

LIFTING BANK SECRECY: A COMPARATIVE LOOK AT THE PHILIPPINES, SWITZERLAND, AND GLOBAL TRANSPARENCY

INTRODUCTION

A global trend towards greater financial transparency has created pressure upon several countries with strict and long-standing bank secrecy laws, including Switzerland and the Philippines, two countries of focus in this note.¹ Countries with such laws in place are increasingly becoming the targets of international groups and global powers² seeking financial accountability to combat international crime and corruption, as well as to curb tax evasion through offshore storage of wealth.³ That this pressure has led to reform of the financial institutions of countries like Switzerland, perhaps the most notorious pioneering country of bank account confidentiality, reflects a broader international movement towards freer global access and sharing of banking information.

Bank secrecy laws have notably been criticized in the Philippines, one country with an established code of strict confidentiality with respect to bank accounts and deposits, for hampering effective investigation and prosecution of white-collar criminals.⁴

Part I of this Note will look into the Philippines' statutes of present controversy: the Foreign Currency Deposit Act,⁵ in place since 1974, and

1. The U.S. Department of State has stated that "excessive bank secrecy laws make financial systems vulnerable to abuse from criminal activities, ranging from terrorism to tax evasion." Int'l Monetary Fund, *Financial System Abuse, Financial Crime and Money Laundering—Background Paper* 4 n.3 (Feb. 12, 2001), available at <http://www.imf.org/external/np/ml/2001/eng/021201.pdf>.

2. *Watchdog calls on G20 to fight bank secrecy*, GLOBAL POST (Apr. 18, 2013), <http://www.globalpost.com/dispatch/news/afp/130418/watchdog-calls-g20-fight-bank-secrecy>; See also OECD, *The Era of Bank Secrecy is Over* (Oct. 26, 2011), available at <http://www.oecd.org/ctp/exchange-of-tax-information/48996146.pdf>.

3. See Transparency Int'l, *Scandals Show Urgent Need for Bank Reform* (Aug. 6, 2012), http://www.transparency.org/news/feature/scandals_show_urgent_need_for_bank_reform.

4. The country's general rule is to keep bank deposits "absolutely confidential in nature." Fred Pamaos, *Amend the Foreign Currency Deposits Act?* (Feb. 14, 2012), <http://attyatwork.com/amend-the-foreign-currency-deposits-act>. Within the relevant statutes there is a distinction between peso deposits (the domestic currency of the Philippines) and dollar-denominated and other foreign currency deposits. *Id.* While the latter are accorded full confidentiality, account details in relation to peso deposits have the following exceptions allowing for a release of information: "(1) upon written permission of the depositor; (2) in cases of impeachment; (3) upon order of a competent court in cases of bribery or dereliction of duty of public officials; and (4) in cases where the money deposited or invested is the subject matter of the litigation." *Id.*

5. An Act Instituting a Foreign Currency Deposit System in the Philippines, and For Other Purposes, Rep. Act No. 6426 (Apr. 4, 1974) (Phil.).

the Bank Secrecy Law,⁶ in place since 1955.⁷ It will then proceed to evaluate recent reform measures to the banking system of the Philippines and consider potential alternative measures in addressing the problems arising from bank secrecy. The Note will also analyze recent court rulings on interpretation and enforcement of the existing bank secrecy laws and the legislative responses coming from the debate over banking reform in the Philippines.

Part II will discuss the history of banking in Switzerland. The foundations of modern private banking come from the landmark Swiss Banking Act of 1934.⁸ Swiss adherence to protecting bank information has received much international criticism and pressure⁹ for its tendency to perpetuate black market activity and offshore tax evasion by non-domestic parties.¹⁰ However, in response to pressure from the United States and increasing international outcry against the use of Swiss banks as tax evasion vehicles, Switzerland has in the past decade begun to chip away at the country's legacy of bank secrecy. Facing threat of punishment, its largest private banks have been forced to reveal the fraudulent practices of individuals and companies holding Swiss bank accounts, and its government has moved towards compliance with global standards of transparency.

Although the Philippines and Switzerland differ in their respective roles and impacts in the global marketplace, their common legacies of bank secrecy offer a pathway for comparative analysis. Part III will juxtapose the driving legal, economic, and political forces of each country

6. An Act Prohibiting Disclosure of or Inquiry Into, Deposits with Any Banking Institution and Providing Penalty Therefor, Rep. Act No. 1405 (Sept. 9, 1955) (Phil.).

7. Lucy Swinnen & Michael Lim Ubac, *Philippines bank secrecy laws strictest in the world*, ASIA ONE (Feb. 18, 2012), <http://news.asiaone.com/News/AsiaOne+News/Asia/Story/A1Story20120218-328709.html>.

8. See Lee Ann Orbringer, *How Swiss Bank Accounts Work*, HOWSTUFFWORKS, <http://money.howstuffworks.com/personal-finance/banking/swiss-bank-account2.htm> (last visited Oct. 20, 2013). Prior to the 1934 law, Switzerland already had an established reputation as a foreign fund safe haven. *Id.* The Great Council of Geneva (1713) disallowed bankers from sharing client information unless urged by the City Council. *Id.* Under civil law, clients could bring a suit for damages against any bank for breaching confidentiality. *Id.*

9. See Alana Petroff, *Chipping away at Swiss bank secrecy*, CNN MONEY (July 5, 2013), <http://money.cnn.com/2013/07/05/news/companies/swiss-secrecy-banks/index.html>. See also Raphael Minder, *Pressure Mounts on Vaunted Secrecy of Switzerland's Banks*, N.Y. TIMES (May 23, 2013), http://www.nytimes.com/2013/05/24/business/global/swiss-banking-secrecy-under-pressure-from-europe.html?pagewanted=all&_r=0.

10. See *Swiss Banking Secrecy: Don't Ask, Won't Tell*, ECONOMIST (Feb. 11, 2012), <http://www.economist.com/node/21547229>; See also Fin. Secrecy Index, *Narrative Report on Switzerland*, TAX JUSTICE NETWORK (2013), <http://www.financialsecrecyindex.com/PDF/Switzerland.pdf>.

that kept bank secrecy laws in place, as well as the forces that now challenge those laws.

Finally, Part IV will frame these analyses against the backdrop of an international trend towards financial transparency and a freer market place in response to global economic crisis and recession. In assessing the legal, economic, and political effects of foreign bank secrecy laws and the potential exploitation of financial institutions for unlawful activities,¹¹ this note will utilize a comparative law lens to discuss issues pertinent to current events in global finance.

I. BANK SECRECY IN THE PHILIPPINES

A. *Background and Characteristics of Philippine Banking*

The Philippines is a developing country that has grown as a global economic player at an increased pace in the last decade.¹² Renewable energy¹³ and infrastructure investment¹⁴ are two pursuits that may aid its economic stability and growth. The prevalent domestic issues facing the Philippine government¹⁵ include corruption,¹⁶ poverty,¹⁷ and the effects of

11. The IMF identified the negative macroeconomic consequences of financial system abuse as follows:

[I]t could compromise bank soundness with potentially large fiscal liabilities, lessen the ability to attract foreign investment, and increase the volatility of international capital flows and exchange rates. In the era of very high capital mobility, abuse of the global financial system makes national tax collection and law enforcement more difficult. Financial system abuse, financial crime, and money laundering may also distort the allocation of resources and the distribution of wealth and can be costly to detect and eradicate.

Int'l Monetary Fund, *supra* note 1, at 9 n.17.

12. Since 2002, the country has averaged approximately 5% in growth thanks to its "sound economic fundamentals and highly-skilled workforce." *Philippines Overview*, THE WORLD BANK, <http://www.worldbank.org/en/country/philippines/overview> (last visited Oct. 28, 2013). As Eugene Leow, a Singapore-based economist, points out, "[t]he domestic economy is the engine behind these high levels of growth, insulating the Philippines from weak external demand" and "[t]he government has some room to respond in case the economy sputters." Cecilia Yap & Karl Lester M. Yap, *Philippines Defies Asia Slowdown as Growth Holds Above 7%*, BLOOMBERG BUSINESS (Aug. 28, 2013, 10:40 PM), <http://www.bloomberg.com/news/2013-08-29/philippine-gdp-growth-holds-above-7-as-aquino-boosts-spending.html>.

13. New hydro and wind power projects bring the country closer to its goal of running completely on renewable energy within a decade. Medilyn Manibo, *Hydro, wind power booms in Philippines in 2014*, ECO-BUSINESS (Jan. 13, 2014), <http://www.eco-business.com/news/hydro-wind-power-booms-philippines-2014>.

14. See Yap, *supra* note 12.

15. The Philippines is a constitutional republic with a presidential form of government. *Philippine Government*, THE OFFICIAL GAZETTE (Jan. 7, 2013), <http://www.gov.ph/about/gov>. The islands' path to independence was preceded by a period under Spanish colonization beginning in the 16th century. *Philippines*, THE WORLD FACTBOOK (Sept. 25, 2013), <https://www.cia.gov/library/>

recurring natural disasters.¹⁸ Recent catastrophes such as Typhoon Haiyan have highlighted how the country's "combination of geography and poverty leaves those in the Philippines at almost unequaled risk of calamity."¹⁹ But despite such obstacles to stabilization, the country appears to be making substantive progress as a growing economy.²⁰

The country's long-standing stringent bank secrecy laws frequently have been referenced in international reports spotlighting offshore tax evasion, money laundering, and corruption.²¹ Despite an apparent causal

publications/the-world-factbook/geos/rp.html. In 1898, the U.S. claimed sovereignty from Spain, and the Philippines would continue as a U.S. territory until independence on July 4th, 1946. *Id.*

16. See James Hookway, *Philippine Economy Withstands Latest Corruption Scandal: President Aquino Renews Battle Graft, Bolstering Investor Confidence*, WALL ST. J. (Sept. 17, 2013, 10:20PM), <http://online.wsj.com/news/articles/SB10001424127887323342404579080871650566730>. In 2007, the Philippines lost roughly 13% of its annual budget to corruption. Carlos H. Conde, *Philippines most corrupt, survey says* (Mar. 13, 2007), N.Y. TIMES (Mar. 13, 2007), <http://www.nytimes.com/2007/03/13/business/worldbusiness/13iht-peso.4891792.html>.

17. Nearly 30% of the country's population lives in poverty. Hookway, *supra* note 16.

18. Notably, in November 2013, Typhoon Yolanda (internationally, "Typhoon Haiyan") struck the country, killing over 6,000 and forcing hundreds of thousands to evacuate their homes. *'Yolanda' death toll rises to 6,201*, ABS-CBN NEWS (Jan. 14, 2014) <http://www.abs-cbnnews.com/nation/regions/01/14/14/yolanda-death-toll-rises-6201>; See also Jethro Mullen, *Super Typhoon Haiyan, one of strongest storms ever, hits central Philippines*, CNN (Nov. 8, 2013, 3:44 AM), <http://www.cnn.com/2013/11/07/world/asia/philippines-typhoon-haiyan/index.html>. The storm was classified as matching a Category 5 hurricane and labeled a "super typhoon," one with surface winds sustain[ing] speeds of more than 240 [kilometers per hour] for at least a minute." Jethro Mullen, *Super Typhoon Haiyan, one of strongest storms ever, hits central Philippines*, CNN (Nov. 8, 2013, 3:44 AM), <http://www.cnn.com/2013/11/07/world/asia/philippines-typhoon-haiyan/index.html>. Floods and landslides continue to affect the country annually. *Landslides, floods kill at least 19 in northern Philippines*, CNN (Sept. 24, 2013, 10:39 AM), <http://www.cnn.com/2013/09/24/world/asia/philippines-landslides>. For more information on the prevalence of natural disasters and their effects see Chico Harlan, *In the Philippines, natural disasters are common; ways to reduce their impact aren't*, WASH. POST (Nov. 16, 2013), http://www.washingtonpost.com/world/asia_pacific/in-the-philippines-natural-disasters-are-common-ways-to-reduce-impact-arent/2013/11/16/c0d77e24-4ecd-11e3-97f6-ed8e3053083b_story.html.

19. *Id.*

20. In 2012, the Philippines was reported to be the 44th largest economy in the world and projected to have the potential to reach 16th largest by the year 2050. Floyd Whaley, *A Youthful Populace Helps Make the Philippines an Economic Bright Spot in Asia*, N.Y. TIMES (Aug. 27, 2012), <http://www.nytimes.com/2012/08/28/business/global/philippine-economy-set-to-become-asias-newest-bright-spot.html>. The country's working population (ages 15 to 64) is growing, unlike the aging populations of many other Asian countries. *Id.* But frequent natural disasters and the government's failure to properly utilize the country's natural resources have been unmistakable obstacles to growth. *Id.* Additionally, due to waves of political instability, the Philippines has been less favored by foreign companies as a site for export-driven manufacturing, relative to neighbors such as China, Japan, Thailand, and Vietnam. *Id.* Much of the recent economic growth is centered on the cities and young urbanites, and does not reach poverty in large rural areas. See *id.*; See also Int'l Fund for Agric. Dev., *Enabling poor rural people to overcome poverty in the Philippines* (Oct. 2009), available at <http://www.ifad.org/operations/projects/regions/pi/factsheets/ph.pdf>.

21. In 2009, the Organisation for Economic Co-operation and Development ("OECD") placed the Philippines on its tax haven blacklist. Roel Landingin, *Philippines to revise bank secrecy laws*, FIN. TIMES (Apr. 20, 2009, 5:13 AM), <http://www.ft.com/intl/cms/s/0/764f3b14-25a9-11de-be57-00144feabdc0.html>. Although an anti-money laundering law was passed in 2003, tax evasion was one

link between the secrecy laws and illegal activity, several recent Philippine Supreme Court decisions have protected bank secrecy as a constitutional and statutory right.

The Foreign Currency Deposit Act (“FCDA”) and the Bank Secrecy Law form the legal foundation for bank secrecy in the Philippines. The more restrictive FCDA prohibits the revelation of foreign currency details without a depositor’s permission.²² Section 8, titled *Secrecy of foreign currency deposits*, states:

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 the 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.²³

The accompanying Bank Secrecy Law makes all domestic deposits confidential, with few exceptions.²⁴

crime excluded from its coverage. *Id.* Roel Landingin drew out other lagging features of Philippine law with respect to protections against offshore tax evasion:

The country’s tax chief is only allowed access to bank information for estate tax assessments and to confirm claims of inability to pay tax. The country lacks laws to explicitly allow sharing of tax information with other countries. [It] has over 30 tax treaties with other countries but these generally limit information sharing to cases of taxpayers also being pursued by Manila. . . . Not even the finance secretary can examine tax returns without explicit authority from the president.

Id. at 1. As a response to these issues, the Bureau of Internal Revenue of the Philippines has declared a lifting of secrecy with respect to requests from foreign tax authorities. Monicca Egoy, *Philippines changes law, wants off tax-haven blacklist*, REUTERS (Mar. 26, 2010), <http://in.reuters.com/article/2010/03/26/philippines-tax-oecd-idINSGE62P0AS20100326>.

22. Swinnen & Ubac, *supra* note 7.

23. *Republic Act No. 6426*, THE LAWPHIL PROJECT, http://www.lawphil.net/statutes/repacts/ra1974/ra_6426_1974.html (last visited Oct. 26, 2013) (emphasis added). The FCDA has been around since the martial-law era in 1974, existing as approved by the dictator Ferdinand Marcos. Swinnen & Ubac, *supra* note 7.

24. An Act Instituting a Foreign Currency Deposit System in the Philippines, and For Other Purposes, Rep. Act No. 6426. (Apr. 4, 1974). Under Republic Act 1405, deposits have absolute confidentiality except for: “written consent of the depositor; in cases of impeachment; upon order of a competent court in cases of bribery or dereliction of duty of public officials; or in cases where the money deposited or invested is the subject matter of the litigation.” Swinnen & Ubac, *supra* note 7. For the full text of Republic Act 1405 (*An Act Prohibiting Disclosure of or Inquiry into, Deposits with any Banking institution and Providing Penalty Therefor*) see *Republic Act No. 1405*, THE LAWPHIL PROJECT, available at http://www.lawphil.net/statutes/repacts/ra1955/ra_1405_1955.html (last visited Oct. 26, 2013).

Significantly, a 1977 presidential decree established a heightened level of confidentiality for foreign currency deposits, limiting releases of related financial accounts only to instances where a depositor had given his or her written consent.²⁵ These banking restrictions create the incentive for money launderers and corrupt officials to pool funds into protected foreign currency-denominated accounts.

B. Recent Controversies over the Bank Secrecy Statutes

Bank secrecy was established as a policy intended to encourage banking growth, discourage the private hoarding of money, and build trust in domestic banking services and institutions by the people.²⁶ These laws have notably been invoked in recent corruption prosecutions, illustrating the political and legal problems tied to bank secrecy. Such lawsuits have given rise to international and domestic calls to reform the bank secrecy statutes.²⁷

In 2005, the Land Bank of the Philippines, citing the bank secrecy laws in place, refused to carry out an order of garnishment against a former Armed Forces comptroller in a plunder and corruption suit.²⁸ The court

25. Magtanggol de la Cruz, *Secrecy in Foreign Currency Deposits* (Feb. 8, 2012, 10:33 PM), <http://www.rappler.com/nation/80-special-coverage/1403-secrecy-in-foreign-bank-accounts>. The change was expressly backed by a rationale of economic growth:

WHEREAS, making absolute the protective cloak of confidentiality over such foreign currency deposits, exempting such deposits from tax, and guaranteeing the vested rights of depositors would better encourage the inflow of foreign currency deposits into the banking institutions authorized to accept such deposits in the Philippines thereby placing such institutions more in a position to properly channel the same to loans and investments in the Philippines, thus directly contributing to the economic development of the country.

Id.

26. Pamaos, *supra* note 4.

The primary benefit [of private banking] is not the interest earned by the depositor because, as compared to direct investments in business, deposit interest is minimal. The bigger impact of pooling the deposit accounts and lending/investing the money, which is the business of banks, is to provide large-scale financing for entrepreneurs, business people and other institutions. [Banking secrecy] reflects the State's policy to encourage savings in banks so the money may be utilized by way of authorized loans and assist in economic development.

Id. These principles would seem especially important for emerging economies like the Philippines.

27. For a domestic perspective championing change to Philippine bank secrecy see Reynaldo Geronimo, *Bank Secrecy is Passe*, SUNSTAR (Feb. 23, 2012), <http://www.sunstar.com.ph/manila/opinion/2012/02/23/geronimo-bank-secrecy-passe-207636>. Reynaldo Geronimo points out the country's already standing international obligations under the 1988 Vienna Convention to implement any possible measures against money laundering and, he emphasizes, "to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized." *Id.*

28. Swinnen & Ubac, *supra* note 7. A military tribunal found that Major General Carlos Garcia had submitted a fraudulent report of his assets, liabilities, and net worth. *See also* Jojo Malig,

ordered a freezing of Major General Garcia's dollar accounts; however, the bank, a Filipino financial institution, froze only two of Garcia's peso-denominated accounts, while refusing to act on five U.S. dollar-denominated accounts.²⁹ This case, along with the Supreme Court ruling in *People of the Philippines v. Eugenio*,³⁰ was criticized by United States ambassadors for fortifying barriers to the effective investigation of corrupt financial actions and the prosecution of money launderers.³¹ The *Eugenio* case held that applications to examine and investigate a particular bank deposit could not be heard without providing notice to the owner of the account.³²

In the *Eugenio* case, the Philippine government nullified a contract with a company involved in constructing an airport terminal based on suspicions of corruption.³³ In February 2008, a high court ruling disallowed the Philippine Anti-Money Laundering Council from looking inside the bank deals of the construction project because the situation did not involve terrorism, kidnapping, or drug violations.³⁴ Objecting to the cited laws requiring prior notification to account holders before inquiry into their records, U.S. ambassador Kristie Kenney argued, "Giving subjects of investigations notice of the investigations at an early stage allows opportunity for the destruction of evidence, the concealment of other assets and the obstruction of justice."³⁵

Similarly, during the 2012 impeachment trial of Renato Corona, the 23rd Chief Justice of the Supreme Court of the Philippines,³⁶ the

WikiLeaks cables: Philippine bank secrecy laws under fire, ABC-CBN NEWS (Feb. 9, 2012), <http://www.abs-cbnnews.com/-depth/02/09/12/wikileaks-cables-philippine-bank-secrecy-laws-under-fire>.

29. Swinnen & Ubac, *supra* note 7.

30. *People v. Eugenio*, G.R. No. 174629 (S.C., Oct. 20, 2008) (Phil.), available at <http://www.chanrobles.com/sresolutions/2008octoberresolutions.php?id=203>.

31. Swinnen & Ubac, *supra* note 7. "The Philippine Supreme Court has ruled that a bank holder must be given prior notification before an inquiry can be made into their bank records during investigation of money laundering or corruption cases." *Id.* at 2.

32. The Supreme Court in *Eugenio* held that the Anti-Money Laundering Act permitted freeze orders on bank accounts, but not the type of ex parte (without notice) proceeding discussed by Kenney. Geronimo, *supra* note 27. Echoing the ambassador's logic, one legal commentator reasoned:

"A guilty perpetrator is not about to wait for the imminent freezing of his account before transferring his funds out of the bank. On the contrary, the earlier he gets an indication of the possibility of government seizure, the sooner will he move out his account. Hence, he ought not to be given advance notice even of a mere inquiry by the authorities into his bank funds."

Id. at 2.

33. Swinnen & Ubac, *supra* note 7.

34. *Id.*

35. Swinnen & Ubac, *supra* note 7, at 3.

36. Floyd Whaley, *Philippines Chief Justice Denies Corruption Charges*, N.Y. TIMES (May 22, 2012), <http://www.nytimes.com/2012/05/23/world/asia/renato-corona-philippines-judge-testifies-at>

Philippine Savings Bank invoked the bank secrecy statutes in denying access to Corona's alleged foreign currency deposits.³⁷ The case sparked a debate over whether the impeachment court should be able to compel private banks by subpoena to disclose information regarding foreign currency deposits in such cases.³⁸

While the Senate uncovered information about Corona's accounts denominated in pesos, the Philippines' domestic currency, it was unable to do the same for his U.S. dollar accounts, as the current statutes contain fewer exceptions allowing for the lifting of confidentiality with respect to foreign currency deposits.³⁹ The bank thereby filed for and received a temporary restraining order (TRO) to block the Senate from reaching the foreign dollar accounts, which would have opened the bank to criminal liability.⁴⁰

C. Potential for Reform

In response to such controversies, some members of the Philippine Congress, including a prosecuting panel composed of members of the House of Representatives and Senator-judges,⁴¹ have sought banking law

impeachment-trial.html. See generally, *Documents on the Corona Impeachment*, OFFICIAL GAZETTE OF THE REPUBLIC OF THE PHIL. (June 15, 2012), <http://www.gov.ph/the-corona-impeachment-trial>; Floyd Whaley, *Philippine Justice Removed Over Omission in Report on Assets*, N.Y. TIMES (May 29, 2012), <http://www.nytimes.com/2012/05/30/world/asia/philippines-chief-justice-removed-over-finances.html>; *The Chief Justice on Trial Timeline*, GMA NEWS ONLINE, <http://www.gmanetwork.com/news/cjtrial> (last visited Jan. 14, 2014). For a biography of Corona, see *Chief Justice on Trial*, ABS-CBNNEWS.COM, <http://www.abs-cbnnews.com/specials/cjontrial/biography-of-corona.html> (last visited Oct. 28, 2013).

37. Swinnen & Ubac, *supra* note 7. The Supreme Court obliged the bank, issuing a temporary restraining order. *Id.* The result of the TRO as upheld by the Senate impeachment court was to inhibit any uncovering of the Chief Justice's alleged deposits at issue in the litigation. *Id.* Nonetheless, in May 2012 the Senate voted to remove Corona, finding him guilty of hiding assets. Shielo Mendoza, *Chief Justice Renato Corona: Guilty as Charged*, YAHOO! NEWS PHILIPPINES (May 29, 2012), <http://ph.news.yahoo.com/verdict-is-out.html>.

38. See de la Cruz, *supra* note 25. The overarching legal issue is whether impeachment courts have the power to force a violation of law, because the law prevents the senate from accessing foreign currency accounts without the depositor's express consent. *Id.* One senator submitted a motion for reconsideration upon issuance of the subpoena, citing RA 6246's expressed protection of foreign currency deposits if a depositor has not given his or her written permission. *Id.*

39. See Pamaos, *supra* note 4; see also *Philippine Savings Bank vs. Senate Impeachment Court*, G.R. No. 200238 (S.C., Nov. 20, 2012) (Phil.).

40. Shielo Mendoza, *Senate Heeds SC TRO on Corona Dollar Accounts*, YAHOO! NEWS PHILIPPINES (Feb. 13, 2012), <http://ph.news.yahoo.com/senate-heeds-sc-tro-on-corona-accounts.html>. One senator noted, "Obedience to the TRO preserves governmental stability, while disobedience precipitates a constitutional crisis. If we have a choice between stability and crisis, the wiser choice is always national stability." *Id.* at 1.

41. Pamaos, *supra* note 4. Such lawmakers have specifically voiced concern for the need to prevent public officials accused of corruption from hiding behind the Bank Secrecy Law. *Id.*

reform. For example, in 2010, Senator Francis Escudero filed a bill to mandate that government officials provide written permission for account inquiries when they are accused of crimes.⁴² This approach would add a sort of judicially-based exception missing from the banking statutes' coverage of foreign currency deposit accounts. Pursuing an alternative solution, Antonio Tinio filed in 2012 a House of Representatives bill to amend the FCDA to lift confidentiality in cases of bribery and dereliction of duty.⁴³

In contrast to such attempts at direct statutory reform, other proposals seek increased empowerment of corruption councils, such as authorizing a council to examine the full network of accounts related to a particular suspect in a criminal case.⁴⁴ Public politics have thus been contemplated as one vehicle for raising awareness of the detrimental effects of long-standing bank secrecy, and consequently for fostering legal change.⁴⁵

The United States is one of several countries that has been critical of the antiquated bank secrecy laws in the Philippines.⁴⁶ Calls to reform continue from international crime watch groups, and from within the country as well.⁴⁷ Proponents emphasize the importance of confidentiality

42. Swinnen and Ubac, *supra* note 7. Arguing for such measures, Escudero stated, "We want to put in place a mechanism that promotes openness and transparency in the public sector. . . . Working in the government is a privilege and not a right." *Id.* In 2012, Senator Ralph Recto filed a resolution to review the two central secrecy laws. *Id.*

43. Swinnen and Ubac, *supra* note 7. Five other bills also sought stiffer anti-money laundering legislation and less secrecy through change to the FCDA. See RG Cruz, *Corona to help amend bank secrecy?*, ABS-CBN NEWS, June 6, 2012, <http://www.abs-cbnnews.com/business/06/05/12/corona-help-amend-bank-secrecy-laws>.

44. Geronimo, *supra* note 27.

45. The recent Congressional proposals have pushed the House committee on banks to consolidate the bills and endorse amendments to the FCDA before the House. Jess Diaz, *House to Amend Law on Foreign Currency Deposits*, PHILIPPINE STAR, June 6, 2012, <http://www.philstar.com/headlines/814133/house-amend-law-foreign-currency-deposits>. Representative Sergio Apostol, chair of the committee, directly cited the Corona impeachment trial—"specifically the assertion of ousted chief justice Renato Corona that the [FCDA] affords his dollar deposits absolute secrecy"—as the impetus for reform. *Id.*

46. Wikileaks publicized two particular cable dispatches from U.S. envoys to Washington identifying the Philippines' secrecy laws as "hampering transparent governance and anticorruption mechanisms." Swinnen and Ubac, *supra* note 7. See also Malig, *supra* note 28. In concert with poor mechanisms for whistleblower protection in the country, bank secrecy was noted as a serious problem for combating corruption and obtaining convictions. *Id.* One cable attacked the refusal of the state-owned LandBank to follow an order of an anti-graft court to disclose the information for an officer's US dollar accounts. *Id.* For more on the Supreme Court ruling in *Eugenio*, see *supra* note 32.

47. The Paris-based Financial Action Task Force (FATF) is one international monitoring organization seeking compliance with global standards set against harboring tax evaders from countries like the Philippines. Zinnia Dela Peña, *Bank secrecy hindering anti-corruption drive—BIR*, PHILIPPINE STAR, July 15, 2013, <http://www.philstar.com/headlines/2013/07/15/970911/bank-secrecy-hindering-anti-corruption-drive-bir>. Within the country, the commissioner of the Philippine Bureau of International Revenue (BIR) has spoken out against RA 1405, citing the statute as an obstacle to

for preserving public trust in the banking system.⁴⁸

Along with the increasing levels of international pressure and awareness resulting from publicized political disputes, the spotlight on the Philippine banks is maintained through the Anti-Money Laundering Council (“AMLC”), established by the Anti-Money Laundering Act of 2001⁴⁹ and which serves as a “financial intelligence unit” to investigate suspicious activity and transactions and to “relax” strict bank deposit secrecy laws.⁵⁰ Notably, the Anti-Money Laundering Council possesses the ability to examine any type of deposit, including those involving foreign currencies, when provided with a court order and probable cause that the deposit is tied to money laundering.⁵¹ This provision under the Anti-Money Laundering Act of 2001 provides a channel of information access in situations like the Corona impeachment trial. However, rather than working through such intermediate reform vehicles like the AMLC, which has been criticized for its procedural shortcomings,⁵² direct statutory reform appears to be a more impactful approach to these issues.⁵³

effective tax evasion investigations. *Id.* The commissioner stressed that the BIR has sought repeal or reform of such statutes for quite some time, with the goal of expanding bank account access to state revenue collectors in cases of criminal suspicion; however, there has been overriding political opposition to changes. *Id.*

48. *Id.*

49. Republic Act No. 9160.

50. See *AMLA at a Glance*, Official Website of the Philippines, <http://www.amlc.gov.ph/amla.html> (last visited Oct. 28, 2013). Money laundering, as defined by the AMLA, is “a crime whereby the proceeds of an unlawful activity as [defined in the law] are transacted, thereby making them appear to have originated from legitimate sources.” Agora Business Intelligence, *Philippine Bank Secrecy, Money Laundering, and Solutions* (Feb. 17, 2012), <http://www.agora.ph/recent.php?id=519>. In February 2012, the AMLA was expanded by RA 10365, now reaching “bribery and corruption, malversation of public funds and terrorism and swindling, fraud and illegal exactions and transactions, forgeries and counterfeiting, and trafficking in persons.” Dela Peña, *supra* note 47.

51. De la Cruz, *supra* note 25. See also Anti-Money Laundering Council, *Money Laundering Offenses and Penalties*, THE PHILIPPINES’ FINANCIAL INTELLIGENCE UNIT, <http://www.amlc.gov.ph/amla.html#offense> (last visited Jan. 14, 2014).

52. For example, in the 2008 *Eugenio* case, the Philippine Supreme Court denied the Anti-Money Laundering Council the ability to examine accounts suspected to be tied to corruption without prior notification to the account holder. *Eugenio*, *supra* note 30. This entails that the fact of an investigation be revealed to such suspicious actors before AMLC or US investigators can collect a requisite level of evidence and fully prepare their criminal charges. *Id.* The US embassy therefore noted, “[The decision] will also allow the account holder to prevent effective investigation by tying the proceedings up with litigation.” Malig, *supra* note 28.

53. The AMLA and AMLC’s effectiveness remains in question, given their interaction with the existing secrecy laws. A 2005 US embassy cable criticized the compliance of local banks with the Anti-Money Laundering Act: “While bank secrecy provisions to the [central bank’s] supervisory functions were lifted in Section 11 of the AMLA, implementation appears to be incomplete. Due to Philippine ‘privacy issues,’ examiners of the [bank] are not allowed to review documents held by coverable institutions in order to determine if the covered institutions are complying with the reporting requirement.” *Id.*

Given its geographical location in the increasingly privacy-friendly area of Southeast Asia, the Philippines remains attractive to wealthy Americans and Europeans seeking less government and tax authority scrutiny of their banking activities. Nearby Singapore and Hong Kong remain growing hotbeds for storage of offshore wealth, even more so with the erosion of Swiss banking secrecy.⁵⁴ Though there have been some steps towards international tax compliance and a gradual lifting of bank account secrecy, it remains to be seen whether the Philippines will be able to fully establish Western levels of transparency in the immediate future.

II. SWITZERLAND: PIONEER OF CLIENT CONFIDENTIALITY

A. *Swiss Secrecy Origins and Reform Overview*

The landmark Swiss Banking Act of 1934, a federal law criminalizing bank-client information sharing, was left relatively unchallenged throughout the twentieth century, and in 1984, Switzerland upheld bank secrecy by vote.⁵⁵ As the world's largest offshore wealth center,⁵⁶ Switzerland has been at the forefront of bank secrecy, with its institutions playing an emblematic role in their resistance the international wave of banking transparency through the start of the twenty-first century.

However, recent movements ceding ground to the international pressure for transparency suggest Swiss reform toward lifting bank secrecy and enforcing previously neglected tax compliance.⁵⁷ Progress towards these goals appears to be incremental—for example, a recent Swiss-signed treaty requires its banks to exchange financial information “on request,” but does not set in place automatic exchange of information, a shortcoming which may impose a high burden on a requesting country.⁵⁸

54. See Lynnley Browning, *Seeking Bank Secrecy in Asia*, N.Y. TIMES, Sept. 22, 2010, <http://www.nytimes.com/2010/09/23/business/global/23swiss.html>.

55. Orbringer, *supra* note 8. The law had initially served as a response from German and French pressure on Swiss banks for access to depositor information—at one point, the German Gestapo patrolled the Swiss banks and sought to execute any Germans with Swiss accounts, reinforcing the Swiss government's commitment to secrecy. *Id.* Underpinning privacy in Swiss banking is Article 13 of the Swiss Federal Constitution, protecting a basic right “to receive respect for his/her private and family life.” *Bank-client confidentiality*, SWISS BANKERS ASSOCIATION, <http://www.swissbanking.org/en/bankkundengeheimnis.htm> (last visited Oct. 28, 2013). Client confidentiality is rooted in Article 47 of the 1934 law. *Id.*

56. *Game Changer: Swiss Banks Ditch Secrecy*, RT BUSINESS, Oct. 16, 2013, <http://rt.com/business/game-changer-swiss-banking-secrecy-254>.

57. *Swiss Banks and Tax Evasion: Arresting Developments*, ECONOMIST, Oct. 23, 2013, <http://www.economist.com/blogs/schumpeter/2013/10/swiss-banks-and-tax-evasion>.

58. *Id.*

Action has largely been concentrated in Swiss responses to U.S. attacks on the largest Swiss banks that enabled the exploitation of secrecy laws to elude international banking and tax regulations.⁵⁹

The United States has been a primary force in demanding change from the Swiss.⁶⁰ The IRS and Justice Department have worked to encourage insiders and potential whistleblowers to divulge the role of their own wrongdoing within the greater illegal scheme of bank confidentiality,⁶¹ and to share any incriminating documents to which they have access by virtue of their employee status.⁶²

Swiss banks have also appeared in several tax evasion investigations up through the past decade. Often these controversies have been uncovered by former Swiss bank operators willing to blow the whistle and identify theft in offshore tax evasion.⁶³

B. Caving to Global Pressure: Erosion of Swiss Secrecy

Cultural attitudes favoring privacy and protection from governmental interference into private affairs played a role in maintaining these laws in Switzerland for so long.⁶⁴ But bank secrecy appears to be on its last legs in

59. *Id.*

60. *Game changer*, *supra* note 56. In the summer of 2013, the U.S. heightened pressures by threatening \$10 billion in tax-related claims against Swiss financial institutions. *Id.* See also 'American Dictate': Swiss Parliament Split on Banking Secrecy Law, RT BUSINESS, June 14, 2013, <http://rt.com/business/swiss-banking-secrecy-parliament-690>. The U.S. is investigating over a dozen Swiss banks. *Id.*

61. Lynnley Browning, *Swiss Banker Blows Whistle on Tax Evasion*, N.Y. TIMES, Jan. 18, 2010, <http://www.nytimes.com/2010/01/19/business/19whistle.html>. One former Swiss whistleblower, Heinrich Kieber, relayed client data taken from his employer, the Liechtenstein royal bank, to American and European authorities. *Id.*

62. In a recent instance of whistleblowing, Rudolf M. Elmer disclosed to the IRS and American investigators internal bank and client information of the Swiss bank Julius Baer, with data on more than 100 trusts, 1300 individuals, and several dozen companies and hedge funds, over a five-year span. *Id.* Elmer's documents "detail the undisclosed role of American investment management companies in funneling American, European and South American clients who wished to avoid taxes to [the Swiss bank]; the backdating of documents to establish trusts and foundations used to evade taxes; and the funneling of trades for hedge funds and private equity firms from high-tax jurisdictions through Baer entities in the Cayman Islands." *Id.*

63. *Id.*

64. In supporting bank secrecy, President of Switzerland Ueli Maurer stated, "The state must absolutely respect the private sphere" and should not know "what there is in your bank account." When asked about issues of offshore tax evasion, Maurer clarified his answer: "In each system there are ways to slip through the holes of the net. We must correct these flaws." Pratap Bhanu Mehta, *Swiss president sees no need to change bank secrecy*, THE INDIAN EXPRESS, Apr. 14, 2013, <http://www.indianexpress.com/news/swiss-president-sees-no-need-to-change-banking-secrecy/1102358>. "Swiss bankers and regulators have long dodged and blunted outsiders' efforts to erode banking secrecy: out of a principled deference for their respectable and prudent customers' privacy, they insist; because of the fat fees paid by crooks, tax-dodgers and dictators, say critics." *Swiss Banking Secrecy*:

this pioneering country due to a shift triggered by global awareness of Swiss bank operations and ensuing pressure for transparency.⁶⁵

Foreign bank assets managed in Switzerland decreased by \$921 billion between 2008 and 2012, signaling a withdrawal by tax evaders who previously exploited Swiss bank secrecy.⁶⁶ In 2009, the country's biggest lender bank, UBS, came clean in its role as a tax evasion vehicle for 52,000 American clients.⁶⁷ From 2008 to 2010, UBS is estimated to have lost about \$200 billion in assets from private banking clients.⁶⁸ In January 2013 Wegelin, the country's oldest private bank, announced a permanent shutdown after pleading guilty to charges that it offered secret accounts hiding over \$1.2 billion from the IRS.⁶⁹

The Swiss government has slowly relinquished its strict adherence to confidentiality,⁷⁰ and the erosion of bank secrecy continues as compliance moves beyond bilateral agreements with individual partner countries.⁷¹ In

Don't Ask, Won't Tell, *supra* note 10. Swiss secrecy supporters also have attempted to point out that the pressure is coming from hypocritical sources—the U.S. stores Latin American money and offers a domain for shell company pursuits in states like Delaware and Nevada, while Britain's Channel Islands are up for exploit as well. *Id.*

65. One Goldman Sachs head official in Europe, Francois-Xavier de Mallman, described the secrecy crackdown: "A combination of government actions from the U.S. and the EU and increased regulatory pressure is likely to trigger further changes in Swiss private banking because it will make it more costly to do business. . . . We expect consolidation to continue in private banking and to likely accelerate as the uncertainty weighing on the sector decreases." Aaron Kirchfeld and Elena Logutenkova, *Private Banks Leave Switzerland as End of Secrecy Hurts*, BLOOMBERG, June 30, 2013, <http://www.bloomberg.com/news/2013-06-30/private-banks-leave-switzerland-as-end-of-secrecy-hurts-profits.html>. Kinner Lakhani, a Citi Research analyst, notes that the Swiss banks have been anticipating changes to secrecy rules for "well over a decade." Petroff, *supra* note 9.

66. *Game Changer*, *supra* note 56. Some clients opted to pay taxes on their undeclared accounts. Kirchfeld and Logutenkova, *supra* note 65. Analysts had predicted that the move towards bank secrecy crackdown and increased regulation for compliance would force "a wave of mergers and acquisitions [through 2013]. *Id.*

67. *'American Dictate,' supra* note 60. UBS "narrowly escaped prosecution" by offering over 5,000 client names and a sum of \$780 million. *Id.*

68. Browning, *Seeking Bank Secrecy in Asia*, *supra* note 54.

69. *Id.* For more on the closing of Wegelin & Co., see Nate Raymond and Lynnley Browning, *Swiss Bank Wegelin to Close after Guilty Plea*, REUTERS, Jan. 4, 2013, <http://www.reuters.com/article/2013/01/04/us-swissbank-wegelin-idUSBRE90200020130104>.

70. See Michael Birnbaum, *Switzerland, threatened by isolation, lifting veil on secret bank accounts*, WASH. POST, Nov. 4, 2012, http://www.washingtonpost.com/world/europe/threatened-by-isolation-switzerlandlifting-veil-on-secret-bank-accounts/2012/11/04/bf77e574-24e8-11e2-9313-3c7f59038d93_story.html. See also *Swiss banks agree to US tax deal, more expected to follow*, REUTERS, Dec. 10, 2013, <http://www.cnn.com/id/101262066>.

71. Most recently, Swiss parliament signed onto a bilateral agreement with the U.S. for the exchange of client information, in line with the U.S. Foreign Account Tax Compliance Act (FATCA). *Id.* Under FATCA, banks unwilling to identify and report American accounts and clients face a 30% withholding tax on American investments. *Swiss Banking Secrecy: Don't Ask, Won't Tell*, *supra* note 10. For full information on FATCA, see the IRS website page, [http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-\(FATCA\)](http://www.irs.gov/Businesses/Corporations/Foreign-Account-Tax-Compliance-Act-(FATCA)). See also U.S. Department of the

October 2013, Switzerland signed onto the Multilateral Convention on Mutual Administrative Assistance on Tax Matters, agreeing to increase transparency and exchange financial information with sixty other countries.⁷² As a result, the Swiss government now has the power to force the country's largest private banks to reveal certain confidential information to international tax monitoring groups.⁷³

III. COMPARATIVE LOOK: THE PHILIPPINES & SWITZERLAND

Although the Philippines occupies a substantially lesser role in the global marketplace than Switzerland,⁷⁴ both countries' historical commitments to bank secrecy facilitate a comparative look as to the direction each will take with its private banking system and fight against white collar and black market financial crime in the near future.

Both countries have faced significant pressure from the United States, a major global economic power, and it is possible that U.S. pressure on countries such as the Philippines will increase as the focus on Swiss private banks and their lifting of bank secrecy 'trickles down' in global influence.⁷⁵ The United States' enormous role in global commerce ensures

Treasury, Resource Center, <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx> (last visited on Mar. 20, 2015); and Robert Stack, *Myth vs. FATCA: The Truth About Treasury's Effort to Combat Offshore Tax Evasion* (Sept. 20, 2013), <http://www.treasury.gov/connect/blog/Pages/Myth-vs-FATCA.aspx>. For information on FATCA and its adoption by the Philippines and interaction with bank secrecy there, see Brian Mahany, *FATCA Showdown in the Philippines?* (Apr. 12, 2013), <http://www.mahanyertl.com/mahanyertl/2013/fatca-showdown-in-the-philippines>.

72. *Game changer*, *supra* note 56. Prior to the convention, which was made in concert with the Organization for Economic Cooperation and Development (OECD), Switzerland had already made bilateral tax collection agreements with Austria and the United Kingdom. *Id.*

73. One potential consequence is a loss of business from foreign banks. *Id.* Swiss bankers are left to seek alternative business: one recommendation toeing ethical lines is to set sights on the wealthy people of poor and unstable countries, no longer "secrecy . . . [but] at least stability." *Swiss Banking Secrecy: Don't Ask, Won't Tell*, *supra* note 10. The trajectory of Swiss banking is to "an ongoing process of normalization;" the country's financial institutions now must pitch onshore, transparent accounts, reach out to emerging markets, and continue to raise appeal to the most wealthy clients available. Petroff, *supra* note 9.

74. In February 2012, the Boston Consulting Group estimated that Swiss banks held about 27% of offshore wealth. *Swiss Banking Secrecy: Don't Ask, Won't Tell*, *supra* note 10.

75. The US State Department has evaluated the progress of the Philippines in its responsiveness to legal concerns regarding illicit funds by the OECD and Financial Action Task Force (FATF). Malig, *supra* note 28. Specifically, the FATF had found a recent history of court decisions employing the policies of bank secrecy and consequently hindering fraud and corruption investigations. *Id.* The State Department reported, "Legislation to address these deficiencies [prohibiting ex-parte inquiries into suspicious accounts] is pending in the Philippine Congress, and has been designated 'urgent' by the [incumbent] Aquino administration, which will accelerate its movement through the Congress." *Id.*

One US embassy cable cited several remaining obstacles to effective combat of illicit bank activity, including the existing secrecy laws, the inability of regulators to examine banks at will, and insufficient protections from liability for bank officials and examiners. U.S. DEP'T OF STATE, 2010

that foreign banks like those in the Philippines continue to transact its business, to be conditioned in turn on compliance with transparency laws.⁷⁶ Increased press and political pressure from other domestic problems of the Philippines, including frequent corruption cases, may bring reform of the secrecy statutes further into the international spotlight and monitoring purview of tax compliance organizations and countries, as seen by the Corona impeachment trial.

Because of the long-standing entrenchment of a policy of confidentiality in the Philippines, perhaps the best approach to reform is through gradual statutory amendments designed to chip away at secrecy protections. A trend in this direction is evident in the reform proposals submitted by the Philippine Congress following the Corona impeachment trial.⁷⁷

It seems unlikely that the Philippines, a smaller country with less economic power than Switzerland, will respond to pressure for transparency as swiftly as Swiss institutions have in recent years. There is less international outcry to reform bank secrecy laws in the Philippines because the country does not have the reputation for policies that had girded the now eroding regime of Swiss bank secrecy. Additionally, the preference among ordinary Philippine citizens is to maintain the familiar privacy of their financial information. Reform thus will have to toe the line of maintaining the public trust in the Philippines' domestic banking system.

INVESTMENT CLIMATE STATEMENT—THE PHILIPPINES (2010), available at <http://www.state.gov/e/eb/rls/othr/ics/2010/138129.htm>. The cable continued, "There are a number of laws and mechanisms directed at combating corruption and related anti-competitive business practices, although the enforcement of anti-corruption law has been weak and inconsistent." *Id.* See also Swinnen and Ubac, *supra* note 7.

76. Mahany, *supra* note 71. "Although no bank likes FATCA, they mostly recognize that it is better to cooperate than to be effectively locked out of the American marketplace or taxed to death." *Id.* IRS penalties for unreported or false accounts are substantial, and the agency remains powerful enough to perform investigations into offshore accounts. *Id.* See also Internal Revenue Service of the U.S. Government, *International Investigations—Criminal Investigation (CI)*, [http://www.irs.gov/uac/International-Investigations-Criminal-Investigation-\(CI\)](http://www.irs.gov/uac/International-Investigations-Criminal-Investigation-(CI)) (last visited on Mar. 3, 2015); Stephen J. Dunn, *Tax Reporting of Foreign Financial Assets: A Tale of Two Acts*, FORBES, Apr. 12, 2013, <http://www.forbes.com/sites/stephendunn/2013/04/12/foreign-financial-asset-reporting-a-tale-of-two-acts>.

77. See Swinnen & Ubac, *supra* note 7. Statutory reform proposals may take as their foundation plain statements of legislative intent; for example, amendments indicating that account examination may be carried out without the permission of a suspicious account holder. See Geronimo, *supra* note 27.

A moderate approach could be to lift bank secrecy with respect to the account information of individuals holding public office.⁷⁸ Another measured approach might begin by shoring up the secrecy statutes' loopholes for withholding bank information when dealing with a criminal investigation or impeachment, specifically with respect to foreign currency deposits. Instead, the Philippines could treat such situations as absolute exceptions to confidentiality.

Finally, some commentators have recommended more indirect improvements and solutions, including an emphasis on reforming tax law for greater compliance and accountability,⁷⁹ stricter bank account monitoring, and a rewards system for corruption and illicit fund whistleblowing.⁸⁰ These solutions might strike an appropriate balance in satisfying the public trust by upholding the general policy of account privacy while targeting unlawful banking exploitation.

IV. GLOBAL EFFORTS RELATED TO BANK SECRECY

Fortunately, significant efforts to raise global awareness of "dirty money" storage in offshore tax havens and private banks have been made in part through international campaigns for financial accountability that have advocated for reform beyond Swiss private banks, the most notorious proponents of bank secrecy.⁸¹ These activist groups have identified the presence of rampant corruption, inequality, and security problems in many developing countries as primary vehicles for the flow of illegal funds.⁸²

78. A government official exception was one proposal made following the controversies of the Corona impeachment trial. See Agora Business Intelligence, *supra* note 50.

79. Dela Peña, *supra* note 47. The tax commissioner encouraged an amendment or repeal that "could help detect tax leakages, improve collections on income and value-added taxes, and increase voluntary compliance." *Id.*

80. Agora Business Intelligence, *supra* note 50.

81. Global Financial Integrity ("GFI") is one Washington-based group releasing reports on illicit outflow. Pratap Bhanu Mehta, *Dirty Money from Crime, Corruption and Tax Evasion Costs Developing World \$6 Tn, Led by China, India: Report*, THE INDIAN EXPRESS, DEC. 18, 2012, <http://www.indianexpress.com/news/dirty-money-from-crime-corruption-and-tax-evasion-costs-developing-world--6-tn-led-by-china-india-report/1046973>. From 2011 to 2012, GFI reported that total outflow of funds tracked from crime, corruption, and tax evasion increased by 11%. *Id.*

82. *Id.* At the end of 2012, "for every dollar in foreign direct aid," it was found, "\$10 leaves developing countries." *Id.* Reports from corruption awareness groups like GFI illustrate a trend showing a growth in illegal finance outflow of 13.3% per year since 2001. *Id.* Such movement of corrupt money is a highly harmful, destabilizing force for the developed world. Entities such as the Global Organization of Parliamentarians Against Corruption (GOPAC) target these international issues by seeking out representation, benchmarks, and increased public awareness from and within countries like the Philippines. See *GOPAC: Fighting Corruption and Promoting Integrity through an Anti-Money Laundering Initiative*, http://www.mickikaminska.com/GOPAC/Docs/Cullen%20Data%20Paper_en.pdf (last visited Mar. 20, 2014). See also GOPAC Global Conference, <http://gopac>

International awareness groups will certainly need to play a significant role in pushing for compliance with tax and financial standards, in conjunction with active monitoring and calls to reform from large global economic players like the United States.

Pressure for compliance need not be as hard-nosed as the U.S. approach with Switzerland; German and British “Rubik” deals with Swiss banks maintain client confidentiality but impose a lump sum and annual withholding tax in place of those would-be-unpaid taxes.⁸³ The U.S. demands have nonetheless precipitated a serious and likely substantial fund-saving change with the Swiss.

The ultimate objective of Swiss secrecy reform is to have automatic information exchange between the tax authorities of Switzerland and those of other countries.⁸⁴ Currently the OECD and Switzerland have agreed to “information on request[:] A government can ask for data about specific offenders; but no fishing expeditions are allowed, and the number of requests permitted each year is capped.”⁸⁵

One counterargument to globalization and more open-ended banking in international finance, however, is that the approach has actually made it easier to transfer illegal monies to Western banks and tax havens.⁸⁶ Solutions aimed at these international problems may need to strike a compromise between transparency and globalized, free-range access. That is, private banks will need to embrace accountability not only in sharing information over bank activities where there are suspicions or evidence of criminal activity, but also in restricting access to banking that potential criminals might have before they are able to place and manage illicit funds in offshore accounts. A multi-pronged approach, at least partially focused on reducing secret bank accounts, will be necessary for change.⁸⁷

network.org/programs/conferences/gopac-conference. GOPAC held its most recent conference in the capital city of Manila, in 2013. *Id.*

83. *Swiss Banking Secrecy: Don't Ask, Won't Tell*, *supra* note 10. These bilateral deals were criticized by politicians as too accommodating to Switzerland. *Id.*

84. *Id.*

85. *Id.*

86. Mehta, *supra* note 81. GFI's lead economist, Dev Kar, associated the trend of growing illicit outflow with globalization and “the loosening of capital controls.” *Id.*

87. GFI has identified several solutions for world leaders targeting illicit outflows, including: “clamping down on secret bank accounts and ownership of shell companies; reforming customs and trade protocols so that export/import payments cannot be used to hide illegal fund transfers; requiring multinational companies to report their profits by country to prevent tax avoidance; and strongly enforcing anti money-laundering laws.” *Id.* Abuse of shell companies parallels the illegal activities associated with secret bank accounts and illicit outflow; international companies without employees or offices remain easy to set up and hide, and thus their exploitation by “money launderers, bribe givers and takers, sanction busters, tax evaders, and financiers of terrorism” constitutes another serious

Recent agreements made by other offshore tax havens further illustrate the global trend toward transparency. In 2013 several British overseas territories agreed to automatic information sharing with Britain, France, Germany, Italy, and Spain.⁸⁸ Austria is another long-standing tax haven that has moved towards sharing personal account information, largely due to influence from the European Union.⁸⁹ Clearly, international organizations and solidarity have provided effective solutions by creating spheres of influence able to spur change and reform from individual countries and their financial policies.⁹⁰

CONCLUSION

Bank secrecy laws appear to be eroding in the global move towards financial transparency. Legal prohibitions and conditions on information sharing by foreign banks have stirred debate over bank secrecy reform, and reformists are increasingly empowered by pressure from foreign governments and international organizations supporting a freer exchange of client and account data between governments and private financial institutions.

In the face of reform, countries holding on to bank secrecy may fear losing the business of wealthy clients, specifically to financial centers promising sustained confidentiality. They may also hold on to the bank

problem in international finance. *Launderers Anonymous*, *ECONOMIST*, Feb. 11, 2012, <http://www.economist.com/node/21563286>. One study revealed that nearly half of 3,700 incorporation agents from 182 countries failed to follow international standards governing shell companies, in neglecting to ask for proper identification from would-be applicants. *Id.*

88. Vanessa Houlder, *Tax havens agree to more transparency*, *FINANCIAL TIMES*, May 2, 2013, <http://www.ft.com/intl/cms/s/0/723b6e9c-b279-11e2-8540-00144feabdc0.html>. Among the territories were Anguilla, Bermuda, the British Virgin Islands, Montserrat and the Turks and Caicos Islands, all following suit with the Cayman Islands. *Id.*

89. James Kanter and Andrew Higgins, *Austria Gives Ground on Banking Secrecy at Meeting of European Union Leaders*, *N.Y. TIMES*, May 22, 2013, <http://www.nytimes.com/2013/05/23/business/global/european-union-leaders-meet-on-tax-avoidance.html>. Luxembourg is another E.U. member that has pledged reform, agreeing at a summit meeting to relinquish its hold on private banking data by 2015. *Id.*

90. On the other hand, there remain “fortress-like” countries, like Singapore, toward which former Swiss clients may now be looking. *Swiss Banking Secrecy: Don’t Ask, Won’t Tell*, *supra* note 10.

The balance of offshore wealth is tipping to Asia. See Georgia McCafferty, *Report: Singapore to eclipse Switzerland as tax haven by 2020*, *CNN*, May 14, 2013, <http://edition.cnn.com/2013/05/13/business/singapore-rich-switzerland-wealth?iid=EL>. “Although Switzerland easily retains its offshore banking crown with \$2.8 trillion in assets under management, or 34% of the global private banking industry, Singapore is now the world’s fastest growing market with \$550 billion under management at the end of 2011, up from just \$50 billion in 2000.” *Id.* See also Browning, *Seeking Bank Secrecy in Asia*, *supra* note 54.

secrecy principles of independence from interference and privacy in banking. Strengthening adherence to these principles is the fear of an unending trend of open access to personal account, transaction, and identification information due to transparency and globalization.

Greater transparency, however, may help to bolster a country's reputation as a compliant and well-regulated center. This should be an important consideration for emerging markets like the Philippines, which seek to carve out roles in the globalized world. Transparent financial banking cultivates economic trust from other countries and represents a commitment to restricting money laundering, corruption, and tax evasion, issues now vehemently fought against by international groups to which many powerful countries are parties.

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