Philippine Corporate Law Practice: Defining the Mandates of the Securities and Exchange Commission (SEC) through the Resolution of the Jurisdictional Conflicts with the Regional Trial Courts (RTC) over Corporate and Securities Cases

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I. INTRODUCTION

A. Objectives of the Article

This Article discusses the nature and scope of the original and exclusive jurisdiction of Regional Trial Courts (RTC), designated as *Special Commercial Courts*, to hear and decide *corporate cases* falling under the coverage of Section 5 of Presidential Decree (P.D.) No. 902-A,[1] vis-à-vis the residual quasi-

1. Reorganization of the Securities and Exchange Commission with Additional Power and Placing the Said Agency Under the Administrative Supervision of

judicial powers of the Securities and Exchange Commission (SEC) over corporations, partnerships, and associations,[2] as well as the applicability of case law that have interpreted and expanded the meaning and coverage of Sections 3, 5, and 6 of P.D. No. 902-A.

In addition, this Article evaluates the applicability of the Administrative Law doctrine of *exhaustion of administrative remedies* and the doctrine of *primary jurisdiction* on corporate and securities cases, in relation to the exercise by the SEC of its administrative and regulatory authority over corporations, partnerships, and associations.

This Article does not cover the practice relating to corporate rehabilitation and insolvency proceedings under the Financial Rehabilitation and Insolvency Act (FRIA),[3] an area already covered in another work,[4] except to the extent relating to jurisdictional conflicts that occur in corporate dissolutions and liquidations under FRIA and the Corporation Code.[5]

Apart from this Introduction, and the Conclusions and Recommendations at the end, this Article is divided into three inter-related parts, namely:

(1) Part II on corporate practice before the SEC, as the primary administrative agency charged under its various charters to supervise and control corporations, partnerships, and other associations;

(2) Part III on the corporate jurisdiction of the RTC Special Commercial Courts; and

(3) Part IV on the power of judicial review by the courts of justice over the orders, rulings, resolutions, or decisions of the SEC as the primary administrative agency granted jurisdiction, supervision, and control over corporations, partnerships, and associations registered under the

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the Office of the President, Presidential Decree No. 902-A as Amended, § 5 (1976).

2. *Id.*

3. An Act Providing for the Rehabilitation or Liquidation of Financially Distressed Enterprises and Individuals [Financial Rehabilitation and Insolvency Act of 2010], Republic Act No. 10142 (2010).

4. CESAR L. VILLANUEVA & TERESA VILLANUEVA-TIANSAY, PHILIPPINE CORPORATE LAW ch. 4 (2013 ed.).

5. The Corporation Code of the Philippines, Batas Pambansa Blg. 68 [CORPORATION CODE] (1980).

> Corporation Code, and the country's securities system as regulated under the Securities Regulation Code.[6]

B. Salient Historical Background

In March 1976, P.D. No. 902-A was issued by then President Ferdinand E. Marcos in the exercise of his martial law powers to legislate, aimed at reorganizing and restructuring the SEC "to make it a more potent, responsive and effective arm of the government,"[7] in the implementation of the "government's policy of encouraging investments ... and a more active public participation in the affairs of private corporations and enterprises through which desirable activities may be pursued for the promotion of economic development,"[8] by:

> (1) Institutionalizing under Section 3, the SEC's "*absolute jurisdiction, supervision*[,] *and control over all corporations,* partnerships[,] and associations, [which] are the grantees of primary franchises and/or a license or permit issued by the government to operate in the Philippines;"[9]
>
> (2) Granting the SEC under Section 5, "*original and exclusive jurisdiction to hear and decide cases involving:*"[10]
>
> (a) Corporate Fraud Schemes — "Devices or schemes employed by or any acts of the board of directors, business associates, its officers[,] or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members";[11]
>
> (b) Intra-Corporate Disputes — "Controversies arising out of intra-corporate or partnership relations[ ] between and among stockholders, members, or partners[;] between any or all of them and the corporation or partnership[;] and between such corporation or partnership and the State insofar as it concerns their franchise or right to exist as such entity[;]"[12] and

6. The Securities Regulation Code, Republic Act No. 8799 [SECURITIES REGULATION CODE] (2000).

7. P.D. No. 902-A, whereas cl. ¶ 2.

8. *Id.* whereas cl. ¶ 1.

9. *Id.* § 3 (emphasis supplied).

10. *Id.* § 5 (emphasis supplied).

11. *Id.*

12. *Id.*

(c) Election Contests — "Controversies in the election or appointment of directors, trustees, officers[,] or managers of corporations or partnerships."[13]

(3) Expanding the powers of the SEC under Section 6, "*[i]n order to effectively exercise such jurisdiction*"[14] under Sections 3 and 5.

In December 1979, P.D. No. 1653 amended P.D. No. 902-A to invest the SEC with additional powers under Section 6 "to issue writs of attachments, appoint receivers, and create management committees to undertake management of the corporations under its jurisdiction."[15]

In January 1981, P.D. No. 1758 amended P.D. No. 902-A to further strengthen the SEC "not only to make it a more potent, responsive[,] and effective arm of the government[,] but [also] to enable it to play a more effective rule in the socio-economic development of the country,"[16] by:

(1) Re-affirming the "absolute jurisdiction, supervision[,] and control [of the SEC] over all corporations, partnerships, or associations, who are the grantees of primary franchises and/or a license or permit issued by the government to operate in the Philippines" found under Section 3;[17]

(2) Expanding the original and exclusive jurisdiction of the SEC under Section 5 to include

> petitions of corporations, partnerships[,] and associations to be declared in a state of suspension of payments in cases where they possess sufficient property to cover all their debts but foresee the impossibility of meeting them when they respectively fall due or in cases where they have no sufficient assets to cover their liabilities;[18]

(3) Further expanding the powers of the SEC under Section 6 on the appointment of receivers, creation, and appointment of management committees with expansive powers, and on the power to issue *subpoena duces tecum* and summon witnesses to appear in any of its proceedings.[19]

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13. P.D. 902-A, § 5.

14. *Id.* § 6 (emphasis supplied).

15. *Id.* § 2 (emphasis supplied).

16. *Id.* whereas cl. ¶ 4.

17. *Id.* § 2.

18. *Id.* § 3.

19. P.D. No. 902-A, § 4.

In the decades that ensued since the initial promulgation of P.D. No. 902-A, there evolved a robust body of jurisprudence which has dealt with nearly all important issues and aspects of Philippine Corporate Law, engendered by the appropriate arrangement that the SEC, through the exercise of its regulatory, quasi-legislative, and quasi-judicial powers under P.D. No. 902-A, constituted a specialized tribunal resolving various corporate issues and problems that confronted Philippine society. This stream of administrative orders, opinions, rulings, and decisions filtered through the judicial appellate process and culminated as precedents in the decisions of the Supreme Court of the Philippines.

Unfortunately, as a direct fallout from the Best World Resources stock scandal that rocked the Philippine capital market in the second half of 1999,[20] Congress passed into law in July 2000 a hurried version of Republic Act (R.A.) No. 8799, known as the Securities Regulation Code (SRC), which empowered and sought to ensure that the SEC concentrated on its primary role as a market regulator. A step taken towards the realization of such an objective was to transfer out, by virtue of Subsection 5.2 of the SRC, the quasi-judicial powers of the SEC over corporate cases under Section 5 of P.D. No. 902-A to the RTC Special Commercial Courts, thus —

> 5.2. *The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Courts*: *Provided*, that the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases.[21]

The transfer was based on the arguable belief that such cases have diverted SEC's efforts and resources from its main role as a market regulator.[22]

In November 2000, the Supreme Court promulgated Administrative Matter (A.M.) No. 00-11-03-SC,[23] designating particular RTC branches

20. *See* Flashback: The BW Controversy, *available at* http://www.financemanila.advfn.com/2008/07/flashback-the-bw-controversy (last accessed Feb. 15, 2016).

21. SECURITIES REGULATION CODE, § 5.2 (2000) (emphasis supplied).

22. The late Senator Raul S. Roco, who was the main proponent of the SRC, was quoted as saying — "[T]he Commission, as a government regulatory body that monitors the capital markets, will lose its power to hear and decide on corporate disputes under the proposed Securities Act of 2000." Carmina E. Reyes, *New Law to Strip SEC of Power to Settle Corporate Disputes*, PHIL. DAILY INQ., July 19, 2000, at B2.

23. Supreme Court, Resolution Designating Certain Branches of Regional Trial Courts to Try and Decide Cases Formerly Cognizable by the Securities and Exchange Commission *En Banc*, Administrative Matter No. 00-11-03-SC [A.M. No. 00-11-03-SC] (Nov. 21, 2000).

across the Philippines as "Special Commercial Courts" to "try and decide SEC cases enumerated in Section 5 of P.D. No. 902-A ... arising within their respective territorial jurisdictions."[24] Subsequently, it promulgated the Interim Rules of Procedure on Corporate Rehabilitation,[25] and the Interim Rules of Procedure for Intra-Corporate Controversies,[26] providing for the procedures to be applied by RTC Special Commercial Courts in resolving corporate cases falling under Section 5 of P.D. No. 902-A.[27]

Then, in September 2001, it issued A.M. No. 00-8-10-SC to clarify matters on the legal fees to be collected,[28] the appellate process allowed,[29] and the applicable period of appeal[30] in corporate cases formerly cognizable by the SEC but now falling within the original and exclusive jurisdiction of RTC Special Commercial Courts,[31] by providing *inter alia* the following:

> (1) Cases covered by the Interim Rules of Procedure on Intra-Corporate Controversies should be considered as ordinary civil actions, since such cases either seek the recovery of damages/property or specific performance of an act against a party for the violation or protection of a right;[32] and
>
> (2) Petitions for rehabilitation under the Interim Rules of Procedure on Corporate Rehabilitation, should be considered as special proceedings under Section 3 (c) of Rule 1 of the 1997 Rules of Court, since they seek to establish the status of a party or a particular fact.[33]

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24. *Id.*

25. INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION, A.M. No. 00-8-10-SC, Nov. 1, 2000.

26. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, A.M. No. 01-2-04-SC, Mar. 13, 2001.

27. Sy Chim v. Sy Siy Ho & Sons, 480 SCRA 465, 493 (2006). This case affirmed that the "Interim Rules of Procedure for Intra-Corporate Controversies [ ] which took effect on 1 April 2001, was promulgated by the Court pursuant to its power to promulgate rules concerning 'pleading, practice[,] and procedure in all courts ... under Section 5 (5), Article VIII of the Constitution.'" *Id.*

28. Supreme Court, Re: Transfer of Cases from the Securities and Exchange Commission to the Regional Trial Courts, Administrative Matter No. 00-8-10-SC [A.M. No. 00-8-10-SC (2001)] (Sep. 4, 2001).

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

In December 2008, the Rules of Procedure on Corporate Rehabilitation[34] was promulgated, thereby replacing the Interim Rules of Procedure on Corporate Rehabilitation[35] and leaving the term "Interim Rules" to apply exclusively to the Interim Rules of Procedure on Intra-Corporate Controversies.[36]

In the closing months of the administration under President Gloria Macapagal-Arroyo, Congress passed into law the FRIA, effectively repealing the vintage 1909 Insolvency Act,[37] as well as Section 5 (d) of P.D. No. 902-A on petitions for corporate suspension of payments or corporate rehabilitation proceedings;[38] and effectively rendering inoperative the Supreme Court's Rules of Procedure for Corporate Rehabilitation.

In August 2013, the Supreme Court issued the Financial Rehabilitation Rules of Procedure pursuant to the power granted under the FRIA.[39] At the time of the writing of this work, the Supreme Court is still considering the rules that would govern insolvency and dissolution proceedings under the FRIA.

C. Particular Issues Covered

In order to appreciate the discussions in the main body of this work, three important features of the SRC must be taken into consideration.

First, by its very language, Subsection 5.2 of the SRC does not create a new "corporate cases" jurisdiction with the regular courts, but merely transfers such jurisdiction from the administrative agency (i.e., the SEC) to specially designated RTC branches.[40] Consequently, since the statutory basis for corporate cases has not changed, the rulings of the Supreme Court interpreting Section 5 of P.D. No. 902-A during the period prior to the enactment of the SRC (pre-SRC period) remain to have precedential value as now applied to the RTC Special Commercial Courts.

34. RULES OF PROCEDURE ON CORPORATE REHABILITATION, A.M. No. 00-8-10-SC, Dec. 2, 2008.

35. INTERIM RULES OF PROCEDURE ON CORPORATE REHABILITATION.

36. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES.

37. An Act Providing for the Suspension of Payments, the Relief of Insolvent Debtors, the Protection of Creditors, and the Punishment of Fraudulent Debtors [Insolvency Law], Act. No. 1956 (1909) & Financial Rehabilitation and Insolvency Act of 2010, § 148.

38. Financial Rehabilitation and Insolvency Act of 2010, § 146.

39. FINANCIAL REHABILITATION RULES OF PROCEDURE, A.M. No. 12-12-11-SC, Aug. 27, 2013.

40. SECURITIES REGULATION CODE, § 5.2.

Second, Section 63 of the SRC provides that all suits to recover damages under the specified provisions of the SRC "shall be brought before the Regional Trial Court, which shall have exclusive jurisdiction to hear and decide such suits ... [and] authorized to award damages in an amount not exceeding triple the amount of the transaction plus actual damages."[41] The same Section authorizes the RTCs to award exemplary damages "in cases of bad faith, fraud, malevolence[,] or wantonness in the violation of [the SRC] or the rules and regulations promulgated thereunder[,]"[42] as well as attorney's fees not exceeding 30% of the award.[43] Accordingly, securities cases therefore constitute the fifth type of cases that now clearly fall within the original and exclusive jurisdiction of the RTC, *although not specifically falling within the exclusive jurisdiction of RTC Special Commercial Courts, and not always covered by Section 5 of P.D. No. 902-A.*

Third, Section 76 of the SRC, which embodies its repealing clause, expressly repealed only "Sections 2,[44] 4[,][45] and 8[46] of Presidential Decree 902-A, as amended,"[47] thus leaving unaffected: (1) Section 3 of P.D. No. 902-A, which has been interpreted by a significant number of Supreme Court decisions as providing the SEC for an all-encompassive jurisdiction over corporations, partnership, and associations;[48] and (2) Section 6, which complements the exercise of jurisdiction over corporate cases under Section 5, as well as the exercise by the SEC of its regulatory powers under the "absolute jurisdiction, supervision[,] and control" language of Section 3, both of P.D. No. 902-A.[49]

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41. *Id.* § 63.

42. *Id.*

43. *Id.*

44. Pertaining to the collegial organization of the SEC. P.D. No. 902-A, § 2.

45. Pertaining to the power of the SEC to reorganize its staff and personnel structures. *Id.* § 4.

46. Pertaining to the various departments of the SEC, including that provision that governs the exclusive power of the SEC, through its Prosecution and Enforcement Department, to

> investigate, on complaint or *motu proprio*, any act or omission of the Board of Directors/Trustees of corporations, or of partnerships, or of other associations, or of their stockholders, officers or partners, including any fraudulent devices, schemes or representations in violation of any law or rules and regulations administered and enforced by the [SEC.]

Id. § 8.

47. SECURITIES REGULATION CODE, § 76.

48. *See* P.D. No. 902-A, § 3.

49. *Id.* §§ 3, 5, & 6.

Consequently, the following significant issues have arisen from the languid formula provided by Subsection 5.2 of the SRC, namely:

(1) What legal vitality remains of the SEC's "absolute jurisdiction, supervision[,] and control over corporations" embodied in Section 3 of P.D. No. 902-A, vis-à-vis any residual quasi-judicial powers that the SEC may have over corporate issues?

(2) What is the applicability of Section 6 of P.D. No. 902-A in determining issues arising in corporate cases within the original and exclusive jurisdiction of RTC Special Commercial Courts? Does the SEC continue to possess the legal capacity to exercise any of such powers?

(3) What happens now with corporate cases that fall within the SEC's adjudicatory or quasi-judicial powers, but do not fall within the coverage of Section 5 of P.D. No. 902-A?

(4) What is the legal vitality of the application of the doctrines of *exhaustion of administrative remedies* and *primary jurisdiction* over the corporate cases falling under Section 5 of P.D. No. 902-A, particularly in defining the relationship between the SEC, in its exercise of purely administrative powers over corporations, and the RTC Special Commercial Courts exercising original and exclusive jurisdiction over corporate cases falling under said Section 5?

The Authors proceed to answer each of the foregoing issues in the discussions hereunder, outlining what may be considered as the "Corporate Litigation Practice" before the SEC and the RTC Special Commercial Courts.

II. CORPORATE PRACTICE BEFORE THE SECURITIES AND EXCHANGE COMMISSION

A. The SEC Remains the Primary Administrative Agency for Private Corporations and Registered Partnerships

Even as when the SRC took away from the SEC its quasi-judicial powers to hear and decide corporate cases under Section 5 of P.D. No. 902-A, it has retained as part of SEC's charter provisions its "absolute jurisdiction, supervision[,] and control" powers over private corporations and registered partnerships under Section 3 of P.D. No. 902-A, which reads—

> Section 3. *The Commission shall have absolute jurisdiction, supervision*[,] *and control over all corporations, partnerships*[,] *or associations, who are the grantees of primary franchises and/or a license or permit issued by the government to operate in the Philippines*, and in the exercise of its authority, it shall have the power to

> enlist the aid and support of and to deputize any and all enforcement agencies of the government, civil or military, as well as any private institution, corporation, firm, association[,] or person.[50]

In fact, Subsection 5.1 of the SRC, apart from confirming that SEC "shall have the powers and functions provided by ... P.D. No. 902-A,"[51] reaffirms SEC's "absolute jurisdiction, supervision[,] and control over all corporations ... [which] are grantees of primary franchises and/or a license or permit issued by the government to operate in the Philippines,"[52] thus —

> Section 5. Powers and Functions of the Commission.
>
> 5.1. The [SEC] shall act with transparency *and shall have the powers and functions provided by this Code, [P.D.] No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act*[,] *and other existing laws. Pursuant thereto the* [*SEC*] *shall have, among others, the following powers and functions:*
>
> (a) *Have jurisdiction and supervision over all corporations, partnerships*[,] *or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;*
>
> (b) Formulate policies and recommendations on issues concerning the securities market, advise Congress and other government agencies on all aspects of the securities market[,] and propose legislation and amendments thereto;
>
> (c) Approve, reject, suspend, revoke[,] or require amendments to registration statements, and registration and licensing applications;
>
> (d) Regulate, investigate[,] or supervise the activities of persons to ensure compliance;
>
> (e) Supervise, monitor, suspend[,] or take over the activities of exchanges, clearing agencies[,] and other [self-regulatory organizations (SROs)];
>
> (f) Impose sanctions for the violation of laws and the rules, regulations[,] and orders issued pursuant thereto;
>
> (g) Prepare, approve, amend[,] or repeal rules, regulations[,] and orders[;] and issue opinions[,] provide guidance on[,] and supervise compliance with such rules, regulations[,] and orders;
>
> (h) Enlist the aid and support of and/or deputize any and all enforcement agencies of the Government, civil or military[,] as well as any private institution, corporation, firm, association[,] or person in the implementation of its powers and functions under this Code;

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50. *Id.* § 3 (emphasis supplied).

51. SECURITIES REGULATION CODE, § 5.1.

52. *Id.*

(i) Issue cease and desist orders to prevent fraud or injury to the investing public;

(j) Punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court;

(k) Compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision;

(l) Issue [*subpoena duces tecum*] and summon witnesses to appear in any proceedings of the Commission and[,] in appropriate cases, order the examination, search[,] and seizure of all documents, papers, files[,] records, tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provisions of existing laws;

(m) Suspend, or revoke, after proper notice and hearing[,] the franchise or certificate of registration of corporations, partnerships[,] or associations, upon any of the grounds provided by law; and

(n) Exercise such other powers as may be provided by law[,] as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.[53]

A reading of the above-enumerated powers of the SEC shows that they are reiterations of most of the same powers that the SEC possesses under Section 6 of P.D. No. 902-A.[54] It may therefore be properly concluded, beyond any credible refutation, that the SEC remains the primary administrative agency vested with plenary regulatory powers over all corporations, partnerships, and other associations that have been registered under the Corporation Code; that the only power or quasi-judicial jurisdiction taken away from the SEC was its quasi-judicial power over corporate cases under Section 5 of P.D. No. 902-A; and that all its regulatory powers remain within its powers post-SRC enactment.

It is quite surprising, therefore, that in the 2004 decision in *Morato v. Court of Appeals*,[55] which involved a petition to declare the nullity of stockholders' and directors' meetings that were held, the Supreme Court ruled by way of *obiter dictum* that pursuant to Subsection 5.2 of the SRC —

> Among the powers and functions of the SEC which were transferred to the RTC include the following: (a) jurisdiction and supervision over all corporations, partnerships[,] or associations who are the grantees of primary franchises and/or a license or permit issued by the Government; (b) the approval, rejection, suspension, revocation[,] or requirement for registration

53. *Id.* (emphasis supplied).

54. P.D. No. 902-A, § 6.

55. Morato v. Court of Appeals, 436 SCRA 438 (2004).

> statements, and registration and licensing applications; (c) the regulation, investigation[,] or supervision of the activities of persons to ensure compliance; (d) the supervision, monitoring, suspension[,] or take over [of] the activities of exchanges, clearing agencies[,] and other SROs; (e) the imposition of sanctions for the violation of laws and the rules, regulations[,] and orders issued pursuant thereto; (f) the issuance of cease-and-desist orders to prevent fraud or injury to the investing public; (g) the compulsion of the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision; and, (h) the exercise of such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.[56]

The *Morato* enumeration of "transferred SEC powers and functions"[57] does not find support either in the peculiar language of Section 5 of P.D. No. 902-A,[58] nor under the provisions of Subsections 5.1 and 5.2 of the SRC which enumerates the regulatory powers which the SEC retains post-SRC enactment.[59] For example, the following powers and functions — which fall within the SEC's regulatory functions; not within its quasi-judicial functions, and which under the SRC constitute an integral part of SEC's powers and functions — do not fall within any of the corporate cases found in Section 5, to wit:

(1) Approval, rejection, suspension, revocation, or requirement for registration statements, and registration and licensing applications;[60]

(2) Regulation, investigation, or supervision of the activities of persons to ensure compliance;[61]

(3) Supervision, monitoring, suspension, or take over of the activities of exchanges, clearing agencies, and other SROs;[62]

(4) Imposition of sanctions for the violation of laws and the rules, regulations, and orders issued pursuant thereto.[63]

Undoubtedly, the SEC's function as an administrative agency to "exercise ... such other powers as may be provided by law as well as those

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56. *Id.* at 456.

57. *Id.*

58. P.D. No. 902-A, § 5.

59. SECURITIES REGULATION CODE, §§ 5.1 & 5.2.

60. *Id.* § 5.1 (c).

61. *Id.* § 5.1 (d).

62. *Id.* § 5.1 (e).

63. *Id.* § 5.1 (f).

which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the [SEC] to achieve the objectives and purposes of these laws,"[64] cannot be arrogated by the RTC Special Commercial Courts, or even by courts of general jurisdiction, as these courts are wholly without jurisdiction to exercise executive power to enforce the laws.

Surprisingly, the *Morato obiter dictum* was reiterated in the 2007 decision in *Yujuico v. Quiambao*,[65] which involved an original petition filed with the RTC Special Commercial Court seeking the declaration of nullity of directors' and stockholders' meetings between two groups of feuding stockholders, with an ancillary request for the RTC to issue an order for the holding of a new stockholders' meeting.[66] After reiterating the *Morato obiter dictum*, *Yujuico* held that —

> Clearly, the RTC has the power to hear and decide the intra-corporate controversy of the parties herein. Concomitant to said power is the authority to issue orders necessary or incidental to the carrying out of the powers expressly granted to it. Thus, the RTC may, in appropriate cases, order the holding of a special meeting of stockholders or members of a corporation involving an intra-corporate dispute under its supervision.[67]

The confirmation under Subsection 5.1 of the SRC of the SEC's regulatory powers is by itself a statutory testament to the ill-conceived enumeration of "transferred SEC powers and functions to RTCs" in the *Morato* and *Syjuico* decisions. In fact, subsequently, in the 2008 decision in *Provident International Resources Corporation v. Venus*[68] involving the issue of whether the SEC still has authority to determine which of two certified stock and transfer books (STBs) was authentic and had priority in application,[69] the Supreme Court, after quoting Subsection 5.1. of the SRC, held that —

> From the above, it can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the [S]tate. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships[,] and

64. *Id.* § 5.1 (n).

65. Yujuico v. Quiambao, 513 SCRA 243, 257 (2007).

66. *Id.* at 247–48.

67. *Id.* at 257.

68. Provident International Resources Corporation v. Venus, 554 SCRA 540 (2008).

69. *Id.* at 541–45.

> associations (excluding cooperatives, homeowners' associations, and labor unions); compel legal and regulatory compliances, conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, [ ] as may be warranted.
>
> Considering that the SEC, after due notice and hearing, has the regulatory power to revoke the corporate franchise — from which a corporation owes its legal existence — the SEC must likewise have the lesser power of merely recalling and canceling a STB that was erroneously registered.[70]

Accordingly, the real challenge before legal scholars is to sort out which of the SEC's powers and functions under P.D. No. 902-A, the Corporation Code, and the SRC, are available as ancillary powers of the RTC Special Commercial Courts in hearing and deciding on "corporate cases" under Section 5 of P.D. No. 902-A; and which powers remain with the SEC as the primary administrative agency exercising regulatory jurisdiction, supervision, and control over private corporations and registered partnerships and associations.

B. The SEC's Quasi-Legislative Powers

1. Statutory Bases of the SEC's Quasi-Legislative Powers

The SEC's power of subordinate legislation is expressly granted under Section 143 of the Corporation Code, thus —

> Section 143. *Rule-making power of the Securities and Exchange Commission.* — The [SEC] shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees[,] or officers.[71]

While under the SRC, affirmation of SEC's quasi-legislative powers can be found in the Subsection 5.1: "(b) Formulate policies and recommendations on issues concerning the securities market[;]"[72] and "(g) Prepare, approve, amend[,] or repeal rules, regulations[,] and orders[;] and issue opinions[,] provide guidance on[,] and supervise compliance with such rules, regulations[,] and orders."[73]

As well as in Subsection 72.1 thereof, thus —

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70. *Id.* at 546-47.

71. CORPORATION CODE, § 143.

72. SECURITIES REGULATION CODE, § 5.1 (b).

73. *Id.* § 5.1 (g).

> Section 72. *Rules and Regulations; Effectivity.* — 72.1. This Code shall be self-executory. To effect the provisions and purposes of this Code, the [SEC] may issue, amend, and rescind such rules[,] regulations[,] and orders necessary or appropriate, including rules and regulations defining accounting, technical, and trade terms used in this Code, and prescribing the form or forms in which information required in registration statements, applications, and reports to the [SEC] shall be set forth. For purposes of its rules or regulations, the [SEC] may classify persons, securities, and other matters within its jurisdiction, prescribe different requirements for different classes of persons, securities, or matters, and by rule or order, conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities or transactions, from any or all provisions of this Code.
>
> Failure on the part of the [SEC] to issue rules and regulations shall not in any manner affect the self-executory nature of this Code.[74]

2. Effect of the SEC's Non-Issuance of Implementing Rules and Regulations

Even without the "self-executory clause"[75] found in its Section 72, the provisions of the SRC are effective and binding, and do not become suspended by reason that the SEC has not issued implementing rules and regulations. The rationale for this legal doctrine was explained in *Securities and Exchange Commission v. Interport Resources Corporation* (*Interport Resources*),[76] thus —

> *The necessity for vesting administrative authorities with power to make rules and regulations is based on the impracticability of lawmakers' providing general regulations for various and varying details of management.* To rule that the absence of implementing rules can render ineffective an act of Congress, such as the Revised Securities Act, would empower the administrative bodies to defeat the legislative will by delaying the implementing rules. *To assert that a law is less than a law, because it is made to depend on a future event or act, is to rob the Legislature of the power to act wisely for the public welfare whenever a law is passed relating to a state of affairs not yet developed, or to things future and impossible to fully know.* It is well established that administrative authorities have the power to promulgate rules and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies. Nevertheless, it is undisputable that the rules and regulations cannot assert for themselves a more extensive prerogative or deviate from the mandate of the statute. Moreover, where the statute contains sufficient standards and an

74. *Id.* § 72, para. 1.

75. *Id.*

76. Securities and Exchange Commission v. Interport Resources Corporation, 567 SCRA 354 (2008) [hereinafter *Interport*].

> unmistakable intent, as in the case of Sections 30 and 36 of the Revised Securities Act, there should be no impediment to its implementation.[77]

3. The SEC's Power to Issue Opinions

Subsection 5.1 (g) of the SRC expressly empowers the SEC to "issue opinions[,] provide guidance on[,] and supervise compliance with such rules, regulations[,] and orders."[78] In its landmark decision in *Gamboa v. Teves*,[79] the Supreme Court had the opportunity to evaluate the power of the SEC under Subsection 5.1 (g) of the SRC, by connecting it with the delegation authority under Subsection 4.6 thereof, thus —

> 4.6. The [SEC] may, for purposes of efficiency, delegate any of its functions to any department or office of the [SEC], an individual Commissioner[,] or staff member of the [SEC] *except its review or appellate authority and its power to adopt, alter*[,] *and supplement any rule or regulation.*
>
> The [SEC] may review upon its own initiative[,] or upon the petition of any interested party[,] any action of any department or office, individual Commissioner, or staff member of the [SEC].[80]

In *Gamboa*, where one of the issues to be resolved was the binding effect of the opinions issued by the SEC's General Counsel applying the control test for corporations engaged in nationalized actitivities, it was held in Justice Antonio T. Carpio's *ponencia* that —

> [t]*he opinions issued by SEC legal officers do not have the force and effect of SEC rules and regulations because only the SEC en banc can adopt rules and regulations.* As expressly provided in Section 4.6 of the [SRC], the SEC cannot delegate to any of its individual Commissioner or staff the power to adopt any rule or regulation. Further, *under Section 5.1 of the same Code, it is the SEC as a collegial body, and not any of its legal officers, that is empowered to issue opinions and approve rules and regulations.*[81]
>
> ...
>
> Thus, the act of the individual Commissioners or legal officers of the SEC in issuing opinions that have the effect of SEC rules or regulations is *ultra vires*. Under Sections 4.6 and 5.1 (g) of the [SRC], only the SEC *en banc* can 'issue opinions' that have the force and effect of rules or regulations. Section 4.6 of the Code bars the SEC *en banc* from delegating to any individual Commissioner or staff the power to adopt rules or regulations. *In*

77. *Id.* at 379 (emphasis supplied).

78. SECURITIES REGULATION CODE, § 5.1 (g).

79. Gamboa v. Teves, 652 SCRA 690 (2011) & Gamboa v. Teves, 682 SCRA 397 (2012).

80. SECURITIES REGULATION CODE, § 46 (emphasis supplied).

81. *Gamboa*, 682 SCRA at 398 (2012) (emphasis supplied).

short, any opinion of individual Commissioners or SEC legal officers does not constitute a rule or regulation of the SEC.[82]

C. The SEC's Regulatory Powers

1. Though bereft of its Quasi-Judicial Powers under Section 5, the SEC retains its Regulatory Powers under Sections 3 and 6 of P.D. No. 902-A

Both Sections 3 and 6 of P.D. No. 902-A enumerate substantial powers of the SEC, covering the exercise of both its pure regulatory[83] as well as "regulatory adjudicative functions,"[84] such as the power, among others, to issue injunctive orders and *subpoenas duces tecum*, or to punish for contempt.[85] More importantly, after enumerating the SEC's powers, Section 6 provides for a system of hearing and appeal from the orders, rulings, and decisions of the SEC.[86]

During the pre-SRC period, many of the controversies which arose from the SEC's exercise of both its regulatory adjudicative functions and its quasi-judicial powers under Section 5 were actually resolved by resorting to Section 3 and the provisions of Section 6 of P.D. No. 902-A. For example, in proceedings on corporate rehabilitation, the automatic stay provision that suspends all pending actions against the corporate debtor upon the appointment of the management committee, or rehabilitation receiver, was found in Section 6 (c) of P.D. No. 902-A.[87]

With the enactment of the SRC, the relevant question asked was whether the SEC still had the powers granted under Section 6 of P.D. No. 902-A, since no provision in the SRC deals with what would be the proper application of the provisions therein. In fact, Subsection 5.1 of the SRC expressly provides that the SEC "shall have the powers and functions provided by ... P.D. No. 902-A, [and] the Corporation Code,"[88] and formally grants to the SEC also the broad and significant powers as those

82. *Id.* at 419-20 (emphasis supplied).

83. P.D. No. 902-A, § 3.

84. *Id.* § 5.

85. *Id.* § 6.

86. *Id.*

87. *See generally* Philippine Commerical International Bank v. Court of Appeals, 172 SCRA 436 (1989); Alemar's Sibal & Sons, Inc. v. Elbinias, 186 SCRA 94 (1990); Ching v. Land Bank of the Philippines, 201 SCRA 190 (1991); Rizal Commercial Banking Corp. v. Intermediate Appellate Court, 213 SCRA 830 (1992); Bank of Philippine Islands v. Court of Appeals, 229 SCRA 223 (1994); Barotac Sugar Mills, Inc. v. Court of Appeals, 275 SCRA 497 (1997); & Union Bank of the Philippines v. Court of Appeals, 290 SCRA 198 (1998).

88. SECURITIES REGULATION CODE, § 5.1.

enumerated under Section 6 of P.D. No. 902-A.[89] In addition, a review of the various enumerated powers of the SEC in Section 6 of P.D. No. 902-A[90] shows that, except for a few (such as the power to appoint a management committee or rehabilitation receiver in proceedings for corporate and rehabilitation), such powers are still exercisable by the SEC since they are consistent with its purely regulatory powers over corporations, partnerships, and other associations.

The proposition that the regulatory powers of the SEC, under Section 6 of P.D. No. 902-A, remain unaffected with the transfer of Section 5 corporate cases to the RTC Special Commercial Courts was eventually affirmed in the 2003 case of *Fabia v. Court of Appeals*,[91] which covered the issue of whether a criminal case for estafa, committed by a corporate officer against a corporation and pending before the RTC, can independently and simultaneously proceed with a civil/intra-corporate case to be filed with the RTC Special Commercial Courts.[92] The Supreme Court noted that

> while [Section] 5 of P.D. No. 902-A was amended by [Section] 5.2 of [the SRC], there is no repeal of [Section] 6 thereof declaring that prosecution under the Decree, or any Act, law, rules, and regulations enforced and administered by the SEC shall be without prejudice to any liability for violation of any provision of the Revised Penal Code [(RPC)].[93]

It is noteworthy, however, that this Court's observation in *Fabia* was inaccurate because the quoted provision was actually Section 8 of P.D. No. 902-A — which was expressly repealed by Section 76 of the SRC.

Nevertheless, from the reasoning in *Fabia*, it may be concluded that Section 6, and other provisions of P.D. No. 902-A which have not been abrogated by the SRC, remain valid and effective sources of power and continue to be determinative of the proper exercise of the SEC's regulatory adjudicative functions and whatever residual quasi-judicial powers it continues to possess outside of Section 5 of P.D. No. 902-A.

2. The SEC No Longer Possesses the Powers under Section 6 of P.D. No. 902-A which are Tied-Up with the Rules of Court

It would be reasonable to conclude that with the transfer of corporate cases under Section 5 of P.D. No. 902-A to the original and exclusive jurisdiction of the RTC Special Commercial Courts, the SEC has ceased to possess the

89. *Id.*

90. *Id.*

91. Fabia v. Court of Appeals, 388 SCRA 574 (2003).

92. *Id.* at 576-77.

93. *Id.* at 584.

following powers under Section 6 of P.D. No. 902-A, which are intricately tied-up with the Rules of Court, thus:

> (a) To issue preliminary or permanent injunctions, whether prohibitory or mandatory, in all cases in which it has jurisdiction, and in which cases the pertinent provisions of the Rules of Court shall apply;
>
> (b) To issue writs of attachment in cases in which it has jurisdiction in order to preserve the rights of parties[,] and in such cases pertinent provisions of the Rules of Court shall apply;
>
> (c) To appoint one or more receivers of the property, real or personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court[, and] in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: *Provided, however*, That the [SEC] may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships[,] or other associations not supervised or regulated by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph [(d)] hereof; *Provided, further*, That the Commission may appoint a rehabilitation receiver of corporations, partnerships[,] or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned; *Provided, finally*, That upon appointment of a management committee, the rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships, or associations under management or receivership pending before any court, tribunal, board[,] or body shall be suspended accordingly; and
>
> (d) To create and appoint a management committee, board[,] or body upon petition or *motu proprio* to undertake the management of corporations, partnerships[,] or other associations not supervised or regulated by other government agencies in appropriate cases when there is imminent danger of dissipation, loss, wastage[,] or destruction of assets or other properties[;] or paralyzation of business operations of such corporations or entities, which may be prejudicial to the interest of minority stockholders, parties-litigants[,] or the general public; *Provided, further*, That the [SEC] may create or appoint a management committee, board[,] or body to undertake the management of corporations, partnerships[,] or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned.
>
> The management committee or rehabilitation receiver, board[,] or body, shall have the power to take custody of, and control over, all the existing assets and property of such entities under management; to evaluate the existing assets and liabilities, earnings[,] and operations of such corporations, partnership[,] or other associations; to determine the

> best way to salvage and protect the interest of the investors and creditors; to study, review[,] and evaluate the feasibility of continuing operations[,] and restructure and rehabilitate such entities if determined to be feasible by the [SEC]. It shall report and be responsible to the [SEC] until dissolved by order of the [SEC]; *Provided, however*, That the [SEC] may, on the basis of the findings and recommendation of the management committee, or rehabilitation receiver, board[,] or body, or in its own findings, determine that the continuance in business of such corporation or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors[,] or the general public, order the dissolution of such corporation or entity and its remaining assets liquidated accordingly. The management committee or rehabilitation receiver, board[,] or body, may overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provisions of law, articles of incorporation[,] or by-laws to the contrary.
>
> The management committee, or rehabilitation receiver, board[,] or body, shall not be subject to any action, claim[,] or demand for, or in connection with, any act done or omitted to be done by it in good faith in exercise of its functions, or in connection with the exercise of its power herein conferred.[94]

Such a conclusion necessarily flows from the configuration provided under P.D. No. 902-A, where the SEC's quasi-judicial powers on corporate cases, under Section 5, stand separate and apart from its regulatory adjudicative powers found under Section 3 of the same P.D.; that in fact, corporate cases under Section 5 would have been within the original and exclusive jurisdiction of RTCs were it not for the clear original legislative intent in said Section 5 to place them instead within the original and exclusive jurisdiction of the SEC.

Thus, in the same manner today, with the transfer of the original and exclusive jurisdiction over corporate cases under Section 5 to the RTC Special Commercial Courts, then Section 6 ancillary powers relating to the Rules of Court have ceased to be within the SEC's legal competence to exercise since it has ceased to act as a "judicial tribunal" governed by the Rules of Court.

Nonetheless, the SEC's power to cite for contempt under Section 6 (e),[95] although tied to the Rules of Court, has been re-affirmed to still be within the SEC's powers, under Subsection 5.1 (j) of the SRC, which grants the SEC the power to "[p]unish for contempt of the [SEC], both direct and indirect, in accordance with the pertinent provisions of and penalties

94. P.D. No. 902-A, § 6.

95. *Id.* § 6 (e).

prescribed by the Rules of Court."[96] This affirms the retention by the SEC of its regulatory adjudicatory powers outside of corporate cases under Section 5 of P.D. No. 902-A.

3. The SEC's Power to Conduct Investigations

Prior to the enactment of the SRC, Section 5 (a) of P.D. No. 902-A placed within the exclusive and original jurisdiction of the SEC corporate cases involving "[d]evices or schemes employed by or any acts of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations, or organizations registered with the [SEC]."[97] In turn, Sections 6 and 8 of P.D. No. 902-A provided for the power of the SEC, acting through its Prosecution and Enforcement Division (PED), to investigate corporate offenses, thus —

> Section 6.
>
> ...
>
> The [PED] shall have, subject to the [SEC]'s control and supervision, the exclusive authority to investigate, on complaint or *motu proprio*, any act or omission of the [b]oard of [d]irectors/[t]rustees of corporations, or of partnerships, or of other associations, or of their stockholders, officers or partners, including any fraudulent devices, schemes or representations in violation of any law or rules and regulations administered and enforced by the [SEC]; to file and prosecute in accordance with law and rules and regulations issued by the [SEC] and in appropriate cases, the corresponding criminal or civil case before the [SEC] or the proper court or body upon *prima facie* finding of violation of any laws or rules and regulations administered and enforced by the [SEC]; to perform such other powers and functions as may be provided by law or duly delegated to it by the [SEC].
>
> *Prosecution under this Decree or any act, law, rules*[,] *and regulations enforced and administered by the* [*SEC*] *shall be without prejudice to any liability for violation of any provision of the* [*RPC*].
>
> ...
>
> Section 8.
>
> The proceeds and effect of crimes committed by any person or entity in violation of the laws and regulations administered and enforced by the [SEC] shall be forfeited, seized[,] and confiscated in favor of the State upon order of the [SEC], after due notice and hearing.[98]

96. SECURITIES REGULATION CODE, § 5.1 (j).

97. *Id.* § 5 (a).

98. *Id.* § 6 & 8(emphasis supplied).

Mobilia Products, Inc. v. Umezawa,[99] interpreted Section 8 to the effect that

> the filing of the civil/intra-corporate case before the SEC do[es] not preclude the simultaneous and concomitant filing of a criminal action before the regular courts; such that a fraudulent act may give rise to liability for violation of the rules and regulations of the SEC cognizable by the SEC itself, as well as criminal liability for violation of the [R.P.C] cognizable by the regular courts, both charges to be filed and proceeded independently, and may be simultaneously with the other.[100]

Section 8 of P.D. No. 902-A has been expressly repealed by Section 76[101] of the SRC, so that in *Morato*, the Supreme Court ruled that "[t]hus, under the new law, the PED ceased to exist,"[102] nonetheless, the investigative proceedings of the SEC could continue on the ground that the *SEC had not lost its prosecutorial or criminal investigative powers*[103] under the laws that it administers, pursuant to paragraphs (d) and (l) of Section 5 of the SRC, thus:

> (d) Regulate, investigate[,] or supervise the activities of persons to ensure compliance;
>
> ...
>
> (l) Issue *subpoena duces tecum* and summon witnesses to appear in any proceedings of the [SEC] and in appropriate cases, order the examination, search[,] and seizure of all documents, papers, files and records, tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provisions of existing laws[.][104]

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99. Mobilia Products, Inc. v. Umezawa, 452 SCRA 737 (2005).

100. *Id.* at 766.

101. SECURITIES REGULATION CODE, § 76, provides —

> *Repealing Clause.* — The Revised Securities Act ([B.P.] 178), as amended, in its entirety, and Sections 2, 4[,] and 8 of [P.D.] 902-A, as amended, are hereby repealed. All other laws, orders, rules[,] and regulations, or parts thereof, inconsistent with any provision of this Code are hereby repealed or modified accordingly.

Id.

102. *Morato*, 436 SCRA at 458.

103. *Id.*

104. SECURITIES REGULATION CODE, § 5.

In addition, the SEC's power to investigate securities fraud cases, found under Section 45 of the Revised Securities Act,[105] has been re-enacted in Section 53 of the SRC, thus —

> Section 53. *Investigations, Injunctions*[,] *and Prosecution of Offenses.*
>
> 53.1. The [SEC] may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of [the SRC], any rule, regulation[,] or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other [SRO], and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the [SEC] shall determine, as to all facts and circumstances concerning the matter to be investigated. ... *Provided, further*, That all criminal complaints for violations of this Code, and the implementing rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice [(DOJ)] for preliminary investigation and prosecution before the proper court: *Provided, furthermore*, That in instances where the law allows independent civil or criminal proceedings of violations arising from the same act, the Commission shall take appropriate action to implement the same: *Provided, finally*, That the investigation, prosecution, and trial of such cases shall be given priority.[106]

In her *ponencia* in *Interport Resources*,[107] Justice Minita V. Chico-Nazario confirmed that —

> Section 53 of the [SRC] clearly provides that criminal complaints for violations of rules and regulations enforced or administered by the SEC shall be referred to the [DOJ] for preliminary investigation, *while the SEC nevertheless retains limited investigatory powers.* Additionally, the SEC may still impose the appropriate administrative sanctions under Section 54 of the aforementioned law.[108]
>
> ...
>
> While the SEC investigation serves the same purpose and entails substantially similar duties as the preliminary investigation conducted by the DOJ, this process cannot simply be disregarded. In *Baviera v. Paglinawan*, this Court enunciated that a criminal complaint is first filed with the SEC, which determines the existence of probable cause, before a preliminary investigation can be commenced by the DOJ. In the aforecited case, the complaint filed directly with the DOJ was dismissed on the ground that it should have been filed first with the SEC. Similarly, the offense was a

105. The Revised Securities Act [Revised Securities Act], Batas Pambansa Blg. 178, § 45 (1982).

106. *Id.* § 53.1.

107. *Interport*, 567 SCRA 354.

108. *Id.* at 407 (emphasis supplied).

> violation of the SRC, wherein the procedure for criminal prosecution was reproduced from Section 45 of the Revised Securities Act.
>
> Consequently, post-SRC enactment, the prevailing rule is that a criminal complaint for violation of any law or rule administered by the SEC, particularly the SRC, must first be filed with the SEC, which determines the existence of probable cause, before a preliminary investigation can be commenced by the [DOJ]. It is only when the SEC finds that there is probable cause, that the case is referred to the DOJ, under the following doctrine enunciated in *Interport Resources* [ ], thus [—]
>
> > A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, i.e., the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact.[109]

Interport Resources also gave the Supreme Court the opportunity to discuss the difference between the SEC's "investigative power" as an aspect of its regulatory powers, from its adjudicative or quasi-judicial powers, thus —

> 'Investigate,' commonly understood, means to examine, explore, inquire[,] delve or probe into, research on, [or] study. The dictionary definition of 'investigate' is 'to observe or study closely; inquire into systematically[;] to search or inquire into[;] to subject to an official probe[; or] to conduct an official inquiry.' The purpose of an investigation, of course[,] is to discover, to find out, to learn, [and] obtain information. Nowhere included or intimated is the notion of settling, deciding[,] or resolving a controversy involved in the facts inquired into by application of the law to the facts established by the inquiry.
>
> The legal meaning of 'investigate;' is essentially the same: '[to] follow up step by step by patient inquiry or observation. To trace or track; to search into; to examine and inquire into with care and accuracy; to find out by careful inquisition; examination; the taking of evidence; a legal inquiry[.] '[I]nvestigation' being in turn described as '(a)n administrative function, the exercise of which ordinarily does not require a hearing ... for the discovery and collection of facts concerning a certain matter or matters.'
>
> 'Adjudicate,' commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, [or] settle. The dictionary defines the term as 'to settle finally (the rights and duties of parties to a court case) on the merits of issues raised[;] to pass judgment on[; or to] settle judicially[.]' And 'adjudge' means 'to decide or rule upon as a

109. *Id.* at 413 (citing Baviera v. Paglinawan, 515 SCRA 170 (2007)).

> judge or with judicial or quasi-judicial powers: ... to award or grant judicially in a case of controversy[.]'
>
> In a legal sense, 'adjudicate' means: '[to] settle in the exercise of judicial authority[;] to determine finally[: and it is synonymous] with *adjudge* in its strictest sense[.]' [In turn,] 'adjudge' means: '[to] pass on judicially, to decide, settle, or decree, or to sentence or condemn[, implying] a judicial determination of a fact, and the entry of a judgment.'[110]

4. The SEC's Powers to Issue Subpoenas and Summon Witnesses, to Punish for Contempt

Under Section 6 (h) of P.D. No. 902-A, the SEC had the power to issue subpoenas and summon witnesses to appear in any of its proceedings, thus —

> (h) To issue *subpoena duces tecum* and summon witnesses to appear in any proceedings of the Commission and[,] in appropriate cases[,] order the examination, search and seizure of all documents, papers, files and records, tax returns, and book of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, notwithstanding the provisions of any law to the contrary.[111]

This power has been re-affirmed under Subsection 5.1 (l) of the SRC —

> (l) Issue *subpoena duces tecum* and summon witnesses to appear in any proceedings of the Commission and[,] in appropriate cases, order the examination, search and seizure of all documents, papers, files and records, tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provisions of existing laws[.][112]

There should be no legal doubt that post-SRC enactment, the SEC continues to exercise the power to issue subpoena and summon witnesses to appear before it, on proceedings which are in the exercise of its pure regulatory powers or those in the exercise of its "regulatory adjudicative functions," or even when it exercises its quasi-judicial powers outside of corporate cases under Section 5 of P.D. No. 902-A.

It should also follow that the SEC may also punish for contempt individuals who refuse to abide by its orders, pursuant to Section 6 (e) of P.D. No. 902-A, as re-affirmed under Subsection 5.1 (j) of the SRC.

5. The SEC's Power to Compel the Calling of Stockholders' or Members' Meetings

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110. *Id.* at 399 (citing Cariño v. Commission on Human Rights, 204 SCRA 483, 495-96 (1991)).

111. P.D. No. 902-A, § 6 (h).

112. SECURITIES REGULATION CODE, § 5.1 (l).

It would have been reasonable to conclude that the ancillary powers of the SEC under Section 6 (f) of P.D. No. 902-A "[t]o compel the officers of any corporation or association registered by it to call meetings of stockholders or members thereof under its supervision,"[113] which is intricately connected with resolutions of intra-corporate controversies under Section 5 of P.D. No. 902-A — especially in election contests — would no longer be exercisable by the SEC as they would intrude with the exercise by RTC Special Commercial Courts of their original and exclusive jurisdiction over corporate cases. Nonetheless, such power of the SEC has been confirmed to remain under Subsection 5.1 (k) of SRC, which grants the power to "[c]ompel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision."[114]

The re-affirmation of such power to compel the holding of meetings would indicate that such regulatory power is not within the judicial powers of the RTC Special Commercial Courts to impose in the resolution of corporate cases under Section 5 of P.D. No. 902-A; or when necessary for the resolution of the justiciable controversy falling with the original and exclusive jurisdiction of the RTC Special Commercial Courts, should be treated in accordance with the doctrine of primary jurisdiction (i.e., the doctrine of prior resort), with full respect to the regulatory powers of the SEC on such matter.

6. The SEC's Power to Pass Upon the Validity of the Issuance and Use of Proxies and Voting Trusts Agreements

A good area to determine the remaining quasi-judicial powers of the SEC post-SRC enactment, would be in the cases involving proxy solicitation and proxy validation covered by provisions of both the Corporation Code and the SRC, as well as Section 5 (g) of P.D. No. 902-A, which originally granted to the SEC the power "[t]o pass upon the validity of the issuance and use of proxies and voting trust agreements for absent stockholders or members."[115]

The 2009 decision in *Government Service Insurance System v. Court of Appeals* (*GSIS*),[116] affords us the proper venue to resolve the issue of whether the SEC retains proper jurisdiction to hear and decide upon justiciable issues pertaining to the validity of proxies solicited in

113. P.D. No. 902-A, § 6 (f).

114. SECURITIES REGULATION CODE, § 5.1 (k).

115. P.D. No. 902-A, § 5 (g).

116. Government Service Insurance System v. Court of Appeals, 585 SCRA 679 (2009) [hereinafter *GSIS*].

contemplation of the annual stockholders' meeting of publicly-listed companies.[117]

In *GSIS*, a petition was filed with the SEC by the Government Service Insurance System (GSIS), a substantial stockholder of Manila Electric Company (Meralco), seeking to restrain the acting corporate secretary from "recognizing, counting[,] and tabulating, directly or indirectly, notionally or actually or in whatever way, form, manner[,] or means, or otherwise honoring the shares covered by"[118] the proxies in favor of the Lopez group, and to annul and declare invalid said proxies.[119] The petition also prayed for the issuance of a cease-and-desist order (CDO) to restrain the use of said proxies during the annual meeting scheduled for the following day.[120] In spite of the issuance of the CDO by the SEC, the annual meeting pushed through with the acting corporate secretary announcing during the proceedings that the CDO was null and void.[121] When the SEC issued against the Lopez group a show-cause-order for defying its order, the respondents filed a petition with the Court of Appeals, which eventually issued a resolution declaring null and void both SEC orders.[122] In a petition for *certiorari* filed with the Supreme Court, the main issues decided were "(1) whether the SEC has jurisdiction over the petition filed by GSIS against private respondents; and (2) whether the CDO and SCO issued by the SEC are valid."[123]

In his ponencia, Justice Dante O. Tinga, on one hand, noted that the SEC's jurisdiction over issues involving proxies has statutory basis under Sections 20 and 53.1 of the SRC[124], thus —

> Section. 20. *Proxy Solicitations.*
>
> 20.1. Proxies must be issued and proxy solicitation must be made in accordance with rules and regulations to be issued by the [SEC];[125]
>
> ...
>
> Section. 53. *Investigations, Injunctions*[,] *and Prosecution of Offenses.*
>
> 53.1. The [SEC] may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to

117. *Id.* at 682–83.

118. *Id.* at 691.

119. *Id.*

120. *Id.*

121. *Id.* at 691–92.

122. *GSIS*, 585 SCRA at 692–93.

123. *Id.* at 699.

124. *Id.* at 703.

125. *Id.* (citing SECURITIES REGULATION CODE, § 20).

> violate any provision of this *Code, any rule, regulation*[,] *or order thereunder*, or any rule of an Exchange, [RSO], clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the [SEC] shall determine, as to all facts and circumstances concerning the matter to be investigated. The [SEC] may publish information concerning any such violations, and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Code, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Code relates;[126]

Justice Tinga also noted that —

> [t]he GSIS petition invoked AIRR-SRC Rule 20, otherwise known as The Proxy Rule, which enumerates the requirements as to form of proxy and delivery of information to security holders. According to [the] GSIS, the information statement [that] Meralco had filed with the SEC in connection with the annual meeting did not contain any proxy form as required under AIRR-SRC Rule 20.[127]

On the other hand, the *ponente* took into consideration Meralco's position that under Section 5.2 of the SRC, the SEC's jurisdiction over all cases enumerated in Section 5 of P.D. No. 902-A was transferred to RTC Special Commercial Courts, as well as the definition of "election contest" under Section 2 of Rule 6 of the Interim Rules of Procedure on Intra-Corporate Controversies[128] as referring to —

> [A]ny controversy or dispute involving title or claim to any elective office in a stock or nonstock corporation, the validation of proxies, the manner and validity of elections and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee[,] or other officer directly elected by the stockholders in a close corporation[,] or by members of a nonstock corporation where the articles of incorporation or [by-laws] so provide.[129]

Ultimately, Justice Tinga distinguished between the process of "proxy validation" from that of "proxy solicitation" to settle the jurisdictional conflicts, explaining that

> the distinction between 'proxy solicitation' and 'proxy validation' cannot be dismissed offhand. The right of a stockholder to vote by proxy is generally established by the Corporation Code, but it is the SRC which specifically regulates the form and use of proxies, more particularly the

126. *Id.* (citing SECURITIES REGULATION CODE, § 53) (emphasis supplied).

127. *Id.* at 702.

128. *GSIS*, 585 SCRA at 702-03.

129. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 6, § 2.

> procedure of proxy solicitation, primarily through Section 20. 42 AIRR-SRC Rule 20 defines the terms solicit and solicitation:
>
> ...
>
> It is plain that proxy solicitation is a procedure that antecedes proxy validation. The former involves the securing and submission of proxies, while the latter concerns the validation of such secured and submitted proxies. GSIS raises the sensible point that there was no election yet at the time it filed its petition with the SEC, hence no proper election contest or controversy yet over which the regular courts may have jurisdiction. And the point ties its cause of action to alleged irregularities in the proxy solicitation procedure, a process that precedes either the validation of proxies or the annual meeting itself.[130]

Finally, Justice Tinga noted that —

> the investigatory power of the SEC established by Section 53.1 [of the SRC] is central to its regulatory authority, most crucial to the public interest especially as it may pertain to corporations with publicly traded shares. For that reason, we are not keen on pursuing private respondents' insistence that the GSIS complaint be viewed as rooted in an intra-corporate controversy solely within the jurisdiction of the trial courts to decide. *It is possible that an intra-corporate controversy may animate a disgruntled shareholder to complain to the SEC a corporation's violations of SEC rules and regulations, but that motive alone should not be sufficient to deprive the SEC of its investigatory and regulatory powers, especially so since such powers are exercisable on a motu proprio basis.*[131]

7. The SEC's Power to Issue Cease-and-Desist Order (CDO)

There was no express provision in the Revised Securities Act granting to the SEC the power to issue CDOs, with the closest powers relating to it being Section 47 which gave the SEC the power to enjoin *motu proprio* any act or practice of which could cause grave or irreparable injury or prejudice to the investing public.[132]

Nonetheless, in *Philippine Association of Stock Transfer and Registry Agencies, Inc. v. Court of Appeals*,[133] which "involve[d] the question of whether the SEC had the power to enjoin petitioner's planned increase in fees after the SEC had determined that said act if pursued may cause grave or irreparable injury or prejudice to the investing public,"[134] the Supreme

130. *GSIS*, 585 SCRA at 703-04.

131. *Id.* at 705 (emphasis supplied).

132. Revised Securities Act, § 47.

133. Philippine Association of Stock Transfer and Registry Agencies, Inc. v. Court of Appeals, 536 SCRA 61 (2007).

134. *Id.* at 71.

Court held that the regulatory powers of SEC are broad enough to include the power to regulate the fees imposed by stock transfer agents, including the issuance of CDO to protect the investing public, thus —

> Petitioner was fined for violating the SEC's [CDO] which the SEC had issued to protect the interest of the investing public, and not simply for exercising its judgment in the manner it deems appropriate for its business.
>
> The regulatory and supervisory powers of the [SEC] under Section 40 of the then Revised Securities Act, in our view, were broad enough to include the power to regulate petitioner's fees. Indeed, Section 47 gave the [SEC] the power to enjoin *motu proprio* any act or practice of petitioner which could cause grave or irreparable injury or prejudice to the investing public. The intentional omission in the law of any qualification as to what acts or practices are subject to the control and supervision of the SEC under Section 47 confirms the broad extent of the SEC's regulatory powers over the operations of securities-related organizations like petitioner.
>
> The SEC's authority to issue the [CDO] being indubitable under Section 47 in relation to Section 40 of the then Revised Securities Act, and there being no showing that the SEC committed grave abuse of discretion in finding basis to issue said order, we rule that the Court of Appeals committed no reversible error in affirming the assailed orders. For its open and admitted defiance of a lawful cease-and-desist order, petitioner was held appropriately liable for the payment of the penalty imposed on it.[135]

Subsection 5.1 of the SRC now expressly grants to the SEC the power to "[i]ssue [CDO] to prevent fraud or injury to the investing public;"[136] the exercise of which is properly delineated as an exercise of regulatory adjudicative power under Section 64 —

> 64.1. The [SEC], after proper investigation or verification, *motu proprio*, or upon verified complaint by any aggrieved party, may issue a [CDO] without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.[137]

In *Securities and Exchange Commission v. Performance Foreign Exchange Corporation*,[138] it was held that there are two essential requirements that must be complied with by the SEC before it may issue a CDO: (1) it must conduct proper investigation or verification; and (2) there must be a finding that the act or practice, unless restrained, will operate as a fraud on investors

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135. *Id.*

136. SECURITIES REGULATION CODE, § 5.1.

137. *Id.* § 64.

138. Securities and Exchange Commission v. Performance Foreign Exchange Corporation, 495 SCRA 579 (2006).

or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.[139] It was ruled therein that a clarificatory conference undertaken by the SEC regarding the corporation's business operations cannot be considered a proper investigation or verification process to justify the issuance of a cease and desist order. The investigation, to be proper, must be conducted by the SEC before, not after, issuing the cease and desist order.[140]

In *GSIS*, the Supreme Court held that there are three distinct bases for the issuance by the SEC of a CDO under the SRC:

> (1) Under Section 5 (i), predicated on a necessity "to prevent fraud or injury to the investing public;"[141]
>
> (2) Under Section 53.3, involves a determination by the SEC that "any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency or other self-regulatory association;"[142] and
>
> (3) Under Section 64, where the CDO is founded on a determination of an act or practice, which unless restrained, "will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury to the investing public."[143]

In his *ponencia* in *GSIS*, Justice Tinga gave a number of distinctions between the three statutory sources of power of the SEC to issue a CDO, thus —

> In view of the statutory differences among the three CDOs under the SRC, it is essential that the SEC, in issuing such injunctive relief, identify the exact provision of the SRC on which CDO is founded. Only by doing so could the adversely affected party be able to properly evaluate whatever his responses under the law.[144]
>
> ...
>
> Notwithstanding the similarities between Section 5 (i) and Section 64.1, it remains clear that the CDO issued under Section 53.3 is a distinct creation from that under Section 64. ... A singular CDO could not be founded on Section 5.1, Section 53.3, and Section 64 collectively — at the very least,

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139. *Id.* at 588.

140. *Id.*

141. *GSIS*, 585 SCRA at 713-14 (citing SECURITIES REGULATION CODE, § 5 (i)).

142. *Id.* (citing SECURITIES REGULATION CODE, § 53.3).

143. *Id.* (citing SECURITIES REGULATION CODE, § 64).

144. *Id.* at 717.

> the CDO under Section 53.3 and under Section 64 have their respective requisites and terms.[145]
>
> Considering that injunctive relief generally avails upon the showing of a clear legal right to such relief, the inability or unwillingness to lay bare the precise statutory basis for the prayer for injunction is an obvious impediment to a successful application. Nonetheless, the error of the SEC in granting the CDO without stating which kind of CDO it was issuing is more unpardonable, as it is an act that contravenes due process of law.
>
> ...
>
> In administrative proceedings, that the body or tribunal 'in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.'
>
> ...
>
> The fact the CDO was signed, much less apparently deliberated upon, by only one commissioner likewise renders the order fatally infirm. The SEC is a collegial body composed of a Chairperson and four Commissioners. In order to constitute a quorum, the presence of at least three Commissioners is required.
>
> ...
>
> It should be clear now that SEC's power to issue a CDO cannot be delegated to an individual Commissioner.[146]

The power of the SEC to issue CDO is a statutory confirmation that it is still possessed of regulatory adjudicative powers.

8. The SEC's Power to Impose Fines and Other Penalties

The SEC's power under Section 6 (i) of P.D. No. 902-A "to impose fines and/or penalties for violation of this Decree or any other laws being implemented by the [SEC], the pertinent rules and regulations, its orders, decisions and/or rulings[,]"[147] has been re-affirmed under Subsection 5.1 (f) of the SRC, which gives the SEC the power to "[i]mpose sanctions for the violation of laws and the rules, regulations[,] and orders issued pursuant thereto."[148]

145. *Id.* at 714.

146. *Id.* at 715 & 717-18.

147. P.D. No. 902-A, § 6, ¶ (i).

148. SECURITIES REGULATION CODE, § 5.1 (f).

9. The SEC's Power to Impose and Collect Fees

Under P.D. No. 902-A, the quasi-legislative power of the SEC to set the rates of the fees that it charges is found in Section 7 thereof — "[t]he [SEC] is authorized to recommend to the President the revision, alteration, amendment[,] or adjustment of the charges and fees, which by law, it is authorized to collect."[149] In addition, Section 139 of the Corporation Code expressly authorizes the SEC "to collect and receive fees as authorized by law or by the rules and regulations promulgated by the Commission."[150]

Securities and Exchange Commission v. GMA Network, Inc.,[151] ruled that (1) the authority of the SEC to collect and receive fees is provided for expressly in Section 139 of the Corporation Code which authorizes the SEC to collect and receive fees as authorized by law or by rules and regulations promulgated by it;[152] (2) that rate-fixing is a legislative function which concededly has been delegated to the SEC under R.A. No. 3531[153] and other pertinent laws, which expressly authorize the SEC to collect fees for examining and filing articles of incorporation and by-laws and amendments thereto, certificates of increase or decrease of the capital stock, among others;[154] and (3) that Section 7 of P.D. No. 902-A empowers the SEC to recommend to the President the revision, alteration, amendment or adjustment of the charges which it is authorized to collect.[155]

GMA Network, Inc. also held that a SEC memorandum circular, which imposes rates on the filing of petition for amendment of articles of incorporation, cannot be construed as simply interpretative of R.A. No. 3531 since it is an implementation of its mandate under said law; indubitably regulates and affects the public at large; and, consequently, ineffective when it has been shown that it has not be duly published by SEC as required by law.[156]

Although the power to provide for a set of fees is an aspect of its exercise of quasi-legislative powers, nonetheless, resolutions of what particular fees are due from corporations or their activities are an exercise by the SEC of its

149. P.D. No. 902-A, § 7.

150. CORPORATION CODE, § 139.

151. Securities and Exchange Commission v. GMA Network, Inc., 575 SCRA 113 (2008) [hereinafter *GMA Network, Inc.*].

152. *Id.* at 119.

153. An Act to Further Amend Section Eighteen of the Corporation Law, Act Numbered One Thousand Four Hundred and Fifty-Nine, as Amended, Republic Act No. 3531 (1963).

154. *GMA Network, Inc.*, 575 SCRA at 123.

155. *Id.* at 119.

156. *Id.* at 123.

regulatory adjudicative functions. Thus, in *GMA Network, Inc.* it was held that the rate-fixing power of the SEC, although it is an exercise of regulatory powers, is subject to the requirements of due process, thus —

> The due process clause, however, permits the courts to determine whether the regulation issued by the SEC is reasonable and within the bounds of its rate-fixing authority and to strike it down when it arbitrarily infringes on a person's right to property.
>
> ...
>
> SEC's assessment amount to ₱1,212,200.00 for the filing of an application for amendment of its articles of incorporation extending its corporate term is exceedingly unreasonable and amounts to an imposition [—] a filing fee, by legal definition, is that charged by a public official to accept a document for processing, and must be just, fair, and proportionate to the service for which the fee is being collected.[157]

It also held that "[t]he due process clause permits the courts to determine whether the regulation issued by the SEC is reasonable and within the bounds of its rate-fixing authority[,] and to strike it down when it arbitrarily infringes a person's right to property."[158]

10. The SEC's Power to Establish Stock or Commodity Exchanges

The SEC's power under Section 6 (j) of P.D. No. 902-A, to wit —

> (j) To authorize the establishment and operation of stock exchanges, commodity exchanges[,] and such other similar organizations[,] and to supervise and regulate the same; including the authority to determine their number, size[,] and location, in the light of national or regional requirements for such activities with the view to promote, conserve[,] or rationalize investment;[159]

The same has been re-affirmed in Subsection 5.1 (e) of the SRC, which gives the SEC the power to "[s]upervise, monitor, suspend[,] or take over the activities of exchanges, clearing agencies[,] and other SROs."[160]

In addition, Chapters IX (Sections 32 to 38) and X (Sections 39 to 40) of the SRC laid down the extent of the regulatory powers of the SEC over the registration, operation, and revocation of registration of exchanges and SROs, respectively.[161]

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157. *Id.*

158. *GMA Network*, 575 SCRA at 123.

159. P.D. No. 902-A, § 6 (j).

160. SECURITIES REGULATION CODE, § 5.1 (e).

161. *Id.* § 32-40.

11. The SEC's Power to Register/Deny Registration of Corporations, Partnership and Associations, or to Suspend/Revoke Such Registrations

The SEC had, under Section 6 (k) and (l) of P.D. No. 902-A on the registration of corporations, partnerships, and associations, and the suspension or revocation of such registrations, the powers to:

> (k) To pass upon, refuse[,] or deny, after consultation with the Board of Investments, Department of [Trade and] Industry, National Economic and Development Authority[,] or any other appropriate government agency, the application for registration of any corporation, partnership[,] association[,] or any form of organization falling within its jurisdiction, if their establishment, organization[,] or operation will not be consistent with the declared national economic policies;
>
> (l) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships[,] or associations, upon any of the grounds provided by law, including the following:
>
> (i) Fraud in procuring its certificate of registration:
>
> (ii) Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public:
>
> (iii) Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise:
>
> (iv) Continuous inoperation for a period of at least five years;
>
> (v) Failure to file by-laws within the required period;
>
> (vi) Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period.[162]

Again, the same have been re-affirmed under Subsection 5.1 (c) and (m) of the SRC, which gives the SEC the powers to: "(c) Approve, reject, suspend, revoke[,] or require amendments to registration statements, and registration and licensing applications; ... (m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnerships[,] or associations, upon any of the grounds provided by law;[163]

It would be reasonable to conclude that the power to revoke the primary franchise of corporations organized under the Corporation Code, which involves the exercise of the SEC's regulatory adjudicative powers,

162. P.D. No. 902-A, §§ 6 (k) & (l).

163. SECURITIES REGULATION CODE, §§ 5.1 (c) & (m).

cannot be arrogated by RTC Special Commercial Courts, even when the same is a necessary remedy in resolving corporate cases under Section 5 of P.D. No. 902-A. Issues relating to such matter are taken-up in Part III below.

D. The SEC's Quasi-Judicial Powers

1. The SEC Continues to Possess Its "Regulatory Adjudicative Functions" under P.D. No. 902-A

a. Dichotomy Between SEC's Regulatory Adjudicative Powers under Sections 3 and 6, and the Quasi-Judicial Powers under Section 5, of P.D. No. 902-A

Prior to the enactment of the SRC, the SEC exercised under the Corporation Code and P.D. No. 902-A not only regulatory powers and quasi-legislative powers, but also quasi-judicial powers, especially on issues that were essentially corporate in character.

Although regulatory powers constitute an integral part of the constitution of an administrative agency, it is not deemed to possess quasi-legislative powers unless its charter so grants it with the express power to issue rules and regulations. In the same manner, an administrative agency is not deemed to have quasi-judicial powers over justiciable controversies that fall within the jurisdiction of regular courts of justice, unless its charter grants it exclusive or concurrent jurisdiction to act with the same competence as the regular courts on such justiciable controversies falling within the area under its regulatory powers. Nonetheless, jurisprudence has recognized the legal competence of administrative agencies to exercise "regulatory adjudicatory power" as an essential adjunct of its regulatory powers, which may be independent of any express grant of quasi-judicial powers under their charters.

In *Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC)* (*Smart Communications, Inc.*),[164] the Supreme Court defined the quasi-judicial or administrative adjudicatory power of administrative agencies as "the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law,"[165] saying —

> Not to be confused with the quasi-legislative or rule-making power of an administrative agency is its quasi-judicial or administrative adjudicatory

164. Smart Communications, Inc. (SMART) v. National Telecommunications Commission (NTC), 408 SCRA 678 (2003) [hereinafter *Smart Communications, Inc.*].

165. *Id.* at 686-87.

> power. This is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. *The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions, the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.*[166]

The problem with the aforequoted definition of quasi-judicial power is that it was made in contra-distinction with the exercise of quasi-legislative power, and is almost indistinguishable from the exercise of regulatory powers by administrative agencies, which often also require the application of notice and hearing to determine facts upon which a penalty is imposed or a license is revoked. Nonetheless, the ruling clearly recognizes the existence of "administrative adjudicatory powers" possessed by administrative agencies as an integral part of the exercise of their regulatory powers.

In the case of the SEC, P.D. No. 902-A *clearly draws a distinction between* the SEC's "regulatory adjudicative functions" under Section 3, and its "quasi-judicial power" over corporate cases under Section 5 thereof, as can be seen from the introductory statement in Section 5 which provides that "[i]n addition to the regulatory adjudicative functions of the [SEC] over corporations, partnerships[,] and other forms of associations ... it shall have original and exclusive jurisdiction to hear and decide [corporate cases.]"[167]

Therefore, invoking the ruling in *Smart Communications, Inc.*, the purely "regulatory adjudicative powers" of the SEC would cover instances "when it performs in a judicial manner an act *which is essentially of an executive or administrative nature*, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it;"[168] and that the SEC's quasi-judicial powers would necessarily be limited to corporate cases under Section 5 of P.D. No. 902-A, the nature of which would normally be within the jurisdiction of the regular courts were it not for the provisions of said section placing them within the SEC's "original and exclusive jurisdiction to hear and decide [such corporate] cases."[169]

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166. *Id.* (emphasis supplied).

167. P.D. No. 902-A, § 5.

168. *Smart Communications, Inc.*, 408 SCRA at 687.

169. P.D. No. 902-A, § 5.

Prior to the enactment of the SRC, the dichotomy between the SEC's regulatory adjudicative powers under Sections 3 and 6, from its purely quasi-judicial powers under Section 5, of P.D. No. 902-A, was elucidated in the 1995 decision in *Securities and Exchange Commission v. Court of Appeals*,[170] a case which involved neglect in the handling of stock certificates, which were stolen from the premises of the stock transfer agent and were traded through the stockbroker.[171] When the opinion of the SEC was sought by the stockbroker and the stock transfer agent, the SEC ordered the replacement of the shares in the names of the innocent buyers and imposed fines on both the stock transfer agent and the stockbroker for their negligence based on a provision of the then Revised Securities Act.[172]

In that case, the Supreme Court defined by enumeration the SEC's "regulatory powers" (i.e., the regulatory adjudicative functions), to wit —

> Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (*after due notice and hearing*), certificates of registration of corporations, partnerships[,] and associations ... compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.[173]

The formula of *notice and hearing*, which is essential in the exercise of quasi-judicial functions, also constitutes an essential part of the exercise by SEC of its regulatory adjudicatory functions, in compliance with the constitutional demands of due process, especially when the exercise thereof would impose a penalty, allow a forfeiture of franchise, or provide loss of rights.[174] On the other hand, that same *Securities and Exchange Commission* case also defined the "adjudicatory authority" (i.e., the quasi-judicial powers) of the SEC, *by simply quoting from Section 5 of P.D. No. 902-A*, in spite of the fact that the issue at bench did not fall within the enumerated cases in said section, because the Court itself prefixed its decision by saying, "[t]he petition before this Court relates to the exercise by the SEC of its powers in case involving a stockbroker ... and a stock transfer agency."[175]

Accordingly, the Supreme Court ruled that the portion of the SEC order which directed the replacement of the stock certificates in the names of the buyers "clearly calls for an exercise of SEC's adjudicative

170. Securities and Exchange Commission v. Court of Appeals, 246 SCRA 738 (1995).

171. *Id.* at 741-41.

172. *Id.* at 744 & 745-47.

173. *Id.* at 740.

174. *Id.*

175. *Id.* at 741 (citing P.D. No. 902-A, § 5.).

jurisdiction."[176] But this adjudicative jurisdiction could not be exercised on behalf of the buyers when the process was

> started only on the basis of a request by [the stock transfer agent] for an opinion from the SEC. [Because the] stockholders who have been deprived of their certificates of stock[,] or the persons to whom the forged certificates have ultimately been transferred by the supposed indorsee thereof[,] are yet to initiate, if minded, an appropriate adversarial action.[177]

The Court then discussed how the SEC validly exercises its quasi-judicial powers, explaining that

> [a] justiciable controversy [which] can occasion an exercise of [the] SEC's exclusive jurisdiction would require an assertion of a right by a proper party against another who, in turn, contests it. It is one instituted by and against parties having interest in the subject matter appropriate for judicial determination predicated on a given set of facts. That controversy must be raised by the party entitled to maintain the action. He is the person to whom the right to seek judicial redress or relief belongs which can be enforced against the party correspondingly charged with having been responsible for, or to have given rise to, the cause of action. *A person or entity tasked with the power to adjudicate stands neutral and impartial*[,] *and acts on the basis of the admissible representations of the contending parties.*[178]

As such, the Court decreed that the proper parties that could bring the controversy and cause an exercise by the SEC of its original and exclusive jurisdiction would be all or any of those who are adversely affected by the transfer of the pilfered certificates of stock. Hence, "[a]ny peremptory judgment by the SEC, without such proceedings having first been initiated, would be precipitate."[179]

Thus, from the foregoing ruling, it is clear that what *Securities and Exchange Commission* case was referring to was the exercise of the SEC's quasi-judicial powers under Section 5 of P.D. No. 902-A, which required the formal filing of a complaint by the aggrieved parties (i.e., the stockholders) against the stockbroker and/or the stock transfer agent.

In contrast, it found legal propriety in the SEC's imposition of fines on the stock transfer agent and the stockbroker since —

> [t]his time, it is the regulatory power of the SEC which is involved. When [ ] the Court of Appeals [ ] set aside the fines imposed by the SEC, the

176. *Securities and Exchange Commission*, 246 SCRA at 744.

177. *Id.*

178. *Id.* (emphasis supplied).

179. *Id.*

> latter, in its instant petition, can no longer be deemed just a nominal party but a real party in interest sufficient to pursue an appeal to this Court.[180]

Accordingly, the doctrine laid down in *Securities and Exchange Commission* case is to the effect that when the SEC seeks to determine relevant facts and apply them to the resolution of claims between two parties in an adversarial proceeding, it is then exercising *quasi-judicial powers*; whereas, when the SEC undertakes proceedings to impose the provisions of law upon persons or entities under its jurisdiction, suh as the imposition of fines in this case, although it may have to comply with the requirements of due notice and hearing under the due process clause, it is really just exercising *regulatory adjudicative functions* as an integral component of its administrative or regulatory powers.

Unfortunately, in spite of the clear distinctions drawn in P.D. No. 902-A between SEC's "regulatory adjudicative functions" from its "quasi-judicial powers over corporate cases," Supreme Court decisions tended to interchange the use of the terms, and thereby engendered jurisprudential confusion into the legal competence of the SEC to exercise its mandates under P.D. No. 902-A.

Starting with the pre-P.D. No. 902-A decision in *Universal Mills Corporation v. Universal Textile Mills, Inc.*,[181] which involved the issue as to which of two corporations registered with the SEC had a better right to the corporate name "Universal Mills,"[182] it was held that —

> It is obvious that the matter at issue is within the competence of the [SEC] to resolve in the first instance in the exercise of the jurisdiction it used to possess under Commonwealth Act [No.] 287 as amended by [R.A. No.] 1055 *to administer the application and enforcement of all laws affecting domestic corporations and associations, reserving to the courts only conflicts of judicial nature*, and, of course, the Supreme Court's authority to review the [SEC]'s actuations in appropriate instances involving possible denial of due process and grave abuse of discretion. Thus, in the case at bar, there being no claim of denial of any constitutional right, all that We are called upon to determine is whether or not the order of the [SEC] enjoining petitioner to change its corporate name constitutes, in the light of the circumstances found by the [SEC], a grave abuse of discretion.[183]
>
> ...

180. *Id.* at 745.

181. Universal Mills Corporation v. Universal Textile Mills, Inc., 78 SCRA 62 (1977).

182. *Id.* at 64.

183. *Id.* (emphasis supplied).

> WHEREFORE, with the reservation already mentioned, *the appealed decision is affirmed*[.][184]

Universal Mills Corporation, which was decided under the original charter of the SEC when it was completely bereft of quasi-judicial powers (i.e., before the enactment of P.D. No. 902-A), would treat as an exercise of regulatory powers those situations where the SEC must determine in an adversarial proceeding which as between two contending corporations had a better right to a corporate name.[185] It recognized that even bereft of an express grant of quasi-judicial powers in its charter, the SEC was authorized to exercise regulatory adjudicatory powers in the enforcement of the purely regulatory mandates of its charter.

The ruling was reiterated under the aegis of P.D. No. 902-A in *Industrial Refractories Corporation v. Court of Appeals* (*Industrial Refractories*),[186] which involved a controversy as to which between two contending corporations engaged in similar business had a better right to the corporate name "Philippine Refractories."[187] One of the issues raised was that the controversy could not be decided upon by the SEC because it was not among the corporate cases defined under Section 5 of P.D. No. 902-A as falling within the quasi-judicial powers of the SEC to resolve, thus —

> The jurisdiction of the SEC is not merely confined to the *adjudicative functions* provided in Section 5 of P.D. No. 902-A, as amended. By express mandate, it has absolute jurisdiction, supervision[,] and control over all corporations (P.D. No. 902-A, Section 3). *It also exercises regulatory and administrative powers to implement and enforce the Corporation Code, one of which is Section 18* [*on corporate name*] ... It is the SEC's duty to prevent confusion in the use of corporate names not only for the protection of the corporations involved but more so for the protection of the public, and it has authority to de-register at all times and under all circumstances corporate names which in its estimation are likely to generate confusion. Clearly, therefore, the present case falls within the ambit of the *SEC's regulatory powers*.[188]

The implication of the foregoing rulings is to the effect that: (1) not every controversy brought before the SEC between two contending parties necessarily invokes the exercise of the SEC's quasi-judicial power under Section 5 of P.D. No. 902-A; and (2) if the resolution involves primarily the enforcement by SEC of the laws and rules for which it has administrative

184. *Id.* at 65 (emphasis supplied).

185. *Id.* at 64.

186. Industrial Refractories Corporation of the Philippines v. Court of Appeals, 390 SCRA 252 (2002) [hereinafter *Industrial Refractories*].

187. *Id.* at 255.

188. *Id.* at 258-59 (emphasis supplied).

power to enforce, the same would primarily be an exercise of its regulatory adjudicative power, in spite of the fact that notice and hearing procedure must be followed.

For example, in both the *Universal Mills Corporation* and *Industrial Refractories* cases, even without a complaining party, it was within the power of the SEC to have *motu proprio* directed a registered corporation to change its corporate name when it finds the same confusingly similar to an earlier registered corporate name, pursuant to its administrative powers under the Corporation Code.[189]

b. Section 3 of P.D. No. 902-A Remains the Basis for the Exercise by SEC of Its Regulatory Adjudicative Functions Post-SRC Enactment

During the pre-SRC period, there was a line of decision which upheld the power of the SEC to resolve issues involving corporations under the "absolute jurisdiction, supervision[,] and control"[190] power under Section 3 of P.D. No. 902-A. The line started with *Orosa, Jr. v. Court of Appeals*,[191] which involved claims by individuals who had made money market placements with the corporation,[192] and where the Supreme Court in ruling that "the adjudicative powers of the SEC being clearly defined by law, its jurisdiction over these cases has to be upheld,"[193] had actually employed the "absolute jurisdiction, supervision[,] and control"[194] language of Section 3 to define the quasi-judicial powers of the SEC, thus —

> Plainly, the SEC is vested with absolute jurisdiction, supervision[,] and control over all corporations which are enfranchised to act as corporate entities. The provision by no means restricts that jurisdiction to entities granted permits or licenses to operate by another Government regulatory body ... *It is the certificate of incorporation that gives juridical personality to a corporation and places it within SEC jurisdiction. It follows then that although authority to operate a certain specialized activity may be withdrawn by the appropriate regulatory body, aside from SEC, the corporation nonetheless continues to be vested with legal personality until it is dissolved in accordance with law.*[195]

The doctrine was revisited in *Philippine Woman's Christian Temperance Union, Inc. v. Abiertas House of Friendship, Inc.*,[196] which involved two

189. *Id.*

190. P.D. No. 902-A, § 3.

191. Orosa, Jr. v. Court of Appeals, 193 SCRA 391 (1991).

192. *Id.* at 393.

193. *Id.* at 400.

194. P.D. No. 902-A, § 3.

195. *Orosa, Jr.*, 193 SCRA at 395-96 (emphasis supplied).

196. Philippine Woman's Christian Temperance Union, Inc. v. Abiertas House of Friendship, Inc., 292 SCRA 785 (1998).

separate cases filed by Philippine Woman's Christian Temperance Union Inc. (PWCTUI) against Abiertas House of Friendship, Inc. (AHFI) and Radiance School Inc. (RSI)[197] "with the [SEC], a petition to declare a contract of lease [entered with RSI to be] void for being *ultra vires*,"[198] on the ground that RSI was a mere alter ego of AHFI to operate a school within PWCTUI's property, which activity was not authorized under AHFI's charter; and "before a [RTC], a complaint for the recovery of possession of the property subject of the said contract [of lease];"[199] with the issue for resolution being — "Was the RTC judge correct in dismissing the complaint on the ground of litis pendentia and forum shopping?"[200]

In denying the merits of the ground of *litis pendencia*,[201] *Philippine Woman's Christian Temperance Union, Inc.* held that although both the SEC and RTC proceedings delved on the same contract of lease and involved the same parties, nonetheless, in the SEC petition —

> The contract of lease was alleged to have been executed *ultra vires*; that is, it was beyond the power of AHFI to enter into because it was not empowered to engage in the school business. The focus, therefore, was on the alleged *ultra vires* act [(or whether the corporate entity has offended its charter)], not on the contract itself. On the other hand, the validity of the contract of lease was the principal issue in the RTC Complaint. Thus, it cannot be said that the rights asserted and the reliefs prayed for were the same. Verily, the [SEC] had jurisdiction to entertain the Petition filed before it, presenting as it did purported intra-corporate issues. On the other hand, the trial court's jurisdiction over the *accion publiciana* case cannot be denied.[202]

The doctrine was reiterated in *Pilipinas Loan Company, Inc. v. Securities and Exchange Commission*,[203] which held that when the thrust of the complaint is on the *ultra vires* act of a corporation, that is, that the complained act of a corporation is contrary to its declared corporate purposes, the SEC has jurisdiction to entertain the complaint before it. The Supreme Court said that

> [w]ithout question, the complaint filed by private respondent against petitioner called upon *the SEC to exercise its adjudicatory and supervisory powers*. By law [(citing Section 3 of P.D. No. 902-A)], the SEC has absolute

197. *Id.* at 788–90.

198. *Id.* at 786.

199. *Id.*

200. *Id.*

201. *Id.* at 791–93.

202. *Philippine Woman's Christian Temperance Union Inc.*, 292 SCRA at 793 (1998).

203. Pilipinas Loan Company, Inc. v. Securities and Exchange Commission, 356 SCRA 193 (2001).

> jurisdiction, supervision[,] and control over all corporations that are enfranchised to act as corporation entities [—] a violation by a corporation of its franchise is properly within the jurisdiction of the SEC.[204]

Pilipinas Loan Company, Inc. emphasized that under Section 3 of P.D. No. 902-A, the SEC has "absolute jurisdiction, supervision[,] and control over all corporations"[205] that are enfranchised to act as corporation entities — a violation by a corporation of its franchise is properly within the jurisdiction of the SEC, thus —

> Jurisprudence has laid down the principle that it is the certificate of incorporation that gives juridical personality to a corporation and places it within SEC jurisdiction. The case of *Orosa, Jr. v. Court of Appeals* teaches that this jurisdiction of the SEC is not affected even if the authority to operate a certain specialized activity is withdrawn by the appropriate regulatory body other than the SEC.[206]

In *Pilipinas Loan Company, Inc.* the complaint was filed with the SEC by an entity which was legitimately engaged in the pawnshop business in the same area and had priority to the use of the "Filipinas,"[207] and required the employment of both the regulatory and adjudicatory powers of the SEC.[208] Since the controversies arose before the promulgation of SRC, the Supreme Court also held in its decision that when a corporation engages in a business that is outside of the powers granted in its charter, then the *ultra vires* acts may constituted corporate fraud covered also under Section 5 (a) of P.D. No. 902-A.

The point being made is that pre-SRC jurisprudence support the proposition that Section 5 of P.D. No. 902-A was not the only source of what the Supreme Court terms as the "quasi-judicial powers" of the SEC, but that Section 3 is certainly a statutory source of such adjudicatory powers. It means therefore, that the only adjudicatory powers that were effectively removed under Subsection 5.2. of the SRC from the original and exclusive jurisdiction of the SEC and transferred to the RTC Special Commercial Courts were the corporate cases covered by Section 5 of P.D. No. 902-A and that all justiciable controversies involving corporations and corporate issues that do not fall within Section 5 of P.D. No. 902-A, remain within the SEC's regulatory adjudicative powers.

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204. *Id.* at 200 (emphasis supplied).

205. *Id.*

206. *Id.* at 201.

207. *Id.* at 196-97.

208. *Id.*

c. The State of the SEC's Adjudicatory Power Post-SRC Enactment

With the enactment of the SRC, it was posited that Section 3 of P.D. No. 902-A only covered the SEC's "absolute jurisdiction"[209] over corporations with respect to the exercise of its regulatory power, and can no longer be interpreted as the source of quasi-judicial powers involving corporate issues outside of the enumerated cases in Section 5 of P.D. No. 902-A.

In a number of post-SRC decisions covering this issue (which includes the *Morato* and *Syjuico* decisions), the Supreme Court has taken the position that the SEC is now bereft of quasi-judicial powers of any type by virtue of the amendment to Section 5 of P.D. No. 902-A, brought about by the Subsection 5.2 of the SRC. Thus, in the 2001 decision in *Vesagas v. Court of Appeals*,[210] the Supreme Court pointedly held that

> [i]n the light of [P.D. No.] 902-A's '*repeal*,' the need to rule on the question of the extent of the contempt powers of an SEC hearing officer relative to his authority to issue subpoenas and orders to parties involved in intra-corporate cases, or potential witnesses therein has been rendered academic. The enactment of [the SRC] mooted this issue as SEC hearing officers, *now bereft of any power to resolve disputes*, are likewise stripped of their power to issue subpoenas and contempt orders incidental to the exercise of their quasi-judicial powers.[211]

There is also the 2007 decision in *Omictin v. Court of Appeals*,[212] where it was held that with the transfer of corporate cases under Section 5 of P.D. No. 902-A to the RTC Special Commercial Courts, they are deemed to possess the specialized regulatory powers of the SEC, and the application of the doctrine of primary resort will not apply to such RTCs,[213] thus —

> Likewise, by analogy, the doctrine of primary jurisdiction may be applied in this case. The issues raised by petitioner particularly the status of Saag Phils., Inc. [vis-à-vis] Saag Pte. Ltd., as well as the question regarding the supposed authority of the latter to make a demand on behalf of the company ... would have been referred to the expertise of the SEC in accordance with the doctrine of primary jurisdiction had the case not been transferred to the RTC of Mandaluyong.
>
> Strictly speaking, the objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before

209. P.D. No. 902-A, § 3.

210. Vesagas v. Court of Appeals, 371 SCRA 508 (2001).

211. *Id.* at 519-20 (emphasis supplied).

212. Omictin v. Court of Appeals, 512 SCRA 70 (2007).

213. *Id.* at 82-83.

> the court. The court cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to resolving the same, where the question demands the exercise of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact.
>
> While the above doctrine refers specifically to an administrative tribunal, the Court believes that the circumstances in the instant case do not proscribe the application of the doctrine, as the role of an administrative tribunal such as the SEC in determining technical and intricate matters of special competence has been taken on by specially designated RTCs by virtue of [the SRC]. Hence, the RTC of Mandaluyong where the intra-corporate case is pending has the primary jurisdiction to determine the issues under contention relating to the status of the domestic corporation, Saag Phils., Inc., [vis-à-vis] Saag Pte. Ltd.; and the authority of petitioner to act on behalf of the domestic corporation, the determination of which will have a direct bearing on the criminal case. The law recognizes that, in place of the SEC, the regular courts now have the legal competence to decide intra-corporate disputes.[214]

The Authors do not agree with the reasonableness of such a doctrinal development, for the following reasons:

(1) A close reading of the enumerated powers of the SEC under Subsection 5.1. aforequoted indicates that the SRC affirms in clear statutory language that the SEC continues to possess "regulatory adjudicative functions" that fall outside of the corporate cases falling under Section 5 of P.D. No. 902-A, as follows:

> (f) Impose sanctions for violation of the laws, rules[,] regulations[,] and orders issued pursuant thereto;[215]
>
> ...
>
> (i) Issue [CDO] to prevent fraud or injury to the investing public;[216]
>
> ...
>
> (m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations ... upon any of the grounds provided by law.[217]

214. *Id.*

215. SECURITIES REGULATION CODE, § 5.1.

216. *Id.*

217. *Id.*

(2) Not only does it impinge upon the regulatory mandate of the SEC, but it would amount to granting to the RTC Special Commercial Courts the power to exercise regulatory powers.

(3) More recent decisions of the Supreme Court have actually taken the opposite position. In the 2008 case of *Provident International Resources Corporation*, the Supreme Court took into consideration the powers and functions of the SEC under Section 5 of the SRC and ruled —

> From the above, it can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.
>
> Considering that the SEC, after due notice and hearing, has the regulatory power to revoke the corporate franchise — from which a corporation owes its legal existence — the SEC must likewise have the lesser power of merely recalling and canceling a STB that was erroneously registered.
>
> Going to the particular facts of the instant case, we find that the SEC has the primary competence and means to determine and verify whether the subject 1979 STB presented by the incumbent assistant corporate secretary was indeed authentic, and duly registered by the SEC as early as September 1979. As the administrative agency responsible for the registration and monitoring of STBs, it is the body cognizant of the STB registration procedures, and in possession of the pertinent files, records[,] and specimen signatures of authorized officers relating to the registration of STB. The evaluation of whether a STB was authorized by the SEC primarily requires an examination of the STB itself and the SEC files. This function necessarily belongs to the SEC as part of its regulatory jurisdiction. Contrary to the allegations of respondents, the issues involved in this case can be resolved without going into the intra-corporate controversies brought up by respondents.[218]

Therefore, *Provident International Resources Corporation* confirms that post-SRC, the SEC fully retains its regulatory adjudicative power over

218. *Provident International Resources Corporation*, 554 SCRA at 546.

corporations and those that fall within the intra-corporate relationship, thus —

> As the regulatory body, it is the SEC's duty to ensure that there is only one set of STB for each corporation. The determination of whether or not the 1979-registered STB is valid and of whether to cancel and revoke the [6 August] 2002 certification and the registration of the 2002 STB on the ground that there already is an existing STBs impliedly and necessarily within the regulatory jurisdiction of the SEC.[219]

What essentially distinguishes the *Provident International Resources Corporation* decision from that in *Vesagas* is that while in the former the only issue and request for remedy brought before the SEC (i.e., invalidating the certification issued on the STB) fell squarely within its regulatory powers, the main remedy brought before the SEC in the latter case was essentially an intra-corporate dispute — "[i]n this case, respondents asked the [SEC] to declare as illegal their expulsion from the club as it was allegedly done in utter disregard of the provisions of its by-laws as well as the requirements of due process."[220]

It should be noted that earlier in *Orendain v. BF Homes, Inc.*[221] the Supreme Court had also affirmed the proposition that even post-SRC, the SEC retained its regulatory adjudicative functions under Section 3 of P.D. No. 902-A which is an integral part of its regulatory powers.

In *Orendain*, BF Homes, Inc. had filed with the SEC a petition for suspension of payments and rehabilitation, and for which a management committee and a rehabilitation receiver were appointed.[222] During the rehabilitation proceedings, a Deed of Absolute Sale over a large tract of land was executed on behalf of BF Homes by its receiver in favor of the Local Superior of the Franciscan Sisters.[223] The following year, the receiver submitted his closing report and was discharged by the SEC and a new Committee of Receivers was appointed.[224] It was then that BF Homes, through the new Committee of Receivers, filed a complaint with the RTC seeking a reconveyance of the property sold contending lack of authority on the part of the previous receiver to effect such sale, as well as fraud.[225] One of the issues raised on appeal was whether the RTC had jurisdiction to hear the case since the SEC had already affirmed the sale when it accepted

219. *Id.*

220. *Id.* at 512.

221. Orendain v. BF Homes, Inc., 506 SCRA 348 (2006).

222. *Id.* at 356.

223. *Id.*

224. *Id.*

225. *Id.* at 353-58.

the closing report of the former receiver,[226] and that "BF Homes, acting through its Committee of Receivers, had neither the interest nor the personality to prosecute the said action, in the absence of SEC's clear and actual authorization for the institution of the said suit."[227]

On the main issue at bar, the Supreme Court held that an action for reconveyance of the property of a corporation did not constitute an intra-corporate dispute that fell within the then original and exclusive jurisdiction of the SEC under Section 5 (b) of P.D. No. 902-A.[228] It also clarified what powers remained with SEC under Section 6 of P.D. No. 902-A, explaining that

> it is unequivocal that the jurisdiction to try and decide cases originally assigned to the SEC under Section 5 of [P.D.] 902-A has been transferred to the RTC. For clarity, we quote those cases under Section 5, [P.D.] 902-A, which now fall within the RTC's jurisdiction, as follows:
>
> ...
>
> The remaining powers and functions of the SEC are enumerated in Section 5 of [the SRC], to wit:
>
> ...
>
> *Juxtaposing the jurisdiction of the RTC under* [SRC] *and the powers that were retained by the SEC, it is clear that the SEC retained its administrative, regulatory, and oversight powers over all corporations, partnerships, and associations who are grantees of primary franchises, and/or a license or permit issued by the Government.* However, the [SRC] is clear that when there is a controversy arising out of intra-corporate relations, between and among stockholders, members or associates, and between, any, or all of the them and the corporation, it is the RTC, not [the] SEC, which has jurisdiction over the case.[229]

Orendain went on to rule that —

> [W]hen the complaint involves 'an active antagonistic assertion of a legal right on one side and a denial thereof on the other concerning a real, and not a mere theoretical question or issue,' a cause of action involving a delict or wrongful act or omission committed by a party in violation of the primary right of another, or an actual controversy involving rights which are legally demandable or enforceable, the jurisdiction over this complaint is lodged with the RTC and not the SEC.[230]

From all the foregoing jurisprudential development, the following conclusions can be drawn:

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226. *Id.* at 359.

227. *Orendain*, 506 SCRA at 357.

228. *Id.* at 360-64.

229. *Id.* at 370-72 (emphasis supplied).

230. *Id.* at 372.

(1) The SEC retains under the aegis of the SRC, all its regulatory powers over all corporations registered under the provisions of the Corporation Code, which includes in a limited manner the exercise of regulatory adjudicative functions over corporate issues that do not impinge on the original and exclusive jurisdiction of RTC Special Commercial Courts over corporate cases under Section 5 of P.D. No. 902-A.

(2) As borne out by the decisions in *Universal Mills Corporation* and *Industrial Refractories*, when the controversy between two parties involves a corporate issue that does not fall within any of the corporate cases covered by Section 5 of P.D. No. 902-A, as when the controversy is between two corporations who seek priority to the use of a corporate name, then the SEC retains the competence under Section 3 of P.D. No. 902-A to exercise purely regulatory adjudicative functions to resolve such controversy, when the case is filed with it for resolution. The exercise of such regulatory adjudicative functions, outside of the scope of Section 5 corporate cases, may be triggered, as in the decision in *Securities and Exchange Commission*, by a mere request of legal opinion from the SEC.[231]

(3) As borne out by the *Provident International Resources Corporation* and *Orendain* decisions, when it comes to corporate issues that arise within intra-corporate relationship or any of the corporate cases under Section 5 of P.D. No. 902-A, whatever issues may fall within the SEC's regulatory adjudicatory function that constitute a part of the resolution of the corporate case under Section 5 of P.D. No. 902-A is now wholly outside the competence of the SEC to pursue, whenever proper jurisdiction has been assumed by the RTC Special Commercial Courts on the main corporate case. This is in accordance with the policy first enunciated in *Orendain* that "Congress thereby recognized the expertise and competence of the RTC to take cognizance of and resolve cases involving intra-corporate controversies."[232] As will be discussed in Part III hereunder, such a holding would be inconsistent with the well-established principle of Doctrine of Prior Resort.

231. *Securities and Exchange Commission*, 246 SCRA at 745.

232. *Id.* at 351.

What remains to be properly resolved are the jurisdictional issues arising in a situation where the main controversy falls within the original and exclusive jurisdiction of the RTC Special Commercial Courts, but an ancillary remedy sought requires the exercise from the SEC of its regulatory power (i.e., directing the call of a stockholders' meeting, revoking the primary franchise of the corporation, amending the articles of incorporation or the by-laws, among others). Would the RTC Special Commercial Courts have the expertise or competence to direct such remedies, or must it (or can it even) direct the SEC to undertake such remedial acts?

Although the *Yujuico* decision is on the affirmative side of the proposition, yet there are other Supreme Court decisions that take the negative view. Resolution of such issues shall properly be covered in Part III hereunder when discussing the particular areas of each of the corporate cases under Section 5 of P.D. No. 902-A, as they now fall within the original and exclusive jurisdiction of RTC Special Commercial Courts.

2. The SEC's Quasi-Judicial Powers Under the Corporation Code

During the pre-SRC period, there were two corporate cases that did not fall under Section 5 of P.D. No. 902-A, or were otherwise treated separately under the Corporation Code, namely: (1) corporate dissolutions proceedings under Sections 119 and 121 of the Corporation Code; and (2) deadlock cases covering close corporations under Section 104 of the Corporation Code.

Both corporate cases have always been treated separately and distinctly from the provisions of Section 5 of P.D. No. 902-A. Hence, since Subsection 5.2 of the SRC expressly transferred out of the SEC its original and exclusive jurisdiction only under Section 5 of P.D. No. 902-A, therefore those found in other statutory provisions, mainly the Corporation Code, remain within the original and exclusive jurisdiction of SEC.

Such legal conclusion is supported by the fact that Subsection 5.1 of the SRC itself expressly provides that the SEC "shall have the powers and functions provided by this Code, [P.D.] No. 902-A, the Corporation Code."[233]

a. Corporate Dissolutions and Liquidation Processes

Apart from the power to dissolve a corporation under the provisions of the Corporation Code, the SEC is granted under Section 6 (l) of P.D. No. 902-A the power "[t]o suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law."[234]

233. SECURITIES REGULATION CODE, § 5.1.

234. P.D. No. 902-A, § 6 (l).

Under Section 118 of the Corporation Code, voluntary petitions for dissolution of corporations where no creditors are involved are within the SEC's competence to resolve, and the matter is treated purely as an administrative matter with the proceedings commenced through the filing of an application, rather than a petition.[235] Nevertheless, if there are stockholders who are opposed to the proceedings and they must file an action, transforming the same into an adjudicatory proceeding, are we to say that the case may be filed directly with the RTC Special Commercial Courts, simply because the controversy falls neatly into the definition of "intra-corporate controversies"?

More in point, under Section 119 of the Corporation Code, voluntary dissolutions of corporation which may prejudice creditors would require the filing of a petition with the SEC, which will hold a hearing on the matter, after due notice to the creditors.[236] Accordingly, although the Corporation Code makes no reference to P.D. No. 902-A, and since they do not constitute corporate fraud cases, would such proceedings be considered "intra-corporate cases" as defined under Section 5 (b) of the P.D. No. 902-A? In other words, although the SRC did not divest the SEC of its powers under the Corporation Code, would such proceedings now fall within the original and exclusive jurisdiction of the RTC Special Commercial Courts?

Under Section 121 of the Corporation Code, involuntary dissolution of corporations can be proceeded to by "the [SEC] upon filing of a verified complaint and after proper notice and hearing on grounds provided by existing laws, rules[,] and regulations,"[237] a wholly quasi-judicial proceeding. Are cases for involuntary proceedings now within the competence of the RTC Special Commercial Courts simply because they fall within the concept of "intra-corporate controversies" of Section 5 (b) of P.D. No. 902-A?

Proceedings for voluntary dissolution of corporations whenever creditors are affected under Section 119, and proceedings for involuntary dissolution under Section 121, both under the Corporation Code, certainly constitute an exercise of quasi-judicial powers of the SEC as the term is defined under aforecited jurisprudence. But dissolutions of corporations are not wholly intra-corporate in nature because they also involve creditors and are proceedings *in rem*. Yet it is clear that Section 5 of P.D. No. 902-A does not cover exactly such cases. In fact, the Committee on SEC Cases which drafted the Interim Rules of Procedure on Corporate Rehabilitation, noted in their recommendation to the Supreme Court that it may not be

235. CORPORATION CODE, § 118.

236. *Id.* § 119.

237. *Id.* § 121.

"proper"[238] to include provisions for corporate liquidation and dissolution in the Interim Rules of Procedure on Intra-Corporate Controversies as one of remedies that may be pursued in the RTC when rehabilitation proceedings have not prospered since "the power to dissolve the corporate debtor belongs to the SEC, and not the regular courts (Section 121). The SRC did not transfer this jurisdiction to the regular courts."[239]

In *Consuelo Metal Corporation v. Planters Development Bank*,[240] the Court recognized that while under Sections 119 and 121 of the Corporation Code, "the SEC has jurisdiction to order the dissolution of a corporation, jurisdiction over the liquidation of the corporation now pertains to the appropriate trial courts,"[241]

> [h]owever, the SEC's jurisdiction does not extend to the liquidation of a corporation. ... This is the reason why the SEC, in its 29 November 2000 Omnibus Order, directed that 'the proceedings on and implementation of the order of liquidation be commenced at the [RTC] to which this case shall be transferred.' This is the correct procedure because the liquidation of a corporation requires the settlement of claims for and against the corporation, which clearly falls under the jurisdiction of the regular courts. The trial court is in the best position to convene all the creditors of the corporation, ascertain their claims, and determine their preference.[242]

The decision does not conform with the previous ruling in *Ching v. Land Bank of the Philippines*,[243] which held that although a petition for declaration of insolvency of private corporation is strictly still with the regular courts which have exclusive and original jurisdiction, the SEC possesses nonetheless ample power under P.D. No. 902-A to declare a corporation insolvent and provide for its liquidation *as an incident of and in continuation of* its already acquired jurisdiction over petitioners to be declared in the state of suspension of payments in the two cases provided in Section 5 (d) thereof.[244]

Considering that revocation of primary franchise of a corporation brings about its dissolution, it is still provided in Section 6 (l) of P.D. No. 902-A that the SEC is granted the powers to —

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238. Memorandum *from* the Committee on SEC Cases *to* the Philippine Supreme Court (Oct. 30, 2000) (on file with Author).

239. *Id.*

240. Consuelo Metal Corporation v. Planters Development Bank, 555 SCRA 465 (2008).

241. *Id.* at 473-74.

242. *Id.*

243. Ching v. Land Bank of the Philippines, 201 SCRA 190 (1991).

244. *Id.* at 197-201.

> suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships[,] or associations, upon any of the grounds provided by law, including the following:
>
> 1. Fraud in procuring its certificate of registration;
> 2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;
> 3. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;
> 4. Continuous inoperation for a period of at least five years;
> 5. Failure to file by-laws within the required period; [or]
> 6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period.[245]

The SEC's power to effect corporate dissolution is actually reiterated in Section 5.1 (m) of the SRC which empowers the SEC to "[s]uspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnerships[,] or associations, upon any of the grounds provided by law."[246] In the same manner, under Section 6 (d) of P.D. No. 902-A, the SEC may, on the basis of the findings and recommendation of the management committee, or rehabilitation receiver, or in its own findings, determine that the continuance in business or such corporation, or entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors, or the general public, and *order the dissolution of such corporation or entity and its remaining assets liquidated accordingly*.[247] Finally, it must also be noted that both the Interim Rules of Procedure on Corporate Rehabilitation and the Interim Rules of Procedure on Intra-Corporate Controversies, *did not contain provisions for corporate dissolutions*.[248]

FRIA now includes proceedings for corporate dissolution pursuant to a failed rehabilitation or as a consequence of corporate insolvency. Therefore, outside of rehabilitation and/or insolvency proceedings, corporate dissolution remains within the jurisdiction of the SEC under the provisions of the Corporation Code. We should be guided by what the Supreme Court

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245. P.D. No. 902-A, § 6 (l).

246. SECURITIES REGULATION CODE, § 5.1 (m).

247. P.D. No. 902-A, § 6 (d).

248. *See generally* INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES & INTERIM RULES OF PROCEDURE FOR CORPORATE REHABILITATION.

held in *Provident International Resources Corporation* that "[c]onsidering that the SEC, after due notice and hearing, has the regulatory power to revoke the corporate franchise — from which a corporation owes its legal existence — the SEC must likewise have the lesser power"[249] to oversee its dissolution and liquidation.

b. Deadlock Cases for Closed Corporations

Under Section 104 of the Corporation Code (Deadlocks in Close Corporations), it is provided that —

> [I]f the directors or stockholders [of a close corporation] are so divided respecting the management of the corporation's business and affairs that the votes required for any corporation action cannot be obtained, with the consequence that the business and affairs of the corporation can no longer be conducted to the advantage of the stockholders generally, the [SEC], upon written petition by any stockholder, shall have the power to arbitrate the dispute. In the exercise of such power, the [SEC] shall have authority to make such order ... including an order:
>
> (1) Cancelling or altering any provision contained in the articles of incorporation, by-laws, or any stockholders' agreement;
>
> (2) Cancelling, altering[,] or enjoining any resolution or other act of the corporation or its board of directors, stockholders, or officers;
>
> (3) Directing or prohibiting any act of the corporation or its board of directors, stockholder, officers, or other persons party to the action;
>
> (4) Requiring the purchase at their fair value of shares of any stockholder, either by the corporation regardless of the availability of unrestricted retained earnings in its books, or by the other stockholders;
>
> (5) Appointing a provisional director;
>
> (6) Dissolving the corporation; or
>
> (7) Granting such other relief as the circumstances may warrant.[250]

The foregoing ancillary powers are an exercise of the SEC's regulatory or supervisory power over corporations, such as the cancelling or altering provisions in the articles of incorporation and/or by-laws, directing or prohibiting any act of the corporation or its board of directors, stockholders or officers, and appointing a provisional director.

Deadlock cases governing close corporation are undoubtedly intra-corporate controversies, but governed peculiarly by Section 104 of the Corporation Code. Would they now fall within the original and exclusive jurisdiction of the RTC Special Commercial Courts, especially when some

249. *Provident International Resources Corporation*, 554 SCRA at 547.

250. CORPORATION CODE, § 104.

of the powers that may be exercised (cancellation or alteration of the articles or incorporation or by-laws, or the ordering of the dissolution of the close corporation) are inherently exclusive prerogatives of the SEC? It is the Authors' position that the jurisdiction and adjudicatory power of the SEC under Section 104 on deadlock cases for close corporations, remains separate and distinct from the intra-corporate disputes governed by Section 5 (b) of P.D. No. 902-A, and are unaffected by the provisions of Subsection 5.2 of the SRC transferring intra-corporate cases to the original and exclusive jurisdiction of RTC Special Commercial Courts, based on the following reasons:

(1) The deadlock cases, although a species of intra-corporate controversies, are specialized cases involving only close corporations peculiarly provided for and governed by the Corporation Code, and not within the ambit of P.D. No. 902-A;

(2) The special powers granted to the SEC are peculiarly found in the Corporation Code, separate and distinct from the SEC powers under Section 6 of P.D. No. 902-A, and cannot be deemed to have been contemplated in the transfer of jurisdiction effected under Subsection 5.2 of the SRC; and

(3) There are regulatory and supervisory powers granted to the SEC under Section 104 of the Corporation Code in deadlock situations which pertain peculiarly to the SEC, and which are beyond the powers of RTC Special Commercial Courts to exercise, such as the power to suspend or amend provisions in the articles of incorporation and/or by-laws.

c. Scenarios Foreseen on Corporate Dissolution Cases and Close Corporation Deadlock Cases

Under the scenario that corporate dissolution cases and close corporation deadlock cases still fall within the original quasi-judicial jurisdiction of the SEC, one of the clear implications would be that the SEC stands co-equal to RTC Special Commercial Courts on such matters. Thus, in *Philippine Pacific Fishing Co., Inc. v. Luna*,[251] the Supreme Court held —

> As already portrayed above, the parties came within the jurisdiction of the [SEC] on the basis of the complaint of herein petitioners. They claimed their controversy with private respondents involved intra-corporate matters within the exclusive jurisdiction of that body. The [SEC] took cognizance thereof, the parties discussed their respective positions [ ] and, on the issues joined by them, the Commission issued the [assailed] orders[.]

251. Philippine Pacific Fishing Co., Inc. v. Luna, 112 SCRA 604 (1982).

> If any or all of said orders are erroneous, the organic act creating the [SEC], [P.D. No.] 902-A, provides the appropriate remedy, first within the [SEC] itself, and ultimately in this Court. Nowhere does the law empower any Court of First Instance to interfere with the orders of the [SEC]. Not even on grounds of due process or jurisdiction. The [SEC] is, conceding arguendo a possible claim of respondents, at the very least a co-equal body with the [RTC]. Even as such co-equal, one would have no power to control the other. But the truth of the matter is that only the Supreme Court can enjoin and correct any actuation of the [SEC].[252]

In addition, when the SEC is acting as a quasi-judicial tribunal, it has the power to execute its decisions. Thus, *Union Bank of the Philippines v. Securities and Exchange Commission*[253] held that where the SEC retained its quasi-judicial jurisdiction over a case pursuant to the transition provision of the SRC, it must be deemed to have the power to execute its decision therein — the tribunal which rendered the decision or award has a general power to determine every question of fact and law which may be involved in the execution.[254]

Even prescinding from the scenario that eventually the Supreme Court will finally rule that corporate dissolution cases and close corporation deadlock cases properly fall within the original and exclusive jurisdiction of RTC Special Commercial Courts falling within the coverage of Section 5 of P.D. No. 902-A, nonetheless, proper consideration must be given (as it has been so done in Part III hereunder), of the proper application of the doctrine of primary jurisdiction vis-à-vis the acknowledged and reinforced position of the SEC as the primary administrative agency tasked to exercise regulatory powers over corporations registered under the Corporation Code.

III. CORPORATE LITIGATION BEFORE THE RTC SPECIAL COMMERCIAL COURTS

A. Statutory and Jurisprudential Bases of the Jurisdiction of RTC Special Commercial Courts over Corporate Cases

1. Section 5 of P.D. No. 902-A: Primary Jurisdictional Basis for Corporate Cases

The original and exclusive jurisdiction of the SEC, in the exercise of quasi-judicial powers over corporate cases under Section 5 of P.D. No. 902-A, covered four main areas affecting corporations and those within the intra-corporate relationships, namely:

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252. *Id.* at 613 (citing Pineda v. Lantin, 6 SCRA 757 (1962)).

253. Union Bank of the Philippines v. Securities and Exchange Commission, 499 SCRA 253 (2006).

254. *Id.* 263-67.

(1) Corporate Fraud Schemes;

(2) Intra-Corporate Disputes;

(3) Election, Appointment, and Termination Cases Involving Directors, Trustees, and Officers; and

(4) Petitions for Corporate Suspension of Payments and/or Rehabilitation.

For proper appreciation of the discussions hereunder, it would be prudent to quote directly Section 5 of P.D. No. 902-A, thus —

> Section 5. In addition to the regulatory adjudicative functions of the [SEC] over corporations ... registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:
>
> (a) Devices or schemes employed by or any acts of the board of directors, business associates, its officers[,] ... amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders ... or organizations registered with the [SEC];
>
> (b) Controversies arising out of intra-corporate ... relations, between and among stockholders, members, or associates; between any or all of them and the corporation, ... of which they are stockholders, members, or associates, respectively; and between such corporation, ... and the State insofar as it concerns their individual franchise or right to exist as such entity;
>
> (c) Controversies in the election or appointments of directors, trustees, officers[,] or managers of such corporations;
>
> (d) Petitions of corporations, ... to be declared in the state of suspension of payments in cases where the corporation, partnership[,] or association possesses sufficient property to cover all its debts but foresees the impossibility of meeting them when they respectively fall due[,] or in cases where the corporation, partnership[,] or association has no sufficient assets to cover liabilities, but is under the management of a Rehabilitation Receiver or Management Committee created pursuant to this Decree.[255]

The characterization under Section 5 (b) of P.D. No. 902-A of the relationship "between such corporation ... and the State insofar as it concerns their individual franchise or right to exist as such entity"[256] as falling within "intra-corporate relations" is certainly a misnomer; for controversies arising between the corporation and the State (represented by the SEC), fall within

255. P.D. No. 902-A, § 5 (emphasis supplied).

256. *Id.* § 5 (b).

the first *Juridical Entity Level* of the Tri-Level Relationship in Corporate Law.[257]

Accordingly, such controversies fall strictly within the regulatory or administrative jurisdiction of the SEC over corporations registered under the Corporation Code, and properly fall within the "absolute jurisdiction, supervision[,] and control" powers of the SEC in Sections 3 and 6 of P.D. No. 902-A.

In other words, issues arising within the *Juridical Entity Level* fall into the regulatory powers of the SEC, rather than in its quasi-judicial powers under Section 5 of P.D. No. 902-A. This is precisely the reason why Section 1 (a) (2) of Rule 1 of the Interim Rules of Procedure on Intra-Corporate Controversies, as it defines the "Cases Covered" therein, does not include controversies arising "between the corporation and the State" within its coverage.[258]

Moreover, the characterization under Section 5 (b) of P.D. No. 902-A of the relationship "between the corporation ... and the public"[259] as intra-corporate relationship is also a misnomer, since that particular relationship falls within the third *Extra-Corporate Level* in the Tri-Level Corporate Relationship,[260] and constituted part of the original and exclusive jurisdiction of the SEC over corporate fraud cases under Section 5 (a) of P.D. No. 902-A.

Thus, the only true intra-corporate relationships within the coverage of Section 5 (b) of P.D. No. 902-A, as identified in *Union Glass & Container Corporation v. Securities and Exchange Commission*,[261] are those "between the corporation ... and its stockholders, ... members[,] or officers," and "among stockholders ... themselves[,]" respectively.[262]

Lastly, petitions for corporate suspension of payments and/or rehabilitation under Section 5 (d) of P.D. No. 902-A presented an extraordinary confluence of all three levels of corporate relationship: the exercise of the police power of the State over corporations to provide for a proper management of their assets and operations in the event of financial crisis or insolvency under the *Juridical Entity Level*; the protection of the

257. *See generally* VILLANUEVA & VILLANUEVA-TIANSAY, *supra* note 4, ch. 3 (for a fuller discussion of this tri-level relationship in corporate law).

258. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, § 1 (a) (2).

259. *Id.*

260. *See* VILLANUEVA & VILLANUEVA-TIANSAY, *supra* note 4, ch. 3.

261. Union Glass & Container Corporation v. Securities and Exchange Commission, 126 SCRA 31, 38 (1983).

262. P.D. No. 902-A, § 5 (b).

going concern value of the corporation for the benefit of the stockholders under the *Intra-Corporate Level*; and the protection or attempt to enhance the value of the business enterprise and assets of the corporation to allow full recover of the claims of creditors, under the *Extra-Corporate Level*.

2. The Two-Tiered Test for Determining Proper Jurisdiction Over Corporate Cases under Section 5 of P.D. No. 902-A

a. The Relationship Test

The earliest decision that defined and characterized the original and exclusive jurisdiction of the SEC under Section 5 of P.D. No. 902-A was rendered in the 1981 decision in *Sunset View Condominium Corp. v. Campos, Jr.*,[263] which involved two cases filed by a condominium corporation with the regular courts to collect assessments levied upon buyers of its condominium units.[264] In determining whether the SEC had proper jurisdiction over the cases on the ground that they involved "intra-corporate disputes," the Supreme Court constituted a ruling of what amounted to the "relationship test," thus —

> Inasmuch as the private respondents are not shareholders of the petitioner condominium corporation, the instant cases for collection cannot be a 'controversy arising out of intra-corporate or partnership relations between and among stockholders, members or associates; between any or all of them and the corporation, partnership[,] or association of which they are stockholders, members[,] or associates, respectively' which controversies are under the original and exclusive jurisdiction of the [SEC], pursuant to Section 5 (b) of P.D. No. 902-A. The subject matters of the instant cases according to the allegations of the complaints are under the jurisdiction of the regular courts.[265]

The following year, the relationship test was reiterated in *Philex Mining Corporation v. Reyes*,[266] which involved an original petition filed with the regular courts for specific performance with damages, where the petitioners sought to compel the issuance of certificates of stocks plus damages sustained.[267] The sole issue before the Court was whether the case involved an intra-corporate dispute that was cognizable by the SEC, or whether the regular courts continued to have jurisdiction since it involved the remedies of specific performance with damages.[268] It was posited in *Philex Mining*

263. Sunset View Condominium Corp. v. Campos, Jr., 104 SCRA 295 (1981).

264. *Id.* at 297-99.

265. *Id.* at 303.

266. Philex Mining Corporation v. Reyes, 118 SCRA 602 (1982).

267. *Id.* at 603-05.

268. *Id.* at 604-05.

Corporation that the phrase "controversies, arising out of intra-corporate relations" as used in Section 5 of P.D. No. 902-A would refer to

> controversies, cases[,] or intramurals among[,] or between[,] stockholders and the corporation involving the exercise of stockholders' privileges, rights, benefits[,] and their duties in a corporation[;] and ... cases between stockholders in [(1)] contesting or vying for a seat in the [b]oard of [d]irectors, [(2)] questions on voting by proxy, [(3)] election and tenure of office and qualification of directors, [(4)] removal and resignation of Directors, [(5)] repeal and amendment of corporate charter and by-laws, [and (6)] questions on corporation meetings and increase of capital stocks, [among others].[269]

Ruling that the existence of the relationship between and among the stockholders, or between the stockholders and the corporation was a necessary ingredient that would bring the controversy within the exclusive jurisdiction of the SEC under Section 5, the Supreme Court emphasized the importance of the relationship test, thus —

> The foregoing interpretation does not square with the intent of the law, which is to segregate from the general jurisdiction of regular courts controversies involving corporations and their stockholders and to bring them to the SEC for exclusive resolution, in much the same way that labor disputes are now brought to the Ministry of Labor and Employment (MOLE) and the National Labor Relations Commission (NLRC), and not to the Courts.[270]

Note therefore, that the emphasis of the relationship test as it was first expressed in *Sunset View Condominium Corp.* puts the relationship existing between the protagonists as by itself placing the controversy within the original and exclusive jurisdiction of the SEC under Section 5 of P.D. No. 902-A, and without which even the corporate nature of the controversy does not warrant the SEC from assuming proper jurisdiction over the case.

Subsequently, the case of *Union Glass & Container Corporation* expanded the coverage of the relationship test, and began to touch upon what eventually came to be known as the "nature of the controversy test." The *Union Glass & Container Corporation* case originated as a derivative suit filed with the SEC by a stockholder of Pioneer Glass seeking to annul the *dacion en pago* transaction effected by the company of its mortgaged assets to and in favor of DBP which, as the largest stockholder and principal creditor, was alleged to have acted with fraud and self-dealing resulting in the gross undervaluation of the transferred asset.[271] The complaint also sought to annul the subsequent sale by DBP of the glass factory it received, through the

269. *Id.* at 606.

270. *Id.*

271. *Union Glass & Container Corporation*, 126 SCRA at 33-36.

dacion en pago transaction, to another company called Union Glass at enormous profit.[272] The primary issue that had to be resolved by the Supreme Court was whether the SEC had proper jurisdiction under Section 5 of P.D. No. 902-A to take cognizance of the case, especially with respect to Union Glass which had no intra-corporate relationship with Pioneer Glass.[273] The Supreme Court noted that —

> In the ordinary course of things, petitioner Union Glass, as transferee and possessor of the glass plant covered by the *dacion en pago* agreement, should be joined as party-defendant under the general rule which requires the joinder of every party who has an interest in or lien on the property subject matter of the dispute. Such joinder of parties avoids multiplicity of suits as well as ensures the convenient, speedy[,] and orderly administration of justice. But since petitioner Union Glass has no intra-corporate relation with either the complainant or the DBP, its joinder as party-defendant in SEC Case No. 2035 brings the cause of action asserted against it outside the jurisdiction of the respondent SEC.[274]

It then laid down what would be formally referred to in jurisprudence as the "relationship test" (or the "status of the relationship of the parties" test) in determining the proper exercise of the SEC's quasi-judicial power under Section 5 of P.D. No. 902-A, thus —

> Otherwise stated, in order that the SEC can take cognizance of a case, the controversy must pertain to any of the following relationships:
>
> (a) between the corporation ... and the State in so far as its franchise, permit[,] or license to operate is concerned;
>
> (b) between the corporation ... and the public;
>
> (c) between the corporation ... and its stockholders, ... members, or officers; and
>
> (d) among the stockholders ... themselves.[275]

The Supreme Court ruled that since the corporation Union Glass had no intra-corporate relationship with the complainant, it could not be joined as a party-defendant in said case in violation of the rule on jurisdiction.[276] It directed that the complaint against Union Glass for cancellation of the sale of the glass plant should therefore be brought separately before the regular courts; but such action, if instituted, shall be suspended to await the final outcome of the SEC intra-corporate case — because the validity of the

272. *Id.* at 33.

273. *Id.* at 36.

274. *Id.* at 37.

275. *Id.* at 37-38.

276. *Id.* at 37 & 39.

dacion en pago is a prejudicial question, the resolution of which is a logical antecedent of the issue involved in the action against Union Glass.[277]

In *Union Glass & Container Corporation*, the Supreme Court gave the rational for placing much importance in the relationship test in determining the original and exclusive jurisdiction of the SEC over corporate cases under Section 5 of P.D. No. 902-A, but relating such quasi-judicial powers to the regulatory powers under Section 3 thereof, thus —

> This grant of jurisdiction [(under Section 5 of P.D. No. 902-A)] must be viewed in the light of the nature and function of the SEC under the law. Section 3 of [P.D.] No. 902-A confers upon the latter 'absolute jurisdiction, supervision, and control over all corporations, partnerships[,] or associations, who are grantees of primary franchise and/or license or permit issued by the government to operate in the Philippines[.]' The principal function of the SEC is the supervision and control over corporations, partnerships[,] and associations with the end in view that investment in these entities may be encouraged and protected, and their activities pursued for the promotion of economic development.
>
> It is in aid of this office that the adjudicative power of the SEC must be exercised. Thus the law explicitly specified and delimited its jurisdiction to matters intrinsically connected with the regulation of corporations, partnerships[,] and associations and those dealing with the internal affairs of such corporations, partnerships[,] or associations.[278]

Thus, during the pre-SRC period, the existence of any of the *Union Glass & Container Corporation* corporate relationships was so critical in placing the controversy under Section 5 of P.D. No. 902-A, such that even when the issues involved in a case were seemingly corporate in character, since the parties did not fall within the relationship test of Union Glass & Container Corporation, then such case remained ouside of the jurisdiction of the SEC.[279] The rationale under such line of decisions was that since the SEC was an administrative agency exercising quasi-judicial powers, then it remained a tribunal of limited jurisdiction which can only assume to act with proper jurisdiction over persons falling within the "intra-corporate relationship" mandated under Section 5 of P.D. No. 902-A, even when such limitation engendered a splitting of causes of action as to compel separate actions with the regular courts for parties who fell outside of the intra-corporate relationship.

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277. *Union Glass & Container Corporation*, 126 SCRA at 39.

278. *Id.* at 38.

279. *See generally* Development Bank of the Philippines v. Ilustre, 138 SCRA 11 (1985); Rivera v. Florendo, 144 SCRA 643 (1986); Abejo v. Dela Cruz, 149 SCRA 654 (1987); & Saavedra, Jr. v. Securities and Exchange Commission, 159 SCRA 57 (1988).

b. The Nature of the Controversy Test

The Supreme Court followed-up its *Union Glass & Container Corporation* ruling with its decision in *DMRC Enterprises v. Este Del Sol Mountain Reserve, Inc.*,[280] establishing the nature of the controversy test, (or the test of "the nature of the question that is the subject of their controversy"), where it ruled that

> [t]he purpose and the wording of the law escapes the respondent. Nowhere in said decree do we find even so much as an intimation that absolute jurisdiction and control is vested in the [SEC] in *all* matters affecting corporations. *To uphold the respondent's argument would remove*[,] *without legal imprimatur*[,] *from the regular courts all conflicts over matters involving or affecting corporations, regardless of the nature of the transactions which give rise to such disputes. The courts would then be divested of jurisdiction not by reason of the nature of the disputes submitted to them for adjudication, but solely for the reason that the dispute involves a corporation.* This cannot be done. To do so would not only be to encroach on the legislative prerogative to grant and revoke jurisdiction of the courts but such sweeping interpretation may suffer constitutional infirmity. Neither can we reduce jurisdiction of the courts by judicial fiat.[281]

In *DMRC Enterprises*, the sole issue was whether it was the SEC or the regular courts that had jurisdiction over a complaint for collection of sum of money[282] based on a contract of lease wherein rentals are to be paid partly in cash and partly in shares of stock of the lessee-corporation.[283] The Supreme Court held that a collection action on a contract of lease which included payment of rentals in shares of stock is essentially civil in nature rather than involving complicated corporate matters, and remained within the competence of the regular courts to decide.[284]

Subsequently, in *Boman Environmental Dev't. Corp. v. Court of Appeals*,[285] the only issue to be resolved was

> whether or not a suit brought by a withdrawing stockholder against the corporation to enforce payment of the balance due on the consideration [evidenced by a corporate promissory note] for the surrender of his shares of stock and interests in the corporation, involves an intra-corporate

280. DMRC Enterprises v. Este Del Sol Mountain Reserve, Inc., 132 SCRA 293 (1984).

281. *Id.* at 299-300 (emphasis supplied).

282. *Id.* at 297.

283. *Id.*

284. *Id.* at 299.

285. Boman Environmental Dev't. Corp. v. Court of Appeals, 167 SCRA 540 (1988).

> dispute. ... The resolution of [which] will determine whether the [SEC] or a regular court has jurisdiction over the action.[286]

In sustaining that the SEC had proper jurisdiction over the controversy even though at the time of the filing of the collection suit with the RTC, the seller was no longer an officer or stockholder of record of the corporation, the Supreme Court ruled that the issues to be resolved still arose from the intra-corporate relationship, and the ability to determine a host of corporate issues, such as the application of the trust fund doctrine, remained with the SEC,[287] thus —

> [the stockholder's] suit against the corporation to enforce the latter's promissory note or compel the corporation to pay for [the] shareholdings is cognizable by the SEC alone which shall determine whether such payment will not constitute a distribution of corporate assets to a stockholder in preference over creditors of the corporation. The SEC has exclusive supervision, control[,] and regulatory jurisdiction to investigate whether the corporation has unrestricted retained earnings to cover the payment for the shares, and whether the purchase is for a legitimate corporate purpose as provided in Sections 41 and 122 of the Corporation Code[.]
>
> ...
>
> These provisions of the Corporation Code should be deemed written into the agreement between the corporation and the stockholders even if there is no express reference to them in the promissory note. The principle is well settled that an existing law enters into and forms part of a valid contract without need for the parties' expressly making reference to it.
>
> The requirement of unrestricted retained earnings to cover the shares is based on the trust fund doctrine which means that the capital stock, property[,] and other assets of a corporation are regarded as equity in trust for the payment of corporate creditors. The reason is that creditors of a corporation are preferred over the stockholders in the distribution of corporate assets. There can be no distribution of assets among the stockholders without first paying corporate creditors. Hence, any disposition of corporate funds to the prejudice of creditors is null and void. 'Creditors of a corporation have the right to assume that so long as there are outstanding debts and liabilities, the board of directors will not use the assets of the corporation to purchase its own stock[.]'[288]

Jurisprudential movement away from the sole significance of the relationship test, and the granting of equal importance to the nature of the controversy test, in determining the proper jurisdiction of the SEC over corporate cases under Section 5 of P.D. No. 902-A was sustained in a series

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286. *Id.* at 541.

287. *Id.* at 546-48.

288. *Id.* at 547-48 (citing Lakas ng Manggagawang Makabayan (LMM) v. Abiera, 36 SCRA 437 (1970) & Steinberg v. Velasco, 52 Phil. 953 (1929)).

of cases since the decisions in *DMRC Enterprises* and *Boman Environmental Dev't Corp.*[289] All clearly demonstrate that not every suit involving a corporation or incidentally arising from corporate relationship necessarily comes within the quasi-judicial powers of the SEC under the "absolute jurisdiction, supervision[,] and control"[290] language of Section 3 of P.D. No. 902-A, and that jurisdiction over corporate cases under Section 5 thereof should be determined by considering not only the status or relationship of the parties but also the nature of the question that is the subject of their controversies.

3. RTC Special Commercial Courts Remain Courts of General Jurisdiction

Since Subsection 5.2 of the SRC merely transferred the original and exclusive jurisdiction over the corporate cases under Section 5 of P.D. No. 902-A to the RTC Special Commercial Courts, an area of development that followed was how to handle pre-SRC rulings that struggled with the fact that the SEC, being an administrative agency and a tribunal of limited jurisdiction *could not* therefore: (a) take proper jurisdiction over persons who did not fall within the intra-corporate relationships; or (b) rule on issues that were essentially civil, rather than corporate, in nature.

Another issue that had to be resolved was whether RTC Special Commercial Courts could, in deciding over corporate cases falling under Section 5, exercise any of the powers expressly granted to the SEC under Section 6, of P.D. No. 902-A.

a. The Issue of "Splitting" of RTC Jurisdiction Over Corporate Cases

The pre-SRC jurisprudence on corporate cases under Section 5 of P.D. No. 902-A allowed for a splitting of causes of action, i.e., that the SEC had jurisdiction over corporate cases as it involved those within the intra-corporate relationship; whereas, the matters that covered those involved in the same controversies who were outside the intra-corporate relationship, were cognizable by the regular courts of law. The basis for such pre-SRC rulings was primarily the doctrine that *the SEC was a tribunal of limited jurisdiction.*

With the enactment of the SRC, it was posited earlier on that such "splitting of causes of action" may, at first blush, no longer occur since the

289. *See generally* Peneyra v. Intermediate Appellate Court, 181 SCRA 244 (1990); Embassy Farms, Inc. v. Court of Appeals, 188 SCRA 492 (1990); Viray v. Court of Appeals, 191 SCRA 308 (1990); Orosa, Jr. v. Court of Appeals, 193 SCRA 391 (1991); Intestate Estate of Alexander T. Ty v. Court of Appeals, 356 SCRA 661 (2001); *Vesagas*, 371 SCRA at 508; & Nacpil v. Intercontinental Broadcasting Corporation, 379 SCRA 653 (2002).

290. P.D. No. 902-A, § 3.

corporate cases under Section 5 of P.D. No. 902-A have been transferred to the RTC Special Commercial Courts, which are also courts of general jurisdiction. Unfortunately, upon closer analysis, issues of splitting of causes of action may still occur even if these corporate cases fall within the jurisdiction of the RTC because corporate cases under Section 5 of P.D. No. 902-A have been segregated to specially-designated RTC branches, and also because of the peculiar application of the Interim Rules of Procedure on Intra-Corporate Controversies.

For example, since the Interim Rules of Procedure on Intra-Corporate Controversies can apply only to corporate cases falling under Section 5 of P.D. No. 902-A, then they can only cover the "corporate aspects" of the case or only the parties falling within the intra-corporate relationship rule. Since the Interim Rules of Procedure on Intra-Corporate Controversies apply only to corporate cases defined under Section 5 of P.D. No. 902-A, there is brewing controversy on whether they could cover a party-litigant who does not fall within the definition of "intra-corporate relationship," but that his claim or obligation happened to be intertwined with the corporate case. Accordingly, is it allowed for such non-intra-corporate party to even file a separate case with the regular RTC and thereby avoid the summary effects of the Interim Rules of Procedure on Intra-Corporate Controversies and instead be governed by the regular Rules of Court? What happens in a case therefore involving non-intra-corporate parties? Does it mean that the case can be filed with the RTC Special Commercial Courts, but that the Interim Rules of Procedure on Intra-Corporate Controversies would apply as to the parties insofar as they fall within the corporate family, and the regular Rules of Court provisions would apply as to non-intra-corporate litigant?

The issue of splitting of jurisdiction over Section 5 corporate cases under the original and exclusive jurisdiction of the RTC Special Commercial Courts was eventually addressed in *Go Express Worldwide N.V. and Amihan Management Services, Inc. v. Court of Appeals (Fourth Division)* (*Go Express Worldwide N.V.*),[291] where two separate but inter-related cases were pending among the same parties at the time the SRC came into effect, namely:

> (1) With the regular RTC, wherein the petitioner Go Express Worldwide N.V. "sought to nullify the approval by the Committee on Privatization and the notice of award issued by the Asset Privatization Trust in favor of respondent Filchart and to compel the defendants to perform all their respective obligations under the joint venture agreements[,]"

291. Go Express Worldwide N.V. and Amihan Management Services, Inc. v. Court of Appeals (Fourth Division), 587 SCRA 333 (2009) [hereinafter *Go Express Worldwide N.V.*].

pertaining to the joint-venture company, Pacific East Asia Cargo Airlines, Inc. (PEAC), or, "in the alternative, to nullify the transfer and/or issuance of subscribed shares of stock in PEAC in favor of respondent Filchart;"[292] and

(2) With the SEC, where the petitioner Filchart prayed for the appointment of a management receiver for PEAC, the nullification and amendment of certain provisions of the articles of incorporation and by-laws of PEAC, the recognition of the election of petitioner's directors, as well as the inspection of the corporate books, which were issues ruled to be "intra-corporate in nature as they pertain to the regulation of corporate affairs."[293]

With the effectivity of the SRC, both cases were transferred to the appropriate RTC Special Commercial Court, and the issue that had to be resolved by the Supreme Court was whether the original RTC civil case "can proceed simultaneously [with] and independently [of] the intra-corporate case or whether both cases should be consolidated or either case suspended or dismissed."[294] The Court characterized the effective powers and prerogative of RTC Special Commercial Courts, as follows —

> It should be noted that the [Special Commercial Courts] are still considered courts of general jurisdiction. Section 5.2 of [the SRC] directs merely the Supreme Court's designation of RTC branches that shall exercise jurisdiction over intra-corporate disputes. Nothing in the language of the law suggests the diminution of jurisdiction of those RTCs to be designated as [Special Commercial Courts]. The assignment of intra-corporate disputes to [Special Commercial Courts] is only for the purpose of streamlining the workload of the RTCs so that certain branches thereof like the [Special Commercial Courts] can focus only on a particular subject matter.
>
> ...
>
> The RTC exercising jurisdiction over an intra-corporate dispute can be likened to an RTC exercising its probate jurisdiction or sitting as a special agrarian court. The designation of the [Special Commercial Courts] as such has not in any way limited their jurisdiction to hear and decide cases of all nature, whether civil, criminal[,] or special proceedings.[295]

In ruling that RTC Special Commercial Courts remain courts of general jurisdiction that continue to have the competence to rule on issues beyond intra-corporate controversies, the Supreme Court held that

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292. *Id.* at 336.

293. *Id.* at 337.

294. *Id.* at 341.

295. *Id.* at 344.

> [t]here is no jurisdictional infirmity for either court (the RTC hearing Civil Case No. 96-17-675 and the [Special Commercial Court] assigned to hear SEC Case No. 08-97-5746), the only question that remains is whether Civil Case No. 96-17-675 and SEC Case No. 08-97-5746, now transferred to the proper [Special Commercial Court], may proceed concurrently or should be consolidated or whether SEC Case No. 08-97-5746 should be suspended to await the outcome of Civil Case No. 96-17-675,[296]

and that the disposition of such issues is addressed to the discretion of the RTC hearing both cases, thus —

> The test to determine whether the suspension of the proceedings in the [second case] is proper is whether the issues raised by the pleadings in the [first case] are so related with the issues raised in the [second case], such that the resolution of the issues in the [first case] would determine the issues in the [second case].
>
> The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the cases on its dockets, considering its time and effort, that of counsel and the litigants. But if proceedings must be stayed, it must be done in order to avoid multiplicity of suits and prevent vexatious litigations, conflicting judgments, confusion between litigants and courts. It bears stressing that whether or not the RTC, in this case the [Special Commercial Court], would suspend the proceedings in the [second case] is submitted to its sound discretion.
>
> Thus, the [Special Commercial Court] to which SEC Case No. 08-97-5746 was transferred has sufficient discretion to determine whether under the circumstances of the case, it should await the outcome of Civil Case No. 96-17-675.[297]

The manner by which RTC Special Commercial Courts are able to handle the final disposition of corporate cases assigned to them is really within their judicial discretion, with ability to resolve issues that fall within their power as courts of general jurisdiction.

The Supreme Court also noted in *Go Express Worldwide N.V.* that

> [i]ncidentally, not all the prayers and reliefs sought by respondent ... can be characterized as intra-corporate in nature. For instance, respondent Filchart's petition does not allege that the cause of action for the nullification of the management contract between PEAC and petitioner Amihan is being instituted as a derivative suit. It is an ordinary action for the nullification of a contract, which is cognizable by courts of general jurisdiction.[298]

Further, it was held that —

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296. *Id.*

297. *GD Express Worldwide N.V.*, 587 SCRA at 346.

298. *Id.* at 345.

> The issue of the interpretation of the provisions of the joint venture agreements is among the subjects of Civil Case No. 96-17-675. On the one hand, petitioner Go Express is claiming therein that the joint venture agreements requiring the petitioner GD Express' consent to the sale of PADC's shares in PEAC must be enforced while respondent Filchart instituted SEC Case No. 08-97-5746 precisely to nullify the said provision. There is no doubt that the objects of both suits are necessarily connected: hence, respondent Filchart's prayer for the nullification of the joint venture agreements should have been raised as a defense in Civil Case No. 96-17-675 because there exists a logical relationship between the two claims. Conducting separate trials of the respective claims of the parties would entail substantial duplication of time and effort by the parties and the court.[299]

In other words, RTC Special Commercial Courts have greater leeway today in handling corporate issues than when corporate cases were being heard by the SEC during the pre-SRC period, and certainly greater leeway than regular RTCs. Note, however, that in *Calleja v. Panday*,[300] it was held that a RTC, which is not designated as special commercial court and to which a corporate case under Section 5 of P.D. No. 902-A was filed, did not have the requisite authority nor power to order the transfer of such case to the proper RTC Special Commercial Court;[301] and that the only action that it could take on the matter was to dismiss the petition for lack of jurisdiction.[302]

Thus, *Go Express Worldwide N.V.* is authority to state that the issue of splitting of causes of action in Section 5 corporate cases can still occur, due to the special corporate jurisdiction of RTC Special Commercial Courts and the peculiar application of the Interim Rules of Procedure on Intra-Corporate Controversies; but that RTC Special Commercial Courts, in the exercise of their powers as courts of general jurisdiction, may choose, taking into consideration the public policy for the speedy disposition of justice, to either consolidate such cases, to allow both to proceed independently in each of the other jurisdiction, or for the case with prejudicial question issues to be suspended to await the decision of the other case.

b. The Powers in Section 6 of P.D. No. 902-A Which May Be Exercised by RTC Special Commercial Courts

Although nothing on the matter is specifically stated in Subsection 5.2 of the SRC, it reasonably follows that the powers vested with the SEC under Section 6 of P.D. No. 902-A have also been vested with RTC Special

299. *Id.*

300. Calleja v. Panday, 483 SCRA 680 (2006).

301. *Id.* at 692-93.

302. *Id.* at 694.

Commercial Courts in exercising their jurisdiction over Section 5 corporate cases. Having also conceded that Section 6 powers insofar as they pertain to the exercise its regulatory powers remain vested with the SEC, the main issue that had to be resolved was what extent of the powers in Section 6 of P.D. No. 902-A are deemed transferred to the RTC Special Commercial Courts.

The matter began to be tackeld in the 2006 decision in *Punongbayan v. Punongbayan, Jr.*,[303] where the issue was whether the RTC Special Commercial Court to which a Section 5 corporate case has been transferred from the SEC, had the power to dissolve the management committee that was constituted previously by the SEC.[304] The Supreme Court held in the affirmative, thus —

> [T]he RTC assumed powers provided under Sections 5 and 6 of Presidential Decree No. 902-A quoted earlier. As such, it has the discretion to grant or deny an application for the creation of a management committee. Having the power to create a management committee, it follows that the RTC can order the reorganization of the existing management committee. Here, knowing that the deadlock among the members of the committee (appointed by the SEC) may lead to the paralyzation of the school's business operations, the RTC removed the said members and appointed new members.[305]

Subsequently, *Yujuico*, where one of the issues to be resolved was whether an RTC Special Commercial Court in a Section 5 corporate case had the power to issue a writ of preliminary injunction to order the holding of a special stockholders' meeting on the allegation that only the SEC has the regulatory power to order the holding of such meeting, held that "[u]pon the enactment of ... [SRC] which took effect on [8 August 2000], the jurisdiction of the SEC over intra-corporate controversies and other cases enumerated in Section 5 of P.D. No. 902-A has been *transferred* to the courts of general jurisdiction, or the appropriate RTC."[306] It also affirmed that all the powers granted to the SEC under Section 6 in order to properly discharge its adjudicatory powers in Section 5 of P.D. No. 902-A, have been assumed by the RTC special commercial courts, thus —

> [T]he RTC has the power to hear and decide the intra-corporate controversy of the parties herein. Concomitant to the power of the RTC to hear and decide intra-corporate controversies is the authority to issue necessary or incidental to the carrying out of powers expressly granted to it. Thus, the RTC may, in appropriate cases, order the holding of a special

303. Punongbayan v. Punongbayan, Jr., 491 SCRA 477 (2006).

304. *Id.* at 483-84.

305. *Id.* at 487.

306. *Yujuico*, 513 SCRA at 257 (emphasis supplied).

> meeting of stockholders or members of a corporation involving an intra-corporate dispute under its supervision.[307]

As has been discussed previously, the inaccuracy of the doctrinal language used in *Yujuico* was unfortunate for aside from holding that RTC Special Commercial Courts have "supervision" over corporations (which they obviously do not have), it referred back to the erroneous doctrine in the earlier decision in *Morato* which held that the SEC has been denied all powers under Section 6 of P.D. No. 902-A, despite the fact that one of the supervisory regulatory powers of the SEC confirmed under Subsection 5.1 (k) is to "|c|ompel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision."[308]

4. Interim Rules of Procedure on Intra-Corporate Controversies

The Interim Rules of Procedure on Intra-Corporate Controversies[309] expressly provide that they are applicable to the following corporate cases:[310]

(1) Corporate Fraud Cases;

(2) Intra-corporate Disputes;

(3) Election/Appointments cases of Directors and Officers;

(4) Inspection of Corporate Books; and

(5) Derivative Suits.

Corporate fraud cases falling under Section 5 (a) of P.D. No. 902-A are not necessarily limited to "intra-corporate cases" for they cover a wide range of corporate practices, including issuance of debt securities that cause damage to the public based on fraud.

a. Nature and Characteristics of the Interim Rule

The Interim Rules for Intra-Corporate Controversies consider intra-corporate cases to be "summary in nature" in that:

(1) All decisions and orders issued under the *Interim Rules* shall be immediately executory, unless restrained by an appellate court;[311]

307. *Id.* at 257.

308. *Morato*, 436 SCRA at 438, 453-54, & 458.

309. *See generally* INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES.

310. *Id.* rule 1, § 1.

311. *Id.* rule 1, § 4.

(2) Certain pleadings are expressly prohibited (e.g., motion to dismiss, motion for bill of particulars, motion for postponement, etc.) to expedite resolution of the issues on the merits;[312]

(3) Mandate that oral evidence shall be submitted in affidavit form;[313]

(4) Provide specific periods within pleadings shall be filed and resolutions are to be made; and

(5) Direct that the presiding judge may, upon verified complaint filed with the Office of the Court Administrator, be subjected to disciplinary action for failure to observe the special summary procedures prescribed in therein.[314]

Sy Tiong Shiou v. Sy Chim,[315] recognized that there is a conflict between Rule 1, Section 8 and Rule 2, Section 2 of the Interim Rules for Intra-Corporate Controversies, in that while a third-party complaint is not included in the allowed pleadings, neither is it among the prohibited ones. It resolved the conflict as follows —

> A third-party complaint is not, and should not be prohibited in controversies governed by the Interim Rules of Procedure for Inter-Corporate Controversies. Jurisprudence is consistent in declaring that the purpose of a third-party complaint is to avoid circuitry of action and unnecessary proliferation of law suits and of disposing expeditiously in one litigation all the matters arising from one particular set of facts [—] the summary nature of the proceedings governed by the Interim Rules, and the allowance of the filing of third-party complaints is premised on one objective, which is expeditious disposition of cases.[316]

b. General Prohibition in the Interim Rules Against Nuisance and Harassment Suits

In line with the underlying policy embodied in the *Interim Rules* that the cases covered should be resolved in the most expeditious manner possible, Section 1 (b), Rule 1 thereof expressly declares that "[n]uisance and harassment suits are prohibited."[317] In case of nuisance or harassment suit,

312. *Id.* rule 1, § 8.

313. *Id.* rule 2, § 8 & rule 5, § 1.

314. *Id.* rule 11, § 2.

315. Sy Tiong Shiou v. Sy Chim, 582 SCRA 517 (2009).

316. *Id.* at 542.

317. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 1, § 1 (b).

the RTC Special Commercial Courts may, *motu proprio* or upon motion, forthwith dismiss the case.

In determining whether a suit is a nuisance or harassment suit, the RTC Special Commercial Courts are mandated to consider among others the following:

(1) Extent of shareholdings or interest of the initiating stockholder or member;

(2) Subject matter of suit;

(3) Legal and factual basis of the complaint;

(4) Availability of appraisal rights for the act(s) complained of; and

(5) Prejudice or damage to the corporation in relation to the relief sought.[318]

In addition, under Section 1, Rule 11 of the Interim Rules for Intra-Corporate Controversies, the RTC Special Commercial Courts may, upon motion or *motu proprio*, impose appropriate sanctions on the parties or counsel in case the suit filed is found to be a nuisance or harassment suit, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the act complained of, including reasonable attorney's fees.[319]

As can be gleaned from the foregoing enumerative examples, parties to corporate cases are not allowed to avail of the special route offered by the Interim Rules for Intra-Corporate Controversies when more adequate remedies are available (e.g., exercise of appraisal rights), or the right sought to be established is not important or serious enough to have to meddle into the operations of the corporate enterprise (e.g., prejudice or damage to the corporation is not serious, the subject matter is not of serious consequence, or the legal or factual bases for the reliefs are not well-defined). Such an attitude in the Interim Rules for Intra-Corporate Controversies is consistent with the general principle of business judgment rule prevailing in corporate world.

c. RTC Powers Under the Interim Rules

(i) The Management Committee

(1) Nature of a Management Committee

318. *Id.*

319. *Id.* rule 11, § 1.

Although the Supreme Court has characterized the function of the Management Committee constituted in corporate cases as "[a] management committee is tasked to manage, take custody of and control all existing assets, funds and records of the corporation, and to determine the best way to protect the interest of its stockholders and creditors;"[320] nonetheless, it has ruled that the Management Committee is not a representative or agent of the stockholders, thus —

> A management committee is not the representative or agent of the stockholder upon whose instance the committee has been appointed; rather, it is for the time being a ministerial officer and representative of the court hearing the derivative suit. Since its appointment is for the benefit of all interested parties, it holds and manages the property for the benefit of those ultimately entitled to, and not primarily for the benefit of the party at whose instance the appointment has been made.[321]

(2) Grounds for the Appointment of a Management Committee

Section 6 (d) of P.D. No. 902-A provides for the power of the SEC, now the RTC Special Commercial Courts, to constitute a Management Committee, thus —

> d) To create and appoint a management committee, board or body upon petition or *motu proprio* to undertake the management of corporations, partnerships or other associations not supervised or regulated by other government agencies in appropriate cases when there is imminent danger of dissipation, loss, wastage or destruction of assets or other properties or paralyzation of business operations of such corporations or entities, which may be prejudicial to the interest of minority stockholders, parties-litigants or the general public.[322]

Additionally, Section 1, Rule 9 of the Interim Rules for Intra-Corporate Controversies provides —

> As an incident to any of the cases filed under these Rules ... a party may apply for the appointment of a management committee for the corporation, partnership or association, when there is imminent danger of:
>
> (1) Dissipation, loss, wastage or destruction of assets or other properties; and

320. *Punongbayan*, 491 SCRA at 486.

321. Jacinto v. First Women's Credit Corporation, 410 SCRA 140, 147 (2003).

322. P.D. No. 902-A, § 6 (d) also provides that the SEC "may create or appoint a management committee, board or body to undertake the management of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned." P.D. No. 902-A, § 6 (d).

(2) Paralyzation of its business operations which may be prejudicial to the interest of the minority stockholders, parties-litigants or the general public.[323]

Sy Chim v. Sy Siy Ho & Sons, Inc.,[324] ruled that *both* aforequoted conditions must both be present, thus —

> The rationale for the need to establish the confluence of the two (2) requisites under Section 1, Rule 9 by an applicant for the appointment of a management committee is primarily based upon the fact that such committee and receiver appointed by the court will immediately take over the management of the corporation, partnership[,] or association, including such power as it may deem appropriate, and any of the powers specified in Section 5 of the Rule.
>
> Indeed, upon the appointment of a receiver, the duly elected/appointed officers of the corporation are divested of the management of such corporation in favor of the management committee/receiver. Such transference of the corporation's management will certainly have a negative, if not crippling effect, on the operations/affairs of the corporation not only with banks and other business institutions including those abroad which it deals business with. A wall of uncertainty is erected; the short and long-term plans of the management of the corporation are disrupted, if not derailed.[325]

Sy Chim held that since neither P.D. No. 902-A, the SRC, nor the Interim Rules for Intra-Corporate Controversies define "imminent danger," it ruled that —

> 'Danger' is a general term, including peril, jeopardy, hazard and risk: as used in the Rule, it refers to exposure or liability to injury. 'Imminent' refers to something which is threatening to happen at once, something close at hand, something to happen upon the instant, close although not yet happening, and on the verge of happening.[326]

Similarly, *Sy Chim* also held that —

> the creation and appointment of a management committee ... is an extraordinary and drastic remedy to be exercised with care and caution; and only when the requirements under the [Interim Rules for Intra-Corporate Controversies] are shown. It is a drastic course for the benefit of the minority stockholders, the parties-litigants or the general public are allowed only under pressing circumstances and, when there is inadequacy, ineffectual or exhaustion of legal or other remedies. The power to

323. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 9, § 1.

324. Sy Chim v. Sy Siy Ho & Sons, 480 SCRA 465 (2006).

325. *Id.* at 494-96.

326. *Id.* at 497 (citing Continental Illinois Western Bank v. United States of America, 504 F.2d 586 (1974)).

> intervene before the legal remedy is exhausted and misused when it is exercised in aid of such a purpose. The power of the court to continue a business of a corporation, partnership[,] or association must be exercised with the greatest care and caution. There should be a full consideration of all the attendant facts, including the interest of all parties concerned.[327]

Finally, *Sy Chim* held that although past conduct and condition of the corporation may be considered in determining the present situation and what the future will be,

> a management committee or receiver will not be appointed merely because of things done or attempted at a past time when the present situation and the prospects for the future are not such as to warrant taking the control of the property out of the hands of its owners. The circumstances to justify the appointment of a management committee/receiver must be extraordinary and something more must be shown that past misconduct and a mere apprehension based thereof of future wrongdoing. To repeat, in the absence of a strong showing of an imminent danger of dissipation, loss, wastage[,] or destruction of assets or other properties of the corporation and paralysis of its business operations, the mere apprehension of future misconduct based upon prior mismanagement will not authorize the appointment of a management committee/receiver.[328]

Indeed, the Court had earlier held in *Jacinto v. First Women's Credit Corporation*,[329] that

> [i]n exercising the discretion to appoint a management committee, the officer or tribunal before whom the application was made must take into account all the circumstances and facts of the case, the presence of conditions and grounds justifying the relief, the ends of justice, the rights of all the parties interested in the controversy and the adequacy and effectiveness of other available remedies. The discretion must be exercised with great caution and circumspection and only for a reason strongly appealing to the tribunal or officer exercising jurisdiction. At any rate, once the discretion has been exercised, the presumption to be considered is that the officer or tribunal has fairly weighed and appraised the evidence submitted by the parties.[330]

In construing the proper exercise of the power under Section 6 (d) of P.D. No. 902-A to appoint a management committee/receiver, the Court held —

> A reading of the aforecited legal provision reveals that for a minority stockholder to obtain the appointment of an interim management committee, he must do more than merely make a *prima facie* showing of a

327. *Id.* at 496–97.

328. *Id.* at 500–01.

329. Jacinto v. First Women's Credit Corporation, 410 SCRA 140 (2003).

330. *Id.* at 145.

> denial of his right to share in the concerns of the corporation; he must show that the corporate property is in danger of being wasted and destroyed; that the business of the corporation is being diverted from the purpose for which it has been organized; and that there is serious paralyzation of operations all to his detriment. It is only in a strong case where there is a showing that the majority are clearly violating the chartered rights of the minority and putting their interests in imminent danger that a management committee may be created.
>
> ...
>
> [M]ere disagreement among stockholders as to the affairs of the corporation would not in itself suffice as a ground for the appointment of a management committee. At least where there is no imminent danger of loss of corporate property or of any other injury to stockholders, management of corporate business should not be wrested away from duly elected officers, who are *prima facie* entitled to administer the affairs of the corporation, and placed in the hands of the management committee. However, where the dissension among stockholders is such that the corporation cannot successfully carry on its corporate functions the appointment of a management committee becomes imperative.[331]

Since the situation described in *Jacinto* is similar to the "deadlock situation" for close corporations covered under Section 104 of the Corporation Code, the Court ruled —

> Additionally, as admitted by the parties and borne out by the evidence on record, the prevailing internal dispute and feud between petitioners and Katayama have resulted in the total paralization of FWCC's business operations and adversely affected its collection efforts. In view of these facts, Hearing Officer Palmares was clearly justified in ordering the appointment of the [Interim Management Committee] to oversee the operation of FWCC and preserve its assets pending resolution of parties' dispute.[332]

Punongbayan held that, under the SRC, the RTC assumed powers provided under Sections 5 and 6 of P.D. No. 902-A,[333] and

> [a]s such, it has the discretion to grant or deny an application for the creation of a management committee[, and having] the power to create a management committee, it follows that the RTC can order the reorganization of the existing management committee. Here, knowing that a deadlock among the members of the committee (appointed by the SEC) may lead to the paralyzation of the school's business operations, the RTC removed the said members and appointed new members.[334]

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331. *Id.* at 145-46.

332. *Id.* at 147.

333. *Punongbayan*, 491 SCRA at 477.

334. *Id.* at 487.

(3) Powers of the Management Committee

Section 6 (d) of P.D. No. 902-A provides for the following powers and duties of the Management Committee when it is constituted, to wit:

> (1) To take custody of, and control over, all the existing assets and property of such entities under management;
>
> (2) To evaluate the existing assets and liabilities, earnings and operations of such corporations, partnership or other associations;
>
> (3) To determine the best way to salvage and protect the interest of the investors and creditors;
>
> (4) To overrule or revoke the actions of the previous management and board of directors of the entity or entities under management notwithstanding any provisions of law, articles of incorporation or by-laws to the contrary.
>
> (5) To study, review and evaluate the feasibility of continuing operations and restructure and rehabilitate such entities if determined to feasible by the SEC (now the RTC) until dissolved by order of the SEC (now the RTC);
>
> *Provided, however*: That the SEC (now RTC Special Commercial Courts) may, on the basis of the findings and recommendation of the Management Committee, or in its own findings, determine that the continuance in business of such *corporation or* entity would not be feasible or profitable nor work to the best interest of the stockholders, parties-litigants, creditors or the general public, *order the dissolution of such corporation or entity and its remaining assets liquidated accordingly*; [and]
>
> (6) To report and be responsible to the SEC (now the RTC Special Commercial Courts) until dissolved by order of the SEC.[335]

A "safe harbor clause" is provided for in the last paragraph of Section 6 (d) of P.D. No. 902-A to the effect that —

> The management committee, or rehabilitation receiver, board or body, shall not be subject to any action, claim or demand for, or in connection with, any act done or omitted to be done by it in good faith in exercise of its functions, or in connection with the exercise of its power herein conferred.[336]

On the other hand, Section 5, Rule 9 of the Interim Rules of Procedure for Inter-Corporate Controversies provides for the following powers and functions of the Management Committee —

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335. P.D. No. 902-A, § 6 (d) (emphasis supplied).

336. *Id.*

Upon the assumption of office of the management committee, the receiver shall immediately render a report and turn over the management and control of the entity under his receivership to the management committee.

The management committee shall have the power to take custody and control of all assets and properties owned or possessed by the entity under management. It shall take the place of the management and board of directors of the entity and assume their rights and responsibilities and preserve the entity's assets and properties in its possession.

Without limiting the generality of the foregoing, the management committee shall exercise the following powers and functions:

(1) To investigate the acts, conduct, properties, liabilities, and financial condition of the entity under management committee;

(2) To examine under oath the directors and officers of the entity and any other witnesses that it may deem appropriate;

(3) To report to the court any fact pertaining to the causes of the problems, fraud, misconduct, mismanagement[,] and irregularities committed by the stockholders, directors, management[,] or any other person;

(4) To employ lawyers, accountants, auditors, appraisers[,] and staff as are necessary in performing its functions and duties as management committee;

(5) To report to the court any material adverse change in the business of the entity under management committee;

(6) To evaluate the existing assets and liabilities, earnings[,] and operations of the entity under management committee;

(7) To determine and recommend to the court the best way to salvage and protect the interest of the creditors, stockholders[,] and the general public, including the rehabilitation of the entity under management committee;

(8) To prohibit and report to the court any encumbrance, transfer, or disposition of the debtor's property outside of the ordinary course of business or what is allowed by the court;

(9) To prohibit and report to the court any payments made outside of the ordinary course of business;

(10) To have unlimited access to the employees, premises, books, records[,] and financial documents during business hours;

(11) To inspect, copy, photocopy[,] or photograph any document, paper, book, account or letter, whether in the possession of the corporation, association or partnership or other persons;

(12) To gain entry into any property for the purposes of inspecting, measuring, surveying, or photographing it[,] or any designated relevant object or operation thereon;

(13) To bring to the attention of the court any material change affecting the entity's ability to meet its obligations;

(14) To revoke resolutions passed by the Executive Committee or Board of Directors/Trustees or any governing body of the entity under management committee and pass resolution in substitution of the same to enable it to more effectively exercise its powers and functions;

(15) To modify, nullify[,] or revoke transactions coming to its knowledge which it deems detrimental or prejudicial to the interest of the entity under management committee;

(16) To recommend the termination of the proceedings and the dissolution of the entity if it determines that the continuance in business of such entity is no longer feasible or profitable or no longer works to the best interest of the stockholders, parties-litigants, creditors[,] or the general public;

(17) To apply to the court for any order or directive that it may deem necessary or desirable to aid him in the exercise of his powers and performance of his duties and functions; and

(18) To exercise such other powers as may from time to time be conferred upon him by the court.[337]

The Chairman of the Management Committee is to be chosen by the members from among themselves, and that a majority of the members shall be necessary for the management committee to act or make a decision. It authorizes the committee to delegate its management functions as may be necessary to operate the business of the entity and preserve its assets.[338]

(ii) Power to Appoint Comptroller and Independent Auditor

On one hand, *Sy Chim* ruled that the RTC Special Commercial Courts *do not* have the power to appoint a comptroller prior to the appointment of a management committee or receiver, but conceded that when so appointed, the management committee or receiver would have the power to ratify such appointment pursuant to Section 5, Rule 9 of the Interim Rules of Procedure for Inter-Corporate Controversies. It defined a "comptroller" as "an officer of a business, charged with certain duties in relation to the fiscal affairs of the same, principally to examine and audit the accounts, to keep records, and report the financial situation from time to time."[339]

On the other hand, *Sy Chim* also held that the RTC Special Commercial Courts have the discretion in appointing an independent auditor even when no management committee or receiver has been

337. Interim Rules of Procedure for Intra-Corporate Controversies, rule 9, § 5.

338. *Id.* rule 9, § 6.

339. *Sy Chim*, 480 SCRA at 501.

appointed — "Such appointment is appropriate and even necessary if only to limit the issues for trial and thus abbreviate the proceedings. ... Moreover, such audit would forestall any misappropriation of corporate funds and assets of respondent corporation in the interim."[340]

Sy Chim further held that when there is allegation of misappropriation of corporate assets, "an independent audit is imperative in this case so that, based on such report, the RTC would be able to determine the veracity not only of respondent's claim that petitioners misappropriated corporate funds and assets, but also that of petitioners who claim otherwise."[341]

Based on the *Sy Chim* disquisitions, we can conclude that the difference between the power of the RTC Special Commercial Courts to appoint an independent director and its lack of power to appoint a comptroller sans the management committee or receiver, can be seen from the diverse role of the two positions — a comptroller comes in and takes control of the financial aspects of the company and the covering records; whereas an independent director conducts its own audit and evaluation of the operations and financial condition of the company, and does not exercise any business judgment or discretion in any aspect thereof.

B. Corporate Fraud Scheme Cases

Subsection 5.2 of the SRC, in relation to Section 5 (a) of P.D. No. 902-A, provides that the RTC Special Commercial Courts have original and exclusive jurisdiction over cases involving "[d]evices or schemes employed by or any acts of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interests of the public and/or of the stockholders, partners, members of associations or organizations registered with the SEC."[342]

The specific language of Section 5 (a) of P.D. No. 902-A covers two types of corporate fraud cases, namely:

(1) Those that fall within the intra-corporate level — "fraud and misrepresentation which may be detrimental to the interests ... of the stockholders;"[343] and

(2) Those outside of intra-corporate relations, within what we refer to as "the extra-corporate level" — "fraud and

340. *Id.* at 502.

341. *Id.*

342. P.D. No. 902-A, § 5 (a).

343. *Id.*

> misrepresentation which may be detrimental to the interests of the public."[344]

The distinction between the two types of fraud scheme cases was important during the pre-SRC period for the following reasons:

(1) Section 5 (a) corporate fraud "against the public" cases were animated by the "absolute jurisdiction, supervision[,] and control" powers of the SEC under Section 3 of P.D. No. 902-A, which recognizes that the State, acting through the SEC, retained an absolute right to control all corporations registered under the Corporation Code, as they deal with the public. During the pre-SRC period, the rule-of-thumb was that Section 5 (a) corporate fraud cases vested the SEC with original and exclusive jurisdiction over devices and schemes employed by directors/trustees or officers of corporations amounting to fraud or misrepresentation.

(2) Corporate fraud schemes against stockholders or members were always within the original and exclusive jurisdiction of the SEC *by reason of the relationship test*; whereas, corporate fraud schemes against the public were differentiated between those which fell under the original and exclusive jurisdiction of the SEC under Section 5 (a) of P.D. No. 902-A, from those which were inherently civil fraud cases which happen to incidentally involve corporations, which fell within the general jurisdiction of the RTCs.

1. Salient Pre-SRC Jurisprudence on Corporate Fraud Scheme Cases

Proper appreciation of the jurisdictional issues pertaining to Section 5 (a) corporate fraud cases should begin with the Supreme Court's early decision in *DMRC Enterprises*, which held that a collection case over unpaid rentals does not involve a contract involving investments of the public in a corporation which would fall under Section 5 (a) of P.D. No. 902-A — as it was essentially an issue over a civil contract cognizable by the regular courts.[345] More importantly, the Court held that —

> Nowhere in petitioner's complaint do we find any averment of fraud or misrepresentation which may have been committed by respondent company against petitioner to bring paragraph (a) [of Section 5] of said Decree into play.
>
> ...

344. *Id.*

345. *DMRC Enterprises*, 132 SCRA at 298 (emphasis supplied).

> A perusal of the complaint, styled 'sum of money', shows that the case at bar does not involve intra-corporate matters as to make it fall within the original and exclusive jurisdiction of the [SEC]. It is clear that petitioner DMRC has no intra-corporate relation with the respondent corporation. Nor can petitioner's cause of action be said to involve or arise from an intra-corporate matter.[346]

DMRC Enterprises established the requisites for proper jurisdiction over Section 5 (a) corporate fraud cases to arise, namely:

> (1) The controversy must involve investments of the public with the corporation, which can cover only equity or debt securities issued by the corporation to the public; and
>
> (2) There must be proper allegation that fraud or misrepresentation was committed against the investing public by the corporation, acting through its directors or officers.

Subsequently, in *Bañez v. Dimensional Construction Trade & Dev't Corp.*,[347] where the promissory notes issued by the corporation "clearly indicated therein that the sums of money received ... were in the nature of investments of the petitioners, agreed upon by the parties to be returned by the corporation upon the maturity of said promissory notes,"[348] plaintiff sought to collect through the regular RTC on promissory notes which have become due and demandable. The Supreme Court refused the contention of the corporate defendant that the case should be dismissed on the ground that under Section 5 (a) of P.D. No. 902-A the same was within the original and exclusive jurisdiction of the SEC, thus —

> The recitals of the complaint ... disclose that plaintiff's cause of action is merely for the collection of the various sums of money that have already become payable to petitioner due to the promissory notes executed by defendant corporation which have already matured. *There is no allegation nor any mention whatsoever in plaintiff's complaint that a device or scheme was resorted to by private respondent corporation amounting to fraud and misrepresentation.* It is, therefore, difficult to consider the petitioner's case [to] fall within the jurisdiction of the [SEC] pursuant to [P.D. No.] 902-A.
>
> ...
>
> As the money received by private respondent do not constitute payment of subscription of shares, the petitioners herein did not become members of respondent Dimensional Trade and Development Corporation. In the case of [*Sunset View Condominium Corp.*,] it was ruled that where the stated

346. *Id.*

347. Bañez v. Dimensional Construction Trade & Dev't Corp., 140 SCRA 249 (1985).

348. *Id.* at 253.

> party-litigants 'are not shareholders of the condominium corporation, the instant cases for collection cannot be 'a controversy arising out of intra-corporate or partnership relations between and among stockholders, members[,] or associates.'[349]

The second aforequoted paragraph indicates that even when the essential element of "proper allegation of fraud or misrepresentation" is not present in the complaint, nonetheless, if the controversy is within the intra-corporate relationship, then the SEC would retain proper jurisdiction over the case as essentially a Section 5 (a) corporate fraud committed against stockholders or members, or a Section 5 (b) intra-corporate dispute. More importantly, *Bañez* noted that "[p]aradoxically, despite the absence of imputation of fraud and misrepresentation being alleged by plaintiff, it is the defendant corporation itself which insinuates the existence of fraud and misrepresentation on its part."[350] It ruled therefore that jurisdiction over Section 5 (a) corporate fraud cases involving the public is determined solely from the allegations of the complaint, and the defendant or respondent cannot, by his allegations or insinuations, changed the issue of jurisdiction by alleging fraud or lack of fraud in the subject transactions.

But mere allegation of fraud or misrepresentation committed by the corporation through its director or officers would not suffice to invoke the SEC jurisdiction under Section 5 (a) of P.D. No. 902-A. Thus, in *Rivilla v. Intermediate Appellate Court*,[351] it was held that —

> Evidently, the present controversy is within the contemplation of Sec[tion] 5 (a) of [P.D.] No. 902-A ... The issuance of the promissory note in the name of C.R. Agro Industrial Development Corporation by the petitioners, who are its officers and/or controlling stockholders, without registration of the note with the SEC, as required by Sec[tion] 4 of the Revised Securities Act in order to protect the investing public, may be considered as a device or scheme amounting to fraud and misrepresentation, because by not registering the note with SEC, the petitioners could later try to disclaim any liability under the said promissory note by claiming that the corporation has a separate and distinct personality from its officers and stockholders.[352]

The case of *Orosa, Jr.*, however, held that —

> Plainly, the SEC is vested with absolute jurisdiction, supervision[,] and control over all corporations which are enfranchised to act as corporate entities. The provision by no means restricts that jurisdiction to entities

349. *Id.* at 253 (citing *Sunset View Condominium Corp.*, 104 SCRA 295 (1981)) (emphasis supplied).

350. *Bañez*, 140 SCRA at 250.

351. Rivilla v. Intermediate Appellate Court, 175 SCRA 773 (1989).

352. *Id.*

> granted permits or licenses to operate by another Government regulatory body, as [petitioners] contend. It is the certificate of incorporation that gives juridical personality to a corporation and places it within SEC jurisdiction. It follows then that although authority to operate a certain specialized activity may be withdrawn by the appropriate regulatory body, aside from SEC, the corporation nonetheless continues to be vested with legal personality until it is dissolved in accordance with law.
>
> ...
>
> Reliance by [petitioners] on the cases of *DMRC* [*Enterprises*] and *Bañez* ... is misplaced for, as explicitly stated in those cases, nowhere in the [complaints] therein is found any averment of fraud or misrepresentation committed by the respective corporations involved. The causes of action, therefore, were nothing more than simple money claims.[353]

The issue was re-visited in *Abad v. CFI of Pangasinan, Br. VIII*,[354] where the Supreme Court tackled the contention of the corporate defendant that fraud was properly alleged in the complaint to bring the case within the SEC's jurisdiction since the term "illegal, unreasonable[,] and fraudulent actions of the defendant" was used to preface describing the flow of the transactions.[355] In denying the contention, the Court noted that the petitioners filed the case with the RTC based on a simple "collection of sum of money with damages" cause of action, and that the reliefs sought were essentially civil in nature in that "[in] both complaints, the petitioners pray for: (a) the return of their investments, with legal interest thereon, (b) payment of the unpaid guaranteed monthly profits, (c) attorney's fees, [ ] (d) miscellaneous litigation expenses ... [and] further asks for moral and exemplary damages."[356]

More importantly, *Abad* held that although there were allegations of fraud in the complaints, such were merely general allegations, amounting to conclusions of law and fact;[357] for to determine the proper jurisdiction of the SEC in Section 5 (a) fraud scheme cases, it was important that the complaint contained a concise statement of the ultimate facts constituting a cause of action based on corporate fraud schemes.[358]

It seems clear that, through *Abad*, the Supreme Court had adopted during the pre-SRC period the principle that for Section 5 (a) of P.D. No. 902-A to confer jurisdiction with the SEC, the fraudulent scheme must be one undertaken by the corporation against the public — and that a mere

353. *Orosa, Jr.*, 193 SCRA at 395 & 399.

354. Abad v. CFI of Pangasinan Br. VIII, 206 SCRA 567 (1992).

355. *Id.* at 573.

356. *Id.*

357. *Id.* at 579-80.

358. *Id.*

isolated fraudulent incident involving a corporation would not divest regular courts of their jurisdiction because the jurisdiction of the SEC could cover only "a scheme to defraud the investing public."[359] *Abad* had been upheld by the Supreme Court in subsequent decisions.[360]

Thus, the pre-SRC doctrine that corporate fraud cases under Section 5 (a) of P.D. No. 902-A, when they do not involve stockholders or members, would require that:

> (1) The matters must arise from investments made by the public with the corporation by way of securities, and not merely unpaid sums of money arising from other commercial transactions; and
>
> (2) The allegation of facts or practices that would constitute fraud or misrepresentation on the part of the directors, trustees, officers, or business associates, must be formally made in the complaint itself. More importantly, they show that even when they involve investments by the public with the corporation, the plaintiff has the power to choose the proper venue with which to file the claim, but the expediency of alleging and properly constructing fraud allegations to bring the matter within the exclusive jurisdiction of the SEC (now the RTC Special Commercial Courts, applying the Interim Rules of Procedure for Inter-Corporate Controversies) or removing all claims of corporate fraud scheme, and thereby fall within the regular jurisdiction of the RTCs.

It must be noted that Section 5 (a) of P.D. No. 902-A deals with the concept of *the corporation as an actor in the business world*, where the focus is not only to grant the SEC jurisdiction to resolve matters on corporate doctrines or principles, but for the SEC to be able to exercise its supervisory power over corporate entities — to hold them in line in order to promote the corporate entities as attractive media of doing business. This is in consonance with the avowed purpose of P.D. No. 902-A in the government's policy of "encouraging investments"[361] and "more active public participation in the affairs of private corporations through which desirable activities may be pursued for the promotion of economic development."[362]

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359. P.D. No. 902-A, § 5 (a).

360. *See generally* Magalad v. Premiere Financing Corp., 209 SCRA 260 (1992); Alleje v. Court of Appeals, 240 SCRA 495 (1995); & Sumndad v. Hartigan, 381 SCRA 8 (2002).

361. P.D. No. 902-A, whereas cl. ¶ 1.

362. *Id.*

How relevant are these rationale now with RTC Special Commercial Courts mandated to decide corporate fraud scheme cases?

2. Post-SRC Enactment Decisions on Section 5 (a) Cases

Shortly after the enactment of the SRC, it was believed in some sectors that the old controversy on whether a corporate fraud within the special jurisdiction the RTC Special Commercial Courts, or a non-corporate fraud within the jurisdiction of the regular courts, was rendered wholly irrelevant because of the merger of jurisdiction over both types of cases with the RTC. The legal reality was not that simple.

Although both Section 5 (a) corporate fraud schemes and non-Section 5 (a) corporate fraud cases fall within the jurisdiction of the RTC, it should be noted that the former is within the special jurisdiction of RTC Special Commercial Courts, which can invoke significant powers under Section 6 of P.D. No. 902-A, and would apply the summary and rather peremptory provisions of the Interim Rules of Procedure for Inter-Corporate Controversies; whereas, the latter were to be resolved by the RTC under the Rules of Court.

Reyes v. Regional Trial Court of Makati, Br. 142[363] clearly recognized the strong divide between the general jurisdiction of the RTC, from its special commercial court jurisdiction, thus —

> In ordinary cases, the failure to specifically allege the fraudulent acts does not constitute a ground for dismissal since such defect can be cured by a bill of particulars. In cases governed by the Interim Rules of Procedure on Intra-Corporate Controversies, however, a bill of particular is a prohibited pleading. It is essential, therefore, for the complaint to show on its face what are claimed to be the fraudulent corporate acts if the complainant wishes to invoke the court's special commercial jurisdiction.
>
> We note that twice in the course of this case, Rodrigo had been given the opportunity to study the propriety of amending or withdrawing the complaint, but he consistently refused. The court's function in resolving issues of jurisdiction is limited to the review of the allegations of the complaint and, on the basis of these allegations, to the determination of whether they are of such nature and subject that they fall within the terms of the law defining the court's jurisdiction. Regretfully, we cannot read into the complaint any specifically alleged corporate fraud that will call for the exercise of the court's special commercial jurisdiction. Thus, we cannot affirm the RTC's assumption of jurisdiction over Rodrigo's complaint on the basis of Section 5 (a) of P.D. No. 902-A.[364]

363. Reyes v. Regional Trial Court of Makati, Br. 142, 561 SCRA 593 (2008).

364. *Id.* at 609.

In *Reyes*, the Supreme Court was confronted with the main issue of whether the RTC, sitting as a special commercial court, had jurisdiction over the subject matter of a complaint which principally invoked Section 5 (a) of P.D. No. 902-A as the basis for the exercise of its special court jurisdiction.[365] In resolving the issue, the Court relied upon the judicial principle that since "jurisdiction over the subject matter of a case is conferred by law and is determined by the allegations of the complaint, irrespective of whether the plaintiff is entitled to all or some of the claims asserted therein,"[366] and held that —

> The rule is that a complaint must contain a plain, concise, and direct statement of the ultimate facts constituting the plaintiff's cause of action and must specify the relief sought. Section 5, Rule 8 of the Revised Rules of Court provides that *in all averments of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity*. These rules find specific application to Section 5 (a) of P.D. No. 902-A which speaks of corporate devices or schemes that amount to fraud or misrepresentation detrimental to the public and/or to the stockholders.
>
> ...
>
> Allegations of deceit, machination, false pretenses, misrepresentation, and threats are largely conclusions of law that, without supporting statements of the facts to which the allegations of fraud refer, do not sufficiently state an effective cause of action. The late Justice Jose [Y.] Feria, a noted authority in Remedial Law, declared that fraud and mistake are required to be averred with particularity in order to enable the opposing party to controvert the particular facts allegedly constituting such fraud or mistake.
>
> Tested against these standards, we find that the charges of fraud against Oscar were not properly supported by the required factual allegations. While the complaint contained allegations of fraud purportedly committed by him, these allegations are not particular enough to bring the controversy within the [S]pecial [C]ommercial [C]ourt's jurisdiction; they are not statements of facts, but are mere conclusions of law; how and why the alleged appropriation of shares can be characterized as 'illegal and fraudulent' were not explained nor elaborated on.
>
> Not every allegation of fraud done in a corporate setting or perpetrated by corporate officers will bring the case within the special commercial court's jurisdiction. To fall within this jurisdiction, there must be sufficient nexus showing that the corporation's nature, structure, or powers were used to facilitate the fraudulent device or scheme. Contrary to this concept, the complaint presented a reverse situation. No corporate power or office was alleged to have facilitated the transfer of the shares; rather, Oscar, as an individual and without reference to his corporate personality, was alleged to have transferred the shares of Anastacia to his name, allowing him to

365. *Id.* at 604.

366. *Id.* at 605.

> become the majority and controlling stockholder of Zenith, and eventually, the corporation's President. This is the essence of the complaint read as a whole and is particularly demonstrated by the following allegations[.][367]

Depending therefore on the litigation strategy that a plaintiff has in mind, it would be very significant to determine whether the fraud case to be filed would fall within Section 5 (a) corporate fraud cases within the original and exclusive jurisdiction of the RTC Special Commercial Courts; or would constitute only regular fraud cases, which would then be raffled off to all the various branches of the RTC within the judicial region, and would call into play the regular provisions of the 1997 Rules on Civil Procedure.

The trend of the Supreme Court decisions under Section 5 (a) of P.D. No. 902-A would be to authorize forum-shopping since whenever a corporation is involved a claimant can choose to file his complaint with the RTC Special Commercial Courts or with regular RTC, by merely alleging or not alleging with particularity the corporate frauds allegedly committed, although he may not be able to sustain it during trial on the merits.

The Supreme Court does not elucidate, in its pre-SRC decisions, the reason why or the public policy behind the doctrine that mere allegation of fraud or misrepresentation would trigger the operation of the SEC's special knowledge, when the ordinary RTC also has competence to rule on matters concerning fraud or misrepresentations since these are essentially civil law concepts. But, perhaps, one could very well remember that the public policy during the pre-SRC period, under P.D. No. 902-A, was to unite all public policy development emanating from both regulatory functions and quasi-judicial functions in one administrative agency, that is, the SEC.

Unfortunately, the situation for RTC Special Commercial Courts today cannot be likened to the pre-SRC situation. This is because under the aegis of the SRC, there is no intention to unite within the RTC Special Commercial Courts both regulatory and judicial policy development for the private corporate sector.

Thus, under the aegis of the SRC, the Supreme Court should evolve a doctrinal interpretation of Section 5 (a) corporate fraud cases where the devices and schemes pertain to matters necessarily connected with or intertwined with corporate features. As stated in *Rivilla*, "the jurisdiction of the SEC should be construed in relation to its power of control and supervision over all corporations to encourage active public participation in the affairs of private corporation by way of investments,"[368] clearly indicating that the corporate fiction must be shown to have been used as a shield to protect the culprit from the effects of his wrongdoing.

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367. *Id.* at 605 & 607-08.

368. *Rivilla*, 175 SCRA at 778.

C. Intra-Corporate Controversies

Under Subsection 5.2 of the SRC, in relation to Section 5 (b) of P.D. No. 902-A, RTC Special Commercial Courts have original and exclusive jurisdiction to hear and decide the following "intra-corporate controversies," thus —

> Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members, or associates, respectively; *and between such corporation, partnership*[,] *or association and the State insofar as it concerns their individual franchise or right to exist as such entity.*[369]

The Authors have discussed earlier their position that controversies arising from the relationship between the corporation and the State, such as dissolution and liquidation cases, should remain within the quasi-judicial powers of the SEC. Also, the Authors have already discussed above Section 5 (a) corporate fraud cases which are essentially controversies arising from the relationship between the corporation and the public.

The Authors will therefore limit the discussions below to the extent and nature of the original and exclusive jurisdiction of the RTC Special Commercial Courts under Section 5 (b) of P.D. No. 902-A over "Intra-Corporate Disputes."

1. Controversies Arising Within the Intra-Corporate Relationships

a. Applicability of the Two-Tiered Jurisdiction Test to the RTC Special Commercial Courts

The issue of whether the two-tiered test for determining proper jurisdiction over Section 5 (b) intra-corporate disputes, developed during the pre-SRC period, would apply to determining the special jurisdiction of the RTC Special Commercial Courts was first tackled by the Supreme Court in *Speed Distributing Corp. v. Court of Appeals*,[370] to wit —

> Jurisdiction over the subject matter is conferred by law. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff, irrespective of whether or not plaintiff is entitled to recover upon all or some of the claims asserted therein. It cannot depend on the defenses set forth in the answer, in a motion to dismiss, or in a motion for reconsideration by the defendant.[371]

369. P.D. No. 902-A, § 5 (b) (emphasis supplied).

370. Speed Distributing Corp. v. Court of Appeals, 425 SCRA 691 (2004).

371. *Id.* at 705.

> [Thus, to] determine whether a case involves an intra-corporate controversy, and is to be heard and decided by the Branches of the RTC specifically designated by the Court to try and decide such cases, two elements must concur: (a) the status or relationship of the parties; and (b) the nature of the question that is the subject of their controversy.
>
> The first element requires that the controversy must arise out of intra-corporate or partnership relations between any or all of the parties and the corporation, partnership[,] or association of which they are stockholders, members[,] or associates; between any or all of them and the corporation, partnership[,] or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership[,] or association and the State insofar as it concerns their individual franchises. The second element requires that the dispute among the parties be intrinsically connected with the regulation of the corporation. If the nature of the controversy involves matters that are purely civil in character, necessarily, the case does not involve an intra-corporate controversy. The determination of whether a contract is simulated or not is an issue that could be resolved by applying pertinent provisions of the Civil Code.[372]

Subsequently, in *Reyes*, the Supreme Court re-affirmed the relevance of the pre-SRC two-tier tests in defining the jurisdiction of RTC Special Commercial Courts over Section 5 (b) intra-corporate cases, thus —

> A review of relevant jurisprudence shows a development in the Court's approach in classifying what constitutes an intra-corporate controversy. Initially, the main consideration in determining whether a dispute constitutes an intra-corporate controversy was limited to a consideration of the intra-corporate relationship existing between or among the parties. The types of relationship embraced under Section 5 (b), as declared in the case of *Union Glass & Container Corp*[*oration*], were as follows:
>
> (a) between the corporation, partnership, or association and the public;
>
> (b) between the corporation, partnership, or association and its stockholders, partners, members, or officers;
>
> (c) between the corporation, partnership, or association and the State as far as its franchise, permit or license to operate is concerned; and
>
> (d) *among the stockholders, partners, or associates themselves.*
>
> The existence of any of the above intra-corporate relations was sufficient to confer jurisdiction to the SEC, regardless of the subject matter of the dispute. This came to be known as the *relationship test*.
>
> However, in the 1984 case of *DMRC Enterprises v. Esta del Sol Mountain Reserve, Inc.*, the Court introduced *the nature of the controversy test*. We declared in this case that it is not the mere existence of an intra-corporate relationship that gives rise to an intra-corporate controversy; to rely on the relationship test alone will divest the regular courts of their jurisdiction for

372. *Id.* at 706–07.

> the sole reason that the dispute involves a corporation, its directors, officers, or stockholders. We saw that there is no legal sense in disregarding or minimizing the value of the nature of the transaction which gives rise to the dispute.
>
> Under the nature of the controversy test, the *incidents* of that relationship must also be considered for the purpose of ascertaining whether the controversy itself is intra-corporate. The controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation. If the relationship and its incidents are merely incidental to the controversy or if there will still be conflict even if the relationship does not exist, then no intra-corporate controversy exists.
>
> The Court then combined the two tests and declared that jurisdiction should be determined by considering not only the status or relationship of the parties, but also the nature of the question under controversy. This two-tier test was adopted in the recent case of *Speed Distribution, Inc. v. Court of Appeals*.[373]

The application of the two-tiered test for the determination of the original and exclusive jurisdiction of the RTC Special Commercial Courts over intra-corporate disputes has been reiterated in subsequent decisions of the Supreme Court.[374] Of particular note is the decision in *Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation*,[375] where the Supreme Court affirmed the application of the two-tiered test to determine the original and exclusive jurisdiction of RTC Special Commercial Courts over Section 5 (b) intra-corporate controversies.[376]

What is significant with the *Strategic Alliance Dev. Corp.* decision was the resolution of the issue of whether the RTC Special Commercial Courts could decide on matters that were wholly civil law in character because of the previous rulings in *Speed Distributing Corp.* and *Nautica Canning Corporation v. Yumul*[377] where it was held that the SEC had no authority to rule on matters of the validity of civil contracts even when relating to shares of stock that transferred to parties who were not within the intra-corporate relationships. The Supreme Court held that "unlike the SEC which is a tribunal of limited jurisdiction, [RTC Special Commercial Courts] like the RTC are still competent to tackle civil law issues incidental to intra-

373. *Reyes*, 561 SCRA at 609-10 (emphasis supplied).

374. *See generally* Yujuico v. Quiambao, 513 SCRA 243 (2007) & Atwel v. Concepcion Progressive Assn., Inc., 551 SCRA 272 (2008).

375. Strategic Alliance Development Corporation v. Star Infrastructure Development Corporation, 635 SCRA 380 (G.R. No. 187872, 17 Nov. 2010).

376. *Id.* at 390-402.

377. Nautica Canning Corporation v. Yumul, 473 SCRA 415 (2005).

corporate disputes filed before them."[378] The Court therefore formally affirmed its ruling in *Go Express Worldwide N.V.* to the effect that RTC Special Commercial Courts

> are still considered courts of general jurisdiction. Section 5.2 of [the SRC] directs merely the Supreme Court's designation of RTC branches that shall exercise jurisdiction over intra-corporate disputes. Nothing in the language of the law suggests the diminution of jurisdiction of those RTCs to be designated as [Special Commercial Courts]. The assignment of intra-corporate disputes to [Special Commercial Courts] is only for the purpose of streamlining the workload of the RTCs so that certain branches thereof like the [Special Commercial Courts] can focus only on a particular subject matter.[379]

The implication of the post-SRC jurisprudence is that in controversies where the primary issue is one that would make the case fall within the original and exclusive jurisdiction of the RTC Special Commercial Courts under Section 5 of P.D. No. 902-A, then such special RTCs have the power to decide on matters, employing the Interim Rules of Procedure on Intra-Corporate Controversies, incidental to the resolution of such corporate controversies, even when purely civil law in character.

2. Inspection of Corporate Books and Records

Cases arising from stockholder's or member's right to inspect and/or copy corporate records definitely fall within the genre of "intra-corporate disputes" under Section 5 (b) of P.D. No. 902-A. They are given special treatment under Rule 7 of the Interim Rules of Procedure for Intra-Corporate Controversies.

a. Basis of Right

The right to inspect and copy corporate records is a common law right and its exercise is essentially to allow the stockholder or member to safeguard all his other rights.[380]

The right to inspect of a stockholder also covers those of the books and other records of a subsidiary which is under the control of the parent company to which the inspecting stockholder is one of record.[381]

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378. *Id.* at 398.

379. *Id.* at 344.

380. Gokongwei, Jr. v. Securities and Exchange Commission, 89 SCRA 336, 383-86 (1979).

381. *Id.*

b. Limitations on Right to Inspect

The only express limitations on the right of inspection under Section 74 of the Corporation Code are that:

> (a) The right of inspections should be exercised at reasonable hours on business days;
>
> (b) The person demanding the right to examine and copy excerpts from the corporate records and minutes has not improperly used any information secured through any previous examination of records of the corporation; [and]
>
> (c) The demand is made in good faith or for a legitimate purpose.[382]

A board resolution limiting the right to inspect to a period of 10 days shortly prior to the annual stockholders' meeting has been adjudged to be an unreasonable restriction and violates the legal provision granting the exercise of such right "at reasonable hours."[383]

The right is exercisable through agents and representatives; otherwise, it would be useless to the stockholder who does not know corporate intricacies.[384]

The right to inspect, although it includes the right to make copies, does not authorize bringing the books or records outside of the corporate premises.[385]

c. Specified Records

Under Section 1, Rule 7 of the Interim Rules of Procedure on Intra-Corporate Controversies, cases covered "shall apply to disputes exclusively involving the rights of stockholders or members to inspect the books and records and/or to be furnished with financial statements of a corporation, under Sections 74 and 75 of ... the Corporation Code[.]"[386] In turn, Sections 74, 75, and 141 of the Corporation Code practically make all corporate records and correspondence subject to the rights of inspection.[387]

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382. Africa v. Philippine Commission on Good Governance, 205 SCRA 39, 57-58 (1992).

383. Pardo v. Hercules Lumber Co., 47 Phil. 964, 965-67 (1924).

384. W.G. Philpotts v. Philippine Manufacturing Co., 40 Phil. 471, 473-75 (1919).

385. Veraguth v. Isabela Sugar Co., 57 Phil. 266, 270-72 (1932).

386. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 7, § 1.

387. CORPORATION CODE, §§ 74, 75, & 141.

The right to inspect certainly includes the right to inspect the STB of the corporation.[388]

The right to inspect does not include the right of access to minutes until such minutes have been written up and approved by the directors.[389]

d. Remedies if Inspection Denied

(i) Mandamus

When denied the rightful exercise of the right of inspection, the remedy of a stockholder, member, director, or trustee would be a petition for *mandamus*, which is now provided under Rule 7 of the Interim Rules of Procedure on Intra-Corporate Controversies, and which under Section 2 thereof requires that the complaint filed must state:

> (1) The case is for the enforcement of plaintiff's right of inspection of corporate orders or records and/or to be furnished with financial statements under Sections 74 and 75 of the Corporation Code;
>
> (2) There was a demand for inspection and copying of books and records and/or to be furnished with financial statements made by the plaintiff;
>
> (3) The refusal of defendant to grant the demands of the plaintiff and the reasons given for such refusal, if any; and
>
> (4) The reasons why the refusal of defendant to grant the demands of the plaintiff is unjustified and illegal, stating the law and jurisprudence in support thereof.[390]

Since Rule 7 is in the nature of a *mandamus* proceeding, it mandates that within two days from the filing of the complaint, the court, upon a consideration of the allegations of the complaint to either dismiss it outright if it is not sufficient in form and substances, or otherwise, order the issuance of summons which shall be served on the defendant within two days from its issuance, and who then has 10 days to file an answer.[391] On one hand, if no answer is filed on due date, the court may *motu proprio* or upon motion, render judgment as warranted by the allegations of the complaint, as well as the affidavits, document, and other evidence on record.[392] On the other hand, if answer is filed, the court is mandated to render a decision based on

388. Yujuico v. Quimbao, 724 SCRA 262, 272 (2014).

389. *Id.* at 274.

390. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 7, § 2.

391. *Id.* rule 7, §§ 2 & 3.

392. *Id.* rule 7, § 6.

the pleadings, affidavits, and documentary evidence and other evidence attached thereto within 15 days from receipt of the last pleading.[393]

The burden of showing that inspection is for a legitimate corporate reason is on the inspecting stockholder or member.[394] Nevertheless, a director has the unqualified right to inspect the books and records of the corporation at all reasonable times, and cannot be denied on the ground that the director or shareholder is on unfriendly terms with the officers of the corporation whose records are sought to be inspected.[395]

In *Ao-as v. Court of Appeals*,[396] it was held that the appointment of a receiver to take over the operations of the company is not the proper remedy when stockholders have been denied their right to examine the company books and records, since there are other adequate remedies, such as a writ of *mandamus*, available to the stockholders denied their common law right —

> Misconduct of corporate directors or other officers is not a ground for the appointment of a receiver where there are one or more adequate legal action against the officers ... The appointment of a receiver for a going corporation is a last resort remedy, and should not be employed when another remedy is available.[397]

(ii) Criminal Complaint Against the Refusing Officer

The third paragraph of Section 74 of the Corporation Code now subjects an officer who refuses to comply with a rightful demand for inspection liable for the criminal offense defined under Section 144 of the Corporation Code, thus —

> Any officer or agent of the corporation who shall refuse to allow any director, trustee, stockholder[,] or member of the corporation to examine and copy excerpts from its records or minutes, in accordance with the provisions of this Code, shall be liable to such director, trustee, stockholder[,] or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 144 of this Code: *Provided*, That if such refusal is pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal: and *Provided, further*, That it shall be a defense to any action under this [S]ection that the person demanding to examine and copy excerpts from the

393. *Id.* rule 7, § 7.

394. *See generally* Gonzales v. Philippine National Bank, 122 SCRA, 489 (1983) & Republic v. Sandiganbayan, 199 SCRA 39 (1991).

395. *Venaguth*, 57 Phil. at 270.

396. Ao-as v. Court of Appeals, 491 SCRA 339 (2006).

397. *Id.* at 362–63.

> corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation or was not acting in good faith or for a legitimate purpose in making his demand.[398]

Ang-Abaya v. Ang[399] held that for the penal provision under Section 144 to apply in case of violation of a stockholder or member's right to inspect the corporate books and records, the following elements must be present:

> *First,* A director, trustee, stockholder[,] or member has made a prior demand in writing for a copy of excepts from the corporation's records or minutes;
>
> *Second,* Any officer or agent of the concerned corporation shall refuse to allow the said director, or trustee, stockholder[,] or member of the corporation to examine and copy said excerpts;
>
> *Third,* If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this [S]ection for such action shall be imposed upon the directors or trustees who voted for such refusal; and
>
> *Fourth,* Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making his demand, the contrary must be shown or proved.[400]

In *Ang-Abaya,* the Supreme Court accepted the evidence-supported allegation that the stockholder demanding the right of inspection of corporate records was an attempt in bad faith at having his large advances from the corporation written off, usurping of rights pertaining to the corporation, and attempts to coerce the corporation, the directors, and the officer into giving into his baseless demands involving specific corporate assets, as sufficient defense that the demanding stockholder "was not acting in good faith and for a legitimate purpose in making his demand for inspection of the corporate books."[401] The Court held that —

> in a criminal complaint for violation of Section 74 of the Corporation Code, the defense of improper use or motive is in the nature of a justifying circumstance that would exonerate those who raise and are able to prove the same. Accordingly, where the corporation denies inspection on the ground of improper motive or purpose, the burden of proof is taken from the shareholder and placed on the corporation. This being the case, it

398. CORPORATION CODE, § 74, ¶ 3.

399. Ang-Abaya v. Ang, 573 SCRA 129 (2008).

400. *Id.* at 144-45.

401. *Id.* at 149.

> would be improper for the prosecutor, during preliminary investigation, to refuse or fail to address the defense of improper use or motive, given its express statutory recognition.[402]

Subsequently, *Yujuico* clarified that although the third paragraph of Section 74 of the Corporation Code, which refers to the criminal offense under Section 144, is limited to "[a]ny officer, or agent of the corporation who shall refuse to allow any director, trustee, stockholder[,] or member of the corporation to examine and copy excerpts from *its records or minutes*,"[403] the criminal offense covers any act of the corporation, done through its officers, from refusing to allow inspection of any and all corporate records, including the STB, thus —

> It must be emphasized that Section 144 already purports to penalize ['*v*]*iolations*' of '*any provision*' of the Corporation Code '*not otherwise specifically penalized therein.*' Hence, we find inconsequential the fact that that Section 74 expressly mentions the application of Section 144 only to a specific act, but not with respect to the other possible violations of the former [S]ection.
>
> Indeed, we find no cogent reason why Section 144 of the Corporation Code cannot be made to apply to violations of the right of a stockholder to inspect the [STB] of a corporation under Section 74 (4) given the already unequivocal intent of the legislature to penalize violations of a parallel right, i.e., the right of a stockholder or member to examine the other records and minutes of a corporation under Section 74 (2). Certainly, all the rights guaranteed to corporators under Section 74 of the Corporation Code are mandatory for the corporation to respect. All such rights are just the same underpinned by the same policy consideration of keeping public confidence in the corporate vehicle thru an assurance of transparency in the corporation's operations.[404]

Sy Tiong Shiou also held that in a criminal complaint for violation of Section 74 of the Corporation Code, the defense of improper use or motive is in the nature of a justifying circumstance that would exonerate those who raise and are able to prove the same; but where the corporation denies inspection on the ground of improper motive or purpose, the burden of proof is taken from the petitioning shareholder and placed instead on the corporation.[405]

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402. *Id.* at 145.

403. *Yujuico*, 513 SCRA at 274 (emphasis supplied).

404. *Id.* at 276.

405. *Sy Tiong Shiou*, 582 SCRA at 542.

D. Derivative Suits

As a general proposition, derivative suits fall within the genre of "intra-corporate controversies" under Section 5 (b) of P.D. No. 902-A, and that Rule 8 of the Interim Rules of Procedure on Intra-Corporate Controversies provides for particular rules to cover such types of derivative suits.

1. Nature of Derivative Suits

In *Western Institute of Technology, Inc. v. Salas*,[406] the Supreme Court explained the nature of a derivative suit,[407] holding that

> [a] derivative suit is an action brought by minority shareholders in the name of the corporation to redress wrongs committed against the corporation, for which the directors refuse to sue, amounting to grave abuse of business judgment or motivated by malice or bad faith. It is a remedy designed by equity and has been the principal defense of the minority shareholders against abuses by the majority.[408]

In a derivative suit, "the real party in interest is the corporation itself, not the shareholder(s) who actually instituted it."[409]

The legal standing of stockholders to bring derivative suits for and in behalf of their corporation is not a civil law right. The Corporation Code contains no provision recognizing or regulating the filing of derivative suits. It is a common law right of stockholders and members in corporate enterprises; it exists by virtue of Philippine jurisprudence adopting Anglo-American jurisprudence on the matter.[410]

2. Jurisdictional Requirements and Venue

The power to bring suits for and in behalf of the corporation falls within the business judgment prerogatives of the board of directors under its plenary corporate powers vested under Section 23 of the Corporation Code. Such power includes the exercise of business judgment to also not to bring any such suit against a party who may have caused damage to the corporation. Properly understood, therefore, a derivative suit is an equitable remedy granted to stockholders in a situation where the board of directors, by reason of complicity, fraud or gross negligence, is not in a position to properly exercise business judgment for the benefit of the corporation, and equitable

406. Western Institute of Technology, Inc. v. Salas, 278 SCRA 216 (1997).

407. *Id.* at 225.

408. *Id.* at 225.

409. Lim v. Lim-Yu, 352 SCRA 216, 223 (2001).

410. *See generally* Pascual v. Del Saz Orozco, 19 Phil. 82, 86-89 (1911) & Angeles v. Santos, 64 Phil. 697, 707-08 (1937).

considerations grants to any stockholder the power to bring a derivative suit to protect the interests of the corporation.

Such a condition precedent to the filing of the derivative suit has been alluded to in *Hi-Yield Realty, Inc. v. Court of Appeals*,[411] thus —

> Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. But an individual stockholder may be permitted to institute a derivative suit on behalf of the corporation in order to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold control of the corporation. In such actions, the corporation is the real party-in-interest while the suing stockholder, on behalf of the corporation, is only a nominal party.[412]

Except for the matter relating to existence of appraisal right, Section 1, Rule 8 of the Interim Rules of Procedure on Intra-Corporate Controversies has adopted most of the requirements laid down in *San Miguel Corporation v. Kahn*,[413] for the proper filing of a derivative suit, and adds two more requisites. However, it fails to include one of the requirements mandated in various decisions of the Supreme Court — that the reliefs sought in a derivative suit must be for the benefit of the corporation and not for the benefit of petitioning stockholder, otherwise known as the "relator."[414] As will be discussed hereunder, there are five requisites for the valid filing of a derivative suit, to wit:

(1) Petitioner must be a stockholder/member at time the acts or transactions occurred and at the time the action is filed;[415]

(2) There was exhaustion of administrative remedies;[416]

(3) "The cause of action actually devolves on the corporation, the wrongdoing or harm having been or being caused to the corporation and not to the particular stockholder[s] bringing the suit;"[417]

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411. Hi-Yield Realty, Inc. v. Court of Appeals, 590 SCRA 548 (2009).

412. *Id.* at 555–56.

413. San Miguel Corporation v. Kahn, 176 SCRA 447, 462–63 (1989).

414. Evangelista v. Santos, 86 Phil. 387, 394–95 (1950).

415. *See* Pascual v. Orozco, 19 Phil. 82, 97–98 &101 (1911) (where this requisite was first established).

416. *See generally* Everett v. Asia Banking Corporation, 49 Phil. 512 (1926) & Angeles v. Santos, 64 Phil. 697 (1937).

417. Filipinas Port Services, Inc. v. Go, 518 SCRA 453, 472 (2007) (citing *San Miguel Corporation*, 176 SCRA at 459).

(4) No appraisal rights are available for the act(s) complained of; and

(5) The suit is not a nuisance or harassment suit.[418]

Under Section 5, Rule 1 of the Interim Rules of Procedure on Intra-Corporate Controversies, the proper venue for derivative suit would be in the RTC which has jurisdiction over the principal office of the corporation.[419]

a. Condition Precedent: Board of Directors Not in a Position to Exercise Business Judgment for the Benefit of the Corporation

Derivative suits constitute an exception to the "Business Judgment Rule," which provides that since under Section 23 of the Corporation Code, all corporate matters are by public policy left to the supervision and control of the board of directors, then generally (and except in the few cases when stockholders' approval is required specifically), the exercise by the board of its business judgment in any corporate act or transaction would be binding on the corporation and the stockholders themselves, and not even the courts can substitute their wisdom or rulings for the acts done by the board, in absence of fraud, malice, or bad faith.[420] Thus, as a general rule, whether or not the corporation will file a suit to recover on damage sustained, or upon a valid cause of action, falls within the business judgment discretion of the board of directors of every corporation.[421]

Thus, according to *Bitong v. Court of Appeals*,[422] in the absence of a special authority from the board of directors to institute a derivative suit for and in behalf of the corporation, the president or managing director is disqualified by law to sue in her own name.[423] The power to sue and be sued in any court by a corporation even as a stockholder is lodged in the board of directors that exercises its corporate powers and not in the president or officer thereof.[424]

418. Yu v. Yukayguan, 589 SCRA 589, 619 (2009).

419. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 1, § 5.

420. Montelibano v. Bacolod-Murcia Milling Co., Inc., 5 SCRA 36 (1962) & Philippine Stock Exchange, Inc. v. Court of Appeals, 281 SCRA 232 (1997).

421. Tam Wing Tak v. Makasiar, 350 SCRA 475 (2001); Shipside Inc. v. Court of Appeals, 352 SCRA 334 (2001); & Social Security System v. Commission on Audit, 384 SCRA 548 (2002).

422. Bitong v. Court of Appeals, 292 SCRA 503 (1998).

423. *Id.* at 532.

424. *Id.*

Tam Wing Tak v. Makasiar[425] reiterated such principle, thus —

> Under Section 36 of the Corporation Code, in relation to Section 23, it is clear that where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. Note that petitioner failed to show any proof that he was authorized or deputized or granted specific powers by the corporation's Board of Directors to sue the defendant for and on behalf of the firm. Clearly, petitioner as a minority stockholder and member of the Board of Directors had no such power or authority to sue on the corporation's behalf. Nor can we uphold this as a derivative suit. For a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit. There is no showing that petitioner has complied with the foregoing requisites.[426]

b. Suit Must Be Brought in the Name of the Corporation

In *Hi-Yield Realty, Inc.*, the Court reiterated that even when a suit is brought by a stockholder on behalf of the corporation, the same is not always a derivative suit —

> For a derivative suit to prosper, the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit.[427]

The principle of condition precedent and standing of a relator to bring derivative suit is better discussed in *Hornilla v. Salunat*,[428] echoing an earlier similar pronouncement of the Supreme Court in *Gochan v. Young*[429] that a derivative suit is allowed to be brought on behalf of the corporation only

> [w]here corporate directors have committed a breach of trust either by their frauds, [*ultra vires*] acts, or negligence, and the corporation is unable or unwilling to institute suit to remedy the wrong, a stockholder may sue on behalf of himself and other stockholders and for the benefit of the corporation, to bring about a redress of the wrong done directly to the corporation and indirectly to the stockholders. This is what is known as a derivative suit, and settled is the doctrine that in a derivative suit, the corporation is the real party in interest while the stockholder filing suit for

425. Tam Wing Tak v. Makasiar, 350 SCRA 475 (2001).

426. *Id.* at 485–86.

427. *Hi-Yield Realty, Inc.*, 590 SCRA at 55 (citing Chua v. Court of Appeals, 443 SCRA 259 (2004)).

428. Hornilla v. Salunat, 405 SCRA 220, 224 (2003).

429. Gochan v. Young, 354 SCRA 207, 218–19 (2001).

> the corporation's behalf is only nominal party. The corporation should be included as a party in the suit.[430]

c. Proper Relator to Bring a Derivative Suit

One of the requisites for a valid derivative suit is that the relator must be a stockholder both at the time when the cause of action accrued and at the time of the filing of the complaint.[431] This requirement for standing was first enunciated in *Pascual v. Orozco*,[432] which found that the requirement came from the federal practice in the United States which sought to prevent forum-shopping by the relator; and that the relator must have been a stockholder at the time the cause of action arose, and not only at the time of the filing of the complaint, to ensure that he is not estopped by his previous actions, or complicity with the acts complained of, from championing the interests of the corporation, thus —

> A stockholder in a corporation who was not such at the time when alleged objectionable transactions took place, or whose shares of stock have not since devolved upon him, by operation of law, cannot maintain suits of this character, unless such transaction continue and are injurious to such stockholder or affect him especially or specifically in some other way.[433]

Therefore, a person who was not a stockholder at the time the cause of action accrued may bring a derivative suit when the covered transactions continue and are injurious to such shareholder, or affects him especially or specifically in some other way. However, such stockholder may not institute the derivative suit:

> (1) If the transferor, when he had the chance or right to constitute the derivative suit when he was still the shareholder, did not do so, then his transferee cannot institute the derivative suit himself. If the transferor is estopped, then the transferee must also be estopped; or
>
> (2) It is possible that the transferor himself, was part of the fraud against the corporation, therefore, you cannot expect him to bring an action for and in behalf of the corporation, then the transferee cannot also institute the derivative suit.

Such reasoning should not prevail if we consider that the main purpose of the derivative suit is to protect the interest of the corporation. An individual shareholder may institute a derivative suit behalf of the corporation, wherein he holds stock, in order to protect or vindicate

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430. *Hornilla*, 405 SCRA at 224.

431. *Gotham*, 354 SCRA at 218–19.

432. Pascual v. Orozco, 19 Phil. 83 (1911).

433. *Id.* at 99.

corporate rights whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold control of the corporation. In such actions, the suing shareholder is regarded as a nominal party, with the corporation as the real party in interest.

The Interim Rules of Procedure on Intra-Corporate Controversies now require that the relator "was a stockholder or member at the time the acts or transactions subject of the action occurred and the time the action was filed."[434]

The ruling in *Pascual* on estoppel and complicity may be covered by the requirement that "[t]he suit is not a nuisance or harassment suit."[435]

d. Exhaustion of Intra-Corporate Remedies

The Supreme Court has held in *Hi-Yield Realty* that while it is true that the complaining stockholder must satisfactorily show that he has exhausted all means to redress his grievances within the corporation; such remedy need not be pursued when it is shown that complete control of the person against whom the suit is being filed. The reason is obvious — a demand upon the board to institute an action and prosecute the same effectively would have been useless and an exercise in futility.

e. Relief Sought in the Action

The main doctrine in derivative suits is that the action must be brought for the benefit of the corporation.

In *Evangelista v. Santos*,[436] the minority stockholders who brought a derivative suit against the principal officer for damages resulting from the mismanagement of corporate affairs and misuse of corporate assets. The complaint prayed for judgment requiring defendant, among others, to pay plaintiffs the value of their respective participation in said assets on the basis of the value of the stocks held by each of them.[437] In holding that the suit was improper, the Supreme Court held that the stockholders brought the action not for the benefit of the corporation but for their own benefit since they asked that the defendant make good the losses occasioned by his mismanagement and pay them the value of their respective participation in the corporate assets on the basis of their respective holdings; and the relief sought could not be done until all corporate debts, if there be any, are paid

434. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 8, § 1 (1).

435. *Id.* rule 8, § 1 (4).

436. Evangelista v. Santos, 86 Phil. 387 (1950).

437. *Id.* at 388.

and the existence the corporation terminated by the limitation of its charter or by lawful dissolution.[438]

Lim v. Lim-Yu,[439] held that if the suit filed by the respondent was to enforce preemptive rights in a corporation, it is not a derivative suit, and therefore "a temporary restraining order enjoining a person from representing the corporation will not bar such action, because it is instituted on behalf and for the benefit of the shareholder, not the corporation."[440] A few months later, the Court, in *Gochan*, modified this requirement by holding that so long as the complaint alleges all the components of a derivative suit, then the additional allegations of injury to the relators can co-exist with those pertaining to the corporation[441] — "The personal injury suffered by the spouses cannot disqualify them from filing a derivative suit on behalf of the corporation. It merely gives rise to an additional cause of action for damages against the erring directors."[442]

f. Ancillary Remedies

The Supreme Court has well-established the principle that the appointment of a receiver can be an ancillary remedy in a derivative suit.[443]

The doctrine now found statutory implementation in Section 6 of P.D. No. 902-A which grants the SEC (now deemed to be exercisable also by RTC Special Commercial Courts) the power to appoint on its own or by petition a receiver or a management committee as ancillary to the exercise of exclusive jurisdiction over corporations. At present, Section 1, Rule 9 of the Interim Rules of Procedure on Intra-Corporate Controversies empowers the RTC "as an incident to any of the cases filed under these Rules"[444] to create a Management Committee or to appoint a receiver.

g. Disqualification of Corporate Counsel to Lawyer for the Board or Officers

Hornilla holds that the counsel of the corporation is disqualified from representing the interest of the directors and officers in a derivative suit, as it would constitute a conflict-of-interests situation, thus —

438. *Id.* at 394.

439. Lim v. Lim-Yu, 352 SCRA 216 (2001).

440. *Id.* at 223.

441. *Gochan*, 354 SCRA at 219.

442. *Id.*

443. Angeles v. Santos, 64 Phil. 697 (1937); Chase v. Court of First Instance of Manila, 18 SCRA 602 (1966); & Reyes v. Tan, 3 SCRA 198 (1961).

444. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 9, § 1.

> A lawyer engaged by a corporation cannot defend members of the board of directors in a derivative suit filed by a minority stockholder. In other jurisdictions, the prevailing rule is that a situation wherein a lawyer represents both the corporation and its assailed directors unavoidably gives rise to a conflict of interest. The interest of the corporate client is paramount and should not be influenced by any interest of the individual corporate officials. The rulings in these cases have persuasive effect upon us. After due deliberations on the wisdom of this doctrine, we are sufficiently convinced that a lawyer engaged as counsel for a corporation cannot represent members of the same corporation's board of directors in a derivative suit brought against them. To do so would be tantamount to representing conflicting interests, which is prohibited by the Code of Professional Responsibility.[445]

3. Other Innovations Introduced Under the Interim Rules of Procedure on Intra-Corporate Controversies

Apart from the power granted to the RTC Special Commercial Courts to dismiss the derivative suit when it is determined that it constitute a nuisance or harassment suit, a number of innovations relating to derivatives suits have also been introduced by the Interim Rules of Procedure on Intra-Corporate Controversies.

a. Appraisal Rights Option

Section 1, Rule 8 of the Interim Rules of Procedure on Intra-Corporate Controversies provides as a requisite for a stockholder or member to bring an action in the name of a corporation or association, that "[n]o appraisal rights are available for the act or acts complained of."[446] The requirement is not supported by any previous decision of the Supreme Court on the matter. The Authors believe that the requirement is incongruous to the purpose and nature of a derivative suit.

Even if appraisal rights are available for the act or acts complained against, the right of appraisal is a remedy that pertains to dissenting stockholders in their personal capacity and does not benefit the corporation; whereas, a derivative suit is brought by minority stockholders, not for their benefit, but for the benefit of the corporation. The existence of appraisal right for the corporate act or acts complained against is available only to the stockholders who formally dissented to the corporate act or transaction when it was voted upon and those who follow a strict procedure of claim.[447]

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445. *Hornilla*, 405 SCRA at 224–25.

446. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 8, § 1.

447. CORPORATION CODE, § 82. Section 82 provides —

Consequently, the existence of appraisal right as to the corporate act or transaction complained against provides no reasonable remedy for the corporation itself and the other stockholders who are not qualified to exercise such right.

b. Rules on Discontinuance of Derivatives Suits

Section 2, Rule 8 of the Interim Rules of Procedure on Intra-Corporate Controversies expressly provides —

> The derivative action shall not be discontinued, compromised[,] or settled without the approval of the court. During the pendency of the action, any sale of shares of the complaining stockholders shall be approved by the court. If the court determines that the interest of the stockholders or members will be substantially affected by the discontinuance, compromise[,] or settlement, the court may direct that notice, by publication or otherwise, be given to the stockholders or members whose interest it determines will be so affected.[448]

The thrust of Section 2 is to equate derivative suits, as essentially suits brought for the interests of the stockholders in general, rather than to protect the interests of the corporation as a separate juridical person. This position is equivalent to the notions applicable to *class suits* where the court is mandated to "make sure that the parties actually before it are sufficiently numerous and representative so that all interests concerned are fully protected."[449] This seems to be the same principle enunciated in both *Western Institute of Technology, Inc.*[450] and *Tam Wing Tak*,[451] where the Court held in the latter decision that

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> *How right is exercised.* — The appraisal right may be exercised by any stockholder who shall have voted against the proposed corporate action, by making a written demand on the corporation within [30] days after the date on which the vote was taken for payment of the fair value of his shares: Provided, That failure to make the demand within such period shall be deemed a waiver of the appraisal right. If the proposed corporate action is implemented or effected, the corporation shall pay to such stockholder, upon surrender of the certificate(s) of stock representing his shares, the fair value thereof as of the day prior to the date on which the vote was taken, excluding any appreciation or depreciation in anticipation of such corporate action.

Id.

448. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 8, § 2.

449. 1997 RULES OF CIVIL PROCEDURE, rule 3, § 12.

450. *Western Institute of Technology, Inc.*, 278 SCRA at 225-26.

451. *Tam Wing Tak*, 350 SCRA at 485-86.

> [f]or a derivative suit to prosper, it is required that the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation *and all other stockholders similarly situated who may wish to join him in the suit.* There is no showing that petitioner has complied with the foregoing requisites.[452]

The provisions of Section 2 should also be viewed in the context that Section 1 of Rule 8 does not also contain the case law requisite that a valid derivative suit must ask for reliefs that are for the benefit of the corporation and not for the petitioning stockholder.[453]

It is difficult to see how stockholders in general would have legal standing to sue and ask for reliefs pertaining to their proprietary interest in a derivative suit. A long-standing principle in Philippine corporate law is that a corporation exists and is to be treated as a separate juridical entity apart from its directors, officers, and stockholders;[454] the corporate assets, properties, and rights pertain exclusively to the corporation and shareholders or members do not have any proprietary interests in them during the life of a corporation;[455] the corporate debt or credit is not the debt or credit of the stockholder nor is the stockholder's debt or credit that of the corporation.[456]

As a corporation has no legal standing to file a suit for recovery of certain parcels of land owned by its members in their individual capacity, even when the corporation is organized for the benefit of the members;[457] so also stockholders have no personality to intervene in a collection case covering the loans of the corporation since the interest of shareholders in corporate property is purely inchoate.[458]

Stockholders do not suffer personal injury or damage to wrongs committed against the corporation or its business enterprise, and their claims to the corporate assets and properties can only arise at dissolution, and only after all the creditors have been paid.[459]

Needless to stress that in a true derivative suit, there is only one person to consider and whose rights and proprietary interest need to be protected — the corporation. The proposition that a derivative suit is meant to protect

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452. *Id.*

453. *Id.*

454. Santos v. National Labor Relations Commission, 254 SCRA 673 (1996) & Remo, Jr. v. Intermediate Appellate Court, 172 SCRA 405 (1989).

455. Stockholders of F. Guanzon and Sons, Inc. v. Register of Deeds of Manila, 6 SCRA 373, 375 (1962).

456. *See* Traders Royal Bank v. Court of Appeals, 177 SCRA 788, 792 (1989).

457. Sulo ng Bayan, Inc. v. Araneta, Inc., 72 SCRA 347, 356 (1976).

458. Saw v. Court of Appeals, 195 SCRA 740, 745 (1991).

459. Ong Yong v. Tiu, 401 SCRA 1, 24-25 (2003).

the proprietary rights and interests of the stockholders has been clearly denied in key decisions of the Supreme Court in *Evangelista*, *Lim*, and *Hornilla*.

Since the relator is only a nominal party in a derivative suit, and the principal party in interest is the corporation, it does not make sense that the relator, during the course of the proceedings, may be prevented by court disapproval, of the right to legitimately sell his shares. Perhaps, the rationale of the policy is to prevent a relator from using the derivative suit as a means of achieving a "green mail."[460]

In the end, the innovations introduced by the Interim Rules of Procedure on Intra-Corporate Controversies on derivative suit may eventually give rise to new doctrines equating them to class suits, where the real interest sought to be protected would be those of the stockholders in general rather than the business enterprise of the corporation. Since derivatives suits are not intended to put an end to the juridical life, or the pursuit of the business enterprise, of the corporation, it would be interesting to see how the innovations of the Interim Rules of Procedure on Intra-Corporate Controversies, once they are engrafted into corporate law doctrines, would square with the exercise of business judgment of the board of directors of corporate enterprises.

4. The "Intra-Corporateness" Issue in Derivative Suits

One the principal issue that has to be resolved, was whether the provisions of Rule 8 of the Interim Rules of Procedure on Intra-Corporate Controversies apply to derivatives suits where the reliefs sought on behalf of the corporation are against a third party who does not fall within the intra-corporate relationship.

The pre-SRC decision in *Macapalan v. Bethel Katalbas-Moscardon*,[461] indicates properly that derivative suits which do not involve corporate fraud cases or arising from intra-corporate disputes do not fall within the coverage of corporate cases under Section 5 of P.D. No. 902-A, and would have to be resolved by the RTC in the exercise of their general jurisdiction.[462]

In *Macapalan*, Bacolod Shrimpmate, Inc. (BSI) obtained a loan from RPB Venture Capital Corporation, which it secured through an accommodation real estate mortgage over the property of Mandalagan

460. "The practice of buying enough of a company's stock to threaten a hostile takeover and reselling it to the company at a price above market value." Merriam-Webster Dictionary, Greenmail, *available at* http://www.merriam-webster.com/dictionary/greenmail (last accessed Feb. 15, 2016).

461. Macapalan v. Katalbas-Moscardon, 227 SCRA 49 (1993).

462. *Id.* at 54-55.

Development Corporation (MDC). When BSI defaulted on the loan, RPB foreclosed on the mortgage and was adjudged the highest bidder in the public auction held. A director of MDC filed a derivative suit against RPB for annulment of the real estate mortgage and foreclosure sale on the ground that although the real estate mortgage was supported by a Board resolution, it is null and void for being an *ultra vires* act of MDC, since the articles of incorporation of MDC did not authorize encumbrance of its property to secure the loans of other persons, whether natural or juridical.[463]

Macapalan was decided on the lone issue of whether the trial court was correct is dismissing the complaint on the ground that the issues therein fell within the jurisdiction of the SEC under Section 5 (a) and (b) of P.D. No. 902-A, and ruled —

> Obviously, the present case, which was filed by petitioner as member of the Board of Directors of MDC against private respondent, another corporation, does not fall under any of the aforequoted enumeration. Moreover, petitioner's complaint does not contain any allegation of fraud or misrepresentation. Therefore, neither [S]ubsection (a) nor [S]ubsection (b), Section 5 of P.D. No. 902-A applies.[464]

However, the decision added the following observation —

> Mention must likewise be made of the case of *Viray, et al v. Court of Appeals*, where we clarified further the disquisition in the *Union* case, to wit:
>
> > 'The establishment of any of the relationships mentioned in *Union* will not necessarily always confer jurisdiction over the dispute on the SEC to the exclusion of the regular courts. The statement made in one case that the rule admits of no exceptions or distinctions is not that absolute. *The better policy in determining which body has jurisdiction over a case would be to consider not only the status or relationship of the parties but also the nature of the question that is the subject of their controversy.*'
>
> In order to ascertain the nature of the question that is the subject of the controversy, we have to rely on the allegations of the complaint, the truth of which is to be theoretically admitted in considering the motion to dismiss.[465]

One of the issues that had to be resolved by the RTC in *Macapalan* was whether the MPC Board resolution granting power to BSI, acting as attorney-in-fact, to mortgage corporate real property outside of corporate purpose was *ultra vires* act — a matter that is essentially a corporate issue. Nonetheless, the Supreme Court held that —

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463. *Id.* at 51.

464. *Id.* at 54.

465. *Id.* (emphasis supplied).

> In the present case, we do not find it necessary to resort to the expertise of the SEC. Petitioner's complaint for annulment of the real estate mortgage and foreclosure sale with preliminary injunction is an ordinary civil litigation, beyond the jurisdiction of the SEC. It is true that the trend is towards vesting administrative bodies like the SEC with the power to adjudicate matters coming under their particular specialization, to insure a more knowledgeable solution of the problems submitted to them. This would also relieve the regular courts of a substantial number of cases that would otherwise swell their already clogged dockets. But as expedient as this policy may be, it should not deprive the courts of justice of their power to decide ordinary cases in accordance with the general laws that do not require any particular expertise or training to interpret and apply. Otherwise, the creeping take-over of the administrative agencies of the judicial power vested in the courts would render the judiciary virtually impotent in the discharge of the duties assigned to it by the Constitution.[466]

The language of Rule 8 seem to cover the main types of derivative suits — where a wrong or harm has been done to the corporation by management or by the board of directors. In such instances, the only reasonable succor that the corporation may obtain is from minority stockholders.

There are other types of derivatives suits allowed, such as where the board of directors fails to bring the appropriate suit against a third-party who by contract or by torts has committed a wrong against the corporation. When the circumstances show that the failure of the board of directors to sue constitutes an abuse of discretion or bad faith as to exempt the application of the business judgment rule, a derivative suit is allowed to be brought by minority stockholders on behalf of the corporation. Since the Interim Rules of Procedure on Intra-Corporate Controversies are denominated as "Procedure Governing Intra-Corporate Controversies," it has been held by some sectors that such types of derivative suits do not fall within the provisions of the Interim Rules of Procedure on Intra-Corporate Controversies.

The reason for this position is that derivative suits do not really occupy a separate category under Section 5 of P.D. No. 902-A, and their inclusion as separate categories under Section 1, Rule 1 of the Interim Rules of Procedure on Intra-Corporate Controversies is that they may proceed from Section 5 (b) of P.D. No. 902-A that covers intra-corporate controversies (as is the case for cases involving inspection of corporate books). Therefore, when the derivative suit involves a third-party who or which does not fall within the definition of intra-corporate relationship, it is posited that such derivative suit cannot fall within the coverage of the Interim Rules of Procedure on Intra-Corporate Controversies.

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466. *Id.* at 54-55.

The opposing view is that all types of derivative suits are covered by the Interim Rules of Procedure on Intra-Corporate Controversies because they would fall both within the intra-corporate controversies and corporate fraud cases, and that the RTC Special Commercial Courts, unlike the SEC, are courts of general jurisdiction with full authority to cover all sorts of issues and parties in the resolution of the main controversy for which it has valid jurisdiction.

The matter of splitting jurisdiction when it comes to derivatives suits that would involve parties outside of the intra-corporate relationship seems to have been resolved by reference to the decision in *Go Express Worldwide N.V.*[467]

E. Nomination, Appointment, Election, and Termination Cases Involving Corporate Officers

Under Subsection 5.2 of the SRC, in relation to Section 5 (c) of P.D. No. 902-A, RTC Special Commercial Courts have original and exclusive jurisdiction over cases involving "controversies in the election or appointments of directors, trustees, officers[,] or managers of such corporations, partnerships[,] or associations."[468]

There is no denying that election and termination cases involving officers of the corporation belong to the genre of "intra-corporate controversies,"[469] but are classified separately under Section 5, and that currently, a special Rule 6 in the Interim Rules of Procedure on Intra-Corporate Controversies governs election contests.

During the pre-SRC period, since the issue of appointment of directors and officers was within the exclusive and original jurisdiction of the SEC, then necessarily controversies relating to the termination from office of corporate officers were also within the jurisdiction of the SEC. Hence, it followed then that issues and controversies on such cases run along the line of "Who are corporate officers?" and "Which tribunal would have proper jurisdiction over the matter, whether it would be the SEC or the NLRC?"

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467. *Go Express Worldwide N.V.*, 587 SCRA at 344-47.

468. SECURITIES REGULATIONS CODE, § 5.2.

469. It was held in a case that —

> [o]ne who is included in the by-laws of a corporation in its roster of corporate officers is an officer of said corporation and not a mere employee. Being a corporate officer, his removal is deemed to be an intra-corporate dispute cognizable by the SEC and not by the Labor Arbiter.
>
> Garcia v. Eastern Telecommunications Philippines, Inc., 585 SCRA 450 (2009) [hereinafter *Eastern Telecommunications*].

The case-law that had evolved with corporate election contests, as well as termination of employment cases, when the same were still within original and exclusive jurisdiction of the SEC, would still be relevant, even as such matters now fall within the jurisdiction of the RTC Special Commercial Courts, mainly because of the conflict of jurisdiction between the regular courts and the NLRC on termination cases involving corporate officers.

1. Theory on Power of Board of Directors Over Corporate Officers

In Philippine corporate law, there are two levels of discussions when it comes to the coverage of the term "officers."

The first level relates to the power of the board of directors to hire and terminate officers in the exercise of business judgment, as contrasted from non-officers who are protected by the security of tenure policy under labor law, a policy embodied in the Constitution.[470]

The second level deals with the distinction of corporate officers from non-officers to determine who are bound by the duties of obedience, diligence, loyalty, and disclosure. Thus, under Section 31 of the Corporation Code, both directors and officers are jointly and severally liable for assenting to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or officers.[471] Non-officers therefore are not generally imposed any of the fiduciary duties pertaining to directors, trustees, and officers. The differentiation of such "officers" from non-officers must necessarily lie on the nature of the office held by them. For the purpose of this Article, discussions will cover only the first level of corporate officership.

In spite of the constitutional right to security of tenure, the prevailing theory in Philippine corporate law is that officers of the corporation are within the "business judgment" competence of the board of directors to terminate in the absence of a specific period of employment provided in their contracts or in the by-laws. On one hand, in strict corporate law sense, the terms of office of corporate officers are co-terminus with that of the board which appoints them. It can even be said that corporate officers serve at the pleasure of the board. This is a fundamental doctrine in corporate law because the ability of the board to hire and terminate officers lies at the very

470. PHIL. CONST. art. XIII, § 3 & A Decree Instituting a Labor Code Thereby Revising and Consolidating Labor and Social Laws to Afford Protection to Labor and Promote Employment and Human Resources Development and Insure Industrial Peace Based on Social Justice [LABOR CODE], Presidential Decree No. 442, as Amended, art. 279 (1974).

471. CORPORATION CODE, § 31.

heart of the operations of the corporation; it is part of the exercise of the business judgment of the board.

On the other, under labor laws, corporate officers are also looked upon as employees, and the corporation as the employer; and consequently, the protective policies of the Labor Code, as well as the Constitution (e.g., due process and security of tenure) are also made to apply to corporate officers.

It is the divergence of policies in corporate law and labor law that creates jurisprudential tension, and has spun several doctrines on the matter. The issue that had to be decided is — "Who, in the corporate sphere, would fall within the definition of 'corporate officer?'"

2. Who Are "Corporate Officers" Under Section 5 (c)?

Under the old Corporation Law, *Gurrea v. Lezama*,[472] held that the term "corporate officers" refers only to officers of a corporation who are given that character either by the then Corporation Law, or by the corporation's by-laws.[473] The ruling in *Gurrea* was to the effect that since the then Corporation Law did not mention the general manager as an officer, and the by-laws did not give him that character, he is not an officer of the corporation, but a mere employee or subordinate official.[474]

The SEC itself in its opinions has held that even when the intention of the Board of Directors by formal resolution is to make the "General Financial Secretary" an officer thereof, he cannot be classified as such where the by-laws of the corporation discloses that the position is not one of the offices provided therein.[475] In another opinion, the SEC opined that if the by-laws enumerate the officers to be elected by the Board, the provision is conclusive, then the Board is without power to create new offices without amending the by-laws.[476]

Section 25 of the Corporation Code enumerates the President, the Secretary, and the Treasurer as officers of the corporation; and in addition provides that the board of directors may elect "such other officers as may be provided for in the by-laws."[477] The Corporation Code therefore has maintained the principle that corporate officers shall include in addition only such positions as are provided for in the by-laws of the corporation.

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472. Gurrea v. Lezama, et al., 103 Phil. 553 (1958).

473. *Id.* at 555-56.

474. *Id.*

475. Securities and Exchange Commission, SEC Opinion (May 15, 1969).

476. Securities and Exchange Commission, SEC Opinion (Oct. 19, 1971).

477. CORPORATION CODE, § 25.

In the case of *De Tavera v. Philippine Tuberculosis Society, Inc.*,[478] it was held that since the letter of appointment Pardo de Tavera as Executive Secretary to the Board of Directors did not contain a fixed term, the implication is that appointee held an appointment at the pleasure of the appointing power and was in essence temporary in nature, co-extensive with the desire of the Board of Directors.[479] The Supreme Court took note in *De Tavera* that the disputed position of Executive Secretary was also provided for in the Code of By-Laws of the Philippine Tuberculosis Society, Inc.[480] When the Board opted to replace the incumbent, technically there was no removal but only an expiration of the term and in an expiration of term, there is no need of prior notice, due hearing or sufficient grounds before the incumbent can be separated from office.[481]

In *Phil. School of Business Administration v. Leano*,[482] Rufino R. Tan, one of the principal stockholders of the Philippine School of Business Administration (PSBA), was also elected Director and Executive Vice-President, a position provided for in the by-laws of PSBA.[483] Subsequently, in a regular meeting, the PSBA Board elected new directors to fill in the vacancies and declared all corporate positions vacant, except those of the President and Chairman, and at the same time elected a new set of officers, with Tan not being re-elected.[484] For this reason, Tan filed with the NLRC a complaint for illegal dismissal, and subsequently, another case with SEC seeking to nullify the election of the new sets of officers.[485]

On the issue of splitting jurisdiction through the filing of two sets of cases with the NLRC and the SEC based on the same controversy, the Supreme Court held that NLRC had no jurisdiction to hear and decide on the matter since the issue involved was inherently intra-corporate dispute within the original and exclusive jurisdiction of the SEC with Tan contending that his "ouster" was a "scheme to intimidate him into selling his shares and to deprive him of his just and fair return on his investment as a stockholder received through his salary and allowances as Executive Vice-President."[486]

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478. De Tavera v. Philippine Tuberculosis Society, Inc., 112 SCRA 243 (1982).

479. *Id.* at 253.

480. *Id.* at 245.

481. *Id.* at 253.

482. Phil. School of Business Administration v. Leano, 127 SCRA 778 (1984).

483. *Id.* at 779.

484. *Id.*

485. *Id.*

486. *Id.* at 782–83.

In holding that the SEC had exclusive jurisdiction over the ouster of the Executive Vice-President, noted that said position was provided for in the corporate by-laws, and further held —

> This is not a case of dismissal. The situation is that of a corporate office having been declared vacant, and of [Tan]'s not having been elected thereafter. The matter of whom to elect is a prerogative that belongs to the Board, and involves the exercise of deliberate choice and the faculty of discriminative selection.[487]

The *ponencia* of former Associate Justice Ameurfina A. Melencio-Herrera proceeded to hold that "[g]enerally speaking, the relationship of a person to a corporation, whether as officer or as agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exist."[488]

It cites as authority the American case of *Bruce v. Travelers Insurance Company*,[489] which reiterated the doctrine in common law jurisdiction that the distinction between an agent or employee and an officer is not determined by the nature of the work performed, but by the nature of the relationship of the particular individual to the corporation —

> One distinction between officers and agents or employees of a corporation lies in the manner of their creation. An [o]ffice is created usually by the charter or by-laws of the corporation, while an agency or employment is created usually by the officers. A further distinction may thus be drawn between an officer and an employee of a private corporation in that the latter is subordinate to the officers and under their control and direction ... It is clear that the two terms officers and agents are by no means interchangeable.[490]

In Philippine corporate law, therefore, in determining the extent of the business judgment prerogative of the board of directors/trustees to hire and terminate corporate officers, the nature of the position, its accompanying duties and responsibilities, are not essential in classifying such position. The evolving jurisprudential test of who are corporate officers therefore follows closely the American doctrine on the matter.

Easycall Communications Phils., Inc. v. King,[491] held that the term "corporate officers" in the context of P.D. No. 902-A are those officers of a corporation who are given that character either by the Corporation Code or

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487. *Id.* at 783.

488. *Phil. School of Business Administration*, 127 SCRA at 783 (citing Bruce v. Travelers Insurance Company, 266 F.2d 781 (1959) (U.S.)).

489. Bruce v. Travelers Insurance Company, 266 F.2d 781 (1959) (U.S.).

490. *Leano*, 127 SCRA at 784-85 (1984).

491. Easycall Communications Phils., Inc. v. King, 478 SCRA 102 (2005).

by the corporation's by-laws.[492] It held in that decision that the respondent, who rose from the rank of General Manager to eventually become Vice President for Nationwide Expansion, was an employee not a "corporate officer," and that jurisdiction over the case was properly with the NLRC, not the SEC.[493]

The doctrine that "corporate officers" in the context of Section 5 (c) corporate cases are those officers of the corporation who are given that character by the Corporation Code or by the corporation's by-laws has become well-established under Philippine corporate law.[494]

a. The Aborted Doctrine on "Enabling By-Law Clause"

Section 25 of the Corporation Code enumerates those who constitute the statutory officers and includes a clause "*and such other officers as may be provided for in the by-laws.*"[495] Initially, with the *obiter* in *Tabang v. National Labor Relations Commission*,[496] there began to emerge a doctrine that provides that when the by-laws of a corporation specifically contains a general empowering clause that allows the board of directors to appoint formally any other officer position apart from those enumerated in the by-laws, then the exercise of such power by the board necessary creates an officer position, which then would not be within the security tenures clause, but fell within the business judgment rule, and the controversies arising from dismissal are within the jurisdiction of the SEC under Section 5 (c) of the [P.D.] 902-A, thus —

> The president, vice-president, secretary[,] and treasurer are commonly regarded as the principal or executive officers of a corporation, and modern corporation statutes usually designate them as the officers of the corporation. However, other offices are sometimes created by the charter or by-laws of a corporation, *or the board of directors may be empowered under the by-laws of a corporation to create additional offices as may be necessary.*[497]

The doctrine was affirmed in *Nacpil v. Intercontinental Broadcasting Corporation*,[498] where the main issue was whether the SEC had jurisdiction to hear controversies on the dismissal of the Comptroller, whose position was not expressly provided for in the by-laws of the company.[499] The Court held

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492. *Id.* at 109.

493. *Id.* at 111.

494. *Eastern Telecommunications*, 585 SCRA at 468.

495. CORPORATION CODE, § 25.

496. Tabang v. National Labor Relations Commission, 266 SCRA 462 (1997).

497. *Id.* at 467 (emphasis supplied).

498. Nacpil v. Intercontinental Broadcasting Corp.oration, 379 SCRA 653 (2002).

499. *Id.* at 657.

that even when the position of Comptroller was not expressly mentioned in the by-laws, nevertheless under authority of Section 25 of the Corporation Code, the by-laws provided that the board of directors is authorized to appoint "such other officers as the board of directors may from time to time deems fit to provide for. Said officers shall be elected by majority vote of the board of directors,"[500] holding thus —

> By-laws may and usually do provide for such other officers, and that where a corporate office is not specifically indicated in the roster of corporate offices in the by-laws of a corporation, the [b]oard of [d]irectors may also be empowered under the by-laws to create additional officers as may be necessary.[501]

Nacpil, held that since the appointment of the Comptroller required the approval and formal action of the Board of Directors to become valid, it was clear that he is a corporate officer whose dismissal may be subject of a controversy cognizable by the SEC (now RTC) under Section 5 (c) of P.D. No. 902-A, which includes the power to determine money claims —

> It is likewise of no consequence that petitioner's complaint for illegal dismissal includes money claims, for such claims are actually part of the requisites of his position in, and therefore linked with his relation with, the corporation. The inclusion of such money claims does not convert the issue into a simple labor problem.[502]

Eventually, both the *Tabang* and *Nacpil* rulings were overturned in *Matling Industrial and Commercial Corporation v. Coros* (*Matling Industrial*),[503] with the Supreme Court holding that "[c]onsidering that the observations earlier made herein show that the soundness of their *dicta* is not unassailable, *Tabang* and *Nacpil* should no longer be controlling."[504] In *Matling Industrial*, where the by-laws expressly provided that the Board of Directors "shall have full power to create new offices and to appoint the officers thereto,"[505] and the Vice President for Finance and Administration was created pursuant to said enabling clause, the Supreme Court ruled that any officer appointed to such position does not become a "corporate officer," but is an employee and the determination of the rights and liabilities relating to his removal are within the jurisdiction of the NLRC; they do not constitute intra-corporate controversies. The decision held forthrightly —

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500. CORPORATION CODE, § 25.

501. *Nacpil*, 379 SCRA at 659.

502. *Id.* at 660.

503. Matling Industrial and Commercial Corporation v. Coros, 633 SCRA 12 (2010).

504. *Id.* at 28.

505. *Id.* at 23.

> A different interpretation [(of Section 25 of the Corporation Code)] can easily leave the way open for the Board of Directors to circumvent the constitutionally guaranteed security of tenure of the employee by the expedient inclusion in the By-Laws of an enabling clause on the creation of just any corporate officer position.[506]

b. When Non-Gurrea Corporate Officers Are Also Directors or Stockholders: Intra-Corporate Aspect of the Termination Contests

During the pre-SRC period, in *Dy v. National Labor Relations Commission*,[507] where the Board of Directors ousted by non-election the bank manager,[508] the Supreme Court sustained the SEC's jurisdiction to hear and decide on the termination case, although the position was not provided for in the by-laws of the company, based on the "intra-corporate" nature of the main issues raised, thus —

> The question of remuneration, involving as it does, a person who is not a mere employee but a stockholder and officer, an integral part, it might be said, of the corporation, is not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact a corporate controversy in contemplation of the Corporation Code.[509]

The *Dy* decision seems to imply that if the controversy in intertwined with management matters by persons who have special relations to the corporation, such as being a stockholder, the controversy is essentially corporate, by virtue of Section 3 and Section 5 (b) of P.D. No. 902-A on intra-corporate disputes. This therefore seems to create two branches of the RTC corporate jurisdiction when it comes to corporate officers. First, there are those who are strictly "officers" because their positions are provided for either by law or by the by-laws of the corporation. Any controversy arising from such relationship is within the original and exclusive jurisdiction of the regular courts by virtue of Section 5 (c) of P.D. No. 902-A. Second, those whose positions are not provided for in the by-laws, who therefore are strictly mere employees of the corporation, when they are at the same time stockholders or members of the corporation, and seem to occupy such employment positions by virtue of such relationship to the corporation. The controversies arising therefrom are within the jurisdiction of the SEC (now RTC) by virtue of the expanded coverage of Section 5 (b) in *Union Glass & Container Corporation*. In both instances, the emphasis of the Supreme Court has always been that the controversies involved primarily a corporate matter, with the right and power of a board to terminate corporate officers.

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506. *Id.* at 27.

507. Dy v. National Labor Relations Commission, 145 SCRA 211 (1986).

508. *Id.* at 214.

509. *Id.* at 222.

In *Gregorio Araneta University Foundation v. Teodoro*,[510] although the respondent interposed illegal dismissal and sought recovery of separation pay, retirement benefits and other monetary claims with the NLRC arising from the "non-extension" of his appointment as Vice President and concurrently, as Treasurer of the corporation,[511] the Court denied the contention of the petitioning corporation that jurisdiction over the case should be with the SEC since respondent was undoubtedly a corporate officer.[512] In denying the petitioner's contention, and distinguishing it from *Phil. School of Business Administration* and *Dy*, the Court held that the complaint was filed by the respondent with the NLRC not questioning the validity of the Board of Directors' meetings wherein the corporate officers involved were not reelected, resulting in the termination of their services. Therefore, no issue which was intra-corporate in nature was necessary to be resolved which would necessitate the vesting of the controversy with the jurisdiction of the SEC (now RTC Special Commercial Court).[513]

Matling Industrial also clarified that just because an officer happens to be a stockholder or member of the board of directors does not necessarily make the controversy relating to his removal from corporate office an intra-corporate dispute; it must be shown that his removal from office was connected with his being a director or stockholder, thus —

> The criteria for distinguishing between corporate officers who may be ousted from office at will, on one hand, and ordinary corporate employees who may only be terminated for just cause, on the other hand, do not depend on the nature of the services performed, but on the manner of creation of the office. In the respondent's case, he was supposedly at once an employee, a stockholder, and a Director of Matling. The circumstances surrounding his appointment to office must be fully considered to determine whether the dismissal constituted an intra-corporate controversy or a labor termination dispute. We must also consider whether his status as Director and stockholder had any relation to all his appointment and subsequent dismissal as Vice President for Finance and Administration.
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> Obviously enough, the respondent was not appointed as Vice President for Finance and Administration because of his being a stockholder or Director of Matling.
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> ...
>
> Even though he might have become a stockholder of Matling in 1992, his promotion to the position of Vice President for Finance and Administration in 1987 was by virtue of the length of quality service he had rendered as an employee of Matling. His subsequent acquisition of the

510. Gregorio Araneta University Foundation v. Teodoro, 167 SCRA 79 (1988).

511. *Id.* at 80–81.

512. *Id.*

513. *Id.* at 81–85.

> status of Director/stockholder had no relation to his promotion. Besides, his status of Director/stockholder was unaffected by his dismissal from employment as Vice President for Finance and Administration.[514]

Matling Industrial also declared void the by-law provision that actually vests with the President the power to create an office, on the ground that it was a power exclusively granted by Section 25 of the Corporation Code to the Board of Directors —

> Moreover, the Board of Directors ... could not validly delegate the power to create a *corporate* office to the President, in light of Section 25 of the Corporation Code requiring the Board of Directors itself to select the corporate officers. Verily, the power to elect the corporate officers was a discretionary power that the law exclusively vested in the Board of Directors and could not be delegated to subordinate officers or agents.[515]

3. Jurisdiction Issues Between RTC Special Commercial Courts and NLRC on Termination Issues Involving Corporate Officers

In the particular issue of whether it was the SEC (now the RTC Special Commercial Courts) or the NLRC which had jurisdiction over the dispute of termination or dismissal of corporate officers, the Supreme Court seems to have narrowed down the coverage of "officers" to include only those provided for in the statutory provisions and those whose positions are expressly provided for in the by-laws.

Phil. School of Business Administration, in holding that the SEC has jurisdiction over the ouster of the Executive Vice-President, took note that said position was provided for in the corporate by-laws. However, it is interesting to note that the Supreme Court affirmed the principle that "[g]enerally speaking, the relationship of a person to a corporation whether as officer or as agent or employee, is not determined by the nature of the services performed, but by the incidents of the relationship as they actually exists."[516]

Also in of *Dy*, in sustaining that the SEC had jurisdiction over the controversy,[517] held that —

> It is of no moment that Vailoces, in his amended complaint, seeks other relief which would seemingly fall under the jurisdiction of the Labor Arbiter, because a closer look a these — underpayment of salary and non-payment of living allowance, shows that they are actually part of the

514. *Matling Industrial and Commercial Corporation*, 633 SCRA at 31–32.

515. *Id.* at 27.

516. *Phil. School of Business Administration*, 127 SCRA at 781 (citing Bruce v. Travelers Insurance Company, 266 F.2d 781 (1959) (U.S.)).

517. *Dy*, 145 SCRA at 211.

> prerequisites of his elective position, hence intimately linked with his relations with the corporation. The question of remuneration, involving as it does, a person who is not a mere employee but a stockholder and officer, an integral part, it might be said, of the corporation, is not a simple labor problem but a matter that comes within the area of corporate affairs and management, and is in fact a corporate controversy in contemplation of the Corporation Code.[518]

Fortune Cement Corporation v. National Labor Relations Commission,[519] emphasized that "a corporate officer's dismissal is always a corporate act and/or intra-corporate controversy and that nature is not altered by the reason or wisdom which the board of directors may have in taking such action."[520]

Under the aegis of the SRC, *Velarde v. Lopez*,[521] sustained the doctrine that the question of remuneration involving a person who is not a mere employee *but a stockholder and officer of the corporation* is not a simple labor problem but a matter that comes within the area of corporate affairs and management, and, is in fact a corporate controversy in contemplation of the Corporation Code.[522] In *Easycall Communications Phils., Inc.*, the Supreme Court recognized the need to properly prove the *Gurrea* test of "corporate officership" to sustain the termination cases within the special jurisdiction of RTC Special Commercial Courts,[523] thus —

> Under Section 5 of [P.D.] 902-A, the law applicable at the time the controversy arose, the SEC, not the NLRC, had original and exclusive jurisdiction over cases involving the removal of corporate officers. Section 5 (c) of [P.D.] 902-A applied to a corporate officer's dismissal for his dismissal was a corporate and/or intra-corporate controversy. However, it had to be first established that the person removed or dismissed was a corporate officer before the removal or dismissal could properly fall within the jurisdiction of the SEC and not the NLRC. Here, aside from its bare allegation, petitioner failed to show that respondent was in fact a corporate officer.[524]

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518. *Id.* at 222.

519. Fortune Cement Corporation v. National Labor Relations Commission, 193 SCRA 258 (1991).

520. *Id.* at 261. *See also* Lozon v. National Labor Relations Commission, 240 SCRA 1 (1995) & Espino v. National Labor Relations Commission, 240 SCRA 52 (1995).

521. Velarde v. Lopez, 419 SCRA 422 (2004).

522. *Id.* at 430.

523. *Easycall Communications Phils., Inc.*, 478 SCRA 102.

524. *Id.* at 109.

The implication of the foregoing rulings would necessitate that the presiding judges of RTC Special Commercial Courts would have competent knowledge on labor laws applicable to situations that fall within their jurisdiction where strictly speaking the "officer" involved does not fall within the "corporate officer" definition, and therefore would be entitled to protection of security of tenure mandated both under the Constitution and the Labor Code.

4. Interim Rules of Procedure on Intra-Corporate Controversies Governing Election Contests

a. Coverage of "Election Contest"

Section 1, Rule 6 of the Interim Rules of Procedure on Intra-Corporate Controversies expressly provides for its coverage being on "election contests in stock and non-stock corporations."[525]

An "election contest" is defined in Section 2 of the Rule as referring to

> any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, the manner and validity of elections, and the qualifications of candidates, including the proclamation of winners, to the office of directors or trustees or other officers directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the articles of incorporation or by-laws so provide.[526]

The case of *Calleja* confirms that although election contests in private corporations have come under the jurisdiction of the RTC, nonetheless the *quo warranto* provisions under Rule 66 of the 1997 Rules of Civil Procedure do not apply to *quo warranto* cases against persons who usurp an office in a private corporation, thus —

> It is therefore, the Interim Rules of Procedure Governing Intra-Corporate Controversies ... which applies to the petition for *quo warranto* filed ... before the trial court since what is being questioned is the authority of herein petitioners to assume the office and act as the board of directors and officers of [the private corporation.][527]

b. Summary Proceedings in Election Contests

Pursuant to the embedded policy under the Interim Rules of Procedure on Intra-Corporate Controversies that proceedings should be summary and

525. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 6, § 1.

526. *Id.* rule 6, § 2.

527. *Calleja*, 483 SCRA at 691.

expedited in nature, Section 3 of Rule 6 requires that an election contest can be commenced with the filing of the complaint:

> (a) Within [15] days from the date of the election if the by-laws of the corporation do not provide for a procedure for resolution of the controversy;
>
> (b) Within [15] days from the resolution of the controversy by the corporation as provided in its by-laws;[528]

Additionally, that the plaintiff must have exhausted all intra-corporate remedies in election cases as provided for in the by-laws.

Within two days from the filing of the complaint, the court, upon a consideration of the allegations thereof, may dismiss the complaint outright if it is not sufficient in form and substance, or, if it is sufficient, order the issuance of summons which shall be served on the defendant within two days from its issuance.[529]

The defendant shall file his answer to the complaint, serving a copy thereof on the plaintiff, within ten days from service of summons and the complaint.[530] The answer shall contain the matters required in Section 6, Rule 2 of the Interim Rules.[531]

It is required that both the complaint and answer shall contain the affidavits of witnesses, documentary and other evidence in support thereof, if any.[532]

If the defendant fails to file an answer within 10 days, the court shall, within 10 days from the lapse of said period, *motu proprio* or on motion, render judgments as may be warranted by the allegations of the complaint, as well as the affidavits, documentary and other evidence on record.[533] In no case shall the court award a relief beyond or different from that prayed for.[534]

If the court deems it necessary to hold a hearing to clarify specific factual matters before rendering judgment, it shall, within 10 days from the last pleading, issue an order setting the case for hearing for the purpose.[535] The

528. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 6, § 3.

529. *Id.* rule 6, § 4.

530. *Id.* rule 6, § 5.

531. *Id.*

532. *Id.* rule 6, § 6.

533. *Id.* rule 6, § 7.

534. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 6, § 7.

535. *Id.* rule 6, § 8, para. 1.

order shall, in clear and concise terms, specify the matters the court desires to be clarified and the witnesses, whose affidavits have been submitted, who will give the necessary clarification.[536]

The hearing shall be set on a date not later than 10 days from the date of the order.[537] The hearings shall be completed not later than 15 days from the date of the first hearing.[538] The affidavit of any witness who fails to appear for clarificatory questions of the court shall be ordered stricken off the record.[539]

The court shall render a decision within 15 days from receipt of the last pleading, or from the date of the last hearing as the case may be.[540] The decision shall be based on the pleadings, affidavits, documentary evidence attached thereto, and the answers of the witnesses to the clarificatory questions of the court given during the hearings.[541]

5. Disputes Relating to Validation of Proxies

The definition of election contests under Section 2, Rule 6 of the Interim Rules of Procedure on Intra-Corporate Controversies expressly includes "any controversy or dispute involving ... validation of proxies,"[542] and this should refer to validation of proxies as an adjunct to determining validity of votes cast during stockholders' or members' meetings for the election of the members of the board of directors/trustees.

As discussed previously, the case of *GSIS* confirmed that while "[t]he SEC's power to pass upon the validity of proxies in relation to election controversies has effectively been withdrawn, tied as it is to its abrogated jurisdictional powers;"[543] it nonetheless clarified that the SEC has not lost all of its regulatory powers involving proxies. It distinguished between "proxy solicitation" which involves the securing and submission of proxies, from "proxy validation" which concerns the validation of such secured and submitted proxies, and ruled that the power and mandate of the SEC under the SRC on proxy solicitation has not been removed.[544]

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536. *Id.*

537. *Id.* rule 6, § 8, para. 2.

538. *Id.*

539. *Id.*

540. INTERIM RULES OF PROCEDURE FOR INTRA-CORPORATE CONTROVERSIES, rule 6, § 9.

541. *Id.*

542. *Id.* rule 6, § 2.

543. *GSIS*, 585 SCRA at 706.

544. *Id.* at 703-04.

6. Appeals from the Decisions of RTC Special Commercial Courts

As discussed already, in September 2001, the Supreme Court issued A.M. No. 00-8-10-SC[545] which provided expressly that petitions for corporate rehabilitation and intra-corporate controversies are considered as special proceedings; accordingly, the "period of appeal provided in paragraph 19 (b) of the [Interim Rules of Procedure on Intra-Corporate Controversies] relative to the implementation of Batas Pambansa Bilang (B.P.) 129 for special proceedings shall apply[,]" which provides a period of appeal to be 30 days, with a record of appeal being required.[546]

Subsequently, in September 2004, the Court issued A.M. No. 04-9-07-SC,[547] clarifying the proper mode of appeal in cases involving corporate rehabilitation and intra-corporate controversies. It is provided therein that all decisions and final order in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure for Intra-Corporate Controversies under the SRC shall be appealed to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court to be filed within 15 days from notice of the decision or final order of the RTC.[548]

In one case,[549] where the petitioner filed was a petition for *certiorari* under Rule 65 of the Rules of Court, the Supreme Court upheld the correctness of the resolution of the Court of Appeals in dismissing the petition.

In another case,[550] the Court held that Rule 1 of the Interim Rules of Procedure on Intra-Corporate Controversies specifically prohibits the filing of motions for reconsideration, hence, the remedy of an aggrieved party is to file a petition for *certiorari* within 60 days from receipt of the assailed order. The Court also held that when the same petitioner files with the Court of Appeals a petition for *certiorari* and another petition on the appeal having the same prayer — the setting aside of the RTC decision — none of the petitions should be given due course. The Court ruled that in spite of the plea of the petitioner that the petition for *certiorari* assails the propriety and

545. A.M. No. 00-8-10-SC (2001).

546. *Id.*

547. Supreme Court, Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission, Administrative Memorandum No. 04-9-07-SC [A.M. No. 04-9-07-SC] (Sep. 14, 2004).

548. *Id.*

549. New Frontier Sugar Corporation v. Regional Trial Court, Branch 39, Iloilo City, 513 SCRA 601, 605 (2007).

550. Westmont Investment Corporation v. Farmix Fertilizer Corporation, 632 SCRA 50, 63 (2010).

manner by which it was rendered, while the appeal goes into the merits of the decision itself, nonetheless, both remedies have one ultimate goal; and to give due course to the two petitions for having the same prayer will definitely pose an evil that the prohibition on forum shopping was seeking to prevent, i.e., the possibility of two different tribunals rendering conflicting decisions.

IV. JURISDICTIONAL CONFLICTS ON CORPORATE AND SECURITIES CASES

A. Introduction

Whether the SEC exercises residual quasi-judicial powers or just purely regulatory powers over certain corporate or securities issues, there will persist "jurisdictional conflicts" between the SEC and the courts of general jurisdiction (whether it be the regular RTCs, or the RTC Special Commercial Courts), the Court of Appeals, and the Supreme Court itself, over justiciable controversies involving matters arising under P.D. No. 902-A, the Corporation Code, or the SRC, under any of the following scenarios:

(1) Where a party to such a justiciable controversy pending with the RTC seeks the dismissal of the court action by invoking the *doctrine of primary jurisdiction*, positing that the SEC retains original and exclusive jurisdiction over corporate or securities issues arising outside of the provisions of Section 5 of P.D. No. 902-A;

(2) Where a party to such a justiciable controversy pending with the RTC seeks to dismiss the court action for violation of the rule against forum-shopping, on the argument that the matter is already pending with the SEC which has concurrent jurisdiction in the exercise of its administrative adjudicative functions outside of corporate cases under Section 5 of P.D. No. 902-A; or vice versa;

(3) Where a party to such a justiciable controversy pending with the courts of law invokes the *doctrine of judicial non-inference* in administrative processes, positing that there are available remedies within the SEC's regulatory powers that must be pursued before resort to the regular courts can be pursued; or

(4) When the party to such a justiciable controversy pending with the RTC on a corporate case falling under Section 5 of P.D. No. 902-A or securities cases arising under the SRC, invokes the *doctrine of prior resort* to suspend the proceedings and refer certain matters for the final resolution of the SEC, where:

(a) the determination of facts or resolution of certain issues presented to the court requires the exercise by the SEC of its purely regulatory powers; or

(b) it is posited that the proper exercise of judicial prudence should require certain intricate issues falling within SEC's regulatory powers ought first be resolved administratively by the SEC within its specialized expertise and purely regulatory functions.

Nevertheless, under the well-established system of judicial review over acts, orders, resolutions, or decisions of the SEC, the following jurisdictional conflicts may also arise, thus:

(1) Where a party to such a justiciable controversy seeks the dismissal of the court action by invoking the *doctrine of exhaustion of administrative remedies* positing that there are available remedies within the SEC's regulatory powers that must be pursued before resort to the regular courts can be pursued; or

(2) Short-circuiting of the appeals process under Section 70 of the SRC which would undermine the original decision of the RTC Special Commercial Courts on corporate cases falling under Section 5 of P.D. No. 902-A, or RTCs acting on their original and exclusive jurisdiction over securities cases under the SRC.

Thus, the Authors shall arrange hereunder a mapping-out, as it were, of the existing statutory and jurisprudential rules that create a complex remedial tension between the SEC as the primary regulatory agency over corporate and securities matters; the RTCs in particular; and the Judiciary in general, when it comes to justiciable controversies involving corporate and securities matters.

In order to allow proper resolutions over such jurisdictional conflicts, it would be necessary to first undertake a review of applicable doctrines in Philippine aadministrative law.

B. Administrative Law in Perspective

The 20th century saw the passage of laws seeking to introduce regulations into highly specialized areas in modern societies, and often inevitably provide for the creation of administrative agencies — specialized bodies mandated to oversee the organic growth and policy development in such regulated areas.

In our country's important commercial sectors, Congress has undertaken the establishment of administrative agencies which are tasked with the primary jurisdiction to evolve and implement the statutory guidelines and

policies mandated in the laws governing such commercial areas, which at the same time constitute the charter of such agencies upon which they draw their mandates, powers, and functions. For instance, there is the creation of the SEC for the system of registration, regulation, and supervision of corporations, partnerships, and associations, as well as the regulation and supervision of the country's securities system; the Insurance Commission for the insurance industry; the *Bangko Sentral ng Pilipinas* for the banking industry; and the National Telecommunications Commission (NTC) for the telecommunications industry.

The complex system of specialized administrative agencies is circumscribed within the legal discipline denominated and studied as "Administrative Law." Most Filipino writers[551] on the subject still refer to the definition given by Dean Roscoe Pound, who described it as

> that branch of modern law under which *the executive department of the government, acting in a quasi-legislative or quasi-judicial capacity*, interferes with the conduct of the individual for the purpose of promoting the well-being of the community, as under laws regulating public interest, professions, trades and callings, rates and prices, laws for the protection of public health and safety, and the promotion of public convenience.[552]

Professor Carlo L. Cruz, in his work in Administrative Law, which he characterized as being "legislation in origin," with "expediency as its justification," traced the development of administrative agencies (and what the Authors would call "super government bodies") in the following manner —

> [Administrative Law] is the result of the pervasive prolixity of the modern age and the increasing difficulties confronting the government, which, given the sophisticated nature of the problems it must address, is no longer able to employ, with the same effectiveness, the traditional powers assigned to its several branches under the doctrine of separation of powers.
>
> ...
>
> Thus hesitantly at first but later even with alacrity, the legislature began authorizing certain specialized bodies to lay down rules for the regulation of the matters entrusted to their jurisdiction and, additionally, apply these rules in the adjudication of factual issues relating to these matters, subject only to certain broad policies intended to guide and limit them in the exercise of their delegated power. The initial demonstrated success of this experiment encouraged further delegations, with the result that the number

551. HECTOR S. DE LEON & HECTOR M. DE LEON, JR., ADMINISTRATIVE LAW: TEXT AND CASES 1 (5th ed. 2005); CARLO L. CRUZ, PHILIPPINE ADMINISTRATIVE LAW 1 (2007 ed.); & ROLANDO A. SUAREZ, ADMINISTRATIVE LAW 2-3 (1st ed. 2001).

552. ROSCOE POUND, GROWTH OF AMERICAN ADMINISTRATIVE LAW 110 (emphasis supplied).

> of these bodies grew to proportions that have led to the tenable observation that, in the legislature, delegation has become the rule and non-delegation, the exception.[553]

The balancing between the policy promoting public interests with an efficient government bureaucracy and the need to adhere to the constitutional doctrine of separation of powers, has created remedial and procedural tension between and among the administrative agencies and the Judiciary, with the latter being mindful of its role as the guardian of the country's constitutional precepts and principles.

1. Nature of the Powers Exercised by Administrative Agencies

Depending on their charters, administrative agencies, which primarily perform executive functions — i.e., the enforcement and administration of the laws, carrying them into practical operation and enforcing their due observance — are usually granted also quasi-legislative[554] and quasi-judicial powers.[555]

Prof. Cruz distinguishes between the quasi-legislative powers and quasi-judicial powers of an administrative agency as follows —

> The first is otherwise known as the power of subordinate legislation and permits the body to promulgate rules intended to carry out the provisions of particular laws. The second, its power of adjudication, enables the administrative body to resolve, in a manner essentially judicial, factual or sometimes even legal questions incidental to its primary power of enforcement of the law. The jurisdiction of the administrative body is quasi-judicial in applying a rule for the past and quasi-legislative in prescribing a rule for the future. The former is in its nature private and the latter public.[556]

The grant of quasi-legislative power to administrative agencies is wholly within the prerogative of the Legislature, in which legislative power has been constitutionally reposed.[557] The exercise by administrative agencies of the power of subordinate legislation must be done within the parameters set by the statute, and pursued with the primary task of evolving the policies set out by the Legislature within the areas falling within their respective jurisdictions.[558] Courts, in exercising their judicial powers in such fields, are therefore generally without authority to change the policy direction set by

553. CRUZ, *supra* note 551, at 2–4.

554. Villafuerte, Jr. v. Robredo, 744 SCRA 534, 550 (2014).

555. Bedol v. Commission on Elections, 606 SCRA 554, 569 (2009).

556. CRUZ, *supra* note 551, at 25 (citing I VON BAUR, FEDERAL ADMINISTRATIVE LAW 65 (1942)).

557. DE LEON & DE LEON, JR., *supra* note 551, at 96.

558. *Id.*

the administrative agencies mandated under formal statutory grants to execute and enforce such laws, except only when such policy developments contravenes what the courts consider to be the letter or spirit of the law or the Constitution, or done with grave abuse of discretion.[559]

In the same manner, the grant of quasi-judicial powers to an administrative agency is now accepted as wholly within the power of the Legislature which under the constitutional set-up has the power to define the jurisdiction of the various courts and tribunals that pertain to the exercise of judicial power,[560] limited only to the constitutional precept that such quasi-judicial powers must be exercised by administrative agencies primarily to more effectively enforce the laws which constitute their administrative or regulatory powers. Time and again, the Supreme Court has noted that administrative agencies which have been conferred with quasi-judicial powers do not make them courts of law, and they do not become part of the Judiciary — they remain executive offices primarily discharging executive functions, and the essence of their quasi-judicial powers or functions is always to the effect that it must constitute an integral part of discharging their executive powers to enforce and implement the law and evolve the development of policies and objectives of the law in the course of resolving the rights and obligations of the parties covered by the terms of the law.[561]

The Court has held that —

> [t]he administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, *where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it*. In carrying out their quasi-judicial functions, the administrative officers or bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.[562]

The grant of quasi-judicial powers to administrative agencies under such parameters does not mean the judicial power is taken away from the Judiciary, because the courts of law can never be deprived of the power of judicial review. The exercise of quasi-judicial power by administrative

559. *Id.* at 101.

560. The Constition provides that "[t]he Congress shall have the power to define, prescribe, and apportion the jurisdiction of various courts but may not deprive the Supreme Court of its jurisdiction over cases enumerated in Section 5 hereof." PHIL. CONST. art. VIII, § 2.

561. Midland Insurance Corporation v. Intermediate Appellate Court, 143 SCRA 458 (1986) & United Residents of Dominican Hills, Inc. v. Commission on the Settlement of Land Problems, 353 SCRA 782 (2001).

562. *Smart Communications, Inc.*, 408 SCRA at 686–87 (emphasis supplied).

agency is merely adjunct to its primary mandate to execute the law for which it has been specifically charged to carry out, and evolve the proper policies sought to be implemented under the law.

Finally, administrative agencies are formally granted investigatory powers, which have been described by the Supreme Court as the

> *life blood of the administrative process* ... [for they] are useful for all administrative functions, not only for rule making, adjudication, and licensing, but also for prosecuting, for supervising and directing, for determining general policy, for recommending legislation, and for purposes no more specific than illuminating obscure areas to find out what if anything should be done. An administrative agency may be authorized to make investigations, not only in proceedings of a legislative or judicial nature, but also in proceedings whose sole purpose is to obtain information upon which future action of a legislative or judicial nature may be taken and may require the attendance of witnesses in proceedings of a purely investigatory nature. It may conduct general inquiries into evils calling for correction and to report findings to appropriate bodies and make recommendations for actions.[563]

When the exercise of investigatory powers do not employ judicial functions and is limited to investigating the facts and making findings in respect thereto and are not making final pronouncements affecting the parties, such powers are purely regulatory in character and do not involve the exercise of quasi-judicial powers.[564]

2. Doctrinal Framework Prevailing in Philippine Administrative Law

From the foregoing discussion of the nature and extent of the quasi-legislative, quasi-judicial, and investigatory powers of administrative agencies, a number of doctrines have evolved in Philippine administrative law.

First, there is the principle that quasi-legislative and quasi-judicial powers of an administrative agency must be clearly conferred by law. Since administrative tribunals are essentially executive offices, there is no presumption that they can exercise quasi-legislative and/or quasi-judicial powers.

Thus, the Supreme Court aptly held in one case[565] that

> [a]dministrative agencies have powers and functions which may be administrative, investigatory, regulatory, quasi-legislative, or quasi-judicial, or a mix of the five, as may be conferred by the Constitution or by statute. *They have in fine only such powers or authority as are granted or delegated, expressly or impliedly, by law. And in determining whether an agency has certain*

563. Evangelista v. Jarencio, 68 SCRA 99, 104 (1975).

564. Presidential Anti-Dollar Salting Task Force v. CA, 171 SCRA 348 (1989).

565. Soriano v. Laguardia, 587 SCRA 79 (2009).

> *powers, the inquiry should be from the law itself. But once ascertained as existing, the authority given should be liberally construed.*[566]

In another case,[567] it held that

> [t]oo basic in administrative law to need citation of jurisprudence is the rule that the jurisdiction and powers of administrative agencies ... are limited to those expressly granted or necessarily implied from those granted in the legislation creating such body; *and any order without or beyond such jurisdiction is void and ineffective.*[568]

Second, an administrative agency may properly be authorized under its charter to resolve justiciable controversies in the exercise of quasi-judicial functions. The Supreme Court has observed that

> [i]n the exercise of such powers, the agency concerned must commonly interpret and apply contracts and determine the rights of private parties under such contracts. One thrust of the multiplication of administrative agencies is that the interpretation of contracts and the determination of private rights thereunder is no longer a uniquely judicial function, exercisable only by our regular courts.[569]

Third, in the exercise of their quasi-judicial powers, administrative agencies are not bound by technical rules and procedures. On this matter, Prof. Rolando A. Suarez has observed —

> Administrative agencies charged with the task of adjudicating contested cases are necessarily involved in exercising functions which are judicial in nature. This does not mean, however, that they are bound to observe the technical rules of evidence and procedure observed by the regular courts of justice.
>
> The reason for this is because administrative tribunals are expected to adjudicate cases expeditiously and without unnecessary delay. The main function of administrative agencies is primarily to enforce the law entrusted to them for implementation. The exercise of quasi-judicial power is only incidental to their main function of enforcing the law.[570]

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566. *Id.* at 90–91 (emphasis supplied). *See also* Antipolo Realty Corp. v. National Housing Authority, 153 SCRA 399 (1987); Liga ng mga Barangay National v. Atienza, Jr., 420 SCRA 562 (2004); & Department of Agrarian Reform Adjudication Board (DARAB) v. Lubrica, 457 SCRA 800 (2005).

567. Globe Wireless Ltd. v. Public Service Commission, 147 SCRA 269 (1987).

568. *Id.* at 272 (emphasis supplied).

569. *Antipolo Realty Corp.*, 153 SCRA at 407. *See also* Solid Homes, Inc. v. Payawal, 177 SCRA 72 (1989).

570. SUAREZ, *supra* note 551, at 130.

Last, the doctrine of the binding effect upon the courts of the administrative rulings or findings of administrative agencies,[571] which the Supreme Court has restated as follows —

> This Court has consistently held that the courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency. It has also been held that the exercise of administrative discretion is a policy decision and a matter that can best be discharged by the government agency concerned, and not by the courts ... findings of fact which are supported by evidence and the conclusion of experts should not be disturbed ... [and that] factual findings of quasi-judicial bodies which have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but even finality and are binding even upon the Supreme Court if they are supported by substantial evidence.[572]

The doctrine has been supported by various theories espoused by the Supreme Court under both Administrative Law and Remedial Law, thus:

(1) In the absence of grave abuse of discretion, the findings of fact of administrative bodies will not be interfered with by the courts, and in fact must be accorded not only great

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571. Ganitano v. Secretary of Agriculture and Natural Resources, et al., 160 SCRA 543 (1966); Dy Keh Beng v. International Labor, 90 SCRA 162 (1979); Meralco Securities Corporation v. Savellano, 117 SCRA 804 (1982); Special Events & Central Shipping Office Workers Union v. San Miguel Corp., 122 SCRA 557 (1983); Baliwag Transit, Inc. v. Court of Appeals, 147 SCRA 82 (1987); Lianga Bay Logging Co., Inc. v. Lopez Enage, 152 SCRA 80 (1987); Gelmart Industries (Phil.), Inc. v. Leogardo, Jr., 155 SCRA 403 (1987); Antonio v. Estrella, 156 SCRA 68 (1987); Mangubat v. De Castro, 163 SCRA 608 (1988); Mapa v. Arroyo, 175 SCRA 76 (1989); Felipe Ysmael, Jr. & Co., Inc. v. Deputy Executive Secretary, 190 SCRA 673 (1990); Earth Minerals Exploration, Inc. v. Macaraig, Jr., 194 SCRA 1 (1991); Director of Lands v. Court of Appeals, 194 SCRA 224 (1991); Sesbreno v. Ala, 208 SCRA 359 (1992); V.V. Aldaba Engineering v. Minister of Labor and Employment, 235 SCRA 31 (1994); Casa Realty Filipino v. Office of the President, 241 SCRA 165 (1995); First Lepanto Ceramics, Inc. v. Court of Appeals, SCRA 552 (1996); Alba v. Nitorreda, 254 SCRA 753 (1996); Capitol Wireless, Inc. v. Confessor, 264 SCRA 68 (1996); Sta. Ines Melale Forest Products Corporation v. Macaraig, Jr., 299 SCRA 491 (1998); Protector's Services, Inc. v. Court of Appeals, 330 SCRA 404 (2000); Amigo Manufacturing, Inc. v. Cluett Peabody Co., Inc., 354 SCRA 434 (2001); Sta. Lucia Realty & Development Inc. v. Romeo Uyecio, 562 SCRA 226 (2008); & Berris Agricultural Co., Inc. v. Abyadang, 633 SCRA 196 (2010).

572. Republic v. Express Telecommunications Co., Inc., 373 SCRA 316, 346-47 (2002) (citing Villanueva v. Court of Appeals, 205 SCRA 537 (1992) & Metro Transit Organization, Inc. v. NLRC, 263 SCRA 313 (1996)).

respect but even finality; by reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon.[573]

(2) Regular courts of justice will generally not interfere in executive and administrative matters which are addressed to the sound discretion of government agencies, such as the grant of licenses, permits, leases or the approval, rejection or revocation of the applicants therefore.[574]

(3) A decision of an administrative agency in the exercise of its quasi-judicial power, where the proceedings where conducted in accordance with law, when it has become final, is conclusive and binding on the parties under the principle of *res adjudicata*.[575]

(4) Regular courts of justice should as much as possible refrain from disturbing the findings of administrative bodies in deference to the doctrine of separation of powers;[576] and that petitions for *certiorari*, prohibition, and *mandamus* do not lie against the legislative and executive branches or the members thereof acting in the exercise of their official functions, basically in consideration of the respect due from the judiciary to said departments of co-equal and coordinate ranks under the principle of separation of powers.[577]

(5) When the act of an administrative agency is not purely administrative but quasi-judicial or adjudicatory since it is

573. *See generally* Raniel v. Jochico, 517 SCRA 221 (2007) & Commission on Higher Education v. Dasig, 574 SCRA 227 (2008).

574. *See generally* Manuel v. Villena, 37 SCRA 745 (1971) & Philippine National Oil Company v. Court of Appeals, 457 SCRA 32 (2005).

575. *See generally* Brillantes v. Castro, 99 Phil. 497 (1956); Ipekdjian Merchandising Co., Inc. v. Court of Tax Appeals, 9 SCRA 72 (1963); Cornelio v. Court of Appeals, 29 SCRA 455 (1969); Macailing v. Andrada, 31 SCRA 126 (1970); Ramos v. Republic, 69 SCRA 576 (1976); Vitug v. Republic, 75 SCRA 436 (1977); Carreon v. Workmen's Compensation Commission, 77 SCRA 297 (1977); Delfin v. Inciong, 192 SCRA 151 (1990); & Ocho v. Calos, 345 SCRA 478 (2000).

576. National Association of Free Trade Union v. Mainit Lumber Development Company Workers Union-United Lumber and General Workers of the Phils., 192 SCRA 598, 603 (1990).

577. *See generally* Mama, Jr. v. Court of Appeals, 196 SCRA 489 (1991); First Lepanto Ceramics, Inc. v. Court of Appeals, 253 SCRA 552(1996); & Olaguer v. Domingo, 359 SCRA 78 (2001).

> dependent upon the ascertainment of facts by the administrative agency, upon which a decision is to be made and rights and liabilities determined ... It thus squarely falls under matters relative to the executive department which courts are mandatorily tasked to take judicial notice of under Section 1, Rule 129 of the Rules of Court. Judicial notice must be taken of the organization of the Executive Department, its principal officers, elected or appointed, such as the President, his powers and duties.[578]

The rationale behind these rulings has been explained in *Nestlé Philippines, Inc. v. Court of Appeals*,[579] in this wise —

> In the first place, it is a principle too well established to require extensive documentation that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the Constitution and other laws. As long ago as 1903, this Court said in *In re Allen* that
>
> > ['t]he principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty is to execute it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts, is so firmly embedded in our jurisdiction that no authorities need be cited to support it.'
>
> The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.[580]

3. Judicial Review Over Acts, Orders, Resolutions and Decisions of Administrative Agencies

a. Two Varying Aspects of the Power of Judicial Review

The term "Judicial Power" as it has been vested by the Constitution "in one Supreme Court and in such lower courts as may be established by law,"[581] has been constitutionally defined as having two (2) integral components, namely:

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578. Sañado v. Court of Appeals, 356 SCRA 546, 558 (2001).

579. Nestle Philippines, Inc. v. Court of Appeals, 203 SCRA 504 (1991).

580. *Id.* at 510–11.

581. PHIL. CONST. art VIII, § 1.

(1) "[T]he duty of the courts of justice to settle actual controversies, involving rights which are legally demandable and enforceable;"[582] and

(2) The power "[t]o determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[583]

What constitutes delegated quasi-judicial power to administrative agencies is only the first component of judicial power which is the power to settle justiciable controversies arising in the pursuit of their regulatory functions; the second component remains wholly within the Judiciary, and non-delegable to administrative agencies.

Notwithstanding the doctrine of the binding effect upon the courts of the rulings or findings of administrative agencies, there exists in Philippine jurisdiction the "Power of Judicial Review" by the courts over the administrative agencies, and which must properly be understood to have *two separate and distinct components*:

(1) What we refer to as the *power of judicial appellate review* by certain courts of law over the final orders, resolutions or decisions of administrative agencies *acting in a quasi-judicial manner*. On the premise that the right to appeal is neither a constitutional nor a common law right, the power of judicial appellate review is purely statutory in character — it exists only when so granted by the law. Without a formal grant of appellate review power to a higher tribunal, the final orders or decisions of administrative agencies issued within their quasi-judicial powers have the effect of being *res judicata*. Currently, the power of the Court of Appeals to exercise appellate review over the decisions of administrative agencies exercising quasi-judicial power is regulated under Rule 43 of the 1997 Rules of Civil Procedure.

(2) What we refer to as the *power of judicial review* or *judicial review proper* defined as "the power of courts to determine the validity of the acts of Legislative or Executive departments of the government,"[584] and which at present finds constitutional basis under Section 1, Article VIII of the 1987 Constitution — "Judicial power includes the duty of

582. PHIL. CONST. art VIII, § 1.

583. PHIL. CONST. art VIII, § 1.

584. Ann Leah Fidelis T. Castaneda, *The Origins of Philippine Judicial Review, 1900-1935*, 46 ATENEO L. J. 121, 122 (2001).

> the courts of justice ... *to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government*[.]"[585] The Judiciary's power of *judicial review proper* is currently regulated under Rule 65 of the 1997 Rules of Civil Procedure.[586]

The essence and remedial operations of the two types of judicial review powers are quite different and have different legal impact in the resolution of jurisdictional conflicts between administrative agencies and the Judiciary. For example, whereas the *power of judicial appellate review* is directed only on orders, resolutions, or decisions of administrative agencies issued in the exercise of their quasi-judicial powers; the *judicial review proper* allows in addition for the courts of justice to determine the validity of all acts of administrative agencies done in the exercise of purely regulatory powers or in the exercise of quasi-legislative powers. The singular use in jurisprudence of the term of *judicial review* for both types of powers has spawned confusion among the members of the Bench and Bar.

To illustrate the point, there is the 2003 decision in *Smart Communications, Inc.*,[587] where the main issue before the Supreme Court was whether the RTC, in a petition for declaratory relief, had jurisdiction to rule upon the validity or constitutionality of the memoranda issued by the NTC in the exercise of its quasi-legislative power, based on the assertion by the NTC that the petition should be dismissed for failure of the petitioning companies to exhaust administrative remedies within the commission itself. After clearly distinguishing between quasi-legislative and quasi-judicial powers, the *ponencia* of former Associate Justice Consuelo Ynares-Santiago held that both the doctrine of exhaustion of administrative remedies and the doctrine of primary jurisdiction cannot be invoked to deprive a court of justice of the exercise of its power of judicial review, when the act being question is not in the exercise of quasi-judicial powers of an administrative agency, thus —

> In questioning the validity or constitutionality of a rule or regulation issued by an administrative agency, a party need not exhaust administrative

585. PHIL. CONST. art. VIII, § 1 (emphasis supplied).

586. Under Section 1, Rule 65 of the 1997 Rules of Civil Procedure, for a writ of *certiorari* to issue, the following requisites must concur: (1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. *Liga ng mga Barangay National*, 420 SCRA at 570.

587. *Smart Communications, Inc.*, 408 SCRA at 678.

> remedies before going to court. This principle applies only where the act of the administrative agency concerned was performed pursuant to its quasi-judicial function, *and not when the assailed act pertained to its rule-making or quasi-legislative power.*
>
> ...
>
> In like manner, the doctrine of primary jurisdiction applies only where the administrative agency exercises its quasi-judicial or adjudicatory function.[588]

In making such pronouncements, the *ponente* relied upon and quoted from the Supreme Court's earlier decision in *Association of Philippine Coconut Dessicators v. Philippine Coconut Authority*,[589] where it was held that —

> *The rule of requiring exhaustion of administrative remedies before a party may seek judicial review*, so strenuously urged by the Solicitor General on behalf of respondent, has obviously no application here. The resolution in question was issued by the PCA in the exercise of its rule-making or legislative power. *However, only judicial review of decisions of administrative agencies made in the exercise of their quasi-judicial function is subject to the exhaustion doctrine.*[590]

The referral to the term *judicial review* in both the *Association of Philippine Coconut Dessicators* and *Smart Communications, Inc.* decisions must be understood to be limited in application only to the *power of appellate review*, since the constitutional text itself *clearly includes* within the coverage of judicial review the power to determine the validity or constitutionality of a rule or regulation issued by an administrative agency. Also, as will be shown hereunder, the doctrine of primary jurisdiction has been invoked in a significant number of Supreme Court decisions which involved the exercise by the regular courts of justice of the power of judicial review over acts and issuances of administrative agencies in the exercise of regulatory non-judicial powers, as well as quasi-legislative powers.

In the aforequoted portion of the *Smart Communications, Inc.* decision, the term "quasi-judicial bodies" has been extended to include within its coverage "quasi-legislative powers" when they are exercised to determine the rights and obligations of the affected members of the public. This is also demonstrated in the 1989 decision in *Presidential Anti-Dollar Salting Task Force v. CA*,[591] which held that "[a] quasi-judicial body has been defined as 'an

588. *Id.* at 687 (emphasis supplied).

589. Association of Philippine Coconut Dessicators v. Philippine Coconut Authority, 286 SCRA 109 (1998).

590. *Id.* at 117 (emphasis supplied).

591. Presidential Anti-Dollar Salting Task Force v. CA, 171 SCRA 348 (1989).

organ of government other than a court and other than a legislature, *which affects the rights of private parties through either adjudication or rule-making*.'"[592]

The *ponencia* of Justice Abraham F. Sarmiento, Sr., enumerated examples of what can be considered as "quasi-judicial bodies," even when clearly some of them did not have quasi-judicial powers though in the exercise of their quasi-legislative functions, they "determined the rights" of those to be affected by their rules and regulations, thus —

> A quasi-judicial body has been defined as 'an organ of government other than a court and other than a legislature, which affects the rights of private parties through either adjudication or rule making.' The most common types of such bodies have been listed as follows:
>
> (a) Agencies created to function in situations wherein the government is offering some gratuity, grant, or special privilege, like the defunct Philippine Veterans Board, Board on Pensions for Veterans, and NARRA, and Philippine Veterans Administration.
>
> (b) Agencies set up to function in situations wherein the government is seeking to carry on certain government functions, like the Bureau of Immigration, the Bureau of Internal Revenue, the Board of Special Inquiry and Board of Commissioners, the Civil Service Commission, the Central Bank of the Philippines.
>
> (c) Agencies set up to function in situations wherein the government is performing some business service for the public, like the Bureau of Posts, the Postal Savings Bank, Metropolitan Waterworks & Sewerage Authority, Philippine National Railways, the Civil Aeronautics Administration.
>
> (d) Agencies set up to function in situations wherein the government is seeking to regulate business affected with public interest, like the Fiber Inspections Board, the Philippine Patent Office, Office of the Insurance Commissioner.
>
> (e) Agencies set up to function in situations wherein the government is seeking under the police power to regulate private business and individuals, like the Securities & Exchange Commission, Board of Food Inspectors, the Board of Review for Moving Pictures, and the Professional Regulation Commission.
>
> (f) Agencies set up to function in situations wherein the government is seeking to adjust individual controversies because of some strong social policy involved, such as the National Labor Relations Commission, the Court of Agrarian Relations, the Regional Offices of the Ministry of Labor, the Social Security Commission, Bureau of Labor Standards, Women and Minors Bureau.

592. *Id.* at 360 (emphasis supplied).

> *As may be seen, it is the basic function of these bodies to adjudicate claims and/or to determine rights, and unless its decision are seasonably appealed to the proper reviewing authorities, the same attain finality and become executory.*[593]

Parenthetically, it has been held in *Presidential Anti-Dollar Salting Task Force* that under existing rules of procedure, the RTC possess no power of judicial review over administrative agencies exercising quasi-judicial powers, and such administrative agencies are deemed to be co-equal tribunals to the RTC which cannot therefore issue orders to restrain or enjoin the acts or orders of such tribunals.[594]

b. Policy Tensions Between Principles of Administrative Law and the Power of Judicial Review

The jurisprudential tension that exists between the two aspects of judicial review has been recognized by leading authors and various decisions of the Supreme Court itself.

Hector S. De Leon and Hector M. De Leon, Jr. (De Leons) have noted —

> The problem of judicial review of the action of an administrative agency necessarily brings the judicial process into conflict with the administrative process and presents vital questions as to the relative roles of administrative agencies and the courts in our system of government. Both are governmental instruments for realizing public purposes.[595]

Prof. Cruz has summed up the jurisprudential discord, thus —

> It is the recognized principle that courts of justice will generally not interfere in executive and administrative matters which are addressed to the sound discretion of government agencies, such as the grant of licenses, permits, leases or the approval, rejection or revocation of the applicants therefore. However, there is a limit to the deference accorded by the courts to the actions of such agencies. Jurisprudence is replete with cases where the Supreme Court has applied the exceptions rather than the general rule. It is generally true that purely administrative and discretionary functions may not be interfered with by the courts; but when the exercise of such functions by the administrative officer is tainted by a failure to abide by the command of the law, then it is incumbent on the courts to set matters right, with the Supreme Court having the last say on the matter. [596]

Thus, judicial review of final orders, resolutions or decisions of administrative agencies is allowed when there has been an abuse of discretion or when such administrative agencies act outside or without jurisdiction,

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593. *Id.* at 360-61 (emphasis supplied).

594. *Id.* at 356.

595. DE LEON & DE LEON, JR., *supra* note 551, at 323.

596. CRUZ, *supra* note 551, at 142-43.

such as when the administrative agency assumes to act in violation of the Constitution or contrary to laws, as when the administrative officer acts without jurisdiction, want of substantial basis in fact or in law, with grave abuse of discretion, violation of due process, denial of substantial justice, or erroneous interpretation of the law;[597] as when there is a conflict in the findings of fact;[598] when the judgment is based on prohibited or void contracts;[599] when the administrative decision or order is not reviewable in any other way, and the complainant will suffer great and obvious damage if the order is carried out, or when such relief is expressly allowed by law; or when the decision or order is made in excess of power and therefore a deprivation of a right granted by law.[600]

Based on the foregoing discussions, the Authors now proceed to discuss two doctrines in Administrative Law that are most relevant in resolving jurisdictional conflicts between administrative agencies and the courts of law, namely: (a) *doctrine of exhaustion of administrative remedies*; and (b) *doctrine of*

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597. *See generally* Oceanic Bic Division (FFW) v. Romero, 130 SCRA 392 (1984); Chung Fu Industries (Phils.), Inc. v. Court of Appeals, 206 SCRA 545 (1992); Cosep v. National Labor Relations Commission, 290 SCRA 704 (1998); & Malabaguio v. Commission on Elections, 346 SCRA 699 (2000). *See also* Alcuaz v. PSBA, QC Branch, 161 SCRA 7 (1988); Lianga Bay Logging Co., Inc. v. Lopez-Enage, 152 SCRA 80 (1987); Beautifont, Inc. v. Court of Appeals, 157 SCRA 481 (1988); Greenhills Mining Company v. Office of the President, 163 SCRA 350 (1988); Mangubat v. De Castro, 163 SCRA 608 (1988); Cuerdo v. Commission on Audit, 166 SCRA 567 (1988); Gordon v. Veridiano II, 167 SCRA 51 (1988); Mapa v. Arroyo, 175 SCRA 76 (1989); Latchme Motoomull v. Dela Paz, 187 SCRA 743 (1990); Alejandro v. Court of Apeals, 191 SCRA 700 (1990); Biak-na-Bato Mining Co. v. Tanco, Jr., 193 SCRA 323 (1991); American Inter-Fashion Corp. v. Office of the President, 197 SCRA 409 (1991); Commissioner of Internal Revenue v. Court of Appeals, 204 SCRA 182 (1991); Banco Filipino Savings & Mortgage Bank v. Monetary Board, Central Bank of the Philippines, 204 SCRA 767 (1991); Peralta v. Civil Service Commission, 212 SCRA 425 (1992); Moomba Mining Exploration Company v. Court of Appeals, 317 SCRA 388 (1999); Hydro Resources Contractors Corporation v. National Irrigation Authority, 441 SCRA 614 (2004); Philippine Long Distance Telephone Co. v. National Telecommunication Commission, 190 SCRA 717 (1990); *Nestle Philippines, Inc.*, 203 SCRA 504; Miguel v. Court of Appeals, 230 SCRA 339 (1994); & Ting v. Court of Appeals, 237 SCRA 797 (1994).

598. *See generally* Pantranco North Express, Inc. v. NLRC, 239 SCRA 272 (1994); Tanala v. National Labor Relations Commission, 252 SCRA 314 (1996); Bontia v. National Labor Relations Commission, 255 SCRA 167 (1996); & Vda. de Dela Cruz v. Abille, 352 SCRA 691 (2001).

599. B.F. Goodrich Phils., Inc. v. Workmen's Compensation Commission, 159 SCRA 355 (1988).

600. *See* SUAREZ, *supra* note 551, at 79–80.

primary jurisdiction. The application of these two doctrines varies on whether they pertain to the *power of judicial appellate review*, or to the constitutionally-sanctioned *judicial review proper.*

By way of introduction, it should be noted that the proper and separate applications of the *doctrine of exhaustion* and the *doctrine of primary jurisdiction* have not been properly delineated in Philippine jurisprudence, and there have been decisions of the Supreme Court where the language used to define or characterize both doctrines is almost indistinguishable.

4. Doctrine of Exhaustion of Administrative Remedies

The *doctrine of exhaustion of administrative remedies* provides that if a remedy is available within the administrative or executive branch of the government, an aggrieved party cannot seek relief from the regular courts of justice before he has availed of such remedy, and failure to do so would affect his cause of action.[601]

Early in the American colonial period in our country, in its 1912 decision in *Lamb v. Phipps*,[602] the Supreme Court began to evolve the doctrine of exhaustion of administrative remedies, and its hierarchical placement in the system of judicial review. In *Lamb*, an application for a writ of *mandamus* was filed with the Court by the former director of the Iwahig Penal Colony, to compel the Auditor of the Philippines to issue a clearance certificate to petitioner who had rendered a formal accounting of all public funds and property that have come to his possession as a public officer.[603] The Supreme Court found that the issuance of the certificate of clearance was not a ministerial duty on the part of the Auditor and noted that

> *For the courts to require an auditor to allow or disallow* a claim against or in favor of the Government would be to substitute the courts as the auditing officers of the Government. Such a result was not contemplated by a law, which conferred upon another department of the Government the *final and exclusive jurisdiction to consider claims.*[604]

The Court also determined that by law, the findings of the Auditor were not immediately final and executory, and were subject to an appeal with the Governor-General, and then to the Secretary of Wars.[605] The Court then brought into play through final ruling the application of both scopes of the

601. Atlas Consolidated Mining & Dev. Corp. v. Mendoza, 2 SCRA 1064 (1961); Ledesma v. Vda. de Opinion, 14 SCRA 973 (1965); & Manuel v. Jimenez, 17 SCRA 55 (1966).

602. Lamb v. Phipps, 22 Phil. 456 (1912).

603. *Id.* at 462–67.

604. *Id.* at 481–82.

605. *Id.* at 490.

power judicial review that courts have over administrative agencies, and the proper application of the doctrine of exhaustion of administrative remedies, thus —

> After a full and careful consideration of the facts and the law applicable to the same, our conclusions may be stated as follows:
>
> (a) That the courts will take jurisdiction of a cause against the Auditor for the Philippine Islands, in a proper case, to compel action on his part, when by reason of unnecessary delays in taking any *action at all*, persons have been deprived of a right and have no *other adequate and speedy remedy in the ordinary course of law*.
>
> (b) That the right to allow or disallow a claim against the Government of the Philippine Islands or any of its branches is, by law, within the discretion of the Auditor.
>
> (c) That the remedy, by appeal, given under [the law], to the aggrieved party to the Governor-General and Secretary of War is another remedy and is speedy and adequate and exclusive.
>
> (d) That when the final decision of a question is by law left to the executive branch of the government, the courts will not interfere until the remedy in that branch has been exhausted, and not always then.[606]

During the first year of the commonwealth period, the Supreme Court affirmed application of the doctrine of exhaustion in *Arnedo v. Aldanese*,[607] where private individuals sought to obtain from the Court a writ of mandamus to compel the Collector of Customs for the Port of Manila to allow the importation free of duty of five bag of rice from Hongkong, claiming to be distressed individuals exempted under the provisions of Proclamation No. 58, declaring therein that a state of emergency exists in view of the serious shortage of rice in the Philippines and of Customs Administrative Order No. 317.[608] Based on the answer of the Collector of Customs that he had already determined that the petitioners were well-to-do individuals and cannot avail of the duty-free importation clause for distressed individual, the Court held —

> The right to appeal from the decision of a subordinate officer to a superior one within the executive department of the government has been held to constitute a plain, speedy and adequate remedy ... , the writ of mandamus will not issue. 'When a plain, adequate and speedy remedy is afforded by and within the executive department of the government, the courts will not interfere until at least that remedy has been exhausted.'
>
> The decision of the respondent requiring the payment of import duties on the rice sought to be imported by the petitioners was not final but

606. *Id.* 496–96 (emphasis supplied).

607. Arnedo v. Aldanese, 63 Phil. 768 (1936) (citing *Lamb*, 22 Phil. at 491).

608. *Id.* at 769–70.

> appealable to the Secretary of Finance who has the power to reverse or modify the same.
>
> Without passing upon the merits of the other questions raised by the pleadings, we conclude that the petitioners are not entitled to the relief sought by them, because they have another plain, speedy and adequate remedy in the ordinary course of law.[609]

The doctrine of exhaustion, as it evolved and was applied in both the early decisions in *Lamb* and *Arnedo*, did not involve an exercise of strictly quasi-judicial powers of the involved administrative officers, but merely an exercise of regulatory powers, *albeit* in the limited concept of *administrative adjudicatory powers*. Both decisions show that the doctrine of exhaustion can rightly be invoked when the courts of justice are resorted to exercise their power of judicial review proper.

a. Legal Bases of the Doctrine of Exhaustion

The doctrine of exhaustion has the following legal bases for its application in our jurisdiction, thus:

(i) Hierarchy of Powers Under the Constitutional Principle of Separation of Powers of Government

When an administrative tribunal acts within its quasi-judicial powers, it stands as a co-equal branch of government vis-à-vis the courts of law. In one case,[610] the Supreme Court held that the doctrine is based on the underlying principle of separation of powers,

> which enjoins upon the Judiciary a becoming policy of non-interference with matters coming primarily (albeit not exclusively) within the competence of the other departments. The theory is that the administrative authorities are in a better position to resolve questions addressed to their particular expertise and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so.[611]

In another case,[612] the Court held that a party —

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609. *Id.* at 771.

610. Sunville Timber Products, Inc. v. Abad, 206 SCRA 482, 486 (1992). *See also* Gonzales v. Court of Appeals, 357 SCRA 599 (2001); Merida Water District v. Bacarro, 567 SCRA 203 (2008); & SUAREZ, *supra* note 551, at 80–81.

611. *Id.* at 486–87.

612. Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City, 408 SCRA 494 (2003). *See also* Bangus Fry Fisherfolk v. Lanzanas, 405 SCRA 530 (2003); National Power Corporation v. Court of Appeals, 423 SCRA 406 (2004); & Republic v. City of Kidapawan, 477 SCRA 324 (2005).

> cannot bypass the authority of the concerned administrative agencies and directly seek redress from the courts on the pretext of raising a supposedly pure question of law without violating the doctrine of exhaustion of administrative remedies. Hence, when the law provides for remedies against the action of an administrative board, body or officer, as in the case at bar, relief to the courts can be made only after exhausting all remedies provided therein.[613]

The doctrine of exhaustion is primarily an aspect of the judicial review proper, based on the underlying principle that if afforded complete opportunity, an administrative agency will decide upon a matter that lies within its competence and expertise correctly.[614] Consequently, if a party goes to the regular courts without first pursuing his administrative remedies, his case is not ripe for judicial determination and for that reason has no cause of action,[615] and thus, justifying the dismissal of his petition.[616] The doctrine of exhaustion is otherwise known as the doctrine of ripeness for judicial review, for indeed it is one of the condition precedents before the regular

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613. *Systems Plus Computer College of Caloocan City*, 408 SCRA at 499.

614. De los Santos v. Limbaga, 4 SCRA 224 (1962); Paat v. Court of Appeals, 266 SCRA 167 (1997); & University of the Philippines v. Catungal, Jr., 272 SCRA 221 (1997). *See also* CRUZ, *supra* note 551, 160–61.

615. Tan Seng Pao v. Commissioner of Immigration, et al., 107 Phil. 742 (1960); Llarena v. Lacson, 108 Phil. 510 (1960); Gamao v. Calamba, 109 Phil. 542 (1960); De los Santos v. Limbaga, 4 SCRA 224 (1962); Allied Brokerage Corporation v. Collector of Customs, 40 SCRA 555 (1971); Antonio v. Tanco, 65 SCRA 448 (1975); Pestanas v. Dyogi, 81 SCRA 574 (1978); Aboitiz and Co., Inc. v. Collector of Customs, 83 SCRA 265 (1978); Abe-Abe v. Manta, 90 SCRA 524 (1979); Pacana v. Consunji, 108 SCRA 631 (1981); Fernando v. Sto. Tomas, 234 SCRA 546 (1994); *Union Bank of the Philippines*, 290 SCRA at 198; Dy v. Court of Appeals, 304 SCRA 331 (1999); Gonzales v. Court of Appeals, 357 SCRA 599 (2001); Mendoza v. Laxina, Sr., 406 SCRA 156 (2003); & Caballes v. Perez-Sison, 426 SCRA 98 (2004).

616. Pineda v. Court of First Instance of Davao, 1 SCRA 1020 (1961); Atlas Consolidated Mining & Dev. Corp. v. Mendoza, 2 SCRA 1064 (1961); C.N. Hodges v. Municipal Board, Iloilo City, et al., 19 SCRA 28 (1967); Pilar v. Secretary of Public Works and Communications, 19 SCRA 358 (1967); Allied Brokerage Corporation v. Commissioner of Customs, 40 SCRA 555 (1971); Commissioner of Immigration v. Vamenta, Jr., SCRA 342 (1972); Pestanas v. Dyogi, 81 SCRA 574 (1978); Aboitiz and Co., Inc. v. Collector of Customs, 83 SCRA 265 (1978); Abe-Abe v. Manta, 90 SCRA 524 (1979); Rocamora v. RTC-Cebu (Branch VIII), 167 SCRA 615 (1988); Department of Agrarian Reform Adjudication Board v. Court of Appeals, 266 SCRA 404 (1997); Gonzales v. Court of Appeals, 357 SCRA 599 (2001); Celestial v. Cachopero, 413 SCRA 469 (2003); Caballes v. Perez-Sison, 426 SCRA 98 (2004); Estrada v. Court of Appeals, 442 SCRA 117 (2004); & Sison v. Tablang, 588 SCRA 727 (2009).

courts may exercise the power of judicial review proper over acts, final orders, resolutions, or decisions of administrative agencies.

Based on the principles of hierarchy of jurisdiction mandated by law and the principle of comity among co-equal branches of government, one clear exception from the application of the doctrine of exhaustion is *where the question or issue raised or to be resolved is purely a legal one*,[617] since nothing of an administrative nature is to be or can be done.[618]

A no less important consideration is that administrative decisions are usually questioned in the special civil actions of *certiorari*, prohibition, and *mandamus*, which are allowed only when there is no other plain, speedy, and adequate remedy available to the petitioner. It may be added that strict enforcement of the rule also relieves the courts of a considerable number of avoidable cases which otherwise would burden their heavily loaded dockets.[619]

The absence of a final order or decision from an administrative agency on matters that are within its quasi-judicial powers to resolve means that, legally, the power has not been fully and finally exercised, and there can usually be no irreparable harm; and that it is only after judicial review is no longer premature that a court may ascertain in proper cases whether the administrative action or finds are not in violation of law, or are free from fraud or imposition or find substantial support from the evidence.[620] However, it has also been said that —

> Non-observance of the doctrine results in lack of cause of action which is one of the grounds allowed in the Rules of Court for the dismissal of the complaint. The deficiency is not jurisdictional. Failure to invoke it operates as a waiver of the objection as a ground for a motion to dismiss and the court may then proceed with the case as if the doctrine had been observed.[621]

Based on the foregoing, the doctrine of exhaustion does not apply in the following instances:

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617. Eastern Shipping Lines, Inc. v. POEA, 166 SCRA 533 (1988); Aquino-Sarmiento v. Morato, 203 SCRA 515 (1991); Aguilar v. Valencia, 40 SCRA 210 (1971); Philex Mining Corporation v. Zaldivia, 43 SCRA 479 (1972); Cadwallader v. Abeleda, 98 SCRA 123 (1980); Valmonte v. Belmonte, 170 SCRA 256 (1989); & China Banking Corporation v. Members of the Board of Trustees, Home Development Mutual Fund, 307 SCRA 443 (1999).

618. Dauan v. Secretary of Agriculture and Natural Resources, et al., 19 SCRA 223 (1967).

619. *Sunville Timber Products, Inc.*, 206 SCRA at 486-87.

620. Matienzo v. Abellera, 162 SCRA 7 (1988).

621. *Sunville Timber Products, Inc.*, 206 SCRA at 486.

(1) Where the act, order or decision of the administrative agency or officer is patently illegal or was performed or issued without jurisdiction or in excess of jurisdiction, or in violation of due process;[622]

(2) When there is no other plain, speedy and adequate remedy, or when the application of the doctrine may cause great and irreparable damage;[623] or

(3) When the administrative body is in estoppel, or where the higher officer fails or refuses to act on the matter.[624]

(ii) Doctrine of Convenience in the Administration of Legal Order and Enforcement of Legal Rights

The doctrine of exhaustion also finds its rationale on the principles of providing convenience to the parties-litigants, and upon the respect which one department must have for a co-equal department. Quoting from a well-known authority, the Supreme Court in one case[625] gave the rationale for the doctrine of exhaustion of administrative remedies, thus —

> Within the administrative forum the law may provide for review of decisions by higher authorities. Before a party can be allowed to invoke the jurisdiction of the courts of justice, he is expected to have exhausted all means of administrative redress afforded him. There are both legal and

622. *See generally* Gonzales v. Hechanova, 9 SCRA 230 (1963); National Development Company v. Collector of Customs, 9 SCRA 429 (1963); Abaya v. Villegas, 18 SCRA 1034 (1966); Mitra v. Subido, 21 SCRA 127 (1967); Azur v. Provincial Board, 27 SCRA 50 (1969); Commissioner of Immigration v. Vamenta, Jr., 45 SCRA 342 (1972); Del Mar v. The Philippine Veterans Administration, 51 SCRA 340 (1973); Reyes v. Subido, 45 SCRA 299 (1975); Cortes v. Bartolome, 100 SCRA 1 (1980); Industrial Power Sales, Inc. v. Duma Sinsuat, 160 SCRA 19 (1988); Madrigal v. Lecaroz, 191 SCRA 20 (1990); Quisumbing v. Gumban, 193 SCRA 520 (1991); Samson v. National Labor Relations Commission, 253 SCRA 112 (1996); Alindao v. Joson, 264 SCRA 211 (1996); Carale v. Abarintos, 269 SCRA 132 (1997); Jariol v. Commission on Elections, 270 SCRA 255 (1997); & Salinas, Jr. v. National Labor Relations Commission, 319 SCRA 54 (1999).

623. *See generally* Azuelo v. Arnaldo, 108 Phil. 293 (1969); Gravador v. Mamigo, 20 SCRA 742 (1967); Cipriano v. Marcelino, 43 SCRA 291 (1972); & Bagatsing v. Ramirez, 74 SCRA 306 (1976).

624. *See generally* Vda. de Tan v. Veterans Backpay Commission, 105 Phil. 377 (1959); Gonzales v. Aldana, 57 O.G. 5697 (1960); Sanoy v. Tantuico, Jr., 50 SCRA 455 (1973); Olympic Mines and Development Corp. v. Platinum Group Metals Corporation, 587 SCRA 624 (2009); & Chua v. Ang, 598 SCRA 229 (2009).

625. Teotico v. Agda, Sr., 197 SCRA 675 (1991).

> practical reasons for this. The administrative process is intended to provide less expensive and more speedy solutions to disputes. *Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts for reasons of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given opportunity to act and correct the errors committed in the administrative forum.*[626]

The doctrine of exhaustion of administrative remedies is based on the principles of convenience of the parties-litigants and proper administration of laws of the land —

> When an adequate remedy may be had within the Executive Department ... , but nevertheless a litigant fails or refuses to avail himself of the same, the Judiciary shall decline to interfere. This traditional attitude of the courts is based not only on convenience but likewise on respect, convenience of the party-litigants and respect for a co-equal office in the government. If a remedy is available within the administrative machinery, this should be resorted to before resort can be made to the courts.[627]

In addition, the Supreme Court has also held that "[o]n practical grounds, it is best that the courts, which are burdened enough as they are with judicial cases, should not be saddled with the review of administrative cases."[628]

Thus, in the following cases, the doctrine of exhaustion does not apply:[629]

(1) Where there are circumstances indicating, in the public interest, urgency of judicial intervention;[630] and

(2) When application of the doctrine would be unreasonable or detrimental to the litigant, such as when the litigant is about

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626. *Id.* at 693 (citing IRENE R. CORTES, PHILIPPINE ADMINISTRATIVE LAW: CASES AND MATERIALS 394 (2d ed. 1984)) (emphasis supplied).

627. Cruz v. Del Rosario, 9 SCRA 755, 758 (1963). *See also* Philippine Health Insurance Corporation v. Chinese General Hospital and Medical Center, 456 SCRA 459 (2005); Garcia v. Court of Appeals, 358 SCRA 416 (1971); Lopez v. City of Manila, 303 SCRA 448 (1999); Bangus Fry Fisherfolk v. Lanzanas, 405 SCRA 530 (2003); *National Power Corporation*, 423 SCRA at 406; Rualo v. Pitargue, 449 SCRA 121 (2005); & Flores v. Sangguniang Panlalawigan of Pampanga, 452 SCRA 278 (2005).

628. *See generally Sunville Timber Products, Inc.*, 206 SCRA at 482 & The Iloilo City Zoning Board of Adjustment and Appeals v. Gegato-Abecia Funeral Homes, Inc., 417 SCRA 337 (2003).

629. *See generally Olympic Mines and Development Corp.*, 587 SCRA at 624 & Chua v. Ang, 598 SCRA 229.

630. Demaisip v. Court of Appeals, 106 Phil. 237, 241-42 (1959).

> to lose his livelihood based on the results of an administrative proceeding;[631] or when the claim involved is small.

5. Doctrine of Primary Jurisdiction

It appears that both jurisprudence and the leading authorities in Administrative Law have not quite figured out the nature and extent of the *doctrine of primary jurisdiction*, and there have been tendencies to confuse or interchange it with, or make it an appendage of, the *doctrine of exhaustion of administrative remedies*.

The De Leons have observed in their work that the doctrine of primary jurisdiction "has been also referred to as the doctrine of *prior resort*, or *exclusive administrative jurisdiction*, or the *preliminary resort*[, with the term 'primary jurisdiction' [as] the most common in recent treatment of the subject."[632] They nonetheless define the doctrine of primary jurisdiction in broad strokes that does not really delineate it from the doctrine of exhaustion, thus —

> It usually refers to cases involving specialized disputes which are referred to an administrative agency of special competence to resolve the same.
>
> The doctrine applies only where the administrative agency exercises its adjudicatory function. Under the doctrine, 'courts cannot and will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound [administrative] discretion requiring the special knowledge, experience and services of the tribunal to determine technical and intricate matters of facts and where a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered.[633]

The De Leons in fact posit that "[t]he usual result when a court holds that an administrative agency has primary jurisdiction is the dismissal of the proceeding in the court[,]"[634] when this procedure is really applicable to the

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631. *See generally* Azuelo v. Arnaldo, 108 Phil. 293 (1960); Abay v. Villegas, 18 SCRA 1034 (1966); Mitra v. Subido, 21 SCRA 127 (1967); Cipriano v. Marcelino, 43 SCRA 291 (1972); & Bagatsing v. Ramirez, 74 SCRA 306 (1976).

632. DE LEON & DE LEON, JR., *supra* note 551, at 353 (emphasis supplied).

633. *Id.* (citing Brett v. Intermediate Appellate Court, 191 SCRA 687 (1990); Qualitrans Limousine Service, Inc. v. Royal Class Limousine Service, 179 SCRA 569 (1989); Dulos Realty and Development Corporation v. Court of Appeals, 370 SCRA 709 (2001); Government Service Insurance System v. Commission on Audit, 411 SCRA 532 (2004); & Honasan II v. The Panel of Investigating Prosecutors of the Department of Justice, 427 SCRA 46 (2004)).

634. *Id.* at 354.

doctrine of exhaustion, or one that does not always hold true within the confines of the doctrine of primary jurisdiction. Finally, they write that "[t]he doctrine is clearly applicable whenever courts and administrative agencies have concurrent jurisdiction."[635]

Prof. Suarez, in providing for the distinctions between the two doctrines, writes that the *doctrine of exhaustion* is a situation where "[t]he administrative agency has authority to pass on every question raised by a person resorting to judicial relief and enables the court to withhold its aid entirely until the administrative remedies had been exhausted;"[636] whereas, in the case of the *doctrine of primary jurisdiction*, "[b]oth the court and administrative agency have jurisdiction to pass on a question when a particular case is presented to court, as an original matter, rather than a matter of review."[637] He also attributes the doctrine of primary jurisdiction to a situation of concurrent jurisdiction, which is clearly shown when in his next set of distinctions, he writes that under the doctrine of exhaustion "[t]he claim or matter is cognizable in the first instance by an administrative agency alone[;]"[638] whereas in the doctrine of primary jurisdiction, he writes that "[t]he claim or matter is cognizable by both the court and administrative agency."[639] Finally, he distinguishes the objectives of the two doctrines in that for the doctrine of exhaustion "[t]he purpose of the rule is to control the timing of judicial relief from adjudicative action of an agency[,]" whereas the "[d]octrine of primary jurisdiction is not concerned with judicial review but determines in some instances whether initial action should be taken by a court or administrative agency."[640]

In contrast, Fr. Ranhilio C. Aquino, in his work with the Philippine Judicial Academy, has characterized the doctrine in this wise[641] —

> Put otherwise, there may be a primary jurisdiction situation even where there is no jurisdiction, [for] [c]oncurrent jurisdiction is relatively rare, in view of the deliberate efforts of our rule-drafters to minimize confusing situations of concurrent jurisdiction. [The doctrine of p]rimary jurisdiction requires that an issue be passed upon first in administrative proceedings *as a*

635. *Id.* at 357 (emphasis supplied).

636. SUAREZ, *supra* note 551, at 92.

637. *Id.*

638. *Id.*

639. *Id.*

640. *Id.*

641. For a thorough understanding of the doctrine of primary jurisdiction, the Authors highly recommend reading Fr. Ranhilio C. Aquino's excellent work for the Philippine Judicial Academy. *See generally* RANHILIO C. AQUINO, BENCHBOOK FOR TRIAL JUDGES ON PRIMARY JURISDICTION AND RELATED CONSIDERATIONS (2002).

> *premise for judicial action.* 'The doctrine of primary jurisdiction requires a complainant in court first to seek relief in an administrative proceeding before a remedy will be supplied by the courts even though the matter is properly presented to the court in a matter within its jurisdiction.'[642]

He further stresses that —

> [t]he Legislature entrust to administrative agencies the regulation and supervision of matters calling for specialized knowledge and skills. When properly applied, the doctrine respects legislative intent by allowing the pertinent administrative agency to administer uniformly and competently the specialized concern assigned to it. Then too, the doctrine allows the courts to adjudicate on economic, industrial[,] and technical matters aided by the invaluable input of specialized agencies. Finally, [the doctrine] restrains the courts from premature intervention when matters are best left to the initial attention and disposition of administrative agencies.[643]

The Authors agree with Fr. Aquino that a distinction between the two doctrines that is based on the theory of concurrent jurisdiction is misplaced, for in such a setting, the rule is that the forum that takes cognizance of the suit assumes it to the exclusion of other fora, not merely a suspension of proceedings. For indeed, if two fora had concurrent jurisdiction over a case, then the filing of the case in one excludes the other and would not allow referral of the same to another fora for being in gross violation of the rules against forum-shopping.[644]

As discussed hereunder, while the doctrine of exhaustion is a specific doctrine, the term "doctrine of primary jurisdiction" is actually *generic in character* that covers three separate doctrinal applications, one of which dovetails with the doctrine of exhaustion.

a. Doctrine of Exclusive Administrative Jurisdiction

The first application of the doctrine of primary jurisdiction is in the enforcement of the legislative intent to grant to a particular administrative agency the original and exclusive jurisdiction to hear a justiciable controversy to the exclusion of courts of general jurisdiction. Such particular application under the context of "doctrine of exclusive administrative jurisdiction" can be appreciated by looking at one of the earliest decisions of the Supreme Court that invoked the doctrine of primary jurisdiction.

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642. *Id.* at 1 (citing 2 AM.JUR. 2d, *Administrative Law*, § 788).

643. *Id.* at xxiii.

644. *See, e.g.*, United Residents of Dominican Hill, Inc. v. Commission on the Settlement of Land Problems, 353 SCRA 782 (2001). This case demonstrates that in areas where there is concurrent jurisdiction between an administrative agency and the regular courts, the matter is resolved not by the employment of the doctrine of primary jurisdiction, but by the rules against forum-shopping. *Id.*

In the 1954 decision in *Pambujan Sur United Mine Workers v. Samar Mining Co., Inc.*,[645] the issue before the Supreme Court was "whether the jurisdiction of the Court of Industrial Relations [(CIR)] over certain controversies between employer and employees is exclusive of the regular courts of justice."[646] In holding that when the law created the CIR, it was the intention to make its jurisdiction over issues involving industrial disputes to be exclusive from the original jurisdiction of courts of justice, the Supreme Court, speaking through Justice César Bengzon, held —

> Indeed there are authorities to the effect that 'where jurisdiction is conferred in express terms upon one court, and not upon another, it has been held that it is the intention that the jurisdiction conferred shall be exclusive.'
>
> To be sure, as plaintiff discloses, several prominent American courts follow the opposite line of thought. But judicial wisdom in this particular matter would seem to favor adherence to the exclusion theory, *what with the litigant's ordinary duty to exhaust administrative remedies* and the '*doctrine of primary administrative jurisdiction,*' sense-making and expedient,
>
> > 'That the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered."[647]

A close reading of the aforequoted portion of the decision indicates that the doctrine was first invoked in the literal manner by which it was referred to as the "doctrine of primary administrative jurisdiction," i.e., that when a justiciable controversy has been placed by the Legislature within the original jurisdiction of an administrative agency, then it shall exercise such quasi-judicial powers to the exclusion of the regular courts of first instance, and subject only to judicial review, pursuant to the fact that "[u]nquestionably, Congress could have so directed, because it has, under the Constitution, power to apportion and diminish the jurisdiction of courts inferior to the Supreme Court."[648] To the Authors, invoking the doctrine of exhaustion in the same breath as the doctrine of primary administrative jurisdiction was intended to show that the doctrine of exhaustion is really an aspect of the

645. Pambujan Sur United Mine Workers v. Samar Mining Co., Inc., 94 Phil. 932 (1954).

646. *Id.* at 933.

647. *Id.* at 941 (citing 42 AM. JUR. *Doctrine of Primary Administrative Jurisdiction* § 254 (1942)) (emphasis supplied).

648. *Id.* at 938.

constitutional right of judicial review, in that the Judiciary has the power of judicial review to ensure that administrative agencies acting in quasi-judicial manner do not act with abuse of discretion amounting to lack of jurisdiction.

The linking and lumping of the doctrine of exhaustion with the doctrine of primary administrative jurisdiction issues was observed by Fr. Aquino in the 1973 decision in *Quintos, Jr. v. National Stud Farm*,[649] thus —

> The Supreme Court sustained the dismissal and held that indeed, administrative remedies had not been exhausted. It went on, however, to hold that failure in that regard 'would be attended with consequences adverse to such equally well-settled postulates in administrative law of primary jurisdiction and ripeness of review.' Thus does the judgment of the Court link the doctrines of exhaustion and of primary jurisdiction. The latter has to do, the opinion reads, with allocation of initial decision-making competence. It restrains the Court from assuming jurisdiction before the assigned administrative agency has made its contribution. While the doctrine is associated with the specialized competence and expertise of administrative bodies, it is also associated with the doctrine of ripeness for judicial review in that disregard of primary authority negates ripeness for judicial review.[650]

Quintos, Jr. characterized the doctrine of exhaustion of administrative remedies as "of compelling force in this jurisdiction,"[651] and by lumping it together with the doctrine of primary jurisdiction[652] would mean that the failure to heed the *doctrine of exclusive administrative jurisdiction* would then have the same jurisdictional consequence as failure to heed the *doctrine of exhaustion of administrative remedies*, as supported by the following language in *Quintos, Jr.* —

> 'The precise function of the doctrine of primary jurisdiction is to guide a court in determining whether the court should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.' The important thing is that the dispute be determined according to the judgment ... 'of a tribunal appointed by law and informed by experience.' ... *When, therefore, ... the judicial forum was sought by plaintiff, there was in effect an unwarranted disregard of the concept of primary jurisdiction. In the traditional language of administrative law, the stage of ripeness of judicial review had not been reached. ... All that had been said so far would seem to indicate that*

649. Quintos, Jr. v. National Stud Farm, 54 SCRA 210 (1973).

650 AQUINO, *supra* note 641, at vii.

651. Quintos, Jr. v. National Stud Farm, 54 SCRA 210, 212 (1973).

652. "What further lends support to the decision now on appeal is that the failure to apply such a basic concept as exhaustion of administrative remedies would be attended with consequences adverse to such equally well-settled postulates in administrative law of primary jurisdiction and ripeness of review." *Id.* at 215.

> *under such a test, the lower court's insistence on the observance of the fundamental requirement of exhausting administrative remedies is more than justified.*[653]

The 1980 decision in *Phil. Global Communications, Inc. v. Relova*,[654] (*Relova*) allowed the Supreme Court to revisit its *Quintos, Jr.* ruling. In *Relova*, while the grant by the NTC to the PGCI of an authority to establish a transmission station in Cebu City was pending final resolution under a motion for reconsideration, the same oppositors filed with the RTC a petition for declaratory relief to determine whether PGCI had the authority under its charter to establish such station outside of Metro Manila. In seeking dismissal of the RTC case, PGCI relied on *Quintos, Jr.* and posited that it was the NTC that had primary jurisdiction to resolve such issue. The Supreme Court therefore enunciated the primary issue that was to be resolved in *Relova* —

> Considering the question raised, is this a case appropriate for a suit for declaratory relief which falls within the competence of the Judiciary or is this a case calling for the applicability of the concept of primary jurisdiction thus necessitating an action by the administrative agency concerned before resort to a judicial remedy?[655]

In upholding that the RTC had assumed proper jurisdiction over the action for declaratory judgment, Justice Enrique M. Fernando as *ponente* noted, "[r]eliance is placed by petitioners on *Quintos, Jr. v. National Stud Farm*[and, indeed, it] is undoubted that fidelity to the basic concept of exhausting administrative remedies calls for the equally fundamental principle of primary jurisdiction to be respected."[656] He nonetheless upheld the power of the RTC to rule on the matter because it essentially involved the interpretation of a law (PGCI charter), a manner that is within the prerogative of the courts of law and also an exception to the application of the doctrine of exhaustion of administrative remedies —

> The doctrine of primary jurisdiction calls for application when there is such competence to act on the part of an administrative body. Petitioner assumes that such is the case. That is to beg the question. There is merit, therefore, to the approach taken by private respondents to seek judicial remedy as to whether or not the legislative franchise could be so interpreted as to enable the [NTC] to act on the matter. A jurisdictional question thus arises and calls for an answer.[657]

In other words, for either of the doctrine of exhaustion or the doctrine of exclusive administrative jurisdiction to apply, it must be shown that the

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653. *Id.* (citing 3 KENNETH C. DAVIS, ADMINISTRATIVE LAW TREATISE 2 (1958)).

654. Phil. Global Communications, Inc. v. Relova, 100 SCRA 254 (1980).

655. *Id.* at 258.

656. *Id.*

657. *Id.* at 259.

justiciable controversy is one that falls within the quasi-judicial power of the administrative agency which is purported to possess primary jurisdiction to resolve the issues raised.

The same ruling was applied in the 2010 decision in *University of Santo Tomas v. Sanchez*,[658] which involved an action by an alleged graduate student filing a petition for *mandamus* against the University of Santo Tomas for the release of his transcript of records and recovery of damages, the Supreme Court emphasized that the doctrine of primary jurisdiction (i.e., in the sense of exclusive administrative jurisdiction) is applicable only when it is shown that the administrative agency which is alleged to have primary jurisdiction has been granted under its charter quasi-judicial powers, thus —

> The rule on primary jurisdiction applies only where the administrative agency exercises quasi-judicial or adjudicatory functions. Thus, an essential requisite for this doctrine to apply is the actual existence of quasi-judicial power. However, petitioners have not shown that the Commission on Higher Education (CHED) possesses any such power to 'investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions.' Indeed, ... the Higher Education Act of 1994[ ] certainly does not contain any express grant to the [CHED] of judicial or quasi-judicial power.[659]

The *doctrine of exclusive administrative jurisdiction* applied in the field of agrarian reform issues may best be illustrated in the 1991 decision in *Quismundo v. Court of Appeals*,[660] where a petition was filed with the RTC by the tenants of a farmland seeking to change their arrangement with the landlord from share tenancy to a leasehold system, pursuant to Section 4 of R.A. No. 3844, as amended, their request therefor having been denied by petitioner.[661] The Supreme Court noted that since Section 50 of R.A. 6657 granted to the DAR Agrarian Board (DARAB) the "primary jurisdiction to determine and adjudicate agrarian reform matters and [ ] exclusive original jurisdiction over all matters involving the implementation of agrarian reform,"[662] then the RTC had no jurisdiction to hear and rule on the petition filed. The ruling in *Quismundo* discussed why it is to public interest that agrarian disputes be litigated primarily with the DARAB rather than with the regular courts in that it

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658. University of Santo Tomas v. Sanchez, 626 SCRA 126 (2010).

659. *Id.* at 134-36.

660. Quismundo v. Court of Appeals, 201 SCRA 609 (1991). *See also* Tiongson v. Court of Appeals, 214 SCRA 197 (1992).

661. *Quismundo*, 201 SCRA at 611.

662. An Act Instituting a Comprehensive Agrarian Reform Program to Promote Social Justice and Industrialization, Providing the Mechanism for its Implementation, and for Other Purposes [Comprehensive Agrarian Reform Law of 1988], Republic Act No. 6657, § 50 (1988).

> is to the best advantage of private respondents since it is in a better position to resolve agrarian disputes, being the administrative agency possessing the necessary expertise on the matter. Further, the proceedings therein are summary in nature and the department is not bound by technical rules of procedure and evidence, to the end that agrarian reform disputes and other issues will be adjudicated in a just, expeditious and inexpensive action or proceedings.[663]

The *Quisumundo* ruling was reiterated in the 1995-decision in *Machete v. Court of Appeals*,[664] which invoked directly the doctrine of primary administrative jurisdiction, thus —

> Consequently, there exists an agrarian dispute in the case at bench which is exclusively cognizable by the DARAB. The failure of petitioners to pay back rentals pursuant to the leasehold contract with private respondent is an issue which is clearly beyond the legal competence of the trial court to resolve. The *doctrine of primary jurisdiction* does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.[665]

The application of *doctrine of primary administrative jurisdiction* in the field of agrarian reform as to render DARAB to have original and exclusive jurisdiction to take cognizance of agrarian disputes has been consistently applied by the Supreme Court.[666]

The 2000 decision in *Province of Zamboanga del Norte v. Court of Appeals*,[667] shows how the *doctrine of primary administrative jurisdiction* exists in a doctrinal continuum with the *doctrine of exhaustion of administrative remedies*, and hence the reason why the Supreme Court often discusses them together in resolving jurisdictional conflicts between administrative agencies and the regular courts. In *Province of Zamboanga del Norte*, when an electric cooperative charged increased power rates against the petitioner, the latter filed a complaint for illegal collection of power bills before the trial court.[668] On the subject that the issue fell within the original jurisdiction of the National Electrification Administration, the petitioner also claimed that because of the unconstitutionality and arbitrariness of the imposition of the

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663. *Quisumundo*, 201 SCRA at 615.

664. Machete v. Court of Appeals, 250 SCRA 176 (1995).

665. *Id.* at 182. *See also* Villaflor v. Court of Appeals, 280 SCRA 297 (1997).

666. *See generally* Bautista v. Mag-isa Vda. de Villana, 438 SCRA 259 (2004); Ros v. Department of Agrarian Reform, 468 SCRA 471 (2005); Hilario v. Prudente, 564 SCRA 485 (2008); & Fajardo v. Flores, 610 SCRA 167 (2010).

667. Province of Zamboanga del Norte v. Court of Appeals, 342 SCRA 549 (2000).

668. *Id.* at 552.

charges, the case is an exception to the rule on exhaustion of administrative remedies.[669]

Although Justice Bernardo P. Pardo, as the *ponente*, discussed the nature of the doctrine of exhaustion, and the exceptions thereto that would allow relief to proceed with obtaining relief from the regular courts, nonetheless, he ruled that "[p]etitioner fails to show that the instant case falls under any of the exceptions. Mere allegation of arbitrariness will not suffice to vest in the trial court the power that has been specifically granted by law to special government agencies."[670] However, he adds in the *ratio decidendi* that —

> The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.
>
> We have held that while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of our resources, the judiciary will stand clear. A long line of cases establishes the basic rule that the court will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.
>
> In fact, a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention. The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that when the administrative body, or grievance machinery, is afforded a chance to pass upon the matter, it will decide the same correctly.
>
> The premature invocation of the jurisdiction of the trial court warrants the dismissal of the case.[671]

The 2005 decision in *Paloma v. Mora*,[672] saw the application of the doctrine in the field of civil service. On the issue of whether it was premature for a General Manager of a local water district who had been terminated from office by the Board of Directors to have filed a *mandamus*

669. *Id.* at 555–57.

670. *Id.* at 559.

671. *Id.* at 559–60 (emphasis supplied). *See generally* Vidad v. RTC of Negros Oriental, Br. 42, 227 SCRA 271 (1993); Paat v. Court of Appeals, 266 SCRA 167 (1997); Felipe Ysmael, Jr. & Co. v. Deputy Executive Secretary, 190 SCRA 673 (1990); Concerned Officials of Metropolitan Waterworks and Sewerage System (MWSS) v. Vasquez, 240 SCRA 502 (1995); & Sta. Ines Melale Forest Products Corporation v. Macaraig, Jr., 299 SCRA 491 (1998).

672. Paloma v. Mora, 470 SCRA 711 (2005).

with the regular courts to compel his reinstatement, instead of proceeding with the Civil Service Commission,[673] it was held—

> Underlying the rulings of the trial and appellate courts in the case at bar is the doctrine of primary jurisdiction; i.e., courts cannot and will not resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.[674]

The 2009 decision in *Maria Luisa Park Association, Inc. v. Almendras*,[675] saw the Supreme Court invoking the "doctrine of primary administrative jurisdiction," to rule that intra-corporate controversies between homeowners' associations and their members are within the original and exclusive jurisdiction of the Housing and Land Use Regulatory Board, and not with the RTC, even when recovery of damages is part of the causes of action.[676]

(i) Comparison of the Doctrine of Exclusive Administrative Jurisdiction with the Doctrine of Exhaustion

The application of the doctrine of exclusive administrative jurisdiction determines whether an administrative agency has original and exclusive jurisdiction *at the first instance* to hear a justiciable controversy to the exclusion of regular courts of justice.

It operates as the prequel to the application of the doctrine of exhaustion of administrative remedies, and is often invoked together with said doctrine, because together they represent the obligations of parties to a justiciable controversy over which jurisdiction has been granted to administrative agencies — a party should not only initiate the administrative processes mandated by law, but pursue them to their appropriate conclusion before seeking court remedies, in order to allow the administrative agency concerned and its supervising executive department the opportunity to decide the matter correctly and prevent unnecessary and premature resort to the courts.[677] Thus, the *doctrine of exclusive administrative jurisdiction* goes into the very issue of whether the tribunal has proper jurisdiction over the case and implications on the application of due process clause.

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673. *Id.* at 714–15.

674. *Id.* at 725.

675. Maria Luisa Park Association, Inc. v. Almendras, 588 SCRA 663 (2009).

676. *Id* at 674.

677. *See generally* Gonzales v. Secretary of Education, 5 SCRA 657 (1962) & Cruz v. Del Rosario, 9 SCRA 755 (1963).

The linking by the Supreme Court of the *doctrine of exclusive administrative jurisdiction* with the *doctrine of exhaustion* brings about the erroneous conclusion that they have the same legal effects, and therefore subject to the same exceptions. That should not be the case.

The *doctrine of exclusive administrative jurisdiction* is an aspect of the *doctrine of primary jurisdiction* that focuses on whether the tribunal upon which a justiciable controversy is being litigated has jurisdiction over the subject matter of the suit, and therefore is an element of the application of the due process clause — wherein the general rule is that the decision of a tribunal over a suit that is outside of its jurisdiction would be a nullity.

On the other hand, the *doctrine of exhaustion* operates under the premises that the regular court which exercises judicial review over the subject matter of the suit has proper jurisdiction to do so, but that the petitioner has no cause of action yet at the time he invokes judicial relief. However, if the doctrine of exhaustion is not invoked, then the regular court hearing the case could rightfully render a valid and binding judgment.

Summarily, the *doctrine of exclusive administrative jurisdiction* operates at the threshold of *first instance* in the resolution of justiciable controversies, and determines whether the administrative agency has been granted quasi-judicial powers; while the *doctrine of exhaustion* operates within the system of *judicial review* and operates within the parameters that an administrative agency has been vested by law with quasi-judicial powers over the controversy that is the subject of review by the courts of law.

b. Doctrine of Judicial Non-Interference with Administrative Processes

The second manner by which the doctrine of primary jurisdiction has been employed in decisions of the Supreme Court is what the Authors refer to as the *doctrine of judicial non-interference with administrative processes*. As will be demonstrated hereunder, the doctrine of judicial non-interference has three distinct manners of application under Philippine administrative law jurisprudence.

(i) Courts Should Not Exercise their Power of Judicial Review to Interfere with the Exercise by Administrative Agencies of their Regulatory Adjudicative Powers

The 1967 decision in *Vivo v. Montesa*,[678] demonstrates how the doctrine of primary jurisdiction is invoked in the sense of positing that judicial remedies that are available with the regular courts, such as petitions for *certiorari*, prohibition, or *mandamus*, should not be availed of when they would

678. Vivo v. Montesa, 24 SCRA 155 (1968).

amount to an intervention of an administrative agency of its regulatory adjudicative powers.[679]

In *Vivo*, the main issue was whether the Court of First Instance (now the RTC) had proper jurisdiction to enjoin the immigration officers from arresting and detaining purported aliens with the end of subjecting them to deportation proceedings, which undoubtedly was an exercise of quasi-judicial powers.[680] In his *ponencia*, Justice Jose Benedicto L. Reyes ruled that —

> [T]he court below is without jurisdiction to restrain the deportation proceedings ... [which] are within the jurisdiction of the Immigration authorities under ... the Philippine Immigration Act (C.A. No. 613). That jurisdiction is not tolled by a claim of Filipino citizenship, where the Commissioner or Commissioners have reliable evidence to the contrary; *and said officers should be given opportunity to determine the issue of citizenship before the courts interfere in the exercise of the power of judicial review of administrative decisions.*
>
> ...
>
> [When] the petition for [*certiorari*] and prohibition ... was filed, deportation proceedings had been started against the respondents ... but had not been completed. In view of the non-completion of the proceedings, the Board of Commissioners has not rendered as yet any decision. The respondents Calacays, therefore, are not being deported. Before the Board reaches a decision, it has to conduct a hearing where the main issue will be the citizenship or alienage of the respondents. Therefore, there is nothing so far for the courts to review.[681]

Subsequently, in the connected case of *Caladay v. Vivo*,[682] Justice Fernando, then writing for the Court, reiterated the earlier *Vivo* ruling, but invoked an exception when judicial review would be proper even when the administrative adjudicatory process is not yet complete —

> There is also no question that a respondent who claims to be a citizen and not therefore subject to deportation has the right to have his citizenship reviewed by the courts, after the deportation proceedings. When the evidence submitted by a respondent is conclusive of his citizenship, the right to immediate review should also be recognized and the courts should promptly enjoin the deportation proceedings.[683]

The term used in both *Vivo* decisions was the "power of the courts to interfere in the exercise of the power of judicial review of administrative

679. *Id.*

680. *Id.* at 156.

681. *Id.* at 158–160 (emphasis supplied).

682. Caladay v. Vivo, 33 SCRA 413 (1970).

683. *Id.* at 416 (citing Chua Hiong v. Deportation Board, 96 Phil. 665, 667 (1955)).

decisions."[684] The maturation of this version of the doctrine of primary jurisdiction can be found in the 1977 decision in *Co. v. The Deportation Board*,[685] also penned by Justice Fernando, which reiterated the cascading of the doctrine of judicial non-interference with on-going administrative adjudicatory process, thus —

> *Calayeay* [ ] reiterated the principle announced in *Vivo* [ ] as to the applicability of the doctrine of primary jurisdiction in deportation proceedings, thus precluding judicial intervention until completed. Nonetheless, the opinion made express mention of the exception to the rule set forth in the [*Chua Hiong*] decision. Thus [—] 'A clarification announced in *Chua Hiong v. Deportation Board* is not to be lost sight of however.' Petitioners could thus very well rely on the pronouncements set forth with such clarity by Justice [Alejo] Labrador in the aforesaid case. The only question that remains is whether on the test prescribed as to the quantum of evidence required to justify judicial intervention before the termination of the deportation proceedings, the judgment reached by the lower court may be termed as suffering from the corrosion of substantial legal error.[686]

In evaluating the *Vivo* and *Co* decisions, Fr. Aquino keenly observed that "[w]hile these cases only underscore the affinity and kinship between 'ripeness' and 'primary jurisdiction[,]' they also suggest that when the fine lines between these doctrines are blurred, the usefulness of 'primary jurisdiction' cannot be fully appreciated" as in cases where an administrative agency could be allowed to exercise its regulatory powers "free of premature and undue judicial interference."[687]

The same principles were invoked by Justice Fernando in the field of customs and tariff in his *ponencia* in *Commissioner of Customs v. Navarro*,[688] (*Navarro*) where the issue was whether courts of first instance could take cognizance of seizure and forfeiture matters relating to important goods over which the Bureau of Customs had obtained custody of.[689] In *Navarro*, the importers of perishable goods had sought and were granted a writ of injunction from the Court of First Instance to enjoin the Bureau of Customs from proceeding with the sale at public auction of the imported items which

684. *Vivo*, 24 SCRA at 160 & *Caladay*, 33 SCRA at 416.

685. Co v. The Deportation Board, 78 SCRA 104 (1977).

686. *Id.* at 108 (citing *Vivo*, 24 SCRA at 160; *Caladay*, 33 SCRA at 416; & *Chua Hiong*, 96 Phil. at 667).

687. AQUINO, *supra* note 641, at vii-viii. Fr. Aquino observes the "blurring" of the doctrine of primary jurisdiction with that of the doctrine of ripeness of judicial review in several decided cases. *Id.* (citing *Brett*, 191 SCRA at 687; *Director of Lands*, 194 SCRA at 224; & *Villaflor*, 280 SCRA at 297).

688. Commissioner of Customs v. Navarro, 77 SCRA 264 (1977).

689. *Id.* at 266.

were seized for violating import restrictions of the Central Bank of the Philippines.[690] Justice Fernando wrote that the case involved a "jurisdiction issue" —

> The question of seizure and forfeiture is for the administrative in the first instance and then the Commissioner of Customs. This is a field where the doctrine of primary jurisdiction controls. Thereafter an appeal may be taken to the Court of Tax Appeals. A court of first instance is thus devoid of competence to act on the matter. There is further judicial review, but only by this Court in the exercise of its certiorari jurisdiction.[691]

In this sense, therefore, the doctrine of judicial non-interference bears the same policy behind the doctrine of exhaustion.

In the field of disposition of public land, the 1991 decision in *Director of Lands v. Court of Appeals*[692] demonstrates how the doctrine of judicial non-interference with administrative processes is invoked in situations where judicial remedies available with the regular courts should not be availed of when they would amount to an intervention of an administrative agency of its purely regulatory powers (i.e., not quasi-judicial powers).

In *Director of Lands*, the primary issue resolved by the Supreme Court involved the exercise of the purely administrative powers of the Director of Lands, that is —

> whether or not the respondent court erred in holding that the Director of Lands acted without or in excess of his jurisdiction or with grave abuse of discretion in allowing the award of the cadastral survey projects to new contractors involving lands subject to prior mapping projects with another contractor (the private respondent) whose contracts are involved in a pending appeal to the Secretary of Environment and Natural Resources.[693]

The Court invoked the doctrine of judicial non-interference in the same vein that it employed the doctrine of exhaustion of administrative remedies, thus —

> The question on the necessity of either or both projects must be better addressed to the sound discretion of the proper administrative officials who admittedly have the competence and technical expertise on the matters. In the case at bar, the petitioner Director of Lands is 'the official vested with direct and executive control of the disposition of the lands of the public domain.' Specifically, Section 4 of Commonwealth Act No. 141 provides that '... [T]he Director of Lands shall have direct executive control of the survey, classification, lease, sale, or any form of concession or disposition and management of the public domain, and his decisions as to questions of

690. *Id.*

691. *Id.* at 267.

692. Director of Lands v. Court of Appeals, 194 SCRA 224 (1991).

693. *Id.* at 229.

> fact shall be conclusive when approved by the Secretary of Agriculture and Commerce (now the Secretary of Environment and Natural Resources).'
>
> We likewise take cognizance of the wealth of jurisprudence on this doctrine of primary administrative jurisdiction and exhaustion of administrative remedies. The Court has consistently held that 'acts of an administrative agency must not casually be overturned by a court, and a court should as a rule not substitute its judgment for that of the administrative agency acting within the parameters of its own competence,' unless 'there be a clear showing of arbitrary action or palpable and serious error.'[694]

The combination of the *doctrine of exhaustion of administrative remedies* with the *doctrine of judicial non-interference* was reiterated in the 2005 decision in *Morcal v. Laviña*,[695] a case which arose from a protest filed against a free patent application with the DENR Regional Office, which was decided on the application of the doctrine of exhaustion where the Supreme Court held —

> The doctrine of exhaustion of administrative remedies requires that resort be first made to the administrative authorities in cases falling under their jurisdiction to allow them to carry out their functions and discharge their responsibilities within the specialized areas of their competence. ... because the administrative agency concerned is in the best position to correct any previous error committed in its forum[.][696]

Then, the Court connected it with the doctrine of primary jurisdiction, thus —

> Note that the case arose from the protest filed by respondents against petitioner's free patent application for the subject unregistered agricultural land. Clearly, the matter comes within the *exclusive primary jurisdiction* of the DENR in the exercise of its quasi-judicial powers. The impugned Orders of the DENR Regional Office are subject to review by the DENR Head Office. Petitioner cannot circumvent this procedure by simply invoking a supposed loss of faith in the said agency.[697]

In the 1997 decision in *Villaflor v. Court of Appeals*,[698] the petitioner had pursued administrative remedies in opposing the award of a public land to his transferee by the Bureau of Lands, and pursued his opposition all the way to the DENR, which denied the petitioner's claim.[699] The petitioner then filed a complaint with the RTC for "Declaration of Nullity of Contract

694. *Id.* at 230.

695. Morcal v. Laviña, 476 SCRA 508 (2005).

696. *Id.* at 512.

697. *Id.* at 513.

698. Villaflor v. Court of Appeals, 280 SCRA 297 (1997).

699. *Id.*

(Deed of Relinquishment of Rights), Recovery of Possession (of two parcels of land subject of the contract), and Damages" at about the same time that he appealed the decision of the DENR to the Office of the President (OP).[700] The Supreme Court applied the whole gamut on the doctrine of primary jurisdiction of administrative agencies, thus —

> Underlying the rulings of the trial and appellate courts is the *doctrine of primary jurisdiction; i.e., courts cannot and will not resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience*[,] *and services of the administrative tribunal to determine technical and intricate matters of fact.*
>
> In recent years, it has been the jurisprudential trend to apply this doctrine to cases involving matters that demand the special competence of administrative agencies even if the question involved is also judicial in character. It applies
>
> > 'where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view.'
>
> *In cases where the doctrine of primary jurisdiction is clearly applicable, the court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence.*
>
> ...
>
> The *rationale underlying* the doctrine of primary jurisdiction finds application in this case, since the questions on the identity of the land in dispute and the factual qualification of private respondent as an awardee of a sales application require a technical determination by the Bureau of Lands as the administrative agency with the expertise to determine such matters. Because these issues preclude prior judicial determination, it behooves the courts to stand aside even when they apparently have statutory power to proceed, in recognition of the primary jurisdiction of the administrative agency.
>
> ...
>
> Petitioner initiated his action with a protest before the Bureau of Lands and followed it through in the Ministry of Natural Resources and thereafter in the [OP]. Consistent with the doctrine of primary jurisdiction, the trial and the appellate courts had reason to rely on the findings of these specialized administrative bodies.
>
> ...

700. *Id.* at 323.

> Reliance by the trial and the appellate courts on the factual findings of the Director of Lands and the [DENR] is not misplaced. By reason of the special knowledge and expertise of said administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus, their findings of fact in that regard are generally accorded great respect, if not finality, by the courts. The findings of fact of an administrative agency must be respected as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of an appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect of sufficiency of evidence.
>
> However, the rule that factual findings of an administrative agency are accorded respect and even finality by courts admits of exceptions. This is true also in assessing factual findings of lower courts. It is incumbent on the petitioner to show that the resolution of the factual issues by the administrative agency and/or by the trial court falls under any of the exceptions. Otherwise, this Court will not disturb such findings.
>
> ...
>
> In this instance, both the principle of primary jurisdiction of administrative agencies and the doctrine of finality of factual findings of the trial courts, particularly when affirmed by the Court of Appeals as in this case, militate against petitioner's cause. Indeed, petitioner has not given us sufficient reason to deviate from them.[701]

The foregoing shows that the doctrine of judicial non-interference with on-going administrative regulatory processes, when it covers the quasi-judicial powers of administrative agencies, is actually indistinguishable from the doctrine of exhaustion of administrative remedies.

The proposition that the *doctrine of judicial non-interference with administrative proceedings* is the very same *doctrine of exhaustion of administrative remedies* is best demonstrated in the 1997 decision in *Paat v. Court of Appeals*,[702] where the Supreme Court, speaking through former Associate Justice Justo P. Torres, Jr., at the onset confirmed that the only issue to be resolved was purely the application of the doctrine of exhaustion of administrative remedies —

> Without violating the principle of exhaustion of administrative remedies, may an action for replevin prosper to recover a movable property which is the subject matter of an administrative forfeiture proceeding in the [DENR] pursuant to Section 68-A of P. D. 705, as amended, entitled The Revised Forestry Code of the Philippines?[703]

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701. *Id.* at 326–32 (emphasis supplied).

702. Paat v. Court of Appeals, 266 SCRA 167 (1997).

703. *Id.* at 172–73.

In *Paat*, the Supreme Court discussed thoroughly the doctrine of exhaustion, as well as the exceptions to its application as to allow the regular courts the power to exercise judicial review even when the administrative proceedings have not been exhausted, and found that none of the exceptions applied to authorize the RTC to proper proceed on the replevin case on subject matters that were under the custody of the DENR and before whom the petitioners had pending motions for reconsideration.[704] Curiously, though, Justice Torres' *ponencia* invoked in the same manner the *doctrine of primary jurisdiction* as an integral extension of the *doctrine of exhaustion of administrative remedies*, thus —

> Moreover, it is important to point out that the enforcement of forestry laws, rules[,] and regulations and the protection, development[,] and management of forest lands fall within the primary and special responsibilities of the [DENR]. By the very nature of its function, the DENR should be given a free hand unperturbed by judicial intrusion to determine a controversy which is well within its jurisdiction. The assumption by the trial court, therefore, of the replevin suit filed by private respondents constitutes an unjustified encroachment into the domain of the administrative agency's prerogative. *The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.*[705]

The proposition that the *doctrine of judicial non-interference* applied during the appellate processes within the Executive department is interchangeable with the *doctrine of exhaustion of administrative remedies* has also been demonstrated in the 2007 decision in *Republic v. Lacap* (*Lacap*),[706] where payment to the contractor of a public works was denied by the regional Commission on Audit (COA) auditor, but that instead of availing of the review process within COA itself, the contractor filed a collection suit against the government with the RTC for "specific performance and recovery of damages."[707] The RTC decision which denied the motion to dismiss based on the ground of non-exhaustion administrative remedies, and rendered judgment in favor of the contractor, was upheld by the Court of Appeals, and eventually brought on review with the Supreme Court contending that there was failure to exhaust administrative remedies and that the appropriate resolution of the issue fell within the primary jurisdiction of the COA.[708] The Supreme Court in *Lacap* ruled on the issue referring to the

704. *Id.* at 184–86.

705. *Id.* at 177–78. *See also* Factoran, Jr. v. Court of Appeals, 320 SCRA 539 (1999).

706. Republic v. Lacap, 517 SCRA 255 (2007).

707. *Id.* at 260–61.

708. *Id.* at 261.

doctrine of primary jurisdiction as a collorary to the doctrine of exhaustion, and that the same exceptions applied to both of them, thus —

> The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.
>
> Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience[,] and services of the administrative tribunal to determine technical and intricate matters of fact.
>
> Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy[,] and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings. Exceptions (c) and (e) are applicable to the present case.
>
> Notwithstanding the legal opinions of the [Department of Public Works and Highways] Legal Department rendered in 1993 and 1994 that payment to a contractor with an expired contractor's license is proper, respondent remained unpaid for the completed work despite repeated demands. Clearly, there was unreasonable delay and official inaction to the great prejudice of respondent.[709]

A close reading of *Liap* would inevitable draw us to the same conclusion, that the doctrine of judicial non-interference with administrative processes is based on the same public policy considerations as the doctrine of exhaustion, and that when resort of administrative appellate or review process would be unreasonable as to bring injustice to the aggrieved party,

709. *Id.* at 265–66. *See also* Guy v. Ignacio, 622 SCRA 678 (2010).

such aggrieved party would have legal authority to seek reliefs from the courts of law.

This is the same application in *Republic v. Express Telecommunications Co., Inc.*,[710] where the issue before the Supreme Court was whether the exceptions to the doctrine of exhaustion of administrative remedies will authorize the Court of Appeals in a petition for *certiorari* and prohibition to annul an order of the NTC to issue a provisional authority to construct, install, operate a nationwide cellular system.[711] The Supreme Court prefaced its ruling on the proper application of the doctrine of exhaustion on the fact that

> [t]he NTC is clothed with sufficient discretion to act on matters solely within its competence. Clearly, the need for a healthy competitive environment in telecommunications is sufficient impetus for the NTC to consider all those applicants who are willing to offer competition, [to] develop the market[,] and [to] provide the environment necessary for greater public service.[712]

The Court ruled —

> We now come to the issue of exhaustion of administrative remedies. The rule is well-entrenched that a party must exhaust all administrative remedies before resorting to the courts. The premature invocation of the intervention of the court is fatal to one's cause of action. This rule would not only give the administrative agency an opportunity to decide the matter by itself correctly, but would also prevent the unnecessary and premature resort to courts.
>
> ...
>
> This case does not fall under any of the recognized exceptions to the rule.
>
> ...
>
> The established exception to the rule is where the issuing authority has gone beyond its statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion. None of these obtains in the case at bar.
>
> ...
>
> This Court has consistently held that the courts will not interfere in matters which are addressed to the sound discretion of the government agency entrusted with the regulation of activities coming under the special and technical training and knowledge of such agency. It has also been held that the exercise of administrative discretion is a policy decision and a matter

710. Republic v. Express Telecommunications Co., Inc, 373 SCRA 316 (2002).

711. *Id.* at 343-44.

712. *Id.* at 342.

> that can best be discharged by the government agency concerned, and not by the courts.
>
> ...
>
> Administrative agencies are given a wide latitude in the evaluation of evidence and in the exercise of its adjudicative functions. This latitude includes the authority to take judicial notice of facts within its special competence.
>
> In the case at bar, we find no reason to disturb the factual findings of the NTC which formed the basis for awarding the provisional authority to Bayantel. ... *Prima facie* evidence was likewise found showing Bayantel's legal, financial[,] and technical capacity to undertake the proposed cellular mobile telephone service.[713]

In the field of immigration and deportation, the doctrine of judicial non-interference was employed by the Supreme Court in its 2004 decision in *Dwikarna v. Domingo*,[714] where the main issue to be resolved was "whether or not petitioner is entitled to the extraordinary remedies of *certiorari*, prohibition[,] and *mandamus*, and whether he should be released from detention,"[715] in order to obtain his release from detention and obtaining a writ of prohibition enjoining absolutely and perpetually the deportation proceedings with the Bureau of Immigration. In its ruling, the Supreme Court used language that covered either the doctrine of exhaustion of administrative remedies or the doctrine of judicial non-interference, thus —

> On the deportation case against him ... resort to court is proper only after a decision is rendered by the Board of Commissioner of the Bureau of Immigration. The Bureau is the agency that can best determine whether petitioner violated certain provisions of the Philippine Immigration Act of 1940, as amended. *In this jurisdiction, courts will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies. By reason of the special knowledge and expertise of administrative departments over matters falling within their jurisdiction, they are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts.* If petitioner is dissatisfied with the decision of the Board of Commissioners of the Bureau of Immigration, he can move for its reconsideration. If his motion is denied, then he can elevate his case by way of a petition for review before the Court of Appeals, pursuant to Section 1, Rule 43 of the 1997 Rules of Civil Procedure.[716]

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713. *Id.* at 343-47.

714. Dwikarna v. Domingo, 433 SCRA 748 (2004).

715. *Id.* at 753.

716. *Id.* at 754-55 (emphasis supplied).

(ii) Courts Cannot Grant Relief to Allow One Administrative Agency to Interfere with the Processess of Another Administrative Agency

The 1995 decision in *Concerned Officials of the Metropolitan Waterworks and Sewerage System (MWSS) v. Vasquez*,[717] (*Concerned Officials of MWSS*) demonstrates how the application of the doctrine of judicial non-interference can prevent one executive agency from imposing its authority on a matter that falls within the regulatory (not quasi-judicial) powers of another administrative agency, with the Judiciary acting as the umpire.

In *Concerned Officials of MWSS*, a petition for *certiorari* was filed with the Supreme Court asking for the declaration that the Ombudsman acted without or with grave abuse of discretion when he issued a ruling setting aside the original award by the MWSS Bidding and Awards Committee on the Angat Water Supply Optimization Project to one bidder, and at the same time directing MWSS to "[a]ward the subject contract to a complying and responsive bidder pursuant to the provisions of [P.D. No.] 1594, Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts."[718] Although the Court held that the Ombudsman had the power and authority to look into alleged irregularities in bidding conducted by government agencies, nonetheless it applied the "doctrine of non-preemption of the exercise of discretion by the proper administrative agency" to prevent Ombudsman from dictating the bidding and award processes to MWSS, thus—

> While the broad authority of the Ombudsman to investigate any act or omission which '... appears illegal, unjust, improper, or inefficient' may be yielded, it is difficult to equally concede, however, that the Constitution and the Ombudsman Act have intended to likewise confer upon it veto or revisory power over an exercise of judgment or discretion by an agency or officer upon whom that judgment or discretion is lawfully vested. *It would seem to us that the Office of the Ombudsman, in issuing the challenged orders, has not only directly assumed jurisdiction over, but likewise pre-empted the exercise of discretion by, the Board of Trustees of MWSS.* Indeed, the recommendation of the [Prequalification, Bids, and Awards Committee for Construction Services and Technical Equipment] to award Contract APM-01 appears to be yet pending consideration and action by the MWSS Board of Trustees.
>
> We can only view the assailed ... Order to be more of an undue interference in the adjudicative responsibility of the MWSS Board of Trustees rather than a mere directive requiring the proper observance of and compliance with the law.
>
> ...

717. Concerned Officials of the Metropolitan Waterworks and Sewerage System (MWSS) v. Vasquez, 240 SCRA 502 (1995).

718. *Id.* at 515.

> The MWSS, a government-owned and controlled corporation created by law through R.A. No. 6234, is charged with the construction, maintenance[,] and operation of waterworks system to insure an uninterrupted and adequate supply and distribution of potable water. It is the agency that should be in the best position to evaluate the feasibility of the projections of the bidders and to decide which bid is compatible with its development plans. The exercise of this discretion is a policy decision that necessitates among other things, prior inquiry, investigation, comparison, evaluation, and deliberation — matters that can best be discharged by it. MWSS has passed Resolution No. 32-93 45 to likewise show its approval of the technical specifications for fiberglass. All these should deserve weight.[719]

The application of the doctrine of judicial non-interference to prevent one administrative agency from interfering with another the regulatory processes of another administrative agency saw its application in the 2009 decision in *Philippine Coconut Producers Federation, Inc. v. Republic*,[720] where the intervenors, led by former Senator Jovito R. Salonga, opposed an urgent motion filed with the Supreme Court for the approval of the conversion of sequestered San Miguel Corporation common shares into non-voting preferred shares alleged to be under terms disadvantageous to the Government and the beneficiaries of the coconut levy funds.[721] In denying the opposition and approving the conversion of shares, the Court held that the approval by the Presidential Commission on Good Governance (PCGG), for the Republic, of the conversion of sequestered shares from common shares to preferred shares, was a policy decision which cannot be interfered with under the well-established jurisprudential principle that "the courts cannot intervene or interfere with executive or legislative discretion exercised within constitutional limits."[722] Curiously, though, the ruling invoked the *doctrine of primary jurisdiction* —

> Corollary to the principle of separation of powers is the doctrine of primary jurisdiction that the courts will [*defer*] to the decisions of the administrative offices and agencies by reason of their expertise and experience in the matters assigned to them. Administrative decisions on matters within the jurisdiction of administrative bodies are to be respected and can only be set aside on proof of grave abuse of discretion, fraud, or error of law.
>
> The only instance when the Courts ought to interfere is when a department or an agency has acted with grave abuse of discretion or violated a law. A circumspect review of the pleadings and evidence extant on record shows that the PCGG approved the conversion only after it

719. *Id.* at 525–28 (emphasis supplied).

720. Philippine Coconut Producers Federation, Inc. v. Republic, 600 SCRA 102 (2009).

721. *Id* at 111.

722. *Id.* at 130.

> conducted an in-depth inquiry, thorough study, and judicious evaluation of the pros and cons of the proposed conversion[.][723]

The application of the doctrine of judicial non-interference was made in the same year in *Office of the Ombudsman v. Heirs of Margarita Ventura*,[724] which involved the issue of whether the Ombudsman acted with grave abuse of discretion when it provisionally dismissed a criminal complaint against a Department of Agrarian Reform officer where the subject matter was still pending final resolution with the DARAB, where it was held —

> The reason behind the doctrine of primary jurisdiction may also be applied here by analogy. The objective of said doctrine is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency, which has special knowledge, experience[,] and tools to determine technical and intricate matters of fact, has determined some question or a particular aspect of some question arising in the proceeding before the court. *This is not to say that the Ombudsman cannot acquire jurisdiction or take cognizance of a criminal complaint until after the administrative agency has decided on a particular issue that is also involved in the complaint before it. Rather, using the same reasoning behind the doctrine of primary jurisdiction, it is only prudent and practical for the Ombudsman to refrain from proceeding with the criminal action until after the DARAB, which is the administrative agency with special knowledge and experience over agrarian matters, has arrived at a final resolution on the issue of whether Edilberto Darang is indeed entitled under the law to be awarded the land in dispute.* This would establish whether the benefits or advantages given to him by the public officials charged under the complaint, are truly unwarranted.[725]

In the 2010 decision in *Ferrer, Jr. v. Roco, Jr.*,[726] where the doctrine of primary administrative jurisdiction was invoked to rule that there is as yet no finality in the administrative processes covering the development of a subdivision where the sangguniang resolutions were submitted to the Housing and Land Use Regulatory Board for its determination of the issuance of development plans, that would properly allow the courts of law to rule on an action for declaratory relief with injunction.[727] Thus —

> Under the doctrine of primary administrative jurisdiction, courts cannot or will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact. In other words, if a case is such that its determination requires the expertise, specialized training[,] and

723. *Id.* at 132 (emphasis supplied).

724. Office of the Ombudsman v. Heirs of Margarita Ventura, 605 SCRA 1 (2009).

725. *Id.* at 12–13 (emphasis supplied).

726. Ferrer, Jr. v. Roco, Jr., 623 SCRA 313, 320 (2010).

727. *Id.* at 320.

> knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the courts is had even if the matter may well be within their proper jurisdiction.[728]

Invoking the doctrine of primary administrative jurisdiction in *Ferrer, Jr.* was erroneous for really it was the doctrine of judicial non-interference with administrative processes that was applied.

As can be seen from the foregoing discussions, the *doctrine of judicial non-interference* operates in the same manner as the *doctrine of exclusive administrative jurisdiction* as a prequel to the proper application of *the doctrine of exhaustion of administrative remedies*, when it comes to situation where an administrative agency has been expressly granted by law with quasi-judicial powers over justiciable controversies. However, the doctrine of judicial non-interference also operates to prevent courts of law in using the power of judicial review to interfere in purely regulatory acts of administrative agencies over matters that fall within their administrative discretion and mandate, or prevents one administrative agency from invoking judicial reliefs against another administrative agency over issues that fall within the primary regulatory powers of the latter.

(iii) Courts Bound to Implement Final Findings and Determinations of Administrative Agencies in their Own Decisions

The third manner by which the doctrine of judicial non-interference is employed by the Supreme Court, would be in the sense that courts of justice are bound to implement the findings or resolutions of administrative agencies acting pursuant to their quasi-judicial powers, or are bound to incorporate them in their final decisions insofar as they are essential in the proper resolution on the merits of the issues raised before the courts. Such an application can best be shown in the 2001 decision in *Sañado v. Court of Appeals*.[729]

In *Sañado*, the grantee of a fishpond permit from the Philippine Fisheries Commission had entered into a private development agreement with another person that provided for a sharing of the profits earned from the operation by the latter of the fishpond.[730] Eventually, the grantee filed an action in the RTC to rescind the agreement, to recover possession of the fishpond from this co-venturer, and recover his shares in the profits earned from the operation of the fishpond.[731] During the trial, the then-Minister of Agriculture and Food, on complaint of the co-venturer, issued an order cancelling the fishpond permit of the grantee for failure to possess and

728. *Id.*

729. Sañado v. Court of Appeals, 356 SCRA 546 (2001).

730. *Id.* at 550–51.

731. *Id.* at 552–53.

develop it personally, and granted the co-venturer priority in applying for a new fishpond permit over the area covered.[732] The grantee then appealed the Minister's order with the OP.[733] Thereafter, the RTC issued a decision in favor of the grantee, which included a directive to deliver possession back to the grantee.[734] The OP issued a resolution affirming the Minister's order.[735] The co-venturer appealed the RTC decision to the Court of Appeals, which affirmed the trial court's decision, except on the portion which directed the return of possession of the fishpond to the grantee based on the Ministry's order, as affirmed by the OP, declaring the cancellation of grantee's fishpond permit.[736]

The Supreme Court was requested on appeal by the grantee to rule whether it was proper for the Court of Appeals to have reversed the portion of the RTC's decision on return of possession of the fishpond based on the proceedings conducted within the Executive department and outside of the issues raised during the trial —

> The petition before us hinges on the argument that the Court of Appeals entertained evidence and/or other matters not duly covered or taken up in the trial of Civil Case No. 2085. Petitioner posits that the appellate court committed grave abuse of discretion in doing so and in applying said matters in its disposition of the case.[737]

In his *ponencia*, former Associate Justice Jose Armando R. Melo affirmed that the resolution of the issue depended on the nature of the order issued by the Minister of Agriculture and Food, as affirmed by the OP during the pendency of the appellate process with the Court of Appeals, as well as its binding effect on the courts of law, thus —

> What is the nature of the [31 July 1989] Malacañang decision and what is its effect on the resolution of Civil Case No. 2085? The action of an administrative agency in granting or denying, or in suspending or revoking, a license, permit, franchise, or certificate of public convenience and necessity is administrative or quasi-judicial. The act is not purely administrative but quasi-judicial or adjudicatory since it is dependent upon the ascertainment of facts by the administrative agency, upon which a decision is to be made and rights and liabilities determined ... As such, the [31 July 1989] decision of the [OP] is explicitly an official act of and an exercise of quasi-judicial power by the Executive [d]epartment headed by the highest officer of the land. It thus squarely falls under matters relative to

732. *Id.* at 553.

733. *Id.*

734. *Id.* at 553.

735. *Sañado*, 356 SCRA at 553.

736. *Id.* at 554.

737. *Id.*

> the [E]xecutive department which courts are mandatorily tasked to take judicial notice of under Section 1, Rule 129 of the Rules of Court. Judicial notice must be taken of the organization of the Executive [d]epartment, its principal officers, elected or appointed, such as the President, his powers and duties.
>
> The rendition of the subject [31 July 1989] Malacañang decision is premised on the essential function of the executive department — which is to enforce the law. In this instance, what is being enforced is [P.D.] No. 704 which consolidated and revised all laws and decrees affecting fishing and fisheries. Such enforcement must be true to the policy behind such laws which is 'to accelerate and promote the integrated development of the fishery industry and to keep the fishery resources of the country in optimum productive condition through proper conservation and protection ... .'
>
> ...
>
> Such respect is based on the time-honored doctrine of separation of powers and on the fact that these bodies are considered co-equal and coordinate rank as courts. The only exception is when there is a clear showing of capricious and whimsical exercise of judgment or grave abuse of discretion, which we find absent in the case at bar.
>
> Understandably, to restore petitioner to the possession of the fishpond area is to totally disregard the [31 July 1989] decision of the [OP] which can hardly be described as an unrelated matter, considering its patent implications in the result of both [the RTC and CA cases]. *For how could the appellate court award possession to the very same party whose license has been cancelled by the executive or administrative officer tasked to exercise licensing power as regards the development of fishpond areas, and which cancellation has been sustained by the* [*OP*]? Petitioner must remember the essence of the grant of a license. It is not a vested right given by the government but a privilege with corresponding obligations and is subject to governmental regulation. Hence, to allow petitioner to possess the subject area is to run counter to the execution and enforcement of the [31 July 1989] decision which would easily lose its 'teeth' or force if petitioner were restored in possession.[738]

The essence of the doctrine of judicial non-interference with administrative processes was best encapsulized in the opening paragraph of former Associate Justice Regino C. Hermosisima Jr.'s *ponencia* in *Garments and Textile Export Board v. Court of Appeals*,[739] thus —

> The doctrine of 'primary jurisdiction' of [g]overnment administrative agencies has herein come into play. Should courts of justice interfere with

738. *Id.* at 558-59 (citing DE LEON & DE LEON, JR., *supra* note 551, at 143-44 & RICARDO J. FRANCISCO, EVIDENCE: RULES OF COURT IN THE PHILIPPINES (RULE 128-134) 24 (1996 ed.)) (emphasis supplied).

739. Garments and Textile Export Board v. Court of Appeals, 268 SCRA 258 (1997).

> their purely administrative and discretionary functions and have supervisory powers over their proceedings and actions involving the exercise of judgment and findings of fact? Verily, over matters falling under their jurisdiction, we have repeatedly held that administrative agencies are in a better position to pass judgment thereon and their findings of fact in that regard are generally accorded respect, if not finality, by the courts.[740]

On this matter, the De Leons have noted that —

> [i]t is the general policy of the courts to sustain the decision of administrative authorities not only on the basis of the doctrine of separation of powers but also for their presumed knowledgeability and even expertise in the laws they are entrusted to enforce. A court cannot compel an agency to do a particular act or to enjoin such act which is within the latter's prerogative, except when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction.[741]

(iv) Comparison of the Doctrine of Exclusive Administrative Jurisdiction with the Doctrine of Judicial Non-Interference

Unlike the doctrine of exclusive administrative jurisdiction which operates outside of the system of judicial review, the doctrine of judicial non-interference finds application within the system of judicial review. The former applies only in situations where the administrative agency has been vested with quasi-judicial powers; whereas, the latter may operate in situation where the administrative agency involved in the controversy has not been granted quasi-judicial powers, and the power of judicial review proper is being applied based on the judicial power and duty of the courts to ensure that administrative agencies should act in accordance with the constitution or the law, or without grave abuse of discretion as to amount to acting in excess of or without jurisdiction.

c. Doctrine of Prior Resort

The 1990 decision in *Industrial Enterprises, Inc. v. Court of Appeals*,[742] penned by Justice Melencio-Herrera, provides the best illustration of the application of the doctrine of primary jurisdiction in the concept of "doctrine of prior resort." It was recognized at the time of the decision that the Board of Energy Development (BED) was the agency tasked with purely administrative or regulatory authority (not quasi-judicial powers) of

> establishing a comprehensive and integrated national program for the exploration, exploitation, and development and extraction of fossil fuels,

740. *Id.* at 260–61.

741. DE LEON & DE LEON, JR., *supra* note 551, at 153 (citing Provident Tree Farms, Inc. v. Batario, Jr., 231 SCRA 463 (1994)).

742. Industrial Enterprises, Inc. v. Court of Appeals, 184 SCRA 426 (1990).

> such as the country's coal resources; adopting a coal development program; regulating all activities relative thereto; and undertaking by itself or through service contracts such exploitation and development, all in the interest of an effective and coordinated development of extracted resources.[743]

The controversy in *Industrial Enterprises, Inc.* centered on the action for rescission of an agreement whereby Industrial Enterprises, Inc. (IEI) transferred all its rights and interests to two coal blocks to Marinduque Mining and Industrial Corporation, which agreement was approved by the BED.[744] While the trial court issued a summary judgment ordering the rescission of the agreement, the Court of Appeals reversed the decision, holding that

> the rendition of the summary judgment was not proper since there were genuine issues in controversy between the parties, and more importantly, that the [t]rial [c]ourt had no jurisdiction over the action considering that, under [P.D.] No. 1206, it is the BED that has the power to decide controversies relative to the exploration, exploitation[,] and development of coal blocks.[745]

Although the purported reasoning of the Court of Appeals read as though it was applying the doctrine of exhaustion of administrative remedies, or at least of which forum was vested with original jurisdiction over the controversy, the reasoning of the Supreme Court in *Industrial Enterprises, Inc.* clearly applied the doctrine of prior resort, thus —

> The decisive issue in this case is whether or not the civil court has jurisdiction to hear and decide the suit for rescission of the Memorandum of Agreement concerning a coal operating contract over coal blocks. A corollary question is whether or not respondent Court of Appeals erred in holding that it is the [BED] which has jurisdiction over said action and not the civil court.[746]

In resolving these issues, the Supreme Court held —

> While the action filed by IEI sought the rescission of what appears to be an ordinary civil contract cognizable by a civil court, the fact is that the Memorandum of Agreement sought to be rescinded is derived from a coal-operating contract and is inextricably tied up with the right to develop coal-bearing lands and the determination of whether or not the reversion of the coal operating contract over the subject coal blocks to IEI would be in line with the integrated national program for coal-development and with the objective of rationalizing the country's over-all coal-supply-demand balance. *IEI's cause of action was not merely the rescission of a contract but the reversion or return to it of the operation of the coal blocks. Thus it was that in its*

743. *Id.* at 430.

744. *Id.* at 428.

745. *Id.* at 429.

746. *Id.* at 429–30.

> *Decision ordering the rescission of the Agreement, the [t]rial [c]ourt, inter alia, declared the continued efficacy of the coal-operating contract in IEI's favor and directed the BED to give due course to IEI's application for three [ ] more coal blocks. These are matters properly falling within the domain of the BED.*[747]

Justice Melencio-Herrera thereupon decreed application of the doctrine of primary jurisdiction, thus —

> In recent years, it has been the jurisprudential trend to apply the doctrine of primary jurisdiction in many cases involving matters that demand the special competence of administrative agencies. *It may occur that the Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is judicial in character.* However, if the case is such that its determination requires the expertise, specialized skills[,] and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. This is the doctrine of primary jurisdiction. It applies 'where a claim is *originally cognizable in the courts, and resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such case the judicial process is suspended pending referral of such issues to the administrative body for its view.*'[748]

The ruling in *Industrial Enterprises, Inc.* clearly delineates the doctrinal area upon which the doctrine of prior resort operates — although the controversy is essentially justiciable and falls within the original jurisdiction of the regulars courts, nonetheless, courts are without authority to preempt rulings that impinge on matters that by law have been vested primarily within the administrative or regulatory functions of an administrative agency. It seems therefore that the doctrine of prior resort covers matters which under clear and specific mandate of the charter of the administrative agency are within its specialized powers exercising purely administrative or regulatory (as distinguished from quasi-judicial) powers.

As held in *Industrial Enterprises, Inc.*,

> the doctrine of primary jurisdiction [i.e., doctrine of prior resort] finds application in this case since the question of what coal areas should be exploited and developed and which entity should be granted coal operating contracts over said areas involves a technical determination by the BED as the administrative agency in possession of the specialized expertise to act on the matter.[749]

Critical for this Article is what then the Court observed —

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747. *Id.* at 430 (emphasis supplied).

748. *Industrial Enterprises, Inc.*, 184 SCRA at 432.

749. *Id.*

> The [t]rial [c]ourt does not have the competence to decide matters concerning activities relative to the exploration, exploitation, development[,] and extraction of mineral resources like coal. These issues preclude an initial judicial determination. It behooves the courts to stand aside even when apparently they have statutory power to proceed in recognition of the primary jurisdiction of an administrative agency.[750]

The *Industrial Enterprises, Inc.* decision provided for the following application and rationale for the doctrine of prior resort, thus —

> The application of the doctrine ... does not call for the dismissal of the case below. It need only be suspended until after the matters within the competence of the [administrative agency] are threshed out and determined. Thereby, the principal purpose behind the doctrine ... is salutarily served.
>
> > 'Uniformity and consistency in the regulation of business entrusted to an administrative agency are secured and the limited function of review by the judiciary are more rationally exercised, by preliminary resort, for ascertaining and interpreting the circumstances underlying legal issues, to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure[.]'[751]

Therefore, the application of the doctrine of prior resort means that courts of law have no business imposing in their decisions matters that fall primarily within the regulatory powers of administrative agencies who have the expertise on such matters and who are mandated by their charters to evolve the policies pertaining to such an area or industry.

In the 1992 decision in *Sunville Timber Products, Inc. v. Abad*,[752] although it was an exception to the application of the doctrine of exhaustion of administrative remedies that was invoked to allow the court proceedings to continue (i.e., the question they are raising is purely legal; the application of the doctrine will cause great and irreparable damage; and public interest is involved),[753] nonetheless, the doctrine of prior resort was applied by the Supreme Court to dismiss the proceedings with the courts of law, thus —

> There is no question that [the case] comes within the jurisdiction of the respondent court. Nevertheless, as the wrong alleged in the complaint was supposedly committed as a result of the unlawful logging activities of the petitioner, it will be necessary first to determine whether or not the [Timber License Agreement] and the forestry laws and regulations had indeed been violated. To repeat for emphasis, determination of this question is the primary responsibility of the Forest Management Bureau of

750. *Id.*

751. *Id.* at 432–33 (citing Far East Conference v. United States, 342 U.S. 570 (1952)).

752. Sunville Timber Products, Inc. v. Abad, 206 SCRA 482 (1992).

753. *Id.* at 482 & 487–88.

> the DENR. The application of the expertise of the administrative agency in the resolution of the issue raised is a condition precedent for the eventual examination, if still necessary, of the same question by a court of justice.[754]

Another aspect under which the doctrine of prior resort can be found in the 1993 decision of *Vidad v. RTC of Negros Oriental, Br. 42*,[755] where former Associate Justice Jose C. Vitug, as *ponente*, alluded to the application of the doctrine of primary jurisdiction (i.e., doctrine of prior resort) to be equal to the suspension of a civil case pending the resolution of a prejudicial question. In *Vidad*, civil cases for prohibition, *mandamus*, and recovery of damages, were filed by public school teachers against the then-Department of Education, Culture, and Sports (DECS) to enjoin the administrative proceedings taken against them for illegal strike.[756] The Court held —

> The defendants' motions to dismiss the complaints have likewise been precipitately sought, and we see no reversible error in the denial thereof by the lower court. The various complaints filed by the public school teachers allege bad faith on the part of the DECS officials. It cannot be pretended this early that the same could be impossible of proof. On the assumption that the plaintiffs are able to establish their allegations of bad faith, a judgment for damages can be warranted. Public officials are certainly not immune from damages in their personal capacities arising from acts done in bad faith; in these and similar cases, the public officials may not be said to have acted within the scope of their official authority, and no longer are they protected by the mantle of immunity for official actions.
>
> It was, nonetheless, inopportune for the lower court to issue the restraining orders. The authority of the DECS Regional Director to issue the return to work memorandum, to initiate the administrative charges[,] and to constitute the investigating panel can hardly be disputed.[757]

In particular, *Vidad* ruled —

> We see the court cases and the administrative matters to be closely interrelated, if not, indeed, interlinked. While no prejudicial question strictly arises where one is a civil case and the other is an administrative proceeding, in the interest of good order, it behooves the court to suspend its action on the cases before it pending the final outcome of the administrative proceedings. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. We see, in these petitions before us, no cogent reason to deviate from the rule.[758]

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754. *Id.* at 488.

755. Vidad v. RTC of Negros Oriental, Br. 42, 227 SCRA 271 (1993).

756. *Id.* at 273.

757. *Id.* at 275–76.

758. *Id.* at 276.

As noted from the foregoing discussions, unlike the *doctrine of exclusive administrative jurisdiction* which raises the issue of whether the tribunal can take cognizance of the controversy raised, the *doctrine of prior resort* does not go into jurisdictional competence of the courts to initially rule on administrative issues arising from justiciable controversies nor into the completeness of causes of action; rather, it addresses itself to the sound discretion of the trial judge to rule whether to refer technical matters to the appropriate regulatory agencies involved to rule on certain aspects of the issues raised that may be critical in allowing the court to properly rule on the merits of the case before it.

The De Leons give the following "reasons for doctrine of primary jurisdiction," which in conformity with its aspect as promoted under the doctrine of prior resort, thus: "[(1)] to take full advantage of administrative expertness; and [(2)] to attain uniformity of application of regulatory laws which can be secured only if determination of the issue is left to the administrative body."[759]

The *doctrine of prior resort* has been applied in the 2011 decision in *Bagunu v. Aggabao*,[760] which stemmed from a protest filed against the free patent application of a public land with the Regional Office of the DENR.[761] It eventually turned out that the application covered an entirely different parcel of land, and the free patent was granted to the protester, who, upon ocular inspection, was the real occupant and tiller of the land.[762] The ruling was eventually affirmed on appeal by the DENR.[763] When the matter was brought to the Court of Appeals,

> [t]he [Court of Appeals] affirmed the ruling of the DENR Secretary. Applying the doctrine of primary jurisdiction, the [appellate court] ruled that since questions on the identity of a land require a technical determination by the appropriate administrative body, the findings of fact of the DENR Regional Office, as affirmed by the DENR Secretary, are entitled to great respect, if not finality. The petitioner assails this ruling before the Court.[764]

During the pendency of the administrative proceedings, petitioner joined in a petition for quieting of title and recover of possession pending with the RTC, which provided for a reformed instrument that now properly

759. HECTOR S. DE LEON & HECTOR M. DE LEON, JR., ADMINISTRATIVE LAW: TEXT AND CASES 375-76 (2013 ed.).

760. Bagunu v. Aggabao, 655 SCRA 413 (2011).

761. *Id.* at 417.

762. *Id.*

763. *Id.*

764. *Id.* at 418.

covered the parcel of land covered in the administrative proceedings.[765] When the DENR ruling came out, the protester in the administrative proceedings filed a motion with the RTC to suspend the proceedings or adopt the findings of the DENR.[766] In the meantime, the petitioner brought another case with the RTC for the reformation of its deed of sale, for the description therein to conform now to the area that is the subject matter of the appeal.[767]

The issue before the Supreme Court was whether the DENR acted without jurisdiction in making a final ruling on the ownership of the parcel of land in question since the matter was pending resolution with the RTC, which had original jurisdiction on reinvindicatory cases to rule on ownership, and who had better right to posses a parcel of land, thus —

> The petitioner insists that under the law actions incapable of pecuniary estimation, to which a suit for reformation of contracts belong, and those involving ownership of real property fall within the exclusive jurisdiction of the [RTC]. Since these actions are already pending before the RTC, the DENR Secretary overstepped his authority in excluding Lot 322 from the petitioner's free patent application and ordering the respondents to apply for a free patent over the same lot.[768]

The Supreme Court held —

> While these actions ordinarily fall within the exclusive jurisdiction of the RTC, the court's jurisdiction to resolve controversies involving ownership of real property extends only to private lands. In the present case, neither party has asserted private ownership over Lot 322. The respondents acknowledged the public character of Lot 322 by mainly relying on the administrative findings of the DENR in their complaint-in-intervention, instead of asserting their own private ownership of the property.
>
> ...
>
> As the [Court of Appeals] correctly pointed out, the present case stemmed from the protest filed by the respondents against the petitioner's free patent application. In resolving this protest, the DENR, through the Bureau of Lands, had to resolve the issue of *identity* of the lot claimed by both parties. [On one hand, t]his issue of identity of the land requires a technical determination by the Bureau of Lands, as the administrative agency with direct control over the disposition and management of lands of the public domain. The DENR, on the other hand, in the exercise of its jurisdiction to manage and dispose of public lands, must likewise determine the applicant's entitlement (or lack of it) to a free patent. ... Thus, it is the DENR which determines the respective rights of rival claimants to

765. *Id.* at 419.

766. *Baguna*, 655 SCRA at 419-20.

767. *Id.*

768. *Id.* at 424.

alienable and disposable public lands; courts have no jurisdiction to intrude on matters properly falling within the powers of the DENR Secretary and the Director of Lands, unless grave abuse of discretion exists.

After the DENR assumed jurisdiction over Lot 322, pursuant to its mandate, the RTC must defer the exercise of its jurisdiction on related issues on the same matter properly within its jurisdiction, such as the distinct cause of action for reformation of contracts involving the same property. Note that the contracts refer to the same property, identified as 'Lot 322,' — which the DENR Regional Office, DENR Secretary[,] and the [Court of Appeals] found to actually pertain to Lot 258. When an administrative agency or body is conferred quasi-judicial functions, all controversies relating to the subject matter pertaining to its specialization are deemed to be included within its jurisdiction since the law does not sanction a split of jurisdiction[.]

...

Under the doctrine of primary jurisdiction, courts must refrain from determining a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to its resolution by the latter, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact —

In recent years, it has been the jurisprudential trend to apply [the doctrine of primary jurisdiction] to cases involving matters that demand the special competence of administrative agencies. [It may occur that the Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is also judicial in character. However, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. This is the doctrine of primary jurisdiction.] It applies 'where a claim is *originally cognizable in the courts*, and comes into play whenever enforcement of the claim requires the resolution of *issues which, under a regulatory scheme, have been placed within the special competence of an administrative body, in such case the judicial process is suspended pending referral of such issues to the administrative body for its view*.'

The application of the doctrine of primary jurisdiction, however, does not call for the dismissal of the case below. It need only be suspended until after the matters within the competence of [the Lands Management Bureau] are threshed out and determined. Thereby, the principal purpose behind the doctrine of primary jurisdiction is salutarily served.

The resolution of conflicting claims of ownership over real property is within the regular courts' area of competence and, concededly, this issue is judicial in character. However, regular courts would have no power to conclusively resolve this issue of ownership given the *public character* of the land, since under C.A. No. 141, in relation to Executive Order [(E.O.)]

> No. 192, the disposition and management of public lands fall within the exclusive jurisdiction of the Director of Lands, subject to review by the DENR Secretary.
>
> While the powers given to the DENR, through the Bureau of Lands, to alienate and dispose of public land do not divest regular courts of jurisdiction over *possessory* actions instituted by occupants or applicants (to protect their respective possessions and occupations), the respondents' complaint-in-intervention does not simply raise the issue of possession — whether *de jure or de facto* — but likewise raised the issue of ownership as basis to recover possession. Particularly, the respondents prayed for declaration of ownership of Lot 322. Ineluctably, the RTC would have to defer its ruling on the respondents' *reivindicatory* action pending final determination by the DENR, through the Lands Management Bureau, of the respondents' entitlement to a free patent, following the doctrine of primary jurisdiction.[769]

Notice that the discussion on the application of the doctrine of prior resort is indistinguishable in its application with the doctrine of judicial non-interference.

(i) Confusing the Doctrine of Exhaustion with the Doctrine of Prior Resort

The doctrine of exhaustion of administrative remedies is often confused with the doctrine of prior resort, because of the "prior resort" language that the Supreme Court uses in many of its decisions applying the doctrine of exhaustion.

To illustrate this point, we will use the 2004 decision in *Estrada v. Court of Appeals*,[770] which originated as a taxpayers' injunction suit filed with the RTC of Olongapo City against lessees of municipal wharf properties, the Subic Mayor, and the Regional Director of DENR, grounded on the allegation that the leased premises will be used to operate a "cement plant [which] is a nuisance because it will cause pollution, endanger the health, life and limb of the residents and deprive them of the full use and enjoyment of their properties."[771] The respondents sought the dismissal of the suit on the grounds that it stated no cause of action, that the RTC had no jurisdiction over the subject matter thereof, and that there was failure to exhaust administrative remedies within the Executive department (although no action was then pending with the DENR).[772]

769. *Id.* at 424-30 (emphasis supplied).

770. Estrada v. Court of Appeals, 442 SCRA 117 (2004).

771. *Id.* at 119.

772. *Id.* at 120.

With the issue before the Supreme Court being whether it was error for the trial court to have refused to dismiss the case, it ruled that the doctrine of exhaustion of administrative remedies as the basis for dismissing the suit before the RTC, but used "prior resort" language to support such ruling, thus —

> The principal issue that needs to be resolved is whether or not the instant case falls under the exceptional cases where prior resort to administrative agencies need not be made before going to court.
>
> We answer in the negative.
>
> The doctrine of exhaustion of administrative remedies requires that *resort be first made with the administrative authorities* in the resolution of a controversy falling under their jurisdiction before the same may be elevated to a court of justice for review. If a remedy within the administrative machinery is still available, with a procedure pursuant to law for an administrative officer to decide the controversy, a party should first exhaust such remedy before going to court. A premature invocation of a court's intervention renders the complaint without cause of action and dismissible on such ground.
>
> The reason for this is that prior availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed and complied with.[773]

The use of the "prior resort" language in *Estrada* shows that the Supreme Court has tended to confuse the *doctrine of exhaustion of administrative remedies* with the *doctrine of prior resort*, and yet the doctrines are distinct and apart. The *doctrine of exhaustion* goes into the petitioner's cause of action and not within the issue of the lack of jurisdiction on the part of the trial court; whereas, the *doctrine of prior resort* does not go into either the issue of cause of action of the petitioner nor of the jurisdiction of the trial court (for it applies when indeed both requisites are present), and merely should go into the exercise of judicial discretion of whether the trial court determines it prudent to seek the specialized knowledge of the administrative agency involved in the administrative process concerned.

Indeed, *Estrada* goes into an issue of whether the trial court could assume proper jurisdiction over the case, based on the allegation that the issue fell within the original quasi-judicial jurisdiction of the DENR, thus —

> The matter of determining whether there is ... pollution of the environment that requires control, if not prohibition, of the operation of a business establishment is essentially addressed to the Environmental Management Bureau [ ] of the DENR which, by virtue of Section 16 of [E.O.] No. 192, series of 1987 has assumed the powers and functions of the

773. *Id.* at 126–27 (emphasis supplied).

> defunct National Pollution Control Commission created under [R.A.] No. 3931. Under said [E.O.], a Pollution Adjudication Board (PAB) under the Office of the DENR Secretary now assumes the powers and functions of the National Pollution Control Commission with respect to adjudication of pollution cases.
>
> As a general rule, the adjudication of pollution cases generally pertains to the [PAB], except in cases where the special law provides for another forum.[774]

The more appropriate doctrine to apply in *Estrada* would have been the *doctrine of exclusive administrative jurisdiction*, since the issue raised therein where within the original and exclusive jurisdiction of the PAB of the DENR.

The "prior resort" language of *Estrada* in defining the doctrine of exhaustion of administrative remedies were again used by the Supreme Court in its subsequent decision in *Morcal* already discussed above, where the Supreme Court held that "[t]he doctrine of exhaustion of administrative remedies requires that *resort be first made* to the administrative authorities in cases falling under their jurisdiction to allow them to carry out their functions and discharge their responsibilities within the specialized areas of their competence."[775]

The problem with applying such version of the doctrine of exhaustion is the fact that in *Morcal*, "resort [was] first made to the administrative authorities,"[776] before the Morcals filed the civil action. The better language was to use the "failure to exhaust available administrative remedies" within the DENR and the Executive [d]epartment, or at least use the language of the doctrine of judicial non-interference with administrative proceedings.

It must be reiterated that the *doctrine of prior resort* operates outside of the system of judicial review, under the premise that the administrative agency is bereft of quasi-judicial powers and that the justiciable controversy falls within the original and exclusive jurisdiction of courts of law. Unlike the application of the *doctrine of exhaustion of administrative remedies*, which goes into the cause of action of a petitioner or a complainant, the application of the *doctrine of prior resort* presumes that indeed the petitioner comes to court with a complete cause of action and that the trial court hearing the case has assumed proper jurisdiction over both the parties and the issues involved, but that an issue of fact critical to deciding the case on the matter requires an administrative agency to exercise its purely administrative powers.

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774. *Id.* at 131–32 (citing Laguna Lake Development Authority v. Court of Appeals 231 SCRA 292 (1994)).

775. *Morcal*, 476 SCRA at 512.

776. *Id.*

(ii) Comparison of the Doctrine of Prior Resort with the Other Species of the Doctrine of Primary Jurisdiction

Unlike the *doctrine of exclusive administrative jurisdiction* which goes into the heart of the issue of proper jurisdiction *at first instance*, the *doctrine of prior resort* merely involves the issue of *judicial propriety* — of whether it would be appropriate for the trial court in ruling upon the issues brought before it, to include in the merits of the case a resolution of administrative matters that are not within its competence and which under the existing legislative set-up are to be decided instead by an administrative body in the exercise of its administrative powers.

Where the *doctrine of exclusive administrative jurisdiction* operates only in relation to the exercise by administrative agencies of their quasi-judicial functions, the *doctrine of prior resort* operates only within the exercise by the administrative agencies of their regulatory powers.[777] Where the proper invocation of the *doctrine of exclusive administrative jurisdiction* or the *doctrine of judicial interference* would bring about the dismissal of the action pending before a court of law, which is deemed bereft of original jurisdiction to hear that particular justiciable controversy or bereft of the power of judicial review in the particular case; proper invocation of the *doctrine of prior resort* does not bring about any dismissal of the petition — since there is a complete cause of action, only that suspension of the proceedings is proper so that reference of technical matters to the appropriate administrative body may be had for the proper guidance of the trial court in the formulation of its final decision on the merits of the case.

Consequently, the refusal of the trial court to apply the doctrine of prior resort may be deemed to be an "abuse of discretion amounting to lack of jurisdiction" and is correctible only by way of petition for *certiorari*.[778]

In essence, the *doctrine of prior resort* requires of the regular courts, in the exercise of their undisputed jurisdiction over a controversy, to take "a posture of 'judicial restraint' in the fact of administrative agency competence,"[779] which is essentially addressed to the sound discretion of the courts, and the failure to apply it cannot work to deprive the trial court of jurisdiction over the controversy and would not render its decision or determination void.

Finally, the application of the *doctrine of prior resort* yields to the same exceptions as those applicable to the *doctrine of exhaustion of administrative remedy*, and would not apply in areas where the judges of regular courts are deemed to possess capability to decide on the issues given and do not require

777. *Smart Communications, Inc.*, 408 SCRA at 678.

778. RULES OF CIVIL PROCEDURE, rule 65, § 1.

779. AQUINO, *supra* note 641.

the competency or expertise of the administrative agency which has been granted control and supervision on the matter.

C. Proffered Resolutions of the Jurisdictional Conflicts in Corporate and Securities Cases

The Authors will now proceed to determine how the various applications of the doctrine of primary jurisdiction may be applicable to corporate cases being tried by RTC Special Commercial Courts under Section 5 of P.D. No. 902-A, as well as securities cases under the SRC.

1. Evolution of the SEC's Nature as an Administrative Agency

Prior to the enactment of the SRC, the Supreme Court in *Abejo v. De la Cruz*,[780] provided a vivid illustration of the full range of regulatory, investigatory, quasi-legislative, and quasi-judicial powers vested with the SEC, along with the various schemes applying the doctrine of primary jurisdiction.

In that 1984 decision, the Abejos requested the corporate secretary of the Pocket Bell Philippines, Inc. to register and transfer to their names a total 196,000 shares in the corporation's STB, to cancel the surrendered certificates of stock, and to issue the corresponding new certificates of stock in their names.[781] The corporate secretary, the son of the erstwhile majority stockholders, the Bragas, refused to comply with the request on the assertion that the Bragas had pre-emptive rights over the Abejo shares and that Virginia Braga never transferred her 63,000 shares but had lost the stock certificates representing those shares.[782]

On one hand, the Abejos brought suit with the SEC, one for *mandamus*, to compel the corporate secretary to comply with his "ministerial duty" to register the shares in the names of the Abejos and issue new certificates in their names; and one for injunction, to enjoin the Bragas from disbursing or disposing funds and assets of Pocket Bell and from performing such other acts pertaining to the functions of corporate officers.[783]

On the other hand, the Bragas brought a suit with the RTC seeking the annulment of sale of the disputed shares made by the Bragas to the Abejos.[784] Eventually, an original petition for *certiorari* was filed with the Supreme

780. Abejo v. De la Cruz, 149 SCRA 654 (1987).

781. *Id.* at 657.

782. *Id.*

783. *Id.* at 657-59.

784. *Id.* at 659-60.

Court to determine which tribunal had proper jurisdiction over the issues raised between the parties.[785]

Pursuant to the provisions of Section 5 of P.D. No. 902-A, the *ponencia* of former Chief Justice Claudio Teehankee, Sr. applied the principles behind the *doctrine of exclusive administrative jurisdiction* when it held that —

> 1. The SEC ruling upholding its primary and exclusive jurisdiction over the dispute is correctly premised on, and fully supported by, the applicable provisions of P.D. No. 902-A which reorganized the SEC with additional powers 'in line with the government's policy of encouraging investments, both domestic and foreign, and more active public participation in the affairs of private corporations and enterprises through which desirable activities may be pursued for the promotion of economic development; and, to promote a wider and more meaningful equitable distribution of wealth[.]'
>
> ...
>
> 2. Basically and indubitably, the dispute at bar, as held by the SEC, is an intracorporate dispute that has arisen between and among the principal stockholders of the corporation Pocket Bell due to the refusal of the corporate secretary, backed up by his parents as erstwhile majority shareholders, to perform his 'ministerial duty' to record the transfers of the corporation's controlling (56%) shares of stock, covered by duly endorsed certificates of stock, in favor of Telectronics as the purchaser thereof.
>
> ...
>
> The claims of the Bragas, which they assert in their complaint in the [RTC], praying for rescission and annulment of the sale made by the Abejos in favor of Telectronics on the ground that they had an alleged perfected pre-emptive right over the Abejos' shares as well as for annulment of sale to Telectronics of Virginia Braga's shares covered by street certificates duly endorsed by her in blank, may in no way deprive the SEC of its primary and exclusive jurisdiction to grant or not the writ of [*mandamus*] ordering the registration of the shares so transferred. The Bragas' contention that the question of ordering the recording of the transfers ultimately hinges on the question of ownership or right thereto over the shares notwithstanding, the jurisdiction over the dispute is clearly vested in the SEC.[786]

The *Abejo* decision also applied the principles of the *doctrine of judicial non-interference* when it ruled that

> [s]uch a dispute and case clearly fall within the original and exclusive jurisdiction of the SEC to decide, under Section 5 of P.D. No. 902-A, above-quoted. The restraining order issued by the [RTC] restraining Telectronics agents and representatives from enforcing their resolution

785. *Id.* at 660-61.

786. *Abejo*, 149 SCRA at 662-64.

> constituting themselves as the new set of officers of Pocket Bell and from assuming control of the corporation and discharging their functions patently encroached upon the SEC's exclusive jurisdiction over such specialized corporate controversies calling for its special competence. As stressed by the Solicitor General on behalf of the SEC, the Court has held that 'Nowhere does the law [P.D. No. 902-A] empower any Court of First Instance [(now RTC)] to interfere with the orders of the Commission,' and consequently 'any ruling by the trial court on the issue of ownership of the shares of stock is not binding on the [SEC]' for want of jurisdiction.[787]

The *Abejo* decision also incorporated into corporate law jurisprudence the application of the doctrine of primary jurisdiction first invoked in *Pambujan Sur United Mine Workers*, thus —

> 6. In the [1950s], the Court taking cognizance of the move to vest jurisdiction in administrative commissions and boards the power to resolve specialized disputes in the field of labor (as in corporations, public transportation[,] and public utilities) ruled that Congress in requiring the Industrial Court's intervention in the resolution of labor-management controversies likely to cause strikes or lockouts meant such jurisdiction to be exclusive, although it did not so expressly state in the law. The Court held that under the
>
> > 'sense-making and expeditious doctrine of primary jurisdiction ... the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal, where the question demands the exercise of sound administrative discretion requiring *the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered*.'
>
> In this era of clogged court dockets, the need for specialized administrative boards or commissions with the special knowledge, experience and capability to hear and determine promptly disputes on technical matters or essentially factual matters, subject to judicial review in case of grave abuse of discretion, has become well nigh indispensable. Thus, in 1984, the Court noted that 'between the power lodged in an administrative body and a court, the unmistakable trend has been to refer it to the former. 'Increasingly, this Court has been committed to the view that unless the law speaks clearly and unequivocably, the choice should fall on [an administrative agency.]'"[788]

What is quite telling in the *Abejo* decision was Chief Justice Teehankee's formal invocation of the SEC's quasi-legislative power under the Corporation Code, as well as the "absolute jurisdiction, supervision[,] and

787. *Id.* at 664-65.

788. *Id.* at 669-70 (citing *Pambujan Sur United Mine Workers*, 94 Phil. at 941).

control" language of Section 3 of P.D. No. 902-A to further bolster the SEC's primary jurisdiction over intra-corporate disputes, thus —

> 7. Thus, the Corporation Code (B.P. 178) enacted on [1 May] 1980 specifically vests the SEC with the [rule-making] power in the discharge of its task of implementing the provisions of the Code and particularly charges it with the duty of preventing fraud and abuses on the part of controlling stockholders, directors[,] and officers, as follows:
>
> ...
>
> The dispute between the contending parties for control of the corporation manifestly falls within the primary and exclusive jurisdiction of the SEC in whom the law has reserved such jurisdiction as an administrative agency of special competence to deal promptly and expeditiously therewith.
>
> As the Court stressed in *Union Glass & Container Corp*[*oration*], *'This grant of jurisdiction [in Section 5] must be viewed in the light of the nature and functions of the SEC under the law. Section 3 of* [*P.D.*] *No. 902-A confers upon the latter 'absolute jurisdiction, supervision, and control over all corporations, partnerships or associations, who are grantees of primary franchise and/or license or permit issued by the government to operate in the Philippines*[.]*' The principal function of the SEC is the supervision and control over corporations, partnerships*[,] *and associations with the end in view that investment in these entities may be encouraged and protected, and their activities pursued for the promotion of economic development.*
>
> '*It is in aid of this office that the adjudicative power of the SEC must be exercised. Thus the law explicitly specified and delimited its jurisdiction to matters intrinsically connected with the regulation of corporations, partnerships*[,] *and associations and those dealing with the internal affairs of such corporations, partnerships*[,] *or associations.*'[789]

The disquisitions in *Abejo* and the companion cases that it cited and discussed, show that based on the history and peculiar language of P.D. No. 902-A, all matters pertaining to corporations, partnerships and associations are placed under "exclusionary parameters" within both the regulatory and adjudicative powers of the SEC. Since only the original and exclusive jurisdiction over corporate cases under Section 5 thereof have been formally transferred to the RTC Special Commercial Courts, then the remaining doctrine established in *Abejo* on the remaining "absolute jurisdiction, supervision[,] and control" over private corporations remain with the SEC.

2. Criminal Proceedings versus SEC Investigatory Powers

One of the areas that has demonstrated a metamorphosis in how the Supreme Court has applied the various aspects of the *doctrine of primary jurisdiction* in corporate and securities laws, is the effect of the passage of the

789. *Id.* at 670-71 (emphasis supplied).

SRC on the application of the SEC's criminal investigatory powers vis-à-vis civil and criminal proceedings that fall within the jurisdictions of the RTCs.

a. From Saavedra, Jr. to Fabia

We begin our review by comparing the pre-SRC *Saavedra, Jr.* decision with the post-SRC twin *Fabia* decisions.

In *Saavedra, Jr. v. Department of Justice*,[790] the petitioners filed with the regular courts an action for damages over disputed stock sale agreement, and thereafter, the respondents filed a separate case with the SEC praying for the rescission of the sale agreement for petitioners' failure to comply with his contractual undertakings.[791] Speaking through former Associate Justice Josue N. Bellosillo, quoting *Saavedra, Jr. v. Securities and Exchange Commission*,[792] the Supreme Court held that since

> the dispute at bar is an intra-corporate dispute that has arisen between and among the principal stockholders of the corporation due to the refusal of the defendants (now petitioners) to fully comply with what has been covenanted by the parties ... [then] [p]ursuant to [P.D.] No. 902-A, ... particularly Section 5 (b) thereof, the primary and exclusive jurisdiction over the present case properly belongs to the SEC.[793]

The first *Saavedra, Jr.* decision applied the *doctrine of exclusive administrative jurisdiction* to resolve the issue of which tribunal had original and exclusive jurisdiction over the controversy, and it was found that the SEC, under Section 5 (b) of P.D. No. 902-A, had original and exclusive jurisdiction, to the exclusion of the regular trial courts, to decide on issues governing ownership and rescission over shares of stock.

It was during the pendency of the SEC proceedings in the first *Saavedra, Jr.* case, that a criminal case for perjury against the petitioner was filed with the provincial prosecutor alleging that petitioner perjured himself when he declared in the verification of the complaint filed with the regular courts that he was the President of the company.[794]

The Supreme Court also applied the *doctrine of exclusive administrative jurisdiction* to rule that the provincial prosecutor was without authority to determine probable cause when the issues of ownership and rescission over the disputed shares of stock were still being determined by the SEC, thus —

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790. Saavedra, Jr. v. Department of Justice, 226 SCRA 438 (1993) [hereinafter *Saavedra, Jr. v. DOJ*].

791. *Id.* at 440.

792. Saavedra, Jr. v. Securities and Exchange Commission, 159 SCRA 57 (1988) [hereinafter *Saavedra, Jr v. SEC*].

793. *Saavedra, Jr. v. DOJ*, 226 SCRA at 442 (*Saavedra, Jr. v. SEC*, 159 SCRA at 60).

794. *Id.* at 441.

> Under the doctrine of primary jurisdiction, courts cannot and will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal having been so placed within its special competence under a regulatory scheme. In such instances the judicial process is suspended pending referral to the administrative body for its view on the matter in dispute.
>
> Consequently, if the courts cannot resolve a question which is within the legal competence of an administrative body prior to the resolution of that question by the administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience[,] and services of the administrative agency to ascertain technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the purposes of the regulatory statute administered, *much less can the Provincial Prosecutor arrogate to himself the jurisdiction vested solely with the SEC.*
>
> ...
>
> Considering that it was definitely settled in *Saavedra, Jr. v. SEC* that the issues of ownership and automatic rescission are intra-corporate in nature, then the Provincial Prosecutor, clearly, has no authority whatsoever to rule on the same. In fact, if we were to uphold the validity of the DOJ Resolutions brought before us, as respondents suggest, we would be sanctioning a flagrant usurpation or preemption of that primary and exclusive jurisdiction which SEC already enjoys.[795]

As can be gleaned from the aforequoted portions of the second *Saavedra, Jr.* decision, the Supreme Court applied the doctrine of judicial non-interference or the doctrine of prior resort, almost in the context of a prejudicial question, i.e., the prosecutorial arm of the government in a criminal proceeding would have no authority to decide upon probable cause which would require making a finding on corporate matters that were within the primary and original jurisdiction of the SEC to decide. It should be noted that the second *Saavedra, Jr.* applied the doctrine of primary jurisdiction in an area that does not fall within the exercise by the SEC of its quasi-judicial jurisdiction under Section 5 of P.D. No. 902-A, for the Supreme Court has already ruled in *Presidential Anti-Dollar Salting Task Force*, that the area of prosecution is not strictly a quasi-judicial function, thus —

> The Court sees nothing in the aforequoted provisions ... that will reveal a legislative intendment to confer it with quasi-judicial responsibilities relative to offenses punished by [P.D.] No. 1883. Its undertaking, as we said, is simply, to determine whether or not probable cause exists to warrant the filing of charges with the proper court, meaning to say, to conduct an inquiry preliminary to a judicial recourse, and to recommend action 'of appropriate authorities[.]' It is not unlike a fiscal's office that conducts a preliminary investigation to determine whether or not *prima facie*

795. *Id.* at 442-43 (emphasis supplied).

> evidence exists to justify haling the respondent to court, and yet, while it makes that determination, it cannot be said to be acting as a quasi-court. For it is the courts, ultimately, that pass judgment on the accused, not the fiscal.[796]

With the Subsection 5.2 of the SRC transferring the corporate cases under Section 5 of P.D. No. 902-A to the RTC Special Commercial Courts, the *Fabia* decisions came out, both penned by Justice Bellosillo, and both recognizing the applicability of the doctrine of primary jurisdiction only when the SEC had primary and exclusive jurisdiction over the corporate cases governed by Section 5 of P.D. No. 902-A.

In the 2001 case of *Fabia v. Court of Appeals*,[797] the former President, director, and stockholder of the company, was charged before the regular courts with the crime of estafa for failure to make proper accounting of his advances from the the Maritime Training Center of the Philippines (MTCP).[798] The accused sought to dismiss the criminal proceedings with the trial court on the ground that the real issues involved intra-corporate disputes which fell within the original and exclusive jurisdiction of the SEC.[799] Remarkably, in his *ponencia*, Justice Belosillo sustained the application of the doctrine of primary jurisdiction, on the premise that a criminal proceeding for estafa was to an intra-corporate dispute proceeding, thus —

> Indeed, the charge against petitioner is for estafa, an offense punishable under [t]he [RPC], and prosecution for the offense is presently before the regular courts. However ... jurisdiction is determined not from the law upon which the cause of action is based, nor the type of proceedings initiated, but rather, it is gleaned from the allegations stated in the complaint. It is evident from the complaint that the acts charged are in the nature of an intra-corporate dispute as they involve fraud committed by virtue of the office assumed by petitioner as President, Director, and stockholder in MTCP, and committed against the MTCP corporation. This sufficiently removes the action from the jurisdiction of the regular courts, and transposes it into an intra-corporate controversy within the jurisdiction of the SEC. The fact that a complaint for estafa, a felony punishable under the RPC, has been filed against petitioner does not negate and nullify the intra-corporate nature of the cause of action, nor does it transform the controversy from intra-corporate to a criminal one.[800]

A close reading of the aforequoted portion of the *Fabia* decision would indicate that Justice Bellosillo was invoking the *doctrine of exclusive administrative jurisdiction* by using language to that effect —

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796. *Presidential Anti-Dollar Salting Task Force*, 171 SCRA at 363.

797. Fabia v. Court of Appeals, 363 SCRA 427 (2001).

798. *Id.* at 429.

799. *Id.* at 430.

800. *Id.* at 433.

> However, ... jurisdiction is determined not from the law upon which the cause of action is based, nor the type of proceedings initiated, but rather, it is gleaned from the allegations stated in the complaint. It is evident from the complaint that the acts charged are in the nature of an intra-corporate dispute as they involve fraud committed by virtue of the office assumed by petitioner as President, Director, and stockholder in MTCP, and committed against the MTCP corporation.[801]

In truth, however, what was being applied by the Court was the *doctrine of judicial non-interference* in the sense that although the criminal case of estafa properly fell within the criminal jurisdiction of the regular courts, nonetheless, there were prejudicial questions that had to be resolved that fell within the primary and original jurisdiction of the SEC under Section 5 (b) of P.D. No. 902-A, which at the time for the *Fabia* decision fell within the original and exclusive jurisdiction of the RTC Special Commercial Courts, thus —

> The doctrine of primary jurisdiction exhorts us to refer the instant case to the SEC for its resolution of the matter in dispute. However, it should be noted that ... [t]he [SRC], has amended [P.D.] 902-A, and transferred the jurisdiction of the SEC over intra-corporate cases to the courts of general jurisdiction or the appropriate [RTCs]. To transfer the present case to the SEC would only result in a circuitous administration of justice. Thus, the [RTC] of Manila should dismiss [the criminal case] without prejudice to the filing of the proper action which shall then be raffled off to the appropriate branch of the court pursuant to A.M. No. 00-11-03-SC.[802]

Eventually, MTCP filed a motion for clarification of the first *Fabia* decision on the ground that it had the effect of dismissing the criminal case against the accused President and compelling the filing of an administrative/civil action with the RTC Special Commercial Courts, thus, in the 2002 decision of *Fabian v. Court of Appeals*[803] —

> MTCP stresses that [the criminal case] remains to be a criminal proceeding and may not be converted into an administrative action. It reasons that the substance of the assailed Decision of the Court of Appeals that there is probable cause to indict petitioner for the crime of estafa was after all not reversed by the Decision of this Court of 20 August 2001 as only the procedural aspect was modified.[804]

In his comment in the second *Fabia* decision, the petitioner-accused Hernani N. Fabia invoked the ruling in *Saavedra, Jr.* to sustain the dismissal of the criminal case against him, thus —

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801. *Id.*

802. *Id.*

803. Fabia v. Court of Appeals, 388 SCRA 574 (2002).

804. *Id.* at 576.

> [Fabia] concedes that the dismissal of the criminal action is without prejudice to the filing of an intra-corporate/civil case for violation of [P.D. No.] 902-A as amended by [the SRC] before the RTC which currently exercises jurisdiction over corporate matters. However, invoking the doctrine of primary jurisdiction, petitioner reasons that his corporate/civil prosecution must first be resolved before the criminal action could be filed. Citing [*Saavedra, Jr.*], petitioner argues that under the doctrine of primary jurisdiction the public prosecutor in the instant case has no authority to rule in a preliminary investigation on a criminal charge arising from an intra-corporate dispute absent prior resolution of the SEC on the matter. Petitioner notes that [*Saavedra, Jr.*] does not deprive the public prosecutors of their jurisdiction to determine the propriety of filing criminal cases, but merely calls for a deferment of the exercise of such criminal jurisdiction pending prior determination by the pertinent administrative agency of the issues involved in the case. Petitioner contends that a violation of the doctrine of primary jurisdiction is jurisdictional in nature and is not rendered moot by [the SRC].[805]

Subsequently in the second *Fabia* decision (which effectively overhauled the first *Fabia* decision), the proposition was put forth clearly —

> Respondent further claims that [the SRC] rendered the doctrine of primary jurisdiction moot and academic since the rationale behind the prior referral of intra-corporate controversies to the then SEC before the public prosecutor could act on them for purposes of criminal prosecution, [i.e.,] to implore the special knowledge, experience[,] and services of the administrative agency to ascertain technical and intricate matters, *no longer stands since the newly enacted law recognizes that the regular courts now have the legal competence to decide intra-corporate disputes.*[806]

Justice Bellosillo, knowing fully well the central role of the doctrine of primary jurisdiction in the *Saavedra, Jr.* decisions and after reiterating a clear discussion of the same doctrine in the second *Fabia* decision, held —

> However, as correctly observed by respondent MTCP, the rationale behind the prior referral of intra-corporate controversies to the SEC before the public prosecutor could act on them for purposes of criminal prosecution loses significance since the newly enacted law recognizes that the specially designated RTC branches now have the legal competence to decide intra-corporate disputes.[807]

Instead, what Justice Bellosillo did in his *ponencia* in the second *Fabia* decision was to sustain the proper jurisdiction of regular courts to proceed independently with estafa and other fraudulent criminal proceedings against corporate officers, that is by invoking the power of the SEC, to conduct special investigation on fraudulent practices, thus —

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805. *Id.* at 577.

806. *Id.* at 578 (emphasis supplied).

807. *Id.* at 585.

> The criminal case for estafa currently pending before the RTC can then independently and simultaneously proceed with a civil/intra-corporate case to be filed with the [RTC Special Commercial Courts] vested with special jurisdiction pursuant to [the SRC]. ... *However, while [Section] 5 of [P.D.] No. 902-A was amended by [Section] 5.2 of [the SRC], there is no repeal of [Section] 6 thereof declaring that prosecution under the Decree, or any Act, law, rules*[,] *and regulations enforced and administered by the SEC shall be without prejudice to any liability for violation of any provision of the [RPC].*
>
> ...
>
> From the foregoing, it could be concluded that the fraudulent devices, schemes[,] or representations which, originally, the PED of the SEC would exclusively investigate and prosecute, are those in violation of any law or rules and regulations administered and enforced by the SEC and shall be without prejudice to any liability for violation of any provision of the [RPC]. Hence, if the fraudulent act is punished under the [RPC], like estafa under [Article] 315, the responsible person may be criminally prosecuted before the regular courts in addition to proceedings before the branches of the RTC designated by this Court to try and decide intra-corporate controversies.
>
> ...
>
> In light of the amendment brought about by [the SRC], the doctrine of primary jurisdiction no longer precludes the simultaneous filing of the criminal case with the corporate/civil case.[808]

What becomes quite peculiar with the second *Fabia* decision was that after an elaborate discussion of the doctrine of primary jurisdiction, Justice Bellosillo decreed that it no longer was applicable in the field of corporate litigation, thus —

> In cases involving specialized disputes, the practice has been to refer the same to an administrative agency of special competence in observance of the doctrine of primary jurisdiction. The Court has ratiocinated that it cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience[,] and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered. The objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court. It applies where claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution

808. *Id.* at 583-84 (emphasis supplied).

> of issues which, under a regulatory scheme, has been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view.
>
> *However, as correctly observed by respondent MTCP, the rationale behind the prior referral of intra-corporate controversies to the SEC before the public prosecutor could act on them for purposes of criminal prosecution loses significance since the newly enacted law recognizes that the specially designated RTC branches now have the legal competence to decide intra-corporate disputes.*[809]

The aforequoted pronouncement in the second *Fabia* decision is completely at odds with the Supreme Court's holdings that only designated RTC Special Commercial Courts exercise the special corporate jurisdiction under Section 5 of P.D. No. 902-A, and that it is still the SEC that is vested with regulatory powers to undertake a preliminary investigation over corporate and securities fraud.

With due respect, it is the Authors' position that the error that may have been committed in the twin *Fabia* decisions was mistaking the *doctrine of primary jurisdiction* to apply only in the concept of conflict of original jurisdictions between the SEC and the RTCs (i.e., the doctrine of exclusive administrative jurisdiction), and not recognizing applicability of the doctrine of judicial non-interference with administrative processes.

Thus, in the first *Fabia* decision, it was wrong to apply the doctrine of primary jurisdiction to compel that a criminal action for estafa against a company president *must be dismissed* and compel the aggrieved parties to invoke the original and exclusive jurisdiction of the SEC on intra-corporate disputes under Section 5 (b) of P.D. No. 902-A, for the proper procedure was to suspend the proceedings with the trial court, and by invoking of the *doctrine of prior resort*, the issue of prejudicial question involved in the corporate aspect of the intra-corporate dispute to be ruled upon by the SEC in the exercise of its regulatory powers.

In the second *Fabia* decision, it was wrong to have dismissed proper application of the doctrine of primary jurisdiction and dilute the holding in *Saavedra, Jr.*, when in fact what was involved was not an issue of concurrent jurisdiction but the application of the doctrine of judicial non-interference in the sense that regular courts cannot proceed with a criminal case involving officers or directors of a corporation for a crime punished under the RPC, unless pursuant to probable cause having been found by the SEC pursuant to Section 6 of P.D. No. 902-A and affirmed by Subsection 53.1 of the SRC.

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809. *Id.* at 585 (emphasis supplied).

b. Criminal Prosecution for Securities Fraud

The application of the doctrine of primary jurisdiction in securities law is exemplified by three relatively contemporary decisions of the Supreme Court.

In *Baviera v. Paglinawan*,[810] criminal complaints were filed against corporate officers directly with the DOJ for alleged violation of the provisions of the SRC.[811] The DOJ dismissed the complaint for being premature, holding that under the provisions of the SRC, the initial complaint should first be filed with the SEC which shall investigate the existence of probable cause and if there such, would file the complaints with the DOJ.[812] In affirming the action of dismissal of the DOJ, the Supreme Court invoked the application of the principles under the *doctrine of primary jurisdiction*, thus —

> The Court of Appeals held that under the above provision, a criminal complaint for violation of any law or rule administered by the SEC must first be filed with the latter. If the [SEC] finds that there is probable cause, then it should refer the case to the DOJ. Since petitioner failed to comply with the foregoing procedural requirement, the DOJ did not grave abuse its discretion in dismissing his complaint in I.S. 2004-229.
>
> A criminal charge for violation of the [SRC] is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, [i.e.,] the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact. The [SRC] is a special law. Its enforcement is particularly vested in the SEC. Hence, all complaints for any violation of the code and its implementing rules and regulations should be filed with the SEC. Where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 earlier quoted.
>
> We thus agree with the Court of Appeals that petitioner committed a fatal procedural lapse when he filed his criminal complaint directly with the DOJ. Verily, no grave abuse of discretion can be ascribed to the DOJ in dismissing petitioner's complaint.[813]

The *Baviera* ruling was reiterated in *Interport Resources*, where among other things, the Supreme Court was to decide whether the criminal offenses

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810. Baviera v. Paglinawan, 515 SCRA 170 (2007).

811. *Id.* at 176.

812. *Id.* at 179-80.

813. *Id.* at 182-83.

committed by the corporate officers under the Revised Securities Act had prescribed with the filing of the criminal complaint only 12 years after the alleged commission thereof.[814] The Court, relying upon its ruling in *Baviera*, held that the filing of the complaint with the SEC which triggered the investigation of the charges was equivalent to a preliminary investigation that had the effect of interrupting the prescription period,[815] thus —

> [*Baviera*] puts into perspective the nature of the investigation undertaken by the SEC, which is a requisite before a criminal case may be referred to the DOJ. The Court declared that it is imperative that the criminal prosecution be initiated before the SEC, the administrative agency with the special competence.
>
> ...
>
> Indubitably, the prescription period is interrupted by commencing the proceedings for the prosecution of the accused. In criminal cases, this is accomplished by initiating the preliminary investigation. The prosecution of offenses punishable under the Revised Securities Act and the [SRC] is initiated by the filing of a complaint with the SEC or by an investigation conducted by the SEC *motu proprio*. Only after a finding of probable cause is made by the SEC can the DOJ instigate a preliminary investigation. Thus, the investigation that was commenced by the SEC in 1995, soon after it discovered the questionable acts of the respondents, effectively interrupted the prescription period. Given the nature and purpose of the investigation conducted by the SEC, which is equivalent to the preliminary investigation conducted by the DOJ in criminal cases, such investigation would surely interrupt the prescription period.[816]

Both *Baviera* and *Interport Resources* demonstrate that even when the tribunal, such as DOJ, is vested by law with jurisdiction to conduct a legal proceeding, and granting it has the competence to conduct such proceeding, nevertheless, when it comes to special laws, which vest competence to undertake preliminary matters, such as investigation to determine the existence of probable cause, the tribunal should defer to the mandated competence of the administrative agency; otherwise, such tribunal is deemed to be acting in grave abuse of discretion even when it proceeds upon a manner consisted with its jurisdiction. The non-adherence by a presiding judge of a regular court of law of the doctrine of judicial non-interference or the doctrine of prior resort, would constitute grave abuse of discretion, amounting to lack of jurisdiction.

In contrast would be the ruling in *Rosario v. Co*,[817] where the issue to be resolved was whether a criminal case involving the prosecution of corporate

814. *Interport*, 567 SCRA at 409.

815. *Id.* at 411.

816. *Id.* at 415-16.

817. Rosario v. Co, 563 SCRA 239 (2008).

officers who signed the company check under B.P. 22 or the Bouncing Checks Law,[818] should be suspended with the filing of a rehabilitation proceeding with the SEC and the appointment of a management committee, which, under P.D. No. 902-A should have the effect of suspending all "claims" against the company, and which prevented the making good of the checks upon which the criminal complaint was filed.[819] Aside from ruling that the stay order effect under P.D. No. 902-A could not cover criminal cases, which did not constitute "claims" under said decree, the Supreme Court held that the doctrine of primary jurisdiction could not work to dislodge a court of law from the exercise of its judicial powers, thus —

> It must be emphasized at this point that as far as the criminal aspect of the case is concerned, the provisions of [Section] 6 (c) of P.D. No. 902-A should not interfere with the prosecution of a case for violation of B.P. 22, even if restitution, reparation[,] or indemnification could be ordered, because an absurdity would result, i.e., one who has engaged in criminal conduct could escape punishment by the mere filing of a petition for rehabilitation by the corporation of which he is an officer. At any rate, should the court deem it fit to award indemnification, such award would not fall under the category of a claim under [Section] 6 (c) of P.D. No. 902-A, considering that it is already one for monetary or pecuniary consideration. Only to this extent can the order of suspension be considered obligatory upon any court, tribunal, branch[,] or body where there are pending actions for claims against the distressed corporation.
>
> The trend is towards vesting administrative bodies like the SEC with the power to adjudicate matters coming under their particular specialization, to ensure a more knowledgeable solution of the problems submitted to them. This would also relieve the regular courts of a substantial number of cases that would otherwise swell their already clogged dockets. But as expedient as this policy may be, it should not deprive the courts of justice of their power to decide criminal cases. Otherwise, the creeping take-over by the administrative agencies of the judicial power vested in the courts would render the judiciary virtually impotent in the discharge of the duties assigned to it by the Constitution.[820]

3. Intra-Corporate Disputes vis-à-vis the SEC's Regulatory Adjudicative Functions

The Authors now proceed to determine the proper application of the various aspects of the doctrine of primary jurisdiction in corporate cases under Section 5 of P.D. No. 902-A under the original and exclusive

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818. An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and for Other Purposes [Bouncing Checks Law], Batas Pambansa Bilang 22 (1979).

819. *Rosario*, 563 SCRA at 246.

820. *Id.* at 252-53.

jurisdiction of the RTC Special Commercial Courts, or other justiciable controversies within the general jurisdiction of the regular RTCs, in relation to the SEC's affirmed primary jurisdiction to exercise its regulatory powers under Sections 3 and 6 of P.D. No. 902-A, those in the Corporation Code, and those affirmed in the SRC.

a. Questioning the Proper Registration of a Corporation

A post-SRC example of the applicability of the *doctrine of prior resort* in corporate law, is the 2002 decision in *G & S Transport Corporation v. Court of Appeals*,[821] where an action was filed with the regular courts to rescind the bidding process conducted by the Manila International Airport Authority for coupon taxi services at the Ninoy Aquino International Airport, alleging that the winning bidder falsified its articles of incorporation with the SEC.[822] In his *ponencia*, Justice Bellosillo, alluding to the *doctrine of primary jurisdiction* but using *doctrine of exhaustion of administrative remedies* language, ruled that the court action "is premature and consequently fails to state a cause of action,"[823] thus —

> It goes without saying that the action [ ] is premature and consequently fails to state a cause of action. The allegations of the complaint therein focused on the irregularity in the process of obtaining corporate personality, that is, the alleged falsification of the [Articles of Incorporation] of 2000 [Transport Corporation], and the misdeed in securing a certificate of public convenience for operating taxi services when 2000 [Transport Corporation] was allegedly a dummy corporation for two [ ] Korean nationals. Clearly, in the absence of any finding of irregularity from the appropriate government agencies tasked to deal with these concerns, which at all the times relevant to the civil case would be the [SEC] [Section 6 (1), P.D. No. 902-A] and the Land Transportation Franchising and Regulatory Board, courts must defer to the presumption that these agencies had performed their functions regularly. The ultimate facts upon which depends the complaint [ ] would be matters which fall within the technical competence of government agencies over which courts could not prematurely rule upon and enter relief as prayed for in the complaint[.][824]

The aforequoted portions of the *G & S Transport Corporation* decision applied the *doctrine of judicial non-interference* on the aspect that holds that regular courts of law are mandated to uphold in their decisions the acts, orders, or decisions of administrative agencies in the performance of their regulatory functions.

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821. G & S Transport Corporation v. Court of Appeals, 382 SCRA 262 (2002).

822. *Id.* at 269.

823. *Id.* at 281.

824. *Id.*

b. Seeking the Remedy of Revocation of the Registration of the Corporation (i.e., Revocation of Primary Franchise)

The 2003 decision in *Gala v. Ellice Agro-Industrial Corporation*,[825] demonstrates how the doctrine of judicial non-interference has been invoked by the Supreme Court to prevent court of law from granting reliefs that fall within the jurisdiction of the regular courts.

In the case, spouses Manuel and Alicia Gala had organized two family corporations (Ellice and Margo) and distributed the shareholdings thereof with their children as part of their estate planning, since the corporations became registered owners of the spouses' large parcels of land.[826] Before Manuel Gala's death, he was able to distribute over a period his shareholdings to the other members of the family.[827] Year later, rivalry over the management of the company and the disposition and custody of corporate properties resulted in a majority group taking control of the Board and Management and sought rescission of the disposition by Alicia Gala of several properties of the family corporations.[828] Eventually, the majority group filed with the SEC an intra-corporate case seeking from the Alicia Gala group accounting of corporate affairs and inspection of company records.[829] The Alicia Gala group in turn filed their own case with the SEC against the majority group to nullify the election as directors and officers, and the return of properties to the corporation allegedly held by the majority stockholders.[830] In a joint resolution of both cases, the SEC *en banc* ruled essentially against the Alicia Gala group and directing them monetary obligations to both corporations for corporate properties which were disposed for their personal benefits.[831]

Despite serious allegations of corporate misdemeanor by the Alicia Gala group in their appeal, the Court of Appeals affirmed the decision of the SEC.[832] In their petition for *certiorari* for review, the Alicia Gala group sought a ruling from the Supreme Court to effectively set aside the corporate personalities of the two family corporations to sustain the theory that the corporate properties were actually conjugal properties of Manuel and Alicia Gala.[833]

825. Gala v. Ellice Agro-Industrial Corporation, 418 SCRA 431 (2003).

826. *Id.* at 436.

827. *Id.* at 436–37.

828. *Id.* at 438–39.

829. *Id.*

830. *Id.* at 439–40.

831. *Gala*, 418 SCRA at 440.

832. *Id.* at 435–36.

833. *Id.* at 441.

In the *ponencia* of Justice Ynares-Santiago, she invoked under the aegis of the SRC the *doctrine of primary jurisdiction* in its various species-applications.

First, on petitioners' contention that the purposes for which Ellice and Margo were organized should be declared illegal and contrary to public policy, in that the spouses Gala merely used the corporations as tools to circumvent land reform laws and to avoid estate taxes,[834] the Supreme Court applied the principles the doctrine of judicial non-interference in the same manner as it is applied under the doctrine of prior resort, when it held —

> At the outset, the Court holds that petitioners' contentions impugning the legality of the purposes for which Ellice and Margo were organized, amount to collateral attacks which are prohibited in this jurisdiction.
>
> ...
>
> In the case at bar, a perusal of the Articles of Incorporation of Ellice and Margo shows no sign of the allegedly illegal purposes that petitioners are complaining of. *It is well to note that, if a corporation's purpose, as stated in the Articles of Incorporation, is lawful, then the SEC has no authority to inquire whether the corporation has purposes other than those stated, and mandamus will lie* to compel it to issue the certificate of incorporation.
>
> *Assuming there was even a grain of truth to the petitioners' claims regarding the legality of what are alleged to be the corporations' true purposes, we are still precluded from granting them relief. We cannot address here their concerns regarding circumvention of land reform laws, for the doctrine of primary jurisdiction precludes a court from arrogating unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.* Since primary jurisdiction over any violation of Section 13 of [R.A.] No. 3844 that may have been committed is vested in the [DARAB], then it is with said administrative agency that the petitioners must first plead their case.[835]

Second, on the petitioners' contention that the corporations were operated not in compliance with corporate formalities, the Supreme Court applied the doctrine of judicial non-interference in the same manner as it is applied under the doctrine of exhaustion of administrative remedies, when it held —

> The petitioners' allegation that Ellice and Margo were run without any of the typical corporate formalities, even if true, would not merit the grant of any of the relief set forth in their prayer. We cannot disregard the corporate entities of Ellice and Margo on this ground. *At most, such allegations, if proven to be true, should be addressed in an administrative case before the SEC.*[836]

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834. *Id.*

835. *Id.* at 442-43 (emphasis supplied).

836. *Id.* at 443 (emphasis supplied).

In essentially ruling that courts of law, and even the Supreme Court itself, cannot arrogate unto themselves the exercise of processes which are essentially within the regulatory powers of the SEC, the decision cites Section 144 of the Corporation Code, Section 6 (i) of P.D. No. 902-A, and Sections 5 (d) and (f) of the SRC. Clearly, therefore, under the aegis of the SRC, *Gala* acknowledges the continued application of the doctrine of judicial non-interference with respect to SEC's purely regulatory powers.

c. Registration and Monitoring of the Stock and Transfer Book

The 2008 decision in *Provident International Resources Corporation* demonstrates, albeit in oblique language, recognition by Supreme Court that the SEC continues to retain a limited aspect of quasi-judicial powers under the banner of administrative adjudicatory powers under Section 3 of P.D. No. 902-A.[837]

In that case, the corporation Provident International Resources Corporation (PIRC) was registered with the SEC by the Marcelo group, as its incorporators, stockholders, and original directors.[838] Subsequently, the Asistio group came to the scene and alleged that the Marcelo group acted merely as their nominees, and alleged before the SEC that

> [t]he Marcelo group ... executed a waiver of pre-emptive right, blank deeds of assignment, and blank deeds of transfer; endorsed in blank their respective stock certificates over all of the outstanding capital stock registered in their names; and completed the blank deeds in 2002 to effect transfers to the Asistio group.[839]

The background facts in *Provident International Resources Corporation* indicate that in April 1998, SEC's Supervision and Monitoring Department issued a show cause letter to PIRC for its supposed failure to register its STB; that on 06 August 2002, SEC's the Company Registration and Monitoring Department (CRMD) issued a certification stating that verification made on the available records of PIRC showed failure to register its STB; that on 07 August 2002, the Asistio group registered PIRC's STB; that subsequently, upon a formal request of PIRC's assistant corporate secretary from the SEC, he was able to present the 1979-registered STB bearing the SEC-stamp and the signature of the officer-in-charge of book registration.[840]

In October 2002, the Asistio group filed in the RTC a complaint against the Marcelo group, seeking the trial court to enjoin the Marcelo group from

837. *Provident International Resources Corporation*, 554 SCRA at 542.

838. *Id.*

839. *Id.*

840. *Id.* at 542-43.

acting as directors of PIRC, from physically holding office at PIRC's office, and from taking custody of PIRC's corporate records.[841] Then, on 30 October 2002, the SEC CRMD issued a letter recalling the certification it had issued on 06 August 2002 and canceling the Asistio-registered STB.[842] A hearing was held by the SEC with both groups, and in February 2003, the hearing officer ruled the authenticity of the 1979 STB and affirming the recall of the certification it issued for the Asistio-STB.[843] The Asistio group appealed to the SEC Board of Commissioners claiming that the issue of which of the two STBs are valid is intra-corporate in nature, and it was the RTC, not the SEC, that had proper jurisdiction.[844]

In its assailed order, the SEC denied the appeal, ratiocinating that the determination of which of the STBs are valid calls for regulatory, not judicial, power and is therefore within its exclusive jurisdiction.[845] The Asistio group elevated the case to the Court of Appeals, who reversed the SEC ruling, holding that the issue is intra-corporate and thus subject to the jurisdiction of the RTC; and which prompted the Marcelo group to bring the matter up to the Supreme Court on a petition for *certiorari*.[846]

In their petition, the Marcelo group contend that the issue was not an intra-corporate dispute, but one that calls for the exercise of the SEC's regulatory power over corporations.[847] Petitioners maintain that the recall and cancellation of the 2002-registered STB does not conflict with the proceedings in the civil case so as to violate the *sub judice* rule.[848] The Asistio group counter that in resolving the question of which of the two STBs are valid, the issues of falsification by corporate officers of corporate records and the acquisition of shares by the Asistio group, must first be settled — matters which are inherently intra-corporate and that whether the 2002-registered STB should be recalled is a mere consequence of the real controversies that should be heard by the RTC.[849]

To resolve the issue of jurisdiction, the Supreme Court enumerated the powers of the SEC found in Section 5 of the SRC, and ruled —

> From the above, it can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly

841. *Id.* at 543.

842. *Id.*

843. *Provident International Resources Corporation*, 554 SCRA at 543.

844. *Id.*

845. *Id.* at 543-44.

846. *Id.* at 544.

847. *Id.*

848. *Id.*

849. *Provident International Resources Corporation*, 554 SCRA at 545.

> all of a corporation's concerns. This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships[,] and associations ... ; compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the [SRC], as well as implementing rules and directives of the SEC, such as may be warranted.[850]

The *ponencia* of former Associate Justice Leonardo A. Quisumbing, then invoked the administrative adjudicatory powers of the SEC to rule that it had proper jurisdiction, and not the RTC, to rule on the authenticity of PIRC's STB, thus —

> Considering that the SEC, after due notice and hearing, has the regulatory power to revoke the corporate franchise — from which a corporation owes its legal existence — the SEC must likewise have the lesser power of merely recalling and canceling a STB that was erroneously registered.
>
> Going to the particular facts of the instant case, we find that the SEC has the primary competence and means to determine and verify whether the subject 1979 STB presented by the incumbent assistant corporate secretary was indeed authentic, and duly registered by the SEC as early as September 1979. As the administrative agency responsible for the registration and monitoring of STBs, it is the body cognizant of the STB registration procedures, and in possession of the pertinent files, records[,] and specimen signatures of authorized officers relating to the registration of STBs. The evaluation of whether a STB was authorized by the SEC primarily requires an examination of the STB itself and the SEC files. This function necessarily belongs to the SEC as part of its regulatory jurisdiction. Contrary to the allegations of respondents, the issues involved in this case can be resolved without going into the intra-corporate controversies brought up by respondents.
>
> As the regulatory body, it is the SEC's duty to ensure that there is only one set of STB for each corporation. The determination of whether or not the 1979-registered STB is valid and of whether to cancel and revoke the [6 August] 2002 certification and the registration of the 2002 STB on the ground that there already is an existing STB is impliedly and necessarily within the regulatory jurisdiction of the SEC.[851]

In *Provident International Resources Corporation*, therefore, the Supreme Court began to delineate post-SRC from the quasi-judicial powers of the SEC under Section 5 of P.D. No. 902-A, from those which are inherently in the exercise of its *regulatory adjudicative functions* under Sections 3 and 6 of P.D. No. 902-A. The aforequoted portion of the *Provident International*

850. *Id.* at 546.

851. *Id.* at 547.

Resources Corporation decision indicates clearly that the doctrine of judicial non-interference was being applied to resolve the issues raised.

d. RTC Powers Under Section 6, Versus SEC Powers Under Sections 3 and 6, of P.D. No. 902-A

An important issue that had to be resolved with the passage of the SRC was how much had the provisions of Section 6 of P.D. No. 902-A that expand the powers of RTC Special Commercial Courts over corporate cases under Section 5 impinged over the "absolute jurisdiction, supervision[,] and control" power of the SEC under Section 3 of the decree.

To properly elucidate on this issue, recall the pre-SRC decision in *A & A Continental Commodities Philippines, Inc. v. Securities and Exchange Commission* (*A & A Continental*),[852] where the issue presented before the Supreme Court was whether the SEC had jurisdiction to hear and decide on a complaint that sought to recover from the corporation sums of money constituting losses sustained by the plaintiff from commodities contracts entered into with the company engaged in commodities brokerage business.[853] In addition, the complaint sought the revocation of the certificate of registration of the company with the SEC for alleged fraudulent dealings.[854]

In *A & A Continental*, apart from affirming the doctrine that the allegations of ultimate facts constituting fraud in the complaint is sufficient to vest jurisdiction with the SEC under Section 5 (a) of P.D. No. 902-A, the Supreme Court held that the SEC also had proper jurisdiction to rule on the relief seeking the revocation of the certificate of registration of the company, thus —

> On the action to revoke the certificate of registration of petitioner, there is no doubt that the SEC has jurisdiction over the same. Section 6 (i) of [P.D.] No. 902-A clearly provides that the SEC shall possess the power to suspend or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships[,] or associations.[855]

If the complaint in *A & A Continental* were to be filed today with the RTC Special Commercial Courts, while undoubtedly the trial court would have proper jurisdiction to hear and decide on the recovery of sums of money against the company, would it have power to grant the prayer for suspension or revocation of its certificate of registration pursuant to its power

852. A & A Continental Commodities Philippines, Inc. v. Securities and Exchange Commission, 225 SCRA 341 (1993).

853. *Id.* at 343.

854. *Id.*

855. *Id.* at 344.

under Section 6 (i) of P.D. No. 902-A? The most reasonable answer to that would be in the negative, for the power of control and supervision over corporations organized under the Corporation Code, including the power to suspend or revoke their franchise remains within the regulatory powers of the SEC, under Section 3 and 6 (l) of P.D. No. 902-A *as confirmed under Subsection 5.1 (m) of the SRC*, apart from the fact that such power has always been an original power granted to the SEC under Section 121 of the Corporation Code covering involuntary dissolution of corporations.

The Supreme Court's decision in *Bernardo, Sr. v. Court of Appeals*[856] should also be reexamined. There, the Court had the occasion to discuss the inherent connection between corporate fraud cases under Section 5 (a), in relations to the "absolute jurisdiction, supervision[,] and control" power of the SEC under Section 3 of P.D. No. 902-A, and the ancillary power of the SEC to authorize the establishment of commodity exchanges under Section 6 (g) of P.D. No. 902-A. In *Bernardo, Sr.*, a complaint was filed with the regular RTC to recover from a corporation, authorized by the SEC to engage in future commodity trading, the losses sustained by the complainant alleged arising through insidious deception and misrepresentation employed upon them so that complainant will engage in commodity futures trading. In sustaining that the matter fell within the SEC's original and exclusive jurisdiction under Section 5 (a) of P.D. No. 902-A, the Supreme Court held —

> In light of the foregoing, we find no difficulty in ruling that the subject matter of petitioner's amended complaint or their causes of action therein fell squarely within the exclusive jurisdiction of the [SEC] for, in the first place, it involved, at bottom, the supervisory powers of the SEC over the conduct of the business of commodity futures. *Section 3 of P.D. No. 902-A expressly provides that the Commission 'shall have absolute jurisdiction, supervision[,] and control over all corporations, ...* [which] are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines,' *and paragraph (g) of Section 6 thereof vests upon the SEC the power to authorize the establishment and operation of inter alia, commodity exchanges.* Furthermore, under Section 7 of P.D. No. 178 (Revised Securities Act), the SEC is authorized to promulgate, subject to the approval of the Monetary Board, rules and regulations for the registration and regulation of commodity futures contracts and licensing of futures commission merchants, futures brokers, floor brokers[,] and pool operators. Pursuant thereto and to Section 3 of P.D. No. 902-A, as amended, the SEC promulgated on 15 December 1987 the Revised Rules and Regulations on Commodity Futures Trading.[857]

If the complaint in *Bernardo, Sr.* were filed today with the RTC Special Commercial Courts, with the additional prayer that the authority of the

856. Bernardo, Sr. v. Court of Appeals, 263 SCRA 660 (1996).

857. *Id.* at 674 (emphasis supplied).

corporation to engage in commodity future trading be terminated, would the trial court have the right to effect such termination of an SEC-granted authority, on the ground that the power under Section 6 (g) of P.D. No. 902-A had been transferred to the RTC Special Commercial Courts? Such an outlandish legal proposition is belied by the fact that the SEC's regulatory power under Section 6 (j) over exchanges has been affirmed to continue to be possessed by SEC under Subsection 5.1 (e) of the SRC to "[s]upervise, monitor, suspend[,] or take over the activities of exchanges, clearing agencies[,] and another SROs," as well as under Section 11, where the power to regulate commodity futures trading is expressly retained with the SEC.[858]

The foregoing discussions emphasizes that only such powers granted under Section 6 are deemed to have been assumed by RTC Special Commercial Courts only to the extent of exercising full jurisdiction over the corporate cases falling under Section 5, of P.D. No. 902-A; but that the regulatory powers of the SEC, including the regulatory adjudicatory functions under Section 3 and 6 of P.D. No. 902-A, remain intact with such administrative agency.

More importantly, if the *A & A International* and the *Bernardo, Sr.* cases were to be resolved by the Supreme Court post-SRC passage, the proper application of the various aspects of the doctrine of primary jurisdiction would result in judgment that will respect the primary jurisdiction of the SEC to resolve the regulatory aspects of controversies involving private corporations on matters that are being litigated within the original and exclusive jurisdiction of RTC Special Commercial Courts for corporate cases covered under Section 5 of P.D. No. 902-A.

4. Binding Effect of SEC's Ruling and Prior Action on the Courts of Law

An example where the doctrine of binding effect upon the courts of administrative rulings and findings was properly applied in post-SRC decision in *Vesagas*,[859] where in order to resolve the merits of the controversies, it had to be decided whether the allegation that the sports club was duly incorporated and registered with the SEC had to be resolved. In that decision, the Supreme Court held that

> [i]t ought to be remembered that the question of whether the club was indeed registered and issued a certification or not is one which necessitates a factual inquiry. On this score, the finding of the [SEC], as the administrative agency tasked with[,] among others[,] the function of registering and administering corporations, is given great weight and

858. *Id. See also* Tolentino v. Court of Appeals, 280 SCRA 226 (1997).

859. *Vesagas*, 371 SCRA at 508.

> accorded high respect. We therefore have no reason to disturb this factual finding relating to the club's registration and incorporation.[860]

Another example, would be the decision in *Inglesia Evangelica Metodista En Las Islas Filipinas (IEMELIF) (Corporation Sole), Inc. v. Lazaro* (*Lazaro*),[861] which applied the doctrine of binding effect of the SEC's rulings and findings upon the court, which really is an aspect of the doctrine of judicial non-interference. In *Lazaro*, the Supreme Court affirmed the decision of the Court of Appeals which held as lawful the conversion of a sole corporation into a religious aggregate corporation without need of dissolution and by simply amending its articles of incorporation, based on the finding that the appellate court's decision relied among others on the fact that the SEC had ruled on the legality of such a mode, holding —

> Besides, as the [Court of Appeals] noted, the IEMELIF worked out the amendment of its articles of incorporation upon the initiative and advice of the SEC. The latter's interpretation and application of the Corporation Code is entitled to respect and recognition, barring any divergence from applicable laws. Considering its experience and specialized capabilities in the area of corporation law, the SEC's prior action on the IEMELIF issue should be accorded great weight."[862]

5. In Corporate Rehabilitation Proceedings

Prior to the passage of the SRC, *Nestlé Philippines, Inc. v. Uniwide Sales, Inc.*,[863] demonstrated a proper application of the doctrine of exclusive administrative jurisdiction in the corporate rehabilitation proceedings.

In *Nestlé Philippines, Inc.*, the issue before the Supreme Court was whether the Court of Appeals could be compelled to terminate the rehabilitation plan approved by the SEC and terminate the rehabilitation proceedings on the ground that supervening facts has arisen showing that the corporate debtor can no longer be rehabilitated under the terms of the approved rehabilitation plan.[864] In denying the petition, the Supreme Court relied on the application of the doctrine of primary administrative jurisdiction, holding that

> It is not for this Court to intrude, at this stage of the rehabilitation proceedings, into the primary administrative jurisdiction of the SEC on a matter requiring its technical expertise. Pending a decision of the SEC on SEC *En Banc* Case No. 12-09-183 and SEC *En Banc* Case No. 01-10-193,

860. *Id.* at 514.

861. Inglesia Evangelica Metodista En Las Islas Filipinas (IEMELIF) (Corporation Sole), Inc. v. Lazaro, 624 SCRA 224 (2010).

862. *Id.* at 233-34.

863. Nestle Philippines, Inc. v. Uniwide Sales, Inc., 634 SCRA 232 (2010).

864. *Id.* at 236.

> which both seek to resolve the issue of whether the rehabilitation proceedings in this case should be terminated, we are constrained to dismiss this petition for prematurity.
>
> In light of supervening events that have emerged from the time the SEC approved the [Second Amendment to the Rehabilitation Plan (SARP)] on 23 December 2002 and from the time the present petition was filed on 3 November 2006, any determination by this Court as to whether the SARP should be revoked and the rehabilitation proceedings terminated, would be premature.
>
> Undeniably, supervening events have substantially changed the factual backdrop of this case. The Court thus defers to the competence and expertise of the SEC to determine whether, given the supervening events in this case, the SARP is no longer capable of implementation and whether the rehabilitation case should be terminated as a consequence.
>
> Under the doctrine of primary administrative jurisdiction, courts will not determine a controversy where the issues for resolution demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact.
>
> In other words, if a case is such that its determination requires the expertise, specialized training, and knowledge of an administrative body, relief must first be obtained in an administrative proceeding before resort to the court is had even if the matter may well be within the latter's proper jurisdiction.
>
> The objective of the doctrine of primary jurisdiction is to guide the court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court.[865]

What was involved in *Nestlé Philippines, Inc.* was the exercise by the Court of Appeals, and subsequently the Supreme Court, of the power of judicial review based on an alleged abuse of authority on the part of the SEC, and therefore the proper doctrine that was applied was in fact the doctrine of judicial non-interference of administrative processes in the same sense as the doctrine of exhaustion of administrative remedies. Under the post-SRC stage, the doctrine of primary jurisdiction can no longer be invoked being all matters pertaining to corporate rehabilitation now are within the original and exclusive jurisdiction of the RTC Special Commercial Courts, including the effect of dissolution of the corporate debtor, as a consequence of the final determination that it cannot be successfully rehabilitated.

865. *Id.* at 239-40.

D. Appellate Processes from Orders, Rulings, and Decisions of the SEC

The last two paragraphs of Section 6 of P.D. No. 902-A, provide for remedies of appeal and review of decisions, rulings, or orders of the SEC, thus —

> Section 6.
>
> ...
>
> In the exercise of the foregoing authority and jurisdiction of the [SEC], hearings shall be conducted by the [SEC] or by a Commissioner or by such other bodies, boards, committees[,] and/or any officers as may be created or designated by the [SEC] for the purpose. The decision, ruling[,] or order of such Commissioner, bodies, boards, committees and/or officer may be appealed to the [SEC] sitting *en banc* within [30] days after receipt by the appellant of notice of such decision, ruling[,] or order. The [SEC] shall promulgate rules or procedures to govern the proceedings, hearings[,] and appeals of cases falling within its jurisdiction.
>
> The aggrieved party may appeal the order, decision[,] or ruling of the [SEC] sitting *en banc* to the Supreme Court by petition for review in accordance with the pertinent provisions of the Rules of Court.[866]

The last paragraph of Section 6 was amended by the Judiciary Reorganization Act of 1980,[867] providing that decisions of the SEC are appealable to the Court of Appeals, instead of the Supreme Court.

1. Section 6 of P.D. No. 902-A Remains Jurisdictional Provision In Seeking Relief from SEC Orders, Rulings, and Decisions

The aforequoted paragraphs of Section 6 remain important statutory bases for determining the proper appellate process that may be pursued by an aggrieved party from orders, rulings, or decisions of the SEC, whether in the exercise of its remaining quasi-judicial powers, as well as the exercise of its regulatory adjudicative powers, and relevant in resolving issues of judicial review of SEC orders, rulings, and decision based on the following considerations: (1) that Section 6 remains unrepealed under the SRC; (2) that the Supreme Court recognized in *Fabia*, that the SEC has not been divested of its powers under Section 6; and (3) finally, that Section 6 remains relevant to the exercise by SEC of its *regulatory adjudicative functions*.

2. Section 6 Provides an Administrative Remedy for Parties Who Feel Aggrieved by the Orders, Rulings, or Decisions of the SEC

866. P.D. No. 902-A, § 6.

867. An Act Reorganizing the Judiciary, Appropriating Funds Therefor, and for Other Purposes [The Judiciary Reorganization Act of 1980], Batas Pambansa Bilang 129, § 9 (3).

The directive under the penultimate paragraph of Section 6 that the "decision, ruling[,] or order of such Commissioner, bodies, boards, committees[,] and/or officer may be appealed to the [SEC] sitting *en banc* within [30] days after receipt by the appellant of notice of such decision, ruling[,] or order," has been ruled by the Supreme Court in the 2006 decision in *Hong Kong & Shanghai Banking Corporation, Ltd. v. G.G. Sportswear Manufacturing Corporation*[868] to constitute an administrative remedy within the SEC, for the proper application of the doctrine of exhaustion of administrative remedies, thus —

> The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule on exhaustion of administrative remedies is that the courts must allow the administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence.
>
> ...
>
> 'In this case, petitioner was actually not without remedy to correct what it perceived and supposed was an erroneous assumption of jurisdiction by the SEC, without having recourse immediately to the Court of Appeals. *Under Section 6 (m) of P.D. No. 902-A, it has been expressly provided that 'the decision, ruling*[,] *or order of any such Commissioner, bodies, boards, committees and/or officer may be appealed to the Commission sitting en banc within [30] days after receipt by the appellant of notice of such decision, ruling*[,] *or order.*' Such procedure being available, could have been resorted to by petitioner which, however, it chose to forego. Furthermore, by taking up the matter with the SEC, it could still have obtained an injunction which it similarly sought from the appellate court via its petition for *certiorari* because the said body has been empowered by Section 6 (a) of P.D. No. 902-A '*to issue preliminary or permanent injunctions, whether prohibitory or mandatory, in all cases in which it has jurisdiction.*'[869]

3. Legal Short-Circuiting of Appellate Process from the Decisions of RTC Special Commercial Courts

It should be noted, that Section 70 of the SRC now provides for the manner of judicial review of orders of the SEC, thus — "Sec. 70. *Judicial Review of Commission Orders.* – Any person aggrieved by an order of the [SEC] may appeal the order to the Court of Appeals by petition for review in accordance with the pertinent provisions of the Rules of Court."

It is reasonable to conclude that Section 70 of the SRC, which has modified the appellate process contained in Section 6 of P.D. No. 902-A,

868. Hong Kong & Shanghai Banking Corporation, Ltd. v. G.G. Sportswear Manufacturing Corporation, 489 SCRA 578 (2006).

869. *Id.* at 587 (emphasis supplied) (citing *Union Bank of the Philippines*, 290 SCRA at 198).

and its existence in the SRC, in the light of Subsection 5.2 which transferred original and exclusive jurisdiction over corporate cases under Section 5 of P.D. No. 902-A to the RTC Special Commercial Courts, has the following significant legal consequences.

First, Section 70 is a recognition that the SEC retains certain quasi-judicial functions, at the very least in the form of its *regulatory adjudicative functions* under Sections 3 and 6 of P.D. No. 902-A, the Corporation Code, and those provided for under the SRC itself; and

Second, the "orders" of the SEC that are subject of the appellate process under Section 70 of the SRC, are those which emanate from resolutions, rulings, or decisions of the SEC *en banc*.

In fact, the Supreme Court, in *Timeshares Realty Corporation v. Lao*,[870] after noting that an "an appeal from such judgment, not being a natural right but a mere statutory privilege, must be perfected according to the mode and within the period prescribed by the law and the rules; otherwise, the appeal is forever barred, and the judgment becomes binding,"[871] held that Section 70 of the SRC is the law which governs a petitioner's appeal from the orders of the SEC *en banc*, and it prescribes that such appeal be taken to the Court of Appeals by a petition for review in accordance with the pertinent provisions Rule 43 of the Rules of Court.

The appellate procedure provided for Rule 43 of the Rules of Court provides that it is a remedy of appeal by petition for review from the orders, rulings, or decisions of administrative agencies in the exercise of their "quasi-judicial functions," thus —

> Section 1. *Scope.* This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and *from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions.* Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, [SEC] ... .
>
> ...
>
> [Section] 3. *Where to appeal. An appeal under this Rule may be taken to the Court of Appeals* within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law.[872]

Third, in the exercise of its *remaining quasi-judicial powers*, the SEC stands as a co-equal to the RTCs and therefore not subject to control by the latter through any of their judicial processes.

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870. Timeshares Realty Corporation v. Lao, 544 SCRA 254 (2008).

871. *Id.* at 260.

872. RULES OF CIVIL PROCEDURE, rule 43, §§ 1 & 3 (emphasis supplied).

In the case of *Presidential Anti-Dollar Salting Task Force*, the Supreme Court laid down doctrine thus — "[a]s a rule, where legislation provides for an appeal from decisions of certain administrative bodies to the Court of Appeals, it means that such bodies are co-equal with the [RTCs], in terms of rank and stature, and logically, beyond the control of the latter."[873]

Fourth, the appellate processes under Section 70 of the SRC may be operated to provide a situation of a co-opting of the decisions of the RTC Special Commercial Courts in corporate cases covered under Section 5 of P.D. No. 902-A.

In recognition of the application of either the doctrine of judicial non-interference which would allow the SEC to exercise its regulatory adjudicative functions over corporate issues that may fall within justiciable controversies that are covered by corporate cases under Section 5 of P.D. No. 902-A, or the doctrine of prior resort which would see the RTC Special Commercial Courts referring to the SEC an aspect that falls within its regulatory powers, it is possible for the administrative order or ruling of the SEC to end-up being reviewed through the appellate process route under Section 70, and completely by-passing the original and exclusive jurisdiction of the RTC Special Commercial Courts under Section 5 of P.D. No. 902-A.

Such a scenario has been vetted by the Supreme Court in its 2003-decision in *Go v. Office of the Ombudsman*,[874] which although in the field of Insurance Law, nevertheless provides a good comparison case, since both Insurance Code and Corporation Code belong in the same specialized field of commercial "transactions and concept" as differentiated from other specialized fields that go into technology (telecommunications), science, energy, and natural resources (e.g., coal mining, public utilities, among others).

In *Go*, the review of the Supreme Court stemmed from the Ombudsman's resolution dismissing the charges against the Insurance Commissioner for alleged corrupt practices in proceeding with the administrative case brought before the Insurance Commission (IC) to cancel the certificates of registration of several insurance companies which refused to pay insurance claims, when in fact there was already a civil case pending before the regular courts to recover on the same insurance policies.[875] The primary issue raised was, "[c]an an administrative case pending before an administrative tribunal be pursued unabated and independently despite

873. *Presidential Anti-Dollar Salting Task Force*, 171 SCRA at 360.

874. Go v. Office of the Ombudsman, 413 SCRA 608 (2003).

875. *Id.* at 610-15.

subsequent filing of a civil case in a regular court of justice wherein in both cases, it involve the same parties and relatively involve the same incident?"[876]

Go recognized that under the Insurance Code, the IC is vested with regulatory powers and adjudicatory authority, thus —

> Under its *adjudicatory authority*, the [IC] has the original jurisdiction to adjudicate and settle insurance claims and complaints where the amount being claimed does not exceed in any single claim one hundred thousand pesos, as provided in Section 416 of the Code ... concurrent with that of the Metropolitan Trial Courts, the Municipal Trial Courts and the Municipal Circuit Trial Courts. In addition to such adjudicatory power, the Commissioner has the *regulatory authority* to revoke or suspend the certificate or authority of an insurance company upon finding the legal grounds for such revocation or suspension under Sections 241 and 247 of the Insurance Code.[877]

The Supreme Court in *Go* held that the filing of actions in the regular courts to recover on fire insurance claims (the amounts being beyond the adjudicatory jurisdiction of the IC), was different from the administrative case filed with the IC itself which "called upon to determine whether there was unreasonable delay or withholding of the claims, as petitioner's action is one for the Revocation and/or Suspension of Licenses,"[878] and stressed that

> [t]he jurisdiction of the [IC] in this case is one that calls for the exercise of its regulatory *or non-quasi-judicial duty*, [i.e.,] the authority to revoke or suspend an insurer's certificate of authority. Aside from the revocation/suspension of license, the [IC] also has the discretion to impose upon the erring insurance companies and its directors, officers and agents, fines and penalties as set out in Section 415 [of the Insurance Code].[879]

Unfortunately, the doctrine of primary jurisdiction was neither invoked nor directly discussed in *Go*, but the issue to be resolved essentially required the determination of the applicability of the doctrine. Thus, on the issue of whether the determination of the IC in the administrative proceedings would unduly prejudice the claims of the petitioner in the civil action, the Court held —

> The findings of the trial court will not necessarily foreclose the administrative case before the [IC], or vice versa. True, the parties are the same, and both actions are predicated on the same set of facts, and will require identical evidence. But the issues to be resolved, the quantum of evidence, the procedure to be followed[,] and the reliefs to be adjudged by these two bodies are different.

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876. *Id.* at 613 (emphasis omitted).

877. *Id.* at 621–22.

878. *Id.* at 622.

879. *Id.* at 622–23 (emphasis supplied).

> Petitioner's causes of action in Civil Case No. Q-95-23135 are predicated on the insurer's refusal to pay her fire insurance claims despite notice, proofs of losses[,] and other supporting documents. ... The matter of whether or not there is unreasonable delay or denial of the claims is merely an incident to be resolved by the trial court, necessary to ascertain petitioner's right to claim damages, as prescribed by Section 244 of the Insurance Code.
>
> On the other hand, the core, if not the sole bone of contention in Adm[in]. Case No. RD-156, is the issue of whether or not there was unreasonable delay or denial of the claims of petitioner, and if in the affirmative, whether or not that would justify the suspension or revocation of the insurer's licenses.
>
> Moreover, in Civil Case No. Q-95-23135, petitioner must establish her case by a *preponderance of evidence*, or simply put, such evidence that is greater weight, or more convincing than that which is offered in opposition to it. In Adm[in]. Case No. RD-156, the degree of proof required of petitioner to establish her claim is *substantial evidence*, that a reasonable mind might accept as adequate to justify the conclusion.
>
> In addition, the procedure to be followed by the trial court is governed by the Rules of Court, while the Commission has its own set of rules and it is not bound by the rigidities of technical rules of procedure. These two bodies conduct independent means of ascertaining the ultimate facts of their respective cases that will served as basis for their respective decisions.[880]

A review of the Supreme Court's reasoning in *Go* aforequoted stresses precisely the difference in the functions being performed by the regular courts and an administrative agency on the same area in administrative law, and the issue is not concurrent jurisdiction, but precisely the application of the doctrine of primary jurisdiction — that when the issue to be resolved in the court proceedings lies primarily within the competence of the administrative agency vested with authority over the matter, and to allow a uniformity of rulings coming from one forum (i.e., the administrative agency tasked with supervision and control on the matter), it would be appropriate for the regular court to suspend its proceedings to allow the administrative agency, the IC in this case, to decide on the issue of the merit of the insurance claims. Instead, the Court in *Go* held that —

> If, for example, the trial court finds that there was no unreasonable delay or denial of her claims, it does not automatically mean that there was in fact no such unreasonable delay or denial that would justify the revocation or suspension of the licenses of the concerned insurance companies. It only means that petitioner failed to prove by preponderance of evidence that she is entitled to damages. Such finding would not restrain the [IC], in the exercise of its regulatory power, from making its own finding of

880. *Go*, 413 SCRA at 623-24.

> unreasonable delay or denial as long as it is supported by substantial evidence.
>
> ...
>
> While the possibility that these two bodies will come up with conflicting resolutions on the same issue is not far-fetched, the finding or conclusion of one would not necessarily be binding on the other given the difference in the issues involved, the quantum of evidence required and the procedure to be followed.[881]

Unfortunatey, such reasoning in *Go* flies in the face of the very rationale enunciated by the Supreme Court itself on the doctrine of primary jurisdiction.

But taking our cue from *Go*, it means that purely administrative controversies may be pursued independently of any civil proceedings with the RTC, although they may involve the same parties, and same issues and arise from the same transactions; but the resolution of the key corporate issues before the Court of Appeals or the Supreme Court would then constitute as binding rulings upon the parties which would adversely affect or undermine the decisions and rulings before the RTC, especially if contrary to the findings and determination of the SEC.

V. CONCLUSIONS AND RECOMMENDATIONS

From all the foregoing discussions, the Authors draw the following conclusions, and proffer the following recommendations:

A. The SEC, as the Agency Having "Jurisdiction, Supervision, and Control" over Private Corporations, Retains all its Administrative Adjudicatory Powers

The original intention under P.D. No. 902-A and the various amendments thereto was to encompass within the SEC all the regulatory, quasi-legislative, and quasi-judicial powers and mandates relating to corporations, partnerships, and association organized and registered under the Corporation Code. In particular, there was recognition of the distinction between the SEC's administrative regulatory powers from those of essentially quasi-judicial powers over corporate cases under Section 5 of P.D. No. 902-A.

The passage of the SRC had the effect, under Subsection 5.2 thereof, of transferring the original and exclusive jurisdiction of the SEC over Section 5 corporate cases under P.D. No. 902-A to the RTC Special Commercial Courts, but clearly with no intention of empowering such courts of general jurisdiction of taking over the regulatory powers of the SEC; and that in fact the SRC, under Subsection 5.1 thereof, affirms the continued possession by the SEC of all its powers and mandate to exercise all its administrative

881. *Id.* at 625.

regulatory powers under Sections 3 and 6 of P.D. No. 902-A, the Corporation Code, and under the SRC itself.

Finally, Section 70 of the SRC, as it directs that all orders and decisions of the SEC may be appealed to the Court of Appeals in accordance with Section 43 of the Rules of Court, not only confirms the legal reality that the SEC retains all its quasi-judicial functions outside of the corporate cases covered under Section 5 of P.D. No. 902-A; but that all orders, rulings, and decisions of the SEC, in the exercise of its remaining administrative adjudicatory powers and its quasi-legislative powers under the Corporation Code and the SRC, retain its characteristic as a quasi-judicial body co-equal to the RTCs which cannot be controlled through judicial processes — and thus proper judicial relief would be with the Court of Appeals or the Supreme Court in the exercise of their power of judicial review.

The problem that usually arises, however, is the danger that the RTC Special Commercial Court would encroach upon the remaining powers and jurisdiction of the SEC and the possibility of totally disregarding the expertise of the SEC on commercial matters that are placed under its administrative supervision, as well as the specialized knowledge and skills on commercial or corporate matters it has acquired through the years that it had exercised its "absolute jurisdiction, supervision[,] and control" over private corporations. In addition, the transfer to the RTC Special Commercial Courts of the original and exclusive jurisdiction over intra-corporate cases from the SEC has had the effect of totally disregarding the acknowledged dilemma of clogged and crowded dockets that the regular courts are continuously experiencing.

This is where the proper application of the doctrine of primary jurisdiction comes into play. By virtue of this doctrine, the RTCs, whether acting as courts of general jurisdiction or as special commercial courts, must always exercise judicial restraint in deciding upon corporate and securities cases which require the prior exercise by the SEC of its regulatory powers under the Corporation Code or the SEC. At the very least, RTCs deciding on corporate or securities cases must invoke the technical skills and administrative expertise of the SEC in order to arrive at resolutions of issues that are consistent with the policy development of the SEC. In addition, such a process saves the courts' precious time, so that they do not have to deal with matters in which that they have no expertise by allowing the proper administrative agency, in this case the SEC, to resolve the matter at the first instance.

B. The Structural Framework of the System of Judicial Review Over Acts, Order, Rulings, and Decisions of the SEC

There has evolved in Philippine administrative law jurisprudence the "structural processes of judicial review of administrative acts, orders,

resolutions or decisions," which in broad strokes follow the following pattern:

(1) When there is no appellate process provided for by law of final orders, rulings, and decisions of administrative bodies to the courts of justice, the same are deemed to be final and executory and have the effect of *res judicata* on the parties; except that judicial review is allowed based upon an allegation of grave abuse of discretion amounting to lack or excess of jurisdiction.

(2) Even when proper appellate judicial review is allowed in particular instances from the final orders, rulings, and decisions of administrative agencies, assumption of proper appellate or review jurisdiction on the part of the courts of law may only proceed when the following condition precedents are present:

   (a) Administrative action has been fully completed and has become final — in other words, that all the administrative remedies have been exhausted. Otherwise, it renders judicial review as premature; and

   (b) As a general proposition, orders, resolutions, or decisions of administrative agencies that have reached the point of finality, when supported by substantial evidence, must be accorded the effect of *res judicata*.

(3) Even when a court of law has assumed proper jurisdiction to exercise judicial review over final orders, resolutions, or decisions of an administrative agency, the following rules must nonetheless be observed:

   (a) Findings of facts of administrative agencies must be accorded respect, if not finality;

   (b) The administrative interpretation that is placed upon statutory provisions must also be accorded great respect as they proceed from a highly specialized agency which by law and practice is possessed of expertise in the field; and

   (c) In the process of judicial review, courts will generally not interfere in executive and administrative matters which are addressed to the sound discretion of administrative bodies, such as the grant of licenses, permits, leases or approval, rejection or revocation of the applications therefore; *except if an agency or official*

> *concerned has acted arbitrarily and with grave abuse of discretion.*

C. Proper Application of the Doctrine of Primary Jurisdiction

Analyses of leading Supreme Court decisions, pre- and post-SRC, indicate that the doctrine of primary jurisdiction has to be applied in three primary levels of regulating the relationship of administrative agencies exercising quasi-judicial powers and regulatory adjudicative functions vis-à-vis the regular courts of law.

First, the *doctrine of exclusive administrative jurisdiction* applies only in situations where a controversy between the parties is being litigated on the merits *at the first instance* — as contrasted from an an appellate proceedings or the invocation of the power of judicial review — and applies only when an administrative agency has been granted under clear statutory language with original and exclusive jurisdiction to hear a species of justiciable controversies which normally would fall within the jurisdiction of regular courts of justice.

The doctrine therefore has no application to instances when what is being invoked are purely regulatory powers of the administrative agencies, including the exercise of purely regulatory adjudicate functions.

Under the current state of the SEC's statutory powers, the doctrine can be invoked only in areas covered by the Corporation Code, where quasi-judicial powers have been vested with the SEC on justiciable controversies, and which do not fall within the provisions of Section 5 of P.D. No. 902-A, thus: (a) registration with the SEC; (b) revocation of corporate charter; (c) dissolution and liquidation of corporations outside of rehabilition proceedings under the FRIA; and (d) deadlock constests involving close corporations.

Second, the *doctrine of judicial non-interference* with administrative processes applies whether the issue involves the exercise of quasi-judicial powers, regulatory adjudicative powers, or purely regulatory powers of administrative agencies, and they apply in the field of judicial review, whether it be in the area of judicial appellate review or in the exercise by the court of law of their power of judicial review proper.

The doctrine has been applied by the Supreme Court in three (3) varying aspects:

> (1) In the primary sense that judicial remedies available with the regular courts should not be availed of when they would amount to an intervention of an administrative agency, which is exercising already its regulatory adjudicative powers. In this sense, the doctrine has the same rationale

and application as the *doctrine of exhaustion of administrative remedies*;

(2) In the sense that judicial relief cannot be availed of when what is sought from the regular courts of law is to allow one administrative agency to intervene with the regulatory powers of another regulatory agency; and

(3) In the sense that in the process of judicial review, regular courts of justice which have assumed proper jurisdiction over such controversies are bound to implement the findings or resolutions of administrative agencies acting pursuant to their quasi-judicial powers, or are bound to incorporate them in their final decisions insofar as they are essential in the proper resolution on the merits of the issues raised before the courts.

Third, the *doctrine of prior resort* applies in cases where the issue in controversy is *in the first instance* falling with the original and exclusive jurisdiction of the regular courts of law — but that the exercise of judicial prudence or restraint impels the trial court to suspend the proceedings and to refer the case to the appropriate administrative agencies for resolution of an important aspect or issue which is necessary for the resolution of the merits of the case before the trial court.

In corporate law and securities law, the doctrine has two levels of application, thus —

(1) When it comes to the corporate cases under Section 5 of P.D. No. 902-A, which have been properly filed with and taken cognizance of by the proper RTC Special Commercial Courts. In this case, whenever there is an aspect or relief that can only be granted by the SEC in the exercise of its regulatory powers, the trial court ought to suspend the proceedings and refer to the SEC for its final resolution and endorsement back to the RTC, a determination of fact or resolution of issues that fall within the SEC's regulatory functions.

(2) In the preliminary investigation of corporate and/or securities fraud and other offenses under the Corporation Code and the SRC, which are filed directly with the DOJ, the matters should first be referred to the SEC for determination of the existence of probable cause.

D. Structural Processes of the Proper Exercise of the Judiciary's Power of Judicial Review Over Administrative Agencies

The Authors' review of the jurisprudence on the matter clearly indicates that the doctrine of exhaustion, and the various applications of the doctrine of primary jurisdiction, represents two levels in a doctrinal continuum which cascade as follows:

(1) Pursuant to the legislative grant of quasi-judicial powers to an administrative agency to exercise original and exclusive jurisdiction over certain justiciable controversies that fall within its regulatory powers, then:

  (a) Such issues must be resolved in the first instance by the administrative agency having jurisdiction, under the *doctrine of exclusive administrative jurisdiction*; and

  (b) That regular courts are without authority to exercise judicial power over such issues based on the following grounds:

    (i) Regular courts have, either by express or implied provision of law, been deprived of original jurisdiction to hear and decide over said issues which has been conferred by Congress to a particular administrative agency; and

    (ii) Under the *doctrine of exhaustion of administrative remedies*, the regular courts are without authority to exercise their constitutional right of judicial review on the ground that there is no final action, order, resolution, or decision as yet from an administrative agency upon which judicial review can be exercised.

(2) When an administrative agency has begun to exercise its administrative adjudicatory powers over a justiciable controversy, the matter cannot be brought before regular courts even though the form of such reliefs fall within such courts' jurisdiction, based on the following rules:

  (a) Under the *doctrine of judicial non-inteference*, in that regular courts in respect to co-equal bodies have no right to interfere in the on-going administrative processes that have been exercised by administrative agencies in discharging their quasi-judicial powers;

  (b) Under the *doctrine of exhaustion of administrative remedies*, in that not having completed the administrative processes that has properly been invoked to gain relief,

the petitioner has no cause of action to invoke the extraordinary judicial reliefs of *certiorari*, prohibition, or *mandamus*.

(c) As an exception to the *doctrines of exhaustion* and *primary jurisdiction*, and under the principle of judicial review, direct relief to the regular courts may be pursued when:

(i) When there is a violation of due process;

(ii) When the issue involved is purely a legal question;

(iii) When the administrative action is patently illegal and amounts to lack or excess of jurisdiction;

(iv) When there is estoppel on the part of the administrative agency concerned;

(v) When there is irreparable injury to be sustained;

(vi) When to require exhaustion of administrative remedies would be unreasonable;

(vii) When it would amount to a nullification of a claim;

(viii) When the rule does not provide a plain, speedy, and adequate remedy; or when there are circumstances indicating the urgency of judicial intervention; or unreasonable delay would greatly prejudice the complainant; and

(ix) When the issue of non-exhaustion of administrative remedies has been rendered moot.

(3) Even when the administrative agency vested with original and exclusive jurisdiction to hear and decide a particular justiciable controversy falling within the exercise of administrative adjudicatory functions has rendered a final resolution or decision, if administrative appellate remedies are still available within the Executive department, the aggrieved party is still without authority to seek judicial relief:

(a) Under the *doctrine of exhaustion of administrative remedies*, for the matter is brought to the regular courts where the cause of action has not been completed; and/or

(b) Under the *doctrine of judicial non-intervention with on-going administrative processes*, for the courts must allow the administrative process to completion out of respect to a co-equal body.

(c) As an exception, direct relief with the regular courts may be pursued by way of judicial review based on the same exceptions to the doctrine of exhaustion judicial non-interference in proposition 2 (c) above.

(4) Even when a justiciable controversy involving matters within the regulatory competence of an administrative agency which is bereft of quasi-judicial powers are properly filed with the regular courts, nonetheless, when the resolution of the issues on the merits requires or demands the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact, then:

(a) Under the *doctrine of prior resort*, the trial court should suspend the proceedings and refer to the administrative agency the resolution of a question of fact or condition, on a matter that falls within the regulatory powers of the administrative agency;

(b) Under the *doctrine of judicial non-interference*, the trial court in deciding on the merits of the case is without authority to provide for a condition, like the issuance of a license, that falls within the regulatory powers of the administrative agency;

(c) Under the *doctrine of judicial non-interference*, it would be a grave abuse of discretion to provide for a judgment on the merit on the justiciable controversy that includes directing the administrative agency to exercise a regulatory power in a particular manner that impinges on the exercise of discretion on the part of the administrative agency.

(5) In all instances when the administrative processes has been finally terminated:

(a) If no appellate judicial review is provided for by law, then the general rule is the findings of facts and the decision of the administrative agencies are final and binding on the courts of law, under the principle of *binding effect on the courts of the findings and decisions of administrative agencies*;

(b) If an appellate judicial review is provided for by law, then recourse to the appellate process with the regular courts of law is allowed. Otherwise, failure to pursue such appellate process makes the administrative rulings final and binding on the parties;

(c) Even if no appellate judicial review is provided for by law, recourse may still be pursued with the regular courts under the system of judicial review of grave abuses of discretion amounting to lack or excess of jurisdiction. But when there is no abuse of discretion shown on the part of the administrative tribunal, the decisions remain final and binding on the parties.

VI. EPILOGUE

The jurisdictional conflicts that have arisen over corporate and securities cases between the SEC and RTC Special Commercial Courts, and which have began to stream into decisions of the Supreme Court in the exercise of its power of judicial review, impels the need to develop in our jurisdiction a proper appreciation of the respect that must be accorded by the Judiciary to the SEC as the primary administrative agency charged by law to exercise administrative and regulatory powers over corporate and securities areas of Philippine commercial law, as well as a delineation of the proper exercise of the power of judicial review over such cases.

The Authors have taken the position that, unless proper jurisdictional framework is developed by the Supreme Court relating to the proper application of the *doctrine of exhaustion of administrative remedies* and the *doctrine of primary jurisdiction*, many of the appeals reaching the Supreme Court in corporate and securities cases — as well as other commercial law cases — will have to deal with the issue of the application of either of the various doctrines discussed above, rather than appeals on the merits of the controversy.

The purpose of this Article is to offer a clear distinctive analysis that will differentiate between the public policies and legal effects of the various doctrines in order to allow the Bench and the Bar to draw properly upon the strengths of each of these two doctrines.

Finally, the proper delineation between the two doctrines is important for the Bench, since the Supreme Court has ruled that when the doctrines are not properly applied, then an administrative proceeding can be pursued

against the presiding judge based on "gross ignorance of the law."[882] The Authors hope that this Article adds to achieving such objectives.

882. In *Tabao v. Lilagan*, the trial judge issued a writ of replevin covering shipment of forest products that were detained by administrative officers in charge with the enforcement of forestry laws. In finding that the trial judge showed gross ignorance of the law, the administrative resolution held —

> Under the doctrine of primary jurisdiction, courts cannot take cognizance of cases pending before administrative agencies of special competence. Note too, that the plaintiff in the replevin suit who seeks to recover the shipment from the DENR had not exhausted the administrative remedies available to him. The prudent thing for the respondent judge to have done was to dismiss the replevin suit outright.

Tabao v. Lilagan, 364 SCRA 322, 331 (2001). *See also* Dagudag v. Paderanga, 555 SCRA 217 (2008).