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SENATE
Senate Bill No. **3005**

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Introduced by **Senator Lacson**

EXPLANATORY NOTE

The world is now engulfed in a very volatile economic environment. There is an imperative need to make sure that financial transactions are only carried legally. It is therefore very urgent to strengthen further our anti-money laundering efforts to enable it to meet the continuing challenges not only that of the present financial crisis but also terrorist financing.

Since the enactment of the Anti-Money Laundering Act (AMLA) of 2001 much is left to be desired and much is still to be complied with. Money launderers have shifted strategies to evade the law. To counter these new strategies, the Financial Action Task Force (FATF) proposed new policies for government-members to adopt.

According to FATF, money launderers are now using Designated Non-Financial Businesses and Professions (DNFBPs), such as casinos, real estate agents, dealers in precious metals and stones, lawyers, notaries, accountants and trust and company services providers in covering their transactions. Thus, the FATF recommends expanding the scope of reporting institutions/entities by including in the definition of covered institutions under the AMLA the Designated Non-Financial Businesses and Professions (DNFBPs) as mentioned.

Money laundering is not only used to conceal illegally acquired money but also the means to finance the commission of different crimes, especially the financing of terrorism. Moreover, our country has a substantial number of migrant workers that need ample protection. Given these premises, it is therefore imperative to include in the definition of unlawful activities under the AMLA the crimes of terrorism and terrorist financing, trafficking in human beings and migrant smuggling, sexual exploitation of children, corruption and bribery, illicit arms trafficking, counterfeiting currency, forgery, and environmental crime, as recommended by the FATF.

The issuance of a freeze order to prevent the withdrawal, transfer, removal, dissipation, or disposal of the deposit in bank accounts is a very urgent matter. The authority, therefore, to initially freeze should be returned to the AMLC as provided for in the original AMLA. Based on experience, issuance of freeze orders is faster and confidentiality is more protected if done by the AMLC. Further, the grant of such authority to the AMLC will not in any way violate the right of the owner of the subject bank account to due process since the purported owner of the bank account is notified of the issuance of the freeze order and given the opportunity to explain why the freeze order should be lifted.

Prevention is better than cure, thus, prompt reporting of covered and suspicious transactions is necessary. The period for submission of covered

transaction reports (CTRs) was fixed at ten (10) days for uniformity. For suspicious transaction reports (STRs), the submission thereof is reckoned from the determination or receipt of material information that would give grounds for submissions.

The Revised Implementing Rules and Regulations provide that the AMLC can only impose fines of not less than one hundred thousand pesos (P100,000.00) but not to exceed five hundred thousand pesos (P500,000.00) on covered institutions, their directors or officers or any person who violates the provision of the AMLA. Thus, even for minor violations of the AMLA, say delay in the submission of covered transaction reports, the AMLC must impose a fine of P100,000.00; and taking into consideration the nature and gravity of the violation and other circumstances, the said fine or penalty might be considered too harsh. The seeming inflexibility of the RIRRs on administrative sanctions should be remedied by allowing the AMLC to impose a fine of not less than ten thousand pesos (10,000.00) but not more than ten million pesos (10,000,000.00) depending on the nature and gravity of the violation or irregularity and other attendant circumstances.

As with all battles, the fight against money laundering needs funding. The AMLC should be allowed therefore to retain twenty-five percent (25%) of the forfeited assets not only as an incentive to intensify the drive to file more civil forfeiture cases for the State, but also to ameliorate AMLC's budget.

The fight against Money laundering is not just the concern of the government but of the whole state, which includes its citizens. In order to encourage a greater degree of participation from other government agencies and concerned citizens in the investigation and prosecution of money laundering offenses and other violations of the AMLA, a system of special incentives and rewards should therefore be established.

This bill therefore seeks to strengthen and update our Anti-Money Laundering Law to address the new strategies being employed by money launderers and attune the said law to the present financial developments. The early passage of this bill will guarantee the Philippines' recognition to the global efforts against money laundering

In view of the foregoing, early passage of this measure is earnestly requested.


PANFILO M. LACSON
Senator

SENATE
Senate Bill No. 3005

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**AN ACT TO FURTHER STRENGTHEN THE ANTI-MONEY LAUNDERING
LAW, AMENDING FOR THE PURPOSE REPUBLIC ACT NO.9160,
OTHERWISE KNOWN AS THE "ANTI-MONEY LAUNDERING ACT OF 2001",
AS AMENDED, AND FOR OTHER PURPOSES.**

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

SECTION 1. Section 3 (a) of Republic Act 9160 as amended is hereby further
amended by adding a new subparagraph (4) to read as follows:

Section 3 (a). "Covered institution or person" refers to:

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(4) NON-FINANCIAL BUSINESSES AND PROFESSIONS,
SUCH AS:

- A. CASINOS, INCLUDING INTERNET CASINOS;
- B. REAL ESTATE AGENTS;
- C. DEALERS IN PRECIOUS METALS;
- D. DEALERS IN PRECIOUS STONES;
- E. LAWYERS, NOTARIES, OTHER INDEPENDENT
LEGAL PROFESSIONALS AND ACCOUNTANTS
WHEN THEY PREPARE FOR OR CARRY OUT
TRANSACTIONS FOR THEIR CLIENT
CONCERNING THE FOLLOWING ACTIVITIES:
 - I) BUYING AND SELLING REAL ESTATE;
 - II) MANAGING OF CLIENT'S MONEY, SECURITIES
OR OTHER ASSETS;
 - III) MANAGEMENT OF BANK, SAVINGS OR
SECURITIES ACCOUNTS;
 - IV) ORGANIZATION OF CONTRIBUTIONS FOR THE
CREATION, OPERATION, OR MANAGEMENT OF
COMPANIES; OR
 - V) CREATION, OPERATION OR MANAGEMENT OF
LEGAL PERSONS OR ARRANGEMENTS, BUYING
AND SELLING OF BUSINESS ENTITIES.

PROVIDED, THAT LAWYERS, NOTARIES, OTHER INDEPENDENT LEGAL PROFESSIONALS AND ACCOUNTANTS ACTING AS INDEPENDENT LEGAL PROFESSIONALS ARE NOT REQUIRED TO REPORT THEIR SUSPICIONS IF THE RELEVANT INFORMATION WAS OBTAINED UNDER CIRCUMSTANCES WHERE THEY ARE SUBJECT TO PROFESSIONAL SECRECY OR LEGAL PROFESSIONAL PRIVILEGE.

- F. TRUST AND COMPANY SERVICE PROVIDERS WHICH AS A BUSINESS PROVIDE ANY OF THE FOLLOWING SERVICES TO THIRD PARTIES:
1. ACTING AS A FORMATION AGENT OF LEGAL PERSONS;
 2. ACTING AS (OR ARRANGING FOR ANOTHER PERSON TO ACT AS) A DIRECTOR OR CORPORATE SECRETARY OF A COMPANY, A PARTNER OF A PARTNERSHIP, OR A SIMILAR POSITION IN RELATION TO OTHER LEGAL PERSONS;
 3. PROVIDING A REGISTERED OFFICE; BUSINESS ADDRESS OR ACCOMMODATION, CORRESPONDENCE OR ADMINISTRATIVE ADDRESS FOR A COMPANY, A PARTNERSHIP OR ANY OTHER LEGAL PERSON OR ARRANGEMENT;
 4. ACTING AS (OR ARRANGING FOR ANOTHER PERSON TO ACT AS) A TRUSTEE OF AN EXPRESS TRUST;
 5. ACTING AS (OR ARRANGING FOR ANOTHER PERSON TO ACT AS) A NOMINEE SHAREHOLDER FOR ANOTHER PERSON.

SECTION 2. Section 3(i) of the same Act, as amended, is hereby further amended to read as follows:

Section 3 (i). 'Unlawful activity' refers to any act or omission or series or combination thereof involving or having direct relation to the following:

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(2) Sections 4,5,6,8,9,10, 11, 12,13,15, and 16 of Republic Act No.9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002;

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- (12) Hijacking and other violations under Republic Act No. 6235; destructive arson and murder, as defined under the Revised Penal Code, as amended;
- (13) TERRORISM AND CONSPIRACY TO COMMIT TERRORISM AS DEFINED AND PENALIZED UNDER REPUBLIC ACT NO. 9372, INCLUDING ITS FINANCING;
- (14) Fraudulent practices and other violations under Republic Act No. 8799, otherwise known as the Securities Regulations Code of 2000;
- (15) BRIBERY UNDER ARTICLES 210, 211, 211-A AND CORRUPTION OF PUBLIC OFFICERS UNDER ARTICLE 212 OF THE REVISED PENAL CODE, AS AMENDED;
- (16) FRAUDS AND ILLEGAL EXACTIONS AND TRANSACTIONS UNDER ARTICLES 213 TO 216, INCLUSIVE, OF THE REVISED PENAL CODE, AS AMENDED;
- (17) MALVERSATION OF PUBLIC FUNDS AND PROPERTY UNDER ARTICLES 217 AND 222 OF THE REVISED PENAL CODE, AS AMENDED;
- (18) FORGERIES AND COUNTERFEITING UNDER ARTICLES 163, 166, 167, 168, 169, 176 OF THE REVISED PENAL CODE, AS AMENDED;
- (19) VIOLATIONS OF SECTIONS 4 TO 6, INCLUSIVE OF REPUBLIC ACT NO. 9208, OTHERWISE KNOWN AS THE ANTI-TRAFFICKING IN PERSONS ACT OF 2003;
- (20) VIOLATIONS OF SECTIONS 68 TO 79, INCLUSIVE, CHAPTER IV OF THE PRESIDENTIAL DECREE NO. 705, OTHERWISE KNOWN AS THE REVISED FORESTRY CODE OF THE PHILIPPINE, AS AMENDED;
- (21) VIOLATIONS OF SECTIONS 86 TO 106, INCLUSIVE, CHAPTER VI OF REPUBLIC ACT NO. 8550, OTHERWISE KNOWN AS THE PHILIPPINE FISHERIES CODE OF 1998;

(22) VIOLATIONS OF SECTIONS 101 TO 107, INCLUSIVE, AND 110 OF REPUBLIC ACT NO. 7942, OTHERWISE KNOWN AS THE PHILIPPINE MINING ACT OF 1995;

(23) VIOLATIONS OF SECTION 27 (C), (E), (F), (G) AND (I) OF REPUBLIC ACT NO. 9147, OTHERWISE KNOWN AS THE WILDLIFE RESOURCES CONSERVATION AND PROTECTION ACT;

(24) VIOLATION OF SECTION 7 (B) OF REPUBLIC ACT NO. 9072, OTHERWISE KNOWN AS THE NATIONAL CAVES AND CAVE RESOURCES MANAGEMENT AND PROTECTION ACT;

(25) VIOLATION OF REPUBLIC ACT NO. 6539 OTHERWISE KNOWN THE ANTI-CARNAPPING ACT OF 2002, AS AMENDED;

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

SECTION 3. Section 7 of the same Act, as amended, is hereby further amended to read as follows:

SEC. 7. Creation of Anti-Money Laundering Council (AMLC).
– The Anti-Money Laundering Council is hereby created and shall be composed of the Governor of the Bangko Sentral ng Pilipinas as Chairman, the Commissioner of the Insurance Commission and the Chairman of the Securities and Exchange Commission as Members. The AMLC shall act unanimously in the discharge of its functions as defined hereunder:

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(6) TO FREEZE ANY MONETARY INSTRUMENT OR PROPERTY ALLEGED TO BE RELATED IN ANY WAY TO ANY UNLAWFUL ACTIVITY;

SECTION 4. Section 9 of the same Act, as amended, is hereby further amended to read as follows:

SEC. 9. Prevention of Money Laundering; Customer Identification, Record Keeping and Reporting of Covered and Suspicious Transactions. -

(C) Reporting Of Covered And Suspicious Transactions. – Covered institutions shall report to the AMLC all covered

transactions within TEN (10) WORKING DAYS from occurrence thereof AND SUSPICIOUS TRANSACTIONS WITHIN FIVE (5) WORKING DAYS FROM THE TIME THE COVERED INSTITUTION OR ANY OF ITS PERSONNEL HAS DETERMINED BASED ON ANY OF THE CIRCUMSTANCES UNDER SECTION 3(B)-1 OF THIS ACT OR WAS INFORMED BY THE AMLC, ANOTHER COVERED INSTITUTION, LAW ENFORCEMENT AGENCY, OR AN AGGRIEVED PARTY THAT THE TRANSACTION IS RELATED TO ANY UNLAWFUL ACTIVITY, unless the supervising authority prescribes a different period.

SECTION 5. Section 10 of the same Act, as amended, is hereby further amended to read as follows:

SEC. 10. *Freezing of Monetary Instrument or Property.*— [The Court of Appeals, upon application ex parte by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) herof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court.] UPON DETERMINATION THAT PROBABLE CAUSE EXISTS THAT ANY MONETARY INSTRUMENT OR PROPERTY IS IN ANY WAY RELATED TO AN UNLAWFUL ACTIVITY, THE AMLC MAY ISSUE A FREEZE ORDER, WHICH SHALL BE EFFECTIVE IMMEDIATELY, ON THE SAID MONETARY INSTRUMENT OR PROPERTY, INCLUDING RELATED WEB OF ACCOUNTS, FOR A PERIOD NOT EXCEEDING THIRTY (30) DAYS. NOTICE TO THE PURPORTED OWNER THAT HIS MONETARY INSTRUMENT OR PROPERTY HAS BEEN FROZEN SHALL BE ISSUED SIMULTANEOUSLY WITH THE ISSUANCE OF THE FREEZE ORDER. THE PURPORTED OWNER OF THE MONETARY INSTRUMENT OR PROPERTY SHALL HAVE FIVE (5) WORKING DAYS UPON RECEIPT OF THE NOTICE TO EXPLAIN WHY THE FREEZE ORDER SHOULD BE LIFTED. THE AMLC HAS FIVE (5) WORKING DAYS TO RESOLVE THE FREEZE ORDER CASE FROM RECEIPT OF THE PURPORTED OWNER'S EXPLANATION. IF THE AMLC FAILS TO ACT WITHIN FIVE (5) WORKING DAYS FROM RECEIPT OF THE PURPORTED OWNER'S EXPLANATION, THE FREEZE ORDER SHALL AUTOMATICALLY BE DISSOLVED.

UPON PETITION BY AMLC FILED BEFORE THE EXPIRATION OF THIRTY (30) DAYS FROM THE ISSUANCE OF THE FREEZE ORDER, THE COURT OF APPEALS MAY EXTEND ITS EFFECTIVITY FOR A PERIOD NOT EXCEEDING SIX (6) MONTHS, PROVIDED THAT THE RUNNING OF THE THIRTY (30) DAY PERIOD SHALL BE TOLLED PENDING THE COURT'S DECISION TO EXTEND THE PERIOD.

NO COURT SHALL ISSUE A TEMPORARY RESTRAINING ORDER OR A WRIT OF INJUNCTION AGAINST ANY FREEZE ORDER, EXCEPT THE SUPREME COURT.

SECTION 6. Section 12 (a) of the Act, as amended, is further amended to read as follows:

(a) Civil Forfeiture. – [When there is a covered transaction report made, and the court has, in a petition filed for the purpose ordered seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report, the Revised Rules of Court on civil forfeiture shall apply.] UPON DETERMINATION THAT PROBABLE CAUSE EXISTS THAT ANY MONETARY INSTRUMENT OR PROPERTY IS FOUND TO BE RELATED IN ANY WAY TO AN UNLAWFUL ACTIVITY AS DEFINED UNDER SECTION 3(I) HEREOF OR A MONEY LAUNDERING OFFENSE UNDER SECTION 4 HEREOF, THE AMLC SHALL FILE, THROUGH THE OFFICE OF THE SOLICITOR GENERAL, A PETITION FOR FORFEITURE AND THE RULES OF COURT ON CIVIL FORFEITURE SHALL APPLY.

SECTION 7. To further strengthen the AMLC's administrative and operational capabilities, the Act, as amended, is further amended with the inclusion of the following provisions:

SECTION 15. ADMINISTRATIVE FINES. - AFTER DUE NOTICE AND HEARING, THE AMLC SHALL, AT ITS DISCRETION, IMPOSE FINES UPON ANY COVERED INSTITUTION, ITS DIRECTORS OR OFFICERS OR ANY OTHER PERSON FOR VIOLATIONS OF THIS ACT, ITS IMPLEMENTING RULES AND REGULATIONS, OR FOR DELIBERATE FAILURE OR REFUSAL TO COMPLY WITH AMLC ORDERS, RESOLUTIONS AND OTHER ISSUANCES.

SUCH FINES SHALL BE IN AMOUNTS AS MAY BE DETERMINED BY THE COUNCIL TO BE APPROPRIATE, WHICH SHALL BE NOT LESS THAN TEN THOUSAND PESOS (PHP10,000.00) BUT NOT MORE THAN TEN MILLION PESOS (P10,000,000.00) PLUS NOT MORE THAN FIVE THOUSAND PESOS (P5,000.00) FOR EACH DAY OF CONTINUING VIOLATION.

THE AMLC SHALL PROMULGATE RULES ON FINES AND PENALTIES TAKING INTO CONSIDERATION THE ATTENDANT CIRCUMSTANCES, SUCH AS THE NATURE AND GRAVITY OF THE VIOLATION OR IRREGULARITY, THE SIZE, FUNCTIONS AND RESOURCES OF THE INSTITUTION. THE IMPOSITION OF THE ADMINISTRATIVE SANCTIONS SHALL BE WITHOUT PREJUDICE TO THE FILING OF CRIMINAL CHARGES AGAINST THE PERSONS RESPONSIBLE FOR THE VIOLATION.

SECTION 16. DISPOSITION OF FORFEITED ASSETS AND RETENTION. THE AMLC SHALL RETAIN TWENTY-FIVE PERCENT (25%) OF THE TOTAL ASSETS FORFEITED LESS THE COST OF LITIGATION. THE REMAINING PORTION SHALL BE TURNED OVER TO THE NATIONAL TREASURY. THE RETAINED AMOUNT SHALL BE UTILIZED BY THE AMLC FOR OPERATIONS AND MAINTENANCE.

SECTION 17. SYSTEM OF INCENTIVES AND REWARDS. – A SYSTEM OF SPECIAL INCENTIVES AND REWARDS IS HEREBY ESTABLISHED TO BE GIVEN TO THE APPROPRIATE GOVERNMENT AGENCY, ITS PERSONNEL AND OTHER PERSONS WHO HELPED OR ASSISTED IN THE SUCCESSFUL INVESTIGATION, PROSECUTION AND CONVICTION OF PERSONS INVOLVED IN THE OFFENSE/S PENALIZED IN THIS ACT.

Section 8. Separability Clause. – If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions thereof.

Section 9. Repealing Clause. – All laws, decrees, orders and issuances or portion thereof which are inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 10. Effectivity. – This Act shall take effect fifteen (15) days after its publication in at least two (2) national newspapers of general circulation.

Approved,