

DEVELOPMENT BANK OF THE PHILIPPINES, JESUS P. ESTANISLAO, DOLORES A. SANTIAGO, LYNN H. CATUNCAN, NORMA O. TERREL, MA. ANTONIA G. REBUENO, PETITIONERS, VS. COMMISSION ON AUDIT, R...

G.R. No. 88435. January 16, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review on certiorari[1] of the letter-decision of the Chairman of the Commission on Audit[2] (“COA” for brevity) and the letter-decision of the COA en banc[3], prohibiting the Development Bank of the Philippines (“DBP” for brevity) from hiring a private external auditor. This petition raises a question of first impression, whether or not the constitutional power of the COA to examine and audit the DBP is exclusive and precludes a concurrent audit of the DBP by a private external auditor.

The Antecedent Facts

In 1986, the Philippine government, under the administration of then President Corazon C. Aquino, obtained from the World Bank an Economic Recovery Loan (“ERL” for brevity) in the amount of US\$310 million. The ERL was intended to support the recovery of the Philippine economy, at that time suffering severely from the financial crisis that hit the country during the latter part of the Marcos regime.

As a condition for granting the loan, the World Bank required the Philippine government to rehabilitate the DBP which was then saddled with huge non-performing loans. Accordingly, the government committed to rehabilitate the DBP to make it a viable and self-sustaining financial institution in recognition of its developmental role in the economy. The DBP was expected to continue “providing principally medium and long-term financing to projects with risks higher than the private sector may be willing to accept under reasonable terms.”[4] The government’s commitment was embodied in the Policy Statement for the Development Bank of the Philippines which stated in part:

“4. Furthermore, like all financial institutions under Central Bank supervision, DBP will now be required to have a private external audit, and its Board of Directors will now be opened to adequate private sector representation. It is hoped that with these commitments, DBP can avoid the difficulties of the past and can function as a competitive and viable financial institution within the Philippine financial system.”[5] (Emphasis supplied)

On November 28, 1986, the Monetary Board adopted Resolution No. 1079 amending the Central Bank’s Manual of Regulations for Banks and other Financial Intermediaries, in line with the government’s commitment to the World Bank to require a private external auditor for DBP. Thus, on December 5, 1986, the Central Bank Governor issued Central Bank Circular No. 1124, providing that:

“SECTION 1. Subsection 1165.5 (Book I) is amended to read as follows:

1165.5 Financial Audit. - Each Bank, whether Government-owned or controlled or private, shall cause an annual financial audit to be conducted by an external independent auditor not later than thirty (30) days after the close of the calendar year or the fiscal year adopted by the bank. x x x.

x x x The Audit of a Government-owned or controlled bank by an external independent auditor shall be in addition to and without prejudice to that conducted by the Commission on Audit in the discharge of its mandate under existing law. x x x.

x x x

“SECTION 3. The requirement for an annual financial audit by an external independent auditor shall extend to specialized and unique government banks such as the Land Bank of the Philippines and the Development Bank of the Philippines.”[6]

On December 12, 1986, pursuant to Central Bank Circular No. 1124 and the government’s commitment to the World Bank, DBP Chairman Jesus Estanislao wrote the COA seeking approval of the DBP’s engagement of a private external auditor in addition to the COA.[7]

On January 2, 1987, to formalize its request for the ERL, the Philippine government sent the World Bank a letter assuring the World Bank that pursuant to Central Bank Circular No. 1124, “all Banks, including government banks, shall be fully audited by external independent auditors x x x in addition to that provided by the Commission on Audit.” The letter was signed by the Central Bank Governor and the Ministers of Finance, Trade and Industry, and Economic Planning of the Philippine government. [8]

On January 8, 1987, the Philippine government and World Bank negotiating panels reached final agreement on the private audit of the DBP, as follows:

“13. With respect to the draft Policy Statement, it was agreed that Sections 4, 7 and 11 would be amended as follows: x x x (iii) Section 11 should in line with the letter of Development Policy, confirm that the external independent audits would commence with a balance sheet audit as of December 31, 1986 and a full financial audit, including income statements, starting with the period July 1 to December 31, 1986. A copy of COA’s letter (referred to in par. 1, a draft of which is attached as Annex VIII) regarding DBP’s appointment of a private external auditor will be sent to the Bank before the distribution of the loan documents to the Bank’s Board, along with a copy of the scope of audit as approved by COA and satisfactory to the Bank.

With regard to the scope of the audit to be undertaken by the private external auditors, the terms of reference which will be issued to the selected auditors should be generally consistent with the attached model terms of reference for financial audits (Annex IX). These general terms of reference were discussed during negotiations and form a part of the World Bank’s guidelines for financial information on financial institutions.”[9]

On January 20, 1987, then COA Chairman Teofisto Guingona, Jr. replied to the December 12, 1986 letter of the DBP Chairman. The COA Chairman’s reply stated that:

“x x x the Commission on Audit (COA) will interpose no objection to your engagement of a private external auditor as required by the Economic Recovery Program Loan Agreements of 1987 provided that the terms for said audit are first reviewed and approved by the Commission.”[10]

The following day, the COA Chairman also informed the Consultant of the Central Bank that the COA interposed no objection to the proposed scope of audit services to be undertaken by the private external auditors to be engaged by the DBP. [11]

On February 18, 1987, the Board of Directors of the DBP approved the hiring of Joaquin Cunanan & Co. as the

DBP's private external auditor for calendar year 1986 as required by Central Bank Circular No. 1124 and the World Bank. The DBP Board of Directors placed a ceiling on the amount of reimbursable out-of-pocket expenses that could be charged by the private auditor.[12]

On February 23, 1987, the World Bank President, in his Report to the Bank's Executive Directors on the Philippine government's application for the ERL, certified that the Philippine government was complying with the requirement of a private external auditor. The World Bank President's certification stated that:

"74. Accounting and Auditing. All banks both government and private are now subject to accounting and auditing standards as established by the Central Bank. To ensure full public accountability, the Monetary Board now requires that all government banks be subject to annual audits by independent private auditing firms, in addition to those normally undertaken by the Government's Commission on Audit. DBP and PNB have already selected private auditors, and audited accounts for 1986 and 1987 will be a requirement for the releases of the second and third tranches, respectively, of the ERL." [13]

However, a change in the leadership of the COA suddenly reversed the course of events. On April 27, 1987, the new COA Chairman, Eufemio Domingo, wrote the Central Bank Governor protesting the Central Bank's issuance of Circular No. 1124 which allegedly encroached upon the COA's constitutional and statutory power to audit government agencies. The COA Chairman's letter informed the Governor that:

"This Commission hereby registers its strong objection to that portion of the CBP Circular No. 1124 which requires government banks to engage private auditors in addition to that conducted by the Commission on Audit, and urges the immediate amendment thereof. It is the position of this Commission that the said requirement: (a) infringes on Article IX-D of the Philippine Constitution; (b) violates Section 26 and 32 of the Government Auditing Code of the Philippines; (c) exposes the financial programs and strategies of the Philippine Government to high security risks; (d) allows the unnecessary and unconscionable expenditure of government funds; and (e) encourages unethical encroachment among professionals." [14]

On May 13, 1987, after learning that the DBP had signed a contract with a private auditing firm for calendar year 1986, the new COA Chairman wrote the DBP Chairman that the COA resident auditors were under instructions to disallow any payment to the private auditor whose services were unconstitutional, illegal and unnecessary.[15]

On July 1, 1987, the DBP Chairman sent to the COA Chairman a copy of the DBP's contract with Joaquin Cunanan & Co., signed four months earlier on March 5, 1987. The DBP Chairman's covering handwritten note sought the COA's concurrence to the contract.[16]

During the pendency of the DBP Chairman's note-request for concurrence, the DBP paid the billings of the private auditor in the total amount of P487,321.14 [17] despite the objection of the COA. On October 30, 1987, the COA Chairman issued a Memorandum disallowing the payments, and holding the following persons personally liable for such payment:

"SVP Fajardo who approved the voucher for payment; VP Santiago who certified that the expenditure was authorized, necessary and lawful; SM Terrel, Catuncan and Rebuena who signed the checks; and the head of office who signed the contract and who is immediately and primarily responsible for the funds of the Bank." [18]

On January 19, 1988, the DBP Chairman wrote the COA Chairman seeking reconsideration of the COA Chairman's Memorandum.[19] However, the DBP received no response until August 29, 1988 when the COA Chairman issued a letter-decision denying petitioner's July 1, 1987 note-request for concurrence. The letter-decision, one of the two COA decisions assailed in this petition, declared in part as follows:

"(a) In the letter to the Central Bank Governor x x x, this Commission clearly stated its non-negotiable stand

on the issue in the following terms:

‘ x x x the very essence of the Commission on Audit as an independent constitutional commission in the total scheme of Government, is its singular function to ‘[E]xamine, audit, and settle x x x all accounts pertaining to x x x the Government, or any of its subdivisions, x x x including government-owned or controlled corporations.’ To allow private firms to interfere in this governmental audit domain would be to derogate the Constitutional supremacy of State audit as the Government’s guardian of the people’s treasury, and as the prime advocate of economy in the use of government resources.’

x x x

“(c) In the letter to the Secretary of Finance dated January 28, 1988 x x x, this Commission maintains:

- ‘COA is in no way prepared to permit ‘use of private auditors’ except insofar as the law allows, which is ‘to deputize and retain in the name of the Commission such certified public accountants and other licensed professionals not in the public service as it may deem necessary to assist government auditors in undertaking specialized audit engagements’ (Sec. 31, PD No 1445). Outside of this, the Commission does not consider the matter of hiring private auditing firms a negotiable matter, and this we want to emphasize to avoid future embarrassment to the Government. The Commission on Audit is a constitutionally-created independent and separate body, and neither Congress nor the Executive Department has the power to detract from its mandated duties, functions, and powers.

- ‘Since the proceeds of the proposed loan accrue to the Republic of the Philippines as borrower, it follows that its accounting and audit must comply with the laws of this country. To specify in the Loan Agreement that the loan account, once released to the Government, shall be ‘audited by independent auditors acceptable to the Bank’ is not only to entirely by-pass this Commission but to ignore as well the Constitution and the laws of this country which vests in this Commission the ‘power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property x x x pertaining to the Government.’ (Sec. 2, Art. IX-D, Phil. Const.).

‘Such brazen disregard of the fundamental law of this country cannot be countenanced by this Commission.’

“In view of all the foregoing, you are hereby advised:

“1. To desist from proceeding with the audit of Joaquin Cunanan & Co. of the Bank’s financial statements for the year ending December 31, 1987.

“2. To refrain from making any payments out of the funds of the Development Bank of the Philippines, in the event that such audit services have already been rendered, attention being invited to the following provisions of the Government Auditing Code of the Philippines:

‘Sec. 108. General liability for unlawful expenditures – Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefore.’

“3. To restitute, within thirty (30) days from receipt hereof, the total amount of P513,549.24 under CV Nos. 9136, 5014, 6201 and 4082 for professional services rendered in the audit of the 1986 financial operations of the Bank. Pursuant to the aforequoted provisions of law, such unlawful expenditure is the personal liability of the official directly responsible therefore.

“Please be guided accordingly.”[20]

On September 26, 1988, the DBP Chairman appealed the letter-decision to the COA en banc. On May 20, 1989, the COA en banc, in a letter-decision, denied the DBP’s appeal. This letter-decision, now also assailed by the DBP, held that:

“Upon a circumspect evaluation of the grounds upon which your instant request is predicated, this Commission finds the same to be devoid of merit. As hereunder demonstrated, the justifications offered do not inspire rational belief in the mind of this Commission.

“First, it bears stress that CB Circular No. 1124, series of 1986, which has earlier been shown to be constitutionally and legally infirm, cannot by any means possess any binding and conclusive effect upon this Commission and, hence, may not be properly invoked in support of the instant appeal.

“Secondly, it was not the International Bank for Reconstruction and Development which required the audit of government banks by private auditing firm, but the Central Bank itself.

“Thirdly, insofar as this Commission is concerned, PD 2029 is an anachronism of sorts if viewed in the light of the present Constitution recognizing this Commission as the supreme and exclusive audit institution of the government. This is necessarily implicit from the bare language of Section 2(1), Article IX-D thereof which, despite the absence of the qualifying adjective “exclusive” that anyway would be a surplusage, ought to be reasonably construed as vesting in this Commission the “power, authority, and duty” to audit all government accounts to the exclusion of any other person or entity, whether in the public or the private sector. Expressio unius est exclusio alterius. A contrary interpretation, such as that being pressed upon this Commission, would reduce this constitutional ordinance to an absurdity (*reductio ad absurdum*) as it thereby would give rise to the rather confusing spectacle, as it were, of a government agency or corporation being audited not only by this Commission but also and in addition thereto by one or two or several private accounting firms – certainly a situation never intended by the framers of the Constitution.

“Lastly, while this Commission has not lost sight of the letter of then COA Chairman Guingona, Jr. to the DBP Chairman, dated January 20, 1987, it has opted to be guided and influenced by the more persuasive and controlling COA Circular No. 860254 dated March 24, 1986, which in categorical and precise terms ordained that:

‘Accordingly, by way of reassertion and reaffirmation of its primary audit jurisdiction, as herein above defined, the Commission on Audit hereby issues the following directives:

- Any ongoing audit of a government-owned and/or controlled corporation or any of its subsidiaries or corporate offsprings being conducted by a private auditor or accounting firm shall cease and terminate on April 15, 1986. Henceforth, from and after said date, the audit of said corporate entity shall be undertaken solely and exclusively by the Commission on Audit. x x x.’

“Premises considered, it is regretted that your instant request for reconsideration has to be, as it is hereby, denied.”[21]

Hence, on June 14, 1989 the DBP filed this petition for review with prayer for a temporary restraining order, assailing the two COA letter-decisions for being contrary to the Constitution and existing laws. On June 15, 1989 this Court issued a temporary restraining order directing the COA to cease and desist from enforcing its challenged letter-decisions. The Office of the Solicitor General, in a Manifestation dated October 18, 1989, declined to appear on behalf of the COA on the ground that the Solicitor General was “taking a position adverse to that of the COA.” Consequently, a private counsel on pro bono basis represented the COA.

The Issues

The DBP’s petition raises the following issues:

- Does the Constitution vest in the COA the sole and exclusive power to examine and audit government banks so as to prohibit concurrent audit by private external auditors under any circumstance?
- Is there an existing statute that prohibits government banks from hiring private auditors in addition to the

COA? If there is none, is there an existing statute that authorizes government banks to hire private auditors in addition to the COA?

- If there is no legal impediment to the hiring by government banks of a private auditor, was the hiring by the DBP of a private auditor in the case at bar necessary, and were the fees paid by DBP to the private auditor reasonable, under the circumstances?

The Court's Ruling

The DBP's petition is meritorious.

First Issue: Power of COA to Audit under the Constitution

The resolution of the primordial issue of whether or not the COA has the sole and exclusive power to examine and audit government banks involves an interpretation of Section 2, Article IX-D of the 1987 Constitution. This Section provides as follows:

"Sec. 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned and held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, x x x.

"(2) The Commission shall have the exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefore, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties." (Emphasis supplied)

The COA vigorously asserts that under the first paragraph of Section 2, the COA enjoys the sole and exclusive power to examine and audit all government agencies, including the DBP. The COA contends this is similar to its sole and exclusive authority, under the second paragraph of the same Section, to define the scope of its audit, promulgate auditing rules and regulations, including rules on the disallowance of unnecessary expenditures of government agencies. The bare language of Section 2, however, shows that the COA's power under the first paragraph is not declared exclusive, while its authority under the second paragraph is expressly declared "exclusive." There is a significant reason for this marked difference in language.

During the deliberations of the Constitutional Commission, Commissioner Serafin Guingona proposed the addition of the word "exclusive" in the first paragraph of Section 2, thereby granting the COA the sole and exclusive power to examine and audit all government agencies. However, the Constitutional Commission rejected the addition of the word "exclusive" in the first paragraph of Section 2 and Guingona was forced to withdraw his proposal. Commissioner Christian Monsod explained the rejection in this manner:

"MR. MONSOD. Earlier Commissioner Guingona, in withdrawing his amendment to add "EXCLUSIVE" made a statement about the preponderant right of COA.

"For the record, we would like to clarify the reason for not including the word. First, we do not want an Article that would constitute a disincentive or an obstacle to private investment. There are government institutions with private investments in them, and some of these investors - Filipinos, as well as in some cases, foreigners - require the presence of private auditing firms, not exclusively, but concurrently. So this does not take away the power of the Commission on Audit. Second, there are certain instances where private auditing may be required, like the listing in the stock exchange. In other words, we do not want this provision to be an unnecessary obstacle to privatization of these companies or attraction of investments." [22] (Emphasis supplied)

Shortly thereafter, Commissioner Guingona attempted to resurrect his amendment by proposing the following provision:

“Private auditing firms may not examine or audit accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property owned or held in trust by or pertaining to the Government or any of its subdivisions, agencies or instrumentalities.”[23]

Guingona argued that a private audit in addition to the COA audit would be a useless duplication and an unnecessary expense on the part of government.

The Constitutional Commission also rejected this proposed provision, after Commissioner Monsod made the following explanation:

“MR. MONSOD. x x x But it is also a fact that even government agencies, instrumentalities and subdivisions sometimes borrow money from abroad. And if we are at all going to preclude the possibility of any concurrent auditing, if that is required, and insist that it is only exclusively the government which can audit, we may be unnecessarily tying their hands without really accomplishing much more than what we want. As long as the COA is there, and the COA’s power cannot be eliminated by law, by decree or anything of that sort, then the government funds are protected.

As far as the question of fees is concerned, this is always negotiable. Besides, if one talks about auditing fees, these are governed by certain regulations within the auditing profession, beyond which auditing firms cannot go. Furthermore, the government can always refuse to pay unconscionable fees. So, that matter really is not that relevant. But I think what we want to insist on is that there should be some flexibility so that a procedural requirement does not impede a substantive transaction as long as COA is there.”[24] (Emphasis supplied)

The rejection of Guingona’s second proposal put an end to all efforts to grant the COA the sole and exclusive power to examine and audit government agencies.

In sharp contrast, the Constitutional Commission placed the word “exclusive” to qualify the authority of the COA under the second paragraph of the same Section 2. The word “exclusive” did not appear in the counterpart provisions of Section 2 in the 1935 and 1973 Constitutions.[25] There is no dispute that the COA’s authority under the second paragraph of Section 2 is exclusive as the language of the Constitution admits of no other meaning. Thus, the COA has the exclusive authority to decide on disallowances of unnecessary government expenditures. Other government agencies and their officials, as well as private auditors engaged by them, cannot in any way intrude into this exclusive function of the COA.

The qualifying word “exclusive” in the second paragraph of Section 2 cannot be applied to the first paragraph which is another sub-section of Section 2. A qualifying word is intended to refer only to the phrase to which it is immediately associated, and not to a phrase distantly located in another paragraph or sub-section.[26] Thus, the first paragraph of Section 2 must be read the way it appears, without the word “exclusive”, signifying that non-COA auditors can also examine and audit government agencies. Besides, the framers of the Constitution intentionally omitted the word “exclusive” in the first paragraph of Section 2 precisely to allow concurrent audit by private external auditors.

The clear and unmistakable conclusion from a reading of the entire Section 2 is that the COA’s power to examine and audit is non-exclusive. On the other hand, the COA’s authority to define the scope of its audit, promulgate auditing rules and regulations, and disallow unnecessary expenditures is exclusive.

Moreover, as the constitutionally mandated auditor of all government agencies, the COA’s findings and conclusions necessarily prevail over those of private auditors, at least insofar as government agencies and officials are concerned. The superiority or preponderance of the COA audit over private audit can be gleaned from the

records of the Constitutional Commission, as follows:

“MR. GUINGONA. Madam President, after consultation with the honorable members of the Committee, I have amended my proposed amendment by deleting the word EXCLUSIVE because I was made to understand that the Commission on Audit will still have the preponderant power and authority to examine, audit and settle.”[27] (Emphasis supplied)

The findings and conclusions of the private auditor may guide private investors or creditors who require such private audit. Government agencies and officials, however, remain bound by the findings and conclusions of the COA, whether the matter falls under the first or second paragraph of Section 2, unless of course such findings and conclusions are modified or reversed by the courts.

The power of the COA to examine and audit government agencies, while non-exclusive, cannot be taken away from the COA. Section 3, Article IX-D of the Constitution mandates that:

“Sec. 3. No law shall be passed exempting any entity of the Government or its subsidiary in any guise whatsoever, or any investment of public funds, from the jurisdiction of the Commission on Audit.”

The mere fact that private auditors may audit government agencies does not divest the COA of its power to examine and audit the same government agencies. The COA is neither by-passed nor ignored since even with a private audit the COA will still conduct its usual examination and audit, and its findings and conclusions will still bind government agencies and their officials. A concurrent private audit poses no danger whatsoever of public funds or assets escaping the usual scrutiny of a COA audit.

Manifestly, the express language of the Constitution, and the clear intent of its framers, point to only one indubitable conclusion - the COA does not have the exclusive power to examine and audit government agencies. The framers of the Constitution were fully aware of the need to allow independent private audit of certain government agencies in addition to the COA audit, as when there is a private investment in a government-controlled corporation, or when a government corporation is privatized or publicly listed, or as in the case at bar when the government borrows money from abroad.

In these instances the government enters the marketplace and competes with the rest of the world in attracting investments or loans. To succeed, the government must abide with the reasonable business practices of the marketplace. Otherwise no investor or creditor will do business with the government, frustrating government efforts to attract investments or secure loans that may be critical to stimulate moribund industries or resuscitate a badly shattered national economy as in the case at bar. By design the Constitution is flexible enough to meet these exigencies. Any attempt to nullify this flexibility in the instances mentioned, or in similar instances, will be ultra vires, in the absence of a statute limiting or removing such flexibility.

The deliberations of the Constitutional Commission reveal eloquently the intent of Section 2, Article IX-D of the Constitution. As this Court has ruled repeatedly, the intent of the law is the controlling factor in the interpretation of the law.[28] If a law needs interpretation, the most dominant influence is the intent of the law.[29] The intent of the law is that which is expressed in the words of the law, which should be discovered within its four corners aided, if necessary, by its legislative history.[30] In the case of Section 2, Article IX-D of the Constitution, the intent of the framers of the Constitution is evident from the bare language of Section 2 itself. The deliberations of the Constitutional Commission confirm expressly and even elucidate further this intent beyond any doubt whatsoever.

There is another constitutional barrier to the COA's insistence of exclusive power to examine and audit all government agencies. The COA's claim clashes directly with the Central Bank's constitutional power of

“supervision” over banks under Section 20, Article XII of the Constitution. This provision states as follows:

“Sec. 20. The Congress shall establish an independent central monetary authority, the members of whose governing board must be natural-born Filipino citizens, of known probity, integrity, and patriotism, the majority of whom shall come from the private sector. They shall also be subject to such other qualifications and disabilities as may be prescribed by law. The authority shall provide policy direction in the areas of money, banking, and credit. It shall have supervision over the operations of banks and exercise such regulatory powers as may be provided by law over the operations of finance companies and other institutions performing similar functions.” (Emphasis supplied)

Historically, the Central Bank has been conducting periodic and special examination and audit of banks to determine the soundness of their operations and the safety of the deposits of the public. Undeniably, the Central Bank’s power of “supervision” includes the power to examine and audit banks, as the banking laws have always recognized this power of the Central Bank.[31] Hence, the COA’s power to examine and audit government banks must be reconciled with the Central Bank’s power to supervise the same banks. The inevitable conclusion is that the COA and the Central Bank have concurrent jurisdiction, under the Constitution, to examine and audit government banks.

However, despite the Central Bank’s concurrent jurisdiction over government banks, the COA’s audit still prevails over that of the Central Bank since the COA is the constitutionally mandated auditor of government banks. And in matters falling under the second paragraph of Section 2, Article IX-D of the Constitution, the COA’s jurisdiction is exclusive. Thus, the Central Bank is devoid of authority to allow or disallow expenditures of government banks since this function belongs exclusively to the COA.

Second Issue: Statutes Prohibiting or Authorizing Private Auditors

The COA argues that Sections 26, 31 and 32 of PD No. 1445, otherwise known as the Government Auditing Code of the Philippines, prohibit the hiring of private auditors by government agencies. Section 26 of PD No. 1445 provides that:

“Section 26. General Jurisdiction. The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government, the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, as well as the examination, audit, and settlement of all debts and claims of any sort due or owing to the Government or any of its subdivisions, agencies or instrumentalities. The said jurisdiction extends to all government-owned or controlled corporations, including their subsidiaries, and other self-governing boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donations through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government.”

Section 26 defines the extent and scope of the powers of the COA. Considering the comprehensive definition in Section 26, the COA’s jurisdiction covers all government agencies, offices, bureaus and units, including government-owned or controlled corporations, and even non-government entities enjoying subsidy from the government. However, there is nothing in Section 26 that states, expressly or impliedly, that the COA’s power to examine and audit government banks is exclusive, thereby preventing private audit of government agencies concurrently with the COA audit.

Section 26 is a definition of the COA’s “general jurisdiction.” Jurisdiction may be exclusive or concurrent.

Section 26 of PD No. 1445 does not state that the COA's jurisdiction is exclusive, and there are other laws providing for concurrent jurisdiction. Thus, Section 26 must be applied in harmony with Section 58[32] of the General Banking Law of 2000 (RA No. 8791) which authorizes unequivocally the Monetary Board to require banks to hire independent auditors. Section 58 of the General Banking Law of 2000 states as follows:

“Section 58. Independent Auditor. - The Monetary Board may require a bank, quasi-bank or trust entity to engage the services of an independent auditor to be chosen by the bank, quasi-bank or trust entity concerned from a list of certified public accountants acceptable to the Monetary Board. The term of the engagement shall be as prescribed by the Monetary Board which may either be on a continuing basis where the auditor shall act as resident examiner, or on the basis of special engagements; but in any case, the independent auditor shall be responsible to the bank's, quasi-bank's or trust entity's board of directors. A copy of the report shall be furnished to the Monetary Board. x x x.” (Emphasis supplied)

Moreover, Section 26 must also be applied in conformity with Sections 25 and 28[33] of the New Central Bank Act (RA No. 7653) which authorize expressly the Monetary Board to conduct periodic or special examination of all banks. Sections 25 and 28 of the New Central Bank Act state as follows:

“Sec. 25. Supervision and Examination. The Bangko Sentral shall have supervision over, and conduct periodic or special examinations of, banking institutions x x x. (Emphasis supplied)

x x x

“Sec. 28. Examination and Fees. The supervising and examining department head, personally or by deputy, shall examine the books of every banking institution once in every twelve (12) months, and at such other time as the Monetary Board by an affirmative vote of five (5) members may deem expedient and to make a report on the same to the Monetary Board: x x x.” (Emphasis supplied)

The power vested in the Monetary Board under Section 58 of the General Banking Law of 2000, and Sections 25 and 28 of the New Central Bank Act, emanates from the Central Bank's explicit constitutional mandate to exercise “supervision over the operations of banks.” Under Section 4 of the General Banking Law of 2000, the term “supervision”[34] is defined as follows:

“Section 4. Supervisory Powers. The operations and activities of banks shall be subject to supervision of the Bangko Sentral. “Supervision” shall include the following:

x x x

4.2. The conduct of examination to determine compliance with laws and regulations if the circumstances so warrant as determined by the Monetary Board;

x x x

4.4. Regular investigation which shall not be oftener than once a year from the last date of examination to determine whether an institution is conducting its business on a safe or sound basis: Provided, That the deficiencies/irregularities found by or discovered by an audit shall immediately be addressed;

x x x.” (Emphasis supplied)

Clearly, under existing laws, the COA does not have the sole and exclusive power to examine and audit government banks. The Central Bank has concurrent jurisdiction to examine and audit, or cause the examination and audit, of government banks.

Section 31 of PD No. 1445, another provision of law claimed by the COA to prohibit the hiring of private auditors by government agencies, provides as follows:

“Section 31. Deputization of private licensed professionals to assist government auditors. - (1) The Commission may, when the exigencies of the service so require, deputize and retain in the name of the Commission such certified public accountants and other licensed professionals not in the public service as it may deem necessary to assist government auditors in undertaking specialized audit engagements.

“(2) The deputized professionals shall be entitled to such compensation and allowances as may be stipulated, subject to pertinent rules and regulations on compensation and fees.”

According to the COA, Section 31 is the maximum extent that private auditors can participate in auditing government agencies and anything beyond this is without legal basis. Hence, the COA maintains that the hiring of private auditors who act in their own name and operate independently of the COA is unlawful.

Section 31 is bereft of any language that prohibits, expressly or impliedly, the hiring of private auditors by government agencies. This provision of law merely grants authority to the COA to hire and deputize private auditors to assist the COA in the auditing of government agencies. Such private auditors operate under the authority of the COA. By no stretch of statutory construction can this provision be interpreted as an absolute statutory ban on the hiring of private auditors by government agencies. Evidently, the language of the law does not support the COA's claim.

Moreover, the COA further contends that Section 32 of PD No. 1445 is another provision of law that prohibits the hiring of private auditors by government agencies. Section 32 provides as follows:

“Section 32. Government contracts for auditing, accounting, and related services. (1) No government agency shall enter into any contract with any private person or firm for services to undertake studies and services relating to government auditing, including services to conduct, for a fee, seminars or workshops for government personnel on these topics, unless the proposed contract is first submitted to the Commission to enable it to determine if it has the resources to undertake such studies or services. The Commission may engage the services of experts from the public or private sector in the conduct of these studies.

“(2) Should the Commission decide not to undertake the study or service, it shall nonetheless have the power to review the contract in order to determine the reasonableness of its costs.” (Emphasis supplied)

Section 32 refers to contracts for studies and services “relating to government auditing” which the COA may or may not want to undertake itself for a government agency. Stated another way, Section 32 speaks of studies and services that the COA may choose not to render to a government agency. Obviously, the subject of these contracts is not the audit itself of a government agency because the COA is compelled to undertake such audit and cannot choose not to conduct such audit. The Constitution and existing law mandate the COA to audit all government agencies. Section 2, Article IX-D of the Constitution commands that the COA “shall have the x x x duty to examine, audit, and settle all accounts” of government agencies (Emphasis supplied). Similarly, the Revised Administrative Code of 1987 directs that the “Commission on Audit shall have the x x x duty to examine, audit, and settle all accounts”[35] of government agencies (Emphasis supplied). Hence, the COA cannot refuse to audit government agencies under any circumstance.

The subject of the contracts referred to in Section 32 is necessarily limited to studies, seminars, workshops, researches and other services on government auditing which the COA may or may not undertake at its discretion, thereby excluding the audit itself of government agencies. Since the COA personnel have the experience on government auditing and are in fact the experts on this subject, it is only proper for the COA to be granted the right of first refusal to undertake such services if required by government agencies. This is what Section 32 is all about and nothing more. Plainly, there is nothing in Section 32 which prohibits the hiring of private auditors to audit government agencies concurrently with the COA audit.

On the other hand, the DBP cites Central Bank Circular No. 1124[36] as legal basis for hiring a private auditor. This Circular amended Subsection 1165.5 (Book I) of the Manual of Regulations for Banks and other Financial Intermediaries to require “[E]ach bank, whether government-owned or controlled or private, x x x (to) cause an annual financial audit to be conducted by an external auditor x x x.” Moreover, the Circular states that the “audit of a government-owned or controlled bank by an external independent auditor shall be in addition to and without prejudice to that conducted by the Commission on Audit in the discharge of its mandate under existing law.” Furthermore, the Circular provides that the “requirement for an annual audit by an external independent auditor shall extend to specialized and unique government banks such as the Land Bank of the Philippines and the Development Bank of the Philippines.”

The Central Bank promulgated Circular No. 1124 on December 5, 1986 pursuant to its power under the Freedom Constitution, the fundamental law then in force, as well as pursuant to its general rule making authority under the General Banking Act (RA No. 337), the banking law in effect at that time. Under the Freedom Constitution, the Central Bank exercised supervisory authority over the banking system. Section 14, Article XV of the 1973 Constitution, which was re-adopted in the Freedom Constitution, provided as follows:

“SEC. 14. The Batasang Pambansa shall establish a central monetary authority which shall provide policy direction in the areas of money, banking and credit. It shall have supervisory authority over the operations of banks and exercise such regulatory authority as may be provided by law over the operations of finance companies and other institutions performing similar functions. Until the Batasang Pambansa shall otherwise provide, the Central Bank of the Philippines, operating under existing laws, shall function as the central monetary authority.” (Emphasis supplied)

Section 6-D of the General Banking Act (RA No. 337) vested the Monetary Board with the specific power to “require a bank to engage the services of an independent auditor to be chosen by the bank concerned from a list of certified public accountants acceptable to the Monetary Board.”

The 1987 Constitution created an independent central monetary authority with substantially the same powers as the Central Bank under the 1973 Constitution and the Freedom Constitution. Section 20, Article XII of the 1987 Constitution provides that the Monetary Board “shall have supervision over the operations of banks”. The specific power of the Central Bank under the General Banking Act (RA No. 337) to require an independent audit of banks was re-enacted in Section 58 of the General Banking Law of 2000 (RA No. 8791).

Indubitably, the Central Bank had the express constitutional and statutory power to promulgate Circular No. 1124 on December 5, 1986. The power granted to the Central Bank to issue Circular No. 1124 with respect to the independent audit of banks is direct, unambiguous, and beyond dispute. The Bangko Sentral ng Pilipinas, which succeeded the Central Bank, retained under the 1987 Constitution and the General Banking Law of 2000 (RA No. 8791) the same constitutional and statutory power the Central Bank had under the Freedom Constitution and the General Banking Act (RA No. 337) with respect to the independent audit of banks.

Circular No. 1124 has the force and effect of law. In a long line of decisions,[37] this Court has held consistently that the rules and regulations issued by the Central Bank pursuant to its supervisory and regulatory powers have the force and effect of law. The DBP, being a bank under the constitutional and statutory supervision of the Central Bank, was under a clear legal obligation to comply with the requirement of Circular No. 1124 on the private audit of banks. Refusal by the DBP to comply with the Circular would have rendered the DBP and its officers liable to the penal provisions of the General Banking Act,[38] as well as the administrative and penal sanctions under the Central Bank Act.[39]

The DBP also relies on Section 8 of PD No. 2029 as its statutory basis for hiring a private auditor. This Section

states in part as follows:

“The audit of government corporations by the Commission on Audit shall not preclude government corporations from engaging the services of private auditing firms: Provided, however, that even if the services of the latter are availed of, the audit report of the Commission on Audit shall serve as the report for purposes of compliance with audit requirements as required of government corporations under applicable law.”

Section 8 of PD No. 2029, however, also provides that the “policy of withdrawal of resident auditors shall be fully implemented x x x.” Section 2 of the same decree also excludes from the term “government-owned or controlled corporation” two classes of corporations. The first are originally private corporations the majority of the shares of stock of which are acquired by government financial institutions through foreclosure or dacion en pago. The second are subsidiary corporations of government corporations, which subsidiaries are organized exclusively to own, manage or lease physical assets acquired by government financial institutions through foreclosure or dacion en pago. Claiming that PD No. 2029 operates to exempt certain government-owned corporations from the COA’s jurisdiction in violation of Section 3, Article IX-D of the Constitution, the COA is questioning the constitutionality of PD No. 2029.

There is, however, no compelling need to pass upon the constitutionality of PD No. 2029 because the Constitution and existing banking laws allow such hiring. The issues raised in this case can be resolved adequately without resolving the constitutionality of PD No. 2029. This Court will leave the issue of the constitutionality of PD No. 2029 to be settled in another case where its resolution is an absolute necessity.[40]

Third Issue: Necessity of Private Auditor and Reasonableness of the Fees

The remaining issue to be resolved is whether or not the DBP’s hiring of a private auditor was necessary and the fees it paid reasonable under the circumstances. The hiring by the DBP of a private auditor was a condition imposed by the World Bank for the grant to the Philippine government in early 1987 of a US\$310 million Economic Recovery Loan, at a time when the government desperately needed funds to revive a badly battered economy. One of the salient objectives of the US\$310 million loan was the rehabilitation of the DBP which was then burdened with enormous bad loans. The rehabilitation of the DBP was important in the overall recovery of the national economy.

On February 23, 1986, the World Bank President reported to the Bank’s Executive Directors that the privately audited accounts of the DBP for 1986 and 1987 “will be a requirement for the releases of the second and third tranches, respectively, of the ERL” (Emphasis supplied). Moreover, the Agreed Minutes of Negotiations on the Philippine Economic Recovery Program[41] signed by the Philippine government and World Bank negotiating panels on January 8, 1987, required that “a copy of COA’s letter x x x regarding DBP’s appointment of a private external auditor will be sent to the (World) Bank before the distribution of the loan documents to the Bank’s Board, along with a copy of the scope of audit as approved by COA and satisfactory to the Bank” (Emphasis supplied).

As a creditor, the World Bank needed the private audit for its own information to monitor the progress of the DBP’s rehabilitation. This is apparent from the said Agreed Minutes which provided that the “general terms of reference (for the hiring of private external audit) were discussed during the negotiations and form part of the World Bank’s guidelines for financial information on financial institutions”[42] (Emphasis supplied).

The hiring of a private auditor being an express condition for the grant of the US\$310 million Economic Recovery Loan, a major objective of which was the DBP’s rehabilitation, the same was a necessary corporate act on the part of the DBP. The national government, represented by the Central Bank Governor, as well as the Ministers of Finance, Trade, and Economic Planning, had already committed to the hiring by all government banks of private

auditors in addition to the COA. For the DBP to refuse to hire a private auditor would have aborted the vital loan and derailed the national economic recovery, resulting in grave consequences to the entire nation. The hiring of a private auditor was not only necessary based on the government's loan covenant with the World Bank, it was also necessary because it was mandated by Central Bank Circular No. 1124 under pain of administrative and penal sanctions.

The last matter to determine is the reasonableness of the fees charged by Joaquin C. Cunanan & Co., the private auditor hired by the DBP. The COA describes the private auditor's fees as an "excessive, extravagant or unconscionable expenditure" of government funds. For the audit of the DBP's financial statements in 1986, the private auditor billed the DBP the amount of P487,321.14.[43] In 1987, the private auditor billed the DBP the amount of P529,947.00.[44] In comparison, the COA billed the DBP an audit fee of P27,015,963.00[45] in 1988, and P15,421,662.00[46] in 1989. Even granting that the COA's scope of audit services was broader,[47] still it could not be said that the private auditor's fees are excessive, extravagant or unconscionable compared to the COA's billings.

The hiring of a private auditor by the DBP being a condition of the US\$310 million World Bank loan to the Philippine government, the fees of such private auditor are in reality part of the government's cost of borrowing from the World Bank. The audit report of the private auditor is primarily intended for the World Bank's information[48] on the financial status of the DBP whose rehabilitation was one of the objectives of the loan. An annual private audit fee of about half a million pesos added to the interest on a US\$310 million loan would hardly make the cost of borrowing excessive, extravagant or unconscionable. Besides, the condition imposed by a lender, whose money is at risk, requiring the borrower or its majority-owned subsidiaries to submit to audit by an independent public accountant, is a reasonable and normal business practice.

WHEREFORE, the petition is hereby GRANTED. The letter-decision of the Chairman of the Commission on Audit dated August 29, 1988, and the letter-decision promulgated by the Commission on Audit en banc dated May 20, 1989, are hereby SET ASIDE, and the temporary restraining order issued by the court enjoining respondent Commission on Audit from enforcing the said decisions is hereby made PERMANENT.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 26-30, Petition, Annex "A", Letter-Decision dated August 29, 1988 signed by COA Chairman Eufemio Domingo.

[3] Ibid., pp. 65-69, Petition, Annex "B", Letter-Decision of the COA en-banc dated May 20, 1989 signed by COA Chairman Eufemio Domingo, Commissioner Bartolome Fernandez, Jr. and Commissioner Alberto Cruz.

[4] Ibid., p. 70, Petition, Annex "C", Policy Statement for the Development Bank of the Philippines.

[5] Supra, see note 4.

[6] Ibid., p. 74, Petition, Annex "E", Central Bank Circular No. 1124 dated December 5, 1986.

[7] Ibid., p. 93, Petition, Annex "H", Letter of DBP Chairman dated December 12, 1986.

[8] Ibid., p. 76, Petition, Annex "F", Letter of Development Policy dated January 2, 1987.

[9] Ibid., p. 72, Petition Annex “D”, Agreed Minutes of Negotiations on the Philippine Economic Recovery Program dated January 8, 1987.

[10] Ibid., p. 94, Petition, Annex “I”, Letter of COA Chairman Teofisto Guingona to DBP Chairman Jesus Estanislao dated January 20, 1987.

[11] Ibid., p. 95, Petition, Annex “J”, Letter of COA Chairman Teofisto Guingona to Mr. Armand Fabella dated January 21, 1987.

[12] Ibid., p. 96, Petition, Annex “K”, DBP Resolution No. 0185 dated February 18, 1987.

[13] Ibid., p. 91, Petition, Annex “G”, Report No. P-4466 dated February 23, 1987.

[14] Rollo, pp.190-224, Respondent’s Comment dated January 25, 1990, Annex “7”, p. 5.

[15] Ibid., p. 257, Annex “8”.

[16] Ibid., p. 97, Petition, Annex “L”, Handwritten note of the DBP Chairman dated July 1, 1987.

[17] Ibid., p. 259, Respondent’s Comment dated January 25, 1990, Annex “9”.

[18] Ibid., p. 98, Petition, Annex “M”, Memorandum of the COA Chairman dated October 30, 1987.

[19] Ibid., p. 99, Petition, Annex “N”, Letter of the DBP Chairman dated January 19, 1988.

[20] Supra, see note 2.

[21] Supra, see note 3.

[22] Record of the Constitutional Commission, Vol. 5, p. 607.

[23] Ibid., p. 614.

[24] Ibid.

[25] Section 2, Article XI of the 1935 Constitution provided as follows:

“Section 2. The Auditor General shall examine, audit, and settle all accounts pertaining to the receipts and revenues from whatever source, including trust funds derived from bond issues, and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the Government or the provinces or municipalities thereof. x x x.”

Section 2, Article XII-D of the 1973 Constitution provided as follows:

“Sec. 2. The Commission shall have the following powers and functions: (1) Examine, audit, and settle, in accordance with law and regulations, all accounts pertaining to the revenues, and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities including government-owned or controlled corporations; xxx.”

[26] Felipe vs. De la Cruz, 99 Phil. 940 (1956); Tirona vs. Cudiamat, 14 SCRA 264 (1965).

[27] Record of the Constitutional Commission, Vol. 5, p. 605.

[28] People vs. Purisima, 86 SCRA 542 (1978); Yellow Taxi & Pasay Transport Workers’ Union vs. Manila Yellow Taxi Cab. Co., 80 Phil. 833 (1948); Ledesma vs. Pictain, 79 Phil. 95 (1947); Torres vs. Limjap, 56 Phil 141 (1931).

[29] De Jesus vs. City of Manila, 29 Phil. 73 (1914).

[30] Manila Lodge No. 761 vs. Court of Appeals, 73 SCRA 162 (1976).

[31] Section 6-D, General Banking Act (RA No. 337) ; Section 58, General Banking Law of 2000 (RA No. 8791); Sections 25 and 28, Central Bank Act (RA No. 265); Sections 25 and 28, New Central Bank Act (RA No. 7653).

[32] Previously, Section 6-D of the General Banking Act (RA No. 337) which provided as follows: “The Monetary Board may, at its discretion, in specific cases where the circumstances so warrant, require a bank to engage the services of an independent auditor to be chosen by the bank concerned from a list of certified public accountants acceptable to the Monetary Board. The terms of engagement shall be as prescribed by the Monetary Board which may either be on a continuing basis where the auditor shall act as a resident examiner, or on the basis of special engagements, but in any case, the independent auditor shall be responsible not only to the bank’s board of directors, but to the Monetary Board as well: x x x.”

[33] Previously, Sections 25 and 28 of the Central Bank Act (RA No. 265). Section 25 of this Act provided as follows: “Creation of Appropriate Departments. x x x [T]he Central Bank shall have appropriate supervising and examining departments which shall be charged with the supervision and periodic or special examinations of banking institutions operating in the Philippines, including all Government credit institutions, including their subsidiaries and affiliates, x x x.”

Section 28 of the same Act provided as follows: “Examination and Fees. It shall be the duty of the head of the appropriate supervising and examining department, personally or by deputy, at least once in every twelve months, and at such other times as either he or the Monetary Board may deem expedient, to make an examination of the books of every banking institution within the purview of this Act and to make a report on the same to the Monetary Board.”

[34] The term “supervision” was defined under Section 2 (e) of the General Banking Act (RA No. 337) to “include not only the issuance of rules, but also the overseeing to ascertain that regulations are complied with, investigating or examining to determine whether an institution is conducting its business on a sound financial basis, and inquiring into the solvency and liquidity of the institution.”

[35] Section 11, Chapter 4, Subtitle B, Title I, Book V, Revised Administrative Code of 1987.

[36] Supra, see note 6.

[37] Banco Filipino Savings & Mortgage Bank vs. Navarro, 152 SCRA 346 (1987); Gonzalo Sy Trading vs. Central Bank, 70 SCRA 570 (1976); Batchelder vs. Central Bank, 46 SCRA 102 (1972); People vs. Que Po Lay, 94 Phil. 640 (1954).

[38] Section 87 of RA No. 337 provided as follows: “Unless otherwise provided herein, the violation of any of the provisions of this Act shall be punished by a fine of not more than two thousand pesos or by imprisonment for not more than two years, or both. x x x.” This provision is now Section 66 of the General Banking Law of 2000.

[39] Section 34 of RA No. 265 provided as follows: “Whenever any person or entity willfully violates this Act or any order, instruction, rule or regulation issued by the Monetary Board, the person or persons responsible for such violation shall be punished by a fine of not more than twenty thousand pesos and by imprisonment of not more than five years.” This provision is now Section 36 of the New Central Bank Act (RA No. 7653).

Section 34-A of RA No. 265 provided as follows: “The Monetary Board is hereby authorized, at its discretion, to impose upon banking institutions, their directors and/or officers, x x x for any willful failure or refusal to comply with, or violation of, any banking law or any order, instruction or regulation issued by the Monetary Board, x x x the following administrative sanctions: (a) Fines in amounts as may be determined by the Monetary Board to be

appropriate, but in no case to exceed five thousand pesos a day for each type of violation, x x x; (b) Suspension, or removal of directors and/or officers; x x x.” This provision is now Section 37 of the New Central Bank Act.

[40] *Alger vs. Court of Appeals*, 135 SCRA 37 (1985).

[41] *Supra*, see note 9.

[42] *Ibid*.

[43] *Supra*, see note 17.

[44] *Ibid*.

[45] *Rollo*, p. 365, footnote 7, Memorandum for the Respondent dated October 7, 1990. See also *Rollo*, p. 319-322, Petitioner’s Reply to Comment dated June 20, 1990, Annexes “A” and “B”.

[46] *Ibid*.

[47] The scope of the COA’s audit covers financial audit, compliance audit, and management audit. Private external audit generally covers only financial audit. *Rollo*, p. 209, Respondent’s Comment dated January 25, 1990.

[48] *Supra*, see note 9, Agreed Minutes of Negotiations on the Philippine Economic Recovery Program.

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