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WILSON P. GAMBOA,

Petitioner,

- versus -

**FINANCE SECRETARY
MARGARITO B. TEVES,
FINANCE UNDERSECRETARY
JOHN P. SEVILLA, AND
COMMISSIONER RICARDO
ABCEDE OF THE PRESIDENTIAL
COMMISSION ON GOOD
GOVERNMENT (PCGG) IN
THEIR CAPACITIES AS CHAIR
AND MEMBERS,
RESPECTIVELY, OF THE
PRIVATIZATION COUNCIL,**

**CHAIRMAN ANTHONI SALIM OF
FIRST PACIFIC CO., LTD. IN HIS
CAPACITY AS DIRECTOR OF
METRO PACIFIC ASSET
HOLDINGS INC., CHAIRMAN
MANUEL V. PANGILINAN OF
PHILIPPINE LONG DISTANCE
TELEPHONE COMPANY (PLDT)
IN HIS CAPACITY AS
MANAGING DIRECTOR OF
FIRST PACIFIC CO., LTD.,
PRESIDENT NAPOLEON L.**

G.R. No. 176579

Present:

CORONA, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA, and
SERENO, *JJ.*

**NAZARENO OF PHILIPPINE
LONG DISTANCE TELEPHONE
COMPANY, CHAIR FE BARIN OF
THE SECURITIES EXCHANGE
COMMISSION, and PRESIDENT
FRANCIS LIM OF THE
PHILIPPINE STOCK EXCHANGE,**

Respondents.

PABLITO V. SANIDAD and

Promulgated:

ARNO V. SANIDAD,

Petitioners-in-Intervention.

June 28, 2011

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DECISION

CARPIO, J.:

The Case

This is an original petition for prohibition, injunction, declaratory relief and declaration of nullity of the sale of shares of stock of Philippine Telecommunications Investment Corporation (PTIC) by the government of the Republic of the Philippines to Metro Pacific Assets Holdings, Inc. (MPAH), an affiliate of First Pacific Company Limited (First Pacific).

The Antecedents

The facts, according to petitioner Wilson P. Gamboa, a stockholder of Philippine Long Distance Telephone Company (PLDT), are as follows:¹

On 28 November 1928, the Philippine Legislature enacted Act No. 3436 which granted PLDT a franchise and the right to engage in telecommunications business. In 1969, General Telephone and Electronics Corporation (GTE), an American company and a major PLDT stockholder, sold 26 percent of the outstanding common shares of PLDT to PTIC. In 1977, Prime Holdings, Inc. (PHI) was incorporated by several persons, including Roland Gapud and Jose Campos, Jr. Subsequently, PHI became the owner of 111,415 shares of stock of PTIC by virtue of three Deeds of Assignment executed by PTIC stockholders Ramon Cojuangco and Luis Tirso Rivilla. In 1986, the 111,415 shares of stock of PTIC held by PHI were sequestered by the Presidential Commission on Good Government (PCGG). The 111,415 PTIC shares, which represent about 46.125 percent of the outstanding capital stock of PTIC, were later declared by this Court to be owned by the Republic of the Philippines.²

In 1999, First Pacific, a Bermuda-registered, Hong Kong-based investment firm, acquired the remaining 54 percent of the outstanding capital stock of PTIC. On 20 November 2006, the Inter-Agency Privatization Council (IPC) of the Philippine Government announced that it would sell the 111,415 PTIC shares, or 46.125 percent of the outstanding capital stock of PTIC, through a public bidding to be conducted on 4 December 2006. Subsequently, the public bidding was reset to 8 December 2006, and only two bidders, Parallax Venture Fund XXVII (Parallax) and Pan-Asia Presidio Capital, submitted their bids. Parallax won with a bid of ₱25.6 billion or US\$510 million.

Thereafter, First Pacific announced that it would exercise its right of first refusal as a PTIC stockholder and buy the 111,415 PTIC shares by matching the bid price of Parallax. However, First Pacific failed to do so by the 1 February 2007 deadline set by IPC and instead, yielded its right to PTIC itself which was then given by IPC until 2 March 2007 to buy the PTIC shares. On 14 February 2007, First Pacific, through its subsidiary, MPAH, entered into a Conditional Sale and Purchase Agreement of the 111,415 PTIC shares, or 46.125 percent of the outstanding capital stock of PTIC, with the Philippine Government for the price of ₱25,217,556,000 or US\$510,580,189. The sale was completed on 28 February 2007.

Since PTIC is a stockholder of PLDT, the sale by the Philippine Government of 46.125 percent of PTIC shares is actually an indirect sale of 12 million shares or about 6.3 percent of the outstanding common shares of PLDT. **With the sale, First Pacific's common shareholdings in PLDT increased from 30.7 percent to 37 percent, thereby increasing the common shareholdings of foreigners in PLDT to about 81.47 percent.** This violates Section 11, Article XII of the 1987 Philippine Constitution which limits foreign ownership of the capital of a public utility to not more than 40 percent.³

On the other hand, public respondents Finance Secretary Margarito B. Teves, Undersecretary John P. Sevilla, and PCGG Commissioner Ricardo Abcede allege the following relevant facts:

On 9 November 1967, PTIC was incorporated and had since engaged in the business of investment holdings. PTIC held 26,034,263 PLDT common shares, or 13.847 percent of the total PLDT outstanding common shares. PHI, on the other hand, was incorporated in 1977, and became the owner of 111,415 PTIC shares or 46.125 percent of the outstanding capital stock of PTIC by virtue of three Deeds of Assignment executed by Ramon Cojuangco and Luis Tirso Rivilla. In 1986, the 111,415 PTIC shares held by PHI were sequestered by the PCGG, and subsequently declared by this Court as part of the ill-gotten wealth of former President Ferdinand Marcos. The sequestered PTIC shares were reconveyed to the Republic of the Philippines in accordance with this Court's decision⁴ which became final and executory on 8 August 2006.

The Philippine Government decided to sell the 111,415 PTIC shares, which represent 6.4 percent of the outstanding common shares of stock of PLDT, and designated the Inter-Agency Privatization Council (IPC), composed of the Department of Finance and the PCGG, as the disposing entity. An invitation to bid was published in seven different newspapers from 13 to 24 November 2006. On 20 November 2006, a pre-bid conference was held, and the original deadline for bidding scheduled on 4 December 2006 was reset to 8 December 2006. The extension was published in nine different newspapers.

During the 8 December 2006 bidding, Parallax Capital Management LP emerged as the highest bidder with a bid of ₱25,217,556,000. The government notified First Pacific, the majority owner of PTIC shares, of the bidding results and gave First Pacific until 1 February 2007 to exercise its right of first refusal in accordance with PTIC's Articles of Incorporation. First Pacific announced its intention to match Parallax's bid.

On 31 January 2007, the House of Representatives (HR) Committee on Good Government conducted a public hearing on the particulars of the then impending sale of the 111,415 PTIC shares. Respondents Teves and Sevilla were among those who attended the public hearing. The HR Committee Report No. 2270 concluded that: (a) the auction of the government's 111,415 PTIC shares bore due diligence, transparency and conformity with existing legal procedures; and (b) **First Pacific's intended acquisition of the government's 111,415 PTIC shares resulting in First Pacific's 100% ownership of PTIC will not violate the 40 percent constitutional limit on foreign ownership of a public utility since PTIC holds only 13.847 percent of the**

total outstanding common shares of PLDT.⁵ On 28 February 2007, First Pacific completed the acquisition of the 111,415 shares of stock of PTIC.

Respondent Manuel V. Pangilinan admits the following facts: (a) the IPC conducted a public bidding for the sale of 111,415 PTIC shares or 46 percent of the outstanding capital stock of PTIC (the remaining 54 percent of PTIC shares was already owned by First Pacific and its affiliates); (b) Parallax offered the highest bid amounting to ₱25,217,556,000; (c) pursuant to the right of first refusal in favor of PTIC and its shareholders granted in PTICs Articles of Incorporation, MPAH, a First Pacific affiliate, exercised its right of first refusal by matching the highest bid offered for PTIC shares on 13 February 2007; and (d) on 28 February 2007, the sale was consummated when MPAH paid IPC ₱25,217,556,000 and the government delivered the certificates for the 111,415 PTIC shares. Respondent Pangilinan denies the other allegations of facts of petitioner.

On 28 February 2007, petitioner filed the instant petition for prohibition, injunction, declaratory relief, and declaration of nullity of sale of the 111,415 PTIC shares. Petitioner claims, among others, that the sale of the 111,415 PTIC shares would result in an increase in First Pacifics common shareholdings in PLDT from 30.7 percent to 37 percent, and this, combined with Japanese NTT DoCoMos common shareholdings in PLDT, would result to a total foreign common shareholdings in PLDT of 51.56 percent which is over the 40 percent constitutional limit.⁶ Petitioner asserts:

If and when the sale is completed, First Pacifics equity in PLDT will go up from 30.7 percent to 37.0 percent of its common or voting- stockholdings, x x x. Hence, the consummation of the sale will put the two largest foreign investors in PLDT First Pacific and Japans NTT DoCoMo, which is the worlds largest wireless telecommunications firm, owning 51.56 percent of PLDT common equity. x x x With the completion of the sale, data culled from the official website of the New York Stock Exchange (www.nyse.com) showed that those foreign entities, which own at least five percent of common equity, will collectively own 81.47 percent of PLDTs common equity. x x x

x x x as the annual disclosure reports, also referred to as Form 20-K reports x x x which PLDT submitted to the New York Stock Exchange for the period 2003-2005, revealed that First Pacific and several other foreign entities breached the constitutional limit of 40 percent ownership as early as 2003. x x x⁷

Petitioner raises the following issues: (1) whether the consummation of the then impending sale of 111,415 PTIC shares to First Pacific violates the constitutional limit on foreign ownership of a public utility; (2) whether public respondents committed grave abuse of discretion in allowing the sale of the 111,415 PTIC shares to First Pacific; and (3) whether the sale of common shares to foreigners in excess of 40 percent of the entire subscribed common capital stock violates the constitutional limit on foreign ownership of a public utility.⁸

On 13 August 2007, Pablito V. Sanidad and Arno V. Sanidad filed a Motion for Leave to Intervene and Admit Attached Petition-in-Intervention. In the Resolution of 28 August 2007, the Court granted the motion and noted the Petition-in-Intervention.

Petitioners-in-intervention join petitioner Wilson Gamboa x x x in seeking, among others, to enjoin and/or nullify the sale by respondents of the 111,415 PTIC shares to First Pacific or assignee. Petitioners-in-intervention claim that, as PLDT subscribers, they have a stake in the outcome of the controversy x x x where the Philippine Government is completing the sale of government owned assets in [PLDT], unquestionably a public utility, in violation of the nationality restrictions of the Philippine Constitution.

The Issue

This Court is not a trier of facts. Factual questions such as those raised by petitioner,⁹ which indisputably demand a thorough examination of the evidence of the parties, are generally beyond this Courts jurisdiction. Adhering to this well-settled principle, the Court shall confine the resolution of the instant controversy solely on the **threshold and purely legal issue** of whether the term capital in Section 11, Article XII of the Constitution refers to the total common shares only or to the total outstanding capital

stock (combined total of common and non-voting preferred shares) of PLDT, a public utility.

The Ruling of the Court

The petition is partly meritorious.

Petition for declaratory relief treated as petition for mandamus

At the outset, petitioner is faced with a procedural barrier. Among the remedies petitioner seeks, only the petition for prohibition is within the original jurisdiction of this court, which however is not exclusive but is concurrent with the Regional Trial Court and the Court of Appeals. The actions for declaratory relief,¹⁰ injunction, and annulment of sale are not embraced within the original jurisdiction of the Supreme Court. On this ground alone, the petition could have been dismissed outright.

While direct resort to this Court may be justified in a petition for prohibition,¹¹ the Court shall nevertheless refrain from discussing the grounds in support of the petition for prohibition since on 28 February 2007, the questioned sale was consummated when MPAH paid IPC P25,217,556,000 and the government delivered the certificates for the 111,415 PTIC shares.

However, since the threshold and purely legal issue on the definition of the term capital in Section 11, Article XII of the Constitution has far-reaching implications to the national economy, the Court treats the petition for declaratory relief as one for mandamus.¹²

In *Salvacion v. Central Bank of the Philippines*,¹³ the Court treated the petition for declaratory relief as one for mandamus considering the grave injustice that would

result in the interpretation of a banking law. In that case, which involved the crime of rape committed by a foreign tourist against a Filipino minor and the execution of the final judgment in the civil case for damages on the tourists dollar deposit with a local bank, the Court declared Section 113 of Central Bank Circular No. 960, exempting foreign currency deposits from attachment, garnishment or any other order or process of any court, inapplicable due to the peculiar circumstances of the case. The Court held that injustice would result especially to a citizen aggrieved by a foreign guest like accused x x x that would negate Article 10 of the Civil Code which provides that in case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail. The Court therefore required respondents Central Bank of the Philippines, the local bank, and the accused to comply with the writ of execution issued in the civil case for damages and to release the dollar deposit of the accused to satisfy the judgment.

In *Alliance of Government Workers v. Minister of Labor*,¹⁴ the Court similarly brushed aside the procedural infirmity of the petition for declaratory relief and treated the same as one for mandamus. In *Alliance*, the issue was whether the government unlawfully excluded petitioners, who were government employees, from the enjoyment of rights to which they were entitled under the law. Specifically, the question was: Are the branches, agencies, subdivisions, and instrumentalities of the Government, including government owned or controlled corporations included among the four employers under Presidential Decree No. 851 which are required to pay their employees x x x a thirteenth (13th) month pay x x x ? The Constitutional principle involved therein affected all government employees, clearly justifying a relaxation of the technical rules of procedure, and certainly requiring the interpretation of the assailed presidential decree.

In short, it is well-settled that this Court may treat a petition for declaratory relief as one for mandamus if the issue involved has far-reaching implications. As this Court held in *Salvacion*:

The Court has no original and exclusive jurisdiction over a petition for declaratory relief. **However, exceptions to this rule have been recognized. Thus, where the petition has far-reaching implications and raises questions that should be resolved, it may be treated as one for mandamus.**¹⁵ (Emphasis supplied)

In the present case, petitioner seeks primarily the interpretation of the term capital in Section 11, Article XII of the Constitution. He prays that this Court declare that the term capital refers to common shares only, and that such shares constitute the sole basis in determining foreign equity in a public utility. Petitioner further asks this Court to declare any ruling inconsistent with such interpretation unconstitutional.

The interpretation of the term capital in Section 11, Article XII of the Constitution has far-reaching implications to the national economy. In fact, a resolution of this issue will determine whether Filipinos are masters, or second class citizens, in their own country. What is at stake here is whether Filipinos or foreigners will have *effective control* of the national economy. Indeed, if ever there is a legal issue that has far-reaching implications to the entire nation, and to future generations of Filipinos, it is the threshold legal issue presented in this case.

The Court first encountered the issue on the definition of the term capital in Section 11, Article XII of the Constitution in the case of *Fernandez v. Cojuangco*, docketed as G.R. No. 157360.¹⁶ That case involved the same public utility (PLDT) and substantially the same private respondents. Despite the importance and novelty of the constitutional issue raised therein and despite the fact that the petition involved a purely legal question, the Court declined to resolve the case on the merits, and instead denied the same for disregarding the hierarchy of courts.¹⁷ There, petitioner Fernandez assailed on a pure question of law the Regional Trial Courts Decision of 21 February 2003 *via* a petition for review under Rule 45. The Courts Resolution, denying the petition, became final on 21 December 2004.

The instant petition therefore presents the Court with another opportunity to finally settle this **purely legal issue** which is of transcendental importance to the national economy and a fundamental requirement to a faithful adherence to our Constitution. The Court must forthwith seize such opportunity, not only for the benefit of the litigants, but more significantly for the benefit of the entire Filipino people, to ensure, in the words of the Constitution, a self-reliant and independent national economy **effectively controlled** by Filipinos.¹⁸ Besides, in the light of vague and confusing positions taken by government agencies on this purely legal issue, present and future foreign investors in this country deserve, as a matter of basic fairness, a categorical ruling from this Court on the extent of their participation in the capital of public utilities and other nationalized businesses.

Despite its far-reaching implications to the national economy, this purely legal issue has remained unresolved for over 75 years since the 1935 Constitution. There is no reason for this Court to evade this ever recurring fundamental issue and delay again defining the term capital, which appears not only in Section 11, Article XII of the Constitution, but also in Section 2, Article XII on co-production and joint venture agreements for the development of our natural resources,¹⁹ in Section 7, Article XII on ownership of private lands,²⁰ in Section 10, Article XII on the reservation of certain investments to Filipino citizens,²¹ in Section 4(2), Article XIV on the ownership of educational institutions,²² and in Section 11(2), Article XVI on the ownership of advertising companies.²³

Petitioner has locus standi

There is no dispute that petitioner is a stockholder of PLDT. As such, he has the right to question the subject sale, which he claims to violate the nationality requirement prescribed in Section 11, Article XII of the Constitution. If the sale indeed violates the Constitution, then there is a possibility that PLDT's franchise could be revoked, a dire consequence directly affecting petitioner's interest as a stockholder.

More importantly, there is no question that the instant petition raises matters of transcendental importance to the public. The fundamental and threshold legal issue in this case, involving the national economy and the economic welfare of the Filipino people, far outweighs any perceived impediment in the legal personality of the petitioner to bring this action.

In *Chavez v. PCGG*,²⁴ the Court upheld the right of a citizen to bring a suit on matters of transcendental importance to the public, thus:

In *Taada v. Tuvera*, the Court asserted that **when the issue concerns a public right and the object of mandamus is to obtain the enforcement of a public duty, the people are regarded as the real parties in interest; and because it is sufficient that petitioner is a citizen and as such is interested in the execution of the laws, he need not show that he has any legal or special interest in the result of the action.** In the aforesaid case, the petitioners sought to enforce their right to be informed on matters of public concern, a right then recognized in Section 6, Article IV of the 1973 Constitution, in connection with the rule that laws in order to be valid and enforceable must be published in the Official Gazette or otherwise effectively promulgated. In ruling for the petitioners legal standing, the Court declared that the right they sought to be enforced is a public right recognized by no less than the fundamental law of the land.

Legaspi v. Civil Service Commission, while reiterating *Taada*, further declared that **when a mandamus proceeding involves the assertion of a public right, the requirement of personal interest is satisfied by the mere fact that petitioner is a citizen and, therefore, part of the general public which possesses the right.**

Further, in *Albano v. Reyes*, we said that while expenditure of public funds may not have been involved under the questioned contract for the development, management and operation of the Manila International Container Terminal, **public interest [was] definitely involved considering the important role [of the subject contract] . . . in the economic development of the country and the magnitude of the financial consideration involved.** We concluded that, as a consequence, the disclosure provision in the Constitution would constitute sufficient authority for upholding the petitioners standing. (Emphasis supplied)

Clearly, since the instant petition, brought by a citizen, involves matters of transcendental public importance, the petitioner has the requisite *locus standi*.

Definition of the Term Capital in

Section 11, Article XII of the 1987 Constitution

Section 11, Article XII (National Economy and Patrimony) of the 1987 Constitution mandates the Filipinization of public utilities, to wit:

Section 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 association must be citizens of the Philippines. (Emphasis supplied)

The above provision substantially reiterates Section 5, Article XIV of the 1973 Constitution, thus:

Section 5. 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 the capital of which 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 National Assembly when the public interest 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 the capital thereof. (Emphasis supplied)

The foregoing provision in the 1973 Constitution reproduced Section 8, Article XIV of the 1935 Constitution, *viz*:

Section 8. 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 other entities organized under the laws of the Philippines sixty per centum of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires. (Emphasis supplied)

Father Joaquin G. Bernas, S.J., a leading member of the 1986 Constitutional Commission, reminds us that the Filipinization provision in the 1987 Constitution is one of the products of the spirit of nationalism which gripped the 1935 Constitutional Convention.²⁵ The 1987 Constitution provides for the Filipinization of public utilities by requiring that any form of authorization for the operation of public utilities should be granted only 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. **The provision is [an express] recognition of the sensitive and vital position of public utilities both in the national economy and for national security.**²⁶ The evident purpose of the citizenship requirement is to prevent aliens from assuming control of public utilities, which may be inimical to the national interest.²⁷ This specific provision explicitly reserves to Filipino citizens control of public utilities, pursuant to an overriding economic goal of the 1987 Constitution: to conserve and develop our patrimony²⁸ and ensure a self-reliant and independent national economy *effectively controlled* by Filipinos.²⁹

Any citizen or juridical entity desiring to operate a public utility must therefore meet the minimum nationality requirement prescribed in Section 11, Article XII of the Constitution. Hence, for a corporation to be granted authority to operate a public utility, at least 60 percent of its capital must be owned by Filipino citizens.

The crux of the controversy is the definition of the term **capital**. Does the term capital in Section 11, Article XII of the Constitution refer to common shares or to the total outstanding capital stock (combined total of common and non-voting preferred shares)?

Petitioner submits that the 40 percent foreign equity limitation in domestic public utilities refers only to common shares because such shares are entitled to vote and it is through voting that control over a corporation is exercised. Petitioner posits that the term capital in Section 11, Article XII of the Constitution refers to the ownership of common capital stock subscribed and outstanding, which class of shares alone, under the corporate set-up of PLDT, can vote and elect members of the board of directors. It is undisputed that PLDT's non-voting preferred shares are held mostly by Filipino citizens.³⁰ This arose from Presidential Decree No. 217,³¹ issued on 16 June 1973 by then President Ferdinand Marcos, requiring every applicant of a PLDT telephone line to subscribe to non-voting preferred shares to pay for the investment cost of installing the telephone line.³²

Petitioners-in-intervention basically reiterate petitioners arguments and adopt petitioners definition of the term capital.³³ Petitioners-in-intervention allege that the approximate foreign ownership of common capital stock of PLDT x x x already amounts to at least 63.54% of the total outstanding common stock, which means that foreigners exercise significant control over PLDT, patently violating the 40 percent foreign equity limitation in public utilities prescribed by the Constitution.

Respondents, on the other hand, do not offer any definition of the term capital in Section 11, Article XII of the Constitution. More importantly, private respondents Nazareno and Pangilinan of PLDT do not dispute that more than 40 percent of the common shares of PLDT are held by foreigners.

In particular, respondent Nazarenos Memorandum, consisting of 73 pages, harps mainly on the procedural infirmities of the petition and the supposed violation of the due process rights of the affected foreign common shareholders. Respondent Nazareno does not deny petitioners allegation of foreigners dominating the common shareholdings of PLDT. Nazareno stressed mainly that the petition **seeks to divest foreign common shareholders purportedly exceeding 40% of the total common shareholdings in PLDT of their ownership over their shares**. Thus, the foreign natural and juridical PLDT shareholders must be impleaded in this suit so that they can be heard.³⁴ Essentially, Nazareno invokes denial of due process on behalf of the foreign common shareholders.

While Nazareno does not introduce any definition of the term capital, he states that **among the factual assertions that need to be established to counter petitioners allegations is the uniform interpretation by government agencies (such as the SEC), institutions and corporations (such as the Philippine National Oil Company-Energy Development Corporation or PNOC-EDC) of including both preferred shares and common shares in controlling interest in view of testing compliance with the 40% constitutional limitation on foreign ownership in public utilities.**³⁵

Similarly, respondent Manuel V. Pangilinan does not define the term capital in Section 11, Article XII of the Constitution. Neither does he refute petitioners claim of foreigners holding more than 40 percent of PLDTs common shares. Instead, respondent Pangilinan focuses on the procedural flaws of the petition and the alleged violation of the due process rights of foreigners. Respondent Pangilinan emphasizes in his Memorandum (1) the absence of this Courts jurisdiction over the petition; (2) petitioners lack of standing; (3) mootness of the petition; (4) non-availability of declaratory relief; and (5) the denial of due process rights. Moreover, respondent Pangilinan alleges that the issue should be whether owners of shares in PLDT as well as owners of shares in companies holding shares in PLDT may be required to relinquish their shares in PLDT and in those companies without any law requiring them to surrender their shares and also without notice and trial.

Respondent Pangilinan further asserts that **Section 11, [Article XII of the Constitution] imposes no nationality requirement on the shareholders of the utility company as a condition for keeping their shares in the utility company.** According to him, Section 11 does not authorize taking one persons property (the shareholders stock in the utility company) on the basis of another partys alleged failure to satisfy a requirement that is a condition only for that other partys retention of another piece of property (the utility company being at least 60% Filipino-owned to keep its franchise).³⁶

The OSG, representing public respondents Secretary Margarito Teves, Undersecretary John P. Sevilla, Commissioner Ricardo Abcede, and Chairman Fe Barin, is likewise silent on the definition of the term capital. In its Memorandum³⁷ dated 24 September

2007, the OSG also limits its discussion on the supposed procedural defects of the petition, i.e. lack of standing, lack of jurisdiction, non-inclusion of interested parties, and lack of basis for injunction. The OSG does not present any definition or interpretation of the term capital in Section 11, Article XII of the Constitution. The OSG contends that the petition actually partakes of a collateral attack on PLDT's franchise as a public utility, which in effect requires a full-blown trial where all the parties in interest are given their day in court.³⁸

Respondent Francisco Ed Lim, impleaded as President and Chief Executive Officer of the Philippine Stock Exchange (PSE), does not also define the term capital and seeks the dismissal of the petition on the following grounds: (1) failure to state a cause of action against Lim; (2) the PSE allegedly implemented its rules and required all listed companies, including PLDT, to make proper and timely disclosures; and (3) the reliefs prayed for in the petition would adversely impact the stock market.

In the earlier case of *Fernandez v. Cojuangco*, petitioner Fernandez who claimed to be a stockholder of record of PLDT, contended that the term capital in the 1987 Constitution refers to shares entitled to vote or the common shares. Fernandez explained thus:

The forty percent (40%) foreign equity limitation in public utilities prescribed by the Constitution refers to ownership of shares of stock entitled to vote, i.e., common shares, considering that it is through voting that control is being exercised. x x x

Obviously, the intent of the framers of the Constitution in imposing limitations and restrictions on fully nationalized and partially nationalized activities is for Filipino nationals to be always in control of the corporation undertaking said activities. Otherwise, if the Trial Courts ruling upholding respondents arguments were to be given credence, it would be possible for the ownership structure of a public utility corporation to be divided into one percent (1%) common stocks and ninety-nine percent (99%) preferred stocks. Following the Trial Courts ruling adopting respondents arguments, the common shares can be owned entirely by foreigners thus creating an absurd situation wherein foreigners, who are supposed to be minority shareholders, control the public utility corporation.

X X X X

Thus, the 40% foreign ownership limitation should be interpreted to apply to both the beneficial ownership and the controlling interest.

X X X X

Clearly, therefore, the forty percent (40%) foreign equity limitation in public utilities prescribed by the Constitution refers to ownership of shares of stock entitled to vote, i.e., common shares. Furthermore, ownership of record of shares will not suffice but it must be shown that the legal and beneficial ownership rests in the hands of Filipino citizens. Consequently, in the case of petitioner PLDT, since it is already admitted that the voting interests of foreigners which would gain entry to petitioner PLDT by the acquisition of SMART shares through the Questioned Transactions is equivalent to 82.99%, and the nominee arrangements between the foreign principals and the Filipino owners is likewise admitted, there is, therefore, a violation of Section 11, Article XII of the Constitution.

Parenthetically, the Opinions dated February 15, 1988 and April 14, 1987 cited by the Trial Court to support the proposition that the meaning of the word capital as used in Section 11, Article XII of the Constitution allegedly refers to the sum total of the shares subscribed and paid-in by the shareholder and it allegedly is immaterial how the stock is classified, whether as common or preferred, cannot stand in the face of a clear legislative policy as stated in the FIA which took effect in 1991 or way after said opinions were rendered, and as clarified by the above-quoted Amendments. In this regard, suffice it to state that as between the law and an opinion rendered by an administrative agency, the law indubitably prevails. Moreover, said Opinions are merely advisory and cannot prevail over the clear intent of the framers of the Constitution.

In the same vein, the SECs construction of Section 11, Article XII of the Constitution is at best merely advisory for it is the courts that finally determine what a law means.³⁹

On the other hand, respondents therein, Antonio O. Cojuangco, Manuel V. Pangilinan, Carlos A. Arellano, Helen Y. Dee, Magdangal B. Elma, Mariles Cacho-Romulo, Fr. Bienvenido F. Nebres, Ray C. Espinosa, Napoleon L. Nazareno, Albert F. Del

Rosario, and Orlando B. Vea, argued that the term capital in Section 11, Article XII of the Constitution includes preferred shares since the Constitution does not distinguish among classes of stock, thus:

16. The Constitution applies its foreign ownership limitation on the corporations capital, without distinction as to classes of shares. x x x

In this connection, the Corporation Code which was already in force at the time the present (1987) Constitution was drafted defined outstanding capital stock as follows:

Section 137. Outstanding capital stock defined. The term outstanding capital stock, as used in this Code, means the total shares of stock issued under binding subscription agreements to subscribers or stockholders, whether or not fully or partially paid, except treasury shares.

Section 137 of the Corporation Code also does not distinguish between common and preferred shares, nor exclude either class of shares, in determining the outstanding capital stock (the capital) of a corporation. Consequently, petitioners suggestion to reckon PLDTs foreign equity only on the basis of PLDTs outstanding common shares is without legal basis. The language of the Constitution should be understood in the sense it has in common use.

x x x x

17. But even assuming that resort to the proceedings of the Constitutional Commission is necessary, there is nothing in the Record of the Constitutional Commission (Vol. III) which petitioner misleadingly cited in the Petition x x x which supports petitioners view that only common shares should form the basis for computing a public utilitys foreign equity.

x x x x

18. In addition, the SEC the government agency primarily responsible for implementing the Corporation Code, and which also has the responsibility of ensuring compliance with the

Constitutions foreign equity restrictions as regards nationalized activities x x x has categorically ruled that both common and preferred shares are properly considered in determining outstanding capital stock and the nationality composition thereof.⁴⁰

We agree with petitioner and petitioners-in-intervention. The term capital in Section 11, Article XII of the Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares,⁴¹ and not to the total outstanding capital stock comprising both common and non-voting preferred shares.

The Corporation Code of the Philippines⁴² classifies shares as common or preferred, thus:

Sec. 6. Classification of shares. - The shares of stock of stock corporations may be divided into classes or series of shares, or both, any of which classes or series of shares may have such rights, privileges or restrictions as may be stated in the articles of incorporation: Provided, **That no share may be deprived of voting rights except those classified and issued as preferred or redeemable shares, unless otherwise provided in this Code:** Provided, further, That there shall always be a class or series of shares which have complete voting rights. Any or all of the shares or series of shares may have a par value or have no par value as may be provided for in the articles of incorporation: Provided, however, That banks, trust companies, insurance companies, public utilities, and building and loan associations shall not be permitted to issue no-par value shares of stock.

Preferred shares of stock issued by any corporation may be given preference in the distribution of the assets of the corporation in case of liquidation and in the distribution of dividends, or such other preferences as may be stated in the articles of incorporation which are not violative of the provisions of this Code: Provided, That preferred shares of stock may be issued only with a stated par value. The Board of Directors, where authorized in the articles of incorporation, may fix the terms and conditions of preferred shares of stock or any series thereof: Provided, That such terms and conditions shall be effective upon the filing of a certificate thereof with the Securities and Exchange Commission.

Shares of capital stock issued without par value shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto: Provided; That shares without par value may not be issued for a consideration less than the value of five (P5.00) pesos per share: Provided, further, That

the entire consideration received by the corporation for its no-par value shares shall be treated as capital and shall not be available for distribution as dividends.

A corporation may, furthermore, classify its shares for the purpose of insuring compliance with constitutional or legal requirements.

Except as otherwise provided in the articles of incorporation and stated in the certificate of stock, each share shall be equal in all respects to every other share.

Where the articles of incorporation provide for non-voting shares in the cases allowed by this Code, the holders of such shares shall nevertheless be entitled to vote on the following matters:

1. Amendment of the articles of incorporation;
2. Adoption and amendment of by-laws;
3. Sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the corporate property;
4. Incurring, creating or increasing bonded indebtedness;
5. Increase or decrease of capital stock;
6. Merger or consolidation of the corporation with another corporation or other corporations;
7. Investment of corporate funds in another corporation or business in accordance with this Code; and
8. Dissolution of the corporation.

Except as provided in the immediately preceding paragraph, the vote necessary to approve a particular corporate act as provided in this Code shall be deemed to refer only to stocks with voting rights.

Indisputably, one of the rights of a stockholder is the right to participate in the control or management of the corporation.⁴³ This is exercised through his vote in the election of directors because it is the board of directors that controls or manages the corporation.⁴⁴ In the absence of provisions in the articles of incorporation denying voting rights to preferred shares, preferred shares have the same voting rights as

common shares. However, preferred shareholders are often excluded from any control, that is, deprived of the right to vote in the election of directors and on other matters, on the theory that the preferred shareholders are merely investors in the corporation for income in the same manner as bondholders.⁴⁵ In fact, under the Corporation Code only preferred or redeemable shares can be deprived of the right to vote.⁴⁶ Common shares cannot be deprived of the right to vote in any corporate meeting, and any provision in the articles of incorporation restricting the right of common shareholders to vote is invalid.⁴⁷

Considering that common shares have voting rights which translate to control, as opposed to preferred shares which usually have no voting rights, the term capital in Section 11, Article XII of the Constitution refers only to common shares. However, if the preferred shares also have the right to vote in the election of directors, then the term capital shall include such preferred shares because the right to participate in the control or management of the corporation is exercised through the right to vote in the election of directors. **In short, the term capital in Section 11, Article XII of the Constitution refers only to shares of stock that can vote in the election of directors.**

This interpretation is consistent with the intent of the framers of the Constitution to place in the hands of Filipino citizens the control and management of public utilities. As revealed in the deliberations of the Constitutional Commission, capital refers to the voting stock or **controlling interest** of a corporation, to wit:

MR. NOLLEDO. In Sections 3, 9 and 15, the Committee stated local or Filipino equity and foreign equity; namely, 60-40 in Section 3, 60-40 in Section 9 and 2/3-1/3 in Section 15.

MR. VILLEGAS. That is right.

MR. NOLLEDO. In teaching law, we are always faced with this question: Where do we base the equity requirement, is it on the authorized capital stock, on the subscribed capital stock, or on the paid-up capital stock of a corporation? Will the Committee please enlighten me on this?

MR. VILLEGAS. We have just had a long discussion with the members of the team from the UP Law Center who provided us a draft. **The phrase that is contained here which we adopted from the UP draft is 60 percent of voting stock.**

MR. NOLLEDO. That must be based on the subscribed capital stock, because unless declared delinquent, unpaid capital stock shall be entitled to vote.

MR. VILLEGAS. That is right.

MR. NOLLEDO. Thank you.

With respect to an investment by one corporation in another corporation, say, a corporation with 60-40 percent equity invests in another corporation which is permitted by the Corporation Code, does the Committee adopt the grandfather rule?

MR. VILLEGAS. Yes, that is the understanding of the Committee.

MR. NOLLEDO. Therefore, we need additional Filipino capital?

MR. VILLEGAS. Yes.⁴⁸

x x x x

MR. AZCUNA. May I be clarified as to that portion that was accepted by the Committee.

MR. VILLEGAS. The portion accepted by the Committee is the deletion of the phrase voting stock or controlling interest.

MR. AZCUNA. Hence, without the Davide amendment, the committee report would read: corporations or associations at least sixty percent of whose CAPITAL is owned by such citizens.

MR. VILLEGAS. Yes.

MR. AZCUNA. So if the Davide amendment is lost, we are stuck with 60 percent of the capital to be owned by citizens.

MR. VILLEGAS. That is right.

MR. AZCUNA. But the control can be with the foreigners even if they are the minority. Let us say 40 percent of the capital is owned by them, but it is the voting capital, whereas, the Filipinos own the nonvoting shares. So we can have a situation where the corporation is controlled by foreigners despite being the minority because they have the voting capital. That is the anomaly that would result here.

MR. BENGZON. No, the reason we eliminated the word stock as stated in the 1973 and 1935 Constitutions is that according to Commissioner Rodrigo, there are associations that do not have stocks. That is why we say CAPITAL.

MR. AZCUNA. We should not eliminate the phrase controlling interest.

MR. BENGZON. In the case of stock corporations, it is assumed.⁴⁹ (Emphasis supplied)

Thus, 60 percent of the capital assumes, or should result in, **controlling interest** in the corporation. Reinforcing this interpretation of the term capital, as referring to controlling interest or shares entitled to vote, is the definition of a Philippine national in the Foreign Investments Act of 1991,⁵⁰ to wit:

SEC. 3. *Definitions.* - As used in this Act:

a. The term *Philippine national* shall mean a citizen of the Philippines; or a domestic partnership or association wholly owned by citizens of the Philippines; or **a corporation organized under the laws of the Philippines of which at least sixty percent (60%) of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines**; or a corporation organized abroad and registered as doing business in the Philippines under the Corporation Code of which one hundred percent (100%) of the capital stock outstanding and entitled to vote is wholly owned by Filipinos or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent (60%) of the fund will accrue to the benefit of Philippine nationals: *Provided*, That where a corporation and its non-Filipino stockholders own stocks in a Securities and Exchange Commission (SEC) registered enterprise, at least sixty percent (60%) of the capital stock outstanding and entitled to vote of each of both corporations must be owned and held by citizens of the Philippines and at least sixty percent (60%) of the members of the Board of Directors of each of both corporations must be citizens of the Philippines, in order that the corporation, shall be considered a Philippine national. (Emphasis supplied)

In explaining the definition of a Philippine national, the Implementing Rules and Regulations of the Foreign Investments Act of 1991 provide:

b. *Philippine national* shall mean a citizen of the Philippines or a domestic partnership or association wholly owned by the citizens of the Philippines; or **a corporation organized under the laws of the Philippines of which at least sixty percent [60%] of the capital stock outstanding and entitled to vote is owned and held by citizens of the Philippines**; or a trustee of funds for pension or other employee retirement or separation benefits, where the trustee is a Philippine national and at least sixty percent [60%] of the fund will accrue to the benefit of the Philippine nationals; *Provided*, that where a corporation its non-Filipino stockholders own stocks in a Securities and Exchange Commission [SEC] registered enterprise, at least sixty percent [60%] of the capital stock

outstanding and entitled to vote of both corporations must be owned and held by citizens of the Philippines and at least sixty percent [60%] of the members of the Board of Directors of each of both corporation must be citizens of the Philippines, in order that the corporation shall be considered a Philippine national. The control test shall be applied for this purpose.

Compliance with the required Filipino ownership of a corporation shall be determined on the basis of outstanding capital stock whether fully paid or not, but only such stocks which are generally entitled to vote are considered.

For stocks to be deemed owned and held by Philippine citizens or Philippine nationals, mere legal title is not enough to meet the required Filipino equity. Full beneficial ownership of the stocks, coupled with appropriate voting rights is essential. Thus, stocks, the voting rights of which have been assigned or transferred to aliens cannot be considered held by Philippine citizens or Philippine nationals.

Individuals or juridical entities not meeting the aforementioned qualifications are considered as non-Philippine nationals. (Emphasis supplied)

Mere legal title is insufficient to meet the 60 percent Filipino-owned capital required in the Constitution. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is required. The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipino nationals in accordance with the constitutional mandate. Otherwise, the corporation is considered as non-Philippine national[s].

Under Section 10, Article XII of the Constitution, Congress may reserve to citizens of the Philippines or to corporations or associations at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments. Thus, in numerous laws Congress has reserved certain areas of investments to Filipino citizens or to corporations at least sixty percent of the **capital** of which is owned by Filipino citizens. Some of these laws are: (1) Regulation of Award of Government Contracts or R.A. No. 5183; (2) Philippine Inventors Incentives Act or R.A. No. 3850; (3) Magna Carta for Micro, Small and Medium Enterprises or R.A. No. 6977; (4) Philippine Overseas Shipping Development Act or R.A. No. 7471; (5) Domestic Shipping Development Act of 2004 or R.A. No. 9295; (6) Philippine Technology Transfer Act of 2009 or R.A. No. 10055; and (7) Ship Mortgage Decree or P.D. No. 1521. Hence, the term **capital** in Section 11, Article XII of the Constitution is also used **in the same context in numerous laws** reserving certain areas of investments to Filipino citizens.

To construe broadly the term capital as the total outstanding capital stock, including both common and *non-voting* preferred shares, grossly contravenes the intent and letter of the Constitution that the State shall develop a self-reliant and independent national economy *effectively controlled* by Filipinos. A broad definition unjustifiably disregards who owns the all-important voting stock, which necessarily equates to control of the public utility.

We shall illustrate the glaring anomaly in giving a broad definition to the term capital. Let us assume that a corporation has 100 common shares owned by foreigners and 1,000,000 non-voting preferred shares owned by Filipinos, with both classes of share having a par value of one peso (₱1.00) per share. Under the broad definition of the term capital, such corporation would be considered compliant with the 40 percent constitutional limit on foreign equity of public utilities since the overwhelming majority, or more than 99.999 percent, of the total outstanding capital stock is Filipino owned. This is obviously absurd.

In the example given, only the foreigners holding the common shares have voting rights in the election of directors, even if they hold only 100 shares. The foreigners, with a minuscule equity of less than 0.001 percent, exercise control over the public utility. On the other hand, the Filipinos, holding more than 99.999 percent of the equity, cannot vote in the election of directors and hence, have no control over the

public utility. This starkly circumvents the intent of the framers of the Constitution, as well as the clear language of the Constitution, to place the control of public utilities in the hands of Filipinos. It also renders illusory the State policy of an independent national economy *effectively controlled* by Filipinos.

The example given is not theoretical but can be found in the real world, *and in fact exists in the present case*.

Holders of PLDT preferred shares are explicitly denied of the right to vote in the election of directors. PLDTs Articles of Incorporation expressly state that **the holders of Serial Preferred Stock shall not be entitled to vote at any meeting of the stockholders for the election of directors or for any other purpose** or otherwise participate in any action taken by the corporation or its stockholders, or to receive notice of any meeting of stockholders.⁵¹

On the other hand, holders of common shares are granted the exclusive right to vote in the election of directors. PLDTs Articles of Incorporation⁵² state that each holder of Common Capital Stock shall have one vote in respect of each share of such stock held by him on all matters voted upon by the stockholders, and **the holders of Common Capital Stock shall have the exclusive right to vote for the election of directors and for all other purposes.**⁵³

In short, only holders of common shares can vote in the election of directors, meaning only common shareholders exercise control over PLDT. Conversely, holders of preferred shares, who have no voting rights in the election of directors, do not have any control over PLDT. In fact, under PLDTs Articles of Incorporation, holders of common shares have voting rights for all purposes, while holders of preferred shares have no voting right for any purpose whatsoever.

It must be stressed, and **respondents do not dispute**, that foreigners hold a majority of the common shares of PLDT. In fact, based on PLDTs 2010 General Information Sheet (GIS),⁵⁴ which is a document required to be submitted annually to the Securities and Exchange Commission,⁵⁵ foreigners hold 120,046,690 common shares of PLDT

whereas Filipinos hold only 66,750,622 common shares.⁵⁶ In other words, foreigners hold 64.27% of the total number of PLDTs common shares, while Filipinos hold only 35.73%. Since holding a majority of the common shares equates to control, it is clear that foreigners exercise control over PLDT. Such amount of control unmistakably exceeds the allowable 40 percent limit on foreign ownership of public utilities expressly mandated in Section 11, Article XII of the Constitution.

Moreover, the Dividend Declarations of PLDT for 2009,⁵⁷ as submitted to the SEC, shows that per share the SIP⁵⁸ preferred shares earn a pittance in dividends compared to the common shares. PLDT declared dividends for the common shares at ₱70.00 per share, while the declared dividends for the preferred shares amounted to a measly ₱1.00 per share.⁵⁹ So the preferred shares not only cannot vote in the election of directors, they also have very little and obviously negligible dividend earning capacity compared to common shares.

As shown in PLDTs 2010 GIS,⁶⁰ as submitted to the SEC, the par value of PLDT common shares is ₱5.00 per share, whereas the par value of preferred shares is ₱10.00 per share. In other words, preferred shares have twice the par value of common shares but cannot elect directors and have only 1/70 of the dividends of common shares. Moreover, 99.44% of the preferred shares are owned by Filipinos while foreigners own only a minuscule 0.56% of the preferred shares.⁶¹ Worse, preferred shares constitute 77.85% of the authorized capital stock of PLDT while common shares constitute only 22.15%.⁶² This undeniably shows that beneficial interest in PLDT is not with the non-voting preferred shares but with the common shares, blatantly violating the constitutional requirement of 60 percent Filipino control and Filipino beneficial ownership in a public utility.

The legal and beneficial ownership of 60 percent of the outstanding capital stock must rest in the hands of Filipinos in accordance with the constitutional mandate. Full beneficial ownership of 60 percent of the outstanding capital stock, coupled with 60 percent of the voting rights, is constitutionally required for the States grant of authority to operate a public utility. The undisputed fact that the PLDT preferred shares, 99.44% owned by Filipinos, are non-voting and earn only 1/70 of the dividends that PLDT common shares earn, grossly violates the constitutional requirement of 60 percent Filipino control and Filipino beneficial ownership of a public utility.

In short, Filipinos hold less than 60 percent of the voting stock, and earn less than 60 percent of the dividends, of PLDT. This directly contravenes the express command in Section 11, Article XII of the Constitution that [n]o franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to x x x corporations x x x organized under the laws of the Philippines, **at least sixty per centum of whose capital is owned by such citizens x x x.**

To repeat, (1) foreigners own 64.27% of the common shares of PLDT, which class of shares exercises the **sole** right to vote in the election of directors, and thus exercise control over PLDT; (2) Filipinos own only 35.73% of PLDT's common shares, constituting a minority of the voting stock, and thus do not exercise control over PLDT; (3) preferred shares, 99.44% owned by Filipinos, have no voting rights; (4) preferred shares earn only 1/70 of the dividends that common shares earn;⁶³ (5) preferred shares have twice the par value of common shares; and (6) preferred shares constitute 77.85% of the authorized capital stock of PLDT and common shares only 22.15%. This kind of ownership and control of a public utility is a mockery of the Constitution.

Incidentally, the fact that PLDT common shares with a par value of ₱5.00 have a current stock market value of ₱2,328.00 per share,⁶⁴ while PLDT preferred shares with a par value of ₱10.00 per share have a current stock market value ranging from only ₱10.92 to ₱11.06 per share,⁶⁵ is a glaring confirmation by the market that control and beneficial ownership of PLDT rest with the common shares, not with the preferred shares.

Indisputably, construing the term capital in Section 11, Article XII of the Constitution to include both voting and non-voting shares will result in the abject surrender of our telecommunications industry to foreigners, amounting to a clear abdication of the States constitutional duty to limit control of public utilities to Filipino citizens. Such an interpretation certainly runs counter to the constitutional provision reserving certain areas of investment to Filipino citizens, such as the exploitation of natural resources as well as the ownership of land, educational institutions and advertising businesses. The Court should never open to foreign control what the Constitution has expressly reserved to Filipinos for that would be a betrayal of the Constitution and of the national interest. The Court must perform its solemn duty to defend and uphold

the intent and letter of the Constitution to ensure, in the words of the Constitution, a self-reliant and independent national economy *effectively controlled* by Filipinos.

Section 11, Article XII of the Constitution, like other provisions of the Constitution expressly reserving to Filipinos *specific* areas of investment, such as the development of natural resources and ownership of land, educational institutions and advertising business, is *self-executing*. There is no need for legislation to implement these self-executing provisions of the Constitution. The rationale why these constitutional provisions are self-executing was explained in *Manila Prince Hotel v. GSIS*,⁶⁶ thus:

x x x Hence, unless it is expressly provided that a legislative act is necessary to enforce a constitutional mandate, the presumption now is that all provisions of the constitution are self-executing. If the constitutional provisions are treated as requiring legislation instead of self-executing, the legislature would have the power to ignore and practically nullify the mandate of the fundamental law. This can be cataclysmic. That is why the prevailing view is, as it has always been, that

. . . in case of doubt, the Constitution should be considered self-executing rather than non-self-executing. . . . **Unless the contrary is clearly intended, the provisions of the Constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective.** These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute. (Emphasis supplied)

In *Manila Prince Hotel*, even the Dissenting Opinion of then Associate Justice Reynato S. Puno, later Chief Justice, agreed that constitutional provisions are presumed to be self-executing. Justice Puno stated:

Courts as a rule consider the provisions of the Constitution as self-executing, rather than as requiring future legislation for their enforcement. The reason is not difficult to discern. **For if they are not treated as self-executing, the mandate of the fundamental law ratified by the sovereign people can be easily ignored and nullified by Congress. Suffused with wisdom of the ages is the unyielding rule that legislative actions may give breath to constitutional rights but congressional inaction should not suffocate them.**

Thus, we have treated as self-executing the provisions in the Bill of Rights on arrests, searches and seizures, the rights of a person under custodial investigation, the rights of an accused, and the privilege against self-incrimination. It is recognized that legislation is unnecessary to enable courts to effectuate constitutional provisions guaranteeing the fundamental rights of life, liberty and the protection of property. The same treatment is accorded to constitutional provisions forbidding the taking or damaging of property for public use without just compensation. (Emphasis supplied)

Thus, in numerous cases,⁶⁷ this Court, even in the absence of implementing legislation, applied directly the provisions of the 1935, 1973 and 1987 Constitutions limiting land ownership to Filipinos. In *Soriano v. Ong Hoo*,⁶⁸ this Court ruled:

x x x As the Constitution is silent as to the effects or consequences of a sale by a citizen of his land to an alien, and as both the citizen and the alien have violated the law, none of them should have a recourse against the other, and it should only be the State that should be allowed to intervene and determine what is to be done with the property subject of the violation. We have said that what the State should do or could do in such matters is a matter of public policy, entirely beyond the scope of judicial authority. (Dinglasan, et al. vs. Lee Bun Ting, et al., 6 G. R. No. L-5996, June 27, 1956.) **While the legislature has not definitely decided what policy should be followed in cases of violations against the constitutional prohibition, courts of justice cannot go beyond by declaring the disposition to be null and void as violative of the Constitution.** x x x (Emphasis supplied)

To treat Section 11, Article XII of the Constitution as not self-executing would mean that since the 1935 Constitution, or over the last 75 years, not one of the constitutional provisions expressly reserving specific areas of investments to corporations, at least 60 percent of the capital of which is owned by Filipinos, was enforceable. In short, the framers of the 1935, 1973 and 1987 Constitutions miserably failed to effectively reserve to Filipinos specific areas of investment, like the operation by corporations of public utilities, the exploitation by corporations of mineral resources, the ownership by corporations of real estate, and the ownership of educational institutions. All the legislatures that convened since 1935 also miserably failed to enact legislations to implement these vital constitutional provisions that determine who will effectively control the national economy, Filipinos or foreigners. This Court cannot allow such an absurd interpretation of the Constitution.

This Court has held that the SEC has both regulatory and adjudicative functions.⁶⁹ Under its regulatory functions, the SEC can be compelled by mandamus to perform its statutory duty when it unlawfully neglects to perform the same. Under its adjudicative or quasi-judicial functions, the SEC can be also be compelled by mandamus to hear and decide a possible violation of any law it administers or enforces when it is mandated by law to investigate such violation.

Under Section 17(4)⁷⁰ of the Corporation Code, the SEC has the regulatory function to reject or disapprove the Articles of Incorporation of any corporation where **the required percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution.** Thus, the SEC is the government agency tasked with the statutory duty to enforce the nationality requirement prescribed in Section 11, Article XII of the Constitution on the ownership of public utilities. This Court, in a petition for declaratory relief that is treated as a petition for mandamus as in the present case, can direct the SEC to perform its statutory duty under the law, a duty that the SEC has apparently unlawfully neglected to do based on the 2010 GIS that respondent PLDT submitted to the SEC.

Under Section 5(m) of the Securities Regulation Code,⁷¹ the SEC is vested with the power and function to **suspend or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law.** The SEC is mandated under Section 5(d) of the same Code with the power and function to **investigate x x x the activities of persons to ensure compliance** with the laws and regulations that

SEC administers or enforces. The GIS that all corporations are required to submit to SEC annually should put the SEC on guard against violations of the nationality requirement prescribed in the Constitution and existing laws. This Court can compel the SEC, in a petition for declaratory relief that is treated as a petition for mandamus as in the present case, to hear and decide a possible violation of Section 11, Article XII of the Constitution in view of the ownership structure of PLDT's voting shares, as admitted by respondents and as stated in PLDT's 2010 GIS that PLDT submitted to SEC.

WHEREFORE, we **PARTLY GRANT** the petition and rule that the term capital in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares). Respondent Chairperson of the Securities and Exchange Commission is **DIRECTED** to apply this definition of the term capital in determining the extent of allowable foreign ownership in respondent Philippine Long Distance Telephone Company, and if there is a violation of Section 11, Article XII of the Constitution, to impose the appropriate sanctions under the law.

SO ORDERED.

ANTONIO T. CARPIO

Associate Justice

WE CONCUR:

I join the dissent of Mr. Justice Velasco
RENATO C. CORONA

Chief Justice

I dissent
(Please see Dissenting Opinion)
PRESBITERO J. VELASCO, JR.

Associate Justice

**TERESITA J. LEONARDO-
DE CASTRO**

Associate Justice

ARTURO D. BRION

Associate Justice

DIOSDADO M. PERALTA

Associate Justice

LUCAS P. BERSAMIN

Associate Justice

MARIANO C. DEL CASTILLO

Associate Justice

See my dissenting opinion

ROBERTO A. ABAD

Associate Justice

MARTIN S. VILLARAMA, JR.

Associate Justice

JOSE PORTUGAL PEREZ

Associate Justice

JOSE C. MENDOZA

Associate Justice

MARIA LOURDES P. A. SERENO

Associate Justice

CERTIFICATION

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

RENATO C. CORONA

Chief Justice

¹ *Rollo* (Vol. I) , pp. 15-103, (Vol. II), pp. 762-768.

² See *Cojuangco v. Sandiganbayan*, G.R. No. 183278, 24 April 2009, 586 SCRA 790.

³ Section 11, Article XII of the 1987 Constitution provides:

ARTICLE XII NATIONAL ECONOMY AND PATRIMONY

x x x x

Section 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 association must be citizens of the Philippines.

4 *Yuchengco v. Sandiganbayan*, G.R. No. 149802, 20 January 2006, 479 SCRA 1.

5 *Rollo*, (Vol. II), p. 806.

6 *Rollo* (Vol. I), p. 23.

7 *Id.* at 23-24, 26.

8 *Id.* at 41.

9 *Id.*

10 Governed by Rule 63 of the Rules of Court. Section 1, Rule 63 of the Rules of Court states:

RULE 63

Declaratory Relief and Similar Remedies

Section 1. *Who may file petition.* Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. (Bar Matter No. 803, 17 February 1998)

11 Section 2, Rule 65 of the Rules of Court provides:

SEC. 2. *Petition for prohibition.* When the proceedings of any tribunal, corporation, board, officer, or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental relief as law and justice may require.

x x x x

12 Section 3, Rule 65 of the Rules of Court states:

SEC. 3. Petition for mandamus. When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

x x x x

13 343 Phil. 539 (1997).

14 209 Phil. 1 (1983), citing *Nacionalista Party v. Angelo Bautista*, 85 Phil. 101, and *Aquino v. Commission on Elections*, 62 SCRA 275.

15 Supra note 13.

16 Adverted to in respondent Nazarenos Memorandum dated 27 September 2007. *Rollo*, p. 929. Nazareno stated: In fact, in *Fernandez v. Cojuangco*, which raised markedly similar issues, the Honorable Court refused to entertain the Petition directly filed with it and dismissed the same for violating the principle of hierarchy of courts.

17 In a Resolution dated 9 June 2003.

18 Section 19, Article II, Constitution.

19Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. **The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens.** Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nations marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fish- workers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

20 Section 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to **individuals, corporations, or associations qualified to acquire or hold lands of the public domain.**

21Section 10. **The Congress shall, upon recommendation of the economic and planning agency, when the national interest dictates, reserve to citizens of the Philippines or to corporations or associations at least sixty *per centum* of whose capital is owned by such citizens, or such higher percentage as Congress may prescribe, certain areas of investments.** The Congress shall enact measures that will encourage the formation and operation of enterprises whose capital is wholly owned by Filipinos.

In the grant of rights, privileges, and concessions covering the national economy and patrimony, the State shall give preference to qualified Filipinos.

The State shall regulate and exercise authority over foreign investments within its national jurisdiction and in accordance with its national goals and priorities.

22Section 4(2), Article XIV of the 1987 Constitution provides: **Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines or corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens.** The Congress may, however, require increased Filipino equity participation in all educational institutions.

The control and administration of educational institutions shall be vested in citizens of the Philippines.

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23Section 11(2), Article XVI of the 1987 Constitution provides: The advertising industry is impressed with public interest, and shall be regulated by law for the protection of consumers and the promotion of the general welfare.

Only Filipino citizens or corporations or associations at least seventy *per centum* of the capital of which is owned by such citizens shall be allowed to engage in the advertising industry.

The participation of foreign investors in the governing body of entities in such industry shall be limited to their proportionate share in the capital thereof, and all the executive and managing officers of such entities must be citizens of the Philippines.

24 G.R. No. 130716, 9 December 1998, 299 SCRA 744 cited in *Chavez v. Public Estates Authority*, 433 Phil. 506 (2002). See also *David v. Macapagal-Arroyo*, G.R. No. 171396, 3 May 2006, 489 SCRA 160; *Santiago v. Commission on Elections*, G.R. No. 127325, 19 March 1997, 270 SCRA 106; *Kilosbayan, Inc. v. Guingona, Jr.*, G.R. No. 113375, 5 May 1994, 232 SCRA 110 (1994).

25 Bernas, *The Constitution of the Republic of the Philippines*, p. 452, citing *Smith, Bell and Co. v. Natividad*, 40 Phil. 136, 148 (1919); *Luzon Stevedoring Corporation v. Anti-Dummy Board*, 46 SCRA 474, 490 (1972).

26 Id.

27 De Leon, Hector, *Philippine Constitutional Law (Principles and Cases)*, Volume 2, 1999 Ed., p. 848.

28 Preamble, 1987 Constitution; De Leon, Hector, *Philippine Constitutional Law (Principles and Cases)*, Volume 2, 1999 Ed., p. 788.

29 Section 19, Article II, Constitution.

30 http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_%28as%20of%207.2.10%29_final.pdf

31 ESTABLISHING BASIC POLICIES FOR THE TELEPHONE INDUSTRY, AMENDING FOR THE PURPOSE THE PERTINENT PROVISIONS OF COMMONWEALTH ACT NO. 146, AS AMENDED, OTHERWISE KNOWN AS THE PUBLIC SERVICE ACT, AS AMENDED, AND ALL INCONSISTENT LEGISLATIVE AND MUNICIPAL FRANCHISE OF THE PHILIPPINE LONG DISTANCE TELEPHONE COMPANY UNDER ACT NO. 3436, AS AMENDED, AND ALL INCONSISTENT LEGISLATIVE AND MUNICIPAL FRANCHISES INCLUDING OTHER EXISTING LAWS.

32 Upon approval by the National Telecommunications Commission, this mandatory requirement to subscribe to non-voting preferred shares was made optional starting 22 April 2003. See PLDT 20- F 2005 filing with the United States Securities and Exchange Commission at [http://www.wikinvest.com/stock/Philippine_Long_Distance_Telephone_Company_\(PHI\)/Filing/20-F/25/F2923101](http://www.wikinvest.com/stock/Philippine_Long_Distance_Telephone_Company_(PHI)/Filing/20-F/25/F2923101). See also *Philippine Consumers Foundation, Inc. v. NTC and PLDT*, G.R. No. L-63318, 18 April 1984, on the origin and rationale of the SIP.

33 *Rollo* (Vol. I), pp. 414-451.

34 *Rollo* (Vol. II), p. 991.

35 Id. at 951.

36 Id. at 838.

37 Id. at 898-923.

38 *Rollo* (Vol. II), p. 913.

39 *Rollo* (G.R. No. 157360), pp. 55-62.

40 *Rollo* (G.R. No. 157360), pp. 1577-1583.

41 In PLDTs case, the preferred stock is non-voting, except as specifically provided by law.

(http://www.pldt.com.ph/investor/Documents/a2d211230ec3436eab66b41d3d107cfc4Q2004FSwi_thopinion.pdf)

[42](#) *Batas Pambansa Blg. 68*.

43 As stated in the Corporation Code.

44 See http://www.congress.gov.ph/download/researches/rrb_0303_5.pdf

45 See http://www.congress.gov.ph/download/researches/rrb_0303_5.pdf

46 Section 6, BP Blg. 68 or The Corporation Code.

47 Agpalo, Ruben E., *Comments on the Corporation Code of the Philippines*, 2001 Second Edition, p. 36.

[48](#) Record of the Constitutional Commission, Vol. III, pp. 255-256.

[49](#) *Id.* at 360.

50 Republic Act No. 7042 entitled AN ACT TO PROMOTE FOREIGN INVESTMENTS, PRESCRIBE THE PROCEDURES FOR REGISTERING ENTERPRISES DOING BUSINESS IN THE PHILIPPINES AND FOR OTHER PURPOSES.

[51](#) *Rollo* (G.R. No. 157360), Vol. I, p. 348.

It must be noted that under PLDTs Articles of Incorporation, the PLDT Board of Directors is expressly authorized to determine, among others, with respect to each series of Serial Preferred Stock:

x x x x

(b) the dividend rate, if any, on the shares of such series (which, if and to the extent the Board of Directors, in its sole discretion, shall deem appropriate under the circumstances, shall be fixed considering the rate of return on similar securities at the time of issuance of such shares), the terms and conditions upon which and the periods with respect to which dividends shall be payable, whether and upon what conditions such dividends shall be cumulative and, if cumulative, the date or dates from which dividends shall accumulate;

C. whether or not the shares of such series shall be redeemable, the limitations with respect to such redemption, the time or times when and the manner in which such shares shall be redeemable (including the manner of selecting shares of such series for redemption if less than all shares are to be redeemed) and the price or prices at which such shares shall be redeemable, which may not be less than (i) the par value thereof plus (ii) accrued and unpaid dividends thereon, nor more than (i) 110% of the par value thereof plus (ii) accrued and unpaid dividends thereon;

d. whether or not the shares of such series shall be subject to the operation of a purchase, retirement or sinking fund, and, if so, whether and upon what conditions such purchase, retirement or sinking fund shall be cumulative or non-cumulative, the extent to which and the manner in which such fund shall be applied to the purchase or redemption of the shares of such series for retirement or to other corporate purposes and the terms and provisions relative to the operation thereof;

(e) the rights to which the holders of shares of such series shall be entitled upon the voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the corporation, which rights may vary depending on whether such liquidation, dissolution, distribution or winding up is voluntary or involuntary, and if voluntary, may vary at different dates, provided, however, that the amount which the holders of shares of such series shall be entitled to receive in the event of any voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the corporation

Further, the holders of Serial Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available therefore, preferential cash dividends at the rate, under the terms and conditions, for the periods and on the dates fixed by the resolution or resolutions of the Board of Directors, x x x and no more, before any dividends on the Common Capital Stock (other than dividends payable in Common Capital Stock) shall be paid or set apart for payment with respect to the same dividend period. All shares of Preferred Stock of all series shall be of equal rank, preference and priority as to dividends irrespective of whether or not the rates of dividends to which the same shall be entitled shall be the same and, when the stated dividends are not paid in full, the shares of all series of Serial Preferred Stock shall share ratably in the payment of dividends including accumulations, if any, in accordance with the sums which would be payable on such shares if all dividends were declared and paid in full, provided, however, that any two or more series of Serial Preferred Stock may differ from each other as to the existence and extent of the right to cumulative dividends as aforesaid.

[52](#) *Rollo* (G.R. No. 157360), Vol. I, p. 339-355. Adopted on 21 November 1995 and approved on 18 February 1997.

53 The other rights, limitations and preferences of common capital stock are as follows:

1. After the requirements with respect to preferential dividends on the Serial Preferred Stock shall have been met and after the corporation shall have complied with all the requirements, if any, with respect to the setting aside of sums as purchase, retirement or sinking funds, then and not otherwise the holders of the Common Capital Stock shall be entitled to receive such dividends as may be declared from time to time by the Board of Directors out of funds legally available therefor.

2. After distribution in full of the preferential amounts to be distributed to the holders of Serial Preferred Stock in the event of the voluntary or involuntary liquidation, dissolution, distribution of assets or winding up of the corporation, the holders of the Common Capital Stock shall be entitled to receive all the remaining assets of the corporation of whatever kind available for distribution to stockholders ratably in proportion to the number of shares of the Common Capital Stock held by them, respectively.

x x x x

4. The ownership of shares of Common Capital Stock shall not entitle the owner thereof to any right (other than such right, if any, as the Board of Directors in its discretion may from time to time grant) to subscribe for or to purchase or to have offered to him for subscription or purchase any shares of any class of preferred stock of the corporation.

54 http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_%28as%20of%207.2.10%29_final.pdf

55 http://www.sec.gov.ph/index.htm?GIS_Download

56 http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_%28as%20of%207.2.10%29_final.pdf

57 http://www.pldt.com.ph/investor/Documents/2009%20Dividend%20Declarations_Update%2012082009.pdf.
See also http://www.pldt.com.ph/investor/Documents/disclosures_03-01-2011.pdf

[58](#) Subscription Investment Plan. See PD No. 217.

59 This is the result of the preferred shares being denominated 10% preferred, which means each preferred share will earn an annual dividend equal to 10% of its par value of ₱10, which amounts to ₱1. Once this dividend is paid to holders of preferred shares, the rest of the retained earnings can be paid as dividends to the holders of common shares. See http://www.pldt.com.ph/investor/Documents/2009%20Dividend%20Declarations_Update%2012082009.pdf

In 2011, PLDT declared dividends for the common shares at ₱78.00 per share.
(http://www.pldt.com.ph/investor/Documents/disclosures_03-01-2011.pdf)

60 [http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_\(as%20of%207.2.10\)_final.pdf](http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_(as%20of%207.2.10)_final.pdf)

61 Id. Based on PLDTs 2010 GIS, the paid-up capital of PLDT (as of Record Date 12 April 2010) consists of the following:

Filipino (preferred): 403,410,355

Foreigners (preferred): 2,287,207

Total: 405,697,562

62 Based on par value, as stated in PLDTs 2010 GIS submitted to the SEC. See http://www.pldt.com.ph/investor/shareholder/Documents/GIS_2010_%28as%20of%207.2.10%29_final.pdf (accessed 23 May 2011).

Authorized capital stock of PLDT is broken down as follows:

Common shares: 234,000,000

Preferred shares: 822,500,000

Total: 1,056,000,000

[63](#) For the year 2009.

[64](#) <http://www.pse.com.ph/> (accessed 31 May 2011)

[65](#) http://www.pse.com.ph/html/Quotations/2011/stockQuotes_05272011.pdf (accessed 27 May 2011)

[66](#) 335 Phil. 82 (1997).

[67](#) *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947); *Rellosa v. Gaw Chee Hun*, 93 Phil. 827 (1953); *Vasquez v. Li Seng Giap*, 96 Phil. 447 (1955); *Soriano v. Ong Hoo*, 103 Phil. 829 (1958); *Philippine Banking Corporation v. Lui She*, 128 Phil. 53 (1967); *Frenzel v. Catito*, 453 Phil. 885 (2003).

[68](#) Id.

[69](#) *Securities and Exchange Commission v. Court of Appeals, et al.*, 316 Phil. 903 (1995). The Court ruled in this case:

The Securities and Exchange Commission (SEC) **has both regulatory and adjudicative functions.**

Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners associations, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.

Relative to its adjudicative authority, the SEC has original and exclusive jurisdiction to hear and decide controversies and cases involving -

a. Intra-corporate and partnership relations between or among the corporation, officers and stockholders and partners, including their elections or appointments;

b. State and corporate affairs in relation to the legal existence of corporations, partnerships and associations or to their franchise; and

c. Investors and corporate affairs particularly in respect of devices and schemes, such as fraudulent practices, employed by directors, officers, business associates, and/or other stockholders, partners, or members of registered firms; x x x

x x x (Emphasis supplied)

70SEC. 17. *Grounds when articles of incorporation or amendment may be rejected or disapproved.* The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: Provided, **That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment.** The following are grounds for such rejection or disapproval:

x x x

(4) **That the required percentage of ownership of the capital stock to be owned by citizens of the Philippines has not been complied with as required by existing laws or the Constitution.** (Emphasis supplied)

71 Republic Act No. 8799. Section 5 of R.A. No. 8799 provides:

Section 5. Powers and Functions of the Commission. 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

(a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or a permit issued by the Government;

x x x

(c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;

x x x

(f) Impose sanctions for the violation of laws and the rules, regulations and orders, issued pursuant thereto;

x x x

(i) Issue cease and desist orders to prevent fraud or injury to the investing public;

x x x

(m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnership or associations, upon any of the grounds provided by law; and

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.