Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

In the matter of:
PHIL-ASIA CARE PLANS, INC.

SEC Admin Case No. 10-09-109

ENFORCEMENT AND PROSECUTION DEPARTMENT,
Petitioner
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DECISION

This resolves the **Petition for Revocation of Corporate Registration**[1] filed on 23 October 2009 by the *then* Enforcement and Prosecution Department (EPD)—*now known as* the Enforcement and Investor Protection Department (EIPD)—praying that the Commission hereby REVOKE the Certificate of Registration of **PHIL-ASIA CARE PLANS, INC.** on the grounds of: (1) ***Defiance of Lawful Order*** under **Section 6(i)(3)** of P.D. 902-A; and (2) ***Serious Misrepresentation*** under **Section 6(i)(2)** of P.D. 902-A.

RELEVANT FACTS

A. PHIL-ASIA, ITS DIRECTORS AND OFFICERS

1. **PHIL-ASIA CARE PLANS, INC. (PHIL-ASIA)** was originally incorporated as Consolidated Care Plan, Inc. on 5 August 1988[2] under SEC Registration No. 153936; it changed its corporate name via Amendment of its Articles of Incorporation (AOI) on 12 December 1990.[3] Its primary purpose is:

> **[t]o engage in the business of organizing, establishing, developing, conducting, maintaining, operating, marketing, and selling (memorial plans), as well as other type of Pre-need plans and** services to be delivered in the future to subscribers, purchasers or planholders to manage, buy, sell[,] all type[s] of merchandise, equipment and/or services pertaining to the Pre-need business. (Emphasis supplied)

2. Based on PHIL-ASIA's latest General Information Sheet (GIS)[4] filed in 2008, its Directors and Officers are as follows:

Name	Director Position	Officer Position(s)	Residence
VICENTE R. AFULUGENCIA	Chairman	President & Gen. Manager	#6 Mapalo Drive, Sierra Monte Villas, Batasan Hills, Quezon City
FRANCIS T. AFULUGENCIA	Member	EVP – Operations	
TEODOLFO A. REGENTE	n/a	Manager, Collection Dept.	
JOJI T. AFULUGENCIA	Member	VP & Treasurer	#54 Eagle Street, Sto. Nino Village, Barangay Banilad, Cebu City
PAULO VICENTE T. AFULUGENCIA	Member	n/a	
LOUIE EMERSON T. AFULUGENCIA	Member	n/a	
GEORGE T. AFULUGENCIA	Member	n/a	

[1] Dated 21 October 2009.
[2] Certificate of Registration dated 5 August 1988 (**Annex A** of Petition for Revocation).
[3] Amendment of AOI dated 12 December 1990 (**Annex B** of Petition for Revocation).
[4] 2008 General Information Sheet (**Annex C** of Petition for Revocation).

JOSE MARIA T. AFULUGENCIA	Member	n/a	
ATTY. EMILIANO DELIVERIO	n/a	Corporate Secretary	

B. CDO AND ORDER AGAINST PHIL-ASIA IN 2002

3. In early 2002, the Commission was notified by PHIL-ASIA's planholders and former salesmen that the company was continuing to issue and sell Pre-need plans for the years 2000-2002, even though it no longer had authority to sell Pre-need plans.

4. On 22 March 2002, the Commission's Non-Traditional Securities and Instruments Department—now known as the **Corporate Governance and Finance Department (CGFD)**—issued a negative Certification[5] against PHIL-ASIA, to wit:

   a. PHIL-ASIA has no Pre-need plans available for sale since 1993;
   b. PHIL-ASIA has no Dealer's License since 1996;
   c. PHIL_ASIA has no Salesmen's Permit;
   d. PHIL-ASIA has no authority to operate a branch;
   e. PHIL_ASIA failed to comply with all the Commission's requirements for a pre-need company and therefore is not authorized to sell new pre-need plans.

5. On **28 May 2002**, the Commission issued a **Cease and Desist Order (CDO)**[6] against PHIL-ASIA, enjoining the sale of pre-need plans and the collection of premiums.

6. On **3 September 2002**, the Commission issued an **Order**[7] which made ***permanent*** the CDO against PHIL-ASIA.

7. After the issuance of the CDO, PHIL-ASIA continued to offer and sell Pre-need plans in Laguna, Nueva Ecija, and Quezon City from, as shown by the following:

Planholder	LPA Number	Life Plan Type	Plan Value	Date
Rhodora Salvia[8]	39823C	Harmonious	P15,000	13 June 2002
Marifi M. Zubia[9]	21494C	Harmonious	P15,000	2 July 2002
Floro C. Pagaduan, Jr.[10]	84768C	Supreme	P50,000	13 January 2003
Teresita G. Canceran[11]	78918	Harmonious	P15,000	2 October 2004
Trinidad S. Raylana[12]	130287	Harmonious	P15,000	10 December 2004

C. CRIMINAL CASES AGAINST PHIL-ASIA

8. In 2003, the Commission also filed **four (4) criminal cases** [13]against PHIL-ASIA, for violation of the Securities Regulation Code (SRC), **before the Regional Trial Court (RTC) of Mandaluyong,** namely:

   a. Criminal Case No. MC03-6766;
   b. Criminal Case No. MC03-6767;

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[5] Certification dated 22 March 2002 (**Annex D** of Petition for Revocation).
[6] CDO dated 28 May 2002 (**Annex E** of Petition for Revocation).
[7] Order dated 3 September 2002 (**Annex F** of Petition for Revocation).
[8] Complaint-Affidavit of Rhodora Salvia (**Annex G** of Petition for Revocation).
[9] Complaint-Affidavit of Marifi M. Zubia (**Annex H** of Petition for Revocation).
[10] Complaint-Affidavit of Floro C. Pagaduan, Jr. (**Annex I** of Petition for Revocation).
[11] Complaint-Affidavit of Teresita G. Canceran (**Annex J** of Petition for Revocation).
[12] Complaint-Affidavit of Trinidad S. Raylana (**Annex K** of Petition for Revocation).
[13] Informations in the 4 criminal cases (**Annexes L, M, N, O** of Petition for Revocation).

c. Criminal Case No. MC03-6768;
d. Criminal Case No. MC03-6769.

D. PHIL-ASIA'S PETITION FOR CERTIORARI

9. Meanwhile, PHIL-ASIA filed a **Petition for Certiorari (with prayer for Preliminary Injunction) before the Court of Appeals (CA)**, assailing the CDO dated 28 May 2002 and the Order dated 3 September 2002. This case was docketed as **CA-GR SP No. 73009**.

10. On 29 August 2003, the CA issued a **Resolution**[14] which granted PHIL-ASIA's Petition and thus enjoined the Commission from implementing the CDO and Order against PHIL-ASIA.

11. On 12 September 2008, however, the CA issued a **Decision**[15] reversing itself; it thus dismissed PHIL-ASIA's Petition and dissolved the injunction.

12. PHIL-ASIA filed a timely Petition for Certiorari before the Supreme Court, assailing the CA Decision dated 12 September 2008.

13. On 20 April 2009, the Supreme Court issued a **Resolution**[16] dismissed PHIL-ASIA's Petition, stating that it failed to show reversible error on the part of the CA.

E. COMPLAINTS AGAINST PHIL-ASIA IN 2008

14. On 18 September 2008, a group of planholders from Catanduanes ("Catanduanes Group") filed their Complaint-Affidavits[17] stating that PHIL-ASIA sold them Pre-need plans from **January 2007 to January 2008**. PHIL-ASIA reportedly held office at No. 017 Salvacion Street, Virac, Catanduanes, represented by Vicente R. Afulgencia (Chair/Pres/GM) and a certain Leonisa Rana. *These plans were sold at the time when the injunction against the Commission was still in effect (from 29 August 2003 to 12 September 2008).*

15. Subsequently, a group of planholders from Manila ("Manila Group") also submitted their Complaint-Affidavits[18] stating that PHIL-ASIA sold them Pre-need plans from **May 2005 to February 2009.** PHIL-ASIA reportedly held office at Sta. Cruz, Manila, represented by a certain Cristita D. Amor. *These plans were sold at the time when the injunction against the Commission was still in effect; however, PHIL-ASIA continued to collect premiums even after the CA reversed itself and dissolved the injunction on 12 September 2008.*

16. Both the Catanduanes group and the Manila group alleged that they had no knowledge that PHIL-ASIA had no authority to sell Pre-need plans. **Recall that, as**

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[14] CA Resolution dated 29 August 2003 (**Annex P** of Petition for Revocation).
[15] CA Decision dated 12 September 2008 (**Annex Q** of Petition for Revocation).
[16] SC Resolution dated 20 April 2009 (**Annex R** of Petition for Revocation).
[17] Complaint-Affidavits of Catanduanes planholders (**Annexes S, T, U, V, W, X, Y** of Petition for Revocation).
[18] Complaint-Affidavits of Manila planholders (**Annexes Z, AA, BB, CC, DD, EE** of Petition for Revocation).

per the [CGFD's] negative Certification[19] dated 22 March 2002, PHIL-ASIA had none of the necessary licenses to sell pre-need plans.

F. SERVICE OF SUMMONS ON PHIL-ASIA

17. On 10 February 2010, the Commission's Office of the General Counsel (OGC), issued **Summons** to PHIL-ASIA (through the Mauricio Law Firm, residing in Quezon City) and its Directors and Officers (residing in Quezon City and Cebu). As to the Directors and Officers residing in Cebu, the Summons were forwarded to the Commission's Cebu Extension Office.

18. On 16 April 2010, the OGC received a **Manifestation** dated 30 March 2010 from the Mauricio Law Office stating that the Summons could not be validly served since PHIL-ASIA no longer held office at that temporary address.

19. On 14 July 2016, the OGC issued an **Order**, clarifying that the Summons on PHIL-ASIA should have been served at its registered address in its 2008 GIS.

20. On 18 July 2016, the Petitioner EPD submitted a **Compliance**, agreeing to serve the Summons on PHIL-ASIA at its last known address, as indicated in its 2008 GIS. Meanwhile, Summons on each of the Directors and Officers would be at their respective Quezon City and Cebu addresses.

21. On 26 July 2016, the OGC issued an **Order** confirming that the addresses cited in EPD's Compliance (i.e., the last-known addresses in the 2008 GIS) should be considered the *correct* addresses for purposes of Summons.

22. On the same day, the OGC issued **Summons** to PHIL-ASIA and its Directors and Officers at the following addresses:

PHIL-ASIA	Unit 1602 16/F Summit I Building, 530 Shaw Boulevard, Mandaluyong City
Directors/Officers in QC	#6 Mapalo Drive, Sierra Monte Villas, Batasan Hills, Quezon City
Directors/Officers in Cebu	#54 Eagle Street, Sto. Nino Village, Barangay Banilad, Cebu City

23. On 27 July 2016, the OGC sent a Memo and the Summons on Directors and Officers residing in Cebu to the **Cebu Extension Office,** which the latter received on 3 August 2016.

24. On 2 August 2016, Doms Aguilar, an authorized process server of the Commission, executed an Affidavit of Service stating that Summons ***could not be served at the common address of the Directors and Officers in Quezon City*** because they had moved out, according to the Security Guard there.

25. On 8 August 2016, Eric Lintes, another process server of the Commission, executed an Affidavit of Service stating that Summons ***could not be served at the address of PHIL-ASIA at Shaw Boulevard*** because it had moved out according to the Receptionist there.

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[19] *Supra*, Note 5.

26. On 15 August 2016, Larisa H. Polinar, of the Commission's Cebu Extension Office, executed an Affidavit of Service stating that Summons ***could not be served at the common address of the Directors and Officers in Cebu*** because they could not be found. Upon inquiry with the Homeowners' Association, she learned the D/O allegedly residing there were never recorded as owners/occupants.

27. On 29 November 2016, the EPD filed a **Motion** (dated 15 November 2016) for Leave to Effect Summons by Publication, because the personal summons to the Respondents were returned unserved, as none of them could be found.

28. On 12 December 2016, the OGC issued an **Order** allowing service of Summons by publication. Thus, the Summons was published on 19 December 2016 at 3:27 PM on the SEC website, where it can still be found.

29. To date, almost 6 months later and well-beyond the fifteen (15) day period given, the Respondents have not filed any response to the EPD's Petition.

ISSUE

Whether or not the SEC Registration of PHIL-ASIA can be **revoked**, under PD 902-A, for Defiance of Lawful Order and/or Serious Misrepresentation.

DISCUSSION

30. Under Section 6(i) of PD 902-A a corporation's Certificate of Registration may be revoked, inter alia, for the following reasons:

> Refusal to comply or **defiance of** any **lawful order** of the Commission restraining commission of acts which would amount to a grave violation of its franchise[20]
>
> **Serious misrepresentation** as to what the corporation can do or is doing to the great prejudice of or damage to the general public[21]

31. Here, as per the negative Certification[22] of the [CGFD], PHIL-ASIA did not have the necessary license to sell Pre-need plans. Thus, the Commission's **CDO**[23] (28 May 2002) and subsequent **Order**[24] making the CDO permanent (3 September 2002) were both lawful orders. PHIL-ASIA's continued selling of Pre-need plans, as recounted in the Complaint-Affidavits[25] of the planholders from Laguna, Nueva Ecija, and Quezon City from June 2002 to December 2004, was a **defiance of lawful orders** of the Commission.

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[20] Section 6(i)(3) of PD 902-A.
[21] Section 6(i)(2) of PD 902-A.
[22] *Supra*, Note 5.
[23] *Supra*, Note 6.
[24] *Supra*, Note 7.
[25] *Supra*, Notes 8-12.

32. Moreover, whenever PHIL-ASIA sells Pre-need plans, it presents itself to the buying public as an entity licensed to sell these plans, which it is not. In other words, PHIL-ASIA, whenever it sells, or even when it merely collects premiums on plans sold, is making a **serious misrepresentation** that it is licensed to sell Pre-need plans.

33. Besides the evidence of selling in Laguna, Nueva Ecija, and Quezon City from June 2002 to December 2004, there is evidence of further selling from May 2005 to February 2009 to the Manila Group. Furthermore, there is evidence that from January 2007 to January 2008, PHIL-ASIA was simultaneous selling to the Catanduanes Group. **Therefore, it has been sufficiently shown** (with affidavits corroborated by *receipts for premium payments*, from multiple planholders in different cities) that **from June 2002 to February 2009, PHIL-ASIA was engaged in continuous selling of Pre-need plans without the license to do so.**

34. Because of the CA Resolution in CA-GR SP No. 73009, there was a time when the Commission was enjoined from enforcing the CDO and Order (i.e. from 29 August 2003 to 12 September 2008); however, it did not confer any authority upon PHIL-ASIA to sell pre-need plans at that time. **PHIL-ASIA *lack of license to sell Pre-need plans* did not stem from the CDO/Order. Thus, even if there was never any CDO/Order, PHIL-ASIA would not be licensed to sell Pre-need plans.** *Assuming arguendo* that PHIL-ASIA's sales activities were *not violating a lawful order* during the pendency of the injunction, PHIL-ASIA nonetheless committed serious misrepresentation because it had no license to sell.

WHEREFORE, premises considered, the Petition is hereby **GRANTED**. The SEC Certificate of Registration No. 153936, issued to **PHIL-ASIA CARE PLANS, INC.** is hereby **REVOKED** based on **Sections 6(i)(3) and 6(i)(2) of PD 902-A**.

Let the Company Registration and Monitoring Department (CRMD) be furnished a copy of this Decision.

SO ORDERED.

Pasay City, Philippines; 27 July 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EMILIO B. AQUINO
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner