

Law and Jurisprudence on Secrecy of Bank Deposits

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INTRODUCTION	670
I. THE LAW ON THE SECRECY OF BANK DEPOSITS	671
II. OPINIONS OF THE SECRETARY OF JUSTICE	674
III. FOREIGN CURRENCY DEPOSITS	675
IV. THE CASE OF <i>MARQUEZ V. DESIERTO</i>	679
V. THE ANTI-MONEY LAUNDERING BILL OF 2001	681
CONCLUSION	682

INTRODUCTION

Due to the importance of maintaining some sort of secrecy in banking transactions, many countries have some form of legislation ensuring the privacy and confidentiality of bank deposits. The United States, for instance, has what is known as The Right to Financial Privacy Act.¹ This Act provides for the privacy of financial records of any customer of a financial institution, subject to certain exceptions. Likewise, Switzerland has its Money Laundering Act of October 10, 1997.² Under Swiss law, a bank is obliged to keep information regarding customers' affairs in strict confidence, subject to a requirement that suspected money laundering activities must be reported to the authorities.³

While the common aim of bank secrecy legislation in these countries is to provide for the privacy or secrecy of bank deposits, these laws differ in their treatment of the exceptions to such secrecy.

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1. 12 U.S.C. § 3405 (1994).

2. Federal Act on the Prevention of Money Laundering in the Financial Sector, SR 955.

3. *Id.* § 2, art. 9.

The Philippines is no different. One of the most misunderstood laws in the Philippines is Republic Act No. 1405, known as the Bank Secrecy Law.⁴ The exceptions to confidentiality of bank deposits provided by that law have been particularly problematic, with the Supreme Court promulgating conflicting decisions on the matter. Even the opinions rendered by the Secretary of Justice conflict with these Supreme Court pronouncements. This essay will endeavor to present the recurring legal problems surrounding the law on bank secrecy in the Philippines.

I. THE LAW ON THE SECRECY OF BANK DEPOSITS

In the Philippines, the basic law on secrecy of bank deposits is the Bank Secrecy Law, which was approved on September 9, 1955.⁵ This law gave life to the declared policy of the Government to give encouragement to the people to deposit their money in banking institutions, and to discourage private hoarding, so that the same may be properly utilized by banks in authorized loans to assist in the economic development of the country.⁶

The law provides that "all deposits of whatever nature with banks or banking institutions in the Philippines, including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are considered as being of an absolutely confidential nature and may not be inquired or looked into by any person, subject to some exceptions."⁷ It should be noted that the law covers not only bank deposits but also investments in government bonds.

The Bank Secrecy Law provides for four (4) exceptions to the rule on the confidentiality of bank deposits.⁸ Later on, however, Presidential Decree No. 1792⁹ amended the Bank Secrecy Law by providing for two (2) additional exceptions.¹⁰ In *Marquez v. Desierto*,¹¹ the Supreme Court recognized and enumerated these six (6) exceptions:

(1) In an examination made in the course of a special or general examination of a bank that is specifically authorized by the Monetary Board, after being satisfied that there is a reasonable ground to believe that a bank fraud or serious irregularity has

4. The Law on the Secrecy of Bank Deposits, Republic Act No. 1405 (1955) [hereinafter Bank Secrecy Law].

5. *Id.*

6. *Id.* § 1.

7. *Id.* § 2.

8. *Id.*

9. Presidential Decree No. 1792, § 1 (1981).

10. *Id.* § 1.

11. G.R. No. 135882 (June 27, 2001).

been or is being committed and that it is necessary to look into the deposit to establish such fraud or irregularity;

(2) In an examination made by an independent auditor hired by the bank to conduct its regular audit, provided that the examination is for audit purposes only and the results thereof shall be for the exclusive use of the bank;

(3) Upon written permission of the depositor;

(4) In cases of impeachment;

(5) Upon order of a competent court in cases of bribery or dereliction of duty of public officials; or

(6) In cases where the money deposited or invested is the subject matter of the litigation.¹²

In the above enumeration, the first two are the exceptions introduced by Presidential Decree No. 1792, while the last four are the original exceptions provided by the Bank Secrecy Act itself.

In 1993, Republic Act No. 7653,¹³ known as the New Central Bank Act, was promulgated, section 135 of which expressly repealed Presidential Decree No. 1792, thereby removing the authority of the Monetary Board to order an examination of bank deposits under certain circumstances. A new provision, however, was inserted in the New Central Bank Act, to wit:

Section 26. *Bank Deposits and Investments.* Any director, officer or stockholder who, together with his related interest, contracts a loan or any form of financial accommodation from: (1) his bank; or (2) from a bank (a) which is a subsidiary of a bank holding company of which both his bank and the lending bank are subsidiaries or (b) in which a controlling proportion of the shares is owned by the same interest that owns a controlling proportion of the shares of his bank, in excess of five percent (5%) of the capital and the surplus of the bank, or in the maximum amount permitted by law, whichever is lower, shall be required by the lending bank to waive the secrecy of his deposits of whatever nature in all banks in the Philippines. Any information obtained from an examination of his deposits shall be held strictly confidential and may be used by the examiners only in connection with their supervisory and examination responsibility or by the *Bangko Sentral* in an appropriate legal action it has initiated involving the deposit account.¹⁴ (emphasis supplied)

Thus, there are presently only five (5) exceptions to the confidentiality or secrecy of bank deposits as provided by statute.¹⁵ Jurisprudence, however, has given additional exceptions.

12. *Id.*

13. The New Central Bank Act, Republic Act No. 7653 (1993).

14. *Id.* § 2.

15. Deposits can still be examined by an auditor hired by the bank for audit purposes in view of the expressed and specific repeal of Presidential Decree No. 1792 by Section 135 of Republic Act No. 7653. The banks and the Central Bank or *Bangko Sentral* still allow this as an exception.

In *Tatalon Barrio Council v. Chief Accountant of the Bank of Philippine Islands*,¹⁶ the Supreme Court ruled that savings and current accounts are privileged documents which fall within the protection Bank Secrecy Law; hence, their disclosure can only be justified under any of the cases enumerated in the Bank Secrecy Law itself. The exceptions enumerated under Section 2 of the said Act do not include the prosecution of criminal actions for violation of the provisions of the Anti-Graft Law and of Article 216 of the Revised Penal Code.

However, just two years later, *Philippine National Bank v. Gancayco*,¹⁷ held that in cases of unexplained wealth under Section 8 of Republic Act No. 3019,¹⁸ known as the Anti-Graft Law, the Bank Secrecy Law would not apply. Thus, barely two years after decisively ruling in the *Tatalon* case that any disclosure of bank secrets could only be sanctioned under the circumstances enumerated in Section 2 of the Bank Secrecy Law, the Supreme Court reversed itself in *Gancayco* and ruled that:

[w]hile Republic Act No. 1405 provided that bank deposits are absolutely confidential ... and therefore, may not be examined, required or looked into except in those cases enumerated in Section 2 thereof, Section 8 of Republic Act No. 3019 (Anti-Graft Law) directs that bank deposits shall be taken into consideration in the enforcement of Section 8 (dismissal due to unexplained wealth) notwithstanding any provision of law to the contrary.¹⁹

The Supreme Court therefore concluded that Section 8 of the Anti-Graft Law was intended to amend Section 2 of Bank Secrecy Law by providing an additional exception to the rule against the disclosure of bank deposits.

It was argued that since the Anti-Graft Law is a general law, it cannot be deemed to have impliedly repealed Section 2 of Bank Secrecy Law. In its answer, the Supreme Court ruled that "the presumption against the intent to repeal by implication is overthrown because the inconsistency or repugnancy reveals an intent to repeal the existing law."²⁰ The Supreme Court further went on to say that "whether a statute either in its entirety or in part has been repealed by implication, is ultimately a matter of legislative intent."²¹

In conclusion, the Supreme Court explained the rationale behind this exception:

[c]ases of unexplained wealth are similar to cases of bribery or dereliction of duty and no reason is seen why these two classes of cases cannot be excepted from the rule making bank deposits confidential. The policy as to one cannot be different from the

16. 7 SCRA 170 (1963).

17. 15 SCRA 91 (1965).

18. The Anti-Graft and Corrupt Practices Act, Republic Act No. 3019 (1971) [hereinafter The Anti-Graft Law].

19. *Gancayco*, 15 SCRA at 95.

20. *Id.*

21. *Id.*

policy as to the other. This policy expresses the notion that a public office is a public trust and any person who enters upon its discharge does so with the full knowledge that his life, so far as relevant to his duty, is open to public scrutiny.²²

In *Banco Filipino Savings and Mortgage Bank v. Purisima*,²³ the Supreme Court not only reiterated its ruling in *Gancayco*, but extended it to bank records in the names of the wife, children and friends of an agent of the Bureau of Customs accused of having allegedly acquired property manifestly out of proportion to his salary and other lawful income, in violation of the Anti-Graft Law. The Supreme Court said:

The inquiry into illegally acquired property — or property NOT "legitimately acquired" — extends to cases where such property is concealed by being held by or recorded in the name of other persons. This proposition is made clear by R.A. No. 3019, which quite categorically states that the term, "legitimately acquired property of a public officer or employee" shall not include ... property unlawfully acquired by the respondent, but its own ownership is concealed by its being recorded in the name of, or held by, respondent's spouse, ascendants, descendants, relatives or any other persons.

To sustain the petitioner's theory, and restrict the inquiry only to property held by or in the name of the government official or employee, or his spouse and unmarried children is unwarranted in the light of provisions of the statutes in question, and would make available to persons in government who illegally acquire property an easy and fool-proof means of evading investigation and prosecution; all they would have to do would be to simply place the property in the possession or name of persons other than their spouse and unmarried children. This is an absurdity that we will not ascribe to the lawmakers.²⁴

II. OPINIONS OF THE SECRETARY OF JUSTICE

Just as the Supreme Court has, through jurisprudence, created additional exceptions to the Bank Secrecy Law, the officially issued Opinions of the Secretary of Justice seem to have done the same. On the issue of whether the Presidential Commission on Good Government (PCGG) can compel Philippine banks to produce or disclose bank documents and records of former President Marcos, et al., without violating the laws providing for secrecy of bank deposits, the Secretary of Justice opined:

It is not doubted that the laws creating and defining the jurisdiction of the PCGG should prevail over the provisions of R.A. No. 1405, even assuming that the disclosure of bank records sought to be compelled would involve an inquiry into the bank deposits themselves, and not merely the use of bank accounts as conduits to transfer money to other places. This should also hold true with respect to the provisions of R.A. No. 6426, and its mandatory decrees regarding foreign currency deposits. To hold that such a massive undertaking to track down the ill-gotten wealth of former President Marcos and his associates can be subject to the constraints of the law on the secrecy of bank deposits, would frustrate the mission of the Commission as clearly

22. *Id.* at 96.

23. 161 SCRA 576 (1988).

24. *Id.* at 582 [emphasis supplied].

directed by law. The Marcos assets include bank accounts and deposits and such bank deposits are to be taken into consideration in such cases of unexplained wealth. *It is believed that the bank deposits secrecy law cannot prevail over the mandated functions of the Commission in the conduct of investigations, to accomplish its purposes and in the issuance of subpoenas to require the production of bank records and other documents as may be material to the investigation conducted by the Commission.* This overriding power of the commission is stressed in E.O. No. 14, as amended by E.O. No. 14-A, above-quoted, which excuses no person from testifying or from producing books and records before the Commission and authorizes the PCGG to grant immunity from criminal prosecution to such witness. *Clearly, the provisions of R.A. No. 1405, R.A. No. 6426, and its amendatory decrees have to give way to the enabling laws of the PCGG.*²⁵ (citations omitted)

Aside from the above pronouncement, the Secretary of Justice also opined that the immunity granted under the Bank Secrecy Law does not extend to papers and documents pertaining to commercial transactions done through banks which do not involve the deposit of money, such as the issuance of letters of credit or trust receipts.²⁶ Neither does the said law prohibit seizure of bank deposits to satisfy just and lawful debts.²⁷

The confidential nature of bank deposits has, however, been held to preclude inquiry or investigation of bank records for the purpose of verifying estate tax liability,²⁸ or the filing by banks of BIR forms that would disclose the identities of depositors to whom interest payments have been made.

III. FOREIGN CURRENCY DEPOSITS

When the Bank Secrecy Law was enacted in 1955, Congress did not intend the law to cover foreign currency deposits, for the simple reason that, at that time, banking institutions in the Philippines were not allowed to receive deposits in foreign exchange.

However, the Monetary Board of the Central Bank subsequently decided to allow domestic commercial banks to accept foreign currency deposits, so that foreign currencies which could form part of the international reserve, could be channeled into the banking system. This was accomplished by issuing Central Bank Circular No. 304 on July 21, 1970, which, for the first time, allowed domestic commercial banks to accept dollar or foreign currency deposits. This excluded foreign currencies, which, under existing regulation, are required to be "surrendered."²⁹

25. Department of Justice Opinion No. 13, series of 1987 (Feb. 24, 1987) [emphasis supplied].

26. Department of Justice Opinion No. 5, series of 1982 (Jan. 8, 1982).

27. Department of Justice Opinion No. 54, series of 1956 (Feb. 13, 1956).

28. Department of Justice Opinion No. 115, series of 1985 (Sept. 23, 1985).

29. "Surrender" here does not mean that the foreign exchange will be confiscated, but that foreign exchange receipts should be sold to the banks at the officially recognized rate.

Certain sectors questioned the legality of the circular. To remove any doubt, on April 4, 1972, Congress enacted Republic Act No. 6426, otherwise known as the Foreign Currency Deposit Act. The law, which was practically a restatement of Central Bank Circular No. 304, authorized any person to deposit with banks designated by the Central Bank to be in good standing, foreign currencies which are acceptable as part of the international reserve, except those required by the Central Bank to be surrendered.³⁰ The provisions regarding the secrecy of peso deposits, with all the exceptions provided in Bank Secrecy Law, were made to apply to foreign currency deposits as well.

Pursuant to the provisions of the Foreign Currency Deposit Act, the Monetary Board promulgated Central Bank Circular No. 343 to implement the provisions thereof, thereby revoking Circular No. 304.

The Foreign Currency Deposit Act was later further amended by Presidential Decree Nos. 1035,³¹ 1246,³² and 1453.³³ The most important amendments are embodied in Presidential Decree No. 1246, which granted absolute confidentiality to foreign currency deposits authorized under the Foreign Currency Deposit Act, as amended, as well as foreign currency deposits authorized under Presidential Decree No. 1034.

Presidential Decree No. 1246 provides that these foreign currency deposits cannot be looked into by any person, government official, or office, whether judicial, legislative, or any other entity, whether public or private, except with *written permission* of the depositor.³⁴ Moreover, foreign currency deposits were immune from "attachment, garnishment or any other order or process of court, legislative body, government agency, or any other administrative body whatsoever."³⁵

Therefore, by virtue of the amendments contained in Presidential Decree No. 1246, the only exception to the secrecy and confidentiality of foreign deposits is in the case where there is written consent by the depositor allowing his account to be examined or disclosed. The other exceptions, applicable to peso deposits under the Bank Secrecy Law, do not apply to foreign currency deposits.

Another important amendment introduced by Presidential Decree No. 1246 was the immunity of foreign deposits from attachment or garnishment. In

30. Republic Act No. 6426, § 2 (1972).

31. Presidential Decree No. 1035 (1976).

32. Presidential Decree No. 1246 (1977).

33. Presidential Decree No. 1453 (1978).

34. Presidential Decree No. 1246, § 2 (1977).

35. *Id.*

the case of *Salvacion v. Central Bank of the Philippines*,³⁶ the Supreme Court had the occasion to discuss the nature of the said privilege.

In *Salvacion*, Karen Salvacion was raped several times by an American tourist, Greg Bartelli. Before the criminal cases could be heard, Bartelli escaped. Hence, the criminal cases were archived.

Meanwhile, the victim's father filed a civil case for damages, and the trial court issued a writ of preliminary attachment. In answer to the garnishment served on China Banking Corporation where Bartelli maintained a dollar deposit, the bank invoked Central Bank Circular No. 960, which implemented the Foreign Currency Deposit Act, as amended by Presidential Decree No. 1246. The bank relied on Section 113 of the Circular, which was copied from Section 8 of the Foreign Currency Deposit Act, as amended. Section 8 of the said law reads:

Sec. 8. Secrecy of Foreign Currency Deposits — All foreign currency deposits authorized under this Act, as amended by Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositor, in no instance shall such foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office whether judicial or administrative or legislative or any other entity whether public or private: *Provided, however, that said foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.*³⁷

In the dispositive portion of its decision, the Supreme Court ruled:

The provisions of Section 113 of CB Circular No. 960 and PD. No. 1246, insofar as it amends Section 8 of R.A. No. 6426 are hereby held to be *inapplicable* to this case because of its *peculiar circumstances*: Respondents were hereby required to comply with the writ... and to release to petitioners the dollar deposit of... Greg Bartelli in such account as would satisfy the judgment.³⁸

While the Supreme Court did not invalidate the amendatory provisions of P.D. No. 1246 granting absolute confidentiality to foreign currency deposits except only in case of written permission of the depositor, and exempting such deposits from attachments, garnishments or any other process of any court, the Supreme Court made the following statements:

It is worth mentioning that R.A. 6426 was enacted in 1983,³⁹ or at a time when the country's economy was in a shambles; this was the reason why said statute was enacted. But the realities of the present times show that the country has [recovered]

36. 278 SCRA 27 (1997).

37. *Id.* at 43 [emphasis supplied].

38. *Id.* at 46 [emphasis supplied].

39. This is not quite correct. Republic Act No. 6426 was approved on April 4, 1972; Presidential Decree No. 1246 was promulgated on Nov. 21, 1977.

economically; and even if [it has] not, the questioned law is still [a violation of the rights of] those entitled to due process of law for being unreasonable and oppressive.⁴⁰

In the *Salvacion* case, the Supreme Court also pronounced:

In his Comment, the Solicitor General *correctly* opined, thus:

"Whereas, in order to assure the development and speedy growth of the Foreign Currency Deposit System and the Offshore Banking System in the Philippines, certain incentives were provided for under the two Systems such as confidentiality of deposits subject to certain exceptions and tax exemptions on the interest income of depositors who are non-residents and are not engaged in trade or business in the Philippines;

Whereas, making absolute the protective cloak of confidentiality over such foreign currency deposits, exempting such deposits from tax, and guaranteeing the vested rights of depositors would better encourage the inflow of foreign currency deposits into the banking institutions authorized to accept such deposits in the Philippines, thereby placing such institutions more in a position to properly channel the same to loans and investments in the Philippines, thus directly contributing to the economic development of the country;

The Offshore Banking System was established by P.D. No. 1034. In turn, the purposes of P.D. No. 1034 are as follows:

Whereas, it is in the interest of developing countries to have as wide access as possible to the sources of capital funds for economic development:

On the other hand, the Foreign Currency Deposit was *created* by P.D. No. 1035. Its purposes are as follows:

Whereas, it is timely to expose the foreign currency lending authority of the said depository banks under R.A. No. 6426 and apply to their transaction the same taxes as would be applicable to transactions of the proposed offshore banking units."⁴¹
(citations omitted)

The Solicitor General concluded from the above whereas clauses of the aforementioned Presidential Decrees that the Offshore Banking System and the Foreign Currency Deposit System were designed to draw deposits from *foreign lenders and investors*, and these laws grant protection and incentives to such depositors.

It is submitted by the author that the above documents/conclusions of the Solicitor General are incorrect if interpreted to mean that *only* foreign lenders and investors are covered by the protection of Presidential Decree No. 1246.

The statute that created or introduced the foreign currency deposit system in the Philippines was Republic Act No. 6426, entitled, "An Act Instituting a Foreign Currency Deposit System in the Philippines, And For Other Purposes." It is not Presidential Decree No. 1035, as commented by the

40. *Salvacion*, 278 SCRA at 41.

41. *Id.* at 42-44 [emphasis supplied].

Solicitor General. The said Presidential Decree merely modified certain provisions of Section 4 of the Foreign Currency Deposit Act.

Prior to the amendments, it was provided that depository banks of foreign currency deposits should maintain at all times 100% foreign currency cover for their deposit liabilities. Of this cover, at least 15% should be in the form of a foreign currency deposit with the Central Bank, and the balance in the form of foreign currency loans or securities, which loans or securities shall be of short term maturities and readily marketable.

Section 1 of Presidential Decree No. 1035, however, allowed certain depository banks qualified by the Central Bank to be exempt from the requirement of maintaining 15% of the cover in the form of foreign currency deposit with the Central Bank, and for said banks to extend foreign currency loans to any domestic enterprise without the limitations regarding maturity and marketability. It is therefore erroneous to say, as commented by the Solicitor General, that the foreign currency deposit system was "created" by Presidential Decree No. 1035.

Presidential Decree No. 1034, on the other hand, authorized the establishment of an Offshore Banking System in the Philippines. An Offshore Banking Unit (OBU), within the meaning of this decree, was defined as "a branch, subsidiary or affiliate of a foreign banking corporation... authorized... to transact offshore banking business in the Philippines, which refers to the conduct of banking transactions in foreign currencies involving the receipt of funds from external sources."⁴²

IV. THE CASE OF *MARQUEZ V. DESIERTO*⁴³

It is worthy to note that certain statements made by the Supreme Court in *Salvacion* are now creating confusion in the efforts of the Office of the Ombudsman to examine foreign currency deposits of deposed President Joseph Estrada, and other persons suspected of being his dummies.

In earlier cases, the Supreme Court ruled that government prosecutors, such as the special prosecutors of the Department of Justice, could access deposits or other bank accounts in connection with an investigation being conducted by them for violation of the Anti-Graft Law. Similarly, in the case of *Purisima*, the Supreme Court also ruled that the Tanodbayan, who was the predecessor of the Ombudsman, had the authority to issue a *subpoena duces tecum* for the production of bank deposit records not only of a public officer, but also of his relatives, in the course of an investigation for unexplained wealth, in violation of the Anti-Graft Law.

42. Presidential Decree No. 1034, § 1(b).

43. G.R. No. 135882 (June 27, 2001).

In its latest decision in the case of *Marquez*, the Supreme Court reversed the earlier decisions giving investigating prosecutors the right to require the production of bank deposit records, in connection with investigations of violations of the Anti-Graft Law.

In this case, the Ombudsman issued an order to petitioner Lourdes Marquez, to produce several bank documents for purposes of inspection *in camera*, relative to various bank accounts maintained at the Union Bank of the Philippines, Julia Vargas Branch, where the petitioner was the branch manager. The accounts to be inspected in the investigation by the Office of the Ombudsman, were those of a certain Mr. Amado Lagdameo and others, for violation of the Anti-Graft Law. The Ombudsman cited Section 15 of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989, and existing jurisprudence as the basis of the order for inspection.

The Ombudsman contended:

Sec. 15 of RA No. 6770, among others, provides the following powers of the Ombudsman, to wit:

(8) Administer oaths, issue *subpoena* and *subpoena duces tecum* and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records.

(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein.

Clearly, the specific provision of R.A. 6770, a later legislation, modifies the law on the Secrecy of Bank Deposits (R.A. 1405), and places the office of the Ombudsman in the same footing as the courts of law in this regard.⁴⁴

The Supreme Court, in a unanimous decision, ruled that:

[b]efore an *in camera* inspection may be allowed, there must be a pending case before a court of competent jurisdiction. Further, the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court of competent jurisdiction. The bank personnel and the account holder must be notified to be present during the inspection, and such inspection may cover only the account identified in the pending case.

In the case at bar, there is yet no pending litigation before any court of competent authority. What exists is an investigation by the Office of the Ombudsman. In short, what the Office of the Ombudsman would wish to do is to fish for additional evidence to formally charge Amado Lagdameo, et. al., with the Sandiganbayan. Clearly, there was no pending case in court which would warrant the opening of the bank account for inspection.⁴⁵

44. *Marquez*, G.R. No. 135882.

45. *Id.*

V. THE ANTI-MONEY LAUNDERING ACT OF 2001

On September 29, 2001, the President signed into law the Anti-Money Laundering Act of 2001,⁴⁶ which became effective fifteen (15) days after its publication in accordance with law.

Under this law, "money laundering" is defined as "a crime whereby the proceeds of an *unlawful activity* are transacted, thereby making them appear to have originated from legitimate sources."⁴⁷ It also defines "unlawful activity" as referring to any "act or omission or series of combination thereof involving or having relation" to fourteen (14) specified crimes such as kidnapping for ransom, violation of the Dangerous Drugs Act, Anti-Graft and Corrupt Practices Act, Plunder and so forth."⁴⁸

The law further provides for reporting by a "covered institution" of a "covered transaction" to "The Anti-Money Laundering Council (AMCL)," composed of the Governor of the Bangko Sentral ng Pilipinas (BSP) as Chairman, the Insurance Commissioner, and the Chairman of the Securities and Exchange Commission (SEC).⁴⁹

A covered institution refers to: "(a) institutions like banks etc., supervised or regulated by the BSP; (b) insurance companies and all other institutions supervised or regulated by the Insurance Commission; and (c) securities dealers, brokers, salesmen, investment houses and other institutions supervised or regulated by the SEC."⁵⁰

A covered transaction, on the other hand, is:

a single, series, or combination of transactions involving a total amount in excess of Four million Philippine pesos (PhP4,000,000.00) or an equivalent amount in foreign currency based on the prevailing exchange rate... except those between a covered institution and a person who at the time of the transaction was a properly identified client and the amount is commensurate with the business or financial capacity of the client; or those with an underlying legal or trade obligation, purpose, origin, or economic justification.

It likewise refers to a single, series, or combination or pattern of unusually large and complex transactions in excess of Four million Philippine pesos (Php 4,000,000.00), especially cash deposits and investments having no credible purpose or origin, underlying trade obligation or contract.⁵¹

Thus, if for instance, a bank receives a deposit which turns out to be a "covered transaction," as defined above, the bank should make a report to the

46. The Anti-Money Laundering Act of 2001, Republic Act No. 9160 (2001).

47. *Id.* § 4 [emphasis supplied].

48. *Id.* § 3.

49. *Id.* § 7.

50. *Id.* § 3 (a).

51. *Id.* § 3 (b).

AMLC within five (5) working days. By doing so, the bank, its officers and employees shall not be deemed to have violated the Bank Secrecy Law, Foreign Currency Deposit Act and other similar laws. However, the bank is further prohibited from communicating the fact that a covered transaction report was made, or the contents thereof, or any other information in relation thereto.⁵²

Hence, the reporting by the bank of a deposit, whether a peso or foreign currency deposit, which fits the definition of a "covered transaction," constitutes a new exception to the secrecy of bank deposits provided in the Bank Secrecy Law, as amended, and the Foreign Currency Deposit Act, as amended. Note that a court order is not needed at this stage to disclose the deposit.

Upon determination that probable cause exists in that the deposit is in any way related to an "unlawful activity," the AMLC may issue a freeze order on the deposit, which takes effect immediately for a period not exceeding fifteen days. Notice to the depositor shall be issued simultaneously with the issuance of the freeze order and the depositor shall have seventy-two hours to explain why the freeze order should be lifted. The AMLC has seventy-two hours to decide whether or not to lift the freeze order; if it fails to act within seventy-two hours, the freeze order shall be automatically dissolved.⁵³

When it is established that there is probable cause that deposits are, in any way, related to a "Money Laundering Offense," the AMLC may inquire into or examine any particular deposit upon order of a competent court in cases of violation of the Anti-Money Laundering Act.⁵⁴ This constitutes another exception to the laws on secrecy of deposits.

However, it should be noted that the provision of Anti-Money Laundering Act do not apply to deposits and investments made *prior* to its effectivity.

CONCLUSION

Forty-six years have passed since the Bank Secrecy Law was enacted in 1955. Although the law has been amended a few times, the secrecy of bank deposits remains a basic state policy. True, additional exceptions to the confidentiality of bank deposits have been established by legislation, such as Presidential Decree No. 1792, but this decree was repealed by Section 135 of the New Central Bank Act.

So far, the only meaningful amendments to Bank Secrecy Law are embodied in the recently enacted Anti-Money Laundering Act. Even then, the

law specifically provides that it shall not apply to deposits already existing before its effectivity. Moreover, even for deposits made subsequent to its effectivity, the Anti-Money Laundering Act requires a court order before deposits can be examined, and only with regard to deposits which are connected with a money laundering offense, *i.e.*, a crime whereby the proceeds of an "unlawful activity" are transacted.

Supreme Court decisions on the subject are rather conflicting. In *Tatalon*, the Supreme Court held that the investigating fiscal cannot compel production of savings and current deposit accounts in the course of an investigation for violation of the Anti-Graft Law. Two years thereafter, the Supreme Court reversed itself in *Gancayco*. Finally, in *Marquez*, the Supreme Court, effectively, set aside earlier decisions by stopping the Ombudsman from compelling a bank branch manager to produce various bank accounts without a pending case before a court of competent jurisdiction.

Deliberations in Congress on the Anti-Money Laundering bill showed deep concern for the preservation of the right of a depositor to the privacy of his bank deposits. At the same time, Congress realized that such protection extended to depositors cannot be used as a shield for laundering the proceeds of any "unlawful activity." Balancing these two concerns will continue to be a challenge to the judicial and legislative branches of government.

52. *Id.* § 9 (c).

53. *Id.* § 10.

54. *Id.* § 11.