An Analysis of Judicial and Administrative Interpretation of Foreign Investment Law

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The Philippines, as a developing country, is in need of attracting foreign capital that would jumpstart industries where local investors are either lacking in the necessary funds, or are not willing to invest. Constitutional mandate, however, limits the industries where 100% foreign capitalization can take place, notably the development of natural resources and the operation of public utilities. Constitutional provisions, being of a general nature, can actually be interpreted by administrative agencies, in this case, the Securities and Exchange Commission or the SEC.

Foreign investment, in order to determine nationality, was traditionally tested in accordance with the Grandfather Rule. However, in line with the Foreign Investments Act (FIA), there is a need to juxtapose the two rules, determine their hierarchy, and even reconcile them. While the FIA is more persuasive, being a newer rule, the grandfather rule still applies.

Thus, the SEC is given the formidable job of balancing national interests by protecting local exploitation vis-à-vis allowing the entry of foreign capital necessary to fund industries in need of capital investments. While inconsistencies may appear in the several rules and regulations granting foreigners control over their investments, the SEC, with its persuasive effect in maintaining the present atmosphere for foreign investment, shows its ability to carry out its legal mandate.