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

IN THE MATTER OF:

NEW SEATAOO CORPORATION AND SEATAOO INFORMATION TECHNOLOGY OPC,

NEW SEATAOO CORPORATION,
Appellants,

SEC En Banc Case No. 06-24-547
Promulgated: 26 December 2024

-versus-

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),
Appellee.

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DECISION

Before the Commission *En Banc* (the "Commission") is the *Memorandum of Appeal* dated 19 June 2024 (the "Appeal") filed by New Seataoo Corporation and Seataoo Information Technology OPC (collectively referred to as the "Appellants" or "Seataoo") praying that the Commission *(i)* conducts a hearing and allows Seataoo to present its business model and submit documents in support of its position that it is not soliciting investments from the public without the license;[1] *(ii)* allows or accepts, pending appeal, Seataoo's payment of the fine imposed in the amount of Two Million Pesos (Php2,000,000.00) to serve as a bond in the instant case;[2] *(iii)* issues an order expressly allowing Seataoo to continue its operation for a period of not less than ninety (90) to one hundred twenty (120) days, pending finality and entry of judgment of the assailed orders against it;[3] *(iv)* removes the notice posted in the SEC website and other online websites and/or platforms, announcing the revocation of registration of New Seataoo Corporation;[4] and (v) after due hearing, reverses and sets aside the Revocation Order dated 10 May 2024 (the

[1] *Memorandum of Appeal* dated 19 June 2024 (Appeal). p. 14.
[2] *Ibid.*
[3] *Ibid.*
[4] *Ibid.*

"Revocation Order") and Order dated 5 June 2024 issued by the Enforcement and Investors Protection Department ("EIPD").[5] The dispositive portion of the Revocation Order reads:

> "**WHEREFORE,** for violations of Section 44 of the Revised Corporation Code of the Philippines (R.A. 11232), Sections 8.1, 26.1 and 28.1 of the Securities Regulations Code, Section 11 of the Financial Products and Services Consumer Protection Act, P.D. 902-A in relation to Section 179 (j) of the RCCP and Section 5.1 (m) of the SRC, the Certificate of Incorporation and registration of **SEATAOO** as a corporation, is hereby **REVOKED.**
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> Further, Section 54 of the Securities Regulation Code provides:
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>> Sec. 54. Administrative Sanctions.- 54.1. If, after due notice and hearing, the Commission finds that: (1) There is a violation of this Code, its rules, or its orders; xxx it shall, in its discretion, impose any or all of the following sanctions as may be appropriate in the light of the facts and circumstances:
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>> xxx.
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>> (ii) A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation;
>>
>> xxx."
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> Hence, a fine of **ONE MILLION PESOS (P1,000,000.00)** is hereby imposed against **SEATAOO** for offering securities to the public

[5] *Ibid.*

without prior registration and license from the Commission and SEATAOO its incorporators and directors are directed to pay the fine of **One Million Pesos (P1,000,000.00)** pursuant to Section 54.1 (ii) of the SRC within a period of Fifteen (15) days from receipt of this Order.

Accordingly, let this Order be posted on the SEC website and attached by the Corporate Filing 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 this Commission is likewise requested to enter the ***"revoked"*** status of subject corporation in the online database of the Commission.

SO ORDERED."[6]

THE PARTIES

Appellant New Seataoo Corporation is a corporation duly organized and existing under Philippine laws having been issued Certificate of Incorporation bearing registration No. 2023050098912-03 on 12 May 2023. Its principal business address as stated in its Articles of Incorporation (AOI) is at 12F, Cocolight Building, 11th Avenue, Fort Bonifacio, Taguig City.

Appellant Seataoo Information Technology OPC is a corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation bearing registration No. 2022100070764-07 on 04 October 2022. Mr. Jayson Corono Clidoro is the sole stockholder thereof.

Appellant-Intervenors are members/online sellers who joined Seataoo 's e-commerce dropshipping business platform.

[6] *Revocation Order* dated 10 May 2024. See Dispositive portion (page 15)

RELEVANT FACTS

Beginning April 2023, the EIPD received numerous inquiries and information regarding the unauthorized investment-solicitation activities of Seataoo which prompted the conduct of a formal investigation on the companies and their operations.

The information and data obtained by the EIPD during the conduct of its investigation confirmed that Seataoo has been representing itself to the public as a leading online cross-border e-commerce platform that provides a seamless and secure online shopping experience to customers worldwide. In the Philippines, Seataoo claims to operate a platform that offers e-commers and "drop shipping" services[7] which enables users to become members/online sellers by creating their own online shop using its platform, and sell products from Seataoo's product warehouse solution, or their own products.[8]

The EIPD carefully scrutinized the business scheme of Seataoo and concluded, based on the information and evidence obtained during the investigation that Seataoo is engaged in the offer/sale of unregistered securities without the required license. The EIPD found that all the elements of an investment contract are present in the business scheme or transaction that Seataoo is carrying out.[9] In particular, by requiring the sellers to pay upfront for the purchases made by their purported buyers, and subsequently paying such sellers the amount that they advance together with the profits, Seataoo is clearly dealing with investment contracts.[10] Considering that Seataoo has no license to act as broker/dealer of securities, and has not caused the registration of any securities, Seataoo is in violation of Sections 8, 26 and 28 of the Securities Regulation Code (SRC), Section 11 of R.A. No. 11765 or the Financial Products and Services Consumer Protection Act (FCPA), and PD 902-A in relation to Section 179(j) of the Revised Corporation Code (RCC).

On the basis thereof, the EIPD issued a Show Cause Order on 22 March 2024, directing Seataoo 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, pursuant to Section 6(i)(2) of PD 902-A.

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[7] *Appeal.* Par. 5
[8] *Ibid.* Par. 8
[9] *Revocation Order* dated 10 May 2024. Page 9
[10] *Ibid.* page 10

In its Verified Answer dated 3 April 2024[11], Seataoo denied that it is soliciting investments from the public. It maintained that it operates an e-commerce platform where its sellers can carry out their retail business using the dropshipping business model. Thus, the monies which the sellers are depositing in Seataoo's account are not investments, but represent the purchase price of products allegedly bought by the customers which is advanced by the sellers to be paid to the suppliers.

During the clarificatory conferences[12] that were conducted, Seataoo was given ample opportunity to present its business model, and show that it is not engaged in the unauthorized offer/sale of unregistered securities. However, the authorized representatives of Seataoo who were present during the said conferences failed to present controverting evidence and overcome the initial findings of the EIPD. The EIPD found that Seataoo's unnotarized lease contract with Flashline Global Logistic Corporation relating to the establishment of a smart warehouse[13] which it submitted in evidence did not negate the fact that it was engaged in the offer/sale of unregistered securities.

Thus, on 10 June 2024, the EIPD issued the assailed Revocation Order.

The Motion for Reconsideration which Seataoo filed on 31 May 2024 was denied by the EIPD in its Order dated 5 June 2024. In sustaining the Revocation Order, the EIPD ruled that Seataoo failed to contradict (and even confirmed and validated) its findings. The EIPD maintained that Seataoo's resort to the law on contract in support of its defense was a ploy to digress from the main issue i.e. the offer/sale of unregistered securities.

Hence, the instant Appeal.

The arguments propounded by Seataoo in the Appeal, which essentially are reiterations of its arguments and allegations contained in the pleadings filed with the EIPD, can be summarized as follows:

> First, it does not offer/sell securities in the form of investment contracts to the public. Seataoo maintains that under its existing dropshipping model, it merely facilitates sale transactions through its app between buyers, sellers, and suppliers, manufacturers or

[11] *Verified Answer* for New Seataoo Corporation dated 3 April 2024.
[12] Held on 23 April 2024 and 30 April 2024
[13] Verified Answer for New Seataoo Corporation. See par. 7

wholesalers. The only time that it receives money is when a buyer purchases from a seller, and when a seller needs to purchase from a supplier, manufacturer or wholesaler, since users of its platform are allegedly not required to pay for their membership in the app.[14] This money received, according to Seataoo, is not an investment, but payment for goods purchased.

Second, it is not involved in a ponzi scheme. Seataoo claims that the Affiliate Program is a marketing strategy that seeks to give additional perks or incentives to its users for successfully marketing/promoting the platform. The 3% commission is earned by the referrer for every successful sale of its referral.[15]

Finally, Seataoo claims that it did not commit fraud which warrants the revocation of its primary franchise. In support thereof, Seataoo argued that the absence of any complaint alleging that it has defrauded the public renders the Order of Revocation baseless.

In its Comment/Opposition dated 17 July 2024, the EIPD maintained that the Appeal is dismissible as Seataoo merely reiterated its arguments and allegations in the Motion for Reconsideration[16], which failed to raise any substantial argument that would warrant the lifting of the Revocation Order. The EIPD maintained its finding that Seataoo is offering/selling unregistered securities in the form of investment contracts to the public, is carrying out a *ponzi* scheme, and is defrauding the public[17] as shown by its advertisements on social media.

On 18 November 2024, a Petition was filed by Appellant-Intervenors[18] who all sought to be allowed to participate in the proceedings of the instant case, and prayed for the reversal and setting aside of the assailed Revocation Order. Appellant-Intervenors allege that they are online sellers who joined Seataoo's business platform, who will be greatly aggrieved and prejudiced by the Revocation Order which resulted in their alleged inability to withdraw money from their banks range from around P200,000.00 to P3Million.[19]

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[14] Appeal. Pages 9 and 10
[15] *Ibid.* page 12
[16] *Comment/Opposition,* p.1.
[17] *Id,* pp.2-7.
[18] Heidi D. Oquindo, Henry T. Chua, Irene S. Dimacali, Liwayway M. Movilla, Jason M. Borja, Hazel Marie D. Mawawan, Sonia A. Baldono, Ma. Dolores E. Ladaran, Shiena Mae F. Bejo, Marf L. Cataneda, Shyla Amor C. Castaneda, Fairodz A. Alonto, Perlita L. Petilla, Sergio V. Venida, Jr., Maria Theresa G. Francisco, Aldrin D. Gabreza, Arielle Marie S. Vallido, Criselle V. Baugbog, Maria Freddilyn C. Garcia, Maria Luisa V. Roa, Reynante P. Valenzuela and Eriquito C. Aquino.
[19] *Petition dated 15 November 2024.* Pars. 9 and 10. See also Annex A, A-1, A-2

In compliance with the Order issued by this Commission, the EIPD submitted its Position Paper dated 20 November 2024 which essentially reiterated its previous arguments and allegations. Seataoo did not file its position paper.

ISSUE

The sole issue presented to this Commission is whether the EIPD committed reversible error in revoking the Certificate of Incorporation of Seataoo for violating Sections 8, 26 and 28 of the SRC, Section 11 of the FCPA, and PD 902-A in relation to Section 179(j) of the RCC.

RULING

We find the Appeal to be bereft of merit.

A corporation, being endowed with a personality separate and distinct from the stockholders/members composing it, is recognized practically in all jurisdictions as the preferred vehicle in conducting, maintaining, developing and growing a business enterprise because of its legal, operational and practical advantages, compared to other business media. Under Republic Act No. 11232, otherwise known as the Revised Corporation Code (RCC), a corporation enjoys, among others, a right of succession[20] which facilitates its continued existence independently of its shareholders, and has the powers expressly granted by law[21], its Articles of Incorporation (AoI), and/or incident to its existence. This was explained in *University of Mindanao, Inc. vs Bangko Sentral ng Pilipinas*[22], to wit:

> "Corporations are artificial entities granted legal personalities upon their creation by their incorporators in accordance with law. Unlike natural persons, they have no inherent powers. Third persons dealing with corporations cannot assume that corporations have powers. It is up to those persons dealing with corporations to determine their competence as expressly defined by the law and their articles of incorporation.

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[20] Section 2 of the Corporation Code
[21] Sections 35 to 43 of the RCC
[22] G.R. No. 194964-65, January 11, 2016

> A corporation may exercise its powers only within those definitions. Corporate acts that are outside those express definitions under the law or articles of incorporation or those "committed outside the object for which a corporation is created" are ultra vires.
>
> The only exception to this rule is when acts are necessary and incidental to carry out a corporation's purposes, and to the exercise of powers conferred by the Corporation Code and under a corporation's articles of incorporation. This exception is specifically included in the general powers of a corporation under Section 36 of the Corporation Code."

The grant of corporate existence, and the continued enjoyment by the corporation of such privilege is therefore conditioned on the grantee's full compliance with all applicable laws, rules and regulations. Stated otherwise, incorporation is not a right that persons can demand from the State, but a mere privilege granted to those that are able to show, to the satisfaction of the Commission which administers and implements the Corporation Code, that all the statutory/regulatory requirements have been complied with.

The foregoing notwithstanding, the approval of the application for incorporation and the issuance of the certificate of incorporation based on the documents presented, is not a guarantee that such certificate will no longer be questioned or assailed for failure to comply with applicable laws, rules or regulations. In other words, the obligation of a corporation to comply with statutory/regulatory requirements commences from the time that its incorporators file the application for incorporation, and continues while it exists as a corporate entity. The Commission is mandated to ensure and exact full compliance of all statutory/regulatory requirements. Thus, if the Commission subsequently finds, *motu proprio* or through a complaint, that a corporation has violated any law, rule or regulation, and/or failed to comply with the same while its corporate term subsists, the Commission is duty-bound to impose the appropriate penalties, including the ultimate penalty of revocation, if warranted.[23]

Relative thereto, Section 6(i)(1) of Presidential Decree No. 902-A categorically granted the Commission the power and authority to revoke the certificate of registration of corporations on any of the grounds provided therein, including serious misrepresentation as to what the

[23] Section 179 (c), (j), and (p) of the RCC

corporation can do or is doing to the great prejudice of or damage to the general public, to wit:

> "**Section 6.** In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> xxx xxx xxx
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> 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:
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> 1. Fraud in procuring its certificate of registration;
> 2. **Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public**;
> 3. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;
> 4. Continuous in operation for a period of at least five (5) years;
> 5. Failure to file by-laws within the required period;
> 6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period; xxx"

In our jurisdiction, the serious misrepresentation contemplated in the afore-quoted provision which will warrant the revocation of a corporate franchise are those ultra vires acts that are classified as illegal, to wit:

> "An ultra vires act may be classified as either illegal or merely ultra vires. **The former contemplates the doing of an act which is contrary to law, morals, or public order, or one that contravenes some rules of public policy or public duty, and is, like similar transactions between individuals, void.** It cannot serve as a basis of a court action, nor acquire validity by performance, ratification, or estoppel. On the other hand, a mere ultra vires act is that which is not illegal and void ab initio, but is merely outside of the scope of the articles of incorporation, and is thus, merely voidable and

may become binding and enforceable when ratified by the stockholders."[24] (Emphasis and underscoring supplied)

In the case of Maria Clara Pirovana vs The De La Rama Steamship Co.[25], the Supreme Court emphasized that only *ultra vires* acts that are not illegal may be ratified by the stockholders since they are not considered void, to wit:

> "It is true that there are authorities which told that *ultra vires* acts, or those performed beyond the powers conferred upon the corporation either by law or by its articles of incorporation, are not only voidable, but wholly void and of no legal effect, and that such acts cannot be validated by ratification or be the basis of any action in court; but such ruling does not constitute the weight of authority, the reason being that they fail to make the important distinction we have above adverted to. Because rule has been rejected by most of the state courts and even by the modern treaties or corporations (7 Flethcer, Cyc. Corps., 563-564). **And now it can be said that the majority of the cases hold that acts which are merely *ultra vires*, or acts which are not illegal, may be ratified by the stockholders of a corporation** (Brooklyn Heights R. Co. vs. Brooklyn City R. Co., 135 N.Y. Supp. 1001).
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> Strictly speaking, an act of a corporation outside of its character powers is just as such *ultra vires* where all the stockholders consent thereto as in a case where none of the stockholders expressly or cannot be ratified so as to make it valid, even though all the stockholders consent thereto; but inasmuch as the stockholders in reality constitute the corporation, it should, it would seem, be estopped to allege *ultra vires*, and *it is generally so held where there are no creditors, or the creditors are not injured thereby, and where the rights of the state or the public are not involved, unless the act is not only ultra vires but in addition illegal and void*. of course, such consent of all the stockholders cannot adversely affect creditors of the corporation nor preclude a proper attack by the state because of such *ultra vires* act. (7 Fletcher Corp., Sec. 3432, p. 585)

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[24] Waterfront Philippines, Inc. vs SSS (G.R. No. 249337. July 6, 2021)
[25] G.R. No. L-5377. December 29, 1954

> Since it is not contended that the donation under consideration is illegal, or contrary to any of the express provision of the articles of incorporation, nor prejudicial to the creditors of the defendant corporation, we cannot but logically conclude, on the strength of the authorities we have quoted above, that said donation, even if *ultra vires* in the supposition we have adverted to, is not void, and if voidable its infirmity has been cured by ratification and subsequent act." (Emphasis supplied)

Thus, in the case of Kapa-Community Ministry International, Inc. vs EIPD of the SEC[26], the Supreme Court sustained the revocation of the primary franchise of Kapa which was found to have carried out an unlawful and fraudulent investment-taking scheme, in violation of the Securities Regulation Code. The Supreme Court affirmed the finding of the Court of Appeals, to wit:

> "It is undisputed that petitioner failed to apply for the registration of the afore-cited securities and is not authorized to offer or sell the same to the public. The recruitment and solicitation activities of petitioner constitute a violation of the Securities Regulation Code. Petitioner cannot deny that they only asked for "donations" for their religious organization and to support their charitable activities when they are promising a return of profit at the rate of 30% monthly to its members. The investment scheme of petitioner operates as a fraud to the investing public."

In the instant case, the EIPD found that Seataoo is engaged in the offer/sale of unregistered securities without the requisite license from the Commission, in violation of the SRC and the FCPA. This is a ground for the revocation of Seataoo's franchise as this is an *ultra vires* act that is illegal, and which cannot be ratified by its shareholders.

Seataoo denies having been engaged in the offer/sale of unregistered securities to the public, and maintained that its business which employs the dropshipping model, facilitates sale transactions through its app between buyers, sellers, and suppliers, manufacturers or wholesalers. Thus, the money received from its sellers is not an investment, but payment for goods purchased.

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[26] G.R. No. 259600. July 27, 2022

After carefully considering the evidence on record, We agree with the EIPD that Seataoo is offering/selling unregistered securities without license from the Commission.

Section 3.1 of the SRC, defines "securities" as follows:

> Sec. 3. Definition of Terms. – 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:
>
> "xxx
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> i. Shares of stocks, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;
>
> ii. **Investment contracts**, certificates of interest or participation in a profit-sharing agreement, certificates of deposit for a future subscription. (Emphasis supplied)

Relatedly, Rule 26.3.5 of the Implementing Rules and Regulations of the SRC (SRC-IRR) defines an "investment contract" as follows:

> "An investment contract means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others. **It is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits**." (Emphasis and underscoring supplied)

In the case of *SEC v. Howey Co.*, the US Supreme Court defined an investment contract as a contract or scheme for the placing of capital or laying out of money in a way intended to secure income or profit from its employment.[27] Investment contracts have been used and adopted in various situations where individuals were led to invest money in a common enterprise with the expectation that they would earn a profit through the efforts of the promoter or of someone other than themselves.[28] It is in the context of the foregoing that the U.S. Supreme

[27] 328 U.S. 293 (1946).

[28] *Ibid.* Although the definition as stated in the Howey Case qualified that the earning of profit was expected to be solely through the efforts of another party, Rule 26.3 of the 2015 IRR of the SRC replaced the qualifier with *"primarily"*, acknowledging that an investment contract may still be present where the individual who placed the money exerted a small amount of effort in an attempt to earn the profits.

Court came up with and adopted the *Howey Test*[29] in determining if an investment scheme, regardless of the legal terminology used, partakes of the nature of an investment contract.

At the outset, We cannot overemphasize that the SRC, which was patterned from the securities laws of USA, has adopted a broad definition of securities with the intent of covering practically all forms and varieties thereof which are known or considered, or ought to be known or considered, to be such in the commercial/financial world. The Supreme Court emphasized this in the case of *Gabionza vs. Court of Appeals*[30] (the "Gabionza Case"), when it ruled that the term "securities" embodies a flexible rather than static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek to use the money of others on the promise of profits.

In the US Case, *Securities and Exchange Commission v Joiner Leasing Corp*[31], it was explained that the controlling test to determine whether an instrument is a security is the attribution given in commerce based on the terms thereof, to wit:

> "In applying acts of this general purpose, the courts have not been guided by the nature of the assets back of a particular document or offering. <u>The test, rather, is what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect.</u> In the enforcement of an act such as this, it is not inappropriate that promoters' offerings be judged as being what they were represented to be." (Emphasis added)

In *Virata v. Ng Wee*[32], the Supreme Court affirmed and reiterated the applicability of the Howey Test in determining if a security is an investment contract that requires prior registration from the Commission, to wit:

> "<u>In this jurisdiction, the Court employs the Howey test</u>, named after the landmark case of Securities and Exchange Commission v. W.J. Howey Co., <u>to determine whether or not the security being offered takes the form of an investment contract. The case served as the foundation for the domestic</u>

[29] *Ibid.*
[30] G. R. No. 161057, 12 September 2008.
[31] 320 U.S. 344 (1943).
[32] G.R. Nos. 220926, 221058, 221109, 221135 & 221218, July 5, 2017.

> definition of the said security.
>
> Under the Howey test, the following must concur for an investment contract to exist: (1) a contract, transaction, or scheme; (2) an investment of money; (3) investment is made in a common enterprise; (4) expectation of profits; and (5) profits arising primarily from the efforts of others. Indubitably, all of the elements are present in the extant case." (Underscoring supplied)

Prescinding from the foregoing, the rule established in our jurisdiction is that the nomenclature given by the parties will not be recognized if, upon examination of the transaction, all the elements of the Howey Test are present, and/or if commerce will treat the same as securities based on the terms of the offer, the plan of distribution, and the economic inducements.

In the instant case, Seataoo's claim that its business does not involve the offer/sale of securities is belied and negated by the evidence submitted by the EIPD, its own admissions, as well as that of the Appellant-Intervenors; all of which shows that all the elements of the Howey Test are present.

> *First*, there is investment of money. The evidence shows that Seataoo requires its members or online sellers to deposit money into their individual account which, after a close scrutiny, actually goes to the main account of Seataoo. Seataoo's investors/online sellers are required to fund their Seataoo account upfront to enable them to process orders, even if, and regardless of whether a buyer has already placed an order, or paid for his/her purchase(s). This scheme affirms that the deposited funds are in reality, investments, since they are not limited to transactional payments directly tied to specific purchases. In fact, the complaints on record essentially relates to the claim of Seataoo's investors/online sellers for the return of their investments plus profits. In the same manner, the Appellant-Intervenors who seek the reinstatement of the primary franchise of Seataoo are simply essentially interested in recovering investments. This mandatory funding of individual accounts required of Seataoo's members/online sellers is a device used by Seataoo to mask its offer/sale of unregistered securities, and obtain investments from the public without having to secure the requisite license from the Commission.

The following circumstances which the evidence on record bears, corroborate the finding of the EIPD that there is investment of money by the public: (a) Seataoo's claim that the only time it receives money in its platform is when a buyer purchases from a seller, and when a seller needs to purchase from a supplier/manufacturer/wholesaler, is negated by the fact that investors/online sellers are required to fund their accounts upfront. In fact, the testimonies of its online sellers reveal that they keep funding their respective online wallets in amounts that are greatly disproportionate to the amounts of products purportedly ordered; (b) the advance payment arrangement between Seataoo and its investors/online sellers is different from a dropshipping model[33] which does not require advance payment of products ordered. Advancing payments actually defeats the purpose of engaging into dropshipping which allows sellers to do business with very little funds. Moreover, persons who dropship their products do not stock or fulfill those items themselves. They route them directly to manufacturers or wholesalers for direct shipment to customers once they receive customers' orders; and they do not pay for their items until they are purchased by customers[34]; and (c) in a dropshipping business model, the seller does not have to purchase the product unless she/she has already made a sale and has been paid by the buyer. The seller is not required to make an up-front investment[35] as she/he only acts as an intermediary between the customer and the supplier. The seller markets the products to potential buyers and only places an order after receiving payment from the customer. In a true dropshipping business arrangement, the sellers are not required to maintain funds in their online account upfront to process orders; the exact opposite is what is being carried out by Seataoo.

Second, the common enterprise in Seataoo's business scheme is evident by the fact that while its investors/online sellers have purported individual accounts, the moneys that were paid by these investors/online sellers goes directly to the account of Seataoo. The evidence shows that it is only after an investor/online seller has complied with the terms of the investment scheme will the original

[33] Dropshipping is selling online without stocking and shipping goods. It is a type of retail fulfillment business that outsources production, warehousing and shipping to a third-party supplier. A dropshipper is an intermediary between consumers and suppliers, curating and promoting the goods that suppliers ship to customers. In a normal retail process, a dropshipper is the seller. (see: https://wix.com/blog/ecommerce/amp/2020/02/dropshipping-guide-what-is-dropshipping?)

[34] *Ibid*

[35] The Ultimate Guide to Dropshipping By Mark Hayes, Andrew Youderian, 2013.

investment and the profit be credited to their individual account from the Seataoo account. Thus, when the banks froze the Seataoo account consequent to issuance of the Revocation Order, Seataoo's unauthorized grant investment scheme was disrupted because it was effectively prevented from paying and/or transferring cash to the individual accounts of its investors/online sellers. The individual wallets/accounts of its investors/online sellers however continued to be accessible to them.

The entire scheme where the investments of Seataoo's investors/online sellers are pooled and managed by the Seataoo under its own account is the common enterprise that is being sustained by such investments. Moreover, by giving its existing investors/online sellers a referral commission of 3%, Seataoo's continued operations is assured because of the infusion of investments from new investors/online sellers.

This Commission is also cognizant of Seataoo's failure to prove the link between the price of the products ordered to the funds being deposited by its investors/online sellers in its account. In a true dropshipping model, the customers pay the products ordered and the seller forwards the order together with the customer payment. The seller is but an intermediary of the customer to the supplier/manufacturer. In Seataoo's case, it is managing the funds of its members/online sellers without any connection to the products supposedly being sold online. In fact, it is alarming to note that nothing in the evidence on record shows that Seataoo has an existing agreement with manufacturers, suppliers or wholesaler of any product which means that the products offered in its app are but a sham. The EIPD was able to verify during its ocular inspection of Seataoo's warehouses that there were no actual products. Seataoo is clearly not operating the online app; it is effectively managing the common enterprise which involves the offer/sale of unregistered securities. Thus, after the Revocation Order was issued by the EIPD, the offices and warehouses of Seataoo became ghost towns as all its officers and employees have absconded are now nowhere to be found.

Third, there is an expectation of profits on the part of its investors/online sellers. The investors/online sellers are enticed to join by the prospect of earning profits ranging from 7% to 12% of the amounts they deposited to Seataoo's account regardless of the purchases made by the buyers. The records show that upon registration, a step that a seller needs to do to set up an account is to choose the profit margin and at least ten (10) products. There was no evidence that the monies sellers are required to deposit are even commensurate to the price of the products in their respective accounts, or that the seller knows how the mark-up chosen are computed. All the sellers are certain of is that they are required to fund their accounts otherwise the orders will not be processed and will not yield any profit. This is shown by the fact that the amounts of capital/monies deposited by its online sellers was earning substantial profits ranging from P200,000 to P3 Million.

Finally, Seataoo's dropshipping model allows investors members/online sellers to profit without doing anything other than to register, deposit and wait for the pay-out. It is Seataoo and its agents who does all the marketing and operational work. Thus, the seller's ability to earn profits is largely dependent on the efforts of Seataoo.

The foregoing is unlike a real dropshipping model which requires and allows a seller to concentrate on marketing and selling products as well as handle customer service having transferred the management of quality, inventory, storage and shipping to suppliers.

Considering that Seataoo has not even applied for, and has been issued the requisite licenses, a fact that this Commission can take administrative notice of based on its records, Seataoo is clearly in violation of Sections 8.1 and 28.1 of the SRC.

Seataoo's act of offering/selling unregistered securities without license from the Commission also constitutes investment fraud[36] as defined under the FCPA, which will warrant the revocation of its primary license pursuant to Sec. 16[37] thereof.

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[36] Sec. 3(f). Investment fraud refers to any form if deceptive solicitation of investments from the public. This includes Ponzi schemes and such other schemes involving the promise or offer of profits or returns which are sourced from the investments or contributions made by the investors themselves, boiling room operations, and the offering or selling of investment schemes to the public without a license or permit from the SEC, unless such offering or selling involves exempt securities or are considered as exempt transactions as provided for under existing laws;

[37] **Section 16.** *Administrative Sanctions.* - Without prejudice to the enforcement actions prescribed under Section 6(d) of this Act and the criminal sanctions provided under Section 15 of this Act, the administrative sanctions of the respective charters of the financial regulators shall be made applicable to a financial service provider, its directors, trustees, officers, employees or agents for violation of this Act or any related rules, regulations, orders or instructions of financial regulators; or to any persons found administratively liable for investment fraud: *Provided,* That for persons found responsible for investment fraud, the SEC may impose a fine of no less than Fifty thousand pesos (P50,000.00) nor more than Ten million pesos (P10,000,000.00) for each instance of investment fraud plus not more

At this juncture, it should be emphasized that Seataoo's Certificates of Incorporation expressly prohibits it from engaging in investment solicitation and investment-taking without secondary license from the Commission.[38] By offering/selling unregistered securities without the requisite license, Seataoo is not only performing an act or power that was not granted to it; worse, such *ultra vires* act is illegal as it clearly violates the SRC and FCPA.

Moreover, it is established in jurisprudence that the act of selling/offering unregistered securities in the form of investment contracts necessarily operates as a fraud on the investing public who are deceived into believing that Seataoo is authorized to deal with securities, when it is not. The foregoing finds affirmation in the case of *Securities and Exchange Commission vs. CJH Development Corp.*[39] to wit:

> "**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." (Emphasis supplied)

On account of the foregoing, we find and so hold that the revocation of Seataoo's Certificate of Incorporation is warranted 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.

Finally, coming now to the Petition filed by the Appellant-Intervenors, We find the same to be bereft of merit and basis.

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than Ten thousand pesos (P10,000.00) for each day of continuing violation in addition to the other administrative sanction under Section 54 of Republic Act No. 8799: *Provided,* further, That in case profit is gained or loss is avoided as a result of the violation of this Act or investment fraud, a fine not more than three (3) times the profit gained or loss avoided may also be imposed by the financial regulator: ***Provided,* finally, That in addition to the administrative sanctions that may be imposed, the authority of the financial service provider to operate in relation to a particular financial product or service may be suspended or cancelled by the financial regulator**."

[38] New Seataoo's Corporation and Seataoo Technology OPC

[39] G.R. No. 210316, November 28, 2016.

Lest it be forgotten, the instant case is an administrative action, as opposed to adjudicative action, where the EIPD revoked the Certificate of Incorporation of Seataoo 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. In the case of *SEC vs Universal Rightfield Property Holdings, Inc.*[40] the Supreme Court explained that the revocation of a license by this Commission is a regulatory action involving the withdrawal of a privilege granted by the State for failure on the part of the grantee to comply with the applicable laws, rules and regulations, to wit:

> "Rather, when the SEC exercises its incidental power to conduct administrative hearings and make decisions, it does so in the course of the performance of its regulatory and law enforcement function.
>
> Significantly, unlike in Globe Telecom, Inc. where the Court ruled that the fine imposed by the NTC without notice and hearing, was null and void due to the denial of petitioner's right to due process, **the revocation of URPHI's registration of securities and permit to sell them to the public cannot be considered a penalty but a withdrawal of a privilege, which regulatory power the SEC validly exercised after giving it due notice and opportunity to be heard.**" (Emphasis supplied)

The foregoing is anchored on the fundamental reality that corporations are creatures of law, and their continued existence is conditioned on their full compliance with all applicable laws, rules, regulations, as well as their articles of incorporation[41] and by-laws. This principle was explained in *Ago Realty and Development Corporation vs Dr. Ago*[42], to wit:

> "If there is one constant that has been observed from the introduction of the Spanish Code of Commerce to the enactment of the Revised Corporation Code, it is that "[c]orporations are creatures of the law." They owe their

[40] G.R. No. 181381. July 20, 2015

[41] The articles of incorporation is the basic corporate contract which is accorded with reverence by the law and the courts, as manifested by the stringent rules for its registration and the manner by which any part thereof may be amended. It is a contract between the corporation and the State, the stockholders and the state, and the corporation and its stockholders, the terms and contents of which are prescribed by law. (See Government of the Philippine Islands v. Manila Railroad Co., G.R. No. 30646, [January 30, 1929], 52 PHIL 699-703

[42] G.R. No. 210906. October 16, 2019

> existence to the sovereign powers of the State, exercised by the Legislature, which — by general law or, in certain instances, direct act — prescribes the manner of their formation or organization. Throughout their lifetimes, corporations are subject to a plethora of regulatory requirements, such as those involving annual reports, voting in stockholders' or directors' meetings, and, depending on the industry where the firm operates, limitations on foreign ownership. As so aptly put in *Ang Pue & Co., et al. v. Sec. of Comm. and Industry*, "**[t]o organize a corporation x x x is not a matter of absolute right but a privilege which may be enjoyed only under such terms as the State may deem necessary to impose**." (Emphasis supplied)

Thus, the SRC, RCC, and the FCPA, in relation to PD-902-A, specifically grants the Commission the power and authority to revoke, in an administrative action, the certificate of incorporation of a corporation that is guilty of serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public. In this regard, Part III, Rule II, Sec. 2-3 of the 2016 Rules of Procedure of the Securities and Exchange Commission (the "2016 SEC Rules") allows intervention **only** in adjudicative actions[43], to wit:

> **SEC.2-3. Intervention. -** A natural or juridical person may, at any stage of the proceedings, be permitted by the Commission *En Banc*, the Director of the Operating Department. or the Special Hearing Panel, as the case may be, **<u>to intervene in an adjudicative action</u> if he has a legal interest therein or when he is so situated as to be adversely affected by the decision of the Commission.** The said party may file a motion to intervene or oppose the adjudicative action, stating therein the reason for his intervention or opposition and attaching therein all relevant supporting documents and evidence.

The exclusion in the 2016 Rules of the remedy of intervention in administrative actions is not without purpose. In the exercise of its regulatory power to enforce compliance by corporations of the laws,

[43] **SEC.2-3. Intervention. -** A natural or juridical person may, at any stage of the proceedings, be permitted by the Commission *En Banc*, the Director of the Operating Department. or the Special Hearing Panel, as the case may be, to intervene in an adjudicative action **if he has a legal interest therein or when he is so situated as to be adversely affected by the decision of the Commission.** The said party may file a motion to intervene or oppose the adjudicative action, stating therein the reason for his intervention or opposition and attaching therein all relevant supporting documents and evidence. (Part III, Rule II, Sec. 2-3 of the SEC Rules of Procedure)

rules and regulations, and to impose the appropriate penalties for violating the same, persons are precluded from intervening in the proceedings on the administrative actions to ensure that the Commission is able to effectively perform its mandate of protecting investors and promoting the integrity of the capital market, among others.

The alleged interests of Appellant-Intervenors cannot negate a clear violation by Seataoo of the provisions of the SRC and the FCPA, and be used to justify the revocation of its franchise, which is the appropriate penalty given the attendant circumstances. The alleged interests and claims of Appellant-Intervenors against Seatoo cannot override public policy and public interest which are what is being upheld and promoted in the instant case for the protection of the investing public. If at all, Appellant-Intervenors' may avail of the remedy(ies) provided under the Civil Code of the Philippines and/or the FCPA.

WHEREFORE, premises considered, the *Memorandum of Appeal* dated 19 June 2024 is hereby **DENIED** for lack of merit. The Revocation Order dated 10 May 2024 issued by the EIPD is hereby **AFFIRMED IN TOTO**. The *Petition-in-Intervention* is hereby **DENIED** for lack of merit and basis.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

ROGELIO V. QUEVEDO
Commissioner