

A QUARTERLY NEWSLETTER OF FORTUN NARVASA & SALAZAR

## DUAL CITIZENSHIP ACT PASSED: BI IMPLEMENTING RULES ISSUED IN 2004

In 2003, Republic Act No. 9225, otherwise known as the "Citizenship Retention and Re-acquisition Act of 2003", was enacted into law. The new law entitles natural-born Filipino citizens, who have lost their citizenship by reason of their naturalization as citizens of a foreign country, to reacquire Philippine citizenship upon the taking of an oath. Natural-born citizens of the Philippines who, after the effectivity of the law, become citizens of a foreign country may likewise retain their Philippine citizenship upon taking said oath.

Those who retain or re-acquire Philippine citizenship under the law shall enjoy full civil and political rights and shall be subject to all attendant liabilities and responsibilities under existing laws of the Philippines. The conditions imposed by this law relevant to the foregoing retention or re-acquisition of Philippine citizenship are as follows: 1) those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution, Republic Act No. 9189, otherwise known as "The Absentee Voting Act of 2003", and other existing laws; 2) those seeking elective office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, shall make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to make an oath; 3) those appointed to any public office shall subscribe and swear to an oath of allegiance to the Republic of the Philippines and its duly constituted authorities prior to their assumption of office; 4) those intending to practice their profession in the Philippines shall apply with the proper authorities for a license or permit to engage in such practice; and 5) the right to vote or be elected or appointed to any public office in the Philippines cannot be exercised by, or extended to, those who are candidates for or are occupying any public office in the country of which they are naturalized citizens or those who are in active service as commissioned officers in the armed forces of the country of which they are naturalized citizens.

The Bureau of Immigration issued in April 2004 the Implementing Rules and Regulations of Citizenship Retention and Re-acquisition Act of 2003.

### Tobacco Regulation Act Passed

Republic Act 9211, otherwise known as the "Tobacco Regulation Act" was enacted into law on June 23, 2003. The new law seeks to comply with the State's duty to protect the populace from hazardous products and promote the right to health and instill health consciousness.

One of the purposes of the law is to regulate and eventually ban all tobacco advertisements and sponsorships. The law bans smoking in public places, requires tobacco vending machines to have a mechanism for age verification, declares as unlawful the sale of tobacco to minors, the smoking of tobacco by minors and the sale of tobacco by minors. It is not a defense in

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this law that the seller did not know that the buyer was a minor. It is also unlawful to sell any tobacco product within 100 meters from a school, public playground or other facility frequented particularly by minors. Establishments are also required to post a signage with a statement that the sale of tobacco to minors is unlawful.

In respect of the packaging of tobacco products, the law requires certain markings thereon such as "GOVERNMENT WARNING: Smoking Kills." The law provides a list of health warnings, which must be printed on a rotating basis or separately and simultaneously, starting January 1, 2004. All tobacco advertisements in mass media must also contain a similar health warning.

The law also placed certain restrictions on advertising in general. Among others, the advertisement shall not feature a celebrity endorsing the product and it shall not show scenes where the actual use of the product is presented to the public. Specific restrictions for print media advertising, outdoor advertising, advertising in cinemas, advertising in audio, video and computer discs, and advertising on the Internet are also imposed. There are also restrictions on tobacco promotions, sponsorships, and even naming rights. Hence, a basketball team may not be named after a tobacco product.

Beginning January 1, 2007, all tobacco advertising on television, cable television and radio shall be prohibited. Beginning July 1, 2007, all cinema and outdoor advertising shall be prohibited. Starting July 1, 2008, all forms of tobacco advertising in mass media shall be prohibited except those placed inside the premises of point-of-sale retail establishments.

The penalties for violators range from the payment of fines to imprisonment.

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## **Anti-Money Laundering Rules Passed**

The Anti-Money Laundering Act (AMLA) was enacted in 2001 pursuant to the declared policy of the State to protect the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as money laundering site for the proceeds of any unlawful activity. Money laundering is a crime whereby the proceeds of an unlawful activity as defined under the AMLA are subject to transactions making them appear to have originated from legitimate sources (Rule 4.1).

The AMLA mandates covered institutions to report to the Anti-Money Laundering Council (AMLC) all covered transactions and suspicious transactions within five (5) working days from occurrence thereof unless the supervising authority concerned prescribes a longer period not exceeding ten (10) working days (Rule 9.3). The AMLC is composed of the Governor of the Bangko Sentral ng Pilipinas, Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission (Rule 7.1.a). Covered institutions refer to banks, insurance companies and securities dealers, among others (Rule 3.a). A covered transaction is a transaction in cash or other equivalent monetary instrument involving a total amount in excess of Php 500,000.00 within one banking day (Rule 3.b). On the other hand, "suspicious transactions" are transactions where any of the enumerated circumstance in the AMLA exists, regardless of amount (Rule 3.b.1). The Regional Trial Courts shall have the jurisdiction to try all cases on money laundering except that public officers and private persons in conspiracy with public officers shall be tried by the Sandiganbayan .

The AMLA gives the AMLC the authority to file an ex-parte application before the Court of Appeals for the issuance of a freeze order on any monetary instrument or property after an investigation and upon determination that probable cause exists that a monetary instrument or property is any way related to any unlawful activity defined under the AMLA (Rule 10). The AMLA likewise gives the AMLC the authority to inquire into bank deposits even without a court order where the unlawful activities involved are kidnapping for ransom, enumerated provisions on the Comprehensive Dangerous Drugs Act of 2002, hijacking, destructive arson and murder, among others (Rule 11.2).

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## **Supreme Court Resolution protecting judges from malicious prosecution issued**

On 14 October 2003, the Supreme Court issued A. M. No. 03-10-01-SC which supplements or modifies Rule 140 of the Rules of Court. This Resolution, which became effective on 4 November 2003, seeks to protect members of the Judiciary from malicious administrative or criminal cases which are filed only for the purpose of harassing judges or putting them to shame, public ridicule or contempt.

In view of the amendments introduced by this Resolution, the Supreme Court may, upon finding that the com-

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## Supreme Court Resolution...

plaint is clearly unfounded and baseless, based on the recommendation made by the Office of the Court Administrator, require the complainant to show cause why he should not be held in contempt of court. If the complainant is a lawyer, he may further be required to show cause why he or she could not be administratively sanctioned as a member of the Bar and as an officer of the court. The Resolution further provides that the complaint must be recommended for dismissal if: (a) there is a *prima facie* showing that it is intended to harass the respondent; (b) the complaint was filed within six (6) months before the compulsory retirement of a Justice or Judge; and (c) the complaint relates to a cause of action that occurred at least a year before it was filed.

## Automobile Excise Tax Rationalization Act Passed

On 29 August 2003, President Gloria Macapagal-Arroyo signed into law R. A. 9224, which amended Section 149 of the National Internal Revenue Code of 1997. The amendment levied an *ad valorem* tax on automobiles based on the manufacturer's or importer's selling price, net of excise and value-added taxes, in accordance with the following schedule:

### Net Manufacturer's price/ Importer's Selling Price Rate

Up to P600,000.00 -2%

Over P600,000.00 to P1.1 Million  
-P12,000.00 + 20% of value in excess of P600,000.00

Over P1.1 Million up to P2.1 Million  
- P112,000.00 + 40% of value in excess of P1.1 Million

Over P2.1 Million P512,000.00 + 60% of value in excess of P2.1 Million

In the case of imported vehicles not for sale, the *ad valorem* tax shall be based on the total land value, including transaction value, customs duty, and all other charges.

The Secretary of Finance is authorized, once every two (2) years, to index the brackets reflecting the manufacturer's price or importer's selling price once every two (2) years if the change in the exchange rate of the Philippine peso against the United States (U.S.) dollar is more than ten percent (10%)

from the date of effectivity of the act, in the case of initial adjustment and from the last revision date in the case of subsequent adjustments. The said brackets may be indexed anytime, within the two-year period referred to above, by the Secretary of Finance, in case the change in the exchange rate is at least twenty percent (20%). The manufacturer's price or importer's selling price, net of excise and value added tax, shall be indexed by the full rate of the peso depreciation or appreciation, as the case may be.

The tax imposed by this law does not apply to buses, trucks, cargo vans, jeeps/jeepneys/jeepney substitutes, single cab chassis, and special purpose vehicles (i.e., motor vehicles designed for specific applications such as cement mixers, fire trucks, boom trucks, ambulances and/or medical units, off-road vehicles for heavy industries, and the like). Automobiles used exclusively within the freeport zone are likewise exempt from excise tax.

## Labor Disputes: Abandonment

SAMUEL SAMARCA VS. ARC-MEN INDUSTRIES, INC. G.R. No. 146118, October 8, 2003.

Samarca, a machine operator of Arc-Men Industries (Arc-Men), was suspended for 30 days after returning from an emergency leave of absence. He applied for said leave on account of the hospitalization of his son for acute gastroenteritis. The suspension was based on alleged company violations consisting of making false and malicious utterances or statements prejudicial to the company and refusal to cooperate with fellow employees.

Feeling aggrieved, Samarca filed a complaint for illegal suspension. During the pendency of his complaint, the suspension ended. Arca-Men sent him a notice to return to work. Samarca refused to comply therewith. Hence, Arca-Men sent him a Notice to Terminate requiring him to explain within 5 days why he should not be dismissed. Samarca explained that he could not return to work because of the pendency of his complaint. Not satisfied with his explanation, Arca-Men sent him a Notice of Termination.

Consequently, Samarca filed an Amended Complaint for Illegal Dismissal. The Labor Arbiter dismissed his complaint for lack of merit. On appeal, the National Labor Relations Commission (NLRC) reversed the ruling of the Labor Arbiter. Arca-Men raised the matter to the Supreme Court via petition for certiorari, which referred the petition