



Asia-Pacific
Economic Cooperation

2007/ACT/WKSP/019

Anti-Money Laundering Council (AMLC) and Anti-Corruption: The Philippine Experience

Submitted by: Philippines



**Capacity Building Workshop on Combating
Corruption Related to Money Laundering
Bangkok, Thailand
20-22 August 2007**

THE ANTI-MONEY LAUNDERING COUNCIL AND ANTI-CORRUPTION : THE PHILIPPINE EXPERIENCE



Nota Bene

- The contents of this presentation are based on direct and verbatim quotes from the provisions of the Philippine Anti-Money Laundering Act of 2001, as amended, including its revised implementing rules and regulations and related laws, current AMLC policies, case law and jurisprudence. However some opinions and interpretations expressed are strictly those of the presenter's views and not of the AMLC, its Secretariat nor of the GRP and of Philippine courts.





The Anti-Money Laundering Act of 2001, as amended

- R.A. No. 9160 - October 17, 2001
- R.A. NO. 9194 - March 23, 2003
- Revised IRRs - September 7, 2003

The Anti-Money Laundering Act of 2001, as amended

- The two-fold policy of the AMLA are :
 1. To protect and preserve the integrity and confidentiality of bank accounts;
 2. to ensure that the Philippines is not used as a money laundering site of the proceeds of unlawful activities.
- Thus, it is the Philippines' policy not only to protect depositors and investors but of equal importance is the investigation, apprehension and prosecution of suspected money launderers.

THE PHILIPPINES' FINANCIAL INTELLIGENCE UNIT

The **Anti-Money Laundering Council** is the financial intelligence unit of the Philippines created pursuant to R.A. 9160, as amended, by R.A. 9194.

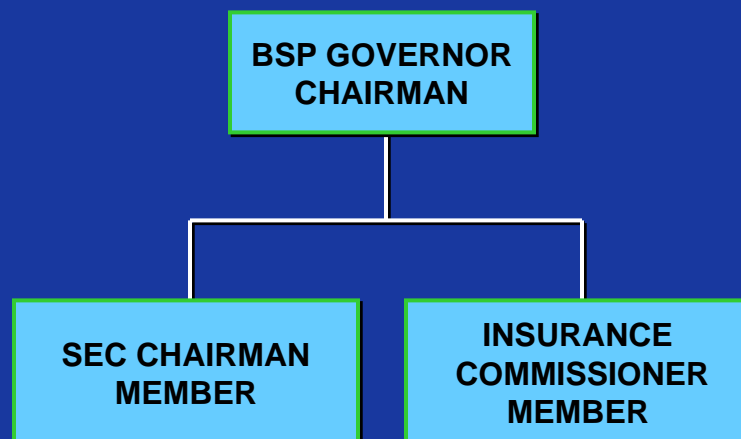


Composition

- Governor, Bangko Sentral ng Pilipinas (BSP)
- Chairman, Securities and Exchange Commission (SEC)
- Commissioner, Insurance Commission (IC)



Composition

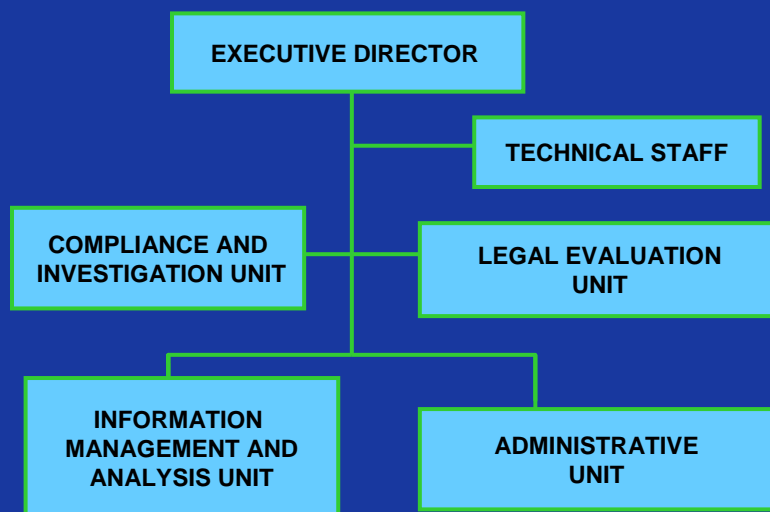


AMLIC - Secretariat

- Executive Director
- Compliance And Investigation Unit
- Legal Evaluation Unit
- Information Management and Analysis Unit
- Administrative Unit



AMLIC - Secretariat



Secretariat

1. **Executive Director** – has a 5-year term, at least 35 years old, of good moral character, unquestionable integrity and known probity.
2. **Members** – must have served for at least 5 years either in the BSP, SEC, or IC and shall hold full-time permanent positions within the BSP.

Vision

To be a world class financial intelligence unit that will help establish and maintain an internationally compliant and effective anti-money laundering regime which will provide the Filipino people with a sound, dynamic and strong financial system in an environment conducive to the promotion of social justice, political stability and sustainable economic growth.



Towards this goal, the AMLC, shall without fear or favor, investigate and cause the prosecution of money laundering offenses.

Mission

- To protect and preserve the integrity and confidentiality of bank accounts
- To ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity
- To extend cooperation in transnational investigation and prosecution of persons involved in money laundering activities wherever committed



Functions

- Require and receive covered and suspicious transaction reports from covered institutions.



Transactions

- Refers to any act establishing any right or obligation or giving rise to any contractual or legal relationship between the parties thereto.
- It also includes any movement of funds by any means with a covered institution.

COVERED TRANSACTIONS

- A **COVERED TRANSACTION** is a transaction in cash or other equivalent monetary instrument involving a total amount in excess of PHP500,000.00 within one (1) banking day.

Suspicious Transactions

Suspicious transactions are transactions with covered institutions, regardless of the amounts involved, where any of the following circumstances exist:

1. There is no underlying legal or trade obligation, purpose or economic justification
2. The client is not properly identified
3. The amount involved is not commensurate with the business or financial capacity of the client

Suspicious Transactions

4. Taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements
5. Any circumstance relating to the transaction which is observed to deviate from the profile of the client and/or the client's past transactions from the covered institution

Suspicious Transactions

6. The transaction is in any way related to an unlawful activity or offense under this Act that is about to be, is being or has been committed
7. Any transaction that is similar or analogous to any of the foregoing

When to File Reports

- Covered institutions shall report to the AMLC all covered and suspicious transactions within **five (5) working days** from occurrence thereof, unless the Supervising Authority concerned prescribes a longer period not exceeding ten (10) days.

WHAT REPORT TO FILE

- Should a transaction be determined to be both a covered transaction and a suspicious transaction, the covered institution shall be required to report the same as a suspicious transaction.

OTHER TYPES OF REPORTS

- BSP Circular No. 308 as amended by BSP Circular Nos. 314 and 507
(Foreign currency declaration forms)
- BSP Circular No. 98

Failure to Report

- “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.”
- Imprisonment of 6 months to 4 years or a fine of not less than P100,000 to P500,000 or both

Malicious Reporting

- Any person who with malice, or in bad faith, reports or files a completely unwarranted or false information relative to a money laundering transaction against any person shall be a subject to a penalty of six (6) months to four (4) years imprisonment and a fine of not less than One Hundred Thousand pesos but not more than Five Hundred Thousand pesos, at the discretion of the court
- No entitlement to the benefits of probation

Breach of confidentiality

When reporting covered or **suspicious** transactions to the AMLC, covered institutions and their officers and employees are prohibited from communicating directly or indirectly, in any manner or by any means, to any person or entity, the media, the fact that a covered or **suspicious** transaction report was made, the contents thereof, or any other information in relation thereto. Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail or other similar devices. In case of violation thereof, the concerned officer and employee of the covered institution and media (**the responsible reporter, writer, president, publisher, manager and editor-in-chief**) shall be held criminally liable.

Breach of confidentiality

- **Penalty**

3 to 8 years imprisonment and a fine of not less than P500,000.00 but not more than P1.0 Million.

Money laundering definition

- Under the AMLA, money laundering is “ a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources.”
- Money Laundering as a crime is committed in three (3) different ways under the AMLA

Money Laundering Proper

- “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.”
- Imprisonment of 7 to 14 years and a fine of not less than P 3 Million but not more than twice the value of the monetary instrument or property involved in the transaction.

Facilitating Money Laundering

- “Any person knowing that any monetary instrument or property involves the proceeds of an unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.”
- Imprisonment of 4 to 7 years and a fine of not less than P 1 Million but not more than P 3 Million.

Offense of Failure to keep Record

- Penalty for failure to keep record :
 - Imprisonment from six (6) months to one (1) year or a fine of not less than One Hundred Thousand (Php100,000) pesos but not more than Five Hundred Thousand (Php500,000) pesos or both

Prohibited Accounts

1. Anonymous accounts
 2. Accounts under fictitious names
 3. All other accounts similar to the foregoing.
- Financial institutions shall maintain accounts only in the true and full name of the account owner or holder

Numbered accounts

Peso and foreign currency non-checking numbered accounts are allowed: Provided that the true identity of the customers of all peso and foreign currency non-checking numbered accounts are satisfactorily established based on official and other reliable documents and records and that the information and documents required under these rules are obtained and recorded by the covered institution.

Unlawful Activities

- **“Unlawful Activity”** refers to any act or omission or series or combination thereof involving or having **DIRECT** relation to any of the following:
 1. Kidnapping for ransom
 2. Drug Trafficking and other violations of the **Comprehensive Dangerous Drugs Act of 2002**

Unlawful Activities

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 (PD 1602)
7. Piracy on the high seas (RPC & PD 532)

Unlawful Activities

- 8. Qualified Theft under Art. 310, RPC
- 9. Swindling under Art. 315, RPC
- 10. Smuggling under RA 455 & 1937
- 11. Violations of Electronic Commerce Act of 2000

Unlawful Activities

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 that are punishable under the penal laws of other countries.

Functions



- Issue orders addressed to the the appropriate supervising authority (BSP, SEC, IC) or the covered institution to determine the true identity of the owner of any monetary instrument/property subject of a covered transaction report or suspicious transaction report or request for assistance from a foreign state, or believed by the AMLC, on the basis of substantial evidence, to be representing, involving, or related to the proceeds of an unlawful activity.

Functions

- Cause the filing of complaints with the department of justice or the ombudsman for the prosecution of money laundering offenses



Jurisdiction Over Money Laundering Cases

- *All cases on money laundering
- *Preliminary Investigation – the Department of Justice or **the Ombudsman, as the case may be.**
- *Trial – the Regional Trial Courts or the Sandiganbayan, as the case may be.

Prosecution of Money Laundering Cases

- Any person may be charged with and convicted of both the offense of money laundering (subject offense) and the unlawful activity (predicate offense)
- Any proceeding relating to the unlawful activity shall be given precedence over the prosecution of any offense or violation under R.A. No. 9160 without prejudice to the freezing and other legal remedies.

Prosecution of Money Laundering Cases

Rule 6.5 of the IRRs provides 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.”

Prosecution of Money Laundering Cases

Rule 6.6. further provides that “All the elements of every money laundering offense 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.”

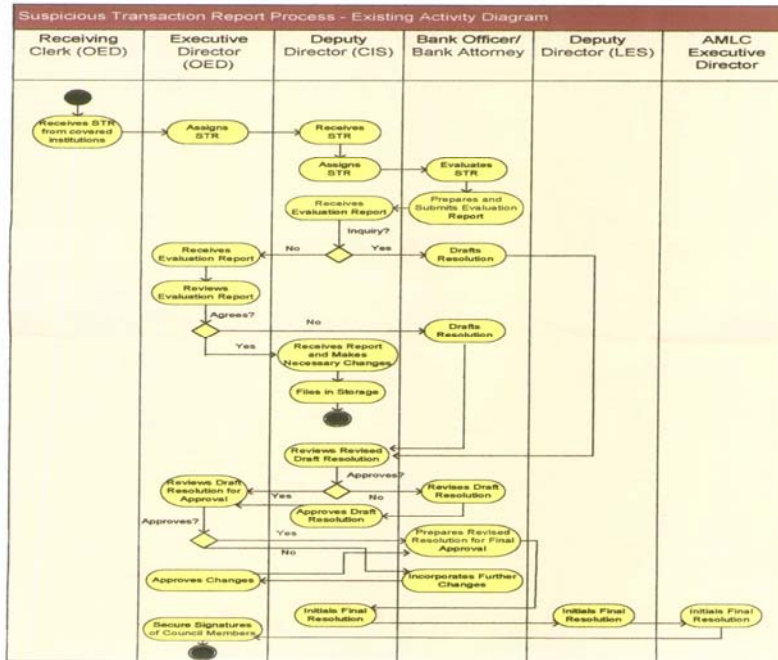
Prosecution of Money Laundering Cases

Rule 6.7 clearly states that “No element of the unlawful activity, however, including the identity of the perpetrators and the details of the actual commission of the unlawful activity need be established by proof beyond reasonable doubt. The elements of the offense of money laundering are separate and distinct from the elements of the felony or offense constituting the unlawful activity.”


Functions




- Investigate suspicious transactions and covered transactions deemed suspicious after an investigation by the AMLC, money-laundering activities, and other violations of the AMLA.



Functions



- 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.




Functions

- 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 or investments are related to an unlawful activity.
- No court order is necessary in cases involving kidnapping for ransom, narcotic offenses, hijacking, destructive arson and murder, including those committed against non-combatant persons and similar targets.



Functions

- Apply before the Court of Appeals, *ex parte*, for the freezing of any monetary instrument/ property alleged to be the proceeds of any unlawful activity as defined in the AMLA.

Functions

- Institute civil forfeiture proceedings and all other remedial proceedings through the office of the solicitor general.
- A.M. NO. 05-11-04-SC (effective Dec. 15, 2005)
- Rule of Procedure in cases of civil forfeiture, asset preservation, and freezing of monetary instruments, property or proceeds representing, involving or relating to an unlawful activity or money laundering offense
- Supreme Court designates AML courts

Functions

- Implement such measures as may be necessary and justified to counteract money laundering.

Functions

- Receive and take action in respect of any request for assistance from foreign states in their own anti-money laundering operations.

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

Assist in the investigation and prosecution of money laundering offenses

AMLC may execute, or refuse to execute informing the foreign state of the valid ground for not executing or the delay

Based on principles of mutuality and reciprocity

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

Assistance includes :

1. Tracking down, freezing restraining and seizing of proceeds of unlawful activity
2. Giving information needed within the procedures laid down by the AMLA

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

3. Applying for an order of forfeiture of any monetary instrument or property with the court

Request must be with an authenticated copy of the court order in the requesting State ordering the forfeiture

A certification or an affidavit of a competent officer of the requesting State that the order of forfeiture and conviction are final and that no further appeals lie

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

- a. Must confirm that an investigation or prosecution for money laundering or a conviction for money laundering
- b. State the grounds for investigation or prosecution or the details of conviction
- c. Sufficient particulars as to the identity of the person

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

- d. Particulars to identify any financial institution believed to have the document, information, material or object which may be of assistance
- e. Ask from the financial institution
- f. Specify the manner in which and to whom the information, etc., is to be produced

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

- g. Particulars necessary for the issuance by the court of the writs, orders or processes needed by the requesting State
- h. Contain such information as may assist in the execution of the request

REQUESTS FOR ASSISTANCE FROM A FOREIGN STATE

- Limitations-
- Granting the request contravenes the Philippine constitution
- Execution to prejudice the Philippine national interest unless there is a treaty between the Philippines and the requesting party relating to the provision of assistance in relation to money laundering

MEMORANDUM OF UNDERSTANDING WITH AN EGMONT FIU

- APPROXIMATELY 100 FIU MEMBERS OF EGMONT
- Korean FIU (KoFiu)
- Bank Negara Malaysia (BNM)
- Indonesian Financial Transaction Reports and Analysis Center (INTRAC)

MEMORANDUM OF UNDERSTANDING WITH AN EGMONT FIU

- AMLO OF THAILAND
- Palau FIU
- Australian Transaction Reports and Analysis Center (Austrac)
- US Financial Crimes Enforcement Network
- Money Laundering Prevention Center of Taiwan
- Peruvian FIU (Peru)

Functions

- Develop educational programs on the pernicious effects of money laundering, the methods and techniques used in money laundering operations, the viable means of preventing money laundering and the effective ways of prosecuting and punishing offenders.



Memorandum of Understanding

- Criminal Investigation and Detection Group (CIDG) of the PNP
- Department of Justice (DOJ)
- Philippine Center on Transnational Crime (PCTC/Interpol Manila)
- Philippine Drug Enforcement Agency (PDEA)
- PNP Task Force “Sanglahi”

Memorandum of Understanding

- **Office of the Ombudsman**
- National Intelligence Coordinating Agency (NICA)
- Presidential Anti-Graft Commission (PAGC)
- Police Anti-Crime and Emergency Response (PACER)
- Bangko Sentral ng Pilipinas (BSP)

PUBLIC SECTOR COOPERATION

National Law Enforcement Coordinating Committee (NALECC)

- composed of approximately 58 agencies
- RLECCs and NALECC sub-committees
- AMLC Executive Director chairs- Sub-committee on Anti-Money Laundering/Combating the financing of terrorism
- AML desks in the various relevant LEAs
- detailees

PRIVATE SECTOR COOPERATION

- Bankers Association of the Philippines
- Association of Bank Compliance Officers of the Philippines
- Philippine Association of Securities Brokers and Dealers
- Philippine Life Insurance Association
- - are members of the Financial Sector Liaison Committee

OBLIGATIONS OF FINANCIAL INSTITUTIONS

- Customer identification and due diligence
- Record-keeping
- Reporting of suspicious and covered transactions
- Training

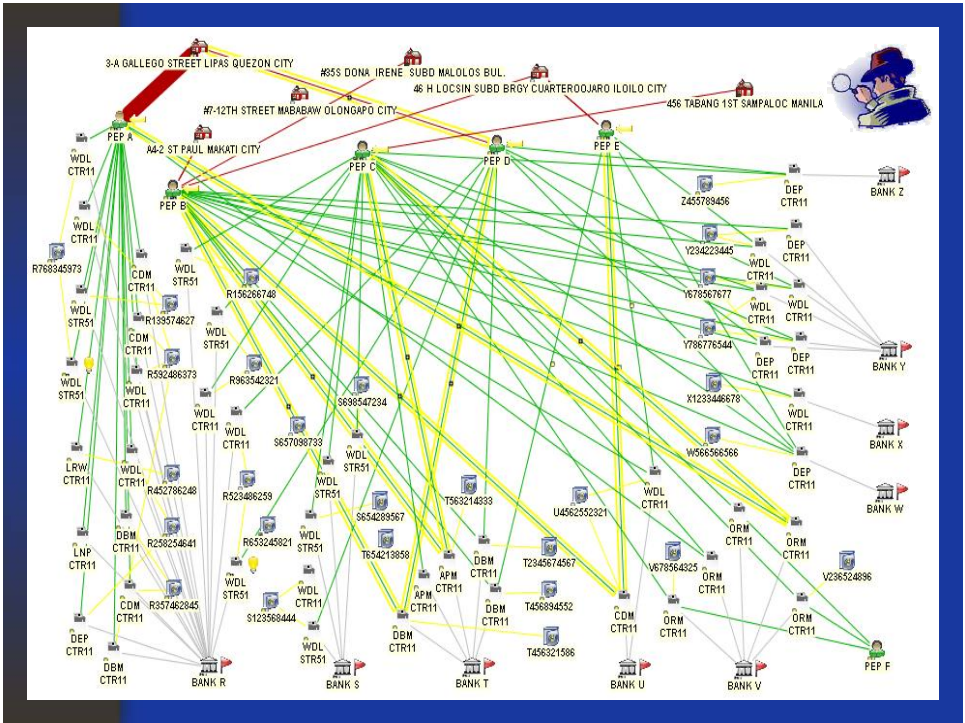
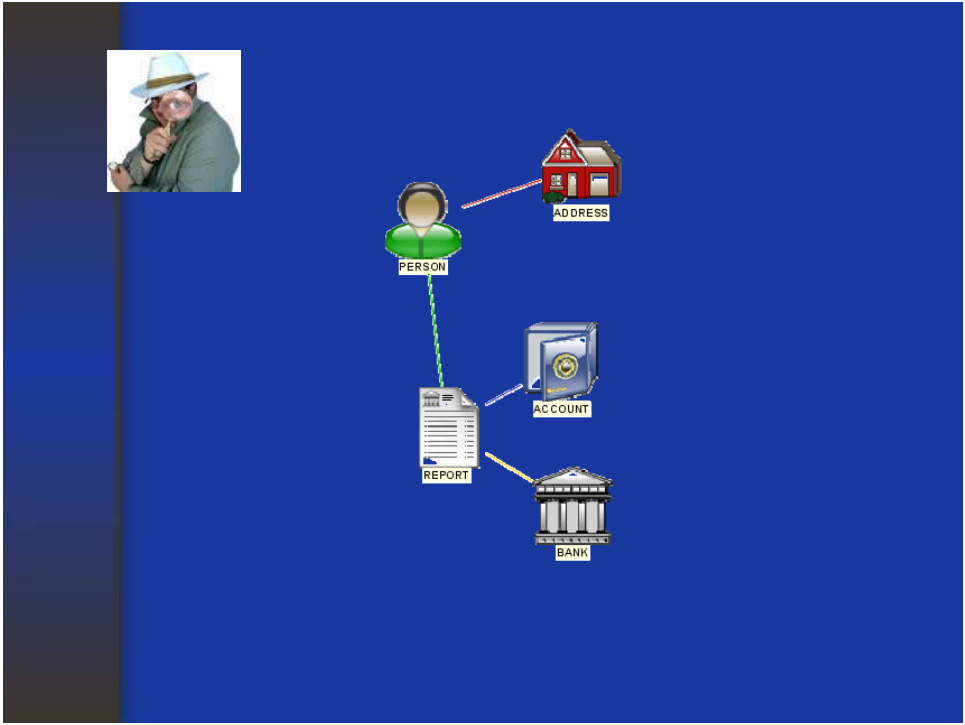
Functions

- Impose administrative sanctions for the violation of laws, rules, regulations and orders and resolutions issued pursuant thereto.

CASE STUDY

OPERATION PEP AND FAMILY





THANKS