

*2014 to 2016, 2017, 2018, 2019, 2020 and 2021 cases*

# **Administrative Law and Administrative Agencies**

**Alberto C. Agra**

August 24, 2022

# Administrative Law

- **Definition:** All the laws and policies that regulate or control the administrative *organization and operations* of the government through administrative agencies (AAs)
- **Classifications:**
  1. Internal and External Administration
  2. Law that Controls (Charter) and those issued by Administrative Agencies (Rules)
  3. Substantive and Procedural Administrative Law
  4. General and Special Administrative Law
  5. Geographical and Functional Jurisdiction

# Administrative Agencies (AAs)

- An agency which exercises some *significant form or combination* of executive, legislative or judicial powers (“4<sup>th</sup> Branch”)
- All AAs are Public Offices
- AAs are “Delegates”
- Include boards, commissions, departments, bureaus, offices, authorities, government corporations, government instrumentalities, and local governments
- Rationale: complex, diverse and specialized concerns

# Administrative Agencies (AAs)

“4<sup>th</sup> Branch”

Public Offices

Legal Persons

Delegates/  
Agents/  
Subordinates

Fusion of  
Powers

Duty-Bearers/  
Accountable  
Institutions

# Creation of AAs

- Constitution
- Congress (Special Law-Chartered; GOCCs - economically viable and common good; LGUs – law then plebiscite)
- President (Executive Order; by authority under the Constitution or of law)
- Supreme Court (classifies; confirms; invalidates)
- AAs themselves (Articles of Incorporation and By-Laws; by authority of law; non-chartered)
- Local Governments (Ordinance; by authority of law)

# Creation of AAs

Creating Authority	Enabling Instrument	Examples
Voters	Constitution	Commission on Elections
Congress	Special Law	Social Security System
President	Executive Order	Presidential Anti-Corruption Commission
Administrative Agencies	AIBL	PNOC-Renewables Corporation
Local Governments	Ordinance; AIBL	Cebu Property Ventures Dev't Corp.

# Charter: Enabling Instrument

1. Name
2. Principles
3. Mandate/ Purpose
4. Powers
5. Duties and Responsibilities
6. Relationships
7. Jurisdiction  
(can provide exclusions)
8. Structure
9. Budget
10. Dissolution

*Differentiator*

# Characteristics of AAs

1. Size
2. Specialization/  
Functions
3. Territory
4. Responsibility for  
Results
5. Administrative Duties
6. Delegated  
Authorities
7. Accountability
8. Relationships
9. Capitalization/  
Funding (Stocks,  
if any)



# AA Categories

## ***Creation***

- Constitution
- Congress
- Executive
- AA themselves

## ***Geographical***

- National: NGAs
- Local: LGUs

## ***Capital Structure***

- GOCC
- GI

## ***Functional***

- Offers gratuities, grants or privileges
- Performs specific governmental functions
- Undertakes public service
- Regulates businesses affected with public interest
- Exercises police power to regulate private businesses
- Resolves controversies

# Government Bureaucracy

- Administrative Agency/  
Government Agency
- Government-Owned and -  
Controlled Corporation
  - special charter/ parent
  - non-chartered under  
Corporation Code/  
subsidiary
- Government  
Instrumentality with  
Corporate Powers
- Government Financial  
Institution
- State Universities and  
Colleges
- Public Corporation
- Public Office
- National Government  
Agency
- Quasi-Corporation
- Quasi-Public Corporation
- Municipal Corporation  
Proper/ Local Government  
Unit
- Quasi-Municipal  
Corporation

# GOCC vs. GICP

## GOCC

1. Organized as stock or **non-stock** corporation
2. Created by law or under Corporation Code
3. Public character of its function
4. **Government directly or indirectly owns or controls at least a majority or 51% share of the capital stock**
5. Created for common good *and* must be economically viable

## GICP

1. Neither stock nor non-stock
2. Not a corporation
3. Created by law only (not under Corporation Code)
4. Agency of the national government
5. Not integrated within the department framework
6. Vested with special functions or jurisdiction by law
7. Endowed with some if not all corporate powers
8. Administering special funds
9. Enjoying operational autonomy
10. Need not be economically viable

# GOCC vs. GICP

	GOCC	GI
Created by Special Law	✓	✓
Created under Corp Code	✓	X
Governmental Function	✓	✓
Common Good	✓	✓
Economic Viability	✓	X
Corporate Powers	✓	✓
Stocks divided into Shares	✓	X
Non-Stock	✓	X

# Recent Jurisprudence

Entity	Characterization
Manila Int'l Airport Authority (GI)	Created under an Executive Order GI; not a GOCC since neither stock nor non-stock
Phl Society for the Prevention of Cruelty to Animals	Quasi-Public Corporation (Private) Not subject to COA
Manila Economic and Cultural Office (Not GOCC; Not GI)	Created under Corporation Code as non-stock corporation Not a GOCC (not owned by Government); Not a GI (since incorporated under Corporation Code) <i>Sui Generis</i> Funds subject to COA
Boy Scouts of the Philippines (GI and GOCC)	Created as corporation under Special Law (Commonwealth Act) Juridical person under Civil Code (other corporations with public purpose) Public function - vital role of the youth GOCC and GI – attached agency; need not meet twin test (economic viability and control/ ownership test) - <i>Sui Generis</i>
Veterans Federation of the Philippines (GOCC)	Created under RA 2640 and registered with the SEC “Public corporation” per Charter; Adjunct of government; Classified as GOCC to be privatized Sovereign function, Control and supervision of DND

# Recent Jurisprudence

Entity	Characterization
Philippine Fisheries Dev't Authority (GI)	Created under PD 977 as amended by EO 772 GI; not a GOCC (has capital stock, but not divided into shares)
Leyte Metropolitan Water District (GOCC)	Created pursuant to PD 198 GOCC with an original charter (since not under Corporation Code, not a private corporation) Quasi-Public under Charter
Philippine Economic Zone Authority (GI)	GI since not integrated within the department framework but is an agency attached to the DTI
Philippine Reclamation Authority (GI)	Incorporated GI Not a GOCC since not a stock nor a non-stock corporation; has capital stock but not divided into shares Not a GOCC since while established for common good, it need not meet test of economic viability nor compete in market place
Metropolitan Waterworks and Sewerage System (GI; "GOCC")	GI under Executive (EO 596-2006) and Legislative (GCG Law) By its nature, it is a GOCC (stock corporation; meets common good and economic viability tests)
Bureau of Local Government Finance (DOF)	Not an AA whose findings on questions of fact are given weight and deference in the courts since only provide consultative services and technical assistance to LGUs

# Recent Jurisprudence

Entity	Characterization
Bases Conversion Development Authority (GI)	Not stock: Capitol stock not divided into shares Not non-stock: not organized under list purposes under Corp. Code As GI, exempt from paying legal or docket fees <i>Exempt from Creditable Withholding Tax on the sale of its properties</i>
Corregidor Foundation (GOCC)	Non-stock corporation organized under Corporation Code Has public interest, to maintain and preserve the war relics Government has substantial participation in the selection of governing board; has control over Foundation GOCC Under COA Audit
University of the Philippines (GI)	GI under its Charter Tax exemption pertains to assets owned by UP (not extend to assets owned by lessee of UP land)
Philippine International Convention Center (GOCC)	Incorporated under PD 520; sole stockholder is Bangko Sentral ng Pilipinas Non-Chartered GOCC, subsidiary of BSP Subject to COA
Philippine National Construction Corporation (GOCC)	GOCC under supervision of President Subject to COA

AA	Create	Function	Structure	Gov't	Class	Effect
PSPCA	Law	Animal Welfare	Private	X Control	Quasi-Public	X COA
MIAA	EO	Airport	X Stocks	Owned	GI	X RPT
MECO	SEC/CC	Trade, Fees	Non-stock	X owned	X GOCC/ X GI	COA
BSP	Law	Youth		Attached	GOCC/ GI	COA
VFP	Law/ SEC	Veterans		Adjunct	(PC/ GOCC)	DND
PFDA	PD	Fisheries	X Stocks		GI	X RPT
WD	PD	Water			GOCC	COA
PEZA	Law	Eco. Zones		Attached	GI	DTI
PRA	PD	Reclamation	X Stocks	Control	Inc. GI	X RPT/ X Y
MWSS	PD	Water	Stocks		(GOCC)/ GI	X RPT/ Y
BCDA	Law	Bases	X Stocks		GI	X Docket
Corr.	SEC/ CC	Relics	Non-stock	Control	GOCC	COA
UP	Law	Education			GI	X RPT
PICC	PD/ CC	Convention	Stocks	Subsidiary	GOCC	COA/ BSP
PNCC	CC	Construction	Stocks	Supervise	GOCC	COA



# Rules

1. All AAs are POs, not all POs are AAs (e.g. Congress, Courts)
2. All AAs are GAs, All GAs are AAs (under GCG Act)
3. All PCs are AAs, not all AAs are PCs (e.g. Departments, Gl's and Commissions)
4. GOCCs are Corporations, Gl's are not; GOCCs cannot be Gl's (except BSP)
5. GOCCs, not Gl's, must meet twin constitutional test of common good *and* economic viability
6. There are chartered (special law) and non-chartered GOCCs (Corporation Code)
7. All Quasi-Corporations are GOCCs, All GOCCs are Quasi-Corporations; Gl's are not QCs since they are not corporations

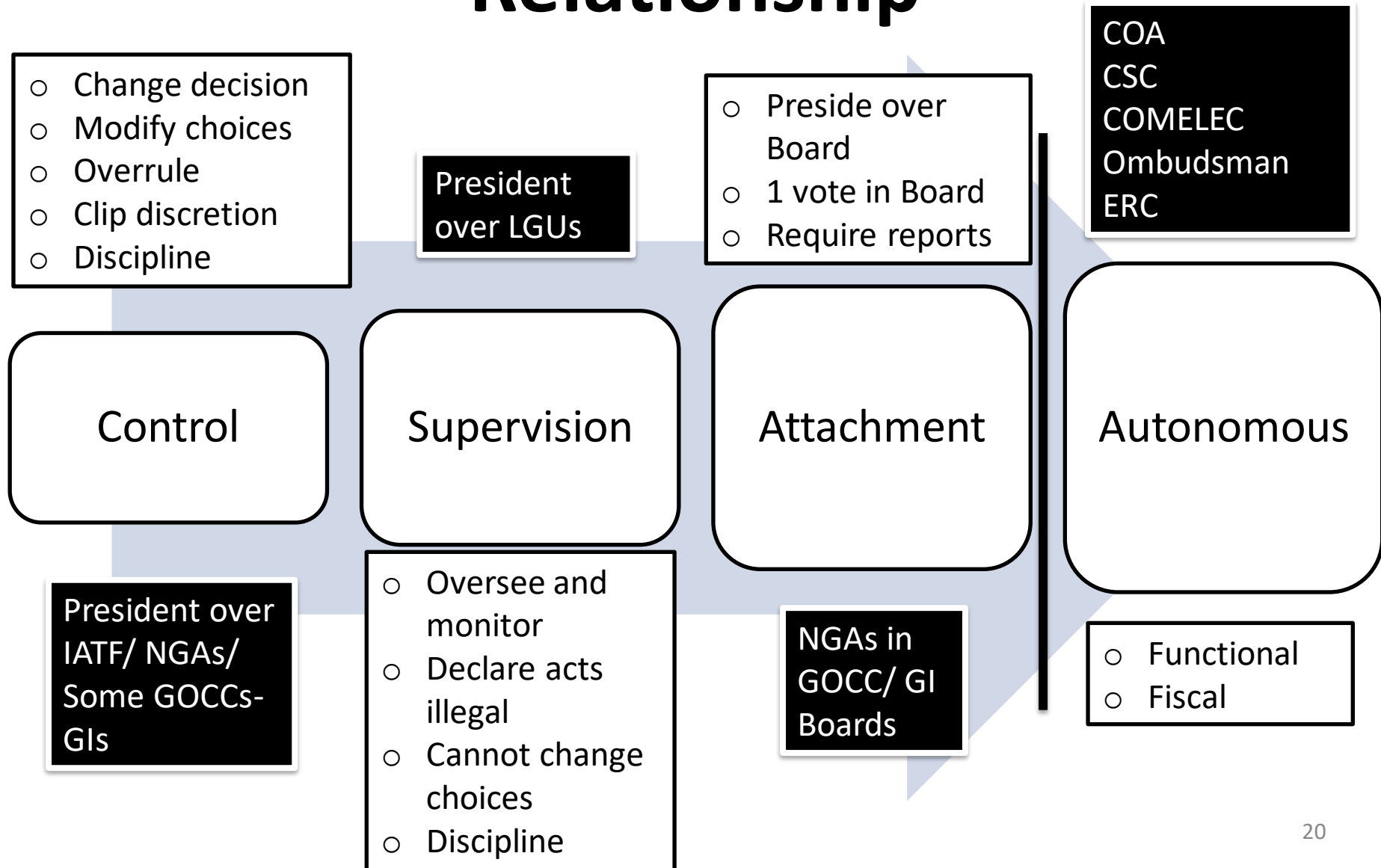
# Which Distinguish?

7. GOCC-GI distinction matters:
  - a. Local taxation (GIs exempt – PFDA, MIAA, PRA, **MWSS, UP**)
  - b. Legal/ docket fees (GIs exempt – **BCDA**) and **Commissioners' Fees** (Land Bank since performing governmental function related to agrarian reform)
  - c. COA jurisdiction (subject to COA – BSP, WD, MECO, **Corregidor, PICC, PNCC**)
  - d. Relationship either attachment, control or supervision (VFP – control and supervision; and BSP, PRA, PEZA – attached; **PNCC – supervision; Corregidor - control**)

# Administrative Relationship

- Areas: policies, rules, actions, operations, budget, decisions, day-to-day, policy and program coordination
- Types:
  1. Independent/ Autonomous (*e.g. Commission on Elections*)
  2. Control and Supervision (*e.g. President and DOTr, PRA; Mayor over Department Heads*)
  3. Administrative Supervision (*e.g. Province over Component City/ Municipality*)
  4. Attachment (*e.g. DENR and LLDA; DOF and SSS; the approval or disapproval of the DBM Secretary, sitting as ex officio officer as required under the law would not have the effect of one member of the board overturning the votes of the majority of the board since it is, by legal fiat, actually the act of the President exercised through his alter ego; Doctrine of qualified political agency does not attach to the acts performed by cabinet secretaries in connection with their position as ex officio members of an AA*)

# Spectrum: Administrative Relationship



Power of “Higher” over “Lower” to	Control	Supervision	Attachment
Alter-ego	✓	X	X
Substitute judgment	✓	X	X
Overrule discretionary acts	✓	X	X
Change wisdom-based decision	✓	X	X
Impose rules on how to act	✓	X	X
Revise policy/ rules	✓	X	X
Discipline	✓	✓	X
Declare acts illegal/ ultra vires	✓	✓	X
Declare acts improper/ arbitrary	✓	X	X
Declare acts prejudicial to public welfare	✓	X	X
Review contracts on legal matters	✓	✓	X
Require periodic reports	✓	✓	✓
Oversee to ensure actions legal	✓	✓	X
Vote and Membership in Board	✓	X	✓
Veto/ disapprove decisions of Boards	✓	X	X
Participate in day-to-day operations	✓	X	X

# Powers

- AAs possess Delegated, *not* Inherent, Powers
- Subordinate, *not* Superior to/ above Enabling Instrument/ Charter, Laws (set boundaries/ limit powers/ define jurisdiction); **when there is a conflict, law prevails over rules**
- In general, liberal, not strict, interpretation of powers
- AAs cannot prohibit what law does not prohibit (unless LGU, provided no law is violated)
- Basic Powers
  1. Investigative
  2. Rule-Making or Quasi-Legislative
  3. Adjudicative or Quasi-Judicial

# Powers

Delegated  
(not inherent)

Subordinate  
Legislation

Mandate-  
Driven

Liberal  
Interpretation

# Exercise of Powers

**Ministerial** *(duty to do a particular thing in a particular way)*



**Discretionary** *(decide or act according to one's judgment)*

**Mandatory** *(requirements must be followed and non-observance is not excusable)*



**Directory** *(non-compliance with requirement is excusable)*



# Delegation of Powers

- *Potestas delegata non potest delegari*
- Exceptions:
  - President – tariff and emergency
  - Local Governments
  - People's Initiative
  - Administrative Agencies
- Tests of Valid Delegation:
  1. Completeness (the 'what', rights; **even if “formulate plan” under Cybercrime Law**); *and*
  2. Sufficient Standards (may be broad, such as public order, safety, social justice, **quality of education, law and order under definition of “Cybersecurity”**; **genuine local development**; but not vague; may be stated in separate law)

# Twin Tests of Valid Delegation

## 1. Completeness *and*

- sets forth therein the policy to be executed, carried out, or implemented by the delegate (*delegate will just enforce*)

## 2. Sufficient Standard

- provides adequate guidelines or limitations in the law to map out the boundaries of the delegate's authority and *prevent the delegation from running riot*
- specifies the limits of the delegate's authority, announces the legislative policy, and identifies the conditions under which it is to be implemented

# Law vs. Rule

## Law (Congress/ LGUs)

- Why of law (purpose/ policy)?
- Who covered (not covered)?
- What are:
  - Scope? Boundaries?  
Limitations? Exclusions?
  - Classes? Categories?
  - Acts? Rights?
  - Duties? Responsibilities?
  - Obligations? Requirements?
  - Standards? Conditions?
  - Offenses? Penalties?
- When take effect?

## Rule (AAs)

- How implemented?
- What are details?
- When statutory provisions become operative (if parameter/ condition in law)?

# Must be Expressed in Enabling Law

## *General:*

1. “What” law is
2. Relationship
3. Prohibitory Powers
4. Jurisdiction

## *Investigation:*

5. Contempt
6. Subpoena
7. Search and Seizure

## *Quasi-Legislation:*

8. Contingent Rule
9. Penal Rule

## *Quasi-Judicial:*

10. Quasi-Judicial
11. Enforcement of Decisions
12. Resolve questions of law

# Menu of AA Powers

Investigate-  
Protect-Compel

Administrative/  
Executive

Quasi-  
Legislative

Quasi-Judicial

Police Power

Others/  
Corporate

# Investigate-Protect-Compel

Express/ Implied in Charter

- Cease and Desist
- Withdrawal of Privilege

Delegated by Law

- Preventive Suspension
- Abatement of Nuisance

Informational

Preventive/  
Protective

Coercive/  
Penal

Express/ Implied in Charter

- Fact-Finding
- Clearance
- Ocular Inspection
- Visitorial
- Investigate anomalies
- File cases

Delegated by Law

- Contempt
- Subpoena
- Search & Seizure

# Cease and Desist Orders

Depending on Charter/ law:

- Mandate/ purpose of AA defines object of CDO
- Power can be express or implied
- Can be an incident of administrative or quasi-judicial proceedings
- Can be done *motu proprio, ex parte* or after notice and hearing (pre- or post-issuance)
- Observe pre-conditions (e.g. show cause order)
- Subject to administrative reversal and/ or judicial review

# Investigative Powers (IP)

- partakes of judicial discretion, not judicial function
- **Express Grant**
  1. Contempt (can be adjunct of IP, if law provides; not exclusive to courts)
  2. Subpoena (enabling law needed; not implied from IP)
  3. Search and Seizure  
*(If not delegated, apply before courts)*  
*(Presence of counsel not required)*
- **Express or Implied**
  1. Clearance
  2. Fact-Finding
  3. Ocular Inspection
  4. Visitorial
  5. Create committee to investigate
  6. Investigate anomalies (CSC)  
Comelec can cite a person for indirect contempt for non-appearance (implied from constitutional power to IP, CHOPFE and enforce laws)



# Rule-Making

- Definition: Power to Issue Rules/ Fill in details/ ‘How’ (not ‘What’) a Law will be implemented; means to provide direct and efficacious solutions to problems
- Nature: Laws are controlling and cannot be amended by a rule; Subordinate Legislation, i.e., Inferior/ must not be inconsistent with the Constitution, Laws and Charter, i.e., cannot change, amend or be in conflict with; test of valid exercise of subordinate legislation
  1. Germane to objects and purposes of law
  2. Regulation not contradict and must conform with law
- Rationale: regulation highly complex, future situations cannot be fully anticipated, practicability, expediency and expertise

# Rules on Rule-Making

1. Executive in nature
2. Rules partake of the nature of a statute
3. Force and effect of law (but are not laws)
4. Germane to the objects of the law
5. By authority of law
6. Issued by proper issuer
7. Interpretations persuasive (deserves cogent consideration); not controlling upon courts (courts must apply the rules if validity of rules not put in issue)
8. Presumed legal, valid and constitutional
9. Notice and hearing not required (*unless law requires and material change*)

# Rules on Rule-Making

10. Mandatory to issue rules if “shall” used in enabling law
11. Pass reasonable test
12. Operative effect
13. Must be followed by other AAs; cannot postpone the application (DOE Rules by ERC)
14. Rules of an AA may be used as basis for rules of another AA
15. Subject to judicial review unless business judgment (RTC can determine if rule contravenes the Constitution or law)
16. Subject to repeal and amendment unless vested or contractual rights involved
17. Prospective application

# Rule-Making

## *Requisites*

1. Authority: by authority of law (DOJ has no authority to issue a circular on HDO which curtails right to travel absent an enabling law; not fall within inherent power of DOJ to issue rules)
2. Nature: Executive (not legislative - Congress cannot limit or take over the President's power to adopt IRR for a law it has enacted; if issued by the President, power is self-executory by virtue of its being inherently executive in nature; falls under Faithful Execution Clause)

# Rule-Making

3. Substance: not contrary to law (subordinate legislation)
4. Scope: germane to the objects and purposes of the law
5. Procedure: properly promulgated; publication and hearing, if required by law (Circular/ not Administrative Regulation [internal rule] so not require hearing, publication and consultation)
6. Issuer: Issued by proper authority for assigned subject matter/ within its jurisdiction (FDA can issue circular based on AO of SoH; IAC-Tobacco can issue rules on the basis of its authority to regulate health aspects of tobacco; CSC cannot issue rules on positions exempt from classification since outside jurisdiction; Career Executive Service Board (CESB) is expressly empowered to promulgate rules, standards and procedures on the selection, classification, compensation and career development of the members of the CES; findings of BLGF, an agency created to provide consultative services, are not given weight by the courts)

# Dos and Don'ts/ Can and Cannot

Dos/ Can	Don'ts/ Cannot
Issue rules to implement laws	Enact/ amend/ repeal laws
Prescribe the “how” and provide details	Define the “who, why, what, when”
Use or apply rules of other AAs	Not follow or postpone the implementation of rules of other AAs
Issue rules as directed by law	<ul style="list-style-type: none"> <li>○ Issue rules outside of its mandate</li> <li>○ Refuse to issue rules if directed by statute</li> </ul>
Issue supplementary, interpretative, internal and procedural rule based on express or implied authority	Issue contingent and penal rules absent express authority
Issue internal and interpretative rules without publication	Issue supplementary, contingent, penal and procedural rule without publication

# Rule-Making

Standard: *Reasonableness*

- Relation to purpose; germane to the objects and purposes of the law
- Supported by good reasons
- Not arbitrary
- Free from legal infirmities

# Rule Defined

“Rule” means any **agency statement of general applicability** that **implements or interprets** a law, fixes and describes the **procedures** in, or practice requirements of, an agency, including its **regulations**. The term includes **memoranda** or statements concerning the **internal administration** or management of an agency **not affecting the rights** of, or procedure available to, the public. *[Section 2 (2), Chapter 1, Book VIII, Revised Administrative Code]*



# 6 Types of Rules

Supplementary/  
Implementing

Procedural

Penal

Contingent

Interpretative/  
Opinions

Internal

# 6 Rules

<b><i>Supplementary</i></b>	Supplies the details, implements and supplements the law, and governs the public.
<b><i>Procedural</i></b>	Outlines the procedures and remedies.
<b><i>Contingent</i></b>	Determines the existence of a fact which is specified and defined in the law, and operationalizes said statutory provision.
<b><i>Penal</i></b>	Provides for the conditions and penalties for the violation of rules as expressly allowed under the law.
<b><i>Interpretative</i></b>	States the official position or opinion of the AA.
<b><i>Internal</i></b>	Governs the administration and operations of a particular AA or other AAs.

# Examples of Rules

<b><i>Supplementary</i></b>	Providing incentives to all government and private Health Institutions with Breastfeeding Practices
<b><i>Interpretative</i></b>	Issuing guidelines on treatment of discounts extended by power suppliers
<b><i>Procedural</i></b>	Outlining the procedure for the disqualification of nuisance candidates
<b><i>Penal</i></b>	Setting the penalties for violation of rules pursuant to the Fair Election Act Penalty of P1,000.00 per day for repeated defiance of its final and executory judgment is reasonable and fair in relation to the purpose of preserving the CSC's Constitutional mandate
<b><i>Contingent</i></b>	Lowering the National Tax Allotment of LGUs on the basis of a declaration of an unmanageable public sector deficit
<b><i>Internal</i></b>	Disallowing release of retirement benefits to those with pending cases

# Why Differentiate?

<i>Type</i>	<i>Grant</i>	<i>Publication</i>
Supplementary/ Implementing Interpretative	Express (E) or Implied (I)  E or I	Required  <b>Not Required</b>
Contingent	E	Required
Penal	E	Required
Procedural	E or I	Required
Internal	E or I	<b>Not Required</b>

# Ordinance-Making Powers

## President

- Executive Order (general or permanent character; *must be published*)
- Administrative Order (aspects of government operations)
- Proclamation (dates or declare status; *must be published*)
- Memorandum Order (administrative detail, concerns particular officer)
- Memorandum Circular (internal administration for all/ some agencies)
- General or Special Order (as commander-in-chief)

## Local Governments

- Territorial Application
- Sanggunian-enacted and Governor/ Mayor-approved
- More or less permanent in character
- Ordinances *and* Resolutions

# Rule-Making: Valid Rules

<i>Law</i>	<i>Rules</i>
AA decision final after 15 days	appeal to OP within 30 days
procedure allowed but silent on period	provide for 60 days
control and supervision	require reports
DAR to CA	DAR to OP to CA
exclusive authority to investigate	withheld right to examine and cross-examine during investigations
prescribe competition	determine eligibility of bidders
provide for termination of OFW employment	determine causes and factors
provides exception to transferability of agricultural land subject to regulations	recognized rule on succession and implemented owner-cultivator policy in agricultural development
CSC constitutional mandate	imposed penalty of P1,000.00 per day for repeated defiance of its final and executory judgment
Not give power to legislate (MMDA)	adopt number coding-scheme is rule-making
Law excludes heinous crimes from benefit	Inclusion of heinous crime in exception

# Rule-Making: Invalid Rules

<i>Law</i>	<i>Rules</i>
provident and/or employee-housing	both provident/ retirement and housing benefits superior to those ...
vacation leave and sick leave shall be cumulative	not cumulative
2 years from payment	10 years from payment
appeal 15 days	10 days
illegitimate children “may” use name of father	“shall” use
provide additional allowances	from only 1 source
enumerate fixed list of benefits	added benefits
lists requirements for creation of provinces	provides exception
qualifications fixed for elective officials	added drug test
classify and mark tobacco	exclusive sources

# Rule-Making: Invalid Rules

<i>Law</i>	<i>Rules</i>
develop road programs	declare roads - limited access
regulates promotion of milk	ban certain aspects
academic freedom	ban review classes
state insofar as it concerns their individual franchise or right to exist as such entity	state/general public or other entity
campaign airtime limit per medium	airtime limit for all stations
“Electronic Data Message”	“but not limited to”
“abortifacient”	“primarily” includes abortion
not prohibit electro-fishing	prohibit electro-fishing
silent on fixing fines	fixed fines



# Rule-Making: Invalid Rules

<i>Law</i>	<i>Rules</i>
prescribe minimum standards for law admission	require passing of test otherwise law schools cannot admit
increase awareness among lawyers	prescribe mandatory training for lawyers
implement Salary Standardization Law	revise salary grades
election at next election after effectivity of law	upcoming election where election period started
power to issue rules	create substantial distinctions between types of contractors
exempted under the Charter to fix compensation	fix compensation contrary to applicable law
“shall allow” end-users to the contestable market	mandatory migration to market (application needed; transfer is not automatic)
“other benefits”	“wage-related benefits”

# Rule-Making: Invalid Exercise

## *Law*

Creates

Strict Requirements

No Requirement

Stated Requirement

Enumeration Exclusive

List with “others”

No Classification

Limited Application

Broad Application

Fixed Period

Continue Practice

Grant Power

## *Rule*

Abolishes

Liberalizes Requirements

Imposes Requirement

Alters/ Deletes Requirement

Adds/ Deletes Requirement

Others not germane to list

**Discriminates/ Classifies**

**Expands Application**

**Abridging Application**

Changes Period

Discontinues Practice

Nullifies Power

# Quasi-Judicial Power

- Definition: Deciding controversies, resolving conflicting claims and positions
- Grant of Power:
  - Express (Issuance of HDOs is judicial which DOJ has no authority to wield)
  - Includes those necessary powers (i.e., authority of DAR to conclude proceedings under a law includes coordinate authority to continue its QJ over controversies arising from said proceedings)
  - Clearly defined jurisdiction/ cannot go beyond (NCIP: disputes involving rights of ICCs/IPs only when they arise between or among parties belonging to the same ICC/IP group/ intra-IP; CIAC: jurisdiction covers transactions within construction industry where parties are in construction industry and does not extend to damages to property of private parties inflicted by a construction company)

# Quasi-Judicial Power

- Jurisdiction: AA must acquire jurisdiction over subject matter to have authority to dispose of case; if no jurisdiction, case should be dismissed
- Extent: Typically, only questions of fact (questions of law or mixed if expressly permitted under the Charter/ law)
- Limitation: Subject to Judicial Review (cannot deprive courts of constitutional mandate)

# Types of Disposition

1. Directing (corrective/ award), e.g., *backwages*
2. Enabling (grant/ permit), e.g., *grant of franchise/ license (purely administrative proceedings; not QJ)*
3. Dispensing (exempt/ relieve), e.g., *amnesty*
4. Summary (compel/ force), e.g., *cease and desist*
5. Equitable

## 2 Proceedings before AAs

Administrative Proceedings	Quasi-Judicial Proceedings
<ol style="list-style-type: none"> <li>1. direct implementation of laws to certain given facts as a consequence of regulation; or</li> <li>2. an undertaking to gather facts needed to pursue a further legal action or remedy in the case of investigation</li> </ol> <p>(Not involve the settling of disputes involving conflicting rights and obligations (not make binding pronouncements as to a party's rights and/or obligations as a result of a conflict or controversy whether legal or factual))</p>	<ol style="list-style-type: none"> <li>1. hearing and determining questions of fact to which the legislative policy is to apply</li> <li>2. deciding in accordance with the standards laid down by the law itself in enforcing and administering the same law.</li> <li>3. taking and evaluating evidence</li> <li>4. determining facts based upon the evidence presented</li> <li>5. rendering an order or decision supported by the facts proved</li> <li>6. determining, what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties.</li> </ol>
<p>Example: grant of authorization or permission to undertake a regulated activity (NTC)</p>	<p>complaint proceedings involving the assessment and settling of the contending parties' respective rights and obligations (NTC)</p>

# Examples

## Administrative

- DOH: List of Notifiable Diseases
- DSWD: Emergency Subsidy Program
- DILG: Investigation of Complaints
- DENR-EMB: Issuance of Special Permit to Transport Hazardous Wastes; **determine appropriate report for a particular project**
- FDA: Authorizations and Licenses to Operate
- SSS: Grant of Small Business Wage Subsidy
- BOC: Seizure of COVID 19-Necessary Goods
- PPA: Issuance of Certificate of Entry/ Withdrawal Permit
- PACC: Investigation of Complaints
- NTC: Grant of license/ franchise
- PCC: Clearance for M&As

## Quasi-Judicial

- DTI: Violation of Consumer Act
- COMELEC: Election Protests
- IC: Statement of Claims
- ERC: Capital Expenditure
- Ombudsman: Disciplinary Actions
- LLDA: Pollution-related
- Higher LGU: complaint against local elective officials

# 12 Rules on Quasi-Judicial

1. Power expressly given
2. Jurisdiction defined by Charter (*not by AA or parties*)
3. Questions of fact and/ or law
4. Non-delegable (*reception of evidence can be sub-delegated*)
5. Follow procedural rules
6. Due process – Notice and Hearing required (*absence curable*)
7. Impartial Tribunal
8. Substantial Evidence (*not bound by technical rules but must have some proof of authenticity*)
9. Decision needed (*need not be full blown like in courts; based on completed investigation; resolve all issues raised*)
10. Counsel dispensable
11. Subject to Judicial Review
12. Courts accord great respect



# Quasi-Legislative or -Judicial

Quasi-Legislative	Quasi-Judicial
Increasing rates for all public utility buses	Application for rate increase by a particular public utility operator
Prescribing the procedure to disqualify nuisance candidates	Disqualifying a nuisance candidate
Adopting the procedures for applying for a franchise	Revoking a specific franchise
Issuance of Resolution on Reinvestment Fund for Sustainable Capital Expenditures	Declaring improper the reinvestment

# Quasi-Legislative vs. Quasi-Judicial

<i>Subject</i>	<i>Quasi-Judicial</i>	<i>Quasi-Legislative</i>
Grant	E	E or I
Parties	Particular	All/ Sectors
Adversarial	Yes	No
Controversy	Exists	None
Notice and Hearing	Required	Not Required (unless law requires; radical change) (Circular - internal)
Primary/ Exhaustion	Applicable	Not Applicable; judicial review at first instance
Time	Past/ Present	Future
Publication	Not Required	Depends on type
Res Judicata	Applicable	Not Applicable

# QJ Proceedings

- Character: Adversarial, quasi-judicial, civil
- Jurisdiction: Defined by Law/ Charter (not by AA or consent of parties, not acquired through or waived by any act or omission of the parties; DOJ has jurisdiction over all disputes solely [i.e., all without exception] between GOCCs involving questions of law)
- Writ of Certiorari: there must be a specific statutory grant to issue (not by self-conferment of authority and not implied from quasi-judicial/ legislative power)
- Nature: *not* delegable (but power to hear/ receive evidence can be sub-delegated)
- Due Process (DINA): Decision, Impartial Tribunal, Notice and Appear/ Defend (reasonable opportunity to be heard; observed when affidavits submitted and evidence considered in earlier ruling; due process requires that a decision must be based on completed, not unfinished investigation)

# QJ Proceedings

- Procedure: reasonable, due process, meet ends, published
- Notice and Hearing
  - Required (actual or constructive)
  - Subject to waiver and estoppel
  - Curable (i.e., subsequently heard, filing of motion of reconsideration, oral arguments)
  - Position papers allowed (unless a party invokes or does not waive hearing)
  - Not required when privilege, abatement, conditional right, legislative or administrative
- Right to counsel not imperative
- Full Hearing: All Claims, Rebuttal, Evidence and Cross-Examination (dispensable)
- AAs not bound by the technical rules of procedure (but must have some proof of authenticity or reliability as condition for the admission of documents)

# Due Process: Notice and Hearing

## Required

- Quasi-Judicial (except motu proprio/ ex parte orders)
- Rule-making if:
  - Law provides
  - Affects a particular party like vested and contractual rights
  - Material change
- Administrative/ Executive Actions if:
  - Notice/ hearing required by law
  - Cannot be issued motu proprio/ ex parte
- MR filed by a particular party

## Not Required

- Rule-making unless:
  - Law requires
  - Material change
- Changes in rules and practices affecting general public, not a particular party with vested and contractual rights
- Motu Proprio/ Ex Parte Administrative and Executive Action

# QJ Proceedings

- Evidence
  - Substantial (unless law provides different quantum; **need not be overwhelming or preponderant**)
  - Ocular allowed (when relevant)
  - Adoption of reports allowed
- Decision: Bases, Form (need not be full-blown like court decisions), Parties, All Issues and Evidence; **based on defenses raised (AA cannot condone if condonation not raised)**
- Deliberative Process (arbitral proceedings): **excepted, provided predecisional and deliberative, from constitutional right to information**
- Enforcement: by AA if authorized by law (if not, courts)

# Judicial Review of Administrative Findings

- In deference to technical expertise (courts cannot determine the type of environmental report which is within the AA knowledge and competence; COA's requirement for prior clearance is an instance of pre-audit which COA can impose)
- AA findings must be accorded great respect if supported by substantial evidence or amount of evidence which a reasonable mind might accept as adequate to justify a conclusion; in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented; unless sharp conflict with law; not conclusive and final before courts and should not be applied in a straightjacket such as when there is grave abuse of discretion; findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence
- Administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law

# Judicial Review of Administrative Findings

- Findings on questions of fact of an AA which only provide consultative services and technical assistance to LGUs are not given weight and deference in the courts
- An order, constituting executive or contemporaneous construction of a statute by an administrative agency charged with the task of interpreting and applying the same, is entitled to full respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the Constitution, the governing statute, or other laws
- AA business judgments/ policy matters/ purely administrative matters (e.g. increase in SSS premiums) cannot be interfered with by Courts



# Changing Factual Findings

Administrative Findings given weight (since AAs in better position to pass judgment thereon), *not* disturbed unless:

1. Not based on substantial evidence
2. Fraud, mistake, collusion
3. Palpable errors
4. Grave abuse of discretion (clear showing; arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined by law; capricious and whimsical exercise of judgment tantamount to lack of jurisdiction; acted without or in excess of jurisdiction - exception to doctrine of immutability)
5. Mis-appreciation or erroneous estimation of evidence
6. Conflict in factual findings (e.g. among Labor Arbiter, NLRC and CA; contrary to findings of arbitrators)
7. Rates fixed are unreasonable

# Dos and Don'ts/ Can and Cannot

Dos/ Can	Don'ts/ Cannot
<ul style="list-style-type: none"> <li>○ Resolve controversy based on mandate</li> <li>○ Rule on question of law if authorized by law</li> </ul>	<ul style="list-style-type: none"> <li>○ Expand jurisdiction of AA by agreement of parties or rule by AA</li> <li>○ Not assume jurisdiction under its mandate</li> </ul>
Delegate reception of evidence to sub-unit	Delegate QJ to its sub-unit
<ul style="list-style-type: none"> <li>○ Decide base on ocular inspection when issue based on perceivable facts</li> <li>○ Decide case based on substantial evidence</li> <li>○ Decide case based on report of sub-unit or affidavits</li> <li>○ Render a decision which is not full blown</li> </ul>	<ul style="list-style-type: none"> <li>○ Rule on case without notice and hearing unless cured or waived</li> <li>○ Decide case based on position papers when parties invoke hearing</li> <li>○ Not resolve all issues raised</li> <li>○ Rule case based on extraneous defenses</li> </ul>
<ul style="list-style-type: none"> <li>○ Not follow technical rules of procedure</li> <li>○ Dispense with cross-examination</li> </ul>	Decide case when there is no/ absent some proof of authenticity or reliability of documents
<ul style="list-style-type: none"> <li>○ Apply for execution of decisions before the courts if no authority to execute under the law</li> <li>○ Issue subpoena or cite persons in contempt is empowered by law</li> </ul>	<ul style="list-style-type: none"> <li>○ Execute its own decisions if no express statutory authority</li> <li>○ Not publish procedural rules</li> <li>○ Apply procedural rules retroactively prejudicing parties</li> </ul>

# Judicial vs. Quasi-Judicial

Aspect	Judicial	Quasi-Judicial
Public Office	Courts	AAs
Quantum of Proof	Criminal: Beyond Reasonable Doubt Civil: Preponderance	Substantial
Contempt/ Subpoena	Authorized	If authorized by law
Technical Rules	Follow	Need not strictly follow
Decision	Full-Blown	Full-Blown not required
Cross-Exam	Indispensable	Dispensable
Enforcement	Authorized	If authorized by law
Counsel	Indispensable	Dispensable

# Judicial Review

- 1. Certiorari
  - 2. Prohibition
  - 3. Injunction
  - 4. Mandamus
  - 5. Declaratory Relief
  - 6. Appeal
- Constitutional
  - Decisions of AA which are declared by law final and unappealable are still subject to judicial review if:
    - fail the test of arbitrariness
    - upon proof of gross abuse of discretion
    - fraud
    - error of law
  - Covers grave abuse of discretion of an AA which does not exercise judicial, quasi-judicial or ministerial functions
  - Mandamus not lie to direct the exercise of judgment or discretion in a particular way on mass testing and efficient testing for COVID
  - RTC has jurisdiction over the validity or constitutionality of a rule

# Scenarios



## ***Defenses***

- ***Ripeness***: No actual injury, filed case in AA or Court
- ***Primary Jurisdiction***: Instead of filing case before AA, filed directly with Court
- ***Finality of Action***: While case pending before AA Level 2, filed case in Court
- ***Non-Exhaustion***: After AA Level 1 decides case, filed case before Court

# Defenses: Judicial Review Premature

1. Doctrine of **Finality of Administrative Action**:  
Decision of AA must be final before Judicial Review;  
Exceptions:
  - interlocutory orders
  - protect rights
  - violate Constitution
  - excessive use of power
2. Doctrine of **Primary Jurisdiction**: AA concurrent with courts; needs administrative discretion and expertise of AA
  - Court may suspend or, if the parties would not be unfairly disadvantaged, dismiss the case without prejudice
  - if 2 AAs have concurrent, where 1<sup>st</sup> filed provided that AA opts to take cognizance, acquires jurisdiction)

# Defenses: Judicial Review Premature

3. Doctrine of **Ripeness for Review**: Controversy must be real, present or imminent (not future/ imaginary/ remote)
4. Doctrine of **Exhaustion of Administrative Remedies**: exhaust all administrative remedies before recourse to courts (reassignment – Governor; failure of bidding – BAC; rate adjustment with ERC; security of tenure of water district employees with LWUA Board then CSC; reconsideration of DND memorandum; mixed questions of law and fact indispensable to resolution of case; validity of tax ordinance with DOJ; personnel action against PAGC employee with CSC; HLURB to OP since there is prompt relief for injurious effects of judgment; DAR Secretary to OP following rules; remedy available in requesting information from government; factual considerations in mass testing and efficient testing), condition precedent, with some 20 exceptions, namely: **JPLCS DRIED DARNI CLRNT**

# Exceptions: Non-Exhaustion

## JPLCS

- Questions essentially **J**udicial
- Administrative Remedy is **P**ermissive
- Pure question of **L**aw (**facts not disputed; local tax**)
- **C**onstitutionality (**impairment; freedom of speech**)
- **S**mall amount that exhaustion will be costly

## DRIED

- **U**tter disregard for **D**ue **P**rocess
- No plain speedy **R**emedy
- Strong public **I**nterest (**increase in FMVs in local taxation**)
- **E**stoppel
- Continued and unreasonable **D**elay/ **U**rgency (**impending maturity if bonds; elections nearing**)



# Exceptions: Non-Exhaustion

## DARNI

- Irreparable **D**amage by party
- **A**lter Ego Bears approval of President
- No administrative **R**eview is provided
- Insistence on exhaustion will lead to **N**ullification of claim
- Resort to admin. remedy is an **I**dle ceremony

## CLRNT

- **C**ivil action for damages
- **L**and not part of public domain
- Special **R**easons demanding immediate judicial relief
- No **D**ecision rendered
- **T**ranscendental issues

# Compare/ Contrast the Defenses

Defenses/ Aspects	Finality of Admin. Action	Primary Jurisdiction	Non-Exhaustion of Admin. Remedies	Ripeness for Review
Concept	AA not yet final (pending)	Concurrent AA and court; AA 1 <sup>st</sup> instance	AA process (all levels) not yet completed	No controversy (future, imaginary, remote)
What has to be done/ Court action	Await decision of AA	Allow AA to assume jurisdiction <b>Court dismisses</b>	Complete whole process (all levels) <b>Court suspends</b>	Await matter to become real/ present or imminent
Pendency before AA	While pending in an AA level, go to court	No AA case yet; filed with court directly	Process complete at 1 level, not elevate to next level, then file with court	Pending or no pending AA case
w/ exceptions	Yes	Yes	Yes	No
Exceptions	Interlocutory Preserve status quo Protect rights Violate Constitution Great damage Excess power	Judicial discretion Question of law AA has no jurisdiction	Pure question of law Transcendental issue Constitutional issue No adequate remedy Alter-ego Public interest	None (Declaratory Relief)
Applicability	QJ	QJ	QJ	QJ and QL



[www.albertocagra.com](http://www.albertocagra.com)



09175353823



alberto agra



[alberto.c.agra@gmail.com](mailto:alberto.c.agra@gmail.com)

Thank you.

