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# \* Legal FiNeSse \*

A Quarterly Newsletter of Fortun Narvasa & Salazar

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**WE WISH YOU, OUR CLIENTS AND FRIENDS, A HAPPY CHRISTMAS AND A PROSPEROUS NEW YEAR!!!**

## **Money Laundering Now A Criminal Offense**

Money laundering, in its simplest terms, is the act of transacting the proceeds of an unlawful activity to make them appear as if they originated from legitimate sources. The Anti-Money Laundering Law of 2001 or Republic Act 9160 (RA 9160), enacted on September 29, 2001, now holds a person engaging in money laundering or any act which facilitates the same criminally liable.

Under said law, banks, non-banks, quasi-banks, trust entities, insurance companies, securities dealers, brokers, salesman, investment houses and such other similar entities have the duty to establish and record the true identity of their clients based on official documents. They are likewise required to report to the Anti-Money Laundering Council (AMLC) any single, series or combination of transactions involving a total amount in excess of P4,000,000.00 or an equivalent amount in foreign currency, within five (5) working days from a transaction by a client who is not properly identified and whose business or financial capacity does not support the amount involved, or which has no underlying legal or trade obligation, credible purpose, origin or economic justification. Failure of such entities to comply with their duties under RA 9160 makes the concerned officer, employees, representative, agent or associate thereof criminally liable.

The AMLC, composed of the Bangko Sentral ng Pilipinas Governor, Securities and Exchange Commission Chairman and Insurance Commissioner, is vested with the power to initiate investigations of any activity in violation of RA 9160 and to cause the filing of the appropriate complaint with the Department of Justice. It also has the power to institute civil forfeiture proceedings against or freeze any monetary instrument or property that is alleged to be the proceeds of an unlawful activity. The AMLC is expected to formulate the implementing rules and regulations of RA 9160 soon.

## **Administrative Correction Of Civil Register Entries Now Possible**

Under RA 9048, clerical or typographical errors or changes of the first name or nickname may now be administratively effected by the local (municipal or city) civil registrar upon the filing of a verified petition by any person having direct and personal interest in the correction sought. In case of Filipino citizens residing in foreign countries, the petition may be filed with the nearest Philippine Consulate. Thus, changes of name and corrections of entries in the civil register no longer require the filing of a petition in court. The Civil Registrar General has the final word on actions of the local civil registrar.

This new law also shortened the publication requirement to at least once a week for two (2) consecutive weeks from the three (3) successive weeks previously required under the Rules of Court. Furthermore, the petitioner is required to submit a certification from the appropriate law enforcement agencies (National Bureau of Investigation, Philippine National Police) that he has no pending case or criminal record.

## **Rules on Electronic Evidence Set**

In order to keep pace with rapid advances in Information Technology in recent years where electronic documents are increasingly utilized in day to day communications and transactions, our Supreme Court promulgated the Rules on Electronic Evidence ("REE"). These apply specifically to electronic documents when introduced in evidence in civil actions and proceedings, as well as quasi-judicial and administrative cases. An electronic document is one that is generated, processed, retrieved, and recorded by "electronic means". The REE, however, does not explain the meaning of "electronic means." Hopefully, the Supreme Court will clarify the meaning of said phrase in the future.

The REE provides that any output or print-out of an electronic document which is readable by sight and shown to reflect the data accurately complies with the best evidence rule. Under the best evidence rule, when the contents of a document are in issue, the original thereof must be presented in evidence. Moreover, pursuant to the REE, duplicates and photocopies are considered originals. The REE also now allows the taking of the testimony of a witness electronically from a remote location after compliance with certain requisite conditions.

The REE likewise expressly recognizes the admissibility of telephone conversations and so-called ephemeral electronic communication like text messages, chatroom sessions, and streaming audio and video.

#### **Drug Tests Required for Applications for New and Renewal of Driver's License**

The DOTC now requires drug testing of applicants for new and renewal driver's licenses. Drug testing costs ₱300.00 to be conducted by LTO accredited drug testing laboratories. The test will try to detect the presence or absence of drugs, principally, methamphetamine (shabu) and cannabinoids (marijuana) or its metabolite.

#### **SC Sets New Guidelines on Ombudsman's Investigative Power Over Bank Accounts**

The Supreme Court recently decided in the case of *Lourdes T. Marquez, et al. vs. Hon. Aniano Desierto, et al.* (G.R. No. 135882) that before an *in camera* inspection of bank accounts by the Ombudsman may be allowed, the following requisites must be present: 1) a pending case before a court of competent jurisdiction; 2) the account must be clearly identified; 3) the inspection must be limited to the subject matter of the pending case before the court of competent jurisdiction; 4) the bank personnel and the account holder must be notified in order to be present during the inspection; and 5) such inspection may cover only the account identified in the pending case.

These cases handled by FNS stemmed from an investigation conducted by the Ombudsman on bank deposits of certain public officials. The bank, relying upon the Law on the Secrecy of Bank Deposits, refused to comply with the order of the Ombudsman to produce bank documents. The SC ruled in favor of the bank by setting the above-mentioned new guidelines and/or limitations on the investigative power of the Ombudsman.

#### **Rule on Joint and Several Guarantee Reiterated**

In another case handled by FNS entitled "*Goldenrod, Inc. and Sonia G. Mathay vs. Court of Appeals and Pathfinder Holdings (Philippines), Inc.*", G.R. No. 127232", the SC reiterated the rule that a signatory to a Joint and Several Guarantee acts as a surety of the principal debtor and as such is solidarily or jointly and severally liable for the payment of the balance of the debt to the creditor.

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#### **Team FNS Finds True Form**

FNS is now one (1) of three (3) teams out of some 3,000 institutions in the Asia-Pacific region who successfully completed the Team Wall Climbing event hosted by Extreme Adventures, Inc. Conducted during FNS' team-building activity in September at Canyon Woods, Tagaytay City, the 34-strong Team FNS, after hurdling the Power of the Mind, Blind and the Deaf, Caterpillar Walk and Trust Fall activities, climbed a 12-foot wooden vertical wall unassisted by any device or contraption within 45 minutes under the cover of an impending thunderstorm!

The team-building activity was a one-day workshop designed to increase interpersonal bonding among members of the Firm. It aimed to exhibit the core values that make up an effective team such as trust, communication, respect, risk-taking, decision-making, problem-solving, creativity and change in an experiential approach. The facilitators were extremely pleased to confirm that FNS exhibiting an exemplary *esprit de corps* is truly a TEAM!

#### **Archie Fortun and Andy Manuel Win RCS Cup; Red Team Best Bowling Tourney; New Associates**

The duo of Archie and Andy received the coveted prize in the RCS Cup held in September at the Philippine Navy Golf Club after posting the lowest golf scores possible on that rainy afternoon!

After two (2) months of strikes and spares, the Red Team led by Dicky Salazar and Ogie Narvasa garnered the much sought after trophy in the FNS Inter-Color Bowling Tournament!! New associates Danny Capistrano and Mia Alinsonorin, however, still have to show their bowling prowess at the next tourney.

#### **FNS To Bring Christmas Cheers to Street Children of Makati**

On December 14<sup>th</sup>, FNS Santas will have a feeding and gift giving activity for street children at the DSWD Makati Crisis Center. FNS lawyers and non-legal staff will share a Christmas meal and play games with the children. On December 17<sup>th</sup>, the FNS Team will then let their hair down at their Christmas party at Makati Sports Club!