



# ***DEL ROSARIO PANDIPHIL Inc.***

## **Philippine Shipping Update – Manning Industry**

By: Ruben Del Rosario, President, Del Rosario Pandiphil Inc., October 13, 2015 (Issue 2015/18)

*“Del Rosario & Del Rosario is more or less unrivalled when it comes to maritime work in the Philippines” from Asia-Pacific, The Legal 500, 2014, p. 497*

In this issue:

**UPDATE:** Memo on Collection of Provincial Coastwatch Environmental Monitoring System User Fee by the Province of Zambales, Philippines

Amendments to the Procedure on Termination of Employment, October 3, 2015

Firm News / New Hires

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## **UPDATE: Collection of Provincial Coastwatch Environmental Monitoring System User Fee by the Province of Zambales, Philippines**

The provincial government of Zambales, Philippines enacted an ordinance mandating the collection of a “Provincial Coastwatch Environmental Monitoring System User Fee” for vessels passing through the territorial waters of or docking at any port in the Province of Zambales. Serious concerns were then raised against this ordinance. We have given advice that payment of any fees be deferred while we clarified the ordinance. (see Philippine Shipping Update Issue 2015/17)

Del Rosario & Del Rosario was invited by the Provincial Board of Zambales to attend a hearing on the implementation of the mentioned ordinance. We raised arguments against the implementation of the ordinance. The Provincial Board recognized the arguments we raised and advised us that there may be a need to conduct deliberation to further amend the ordinance.

A Congressional hearing was likewise held and the issues against the ordinance were again raised. ***It was agreed at said hearing that the implementation of the ordinance would be suspended.***

The Provincial Board of Zambales as of this writing has not yet passed an amendment to revise, modify or amend said ordinance. We understand that some Owners have received billings dated September 2015 directly from the Provincial Board of Zambales. ***We strongly urge that those concerned reply that the legality of the ordinance is still being determined and in the meantime, it is strongly urged that no payment on such billings be made.***

This newsletter will give timely updates on the ordinance.

## Amendments to the Procedure on Termination of Employment

The Department of Labor and Employment published on October 3, 2015 Department Order No. 147-15 series of 2015, which amended the Implementing Rules and Regulations (IRR) of the Labor Code on termination of employment.

Basically, the amendments sought to include jurisprudence which previously interpreted the provisions of the Labor Code on termination of employment.

Worthy of note is that the amendment now expressly details the procedure and requirements in terminating the employment of a worker which was previously absent in the provisions of the Labor Code.

In said procedure, the amendments now reflect jurisprudential doctrines on procedural due process in the termination of employment. The requirements are:

1. There must be a first written notice which should contain:
  - a. The **specific causes of grounds for termination** under the Labor Code and company policies, if any.
  - b. **Detailed narration of facts and circumstances** that will serve as basis for the charge against the employee. General description of the charge will not suffice.
  - c. A directive that the **employee is given an opportunity to submit a written explanation within a reasonable period**. The term "reasonable period" has been construed to be **at least five (5) calendar days** from receipt of the notice to study the allegations, gather data and information, consult and/or be represented by counsel or the union and develop his defense.
2. After serving the first notice, the employer should afford the employee with **ample opportunity to be heard and defend himself** with the assistance of a representative if he so desires. The term "ample opportunity to be heard" means any meaningful opportunity (verbal or written) given to the employee to answer the charges against him and submit evidence in support of his defense, whether in a hearing, conference or some other fair, just and reasonable way. A formal hearing or conference becomes mandatory only when requested by the employee in writing or substantial evidentiary disputes exist, or a company rule or practice requires it, or when similar circumstances justify it.
3. After determining that the termination of employment is justified, the employer shall serve a written notice to the employee of the termination indicating the following:
  - a. all the circumstances involving the charge against the employee had been considered, and,
  - b. the grounds have been established to justify the severance of the employee from his employment.
4. Said notices shall be personally served on the employee or to his last known address.

The amendments will take effect on 18 October 2015 as it was published on 3 October 2015.

**Author's Note:** *The Labor Code and its implementing Rules and Regulations were primarily designed for land based domestic employment. Nevertheless, the provisions of said law are deemed to be part of any employment contract including the POEA Contract.*

*The POEA Contract provides for its own rules on the procedure for termination of employment which is basically in harmony with the above-mentioned procedure. The primary difference is that in the POEA Contract, there is no minimum number of days afforded to the seafarer to reply to a notice of violation unlike in the amended rules that the employee should be given at least 5 days to provide his written explanation to the charges against him.*

*While the procedure of the Labor Code should be complied with at all times, we believe that its application to the employment of seafarers on-board ocean-going vessels should be based on practicability and reasonableness considering the peculiar circumstances of said employment.*

## **Firm News / New Hires**

### **Arturo T. Del Rosario Jr. elected IPAP President for 2015 – 2017**

Del Rosario Law's Co-Managing Partner Arturo Del Rosario, Jr. was elected as President of the Intellectual Property Association of the Philippines (IPAP) for a three-year term starting 2015. IPAP is the leading organization for Intellectual Property Law practitioners in the Philippines. IPAP has remained committed to every aspect of the protection of intellectual property, and has assisted in the drafting of legislation and implementing rules relating to the many facets of Intellectual Property Law for the Congress of the Philippines, Intellectual Property Office of the Philippines, Optical Media Board, and other government agencies.

IPAP is the only officially recognized Philippine organization by the Asian Patent Attorney Association (APAA), and the Association Internationale Pour la Protection de la Propriete Intellectuelle (AIPPI).

### **Ruben Del Rosario speaks at GARD New York Seminar**

Del Rosario Law's Co-Managing Partner, Ruben Del Rosario was invited to speak at the GARD P & I Club seminar entitled "Persons of Interest". Ruben spoke on Philippine updates relating to seafarers' cases. The seminar was recently held at the New York Yacht Club and was well attended by several stakeholders in the industry.

### **Charles Jay Dela Cruz elected to PNBC Board**

Partner Charles Jay Dela Cruz was elected as a member of the Board of Trustees of the Philippines Norway Business Council (PNBC) for the term 2015-2016. Charles is a preferred legal advisor to many Norwegian interests particularly in the maritime field. His long experience and expertise augurs well for the organization.

PNBC is a non-stock, non-profit organization which aims to promote closer economic and friendly relations between Philippines and Norway and provides a forum for exchange of views on business and commercial dealings in both domestic and international setting.

### **Joseph Rebano elected as trustee in the Philippine Bar Association**

Partner Joseph Manolo Rebano is elected once more to be a member of the Board of Trustees of the Philippine Bar Association (PBA), the oldest voluntary national organization of lawyers in the Philippines. Past presidents of PBA are Firm founder Arturo M. Del Rosario Sr. and current co-Managing Partner Arturo T. Del Rosario Jr.

### **Herbert Tria is a member Technical Working Group formed by the POEA**

The POEA is currently reviewing the proposed amendments to the 2003 POEA Rules and Regulations. Partner Herbert Tria will sit as a member of the Technical Working Group formed by the POEA to review the amendments.

## **New Hires**

### **Del Rosario welcomes its new lawyers**

Del Rosario & Del Rosario would like to congratulate and welcome its new lawyers to the firm.

**Eunice Carmela M. Ariate**, has a degree of Bachelor of Science, Major in Accountancy from San Beda College, Manila and a Bachelor of Laws degree also from the same school. She is likewise a Certified Public Accountant.

**Rene G. Pilapil Jr.** has a degree of Bachelor of Arts, Major in Political Science from the De La Salle University, Manila and a Juris Doctor of Laws degree from the same school.

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*"Del Rosario & Del Rosario is often first port of call for employment law within the maritime industry, where it represents shipowners, agents, insurers and port owners." Asia-Pacific, The Legal 500, 2014, p. 494*

*"Offers comprehensive shipping expertise. Maintains an excellent reputation for representing P&I firms and handling collision and crew casualties. A strong team that is well known in the market." Chambers Asia Pacific, 2014 p. 949*  
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Facebook Page: DelRosarioLaw

This publication aims to provide commentary on issues affecting the manning industry, analysis of recent cases and updates on legislation. It is meant to be brief and is not intended to be legal advice. For further information, please email [ruben.delrosario@delrosario-pandiphil.com](mailto:ruben.delrosario@delrosario-pandiphil.com).

This publication is sent from time to time to clients and friends. To unsubscribe, reply to this email and put "[unsubscribe](#)" in the subject.

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