



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

LUIS R. VILLAFUERTE,
CARIDAD R. VALDEHUESA, and
NORMA L. LASALA,

*Petitioners,**

- versus -

SECURITIES AND EXCHANGE
COMMISSION, BANGKO
SENTRAL NG PILIPINAS,
SECRETARY OF FINANCE, THE
NATIONAL TREASURER,
BANKERS ASSOCIATION OF
THE PHILIPPINES, PHILIPPINE
DEALING & EXCHANGE
CORPORATION, PHILIPPINE
DEPOSITORY & TRUST CORP.,
PHILIPPINE SECURITIES
SETTLEMENT CORPORATION,
PHILIPPINE DEALING SYSTEM
HOLDINGS CORPORATION, and
VICENTE B. CASTILLO,

Respondents.

G.R. No. 208379

Present:

GESMUNDO, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M. V.,
GAERLAN,
ROSARIO,
LOPEZ, J. Y.,
DIMAAMPAO,
MARQUEZ, and
KHO, JR., JJ.

Promulgated:

March 29, 2022

[Signature]

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DECISION

HERNANDO, J.:

This Petition for *Certiorari* and Prohibition with Prayer for Temporary Restraining Order (TRO) and Preliminary Injunction (PI)¹ seeks to nullify the

* Aquilino Q. Pimentel, Jr. and Benjamin E. Diokno withdrew as petitioners, *Rollo*, pp. 2159-2167 and 2579-2584.

¹ *Id.* at 3-134.

various rules, orders, issuances, and acts² of Securities and Exchange Commission (SEC), Bangko Sentral ng Pilipinas (BSP), Secretary of Finance, and National Treasurer (collectively, public respondents), as well as to prohibit them from continuing with specific actions,³ in relation to the operations of the PDS Group, composed of private respondents Philippine Dealing & Exchange Corporation (PDEX), Philippine Depository & Trust Corporation (PDMT), Philippine Securities Settlement Corporation (PSSC), and Philippine Dealing System Holdings Corp. (PDSHC) (collectively, private respondents).

Stripped to its core, the petition alleges that public respondents, through their assailed regulations, and with the help of private respondent Bankers Association of the Philippines (BAP),⁴ enabled the PDS Group to establish and maintain a monopoly and impose unlawful restraint of trade and unfair competition in the market for fixed-income securities and the over-the-counter (OTC) market⁵ for government securities.⁶

Antecedents

Petitioners allege that the creation of the monopoly began in the early 2000s when private respondent Vicente E. Castillo (Castillo) and his colleagues in BAP exploited the lack of market for privately-issued securities in the

² These are:

1. The Securities and Exchange Commission (SEC)'s grant of license to Philippine Dealing & Exchange Corp. (PDEX) to operate in the over-the-counter (OTC) market for government securities concurrently in the market for fixed-income securities;
2. The SEC's grant of license to PDEX as a Self-Regulatory Organization (SRO) in the OTC market for government securities;
3. Bangko Sentral ng Pilipinas (BSP)'s Circular Letter dated November 16, 2004;
4. BSP Circular No. 481 dated March 21, 2005;
5. BSP Circular No. 557 dated January 12, 2007;
6. Section 6 of SEC Memorandum Circular No. 14-06;
7. Rule 3.3 (1) in relation to Rule 17 of the PDEX Rules for the Fixed Income Securities Market, as Amended (July 17, 2009);
8. The Secretary of Finance's grant, through the National Treasurer, to PDEX and Philippine Depository & Trust Corp. of connectivity to the Registry of Scripless Securities; and
9. The Secretary of Finance's grant, through the BSP, to PDEX and Philippine Securities Settlement Corp. of connectivity to the Philippine Payment and Settlement System.

³ These are:

1. The SEC's act of regulating government securities;
2. The Bankers Association of the Philippines (BAP)'s act of unduly influencing its member banks to use the PDEX trading system exclusively;
3. The PDS Group's act of exercising revenue imposition functions; and
4. Public respondents' implementation of unlawful rules, orders, circulars, and other issuances.

⁴ According to its website, BAP is the lead organization of universal and commercial banks in the Philippines consisting of 45 member banks, 21 of which are local banks and 24 are foreign bank branches. < <https://bap.org.ph/about/> > (visited May 29, 2021).

⁵ Defined as "the market created by the buying and selling of a security on a bilateral basis between parties that takes place outside of an Exchange or Alternative Trading System (ATS)" in SEC Memorandum Circular No. 14-06, or the Rules Governing the Over the Counter Market.

⁶ *Rollo*, pp. 23, 29.

country.⁷ This led to the establishment of the Fixed-Income Exchange (FIE),⁸ a marketplace or facility for fixed-income securities.⁹ To implement the FIE, the PDS Group was created, with each company tasked to provide a specific service: (1) PDEX, to provide the trading platform for the FIE; (2) PSSC, to operate as the central clearing and settlement institution for trading activities; (3) PDTC, to act as the depository, registry, and custodian of fixed-income securities; and (4) PDSHC, to be the holding company for the three corporations.¹⁰

The FIE, according to petitioners, failed as a financial venture.¹¹ PDEX allegedly incurred heavy business losses, which accumulated to about ₱170 million by the end of 2006.¹² Such losses purportedly persisted despite the illegal capital infusion by banks to PDEX, which banks were unlawfully ordered by BAP to invest therein.¹³ These financial losses led Castillo and BAP to intrude upon the stable OTC market for government securities in 2008, which was then operated by the Money Market Association of the Philippines (MART).¹⁴ In intruding upon the said market, MART was allegedly unlawfully eased out.¹⁵

Petitioners allege that the monopoly of the PDS Group was made possible with the help of public respondents through the following rules, orders, issuances, and acts:

1. **BSP Circular No. 338 (2002)**,¹⁶ which amended the Manual of Regulations for Banks by adding the FIE as one of the non-financial allied undertakings in which equity banks may invest, allegedly ensuring that PDEX could legally source its funding from banks;¹⁷
2. **BSP Circular No. 392 (2003)**,¹⁸ which imposed an additional requirement for a book entry of scripless securities where none was previously required, supposedly creating a business for PDTC;¹⁹

⁷ Id. at 73.

⁸ Id.

⁹ See Section 3.7 of the Securities Regulation Code (SRC), which defines an exchange as “an organized market place or facility that brings together buyers and sellers and executes trade of securities and/or commodities.”

¹⁰ *Rollo*, p. 76.

¹¹ Id. at 73.

¹² Id.

¹³ Id. at 90.

¹⁴ Id. at 74.

¹⁵ Id. at 18-19, 73.

¹⁶ Dated July 18, 2002.

¹⁷ *Rollo*, p. 78.

¹⁸ Dated July 23, 2003.

¹⁹ *Rollo*, p. 79.

3. **BSP Circular No. 428 (2004),²⁰** which enumerated the prequalification requirements for a securities custodian and registry, allegedly giving figment of legitimacy to the operations of PDTC;²¹
4. **BSP Circular Letter dated November 16, 2004,** which authorized PDTC to perform securities custodianship and registry operations, giving license to PDTC to act as such despite being unqualified and despite being the only non-bank entity accredited by the BSP;²²
5. **BSP Circular No. 481 (2005),²³** which deferred the implementation of the ₱650 million minimum capital requirement for non-bank financial institutions (NBFI) to operate as quasi-banks, allegedly favoring PDTC;²⁴
6. **BSP Circular No. 557 (2007),²⁵** which lifted the moratorium in granting licenses to engage in quasi-banking activities, allegedly allowing PDTC to be licensed despite not being qualified;²⁶
7. **BSP's act of disallowing MART from participating in government securities trading,** unlawfully depriving the latter of business;²⁷
8. **BSP and the National Treasurer's act of allowing PDEX and PDTC to electronically connect or interface with the Registry of Scripless Securities (ROSS)—the Bureau of Treasury (BTr)'s registry for government securities—allegedly forcing trading participants to use the PDEX trading system²⁸ and consolidating the PDS Group's monopoly;²⁹**
9. **BSP and the National Treasurer's act of allowing PDTC and PSSC to electronically connect or interface with the Philippine Payment and Settlement System (PhilPaSS)—a payment system owned and operated by the BSP—allegedly consolidating the PDS Group's monopoly;³⁰**

²⁰ Dated April 27, 2004.

²¹ *Rollo*, p. 79.

²² *Id.* at 80-81.

²³ Dated March 21, 2005.

²⁴ *Rollo*, pp. 82, 111.

²⁵ Dated January 12, 2007.

²⁶ *Rollo*, p. 82.

²⁷ *Id.* at 18.

²⁸ *Id.* at 83-85.

²⁹ *Id.* at 7-8.

³⁰ *Id.*

10. **SEC's act of regulating government securities**, allegedly amounting to grave abuse of discretion as the Securities Regulation Code (SRC) covers regulation of private securities only;³¹
11. **SEC's grant of license to PDEX as a Self-Regulatory Organization (SRO)**—an organization or association registered under the SRC that is empowered to make and enforce its own rules among its members³²—allegedly enabling PDEX to enter such market and establish a monopoly therein;³³
12. **SEC Memorandum Circular No. 14, or the Rules Governing the OTC Market (OTC Rules)**,³⁴ which “have been so crafted at the instigation of PDEX as to effectively preclude any other organization x x x from setting up such an SRO;”³⁵ and
13. **The Secretary of Finance's and the National Treasurer's abdication of their duties** when they allowed the SEC to encroach upon their regulatory powers over government securities.³⁶

In their petition, petitioners also lay down the following arguments:

First, that government securities are outside the power of the SEC to regulate, since the securities defined in the SRC refer only to securities issued by private corporations, by private commercial enterprises, and by private profit-making ventures.³⁷

Second, that SEC exceeded its jurisdiction with grave abuse of discretion when it licensed PDEX to be the marketplace or facility for the OTC market in government securities and to be the SRO in the said OTC market concurrently with its exchange operations.³⁸

³¹ Id. at 105-107.

³² An SRO is more accurately defined in the SRC's Implementing Rules of Regulations as “an organized Exchange, registered clearing agency, organization or association registered as an SRO under Section 39 of the Code, and which have been authorized by the Commission to: (1) enforce compliance with relevant provisions of the Code and rules and regulations adopted thereunder; (2) promulgate and enforce its own rules which have been approved by the Commission, by their members and/or participants, and; (3) enforce fair, ethical and efficient practices in the securities and commodity futures industries including securities and commodities exchanges.”

³³ *Rollo*, pp. 5-8.

³⁴ Dated October 27, 2006.

³⁵ *Rollo*, p. 7.

³⁶ Id. at 4.

³⁷ Id. at 105-107.

³⁸ Id. at 108-109.

Third, that SEC committed grave abuse of discretion when after it agreed with petitioners through correspondence³⁹ with petitioner Villafuerte: (1) that PDEX could not compel trading participants to join PDEX as its member, (2) that PDEX could not compel participants to course their trade exclusively in the PDEX trading system; and (3) that trading participants may course their transactions in other trading platforms, SEC still continued to allow PDEX to enforce Section 6 of the OTC Rules requiring that no broker or dealer shall participate in an OTC market unless he or she is a member of a registered SRO.⁴⁰

Fourth, that PDEX could not compulsorily charge *ad valorem* mapping fees.⁴¹

Fifth, that the BSP committed grave abuse of discretion when it temporarily lifted the minimum capital requirement of ₱650 million for NBFIs in order to grant quasi-banking and trust licenses to PDTC, a subsidiary of the monopolistic PDS Group.⁴²

Sixth, that the Secretary of Finance, through the BTr, committed grave abuse of discretion when PDTC was unlawfully allowed to connect and have access to ROSS, the official public record of ownership or interest in government securities at the primary market and of the transfers through the secondary market by and among government securities eligible dealers.⁴³

Last, that BSP, as operator of PhilPaSS, committed grave abuse of discretion when, in concert with the Secretary of Finance, it allowed PSSC (a private entity) to intervene for a fee in the settlement of government securities transactions.⁴⁴

The PDS Group opposed the application for TRO and PI,⁴⁵ which was responded to by petitioners in their Reply⁴⁶ and Supplementary Reply.⁴⁷

Respondents then filed their respective Comments,⁴⁸ pointing out the several procedural defects of the petition⁴⁹ and disputing the factual allegations

³⁹ Id. at 6-7.

⁴⁰ Id. at 108-109.

⁴¹ Id. at 109-110.

⁴² Id. at 111.

⁴³ Id. at 111-113.

⁴⁴ Id. at 113-114.

⁴⁵ Id. at 728-762.

⁴⁶ Id. at 801-834.

⁴⁷ Id. at 851-897.

⁴⁸ Id. at 1000-1023, 1024-1106, 1537-1609, 1619-1749.

⁴⁹ Id. at 1009-1018, 1027-1043, 1550-1552, 1555-1567, 1651-1652, 1656-1666.

of petitioners.⁵⁰ They submit in common that the establishment of the FIE was the result of necessary reforms in the fixed-income market, which arose from an environment characterized by lack of transparency and limited regulation. Rather than being a product of Castillo's exploitation, the FIE was created to provide a comprehensive financial market infrastructure for the electronic trading, clearing and settlement, depository, registry, and custody of fixed-income securities.⁵¹

Respondents further assert that SEC has jurisdiction over the secondary market for government securities as this is within the scope of the SRC.⁵² They argue that there is no monopoly in the OTC market because PDEX does not enjoy any exclusive right to be the SRO in such market⁵³ (while other entities may apply and qualify as SROs, only PDEX satisfied the requirements).⁵⁴ Further, the requirement in the OTC Rules for mandatory membership in an SRO constitutes a reasonable regulation that is consistent with the SEC's mandate to establish a free market that regulates itself.⁵⁵

As to the assailed connectivity to PhilPaSS and ROSS, respondents point out that they are not the only non-government entities connected to the two facilities.⁵⁶ As last reported by BSP, PhilPass has 35 links to universal banks, 3 links to specialized government banks, 43 links to thrift banks, 54 links to rural banks, 14 links to entities with quasi-banking license, and 4 links to third party system providers including the Philippine Clearing House Corporation, BancNet, and Megalink.⁵⁷ Further, ROSS is linked to Moneyline Telerate.⁵⁸

As to the other assailed issuances, including the BSP regulations, respondents assert that these were made pursuant to the executive and rule-making functions of public respondents.⁵⁹

In response to the Comments, petitioners filed their Consolidated Reply.⁶⁰ Thereafter, the parties were required to move in premises, and in compliance, respondents informed the Court that many developments have transpired which rendered the case moot and academic, among them that MART has been licensed as an SRO in an OTC market (Government Securities Repo Market),

⁵⁰ Id. at 1001-1009, 1025-1027; 1625-1650.

⁵¹ Id. at 1003-1004, 1014, 1025-1026; 1628-1634, 1667-1678.

⁵² Id. at 1045-1055; 1573-1574, 1694-1696.

⁵³ Id. at 1098-1099; 1716.

⁵⁴ Id. at 1076; 1716-1717.

⁵⁵ Id. at 1074-1075; 1578-1580, 1700-1703, 1705-1710.

⁵⁶ Id. at 1085, 1090.

⁵⁷ Id. at 1085.

⁵⁸ Id. at 1090.

⁵⁹ Id. at 1036-1037; 1559-1563.

⁶⁰ Id. at 1870-2092.

and that the BTr has upgraded and modernized its system to the National Registry of Scripless Securities (NROSS), removing certain infrastructures, services, and features previously offered by the PDS Group to ROSS.⁶¹

Our Ruling

The petition suffers from procedural infirmities. We dismiss.

Petitioners have no legal standing.

Among the requisites for judicial review is legal standing or *locus standi*, which is the “right of appearance in a court of justice on a given question.”⁶² To possess legal standing, parties must show “a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged.”⁶³

Here, petitioners state that they are former legislators, former national treasurers, and a former budget secretary and economics professor, who all maintain a continuing interest in the subject of the petition in view of their advocacies and prior government positions.⁶⁴ However, this allegation by itself does not satisfy the requirement of standing. What is required is “a material interest, an interest in issue affected by the decree as distinguished from mere interest in the question involved, or a mere incidental interest.”⁶⁵

Petitioners also invoke the exceptions to the rule on standing, suing as taxpayers, concerned citizens, and public interest advocates raising issues of transcendental importance;⁶⁶ and suing on behalf of BAP member-banks who are allegedly afraid to file the case.⁶⁷

Indeed, these exceptions have been recognized by jurisprudence:

Like any rule, the rule on legal standing has exceptions. This Court has taken cognizance of petitions filed by those who have no personal or substantial interest in the challenged governmental act but whose petitions nevertheless raise “constitutional issue[s] of critical significance.” This Court summarized the requirements for granting legal standing to “non-traditional suitors” in *Funa v. Villar*, thus:

⁶¹ *Id.*

⁶² *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, 836 Phil. 205, 249 (2018), citing *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483, 493 (2013).

⁶³ *Pimentel v. Legal Education Board*, G.R. Nos. 230642 & 242954, September 10, 2019, citing *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, *supra*.

⁶⁴ *Rollo*, pp. 55-56, 48-50.

⁶⁵ *Falcis III v. Civil Registrar General*, G.R. No. 217910, September 3, 2019, citing *Integrated Bar of the Philippines v. Zamora*, 392 Phil. 618, 633 (2000).

⁶⁶ *Rollo*, p. 54.

⁶⁷ *Id.* at 1942-1944.

- 1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;
- 2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;
- 3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and
- 4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators. x x x

Another exception is the concept of third-party standing. Under this concept, actions may be brought on behalf of third parties provided the following criteria are met: first, “the [party bringing suit] must have suffered an ‘injury-in-fact,’ thus giving him or her a ‘sufficiently concrete interest’ in the outcome of the issue in dispute”; second, “the party must have a close relation to the third party”; and third, “there must exist some hindrance to the third party’s ability to protect his or her own interests.”⁶⁸ (Citations omitted)

However, none of these exceptions apply here.

First, as **taxpayers**, petitioners submit that this exception is present essentially because the public money used to finance ROSS was deflected to an improper and illegal purpose when PDEX was given an undue advantage to use it.⁶⁹ However, this allegation falls short of the requirements for a taxpayer’s suit: (1) that public funds derived from taxation are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed; and (2) that the petitioner is directly affected by the alleged act.⁷⁰

A closer look at petitioners’ allegations would show that what they claim to be illegal and improper is not *per se* the **disbursement** of public funds to finance ROSS, but the **use** of the latter by PDEX.⁷¹ However, that a government project is later on used for an alleged improper purpose does not necessarily make the prior funding of such project illegal; what makes a disbursement illegal is the violation of a specific law or the commission of an irregularity in the deflection of such public funds. Because there is no showing that the disbursement of funds *per se* is illegal or improper, the requirement that a law was violated or that some irregularity was committed when public money was disbursed is not met. Further, the requirement that petitioners are directly affected by such act is also not satisfied (as will be expounded on later). Thus, this case does not qualify as a taxpayer’s suit.

⁶⁸ *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, supra note 62, at 250-251.

⁶⁹ *Rollo*, p. 56-57.

⁷⁰ *Alliance of Non-Life Insurance Workers of the Philippines v. Mendoza*, G.R. No. 206159, August 26, 2020, citing *Mamba v. Lara*, 623 Phil. 63, 77 (2009).

⁷¹ *Rollo*, p. 56-57.

Petitioners also assert that as **citizens** and **public interest advocates** seeking to enforce a constitutional right, they have standing to file this suit.⁷² They claim that they have a strong interest in the case as it involves constitutional issues.⁷³ Further, the issues they raise are of **transcendental importance**:

This is a case of **TRANSCENDENTAL IMPORTANCE** to the nation because it tests the will of the justice system to enforce (a) the constitutional provision against illegal monopolies and combinations in restraint of trade and unfair competition and (b) the implementation of statutory prohibitions against monopolizing the management and operation of both Exchange and Over-the-Counter (OTC) markets for securities; and to stop the undue interference with the freedom to choose the trading market facility in the fixed income securities; and the unlawful and unjust malpractices which create distortions in the free market, which thereby also impede and obstruct the establishment of a socially conscious free market in fixed income securities, **particularly in government securities**, all of which have negative impact in the protection of investors and the promotion of public interest.⁷⁴

Petitioners add in their Consolidated Reply that the national economy is greatly impacted by the government securities market affected by the acts of respondents.⁷⁵

To determine whether a matter is of transcendental importance, the Court considers “(1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.”⁷⁶

Here, petitioners failed to show a **clear** or **obvious** disregard of the relevant constitutional provision which requires an immediate action from this Court. In the first place, monopoly is not prohibited *per se* but is only regulated or disallowed when public interest so requires.⁷⁷ Further, We have already recognized that securities markets may regulate their own operations by

⁷² Id. at 54.

⁷³ Id. at 56.

⁷⁴ Id. at 4.

⁷⁵ Id. at 1935-1942. Petitioners enumerate the following considerations: (1) the magnitude of annual government securities issuances, annual debt service requirements, and outstanding securities net of redemption and payments that are made every year; (2) the substantial contributions of government securities to socio-economic development; (3) the essential role of government securities in the fiscal management of the government; (4) the significant functions of government securities in the management by the BSP of the monetary sector; and (5) the relevant use of government securities in the management of financial institutions.

⁷⁶ *Advocates for Truth in Lending, Inc. v. Bangko Sentral Monetary Board*, 701 Phil. 483, 495 (2013), citing *Chamber of Real Estate and Builders' Association, Inc. v. Energy Regulatory Commission*, 638 Phil. 542, 556-557 (2010).

⁷⁷ CONSTITUTION, Article XII, Section 19.

requiring membership in an SRO under the principle of self-regulation, consistent with the State policy to “establish a socially conscious, free **market that regulates itself**,” *viz.*:

From their earliest inception in the United States, stock exchanges and securities markets have always exercised some form of control over their own regulatory affairs. It has been generally recognized that due to the large number of market participants and the lack of resources, full government regulation of securities markets is impractical. As such, stock exchanges and securities markets are allowed to regulate their own operations, subject to the control and supervision of the government regulatory authority. This principle is known as *self-regulation*; and is embodied in the SRC’s declaration of policy, which states *inter alia* that “the State shall establish a socially conscious, free **market that regulates itself** x x x.” As explained by a commentator:

In lieu of direct regulation by the SEC of Exchanges and other securities-related organizations, the statutory scheme involves, in the first instance, the adoption by SROs of rules that are subject to SEC review and approval, and the enforcement of such rules by the SROs against their members. Under this SEC-supervised self-regulation, the SEC will step in only if the SROs are unable to perform properly their functions. In the process, the SEC is able to conserve its own resources, since the SROs effectively serve as its instrumentalities in the surveillance of the markets.

The principle of self-regulation is enshrined and fleshed out in Sections 39 and 40 of the SRC. Rule 3 (R) of the 2015 SRC IRR defines a “*Self-Regulatory Organization or SRO*” as:

an organized Exchange, registered clearing agency, organization or association registered as an SRO under Section 39 of the Code, and which has been authorized by the Commission to: (1) **enforce compliance with relevant provisions of the Code and rules and regulations adopted thereunder**; (2) **promulgate and enforce its own rules** which have been approved by the Commission, by their members and/or participants; and, (3) **enforce fair, ethical and efficient practices** in the securities and commodity futures industries including securities and commodities exchanges.

Under Section 39.1 of the SRC, the SEC is given the “power to register as a self-regulatory organization, or otherwise grant licenses, and to regulate, supervise, examine, suspend or otherwise discontinue, as a condition for the operation of organizations whose operations are related to or connected with the securities market.” In turn, associations of securities market participants are allowed to apply for registration as SROs. Under the SRC, SROs are empowered: 1) to promulgate, amend, and enforce rules and regulations to

govern the trading activities of its members; 2) to control the admission of brokers, dealers, salespersons, and associated persons into a securities association; and 3) to impose disciplinary sanctions upon its members.

The regulatory structure under the SRC is therefore a two-tiered scheme, with the SROs as the first-level regulatory entities, subject to the review, regulation, and supervision of the SEC as the second-level regulatory entity. The regulatory jurisdiction of SROs is defined in Section 40.2 of the SRC, which mandates SROs to “comply with the provisions of this Code, the rules and regulations thereunder, and its own rules, and enforce compliance therewith x x x.” x x x.

x x x x

It is readily apparent from the foregoing that, in enacting the principle of self-regulation into statute, Congress delegated a modicum of regulatory power to the SROs. These regulatory powers are exercised “[i]n lieu of direct regulation by the SEC of Exchanges and other securities-related organizations,” and are therefore of the same legal nature as that of the SEC’s powers.⁷⁸ (Citations omitted)

Thus, the membership requirement in an SRO does not necessarily violate the constitutional provision on monopoly.

Moreover, there are other parties with a more direct and specific interest in the issues raised in the petition: with respect to the supposed monopoly in the market for fixed-income securities and OTC market for government securities—**the participants in the said markets**; and with respect to the alleged unlawful deprivation of MART’s business—**MART**.

Petitioners’ claim that they are suing **on behalf of BAP member-banks** who are afraid of retaliation from respondents deserves scant consideration.⁷⁹ Aside from being unsubstantiated, their allegations do not satisfy the jurisprudential requirements for third-party standing: (1) that the party must have suffered an injury-in-fact, thus giving him or her a sufficiently concrete interest in the outcome of the issue in dispute; (2) that the party must have a close relation to the third party; and (3) that there must exist some hindrance to the third party’s ability to protect his or her own interests.⁸⁰ Here, petitioners have not shown any injury-in-fact that gives them a sufficiently concrete interest in the outcome of the case. They also have not shown any close relation to the banks, nor have they sufficiently demonstrated how these banks are hindered from filing the case.

⁷⁸ *Palanca IV v. RCBC Securities, Inc.*, G.R. No. 241905, March 11, 2020.

⁷⁹ *Rollo*, pp. 1942-1944.

⁸⁰ *Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*, supra note 64 at 251, citing *White Light Corp. v. City of Manila*, 596 Phil. 444, 456 (2009).

Further, We have held that generalized interests, albeit accompanied by the assertion of a public right, do not establish standing.⁸¹ What is required in suits by concerned citizens is “an allegation that the continuing enforcement of a law or any government act has denied the party some right or privilege to which they are entitled, or that the party will be subjected to some burden or penalty because of the law or act being complained of.”⁸² Again, petitioners have not alleged any sufficient and specific denial of their rights or any burden caused to them by the assailed acts and issuances.

Petitioners add, seemingly as an afterthought, that they are **investors** in government securities.⁸³ But aside from once more being unsubstantiated, even if this is true, petitioners still failed to establish how they as investors have suffered or will suffer direct or personal injury. Without such showing, the claim of being an investor in itself cannot accord them standing.

In sum, petitioners were unable to establish the necessary legal standing to file the instant Petition. Without this, judicial review could not proceed. **Unfortunately for petitioners, even if We relax the rule, the petition would still fail.**

Petitioners violated the constitutional filtering mechanism of hierarchy of courts.

Hierarchy of courts is the mechanism that ordains a sequence of recourse to courts vested with concurrent jurisdiction.⁸⁴ The hierarchy begins from the trial courts, then the Court of Appeals and the other intermediate courts, then finally the Supreme Court. This sequence recognizes; (1) the various levels of courts in the country as they are established under the Constitution and by law; (2) their ranking and effect of their rulings in relation with one another; and (3) how they interact with one another.⁸⁵ Given the differences in these aspects, the questions these courts resolve also differ: trial courts decide questions of fact and law at first instance; the Court of Appeals and the other intermediate courts, both questions of fact and law; and this Court, only questions of law in general.⁸⁶

⁸¹ *Padilla v. Congress of the Philippines*, 814 Phil. 344, 366 (2017).

⁸² *Falcis III v. Civil Registrar General*, supra note 65, citing *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 896 (2003).

⁸³ *Rollo*, p. 1916.

⁸⁴ *Montes v. Court of Appeals*, 523 Phil. 98, 109 (2006), citing *Yared v. Ilarde*, 391 Phil. 722, 733 (2000).

⁸⁵ *Gios-Samar, Inc. v. Department of Transportation and Communications*, G.R. No. 217158, March 12, 2019, citing *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 156 (2016).

⁸⁶ *Id.*, citing *Association of Medical Clinics for Overseas Workers, Inc. v. GCC Approved Medical Centers Association, Inc.*, 802 Phil. 116, 157 (2016) and *Aspacio v. Inciong*, 244 Phil. 180, 184 (1998).

Here, petitioners filed the case directly before this Court despite the concurrent jurisdiction of the Court of Appeals and the Regional Trial Courts to issue the writs of *certiorari* and prohibition they pray for.⁸⁷ Petitioners invoke “special and important reasons”⁸⁸ and “transcendental importance”⁸⁹ to justify their action.

While We have previously held that the invocation of the Court’s original jurisdiction to issue extraordinary writs may be allowed on the ground of special and important reasons or transcendental importance, in the landmark case of *Gios-Samar, Inc. v. Department of Transportation and Communications*,⁹⁰ the Court clarified that direct recourse is allowed **only when the issues presented are purely legal**:

In fine, while this Court has original and concurrent jurisdiction with the RTC and the CA in the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus* (extraordinary writs), **direct recourse to this Court is proper only to seek resolution of questions of law**. Save for the single specific instance provided by the Constitution under Section 18, Article VII, cases the resolution of which depends on the determination of questions of fact cannot be brought directly before the Court because we are not a trier of facts.⁹¹ (Emphasis supplied; citations omitted)

Some of the issues here are not purely legal.

First, what petitioners ask is for this Court to nullify the various rules, orders, issuances, and acts of public respondents for essentially perpetuating the alleged **monopoly** of the PDS Group in the market for fixed-income securities and the OTC market for government securities.⁹²

A monopoly is “a privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right or power to carry on a particular business or trade, manufacture a particular article, or control the sale or the whole supply of a particular commodity.”⁹³ Its existence is a question of fact.⁹⁴

Because petitioners are assailing the supposedly subsisting monopoly of the PDS Group,⁹⁵ it is necessary to determine first whether there actually is a

⁸⁷ *Id.*

⁸⁸ *Rollo*, pp. 1916-1918.

⁸⁹ *Id.* at pp. 55, 57; pp. 1917-1918.

⁹⁰ *Supra* note 85.

⁹¹ *Id.*

⁹² *Rollo*, pp. 23, 29.

⁹³ *Tatad v. Secretary of the Department of Energy*, 346 Phil. 321, 365 (1997), citing Black’s Law Dictionary, 6th ed., p. 1007.

⁹⁴ *Garcia v. Executive Secretary*, 602 Phil. 64, 75 (2009).

⁹⁵ *Rollo*, Vol. I, pp. 23, 29.

monopoly. This question is clearly factual in nature; thus, it is imperative that it be threshed out before a tribunal that is competent to receive evidence and to resolve such question: a court that is a trier of facts.

Even if this Court disregards the factual assertions of the parties on the existence of monopoly, and simply rule on the legal issues raised by petitioners, there is still a need to receive evidence to fully resolve the case since some of these issues are inextricably intertwined with underlying questions of fact.

For instance, petitioners argue that the SEC committed grave abuse of discretion when it issued Section 6 of the OTC Rules, which requires a broker or dealer to be a member of a registered SRO to be able to participate in an OTC market.⁹⁶ According to petitioners, since PDEX is the only SRO in the OTC market, and because the OTC Rules were “designed to be complied with by no one except PDEX,”⁹⁷ any aggrieved broker or dealer who does not want to be a member of PDEX is unlawfully prevented from setting up a new SRO.⁹⁸ Petitioners emphasize that the specifications for facilities to be operated by the SRO as described in the SEC-issued OTC Rules are virtual descriptions of the PDEX trading system.⁹⁹

To resolve this issue, the Court must closely examine and compare the specifications of the PDEX trading system with the specifications described in the OTC Rules. To determine this factual matter would require a great deal of time and attention from this Court—resources that are better devoted to matters within its exclusive jurisdiction.

Even in their prayer, petitioners ask for reliefs which can only be granted after a thorough evaluation of facts. Most notable is their prayer to prohibit BAP from “further compelling, persuading or exerting any undue influence upon its member banks tending to coerce, convince or induce them to use exclusively the PDEX trading system in government securities.”¹⁰⁰ Needless to say, the question of whether BAP is exerting or has been exerting undue influence on its members is undeniably a question of fact.

Further, the need to bring this particular case before a trial court is amplified by the fact that the securities market is **dynamic** in nature, as shown by the many developments that arose after the filing of this Petition in 2013.¹⁰¹

⁹⁶ Id. at 109-110.

⁹⁷ Id. at 8.

⁹⁸ Id. at 6-8.

⁹⁹ Id. at 8.

¹⁰⁰ Id. at 118.

¹⁰¹ See compliances filed by private respondent PDS Group and public respondents (Id., unpaginated).

Incidentally, these developments, if true, may render moot and academic the resolution of some issues in this case.

For instance, in the issue of whether the specifications in the OTC Rules were designed to be complied with by no one except PDEX, respondents informed the Court that in 2017, MART has been granted a license to operate as an SRO in an OTC market (Government Securities Repo Market).¹⁰² If this is indeed true, then the annulment of Section 6 of the OTC Rules by reason that it prevents the formation and registration of other SROs may possibly be affected by this development.

In the same vein, petitioners' prayer to nullify PDTC's connectivity to ROSS may also have been mooted by the latter's upgrade to NROSS (a new system which does not carry the assailed services previously rendered by the PDS Group to ROSS),¹⁰³ if proven to be true.

These reasons, along with petitioners' lack of legal standing, constrain us to dismiss the Petition. As We have stressed in *Gios-Samar v. Department of Transportation and Communications*:

Accordingly, for the guidance of the bench and the bar, we reiterate that when a question before the Court involves determination of a factual issue indispensable to the resolution of the legal issue, the Court will refuse to resolve the question regardless of the allegation or invocation of compelling reasons, such as the transcendental or paramount importance of the case. Such question must first be brought before the proper trial courts or the CA, both of which are specially equipped to try and resolve factual questions.¹⁰⁴ (Emphasis in the original; underscoring supplied)

Finally, it would do well to remind petitioners that pleadings before all courts must be presented in an organized and systematic manner. Not only does this aid the court's analysis, but it also reflects the litigants' grasp and comprehension of the matters they discuss.

WHEREFORE, this Court resolves to **DISMISS** the petition.¹⁰⁵

The Motion to Withdraw as Petitioner of Benjamin E. Diokno is **GRANTED**. Respondent Bankers' Association of the Philippines' compliance with the Move in the Premises Resolution dated March 3, 2020 is **DISPENSED WITH**.

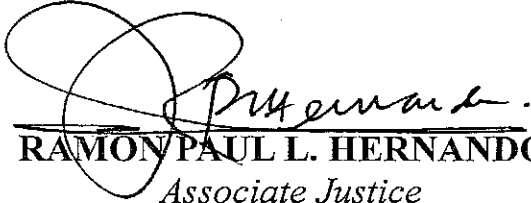
¹⁰² Id., unpaginated.

¹⁰³ Id., unpaginated.

¹⁰⁴ *Gios-Samar, Inc. v. Department of Transportation and Communications*, supra note 87.

¹⁰⁵ Nothing in this Resolution shall be taken as a prejudgment on the matters discussed, including but not limited to the statement on the lack of clear case of disregard of the relevant constitutional provision, and the disquisition on mootness.

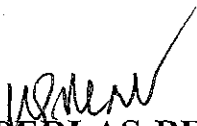
SO ORDERED.



RAMON PAUL L. HERNANDO
Associate Justice

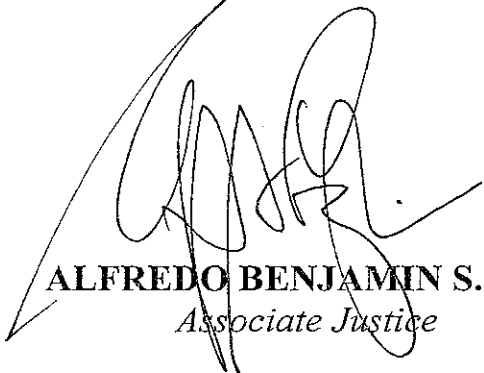
WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice


*See separate concurring
opinion*


ESTELA M. PERLAS-BERNABE
Associate Justice

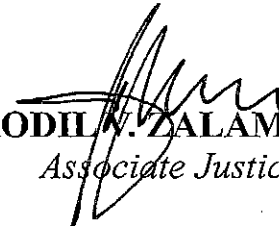

MARVIC M. V. F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice



HENRIJEAN PAUL B. INTING
Associate Justice



RODIL N. ZALAMEDA
Associate Justice



MARIO V. LOPEZ
Associate Justice



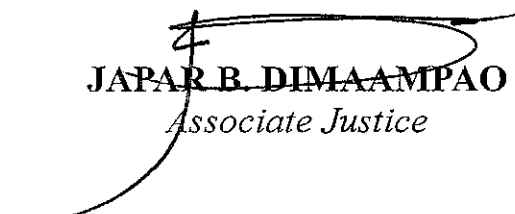
SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice