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

In the Matter of

MYGAME.PH INC. [Formerly MYGAME1 INC. and MICROGAMING TECHNOLOGY CORPORATION],

SEC Adm. Case No. 05-09-106

Enforcement and Prosecution Department,[1]

Petitioner.

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DECISION

This resolves the Petition, filed on 05 May 2009 for the revocation of the corporate registration of MYGAME.PH, INC.[2] under Company Registration No. CS200712334.

MYGAME.PH INC. was registered with the Commission on 08 August 2007. Its primary purpose, as stated in its Amended Articles of Incorporation, is:

> "To engage in recreation, games and amusement center, particularly but not limited to, online gaming, computer games, video games, play stations, and other related recreational activities."

Its authorized capital stock is One Hundred Million Pesos (Php 100,000,000.00) divided into One Million (1,000,000) shares with a par value of One Hundred Pesos (Php 100.00) per share.

Its Articles of Incorporation indicate the names of its incorporators and first directors with their respective addresses, nationalities and number of shares subscribed, as follows:

[1] Formerly known as the Compliance and Enforcement Department (CED).
[2] Formerly known as MYGAME1 INC., and MICROGAMING TECHNOLOGY CORPORATION.

NAME	ADDRESS	NATIONALITY	SHARES
1. KWON, AE KYUNG	3RD Floor, Dongsim Bldg., 600-2 Sinsa-Dong, Gangnam-Gu, Seoul, Korea, 135-893	KOREAN	1 share
2. LEE, HO JUNE	6TH Floor, Dongsim Bldg., 600-2 Sinsa-Dong, Gangnam-Gu, Seoul, Korea, 135-893	KOREAN	1 share
3. PARK, MIN SOO	23RD Floor, Marina Condominium, M.H. Del Pilar St., Manila	KOREAN	1 share
4. OH, SUNG WON	23RD Floor, Marina Condominium, M.H. Del Pilar St., Manila	KOREAN	1 share
5. YEOM, JEWOO	23RD Floor, Marina Condominium, M.H. Del Pilar St., Manila	KOREAN	1 share

On 07 October 2008, IP E-GAME VENTURES, INC. (complainant), a domestic corporation primarily engaged in the business of active gaming and content distribution, filed a complaint with the EPD against MYGAME.PH INC. praying for the revocation of the latter's corporate franchise on the ground that it was secured through fraud. The Articles of Incorporation submitted by MYGAME.PH, INC. to the Commission's Company Registration and Monitoring Department (CRMD) allegedly contained untruthful statements of facts regarding the residence of its incorporators.

The Articles of Incorporation declare that three out of the five incorporators (thus, comprising a majority thereof) namely, JEWOO YEOM, MIN SO PARK and SUNG WON OH, were residents of the Philippines.

Since the incorporators were all foreign nationals, the complainant conducted inquiries to confirm their residency by obtaining certifications from the Bureau of Immigration regarding their immigration status at the time they executed the Articles of Incorporation on 23 July 2007.

Accordingly, the Bureau of Immigration issued a Certification dated 31 March 2008, stating that incorporator JEWOO YEOM was holding a tourist visa when he entered the Philippines on 11 July 2007 and 20 August 2007. The Bureau certified further that there were no available records regarding the immigration status of incorporators MIN SOO PARK and SUNG WON OH. In fact, there is no record to show that the MIN SOO PARK entered the Philippines.

On the basis of these certifications, complainant claims that it is evident that at the time the incorporators executed the Articles of Incorporation under oath on 23 July 2007, the majority of the incorporators were not residents of the Philippines.

Acting on the complaint, the EPD conducted an investigation to determine the truthfulness of the complainant's allegations. The EPD sent two Notices of Conference to the five incorporators for them to attend a conference on 23 October

2008. The said notices were sent to two addresses, viz: 1601 Taipan Building, F. Ortigas, Jr. Road, Ortigas Center, Pasig City for the incorporators AE KYUNG KWON and HO JUNE LEE and 23rd Floor Marina Condominium, M.H. Del Pilar Street, Manila for the incorporators MIN SOO PARK, SUNG WON OH and JEWOO YEOM. On the scheduled hearing date, counsels for MYGAME.PH INC. appeared without the Korean nationals. They explained that only the notice meant for incorporators AE KYUNG KWON and HO JUNE LEE were received by their office but at that time the two were in Korea.

On 24 October 2008, the EPD obtained a confirmation from the Bureau of Immigration that the certifications, submitted by the complainant, on the immigration status of the incorporators were authentic.

On 02 December 2008, the EPD wrote a letter to Director Erlinda F. Acellana of the Incentives Department of the Board of Investments requesting for a certification on whether or not MIN SOO PARK, SUNG WON OH and JEWOO YEOM applied for and were granted Special Investor's Resident Visa (SIRV) by their department. In a letter dated 10 December 2008, the Board of Investments replied that MIN SOO PARK, SUNG WON OH and JEWOO YEOM are not listed in the registry of SIRV holders.

On 15 January 2009, a Second Notice of Conference was sent to the incorporators. On 20 January 2009, incorporator JEWOO YEOM, together with counsels, appeared before the EPD investigating team. During the conference, JEWOO YEOM gave information that MIN SOO PARK and SUNG WON OH were currently out of the country. When asked by members of the investigating team if the three of them were actual residents of the Philippines at the time of the incorporation, JEWOO YEOM, who was then assisted by counsel, admitted that the other Koreans-incorporators were not really residents of the Philippines. JEWOO YEOM stated that he merely got their information and started the incorporation process.

In view of the foregoing facts and evidence, the EPD filed the present petition on 05 May 2009 praying for the revocation of the corporate registration of MYGAME.PH, INC. on the ground that its registration was procured through fraud. The EPD points out that certifications issued by the Bureau of Immigration and the Incentives Department of the Board of Investments, and the admissions of no less than the incorporator JEWOO YEOM himself, undeniably establish the fact that at the time of MYGAME.PH INC.'s incorporation, the incorporators MIN SOO PARK, SUNG WON OH and JEWOO YEOM were not residents of the Philippines, contrary to what they certified under oath in the Articles of Incorporation.

Further, the EPD argues that the incorporation was clearly in violation of the provisions of Section 10 of the Corporation Code[3] which provides:

[3] Batas Pambansa bilang 68 (1980).

> "Sec. 10. Number and Qualifications of incorporators. - Any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose or purposes. Each of the incorporators of a stock corporation must own or be a subscriber to at least one (1) share of the capital stock of the corporation."

By stating in the Articles of Incorporation that MIN SOO PARK and SUNG WON OH and JEWOO YEOM are residents of 23rd Floor Marina Condominium, M.H. Del Pilar Street, Manila, respondent MYGAME.PH INC. was able to make it appear that it was able to comply with the residency requirement as provided under Section 10 of the Corporation Code when in truth and in fact the requirement was not satisfied as MIN SOO PARK and SUNG WON OH were not actual residents of the Philippines. Indeed, the incorporators even expressly certified in the Articles of Incorporation that majority of them are residents of the Philippines:

> "The **undersigned incorporators**, all of legal age and **majority of whom are residents of the Philippines**, have this day voluntarily agreed to form a stock corporation under the laws of the Republic of the Philippines."[4]

Moreover, the certifications issued by the Bureau of Immigration show that the incorporator JEWOO YEOM was a holder of a tourist visa when he entered the Philippines on 11 July 2007 and 20 August 2007. Meanwhile, there is no record on how and when SUNG WON OH entered the country, and his immigration records only indicate that he left the country on 20 December 2007 without any visa, which implies that he entered the country as a temporary visitor only. Notably, JEWOO YEOM's and SUNG WON OH's immigration records show that they never provided a Philippine Address. As such, it cannot be said that JEWOO YEOM and SUNG WON OH were residents of the Philippines at the time they executed the Articles of Incorporation of MYGAME.PH INC. More so with incorporator PARK MIN SOO considering the fact that the immigration records show that he did not even entered the Philippines.

Furthermore, based on the letter dated 10 December 2008, the Board of Investments stated that MIN SOO PARK, SUNG WON OH and JEWOO YEOM are not listed in the registry of SIRV (Special Investor's Resident Visa) holders which would likewise serve as proof of their residence status in the Philippines.

As admitted by JEWOO YEOM, with the assistance of counsel, during the conference held on 20 January 2009, the other incorporators were not really residents of the Philippines. As further admitted by JEWOO YEOM, he merely got their information and started the incorporation process. Apparently, it was only

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[4] Articles of Incorporation, 1st paragraph, page 1; Emphasis supplied.

JEWOO YEOM who prepared the Articles of Incorporation, and made the false entries.

As a matter of fact, according to the certifications issued by the Bureau of Immigration, the incorporator AE KYUNG KWON arrived in the Philippines on 22 March 2007 and soon thereafter left the Philippines on 26 March 2007. On the other hand, the name of the incorporator HO JUNE LEE does not appear in the database of the Bureau of Immigration arrivals from 01 January 2007 to 31 December 2007.[5]

Moreover, based on the said certifications, incorporators AE KYUNG KWON and HO JUNE LEE were not in the Philippines at the time of the execution of MYGAME.PH INC.'s Articles of Incorporation on 23 July 2007. However, despite the fact that said incorporators were out of the country on 23 July 2007, it was made to appear in the said Articles of Incorporation that AE KYUNG KWON and HO JUNE LEE signed the said document on 23 July 2007 at Pasig City and subscribed the same on even date before Notary Public Atty. FIDEL V. ESQUIERES when in truth and in fact they could not have done so as they were not in the Philippines on said date.

In short, the EPD established that in applying for the registration of MYGAME.PH, INC. with the Commission, its incorporators submitted an Articles of Incorporation, which falsely represented that the incorporators MIN SOO PARK and SUNG WON OH were residents of 23rd Floor Marina Condominium, M.H. Del Pilar Street, Manila, that a majority of the incorporators were residents of the Philippines, and that all the incorporators signed the Articles of Incorporation on 23 July 2007 at Pasig City despite the fact that some of them were not even inside the country on said date. And, were it not for such misrepresentations in the submitted Articles of Incorporation, the Commission would not have accepted, and approved MYGAME.PH INC.'s application for corporate registration.

It is due to such falsehoods that MYGAME.PH INC. was able to obtain a certificate of registration from the Commission.

Thus, the EPD concludes that such facts and circumstances merit revocation of the corporation's registration based on Section 6, par. l (1) of Presidential Decree 902-A, as amended, which provides:

> "Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> x x x
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> (l) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or

[5] Petition, Annex V.

associations, upon any of the grounds provided by law, including the following:

1. Fraud in procuring its certificate of registration"[6]

Meanwhile, on 02 June 2009, respondent MYGAME.PH INC. filed its answer to the petition. The respondent corporation explained that its incorporators were all Korean nationals and thus, they were ignorant of the requirements and processes for registration of a corporation with the Commission. They had no little or no knowledge on the applicable laws pertaining to the formation or organization of corporations in our jurisdiction. Incorporator JEWOO YEOM, with the assistance of a certain Amelia Cruz, accomplished the template articles of incorporation allegedly obtained from the Express Lane Section located at the Commission's head office. The corporation emphasizes that the template does not provide a definition for residence. Thus, in supplying the residence of the other incorporators in the template, JEWOO YEOM did so with the good faith belief that residence, as required in the articles, means its common signification as "a building used as a home dwelling."[7] He indicated his residence and that of his fellow incorporators MIN SOO PARK and SUNG WON OH as 23rd Floor Marina Condominium, M.H. Del Pilar Street, Manila since "such address was intended to be their dwelling place in the Philippines or their official Philippine address, while acting as agents/representatives of the Parent Company, and subsequently, when they commence to work for or under the respondent company."[8] Indeed, the respondent corporation argues that JEWOO YEOM actually executed a contract of lease over the said condominium unit for a period of one year on 01 December 2006 or more than six months prior to the subject incorporation for such purpose. Thus, MYGAME.PH INC. concludes that JEWOO YEOM was in good faith when he indicated th e residence of the said incorporators as such in the articles of incorporation. Any misstatement in the articles was due to the "lack of legal assistance"[9] during the incorporation process to foreign nationals who "could not have been apprised of"[10] the correct, or proper construction of the term residence as required in the template articles of incorporation. In other words, there was no malice, bad faith or intent to defraud. The respondent company maintains that its incorporators cannot be faulted "in view of the fact that they are foreigners who cannot be assumed to have knowledge of Philippine law."[11]

Further, the respondent corporation argued that its incorporators were not in bad faith when they made it appear in the Articles of Incorporation that it was signed in the Philippines before a notary public. The respondent again argues that

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[6] Emphasis ours.
[7] Answer, Paragraph 36, page 13.
[8] Answer, Paragraph 37, page 14.
[9] Answer, Paragraph 41, page 16.
[10] Id.
[11] Answer, Paragraph 42, page 16.

the incorporators were unaware of this requirement since they were foreigners, and any misrepresentation was not committed by them but by the notary public.

In summary, the respondent concludes that fraud does not exist under the subject circumstances since the misrepresentation, being due to the incorporator's ignorance of Philippine laws, was not knowingly, willfully, and deliberately intended, and no damage was caused to any third parties as a result of the subject misrepresentation.

Lastly, the respondent argues that even if there may have been false statements and misrepresentations in the Articles of Incorporation, such fact is now of no consequence in view of the fact that since its incorporation the respondent company has been operating lawfully showing that there is no intention to operate fraudulently.

The Petition has merit.

In the incorporation and organization of private corporations, the Corporation Code expressly requires that a majority of the incorporators must be residents of the Philippines. The residence requirement is mandatory. Indeed, the law further requires that:

> "Section 14. Contents of the articles of incorporation. - All corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages **duly signed and acknowledged by all of the incorporators**, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:
>
> xxx
>
> 5. The names, nationalities and **residences of the incorporators;**"

The Commission has consistently interpreted the term "resident" or "*residence*" as used in statute as being "equivalent to domicile the pertinent elements of which are physical presence in the state, and an intention to remain therein."[12]

In the present case, it cannot be disputed that three out of the five incorporators namely, JEWOO YEOM, MIN SO PARK and SUNG WON OH, were not residents of the Philippines contrary to what they declared and certified in the respondent's Articles of Incorporation, which was executed on 23 July 2007.

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[12] SEC Opinion dated 17 January 1985, citing 2 Fletcher, Cyc. Corp., 1969 Rev. Vol. sec. 307 at 97; SEC Opinion 30 January 30, 1990;

The certifications issued by the Bureau of Immigration and the Board of Investments, discussed above, and the admissions made by JEWOO YEOM conclusively establish by substantial evidence that JEWOO YEOM, MIN SO PARK and SUNG WON OH were not residents of our country at the time of the incorporation.

The respondent's allegation that the said incorporators intended to stay in the country in order to incorporate and manage the corporation, and that they leased a condominium unit in Manila for such purpose, cannot be given much significance in view of the fact that, at the time of the incorporation, JEWOO YEOM, and SUNG WON OH were admitted, and authorized by the Bureau of Immigration to stay in the country as temporary visitors only. They did not have an Immigrant Certificate of Registration (ICR), SIRV, or any other kind of Visa that would have allowed them to legally reside in the country. Incidentally, the purported photocopy of SUNG WON OH's Alien Certificate of Registration, presented by respondent, is irrelevant considering that its date of issuance is indicated as 18 November 2008 or well after the date of incorporation on 23 July 2007. Further, the records of the Bureau of Immigration as of 27 March 2008 show that JEWOO YEOM and SUNG WON OH never provided a Philippine address as they travelled in and out of the country. And in the case of MIN SO PARK, the undisputed fact is that he did not even enter the country, and thus, was never physically present herein at the time of the incorporation. All of these facts and circumstances belie respondent's self-serving allegation regarding the said incorporators' purported intention to stay in the country.

Verily, the fact is that none of the respondent's five incorporators were residents of the Philippines. This is clearly contrary to the express mandatory requirement found in Section 10 of the Corporation Code that majority of the incorporators must be residents of our country. This requirement must be complied with to create a *de jure* corporation.[13] Therefore, the respondent is not, and never was a *de jure* corporation.

Further, the fact is that not all of the incorporators personally acknowledged the Articles of Incorporation before a notary public. We note that respondent does not dispute the allegation that contrary to what is stated in the Articles of Incorporation, KWON AE KYU and LEE HO JUNE did not actually appear personally to acknowledge the said Articles before the notary public. Such circumstance is a violation of Section 14 of the Corporation Code, which provides:

> "Section 14. Contents of the articles of incorporation. - All corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages duly signed and **acknowledged by all of the**

[13] American Salt Co. v. Heidenheimer, 80 Tex 344, 15 SW 1038.

incorporators, containing substantially the following matters, except as otherwise prescribed by this Code or by special law: xxx"

It is well-settled that if a statute requires that all the incorporators sign and acknowledge the articles of incorporation, all of them must acknowledge their signatures, and if even one of them fails to do so, the defect is fatal to a valid corporation.[14]

Since incorporation is a grant of a privilege from the state, the state is entitled to preserve the value of that privilege. Under the Corporation Code, the certificate of registration may be acquired only if the conditions required by the statute are complied with.

Considering that respondent's incorporation was defective and void for non-compliance with the Corporation Code requirements on the residence of majority of the incorporators and acknowledgement by all incorporators, there is already sufficient ground for the Commission to revoke the subject certificate of registration.

Be that as it may, we will still proceed, and discuss the issue of whether there was fraud in the procurement of the certificate of registration.

It is established and uncontroverted that the respondent's Articles of Incorporation falsely stated that incorporators MIN SOO PARK, SUNG WON OH and JEWOO YEOM were Philippine residents, and that majority of the incorporators were residents of the Philippines, and that they all acknowledged the same before a notary public.

These false statements, which pertaining to mandatory requirements of the Corporation Code, are material, and were relied upon by the Commission in issuing the subject certificate of registration to the respondent corporation.

Respondent's main defense is that the incorporators, being Korean nationals, were naturally ignorant of our laws and procedures on incorporation. When JEWOO YEOM indicated that he, MIN SO PARK, and SUNG WON OH were residents of the Philippines, he did not fully comprehend the meaning of residence as required in the template Articles of Incorporation. Thus, he was in good faith and therefore there was no intention to commit fraud. Further, the respondent argues that the fact that the incorporators falsely certified under oath that they personally appeared before a notary public in the Philippines, and acknowledged the Articles of Incorporation when in fact they did not, should not be taken against the respondent but against the concerned notary public. Respondent argues again that the incorporators were not aware of such requirement since they were foreign nationals unfamiliar with

[14] People v. Montecito Water Company, 97 Cal. 276, 32 P 236; Kaiser v. Lawrence Savings Bank, 56 Iowa 104, 8 NW 772.

Philippine law and regulations and, thus, they made such falsehoods in good faith and without any intention to defraud anyone.

In the present case, we are not convinced that respondent can be allowed to plead its incorporators' ignorance of Philippine laws and regulations as an excuse for non-compliance therewith, and for negating the existence of fraud.

Fraud can be classified as either actual or constructive. To constitute actual fraud there must be such fraud as affects the conscience – i.e., there must be the element of deceit or intentional deception. In other words, it includes the intentional and successful employment of cunning, deception, or schemes to cheat, circumvent, or deceive another. On the other hand, constructive fraud, otherwise known as legal fraud, is an act done or omitted, which in the contemplation of the courts and tribunals is a fraud because of its detrimental effect on public interests, even though the act is not done with an actual intent to perpetrate fraud or injury upon another. The conscience is not necessarily affected by it, and it generally involves a mere mistake of fact. In other words, it does not require dishonesty nor intent to deceive, it is contemplated by law as a fraud, irrespective of the moral guilt of the wrongdoer, because of its tendency to deceive others, to injure the public interests, or to violate public or private confidence. Thus, in certain cases, fraud exists where there is a misrepresentation made even without knowledge of falsity. In short, constructive fraud may result from reckless and heedless representations although they are not made with a deliberate intent to deceive.[15]

We clarify that "fraud" as used in Section 6, paragraph L (1) of P.D. 902-A includes constructive or legal fraud, and not just actual or moral fraud. The subject provision is not concerned with a crime or felony. And thus, criminal intent or intent to deceive is not essential.

Indeed, there are many cases in which false representations may constitute fraud even though the party making them did not actually know that they were false,[16] particularly where there is a duty to know the truth,[17] or where statements are made recklessly.[18] Under the right circumstances, the law will imply or presume knowledge.[19] And, we find that such circumstances exist in the present case.

Bear in mind that incorporation is not a matter of right but merely a special privilege extended by the state. Thus, in order to enjoy such privilege, the requirements and procedures for the grant thereof must be strictly complied with. To this end, the state prescribes and gives notice, through statutes and rules, of the necessary requirements and procedures for the grant of the privilege or franchise.

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[15] 37 Am Jur 2d, Fraud and Deceit § 4.
[16] Lahay v. City Nat. Bank, 15 Colo 339, 25 P 704; Woodruff v. Garner, 27 Ind 4; Kroninger v Anasl, 367 Mich 478, 116 NW2d 863.
[17] 37 Am Jur 2d, Fraud and Deceit § 201, 202.
[18] 37 Am Jur 2d, Fraud and Deceit § 203 et seq.
[19] 37 Am Jur 2d, Fraud and Deceit § 446.

Anyone interested in applying for a franchise must then exercise due diligence, and familiarize themselves with such statutes or rules in order to ensure that they will be able to substantially comply with the prescribed requirements and procedures. In other words, applicants are duty bound to know the prescriptions, and they can never be allowed to feign ignorance thereof to excuse non-compliance therewith, and then demand a franchise from the state as a matter of right.

In our jurisdiction, the Corporation Code prescribes the requirements for the grant of a corporate franchise. The Code has long been published, and is there for everyone to examine or review. Thus, the Commission correctly assumes that every applicant-incorporators, through the exercise of due diligence, know and understand the requirements and procedures for incorporation - particularly, what is required to be stated in the Articles of Incorporation. Therefore, any material statement made by an incorporator in the Articles of Incorporation that turns out to be a falsehood as determined by the Commission is thereby considered as fraudulent regardless of the incorporator's intent or knowledge of such falsehood.

In the present case, respondent reasons that the incorporators are Korean nationals, and therefore cannot be expected to know the laws and procedures on incorporation in our jurisdiction. Therefore, when they made the false statements they were in good faith, and they had no fraudulent intent.

This manner of reasoning cannot be countenanced.

Article 3 of the Civil Code[20] provides that: "Ignorance of the law excuses no one from compliance therewith."

In consonance with this immutable norm, we rule that the existence of the false statements, relating to the mandatory requirements prescribed by the Corporation Code, in the Articles of Incorporation is, by law, tantamount to fraud regardless of the maker's knowledge of falsehood or intent to deceive or lack thereof. To rule otherwise would be contrary to public interest since it would allow incorporators to feign ignorance of the statutes in order to evade compliance therewith. The Commission is duty bound to enforce the Corporation Code, and maintain the established regulatory framework on corporate registrations in order to ensure that the privilege of a corporate franchise is given only to deserving applicants consistent with public interest and public policy.

What respondent would have this Commission do is to tolerate the subject incorporators' recklessness and lack of due diligence. In effect, the Commission is being asked by respondent to carve out a special exception for the subject incorporators as a special class not bound by the mandatory requirements of the Corporation Code. However, the fact that the respondent's incorporators are foreigner nationals behooves them to take even greater care before applying for

[20] Republic Act No. 386 (1950).

incorporation and do business in our jurisdiction. All the more that they should have conducted a due diligence study about the regulatory framework in our jurisdiction. For example, since they are ignorant of Philippine statutes and rules, they should have consulted with a lawyer. If their grasp of the English language is poor then they should have made use of competent interpreters. Such due diligence actions are expected of a reasonable person who would want to engage in business in a foreign country. One who fails to exercise due diligence should bear the consequences of such negligence.

The fact is that the respondents' incorporators omitted such basic due diligence actions. Instead, in accomplishing the template articles of incorporation, they just relied on the representations of a certain Ms. Cruz, who was neither a lawyer, nor connected with the Commission, nor, as borne out by the facts, qualified as an expert on the incorporation process in our jurisdiction. Contrary to respondent's submission, such circumstance does not mitigate the existence of fraud. It has the reverse effect since it serves to highlight the incorporators' wanton recklessness amounting to lack of good faith. In any case, as discussed earlier, a false statement in the articles of incorporation is equivalent to fraud regardless of the existence of good or bad faith.

Further, contrary to the respondent corporation's argument, the fact that it has been operating its business since its incorporation does not render the present issues as moot. Again we emphasize that, non-compliance with the mandatory requirements of the Corporation Code on incorporation (e.g. prescriptions on the residence of majority of the incorporators; acknowledgement of all the incorporators) renders the incorporation defective in the very first instance and there is no *de jure* corporation to speak of. Further, the filing of false and fraudulent articles of incorporation is sufficient ground to sustain proceedings for forfeiture of corporate charter.[21] Therefore, the fact that the respondent has been operating is of no consequence, and does not cure the nullity of the incorporation.

Lastly, respondent fails to convince us that there are any compelling reasons which would merit the Commission to extend liberality and refrain from revoking the respondent's registration. On the contrary, as the earlier discussion shows, public policy and public interest will be served well by the revocation considering not only the fraud perpetrated against the Commission through the false statements contained in respondent's articles of incorporation, but also considering the fact that respondent's incorporation violated the mandatory requirements of the Corporation Code (on residency of incorporators and acknowledgement by all of them of the articles).

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[21] State ex rel. Brown v. Bailey, 16 Ind 46.

WHEREFORE, premises considered, the Certificate of Registration of respondent MYGAME.PH INC. (formerly MYGAME1 INC. and MICROGAMING TECHNOLOGY CORPORATION), i.e. Company Registration No. CS200712334 is hereby **REVOKED**.

Further, the Economic Research and Information Department is hereby **DIRECTED** to place respondent's incorporators namely, JEWOO YEOM, MIN SO PARK, SUNG WON OH, AE KYUNG KWON and HO JUNE LEE in the Commission's Watch List.

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

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for appropriate action. And, this Revocation Order must be posted at the Commission's website for purposes of giving notice to the public.

SO ORDERED.

Mandaluyong City, 07 October 2010.

PE B. BARIN
Chairperson

MA. JUANITA E. CUETO*
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

*on official travel