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

In the Matter of:

ASIA INVESTMENT CORPORATION.
Appellant.

SEC EN BANC CASE NO. 06-12-261

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DECISION

Before the Commission is the assailed *Letter* of the Company Registration and Monitoring Department ("CRMD", for brevity) of the Commission dated 31 May 2012, which denied the request of appellant ASIA INVESTMENT CORPORATION ("appellant", for brevity) for CRMD to reconsider its denial of its proposed business name "ASIA INVESTMENT" for being confusingly similar with ASIAINVEST CORP. and for using the word "INVESTMENT" as part of its corporate name.

Appellant was registered with the Commission on 4 December 1952.[1] Its primary purpose was to "engage in real estate business; to buy, sell, rent, sub-lease, and exchange real properties, improved and unimproved, residential or commercial; the building, construction, and alteration of houses thereon, and the management and development of said properties generally x x x."[2] Its corporate term was fifty (50) years.[3] Since its incorporation, no application for the extension of its term has been filed.[4] **Thus, its corporate existence expired on 4 December 2002.**[5]

The facts, as alleged by the parties to the case, are as follows:

After the expiration of the corporate existence of the appellant on 4 December 2002, the appellant applied for the reservation of the name "ASIA INVESTMENT CORPORATION" with the CRMD for the purposes of "re-incorporation" sometime on May 2012. Said application for reservation of the name was however denied since it appeared from the records that said proposed name is confusingly similar to ASIAINVEST CORP., which registered on 30 March 2010.[6]

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1 SEC Registration No. 7332.
2 *Memorandum of Appeal*, (Articles of Incorporation) Annex "A".
3 *Id.*
4 *Reply Memorandum*, p. 1.
5 *Certificate of Corporate Filing/Information* dated 15 October 2012, and *Memorandum of Appeal*, par. 5.
6 *Reply Memorandum*, p. 1.

The counsel of the appellant requested, in *Letter* dated 17 May 2012,[7] a reconsideration of the denial by the CRMD claiming that that the possibility of "being 'confused' or 'deceived' is practically nil due to the difference in the respective businesses" since the purposes of the appellant and ASIAINVEST CORP. are entirely different.[8] Moreover, the appellant contends that the appellant's name consists of three (3) words as differentiated from ASIAINVEST CORP., which consists of only two (2) words.[9]

In the assailed *Letter* dated 31 May 2012, the CRMD denied the request for reconsideration as it is confusingly similar with ASIAINVEST CORP. Moreover, the CRMD did not allow the appellant to use the word "INVESTMENT" as part of its corporate name since its proposed business activity is *realty* and not as an investment or holding company as required under *SEC Memorandum Circular No. 5, Series of 2008* ("Circular", for brevity). Lastly, the CRMD stated that the fact that the proposed corporate name consists of three (3) words whereas the ASIAINVEST CORP. name consists of only two (2) words is of no moment.[10]

Hence, this appeal.

The issue to be resolved is whether the appellant's proposed name to be registered is "confusingly" or "deceptively" similar with ASIAINVEST CORP. which is registered with the Commission, such that the ruling of the CRMD should be reversed.

Section 18 of the Corporation Code provides that no corporate name may be allowed by the Commission if the proposed name is identical or deceptively or confusingly similar to that of any existing corporation.[11] Two requisites must be proven, to wit: (1) that the complainant corporation acquired a prior right over the use of such corporate name; and (2) the proposed name is either: (a) identical or (b) deceptively or confusingly similar to that of any existing corporation or to any other name already protected by law; or (c) patently deceptive, confusing or contrary to existing law.[12] The second requisite is likewise mentioned under the *Circular*.[13] The right to the exclusive use

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[7] *Memorandum on Appeal*, (Letter from the appellant dated 17 May 2012) Annex "D".

[8] *Id.*, (Articles of Incorporation of ASIAINVEST CORP.) Annex "C". The primary purpose of ASIAINVEST CORP. is to engage in "x x x the business of providing consultancy and advocacy services and creating and developing of products in connection with or relative to projects of corporations, x x x."

[9] *Id.*, (Letter of the appellant dated 17 May 2012) Annex "D".

[10] *Id.*, (Letter of CRMD dated 31 May 2012) Annex "E".

[11] Batas Pambansa Bilang 68 (1980).

[12] *Industrial Refactories Corporation of the Philippines v. Court of Appeals, et al.*, G.R. No. 122174, 3 October 2002, citing *Philips Export B.V., et al. v. Court of Appeals, et al.*, G.R. No. 96161, 21 February 1992.

[13] The Circular, with respect to the second requite, provides the following:

> "3. a) The name shall not be identical, misleading or confusingly similar to a corporate or partnership name registered with the Commission, or with the Department of Trade and Industry, in case of sole proprietorships; x x x

of a corporate name with freedom from infringement by similarity is determined by priority of adoption.[14]

The appellant argues that its name has a "priority of adoption" for the following reasons: (1) that the name has been used for over sixty (60) years since its incorporation on 4 December 1952;[15] (2) that the appellant has been paying taxes to the government for the last ten (10) years and "even before";[16] (3) that the appellant acquired "vested rights" by the use of the corporate name for the last sixty (60) years and should not be penalized for its inadvertence;[17] and (4) that failure to "re-register" the corporation after its term expired does not deprive it of its right to the protection of its corporate name.[18] Such arguments are devoid of merit.

In the case at bar, ASIAINVEST CORP. acquired a prior right over the use of the corporate name "ASIA INVESTMENT" since it registered on 30 March 2010 which is ahead of the appellant whose corporate existence expired on 4 December 2002. In fact, ASIAINVEST CORP. was allowed to register since there was no other entity with an identical or confusingly similar name registered with the Commission at the time it applied for incorporation as correctly pointed out by the CRMD.[19]

On the other hand, the appellant does not have a "priority of adoption" or "vested rights" over the corporate name "ASIA INVESTMENT" even if it has been paying taxes and been used by the appellant for over sixty (60) years. The reason is that it no longer has a corporate existence after the expiration of its corporate term which expired due to its oversight and inadvertence. The moment a corporation's right to exist as an "artificial person" expires or ceases, its corporate powers are terminated "just as the powers of a natural person to take part in mundane affairs cease to exist upon his death".[20] Moreover, when the corporation finishes the course of its existence, the name is no longer that of an existing corporation, and it may be acquired by another.[21] However, the name of the

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14. Notwithstanding the foregoing, the Commission shall, for the protection of the public interest and other justifiable causes, disallow the use of the names that, in its judgment, are misleading, deceptive, confusingly similar to a registered name, or contrary to public morals, good customs or public policy."

[14] *Industrial Refactories Corporation of the Philippines v. Court of Appeals.*
[15] *Memorandum of Appeal,* p. 3, 4 and 5, and *Motion for Leave to File Rejoinder to Reply Memorandum,* p. 2.
[16] *Id.*, p. 5, and *Motion for Leave to File Rejoinder to Reply Memorandum,* p. 1.
[17] *Id.*, and *Motion for Leave to File Rejoinder to Reply Memorandum,* p. 2.
[18] *Memorandum of Appeal,* p. 4.
[19] *Reply Memorandum,* p. 1.
[20] *Alhambra Cigar & Cigarette Manufacturing Company, Inc. v. Securities and Exchange Commission,* G.R. No. L-23606, 29 July 1968, citing 19 C.J.S., p. 1485, at footnote 76, citing Sharp v. Eagle Lake Lumber Co. 212 P. 933, 60 Cal. App. 386.
[21] 6 Fletcher, Cyclopedia Corporations, sec. 2415, citing Grand Rapids Trust Co. v. Haney School Furniture Co., 221 Mich 487, 191 NW 196.

dissolved corporation may only be acquired by another corporation after three (3) years from its dissolution.[22]

In which case, ASIAINVEST CORP. acquired the use of its corporate name seven (7) years from the dissolution of the appellant. Thus, the appellant's failure to extend or to "re-register" using it original name within the three (3) year period deprives it of its right to use the name "ASIA INVESTMENT", and may be acquired by another regardless of any goodwill it generated over the years.

As to the second requisite, the desired name of the appellant is confusingly and deceptively similar to ASIAINVEST CORP. It is of no moment that the primary purpose and the clientele of both the appellant and ASIAINVEST CORP. are different, and that the proposed corporate name of appellant consists of three (3) words whereas the ASIAINVEST CORP. name consists of only two (2) words as argued by the appellant.[23] The policy underlying the prohibition in Section 18 against the registration of a corporate name is the avoidance of fraud upon the public which would have occasion to deal with the entity concerned, the evasion of legal obligations and duties, and the reduction of difficulties of administration and supervision over corporations.[24]

Lastly, the appellant claims its use of the word "INVESTMENT" does not refer to actual investment and it has no intention of dealing stocks, shares or other similar commodities.[25] The appellant clearly misses the point.

No. 12 of the *Circular* provides the following:

> "Unless otherwise authorized by the Commission, the words and phrases enumerated below can be used only by the entities mentioned:
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> **a) 'Investment(s)' or 'Capital'** – by entities organized as an investment house, investment company or holding company; x x x" (Emphasis ours)

In which case, the appellant is not allowed to use word "INVESTMENT" in its proposed corporate name since the proposed business activity is *realty* and not an investment company or holding company, regardless if it does not deal with stocks, shares or other similar commodities.

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[22] SEC Memorandum Circular No. 14-2000 provides: "14. The name of a dissolved firm shall not be allowed to be used by other firms within three (3) years after the approval of the dissolution of the corporation by the Commission, unless allowed by the last stockholders representing at least majority of the outstanding capital stock of the dissolved firm."

[23] *Memorandum of Appeal*, p. 3, 4 and 5, and *Motion for Leave to File Rejoinder to Reply Memorandum*, p. 2-3.

[24] *Lyceum of the Philippines, Inc. v. Court of Appeals, et al.*, G.R. No. 101897, 5 March 1993.

[25] *Motion for Leave to File Rejoinder to Reply Memorandum*, p. 3.

The appellant argues that the exceptions to the provisions in the *Circular* are premised on the phrase "*unless authorized by the Commission*" under No. 12 of the said *Circular*. Moreover, the appellant claims that its "re-incorporation" is not contrary to public morals, good customs or public policy.

The appellant's argument is baseless. The Commission does not see it fit to make an exception especially since there are underlying policy reasons for requiring certain entitles to use the word "INVESTMENT".

However, the appellant is correct in stating that incorporation is not contrary to public morals, good customs or public policy. The Commission is not preventing the appellant from incorporating but merely denying its request to use the corporate name "ASIA INVESTMENT".

In which case, the appellant is **ADVISED** to drop the word "INVESTMENT" and add one or more *distinctive words* to the proposed name to remove the similarity or differentiate it from an existing registered company name.[26]

WHEREFORE, premises considered, the CRMD's Order/Ruling is affirmed and the instant appeal is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Mandaluyong City, 4 April 2013.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

ANTONIETA F. IBE
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

CC: ERID

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[26] No. 3. b), *Id.*