

# MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION

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## I. INTERNATIONAL COOPERATION IN TRACING, IDENTIFYING, FREEZING, SEIZING AND CONFISCATING PROCEEDS OF CORRUPTION

Requests for legal assistance, including assistance for recovery of proceeds of corruption, to the Republic of the Philippines must be submitted to the Office of the Chief State Counsel of the Department of Justice. The Office of the Chief State Counsel directly takes charge of assisting the requesting State and executing the request if the same is based on a treaty.

An example of a treaty to which the Republic of the Philippines is a party is the Treaty on Mutual Legal Assistance in Criminal Matters signed on the 29th day of November 2004 by the governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Socialist Republic of Vietnam.

Under said Treaty, the Republic of the Philippines, among others, shall, subject to its domestic laws, endeavour to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime from which such assistance can be given, provided that the Requesting State provides all information which the Republic of the Philippines considers necessary.<sup>1</sup>

As the Requested Party, the Republic of the Philippines, pursuant to said treaty, has the duty to: (i) promptly carry out requests for assistance; (ii) carry out the request in the manner specified by the Requesting State; (iii) make all necessary arrangements, if requested to do so, for the representation of the Requesting State in the country in any criminal proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting State; and (iv) respond as soon as possible to reasonable inquiries by the Requesting State concerning progress toward execution of the request. The manner of execution of the foregoing duties is subject to the laws and practices of the Republic of the Philippines.<sup>2</sup>

In the absence of a treaty, requests by a foreign states for legal assistance in the recovery of proceeds of corruption are referred by the Office of the Chief State Counsel to the Anti-Money Laundering Council. The Anti-Money Laundering Council is the financial intelligence unit of the Republic of the Philippines tasked to implement the Anti-Money Laundering Act. The Anti-Money Laundering Act<sup>3</sup> was passed to prevent the Republic of the Philippines from becoming a haven for money laundering and, among others, establish

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<sup>1</sup> Article 22, Treaty on Mutual Legal Assistance in Criminal Matters signed on 29 November 2004.

<sup>2</sup> Ibid., Article 7.

<sup>3</sup> Republic Act No. 9160.

procedures for international cooperation and assistance in the apprehension and prosecution of persons involved in money laundering. Money laundering, under the Philippine concept, is any act or series or combination of acts whereby proceeds of an unlawful activity, whether in cash, property or other assets, are converted, concealed or disguised to make them appear to have originated from legitimate sources.<sup>4</sup>

The Anti-Money Laundering Council may execute a request for assistance from a foreign state by: (i) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity under the procedures laid down in the Anti-Money Laundering Act; (ii) providing the foreign state with needed information within the procedures laid down in said Act; and (iii) applying for an order of forfeiture of any monetary instrument or property in the court. The court, however, shall not issue an order of forfeiture unless the application is accompanied by an authenticated copy of the order of a court in the requesting state ordering the forfeiture of said monetary instrument or property of a person who has been convicted of a money laundering offence in the requesting state, and a certification or an affidavit of a competent officer of the requesting state stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.<sup>5</sup>

A document is authenticated if the same is signed or certified by a judge, magistrate or equivalent officer in or of the requesting state, and authenticated by the oath or affirmation of a witness or sealed with an official or public seal of a minister, secretary of state, or officer in or of the government of the requesting state, or of the person administering the government or a department of the requesting territory, protectorate or colony. The certificate of authentication may also be made by a secretary of the embassy or legation, consul general, consul, vice consul, consular agent or any officer in the foreign service of the Philippines stationed in the foreign state in which the record is kept, and authenticated by the seal of his office.<sup>6</sup>

A request for mutual assistance from a foreign state must: (i) confirm that an investigation or prosecution is being conducted in respect of a money launderer named therein or that he or she has been convicted of any money laundering offence; (ii) state the ground on which any person is being investigated or prosecuted for money laundering or the details of his or her conviction; (iii) give sufficient particulars as to the identity of said person; (iv) give particulars sufficient to identify any covered institution believed to have any information, documents, materials or objects which may be of assistance to the investigation and prosecution; (v) ask a covered institution to produce any information, documents, materials, or objects which may be of assistance to the investigation or prosecution; (vi) specify the manner in which and to whom said information, documents, materials or objects obtained pursuant to said request are to be produced; (vii) give all the particulars necessary for the issuance by the court in the requested state of the writs, orders, or processes needed by the requesting state; and (viii) contain such other information as may assist in the execution of the request.<sup>7</sup>

The Anti-Money Laundering Council, however, may deny a request for assistance where the action sought by the request contravenes any provision of the Constitution or the

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<sup>4</sup> Bangko Sentral ng Pilipinas Briefer on the Anti-Money Laundering Act of 2001.

<sup>5</sup> Section 13 (b), Republic Act No. 9160, as amended.

<sup>6</sup> Section 13 (f), Republic Act No. 9160, as amended.

<sup>7</sup> Section 13 (e), Republic Act No. 9160, as amended.

execution of the request is likely to prejudice the national interest of the Republic of the Philippines, unless there is a treaty between the Republic of the Philippines and the requesting state relating to the provision of assistance in relation to money laundering offences.<sup>8</sup>

The Anti-Money Laundering Council has likewise been granted authority to make a request to any foreign state for assistance in: (i) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity; (ii) obtaining information that it needs relating to any covered transaction, money laundering offence or any other matter directly or indirectly related thereto; (iii) to the extent allowed by the law of the foreign state, applying to the proper court for an order to enter any premises belonging to or in the possession or control of any or all persons named therein and/or to remove any documents, materials or objects named in said request.<sup>9</sup>

## **II. IDENTIFYING, TRACING, FREEZING, SEIZING AND CONFISCATING PROCEEDS OF CORRUPTION**

Public officers and employees<sup>10</sup> of the Republic of the Philippines are required to submit, upon assumption of office and every year thereafter, a true, detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of income, the amounts of personal and family expenses and the amount of income taxes paid for the preceding calendar year.<sup>11</sup> Through this measure, any unwarranted increase in income can be easily monitored and evaluated.

Whenever any public officer or employee has acquired during incumbency an amount of property which is manifestly out of proportion to such public officer's or employee's salary and to other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired and may thus, be forfeited.<sup>12</sup>

Hence, a former high ranking military officer of the Republic of the Philippines, with the rank of Lieutenant General, was indicted for, among others, violation of the Anti-Graft and Corrupt Practices Act for having acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as a military officer. The accusations against him are, among others: (i) he declared in his Statement of Assets, Liabilities and Net Worth that as of 31 December 2003, he had assets in the total amount of ₱3,848,003 in contrast to his declared assets in his 1982 Statement of Assets, Liabilities and Net Worth that amounted to only ₱105,000; and (ii) further investigation revealed that he and his family had other properties and bank accounts not declared in his Statement of Assets, Liabilities and Net Worth amounting to at least ₱54,001,217. As the Lieutenant General's main source of

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<sup>8</sup> Section 13 (d), Republic Act No. 9160, as amended.

<sup>9</sup> Section 13 (3), Republic Act No. 9160, as amended.

<sup>10</sup> All elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount, from the national government, local governments, and all other instrumentalities, agencies or branches of the Republic of the Philippines, including government owned or controlled corporations, and their subsidiaries.

<sup>11</sup> Section 17, Article XI of the 1987 Constitution; Section 8 of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) and Section 7 of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act).

<sup>12</sup> Section 2, Republic Act No. 1379.

income was his salary as an officer of the Armed Forces of the Philippines, and given his wife and children's lack of any other sources of income, the Office of the Ombudsman<sup>13</sup> declared the assets registered in the Lieutenant General's name, as well as those in his wife's and children's names, to be illegally obtained and unexplained wealth.<sup>14</sup> The cases filed against the Lieutenant General and other members of his family are still in court.

The Office of the Ombudsman likewise found the former head of the Large Taxpayer's Document Processing and Quality Assurance Division of the Bureau of Internal Revenue — after examination of her Statement of Assets, Liabilities and Net Worth, among others — to have illegally acquired and accumulated properties and investments, as well as incurred expenses and liabilities, grossly disproportionate to her income and earning capacity as a government employee. When computed, her total unexplained wealth amounted to approximately ₱10,891,009, which was the difference between her 1986 to 2004 accumulated wealth of ₱13,144,599.71 and ₱2,253,590.60, which was her total lawful income for that period.<sup>15</sup>

There was also a Deputy Chief of Staff for Comptrollership of the Armed Forces of the Philippines, with the rank of Major General, whose properties became the subject of forfeiture proceedings on the ground that, during his incumbency as a soldier and public officer, he acquired huge amounts of money and properties manifestly out of proportion to his salary as such public officer and his other lawful income.<sup>16</sup> Among the accusations against him was his failure to declare all his existing assets in his sworn Statement of Assets, Liabilities and Net Worth.<sup>17</sup> In June 2015, the United States of America turned over to the Republic of the Philippines US\$1,384,940.28, more or less, or around ₱61,000,000,000, representing the amount of some of the assets of the Major General seized from the U.S.

The use of the sworn Statement of Assets, Liabilities and Net Worth is apparently a simple yet practical tool to initially identify and trace proceeds of corruption that may thereafter be seized and forfeited. However, the same is only effective if a particular public officer or employee is already under investigation inasmuch as copies of Statement of Assets, Liabilities and Net Worth need to be manually and physically retrieved from the office where the public officer or employee under investigation is assigned before the same could be examined and evaluated. Normally, the Statement of Assets, Liabilities and Net Worth of a public officer or employee will only be thoroughly examined if he or she is under investigation. There is no system yet that would automatically alert concerned government agencies of any suspicious increase in the net worth of a public officer or employee or any untruthful entry in his or her Statement of Assets, Liabilities and Net Worth.

In any event, proceeds of corruption that have been concealed, placed or transferred in a complicated scheme may still be identified, traced, frozen, seized and confiscated through the Anti-Money Laundering Council which has the power to: (i) require and receive covered or suspicious transaction reports from covered institutions; (ii) issue orders addressed to the appropriate Supervising Authority or covered institution to determine the true identity of the owner of any monetary instrument or property subject to a covered transaction or

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<sup>13</sup> The office in the Republic of the Philippines charged with the duty to investigate and prosecute government officials accused of crimes, such as graft and corruption.

<sup>14</sup> G.R. No. 176944, March 6, 2013.

<sup>15</sup> G.R. No. 179261, April 18, 2008.

<sup>16</sup> G.R. No. 165835, June 22, 2005.

<sup>17</sup> G.R. No. 198554, July 30, 2012.

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, proceeds of an unlawful activity; (iii) institute civil forfeiture proceedings and all other remedial proceedings;<sup>18</sup> (iv) cause the filing of complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offences; (v) investigate suspicious transactions and covered transactions deemed suspicious after an investigation, money laundering activities, and other violations of the Anti-Money Laundering Act; (vi) apply,<sup>19</sup> *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; (vii) implement such measures as may be necessary and justified to counteract money laundering; (viii) receive and take action in respect of, any request from foreign states for assistance in their own anti-money laundering operations; (ix) 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 offences and prosecution of offenders; (x) impose administrative sanctions for the violation of laws, rules, regulations and orders and resolutions issued pursuant thereto; and (xi) require<sup>20</sup> the submission of reports on all real estate transactions involving an amount in excess of five hundred thousand pesos (P500,000.00) within fifteen (15) days from the date of registration of the transaction, as well as to submit copies of relevant documents of all real estate transactions.<sup>21</sup>

In conclusion, the Republic of the Philippines recognizes that proceeds of corruption provide criminals with incentives and means to continue their illegal activities. Unless seized, these proceeds will ultimately destabilize governments and undermine financial systems. Indeed, new means should be developed on how to effectively seize these proceeds to finally eradicate corruption. The Republic of the Philippines has already started to take steps not to allow itself to become a haven for the corrupt.

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<sup>18</sup> Through the Office of the Solicitor General.

<sup>19</sup> Before the Court of Appeals.

<sup>20</sup> The Land Registration Authority and all its Registries of Deeds.

<sup>21</sup> Section 7, Republic Act No. 9160.