
* Legal FiNeSse *

A Quarterly Newsletter of Fortun Narvasa & Salazar

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On this our 8th year Anniversary, we are pleased to introduce the maiden issue of Legal FiNeSse! This is our Firm's modest way of giving YOU, our clients and friends, snippets of new developments in Philippine law to keep you abreast with the changes in our legal environment. It is also our aim to give YOU quarterly glimpses of events in our Firm so that YOU may be more familiar with how we, your friend and counsel, provide legal service to the Philippine business community.

New Banking Law Cuts Redemption Period

The General Banking Law of 2000 ("GBL"), Republic Act No. 8791, was enacted on May 23, 2000 and now governs the organization and operation of banks, quasi-banks and trust entities. The GBL replaces the 52 year old General Banking Act and seeks to further liberalize and strengthen the banking industry.

A significant change introduced by the many amendments and new provisions of the GBL is in respect of the redemption period for property given as security for a loan from a bank which is made the subject of an extrajudicial foreclosure, i.e. without court intervention, done through a private sale or public auction. Redemption by a natural or juridical person was previously allowed within one (1) year from the registration of the certificate of sale. The law, as it now stands, allows a mortgagor who is a natural person or an individual to redeem a property foreclosed within one (1) year after the sale. Upon the other hand, a mortgagor who is a juridical person or a corporation can redeem the property only within three (3) months after the foreclosure sale. Redemption is barred after the sale has been registered with the Registry of Deeds.

The new law likewise grants the purchaser the right to enter upon, take possession and administer the property immediately after the confirmation of the sale without the need of obtaining a writ of possession or posting a bond.

Overcoming Corporate Disputes

The Supreme Court recently promulgated the new rules of procedure governing the resolution of intra-corporate controversies. The Regional Trial Court where the principal office of the corporation is located shall now have jurisdiction over said cases. It used to be the Securities and Exchange Commission that had exclusive jurisdiction over such disputes.

An action is commenced by filing a verified complaint with the proper court. The court will later issue summons to the defendant who shall have 15 days to answer. Once an answer is filed, the court will take the usual course of settling a controversy. All decisions and orders issued by the court shall be immediately executory unless restrained by an appellate court.

During the pendency of a case, a party may apply for the appointment of a management committee whenever the circumstances so warrant. The management committee shall take custody of, and control of all assets and properties owned by the entity. Committee members may be discharged from their duties only in instances when the court has determined that their necessity no longer exists, by agreement of the parties or upon termination of the court proceedings.

The Philippines Goes On Line

Under the provisions of the Electronic Commerce Act, contracts shall not be denied validity or enforceability solely on the ground that it is generated, received or stored in the form of an electronic data message. Thus, where the law requires that a document be in writing, that requirement is satisfied by an electronic document, which may now be considered as the functional equivalent of any written document for evidentiary purposes. All contracts expressed, demonstrated and proved by means of electronic documents are to be considered valid.

Except as otherwise agreed by the parties, elements required for the formation of contracts (i.e. offer, acceptance, etc) may now be expressed in, demonstrated and proved by means of electronic data messages. For example, acts pursuant to a contract of carriage such as the furnishing of marks and issuing of receipt of goods which are usually carried out in writing may now be executed by using one or more electronic data messages.

Physical Presence of Directors in Board Meetings No Longer Needed

As a consequence of the enactment of the E-Commerce Act, the SEC recently issued an opinion stating that directors of corporations are no longer required to be physically present in board meetings and may participate therein through teleconferencing and video-conferencing. This is in recognition of recent business globalization trends and modern technology that now allows for new tools for board meetings. Actual presence is not a necessity for a quorum to be constituted in a board meeting but companies are required to set in place adequate safeguards such as the recording of meetings and storage of video tapes and video discs.

Penalizing Bouncing Checks Law Violators

In Administrative Circular 12-2000, the Supreme Court explained that a fine amounting to double the amount of the bouncing check, which in any event should not exceed two hundred thousand pesos, would be the appropriate penalty when it has been established that the offender believed in good faith that he had not committed any violation. This policy resulted in confusion as to whether judges may still impose the penalty of imprisonment, and later sanction the offender to subsidiary imprisonment in case the accused is unable to pay the fine.

In the later Administrative Circular 13-2001, the Court stressed that the earlier circular merely laid down a rule of preference. In other words, when the circumstances of both the offense and the offender clearly indicate good faith or an obvious mistake of fact, without taint of negligence, the Supreme Court considers the imposition of a fine the more appropriate penalty. However, this does not preclude the Judge from sentencing the accused to imprisonment if in his determination, none of the foregoing conditions exist. Neither does this rule of preference prevent the Judge from imposing subsidiary imprisonment in the event the accused is unable to pay the fine.

DOJ Appeals, Explained

Resolutions of prosecutors in cases which require a preliminary investigation may be appealed to the Secretary of Justice by filing a verified petition for review with the Office of the Secretary of Justice within 15 days from the receipt of the questioned resolution or order.

Any petition for review will not be entertained if it is brought to the Secretary after an information has been filed and the accused arraigned. However, an arraignment that is made after the filing of the petition shall not bar the Justice Secretary from exercising his power of review. While as a general rule, the appeal does not bar the filing of the corresponding information, both the appellant and the prosecutor are enjoined to see to it that pending the resolution of the appeal, the proceedings in court are held in abeyance.

In deciding the merits of the appeal, the Justice Secretary may order a reinvestigation of the case.

FN&S Welcomes Its 1000th Client

The Firm now has 1000 clients with its engagement as the retained counsel of Knowledge Alchemy, Inc., a company engaged in the business of educational multi-media publishing. Knowledge Alchemy is to be assisted by the Firm's Junior Partner, Myls Creencia.

Recent Promotions in and Additions to the Firm

Andy Manuel and Dickson Berberabe have recently been promoted to Senior Associate in recognition of their outstanding work with the Firm for several years.

FN&S welcomed new lawyers, Jojo Valmores, Wilbert Tan and Richard Clarin to the Firm. Reggie Beltran, a 1997 graduate of the UP College of Law also joined the FN&S Family. These new associates now bring the number of lawyers in the Firm to 19.

FN&S Beachcombers Had a Blast in Puerto Galera's Big La Laguna

To celebrate the 8th year in existence of FN&S, its lawyers and support staff spent two (2) wonderful nights and three (3) enjoyable days in Big La Laguna Beach Hotel in Puerto Galera, Oriental Mindoro from June 9 to 11, 2001. Wacky games and creative contests were savored at every moment of their stay in the white sands of Puerto Galera.

Red Team Wins Table Tennis Tournament/ Archie Fortun Wins His Golf Tournament

Congratulations are in order for the Red Team led by Dicky Salazar for being the Champion of the Firm's First Table Tennis Tournament held in July 2001 at the Firm's Gym. Kudos to Archie Fortun and Andy Manuel too for winning the former's B-day Golf Tourney. The Firm's athletes are now looking forward to the RCS Golf Cup and the Bowling Tournament in September.