

Prosecution of corporate officers for non-compliance with SSS Law to continue despite rehabilitation proceedings

The Supreme Court allowed the prosecution of criminal cases against the corporate officers of Silahis International Hotel, Inc. for violation of the Social Security System Act of 1997 notwithstanding the pendency of Suspension of Payments and Rehabilitation proceedings to revive the corporation.

Corporate rehabilitation involves the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is economically feasible and its creditors can recover more, by way of the present value of payments projected in the rehabilitation plan, if the corporation continues as a going concern than if it is immediately liquidated. It contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings. A principal feature of corporate rehabilitation is the suspension of claims against the distressed corporation.

At the time of the filing of the petition for rehabilitation by Silahis Hotel, there were a number of criminal charges pending against the corporate officers. Subsequently, the officers filed with the criminal court a motion to suspend proceedings arguing that the stay order issued by rehabilitation court should also apply to the criminal cases then pending.

The High Court found that the rehabilitation of Silahis Hotel and the settlement of claims against the corporation is not a legal ground for the extinction of its officers' criminal liabilities. The Tribunal held that there is no reason why criminal proceedings should be suspended during corporate rehabilitation, more so, since the primary purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or



The Grand Boulevard Hotel (Silahis) on the scenic Roxas Boulevard lies in limbo as it awaits the outcome of litigation.

similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order. The Supreme Court said that it would be absurd for one who had engaged in criminal conduct could escape punishment by the mere filing of a petition for rehabilitation by the corporation of which he is an officer.

Relatedly, the Court pointed out that Congress has recently enacted Republic Act No. 10142, or the Financial Rehabilitation and Insolvency Act of 2010 which explicitly provides that criminal actions against the individual officer of a corporation are not subject to the Stay or Suspension Order in rehabilitation proceedings.

The case is *Jose Marcel Panlilio, et al. vs. Regional Trial Court, People of the Philippines and Social Security System*, G.R. No. 173846, February 2, 2011.

The Bureau of Internal Revenue revised the list of *de minimis* benefits with the issuance of Revenue Regulation No. 5-2011 last March 16, 2011.

Generally, the government imposes a 32% final tax on fringe benefits for employees (except rank and file) such as housing, expense account, vehicles, household personnel, interest on loan at less than market rates, membership fees in social and athletic clubs, foreign travel expenses, holiday and vacation expenses, educational assistance, and insurance.

De minimis benefits, although forms of fringe benefits, are not taxable as these are limited to facilities or privileges furnished or offered by an employer to the employees that are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, goodwill, contentment, or efficiency of the employees.

The following shall be considered as “de minimis” benefits not subject to income tax as well as withholding tax on compensation income of both managerial and rank and file employees:

- a. Monetized unused vacation leave credits of private employees not exceeding ten (10) days during the year;
- b. Monetized value of vacation and sick leave credits paid to government officials and employees;
- c. Medical cash allowance to dependents of employees, not exceeding Php 750 per employer per semester or Php 125 per month;
- d. Rice subsidy of Php 1,500 or one (1) sack of 50kg. rice per month amounting to not more than Php 1,500;
- e. Uniform and clothing allowance not exceeding Php 4,000 per annum;
- f. Actual medical assistance, e.g., medical allowance to cover medical and healthcare needs,

BIR amends non-taxable de minimis benefits



annual medical/executive check-up, maternity assistance, and routine consultations, not exceeding Php 10,000 per annum;

- g. Laundry allowance not exceeding Php 300 per month;
- h. Employees achievement awards, e.g., for length of service or safety achievement, which must be in the form of a tangible personal property, other than cash or gift certificates, with an annual monetary value not exceeding Php 10,000 received by the employee under an established written plan which does not discriminate in favor of highly paid employees;
- i. Gifts given during Christmas and major anniversary celebrations not exceeding Php 5,000 per employee per annum;
- j. Daily meal allowance for overtime work and night/graveyard shift not exceeding twenty-five percent (25%) of the basic minimum wage on a per region basis;

All other benefits given by employers which are not included in the above enumeration shall not be considered as “de minimis” benefits, and hence, shall be subject to income tax as well as withholding tax on compensation income. The benefits mentioned shall apply to income earned starting the year 2011.

New guidelines for quota immigrant visas

The Bureau of Immigration resumed the issuance of quota immigrant visas to qualified foreigners following the release of new guidelines designed to prevent abuse of said visa privilege. The resumption of the issuance of quota immigrant visas comes five months after the BI suspended the issuance of quota immigrant visas amid reports of anomalies that allegedly attended their processing and approval during the previous years.

The Philippine Immigration Act allows the admission of 50 quota immigrants of any nationality in a given year. Stateless individuals are also entitled to the annual quota. Quota immigrant visas will only be issued to foreign nationals of countries with which the Philippines has diplomatic relations or which grant the same immigrant privileges to Filipino citizens. Unused quota visas will also not be carried over to the following year.

In allotting quota numbers, the Commissioner of Immigration shall accord preference status to applicants in the following order of priority:

- a. Those possessed of qualifications, skill, or scientific, educational or technical knowledge which will advance and be beneficial to the national interest of the Philippines; and
- b. Those possessed of sufficient capital for a viable and sustainable investment in the Philippines.

The allocation of a quota number to a non-preferred immigrant applicant shall be on first come-first served basis and only after allocation of numbers to preferred quota applicants.

The new guidelines are embodied in Memorandum Circular No. RPL-11-003 (March 5, 2011).

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Deposit insurer releases rules excluded accounts

The Philippine Deposit Insurance Corporation listed the following accounts and transactions as excluded from the coverage of the Php 500,000 deposit insurance mandated by law:

- a. Investment products such as bonds and securities, trust accounts, and other similar instruments which do not fall under the definition of a deposit. Among the features which may be considered as grounds for determining that a product is an investment:
 1. There is no debtor-creditor relationship exists between the bank and the client;
 2. The relationship between the bank and the client is either that of a trustee-trustor or an agent-principal;
 3. The principal amount is not protected;
 4. The amount deposited is not withdrawable on demand; and/or
 5. Other analogous features.

- b. Deposit accounts or transactions which are unfunded, or are fictitious or fraudulent. A deposit account or transaction shall be deemed unfunded when no money or equivalent of money is received by a bank for such account or transaction. A deposit account or transaction shall be deemed fictitious when it is simulated, feigned or is not a genuine deposit account or transaction, for instance, when money or equivalent of money was made to appear to have been received by a bank, or the deposit account or the name of the depositor does not appear in the records of the bank. A deposit account or transaction shall be deemed fraudulent whenever the bank and/or depositor knowingly employ means calculated to deceive, including acts, omissions and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another, e.g. the named depositor denies ownership of the deposit.

RUN FOR JAPAN Team FNSLAW, the running club of FNS, participated in the Run for Japan last April 17, 2011 to raise funds for the relief and rehabilitation of victims of the earthquake and tsunami that hit northern Japan last March. Right after the benefit run, the Team celebrated the birthday of senior associate Rebecca R. De Guzman over breakfast.



Team FNSLAW prior to the gun start of Run for Japan on Bonifacio High Street.



The Team carbo-loads at Kabisera restaurant right after the

Deposit insurer

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- c. Deposit accounts or transactions constituting, and/or emanating from, unsafe and/or unsound banking practices, as determined by the PDIC, in consultation with the Bangko Sentral ng Pilipinas, after due notice and hearing, and publication of the directive to cease and desist issued by the PDIC against such deposit accounts or transactions.
- d. Deposits that have been determined to be the proceeds of an unlawful activity as defined under Anti-Money Laundering Act. As regards these proceeds, payment of deposit insurance shall be deferred on any deposit which is the subject matter of any freeze order, civil forfeiture proceedings, money laundering case, or any other case involving an unlawful activity, pending before the Department of Justice, Office of the Ombudsman, or the regular court. Further deposit insurance payments shall only be made upon a final judgment effectively holding that the deposits do not constitute proceeds of an unlawful activity. However, deposits determined with finality

by the courts to be proceeds of an unlawful activity shall not be paid deposit insurance.

If a deposit insurance claim is denied, the concerned depositor may file within sixty days from receipt of the when the claim was filed, together with affidavit/s and other document/s that would support the payment of the claim. The resolution of the PDIC on the reconsideration is final and executor and may not be restrained or set aside by the court, except on appropriate petition for certiorari under Rule 65 of the Rules of Court on the ground that the action was taken in excess of jurisdiction or with such grave abuse of discretion as to amount to a lack or excess of jurisdiction. The petition for certiorari may only be filed within thirty (30) days from notice of denial of a request for reconsideration.

The foregoing regulations are part of Regulatory Issuance No. 2011-02, January 27, 2011.

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