Legal FiNeSse

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FNS CELEBRATES ITS 10TH YEAR

The year 2003 is a momentous year for Fortun Narvasa & Salazar as it celebrates its 10th year as a member of the legal community. It has also transferred to its new home at the 23rd Floor of the Multinational Bancorporation Centre Building, at 6805 Ayala Avenue, Makati City. On June 19, 2003, the Firm will celebrate 10 years of dedicated legal service with a mass and cocktail party. A brief program follows to highlight the Firm's history, and to showcase their employees' talents.

The blessing of the new office will commence the anniversary celebration. Fr. Roderick Salazar, Jr., the brother of the Firm's Managing Partner, Atty. Roderick R.C. Salazar III, will officiate the mass and the blessing, which starts at 5 p.m. The cocktail party follows thereafter at 6 p.m.

Anti-Trafficking in Persons Act Passed

Republic Act No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003, has recently been enacted by Congress.

The law defines "Trafficking in Persons" as the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Under said law, the recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the aforementioned definition.

Trafficked persons, considered under the law as victims of trafficking and categorized as "Overseas Filipinos in Distress", shall not be penalized for crimes directly related to the acts of trafficking even if they acted in obedience to the order made by the trafficker. Instead, the trafficked persons shall be afforded numerous protective and rehabilitative measures by certain government agencies in the country and overseas as provided under the law. On the other hand, persons found guilty of committing any of the acts of trafficking shall suffer certain penalties and sanctions the maximum of which is life imprisonment and a fine of not less than Two Million Pesos (P2,000,000.00) but not more than Five Million Pesos (P5,000,000.00).

Congress, through the enactment of the Anti-Trafficking Law, aims to promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, especially women and children.

ASSORTED INTERESTS

In the recent case of Bangko Sentral ng Pilipinas v. Santamaria, G.R. No. 139885, Jan. 13, 2003, penned by Justice Quisumbing, the Supreme Court cited the case of Eastern Shipping Lines, Inc. v. CA, 234 SCRA 78 (1994), in laying down the following guidelines in the imposition of interest.

When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum.

No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code).

Nevertheless, when such certainty can not be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained).

The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest shall be 12 % per annum from such finality until its satisfaction. The reason behind the 12 % rate is because the judgment debt, during the interim period, is deemed to have become an equivalent to a forbearance of credit.

In Bangko Sentral ng Pilipinas v. Santamaria, the subject amount did not involve any obligation arising from loan or forbearance of money, thus the interest was properly computed as follows: Interest on the first billing of P450,604.96 should be computed at 6% per annum computed from the date of demand on Feb. 23, 1996. Nevertheless, an interest rate of 12% per annum was properly imposed on the total amount from the finality of the decision until the payment thereof.

Interest on the second billing of P62,451.05 should be computed at 6% per annum computed from the date of demand on Sep. 10, 1996. An interest rate of 12% per annum was imposed on such amount from the finality of the decision until the payment thereof.

On the amount of P108,610.52 for services rendered from April 10, 1996 to July 31, 1996, an interest rate of 6% per annum was imposed, computed from the date of decision of CIAC on Feb. 20, 1998. An interest rate of 12% per annum was imposed on such amount from the finality of the decision until the payment thereof.

SEC Watch

RULES AND REGULATIONS COVERING FORM AND CONTENT OF FINANCIAL STATEMENTS

SRC Rule 68, as Amended (February 20, 2003)

The Securities and Exchange Commission (the Commission) amended Rule 68 of Republic Act No. 8799, otherwise known as the Securities Regulation Code (SRC). Rule 68 of the SRC, as amended, provides the requirements applicable to the form and content of *audited financial statements* required to be filed with the Commission by all corporations, except those whose paid-up capital is less than P50,000.00. Financial statements of branch offices of foreign corporations licensed to operate in the Philippines by the Commission shall likewise comply with the requirements of this Rule.

Under the new Rule, the management as well as the Board of Directors are responsible for the fairness of the representations made in a corporation's financial statement.

Under the amended Rule, financial statements

CONTINUED ON PAGE 3

Tax Breaks

Consolidated Revenue Regulation on Estate and Donor's Tax

The Bureau of Internal Revenue came up with Revenue Regulation No. 2-2003 which consolidates all regulations relating to the payment of estate tax and donor's tax. Salient provisions of the regulation include factors in the valuation of the gross estate, a listing of the allowable deductions from the gross estate and the determination thereof, the imposition of a 30% tax on net gifts made to a stranger, and the computation of the donor's tax on an accumulative basis.

Of particular interest to persons and entities engaged in business are the requirements in claiming exemption from donor's tax and full deduction from gross income of all donations worth at least Fifty Thousand Pesos (P50,000.00) to qualified-donee institutions duly accredited by the Philippine Council for NGO Certification, Inc.

The regulation was signed by Finance Secretary Jose Isidro Camacho on December 16, 2002 and is now in effect.

VAT Revenue Regulations Nos. 1-2003/2-2003

Beginning January 1, 2003, a value-added tax (VAT) on sale of services by artists, athletes, and persons or entities engaged in the practice of a profession or calling shall was imposed by the BIR. Thus, the Firm's services are now subject to VAT.

Affected taxpayers were required to register as VAT taxpayers not later than January 31, 2003. Further, taxpayers who change status from NON-VAT to VAT were tasked to submit an inventory of unused receipts as of December 31, 2002, otherwise, their gross receipts shall be subjected to VAT.

In the case of billed but uncollected sale of services, amounts due on or before December 31, 2002 from the sale of services by professionals, etc. are to be paid on or after January 1, 2003, but they may be exempted from VAT subject to certain conditions.

RR No. 1-2003 also contains a provision on transitional input tax credits for goods, materials or supplies not for sale but purchased for use in business in their present condition which are on hand on December 31, 2002.

RR No. 2-2003 amended RR No. 1-2003 by extending the registration of affected taxpayers from January 31, 2003 to February 28, 2003. However, VAT transactions beginning January 1, 2003 are now included in the VAT Declaration to be filed with the BIR except taxpayers whose gross receipts do not exceed P550,000.00.

This new rule allows the issuance to newly-covered taxpayers of Provisional or Temporary Receipts, but these must be immediately replaced by VAT Official Receipts.

CONTINUED FROM PAGE 2

SRC Rule 68, as Amended (February 20, 2003)

shall now include *a statement of changes of equity* in addition to the balance sheet, statement of income and retained earnings, and statement of cash flows. Also, new formats for Statements of Financial Accounting Standards (SFAS) have been approved by the Accounting Standards Council (ASC), and are effective beginning January 21, 2003.

The new Rule now requires external auditors of public companies (or those companies enumerated under Section 17.2 of the SRC) to be accredited by the Commission in accordance with SEC Circular No. 5 (Series of 2002).

Violations of any provision of Rule 68, as amended, are penalized with administrative sanctions (monetary and/or non-monetary) provided under the SRC and its Implementing Rules and Regulations, for public companies, or the Corporation Code and its Implementing Rules and Regulations, for all other corporations covered by this Rule.

UPDATES

OVERSEAS ABSENTEE VOTING ACT OF 2003 PASSED

RA 9189, otherwise known as The Overseas Absentee Voting Act of 2003, was signed into law in February of this year. The new law, passed by the Twelfth Congress in its Second Regular Session, is a consolidation of Senate Bill No. 2104 and House Bill No. 3570 which were passed by the Senate and the House on February 4, 2003 and February 11, 2003, respectively.

The law was enacted pursuant to the prime duty of the State to provide a system of honest and orderly overseas absentee voting that upholds the secrecy and sanctity of the ballot. It also ensures equal opportunity to all qualified citizens of the Philippines abroad to the exercise of their fundamental right to vote.

Qualified overseas absentee voters, who are at least 18 years of age on the day of elections and not otherwise disqualified by law to vote, may vote for president, vice-president, senators and party-list representatives.

Disqualifications include those who have lost their Filipino citizenship or who have renounced the same and who have pledged allegiance to a foreign country. Immigrants or permanent residents, recognized as such by a foreign country, are also disqualified from becoming overseas absentee voters, unless they execute an affidavit declaring that they shall resume actual physical permanent residence in the Philippines not later than three years from approval of their registration under RA 9189. Failure to return shall be cause for the removal of the name of the immigrant or permanent resident from the National Registry of Absentee Voters and their permanent disqualification to vote *in absentia.*

Registration as an overseas absentee voter shall be done in person with the Election Registration Board of the city or municipality where they were domiciled immediately prior to their departure from the Philippines. Registration may also be done in person at the Philippine embassies, consulates and other foreign service establishments that have jurisdiction over the locality where they temporarily reside. All applications for the May 2004 elections shall be filed with the Commission on Elections (COMELEC) not later than 280 calendar days before the day of elections.

The COMELEC, through embassies, consulates and other foreign service establishments, shall cause the publication in a newspaper of general circulation of the place, date and time of the holding of a regular or special national election and the requirements for the participation of qualified citizens of the Philippines abroad, at least six months before the date set for the filing of applications for registration. It shall also determine the countries where publication shall be made, and the frequency thereof, taking into consideration the number of overseas Filipinos present in such countries.

Every qualified citizen of the Philippines abroad whose application for registration has been approved shall, in every national election, file with the officer of the embassy, consulate and other foreign service establishment authorized by the COMELEC, a sworn written application to vote in a form prescribed by the Commission.

Qualified overseas absentee voters may cast their votes during the 30 days before the day of elections in the Philippines. Qualified overseas absentee voters must immediately fill out their respective ballots personally, in secret, without leaving the premises of the embassies, consulates and other foreign service establishments that has jurisdiction over the country where they temporarily reside or at any polling place designated and accredited by the COMELEC.

The overseas absentee voter shall cast his ballot upon presentation of the absentee voter identification card to be issued by the Commission within 30 days before the day of elections. In the case of seafarers, they shall cast their ballots anytime within 60 days before the day of elections as prescribed by the Implementing Rules and Guidelines. The overseas absentee voter shall be instructed that his/her ballot shall not be counted if it is not inside the special envelope furnished him/her when it is cast.

For the May 2004 elections, the COMELEC shall authorize voting by mail in not more than three countries, subject to the approval of the Congressional Oversight Committee. Thereafter, voting by mail in any country shall be allowed only upon review and approval of the Joint Congressional Oversight Committee.

The COMELEC shall issue the necessary rules and regulations to effectively implement the provisions of RA 9189 within 60 days from its effectivity. The Implementing Rules and Regulations shall be submitted for prior approval to the Joint Congressional Oversight Committee.