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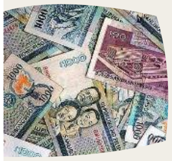

YAMAN Coach

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Legal Issues on High-Yield Investment Schemes

by Coach Atty. Zigfred Diaz, RFP®, EnP, ReA, ReB, CSS, AEPP

High-yield investment schemes are a hot topic nowadays. Various entities have successfully enticed not only Filipinos both here and abroad but even foreigners to get into these get-rich-quick schemes, which offer returns from 30% to 400% per month!

A high-yield investment scheme is multi-faceted as it has a legal, investment, business, economic and even a theological problem! As a pastor, lawyer, businessman and personal finance and investment professional, here is my take on the matter. Let us tackle the legal perspective first.

Republic Act 8799 otherwise known as the "Securities Regulation Code" (SRC) prohibits the sale or distribution of "Securities" in the Philippines without first registering it with the Securities and Exchange Commission (SEC). After such securities are registered a "Secondary License" is issued. So, what are "Securities" as defined under the SRC? Under Section 3, "Securities" are defined as "shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. It includes among others . . . . (b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription."

High-yield investment schemes very well fall under the definition of "Securities" according to the SRC as these are "investment contracts" and or "profit sharing agreements." And before such will be offered to be public, the entities offering them must first acquire a secondary license from the SEC.

In several cases, the Supreme Court of the Philippines has used what is known as the "Howey test", which classifies a scheme as an investment contract if it: a) makes an investment of money; b) is in a common enterprise; c) is with the expectation of profits; d) is to be derived solely from the efforts of others (primarily for the efforts of others). The Philippine Securities and Exchange Commission (SEC) applies the same test.

It does not matter what name for the high-yield investment scheme is used (i.e. investing/returns, donation/blessing, planting/harvesting). If the scheme passes the Howey Test and, regardless what kind of animal is being fronted as a business, if such enticement, solicitation, invitation to put in money or whatever it is called is done without securing a secondary license from the SEC, then such scheme is illegal and can appropriately be called a scam which can be prosecuted criminally as provided for under the SRC.

Remember that the buying, selling, and dealing of unregistered securities is punishable by fine or imprisonment under Sec. 28 and Sec. 73 of the SRC which state:

"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 as such with the Commission. . . . Any person who violates any of the provisions of this Code, or the rules and regulations promulgated by the Commission under authority thereof, or any person who, in a registration statement filed under this Code, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, suffer a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Five million pesos (P5,000,000.00) or imprisonment of not less than seven (7) years nor more than twenty-one (21) years, or both in the discretion of the court."

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Retirement Planning 101

by Coach John Hero A. Salvador, RFP

Several articles were published during the second half of October 2019 stating that the Philippines has one of the worst retirement systems in terms of sustainability, integrity, and adequacy. Also, another study showed that 9 in 10 Filipinos worry about being in retirement, with having their savings exhausted, being of poor health and having no one to care for them as the most common worries being faced. Considering these findings, retirement planning has gained significant traction when it comes to financial planning here in the Philippines.

People in general tend to put off preparing for retirement because of its inherent long-term nature. However, this should never be the case – it is never too early to plan for retirement.

There are four intertwined aspects that one should consider when planning for retirement – source of retirement funds, expected expenses, risks, and time horizon. And a financial planner should be able to guide retirees through this planning process to generate a plan that is specific, measurable, achievable, relevant and time bound.

During retirement, an individual generally experiences a significant decrease in income. However, there are various sources from where a retiree can withdraw funds. These mainly are company retirement benefits, government-mandated pension funds (SSS/GSIS), and his own retirement fund created, grown, and preserved through investing.

The critical aspect is to have a plan to manage the sources of retirement funds during retirement.

When it comes to expenses, a retiree, perhaps with the help of a financial planner, needs to create a budget with allocations for most, if not all, of the following items: food, housing, utilities, transportation, healthcare, entertainment, and clothing. Estimates for these budget categories can be deduced from the desired standard of living of client if he were to retire at the time when he is drafting his plan. The financial planner can help in forecasting the future value of such expenses given certain assumptions like date of retirement, length in retirement, and inflation rate.

The risks mentioned earlier pertains to health risks that a retiree may face, which will have serious impact on his budget planning. These include sickness, hospitalization, disability, major illness, and death. In order to manage these risks, a retiree should have ample safety nets in the form of insurance coverage that will provide support throughout the retirement period. A financial planner can help the retiree take stock of current life insurance policies, particularly when it comes to riders pertaining to health insurance as well as HMO policies that the retiree bought on his own or is a beneficiary of through one of his adult children, and even cremation/burial/funeral service plans.

When considering time horizon, there are two important timelines that should be considered – how far is an individual from the target retirement age and how long is the expected retirement period. These timelines have a critical impact on the investment options available and decisions that will need to be made when it comes to retirement planning.

Complicated as it may be, but retirement planning is an essential component of comprehensive financial planning. It is almost a certainty that life events may happen that will change one's retirement plan. It is important to bear in mind that retirement plans should be flexible and subject for review every few years. Succeeding articles under this series will go through the aspects mentioned above more thoroughly.

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PFA EVENT - June to July 2020

Editor's Note

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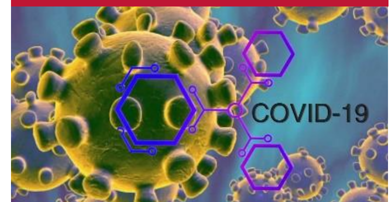

As the Philippines starts to ease on its quarantine measures first implemented because of the onslaught of CoVid-19, it cannot be helped that people will tend to bask in their restored freedom. We would like to remind one and all that the virus is still out there and that an abundance of caution should still be practiced. This advice extends to money management. During the lockdown, people tended to hoard for fear of running out of supplies ranging from food to non-consumable household items. However, for many, that practice went overboard as the feeling not being able to afford the finer things in life led people to buy stuff that they would not normally buy prior to the lockdown. If this behavior extends to the post lockdown period, it will have the potential of wreaking havoc in personal finances even after regular income is restored. So, it would do the consumer well to practice an abundance of caution when it comes to both health and wealth.