Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

EDUVEGES LIMPAHAN,
Appellant,

-versus- **SEC En Banc Case No. 05-18-444**

COMPANY REGISTRATION AND MONITORING DEPARMENT, CALINDAGAN LANDHOLDINGS CORPORATION represented by its President, AGNES FLORES and its Vice-President, ANDREW FITZ GIBBON.
Appellee.

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DECISION

Before the Commission is the Appeal dated 10 April 2018 (the "Appeal") filed by Appellant Eduveges Limpahan ("Appellant Limpahan") assailing the Order[1] (*Assailed Order*) of the Company Registration and Monitoring Department ("CRMD") which denied the Complaint for cancellation/revocation of the Certificate of Incorporation of Calindagan Landholdings Corporation ("CLC") on the ground of fraud in its procurement and serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage of the general public, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition is hereby **DENIED**."

PARTIES

Appellant Limpahan is of legal age, Filipino and a resident of 73 Meciano Road, Dumaguete City, Negros Oriental. As stated in the Complaint, Appellant Limpahan is the owner of a property located in Dr. Meciano Road, Taclobo, Dumaguete City which was leased to Appellee Calindagan Landholdings Corporation (Appellee CLC) for commercial and residential purposes.

Appellee CRMD is one of the Commission's operating department which has the authority to take cognizance of and act on petitions for revocation of certificates of registration.

[1] Dated 27 March 2018, signed by Atty. Ferdinand B. Sales Director of the CRMD.

Appellee CLC is a corporation duly organized and existing under the laws of the Philippines, having been issued a Certificate of Incorporation by the Securities and Exchange Commission (SEC) with SEC Company Registration No. CS20105982. Its principal office is located at Old Bridge, Calindagan, Dumaguete City. The AOI of Appellee CLC provides for the following primary purpose, to wit:

> "To acquire by purchase, lease or otherwise, lands or interest in lands and realty, and to own, hold, improve, develop, manage, and operate said land or lands or real estate so acquired, and to erect or cause to be erected on any lands, owned, held, occupied, or acquired by the corporation, buildings and other structures with their appurtenances, and to rebuild, enlarge, alter, improve, or remodel any building or other structures new or hereafter erected on any lands or lands or real estate or interests in lands or real estates and in buildings and other structures at any time owned or held by the corporation."

The names, nationalities and residences of the incorporators of Appellee CLC, who were also elected as members of the Board of Directors, are as follows:

Name	Nationality	Residence (Complete Address)
Andrew Fitz Gibbon	Australian	Perdices Street, Purok Mansanitas, Dumaguete City Negros Or. Albany, Western, Australia
Agnes Flores	Filipino	Perdices Street, Purok Mansanitas, Dumaguete City Negros Or.
Veverly F. Gasataya	Filipino	Perdices Street, Purok Mansanitas, Dumaguete City Negros Or.
Rosalia O. Pardilla	Filipino	Perdices Street, Purok Mansanitas, Dumaguete City Negros Or.
Dolores Pardilla	Filipino	Perdices Street, Purok Mansanitas, Dumaguete City Negros Or.

Article VIII of Appellee CLC's AOI provides that Mr. Andrew Fitz Gibbon (Mr. Gibbon), an Australian national, subscribed to 40% of the total subscribed shares at the time of incorporation.

RELEVANT FACTS

On 30 January 2017, Appellant Limpahan filed with the CRMD a Complaint dated 17 January 2017 (the "Complaint") praying for the issuance of an Order cancelling/revoking the Certificate of Incorporation of Appellee CLC on the ground that the latter is engaged in a business that is not sanctioned by the purpose clause provided in its Articles of Incorporation. In support thereof, Appellant Limpahan alleged that (a) Appellee CLC's act of engaging in pension house/hotel business named "White Knights Dumaguete Pension House" within the leased premises owned by Appellant, is not covered by its primary purpose which is to do business as a "real estate developer"[2], and (b) it violated Section 10 of the Corporation Code since one of its incorporators, Mr. Gibbon, having been classified as a temporary visitor, is not allowed to do business or study in the Philippines per Certification dated 19 June 2012 issued by the Bureau of Immigration (BI), Dumaguete City[3]. Appellant Limpahan argued that on the basis of the foregoing, the involuntary dissolution of Appellee CLC is warranted under Section 121 of the Corporation Code.

In its Answer with Affirmative Defenses and Counterclaim dated 22 May 2017, Appellee CLC prayed for the dismissal of the Complaint for lack of merit. Appellee CLC maintained that the revocation of its certificate of incorporation has no basis because (a) it complied with all the legal requirements under the Corporation Code and is doing business in accordance with its primary purpose[4]; (b) the inclusion of Mr. Gibbon as incorporator did not violate the Foreign Investment Act of 1991 since the corporation is not engaged in a nationalized activity[5]; and (c) it did not commit serious misrepresentation as to what it can do as a corporation, nor fraud in the procurement thereof, since Mr. Gibbon did not conceal his nationality and shareholdings in the corporation[6].

On 11 December 2017, Appellant Limpahan filed her Position Paper dated 5 December 2017 which basically reiterated her arguments in the Complaint. Appellant Limpahan maintained that Mr. Gibbon is prohibited from engaging in business in the Philippines which rendered the incorporation of Appellee CLC infirm as it failed to comply with the required number of incorporators. Appellant Limpahan also maintained that Appellee CLC procured its Certificate of Incorporation through fraud and carried out a pension house business which is not authorized under its Articles of Incorporation for which reason, its revocation should be granted by the Commission.

On 4 January 2018, Appellee CLC filed its Position Paper praying for the dismissal of the Complaint which likewise reiterated the arguments in its Answer.

In the Assailed Order, the dismissal of the Complaint was based on the finding of CRMD that Appellee CLC's Certificate of Incorporation was not procured through fraud. The CRMD ruled that the full disclosure in the

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[2] See page 3 of the Complaint
[3] *Ibid*
[4] Par. 6 (page 6) of the Answer
[5] Par. 5 (page 5) of the Answer
[6] Pars. 7 and 8 of the Answer

application documents of the personal circumstances Mr. Gibbon as well has investment in the corporation negated the allegation of fraud. The CRMD also found that the requirements of Section 10[7] and Section 14[8] of the Corporation Code[9] were accordingly complied with because the law does not prohibit a temporary visitor of the Philippines to be an incorporator of a corporation. There is no general requirement of Philippine citizenship in the establishment of a private corporation, since what the law requires is that majority of the incorporators must be a resident of the Philippines.

The CRMD also dismissed the allegation that Mr. Gibbon formed the corporation and used the other four (4) incorporators as dummies after finding that no evidence was shown in support thereof. The CRMD gave credence to the facts/entries provided in the Articles of Incorporation of Appellee CLC which were made under oath. The CRMD then ruled that since Appellee CLC is a domestic Filipino corporation engaged in a business where foreign participation is not prohibited or limited to a smaller percentage by Republic Act (R.A.) No. 7042[10], the infusion of money for investment purposes by Mr. Gibbon, a foreign national, is thus allowed.

Finally, the CRMD ruled that Appellee CLC did not commit serious misrepresentation as to what it can do or is doing to the great prejudice of or damage to the general public after finding that the operation of a pension house is sanctioned by its primary purpose provided in its Articles of Incorporation as a real estate developer.

Hence the instant Appeal.

ISSUES

(1) Whether fraud attended the procurement of Appellee CLC's Certificate of Incorporation that warrants the revocation thereof.
(2) Whether Appellee CLC's serious misrepresentation as to what it can do or is doing as a corporation warrants the revocation of its Certificate of Incorporation.

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[7] **Section 10.** *Number and qualifications of incorporators.* – Any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose or purposes. Each of the incorporators of s stock corporation must own or be a subscriber to at least one (1) share of the capital stock of the corporation. (6a)

[8] **Section 14.** *Contents of the articles of incorporation.* – All corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages duly signed and acknowledged by all of the incorporators, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:

xxx.

5. The names, nationalities and residences of the incorporators;

xxx.

[9] Batas Pambansa Blg. 68.

[10] Section 5 of R.A. No. 7042, as amended, provides that a without need of prior approval, a non-Philippine national, not otherwise disqualified by law may, upon registration with the SEC, do business as defined in Section 3 (d) of said Act, or invest in a domestic enterprise up to one hundred percent (100%) of its capital, unless participation of non-Philippine nationals in the enterprise is prohibited or limited to a smaller percentage by existing law or under the provisions of Foreign Investments Act of 1991.

(3) Whether the non-registration of the investments of Mr. Gibbon, a foreign national, disqualifies him from being an incorporator and warrants the revocation of Appellee CLC's Certificate of Incorporation.

RULING

The Appeal has no merit.

I. The Certificate of Incorporation of Appellee CLC was not fraudulently procured.

In her Appeal, Appellant Limpahan maintained that CRMD committed reversible error in finding that the procurement of Appellee CLC's Certificate of Incorporation was not attended by fraud. She argued that Mr. Gibbon's act in forming the corporation in violation of the immigration laws, specifically the conditions allegedly provided in his travel documents i.e. he cannot do gainful activity, constitutes bad faith which is equivalent to fraud. This, according to Appellant Limpahan disqualified Mr. Gibbon from being an incorporator of Appellant CLC and warrants the revocation of Appellee CLC's certificate of registration.[11]

Appellant Limpahan's arguments are misplaced and baseless.

The revocation of a certificate of registration of a corporation on the ground that the same was fraudulently obtained is specifically authorized under Section 6 (i)(1) of PD 902-A , as amended, to wit:

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

The afore-quoted provision used the word "fraud" in its generic and unqualified sense. The foregoing finds affirmation in *Care Best International, Inc. vs Securities and Exchange Commission,*[12] where the Court categorically ruled, thus:

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[11] Page 8 of the Appeal
[12] GR No. 215510. October 5, 2015

"Fraud can be classified as either actual or constructive. Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as a fraud because of its detrimental effect upon public interest, and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons. Since Section 6(i)(1) of PD 902-A simply speaks of fraud without limiting its use of the term, then the section must include not only actual fraud, but constructive fraud as well. Since the provision is not concerned with a crime or a felony, criminal intent or intent to deceive is not essential. Consequently, even assuming that incorporators Evita and Solivio were in good faith does not detract from the undisputed commission of the falsity when they used fictitious names in petitioner's Articles of Incorporation." (Emphasis supplied)

It should however be emphasized that the fraud contemplated in Section 6 (i)(1) of PD No. 902-A as a ground for the revocation of a certificate of registration of a corporation, partnership or association refers to fraud that is attendant in the registration and the same must be contained or connected with the documents and/or papers presented to the Commission for the registration of the said corporation, partnership or association.[13] Consistent with the foregoing, the Commission has revoked the certificate of registration of corporations which have been found to, among others, (a) have provided false Tax Identification Numbers (TIN) of its incorporators[14], (b) have included a deceased person as an incorporator,[15] (c) have submitted articles of incorporation and by-laws which contained forged signatures of incorporators[16] and (d) have submitted articles of incorporation and by-laws bearing a signature of an incorporator who could not have signed and acknowledged the execution of the same as he was abroad when the document was executed and notarized[17].

Relative to the instant case, Section 10 of the Corporation Code provides for the qualifications of incorporators, to wit:

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[13] In the Matter of Silvermoon Security & Investigation Agency, Inc., et al., SEC Case No. 12-05-99 citing In the Matter of Charlyn Marketing Enterprise, SEC Case No. 03-05-49.

[14] See (a) In the Matter of Caraga Indigenous Peoples Management and Development Corporation (URL: https://www.sec.gov.ph/wp-content/uploads/2019/12/2014RevocationPR_CARAGAIndigenousPeoplesManagementandDevelopmentCorporation.pdf), (b) In the Matter of Revocation of the Articles of Incorporation of Domel Realty & Development Corporation (SEC En Banc Case No. 02-11-229)

[15] See Esmar Posadas Realty Corporation vs Dir. Ferdinand Sales (SEC En Banc Case No. 08-13-298)

[16] See In the Matter of Zanjera De Cabarambanan, Inc. (SEC Admin. Case No. 11-06-84)

[17] In the Matter of Terracota Villas, Inc. vs Enforcement and Prosecution Department (SEC Admin Case No. 11-11-137)

> "Section 10. *Number and qualifications of incorporators*. – Any number of **natural persons** not less than five (5) but not more than fifteen (15), **all of legal age and a majority of whom are residents of the Philippines, may form a private corporation** for any lawful purpose or purposes. Each of the incorporators of s stock corporation must own or be a subscriber to at least one (1) share of the capital stock of the corporation." (Emphasis supplied)

The afore-quoted provision is clear and categorical in stating that any natural person, who is of legal age, complies with the residency requirement, and owns or has subscribed to at least one (1) share of the capital stock can be an incorporator of a corporation. Consistent with the *verba legis* rule, this provision must be given its literal meaning and applied without attempted interpretation.[18]

In the instant case, the records will show that the incorporators of Appellee CLC complied with all the requirements prescribed under Section 10 of the Corporation Code. In relation to Mr. Gibbon, the Articles of Incorporation of Appellee CLC will readily show that he is a natural person, of legal age, a resident of Dumaguete City and Australia, and owns shares of the corporation. The CRMD was thus correct in holding that Mr. Gibbon can validly be an incorporator of Appellee CLC. Considering that there is nothing in Section 10 of the Corporation Code which prohibits or disqualifies an alien classified as temporary visitor from being an incorporator of a corporation, the Commission cannot rule otherwise. The Commission notes that Appellant Limpahan herself admitted/affirmed in her Appeal that the Corporation Code does not prohibit a foreigner from becoming an incorporator in a domestic corporation.[19]

Appellant Limpahan's reliance on the Immigration Laws which Mr. Gibbon allegedly violated and which she used in arguing that Mr. Gibbon is disqualified to be an incorporator is both misplaced and has no basis in law. The administration and implementation of the provisions of Immigration Laws are not lodged with the Commission, but with the Bureau of Immigration. If Appellant Limpahan believes that Mr. Gibbon violated the provisions of the Immigration Laws, her recourse is not with the Commission but with the Bureau of Immigration which has the power and authority to make a determination on the same and impose the proper sanction(s).

Moreover, it should be emphasized that the qualifications and disqualifications of persons as incorporators are governed and provided in the Corporation Code. The determination of whether there has been compliance with the provisions of the Corporation Code is ministerial in nature, where the Commission is required to act and pass upon any application filed with it

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[18] Cubillo v. Social Security System (G.R. No. 221067 (Notice), January 14, 2019)
[19] See pages 7-8 (on the "First Assignment of Error") of the Appeal

merely on the basis of the documents submitted. This was emphasized by the Supreme Court in *Ridon v. AXN Networks Phils., Inc.*[20], thus:

> "The SEC, **in issuing certificates of registration** in favor of a corporation, is not called upon to adjudicate the rights of contending parties or to exercise, in any manner, discretion of a judicial nature; nor does it conduct investigations and then draw conclusions from them as basis for its actions. **What it does is merely to verify the documents submitted for incorporation in order to determine if there has been substantial compliance with the list of requirements of the Code**. Thus, in the process of incorporation, the SEC is clearly not acting in any judicial or quasi-judicial capacity." (Emphasis supplied)

To ensure that the requirements in Section 10 of the Corporation Code are complied with, Section 14[21] of the Corporation Code mandates the inclusion of the names, nationalities and residences of the incorporators in the articles of incorporation (AOI) which is required to be acknowledged before a notary public.[22]

Again, a careful review of the Articles of Incorporation of Appellee CLC will readily show that **all information required under Section 14 of the Corporation Code relating to the personal circumstances of its incorporators was fully disclosed**. Appellee CLC was not bound to disclose information not required by the Corporation Code in relation to its application for incorporation, contrary to the assertion of Appellant Limpahan[23]. It cannot thus be faulted or penalized for not providing an information which is not required by laws. More importantly, the Articles of Incorporation and By-laws of Appellee CLC were not shown to contain any false information or forged signature which would amount fraud in the procurement thereof as contemplated under Section 6(i)(1) of PD 902-A.

On the basis thereof, We find no cogent reason to disturb the finding of the CRMD that the certificate of registration of Appellee CLC was not fraudulently procured.

II. Appellee CLC's operation of a pension house is authorized by

[20] G.R. No. 210885 & 210886 (Notice), [August 26, 2014]

[21] **Section 14.** *Contents of the articles of incorporation.* – All corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages duly signed and acknowledged by all of the incorporators, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:

xxx.

5. The names, nationalities and residences of the incorporators; xxx"

[22] See Sections 11, 14 and 15 of the Old Corporation Code.

[23] See "Third Assignment of Error" (page 9) in the Appeal

its Primary Purpose; it is not an ultra vires act.

In her Appeal, Appellant Limpahan alleged that the act of Appellee CLC in operating a pension house is an *ultra vires* act as it is not covered by its primary purpose provided in its Articles of Incorporation. This, according to Appellant Limpahan, constitutes serious misrepresentation as to what Appellee CLC can do or is doing as a corporation that warrants the revocation of its certificate of registration pursuant to Section 6(i)(2) of PD 902-A.

We do not agree.

Serious misrepresentation as to what the corporation can do or is doing which under Section 6(l)(2) of PD 902-A, as amended, exists if a corporation performs an act or carries out transactions which are not within its authority and power under its Articles of Incorporation to do or make. These unauthorized acts are also called *ultra vires* acts of corporations, or acts committed outside the object for which a corporation was created as defined by law of its organization and thereof beyond the powers conferred upon it by law.[24] In *Rural Bank of Milaor v. Ocfemia*[25], the Supreme Court defined the concept of *ultra vires*, thus:

> "The language of the Code appears to confine the term ultra vires to an act outside or beyond express, implied and incidental corporate powers. <u>Nevertheless, the concept can also include those acts that may ostensibly be within such powers but are, by general or special laws, either proscribed or declared illegal</u>. In general, although perhaps loosely, ultra vires has also been used to designate those acts of the board of directors or of corporate officers when acting beyond their respective spheres of authority. In the context that the law has used the term in Article 45 of the Corporation Code, an ultra vires act would be void and not susceptible to ratification. **<u>In determining whether or not a corporation may perform an act, one considers the logical and necessary relation between the act assailed and the corporate purpose expressed by the law or in the charter</u>. For if the act were one which is lawful in itself or not otherwise prohibited and done for the purpose of serving corporate ends or reasonably contributes to the promotion of those ends in a substantial and not merely in a remote and fanciful sense, it may be fairly considered within corporate powers.**" (Emphasis supplied)

A corporation has both express and implied or incidental powers. Express powers are those which are enumerated in Section 36 of the

[24] Republic v. Acoje Mining Co., Inc., G.R. No. L-18062, February 28, 1963.
[25] G.R. No. 137686, February 8, 2000.

Corporation Code and those which are sanctioned by the State in the corporation's articles of incorporation. Implied or incidental powers, on the other hand, are the corporation's "powers, attributes and properties incident to its existence", which may be "essential or necessary to carry out its purpose or purposes as stated in its articles of incorporation." Acts beyond these powers are *ultra vires* acts and the statutory provision prohibiting them is Section 45 of the Corporation Code.

In the case of *Montelibano v. Bacolod-Murcia Milling Co., Inc.*[26], the Supreme Court laid down the test in determining if an act is *ultra vires* within the contemplation of the Corporation Code, thus:

> "It is a question, therefore, in each case, of the logical relation of the act as to the corporate purpose expressed in the charter. If that act is one which is lawful itself, and not otherwise prohibited, is done for the purpose of serving corporate ends, and not in a remote and fanciful sense, it may fairly be considered within the charter powers. **The test to be applied is whether the act in question is in direct and immediate furtherance of the corporation's business, fairly incident to the express powers and reasonably necessary to their exercise. If so, the corporation has the power to do it: otherwise, not**." (Emphasis supplied)

On the basis of the foregoing, We affirm the finding of CRMD and so hold that the operation by Appellee CLC of a pension house is an act that is covered by and authorized under its primary purpose which includes, among others, (a) the acquisition or lease of land or realty, and the improvement, development or management of the same, (b) to erect or cause to be erected on the land acquired or leased by the corporation, buildings and structures, and (c) to rebuild, enlarge, alter, improve, or remodel any building or other structures new or hereafter erected on any lands or real estates. The operation of a pension house on a leased building which Appellee CLC has improved and developed is clearly authorized by its constitutional documents.

Granting, *ex gratia*, that the operation of pension house is not expressly provided in the purpose clause of Appellee CLC, the same can nonetheless be considered as an exercise of an implied/incidental powers because it is essential or necessary in carrying out its primary purpose and/or will directly promote or further the business of the corporation.

Moreover, the Commission takes administrative notice of the definition of real estate developer in Section 3(e) of R.A. No. 9646[27] otherwise known as the "Real Estate Service Act of the Philippines (RESA Law), to wit: "*Real estate developer refers to any natural or juridical person engaged in the*

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[26] GR No. L-15092, 18 May 1962
[27] 29 June 2009

business of developing real estate development project for his/her or its own account and offering them for sale or lease." The operation of a pension house which involves the leasing out to the public of the entire building or portions thereof is within the afore-quoted definition of Real Estate Developer which under the RESA Law, CLC is authorized to lease the real estate it developed.

On the basis thereof, the Commission finds no cogent reason to disturb the finding of CRMD that Appellee CLC did not commit serious misrepresentation as to what it can do or is doing as a corporation that will warrant the revocation of its corporate charter.

III. The non-registration of a foreign national is not a ground for revocation of the certificate of registration of a corporation.

In her Appeal, Appellant Limpahan maintained that the CRMD committed reversible error in misapplying Section 5 of Republic Act No. 7042 (the "Foreign Investments Act of 1991 or FIA") to justify the alleged illegal acts of Mr. Gibbon. She maintained that Mr. Gibbon should have been penalized for his act of registering Appellee CLC under the Corporation Code instead of the FIA, and for his failure to register his investments with the Bureau of Investment.[28] Appellant Limpahan then concluded that the certificate of registration of Appellee CLC should be revoked because one of its incorporators, Mr. Gibbon, is prohibited from doing business in the Philippines.

Appellant Limpahan's arguments have no basis in law and jurisprudence.

The issue on the eligibility or qualification of Mr. Gibbon as an incorporator of a domestic corporation having been addressed and disposed of in the earlier part of this decision, the same will no longer be discussed in this section.

In relation to the position of Appellant Limpahan that the registration of Appellee CLC is invalid and should be revoke because it was not obtained pursuant to the provisions of the FIA, the Commission finds the same to be patently erroneous. In our jurisdiction, there are only two (2) ways where a corporation can validly and legally come into existence i.e. first, is through a valid incorporation pursuant to the provisions of the corporation code[29], and

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[28] See page 9 (on the "Fourth Assignment of Error") of the Appeal

[29] Section 3 of the Corporation Code provides: "Corporations formed or organized under this Code may be stock or non-stock corporations. Corporations which have capital stock divided into shares and are authorized to distribute to the holders of such shares dividends or allotments of the surplus profits on the basis of the shares held are stock corporations. All other corporations are non-stock corporations."

second, is through a special law or charters[30]. In *National Power Corporation v. City of Cabanatuan*[31], the Supreme Court affirmed the foregoing, thus:

> "In its general signification, a franchise is a privilege conferred by government authority, which does not belong to citizens of the country generally as a matter of common right. **In its specific sense, a franchise may refer to a general or primary franchise**, or to a special or secondary franchise. **The former relates to the right to exist as a corporation, by virtue of duly approved articles of incorporation, or a charter pursuant to a special law creating the corporation.** The right under a primary or general franchise is vested in the individuals who compose the corporation and not in the corporation itself. On the other hand, the latter refers to the right or privileges conferred upon an existing corporation such as the right to use the streets of a municipality to lay pipes of tracks, erect poles or string wires. The rights under a secondary or special franchise are vested in the corporation and may ordinarily be conveyed or mortgaged under a general power granted to a corporation to dispose of its property, except such special or secondary franchises as are charged with a public use. (Emphasis supplied)

Having been duly formed and organized under the Corporation Code with the approval by the Commission of its Articles of incorporation and By-laws, and the issuance of its certificate of incorporation, Appellee CLC came into existence as a corporation, an artificial being created by operation of law.[32] The alleged failure of Mr. Gibbon to register his investments with the SEC did not affect the existence of the Appellee CLC. Neither does the same constitute a ground for revocation of a certificate of incorporation under the Corporation Code or PD 902-A. In *Hutchison Ports Philippines Limited vs Subic Bay Metropolitan Authority*[33], the Supreme Court ruled that the effect of a failure of an alien or a foreign entity doing business in the Philippines to register and secure a license is to deny the same access to the courts, thus:

> "**The primary purpose of the license requirement is to compel a foreign corporation desiring to do business within the Philippines to submit itself to the jurisdiction of the courts of the state and to enable the government to exercise jurisdiction over them for the regulation of their activities in this country. If a foreign corporation operates a business in the Philippines without a license**, and thus does not submit itself

[30] Section 4 of the Corporation Code provides: "Corporations created by special laws or charters shall be governed primarily by the provisions of the special law or charter creating them or applicable to them, supplemented by the provisions of this Code, insofar as they are applicable."
[31] G.R. No. 149110, [April 9, 2003], 449 PHIL 233-262
[32] See Section 2 of the Corporation Cod
[33] G.R. No. 131367. August 31, 2000

to Philippine laws, **it is only just that said foreign corporation be not allowed to invoke them in our courts when the need arises**. "While foreign investors are always welcome in this land to collaborate with us for our mutual benefit, they must be prepared as an indispensable condition to respect and be bound by Philippine law in proper cases, as in the one at bar." The requirement of a license is not intended to put foreign corporations at a disadvantage, for the doctrine of lack of capacity to sue is based on considerations of sound public policy. Accordingly, petitioner HPPL must be held to be incapacitated to bring this petition for injunction before this Court for it is a foreign corporation doing business in the Philippines without the requisite license." (Emphasis supplied)

Moreover, it bears emphasis that proof of inward remittances is not a requirement for one to be an incorporator of a domestic corporation; neither is the same a requirement for incorporation as adamantly insisted by Appellant Limpahan[34]. The compliance by Appellee CLC with all the requirements prescribed under the Corporation Code and applicable rules and regulations, which was duly verified and ascertained by the Commission, resulted in its incorporation. In the absence of a law providing that the failure to submit proof of inward remittances constitutes a valid ground for revocation, the corporate existence of Appellee CLC should be upheld.

Finally, the Commission finds no merit in the allegation of Appellant Limpahan that she was denied due process as a consequence of the failure of the CRMD to conduct actual hearing.

It is an established principle that the essence of due process in administrative proceedings is simply an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of. If it can be shown that the parties were given fair and reasonable opportunity to be heard before judgment/decision was rendered, the demands of due process are met/complied with.[35] Moreover, the exercise of the right to be heard is not limited to presentation of evidence in a hearing or conference conducted, as it can also be made through submission of pleadings. Hence, a formal or trial type hearing is not, at all times, necessary in an administrative proceedings.[36] In *Montemayor bs Bundalian*[37], the Supreme Court applied the foregoing rule, to wit:

"The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long

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[34] See page 9 (on the "Third Assignment of Error") of the Appeal
[35] Magcamit vs Internal Affairs Service-PDEA. (GR No.198140, January 25, 2016)
[36] Samalio v. Court of Appeals,
[37] G.R. No. 149335, 01 July 2003

as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. In the case at bar, the PCAGC exerted efforts to notify the complainant of the proceedings but his Philippine residence could not be located. Be that as it may, petitioner cannot argue that he was deprived of due process because he failed to confront and cross-examine the complainant. Petitioner voluntarily submitted to the jurisdiction of the PCAGC by participating in the proceedings before it. He was duly represented by counsel. He filed his counter-affidavit, submitted documentary evidence, attended the hearings, moved for a reconsideration of Administrative Order No. 12 issued by the President and eventually filed his appeal before the Court of Appeals. **His active participation in every step of the investigation effectively removed any badge of procedural deficiency, if there was any, and satisfied the due process requirement**. He cannot now be allowed to challenge the procedure adopted by the PCAGC in the investigation." (Emphasis supplied)

In the instant case, the records show that Appellant Limpahan was given ample opportunity to be heard and present evidence to support her allegations. In fact, she actively participated in the proceedings as evidenced by her attendance in the preliminary conference held on 07 November 2017 and the filing of her pleadings which have formed part of the records of the case. These negates Appellant Limpahan's allegation that she was deprived of due process because through the said pleadings, she was clearly able to present her case.

WHEREFORE, in view of the foregoing, the instant *Appeal* is hereby **DENIED** for lack merit.

SO ORDERED.

Pasay City, Philippines; 22 March 2021.

EMILIO B. AQUINO
Chairperson

[On Leave]
EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE Commissioner	**KARLO S. BELLO** Commissioner