



BANGKO SENTRAL NG PILIPINAS

CIRCULAR LETTER NO. CL-2021-103

OFFICE OF THE DEPUTY GOVERNOR FINANCIAL SUPERVISION SECTOR

To : All BSP-Supervised Financial Institutions (BSFIs)

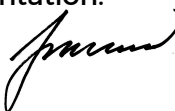
Subject : Anti-Money Laundering Council (AMLC) Regulatory Issuance (ARI) No. 8 – Guidelines on the Preservation, Management, and Disposal of Assets Subject of a Freeze Order, Asset Preservation Order, and Judgment of Forfeiture

This is to disseminate to all BSFIs the Guidelines on the Preservation, Management, and Disposal of Assets Subject of a Freeze Order (FO), Asset Preservation Order (APO), and Judgment of Forfeiture, herein referred to as the "Management and Preservation Guidelines" (MAP), which was issued under ARI No. 8, Series of 2021¹ (copy attached). The MAP is adopted to supplement the details of implementation provided under Rule 6(F) of the 2018 Implementing Rules and Regulations (IRR), in relation to the AMLC's power to preserve, manage, or dispose assets pursuant to a FO, APO or judgement of forfeiture under Section 7(16) of the Anti-Money Laundering Act of 2001, as amended (AMLA).

The MAP shall apply to, among others, the covered persons (CPs) and relevant government agencies, suppliers, service providers, and other third parties that may be involved in the preservation, management, and disposal of frozen, preserved, and forfeited assets. Section 5 directs, among others, all CPs to implement FO, APO, and judgment of forfeiture in the manners provided under the Rules on Civil Forfeiture, Rules on Criminal Forfeiture, and the 2018 IRR of the AMLA.

CPs, relevant government entities, and other persons who violate the provisions of the MAP shall be liable for administrative sanctions under the Rules of Procedure in Administrative Cases under the AMLA.

For information and strict compliance/implementation.

 Digitally signed by
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CHUCHI G. FONACIER
Deputy Governor

29 December 2021

¹<http://www.amlc.gov.ph/images/PDFs/ARI8%20S2021%20GUIDELINES%20ON%20THE%20PRESERVATION.%20MANAGEMENT%20AND%20DISPOSAL%20OF%20ASSETS%20SUBJECT%20OF%20A%20FREEZE%20ORDER.%20ASSET%20PRESERVATION%20ORDER.%20AND%20JUDGMENT%20OF%20FORFEITURE.pdf>; published in a newspaper of general circulation and filed in the Office of the National Administrative Register, University of the Philippines, on 01 December 2021.



ANTI-MONEY LAUNDERING COUNCIL

REGULATORY ISSUANCE NO. 8

Series of 2021

Subject: Guidelines on the Preservation, Management, and Disposal of Assets Subject of a Freeze Order, Asset Preservation Order, and Judgment of Forfeiture

By the authority vested in the Anti-Money Laundering Council (AMLC) to preserve, manage, or dispose assets pursuant to a freeze order, asset preservation order, or judgement of forfeiture under Section 7(16) of Republic Act No. 9160, also known as the Anti-Money Laundering Act of 2001, as amended (AMLA) and Rule 6(F) of its 2018 Implementing Rules and Regulations (IRR), the Council, in its Resolution No. 242, dated 16 November 2021, approved the adoption of the following guidelines:

Part 1 – General Provisions

Part 2 – Asset Preservation

Part 3 – Asset Management

Part 4 – Asset Disposal

Part 5 – Expenses for Preservation, Management and Disposal

Part 6 – Miscellaneous Provisions

PART 1 GENERAL PROVISIONS

Section 1. Title, Purpose, and Coverage.

1.1. Title and Purpose.

The *Guidelines on the Preservation, Management, and Disposal of Assets Subject of a Freeze Order, Asset Preservation Order, and Judgment of Forfeiture*, hereafter referred to as the “Management and Preservation Guidelines” (MAP) is adopted to supplement the details of implementation provided under Rule 6(F) of the 2018 IRR, in relation to the AMLC’s power under Section 7(16) of the AMLA, to wit:

The AMLC shall preserve, manage or dispose assets subject of a freeze order, asset preservation order, and judgment of forfeiture. Pending the turnover to the National Government, all expenses incurred in relation to the duties herein mentioned shall be deducted from the amount to be turned over to the National Government.

For this purpose, the AMLC shall account for all expenses incurred that are related to the preservation of the value, management of funds, properties or monetary instruments and disposition of the same, and deduct these expenses from the gross value of the assets prior to turnover of the net value to the National Government in accordance with acceptable accounting standards.

1.2. Coverage.

This MAP shall apply to the relevant operating units of the AMLC, covered persons and relevant government agencies, suppliers, service providers, and other third parties that may be involved in the preservation, management, and disposal of frozen, preserved, and forfeited assets.

Section 2. Governing Principles.

The following governing principles shall be observed in the implementation of this MAP:

- (a) The AMLC shall exercise operational independence in the discharge of its mandate to preserve, manage, and dispose assets related to money laundering/terrorism financing (ML/TF) and associated unlawful activities;
- (b) The risk-based approach shall be observed to ensure efficient allocation of resources, considering the level of risks involved, to support an effective asset freezing and forfeiture framework;
- (c) The manner of disposal of assets shall be transparent and the use of funds for preservation, management, and disposal shall be compliant with acceptable accounting standards.

Section 3. Definition of Terms.

For purposes of this MAP, the following terms are hereby defined as follows:

- (a) **“Anti-Money Laundering Act”** (AMLA) refers to Republic Act No. 9160, as amended by Republic Act Nos. 9194, 10167, 10365, 10927, and 11521.
- (b) **“Anti-Money Laundering Council”** (AMLC) refers to the Philippines’ central anti-money laundering/counter-terrorism financing (AML/CTF) authority and financial intelligence unit, which is the government instrumentality mandated to implement the AMLA and TFPISA. It also refers to the official name of the Council, which is the governing body of the said government agency.

For purposes of this MAP, the government agency shall be referred hereafter as the “AMLC”, while the governing body shall be referred hereafter as the “Council”.

- (c) **“Asset Management Group”** (AMG) refers to the operating unit of the AMLC tasked to preserve, manage, or dispose assets pursuant to a freeze order, asset preservation order, or judgement of forfeiture.
- (d) **“Asset Preservation Order”** (APO) refers to a provisional remedy aimed at preserving monetary instruments or properties in any way related to an unlawful activity or money laundering offense defined herein, during the pendency of civil forfeiture proceedings.
- (e) Asset Disposal means any sale, transfer, grant, or other modes of disposal of an asset which does not include return to the respondent/accused in a Civil and Criminal Forfeiture Case.
- (f) **“Civil Forfeiture”** (CF) refers to the non-conviction-based proceedings aimed at forfeiting, in favor of the government, monetary instruments or properties related to an unlawful activity or money laundering offense.
- (g) **“Freeze Order”** (FO) refers to a provisional remedy aimed at blocking or restraining monetary instruments or properties in any way related to an unlawful activity, as herein defined, from being transacted, converted, concealed, moved or disposed without affecting the ownership thereof.
- (h) **“Manage”** refers to handling or directing with a degree of skill.

For purposes of this MAP, the term “manage” shall include efforts geared towards preservation and disposal of assets.

- (i) **“Money Laundering”** (ML) refers to the crime defined under Section 4 of the AMLA.
- (j) **“Office of the Solicitor General”** (OSG) refers to the statutory counsel of the AMLC.
- (k) **“Perishable Assets/Goods”** refer to property that will become unusable in a short period of time, thus the need to sell before it loses its economic value and physical integrity, or those goods liable to perish or depreciate greatly in value while stored or which cannot be kept without great disproportionate expense.
- (l) **“Preserve”** refers to keeping the property safe from injury, harm, or destruction through an order of the court directing the AMLC to preserve the property.

- (m) **“Rapidly Depreciating Property”** refers to perishable property or property whose realizable value diminishes rapidly through time as to render its preservation impracticable, or even if preserved, would eventually be worthless upon forfeiture and whose expense of preservation exceeds its actual realizable value.

It covers assets where there is a risk of depreciation or deterioration. It includes real properties, ongoing businesses, or self-propelled assets such as vehicles, boats, and aircraft.

- (n) **“Restraint” or “Freezing”** refers to moderating or limiting the force, effect, development, or full exercise of possession or enjoyment of property.
- (o) **“Risk-Based Approach”** (RBA) refers to the process by which countries, competent authorities, and covered persons identify, assess, and understand the ML/TF risks to which they are exposed, and take the appropriate mitigation measures in accordance with the level of risk. RBA includes prioritization and efficient allocation of resources by the relevant key players and stakeholders in applying AML/CTF measures in their operations in a way that ensures that they are commensurate with the risks involved.
- (p) **“Rules on Civil Forfeiture”** refers to the *Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as Amended* (A.M. 05-11-04-SC) promulgated on 15 December 2005
- (q) **“Rule on Criminal Forfeiture”** refers to the *Rule on Asset Preservation, Seizure, and Forfeiture in Criminal Cases under Republic Act No. 9160 as Amended* refers to A.M. 21-13-13-SC, which took effect on 31 May 2021.
- (r) **“Seize” or “Seizure”** refers to taking possession of a property by legal process.
- (s) **“Terrorism Financing”** (TF) refers to the crime defined under Section 4 of the TFP SA.
- (t) **“Terrorism Financing Prevention and Suppression Act”** (TFPSA) refers to Republic Act No. 10168.
- (u) **“Unlawful Activity”** refers to the associated unlawful activities to money laundering defined under Section 3(i) of the AMLA.

Section 4. Subjects of Asset Preservation, Management, and Disposal.

The following shall be the subjects of AMLC's authority to preserve, manage, and dispose assets under Section 7(16) of the AMLA:

- (a) All assets covered by freeze orders, whether the initial 20-day freeze orders or 6-month freeze orders issued by both the Court of Appeals or the Council;
- (b) All assets covered by sanctions freeze orders, pursuant to targeted financial sanctions;
- (c) All assets covered by asset preservation orders, whether provisional or indefinite; and
- (d) All assets subject of a judgement of forfeiture, whether final judgement in favor of the State or those against the State, but still pending reconsideration and finality, unless otherwise provided in the court order or rules of court.

Section 5. Implementation of Freeze Orders, Asset Preservation Orders, and Judgment of Forfeiture.

All covered persons, relevant government agencies, and other persons directed to implement freeze orders, asset preservation orders, and judgment of forfeiture shall be implemented in the manners provided under the Rules on Civil Forfeiture, Rules on Criminal Forfeiture, and the 2018 IRR of the AMLA.

The duties and responsibilities of covered persons, relevant government agencies, and other persons, including the immediate freezing and preservation of assets, and the filing of the written and electronic detailed returns shall be strictly monitored and enforced.

PART 2 ASSET PRESERVATION

Section 6. Modes of and Mechanisms for Asset Preservation.

The AMLC shall avail all modes of and mechanisms necessary to preserve the value of the assets subject of freeze order, asset preservation order, and judgment of forfeiture. This may include availment of all the necessary legal remedies to ensure that the efforts of the State in running after proceeds and instrumentalities of money laundering and associated unlawful activities will not be put to waste.

Section 7. Receivership.

Whenever necessary for the effective protection, conservation, and maintenance of frozen or preserved assets, the AMLC may move for the designation of itself, if it has the relevant personnel, or a third party as a receiver under such terms and conditions the court may deem proper under the instances provided in the Rules on Civil Forfeiture and Rules on Criminal Forfeiture. Initial payment for the third-party receiver shall be taken from the trust fund. The fruits of the assets shall cover succeeding payment until a judgement order has been issued forfeiting the property in the name of the Republic of the Philippines.

Section 8. Sale of Assets During the Pendency of Cases.

Perishable assets subject of freeze order or asset preservation order may be disposed of through Sale of Perishable Assets, in accordance with the requirements under the Rules on Civil Forfeiture and Rules on Criminal Forfeiture.

PART 3 ASSET MANAGEMENT

Section 9. Asset Management Policy.

As far as applicable, the AMLC shall observe Joint Memorandum Circular No. 2020-1¹ dated 24 September 2020 on the *Implementation of a Philippine Government Asset Management Policy (PGAMP)* in the implementation its asset management function.

The AMLC shall also apply, whenever applicable or practicable within the circumstances, the international standards [International Organization for Standardization (ISO) 55000 Family] and best practices on asset management.

Section 10. Asset Inventory and Database.

The AMG shall conduct regular inventory of frozen, preserved, and forfeited assets to ensure that it has updated data and information. The inventory shall include running balances, appraised amounts, status of properties, and the relevant expenses, among others, both on a per category basis and on the aggregate level.

The data and information on frozen, preserved, and forfeited assets shall be kept in a central database accessible to the head of the AMG and his or her authorized personnel.

The AMG shall ensure the confidentiality and security of the data and information on frozen, preserved, and forfeited assets. These data and information shall only be used for official

¹ Issued by the Department of Finance, Department of Budget and Management, and National Economic and Development Authority.

purposes relevant to the preservation, management, and disposal of assets, or as allowed under such guidelines provided by the Council.

Section 11. Asset Appraisal.

The AMG shall appraise, through its own competent personnel, if any, or through third parties, the assets subject of freeze orders, asset preservation orders, and judgment of forfeiture, as may be necessary, to ensure that their valuation is updated.

PART 4 ASSET DISPOSAL

Section 12. Public Auction.

Conformably to existing state policy, the disposal of frozen, preserved, or forfeited assets, as contemplated herein, shall be undertaken primarily through public auction. Such mode of disposal shall observe and adhere to established mechanics and procedures in public bidding:

- (a) adequate publicity and notification so as to attract the greatest number of interested parties; (vide, Sec. 79, P.D. 1445)
- (b) sufficient time frame between publication and date of auction.
- (c) opportunity afforded to interested parties to inspect the property or assets to be disposed of.
- (d) confidentiality of sealed proposals.
- (e) bond and other prequalification requirements to guarantee performance; and
- (f) fair evaluation of tenders and proper notification of award. It is understood that the AMLC reserves the right to reject any or all the tenders.

Section 13. Sale Through Negotiation.

For justifiable reasons and as demanded by the exigencies of the service, disposal through negotiated sale may be resorted to and undertaken by the AMG taking into consideration the following factors:

13.1. *Failure of public auction*

There is failure of public auction in any of the following instances:

- (a) if there is only one offeror. In this case, the offer or bid, if sealed, shall not be opened;
- (b) if all the offers/tenders are non-complying or unacceptable. A tender is non-complying or unacceptable when it does not comply with the prescribed legal, technical, and financial requirements for pre-qualification.

For properties subject of a final judgment of forfeiture, a negotiated sale may be done without the approval of the court.

13.2. One-on-one negotiation.

The negotiation may be conducted singly, i.e., on a one-on-one basis, or in group, provided that due communication between the offerors and the AMLC is established with a view to ensuring that the government gets the best price.

To avert possible confabulation among unscrupulous parties, a record of the proceedings of the negotiation must be maintained.

13.3. Negotiation Price.

It is understood that the price agreed upon at the negotiation shall not be lower than the floor price as fixed by the AMLC or the highest offer submitted at the failed public auction whichever is higher.

13.4. Suppletory Application of Commission on Audit Issuances.

The provisions of the Commission on Audit Circular No. 89-296 dated January 27, 1989², its successor circulars and/or issuances shall apply have suppletory application.

Section 14. Turn Over of Assets.

The AMLC shall turn over assets, as indicated in the judgment of forfeiture, to any of the following:

- (a) the BTr, or any government agency that may be designated by law;
- (b) any foreign government agency as allowed by treaties or conventions; or
- (c) to such other claimants as may be designated by the court.

² Audit Guidelines on the Divestment or Disposal of Property and Other Assets of National Government Agencies and Instrumentalities, Local Government Units and Government-Owned or Controlled Corporations and their Subsidiaries.

Section 15. Turnover to the National Government.

Upon finality of the forfeiture order, the AMG shall turn over the assets by transmitting documentary proof of ownership or monetary instruments:

- (a) Cash or checks representing forfeited monetary instrument, virtual currencies, cryptocurrencies, casino chips or tokens, or other gaming instruments in banks, insurance companies, and other financial institutions, or covered persons, may be deposited/remitted to the national government by depositing the same to the Land Bank of the Philippines (LBP) account of the Bureau of the Treasury (BTr).
- (b) Upon turnover of the forfeited personal properties, or the proceeds of their public sale held in custodia legis, to the AMLC, the same may be promptly remitted to the BTr.
- (c) Forfeited real properties, improvements constructed or crops growing thereon, or any interest therein, upon turn over by the sheriff of the certificate of title covering the forfeited real property to the AMLC, said certificate of title may be transmitted to the BTr for its appropriate action.
- (d) To manage assessment of realty tax by the local government unit where the real property is located, the AMLC shall ensure that the forfeiture judgment is annotated on the certificate of title and/or on the tax declaration covering the said real estate. In case of realty tax assessments prior to the order of forfeiture, the AMLC may advance realty taxes or propose to the Local Government Unit the sale at auction of the forfeited real property for the satisfaction of accrued real property taxes. The excess of the proceeds of said sale shall be collected by the AMLC and turned over to the BTr.

Section 16. Turnover to Foreign Jurisdictions.

- (a) In cases where the forfeited monetary instrument, virtual currencies, cryptocurrencies, casino chips or tokens, or other gaming instruments need to be turned over to a foreign jurisdiction pursuant to a mutual legal assistance (MLA) request, said cash or checks representing monetary instrument, cryptocurrency, casino chips or tokens, and other gaming instruments may be deposited to the LBP AMLC account pending transmittal of the funds to the requesting foreign jurisdiction.
- (b) In cases where the forfeiture of the personal property is upon the request of a foreign jurisdiction pursuant to an MLA request, the AMLC may file a motion in court to direct the sheriff to assist the AMLC in selling the personal property at public auction. After public auction, the proceeds may be deposited to the

LBP account of the BTr as trust receipts pending their transmittal to the requesting foreign jurisdiction.

- (c) In cases where the forfeiture of the real property is upon the request of a foreign jurisdiction pursuant to an MLA request, the AMLC may sell the real property at public auction.

PART 5 EXPENSES FOR PRESERVATION, MANAGEMENT, AND MAINTENANCE

Section 17. Accounting and Monitoring of Costs and Expenses.

The AMLC shall account and monitor all costs and expenses relevant to the preservation, management, and disposal of assets.

Section 18. Costs and Expenses.

The amount necessary for payment of all costs and expenses relevant to the preservation, management, and disposal of assets shall be sourced from the following:

- (a) Allowable deductions deposited in the AMLC account before an authorized servicing banks under the Modified Disbursement Scheme (MDS); and
- (b) Budget under the General Appropriations Act (GAA) may be used if the funds under the MDS account is insufficient.

Section 19. Deductible Expenses.

Pending the turnover of forfeited assets to the National Government or foreign jurisdiction, all expenses incurred in relation to the duties herein mentioned shall be deducted from the amount to be turned over to the Bureau of Treasury or foreign jurisdiction.

Deductible expenses shall include, but not limited to, the following:

- (a) Cost of publication;
- (b) Expenses related to the service of freeze orders and asset preservation orders, e.g., travel, lodging, etc.;
- (c) Cost of annotations on titles/tax declaration;
- (d) Payment of goods and services for:
 - (i) Security;

- (ii) Warehousing;
 - (iii) Property appraisal/valuation;
 - (iv) Receiver or property manager.
- (e) Property Taxes and fees; and
- (f) All other expenses that are necessary for the preservation, management, and disposal of assets.

Section 20. Opening of Modified Disbursement System (MDS) Account.

The AMLC shall open a Modified Disbursement System (MDS) account with an authorized servicing bank, which shall serve as a depository account for trust receipts representing the value of the funds to be spent in the preservation, management, and disposal of assets and which shall be deducted from the amount to be turned over to the National Government, through the Bureau of Treasury.

PART 6 MISCELLANEOUS PROVISIONS

Section 21. Imposition of Administrative Sanctions.

Covered persons, relevant government entities, and other persons who violate the provisions of this MAP shall be liable for administrative sanctions under the Rules of Procedure in Administrative Cases (RPAC) under the AMLA.

Section 22. Separability Clause. If any provision of this MAP or the application thereof to any person or circumstance is held to be invalid, the other provisions of this MAP, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Section 23. Effectivity Clause.

This Regulatory Issuance shall take effect fifteen days (15) after the completion of its publication in a newspaper of general circulation, and filing before the Office of the National Administrative Register, University of the Philippines, Diliman, Quezon City.

For the AMLC:
(original signed)
MA. RHEA M. SANTOS-MENDOZA
Officer-in-Charge