Republic of the Philippines
**Securities and Exchange Commission**
SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the matter of:

**ETXT BUSINESS SOLUTIONS, INC.**

SEC Admin. Case No. 03-08-002
(CED Case No. 07-2764)

**ENFORCEMENT AND PROSECUTION DEPARTMENT,**

For: Revocation of Corporate Registration

*Petitioner.*

x----------x

**DECISION**

This refers to the Enforcement and Prosecution Department's[1] ("EPD," for brevity) Petition for Revocation of Corporate Registration against ETXT BUSINESS SOLUTIONS, INC. ("ETXT," for brevity), filed on 14 March 2008.

ETXT is a stock corporation registered with the Commission since 03 April 2007 under Company Registration No. CS200705173. Its primary purpose is "to engage in the business of trading goods such as prepaid cards and general merchandise on wholesale/retail basis."[2] Its incorporators-directors are Irene L. Ilagan, Edward L. Ilagan, Wilfred N. Marbella, Marinelle M. Villanueva, and Adonis C. Estacio.[3]

On September 10, 2007, the EPD received an e-mail from a certain "Jon B" with e-mail address at jonel151@yahoo.com, who wanted to inquire into the legality of the investment scheme being offered by ETXT. The e-mail provided a link to a forum at http://gonegosyo.net, which featured a discussion of ETXT's business scheme offer. According to the discussion, ETXT is "engaged in income generating business ventures that will become revenues for coop based members. Our projects and business are e-MART convenience store franchise, e-loading business, tv, radio, concerts, and events productions right now (sic). From the said ventures, each coop base (sic) members are entitled to a 4.5% for every fifteen days within a period of 100 days."

Acting on the e-mail, the EPD formed an investigating team to conduct an undercover surveillance of the ETXT's activities at its principal office located at G/F ROSCAR Building, Boni MRT EDSA, Mandaluyong City. On September 17, 2007, the

investigating team proceeded to this location, and upon arrival, they were informed that a Business Orientation Seminar was already in progress and that no one could attend to their queries. Thus, the investigating team noted the schedule of the Business Orientation Seminars being conducted by ETXT and before leaving the premises, obtained a copy of the "ETXT Dealership Agreement."

On September 24, 2007, the investigating team returned to ETXT's office to attend the latter's Business Orientation Seminar. The members of the team were entertained by a Ms. ANGEL ESTEBAN, the Marketing Supervisor of ETXT, who explained to them (the investigating team), among others, the business plan of respondent ETXT. The investigation revealed that ETXT offers investment contracts to the public in the following scheme:

> The company has two (2) products namely, the Classic Retailer Entry and the Classic Dealer Entry. In the Classic Dealer Entry, the investor may choose among three (3) different entries by paying One Thousand Dollars (USD 1,000.00), Three Thousand Dollars (USD 3,000.00), or Five Thousand Dollars (USD 5,000.00). Each entry has a corresponding package containing different products or benefits. Investors under this entry are awarded with a company "profit share" in the amount of US$62.50 for the US$1, 000.00 entry, US$187.50 for the US$3, 000.00 entry and US$312.50 for the US$ 5,000.00 entry, all of which are given every week for a period of thirty (30) weeks. Under ETXT's so-called "dealership agreement", once the dealer invests in the corporation, he will have a guaranteed share in the profit of the corporation for the period provided in the contract.
>
> "Investors" under the Classic Dealer Entry are also given "stock points" which vary from 10, 30, and 50 points depending on the amount of "investment". These points will then be applied for stock dividends with SEC after the end of the thirty (30) weeks contract.
>
> ETXT also uses a binary and uni-level program where investors receive a direct "referral incentive" per person who becomes his or her downline. If there is a pairing among the downlines, said investor receives an additional pairing incentive.

Further, the investigating team determined that ETXT conducted Business Orientation Seminars at its principal office where prospective investors were enticed to become dealers of the corporation, and ETXT agents represented that investors under the Classic Dealer Entry are given "stock points". ETXT also offered its investment scheme through the distribution of flyers to the public, and advertisements in the internet.

On October 4, 2007, upon EPD's request, the Cooperative Development Authority (CDA) issued a certification that ETXT is not registered with them. On October 10, 2007, the Corporation Finance Department (CFD) issued a certification that respondent ETXT is not a registered issuer of securities pursuant to Sections 8 and 12 of the Securities Regulation Code (SRC).

On October 10, 2007, Atty. MARIA CRISTINA L. DINO of the EPD sent a Notice of Conference to Mr. JERICHO ESTRELLA, ETXT's CEO. The notice was received by Ms. ANNABEL CRUZ at the ETXT's principal office on October 11, 2007. The conference was scheduled for October 16, 2007. However, Mr. ESTRELLA did not appear at the scheduled conference.

On October 22, 2007, another conference was held wherein ETXT and its officers were represented by Atty. GUADENCIO P. PALAFOX. Ms. ANGEL ESTEBAN, the ETXT's Marketing Supervisor was also present. During the conference, Ms. ESTEBAN tried to explain the business activities of ETXT but could not explain the statements contained in the flyers. Ms. ESTEBAN was also reluctant to provide more information and since it was difficult to get answers from her, another conference was scheduled for October 31, 2007. Atty. PALAFOX was told that Mr. ESTRELLA and the officers of ETXT should be present at said conference. However, neither Atty. PALAFOX nor the officers of ETXT appeared at the scheduled conference.

Hence, the EPD filed this Petition with prayer for the issuance of a Cease and Desist Order (CDO) on 14 March 2008. On 09 April 2008, the Commission *En Banc* issued a Cease and Desist Order restraining ETXT from further selling and offering securities to the public. This CDO was served personally and by registered mail upon ETXT at its principal office. However, ETXT moved out of its office without leaving any forwarding address. On 17 October 2008, the Commission *En Banc* granted EPD's motion to make the CDO permanent. This order making the CDO permanent was duly served personally upon ETXT and its officers.

The Securities Regulation Code[4] ("SRC," for brevity) prohibits the offer or sale of unregistered securities to the general public:

> "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."

The Amended Implementing Rules and Regulations of the Securities Regulation Code, Rule 3, Paragraph 1, Subparagraph N provides what acts are deemed as offering of securities to the public:

> "Public Offering means a random or indiscriminate offering of securities in general to anyone who will buy, 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:
>
> i. Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;
> ii. Presentation in any public or commercial place;
> iii. Advertisement or announcement in any radio or television, or in any online or email system; or
> iv. Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or mailing the same to prospective purchasers."

ETXT's acts of distributing flyers, conducting Business Orientation Seminars and advertising through the internet, constitute public offering of securities. Clearly, ETXT and its directors-incorporators violated Section 8 of the SRC for offering unregistered securities to the public. Under the Corporation Code,[5] ETXT's corporate powers are exercised and its business conducted through its Board of Directors.[6] Consequently, aside from the corporation itself, its incorporators-directors are also administratively liable under Section 54 of the SRC, which provides:

> "SEC. 54. Administrative Sanctions.
>
> 54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; xxx it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:
>
> xxx
>
> (ii) A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation; xxx"

Considering that the most expensive investment contract that ETXT offered to the public amounts to Ten Thousand Dollars (USD 10,000.00) or Four Hundred Fifty Thousand Pesos[7] (PhP 450,000.00), an administrative fine equivalent to such amount is appropriate penalty for each of the incorporators-directors.

Further, ETXT representations that investors under its Classic Dealer Entry are given "stock points", which vary from 10, 30, and 50 points depending on the amount of "investment" and that these points will then be applied for stock

dividends with the Commission after the end of the thirty (30) week contract are misleading the public into believing that they will become stockholders of ETXT and therefore receive dividends by merely becoming dealers of prepaid cards. This is contrary to the Corporation Code, which provides that only the corporation's stockholders of record are entitled to dividends. [8]

ETXT also claims in its website, www.etxt-bsi.com, that it is an I.C.T. (Information and Communications Technology) Company offering personal, corporate and industrial business solution management, web design and specialization on SMS TXT messaging application development. This is contrary to the stated primary purpose of ETXT in its articles of incorporation, which provides that its primary purpose is "to engage in the business of trading of goods such as prepaid cards and general merchandise on wholesale/retail basis."

Verily, ETXT's acts amount to serious misrepresentation as to what ETXT as a corporation can do or is doing to the great prejudice of the investing public. Thus, the Commission must exercise its power to revoke ETXT's charter for the protection of the public in accordance with Presidential Decree No. 902-A, Section 6(i)(2), which provides:

> "Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
>
> i. To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:
>
> xxx
>
> 2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;"

**WHEREFORE**, premises considered, the Petition is hereby **GRANTED**. ETXT BUSINESS SOLUTIONS, INC.'s Certificate of Incorporation (Company Reg. No. CS200705173) is hereby **REVOKED**.

ETXT and its incorporators and officers namely, Irene L. Ilagan, Edward L. Ilagan, Wilfred N. Marbella, Marinelle M. Villanueva, and Adonis C. Estacio are hereby **ORDERED** to pay jointly and severally a fine amounting to Four Hundred Fifty Thousand Pesos (PhP 450,000.00) as administrative sanction. Further, the Economic Research and Information Department is hereby **DIRECTED** to place these persons under the Commission's Watch List and to post this Decision on the Commission's website – www.sec.gov.ph.

Lastly, the Human Resources and Administrative Department is hereby **DIRECTED** to serve a copy of this Decision to the local government of the City of Mandaluyong for its appropriate action.

This is without prejudice to any further actions that may be taken against the responsible directors and officers of the subject corporation.

**SO ORDERED.**

Mandaluyong City, 04 March 2010.

**JOSE B. BARIN**
Chairperson

**MA. JUANITA E. CUETO**
Commissioner

**RAUL J. PALABRICA**
Commissioner

**MANUEL HUBERTO B. GAITE**
Commissioner

**ELADIO M. JALA**
Commissioner

---

[1] Formerly known as the "Compliance and Enforcement Department" or "CED" for brevity.
[2] *ETXT's Articles of Incorporation.*
[3] *Id.*
[4] *REPUBLIC ACT NO. 8799 (2000).*
[5] *BATAS PAMBANSA BLG. 68 (1980).*
[6] *B.P. 68, Section 23.*
[7] *Using the approximate exchange rate of USD 1 is to P 45 prevailing at the time it was discovered that the investment contracts were being offered to the public.*
[8] *B.P. 68, Section 43; Nielson & Co. Inc. vs. Lepanto Consolidated Mining Co., G.R. No. L-21601, December 28, 1968.*