

# **CORRUPTION AND MONEY-LAUNDERING: THE PHILIPPINE SITUATION**

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## **I. INTRODUCTION**

Money-laundering has become a very serious threat not just in the Philippines but also in almost every country. Criminals have become more creative, ingenious and resourceful in laundering the proceeds of their criminal activities. With the advent of new technology and the fast pace of its updates, anti-money-laundering authorities are now working overtime to keep up with the everchanging trends and doubling their efforts to give more teeth and power to existing laws, rules, regulations and guidelines.

One of the most perennial concerns that governments face is the issue on graft and corruption perpetrated by its officials and employees. Governments do not just stop in securing a conviction of these corrupt officials but would also ensure that the proceeds of these criminal acts are traced, frozen, recovered and forfeited in favour of the government.

The Republic of the Philippines is no exception to this problem. The Philippines has seen several government scandals that involved high-ranking officials involved in multi-million-dollar corruption cases, which eventually lead to uncovering a much bigger and wider web of corruption activities.

The exposé on the corruption scandal involving the Armed Forces of the Philippines gives us a glimpse on how deeply seethed is the problem of corruption. And it surprises us to discover that it is much harder at times in securing a conviction and the eventual civil forfeiture of the criminal proceeds.

## **II. SITUATION**

Looking at the current situation of money-laundering activities will give us a better view and understanding of where corruption and money-laundering stand in the Philippines right now. The Anti-Money-Laundering Council (AMLC) is the Philippines' central government agency tasked to monitor money-laundering activities in the country and mandated to strictly implement and enforce anti-money-laundering laws and regulations. The AMLC was created pursuant to Republic Act No. 9160, otherwise known as the "Anti-Money-Laundering Act of 2001" (AMLA), to protect 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.<sup>1</sup>

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<sup>1</sup> Anti-Money-Laundering Council website, <http://www.amlc.gov.ph/>.

The AMLC is the Philippines' Financial Intelligence Unit (FIU) tasked to implement the Anti-Money-Laundering Act (AMLA), as amended by Republic Act Nos. 9194, 10167, and 10365, as well as Republic Act No. 10168, otherwise known as the "Terrorism Financing Prevention and Suppression Act of 2012".<sup>2</sup>

In the 2017 published report of the Anti-Money-Laundering Council entitled National Risk Assessment on Money Laundering and Terrorist Financing 2015-2016, it stated, to wit:

After considering the proceeds generated by select predicate crimes, money laundering trends and techniques, the prevalence of sectoral threats and external threats, the national money laundering threat is assessed to be HIGH. After considering the ratings for National Combating Ability and Sectoral Vulnerabilities, the national vulnerability for money laundering is assessed to be Medium. Following the risk map of the assessment tool, the Money Laundering Risk at National Level is rated as Medium-High.<sup>3</sup>

The same assessment report further stated that threat in Plunder and Violations of the Anti-Graft and Corrupt Practices Act (Republic Act 3019) is still *generally high, viz:*

It is estimated that 20% of the Philippines' yearly national budget is lost to corruption. Following the same pattern and based on the 2015 (Php2.6 Trillion) and 2016 (Php3.0 Trillion) national budgets, about Php520 to Php600 Billion were lost to corruption in 2015 and 2016.<sup>4</sup> From 2015 to 2016, the NBI conducted 222 corruption-related investigations. For the same period, the Ombudsman convicted 299 individuals for cases of bribery, malversation of public funds and violation of RA No. 3019. Filed before the Sandiganbayan were 2,207 corruption-related cases from 2011 to 2016; 1,019 of these cases were filed from 2015 to 2016. The AMLC conducted 15 ML investigations predicated on corruption-related cases from 2015 to 2016. Ten (10) cases and two (2) cases being investigated by the AMLC and its Secretariat in 2015 and 2016, respectively, are related to the alleged unlawful appropriation and use of the Priority Development Funds (PDAF) funds of subject lawmakers. All the 15 money laundering cases under AMLC investigation from 2015 to 2016 involve corruption proceeds approximately amounting to Php750 Million. For the same period, corruption proceeds subject of civil forfeiture amounted to Php223 Million in funds and properties. The amount constitutes 22.3% of the estimated Php1 Billion in funds and properties subject of civil forfeiture corruption-related cases as of 31 December 2016. The foregoing data on the corruption-related cases investigated and prosecuted for the period 2011 to 2016 show no increasing trend, but the figures remain significantly high. As to the amount of corruption proceeds, about Php689.7 Million and Php750 Million are involved in the cases for forfeiture of illicit funds pending before the Sandiganbayan and money laundering investigations of the AMLC, respectively.

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<sup>2</sup> Ibid.

<sup>3</sup> 2nd National Risk Assessment – Philippines 2015-2016, page 3.

<sup>4</sup> Developing a Corruption-intolerant Society (www.ph.undp.org).

Moreover, insofar as the 15 money laundering cases are concerned, only 30% of the proceeds of these cases are subject of civil forfeiture. The foregoing considerations provide reasonable bases to retain the HIGH rating of the threat posed by plunder and other corruption-related cases.<sup>5</sup>

For a better perspective, a staggering US\$ 10,400,000,000 to US\$ 12,000,000,000 were lost to corruption in 2015 to 2016. The Anti-Money-Laundering Council investigated 15 cases which involved US\$ 15,000,000. For the same period, the amount representing civil forfeiture of the proceeds of these crimes equals to US\$ 4,460,000.<sup>6</sup>

The data and the figures presented in the foregoing report clearly show that corruption and money-laundering is not just a problem but has already become a menace in the Philippines. Continued efforts and additional laws and regulations are constantly passed and implemented to address this problem.

### **III. ACTUAL CASE STUDY**

#### **A. The Game of the Generals**

An interesting case in the Philippines which involved graft and corruption, money-laundering, forfeiture and the effective use of a Mutual Legal Assistance Treaty is that of Major General Carlos F. Garcia, then Deputy Chief of Staff for Comptrollership, J6, of the Armed Forces of the Philippines.

On 27 September 2004, Atty. Maria Olivia Elena A. Roxas, Graft Investigation and Prosecution Officer II of the Field Investigation Office of the Office of the Ombudsman, after due investigation, filed a complaint against Garcia, before the Office of the Ombudsman, (1) for violation of Sec. 8, in relation to Sec. 11 of Republic Act (R.A.) No. 6713, (2) violation of Art. 183 of the Revised Penal Code, and (3) violation of Section 52 (A)(1), (3) and (20) of the Civil Service Law. Based on this complaint, a case for violations of R.A. No. 1379,<sup>4</sup> Art. 183 of the Revised Penal Code, and Sec. 8 in relation to Sec. 11 of R.A. No. 6713 was before the anti-graft court, the Sandiganbayan.

In April 2005, the Office of the Ombudsman filed against Garcia before the Sandiganbayan criminal charges of Plunder, Perjury and Money Laundering for allegedly amassing P303,270,000 in ill-gotten wealth while he was in active service in the Armed Forces of the Philippines. His wife Clarita Depakakibo Garcia, and their three sons, Ian Carl, Juan Paolo and Timothy Mark, all surnamed Garcia, were named co-defendants for allegedly helping him conceal suspected unlawfully acquired assets. The Garcia family is also facing money-laundering charges following alleged withdrawals from their numerous bank accounts.

In May 2011, Garcia was eventually convicted of Perjury, but for the cases of Plunder and Money Laundering, he entered into a plea-bargaining agreement with the government. The Sandiganbayan approved the former general's guilty plea to the lesser offence of Indirect Bribery and the lesser offence of Facilitating Money Laundering under Section 4 (b) of Republic Act 9160,

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<sup>5</sup> 2nd National Risk Assessment – Philippines 2015 -2016, pages 7-8.

<sup>6</sup> Php 50.00 = US\$ 1.00.

based on the plea-bargaining agreement between Garcia and the Office of the Ombudsman. Under the controversial agreement, Garcia will be allowed to plead guilty and post bail to the lesser offences of Indirect Bribery and Facilitating Money Laundering on the condition that he would return to the government half of the P303.27 million that he had allegedly stolen.

As part of the plea-bargaining deal between Garcia and the government, Garcia transferred real properties worth P 21,269,520.50 and personal properties amounting to P4,416,380 in favour of the Republic of the Philippines. Likewise, total cash and bank deposits in the amount of P52,510,980.00 were turned over in favour of the government.<sup>7</sup> Two of Garcia's sons are facing bulk cash smuggling charges in a US court for attempting to slip US\$100,000 into the United States from the Philippines in 2003. The government is working for their extradition.

Through effective Mutual Legal Assistance, the US Embassy in the Philippines in June 2015 turned over to the Philippine government a check amounting to some US\$ 1,300,000 as the second tranche of proceeds from the forfeited assets of Garcia. Then US Ambassador to the Philippines Philip Goldberg handed over a US Treasury check amounting to US\$ 1,384,940.28 or around P61,000,000 to then Ombudsman Conchita Carpio-Morales, who represented the Philippine government. The check represented the net proceeds from the sale of Garcia's condominium unit at The Trump Tower in Manhattan, New York, and the balance from the former general's two bank accounts in Citibank New York. The money from Garcia's bank accounts in Citibank New York had earlier been traced by the US Department of Homeland Security to be part of the laundered assets of Garcia. In sum, the Philippine Government was able to recover a total amount of P135,433,387.84 from former Major General Carlos F. Garcia, his wife and his three sons.

Another high-ranking official of the Armed Forces of the Philippines that got embroiled in a corruption scandal is the predecessor of Major General Carlos F. Garcia as Comptroller, Retired Lieutenant General Jacinto Ligot. This case is one of the biggest corruption scandals in Philippine military history, first exposed in 2004 and culminated in multiple investigations in 2011, where Ligot and other officials were accused of amassing unexplained wealth, including receiving send-off money. After a series of Senate investigations in 2011, former military chief Angelo Reyes, who was also dragged into the issue, took his life in front of his mother's grave.

The prosecution accused Ligot of acquiring tax deficiencies worth P428,000,000 from 2001 to 2004. The Department of Justice (DOJ) prosecution found out that the Statements of Assets Liabilities and Net Worth (SALNs) of General Ligot did not declare bank deposits, assets and investments, the value of which are beyond their compensation, considering that his wife, Erlinda Ligot, is described as a mere 'housewife' in those documents with no source of income. The Department of Justice (DOJ) prosecution surmised that there can be no other conclusion that Ligot and his spouse failed to declare their true and correct income in their income tax returns, thereby evading the payment of correct income taxes.

Aside from bank assets, the Department of Justice (DOJ) prosecution uncovered the Ligots real estate including a 14-hectare land in Malaybalay City in Bukidnon; two Paseo Parkview Tower 2 Condominium units with one parking slot in Makati City; a unit at Essensa East Forbes

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<sup>7</sup> People of the Philippines vs. Carlos F. Garcia, et. al., Criminal Cases Nos. 28197 & SB-09-CRM-0194, 09 May 2011.

Condominium; properties in Anaheim and Orange County in California; and a parcel of land in Tanay, Rizal.

The Anti-Money-Laundering Council (AMLC) was able to generate a report of the mismatch in assets and lawful income, but in 2015, the Court of Tax Appeals (CTA) struck all evidence off the record because they did not fall “within any exception of the best evidence rule.” The CTA said the AMLC probe was sanctioned for a case at the Makati Regional Trial Court (RTC), not for the tax cases.

Bank secrecy laws in the Philippines will not apply in certain cases such as impeachment, cases related to the Human Security Act, and some kinds of forfeiture cases such as when a deposit makes its way to a wrong account and the bank needs to retrieve it. The CTA ruled that these exceptions to the Bank Secrecy Law also find no application in the case of Ligot and his spouse. It also enunciated that having no assets purportedly purchased with other income, they could not have willfully violated Secs. 254 and 255 of the National Internal Revenue Code (NIRC). The earlier deficiency assessment of the Bureau of Internal Revenue (BIR) still stands, said the CTA.

The CTA Third Division acquitted the Ligots in a decision promulgated January 8, 2019, mainly because an extensive paper trail of bank evidence was stricken off the record for violating bank secrecy laws. Ligot tried to invoke the bank secrecy law in arguing that his foreign deposit records were accessed without his consent. The Philippine bank secrecy law got Ligot acquitted in the P428,000,000 tax case in the Court of Tax Appeals (CTA).

However, the Sandiganbayan ruled that while Section 2 of Republic Act No. 1405, enacted in 1955, declares bank records confidential except in certain conditions, Section 8 of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, amended that when it said bank deposits “shall be taken into consideration” in the investigation into unexplained wealth. The anti-graft law was enacted in 1960. The later law typically prevails over earlier laws.

In the CTA decision that acquitted Ligot, tax court justices strictly applied Section 2 of R.A 1405, which waives confidentiality of bank records “in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation.” The Sandiganbayan, however, applied the last exemption and said: “Bank representatives are allowed to testify on the subject bank accounts because the accounts allegedly contain the unlawfully acquired money of respondent Jacinto during his service, the same constitute the subject matter of the present litigation. The anti-graft court also said that the bank investigation “is an exercise of the power of the Anti-Money-Laundering Council under the law.”

In April 2019, the Sandiganbayan convicted Ligot of 6 counts of perjury over misdeclarations in his Statements of Assets, Liabilities, and Net Worth (SALNs). The Office of the Ombudsman has been working to forfeit in favour of the government P55,596,000 in unlawfully acquired bank deposits and investment accounts of General Ligot, his wife, and other co-accused. Last July 2019, the Sandiganbayan denied the Demurrer to Evidence filed by General Ligot.

#### IV. NEW LEGISLATION TO ADDRESS NEW TRENDS IN MONEY-LAUNDERING

In 2016, the government investigated the biggest documented case of money-laundering in Philippine history – where about \$81 million stolen from the Bank of Bangladesh's account at the Federal Reserve Bank of New York was coursed through Rizal Commercial Banking Corporation (RCBC), converted into pesos, and then played in large casinos in the country.

Because of this US\$ 81,000,000 Bank of Bangladesh money-laundering case, President Rodrigo Duterte in July 2017 signed Republic Act No. 10927, placing casinos, including internet and “ship-based” ones, under the AMLA. Casino cash transactions of more than P5,000,000 or its equivalent in other currencies are now considered a transaction covered by the law and must thus be reported to the Anti-Money-Laundering Council (AMLC). The new amendment now includes, real estate developers, money transfer firms, junket operators, and dealers of high-value items under the AMLC's watch. In the amended law, the Anti-Money-Laundering Council still has to wait for the Court of Appeals to issue a freeze order if they suspect a monetary instrument or property is related to an unlawful activity. The freeze order will be effective immediately and will last 20 days.

The Supreme Court of the Philippines in January 2017, in a unanimous decision penned by Associate Justice Jose Portugal Perez, held Section 11 of RA 9160 or the Anti-Money Laundering Act to be valid and constitutional. Section 11 of R.A. 9160 states that the Anti-Money Laundering Council (AMLC) may "inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court based on an *ex parte* application." It allows the AMLC, upon approval from the Court of Appeals, to check the movement of money and history of the account. Banks could then waive their confidentiality agreement without having to notify the account owners.

The constitutionality of the said provision was challenged by a law firm associated with former Vice-President Binay. In January 2018, anti-money-laundering authorities implemented the AMLC Registration and Reporting Guidelines (ARRG). This AMLA law requires covered persons – like those in banks, insurance companies, and securities dealing firms – to submit suspicious transaction reports (STRs) within 5 days of an incident. This includes the date of determination of the suspicious nature of the transaction, which should not exceed 10 calendar days. It also provides for appropriate sanctions for violators as to ensure a culture of compliance among the covered persons. Two new facilities would allow covered persons to upload know-your-customer (KYC) documents for STRs as well as e-returns via the AMLC portal.

In 2018, the AMLC Secretariat issued Resolution No. 59 adopting the Anti-Money-Laundering and Counter-Terrorism Financing (AML/CTF) guidelines for Designated Non-Financial Businesses and Professions (DNFBPs), which covers and includes jewellery dealers, fund managers, lawyers, and accountants. These professionals are now being strictly monitored by the Anti-Money-Laundering Council (AMLC), as it firms up its battle against money-laundering and terrorist financing.

The guidelines are based on Republic Act No. 10365, which includes under "covered persons" those who deal with precious stones and metals; those who deliver fund or securities management

services for other persons; and persons and entities who provide services to organize, create, and manage companies and arrangements under the amended Anti-Money Laundering Act (AMLA). Lawyers and accountants, who provide the services enumerated in the amended AMLA, are required to report covered and suspicious transactions to the AMLC.

On November 12, 2018, President Rodrigo Duterte signed Executive Order No. 68, which orders the government to implement a national strategy to fight money-laundering and terrorism financing from 2018 to 2022. The Executive Order also creates a committee to oversee and coordinate all government and private sector efforts in pursuit of the strategy. This plan is officially known as the National Anti-Money-Laundering and Countering the Financing of Terrorism Strategy (NACS). The committee is referred to as the National AML/CFT Coordinating Committee (NACC). The said committee is mandated to craft operational guidelines and rules of procedure to implement the strategy and consult public and private stakeholders on operational and policy issues that may have implications on the NACS. The NACC is to be chaired by the Executive Secretary or a representative while its vice chairpersons shall be the Bangko Sentral ng Pilipinas governor and Anti-Money Laundering Council chairperson. Its members are the Foreign Secretary, Finance Secretary, Justice Secretary, Defense Secretary, Interior Secretary, Trade Secretary, Securities and Exchange Commission chairperson, Insurance Commissioner, Philippine Amusement and Gaming Corporation CEO and chairperson, Cagayan Economic Zone Authority administrator, and Aurora Pacific Economic Zone and Freeport Authority president. The AMLC will serve as the committee's secretariat.

## V. CONCLUSION

Corruption and money-laundering activities continue to evolve overtime. As such, government must be faster and quicker in addressing these issues and concerns. It is sad that, most of the time, new laws and amendments to existing legislation take time to come to fruition as it has to go through the constitutionally mandated law-making process. Innovations in money-laundering come about faster than new rules and regulations. However, governments must make use of existing mechanisms currently available to combat these threats. Stricter implementation and execution of current laws, rules and regulations should be had to avoid and to stop, or at least manage these threats.

Actual cases of graft and corruption with corresponding active prosecution and eventual forfeiture and recovery of the criminal proceeds, whether successful or a failure, must always serve as guidance to governments to more strictly enforce anti-money-laundering laws, rules and regulations. There is comfort in knowing that the government authorities continue to pass relevant and stricter laws that are compliant with international standards and guidelines.