ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the Matter of:

INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION
COMPANY REGISTRATION NO. 2022010039214-05

SEC-EIPD Case No. 2022-6202
For: Revocation of Certificate of Incorporation

x---x

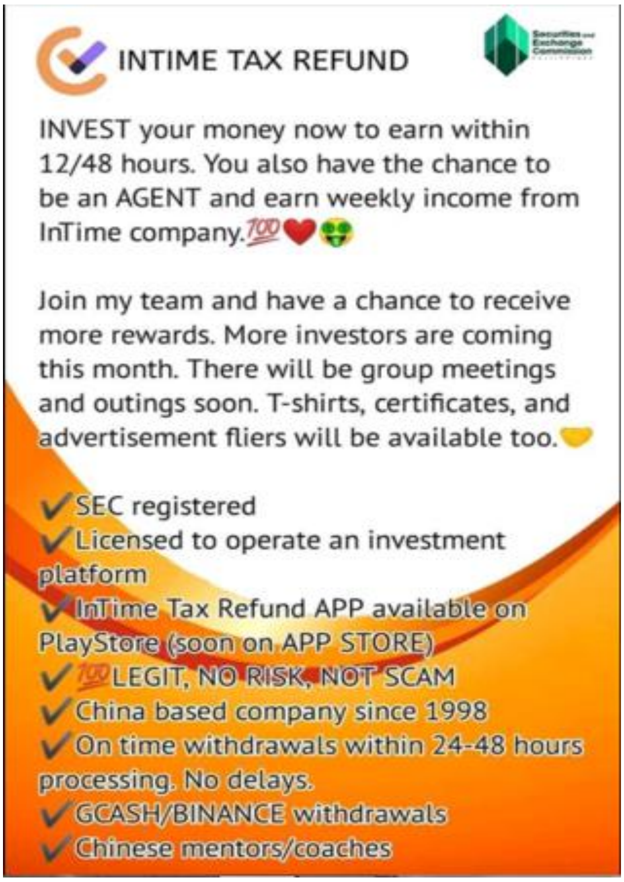
ORDER OF REVOCATION

INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION is a corporation registered with the Commission on 25 January 2022 under Company Reg. No. 2022010039214-05. Its registered principal office address is at No. No. 681 Beaterio Street, corner Magallanes Street, Intramuros Brgy654, City of Manila, First District, National Capital Region (NCR), 1002. Its primary purpose as stated in its Articles of Incorporation is:

> "To engage in, conduct and carry on the business of buying, selling, distributing, marketing on wholesale and retail basis insofar as may be permitted by law, all kinds of goods, wares and merchandise of every kind and description, and enter into all kinds of contracts for export, import, purchase, acquisition sale on wholesale and retail basis and other disposition for its own account as principal or in representative capacity as main distributor, manufacturer's representative, merchandise broker, indentor, commission, merchant, factors or agents, upon consignment of all kinds of goods; services; merchandise or products whether natural or artificial; without engaging in investment solicitation nor investment taking activity from public.;
>
> **Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.**" (*Emphasis supplied*)

The Department has received numerous emails inquiring and/or reporting about **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** and its alleged investment-taking activities with a guaranteed return on investment.

Investigation conducted by the Department revealed that **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** had been promising to the public a 3-5% daily return. Under its investment scheme, **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** entices the public to invest in its investment package where one may invest a minimum amount of Php1,000.00 and promises a return of as much as 3-5% daily depending on the chosen plan, to wit:



Intime Tax Refund Philippines

Write a public comment...

Jun Ilag San Pedro
· March 20 at 8:22 PM ·

Part-Time Extra Income for all
Let Money Work for You
ITR - Intime Tax Refund Ph

👉 Legit Extra Income - SEC registered
👉 1,000 min/ Low Capital
👉 GCash / Binance,usdt
Bank Pay.in&Out options
👉 No need refferal to
withdraw, 1K min.
👉 3% - 5% profit Daily tax refund
plus Capital return
👉 Biggest Invest of Alibaba Co.
👉 Intime Malls Soon in Ph
👉 Search available on YT, FB, Twitter,
Google, Telegram.. etc..
👉 PM for details Assistance

https://BernilaVigan.com/ugahh8lv9/5ce7uk/262850.html

72

Transactions 262850

The foregoing investment scheme of **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** has the characteristics of an "investment contract" which must first be registered with the Commission pursuant to Section 8 of the Securities Regulation Code (SRC) before they may be offered and sold or distributed to the public

However, based on the records of the Commission, **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** has not registered any securities pursuant to Sections 8 and 12 of the SRC that would allow it to offer and/or sell securities to the public. Neither is **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** licensed as a capital market professional such as, among others, as a securities brokers.

Thus, on 06 April 2022, an SEC Advisory was issued and posted on the Commission's website informing the public, that:

> *Xxx* "INTIME IMPORT AND EXPORT (LLC) CORPORATION, according to those claiming to represent this entity is offering investments where a minimum investment of Php1,000.00 shall earn a daily interest of 3% to 5%. The above described scheme involves the sale of securities to the public where the Securities Regulation Code (SRC) requires that these securities must first be registered with the Commission and that the concerned corporation and/or its agents have the appropriate registration and/or license to sell such securities to the public pursuant to Sections 8 and 12 of the SRC. Records of the Commission show that INTIME IMPORT AND EXPORT (LLC) CORPORATION was registered as Corporation with Company No. 2022010039214-05 on 25 January 2022. However, such registration merely grants juridical personality to the corporation but does not authorize it to issue, sell or offer for sale securities to the public nor undertake business activities requiring a secondary license. In view thereof, the public is hereby advised to exercise caution in dealing with any individuals or group of persons offering and selling securities for on behalf of INTIME IMPORT AND EXPORT (LLC) CORPORATION. " *Xxx*

Despite the issuance of the above-mentioned SEC Advisory against **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION,** the said entity did not pay attention thereto, and in fact, continued its investment-taking activities

On 2 May 2022, a ***Show Cause Order*** was issued against **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** that was sent to the official email address of **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** indicated in the Cover Sheet of its Articles of Incorporation (intimetradingllc@gmail.com/xxgemini75@gmail.com) and to the incorporators of the said entity (**Mr. WILFREDO REPATO MAMARIL, Ms. LANIE CARCOSIA PADREQUILAGA** and **Ms. HELEN TORENO REBATADO)**, ***directing the company to show cause why its Certificate of Incorporation should not be revoked 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 committing fraud in the procurement of its Certificate of Incorporation and to show cause why no administrative sanction and/or criminal charges should be filed against*** **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION for violation of the Securities Regulation Code.**

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.

The factual backdrop having been laid, we now resolve the instant case on the basis of available evidence.

Section 3.1 of the Securities Regulation Code (SRC) defines securities as:

> "3.1 "Securities" are 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;
>
> (c) Fractional undivided interests in oil, gas or other mineral rights;
>
> (d) Derivatives like option and warrants;
>
> (e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments;
>
> (f) Proprietary or non-proprietary membership certificates in corporations; and
>
> (g) Other instruments as may in the future be determined by the Commission."

An *investment contract* on the other hand, is defined under *SRC Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC IRR),* 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.
>
> 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."

Further, the elements of an investment contract were enumerated in the case of *Power Homes Unlimited Corporation vs. SEC* which traces its roots from the US case of *SEC vs. Howey Co.* and was later modified in the case of *SEC vs. Glenn W. Turner Enterprises, Inc*. as follows:

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

Section 8, in relation to *Section 12* of the SRC provides, that:

> "SEC. 8. ***Requirement of Registration of Securities***. – 8.1. ***Securities shall not be sold or offered for sale or distribution within the Philippines***, ***without a registration statement*** duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.
>
> "SEC. 12. Procedure for Registration of Securities. - 12.1. All securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4."

Securities, such as investment contracts, as defined by the SRC in relation to *SRC Rule 26.3.5 of the 2015 SRC IRR*, must be registered before the same can be ***sold or offered*** for distribution to the public. Hence, as a form of security, investment contracts must be registered under Section 8 of the SRC before they can be sold or offered to the public.

Rule 3.1.17 of the 2015 SRC IRR defined ***Public Offering*** as "any 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)

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 while *"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 license from the Commission who acts as brokers, dealers 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.

In this particular case, the Department carefully examined the characteristics of the investments offered by against **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** to determine if they satisfy the elements of an investment contract. In our evaluation, indeed, the elements of investment contracts are manifested in the investments being offered by against **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** as follows:

- First, there was an **investment of money** by the public in the investment scheme of the company and **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** actually received money from the public who were enticed to invest in their scheme;

- Second, there was a **common enterprise** in the sense that the investors monies were pooled in respondent **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** alleged profit-making venture;

- Third, there was clearly an **expectation of profits** on the part of its investors who were promised that their money would earn 3-5% depending on their chosen plan; and

- Lastly, the expectation of profits is **derived primarily from the efforts of others. Here the investors had no hand in the management of INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION and earned profits by merely investing in said entity.**

It is important to emphasize that as a juridical person, **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** is only allowed to exercise powers inherent to its 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.

The purpose clause in the Articles of Incorporation of **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** clearly and explicitly state, among others, that:

> "This Certification **DOES NOT AUTHORIZE INVESTMENT SOLICITATION AND INVESTMENT-TAKING WITHOUT A SECONDARY LICENSE FROM THIS COMMISSION."**

Nonetheless, the purpose stated in the Articles of Incorporation need not set out with particularity the multitude of activities in which the partnership may engage. The effect of broad purposes or objects is to confer wide discretionary authority upon the partners or management of the partnership as to the kinds of business in which it may engage. However, ***dealings which are entirely irrelevant*** to the purposes are unauthorized and called ***<u>ultra vires</u>***. The purpose clause of the articles of incorporation indicates the extent as well as the limitations of the powers which a corporation or partnership may exercise. In fact, the purpose of **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** in its Articles of Incorporation ***prohibited it to operate an investment-taking scheme***.

Section 44 of the Revised Corporation Code of the Philippines, 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."

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

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

> the corporation. Hence, the primary purpose determines its classification."

Likewise, the Certificates of Registration issued to **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** explicitly states that:

> "This Certification **DOES NOT AUTHORIZE INVESTMENT SOLICITATION AND INVESTMENT-TAKING WITHOUT A SECONDARY LICENSE FROM THIS COMMISSION."**

The act of against **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** through its affiliates in allowing certain persons acting as their agents or representatives to make public presentations of their investment scheme, inviting the public to invest in the companies through social media renders it liable for the unauthorized public offering of securities and the misrepresentation committed in connection with such public offering.

Likewise, the investment scheme of respondents **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** promising a return of 3-5% per day 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[2] 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.

---

[2] Actually, postal reply coupons

Necessarily, Ponzi schemes only last weeks, or months at the most." (Underscoring added for emphasis)

The investment scheme of **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** also operates to defraud investors as it deceives the investing public by making it appear that it has the authority to deal in securities. This also amounts to serious misrepresentation as to what they can do or are doing to the damage and prejudice of the investing public.

Under Section 6 of Presidential Decree 902-A, the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations on the ground of serious misrepresentation as to what the corporation can do or is doing 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:

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[3] 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

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

> that the Commission implements but do not fall under their respective original authority."

Further, in SEC Admin Case No. 11-10-124 entitled *In re: PHILBIO Renewable Energy Resources Corp.*, promulgated on 27 April 2016, the Commission provided 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."*

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."

Considering that nowhere is it stated in the primary purpose of **INTIME IMPORT AND EXPORT (L.L.C.) CORPORATION** that it is authorized to engage in the selling or offering for sale of securities to the public, compounded by the fact that it does not have the required Secondary License from the Commission to offer or sell securities to the public, its activity of selling or offering to the public securities or investment contracts 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.

WHEREFORE, for violation of Section 44 of the Revised Corporation Code of the Philippines (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 Certificate of Incorporation and the registration of **INTIME IMPORT AND EXPORT (L.L.C.) 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 partnership on file with the Commission. Further, the Information and Communications Technology Department (ICTD) of this Commission is likewise requested to enter the "*revoked*" status of Subject Corporation in the online database of the Commission.

SO ORDERED

Pasay City, 3 June 2022.

OLIVER O. LEONARDO
Director