



ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the Matter of:

SCET COLLEENS CORPORATION
COMPANY REGISTRATION
NO. CS202061878

SEC-EIPD Case No. 2021-0044
For: Revocation of Certificate of
Incorporation

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ORDER OF REVOCATION

SCET COLLEENS CORPORATION is a corporation registered with the Commission on 6 November 2020 with Company Reg. No. CS-202061878. Its registered principal office address is at Unit 2004, Grand Cenia Residences Apitong Street, Lahug, Cebu City. Its primary purpose as stated in its Articles of Incorporation is:

“That the primary purpose for which such corporation is incorporated;

To engage in retail and wholesale trading of beauty products with the use of multilevel marketing strategy; without engaging in pyramiding scheme.”

Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.” (*Emphasis supplied*)

The Department received numerous emails inquiring and/or reporting about **SCET COLLEENS CORPORATION** and its alleged investment-taking activities where it promises a guaranteed return of investments.

Investigation conducted by the Department revealed that **SCET COLLEENS CORPORATION** offers unregistered securities to the public in the form of investment packages or opportunities promising pure passive income of Five to Eight Percent Return of Investment (5-8% ROI) per month which are too-good-to-be-true.



Since what is being offered for sale by **SCET COLLEENS CORPORATION** are securities, the Securities Regulation Code (SRC) requires that said offer and sale of securities must be duly registered with the Commission and that the concerned corporation and/or its agents have appropriate registration and/or license to sell such securities to the public.

However, **SCET COLLEENS CORPORATION** is **NOT AUTHORIZED** to solicit, accept or take investments/placements from the public nor to issue investment contracts and other forms of securities defined under Section 3 of the Securities and Regulation Code (SRC) contrary to its claim as it has not applied for or has been issued a Secondary License to offer and/or sell securities to the public.

Thus, on 2 September 2021, an SEC Advisory was issued and posted on the Commission's website informing the public, that:

Xxx "SCET COLLEENS CORPORATION, based on what we gathered, SCET COLLEENS CORPORATION is offering a number of investment packages and promos ranging from Three Thousand Eight Hundred Pesos (Php3,800.00) to One Million Eighty Thousand Pesos (Php1,080,000.00) promising guaranteed lucrative passive returns of Five to Eight Percent Return of Investment (5-8% ROI) per month and other bonuses with little or no risk. The above described scheme involves the sale of securities to the public where the Securities Regulation Code (SRC) requires that these securities must first be registered with the Commission and that the concerned corporation and/or its agents have the appropriate registration and/or license to sell such securities to the public pursuant to Sections 8 and 12 of the SRC. Records of the Commission show that SCET COLLEENS CORPORATION was registered as Corporation with Company No. CS-202061878 on 2 September 2021. However, such registration merely grants juridical personality to the corporation but does not authorize it to issue, sell or offer for sale securities to the public nor undertake business activities requiring a secondary license. In view thereof, the public is hereby advised to exercise caution in dealing with any individuals or group of persons offering and selling securities for on behalf of SCET COLLEENS CORPORATION. "Xxx

Despite the issuance of the above-mentioned SEC Advisory against **SCET COLLEENS CORPORATION**, the said entity did not pay attention thereto, and in fact, continued its investment-taking activities.

Thus, on 23 September 2021, a **Show Cause Order** was issued against **SCET COLLEENS CORPORATION** that was sent to its principal address indicated in their Articles of Incorporation and to the incorporators of the said entity (**SHARA JANE CASAO CHAVEZ, EARN STA. RITA SAGUINDEL, EDITH FRANCISSE VILLEGAS TABLANTE, KAY ANNE CUIZON LEYSON** and **ARTEMIO TARONA PONCE Jr**), **directing the company to show cause why its Certificate of Incorporation should not be revoked for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public and for committing fraud in the procurement of its Certificate of Incorporation and to show cause why no administrative sanction and/or criminal charges should be filed against SCET COLLEENS CORPORATION for violation of the Securities Regulation Code.**

To date, despite such receipt and presumptive notice of the Show Cause Order as detailed above, the company failed to respond, which shall be construed as a waiver of its right to be heard as to matters stated in the aforementioned Show Cause Order. Hence, we now resolve the instant proceedings on the basis of available evidence.

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

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

“3.1 “Securities” are shares, participation or interest in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

- (a) Shares of stocks, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;
- (b) ***Investment contracts***, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;
- (c) Fractional undivided interests in oil, gas or other mineral rights;
- (d) Derivatives like option and warrants;
- (e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments;
- (f) Proprietary or non-proprietary membership certificates in corporations; and
- (g) Other instruments as may in the future be determined by the Commission.”

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

“An **investment contract** means a contract, transaction or scheme (collectively “contract”) whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.

A common enterprise is deemed created when two (2) or more investors “pool” their resources, creating a common enterprise, even if the promoter receives nothing more than a broker's commission.”

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

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

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

“SEC. 8. **Requirement of Registration of Securities.** – 8.1. **Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement** duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

“SEC. 12. Procedure for Registration of Securities. - 12.1. All securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4.”

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

Rule 3.1.17 of the 2015 SRC IRR defined ***Public Offering*** as “any offering of securities to the public or to anyone, whether solicited or unsolicited. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:

“3.1.17.1 Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;

3.1.17.2 Presentation in any public or commercial place;

3.1.17.3 ***Advertisement or announcement*** on radio, television, telephone, ***electronic communications, information communication technology or any other forms of communication***; or

3.1.17.4 Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or to prospective purchasers through the postal system, ***information communication technology*** and ***other means of information distribution.***” (Emphasis supplied)

On the other hand, a “*Broker*” is defined under Section 3.3. of the SRC, as a person engaged in the business of buying and selling securities for the account of others while “*Salesman*” is defined under 3.13 of the SRC as a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

Consequently, Section 28 of the SRC provides that:

“SEC. 28. **Registration of Brokers, Dealers, Salesman and Associated Persons.** – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or

dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

Thus, any person, without proper license from the Commission who acts as brokers, dealers or agents of a company selling or convincing people to invest in the investment scheme including solicitations or recruitment through the internet may likewise be prosecuted and held criminally liable under Section 28 of the SRC and penalized with a maximum fine of Five Million pesos (P5,000,000.00) or penalty of Twenty One (21) years imprisonment or both pursuant to Section 73 of the SRC.

In this particular case, the Department carefully examined the characteristics of the investments offered by against **SCET COLLEENS CORPORATION** to determine if they satisfy the elements of an investment contract. In our evaluation, indeed, the elements of investment contracts are manifested in the investments being offered by against **SCET COLLEENS CORPORATION** as follows:

- First, there was an **investment of money** by the public in the investment scheme of the company and **SCET COLLEENS CORPORATION** actually received money from the public who were enticed to invest in their scheme;
- Second, there was a **common enterprise** in the sense that the investors monies were pooled in respondent **SCET COLLEENS CORPORATION** alleged profit-making venture;
- Third, there was clearly an **expectation of profits** on the part of its investors who were promised that their money would earn 5-8% depending on their chosen plan; and
- Lastly, the expectation of profits is **derived primarily from the efforts of others. Here the investors had no hand in the management of SCET COLLEENS CORPORATION and earned profits by merely investing in said entity.**

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

The purpose clause in the Articles of Incorporation of against **SCET COLLEENS CORPORATION** clearly and explicitly state, among others, that:

“This Certification DOES NOT AUTHORIZE INVESTMENT SOLICITATION AND INVESTMENT-TAKING WITHOUT A SECONDARY LICENSE FROM THIS COMMISSION.”

Nonetheless, the purpose stated in the Articles of Incorporation need not set out with particularity the multitude of activities in which the corporation may engage. The effect of broad purposes or objects is to confer wide discretionary authority upon the directors or 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, **SCET COLLEENS CORPORATION**'s purpose in its Articles of Incorporation ***prohibited it to operate an investment-taking scheme.***

Section 44 of the Revised Corporation Code of the Philippines, provides:

“SEC. 44. *Ultra Vires Acts of Corporations.* — No corporation shall possess or exercise corporate powers other than those conferred by this Code or by its articles of incorporation and except as necessary or incidental to the exercise of the powers conferred.”

In an opinion¹, the Commission pronounced that:

“It is the corporation’s primary purpose clause which confers, as well as limits, the powers which a corporation may exercise and the character of a corporation is usually determined by the objects of its formation and the nature of its business as stated in the articles. The primary purpose of the corporation, as stated in its articles of incorporation, is the first business to be undertaken by the corporation. Hence, the primary purpose determines its classification.”

Likewise, the Certificates of Registration issued to **SCET COLLEENS CORPORATION** explicitly states that:

“This Certification DOES NOT AUTHORIZE INVESTMENT SOLICITATION AND INVESTMENT-TAKING WITHOUT A SECONDARY LICENSE FROM THIS COMMISSION.”

The act of against **SCET COLLEENS CORPORATION** through its affiliates in allowing certain persons acting as their agents or representatives to make public presentations of their investment scheme, inviting the public to invest in the companies through social media renders them liable for the unauthorized public offering of securities and the misrepresentation committed in connection with such public offering.

Likewise, the investment scheme of respondents **SCET COLLEENS CORPORATION** promising a return of 5-8% per month has the characteristics of a Ponzi scheme. A **Ponzi scheme** is an investment program that offers impossibly high returns and pays these returns to early investors out of the capital contributed by later investors. Named after Charles Ponzi who promoted the scheme in the 1920s, the original scheme involved the issuance of bonds² which offered 50% interest in 45 days or a 100% profit if held for 90 days. Basically, Ponzi used the money he received from later investors to pay extravagant rates of return to early investors, thereby inducing more investors to place their money with him in the false hope of realizing this same extravagant rate of return themselves. Such scheme is prohibited under Section 26 of the SRC:

“SEC. 26. *Fraudulent Transactions.* – It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale any securities to:

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

² Actually, postal reply coupons

26.1. Employ any device, scheme, or artifice to defraud;

26.2. Obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading; or

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.”

In the case of *People of the Philippines vs. Palmy Tibayan and Rico Z. Puerto* (G.R. Nos. 209655-60, 14 January 2015), the Supreme Court held that:

“To be sure, a Ponzi scheme is a type of investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. **Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk.** In many Ponzi schemes, the **perpetrators focus on attracting new money to make promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business.** It is not an investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme. It is difficult to sustain the scheme over a long period of time because the operator needs an ever larger pool of later investors to continue paying the promised profits to early investors. The idea behind this type of swindle is that the “con-man” collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, Ponzi schemes only last weeks, or months at the most.” (Underscoring added for emphasis)

The investment scheme of **SCET COLLEENS CORPORATION** also operates to defraud investors as it deceives the investing public by making it appear that they have the authority to deal in securities. This also amounts to serious misrepresentation as to what they can do or are doing to the damage and prejudice of the investing public.

Under Section 6 of Presidential Decree 902-A, the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships and associations, on the ground of serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public. Likewise, Section 5.1 (m) of the SRC and Section 179 (j) of the Revised Corporation Code of the Philippines (RCCP) empower the Commission to revoke the franchise or Certificate of Incorporation/registration of corporations registered with it.

Under the 2016 Rules of Procedure of the SEC, the EIPD shall exercise authority over persons and entities, whether under the primary authority of other Operating Departments, involved in the following:

xxx “1. Investigations and administrative actions involving the following:

xxx c) Selling, offering or transacting unregistered securities by entities without secondary license;

- d) *Ultra Vires* acts committed in violation of the Revised Corporation Code;
2. Petitions for revocation³ of corporate registration in all cases, except those which fall under the original authority of CRMD;
3. Administrative actions for fraudulent transactions involving securities;
4. Administrative actions for all other violations under PD 902-A, except those cases which fall under the original authority of other Operating Departments;
5. All other matters involving investor protection filed by the public, referred by self-regulatory organizations, or referred by other Operating Departments after initial evaluation or findings that there is a possible violation of laws, rules or regulations that the Commission implements but do not fall under their respective original authority.”

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

*“From the foregoing, it is indubitable that PHILBIO misrepresented itself to the public that it can solicit investments despite the fact that it is **not one of the purposes of the corporation.** Worse, it **does not have a license to offer/sell securities.** PHILBIO operates an investment-taking scheme which is therefore considered an **ultra vires act.** These constitute serious misrepresentation as to what the corporation can do or doing to the great prejudice to the general public.”*

In the case of *SEC vs. CJH DEVELOPMENT CORPORATION (G.R. No. 210316, 28 November 2016)* the Supreme Court held that:

“The act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities. **Section 8.1 of the SRC** clearly states that securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer.”

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

Considering that nowhere is it stated in the primary purpose **SCET COLLEENS CORPORATION** that it is authorized to engage in the selling or offering for sale of securities to the public, compounded by the fact that it does not have the required Secondary License from the Commission to offer or sell securities to the public, its activity of selling or offering to the public securities or investment contracts is considered an *ultra vires act* and therefore constitutes serious misrepresentation as to what the corporation can do to the great prejudice or damage to the general public which is a ground for the revocation of a corporation's primary franchise or certificate of registration/ incorporation under PD 902-A.

WHEREFORE, for violation of Section 44 of the Revised Corporation Code of the Philippines (R.A. No. 11232) in relation to Sections 8.1, 26 and 28.1 of the Securities Regulation Code and Section 6 (i)(2) of P.D. 902-A, the Certificate of Incorporation and registration as a corporation of **SCET COLLEENS CORPORATION**, is hereby **REVOKED**.

Accordingly, let this Order be attached by the Corporate Filing and Records Division of the Company Registration and Monitoring Department (CRMD) to the records of the 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

Makati City, 21 February 2023.


OLIVER O. LEONARDO
Director