

# **Anti-Money Laundering/Combating Financing of Terrorism: A Philippine Perspective on a Donor-Driven Initiative**

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## **Introduction**

The Philippines had no anti-money laundering (AML) infrastructure up until 2001 when Republic Act No. 9160, otherwise known as The Anti-Money Laundering Act of 2001, was signed into law on September 29 and took effect on October 17 of the same year. The law was later amended on March 7, 2003 through RA 9194 (An act Amending RA 9160). The amendment took effect on March 23, 2003.<sup>1</sup>

When the Financial Action Task Force (FATF) published its first Non-Cooperating Countries and Territories (NCCT)<sup>2</sup> list on June 22,

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<sup>1</sup> AML History, <http://www.amlc.gov.ph/amla.html>

<sup>2</sup> The principal objective of the Non-Cooperative Countries and Territories (NCCT) Initiative is to reduce the vulnerability of the financial system to money laundering by ensuring that all financial centres adopt and implement measures for the prevention, detection and punishment of money laundering according to internationally recognised standards. The February 2000 NCCTs report laid out the basic procedure for reviewing countries and territories as part of this initiative. The FATF established 4 regional review groups (Americas, Asia/Pacific, Europe, Africa/Middle East) consisting of representatives from the FATF member governments that serve as the main points of contact with the reviewed country or territory. Countries were selected for review based on FATF members' experience on a priority basis. The jurisdictions to be reviewed were informed of the work to be carried out by the FATF. The review groups gathered relevant laws, regulations and other relevant information, analysed this information against the 25 criteria, and drafted a report that was sent to the jurisdictions for comment. This information was directly lifted from the FATF website at: <http://www.fatf->

2000, the Philippines was one of the countries identified as falling under this list and was then joined by Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Russia, St. Kitts and Nevis, and St. Vincent and the Grenadines. It was only on June 22, 2000 that the country was delisted, along with The Cook Islands and Indonesia (identified in the Second Review on June 22, 2001).<sup>3</sup>

In a relatively short period of time, the Philippines became, arguably, a forefront in countering money laundering and terrorist financing in the region. The Philippines' aggressive effort in establishing and strengthening its AML regime is founded on possible countermeasures that it was then liable to face from the FATF, prior to the country's enactment of basic legislative measures, and later for not making possible progress in earlier efforts, that combat money laundering and incorporate amendments to meet the deficiencies in the law.

Multilateral financial institutions like the Asian Development Bank (ADB) and the World Bank (WB) have extended support to the Philippines through various forms of technical assistance and loans to further the country's efforts in complying with anti-money laundering/combating of financing of terrorism (AML/CFT) international standards. And the premium on this assistance is apparent in the benefits that the international community gains by strengthening the Philippines' internal financial structure.

### **AML/CFT International Law and Standards - a brief history**

The 1988 United Conventions against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances is the first international legal instrument to embody money laundering concepts and is also the first international convention, which criminalises money laundering. Later, 2 international instruments, which sought to widen the scope of money laundering offence as covering not only proceeds of illicit drug trafficking but also proceeds of all serious crimes, came into force- the UN

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[gafi.org/document/51/0,3343,en\\_32250379\\_32236992\\_33916403\\_1\\_1\\_1\\_1,00.html#Annual\\_NCCTs\\_Reports](http://www.fatfgafi.org/document/51/0,3343,en_32250379_32236992_33916403_1_1_1_1,00.html#Annual_NCCTs_Reports) (visited on June 20, 2009)

<sup>3</sup> NCCT Time line, [http://www.fatfgafi.org/document/54/0,3343,en\\_32250379\\_32236992\\_33919542\\_1\\_1\\_1\\_1,00.html](http://www.fatfgafi.org/document/54/0,3343,en_32250379_32236992_33919542_1_1_1_1,00.html) (visited on June 21, 2009)

Convention against Transnational Organized Crime (September 2003) and the UN Convention against Corruption (December 2005). Primarily, both Conventions urge States to create a comprehensive domestic supervisory and regulatory regime for banks and non-bank financial institutions, including natural and legal persons, as well as any entities particularly susceptible to being involved in a money-laundering scheme. In April 2002, the International Convention for the Suppression of the Financing of Terrorism came into force. It requires Member States to take measures to protect their financial systems from being misused by persons planning or engaged in terrorist activities.<sup>4</sup>

Briefly, “money laundering is the process by which proceeds from a criminal activity are disguised to conceal their illicit origin. Money laundering has commonly been associated with drug trafficking where drug proceeds are laundered through the financial system or other means. It extends beyond drug trafficking (or drug money laundering) when proceeds of other criminal activities are laundered, such as illegal arms sales and human trafficking. Terrorist financing, on the other hand, is the provision or collection of funds for the support, advancement or perpetration of acts of terrorism. Such funds include legitimate funds as well as proceeds of criminal activities.”<sup>5</sup>

According to the Asia/Pacific Group<sup>6</sup>, “money laundering” is not a

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<sup>4</sup> UN Office on Drugs and Crime (UNODC), <http://www.unodc.org/unodc/en/money-laundering/Instruments-Standards.html> (visited on June 22, 2009)

<sup>5</sup> ADB Anti-Money Laundering Toolkit, <http://www.adb.org/Documents/Others/OGC-Toolkits/Anti-Money-Laundering/aml0100.asp> (visited on June 21, 2009)

<sup>6</sup> The Asia/Pacific Group on Money Laundering (APG) is an autonomous and collaborative international organisation founded in 1997 in Bangkok, Thailand consisting of 39 members and a number of international and regional observers. Some of the key international organisations who participate with, and support, the efforts of the APG in the region include the Financial Action Task Force, International Monetary Fund, World Bank, OECD, United Nations Office on Drugs and Crime, Asian Development Bank and the Egmont Group of Financial Intelligence Units. One of its core functions is to assess compliance by APG members with the global AML/CFT standards through a robust mutual evaluation programme. The APG also assists its members to establish coordinated domestic systems for reporting and investigating suspicious transaction reports and to develop effective capacities to investigate and prosecute money laundering and the financing of terrorism offences. Visit their website at: <http://www.apgml.org/about/history.aspx>

legal term in international law but is used to loosely describe the "turning of dirty money into clean money".

Under the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention) and the United Nations Convention Against Transnational Organized Crime (2000) (Palermo Convention), money laundering<sup>7</sup> has been defined as:

- a. The conversion or transfer of property, knowing that such property is derived from any offence or offences or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions;
- b. The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences or from an act of participation in such an offence or offences; and
- c. The acquisition, possession or use of property, knowing at the time of receipt that such property was derived from an offence or offences or from an act of participation in such offence or offences.

The money laundering process often takes place in three stages: (1) placement; (2) layering; and (3) integration. Placement is the unnoticed introduction of funds into the financial system; it is the stage most vulnerable to detection. Layering is the process of distancing funds from illegal sources by conducting a series of financial transactions that resemble legitimate transactions. Integration is the introduction of funds

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<sup>7</sup> The World Bank. Effective Regimes to Combat Money Laundering and Financing of Terrorism. 2004, <http://www.imf.org/external/np/leg/amlcft/eng/aml1.htm> (visited on June 21, 2009)

into the economy with a legal paper trail.<sup>8</sup>

“Layering is the most complex of all the stages, and the most international in character. The money launderer might begin by sending funds electronically from one country to another, then break them up into investments in advanced financial options or in overseas markets, moving them constantly to evade detection, each time hoping to exploit loopholes or discrepancies in legislation and delays in judicial or police cooperation.”<sup>9</sup>

Money launderers have become so creative in their schemes that governments everywhere are kept on their toes identifying emerging methods of laundering illicit funds. Undeniably, money laundering, financial crimes, and terrorist financing are complex activities and not easy to address. Almost on a regular basis, money launderers come up with complicated financial schemes to introduce illegally obtained funds into legitimate financial markets, making it difficult for governments throughout the world to keep up and prevent laundered funds from acquiring legitimacy. Introducing drug, kidnap for ransom, human trafficking/prostitution, or illegal arms funds into the financial market through trade price manipulation, or through contributions to charitable institutions, using a beneficial owner to conceal real ownership of illegally acquired funds or property, engaging in foreign exchange transactions, or using corporate vehicles (trusts, company service providers) are only a few of the money laundering methods and techniques that have emerged in these recent times.

Apropos, an ADB March 2007 Working Paper, concludes:

“Now that wholesale payments have been caught in the full tide of the electronic revolution, traditional commercial banks will face stronger competition from non-

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<sup>8</sup> ADB Anti-Money Laundering Toolkits, <http://www.adb.org/Documents/Others/OGC-Toolkits/Anti-Money-Laundering/documents/Working-Paper-March2007.pdf> (visited on July 6, 2009)

<sup>9</sup> ADB Manual on Countering on Money Laundering and Financing of Terrorism 2003, <http://www.amlft.com/Asian%20Development%20Bank%20Manual%20on%20Countering%20on%20Money%20Laundering%20and%20Financing%20of%20Terrorism%202003.pdf> (visited on June 20, 2009)

banks and from ‘dis-intermediation’ as lenders and borrowers can deal more easily and directly with each other without needing a financial intermediary. Central Banker’s tasks in attempting to define, measure, monitor, control and supervise their own countries’ changing forms of money and monetary instruments, will become much more complex as the old boundaries between national and regional monetary domains will be broken down by new forms of competitive currencies.”<sup>10</sup>

### **The FATF and the 40 Recommendations Plus 9 Special Recommendations**

“The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. The Task Force is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.”<sup>11</sup> The FATF was convened by the G-7 Summit in Paris in 1989 in response to increasing concern over money laundering. The establishment of the FATF was deemed a coordinated international response to a transnational crime that could no longer be ignored. Pursuant to its mandate as a policy-making body, the FATF published in 1996 its Recommendations 40, which set out the measures national governments should take to implement effective anti-money laundering programs. Members of the FATF include 29 countries and jurisdictions—including the major financial center countries of Europe, North and South America, and Asia—as well as the European Commission and the Gulf Co-operation Council.<sup>12</sup> The FATF membership is currently made up of 32 countries

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<sup>10</sup> ADB Working Paper, March 2007, Effects of Cell Phones on Anti-Money Laundering/Combating Financial Terrorism (AML/CFT) Wire Remittance Operations, quoting A History of Money, Davies, Glyn page 673, <http://www.adb.org/Documents/Others/OGC-Toolkits/Anti-Money-Laundering/documents/AML-Cell-Phone-Effects.pdf> (visited on June 21, 2009)

<sup>11</sup> Quoted from the FATF official website, [http://www.fatf-gafi.org/pages/0,3417,en\\_32250379\\_32235720\\_1\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/pages/0,3417,en_32250379_32235720_1_1_1_1_1,00.html) (visited on June 24, 2009)

<sup>12</sup> ADB Manual on Countering Money Laundering and the Financing of Terrorism,

and territories and 2 regional organisations. The Philippines is not a member of the FATF, but rather is a member of Asia/Pacific Group on Money Laundering (APG), which is a member associate of the FATF.<sup>13</sup>

“The original FATF 40 Recommendations, drawn up in 1990, were precisely the very initiative aimed at preventing the misuse of a country’s financial system by persons, initially identified only as pertaining to persons laundering drug money. “In 1996 the Recommendations were revised for the first time to reflect evolving money laundering typologies. The 1996 40 Recommendations have been endorsed by more than 130 countries and are the international anti-money laundering standard. In October 2001 the FATF expanded its mandate to deal with the issue of the financing of terrorism, and took the important step of creating the 9 Special Recommendations on Terrorist Financing. These Recommendations contain a set of measures aimed at combating the funding of terrorist acts and terrorist organisations, and are complementary to the 40 Recommendations.”<sup>14</sup> The Recommendations cover all the measures that national systems should have in place within their criminal justice and regulatory systems; the preventive measures to be taken by financial institutions and certain other businesses and professions; and international co-operation.

“Taken together, the FATF 40 Recommendations and the 9 Special Recommendations on terrorist financing provide a comprehensive set of measures for an effective legal and institutional regime against money laundering and the financing of terrorism. Resolution 1617 (2005) of the UN Security Council and the Annexed Plan of Action of Resolution 60/288 of the UN General Assembly (20 Sept 2006), stress the importance of the implementation of the FATF 40 Recommendations and the 9

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<http://www.amlcft.com/Asian%20Development%20Bank%20Manual%20on%20Counter%20ing%20on%20Money%20Laundering%20and%20Financing%20of%20Terrorism%202003.pdf> (visited on June 25, 2009)

<sup>13</sup> FATF Members and Observers, [http://www.fatf-gafi.org/document/52/0,3343,en\\_32250379\\_32237295\\_34027188\\_1\\_1\\_1\\_1,00.html#Top](http://www.fatf-gafi.org/document/52/0,3343,en_32250379_32237295_34027188_1_1_1_1,00.html#Top) (visited on June 25, 2009)

<sup>14</sup> Quoted from FATF website on 40 Recommendations, [http://www.fatf-gafi.org/document/28/0,3343,en\\_32250379\\_32236930\\_33658140\\_1\\_1\\_1\\_1,00.html#1](http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.html#1) (visited on June 22, 2009)

Special Recommendations on terrorist financing.”<sup>15</sup>

Although not imbued with the nature of a treaty, the 40 Recommendations are mandatory in character upon all the FATF members, such that membership thereto also means adopting the 40 Recommendations. The FATF has put in place two mechanisms to monitor members' compliance with these Recommendations: self-assessment exercises and mutual evaluation procedures. Each member country answers a questionnaire and makes a report thereon regarding its effective implementation of the 40 Recommendations. The answers are then tabulated and analyzed against FATF standards. Mutual evaluation processes, the second monitoring mechanism, are more detailed than self-assessment exercises. The FATF conducts on-site visits to member countries to examine firsthand how well member countries or jurisdictions are (or are not) implementing the 40 Recommendations. The on-site visit is then concluded with a report, which describes the strengths of a member country's anti-money laundering efforts and areas for improvement, if any. If a member country is deemed by the FATF to be non-compliant with the Recommendations, the FATF may take a number of steps, including imposition of countermeasures.<sup>16</sup>

The basic premise underlying an effective AML regime of any jurisdiction is to discouraged money launderers or financiers of terrorism from using that particular country as a haven to “clean up” their illicit funds. But the more crucial object of a fully operational AML system is to strike at the economic power of criminal or terrorist organizations (or individuals) and weaken their operations by precluding them from using or benefiting from the illegal proceeds of their criminal activities.

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<sup>15</sup> UN Instruments and Other International Standards on Money-Laundering and Terrorist Financing, <http://www.unodc.org/unodc/en/money-laundering/Instruments-Standards.html> (visited on July 27, 2009)

<sup>16</sup> From Drugs to Terrorism: The Focus Shifts in the International Fight Against Money Laundering after September 11, 2001, Alison S. Bachus, <http://www.law.arizona.edu/journals/ajicl/AJICL2004/vol213/Bachus%20Note%20Final%20Revised%2011%20Nov%202004.pdf> (visited on July 6, 2009)



### A Short Note on Predicate Offences

In its 40 Recommendations for fighting money laundering, FATF specifically incorporates the technical and legal definitions of money laundering set out in the Vienna and Palermo Conventions and lists 20 designated categories of offences that must be included (in national jurisdictions) as predicate offences for money laundering.<sup>17</sup>

Recommendation 1 of the FATF 40 Recommendations provides that:

Countries should criminalise money laundering on the basis of United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention). Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or to a list of predicate offences, or a combination of these approaches.

Where countries apply a threshold approach, predicate offences should at a minimum comprise all offences that fall within the category of serious offences under their national law or should include offences which are punishable by a maximum penalty of more than one year's imprisonment or for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences, which are punished by a minimum penalty of more than six months

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<sup>17</sup> Chapter V, Criminalization of Money Laundering Reference Guide, [http://www1.worldbank.org/finance/html/amlcft/docs/Ref\\_Guide\\_EN/v2/01-Ch01\\_EN\\_v2.pdf](http://www1.worldbank.org/finance/html/amlcft/docs/Ref_Guide_EN/v2/01-Ch01_EN_v2.pdf) (visited on July 11, 2009)

imprisonment. Whichever approach is adopted, each country should at a minimum include a range of offences within each of the designated categories of offences.

The Recommendation likewise provides for a list of designated categories of offences, which each country shall use as basis for designating the range of offences that may fall under the predicate offences, defining those offences and providing for circumstances that will aggravate the nature of the offence, bearing in mind its respective domestic laws.

The following are the designated categories of offences: (i) participation in an organised criminal group and racketeering; (ii) terrorism, including terrorist financing; (iii) trafficking in human beings and migrant smuggling; (iv) sexual exploitation, including sexual exploitation of children; (v) illicit trafficking in narcotic drugs and psychotropic substances; (vi) illicit arms trafficking; (vii) illicit trafficking in stolen and other goods; (viii) corruption and bribery; (ix) fraud; (x) counterfeiting currency; (xi) counterfeiting and piracy of products; (xii) environmental crime; (xiii) murder, grievous bodily injury; (xiv) kidnapping, illegal restraint and hostage-taking; (xv) robbery or theft; (xvi) smuggling; (xvii) extortion; (xviii) forgery; (xix) piracy; and (xx) insider trading and market manipulation.<sup>18</sup>

Counties are further encouraged to ensure that what constitutes a predicate offence should be considered transnational in character, and will be considered an offence even if it was committed in another jurisdiction and which would have constituted a predicate offence had it occurred domestically.

In this jurisdiction, there are 14 unlawful activities or predicate crimes covered by the AML law. Republic Act No. 9160 (2001), Sec. 3(i), as amended, provides that: “Unlawful activity” refers to any act or omission or series or combination thereof involving or having direct

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<sup>18</sup> 40 Recommendations Glossary,  
[http://www.fatf-gafi.org/glossary/0,3414,en\\_32250379\\_32236889\\_35433764\\_1\\_1\\_1\\_1,00.html#34277114](http://www.fatf-gafi.org/glossary/0,3414,en_32250379_32236889_35433764_1_1_1_1,00.html#34277114) (visited on July 11, 2009)

relation to the following:

- (1) Kidnapping for ransom under Article 267 of Act No. 3815, otherwise known as the Revised Penal Code, as amended;
- (2) Sections 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, and 16 of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002;
- (3) Section 3 paragraphs B, C, E, G, H and I of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act;
- (4) Plunder under Republic Act No. 7080, as amended;
- (5) Robbery and extortion under Articles 294, 295, 296, 299, 300, 301 and 302 of the Revised Penal Code, as amended;
- (6) Jueteng and Masiao punished as illegal gambling under Presidential Decree No. 1602;
- (7) Piracy on the high seas under the Revised Penal Code, as amended and Presidential Decree No. 532;
- (8) Qualified theft under Article 310 of the Revised Penal Code, as amended;
- (9) Swindling under Article 315 of the Revised Penal Code, as amended;
- (10) Smuggling under Republic Act Nos. 455 and 1937;
- (11) Violations under Republic Act No. 8792, otherwise known as the Electronic Commerce Act of 2000;
- (12) Hijacking and other violations under Republic Act No. 6235; destructive arson and murder, as defined under the Revised Penal Code, as amended, including those

perpetrated by terrorists against non-combatant persons and similar targets;

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

(14) Felonies or offenses of a similar nature that are punishable under the penal laws of other countries.

### **The Philippine Experience**

RA 9160 (as amended) provided for the creation of the Anti-Money Laundering Council (AMLC). While it is mandated to function as a Financial Intelligence Unit (FIU)<sup>19</sup>, the AMLC is also tasked to investigate money-laundering offences and assist in the prosecution of money laundering cases.

The AMLC is the highest policy-making body and lead agency with respect to the implementation of the Philippine AML regime. It is composed of the Governor of Banko Sentral ng Pilipinas as Chairman and the Commissioner of the Insurance Commission and the Securities and Exchange Commission Chairperson as members. It acts unanimously in the discharge of its functions.

Initially, the Philippines complied with global standards on establishing an AML regime by passing the Anti-Money Laundering Act of 2001 (AMLA). The Implementing Rules and Regulations (IRR) for the AMLA were issued in April 2002. AMLA criminalized money laundering, an offence that includes commission of any activity involving any of the 14 major categories of crimes listed in the law, as well as the proceeds

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<sup>19</sup> Pursuant to the Statement of Purpose of the Egmont Group of Financial Intelligence Units (Guernsey, 23 June 2004), an FIU has been defined as “a central, national agency responsible for receiving, (and as permitted, requesting), analysing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds of crime and potential financing of terrorism, or (ii) required by national legislation or regulation, in order to combat money laundering and terrorism financing”, [http://www.egmontgroup.org/statement\\_of\\_purpose.pdf](http://www.egmontgroup.org/statement_of_purpose.pdf) (visited on July 27, 2009)

arising from such unlawful activity, and imposed a penalty of imprisonment for up to 14 years and a fine of no less than P3 million but no more than twice the value or property involved in the offense. However, the FATF considered AMLA inadequate, which caused the Philippine Congress to amend the law in March 2003 through Republic Act No. 9194. The major amendments included lowering the threshold amount for single covered transactions (cash or other equivalent monetary instrument) from P4 million to P500, 000 within one banking day; expanded financial institution reporting requirements to include the reporting of suspicious transactions<sup>20</sup>; authorized AMLC to inquire into or examine any particular deposit or investment, with any banking institution or non-bank financial institution and their subsidiaries and affiliates upon order of any competent court in cases of violation of the law, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity. However, no court order is required in cases involving unlawful activities of kidnapping for ransom, narcotics offenses and hijacking, destructive arson and murder, including those perpetrated by terrorists against non-combatant persons and similar targets; authorized the Bangko Sentral ng Pilipinas to inquire into or examine any deposit or investment with any banking institution or non-bank financial institution and their subsidiaries and affiliates when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP; transfer the authority to freeze any money/property from the AMLC to the Court of Appeals.<sup>21</sup>

Prior to these amendments, the Philippines then faced possible

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<sup>20</sup> Section 3 (b-1) of RA 9160, as amended, defines ‘suspicious transactions’ as transactions with covered institutions, regardless of the amounts involved, where any of the following circumstances exist: 1. there is no underlying legal or trade obligation, purpose or economic justification; 2. the client is not properly identified; 3. the amount involved is not commensurate with the business or financial capacity of the client; 4. taking into account all known circumstances, it may be perceived that the client’s transaction is structured in order to avoid being the subject of reporting requirements under the Act; 5. any circumstance relating to the transaction which is observed to deviate from the profile of the client and/or the client’s past transactions with the covered institution; 6. the transaction is in any way related to an unlawful activity or offense under this Act that is about to be, is being or has been committed; or 7. any transaction that is similar or analogous to any of the foregoing.

<sup>21</sup> AMLC website: <http://www.amlc.gov.ph/archive.html#9194> (visited on July 7, 2009)

countermeasures<sup>22</sup> from the FATF. However, for better or for worse, the FATF considered the 2003 amendments to have adequately corrected the major flaws in the original law and decided not to recommend the application of countermeasures. In February 2005, FATF de-listed the Philippines from its NCCT list but continued to monitor the country as part of the FATF's standard monitoring process for de-listed NCCTs, to ensure continued adequate implementation of its AML regime. In June 2005, the AMLC was admitted to the Egmont Group<sup>23</sup> of FIUs. On the basis of this progress, in February 2006 the FATF ended the formal monitoring of the Philippines. The Philippines is a member of the APG, which has mechanisms to review members' progress in implementing AML measures.<sup>24</sup>

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<sup>22</sup> In cases where NCCTs have failed to make adequate progress in addressing the serious deficiencies previously identified by the FATF, and in cases where progress has stalled, the FATF will recommend the application of further countermeasures which should be gradual, proportionate and flexible regarding their means and taken in concerted action towards a common objective. The FATF believes that enhanced surveillance and reporting of financial transactions and other relevant actions involving these jurisdictions would now be required, including the possibility of: (i) Stringent requirements for identifying clients and enhancing advisories (including jurisdiction-specific financial advisories) to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries; (ii) Enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious; (iii) Taking into account the fact that the relevant bank is from an NCCT, when considering requests for approving the establishment in FATF member countries of subsidiaries or branches or representative offices of banks; (iv) Warning non-financial sector businesses that conducting transactions with entities within the NCCTs might run the risk of money laundering. See Annual Review of Non-Cooperative Countries and Territories 2005-2006 at <http://www.fatf-gafi.org/dataoecd/0/0/37029619.pdf> (visited on July 8, 2009)

<sup>23</sup> Since 1995, a number of FIUs began working together in an informal organization known as the Egmont Group (named for the location of the first meeting at the Egmont-Arenberg Palace in Brussels on 9 June 1995). The goal of the Egmont Group is to provide a forum for FIUs to improve support to their respective national anti-money laundering programs. This support includes expanding and systematizing the exchange of financial intelligence information, improving expertise and capabilities of personnel of such organizations, and fostering better communication among FIUs through application of technology. (Information Paper on Financial Intelligence Units and the Egmont Group, [http://www.egmontgroup.org/info\\_paper\\_final\\_oct\\_2004.pdf](http://www.egmontgroup.org/info_paper_final_oct_2004.pdf)) (visited on July 9, 2009)

<sup>24</sup> Annual Review of Non-Cooperative Countries and Territories, <http://www.fatf-gafi.org/dataoecd/0/0/37029619.pdf> (visited on July 08, 2009)

## Projects and Technical Assistance (TA)

“Examples of activities that have a bearing on ADB’s current activities in AML and CFT are those dealing with public financial management; legal system reforms, enhancing capacity to implement laws and supporting private sector development; public accountability through strong anticorruption measures; improvement in accounting and auditing standards; and improving disclosure and transparency.”<sup>25</sup>

Strengthening governance in the financial sectors of DMCs is a key element of good governance. ADB’s efforts in assisting DMCs to combat ML have also been channeled through 3 TAs, approved between 2000-2002, that seek to directly assist DMCs in identifying needed institutional and regulatory reforms and strengthening their AML regimes.<sup>26</sup>

The 3 TAs included a regional technical assistance (RETA) and 2 TAs in favor of Indonesia and another for the Philippines. The RETA, approved in December 2000, targeted 9 selected DMCs -Cook Islands, Fiji Islands, Indonesia, Marshall Islands, Nauru, Philippines, Samoa, Thailand, and Vanuatu- and aimed to identify institutional and regulatory reforms in each of the participating countries, taking into account the evaluations done by FATF and APG, as well as self-assessments by each country.

The TA granted to the Philippines in March 2002<sup>27</sup> had for its object the strengthening of its existing AML regime, which also built on the accomplishments of the earlier RETA, of which the Philippines was part.

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<sup>25</sup> Enhancing the Asian Development Bank’s Role in Combating Money Laundering and the Financing of Terrorism, March 2003, [http://www.adb.org/Documents/Policies/ADB\\_Money\\_Laundering\\_Terrorism/money\\_laundering\\_terrorism.pdf](http://www.adb.org/Documents/Policies/ADB_Money_Laundering_Terrorism/money_laundering_terrorism.pdf) (visited on July 10, 2009)

<sup>26</sup> *Id.*

<sup>27</sup> TA 3847-PHI: Strengthening the Anti-Money Laundering Regime, TA Completion Report, <http://www.adb.org/Documents/TACRs/PHI/tacr-phi-3847.pdf> (visited on July 27, 2009)

On 24 June 2005,<sup>28</sup> ADB granted the Philippines another TA, the most crucial and significant contribution of which is the preparation of the report alongside the creation of a process-map of the AML regime in the Philippines. The process map is an attempt to briefly explain how the AML system currently works and to suggest positive actions to make the system operate more effectively and efficiently, in the hope that the process map can add understanding and clarify some of the misconceptions concerning current system and, therefore, lay a foundation for further enhancements. The objective of the report alongside the process map is to document the anti-money laundering procedures under the Philippine AML regime and systematically identify key money-laundering-related vulnerabilities and bottlenecks to effective implementation. The process map is regime-wide and is intended to provide a comprehensive and common framework of reference for the Government, as well as the interested development partners, to allow for a more coordinated approach to addressing implementation issues.

The Philippines also sought assistance from ADB by way of a loan in reference to a project with AML/CFT component. The loan agreement between ADB and the Philippines, dated December 2006, sought to develop the country's financial market. "The objectives of the Program are to (i) enhance financial system stability through improved debt and risk management measures of the Government, improve resolution of banks resulting in enhanced financial intermediation, and more robust non-bank financial institutions, (ii) strengthen non-bank financial sector governance, and (iii) improve securities market efficiency that will contribute to better investment confidence and climate."<sup>29</sup>

## Conclusion

Simply put, the objectives of any AML regime are to "ensure that the identities of all people using the financial system are known, that the ownership of all funds is identified or is identifiable, that movement of

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<sup>28</sup> TA 4601- Philippines: Strengthening the Anti-Money Laundering Regime (Phase II), TA Report: PHI 38601, <http://www.adb.org/Documents/TARs/PHI/tar-phi-38601.pdf> (visited on July 27, 2009)

<sup>29</sup> Loan Number 2278-PHI, Subprogram I–Financial Market Regulation and Intermediation Program Cluster, <http://www.adb.org/Documents/Legal-Agreements/PHI/38276/38276-PHI-LBG.pdf> (visited on July 28, 2009)



money or valuable assets is traceable, and that the original source of funds is traceable, whether they came from within or outside the jurisdiction.”<sup>30</sup>

As a policy-making body, the FATF endeavours to require all jurisdictions to have in place a system that complies with the legal regime and financial system requirements of the FATF 40 and 9 Special Recommendations, which have been recognised by the International Monetary Fund and the World Bank as the international standards for combating money laundering and the financing of terrorism.<sup>31</sup>

“An effective AML/CFT system requires an adequate legal and institutional framework, which should include: (i) laws that create money laundering (ML) and terrorist financing (FT) offences and provide for the freezing, seizing and confiscation of the proceeds of crime and terrorist funding; (ii) laws, regulations or in certain circumstances other enforceable means that impose the required obligations on financial institutions and designated non-financial businesses and professions; (iii) an appropriate institutional or administrative framework, and laws that provide competent authorities with the necessary duties, powers and sanctions; and (iv) laws and other measures that give a country the ability to provide the widest range of international co-operation.”<sup>32</sup>

With this in mind, it was logical for a multilateral financial institution like ADB to be heavily invested in ensuring that the AML regimes of its Developing Member Countries (DMCs) are fully institutionalized, sound and effective. The risks posed by ML/FT activities to the financial sector of any DMC affects not only the regional but also the global financial markets. Any instability in the region, i.e. instability in the financial market, will have profound effects and will ripple across the globe. As one of the first multilateral development banks

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<sup>30</sup> ADB Anti-Money Laundering Toolkit: Understanding the Structure of the AML Legal Regime, [http://www.adb.org/Documents/Others/OGC-Toolkits/Anti-Money-Laundering/aml\\_bg\\_intlstandrd\\_a.asp](http://www.adb.org/Documents/Others/OGC-Toolkits/Anti-Money-Laundering/aml_bg_intlstandrd_a.asp) (visited June 18, 2009)

<sup>31</sup> Money Laundering and Terrorist Financing: Definitions and Explanations, [http://www1.worldbank.org/finance/html/amlcft/docs/Ref\\_Guide\\_EN/v2/01-Ch01\\_EN\\_v2.pdf](http://www1.worldbank.org/finance/html/amlcft/docs/Ref_Guide_EN/v2/01-Ch01_EN_v2.pdf) (visited on July 28, 2009)

<sup>32</sup> Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, <http://www.fatf-gafi.org/dataoecd/16/54/40339628.pdf> (visited on July 28, 2009)

to address these risks by providing regional and country-specific assistance program to its DMCs, ADB is able to ensure the integrity of the region's financial systems. "ADB's own recent activities in assisting its DMCs to combat ML have been undertaken within the broader context of its existing policies and strategies to facilitate poverty reduction, promote good governance and anticorruption, and strengthen national financial systems. Thus, these activities have been incorporated, as appropriate, as an integral part of ADB's operational programs and country strategies in a limited number of DMCs that have requested assistance in their efforts to combat ML."<sup>33</sup>

Undeniably, the Philippines would benefit (and has indeed benefited) from any efforts to strengthen its AML/CFT legal regimes. In the years that followed since the enactment of the AML law, the Philippines had received technical assistance (TAs) and been involved in other projects with AML/CFT components from ADB, as well as from other international organizations. In reference to ADB's own successful intervention, obviously as one of its DMCs, the Philippines had shown great strides insofar as being a forerunner in AML/CFT endeavours in the region is concerned.

Thus far, the Philippines has averted imposition of countermeasures from FATF, and more importantly, the international community remains confident that the country's financial system is sound and transparent. At the risk of sounding simplistic, the Philippines seems to enjoy a robust economy and all the other seeming benefits attendant to such perception. "The negative economic effects of ML on economic development are difficult to quantify, yet it is clear that such activity damages the financial sector institutions that are critical to economic growth; reduces productivity in the economy's real sector by diverting resources and encouraging crime and corruption, which slow economic growth; and can distort the economy's external sector—international trade

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<sup>33</sup> Enhancing the Asian Development Bank's Role in Combating Money Laundering and Financing of Terrorism, March 2003, Chapter III. International Efforts to Combat ML/FT, ADB's Activities in AML, para. 45, [http://www.adb.org/documents/policies/ADB\\_Money\\_Laundering\\_Terrorism/money304.asp](http://www.adb.org/documents/policies/ADB_Money_Laundering_Terrorism/money304.asp) (visited on July 28, 2009)

and capital flows—to the detriment of long-term economic development.<sup>34</sup>

Despite the glowing reports, it is nonetheless prudent to look at this aid-driven effort from a more pragmatic angle rather than as an abstraction of complying with requirements from international standard setters on one hand and avoiding imposition of penalties, or countermeasures, on the other. After all, international organizations, i.e. ADB, espouse the provision of TAs and other assistance to their DMCs within the broader context of its policy to reduce (and perhaps to ultimately eradicate) poverty in the region. Having said that, and by no means downplaying the positive impact of these TAs and other projects with AML/CFT components, these aid efforts should also aim to illicit more practical “effects” within the community- that purging the financial system of money laundering, for instance, and economic growth results therefrom, what is the immediate benefit to the common man? Again, at the risk of sounding simplistic, it is believed that efforts directed at suppressing money laundering (and financing of terrorism in some instances) would be successful or deemed successful if those in power do not abuse AML/CFT legal regime in their jurisdiction.

As a core policy of ADB, for instance, the promotion of good governance and anticorruption is also inherent in every effort to prevent money laundering (or financing of terrorism in some instances). Indeed, a corrupt government official benefits if pilfered money is integrated into the economy with legal paper trail attributed to him. The bleeding of the government coffers by corruption is no less damaging as a drug trafficker integrating his illicit funds into the economy. And perhaps, it is safe to say, that a drug trafficker will have a far more difficult opportunity to infuse the proceeds of his crime into the financial system than would a government official with his “corruption funds”, for the latter would have at his disposal the opportunity to go around AML regimes and the former would have that opportunity if he pays the corrupt government official.

Thus, undeniably, “anti-corruption and anti-money laundering

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<sup>34</sup> Enhancing the Asian Development Bank’s Role in Combating Money Laundering and Financing of Terrorism, March 2003, Chapter II. The Policy Context, Negative Effects of Money Laundering, para. 13, [http://www.adb.org/Documents/Policies/ADB\\_Money\\_Laundering\\_Terrorism/money204.asp](http://www.adb.org/Documents/Policies/ADB_Money_Laundering_Terrorism/money204.asp) (visited on July 28, 2009)

work are linked in numerous ways, and especially in recommendations that promote, in general, transparency, integrity and accountability. The essential connections are: (i) money-laundering (ML) schemes make it possible to conceal the unlawful origin of assets. Corruption is a source of ML as it generates large amounts of proceeds to be laundered. Corruption may also enable the commission of a ML offense and hinder its detection, since it can obstruct the effective implementation of a country's judicial, law enforcement and legislative frameworks. (ii) when countries establish corruption as a predicate offense to a money laundering charge, money-laundering arising as a corrupt activity can be more effectively addressed. When authorities are empowered to investigate and prosecute corruption-related money laundering they can trace, seize and confiscate property that is the proceeds of corruption and engage in related international cooperation. (iii) when corruption is a predicate offense for money laundering, AML preventive measures can also be more effectively leveraged to combat corruption.<sup>35</sup>

One can only hope then that our leaders accept the generosity of the international community with the sincerest intention to direct such aid for the benefit of the country and not for the leaders' personal gain.

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<sup>35</sup> International Monetary Fund, How are Corruption and Money Laundering Linked?, <http://www.imf.org/external/np/leg/amlcft/eng/aml1.htm> (visited on July 27, 2009)