

Highlights of R.A. 9160

R.A. 9160: "The Anti-Money Laundering Act of 2001" was promulgated primarily to allow the examination of bank accounts suspected to be sourced from illegal activities but which otherwise are protected from examination or freezing under existing laws on secrecy of bank deposits.

R.A. 1405 ("An Act Prohibiting Disclosure of or Inquiry into Deposits with any Banking Institution and Providing Penalty Therefor") was promulgated forty-six years ago to encourage people to deposit their money in banking institutions and to discourage private hoarding so that these private funds may be properly utilized to assist in the economic development of the country. Under said law, all deposits of whatever natures which are deposited with banks or banking institutions are considered as of an absolutely confidential nature. Examination of the account is allowed only by way of exception in four (4) cases: a) upon written permission of the depositor; b) in cases of impeachment; c) upon order of a competent court in cases of bribery or dereliction of duty of public officials; or d) in cases where the money deposited is the subject matter of the litigation.

Similarly, R.A. 6426 ("An Act Instituting Foreign Currency Deposit System in the Philippines, and for Other Purposes") promulgated on April 4, 1972 extended the veil of absolute confidentiality and immunity from examination to foreign currency deposits with authorized Philippines banks and banking institutions.

With the passage of time and the phenomenon referred to as "globalization", these laws originally promulgated with a noble purpose were taken advantage of to conceal illegal banking activities such that the Philippines was cited as among the money laundering centers of Asia. Hence international pressure was imposed to goad our government into passing an anti-money laundering law.

The key to a proper appreciation of the law is in its definition of terms, particularly: a) "Covered Institutions" b) Covered Transactions and c) Unlawful Activity.

The term "covered institutions" embraces any institution supervised or regulated by either the Banko Sentral ng Pilipinas (BSP) or the Insurance Commission and any institution or entity dealing in currency, commodities or financial derivatives supervised or regulated by the Securities & Exchange Commission.

"Covered Transaction" is a single, series or combination of transactions involving a total amount in excess of P4M or its equivalent in foreign currency. Expressly excluded are transactions involving a person, who at the time of the transaction was a properly identified client and the amount is commensurate with the business or financial capacity of the client or those with an underlying legal or trade obligation.

"Unlawful Activity" refers to any act or omission involving the following crimes/offenses:

1. Kidnapping for ransom;
2. Specified provisions of the Dangerous Drugs Act of 1972;
3. Specified provisions of the Anti-Graft and Corrupt Practices Act;
4. Plunder
5. Robbery and Extortion

6. Jueteng and Masiao;
7. Piracy on the high seas;
8. Qualified theft;
9. Swindling
10. Smuggling;
11. Violations of the Electronic Commerce Act of 2000 (R.A. 8792);
12. Hijacking and other violations under Republic Act No. 6235 destructive arson and murder, acts perpetrated by terrorists;
13. Fraudulent practices and other violations of Securities Regulation Code of 2000; and
14. Felonies or offenses of a similar nature that is punishable under the penal laws of other countries.

Accordingly, the crime of money laundering is defined as one whereby the proceeds of an **unlawful activity** are transacted and made to appear as having originated from a legitimate source. Specifically it is committed by:

- a. Any person knowing that any monetary instrument or property represented, involves, or relates to the proceeds of any unlawful activity, transacts or attempts to transact, said monetary instrument or property.
- b. Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity, perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.
- c. Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Monetary Laundering Council (AMLC), fails to do so.

Other significant provisions:

- a. Any person may be simultaneously charged with and convicted of both a violation of R.A. 9160 and the crime embraced with the definition of "unlawful activity".
- b. The formation of an Anti-Money Laundering Council composed of the Governor of the BSP, the Commissioner of the Insurance Commission of the Chairman of the SEC.

Notably, the law requires that the AMLC must act unanimously in the discharge of its functions. Hence, a vacancy in any of the enumerated offices or absence of any such member will render the AMLC ineffective.

- c. The AMLC is authorized to, upon determination of probable cause, issue of a freeze order – which shall be effective for at least fifteen (15) days and except for the Court of Appeals and the Supreme Court no court shall issue a TRO or writ of injunction against a freeze order issued by the AMLC.
- d. The AMLC is also authorized to inquire into or examine any particular deposit or investment with a covered institution but upon order of a competent court. Hence, while the AMLC has powers to freeze a suspected account, it cannot examine same without a prior court order.

- e. The penalty for the crime of transacting or attempting to transact a money laundering activity ranges from 7 to 14 years and a fine of not less than P3M but not more than double the value of the monetary instrument.

4 – 7 years imprisonment and a fine of at least P1.5M but to exceed P3M for facilitating the offense of money laundering.

6 months – 4 years or a fine of not less than P100,000.00 but not more than P500,000 for failure to disclose a money laundering activity.

- f. To allay fears of the lawmakers themselves that the law may in the future be used against them (as in the case of the crime of plunder which ERAP is charged with), a safeguard provision was inserted. R.A. 9160 cannot be used for political persecution and no case for violation of R.A. 9160 may be filed during an election period.

By and large, the passage of the law (R.A. 9160) is a significant development. The law has several defects but what do you expect when the passage of said law was fast-tracked (very like instant noodles) and extensive debates and deliberations on the bill discouraged and avoided just so both houses of congress are able to meet the deadline. But at least some procedure, however crude, has been put in place as will hopefully deter the use of Philippine banks (and other financial/insurance institutions) as laundry centers.