Republic of the Philippines
Department of Trade and Industry
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the Matter of

EUROCOM INTERNATIONAL MANAGEMENT, INC. (EUROCOM BUSINESS CENTER, INC.)

PED Case No. 96-2122

Asia Capital Financial Corporation,
Movant.
x-----------------------------------x

ORDER

For consideration of the Commission *En Banc* is the *Motion to Dismiss and to Lift Cease and Desist Order dated 04 May 1999* filed by Asia Capital Financial Corporation ("ACFC") on 29 January 2002.

The background of the case is narrated below:

On 16 August 1996, then Prosecution and Enforcement Department (PED) of the Commission received a Memorandum from the defunct Brokers and Exchanges Department of the Commission pertaining to a letter-complaint of a certain Cresencio Sosa against Eurocom International Management, Inc. ("Eurocom"). The letter–complaint was docketed as PED Case No. 96-2122. The PED issued an Order dated 10 February 1997 directing Eurocom to show cause why no sanction shall be imposed upon it for violation of laws implemented by the Commission. On 03 April 1997, Eurocom filed its *Comments on and/or Compliance to the Order dated 10 February 1997*. Eurocom also filed a *Motion to Resolve* dated 31 July 1997.

Another letter-complaint dated 14 May 1998, this time from one Anna Gimenez, was filed against Eurocom requesting the Commission to investigate the foreign exchange trading operations of Eurocom, which it was doing without the required license to engage in such transactions. The complaint was docketed as PED Case No. 98-2239.

A third set of complaints from certain Seth Aspra, Edgar Sabio, and Lewis Dacanay ("Aspra, *et al*") was also filed against Eurocom sometime in June 1998, and the same was docketed as PED Case No. 98-2246.

Pending the investigation of the complaints mentioned above, the Commission issued an Order dated 14 April 1999 directing Eurocom to cease and desist from operating as a commodities futures broker. The same Order likewise declared that no withdrawal of funds from any bank and for any purpose should be allowed. Third, all the assets of Eurocom were deemed frozen and all of its (Eurocom) banks were directed to disallow any and all withdrawals of any assets in their custody.

On 04 May 1999, the Commission, through Chairman Perfecto Yasay, issued an Omnibus Order in PED Case No. 96-2122, the pertinent portion of which reads as follows:

> "xxx
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> So as not to render nugatory any Order which this Commission may issue in this entitled case and to protect the investing public, it is hereby ORDERED that the
>
> | Bank | Account No. |
> |---|---|
> | Bank of Southeast Asia | 07-06-70007-0 |
> | Solid Bank | 50-68-0014-30 |
>
> And all other banks should not allow any withdrawal of funds under the account name of ASIA CAPITAL FINANCING CORPORATION, until further Order of this Commission. xxx"

ACFC sent a letter dated 27 July 1999 addressed to Chairman Yasay requesting the lifting of the Omnibus Order on the ground that Solid Bank Account No. 50-68-0014-30, being a foreign currency deposit account, should be "exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever under Section 8, Republic Act No. 6426."

The Commission *En Banc* issued an Order on 19 November 1999 denying ACFC's motion to lift and set aside the Order dated 4 May 1999. ACFC filed a Motion for Reconsideration of the 19 November 1999 Order, but the same was denied for lack of merit pursuant to an Order dated 06 January 2000.

Not satisfied, ACFC elevated the three Orders dated 04 May 1999, 19 November 1999, and 06 January 2000 respectively, by filing a petition for review with the Court of Appeals ("CA"). The CA, however, dismissed the petition on 29 May 2000 considering that the three Orders were interlocutory in nature. The CA Resolution dismissing ACFC's petition became final and executory on 14 April 2001 and was accordingly entered in the Book of Entries of Judgments of CA.

On 29 January 2002, ACFC filed the instant motion to dismiss based on the following grounds: (1) The failure of the PED to resolve the instant case has prejudiced ACFC; (2) The Commission has lost jurisdiction over the case by the passage of R.A. No. 8799 also known as the Securities and Regulation Code ("SRC") and by the filing of criminal complaints directly with the Office of the City Prosecutor in Pasig City; (3) An *ex-parte* Cease and Desist Order may be issued only for a maximum period of ten (10) days; and (4) Solidbank Account No. 50-68-0014-30 is a foreign currency deposit account.

An Order dated 05 October 2002 was issued directing the Compliance and Enforcement Department (formerly PED) to file its comment on the instant motion.

In compliance, CED (now known as Enforcement and Prosecution Department) filed its *Opposition* dated 06 November 2002 alleging, among others, that: (1) although the pending PED case and the criminal case pending with the Regional Trial Court involve the same parties, same issues and prayers, the former is administrative in nature and the latter is criminal; and (2) the lifting of the CDO should be denied to avoid impairment of the corporate assets, which may be used to answer for any liability of ACFC to its investors.

The motion is denied.

Jurisdiction of the Commission

On the issue of jurisdiction, the Commission holds that the passage of the SRC does not divest it (Commission) of the authority to continue investigating the case. In the case of *Securities and Exchange Commission v. Interport Resources Corporation, et al.*[1], the Supreme Court pronounced that:

> "Republic Act No. 8799, otherwise known as the Securities Regulation Code, took effect on 8 August 2000. Section 8 of Presidential Decree No. 902-A, as amended, which created the PED, was already repealed as provided for in Section 76 of the Securities Regulation Code:
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>> SEC. 76. *Repealing Clause.* – The Revised Securities Act (Batas Pambansa Blg. 178), as amended, in its entirety, and Sections 2, 4 and 8 of Presidential Decree 902-A, as amended, are hereby repealed. All other laws, orders, rules and regulations, or parts thereof, inconsistent with any provision of this Code are hereby repealed or modified accordingly.
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> Thus, under the new law, the PED has been abolished, and the Securities Regulation Code has taken the place of the Revised Securities Act.
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[1] G.R. No. 135808 (2008).

The law creating the PED, Section 8 of Presidential Decree No. 902-A, as amended, defines the authority granted to the PED, thus:

> SEC. 8. The Prosecution and Enforcement Department shall have, subject to the Commission's control and supervision, **the exclusive authority to investigate**, on complaint or *motu proprio*, any act or omission of the Board of Directors/Trustees of corporations, or of partnerships, or of other associations, or of their stockholders, officers or partners, including any fraudulent devices, schemes or representations, in violation of any law or rules and regulations administered and enforced by the Commission; **to file and prosecute** in accordance with law and rules and regulations issued by the Commission and in appropriate cases, the corresponding criminal or civil case before the Commission or the proper court or body upon prima facie finding of violation of any laws or rules and regulations administered and enforced by the Commission; and to perform such other powers and functions as may be provided by law or duly delegated to it by the Commission. (Emphasis provided.)
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> xxx
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> As in *Morato v. Court of Appeals*, the repeal cannot deprive SEC of its jurisdiction to continue investigating the case
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> xxx
>
> Thus, the respondents may be investigated by the appropriate authority under the proper rules of procedure of the Securities Regulations Code for violations of Sections 8, 30, and 36 of the Revised Securities Act."[2]

Applying the foregoing pronouncement to the instant case, the repeal of the Revised Securities Act[3] (RSA) does not render the pending investigation moot since the SRC punishes the same acts as those identified in the RSA. Section 4 of the RSA is essentially the same as Section 8 of the SRC.[4] Both

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[2] Interport, *supra*, citing Morato v. Court of Appeals, G.R. No. 141510, 13 August 2004.
[3] Batas Pambansa Bilang 178 (1982).
[4] The RSA provides that:

SEC. 4. Requirement of registration of securities. — (a) No securities, except of a class exempt under any of the provisions of Section five hereof or unless sold in any transaction exempt under any of the provisions of Section six hereof, shall be sold or offered for sale or distribution to the public within the Philippine unless such securities shall have been registered and permitted to be sold as hereinafter provided.

The SRC provides that:

SEC. 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 provisions provide for the registration of securities before they can be sold or offered for sale to the public. Moreover, both the SRA and the SRC also prohibit any unlicensed person to act as a broker, dealer or salesman or to sell securities unless registered with the Commission.[5] Thus, the Enforcement and Prosecution Department (EPD) may still proceed with its investigation.

Second, it is also noteworthy that a criminal complaint against any person, who violates the provisions of the laws implemented by the Commission, is not the only action that may be filed against a corporation and its directors and officers. An administrative sanction may also be imposed as warranted by the evidence available at hand. Besides, the end result of the investigations, which the PED conducted, does not only pertain to the filing of a criminal complaint, but also for determining whether there is a valid ground to

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form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

8.2. The Commission may conditionally approve the registration statement under such terms as it may deem necessary.

8.3. The Commission may specify the terms and conditions under which any written communication, including any summary prospectus, shall be deemed not to constitute an offer for sale under this Section.

8.4. A record of the registration of securities shall be kept in a Register of Securities in which shall be recorded orders entered by the Commission with respect to such securities. Such register and all documents or information with respect to the securities registered therein shall be open to public inspection at reasonable hours on business days.

8.5. The Commission may audit the financial statements, assets and other information of a firm applying for registration of its securities whenever it deems the same necessary to insure full disclosure or to protect the interest of the investors and the public in general.

[5] The RSA provides:

SEC. 19. Registration of brokers, dealers and salesmen. — No broker, dealer or salesman shall engage in business in the Philippines as such broker, dealer or salesman or sell any securities, including securities exempted under this Act, except in exempt transactions, unless he has been registered as a broker, dealer, or salesman pursuant to the provisions of this Section.

The SRC provides:

SEC. 28. Registration of Brokers, Dealers, Salesmen and Associated Persons. — 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

28.2. No registered broker or dealer shall employ any salesman or any associated person, and no issuer shall employ any salesman, who is not registered as such with the Commission.

file a civil case for damages against Eurocom, its directors, and officers. It is thus incorrect to say that the investigation is dismissible simply because there has already been a criminal complaint that was filed with the Department of Justice. Other sanctions such as revocation of the corporate franchise or recovery of damages may be imposed.

Cease and Desist Order

For the other issue of whether the Cease and Desist Order should be lifted, the motion is unmeritorious.

Under the RSA, a CDO may be issued if the act complained of may cause grave or irreparable injury or prejudice to the investing public or may amount to fraud or violation of the disclosure requirements of this Act and the rules and regulations of the Commission.[6] The same is essentially provided in the SRC.

The issuance of a CDO under SRC is governed by Section 53.3[7] thereof as well as Section 64[8] of the said law.

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[6] SEC. 47. Cease and desist order. — The Commission, after proper investigation or verification, *motu proprio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained may cause grave or irreparable injury or prejudice to the investing public or may amount to fraud or violation of the disclosure requirements of this Act and the rules and regulations of the Commission.

Such cease and desist order shall be confidential until after the sanctions mentioned in the next preceding Section shall have been imposed and have become final and executory.

Immediately upon the issuance of such order, the Commission shall, with due notice to the parties involved, schedule a hearing, on a date not later than fifteen days after service of notice, on whether to lift such order or to impose the administrative sanctions provided for in the next preceding Section[6]. (n)

[7] Sec. 53.xxx 53.3. Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency or other self-regulatory organization, it may issue an order to such person to desist from committing such act or practice: Provided, however, That the Commission shall not charge any person with violation of the rules of an Exchange or other self-regulatory organization unless it appears to the Commission that such Exchange or other self-regulatory organization is unable or unwilling to take action against such person. After finding that such person has engaged in any such act or practice and that there is a reasonable likelihood of continuing, further or future violations by such person, the Commission may issue ex-parte a cease and desist order for a maximum period of ten (10) days, enjoining the violation and compelling compliance with such provision. The Commission may transmit such evidence as may be available concerning any violation of any provision of this Code, or any rule, regulation or order thereunder, to the Department of Justice, which may institute the appropriate criminal proceedings under this Code.

In this case, the Commission, through then Chairperson Yasay, issued the Omnibus Order dated 04 May 1999. The Commission agrees with the observation of the EPD that the Omnibus Order ordering Solid Bank and other banks should be in full force until the conclusion of the investigation. Further, the CDO was issued for the purpose of protecting the assets of the corporation aside from restraining ACFC from causing grave or irreparable damage and injury or prejudice to the investing public. Since Eurocom no longer has other assets that may be used to indemnify the investors, the motion to lift the CDO must be denied.

There is no violation of the Foreign Currency Deposit Account

The issue of confidentiality of Solid Bank Account No. 50-68-0014-30 has already been addressed in the 19 November 1999 Order of the Commission *En Banc,* as follows:

> "The Solid Bank Account No. 50-68-0014-30 was opened for the account of the complainants although under the name of ACFC. The deposit in this account came from individual complainant. It was the individual complainant/victim who deposited the dollars/foreign currency in this account. Thus being the depositor of the dollars/foreign currency and who had given written permission to the Commission to recover their individual investments the currency could be inquired into by the Commission."

Finally, it was noted that before movant ACFC filed the instant motion, the PED (now EPD) was still conducting its investigation on the complaints involving Eurocom and ACFC. To conclude its investigation, the remand of the instant case to the EPD is in order.

WHEREFORE, foregoing premises considered, the instant motion is hereby **DENIED**. The instant case is hereby remanded to the Enforcement and Prosecution Department of the Commission to conclude its investigation and file the necessary action as warranted by its findings.

SO ORDERED.

Mandaluyong City, 26 August 2010.

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[8] SEC. 64. Cease and Desist Order. — 64.1. The Commission, after proper investigation or verification, *motu proprio,* or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

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