22 October 2019

DOJ INDICTS KAPA FOR DEFRAUDING INVESTING PUBLIC

The Department of Justice (DOJ) has recommended the filing of criminal charges against Kapa-Community Ministry International (KAPA) for defrauding the investing public, as it affirmed the findings of the Securities and Exchange Commission (SEC).

In a resolution issued on September 25, 2019, state prosecutors found probable cause to charge KAPA, its founder and president Joel A. Apolinario, trustee Margie A. Danao and corporate secretary Reyna L. Apolinario for violations of Sections 8 (8.1), 26.1, and 28 of Republic Act No. 8799, or the Securities Regulation Code (SRC).

The DOJ also indicted Marisol M. Diaz, Adelfa Fernandico, Moises Mopia and Reniones Catubigan for promoting and participating in the unlawful public offering and/or selling of securities by KAPA.

The SEC filed a criminal complaint against KAPA before the DOJ on June 18, 2019, after uncovering the group’s unauthorized investment-taking activities.

KAPA has enticed the public to invest at least P10,000 in exchange for a 30% monthly “blessing” or “love gift” for life, without having to do anything other than invest and wait for the payout.

The group’s scheme involved the sale and offering for sale or distribution to the public of securities, in the form of investment contracts, as defined under Section 3 of the SRC, according to the SEC.

Rule 26.3.5 of the 2015 Implementing Rules and Regulations of the SRC defines an investment contract as a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits primarily from the effort of others. An investment contract is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.

Rule 3.1.17 further provides that any solicitation or presentation of securities for sale shall be presumed to be a public offering when it involves presentation in any public or commercial place, and advertisement or announcement in any radio, telephone, electronic communications, information communication technology or any other forms of communication, among other modes.

Under Section 8 (8.1) of the SRC, securities shall not be sold or offered for sale or distribution without a registration statement duly filed and approved by the SEC.
Section 28 adds that no person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered with the SEC.

Rule 26.3.5 defines solicitation as the act of seeking or asking for business or information, including the act of providing information about a security or investment product being offered for sale with the view of making another person a client or closing or bringing in a sale or purchase of security or investment product. The solicitor does not have to be a signatory to any contract relative to such offer or sale.

The SEC also found KAPA to have employed a Ponzi scheme, an investment program that offers impossibly high returns and pays investors using the money contributed by other investors. This qualifies as a fraudulent transaction prohibited under Section 26 of the SRC.

Accordingly, the Commission initially issued an advisory against KAPA in March 2017. It would later issue a cease and desist order on February 14, 2019 and an order of revocation of the KAPA’s certificate of incorporation on April 3, 2019.

In the interest of affected investors, the Commission, through the Anti-Money Laundering Council, likewise obtained a freeze order from the Court of Appeals on June 4, 2019 to preserve assets linked to KAPA.

“The indictment of KAPA along with its founder, officers and promoters is an affirmation of our unwavering commitment to championing investors and tackling abuses in the corporate sector,” SEC Chairperson Emilio B. Aquino said.

“This should also serve as a stern warning against other groups engaging in unlawful investment-taking activities and other predatory practices to the detriment of the investing public.”

A person found to have violated the SRC, or the relevant rules and regulations promulgated by the SEC, will face a maximum fine of P5 million or imprisonment of seven to 21 years, or both.

The SEC has pushed for a penalty one degree higher, considering the use of Facebook and YouTube in the illegal investment scheme.

Section 6 of Republic Act No. 10175, or the Cybercrime Prevention Act of 2012, provides for the imposition of a penalty one degree higher than what the Revised Penal Code, as amended, and special laws provides if the crime or offense was committed by, through, and with the use of information and communication technologies.

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