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RAMON ORLINA
"THE LOVERS"



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President Gloria Macapagal-Arroyo recently signed into law Republic Act (R.A.) No. 9510 or the Credit Information Act. The law created the Central Credit Information Corporation (CCIC) whose primary purpose is to receive and consolidate basic credit data, to act as a central registry or central repository of credit information, and to provide access to reliable, standardized information on the credit history and financial condition of borrowers. Banks, quasi-banks, their subsidiaries and affiliates, life insurance companies, credit card companies and other entities that provide credit facilities are required to submit basic credit data and updates on a regular basis to the CCIC.

Basic credit data refers to positive and negative information provided by a borrower to a submitting entity in connection with the application for and availment of a credit facility and any information on the borrower's creditworthiness. In the absence of a written waiver duly accomplished by the borrower, basic credit data shall exclude confidential information on bank deposits and/or clients funds under R.A. No. 1405 (Law on Secrecy of Bank Deposits), R.A. No. 6426 (The Foreign Currency Deposit Act), R.A. No. 8791 (The General Banking Law of 2000), R.A. No. 9160 (Anti-Money Laundering Law) and their amendatory laws. Any negative information on a borrower shall be updated within fifteen (15) working days and such record shall stay in the database for not more than three (3) years.

Aside from information relating to the creditworthiness of borrowers, the CCIC is also authorized to access credit and other relevant information from government offices, judicial and administrative tribunals, prosecutorial agencies and other related offices, as well as pension plans administered by the government. The CCIC, the submitting entities, the accessing entities, the special accessing entities, the outsource entities and the duly authorized non-accessing entities shall hold the credit information under strict confidentiality and shall use the same only for the authorized purpose. With the credit information system in place, a person can build his credit standing over time and obtain loans more quickly as banks and other financial institutions through the shared information could process the loans faster, with less exposure to risk and lower transaction costs.

While the mandate for strict confidentiality in holding and releasing credit information along with sanctions and penalties for violations are key features in the law, the private and business sector have raised concerns regarding the possibility of improper intrusion or infringement on one's privacy, the ease of manipulating the records, and the potential for mishandling and misusing the information. Stakeholders would like to see that the foregoing concerns be properly addressed with stringent guidelines and other measures for consumer protection and confidentiality. **■**

SC Rules on Boracay Land Ownership

In a landmark decision, the Supreme Court (SC) declared the island of Boracay as being owned by the State, except for those lands already covered with existing titles prior to Proclamation No. 1064. The Court ruled that prior to the issuance of the Proclamation on May 22, 2006, Boracay was never expressly and administratively classified under any of the categories of lands of public domain (agricultural, forest, timber or national park). As such, Boracay Island was deemed to be as unclassified and



inalienable land of the public domain and considered as public forest under P.D. No 705.

According to the High Court, no vested rights accrued to the private claimants as the nature of the lands allegedly possessed by them were inalienable lands of the public domain. They could thus not apply for any judicial confirmation of imperfect title under CA No. 141. The Court further ruled that the private claimants failed to establish open, continuous and exclusive possession of their occupied lands as tax declarations submitted as evidence of possession were only in 1993.

The Court however stated that while the private claimants are not eligible for ownership, the Court said that those with lawful possession may claim to be builders of improvements in good faith. They can also take steps to preserve or protect their possession. They may look into other modes of applying for original registration of title such as homestead or sales patent, subject to the conditions imposed by law. (GR No. 167707, *The Secretary of the Department of Environment and Natural Resources v. Yap*; GR No. 173775, *Sacay v. The Secretary of the Department of Environment and Natural Resource*, October 8, 2008) **16**

Resolution of Small Claims Cases by the People's Courts

In the past, a civil case would not have a court hearing for several months after filing and would likely involve lawyers arguing about the next hearing date. Due to the serious backlog of cases, the contending parties must often wait years to resolve basic litigation, including cases where the value of the claim is relatively low. To aid in reducing the backlog and to expedite the resolution of such cases, the Supreme Court (SC) recently created a new branch of courts which will handle small claims cases.

The rules of procedure for small claims cases were promulgated by the SC on September 9, 2008 with the issuance of A.M. No. 08-8-7-SC (Rules). SC Chief Justice Reynato S. Puno calls these courts the People's Courts. The Rules will apply to cases at the Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts where the value of the claim does not exceed P100,000.00, exclusive of interest and costs. It applies in all actions which are: (a) purely civil in nature where the claim or relief prayed for by the plaintiff is solely for payment or reimbursement of sum of money, and (b) the civil aspect of criminal actions, either filed before the institution of the criminal action, or reserved upon the filing of the criminal action in court. Those claims or demands may be for money owed under a contract for lease, loan, services, sale, or mortgage; for damages arising from fault or negligence, quasi-contract, or contract; or the enforcement of a barangay amicable settlement or an arbitration award involving a money claim covered pursuant to Sec. 417 of Republic Act



(R.A.) No. 7160 (The Local Government Code of 1991).

No attorney shall appear on behalf of or represent a party at the hearing, unless the attorney is the plaintiff or defendant. A small claims action is commenced by filing an accomplished and verified Statement of Claim and other supporting documents with the court. Based on the examination of the allegations in the Statement of Claim and the evidence attached thereto, the court may dismiss the case outright on any of the grounds subject of a dismissal of a civil action. If no ground for dismissal is found, the Court shall issue summons for the defendant to file a verified Response. The Court shall likewise issue a Notice requiring the parties to appear at the designated date of hearing. Failure of the plaintiff to appear shall cause the dismissal of the claim while the failure of the defendant to appear and/or file a verified response allows the court to render judgment based on the facts alleged in the claim. At the hearing, the judge shall conduct judicial dispute resolution (JDR) through mediation, conciliation, early neutral evaluation, or any other mode of JDR. If JDR fails and the parties agree in writing that the hearing of the case shall be presided over by the judge who conducted the JDR, the hearing shall proceed in an informal and expeditious manner and terminated within one (1) day. Absent such agreement, the case shall be referred to the pairing judge for hearing and be decided within five (5) working days from referral. After the hearing, the court shall render its decision on the same day. The decision shall be final and unappealable.

With the creation of the small claims court, minor disputes will be adjudicated much more quickly with less litigation expenses. The public will have greater access to justice. **17**

BIR Issues Consolidated Regulations on Taxpayer Registration

The Bureau of Internal Revenue (BIR) issued Revenue Regulations No. 11-2008 to consolidate and update all existing Revenue Regulations relative to the primary registration of taxpayers such as the guidelines for registration, updates and cancellation procedures; documentary requirements; registration forms; annual registration fee; certification fee; and penalties for registration-related violations.



Primary registration involves two stages: application and issuance of the Taxpayer Identification Number (TIN) and submission of required documents; and payment of required fees for the subsequent registration of employment, business, profession and/or undertaking which a person (natural or juridical) intends to pursue.

The general rules in the application and issuance of a TIN during the initial stage of the primary registration are:

1. Only one TIN shall be assigned to a taxpayer. The TIN, once assigned to a taxpayer, is non-transferable. The taxpayer is precluded from applying for another TIN.

2. For natural persons, the TIN stays with the taxpayer permanently regardless of the cancellation or cessation of business registration with the BIR. For juridical persons, the TIN is cancelled at the time of the dissolution, merger or consolidation resulting to the termination of the corporate existence through the eventual cancellation of the registration with the BIR.

3. A TIN for the estate of a deceased person under judicial settlement and/or a trust under an irrevocable trust agreement shall be secured separately from the TIN of the deceased person and/or trustee.

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Guidelines on the Determination of Retained Earnings Available for Dividend Declaration

The Securities and Exchange Commission recently promulgated guidelines regarding the determination of availability of retained earnings for declaration of cash dividends, property dividends, and stock dividends:

1. Dividends shall only be declared out of unrestricted retained earnings of the corporation. A corporation cannot declare dividends when it has zero or negative retained earnings known as Retained Earnings deficit. The surplus profits must be bonafide income founded upon actual earnings or profits. Additional Paid-in Capital Stock shall neither be declared as dividend nor shall it be reclassified to absorb any deficiency.

2. Stock corporations are prohibited from retaining surplus profits in excess of 100% of their paid-in capital stock except when justified by definite corporate expansion projects or programs approved by the board of directors; when the corporation is prohibited under any loan agreement with any financial institution or creditor from declaring dividends without its consent; and when it can be shown that such retention is necessary under special circumstances obtaining in the corporation, such as when there is need for special reserve for possible contingencies.

The regulations also enumerated the items affecting the Unrestricted Retained Earnings account of a corporation and the requirement that a Reconciliation of Retained Earnings for Dividend Declaration shall be presented as one of the schedules in the audited financial statements of listed companies, corporations with registered securities, and public companies. **LE**

GMA Signs EO on Foreign Traders' Visa

President Gloria Macapagal-Arroyo recently signed Executive Order (E.O.) No. 758 which allows the issuance of a Special Visa for Employment Generation (SVEG). The SVEG will allow foreign investors to stay indefinitely in the Philippines under certain requirements. Qualified foreigners who are granted the SVEG shall be considered special non-immigrants with multiple entry privileges and conditional extended stay, without need of prior departure from the Philippines. The privileges under the SVEG extend to the qualified foreigner, his/her spouse and dependent unmarried child/children below eighteen (18) years of age whether legitimate, illegitimate or adopted. Non-immigrant foreigners who wish to avail of the SVEG should comply with the following conditions:

1. The foreigner shall actually, directly or exclusively engage in a viable and sustainable commercial investment/enterprise in the Philippines, exercises/performs management acts or has the authority to hire, promote and dismiss employees;
2. He evinces a genuine intention to indefinitely remain in the Philippines;
3. He is not a risk to national security; and
4. The foreigner's commercial investment/enterprise must provide actual employment to at least ten (10) Filipinos in a lawful and sustainable enterprise, trade or industry.

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Registration of Outstanding Shares Prior to Listing in PSE

The Securities and Exchange Commission (SEC) recently issued guidelines on the registration of shares that will be offered to the public by primary or secondary offering or both, and all unregistered shares of listed companies or companies that plan to list at the Philippine Stock Exchange (PSE). Companies that will make an Initial Public Offering (IPO), companies applying for Listing by Way of Introduction, and public companies that will make an IPO or Listing by Way of Introduction are required to register all outstanding shares with the SEC. Registration shall not be required for the outstanding shares of the following cases, but the companies are required to disclose to the SEC the total number of shares that will be issued and offered to the public:

1. Shares already registered with the SEC but were not listed by their companies at the PSE and are applying for listing for the first time;

2. Registered shares of companies or shares of companies covered by Sections 10.1 and 10.2 (Exempt Transactions) of the Securities Regulations Code (SRC), that are applying for listing at the PSE; and

3. Shares already listed at the PSE that were not registered with the SEC pursuant to Section 9(e) of the SRC. **LE**

FNS now offers Australian Migration Advice through tie-up with Migration Lawyers Australia



FNS Managing Partner Dicky Salazar has just signed an Agreement for Cooperation in Provision of Australian Migration Advice with an Australian law firm, Migration Lawyers Australia (MLA). MLA's Managing Partner, John Corbett, is a registered Australian migration agent and Australian admitted lawyer.

Through this tie-up, the two (2) law firms shall work together to source skilled clients and business investors who are seeking to obtain permanent residency in Australia. They have identified three (3) types of clients who have opportunities for migration to Australia:

1. Independent skilled - who should have a skill in demand in Australia and meet a rigorous points test;
2. Employer nominated - whose skills are in demand in Australia and are sponsored by an Australian employer, and who would have the opportunity for permanent residence after two years of full time employment; and
3. Business investors - who are established business people or entrepreneurs who want to establish an Australian business in order to obtain Australian residency, and with assets of approximately AUD1.5 million and are required to purchase a non-speculative business that has an annual turnover of at least AUD100,000 and which employs at least one full time Australian person.

FNS shall conduct initial telephone screening of prospective clients and MLA shall evaluate the clients' requirements. Both MLA and FNS are optimistic that there is a market for this service in the Philippines and look forward to the success of the arrangement. **■**

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4. Except for banks with both Regular Banking Unit (RBU) and with a Foreign Currency Deposit Unit (FCDU) that are assigned with different TINs, there should never be an instance when a taxpayer can be a holder of multiple TINs.

Persons who are required to proceed to the second stage of primary registration are the following:

- a) Employees;
- b) Self-employed individuals, professionals, estates and trusts, and their branches or facilities, if any;
- c) Corporations, partnerships, cooperatives, associations (whether taxable or non-taxable) and their branches and facilities, if any; and
- d) Government agencies and instrumentalities, government-owned and -controlled corporations, local government units and their branches and facilities, if any.

Except for employees and facilities, it is in the second stage where the registrants are required to pay the registration fee, secure a Certificate of Registration (COR), get an "Ask for Receipt" notice, and attend the taxpayer's briefing for new registrants to be conducted by the respective BIR Revenue District Office (RDO) representatives.

Penalties for the following violations related to primary registration are specified in the Regulations: failure to register, late registration, late payment of annual registration fee, failure to register a branch or facility, acquisition of multiple TINs, failure to provide information, and providing erroneous information. In case of erroneous encoding of material information on the part of the RDOs, the district personnel who committed the error shall be liable to a penalty of P1,000 per error. **■**

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FNS Christmas Party 2008



The Fortun Narvasa & Salazar (FNS) family celebrated its annual Christmas gathering on December 12, 2008 at the Dasmariñas Village Association Clubhouse. This

year, the fun and merriment tripled as the legal staff and employees brought their spouses and children to the get-together. The senior partners opened the event with a few words reminiscing the milestones and triumphs of the past fifteen years of FNS, and expressed their appreciation to all the staff and employees who eagerly contributed to the firm's success.

The party started mid-afternoon as the kids enjoyed a magic show, a photo booth, nachos and ice cream. For the main event, employees were divided into four groups and competed in a cheering competition and various games. The winner was the group headed by Managing Partner Dicky Salazar. Following tradition, the three FNS branches (Makati, Cavite, and Baguio) gave inspired performances. One of the highlights of the evening was when FNS Baguio performed the Hula dance wearing colorful Hawaiian costume. The new hires also performed a riveting dance number. Everyone had their fill of sumptuous food, good entertainment, and all-night merry-making. It was another fun-filled celebration that the employees and their families will surely remember and cherish. **■**

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These requirements must be continually satisfied by the foreigner for him/her to continue to be a holder of the SVEG. Applications for the SVEG are submitted to the Commissioner of Immigration. The Commissioner of Immigration shall revoke the SVEG granted:

1. If the SVEG holder fails to maintain compliance of any of the conditions stated above;
2. If it was obtained through fraud or willful misrepresentation of material facts;
3. Upon conviction of the foreigner by final judgment for a crime or offense in the Philippines; or
4. A final determination by competent authority that the foreigner poses a risk to national security. **■**