

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH (15TH) CONGRESS
Second Regular Session



House Bill No. 6105

Introduced by: Rep. Bernadette Herrera-Dy

EXPLANATORY NOTE

The recent controversy over the disclosure of Chief Justice Corona's foreign currency bank accounts has once again thrown the spotlight on the scope of the bank secrecy provisions in the Philippines, and has highlighted the need for an amendment to the Foreign Currency Deposit Act of the Philippines,¹ if not the Bank Secrecy Law.²

For some time, there has been controversy over the potential for Philippine secrecy laws to be used as a tool for the facilitation of crime and corruption and as an impediment to law enforcement. This has led to a number of attempts at reform of the Foreign Currency Deposit Act in particular, as evidenced by a number of draft amendments pending in both the Senate and the House.

The bank secrecy laws of the Philippines have been characterized as antiquated by some members of the international community. The 2011 Financial Secrecy Index (FSI),³ designed to help users better understand global financial secrecy, corruption, and illicit financial flows, ranks the Philippines 33rd in terms of overall weight in importance and perceived secrecy. However, the country is not generally considered to be a preferred legal tax haven. It is seldom a destination of choice for corporations looking to benefit from preferential taxes and financial shelters. In 2010, Forbes produced a listing of the top 10 tax havens,⁴ based on a variety of factors, including the degree of bank secrecy, whether accounts were required to be on public record, and the number of tax information exchange agreements in place. The Philippines was not featured on the list.

The current reputation of the Philippines as a destination for bank secrecy is more likely to be connoted with drug cartels and money launderers, than multinational corporations looking for a legitimate tax haven. Therefore, it is clear that there are compelling reasons for

¹ Republic Act No. 6426

² Republic Act No. 1405 entitled An Act Prohibiting Disclosure Of Or Inquiry Into Deposits With Any Banking Institution And Providing Penalty Therefor, but generally referred to as the Bank Secrecy Law.

³ Financial Secrecy Index 2011, available at <http://www.financialsecrecyindex.com/2011results.html>.

⁴ "World's Best Tax Havens," Forbes, available at <http://www.forbes.com/2010/07/06/tax-havens-delaware-bermuda-markets-singapore-belgium.html>.

reform supported by both internal and external factors, and chief among these are the interests of justice and law enforcement.

Bank secrecy as a right is not without constitutional underpinnings, but beyond that, finds support in the well-established jurisprudence of the English common law, long inherited and followed in numerous other jurisdictions.⁵ As a policy matter, separate from any question of right, the Philippine government recognized bank depositors' rights to privacy as part of an incentive program to 'give encouragement to the people to deposit their money in banking institutions and to discourage private hoarding so that the same may be properly utilized by banks in authorized loans to assist in the economic development of the country.'⁶ In further incentivizing foreign currency deposits and the development of an offshore banking sector, it was declared in Presidential Decree 1246 that '...making absolute the protective cloak of confidentiality over such foreign currency deposits, exempting such deposits from tax, and guaranteeing the vested rights of depositors would better encourage the inflow of foreign currency deposits into the banking institutions authorized to accept such deposits in the Philippines thereby placing such institutions more in a position to properly channel the same to loans and investments in the Philippines, thus directly contributing to the economic development of the country.'

The bank secrecy regime therefore seeks to achieve important objectives. However, these objectives can be achieved without 'making absolute the protective cloak of confidentiality,' which may sacrifice the equally important objectives of law enforcement and the interests of justice. It is important to create the right balance.

It is the aim of this draft amendment to the Foreign Currency Deposit Act to better facilitate law enforcement and protect the interests and rights of other Philippine citizens, even as the rights of bank depositors are protected and encroachments on privacy are limited to what is necessary and reasonable. This proposed amendment aims to implement a comprehensive overhaul of the secrecy provision of the Act, and to that extent goes further than previous amendments and proposals, not only to correct the problems encountered in the Corona impeachment but also to plug other foreseeable loopholes and law enforcement problems, taking account of decisions of the courts already giving very restrictive interpretations to the provision.


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⁵ See Tournier v National Provincial Bank [1924] 1 KB 461, (UK C.A.)

⁶ See RA No. 1405.

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***AN ACT TO AMEND REPUBLIC ACT NO. 6426 KNOWN AS THE FOREIGN
CURRENCY DEPOSIT ACT OF THE PHILIPPINES, AND TO PROVIDE FOR THE
DISCLOSURE OF FINANCIAL INFORMATION RELATIVE TO FOREIGN
CURRENCY DEPOSITS IN APPROPRIATE AND JUST CIRCUMSTANCES***

WHEREAS, financial privacy serves the policy objectives of the Philippine government in promoting investment from internal and external sources and fostering economic growth;

WHEREAS, in furthering this objective Republic Act No. 6426 makes provision for the recognition of absolute financial privacy but, in accordance with judicial interpretation of the Philippine financial privacy regime, tends to frustrate the equally important objectives of law enforcement and the rights of other Philippine citizens;

WHEREAS, it is therefore necessary to amend RA 6426 in such a manner as to retain the necessary and reasonable benefits and protections of financial privacy while making allowance for law enforcement objectives and the rights of other citizens;

NOW THEREFORE

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

Section 1. *Short Title.* - This Act shall be known as "*The Foreign Currency Deposit Amendment Act of 2012*".

Section 2. *Amendment of Section 8 of Republic Act No. 6426.* - Section 8 of Republic Act No. 6426 is hereby amended to read as follows:

"Section 8. Privacy of foreign currency deposits. –

(1) All foreign currency deposits authorized under this Act, as well as foreign currency deposits authorized under Presidential Decree No. 1034 which authorizes the establishment of an offshore banking system in the Philippines, are hereby declared to be of confidential nature and shall not be examined, inquired or looked into by any person including any government official, bureau or administrative or legislative office, or any other entity whether public or private, except as provided for in this section.

(2) The confidential nature of foreign currency deposits as provided for in subsection 1 of this section shall not preclude the seeking, divulging or obtaining of any information relative to the said deposits:

(a) in accordance with this or any other law;

(b) with the written consent of the depositor or any of the depositors of such account;

(c) in compliance with the directions of any competent court or other tribunal in any criminal investigation or proceeding concerning an offense or matter within the legal jurisdiction of the Philippines and the jurisdiction of the said court or tribunal;

(d) in cases of impeachment of any public official or in any investigation of a public official for any offense for which it is necessary to obtain information relative to that official's foreign currency deposits;

(e) where any competent person so authorizes in fulfillment of any treaty obligations of the Philippines;

(f) or in litigation proceedings, including enforcement proceedings, where the money deposited or invested is the subject matter of the proceedings.

(3) The use of any information disclosed in accordance with this Act shall be limited to the specific purposes for which its disclosure was authorized, and the information shall otherwise remain confidential.

(4) An application to a competent court or tribunal for an order for the disclosure of information in relation to a foreign currency deposit account may be made at any stage of an investigation or proceeding by any investigating officer or prosecutor and may be made without notice to the depositor on proof to the court or tribunal that notice to the depositor is likely to compromise the investigation or proceeding. The court or tribunal seized of the matter shall make orders to ensure that the depositor is informed as soon as reasonably practicable of the application or order for disclosure.

(5) Where disclosure of any information with respect to foreign currency deposits is threatened or has been made, any interested depositor may apply to a competent court or tribunal for orders or directions, and such court or tribunal seized of the matter may, in its discretion, having regard to the overall confidential nature of the said deposits, the purposes of this Act and the

overall interests of justice and law enforcement, make orders or give directions to safeguard the confidentiality of the information disclosed, including to limit disclosure to particular persons, or to limit the amount and nature of the information disclosed relative to the purposes to be achieved, or to make provision for the redacting of specific information from any document to be disclosed.”

Section 3. *Separability clause.* - In the event that any provision of this Act or the applicability of such provision to any person or circumstance is declared invalid, the remainder of the Act or the application of said provision to other persons or circumstances shall not be affected by such declaration.

Section 4. *Repealing clause.* - All acts, executive orders, administrative orders, proclamations, rules and regulations or parts thereof inconsistent with any of the provisions of this Act are hereby repealed or modified accordingly.

Section 5. *Effectivity.* This Act shall take effect fifteen (15) days following the completion of its publication in any two (2) national newspapers of general circulation.

Approved,...