

## **COPING WITH JURISDICTIONAL ISSUES UNDER THE SECURITIES REGULATION CODE**

*Jeffrey P. Punzalan\**

### **I. BACKGROUND**

On July 19, 2000, then President Joseph Estrada signed into law Republic Act No. 8799, otherwise known as the Securities Regulation Code (SRC). The SRC aims to develop the Philippine capital market, promote self-regulation in the securities industry, ensure protection for all investors, encourage full and fair disclosure, and eliminate fraud and manipulation which create market distortions. The law likewise aims to send a clear signal to both local and foreign investors that the Philippine government is firmly committed to develop the local capital market and protect investors. Through the measures embodied in the SRC, the Securities and Exchange Commission (SEC) is expected to regain the credibility of our securities market and help lead the Philippines toward sustainable economic growth.<sup>1</sup>

In reorganizing the SEC into an effective market regulator, Congress deemed it necessary to relieve the Commission of certain quasi-judicial powers. Thus, Section 5.2 of the SRC provides that the SEC's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A<sup>2</sup> is transferred to the courts of general jurisdiction or the appropriate Regional Trial Court (RTC).

In the light of the economic objectives of the SRC, the transfer of jurisdiction of the SEC to the regular courts is a welcome development. Viewed, however, from the perspective of administrative law, the wisdom of the transfer may be regarded by some as contrary to the current trend of expanding the scope of administrative power.<sup>3</sup> Still, others may question the capability of the regular courts

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\* LL.B., UP College of Law (2003)

<sup>1</sup> *Explanatory Note*, S. B. NO. 1220, 11<sup>th</sup> Cong., 1<sup>st</sup> Sess (1998).

<sup>2</sup> REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING THE SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE OFFICE OF THE PRESIDENT (1976).

<sup>3</sup> C. L. CRUZ, *PHILIPPINE ADMINISTRATIVE LAW* 2-3 (1994 Ed.)

to handle corporate cases considering the relatively specialized technical aspect of such disputes, not to mention the added case log that the transfer may create in the already clogged dockets of the regular courts. Finally, the provision in the SRC on the transfer of jurisdiction may have been too general for its own good that its interpretation by the courts might have led to the latter's assumption of jurisdiction over cases which, although corporate in nature, may have been intended for retention by the SEC under its residual jurisdiction.

## II. OBJECTIVES

The primary objective of this study is to examine the issues attendant to the transfer of jurisdiction over corporate cases from the SEC to the regular courts under the SRC. In particular, this study will attempt to analyze the legislative intent and reasons of such transfer in the light of the reformed powers and functions of the Commission. Furthermore, it will examine the actual application of the law and determine the capacity of the regular courts to handle corporate cases. Finally, it will be determined whether or not there has been a misapprehension, if not confusion, in the regular courts' interpretation of the scope of the transferred jurisdiction.

But first, a brief background on the Securities and Exchange Commission and a survey of SEC's jurisdiction over corporate disputes are in order.

## III. THE SECURITIES AND EXCHANGE COMMISSION

The Securities and Exchange Commission was first established under Commonwealth Act No. 83, otherwise known as the Securities Act.<sup>4</sup> The original SEC was composed of only one commissioner appointed by the President with the consent of the Commission on Appointments of the National Assembly and under the executive supervision of the Department of Justice.<sup>5</sup> Under the said Act, the SEC had limited quasi-judicial powers. Its regulatory and adjudicatory powers, in fact, extended only over securities and exchanges, but not over corporations and similar entities.<sup>6</sup> The issuance of certificates of incorporation, for example, was a function of the Division of Archives, Patents, Copyrights, and Trade-Marks of the Executive Bureau<sup>7</sup> pursuant to the old Corporation Law.<sup>8</sup> The power to revoke a corporation's

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<sup>4</sup> Com. Act No. 83 (1936).

<sup>5</sup> Com. Act No. 83 (1936), sec. 3.

<sup>6</sup> Com. Act No. 83 (1936), sec. 28.

<sup>7</sup> Com. Act No. 83 (1936), sec. 6.

<sup>8</sup> Act No. 1459 (1906).

license to transact business in the Philippines, on the other hand, was vested in the Secretary of Finance,<sup>9</sup> while intra-corporate disputes and corporate dissolution were within the jurisdiction of the then Courts of First Instance (precursor of the RTC).<sup>10</sup> SEC was later given contempt powers, but only to strengthen its investigatory powers under the Securities Act.<sup>11</sup>

Then in 1976, President Ferdinand Marcos signed Presidential Decree No. 902-A, which reorganized the SEC. Among others, the administrative supervision over the SEC was removed from the Department of Trade and the Commission was placed under the direct general supervision of the Office of the President.<sup>12</sup> The Commission was likewise transformed into a collegial body composed of a Chairman and two Associate Commissioners to be appointed by the President with tenure of office of seven (7) years each.<sup>13</sup>

Through P.D. 902-A, the SEC was expressly vested with the following powers:

- 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 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;
- c) To compel the officers of any corporation or association registered by it to call meetings of stockholders or members thereof under its supervision;
- d) To pass upon the validity of the issuance and use of proxies and voting trust agreements for absent stockholders or members;
- e) To issue subpoena *duces tecum* and summon witnesses to appear in any proceedings of the Commission and in appropriate cases order search and seizure or cause the search and seizure of all documents, papers, files and records as well as books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it;

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<sup>9</sup> Act No. 1459 (1906), secs. 26, 54, 71.

<sup>10</sup> Act No. 1459 (1906), sec. 62.

<sup>11</sup> Rep. Act No. 1143 (1954).

<sup>12</sup> Pres. Decree No. 902-A, (1976) sec. 1.

<sup>13</sup> Pres. Decree No. 902-A, (1976) sec. 2.

f) To impose fines and/or penalties for violation of this Decree or any other laws being implemented by the Commission, the pertinent rules and regulations, its orders, decisions and/or rulings;

g) To authorize the establishment and operation of stock exchanges, commodity exchanges and such other similar organization 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;

h) To pass upon, refuse or deny, after consultation with the Board of Investments, Department of Industry, National Economic and Development Authority or any other appropriate government agency, the application for registration of any corporation, partnership or 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;

i) 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:

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 (5) years;
5. Failure to file by-laws within the required period;
6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period;

j) To exercise such other powers as implied, necessary or incidental to the carrying out the express powers granted to the Commission or to achieve the objectives and purposes of this Decree.<sup>14</sup>

The succeeding years saw the emergence of the SEC as a powerful but very occupied administrative body tasked with the implementation of not less than

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<sup>14</sup> Pres. Decree No. 902-A, sec. 6.

twenty-five additional statutes,<sup>15</sup> among which are the Revised Securities Act,<sup>16</sup> the Corporation Code,<sup>17</sup> and the Omnibus Investments Code.<sup>18</sup>

More significantly, the SEC was transformed into a potent quasi-judicial agency. P.D. 902-A vested the Commission with absolute jurisdiction, supervision and control over all corporations, partnerships or associations who are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines to the exclusion of the regular courts.<sup>19</sup> In particular, SEC was given original and exclusive jurisdiction to hear and decide cases involving the following:

- a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;
- b) 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;
- c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.<sup>20</sup>

This conferral of jurisdiction was supposed to be in line with the State's policy of a "more active public participation in the affairs of private corporations and enterprises" as well as the perceived "need for an agency of the government to be invested with ample powers to protect (corporate) investment and the public."<sup>21</sup> As elucidated by the Supreme Court in the case of *Union Glass and Container Corporation, et al. v. SEC*:<sup>22</sup>

This grant of jurisdiction must be viewed in the light of the nature and function of the SEC under the law. Section 3 of PD No. 902-A confers upon the latter absolute jurisdiction, supervision, and control over all corporations,

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<sup>15</sup> F. F. Farolan, *A Critical Analysis of the Jurisdiction of the Securities and Exchange Commission*, IN 60 PHIL. L. J. 318-339 (1985).

<sup>16</sup> Batas Pambansa Blg. 178 (1982).

<sup>17</sup> Batas Pambansa Blg. 68 (1980).

<sup>18</sup> Exec. Order No. 226 (1987).

<sup>19</sup> Pres. Decree No. 902-A (1976), sec. 4.

<sup>20</sup> Pres. Decree No. 902-A (1976), sec. 5.

<sup>21</sup> Pres. Decree No. 902-A (1976), First Whereas Clause.

<sup>22</sup> G.R. No. 64013, November 28, 1983.

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. 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, 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 in so far as its franchise, permit or license to operate is concerned; and [d] among the stockholders, partners or associates themselves. (emphasis ours)

Thus, in a line of cases, the Supreme Court upheld the jurisdiction of the SEC over the following disputes and controversies to the exclusion of other tribunals: claims against financing companies under the Financing Company Act,<sup>23</sup> corporate liquidation,<sup>24</sup> dissolution,<sup>25</sup> as well as insolvency proceedings<sup>26</sup>, claims against assets and properties of distressed corporations,<sup>27</sup> validity of member assessments by condominium corporations,<sup>28</sup> fraudulent acts by corporate officers detrimental to the interest of the public,<sup>29</sup> dissipation of corporate funds by corporate officers,<sup>30</sup> recovery of damages from fraudulent money market placements,<sup>31</sup> legality of dismissal of corporate officers,<sup>32</sup> revocation of certificate of corporate registration,<sup>33</sup> and award of consequential damages arising from such disputes and issues.<sup>34</sup>

SEC's jurisdiction, however, was not without issue and confusion. A number of cases decided by the Supreme Court emphasize the misapprehension of the extent of SEC's jurisdiction. Thus, the High Tribunal clarified that SEC's

<sup>23</sup> Orosa, Jr. v. CA, G.R. Nos. 76828-32, January 28, 1991.

<sup>24</sup> State Investment House, Inc. v. CA, G.R. No. 89767, February 19, 1992.

<sup>25</sup> Freeman, Inc., et al. v. SEC, G.R. No. 110265, July 7, 1994.

<sup>26</sup> Land Bank of the Philippines v. Capistrano, G.R. No. 73123, September 2, 1991.

<sup>27</sup> Rizal Commercial Banking Corporation v. IAC, G.R. No. 74851, September 14, 1992.

<sup>28</sup> Wack Wack Condominium Corporation, et al. v. CA, G.R. No. 78490, November 23, 1992.

<sup>29</sup> Magalad v. Premiere Financing Corp., G.R. No. 87135, May 22, 1992.

<sup>30</sup> Alleje v. CA, G.R. No. 107152, January 25, 1995.

<sup>31</sup> Sesbreno v. CA, G.R. No. 84096, January 26, 1995.

<sup>32</sup> PSBA v. Leano, G.R. No. L-58468, February 24, 1984; Lozon v. NLRC, G.R. No. 107660, January 2, 1995; Paguio, et al. v. NLRC, G.R. No. 116662, February 1, 1996.

<sup>33</sup> Garments and Textile Export Board v. CA, G.R. Nos. 114711 & 115889, February 13, 1997.

<sup>34</sup> Andaya v. Abadia, G.R. No. 104033, December 27, 1993.

jurisdiction was limited to disputes between the corporation and its stockholders, and did not extend to disputes between the former and its creditors.<sup>35</sup> Neither did it have jurisdiction over corporations organized pursuant to a law other than the Corporation Code, such as water districts organized and operating as a quasi-public corporation pursuant to P.D. 198,<sup>36</sup> much less over co-equal government entities such as the Presidential Commission on Good Government.<sup>37</sup>

With the advent of the SRC, much of this jurisdictional confusion, (particularly with respect to civil disputes involving a corporation) is expected to be addressed. Thus, in the resolution of such cases pending in the High Tribunal after the enactment of the SRC, the Supreme Court simply cited Section 5.2 of the SRC and ruled that the jurisdictional issue of the cases has been mooted in favor of the Regional Trial Court's exercise of jurisdiction over controversies involving the corporation, its stockholders, and even third parties.<sup>38</sup>

But, as will be shown later, the jurisdictional implications of the SRC are actually more than meets the eye.

#### IV. THE SECURITIES REGULATION CODE

As mentioned earlier, R.A. 8799 was enacted in view of the State policy of establishing a socially conscious, free market that regulates itself, encouraging the widest participation of ownership in enterprises, enhancing the democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, and minimizing if not totally eliminating insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market.<sup>39</sup> The SEC is envisioned as the enforcer of this State policy.

The SRC boasts of the following salient features: reorganization of the SEC into an effective market regulator; a full disclosure approach to regulation of the securities market; credibility of the Philippine securities market; protection of

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<sup>35</sup>Bañez v. Dimensional Const., G.R. No. L-62648, November 22, 1985; Abad v. CFI of Pangasinan, Branch VIII, G.R. Nos. 58507-08, February 26, 1992.

<sup>36</sup> Marilao Water Consumers Association, Inc. v. IAC, et al., G.R. No. 72807, September 9, 1991.

<sup>37</sup> Africa v. PCGG, G.R. Nos. 83831, 85594, 85597, & 85621, January 9, 1992.

<sup>38</sup> See Spouses Pascual v. CA, et al., G.R. No. 138542, August 25, 2000; Transfarm & Co., Inc., et al. v. Daewoo Corp., et al., G.R. No. 140453, October 17, 2000; Gochan, et al. v. Young, et al., G.R. No. 131889, March 12, 2001; In re: Intestate Estate of Alexander R. Ty, G.R. Nos. 112872 & 114672, April 19, 2001; Fabia v. CA, et al., G.R. No. 132684, August 20, 2001; Rural Bank of Lipa City, et al. v. CA, et al., G.R. No. 124535, September 28, 2001; Vesagas, et al. v. CA, et al., G.R. No. 142924, December 5, 2001.

<sup>39</sup> Rep. Act No. 8799 (2000), sec. 2.

minority corporate shareholders; and prevention of market abuses. More specifically, the SRC authorizes the SEC to provide for its reorganization, to streamline its structure and operations, upgrade its human resource component and enable it to more efficiently and effectively perform its functions and exercise its powers under the law.<sup>40</sup> The law likewise empowers SEC to audit the financial statements, assets and other information of a firm applying for registration of its securities whenever it deems the same necessary to ensure full disclosure or to protect the interest of the investors and the public in general.<sup>41</sup>

The powers and functions of the SEC have altogether been refurbished by the SRC. Preliminarily, it provides that the SEC shall have the powers and functions provided by the SRC, P.D. No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws.<sup>42</sup> From these laws, the SRC reformulated the express powers and functions of the SEC as follows:

- (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 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 and 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

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<sup>40</sup> Rep. Act No. 8799 (2000), sec. 7.1.

<sup>41</sup> Rep. Act No. 8799 (2000), sec. 8.5.

<sup>42</sup> Rep. Act No. 8799 (2000), sec. 5.1.



private institution, corporation, firm, association or person in the implementation of its powers and functions under this Code;

(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;<sup>43</sup>

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With the reformulation of the powers and functions of the SEC, the legislators deemed it unnecessary for the Commission to retain all of its quasi-judicial powers. The transfer of SEC's jurisdiction under Section 5 of P.D. 902-A to the regular courts was in fact a mere afterthought, it not being included among the provisions of the original version of Senate Bill No. 1220. Moreover, there was only scant consideration on the matter during the interpellations and deliberations of the bill in the Senate, which focused more on the technical and economic aspects of the proposed SRC. Proponents of the transfer appeared to be overly concerned with the fact that ours is the only Securities and Exchange Commission in the world that exercises quasi-judicial powers over corporate disputes.<sup>44</sup> Apparently, the legislators considered SEC's retention of its quasi-judicial powers as more of an impediment rather than a facility to the effective performance of the Commission's mandate under the SRC.

Thus, while SEC's mandate under P.D. 902-A to encourage and protect public investments in private corporations was previously cited by the Supreme Court in the *Union Glass* case<sup>45</sup> to justify the Commission's exercise of jurisdiction over disputes involving such corporations, the same mandate reinforced under the SRC is now being made an excuse to divest the SEC of its quasi-judicial powers.

#### A. JURISDICTIONAL PROBLEM AREAS

Still, a perusal of the whole Section 5 of the SRC raises the question of how much quasi-judicial powers have been divested from the SEC. While Section 5.2 of the SRC is quite categorical that all of SEC's jurisdiction under Section 5 of P.D. 902-A shall be transferred, there is Section 5.1 to deal with. The powers and

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<sup>43</sup> Rep. Act No. 8799 (2000), Sec. 5.1.

<sup>44</sup> See JOURNALS OF THE SENATE OF THE PHILIPPINES, 11<sup>th</sup> Cong., 1<sup>st</sup> Sess., Sept. 29-Nov. 19, 1998.

<sup>45</sup> *Supra*.

functions enumerated under the latter are not necessarily exclusive and independent of SEC's jurisdiction under Section 5 of P.D. 902-A. For example, Section 5.1(a) of the SRC confusingly provides that the SEC shall still 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," while Section 5.1(n) allows the Commission to exercise not only such other powers as may be provided by law but also "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."

Also, the SRC provides that the SEC shall still have the power 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".<sup>46</sup> Such grounds are found under Section 5(i) of P.D. 902-A, and include "serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public".<sup>47</sup> However, such a case necessarily falls under the first classification of transferred cases under Section 5 of P.D. 902-A, which provides:

any acts, of the board of directors, business associates, its officers or partnership, *amounting to fraud and misrepresentation which may be detrimental to the interest of the public...* (emphasis supplied)

To further complicate the scenario, SEC is also empowered to "issue cease and desist orders to prevent fraud or injury to the investing public".<sup>48</sup> The following corollary issues therefore arise:

- 1) Does the transfer of jurisdiction still allow an administrative case to be filed before the SEC based on defrauding the public, which case falls under Section 5(1) of P.D. 902-A?
- 2) And if so, is the doctrine of primary jurisdiction applicable, such that a case before the RTC cannot be filed ahead of the administrative case?<sup>49</sup>

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<sup>46</sup> Rep. Act 8799 (2000), section 5.1(m).

<sup>47</sup> Pres. Decree 902-A, sec. 6(i)(2).

<sup>48</sup> Rep. Act 8799 (2000), sec. 5.1(i).

<sup>49</sup> Saavedra, et al., vs. SEC, et al., G.R. No. 80879, March 21, 1988, where the Supreme Court held: "In cases involving specialized disputes, the trend has been to refer the same to an administrative agency of special competence." *Citing Pambujan Sur United Mine Workers vs. Samar Mining Co., Inc.* (94 Phil. 932, 941 [1954]), the Court ruled above that "under the sense-making and expeditious doctrine of primary jurisdiction, x x x 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

3) Considering that the cause of action is a matter within the jurisdiction of the RTC pursuant to the SRC, is the RTC empowered to grant the relief prayed for, *i.e.*, a temporary restraining order, a writ of injunction, or even the suspension or revocation of franchise or certificate of registration, which powers are specifically vested by the SRC in the SEC?

Finally, even though Section 5 of P.D. 902-A does not relate to rehabilitation cases (and suspension of payments), Section 5.2 of the SRC likewise transfers the jurisdiction over such cases to the RTC when it provides that "the Commission (SEC) shall retain jurisdiction over pending xxx rehabilitation cases filed as of 30 June 2000 until finally disposed." This poses a more perplexing query: are the regular courts equipped with the capability and machinery of handling rehabilitation cases? Corporate rehabilitation is supposed to be quite complicated that the SEC, after almost twenty years, only came up with approved Rules of Procedure on Corporate Recovery on January 15, 2000,<sup>50</sup> or just a few months before it was divested of jurisdiction over corporate rehabilitation.

A cause of consolation would perhaps be the fact that regular courts have long been handling cases of suspension of payments by virtue of the Insolvency Law,<sup>51</sup> although the Regional Trial Court's jurisdiction is limited to individual debtors.<sup>52</sup> A petition for rehabilitation also involves an application for suspension of payments, only that the application is coupled with a prayer for the appointment of a rehabilitation receiver or management committee that shall closely oversee and monitor the operations of the debtor during the pendency of the proceedings.<sup>53</sup> Still, rehabilitation proceedings are supposed to have their own set of rules and procedures that the regular courts until recently had yet to be oriented to.

Indeed, if we were to take into consideration the present trend in administrative law, *i.e.*, further empowerment of administrative agencies for further specialization of governmental functions,<sup>54</sup> there is neither logic nor wisdom in divesting a supposedly technical agency of quasi-judicial powers over special disputes which are within the realm of the agency's expertise, only to transfer the same to a

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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 facts, and a uniformity of ruling is essential to comply with the purpose of the regulatory statute administered."

<sup>50</sup> F.E. Lim, Judicial Manual on Corporate Rehabilitation (Discussion Draft, April 11, 2002), pp. 2-3.

<sup>51</sup> Act No. 1956 (1909), as amended.

<sup>52</sup> Act No. 1956 (1909), Sec. 2.

<sup>53</sup> See F.E. Lim, *op. cit. supra* note 50.

<sup>54</sup> C.L. CRUZ, *op. cit. supra* note 3 at pp. 3, 14.

regular court which seems to already have too much of its own to handle. But in fairness at least to the Supreme Court, it has shown that it is determined to equip its courts with the necessary faculties to face their new challenge.

### B. PERIOD OF TRANSITION

Pursuant to Section 5.2 of the SRC, the Supreme Court promulgated a number of resolutions, the first of which designated certain branches of the Regional Trial Courts to try and decide cases formerly cognizable by the SEC.<sup>55</sup> Consequently the Supreme Court promulgated the Interim Rules on Corporate Rehabilitation<sup>56</sup> and the Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. 8799.<sup>57</sup> These resolutions embody the major steps taken by the Judiciary in addressing the need of the courts to effectively assume their new, albeit reverted, jurisdiction. For example, by virtue of AM No. 00-11-03-SC, the Supreme Court opted to designate certain branches of the RTC as special courts to handle corporate cases instead of vesting all branches with said jurisdiction. The Supreme Court also made sure that each judicial region would have at least one RTC branch to handle corporate cases. Thus, unlike before when every case under SEC's jurisdiction had to be filed before the Securities and Investigation Clearing Division (SICD) in the Commission's Main Office in Mandaluyong City, intra-corporate and rehabilitation cases shall now be filed in Regional Trial Court having jurisdiction over the territory where the principal office of the corporation concerned is situated.<sup>58</sup>

The resolutions are not without their own jurisdictional predicaments. For example, as if the transferred jurisdiction pursuant to Section 5.2 of the SRC was not enough, the Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. 8799 included two other classes of cases, to wit: derivative suits<sup>59</sup> and inspection of corporate books,<sup>60</sup> which classes of corporate cases are not found in P.D. 902-A but are remedies provided by common law to stockholders for the purpose of protecting their individual interests and rights under the Corporation Code.<sup>61</sup>

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<sup>55</sup> Adm. Mem. No. 00-11-03-SC (November 21, 2000).

<sup>56</sup> Adm. Mem. No. 00-8-10-SC (November 21, 2000).

<sup>57</sup> Adm. Mem. No. 01-2-04-SC (March 13, 2001).

<sup>58</sup> Adm. Mem. No. 00-8-10-SC, Rule 3, sec. 2; Adm. Mem. No. 01-2-04-SC, Rule I, sec. 5.

<sup>59</sup> Adm. Mem. No. 01-2-04-SC, Rule 1, subsec. (1)(a)(4).

<sup>60</sup> Adm. Mem. No. 01-2-04-SC, Rule 1, subsec. (1)(a)(5).

<sup>61</sup> R.E. AGPALO, COMMENTS ON THE CORPORATION CODE OF THE PHILIPPINES 105, 317(1993 Ed.); C.L. VILLANUEVA, PHILIPPINE CORPORATE LAW 354,369-370 (1998 ed.).

Be that as it may, the two Interim Rules supply the respective guidelines and rules of procedure, including mandatory periods to be observed during the proceedings, all with the aim of making the disposition of corporate cases before regular courts as efficient as possible. In fact, both Interim Rules state that their provisions shall be liberally construed in order to assist the parties in obtaining a just, summary, expeditious and inexpensive determination of actions and proceedings. For this reason, certain pleadings are deemed prohibited.<sup>62</sup> Moreover, as a necessary precaution against procedural lapses, both Interim Rules provide that the Rules of Court shall apply suppletorily to proceedings they govern.<sup>63</sup>

Apart from the promulgation of the necessary rules of procedure, the Supreme Court through the Philippine Judicial Academy likewise conducted seminars and workshops for concerned judges and court personnel to effectively adjust to their new responsibilities.<sup>64</sup>

In the end, it was up to the special branches of the Regional Trial Court to prove that regardless of the supposed wisdom and logic of the transfer of jurisdiction, they are up to the challenge of corporate litigation.

With the generosity of the Regional Trial Court, Branch 158 of Pasig City, an actual examination of the regular court's performance became possible.

### C. TESTING ITS METTLE

Pursuant to A.M. No. 00-11-03-SC,<sup>65</sup> Branch 158<sup>66</sup> of the Regional Trial Court (RTC) of Pasig City has been designated as one of the sixty (60) RTC branches to try and decide the cases formerly cognizable by the SEC. Official records<sup>67</sup> show that as of September 30, 2002, 151 corporate cases have either been transferred from the SEC or originally filed with the RTC of Pasig City pursuant to the SRC. Of these cases, fourteen (14) are election contests, ten (10) are derivative suits, nine (9) are petitions for dissolution and partition, eight (8) are petitions for accounting or inspection of corporate books, four (4) are petitions for corporate rehabilitation, three (3) involve cancellation of registration or corporate name, while

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<sup>62</sup> Adm. Mem. No. 00-8-10-SC, Rule 3, sec. 1; Adm. Mem. No. 01-2-04-SC, Rule 1, sec. 8.

<sup>63</sup> Adm. Mem. No. 00-8-10-SC, Rule 2, sec. 2; Adm. Mem. No. 01-2-04-SC, rule 1, sec. 2.

<sup>64</sup> The latest of which was the "Roundtable Discussion/Workshop on the Benchbooks on Corporate Rehabilitation and Liquidation", held on September 12, 2002 in Makati City.

<sup>65</sup> AGPALO, *op cit.* *supra* note 61.

<sup>66</sup> Presided by Hon. Jose R. Hernandez.

<sup>67</sup> RTC Branch 158 Pasig City, *Docket Inventory of SEC Cases*, January 1, 2001 to June 30, 2002; *Monthly Reports* for July, August, and September 2002.

accounting or inspection of corporate books, four (4) are petitions for corporate rehabilitation, three (3) involve cancellation of registration or corporate name, while the remaining one hundred and three (103) involve general disputes among and between members of the corporation, such as those involving the issuance of certificates of stocks, payment of dues, or violations of corporate by-laws or internal rules.

An initial review of these cases easily reveals a practical sense in the transfer of corporate cases from the SEC, although such transfer may not have been considered by Congress.<sup>68</sup> Almost half of the cases at the time they were transferred from the SEC are pending for over five years already. The oldest case, *Bailon v. Professional Services, Inc.*<sup>69</sup> was originally filed in the SICD on January 28, 1991. An interview with the Clerk-in-charge of the corporate cases in Branch 158<sup>70</sup> further reveals that in most of the transferred cases, the Presiding Judge had to conduct preliminary conferences and require the parties to submit missing transcripts of stenographic notes, pleadings and documents which should have been included in the records upon transfer from the SEC, leading to the suspicion that the SICD did not properly manage the records of pending cases. Such suspicion was somewhat validated when upon inquiry with the SEC, it was learned that there were no existing docket inventories and periodic reports of pending SEC cases before or even after the SICD was eventually dissolved sometime in the year 2000.

In contrast, of the 151 corporate cases that have been transferred to and filed with Branch 158 since January 9, 2001, only 15 were left unresolved or not acted upon as of September 30, 2002. And if it is any indication of the parties' satisfaction with the court's resolution of the disputes, of the more than 100 cases dismissed or decided on the merits as of September 30, 2002, only 14 cases were elevated by appeal or petition for certiorari to the Court of Appeals.<sup>71</sup>

A more extensive review of the actual case records, on the other hand, shows how the court addressed the jurisdictional issues brought about by the SRC. In most cases, the disputes were more or less clear-cut that the parties voluntarily submitted to the jurisdiction of the court. In some cases, however, the defendants questioned the jurisdiction of the court, either because there was prior agreement

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<sup>68</sup> Most probably it was not. A check with the SEC Office of General Counsel, which was in charge of the records of the now dissolved SICD, showed that there were no docket inventories nor periodic reports of pending cases prior to the enactment of R.A. 8799.

<sup>69</sup> SICD Case No. 3938; Civil Case No. 68224; for Annulment of Increase in outstanding capital stock.

<sup>70</sup> Mrs. Veronica Cruz, Clerk III.

<sup>71</sup> RTC Branch 158 Pasig City, *Docket Inventory of SEC Cases*, January 1, 2001 to June 30, 2002; *Monthly Reports* for July, August, and September 2002.

between the parties as to the venue of disputes,<sup>72</sup> or because another tribunal has jurisdiction over the case.<sup>73</sup>

Still, in at least one case, the court itself declared that it could not assume jurisdiction over the dispute. In the case of *Filipino Inventors Society v. Modanza, et al.*,<sup>74</sup> petitioner was at the outset protesting the result of the election of officers and directors conducted by some of its members. Since the President-elect of the organization shall likewise sit as an ex-officio member of the Screening Committee of Inventions of the Department of Science and Technology (DOST), petitioner prayed that a writ of injunction be issued by the court to enjoin the Chairman of the Screening Committee, DOST Undersecretary Rogelio Panlasigui, from holding the monthly meetings of the Screening Committee and from recognizing private respondents as petitioner's duly elected officers and directors. Despite the failure of the respondents to file an Answer within the reglementary period, the court still dismissed the petition in this wise:

It is thus clear that the principal respondent in this Petition for Injunction is public respondent Panlasigui who is neither a member nor an officer of FIS. Moreover, the amended petition seeks to enjoin private respondents from representing themselves as the duly elected directors and officers of FIS, and from sitting in the screening committee either as members or observers. But nowhere in the petition is it prayed that the election of private respondents be declared null and void. This is necessary and must be done first to determine private respondents eligibility to sit in the screening committee. Being so, this case cannot be treated as an intra-corporate controversy under Rule I, Section 1(a.2) nor an election contest under Rule I, Section (a.3) in relation to Rule 6 of the Interim Rules. The Court then has no jurisdiction over the subject matter of this case.<sup>75</sup>

Although the case involved an intra-corporate dispute, particularly an election contest among the members of an association, it was the court's position that it cannot acquire jurisdiction over the public respondent because it was exercising a special jurisdiction. Indeed, had the court been exercising its general jurisdiction, there is no question that it can assume jurisdiction over a Cabinet undersecretary, because the latter nor his office cannot be said to be a co-equal government entity of the court. However, it is doubtful whether the SRC, or even the subsequent resolutions promulgated by the Supreme Court for that matter, intended a special court handling corporate cases to be divested of its regular

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<sup>72</sup> *Unitas Network, Inc. v. Jose*, Civil Case No. 68520, Petition for Injunction with Damages.

<sup>73</sup> *Taguig Neighborhood Association v. Gobrin, et al.*, Civil Case No. 68232, Petition for calling of General election and auditing of financial records.

<sup>74</sup> SEC Case No. 02-07; Petition for Injunction with Damages filed on June 6, 2002.

<sup>75</sup> Order of Dismissal dated July 31, 2002.

jurisdiction, considering that under A.M. No. 00-11-03-SC,<sup>76</sup> the designated special courts are directed to continue to try and decide cases under their general jurisdiction in addition to the SEC cases.<sup>77</sup>

It would have been an ideal case to clarify the intended scope of jurisdiction of a special court handling corporate cases had it been brought before the Supreme Court. Unfortunately, the petitioner failed to file an appeal, thus making the order of the court final and executory.

On the other hand, the court had the chance to assume jurisdiction over a case which was clearly an intra-corporate dispute, but wherein the remedy sought was questionably within its powers. In the case of *Ratanasopinsawat, et al. v. Spouses Varona*,<sup>78</sup> the Plaintiffs were Thai nationals who were lured by the defendants to invest in a prospective domestic corporation. But while the plaintiffs were able to infuse the necessary paid-up capital for the eventual incorporation of the company, defendants were not able to commence the operation of the corporation, and instead caused the dissipation of the latter's funds. Plaintiffs then filed the complaint praying for the dissolution of the corporation. Instead of questioning the power of the court to dissolve the corporation, defendants claimed that the dissolution would be improper since plaintiffs were mere minority stockholders. The court resolved to grant the dissolution of the corporation, reasoning as follows:

From the evidence the Court finds merit in plaintiffs' allegations of mismanagement and unauthorized use of funds by the Varonas, who occupy the positions of President and Treasurer of the Corporation, in the conduct of the affairs of T-Con to the prejudice of the interests of plaintiffs as minority stockholders. xxx

Furthermore, it appears that the relations between the two parties are already strained beyond reconciliation. xxx Considering these factors, corporate dissolution would indeed be a logical answer to the controversy.

The Varonas, however, would contend that as the minority stockholders, plaintiffs are not in a position to seek the dissolution of their Corporation. The Court disagrees. xxx

[T]he Supreme Court has pronounced in the case of *Financing Corporation of the Philippines, Inc., et al. vs. Jose Teodoro, et al.* (G.R. No. L-4900, August 31, 1953), decided under the old Corporation Law, that there are cases where even minority stockholders may ask for dissolution, under the principle that such

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<sup>76</sup> RESOLUTION DESIGNATING CERTAIN BRANCHES OF REGIONAL TRIAL COURTS TO TRY AND DECIDE CASES FORMERLY COGNIZABLE BY THE SECURITIES AND EXCHANGE COMMISSION, *supra*.

<sup>77</sup> *Id.*, Guidelines, par. 1.

<sup>78</sup> Civil Case No. 68272; for Dissolution and Liquidation filed on January 18, 2001.



minority members, if unable to obtain redress and protection of their rights within the corporation, must not and should not be left without redress and remedy.

Under the present Corporation Code, on the other hand, Section 105 provides that any stockholder of a close corporation may, by written petition to the SEC, compel the dissolution of such corporation whenever any of acts of the directors, officers or those in control of the corporation is illegal, or fraudulent, or dishonest, or oppressive or unfairly prejudicial to the corporation or any stockholder, or whenever corporate assets are being misapplied or wasted. A similar situation is very apparent in this case.

Note, however, that Section 105 speaks of stockholders of a 'close corporation', the strict definition of which is provided under Section 96 of the Corporation Code, and to which definition T-Con may not fit. Be that as it may, it has been the opinion of legal authorities on the subject that the express grant of such right to a stockholder of a close corporation should not be interpreted to preclude the operation of the principle laid down in the above-mentioned *Financing Corporation* case to protect the rights of stockholders in ordinary corporations (see Volume II of Campos, *The Corporation Code: Comments, Notes and Cases*, 1990 ed., pp. 378).<sup>79</sup>

In a rather defensive stance, the court then supports its decision by offering its own interpretation of the implications of the transfer of jurisdiction under the SRC. Thus:

...With the advent of the Securities Regulations Code (R.A. 8799) ...the exclusive and original jurisdiction over corporate controversies has already been delineated, such that those affecting the rights of corporate members and stockholders have been transferred to the jurisdiction of the Regional Trial Courts (see Section 5.2 of R.A. 8799) while those affecting public interest and the public in general are retained by the SEC (See Sections 2 and 5 of R.A. 8799). This case being an intra-corporate controversy without any significant effect on public interest as T-Con has yet to enter into any business transaction, this Court has properly assumed jurisdiction over this case and is therefore empowered to grant the relief prayed for.<sup>80</sup>

The hounding question was whether the court has likewise been empowered to dissolve corporations as a relief to the aggrieved party in an intra-corporate dispute. Note that under the old Rules of Court,<sup>81</sup> a *quo warranto* proceeding could have been commenced before the RTC for the dissolution of a corporation by the Solicitor General or a public prosecutor, when directed by the

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<sup>79</sup> Decision dated April 26, 2002, pp. 4-5.

<sup>80</sup> *Id.* at 5.

<sup>81</sup> Promulgated in 1964.

President of the Philippines, or "when upon complaint or otherwise has good reason to believe that any case specified under the law exist."<sup>82</sup> However, the provisions under the Rules of Court on forfeiture of franchise and dissolution of a corporation have since been deleted under Rule 66 of the 1997 Rules of Civil Procedure on recognition that the matter is governed by the provisions of P.D. 902-A, and is within the original and exclusive jurisdiction of the SEC.<sup>83</sup> Such original and exclusive jurisdiction, on the other hand, was not vested by Section 5 of P.D. 902-A but by Section 121 of the Corporation Code,<sup>84</sup> which was neither amended nor repealed by the SRC. It is likewise worthy to note that the Interim Rules of Procedure Governing Intra-Corporate Controversies do not provide rules for the dissolution of corporation, be it voluntary or involuntary.<sup>85</sup>

Again, the case could have contributed much to the scholarly evaluation and appreciation of the extent of the jurisdiction and powers vested by the SRC to the regular courts had it been appealed all the way to the Supreme Court. Unfortunately, the defendants did not pursue an appeal.

But perhaps the most interesting case within the dockets of Branch 158 would be the *Petition for Rehabilitation of First Dominion Prime Holdings, et al.*<sup>86</sup> It is unofficially the first approval of a corporate rehabilitation plan by a regular court<sup>87</sup> pursuant to the SRC and the Interim Rules of Procedure on Corporate Rehabilitation.<sup>88</sup> Such an achievement would be better appreciated where one is oriented to the intricacies of rehabilitation proceedings leading to the approval of a rehabilitation plan.

Under the Interim Rules of Procedure on Corporate Rehabilitation, after a petition for rehabilitation has been filed, the court must determine within five days if the same is sufficient in form and substance,<sup>89</sup> meaning, if it complies with the requirements under Rule 4, Section 2 of said Rules, which, among others, necessitates the submission of at least eleven (11) different kinds of supporting

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<sup>82</sup> RULES OF COURT, Rule 66, secs. 2, 3.

<sup>83</sup> VILLANUEVA, *op cit.* *supra* note 63 at 680.

<sup>84</sup> Sec. 121. Involuntary dissolution. — A corporation may be dissolved by the Securities and Exchange Commission upon filing of a verified complaint and after proper notice and hearing on the grounds provided by existing laws, rules and regulations.

<sup>85</sup> VILLANUEVA, *op cit.* *supra* note 63 at 681

<sup>86</sup> Civil Case No. 68343, filed on February 15, 2001.

<sup>87</sup> Order approving the rehabilitation plan dated February 2, 2002.

<sup>88</sup> An examination of the available reports by the various special courts handling corporate cases at the Office of the Court Administrator of the Supreme Court showed that no other court has approved a rehabilitation plan as of November 2002.

<sup>89</sup> Adm. Mem. No. 00-8-10-SC, Rule 4, sec. 3.

financial documents and certifications.<sup>90</sup> If the petition meets the standard, the court shall then issue an order which, among others, appoints a Rehabilitation Receiver and fixes his bond. The same order shall fix the initial hearing on the petition not earlier than forty-five (45) days but not later than sixty (60) days from the filing thereof. The same order shall likewise direct all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on the debtor-corporation a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before the date of the initial hearing. In the case of *First Dominion, et al.*, a total of twenty-seven creditor banks and

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<sup>90</sup> Adm. Mem. No. 00-8-10-SC, Rule 4, sec. 2 provides among other that the petition for rehabilitation shall be accompanied upon filing by the following documents:

- a. An audited financial statement of the debtor at the end of its last fiscal year;
- b. Interim financial statements as of the end of the month prior to the filing of the petition;
- c. Schedule of Debts and Liabilities which lists all the creditors of the debtor indicating the name and address of each creditor, the amount of each claim as to principal, interest, or penalties due as of the date of filing, the nature of the claim, and any pledge, lien, mortgage judgment, or other security given for the payment thereof;
- d. An Inventory of Assets which must list with reasonable specificity all the assets of the debtor, stating the nature of each asset, the location and condition thereof, the book value or market value of the asset, and attaching the corresponding certificate of title therefor in case of real property, or the evidence of title or ownership in case of movable property, the encumbrances, liens or claims thereon, if any, and the identities and addresses of the lienholders and claimants. The Inventory shall include a Schedule of Accounts Receivable which must indicate the amount of each, the persons from whom due, the date of maturity, and the degree of collectibility categorizing them as highly collectible to remotely collectible;
- e. A rehabilitation plan which conforms to the minimal requirements set out in section 5, Rule 4 of these Rules;
- f. A Schedule of Payments and disposition of assets which the debtor may have effected within three (3) months immediately preceding the filing of the petition;
- g. A Schedule of the Cash Flow of the debtor for three (3) months immediately preceding the filing of the petition, and a detailed schedule of the projected cash flow for the succeeding three (3) months;
- h. A Statement of Possible Claims by or against the debtor which must contain a brief statement of the facts which might give rise to the claim and an estimate of the probable amount thereof;
- i. An Affidavit of General Financial Condition which shall contain answers to the questions or matters prescribed in Annex "A" hereof;
- j. At least three (3) nominees for the position of Rehabilitation Receiver as well as their qualifications and addresses, including but not limited to their telephone numbers, fax number and e-mail address; and
- k. A Certificate attesting, under oath, that (a) the filing of the petition has been duly authorized; and (b) the directors and stockholders have irrevocably approved and/or consented to, in accordance with existing laws, all actions or matters necessary and desirable to rehabilitate the debtor including, but not limited to, amendments to the articles of incorporation and by-laws or articles of partnership; increase or decrease in the authorized capital stock; issuance of bonded indebtedness; alienation, transfer, or encumbrance of assets of the debtor; and modification of shareholders' rights.

corporations submitted their respective comments or oppositions to the petition for rehabilitation.<sup>91</sup>

On or before the initial hearing, the petitioner shall file the publisher's affidavit showing that the publication requirements had been complied with. If the court is satisfied that said jurisdictional requirement had been complied with, it shall summarily hear the parties on any matter relating to the petition as well as any comment or opposition filed in connection therewith. The court may hold additional clarificatory hearings where there is need to further clarify matters but in no event shall such additional hearings be held beyond one hundred eighty (180) days from the date of the initial hearing. If, after the initial hearing, the court is satisfied that there is merit in the petition, it shall give due course to the petition and immediately refer the petition and its annexes to the Rehabilitation Receiver who shall evaluate the rehabilitation plan and submit his recommendations to the court not later than one hundred twenty (120) days from the date of the initial hearing.<sup>92</sup> In the *First Dominion* case, the initial hearing was conducted on April 19, 2001<sup>93</sup> while the court gave due course to the petition and referred it to the Rehabilitation Receiver on May 2, 2001. The Rehabilitation Receiver then submitted his recommendations to the court on July 25, 2001.<sup>94</sup>

Under the same Interim Rules, the petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing. However, the court may grant an extension beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated, but in no instance shall the period for approving or disapproving a rehabilitation plan exceed eighteen (18) months from the date of filing of the petition.<sup>95</sup> In the *First Dominion* case, the court eventually approved the rehabilitation plan on February 22, 2002, or twelve (12) months from the date of filing of the petition.

It is in the approval of the rehabilitation plan where the technical expertise of the judge or tribunal is required. It is also here that the experience of regular courts in handling suspension of payments under the Insolvency Law proves insufficient. Under the Insolvency Law, the proposed agreement for the suspension of payments by the petitioning debtor may only be approved by the creditors who took part in the meeting called for the purpose of approving the proposed agreement

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<sup>91</sup> Records of Civil Case No. 68343.

<sup>92</sup> Adm. Mem. No. 00-8-10-SC, Rule 4, sec. 9.

<sup>93</sup> Records of Civil Case No. 68343, Vol. II, p. 497.

<sup>94</sup> Records of Civil Case No. 68343, Vol. III, p. 298-315.

<sup>95</sup> Adm. Mem. No. 00-8-10-SC, *supra*, Rule 4, sec. 11.

in accordance with the guidelines provided in said Act.<sup>96</sup> The Insolvency Law is in fact quite categorical when it provides that "if the decision of the meeting be negative as regards the proposed agreement or if no decision is had in default of such number or of such majorities, the proceeding shall be terminated without recourse and the parties concerned shall be at liberty to enforce the rights which may correspond to them." The judge then has no authority to overrule the decision of the creditors to reject the proposed agreement.

In a rehabilitation case, on the other hand, the court may approve the proposed plan even over the opposition of creditors holding a majority of the total liabilities of the debtor. Such case, however, is limited in instances when, in the judge's judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable. In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following:

- a. That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets of the debtor were sold by a liquidator within a three-month period;
- b. That the shareholders or owners of the debtor lose at least their controlling interest as a result of the plan; and
- c. The Rehabilitation Receiver has recommended approval of the plan.<sup>97</sup>

Furthermore, rehabilitation proceedings do not end upon the approval of the rehabilitation plan. The court is in fact required to issue the necessary orders or processes for immediate and successful implementation of the approved rehabilitation. Pursuant to such duty, the court may impose such terms, conditions, or restrictions as the effective implementation and monitoring thereof may reasonably require, or for the protection and preservation of the interests of the creditors should the plan fail. The proceedings, on the other hand, may only be terminated by the court in the following instances:

1. Failure of the debtor to submit the rehabilitation plan;
2. Disapproval of the rehabilitation plan by the court;
3. Failure of the rehabilitation of the debtor because of failure to achieve the desired targets or goals as set forth therein;

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<sup>96</sup> Act No. 1956 (1909), secs. 2,3,5, 7-10.

<sup>97</sup> Adm. Mem. No. 00-8-10-SC, *supra*, Rule 4, sec. 24.

4. Failure of said debtor to perform its obligations under the said plan;
5. A determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions; or
6. upon the successful implementation of the rehabilitation plan.<sup>98</sup>

Thus, even after the court had already approved the rehabilitation plan in the *First Dominion* case, the court had to act upon other incidents in the case, such as the petitioners' Motion for Extension of Period for First Tranche Inflow, which was filed on August 7, 2002, and granted by the court on November 7, 2002, or more than 9 months after the rehabilitation plan had been approved.

An indication of the parties' satisfaction with the conduct of the proceedings and the subsequent approval of the rehabilitation plan in the *First Dominion* case is the fact that of the 27 creditors which filed their comments and oppositions to the petition and the rehabilitation plan, only two decided to appeal the order of Branch 158.

On the other hand, any impression that the court might have been overly eager to prove its worth in rehabilitation cases can easily be set aside by considering the fact that three other rehabilitation cases filed in Branch 158 have been dismissed either for being insufficient in form or substance,<sup>99</sup> or due to the disapproval of the proposed rehabilitation plan,<sup>100</sup> indicating that the court was not mechanical in dealing and resolving rehabilitation cases.

## V. CONCLUSION

We could only hope that the performance of RTC Branch 158, Pasig City merely represents what the 59 other special courts handling corporate cases are capable of doing. Still, two years of implementation and 151 test cases are not enough to fully grasp the jurisdictional implications brought about by the Securities Regulation Code. Be that as it may, the examination of the performance of Branch 158 proves that capability-wise, regular courts are indeed up to the challenge of corporate litigation.

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<sup>98</sup> Adm. Mem. No. 00-8-10-SC, *supra*, Rule 4, sec. 27.

<sup>99</sup> In re: Fortune Integrated Textile Mills, Inc., Civil Case No. 68479, filed on June 15, 2001 and dismissed on July 9, 2001; In re: R.S. Arrieta, Inc., Civil Case No. 68757, filed on November 27, 2001 and dismissed on January 8, 2002.

<sup>100</sup> In re: Corporate Investments Philippines, Inc., Civil Case No. 68542, filed on July 19, 2001 and dismissed on February 11, 2002.

The study was likewise able to identify concrete problem areas brought about by the transfer of jurisdiction over corporate cases. We recapitulate these problem areas in question form so that they may be addressed by future studies:

- a. What quasi-judicial powers are retained by the SEC by virtue of having "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" under Section 5.1(a) of the SRC?
- b. May the SEC still assume administrative jurisdiction over cases which necessarily fall under any of the classification of cases under Section 5 of P.D. 902-A but are well within SEC's powers under Section 5.1 of the SRC?
- c. Does the RTC have the power to dissolve corporations through a mere intra-corporate action?

Unless Congress acts and amends the SRC to address these concerns, it may very well be up to the Supreme Court, the final arbiter, to rule on these matters. That, however, would require an actual controversy before the High Tribunal, which may take some time.

In the meantime, the attention of more scholars and legal practitioners in this area is invited to provoke a more critical evaluation of the Securities Regulation Code, especially in actual practice during the nascence of the said Code.