



Republic of the Philippines  
Department of Finance  
**Securities and Exchange Commission**  
SEC Building, EDSA, Greenhills, Mandaluyong City  
Company Registration and Monitoring Department

**In the Matter of:**

**For: Revocation of Corporate  
Registration on the Ground of  
Fraud in Procuring its Certificate  
of Incorporation**

**CARAGA INDIGENOUS PEOPLES MANAGEMENT  
AND DEVELOPMENT CORPORATION**  
SEC Registration No. CS201030102

X-----X

## ORDER

For consideration of the Company Registration and Monitoring Department ("CRMD") is the letter-certification from BIR Commissioner Kim S. Jacinto-Henares to the Commission dated January 29, 2014, received by the Enforcement and Investor Protection Department ("EIPD") of this Commission, stating that some of the incorporators of CARAGA INDIGENOUS PEOPLES MANAGEMENT AND DEVELOPMENT CORPORATION used incorrect or invalid Tax Identification Numbers (TINs) in its articles of incorporation.

CARAGA INDIGENOUS PEOPLES MANAGEMENT AND DEVELOPMENT CORPORATION ("*subject corporation*") is a stock corporation registered with the Commission on July 20, 2010 under SEC Registration No. CS201030102. Its declared principal office is located at Km. 2 Doongan Road, Butuan City. Based on its articles of incorporation, the primary purpose for which it was established is as follows:

*"To engage and/or provide professional and/or technical services for Indigenous Cultural Communities throughout Mindanao in the form of consultancy and representation, technical and managerial services for the development of ancestral domain or any project to be undertaken therein, and other business, information and communication technology that may be undertaken therein."*

The incorporators of subject corporation with their individual TINs opposite their names, as they have declared in the articles of incorporation, are as follows:

	NAME	DECLARED TAX IDENTIFICATION NUMBER
	Sergio C. Pascual	102-733-170

Emma S. Pascual	168-400-062
Roldan L. Torralba	113-528-741
<b>Romeo M. Catalan</b>	<b>196-400-456</b>
Karen S. Pascual	933-913-440
Aprilyn S. Pascual	262-413-135
<b>John Sergio S. Pascual</b>	<b>190-214-221</b>
<b>Perlito B. Montañez</b>	<b>199-877-695</b>
<b>Banzi P. Bago</b>	<b>924-790-428</b>

As part of their surveillance and investigation functions, the EIPD of this Commission requested the Bureau of Internal Revenue (“BIR”) for verification of the authenticity of the Tax Identification Numbers (“TINs”) of the foregoing incorporators of subject corporation.

In a letter-certification dated January 29, 2014, the BIR, through Commissioner Kim S. Jacinto-Henares, confirmed that the TIN used by/for incorporators, Romeo M. Catalan, John Sergio S. Pascual, Perlito B. Montañez and Banzi P. Bago, are either invalid or incorrect based on the following reasons:

NAME	TIN	RESULT OF TIN VERIFICATION
Romeo M. Catalan	196-400-456	Invalid; Valid and correct TIN is 196-400-436
John Sergio S. Pascual	190-214-221	Valid TIN series but the correct TIN he is using is 429-980-206
Perlito B. Montañez	199-877-695	Valid but not registered under his name. The correct valid TIN he is using is 124-158-875
Banzi P. Bago	924-790-428	Valid but not registered under his name. No TIN found for Banzi P. Bago

Acting on the matter, CRMD, pursuant to its authority under SEC Resolution No. 359, Series of 2010, served summons to subject corporation in its declared principal office address, a copy furnished its treasurer and director, Romeo Catalan, directing the same to file its answer or comment to the foregoing information received by the Commission from the BIR within fifteen (15) days from receipt thereof.

On June 11, 2014, CRMD received the answer/comment of subject corporation, through its president, Engr. Sergio C. Pascual, admitting that, out of the nine (9) incorporators of the corporation, only four (4) have inaccurate TINs, while proffering its explanations for said discrepancy as hereunder quoted:

1. *On Romeo Catalan's TIN, it was clearly a clerical error while that of John Sergio S. Pascual is an honest mistake or excusable negligence of our clerk.*
2. *With respect to Perlito B. Montañez and Banzi P. Bago who represent the Indigenous Cultural Communities (“ICCs”) of Surigao del Sur and Surigao del Norte, respectively, the same were also due to excusable negligence of our clerk.”*

Subject corporation also contends that, as provided under Section 121 of the Corporation Code, it may be dissolved only by this Commission upon filing of a verified complaint which it supposedly has not received. It believes that where the violations are not willful or fraudulent or do not affect the public adversely or seriously, the court may in its discretion merely enjoin the further commission of the wrongful act or acts.

The sole issue to be resolved in this instant case is:

*“Whether or not this Commission should revoke the corporate registration of CARAGA INDIGENOUS PEOPLES MANAGEMENT AND DEVELOPMENT CORPORATION with SEC Registration No. CS201030102 on the ground of fraud in procuring its certificate of incorporation.”*

The answer is in the affirmative.

### DISCUSSIONS

It cannot be gainsaid how the articles of incorporation is accorded with reverence and importance. It is after all not only a contract document between the corporation and its stockholders. It is worth stressing that the articles of incorporation is also a contract between the corporation, its stockholders and the state, which is the grantor of the privilege of acquisition of juridical personality to a corporation.

The grant being a mere privilege, the state has a continuing interest in the existence of a corporation in a sense that this privilege be acquired only under the conditions of the law including the mandatory requirements for incorporation as may be deemed appropriate by the state.

One of such requirements of the state that must be observed by the corporation and its incorporators is to indicate their individual Tax Identification Numbers (TINs) in the articles of incorporation pursuant to Section 236 of the National Internal Revenue Code, which provides that:

*“xxx (J) Supplying of Taxpayer Identification Number (TIN). - Any person required under the authority of this Code to make, render or file a return, statement or other document shall be supplied with or assigned a Taxpayer Identification Number (TIN) which he shall indicate in such return, statement or document filed with the Bureau of Internal Revenue for his proper identification for tax purposes, and which he shall indicate in certain documents, such as, but not limited to the following: xxx*

*(5) Documents to be registered with the Securities and Exchange Commission;*

*Only one Taxpayer identification Number (TIN) shall be assigned to a taxpayer. Any person who shall secure more than one Taxpayer Identification*

*Number shall be criminally liable under the provision of Section 275 on  
'Violation of Other Provisions of this Code or Regulations in General.'*

This is also in furtherance of the mandate of Executive Order No. 98 dated April 28, 1999, directing all government agencies and instrumentalities, including government-owned and/or controlled corporations, and all local government units to incorporate the TIN in all forms, permits, licenses, clearances, official papers and documents which they issue to persons transacting business with them, be they natural or juridical.

Such is the importance of the procurement and disclosure of the TIN of the incorporators in the articles of incorporation that any misrepresentation or false statement thereon, whether intentional or not, is a ground to cause the revocation of the certificate of registration granted by the state.

The authority of the state, through the Securities and Exchange Commission, is provided under Section 5.1 (m) of the Securities Regulation Code which vests the State, through Securities and Exchange Commission, jurisdiction and supervision over all corporations who are grantees of primary license.

*"Powers and Functions of the Commission.— 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions: xxx*

*(m) Suspend, or revoke, after proper notice or hearing the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law;"*

Section 6, paragraph i, of Presidential Decree No. 902-A, as amended, enumerates "fraud in procurement of the certificate of registration" as one of these grounds for revocation. This "fraud" refers to fraud attendant in the registration and the same must be contained or connected with the documents and/or papers presented to the Commission for the registration of said corporation, partnership or association<sup>1</sup>.

There are two (2) types of fraud: actual and constructive. To constitute actual fraud, there must be such fraud which affects the conscience – i.e. there must be the element of deceit or intentional deception. However, in the case of constructive fraud, intention is immaterial.

There is constructive fraud when the act done or omitted constitutes a misrepresentation, which in the contemplation of courts and tribunals, is tantamount to fraud because of its detrimental effect on public interest, even though the act is not done with an actual intent to perpetrate fraud or injury upon another. The

<sup>1</sup> In the Matter of Charyn Marketing Enterprise Corporations (SEC Case No. 03-05-49)

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 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<sup>2</sup>.

We clarify that "fraud" as used in Section 6, paragraph i (1), of Presidential Decree No. 902-A, as amended, includes constructive or legal fraud and not just actual or moral fraud. The subject provision is not concerned with a crime of felony and, thus, criminal intent or intent to deceive is not essential. It is concerned with the regulation of the grant of a special privilege. A party interested in applying for a franchise must therefore exercise due diligence and familiarize themselves with such statutes or rules in order to ensure that they will be able to strictly comply with the prescribed requirements and procedures. In other words, applicants are duty bound to know the regulations and they can never be allowed to feign ignorance thereof as good faith to be excused from compliance therewith and then demand a grant of approval from the state as a matter of right.<sup>3</sup>

Accordingly, this Commission, a privy to the contract with the corporation, has authority to withdraw its approval thereto if the same is found to have been procured through fraud.

In order to carry out this authority, the Commission, by virtue of SEC Resolution No. 359, Series of 2010, vested Company Registration and Monitoring Department (CRMD) to institute the revocation process of the erring corporation after complying with due process, particularly on these grounds:

1. *If companies fail to formally organize and commence operation within two (2) years from the date of its incorporation;*
2. *If companies are inoperative for a continuing period of at least five (5) years;*
3. *If companies fail to file its by-laws within the prescribed period;*
4. *If companies fail to file/register for a period of at least five (5) years any of the following:*
  - i. *Financial statements;*
  - ii. *General Information Sheet; and*
  - iii. *Stock and Transfer Book/ Membership Book*
5. *if any of the incorporators is already deceased at the time of incorporation;*
6. *if any of the incorporators is a minor at the time of incorporation;*
7. *if any of the incorporators has submitted spurious or falsified documents to prove compliance with requirements for registration;*
8. *if any of the incorporators submits false addresses or Tax Identification Numbers.*

---

<sup>2</sup> 37 Am Jur 2d. Fraud and Deceit

<sup>3</sup> In the Matter of Revocation of the Articles of Incorporation of Domel Realty & Development Corporation (SEC En Banc Case No. 02-11-229)

The essence of due process is simply to be heard; or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of<sup>4</sup>.

In its answer, subject corporation does not dispute that the TINs of Romeo M. Catalan, John Sergio S. Pascual, Perlito B. Montañez and Banzi P. Bago, as reflected in its articles of incorporation, are inaccurate. This has been confirmed by no other than the Bureau of Internal Revenue (BIR), the government agency which registers and records the tax registration information of all taxpayers.

Fraud, how unintentional it may be, indubitably exists in the procurement of the certificate of registration of subject corporation, thus, compels the Commission to revoke its certificate of registration.

**WHEREFORE**, premises considered, the Certificate of Registration of CARAGA INDIGENOUS PEOPLES MANAGEMENT AND DEVELOPMENT CORPORATION, issued by the Commission on July 20, 2010, is hereby **REVOKED**.

Let a copy of this Order be attached by the Corporate Filing and Records Division (CFRD) of this Department to the corporate records of subject corporation on file with this Commission and its "revoked" status be entered in the SEC online database by the Information and Communications Technology Department (ICTD) of this Commission.

**SO ORDERED.**

Mandaluyong City, Philippines. September 4, 2014.

  
**FERDINAND B. SALES**  
Director 

---

<sup>4</sup> Lily O. Orbase vs. Office of the Ombudsman and Adoracion Mendoza-Bolos, G.R. No. 175115, December 23, 2009.