

THE ROLE OF THE ANTI-MONEY LAUNDERING COUNCIL (AMLC) IN “IDENTIFYING, FREEZING, CONFISCATING, AND RECOVERING PROCEEDS OF CORRUPTION”

*Julia C. Bacay-Abad**

I. THE ANTI-MONEY LAUNDERING ACT OF 2001; CREATION OF PHILIPPINES’ FIU

On 29 September 2001, the Congress enacted Republic Act (R.A.) 9160, otherwise known as the Anti-Money Laundering Act of 2001. The law took effect on 17 October 2001. On 5 March 2003, the Congress enacted R.A. 9194, amending R.A. 9160. The amendatory Act became effective on 23 March 2003.

R.A. 9160 criminalized money laundering in the Philippines and, at the same time, introduced civil forfeiture as an appropriate remedy for the seizure and forfeiture in favor of the State, without the necessity of conviction or prosecution in a criminal case, of monetary instrument, property or proceeds involved in or related to an unlawful activity or money laundering offense as defined in the law.

R.A. 9160 likewise created the Philippines’ Financial Intelligence Unit (FIU) -- the Anti-Money Laundering Council (AMLC). The AMLC is composed of:

- (i) the Governor of the Bangko Sentral ng Pilipinas (BSP), as Chairman
- (ii) the Commissioner of the Insurance Commission (IC); and
- (iii) the Chairman of the Securities and Exchange Commission (SEC), as Members.

The AMLC is assisted by a Secretariat which is headed by an Executive Director and consists of four (4) units:

- (i) Compliance and Investigation Group;
- (ii) Legal and Evaluation Group;
- (iii) Information Management and Analysis Group;
- (iv) Administrative and Financial Services Division.

The Philippines is a founding member of the Asia Pacific Group on Money Laundering (APG) and attends its meetings regularly. Also, the AMLC is a member of the Egmont Group (association of FIUs around the world) since 2005.

Under R.A. 9160, as amended, the AMLC has the following functions:

1. Require and receive covered or suspicious transaction reports from covered institutions;
2. Issue orders addressed to the appropriate Supervising Authority or the covered institution to determine the true identity of the owner of any monetary instrument or property subject of a covered transaction or suspicious transaction report or request for assistance from a foreign State, or believed by the Council, on the basis of substantial evidence, to be, in whole or in part, wherever located, representing, involving, or related to, directly or indirectly, in any manner or by any means, the proceeds of an unlawful activity.

* Deputy Director, Head, Legal Evaluation Group, AMLC Secretariat, Philippines.

3. Institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General.
4. Cause the filing of complaints with the Department of Justice or the Office of the Ombudsman for the prosecution of money laundering offenses.
5. Investigate suspicious transactions and covered transactions deemed suspicious after an investigation, money laundering activities, and other violations of the Act.
6. Apply before the Court of Appeals, *ex parte*, for the freezing of any monetary instrument or property alleged to be the proceeds of any unlawful activity as defined in Section 3(i) of R.A. 9160, as amended.
7. Implement such measures as may be necessary and justified under the law to counteract money laundering.
8. Receive and take action in respect of any request from foreign states or jurisdictions for assistance in their own anti- money laundering operations provided in the law.
9. Develop educational programs on the pernicious effects of money laundering, the methods and techniques used in money laundering, the viable means of preventing money laundering and the effective ways of prosecuting and punishing offenders.
10. Enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including government-owned-and-controlled corporations, in undertaking any and all anti-money laundering operations, which may include the use of its personnel, facilities and resources for the more resolute prevention, detection and investigation of money laundering offenses and prosecution of offenders.
11. Impose administrative sanctions for the violation of laws, rules, regulations and orders and resolutions issued pursuant thereto.
12. Examine or inquire into bank deposits/investments upon order of any competent court in cases of violation of the AMLA, when it has been established that there is probable cause that the deposits/investments are related to an unlawful activity or money laundering offense. No court order, however, is necessary in cases involving kidnapping for ransom; narcotics offenses; and “acts of terrorism”.

Money laundering, as defined in the law, is a crime whereby the proceeds of an unlawful activity are transacted thereby making them appear to have originated from legitimate sources (Section 4, R.A. 9160, as amended). For purposes of money laundering, the term “unlawful activity” refers to any act or omission or series or combination thereof involving or having direct relation to the following:

1. Kidnapping for ransom
2. Drug Trafficking and other violations of the Comprehensive Dangerous Drugs Act of 2002
3. Graft and Corruption under R.A. No. 3019, as amended
4. Plunder (R.A. No. 7080 as amended)
5. Robbery and extortion
6. Jueteng and Masiao (Presidential Decree [PD]1602)
7. Piracy on the high seas (Revised Penal Code [RPC] & PD 532)
8. Qualified Theft under Art. 310, RPC
9. Swindling under Art. 315, RPC
10. Smuggling under R.A. 455 & 1937
11. Violations of Electronic Commerce Act of 2000
12. Hijacking, destructive arson and murder, including those perpetrated by terrorists against non-combatant persons and similar targets
13. Fraudulent practices and other violations under the Securities Regulation Code of 2000 (RA 8799)
14. Felonies or offenses of a similar nature punishable under the penal laws of other countries.

II. HOW ARE CASES LITIGATED?

The process basically begins with the submission of the covered transaction and suspicious transaction reports by the covered institutions to the AMLC. The reports are being filed within five (5) working days from the occurrence of the transactions. In addition to the covered and suspicious transaction reports submitted by covered institutions, the AMLC may also initiate an investigation based on referrals of law enforcement and other government agencies, media reports and sworn complaints of private individuals. The AMLC is also empowered to act directly on requests from foreign jurisdictions for legal assistance in relation to their own anti-money laundering operations.

When, after its investigation, the AMLC finds that money laundering has been committed, it causes the filing of a criminal complaint with the Department of Justice (DOJ), or with the Office of the Ombudsman in cases involving public officers or employees, which conducts the preliminary investigation of the case. If the DOJ or the Ombudsman finds probable cause to indict the offenders, criminal cases are filed with the Regional Trial Courts which have the jurisdiction to try all cases of money laundering, or with the *Sandiganbayan* if the offender is a high ranking public officer or a private person in conspiracy with the public officer.

Under the Revised Implementing Rules and Regulations (RIRRs) of the AMLA, as amended, all the elements of money laundering must be proved beyond reasonable doubt, including “the element of knowledge that the monetary instrument or property represents, involves or relates to the proceeds of any unlawful activity.”

If, in the course of its investigation, the AMLC finds it necessary, it may file an *ex-parte* petition with the Court of Appeals for the issuance of a freeze order against any monetary instrument, property or proceeds that are deemed related to an unlawful activity or a money laundering offense.

A freeze order issued by the Court of Appeals is effective, initially, for a period of twenty (20) days. Upon motion filed by the AMLC, the effectivity of the freeze order may, for good cause, be extended for a period not exceeding six months.

After due investigation on a particular monetary instrument, property or proceeds, if the AMLC finds sufficient evidence that would support a conclusion that the said monetary instrument, property or proceeds are related to an unlawful activity or a money laundering offense, it shall file, through the Office of the Solicitor General, a petition for civil forfeiture against the said monetary instrument, property or proceeds. The petition for civil forfeiture is being filed with the Regional Trial Court, a court of general jurisdiction.

In relation to its power to investigate money laundering, the AMLC, *upon order of a competent court*, is authorized to inquire into or examine any particular bank deposits or investments that are deemed related to an unlawful activity or a money laundering offense. No court order, however, is necessary in cases involving kidnapping for ransom; narcotics offenses; and “acts of terrorism”. Such authority of the AMLC to inquire into bank deposits or investments is an express exception to the provisions of the Bank Deposit Secrecy Law which prohibits any person from examining, inquiring or looking into any bank deposit.

On 15 November 2005, the Supreme Court of the Philippines, upon request of the AMLC, promulgated the so-called “Rules on Civil Forfeiture” which governs court proceedings relating to petitions for freeze order before the Court of Appeals and petitions for civil forfeiture before the Regional Trial Courts. The Rules of Civil Forfeiture took effect on 15 December 2005.

Under the “Rule on Civil Forfeiture”, the Court of Appeals, upon filing by the AMLC of a petition for freeze order, is mandated to act thereon within twenty-four (24) hours. If, based on the allegations of the *ex-parte* petition and the supporting documents, it finds probable cause that the property or asset subject of the petition is related to an unlawful activity or a money laundering offense, it shall issue a freeze order which shall be immediately effective for a period of twenty (20) days. Thereafter, the Court of Appeals shall conduct a summary hearing for purposes of determining whether the freeze order should be modified, lifted, or otherwise extended. Should the Court of Appeals find good cause to extend the effectivity of the freeze order, it shall do so for a period not exceeding six (6) months. Once a freeze order is issued, the property subject thereof may not be transacted, withdrawn, transferred, removed, converted or otherwise disposed of by any person during the effectivity of the freeze order.

Likewise, under the “Rule on Civil Forfeiture”, once a petition for civil for forfeiture is filed by the

AMLC, within twenty-four hours, the Executive Judge of the Regional Trial Court shall, upon finding of probable cause that the property subject of the petition is related to an unlawful activity or a money laundering offense, issue a Provisional Asset Preservation Order (PAPO). Just like a freeze order, a PAPO is effective initially for a period of twenty (20) days. During the 20-day effectivity of the PAPO, the court shall conduct summary hearing to determine whether or not the PAPO should be modified or lifted, or whether an Asset Preservation Order (APO) should be issued. An APO is more permanent in character, in that it remains effective until the termination of the case.

All monetary instruments, property or proceeds forfeited by the AMLC in favor of the State are being turned over to the National Treasury, unless a third party claimant is able to prove in a “post-forfeiture” proceedings that the monetary instrument or property legitimately belongs to him.

III. STATISTICS

The following tables show the number of cases filed involving the issuance of freeze order, civil forfeiture and the amounts involved, including those relating to corruption-related cases, as of 30 September 2009.

A. Petitions for Freeze Order filed as of 30 September 2009

Total No. of Petitions filed with the Court of Appeals	33
Terminated/Granted	24
Pending	9
Corruption Related Petitions for Freeze Order	8

B. Total Amount Frozen as of 30 September 2009

TOTAL AMOUNT	PhP 2.556 billion
Returned to Victims	1.250 billion
Corruption-Related Frozen Amount	PhP146.6 million

C. Civil Forfeiture Cases filed as of 30 September 2009

	No. of Cases	Amount
Pending Petitions	26	PhP371,942,346.68
Decided Petitions		PhP 43,401,714.60
<ul style="list-style-type: none"> • Proceeds turned over to the National Treasury • Claimed by Third-Parties • Pending execution 	12	(PhP19,630,062.20) (PhP2,401,568.50) (PhP21,370,083.90)
Corruption-Related Petitions for Civil Forfeiture	5	PhP 62,593,806.27

In conclusion, since 2001, the AMLC has been a partner of the Government in fighting corruption and recovering proceeds thereof. Legal framework and procedural measures for the recovery of stolen assets are in place in the Philippines. They may not be perfect, but are working.