



RA 6426
FOREIGN
CURRENCY
DEPOSITS ACT OF
THE PHILIPPINES

This law established the “foreign currency deposit account system.”

■ It allows any person, natural or juridical, in accordance with the provisions of this Act, deposit with such Philippine banks in good standing, as may, upon application, be designated by the Central Bank for the purpose, foreign currencies which are acceptable as part of the international reserve, except those which are required by the Central Bank to be surrendered in accordance with the provisions of RA 7653.

■ Section 3. Authority of banks to accept foreign currency deposits. –
The banks designated by the Central Bank under Section two hereof shall have the authority:

(1) To accept deposits and to accept foreign currencies in trust Provided, That numbered accounts for recording and servicing of said deposits shall be allowed;

(2) To issue certificates to evidence such deposits;

(3) To discount said certificates;

(4) To accept said deposits as collateral for loans subject to such rules and regulations as may be promulgated by the Central Bank from time to time; and

(5) To pay interest in foreign currency on such deposits.

Foreign currency deposits

Refer to funds in foreign currencies which are accepted and held by authorized banks in the regular course of business with the obligation to return an equivalent amount to the owner thereof, with or without interest

Prohibited acts and persons liable

■ The following are liable under this law:

Any person or government official who, or any government bureau or office that, examines, inquires or looks into a foreign currency deposit without the written permission of the depositor. (Sec. 8)

Any official or employee of a banking institution who makes a disclosure concerning foreign currency deposits to another, in any instance not allowed by law. (Sec. 10)

Anyone who shall attach, garnish, or subject the foreign currency deposit to any other order or process of any court, legislative body, government agency or any other administrative body. (Sec. 8)

Any person who commits a willful violation of any of the provisions of RA No. 6426 or regulation issued by the Monetary Board pursuant to the said

Sec. 8

- Secrecy of foreign currency deposits. – all foreign currency deposits authorized under this Act, as amended by PD No. 1035, as well as foreign currency deposits authorized under PD No. 1034, are hereby declared as and considered of an **absolutely confidential** nature and, except upon written permission of the depositor, **in no instance shall foreign currency deposits be examined, inquired or looked** into by any person, government official, bureau or office whether judicial or administrative or legislative, or any other entity whether public or private; *Provided, however,* that said foreign currency deposits shall be **exempt from attachment, garnishment, or any other order or** process of any court, legislative body, government agency or any administrative body whatsoever. (as amended by PD No. 1035 and further amended by PD No. 1246.)

Foreign currency deposits shall in no instance be inquired or examined.

- Hence, even if the foreign currency deposit is the subject matter of litigation, the same may not be inquired, examined or looked into.
- **Only the owner** of the foreign currency deposit is entitled to the confidentiality provisions of Sec. 8 of RA No. 6426.

Foreign currencies that are covered

- ALL kinds of foreign currency deposits are covered.
- In the case of *Benedicto V. CA*, the Supreme Court ruled that Sec. 2 of the FCDA speaks of “deposit with such Philippine banks in good standing, as may be. . . Designated by the Central Bank for the purpose” and does not cover foreign currency accounts maintained in foreign banks

When can foreign deposits be inquired or looked into?

- The lone exception to the disclosure of foreign currency deposits, under RA No. 6426, is a disclosure upon the written permission of the depositor.

- HOWEVER, with the enactment of subsequent laws, there are 4 additional exceptions now:
 - *A. without the need of a court order, if the ANTI-MONEY LAUNDERING COUNCIL determines that a particular deposit or investment with any banking institution is related to any of the following unlawful activities:*

B. Human security Act (RA 9732)

C. Sec. 5, RA No. 3591 (PDIC LAW) as amended by RA No. 9567

D. RA No. 10168 (Terrorism Financing Prevention and Suppression Act of 2012)

CASE:

- JOSE and MARY are co-payers of various CITIBANK dollar checks. MARY withdrew these checks from CITIBANK. The funds in CITIBANK belonged exclusively to JOSE. MARY solely endorsed the checks and deposited them with CHINABANK. JOSE later filed a case of recovery of sums of money against MARY claiming that the latter stole his dollar deposits with CITIBANK.
- Trial court granted the motion for the issuance of a subpoena against CRIS and ISABEL (Employees of CHINABANK).
- However, Chinabank questions such alleging that:
 - *The dollar checks are absolutely confidential in nature and may not be inquired into as provided for in RA No. 6426 and;*
 - *Jose is not the owner or the depositor of the dollar deposits and he cannot invoke the aid of the court in compelling the disclosure of someone else's foreign currency deposit.*

Issue: Can China bank testify on the dollar deposits in the name of MARY?

RULING: YES.

- There is no question as to the source of the funds: the dollar deposits of JOSE with CITIBANK. These were then deposited in the form of Citibank dollar checks with Chinabank. As the owner of the funds unlawfully taken and which are undisputably now deposited with Chinabank, JOSE has the right to inquire into the said deposits.

- The Chinabank case is a limited *pro hac vice* ruling in view of the distinctive circumstances of the case. Said the Supreme Court:
“Clearly, it was not the intent of the legislature when it enacted the law on secrecy on foreign currency deposits to perpetuate injustice. This Court is of the view that the allowance of the inquiry would be in accordance with the rudiments of fair play, the upholding fairness on our judicial system and would be an avoidance of delay and time-wasteful of administering justice.”

- *Pro Hac Vice: for this one particular occasion only*

CASE:

- From his first term in 2007, Congressman Abner has been endorsing his pork barrel allocations to Twin Rivers in exchange for a commission of 40% of the face value of the allocation. Twin Rivers is a non-government organization whose supporting paper, after audit, were found by the COA to be fictitious. Other than to prepare and submit falsified papers to support the encashment of the pork barrel checks, Twin Rivers does not appear to have done anything on the endorsed projects and Congressman Abner likewise does not appear to have bothered to monitor the progress he endorsed.
- The congressman converted most of the commissions he generated into US dollars, and deposited these in a foreign currency account with Bance de Planta.

- Based on amply-supported tips given by a congressman from another political party, the Anti-Money Laundering Council sent BDP an order:
 1. To confirm Congressman Abner's deposits with the bank and to provide details of these deposits; and
 2. to hold all withdrawals and other transactions involving the congressman's bank accounts.

As counsel for BDP, would you advise the bank to comply with the order?

Suggested answer: NO

- The order is anchored on mere hearsay and there is no probable cause as it is based on a tip from another political party.

CASE:

- Hi Yielding Corporation filed a complaint against five of its officers for violation of section 31 of the corporation code. The corporation claimed that the said officers were guilty of advancing their personal interest of the corporation, and that they were grossly negligent in handling its affairs. Aside from documents and contracts, the corporation also submitted in evidence records of the officers' US Dollar deposits in several banks overseas.
- For their part, the officers filed a criminal complaint against the directors of Hi Yielding Corporation for violation of RA No. 6426, alleging that their bank deposits were illegally disclosed for want of a court order, and that such deposits were not even the subject of the case against them.

Will the complaint against the directors of Hi Yielding Corporation prosper?

Yes.

- The complaint will prosper. All kinds of foreign currency deposits shall not be examined, inquired or looked into by any person, government official, bureau or office whether judicial or administrative or legislative, or any other entity whether public or private, except only upon a written permission of the depositor, or when it falls with the AMLA. None of these exceptions were present in the case.