

THE PAST AND FUTURE OF EMPLOYEE COMPENSATION IN GOVERNMENT CORPORATE SECTOR REFORM*

Johann Carlos S. Barcena**

Ronald O. Chua***

Sa isinakatuparan nating agenda ng pagbabago, binubura na natin ang dating reputasyon ng Government-Owned or Controlled Corporations: ang pagiging gatasan ng mga sakim sa yaman, ang pagkubra ng premyo sa pagiging sunud-sunuran, at pagkakanulo ng tiwala ng publiko para paburan ang padrino.¹

President Benigno S. Aquino III

Those that have less in life should have more in law to give them a better chance at competing with those that have more in life. Accordingly, in case of doubt, laws should be interpreted to favor the working class – whether in the government or in the private sector – in order to give flesh and vigor to the pro-poor and pro-labor provisions of our Constitution.

– Artemio V. Panganiban, C.J.
Phil. Ports Authority Employees v.
*Commission on Audit*²

* Cite as Johann Carlos Barcena & Ronald Chua, *The Past and Future of Employee Compensation in Government Corporate Sector Reform*, 86 PHIL. L.J. 912, (page cited) (2012).

** Chairman, PHILIPPINE LAW JOURNAL (2009; Member, 2006); J.D., University of the Philippines (2010); A.B. Political Science, Ateneo de Manila University (2005).

*** Director, Senate of the Philippines (2010-present); J.D. University of the Philippines (2013 expected); B.S. Applied Economics and B.S. Accountancy, *magna cum laude*, De La Salle University (2005).

The authors would like to extend their gratitude to Jonathan Ibañez for his invaluable contribution and assistance in crafting the initial draft of this paper, and to Oscar Franklin B. Tan.

¹ “In the fulfillment of our agenda of change, we are already erasing the old reputation of Government-Owned or Controlled Corporations: as milking cows of the greedy, as reward for subservience, and forsaking public trust to favor principals.” Speech of President Benigno S. Aquino III delivered on the occasion of the GOCC Governance Day on Feb. 6, 2012.

² G.R. No. 160396, 469 SCRA 397, Sept. 6, 2005.

I. INTRODUCTION

Reform and rationalization of the government corporate sector can be considered as one of the flagship projects of the *Daang Matuwid* (“straight path”) agenda of the current Aquino administration. During his first State-of-the-Nation Address (SONA) in 2010,³ President Benigno Aquino III depicted the government owned and controlled corporations (GOCCs), with specific reference to the Metropolitan Waterworks and Sewerage System (MWSS), as the archetype of corruption in government.

The image painted by President Aquino was that, while the people were lining up to get water in the midst of a water shortage, the members of the Board of Trustees of MWSS were rewarding themselves with bonuses. President Aquino went on to enumerate the various allowances that members of the Board of Trustees of MWSS were receiving: committee meeting *per diem*, grocery incentive, mid-year bonus, productivity bonus, anniversary bonus, year-end bonus, Christmas bonus, additional Christmas package, and financial assistance. And while all these bonuses already amounted in the millions for Board Members, all these were on top of the technical assistance, loans, vehicles, and houses granted by the MWSS to the members of its Board of Trustees. All these were allocated and given despite the fact that the MWSS has yet to pay the pension of its retired employees.⁴

With the exposition of President Aquino, it was clear that Boards of Directors/Trustees of GOCCs were giving themselves undeserved bonuses and that such pernicious practice of according extravagant benefits to government corporate officials must be stopped.

However, what was perhaps overlooked by many was that the government corporate sector reform agenda of the Aquino administration was not limited to the level of its Board of Directors/Trustees; it also included the ordinary rank-and-file employees.

³ State of the Nation Address of His Excellency Benigno S. Aquino III President of the Philippines to the Congress of the Philippines, Delivered at the Batasan Pambansa Complex, Quezon City on July 26, 2010 available at: <http://www.gov.ph/2010/07/26/state-of-the-nation-address-2010/> (accessed on Jun. 7, 2012).

⁴ *Id.*

In the same 2010 SONA, President Aquino mentioned that in 2009, the total amount paid by MWSS as compensation to its employees was P211.5 million pesos. The President clarified, however, that only 24% of this amount was the actual payroll salary of employees. The other 76% was in the form of additional allowances and benefits. To further simplify his illustration, President Aquino stated that an ordinary employee [in government] receives only 13th month pay plus a cash gift, but in MWSS, employees receive as much as 30 months worth of salary every year with the additional bonuses and allowances that they have been receiving.

This proportion between the salary and additional benefits received by MWSS employees was again highlighted by President Aquino, almost two (2) years after, in the speech that he delivered during the GOCC Governance Day, held on 6 February 2012.

Public attention on the government corporate sector reform agenda of the Aquino Administration has been focused on the projected enhanced efficiency and responsiveness of the corporate entity and the rationalized compensation of its governing board. In the margins, however, is the inevitable collateral effect of this government corporate sector reform agenda on the ordinary rank-and-file employee of GOCCs.

The Aquino Administration, in traversing its “straight path”, might very well find itself stumbling upon the policy on the protection of labor, which is already well-entrenched in the Philippine legal system. This is a nascent legal issue which this paper seeks to explore, and perhaps, resolve.

II. RATIONALIZING THE GOVERNMENT CORPORATE SECTOR

The agenda of reform in the government corporate sector is by no means a novel idea of the current Aquino Administration. The need to rationalize the government corporate sector was recognized by the government as early as 1984,⁵ when the government could no longer ignore that government corporate sector consumes a large amount of government budgetary resources and substantial domestic and external borrowings.⁶

⁵ See Exec. Order No. 936 (s.1984).

⁶ See Rosario Manasan, *Public Enterprise Reform: The Case of the Philippines, 1986-1987* (1995).

Furthermore, the unregulated proliferation of GOCCs was viewed to be one of the major contributing elements to the fiscal imbalance of the economy.

The government policy of rationalizing the government corporate sector thus began even before the adoption of the 1987 Constitution. From the administration of former President Ferdinand Marcos, rationalizing the government corporate sector has been part of the agenda and policy of the administrations that followed.⁷

During the term of then President Corazon Aquino, the matter of compensation and incentives in the government corporate sector had already been recognized. In 1987, she issued Executive Order No. 236⁸ which contained a provision on the evaluation of corporate performance and the “granting of incentives as appropriate to well-performing corporations”. To implement this performance incentive, President Corazon Aquino issued Executive Order No. 486,⁹ which put in place a Performance Evaluation System (PES), and was later amended by Executive Order No. 518.¹⁰ The establishment of a performance-based incentive system for GOCCs was intended to encourage efficient performance. The incentives consisted not only of cash rewards and bonuses to deserving GOCC officers and employees,¹¹ but also presidential citations for GOCCs exhibiting outstanding performance.¹² These bonuses were to be given “based on an evaluation of individual performance and relative contribution to the attainment of the corporation’s goals and targets” and the maximum allowable amount for such incentive bonus was not to exceed three (3) months the basic salary of the officer or employee.¹³ Together with the incentive, a disincentive system was established such that “any GOCC that fails to achieve at least a “Satisfactory” performance rating in two (2) consecutive evaluation periods shall [have been]

⁷ See Admin. Order No. 59 (s.1988); Exec. Order No. 55 (s.1993); Admin. Order No. 16 (s.2001).

⁸ Exec. Order No. 236, entitled “*Strengthening the Government Corporate Monitoring and Coordinating Committee and for Other Purposes*” dated Jul. 22, 1987.

⁹ Exec. Order No. 486, entitled “*Establishing a Performance-Based Incentive System for Government-Owned or Controlled Corporations and for Other Purposes*” dated Nov. 8, 1991.

¹⁰ Exec. Order No. 518, entitled “*Amending Certain Provisions of Executive Order No. 486 Dated 8 November 1991 Establishing a Performance-Based Incentive System for Government-Owned or Controlled Corporations and for Other Purposes*” dated May 29, 1992.

¹¹ Exec. Order No. 486, as amended, § 4(b).

¹² Exec. Order No. 486, as amended, § 4(a).

¹³ Exec. Order No. 486, as amended, § 4(b).

subjected to whatever measures and sanctions by the GCMCC.”¹⁴ And among the allowed measures was the immediate replacement of the member(s) of the GOCCs Board of Directors and/or any or all of its key officers.¹⁵

However, despite five (5) previous administrations and more than twenty five (25) years of reform initiatives, the government corporate sector remained a problem area that the administration of President Benigno Aquino III had to address when he assumed office in 2010.

A. Dichotomy of GOCCs

Government-owned or controlled corporations are collectively defined as “any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities either wholly or, where applicable as in the case of stock corporations, to the extent of at least majority of its outstanding capital stock.”¹⁶ Under R.A. 10149,¹⁷ the term “GOCC” includes Government Instrumentalities with Corporate Powers (GICPs)/Government Corporate Entities (GCEs)¹⁸ and Government Financial Institutions (GFIs).¹⁹

While GOCCs have a unitary definition, the Constitution and the law dichotomizes GOCCs in two ways: (1) on the manner of its creation; and (2) coverage under the Salary Standardization Law (SSL). These dichotomies have a direct impact on the manner by which employees of GOCCs receive compensation and other benefits.

i. Chartered vs. Non-Chartered

GOCCs can be dichotomized based on the manner of their creation. The first mode by which GOCCs may be created is found in the Constitution, which provides that GOCCs “may be created or established by special

¹⁴ Exec. Order No. 486, as amended, § 6.

¹⁵ Exec. Order No. 486, as amended, § 6.

¹⁶ Rep. Act No. 10149, § 3(o).

¹⁷ Rep. Act No. 10149, § 3(o).

¹⁸ Rep. Act No. 10149, §3(n); *see also* Manila International Airport Authority v. Court of Appeals, G.R. No. 155650, Jul. 20, 2006; Exec. Order No. 596 (s.2006).

¹⁹ Rep. Act No. 10149, § 3(m).

charters.”²⁰ GOCCs created in this way are generally called “chartered” GOCCs.²¹

Consequently, the other class of GOCCs is aptly called “non-chartered” GOCCs because they are “organized and operating under *Batas Pambansa Bilang 68*, or ‘The Corporation Code of the Philippines’.”²² GOCCs of this class come into being in two ways. First, a GOCC or other instrumentality of government organizes a corporation under the Corporation Code. And second, a GOCC or government agency acquires majority of the shares of stock of an already existing private corporation.

With the 1987 Constitution, the dichotomy on the basis of charter is crucial for the reason that it determines which law governs the GOCC; that is, whether it is covered by civil service laws or the Labor Code.

Significantly, under the 1935 Constitution a subsidiary of a wholly government-owned corporation and a government corporation with original charter were both covered by the Labor Code.²³

The situation changed after the ratification of the 1973 Constitution which provided that the “civil service embraces every branch, agency, subdivision and instrumentality of the Government, including every [GOCC]...”²⁴ Effectively, all GOCCs, with or without original/special charter, was subsumed under the civil service. In *National Housing Corp. v. Juco*,²⁵ the Supreme Court explained the evil that the 1973 Constitution sought to prevent, thus:

The infirmity of the respondents' position lies in its permitting a circumvention or emasculation of Section 1, Article XII-B of the constitution. It would be possible for a regular ministry of government to create a host of subsidiary corporations under the Corporation Code funded by a willing legislature. A government-owned corporation could create several subsidiary corporations.

²⁰ CONST. art. XII, § 16.

²¹ Rep. Act No. 10149, §3(f) defines “Chartered GOCC” as one that “refers to a GOCC, including Government Financial Institutions, created and vested with functions by a special law.”

²² Rep. Act No. 10149, § 3(p).

²³ *Paloma v. Phil. Airlines*, G.R. No. 148415, 558 SCRA 94, 106-07, Jul. 14, 2008.

²⁴ 1973 CONST. art. XII-B, § 1(1).

²⁵ 134 SCRA 172 (1985).

These subsidiary corporations would enjoy the best of two worlds. Their officials and employees would be privileged individuals, free from the strict accountability required by the Civil Service Decree and the regulations of the Commission on Audit. Their incomes would not be subject to the competitive restraints of the open market nor to the terms and conditions of civil service employment. Conceivably, all government-owned or controlled corporations could be created, no longer by special charters, but through incorporations under the general law. The Constitutional amendment including such corporations in the embrace of the civil service would cease to have application. Certainly, such a situation cannot be allowed to exist.²⁶

It was under the 1973 Constitution that President Marcos issued Presidential Decree No. 1597,²⁷ which provided that “allowances, honoraria and other fringe benefits which may be granted to government employees... shall be subject to the approval of the President upon recommendation of the Commissioner [now Secretary] of the Budget.”²⁸ The importance of this Executive issuance is that it remains to be cited by the Department of Budget Management (DBM) and other government agencies, and the abovementioned provision remains one of the legal standards by which allowances and other benefits are determined to be “authorized” or not.²⁹

However, when the 1987 Constitution was adopted, it textually limited the coverage of the civil service only to GOCCs “with original charter.”³⁰ Furthermore, under the 1987 Constitution, the power, authority, and duty of the Commission on Audit to examine and audit accounts was also limited to GOCCs with original charters,³¹ whereas the jurisdiction of the Commission

²⁶ *Id.* at 182-83 cited in *Nat’l Service Corp. v. Nat’l Labor Relations Comm.*, G.R. No. L-69870, 168 SCRA 122, 133-34, Nov. 29, 1988.

²⁷ Entitled *Further Rationalizing the System of Compensation of and Position Classification in the National Government* dated Jun. 11, 1978. This law amended Pres. Dec. No. 985, also known as *The Budgetary Reform Decree on Compensation and Position Classification of 1976*.

²⁸ Exec. Order No. 1597, § 5.

²⁹ See also Memorandum Order No. 20 (s.2001).

³⁰ CONST. art. IX-B, § 2(1).

³¹ CONST. art. IX-D, § 2(1). In *De Jesus v. Commission on Audit* (G.R. No. 149154, 403 SCRA 666, 671-72, Jun. 10, 2003), the Supreme Court held that “[t]he Constitution and existing laws mandate the COA to audit all government agencies, including government-owned and controlled corporations with original charters. Indeed, the Constitution specifically vests in the COA the authority to determine whether government entities comply with laws and regulations in disbursing government funds, and to disallow illegal or

on Audit over GOCCs under the 1973 Constitution made no distinction as to charter.³²

The following proceedings in the 1986 Constitutional Commission shed better light on the Constitutional intent and meaning in the use of the phrase "with original charter", thus:

THE PRESIDING OFFICER (Mr. Trenas) Commissioner Romulo is recognized.

MR. ROMULO. I beg the indulgence of the Committee. I was reading the wrong provision.

I refer to Section 1, subparagraph I which reads:

The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned or controlled corporations.

My query: Is Philippine Airlines covered by this provision?

MR. FOZ. Will the Commissioner please state his previous question?

MR. ROMULO. The phrase on line 4 of Section 1, subparagraph 1, under the Civil Service Commission, says: "including government-owned or controlled corporations." Does that include a corporation, like the Philippine Airlines which is government-owned or controlled?

MR. FOZ. I would like to throw a question to the Commissioner. Is the Philippine Airlines controlled by the government in the sense that the majority of stocks are owned by the government?

irregular disbursements of government funds." *See also* Barbo v. Commission on Audit, G.R. No. 157542, 568 SCRA 302, Oct. 10, 2008.

³² 1973 CONST. art. XII-D, § 2(1). "Under Commonwealth Act No. 327, as amended by P.D. No. 1445, the COA is specifically vested with the power, authority and duty to examine, audit and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property owned or held in trust by the government, or any of its subdivisions, agencies or instrumentalities, including government-owned and controlled corporations." (Nat'l Home Mortgage Finance Corp. v. Abayan, G.R. No. 166508, 602 SCRA 242, 254-55, Oct. 2, 2009).

MR. ROMULO. It is owned by the GSIS. So, this is what we might call a tertiary corporation. The GSIS is owned by the government. Would this be covered because the provision says "including government-owned or controlled corporations."

MR. FOZ. The Philippine Airlines was established as a private corporation. Later on, the government, through the GSIS, acquired the controlling stocks. Is that not the correct situation?

MR. ROMULO. That is true as Commissioner Ople is about to explain. There was apparently a Supreme Court decision that destroyed that distinction between a government-owned corporation created under the Corporation Law and a government-owned corporation created by its own charter.

MR. FOZ. Yes, we recall the Supreme Court decision in the case of NHA vs. Juco to the effect that all government corporations irrespective of the manner of creation, whether by special charter or by the private Corporation Law, are deemed to be covered by the civil service because of the wide-embracing definition made in this section of the existing 1973 Constitution. But we recall the response to the question of Commissioner Ople that our intendment in this provision is just to give a general description of the civil service. We are not here to make any declaration as to whether employees of government-owned or controlled corporations are barred from the operation of laws, such as the Labor Code of the Philippines.

MR. ROMULO. Yes.

MR. OPLE. May I be recognized, Mr. Presiding Officer, since my name has been mentioned by both sides.

MR. ROMULO. I yield part of my time.

THE PRESIDING OFFICER (Mr. Trenas). Commissioner Ople is recognized.

MR. OPLE. In connection with the coverage of the Civil Service Law in Section 1 (1), may I volunteer some information that may be helpful both to the interpellator and to the Committee. Following the proclamation of martial law on September 21, 1972, this issue of the coverage of the Labor Code of the Philippines and of the Civil Service Law almost immediately arose. I am, in particular, referring to the period following the coming into force and effect of the Constitution of 1973, where the Article on the Civil Service was

supposed to take immediate force and effect. In the case of LUZTEVECO, there was a strike at the time. This was a government-controlled and government-owned corporation. I think it was owned by the PNOC with just the minuscule private shares left. So, the Secretary of Justice at that time, Secretary Abad Santos, and myself sat down, and the result of that meeting was *an opinion of the Secretary of Justice which became binding immediately on the government that government corporations with original charters, such as the GSIS, were covered by the Civil Service Law and corporations spun off from the GSIS, which we called second generation corporations functioning as private subsidiaries, were covered by the Labor Code*. Samples of such second generation corporations were the Philippine Airlines, the Manila Hotel and the Hyatt. And that demarcation worked very well. In fact, all of these companies I have mentioned as examples, except for the Manila Hotel, had collective bargaining agreements. In the Philippine Airlines, there were, in fact, three collective bargaining agreements; one, for the ground people or the PALIA one, for the flight attendants or the PASAC and one for the pilots of the ALPAC. How then could a corporation like that be covered by the Civil Service law? *But, as the Chairman of the Committee pointed out, the Supreme Court decision in the case of NHA vs. Juco unrobed the whole thing*. Accordingly, the Philippine Airlines, the Manila Hotel and the Hyatt are now considered under that decision covered by the Civil Service Law. I also recall that in the emergency meeting of the Cabinet convened for this purpose at the initiative of the Chairman of the Reorganization Commission, Armand Fabella, they agreed to allow the CBA's to lapse before applying the full force and effect of the Supreme Court decision. So, we were in the awkward situation when the new government took over. I can agree with Commissioner Romulo when he said that this is a problem which I am not exactly sure we should address in the deliberations on the Civil Service Law or whether we should be content with what the Chairman said that Section 1 (1) of the Article on the Civil Service is just a general description of the coverage of the Civil Service and no more.

Thank you, Mr. Presiding Officer.

MR. ROMULO. Mr. Presiding Officer, for the moment, I would be satisfied if the Committee puts on records that it is not their intent by this provision and the phrase "including government-owned or controlled corporations" to cover such companies as the Philippine Airlines.

MR. FOZ. Personally, that is my view. As a matter of fact, when this draft was made, my proposal was really to eliminate, to drop from the provision, the phrase "including government- owned or controlled corporations."

MR. ROMULO. Would the Committee indicate that is the intent of this provision?

MR. MONSOD. Mr. Presiding Officer, I do not think the Committee can make such a statement in the face of an absolute exclusion of government-owned or controlled corporations. However, this does not preclude the Civil Service Law to prescribe different rules and procedures, including emoluments for employees of proprietary corporations, taking into consideration the nature of their operations. So, it is a general coverage but it does not preclude a distinction of the rules between the two types of enterprises.

MR. FOZ. In other words, it is something that should be left to the legislature to decide. As I said before, this is just a general description and we are not making any declaration whatsoever.

MR. MONSOD. Perhaps if Commissioner Romulo would like a definitive understanding of the coverage and the Gentleman wants to exclude government-owned or controlled corporations like Philippine Airlines, then the recourse is to offer an amendment as to the coverage, if the Commissioner does not accept the explanation that there could be a distinction of the rules, including salaries and emoluments.

MR. ROMULO. So as not to delay the proceedings, I will reserve my right to submit such an amendment.

... ..

THE PRESIDING OFFICE (Mr. Trenas) Commissioner Romulo is recognized.

MR. ROMULO. On page 2, line 5, I suggest the following amendment after "corporations": Add a comma (,) and the phrase EXCEPT THOSE EXERCISING PROPRIETARY FUNCTIONS.

THE PRESIDING OFFICER (Mr. Trenas). What does the Committee say?

SUSPENSION OF SESSION

MR. MONSOD. May we have a suspension of the session?

THE PRESIDING OFFICER (Mr. Trenas). The session is suspended.

It was 7:16 p.m.

RESUMPTION OF SESSION

At 7:21 p.m., the session was resumed.

THE PRESIDING OFFICER (Mr. Trenas). The session is resumed. Commissioner Romulo is recognized.

MR. ROMULO. Mr. Presiding Officer, I am amending my original proposed amendment to now read as follows: "including government-owned or controlled corporations WITH ORIGINAL CHARTERS." *The purpose of this amendment is to indicate that government corporations such as the GSIS and SSS, which have original charters, fall within the ambit of the civil service. However, corporations which are subsidiaries of these chartered agencies such as the Philippine Airlines, Manila Hotel and Hyatt are excluded from the coverage of the civil service.*

THE PRESIDING OFFICER (Mr. Trenas). What does the Committee say?

MR. FOZ. Just one question, Mr. Presiding Officer. By the term "original charters," what exactly do we mean?

MR. ROMULO. We mean that they were created by law, by an act of Congress, or by special law.

MR. FOZ. And not under the general corporation law.

MR. ROMULO. That is correct. Mr. Presiding Officer.

MR. FOZ. With that understanding and clarification, the Committee accepts the amendment.

MR. NATIVIDAD. Mr. Presiding officer, so those created by the general corporation law are out.

MR. ROMULO. That is correct:³³ (emphases supplied)

Thus, as it now stands, GOCCs with original charters are covered by civil service laws,³⁴ while non-chartered GOCCs are covered by the Labor Code.³⁵ As such, only employees of chartered GOCCs are part of the civil service, while employees in non-chartered GOCCs are excluded therefrom.³⁶

The effect of this is that employees in GOCCs incorporated under the Corporation Code have the right to bargain collectively, to have collective bargaining agents, collective bargaining agreements, and the right to strike or lockout.³⁷ Employees in GOCCs with special charters, on the other hand, have no right to strike nor to bargain collectively, except where the terms and

³³ I RECORD OF THE CONSTITUTIONAL COMMISSION 583-85.

³⁴ See *Trade Union of the Phil. and Allied Services (TUPAS) v. Nat'l Housing Corp.*, G.R. No. 49677, 173 SCRA 33, May 4, 1989.

³⁵ *Phil. Nat'l Oil Corp. - Energy Dev't Corp. v. Leogardo*, G.R. No. 58494, 175 SCRA 26, 29, Jul. 5, 1989.

³⁶ The definition of "Government" in the Anti-Graft and Corrupt Practices Act (Rep. Act No. 3019) includes GOCCs, without distinction as to whether the same is chartered or non-chartered. The definition of "Government" in the Code of Conduct and Ethical Standards for Public Officials and Employees (Rep. Act No. 6713) is even more explicit, as it covers GOCCs and their subsidiaries. In other words, officials and employees of non-chartered GOCCs remain to be "public officers" or "public officials," despite not being covered by the civil service.

³⁷ *Home Dev't Mutual Fund v. Commission on Audit*, G.R. No. 142297, 476 Phil. 92, 100-02, Jun. 15, 2004; citing *Ass'n of Dedicated Employees of the Phil. Tourism Authority (ADEPT) v. Commission on Audit*, 295 SCRA 366 (1998).

In *Social Security System Employees Association (SSEA) v. Court of Appeals* (G.R. No. 85279, 175 SCRA 686, Jul. 28, 1989), the Supreme Court provided the rationale for distinguishing between workers in the private sector and government employers with regard to the right to strike. While the Supreme Court ruled therein that the strike of SSEA was illegal primarily on the basis that the Social Security System (SSS) was a chartered corporation covered by the prohibition from striking under Civil Service laws, rules and regulation, the ruling was made at a time when the compensation for chartered GOCCs and non-chartered GOCCs/SSL-exempt GOCCs had not been standardized and fixed by law under a single Total Compensation Framework.

With the enactment into law of Rep. Act No. 10149 (which mandates a "Compensation and Position Classification System which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom"), as well as the issuance of J.R. No. 4 and E.O. No. 7 subjecting increases in the salary rates, allowances, benefits and incentives of SSL-exempt entities to the approval of the President, the distinction between government employees in chartered GOCCs vis-à-vis non-chartered GOCCs regarding the right to strike (at least on the basis of bargaining deadlocks on economic benefits) appears to have ceased along with the legal basis for fixing the terms of conditions and employment in the latter through collective bargaining.

conditions of employment are not fixed by law.³⁸ The blanket Constitutional right of workers to self-organization, collective bargaining and negotiations,³⁹ however, nonetheless applies to employees of GOCCs with original charters⁴⁰ and is guided by Executive Order No. 180, Series of 1987.⁴¹

ii. SSL-covered vs. SSL-exempt

Under the Article on the Civil Service in the 1987 Constitution, it is mandated that “Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters...”⁴² Pursuant to this provision of the Constitution, Congress enacted Republic Act No. 6758 (R.A. 6758),⁴³ more popularly known as the Salary Standardization Law (SSL), prescribing a revised compensation and position classification system in the government, “including government-owned or controlled corporations and government financial institutions.”⁴⁴

Notably, when R.A. 6758 included GOCCs in its coverage,⁴⁵ it made no distinction as to chartered or non-chartered GOCCs. The dichotomy that R.A. 6758 ostensibly sought to address was on the basis of the functions of the GOCC,⁴⁶ thus:

³⁸ *Home Dev’t Mutual Fund v. Commission on Audit*, G.R. No. 142297, 476 Phil. 92, Jun. 15, 2004; *citing* *Ass’n of Dedicated Employees of the Phil. Tourism Authority (ADEPT) v. Commission on Audit*.

³⁹ CONST. art. XIII, § 3.

⁴⁰ *See* Admin. Order No. 135 (s.2005).

⁴¹ Entitled *Providing Guidelines for the Exercise of the Right to Organize of Government Employees, Creating a Public Sector Labor-Management Council, and for Other Purposes*.

⁴² CONST. art. IX-B, § 5. Note that Article XII-B, Section 6 of the 1973 Constitution similarly provided that “The Batasang Pambansa shall provide for the standardization of compensation of government officials and employees, including those in government-owned and controlled corporations, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, the position concerned.”

⁴³ Compensation and Position Classification Act of 1989.

⁴⁴ Rep. Act No. 6758, § 4.

⁴⁵ Rep. Act No. 6758, § 4.

⁴⁶ This was reiterated in DBM-CCC No. 10-99 (s.1999), which provides:

2.0 COVERAGE

The Compensation and Position Classification System referred to herein shall apply to all positions whether permanent, casual, temporary, contractual, on full-time or part-time basis, now existing or hereafter created in GOCCs/GFIs whether they perform governmental or proprietary functions.

...The term “government-owned or controlled corporations and financial institutions” shall include all corporations and financial institutions owned or controlled by the National Government, *whether such corporations and financial institutions perform governmental or proprietary functions*.⁴⁷ (emphases supplied)

In 1994, the Senate and the House of Representatives adopted Joint Resolution No. 1, also known as the Salary Standardization Law II (SSL II), urging the President to revise the existing Compensation and Position Classification System in line with the revised compensation and position classification system adopted therein.⁴⁸ Through Joint Resolution No. 1, “the Senate and House of Representatives have also categorically recognized and acknowledged the authority of the President of the Philippines to revise the existing Compensation and Position Classification System in the government under the standards and guidelines therein provided.”⁴⁹

In 2009, the Senate and the House of Representatives adopted Joint Resolution No. 4, also known as the Salary Standardization Law III (SSL III), resolving to “authorize the President of the Philippines to modify the existing Compensation and Position Classification System.” Under its Total Compensation Framework, “[t]he existing basic salaries, allowances, benefits and incentives granted to government officials and employees [were] rationalized and standardized... [whereby] the total payment given to an employee for services rendered [were] limited to the following: (i) Basic Salaries, including Step Increments; (ii) Standard Allowances and Benefits;⁵⁰ (iii) Specific-Purpose Allowances and Benefits;⁵¹ and (iv) Incentives.”⁵² The

⁴⁷ Rep. Act No. 6758, § 4.

⁴⁸ See Joint Resolution No. 4 (s.2009).

⁴⁹ See Exec. Order No. 389 (s.1996).

⁵⁰ These are allowances and benefits given to all employees across agencies at prescribed rates, guidelines, rules and regulations, which shall be limited to the following: (i) Personnel Economic Relief Allowance; (ii) Uniform/Clothing Allowance; and (iii) Year-End Bonus and Cash Gift [Joint Resolution No. 4, 4(f)].

⁵¹ These are allowances and benefits given to employees across agencies under specific conditions and situations related to the actual performance of work; at prescribed rates, guidelines, rules and regulations. These are limited to the following:

(i) Representation and Transportation Allowances; (ii) Per Diem; (iii) Honoraria; (iv) Night-Shift Differential; (v) Overtime Pay; (vi) Subsistence Allowance; (vii) Hazard Pay; (viii) Special Counsel Allowance; (ix) Overseas and Other Allowances for Government Personnel Stationed Abroad; and (x) Other allowances and benefits granted under specific conditions and situations, related to the actual performance of work as may be determined by the DBM [Joint Resolution No. 4, 4(g)].

Joint Resolution also provides that the “coverage, conditions for the grant, including the rates of allowances, benefits and incentives to all government employees, shall be rationalized in accordance with the policies to be issued by the President upon recommendation of the DBM.”⁵³

There is, however, also a dichotomy on the basis of the application of the Salary Standardization Law. For while the standardized compensation enacted by Congress was meant to cover GOCCs with original charters, Congress has also provided exemptions to certain GOCCs. Thus, there are GOCCs with original charters that are SSL-covered, and there are GOCCs with original charters that are SSL-exempt.

The exemption from the SSL is based on a GOCCs claim that the qualifications and jobs performed by its directors, officers and employees are different from those performed by other “government employees”. The exemption grants the Board of Directors/Trustees of the GOCC the authority to fix the salaries, compensations and benefits of its personnel, including the board members themselves. In *Central Bank Employees Association v. Bangko Sentral ng Pilipinas*,⁵⁴ the justification for exemption from the coverage of the SSL (at least for GFIs) was framed in this wise:

...But it bears emphasis that, while each GFI has a mandate different and distinct from that of another, the deliberations show that the *raison d'être* of the SSL-exemption was *inextricably linked to and for the most part based* on factors common to the eight GFIs, *i.e.*, (1) the pivotal role they play in the economy; (2) the necessity of hiring and retaining qualified and effective personnel to carry out the GFI's mandate; and (3) the recognition that the compensation package of these GFIs is not competitive, and fall substantially below industry standards.⁵⁵

⁵² Incentives were limited to the following: (i) Incentives to reward an employee's loyalty to government service and contributions to the agency's continuing viable existence, as follows: (aa) Loyalty Incentive; and (bb) Anniversary Bonus; (ii) Incentives as rewards for exceeding agency financial and operational performance targets, and to motivate employee efforts toward higher productivity, as follows: (aa) Collective Negotiation Agreement (CNA) Incentive; and (bb) Productivity Enhancement Incentive; and (iii) Other existing benefits to be categorized by the DBM as incentives [Joint Resolution No. 4, 4(h)].

⁵³ Joint Resolution No. 4, 4(e).

⁵⁴ G.R. No. 148208, 446 SCRA 299, Dec. 15, 2004.

⁵⁵ *Id.* at 365.

Since 1992, Congress has granted twenty eight (28) exemptions from the coverage of the SSL through the charters of the GOCCs.⁵⁶ The MWSS is in fact one of these SSL-exempt GOCCs. The practical effect of this was that the DBM had difficulty in requiring these SSL-exempt GOCCs to submit their budgets for examination as these GOCCs question the authority of the DBM to look into their budgets on the basis of their exemption from the SSL. The Corporate Operating Budget (COB), which is the budget of a GOCC or GFI, which consists of estimates of revenues, expenditures and borrowings and prepared prior to the beginning of the fiscal year and recommended by the governing board, is submitted for the consideration and final approval of the President through the DBM.⁵⁷ The exemption from the coverage of the SSL that gave the Board of Directors/Trustees of certain GOCCs the opportunity to grant generous salaries and bonuses, not only to themselves, but also to the rank-and-file employees of the GOCC.⁵⁸

The mistaken, yet prevailing, notion is that SSL-exempt GOCCs have complete fiscal autonomy to adopt compensation, allowances and benefits packages without need of seeking approval from the Office of the President, especially when the GOCC was not obtaining any subsidies from the National Government. For this purpose, GOCCs use its own corporate funds to adopt

⁵⁶ (1) Aurora Pacific Economic Zone and Free Port Authority (APECO); (2) Bases Conversion Development Authority (BCDA); (3) Bangko Sentral ng Pilipinas (BSP); (4) Civil Aviation Authority of the Philippines (CAAP); (5) Credit Information Corporation (CDC); (6) Development Bank of the Philippines (DBP); (7) Duty Free Philippines Corporation (DFPC); (8) Government Service Insurance System (GSIS); (9) Home Development Mutual Fund (HDMF); (10) Home Guaranty Corporation (HGC); (11) Land Bank of the Philippines (LBP); (12) Local Water Utilities Administration (LWUA); (13) Metropolitan Waterworks Sewerage System (MWSS); (14) National Power Corporation (NPC); (15) National Transmission Corporation (TransCo); (16) Philippine Amusement and Gaming Corporation (PAGCOR); (17) Philippine Deposit Insurance Corporation (PDIC); (18) Philippine Economic Zone Authority (PEZA); (19) Philippine Health Insurance Corporation (PhilHealth); (20) Philippine Postal Corporation (PhilPost); (21) Power Sector Assets and Liabilities Management (PSALM); (22) People's Television Network Inc. (PTV); (23) Small Business Corporation (SBC); (24) Social Security System (SSS); (25) Subic Bay Metropolitan Authority (SBMA); (26) Trade Investment Development Corporation (TIDC); (27) Tourism Infrastructure and Enterprise Zone Authority (TIEZA); (28) Tourism Promotion Board (TPB).

⁵⁷ See *Manila International Airport Authority v. Commission on Audit*, G.R. No. 194710, Feb. 14, 2012.

⁵⁸ See *however*, Memorandum Order No. 20 (s.2001), which requires the approval of the President for any increase in salary or compensation of GOCCs and GFIs that are not in accordance with R.A. 6758 (SSL).

and implement its own compensation system. However, as stated earlier, Presidential Decree No. 1597 requires that the approval of the President, upon recommendation from the Secretary of Budget, must first be secured before allowances, honoraria and other fringe benefits may be granted. The Presidential Decree makes no distinction and was intended to apply to all GOCCs. This policy of securing prior Presidential approval, upon recommendation from the DBM, with respect to the grant of allowances and other benefits was re-affirmed by Joint Resolution No. 4 (s.2009), which provides that the “coverage, conditions for the grant, including the rates of allowances, benefits, and incentives to all government employees, shall be rationalized in accordance with the policies to be issued by the President upon recommendation of the DBM.” In other words, whether under the era of the 1973 Constitution or 1987 Constitution, prior approval from the President is necessary.

In 2001, President Gloria Macapagal-Arroyo issued Memorandum Order No. 20, directing the heads of GOCCs, GFIs, and subsidiaries exempted from or not following the Salary Standardization Law to implement pay rationalization in all senior officer positions. This was in response to a study that “revealed a much superior pay package in GOCCs, GFIs and subsidiaries exempted from the SSL, such that officers in these entities receive at least twice what comparable positions receive in NGAs, and some heads of said entities even exceed the average salary of their counterpart positions in the private sector in the Philippines and in the ASEAN Region.”⁵⁹ The issuance immediately suspended the grant of any salary increases and new or increased benefits,⁶⁰ and ordered the preparation of a Pay Rationalization Plan for senior officer positions and Members of the Board of Directors/Trustees to reduce their actual pay package.⁶¹

In 2010, President Benigno Aquino III also implemented a rationalization of the compensation of GOCCs with the issuance of Executive Order No. 7,⁶² which imposed a moratorium in the increase in the rates of salaries, and the grant of new increases in the rates of allowances, incentives and other benefits, except salary adjustments in accordance with the

⁵⁹ Memo. Order No. 20, whereas clause.

⁶⁰ Memo. Order No. 20, § 1.

⁶¹ Memo. Order No. 20, § 2.

⁶² Entitled *Directing the Rationalization of the Compensation and Position Classification System in the Government-Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs), and for Other Purposes*.

implementation of Joint Resolution No. 4, until specifically authorized by the President. The moratorium was imposed to pave the way for the standardization of the compensation and position classification in all GOCCs and GFIs. This was followed by Executive Order No. 24 (s.2011),⁶³ which rationalized the compensation for the members of the Board of Directors/Trustees of GOCCs by imposing limits on their compensation structure based on the classification set by the Executive Order.

B. The GOCC Governance Act of 2011

Barely a year after the 2010 SONA of President Aquino, which highlighted the amount of allowances received by GOCCs such as the MWSS, Republic Act No. 10149, otherwise known as the “GOCC Governance Act”, was enacted by the Legislature.⁶⁴ The title of R.A. 10149 itself expresses the very purpose for which the law was created:

AN ACT TO PROMOTE FINANCIAL VIABILITY AND FISCAL DISCIPLINE IN GOVERNMENT-OWNED OR –CONTROLLED CORPORATIONS AND TO STRENGTHEN THE ROLE OF THE STATE IN ITS GOVERNANCE AND MANAGEMENT TO MAKE THEM MORE RESPONSIVE TO THE NEEDS OF PUBLIC INTEREST AND FOR OTHER PURPOSES

R.A. 10149 created the “Governance Commission for GOCCs” (GCG), a “central advisory, monitoring, and oversight body with authority to formulate, implement and coordinate policies”⁶⁵ in the government corporate sector. The GCG is attached to the Office of the President,⁶⁶ and among its powers and functions is to:

(h) Conduct compensation studies, *develop and recommend to the President a competitive compensation and remuneration system* which shall

⁶³ Entitled *Prescribing Rules to Govern the Compensation of Members of the Board of Directors/Trustees in Government-Owned or Controlled Corporations including Government Financial Institutions*.

⁶⁴ Rep. Act No. 10149 was enacted on Jun. 6, 2011.

⁶⁵ Rep. Act No. 10149, § 5.

⁶⁶ Rep. Act No. 10149, § 5.

attract and retain talent, at the same time allowing the GOCC to be financially sound and sustainable;⁶⁷

To further operationalize this function of the GCG with respect to the members of the Board of Directors/Trustees of GOCCs, Section 23 of R.A. 10149 mandates the GCG to determine their compensation, *per diems*, allowances and incentives, “using as a reference, among others, Executive Order No. 24 dated February 10, 2011.”

In addition, Section 8 of R.A. 10149 mandated the Commission to “develop a *Compensation and Position Classification System (CPCS)*⁶⁸ which shall apply to all officers and employees of the GOCCs whether under the Salary Standardization Law or exempt therefrom and shall consist of classes of positions grouped into such categories as the GCG may determine, subject to the approval of the President.” Through this CPCS, all positions “shall be allocated to their proper position titles and salary grades in accordance with an Index of Occupational Services, Position Titles and Salary Grades of the [CPCS], which shall [also] be prepared by the GCG and approved by the President.”⁶⁹ This mandate of the GCG to develop a CPCS applicable to all positions in GOCCs and consisting of classes of positions, is similar to that given to the DBM under R.A. 6758.⁷⁰

The CPCS to be developed by the GCG is further mandated by R.A. 10149 to be governed by the following principles:

- (a) All GOCC personnel shall be paid just and equitable wages in accordance with the principle of equal pay for work of equal value. Differences in pay shall be based on verifiable Compensation and Position Classification factors in due regard to the financial capability of the GOCC;
- (b) Basic compensation for all personnel in the GOCC shall generally be comparable with those in the private sector doing comparable work and must be in accordance with prevailing laws on minimum wages. The total compensation provided for

⁶⁷ Rep. Act No. 10149, § 5(h); emphasis supplied.

⁶⁸ See DBM MANUAL ON POSITION CLASSIFICATION AND COMPENSATION for a more exhaustive overview of the evolution of the Compensation and Position Classification System in the Philippine Government.

⁶⁹ Rep. Act No. 10149, § 9.

⁷⁰ See Rep. Act No. 6758, §§ 4, 5, & 6.

GOCC personnel shall be maintained at a reasonable level with due regard to the provisions of existing compensation and position classification laws including Joint Resolution No. 4, Series of 2009, and the GOCCs operating budget; and

- (c) A review of the GOCC compensation rates, taking into account the performance of the GOCC, its overall contribution to the national economy and the possible erosion in purchasing power due to inflation and other factors, shall be conducted periodically.

Any law to the contrary notwithstanding, no GOCC shall be exempt from the coverage of the Compensation and Position Classification System developed by the GCG...⁷¹

The foregoing principles are again by no means novel, as it is a substantial replication of the principles governing the Compensation and Position Classification System of the Government under R.A. 6758,⁷² Executive Order No. 7 (s.2010), and Joint Resolution No. 4.⁷³

Furthermore, R.A. 10149 contains a provision with respect to *non-diminution of authorized salaries*, to wit:

Sec. 11. *Non-diminution of Salaries.* – The Compensation and Position Classification System to be developed and recommended by the GCG and as approved by the President shall apply to all positions, on full or part-time basis, now existing or hereafter created in the GOCC: *Provided*, That in no case shall there be any diminution in the authorized salaries as of December 31, 2010 of incumbent employees of GOCCs, including those exempt under Republic Act No. 6758, as amended, upon the implementation of the Compensation and Position Classification System for GOCCs.⁷⁴

Equally important in this regard is the wording of R.A. 10149 in relation to the definition of a GOCC, to wit:

⁷¹ Rep. Act No. 10149, § 9.

⁷² See Rep. Act No. 6758, § 3.

⁷³ Entitled *Joint Resolution Authorizing the President of the Philippines to Modify the Compensation and Position Classification System of Civilian Personnel and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and for Other Purposes*.

⁷⁴ Rep. Act No. 10149, § 11.

(o) *Government-Owned or –Controlled Corporation (GOCC)* refers to any agency organized as a stock or nonstock corporation, vested with functions relating to public needs *whether governmental or proprietary in nature, and owned by the Government of the Republic of the Philippines directly or through its instrumentalities* either wholly or, where applicable as in the case of stock corporations, to the extent of at least a majority of its outstanding capital stock: *Provided, however,* That for purposes of this Act, the term “GOCC” shall include GICP/GCE and GFI as defined herein.⁷⁵ (emphasis supplied)

With the foregoing, it is clear that once the CPCS is in place, the dichotomies that defined GOCCs before will be irrelevant. The CPCS to be developed by the GCG shall apply to all GOCCs; whether chartered or non-chartered, SSL-covered or SSL-exempt, governmental or proprietary. All GOCCs, whether receiving subsidies from the National Government or operate on their own corporate funds generated from operations, are bound to adopt compensations systems that are in conformity with the CPCS for GOCCs, which requires for its effectivity the formal approval of the President of the Philippines. The GCG is further vested with authority to recommend to the President, incentives for certain position titles, giving due consideration to the necessity for such allowances and the good performance of the GOCC.⁷⁶

The overhaul of the existing laws, rules and jurisprudence pertaining to the CPCS as applied to GOCCs is meant to address the dichotomy in the government bureaucracy as well as in GOCCs, which was formally recognized in Memorandum Order No. 20, Series of 2001⁷⁷ “brought about by the severe pay imbalance between personnel of these special entities and the rest of the bureaucracy following the SSL,”⁷⁸ and which was also formally recognized by

⁷⁵ Rep. Act No. 10149, § 3(o).

⁷⁶ Rep. Act No. 10149, § 10.

⁷⁷ Entitled “*Directing Heads of the Government-Owned-and-Controlled Corporations (GOCCs), the Government Financial Institutions (GFIs) and Subsidiaries Exempted From or Not Following the Salary Standardization Law (SSL) to Implement Pay Rationalization in All Senior Officer Positions.*”

⁷⁸ Memo. Order No. 20 (s. 2001), whereas clause.

Another example of this “pay imbalance” brought about by dichotomy of coverage by the SSL is the application of Executive Order No. 7 (s.2010), which imposed a moratorium in the increase in rates of salaries of GOCCs, except salary adjustments pursuant to Executive Order Nos. 811 and 900, which implement the salary schedule for SSL-covered GOCCs pursuant to Joint Resolution No. 4. The practical effect of this is that SSL-covered GOCCs received increases in their bsasic salary, while SSL-exempt GOCCs did not.

the Aquino Administration in the Philippine Development Plan 2011-2016 (PDP), which serves as the Administration's guide in formulating policies and implementing development programs.⁷⁹ Thus one of the key strategies and programs for achieving the overall goal of inclusive growth under the PDP is to further rationalize the compensation framework of the bureaucracy and GOCCs.⁸⁰

The rationalization of government functions, pay, and personnel shall be continued and extended to cover not only the bureaucracy itself but also government-owned and -controlled corporations (GOCCs) and government financial institutions (GFIs).

i. Jurisdiction of the Civil Service Commission (CSC)

R.A. 10149 brought under the ambit of the GCG both chartered and non-chartered GOCCs, hence the CPCS that the GCG is mandated to develop, as well as other aspects of its powers and functions, also affect employees in the civil service. Notably, Section 22 of R.A. 10149 expressly recognizes the continuing effectivity, if not primacy, of existing civil service laws when it provided that the power of the Board of Directors/Trustees to discipline or remove the CEO is "subject to existing civil service laws, rules and regulations." Considering that the civil service, which embraces GOCCs with original charters,⁸¹ is under the administration of the Civil Service Commission (CSC),⁸² a discussion of the interplay of the GCG and the CSC becomes necessary.

Unlike the GCG which is a body created by statute, the CSC is an independent body created by the 1987 Constitution and vested with the following powers and functions:

Sec. 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human

⁷⁹ NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY, PHILIPPINE DEVELOPMENT PLAN 2011-2016, viii.

⁸⁰ *Id.* at 23.

⁸¹ CONST. art. IX-B, § 2.

⁸² CONST. art. IX-B, § 1.

resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.⁸³

The powers and functions of the CSC under the 1987 Constitution reaffirms the policy laid down by the Civil Service Decree⁸⁴ of President Ferdinand Marcos,⁸⁵ which is in turn reaffirmed by the Administrative Code of 1987.⁸⁶

The sphere of authority of the GCG is also different from that of the CSC. As the designated “central personnel agency of the government”, the CSC is an administrative agency that merely exercises administrative functions with respect to government employees. It deals with matters pertaining to eligibility, qualification, status, compensation, discipline and termination of employees in the civil service.⁸⁷ In other words, the powers of the CSC is limited to the personnel matters GOCC employees – and only of chartered ones at that. The CSC has no jurisdiction or power over the GOCC, as such. The powers of the GCG,⁸⁸ on the other hand, pertain to the GOCC or the corporation itself. While R.A. 10149 grants the GCG certain powers incidentally relating to the employees of the GOCCs, whether chartered or non-chartered, these do not, as it cannot, supplant the CSC or diminish the latter’s powers. Employees of GOCCs with original charters remain part of the civil service and under the jurisdiction of the CSC.

While the CSC is constitutionally mandated to “strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability” in the civil service, this does not impair the power of the GCG to develop a CPCS applicable to employees of chartered [and non-chartered] GOCCs. Corollarily, the statutory powers of the GCG under R.A. 10149 does not encroach upon the jurisdiction of the CSC.

⁸³ CONST. art. IX-B, § 3.

⁸⁴ Pres. Dec. No. 807 enacted on Oct. 6, 1975.

⁸⁵ Pres. Dec. No. 807 (s.1975), § 2.

⁸⁶ ADMINISTRATIVE CODE OF 1987, Book V, Title I, Subtitle A, Chapter 1, § 1.

⁸⁷ *See* National Electrification Administration v. Civil Service Comm., et al., G.R. No. 149497, 611 SCRA 14, January 25, 2010.

⁸⁸ *See* Rep. Act No. 10149, § 5.

The provisions of R.A. 10149 regarding the CPCS can be considered as a legislative enactment of Congress pursuant to Section 5 of Article IX-B of the 1987 Constitution,⁸⁹ which provides:

Section 5. The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for, their positions.

As earlier stated, the powers granted to the GCG under R.A. 10149 to develop a CPCS applicable to all positions in GOCCs and consisting of classes of positions, is similar to that given to the DBM under R.A. 6758. Notably, R.A. 6758 directed the DBM to establish and administer a unified Compensation and Position Classification System that shall be applied for all government entities, as mandated by the Constitution⁹⁰ – that is, Section 5 of Article IX-B thereof.

In other words, the CPCS provisions of R.A. 10149 simply transferred to the GCG a directive that was given to the DBM under R.A. 6758. In this respect, in the development and implementation of its CPCS, the GCG can simply follow the model of the DBM, which received no objection as to encroachment into the jurisdiction of the CSC.

That Congress, thru R.A. No. 10149, has expressly empowered the President to establish a uniform compensation system for all GOCCs was already pronounced by the Supreme Court in the recent case of *Galicto v.*

⁸⁹ See also Rep. Act No. 9829; Rep. Act No. 8799; Rep. Act No. 8523. The foregoing laws also contain provisions regarding Compensation and Position Classification System.

⁹⁰ Rep. Act No. 6758, § 2.

While the 1987 Constitution only speaks of GOCCs with original charters, P.D. 1597 which was issued prior to the 1987 Constitution, already gave the President power over exempt GOCCs in that they should remain to observe the guidelines and policies issued by the President governing classifications, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits. This power of the President over exempt entities was reiterated in Joint Resolution No. 4 (s.2009), Exec. Order No. 7 (s.2010), R.A. 10149, and even the general provisions of the General Appropriations Act of 2011 (R.A. 10147).

*Aquino, et al.*⁹¹ The Court declared therein that R.A. 10149 “authorizes the President to fix the compensation and position classification system for all GOCCs and GFIs, as well as other entities covered by the law.”

ii. “Authorized Salary”

Of note is the peculiar wording of R.A. 10149 as to non-diminution. The law provides for non-diminution of “salaries” and not “benefits” as commonly used in the Labor Laws⁹² and jurisprudence. Moreover, R.A. 10149 provides for non-diminution only of “authorized” salaries. Thus, in determining the base amounts on which the new CPCS shall be developed, the issue turns upon what constitutes “authorized” salaries. While the issue is purely legal, the practical consequences directly impact the rank-and-file employees of GOCCs as the resolution of this question will determine the compensation that they will receive once the new CPCS is implemented.

In *Songco v. NLRC*,⁹³ the Supreme Court ruled that the term “salary” broadly refers to the recompense or consideration made to a person for his pains or industry in another man’s business, and carries with it the fundamental idea of compensation for services rendered.⁹⁴ The Supreme Court also held that the term “salary” is in essence synonymous with the terms “pay” and “wages”.⁹⁵

In *Cebu Institute of Technology v. Ople*,⁹⁶ the Supreme Court in effect ruled that allowances are excluded from the basic salary of employees. Benefits, such as allowances, are compensations given to employees in addition to their regular salaries. While some benefits are mandated by law, others are granted by the employer out of liberality, or as an incentive.

When R.A. 6758 was enacted, the law provided for the integration of all allowances into the prescribed standardized salary rates, except for certain specified allowances⁹⁷ and such other additional compensation as may be

⁹¹ G.R. No. 193978, Feb. 28, 2012.

⁹² See LABOR CODE, art. 100.

⁹³ G.R. No. 50999, 183 SCRA 610, Mar. 23, 1990.

⁹⁴ *Id.* at 617.

⁹⁵ *Id.*; See also LABOR CODE, art. 167(w).

⁹⁶ G.R. No. 58870, 156 SCRA 629, Dec. 18, 1987.

⁹⁷ (1) representation and transportation allowances (RATA); (2) clothing and laundry allowances; (3) subsistence allowance of marine officers and crew on board government

directed by the DBM.⁹⁸ “These allowances are granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions.”⁹⁹ In *Public Estates Authority v. COA*,¹⁰⁰ the Supreme Court elucidated on the coverage of “other additional compensation” that may be directed by the DBM, thus:

No. 7 of the foregoing list is a “catch-all proviso” covering all other allowances/fringe benefits not integrated into the basic salary *and allowed to be continued only for incumbents as of June 30, 1989*. Those benefits covered by the “catch-all proviso” includes the following: (1) *rice subsidy*; (2) sugar subsidy; (3) death benefits other than those granted by the GSIS; (4) medical/dental/optical allowances/benefits; (5) children’s allowance; (6) special duty pay/allowance; (7) meal subsidy; (8) longevity pay; and (9) teller’s allowance. Thus, under the said “catch-all proviso,” the legislative intent is just to include the fringe benefits which are in the nature of allowances, and to exclude those benefits which are of a different genus, such as financial assistance benefits.¹⁰¹ (emphasis supplied)

In the Corporate Compensation Circular[s] issued by the DBM prescribing the rules and regulations for the implementation of the revised compensation and position classification system under R.A. 6758,¹⁰² it is expressly provided that the “payment of other allowances/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, not mentioned in Sub-Paragraphs 5.4 and 5.5 [therein] shall continue to be not authorized.”¹⁰³ The Circulars further qualify that “payment made for such unauthorized allowances/fringe benefits shall be considered as illegal disbursements of public funds.”¹⁰⁴

vessels; (4) subsistence allowance of hospital personnel; (5) hazard pay; (6) allowances of foreign service personnel stationed abroad; and (7) such other additional compensation not otherwise specified herein as may be determined by the DBM (*Public Estates Authority v. Commission on Audit*, G.R. No. 156537, Jan. 24, 2007).

⁹⁸ See Rep. Act No. 6758, § 12; *Public Estates Authority v. Comm.on Audit*, G.R. No. 156537, 512 SCRA 428, 434-35, Jan. 24, 2007 *citing* *Nat’l Tobacco Admin. v. Comm. on Audit*, G.R. No. 119385, 311 SCRA 755, Aug. 5, 1999.

⁹⁹ *Public Estates Authority v. Comm. on Audit*, G.R. No. 156537, 512 SCRA 428, 435, Jan., 24 2007.

¹⁰⁰ G.R. No. 156537, 512 SCRA 428, Jan. 24, 2007.

¹⁰¹ *Id.* at 435.

¹⁰² DBM-CCC No. 10 (s.1989); DBM-CCC No. 10-99 (s.1999).

¹⁰³ DBM-CCC No. 10-99 (s.1999), ¶ 5.6. See also DBM-CCC No. 10 (s.1989).

¹⁰⁴ DBM-CCC No. 10-99 (s.1999), ¶ 5.6. See also DBM-CCC No. 10 (s.1989).

In a host of cases, the Supreme Court has upheld disallowances made by the Commission on Audit (COA) of benefits and allowances deemed to be granted to GOCC employees in violation of existing laws.¹⁰⁵ The COA still continues to issue Audit Observation Memorandum to GOCCs that continue to grant allowances and other additional compensation without following the requirements prescribed by law, such as prior approval from the President of the Republic.¹⁰⁶ While only members of the Board of Directors and responsible officers, and not rank-and-file employees, have been made to reconstitute such unauthorized allowances,¹⁰⁷ its possible impact on employee compensation in view of an imminent implementation of a new CPCS cannot be overlooked.

It bears emphasis that while the non-diminution provision of R.A. 10149 provides that “in no case shall there be any diminution in the authorized salaries as of December 31, 2010 of incumbent employees of GOCCs,” the same law does not define “authorized salaries.” This is unlike DBM-CCC No. 10, implementing R.A. 6758, wherein the following is provided:

4.0 DEFINITION OF TERMS

4.1 The *present salary* of an incumbent for purposes of this Circular shall refer to the sum total of actual basic salary including allowances enumerated hereunder, being received as of June 30, 1989 and certified and authorized by the DBM.

4.1.1 Cost-of-Living Allowance (COLA)/Bank Equity Pay (BEP) equivalent to forty percent (40%) of basic salary or P300.00 per month, whichever is higher;

4.1.2 Amelioration Allowance equivalent to ten percent (10%) of basic salary or P150.00 per month, which ever is higher;

¹⁰⁵ Philippine Ports Authority v. Comm. on Audit, G.R. No. 159200, 482 SCRA 490, Feb. 16, 2006; Home Dev’t Mutual Fund v. Comm. on Audit, G.R. No. 157001, 440 SCRA 643, Oct. 19, 2004; Kapisanan ng mga Manggagawa sa Gov’t Service Insurance System (KMG) v. Comm. on Audit, G.R. No. 150769, 437 SCRA 371, Aug. 31, 2004; De Jesus v. Comm. on Audit, G.R. No. 149154, 403 SCRA 666, Jun. 10, 2003; Baybay Water District v. Comm. on Audit, G.R. Nos. 147248, 374 SCRA 382, Jan. 23, 2002; Blaquera v. Alcala, G.R. No. 109406, 295 SCRA 366, Sep. 11, 1998.

¹⁰⁶ See Memo. Order No. 20 (s.2001).

¹⁰⁷ Manila Int’l Airport Authority v. Comm. on Audit, G.R. No. 194710, Feb. 14, 2012.

5.4.2 Uniform and Clothing Allowance at a rate as previously authorized;

5.4.3 Hazard Pay as authorized by law;

5.4.4 Honoraria/additional compensation for employees on detail with special projects of inter-agency undertakings;

5.4.5 Honoraria for services rendered by researchers, experts and specialists who are of acknowledged authorities in their field of specialization;

5.4.6 Honoraria for lecturers and resource persons/speakers;

5.4.7 Overtime Pay in accordance to Memorandum Order No. 228;

5.4.8 Clothing/laundry allowances and subsistence of marine officers and crew on board GOCCs/GFIs owned vessels and used in their operations, and of hospital personnel who attend directly to patients and who by nature of their duties are required to wear uniforms;

5.4.9 Quarters Allowance of officials and employees who are presently entitled to the same;

5.4.10 Overseas, Living Quarters and other allowances presently authorized for personnel stationed abroad;

5.4.11 Night Differential of personnel on night duty;

5.4.12 Per Diems of members of governing Boards of GOCCs/GFIs at the rate as prescribed in their respective Charters;

5.4.13 Flying Pay of personnel undertaking aerial flights;

5.4.14 Per Diems/Allowances of Chairman and Members/Staff of collegial bodies and Committees; and

5.4.15 Per Diems/Allowances of officials and employees on official foreign and local travel outside of their official station;

5.5 Other allowances/fringe benefits *not likewise integrated into the basic salary* and allowed to be continued only for incumbents as of June 30, 1989 subject to the condition that the grant of the same is with appropriate authorization either from the DBM, Office of the President or legislative issuances are as follows:

- 5.5.1 Rice Subsidy;
- 5.5.2 Sugar Subsidy;
- 5.5.3 Death Benefits other than those granted by the GSIS;
- 5.5.4 Medical/Dental/Optical Allowances/Benefits;
- 5.5.5 Childrens Allowance;
- 5.5.6 Special Duty Pay/Allowance;
- 5.5.7 Meal Subsidy;
- 5.5.8 Longevity Pay; and
- 5.5.9 Tellers Allowance.

5.6 Payment of other allowances/fringe benefits and all other forms of compensation granted on top of basic salary, whether in cash or in kind, not mentioned in Sub-paragraphs 5.4 and 5.5 above shall be discontinued effective November 1, 1989. Payment made for such allowances/fringe benefits after said date shall be considered as illegal disbursement of public funds.¹⁰⁹

R.A. 10149 is a law that is self-executing, which means that it can be implemented even without implementing rules and regulations operationalizing its provisions. This means that in the absence of an explicit definition of “authorized salary”, the GCG shall be guided by the provisions and principles of R.A. 10149 in conducting a compensation study that is a precursor to its development of a new CPCS.

And in the absence of such operationalized definition of “authorized salary”, GOCCs and its employees will naturally to hold on to their present compensation packages, whether with legal basis or not, in the hope of maintaining the same level when the new CPCS is in place.

III. THE POLICY ON NON-DIMINUTION OF BENEFITS

The principle of “non-diminution of benefits” is one that is statutory in origin, but elevated by the Supreme Court into a jurisprudential doctrine.

¹⁰⁹ Emphasis supplied.

Thus, while it is grounded on Article 100 of the Labor Code,¹¹⁰ which is applicable to employees in the private sector, the Supreme Court has effectively elevated it into a principle of equity applicable to all classes of employees. This is along the lines of the pronouncement of the Supreme Court that the pro-poor and pro-labor provisions of the Constitution¹¹¹ apply to the working class, whether in government or in the private sector.¹¹²

In *Home Development Mutual Fund v. COA*,¹¹³ the Supreme Court held that Republic Act No. 6971 (R.A. 6971), or the “Productivity Incentives Act of 1990”, was applicable to GOCCs incorporated under the general corporation law but not to GOCCs performing proprietary functions which are created, maintained or acquired in pursuance of a policy of the state, enunciated in the constitution or by law, and those whose officers and employees are covered by the Civil Service. Section 12 of R.A. 6971 likewise provides for non-diminution of benefits.

The principle of non-diminution of benefits comes into play when the employer changes existing company policies pertaining to employee benefits, which results in a diminution of the benefits already enjoyed by the employees. This presupposes that there the benefits withdrawn have already ripened into practice, in view of its repeated and consistent grant, such that the employees have a reasonable expectation that such benefit shall continue to be granted. This is the case for GOCCs, such as the MWSS, that have been giving generous benefits to its employees.

For the rule against diminution of benefits to apply, the following requisites must be present: (1) the grant of the benefit is founded on a policy or has ripened into a practice over a long period; (2) the practice is consistent and deliberate; (3) the practice is not due to error in the construction or application of a doubtful or difficult question of law; and (4) the diminution or discontinuance is done unilaterally by the employer.¹¹⁴

¹¹⁰ Art. 100. *Prohibition against elimination or diminution of benefits.* Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of promulgation of this Code.

¹¹¹ CONST. art. XIII, § 3; Art. II, § 18.

¹¹² *Phil. Ports Authority v. Comm. on Audit*, G.R. No. 160396, 469 SCRA 397, 400, Sept. 6, 2005.

¹¹³ G.R. No. 142297, 476 Phil. 92, Jun. 15, 2004.

¹¹⁴ I CESAR AZUCENA, *THE LABOR CODE WITH COMMENTS AND CASES* 222 (2004 ed.).

Among the benefits included in the prohibition against elimination of benefits are food/meal allowance,¹¹⁵ noncontributory retirement plan,¹¹⁶ and monthly emergency allowance.¹¹⁷

It has been held, however, that where there is no law entitling employees of GOCCs to certain allowances or bonuses, such employees do not acquire a vested right over the same.¹¹⁸ A vested right is one that is absolute, complete and unconditional; to its exercise, no obstacle exists; and it is immediate and perfect in itself and not dependent upon any contingency.¹¹⁹ As such, the government may order the discontinuation the same, and in some cases, require restitution from responsible directors and officers.¹²⁰ In *Baybay Water District v. COA*,¹²¹ the Supreme Court held that:

The erroneous application and enforcement of the law by public officers does not estop the Government from making a subsequent correction of such errors. More specifically, where there is an express provision of law prohibiting the grant of certain benefits, the law must be enforced even if it prejudices certain parties due to an error committed by public officials in granting the benefit... Practice, without more, no matter how long continued, cannot give rise to any vested right it is contrary to law.¹²²

Indeed, the fundamental difference between GOCCs and private corporations is that the funds being managed by GOCCs are very well deemed

¹¹⁵ Cebu Autobus Co. v. United Cebu Autobus Employees Assn., G.R. No. L-9742, Oct. 27, 1955.

¹¹⁶ Nestle Phil., Inc. v. Nat'l Labor Relations Comm., G.R. No. 91231, 193 SCRA 504, Feb. 4, 1991.

¹¹⁷ Tiangco v. Leogardo, Jr., G.R. No. L-57636, 122 SCRA 267, May 16, 1983.

¹¹⁸ Home Dev't Mutual Fund v. Comm. on Audit, G.R. No. 142297, 440 SCRA 643, 661, Jun. 15, 2004.

¹¹⁹ Phil. Ports Authority v. Comm. on Audit, G.R. No. 100773, 214 SCRA 653, 663, Oct. 16, 1992.

¹²⁰ Manila Int'l Airport Authority v. Comm. on Audit, G.R. No. 194710, Feb. 14, 2012. Prior to this case, the Supreme Court did not require officers and employees alike to refund unauthorized allowances on the ground that such officers and employees received the same in good faith. *See* De Jesus v. COA, G.R. No. 149154, 403 SCRA 666, 671-72, Jun. 10, 2003; Phil. International Trading Corp. v. Commission on Audit, G.R. No. 152688, 416 SCRA 245, Nov. 19, 2003.

¹²¹ G.R. Nos. 147248, 374 SCRA 382, Jan. 23, 2002.

¹²² *Id.* at 341-42.

to be public funds¹²³ which cannot be gratuitously disbursed by its Management without legal authority. Thus, even though the grant of generous bonuses, allowances, and benefits have ripened into practice, the same can nonetheless be revoked for being given in violation of existing laws.

Another point is that once the CPCS mandated under R.A. 10149 is implemented, employees in non-chartered GOCCs can no longer bargain with respect to their salaries and benefits through Collective Bargaining Agreements (CBA). Such employees may still collectively bargain with respect to non-economic items, but their compensation may no longer be bargained as it shall be fixed by law, through the CPCS. In effect, the CPCS shall also standardize collective agreements of chartered and non-chartered GOCCs as the CBA of non-chartered GOCCs will, in essence, be the same as the Collective Negotiation Agreement (CNA) of chartered GOCCs.

A. Dichotomy of Compensation

In *Philippine Ports Authority v. COA*,¹²⁴ the Supreme Court ruled that with the salary standardization scheme provided for by R.A. No. 6758, additional financial incentives may no longer be given by the government owned and controlled corporations to their personnel except to incumbents as of July 1, 1989. The rationale for the same was expressed in *Philippine International Trading Corp. v. COA*,¹²⁵ wherein the Supreme Court held that incumbents as of July 1, 1989 shall continue to receive the allowance mentioned in Section 12 even after R.A. No. 6758 took effect, thus:

First of all, we must mention that this Court has confirmed in *Philippine Ports Authority vs. Commission on Audit* the legislative intent to protect incumbents who are receiving salaries and/or allowances over and above those authorized by RA 6758 to continue to receive the same even after RA 6758 took effect. In reserving the benefit to incumbents, the legislature has manifested its intent to gradually phase out this privilege without upsetting the policy of non-diminution of pay and consistent with the rule that laws should only be applied prospectively in the spirit of fairness and justice.¹²⁶

¹²³ This is perhaps with the exception of the Government Service Insurance System (GSIS) and the Social Security System (SSS) which manages the funds of its members.

¹²⁴ G.R. No. 100773, 214 SCRA 653, Oct. 16, 1992.

¹²⁵ G.R. No. 132593, 309 SCRA 177, Jun. 25, 1999.

¹²⁶ *Id.* at 185.

In other words, when in the implementation of R.A. 6758, there was created a dichotomy of employees. On the one hand, there were the incumbents as of July 1, 1989, and on the other, were the employees hired after such date. The cut-off date was determinative of whether an employee is entitled to the continued grant of a benefit previously enjoyed by employees, and not as a limitation or imposition of a maximum amount that such class of employees is entitled.¹²⁷ Thus, the compensation received by employees already employed as of July 1, 1989 was different from those hired after such date when R.A. 6758 was implemented. This is in keeping with the policy of non-diminution.

Given the provision on non-diminution of “authorized salaries as of December 31, 2010 of incumbent employees,” with respect to the CPCS to be developed by the GCG pursuant to R.A. 10149, the likely result is that there will again be two classes of employees once the CPCS is implemented: (1) those incumbents receiving a certain amount of compensation as of December 31, 2010, that is higher than the new rates under the CPCS; and (2) employees hired after December 31, 2010 or have been receiving an amount of compensation less than the rates prescribed by the new CPCS. For the first class of employees, they retain the amount of authorized salaries that they have been receiving prior to the implementation of the new CPCS, while for the second class, they adhere to the rates prescribed by the CPCS.¹²⁸

Therein lies the silver lining. With the new CPCS, while some employees may indeed receive compensation lower than their current ones on account of its unauthorized disbursement of the same, there remains the chance that employees of other GOCCs will receive compensation which is higher than what they are currently receiving. This is a consequence of the implementation of a unified compensation system.

IV. SUMMARY

The current government has finally mustered the political will to address the decades-old problem of the government corporate sector through the enactment of R.A. 10149 and its consequent mandate for the development

¹²⁷ *Philippine Ports Authority v. Commission on Audit*, G.R. No. 100773, 214 SCRA 653, 660-61, Oct. 16, 1992.

¹²⁸ *See also Agra v. Commission on Audit*, G.R. No. 167807, Dec. 6, 2011.

of a uniform Compensation and Positioning Classification System that will apply to all GOCCs, without distinction or exemption.

The crucial issue in this aspect of government corporate sector reform is: what shall be the future compensation that employees of GOCCs will receive under the new CPCS? The resolution of this question is one that is indeed much anticipated and speculated.

The question of what is “authorized salary” for purposes of the new CPCS is indeed one that is purely legal and can be very well considered to be abstract. However, its impact on the ordinary rank-and-file employee, who has mapped his/her life and that of his/her family’s on the basis of such, is certainly one that is tangible and real. Again, in the case of MWSS, 76% of the take-home pay of its employees are based on allowances, authorized or not. These employees have taken on loans, built houses, and sent their children to good schools on the expectation of receiving such pay every 15th and 30th of the month. Needless to say, the impact of taking away such amounts would radically change their lives.

For other GOCC employees, there is the prospect that the new CPCS will bring a more rewarding recompense for their work. This is perhaps more true for employees of GOCCs who are receiving compensation that is much less generous compared to others.

Moving forward, with the enactment of R.A. 10149, there may be a need to revisit the state policies with respect to the treatment of GOCCs. In the current state of law and jurisprudence, chartered GOCCs are covered by civil service laws while non-chartered GOCCs are governed by the Labor Code. With the implementation of the CPCS mandated under R.A. 10149, and its consequent elimination of bargaining of economic benefits for non-chartered GOCCs, it may no longer be accurate to say that the full extent of the Labor Code applies to non-chartered GOCCs.

At the end of the day, the question is one that is not just purely legal, but is a question of policy and equity as well.