

GETTING THE DEAL THROUGH

# Anti-Money Laundering

in 24 jurisdictions worldwide

# 2014

Contributing editors: James G Tillen and Laura Billings



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**Anti-Money Laundering 2014****Contributing editors:****James G Tillen and Laura Billings  
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*Getting the Deal Through* is delighted to publish the third edition of *Anti-Money Laundering*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and clients.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 24 jurisdictions featured. New jurisdictions this year include Argentina, Germany, Guatemala, Luxembourg and Turkey. This edition includes a global overview authored by James G Tillen, Laura Billings and Jonathan Kossak of Miller & Chevalier Chartered as well as an introduction written by the secretariat of the Financial Action Task Force.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

*Getting the Deal Through* gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editors James G Tillen and Laura Billings of Miller & Chevalier Chartered for their assistance with this volume.

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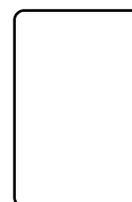
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# Philippines

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## Domestic legislation

### 1 Domestic law

Identify your jurisdiction's money laundering and anti-money laundering (AML) laws and regulations. Describe the main elements of these laws.

Republic Act No. 9160, otherwise known as the Anti-Money Laundering Act of 2001, as amended by Republic Act No. 9194, 10167, and 10365 (AMLA), defines and penalises money laundering.

The AMLA created the Anti-Money Laundering Council (AMLC). The AMLC is mandated to act unanimously in the discharge of its functions, which include:

- the implementation of necessary measures to counteract money laundering;
- investigation of suspicious transactions and covered transactions deemed suspicious after an investigation by the AMLC;
- filing of complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offences;
- institution of civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General, among others (AMLA, section 7); and
- investigation of financing of terrorism and any property or funds that relates to said offence (Republic Act No. 10168, section 10).

To assist the AMLC, a secretariat headed by an executive director was also created (AMLA, section 8).

The AMLA provides the different court remedies available to the AMLC, such as freeze orders, authorisation to inquire into bank deposits and forfeiture (AMLA, sections 10, 11 and 12).

The AMLA further prescribes preventive measures, including customer identification, record keeping and reporting of covered and suspicious transactions by covered persons (AMLA, section 9).

Pursuant to the AMLA, the Bangko Sentral ng Pilipinas (BSP), the Insurance Commission (IC) and the Securities and Exchange Commission (SEC) promulgated the Revised Implementing Rules and Regulations of the AMLA (RIRR).

The BSP also issued Circular No. 706, series of 2011, the Updated Anti-Money Laundering Rules and Regulations for banks, trust entities and other institutions under its supervisory authority.

The Supreme Court also promulgated AM No, 05-11-04, or the Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offence under Republic Act No. 9160, as amended.

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## Money laundering

### 2 Criminal enforcement

Which government entities enforce your jurisdiction's money laundering laws?

The AMLC is the government agency tasked with implementing the AMLA, including the investigation of suspicious transactions and covered transactions deemed suspicious after its investigation (AMLA, section 7(5)). After its investigation, the AMLC files the complaint for money laundering with the Department of Justice or the Ombudsman (for complaints involving public officers and employees with salary grade 27 or higher), which then conducts a preliminary investigation to determine whether there exists sufficient evidence to file any information regarding money laundering against the respondents in court. After the information is filed in court, the Department of Justice or the Ombudsman prosecutes the criminal case (AMLA, sections 5 and 7(4)).

A person may be charged with and convicted of the offence of money laundering and the predicate offences or the unlawful activities to which the monetary instrument or property relates. The prosecution of money laundering offences shall proceed independently of the prosecution of the predicate offences (AMLA, section 6).

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### 3 Defendants

Can both natural and legal persons be prosecuted for money laundering?

The offence of money laundering may be committed by 'any person' or by any 'covered person'. These terms as defined under the AMLA include both natural or juridical persons (AMLA, section 3(a) and (e)).

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### 4 The offence of money laundering

What constitutes money laundering?

Section 4 of the AMLA defines money laundering as a crime whereby the proceeds of an unlawful activity as defined in the AMLA are transacted and such proceeds are made to appear to have originated from legitimate sources. It is committed by any person who, knowing that any monetary instrument or property represents, involves or relates to the proceeds of any unlawful activity, carries out any of the following acts:

- transacts the said monetary instrument or property;
- converts, transfers, disposes of, moves, acquires, possesses or uses the said monetary instrument or property; or
- conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to the said monetary instrument or property.

The following acts committed by any person also constitute money laundering:

- an attempt or conspiracy to commit the money laundering offences referred to above;
- aiding, abetting, assisting in or counselling the commission of the offences referred to above; and
- performing or failure to perform any act that facilitates the commission of the offences referred to above.

Also, money laundering is committed by any covered person who, knowing that a covered or suspicious transaction is required under the AMLA to be reported to the AMLC, fails to do so.

All the elements of every money laundering offence as defined 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 an unlawful activity (RIRR, rule 6.6). Since the elements of money laundering are separate and distinct from the elements of the predicate offence or unlawful activity, the elements of the predicate offence do not need to be established by evidence beyond reasonable doubt (RIRR, rule 6.7).

Following the definition of money laundering under section 4 of the AMLA, the offence of money laundering may be committed through a positive act or omission (the failure to act) of the offender. An offender who transacts or attempts to transact any monetary instrument or property known by him or her to be related to an unlawful activity, or performs an act that facilitates a transaction involving such a monetary instrument or property, is liable under the AMLA. Also, an offender who fails to perform an act and as a result of which facilitates money laundering or who fails to disclose such a monetary instrument or property to the AMLC as required by the AMLA, is liable under the AMLA. An offender who knowingly fails to report a covered or suspicious transaction required under the AMLA to the AMLC is also liable for money laundering.

While wilfulness or malice to commit the offence of money laundering is not an element of the offence of money laundering, what should be established is the element of knowledge of the offender that the monetary instrument or property represents, involves or relates to the proceeds of an unlawful activity or that any covered or suspicious transaction is required under the AMLA to be disclosed and filed with the AMLC. Such knowledge may be established by direct evidence or inferred from attendant circumstances (RIRR, rule 6.5).

## 5 Qualifying assets and transactions

Is there any limitation on the types of assets or transactions that can form the basis of a money laundering offence?

Any asset or transaction may form the basis of a money laundering offence. Assets may include cash, monetary instruments, or other property, both personal and real property.

'Monetary instruments' include:

- currency or legal tender of the Philippines or of a foreign country;
- drafts, cheques and notes;
- securities or negotiable instruments, bonds, commercial papers, deposit certificates, trust certificates, custodial receipts or deposit substitute instruments, trading orders, transaction tickets and confirmations of sale or investments and money market instruments;
- contracts or policies of insurance, life or non-life, and contracts of suretyship; and
- other similar instruments where title passes to another by endorsement, assignment or delivery (AMLA, section 3(c)).

'Property' includes any thing or item of value, real or personal, tangible or intangible, or any interest therein or benefit, privilege, claim or right with respect thereto (RIRR, section 3.a.3(o)).

Covered persons are required to report covered and suspicious transactions to the AMLC (AMLA, section 9(c)). 'Covered' transactions are transactions in cash or its equivalent in a monetary instrument involving a total amount in excess of 500,000 Philippine pesos within one banking day. 'Suspicious' transactions are transactions with covered persons, regardless of the amounts involved, where any of the following circumstances exist:

- there is no underlying legal or trade obligation, purpose or economic justification;
- the client is not properly identified;
- the amount involved is not commensurate with the business or financial capacity of the client;
- taking into account all known circumstances, it may be perceived that the client's transaction is structured to avoid being the subject of reporting requirements under the AMLA;
- any circumstance relating to the transaction that is observed to deviate from the profile of the client or the client's past transactions with the covered person;
- the transaction is in any way related to an unlawful activity or offence under the AMLA that is about to be, is being or has been committed; or
- any transaction that is similar or analogous to any of the foregoing (AMLA, sections 3(b) and 3(b-1)).

## 6 Predicate offences

Generally, what constitute predicate offences?

Section 3(i) of the AMLA in relation to Rule 3.1 of the RIRR enumerates the unlawful activities or predicate offences. These offences can be characterised as serious and heinous offences, including those perpetrated by terrorists against non-combatant persons, offences involving corruption of public officials, violations of customs laws and other special statutes. These offences may also be viewed to typically involve cash or property in a total amount that would likely exceed the threshold of 500,000 Philippine pesos if transacted through covered persons.

Examples of serious and heinous predicate offences include kidnapping for ransom, importation and sale of prohibited drugs, robbery and extortion, hijacking, arson and murder. Examples of predicate offences that involve corruption of public officials include violations of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act, and Republic Act No. 7080. Smuggling, which constitutes a violation of customs laws, is also classified as a predicate offence. Violations of special statutes, such as the Republic Act No. 8792 or the Electronic Commerce Act, Republic Act No. 7394 or the Consumer Act and Republic Act No. 8799 or the Securities Regulation Code also constitute as predicate offences. Terrorism and conspiracy to commit terrorism as defined under the Republic Act No. 9372 or the Human Security Act of 2007, and the financing of the said crimes are also predicate offences (Republic Act No. 10168, section 17).

Felonies or offences of a similar nature that are punishable under the penal laws of other countries also serve as predicate offences (AMLA, section 3(i)(14)).

## 7 Defences

Are there any codified or common law defences to charges of money laundering?

Among the defences that may be raised to charges of money laundering is the absence of knowledge of the offender that the monetary instrument or property relates to an unlawful activity.

Also, the offender may raise the defence of ownership. In relation to a forfeiture of the monetary instrument or property in a criminal prosecution, the offender may apply for a declaration that such a monetary instrument or property legitimately belongs to him or her (AMLA, section 12(b)).

Lawyers and accountants acting as independent professionals are expressly excluded from the enumeration of covered persons who have an obligation to report covered or suspicious transactions to the AMLC. However, if they are charged to have failed to make any report, their available defence is that the relevant information is protected by the attorney-client privilege or professional secrecy (AMLA, section 9(c)).

## 8 Resolutions and sanctions

What is the range of outcomes in criminal money laundering cases?

Violations of the AMLA incur a penalty of imprisonment from seven to 14 years and a fine of not less than 3 million Philippine pesos, but not more than twice the value of the monetary instrument or property involved.

Offenders convicted of transacting, converting or transferring, concealing or disguising the true nature of the monetary instrument or property that relates to an unlawful activity and attempting to commit such acts are penalised with imprisonment ranging from seven to 14 years and a fine of not less than 3 million Philippine pesos, but not more than twice the value of the monetary instrument or property involved. Offenders convicted of aiding or abetting the commission of money laundering offences or performing or failing to perform any act that resulted in the facilitation of money laundering are penalised with imprisonment ranging from four to seven years and a fine of not less than 1.5 million but not more than 3 million Philippine pesos. Offenders convicted of knowingly failing to report a covered or suspicious transaction to the AMLC are penalised with imprisonment ranging from six months to four years or a fine ranging from 100,000 to 500,000 Philippine pesos, or both (AMLA, section 14(a)).

If the offender is a juridical entity, the penalty shall be imposed upon the responsible officers who participated in, or by their gross negligence allowed, the commission of the crime. The licence of the juridical entity may be suspended or revoked (AMLA, section 14(c) second paragraph).

If the offender is a foreign national, in addition to the foregoing penalties, he or she shall be deported without further proceedings after serving the penalties (AMLA, section 14(c) second paragraph).

If the offender is a public official or employee, in addition to the foregoing penalties, he or she shall suffer permanent or temporary absolute disqualification from office (AMLA, section 14(c) second paragraph).

Those accused of money laundering offences are convicted after trial. However, there is no prohibition against entering into plea bargaining agreements to obtain a lesser penalty (Rules of Court, Rule 116, section 2 and Rule 118, section 1).

## 9 Forfeiture

Describe any related asset freezing, forfeiture, disgorgement and victim compensation laws.

The AMLA authorises asset freezing, asset preservation, forfeiture and payment in lieu of forfeiture in connection with the investigation and prosecution of money laundering offences. The petitions for the issuance of a freeze order, asset preservation order or forfeiture are filed by the Office of the Solicitor General (OSG), which represents the AMLC.

For the issuance of a freeze order or an asset preservation order on any monetary instrument or property that relates to any unlawful activity as defined in the AMLA, an ex parte petition is filed.

Petitions for the issuance of a freeze order are filed with the court of appeals and petitions for the issuance of an asset preservation order are filed with the regional trial court. If the court of appeals is satisfied that there exists probable cause that the monetary instrument or property relates to an unlawful activity, a freeze order would be issued and it is effective immediately but shall not exceed six months (AMLA, section 10). If the regional trial court determines that there exists probable cause that the monetary instrument or property relates to an unlawful activity, an asset preservation order would be issued and it is effective immediately for 20 days. Within the 20-day period, a summary hearing, with notice to parties is held to determine whether the asset preservation order should be modified, lifted or extended. (A.M. No. 05-11-04, sections 11 and 12).

In addition to freezing and asset preservation, the AMLA also allows civil forfeiture and criminal forfeiture. Similarly, the government, acting through the AMLC and represented by the OSG, may file a petition for civil forfeiture in favour of the state of any monetary instrument or property that relates to money laundering or any unlawful activity as defined in the AMLA. The forfeiture extends to other monetary instruments or property of an equivalent value to the monetary instrument or property found to be related to money laundering offence or any unlawful activity. Generally, the petition is filed with the regional trial court of the judicial region where the monetary instrument or property is located. However, if any or all of the monetary instrument or property is located outside the Philippines, the petition shall be filed in the regional trial court of Manila or of the judicial region where a portion of the monetary instrument or property is located, at the option of the government. The petition for civil forfeiture shall proceed independently of the charge, prosecution or conviction for any unlawful activity or money laundering. Acting on the petition, the court may either render a judgment declaring the monetary instrument or property forfeited in favour of the government or in appropriate cases, order the respondent to pay an amount equal to the value of the monetary instrument or property (AMLA, section 12(a); A.M. No. 05-11-04, sections 2, 3, 27, 28 and 32).

In relation to a criminal prosecution for money laundering offences, the monetary instrument or property that relates to the unlawful activity may also be ordered by the court to be forfeited in favour of the government. If such an order cannot be enforced because such property cannot be located or has been substantially altered, destroyed, diminished in value or rendered worthless by an act attributable to the offender, the court may instead order the convicted offender to pay an amount equal to the value of said monetary instrument or property (AMLA, section 12(c)).

By virtue of Republic Act No. 10168, which expanded the authority of the AMLC to investigate financing of terrorism, the AMLC has authority to issue an ex parte freeze order on any property or funds that are either related to financing of terrorism or belong to any person or organisation, in relation to whom there is probable cause to believe that such a person or organisation is committing, attempting or conspiring to commit such an offence. The freeze order issued by the AMLC is effective for 20 days and may be extended for a period not exceeding six months upon an order of the court of appeals. For the extension of the effective period of the freeze order, a petition should be filed with the court of appeals (Republic Act No. 10168, section 11, first and second paragraphs).

Further, the AMLC also has authority to issue an ex parte freeze order in compliance with the Philippines' international obligations and terrorism-related Resolutions, including Resolution No. 1373 of the UN Security Council pursuant to article 41 of the UN Charter. A freeze order issued on the basis of the Philippines' international obligations shall be effective until the basis thereof has been lifted. An aggrieved party may seek relief by filing a petition with the court of appeals (Republic Act No. 10168, section 11, third paragraph).

Any property or funds related to financing of terrorism are also subject of civil forfeiture proceedings instituted by the AMLC (Republic Act No. 10168, section 11, fourth paragraph).

#### 10 Limitation periods

What are the limitation periods governing money laundering prosecutions?

In the absence of any limitation period for the prosecution of money laundering offences in the AMLA, Act No. 3326, An Act to Establish Periods of Prescription for Violations Penalised by Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin to Run, applies. Thus, the applicable prescriptive periods are:

- eight years for knowing that any monetary instrument or property relates to an unlawful activity, transacts, converts or transfers, conceals or disguises the true nature of the monetary instrument or property or attempts to commit such acts;
- eight years for knowing that any monetary instrument or property relates to an unlawful activity and aids or abets the commission of money laundering offences or performs or fails to perform any act that results in the facilitation of money laundering; and
- 12 years for knowingly failing to report a covered or suspicious transaction to the AMLC.

Prescription shall begin to run from the day of the commission of the offence, and if the date is not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment (Act No. 3326, section 2).

#### 11 Extraterritorial reach

Do your jurisdiction's money laundering laws have extraterritorial reach?

Unlike Republic Act No. 10168, also known as the Terrorism Financing Prevention and Suppression Act of 2012, which provides that said law has extraterritorial application, the AMLA does not contain a similar provision. While the AMLA expressly recognises that the monetary instrument or property subject of the money laundering offence relates to an unlawful activity or predicate offence committed in a foreign jurisdiction, in order to be prosecuted for money laundering offences, the constitutive elements of the money laundering offence should be committed within Philippine territory (AMLA, section 3(i)(34)). Philippine citizens and foreign nationals, both natural and juridical entities, may be found criminally liable and foreign nationals are not exempted from the application of the AMLA.

### AML requirements for covered institutions and individuals

#### 12 Enforcement and regulation

Which government entities enforce your jurisdiction's AML regime and regulate covered institutions and persons? Do the AML rules provide for ongoing and periodic assessments of covered institutions and persons?

The AMLC is the government agency tasked with implementing the AMLA, in particular requesting and receiving reports from covered persons, investigating suspicious transactions and covered transactions deemed suspicious after an investigation, filing complaints with the Department of Justice and Ombudsman, instituting civil forfeiture proceedings and all other remedial measures (AMLA, section 7).

The AMLC is composed of the governor of the BSP as chairman, commissioner of the IC and the chairman of the SEC as members. The BSP, IC and SEC exercise supervising authority over the covered institutions under their respective jurisdictions (AMLA, section 7).

The AMLC has authority to enlist the assistance of any branch, office or agency of the government in undertaking any and all AML operations (AMLA, section 7(10)). The AMLC also has authority to require the Land Registration Authority and all its registries of deeds to submit to the AMLC, reports and copies of relevant documents on all real estate transactions involving an amount in excess of 500,000 Philippine pesos.

With respect to banks, trust entities and other institutions regulated by the BSP, the BSP may inquire into or examine any deposit or investment with any bank when the examination is made in the course of a periodic or special examination in accordance with the BSP rules (AMLA, section 11). The BSP may also conduct annual testing limited to the determination of the existence and true identity of the owners of numbered accounts (AMLA, section 9(a)).

With respect to insurance companies and other institutions regulated by the IC, the IC is authorised and required to examine every insurance company at least once a year (Presidential Decree No. 612, as amended, section 246) and to conduct testing more than once a year to determine the true identities of the owners of the policies or contracts of insurance (RIRR, rule 9.1.g).

With respect to securities dealers, brokers, investment houses and other entities regulated by the SEC, the SEC may also conduct similar testing more than once a year (RIRR, rule 9.1.g).

#### 13 Covered institutions and persons

Which institutions and persons must carry out AML measures?

Covered persons include:

- banks, non-banks, quasi-banks, trust entities, foreign exchange dealers, pawnshops, money changers, remittance and transfer companies and other similar entities and all other persons and their subsidiaries and affiliates regulated by the BSP;
- insurance companies, pre-need companies and all other persons supervised or regulated by the IC;
- securities dealers, brokers, salesmen, investment houses and other similar persons managing securities or rendering services as investment agent, adviser or consultant; mutual funds, close-end investment companies, common trust funds, and other similar persons; and other entities administering or otherwise dealing with currency, commodities or financial derivatives based thereon, valuable objects, cash substitutes and other similar monetary instruments or property supervised or regulated by the SEC;
- jewellery dealers in precious metals, who, as a business, trade in precious metals, for transactions in excess of 1 million Philippine pesos;
- jewellery dealers in precious stones, who, as a business, trade in precious stones, for transactions in excess of 1 million Philippine pesos;
- company service providers, which as a business, provide any of the following services to third parties:
  - acting as a formation agent of juridical persons;
  - acting as (or arranging for another person to act as) a director or corporate secretary of a company, a partner of a partnership, or a similar position in relation to other juridical persons;
  - providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; and
  - acting as (or arranging for another person to act as) a nominee shareholder for another person; and
- persons who provide any of the following services:
  - managing of client money, securities or other assets;
  - management of bank, savings or securities accounts;
  - organisation of contributions for the creation, operation or management of companies; and

- creation, operation or management of juridical persons or arrangements, and buying and selling business entities.

Covered persons, however, exclude lawyers and accountants acting as independent legal professionals in relation to information concerning their clients or where disclosure of information would compromise client confidences or the attorney–client relationship, provided that these lawyers and accountants are authorised to practise in the Philippines and shall continue to be subject to the provisions of their respective codes of conduct (AMLA, section 3(a)).

#### 14 Compliance

Do the AML laws in your jurisdiction require covered institutions and persons to implement AML compliance programmes? What are the required elements of such programmes?

Yes, covered persons under the supervisory authority of the BSP, IC and SEC are required to formulate and implement their respective money laundering prevention and compliance programmes (RIRR, rule 17.2.a). The BSP, IC and SEC have issued their respective Model Operating Manuals.

These programmes should contain the following:

- detailed procedures on customer identification or ‘know-your-client’ policy;
- setup of information dissemination on money laundering activities and their prevention, detection and reporting;
- system of flagging and monitoring transactions;
- system of reporting to the AMLC;
- designation of compliance officers at management level;
- adequate screening and recruitment procedures; and
- an audit function to test the system (RIRR, rules 17.2.b and 17.2.c).

These institutions are also required to provide their responsible officers and personnel with efficient and effective training and continuing education programmes to enable them to fully comply with the AMLA and the RIRR (RIRR, rule 17.3).

#### 15 Breach of AML requirements

What constitutes breach of AML duties imposed by the law?

The following constitute a breach of AML duties under the AMLA:

- knowing that any monetary instrument or property relates to an unlawful activity, and performs or fails to perform any act that results in the facilitation of money laundering (AMLA, section 4(f));
- knowing that a covered or suspicious transaction is required to be reported to the AMLC and fails to do so (AMLA, section 4, last paragraph);
- failure to keep records for five years from the dates of transactions (AMLA, section 14(b));
- malicious reporting or making a completely unwarranted report or a report with false information relative to a money laundering transaction against any person (AMLA, section 14(c)); and
- breach of confidentiality by communicating to any person or entity, including the media, the fact that a covered or suspicious transaction report was made, the contents thereof, or any other related information (AMLA, sections 9 and 14(d)).

#### 16 Customer and business partner due diligence

Describe due diligence requirements in your jurisdiction’s AML regime.

Covered institutions and persons are required to establish and record the true identity of their clients, whether natural or juridical persons, based on official documents (AMLA, section 9).

For natural persons, specified minimum information and documents are required to be obtained, which include personal and work information and government-issued identification documents (RIRR, rules 9.1.a and 9.1.c). For juridical entities, their legal existence and organisational structure, and the identity and authority of all persons acting on their behalf should be verified. Similarly, specified minimum information and documents need to be obtained, such as, but not limited to, the articles of incorporation or partnership, by-laws and list of directors, principal stockholders and beneficial owners, if any (RIRR, rule 9.1.d).

Covered persons are required to maintain accounts in the true and full name of the account owner or holder. Anonymous accounts, accounts under fictitious names and similar accounts are strictly prohibited (RIRR, rule 9.1.e).

Also, no new accounts shall be opened without face-to-face contact and full compliance with the minimum customer identification requirements (RIRR, rule 9.1.f).

For trustee, nominee and agent accounts, covered persons are required to verify and record the true and full identities of the beneficial owner and the trustee, nominee or agent. Covered persons should make the necessary inquiries to verify the state of the business relationship between the parties where they suspect that such a trustee, nominee or agent is being used as a dummy in circumvention of existing laws (RIRR, rule 9.1.b).

#### 17 High-risk categories of customers, business partners and transactions

Do your jurisdiction’s AML rules require that covered institutions and persons conduct risk-based analyses? Which high-risk categories are specified?

Covered persons regulated by the BSP, IC and SEC are required to conduct a risk-based assessment to determine whether a customer is a low or normal-risk or high-risk customer. Transactions with high-risk customers require enhanced due diligence and senior management action (BSP Circular No. 706, Series of 2011, sections X805 and X806.1.b; IC Circular Letter No. 32-2006, title 3, section 1.a; SEC Memorandum Circular No. 02-10, sections 4.A.14 and 4.C.3).

A high-risk customer is from a country from that is recognised as having inadequate internationally accepted AML standards, or does not sufficiently apply regulatory supervision or the Financial Action Task Force (FATF) recommendations, or presents greater risk for crime, corruption or terrorist financing (BSP Circular No. 706, Series of 2011, sections X806.2.m; IC Circular Letter No. 32-2006, title 3, section 1.a; SEC Memorandum Circular No. 02-10, section 4.C).

Dealing with politically exposed persons (PEPs) and their immediate family members and entities related to them also requires enhanced due diligence in terms of establishing and recording their true and full identities (BSP Circular No. 706, Series of 2011, section X806.2.g).

Shell banks are not allowed to operate or to be established in the Philippines and banks are prohibited from entering into any relationship with such banks. In dealing with shell entities, enhanced due diligence is applied on both the entity and its beneficial owners (BSP Circular No. 706, Series of 2011, section X806.2.n). For covered entities regulated by the IC and SEC, in addition to securing the necessary identification and corporate documents, they must also obtain a board of directors’ certification as to purposes of the owners or stockholders in purchasing the shell company (IC Circular Letter No. 32-2006, title 3, section 13; SEC Memorandum Circular No. 02-10, section 4.E).

In dealing with correspondent banks, banks are required to apply enhanced due diligence, which includes gathering information about the customer and the correspondent bank’s business and anti-money laundering and terrorist financial controls (BSP Circular No. 706, Series of 2011, section X806.2.h).

In dealing with banks operating outside the Philippines, the banks shall obtain a sworn certification from the other financial institution that it has complied with its requisite customer identification requirements and that it has the capacity to obtain additional identification documents upon request (BSP Circular No. 706, Series of 2011, section X806.2.e.i.b).

For fund and wire transfers, including cross-border transfers, full and true identities of both the originator and beneficiary must be established. When additional information cannot be obtained or any document provided is false or falsified, banks should refuse to effect the fund or wire transfer (BSP Circular No. 706, Series of 2011, section X806.2.i).

#### 18 Record keeping and reporting requirements

Describe the record keeping and reporting requirements for covered institutions and persons.

Covered persons are required to maintain and safely store records of all transactions for five years from the dates of transactions. Such records shall contain the full and true identity of the owners or holders of the accounts and all other customer identification documents. These records shall also be kept confidential (AMLA, section 9(b) and RIRR, rule 9.2.a). However, if a money laundering case has been filed, the records of that transaction shall be retained beyond five years until the case has been finally resolved or terminated by the court (RIRR, rule 9.2.d).

Reports by covered persons, which include both 'covered' and 'suspicious' transactions shall be reported to the AMLC within five days from the dates of the transaction, unless the AMLC prescribes a longer period not exceeding 15 days (AMLA, section 9(c)).

Reports shall be made in the forms prescribed by the AMLC and submitted electronically (RIRR, rule 9.3.b).

Covered transactions are transactions in cash or its equivalent in a monetary instrument involving a total amount in excess of 500,000 Philippine pesos within one banking day. Suspicious transactions are transactions with covered persons, regardless of the amounts involved, where any of the following circumstances exist:

- there is no underlying legal or trade obligation, purpose or economic justification;
- the client is not properly identified;
- the amount involved is not commensurate with the business or financial capacity of the client;
- taking into account all known circumstances, it may be perceived that the client's transaction is structured to avoid being the subject of reporting requirements under the AMLA;
- any circumstance relating to the transaction that is observed to deviate from the profile of the client or the client's past transactions with the covered person, or both;
- the transaction is in any way related to an unlawful activity or offence under the AMLA that is about to be, is being or has been committed; or
- any transaction that is similar or analogous to any of the foregoing (AMLA, sections 3(b) and 3(b-1)).

The AMLC also issued AMLC Resolution No. 59 on 1 June 2005, which lists the 16 basic red flag indicators for suspicious transactions that correspond to FATF practices.

#### 19 Privacy laws

Describe any privacy laws that affect record keeping requirements, due diligence efforts and information sharing.

The bank secrecy laws, namely, Republic Act No. 1405, as amended and Republic Act No. 6426, as amended, subject to certain exceptions, expressly declare that deposits of whatever nature, Philippine peso and foreign currency deposits, respectively, are confidential

and prohibit banks from disclosing any information related to the said deposits. As a consequence of the enactment of the AMLA, the reporting of covered and suspicious transactions to the AMLC was expressly made an exception to bank secrecy laws (AMLA, section 9).

But in order for the AMLC to inquire into or examine any particular deposit or investment, such as the main or principal account and related accounts, with any bank or financial institution, generally, the AMLC must secure a 'bank inquiry order' from the court of appeals by filing an ex parte application. The bank inquiry order will only be issued after the AMLC establishes probable cause that the deposit is related to money laundering or any unlawful activity. However, certain kinds of unlawful activity, such as those involving kidnapping and dangerous drugs, fall under the exception (AMLA, sections 11 and 21).

Also, covered persons, their officers and employees, are prohibited from communicating, directly or indirectly, in any manner to any person or entity, including the media, the fact that a report on covered and suspicious transactions was made, the contents thereof and other related information. These covered and suspicious transactions reports are also prohibited from being published in any manner, such as by the mass media, in electronic mail or similar devices (AMLA, section 9). The members of the AMLC, the executive director, and all members of the Secretariat, whether permanent, on detail or on secondment, are also prohibited from disclosing any information known to them by reason of their office (RIRR, rule 8.4).

Since the AMLC is authorised to implement such measures as may be necessary and justified under the AMLA to counteract money laundering, the AMLC issued Resolution No. 59 on 4 August 2006 wherein the AMLC delegated to the executive director of the Secretariat the authority to share intelligence information, except when such information relates to PEPs, with law enforcement agencies whether foreign or domestic (AMLA, section 8). The AMLC has also entered into a number of memoranda of understanding with FIUs on the exchange of information.

Section 20 of the AMLA, however, provides that the AMLC is not allowed to interfere with the operations of the Bureau of Internal Revenue.

#### 20 Resolutions and sanctions

What is the range of outcomes in AML controversies? What are the possible sanctions for breach of AML laws?

In addition to the sanctions discussed in question 8, offenders convicted of failure to keep records for five years from the dates of transactions are punished with imprisonment from six months to one year or a fine of not less than 100,000 but not more than 500,000 Philippine pesos, or both (AMLA, section 14(b)). Offenders convicted for malicious reporting are punished with imprisonment from six months to four years and a fine of between 100,000 and 500,000 Philippine pesos. If convicted for malicious reporting, the Probation Law is not applicable (AMLA, section 14(c)). Offenders convicted for breach of confidentiality are punished with imprisonment from three to eight years and a fine of between 500,000 and 1 million Philippine pesos (AMLA, section 14(d)).

Administrative sanctions may also be imposed without prejudice to the filing of criminal charges against the persons responsible for AMLA violations. The AMLC, after due notice and hearing, has the discretion to impose sanctions, including monetary penalties, warning or reprimand, upon any covered person, its directors, officers, employees or any other person for AMLA violations, its implementing rules and regulations, or for failure or refusal to comply with AMLC orders, resolutions and other issuances. The AMLC shall determine the appropriate amount of monetary penalty, which shall not be more than 500,000 Philippine pesos per violation.

**Update and trends**

In 2013, a whistleblower exposed the multibillion Philippine peso 'Pork Barrel Scam' or the controversy involving the alleged misuse of the Priority Development Assistance Fund (PDAF) by certain legislators and non-government organisations (NGOs). The PDAF, commonly referred to as the 'pork barrel', is the lump-sum discretionary fund of members of Congress intended for community projects, such as the building of infrastructure, providing scholarships, and financing health programmes. Janet Lim Napoles was named as the alleged mastermind of the pork barrel scam who formed the fictitious NGOs that served as conduits for the release of the PDAF. Acting on the different investigations conducted by the Commission on Audit, Department of Justice and National Bureau of Investigation, the AMLC, filed a petition for the issuance of a freeze order on the bank accounts in the name of Napoles, her family and relatives, her corporation, JLN Corporation, and the different NGOs associated with her. Finding probable cause that these bank accounts related to unlawful activities, such as violations of the Anti-Graft and Corrupt Practices Act, the court of appeals issued a freeze order, which was effective for six months, for 415 accounts, which included 344 bank accounts, 66 insurance policies, and five credit card accounts.

The AMLC also filed a forfeiture case with the regional trial court of Manila and impleaded as respondents were Napoles, her family and relatives, and all others associated with her NGOs. In connection with this case, the regional trial court issued an asset preservation order involving almost 120 million Philippine pesos, which is effective while the case is continuing.

**21 Limitation periods**

What are the limitation periods governing AML matters?

Further to the discussion in question 10 and in the absence of any limitation period for the prosecution of money laundering offences in the AMLA under Act No. 3326, the applicable prescriptive periods are:

- four years for failure to keep records;
- eight years for malicious reporting; and
- 12 years for breach of confidentiality.

**22 Extraterritoriality**

Do your jurisdiction's AML laws have extraterritorial reach?

See question 11.

**Civil Claims****23 Civil claims and private enforcement**

Enumerate and describe the required elements of a civil claim or private right of action against money launderers and covered institutions and persons in breach of AML laws.

The AMLA does not provide a civil claim or private right of action against money launderers and covered persons.

**International anti-money laundering efforts****24 Supranational**

List your jurisdiction's memberships of supranational organisations that address money laundering.

The Philippines is a member of the following organisations:

- the Asia/Pacific Group on Money Laundering;
- the Egmont Group of Financial Intelligence Units;
- the Asian Development Bank;
- the Global Organization of Parliamentarians Against Corruption;
- the International Association of Insurance Supervisors;
- the International Monetary Fund;
- the International Organisation of Supreme Audit Institutions;
- the International Organization of Securities Commissions;
- Interpol;
- the World Bank; and
- the World Customs Organization.

**25 Anti-money laundering assessments**

Give details of any assessments of your jurisdiction's money laundering regime conducted by virtue of your membership of supranational organisations.

In June 2013, in recognition of the Philippines' significant progress in addressing deficiencies in its anti-money laundering/combating financial terrorism (AML/CFT) regime, the FATF removed the Philippines from its ongoing compliance list and it is no longer subject to the FATF's monitoring process under its ongoing compliance process. However, it has been observed that the unregulated casino sector for AML/CFT purposes remains a concern.



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**26** FIUs

Give details of your jurisdiction's Financial Intelligence Unit (FIU).

The address and contact information of the AMLC are:

5th Floor, EDPC Building  
 Bangko Sentral ng Pilipinas Complex  
 Mabini corner Vito Cruz Street, Malate  
 Manila  
 Philippines  
 Tel: +632 708 7701, local 3083, 3084  
 Fax: +632 708 7909  
 secretariat@amlc.gov.ph  
 amlc@bsp.gov.ph  
 www.amlc.gov.ph

The AMLC is a member of the Egmont Group of Financial Intelligence Units.

**27** Mutual legal assistance

In which circumstances will your jurisdiction provide mutual legal assistance with respect to money laundering investigations? What are your jurisdiction's policies and procedures with respect to requests from foreign countries for identifying, freezing and seizing assets?

Generally, mutual legal assistance (MLA) is recognised in MLA treaties entered into with Australia, China, Hong Kong, Korea, Spain, Switzerland, the United States and countries within the Association

of Southeast Asian Nations. The AMLA also recognises MLA between the Philippines and other foreign states and it is the AMLC that makes or acts on such requests for assistance (AMLA, section 13).

The requirements for requests for mutual assistance from a foreign state must:

- confirm that an investigation or prosecution is being conducted in respect of a money launderer named therein or that he or she has been convicted of any money laundering offence;
- state the grounds on which any person is being investigated or prosecuted for money laundering or the details of his or her conviction;
- give sufficient particulars as to the identity of said person;
- give particulars sufficient to identify any covered institution believed to have any information, document, material or object that may be of assistance to the investigation or prosecution;
- ask from the covered institution concerned any information, document, material or object that may be of assistance to the investigation or prosecution;
- specify the manner in which and to whom said information, document, material or object obtained pursuant to said request, is to be produced;
- give all the particulars necessary for the issuance by the court in the requested state of the writs, orders or processes needed by the requesting state; and
- contain such other information as may assist in the execution of the request (RIRR, rule 13.5).

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