In The Matter of
CROWN REGENCY HOLIDAY INTERNATIONAL, INC., FUENTE TRIANGLE REALTY DEVELOPMENT CORPORATION and BORACAY MULTIPLE PROPERTIES DEVELOPERS, INC.

SEC Admin Case No. 10-14-172

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Petitioner.
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DECISION

For consideration of the Commission is the *Petition (For Revocation of Certificate of Incorporation)* dated 3 October 2014 (the "Petition") filed by the Enforcement and Protection Department (EPD), now Enforcement and Investor Protection Department ("EIPD"), of the Commission against Crown Regency Holiday International, Inc. (Crown Regency), Fuente Triangle Realty Development Corporation (Fuente Triangle) and Boracay Multiple Properties Developers, Inc. (Boracay Multiple) pursuant to Section 6(l)(2) of Presidential Decree (P.D.) 902-A, as amended by P.D. No. 1653.

THE PARTIES

Petitioner EIPD is one of the operating departments of the Securities and Exchange Commission ("Commission") tasked to ensure compliance by corporations and partnerships, market participants, issuers and individuals with laws, rules and regulations implemented by the Commission; and to initiate/carry out appropriate enforcement action against them for violation of the said laws, rules and/or regulations. Petitioner EIPD is also vested with the primary authority to conduct investigations on, and pursue administrative actions, *motu propio* or upon complaint or referral, against entities and/or individuals who, without the requisite secondary license, are involved, among others, in the sale, and/or offering for sale of unregistered securities; and to initiate petitions for revocation of certificate of registration except those cases which are under the original authority of the Company Registration and Monitoring Department ("CRMD").

Respondent Crown Regency is a corporation duly registered with the Commission, its Certificate of Registration bearing Company Registration No. CS200406937 having been issued on 4 May 2004. Its principal office address is at Unit 1001, 10/F, Atlanta Center, Annapolis St., Greenhills, San Juan, Metro Manila. Respondent Crown Regency was incorporated for the following purpose:

> "To subscribe for, engage in, or otherwise acquire and own, hold, use, sell, assign, transfer or otherwise dispose of real and personal properties, including shares of stocks, securities, contracts, or obligations of any corporation, domestic or foreign, engaged in the general business of a hotel, resort, restaurant, fastfood, recreational, amusement, real estate brokerage, finance, transportation, medicine distribution, construction and other allied businesses and to the limit extent permitted by law, to acquire and own, either by purchase or lease or other means of acquisition, land, equipment, buildings and other equipment, buildings and improvements thereto for the conduct and operation of the general nature of its business and object of all other similar or related activities incidental thereto, to include the sale and issuance of non-propriety Holiday Ownership Membership Certificates to natural and juridical persons which shall entitle the purchaser or holder thereof to the use, at any time, or at some future time, one or more weekly intervals future vacation accommodation in the facilities and amenities of the establishments to be organized, managed and operated for the welfare and benefit of the holder or purchaser of the certificate."

Respondent Fuente Triangle is a corporation duly registered with the Commission, its Certificate of Registration bearing Company Registration No. CS200606993 having been issued on 5 May 2006. Its principal office address is at Fuente Tower II, Osmeña Boulevard, Cebu City. Respondent Fuente Triangle was incorporated for the following purpose:

> "To acquire by purchase, lease, donation or otherwise, and to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise, real estate of all kinds, whether improve, manage or otherwise dispose of buildings, houses, apartments and other structures of whatsoever kind, together with their appurtenances, and to carry on a general real estate business, to purchase, manage, to take, own real and personal property, whether for investment or for its own use or to protect existing interest therein for other purposes, to mortgage, sell and convey the same, to negotiate, purchase, hold and sell mortgage, stocks, bonds and other securities and personal property and to invest money in real estate for itself. However, the corporation will not engage in the management of land securities portfolio and other similar assets of persons, firms or entities."

Respondent Boracay Multiple is a corporation duly registered with the Commission, its Certificate of Registration bearing Company Registration No. CS200705954 having been issued on 13 April 2007. Its principal office address is at Unit 1008, 10/F Atlanta Center Annapolis Street, Greenhills, San Juan City. Respondent Boracay Multiple was incorporated for the following purpose:

> "To carry on the general real estate business, to purchase, manage, to take, own real and personal property, whether for investment or for its own use or to protect existing interest therein of other purposes, to mortgage, sell and convey the same, to negotiate, purchase, hold and sell mortgage, stocks, bonds and other securities and personal property and to invest money in real estate for itself. However, the corporation will not engage in subdivision business and in the management of fund securities portfolio and other similar assets of persons, firms or entities."

RELEVANT FACTS

The instant case stemmed from the Memorandum dated 27 September 2007 of the Corporate Finance Department (CFD), now the Corporate Governance and Finance Department (CGFD), endorsing to the EIPD for investigation and appropriate enforcement action, its initial finding that Respondents are engaged in the sale and/or has been offering securities to the public without the requisite secondary license from the Commission.

On 17 March 2009, the EIPD filed a Motion for Issuance of a Cease and Desist Order (CDO)[1] (the "Motion") against Crown Regency, Fuente Triangle, Megatrend and Boracay Multiple, their respective officers, directors, representatives, salesmen, agents and any and all persons claiming and acting for and in their behalf based on its finding that the foregoing are engaged in the sale and/or offer for sale of securities in the form of Non-Participating Preferred Shares of Stock (the "Preferred Shares") which were represented by a Condotel Unit at Boracay Crown Regency Resort and Convention Center without the requisite license from the Commission.

In its Motion, EIPD likewise found that the Contract to Sell and the Management and Profit Sharing Agreement used by Respondents in carrying out their business scheme essentially involved the sale of investment contracts which requires a secondary license from the Commission.

On 26 March 2009, the Commission granted the Motion and issued the CDO, the dispositive of which reads as follows:

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[1] SEC Case No. 03-09-007

> "**PREMISES CONSIDERED**, respondents CROWN REGENCY, FUENTE TRIANGLE, MEGATREND and BORACAY MULTIPLE, their officers, directors, partners, representatives, assigns, agents and any and all persons acting for and/or in their behalf are hereby ordered to immediately **CEASE AND DESIST**, under pain of contempt, from further offering, advertising, soliciting and selling Investment Contracts and Shares of Preferred Stock of BORACAY MULTIPLE to the public until the requisite registration statement is duly filed and approved by the Commission and the corresponding permit to offer and sell securities is issued, and to **SHOW CAUSE** why the Cease and Desist Order should not be made permanent.
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> Further, respondents are directed to submit a report on the actual number of unregistered shares already sold to the public.
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> Pursuant to Section 10-3 of the 2006 Rules of Procedure of the Commission, respondents may file a formal request or motion for the lifting of this Cease and Desist Order within a non-extendible period of five (5) business days from receipt of the Order, stating therein whether the corporation is willing to enter into a settlement offer under Section 55 of the SRC and would opt for summary procedure.
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> Let a copy of this Order be furnished the Corporation Finance Department and the Economic Research and Information Department for their information and appropriate action.
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> **SO ORDERED.**"

On 25 May 2009, the CDO was made permanent by Order of the Commission, the dispositive of which reads as follows:

> "**WHEREFORE**, premises considered, respondents Motion for Reconsideration dated 23 April 2009 is hereby **DENIED** for lack of merit. The Cease and Desist Order dated 26 March 2009 is hereby made **PERMANENT**.
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> Accordingly, Crown Regency, Fuente Triangle, Boracay Multiple and Megatrend, their officers, directors, agents, representatives, conduits, assigns and any and all persons claiming and acting for and in behalf and under their authority, are hereby ordered **NOT** to undertake further offering, soliciting or otherwise selling of securities to the public until the requirements of the law have been complied with.
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> **SO ORDERED.**"

Aggrieved, the Respondents filed before the Court of Appeals (Second Division) a Petition for Certiorari under Rule 65 with a prayer for issuance of a Temporary Restraining Order (TRO), assailing the CDO issued by the Commission. In its Decision promulgated on March 2010[2], the CA sustained the finding of the Commission and the CDO. The Joint Motion for

[2] CA G.R. SP No. 109676

Reconsideration was denied by the CA in its Resolution promulgated on 24 September 2010.

On 18 June 2012, the CRMD of this Commission revoked the Certificate of Registration of Respondent Crown Regency in an Order dated 18 June 2012 for failure to file the reportorial requirements mandated by law, rules, and regulations.

In a Resolution dated 15 August 2012 (the "Resolution"), the Supreme Court affirmed the Decision of the Court of Appeals, and denied the *Petition for Review* filed by Respondents for failure to show reversible error as to warrant the exercise of its discretionary appellate jurisdiction.[3] On 10 December 2012, the Supreme Court issued a Resolution denying with finality the Motion for Reconsideration of Respondents. The Resolution became final and executory on 6 February 2013.

On 9 October 2014, the instant Petition was filed with the Commission. Petitioner EIPD alleged that Respondents' act of selling and/or offering for sale unregistered securities in the form of preferred shares and investment contracts without the required secondary license from the Commission amounts to serious misrepresentation proscribed under Section 6(l)(2) of P.D. 902-A, as amended by P.D. No. 1653, which warrants the revocation of their certificates of registration.

On 11 November 2014, Respondents filed its Consolidated Answer (the "Answer") praying for the dismissal of the Petition for lack of merit. Respondents assert that they are not engaged in the sale of unregistered securities in the form of investment contracts; neither did they offer such securities. Finally, Respondents maintain that Respondent Crown Regency is not a party to, or had no participation in the alleged sale and/or offer for sale of the investment contracts for which reason its Certificate of Registration should not be revoked.

On 21 November 2014, EIPD filed its Reply dated 20 November 2014 praying that the Commission issues an Order revoking the Certificates of Registration of Respondents on the ground that the Answer failed to raise substantial arguments and/or present sufficient evidence that will warrant the dismissal of the Petition.

On 3 December 2014, Respondents filed their Consolidated Rejoinder where they reiterated their arguments in their Consolidated Answer.

[3] G.R. No. 193848, August 15, 2012

ISSUE

Whether or not the revocation of the Respondents' Certificates of Registration on the ground of serious misrepresentation as to what the corporations can do to the great prejudice or damage to the general public is warranted given the evidence on record.

DISCUSSION

The Commission finds merit to the Petition.

The undisputed fact borne in the records of this case is that this Commission issued a CDO against Respondents on the basis of, and after a finding that the latter was engaged in the sale and/or offer for sale of securities in the form of investment contracts to the public without the requisite license in violation of Section 8.1[4] of the Securities Regulation Code (SRC).

The finding of the Commission that Respondents were engaged in the unregistered sale of securities in violation of the SRC which was the sole basis for the issuance of the CDO was questioned by Respondents all the way to the Supreme Court. The Supreme Court, however, sustained and affirmed the finding of violation by Respondents of Section 8.1 of the SRC, and the validity of the CDO.

On the basis of the foregoing, the EIPD sought the revocation of Respondents' Certificates of Registration on the ground of serious misrepresentation under Section 6(l)(2) of P.D. 902-A, as amended by P.D. No. 1653.

Before We resolve the Petition, the Commission deems it necessary to discuss the scope and extent of the authority, powers and functions of EIPD as the same was questioned by Respondents.[5]

Section 5(m) of the Securities Regulation Code grants the Commission the power to "*suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnerships or associations, upon any grounds provided by law.*"[6]

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[4] Section 8. Requirement of Registration of Securities. – 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.
[5] See Paragraph 92 of the Consolidated Answer
[6] Section 179(j) of Republic Act No. 11232 (the Revised Corporation Code) also empowers the Commission to "*suspend or revoke the certificate of incorporation after proper notice and hearing.*"

Section 6(l) of P.D. 902-A, as amended by P.D. No. 1653, provides for the grounds when a certificate of registration may be suspended or revoked. In particular, paragraph 2 of the foregoing provision sanctions the suspension or revocation of a corporation's certificate of registration for "*serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public*."

On the basis of Section 4.6 of the SRC, this Commission issued Office Order No. 819, Series of 2014, delegating to the EIPD the power and authority, among others, to investigate, *motu proprio* or upon complaint or referral, violations of the law and the rules and regulations of the Commission, and to file petitions for revocation and other administrative actions before the Office of the General Counsel.[7]

The validity of the delegation of Commission's powers covered by Office Order No. 819, Series of 2014 was recognized and sustained by the Supreme Court in the case of *Cosmos Bottling Corp. vs. Securities and Exchange Commission*[8], thus:

> "As an administrative agency with both regulatory and adjudicatory functions, the SEC was given the <u>**authority to delegate** some of its functions to, inter alia, its various operating departments</u>, such as the SEC-CFD, the Enforcement and Investor Protection Department, and the Company Registration and Monitoring Department, pursuant to Section 4.6 of the SRC, to wit:
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> xxx xxx xxx
>
> Naturally, the aforesaid provision also gives the SEC the power to review the acts performed by its operating departments in the exercise of the former's delegated functions. This power of review is squarely addressed by Section 11-1, Rule XI of the 2006 SEC Rules of Procedure, which provides that "[a]n appeal to the Commission En Banc may be taken from a decision, order, or resolution issued by an Operating Department if there are questions of fact, of law, or mixed questions of fact and law."

On the basis of the foregoing, EIPD clearly has the authority to act as complainant and to file the petition for suspension or revocation of certificates of registration of corporations.

Coming now to the merits of the case, Respondents claim that the Petition is dismissible for lack of merit and basis. Respondents maintain that they were not engaged in the sale of unregistered securities, arguing that they were in reality engaged in the sale of condotel units and the issuance of the Preferred Shares was carried out for the sole purpose of giving the buyer

[7] See Section V of Annex "A" to Office Order No. 819, Series of 2014
[8] G.R. No. 199028, November 12, 2014

protection due to the fact that no condominium title can be issued given the peculiar situation that the entire Boracay island is classified as timberland.[9] Respondents likewise maintain in the alternative that they did not commit serious misrepresentation as to what they can do since they sought the required approvals and opinions from regulatory bodies and disclosed to their buyers the business scheme.[10]

Respondents' arguments fail to convince.

It is undisputed that this Commission issued a CDO based on a finding that Respondents were engaged in the sale and/or offer for sale of unregistered securities without the requisite license which is proscribed under Section 8.1 in relation to Section 12 of the SRC. In the Order, the Commission held that the business scheme of Respondents involved not only the sale of Preferred Shares which represented a specific condotel unit at Boracay Crown Regency, but also partook of the nature of an investment contract where the money invested is placed in a common enterprise and their investors are led to expect profits from Respondents' efforts.

In its Decision, the CA sustained the validity of the CDO after it found that the Respondents were indeed engaged in the unauthorized sale and/or offer for sale of securities, thus:

> "Undeniably, petitioners' act of selling or offering condotel units, together with the sale or distribution of their preferred shares of stock to the public, constitute an offering of securities without prior statement duly filed with and approved by the SEC as required under Section 8 of the SRC. Offering NPPSS as additional security or guarantee to the unit buyers in contravention with the provisions of the Securities Regulation Code. The sale of condotel units together with the shares of stocks would lure investors to buy without any knowledge that the activity is unlawful. Securities and Exchange Commission is vested with the power and authority to safeguard the interest of the public against said unlawful activities."

After the Resolution of the Supreme Court, denying with finality the Motion for Reconsideration of Respondents and affirming the Decision of the CA, became final and executory on 6 February 2013, the same became immutable and unalterable.

It is thus clear that the finding of violation of Sections 8.1 was an indispensable condition for the issuance of the CDO. The foregoing is based on the very purpose of a cease and desist order which was explained by the

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[9] See Paragraph 68 of the Consolidated Answer
[10] See Paragraphs 82 and 83 of the Consolidated Answer

Supreme Court in the case of *Securities and Exchange Commission vs. CJH Development Corp.*[11], thus:

> "The law is clear on the point that a cease and desist order may be issued by the SEC *motu proprio*, it being unnecessary that it results from a verified complaint from an aggrieved party. A prior hearing is also not required whenever the Commission finds it appropriate to issue a cease and desist order that aims to curtail fraud or grave or irreparable injury to investors. There is good reason for this provision, as any delay in the restraint of acts that yield such results can only generate further injury to the public that the SEC is obliged to protect."

A cease and desist order issued without the illegal or prohibited act being established and proven is legally baseless, and warrants the exercise of the appellate jurisdiction of higher courts. Without the illegal or prohibited act being established and proven, any issuance of a cease and desist order would be an act that constitutes grave abuse of discretion amounting to lack or excess of jurisdiction. In a similar vein, a cease and desist order issued based on a finding of an illegal or unauthorized act that will cause grave or irreparable injury to the investing public is valid, and will withstand any legal attack. Stated differently, a cease and desist order which is issued on the basis of a finding of an illegal or unauthorized act that will cause grave or irreparable injury to the investing public constitutes an affirmation of such illegal or unauthorized act.

In the instant case, the CDO issued by this Commission which was affirmed by both the CA and SC constituted an affirmation that Respondents were engaged in the sale of securities in the form of investment contract without the requisite license. After the Resolution of the SC became final and executory on 6 February 2013, the CDO and the basis thereof i.e. the finding of the Commission that Respondents violated Section 8 of the SRC, became the law of the case in so far as the instant Petition is concerned. In the case of *Philippine Ports Authority vs. Nasipit Integrated Arrastre and Stevedoring Services, Inc.*[12], the Supreme Court held that:

> "The term law of the case has been held to mean that 'whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. As a general rule, a decision on a prior appeal of the same case is held to be the law of the case whether that question is right or wrong, the remedy of the party deeming himself aggrieved being to seek a rehearing."

[11] G.R. No. 210316, November 28, 2016
[12] G.R. No. 214864, March 22, 2017

In their Consolidated Answer, Respondents admitted that they were "*fully aware of the need to secure license before this type of security*" i.e. the Preferred Shares, are offered for sale to the public pursuant to the relevant provisions of the SRC. Hence, Respondents deemed it appropriate **not to sell the shares directly to the public** as the same requires prior registration and licensing[13]; they then argued and maintained that the real transaction was a sale of condotel units and not securities.

To justify the issuance of the Preferred Shares provided in Article SEVENTH of its Articles of Incorporation (AOI)[14], in relation to the sale of the condotel units, Respondents admitted that they had to issue the Preferred Shares for the "*sole purpose of giving the buyer protection due to the fact that no condominium title can be issued to the buyer*" because the land where the condominium sits cannot be titled considering that the entire Boracay Island has been declared as timberland.[15] The <u>Preferred Shares were thus issued to condotel unit buyers without any consideration</u> (and in clear violation of its AOI) because such issuance was primarily meant to be an added incentive, protection and guarantee in the event the properties are eventually titled.[16]

In addition to the foregoing apparently incoherent and contradictory arguments, Respondents also maintained that their issuance of Preferred Shares did not constitute serious misrepresentation because (a) the same were issued only after the filing of the notice of exemption where the Commission was officially put on notice of such issuance,[17] and (b) no complaint was filed against them which means that no investor was prejudiced or damaged.[18]

Respondents' position does not induce assent.

Serious misrepresentation, once established, triggers and warrants the exercise by this Commission of its mandate to protect the investing public, utilizing for this purpose its expertise in matters relating to securities. An administrative charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, *i.e.*, the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question

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[13] Paragraph 80 of the Consolidated Answer
[14] "*That the authorized capital stock of the corporation is ONE HUNDRED MILLION PESOS (P100,000,000.00) pesos in lawful money of the Philippines, divided into the following classes:*

xxx xxx xxx

TEN THOUSAND (10,000) Non-Participating Preferred Shares with a par value of One Thousand Pesos (P1,000.00) per share."
[15] Paragraphs 68, 70 and 71 of the Consolidated Answer
[16] Paragraph 11 of the Consolidated Answer
[17] Paragraph 3 of the Consolidated Answer
[18] Paragraphs 89-91 of the Consolidated Answer

demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact. The Securities Regulation Code is a special law. Its interpretation and implementation is vested primarily in the SEC.[19]

Other than the matters raised by the Respondents which have long been settled and laid to rest, with the Resolution of the SC having attained finality and executory status on 6 February 2013, the only remaining issue for this Commission to resolve is whether serious misrepresentation under Sec. 6(l)(2) of P.D. No. 902-A, as amended by P.D. No. 1653, was committed when Respondents sold and/or offered the Preferred Shares in the form of investment contracts without the requisite license.

In the case of *Bernardo vs. Court of Appeals*, the Supreme Court has defined misrepresentation as a false statement about a material fact in any contract or other transaction that misleads the party to whom it is made.[20] Likewise, fraud refers to all kinds of deception — whether through, among others, misrepresentation — that would lead an ordinarily prudent person into error after taking the circumstances into account.[21] The fraud is serious when it is sufficient to impress, or to lead an ordinarily prudent person into error.[22]

On the basis of the foregoing, serious misrepresentation as to what the corporation can do or is doing under Section 6(l)(2) of P.D. 902-A, as amended by P.D. No. 1653, exists if a corporation performs an act or carries out transactions which are not within its authority and power under its Articles of Incorporation to do or make. These unauthorized acts are also called *ultra vires* acts of corporations, or acts committed outside the object for which a corporation was created as defined by law of its organization and thereof beyond the powers conferred upon it by law.[23] In *Rural Bank of Milaor vs. Ocfemia*[24], the Court defined the concept of *ultra vires,* thus:

> "The language of the Code appears to confine the term ultra vires to an act outside or beyond express, implied and incidental corporate powers. Nevertheless, the concept can also include those acts that may ostensibly be within such powers but are, by general or special laws, either proscribed or declared illegal. In general, although perhaps loosely, ultra vires has also been used to designate those acts of the board of directors or of corporate officers when acting beyond their respective spheres of authority. In the context that the law has used the term in Article 45 of the Corporation Code, an ultra vires act would be void and not susceptible to ratification. In

[19] Securities and Exchange Commission vs. Interport Resources Corp., G.R. No. 135808, October 6, 2008
[20] Bernardo vs. Court of Appeals, G.R. No. 124261, May 27, 2004
[21] Solidbank Corp. vs. Mindanao Ferroalloy Corp., G.R. No. 153535, July 28, 2005
[22] Tankeh vs. Development Bank of the Phils., G.R. No. 171428, November 11, 2013
[23] Republic vs. Acoje Mining Co., Inc., G.R. No. L-18062, February 28, 1963
[24] G.R. No. 137686, February 8, 2000

> determining whether or not a corporation may perform an act, one considers the logical and necessary relation between the act assailed and the corporate purpose expressed by the law or in the charter. For if the act were one which is lawful in itself or not otherwise prohibited and done for the purpose of serving corporate ends or reasonably contributes to the promotion of those ends in a substantial and not merely in a remote and fanciful sense, it may be fairly considered within corporate powers." (Emphasis supplied)

In the instant case, it is not disputed that Respondents did not have secondary license to sell or offer securities. Nonetheless, Respondents dealt with and transacted the Preferred Shares in the form of investment contracts after they filed the notice of exemption with the Commission. It is on the basis of the foregoing that the Supreme Court affirmed the CA Decision sustaining this Commission's finding that Respondents violated Section 8 of the SRC. The ruling of the Court of Appeals is worth quoting, thus:

> *"The Articles of Incorporation of any corporation merely operates to confer to such corporation its primary franchise or its separate juridical personality and* ***not the secondary license or any other authority*** *required by law for engaging in certain types of businesses or activities. Nowhere can it be found from the petitioners' evidence at hand that said companies were indeed exempt from complying with the registration."*[25]

The Commission thus finds that Respondents' act of selling and/offering the Preferred Shares in the form of investment contracts without the requisite license constituted serious misrepresentation as to what the corporation can do or is doing under Section 6(l)(2) of P.D. 902-A, as amended by P.D. No. 1653, because these acts were clearly outside the object for which Respondents were created. The sale and/or offer of securities cannot be considered as an implied or incidental powers granted to the Respondents since their primary purpose is to engage in real estate business. This is the reason why Respondents needed the secondary license before it can lawfully sell and/or offer securities, a fact that they themselves admitted.

Moreover, this Commission cannot also concur with and grant *imprimatur* to the position of Respondents that the mere filing of a notice of exemption suffices to, and automatically operates to grant the exemptive relief sought. This has no basis in law. The SRC accords this Commission broad discretionary powers *"to approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications"*[26], and to declare a registration statement effective or rejected.[27]

The foregoing negates Respondents' position that the filing of notice or application with the Commission operates to grant the same. The approval of

[25] CA Decision (G.R. No. 179047, March 11, 2015)
[26] Section 5(c) of the SRC
[27] Section 12.6 of the SRC

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any application filed with this Commission is not a ministerial act. he reason for the foregoing was explained by the Supreme Court in the case of the *Securities and Exchange Commission vs. Subic Bay Golf and Country Club, Inc.*[28], thus:

> "The Securities and Exchange Commission's approval of securities registrations signals to the public that the securities are valid. It provides the public with basis for relying on the representations of corporations that issue securities or financial instruments."

Finally, this Commission finds that there is no basis and merit to Respondents' argument that damage or prejudice to investors is wanting in the instant case since no complaint was filed against it. The instant case is not a private suit but a revocation proceeding before the Commission which calls for the exercise of its primary and exclusive jurisdiction under Section 6(l)(2) of P.D. No. 902-A, as amended by P.D. No. 1653. In the case of *SEC vs. CJH Development Corporation*[29], the Supreme Court held that fraud is attendant in the act of selling and/or offering securities without the requisite license, thus:

> "The act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities. Section 8.1 of the SRC clearly states that securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer."

In the case of *Securities and Exchange Commission vs. Subic Bay Golf and Country Club, Inc.*[30], the Supreme Court affirmed and emphasized the mandate of this Commission to protect the investing public by strictly implementing and enforcing the provisions of the SRC, to wit:

> "Any fraud or misrepresentation in the issuance of securities injures the public. The Securities and Exchange Commission's power to suspend or revoke registrations and to impose fines and other penalties provides the public with a certain level of assurance that the securities contain representations that are true, and that misrepresentations if later found, would be detrimental to the erring corporation. It creates risks to corporations that issue securities and adds cost to errors, misrepresentations, and violations related to the issuance of those securities. This protects the public who will rely on representations of corporations and partnerships regarding financial instruments that they issue. The Securities and Exchange Commission's regulatory power over securities-related activities is tied to the government's duty to protect the investing public from illegal and fraudulent instruments."

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[28] G.R. No. 179047, March 11, 2015
[29] G.R. No. 210316, 28 November 2016.
[30] G.R. No. 179047, March 11, 2015

Moreover, the Commission also notes that the transactions that Respondents carried out operated not only as fraud to the investing public but also to the corporation and its shareholders. At the expense of its existing shareholders, Respondents were willing to issue, and in fact issued, the Preferred Shares without consideration and in violation of Article SEVENTH of its AOI to provide added protection and security to the prospective buyers and owners of the condotel units. The unit owners automatically became shareholders of Respondents as a consequence of the issuance of unregistered securities. The contention of Boracay Multiple that it is not selling or issuing securities to the public, except those issued to Fuente Triangle for which it filed a Notice of Exemption with the Commission, is inaccurate. The Preferred Shares were being issued/offered as a protection or guarantee to the buyers/owners of the condotel units; and pursuant to the Contract to Sell being represented to prospective condotel buyers by Respondents, the holders of Preferred Shares are also entitled to preferred dividends. In this sense, the Preferred Shares are not mere guarantees on the untitled condotel units; the offer also "partakes of the nature of an investment contract."[31]

Section 6(l) of P.D. No. 902-A, as amended by P.D. No. 1653, grants this Commission broad discretionary powers to determine and impose, after considering all the circumstances and evidence attendant in a particular case, the appropriate penalties which may either be suspension or revocation of the certificate of registration.

In the instant case, the Commission takes cognizance of Respondents' act of recognizing and respecting the authority of the Commission when it filed a Notice of Exemption and immediately ceased and desisted from further issuing the Preferred Shares after the CDO was issued. Moreover, the records also reveal that Respondents caused the amendment of its AOI to include the Preferred Shares and secured the prior approval of this Commission in relation thereto. Respondents also took pains in securing the opinions of this Commission and the HLURB for guidance. These circumstances warrant the exercise of the discretionary powers of this Commission in imposing the penalty for violation of the SRC.

On the basis of the foregoing, the Commission finds merit in the Petition with modification on the imposable penalty. The Commission hereby imposes a fine of One Million Pesos (P1,000,000.00)[32] each on both Fuente Triangle Realty Development Corporation and Boracay Multiple Properties Developers, Inc. for having committed serious misrepresentation as to what they can do or are doing to the great prejudice of or damage to the general public under Section 6(l)(2) of P.D. No. 902-A, as amended by P.D. No. 1653

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[31] CA – G.R. SP No. 109676 - Resolution
[32] SEC. 54.1 (ii) of the Securities Regulation Code

by selling and offering securities without prior registration in violation of Section 80 of the SRC. The Respondents Fuente Triangle and Boracay Multiple are hereby ordered to secure secondary license from this Commission authorizing it to sell and/or offer the Preferred Shares under its existing business scheme.

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED WITH MODIFICATION**. The fine of One Million Pesos (P1,000,000.00) each on both **FUENTE TRIANGLE REALTY DEVELOPMENT CORPORATION AND BORACAY MULTIPLE PROPERTIES DEVELOPERS, INC.** is hereby imposed. **FUENTE TRIANGLE REALTY DEVELOPMENT CORPORATION** and **BORACAY MULTIPLE PROPERTIES DEVELOPERS, INC.** are hereby **ORDERED** to procure the necessary permits and licenses authorizing them to sell or offer the Preferred Shares under its existing business scheme.

With respect to **CROWN REGENCY HOLIDAY INTERNATIONAL, INC.**, the instant Petition case has already become moot and academic with the revocation of its Certificate of Registration on 18 June 2012. Thus, the instant Petition is hereby dismissed as to Crown Regency.

SO ORDERED.

Pasay City, Philippines, 10 March 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner