



## ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT

**In the Matter of:**

**SEC-EIPD Case No. 7571**

For Revocation of Certificate of  
Incorporation/Registration

**KOZY.PH MANAGEMENT OPC**

**Company Registration No. 2022020041635-04**

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## ORDER OF REVOCATION

This has reference to the Show Cause Order issued on 2 August 2023, against **KOZY.PH MANAGEMENT OPC ("KOZY")**, directing respondent to show cause in writing why:

- 1) The certificate of **KOZY** should not be revoked pursuant to Section (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;
- 2) No administrative sanctions should be imposed against the subject corporation and its incorporators, directors and officers for violation of Section 8.1 of the Securities Regulation Code (SRC) and its 2015 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 (RCC); and
- 3) No administrative sanctions should be imposed under Republic Act No. 8799 otherwise known as "the Financial Products and Services Consumer Protection Act".

Accordingly, Mr. Janil Aspiras, in his capacity as the single stockholder-director-President of **KOZY**, mentioned in its letter-reply to the Show Cause Order dated 17 August

2023 that the subject entity functions as a brand facilitating co-ownership arrangements concerning his own personal property quoted as follows:

**“Within this operational framework, my company assumes the role of an acting property manager,** particularly during periods when the properties are awaiting sale. My responsibilities encompass the sale of fractional ownership in real estate properties, which are exclusively owned by me and not the company. The properties are registered under my name, and the co-ownership structure enables interested parties to acquire shares in these properties. xxx”

Mr. Aspiras further mentioned in the reply that the “Dormant Investor Program” referred to in the Show Cause Order should not be misconstrued as an investment contract originating from **KOZY**, instead it operates as a co-ownership model where individuals possess the option to invest in fractional ownership of designated properties.

SRC Rule 26.2.5 defined investment contract as “... 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.”

The elements of an investment contract as enumerated in the case of Power Homes Unlimited Corporation vs. SEC (G.R. No. 164182 February 26, 2008) were traced from the case of US 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;
- Profits arise primarily from the entrepreneurial and managerial efforts of others.

Here, the Department carefully examined the characteristics of the investments offered by **KOZY** to determine if they satisfy the elements of an investment contract. In our evaluation, indeed, the elements of investment contracts are present, as illustrated below:

1. The Dormant Investor Program of **KOZY** involves a contract with the company under its Notarized Memorandum of Agreement;
2. There is an investment of money, which in this case is the P100,000 paid to the company to become a co-owner of properties that are owned exclusively by Mr. Aspiras;

3. It is under a common enterprise or profit-making venture since the money is placed under the name of Mr. Aspiras as the President and legal representative of the company;
4. There is expectation of profit of 20% interest income paid monthly to the investor in the amount of Php5,000; and
5. Primarily from the efforts of others, as the investor need not engage in any other activity in order to earn profit other than placing their investment.

It must be noted that investment contract is a form of securities defined under Section 3.1 of the SRC, the offering of which to the public, is covered by the registration requirements under Section 8.1 of the SRC. On the other hand, 2015 SRC Rules, specifically Rule 3.1.17.4, provides that any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:

- a) Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines;
- b) Presentation in any public or commercial place;
- c) Advertisement or announcement on radio, television, telephone, electronic communications, **information communication technology or any other forms of communication; or**
- d) Distribution and/or making available flyers, brochures or any offering material in a public or commercial place or to prospective purchasers through the postal system, information communication technology and other means of information distribution.

Therefore, the offering of the Dormant Investor Program by **KOZY** using the Facebook platform constitutes a public offering of securities which requires registration under Section 8.1 of the SRC.

Further, **KOZY** also violated Section 11 of the Financial Products and Services Consumer Protection Act which prohibits investment fraud, defined under the law as any form of deceptive solicitation of investments from the public which includes Ponzi schemes and such other schemes involving the promise or offer of profits or returns sourced from the investments or contributions made by the investors themselves and the offering or selling of investment schemes to the public without a license.

On the other hand, the purpose clause of the articles of incorporation indicates the extent as well as the limitations of the powers which a corporation may exercise. Thus, it is important to determine if the offering of the Dormant Investor Program of **KOZY** constitutes an *ultra vires* act that is beyond the powers conferred to it by the State.

A corporation has both express and implied or incidental powers. Express powers are those which are enumerated in Section 35 of the RCC and those which are sanctioned by the State in accordance with the corporation's article of incorporation. Implied or Incidental Powers on the other hand, are the corporation's "powers, attributes and properties... incident to its existence<sup>1</sup>, which may be 'essential or necessary to carry out its purpose as stated in its articles of incorporation. Acts beyond these powers are ultra vires acts and the statutory prohibition them is Section 44 of the Revised Corporation Code.

In the case of *Montelibano v. Bacolod Murcia Milling Co., Inc.*<sup>2</sup>, the Supreme Court laid down the test in determining ultra vires acts:

**"The test to be applied is whether the act in question is in direct and immediate furtherance of the corporation's business, fairly incidental to the express powers and reasonably necessary to their exercise. If so, the corporation has the power to do it; otherwise, not."**

It must be noted that, nowhere is it stated in **KOZY's** primary purpose that it can engage as property manager, more so, offer investment contracts to the public. In fact, the primary purpose of **KOZY** expressly states:

**"To act as managers or managing agency of persons, firms, associations, corporations, partnerships and other entities; to provide management and technical advice for commercial, industrial, manufacturing and other kinds of enterprises; and to undertake, carry on, assist or participate in the promotion, organization, management, liquidation or reorganizations or corporations, partnerships and other entities, except the management of funds, securities, portfolio or similar assets of the managed entities or corporations."**

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

Based on Commission's records, **KOZY** has not registered its securities in the form of investment contracts (Dormant Investor Program) pursuant to the provisions of the SRC that would allow it to be offered and/or sold to the public. Moreover, the subject entity has no power or authority to offer the aforementioned investment contracts as it is not expressly provided in its primary purpose. Therefore, applying the test in *Montelibano*, **KOZY** acted beyond the scope of its power and purpose provided to it.

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<sup>1</sup> Section 2 of the Revised Corporation Code

<sup>2</sup> G.R.No. L-15092,18 May 1962

Moreover, Mr. Aspiras' personal defense that the subject matter of the Dormant Investor Program involves his personal properties and that he has not received any form of monetary compensation from the offering and sale of the said programs are untenable. In fact, the actual activity of **KOZY** involves promoting and selling of co-ownership arrangements to the public for a consideration. The absence of authority to conduct such kind of activity in its incorporation documents constitutes *ultra vires* acts and the offering of unregistered securities constitute violation of the provisions of the RCC and the SRC, respectively.

It must be emphasized that Republic Act No. 8799 or the Securities Regulation Code (SRC) is a special penal law **where intent to commit the crime is not necessary**. As elucidated by Justice Regalado in the case of *People v. De Gracia*, G.R. No. 102003-10, July 6, 1994, to state:

*"When the crime is punished by a special law, as a rule, intent to commit the crime is not necessary. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law. Intent to commit the crime and intent to perpetrate the act must be distinguished. **A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself. In the first (intent to commit the crime), there must be criminal intent; in the second (intent to perpetrate the act) it is enough that the prohibited act is done freely and consciously.**"*  
(Emphasis ours)

Moreover, **KOZY** has no authority to act as property manager as it has no license/permit to act as such. Sec. 32 of the Republic Act No. 9464 or the Real Estate Service Act (RESA) requires that a partnership or corporation must be duly registered with the Securities and Exchange Commission (SEC) before it can engage in the corporate practice of a real estate, to wit:

*"Section 32. Corporate Practice of the Real Estate Service. -*

*(a) **No partnership or corporation shall engage in the business of real estate service unless it is duly registered with the Securities and Exchange Commission (SEC)**, and the persons authorized to act for the partnership or corporation are all **duly registered and licensed real estate brokers, appraisers or consultants, as the case may be.** The partnership or corporation shall regularly submit a list of its real estate service practitioners to the Commission and to the SEC as part of its annual reportorial requirements. There shall at least be one (1) licensed real estate broker for every twenty (20) accredited salespersons."*

All in all, **KOZY** misrepresented itself to the Commission and the public claiming that "its marketing approach is commonly employed within the real estate sector" and creating an impression that it is allowed under its registration to engage in such activities, when in truth and in fact that it is **not one of the purposes for which it was incorporated** as stated in its Articles of Incorporation, is therefore liable and accountable for **serious misrepresentation and ultra vires acts**.

Based on the foregoing, after careful review of the letter-reply, records of the Commission and based on the investigation of the Department, the Department finds that there is sufficient ground to hold **KOZY** liable under 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 of or damage to the general public and for engaging in ultra vires acts in violation of the Revised Corporation Code of the Philippines.

**WHEREFORE**, premises considered,

- a) 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 **KOZY MANAGEMENT OPC** is hereby **REVOKED**; and
- b) The following single stockholder-director-president-incorporator, nominee and alternate nominee of **KOZY MANAGEMENT OPC** for conceptualizing, offering and propagating its Dormant Investor Program 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:
  1. **JENIL BONALBA ASPIRAS**;
  2. **JANILYN LACIA MEDINA**; and
  3. **LEONILA BONALBA ASPIRAS**.

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 corporation on file with the Commission. Further, the Information and Communications Technology Department (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.

  
**OLIVER O. LEONARDO**  
Director