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

IN THE MATTER OF:

GLASGOW CREDIT AND COLLECTION SERVICES, INC.
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SEC Admin Case No. 05-05-83
(CED Case No. 02-2721)

DECISION

For consideration of the *Commission En Banc* is the petition for revocation of corporate registration and the imposition of administrative penalty filed by the Enforcement and Prosecution Department ("EPD," for brevity)[1] of the Commission against Glasgow Credit and Collection Services, Inc. ("Glasgow").

The relevant facts of the case are narrated below.

Glasgow was registered with the Commission on 02 May 2002 to engage in the "business of Credit and Collection services and other necessary or essential activities thereto as well as incidental activities thereto, as the transaction of the lawful business of the company may reasonably and necessary require, subject to the limitation prescribed by law and constitution."[2]

Sometime in June 2002, the EPD received information on the mode of operation of Glasgow after which, the EPD conducted an investigation and surveillance activities. Based on the investigation, it was found that there is a prima facie evidence that Glasgow solicited investments from the public without first securing the necessary license to engage in securities. Neither was the securities registered before they were offered to the public. To obviate further damage to the investing public, EPD filed a motion for the issuance of a cease and desist order against Glasgow, which the Commission *En Banc* granted on 09 July 2002.

Consequently, EPD filed the instant petition against Glasgow and its board members on 05 May 2005. Summonses were duly issued but despite several attempts[3] to serve them, the process server failed because Glasgow already moved out from its principal address. The summonses for the board members were also not served, except for the two directors, namely: Radiacion S. Baldias and Roldan H. Estacio, since they are no longer residing in their respective residence addresses. On 15 July 2008, the Commission issued an Order dated 15 July 2008 directing the

[1] Then known as the Compliance and Enforcement Department.
[2] Petition dated 02 May 2005, Annex "B".
[3] An Order dated 02 February 2006 directing Glasgow and Manuel J. Roldan, Jr. to file their comments on the petition were served upon their counsel of record but the said counsel refused to receive the Order. Another Order dated 16 April 2007 was issued to Glasgow and its board members, but the same was not served.

service of summons by way publication of the Order to File Comment dated 16 April 2007 and the petition dated 02 May 2005.

The 16 April 2007 Order and the Petition dated 02 May 2005 were published in the 26 July 2008 issue of The Philippine Star, a newspaper of general circulation.[4] To this date, however, no comment was filed by Glasgow or any of its board members.

We now resolve the petition.

The sole issue in this case is whether there is a valid ground to revoke the corporate registration of and to impose administrative penalty against Glasgow.

The petition is meritorious.

Under the Securities Regulation Code[5] ("SRC"), 'securities' was defined by way of enumeration, namely:

> "SEC. 3. Definition of Terms. — 3.1. "Securities" are shares, participation or interests 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:
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> (a) Shares of stock, 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; xxx." (Emphasis supplied)

The foregoing provision plainly and broadly defines the term "securities" as "shares, participation or interests 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."[6]

There are set criteria for a security to fall under the SRC:

(1) it must be a share, participation or interest;
(2) in a corporation, commercial enterprise or profit-making venture; and
(3) evidenced by a written or electronic certificate, contract or instrument.

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[4] The Affidavit of Publication notarized on 11 August 2009 was received by the Office of the General Counsel of the Commission on **04 November 2009**.
[5] Republic Act No. 8799 (2000).
[6] Economic Governance Technical Assistance. Draft Commentary on the Securities Regulation Code, p. 4.

One of the instruments considered as a security is an investment contract, which is defined in the Amended Implementing Rules and Regulations of the SRC as:

> "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."

Another definition of the term investment contract can be found in the U.S. case *SEC v. Howey Co.*, 328 U.S. 293 (1946) where the U.S. Supreme Court defined such term in this manner:

> "... an investment contract, for purposes of the Securities Act, means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise."

The case also laid down the test in determining whether there is an investment contract, that is, whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others.

In the instant case, records show that the contracts issued by Glasgow to its investors fall squarely within the definition of an investment contract based on the following reasons.

First, there is a contract, transaction or scheme. Based on the investigations conducted by the EPD, the mode of operation of Glasgow was that it would entice a prospective investor to place an investment with it by offering a high interest rate. As proof of the agreement, Glasgow and the investor would execute a document designated as a 'Contract.' Glasgow would then issue postdated checks to its investors. For the period March 2002 to July 2002, Glasgow solicited investments from nine thousand two hundred thirty-six (9,236) investors.[7] A reconciliation of the list submitted by Glasgow and the various documents submitted by the lender-investors, EPD found that Glasgow had been sourcing funds from at least 8,961 lender-investors.[8]

Second, there is an investment of money. The supposed investors would part with their money and give it to Glasgow with the expectation of a return in the form of interest. For a minimum investment of Php50,000.00, the investor would receive a monthly return of 15% for six months, and for a smaller amount, the monthly return would be 10%. The principal amount would be locked up for six months after which the principal amount would be released.

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[7] Petition, Annexes"F" to ""F-241".
[8] Id, par. 12.

Third, there is a common enterprise. From the operation of Glasgow, there is a pooling of investor resources. In turn, Glasgow was supposed to use the money to make profits for itself and its investors. From this, it can be said that Glasgow is offering merely opportunities to contribute money, and the success of an investor is dependent on the success of Glasgow's business operations.

Fourth, the investor is led to participate in the profits based on the efforts of others. The investors merely contributed money, and after six months they would expect to receive profits. The investors would do nothing except wait for six months after which they would receive the principal amount of their investments and the interest yield.

Moreover, these documents can be classified also as "evidence of indebtedness" based on the tenor of the contracts, thus:

> "...FOR VALUE RECEIVED, Glasgow Credit and Collection Services Co. xxx hereby promise to pay to the order to [Name of Investor] xxx the principal amount of [Amount of Investment] together with interest payable within six (6) months in accordance with the agreed schedule below.
>
> xxx
>
> In case of default, the principal amount and the accrued interest on this Note may be declared due and demandable in the manner and with the effect agreed upon by the Borrower and Lender. xxx
>
> In case the Lender withdraws the amount prior to the expiration of the period agreed upon, a surcharge of 25% shall be assess by the Borrower on the principal amount.xxx"

Clearly, the contracts issued by Glasgow are pieces of evidence of indebtedness, and the contracts speak for themselves.

Since investment contracts and evidence of indebtedness are securities, they must first be registered with the Commission before the same can be offered to the public pursuant to Section 8[9] of the SRC. Otherwise, the issuing corporation, its officers and agents shall be held liable under Section 54 (ii) and (v) 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

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[9] "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."

(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

(v) Other penalties within the power of the Commission to impose."

Based on the certification issued by the Corporation Finance Department of the Commission, Glasgow is not authorized to sell or offer securities to the public.[10] Glasgow, however, offered, sold and distributed to the general public securities by entering into numerous 'contracts' or 'evidence of indebtedness' not covered by a registration statement filed and approved by the Commission. For this reason, Glasgow is liable to pay the fine of TEN THOUSAND PESOS for each investment contract it entered into with its 8,961 lender-investors.[11]

WHEREFORE, foregoing premises considered, the instant petition is hereby **GRANTED**. Accordingly, the Certificate of Registration of Glasgow Credit and Collection Services Corp. is revoked, and a fine of EIGHTY-NINE MILLION SIX HUNDRED TEN THOUSAND PESOS (Php89,610,000.00) is hereby imposed against the corporation.

Let a copy of this Decision be furnished the Enforcement and Prosecution Department and the Company Registration and Monitoring Department for their appropriate action.

SO ORDERED.

Mandaluyong City, 04 March 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

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[10] Petition, Annex "I".

[11] The total amount of fine that can be imposed is Php89,610,000.00 computed as follows: Php10,000.00 x 8,961 investors.