



BRIEFER ON **KAPA**

As of June 10, 2019

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I. KAPA: QUICK FACTS



Kapa-Community Ministry International, Inc. (KAPA) was registered with the Securities and Exchange Commission (SEC) as a **domestic nonstock corporation** on March 3, 2017.



KAPA also operates as **KAPA Kabus Padatuon (Enrich the Poor)**, **KAPA/KAPPA (Kabus Padutoon)**, **KAPA-Co Convenience Store and General Merchandise** and **KAPA Worldwide Ministry**.



KAPA was co-founded by **Joel A. Apolinario**, who serves as the nonstock corporation's president and more popularly as pastor.



The **primary purpose** of KAPA, as stated in its Articles of Incorporation, is to **administer its affairs, properties and temporalities as a religious corporation**.




The Certificate of Incorporation granted to KAPA expressly states that it is **not authorized to undertake business requiring secondary license** from the SEC such as soliciting investments in the form of securities.


KAPA has **not filed any registration statement nor has it been issued any secondary license** to offer or sell securities to the public as required under Sections 8 and 12 of the Securities Regulation Code.




The SEC issued **advisories** against KAPA as early as March 2017, subsequently a **cease and desist order** in February 2019 and ultimately an **order of revocation** of its certificate of incorporation in April 2019.

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KAPA was found to have been **soliciting investments from the public without the necessary license** from the SEC, when it enticed the public to “donate” in exchange for monthly “blessings” equivalent to 30% of their donation for life.

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KAPA violated **Republic Act No. 8799, or the Securities Regulation Code**, which requires the registration of securities before they can be offered for sale to the public.

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The investment scheme of KAPA is **within the definition of “securities”** under Section 3.1 of the Securities Regulation Code which are “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.

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The arrangement between KAPA and its members partakes of an **investment contract**, in particular, whereby a person invests his money in a common enterprise and is led to expect profits from the effort of others.

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The investment scheme of KAPA resembles a **Ponzi scheme**, an investment program that offers impossibly high returns and pays these returns to early investors out of the capital contributed by later investors.

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The investment scheme of KAPA also qualifies as **affinity fraud** where a spiritual leader uses his undue influence in duping his flock and hides behind the freedom of religion.

II. DISSECTING KAPA'S INVESTMENT SCHEME

A. KAPA'S SCHEME IS AN INVESTMENT CONTRACT

An **Investment Contract** is a **contract, transaction or scheme** whereby a person **invests money** in a **common enterprise** and is led to **expect profits** from the **effort of others**.

The arrangement between KAPA and its members partakes of an investment contract, satisfying the four elements laid down in the decision of the Supreme Court in the case of Power Homes Unlimited Corporation vs. Securities and Exchange Commission (G.R. No. 164182, 28 February 2008):

- a) **Money is invested;**
- b) **The money invested is placed in a common enterprise;**
- c) **There is expectation of profit;**
- d) **The profit is derived primarily from the efforts of others.**

Under Section 3 (b) of Republic act No. 8799, or the Securities Regulation Code, **investment contracts are securities**, defined as shares, participation or interests 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.

Section 8 of the Securities Regulation Code provides: "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."

THE FOLLOWING ILLUSTRATION SHOWS HOW KAPA'S INVESTMENTS SCHEME SATISFIES THE ELEMENTS OF AN INVESTMENT CONTRACT

THE HOWEY TEST

1. INVESTMENT OF MONEY

- In Kapa's scheme, the money invested is the "**DONATION**" worth at least P10,000.

2. IN A COMMON ENTERPRISE

- The common enterprise is **KAPA-COMMUNITY MINISTRY INTERNATIONAL**, previously registered as a religious corporation.

KAPA INVESTMENT SCHEME

3. EXPECTATION OF PROFIT

- The member-donor expects a "**BLESSING**" equivalent to 30% of the amount "donated" every month for life.

4. PRIMARILY FROM EFFORTS OF OTHERS

- The member-donor **NEED NOT DO ANYTHING** other than invest and wait for the day of the monthly payout.

B. KAPA'S SCHEME IS A PONZI SCHEME

A **Ponzi Scheme** is an investment program that offers **impossibly high returns** and pays these returns to early investors out of the **capital contributed by later investors**.

In KAPA, members are enticed to make “donations” with a promise of “blessings” equivalent to 30% of their donations to be paid out every month and for life. Yet, KAPA does not have any concrete and stable business or source of income.

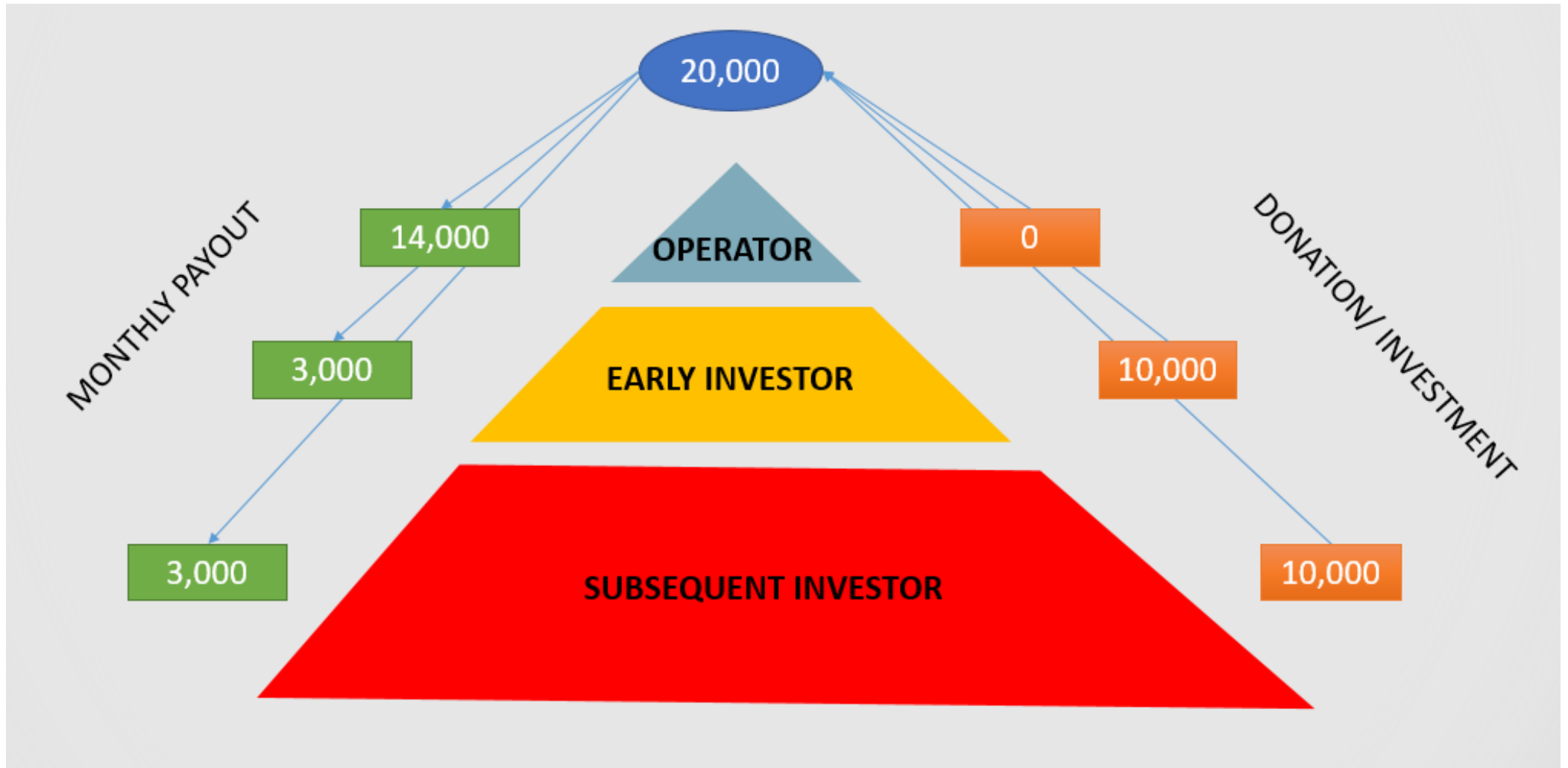
The investment scheme is doomed to fail. KAPA cannot possibly sustain paying out a 30% monthly interest without recruiting new members and soliciting more money from the public.

To illustrate, KAPA would need at least P15 billion monthly to pay 5 million members who have invested at least P10,000 each, as shown below. Without new members or additional investments coming in, the pooled funds would have diminished by the third month.

Number of Members	5,000,000
Minimum Investment	P10,000.00
Pooled Funds	P50,000,000,000.00
Monthly Return	30%
Contract Term	∞
Monthly Payout	P15,000,000,000.00

By the third month, the pooled funds would have diminished.

THE FOLLOWING ILLUSTRATION PROVIDES THE SCHEME OF KAPA



C. KAPA'S SCHEME IS AN AFFINITY FRAUD

Affinity Fraud refers to investment scams where offenders take advantage of their likeness to identifiable groups such as religious organizations or pretend to belong to the same group to earn the trust of their victims and prey upon them.¹ Many affinity scams involve “Ponzi” or pyramiding schemes.

A “church” makes an effective breeding ground for affinity fraud because an offender can easily pitch investment scheme to a large group of people.²

In the case of KAPA, founder and president Joel A. Apolinario exploits his position and influence as pastor of a religious ministry to dupe members in investing their hard-earned money in KAPA in the guise of a donation.

D. KAPA'S SCHEME IS AN ULTRA VIRES ACT

An Ultra Vires Act is an **exercise of a corporate power other than those conferred** by Republic Act No. 11232, or the Revised Corporation Code of the Philippines, and by the corporation’s articles of incorporation.³

In offering and selling securities, **KAPA committed an ultra vires act**, exceeding the privilege granted to it and misrepresenting itself to the public by concealing its investment scheme in the guise of a donation to entice the public to donating when in truth and in fact they are investing.

¹ <https://www.sec.gov/investor/pubs/affinity.pdf>

² Ibid

³ Section 44 of the Revised Corporation Code (Republic Act No. 11232)

III. CHRONOLOGY OF EVENTS INVOLVING KAPA

DATE	EVENTS																
03 March 2017	<ul style="list-style-type: none"> ➤ Incorporation (Company Registration No. CN201707724) ➤ Registered as a Nonstock Corporation; Independent Religious Corporation ➤ Certificate of Incorporation states that it is <u>not</u> authorized to undertake business activities requiring a Secondary License ➤ Principal Office Address: Garay Arcade, Barreda Street, Caramcam District, Mangagoy, Bislig City, Surigao Del Sur, 8311 Philippines ➤ Primary purpose provided in its GIS: “for the administration of its affairs, properties and temporalities” ➤ Names and addresses of incorporators and trustees: <table border="1"> <tbody> <tr> <td>Ptr. Joel A. Apolinario</td> <td>Union Site, Mangagoy, Bislig City</td> </tr> <tr> <td>Nonita S. Urbano</td> <td>P-1 Cumawas, Bislig City</td> </tr> <tr> <td>Junnie G. Apolinario</td> <td>P-1 Cumawas, Bislig City</td> </tr> <tr> <td>Nelia V. Niño</td> <td>P-2 Calubian, Tabon, Bislig City</td> </tr> <tr> <td>Maria Pella B. Sevilla</td> <td>Sanyat, Sta. Cruz, Bislig City</td> </tr> <tr> <td>Jouelyn A. Del Castillo</td> <td>Scaling, San Roque, Bislig City</td> </tr> <tr> <td>Cristobal R. Barabad</td> <td>Espiritu St. Mangagoy, Bislig City</td> </tr> <tr> <td>Joji A. Jusay</td> <td>Espiritu St. Mangagoy, Bislig City</td> </tr> </tbody> </table> 	Ptr. Joel A. Apolinario	Union Site, Mangagoy, Bislig City	Nonita S. Urbano	P-1 Cumawas, Bislig City	Junnie G. Apolinario	P-1 Cumawas, Bislig City	Nelia V. Niño	P-2 Calubian, Tabon, Bislig City	Maria Pella B. Sevilla	Sanyat, Sta. Cruz, Bislig City	Jouelyn A. Del Castillo	Scaling, San Roque, Bislig City	Cristobal R. Barabad	Espiritu St. Mangagoy, Bislig City	Joji A. Jusay	Espiritu St. Mangagoy, Bislig City
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	<ul style="list-style-type: none"> ➤ Current officers and trustee: <table border="1"> <tbody> <tr> <td>Ptr. Joel A. Apolinario</td> <td>President</td> </tr> <tr> <td>Reyna L. Apolinario</td> <td>Corporate Secretary</td> </tr> <tr> <td>Modie S. Dagala</td> <td>Chief Financial Officer</td> </tr> <tr> <td>Benigno D. Tepan, Jr.</td> <td>Trustee</td> </tr> <tr> <td>Marnilyn M. Maturan</td> <td>Trustee</td> </tr> <tr> <td>Ricky A. Taer</td> <td>Trustee</td> </tr> </tbody> </table> 	Ptr. Joel A. Apolinario	President	Reyna L. Apolinario	Corporate Secretary	Modie S. Dagala	Chief Financial Officer	Benigno D. Tepan, Jr.	Trustee	Marnilyn M. Maturan	Trustee	Ricky A. Taer	Trustee				
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	Margie A. Danao	Trustee

22 March 2017 ➤ SEC issued an Advisory against KAPA

04 October 2017

- An email with attachments were forwarded by the Office of the SEC Chairperson to the Enforcement and Investor Protection Department (EIPD) for investigation
- Sender suspected that KAPA COMMUNITY and KAPPA PADATOON are one and the same having similar “modus” of recruiting and offering “10k for 3k” monthly
- Attached also is a copy of a Deed of Donation

October 2017

- Negative certifications were issued by Markets and Securities Regulation Department (MSRD) and Corporate Governance and Finance Department (CGFD) that KAPA has not registered any securities and has not been issued permits to offer and sell securities

October 2017 – September 2018

- Emails, letters, complaints and phone queries from the public were received
- EIPD referred the reports and complaints to SEC Davao EO and SEC Cagayan de Oro EO for investigation

11 September 2018

- Memorandum from SEC Davao EO was received by EIPD with attached pertinent documents from NBI-Caraga Regional Office XIII:

1. Copies of “Certificate of Membership with Deed of Donation;”
2. KAPA Policy and Benefits;
3. NBI Investigation Report;
4. Endorsement of the NBI of its findings (for estafa) to the Office of the City Prosecutor (Bislig City);
5. Copies of 12 warrants of arrest issued against Joel Apolinario, et. al.; and
6. Order of Release issued by the Municipal Trial Circuit Court in Bislig City by reason of posting of a bail bond by Joel Apolinario.

**September
2018**

- Memorandum from SEC Cagayan de Oro EO was received by EIPD with attached certified true copies of documents furnished by Bislig City Police Station
- Includes criminal action for Estafa filed by some investors against KAPA, Joel Apolinario y Abaton, et. al.
- Also includes warrants of arrest against Joel Apolinario y Abaton

**28 September
2018**

- CGFD issued certification that KAPA is not registered issuer of mutual funds, exchange traded funds and proprietary/non-proprietary shares or membership certificates and timeshares

**01 October
2018**

- MSRDC issued a certification that KAPA has not registered any securities;
- That MSRDC has not issued a Permit to Sell Securities; and

- That KAPA has not filed any application for registration/permit to sell securities

**04 October
2018**

- SEC issued another Advisory against KAPA

- EIPD still receives reports from the public through SEC i-Message Mo and email that KAPA has intensified its recruitment and solicitation activities through different social media networks (Facebook and YouTube) since January 2018 to January 2019

**10 October
2018**

- EIPD received a Memorandum from SEC Cagayan de Oro EO with attached affidavits from its personnel who conducted investigation of the activities of KAPA in Surigao City, Surigao del Norte and Bayugan City, Agusan del Sur on 4 to 5 October 2018

**22 October
2018**

- Letter from Ricky Collado, Area Manager for Mindanao, BomboRadyo Philippines, addressed to Com. Javey Paul Francisco reporting activities of KAPA.

**12 February
2019**

- EIPD filed Petition for Revocation of Corporate Registration with prayer for the issuance of a Cease and Desist Order (CDO) against KAPA

**14 February
2019**

*(served to
KAPA on 21
February 2019)*

- CDO was issued by SEC against KAPA

**28 February
2019**

- KAPA, through SEDA Law, filed a Manifestation that it has filed on 26 February 2019 an Urgent Omnibus Motion to (1) Lift the Cease and Desist Order dated 14 February 2019; and (2) To Revoke and Remove SEC Advisory dated 03 October 2018

01 March 2019

- KAPA, through SEDA Law, filed a Manifestation **withdrawing** the “Urgent Omnibus Motion to (1) Lift the Cease and Desist Order; and (2) To Revoke and Remove SEC advisory dated 03 October 2018 which it filed on 26 February 2019.”
- KAPA alleges that it has not yet received its official copy of the CDO dated 14 February 2019

07 March 2019

- SEC issued an Order to File a Verified Answer on the Petition for the Revocation of Corporate Registration (within 15 days) addressed to KAPA

11 March 2019

- SEC issued an Advisory to the Public pertaining to the reports that there is a circulating YouTube Video

featuring the alleged news that KAPA has obtained a TRO against the CDO issued by SEC against KAPA, when in fact, said TRO was DENIED by the RTC on 01 March 2019

14 March 2019 ➤ SEC resolved KAPA's Manifestations ruling that KAPA has been properly served with the copy of the CDO and since it did not file any motion to lift CDO, the CDO became permanent.

21 March 2019 ➤ KAPA, through SEDA Law, filed a Motion for Extension of Time to file its Verified Answer

27 March 2019 ➤ EIPD filed its Comment on the Motion for Extension of Time arguing that said motion is a prohibited pleading under SEC Rules of Procedure

03 April 2019 ➤ SEC issued a Decision Revoking the Certificate of Registration of KAPA

04 June 2019 ➤ Court of Appeals issued a Freeze Order on bank accounts and other assets linked to KAPA

VISIT US

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Cagayan De Oro City
Telephone Nos.: (088) 857-4325;
(08822) 726-948 (Samsung)

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