



Amendments to the Anti-Money Laundering Act

April 21, 2021

The Anti-Money Laundering Act (AMLA) has been further amended by Republic Act No. 11521,¹ which took effect on February 8, 2021 (or immediately after its publication in the Official Gazette). *(The new provisions introduced by R.A. 11521 to the AMLA are underlined below for ease of reference.)*

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A. **Spotlight on New Provisions**

R.A. 11521 adds two new covered persons who are now required to report covered and suspicious transactions to the Anti-Money Laundering Council (AMLC) – (1) “real estate developers and brokers;” and (2) “offshore gaming operators, as well as their service providers, supervised, accredited or regulated by the Philippine Amusement and Gaming Corporation (PAGCOR) or any government agency.” *(Please see part B below for more information.)*

This amendatory law provides a new kind of covered transaction as well -- for real estate developers and brokers, a single cash transaction involving an amount exceeding P7.5 million will be a covered transaction.

There are also two new unlawful activities under this latest AMLA amendment.² The first one is a violation of Section 19(a)(3) of R.A. 10697, also known as the Strategic Trade Management Act (STMA) dated November 13, 2015, which penalizes activities “prohibited by, or in contravention of, any orders or regulations issued by the National Security Council-Strategic

¹ Please see <https://www.officialgazette.gov.ph/downloads/2021/01jan/20210129-RA-11521-RRD.pdf> for reference.

² Under AMLA, unlawful activities are acts or omissions involving or having relation to any of the 36 (previously 34) crimes listed under Section 3(i) of the AMLA. Money laundering is committed when a person transacts, converts, conceals, attempts, abets, among others, any monetary instrument or property, knowing that it relates to the proceeds of an unlawful activity. Furthermore, covered persons are required to report suspicious transactions to the AMLC regardless of the amount involved, and one such suspicious transaction is when it relates to an unlawful activity. Money laundering is likewise committed when covered persons fail to report covered or suspicious transactions.

Trade Management Committee (NSC-STMCom) to implement the provisions” of the STMA. The second one is tax evasion under Section 254 of the National Internal Revenue Code, as amended (NIRC), “where the deficiency basic tax due exceeds P25 million per taxable year, for each tax type covered and there has been a finding of probable cause by the competent authority.”

R.A. 11521 grants AMLC the power to issue freeze orders to implement targeted financial sanctions in relation to financing of the proliferation of weapons of mass destruction, terrorism, and financing of terrorism. Furthermore, this latest amendment provides that the AMLC and its Secretariat must protect information received by them by virtue of their office, and imposes criminal liability for violation of such confidentiality.

B. Covered Persons and Covered Transactions

Two new covered persons

Under the AMLA, covered persons are required to report covered or suspicious transactions to AMLC. Covered persons who fail to report these transactions are guilty of money laundering.

The AMLA defines and lists down these covered persons, and under Sections 3(a)(9) and (10) of R.A. 11521, “real estate developers and brokers”; and “offshore gaming operators, as well as their service providers.” are new covered persons and are now required to report covered and suspicious transactions to the AMLC.

R.A. 11521 likewise defines these new covered persons, as seen in the table below:

Provision	Term	Definition
Section 3(m)	Real estate developer	<u>“Any natural or juridical person engaged in the business of developing real estate development project for the account of the developer and offering them for sale or lease.”</u>
Section 3(n)	Real estate broker	<u>“A duly registered and licensed natural person who, for a professional fee, commission or other valuable consideration, acts as an agent of a party in a real estate transaction to offer, advertise, solicit, list, promote, mediate, negotiate or effect the meeting of the minds on the sale, purchase, exchange, mortgage, lease or joint venture, or other similar transactions on real estate or any interest therein.”</u>
Section 3(l)(4)	Offshore gaming operator	<u>“An entity engaged in offering online games of chance or sporting events via the internet using a network and software program, by themselves or through local service providers.”</u>

Provision	Term	Definition
Section 3(l)(5)	Service provider	<u>“Duly constituted business corporations who provide components of offshore gaming operations to offshore gaming operators.”</u>

Covered transaction for real estate brokers and developers

As mentioned, covered persons must report covered transactions. While the amendatory law does not change the definition of covered transactions, it provides for a new covered transaction that applies only to real estate developers and brokers. The new Section 3(b) provides:

(b) 'Covered transaction' is a transaction in cash or other equivalent monetary instrument involving a total amount in excess of Five hundred thousand pesos (P500,000.00) within one (1) banking day; for covered persons under Section 3(a)(8), a single casino cash transaction involving an amount in excess of Five million pesos (P5,000,000.00) or its equivalent in any other currency.

For covered persons under Section 3(a)(9) herein, a single cash transaction involving an amount in excess of Seven million five hundred thousand pesos (P7,500,000.00) or its equivalent in any other currency.

Section 3(a)(9) of R.A. 11521 pertains to real estate developers and brokers. In other words, real estate developers and brokers are now required to report single cash transactions exceeding P7.5 million to the AMLC. This is without prejudice to the reporting of suspicious transactions, which covered persons are required to report regardless of the amount. R.A. 11521 did not change or add to the suspicious transactions.

C. Targeted Financial Sanctions

Declaration of Policy

Under the new Section 2 of the AMLA, the following are declared to be the policy of the State:

1. To protect and preserve the integrity and confidentiality of bank accounts;
2. To ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity;
3. To extend cooperation in transnational investigations and prosecutions of persons involved in money laundering activities wherever committed; and
4. To implement targeted financial sanctions related to the financing of the proliferation of weapons of mass destruction, terrorism, and financing of terrorism, pursuant to the resolutions of the United Nations Security Council.

The new declared policy here is item 4, i.e., “to implement targeted financial sanctions.” According to Section 3(o) of the AMLA, as amended, targeted financial sanctions “refer to both asset freezing and prohibition to prevent funds or other assets from being made available, directly or indirectly, for the benefit of any individual, natural or legal persons or entity

designated pursuant to relevant United Nations Security Council resolutions and its designation processes.”

Freeze Orders

Pursuant to this policy, the AMLC has been granted the additional function of implementing targeted financial sanctions. According to Section 7(15) of AMLA, the AMLC has the power “to implement targeted financial sanctions in relation to proliferation of weapons of mass destruction and its financing, including *ex parte* freeze, without delay, against all funds and other assets that are owned and controlled, directly or indirectly, including funds and assets derived or generated therefrom, by individuals or entities designated and listed under United Nations Security Council Resolution Numbers 1718 of 2006 and 2231 of 2015 and their successor resolutions as well as any binding resolution of the Security Council.”

Based on Section 10 of AMLA, the AMLC has to apply for the freeze order with the Court of Appeals if there is probable cause that any monetary instrument or property is related to an unlawful activity; this provision is still valid and effective even with the effectiveness of R.A. 11521. However, an exception is now provided in the new law as it inserts a new Section 10(b) to AMLA and it provides that “for purposes of implementing targeted financial sanctions in relation to proliferation of weapons of mass destruction and its financing, the AMLC shall have the power to issue, *ex parte*, an order to freeze without delay.” Thus, if the purpose is to implement targeted financial sanctions in relation to proliferation of weapons of mass destruction and its financing, AMLC can now issue the freeze order itself without needing to go to any court.

A table is provided below distinguishing Section 10(a) of AMLA with the new Section 10(b).

	Section 10(a)³ of AMLA	New Section 10(b) of AMLA
Underlying Activity	Unlawful activity, as defined In Section 3(i)	<u>“Proliferation of weapons of mass destruction and its financing” as provided under Section 3(15)</u>
Role of AMLC	Applies for the freeze order via verified <i>ex parte</i> petition	<u>Issues the freeze order <i>ex parte</i></u>
Who issues the freeze order	Court of Appeals	<u>AMLC</u>
Requirements for issuing freeze order	“Verified <i>ex parte</i> petition by the AMLC, after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity”	<u>“For purposes of implementing targeted financial sanctions in relation to proliferation of weapons of mass destruction and its financing, as provided under Section 3(15)”</u>

³ Section 10 of AMLA prior to effectiveness of R.A. 11521.

	Section 10(a)³ of AMLA	New Section 10(b) of AMLA
Effectivity of the freeze order	<p>“Effective immediately for a period of twenty (20) days. May be extended after summary hearing but the total period of the freeze order issued by the Court of Appeals under this provision shall not exceed six (6) months.</p> <p>If there is no case filed against a person whose account has been frozen within the period determined by the Court of Appeals, not exceeding six (6) months, the freeze order shall be deemed ipso facto lifted.”</p>	<p><u>“Effective until the basis for its issuance shall have been lifted.”</u></p>
Procedure	<p>“Within the twenty (20)-day period, the Court of Appeals shall conduct a summary hearing, with notice to the parties, to determine whether or not to modify or lift the freeze order, or extend its effectivity.”</p>	<p><u>“During the effectivity of the freeze order, the aggrieved party may, within twenty (20) days from issuance, file with the Court of Appeals a petition to determine the basis of the freeze order according to the principle of effective judicial protection.”</u></p>
Limitations	<p>“The freeze order or asset preservation order issued under this Act shall be limited only to the amount of cash or monetary instrument or value of property that court finds there is probable cause to be considered as proceeds of a predicate offense, and the freeze order or asset preservation order shall not apply to amounts in the same account in excess of the amount or value of the proceeds of the predicate offense.”</p>	<p><u>“The person whose property or funds have been frozen may withdraw such sums as the AMLC determines to be reasonably needed for monthly family needs and sustenance including the services of counsel and the family medical needs of such person.”</u></p>
Who may issue injunctions or TROs against the freeze order	<p>Court of Appeals and the Supreme Court only.</p>	

D. Other Relevant Provisions

Information Security and Confidentiality

The latest amendment to AMLA contains a new provision on information security and confidentiality. Section 8-A provides that the AMLC and its Secretariat shall “securely protect information received or processed and shall not reveal, in any manner, any information known to them by reason of their office. This prohibition shall apply even after their separation from the AMLC.” A breach of information security and confidentiality is met with a punishment of “imprisonment ranging from three (3) to eight (8) years and a fine of not less than Five hundred thousand Philippine pesos (P500,000.00) but not more than One million Philippine pesos (P1,000,000.00).”

R.A. 11521 also provides that the AMLC shall “formulate rules governing information exchange and dissemination, the security and confidentiality of such information, including procedures for handling, storage, and protection of, as well as access to such information.”

Functions of the AMLC

In addition to the power of the AMLC to issue freeze orders for purposes of implementing targeted financial sanctions, as discussed above, there were other minor changes to the powers and functions of the AMLC. Under Sections 7(13) and (14), the AMLC, in the conduct of its investigation, is expressly allowed to “apply for the issuance of a search and seizure order” or a “subpoena ad testificandum and/or subpoena duces tecum with any competent court.” The AMLC is likewise given the power to “preserve, manage, or dispose assets pursuant to a freeze order, asset preservation order, or judgment of forfeiture.”

With respect to civil forfeitures, the latest amendment now provides that “no court shall issue a temporary restraining order (TRO) or a writ of injunction against any provisional asset preservation order or asset preservation order, except the Court of Appeals or the Supreme Court.”

Furthermore, while the new law reiterates that “nothing contained therein nor in related antecedent laws or existing agreements shall be construed to allow the AMLC to participate in any manner in the operations of the Bureau of Internal Revenue (BIR),” it likewise provides that “the AMLC may, however, coordinate with the BIR on investigations in relation to violations of Section 254 (i.e., tax evasion) of the NIRC, as amended, as a predicate offense to money laundering.”

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Anti-Money Laundering Act
As Amended on February 8, 2021

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