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SyCip Salazar Hernandez & Gatmaitan

Employment & Immigration Update

Implications of the Prohibition Against Labor-Only Contracting and Suspension of Registration of New Applicants for Contractors or Sub-Contractors

I. Labor Advisory No. 10-2016: Prohibition against Labor-Only Contracting

1. Definition of Labor-only Contracting

Labor Advisory No. 10-2016 reiterates the definition of labor-only contracting as an arrangement whereby the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal. The following elements are present in labor-only contracting:

a) The contractor or subcontractor does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him; or

b) The contractor does not exercise the right of control over the performance of the work of the employee.

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Anti-Age Discrimination in Employment Act (Republic Act No. 10911) Lapsed into Law

The Anti-Age Discrimination in Employment Act became effective on July 21, 2016. In furtherance of the policy of promoting equal work opportunities under the Labor Code, the law qualifies age as a source of prohibited discrimination, in addition to sex, race, and creed. The law appears to be similar to the Age Discrimination in Employment Act of 1967 in the U.S. The law seeks to help persons above 30 who cannot find jobs despite being certainly qualified, and in particular, returning OFWs that seek suitable employment in the Philippines. The Implementing Rules, which have not yet been released, will elaborate on its details and operating guidelines.

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Inside this issue

Special points of interest

- Supreme Court (SC) Decisions
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Legal Resources

Employment Law Alliance's *Global Employer Handbook*

The Employment Law Alliance's *Global Employer Handbook* contains labor and employment law information in various countries. It is essentially a compilation of individual chapters that are accessible online by jurisdiction.

The "Philippine Labor and Employment Law" chapter contains law information about Hiring, Compensation and Benefits, Time Off / Leaves of Absence, Termination Issues, Layoffs / Work Force Reductions / Redundancies, Unfair Competition / Covenants Not to Compete, Privacy, Employee Injuries / Worker's Compensation, Unemployment, and Health & Safety and Unions—Industrial Relations. SyCipLaw Partner Dante T. Pamintuan authored the content.

Aside from the Philippines, the handbook covers jurisdictions from other parts of Asia, United Kingdom and the United States. For a full list of contributors and to access the Global Employer Handbook, please visit www.employmentlawalliance.com/globalemployerhandbook. ◆

How do you compute the retirement benefit of seasonal workers?

SC Decision: G.R. No. 199554, February 18, 2015

In computing the retirement benefit of seasonal workers, the SC applied the ruling in *Philippine Tobacco Flue-Curing & Redrying Corp. v. National Labor Relations Commission* which involved the computation of separation pay. The Supreme Court found that Article 283 and 284 of the Labor Code on separation pay contain the proviso "a fraction of at least six (6) months shall be considered one (1) whole year." Article 287 of the Labor Code on retirement pay contains the same proviso. Thus, in computing the retirement pay of seasonal workers, the Supreme Court held that an employee must have rendered at least six (6) months in a year for the said year to be considered in the computation.

In this case, the employee worked from 1974 to 2003. However, she rendered six months of service only in the years 1995, 1999, and 2000. Therefore, in computing her retirement pay, the Supreme Court considered only the said three years. ◆

Fixed term employment: Pre-termination must always be with cause

S.C. Decision: G.R. No. 194906, September 09, 2015

May an employer pre-terminate a fixed-term employment without cause based on a pre-termination clause in the employment contract that allows both the employer and employee to pre-terminate the employment relationship "at any time by giving four weeks notice?"

In *Halili v. Justice for Children International*, the Supreme Court ruled that any party may pre-terminate the employment contract provided that the party invoking the pre-termination clause has:
(a) a legal cause for terminating the fixed term employment; and
(b) notifies the other party in writing four (4) weeks prior to the intended date of termination.

The Supreme Court further clarified that even if the employment contract is "silent on the requirement of a legal cause for the same to be operative," the law, which requires a just or authorized cause for termination of employment, is read into every contract. "Hence, the

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Communication of Regularization Standards to Probationary Employees

SC Decision: G.R. No. 209559, December 9, 2015

The employer must comply with the following requirements when dealing with a probationary employee:
(a) communicate the regularization standards to the probationary employee; and
(b) make such communication at the time of the probationary employee's engagement.

If the employer fails to comply with either, the employee is deemed a regular employee.

In *Enchanted Kingdom v. Verzo & Paz*, the employer informed the employee of the regularization standards fourteen (14) days after the employee's engagement. The SC held that, ideally, employers should immediately inform a probationary employee the standards for his regularization from day one. However, strict compliance thereof is not required. The true test of compliance is one of reasonableness—as long as the probationary employee is given a reasonable time and opportunity to be made fully aware of what is expected of him during the early phases of the probationary period, the requirement of the law is satisfied. Thus, the employer substantially complied with the requirements of the law. ◆

Forum Non Conveniens

SC Decision: G.R. No. 198587, January 14, 2015

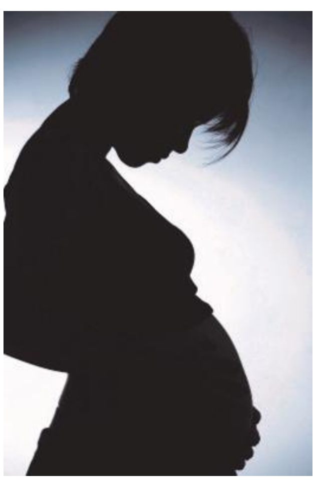
Forum non conveniens, which literally translates to "the forum is inconvenient," is a concept in private international law that was devised to combat the bad practice used by litigants to secure procedural advantages, annoy and harass defendants, avoid overcrowded dockets, and select a "friendlier" venue. It addresses the same issue that the rule against forum shopping does, albeit on a multijurisdictional scale.

In this case, Saudi Arabian Airlines asserted that Philippine courts are not in a position to make an intelligent decision because the Cabin Attendant contracts require the application of the laws of Saudi Arabia and not of the Philippines. It claimed that the difficulty of ascertaining foreign law calls into operation the principle of *forum non conveniens,* thereby rendering improper the exercise of jurisdiction by Philippine tribunals.

The Supreme Court held that *forum non conveniens* does not operate to divest Philippine courts of jurisdiction. While this concept finds no textual anchor, whether in statute or in procedural rules, in our civil law system, jurisprudence laid down the rule that "a court, in conflicts of law cases, *may* refuse impositions on its jurisdiction where it is not the most 'convenient' or available forum and the parties are not precluded from seeking remedies elsewhere." The use of the word "may" shows that the matter of jurisdiction rests on the sound discretion of the courts. Further, a choice of law governing the validity of contracts or the interpretation of its provisions does not necessarily imply *forum non conveniens* as these two are entirely different matters. ◆

Pregnancy, Not a Valid Ground to Terminate Employment

SC Decision: G.R. No. 198587, January 14, 2015



Although pregnancy presents physical limitations that may render difficult the performance of functions associated with being a flight attendant, it would be the height of iniquity to consider it as a disability so permanent and immutable as to result in the termination of one's employment. Pregnancy should not be considered as an impairing occurrence that leaves no other recourse but the complete termination of the means through which a woman earns a living.

In this case, the Unified Employment Contract for Female Cabin Attendants of Saudi Arabian Airlines ("Saudia") provides that the employment of an air hostess who becomes pregnant at any time during the term of her employment contract will be terminated due to lack of medical fitness. Pursuant to this provision, Saudia requested its four Filipina flight attendants to resign when they got pregnant. Confronted with the dilemma of resigning or totally losing their benefits, the flight attendants submitted their handwritten resignation letters.

In ruling that the flight attendants were illegally dismissed, the Supreme Court held that the termination of employment due to pregnancy violates the Convention on the Elimination of all Forms of Discrimination against Women ("CEDAW") and Section 14, Article II of the 1987 Philippine Constitution which provides that the State shall ensure the fundamental equality before the law of women and men. Since pregnancy is an occurrence that pertains specifically to women, Saudia's policy which excludes from and restricts employment solely on the basis of sex, is not valid. ◆

Legal Resources

Employment Law Alliance's When Employees Leave

SyCipLaw contributed the Philppine Chapter of *When Employees Leave: What Employers in Asia/Pacific Need to Know about Protecting Company Rights and Confidential Information* published by the Employment Law Alliance. The publication briefly describes how the issues of non-competition and protection of confidential and proprietary information are handled in 16 jurisdictions across Asia and the Pacific, and the steps companies can take to protect their interests when employees leave.

Visit the SyCipLaw website (www.syciplaw.com/news/legalresources) to download a copy.

The Philippine chapter was contributed by SyCipLaw Partner Rodelle B. Bolante with support from Associate Vera Marie H. Bautista-King.

SyCipLaw is the exclusive Philippine member of ELA. For more information on ELA, please visit www.employmentlawalliance.com. ◆

Legal Resources

Herbert Smith Freehills' *Gifts, Entertainment, Travel and Training*

SyCipLaw Partner Russel L. Rodriguez, with support from Associate Vera Marie H. Bautista-King, contributed the Philippines chapter of Herbert Smith Freehills' *Gifts, Entertainment, Travel and Training: Compliance with anti-bribery regulation in Asia-Pacific*. The 2016 edition focuses on practical issues for individuals and corporations when offering or receiving gifts, entertainment, travel or training. It also deals with charitable donations, benefits offered to third parties, and the impact of authorization on liability.

Key topics covered by the Guide include: the general scope of local anti-bribery laws, the kinds of gifts likely to be considered acceptable, the forms of entertainment likely to be considered acceptable, whether and to what extent travel and accommodation may be provided for, whether rules cover relatives of public officials, whether consent or disclosure may legitimize an otherwise problematic advantage, and fines and penalties.

To request for a copy of the guide, please visit www.herbertsmithfreehills.com/latest-thinking/gift-wrapping-bribery-corporate-perks-in-asia-pacific. ◆

Stricter Liability Rules for Corporate Officers

SC Decision: G.R. No. 198967, March 7, 2016

May a corporate officer be held liable for the first time, even after a decision against the employer-company had become final and executory? The Supreme Court answered in the affirmative in the case of *Jose Emmanuel Guillermo v. Crisanto Uson*.

In this case, after failing to hold the company liable, the employee filed a motion to hold the directors and officers of the company liable for the award in the decision. The Labor Arbiter granted the motion, holding the company's President personally liable, along with the company, for the claims of the employee.

With the Labor Arbiter's decision, the President of the company filed a petition with the Supreme Court, arguing that he is being belatedly made liable, more than a year after the decision against the company had already become final. He also assailed the so-called "piercing the veil" of corporate fiction which allegedly discriminated against him despite the existence of other directors and officers in the Company.

Siding with the employee and denying the petition of the President, the Supreme Court found that the President was the person actually responsible for the day-to-day operations of the company and for the malicious and illegal dismissal of the employee. He likewise was shown to have had a role in dissolving the original obligor company and incorporating a new one in the same address, in an obvious scheme to avoid liability. The Supreme Court explained that the veil of corporate fiction can be pierced, and responsible corporate directors and officers may be impleaded and held answerable solidarily in labor cases (even after final judgment and on execution) so long as it is established that such persons have deliberately used the corporate vehicle to unjustly evade the judgment obligation, or have resorted to fraud, bad faith or malice in doing so. ◆

Anti-Age Discrimination in Employment Act Lapsed into Law

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It prohibits and punishes the following acts:

(a) For an employer to:
   1. Print or publish, or cause to be printed or published, in any form of media any notice of advertisement relating to employment suggesting preferences, limitations, specifications, and discrimination based on age;
   2. Require the declaration of age or birthdate during the application process;
   3. Decline any employment application based on age;
   4. Discriminate against an individual in terms of compensation or privileges based on age;
   5. Deny promotion or training opportunities because of age;
   6. Forcibly lay-off because of age;
   7. Impose early retirement on the basis of such employee's age.

(b) For a labor contractor or subcontractor, if any, to refuse to refer for employment or otherwise discriminate based on age.

(c) For a labor organization to:
   1. Deny membership based on age;
   2. Exclude from its membership based on age; or
   3. Cause or attempt to cause an employer to discriminate based on age.

(d) For a publisher to print or publish any notice of advertisement relating to employment suggesting preferences, limitations, specifications, and discrimination based on age.

However, it also provides the following exceptions:

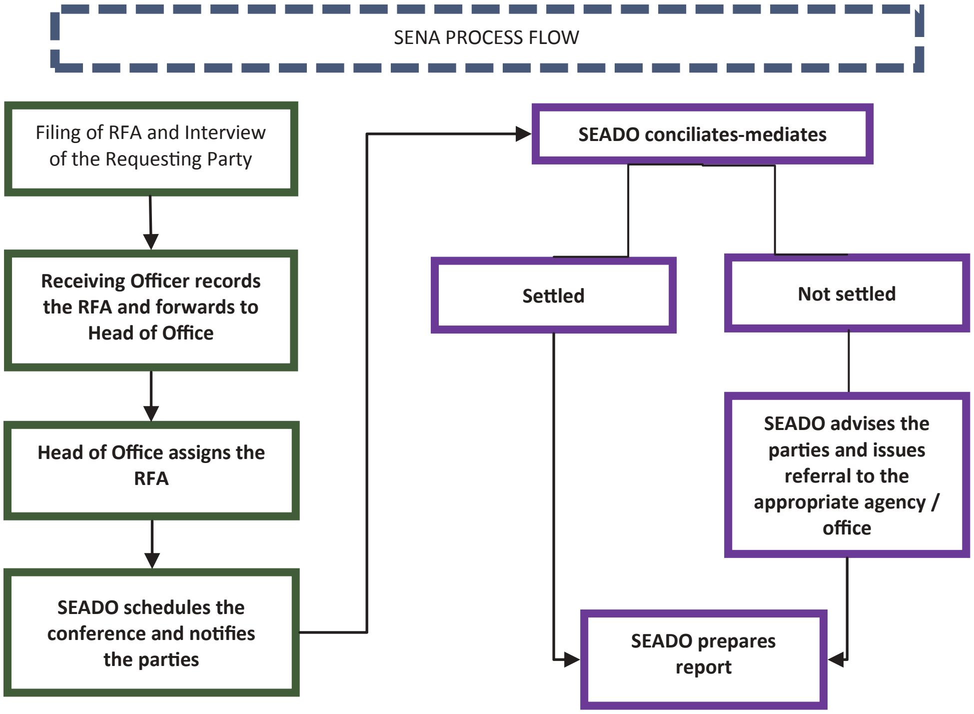
(a) Age is a reasonable bona fide occupational qualification, or where the differentiation is based on reasonable factors, other than age;

(b) The intent is to observe the terms of a bona fide seniority system that is not intended to evade the purpose of this Act;

(c) The intent is to observe the terms of a bona fide employee retirement or a voluntary early retirement plan; and

(d) The action is duly certified by the Secretary of Labor and Employment in accordance with the purpose of this act. ◆

Single Entry Approach: A Key to a Speedy, Accessible, Impartial and Inexpensive Labor Dispute Settlement



Department Order No. 151, series of 2016, also known as the "Single Entry Approach Implementing Rules and Regulations", was issued by the Department of Labor and Employment ("DOLE") on February 22, 2016 pursuant to Republic Act 10396, which institutionalized the Single Entry Approach ("SEnA") of the DOLE.

The SEnA was devised pursuant to the Constitutional mandate to promote the preferential use of voluntary modes of settling disputes including conciliation-mediation. It is an administrative approach by the DOLE that aims to provide accessible, speedy, impartial and inexpensive settlement procedure of all labor and employment issues through a 30-day mandatory conciliation-mediation proceedings. DOLE D.O. No. 151-16 provides that, as a general rule, all issues arising from labor and employment is subject to a 30-day mandatory conciliation-mediation.

Exceptions to this rule, as outlined in greater detail in Section 3 of DOLE D.O. No. 151-16, include

(a) notices of strike or lockout, or preventive mediation cases with the National Conciliation Mediation Board;
(b) issues arising from the interpretation or implementation of the collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies which should be processed through the grievance machinery;
(c) applications for exemption from Wage Orders with the National Wages and Productivity Commission;
(d) issues involving violations of employment permits, employment and contracting licenses, accreditations, and registrations issued by the DOLE or its attached agencies;
(e) certain violations of the Rules and Regulations of the Philippine Overseas Employment Agency; and
(f) issues on occupational safety and health standards involving imminent danger situation, dangerous occurrences or disabling injury, and absence of personal protective equipment.

The SEnA process starts with the filing of a Request for Assistance ("RFA"). The RFA may be filed by any aggrieved person such as the employer, the worker (including *kasambahay*) or group of workers, whether local or overseas, or a union, workers association or federation.

Thereafter, the Receiving Officer will record the RFA and forward the same to the Head of

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Legal Resources

World Bank Group's *Women, Business and the Law 2016*

SyCipLaw Partner Leslie C. Dy participated in the World Bank Group's *Women, Business and the Law 2016: Getting to Equal*. The 2016 edition, the fourth in the series, continues to cover and collect data about legal restrictions on women's entrepreneurship and employment. The series aims to inform policy discussions and promote research on linkages between the law and women's economic opportunities.

The report focuses on seven indicators: accessing institutions, using property, getting a job, providing incentives to work, going to court, building credit, and protecting women from violence. Within these indicators, new areas covered include legislation on issues such as nondiscrimination in access to credit, care leave for sick relatives, the legal age of marriage, and protection orders for victims of domestic violence.

The edition covers 173 economies, from a previous 143, and includes, among others, Afganistan, Cambodia, Egypt, Israel, Kuwait, Mexico, Netherlands, Philippines, Saudi Arabia, Spain, Switzerland, Tunisia, and Vietnam.

The report and data set are available at http://wbl.worldbank.org. ◆

Legal Resources

IFLR: "Philippines: Employees in corporate reorganisations"

The June 2016 issue of the International Financial Law Review (IFLR) included an international briefing article entitled "Employees in corporate reorganisations." The article was contributed by SyCipLaw Partner Ronald Mark C. Lleno and Senior Associate Easter Princess U. Castro. The article discusses the two main types of corporate reorganizations and their effect on employees.

Read the article online at the IFLR website: www.iflr.com/Article/3556454/Philippines-Employees-in-corporate-reorganisations.html. ◆

ALB: "Single Entry Approach: Mandatory Conciliation and Mediation of Labor Disputes"

The July 2016 issue of the Asian Legal Business (ALB) Asia edition included a regional update article entitled "Single Entry Approach: Mandatory Conciliation and Mediation of Labor Disputes," contributed by SyCipLaw Partner Marianne M. Miguel and Associate Mary Grace L. Javier. The article discusses the relevant guidelines how the Single Entry Approach or SEnA is initiated.

To read the article, access or download the full ALB July issue at https://asianlegalbusiness.uberflip.com/i/702234-alb-july-2016/2. ◆

Implications of the Prohibition Against Labor-Only Contracting and Suspension of Registration of New Applicants for Contractors or Sub-Contractors

(Continued from page 1)

Notably, the first element provided in Labor Advisory No. 10-2016 reverted to the definition under the Department Order ("D.O.") No. 18-02 and the Labor Code[1] and deviated from that of D.O. 18-A, where the qualifying activities performed by the contractual workers include "activities which are **usually necessary or desirable to the operation of the company,** or directly related to the main business of the principal **within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.**"[2]

Since the new labor advisory excluded "activities which are usually necessary or desirable to the operation of the company" as an element, it would seem that the new definition has provided a more limited scope. For instance, janitorial or messengerial services, which are usually necessary or desirable to the operation of the company, although not directly related to the main business of the principal, would have qualified for purposes of determining the existence of labor-only contracting under the old definition. Under the new labor advisory, it remains a question if labor-only contracting can exist if the contractual work is not directly related to the employer's main business.[3]

Notwithstanding the apparent conflict in interpretation, it may be concluded that nothing was changed because of the recent issuance, despite its failure to mention one of its elements. After all, the wording under the new issuance is a mere reiteration of the definition under the Labor Code; between law and a mere order, the former prevails.

2. Declaration of Labor-only Contracting

Section 2 of Labor Advisory No. 10-2016 also restates the authority of the Regional Directors to declare the existence of labor-only contracting between the contractors and subcontractors, and the principal. In case of such declaration, the workers of labor-only contractor/subcontractor are considered employees of the principal, consistent with Article 128 of the Labor Code (Visitation and Enforcement Powers) and existing jurisprudence.[4] Further, once the matter of whether a contractor is a labor-only contractor is already settled and determined in the Department of Labor and Employment ("DOLE") proceedings, such finding is deemed conclusive and binding upon the National Labor Relations Commission ("NLRC").

Notably, this provision has already been explicitly set out in D.O. 18-A series of 2011, to wit:

> ***Section 29. Enforcement of labor standards and working conditions.*** Consistent with Article 128 (Visitorial and Enforcement Power) of the Labor Code, as amended, the Regional Director through his/her duly authorized

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[1] Art. 106. Contractor of subcontractor. xxx There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are direclty related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

[2] Department Order 18-A series of 2011, Section 6. Emphasis supplied.

[3] *See* Avelio S. Alilin, et al. v. Petron Corporation, G.R. No. 177592, June 9, 2014. "Petitioners were given various work assignments such as tanker receiving, barge loading, sounding, gauging, warehousing, mixing, painting, carpentry, driving, gasul filling and other utility works. Petron refers to these work assignments as menial works which could be performed by any able-bodied individual. The Court finds, however, that while the jobs performed by petitioners may be menial and mechanical, they are nevertheless necessary and related to Petron's business operations." *Id.*

[4] *See* DOLE Philippines v. Medel Esteva, et al., G.R. No. 161115, November 30, 2006; *see* Norkis Trading Corp. v. Joaquin Buena Vista, et al., G.R. No. 182018, October 10, 2012.

Implications of the Prohibition Against Labor-Only Contracting and Suspension of Registration of New Applicants for Contractors or Sub-Contractors

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> representatives, shall conduct routine inspection of establishments engaged in contracting arrangement regardless of the number of employees engaged by the principal or by the contractor. They shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein or the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of the Labor Code and of any labor law, wage order, or rules and regulations issued pursuant thereto.
>
> xxx

II. Department Order No. 162-2016: Suspending Registration of New Applicants as Contractors or Subcontractors under Department Order No. 18-A

<u>1. Covered Contractors/Subcontractors</u>

Department Order 162-2016 provides that "notwithstanding Sections 14, 15, 16, 17, 18, 19 and 20 of Department Order No. 18-A, series of 2011, registration of **new applicants** as contractors or subcontractors is hereby suspended upon effectivity of this Order."[5]

Only new applicants are covered by this suspension order, considering that:

a) Section 1 of the new department order explicitly states that registration of "new applicants" as contractors/subcontractors is suspended;
b) Section 2 of the new department order provides that "all certificates of registration of contractors/subcontractors issued prior to this Order shall be respected, unless otherwise revoked[.]"[6]; and
c) The new department order does not preclude, prohibit or suspend renewal of certificates of registration. Moreover, despite the notwithstanding clause that enumerated several sections from D.O. 18-A series of 2011, the new department order did not include Section 21 on Renewal.

The DOLE has taken the position that the suspension provided in the new department order only applies to the registration of new applicants. Thus, previously registered contractors/ subcontractors may still renew their registration.

<u>2. Presumption of Registration</u>

Under D.O. 18-A, series of 2011, registration of contractors/ subcontractors prevents the legal presumption of being a mere labor-only contracting from arising.[7] As such, while one cannot conclusively rely on the Certificate of Registration, it cannot be denied that registration of contractors has added a layer of protection against being characterized as a labor-only contractor.

Since registration has been suspended, there is nothing to preliminarily distinguish contractors engaged in labor-only contracting from those engaged in permissible job contracting. Employers or principals who would want to engage contractual workers through contractors must now be more circumspect and cautious in selecting their contractors, lest they be considered as the direct employers of the contractual workers who shall be responsible to them in the same manner and extent as if the latter were directly employed by the principal.

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[5] Department Order 162-2016, Section 1.
[6] *Id.*, Section 2.
[7] D.O. 18-A series of 2011, Section 14.

Firm Recognition

Chambers Asia Pacific 2016

Chambers Asia Pacific 2016 ranked SyCipLaw as Band 1 in all categories applicable to Philippine firms, including in Employment. The firm's complete rankings may be found at www.chambersandpartners.com/asia/firm/3072/sycip-salazar-hernandez-gatmaitan.

In addition, several of the firm's lawyers were recognized as leaders in their fields. Among those cited are Of Counsel Lozano A. Tan and Partner Leslie C. Dy for Employment. ◆

2016 Who's Who Legal Award

SyCipLaw received the Country Awards for the Philippines at the 3rd Annual Who's Who Legal Awards last April 11, 2016 at The University Club, New York. Who's Who Legal's country awards recognize the firm's achieving the highest number of nominations in a particular jurisdiction across Who's Who Legal's research.

Visit [http://whoswholegal.com/awards/country state/ for the list of country and state awardees](http://whoswholegal.com/awards/countrystate/). ◆

Firm Recognition

ALB Employer of Choice 2016

SyCipLaw was recognized by Asian Legal Business (ALB) as one of the Philippines' 2016 Employer of Choice. The ALB Employer of Choice rankings is based on survey responses from law firm employees across Asia, as well as market knowledge obtained by ALB. Law firms are ranked on the basis of job satisfaction, remuneration, work-life balance, career prospects, mentorship, and job security, among others.

ALB runs the survey annually in February and March with respondents submitting their inputs anonymously. The results are included in a Special Report alongside ALB's April edition. ◆

Chambers Global 2016

Chambers Global 2016 ranked SyCipLaw as Band 1 in Corporate & Finance and Projects, Infrastructure & Energy. The firm's complete rankings are available for viewing at www.chambersandpartners.com/global/firm/3072/sycip-salazar-hernandez-gatmaitan.

In addition, the firm's law firm networks were recognized as leading global and regional law firm networks. These include Employment Law Alliance, First Law International, the Interlex Group, Multilaw, Pacific Rim Advisory Council, World Law Group and World Services Group. ◆

Implications of the Prohibition Against Labor-Only Contracting and Suspension of Registration of New Applicants for Contractors or Sub-Contractors

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3. Non-impairment of existing contracts/Non-diminution of benefits

The new department order also provides that contracts entered into by duly registered contractors/subcontractors prior to the issuance of this Order shall not be impaired or diminished, and that nothing contained in the new issuance shall "impair the rights or diminish the benefits being enjoyed by parties to existing contracting or subcontracting arrangements."[8]

This provision may refer to the service contracts and employment contracts entered into for which a term or period has been agreed upon. This supports the proposition that renewal of contracts is not precluded and is even mandated, especially when non-renewal will lead to impairment of contracts or diminution of rights. ◆

Fixed term employment: Pre-termination must always be with cause

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contract's termination clause should not be interpreted as a form of blanket-license by which each of the parties may just abdicate the contract at will."

In the case of *Halili*, the Court found that the first requisite of legal cause was not complied with by the employer. It was resolved that "[n]o just or authorized cause was proven by substantial evidence in support of its invocation of the termination clause stated" in the employment contract. Consequently, the pre-termination of the contract was found to be "infirm", and the employee was declared as having been illegally dismissed. ◆

Seafarer's Protection Act

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interest, arising from accident, illness or death, in exchange of an amount or fee which shall be retained or deducted from the monetary claim or benefit granted to or awarded to the seafarers or their heirs. Persons who violate this provision of the law are to be meted with a penalty of fine of not less than fifty thousand pesos (P50,000.00) but not more than one hundred thousand pesos (P100,000.00), or by imprisonment of one (1) year but not more than two (2) years, or both fine and imprisonment.

The law prohibits the imposition of excessive fines by persons who appear for or represents the seafarer or his/her heirs in any case for recovery of monetary claim or benefit, including legal interest, arising from accident, illness or death before the National Labor Relations Commission (NLRC) or any labor arbiter, the National Conciliation and Mediation Board (NCMB), the Philippine Overseas Employment Administration (POEA), the Department of Labor and Employment (DOLE) or its regional offices, or other quasi-judicial bodies handling labor disputes. The law places a cap of (10%) of the compensation or benefit awarded to the seafarer or his/her heirs on the fees of the person who appears for or who represents the seafarer. ◆

[8] D.O. 162-2016, Section 3.

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Juan C. Reyes, Jr. (November 26, 1930 - December 1, 2015)

Juan C. Reyes, Jr. passed away on December 1, 2015. Of his 60 years of active and continuous general law practice, Johnny served 54 of those years with the Firm.

Johnny joined SyCipLaw in 1961 as an associate and became a partner in 1968. He headed the firm's Litigation Department, and then the Immigration Department prior to its merger into the Labor Department (now known as the Employment and Immigration Department). After his retirement from the partnership in 1995, he continued to actively serve the firm as Of Counsel, a post which he held until his passing.

Caring for others defined Johnny. He will be remembered most for being very accommodating and self-effacing. In 1992, Johnny received the *Pro Ecclesia Et Pontifice*, the highest medal that can be awarded to the laity by the Pope for services done for the Church.

Johnny cared very much for the firm and we will remember Johnny with fondness. We have been enriched by his having been part of our Firm, and we are grateful for that. ◆

Florentino P. Feliciano (March 14, 1928 - December 15, 2015)

Retired Supreme Court Associate Justice Florentino P. Feliciano passed away on December 15, 2015.

Justice Feliciano was a partner of the firm from 1962 to 1986, when he withdrew from SyCipLaw to serve as an Associate Justice of the Philippine Supreme Court. He was the firm's managing partner at that time. As a Supreme Court justice, he decided numerous cases involving significant commercial law and tax law issues. He served on the highest tribunal until 1995 when he retired early to accept an appointment as one of the first seven members of the Appellate Body of the World Trade Organization. He served on this body with distinction from 1995 to 2001, the last year of which he was chairman. He then rejoined SyCipLaw as Senior Counsel. In 2003, he chaired the Fact Finding Commission created by Admnistrative Order No. 78 (2003) on the military rebellion of July 2003. He was counsel to the Republic in several significant cases. He considered it a duty and a privilege to serve the Republic as its advocate.

Throughout Justice Feliciano's remarkable career, he was a lawyer with an international reputation for the highest level of excellence and integrity, and widely considered, in the words of his peers, a "towering scholar in international law." He was a prolific writer and lecturer, an arbiter, an adviser, a teacher, an inspiring mentor, a patriot, and until his passing, and despite all of his achievements and learning, an avid and curious student of the law. He will be missed. ◆

Single Entry Approach: A Key to a Speedy, Accessible, Impartial and Inexpensive Labor Dispute Settlement

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Office. The Head of Office will assign the RFA to a particular Single Entry Approach Desk Officer ("SEADO") who will notify the parties of the scheduled conference. During the conference, the SEADO will conciliate and mediate. If the issue is settled, the RFA is considered closed. However if the issue is not settled, the SEADO will issue a referral to the appropriate agency or office. In either case, the SEADO will prepare a report of what transpired during the conciliation and mediation. ◆

Firm Announcements

New Banking, Finance & Securities Head

SyCipLaw is pleased to announce the appointment of Marievic G. Ramos-Añonuevo as the new head of the firm's Banking, Finance & Securities (BFS) Department. Ms. Añonuevo assumed the post after the retirement of Mia G. Gentugaya who continues to serve the firm as Of Counsel.

With over 32 years of law practice, Ms. Añonuevo has acquired substantial experience advising major local and foreign clients in the fields of banking, project finance, privatization, infrastructure, foreign investments, mergers and acquisitions, corporate rehabilitation and restructuring, securities, and land acquisition and development.

Please visit the SyCipLaw website for Ms. Añonuevo full profile: www.syciplaw.com/news/articles/fa/179.

The firm's BFS group has been consistently recognized by the financial and business community as the Philippine leader in this practice. It is a mainstay in country surveys as a top choice for local counsel. The group represents and advises most of the major banks, and in all types of financing transactions and regulatory matters. ◆

Firm Announcements

New SyCipLaw Partners

SyCipLaw is pleased to announce the admission of Aaron Roi B. Riturban and Franco Aristotle G. Larcina to the partnership.

Mr. Riturban is with the firm's Banking, Finance & Securities and Special Projects groups. He specializes in mining, natural resources development, and environment law, and regularly advises local and foreign clients in relation to these areas, as well as those in the power generation, infrastructure development, and banking industries. He has acted as counsel for the private sector in connection with projects under the Philippine Government's public-private partnership program.

Mr. Larcina is a member of the firm's Special Projects group. He specializes in investments, mergers and acquisitions, particularly in industries with FDI and nationality restrictions in listed and public corporations. His other work focus is arbitration and dispute resolution for commercial transactions. He has expertise in merger and competition law, securities regulations, and telecommunications, media, and technology.

Visit the website for their full profiles: www.syciplaw.com/news/articles/fa/181. ◆

Chambers AP Philippine Law Firm of the Year

SyCipLaw received the Philippine Law Firm of the Year Award once again at the Chambers Asia Pacific Awards 2016. The awards honor the work of national and international law firms across the Asia-Pacific region on the basis of research for the Chambers Asia-Pacific. Not only do they recognize a firm's pre-eminence in key countries in the region, they also reflect notable achievements in the past year, including outstanding work, impressive strategic growth and excellence in client service.

The awards ceremony took place on April 8, 2016 at The Fullerton Hotel in Singapore. Representing the firm were Mia G. Gentugaya, Rolando V. Medalla, Jr., Leslie C. Dy and Ramon G. Songco. ◆

Inaugural Meeting of Indonesia Diaspora Network Chapter Manila

SyCipLaw's Leslie C. Dy and Hiyasmin H. Lapitan were featured speakers at the inaugural meeting of Indonesian business and professionals in Manila organized by the Indonesia Diaspora Network Chapter Manila. The meeting was hosted by the Indonesian Embassy on April 16, 2016 and was attended by about 120 Indonesians in Manila engaged in various industries. The Indonesian Ambassador to Manila, His Excellency Johny J. Lumintang, and members of his staff were also present.

Ms. Dy and Ms. Lapitan's session focused on how Indonesians can start and do business in the Philippines. Other sessions were on business opportunities in the Philippines and on challenges for Indonesian businesses and professionals. ◆

2016 AILA Global Immigration Forum

SyCipLaw Partner Russel L. Rodriguez was one of the featured speakers at the 2016 American Immigration Lawyers Association (AILA) Global Immigration Forum. The two-day forum was held last June 21-22, 2016 at the SLS Hotel in Las Vegas, Nevada.

The AILA Global Information Forum started in 2013 and is run by AILA's Global Migration Section. For more information on AILA and the forum, visit www.aila.org. ◆

PRAC 60th International Conference in Manila

SyCipLaw hosted the Pacific Rim Advisory Council (PRAC) 60th International Conference last September 24 to 27. The Conference gathered 43 delegates from PRAC member firms in Australia, Brazil, Canada, China, Hong Kong, India, Indonesia, Malaysia, Mexico, New Zealand, Panama, Philippines, Singapore, South Korea, Spain, Taiwan, The Netherlands, and the United States.

The business program included a presentation on ASEAN+3 Financial Integration by the Asian Development Bank's Noritaka Akamatsu; a panel discussion on public-private partnerships with the Public-Private Partnership Center's Mia G. Sebastian as guest speaker; a tour of the Supreme Court of the Philippines and meet-and-greet with Associate Justice Marvic Leonen; a panel discussion on data security with ECCI Philippines' Kama Neson Ganeson as guest speaker; and a general counsel forum featuring Jollibee Foods Corporation's Valerie Feria Amante, Aboitiz Power Corporation's Joseph Trillana Gonzales and Ayala Land, Inc.'s June Vee Monteclaro-Navarro.

SyCipLaw is the exclusive Philippine member of PRAC. Visit www.prac.org for more information. ◆

Inaugural ALB Philippine Law Awards 2016

SyCipLaw received recognition in various categories of the inaugural ALB Philippine Law Awards, including the Philippine Law firm of the Year.

Apart from the receiving the top law firm award, the firm picked up awards for Arbitration Law Firm of the Year and Banking and Financial Services Law Firm of the Year.

The firm was also lauded for its role in the AP Renewables' Issance of the First Climate Bond, which received the Debt Market Deal of the Year and the Mactan Cebu International Airport Passenger Terminal Project, which received the Project Finance Deal of the Year.

ALB's inaugural tribute to Philippine legal excellence was held on October 14, 2016 at the Fairmont Makati. Representing the firm were Hector M. de Leon, Jr., Marievic G. Ramos-Añonuevo, Simeon Ken R. Ferrer, Rocky Alejandro L. Reyes, Enrique T. Manuel, Arlene M. Maneja, and Melyjane G. Bertillo-Ancheta.

Visit the awards website for more information and for the full list of winners: www.legalbusinessonline.com/awards/philippine-law-awards-2016. ◆

Firm Announcements

New Managing Partner

SyCipLaw is pleased to announce that Hector M. de Leon, Jr. has been elected as the firm's managing partner. Mr. de Leon joined SyCipLaw in 1988 and has been a memer of the firm's Executive Committee since 2014.

Mr. de Leon's practice focuses on corporate and commercial matters, with emphasis on equity investments, mergers and acquisitions, project development and finance, and similar commercial transactions. Together with the other lawyers of the firm, he worked on some of the biggest M&A transactions in the Philippines, several of which were awarded or nominated as "Deal of the Year" by international publications.

Mr. de Leon has authored or co-authored books and articles on, among others, commercial and civil law. He is a fellow of the Institute of Corporate Directors and a member of the Tax Management Association of the Philippines.

Please visit the SyCipLaw website for Mr. de Leon's full profile: www.syciplaw.com/news/articles/fa/204.

Mr. de Leon succeeds Rafael A. Morales who retired as a partner of the firm in March 2016. ◆

Introducing Further Amendments to the 2011 NLRC Rules of Procedure

NLRC *En Banc* Resolution No. 14-15 dated September 16, 2015 introduced further amendments to the 2011 NLRC Rules of Procedure. Section 6 Article VI deleted three requirements for appeal bonds in decisions of the Labor Arbiter or the Regional Director involving a monetary award. Certificate of Authority from the Insurance Commission, Certificate of Registration from the Securities and Exchange Commission and Certificate of Accreditation and Authority from the Supreme Court are no longer required.

With respect to third party claim, Section 16 requires that the affidavit stating title to the property or right to possession thereof be accompanied by the property's fair market value with supporting evidence.

The Resolution provides that the filing of a third party claim shall no longer suspend the execution proceedings with respect to the property subject of the third party claim unless the third party claimant posts a cash or surety bond equivalent to the value of the levied property or judgment award, whichever is lower, and in accordance with Section 6 of Rule VI. The cash or surety bond shall be in lieu of the property subject of the third party claim. In the event that the resolution of the third party claim is elevated to the Commission, the release of the bond shall be suspended. Pending resolution thereof, execution shall proceed against all other properties not subject of the third party claim.

If the third party claim is denied with finality, the bond shall be made answerable in lieu of property subject of the third party claim. ◆

Seafarer's Protection Act

Republic Act 10706, also known as "An Act Protecting Seafarers against Ambulance Chasing and Imposition of Excessive Fees, and Providing Penalties Therefor" was enacted to promote and protect every Filipino seafarer from the practice of ambulance chasers charging exorbitant fees, with the promise of huge monetary award.

The law punishes any person who engages in ambulance chasing or the act of soliciting, personally or through an agent, from seafarers, or their heirs, the pursuit of any claim against their employers for the purpose of recovery of monetary claim or benefit, including legal

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Republic Act 10741

Republic Act 10741, also known as "An Act Strengthening the Operations of the NLRC, amending for this purpose Articles 220 and 222 of P.D. 442, as amended, otherwise known as the "Labor Code of the Philippines" increased the number of Commission Attorneys of the National Labor Relations Commission from three (3) to five (5). The Act provides that there shall be as many Commission Attorneys as may be necessary for the effective and efficient operation of the Commission but in no case more than five (5) assigned to the Office of the Chairman and each Commissioner.

Under this Act, the Labor Arbiters are no longer given preference in appointment to the specific arbitration branch in the region where they are residents.

Articles 213 and 215 of the Labor Code as amended have been renumbered as Articles 220 and 222 respectively. ◆