

BANKING LAWS OF THE PHILIPPINES

THE LAWS ON SECRECY OF BANK DEPOSITS

A LEGAL PRIMER



BANGKO SENTRAL NG PILIPINAS

Office of the General Counsel and Legal Services

THE LAWS ON SECRECY OF BANK DEPOSITS

INTRODUCTION

The *Bangko Sentral* has to date, published two books on banking laws. The first contains annotations to the New Central Bank Act (*Rep. Act No. 7653*) and the second annotates the General Banking Law (*Rep. Act No. 8791*). The vision is to publish a series of books that will cover the entire range of banking laws and create a distinct repository of authoritative sources that will elucidate the academe, bankers, practitioners and the judiciary, on the intricacies of banking laws. The series of books is written by lawyers from the Office of the General Counsel and Legal Services (OGCLS). Book Three – Special Banking Laws – is in the works and will be released this year.

In the light of current events, the relevance, enforcement and application of bank secrecy laws, such as, Law on the Secrecy of Bank Deposits (*Rep. Act No. 1405*) and Foreign Currency Deposit Act (*Rep. Act No. 6426*), have come to fore. Indeed, as necessity is the mother of all invention, necessity prompted the OGCLS to carve out from Book Three the discussions on bank secrecy laws, and to edit, condense and make them available as a Primer.

Primers are understood to be introductory materials that cover the basic elements of a subject. They are preparatory sources that serve as introductions to a main material. It is in this sense that this Primer on Bank Secrecy Laws finds relevance.

First, this Primer, which is a collaborative effort of lawyers from the OGCLS and Office of Special Investigation, is meant to be an easy read, to guide one through the fundamentals of bank secrecy laws and related

jurisprudence. It is envisioned to be a mind map, providing one with an overview of bank secrecy laws.

Second, it provides the reader with a “sneak peak” and a “preview” of Book Three, giving one an idea of the relevance of the final book in the series and piquing one’s academic interest for the more comprehensive explanations found therein.

In this regard, the purpose of this primer is simply to offer an overview and is neither meant to be a reference document nor a substitute for reading the main text of the laws and relevant jurisprudence.

Thus, on behalf of the Editorial Board and collaborating authors of Book Three, it is hoped that this primer will enhance the readers’ knowledge and awareness of the country’s bank secrecy laws.

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AN ACT PROHIBITING DISCLOSURE OF OR INQUIRY INTO DEPOSITS WITH ANY BANKING INSTITUTION (*REPUBLIC ACT NO. 1405*)

Absolute Confidentiality of Bank Deposits and Investments in Government Bonds

All deposits of whatever nature in banks or banking institutions in the Philippines and investments in government bonds are absolutely confidential in nature. (*Sec. 2, Rep. Act No. 1405*)

- (i) ***Deposits*** refer to money or funds placed with a bank that can be withdrawn on the depositor's order or demand, such as deposit accounts in the form of savings, current and time deposits.¹ Deposits are characterized as being in the nature of a simple loan. The placing of deposits in a bank creates a creditor-debtor relationship between the depositor and the bank. As such, the bank, being the debtor, has the obligation to pay a certain sum of money to the depositor, being the creditor.²
- (ii) ***Investments in Government Bonds*** refer to investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities. Government bonds are debt securities which are unconditional obligations of the State, and backed by its full taxing power. Government bonds include treasury bills, treasury notes, retail treasury bonds, dollar linked peso notes, and other risk-free bonds.³

The General Banking Law prohibits bank directors, officers, employees or agents from disclosing to any unauthorized person, without order of a competent court,

any information relative to funds or properties belonging to private individuals, corporations, or any other entity in the custody of the bank. (*Sec. 55[b], Rep. Act No. 8791*) The Thrift Banks Act and the Rural Banks Act likewise prohibit any bank officer, employee or agent from disclosing any information on such funds or properties. (*Sec. 21[a][2], Rep. Act No. 7906 & Sec. 26[a][2], Rep. Act No. 7353*)

Prohibited Acts and Persons Liable

The following are liable under this law:

- (i) Any person or government official who, or any government bureau or office that, examines, inquires or looks into a bank deposit or government bond investment in any of the instances not allowed in Section 2;
- (ii) Any official or employee of a banking institution who makes a disclosure concerning bank deposits to another in any instance not allowed by law (*Sec. 3, Rep. Act No. 1405*); and
- (iii) Any person who commits a violation of any of the provisions of the law (*Sec. 5, Rep. Act No. 1405*).

Any bank official, director, employee or agent who discloses information relative to funds or properties in the custody of the bank may also be held liable under the applicable provisions of the General Banking Law, Thrift Banks Act and Rural Banks Act.

Instances when Confidentiality of Bank Deposits is Not Absolute

Bank deposits and investments in government bonds may be examined, inquired or looked into under limited exceptions in Republic Act No. 1405 and in other laws.

(i) **Exceptions under the Law on Secrecy of Bank Deposits**

Section 2 of Republic Act No. 1405 provides that bank deposits and government bond investments may be examined, inquired and looked into in the following instances:

- (a) Upon written permission or consent in writing by the depositor. For consent to be valid, it should be made knowingly, voluntarily and with sufficient awareness of the relevant circumstances and likely consequences.⁴
- (b) In cases of impeachment of the President, Vice President, members of the Supreme Court, members of the Constitutional Commission (Commission on Elections, Civil Service Commission and Commission on Audit) and the Ombudsman for culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes or betrayal of public trust. (*Art. XI, Sec. 2, 1987 Philippine Constitution*)
- (c) Upon order of a competent court in cases of bribery⁵ or dereliction of duty of public officials.⁶
- (d) In cases where the money deposited or invested is the subject matter of the litigation. The money deposited should be the very thing in dispute. (*Mellon Bank, N.A. v. Magsino, 190 S.C.R.A. 633 [1990]*)

(ii) **Exceptions under Other Laws**

Bank deposits and investments may be examined, inquired or looked into as provided for under other laws in the following instances:

- (a) The Ombudsman has the power to issue *subpoena* and *subpoena duces tecum*, take testimony in any investigation or inquiry, as well as examine and access bank accounts and records.⁷ The power of the Ombudsman to *subpoena* deposit information of a government official may be exercised when the following conditions concur:
 - (1) there must be a case pending before a court of competent jurisdiction;
 - (2) the account must be clearly identified;
 - (3) the inspection must be limited to the subject matter of the pending case; and
 - (4) the bank personnel and the account holder must be notified to be present during the inspection. (*Marquez v. Desierto*, 359 S.C.R.A. 772 [2001])
- (b) Bank deposits of a public official, his spouse and unmarried children may be taken into consideration in the enforcement of Section 8 of The Anti-Graft and Corrupt Practices Act (*Rep. Act No. 3019*).⁸
- (c) Directors, officers, stockholders and related interests who contract a loan or any form of financial accommodation with their bank or related bank are required to execute a written waiver of secrecy of deposits

pursuant to The New Central Bank Act. (*Sec. 26, Rep. Act No. 7653*)

- (d) The Commissioner of Internal Revenue is authorized to inquire into bank deposit accounts in relation to:
 - (1) an application for compromise of tax liability or a determination of a decedent's gross estate under The National Internal Revenue Code (*Rep. Act No. 8424, as amended by Rep. Act No. 10021*); and
 - (2) a request for tax information of specific⁹ taxpayers made by a foreign tax authority pursuant to a tax treaty under The Exchange of Information on Tax Matters Act of 2009 (*Rep. Act No. 8424, as amended by Rep. Act No. 10021*).
- (e) The Anti-Money Laundering Council may be authorized to examine and inquire into bank deposits or investments with banks or non-bank financial institutions –
 - (1) with court order, when there is probable cause that the deposits or investments are related to an unlawful activity or a money laundering offense (*Secs. 3[i] and 4 of Rep. Act No. 9160*); and
 - (2) without need of court order, when probable cause exists that a particular deposit or investment with any banking institution is related to certain predicate crimes, such as kidnapping

for ransom, violation of the Comprehensive Dangerous Drugs Act, hijacking and other violations under Republic Act No. 6235¹⁰, destructive arson and murder (*Sec. 11 of Republic Act No. 9160*¹¹).

- (f) The *Bangko Sentral* is authorized to –
 - (1) inquire into or examine bank deposits or investments in the course of a periodic or special examination to ensure compliance with The Anti-Money Laundering Law, in accordance with the rule of examination of the *Bangko Sentral* (*Sec. 11, Rep. Act No. 9160, as amended*); and
 - (2) conduct annual testing which is limited to the determination of the existence and true identity of the owners of numbered accounts (*Sec. 9, Rep. Act No. 9160, as amended*¹²).
- (g) The Philippine Deposit Insurance Commission and the *Bangko Sentral* may inquire into bank deposits when there is a finding of unsafe or unsound banking practices. (*Sec. 8, Rep. Act No. 3591, as amended*)
- (h) The Court of Appeals, designated as a special court, may issue an order authorizing law enforcement officers to examine and gather information on the deposits, placements, trust accounts, assets and records in a bank or financial institution in connection with anti-terrorism case. (*Rep. Act No. 9372*¹³)

- (i) The Commission on Audit is authorized to examine and audit government deposits pertaining to the revenue and receipts of, and expenditures or uses of funds and properties, owned or held in trust by, or pertaining to, the Government or any of its subdivisions, agencies or instrumentalities, including government-owned and controlled corporations with original charters. (*See Art. IX-D, 1987 Constitution and Pres. Dec. No. 1445*)
- (j) The Presidential Commission on Good Government, in the conduct of its investigations to recover ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, may issue *subpoenas* requiring the attendance and testimony of witnesses and/or the production of books, papers, contracts, records, statement of accounts and other documents. (Sec. 3 [e], *Exec. Order No. 1 [1986]*)¹⁴

(iii) **Jurisprudence Interpreting Exceptions**

- (a) Plunder is analogous to bribery. The exception in the law that is applicable in bribery also applies to plunder. The overt or criminal acts as described in Section 1(d) of Republic Act No. 7080 would make the similarity between plunder and bribery even more pronounced since bribery is essentially included among these criminal acts. (*Ejercito v. Sandiganbayan*, 509 S.C.R.A. 190 [2006])

- (b) Cases of unexplained wealth are similar to cases of bribery or dereliction of duty and no reason is seen why these two classes of cases cannot be excepted from the rule making bank deposits confidential. (*Phil. National Bank v. Gancayco*, 122 Phil. 503 [1965])

Authorized Disclosures

Disclosures by authorized and responsible bank officials are allowed in the following instances:

- (i) reporting of unclaimed balances to the Treasurer of the Philippines (*Secs. 1 & 2, Act No. 3936*);
- (ii) turn-over to the Commissioner of Internal Revenue of the amount in bank accounts as may be sufficient to satisfy the writ of garnishment issued to collect delinquent taxes (*Secs. 205 & 208, Rep. Act No. 8424*); and
- (iii) submission of report, and turn-over to, the court officer or executing sheriff of garnished amounts pursuant to a writ of garnishment in satisfaction of a judgment (*Sec. 9[c], Rule 39, Rules of Court; See China Banking Corporation v. Ortega*, 49 SCRA 355 [1973]).
- (iv) disclosure by a bank officer or employee upon order of the court in connection with a deposit in a closed bank that was used in the perpetration of anomalies. (*Soriano v. Manuzon*, C.A. G.R.-S.P No. 87634¹⁵)

Penalties

Violation of Republic Act No. 1405 will subject the

offender, upon conviction, to the following penalties:

- (i) imprisonment of not more than five years;
- (ii) fine of not more than ₱20,000.00; or
- (iii) both imprisonment and fine.

**FOREIGN CURRENCY DEPOSIT ACT
OF THE PHILIPPINES
(REPUBLIC ACT NO. 6426)**

**Absolute Confidentiality of
Foreign Currency Deposits**

All foreign currency deposits are absolutely confidential and cannot be examined, inquired, or looked into by any person, government official, bureau or office, whether judicial or administrative or legislative, or any other private or public entity. Foreign currency deposits are also exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever. (*Sec. 8, Rep. Act No. 6426*)

Foreign currency deposits refer to funds in foreign currencies which are accepted and held by authorized banks in the regular course of business with the obligation to return an equivalent amount to the owner thereof, with or without interest.¹⁶

Prohibited Acts and Persons Liable

The following are liable under this law:

- (i) Any person or government official who, or any government bureau or office that, examines, inquires or looks into a foreign currency deposit without the written permission of the depositor (*Sec. 8, Rep. Act No. 6426*);
- (ii) Any official or employee of a banking institution who makes a disclosure concerning foreign currency deposits to another, in any instance not allowed by law (*See Sec. 10, Rep. Act No. 6426*);

- (iii) Anyone who shall attach, garnish, or subject the foreign currency deposit to any other order or process of any court, legislative body, government agency or any other administrative body (*Sec. 8, Rep. Act No. 6426*); and
- (iv) Any person who commits a willful violation of any of the provisions of Republic Act No. 6426 or regulation issued by the Monetary Board pursuant to the said law (*Sec. 10, Rep. Act No. 6426*).

Instances when Confidentiality of Foreign Currency Deposits is Not Absolute

Foreign currency deposits may be examined, inquired or looked into under the limited exceptions in Republic Act No. 6426 and in other laws.

- (i) **Exception under The Foreign Currency Deposit Act**

Foreign currency deposits may be examined, inquired or looked into when there is written permission of the depositor.¹⁷

- (ii) **Exceptions under Other Laws**

- (a) Directors, officers, stockholders and related interests who contract a loan or any form of financial accommodation with their bank or related bank are required to execute a written waiver of secrecy of deposits pursuant to The New Central Bank Act. (*Sec. 26, Rep. Act No. 7653*)
- (b) The Commissioner of Internal Revenue is authorized to inquire into bank deposit accounts in relation to:

- (1) an application for compromise of tax liability or a determination of a decedent's gross estate under The National Internal Revenue Code (*Rep. Act No. 8424, as amended by Rep. Act No. 10021*); and
 - (2) a request for tax information of specific¹⁸ taxpayers made by a foreign tax authority pursuant to a tax treaty under The Exchange of Information on Tax Matters Act of 2009 (*Rep. Act No. 8424, as amended by Rep. Act No. 10021*).
- (c) The Anti-Money Laundering Council may be authorized to examine and inquire into bank deposits or investments with banking or non-bank financial institutions –
- (1) with court order, when there is probable cause that the deposits or investments are related to an unlawful activity or a money laundering offense (*Secs. 3(i) and 4 of Rep. Act No. 9160*); and
 - (2) without need of court order, when probable cause exists that a particular deposit or investment with any banking institution is related to certain predicate crimes, such as kidnapping for ransom, violation of the Comprehensive Dangerous Drugs Act, hijacking and other violations under Republic Act No. 6235¹⁹, destructive arson and murder (*Sec. 11 of Republic Act No. 9160*²⁰).

- (d) The *Bangko Sentral* is authorized to –
- (1) inquire into or examine bank deposits and investments in the course of a periodic or special examination to ensure compliance with The Anti-Money Laundering Act, in accordance with the rules of examination of the *Bangko Sentral* (Sec. 11, Rep. Act No. 9160, as amended); and
 - (2) conduct annual testing which is limited to the determination of the existence and true identity of the owners of numbered accounts (Sec. 9, Rep. Act No. 9160, as amended²¹).
- (e) The Philippine Deposit Insurance Commission and the *Bangko Sentral* may inquire into bank deposits when there is a finding of unsafe or unsound banking practices. (Sec. 8, Rep. Act No. 3591, as amended)
- (f) The Commission on Audit is authorized to examine and audit government deposits pertaining to the revenue and receipts of, and expenditures or uses of funds and properties, owned or held in trust by, or pertaining to, the Government or any of its subdivisions, agencies or instrumentalities, including government-owned and controlled corporations with original charters. (See Art. IX-D, 1987 Constitution and Pres. Dec. No. 1445)
- (g) The Presidential Commission on Good Government, in the conduct of its

investigations to recover ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, may issue *subpoenas* requiring the attendance and testimony of witnesses and/or the production of books, papers, contracts, records, statement of accounts and other documents. (Sec. 3 [e], *Exec. Order No. 1 [1986]*)²²

(iii) **Exceptions under Jurisprudence on Grounds of Equity**

(a) Account of a Non-resident Alien

The garnishment of a foreign currency deposit account of a non-resident alien found guilty of raping a minor was allowed on the basis of equity. (*Salvacion v. Central Bank of the Philippines*, 278 S.C.R.A. 27 [1997])

(b) Account of a Co-payee of a Check

A co-payee of a check who filed a suit for recovery of sum of money was considered, in a *pro hac vice* ruling by the Supreme Court, as a depositor in view of the distinctive circumstances of the case. (*China Banking Corporation v. Court of Appeals*, 511 S.C.R.A. 110 [2006])

Penalties

Violation of Republic Act No. 6426 shall subject the offender, upon conviction, to the following penalties:

- (i) imprisonment of not less than one (1) year but not more than five (5) years; or
- (ii) fine of not less than Five Thousand Pesos (₱5,000.00) but not more than Twenty Five Thousand Pesos (₱25,000.00); or
- (iii) both imprisonment and fine.

The following sanctions may also be imposed against a bank or any bank director and officer for violation of the provisions of Republic Act No. 6426 and *Bangko Sentral* regulation issued pursuant to said law:²³

- (i) revocation of the authority of the bank to accept new foreign currency deposits; and
- (ii) administrative sanctions provided under Section 37 of the New Central Bank Act (*Rep. Act No. 7653*), as may be applicable.

**REVISED NON-STOCK SAVINGS AND
LOAN ASSOCIATION ACT OF 1997
(REPUBLIC ACT NO. 8367)**

Non-Stock Savings and Loan Associations (“Associations”) are non-stock, non-profit corporations engaged in the business of accumulating the savings of its members and using such accumulations for loans to members to service the needs of households by providing long-term financing for home-building and development and for personal finance. (*Sec. 3, Rep. Act No. 8367*)

Absolute Confidentiality of Deposits

All deposits of whatever nature with an Association in the Philippines are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office. (*Sec. 6, Rep. Act No. 8367*)

Deposits in an Association are obtained from its members. Membership in an Association shall be confined to a well-defined group of persons. An Association shall not transact business with the public. (*Sec. 4, Rep. Act No. 8367*)

Prohibited Acts and Persons Liable

The following are liable under this law:

- (i) Any person and government official who, or any government bureau or office that, examines, inquires or looks into deposits in the Association in any of the following circumstances:
 - (a) without the written permission of the depositor;

- (b) without a court order pursuant to Section 2 of Republic Act No. 1405; or
 - (c) in any instance not permitted by other laws or jurisprudence.
- (ii) Any official or employee of an Association who makes a disclosure concerning deposits to another, in any instance not allowed by law.
 - (iii) Any person who violates the provisions of Section 6 of Republic Act No. 8367.

Instances when Confidentiality of Deposits is Not Absolute

Deposits in an Association may be examined, inquired or looked into under the following exceptions under Section 6 of Republic Act No. 8367:

- (i) when there is written permission of the depositor;
- (ii) in cases of impeachment;
- (iii) upon order of a competent court in cases of bribery or dereliction of duty of public officials, or
- (iv) in cases where the money deposited or invested is the subject matter of litigation.

Exceptions under Other Laws

Examination or inquiry into deposits with the Association may also be allowed in the following instances –

- (i) The Anti-Money Laundering Council may be authorized to examine and inquire into bank deposits or investments with non-bank financial institutions –

- (a) with court order, when there is probable cause that the deposits or investments are related to an unlawful activity or a money laundering offense (*Secs. 3(i) and 4 of Rep. Act No. 9160*); and
 - (b) without need of court order, when probable cause exists that a particular deposit or investment with any non-bank institution is related to certain predicate crimes, such as kidnapping for ransom, violation of the Comprehensive Dangerous Drugs Act, hijacking and other violations under Republic Act No. 6235²⁴, destructive arson and murder (*Sec. 11 of Republic Act No. 9160*²⁵).
- (ii) The *Bangko Sentral* is authorized to –
 - (a) inquire into or examine any deposits or investments in the course of a periodic or special examination to ensure compliance with The Anti-Money Laundering Law, in accordance with the rule of examination of the *Bangko Sentral* (*Sec. 11, Rep. Act No. 9160, as amended*); and
 - (b) conduct annual testing which is limited to the determination of the existence and true identity of the owners of numbered accounts (*Sec. 9, Rep. Act No. 9160, as amended*).
- (iii) The Court of Appeals, designated as a special court, may issue an order authorizing law enforcement officers to examine and gather information on the deposits, placements, trust accounts, assets and records in a financial institution in connection with anti-terrorism case

under the Human Security Act (*Rep. Act No. 9372*).

Penalties under Rep. Act No. 1405 Applicable

Any official or any employee of an Association shall be punished under Republic Act No. 1405, as amended, for violation of the absolute confidentiality of deposits in an Association. (*Sec. 6, Rep. Act No. 8367*)

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- ¹ THOMAS P. FITCH, *DICTIONARY OF BANKING TERMS* 141 (Barron's Educational Series, 5th ed. 2006); DOJ Op. No. 005, s. 1982, January 8, 1982, citing *Gimbel Bros. v. White* 10 NYS 2d 666; *City of Lincoln v. First National Bank*, 19 NW 2 d 156; *City of Canby v. Bank of Canby*, 257 NW 520. See also Michie, *Banks and Banking* 19 (Vol. 5A, Permanent Edition, 1973).
- ² See *Guingona, Jr., et.al v. The City Fiscal, et.al.*, 128 S.C.R.A. 577 (1984).
- ³ See <http://www.treasury.gov.ph/govsec/aboutsec.html> & <http://invest.cfo.gov.ph/pdf/part1/investment-in-government-bonds-and-securities.pdf>
- ⁴ See *Premiere Development Bank v. Central Surety and Insurance Company, Inc.* 579 S.C.R.A. 359 (2009).
- ⁵ As defined in the Revised Penal Code, Art. 203, 210-211.
- ⁶ As defined in the Revised Penal Code, Art. 204-209.
- ⁷ The Ombudsman Act (Rep. Act No. 6770).
- ⁸ See *Philippine National Bank v. Gancayco*, 122 Phil. 503 (1965).
- ⁹ The word "specific" replaces "Philippine-based" as used in the first set of primers released on April 13, 2012 to accurately cite Rep. Act No. 10021 (2010).
- ¹⁰ An Act Prohibiting Certain Acts Inimical to Civil Aviation, and for other purposes.
- ¹¹ As amended by Rep. Act No. 9194 (2003).
- ¹² See MORB, § X801.1 (2008-App. 52a) (2010).
- ¹³ The Human Security Act.
- ¹⁴ See Op. No. 13, Dep't. of Justice, Feb. 24, 1987.
- ¹⁵ Affirmed by the Supreme Court in Minute Resolution G.R. No. 174944 (2007).
- ¹⁶ See MORFXT, § 45 in relation to § 70 (2011).
- ¹⁷ See MORFXT, § 76 (2011).
- ¹⁸ The word "specific" replaces "Philippine-based" as used in the first set of primers released on April 13, 2012 to accurately cite Rep. Act No. 10021 (2010).
- ¹⁹ An Act Prohibiting Certain Acts Inimical to Civil Aviation, and for other purposes.
- ²⁰ As amended by Rep. Act No. 9194 (2003).
- ²¹ See MORFXT, § 77 (2011).

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- ²² See . Op. No. 13, Dep't. of Justice, Feb. 24, 1987.
- ²³ See MORFXT, § 87 (2011).
- ²⁴ An Act Prohibiting Certain Acts Inimical to Civil Aviation, and for other purposes.
- ²⁵ As amended by Rep. Act No. 9194 (2003).