

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

In the Matter of:

SEC-EIPD Case No. 2023-7624

**For: Revocation of Certificate of
Incorporation/Registration**

DOUBLE R TRUCKING AND AGGREGATES OPC;

SEC Registration No. 2023080113328-90

DOUBLE R AGGREGATES.

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ORDER OF REVOCATION

This has reference to the reports and information received by the Department that **DOUBLE R AGGREGATES/DOUBLE R TRUCKING AND AGGREGATES OPC** ("**DOUBLE R**", for brevity) is allegedly engaged in quarrying business operations and expansion through offering a "partnership" to the public.

DOUBLE R TRUCKING AND AGGREGATES OPC is a One Person Corporation duly registered with the Securities and Exchange Commission ("**SEC, Commission**") on 22 August 2023 under Company Registration No. 2023080113328-90 and with principal office located at Unit 104 GF Stanford Tower, 1870 MH Del Pilar, Malate – Barangay 699, City of Manila, First District, National Capital Region (NCR), 1004. Its primary purpose as stated in its Articles of Incorporation ("**AOI**") is, as follows:

"To provide materials and trucking services to contractors and construction companies such as gravel, sand and other related items;

Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts."

The single stockholder-director-president, nominee and alternate nominee of **DOUBLE R TRUCKING AND AGGREGATES OPC**, are as follows:

NAME	NATIONALITY	RESIDENCE
RHONEIL ABAD REYES (Single stockholder-director-president)	Filipino	Block 1 Lot 15 Ph3 Manansala Ext. Langgam, City of San Pedro , Laguna, Region IV – A (CALABARZON), 4023
ERWIN DEO NOROÑA (Nominee)	Filipino	216 Upper Manalite 1, Sanat Cruz, City of Antipolo, Rizal Region IV – A (CALABARZON), 1870
MICHELLE ESDRELON BENCITO (Alternate Nominee)	Filipino	Blk 5 Lot 15 Amber St., Golden City, Dolores (Pob.), Taytay, Rizal, Region IV – A (CALABARZON), 1870

Investigation conducted by the Department revealed that **DOUBLE R**, without any authority from the Commission, recruit investors using the Facebook platform by offering investments starting from Twenty Thousand Pesos (Php20,000.00) or more with a promise of monthly profit ranging from 7.5% to 15% or equivalent to a total of 60% return on investment within the four (4) months lock-in period.

As a result of the EIPD's investigation, on 10 October 2023, the *Commission En Banc* issued and posted on the Commission's website an SEC Advisory informing the public that **DOUBLE R** is not authorized to solicit investments from the public.

Thereafter, the EIPD issued a **Show Cause Order** dated 20 October 2023 against **DOUBLE R**, Rhoneil Abad Reyes¹, Erwin Deo Noroña, and Michelle Esdreton Bencito², directing the company to show cause why:

1. The Certificate of Incorporation of **DOUBLE R TRUCKING AND AGGREGATES OPC** should not be revoked 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
2. No administrative sanctions should be imposed against the subject corporation and its incorporators, directors and officers for violations of:
 - a) Section 44 of the Revised Corporation Code of the Philippines (RCC or R.A. 11232) in relation to Section 8.1., 12.1, 28.1, 26.1 of the Securities Regulation Code (SRC) and its Implementing Rules and Regulations including, but not limited to, disqualification from being a director of a corporation under Section 26 of the Revised Corporation Code of the Philippines; and
 - b) Section 11 in relation to Section 3(f) of the Financial Products and Services Consumer Protection Act.

The Show Cause Order was sent to the email address of **DOUBLE R TRUCKING AND AGGREGATES OPC** at doubleraggregates@gmail.com on 23 October 2023 and on the same day, was attempted to be personally served at its principal office at Unit 104 GF Stanford Tower, 1870 MH Del Pilar, Malate – Barangay 699, City of Manila, First District, National Capital Region (NCR), 1004. Nobody was around at the time to receive the Show-Cause Order. Hence the Show-Cause Order was also sent via registered mail to the same principal office of the corporation and the residential addresses of its single stockholder-director-president, nominee and alternate nominee as indicated above. The Show-Cause Order was received by the Makati Central Post Office 1200 Makati City on 25 October 2023.

To date, despite such receipt and presumptive notice of the Show Cause order as detailed above, the company failed to respond, which shall be construed as a waiver of its right to be heard as to matters stated in the aforementioned Show Cause Order.

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

¹ Mr. Rhoneil Abad Reyes is the single stockholder/director/president of the OPC.

² Ms. Michelle Esdreton Bencito is the treasurer of the OPC.

ISSUE

The sole issue to be resolved is whether or not **DOUBLE R** 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 sanctions 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

DOUBLE R AGGREGATES/ DOUBLE R TRUCKING AND AGRREGATES OPC 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 different securities which include, among others, investment contract, evidences of indebtedness, as enumerated on the same provision and under SRC Rule 3.1.20 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (2015 SRC IRR), to wit:

xxx "Debt securities/instruments include any **evidence of indebtedness** such as bonds, notes, debentures, commercial papers³, treasury bills, treasury bonds and other similar instruments as may be determined by the Commission". xxx

On the other hand, **investment contract** is defined under SRC Rule 26.3.5 of the 2015 SRC IRR as follows:

"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.

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;

³ **SRC Rule 3.1.6. Commercial paper** means an evidence of indebtedness of any person with a maturity of three hundred and sixty-five (365) days or less.

- An investment of money;
- A common enterprise;
- Expectation of profits; and
- Profits arise primarily from the entrepreneurial and managerial efforts of others.

Clearly, investment contracts and evidence of indebtedness such as credit agreement are both classified as securities under the provisions of the SRC.

It must be emphasized that Section 8.1⁴, in relation to Section 12.1⁵ 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 contracts and credit agreements 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 to the public.

Conversely, SRC Rule 3.1.17.4, 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 SRC Rule 3.1.17.⁶

Aside from the prohibition on the selling or offering for sale of unregistered securities, the SRC also prohibits any person to engage in the business of buying and selling of securities (broker⁷) or to act as a salesman⁸ or agent in relation to the selling or offering for sale of securities to the public without the necessary registration from the Commission⁹. 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.

Based on the information gathered, **DOUBLE R** presents through social media (*displayed under "DOUBLE R AGGREGATES"*) its investment scheme summarized as follows:

1. **7.5% monthly profit** - where an investor-member is enticed to invest an amount ranging from Php20,000 to Php50,000 for a 7.5% monthly profit.
2. **10.5% monthly profit** - where an investor-member is enticed to invest an amount ranging from Php80,000 to Php150,000 for a 10.5% monthly profit.

⁴ **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.

⁵ **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.

⁶ **SRC Rule 3.1.17 Public Offering** is any offering of securities to the public or anyone, whether solicited or unsolicited.

⁷ **Section 3.3 of the SRC** – “Broker” is a person engaged in the buying and selling of securities to the account of others.

⁸ **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.

⁹ Section 28 of the SRC on the Registration of Brokers, Dealers, Salesmen & Associated Person

3. **15% monthly profit** - where an investor-member is enticed to invest an amount ranging from Php250,000 and above for a 15% monthly profit.

While such offering is being made under the pretense of a Partnership Program and Credit Agreement, however, evidence showed that **DOUBLE R** is engaged in the selling and/or offering of securities in the form of investment contracts as the following elements are present:

1. There is a **contract, transaction or scheme**.

By investing in the scheme offered by **DOUBLE R** 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 Php20,000.00.

3. The money-investment is placed into a **common enterprise**.

The monies as investment goes to the **DOUBLE R** or its incorporators by depositing it into their bank accounts.

4. The placement of money gives rise to an **expectation of profits**.

Investors were prompted to invest their money in **DOUBLE R** with the promise of earning from **7.5% to 15% or for a total earning of 60% for four (4) months**; and

5. Investors are **expecting to earn profits from the entrepreneurial and managerial efforts of others**.

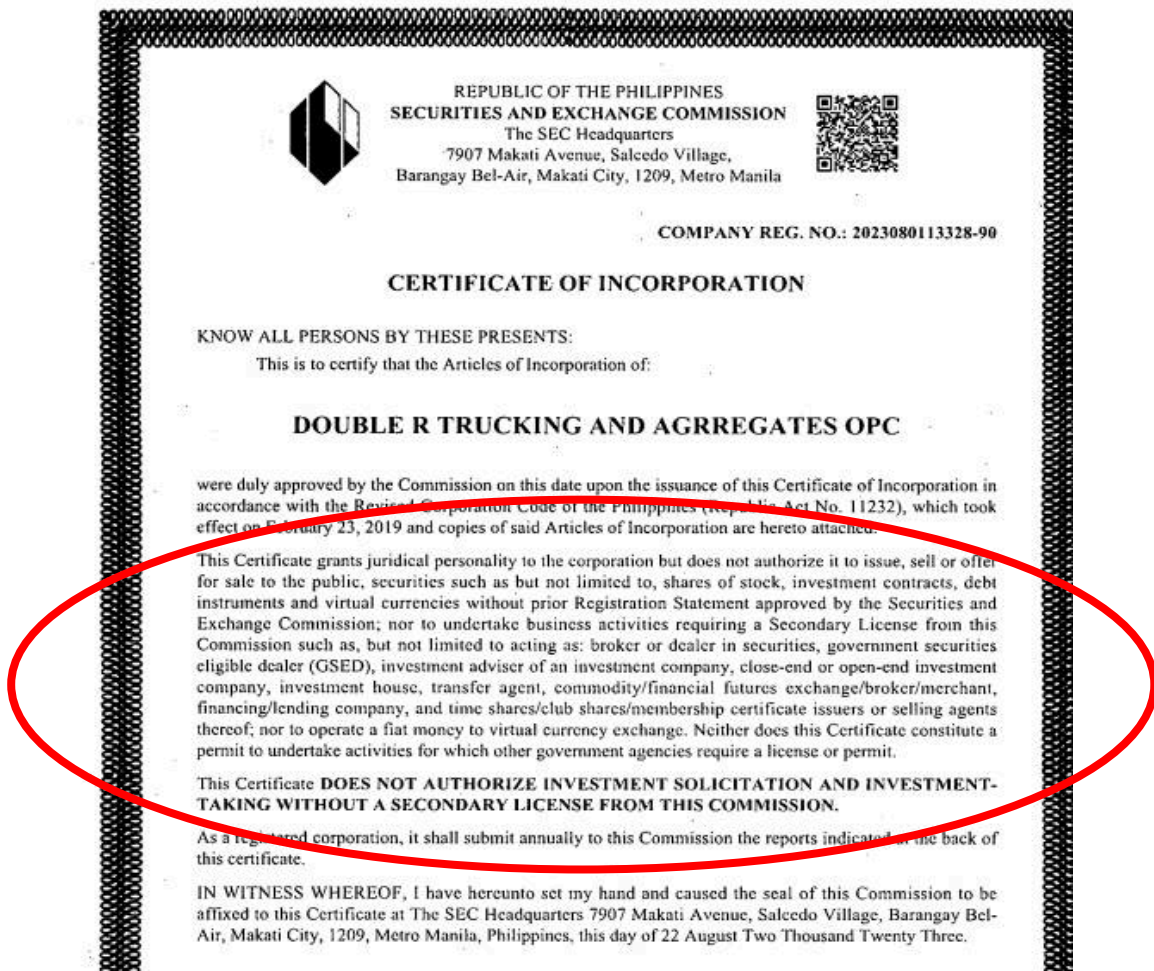
Investors were solely required to invest their money without any need to participate in the alleged business operations.

Based on Commission's records, **DOUBLE R TRUCKING AND AGGREGATES OPC** was registered as a One Person Corporation (OPC) on 22 August 2023. However, the corporation has not registered its securities in the form of investment contracts and/or evidence of indebtedness pursuant to the provisions of the SRC that would allow it to offer and/or sell securities to the public. Pursuant thereto, the Commission issued an Advisory informing the public that **DOUBLE R** has no authority to solicit investments from the public.

It is important to emphasize that **DOUBLE R** as a juridical person, 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 **DOUBLE R** does not include the offering to sell, selling or promoting the sale to the public its own securities in the form of investment contract. In fact, the AOI categorically provided that **DOUBLE R TRUCKING AND AGGREGATES OPC** "**shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts.**"

Nonetheless, the purpose stated in the Articles of Incorporation need not set out with particularity the multitude of activities in which the corporation may engage. The effect of broad purposes or objects is to confer wide discretionary authority upon the directors and management of the corporation as to the kinds of business in which it may engage. However, dealings which are entirely irrelevant to the purposes are unauthorized and called *ultra vires*. 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 **DOUBLE R**'s Articles of Incorporation expressly prohibits it to operate an investment taking scheme.



In the instant case, nowhere is it stated in the AOI and Certificate of Incorporation of **DOUBLE R** 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 **DOUBLE R** 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 opinion¹⁰, 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 **DOUBLE R** 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 2016¹¹**, the Supreme Court ruled that *the sale and/or offer of securities without the requisite license, necessarily operates as a fraud on investors, thus:*

"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:

¹⁰ SEC-OGC Opinion No. 11-33 dated 29 July 2011 addressed to Mr. Jesus B. Lapuz.

¹¹ SEC vs. CJH Development Corporation, (G.R. No. 210316, 28 November 2016)

*"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 **DOUBLE R** 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 **DOUBLE R TRUCKING AND AGREGATES OPC** is hereby **REVOKED**; and
2. The following single director-stockholder-president, nominee, alternate nominee and treasurer of **DOUBLE R TRUCKING AND AGREGATES OPC**, 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) **RHONEIL ABAD REYES;**
- b) **ERWIN DEO NOROÑA;** and
- c) **MICHELLE ESDRELON BENCITO.**

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, 14 February 2024


ATTY. OLIVER O. LEONARDO
Director