ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the matter of:

For: Revocation of Certificate of Incorporation

PETROMOBIL CORPORATION
Company Registration No. CS202004735
x--x

PETROMOBIL CORPORATION
4TH Floor, DY International Building, Malvar-San Marcelino Street, Barangay 695 Malate, City of Manila, NCR, Philippines, 1004

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Mangas I Alfonso, Cavite, Region IV-A, Philippines

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ORDER

This treats of the **Show Cause Order** issued by the Department on 12 November 2021 against PETROMOBIL CORPORATION directing the latter to show cause why its Certificate of Incorporation should not be revoked pursuant to Section 6(i)(2) of Presidential Decree No. 902-A for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public and for engaging in ultra vires acts in violation of the Revised Corporation Code of the Philippines and to show cause why no administrative sanction and/or criminal charges should be filed against PETROMOBIL CORPORATION and/or its incorporators, directors and officers for violation of the Securities and Regulation Code and other pertinent laws, rules and regulations of the Commission, including but not limited to disqualification from being a director of a corporation under Section 26 of the Revised Corporation Code of the Philippines.

RELEVANT FACTS:

PETROMOBIL CORPORATION was granted its Certificate of Registration by the Commission on 23 June 2020 with Company Registration No. CS202004735. It's Incorporators as stated in its Articles of Incorporation are the following:

Name	Citizenship	Residential Address
Jesser T. Cordova	Filipino	Unit 2819, Manila Residences, Bocobo Street, Barangay 666, Ermita, City of Manila, NCR, Philippines
Jeriz B. Ramos	Filipino	Unit 2819, Manila Residences, Bocobo Street, Barangay 666, Ermita, City of Manila, NCR, Philippines
Rema C. Macarilay	Filipino	Mangas I Alfonso, Cavite, Region IV-A, Philippines
Reynaldo L. Macarilay	Filipino	Mangas I Alfonso, Cavite, Region 4-A, Philippines
Liezel Nadine L. Toga	Filipino	10 Antique Street, Macaria Village, San Francisco, (Halang), City of Binan, Laguna, Region 4-A, Philippines

The primary purpose of **PETROMOBIL CORPORATION** as stated in its Articles of Incorporation is:

> *"To buy and sell petroleum-based products such as diesel, gasoline, kerosene, aviation gas, LPG, various kind of lubricants, car care products, where and when available and such other petroleum products; To operate, manage and carry out gasoline retail stations and such other services necessary, incidental and complementary to the business; To operate a convenience store and such other non-fuel related businesses that may complement the business of operating gasoline retail station and buy and sell such other merchandise, wares, goods and services that may complement the business activities in the said stations.*
>
> *Provided that the corporation* ***shall not solicit, accept or take investment/placement*** *from the public neither shall it issue investment contract".*

Sometime in October 2020, the Commission received information that individuals or group of persons representing **PETROMOBIL CORPORATION** was enticing the public to invest in the latter.

Based on reports from the public, **PETROMOBIL CORPORATION** is enticing the public to invest in the said entity by offering would-be investors a *Co-Ownership Program* for a minimum capital of Php 400,000.00 for a promise of receiving a conservative profit amounting to Php 100,000.00 within a period of 3 months and a chance to co-own 17 gas stations which the company was planning to build.

It was further reported that the 17 Gas Stations will be managed by **PETROMOBIL CORPORATION** and investors were promised to receive 60% of the net income which will be given on a quarterly basis. Likewise, **PETROMOBIL CORPORATION** promised to give would-be investors shares of stock which will be issued to each co-owner through a Deed of Assignment.

Furthermore, **PETROMOBIL CORPORATION** also offers would-be investors an Oil Importation Co-Ownership Program for a minimum capital of Php 500,000.00.

In its pdf. file document, **PETROMOBIL CORPORATION** enumerated what appears to be its offer to its would-be investors, such as; acceptance of 250 co-owners for the 17 stations program which will be protected by a premium surety insurance, Php 400,000.00 minimum capital, a Deed of Assignment to be given to all co-owners, a Convenience store, an autoboot (spare parts, lubricants, car maintenance service), 60% profits to its 250 co-owners and a promise of return of investment within a period of 2 years as can be seen in the herein below screenshot:

op/PETROMOBIL%20CORP.%20CASE/PETROMOBIL-NEW-17STATIONS.pdf

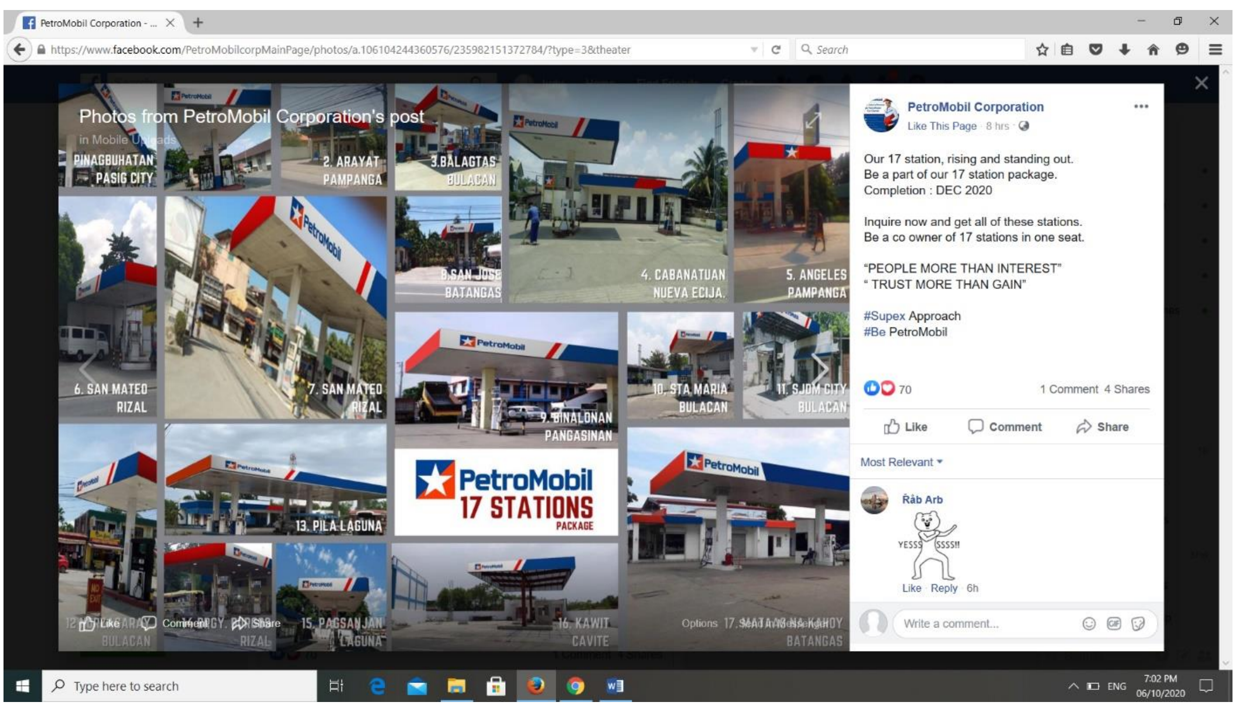
Page view | Read aloud | Draw

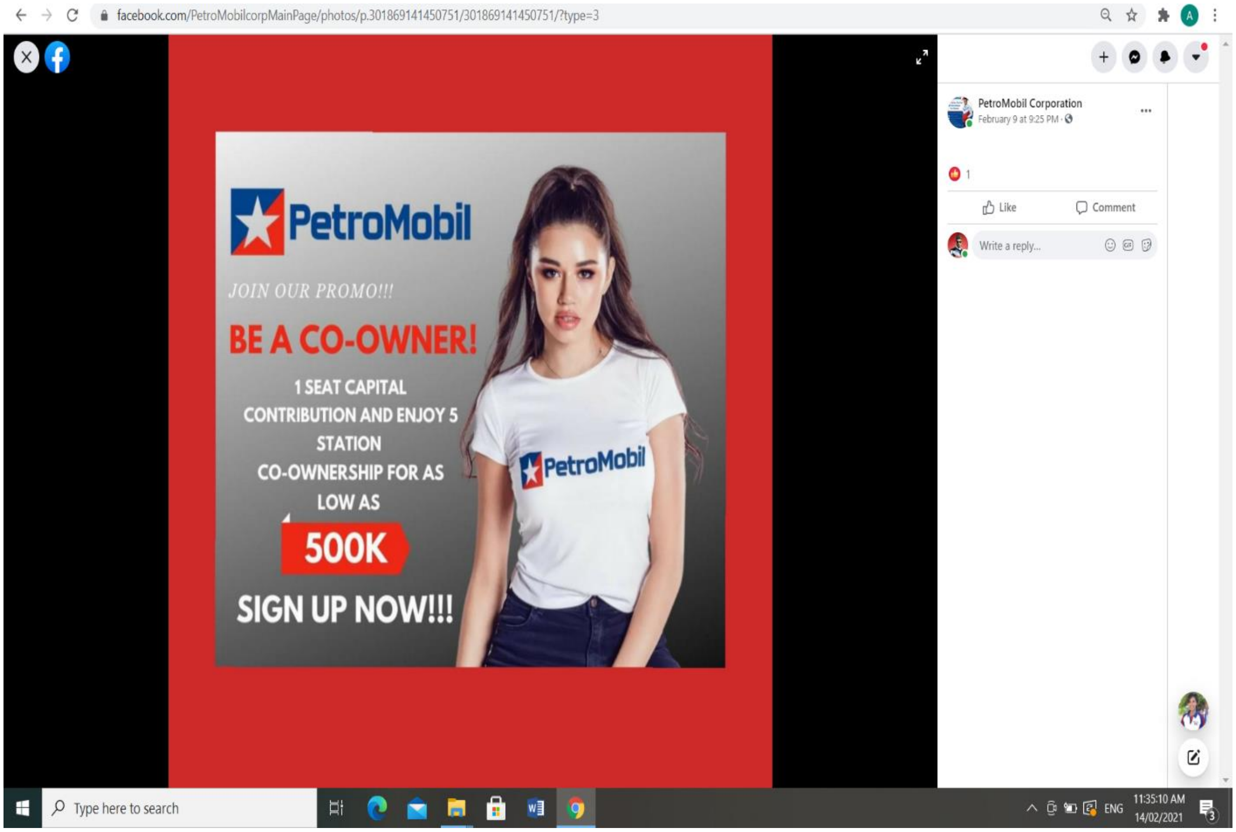
- LIFETIME CO-OWNERSHIP
- SEC REGISTERED
- PETROMOBIL WILL ACCEPT 250 CO-OWNERS FOR THE 17 STATIONS PROGRAM
- PROTECTED BY A PREMIUM SURETY INSURANCE
- CONVENIENCE STORE
- AUTOBOOT (SPARE PARTS, LUBRICANTS, CAR MAINTENANCE SERVICE)
- ALL BRANCHES WILL BE MANAGED BY PETROMOBIL
- 60% = 250 CO-OWNERS, 40% = PETROMOBIL
- ALL CO-OWNERS WILL BE GIVEN DEED OF ASSIGNMENT UNDER SEC REGULATIONS
- MINIMUM CAPITAL OF 400,000
- ACQUIRING OF MULTIPLE SEATS ALLOWED
- RETURN OF INVESTMENT IS WITHIN 2 YEARS TIME

PetroMobil

In the same document, **PETROMOBIL CORPORATION** illustrated its co-ownership program with a minimum capital of 400K per co-owner and its promise of giving co-owners a profit of 60% which will be divided among themselves. Below is a screenshot of the said illustration:

In its Facebook Page post, **PETROMOBIL CORPORATION** is inviting the public to invest and be a co-owner of its gas stations with 1 seat capital contribution for as low Php 500,000.00. Below are screenshots of the said FB posts:



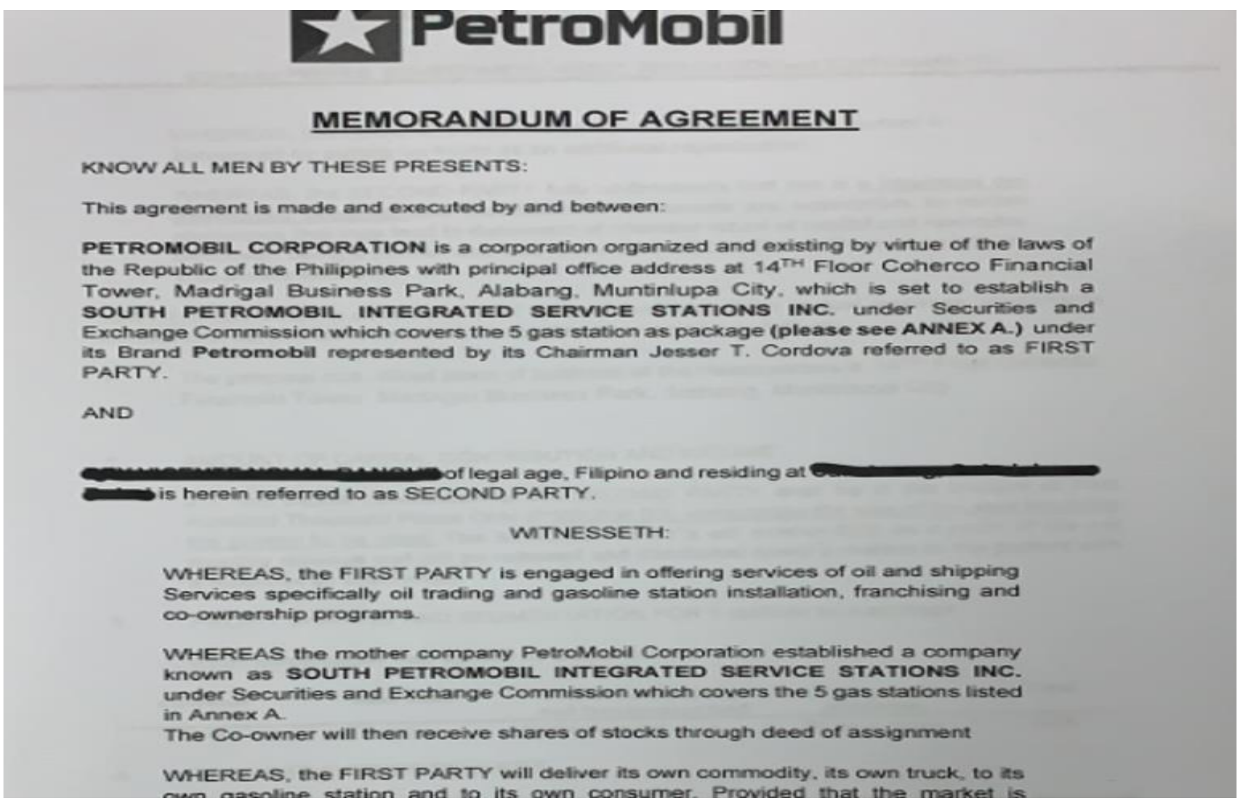


In the same FB Page, **PETROMOBIL CORPORATION** is enticing the public to be a vessel co-owner for only Php400,000.00. Below is a screenshot of the said FB post:

In an investigation conducted by the SEC Baguio Extension Office, it was reported that **PETROMOBIL CORPORATION** appears to be offering online a gasoline station co-ownership program which is similar to a scheme of a franchise agreement and promises investors of becoming a co-owner of operational gas stations with the following amenities such as Convenience Store, Coffee Shop, Water Refilling, Barbershop, Carwash, General Services, Lubricants and batteries, Bayad Center, 4 Dispenser Pumps, 12 Nozzles, 3.16 k ground tanks and 1000 sqm area.

In a Conference held on 8 June 2021, the EIPD gave instructions to **PETROMOBIL CORPORATION** thru its representative who introduced himself as Mr. Louie Lito Malit, to cease from offering its co-ownership program to the public and to stop posting such advertisement online considering that during the said conference, Mr. Malit voluntarily admitted to the team the company's mistake of making an online solicitation of investments without the necessary secondary license from the Commission and the cessation of the said business scheme pending approval of their application for a secondary license. Further, Mr. Malit sent an email clarifying that their investors are "co-franchisees or co-retailers" which means that a group of people will share in the capitalization for the gas stations. However, the contract **PETROMOBIL CORPORATION** is using is the same contract for co-ownership and it simply changed the terminology.

In a document entitled Memorandum of Agreement, **PETROMOBIL CORPORATION** guarantees that co-owners will receive shares of stocks through a Deed of Assignment. In the same document, it was stipulated that the capital contribution of a co-owner/partner shall be Php500,000.00 and the co-owner/partner will receive 60% as profit of the net monthly revenue which will be released and distributed every 3 months to the partner. Below are screenshots of the pertinent portions of the Memorandum of Agreement containing the subject stipulations:



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MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This agreement is made and executed by and between:

PETROMOBIL CORPORATION is a corporation organized and existing by virtue of the laws of the Republic of the Philippines with principal office address at 14TH Floor Coherco Financial Tower, Madrigal Business Park, Alabang, Muntinlupa City, which is set to establish a **SOUTH PETROMOBIL INTEGRATED SERVICE STATIONS INC.** under Securities and Exchange Commission which covers the 5 gas station as package **(please see ANNEX A.)** under its Brand **Petromobil** represented by its Chairman Jesser T. Cordova referred to as FIRST PARTY.

AND

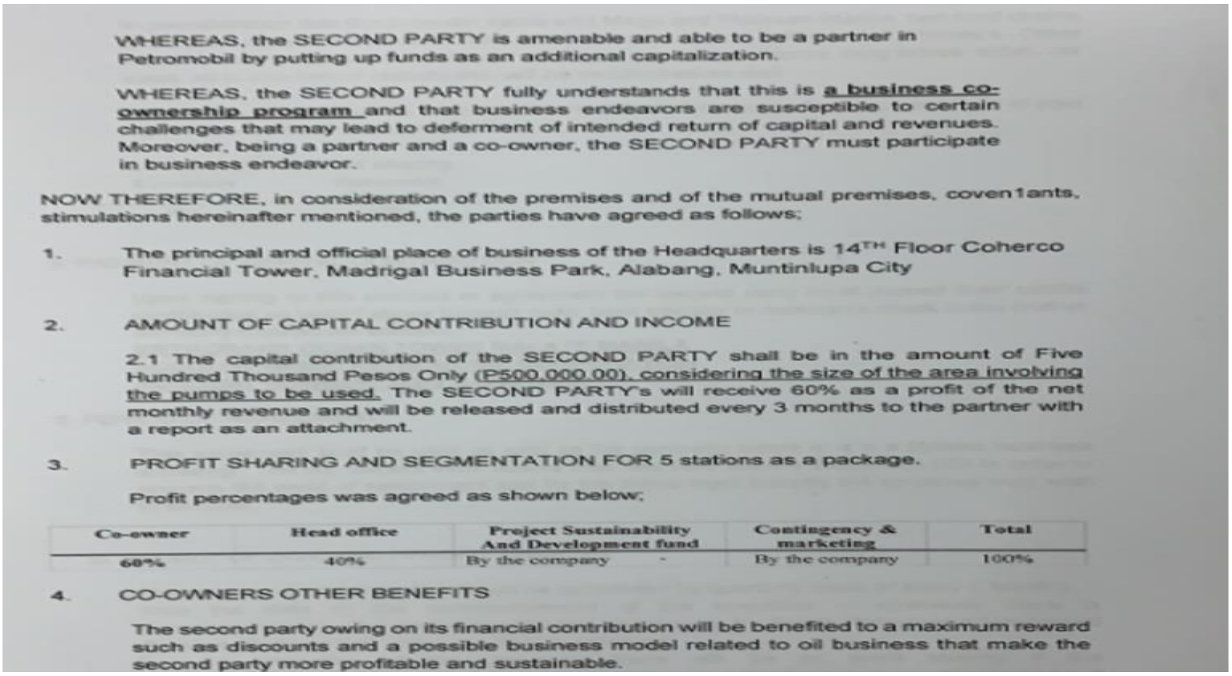
[redacted] of legal age, Filipino and residing at [redacted] is herein referred to as SECOND PARTY.

WITNESSETH:

WHEREAS, the FIRST PARTY is engaged in offering services of oil and shipping Services specifically oil trading and gasoline station installation, franchising and co-ownership programs.

WHEREAS the mother company PetroMobil Corporation established a company known as **SOUTH PETROMOBIL INTEGRATED SERVICE STATIONS INC.** under Securities and Exchange Commission which covers the 5 gas stations listed in Annex A.
The Co-owner will then receive shares of stocks through deed of assignment

WHEREAS, the FIRST PARTY will deliver its own commodity, its own truck, to its own gasoline station and to its own consumer. Provided that the market is



WHEREAS, the SECOND PARTY is amenable and able to be a partner in Petromobil by putting up funds as an additional capitalization.

WHEREAS, the SECOND PARTY fully understands that this is a business co-ownership program and that business endeavors are susceptible to certain challenges that may lead to deferment of intended return of capital and revenues. Moreover, being a partner and a co-owner, the SECOND PARTY must participate in business endeavor.

NOW THEREFORE, in consideration of the premises and of the mutual premises, coven1ants, stimulations hereinafter mentioned, the parties have agreed as follows;

1. The principal and official place of business of the Headquarters is 14TH Floor Coherco Financial Tower, Madrigal Business Park, Alabang, Muntinlupa City

2. AMOUNT OF CAPITAL CONTRIBUTION AND INCOME

2.1 The capital contribution of the SECOND PARTY shall be in the amount of Five Hundred Thousand Pesos Only (P500,000.00), considering the size of the area involving the pumps to be used. The SECOND PARTY's will receive 60% as a profit of the net monthly revenue and will be released and distributed every 3 months to the partner with a report as an attachment.

3. PROFIT SHARING AND SEGMENTATION FOR 5 stations as a package.

Profit percentages was agreed as shown below;

Co-owner	Head office	Project Sustainability And Development fund	Contingency & marketing	Total
60%	40%	By the company -	By the company	100%

4. CO-OWNERS OTHER BENEFITS

The second party owing on its financial contribution will be benefited to a maximum reward such as discounts and a possible business model related to oil business that make the second party more profitable and sustainable.

On 10 June 2021, **PETROMOBIL CORPORATION** posted an advertisement in its FB Page inviting the public to be a co-franchisee of 5 stations including a commercial establishment for a capital of Php 500,000.00. Below is a screenshot copy of the said FB post:

As earlier mentioned, **PETROMOBIL CORPORATION** is registered with the Commission. 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 to undertake business activities requiring a secondary license from the Commission.

Further, records of the Commission shows that **PETROMOBIL CORPORATION** is not authorized to solicit investments from the public as it did not secure prior registration and/or license to solicit investments from the Commission as prescribed under Section 8 of the Securities Regulation Code.

Apparently, despite being warned, **PETROMOBIL CORPORATION** did not stop its unauthorized operations of soliciting investments from the public and merely changed its advertisements from "co-ownership" to "co-franchisee" which has the same implications.

Consequently, on 01 July 2021, the Commission issued an SEC Advisory informing the public that **PETROMOBIL CORPORATION:**

> **"**xxx is not **AUTHORIZED** to solicit investments from the public as this entity did not secure prior registration and/or license to solicit investment from the Commission as prescribed under Section 8 of the Securities Regulation Code (SRC). Further, the public is advised to **STOP INVESTING** in the investment scheme being offered by **PETROMOBIL CORPORATION** or its **representatives.** Xxx"

On 7 July 2021, **PETROMOBIL CORPORATION** through its Chief Finance Officer Mr. Jonibeth Potolin, filed a *Position Paper* praying for the nullification of the SEC Advisory issued on 01 July 2021 against it or for the issuance of a new Advisory stating that **PETROMOBIL CORPORATION** is compliant with existing laws, rules and regulations. Further, **PETROMOBIL CORPORATION** requested that the instant case be set for a Preliminary Conference on 09 July 2021 at 10:00 o'clock in the morning or on such date and time most convenient to the EIPD.

On 16 August 2021, an Order was issued denying the respondent's prayer to nullify the SEC Advisory issued against **PETROMOBIL CORPORATION** or for the issuance of a new Advisory stating that **PETROMOBIL CORPORATION** is compliant with existing laws, rules and regulations. Likewise, the respondent's request for the setting of the instant case for a Preconference was denied, the dispositive portion of the said Order states:

> *"Wherefore, in view of the foregoing, the respondent's prayer to annul the SEC Advisory issued against **PETROMOBIL CORPORATION** on 01 July 2021 or the issuance of a new Advisory stating that **PETROMOBIL CORPORATION** is compliant with existing laws, rules and regulation is hereby denied.*
>
> *Likewise, the respondent's request for the setting of the instant case for a Preconference is denied, since a Conference regarding the instant case has already been conducted on 08 June 2021 where **PETROMOBIL CORPORATION** through their authorized representative has been given an opportunity to explain their business plan".*

In a Conference held on 5 October 2021, **PETROMOBIL CORPORATION** thru counsel, again contested the SEC Advisory dated 1 July 2021 issued against it allleging that the said Advisory does not apply to the company since it is not selling securities to the public and the company's old Business Model does not offer securities but just a mere convenor. **PETROMOBIL CORPORATION** stated that its current Business Model is to offer its gas station business to the public for franchising. Further, **PETROMOBIL CORPORATION** informed the EIPD of their company's intention to secure a secondary license from the Commission.

During the said Conference, **PETROMOBIL CORPORATION** through counsel, filed a Position Paper dated 23 August 2021 praying for the nullification of the SEC Advisory issued against **PETROMOBIL CORPORATION** on 01 July 2021 or for the issuance of a new Advisory stating that **PETROMOBIL CORPORATION** is compliant with existing laws, rules and regulations, the dispositive portions of which reads as follows:

> *"WHEREFORE, premises considered, it is respectfully prayed of this Honorable Department and the Commission to nullify its Advisory against **PETROMOBIL CORPORATION** dated July 1, 2021 or a new one be issued legitimizing its operation as not a violation of Section 8 of the Securities Regulations Act."*

On 08 October 2021, an Order was issued denying the respondent's prayer to nullify the SEC Advisory dated 01 July 2021 or the issuance of a new Advisory stating that **PETROMOBIL CORPORATION** is compliant with existing laws, rules and regulation, the dispositive portion of which reads as follows:

> *"Wherefore, in view of the foregoing, the respondent's prayer to annul the SEC Advisory issued against **PETROMOBIL CORPORATION** on 01 July 2021 or the issuance of a new Advisory stating that **PETROMOBIL CORPORATION** is compliant with existing laws, rules and regulation is hereby denied."*

On 12 November 2021, a ***Show Cause Order*** was issued against **PETROMOBIL CORPORATION** addressed to the company's registered principal office address, and to its stockholders-directors-incorporators, namely; Jesser T. Cordova, Jeriz B. Ramos, Rema C. Macarilay, Reynaldo L. Macarilay and Liezel Nadine L. Toga, ***directing the company to show cause why its Certificate of Incorporation should not be revoked pursuant to Section 6(i)(2) of Presidential Decree No. 902-A for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public and for engaging in ultra vires acts in violation of the Revised Corporation Code of the Philippines and to show cause why no administrative sanction and/or criminal charges should be filed against PETROMOBIL CORPORATION and/or its incorporators, directors and officers for violation of the Securities and Regulation Code and other pertinent laws, rules and regulations of the Commission, including but not limited to disqualification from being a director of a corporation under Section 26 of the Revised Corporation Code of the Philippines.***

In a Conference held on 24 November 2021, Counsels for **PETROMOBIL CORPORATION** appeared and presented a verified explanation in response to the Show Cause Order issued by the Department and a copy of the list of Co-Owners of **PETROMOBIL CORPORATION**. Further, counsels undertook to submit an Entry of Appearance with corresponding Board Resolution authorizing them to represent **PETROMOBIL CORPORATION** and to resubmit the list of **PETROMOBIL CORPORATION**'s investors specifying therein the programs availed of by the investors and the amount invested on or before 09 December 2021.

During the said Conference, **PETROMOBIL CORPORATION** through counsel, filed a Verified Explanation acknowledging the mistakes that the company has committed and admitted that its actions were against the SEC Reorganization Act and the Securities Regulation Code. Further, **PETROMOBIL CORPORATION** prayed for the following:

1. The actions of past counsel and Chief Financial Officer Potolin, not be taken against **PETROMOBIL CORPORATION**;

2. The SEC make a computation of the penalties due from **PETROMOBIL CORPORATION** in order that payment of the same be made at the soonest possible time;

3. That their arguments be considered and that the SEC desist from filing administrative or criminal charges against the **PETROMOBIL CORPORATION** and its incorporators, directors and officers; and

4. That their arguments be considered and that the SEC desist from revoking the Certification of Incorporation of **PETROMOBIL CORPORATION**.

On 03 December 2021, Respondent submitted a document containing **PETROMOBIL CORPORATION**'s list of co-owners including the program availed of by the investors and the amount of their investments.

On 05 January 2022, an Order was issued by the EIPD directing **PETROMOBIL CORPORATION** to submit within 15 days from receipt of the said Order the required company documents as discussed during the Conference held on 24 November 2021.

On 17 February 2022, an Order was issued directing **PETROMOBIL CORPORATION** to: (1) Submit, within Fifteen Days (15) from receipt of the said Order, an action plan for the return of the money of investors who wish to withdraw their investments from the company and proof that it has already settled the same; and (2) a complete list of its investors.

On 10 March 2022, the EIPD Order dated 17 February 2022 was sent to Respondent's counsel email address at coclawoffice@gmail.com and to one of its incorporator's email address at jerizramos1989@gmail.com, which is also the company's official email per records.

On 25 March 2022, the EIPD Order dated 17 February 2022 was validly served at the declared address of one of its incorporators, Reynaldo Macarilay. However, the said Order was not served at the company's address as the Department was informed that the company has already moved out of the building.

To this date, despite such receipt and presumptive notice of the EIPD Order dated 17 February 2022, Respondent failed to comply with the directive in the said Order.

Hence, we now resolve the instant matter on the basis of the documents submitted and the available evidence.

A perusal of the marketing and/or compensation plan of **PETROMOBIL CORPORATION** as advertised in its FB Page and PDF File document shows that is offering securities to the public in the form of investment contracts presented in the guise of offering a co-ownership and/or co-franchising program of the company's gas stations.

In other words, the compensation plan of promising investors or co-owners 60% profits as well as a return of investment within a period of 2 years being offered by **PETROMOBIL CORPORATION** to the public as stated in its PDF File document, partakes of the nature of securities in the form of an investment contract.

Section 3.1 of the Securities Regulation Code (SRC) defines securities as shares, participation or interest in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

(a) Shares of stocks, bonds, debentures, notes, evidences of indebtedness, asset backed securities;

(b) **Investment contracts**, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;

(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* (G.R. No. 164182 February 26, 2008) traced from the case of *SEC vs. Howey Co.* (66 S.Ct.1100 May 27, 1946) and was later modified in the case of *SEC vs. Glenn W. Turner Enterprises, Inc.* (474 F.2d476 February 1, 1973), as follows:

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

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 Page 11 of 14 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 an investment contract as defined under the SRC in relation to SRC Rule 26.3.5 of the 2015 SRC IRR, must be registered with the Commission pursuant to Sections 8 and 12 of the SRC before the same can be **offered or sold** or distributed.

Meanwhile, 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. "Salesman" is defined under 3.13 of the SRC as a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

Consequently, Section 28 of the SRC provides that:

> "SEC. 28. **Registration of Brokers, Dealers, Salesman and Associated Persons.** – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission."

Thus, any person, without proper registration or license from the Commission who acts as brokers, agents or salesmen 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.

In the instant case, the elements of an investment contract are present in the investments offered by **PETROMOBIL CORPORATION,** as follows:

- By investing in the company and investment scheme of **PETROMOBIL CORPORATION**, **the investor enters into a contract**;

- There is a **placement of money** by the public as they are enticed to invest in the company that represented to be engaged in a lucrative business;

- The money invested is placed in a **common enterprise**;

- The **investors expect to derive profits** as they are primarily attracted to join **PETROMOBIL CORPORATION** for a promise of receiving a 60% profits as well as a return of investment within a period of 2 years; and

- The investors expect to earn profits derived primarily form the efforts of others or from **PETROMOBIL CORPORATION.**

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

The business of the company is clearly set forth in the Articles of Incorporation of **PETROMOBIL CORPORATION** as follows:

> *"Primary Purpose: To buy and sell petroleum-based products such as diesel, gasoline, kerosene, aviation gas, LPG, various kind of lubricants, car care products, where and when available and such other petroleum products; To operate, manage and carry out gasoline retail stations and such other services necessary, incidental and complementary to the business; To operate a convenience store and such other non-fuel related businesses that may complement the business of operating gasoline retail station and buy and sell such other merchandise, wares, goods and services that may complement the business activities in the said stations.*
>
> *Provided that the corporation* ***shall not solicit, accept or take investment/placement from the public neither shall it issue investment contract****". (Emphasis supplied).*

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

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

> *"It is the corporation's primary purpose clause which confers, as well as limits, the powers which a corporation may exercise and the character of a corporation is usually determined by the objects*

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

> *of its formation and the nature of its business as stated in the articles. The primary purpose of the corporation, as stated in its articles of incorporation, is the first business to be undertaken by the corporation. Hence, the primary purpose determines its classification."*

Likewise, the Certificate of Registration issued to **PETROMOBIL CORPORATION**, explicitly states that:

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

Under Section 6 of Presidential Decree 902-A, the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration or corporations, partnerships and associations, on the ground of serious misrepresentation as to what the corporation can do or is doing to the to the great prejudice of or damage to the general public. Likewise, Section 5.1 (m) of the SRC and Section 179 (j) of the RCC 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 Securities and Exchange Commission, the EIPD shall exercise authority over persons and entities, whether under the primary authority of other Operating Departments, involved in the following:

> "1. Investigations and administrative actions involving the following:
>
> c) Selling, offering or transacting unregistered securities by entities without secondary license;

d) Ultra vires acts committed in violation of the Corporation Code;

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

3. Administrative actions for fraudulent transactions involving securities;

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

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

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

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

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 its primary purpose that **PETROMOBIL CORPORATION** is authorized to engage in the selling or offering for sale of securities to the public, the activity of **PETROMOBIL CORPORATION** of selling or offering for sale of investments through its co-ownership/co-franchisee program for its gas stations is considered an *ultra vires* act and therefore constitutes serious misrepresentation.

WHEREFORE, for violation of Section 44 of the Revised Corporation Code of the Philippines (R.A. 11232) in relation to Sections 8.1, 28.1 of the Securities Regulation Code, P.D. 902-A and Section 5.1 (m) and Section 179 (j) of the RCC, the Certificate of Incorporation and the registration of **PETROMOBIL CORPORATION** is hereby **REVOKED.**

Finally, in view of the Respondent's failure to comply or take any action with the directive of the EIPD in its Order dated 17 February 2022, the settlement offer made by **PETROMOBIL CORPORATION** is hereby DENIED.

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

SO ORDERED

Pasay City, 27 May 2022.

OLIVER O. LEONARDO
Director