



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the Matter of:

SEC-EIPD Case No. 7573

For: Revocation of Certificate of
Incorporation/Registration

GEN-Z AGRIVENTURES, INC.

SEC Registration No. 2023020087357-30

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ORDER OF REVOCATION

GEN-Z AGRIVENTURES, INC. ("GEN-Z", for brevity) is a corporation duly registered with the Securities and Exchange Commission ("**SEC, Commission**") on 22 February 2023 under Company Registration No. 2023020087357-30 and with principal office located at GEN-Z Makati Building, West Makati, 1417 Ocampo Street San Antonio, Makati City. Its primary purpose as stated in its Articles of Incorporation ("AOI") is as follows:

"To engage in, conduct, and carry on the business of buying, direct selling, distributing online marketing at wholesale, import, and export, insofar as may be permitted by law, all kinds of online products, business, agricultural products such as but not limited goats, ventures, or otherwise, such as but not limited to general merchandise at wholesale, and whatever nature relative to the business aforesaid, without acting as broker or dealer in securities, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, commodity/financial futures exchange/broker/merchant, financing company, and time shares/club shares/membership certificates issuers or selling agents thereof nor engaging in investment solicitation nor investment taking activity from public investors."

The instant case stemmed sometime in June 2023, when the Commission received numerous complaints, reports and inquiries that **GEN-Z**, operated by Mr. Homer Concepcion Lim, is actively engaged in the investment-taking activities in the guise of its "*co-partnership program*" in its egg poultry farming business to the public, a regulated activity which requires prior authority from the Commission.

Investigation conducted by the Department revealed that **GEN-Z**, without any authority from the Commission, offers a "*co-partner plans*" where prospective 'partners' are enticed to invest a minimum capital of Php100,000.00 or more with a promise of monthly

gain ranging from 5% to 11% or equivalent to total of 60% or 132% return on investment within the one (1) year lock-in period depending on the 'co-partner plan' availed of.

As a result of the EIPD's investigation, on 28 July 2023, the *Commission En Banc* issued and posted on the Commission's website an SEC Advisory informing the public that **GEN-Z** is not authorized to solicit investments from the public.

Thereafter, the EIPD issued on 11 August 2023 a **Show Cause Order** against **GEN-Z**, Homer Concepcion Lim¹, Jomary Tubigon Nuqui², Mark Carabot Tuig³, Michelle Coquilla Santillan⁴, Rodmar Joseph Fernandez Mendoza, and Renato D. Calacat, directing the company to show cause why:

1. Its Certificate of Incorporation should not be revoked for serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public; and
2. No administrative sanctions and/or criminal charges should be filed against and imposed upon **GEN-Z** for violations of Securities Regulation Code and its Implementing Rules and Regulations, and the Financial Products and Services Consumer Protection Act.

Consequently, in compliance with the Show Cause Order, **HOMER CONCEPCION LIM⁵, JOMARY TUBIGON NUQUI, MARK CARABOT TUIG, MICHELLE COQUILLA SANTILLAN, RODMAR JOSEPH FERNANDEZ MENDOZA, and RENATO D. CALACAT**, filed a two-page Verified Answer⁶ which contains only a general denial and without any supporting documents, the relevant portion of which is quoted as follows:

xxx

- "3. By way of Answer-Comment, respondents categorically deny that it has solicited investments from the public, and do not ask for investments from the public. The reports reaching the SEC are baseless and derogatory. The corporation has never asked for investments nor did it advertise any solicitation in any matter, specially thru social media.*
- 4. GEN-Z has not in any way advertised its business affairs, nor has it authorized any person, entity or institution to use its platform as means to solicit investment from the public.*
- 5. The alleged advertisement thru social media did not come from GEN-Z nor any of its Board of Directors or Officers."*

¹Based on the Director's Certificate attached in their amended Articles of Incorporation (AOI), he is the director/stockholder of GEN-Z.

²Based on the Director's Certificate attached in their amended AOI, he is the director/stockholder of GEN-Z.

³Based on the Director's Certificate attached in their amended AOI, he is the Corporate Secretary/CFO and the director/stockholder of GEN-Z.

⁴Based on the Director's Certificate attached in their amended AOI, she is the director/stockholder of GEN-Z.

⁵Based on the submitted Board Resolution dated 12 September 2023, the corporation is giving authority to Homer Concepcion Lim to be the authorized representative of GEN-Z in the case entitled *In the Matter of: GEN-Z Agriventures Registration No. 2023020087357-30 docketed as SEC-EIPD Case No. 7573 For Revocation of Primary Registration* pending before the SEC-EIPD.

⁶The notarial portion on the answer-comment was subscribed and sworn on 11 September 2023.

Hence, we now resolve the instant proceedings on the basis of the documents submitted and the available information and evidence gathered.

ISSUE

The sole issue to be resolved is whether or not **GEN-Z** is engaged in the selling or offering for sale of securities that require authority from the Commission, and therefore, would warrant the revocation of its Certificate of Incorporation/Registration pursuant to Section 6 (i) (2) of Presidential Decree No. 902-A for serious misrepresentation as to what the corporation can do or is doing to the great prejudice or damage to the general public and for engaging in *ultra vires* acts in violation of the Revised Corporation Code of the Philippines and the imposition of administrative sanction and/or criminal charges in violation of R.A. No. 8779 and Section 11 of the Republic Act 11765 also known as the Financial Products and Services Consumer Protection Act.

DISCUSSION

As already mentioned above, respondents' Verified Answer only contains a general denial and without any supporting documents, hence, does not deserve any consideration at all.

Thus, we reiterate our findings as contained in our Show Cause Order:

GEN-Z AGRIVENTURES, INC. IS ENGAGED IN THE OFFERING OR SELLING FOR SALE OF SECURITIES

Section 3.1 of the Securities Regulation Code (SRC) defines securities as shares, participation or interest 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. The same provision enumerates the different securities which include, among others, **investment contracts**, defined under SRC Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC IRR), to wit:

“An **investment contract** means 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. x x x

A **common enterprise** is deemed created when two (2) or more investors “pool” their resources, creating a common enterprise, even if the promoter receives nothing more than a broker's commission.”

The elements of an investment contract enumerated in the case of *Power Homes Unlimited Corporation vs. SEC* (G.R. No. 164182 February 26, 2008) were traced from the case of *SEC vs. Howey Co.* (66 S.Ct.1100 May 27, 1946) and was later modified in the case of *SEC vs. Glenn W. Turner Enterprises, Inc.* (474 F.2d476 February 1, 1973), as follows:

- A contract, transaction or scheme;
- An investment of money;
- A common enterprise;
- Expectation of profits; and

- Profits arise primarily from the entrepreneurial and managerial efforts of others.

Section 8.1⁷ in relation to Section 12.1⁸ of the Securities Regulation Code (SRC) provides the prohibition on the selling or offering for sale of unregistered securities to the public. Thus, securities such as investment contract must be registered with the Commission pursuant to Sections 8 and 12 of the SRC before the same can be **offered or sold** for distribution.

Conversely, Rule 3.1.17.4 of the 2015 Implementing Rules and Regulation of the Securities Regulation Code ("2015 SRC IRR"), provides, among others, that the distribution or making available or offering of any material through, among others, information technology is presumed to be a public offering as contemplated under the Rule 3.1.17 of the 2015 SRC IRR.⁹

Aside from the prohibition on the selling or offering for sale of unregistered securities or investments, the SRC also prohibits any person to engaged in the business of buying and selling of securities (broker¹⁰) or to act as a salesman¹¹ or agent in relation to the selling or offering for sale of securities to the public without the necessary registration from the Commission¹². Thus, any person, without proper license from the Commission who acts as brokers or agents of a company, selling or convincing people to invest in the investment scheme including solicitations or recruitment through the internet may likewise be prosecuted and held criminally liable under Section 28 of the SRC and penalized with a maximum fine of Five Million pesos (Php5,000,000.00) or penalty of Twenty-One (21) years imprisonment or both pursuant to Section 73 of the SRC.

In this particular case, the Department carefully examined the characteristics of the investment offered by GEN-Z to determine if they satisfy the elements of an investment contract. In our evaluation, indeed, the elements of an investment contract are manifested in the elements being offered by GEN-Z, as follows:

1. There is a **contract, transaction or scheme**.
By investing in the scheme offered by **GEN-Z**, the partner-investor **enters into a contract**.
2. There is an **investment of money**.
Investors were enticed to place their money amounting to a minimum amount of Php100,000.00.
3. The money-investment is placed into a **common enterprise**.

⁷ **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.

⁸ **SEC. 12. Procedure for Registration of Securities.** - 12.1. All securities required to be registered under Subsection 8.1. shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4.

⁹ **SRC Rule 3.1.17 Public Offering** is any offering of securities to the public or anyone, whether solicited or unsolicited.

¹⁰ **Section 3.3 of the SRC** – “Broker” is a person engaged in the buying and selling of securities to the account of others.

¹¹ **Section 3.113 of the SRC** – “Salesman” is a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

¹² Section 28 of the SRC on the Registration of Brokers, Dealers, Salesmen & Associated Person

The monies as investment goes to the **GEN-Z AGRIVENTURES, INC.** by depositing it to its bank account.

4. The placement of money gives rise to an **expectation of profits**. Investors were prompted to invest their money the company with the promise of earning ranging from 5% to 11% monthly gain or for a total earning of 132% per annum.
5. Investors are **expecting to earn profits from the entrepreneurial and managerial efforts of others**. Partner-investors were solely required to invest their money without any need to participate in the alleged business operations.

It is important to emphasize that **GEN-Z** as a juridical person, it is only allowed to exercise powers inherent to its corporate existence as provided in the Revised Corporation Code of the Philippines and those conferred in its Articles of Incorporation (AOI). In other words, what a corporation can do is necessarily circumscribed by its primary purpose clause in its AOI.

Please note that the registration of **GEN-Z** with the Commission as a corporation only grants the subject entity the authority to engage into purposes stated in its Articles of Incorporation. The purpose clause of the articles of incorporation indicates the extent as well as the limitations of the powers which a corporation may exercise. In fact, the purpose in **GEN-Z's** Articles of Incorporation expressly prohibits it to operate an investment taking scheme.

REPUBLIC OF THE PHILIPPINES
SECURITIES AND EXCHANGE COMMISSION
The SEC Headquarters
7907 Makati Avenue, Salcedo Village,
Barangay Bel-Air, Makati City, 1209, Metro Manila

COMPANY REG. NO. 2023020087357-30

CERTIFICATE OF FILING
OF
AMENDED ARTICLES OF INCORPORATION

KNOW ALL PERSONS BY THESE PRESENTS:

This is to certify that the amended articles of incorporation of the
GEN-Z AGRIVENTURES INC.
(Amending Articles II Secondary Purpose and III thereof)

copy annexed, adopted on May 30, 2023 by majority vote of the Board of Directors and by the vote of the stockholders owning or representing at least two-thirds of the outstanding capital stock, and certified under oath by the Corporate Secretary and a majority of the Board of Directors of the corporation was approved by the Commission on this date pursuant to the provision of Section 45 of the Revised Corporation Code of the Philippines, Republic Act No. 11232, which took effect on February 23, 2019, and copies thereof are filed with the Commission.

Unless this corporation obtains or already has obtained the appropriate Secondary License from this Commission, this Certificate does not authorize it to undertake business activities requiring a Secondary License from this Commission such as, but not limited to acting as: broker or dealer in securities, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, commodity/financial futures exchange/broker/merchant, financing/lending company and time shares/club shares/membership certificates issuers or selling agents thereof; nor to operate a fiat money to virtual currency exchange. Neither does this Certificate constitute as permit to undertake activities for which other government agencies require a license or permit.

IN WITNESS WHEREOF, I have set my hand and caused the seal of this Commission to be affixed to this Certificate at The SEC Headquarters, 7907 Makati Avenue, Salcedo Village, Barangay Bel-Air, Makati City, 1209, Metro Manila, Philippines, this 21 day of July, Twenty Twenty Three.

In the instant case, nowhere is it stated in the AOI and Certificate of Incorporation of **GEN-Z** that it is authorized to engage in the business of investment activities, thus considered as an *ultra vires* act and therefore constitute serious misrepresentation.

Thus, the act of **GEN-Z** through its affiliates in allowing certain persons acting as their agents or representatives to make public presentations of their investment scheme, inviting the public to invest in the companies through social media renders them liable for the unauthorized public offering of securities and the misrepresentation committed in connection with such public offering.

Section 44 of the RCCP provides:

SEC. 44. Ultra Vires Acts of Corporations. — *No corporation shall possess or exercise corporate powers other than those conferred by this Code or by its articles of incorporation and except as necessary or incidental to the exercise of the powers conferred.*

In an opinion¹³, the Commission pronounced that:

“It is the corporation’s primary purpose clause which confers, as well as limits, the powers which a corporation may exercise and the character of a corporation is usually determined by the objects of its formation and the nature of its business as stated in the articles. The primary purpose of the corporation, as stated in its articles of incorporation, is the first business to be undertaken by the corporation. Hence, the primary purpose determines its classification.

Therefore, the offering of unregistered securities to the public by **GEN-Z** constitute fraudulent transactions under Section 26 of the SRC as the public were made to believe that respondents have the authority to deal on such securities:

“SEC. 26. Fraudulent Transactions. – It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale any securities to:

26.1. Employ any device, scheme, or artifice to defraud;

26.2. Obtain money or property by means of any untrue statement of a material fact of any omission to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they were made, not misleading; or

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.”

As held in the case of **SEC vs. CJH Development Corporation, (G.R. No. 210316, 28 November 2016)**¹⁴, the Supreme Court ruled that *the sale and/or offer of securities without the requisite license, necessarily operates as a fraud on investors, thus:*

¹³ SEC-OGC Opinion No. 11-33 dated 29 July 2011 addressed to Mr. Jesus B. Lapuz.

¹⁴ SEC vs. CJH Development Corporation, (G.R. No. 210316, 28 November 2016)

“The act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities. Section 8.1 of the SRC clearly states that 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 SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer.” (Emphasis ours)

Further, the **Financial Products and Services Consumer Protection Act (FCPA)** specifically provides that any form of deceptive solicitation such as offering or selling of investment scheme from the public without a secondary license or permit from the Commission constitute investment fraud and is an unlawful activity in violation of Section 11 of the said Act.

Pursuant to Section 6 of Presidential Decree 902-A, the Commission has the power to suspend, or revoke, after proper notice and hearing, the franchise of certificate of registration or corporations, partnerships and associations, on the ground of serious misrepresentation as to what the corporation can do or is doing to the to the great prejudice of or damage to the general public. Further, SEC Admin Case No. 11-10-124 entitled *In re: PHILBIO Renewable Energy Resources Corp.*, promulgated on 27 April 2016 provides what constitute serious misrepresentation, to wit:

*“From the foregoing, it is indubitable that PHILBIO misrepresented itself to the public that it can solicit investments despite the fact that it is **not one of the purposes of the corporation.** Worse, it **does not have a license to offer/sell securities.** PHILBIO operates an investment-taking scheme which is therefore considered an **ultra vires act.** These constitute serious misrepresentation as to what the corporation can do or doing to the great prejudice to the general public.”*

Considering that nowhere is it stated in the primary purpose of **GEN-Z** that it is authorized to engage in the selling or offering for sale of securities to the public, compounded by the fact that it does not have the required Secondary License from the Commission to offer or sell securities to the public, its activity of selling or offering the public securities or investment contracts is considered an *ultra vires* act and therefore constitutes serious misrepresentation as to what the corporation can do to the great prejudice or damage to the general public, a ground for the revocation of a corporation’s primary franchise or certificate of registration/ incorporation under PD 902-A.

WHEREFORE, premises considered:

1. For violation of Section 44 of the Revised Corporation Code of the Philippines (RCC or R.A. 11232) in relation to Sections 8.1, 12.1, 28.1 and 26.1 of the Securities Regulation Code, Section 11 in relation to Section 3 (f) of the Financial Products and Services Consumer Protection Act, P.D. 902-A and Section 179 (j) of the RCC, the Certificate of Incorporation and the registration of **GEN-Z AGRIVENTURES, INC.** is hereby **REVOKED**; and
2. The following incorporators-directors of **GEN-Z AGRIVENTURES, INC.**, for conceptualizing, offering and propagating its “co-partner plans” to the public, an unregistered security in the form of an investment contract, are found to

be administratively liable for investment fraud, a fraudulent act, and are hereby **DISQUALIFIED** from being a director of a corporation for a period of five years from date of this Order pursuant to Section 26 of the Revised Corporation Code of the Philippines:

- a) **HOMER CONCEPCION LIM;**
- b) **JOMARY TUBIGON NUQUI;**
- c) **MARK CARABOT TUIG;**
- d) **MICHELLE COQUILLA SANTILLAN;**
- e) **RODMAR JOSEPH FERNANDEZ MENDOZA; and**
- f) **RENATO D. CALACAT.**

Accordingly, let this Order be posted on the SEC Website and attached by the Corporate Filing and Records Division of the Company Registration and Monitoring Department (CRMD) to the records of the Commission. Further, the Information and Communications Technology (ICTD) of the Commission is likewise requested to enter the **"REVOKED"** status of the subject corporation in the electronic/online database of the Commission.

SO ORDERED.

Makati City, 10 October 2023.


ATTY. OLIVER O. LEONARDO
Director