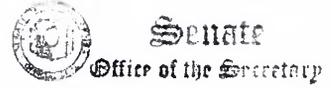


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NINETEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)



22 AUG -8 A10 :25

SENATE
S. NO. 1068

RECEIVED BY:

Introduced by Senator Grace Poe

AN ACT
AMENDING REPUBLIC ACT NO. 1405, OTHERWISE KNOWN AS THE
SECRECY OF BANK DEPOSITS LAW

EXPLANATORY NOTE

In 1955, Republic ("Rep.") Act No. 1405 or the law prohibiting disclosure of or inquiry into deposits with any banking institution was enacted primarily to deter private hoarding, boost the economy, and enhance state protection of privacy rights. Thereafter, Rep. Act No. 1405 was amended by Presidential Decree ("PD") No. 1792, which expanded the exceptions to the absolute confidentiality rule, including instances when the examination is made in the course of a special or general examination of a bank and is specifically authorized by the Monetary Board after being satisfied that there is reasonable ground to believe that a bank fraud or serious irregularity has been or is being committed, and that it is necessary to look into the deposit to establish such fraud or irregularity. However, PD No. 1792 was later expressly repealed by Rep. Act No. 7653, otherwise known as "The New Central Bank Act," effectively reinstating the version of Rep. Act No. 1405 prior to PD No. 1792.

Decades after the enactment of Rep. Act No. 1405, the financial sector landscape has evolved such that transactions and financial products became more complex. Financial technology made transactions easier to execute at the shortest possible time and capital flowed freely into the Philippine economy. These innovations and ease of transactions enabled, necessitated and encouraged Filipinos to place their money in the banks, and spurred the economy to some extent.

Somehow, the objectives of Rep. Act No. 1405 to deter private hoarding and boost the economy are achieved. However, with Rep. Act No. 1405, there are depositors who hide behind the cloak of deposit secrecy to perpetuate their ingenious ways of defrauding counterparties, regulators or the government.

It is recognized that the existing secrecy of bank deposit laws of the Philippines are more constraining for prudential supervision than similar laws in other jurisdictions.¹ A review of 49 countries assessed against the Basel Core Principles (BCP) since 2012² shows that only one other country—Lebanon³—has similar limitations for prudential supervision as the Philippines.⁴ This limitation impedes transparent governance and anti-corruption mechanisms.

For example, in the incident involving Wirecard, *Bangko Sentral ng Pilipinas* ("BSP"), in the exercise of its supervisory powers, was unable to direct the banks involved to submit to BSP specific deposit or account information about the parties involved. This hindered the conduct of a swifter, more focused and more direct investigation that would have resulted in more timely and conclusive decisions. In the said case, BSP relied on reports and representations of the banks involved and other available information surrounding the incident.

Meanwhile, other jurisdictions with strong bank secrecy arrangements have provided their prudential authority with unrestricted access to all bank records.⁵ In well-known international financial centres like Switzerland, Singapore and Hong Kong, the prudential supervisors have the power to access all bank records,

¹ International Monetary Fund Financial Sector Assessment Program, Background Note (Draft), Bank Secrecy Impediments to Financial Sector Supervision. March 2020. p. 15.

² When the revised BCP framework was published.

³ According to the Lebanon Law on Banking Secrecy (1956), banks are subjected to bank secrecy. Bank managers and employees who by virtue of their position have access to bank books and operation may not disclose information on client names funds or personal matter to any party. Violation of the secrecy provision is punishable by three to twelve months imprisonment.

⁴ *Supra*, note 1.

⁵ *Id.*

including depositor information.⁶ This power is, however, combined with clear and strong professional secrecy arrangements.⁷

The International Monetary Fund notes that prudential supervision is aligned with the interest of depositors, and therefore should not be seen as conflicting with the objectives of bank secrecy; that the objective of prudential supervision is to see after the safety and soundness of banks and the banking sector as a whole; that prudential authorities work towards this objective in order to protect depositors from losses due to the failure of banks and to promote the stability and soundness of the banking sector as a whole; and that not being able to properly fulfill their mandate as a result of bank secrecy laws might actually be detrimental to depositors.⁸

Thus, to address the unintended consequences of the secrecy of bank deposit laws, and to heed the call of the global community for a more transparent financial system environment, Rep. Act No. 1405 is proposed to be amended, limited only within the very narrow confines of banking supervision. This will effectively restore the authority of BSP to examine bank deposits under PD No. 1792.

One of the significant amendments proposed in the bill is the inclusion of the inquiry or examination made by BSP, in the exercise of its supervisory powers, as one of the exceptions to the prohibition to examine, inquire or look into deposits, provided that: (i) there is reasonable ground to believe that a fraud, serious irregularity or unlawful activity has been or is being committed; (ii) it is necessary to look into the deposit to establish such fraud, irregularity or unlawful activity; (iii) the results of such examination shall be for the exclusive use of BSP and shall not be made available to any person or entity, whether public or private, except under such conditions as may be prescribed by the Governor or the Monetary Board of BSP; (iv) no deposit shall be examined, inquired or looked into by BSP during an election period to the prejudice of a candidate for an electoral office; and (v) the authority of BSP to examine, inquire or look into deposits in the exercise of its supervisory

⁶ *Id.*

⁷ *Id.*

⁸ *Supra*, note 1.

powers shall not apply to funds deposited and placed in a deposit account prior to the effectivity of this Act, as secrecy of deposits may be considered a form of vested right, which cannot be impaired. The foregoing exemptions are recommended to also apply to foreign currency deposits in banks operating in the Philippines including off-shore branches of domestic banks.

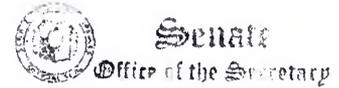
Notably, as safeguard against using the Act for political motives during the election period, it is proposed that no deposit shall be examined, inquired or looked into by BSP during said period to the prejudice of a candidate for an electoral office. In addition, the bill proposes to consider the use of the Act for political persecution or harassment as one of the unlawful acts under the Act. It is believed that the amendment to Rep. Act No. 1405 should not be used to facilitate political harassment or malicious prosecution. Such will prevent to a great extent the indiscriminate disclosure by any person who may have obtained any information on deposits, thereby adversely affecting the privacy of a depositor.

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



GRACE POE

NINETEENTH CONGRESS OF THE)
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SENATE
S. NO. 1068

RECEIVED BY:

Introduced by Senator Grace Poe

AN ACT
AMENDING REPUBLIC ACT NO. 1405, OTHERWISE KNOWN AS THE
SECRECY OF BANK DEPOSITS LAW

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

1 Section 1. Section 2 of Republic Act No. 1405, otherwise known as "The
2 Secrecy of Bank Deposits Law" is hereby amended to read, as follows:

3 SECTION 2. All deposits, [~~of whatever nature with banks or banking~~
4 ~~institutions in the Philippines including investments in bonds issued by the~~
5 ~~Government of the Philippines, its political subdivisions and its~~
6 ~~instrumentalities,~~] are hereby considered as of an absolutely confidential
7 nature and may not be examined, inquired or looked into by any person,
8 government official, bureau or office, except upon written permission of the
9 depositor, or in cases of impeachment, or upon order of a competent court in
10 cases of bribery or dereliction of duty of public officials, or in cases where the
11 money deposited [~~or invested~~] is the subject matter of the litigation, **OR IN**
12 **CASES WHERE THE INQUIRY OR EXAMINATION IS MADE BY THE**
13 **BANGKO SENTRAL NG PILIPINAS (BSP) IN THE EXERCISE OF ITS**
14 **SUPERVISORY POWERS: PROVIDED THAT, UPON DETERMINATION**
15 **BY THE MONETARY BOARD, THERE IS REASONABLE GROUND TO**
16 **BELIEVE THAT A FRAUD, SERIOUS IRREGULARITY OR UNLAWFUL**
17 **ACTIVITY HAS BEEN OR IS BEING COMMITTED AND THAT IT IS**
18 **NECESSARY TO LOOK INTO THE DEPOSIT TO ESTABLISH SUCH**
19 **FRAUD, IRREGULARITY OR UNLAWFUL ACTIVITY. THE AUTHORITY**

1 OF THE BSP TO INQUIRE AND EXAMINE DEPOSITS SHALL ALSO
2 APPLY IN THE COURSE OF ITS INVESTIGATION OF CLOSED BANKS.
3 AS USED IN THIS ACT, DEPOSITS SHALL REFER TO MONEY OR ITS
4 EQUIVALENT RECEIVED BY A BANK IN THE USUAL COURSE OF ITS
5 BUSINESS, AND FOR WHICH IT HAS GIVEN OR IS OBLIGED TO GIVE
6 CREDIT TO A COMMERCIAL, CHECKING, SAVINGS, TIME OR THRIFT
7 ACCOUNT, EVIDENCED BY A PASSBOOK, CERTIFICATE OF DEPOSIT,
8 OR OTHER EVIDENCE OF DEPOSIT, ISSUED IN ACCORDANCE WITH
9 BSP RULES AND OTHER APPLICABLE LAWS, AS WELL AS SUCH
10 OTHER OBLIGATION OF A BANK THAT FORMS PART OF ITS
11 DEPOSIT LIABILITIES PURSUANT TO BSP RULES AND
12 REGULATIONS.

13 THE RESULTS OF SUCH INQUIRY OR EXAMINATION SHALL BE
14 FOR THE EXCLUSIVE USE OF THE BSP AND SHALL NOT BE MADE
15 AVAILABLE TO ANY PERSON OR ENTITY, WHETHER PUBLIC OR
16 PRIVATE, EXCEPT UNDER SUCH CONDITIONS AS MAY BE
17 PRESCRIBED BY THE MONETARY BOARD OF BSP FOR THE
18 PROSECUTION OF AN OFFENSE OR CRIME: *PROVIDED*, THAT NO
19 DEPOSIT SHALL BE EXAMINED, INQUIRED OR LOOKED INTO BY
20 THE *BANGKO SENTRAL NG PILIPINAS* DURING AN ELECTION
21 PERIOD TO THE PREJUDICE OF A CANDIDATE FOR AN ELECTORAL
22 OFFICE: *PROVIDED FINALLY*, THAT THE AUTHORITY OF *BANGKO*
23 *SENTRAL NG PILIPINAS* TO INQUIRE, EXAMINE OR LOOK INTO
24 DEPOSITS IN THE EXERCISE OF ITS SUPERVISORY POWERS SHALL
25 NOT APPLY TO FUNDS DEPOSITED AND PLACED IN A DEPOSIT
26 ACCOUNT PRIOR TO THE EFFECTIVITY OF THIS ACT.

27 THE FOREGOING EXEMPTIONS SHALL APPLY TO FOREIGN
28 CURRENCY DEPOSITS IN BANKS OPERATING IN THE PHILIPPINES
29 INCLUDING OFF-SHORE BRANCHES OF DOMESTIC BANKS.

1 Sec. 2. Section 3 of Republic Act No. 1405, is hereby amended to read as
2 follows:

3 **SECTION 3. NO BANK OR FINANCIAL INSTITUTION, OR ANY OF**
4 **ITS DIRECTORS, OFFICERS OR EMPLOYEES, SHALL BE SUBJECT TO**
5 **ANY ACTION, CLAIM OR DEMAND IN CONNECTION WITH, AND**
6 **SHALL BE HELD FREE AND HARMLESS FROM LIABILITY FOR, ANY**
7 **ACT DONE IN COMPLIANCE WITH AN ORDER FOR INQUIRY OR**
8 **EXAMINATION OF DEPOSITS FROM THE BSP.**

9 **HOWEVER, [I]it shall be unlawful for any official, employee, of a**
10 banking institution **OR THE *BSP***, to disclose to any person other than those
11 mentioned **AND UNDER SUCH CONDITIONS PROVIDED** in Section 2
12 hereof, information concerning said deposits. **IT SHALL ALSO BE**
13 **UNLAWFUL FOR ANY PERSON TO USE THIS ACT FOR POLITICAL**
14 **PERSECUTION OR HARASSMENT OR AS AN INSTRUMENT TO HAMPER**
15 **COMPETITION IN TRADE AND COMMERCE.**

16 *Sec. 3. Repealing Clause.* – The following are hereby repealed subject to the
17 provisions of this Act:

- 18 a. Sections 2,3, 4 and 6 of Republic Act No. 1405, as amended, also known
19 as the "Secrecy of Bank Deposits Act";
- 20 b. Sections 8 and 12-A of Republic Act No. 6426, as amended, also known as
21 the "Foreign Currency Deposit Act of the Philippines," with respect to
22 foreign currency deposits;
- 23 c. Section 6 Republic Act No. 8367, also known as the "Revised Non-Stock
24 Savings and Loan Association act of 1997," with respect to all deposits of
25 whatever nature with a Non-Stock Savings and Loan Associations as
26 provided under Republic Act No. 8367;
- 27 d. Section 33 of Republic Act No. 6848, also known as the "Charter of the Al-
28 Amanah Islamic Investment Bank of the Philippines," with respect to
29 banking transactions relating to all deposits of whatever nature as
30 provided under Republic Act No. 6848;
- 31 e. Section 26(a)(2) of Republic Act No. 7353, also known as the Rural Banks
32 Act of 1992, as amended; and

1 f. Section 21(a)(2) of Republic Act No. 7906, also known as the Thrift Banks
2 Act of 1995.

3 All other Acts or parts of Acts, Special Charters, Executive Order, Rules and
4 Regulations, which are inconsistent with the provisions of this Act, are hereby
5 repealed.

6 Sec. 4. *Separability Clause.* – If any provision or section of this Act is held to
7 be unconstitutional or invalid, the other provisions or sections hereof, which are not
8 affected thereby shall continue to be in full force and effect.

9 Sec. 5. *Effectivity.* – This Act shall take effect fifteen (15) days following its
10 publication in the *Official Gazette* or in a newspaper of general circulation in the
11 Philippines

Approved,