

BANKING LAWS OF THE PHILIPPINES

# **THE LAWS ON SECRECY OF BANK DEPOSITS**

— A LEGAL PRIMER —



# PHILIPPINE LAWS, RULES, AND REGULATIONS ON SECRECY OF BANK DEPOSITS

## Introduction

The *Bangko Sentral* will soon launch a book “Banking Laws of the Philippines Annotated,” which is a consolidated and updated version of the previously published three (3) books on Banking Laws covering The New Central Bank Act,<sup>1</sup> The General Banking Law of 2000,<sup>2</sup> and special banking laws. One of the major topics in the revised version is the Secrecy of Bank Deposits Laws, Rules, and Regulations. To serve as an introductory material for the book, this primer covers the basic laws on the secrecy of bank deposits, as well as the exceptions.

Republic Act No. 1405,<sup>3</sup> also known as the Law on Secrecy of Bank Deposits, was enacted in September 1955, primarily to encourage the public to invest their money in government securities and deposit them in banking institutions, discourage private hoarding,<sup>4</sup> and enhance protection of privacy rights.<sup>5</sup> During those times, the country needed enough capital and credit facilities to boost the economy after the ravage of World War II.<sup>6</sup>

More than half a century after the enactment of the law, the financial sector landscape has evolved, such that the financial innovations and ease of transactions enabled, necessitated, and encouraged the public to place their money in the banks, and spurred the economy.<sup>7</sup> The factual milieu then prevailing is no longer existing, and the objectives of the law to deter private hoarding and to boost the economy are deemed achieved.<sup>8</sup>

On the other hand, the Foreign Currency Deposit Act of the Philippines<sup>9</sup> was enacted on April 4, 1972. Prior to this law, one of the main economic challenges of the country was its unstable financial condition, which was greatly caused by, among other factors, heavy dollar spending.<sup>10</sup> This, in turn, caused a dollar deficit in the country, which dollars were necessary to finance foreign currency liabilities and dollar-denominated transactions. To address this deficit, Filipinos working overseas were targeted as potential sources of foreign currencies.<sup>11</sup> The repatriation of dollars by Filipinos abroad was envisioned to boost the economy.<sup>12</sup> Foreign currencies

<sup>1</sup> Rep. Act No. 7653 (1993), as amended by Rep. Act No. 11211 (2019).

<sup>2</sup> Rep Act. No. 8791 (2000).

<sup>3</sup> An Act Prohibiting Disclosure of or Inquiry into, Deposits with any Banking Institution and Providing Penalty Therefor.

<sup>4</sup> Rep. Act No. 1405, § 1 (1955).

<sup>5</sup> See Republic v. Eugenio, Jr., G.R. No. 174629, Feb. 14, 2008 (545 S.C.R.A. 384).

<sup>6</sup> H.R. No. 3977, 3<sup>rd</sup> Cong., Congressional Rec. 3886 (July 27, 1995) (enacted).

<sup>7</sup> S. No. 1802 (Sept. 1, 2020), 18<sup>th</sup> Cong., Explanatory Note & H.R. No. 8634 (Feb. 7, 2021), 18<sup>th</sup> Cong., Explanatory Note.

<sup>8</sup> *Id.*

<sup>9</sup> Rep. Act No. 6426 (1974) (last amended in 1978).

<sup>10</sup> H.R. No. 2475, 7<sup>th</sup> Cong., Explanatory Note & S. No. 541, 7<sup>th</sup> Cong., Explanatory Note.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

were also considered to be part of the country's international reserves.<sup>13</sup> Thus, it was imperative to attract and invite deposits of foreign currencies in duly authorized banks in order that they may be put into the stream of the banking system.<sup>14</sup> This law put in place the primary incentives of protection and stability of the foreign currency deposit system. This law and its subsequent amendments introduced more incentives by guaranteeing confidentiality of deposits, granting tax exemptions, allowing withdrawability and transferability of deposits, and affirming the vested rights of depositors.<sup>15</sup> These incentives were intended to encourage residents and non-residents to deposit their foreign currencies in the Philippine banking system.<sup>16</sup>

As early as 2011, the Group of Twenty or G20<sup>17</sup> declared that the “era of bank secrecy is over” after it endorsed the standards on transparency and exchange of information.<sup>18</sup> In 2014, the Organisation for Economic Co-operation and Development (OECD) released the standard for automatic exchange of information as the new global standard of obtaining detailed account information from financial institutions, and exchanging that information automatically with other jurisdictions for the purpose of combatting tax evasion, money laundering, and commission of other crimes.<sup>19</sup> This global regulatory watch means lifting the cloak of bank secrecy.

At present, the Philippines is the only country<sup>20</sup> to still have restrictive banking laws making it hard for the government to go after tax evaders and money launderers.<sup>21</sup> This, notwithstanding the global trend to shift from secrecy towards transparency.

<sup>13</sup> H.R. No. 2475, 7<sup>th</sup> Cong., Congressional Rec. 77 (Feb. 11, 1971).

<sup>14</sup> Cancio v. Court of Tax Appeals, G.R. No. 73882, Oct. 22, 1987 (154 S.C.R.A. 731).

<sup>15</sup> Rep. Act No. 6426 (1974), §§ 5, 6, 7, 8, & 12-A (last amended in 1978).

<sup>16</sup> H.R. No. 2475, 7<sup>th</sup> Cong., Congressional Rec. 77 (Feb. 11, 1971).

<sup>17</sup> The Group of Twenty (G20) is the premier forum for international economic cooperation. It plays an important role in shaping and strengthening global architecture and governance on all major international economic issues. See About G20, <https://www.g20.org/en/about-g20/> (last visited Jan. 2023).

<sup>18</sup> OECD, *The Era of Bank Secrecy is Over*, Oct. 26, 2011, <https://www.oecd.org/ctp/exchange-of-tax-information/48996146.pdf> (last visited Jan. 2023).

<sup>19</sup> OECD, *Automatic Exchange of Information*, <https://www.oecd.org/tax/automaticexchange.htm> (last visited Jan. 2023).

<sup>20</sup> Lebanon recently passed a law amending its law on bank secrecy. See <https://english.alarabiya.net/News/middle-east/2022/10/29/Outgoing-Lebanon-leader-signs-amended-banking-secrecy-law-in-step-towards-IMF-reform> (last visited Jan. 2023).

<sup>21</sup> See National Tax Research Center, *Lifting of the Philippine Bank Secrecy Law for Tax Fraud Cases*, National Tax Research Center Research Journal (July-Aug. 2016), <https://ntrc.gov.ph/images/journal/2016/j20160708a.pdf> (last visited Jan. 2023).

According to the International Monetary Fund (IMF), the existing secrecy of bank deposits laws of the Philippines restrict the ability of *Bangko Sentral* to undertake effective supervision.<sup>22</sup> The IMF noted that our secrecy laws undermine financial stability, financial integrity, and development of the banking sector, and expose the banking system to reputational risk.<sup>23</sup> The IMF recommended that legislative amendments be promptly approved to give *Bangko Sentral* direct and full access to individual depositor information covered by bank secrecy laws.<sup>24</sup> Moreover, a multi-sectoral support is behind the proposed repeal of bank secrecy laws being spearheaded by *Bangko Sentral*, such as the Bankers Association of the Philippines, Management Association of the Philippines, Chamber of Thrift Banks, and Makati Business Club.

This legal primer is the product of a collaborative effort of lawyers from the Office of the General Counsel and Legal Services. It is hoped that this legal primer will enhance the readers' knowledge and awareness of the country's secrecy of bank deposits laws, rules, and regulations.

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**ANNOTATED (2023)**

<sup>22</sup> IMF Country Report No. 20/296, Financial Sector Assessment Program, Philippines, Oct. 2020.

<sup>23</sup> IMF Country Report No. 21/74, Financial System Stability Assessment, Philippines, Feb. 11, 2021.

<sup>24</sup> *Id.*

## Law on Secrecy of Bank Deposits

### Absolute Confidentiality

All deposits of whatever nature in banks or banking institutions in the Philippines and investments in government bonds are absolutely confidential in nature.<sup>25</sup>

1. **Deposit** means the unpaid balance of money or its equivalent received by a bank in the usual course of business and for which it has given or is obliged to give credit to a commercial, checking, savings, time or thrift account, evidenced by a passbook, certificate of deposit, or other evidence of deposit issued in accordance with *Bangko Sentral* rules, regulations and other applicable laws, together with such other obligations of a bank, which, consistent with banking usage and practices, the Board of Directors of the Philippine Deposit Insurance Corporation (PDIC) shall determine and prescribe by regulations to be deposit liabilities of the bank.<sup>26</sup> Deposit is characterized as being in the nature of a simple loan. The placing of a deposit in a bank creates a creditor-debtor relationship between the depositor and the bank. The bank, as debtor, has the obligation to pay a certain sum of money to the depositor, as creditor.<sup>27</sup>

The term “deposit of whatever nature” is construed broadly to include accounts that may be used by banks for authorized loans to third persons, although there is no creditor-debtor relationship arising from the account, such as money placed under trust accounts.<sup>28</sup>

2. **Investments in government bonds** refer to investments in bonds issued by the government of the Philippines, its political subdivisions, and its instrumentalities. Government bonds are debt securities that are unconditional obligations of the State and backed by its full taxing power. Government bonds include treasury bills, treasury notes, retail treasury bonds, dollar linked peso notes, and other risk-free bonds.<sup>29</sup>

The General Banking Law of 2000 prohibits bank directors, officers, employees, or agents from disclosing to any unauthorized person, without order of a competent court, any information relative to funds or properties belonging to private individuals, corporations, or any other entity in the custody of the bank.<sup>30</sup> It is not required that all the details of a bank deposit be examined, inquired or looked into.<sup>31</sup> The prohibition applies even if the disclosure pertains only to the mere existence of a bank deposit, without revealing the bank or amount.<sup>32</sup>

The Thrift Banks Act of 1995<sup>33</sup> and the Rural Banks Act of 1992<sup>34</sup> likewise prohibit any bank officer, employee, or agent from disclosing any information on such funds or properties.<sup>35</sup>

### Prohibited Acts and Persons Liable

The following are liable under this law:

1. Any person or government official who, or any government bureau or office that, examines, inquires, or looks into a bank deposit or government bond investment in any of the instances not allowed under the law;<sup>36</sup>
2. Any official or employee of a banking institution who makes a disclosure concerning bank deposits to another in any instance not allowed by law;<sup>37</sup> and
3. Any person who commits a violation of any of the provisions of the law.<sup>38</sup>

<sup>25</sup> Rep. Act No. 1405, § 2 (1955).

<sup>26</sup> Rep. Act No. 3591, § 5(g) (1963) (last amended in 2022).

<sup>27</sup> See *Guingona, Jr. v. The City Fiscal*, G.R. No. 60033, Apr. 4, 1984 (128 S.C.R.A. 577).

<sup>28</sup> *Ejercito v. Sandiganbayan*, G.R. No. 157294-95, Nov. 30, 2006 (509 S.C.R.A. 190).

<sup>29</sup> See Bureau of Internal Revenue, *BIR: Investments are not subject to the bank secrecy law, only bank deposits and government securities*, <https://www.officialgazette.gov.ph/2014/08/12/bir-investments-are-not-subject-to-the-bank-secrecy-law-only-bank-deposits-and-government-securities/> (last visited Jan. 2023).

<sup>30</sup> Rep. Act No. 8791, § 55.1(b) (2000).

<sup>31</sup> Letter of the BSP Deputy Governor & General Counsel to the Chairman of the Committee on Ways & Means, House of Representatives (Dec. 13, 2011), *citing* S. No. 351, Congressional Rec. 1625.

<sup>32</sup> Letter of the BSP Deputy Governor & General Counsel to the Chairman of the Committee on Ways & Means, House of Representatives (Dec. 13, 2011), *citing* *BSB Group, Inc. v. Go*, G.R. No. 168644, Feb. 16, 2010 (612 S.C.R.A. 496).

<sup>33</sup> Rep. Act No. 7906 (1995).

<sup>34</sup> Rep. Act No. 7353 (1992) (last amended in 2013).

<sup>35</sup> Rep. Act No. 7906, § 2(a)(2) (1995) & Rep. Act No. 7353, §26(a)(2) (1992) (last amended in 2013).

<sup>36</sup> See Rep. Act No. 1405, § 2 (1955).

<sup>37</sup> *Id.*, § 3.

<sup>38</sup> *Id.*, § 5.

Any bank official, director, employee, or agent who discloses information relative to funds or properties in the custody of the bank may also be held liable under the applicable provisions of The General Banking Law of 2000, Thrift Banks Act of 1995, and Rural Banks Act of 1992.

### Exceptions to Confidentiality

Bank deposits and investments in government bonds may be examined, inquired, or looked into under the following limited exceptions:

#### 1. Law on Secrecy of Bank Deposits

Bank deposits and investments in government bonds may be examined, inquired, and looked into in the following instances:<sup>39</sup>

- a. Upon written permission or consent in writing by the depositor. For consent to be valid, it should be made knowingly, voluntarily, and with sufficient awareness of the relevant circumstances and likely consequences.<sup>40</sup>
- b. In cases of impeachment of the President, Vice President, members of the Supreme Court, members of the Constitutional Commissions,<sup>41</sup> and Ombudsman for culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.<sup>42</sup>
- c. Upon order of a competent court in cases of bribery<sup>43</sup> or dereliction of duty of public officials.<sup>44</sup>

Cases 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.<sup>45</sup>

As bribery and plunder are analogous, the exception under the Law on Secrecy of Bank Deposits applicable in cases of bribery must also apply to cases of plunder.<sup>46</sup>

- d. In cases where the money deposited or invested is the subject matter of the litigation. The money deposited should be the very thing in dispute.<sup>47</sup>

#### 2. Other Laws and Jurisprudence

Bank deposits and investments in government bonds may be examined, inquired, or looked into as provided in other laws and jurisprudence:

- a. *Investigation by the Ombudsman under The Ombudsman Act of 1989*<sup>48</sup>

The Ombudsman has the power to issue *subpoena* and *subpoena duces tecum*, take testimony in any investigation or inquiry, as well as examine and access bank accounts and records.<sup>49</sup> The power of the Ombudsman to subpoena deposit information of a government official may be exercised when the following conditions concur:

- i. There must be a case pending before a court of competent jurisdiction;
- ii. The account must be clearly identified;
- iii. The inspection must be limited to the subject matter of the pending case; and
- iv. 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.<sup>50</sup>

<sup>39</sup> *Id.*, § 2.

<sup>40</sup> See *Premiere Development Bank v. Central Surety and Insurance Company, Inc.* G.R. No. 176246, Feb. 13, 2009 (579 S.C.R.A. 359).

<sup>41</sup> Commission on Elections, Civil Service Commission, and Commission on Audit.

<sup>42</sup> Constitution, Art. XI, § 2 (1987).

<sup>43</sup> See Act No. 3815, Arts. 203, 210-211 (1930) (last amended in 2017).

<sup>44</sup> *Id.*, Arts. 204-209.

<sup>45</sup> *Ejercito v. Sandiganbayan*, G.R. Nos. 157294-95, Nov. 30, 2006 (509 S.C.R.A. 190), *citing* *Philippine National Bank v. Gancayco*, G.R. No. L-18343, Sept. 30, 1965.

<sup>46</sup> *Ejercito v. Sandiganbayan*, G.R. Nos. 157294-95, Nov. 30, 2006 (509 S.C.R.A. 190).

<sup>47</sup> *Mellon Bank, N.A. v. Magsino*, G.R. No. 71479, Oct. 18, 1990 (190 S.C.R.A. 633).

<sup>48</sup> Rep. Act No. 6770 (1989).

<sup>49</sup> *Id.*, § 15(8).

<sup>50</sup> *Marquez v. Desierto*, G.R. No. 135882, June 27, 2001 (359 S.C.R.A. 772). See *Office of the Ombudsman v. Ibay*, G.R. No. 137538, Sept. 3, 2001.

b. *Cases of Unexplained Wealth of Public Officials or Violations of the Anti-Graft and Corrupt Practices Act*<sup>51</sup>

Bank deposits of a public official, his spouse, and unmarried children may be taken into consideration in the enforcement of the dismissal or removal of the said public official due to unexplained wealth.<sup>52</sup>

c. *Borrowings of directors, officers, stockholders, and their related interests who are required to execute a written waiver of secrecy of bank deposits under The New Central Bank Act*<sup>53</sup>

Directors, officers, stockholders, and their related interests who contract a loan or any form of financial accommodation with their bank or related bank are required to execute a written waiver of secrecy of deposits in accordance with The New Central Bank Act.

d. *Application for Compromise of Tax Liability, Determination of Decedent's Estate, and Exchange of Tax Information under the National Internal Revenue Code (NIRC)*<sup>54</sup>

The Commissioner of Internal Revenue is authorized to inquire into bank deposit accounts in relation to:

- i. An application for compromise of tax liability or a determination of a decedent's gross estate under the NIRC; and
- ii. A foreign tax authority's request for tax information of specific taxpayers in the Philippines pursuant to an international convention or agreement on tax matters to which the Philippines is a signatory or a party.<sup>55</sup>

e. *As a Remedy for the Collection of Delinquent Taxes or Duties under NIRC*<sup>56</sup>

The national government, through the Bureau of Internal Revenue (BIR) and the Bureau of Customs (BOC), and the local government units may collect delinquent taxes<sup>57</sup> or duties and taxes<sup>58</sup> by distraint of goods and other personal property of whatever character, including debts, credits, bank accounts, and interests in and rights to personal property. The term "distrain" refers to the seizure by government of the personal property (tangible or intangible) of a taxpayer, to enforce the payment of his tax liabilities.<sup>59</sup>

With respect to bank accounts, the commissioners of BIR and BOC issue a warrant of garnishment to seize the bank deposits of a delinquent taxpayer.<sup>60</sup> Bank accounts are garnished by serving a warrant of garnishment upon the delinquent taxpayer or importer and upon the president, manager, treasurer, or other responsible officer of the bank. Upon receipt of the warrant of garnishment, the bank shall turnover to the commissioner so much of the bank accounts as may be sufficient to satisfy the claim of the government.<sup>61</sup>

f. *Garnishment of Deposits in Satisfaction of Judgment under the Rules of Court*<sup>62</sup>

To satisfy a final judgment in a collection case, the court officer may levy on debts due the judgment obligor and other credits, including bank deposits. Levy is made by serving notice upon the persons owing such debts or having in his possession or control such credits to which the judgment obligor is entitled.<sup>63</sup>

The responsible bank official to whom the writ of garnishment is directed must disclose information if the judgment debtor has a deposit with the bank. The disclosure of the existence of a deposit is purely incidental to the execution process. The measure of protection afforded by this law is not intended to enable debtors to evade payment of their just debts through the expedient conversion of their assets into cash and depositing the same in a bank. It is not the intention of the law to place

51 Rep. Act No. 3019 (1960) (last amended in 2016).

52 *Id.*, § 8; See *Philippine National Bank v. Cancayco*, G.R. No. L-18343, Sept. 30, 1965.

53 Rep. Act No. 7653, § 26 (1993), as amended by Rep. Act No. 11211 (2019).

54 Rep. Act No. 8424 (1997) (last amended in 2021).

55 *Id.*, § 6., such as Foreign Account Tax Compliance Act.

56 Rep. Act No. 8424, § 205 (1997) (last amended in 2021); Admin. Ord. No. 270, Art. 26 (1992); & Rep. Act No. 10863, § 1132 (2016).

57 Rep. Act No. 8424, § 205 (1997) (last amended in 2021) & Admin. Ord. No. 270, Art. 262 (1992).

58 Rep. Act No. 10863, § 1132 (2016).

59 Aguirre, Estelita C., *Philippine Tax Collection System, Its Evolution and Direction*, <https://www.bir.gov.ph/index.php/downloadables/features.html> (last visited Jan. 2023).

60 Rep. Act No. 8424, § 208 (1997) (last amended in 2021) & Rep. Act No. 10863, § 1134 (2016).

61 *Id.*

62 Rules of Court, Rule 39, § 9(c) (1997).

63 *Id.*

bank deposits beyond the reach of execution to satisfy a final judgment.<sup>64</sup>

g. *Deposits or Investments Related to Unlawful Activities or Money Laundering Offenses under the Anti-Money Laundering Act of 2001 (AMLA)*<sup>65</sup>

The AMLA<sup>66</sup> authorizes the Anti-Money Laundering Council (AMLC) to examine and inquire into bank deposits or investments with banks or non-bank financial institutions

- i. With court order, when there is probable cause that the deposits or investments are related to an unlawful activity or a money laundering offense;<sup>67</sup> and
- ii. Without need of court order, when probable cause exists that a particular deposit or investment with any banking institution is related to certain predicate crimes, such as kidnapping for ransom, violation of the Comprehensive Dangerous Drugs Act,<sup>68</sup> hijacking and other violations under Republic Act No. 6235,<sup>69</sup> destructive arson, and murder as defined under the Revised Penal Code,<sup>70</sup> including those perpetrated by terrorists against non-combatant persons and similar targets.

Upon verified *ex parte* petition by AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity, the Court of Appeals may issue a freeze order, which shall be effective immediately and shall be valid for a period of twenty (20) days unless extended by the court.<sup>71</sup>

<sup>64</sup> China Banking Corporation v. Ortega, G.R. No. L-34964, Jan. 31, 1973 (49 S.C.R.A. 355).

<sup>65</sup> Rep. Act No. 9160 (2001) (last amended in 2021).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*, §§ 3(i) & 4.

<sup>68</sup> Rep. Act No. 9165 (2002) (amended in 2014).

<sup>69</sup> An Act Prohibiting Certain Acts Inimical to Civil Aviation, and For Other Purposes (1971).

<sup>70</sup> Act No. 3815 (1930) (last amended in 2017).

<sup>71</sup> Rep. Act No. 9160, § 10 (2001) (last amended 2021).

As a financial investigator, AMLC has the power to investigate the following: (i) suspicious transactions<sup>72</sup> and covered transactions<sup>73</sup> deemed suspicious after investigation by AMLC; (ii) Money Laundering/Terrorism Finance activities; or (iii) any property or funds that are in any way related to Terrorism Finance or acts of terrorism.<sup>74</sup>

h. *Annual Testing of Numbered Accounts under AMLA*<sup>75</sup>

The *Bangko Sentral* is authorized to –

- i. Inquire into or examine bank deposits or investments in the course of a periodic or special examination to ensure compliance with the AMLA;<sup>76</sup> and
- ii. Conduct annual testing, which is limited to the determination of the existence and true identity of the owners of numbered accounts.<sup>77</sup>

i. *Cases of Unsafe or Unsound Banking under Republic Act No. 3591, or the PDIC Charter*<sup>78</sup>

The PDIC and *Bangko Sentral* are authorized to inquire into or examine bank deposits and all information related thereto when there is a finding of unsafe or unsound banking.

A court order is not required for PDIC and *Bangko Sentral* to exercise their respective authority to inquire into bank deposits. It is sufficient that their inquiries are based on a finding of unsafe or unsound banking.<sup>79</sup>

<sup>72</sup> Covered Transaction refers to (1) a transaction in cash or other equivalent monetary instrument exceeding Five Hundred Thousand pesos (PhP500,000.00); (2) a transaction with or involving jewelry dealers, dealers in precious metals and dealers in precious stones in cash or other equivalent monetary instrument exceeding One Million pesos (PhP1,000,000.00); or (3) a casino cash transaction exceeding Five Million Pesos (PhP5,000,000.00) or its equivalent in other currency. 2018 IRR of Rep. Act No. 9160, as amended, Rule 2, § 1.

<sup>73</sup> Suspicious Transaction refers to a transaction, regardless of amount, where any of the suspicious circumstances is determined, based on suspicion or, if available, reasonable grounds, to be existing. 2018 IRR of Rep Act No. 9160, as amended, Rule 2, § 1.

<sup>74</sup> 2018 IRR of Rep Act No. 9160, as amended, Rule 6, §1.9.1.

<sup>75</sup> Rep. Act No. 9160, §§ 9 & 11 (2001) (last amended 2021).

<sup>76</sup> *Id.*, §11.

<sup>77</sup> *Id.*, §9; 2018 IRR of Rep Act No. 9160, as amended, Rule 17, § 3.

<sup>78</sup> An Act Establishing the Philippine Deposit Insurance Corporation, Defining its Powers and Duties and For Other Purposes (1963).

<sup>79</sup> Rep. Act No. 3591, § 9 (1963) (last amended in 2022).

j. *Failure of Prompt Corrective Action (PCA) under the PDIC Charter*<sup>80</sup>

The PDIC and *Bangko Sentral* may examine, inquire, or look into the deposit records of a bank if there is a failure of PCA as declared by the Monetary Board due to capital deficiency. Pursuant to this authority, banks and their officers and employees are mandated to disclose and report to PDIC and *Bangko Sentral* or their duly authorized officers and employees the required deposit account information. Thus, any act done pursuant to this power is not violative of the Law on Secrecy of Bank Deposits, Foreign Currency Deposits Act of the Philippines,<sup>81</sup> The General Banking Law of 2000, and other similar laws protecting or safeguarding the secrecy or confidentiality of bank deposits. The PDIC and *Bangko Sentral*, their officers or employees are, however, prohibited from disclosing deposit information to any person, government official, bureau, or office. Unauthorized disclosure shall be subject to the same penalty under the laws on secrecy or confidentiality of bank deposits.<sup>82</sup>

k. *Examination Pursuant to the Anti-Terrorism Act of 2020*<sup>83</sup>

The Anti-Terrorism Act of 2020 authorizes AMLC, upon the issuance by the court of a preliminary order of proscription or in case of designation, either upon its own initiative or at the request of the Anti-Terrorism Council (ATC), to investigate: (i) any property or funds that are in any way related to financing of terrorism<sup>84</sup> or violation of certain sections of the Anti-Terrorism Act of 2020;<sup>85</sup> and (ii) property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of certain sections of the Anti-Terrorism Act of 2020.<sup>86</sup>

For this purpose, AMLC is authorized to inquire into or examine deposits and investments with any banking institution or non-bank financial institution and their subsidiaries and affiliates without a court order.<sup>87</sup>

l. *Examination Pursuant to the Terrorism Financing Prevention and Suppression Act of 2012*<sup>88</sup>

The AMLC, either upon its own initiative or at the request of the ATC, is authorized to investigate: (i) any property or funds that are in any way related to financing of terrorism or acts of terrorism; or (ii) property or funds of any person or persons in relation to whom there is probable cause to believe that such person or persons are committing or attempting or conspiring to commit, or participating in or facilitating the financing of terrorism or acts of terrorism as defined in the law.<sup>89</sup>

For this purpose, AMLC is authorized to inquire into or examine deposits and investments with any banking institution or non-bank financial institution and their subsidiaries and affiliates without a court order.<sup>90</sup>

m. *Audit of Government Deposits under the Constitution*<sup>91</sup> and the *Government Auditing Code*<sup>92</sup>

By virtue of the Constitution and the Government Auditing Code, the Commission on Audit is authorized to examine and audit government deposits pertaining to the revenue and receipts of, and expenditures or uses of funds and properties, owned or held in trust by, or pertaining to, the government or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters.<sup>93</sup>

80 Rep. Act No. 3591(1963) (last amended in 2022).

81 Rep. Act No. 6426 (1974) (last amended in 1978).

82 *Id.*, § 11.

83 Rep. Act No. 11479, § 35 (2020).

84 See Rep. Act No. 10168 (2012).

85 Rep. Act No. 11479, §§ 4, 6, 7, & 10-12 (2020).

86 *Id.*

87 *Id.*, § 35.

88 Rep. Act No. 10168 (2012).

89 *Id.*, § 10.

90 *Id.*

91 1987 Philippine Constitution.

92 Pres. Dec. No. 1445 (1978).

93 See Constitution, Art. IX-D, § 2(1) & Op. No. 95, Dep't of Justice (May 31, 1991), *citing* Pres. Dec. No. 1445 (1978).

The authority and powers of the Commission on Audit extend to and comprehend all matters relating to, among other things, the following:<sup>94</sup>

- i. Examination and inspection of books, records, and papers relating to the accounts of the government; and
- ii. Audit and settlement of accounts of all persons respecting funds or property received or held by them in an accountable capacity.

n. *Investigation To Recover Ill-Gotten Wealth under Executive Order No. 1*<sup>95</sup>

The Presidential Commission on Good Government (PCGG), in the conduct of its investigations to recover ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates, and close associates, may issue *subpoenas* requiring the attendance and testimony of witnesses and/or the production of books, papers, contracts, records, statement of accounts, and other documents as may be material to its investigation.<sup>96</sup> Bank secrecy laws cannot prevail over the mandated functions of the PCGG in the conduct of investigations to accomplish its purposes, specifically to recover ill-gotten wealth from the Marcoses and their cronies.<sup>97</sup> To hold otherwise would frustrate PCGG's mission as clearly directed by law.<sup>98</sup>

o. *Review of Records by a Rehabilitation Receiver under the Financial Rehabilitation and Insolvency Act (FRIA) of 2010*<sup>99</sup>

In the rehabilitation of financially distressed enterprises and individuals, the rehabilitation receiver, upon issuance by the court of a Commencement Order, is vested with all the powers and functions under FRIA, such as to review and obtain records to which the debtor's management and directors have access. These records include bank accounts of whatever nature of the debtor subject to the approval by the court of a performance bond filed by the rehabilitation receiver.<sup>100</sup>

p. *Escheat Proceedings under the Act No. 3936, as amended, or the Unclaimed Balances Law*<sup>101</sup>

All banks, building and loan associations, and trust corporations are required to submit to the Treasurer of the Philippines a statement under oath, of all credits and deposits held by them in favor of persons known to be dead, or who have not made further deposits or withdrawals during the preceding ten (10) years or more.<sup>102</sup>

The submission by banks to the Treasurer of the Philippines of the sworn statement is the initial step in implementing the Unclaimed Balances Law. The submission of this statement is not violative of the Law on Secrecy of Bank Deposits; otherwise, it would defeat the very purpose and implementation of this law since the information in the statement precisely constitutes the basis for institution of escheat proceedings.<sup>103</sup> The Unclaimed Balances Law and the Law on Secrecy of Bank Deposits may be simultaneously implemented without defeating their respective purposes and policies.<sup>104</sup>

q. *Records of Closed Banks based on jurisprudence*

Employees and officers of a closed bank cannot be prosecuted for violation of the Law on Secrecy of Bank Deposits when they disclose information concerning a bank account, which was used in the perpetration of anomalies.<sup>105</sup> The disclosure of a bank account is not prohibited under the law as the closed bank is no longer a "banking institution" within the spirit and letter of the law.<sup>106</sup>

94 Pres. Dec. No. 1445, § 26 (1978).

95 Creating the Presidential Commission on Good Governance (1986).

96 *Id.* § 3(e).

97 Op. No. 13, Dep't. of Justice (Feb. 24, 1987).

98 *Id.*

99 Rep. Act No. 10142 (2010).

100 *Id.*, § 17(a).

101 An Act Requiring Banks, Trust Companies, Savings and Mortgage Banks, Mutual Building and Loan Associations, and Banking Institutions of Every Kind to Transfer Unclaimed Balances Held by them to the Insular Treasury, and For Other Purposes (1932).

102 Act No. 3936, § 1 (1932), as amended by Pres. Dec. No. 679 (1975).

103 Op. No. 104, Dep't of Justice (July 9, 1975).

104 *Id.*

105 See Soriano v. Gutierrez and Manuzon, C.A. G.R. SP No. 87634, May 30, 2006, which was affirmed by the Supreme Court in a Minute Resolution, G.R. No. 174944, Jan. 24, 2007.

106 *Id.*

## Penalties

Violation of the Law on Secrecy of Bank Deposits will subject the offender, upon conviction, to the following penalties:

1. Imprisonment of not more than five (5) years;
2. Fine of not more than PhP20,000.00; or
3. Both imprisonment and fine.

## Foreign Currency Deposit Act of the Philippines

### Absolute Confidentiality

All foreign currency deposits are absolutely confidential and cannot be examined, inquired, or looked into by any person, government official, bureau, or office, whether judicial or administrative or legislative, or any other private or public entity. Foreign currency deposits are also exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency, or any administrative body whatsoever.<sup>107</sup>

Foreign currency deposits refer to funds in foreign currencies that are accepted and held by authorized banks in the regular course of business with the obligation to return an equivalent amount to the owner thereof, with or without interest.<sup>108</sup>

### Prohibited Acts and Persons Liable

The following are liable under this law:

1. Any person or government official who, or any government bureau or office that, examines, inquires, or looks into a foreign currency deposit without the written permission of the depositor;<sup>109</sup>
2. Any official or employee of a banking institution who makes a disclosure concerning foreign currency deposits to another, in any instance not allowed by law;<sup>110</sup>
3. Anyone who shall attach, garnish, or subject the foreign currency deposit to any other order or process of any court, legislative body, government agency, or any other administrative body;<sup>111</sup> or
4. Any person who commits a willful violation of any of the provisions of Foreign Currency Deposit Act of the Philippines or regulation issued by the Monetary Board pursuant to the said law.<sup>112</sup>

<sup>107</sup> Rep. Act No. 6426, § 8 (1974) (last amended in 1978).

<sup>108</sup> MORFXT, § 45(4) in relation to § 70 (2022).

<sup>109</sup> Rep. Act No. 6426, § 8 (1974) (last amended in 1978).

<sup>110</sup> See *Id.*, § 10.

<sup>111</sup> *Id.*, § 8.

<sup>112</sup> *Id.*, § 10.

## Exceptions to Confidentiality

Absolute confidentiality is mandated for all foreign currency deposits subject to the following limited exceptions:

### 1. Foreign Currency Deposit Act of the Philippines

The only exception to the absolute confidentiality under this law is when there is written permission of the depositor.<sup>113</sup> Absent the written permission of the depositor and subject to other exceptions provided under other laws, banks cannot be compelled to disclose any information on foreign currency deposits; otherwise, it might expose itself to criminal liability.<sup>114</sup>

### 2. Other Laws and Jurisprudence

The exceptions to the absolute confidentiality as regards the foreign currency deposits under other laws are almost similar to those in the Law of Secrecy of Bank Deposit.<sup>115</sup> Hence, foreign currency deposits may be lawfully examined, inspected, and inquired into by authorized persons and entities in the following instances:

- a. Borrowings of directors, officers, stockholders, and related interests who are required to execute a written waiver of secrecy of deposits of whatever nature in all banks in the Philippines, in accordance with The New Central Bank Act;<sup>116</sup>
- b. In cases of application for compromise of tax liability, determination by the Commissioner of BIR of a decedent's gross estate, and exchange of tax information;<sup>117</sup>
- c. A covered institution that reports foreign currency deposits in covered transaction reports or suspicious transaction reports to AMLC;<sup>118</sup>

113 Rep. Act No. 6426, § 8 (1974) (last amended in 1978) & *People v. Ligot*, C.T.A. Crim. Case Nos. O-241, O-242, O-243 & O-244, Jan. 8, 2019.

114 *GSIS v. Court of Appeals*, G.R. No. 189206, June 8, 2011 (651 S.C.R.A. 661).

115 *People v. Ligot*, C.T.A. Crim. Case Nos. O-241, O-242, O-243 & O-244, Jan. 8, 2019.

116 See Rep. Act No. 7653, § 26 (1993), as amended by Rep. Act No. 11211 (2019), & MORFXT, § 76 (1) (2022).

117 See Rep. Act No. 8424, § 6 (1997) (last as amended in 2021) & MORFXT, § 76(8) (2022).

118 See MORFXT, § 76(2) (2022).

- d. Inquiry by AMLC into deposits or investments related to unlawful activities or money laundering offenses;<sup>119</sup>
- e. Investigation by AMLC of deposits and investments related to financing or acts of terrorism;<sup>120</sup>
- f. Conduct of annual testing by *Bangko Sentral* that is solely limited to the determination of the existence and true identity of the owners of foreign currency non-checking numbered accounts, to prevent money laundering;<sup>121</sup>
- g. Inquiry or examination of deposits or investments by *Bangko Sentral* in the course of a periodic or special examination to ensure compliance with the AMLA;<sup>122</sup>
- h. Inquiry by PDIC and *Bangko Sentral* in cases of unsafe or unsound banking and failure of prompt corrective actions;<sup>123</sup>
- i. Audit of government deposits by Commission on Audit;<sup>124</sup> and
- j. Investigation by PCGG to recover ill-gotten wealth.<sup>125</sup>

### 3. Grounds of equity as declared by jurisprudence

- a. Account of a non-resident alien  
The garnishment of a foreign currency deposit account of a non-resident alien found guilty of raping a minor was allowed on the basis of equity.<sup>126</sup>
- b. Account of a co-payee of a check  
A co-payee of a check who filed a suit for recovery of sum of money was considered, in a *pro hac vice* ruling by the Supreme Court, as a depositor in view of the distinctive circumstances of the case.<sup>127</sup>

119 See Rep. Act No. 9160 (2001) (last amended in 2021) & MORFXT, § 76(3) (2022).

120 See Rep. Act No. 10168, § 10 (2012); Rep. Act No. 11479, § 35 (2020); & MORFXT, § 76(4) & (9) (2022).

121 See Rep. Act No. 9160, § 9 (2001) (last amended in 2021) & MORFXT, § 76(6) (2022).

122 See Rep. Act No. 9160, § 11 (2001) (last amended in 2021) & MORFXT, § 76(5) (2022).

123 See Rep. Act No. 3591, §§ 9 & 11 (1963) (last amended in 2022) & MORFXT, § 76(7) (2022).

124 See Constitution, Art. IX-D, § 2(1); Op. No. 95, Dep't of Justice (May 31, 1991), *citing* Pres. Dec. No. 1445 (1978); & MORFXT, § 76 (2022).

125 See Exec. Ord. No. 1, § 3(e) (1986) & MORFXT, § 76 (2022).

126 *Salvacion v. Central Bank of the Philippines*, G.R. No. 94723, Aug. 21, 1997 (278 S.C.R.A. 27).

127 *China Banking Corporation v. Court of Appeals*, G.R. No. 140687, Dec. 18, 2006 (511 S.C.R.A. 110).

## Penalties

Violation of the Foreign Currency Deposit Act of the Philippines shall subject the offender, upon conviction, to the following penalties:

1. Imprisonment of not less than one (1) year but not more than five (5) years; or
2. Fine of not less than PhP5,000.00 but not more than PhP25,000.00; or
3. Both imprisonment and fine.

The following sanctions may also be imposed against a bank or any bank director and officer for violation of the Foreign Currency Deposit Act of the Philippines and *Bangko Sentral* regulations issued pursuant to said law:

1. Revocation or suspension of the authority of the bank to accept new foreign currency deposits;<sup>128</sup> and
2. Administrative sanctions provided under Section 37 of The New Central Bank Act, as may be applicable.

## Revised Non-Stock Savings and Loan Association Act of 1997

Non-Stock Savings and Loan Associations (Associations) are non-stock, non-profit corporations engaged in the business of accumulating the savings of its members and using such accumulations for loans to members to service the needs of households by providing long-term financing for home-building and development, and for personal finance.<sup>129</sup>

### Absolute Confidentiality

All deposits of whatever nature with an Association in the Philippines are considered absolutely confidential in nature and may not be examined, inquired, or looked into by any person, government official, bureau, or office.<sup>130</sup>

Deposits in an Association are obtained from its members. Membership in an Association shall be confined to a well-defined group of persons. An Association shall not transact business with the public.<sup>131</sup>

### Prohibited Acts and Persons Liable

The following are liable under this law:

1. Any person and government official who, or any government bureau or office that, examines, inquires, or looks into deposits in the Association in any of the following circumstances:
  - a. Without the written permission of the depositor or not involving an impeachment case;<sup>132</sup>
  - b. Without a court order in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of litigation;<sup>133</sup> or
  - c. In any instance not permitted by other laws or jurisprudence.
2. Any official or employee of an Association who makes a disclosure concerning deposits to another, in any instance not allowed by law.<sup>134</sup>

<sup>129</sup> Rep. Act No. 8367, § 3(a) (1997).

<sup>130</sup> *Id.*, § 6.

<sup>131</sup> *Id.*, § 4.

<sup>132</sup> *Id.*, § 6.

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*

<sup>128</sup> See MORFXT, § 87 (2022).

## Exceptions to Confidentiality

### 1. Revised Non-Stock Savings and Loan Association Act of 1997

Deposits in an Association may be examined, inquired, or looked into under the following instances:<sup>135</sup>

- a. When there is written permission of the depositor;
- b. In cases of impeachment;
- c. Upon order of a competent court in cases of bribery or dereliction of duty of public officials; or
- d. In cases where the money deposited or invested is the subject matter of litigation.

### 2. Other Laws

Examination or inquiry into deposits with the Association may be allowed in the following instances:

- a. Inquiry by AMLC into deposits or investments related to unlawful activities or money laundering offenses;<sup>136</sup>
- b. Investigation by AMLC of deposits and investments related to financing or acts of terrorism;<sup>137</sup>
- c. Conduct of annual testing by *Bangko Sentral* that is solely limited to the determination of the existence and true identity of the owners of numbered accounts, to prevent money laundering;<sup>138</sup>
- d. Inquiry or examination of deposits or investments by *Bangko Sentral* in the course of a periodic or special examination to ensure compliance with the AMLA,<sup>139</sup> and
- e. Investigation by PCGG to recover ill-gotten wealth.<sup>140</sup>

<sup>135</sup> *Id.*

<sup>136</sup> See Rep. Act No. 9160 (2001) (last amended in 2021).

<sup>137</sup> See Rep. Act No. 10168, § 10 (2012); Rep. Act No. 11479, § 35 (2020).

<sup>138</sup> See Rep. Act No. 9160, § 9 (2001) (last amended in 2021).

<sup>139</sup> See *Id.*, §11.

<sup>140</sup> See Exec. Ord. No. 1, § 3(e) (1986).

## Applicability of Penalties under the Law on Secrecy of Bank Deposits

Any official or employee of an Association shall be punished under the Law on Secrecy of Bank Deposits for violation of the absolute confidentiality of deposits in an Association.<sup>141</sup>

<sup>141</sup> Rep. Act No. 8367, § 6 (1997).

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