



**Republic of the Philippines**  
**SECURITIES AND EXCHANGE COMMISSION**  
**SEC Building, EDSA, Greenhills, City of Mandaluyong**

In the Matter of:

**LEYTE COLLEGES, INC.**

SEC ADM. CASE NO. 11-07-199  
 (CED Case No. 07-2860)  
 For: Revocation of Certificate  
 of Registration

**COMPLIANCE AND ENFORCEMENT  
 DEPARTMENT,**

Petitioner

X-----X

## DECISION

Pending before the Commission is the Petition filed by the Compliance and Enforcement Department ("CED") seeking the revocation of the Certificate of Registration of Leyte Colleges, Inc. ("Leyte Colleges") on the ground of fraud and misrepresentation.

### STATEMENT OF FACTS AND PROCEEDINGS

The records disclose that Leyte Colleges, Inc. was incorporated on March 29, 2006 as evidenced by Company Registration Certificate No. CS 200605015 with an authorized capital of P10,000,000.00, of which P5,000,000.00 worth of shares was subscribed and fully paid.

As proof of payment for the subscribed shares, Amador A. Astilla, Sr. executed a Treasurer's Affidavit dated November 11, 2005 attesting to the fact that Five Million Pesos (Php 5,000,000.00) was deposited with the Development Bank of the Philippines (DBP), Tacloban Branch. The Bank Certificate dated December 14, 2005, acknowledged before a Notary Public on March 23, 2006 and issued by Bernardino E. Olayvar, Jr. of DBP (designation undisclosed) indicated that indeed P5,000,000.00 was on deposit with said bank under "Savings/Current Account No. 232-419-08118-5 in the name of Leyte Colleges, Inc., Treasurer-in-Trust for Amador A. Astilla, Sr. which is in the process of incorporation".

In a letter dated November 17, 2006, Mr. Octavio A. Astilla, a stockholder of Leyte Colleges questioned the registration of Leyte Colleges. To borrow the very language of Mr. Octavio Astilla in his letter of same date:

"The Leyte Colleges, Inc., existed as a nonstock corporation as early as June 1965 to expire on June 2015. Its expiry date was shortened to November 30, 2005.

In lieu thereof a stock corporation came into being with the same name. As a new stock corporation it must have Php5,000,000.00 as paid-up capital. However the Leyte Colleges could not raise up the amount. Thus the management cooked up a scheme that prove to be fraught with several badges of fraud:

Firstly, The savings/current account number 232-419-08118-5 is not carried by DBP. The series of nos. should have read 1-5-3-1 and not 3-3-5-1.

Secondly, the allegation that the Leyte Colleges is the Treasurer-in-Trust for Amador A. Astilla Sr., is incorrect. It should have read the other way round.

Thirdly, The certificate of deposit is dated December 14, 2005 at Tacloban City and yet it was notarized on March 23, 2006 at Quezon City.

Fourthly, The allegation that there is a deposit of P5,000,000.00 is false. At no time the old and new Leyte Colleges did succeed in depositing the full amount. In other words, the amount of Php5,000,000.00 is watered stock. Such situation the Honorable Commission thru its authorized representative could examine and verify the deposit in the Development Bank of the Philippines without notice and hearing. In the event that the certificate of deposit is bugos the honorable commission could rebuke the certificate of incorporation of the Leyte Colleges, also without notice and hearing."  
(Underscoring ours)

On February 20, 2007, the CED wrote Mr. Bernardino E. Olayvar, Jr. of DBP Tacloban Branch requesting that it be issued a certification on whether or not Leyte Colleges Inc. has an existing account with that branch. CED further requested that a certification be issued as to the authenticity of the bank certificate of Leyte Colleges.

On March 12, 2007, DBP Tacloban, through its Acting Branch Head, Ms. Lina E. Medalla, replied that Leyte Colleges has an existing Current Account deposit with the bank under Account No. 0-00096-775-1. Ms. Medalla also stated that she could not certify on the authenticity of the Bank certificate dated December 14, 2005 allegedly issued by Mr. Bernardino E. Olayvar, Jr. inasmuch as the bank does not have such account number in its records.

In a letter dated June 19, 2007, Director Hubert B. Guevarra of CED requested Director Merle Cunanan of SEC Cebu Extension Office to take the testimony of Mr. Bernardino E. Olayvar, Jr. relevant to the questionable bank certificate dated December 14, 2005.

On August 1, 2007, Mr. Bernardino E. Olayvar, Jr. executed an Affidavit attesting that the signature above his name appearing on the bank certificate dated December 14, 2005 was not his signature, and neither did he affix the same thereon.

On December 10, 2007, SEC issued an Order directing the concerned parties and Leyte Colleges to file their Answer/s as well as the affidavits of their witnesses and copies of documentary evidence.

In a letter received by the Commission on February 22, 2008, Mr. Octavio A. Astilla stated that the Board of Directors of Leyte Colleges in its meeting held on January 18, 2008, approved /resolved not to file an answer anymore in SEC Case No. 11-07-099 (CED Case No. 072860). Instead, a new corporation, compliant with all the SEC requirements, with a capitalization of Php 5,000,000.00 shall be formed.

On March 25, 2008, SEC sought the Comment/Recommendation of the Commission on Higher Education (CHED) in view of the fact that the corporation to be revoked is an institution of learning or an educational institution.

On July 24, 2008, Dr. William Medrano, Executive Director of CHED wrote, among others, that "it shall not interfere nor influence the SEC in the execution of its resolutions provided that Leyte Colleges is accorded due process and fair play." CHED also requested SEC to inform the former on the action that may be taken on Leyte Colleges

### **ISSUE**

The sole issue to be resolved in the instant case is whether the Certificate of Registration of Leyte Colleges, Inc. (CS00000021663) should be revoked or not on grounds of fraud and misrepresentation in procuring its certificate of registration.

### **RESOLUTION**

Petitioner herein succinctly presented, substantiating the earlier factual presentation, the following indubitable fraudulent circumstances: that there is no doubt that the Bank Certificate of Deposit dated 14 December 2005 was falsified and/or fabricated; respondent Leyte Colleges falsified the Bank Certificate of Deposit it submitted to the SEC in order to successfully secure a certificate of incorporation; the statement in the Treasurer's Affidavit made by Mr. Amador A. Astilla, Sr., that the amount of Php5,000,000.00 was deposited with the Development Bank of the Philippines Tacloban Branch, is also false. Verily, respondent submitted two (2) sham documents to the SEC, the Bank Certificate of Deposit dated 14 December 2005, and the Treasurer's Affidavit. Thus, petitioner concluded that "were it not for the aforementioned spurious documents and attendant acts of falsification and misrepresentation, the Honorable Commission would not have accepted and approved the application for registration of LEYTE COLLEGES, INC." Indeed, there was fraud in the procurement of respondent Leyte

Colleges' certificate of registration, warranting its revocation (Petition dated November 9, 2007, pp. 3-8)

In fine, there is no consideration for the issued shares of stocks resulting in stock watering. Watered stock" has been defined as "*stock issued not in exchange for its equivalent either in cash, property, share, stock dividends or services. It includes stock (1) issued without consideration (bonus share); xxx.*" (Hector De Leon, *The Corporation Code of the Philippines*, p. 596).

Stock watering has multifaceted evils that are sought to be prevented. *Ballantine* pointed out that:

"The wrong done by stock watering are primarily injuries to the corporation done by the promoters and those in control by depriving it of needed capital and the opportunity to market its securities to its own advantage, thus hurting its business prospects and financial responsibility. They also injure existing and future shareholders by diluting their proportionate interests in the corporation of those who pay full value for their shares. They injure present and future creditors when the corporation is deprived of the assets or capital required by law to be contributed by all the shareholders as a substitute for individual liability for corporate debts. Stock watering which involves fictitious capitalization is deceptive both to the management of the corporation in declaring dividends and to those who deal with it or purchase its securities, because it is invariably accompanied with misleading corporate accounts and financial statements, particularly by an overstatement of the value of assets received for the shares to cover up a capital deficit resulting from overvaluation and underpayment of purported capital contributions. **The wrongs done by stock watering are most likely to be perpetrated by the manipulations of promoters and directors at the outset in the flotation of a new enterprise and the fraudulent obtaining of shares of stock and other securities without consideration.** They have been frequently practiced in periods of industrial booms and combinations where mergers and consolidations have issued securities on the basis of grossly overestimated good will or prospective earning power of the new concern rather than on the value of the assets and businesses contributed by constituent corporations. ((*Ballantine, On Corporations*, pp. 794-795)

*Ballantine* further describes the requisite consideration for the subscribed capital and its fraudulent nature in the absence of such payment, in the following words:

**“According to another line of cases it is legally fraudulent to commence business before the statutory minimum capital named in the articles has been subscribed or paid. All those participating in the business are, according to those cases, held liable, at least up to the amount which should have been subscribed. Some courts, in view of statutory requirements, deny de facto existence when no part of the capital has been subscribed or paid in, or only a nominal part thereof. Under the statutes of many states the subscription and payment of a minimum capital or usually of nominal amount, are required before the transaction of business. If business is done without such provision of capital the directors and sometimes shareholders or even incorporators are expressly made liable to creditors. The attempt to do corporate business without providing in good faith sufficient basis for financial responsibility may be regarded as a fraud upon creditors, an abuse of the separate corporate entity privilege, independent of statute.” (Ibid. pp. 83-84. )**

A corollary provision can be found in Section 7(A) (2) of the 1976 SEC Guidelines for the Verification of Paid-up Capital (Cash) of Corporations, [as modified by Memorandum Circular No. 2 (Monitoring Series, 1986) dated January, 1986]. Said circular was promulgated for the primary purpose of reasonably assuring that the paid-up capital of newly-registered corporations are actually received or disbursed for legitimate purposes. It reads:

**“A. After due notice and hearing, the registration of the articles of incorporation of any corporation may be revoked on the following grounds:**

x x x

2. If it was found that the paid-up capital or any amount thereof had been granted as loans or advances to stockholders and officers of the corporation; and

3. If the paid-up capital was proven to have been obtained as mere accommodation or loans or advances to the corporation.”

Furthermore, Sec. 62 of the Corporation Code of the Philippines provides that “[s]tock shall not be issued for a consideration less than the par or issued price thereof. xxx”. On the other hand, Sec. 65 of the same Code prohibits the issuance of watered stock to afford protection to the creditors of the corporation and those who in good faith may acquire corporate stocks on the belief that the outstanding capital stock is fully paid. Sec. 5 of the Securities Regulation Code, upon the other hand, grants SEC ample powers to regulate and supervise all corporations, partnerships and associations registered with it.

Likewise, Section 6(l)(1) of Presidential Decree No. 902-A adequately empowers SEC to revoke the certificate of registration of Leyte Colleges anchored on the following grounds:

"Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

xxx

xxx

xxx

(l) To suspend or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:

1. Fraud in procuring its certificate of registration."

All in all, the foregoing pertinent provisos and citations envision a scenario that corporate shares shall be issued for a valuable consideration prescribed under the law. Such circumstance is wanting in the instant case.

It must be emphasized that the above-cited statutes are designed to forestall any and all corporate, investment or business evils and to ensure that the yardsticks or safeguards set by law and existing rules and regulations are strictly adhered to, i.e., the trust fund doctrine, watering of stocks and full disclosure rules. Non-conformance with the directive of the pertinent laws or rules and regulations calls for appropriate sanctions against erring corporations.

Worthy of note is the meeting of the board of directors of Leyte Colleges held on January 18, 2008, wherein the board resolved not to file an answer in the instant case and to just incorporate a new entity. Due to non-filing of the responsive pleading by respondent, all the allegations in the petition were rendered uncontroverted thereby eliminating any legal obstacle to the revocation of the certificate of registration of Leyte Colleges.

In sum, a judicious perusal of the records of the case and the attendant circumstances indicate that the consideration for the shares of stocks worth P5,000,000.000 is of dubious nature. The bank certificate is a hoax. No less than the DBP Tacloban Branch officer, Mr. Bernardino Olayvar, Jr. attested to the fact that he did not sign the questioned bank certificate. DBP could not even verify the authenticity of subject certificate because the account number in said document does not exist in the bank's records. All of these uncontroverted facts was bolstered in the investigation conducted by CED.

Finding that respondent corporation indubitably violated the applicable laws and on the strength of the cited legal authorities, the revocation of the corporate charter of Leyte Colleges, Inc. is thus warranted and inevitable.

**PREMISES CONSIDERED**, the Certificate of Registration of Leyte Colleges, Inc., No. CS200605015 is hereby **REVOKED**.

Let a copy of this Decision be furnished the Company Registration and Monitoring Department (CRMD), the Economic Research and Information Department (ERID) this Commission and the Commission on Higher Education (CHED) for their appropriate action.

The Board of Directors and Officers of Leyte Colleges are further directed to ensure that no damage or prejudice shall be caused to the students of the institution in the implementation of this revocation order.

**SO ORDERED**

City of Mandaluyong, Philippines

November 25, 2008

*Fe B. Barin*  
**FE B. BARIN**  
Chairperson

**MA. JUANITA E. CUETO<sup>1</sup>**  
Commissioner

  
**JESUS ENRIQUE G. MARTINEZ**  
Commissioner

  
**RAUL J. PALABRICA**  
Commissioner

  
**THADDEUS E. VENTURANZA**  
Commissioner

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<sup>1</sup> On Sick Leave