



Philippines: Laws Concerning the Recovery of Assets of Corrupt Public Officials

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PHILIPPINES

LAWS CONCERNING THE RECOVERY OF ASSETS OF CORRUPT PUBLIC OFFICIALS

Executive Summary

Republic Act 1379 provides for the forfeiture of property unlawfully acquired by public officers in favor of the State.

I. Introduction

The Philippines has numerous constitutional provisions, laws and regulations on the subject of graft and corruption.¹ Some of these laws provide that assets obtained illegally by public officers may be reverted to the State. For example, article 11, section 15 of the Philippines Constitution provides that the right of the State to recover properties unlawfully acquired by public officials and employees (from them or from their nominees or transferees) shall not be barred by prescription, laches, or estoppel.²

More specifically, Republic Act 1379 (RA 1379) provides for the forfeiture of property unlawfully acquired by public officers in favor of the State.³ RA 1379 provides that the assets of a government official acquired during incumbency are subject to forfeiture if their value is patently disproportionate to his salary and other lawful income.⁴ If the respondent is unable to prove in court that he has lawfully acquired the property in question, the court will declare those assets forfeited and they become property of the State.⁵ RA 1379 is applicable to “any person holding any public office or employment by virtue of an appointment, election or contract, and any person holding any office or employment, by appointment or contract, in any State owned or controlled corporation or enterprise.”⁶

II. Recovery of Cash Assets Unlawfully Acquired by Ferdinand Marcos

There are many documented cases concerning acts of corruption committed by high-ranking government officials in the Philippines.⁷ However, the recovery of cash assets unlawfully acquired by former President Ferdinand Marcos from Swiss banks is one of the most publicized cases of government

¹ Republic of the Philippines, Anti Graft Laws, <http://www.ombudsman.gov.ph/page.php?pid=256> (last visited June 20, 2006). This hyperlink connects to the official Web site of the Philippines Office of the Ombudsman.

² The 1987 Constitution of the Republic of the Philippines 11 (15), <http://www.gov.ph/aboutphil/a11.asp> (last visited June 20, 2006). This hyperlink connects to the official Web site of the Philippines government.

³ Republic Act No. 1379, An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefore, http://www.dpwh.gov.ph/graft_corruption/program/pdf/RA%201379.pdf (last visited June 20, 2006). This hyperlink connects to the official Web site of the Philippines Department of Public Works and Highways.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ ASIAN INSTITUTE OF STRATEGIC STUDIES, INC., GRAPPLING WITH GRAFT AND CORRUPTION, THE PHILIPPINES EXPERIENCE (2003).

corruption in the Philippines. Mr. Marcos had several bank accounts in Switzerland when he fled the Philippines in late February 1986. The money deposited in those bank accounts, approximately \$570 million at the time the money was finally transferred to the Philippines in 1998, was the subject of several legal battles. A brief summary of this case follows.

On February 28, 1986, Philippines President Corazón Aquino signed Executive Order 1, creating the Presidential Commission on Good Government (PCGG).⁸ The main task entrusted to the Commission was the recovery of ill-gotten wealth accumulated during the Marcos regime.⁹ On March 24, 1986, the Swiss Council of Ministers (*Bundesrat*) convened for an emergency meeting.¹⁰ The Swiss Finance Ministry had just been warned by the Credit Swiss Bank that agents of the recently deposed President Ferdinand Marcos were trying to transfer hundreds of millions of dollars out of Switzerland.¹¹ After this meeting, the Swiss government ordered an emergency freeze of the assets that Mr. Marcos and his family kept in Switzerland.¹² This money was deposited in Swiss banks by five different “foundations” that Mr. Marcos created to conceal his crimes.¹³

In April 1986, the PCGG filed a formal request for judicial assistance in Switzerland under the Federal Act on International Mutual Assistance in Criminal Matters (IMAC).¹⁴ The IMAC allows the Swiss government to co-operate with other countries in criminal matters, even in the absence of conventional agreements.¹⁵ In 1989, a Swiss magistrate ruled that “the assets may be turned over only when it is sufficiently established that they were acquired directly or indirectly through offence, justifying the penal prosecution abroad or at least that their punishable origin is highly probable.”¹⁶ The Magistrate concluded that the Philippine request was not sufficiently precise for immediate action on the request for transfer of funds.¹⁷ However, the 1986 filing of the request for judicial assistance extended the freeze order previously issued by the Swiss authorities blocking all assets the Marcos family held in Switzerland.¹⁸

⁸ Mission of the Presidential Commission on Good Government (PCGG), <http://www.pcgg.gov.ph/id19.htm> (last visited June 24, 2006). This hyperlink connects to the official Web site of the PCGG.

⁹ *Id.*

¹⁰ JOVITO R. SALONGA, UNIVERSITY OF THE PHILIPPINES, CENTER FOR LEADERSHIP, CITIZENSHIP AND DEMOCRACY PRESIDENTIAL PLUNDER, THE QUEST FOR THE MARCOS ILL-GOTTEN WEALTH 84 (Regina Pub. 2000).

¹¹ *Id.*

¹² *Id.*

¹³ Asian Institute of Strategic Studies, Inc., *Grappling with Graft and Corruption, the Philippines Experience* 11 (2003).

¹⁴ United Nations General Assembly, 56th Session, Sep. 25, 2001, Agenda Items 96 (a) and 110, Prevention of Corrupt Practices and Illegal Transfer of Funds, Report of the Secretary General, 13, A/56/403, http://www.unodc.org/pdf/crime/a_res_56/403e.pdf. The hyperlink in this footnote connects to the UN Office on Drugs and Crime Web site.

¹⁵ United Nations General Assembly, 56th Session, Oct. 5, 2001, Agenda Item 166, Measures to Eliminate International Terrorism, Statement by H. E. Ambassador Jenö C.A. Staehelin, Permanent Observer of Switzerland to the United Nations, New York, <http://www0.un.org/terrorism/statements/switzerlandE.html>. The hyperlink in this footnote connects to the UN Action Against Terrorism Web site.

¹⁶ United Nations General Assembly, 56th Session, Sep. 25, 2001, Agenda Items 96 (a) and 110, Prevention of Corrupt Practices and Illegal Transfer of Funds, Report of the Secretary General, 13, A/56/403, http://www.unodc.org/pdf/crime/a_res_56/403e.pdf. The hyperlink in this footnote connects to the UN Office on Drugs and Crime Web site.

¹⁷ *Id.*

¹⁸ *Id.*

In December 1990, the Swiss Supreme Court ruled that the assets would only be remitted to the Republic of the Philippines upon fulfillment of a number of conditions, namely:

- that there be final conviction rendered against Mrs. Marcos (who continued litigating this case in Switzerland after her husband passed away in 1989) before Philippines courts;
- that Mrs. Marcos be accorded due process of law in the judicial proceedings; and
- that Mrs. Marcos' rights under the Swiss Federal Constitution and under the European Convention on Human Rights and Fundamental Freedoms be safeguarded in accordance with IMAC.¹⁹

In August 1995, the PCGG filed a Petition for Additional Request for Mutual Assistance before the Office of the District Attorney of Zurich, seeking a modification of the Swiss court's judgment of December 1990 to ensure that the assets could be transferred even before the rendering of a final and enforceable judgment in the Philippines.²⁰ The petition invoked, among others, the exceptions provided for under article 74 of IMAC which allows, in some highly exceptional cases, the transfer of the assets at any time at the discretion of the Swiss authorities.²¹ In order to support this petition, the PCGG presented evidence that the assets located in Switzerland were a product of acts of corruption committed by Mr. Marcos, and therefore those assets rightfully belonged to the Republic of the Philippines.²²

In December 1997, the Swiss Federal Authorities sustained the position of the Philippines Government that the money could be moved out of Switzerland even without a judgment of final conviction against Mrs. Marcos, pursuant to the exception under article 74 of IMAC.²³ Finally, the funds were repatriated to the Republic of the Philippines in 1998.²⁴ However, Mr. Marcos' family continued litigating this matter in Philippines courts for five more years until the Philippines Supreme Court ruled, in late 2003 that these funds should be recouped by the Philippines government pursuant to RA 1379, as they were unlawfully acquired by Mr. Marcos.²⁵

III. Expert Witnesses That Can Be Summoned on This Matter

We could not locate Filipino experts on this matter in the Washington, D.C. area. However, the Philippines government has several government agencies that investigate acts of corruption committed by government officials, such as the PCGG, the Presidential Anti Graft Commission, and the Office of the

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ ASIAN INSTITUTE OF STRATEGIC STUDIES, INC., GRAPPLING WITH GRAFT AND CORRUPTION, THE PHILIPPINES EXPERIENCE 33 (2003).

Ombudsman. These agencies could be contacted through the Philippines embassy in Washington, D.C. The Philippines embassy contact information is available at:

- <http://www.philippineembassy-usa.org/misc/contactus.htm>.

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