

Risk Mitigation Measures and Legal Remedies



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Risk Mitigation?

Civil Code Article 3:

“Ignorance of the law excuses no one from compliance therewith”

Legal Basis of State

- Anti-Terror Act (RA 11479)
- Terrorist Financing Prevention and Suppression Act (RA 10168)
- Guidelines for the Protection of SEC Registered Non-Profit Organizations from Money Laundering and Terrorist Financing Abuse (SEC MC No. 15, s.2018)

Anti-Terror Act

- Defines “Terrorism”
- Prohibits terrorism
- Designation, proscription, detention, limitation of freedom to travel, freezing of assets

Terrorist Financing Prevention and Suppression Act

Section 4. Financing of Terrorism. – Any person who, directly or indirectly, willfully and without lawful excuse, possesses, provides, collects or uses property or funds or makes available property, funds or financial service or other related services, by any means, with the unlawful and willful intention that they should be used or with the knowledge that they are to be used, in full or in part: (a) to carry out or facilitate the commission of any terrorist act; (b) by a terrorist organization, association or group; or (c) by an individual terrorist, shall be guilty of the crime of financing of terrorism and shall suffer the penalty of reclusion temporal in its maximum period to reclusion perpetua and a fine of not less than Five hundred thousand pesos (Php500,000.00) nor more than One million pesos (Php1,000,000.00).

Any person who organizes or directs others to commit financing of terrorism under the immediately preceding paragraph shall likewise be guilty of an offense and shall suffer the same penalty as herein prescribed.

For purposes of this Act, knowledge or intent may be established by direct evidence or inferred from the attendant circumstances. XXX

Terrorist Financing Prevention and Suppression Act

Section 8. Prohibition Against Dealing with Property or Funds of Designated Persons.

– Any person who, not being an accomplice under Section 6 or accessory under Section 7 in relation to any property or fund: (i) deals directly or indirectly, in any way and by any means, with any property or fund that he knows or has reasonable ground to believe is owned or controlled by a designated person, organization, association or group of persons, including funds derived or generated from property or funds owned or controlled, directly or indirectly, by a designated person, organization, association or group of persons; or (ii) makes available any property or funds, or financial services or other related services to a designated and/or identified person, organization, association, or group of persons, shall suffer the penalty of reclusion temporal in its maximum period to reclusion perpetua and a fine of not less than Five hundred thousand pesos (Php500,000.00) nor more than One million pesos (Php1,000,000.00).

Terrorist Financing Prevention and Suppression Act

Section 11. Authority to Freeze. – The AMLC, either upon its own initiative or at the request of the ATC, is hereby authorized to issue an ex parte order to freeze without delay: (a) property or funds that are in any way related to financing of terrorism or acts of terrorism; or (b) property or funds of any person, group of persons, terrorist organization, or association, in relation to whom there is probable cause to believe that they are committing or attempting or conspiring to commit, or participating in or facilitating the commission of financing of terrorism or acts of terrorism as defined herein.

The freeze order shall be effective for a period not exceeding twenty (20) days. Upon a petition filed by the AMLC before the expiration of the period, the effectivity of the freeze order may be extended up to a period not exceeding six (6) months upon order of the Court of Appeals: Provided, That the twenty-day period shall be tolled upon filing of a petition to extend the effectivity of the freeze order

NPO Guidelines

- The SEC adopts these guidelines to protect NPOs from money laundering and terrorist financing abuse, enhance its registration and monitoring system in order to obtain the necessary information of NPOs for regulatory and risk assessment purposes, and provide additional measures pursuant to its regulatory and supervisory powers under the law

NPO Guidelines

- If SEC identifies certain NPOs being at risk, it shall adopt enhanced monitoring and supervision measures and require NPOs enhanced compliance requirements

NPO Guidelines

- Mandatory disclosure:
 - Objectives and purpose of activities
 - Persons who own, control direct activities
 - Nature of operations or projects
 - Actual raising or disbursing of funds
 - Contributions
 - Fund balance
 - Location of operations
 - Source of funds
 - Intended beneficiaries
 - Existing licenses

The Bill of Rights

“Government is powerful. When unlimited, it becomes tyrannical. The Bill of Rights is a guarantee that there are certain areas of a person’s life, liberty, and property which governmental power may not touch” - Bernas

Rights at Risk?

- Section 1: No person shall be deprived of life liberty or property without **due process** of law, nor shall any person be denied the equal protection of the laws.

Rights at Risk?

- Section 2: The right of people to be secure in their persons, houses, papers, and effects against **unreasonable searches and seizures** of whatever nature and for any purpose shall be **inviolable**, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Rights at Risk?

- Section 3: (1) the privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
(2) any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding

Allowable warrantless searches

- Incidental to lawful arrest
- Evidence in plain view
- Moving vehicle
- Consented warrantless search
- Customs search
- Stop and frisk
- Exigent and emergency circumstances

Allowable warrantless arrest

- The person to be arrested has committed, is actually committing, or attempting to commit an offense
- When an offense has been committed and the arresting officer has personal knowledge of the facts indicating the person to be arrested has committed it
- Prisoner who has escaped

In the ATA...

- Sec. 16: surveillance of suspects and interception and recording of communications – requires written order of the Court of Appeals, must be judicially authorized
- Sec. 24: unauthorized or malicious interpretations – 10 years imprisonment

In the ATA...

- Sec. 29: detention of suspect requires notification of judge. Failure to notify judge = imprisonment of ten years
- Sec. 31: violation of rights of detainee = ten years imprisonment

In the ATA...

- Rights of detainee (Sec. 30)
 - To be informed of the nature and cause of arrest
 - To remain silent
 - To have a competent and independent counsel of choice
 - If cannot afford: IBP or PAO

In the ATA...

- Rights of detainee (Sec. 30)
 - Informed of the cause or causes of detention in the presence of counsel
 - Allowed to communicate freely with counsel and to confer at any time without restriction
 - Communicate freely without restriction with family or relatives and to be visited by them
 - Allowed freely to avail the service of a physician or physicians of choice

In the ATA...

- Sec. 33: Any evidence obtained resulting from torture, coercion, cannot be used as evidence
- Sec. 37: any person who maliciously, or without authorization, examines deposits, placements, trust accounts, assets, or records in a bank or financial institution... shall suffer the penalty of four years imprisonment

In the ATA...

- Sec. 43: knowingly furnishing false testimony, forged documents or spurious evidence in any investigation or hearing conducted in relation to any violations under the ATA = six years imprisonment

Habeas Corpus (Rule 102)

- Habeas corpus extends to all cases of illegal confinement or detention by which any person is deprived of his liberty (Sec. 1)

Habeas Corpus (Rule 102)

- Execution of writ: the officer to whom the writ is directed shall convey the person so detained before the judge allowing the writ. In case the judge is absent, the person shall be brought before some other judge of the same court, unless from sickness or infirmity of the person directed to be produced, such person cannot be brought before the judge.

Amparo (AM No. 7-09-12-SC)

- The writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ covers extralegal killings and enforced disappearances or threats thereof (Sec. 1)

Amparo (AM No. 7-09-12-SC)

- Interim reliefs:
 - Temporary protection order
 - Inspection order
 - Production order
 - Witness protection order (Sec. 14)

Habeas Data (AM NO. 8-1-16-SC)

- Habeas data is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party (Sec. 1)

Habeas Data (AM NO. 8-1-16-SC)

- Reliefs?
 - Updating, rectification, suppression or destruction of the database or information or files kept by the respondent. In cases of threats, the reliefs may include a prayer for an order enjoining the act complained of. (Sec. 6)

Anti-Torture Act of 2009

- Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body (Sec. 4)

Physical Torture

- (1) Systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;
- (2) Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;
- (3) Electric shock;
- (4) Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s);
- (5) The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;

Physical Torture

- (6) Being tied or forced to assume fixed and stressful bodily position;
- (7) Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals;
- (8) Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;
- (9) Dental torture or the forced extraction of the teeth;
- (10) Pulling out of fingernails;

Physical Torture

- (11) Harmful exposure to the elements such as sunlight and extreme cold;
- (12) The use of plastic bag and other materials placed over the head to the point of asphyxiation;
- (13) The use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as:
 - (i) The administration of drugs to induce confession and/or reduce mental competency; or
 - (ii) The use of drugs to induce extreme pain or certain symptoms of a disease; and
- (14) Other analogous acts of physical torture

Anti-Torture Act of 2009

- "Mental/Psychological Torture" refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person's dignity and morale (Sec. 4)

Mental/Psychological Torture

- (1) Blindfolding;
- (2) Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;
- (3) Confinement in solitary cells or secret detention places;
- (4) Prolonged interrogation;
- (5) Preparing a prisoner for a "show trial", public display or public humiliation of a detainee or prisoner;
- (6) Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed;

Mental/Psychological Torture

- (7) Maltreating a member/s of a person's family;
- (8) Causing the torture sessions to be witnessed by the person's family, relatives or any third party;
- (9) Denial of sleep/rest;
- (10) Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim's head or putting marks on his/her body against his/her will;
- (11) Deliberately prohibiting the victim to communicate with any member of his/her family; and
- (12) Other analogous acts of mental/psychological torture.

Anti-Torture Act of 2009

- Section 11. Assistance in Filing a Complaint. - The CHR and the PAO shall render legal assistance in the investigation and monitoring and/or filing of the complaint for a person who suffers torture and other cruel, inhuman and degrading treatment or punishment, or for any interested party thereto.
- The victim or interested party may also seek legal assistance from the Barangay Human Rights Action Center (BRRAC) nearest him/her as well as from human rights nongovernment organizations (NGOs).

Other proposed operational mechanisms

- Legal action (i.e., constitutionality issue?)
- Documentation
- Public and media advocacy; social media platforms
- Designation of compliance officer, security officer
- Trainings and IEC

THE END

Thank you for listening