



Republic of the Philippines
ANTI-MONEY LAUNDERING COUNCIL

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Q&A: THE ANTI-TERRORISM ACT OF 2020

1. What is the Anti-Terrorism Act of 2020 (ATA)?

The ATA replaces the Human Security Act of 2007 (HSA). The ATA was passed by the Senate of the Philippines as Senate Bill No. 1083 on 26 February 2020, and adopted by the House of Representatives as an amendment to House Bill No. 6875 on 5 June 2020. The ATA was previously known as the Anti-Terror Bill (ATB) before it was passed into law.

The ATA is also known as Republic Act No. 11479, “An Act to Prevent, Prohibit and Penalize Terrorism, Thereby Repealing Republic Act No. 9372, otherwise known as the Human Security Act of 2007.” President Rodrigo Roa Duterte signed the ATA into law on 3 July 2020.

2. Does the ATA allow arrests without warrant?

Sec. 29 (Detention without judicial warrant of arrest) of the ATA allows law enforcement agents or military personnel, who have been duly authorized in writing by the Anti-Terrorism Council (ATC), to arrest persons suspected of committing terrorism or any of the acts¹ defined and penalized under the ATA.

¹ Sec. 4 of the Anti-Terrorism Act of 2020 (ATA) provides that a person, within or outside the Philippines, commits terrorism when he or she, regardless of the stage of execution:

- a) Engages in acts intended to cause death or serious bodily injury to any person, or endangers a person’s life;
- b) Engages in acts intended to cause extensive damage or destruction to government or public facilities, public places, or private properties;
- c) Engages in acts intended to cause extensive interference with, damage, or destruction to critical infrastructures;
- d) Develops, manufactures, possesses, acquires, transports, supplies, or uses weapons, explosives, or biological, nuclear, radiological, or chemical weapons; and
- e) Releases dangerous substances or causes fires, floods, or explosions.

Along with these acts is the purpose of intimidating the general public or a segment of the public; creating an atmosphere or spread a message of fear; provoking or influencing by intimidation the government or any of its international organization; seriously destabilizing or destroying the fundamental political, economic, or social structures of the country; or creating a public emergency or seriously undermining public safety.

Sec. 4 also states that terrorism does not include advocacy, protest, dissent, stoppage of work, industrial or mass action, and other similar exercises of civil and political rights, which are not intended to cause death or serious physical harm to a person, to endanger a person’s life, or to create a serious risk to public safety.

Other crimes include:

- Threatening to commit terrorism (Sec. 5);
- Planning, training, preparing, and facilitating the commission of terrorism (Sec. 6);



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Persons may be detained for 14 calendar days from the moment of arrest before being presented in court. This period of detention may be extended for another 10 calendar days if:

- Further detention is necessary to preserve evidence related to the terrorism act or to complete the investigation;
- Further detention is necessary to prevent the commission of another terrorism act; and
- The investigation is being conducted properly and without delay.

3. Does the 1987 Constitution allow arresting without warrant?

Pursuant to Sec. 5 (5) of Article VIII of the 1987 Constitution, the Supreme Court adopted and promulgated the Rules of Court.

Sec. 5 (Arrest without warrant, when lawful) of Rule 113 of the Rules of Court provides that a peace officer or a private person may, without a warrant, arrest a person:

- When, in his or her presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;
- When an offense has just been committed and when he or she has probable cause to believe, based on personal knowledge of facts or circumstances, that the person to be arrested has committed an offense; and
- When the person to be arrested is a prisoner, who has escaped from a penal establishment or place where he is serving final judgment, who is temporarily confined while his case is pending, or who has escaped while being transferred from one confinement to another.

These circumstances must exist in the presence of the person making the arrest.

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- Conspiring to commit terrorism (Sec. 7);
 - Proposing to commit terrorism (Sec. 8);
 - Inciting to commit terrorism (Sec. 9);
 - Recruiting and becoming a member in a terrorist organization (Sec. 10);
 - Being a foreign terrorist (Sec. 11);
 - Providing material support to terrorists (Sec. 12); and
 - Being an accessory to the crime of terrorism (Sec. 14).

Based on these provisions, the intent and purpose must be established to be considered an act of terrorism.

Executing the aforementioned acts without the underlying aforementioned purposes may be considered violations of the Revised Penal Code or other Special Laws, and not acts of terrorism.



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Further, it must be noted that the Anti-Terrorism Council (ATC) cannot issue arrest warrants. Upon finding probable cause of terrorist activities defined in the ATA, the ATC may, however, authorize specific law enforcement units, who, in the course of their official duties, make the arrests under the grounds provided under the Rules of Court for lawful warrantless arrests.

4. Does the 1987 Constitution allow detaining a person without charge?

Article 125 (Delay in the delivery of detained persons to the proper judicial authorities) of the Revised Penal Code (RPC) provides that detained persons must be delivered to the proper judicial authorities, that is, the courts, within the periods prescribed.² Otherwise, the public official or employee, who is detaining the person on some legal ground, could be held liable for the failure to deliver, except if grounded on reasonable and allowable delays.

It should be noted, however, that the detention periods stated under Article 125 of the RPC is a statutory and not a constitutional provision. A statutory provision is a provision that is found under the law that created it, while a constitutional provision is one that is found under the Constitution. But it must be noted that all statutory laws are presumed to be constitutional, unless declared otherwise by the Supreme Court.

As it is a statutory provision, the Congress may amend the detention period as it has done so through Sec. 29 of the ATA.

5. Why do we need a longer detention period?

It is not enough to just arrest then detain a person suspected of committing terrorism or any of the acts defined and penalized under the ATA. A solid case against the detainee is necessary to secure a conviction that would ultimately prevent a terrorist act from happening.

² Article 125 of the Revised Penal Code provides that persons detained under legal grounds must be delivered to the proper judicial authorities within the period of:

- 12 hours for crimes or offenses punishable by light penalties, or their equivalent;
- 18 hours for crimes or offenses punishable by correctional penalties, or their equivalent; and
- 36 hours for crimes or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed, upon his request, to communicate and confer at any time with his attorney or counsel.



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The HSA, which the ATA replaced, allows only three days of detention without judicial warrant of arrest. A longer detention period, as prescribed by the ATA, would provide more time to gather sufficient evidence and file a case, considering the sensitivity and security implication of terrorist acts.

6. What protection would persons have after being arrested without warrant or detained without charge?

Sec. 29 of the ATA provides that immediately after the warrantless arrest, the law enforcement agency or military personnel must notify the judge of the court nearest to the place of arrest of the following facts in writing:

- Time, date, and manner of arrest;
- Location or locations of the detained suspect/s; and
- Physical and mental condition of the detained suspect/s.

The penalty of imprisonment of 10 years will be imposed upon the law enforcement agent or military personnel who fails to notify any judge. The law enforcement agent or military personnel must also send the same written notice to the ATC and the Commission on Human Rights.

Also, the head of the detaining facility must ensure that detained suspects are informed of their rights as detainees and must ensure the detainees' access to counsel or to agencies and entities authorized by law to exercise visitorial powers over detention facilities.

Further, if the detention is without legal grounds, the person arrested can charge the arresting officer with arbitrary detention under Article 124 of the RPC. This is without prejudice to the possible filing of an action for damages under Article 32 of the New Civil Code of the Philippines. Persons under custody may also question the legality of their detention by filing a petition for the issuance of a writ of habeas corpus, pursuant to Rule 102 of the Rules of Court.

7. What does it mean to designate terrorist individuals, groups of persons, organizations, or associations?

This means identifying individuals, groups of persons, organizations, or associations as terrorists.



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United Nations Security Council Resolution (UNSCR) No. 1373³ directs member-states, such as the Philippines, to prohibit their nationals from making funds, financial services, or economic resources available to those who commit terrorist acts.

Thus, Sec. 25 (Designation of terrorist individual, groups of persons, organizations, or associations) of ATA provides that pursuant to UNSCR 1373, the ATC will automatically adopt the UNSC Consolidated List of all individuals and entities subject to measures imposed by the UNSC, which includes those identified as terrorists or terrorist financiers. The ATC may also adopt requests for designation by other jurisdictions or supranational jurisdictions if the proposed designee meets the criteria for designation of UNSCR 1373.

Further, the ATC may designate individuals, groups of persons, organizations, or associations, whether domestic or foreign, upon a finding of probable cause that these individuals, groups of persons, organizations, or associations commit, or attempt to commit, or conspire in the commission of the acts defined and penalized under the ATA.

The assets of these designated individuals, groups of persons, organizations, or associations are subject to target financial sanctions, that is, asset-freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities.

UNSCR 1373 also requires that de-listing, review, and un-freezing mechanisms must be in place, which will be addressed by the ATA's Implementing Rules and Regulations.

8. Why do we need to follow UNSCR 1373?

³ Pursuant to its mandate under Chapter VII of the United Nations (UN) Charter, the UN Security Council (UNSC) issued UNSC Resolution (UNSCR) No. 1373. Par. 1(d) of UNSCR 1373 directs member-states to: "Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons."



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First, Sec. 2⁴ of the 1987 Constitution states that the Philippines “adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.”

Second, UN Charter states that all members, such as the Philippines, “shall fulfill in good faith the obligations assumed by them in accordance with the present Charter,”⁵ and shall “agree to accept and carry out the decisions”⁶ of the UNSC. The UNSC “may decide what measures, not involving the use of armed force, are to be employed to give effect to its decisions,” and “it may call upon the members to apply such measures.”⁷

Third, the designation of terrorist individuals, groups of persons, organizations, or associations, that is, Sec. 25 of the ATA, was one of the non-negotiables in the ATB per the Philippines’ Mutual Evaluation⁸ findings. If the country failed to pass this provision into law, the Philippines may be included in the gray list, that is, the list of countries with strategic deficiencies in its anti-money laundering/counter-terrorism financing framework.

⁴ Sec. 2 of the 1987 Constitution states that “the Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.”

⁵ Article 2 (2) of the UN Charter states that “all Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfill in good faith the obligations assumed by them in accordance with the present Charter.”

⁶ Article 25 of the UN Charter states that “the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

⁷ Article 41 of the UN Charter states that “the Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.”

⁸ The Mutual Evaluation (ME) is an assessment of a country’s levels of (1) technical compliance with international anti-money laundering/counter-terrorism financing (AML/CTF) standards; and (2) effectiveness of the country’s existing AML/CTF mechanisms. The ME is one of the Philippines’ commitments pursuant to the Terms of Reference of the Asia Pacific Group (APG) on Money Laundering. According to APG rules, members mutually evaluate their peers to assess compliance with international AML/CTF standards, particularly the Financial Action Task Force (FATF) Forty Recommendations.



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9. Since the ATA has been signed into law, will the Philippines avoid inclusion in the Financial Action Task Force (FATF) International Co-operation Review Group (ICRG) gray list?⁹

It must be remembered that it is not enough to pass the ATA into law because the Philippines is being assessed both on technical and effectiveness compliance. The country must also demonstrate effective implementation of the ATA before the observation period¹⁰ ends in February 2021. Now that the ATA has been passed, the Philippines has an opportunity to implement the same and demonstrate progress in fulfilling our international commitments.

Moreover, the same attention and commitment must be given to amendments to the Anti-Money Laundering Act of 2001 (AMLA), as amended. Failure to pass and to implement the amendments to the AMLA, as amended, before February 2021 will have similar effects, that is, the Philippines' inclusion in the FATF ICRG gray list.

10. What are the consequences if the Philippines fails to pass the ATA and demonstrate effective implementation within the 12-month observation period?

If the Philippines fails to enact the necessary amendments and demonstrate effective implementation of the same, it will be **gray-listed**. FATF shall then publicly identify the Philippines as a **high-risk jurisdiction with strategic anti-money laundering and counter-terrorism financing (AML/CTF) deficiencies**.

Countries currently included in the gray list are the Bahamas, Botswana, Cambodia, Ghana, Iceland, Mongolia, Pakistan, Panama, Syria, Trinidad and Tobago, Yemen, and

⁹ Inclusion in the FATF International Co-operation Review Group (ICRG) gray list will publicly identify the Philippines as a risk to the international financial system for having strategic deficiencies in its anti-money laundering/counter-terrorism financing framework. Consequently, the Philippines' inclusion will result to an additional layer of scrutiny from regulators and financial institutions, thereby increasing the cost of doing business; delaying the processing of transactions; and blocking the country's road to an "A" credit rating.

¹⁰ The Philippines was placed under a 12-month observation period by the FATF in October 2019, following the adoption of the country's ME Report (MER). In view of the general pause in the ICRG review process due to the Covid-19 pandemic, the Philippines' observation period will now end in February 2021, instead of October 2020. This observation period is the last opportunity for the Philippine competent authorities to address identified deficiencies in the MER to avoid gray-listing.



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Zimbabwe. On the other hand, the countries included in the “black-list” are Iran and DPRK.¹¹

Gray-listing will have a negative impact on the reputation of the economy and the cost of doing business with its citizens, both as an individual and a juridical entity.

11. What are the implications of gray-listing?

- The European Union (EU) will require its members to immediately impose enhanced due diligence (EDD) on Filipino nationals and businesses that are transacting through EU channels.
- Subjecting an individual or entity to EDD will entail additional costs and additional paperwork or justification.
- Additional costs and paperwork could push banks and financial institutions to do a cost-benefit analysis in determining whether or not to continue doing business. If costs outweigh the benefits, it could result to de-risking or de-banking.
- If the relationship is continued, these additional costs will naturally be charged to Filipino nationals and businesses in the form of higher interest rates or higher processing fees.
- Additional paperwork and justifications likewise mean delays in processing transactions.

12. Who will be affected by the additional cost of transactions?

- OFWs, as higher costs of remittances mean additional expenses and less money for living and education expenses for the family;
- Philippine banks, as higher costs mean higher interest rates or less competitive rates to offer; and
- Philippine businesses in general as it means higher interest rates, hence more expensive production costs or higher cost of doing business.

13. What does a delay in remittances mean for the country?

- More paperwork and justification for the contract mean delays in processing bank transactions, including remittances; and

¹¹ Democratic People’s Republic of Korea



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- A five (5)-to-10-day delay will mean a 2% to 4% reduction in annual foreign currency remittances (computed at 240 working days per year).

14. How will gray-listing affect the reputation of the country?

Trust is “the foundation on which companies build their relationships with all stakeholders, from company workers to consumers,” and “without this bond of respect, employees will leave their positions, investors will look for other projects to finance and customers will opt for competition.”¹²

The same reputation risk applies to gray-listed countries. Gray-listing comes with reduced investor and lender confidence, which may result to limited access to banking or financial services. For instance, banks may not allow access to wire transfer or check issuance facilities.

Also, the gray-listed country would need to raise its borrowing rates, both internationally and domestically, to attract a lender. In contrast, investors will demand for higher interest rates.

15. What is the effect of higher cost of remittance relative to the Gross Domestic Product (GDP)?

All things being equal, a higher cost in remittances will lead to a decline in inward remittances and may further lead to a decline in the gross domestic product (GDP) growth, since remittance growth and GDP growth have a direct relationship.

16. What are the effects of gray-listing to the efforts of the country preserve financial integrity (Credit and Country Risk)?

For Philippine financial institutions (FIs), possible effects may include:

- Prohibiting FIs from establishing subsidiaries or branches or representative offices, or otherwise taking into account the fact that the FI is from a country that does not have adequate AML/CTF systems;
- Prohibiting FIs from relying on third parties located in the listed country to conduct elements of the Customer Due Diligence (CDD) process;

¹² Farooq, Umar. "Reputational Risk Definition | Types of Reputational Risk." Business Study Notes, 25 Aug 2017, www.businessstudynotes.com/marketing/reputational-risk-definition-types-of-reputational-risk/.



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- Requiring FIs to review and amend, or, if necessary, terminate correspondent relationships with FIs in the country concerned;
- Requiring increased supervisory examination and/or external audit requirements for branches and subsidiaries of FIs based in the listed country; and
- Requiring increased external audit requirements for financial groups with respect to any of their branches and subsidiaries located in the listed country

17. What is the effect of gray-listing to correspondent banking relationships (CBRs) and de-risking¹³?

CBR is the provision of banking services by one bank (the correspondent) to another bank (the respondent). CBRs are essential to international payments, and they provide an essential nexus between local economies and jurisdictions and the international financial system.

- Gray-listing would have an effect on international trade, remittances, and humanitarian financial flows that support economic growth and development.
- The macroeconomic impact of de-risking appears to be limited. Microeconomic effects and business distortions, however, need more attention.
- It shows a trend toward a concentration of correspondent banking services with fewer institutions handling larger volumes, leading to the buildup of counterparty risks.
- The concentration of money transfer operators (MTOs) and remittances may lead to higher systemic risks.
- Local respondent banks would seek recourse with second tier and less reputable institutions after global banks terminate their CBRs.
- This shift warrants scrutiny from domestic authorities.
- There are concerns that de-risking has resulted in the creation of new, informal channels through which money is now flowing.
- Circumstantial evidence suggests that informality and greater use of cash and other unconventional channels have resurged in a few places as a possible consequence of de-risking. If pervasive, they could undermine AML/CTF objectives by driving financial transactions outside regulated channels.

¹³ The Decline in Access to Correspondent Banking Services in Emerging Markets: Trends, Impacts, and Solutions. Lessons Learned from Eight Country Case Studies. World Bank Group. 2018.



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18. Will gray-listing affect the Road to “A” Credit Rating advocacy of the country?

S&P¹⁴ Global rated the Philippines “BBB+” on long-term sovereign credit, and a calibrated and coordinated approach is necessary in achieving an “A” level credit rating. Shortcomings in financial crimes and AML controls are more likely to impact the credit rating of a bank than non-financial factors.

Efforts must also be directed at addressing these issues:

- Further increasing the country’s per-capita income;
- Enhancing the country’s potential input;
- Strengthening the external payments buffers;
- Keeping prices stable;
- Fortifying public finance; and
- Elevating governance standards.

It may also prolong the timeline to achieve the “A” rating, since gray-listing can have an effect on price stability and perceived governance standards.

19. How will the ATA be implemented?

The ATA will be enforced in accordance with its Implementing Rules and Regulations. Sec. 54 (Implementing rules and regulations) of the ATA provides that the ATC and the Department of Justice as well as police and military institutions will promulgate the rules and regulations for the effective implementation of the ATA within ninety (90) days after the ATA’s effectivity.

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¹⁴ S&P Ratings control approximately 95% of the credit ratings business.