

REPUBLIC OF THE PHILIPPINES
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
First Regular Session



House Bill No. 6174

Introduced by Hon. Junie E. Cua
Lone District, Quirino

EXPLANATORY NOTE

Pursuant to the membership rules of the Asia Pacific Group on Money Laundering (APG), members shall undergo a mutual peer review system to determine levels of compliance with international anti-money laundering and combating the financing of terrorism (AML/CFT) standards. These peer reviews are referred to as “mutual evaluations” (ME).

The ME, assess as a whole, a jurisdiction’s AML/CFT system. This includes the legal framework addressing money laundering (ML), terrorism financing (TF), proliferation financing of weapons of mass destruction (PF), and the framework for supervision of financial institutions and designated non-financial businesses and professions (DNFBPs). The ME will also look into the criminal justice system, from investigation to prosecution to conviction and confiscation of the crimes of ML, TF, PF including predicate crimes (i.e. terrorism, drug trafficking, corruption, tax crimes, fraud, environmental crimes, human trafficking, etc.).

The Philippines has undergone two (2) MEs, in 2003 and in 2008, and recently, we have undergone the Third Round of Mutual Evaluation (ME) process which was conducted in 2018 – 2019. On 22 August 2019, the 3rd Philippine Mutual Evaluation Report (MER) was adopted by the Asia Pacific Group on Money Laundering (APG) and was published in its website last 24 October 2019. The MER embodies the results Mutual Evaluation.

Based on the MER ratings, the Philippines is placed under the enhanced expedited follow-up of the APG and meets the referral criteria¹ for the International Cooperation Review Group² (ICRG). Members who meet the ICRG referral criteria enter a twelve (12) month observation period, which also provides an opportunity for the jurisdiction to remedy

¹ The Philippines is placed under enhanced expedited follow-up and meets the referral criteria for the ICRG for having been rated low or moderate level of effectiveness for ten (10) out of the eleven (11) Immediate Outcomes.

² The ICRG, which is essentially the “grey list”, is a mechanism to identify and respond to jurisdictions with strategic AML/CFT deficiencies that pose a risk to the international financial system.

the identified shortcomings in the MER. In the case of the Philippines, the 12-month period started in October 2019, and will end in October 2020.

Within the 12-month period, it is critical that we address deficiencies for key FATF Recommendations and demonstrate positive and tangible progress towards effectiveness for all Immediate Outcomes rated as low/moderate, in order to avoid referral to the ICRG. This includes the passage of laws and regulations to address deficiencies in the legal framework, and operational enhancements (i.e. investigation and prosecution, confiscation of proceeds of crime, supervision, etc.) to improve effectiveness of the system.

Referral to ICRG or Grey-Listing has significant negative impact on the country's economy as a whole. This includes public identification by the FATF that the Philippines has strategic deficiencies. Particularly, the European Union (EU) will require its members to immediately impose enhanced due diligence (EDD) on Filipino nationals and businesses transacting through EU channels. This also means higher costs of doing business for those individuals and entities in Europe which could result in de-banking or refused transactions. If the Philippines will not pass the 12-month observation period, it will be automatically referred to the ICRG or Grey-Listed. Considering the impact of grey-listing to our country, it is critical that all relevant agencies participate in this endeavor and strive to achieve positive and tangible progress on the implementation of the MER Recommended Actions.

At the end of the 12-month period, the Philippines will submit a comprehensive progress report on the level of implementation of the MER Recommended Actions. The Asia-Pacific Joint Group (AP-JG)³ will evaluate the progress report, and interview relevant government authorities regarding the details of progress made. The AMLC has developed an Implementation Plan, based on the MER Recommended Actions, to guide the relevant agencies in addressing the identified deficiencies in the MER.

The Implementation Plan attempts to identify "key" RAs which should be prioritized, the immediate outcomes sought to be achieved, and the type of action that needs to be undertaken. The AP-JG will focus their review on these "key" RAs, and determine whether the Philippines has demonstrated positive and tangible progress towards effectiveness. The AMLC Secretariat intends to further consult the APG Secretariat and/or a consultant to objectively assess the "key" RAs.

The type of action identified in the Implementation Plan is classified as: a) Legislative Action; b) Regulatory/Agency Issuance; c) Supervisory Action; d) Risk Assessment; e) Operational Enhancement; f) Organizational Restructuring; and g) Capacity Building/Outreach. The plan further identifies corresponding recommended outputs to address the MER RAs, the agencies responsible and the timeline for implementation.

To implement plan on legislative action the following amendments to Republic Act No. 9160, as amended have to be introduced:

³ The AP-JG is responsible in preparing a Post Observation Period Report (POPR) containing its assessment of the country's progress and recommendations on whether the Philippines has demonstrated positive and tangible progress towards effectiveness.

- a) Inclusion of real estate agents as covered persons;
- b) Inclusion of tax crimes and violation of the Strategic Trade Management Act which indirectly includes proliferation of weapons of mass destruction as predicate offenses to money laundering;
- c) Enhancement of the investigative powers of the AMLC (i.e. use of investigative techniques, subpoena power);
- d) Authority of the AMLC to implement targeted financial sanctions on proliferation financing;
- e) Prohibition on the issuance of injunctive relief against freeze orders and forfeiture proceedings; and
- f) Retention of portion of forfeited assets.

In view of the foregoing and the deadline by which we have to comply with the recommendations, immediate approval of this bill is earnestly sought.



JUNE E. CUA

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AN ACT
TO FURTHER STRENGTHEN THE ANTI-MONEY LAUNDERING LAW,
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9160, OTHERWISE KNOWN AS
THE ANTI-MONEY LAUNDERING ACT OF 2001, AS AMENDED,
AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 2 of Republic Act No. 9160, as amended, is hereby amended to read as follows:

“SEC 2. *Declaration of Policy.* It is hereby declared 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. Consistent with its foreign policy, the State shall extend cooperation in transnational investigations and prosecutions of persons involved in money laundering activities wherever committed, AND ASSIST THE UNITED NATIONS SECURITY COUNCIL IN THE IMPLEMENTATION OF ITS RESOLUTIONS INVOLVING TARGETED FINANCIAL SANCTIONS RELATED TO THE FINANCING OF THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION.”

SECTION 2. Section 3(a) of the same Act is also amended by inserting a new paragraph (9), as follows:

“(a) “Covered persons”, natural or juridical refer to:

“x x x

“(9) REAL ESTATE DEVELOPERS AND BROKERS.”

SECTION 3. Section 3(b) of the same Act is hereby further amended by inserting a new paragraph, as follows:

“(b) “Covered transaction” x x x.

"FOR COVERED PERSONS UNDER SECTION 3(a)(9), A SINGLE CASH TRANSACTION INVOLVING AN AMOUNT IN EXCESS OF ONE MILLION PESOS (P1,000,000.00)."

SECTION 4. Section 3 of the same Act is hereby further amended by inserting new paragraphs (m) and (n), as follows:

"(m) For purposes of covered persons under Section 3(a)(9), the following terms are hereby defined as follows:

"Real estate developer" refers to any natural or juridical person engaged in the business of developing real estate development project for his/her or its own account and offering them for sale or lease.

"Real estate broker" refers to a duly registered and licensed natural person who, for a professional fee, commission or other valuable consideration, acts as an agent of a party in a real estate transaction to offer, advertise, solicit, list, promote, mediate, negotiate or effect the meeting of the minds on the sale, purchase, exchange, mortgage, lease or joint venture, or other similar transactions on real estate or any interest therein.

"(n) targeted financial sanctions" refers to both asset freezing and prohibition to prevent funds or other assets from being made available, directly or indirectly, for the benefit of any individual, natural or legal persons or entity designated pursuant to relevant security council resolutions."

SECTION 5. Section 3(i) of the same Act is hereby further amended by inserting new paragraphs (34) and (35), as follows:

"(33) Fraudulent practices and other violations under Republic Act No. 8799, otherwise known as the Securities Regulation Code of 2000; [and]

" (34) VIOLATION OF SECTION 19 (a)(3) OF REPUBLIC ACT NO. 10697, OTHERWISE KNOWN AS THE STRATEGIC TRADE MANAGEMENT ACT IN RELATION TO PROLIFERATION OF WEAPONS OF MASS DESTRUCTION AND ITS FINANCING.

-"(35) VIOLATIONS OF SECTION 254, 255, 257, 258, 260, 261, 262, 263, 264, 264-A, 264-B, 265 AND 265-A OF CHAPTER II, TITLE X OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED IF THE FINAL ASSESSMENT IS IN EXCESS OF TEN MILLION PESOS (P10,000,000.00) ; AND"

SECTION 6. Section 3(i) of the same Act is hereby renumbered, as follows:

“[(34)] **(36)** Felonies and offenses of a similar nature that are punishable under the penal laws of other counties.”

SECTION 7. Section 7 of the same Act is hereby amended to read as follows:

“**SEC.7.** Creation of Anti-Money Laundering Council (AMLC). – The Anti-Money Laundering Council is hereby created and shall be composed of the Governor of the Bangko Sentral ng Pilipinas as Chairman, the Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission, as members. The AMLC shall act unanimously in the discharge of its functions as defined hereunder:

“(1) to require, receive **AND ANALYZE** covered or suspicious transactions reports from covered persons;

“x x x;

“(5) to investigate suspicious transactions and covered transactions deemed suspicious after **DETERMINATION** by AMLC, money laundering activities, and other violations of this Act. **IN THE CONDUCT OF ITS INVESTIGATIONS, THE AMLC MAY USE INVESTIGATION TECHNIQUES AVAILABLE TO OTHER LAW ENFORCEMENT AGENCIES, SUCH AS, BUT NOT LIMITED TO THE CONDUCT OF SEARCHES AND SEIZURES, WITNESS INTERVIEW, SURVEILLANCE, AND UNDERCOVER INVESTIGATION. AMLC INVESTIGATIONS SHALL BE KEPT STRICTLY CONFIDENTIAL FROM THE PUBLIC.**

“x x x;

“(12)x x x [.];

“(13) **TO SUBPOENA ANY PERSON AND COMPEL HIS ATTENDANCE, TO PRODUCE INFORMATION, BOOKS, PAPERS, DOCUMENTS, DATA, AND OTHER RELEVANT INFORMATION OR OBJECTS; OR TO GIVE STATEMENT, UNDER OATH, IN RELATION TO ITS INVESTIGATIVE POWERS. THOSE WHO REFUSE THE SUBPOENA WITHOUT JUSTIFIABLE CAUSE, OR WHO REFUSE TO SUPPLY THE AMLC WITH DATA REQUESTED OR REQUIRED, SHALL BE SUBJECT TO PUNISHMENT FOR CONTEMPT IN ACCORDANCE WITH THE PROVISIONS OF THE RULES OF COURT; AND TO ADMINISTER OATH OR AFFIRMATION TO ANY PERSON APPEARING IN THE COURSE OF INVESTIGATION OR ADMINISTRATIVE PROCEEDINGS; AND**

“(14) **TO IMPLEMENT TARGETED FINANCIAL SANCTIONS,**

INCLUDING EX PARTE FREEZE, WITHOUT DELAY, AGAINST THE FUNDS AND OTHER ASSETS OF INDIVIDUALS OR ENTITIES DESIGNATED AND LISTED UNDER UNITED NATIONS SECURITY COUNCIL RESOLUTION NUMBERS 1718 (2006) AND 2231 (2015) AND THEIR SUCCESSOR RESOLUTIONS AS WELL AS ANY BINDING RESOLUTION OF THE SECURITY COUNCIL RELATING TO THE PREVENTION, SUPPRESSION AND DISRUPTION OF PROLIFERATION OF WEAPONS OF MASS DESTRUCTION AND ITS FINANCING.”

SECTION 8. Section 10 of the same Act is hereby further amended by inserting a new paragraph to read as follows:

“Section 10. Freezing Monetary Instrument or Property. –

“(A) Upon a verified *ex parte* petition by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, the Court of Appeals may issue a freeze order which shall be effective immediately, for a period of twenty (20) days. Within the twenty (20)-day period, the Court of Appeals shall conduct a summary hearing, with notice to the parties, to determine whether or not to modify or lift the freeze order, or extend its effectiveness. The total period of the freeze order issued by the Court of Appeals under this provision shall not exceed six (6) months. This is without prejudice to an asset preservation order that the Regional Trial Court having jurisdiction over the appropriate anti-money laundering case or civil forfeiture case may issue on the same account depending on the circumstances of the case, where the Court of Appeals will remand the case and its records; *Provided*, That if there is no case filed against a person whose account has been frozen within the period determined by the Court of Appeals, not exceeding six (6) months, the freeze order shall be deemed *ipso facto* lifted; *Provided, further*, That this new rule shall not apply to pending cases in the courts. In any case, the court should act on the petition to freeze within twenty-four (24) hours from filing of the petition. If the application is filed a day before a nonworking day, the computation of the twenty-four (24)-hour period shall exclude the nonworking days.

The freeze order or asset preservation order issued under this Act shall be limited only to the amount of cash or monetary instrument or value of property that court finds there is probable cause to be considered as proceeds of a predicate offense, and the freeze order or asset preservation order shall not apply to amounts in the same account in excess of the amount or value of the proceeds of the predicate offense.

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 freeze order.

No court shall issue a temporary restraining order or a writ of injunction against any freeze order, except the Supreme Court.

“(B) FOR PURPOSES OF IMPLEMENTING TARGETED FINANCIAL SANCTIONS, AS PROVIDED UNDER SECTION 7, PAR. 14, THE AMLC SHALL HAVE THE POWER TO ISSUE, EX PARTE, AN ORDER TO

FREEZE WITHOUT DELAY.

THE FREEZE ORDER SHALL BE EFFECTIVE UNTIL THE BASIS FOR ITS ISSUANCE SHALL HAVE BEEN LIFTED. DURING THE EFFECTIVITY OF THE FREEZE ORDER, THE AGGRIEVED PARTY MAY, WITHIN TWENTY (20) DAYS FROM ISSUANCE, FILE WITH THE COURT OF APPEALS A PETITION TO DETERMINE THE BASIS OF THE FREEZE ORDER ACCORDING TO THE PRINCIPLE OF EFFECTIVE JUDICIAL PROTECTION.

THE AMLC, IF CIRCUMSTANCES WARRANTS, MAY INITIATE A CIVIL FORFEITURE PROCEEDINGS TO PRESERVE THE ASSETS AND TO PROTECT IT FROM DISSIPATION.

NO COURT SHALL ISSUE A TEMPORARY RESTRAINING ORDER OR A WRIT OF INJUNCTION AGAINST THE FREEZE ORDER, EXCEPT THE COURT OF APPEALS OR THE SUPREME COURT.”

SECTION 9. Section 12 of the same Act shall have a new paragraph (d) to be read as follows:

“SEC. 12. Forfeiture Provisions. — X x x.

“(d) RETENTION OF FORFEITED ASSETS WITH FINALITY. — THE AMLC SHALL RETAIN FIFTY PERCENT (50%) OF THE TOTAL ASSETS FORFEITED.-

THE RETAINED AMOUNT SHALL BE UTILIZED BY THE AMLC FOR MAINTENANCE AND OTHER OPERATING EXPENSES.

X x x”

SECTION 10. Section 20 of the same Act is hereby deleted.

“[SECTION 20. Non-intervention in the Bureau of Internal Revenue (BIR) Operations. – Nothing contained in this Act nor in related antecedent laws or existing agreements shall be construed to allow the AMLC to participate in any manner in the operations of the BIR.]”

SECTION 11. Section 12 of the same Act is hereby amended inserting a new paragraph to read as follows:

“(a) Civil Forfeiture – X x x.

“NO COURT SHALL ISSUE A TEMPORARY RESTRAINING ORDER OR A WRIT OF INJUNCTION AGAINST ANY PROVISIONAL ASSET PRESERVATION ORDER OR ASSET PRESERVATION ORDER, EXCEPT THE COURT OF APPEALS OR THE SUPREME COURT.”

SECTION 12. Implementing Rules and Regulations - The AMLC shall within ninety (90) days from the effectivity of this Act issue the necessary rules and regulations.

SECTION 13. Separability Clause. - If any provision or section of this Act is held to be unconstitutional or invalid, the other provisions or sections hereof, which are not affected thereby shall continue to be in full force and effect.

SECTION 14. Repealing Clause. - All provisions of existing laws, orders, rules and regulations, or parts thereof which are in conflict or inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly; Provided, that all provisions of Republic Act No. 9160, as amended, which are not inconsistent with this Act are hereby adopted.

SECTION 15. Effectivity. -This Act shall take effect immediately after the completion of its publication in the *Official Gazette* or in a newspaper of general circulation.