

# FIRST DIVISION

[ G.R. No. 206673, July 28, 2020 ]

## FIRST PHILIPPINE HOLDINGS CORPORATION, PETITIONER, VS. SECURITIES AND EXCHANGE COMMISSION, RESPONDENT.

### D E C I S I O N

#### CAGUIOA, J:

*"To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression. Due process is thus hostile to any official action marred by lack of reasonableness. Correctly it has been identified as freedom from arbitrariness."*<sup>[1]</sup>

This is a petition for review on *certiorari*<sup>[2]</sup> (Petition) under Rule 45 of the Rules of Court assailing the September 28, 2012<sup>[3]</sup> and March 25, 2013<sup>[4]</sup> Resolutions of the Court of Appeals, Second Division (CA), in CA-G.R. SP No. 121883. The CA 1) dismissed First Philippine Holdings Corporation's (petitioner) petition for review and upheld the authority of the Securities and Exchange Commission (SEC) to impose a registration fee amounting to P24,000,000.00 for the extension of petitioner's corporate term,<sup>[5]</sup> and 2) denied petitioner's motion for reconsideration.<sup>[6]</sup>

#### The Facts and Antecedent Proceedings

The dispute hinges on the reasonableness of the filing fee imposed by the SEC's Company Registration and Monitoring Department (CRMD). Petitioner was charged a substantial amount of P24,000,000.00 for the amendment of its articles of incorporation to extend its term of corporate existence as a filing fee under SEC Memorandum Circular No. 9, Series of 2004 (SEC M.C. No. 9, S. 2004).<sup>[7]</sup> The facts were summarized by the SEC *en banc* as follows:

[Petitioner] is a domestic stock corporation registered with the [SEC] on 30 June 1961 with SEC Registration Number 19073. Its term was set to expire on 30 June 2011. On 01 March 2007, its Amended Articles of Incorporation ("AOI") was approved by the majority vote of the Board of Directors and ratified on 21 May 2007 by the vote of the stockholders owning or representing at least two-thirds of the outstanding capital stock, particularly, Articles II (Primary Purpose), IV (Extension of Corporate Term) and VI (Number of Directors).

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The amendment which caused the subject of this appeal is Article IV, which provides:

"That the term for which the Corporation is to exist shall be [1)] fifty (50) years, from and after the date of incorporation, and 2) fifty (50) more years from and after the expiration of the said original term of fifty (50) years, or fifty (50) years more from and after June 30, 2011."

Upon filing of the amended AOI, [petitioner] was assessed the filing fee for the extension of its corporate existence, based on paragraph 11 of [SEC M.C. No. 9, S. 2004]. **It states that the filing fee for the application of amended articles of incorporation where [the] amendment consists of extending the term of corporate existence, shall be 1/5 of 1% of the authorized capital stock, but not less than P2,000.00.**

Thus, based on [petitioner's] authorized capital stock (ACS) of TWELVE BILLION ONE HUNDRED MILLION PESOS (P12,100,000,000.00), [petitioner] on 21 June 2007, was assessed the amount of TWENTY[-]FOUR MILLION TWO HUNDRED THOUSAND PESOS (P24,200,000.00) for the amendment] of [its] articles of incorporation to extend its corporate term, which it paid on the same day.

Also on 21 June 2007. [petitioner] filed a letter dated 20 June 2007 expressing [its] "surprise and dismay" to find that it was required to pay filing fees in the amount of TWENTY[-]FOUR MILLION PESOS (P24,000,000.00) under [SEC M.C. No. 9, S. 2004], recalling that **ten years ago**, under SEC Memorandum] Circular No. 02 s. 1994 [(SEC M.C. No. 2, S. 1994)], the examining and filing fee for amended articles of incorporation of both stock and non-stock corporations was only TWO HUNDRED PESOS (P200.00). [Petitioner] questioned the reasonableness and necessity of the fee of P24,000,000.00 (P24million, as stated by [petitioner] in its documents, disregarding the amount of P200 thousand), and paid the fee under protest, "without prejudice to filing the appropriate position paper, among other things."

It was only four months later [or] on 17 October 2007, when [petitioner] filed its Position Paper, dated 2 October 2007, claiming that [SEC M.C. No. 9, S. 2004] that imposes the filing fee of 1/5 of 1% of the authorized capital stock for the extension of corporate term is not a valid exercise of its authority to promulgate administrative regulations, for not being reasonably necessary. [Petitioner] thus prayed that the amount of P24 million be reduced to TWO HUNDRED PESOS (P200.00) per [SEC M.C. No. 2, S. 1994] and that the amount in excess be promptly refunded to the corporation.

In November of the same year, a few months after its application for extending its corporate term ha[d] been granted, [petitioner] filed its application for the amendment of Article VII of its API by increasing its authorized capital stock to THIRTY-TWO BILLION ONE HUNDRED MILLION PESOS (P32,100,000,000.00). and the Certificate of Filing of the Amended API was granted by the Commission on 23 November 2007. For this, it was assessed and it paid the amount of FORTY MILLION PESOS (P40,000,000.00) as filing fee, based on paragraph fourteen also of [SEC

M.C. No. 9, S. 2004], which provides that the filing fee for [the] increase of capital stock for corporations with par value is, 1/5 of 1% of the increase in capital stock or the subscription price of the subscribed capital stock whichever is higher[,], but not less than P1,000.00.

On 07 January 2009, the Commission Secretary issued an Order, informing [petitioner] that the **02 October 2007 Position Paper is treated as an Appeal, from the assessment of the CRMD** of the filing fee for extension of corporate term, approved on 25 June 2007. [Petitioner] was asked to pay the docket fee in the total amount of TWO THOUSAND TWENTY PESOS (P2,020.00), which was assessed on 21 January 2009 and paid on the same day.

On 28 January 2009, the Commission Secretary issued an Order addressed to Atty. Benito Cataran, Director of CRMD, to file a Reply Memorandum within TEN (10) days upon receipt of the Order.

On 26 February 2009, CRMD filed its Reply Memorandum by way of Comment ("CRMD Comment"), declaring that the imposition of the filing fee of 1/5 of 1% of the authorized capital stock for the extension of corporate term under [SEC M.C. No. 9, S. 2004] is a valid exercise of the Commission's authority to promulgate administrative regulation. CRMD also indicated that the fifteen[-]day period within which to file the Petition for Review should be reckoned from the actual receipt by [petitioner] of the certificate and in the instant case, more than fifteen days have transpired before the filing of the petition.

In response, [petitioner] filed a Request for Time to File Reply to Comment on 18 March 2009, and acknowledged therein that it received the CRMD Comment on 11 March 2009 but prayed that it be granted until 26 March 2009 within which to file its Reply. Again, on 26 March 2009, [petitioner] filed a Request for Time to File Reply to Comment and prayed that it be given until 31 March 2009 to submit its Reply. It was only on 31 March 2009 when it filed its Reply, way beyond the [10-]day period required by the 2006 Rules of Procedure of the Commission ("2006 Rules"). In its Reply, [petitioner] basically reiterated the contents of its 02 October 2007 Position Paper.<sup>[8]</sup>

### **The Ruling of the SEC *En Banc***

In its October 13, 2011 Decision,<sup>[9]</sup> the SEC en banc held that pursuant to the Corporation Code, Republic Act No. (R.A.) 3531,<sup>[10]</sup> the Securities Regulations Code (SRC), the Civil Code, and the Constitution, the imposition of the filing fee for the extension of a corporation's term, in the amount of 1/5 of 1% of the authorized capital stock, is a valid exercise of the SEC's authority to promulgate administrative regulations.<sup>[11]</sup>

Under the Corporation Code<sup>[12]</sup> and the SRC,<sup>[13]</sup> the SEC has the power and authority to promulgate rules and regulations reasonably necessary to enable it to perform its duties.<sup>[14]</sup> The SEC *en banc* reasoned that this authority includes the power to prescribe the fees necessary for the SEC to carry out its functions and

mandates,<sup>[15]</sup> which entail a lot of expenditure on the part of the government.<sup>[16]</sup> Given that petitioner is a publicly listed company burdened with various reportorial requirements, the SEC *en banc* held that it is duty-bound to monitor petitioner's compliance for the protection of the investing public.<sup>[17]</sup> Contrary to petitioner's claim therefore, the fee imposed is not merely for the processing of its application.<sup>[18]</sup> Rather, the approval of petitioner's application triggers the renewal of the regulatory functions of the SEC that will last for the next 50 years.<sup>[19]</sup> The SEC *en banc* held that petitioner, as a grantee of a mere privilege, should contribute to the expenses for its regulation for the next 50 years of its existence. In any event, the fee amounts to a reasonable P40,000.00 *per month* for 50 years.<sup>[20]</sup>

The SEC *en banc* further held that R.A. 3531,<sup>[21]</sup> which was purportedly never expressly repealed, authorizes the SEC to collect, for the extension of the corporate term, the same fees collectible for the filing of articles of incorporation.<sup>[22]</sup> Hence, the imposition of the 1/5 of 1% of the authorized capital stock for both the filing of the articles of incorporation and the extension of the corporate term is consistent with the law.<sup>[23]</sup>

In sum, the filing fee imposed is reasonable to cover the cost of not only issuing the license but also of the regulatory functions performed by the various departments of the SEC.<sup>[24]</sup>

Petitioner thus filed a petition for review under Rule 43 with the CA.<sup>[25]</sup>

### **The Ruling of the CA**

In its September 28, 2012 Resolution,<sup>[26]</sup> the CA dismissed the petition and held that the SEC is authorized to promulgate such rules and regulations as it may consider appropriate for the enforcement of the SRC and other pertinent laws. The CA held that this authority is broad enough to cover the fixing of reasonable rates to be imposed upon securities-related organizations.<sup>[27]</sup>

The CA further held that SEC M.C. No. 9, S. 2004 prescribing the filing fees for the extension of a corporation's life at the rate of 1/5 of 1% of authorized capital stock was reasonably necessary for the SEC to perform, monitor, and carry out its duties and functions to protect the investing public from fraudulent manipulations for the next 50 years.<sup>[28]</sup>

Petitioner filed a motion for reconsideration, which was denied by the CA in its March 25, 2013 Resolution.<sup>[29]</sup>

Petitioner thus filed the instant Petition under Rule 45 alleging, among others, that: 1) the SEC has no basis to impose the subject "filing fee" for the examination and amendment of petitioner's articles of incorporation, considering that none of the authorities cited by the SEC justify the imposition of the amount of P24,000,000.00;<sup>[30]</sup> 2) the SEC does not have the power and discretion to, by itself, independently fix and prescribe a legislative determination of the amount of fees it can collect;<sup>[31]</sup> 3) the filing fee is in the nature of a tax which the SEC has no power to impose,<sup>[32]</sup>

and 4) the filing fee is not reasonably necessary and is, in fact, patently oppressive, confiscatory, and contrary to law, jurisprudence and the Constitution.<sup>[33]</sup>

In its Comment,<sup>[34]</sup> the SEC, through the Office of the Solicitor General, argued that: 1) the SEC is authorized by law to impose filing fees for applications for amendment of articles of incorporation such as the case at bar;<sup>[35]</sup> 2) the constitutionality of a law cannot be collaterally attacked;<sup>[36]</sup> and 3) the assessed filing fee is not a tax and is reasonably necessary for regulation, which is the main task of the SEC.<sup>[37]</sup>

### **Issues**

Stripped of verbiage, the issues may be summarized as follows: 1) whether the SEC is authorized to prescribe the rates for incorporation and other fees, and 2) whether the fee for the extension of a corporation's term in the amount of P24,000,000.00<sup>[38]</sup> is unreasonable, patently oppressive, and confiscatory.

### **The Court's Ruling**

The Petition has partial merit. The SEC is authorized to promulgate rules and regulations to prescribe the rates for incorporation and other fees. However, in the exercise of said authority, the SEC imposed an unreasonable rate for the extension of a corporation's term.

***The SEC was authorized to promulgate rules and regulations prescribing the rates for incorporation and other fees.***

Petitioner claims that the SEC was only granted a general authority to collect and receive fees as authorized by law and not the authority to determine and fix the rates thereof.<sup>[39]</sup> On the other hand, the SEC claims that it was authorized by law to prescribe filing fees for applications for amendment of articles of incorporation such as the case at bar.<sup>[40]</sup> The Court agrees with the SEC.

In 1953, Congress enacted R.A. 944<sup>[41]</sup> authorizing the SEC to collect and receive fees for the filing and examination of articles of incorporation, among others. The amount was pegged at 1/10 of 1% of the authorized capital stock, but in no case less than P25.00 nor more than P1,000.00.<sup>[42]</sup>

In 1963, R.A. 3531 authorized the SEC to collect and receive the same fees for an amendment extending the term of a corporation's existence as the fees collected under *existing* law for the filing of articles of incorporation, *i.e.*, 1/10 of 1% of the authorized capital stock, but in no case less than P25.00 or more than P1,000.00 prescribed under R.A. 944.

In 1976, Presidential Decree No. (P.D.) 902-A<sup>[43]</sup> reorganized the SEC in order to "make it a more potent, responsive and effective arm of the government to help in the implementation of these programs and to play a more active role in national-building." Said law likewise authorized the SEC to recommend to the President the