Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

IN THE MATTER OF

FIRST EQUIS INC.

SEC Admin Case No. 10-08-99
(CED Case No. 08-2875)
For: Revocation of Corporate Registration

COMPLIANCE AND ENFORCEMENT DEPARTMENT,

Petitioner.

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DECISION

For consideration of the Commission *En Banc* is the Petition for Revocation of Corporate Registration of First Equis Inc. ("FEI" for brevity) dated 20 October 2008, filed by the Compliance and Enforcement Department[1] ("CED" for brevity) on the ground of using fictitious and/or non-existent addresses of the corporation and its incorporators for purposes of registration, in violation of Section 6(l)(1) of Presidential Decree No. 902-A, as amended.

FACTS OF THE CASE

Petitioner CED is the department of the SEC mandated to file petitions for revocation of certificates of registration for violation of the Securities Regulation Code[2] ("SRC"), the .Corporation Code[3], P.D. 902-A, as amended, including their Implementing Rules and Regulations, and such other relevant laws enforced by the Commission.

FEI is a corporation duly registered with the Commission on 20 June 2006 under SEC Registration No. CS200609642 with principal place of business at Lower Ground, Alfaro's Place, L.P. Leviste Street, Salcedo Village, Makati City.[4]

The petition was prompted by a letter[5] from the Financial Services Agency, Government of Japan ("FSA", for brevity) dated 30 November 2007 addressed to the CED informing the Commission of a suspected boiler room named First Equis Ltd. ("FEL"), which claims to be located in Tokyo. Upon FSA's investigation, it appears that FEL has a representative in the Philippines by the name of Louis Morgante

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[1] Now the Enforcement and Prosecution Department.
[2] R.A. 8799 (2000).
[3] Batas Pambansa Blg. 68 (1980).
[4] FEI's Certificate of Incorporation, attached as Annex "A" of the Petition.
[5] Annex "C" of the Petition.

whose address is indicated to be at Island Plaza Salcedo, 105 L.P. Leviste Street, Suite 457 Salcedo Village, Makati City. The FSA requested information regarding the business activities of FEL.

Upon verification by the CED, it was found out that FEL is not registered with the Commission. However, FEI is the one duly registered with the Commission. Upon surveillance of the CED investigators, it was discovered that FEI never held office at its given address, as verified by the building administrator of Alfaro's Place. Also, the indicated address of Louis Morgante turned out to be a rented mailbox.

Likewise, upon thorough investigation, it was established that the respective addresses used by the incorporators in FEI's Articles of Incorporation were either fictitious or fabricated.[6]

On 10 July 2008, the CED served another Notice Requiring Appearance at an Examination to all the incorporators/directors of FEI through registered mail. However, the notices were returned unopened and stamped with "Return to Sender" from the postmaster.[7]

Further, the records of the Commission show that FEI has failed to submit its annual General Information Sheet and Financial Statement since its incorporation.

On 21 October 2008, the CED, on the basis of its own findings, filed the instant petition for the revocation of corporate registration of FEI.

On 20 April 2010, an Order was issued directing the CED to cause the publication of the said Order together with the Summons once in a newspaper of general circulation. In addition, the CED was likewise directed to cause the posting of the said Order and Summons in the Commission's website (www.sec.gov.ph) for thirty (30) days.

On 21 May 2010, the CED filed a Compliance stating the submission of the following documents:

1. A copy of the Affidavit of Publication affirming that the 20 April 2010 and 21 November 2008 Orders of the Office of the General Counsel were published in the Philippine Star on 30 April 2010;[8]

2. The Certification dated 19 May 2010 from the Director of the Economic Research and Information Department stating that

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[6] CED's Petition, Annexes D, E, and F.
[7] *Id.*, Annexes G, H, I, J and K.
[8] CED's Compliance, Annex A.

the mentioned Orders were posted in the Commission's website;[9]

3. The Certification dated 17 May 2010 from the Director of Commission's Human Resource and Administrative Department stating that the said Orders were posted in the bulletin board at the ground lobby for fifteen (15) days.[10]

ISSUE

The sole issue to be resolved in this case is whether or not there is a sufficient ground to revoke FEI's certificate of registration.

We rule in the affirmative.

Upon the publication of the Order of the Commission for FEI to file its Answer to the Petition, FEI has yet to file the same. Thus, pursuant to Section 3-12[11] of the 2006 Rules of Procedure of the Commission, FEI shall be considered as in default. As a consequence, the Commission shall render judgment on the basis of the petition and available records at hand.

We now resolve the case on its merits.

Section 6(l)(1) of Presidential Decree No. 902-A, as amended provides for the power of the Commission to revoke a corporation's certificate of registration on the ground of fraud in procuring the certificate of registration, to wit:

> "Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> x x x
>
> (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:
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> 1. Fraud in procuring its certificate of registration;

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[9] CED's Compliance, Annex B.
[10] Id., Annex C.
[11] SEC. 3-12. *Effect of Failure to Answer*. If the respondent fails to answer the complaint within the abovestated period, he shall be considered as in default. The Hearing Panel or Officer shall, *motu proprio*, proceed to render judgment granting the complainant such relief as the complaint may warrant, unless the Hearing Panel or Officer determines that the complainant should be required to submit *ex parte* additional evidence.

x x x"

As part of the requirements for FEI's incorporation and registration with the Commission, the filing of its Articles of Incorporation ("AOI") is necessary. The AOI is the document prepared by the persons establishing a corporation and filed with the Commission containing the matters required by the Corporation Code ("Code" for brevity).[12] It defines the charter of the corporation and the contractual relationships between the State and the Corporation, the stockholders and the State, and between the corporation and the stockholders.[13]

Section 14(3) of the Code specifically provides that the articles of incorporation must state the "place where the principal office of the corporation is to be established or located, which place must be within the Philippines." The purpose of the requirement is to fix the residence of the corporation in a definite place, instead of allowing it to be ambulatory for effective supervision and regulation of the corporation.[14] More so, in line with the "full disclosure" requirement of existing laws, it is now mandatory that all corporations and partnerships applying for registration with the Commission should state in their Articles of Incorporation or Articles of Partnership the (i) specific address of their principal office, which shall include, if feasible, the street number, street name, barangay, city or municipality; and (ii) specific residence address of each incorporator, stockholder, director, trustee or partner.[15]

The findings of the CED reveal that FEI falsified its articles of incorporation at the time of its application for registration by making use of fictitious or non-existent addresses of its principal office and incorporators. Also, since its incorporation, FEI has not filed its General Information Sheet and Audited Financial Statements as required by the Commission. Evidently, there is an apparent intention to defraud the Commission and the general public. Had the Commission known of such falsities, the registration of FEI would have been denied pursuant to Section 17 of the Code.[16]

From the foregoing, and after having established that FEI employed fictitious, fabricated and non-existent addresses in its articles of incorporation filed with the Commission for purposes of registration, there was a clear violation of Section 6(l)(1) of P.D. 902-A, as amended. Thus, the revocation of the certificate of registration of FEI is warranted.

WHEREFORE, premises considered, the Petition is hereby **GRANTED**. FEI's

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[12] Batas Pambansa Blg. 68 (1980).
[13] Government of the Philippine Islands vs. Manila Railroad Co., 52 Phil. 169 (1929).
[14] Young Auto Supply Co. vs. Court of Appeals, G.R. No. 104175, June 25, 1993.
[15] SEC Memorandum Circular No. 3, series of 2006.
[16] SEC. 17. *Grounds when articles of incorporation or amendment may be rejected or disapproved.* The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code x x x.

Certificate of Incorporation (Reg. No. CS200609642) is hereby **REVOKED**.

Let a copy of this Decision be furnished to the Company Monitoring Department for its appropriate action, as well as to the Economic Research and Information Department ("ERID") and the Commission's extension offices for dissemination to the general public. The ERID is likewise directed to cause the posting of this Decision in the Commission's website at www.sec.gov.ph.

SO ORDERED.

Mandaluyong City, 01 July 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE *
Commissioner

ELADIO M. JALA
Commissioner

*on leave