Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

In the matter of:
KAPA-COMMUNITY MINISTRY INTERNATIONAL INC.

SEC Admin. Case No. 02-19-181
For: Petition for Revocation of Corporate Registration

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Petitioner.

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DECISION

For consideration of the Commission En Banc is a Petition[1] (For Revocation of Corporate Registration with prayer for the issuance of a Cease and Desist Order) filed by the Enforcement and Investor Protection Department ("EIPD") against respondent, Kapa-Community Ministry International, Inc. ("Kapa") praying that Kapa's Certificate of Corporate Registration be revoked for violation of Section 6 (l) (2) of Presidential Decree No. 902-A.

THE PARTIES

EIPD is one of the operating departments of the Securities and Exchange Commission tasked with ensuring compliance of all market participants, issuers and individuals, and takes appropriate enforcement action against them for legal infractions of the laws, rules and regulations implemented by the Commission. It is also the operating department vested with the primary authority to conduct investigations and administrative actions involving, among others, the selling, offering or transacting unregistered securities by entities without a secondary license as well as to initiate petitions for revocation of corporate registration except those under the original authority of CRMD. EIPD is likewise tasked to investigate, *motu proprio* or upon complaint or referral, violations of laws, rules and regulations implemented by the Commission as well as initiate the issuance of a Cease and Desist Order ("CDO") by the Commission.

On the other hand, respondent Kapa is a religious corporation under Section 116 of the Corporation with Company Registration No.

[1] Dated 12 February 2019.

CN201707724.[2] Kapa's Articles of Incorporation[3] (AOI) states that the parties "associated themselves for the purpose of forming a religious corporation in accordance with Section 116 of the Corporation Code of the Philippines" and had for its purpose the administration of its affairs, properties and temporalities. The lower portion of its AOI indicated the words, "Kapa – Kabus Padatuon" (Enrich the Poor) which was incorporated by Mr. Joel Apolinario.

RELEVANT FACTS

In the Petition the EIPD narrates that it received reports about the fraudulent schemes employed by Kapa or Kappa (Kabus Padatuon) in Bislig City. Allegedly, Kapa's is collecting investments from the public in the guise of a "donation" with a promise of a 30% return per month until forever. EIPD made an initial verification and found out that Kapa is not registered with the Commission. It was also found out through the negative certifications[4] issued by the Corporate Governance and Finance Department (CGFD) and Markets and Securities Regulation Department (MSRD) that Kapa is not a registered issuer of any securities under Sections 8 and 12 of the Securities Regulation Code (SRC), as such, it is not licensed to offer or sell securities to the public.

On **22 March 2017** the Commission posted an Advisory in its website informing the public that Kappa is not registered with the Commission nor was it authorized to solicit investments.

Despite the earlier advisory, various offices including the Cagayan De Oro and Davao Extension Offices received numerous complaints of the same tenor regarding Kapa. That is, Kapa is allegedly engaged in massive recruitment of members to join the religious organization and at the same time it offers an investment scheme with the opportunity of earning huge profits at the rate of 30% of the investment, monthly.

The documents[5] attached in the Petition disclosed the investigations conducted by Philippine National Police Bislig City and National Bureau of Investigation Caraga which included among others Kapa's Certificate of Membership, Deed of Donation and Kapa's Policy and Benefits. Kapa's Policy and Benefits states that a onetime one-hundred-peso membership fee is required before one becomes a member of Kapa. Once a member, the person can "donate" any amount which will earn 30% interest per month. In the documents, it was discovered that several Estafa cases were filed by some

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[2] Registered on 3 March 2017
[3] Annex "B" of the Petition.
[4] Annex "K" and "L" of the Petition.
[5] Annex "I" to "I-39" of the Petition.

investors against Kapa, Joel Apolinario and others before the Bislig City Prosecutor's Office and courts. Several warrants of arrest were likewise issued against Joel Apolinario.

On **04 October 2018** the Commission issued another Advisory against Kapa informing the public that it is registered with the Commission as a non-stock corporation on 3 March 2017. Further Kapa is not authorized to solicit investments requiring a secondary license as provided under Section 8.1 of the SRC.

The EIPD received a Memorandum[6] from the Cagayan De Oro EO including the Affidavits of SEC personnel who investigated the alleged investment taking activities of Kapa in Surigao del Norte and Agusan del Sur. The affidavits narrate that only two kinds of activities take place at Kapa's offices either the persons are getting their monthly "token of gratitude" or the 30% return or making additional or initial investments to Kapa. No other transaction occurs at that place.

EIPD investigators[7] found out that Kapa is also active in other social media platforms such as YouTube and Facebook. In one of the video presentations Kapa's president, Joel Apolinario, is talking about KAPA. The video presentations intend to endorse, promote, and disseminate information about the investment scheme offered by Kapa. It further invites prospective investors by luring them on the promise of huge returns. EIPD contends that such video presentations posted on online constitutes public offering of securities under Rule 3.1.17 of the 2015 Implementing Rules and Regulations of the SRC.[8]

In the Petition, EIPD argues that Section 8 of the SRC requires prior registration and approval before securities can be offered, sold, or distributed to the public. For the EIPD, the investment scheme of Kapa specifically the promise of a return in the amount of 30% per month for life falls within the definition of a security under Section 3.1 of the SRC. The scheme qualifies as an investment contract[9] which are certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription.

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[6] Annex "P" of the Petition.

[7] Annex "O" of the Petition.

[8] Public offering is any offering of securities to the public or to anyone, whether solicited or unsolicited. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:

3.1.17.1. Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines;

3.1.17.2. Presentation in any public or commercial place;

3.1.17.3. Advertisement or announcement on radio, television, telephone, electronic communications, information communication technology or any other forms of communication; or

3.1.17.4. 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.

[9] Under Rule 26.3 of the 2015 Implementing Rules and Regulations of the SRC is defined as: "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits from the effort of

The EIPD contends that Kapa's investment scheme falls within the ambit of an investment contract laid down by the Supreme Court in the case of Power Homes Unlimited Corporation versus SEC (G.R. No. 164182, 28 February 2008).[10] That Kapa's investment scheme which it calls as a "donation" is the contract entered into by the member-investor. There is placement of money for which the member-investor is promised an interest of 30% of the amount donated per month for life. The money invested is placed in a common enterprise and the member-investor expects to derive profits. Lastly, the member-investor expects to earn profits from the entrepreneurial and managerial efforts of others. The member-investor need not do anything other than invest money and go to the office of Kapa to receive the monthly profits promised to them.

It is by this reason that the EIPD contends that Kapa's certificate of registration should be revoked for serious misrepresentation on what it can do or is doing to the damage and prejudice of the public.[11]

The Commission upon the finding that Kapa's act of selling securities without the necessary license unless restrained would operate as fraud on investors or is likely to cause grave or irreparable injury or prejudice to the investing public issued a CDO on 14 February 2019 against Kapa Community Ministry International, Inc., Kapa Kabus Padatuon (Enrich the Poor), Kapa/Kappa (Kabus Padatuoon), Kapa-Co Convenience Store and General Merchandise, Kapa Worldwide Ministry, Mr. Joel Apolinario, their partners, officers, directors, agents, representatives, conduits, and persons claiming and acting for and in their behalf, directing them to immediately cease and desist under the pain of contempt from engaging in activities of selling and/or offering for sale the securities.

On ***28 February 2019***, Kapa, through counsel, SEDA Law filed a Manifestation informing the Commission 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. Subsequently, on 01 March 2019, Kapa, through SEDA Law, filed another Manifestation withdrawing the Manifestation it filed earlier. In the 01 March 2019 Manifestation, Kapa alleges that it "has not yet received its official copy of the purported Cease and Desist Order dated 14 February 2019".[12]

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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."

[10] The Supreme Court held that in order to be considered as a security subject to the regulation of the SEC, the security must be proved to be: (a) an investment of money, (b) in a common enterprise, (c) with the expectation of profits, (d) primarily through the efforts of others.

[11] Section 6 (l) (2) of PD 902-A

[12] Paragraph 2 of the Manifestation dated 01 March 2019

The Commission in an Order to File Answer dated 07 March 2019 gave Kapa 15 days to file its verified answer on the Petition for the Revocation of Corporate Registration filed against it.

The Commission in a Resolution dated 14 March 2019, resolved the Manifestations[13] ruling that Kapa has been properly served with the copy of the CDO. The Commission further ruled that the said CDO has already become permanent pursuant to Section 4-3 (c), Rule IV, Part II of the 2016 SEC Rules of Procedure.

On 21 March 2019 Kapa through counsel SEDA Law filed a Motion for Extension of Time to File Verified Answer. The EIPD filed its Comment on the Motion for Extension of Time on 27 March 2019.

The EIPD argues that the Motion for Extension of Time to File Verified Answer is a prohibited pleading under the SEC Rules of Procedure and therefore must be expunged from the records. Further, since Kapa has not filed any answer within the prescribed period, it is deemed to have waived its right to file answer and the case should be deemed submitted for resolution.

ISSUE

The sole issue is whether Kapa's Corporate Registration can be revoked on the ground of serious misrepresentation on what it can do to the damage and prejudice of the public?

DISCUSSION

Before going into the merits of the present Petition, procedural matters will be discussed first. Kapa, through SEDA Law, filed a Motion for Extension of Time to File Verified Answer[14] praying for an extension of fifteen days within which to file a verified answer due to proximity concerns and other prior commitments. A motion for extension of time to file a pleading is ***prohibited*** under Section 3-3, Rule III, Part I of the 2016 SEC Rules of Procedure (Rules). The Rules explicitly provides that when a prohibited pleading is filed it ***shall be automatically expunged from the records of the case***. Hence, the Motion for Extension of Time is expunged from the records of the case. Since Kapa did not file any answer within the prescribed period, the case then shall be decided based on the available records.

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[13] Filed by Kapa on 28 February 2019 and 01 March 2019
[14] Dated 21 March 2019

On the substantive matter, the Petition for Revocation of Kapa's Corporate Registration has merit.

Kapa labels its investment solicitation activities as a "donation". However, the promise of a 30% return to its member-donors belies that it is a donation. A donation is an act of gratuity or liberality whereby a person gives to another who accepts.[15] The primary consideration in pure donations is the liberality or plain gratuity of the donor[16] who does not expect anything out of his donation.

Kapa's member-donors are "donating" not out of gratuity or liberality but on the promise of a 30% return. When a person gives something to another with the expectation of any return, such is no longer a donation but another form of contract. The contractual arrangement of Kapa and its member-donors partakes of an investment contract. An investment contract has been defined under the IRR of the SRC as "a contract, transaction or scheme whereby a ***person invests his money in a common enterprise and is led to expect profits from the effort of others***."

The elements of an investment contract laid down by the Supreme Court in Power Homes Unlimited Corporation versus SEC[17] are: (a) an investment of money, (b) in a common enterprise, (c) with the expectation of profits, (d) primarily through the efforts of others. ***All the elements of an investment contract are present in Kapa's scheme*** although it is denominated as a "donation". The money being "donated" is the investment to Kapa's common enterprise. The member-donor expects a return in the amount of 30% of the amount "donated" per month for life and he need not do anything other than invest and wait for the day of the monthly payout.

Since Kapa's scheme falls into the category of an investment contract, it is therefore a security defined in Section 3.1 of the SRC. Under Section 8.1 of the SRC, "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***." ***Kapa does not have any secondary license to deal with securities*** evidenced by the negative certifications issued by the MSRD and CGFD. Kapa's ***registration is limited to being a religious corporation***.

Kapa's Articles of Incorporation states that it is a ***religious corporation for the purpose of administering its affairs, properties and temporalities***. As

[15] Article 725 New Civil Code
[16] Republic of the Philippines versus Leon Silim and Ildefonsa Mangubat; G.R. No. 140487; 2 April 2001
[17] G.R. No. 164182, 28 February 2008

a religious corporation, ***it can only perform acts which are essential and necessary to carry out its purpose.***

Soliciting investments to its members is neither essential nor necessary to carry out Kapa's purpose as a religious organization. Kapa's act of soliciting investments, more so, without the requisite registration is *ultra vires*.[18] The Revised Corporation Code is explicit in saying that:

> "Section 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***."

Kapa's investment taking scheme is clearly *ultra vires* for it transgresses the powers conferred to it by law and those indicated in its AOI. ***Performing ultra vires acts especially making it appear to the public that it can perform investment taking activities in the guise of a donation constitute serious misrepresentation on what it can do or is doing to the prejudice and damage of the public***.

Kapa in dealing with the public is using its registration with the Commission as a religious corporation as a backdrop to solicit investments from the public knowing that it does not have the requisite registration. ***Such act is indicative of Kapa's intent to deceive the public on what it can do or is doing to the damage and prejudice of the investing public***. The Commission cannot close its eyes to its mandate in protecting the public from these damaging and prejudicial schemes. As regulator of the capital markets it is incumbent upon the Commission to be vigilant especially when Kapa offers and issues securities without prior registration. The Commission is therefore obligated to exercise its power under Section 6(l)(2) of the SRC:

> "l) **To** suspend, or **revoke, after proper notice and hearing**, the franchise or **certificate of registration of corporations**, partnerships or associations, upon any of the grounds provided by law, including the following:
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> 1. Xxx
> 2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public"

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[18] *Ultra vires* acts are corporate acts that are outside those express definitions under the law or articles of incorporation or those "committed outside the object for which a corporation is created" (University of Mindanao vs. Bangko Sentral ng Pilipinas, et. al., G.R. No. 194964-65, 11 January 2016 citing the case of Republic v. Acoje Mining Company, Inc., 117 Phil. 379, 383 (1963)).

Kapa's juridical existence as a mere privilege granted to it by the state can be withdrawn when a ground exists.[19] Kapa, in engaging itself in offering/selling of securities in the form of investment contracts without the necessary permit/registration under Section 8.1 of the SRC, commits an *ultra vires* act exceeding the privilege granted to it. Kapa misrepresents itself to the public by concealing this investment scheme in the guise of a donation to entice the public to "donating" when truth and in fact they are investing. It is by these acts that Kapa's Certificate of Corporate Registration should be revoked so that it can no longer perpetrate its fraudulent and misleading acts through the privilege granted to it by the State.

WHEREFORE, premises considered, this Petition is hereby **GRANTED**. The Certificate of Corporate Registration of **KAPA COMMUNITY MINISTRY INTERNATIONAL, INC.** is hereby **REVOKED** pursuant to Section 6 (l) sub-paragraph 2 of Presidential Decree No. 902-A without prejudice to other criminal offense/s that may be filed.

Let a copy of this *Decision* be furnished to the Enforcement and Investor Protection Department, the Company Registration & Monitoring Department and the Information and Communications Technology Department for their information and appropriate action.

SO ORDERED.

Pasay City, Philippines, 03 April 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO*
Commissioner

KELVIN LESTER K. LEE
Commissioner

*On Official Business

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[19] In the matter of PHILBIO Renewable Energy Resources Corp., SEC Admin Case No. 11-10-124 citing In the matter of: Maasin Traders Lending Corporation, SEC Case No. 02-07-169