

*2014 to 2016, 2017, 2018, 2019, 2020 up to June 2021 cases*

# **Administrative Law and Administrative Agencies**

**Alberto C. Agra**

August 23, 2021

# 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. GI

|                            | 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<br>GI; not a GOCC since neither stock nor non-stock   |
| Manila Economic and Cultural Office (Not GOCC; Not GI) | Created under Corporation Code as non-stock corporation<br>Not a GOCC (not owned by Government); Not a GI (since incorporated under Corporation Code)<br><i>Sui Generis</i><br>Funds subject to COA  |
| Boy Scouts of the Philippines (GI and GOCC)            | Created as corporation under Special Law (Commonwealth Act)<br>Juridical person under Civil Code (other corporations with public purpose)<br>Public function - vital role of the youth<br>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<br>“Public corporation” per Charter; Adjunct of government; Classified as GOCC to be privatized<br>Sovereign function; Control and supervision of DND; DBM can in the future allocate funds  |

# Recent Jurisprudence

| Entity   | Characterization  |
|--|---|
| Philippine Fisheries Dev't Authority (GI)                | Created under PD 977 as amended by EO 772<br>GI; not a GOCC (has capital stock, but not divided into shares)  |
| Leyte Metropolitan Water District (GOCC)                 | Created pursuant to PD 198<br>GOCC with an original charter (since not under Corporation Code, not a private corporation)<br>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<br>Not a GOCC since not a stock nor a non-stock corporation; has capital stock but not divided into shares<br>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)<br>By its nature, it is a GOCC (stock corporation; meets common good and economic viability tests)   |

# Recent Jurisprudence

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

# Summary

| AA    | Create   | Function     | Structure | Gov't      | Class        | Effect     |
|-------|----------|--------------|-----------|------------|--------------|------------|
| 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, GIs and Commissions)
4. GOCCs are Corporations, GIs are not; GOCCs cannot be GIs (except BSP)
5. GOCCs, not GIs, must meet twin constitutional test of common good *and* economic viability
6. There are chartered (special law) and non-chartered GOCCs (Corporation Code)

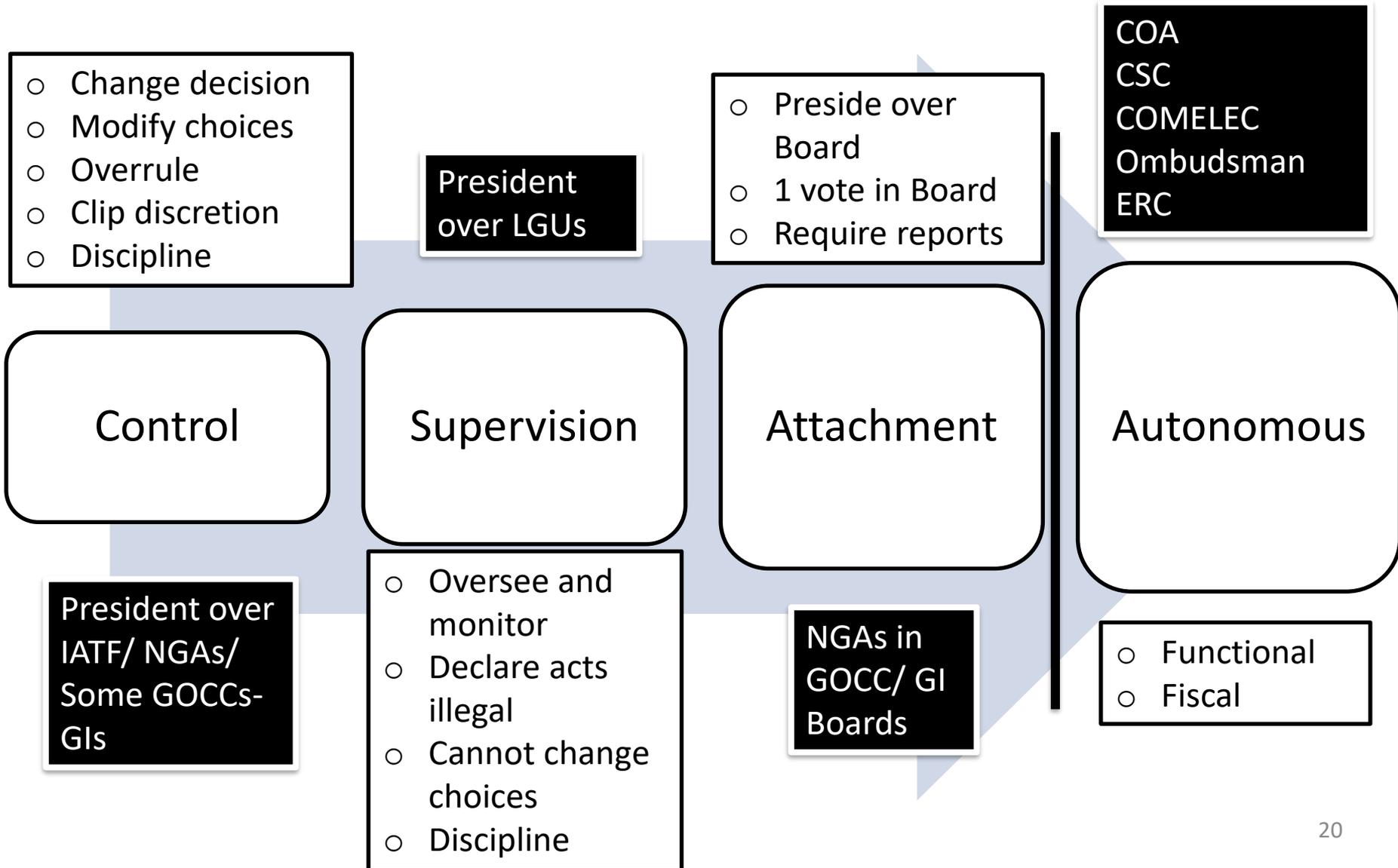
# Rules

7. All Quasi-Corporations are GOCCs, All GOCCs are Quasi-Corporations; GIs are not QCs since they are not corporations
8. 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*)

# Spectrum of “Interference”



| 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)
- 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)*



# 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

# 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.

## 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

# Menu of AA Powers

Investigate-  
Protect-Compel

Administrative/  
Executive

Quasi-  
Legislative

Quasi-Judicial

Police Power

Others/  
Corporate

# Investigate-Protect-Compel

- Cease and Desist
- Preventive Suspension
- Abatement of Nuisance
- Withdrawal of Privilege

Informational

Preventive/  
Protective

Coercive/  
Penal

Express/ Implied in Charter

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

Express in Charter

- 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)

# 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)?

# 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: 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
- Rationale:
  1. regulation highly complex
  2. future situations cannot be fully anticipated
  3. practicability
  4. expediency
  5. expertise

# Rule-Making

## *Effects*

1. Force and effect of law (but are not laws)
2. Interpretations persuasive (deserves cogent consideration); not controlling upon courts
3. Presumed legal and constitutional
4. Mandatory to issue rules if “shall” used in enabling law
5. Operative effect
6. Must be followed by other AAs; cannot postpone the application (DOE Rules by ERC)
7. Rules of an AA may be used as basis for rules of another AA
8. Subject to judicial review
9. Subject to repeal and amendment
10. 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; 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**)

# 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

# Rules Defined

|                              |   |
|------------------------------|---|
| <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.  |

# Types of Rules (PIPICS)

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

# 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<br>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  |

# 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   |

# 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  |
| <b>campaign airtime limit per medium</b>   | <b>airtime limit for all stations</b> |
| “Electronic Data Message”  | “but not limited to”                  |
| <b>“abortifacient”</b>   | <b>“primarily” includes abortion</b>  |
| 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                  |

# Rule-Making: Invalid Exercise

## *Law*

Creates

Strict Requirements

No Requirement

Stated Requirement

Enumeration Exclusive

No Classification

Limited Application

Fixed Period

Continue Practice

Grant Power

## *Rule*

Abolishes

Liberalizes Requirements

Imposes Requirement

Alters/ Deletes Requirement

Adds/ Deletes Requirement

**Discriminates/ Classifies**

Expands Application

Changes Period

Discontinues Practice

Nullifies Power

# 12 Rules on Rule-Making

1. Executive in nature
2. Force and effect of law and must be followed
3. Subordinate legislation
4. Presumed valid
5. Issued by authority of law
6. Subject within jurisdiction/ authority
7. Notice and hearing not required (*unless law requires and material change*)
8. Pass reasonableness test
9. Operative upon publication
10. Prospective in application
11. Subject to repeal and amendment (*unless vested or contractual rights involved*)
12. Subject to judicial review (*unless business judgment*)

# 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

- 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
- 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*)
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)
- 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)
- Procedure: reasonable, due process, meet ends, published

# QJ Proceedings

- 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
- AA findings **must be accorded great respect if supported by substantial evidence**; not conclusive and final before courts; **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
- 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**

# Perspective: Judicial Review

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 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>  |
| <p>Delegate reception of evidence to sub-unit</p>   | <p>Delegate QJ to its sub-unit</p>  |
| <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>  | <p>Decide case when there is no/ absent some proof of authenticity or reliability of documents</p>  |
| <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<br>Civil: Preponderance | Substantial              |
| Contempt/<br>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
  - 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
2. Prohibition
3. Injunction
4. Mandamus
  - Mandamus not lie to direct the exercise of judgment or discretion in a particular way on mass testing and efficient testing for COVID
5. Declaratory Relief
6. Appeal

# Scenarios

AA

Higher/  
Level 2

Lower/  
Level 1

Courts

## ***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 **Judicial**
- Administrative Remedy is **Permissive**
- Pure question of **Law** (**facts not disputed; local tax**)
- **Constitutionality** (**impairment; freedom of speech**)
- **Small amount** that exhaustion will be costly

## DRIED

- **Utter disregard for Due Process**
- No plain speedy **Remedy**
- Strong public **Interest** (**increase in FMVs in local taxation**)
- **Estoppel**
- Continued and unreasonable **Delay/ Urgency** (**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
- **R**esort to admin. remedy is an **I**dle ceremony

## CLRNT

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

# Compare/ Contrast the Defenses

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

Download this PowerPoint  
Presentation from  
[www.albertocagra.com](http://www.albertocagra.com)

09175353823

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

**THANK YOU. GOOD LUCK.**