



Republic of the Philippines  
Department of Finance  
Securities and Exchange Commission

**ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT**

**In the Matter of:**

**THE ARK VEHICLE TRADING &  
GENERAL MERCHANDISE INC.**  
Company Registration No. 201716755  
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For: Revocation of Certificate of Incorporation/Registration for violation of Section 6(i)(2) of Presidential Decree No. No. 902-A for serious misrepresentation as to what the corporation can do to the great prejudice of or damage to the general public and for violation of Republic Act No. 8556 or the Financing Company Act of 1998

**ORDER OF REVOCATION**

**THE ARK VEHICLE TRADING & GENERAL MERCHANDISE INC. (“ARK VEHICLE”, for brevity)** is a corporation registered with the Securities and Exchange Commission (“**SEC, Commission**”) on 24 May 2017 under Company Registration No. 201716755. Its principal office is located at Unit 928 City & Land Mega Plaza Bldg., ADB Ave. cor. Garnet Road, Ortigas Center, Pasig City<sup>1</sup>. Its primary purpose as stated in its Articles of Incorporation (“AOI”) is as follows:

*“To engage in conduct, and carry on the business of buying, selling, trading, distributing, marketing at wholesale and retail insofar as may be permitted by law, all kinds of cars, car accessories, upholstery, car alarm and other related products of every kind and description; to enter into all kinds of contracts for the export, import, purchase, acquisitions, sale at wholesale and retail and other disposition for its own account as principal or in representative capacity as manufacturer’s representative, merchandise broker, indenter, commission merchant, factors or related products, whether natural or artificial, without 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 company, and time shares/club shares/membership certificates issuers or selling agents thereof neither engaging in investment solicitation nor investment taking activity from public investors.”*

Sometime in 2020, the Enforcement and Investor Protection Department (EIPD) received complaints, reports and inquiries through its official email account and the *SEC i-Message Mo Facility*<sup>2</sup> that the ARK VEHICLE is allegedly engaged in financing activities which require authority from the Commission.

<sup>1</sup> As amended on 20 October 2020.

<sup>2</sup> I-Message Mo Facility is a web-based online application for lodging of questions, requests, complaints, issues, concerns, suggestions/opinions, tips/alerts, etc.

The department gathered information as to the activities of ARK VEHICLE and found out that the schemes of the company involves offering of its program/services to those interested to purchase motor vehicles (cater all brands of car or motorcycle). In the purchase of motor vehicles, ARK VEHICLE maintains a provision of zero percent (0%) interest rate, a 10% discount and cash rebates in installment and low monthly amortization. ARK VEHICLE further represents that the company generates earnings through “sustainable down payment” equivalent to the difference between the actual amount of dealership down payment (30% for cars and 50% for motorcycles) and the down payment by ARK VEHICLE. The sustainable profit in every transaction will sustain their client’s monthly payment at the dealer’s approved bank. Likewise, ARK VEHICLE maintains that their sustainable profit will depend on the dealer’s promo since each unit has an equivalent sustainable profit matched.

Moreover, the Contract/Agreement between ARK VEHICLE and its clients contained the following stipulations, to wit:

1. The client is required to provide the Ark Vehicle information such as but not limited to Bank, Account Name, Account Number Monthly Amortization, Number of Months and Starting Date<sup>3</sup>;
2. That in case of self-approval of client’s bank vehicle loan application, the company shall pay the first monthly amortization to the financing bank if the client applied with Ark Vehicle within ten (10) days from the release date in the dealership. However, if the client applied after the prescribed period, the client will pay the first month of the monthly amortization to the financing company/bank<sup>4</sup>;
3. The client is required to open an account in **The Ark Access** mobile application which is the platform where the client will send their proof of monthly payment and to view the status of their account<sup>5</sup>;
4. The client shall deposit to the Ark’s authorized bank account, a ten percent (10%) of the total amount as processing fee for the bank approval and release of the vehicle<sup>6</sup>; and
5. The company shall take sole responsibility in paying the monthly amortization on behalf of the client;

The company also presented that upon approval of the application, ARK VEHICLE and the client will negotiate for the lowest deposit from the dealership. Before the releasing date, the client is also bound to pay the remaining 30% deposit to Ark Vehicle through online payment which will be deposited to the designated ARK VEHICLE bank account.

Thus, on 12 April 2023, a **Show Cause Order** was issued against ARK VEHICLE that was sent thru the official email address of the company as indicated in its filed General Information Sheet for the year 2020 and to the incorporators of said entity (**ROMEO M. ALBURO JR. JENNIFER L. ALBURO, PAUL JEROME L. ALBURO<sup>7</sup>, EDWARD REY CALANGIAN<sup>8</sup>** and **ROSAIDA**

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<sup>3</sup> Under the terms of Payment Contract.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Under the terms of Processing and Delivery Contract with Agreement to Enter in Installment Program.

<sup>7</sup> Sent via registered mail to Romeo M. Alburo, Jr. Jennifer L. Alburo and Pau, Jerome L. Alburo with Tracking No. RE 655 244 745 ZZ.

<sup>8</sup> Sent via registered mail with Tracking No. RE 665 244 754 ZZ.

**P. ONGSOTTO<sup>9</sup>**) 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 to show cause why no administrative sanctions and/or criminal charges should be filed against and imposed upon ARK VEHICLE for violation of Republic Act No. 8556 or the Financing Company Act of 1998 and its rules and regulations.

In the conduct of its investigation, the Department was able to establish the following:

- a) While the loan contract with the bank/in-house financing remains under the name of the client, however, the client shall pay the amortization of the motor vehicle through ARK VEHICLE;
- a) ARK VEHICLE commits to pay only a portion of the down payment received from the client to the dealer. The remaining portion shall represent the processing fee paid by the client to ARK VEHICLE; and
- b) ARK VEHICLE offers lower monthly amortizations than what is offered by the bank/in-house financing. On the other hand, ARK VEHICLE assumes the sole responsibility in paying the monthly amortizations (which is higher than the amount paid by the client to ARK VEHICLE) to the bank.

The EIPD requested the Commission's Company Registration and Monitoring Department (CRMD) to confirm whether ARK VEHICLE is an SEC Registered entity and whether it has been issued a secondary license. In reply to EIPD request, the CRMD certified<sup>10</sup> that ARK VEHICLE with SEC Registration Number CS201716755 was registered as a corporation on May 24, 2017, however, it has not been issued a secondary license as a Lending/Financing Company, Broker and/or Dealer of Securities, Dealer in Government Securities, Investment Adviser of an Investment Company, Investment House and Transfer Agent and it has not filed nor has any pending application for a secondary license with the Department.

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 the available information and evidence gathered.

## **ISSUE**

The sole issue to be resolved is whether or not ARK VEHICLE is engaged in the business of financing activities that require authority from the Commission which would warrant the revocation of its Certificate of Incorporation/Registration and the imposition of administrative sanction and/or criminal charges in violation of R.A. No. 8556.

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<sup>9</sup> Sent via registered mail with Tracking No. RE 665 244 768 ZZ.

<sup>10</sup> Issued on 15 June 2023.

## DISCUSSION

### ARK VEHICLE IS ENGAGED IN THE BUSINESS OF FINANCING ACTIVITIES

Section 3 of Republic Act No. 8556 (RA 8556) or the Financing Company Act of 1998 defines Financing Companies and Credit, to wit:

"(a) '**Financing companies**' hereinafter called companies, are corporations, except banks, investments houses, savings and loan associations, insurance companies, cooperatives, and other financial institutions organized or operating under other special laws, which are primarily organized for the purpose of extending credit facilities to consumers and to industrial, commercial, or agricultural enterprises, by direct lending or by discounting or factoring commercial papers or accounts receivable, or by buying and selling contracts, leases, chattel mortgages, or other evidences of indebtedness, or by financial leasing of movable as well as immovable property;

x x x

(c) '**Credit**' shall mean any loan, mortgage, financial lease, deed of trust, advance or discount, any conditional sales contract, contract to sell, or sale or contract of sale of property or service, either for present or future delivery, under which, part of all or the price is payable subsequent to the making of such sale or contract; any contract, any option, demand, lien or pledge, or to the other claims against, or for the delivery of, property or money, any purchase, or other acquisition of or any credit upon the security of, any obligation or claim arising out of the foregoing, and any transaction or series of transactions having similar purpose or effect;

In this particular case, while the loan agreement remains in the name of the client in favor of the bank, however, it appears that the original obligation has already been extinguished by novation as **ARK VEHICLE** substituted itself as the new creditor. This is manifested through the spontaneous actions of the parties where the client pays the down payment and the amortization to **ARK VEHICLE** and the subsequent action of the latter in receiving the payments and the assumption of obligations of the client. Further, by disbursing and paying on behalf of the client, **ARK VEHICLE** mainly engaged in the primary purpose of financing company which is "**extending credit facilities to consumers**". The term credit includes a "contract of sale of property or service, either for present or future delivery, under which, part of all or the price is payable subsequent to the making of such sale or contract." As such, **ARK VEHICLE** is engaged in financing activities.

It is to be noted that **ARK VEHICLE's** primary purpose as indicated in its Articles of Incorporation is: "*buying, selling, trading, distributing, marketing at wholesale and retail insofar as may be permitted by law, all kinds of cars, car accessories, upholstery, car alarm and other related products of every kind and description...*". On the other hand, the company's Founder/CEO and COO represents that **ARK VEHICLE** is a merchandise broker<sup>11</sup>. In contrast, none of the aforementioned appears to be true as **ARK VEHICLE** is apparently engaged in the operations of a financing company.

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<sup>11</sup> Agent acting for merchandise buyers and sellers who is paid a commission or fee for negotiating sales of specific lots of goods. A merchandise broker puts the merchandise buyer and seller together for the purposes of a sale without taking possession of the actual merchandise.

[https://www.allbusiness.com/barrons\\_dictionary/dictionary-merchandise-broker-4955107-1.html](https://www.allbusiness.com/barrons_dictionary/dictionary-merchandise-broker-4955107-1.html)

It is important to emphasize that as a juridical person, **ARK VEHICLE** 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.

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, officers, 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, **ARK VEHICLE's** purpose in its Articles of Incorporation expressly ***prohibited it from acting as a financing company*** as follows:

*"To engage in conduct, and carry on the business of buying, selling, trading, distributing, marketing at wholesale and retail insofar as may be permitted by law, all kinds of cars, car accessories, upholstery, car alarm and other related products of every kind and description; to enter into all kinds of contracts for the export, import, purchase, acquisitions, sale at wholesale and retail and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indenter, commission merchant, factors or related products, whether natural or artificial, **without 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 company**, and time shares/club shares/membership certificates issuers or selling agents thereof neither engaging in investment solicitation nor investment taking activity from public investors."*

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

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

In an opinion<sup>12</sup>, 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."*

On the other hand, Section 5 of the Rules and Regulations to Implement the Provisions of Republic Act No. 8556 (The Financing Act of 1998) requires the registration of the Articles of Incorporation for the issuance of a Certificate of Authority to operate as a financing company. On

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<sup>12</sup> SEC-OGC Opinion No. 11-33 dated 29 July 2011 addressed to Mr. Jesus B. Lapuz.

the other hand, Section 12 of the same rule provides for the prohibition to engage in the business of financing company unless authorized under R.A. 8556. Findings of violation of the aforementioned act and rules shall be subject to administrative sanctions as provided under Section 14 of the said rules which include, among others, other sanctions within the power of the Commission.

Considering the activities being conducted by ARK VEHICLE, the Commission, pursuant to Section 6 of Presidential Decree 902-A 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 misrepresentations as to what the corporation can do or is doing to the to the great prejudice of or damage to the general public. 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."*

Also its Certificate of Incorporation states that :

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REPUBLIC OF THE PHILIPPINES  
**SECURITIES AND EXCHANGE COMMISSION**  
SEC Building, EDSA, Greenhills  
City of Mandaluyong, Metro Manila

COMPANY REG. NO. CS201716755  
COMPANY TIN 009-676-383

**CERTIFICATE OF INCORPORATION**

KNOW ALL PERSONS BY THESE PRESENTS:

This is to certify that the Articles of Incorporation and By-Laws of

**THE ARK VEHICLE TRADING & GENERAL MERCHANDISE INC.**

were duly approved by the Commission on this date upon the issuance of this Certificate of Incorporation in accordance with the Corporation Code of the Philippines (Batas Pambansa Blg.68), and copies of said Articles and By-Laws are hereto attached.

This Certificate grants juridical personality to the corporation but does not authorize it to undertake business activities requiring a Secondary License from the 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 company, pre-need plan issuer, general agent in pre-need plans and time shares/club shares/membership certificates issuers or selling agents thereof. Neither does this Certificate constitute as permit to undertake activities for which other government agencies require a license or permit.

As a registered corporation, it shall submit annually to this Commission the reports indicated at the back of this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of this Commission to be affixed at Pasay City, Metro Manila, Philippines, this 24<sup>th</sup> day of May, Twenty Seventeen.

**FERDINAND B. SALES**  
Director  
Company Registration and Monitoring Department

Conformably to the above evaluation, it clearly shows that **ARK VEHICLE** is engaged in the business of a financing company without the required authority from the Commission.

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.

The 2016 Rules of Procedure of the SEC provides that 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
    - d) *Ultra Vires* acts committed in violation of the Revised Corporation Code;
  2. Petitions for revocation<sup>13</sup> 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."

Considering that nowhere is it stated in the primary purpose **ARK VEHICLE** that it is authorized to engage in the business of a financing company as it does not have the required Secondary License or Certificate of Authority to Operate as a Financing Company from the Commission, its activities pertaining to a financing company are 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 6(i)(2) and 3 of Presidential Decree (PD) 902-A and in relation to Republic Act No. 8556 or the Financing Company Act of 1998, the corporate registration Certificate of Incorporation/Registration of **THE ARK VEHICLE TRADING & GENERAL MERCHANDISE INC.** is hereby **REVOKED**.

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<sup>13</sup> Revocation refers to involuntary dissolution of corporate registration pursuant to Section 138 of the Revised Corporation Code.

This is without prejudice to any criminal action that the Commission may initiate against persons responsible for the violation of the Revised Corporation Code of the Philippines and the Financing Company Act of 1998 and its Implementing Rules and Regulations.

Accordingly, let this Order be attached by the Corporate Filing and Records Division of the CRMD to the records of the corporation on file with the Commission. Further, the Information and Communications Technology Department (ICTD) of the Commission is likewise requested to enter the "**REVOKED**" status of the subject corporation in the electronic/online database of the Commission.

**SO ORDERED.**

20 June 2023, Makati City, Philippines.



**ATTY. OLIVER O. LEONARDO**  
Director