Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

In the Matter of

RISE E-COMMERCE SYSTEMS, INC.

SEC Admin. Case No. 05-10-310
For: Revocation of Certificate of Incorporation
(CEDCaseNo.10-2904)

ENFORCEMENT AND PROSECUTION DEPARTMENT,
Petitioner.

x---x

DECISION

For consideration is the *Petition for Revocation of Certificate of Incorporation of RISE E-COMMERCE SYSTEMS, INC.* (RISE), dated 29 April 2010, filed by the then Enforcement and Prosecution Department (EPD) of the Commission (now the Enforcement and Investor Protection Department [EIPD]) on 04 May 2010 based on serious misrepresentation as to what the corporation can do and failure to file required reports as provided under Section 6, pararagraph (l), sub-paragraphs (2) and (6), respectively of Presidential Decree 902-A.

FACTS OF THE CASE

RISE is a corporation duly registered with the Commission with Certificate of Incorporation dated 25 July 2001 under SEC Registration No. A200110895. Its principal office address is at Suite 1906, Robinsons Galleria Corporate Center, Quezon City, Metro Manila.[1] Its primary purpose is:

> "To engage in, operate, conduct and maintain the **business of buying, selling, trading and exchange of goods and services of every kind, nature and description** through conventional distributions and/or through advance electronic means such as E-COMMERCE and/or **IT-based network or multi-level systems** and for this purpose, act as merchant, broker, indentor, middlemen, commission agent and the like; and conduct massive informations, [*sic*] promotional and educational campaigns for the benefits [*sic*] and the empowerment of the consumers and clienteles."[2] (Emphasis ours)

[1] Annex "A," Certificate of Incorporation of RISE E-Commerce Systems, Inc., Records, p. 63.
[2] *Id.*, Articles of Incorporation, "Annex "B" Records p. 62.

On 07 May 2008, the EPD received a letter, dated 24 April 2008[3], from Dr. Felimon U. Rosaupan (Dr. Rosaupan) requesting for an investigation on the operation of RISE. In the letter, Dr. Rosaupan alleged that on 4 October 2001, he subscribed to RISE by paying the amount of TWO THOUSAND FIVE HUNDRED PESOS (PhP 2,500.00) after RISE's representative, Homer Prieto, convinced him that his subscription would be profitable. He and other would-be subscribers were persuaded that they would be receiving, a share of the earnings of those who subscribed after them, or the expected earnings and rebates that will be received from having down lines. In addition to the share in the earnings, they would be entitled to rebate from the accredited stores nationwide.

Following his subscription, Dr. Rasaupan delivered to RISE several invoices valued at more or less TWENTY THOUSAND PESOS (Php 20,000.00) of his purchases. However, when he checked his account with Union Bank, which was opened for him by RISE, wherein his projected earnings were supposed to be deposited, said account was closed. He then mailed a letter of protest to the office address of RISE but it was returned with a notation on the envelope, stating "MOVED." This prompted Dr. Rosaupan to inquire into the legitimacy of RISE's business.[4]

In response to Dr. Rasaupan's letter, EPD formed a team to investigate the business activities of RISE. On 05 September 2008, Dr. Rosaupan appeared before the team where he narrated the circumstances regarding his involvement with the company. On 03 October 2008 EPD received an Affidavit-Complaint from Dr. Rosaupan.[5]

On 27 May 2009, the EPD conducted surveillance on RISE to determine whether the same is still operating and recruiting investors. They proceeded to its last known address at 19th Floor, Galleria Corporate Center, Ortigas, where they were able to talk with Mr. Glenn R. Elivera, Galleria Corporate Center Condominium Corporation's Building Manager. Mr. Elivera informed them that RISE has already moved out of the building since June 2003. She also issued a Certification dated 27 May 2009, confirming the information.[6]

A Notice of Conference was sent to the incorporators of RISE requiring them to appear before the team on 13 July 2009.[7] However, the Notice was served only to William Ferolino (Mr. Ferolino), the authorized signatory to the RISE identification card, since the addresses of the other incorporators cannot be located.[8]

On 31 July 2009, Atty. Rowena L. Escobido of Escobido and Pulga Law Offices appeared on behalf of Mr. Ferolino and informed the team of Mr. Ferolino's current detention at the Quezon City Jail by reason of a pending case before the Regional Trial Court of Quezon City (RTC-QC), Branch 100 for syndicated estafa involving RISE.[9]

Thereafter, the team proceeded to said RTC-QC and obtained copies of the Information for Estafa in Criminal Case Nos. 03-116577 to 85 against Renato Sinangote y Escarda,

[3] *Id.*, Annex "C" He attached a copy of the provisional receipt, cyber account ATM card and an Identification card issued by RISE, Records p. 55.
[4] *Id.*, Annex "C."
[5] Paragraph 11 of the *Petition*, Records, p. 73.
[6] *Id.*, Annex "E," Records, p. 53.
[7] *Id.*, Annex "F," Notice of Conference dated June 15 2009 Records, p. 52.
[8] *Id.*, par. 13, Records, p. 72.
[9] *Id.*, par. 14, Annex "G," Summary of Proceedings/Conference dated July 31, 2009 Records p. 50.

Deogracias A. Acupan, Alodia Setiar y Geanga, Lilian Reyes, Roberto T. Mata, Melchor E. Monreal, Mercedita C. Galindo, Flor Sibal and William Ferolino, all of whom allegedly represent RISE. [10]

As part of its investigation, the EPD obtained from the Company Registration and Monitoring Department (CRMD) of the Commission a Certification, dated 20 January 2009, declaring that since RISE's registration in 2001, it has not filed any General Information Sheet (GIS) from 2002 to 2007 nor any Financial Statement (FS) from 2002 to 2006.[11]

Likewise, the Corporation Finance Department (CFD) of the Commission, upon request of the EPD, issued a Certification[12] dated 15 April 2010 stating that RISE "is not a registered issuer of securities under Sections 8 and 12 of the SRC, and is, therefore, not licensed to offer or issue securities to the public."

The EPD, on the basis of the evidence presented by Dr. Rasaupan and its own investigation, concluded that the business operation of RISE is in the nature of an **investment contract**[13], which is beyond the purpose for which it was incorporated. The same constitutes serious misrepresentation as to what the corporation can do to the prejudice and damage of the general public. Thus, it filed the instant *Petition* which anchors on the following provisions of Section 6 of the Presidential Decree (PD) No. 902-A, in relation to paragraph 1(G), Rule 3, of the Amended Implementing Rules and Regulations (AIRR) of the Securities Regulation Code[14] (SRC), which provide:

> "SECTION 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
>
> xxx---------xxx-----------xx
>
> l) To suspend, or ***revoke***, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:
>
> xxx---------xxx-----------xx
>
> 2) Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;
>
> xxx---------xxx-----------xx

[10] *Id.*, par. 15, Information all dated April 10, 2003, Annexes "H" to Annex "P," Records pp. 32-49.
[11] *Id.*, Annex "Q" Records p. 30.
[12] Annex "S" p. 1 Records.
[13] "An investment contract means a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.

1. An investment contract is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.
2. A common enterprise is deemed created when tow (2) or more investors "pool" their resources, -creating a common enterprise, even if the promoter receiveds nothing more than a broker's commission."

[14] Republic Act 8799 (2000)

6) Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period; Xxx."

Acting on the *Petition*, the Commission issued an Order, dated 19 May 2010, directing the issuance of Summons, dated 12 May 2010, by publication. Pursuant to the Order, Summons directing RISE to file its *Answer* to the *Petition* was published in the Commission's website and in a newspaper of general circulation.

ISSUE

Whether or not the Certificate of Registration of RISE E-COMMERCE SYSTEMS, INC. should be revoked, on the basis of Section 6, paragraph (l), sub-paragraph (2) and (6) of PD 902-A.

RULING

Despite the publication of the Order, dated 19 May 2010, and the Summons directing RISE to file its *Answer* to the *Petition*, RISE has yet to file the same. Thus, pursuant to Section 3-12[15] of the 2006 Rules of Procedure of the Commission, RISE is considered as in default. As a consequence, the Commission shall render judgment on the basis of the Petition.

We now resolve the case on the merits.

Under the SRC, "securities" was defined by way of enumeration, namely:

"Section 3. *Definition of Terms*. - 3.1. "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

(a) Shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;

(b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;"[16]

Clearly, one of the instruments considered as a security is an investment contract as further defined in paragraph 1(G), Rule 3 of the AIRR-SRC[17]. Another definition of the term investment contract can be found in the U.S case *SEC vs. Howey Co.*[18], where the U.S. Supreme Court defined such term in this manner:

[15] SEC. 3-12. *Effect of Failure to Answer.* – If the respondent fails to answer the complaint within the abovestated period, he shall be considered as in default. The hearing Panel or Officer shall, *motu proprio*, proceed to render judgment granting the complainant such relief as the complaint may warrant, unless the Hearing Panel or Officer determines that the complainant should be required to submit *ex parte* additional evidence.

[16] Underlines ours.

[17] Note 13, supra

[18] 328 U.S. 293 (1946)

"...an investment contract, for purposes of the Securities Act, means a contract, transaction or scheme whereby a person invest his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interest in the physical assets employed in the enterprise."

The concept of an investment contract has since been transported in Philippines jurisprudence in the case of *Power Homes vs. SEC*,[19] where the Philippine Supreme Court cited the 1973 US case of *SEC v. Glenn W. Turner Enterprises, Inc. et al.*[20] wherein the 9th Circuit of the US Court of Appeals ruled that the element that profits must come "solely" from the efforts of others should not be given a strict interpretation. In *SEC vs. Turner*, the US Court held that a literal reading of the requirement "solely" would lead to unrealistic results. It reasoned out that its flexible reading is in accord with the statutory policy of affording broad protection to the public.

In *Power Homes*, the Philippine Supreme Court thus reasoned that the SRC appears to follow this flexible concept for it defines an investment contract as a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and **is led to expect profits not solely but primarily from the efforts of others.** Thus, the Court concluded that to be a security subject to regulation by the Commission, an investment contract in our jurisdiction must be proved to be: (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) **primarily** from efforts of others. Under this definition, whenever an investor relinquished control over his or her funds and submits their control to another for the purpose of deriving profits from them, he is in fact investing in a security.[21]

In this connection, Section 8.1 of the SRC provides that securities not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Moreover, Section 12.1 of the SRC prescribes that all securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe.

In the instant case, the evidence show that the contracts issued by RISE to its investors, like Dr. Rasaupan, falls within the definition of an investment contract. In other words, the four elements of an investment contract are present.

As to the first element, the investment in money occurs when Dr. Rasaupan parted which his money when he subscribed to RISE paying the amount of TWO THOUSAND FIVE HUNDRED PESOS (Php 2,500.00). Evidence confirms that RISE issued to Dr. Rasaupan a Provisional Receipt[22] dated October 4, 2007 declaring that the amount was in payment of his

[19] G.R. No. 164182 February 26, 2008.
[20] 474 F.2d 476, Fed.Sec. L. Rep. P 93, 748.
[21] *Investment Co. Institute vs. Camp*, 274 F. Supp. 624 (D. D.C. 1967)
[22] *Id.*, Annex "D", Records, p. 54

subscription fee. Moreover, this investment contract is declared in Part IV[23]of RISE E-Commerce Systems' Subscriber's Business Manual[24] (Manual) on how to become a subscriber.

As to the second element, a common enterprise is deemed created when two (2) or more investors "pool" their resources. Several tests have evolved to determine what constitutes "common enterprise".[25] One of these tests is the horizontal commonality approach. Under this test, the determination of whether a transaction satisfies the commonality element of the modified Howey test involves an inquiry into whether said transaction involves the joint participation of more than one investor in (i) the investment of funds, or (ii) the sharing of profits.[26] In the case at bar, it is clear from the "Consumer Loyalty or Global Sharing Rewards"[27] (GSR) provisions, as contained in the Manual that the RISE e-Commerce Systems[28] (Systems), that there is a common enterprise, to wit:

> "**RISE e-COMMERCE SYSTEMS** employs a "Tripod and Left to Right Approach" in forming its Global Consemers Group. Its main thrust is to develop an avenue for a profitable market exchange system where buyers and sellers mutually share and benefit from each other's strengths and resources.
>
> xxx---------xxx-----------xx
>
> **How to Earn From the Systems**
>
> The company developed this marketing structure to provide unlimited income opportunities to its subscribers through:
>
> **1. Consumer Loyalty or Global Sharing Rewards (GSR)**
>
> **Each time a regular consumer and his co-subscriber/s within his 3x8 Permanent Market Structure avail themselves of products and/or utilize services from the Systems' cybermall, accredited suppliers/service providers, rolling stores and/or in-house distribution and marketing group, the Systems generate corresponding rebates or PV that go to the Global Sharing Rewards Fund (GSRF)**, of which sixty-eight percent (68%) is distributed/shared upwards among the components of the Global Consumers' Group. The remaining thirty-two percent (32%) is retained by the company to finance the System's operations, promotions, servicing, maintenance, and improvement. The subscriber's share from the GSRF is released every 15th day of the month after each cut-off and allocated as follows: (Emphasis ours)
>
> 65% Cash (deposited to his/her personal account with the company's accredited bank)
> 25% Property Ownership Points (POP)
> 10% e-Card load or automatic purchase budget"[29]

[23] Paragraph 1(b) provides that "[a] consumer may also subscribe through the Systems' business center or sub-center located in his place of residence or business/employment by paying the US$50.00 (P2,500.00) initial subscription fee."
[24] *Id.*, Annex "R", Records, p. 29
[25] *In the Matter of Octopus Network, Inc.*, SEC-PED Case No. 98-2220, May 22, 1998.
[26] *Id.*, citing 69 Am Jur 2d, citing *Stenger v. R.H. Love Galleries, Inc.*, 741 F2d 144
[27] *Id.*, Records, p. 24
[28] *Id.*, Annex "R", Records, p. 53.
[29] Emphasis supplied.

From the stated operation of the RISE e-Commerce Systems where buyers and sellers mutually share and benefit from each other's strengths and resources, it is obvious that there is a pooling of investor resources. Indeed, the Systems presented the common enterprise when it declared in the Manual that "[n]ow, we are into the Stabilzation Stage (Phase 2) whereby accredited suppliers are being pooled together while decentralizing the Systems operation through our accredited BCOs[30]."[31] In turn, RISE uses the money of its investors (32% is retained by the company) to make profit for itself and its investors (68%). From this, it can be said that RISE is offering merely opportunities to contribute money, and the success of an investor is dependent on the success of RISE's business operation.

As to the third element, there must be an expectation of profits. By profits, the court has meant either capital appreciation resulting from the development of the initial investment, or participation in the earnings resulting from the use of investors' funds. In such cases, the said investors are "attracted primarily by the prospects of a return on his investment."[32] Again, the Manual clearly proclaims how the subscribers can earn from the Systems.[33] To entice investors, it asserts that it has develop marketing structure to provide unlimited income opportunities to its subscribers through: (1) GSR; (2) Personal Mentoring Allowance (PMA) and Residual Training Allowance (RTA); (3) Property Ownership Points (POP); and (4) Personal Loyalty Points, Discounts and Other Rewards.[34]

Lastly, as to the fourth element, there must be an expectation of profits primarily from the efforts of others. Under the Rise's Systems, once an individual, like Dr. Rasaupan, pays the minimum amount of US$100.00, he turns his efforts toward bringing others into the system, for which he receives PMA and RTA[35] which increases depending on the trainees' recruits, provided these trainees subscribe.[36] EPD is, thus, correct when it claims that the accumulated amount received by the investor comes primarily from his recruits /trainees.[37]

Since investment contracts are securities, they must first be registered with the Commission before the same can be offered to the public pursuant to Sections 8 and 12 of the SRC. However, RISE did not obtain any license or authority to issue or offer or sell securities in the Philippines. The certification issued by the CFD categorically show that it is not registered issuer of securities pursuant to Section 8 and 12 of the SRC. There is also no record showing that these corporations had secured any exemption from the requirement of registration with the Commission. Worse, the business of selling investment contracts is not covered by the primary purpose stated in the Articles of Incorporation of RISE.

[30] Id., Records, p. 22, BCO or Business Center Operators is a subsidiary and strategic partner of Rise e-Commerce Systems (RECS), Inc. that acts as an extension arm to further decentralize its operations and services.
[31] *Id.*, Records, p. 20.
[32] *Power Homes Unlimited Corporation vs. SEC.*
[33] *Id.*, Records, p. 24.
[34] *Id.*, Records, pp. 9-12.
[35] **An existing subscriber may opt to train or introduce the Systems to potential participants.** He shall receive US$10.00 (P500.00) as Personal Mentoring Allowance (PMA) for every personal trainee (1st generation) and US$1.00 (P50.00) which incrementally increases (from 2nd up to 8th generation) as Residual Training Allowance (RTA) for residual trainees generated in his Personal Consumers Group (PCG) provided, said trainees subscribe. Therefore, the more trainees a subscriber contributes to the Systems, the more PMA and/or RTA he gains. Note, however, that twenty-five (25%) of these allowance will be in the form of Property Ownership Points (POP).
[36] *Id.*, p. 11.
[37] Paragraph 20 of the *Petition*, Records, p. 68.

Accordingly, these acts constitute serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public warranting the revocation of its Certificate of Registration, pursuant to Section 6 paragraph (l) sub-paragraph 2 of the amended PD 902-A.

Likewise, there is valid ground to revoke the certificate of registration of RISE under P.D. 902-A Section 6 paragraph (l) sub-paragraph 6 on non-filing of reportorial requirements. CRMD's Certification dated 20 January 2009 showed that since RISE was registered in 2001, the company has not filed any General Information Sheet from 2002 to 2007 nor any Financial Statement from 2002 to 2006.[38]

A recent verification with the records of the Commission shows that RISE has not filed the reportorial requirements since its incorporation in 2001. RISE failed to file GIS and FS for more than five years. Therefore, the Certificate of Incorporation may be revoked, on the basis of P.D. 902-A Section 6, paragraph l sub-paragraph 6.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED.** The Certificate of Incorporation of **RISE E-COMMERCE SYSTEMS, INC.** is hereby **REVOKED,** based on Section 6(l) sub-paragraphs 2 and 6 of Presidential Decree No. 902-A.

Let the Company Registration and Monitoring Department be furnished a copy of this Decision for its appropriate action.

SO ORDERED

Mandaluyong City, 6 November 2014.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

[38] Petition, Annex "Q" Records p. 30.