

# SCHEME BEYOND BORDERS: PHILIPPINES' FIGHT AGAINST MONEY LAUNDERING

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## I. INTRODUCTION

Money laundering is a massive and evolving challenge around the world, and the increasing sophistication of technology only worsens detection and deterrence of the crime.

In place of guns and masks, the crime may now be committed by computer experts operating in the shadowy world of hacking and manipulating information; and may be carried out with just a few keystrokes.

Millions of funds may now be transferred from a particular system to a far-flung network, moving swiftly as data over the Internet. This is exactly how the most brazen bank heist in the 21<sup>st</sup> century was realized—with the Philippines serving as cashing crew for high-profile anonymous thieves.

The International Monetary Fund states that “money laundering refers to activities intended to disguise the origins of the proceeds of the crime through processes that transform illegal inputs into apparently legitimate sources.”<sup>1</sup>

In the Philippines, money laundering was criminalized by Section 4 of Republic Act 9160, or the Anti-Money Laundering Act (AMLA) of 2001. It is committed by any person who, knowing that any monetary instrument or property relates to the proceeds of an unlawful activity, does the following:

- i. transacts said monetary instrument or property;
- ii. converts, transfers, disposes of, moves, acquires, possesses, or uses said monetary instruments or property;
- iii. conceals or disguises the true nature, source, location, disposition, movement, ownership of rights with respect to said monetary instrument or property;
- iv. attempts or conspires to commit money laundering offences;
- v. aids, abets, assists in or counsels the commission of money laundering offences; and
- vi. performs or fails to perform any act as a result of which he facilitates the offence.<sup>2</sup>

But while the law is already in place, and amendments to it are being constantly updated, there are still some loopholes which clever criminals use to their advantage.

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<sup>1</sup> SOCTA Philippines. (2013). *Serious and Organize Crime Threat Assessment: Money Laundering*, p. 168.

<sup>2</sup> *Ibid.*

This paper seeks to present the vulnerabilities of current financial regulations in the Philippines, particularly the AMLA, amidst the complexities of cyberspace and the online remittance system worldwide. It postulates the need for further amendment of the AMLA to include casinos and other related transactions within the coverage of the law.

## **II. EVOLUTION OF THE ANTI-MONEY LAUNDERING ACT IN THE PHILIPPINES**

Money laundering, simply put, is literally sanitizing the money trail to legitimize criminally acquired assets or cash—thus, the term “laundering.”

As such, proceeds of the crime appear in public like legitimate income; and without means to actually check the origin of the funds, criminals are given incentives to continue their illegal activities. In the long run, money laundering has the effect of destabilizing the government and weakening the state’s financial system—making it altogether a threat to national security.<sup>3</sup>

It is for this reason that the Philippines, on 18 September 2001, enacted RA 9160, which puts into effect the policy of the State “to protect and preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity.”<sup>4</sup>

The law created the Anti-Money Laundering Council (AMLC)—the government agency primarily tasked with implementing the AMLA. Among the functions of the AMLC are as follows:

- i. Implementation of necessary measures to counteract money laundering;
- ii. Investigation of suspicious transactions and covered transactions deemed suspicious;
- iii. Filing of complaints with the Department of Justice or Office of the Ombudsman for prosecution;
- iv. Institution of civil forfeiture and all other remedial proceedings through the Office of the Solicitor General;
- v. To receive and take action in respect of any request from foreign states for assistance in their own anti-money laundering operations; and
- vi. Investigation of financing terrorism and any property or funds relating to the offence.<sup>5</sup>

Under the law, transactions in cash or other equivalent monetary instruments involving a total amount of P500,000 and above within one business day must be reported to the AMLC. These are referred to as “Covered Transactions.”

“Suspicious transactions,” which are also required under the law to be under the cognizance of the AMLC, are those transactions, regardless of the amount involved, that have the following circumstances:

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<sup>3</sup> Bangko Sentral ng Pilipinas. (2012, February 21). BSP briefer on the Anti-Money Laundering Act of 2001. Retrieved <<http://www.gov.ph/2012/02/21/bsp-briefer-on-anti-money-laundering-act-of-2001/>>.

<sup>4</sup> Republic Act 9160

<sup>5</sup> Bautista, C.C.P. (2014). Getting the Deal Through – Anti-Money Laundering. pp. 116-117.

- i. There is no underlying legal or trade obligation, purpose, or economic justification;
- ii. Client is not properly identified;
- iii. Amount involved is not commensurate with the financial capacity of the client;
- iv. Transaction is structured in order to avoid being subject to reporting requirements;
- v. Any circumstance which deviates from the profile of the client or his past transactions;
- vi. The transaction is in any way related to unlawful activity that is about to be, is being, or has been committed.

Reports to the AMLC of such transactions shall be made within 5 working days from the occurrence thereof, unless the Bangko Sentral ng Pilipinas, Securities and Exchange Commission, or the Insurance Commission prescribes a longer period not exceeding 10 working days.

Failure to report such covered and/or suspicious transactions will be subject to a penalty of 6 months' to 4 years' imprisonment or a fine of not less than P100,000 but not more than P500,000.

The reportorial requirement of such covered and/or suspicious transactions under the AMLA provides for confidentiality restrictions. Officers and employees of the AMLC are prohibited in any manner from communicating to any person about the fact that a report was made. Contents thereof shall remain confidential, and must not be published or aired in any manner. For this offence, the penalty is 3 to 8 years' imprisonment and a fine of not less than P500,000.00 but not more than P1 million.<sup>6</sup>

#### **A. First Amendment: Republic Act No. 9194**

Before the enactment of the AMLA, the Philippines lacked a basic set of anti-money laundering regulations, and system of reporting suspicious transactions. The country was also listed as among the Non-Cooperative Countries and Territories (NCCT) in the Paris-based Financial Action Task Force (FATF)—an organization which sets the international standards for combating money laundering and terrorist financing.

But even with the enactment of RA 9160, the Philippines remained on the NCCT list based on the FATF's findings that additional countermeasures must be taken to address the identified deficiencies in its anti-money laundering legislation.<sup>7</sup> Thus, on 5 March 2003, President Gloria Macapagal-Arroyo signed into law RA 9194, amending RA 9160.

On 11 February 2005, the Philippines was taken off the NCCT list after the FATF's Asia-Pacific Group's (APG) review confirmed that the country was effectively implementing anti-money laundering measures.

From 22 September to 6 October 2008, the Philippines underwent an evaluation conducted jointly by the World Bank and the APG on Money Laundering. By February 2010, the Philippines was placed on the "grey list," which signifies that it was "making sufficient

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<sup>6</sup> Bangko Sentral ng Pilipinas. (2012, February 21). BSP briefer on the Anti-Money Laundering Act of 2001. Retrieved <<http://www.gov.ph/2012/02/21/bsp-briefer-on-anti-money-laundering-act-of-2001/>>.

<sup>7</sup> Bacay-Abad, J.C. The Anti-Money Laundering Act of 2001, as amended.

progress in the global campaign against money launderers and terrorists.”<sup>8</sup> The evaluators, though, had set December 2011 as the deadline for the Philippines to address the identified deficiencies in RA 9194.

However, in February 2012, the country was downgraded from the “grey list” to the “dark grey list” for its failure to meet the deadline previously set by the APG. While the Philippines persisted in battling for reforms to its anti-money laundering regulations, the government continued to circle around the FATF’s “black list” area.

A black-listed nation is subjected to restrictions, more stringent inspections, and additional reporting requirements by the FATF. In the long run, it could cause inconvenience to remittances, which is something the Philippines could not afford, considering the thousands of Overseas Filipino Workers detailed across the globe.

#### **B. Second Amendment: Republic Act No. 10167**

Signed on 18 June 2012, RA 10167 was signed into law by President Benigno S. Aquino III. This further amended RA 9194 and placed the Philippines back on the “grey list”. The FATF thus recognized the significant steps the government has taken in its anti-money laundering system; but it also noted in its statement made in Rome in June 2012 that “certain deficiencies remain; and that the FATF encourages the Philippines to address its remaining deficiencies and continue the process of implementing its action plan.”<sup>9</sup>

#### **C. Third Amendment: Republic Act No. 10365**

Based on the FATF’s assessment, the government once again amended the law and enacted RA 10365 on 15 February 2013. A week later, or on 22 February 2013, the FATF noted the significant progress made, and decided to conduct an on-site visit to the Philippines. However, the FATF still raised concerns on the non-inclusion of the casino sector in its existing anti-money laundering regulations.

On 17-21 June 2013, a plenary meeting was conducted in Oslo, Norway, wherein the Philippines was officially removed from the FATF list of monitored jurisdictions. The pronouncement reads:

“The FATF welcomes the Philippines’ significant progress in improving its AML/CFT regime and notes that the Philippines has established the legal and regulatory framework to meet its commitments in its Action Plan regarding the strategic deficiencies that the FATF identified in October 2010. The Philippines is therefore no longer subject to FATF’s monitoring process under its on-going global AML/CFT compliance process.”<sup>10</sup>

#### **D. Significant Amendments**

The subsequent amendments to the Anti-Money Laundering Act reaped the following changes:<sup>11</sup>

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<sup>8</sup> Chipongian, L.C. (2016, March 20). What is money Laundering. Manila Bulletin. Retrieved <http://www.mb.com.ph/what-is-money-laundering/>

<sup>9</sup> Bacay-Abad, J.C. The Anti-Money Laundering Act of 2001, As Amended.

<sup>10</sup> Bacay-Abad, J.C. The Anti-Money Laundering Act of 2001, As Amended.

<sup>11</sup> Ibid.

R.A. No. 9160 (2001)	R.A. No. 10167 (2012)
<b>On Petition for Freeze Order</b>	
No specific period within which the Court should act on the <i>ex parte</i> petition	Amended Sec. 10, reads as follows:  “...In any case, the court should act on the petition to freeze within twenty-four (24) hours from filing of the petition...” –Sec. 1., par. 1.
No provision on the remedy available to a person whose property has been frozen	Amended Sec. 10, reads as follows:  “...A person whose account has been frozen may file a motion to lift the freeze order and the court must resolve this motion before the expiration of the twenty (20)-day original freeze order...” –Sec. 1, par. 2
No provision against Temporary Restraining Order, or Writ of Injunction	Amended Sec. 10, reads as follows:  "No court shall issue a temporary restraining order or a writ of injunction against any freeze order, except the Supreme Court."— Sec. 1., par. 3
<b>On Application for Bank Inquiry</b>	
No express provision on which Court has jurisdiction; filed with the Regional Trial Court	Amended Sec. 11, reads as follows:  "The Court of Appeals shall act on the application to inquire into or examine any deposit or investment with any banking institution or non-bank financial institution within twenty-four (24) hours from filing of the application." – Sec. 2, par. 2
No express provision on procedure; but notice and hearing required (pursuant to Republic vs. Eugenio, G.R. No. 174629, February 14, 2008)  “The necessary implication of the [the] finding that Section 11 of the AMLA does not generally authorize the issuance <i>ex parte</i> of the bank inquiry order would be that such orders cannot be issued unless notice is given to the owners of the account, allowing them the opportunity to contest the issuance of the order...”	Amended Sec. 11, reads as follows:  “...the AMLC may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court based on an <i>ex parte</i> application in cases of violations of this Act...” –Sec. 2, par. 1

Meanwhile, the following provisions were added to R.A. 10365:<sup>12</sup>

R.A. 9160 (2001)	R.A. No. 10365 (2013)
<b>As to covered institutions/persons</b>	
“Covered institutions” –Sec. 3 (a)	“Covered persons, natural or juridical,…” – Sec. 1 (a)
Refers only to: <ul style="list-style-type: none"> <li>a. Banks, non-banks, quasi-banks, trust entities, and all other institutions, regulated by the Bangko Sentral ng Pilipinas — Sec. 3(a), par. 1;</li> <li>b. Insurance companies and all other institutions supervised or regulated by the Insurance Commission -- Sec. 3(a), par. 2; and</li> <li>c. Securities dealers, mutual funds companies, foreign exchange corporations, and other entities dealing with currency or financial derivatives – Sec. 3(a), par. 3.</li> </ul>	Added new covered persons, to wit: <ul style="list-style-type: none"> <li>a. Jewelry dealers in precious metals, who, as a business trade in precious metals in transactions in excess of P1 million. – Sec. 1 (a), par. 4</li> <li>b. Jewelry dealers in precious stones, who, as a business trade in precious stones for transactions in excess of P1 million. – Sec. 1 (a), par. 5</li> <li>c. Company service providers. – Sec. 1 (a), par. 6</li> <li>d. Persons who manage clients’ money or bank accounts, organize contributions for operation of a company; and/or create, operate or manage juridical persons or arrangements. – Sec. 1 (a), par. 7</li> </ul>
<b>Definition of Money Laundering</b>	
<p>“SEC. 4. Money Laundering Offence. – Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following:</p> <p>(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.</p> <p>(b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful</p>	<p>"SEC. 4. Money Laundering Offence. – Money laundering is committed by any person who, <i>knowing</i> that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity:</p> <p>"(a) transacts said monetary instrument or property;</p> <p>"(b) <i>converts, transfers, disposes of, moves, acquires, possesses or uses</i> said monetary instrument or property;</p> <p>"(c) <i>conceals or disguises</i> the true nature, source, location, disposition, movement or ownership of or rights with respect to said monetary instrument or property;</p>

<sup>12</sup> Bacay-Abad, J.C. The Anti-Money Laundering Act of 2001, as amended.

<p>activity, performs or fails to perform any act as a result of which he facilitates the offence of money laundering referred to in paragraph (a) above.</p> <p>(c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.”</p>	<p>"(d) <i>attempts or conspires to commit</i> money laundering offences referred to in paragraphs (a), (b) or (c);</p> <p>"(e) <i>aids, abets, assists in or counsels</i> the commission of the money laundering offences referred to in paragraphs (a), (b) or (c) above; and</p> <p>"(f) <i>performs or fails to perform any act as a result of which he facilitates the offence of money laundering referred to in paragraphs (a), (b) or (c) above.</i></p> <p>"Money laundering is also committed by any covered person who, knowing that a covered or suspicious transaction is required under this Act to be reported to the Anti-Money Laundering Council (AMLC), fails to do so."</p>
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**Unlawful Activities**

<p>Unlawful Activity refers to any act or omission or series or combination thereof involving or having relation to the following:</p> <ol style="list-style-type: none"> <li>1. Kidnapping for ransom;</li> <li>2. Violation of Dangerous Drugs Act of 1972;</li> <li>3. Violation of Anti-Graft and Corrupt Practices Act;</li> <li>4. Plunder;</li> <li>5. Robbery and Extortion;</li> <li>6. Jueteng and Masiao punished as Illegal Gambling;</li> <li>7. Piracy on high seas;</li> <li>8. Qualified theft;</li> <li>9. Swindling;</li> <li>10. Smuggling;</li> <li>11. Violations of Electronic Commerce Act;</li> <li>12. Hijacking, destructive arson, and murder, including those perpetrated by terrorists against non-combatant persons and similar targets;</li> </ol>	<p>Sec. 2 of the amended law added the following unlawful activities:</p> <ol style="list-style-type: none"> <li>1. Financing of Terrorism;</li> <li>2. Bribery;</li> <li>3. Frauds and Illegal Exactions and Transactions;</li> <li>4. Malversation of Public Funds;</li> <li>5. Forgeries and Counterfeiting;</li> <li>6. Violations of Anti-Trafficking in Persons Act of 20013;</li> <li>7. Violations of Revised Forestry Code;</li> <li>8. Violations of Philippine Fisheries Code of 1998;</li> <li>9. Violations of Philippine Mining Act of 1995;</li> <li>10. Violations of Wildlife Resources Conservation and Protection Act;</li> <li>11. Violations of National Caves and Cave Resources Management Protection Act;</li> <li>12. Violations of Anti-Carnapping Act of 2002;</li> </ol>
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<p>13. Fraudulent practices under the Securities Regulation Code of 2000; and</p> <p>14. Felonies punishable under penal laws of other countries. –Sec. 3 (i)</p>	<p>13. Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives;</p> <p>14. Violation of the Anti-Fencing Law;</p> <p>15. Violation the Migrant Workers and Overseas Filipinos Act of 1995;</p> <p>16. Violation of the Intellectual Property Code of the Philippines;</p> <p>17. Violation of the Anti-Photo and Video Voyeurism Act of 2009;</p> <p>18. Violation of the Anti-Child Pornography Act of 2009; and</p> <p>19. Violations of the Special Protection of Children Against Abuse, Exploitation and Discrimination.</p>
<b>Powers of the AMLC</b>	
<p>“Sec. 7. Creation of Anti-Money Laundering Council (AMLC)...</p> <p>(6) to freeze any monetary instrument or property alleged to be proceeds of any unlawful activity;”</p>	<p>Amended, as follows:</p> <p>"(6) to apply before the Court of Appeals, ex parte, for the freezing of any monetary instrument or property alleged to be laundered, proceeds from, or instrumentalities used in or intended for use in any unlawful activity as defined in Section 3(i) hereof;” – Sec. 6, par. 2</p>
<p>No express provision on reporting real estate transactions</p>	<p>Requires the Land Registration Authority and all its Registries of Deeds to submit to the AMLC, reports on all real estate transactions involving an amount in excess of P500,000 within 15 days from the date of registration of the transaction, in a form to be prescribed by the AMLC. The AMLC may also require the Land Registration Authority and all its Registries of Deeds to submit copies of relevant documents of all real estate transactions. – Sec. 6, par. 3.</p>

### III. MONEY LAUNDERING TYPOLOGIES

Money laundering is deeply entrenched in terrorist financing and crime groups, and the threats posed by it to the government and its people should not be discounted.



According to FATF's statistical data, there were about 288 money laundering and related cases filed in the Philippines from 2008 to 2013. Of the said number, 62 civil forfeiture cases were filed before the Regional Trial Courts, and at least 73 applications for freeze orders were filed before the Court of Appeals.

The following amounts were involved in numerous applications for freeze orders: 1.88-billion PHP; 4.5-million USD, 7-thousand EURO, and 6.66-thousand GBP. Meanwhile, the following were the amounts subject of petitions for civil forfeiture filed: 4.72-billion PHP; 6-million USD; 7.29-thousand EURO; 3-thousand CNY; 6.65-thousand GBP; and 561-thousand HKD.<sup>13</sup>

With the recent passage of RA 10365, the Philippines sees a strengthened mechanism to combat money laundering. The law now gives the AMLC a broadened power to investigate and prosecute more money laundering cases covering a wider range of unlawful activities. However, money launderers are said to be always a step ahead of the financial investigators tasked to stop them. It is thus imperative to get a grasp of the recent typologies used by money launderers in cases investigated by the AMLC.

"Typologies" refer to the various techniques used to launder money or finance terrorism.<sup>14</sup> The Mutual Evaluation Report of the FATF for 2009 notes that money laundering in the Philippines is usually perpetrated through crimes committed within the Philippines. The same report, however, likewise underscores the fact that some foreign nationals launder into the Philippines the proceeds of their criminal enterprise.

According to FATF, money laundering is conducted as follows:<sup>15</sup>

- a. *Collection*, where money is gathered from unlawful activities;
- b. *Placement*, where dirty money is integrated into the financial system as clean money;
- c. *Layering*, where funds are transferred between various offshore/onshore banks or financial institution; and
- d. *Integration*, where such funds are being used to purchase assets, financial investments, and other commercial/industrial enterprise.

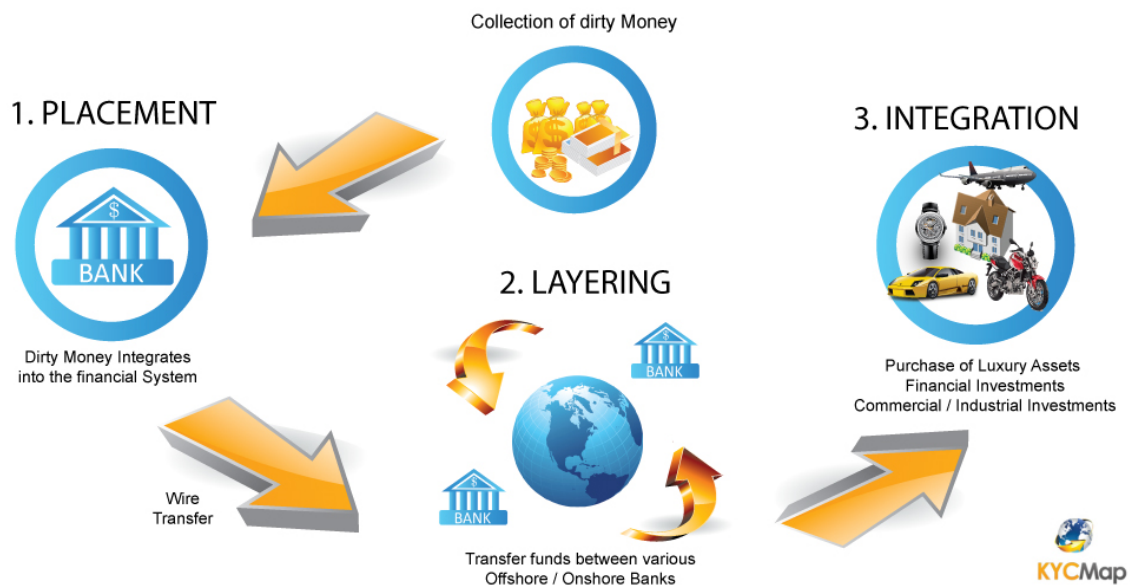
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<sup>13</sup> SOCTA Philippines. (2013). Serious and Organize Crime Threat Assessment: Money Laundering, p. 173.

<sup>14</sup> SOCTA Philippines. (2014). Serious and Organize Crime Threat Assessment: Money Laundering, p. 124.

<sup>15</sup> Financial Action Task Force. (2009). Money Laundering and Terrorist Financing Typologies.

## A TYPICAL MONEY LAUNDERING SCHEME<sup>16</sup>



The FATF also identified in the same report<sup>17</sup> other strategies which money launderers exploit to complete the crime, to wit:

- Money launderers make use of the various services being offered by mainstream retail banking with the aid of forged identities;
- The securities and insurance sectors are also exploited using fake identities;
- Domestic and international fund transfers likewise facilitate money laundering;
- In a smaller scale, money changers and foreign currency dealers have also been used to launder money from criminal enterprise; and
- Cash smuggling into and outside of the country is another usual practice of money launderers.

### IV. THE \$81-M BANGLADESH CYBERHEIST

***“This money laundering controversy had put the Philippines in a negative light globally and heightened calls to repeal the bank secrecy law and give more teeth to the AMLC to directly freeze and investigate suspicious accounts as well as to include casinos among entities covered by reporting obligations under the AMLA.”***  
*–Philippine Daily Inquirer, 29 March 2016*

Dubbed as the biggest money laundering scandal to hit the Philippines, the recent issue of the \$81-million Bangladesh cyberheist has placed the country’s financial industry the spotlight—drawing attention to the urgency of putting more teeth into the Anti-Money Laundering Act.

<sup>16</sup> Renner, P. (2012) Retrieved <<http://kycmap.com/wordpress/wp-content/uploads/2012/12/Paul-Renner-C6-KYC-money-laundering-example.jpg>>.

<sup>17</sup> Ibid.

The money, coming from the US Federal Reserve of New York account of the Bangladesh Central Bank, is said to have reached the Philippine banking system sometime between 4-5 February 2016.

As culled from the Philippine Senate Blue Ribbon Committee probe, the money was initially wired into four Rizal Commercial Banking Corporation (RCBC) foreign currency accounts in its Jupiter, Makati branch.

The accounts, which were later on found out to be under fictitious identities, had the following account names and deposits each covering a divided share of the loot: (a) Jessie Christopher Magno Lagrosas, \$30-million; (b) Michael Francisco Cruz, \$6-million; (c) Alfred Santos Vergara, \$20-million; and (d) Enrico Teodoro Vasquez, \$25-million.<sup>18</sup>

According to RCBC officials, said accounts were opened as early as 15 May 2015, with initial deposits of \$500 each. These accounts remained untouched until 4 February 2016—the date when the transfer from the US Federal Reserve Bank of New York was made.<sup>19</sup>

The funds were then transferred to a foreign exchange broker, Philrem Service Corporation (Philrem), which converted part of the loot into Philippine pesos; then it was returned to RCBC and consolidated in the account of a Chinese-Filipino businessman named William Go.

Soon after, the money was sent to two big-time casino junket operators, namely, Weikang Xu and Kim Wong, who then moved the proceeds to different casino high-rollers through Midas Hotel and Casino, and Solaire Resort and Casino.

Maia Santos-Deguito, Manager of RCBC Jupiter, Makati Branch, allegedly processed and facilitated the movement of said funds and is said to have worked in collusion with the mastermind of the entire money-laundering operations.

#### **A. The Loot Onset**

***“It is the digital version of the heist depicted in the movie “Ocean’s Eleven.” The trend is moving from opportunistic crime to Hollywood-scale attacks.” –Adrian Nish, Cyberthreat Intelligence Team Head, BAE Systems***

Hackers have successfully carried out the most brazen digital bank heist in the history of cybercrime after siphoning millions of dollars by breaching the highly trusted international bank messaging system called SWIFT, or the Society for Worldwide Interbank Financial Telecommunication.

SWIFT is billed as a secure system that banks use to authorize payments from one account to another. What began in 1973 as a relatively small network of 240 banks has

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<sup>18</sup> Dumlao-Abadilla, D. (2016, March 29). Faces behind fictitious accounts known. *Philippine Daily Inquirer*, pp. A1, A16

<sup>19</sup> Ibid.

expanded to 11,000 users around the world, which reflects an increasingly global and interconnected financial system.<sup>20</sup>

Under the SWIFT system, each bank is identified by a set of codes; and it was the set of codes assigned to Bangladesh Central Bank that was recognized and authenticated on 4 February 2016, when it transferred a whopping amount of \$81-million to the Philippines.<sup>21</sup>

According to FireEye's Mandiant forensics, Bangladesh investigators of the cyberheist, the hackers are believed to have installed some type of malware into the Central Bank's computer system, and observed how transfers are done. The malware is classified as a Remote Access Trojan (RAT), a form of spyware that allowed hackers to gain access to the bank's credentials.<sup>22</sup>

The hackers' timing was perfect. When officials from the US Federal Bank tried to reach Bangladesh as regards the receipt of instruction to move funds, it was a weekend there and no one was working. By the time central bankers in Bangladesh discovered the fraud, it was also a weekend in New York and the Federal offices were closed.<sup>23</sup>

On 5 February 2016, the RCBC Jupiter, Makati Branch saw the \$81-million inward remittance and applied the funds to the four beneficiary accounts.<sup>24</sup>

The Bangladesh Central Bank, on 8 February 2016, sent an urgent message to the RCBC, which reads: "*PLEASE be informed that this is a doubtful transaction. You are requested to stop the payment, and if you already made the payment then freeze the account of the beneficiary for proper investigation. We think that the transaction is contradictory with the anti-money laundering law.*"<sup>25</sup>

However, RCBC was closed that day in view of the Chinese New Year holiday.

On 9 February 2016, the same message was again sent by the Bangladesh Central Bank to RCBC. By the time RCBC gained access to said messages, the \$81-million had already been withdrawn.<sup>26</sup>

On 11 February 2016, the Bangladesh Central Bank alerted the Philippine Central Bank Governor who, in turn, informed the AMLC on what was later revealed to be the largest laundering caper in Philippine history.

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<sup>20</sup> Corkery, M. (2016, April 30). Hackers' \$81 Million Attack on World Banking. Retrieved <[http://www.nytimes.com/2016/05/01/business/dealbook/hackers-81-million-sneak-attack-on-world-banking.html?\\_r=1](http://www.nytimes.com/2016/05/01/business/dealbook/hackers-81-million-sneak-attack-on-world-banking.html?_r=1)>.

<sup>21</sup> Ibid.

<sup>22</sup> Quadir, S. (2016, March 11). Spelling mistake stops hackers stealing \$1 billion in Bangladesh bank heist. Retrieved <<http://www.independent.co.uk/news/world/asia/spelling-mistake-stops-hackers-stealing-1-billion-in-bangladesh-bank-heist-a6924971.html>>.

<sup>23</sup> Corkery, M. (2016, April 30). Hackers' \$81 Million Attack on World Banking. Retrieved <[http://www.nytimes.com/2016/05/01/business/dealbook/hackers-81-million-sneak-attack-on-world-banking.html?\\_r=1](http://www.nytimes.com/2016/05/01/business/dealbook/hackers-81-million-sneak-attack-on-world-banking.html?_r=1)>.

<sup>24</sup> Chempo. (2016, March 18). The Great Bangladesh Central Bank Heist. Retrieved <<https://joeam.com/2016/03/18/the-great-bangladesh-central-bank-heist/>>.

<sup>25</sup> Lucas, D.L. (2016, April 13). Dhaka bank sent 3 urgent messages. *Philippine Daily Inquirer*, pp. A1, A17

<sup>26</sup> Salaverria, L.B. (2016, April 13). \$81M withdrawn when stop payment order came, says Deguito. *Philippine Daily Inquirer*, p. A17.

The AMLC and the National Bureau of Investigation probe began on 19 February 2016.

On 29 February 2016, the Philippine Daily Inquirer, a newspaper of general circulation, broke the news to the public.

By 15 March 2016, the Philippine Senate began its hearing led by Senator Teofisto Guingona III, head of the Blue Ribbon Committee and Congressional Oversight Committee on the Anti-Money Laundering Act.

The sophistication of the scheme eased the movement of funds to various accounts in the Philippine banking system, then later on into the gaming and amusement system (casinos)—an industry which is currently exempt from many of the country’s anti-money laundering requirements.

## **B. The Lead Characters**

*“I am but a pawn in a high-stakes chess game played by giants in international banking and high finance. If this committee is looking for a ‘grandmaster,’ it’s not me.” –Maia Santos-Deguito, sacked RCBC Branch Manager, on her alleged involvement in the money laundering scandal.*

Pinned down as the main mover in the laundering scheme, Maia Santos-Deguito testified before the Senate hearing that “a crime of this magnitude could be possible only with the participation of people from the highest officialdom of RCBC, in cahoots with extremely wealthy businessmen whose far-reaching powers and influence span several countries.”<sup>27</sup>

Deguito, who has been relieved from work since the scandal broke, said that officials of RCBC allowed several transactions, involving the \$81-million fund stolen from the Bangladesh Central Bank to be credited and withdrawn despite her queries.

She detailed how the funds passed through several layers of control within the bank. She testified that she was told by RCBC treasurer Raul Tan that it was not the bank’s problem that most of the stolen funds had been withdrawn when the request to hold them came.<sup>28</sup>

As to prior withdrawals, Deguito asserted that RCBC Regional Director Brigitte Capina effectively said that there was no reason to hold the funds after they were flagged by the bank days earlier. Deguito added that because of said instructions, which she asserted were duly documented, she then processed the withdrawals.<sup>29</sup>

RCBC, for its part, denied the allegations adding that Deguito herself admitted that the accounts were credited automatically without need of any approval. Bank records show that, at the end of the day on 5 February 2016, a hold order was initiated by the operations group. It

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<sup>27</sup> Salaverria, L.B. and Avendano, C.O. (2016, April 6). Conflicting testimonies noted. *Philippine Daily Inquirer*, pp. A1, A4.

<sup>28</sup> Salaverria, L.B. (2016, April 13). \$81M withdrawn when stop payment order came, says Deguito. *Philippine Daily Inquirer*, p. A17.

<sup>29</sup> Ibid.

was then lifted when Deguito explained that the amounts were expected and that the “know-your-client” documents were in order.<sup>30</sup>

The Yuchengco family-led financial institution said that the bank was also a victim of the money laundering scam; that it can validly invoke the defense that it exercised due diligence in the supervision of a ‘rouge employee;’ and that it did not contribute to the wrongdoing.<sup>31</sup>

Meanwhile, William Go, the Chinese-businessman whose name appears on the newly created US dollar account, and which was the same account used to consolidate the proceeds of the loot, vehemently denied participation in the scandal. He denied owning the peso account in the RCBC Jupiter, Makati branch, or authorizing any withdrawal of funds for that matter. He asserted that Deguito even offered him P10 million to participate in the scheme and keep quiet about it.<sup>32</sup>

On 19 March 2016, Go filed a criminal complaint before the Office of the City Prosecutor of Makati against Deguito and resigned RCBC senior customer relations officer Angela Ruth Torres for falsification of documents relative to the Bangladesh Bank heist.<sup>33</sup>

Also identified as a ‘major player’ in the money laundering scam is junket operator Kim Wong, who testified that he did not know that the funds were suspected to have come from the electronic heist. He said that the local casino industry rarely asks its clients about the origin of their funds, especially from high-rollers who regularly bring in and gamble billions of pesos. Wong said that he assumes in good faith that the money is clean the moment it passes through the laundering safeguards of the banking system.<sup>34</sup>

As to how the money got into his hands, Wong said that his Beijing-based friend, Shuhua Gao, and one of his Macau-based casino players, Ding Zhize, were responsible for bringing the funds into the country. He said that all he was told was that they are going to invest and pay their debts to him.<sup>35</sup>

On several occasions during the Senate hearing, Wong had turned over to the AMLC for safekeeping and eventual return to Bangladesh, the following amounts: \$4.63-million as the first tranche, PhP32.82-million as the second tranche, P200-million as the third tranche, and P250-million as the final tranche, all in cash.<sup>36</sup>

Meanwhile, Weikang Xu, another person indicted in the scam, is believed to have received P600 million and \$18 million in cash, remains at large. The National Bureau of

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<sup>30</sup> Lucas, D.L. (2016, April 22). Deguito: RCBC allowed transactions involving \$81M. *Philippine Daily Inquirer*, p. A6.

<sup>31</sup> Lucas, D.L. (2016, April 4). RCBC lawyers say bank a ‘victim’ of money laundering scam. *Philippine Daily Inquirer*, p. A20.

<sup>32</sup> Dumlao-Abadilla, D. (2016, March 19). Businessman William Go sues bank manager. Retrieved <<http://newsinfo.inquirer.net/775082/businessman-william-go-sues-bank-manager>>.

<sup>33</sup> Dela Paz, C. (2016, March 21). Deguito: William Go wanted 10% of \$81-M dirty money. Retrieved <<http://www.rappler.com/business/industries/209-banking-and-financial-services/126603-william-go-bangladesh-bank-heist>>.

<sup>34</sup> Lucas, D.L. (2016, March 29). Kim Wong to name brains. *Philippine Daily Inquirer*, pp. A1, A16.

<sup>35</sup> Ibid.

<sup>36</sup> Lucas, D.L. (2016, May 5). Kim Wong hands over another P250M to AMLC. *Philippine Daily Inquirer*, pp. A16.

Investigation has been tasked to look for him. To date, the AMLC maintains that Xu is still in possession of the stolen funds.<sup>37</sup>

As for Philrem, the foreign exchange trader that handled the conversion and deliveries of the stolen money from the bank branch to the casino beneficiaries, it asserted that it did not know that the deal involved Wong. Its officials, Salud and Michael Bautista, said that since the money came from RCBC, and that its branch manager Deguito was involved, Philrem trusted the transaction.<sup>38</sup>

## V. NON-INCLUSION OF CASINOS IN THE AMENDED AMLA

What started out as a seemingly harmless amendment—excluding casinos from the list of covered persons in the revised AMLA—now wreaks havoc in the country’s fight against money laundering.

Congressional records show that attempts to amend the AMLA through Senate Bill 3123—authored by Senators Sergio Osmena III and Teofisto Guingona III; and House Bill 6565—authored by Speaker Sonny Belmonte, Majority Leader Neptali Gonzales II, and Minority Leader Danilo Suarez, originally included casinos and internet casinos as additional covered transactions.<sup>39</sup> However, due to incessant lobbying of operators, through the House Games and Amusement Committee (HGAC), exclusion from the list was carried out on 5 December 2012 via a final vote of 141 in favor, 7 against, and 1 abstention.

During the plenary deliberations on House Bill 6565, HGAC Chairman Amado Bagatsing posited that it is impossible to comply with the AMLA “when anything beyond \$10,000, we have to report.” He pointed out that said threshold is very inconsequential for big-time rollers, especially tourists coming from Singapore, China, and Japan; adding that “to them \$10,000 is not even enough to pay for a Louis Vuitton bag.”<sup>40</sup>

Bagatsing also said that he had to look at the bigger picture due to the number of investors coming in. He noted that inclusion of casinos on the list would negate the very purpose of an entertainment city—which is to promote tourism and generate employment. He thus emphasized that it would be more beneficial to exclude it from AMLA coverage.

It was, more or less, the same result at the plenary deliberations of Senate Bill 3123, on 30 January 2013, where Senate President Juan Ponce Enrile moved to exclude casinos “because their inclusion would prejudice many people who have already invested huge amounts of money.”<sup>41</sup> He further pointed out that reporting such transactions would be very tedious and would impede the competitiveness of the casino gaming market; and, as such, it is more important to prioritize the country’s interest than to comply with FATF assessments.

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<sup>37</sup> Carvajal, N. (2016, March 29). \$81M laundering: PH officials get hold of ‘suspect’ Weikang Xu’s passport. Retrieved <<http://globalnation.inquirer.net/138170/81m-laundery-case-ph-officials-get-hold-of-suspect-weikang-xus-passport#ixzz49c7atSgw>>.

<sup>38</sup> Salaverria, L.B. and Avendano, C.O. (2016, April 6). Conflicting testimonies noted. *Philippine Daily Inquirer*, pp. A1, A4

<sup>39</sup> Cruz, R. (2016, March 2). Casinos lobbied for exclusion from AMLA. Retrieved <<http://news.abs-cbn.com/nation/03/02/16/casinos-lobbied-for-exclusion-from-amla>>.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

Enrile emphasized that casinos and internet gaming are not, after all, totally excluded from the AMLA, as these businesses remain covered in the reporting requirements so long as there is knowledge or suspicion of money laundering, consistent with the principle of “know-your-customer.”

The Senate approved its version on 4 February 2013, with 15 voting in favor and no one against the exclusion of casinos in the list.

#### **A. Lobby for Casinos’ Tight Monitoring**

At present, debates are still rife as regards the inclusion of casinos in the list of covered institutions in the AMLA. Proponents believe that the \$81-million Bangladesh cyberheist would have been prevented if not for Congress’ lack of foresight at the time when amendments were introduced.

With the Philippines on the heels of slipping back to the FATF’s “gray-list,” various organizations have now called for urgent legal reforms.

The World Bank, for one, already expressed its support for the AMLA’s amendment listing casinos among the covered institutions. In its Philippine Economic Update dated April 2016, the organization revealed that “global concerns over money laundering could affect the cost of sending remittances, if there is an increase in the closure of bank accounts of remittance-forwarding companies.”<sup>42</sup>

It further stated that while the AMLA brings the Philippines’ regulatory regime on money laundering closer to international standards, better compliance with these standards, through further legal and regulatory reform is needed. For instance, the coverage of the Act should be expanded to include sectors such as casinos.<sup>43</sup>

The Securities and Exchange Commission, through Chairperson Teresita Herbosa, also said that they are pushing for the inclusion of casinos. She said the Philippines has an “international commitment to do so,”<sup>44</sup> adding that its addition to AMLA’s ambit will prevent the country from being black-listed by the FATF.

This was the same stance given by Insurance Commissioner Emmanuel Dooc, saying that inclusion of casinos and casino operators is necessary to put more teeth in the AMLA.<sup>45</sup> He also said that other amendments included in the draft of the updated AMLA, currently being prepared for the Senate, were intended to ease bank secrecy laws, and give AMLC wider powers to freeze suspicious accounts without relying on court orders.

Despite believing that the inclusion of casinos in the AMLA will not guarantee protection against money launderers, the Philippine Amusement and Gaming Corporation (PAGCOR) also pledged its support to the legal reform.

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<sup>42</sup> Caraballo, M. U. (2016, April 11). WB backs anti-money laundering reform. Retrieved <<http://www.manilatimes.net/wb-backs-anti-money-laundering-reform/255501/>>.

<sup>43</sup> World Bank. (2016). Moving Full Speed Ahead: Accelerating Reforms To Create More And Better Jobs. *Philippine Economic Update*, p. 16.

<sup>44</sup> Caraballo, M. U. (2016, April 11). WB backs anti-money laundering reform. Retrieved <<http://www.manilatimes.net/wb-backs-anti-money-laundering-reform/255501/>>.

<sup>45</sup> Cabuenas, J.V. (2016, March 15). AMLC wants casinos within the purview of anti-money laundering law. Retrieved <<http://www.gmanetwork.com/news/story/559096/money/personalfinance/amlc-wants-casinos-within-purview-of-anti-money-laundering-law#sthash.kZ0OZIE9.dpuf>>.



PAGCOR's Chairman Cristino Naguiat, Jr. said: "Laundering money in casinos is highly unlikely since converting illicit money into gaming chips would mean risking losses on the part of the perpetrator. Also, all the winnings in casinos are duly recorded by PAGCOR and can easily be accessed by the government."<sup>46</sup>

However, he said PAGCOR welcomes any move to include casinos within the law's coverage in the spirit of transparency; maintaining though that if legislation is to be passed, "the threshold amount for reporting must be consistent with the value of typical transaction sizes in the casino industry."<sup>47</sup>

## **B. Congress Position**

Even with the seemingly unanimous call and support for legal reform seeking to include casinos in the coverage of the AMLA, Congress appears divided on the issue.

Senator Franklin Drilon, the Senate President at the time the AMLA was enacted in 2001, said institutions which are extremely vulnerable to money laundering and other illegal monetary transactions should be put under the close supervision of agencies tasked with eliminating money laundering. The lawmaker noted that recent reports of illegal monetary activities in the casinos only point out the need to include casinos in the list of institutions covered by the AMLA.<sup>48</sup>

Senator Teofisto Guingona III, who authored Senate Bill 3123, renewed his bid for inclusion of casinos within the purview of the AMLA. While acknowledging that casinos generate a substantial amount of revenue and employment for the country, Guingona noted that it is "equally exposed to the raging threats of money laundering and financing of terrorism."

The same is true for Senator Miriam Defensor-Santiago, who said that the country risks becoming the world's money laundering capital if the casino sector remains outside the coverage of the AMLA. She emphasized that the Philippines will suffer higher financial transaction costs if it gets blacklisted by the FATF.<sup>49</sup>

Despite the clamor, however, the House of Representatives is not ready to concede that the exclusion of casinos may well be considered as a loophole that needs to be plugged. House Speaker Feliciano Belmonte, Jr. said the casino business was just starting to gain its momentum in the Philippines. He added: "there was no clear indication, even from the record of Las Vegas and Macau that it could be a big loophole. And up to this time, it is still under investigation; so we still don't know if it is an established fact."<sup>50</sup>

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<sup>46</sup> Leyco, C. (2016, March 16). Pagcor open to include casinos in AMLA. Retrieved <<http://www.mb.com.ph/pagcor-open-to-include-casinos-in-amla/#YP9Rz1Rudfx1h2z2.99>>.

<sup>47</sup> Cruz, R. (2016, March 2). Casinos lobbied for exclusion from AMLA. Retrieved <<http://news.abs-cbn.com/nation/03/02/16/casinos-lobbied-for-exclusion-from-amla>>.

<sup>48</sup> Manalo, C. (2016, March 2). Partylist to file graft charges vs Purisima for casino fund scam. Retrieved <<http://www.tribune.net.ph/headlines/partylist-to-file-graft-charges-vs-purisima-for-casino-fund-scam>>.

<sup>49</sup> Viray, P.L. (2016, March 17). Senators want casinos covered by Anti-Money Laundering Act. Retrieved <<http://www.philstar.com/headlines/2016/03/17/1563862/senators-want-casinos-covered-anti-money-laundering-act>>.

<sup>50</sup> Cruz, R. (2016, March 2). Casinos lobbied for exclusion from AMLA. Retrieved <<http://news.abs-cbn.com/nation/03/02/16/casinos-lobbied-for-exclusion-from-amla>>.

Representative Amado Bagatsing, taking a similar note, maintained that one isolated case, such as the \$81-million Bangladesh cyberheist, is not enough to conclude that exclusion of casinos is a loophole to the AMLA. He again emphasized that, “we should look at the big picture.”<sup>51</sup>

Bagatsing added: “the Philippines is now open because any tourist will have a wonderful time in the Philippines, rather than in other countries. We have more to offer. It is up to the Central Bank to apply the full force of the law.”<sup>52</sup>

## VI. CONCLUSION AND RECOMMENDATIONS

Money laundering produces negative effects that are too complex to detail with precision. This illicit shadowy economy flows in and out of the country so fast that it only dampens the overall economic development of a country. It starves the government of valuable resources by diverting funds to less productive activity instead of subsidizing real and essential services, making developing nations more susceptible to bigger losses.

A reputation as a money laundering haven may also limit foreign financial transactions and, in the long run, impede both local and foreign investment. It may also cause significant distortions to a country’s trade and international capital flows through lessened imports and exports.

The massive amount of remittances sent by Overseas Filipino Workers into the Philippines may also be adversely affected and, in time, gradually harm the soundness of the country’s financial system. It may also ruin the faith of ordinary citizens in duly established financial institutions.

Given that illicit capital flight drains scarce resources of developing economies, transnational money-laundering activity also impairs the growth of affected countries. Even worse, criminal groups may convert established productive endeavours into sterile investments by operating them for the primary purpose of laundering illegal proceeds, rather than as profit-generating enterprises.

This is the same threat facing the Philippines’ amusement and gaming industry. The Bangladesh heist shows all this in bold relief.

Casino operations have become a highly profitable sector of the economy in the Philippines, generating employment and driving tourism. Moreover, the taxation of the industry has become a significant source of revenue. But today, the Philippine casino industry seems to be the only weak-link in the anti-money laundering/counter-terrorist financing (AML-CTF) regime.

It is high time that the government should further push for measures that will strengthen the AMLA, starting with the inclusion of casinos and other similar industries as among the covered institutions. A comprehensive and effective AMLA, together with timely

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<sup>51</sup> Cruz, R. (2016, March 2). Casinos lobbied for exclusion from AMLA. Retrieved <http://news.abs-cbn.com/nation/03/02/16/casinos-lobbied-for-exclusion-from-aml>

<sup>52</sup> Ibid.

implementation and effective enforcement, will certainly reduce the profitable aspects of this criminal activity and, ultimately, discourage criminals from pursuing their illicit trade.

The government may complement this by enhancing the structure of the AMLC with sufficient investigators, budget, and other resources that will advance money laundering investigations.

The financial sector may also develop its transaction analytics to include a verification system that will effectively detect suspicious transactions and send red flags to its transacting clients.

Indeed, the adverse implications of money laundering on the nation's development are difficult to quantify, just as the extent of money laundering itself is difficult to estimate. Nonetheless, it is clear from available evidence that allowing money laundering activity to proceed unchallenged is never the most favourable development policy.

The present AMLA may have its own share of weaknesses and strengths, but with strong determination, sustained cooperation, and proactive vigilance, the government can effectively prevent the proliferation of the threat of money laundering.