Republic of the Philippines
Department of Finance
Securities and Exchange Commission

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the Matter of:

For: Revocation of Certificate of Incorporation/Registration

FMD LOGISTICS INTERNATIONAL CORPORATION
SEC Registration No. 2021010005900-01
x---x

ORDER OF REVOCATION

FMD LOGISTICS INTERNATIONAL CORPORATION ("FMD LOGISTICS") was registered with the Securities and Exchange Commission (SEC) on 27 January 2021 under Company Registration No. 2021010005900-01 with the following primary purpose:

> *"To engage in the business of forwarding and hauling such as project cargo, freight forwarding, heavy lift moving service and all kind of services related thereto.*
>
> *Provided that the corporation* ***shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.****"*

On June 05, 2021, the EIPD received an inquiry through an e-mail asking whether FMD LOGISTICS INTERNATIONAL CORPORATION has a secondary license to solicit funds which jumpstarted the investigation on the said entity, quoted here verbatim:

"Hi Team,

Hope you're doing well. Seeking for your assistance to verify if the below companies have a secondary permit to solicit funds?
- FMD Logistics International Corp
- Katuwang Poultry Chicken Egg Producing (KPCEP)"

Several emails also were received by the Department giving information that individuals or group of persons representing **FMD LOGISTICS TRUCKING CORPORATION** and **FMD LOGISTICS INTERNATIONAL CORPORATION** are apparently engaged in investment-solicitation activities through the social media platform Facebook, that the said entity is enticing the public to invest in its "trucking business" under FMD LOGISTICS TRUCKING CORPORATION for a promise of up to 55% in profits in just 6 months, without being legally authorized to do so.

"Good Morning!
I would inquire if FMD Logistics Trucking Corporation is allowed to offer investment or co-partnership to the public? They are currently offering 6-month co-partnership program and they are telling that their partners can earn up to 55%. The investment or co-partnership program that they offer cost 315,000 pesos.
I will attach some screenshots of their Facebook page.
Thank you for your time."

The following are posts taken from the Facebook page of FMD LOGISTICS TRUCKING CORPORATION:

It appears from several emails received by the Commission on separate dates that the respondent FMD LOGISTICS INTERNATIONAL CORPORATION is operating on the social media platform Facebook through their page FMD LOGISTICS TRUCKING CORPORATION reaching investors from the different parts of the Philippines and also from abroad. In one of the e-mails sent through SEC *I-message Mo* Facility, the sender attached an e-mail/inquiry quoted, as follows:

"Dear SEC,

I would like to inquire the subject company if they are registered with SEC and do they have secondary license to solicit investors? As they are doing now inviting investors via facebook. Below are info for your reference.

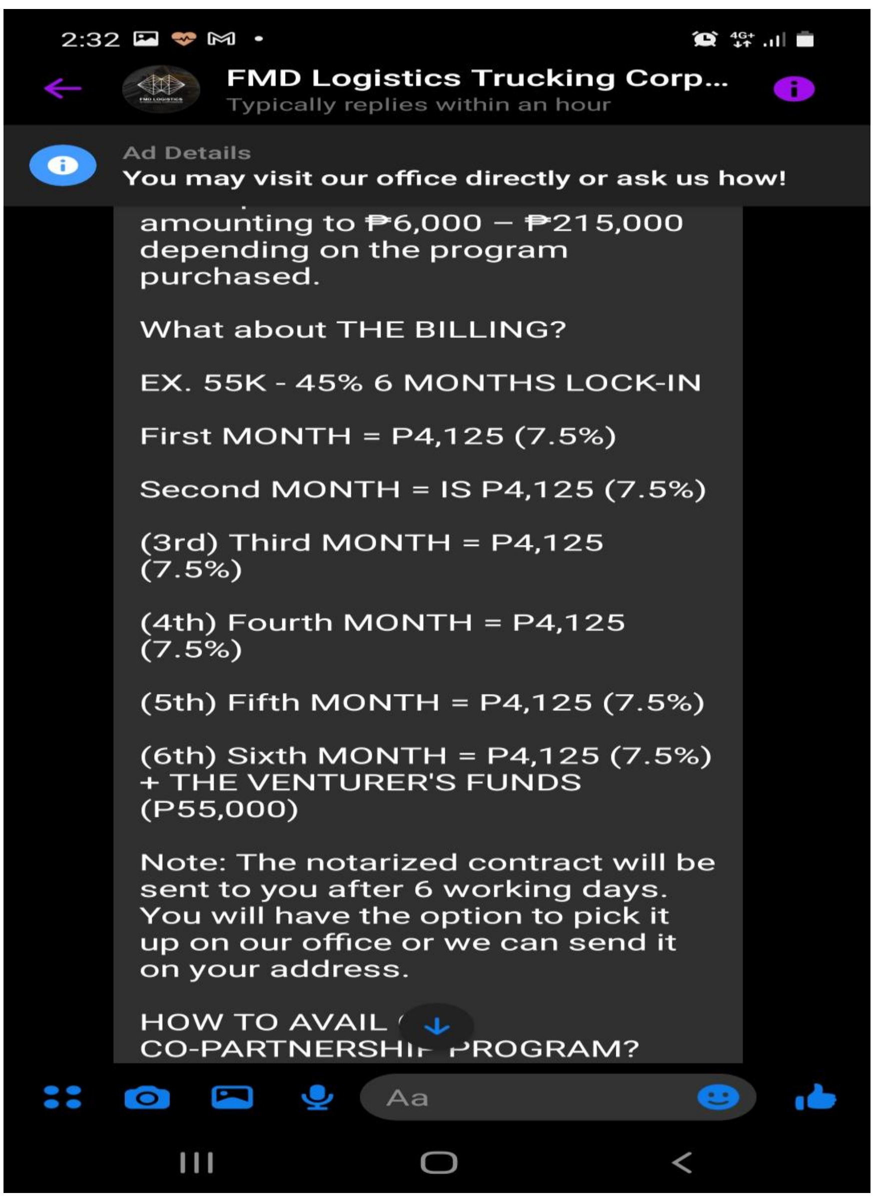
Website: fmdlogisticsintlcorp.com (published Feb.25 2021)

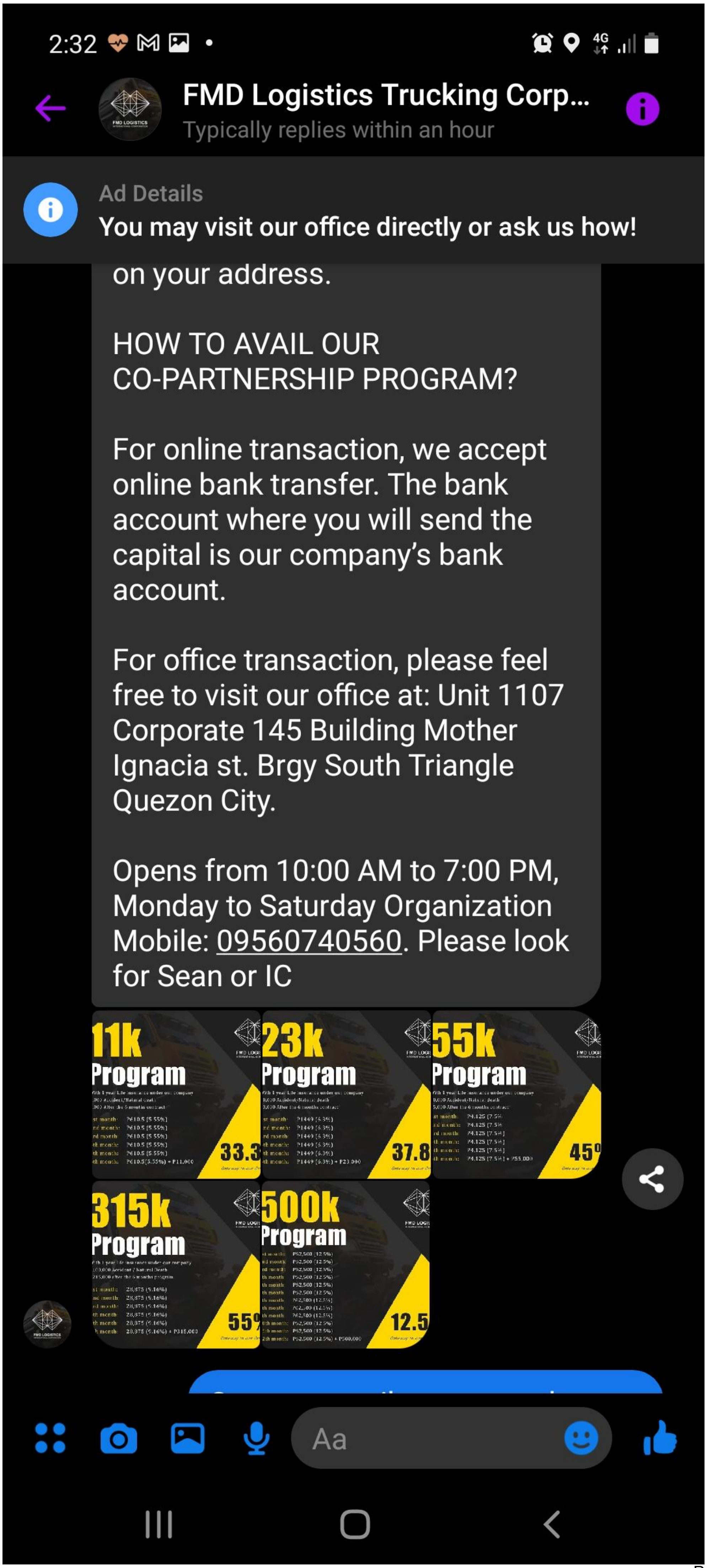
Declared office address:
Unit 1107 Corporate 145 Bldg. Mother Ignacia, Brgy. South Triangle, Quezon City

Facebook: www.facebook.com/FMDCORP
(Created Jan.15 2021)

Contact number: 09560740560
(No landline?)

Looking forward to hearing from you."




2:32
FMD Logistics Trucking Corp...
Typically replies within an hour
Ad Details
You may visit our office directly or ask us how!
on your address.
HOW TO AVAIL OUR
CO-PARTNERSHIP PROGRAM?
For online transaction, we accept online bank transfer. The bank account where you will send the capital is our company's bank account.
For office transaction, please feel free to visit our office at: Unit 1107 Corporate 145 Building Mother Ignacia st. Brgy South Triangle Quezon City.
Opens from 10:00 AM to 7:00 PM, Monday to Saturday Organization Mobile: 09560740560. Please look for Sean or IC
11k Program
23k Program
55k Program
315k Program
500k Program
Aa

A perusal of the marketing and/or compensation plan of FMD LOGISTICS TRUCKING CORPORATION/FMD LOGISTICS INTERNATIONAL CORPORATION shows that it is offering a business opportunity it calls "co-partnership" program (11k-315k program) in the guise of running a trucking business program where it appears that the promised profits and returns would be derived from the investments of FMD LOGISTICS TRUCKING CORPORATION/FMD LOGISTICS INTERNATIONAL CORPORATION's new member/investors. Necessarily, such a scheme is unsustainable, as it must rely on a continuous inflow of new investors in order to make payouts to earlier investors. Evidently, the co-partnership program which promise investors with "high return of investment" in a period of six (6) months being offered by FMD LOGISTICS TRUCKING CORPORATION/FMD LOGISTICS INTERNATIONAL CORPORATION to the public, partakes of the nature of securities in the form of an investment contract

As part of its investigation, the Enforcement and Investor Protection Department (EIPD) requested for a Certification from the Company Registration and Monitoring Department (CRMD) whether FMD LOGISTICS INTERNATIONAL CORPORATION and FMD LOGISTICS TRUCKING CORPORATION is a SEC-registered entity and whether it has been issued a secondary license by the Commission.

In reply to EIPD's request, the CRMD certified that records of FMD LOGISTICS INTERNATIONAL CORPORATION with Company Registration No. 2021010005900- on file with the Commission show that the corporation was registered on 27 January 2021 with a term of existence of fifty (50) years.

However, the CRMD further certified that records of the Commission show that FMD LOGISTICS INTERNATIONAL CORPORATION has NOT been issued a secondary license as a Lending Company, Broker and/or Dealer of Securities, Dealer in Government Securities, Investment Adviser of an Investment Company, Investment House and Transfer Agent and it has not filed nor has any pending application for a secondary license with the Department.

The EIPD likewise inquired with the Markets and Securities Regulation Department (MSRD) and the Corporate Governance and Finance Department (CGFD) if FMD LOGISTICS INTERNATIONAL CORPORATION has been issued or has a pending application for a registration/permit to sell securities and license to offer or sell securities to the public.

Based on the Certification issued by the MSRD, FMD LOGISTICS INTERNATIONAL CORPORATION has not registered any securities pursuant to Sections 8 and 12 of the Securities Regulation Code (SRC). MSRD further certified that it has not issued a Permit to Sell Securities in favor of FMD LOGISTICS INTERNATIONAL CORPORATION and that said entity has not filed nor has any pending application for registration/permit to sell securities.

Meanwhile, the CGFD certified that based on records on file with the Commission, FMD LOGISTICS INTERNATIONAL CORPORATION is not a registered issuer of mutual funds, exchange traded funds, proprietary/non-proprietary shares or membership certificates, timeshares pursuant to Sections 8 and 12 of the SRC and therefore not licensed to offer or sell such securities to the public.

On the other hand, FMD LOGISTICS TRUCKING CORPORATION does not appear to be registered with the Commission.

On 02 September, 2021, the Commission issued an advisory against FMD LOGISITICS INTERNATIONAL CORPORATION/ FMD LOGISTICS TRUCKING

CORPORATION. On 05 September 2021, news broke that the personnel of FMD LOGISTICS TRUCKING CORPORATION were apprehended by the NBI for alleged Estafa.

On the same month of September 2021, the Commission through the EIPD issued an Order to respondent FMD LOGISTICS INTERNATIONAL CORPORATION and its incorporators/directors:

> **(1)** SHOW CAUSE why no administrative sanctions and/or criminal charges should be imposed/filed against FMD LOGISTICS INTERNATIONAL CORPORATION and/or its incorporators, directors and officers for violation of the Securities Regulation Code, and other pertinent laws, rules and regulations of the Commission;
>
> **(2)** SHOW CAUSE why the Certificate of Incorporation of FMD LOGISTICS INTERNATIONAL CORPORATION should not be revoked pursuant to Section 6(i)(2) of Presidential Decree No. 902-A for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public and for engaging in *ultra vires* acts in violation of the Revised Corporation Code of the Philippines;

As part of due process requirements, the Department endeavored to serve the Show Cause Order upon FMD LOGISTICS INTERNATIONAL CORPORATION's registered address/principal office appearing in its Articles of Incorporation, i.e., Unit 1107 Corporate 145 Bldg., Mother Ignacia, Brgy. South Triangle, Quezon City, however, said office of the respondent corporation had been abandoned. Also it was discovered that some of the residences of the incorporators were fake and that one of the incorporators was reported to be already deceased.

The Department also emailed the Show Cause Order to the company's official email addresses per records of the Commission at: fmdinternationalcorp@gmail.com, fmdlogisticscorp@gmail.com and mmdorg0221@gmail.com

To date, despite such receipt and presumptive notice of the Show Cause Order as detailed above, the company failed to respond which shall be taken against it and construed as a waiver of its right to be heard as to the allegations stated in the aforementioned Show Cause Order.

Hence, we now resolve the instant proceedings on the basis of available evidence.

Section 8 paragraph 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 Commission."

Based on the evidence gathered, respondent FMD LOGISTICS INTERNATIONAL CORPORATION is engaged in offering, solicitation and sale of securities to the public without the required registration statement duly filed with and approved by the SEC.

In the instant case, the investment scheme of respondent FMD LOGISTICS INTERNATIONAL CORPORATION, where an investor places a minimum amount of money according to the package he availed of to be invested in the co-partnership program of FMD LOGISTICS INTERNATIONAL CORPORATION, falls within the definition of **"securities"** under **Section 3.1 of the Securities Regulation Code** which is defined as ***"shares, participation or interest 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 stocks****, 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; xxx."*

In relation thereto, Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the SRC defines an investment contract and a common enterprise as follows:

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

In *SEC vs. Howey Co. (66 S.Ct.1100 27 May 1946)*, the U.S. Supreme Court concluded that arrangements whereby the investors' interest are made manifest involve investment contracts, regardless of the legal terminology in which such contracts are clothed.

Further, the elements of an investment contract were enumerated in the case of *Power Homes Unlimited Corporation vs. SEC (G.R. No. 164182, 26 February 2008)* citing the so-called Howey Test enunciated in Howey *a*nd was later modified in the case of *SEC vs. Glenn W. Turner Enterprises, Inc. (474 F.2d476 1 February 1973)*, as follows:

- A contract, transaction or scheme;
- An investment of money;
- A common enterprise;
- Expectation of profits; and
- Profits arises primarily from the entrepreneurial and managerial efforts of others.

Applying the foregoing, the investment scheme of respondent FMD LOGISTICS INTERNATIONAL CORPORATION through FMD LOGISTICS TRUCKING CORPORATION of a business opportunity called "co-partnership program" where a prospective investor will make an initial investment of P11,000.00 to P315,000.00 with a promise of profit of up to 55% in just 6 months, falls within the ambit of an investment contract.

By investing in the scheme offered by the respondent FMD LOGISTICS INTERNATIONAL CORPORATION/ FMD LOGISTICS TRUCKING CORPORATION, the investor **enters into a contract**. There is a placement of money wherein for a certain amount of capital invested, there will be a high return of money in the form of a commission. **The money invested is placed in a common enterprise and the investor expects to derive profits.** Finally, the investor **expects to earn profits from the entrepreneurial and managerial efforts of others.** The investor need not do anything in order to earn the said return on their investment. The direct referral commissions and the pairing bonus are employed for the investor to earn additional shares to his account.

Said investment contract, being in the nature of securities, is required under Section 8 of the SRC to be registered before being offered or sold to the general public. However, based from the records of the Commission, no application for registration has been filed by respondent FMD LOGISTICS INTERNATIONAL CORPORATION in violation of the provisions of Sections 8 and 12 of the SRC.

Moreso, the act of respondent FMD LOGISTICS INTERNATIONAL CORPORATION in allowing its members to discuss, orient and make the public familiar with its schemes and inviting them to join the company through its Facebook account posts constitutes **public offering** as defined under Rule 3.1.17 of the Implementing Rules and Regulations of the SRC, which provides that:

> "**Public Offering**" is any means offering of securities to the public or to anyone, whether solicited or unsolicited. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:
>
> 3.1.17.1 Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;
>
> 3.1.17.2 Presentation in any public or commercial place;
>
> **3.1.17.3** ***Advertisement or announcement*** on radio, television, telephone, ***electronic communications***, ***information communication technology or any other forms of communication***; or
>
> 3.1.17.4 Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or to prospective purchasers through the postal system, ***information communication technology*** and ***other means of information distribution***." (Emphasis supplied)

Public offering is evident in this case because representatives of respondent FMD LOGISTICS INTERNATIONAL actively post and participate in group discussions in the social media platform, Facebook, where they advertise and encourage the public to invest in respondent FMD LOGISTICS INTERNATIONAL CORPORATION.

In the case of *SEC vs. CJH DEVELOPMENT CORPORATION (G.R. No. 210316, 28 November 2016)* the Supreme Court held that:

> "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."

On the other hand, a "Broker" is defined under Section 3.3. of the SRC as a person engaged in the business of buying and selling securities for the account of others. "Salesman" is defined under 3.13 of the SRC as a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

Consequently, Section 28 of the SRC provides that:

> "SEC. 28. **Registration of Brokers, Dealers, Salesman 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."

Thus, any person, without proper registration or license from the Commission who acts as brokers or agents of a company selling or convincing people to invest in the investment scheme including solicitations or recruitment through the internet may likewise be prosecuted and held criminally liable under Section 28 of the SRC and penalized with a maximum fine of Five Million pesos (P5,000,000.00) or penalty of Twenty One (21) years imprisonment or both pursuant to Section 73 of the SRC.

Likewise, the investment scheme of respondent FMD LOGISTICS INTERNATIONAL CORPORATION has the characteristics of a Ponzi scheme. A **Ponzi scheme** is an investment program that offers impossibly high returns and pays these returns to early investors out of the capital contributed by later investors. Named after Charles Ponzi who promoted the scheme in the 1920s, the original scheme involved the issuance of bonds which offered 50% interest in 45 days or a 100% profit if held for 90 days. Basically, Ponzi used the money he received from later investors to pay extravagant rates of return to early investors, thereby inducing more investors to place their money with him in the false hope of realizing this same extravagant rate of return themselves.

In the case of *People of the Philippines vs. Palmy Tibayan and Rico Z. Puerto (G.R. Nos. 209655-60, 14 January 2015)*, the Supreme Court held that:

> "To be sure, a Ponzi scheme is a type of investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. ***Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk.*** In many Ponzi schemes, the ***perpetrators focus on attracting new money to make promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business***. It is not an investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme. It is difficult to sustain the scheme over a long period of time because the operator needs an ever larger pool of later investors to continue paying the promised profits to early investors. The idea behind this type of swindle is that the "con-man" collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, Ponzi schemes only last weeks, or months at the most." (Underscoring added for emphasis)

It is important to emphasize that FMD LOGISTICS INTERNATIONAL CORPORATION as a juridical person, is only allowed to exercise powers inherent to its corporate existence as provided in the Revised Corporation Code of the Philippines and those conferred in its Articles of Incorporation (AOI). In other words, what a corporation can do is necessarily circumscribed by its primary purpose clause in its AOI.

In FMD LOGISTICS INTERNATIONAL CORPORATION's, Articles of Incorporation as approved by the Commission, it is clearly provided that the business of the subject company is:

> *"To engage in the business of forwarding and hauling such as project cargo, freight forwarding, heavy lift moving service and all kind of services related thereto.*
>
> *Provided that the corporation* ***shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.****"*

Nonetheless, the purpose stated in the Articles of Incorporation need not set out with particularity the multitude of activities in which the corporation may engage. The effect of broad purposes or objects is to confer wide discretionary authority upon the directors and management of the corporation as to the kinds of business in which it may engage. However, dealings which are entirely irrelevant to the purposes are unauthorized and called ***ultra vires.*** The purpose clause of the articles of incorporation indicates the extent as well as the limitations of the powers which a corporation may exercise. In fact, the purpose in FMD LOGISTICS INTERNATIONAL CORPORATION's Articles of Incorporation expressly prohibits it to operate an investment-taking scheme.

In an opinion[1], the Commission pronounced that:

> "It is the corporation's primary purpose clause which confers, as well as limits, the powers which a corporation may exercise and the character of a corporation is usually determined by the objects of its formation and the nature of its business as stated in the articles. The primary purpose of the corporation, as stated in its articles of incorporation, is the first business to be undertaken by the corporation. Hence, the primary purpose determines its classification."

Likewise, the Certificate of Registration issued to FMD LOGISTICS INTERNATIONAL CORPORATION explicitly states that:

> This Certificate grants juridical personality to the corporation **but does not authorize it to issue, sell or offer for sale to the public, securities** such as but not limited to, shares of stock, **investment contracts,** debt instruments and virtual currencies without prior Registration Statement approved by the Securities and Exchange Commission **nor to undertake business activities requiring a Secondary License from this Commission such as, but not limited to acting as broker or dealer in securities,** government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, commodity financial futures exchange/broker merchant, financing lending company, and time share, cash share/membership certificate issuers or selling agents thereof nor to operate a fiat money to virtual currency exchange. **Neither does this Certificate constitute a permit to undertake activities for which other government agencies require a license or permit.** (emphasis supplied)

Under Section 6 of Presidential Decree 902-A, the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise of certificate of registration or corporations, partnerships and associations, on the ground of serious misrepresentations as to what the corporation can do or is doing to the to the great prejudice of or damage to the general public. Likewise, Section 5.1 (m) of the SRC and Section 179 (j) of the Revised Corporation Code of the Philippines (RCCP) empower the Commission to revoke the franchise or Certificate of Incorporation/registration of corporations registered with it.

Under the 2016 Rules of Procedure of the SEC, the EIPD shall exercise authority over persons and entities, whether under the primary authority of other Operating Departments, involved in the following:

[1] SEC-OGC Opinion No. 11-33 dated 29 July 2011 addressed to Mr. Jesus B. Lapuz.

xxx "1. Investigations and administrative actions involving the following:

xxx c) Selling, offering or transacting unregistered securities by entities without secondary license;
d) Ultra Vires acts committed in violation of the Revised Corporation Code;

2. Petitions for revocation[2] of corporate registration in all cases, except those which fall under the original authority of CRMD;

3. Administrative actions for fraudulent transactions involving securities;

4. Administrative actions for all other violations under PD 902-A, except those cases which fall under the original authority of other Operating Departments;

5. All other matters involving investor protection filed by the public, referred by self-regulatory organizations, or referred by other Operating Departments after initial evaluation or findings that there is a possible violation of laws, rules or regulations that the Commission implements but do not fall under their respective original authority."

Further, SEC Admin Case No. 11-10-124 entitled *In re: PHILBIO Renewable Energy Resources Corp.,* promulgated on 27 April 2016 provides what constitutes serious misrepresentation, to wit:

> "From the foregoing, it is indubitable that PHILBIO misrepresented itself to the public that it can solicit investments despite the fact that it is not one of the purposes of the corporation. Worse, it does not have a license to offer/sell securities. PHILBIO operates an investment-taking scheme which is therefore considered an ultra vires act. These constitute serious misrepresentation as to what the corporation can do or doing to the great prejudice to the general public."

Considering that nowhere is it stated in the primary purpose of FMD LOGISTICS INTERNATIONAL CORPORATION that it is authorized to engage in investment-solicitation activities through the offering or selling for public sale securities in the form of investment contracts, the activities of FMD LOGISTICS INTERNATIONAL CORPORATION of offering or selling unregistered securities to the public and without the corresponding registration or license as a securities broker is considered an *ultra vires act* and therefore, constitutes serious misrepresentation as to what the corporation can do to the great prejudice or damage to the general public which is a ground for the revocation of a corporation's primary franchise or certificate of registration/ incorporation under PD 902-A.

Section 44 of the RCCP provides:

> **SEC. 44. Ultra Vires Acts of Corporations.** — No corporation shall possess or exercise corporate powers other than those conferred by this Code or by its articles of incorporation and except as necessary or incidental to the exercise of the powers conferred.

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[2] Revocation refers to involuntary dissolution of corporate registration pursuant to Section 138 of the Revised Corporation Code.

WHEREFORE, for violation of Section 44 of the Revised Corporation Code (R.A. No. 11232) in relation to Sections 8.1 and 28.1 of the Securities Regulation Code and Section 6 (i)(2) of P.D. 902-A, the corporate registration or Certificate of Incorporation/Registration of **FMD LOGISTICS INTERNATIONAL CORPORATION** is hereby **REVOKED.**

Accordingly, let this Order be attached by the Corporate Filing and Records Division of the Company Registration and Monitoring Department (CRMD) to the records of the corporation on file with the Commission. Further, the Information and Communications Technology Department (ICTD) of the Commission is likewise requested to enter the *"revoked"* status of the subject corporation in the online database of the Commission.

SO ORDERED

Pasay City, 11 March 2022.

Securities and Exchange Commission PHILIPPINES

Atty. Oliver O. Leonardo
Director
Enforcement and Investor Protection Department
Securities Exchange and Commission
G/F, North Wing, Secretariat Building, PICC Complex, Roxas Boulevard,
Pasay City, Philippines
Tel No. (+632) 8818-6337