Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

FIRST PHILIPPINE HOLDINGS CORPORATION, Petitioner,	**G.R. No. 206673**
	Present:
- versus -	PERALTA, *C.J., Chairperson,* CAGUIOA, J. REYES, JR., LAZARO-JAVIER, and LOPEZ, *JJ.*
SECURITIES AND EXCHANGE COMMISSION, Respondent.	Promulgated: JUL 28 2020

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DECISION

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.*"[1]

This is a petition for review on *certiorari*[2] (Petition) under Rule 45 of the Rules of Court assailing the September 28, 2012[3] and March 25, 2013[4] 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 ₱24,000,000.00 for the extension of petitioner's corporate term,[5] and 2) denied petitioner's motion for reconsideration.[6]

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1 *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, No. L-24693, July 31, 1967, 20 SCRA 849, 860.

2 *Rollo*, pp. 9-73.

3 Id. at 76-78. Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Remedios A. Salazar-Fernando and Manuel M. Barrios.

4 Id. at 80-81.

5 Supra note 3.

6 Supra note 4.

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 ₱24,000,000.00 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).[7] 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:
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> > "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."
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> 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.**
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> 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 amend[ment] of [its] articles of incorporation to extend its corporate term, which it paid on the same day.
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> 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 Memo[randum] 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

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7 Id. at 19.

[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 AOI 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 AOI 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 that 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.[8]

The Ruling of the SEC *En Banc*

In its October 13, 2011 Decision,[9] the SEC *en banc* held that pursuant to the Corporation Code, Republic Act No. (R.A.) 3531,[10] 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.[11]

Under the Corporation Code[12] and the SRC,[13] the SEC has the power and authority to promulgate rules and regulations reasonably necessary to enable it to perform its duties.[14] 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,[15] which entail a lot of expenditure on the part of the government.[16] 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.[17] Contrary to petitioner's claim therefore, the fee imposed is not merely for the processing of its application.[18] 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.[19] 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 ₱40,000.00 *per* month for 50 years.[20]

The SEC *en banc* further held that R.A. 3531,[21] 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.[22] 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.[23]

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8 Id. at 147-150. Emphasis and italics in the original; underscoring supplied.
9 Id. at 147-161.
10 AMENDMENT TO CORPORATION LAW RE: ARTICLES OF INCORPORATION, June 20, 1963.
11 *Rollo*, p. 152.
12 Id. at 94.
13 Id. at 97.
14 Id. at 98.
15 Id.
16 Supra note 11.
17 Id. at 94-95.
18 Id. at 95.
19 Id.
20 Id.
21 Id. at 96.
22 Supra note 12.
23 Id.

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.[24]

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

The Ruling of the CA

In its September 28, 2012 Resolution,[26] 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.[27]

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.[28]

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

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 ₱24,000,000.00;[30] 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;[31] 3) the filing fee is in the nature of a tax which the SEC has no power to impose,[32] and 4) the filing fee is not reasonably necessary and is, in fact, patently oppressive, confiscatory, and contrary to law, jurisprudence and the Constitution.[33]

In its Comment,[34] 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;[35] 2) the constitutionality of a law cannot be collaterally attacked;[36]

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24 Id. at 101.
25 Id. at 13.
26 Supra note 3.
27 Id. at 77.
28 Id. at 77-78.
29 Supra note 4.
30 Id. at 27-28.
31 Id. at 28.
32 Id.
33 Id.
34 Id. at 331-351.
35 Id. at 338.
36 Id. at 343.

and 3) the assessed filing fee is not a tax and is reasonably necessary for regulation, which is the main task of the SEC.[37]

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 ₱24,000,000.00[38] 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.[39] 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.[40] The Court agrees with the SEC.

In 1953, Congress enacted R.A. 944[41] 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 ₱25.00 nor more than ₱1,000.00.[42]

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37 Id. at 346-348.

38 Computed under SEC M.C. No. 9, S. 2004 formula of 1/5 of 1% of authorized capital stock but not less than ₱2,000.00.

39 *Rollo*, p. 31.

40 Supra note 34.

41 INCREASING THE FEES CHARGED BY THE SECURITIES AND EXCHANGE COMMISSION AND TO AUTHORIZE IT TO COLLECT AND RECEIVE FEES FOR CERTAIN SERVICES, June 20, 1953.

42 R.A. 944, Sec. 1(a), provides:

> Section 1. The Securities and Exchange Commission is hereby authorized to collect and receive fees for the following:
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> (a) *For examining and filing articles of incorporation of a corporation* — One-tenth of one *per centum* of the authorized capital stock, but in no case shall the fee be less than twenty-five pesos or more than one thousand pesos: *Provided*, That in case of shares without par value, each share shall be taken to be of the par value of one hundred pesos for the purpose of fixing the fee: *And provided, further*, That the fee for the examination and filing of articles of incorporation of a non-stock corporation shall be twenty-five pesos[.]

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 ₱25.00 or more than ₱1,000.00 prescribed under R.A. 944.

In 1976, Presidential Decree No. (P.D.) 902-A[43] 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 revision and adjustment of the charges and fees it is authorized by law to collect.[44]

In 1980, the Corporation Code of the Philippines[45] was enacted. Under said law, the SEC was authorized to collect and receive fees as prescribed by law or by its rules and regulations. Sections 139 and 143 of the Corporation Code provided:

> **Section 139.** *Incorporation and other fees.* – The Securities and Exchange Commission is hereby authorized to collect and receive fees as authorized by law or by rules and regulations promulgated by the Commission. (n)[46]
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> **Section 143.** *Rule-making power of the Securities and Exchange Commission.* – The Securities and Exchange Commission shall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers. (n)

In addition, the Corporation Code included a repealing clause, which stated:

> **Section 146.** *Repealing clause.* – Except as expressly provided by this Code, all laws or parts thereof inconsistent with any provision of this Code shall be deemed repealed. (n)

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43 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, March 11, 1976.

44 P.D. 902-A, Sec. 7 provides:

SECTION 7. The Commission is authorized to recommend to the President the revision, alteration, amendment or adjustment of the charges and fees, which by law, it is authorized to collect.

45 Batas Pambansa Blg. 68 (B.P. 68), CORPORATION CODE OF THE PHILIPPINES, May 1, 1980.

46 Notably, Sec. 139 of the Corporation Code was recently repealed by R.A. 11232 or the Revised Corporation Code of the Philippines, and now states:

SEC. 175. *Collection and Use of Registration, Incorporation and Other Fees.* – For a more effective implementation of this Code, the Commission is hereby authorized to collect, retain, and use fees, fines, and other charges pursuant to this Code and its rules and regulations. The amount collected shall be deposited and maintained in a separate account which shall form a fund for its modernization and to augment its operational expenses such as, but not limited to, capital outlay, increase in compensation and benefits comparable with prevailing rates in the private sector, reasonable employee allowance, employee health care services, and other insurance, employee career advancement and professionalization, legal assistance, seminars, and other professional fees.

The foregoing provisions naturally give rise to the question of whether the Corporation Code impliedly repealed the specific fees prescribed under R.A. 944 and R.A. 3531, and if so, to what extent.

In *Bank of Commerce v. Planters Development Bank*,[47] the Court discussed the rules of statutory construction involving implied repeals, as follows:

> An implied repeal transpires when a substantial conflict exists between the new and the prior laws. In the absence of an express repeal, a subsequent law cannot be construed as repealing a prior law unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and the old laws. Repeal by implication is not favored, unless manifestly intended by the legislature, or unless it is convincingly and unambiguously demonstrated, that the laws or orders are clearly repugnant and patently inconsistent with one another so that they cannot co-exist; the legislature is presumed to know the existing law and would express a repeal if one is intended.
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> There are two instances of implied repeal. One takes place when the provisions in the two acts on the same subject matter are irreconcilably contradictory, in which case, the later act, to the extent of the conflict, constitutes an implied repeal of the earlier one. The other occurs when the later act covers the whole subject of the earlier one and is clearly intended as a substitute; thus, it will operate to repeal the earlier law.[48]

A perusal of the three laws reveals that the first instance of implied repeal is present in this case.

R.A. 944 specifically prescribed fees for the "examining and filing of articles of incorporation," among other fees.[49] On the other hand, Section 139 of the Corporation Code embraced "Incorporation and other fees."[50] Both provisions indisputably cover the same subject matter, *i.e.*, the prescribed fee for incorporating corporations and other related fees.

It is likewise apparent that a substantial inconsistency exists between the terms of the three laws. R.A. 944 prescribed a specific rate of 1/10 of 1% of the authorized capital stock, but in no case less than ₱25.00 nor more than ₱1,000.00,[51] and R.A. 3531 pegged the fee collectible for an amendment extending the term of a corporation's existence to the same.[52] On the other

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47 G.R. Nos. 154470-71 & 154589-90, September 24, 2012, 681 SCRA 521.

48 Id. at 545-546. Underscoring supplied.

49 Supra note 41.

50 B.P. 68, Sec. 139, provides:
Section 139. *Incorporation and other fees.* – The Securities and Exchange Commission is hereby authorized to collect and receive fees as authorized by law or by rules and regulations promulgated by the Commission. (n). Underscoring supplied.

51 R.A. 944, Sec. 1.

52 R.A. 3531, Sec. 1 states:
Section 1. x x x
x x x x

hand, Section 139 of the Corporation Code authorized the SEC to "collect and receive fees as authorized by law *or* by rules and regulations promulgated by the Commission." The use of the term "or" is significant. In statutory construction, the term "or" "is a disjunctive [conjunction] indicating an alternative. It often connects a series of words or propositions indicating a choice of either."[53]

Undoubtedly therefore, Congress, by using the term "or", intended to authorize the SEC to choose to either collect and receive the fees already "authorized by law" *or* to promulgate rules and regulations prescribing the rates and fees it will collect and receive.[54] In other words, while the rates for the filing of articles of incorporation and other fees were previously specifically provided by law, Section 139 in relation to Section 143 of the Corporation Code impliedly repealed the same by delegating to the SEC the power to also promulgate rules prescribing different rates to be collected.

The Court finds that such a construction is more consistent with the declared intent to infuse the SEC with the power and authority to determine and promulgate such rules and regulations it deems reasonably necessary for the performance of its duties.[55] More importantly, any other construction would not only render the phrase "collect and receive fees as authorized by law" superfluous in light of the existing laws on the matter, but would also render the additional phrase, "authorized x x x by rules and regulations promulgated by the Commission" worthless.

However, while administrative agencies may be authorized by law to promulgate rules and regulations necessary to carry out their mandates under a statute, due process requires that said authority always be exercised within the bounds of the ever-elusive concept of "reasonableness."[56]

The rate prescribed was unreasonable.

Petitioner claims that the prescribed fee amounting to ₱24,000,000.00 for the mere examination of an amendment of a single paragraph in a

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x x x *Provided, however,* That where the amendment consists in extending the term of corporate existence the Securities and Exchange Commissioner shall be entitled to collect and receive for the filing of the amended articles of incorporation the same fees collectible under existing law for the filing of articles of incorporation." Underscoring supplied.

53 *PCI Leasing and Finance, Inc. v. Giraffe-X Creative Imaging, Inc.*, G.R. No. 142618, July 12, 2007, 527 SCRA 405, 422. Citations omitted, underscoring supplied.

54 *Rollo*, p. 339.

55 B.P. 68, Sec. 143 provides:

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

56 See generally *Mangune v. Ermita*, G.R. No. 182604, September 27, 2016, 804 SCRA 237, 263 and *Philippine Communications Satellite Corp. v. Alcuaz*, G.R. No. 84818, December 18, 1989, 180 SCRA 218, 233.

corporation's articles of incorporation[57] is unreasonable, oppressive, confiscatory and amounts to a tax.[58] The SEC argues that the fee imposed is not merely for the processing of its application.[59] Rather, it is a license fee that is reasonably necessary to enable it to perform its regulatory functions for the next 50 years.[60] The Court finds both claims to be partially meritorious. The fee was imposed primarily for regulation and thus cannot be considered a tax.[61] Nevertheless, the Court finds the license fee imposed to be unreasonable and exorbitant.

Pursuant to the SEC's authority to prescribe fees under Section 139 in relation to Section 143 of the Corporation Code, the SEC, through SEC M.C. No. 9, S. 2004, imposed the following:

Company Registration and Monitoring Department	
Application	Filing Fee
x x x x	
7. Articles of Incorporation	
a. Stock corporation with par value	1/5 of 1% of the authorized capital stock or the subscription price of the subscribed capital stock whichever is higher but not less than ₱1,000.00.
b. Stock corporation without par value	1/5 of 1% of authorized capital stock computed at ₱100.00 per share or the subscription price of the subscribed capital stock whichever is higher but not less than ₱1,000.00
x x x x	
11. **Amended Articles of Incorporation where amendment consists of extending the term of corporate existence**	**1/5 of 1% of the authorized capital stock but not less than ₱2,000.00.**
x x x x	
14. Increase of Capital Stock	
a. Corporation with par value	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 ₱1,000.00
b. Corporation without par value	1/5 of 1% of the increase in capital stock computed at ₱100.00 per share or the subscription price of the subscribed capital stock whichever is higher but not less than ₱1,000.00
x x x x	

57 *Rollo*, p. 60.
58 Id. at 65.
59 Supra note 17.
60 Id. at 346-347.
61 In *Progressive Development Corp. v. Quezon City*, G.R. No. L-36081, April 24, 1989, 172 SCRA 729, 635, the Court explained: "The term "tax" frequently applies to all kinds of exactions of monies which become public funds. It is often loosely used to include levies for revenue as well as levies for regulatory purposes such that license fees are frequently called taxes although *license fee is a legal concept distinguishable from tax:* the former is imposed in the exercise of police power primarily for purposes of regulation, while the latter is imposed under the taxing power primarily for purposes of raising revenues. Thus, if the generating of revenue is the primary purpose and regulation is merely incidental, the imposition is a tax; but if regulation is the primary purpose, the fact that incidentally revenue is also obtained does not make the imposition a tax."

It is settled that "[t]o be valid, implementing rules and regulations (IRRs) must be **reasonable**. Administrative authorities should not act arbitrarily and capriciously in the issuance of their IRRs, but must ensure that their IRRs are reasonable and fairly adapted to secure the end in view. If the IRRs are shown to bear no reasonable relation to the purposes for which they were authorized to be issued, they must be held to be invalid and should be struck down."[62]

In the instant case, the SEC, the national government regulatory agency charged with supervision over the corporate sector,[63] has been authorized to promulgate rules and regulations reasonably necessary to enable it to perform its duties and mandates. Its power to prescribe fees, and the reasonableness of the amount, must therefore be read in light of this regulatory function.

In *Securities and Exchange Commission v. GMA Network, Inc.*,[64] the Court likened the SEC's authority to prescribe rates to the rate-fixing power of administrative agencies and held that the only applicable standard to gauge the validity thereof is that the rate prescribed be reasonable, just, and proportionate to the service for which the fee is being collected.[65] Notably, the Court, in said case, found the filing fee of ₱1,212,200.00 for the extension of GMA's corporate term already unreasonable, *viz.*:

> A related factor which precludes consideration of the questioned issuance as interpretative in nature merely is the fact the SEC's assessment amounting to P1,212,200.00 is exceedingly unreasonable and amounts to an imposition. A filing fee, by legal definition, is that charged by a public official to accept a document for processing. **The fee should be just, fair, and proportionate to the service for which the fee is being collected**, in this case, the examination and verification of the documents submitted by GMA to warrant an extension of its corporate term.
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> Rate-fixing is a legislative function which concededly has been delegated to the SEC by R.A. No. 3531 and other pertinent laws. The due process clause, however, permits the courts to determine whether the regulation issued by the SEC is reasonable and within the bounds of its rate-fixing authority and to strike it down when it arbitrarily infringes on a person's right to property.[66]

It bears emphasis that the fee of ₱1,212,200.00 is a far cry from the ₱24,000,000.00 imposed on herein petitioner, even after accounting for inflation. Indeed, the amount appears exorbitant and confiscatory for the mere filing, "processing, examination, and verification" of a single

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62 *Quezon City PTCA Federation, Inc. v. Department of Education*, G.R. No. 188720, February 23, 2016, 784 SCRA 505, 583. Underscoring supplied.

63 See *http://www.sec.gov.ph/about/mission-values-and-vision/* (last accessed March 30, 2020).

64 G.R. No. 164026, December 23, 2008, 575 SCRA 113.

65 See generally *Holy Spirit Homeowners Association, Inc. v. Defensor*, G.R. No. 163980, August 3, 2006, 497 SCRA 581 and *Philippine Communications Satellite Corp. v. Alcuaz*, supra note 56.

66 *Securities and Exchanges Commission v. GMA Network, Inc.*, supra note 64 at 123. Emphasis and underscoring supplied.

paragraph of petitioner's articles of incorporation,[67] even if the same were to be done by the SEC's most competent "Certified Public Accountants, lawyers, technical staff and competent support personnel."[68]

Even if the Court were inclined to agree with the SEC that the instant fee was not a "mere" "processing fee", but rather, a "license fee" for the grant of a fresh period for a corporation to act as a juridical being for another 50 years,[69] the amount would still be unreasonable.

In *Progressive Development Corp. v. Quezon City*,[70] the Court explained the due process standards applicable to "license fees," in this wise:

> To be considered a license fee, the imposition questioned must relate to an occupation or activity that so engages the public interest in health, morals, safety and development as to require regulation for the protection and promotion of such public interest; the imposition must also **bear a reasonable relation to the probable expenses of regulation, taking into account not only the costs of direct regulation but also its incidental consequences as well.** When an activity, occupation or profession is of such a character that inspection or supervision by public officials is reasonably necessary for the safeguarding and furtherance of public health, morals and safety, or the general welfare, the legislature may provide that such inspection or supervision or other form of regulation shall be carried out at the expense of the persons engaged in such occupation or performing such activity, and that no one shall engage in the occupation or carry out the activity until a fee or charge sufficient to cover the cost of the inspection or supervision has been paid. Accordingly, a charge of a fixed sum which bears no relation at all to the cost of inspection and regulation may be held to be a tax rather than an exercise of the police power.[71]

The Court, in *Morcoin Co., Ltd. v. City of Manila*,[72] likewise held:

> x x x The power to regulate and impose license fee for the operations of slot machines — which include juke box machines, pinball machines and other coin-operated contrivances — should not, however, be construed as including the power to impose license taxes for revenue purposes. Indeed, a cursory reading of the legislative powers of the Municipal Board enumerated in Section 18 of the City's Revised Charter shows that the power to tax is given where it was intended to be exercised and is not given where it was not so designed. As the authority was withheld, it must logically result that the power granted under the above-quoted provision of the City's Charter is purely regulatory for police purposes. ([*Pacific Commercial Co. v. Romualdez and Alfonso*, 49 Phil. 917; *Hercules Lumber v. Municipality of Zamboanga*, 55 Phil. 653.]) Such being the case, the amount of license fees that may be imposed upon juke box machines and other coin-operated contrivances cannot be prohibitive, extortionate, confiscatory or in an unlawful restraint of trade, but **should be approximately commensurate**

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67 Supra note 57.
68 Supra note 17.
69 Id. at 348-350.
70 Supra note 61.
71 Id. at 636. Emphasis and underscoring supplied.
72 No. L-15351, January 28, 1961, 1 SCRA 310.

> **with and sufficient to cover all the necessary or probable expenses of issuing the license and of such inspection, regulation and supervision as may be lawful.** ([*Cu Unjieng v. Patstone*, 42 Phil. 818; *City of Iloilo v. Villanueva*, 105 Phil., 337]; 33 Am. Jur. 367; 53 C.J.S. 517]; See also the cases cited therein.) **Any ordinance which imposes a license fee which is substantially in excess of the reasonable expense of issuing the license and regulating the occupation to which it pertains, is invalid.** (25 Am. Law and Proc. 611; 28 *Id.* 749, 750.)[73]

The SEC itself recognizes that its authority to prescribe fees is limited to imposing a "fee sufficient in amount to include the expense of issuing the license and the cost of necessary inspection or police surveillance connected with the business or calling licensed."[74] Nevertheless, it admitted that the fee imposed in the instant case was not based on the probable expense of issuing the license, the cost of necessary inspection and the probable expenses of regulation, but was instead made directly related to a corporation's **capacity to pay**.[75]

While R.A. 944 in relation to R.A. 3531 and previous Memorandum Circulars[76] were also based on authorized capital stock, the rate prescribed therein undeniably contained a fee cap or ceiling, which effectively prevented it from ballooning way past the probable expenses of regulation. Notably, R.A. 944 stated:

> SECTION 1. The Securities and Exchange Commission is hereby authorized to collect and receive fees for the following:
>
> (a) *For examining and filing articles of incorporation of a corporation* — One-tenth of one *per centum* of the authorized capital stock, but in no case shall the fee be less than twenty-five pesos **or more than** one thousand pesos: *Provided*, That in case of shares without par value, each share shall be taken to be of the par value of one hundred pesos for the purpose of fixing the fee: *And provided, further*, That the fee for the examination and filing of articles of incorporation of a non-stock corporation shall be twenty-five pesos;
>
> (b) *For examining and filing a certificate of increase of the capital stock of a corporation* — One-tenth of one *per centum* of the increase in capital stock, but in no case shall the fee be less than twenty-five pesos or more than one thousand pesos;
>
> (c) *For examining and filing the by-laws of a corporation* — Five pesos; and the same fee shall be charged for the examination and filing of an amendment to the by-laws;
>
> (d) *For the examination and recording of articles of partnership*:

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73 Id. at 313-314.

74 *Rollo*, p. 347. See also, *City of Ozamiz v. Lumapas*, 160 Phil. 33 (1975).

75 Id. at 99.

76 *See* SEC Memorandum Circular No. 1, Series of 1986 (SEC M.C. No. 1, S. 1986) and SEC M.C. No. 2, S. 1994.

(1) *Presentation Fee* — One peso;

(2) *Recording fee* — Ten pesos for a capital not exceeding ten thousand pesos; and two pesos for each thousand or fraction thereof in excess of the first ten thousand, but in no case shall the fee be more than six hundred pesos;

(3) *For examining and recording a document amending articles of partnership* — Ten pesos. (Underscoring supplied)

Similarly, SEC M.C. No. 1, S. 1986 prescribed the filing fee for amending articles of incorporation, where the amendment consists of extending the term of corporate existence at 1/10 of 1% of the authorized capital stock but not less than ₱300.00 **nor more than ₱100,000.00** for stock corporations, and 1/10 of 1% of the authorized capital stock but not less than ₱200.00 **nor more than ₱100,000.00** for stock corporations without par value.[77]

While SEC M.C. No. 2, S. 1994 sought to prescribe 1) the fee for the filing of articles of incorporation at the rate of 1/10 of 1% of the authorized capital stock plus 20% thereof but not less than ₱500.00, without any maximum filing fee[78] and 2) the fee of ₱200.00 for examining and filing amended articles of incorporation,[79] said Circular was declared invalid in *Securities and Exchange Commission v. GMA Network, Inc.*,[80] for failing to comply with the publication and filing requirements pronounced in *Tanada v. Tuvera*.[81]

Thus, it was only in the instant SEC M.C. No. 9, S. 2004 that the fee cap or ceiling was altogether abandoned, giving rise to the exaction of significantly huge regulatory fees.

Even assuming arguendo that the SEC is correct in holding that a corporation with more authorized capital stock requires more regulation and supervision, the Court has not been shown how such additional effort on the part of the SEC can reasonably amount to ₱24,000,000.00 or 12,000 times more than the minimum amount of ₱2,000.00.[82] Likewise, no justification has been demonstrated to the Court for imposing the huge amount of ₱24,000,000.00 on herein petitioner simply because it also happens to be a public company.[83] While a public company may be subject to stringent regulations and to periodic reportorial requirements under the SRC, the instant fee is being imposed on a corporation's authorized capital stock, regardless of whether or not the corporation falls within the definition of a

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77 *Securities and Exchange Commission v. GMA Network, Inc.*, supra note 64 at 120.
78 Id.
79 *Rollo*, pp. 95-96.
80 Supra note 64.
81 220 Phil. 422 (1985).
82 See SEC M.C. No. 9, S. 2004.
83 *Rollo*, p. 98.

"public company."[84] In other words, SEC M.C. No. 9, S. 2004 would also apply to a non-public company with the same authorized capital stock as herein petitioner. Evidently therefore, any additional surveillance and regulation that may be needed for public companies and the additional costs associated therewith are **not remotely related to the instant fee**. This only further shows that the fee is not only exorbitant, it is also quite arbitrary.

To further illustrate the arbitrariness of the cap-less and therefore limitless formula prescribed under SEC M.C. No. 9, S. 2004, the Court notes that petitioner likewise paid a "filing fee" in the amount of ₱40,000,000.00 for the increase of its authorized capital stock.[85] Curiously, had the increase in its authorized capital stock from ₱12.1 billion to ₱32.1 billion been undertaken *before* petitioner sought an extension of its corporate life, petitioner would have paid ₱40,000,000.00 for the increase in its authorized capital stock and thereafter, ₱64,200,000.00 (instead of the current ₱24,000,000.00) for the extension of its term. In this scenario, what additional regulatory cost could possibly justify the outrageous ₱40,200,000.00 leap in petitioner's license fees?

It also bears emphasis that the SEC presumably examined petitioner's corporate records and its compliance with various reportorial requirements each time it increased its authorized capital stock or sought SEC approval for other corporate acts undertaken prior to the extension of its corporate term.[86] Thus, when petitioner filed for the extension of its corporate term in 2007, the SEC only needed to determine petitioner's compliance as regards the reportorial requirements due after the approval or monitoring of the corporate act immediately preceding the extension under examination. As the SEC already charged significant fees for previous corporate acts requiring SEC approval, especially increases in capital stock, the incremental work involved in extending petitioner's corporate life could not justifiably amount to ₱24,000,000.00.

The unreasonableness of the instant fee is bolstered by the fact that R.A. 11232 or the Revised Corporation Code of the Philippines, which took effect on February 23, 2019, now grants all corporations perpetual existence, unless its articles of incorporation otherwise provides:

> SEC. 11. *Corporate Term.* – A corporation shall have perpetual existence unless its articles of incorporation provides otherwise.
>
> Corporations with certificates of incorporation issued prior to the effectivity of this Code, and which continue to exist, shall have perpetual

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[84] Section 3.1.16 of the 2015 IMPLEMENTING RULES AND REGULATIONS OF THE SECURITIES AND REGULATIONS CODE defined public company as:

> **3.1.16. Public Company** means any corporation with a class of equity securities listed on an Exchange, or with assets in excess of Fifty Million Pesos (PhP50,000,000.00) and has two hundred (200) or more holders each holding at least one hundred (100) shares of a class of its equity securities."

[85] Supra note 8.

[86] See for instance requirements for Increase of Authorized Capital Stock available at http://www.sec.gov.ph/services-2/company-2/amendment/.

> existence, unless the corporation, upon a vote of its stockholders representing a majority of its outstanding capital stock, notifies the Commission that it elects to retain its specific corporate term pursuant to its articles of incorporation: *Provided,* That any change in the corporate term under this section is without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code.
>
> A corporate term for a specific period may be extended or shortened by amending the articles of incorporation: *Provided*, That no extension may be made earlier than three (3) years prior to the original or subsequent expiry date(s) unless there are justifiable reasons for an earlier extension as may be determined by the Commission: *Provided, further*, That such extension of the corporate term shall take effect only on the day following the original or subsequent expiry date(s).
>
> A corporation whose term has expired may apply for a revival of its corporate existence, together with all the rights and privileges under its certificate of incorporation and subject to all of its duties, debts and liabilities existing prior to its revival. Upon approval by the Commission, the corporation shall be deemed revived and a certificate of revival of corporate existence shall be issued, giving it perpetual existence, unless its application for revival provides otherwise.
>
> No application for revival of certificate of incorporation of banks, banking and quasi-banking institutions, preneed, insurance and trust companies, non-stock savings and loan associations (NSSLAs), pawnshops, corporations engaged in money service business, and other financial intermediaries shall be approved by the Commission unless accompanied by a favorable recommendation of the appropriate government agency.

Evidently, there is **no more basis** to impose a "license fee" for the purported grant of a fresh period for a corporation to act as a juridical being for another 50 years.[87]

While administrative rules are presumed valid and reasonable, said presumption may be set aside when the invalidity or unreasonableness appears on the face of the administrative rule itself or is established by proper evidence.[88] Unreasonableness is repugnant to due process and the Constitution. "*To satisfy the due process requirement, official action, to paraphrase Cardozo, must not outrun the bounds of reason and result in sheer oppression.*"[89]

In view of the foregoing discussion, the prescribed rate for extending a corporation's term under SEC M.C. No. 9, S. 2004 is hereby declared **invalid and unreasonable**.

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87 Supra note 69.

88 See *Morcoin Co., Ltd. v. City of Manila*, supra note 72.

89 *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manil*a, supra note 1

As regards the amount to be refunded, the Court notes that SEC M.C. No. 9, S. 2004 superseded SEC M.C. No. 2, S. 1994,[90] which, in turn, superseded SEC M.C. No. 1, S. 1986.[91]

As discussed hereunder, the rate prescribed for extending a corporation's term under SEC M.C. No. 9, S. 2004 is invalid. Remarkably, SEC M.C. No. 2, S. 1994 was likewise declared invalid in *Securities and Exchange Commission v. GMA Network, Inc.*[92]

As such, SEC M.C. No. 1, S. 1986 applies. Under said Circular, the filing fee for amending articles of incorporation, where the amendment consists of extending the term of corporate existence is 1/10 of 1% of the authorized capital stock but not less than ₱300.00 nor more than ₱100,000.00 for stock corporations, and 1/10 of 1% of the authorized capital stock but not less than ₱200.00 nor more than ₱100,000.00 for stock corporations without par value.[93]

In the case at bar, it appears that petitioner paid the total amount of ₱24,200,000.00.[94] As the maximum amount payable under SEC M.C No. 1, S. 1986 is ₱100,000.00, the SEC is hereby ordered to return the excess in the total amount of ₱24,100,000.00 to petitioner, to be credited against future fees or charges.[95]

Having resolved the foregoing matters, the Court finds no more need to resolve the other issues raised in the Petition.

WHEREFORE, the Petition is **GRANTED**. The September 28, 2012 and March 25, 2013 Resolutions of the Court of Appeals, Second Division, in CA-G.R. SP No. 121883 are hereby **SET ASIDE**. The rate prescribed for extending a corporation's term under SEC Memorandum Circular No. 9, Series of 2004 is hereby declared invalid and unreasonable. The Securities and Exchange Commission is hereby **DIRECTED** to return the amount of ₱24,100,000.00 to First Philippine Holdings Corporation, to be credited against future fees.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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90 Supra note 79.
91 *Securities and Exchange Commission v. GMA Network, Inc.*, supra note 64.
92 Id.
93 Id. at 120.
94 *Rollo*, p. 89.
95 Supra note 58. Petitioner prayed that "the TWENTY-FOUR MILLION PESO (₱24,000,000.00) Filing Fee, paid by Petitioner under protest for examination of the amendment of Petitioner's articles of incorporation, be **computed according to the proper law** and that the amount in excess thereof be properly refunded/credited to Petitioner accordingly." Emphasis in the original; underscoring supplied.

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

JOSE C. REYES, JR.
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice