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

IN THE MATTER OF:

FIRST ASIA CLIENT DEPOSITORY SERVICES, INC.

SEC Admin Case No. 05-10-117
For: Revocation of Corporate Registration

ENFORCEMENT AND PROSECUTION DEPARTMENT,

Petitioner.

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DECISION

For consideration is the instant Petition for Revocation of Corporate Registration ("Petition," for brevity) of First Asia Client Depository Services, Inc. ("First Asia," for brevity) dated 26 May 2010[1] filed by petitioner Enforcement and Prosecution Department ("EPD," for brevity)[2] of the Commission.

The Petition is anchored on First Asia's alleged violation of Section 6(l)(1) of Presidential Decree No. 902-A ("PD 902-A," for brevity), as amended, for fraud in the procurement of its certificate of registration consisting of use of fictitious addresses for its incorporators.

In an Order dated 31 May 2010, the Commission ordered the publication of the Petition, Summons and Order in a newspaper of general circulation and for posting thereof on the SEC website.

On 07 July 2010, the EPD submitted its Compliance with the Order for publication.

To date, First Asia has not filed its Answer or any responsive pleading in the instant case.

Released on 20 Jan 2012 @ 9:30 AM

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[1] Filed on even date.

[2] At the time the email complaint was filed, the Enforcement and Prosecution Department was known as the Compliance and Enforcement Department ("CED"), hence documents pertaining to the case refer to the EPD by its original name.

FACTS OF THE CASE:

First Asia is a stock corporation registered with the Commission since 15 March 2006 under SEC Reg. No. CS200604053.

The names, nationalities and addresses of the incorporators listed in its Articles of Incorporation are as follows:

Name	Nationality	Address
Hebron Tagle	Filipino	Purok 5, Upper Bicutan, Taguig City
Jim Orian	Filipino	Kagawad St. Batasan Hills, Quezon City
Allan Toble	Filipino	Sinagtala St., Batasan Hills, Quezon City
Alma Conde	Filipino	Kelayan St., Talayan, Quezon City
Priscilo Tanilon	Filipino	Giloctog, Barili, Cebu City

The instant Petition arose from an email dated 31 March 2008 by a certain Mr. Ray McElhinney ("McElhinney," for brevity) addressed to the EPD requesting an investigation into the alleged boiler room activities of a corporation named Goodwin Capital Management Corporation ("Goodwin," for brevity).[3]

McElhinney, a resident of Dubai, United Arab Emirates, claimed that he was "hard sold" to buy into two US companies, namely Global Media Productions, Inc. and Saviour Energy Corporation for a total of US$82,900 by a certain George Spencer of Goodwin.[4] Initially, McElhinney did not have any problems with his investments since the value of the stocks at the time was increasing. Subsequently, McElhinney received a letter from Spencer informing him that the investment portfolios of Goodwin would be handled by Sovereign Global Trading, a company based in Japan, and lost touch with Spencer ever since. Sometime later, he was contacted by a certain Paul Lauretta of Bayside Equity, persuading him to sell his 16,000 shares in the two companies for US$15-17 each share which he only bought for US$2.80 a share. He grew suspicious when Lauretta (and several other callers) asked him to deposit US$40,000 in a trust account by way of security because Goodwin had not yet transferred the stock certificates in his name.

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[3] *Records*, pp. 75-76.
[4] *Id.*

In another email dated 17 June 2008,[5] McElhinney informed the EPD that he found that Goodwin was using the following address for mailing:

> First Asia Client Depository Services, Inc.
> Suite 605 G/Floor Island Plaza Salcedo
> 101 I.P. Leviste St., Salcedo Village, Makati City

Acting on the email, EPD formed an investigating team to investigate First Asia.

On 08 August 2008, the investigating team proceeded to the principal office of First Asia at 118 Perea Street, Legaspi Village, Makati City for the purpose of conducting a surveillance and ocular inspection of the activities and premises of the company.

The following is excerpted from the field investigation report[6] of the EPD investigating team:

> "Upon the arrival at the destination, we noticed that the building name at 118 Perea Street is not Business Center but LTA (Lorenza A. Arroyo Building). We proceeded to the reception area and asked the guard on duty if First Asia is one of the occupants of the building. The guard said that no such company occupied the building.
>
> xxx
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> We then proceeded to the other room that does not have a company name. As we went inside, we noticed that the small room was further divided into several cubicles, each of which has two (2) telephone lines. Xxx Ms. Sonia Carmelo, the one in-charge at that time positively identified First Asia as one of the former occupants of one of the cubicles. She then telephoned a certain Atty. Jose Angelito Bulao to verify that information. She said that according to Atty. Bulao, First Asia's contract was only for six (6) months and she does not have any information about the company after the contract had lapsed."
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> When asked how the business of First Asia operates, Ms. Carmelo explained that First Asia did not actually occupy the premises. Instead the address of the building was merely utilized for First Asia's business correspondence. She receives all the letters and then she calls First Asia to pick it up. There was no actual business operation that took place. The company did not even meet their *(sic)* client there. She further explained that that is what the company does, i.e., to accommodate small and newly organized companies and allow its address to be used as a company address in exchange for the so-called "monthly rental fees". When the business expands and needs bigger space for its operation, the

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[5] *Records, p. 66.*
[6] *Id.*, pp. 63-65.

company terminates the lease contract and looks for its official business address. xxx"[7]

The principal office address is the same one used by First Asia in its General Information Sheet ("GIS") for the years 2007, 2008, 2009 and in its 2008 and 2009 Audited Financial Statements ("AFS", for brevity).[8]

The investigating team conducted several field investigations into the activities of First Asia.[9] In connection with the said investigation, the team also personally served Notices Requiring Appearance at an Examination ("Notices") dated 01 August 2008, upon each of the directors/incorporators at their respective addresses as appearing in the Articles of Incorporation and the 2009 GIS.

However, the notices were not served for failure to locate the exact addresses of Hebron Tagle, Jim Orian and Allan Toble.[10] The investigating team then procured the relevant barangay certifications. Notices were sent again by registered mail, but these were not served due to insufficient addresses of the incorporators/directors.[11] This can be summarized, to wit:

A SUMMARY OF THE RESULTS OF THE RESENDING OF NOTICES

Name	Nationality	Address	Barangay Certification	Notices via Registered Mail
Hebron Tagle	Filipino	Purok 5, Upper Bicutan, Taguig City	Not a bonafide resident[12]	Insufficient address[13]
Jim Orian	Filipino	Kagawad St. Batasan Hills, Quezon City	Cannot be located.[14]	Insufficient address[15]
Allan Toble	Filipino	Sinagtala St., Batasan Hills, Quezon City	Cannot be located.[16]	Insufficient address[17]
Alma Conde	Filipino	Kelayan St., Talayan, Quezon City	No such address[18]	Not sent
Priscilo Tanilon	Filipino	Giloctog, Barili, Cebu City	-	Party moved to Manila[19]

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[7] It should be noted that in the Articles of Incorporation, the principal office address declared by First Asia therein is only "118 Perea St., Legaspi Village, Makati City."
[8] *Records*, pp. 2-50, and 77-84
[9] *Id.*, pp. 59-62.
[10] *Id.*
[11] *Id.*, pp. 51-54.
[12] *Id.*, p. 56.
[13] *Id.*, p. 53.
[14] *Id.*, p. 58.
[15] *Id.*, p. 52.
[16] *Id.*, p. 57.
[17] *Id.*, p. 51.
[18] *Id.*, p. 55.
[19] *Id.*, p. 54.

Likewise, on 05 November 2008, the investigating team conducted surveillance at the address declared by First Asia in its 2007 Audited Financial Statement (i.e., 9532 Akle cor. Kamagong Street, San Antonio Village, Makati City), on the assumption that First Asia merely changed its office address. However, upon verification, the investigating team learned that only Relliance US Corp. was ever a tenant of the building, and that upon interview with the employees of RMPG Hospital Supply, another occupant, the latter stated that they were not familiar with the company First Asia.[20] Thus, EPD posits that the company did not occupy and was never an occupant of the building.

Based on the foregoing findings, the EPD initiated the instant Petition, alleging that "these fictitious addresses is *(sic)* evidence alone that there is prima facie proof of misrepresentation amounting to fraud committed by respondent First Asia."[21]

ISSUE:

The sole issue for consideration is whether or not the corporate registration of First Asia should be revoked based on fraud in the procurement of its certificate of registration.

RULING:

The petition is impressed with merit.

Section 6(l)(1) of PD 902-A, as amended provides:

> "Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> 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:
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> 1) ***Fraud in procuring its certificate of registration.*** xxx"

A corporation's Articles of Incorporation is in essence the document defining the charter of a corporation and its relations with the State, to which it owes its privilege of license to exist. A corporation "owes its life to the state, its birth being purely dependent on its will."[22]

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[20] *Records,* p. 1.
[21] *Id.,* p. 6.
[22] *Tayag vs. Benguet Consolidated, Inc.* 26 SCRA 242 (1968) at 242, *cited* in C.L. Villanueva, Philippine Corporate Law (2010 edition), at 12.

A corporation's charter "evidences the agreement by which a stockholder consents to be bound. It measures and determines the stockholder's rights, obligations and liabilities, and also the nature and extent of the powers conferred on the corporation."[23] It cannot be over-emphasized that under the Corporation Code of the Philippines[24] ("Code," for brevity) the names, nationalities and residences of the incorporators of a corporation are required by law, to be stated in the Articles of Incorporation, and the same is likewise acknowledged before a notary public as the free, voluntary act and deed of the incorporators therein.[25] The statement of the residences is required to show that majority of the incorporators are residents of the Philippines as mandated by Section 10 of the Code. The requirement gains more significance in light of the fact that the incorporators, who, as in this case, usually act as the first set of directors, may be held personally liable for certain acts or omissions under Section 31[26] of the Code.

The Articles of Incorporation must then be evaluated and approved by the Commission to be in accordance with the requirements under the law before a corporation can be issued its certificate of registration.[27] By the same token, the same certificate of registration can be suspended or revoked if the Commission determines that there was fraud attendant in the procurement of the same.

As previously ruled by the Commission in the case of *Urban Poor of Pasig Incorporated vs. Nonesio Rivera*, SEC Case No. 02-94-4869 (December 26, 1995):

> "(t)he fraud mentioned in Section 6, paragraph I, subparagraph 1 of P.D. No. 902-A as amended as one of the grounds for revocation of a certificate of registration of a corporation, partnership or association refers to ***fraud attendant in the registration of the corporation, partnership, or association and the same must be contained or connected with the documents and/or papers presented to this Commission for the registration of the said corporation, partnership or association.*** " (Emphasis supplied)

In the instant case, it is clear that among the incorporators, Alma Conde used a fictitious address in the Articles of Incorporation and made it to appear valid and legitimate in order to deceive the Commission into approving the same. This fictitious address is the same one used in the GIS submitted by First Asia for the years 2007, 2008

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[23] Fletcher Cyc. Corp. (Vol. 7A) §3634, 224, citations omitted.
[24] Batas Pambansa, Blg. 68 (1980).
[25] See Sections 11, 14 and 15 of the Code.
[26] "SECTION 31. Liability of directors, trustees or officers. – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.xxx"
[27] See Sec. 17 of the Code.

and 2009, where Alma Conde is also listed as the Vice President.[28] Thus, it is undeniable that there is clearly an intent to defraud the Commission by misrepresenting that the address used in the Articles of Incorporation and the subsequent filings of the corporation is valid, when it actually does not exist. As certified by Virginia C. Ongtauco, Barangay Chairman of Barangay Talayan Council, Quezon City, "there is no such address here in Barangay Talayan."[29]

Likewise, there is an inconsistency in the addresses provided by First Asia in its filings with the Commission. In the Articles of Incorporation, the principal office address provided therein is: "118 Perea Street, Legaspi Village, Makati City." However, in the 2007, 2008 and 2009 GIS submitted by First Asia, the principal office address stated is: "8F LTA Business Center, Perea Street, Legaspi Village, Makati City." In the 2007 Audited Financial Statement submitted by First Asia, it stated that its registered office address is located at "9532 Akle cor. Kamagong St. San Antonio Village, Makati City."[30] Moreover, upon verification by the EPD, the office addresses indicated therein were not occupied by the company.[31]

Evidently, there is an apparent intention to defraud the Commission and the general public. Had the Commission known of such falsities, the registration of First Asia would not have been approved.

"A corporation as known to Philippine jurisprudence is a creature without any existence until it has received the imprimatur of that state acting according to law. It is logically inconceivable therefore that it will have rights and privileges of a higher priority than that of its creator."[32] Pursuant to the statutory authority of the Commission to suspend or revoke the registration of a corporation for fraud in procuring the same, the Commission thus holds that First Asia Client Depository Services, Inc. violated Section 6(l)(1) of PD 902-A and thus, appropriate sanctions must be imposed.

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[28] Records, pp. 39-40, 47-48, 81-82. Upon verification with SEC i-View, the same address was likewise used in the 2011 GIS submitted by First Asia to the Commission.
[29] *Records,* p. 36-50 and 77-84.
[30] Parenthetically, First Asia cites 24 January 2007 as its date of registration in its 2007 and 2008 Audited Financial Statements which is contrary to its date of registration on 15 March 2006.
[31] *Id.,* p. 7.
[32] See Note 22, *supra* at 5.

WHEREFORE, premises considered, the Certificate of Registration of FIRST ASIA CLIENT DEPOSITORY SERVICES, INC. (SEC Reg. No. CS200604053) is hereby **REVOKED.**

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

Lastly, let copies of this Decision be furnished the Economic Research and Information Department and all the Extension Offices of this Commission for dissemination to the general public.

SO ORDERED.

Mandaluyong City, 12 January 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner