



**TAX LAW FOR BUSINESS**  
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## **The SEC's power to protect the public**

The Securities and Exchange Commission (SEC) was established to bolster the government's policy of encouraging both local and foreign investments and to embolden public participation in the affairs of private corporations in order to promote and accelerate the country's economic development. Primary to all these, however, is the commission's duty of safeguarding public interest in our ever-changing and ever-evolving business environment.

It is with this mission in mind that the commission recently revoked the corporate registration of a nonstock, nonprofit organization for fraud and serious misrepresentation (SEC Admin Case 04-10-113). In this particular case, two persons, posing as officers of an organization, approached students from various schools and invited them to join so they can avail themselves of scholarships, be given a monthly allowance of P15, 000, laptop computers and free trips abroad. The students were then asked to take an entrance examination and pay a membership fee of P1,000. Subsequently, the students were informed they passed the exams and were asked to sign several documents that turned out to be the incorporation documents of the organization. More students were recruited and made to pay membership and other fees on the promise that they, too, would be given scholarships and monthly allowances. Meetings were conducted every Saturday thereafter where the two "officers" collected P1,000 from each participant. In one of these meetings, it was alleged that the funds of the program would come from then-President Arroyo's P300-billion donation to the organization and from foreign contributions.

When the promised allowances never came, concerned parents started entertaining doubts and thus, made inquiries with the two "officers" of the organization. Their questions were met with hostility; the parents were scolded, insulted and threatened. The parents then obtained a copy of the Certificate of Incorporation of the organization and they, together with the student-incorporators, were surprised to find that residence certificates were provided in the incorporation papers because the students never submitted any residence certificates. With this, the parents and students filed a letter-complaint with the SEC's Baguio extension office.

The commission, in a decision dated January 13, 2011, granted the revocation of the Certificate of Registration of the organization, citing Section 6(i)(1) and (2) of PD 902-

A, as amended, which provides that “[I]n order to effectively exercise such jurisdiction, the commission shall possess the following powers: xxx

(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:

1. Fraud in procuring its certificate of registration.
2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public xx.”

#### Fraud in procuring certificate of registration

In the investigation conducted by the commission’s Enforcement and Prosecution Department, it was revealed that there was fraud in obtaining the certificate of registration since two of the incorporators were minors at the time they signed the incorporation documents. Aside from being a violation of Section 10 of the Corporation Code which provides that, “Any number of natural persons not less than five but not more than 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 xxx,” it was also expressly certified in the organization’s Articles of Incorporations that all incorporators were of legal age.

It appears that there is constructive fraud in this particular case. Constructive fraud may result from reckless and heedless representations although not made with a deliberate intent to deceive. The law and the commission are not concerned with crimes or felonies, therefore, criminal intent or intent to deceive is not essential. Thus, 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.

#### **Serious misrepresentation**

The officers of the organization made several serious misrepresentations, which prejudiced the general public, particularly the students. One such act was the distribution of flyers to the general public which stated that the fund of the organization was P300 billion and that the participants needed to give only P1,000 as their counterpart contribution. In addition, the promise of scholarships was emphasized by the fact that Certificates of Scholarships were awarded to the scholar-complainants in a ceremony that even took place in a hotel.

It is the commission’s duty and responsibility to keep the general public safe from enterprising hooligans who are out to deceive and make a quick buck out of the naïveté of people. Thus, the public is encouraged to go directly to the commission in case they have doubts regarding the organization they joined or is dealing with and the enterprise where they invested their hard earned money.

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