

CORPORATE CRIME AND THE CRIMINAL LIABILITY OF CORPORATE ENTITIES

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I. INTRODUCTION

The emerging problem of corporate crime poses a serious threat to nations around the world. This problem is hard to control because of the large profit these crimes can yield plus the grim fact that most of the perpetrators wield a wide sphere of influence, being corporate entities with huge financial resources at their disposal. They can afford to offer “hard to resist” bribes to law enforcers and if bribes do not work, they can also afford to hire the best lawyers in the world to defend them during court litigation. More so, with the aid of modern technology, corporate crimes are mostly committed with a sophistication that gives prosecutors a harder time proving their guilt in court.

Nonetheless, the difficulties in prosecuting the perpetrators for the aforesaid reasons must not serve as a discouragement but rather a challenge among nations to persevere, co-operate, and support each other in curbing this global menace.

II. THE PHILIPPINE LEGAL SYSTEM IN CORPORATE CRIMES

Like most developing countries, the Philippines faces the urgent need to evolve a legal system that is responsive to the multifarious needs of its society. The Philippines has a legal system which is a mixture of Roman civil law and Anglo-American common law.

A. Philippine Corporate Law

1. The Nature of Philippine Corporate Law

Philippine corporate law is a direct transfer of American corporate law, and is therefore a product of the common law system. The Philippines adheres to the Corporation Code that provides for statutory principles. Philippine corporate law is essentially the product of commercial developments. These developments can be anticipated by way of jurisprudential rules that corporate principles adapted and applied to conform to the changing concepts and mechanisms within the world of commerce. The Corporation Code embodies statutory principles that are based on dated rules or legal expressions of approved corporate practices. The Corporation Code is a collection of rules governing only a particular medium of doing business in the Philippines, the corporation, and which expresses the accepted practice as a result of jurisprudential rules.

2. The Role of Corporations in Philippine Society

The underlying legal philosophy of Philippine corporate law is that of dynamism in the development of the doctrinal basis upon which the corporation is to function. This provides that the Corporation Code is not a defined limitation of the playing field of Philippine corporate law, but constitutes a guiding light; and in the ever changing playing field, it must look with dynamism on the changes upon which innovation and growth are founded.

B. Liability of Legal Persons

1. Current Situation of Criminal Liability of Corporate Entities in the Philippines

The Corporation Code of the Philippines, otherwise known as Batas Pambansa Blg. 68, became effective on 1 May 1980. It clarified the obligations of corporate directors and officers, and expressed in statutory language established principles and doctrines. There are three duties of the directors, trustees and officers of a corporation: the duty of obedience, the duty of diligence and the duty of loyalty. Duty of obedience

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means that they will direct the affairs of the corporation only in accordance with the purposes for which it was organized. Duty of diligence and duty of loyalty are reflected in the Corporation Code wherein directors or trustees who acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting there from suffered by the corporation, its stockholders or members and other persons.

The general rule on duties and liabilities of directors, trustees and officers is that the members of the Board and officers of a corporation who signify to act for and on behalf of the corporation, keep within the lawful scope of their authority in acting, and act in good faith, do not become liable, whether civilly or otherwise, for the consequences of their acts. Those acts are properly attributed to the corporation alone and no personal liability is incurred by such Board members and officers. The extent of liability of the directors, trustees or officers are joint and several (*in solidum*) if they assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty (Sec. 31, The Corporation Code of the Philippines Batas Pambansa Blg. 68). This means that either of several persons may be liable for the entire amount. The case of *Philippine National Bank v. Court of Appeals*, 83 Supreme Court Reports Annotated 237 (1978), laid out clearly the nature of liability of a corporation for the tortuous acts of its directors or officers. The Supreme Court held in this case that a corporation is civilly liable in the same manner as natural persons for torts, because “generally speaking, the rules governing the liability of a principal or master for a tort committed by an agent or servant are the same whether the principal or master be a natural person or a corporation, and whether the servant or agent be a natural person or artificial person. All of the authorities agree that a principal or master is liable for every tort which he expressly directs or authorizes, and this is just as true of a corporation as of a natural person. A corporation is liable, therefore, whenever a tortuous act is committed by an officer or agent under express direction or authority from the stockholders or members acting as a body, or, generally, from the directors as the governing body.”

In the case of *Tramat Mercantile, Inc. v. Court of Appeals*, 238 Supreme Court Reports Annotated 450 (1994), holds that “personal liability of a corporate director, trustee, or officer along (although not necessarily) with the corporation may so validly attach, as a rule only when:

- (a) He assents (i) to a patently unlawful act of the corporation, or (ii) for bad faith or gross negligence in directing its affairs, (iii) for conflict of interest, resulting in damages to the corporation, its stockholders or other persons (Section 31, Corporation Code);
- (b) He consents to the issuance of watered stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto (Section 65, Corporation Code);
- (c) He agrees to hold himself personally and solidarily liable with the corporation;
- (d) He is made, by a specific provision of law, to personally answer for his corporate action.”

2. Legal Framework of Criminal, Civil and Administrative Sanctions

In the Philippine setting there are various penal laws which corporations as such may violate. The Supreme Court in numerous cases held that when a criminal statute forbids the corporation itself from doing an act, the prohibition extends to the board of directors and to each director separately and individually. The principle was laid down in *People v. Tan Boon Kong*, 54 Phil. Reports 607 (1930), that “a corporation can act only through its officers and agents, and where the business itself involves a violation of the law, the correct rule is that all who participate in it are liable.” It can be discerned that the court refuses to apply the fiction of corporate entity to shield and protect the individual actors in the criminal act, although they do the criminal act for or on behalf of the corporation they represent. Another rationale explaining why corporations cannot be held liable for a crime is the impossibility or difficulty of imposing penal sanctions, i.e. imprisonment, on a being that has no corporal existence and which cannot be put in jail. A crime cannot be attributed to a corporation because it is just a mere artificial being without a mind: criminal intent is an important ingredient of a crime; therefore in cases involving artificial beings there is lack of malice.

In civil cases a corporation can be a real-party-in-interest for the purpose of filing a civil action for malicious prosecution for the damages incurred by the corporation in the criminal proceedings brought against its officer.

The Republic Act No. 8799, otherwise known as the Securities Regulation Code, provides for administrative sanctions against a corporation. Under Section 54 of the said code it is stated that “if, after due notice and hearing, the Securities and Exchange Commission finds that: (a) There is a violation of this Code, its rules or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or, in case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

- (1) Suspension, or revocation of any registration for the offering of securities;
- (2) A fine of not less than PHP10,000 (Philippine pesos) nor more than PHP1,000,000 plus not more than PHP2,000 for each day of continuing violation;
- (3) In the case of a violation Section 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under Section 17 of this Code or any other act, rule or regulation administered by the Commission;
- (4) In the case of a violation of Section 34, a fine of not more than three times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such Section; and
- (5) Other penalties within the power of the Commission to impose.”

The imposition of these administrative sanctions shall be without prejudice to the filing of criminal cases against the individual responsible for such violation.

C. Criminalization in Relation to Corporate Crime

The Corporation Code of the Philippines specifically states in Section 144 the criminal penalties for violations of “any” of the provisions of the Corporation Code and the penalties include fine of not less than PHP1,000 but not more than PHP10,000 or imprisonment for not less than 30 days but not more than five years, or both, at the discretion of the court. If the corporation committed such violation the same may be dissolved in appropriate proceedings before the Securities and Exchange Commission.

The main doctrine of Separate Juridical Personality of the Corporation and that a corporation is distinct from the stockholders or members who compose it can be tempered by the Doctrine of Piercing the Veil of Corporate Fiction. In reviewing the decided cases of the Supreme Court, *Umali v. Court of Appeals*, 189 Supreme Court Reports Annotated 529 (1990), it can identify the three major areas wherein piercing the veil doctrine can be applied: (1) When the corporate entity is used to commit fraud (“fraud cases”); (2) When the corporate entity is used to defeat public convenience, or a mere farce (“alter ego cases”); and (3) When the piercing of corporate fiction is necessary to achieve justice or equity (“equity cases”).

One of the most common corporate crimes being committed in the Philippines is tax evasion wherein the fiction of corporate entity was being used as a shield for tax evasion by making it appear that the original sale was made by the parent corporation to the subsidiary corporation in order to gain tax advantage.

The legislature has also enacted special penal laws to criminalize corporate crimes and one of these is Presidential Decree No. 715 (1975) otherwise known as the “Anti-Dummy Law” which penalizes foreign investors who exceed in their representation in the governing board or body of corporations or associations in proportion to their allowable participation in the equity of the said entities.

Another special penal law is Republic Act No. 9160, as amended by Republic Act No. 9194, otherwise known as the “Anti-Money Laundering Act of 2001”, which criminalizes money laundering.

D. The Money Laundering Process and its Stages

1. Elements of the Crime of Money Laundering

Money laundering is the processing of criminal proceeds in order to disguise their illegal origin. It is a crime whereby the proceeds of unlawful activity are transacted thereby making them appear to have originated from legitimate sources. The elements of the crime of money laundering are: (1) there must be unlawful activity; (2) the activity must concern a monetary instrument or property; (3) there must have been a transaction or attempted transaction of the monetary instrument or property; (4) and there must be knowledge that the monetary instrument or property represents, involves, or relates to the proceeds of the unlawful activity.

2. Stages of Money Laundering

(i) Placement

This is the first stage and involves initial placement or introduction of the illegal funds into the financial system. Banks and other financial institutions are usually used at this point. (Example – circumvent the reporting requirements of SEC, commingled with legitimate funds.)

(ii) Layering

This is the second stage and involves a series of financial transactions during which the dirty money is passed through a series of procedures, putting layer upon layer of persons and financial activities into the laundering process. (Example: electronic transfer of funds, disguising the transfer as a payment for goods or services.)

(iii) Integration

This is the last stage wherein the money is once again made available to the criminal with the occupational and geographic origin concealed. The laundered funds are now integrated back into the legitimate economy through the purchase of properties, businesses and other investments.

E. Anti-Money Laundering Act of 2001

1. State Policies

Republic Act No. 9160, as amended by Republic Act No. 9194, otherwise known as the Anti-Money Laundering Act of 2001, embodied the state policies “to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity; To extend co-operation in transnational investigations and prosecutions of persons involved in money laundering activities wherever committed; and to protect and preserve the integrity and confidentiality of bank accounts.”

2. Salient Features

The salient features of the law are: it criminalizes money laundering; it creates a financial intelligence unit or implementing agency; it imposes requirements of customer identification, record keeping and reporting of covered and suspicious transactions; it relaxes strict bank deposit secrecy laws; it provides for freezing/seizure/forfeiture/recover freezing/seizure/forfeiture/recovery of dirty money/property; and it provides for international co-operation.

F. Issues Concerning Investigation

1. Specialized Investigative Authorities and Training Methods for Investigators

The “Anti-Money Laundering Act of 2001” provides for the creation of the Anti-Money Laundering Council of the Philippines (AMLC). One of the functions of Anti-Money Laundering Council is “to investigate suspicious transactions and covered transactions deemed suspicious after an investigation of AMLC, money laundering activities, and other violations of this act.” The AMLC shall “act to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General.” The AMLC provides modules on education and programmes to train investigators on the pernicious effects of money laundering, the methods and techniques used in money laundering, the means of preventing money laundering, and the effective ways of prosecuting and punishing the offenders.

2. Co-operation between Investigative Authorities Concerned at the State Level

The Anti-Money Laundering Council can “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, detection and investigation of money laundering offences and prosecution of offenders.” (Republic Act No. 9160)

3. Acquisition of Information on Money Laundering

The information on money laundering can be acquired through the reports of the covered institutions by requiring them to submit and receive covered or suspicious transactions. Covered Institutions refers to: (a) “Banks, non-banks, quasi-banks, trust entities, and all other institutions and their subsidiaries and affiliates supervised or regulated by the Bangko Sentral ng Pilipinas; (b) Insurance companies and all other institutions supervised or regulated by the Insurance Commission; and (c) All those supervised and regulated by the Securities and Exchange Commission, including securities dealers, brokers, pre-need companies, foreign exchange corporations, investment houses, trading advisers, and other entities administering or otherwise dealing in currency, commodities or financial derivatives based thereon.” (Republic Act No. 9160)

Covered institutions shall make an effort to guarantee that a corporate juridical entity has not been or is not being dissolved, wound up or voided. The business or operations of the said corporation has not been or is not being closed, shut down, phased out, or terminated and that shell companies should be dealt with extremely cautiously. Shell companies refer to business entities without active business or significant assets. There are three major requirements for compliance by the covered institutions to be forwarded to the Anti-Money Laundering Council. One is customer identification and due diligence; second is record keeping; third is reporting of suspicious and covered transactions. The Anti-Money Laundering Council have prepared forms together with the Securities and Exchange Commission to be filled up and submitted by the covered institutions; these are a compliance form, a covered transaction report and a suspicious transaction report. The AMLC and SEC have prepared examination rules and procedures on Anti-Money Laundering.

The Anti-Money Laundering Council has special powers to inquire into bank deposits/investments with or without court order; to cause a freeze/restraint on suspected dirty money/property, the court issuing a freeze order; to cause forfeiture of dirty money/property; and to implement necessary/justified measures to counteract money laundering.

G. Issues Concerning the Prosecution

1. Prosecution of Money Laundering Cases

Under the law of the Anti-Money Laundering Act, any person may be charged with and convicted of both the offence of money laundering (subject offence) and the unlawful activity (predicate offence). “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; (4) Plunder ; (5) Robbery and extortion; (6) Jueteng and Masiao; (7) Piracy; (8) Qualified Theft; (9) Swindling; (10) Smuggling; (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; (14) Felonies or offences of a similar nature that are punishable under the penal laws of other countries.” If the offender is a corporation, association, partnership or any juridical person the penalty shall be imposed upon the responsible officers, as the case may be, who participated in, or allowed by their gross negligence, the commission of the crime. The offender, if a juridical entity, may have its license suspended or revoked by the court. The other offences punishable under the law include knowingly transacting or attempting to transact any monetary instrument or property which involves the proceeds of any unlawful activity, and the penalty is 7 to 14 years’ imprisonment and a fine of not less than 3 million pesos but not more than twice the value of the monetary instrument or property. Another offence is knowingly performing or failing to perform an act in relation to any monetary instrument or property involving the proceeds of unlawful activity and for knowingly failing to disclose and file with the AMLC any monetary instrument or property required to be disclosed and filed. It is also penalizes those covered institutions who failed to keep records of all their transactions maintained and safely stored for five years from the dates of transactions. Malicious reporting of a money laundering transaction is an offence and is punishable under the act. The law also espouses breach of confidentiality in relation to reporting covered or suspicious transactions to the AMLC. The covered institutions and their officers and employees are prohibited from communicating or disclosing any information to the media, neither may such reporting be

published or aired in any manner or form by the mass media, electronic mail or other similar devices.

H. Issues in Trial and Adjudication

1. Jurisdiction over Money Laundering Cases

The Regional Trial Courts shall have jurisdiction to try all cases of money laundering. There are 56 Special Anti-Money Laundering Courts/Commercial Courts in the Philippines which have the jurisdiction to try and decide violations of the Anti-Money Laundering Act. If the accused is a public officer or private person who conspired with such a public officer, the case shall be tried by the *Sandiganbayan* court. (Supreme Court Resolution dated 1 June 2004.)

2. Disclosure of Evidence before the Trial

The evidence acquired by the Anti-Money Laundering Council shall be handled with confidentiality until such evidence be disclosed as necessary in the filing of charges against the offender. The law punishes the breach of confidentiality of the accumulated information by the covered institution if such was given to media by its officers or employees.

As provided by the Implementing Rules and Regulations of the Anti-Money Laundering Act, Rule 6.5 states that "Knowledge of the offender that any monetary instrument or property represents, involves, or relates to the proceeds of an unlawful activity or that any monetary instrument or property is required under the AMLA to be disclosed and filed with the AMLC, may be established by direct evidence or inferred from the attendant circumstances". Rule 6.6 further states that "All the elements of every money laundering offence under Section 4 of the AMLA must be proved by evidence 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."

3. Effective Methods of Fact Finding

The Anti-Money Laundering Council consists of five units; the Executive Director (under which is the Technical Staff); the Compliance and Investigation Unit; the Legal Evaluation Unit; the Information Management and Analysis Unit; and the Administrative and Finance Unit. It has the power to issue orders to the appropriate Supervising Authority of the covered institution to determine the true identity of the owner of any monetary instrument or property. Based on the information gathered by the council as to the covered transactions and suspicious transactions, it will inquire and examine the facts in an investigation under the respective unit of the council through the assistance of different government agencies and covered institutions in monitoring and investigating such transactions.

The first money laundering conviction in the Philippines was on 2006 wherein a bank manager was convicted in violation of the Anti-Money Laundering Act. This was clear proof of the government's determination to stifle and impede possible money trails of crime syndicates and terrorists.

I. International Co-operation

The Philippines is no longer subject to the Financial Action Task Force (FATF) on money laundering monitoring, because it complied with the necessary requirements of FATF. The FATF was established by the G7 Summit in 1989. Recognizing the threat posed to the banking system and to financial institutions, the G7 Heads of State and the President of the European Commission convened the Task Force.

The Philippines is still encountering difficulties and challenges in the investigation and prosecution of violations of the Anti-Money Laundering Act for reasons that not all covered institutions co-operate in reporting covered and suspicious transactions. The success in hampering money laundering is in the monitoring and reporting of the covered institutions; it is therefore imperative that covered institutions co-operate and actively participate in the campaign to prevent money trails of criminal syndicates and terrorists through corporations, banks and other institutions from circulating in the Philippines. The Financial Action Task Force supports the Philippines' fight against money laundering by lending mutual assistance and giving information as international co-operation.

III. CORPORATE CRIME SITUATION IN THE PHILIPPINES

A. Tax Evasion

To address the problem of tax evasion in the Philippines, the Bureau of Internal Revenue (BIR) is implementing a programme dubbed "Run After Tax Evaders" (RATE). The RATE programme is an endeavour against tax evasion which aims to prosecute high profile tax evaders. Through this programme, the BIR envisions to enhance voluntary tax compliance. It is primarily intended to instill in the taxpaying public the principle that tax evasion is a crime and violators will be caught and punished. Also, this programme aims to provide maximum deterrent effect against tax evasion, thereby promoting public confidence in the Philippine tax system.

This programme covers the investigation and prosecution of individuals and/or entities engaged in tax evasion and other criminal violations of the National Internal Revenue Code (NIRC) of 1997.

From 1 January 2006 to date, 83 tax evasion cases have been filed with the Department of Justice (DOJ) through this programme. Of these cases, 47 are against corporate entities while the remaining 36 are against individuals. These cases are treated with utmost confidentiality, thus the BIR cannot disclose any further details.

B. Money Laundering

As of 31 July 2007, the AMLC has filed civil forfeiture cases against nine corporations. Among them is one "company A", which is facing a forfeiture case involving more than PHP20,000,000. Below is the synopsis of company A's money laundering case as obtained from the AMLC.

Company A sold, offered for sale, and distributed securities in the form of investment contracts to the public, with promises of interest at fifteen percent (15%) per month if the investments were PHP50,000 or more. In cases of investments worth less than PHP50,000, the interest rates were pegged at ten percent (10%).

At least 100 investors went to company A's offices daily to place their respective investments. Unusually large deposits were made in A's accounts per day – from PHP54.472 million to PHP91.742 million and massive withdrawals within a day amounting to PHP545 million. The aforesaid transactions were likewise reported by a bank because they exceeded the threshold limit and they were highly unusual given the purposes for which "A" was incorporated.

Investigations disclosed that several companies were being used by "A" as conduits for the money invested with it, B International Corporation and C International Corporation, the incorporators of which are members of the Ruiz and Cortel (not their real names) families. The common incorporator among the aforementioned companies was Mario J. Ruiz. A series of checks amounting to more than PHP80 million drawn from A's account were deposited to Ruiz's accounts.

The Securities and Exchange Commission (SEC) found "A" to be engaged in activities of selling, offering for sale, or distributing securities to the public without authority to do so, in violation of Section 8.1 of the Securities Regulation Code, and directed "A" to cease and desist from further engaging in these activities.

Considering that violations of the Securities Regulation Code are among the unlawful activities defined by the Anti-Money Laundering Act and based on the facts of the case, the bank accounts of A, B, C, and Mario Ruiz were ordered frozen by the AMLC.

Examination is still ongoing to obtain additional information on the transactions made by the account holders relating to money laundering through the bank accounts.

C. Fraud/Swindling

In the Philippines, lots of people are being victimized by pyramiding or "Ponzi" schemes. This scheme is a fraudulent investment operation that involves paying abnormally high, short-term returns to investors out of the money raised from new investors, rather than from profits generated by any real business undertaking. As reported in the news on 18 August 2007, the National Bureau of Investigation (NBI) of the

Philippines has filed charges against 27 officers and investors of Francswiss Investment, one of the pyramiding scams proliferating on the Internet.

The case stemmed from the complaints of at least 41 investors who claimed they lost a total of \$75,000 to the investment scheme, the NBI said, adding: "Francswiss, which started operating in March, was believed to have gypped unsuspecting investors in the Philippines of PHP1 billion". The news report further said: "The respondents allegedly lured unsuspecting victims over the Internet using the websites <http://www.francswiss.biz> and <http://deutchfrancs.com>. Investors were asked to invest \$1,000 in francswiss.biz and \$10,000 in deutchfrancs.com which promised to double their money in 22 days. They were told that their investment would earn daily interest of 4.5 percent or \$45 which they could cash through Internet-to-bank transactions. The investors were likewise promised additional 10 percent commission as "e-points" for every investor they recruited.

"Francswiss Investment promised interests bigger than those offered by banks," said director Ruel Lasala, head of the NBI-National Capital Region. "These types of investment schemes usually collapse as fast as they are created while investors are left unable to recover their investments," Lasala said. The investors were also told that their money would be re-invested in other lines of Francswiss Investment like overnight casinos and pawnshops, foreign exchange trading, sports betting, and mutual funds. "But we found out that none of these operations exist," Lasala said.

D. Foreign Bribery (Internet and Various Media Reports)

The Philippine government has been dragged into the arbitration case filed with the International Center for the Settlement of Investment Disputes (ICSID) in Washington D.C. by FRAPORT, a German company seeking compensation for expenses in building the Ninoy Aquino International Airport (NAIA) – 3. FRAPORT is the biggest investor in the Philippine International Air Terminals Co. (PIATCO), which won the bid to build NAIA – 3 in 1999. But the Philippine Government sought for the nullification of the contract because allegedly, the airport contract was obtained and implemented through various acts of corruption, fraud, and bribery.

After the Philippine Supreme Court declared the airport contract null and void because of proven anomalies, FRAPORT went to ICSID and alleged that its investments were being unfairly treated by the Philippine government, in the same manner as PIATCO went to the International Court of Arbitration of the International Chamber of Commerce (ICC) based in Singapore.

Allegedly, during the hearing, it was learned that the chunks of FRAPORT's \$425 million and PIATCO's \$565 million claims could not be accounted for, giving more credence to the Philippine legal team's position that the companies had been involved in illegal activities.

In the FRAPORT's \$425 million claim for instance, reports say the company can only show payment to Takenada Corporation, its sub-contractor, of some \$275 million and some \$30 million in "soft costs" which leaves a \$121 million gap. The "soft costs" have been attributed to FRAPORT's alleged illegal activities like the payment of \$850,000, believed to be a bribe, made to a certain political operator through PIATCO to obtain government approval within only two weeks. The money was traced after the Philippine legal team obtained a Hong Kong bank's records containing the related account transactions, the report said.

On 18 August 2007, a local news outlet reported the dismissal of the \$425 million arbitration case filed by FRAPORT against the Philippine Government. Accordingly, in the decision, the ICSID in Washington DC claimed no jurisdiction over the FRAPORT case because the German airport builder was found to have violated Philippine laws, the Anti-Dummy Law, and the Build-Operate-Transfer Law, among others. The report quoted Solicitor General Agnes Devanadera at a press conference, "So the government challenged the tribunal's jurisdiction, on the ground that before any foreign investor can ask for the protection and seek relief (from ICSID) under a treaty, there must be no violation of the laws of the Philippines that were committed by the investor," she said, referring to the Bilateral Investment Treaty on the Promotion and Reciprocal Protection of Investments between the Philippines and Germany.

In its request for arbitration, FRAPORT stated that it owns more than 61 percent of PIATCO, directly or indirectly, "through cascade companies that have equity ownership" of its local partner, Ms. Devanadera

said, thus, it was in violation of the Philippine constitution that allows foreigners to own only up to 40 percent of Philippine local companies.

Moreover, the report of Lala Rimando of Newsbreak on 11 February 2007 states that, "contrary to FRAPORT's assertion in ICSID that the completed airport terminal stands in Manila as pretty good evidence that an investment has been made, Terminal 3 stands incomplete, largely untested, and replete with structural defects". She added: "The quality assurance inspectors, the Japan Airport Consultants, raised these concerns during their inspection in 2002, and did not sign off on the terminal."

Also reported by the newspaper *Philippine Star*, a 100-square meter portion of the airport's ceiling collapsed a day before it was scheduled for soft opening in March 2006 thus confirming the report of Lala Rimando.

With regard to the arbitration case filed by PIATCO before the ICC in Singapore, the next hearing is reportedly set for November 2007.

E. Large Scale Pilferage

One pressing concern in the Philippines involving corporate entities today is the large scale pilferage of cable wires of electric companies, telecommunication carriers, and cable TV operators which is causing interruption of operations. These unlawful acts result in loss of revenue to the government, inconveniences both to the public and business sector, ruin the image of the service providers, and adversely affect the economic and social development of the country.

To illustrate how serious the problem is, from January to June 2007, there were a recorded 2,891 cable wire theft incidents with an estimated loss to concerned companies of PHP96.77 million. Although the financial setback can be tolerated, the pestering effect of the power outage on the public is unbearable.

Cable wire has aluminum and copper content. These two elements are expensive due to high demand in the foreign market and thus can yield huge profits. Investigations revealed that there are transnational crime groups behind this illegal act utilizing a wide range of contacts, such as: brokers and sales agents engaged in the trading of stolen cable wires, small and large junkshops, warehouses, international trading companies, shipping lines, etc.

Water companies are also suffering huge losses because of rampant theft of their steel pipes. Adding to the problem is the corollary disruption of water supply to the inconvenience of the community.

In previous months, a shipment of Philippine peso coins with a currency value of three million pesos bound abroad was intercepted by Philippine authorities. Logically, the consignee seems interested in the metal, and not the currency value of the coins. This confirms the preciousness of metal abroad and explains why corporate entities are scrambling to accumulate metals, by hook or by crook.

During the raid conducted on 10 August 2007 in the Philippines, the national police arrested the owner of a certain junkshop or warehouse, and 12 foreign nationals. Seized evidence is 4,597.3 kilograms of copper wires duly identified by officials of Manila Electric Company (MERALCO) as their exclusive properties and stock items. Another raid resulted in the arrest of the owner and manager of another junkshop, and the confiscation of six to eight tons of stolen copper wires of the National Waterworks and Sewerage System Administration (NAWASA) and Transmission Corporations (TRANSCO). The suspects are charged with violations of Republic Act 7832, the Anti-Pilferage Law and Presidential Decree no. 1612, the Anti-Fencing Law – the law that prohibits buying or just mere possession of stolen items.

IV. CONCLUSION

Curbing the commission of corporate crimes is really a daunting task that needs a synergized effort from all sectors of society in order to succeed. Since the scope of the problem is global, the corresponding effort to stop it must also be global. Therefore, there is a need for countries all over the world to co-operate towards this end.

Moreover, vigilance must be exercised by every concerned entity to prevent the commission of corporate crimes. The government for its part must exhibit political will and apply the full force of the law to whoever violates it. This political will becomes a good deterrent to the commission of crimes not only to ordinary citizens but also to influential people in the so called “corporate world”, as well.

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The Internet and various media reports were also used as background reading for this paper.