RIGHTS, POWERS, AND LIABILITIES OF FOREIGN CORPORATIONS IN THE PHILIPPINES

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WHAT ARE FOREIGN CORPORATIONS

A foreign corporation, from the standpoint of the Philippine Corporation Law is a "corporation formed, organized, or existing under any laws other than those of the Philippines." [1] As regards the nationality of a corporation, the Philippine law follows the common law doctrine of the "incorporation principle", as distinguished from the civil law doctrine which follows the view that a corporation is subject to the law of the state where it has its permanent central office of management, known as the "central office principle" or *siége social* doctrine. The incorporation principle is followed in England and the United States, the Soviet Union, Peru, Cuba, Guatemala, and Uruguay, while the central office or *siége social* principle is followed in Austria, Belgium, Bulgaria, Denmark, France, Germany, Greece, Hungary, Italy, Liechtenstein, Montenegro, the Netherlands, Poland, Rumania, Spain, Switzerland, Turkey, Yugoslavia, China, Japan, Argentina, Colombia, Brazil, Honduras, Mexico, and Venezuela.[2] Each doctrine has its own merits and problems. A better principle, perhaps, is needed to be evolved, but for the present, a corporation *not* formed or incorporated under the Philippine law is deemed a foreign corporation. Consequently, it may be said that regardless of the place of the activities of the corporation, or the domicile of its members or stockholders, or the principal seat of its management, its place of incorporation will determine its nationality.

However, this incorporation principle is not adhered to absolutely by the Philippine courts. For the purpose of protecting national security in times of war, or similar cases, the nationality of a corporation shall be determined not by the place of its incorporation but by the nationality of its *controlling stockholders*.[3] Thus, where an insurance policy by a domestic corporation on its property was taken by the corporation composed and controlled by aliens, if the loss becomes payable during the war and said aliens had in the meantime become enemy aliens, the insurance money could not be paid to the insured, notwithstanding the fact that the corporation (as insured) has a personality distinct from that of the controlling stockholders, as in such a case, the corporation itself shall be deemed an enemy alien.[4]

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[1] Act No. 1459, Sec. 68, as amended.

[2] Rabel, THE CONFLICT OF LAWS, Vol. 2, pp. 4, 31 (1947).

[3] If this principle is good in "realistic" cases, may it not also be deemed good and valid in "fictitious" ones? In other words, may not this idea be a better principle to determine the nationality of a corporation in *all* cases?

[4] Filipinas Cía. de Seguros v. Christern Huenefeld G.R. No. L-2294, May 25, 1951. According to the Philippine Insurance Law, "Anyone except a public enemy may be insured." Act No. 2427, Sec. 8.

RIGHT TO TRANSACT BUSINESS IN THE PHILIPPINES

Notwithstanding the old doctrines that a corporation, "being the mere creature of local law, can have no existence beyond the limits of the sovereignty which created it" [5], and that "it must dwell in the place of its creation and cannot migrate to another sovereignty" [6], yet many corporations had left the limits of the sovereignty that created them and had migrated to other countries, including the Philippines, in search, perhaps, for more wealth and economic power.

Two thories are in vogue today regarding the treatment of foreign corporations desiring to do business in other lands: the *restrictive* and the *liberal* theories.[7] The Philippine policy on foreign corporations is neither one or the other.[8] I may call it the *normal or ordinary theory,* which is but a mere adherence to the American doctrine that a state "has authority to provide by legislation the terms and conditions upon which a foreign corporation may engage in intrastate business within its territorial limits, or avail itself of the benefits of its laws and the aid and protection of its courts in the enforcement of contracts relating to such business." [9]

No foreign corporation shall be permitted to transact business in the Philippines until it shall have obtained a license for the purpose from the Securities & Exchange Commissioner. In the case of *banks,* no license shall issue except upon order of the Monetary Board of the Central Bank of the Philippines, and no order for a license shall be issued by the said Board unless and until it is convinced that the public interest and economic conditions, both general and local, justify the issuance of such order; that the foreign banking corporation is solvent and in sound financial condition; and that a duly appointed agent in the Philippines has been authorized to accept summons and legal processes.[10] All kinds of banking institutions may be licensed to transact business in the Philippines, except foreign building and loan associations.[11]

In the case of *insurance companies,* no license shall issue except upon order of the Insurance Commissioner, who has the sole power to issue a certificate of authority for engaging in insurance busi-

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[5] Per Field, J., Paul v. Virginia, 8 Wall. 168 (1868).

[6] Per Taney, J., Bank of Augusta v. Earle, 13 Pet. 519 (1839).

[7] RABEL, *op. cit.*, Vol. 2, p. 124.

[8] See, however, Art. 15, Code of Commerce of Spain, most of which provisions are still in force in the Philippines: "*Aliens and foreign companies may engage in commerce in the Philippines, subject to the laws of their country in so far as their capacity to contract is concerned, and to the provisions of this Code in so far as concern the creation of their establishments within the Philippines, their commercial transactions, and the jurisdiction of courts of this country.*" This provision refers only to what Rabel calls "the right of recognition" (civil capacity or right to be recognized as a legal person) as distinguished from "the right to do business". (pp. 129-132). But even if the provision refers to the right to do business, nevertheless, in so far as corporations or juristic persons are concerned, it is deemed repealed by the new corporation, insurance, and banking laws of the Philippines.

[9] Baltic Mining Co. v. Massachusetts, 231 U.S. 68 (1913).

[10] Rep. Act No. 337, Sec. 14.

[11] *Ibid.*, Sec. 15.

ness. The Insurance Commissioner may refuse to issue a certificate of authority to any insurance company, if, in his opinion, such refusal will best promote the interests of the people of the Philippines. No such certificate of authority shall be granted to any such company until the Insurance Commissioner shall have satisfied himself by such examination as he may make and such evidence as he may require that such company is qualified by the laws of the Philippines to transact business therein. Said certificate of authority shall expire on the last day of June of each year and shall be renewed annually if the company is continuing to comply with all of the provisions of the Insurance Law or the circulars, instructions or rulings of the Insurance Commissioner. Before issuing such certificate of authority, the Insurance Commissioner must be satisfied that the name of the company is not that of any other known company transacting a similar business, or a name so similar as to be calculated to mislead the public. Every company receiving any such certificate of authority shall be subject to the insurance laws of the Philippines and to the jurisdiction and supervision of the Insurance Commissioner.[12] Every foreign insurance company, before engaging in business in the Philippines, must file with the Office of the Insurance Commissioner the following: (a) A certified copy of the last annual statement or a verified financial statement exhibiting the condition and affairs of such company; (b) a certificate from the Securities & Exchange Commissioner showing that it is duly registered in that office in accordance with Section 68 of the Corporation Law.[13]

Licenses for foreign corporations other than banks and insurance companies, may be issued upon order of the Secretary of Commerce.

All foreign corporations are required to file a sworn statement showing to the satisfaction of the proper authority that the corporation is solvent and in good financial condition, and setting forth the resources and liabilities of the corporation within a reasonable number of days to be fixed by the said authorities, as follows, to wit:

> (a) The name of the corporation;
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> (b) The purpose for which it was organized;
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> (c) The location of its principal or home office;
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> (d) The capital stock of the corporation and the amount thereof actually subscribed and paid into the treasury on the ..... *(here state date, month, year);*
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> (e) The net assets of the corporation over and above all debts, liabilities, obligations, and claims outstanding against it on the ..... *(here state date, month, year);*
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> (f) The name of an agent residing in the Philippines authorized by the corporation to accept service of summons and process in all legal proceedings against the corporation and of all notices affecting the corporation; provided, however, that the Central Bank, or the Bank Commissioner, or the Secretary of Commerce, as the case may be, before ordering that a license be issued in the case of any particular corporation,

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[12] Act No. 2427, Sec. 172, as amended.

[13] *Ibid.*, Sec. 176.

may require further evidence of the solvency and fair dealing of the corporation if in its or his judgment such further information is essential

The above statement, together with a certified copy of its charter or articles of incorporation[14] and the order of the Central Bank, the Insurance Commissioner, or of the Secretary of Commerce, as the case may be, shall be filed with the Securities & Exchange Commissioner who shall then issue to the foreign corporation, as directed in the order, a license to do business in the Philippines, and for the issuance of said license the Securities & Exchange Commission shall collect a fee in proportion to the corporate capital of such corporation, to be fixed in accordance with the schedule of fees established by law.[15]

TRANSACTING BUSINESS WITHOUT LICENSE; LEGAL EFFECTS

Any foreign corporation transacting business in the Philippines without the prescribed license shall give rise to the following consequences:

(a) Any officer, or agent of the corporation or any person transacting business for it shall be punished by imprisonment for not less than six months nor more than two years or by a fine of not less than ₱200 nor more than ₱1,000, or both such imprisonment and fine, in the discretion of the court.[16] In the case of foreign banks, any officer, director or agent of any such corporation who transacts business in the Philippines without the said license shall be punished by imprisonment for not less than one year nor more than ten years and by a fine of not less than ₱1,000 nor more than ₱10,000.[17] The Philippine law on foreign banks transacting business

[14] One of the most frequent regulations to which foreign corporations are subjected is a provision that, before undertaking to do business within the state, it shall file with the Secretary of State or other proper state officer a copy of its charter or certificate of incorporation duly authenticated. The purpose of this enactment evidently is to prevent sham organizations from another jurisdiction from usurping the corporate privilege and franchise within the state, and to afford persons dealing with a foreign corporation the means of ascertaining the nature and character of its organization, the amount of its capital, to what extent paid up, and the liability of its stockholders; in other words, to make it practicable for him to ascertain those facts concerning the legal status of the foreign company, of which he would be presumed to have notice in dealing with a domestic corporation. Consequently, such statutes are not to be subjected to a strict construction as prescribing conditions upon which the power to act in a corporate capacity is granted. A substantial compliance with the statute that will effect the purpose aimed at will be held sufficient. (William L. Murfree, Jr., THE LAW OF FOREIGN CORPORATIONS pp. 57-8 (1893) quoting the cases of Barney v. Daniels, 32 Ind. 19; Hammer v. Garfield M. Co., 130 U.S. 291.

[15] Act No. 1459, Sec. 68, as amended. The fee collectible is 1/10 of 1% of the authorized capital stock of the corporation but in no case shall the fee be less than ₱25 nor more than ₱1,000; provided, that in case of shares without par value, each shall be deemed of the par value of ₱100 for the purpose of fixing the fee; the fee for non-stock corporations shall be ₱25. (*Rep. Act No.* 944).

[16] Act No. 1459, Sec. 69.

[17] Rep. Act No. 33, Sec. 14.

in the Philippines without the prescribed license is, therefore, more strict than on other kinds of foreign corporations, as it imposes a greater fine and makes the penalty of imprisonment mandatory and not merely discretionary on the part of the court.

(b) The foreign corporation transacting business in the Philippines without the prescribed license shall not be permitted to "maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed." [18]

To "transact business" involves continuity of carrying business.[19] The general rule is that when a foreign corporation transacts some substantial part of its ordinary business in a state, it is doing, transacting, carrying on, or engaging in business therein.[20] So, the regular and systematic solicitation of orders in the Philippines by a salesman of a foreign corporation with permanent display rooms constitutes "doing business" in the Philippines.[21] Hence, where a foreign corporation engages in regular marine insurance business in the Philippines by issuing marine insurance policies abroad to cover foreign shipments to the Philippines, said policies being made payable in the Philippines and said insurance company appoints and keeps an agent in the Philippines to receive and settle claims flowing from said policies, then the said foreign corporation will be regarded as "doing business" in the Philippines in contemplation of the law.[22] But, a single or isolated transaction does not constitute "transacting business", although it is a part of the very business for which the corporation is organized to transact, if the act of the corporation in engaging therein indicates no purpose of continuity of conduct in that respect.[23] Where, however, the principal object of a foreign corporation was to purchase, hold, and dispose of a particular tract of land in a foreign state, its act in purchasing the land from a citizen of such state, although considered a single transaction, amounts to engaging in business.[24] The true test, then, is not that it is a single transaction, but whether it is done with the intent to engage in business therein, and if so, a single act in that business is in violation of the law.[25]

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[18] Act No. 1459, Sec. 69.

[19] Whitaker v. Rafferty, 38 Phil. 508 (1918); General Corporation of the Philippines *et al* v. Union Ins. Soc. of Canton, Ltd., 48 O.G. 73 (1950).

[20] General R. Signal Co. v. Virginia, 246 U.S. 500, 38 S. Ct. 360, 62 L. Ed. 854 (1918); Bullfrog Goldfield R. Co. v. Jordan, 174 Cal. 342, 163 Pac. 40 (1917); Wood v. Ball, 190 N. Y. 217, 83 N. E. 21 (1907).

[21] International Shoe Co. v. State, 326 U.S. 310, 90 L. Ed. 95.

[22] General Corporation of the Philippines *et al* v. Union Ins. Soc. of Canton, Ltd., *et al*, *supra* (1950).

[23] Banco Agricola y Pecuario *et al* v. El Dorado Trading Co., Inc., *et al* (C.A.), 53 O.G. 6538 (1957); Pacific Micronesian Lines v. Del Rosario *et al*, 50 O.G. 5271 (1954); Cooper Mfg. Co. v. Ferguson, 113 U.S. 727, 28 L.Ed. 1137 (1885); General Conference of Free Baptists v. Berkey, 156 Cal. 466, 105 Pac. 411 (1909); Penn Colieres Co. v. McKeever, 183 N.Y. 98, 75 N.E. 935 (1905); Ware v. Hamilton-Brown Shoe Co., 92 Ala. 145, 9 So. 136 (1891).

[24] Wolser Land Co. v. Bohrer, 78 Or. 202, 152 Pac. 869 (1915).

[25] International Textbook Co. v. Lynch, 81 Vt. 101; Diamond Glue Co. v. U.S. Glue Co., 187 U.S. 611, 47 L.Ed. 328.

The inability or denial to maintain suits in Philippine courts, however, must be understood to apply only to those foreign corporations *transacting business* in the Philippines without the prescribed license. In other words, only foreign corporations violating the laws of the Philippines shall be denied the right to sue in Philippine courts. Hence, an unlicensed foreign corporation which never transacted business in the Philippines may maintain a suit in Philippine courts for the purpose of protecting its reputation, corporate name, and good will. The right to sue must not be confused with the right to transact business. The obtaining of a license under Philippine law is not a condition precedent to the maintenance of an action in Philippine courts by a foreign corporation which does not transact business therein.[26] But no foreign corporation shall be permitted "to transact business in the Philippines", as this phrase is understood in the Corporation Law, unless it shall have the license prescribed by law, and unless it complies with the law, it shall not be permitted to maintain any suit in the local courts. In other words, in order that a foreign corporation may be denied the right to sue in the Philippines, it must affirmatively appear: (a) That the plaintiff is a foreign corporation; (b) that it is transacting business in the Philippines; (c) that it has not obtained the prescribed license.[27]

On June 11, 1951, however, the Congress of the Philippines enacted Republic Act No. 638 which inserted a new section (Sec. 21-A) to the Philippine Trade-marks & Trade-names law, as follows:

> "SEC. 21-A. Any foreign corporation or juristic person to which a mark or trade-name has been registered or assigned under this Act may bring an action hereunder for infringement, for unfair competition or false designation of origin and false description, whether or not it has been licensed to do business in the Philippines under Act Numbered Fourteen Hundred and Fifty-Nine, as amended, otherwise known as the Corporation Law, at the time it brings complaint: *Provided*, That the country of which the said foreign corporation or juristic person is a citizen or in which it is domiciled, by treaty, convention or law, grants a similar privilege to corporate or juristic persons of the Philippines."

Under the above legal provision, a foreign corporation may bring a suit in Philippine courts regarding infringement of its trademark or trade-name, or for unfair competition, *even if such foreign corporation is transacting business in the Philippines without any license,* provided that the following requisites exist: (a) That said trade-mark or trade-name has been duly registered under the Philippine Trade-marks & Trade-names Law, and (b) that the country of which the said foreign corporation is a citizen or in which it is domiciled, by treaty, convention, or law grants a similar privilege to Philippine corporations. This law liberalizes the right of unlicensed foreign corporations transacting business in the Philippines to file suits in Philippine courts regarding infringement of their trademarks and trade-names in the Philippines.

But shall the two requisites above-mentioned be also required if the foreign corporation is *not transacting business* in the Philip-

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[26] Western Equipment & Supply Co. v. Reyes, 51 Phil. 115 (1927).

[27] Marshall-Wells Co. v. Elser & Co., Inc., 46 Phil. 71 (1924).

pines? In other words, is a foreign corporation not transacting business in the Philippines (and, therefore, is not provided with any license, as such a license is unnecessary) to be denied the right of access to Philippine courts to protect its right to its trade-mark or trade-name which is being fraudulently imitated or pirated by some unscrupulous merchants in the Philippines, simply because the said trade-mark or trade-name has not been duly registered under the Philippine Trade-marks & Trade-names Law? Literally, the above legal provision seems to say so: "any foreign corporation or juristic person to which a mark or trade-name has been *registered* or assigned under this Act may bring an action..." But, a rational and just interpretation of this provision should not have that meaning. The right of foreign corporations, *not transacting* business in the Philippines, to file suits in Philippine courts for redress of grievances should not be denied.

As was said by the Philippine Supreme Court[28], quoting *Hanover Star Milling Co. v. Allen and Wheeler Co.*[28-a]:

> "Since it is the trade and not the mark that is to be protected, a trade-mark acknowledges no territorial boundaries of municipalities or states or nations, but extends to every market where the trader's goods have become known and identified by the use of the mark."

And it further states that the right of a corporation to the use of its corporate and trade-name

> "is a property right, a right in *rem*, which it may assert and protect against all the world, in any of the courts of the world, — even in jurisdictions where it does not transact business — just the same as it may protect its tangible property, real or personal, against trespass, or conversion."

In other words, Republic Act No. 638 does not nullify nor modify the right of an unlicensed foreign corporation *not transacting business in the Philippines* to file suits in Philippine courts for the protection of the right to its trade-mark or trade-name.

Moreover, the prohibition to maintain a suit in Philippine courts by unlicensed foreign corporations transacting business in the Philippines does not exclude the liability to be sued. The foreign corporation that violates the laws of the Philippines by transacting business without the prescribed license would only prejudice the delinquent corporation but not third persons who dealt with the corporation in good faith. It is unjust that a foreign corporation without the prescribed license should escape liability arising out of its failure to comply with the law of the forum. Hence, a foreign corporation transacting business in the Philippines without license may not sue but may be sued in Philippine courts. So, it has been held by the Philippine Supreme Court that, unlicensed foreign corporations transacting business in the Philippines may be sued in the local courts, and service of process may be made on any of its officers or agents

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[28] Western Equipment & Supply Co. v. Reyes, 51 Phil. 115, 129 (1927).
[28-a] 208 Fed. 513.
[29] *Ibid.*

in the Philippines; if there be no resident agent designated in accordance with law for the purpose, on the government official designated by law to that effect.[30]

ENFORCEABILITY OF CONTRACTS OF UNLICENSED FOREIGN CORPORATIONS

Section 69 of the Philippine Corporation Law expressly provides:

> "No foreign corporation or corporation formed, organized or existing under any laws other than those of the Philippines shall be permitted to transact business in the Philippines or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, *unless*[31] it shall have the license prescribed in the section immediately preceding. Any officer, or agent, of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for not less than six months nor more than two years or by a fine of not less than two hundred pesos nor more than one thousand pesos, or by both such imprisonment and fine, in the discretion of the court."

The legal question is: In view of the above provision, are contracts entered into by unlicensed foreign corporations that transact business in the Philippines void or valid, or unenforceable until the license is obtained? There seems to be no doubt that in the meantime that the corporation has not obtained the necessary license, the contract entered into by it with local residents cannot be sued upon.

The law is clear on this point:

> "No foreign corporation...shall...maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed....."

But the further and more important question is: May such foreign corporation be allowed subsequently to maintain a suit on a debt, claim, or demand which, at the time it accrued, the corporation had no license to transact business in the Philippines? Or, stated more clearly, may a foreign corporation that violated the law of the forum regarding the privilege of engaging in business therein be permitted to maintain any suit on a claim created by such violation upon subsequently obtaining the necessary license?

The American decisions on this matter are in conflict.[32] It may be gleaned, however, from these decisions the following: Where a

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[30] General Corporation of the Philippines *et al* v. Union Ins. Soc. of Canton, Ltd., *et al*, 48 O.G. 73 (1950). See also Rule 7, Sec. 14, Rules of Court of the Philippines which provides: "If the defendant is a foreign corporation, or a non-resident joint stock company or association, *doing business* in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines."

[31] "*A menos que...*" (Spanish text of the law).

[32] See 75 A.L.R. 446.

contract which is entered into by a foreign corporation without complying with the local requirements of doing business is made *void by express statutory provision,* a subsequent compliance with the statute by the corporation will not enable it to maintain an action on the contract.[33] But, where the statute merely prohibits the maintenance of a suit on such contract, *without expressly declaring the contract itself void,* it was held that failure to comply with the statute in obtaining the necessary license rendered the contract merely voidable or unenforceable and not void, and compliance any time before suit was sufficient.[34] As stated by an American court:

> "The very fact that the prohibition against maintaining an action in the courts of the state was inserted in the statute ought to be conclusive proof that the legislature did not intend or understand that contracts made without compliance with the law were void. The statute does not fix any time within which foreign corporations shall comply with the Act. If such contracts were void, no suits could be prosecuted on them in any court. x x x The primary purpose of our statute is to compel a foreign corporation desiring to do business with the state to submit itself to the jurisdiction of the courts of this state. The statute was not intended to exclude foreign corporations from the state. It does not, in terms, render invalid contracts made in this state by non-complying corporations. The better reason, the wiser and fairer policy, and the greater weight lie with those decisions which hold that where, as here, there is a prohibition with a penalty, with no express or implied declarations respecting the validity or enforceability of contracts made by unqualified foreign corporations, the contracts x x x are enforceable... upon compliance with the law."[35]

On the other hand, other American courts make no distinction whether the law makes express declaration of nullity or not. Says one court:

> "The purpose of the law is to bring foreign corporations doing business in the state within the reach of legal process. This purpose is not accomplished by a registration of the corporation at the pleasure of its officers, or when it may be to their interest to appeal to our courts. The law is for the protection of those with whom it does business, or to whom it may incur liability by its wrongful acts, and nothing short of a registration before the contract that it seeks to enforce is made can give it a right of action. Any other construction of the law would violate its

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[33] Perkins Mfg. Co. v. Clinton Const. Co., 295 Pac. 1, 75 A.L.R. 439 (1930); Diamond Glue Co. v. U.S. Glue Co., 187 U.S. 611, 47 L.Ed. 328.

[34] Perkins Mfg. Co. v. Clinton Const. Co., *supra.* See also Hastings Industrial Vo. v. Moran, 143 Mich. 679, 107 N.W. 706 (1906); Kuenan v. U.S. Fidelity & G. Co., 159 Mich. 122, 123 N.W. 799 (1909); Despres, etc. v. Zierleyn, 163 Mich. 399, 128 N.W. 769 (1910); California Sav. & L. Soc. v. Harris, 111 Cal. 133, 43 Pac. 525 (1896).

[35] Peter & B. Stone Co. v. Carper, 172 N.E. 319, 172 N. E. 775 (1930). See also Alpena Portland Cement Co. v. Jenkins *et al,* 244 Ill. 354, 91 N.E. 480 (1910); McKee v. Stewart Land & Live Stock Co., 28 Ariz. 511, 238 Pac. 326 (1925); Martel v. Swan Land & Cattle Co., 154 Ill. 177, 40 N.E. 462 (1895); Gold Mining Co. v. National Bank, 96 U.S. 640 (1878); National Bank v. Matthews, 98 U.S. 621 (1878); Clay F. & M. Ins. Co. v. Hurron Salt & L. Mfg. Co., 31 Mich. 340; Bank v. Page, 6 Ore. 431.

plain words and wholly defeat its object by affording protection to the corporation and denying it to the public."[36]

This legal question has not as yet reached the Philippine Supreme Court. If it ever does, the Court may perhaps follow that interpretation of the provision that it has reference only to the filing of a suit and not to the validity of the contract itself. But, again, the following observation on the part of an American court may show a different path:

"If a statute prohibits a foreign corporation from doing business in the state, without first having complied with the law, this prohibition is as effective to make the contracts of such corporations void as though the statute in terms so declared them; for if an act is prohibited or declared unlawful, it is not necessary for the law to declare the act or contract void; an unlawful act is itself void."[37]

This idea is reenforced by another American court, saying:

If the contract, or any business that gives rise to a claim is unlawful, it cannot be well made lawful by anything that is done subsequently."[38]

This last principle seems to be in accord with the new Philippine Civil Code which provides:

"Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity."[39]

This means that, contrary to some American decisions, a contract executed by unlicensed foreign corporations transacting business in the Philippines need not be declared expressly to be void in order that they may be such; it is enough that they were done contrary to the prohibitory laws; and that in order that they may be valid, the law itself should have expressly declared them valid.

The above solution, however, need not be air-tight for all situations. There may be, indeed, instances whereby a foreign corporation, in *good faith* transacted business in the Philippines without any license, and gave rise to claims against local residents for goods purchased and not paid for. To prevent the corporation from filing suits for the recovery of claims in this case would sanction unjust enrichment or fraud. Hence, in proper cases, the corporation, upon obtaining the necessary license, may be permitted to maintain suits thereon. But, except to prevent fraud or unjust enrichment, and except where the principle of estoppel on the part of the defendant

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[36] Pittsburg Const. Co. v. West Slide Belt R. Co., 151 Fed. 125, 11 L.R.A. (N.S.) 1145 (1907). See also South Amboy Terra Cotta Co. v. Poerschke, 45 Misc. 358, 90 N.Y. Supp. 333 (1904); David Lupton's Sons Co. v. Automobile Club, 225 U.S. 489, 56 L.Ed. 1177 (1912); Taber v. Interstate Bldg. & L. Assoc., 91 Tex. 1177, 40 S.W. 954 (1894); Dudley v. Collier, 87 Ala. 431, 13 Am. St. Rep. 55 (1888); Aetna Ins. Co. v. Harvey, 11 Wis. 394.

[37] Tri-State Amusement Co. v. Forest Park Highlands Amusement Co., 192 Mo. 404, 90 S.W. 102, 111 Am. St. Rep. 511, 4 L.R.A. (N.S.) 1688 (1906).

[38] Interstate Const. Co. v. Lakeview Canal Co., 31 Wyo. 191, 224 Pac. 850 (1924).

[39] Art. 5, Civil Code of the Philippines.

may be applied[40], the general rule should be that stated in the new Philippine Civil Code: "Acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." [41]

LEGAL RESTRICTIONS ON FOREIGN CORPORATIONS TRANSACTING BUSINESS IN THE PHILIPPINES

Foreign corporations lawfully doing business in the Philippines shall be bound by all laws, rules, and regulations applicable to domestic corporations of the same class, save and except such only as provide for the creation, formation, organization, or dissolution of corporations or such as fix the relations, liabilities, responsibilities, or duties of members, stockholders, or officers of corporations to each other or to the corporation.[42] This simply means that foreign corporations in the Philippines shall not enjoy greater rights and privileges than those enjoyed by domestic corporations, except in cases affecting intra-corporate matters, such as the right of inspection of corporate books.[43]

So, all corporations whether domestic or foreign, are subject to the visitorial power of the Philippine Government[44], to local police regulations[45], to the same taxation laws, and to currency[46] or exchange control and import control laws in force in the Philippines.

For instance, under the Central Bank Act of the Philippines, dollar allocations for foreign exchange are determined by the Central Bank, pursuant to the authority conferred upon it by law; and in those imports where no previous foreign exchange has been alloted by the Central Bank, the so-called "No-Dollar Remittance" applies. This law[47] (No-Dollar Remittance) allows only the following kinds of imports without dollar allocations: (a) Machineries and capital goods needed in dollar-producing and dollar-saving industries; (b) goods in exchange for goods on a straight barter basis; (c) cloths of all kinds entering the Philippines on consignment basis to be embroidered in the Philippines to be reexported abroad after having been embroidered; (d) goods not exceeding ₱10,000 imported for personal use; (e) gifts received from abroad through the mails of not more than ₱500; (f) goods brought by returning residents of the Philippines, not for sale, of not more than ₱5,000.

In addition to this, there is a special import tax on all goods imported into the Philippines (which, in reality, is equivalent to a tax on foreign exchange remitted to foreign countries), beginning with 17% in 1956 and decreasing gradually to 1-7/8% in 1965.

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[40] Sherwood v. Alvis, 83 Ala. 115, 3 So. 307 (1887) Dutchess Cotton Mfg. Co. v. Davis, 14 Johns 238, 7 Am. Dec. 459 (1817); Chester Glass Co. v. Dewey, 16 Mass. 94.

[41] Civil Code of the Philippines, Art. 5.

[42] Act No. 1459, Sec. 37; Rep. Act No. 337, Sec. 16.

[43] Grey v. Insular Lumber Co., 67 Phil. 139 (1939).

[44] Secs. 54, 55, Act No. 1459, as amended.

[45] See Purdy v. New York etc. R. Co., 61 N.Y. 353 (1875).

[46] Rep. Act No. 529.

[47] Rep. Act No. 1410.

This is also in addition to existing specific and compensating taxes on imported goods. This law has the peculiar provision that, if as a result of the application of the graduated tax schedule provided for in the law, the total revenue derived from the customs duties and from this special import tax on goods imported from the United States is less in any calendar year than the proceeds from the exchange tax imposed under Republic Act No. 601 (which Act, by the way, has been repealed expressly by the same law that contains this peculiar provision) on such goods during the calendar year 1955, the President of the Philippines "may, by proclamation *suspend* the reduction of the special import tax for the next succeeding calendar year" as prescribed in the schedule, and, in order to restore the total revenue to be collected in the importation of United States goods to the level of the exchange tax thereon during the calendar year 1955, increase the special import tax on all goods coming from any country for such succeeding calendar year to any previous rate provided for in the law.[48] This special tax on imports, however, does not apply to imported machineries or raw materials to be used by new and necessary industries, as provided for in another law (Rep. Act No. 901), nor to canned milk, drugs and medicines, and to some other goods specified or listed in the law.

Republic Act No. 901 provides that any person, firm, or corporation engaged in new and necessary industries are exempt from the payment of all direct taxes until December 31, 1958, and to a diminishing exemption for four years following, as follows:

90% of all said taxes from Jan. 1-Dec. 31, 1959;
75% of all said taxes from Jan. 1-Dec. 31, 1960;
50% of all said taxes from Jan. 1-Dec. 31, 1961;
10% of all said taxes from Jan. 1-Dec. 31, 1962,

after which such person, firm, or corporation shall be liable in full to all taxes; provided, that the grantee of this tax exemption is liable to full income tax after it shall have enjoyed tax exemption for six years, and provided, further, that this tax exemption shall not apply to those engaged in the processing of oil, gasoline, lubricants, and other similar fuels and by-products. A "new" industry is one not existing or operating in the Philippines on a commercial scale prior to January 1, 1945; while a "necessary" industry is one, among other things, where its establishment will contribute to the attainment of a stable and balanced Philippine economy.

These various control laws and regulations are common in other countries, and are the results of dislocations in international trade as a consequence of World War II. They should be deemed temporary in character. Otherwise, if they should continue as permanent laws, they will constitute barriers to free commerce. Speaking of existing controls in Malaya, in his address to the Singapore Chamber of Commerce at the Annual General Meeting on March 28, 1952, the Hon. E. M. F. Ferguson, Chairman, states:

> "Import and export controls, exchange control and all other controls are no way to expand trade. They are obstacles to trade and enterprise,

[48] Rep. Act No. 1394.

no matter how simply the Government may try to make them operate. Controls mean bureaucracy and forms; they require time, study and staff for the business man; and frustrations for the honest trader who sees his less honest competitors find the way to defeat the controls."[49]

But although foreign corporations lawfully transacting business in the Philippines shall enjoy no greater rights and privileges than those enjoyed by domestic corporations, this does not mean that all rights and privileges enjoyed by domestic corporations are necessarily granted to foreign corporations.

For instance, the Constitution of the Philippines expressly provides:

"All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to *corporations or associations at least 60% of the capital of which is owned by such citizens,* subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. x x x"[50]

Where the corporation is a non-stock corporation, and has therefore no capital stock, the Philippine Supreme Court, for the purpose of giving legal effect to the above Constitutional provision, interpreted "60% of the capital" to mean the controlling membership of the non-stock corporation to be Filipino citizens.[51]

Also, the Constitution of the Philippines expressly provides that:

"No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, 60% of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character, or for a longer period than 50 years x x x"

However, the Philippine Supreme Court interpreted this constitutional provision as referring only to corporations already incorporated and not to incorporation of a corporation; that is to say, even if less than 60% of the capital of a public utility corporation is owned by non-citizens of the Philippines, the corporation may be incorporated, provided that at the time it begins to operate as a public utility, the constitutional requirement must have been compiled with. In other words, the Philippine Supreme Court held that this particular constitutional limitation applies to "secondary franchise" and not to "primary franchise".[53]

Again, the laws of the Philippines regarding the right of corporations to engage in coastwise shipping is limited only to those

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49 See Koyle, Export-Import Problems in Southeast Asia in SOUTHEAST ASIA IN THE COMING WORLD, Thayer (1953).

50 PHIL. CONST., Art. XIII, Sec. 1.

51 Register of Deeds of Rizal v. Ung Siu Temple, 51 O.G. 2866 (1955).

52 PHIL. CONST., Art. XIV, Sec. 8.

53 People v. Quasha, 49 O.G. 2826 (1953).

where at least 75% of the capital stock of which is owned by citizens of the Philippines.[54] Hence, a domestic corporation composed and controlled by British subjects, may be lawfully denied the right to engage in Philippine coastwise shipping, and such a denial does not violate any constitutional provision regarding equal protection of the law, because:

> "Literally, and absolutely, steamship lines are, for an insular territory (composed of more than 3,000 islands), the arteries of commerce. If one be severed, the lifeblood of the nation is lost. If on the other hand, these arteries are protected, then the security of the country and the promotion of the general welfare is sustained. Time and again, with such conditions confronting it, has the executive branch of the government of the Philippines, always later with the sanction of the judicial branch, taken a firm stand with reference to the presence of undesirable foreigners. The Government has thus assumed to act for the all-sufficient and primitive reason of the benefit and protection of its own citizens and of the self-preservation and integrity of its dominion."[55]

So, also, the Philippine Nationalization Retail Trade Law limits the right to engage in retail trade in the Philippines only to citizens of the Philippines or to corporations or associations the capital of which is owned wholly by citizens of the Philippines.

The rights of American citizens, however, in relation to all the above legal and constitutional limitations, in so far as such rights are guaranteed by the Parity Treaty between the Philippines and the United States of America, are not affected.[57]

With respect to *foreign insurance companies,* the following special provisions shall apply to them:

> 1. Foreign banks authorized to do business in the Philippines after July 24, 1948 (the date when the General Banking Act, Republic Act No. 337 was enacted) are prohibited to receive deposits.[58]

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54 Revised Administrative Code, Sec. 1172.

55 Smith, Bell & Co., Ltd. v. Natividad, 40 Phil. 136, 148 (1919).

56 Rep. Act No. 1180.

57 The so-called Parity Treaty is embodied in the Constitution of the Philippines as an *Ordinance* which provides: "Notwithstanding the provisions of Section One, Article Thirteen, and Section Eight, Article Fourteen, of the foregoing Constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the Fourth of July, Nineteen Hundred and Forty-Six, pursuant to the provisions of Commonwealth Act Numbered Seven Hundred and Thirty-Three, but in no case to extend beyond the third of July, Nineteen Hundred and Seventy-Four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of public domain, waters, minerals, coal, petroleum, and other natural oils, all forces and sources of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines."

58 Rep. Act No. 337, Sec. 11.

2. Foreign banks established prior to July 24, 1948 are permitted to continue to receive deposits, but all deposits so received by branches and agencies of such foreign banks shall not be invested in any manner outside of the territorial limits of the Republic of the Philippines.[59]

3. Residents and citizens of the Philippines who are creditors of a branch or agency in the Philippines of a foreign bank shall have preferential rights to the assets of such branch or agency.[60]

4. In order to provide effective protection of the interests of the depositors and other creditors of Philippine branches of foreign banks, the head office of such branches shall fully guarantee the prompt payment of all liabilities of its Philippine branch.[61]

5. Except as the Monetary Board of the Central Bank may otherwise provide, the total liabilities of any person, or of any company, corporation, or firm, to the Philippine branch of a foreign bank for money borrowed with the exception of money borrowed against obligations of the Central Bank or of the Philippine Government, or borrowed with the full guarantee by the Government of payment of principal and interest, shall at no time exceed 15% of the sum of:

(a) The net amount due by such branch to the head office and branches outside the Philippines, and

(b) The total capital accounts, if any, representing funds definitely assigned to the branch by the head office.

The liabilities of any borrower may amount to a further 15% of the two items mentioned above, provided the additional liabilities are adequately secured by shipping documents, warehouse receipts or other similar documents transferring or securing title covering readily marketable, nonperishable staples, which staples must be fully covered by insurance, and must have a market value equal to at least 125% of such additional liabilities.

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[59] *Ibid.*

[60] Rep. Act No. 337, Sec. 19.

[61] *Iibid.*, Sec. 69.

[62] Rep. Act No. 337, Sec. 70. The term "liabilities" as used herein, shall mean the direct liability of the maker or acceptor of paper discounted with or sold to such bank and the liability of the indorser, drawer, or guarantor who obtains a loan from or discounts paper with or sells paper under his guaranty to such bank and shall include in the case of liabilities of a copartnership or association the liabilities of the several members thereof and shall include in in the case of liabilities of a corporation of all subsidiaries thereof in which such corporation owns or controls a majority interest. But the discount of bilss of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same, shall not be considered as money borrowed, for the purposes of Sec. 70 of Rep. Act No. 337. Whenever, and to the extent guarantees the repayment of liabilities of its branch, the limitation established herein shall not apply. Moreover, nothing in the Act shall be construed as restricting in any manner loans made by the Philippine branch of a foreign bank for the account of, and with funds supplied by, its head office or branches outside the Philippines, but the Monetary Board of the Central Bank may require that all such loans be reported to it in accordance with such rules and regulations as it may issue on the subject.

6. No branch of any foreign bank doing business in the Philippines shall in any way announce the amount of the capital and surplus of its head office, or of the bank in its entirety without indicating at the same time and with equal prominence the amount of the capital, if any, definitely assigned to such branch. In case no capital has been definitely assigned to such branch, such fact shall be stated in, and shall form part of, the advertisement.[63]

7. In all matters not specifically covered by special provisions applicable only to foreign banks or their branches and agencies in the Philippines, any foreign bank lawfully doing business in the Philippines shall be bound by all laws, rules, and regulations applicable to domestic banks of the same class, except such laws, rules, and regulations as provide for the creation, formation, organization, or dissolution of corporations or as fix the relation, liabilities, or duties of members, stockholders, or officers of corporations, to each other or to the corporation.[64]

With respect to *foreign banking institutions*, the following special provisions shall apply to them:

1. No foreign insurance company shall engage in business in the Philippines unless possessed of paid-up unimpaired capital or assets and reserves not less than that required of domestic insurance companies.[65]

2. No foreign insurance company shall engage in business in the Philippines until it shall have deposited with the Insurance Commissioner for the benefit and security of its policy holders and creditors in the Philippines, securities satisfactory to the Insurance Commissioner consisting of bonds of the Government of the Republic of the Philippines or of any of the branches or political subdivisions of the Philippines authorized by law to issue bonds, or of the Government in which such company is organized, or other good securities to the actual market value of ₱205,000; provided, that at least 50% of the securities or bonds shall consist of securities of the Philippines; and provided, further, that it shall be a sufficient compliance herein if the deposit be made with the Philippine National Bank, New York agency in the United States of America, embassies, legations, or consular offices of the Philippines already established other than those in the United States of America or which may hereafter be established, or with a safe deposit company designated by the said Philippine National Bank, New York agency, embassies, legations or consular offices of the Philippines, which company shall agree to hold the

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[63] Rep. Act No. 337, Sec. 82.

[64] Sec. 18, *Ibid.*

[65] Act No. 2427, Sec. 178, as amended. Every domestic insurance company shall have a subscribed capital stock equal to at least ₱500,000, 50% of which must be paid up in cash previous to the issuance of any policy, and the residue within 12 months from the date of filing its articles of incorporation. For failure to have its capital stock paid up within the time prescribed the corporation shall not be permitted to take any new risks of any kind or character. If organized as a mutual company, in lieu of such capital stock, it must have available cash assets of at least ₱500,000 above all liabilities for losses reported, expenses, taxes, legal reserve, and reinsurance of all outstanding risks. Act No. 2427 Sec. 195, as amended.

securities of the Philippines, as the representatives of the Insurance Commissioner of the Philippines.[66]

3. Every foreign insurance company doing business in the Philippines shall set aside at least 30% of the legal reserves of the policies written in the Philippines and invest and keep the same therein in accordance with the provisions of the law; provbided, that in determining the amount to be invested and kept in the Philippines, a company shall be given credit for the amount of securities of the Philippines deposited by such company as required by law; and provided, further, that the securities purchased and kept in the Philippines as required by law shall not be sent out of the territorial jurisdiction of the Philippines without written consent of the Insurance Commissioner.[67]

4. In the case of any foreign insurance corporation, any real estate purchased by the said corporation in payment or by reason of any loan made by it shall be sold by the said corporation within 20 years after the title thereto has been vested in it.[68]

5. A foreign insurance company doing business in the Philippines, upon payment of a fee of ₱100 and surrender to the Insurance Commissioner of its certificate of authority, may apply to withdraw from the Philippines; such application shall be duly executed in writing, accompanied by evidence of due authority for such execution and properly acknowledged. The Insurance Commissioner shall publish the application for withdrawal daily for a period of one week in two newspapers of general circulation in the city of Manila, one in English and the other in Spanish; the expenses of such publication shall be paid by the insurance corporation filing such application. Every foreign insurance company which wtihdraws from the Philippines shall, prior to such withdrawal, discharge its liabilities to policy-holders and creditors in the Philippines. In case of its policies insuring residents of the Philippines, it shall cause the primary liabilities under such policies to be reinsured and assumed by another insurance company authorized to transact insurance business in the Philippines. In the case of such policies as are subject to cancellation by the withdrawing company, it may cancel such policies pursuant to the terms thereof in lieu of such reinsurance and assumption of liabilities.[69]

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[66] Act No. 2427, Sec. 178, as amended. The Insurance Commissioner shall hold the securities, deposited as aforesaid, for the benefit and security of all the policy-holders of the company depositing the same, but shall, so long as the company shall continue solvent, permit the company to collect the interest or dividends on the securities so deposited, and, from time to time, with his assent, to withdraw any of such securities, upon depositing with the said Commissioner other like security, the market value of which shall be equal to the market value of such as may be withdrawn. In the event of any company ceasing to do business in the Philippines the securities deposited shall be returned upon the company's making application therefor and proving to the satisfaction of the Insurance Commissioner that it has no further liability under any of its policies in the Philippines. *Ibid.*, Sec. 179. As to the nature of this deposit of securities, see Lancashire Ins. Co. v. Maxwell, 131 N.Y. 286, 30 N.E. 192.

[67] Act No. 2427, Sec. 178-A, as amended by Rep. Act No. 488.

[68] Act No. 2427, Sec. 200, as amended.

[69] Rep. Act No. 447.

SERVICE OF SUMMONS AND PROCESS UPON FOREIGN CORPORATIONS

The law requires all foreign corporations desiring to do business in the Philippines to name an agent residing in the Philippines authorized by the corporation to accept service of summons and process in all legal proceedings against the corporation and of all notices affecting the corporation.[70] Summons and legal process served the agent so designated shall give jurisdiction to the local courts over the corporation, and service of notices on such agent shall be as binding upon the corporation which he represents as if made upon the corporation itself. Should the authority of such agent to accept service of summons and legal process and notices be revoked, or should such agent become mentally incompetent or otherwise unable to accept service while exercising such authority, it shall be the duty of the corporation to promptly designate another agent upon whom service of summons and process in legal proceedings against the corporation and of notices affecting the corporation may be made and to file with the Securities & Exchange Commissioner a duly authenticated nomination of such agent. Should there be no agent authorized by the corporation upon whom service of summons, process, and all legal notices may be made, such service may be made upon the Superintendent of Banks in the case of banking corporations, and upon the Secretary of Commerce in the case of all other foreign corporations, and such service shall be as effective as if made upon the corporation or upon its duly authorized agent. In case of service for the corporation upon the Superintendent of Banks or the Secretary of Commerce (or upon the Insurance Commissioner) as the case may be, the proper official shall register and transmit by mail to the president or to the secretary or clerk of the corporation at its home or principal office a copy, duly certified by him, of the summons, process, or notice. The sending of such copy shall be a necessary part of, and complete the service. The registry receipt of mailing shall be conclusive evidence of the sending. All costs necessarily incurred by the proper official or Secretary for the mailing and sending of a copy of the summons, process, or notice to the president or secretary or clerk of the corporation at its home or principal office shall be paid in advance by the party at whose instance the service is made.[71]

The above legal provisions contemplate a situation where the foreign corporation is lawfully transacting business in the Philippines. But, suppose a foreign corporation is transacting business in the Philippines without the necessary license, and therefore, has not designated any agent in the Philippines to accept service of summons and legal notices, upon whom shall such summons and legal notices be served when the corporation is being sued in the Philippines?

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[70] Act No. 1459, Sec. 68, as amended.

* Except, that in the case of foreign insurance companies, service of process shall be made on the Insurance Commissioner. See Act No. 2427, Sec. 117, as amended.

[71] Act No. 2427, Sec. 72, as amended. See also Rep. Act No. 337 Sec. 14, *re* banks; Act No. 2427, Sec. 177, *re* insurance companies.

In this connection, the Rules of Court of the Philippines regarding service of summons on private foreign corporations may be invoked. It says: "If the defendant is a foreign corporation, or a nonresident joint stock company or association, doing business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines." [72]

The Supreme Court of the Philippines, in interpreting this particular provision of the Rules of Court, held that:

> "Section 14, Rule 7 of the Rules of Court above quoted, in employing the phrase 'doing business in the Philippines', makes no distinction as to whether said business was being done or engaged in legally with the corresponding authority and license of the Government or, perhaps illegally, without the benefit of any such authority or license. As long as a foreign private corporation does or engages in business in this jurisdiction, it should and will be amenable to process and the jurisdiction of the local courts, this for the protection of the citizens, and service upon any agent of said foreign corporation and accordingly judgment may be rendered against said foreign corporation. x x x The test is whether a foreign corporation was actually doing business here. Otherwise, a foreign corporation illegally doing business here because of its refusal or neglect to obtain the corresponding license and authority to do business may successfully though unfairly plead such neglect or illegal act so as to avoid service and thereby impugn the jurisdiction of the local courts."[73]

REVOCATION OF LICENSE OF FOREIGN CORPORATIONS

The revocation of permission given to a foreign corporation to do business within the state is said not the infliction of a penalty, nor the deprivation of a right. It was held merely the cancellation of a license, and a mere license is always revocable.[74] In other words, under American doctrine, it is intimated that revocation of a license given to a foreign corporation may be done with or without cause.

In the Philippines, the license given to a foreign corporation authorized to transact business therein is revocable for cause.[75]

In the case of foreign banks, the Monetary Board of the Central Bank, by the affirmative vote of at least five of its members and with the approval of the President of the Philippines, may revoke the license to transact business in the Philippines of any such bank, if the said Board finds after due investigation at which such bank is given a chance to be heard by itself or counsel, that the foreign

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[72] Rules of Court of the Philippines, Rule 7, Sec. 14.

[73] General Corporation of the Philippines *et al* v. Union Insurance Society of Canton, Ltd., *et al*, 48 O.G. 73 (1952).

[74] Hammond Packing Co. v. Arkansas, 212 U.S. 322, 53 L.Ed. 530 (1909).

[75] In the case of domestic corporations, Sec. 76 of the Philippine Corporation Law expressly provides that "any or all corporations created by virtue of this Act may be dissolved by legislative enactment." Some writers believe that this power of the Congress to dissolve domestic corporations may be exercised at any time without cause. Could it be possible that foreign corporations are entitled to greater rights than those enjoyed by domestic corporations?

bank is in imminent danger of insolvency or that its continuance in business will involve probable loss to those transacting business with it.[76]

In the case of foreign insurance companies, the Insurance Commissioner is authorized to revoke or suspend all certificates of authority, if the said Commissioner, upon investigation, is of the opinion that such corporation is in an unsound condition, or that it has failed to comply with any provisions of law or regulations obligatory upon it, or that in the opinion of the said Commissioner, its condition or method of business is such as to render its proceedings hazardous to the public or to its policy holders, or that its actual assets exclusive of its capital are less than its liabilities, including unearned premiums and reinsurance reserve, the Insurance Commissioner is authorized to revoke or suspend all certificates of authority granted to such insurance company, its officers, or agents, and no new business shall hereafter be done by such company or by its agents in the Philippines while such revocation, suspension or disability continues or until its authority to do business is restored by the Insurance Commissioner.[77]

In the case of *other foreign corporations*, the Secretary of Commerce may revoke the license of any foreign corporation transacting business in the Philippines, if the said Secretary and the President of the Philippines find that the condition of the corporation is one of insolvency or that its continuance in business in the Philippines will involve a probable loss to those transacting business with it, and after such revocation, it shall be unlawful for such corporation to transact business in the Philippines unless its license is renewed or reissued. In case of revocation of license, the Solicitor-General of the Philippines shall take such proceedings as may be proper to protect creditors and the public.[78]

However, although it has been stated before that the revocation of a license of a foreign corporation authorized to transact business in the Philippines may be done only for cause, yet the determination of a sufficient cause depends upon the sound judgment of the official authorized by law to order the revocation. In other words, under the language of the Philippine statute, which is similar to statutes in some American States, this power of revocation is not subject to mandamus,[79] unless, of course, there is clear abuse of discretion.

The revocation of a license of a foreign corporation has the effect of extinguishing its right to do business in the state, but does not affect its liability or its right on obligations or actions that have

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[76] Rep. Act No. 337, Sec. 16,

[77] Act No. 2427, Sec. 175, as amended.

[78] Act No. 1459, Sec. 71, as amended.

[79] See State v. Thomas, 88 Tenn. 491, 12 S.W. 1034 (1890); State v. Benton, 25 Neb. 834, 41 N.W. 793 (1889); Kansas Home Ins. Co. v. Wilder, 43 Kan. 731, 23 Pac. 1061 (1890). See also Murfree, Jr., LAW OF FOREIGN CORPORATIONS, pp. 51-55 (1893).

already accrued prior to such revocation.[80] This may also be inferred from the express provisions of the Philippine Corporation Law regarding non-impairment of rights in favor of or accrued against any corporation upon its dissolution.[81]

THE NEED FOR UNIFORM RULES ON FOREIGN CORPORATIONS

The Philippine law on foreign corporations may not be sufficiently attractive to foreign capitalists who would like to invest their money in the Philippines. Perhaps, the laws of other countries regarding foreign corporations are more strict or restrictive than those of the Philippines. One fact, however, is certain, and that is, that this world of ours has become smaller and nations have become mere neighbors. All nations, big and small, are dependent upon one another, and economic prosperity without any intent of economic dominance or subversion, must be commonly enjoyed. To this end, there should be mutual understanding among nations regarding the rights of foreign corporations transacting business in a state. National laws should treat foreign capital on the basis of good-neighbor policy rather than on a policy of economic warfare.

A parting thought for statesmen of the future is discernible in the following words of Rabel:

> "That these are the basic lines of a satisfactory compromise must have been felt in many quarters. It is the more regrettable that not one of all the positive enactments is entirely commendable, and that, to my knowledge, not much has been done even in legal economic science to develop the particulars. The elaboration of a comprehensive model statute for foreign organizations would be a worthy object of international endeavor." [82]

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[80] Banco Agricola y Pecuario *et al* v. El Dorado Trading Co., Inc., *et al* (C.A.), 53 O.G. 6539 (1957).

[81] Secs. 76, 77, Act No. 1459. See also Mutual Reserve Fund Life Assoc. v. Phelps, 190 U.S. 1147, 47 L.Ed. 987; Woodward v. Mutual Reserve Life Ins. Co., 178 N.Y. 485, 71 N.E. 10, 102 Am. St. Rep. 519 (1896).

[82] THE CONFLICT OF LAWS, Vol. 2, p. 225 (1947).

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