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TAX LAW FOR BUSINESS

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Determining fraud and intracorporate disputes

IT bears recalling that under Presidential Decree 902-A, any cause of action that involves controversies arising out of intra-corporate relations, between and among stockholders, members or associates of a corporation, partnerships or association, is within the original and exclusive jurisdiction of the Securities and Exchange Commission (SEC) to try and decide, in addition to its regulatory and adjudicated functions.

However, upon the approval of Republic Act (RA) 8799, otherwise known as the Securities and Regulation Code, the commission's jurisdiction over all cases enumerated in Section 5, PD 902-A were transferred to the court of general jurisdiction, or the appropriate regional trial court (RTC).

Thereafter, the Supreme Court, pursuant to its mandated authority, promulgated the following:

A.M. 00-11-03-SC designated certain branches of the RTC to try and decide SEC cases arising within their respective territorial jurisdiction.

Supplemental Administrative Circular 8-01 directed that all SEC cases originally assigned or transmitted to the regular RTC shall be transferred to branches of the RTC especially designated to hear such cases in accordance with A.M. 00-11-03-SC.

A.M. 01-2-04 SC (Proposed Interim Rules of Procedure Governing Intracorporate Controversies under RA 8799) was promulgated.

This brief background relative to the venue and jurisdiction to try and decide cases involving, among others, intracorporate disputes, becomes crucial in the controversy raised in *SEC En Banc Case 05-16-401* promulgated on January 5.

In said case, a local company applied for an increase of Authorized Capital Stock, as well as Amendment of its Articles of Incorporation with the SEC. Having submitted all of the required documents pursuant to such application, the Company Monitoring and Registration Department of the SEC approved the same.

However, the company's application was eventually challenged based on allegations of fraud committed by the company in its application. It must be emphasized that one of the requirements for an application for increase of authorized capital stock is a secretary's certificate stating that there are no pending intracorporate disputes within the corporation. The opposition in this case was anchored mainly on the existence of an intracorporate dispute within the applicant-company there being three factions within the corporation claiming to be the legitimate set of officers for the company.

Given the above circumstances, can the increase of authorized capital stock and amendment of the articles of incorporation previously approved by the SEC be revoked? Which has jurisdiction to resolve the issue of fraud: the RTC or the SEC?

The SEC has jurisdiction to determine if a corporation, partnership or association committed fraud. Since it is tasked, among others, to determine the propriety of applications for increase of authorized capital stock, it is clothed with authority to determine the veracity of the requirements submitted to it for evaluation. Among those requirements is a secretary's certificate, stating that there are no pending intracorporate disputes within the applicant-

corporation. The SEC, therefore, has authority to determine if the statements made in the secretary's certificate of a corporation is truthful.

In the said case, fraud was established when the SEC found out that there is an intracorporate dispute involving the applicant company pending before the regular courts and the applicant company has knowledge of such fact. Further, there were multiple filings of General Information Sheet by the company with different branches of the SEC, each stating a different set of officers. Such further strengthens the finding of the SEC that there is, indeed, an intracorporate controversy within the applicant-corporation, and that the secretary's certificate submitted by it stated a falsehood.

This decision, however, does not supplant or encroach upon the jurisdiction of the RTCs. While ordinarily, matters involving fraud or misrepresentation by the board of directors, business associates, officers or partners, as well as intracorporate disputes, are now within the jurisdiction of RTCs, the SEC is not precluded in determining allegations of fraud and intracorporate dispute, so long as it is done for purposes only of fulfilling the SEC's mandate, and to ensure compliance with SEC rules and regulations.

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