



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila

TWENTIETH CONGRESS
First Regular Session



HOUSE BILL NO. 1674

Introduced by Representative Irwin C. Tieng

AN ACT
PROMOTING TRANSPARENT GOVERNANCE AND
INSTITUTING ANTI-CORRUPTION MECHANISMS IN THE OPERATION OF
BANKS AND OTHER FINANCIAL INSTITUTIONS,
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 1405, ENTITLED “AN ACT
PROHIBITING DISCLOSURE OF OR INQUIRY INTO, DEPOSITS WITH ANY
BANKING INSTITUTION AND PROVIDING PENALTY THEREFOR”

EXPLANATORY NOTE

Seventy (70) years ago, in 1955, Republic 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 However, PD No. 1792 was later expressly repealed by Rep.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.

However, 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.

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.

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

Hence, to address the unintended consequences of the secrecy of bank deposit laws, and heed the call of the global community for a more transparent financial system environment, RA No. 1405 should be amended, **which will be 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 by the stockholder, owner, director, trustee, officer or employee of an entity that is subject to the supervision or regulatory power of BSP, his representative or agent, or any individual in conspiracy with the aforementioned persons; and (ii) it is necessary to look into the deposit to establish such fraud, irregularity or unlawful activity. It is also suggested that the authority of BSP to inquire or examine deposit shall apply in the course of its investigation of closed banks.

The results of such inquiry and 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 to the Securities and Exchange Commission, Philippine Deposit Insurance Corporation, Anti-Money Laundering Council, Department of Justice, and the courts.

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.

In addition, the bill proposes to consider the use of the Act for 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 harassment or malicious prosecution. Such will

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.

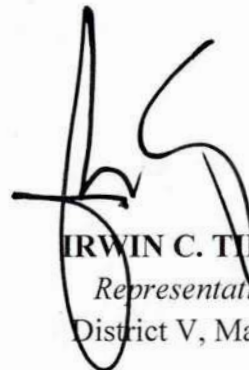
⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

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 these premises, the immediate passage of this bill is earnestly recommended.



IRWIN C. TIENG
Representative
District V, Manila



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

SECTION 1. Section 2 of Republic Act No. 1405, entitled: *“An Act Prohibiting Disclosure of or Inquiry Into, Deposits With Any Banking Institution And Providing Penalty Therefor”* is hereby amended to read, as follows:

“SECTION 2. All deposits 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 of public officials, or in cases where the money deposited is the subject matter of the litigation, **OR IN CASES WHERE THE INQUIRY OR EXAMINATION IS MADE BY THE BANGKO SENTRAL NG PILIPINAS (BSP), IN THE EXERCISE OF ITS SUPERVISORY POWERS, ON THE DEPOSIT OF THE STOCKHOLDER, OWNER, DIRECTOR, TRUSTEE, OFFICER OR EMPLOYEE OF AN ENTITY THAT IS SUBJECT TO THE SUPERVISION OR REGULATORY POWER OF THE BSP, THE REPRESENTATIVE OR AGENT, THE RELATED PARTY, OR ANY OF THE CONSPIRATORS, OF THE PERSON INVOLVED: PROVIDED, THAT, UPON DETERMINATION BY THE MONETARY BOARD, THERE IS A REASONABLE GROUND TO BELIEVE THAT FRAUD, SERIOUS IRREGULARITY OR UNLAWFUL ACTIVITY HAS BEEN OR IS BEING COMMITTED BY THE ABOVEMENTIONED PERSONS,**

THE RELATED PARTY, OR ANY OF THE CONSPIRATORS, OF THE PERSON INVOLVED: *PROVIDED*, THAT, UPON DETERMINATION BY THE MONETARY BOARD, THERE IS A REASONABLE GROUND TO BELIEVE THAT FRAUD, SERIOUS IRREGULARITY OR UNLAWFUL ACTIVITY HAS BEEN OR IS BEING COMMITTED BY THE ABOVEMENTIONED PERSONS, AND THAT IT IS NECESSARY TO LOOK INTO THE DEPOSIT TO ESTABLISH SUCH FRAUD, SERIOUS IRREGULARITY OR UNLAWFUL ACTIVITY. THE AUTHORITY OF THE *BSP* TO INQUIRE AND EXAMINE DEPOSITS SHALL ALSO APPLY IN THE COURSE OF ITS INVESTIGATION OF CLOSED BANKS.

AS USED IN THIS ACT, *DEPOSITS* SHALL REFER TO MONEY OR ITS EQUIVALENT RECEIVED BY A BANK IN THE USUAL COURSE OF BUSINESS, AND FOR WHICH IT HAS GIVEN OR IS OBLIGED TO GIVE CREDIT TO A COMMERCIAL, CHECKING, SAVINGS, TIME OR THRIFT ACCOUNT, EVIDENCED BY A PASSBOOK, CERTIFICATE OF DEPOSIT, OR OTHER EVIDENCE OF DEPOSIT, ISSUED IN ACCORDANCE WITH *BSP* RULES AND REGULATIONS AND OTHER APPLICABLE LAWS, AS WELL AS SUCH OTHER OBLIGATION OF A BANK THAT FORMS PART OF ITS DEPOSIT LIABILITIES PURSUANT TO *BSP* RULES AND REGULATIONS.

THE RESULTS OF THE INQUIRY OR EXAMINATION CONDUCTED BY THE *BSP* SHALL BE FOR ITS EXCLUSIVE USE AND SHALL NOT BE MADE AVAILABLE TO ANY PERSON OR ENTITY, WHETHER PUBLIC OR PRIVATE, EXCEPT TO THE SECURITIES AND EXCHANGE COMMISSION, PHILIPPINE DEPOSIT INSURANCE CORPORATION, ANTI-MONEY LAUNDERING COUNCIL, DEPARTMENT OF JUSTICE, AND THE COURTS: *PROVIDED*, THAT THE SHARING OF THE RESULTS OF THE ABOVEMENTIONED INQUIRY OR EXAMINATION IS NECESSARY TO PREVENT OR PROSECUTE ANY OFFENSE OR CRIME.

THE EXEMPTIONS UNDER THIS SECTION SHALL APPLY TO FOREIGN CURRENCY DEPOSITS IN BANKS OPERATING IN THE PHILIPPINES INCLUDING OFF-SHORE BRANCHES OF DOMESTIC BANKS: *PROVIDED*, THAT THESE EXEMPTIONS SHALL NOT APPLY TO NON-STOCK SAVINGS & LOAN ASSOCIATIONS (NSSLAS) THAT ARE CATERING ONLY TO THEIR MEMBERS.”

SEC. 2. Section 3 of the same Act, is hereby amended to read as follows:

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

AND THAT IT IS NECESSARY TO LOOK INTO THE DEPOSIT TO ESTABLISH SUCH FRAUD, SERIOUS IRREGULARITY OR UNLAWFUL ACTIVITY. THE AUTHORITY OF THE *BSP* TO INQUIRE AND EXAMINE DEPOSITS SHALL ALSO APPLY IN THE COURSE OF ITS INVESTIGATION OF CLOSED BANKS.

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HOWEVER, it shall be unlawful for any official OR employee, of a banking institution OR THE *BSP*, to disclose ANY INFORMATION CONCERNING SAID DEPOSITS to any person AND UNDER SUCH CONDITIONS other than those mentioned in Section ~~two~~ 2 hereof. IT SHALL ALSO BE UNLAWFUL FOR ANY PERSON TO USE THIS ACT FOR PERSECUTION OR HARASSMENT OR AS

**AN INSTRUMENT TO HAMPER COMPETITION IN TRADE AND
COMMERCE.”**

SEC. 3. Section 5 of the same Act, is hereby amended to read as follows:

“SECTION 5. Any violation of this law will subject **THE** offender upon conviction, to imprisonment of not **LESS THAN TWO (2) YEARS NOR** more than ~~five~~ **TEN (10) YEARS** or a fine of not **LESS THAN FIFTY THOUSAND PESOS (P50,000) NOR MORE THAN** ~~twenty—thousand~~ **TWO MILLION PESOS (P2,000,000)**, or both, ~~in~~ **AT** the discretion of the court.”

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

SEC. 5. *Repealing Clause.*

- a. Sections 2, 3 and 5 of Republic Act No. 1405 are hereby amended;
- b. Sections 8 and 12-A of Republic Act No. 6426, as amended, also known as the “Foreign Currency Deposit Act of the Philippines,” with respect to foreign currency deposits, are hereby amended;
- c. Section 33 of Republic Act No. 6848, also known as “The Charter of the Al-Amanah Islamic Investment Bank of the Philippines”, is hereby amended;
- d. Section 26(a)(2) of Republic Act No. 7353, also known as the “Rural Act of 1992” is hereby amended; and
- e. Section 21(a)(2) of Republic Act No. 7906, also known as the “Thrift Banks Act of 1995” is hereby amended.

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

SEC. 6. *Effectivity.* This Act shall take effect fifteen (15) days following its publication in the *Official Gazette* or in a newspaper of general circulation in the Philippines.