

SENATE



Senate
Office of the Secretary

Senate Bill No. 634

'19 JUL 22 A9:04

Introduced by Senator FRANCIS N. PANGILINAN

RECEIVED

AN ACT
ALLOWING DISCLOSURE OF DEPOSITS, REPEALING FOR THE PURPOSE THE
PERTINENT LAWS ON SECRECY OF DEPOSITS

EXPLANATORY NOTE

Republic Act No. 11213 or the Tax Amnesty Act was signed by the President on 14 February 2019. However, he removed the provision for a general tax amnesty, which could have raised P13.63 billion in revenues if implemented.¹ In his veto message, the President cited the absence of powers for the State to run after tax evaders due, in part, to the rigidity of our bank secrecy laws. He noted:

“Without the provisions breaking down the walls of bank secrecy, setting the legal framework for us to comply with international standards on exchange of information for tax purposes, and safeguarding against those who abuse the amnesty by declaring an untruthful asset or net worth, a general amnesty that is overgenerous and unregulated would create an environment ripe for future tax evasion, the very thing we wish to address.

Without these measures, the government and ultimately the Filipino people will incur long term substantial revenue losses. x x x without safeguards and measures against tax evasion, the objectives of an amnesty such as raising revenues and expanding the tax base cannot be fully achieved.”²

According to the Department of Finance (DOF), the national government is unable to collect an estimated P668.34 billion in taxes and duties annually due to our restrictive banking laws. Said revenue leakage accounts for about a third (33.7 percent) of the government’s annual tax collection. The biggest leakage is from individual tax payers; of which, only 15 percent of the total universe is properly collected by the Bureau of Internal

¹ Business World, *Finance dep’t eyes approval of bank secrecy easing this year*, Published on 14 May 2019, Available at <https://www.bworldonline.com/finance-dept-eyes-approval-of-bank-secrecy-easing-this-year/>, Accessed on 08 July 2019.

² Official Gazette, *The President’s Veto Message on Republic Act No. 11213 or the Tax Amnesty Act*, Dated 14 February 2019, Available at <https://www.officialgazette.gov.ph/downloads/2019/02feb/20190214-VETO-RA-11213-RRD.pdf>, Accessed on 08 July 2019.

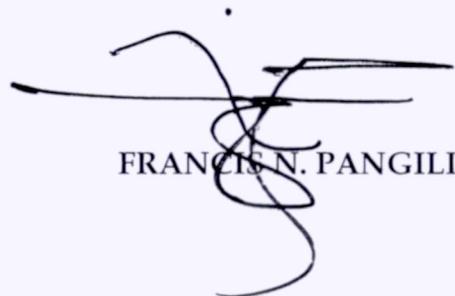
Revenue. Meanwhile, the Bureau of Customs reports that it suffers an annual leakage of around 50 percent of its total tax take, equivalent to P198.18 billion.³

In 2016, the Philippines was in the center of a money laundering scandal involving millions of dollars. This drew attention to our outdated bank secrecy laws that are being exploited to hide dirty money in the country.⁴ The same laws have made it hard for authorities to investigate such cases and have hampered our government's efforts to go after tax evaders and criminals.

Further, the DOF notes that we are unable to maximize the benefits of ASEAN integration as we are barred from participating in the region's integrated capital market due to our restrictive banking laws. These have also prevented the Philippines from joining strategic global bodies such as the International Organization of Securities Commissions and the Asia Pacific Economic Cooperation-Asia Regional Funds Passport.⁵

This representation believes it is necessary and timely to lift all pertinent laws on the secrecy of bank deposits to ensure rightful declaration of taxes and efficient revenue collection. Through this measure, the government will be able to effectively combat domestic and global tax evasion, money laundering and other financial crimes, and corruption; further improve the country's attractiveness to foreign investors; and protect the fundamental human right of privacy of communication, while ensuring free flow of information to promote innovation and growth.

In view of the foregoing, the passage of this bill is earnestly sought.



FRANCIS N. PANGILINAN

³ Manila Bulletin, *DOF estimates P668-B tax losses due to bank secrecy*, Published on 03 May 2017, Available at <https://business.mb.com.ph/2017/05/03/dof-estimates-p668-b-tax-losses-due-to-bank-secrecy/>, Accessed on 08 July 2019.

⁴ Business World, *Bank secrecy, the BIR, and the Tax Amnesty Law*, Published on 25 February 2019, Available at <https://www.bworldonline.com/bank-secrecy-the-bir-and-the-tax-amnesty-law/>, Accessed on 08 July 2019.

⁵ Manila Bulletin, *op. cit.*

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Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

1 **SECTION 1. *Short Title.*** – This Act shall be known as the “*Deposits Disclosure*
2 *Act.*”

3 **SEC. 2. *Declaration of Policy.*** – It is hereby declared the policy of the State to
4 effectively combat domestic and global tax evasion, money laundering and other
5 financial crimes, and corruption; to promote harmonious and supportive international
6 relations; and to comply with international standards on transparency. It is likewise the
7 policy of the State to protect the fundamental human right of privacy of communication,
8 while ensuring free flow of information to promote innovation and growth.

9 **SEC. 3. *Non-Confidentiality of Deposits.*** – All deposits of whatever nature of
10 currency denomination with banks and non-banking financial institutions in the
11 Philippines are hereby no longer considered as absolutely confidential in nature and can
12 now be examined, inquired, or looked into under the following legitimate purposes,
13 subject to, if application, Section 4 of this Act:

- 14 a) Upon written permission or waiver of the depositor;
15 b) In the course of investigation or inquiry by the Office of the Ombudsman, or
16 pursuant to or in relation to its Constitutional and/or statutory mandate;

- 1 c) Upon order of a competent court in relation to a case pending before it;
- 2 d) Investigations by the Senate, the House of Representatives ("HoR"), or any of
3 its Committees, in the course of, or pursuant to, the exercise of its
4 Constitutional and/or statutory mandate;
- 5 e) Investigations necessary in the exercise of its mandates by any government
6 agency or financial regulator, including, but not limited to, the Anti-Money
7 Laundering Council ("AMLC"), Bureau of Internal Revenue ("BIR"), the
8 financial regulators such as the *Bangko Sentral ng Pilipinas* ("BSP"), Securities
9 and Exchange Commission ("SEC"), Philippine Deposit Insurance
10 Corporation ("PDIC"), and Insurance Commission ("IC");
- 11 f) Inquiry by independent auditors or a qualified agent engaged by the bank to
12 provide independent audit or technical services subject to a strict
13 confidentiality agreement; and
- 14 g) Inquiry on the account/s of a deceased depositor by his/her immediate family
15 members or compulsory heirs.

16 Further, any examination or inquiry and any results thereof shall be for the
17 exclusive use of the requesting body and shall not be made available to any persona or
18 entity, whether public or private, except upon prescription by the persons enumerated
19 under Section 4 of this Act, as the case may be. Furthermore, no court shall issue a
20 temporary restraining order or writ or injunction against any act to examine, inquire, or
21 look into bank deposits except upon order issued by the Court of Appeals or the Supreme
22 Court.

23 **SEC. 4. Authority to Issue Order.** – In cases where the deposit shall be examined,
24 inquired, or looked into, the authority to issue the Order requiring such examination or
25 inquiry shall be limited to the following persons:

- 26 a) In the case of Section 3 (B) of this Act, the Ombudsman;

- 1 b) In the case of Section 3 (C) of this Act, the Regional Trial Courts, the Court of
2 Tax Appeals, the Court of Appeals, or the Supreme Court;
- 3 c) In the case of Section 3 (D) of this Act, the Senate President or the Speaker of
4 the HoR, as the case may be; and
- 5 d) In the case of Section 3 (E) of this Act, the head of the government agency or
6 financial regulator concerned, provided that if the government agency or
7 financial regulator has a governing board or council, consent of the latter shall
8 also be required.

9 **SEC. 5. *Clearing House, Authentication of Order.*** – The BSP shall act as the clearing
10 house of any order issued pursuant to Section 4 hereof. It shall ensure that the Order is
11 authentic and for a legitimate purpose and is not violative of RA No. 10173 of the Data
12 Privacy Act of 2012.

13 **SEC. 6. *Mandatory Disclosure.*** – Pursuant to the provisions of this Act, the bank or
14 non-bank financial institution concerned, their officers, and employees are mandated to
15 disclose and report the requested deposit account information; the bank or financial
16 institution concerned, their officers, and employees shall not refuse to allow such
17 examination or to provide the desired information.

18 **SEC. 7. *Right to Privacy.*** – Inquiry, examination, disclosure or use of deposits shall
19 always be for a legitimate purpose pursuant to Section 3 and in relation to Sections 4 and
20 5 of this Act and shall not be used in any manner to harass, threaten, or violate the right
21 to privacy of any person.

22 **SEC. 8. *Penalty Clause.*** – Any abuse on the initiation, conduct, or use of any inquiry
23 or examination of accounts or the refusal to disclose or report deposits as required
24 pursuant to the provisions of this Act without justifiable reason shall, upon conviction
25 and without prejudice to other liabilities provided by law, suffer the penalty of
26 imprisonment of at least three (3) years or a fine of at least two hundred thousand pesos
27 or both, upon the discretion of the court. In the case of government officials or employees,

1 the penalty of perpetual absolute disqualification to hold public office shall be likewise
2 imposed.

3 **SEC. 9. *Implementing Rules and Regulations.*** – Within sixty (60) days from the
4 effectivity of this Act, the BSP shall, in consultation with the Department of Justice and
5 other concerned financial regulators, promulgate the necessary implementing rules and
6 regulations for the effective and efficient enforcement of this Act. *Provided,* That the
7 implementing rules and regulations shall take effect fifteen (15) days following its
8 publication in two (2) newspapers of general circulation.

9 **SEC. 10. *Separability Clause.*** – If any of the provisions of this Act is declared
10 invalid, the other provisions not affected thereby shall remain in full force and effect.

11 **SEC. 11. *Repealing Clause.*** – The following provisions of the law insofar as they
12 relate to deposits are hereby repealed:

- 13 a) Republic Act No. 1405, as amended, also known as the Secrecy of Bank
14 Deposits Act;
- 15 b) Sections 8¹ and 12-A² of Republic Act No. 6426, as amended, also known as the
16 Foreign Currency Deposit Act of the Philippines, with respect to foreign
17 currency deposits;
- 18 c) Section 6³ of Republic Act No. 8367, also known as the Revised Non-Stock
19 Savings and Loan Association Act of 1997, with respect to all deposits of

1 ¹ “Sec.8. Secrecy of Foreign Currency Deposits. All foreign currency deposits authorized under this Act, as amended by Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositors, in no instance shall such foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office whether judicial or administrative or private. Provided, however, that said foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.”

2 ² “Sec. 12-A. Amendatory Enactments and Regulations. In the event a new enactment or regulation is issued decreasing the rights hereunder granted, such new enactment or regulation shall not apply to foreign currency deposits already made or existing at the time of issuance of such new enactment or regulation, but such new enactment or regulation shall apply only to foreign currency deposits made after its issuance.”

3 ³ “Sec. 6. Prohibition against inquiry into or disclosure of deposits. All deposits of whatever nature with an Association in the Philippines are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty or public officials, or in cases where the money deposited or invested is the subject matter of litigation. It shall be unlawful for any official or employee of an Association to disclose to any person any information concerning said deposits, except in the cases mentioned in the preceding paragraph of this section.

- 1 whatever nature with a Non-Stock Savings and Loan Association as provided
2 under Republic Act No. 8367;
- 3 d) Section 33⁴ of Republic Act No. 6848, also known as the Charter of the Al-
4 Amanah Islamic Investment Bank of the Philippines, with respect to banking
5 transactions relating to all deposits of whatever nature as provided under
6 Republic Act No. 6848;
- 7 e) Section 55(b)⁵ of Republic Act No. 8791, also known as the General Banking
8 Law of 2000;
- 9 f) Section 26(a)(2)⁶ of Republic Act No. 7353, also known as the Rural Banks Act
10 of 1992;
- 11 g) Section 21(a)(2)⁷ of Republic Act No. 7906, also known as the Thrift Banks Act
12 of 1995;

Any official or employee of an Association who violates this section shall be punished under Republic Act No. 1405, as amended."

- 4 "Sec. 33. Confidential Information. Banking transactions relating to all deposits of whatever nature are confidential and may not be examined, inquired or looked into by any person, government official, bureau or office, except as provided in the preceding section, or upon written permission by the depositor, or in cases where the money deposited or the transaction concerned is the subject of a court order

It shall be unlawful for any official or employee of the Islamic Bank or any person as may be designated by the Board of Directions to examine or audit the books of the Bank to disclose or reveal to any person any confidential information except under the circumstances mentioned in the preceding paragraph."

- 5 "SECTION 55. Prohibited Transactions. - 55.1. No director, officer, employee, or agent of any bank shall - (b) Without order of a court of competent jurisdiction, disclose to any unauthorized person any information relative to the funds or properties in the custody of the bank belonging to private individuals, corporations, or any other entity: Provided, That with respect to bank deposits, the provisions of existing laws shall prevail."

- 6 "Sec. 26. Without prejudice to any prosecution under any law which may have been violated, a fine of not more than ten thousand pesos (P10,000) or imprisonment of not less than six (6) months but not more than then (10) years, or both, at the discretion of the court, shall be imposed upon:

- a. Any officer, employee, or agent of a rural bank who shall:
2. Without order of a court of competent jurisdiction, disclose any information relative to the funds or properties in the custody of the bank belonging to private individuals, corporations, or any other entity."

- 7 "Sec. 21. Prohibited Acts. - Without prejudice to any prosecution under any law which may have been violated, a fine of not more than ten thousand pesos (P10,000) or imprisonment for not less than six (6) months but not more than ten (10) years, or both, at the discretion of the court, shall be imposed upon:

- a. Any officer, employee, or agent of a thrift bank who shall:
2. Without order of a court of competent jurisdiction, disclose any information relative to the funds or properties in the custody of the bank belonging to private individuals, corporations, or any other entity."

1 h) Section 22⁸ of Executive Order No. 81, also known as the 1986 Revised Charter
2 of the Development Bank of the Philippines with respect to banking
3 transactions relating to all deposits of whatever nature; and

4 i) Section 11 of Republic Act No. 9160, as amended, also known as the Anti-
5 Money Laundering Act of 2001, as amended, in so far as it requires an order
6 of any competent court before the AMLC can inquire into bank deposits,
7 including related accounts, with any banking institution or non-bank financial
8 institution.

9 All laws, presidential decrees, executive orders, rules and regulations, and other
10 issuances, or any parts thereof, inconsistent with this Act, are hereby repealed, modified,
11 or amended accordingly.

12 **SEC. 12. Effectivity.** – This Act shall take effect fifteen (15) days after its publication
13 in the Official Gazette or in at least two (2) newspapers of general circulation.

Approved,

⁸ “SEC. 22. Prohibition on Officers and Employees of the Bank. – Except as required by law, or upon order of a court of competent jurisdiction, or the express order of the President of the Philippines or written permission of the client, no officer or employee of the Bank shall reveal to, nor allow to be examined, inquired, or looked into, by any third person, government official, bureau or office any information relative to details of individual accounts or specific banking transactions: Provided, that in respect to deposits or whatever nature, the provisions of existing law shall apply. x x x ”