

IJM

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AN EXPLAINER ON THE OSAEC PROVISIONS IN R.A. NO. 11862

About the Resource

IJM's *Explainer on the Online Sexual Abuse and Exploitation of Children (OSAEC) Provisions in the Expanded Anti-Trafficking in Persons Act of 2022 (Republic Act No. 11862)* is a resource for local caseworkers and front-liners, including prosecutors, social workers, and law enforcement, to better understand and implement the provisions of the new law. This second amendment to the Philippines' primary anti-trafficking law, the Anti-Trafficking in Persons Act (R.A. No. 9208), specifically includes and recognizes the Online Sexual Abuse and Exploitation of Children as a well-defined act of trafficking. To aide justice system actors as they work on OSAEC cases, this Explainer provides an overview of the main revisions of the law as compared to the prior version, outlines the new duties and potential liability for internet and financial intermediaries, provides an overview on investigation and prosecution tools available to law enforcement and prosecutors, and discusses the requirements for the protection and rehabilitation of survivors. The Explainer also includes a practical resource showing the full text of the law that identifies the newly amended sections for easy comparison.

About International Justice Mission

International Justice Mission is a global organization that protects people in poverty from violence. IJM partners with local authorities in 33 program offices in 18 countries to combat slavery, violence against women and children, and police abuse of power against people who are poor. IJM works with local authorities and governments to rescue and restore survivors, hold perpetrators accountable, and help strengthen public justice systems so they can better protect people from violence.

Operating since 2001, our 23 years of work in the Philippines led to a dramatic decrease in the prevalence of sex trafficking of children in bars and brothels—reductions ranging from 72%-86% in the cities where we partnered with local authorities. In 2016, IJM fully transitioned our program in the Philippines to combat online sexual exploitation of children, in particular the trafficking of children to create new child sexual abuse materials, including via livestreaming. We have assisted Philippine authorities in more than 408 operations, leading to the rescue of 1311 victims and arrest of 400 suspects of online sexual exploitation of children (first case dates back to 2011).

Learn more at ijm.org.ph.

Contact Information

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Disclaimer and Restrictions: The information in this document has been collected by IJM primarily through the work of its Manila Prosecution Development Team which actively prosecutes and collaborates closely with government partners for online sexual exploitation of children casework in the Philippines.



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INTRODUCTION

Our OSEC Program

About Republic Act (R.A.) No. 11862

Introduction

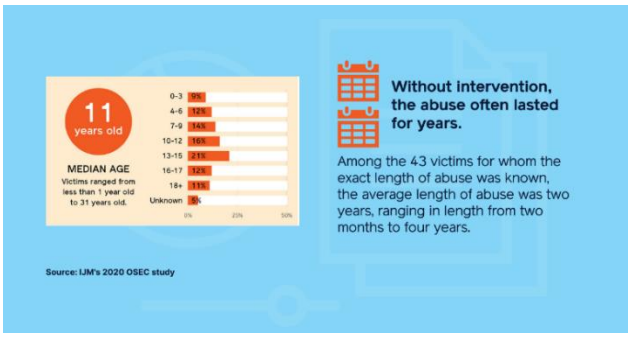
OUR OSEC PROGRAM

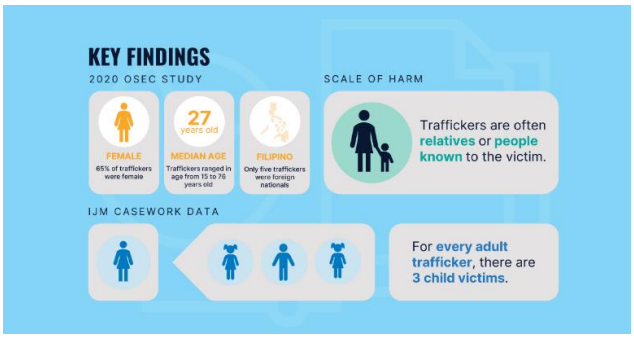
IJM's Program to End Online Sexual Exploitation of Children (OSEC) is an initiative designed to combat this crime in the Philippines and around the world. It works with the Philippine government to protect children and hold perpetrators accountable. Embracing the whole-of-society approach, it also partners with churches, corporations, local and community organizations, including the media and academe, as well as the international community.

With a focus on OSEC casework, IJM defines OSEC as children being sexually abused by traffickers who then spread or sell images or videos of the exploitation online—even livestreaming the abuse for sex offenders to direct from anywhere in the world.

Through its Scale of Harm study, it was found that nearly half a million Filipino children were trafficked to produce new sexual exploitation material (or CSEM) in 2022 alone. That is 1 in every 100 Filipino children. Also found was nearly a quarter of a million or 250,00 adult Filipinos trafficked children to produce CSEM in the same year. Meaning, for every 1 trafficker, there are about 3-4 child victims sexually exploited.

The offenders pay traffickers, who 41% of the time are biological parents and 42% are other relatives of the victim, to sexually abuse children in person.[1] The same Study found that the median age of victims was 11, with the youngest rescued less than 1 year old.





See Footnote 1 for IJM's OSEC and Scale of Harm Studies.

In partnership with the Philippine government and other stakeholders, incredible growth, with strong momentum in both collaborative casework and system reform initiatives, has been achieved. More can still be done to accelerate the fight against OSEC in the Philippines. It is hoped that this explainer would serve as a helpful guide for local caseworkers and front-liners to better understand and implement the provisions of the new law and support justice system actors as they work on OSAEC cases.

1 International Justice Mission Philippines. (May 2020). Online Sexual Exploitation of Children in the Philippines: Analysis and Recommendations for Governments, Industry, and Civil Society. Retrieved from http://ijm.org/studies. International Justice Mission Philippines. (September 2023). Scale of Harm: Estimating the Prevalence of Trafficking to Produce Child Sexual Exploitation Material in the Philippines. Retrieved from https://www.ijm.org.ph/resources

ABOUT REPUBLIC ACT (R.A.) NO. 11862

Republic Act (R.A.) No. 11862, otherwise known as the Expanded Anti-Trafficking in Persons Act of 2022, was signed by President Rodrigo R. Duterte on 23 June 2022 and published in the *Official Gazette* on 28 June 2022. Thus, the law took effect on 14 July 2022.

R.A. No. 11862 is the second amendment to the original law, R.A. No. 9208, otherwise known as the Anti-Trafficking in Persons Act of 2003 (referred to herein as R.A. 9208). R.A. No. 9208 was initially amended by R.A. No. 10364, otherwise known as the Expanded Anti-Trafficking in Persons Act of 2012 (referred to herein as R.A. 10364).

The most prominent expansion on R.A. No. 10364 made by R.A. No. 11862 is the express inclusion and recognition of Online Sexual Abuse and Exploitation of Children (OSAEC) as a well-defined act of trafficking. It must be noted however, that OSAEC is not a new crime and is already penalized under R.A. No. 10364, the Anti-Child Pornography Act of 2009 (R.A. No. 9775), as reenacted by Online Sexual Abuse and Exploitation and Anti-Child Sexual Abuse and Exploitation Materials Law (R.A. No. 11930)[2], and the Anti-Child Abuse Law (R.A. No. 7610), all in relation to the Anti-Cybercrime Law (R.A. No. 10175). There is likewise a jurisprudential basis in penalizing OSAEC activities under the said laws.[3]

R.A. No. 11862 also addressed the gaps in the previous law, particularly regarding the investigation of trafficking in persons and OSAEC activities. It provides the parameters by which law enforcement can conduct their interception of communication activities. Notable here is the exception to the requirement of a court order or warrant in conducting interception of communication activities, which applies when the suspected victim is a minor, the offense was committed through digital platforms and/or computer systems, and the interception is made through an online undercover operation.

A further innovation in this law is the inclusion of criminal liability for internet and financial intermediary if they knowingly or by gross negligence allow their services and platforms to be used by traffickers in trafficking in persons activities, such as failing to report OSAEC activities found on their platforms.

R.A. No. 11862 also provides a new definition of "Child Laundering," which also provides liabilities to the private sector.

Likewise, the law expanded the duties and responsibilities of different government agencies with regard to the enforcement of the law and prevention of trafficking activities. It included other government agencies as additional members of the Inter-Agency Council Against Trafficking (IACAT), whose powers and responsibilities in addressing trafficking in persons crimes were expanded further.

It is worth highlighting that the new law made it its policy to ensure victim recovery, rehabilitation, and reintegration into the mainstream of society in a manner that is culturally-responsive, gender- and age-appropriate, and disability-inclusive. This addition guarantees that policies and programs will be responsive to the needs of the victims. R.A. No. 11862 amended the Declaration of Policy in the old law, and it now reads in part:

2 Note that R.A. No. 11930, or the Anti Online Sexual Abuse and Exploitation of Children Law, lapsed into law on 29 July 2022 and became effective on 23 August 2022. This law expressly repealed R.A. No. 9775, or the Anti-Child Pornography Act of 2009, but reenacted most of its provisions.

3 See *People v. XXX and YYY*, G.R. No. 235652, 9 July 2018.

> *It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation, and reintegration into the mainstream of society in a manner that is culturally-responsive, gender- and age-appropriate, and disability-inclusive. xxx.*

The first part of this Explainer will focus on the new provisions and amendments of R.A. No. 11862 that are specific to OSAEC. The second part will focus on the other salient provisions. Please note that <u>underlined</u> texts in the body are new or amended provisions. Finally, Annex "A" to this Explainer provides the full text of the current Expanded Anti-Trafficking in Persons Act, consolidating R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862, with the new provisions under R.A. No. 11862 bolded, and Annex "B" contains the Anti-Money Laundering Council's Rules and Regulations Implementing Section 9(d) of Republic Act No. 9208, as amended by Republic Act No. 11862, otherwise known as the Expanded Anti-Trafficking in Persons Act of 2022 (AMLC IRR of R.A. No. 11862).[4]

4 Rules and Regulations Implementing Section 9(d) of Republic Act No. 9208, as amended by Republic Act No. 11862, otherwise known as the Expanded Anti-Trafficking in Persons Act of 2022, signed by the Anti-Money Laundering Council 12 October 2022.

OSAEC-SPECIFIC PROVISIONS

General Definitions

OSAEC as Defined and Penalized under R.A. No. 11862

Duties of Internet and Financial Intermediaries

OSAEC-Specific Provisions

GENERAL DEFINITIONS

A. AMENDED DEFINITIONS

Trafficking in Persons

In R.A. No. 11862, Congress expanded the definition of trafficking in persons to include the following exploitative purpose: "the engagement of others for the production or distribution, or both, of materials that depict child sexual abuse or exploitation."
Section 3(a) now provides:

> (a) *Trafficking in Persons* – refers to the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others, or the engagement of others for the production or distribution, or both, of materials that depict child sexual abuse or exploitation, or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes shall also be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph.

Note: All underlined texts in this resource are **new or amended provisions.**

Sexual Exploitation

In Section 3(h), Sexual Exploitation has been redefined as follows:

> (h) *Sexual exploitation* – refers to any means of actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes or lewd designs, including profiting monetarily, socially, or politically from the sexual exploitation of another, regardless of whether or not consent was given.

Pornography

Furthermore, the law adds a *proviso* in the previous definition of Pornography stating "[t]hat when a child is involved, the material shall be considered child sexual abuse and exploitation material as defined under paragraph (m) of this section." The new definition of Pornography in Section 3(i), thus now reads:

> (j) *Pornography* - refers to any representation, through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual purposes: *Provided,* That when a child is involved, the material shall be considered child sexual abuse and exploitation material as defined under paragraph (m) of this section.

The referenced "paragraph (m)" in the Pornography definition above refers to the newly defined Child Sexual Abuse and Exploitation Materials or Child Sexual Abuse Material, discussed below.

B. NEW TERMS DEFINED BY R.A. NO. 11862

Child Sexual Abuse and Exploitation Materials or Child Sexual Abuse Material (CSAEM or CSAM)[5]

Section 3(m) of R.A. No. 11862 provides a new definition to describe explicit images and other materials involving children:

> (m) *Child Sexual Abuse and Exploitation Material or Child Sexual Abuse Material (CSAEM or CSAM)* - Refers to photos, images, videos, recordings, streams, or any other representation or form of media, depicting acts of sexual abuse and exploitation of a child or representation of a child as a sexual object, whether or not generated digitally or by, through, and with the use of information and communications technology. It shall also include materials that focus on real or simulated genitalia or other private body parts of a child.

To be clear, pornography, child pornography, and child sexual abuse and exploitation materials or child sexual abuse materials (referred to herein as CSAEM) are distinctly defined terms which should *not* be used interchangeably.

- Pornography refers to any representation of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts for primarily sexual purposes.[6] It contemplates a situation where the subject of the material is engaged in a sexual activity, whether the same is real or simulated.
- When the subject of the material is a child or a person represented as a child, the material becomes child pornography which specifically defined and penalized under R.A. No. 9775.[7] It must be noted that R.A. No. 11930, otherwise known as the Anti-Online Sexual Abuse and Exploitation of Children and Anti-Child Sexual Abuse and Exploitation Materials Law (R.A. No. 11930) expressly repeals and reenacts R.A. No. 9775, and the former no longer defines

5 Section 3(m), R.A. No. 9208, as amended by R.A. No. 11862.
6 Section 3(j), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
7 Child Pornography, under R.A. No. 9775, is defined as any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of child engaged or involved in real or simulated explicit sexual activities.

"child pornography". Effectively, therefore, the term "child pornography" will no longer be used to describe such materials.

- R.A. No. 11862 recognizes that representations of children in sexual activities, real or simulated, and representations of their private body parts are sexually abusive and exploitative. Hence, representations of sexual abuse and exploitation of a child or of a child as a sexual object using information and communications technology fall under the category of CSAEM or CSAM.

It is clear from the definition of CSAEM that it covers what was then referred to as child pornography. Moreover, the expanded CSAEM definition includes actual depictions of exploitation and abuse as well as "representations" of children as sexual objects, effectively prohibiting digitally-created CSAEM. This means the CSAEMs created using artificial intelligence software or other means of digital creation qualify under the definition of CSAEM and are punishable under the law.

Furthermore, and most importantly, the change of terminology takes into account the observation made by experts in the field that the use of the term "child pornography" carries with it several negative connotations and implications.[8] Because consensual adult pornography is itself normalized and legal in many places (presuming it abides by relevant legal requirements), the use of the term "pornography" in relation to children may "contribute to diminishing the gravity of, trivialising, or even legitimising what is actually sexual abuse and/or sexual exploitation of children.[9] Additionally, the term "child pornography" risks "insinuating that the acts are carried out with the consent of the child and represent legitimate sexual material."[10] The idea of such implied consent then leads to the insidious suggestion that children are complicit in their own abuse. The broader, more encompassing term of "CSAEM" avoids these implications.

Information and Communications Technology (ICT)[11]

Refers to the totality of electronic means to access, create, collect, store, process, receive, transmit, present, and disseminate information.

Internet Intermediaries[12]

Refer to a natural or juridical person, or entity that provides infrastructure[s], platforms, access to host, transmit and index content, products and services originated by third parties on the internet. It includes among others:

(1) Internet Service Providers (ISPs);
(2) Data processing and web hosting providers including domain name registrars;
(3) Internet search engines and portals;
(4) E-commerce intermediaries;
(5) Internet payment system providers, whether supervised by the Bangko Sentral ng Pilipinas (BSP) or not; and
(6) Participative network platform providers or social media intermediaries.

8 F. Child Pornography, Pg. 35 – 40, *Terminology Guidelines for the Protection of Children from Sexual Exploitation and Abuse*, adopted by the Interagency Working Group in Luxembourg, 28 January 2016.
9 *Id.* at pg. 39 (citing D. Frangež et al., "The Importance of Terminology Related to Child Sexual Exploitation" *Journal of Criminal Investigation and Criminology*, vol. 66, no. 4, Ljubljana 2015, pp. 291-299).
10 *Id.*
11 Section 3(r), R.A. No. 9208, as amended by R.A. No. 11862.
12 Section 3(t), R.A. No. 9208, as amended by R.A. No. 11862.

Subscriber's or Registrant's Information[13]

Refers to any information contained in the form of computer data or any other form that is held by internet intermediaries, relating to the subscribers or registrants who avail of services, other than traffic or content data, and by which any of the following can be established:

> (1) The type of communication service used, the technical provisions taken thereto, and the period of service;
> (2) The subscriber's or registrant's identity, postal or geographic address, telephone and other access number, any assigned network address, billing, and payment information that are available on the basis of the service agreement or arrangement; or
> (3) Any other available information on the site of the installation of communication equipment that is available on the basis of the service agreement or arrangement.

Online Sexual Abuse and Exploitation of Children (OSAEC)[14]

Refers to the use of digital or analogue communication and ICT as means to abuse and exploit children sexually, which includes cases in which contact child abuse or exploitation offline is combined with an online component. This can also include the production, dissemination, and possession of CSAEM or CSAM; online grooming of children for sexual purposes; sexual extortion of children; sharing image-based sexual abuse; commercial sexual exploitation of children; exploitation of children through online prostitution; and live streaming of sexual abuse, with or without the consent of the victim.

Child Laundering[15]

Refers to an act of stealing and selling a child to adopting parents under false pretenses and using schemes such as falsifying the child's details or manipulating the child's origins to make the child appear an orphan or foundling.

Tourism Enterprises[16]

Refer to the facilities, services, and attractions involved in tourism, such as travel and tour services; health, wellness, and medical tourism services, tourist transport services, whether for land, sea or air transportation; tour guides; adventure sports services involving sports, such as mountaineering, spelunking, scuba diving, and other sports activities of significant tourism potential; convention organizers; accommodation establishments, including hotels, resorts, apartelles, tourist inns, motels, pension houses, and home stay operators; and tourism estate management services, restaurants, shops and department stores, sports and recreational centers, spas, museums and galleries, theme parks, convention centers, and zoos.

13 Section 3(u), R.A. No. 9208, as amended by R.A. No. 11862.
14 Section 3(w), R.A. No. 9208, as amended by R.A. No. 11862.
15 Section 3(l), R.A. No. 9208, as amended by R.A. No. 11862.
16 Section 3(v), R.A. No. 9208, as amended by R.A. No. 11862.

C. ADDITIONAL TERMS ALREADY DEFINED UNDER THE ANTI-CYBERCRIME LAW (R.A. NO. 10175)

Communications[17]

Refer to any spoken or written conversations, exchanges, discussions, data, information, or messages for interception.

Computer System[18]

Refers to any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automated processing of data. It covers any type of device with data processing capabilities including computers and mobile phones. The device consisting of hardware and software may include input, output process, and storage components which may stand alone or be connected in a network or other similar devices. It also includes computer data storage devices or media.

Computer and Other Computer-Related Devices[19]

Refer to any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automated processing of data. It covers any type of device with data processing capabilities, including computers and mobile phones.

Data[20]

Refers to both:

> (1) Content Data - the substance, meaning or purport of the communication, or the message or information being conveyed by the communication, other than traffic data; and
> (2) Traffic Data or Non-Content Data - any computer data other than the content of the communication, including the communication's origin, destination, route, time, date, size, duration, or type of underlying service[s].

Interception[21]

Refers to the act of listening to, recording, monitoring, or surveillance of the content of communications, including procuring of the content data, either directly, through access and use of the computer system, or through the use of electronic eavesdropping or tapping devices, at the same time that the communication is occurring.

17 Section 3(n), R.A. No. 9208, as amended by R.A. No. 11862; referred to in R.A. No. 10175.
18 Section 3(o), R.A. No. 9208, as amended by R.A. No. 11862; referred to in the IRR of R.A. No. 10175.
19 Section 3(p), R.A. No. 9208, as amended by R.A. No. 11862; Referred to in R.A. No. 10175.
20 Section 3(q), R.A. No. 9208, as amended by R.A. No. 11862; Referred to in the IRR of R.A. No. 10175.
21 Section 3(s), R.A. No. 9208, as amended by R.A. No. 11862; Referred to in R.A. No. 10175.

OSAEC AS DEFINED AND PENALIZED UNDER R.A. NO. 11862

A. TRAFFICKING IN PERSONS

In order to prove a trafficking in persons crime, three elements are necessary: (1) act, (2) means, and (3) purpose. "**Acts**" are those listed in Section 4 of R.A. 11862, and include recruiting, obtaining, hiring, providing, offering, transporting, transferring, maintaining, harboring, or receiving a person for the purposes prohibited by the law. The "**means**" used to commit the crime include threats, use of force, other coercion, abduction, fraud, deceit, abuse of power or position, taking advantage of the vulnerability of a person, or giving or receiving payment or benefit to obtain the consent of person having control of another. For instance, a trafficker who forces a woman to offer sexual services to foreign customers by telling her that he will hurt her family if she does not do so has used a "threat" as the *means* of his trafficking. Finally, trafficking occurs when the act and means are "for the **purpose** of exploitation," which includes the production of CSAEM, other forms of sexual exploitation, forced labor, slavery, or organ sale.

While the element of "means" was previously sourced from the definition of Trafficking in Persons under Section 3(a) of the R.A. No. 10364, Section 4 (on acts of trafficking in persons) of R.A. No. 11862 amended R.A. No. 9208 and R.A. No. 10364 to include the means on how trafficking in persons is committed in the opening paragraph. This reinforces the means as an element to the crime of trafficking in persons when any of the acts enumerated are committed. The amendment further clarified that for purposes of overseas domestic work, a "child" means a person below twenty-four (24) years old.

Significantly, Section 4 contains newly-added language clearly stating that **when the victim is a child, the means to commit trafficking in persons shall not be necessary**. This new language indicates that only the elements of "act" and "purpose" are required to establish trafficking of children. A person who commits any of the defined acts against a child for any of the purposes of trafficking will be in violation of the law, regardless of if they used means like threats, force, coercion, etc.[22]

The new Section 4 of R.A. No. 11862 now reads in part:

> **Section 4.** *Acts of Trafficking in Persons.* — It shall be unlawful for any person, natural or juridical, to commit by means of a threat, or use of force, or other forms of coercion, or through abduction, fraud, deception, abuse of power or of position, or through taking advantage of the vulnerability of the person, or by giving or receiving of payment or benefit to obtain the consent of a person having control over another person, any of the following acts:
>
> xxx xxx xxx
>
> *Provided,* That when the victim is a child, the means to commit these unlawful acts as enumerated in the first paragraph of this section shall not be necessary…

Furthermore, OSAEC, as a species of trafficking in persons, has now been expressly provided in Section 4(a) as well as Section 4(k) of R.A. No. 11862. The amended provisions concerning OSAEC are as follows:

> (a) To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution,

22 Note that in practice there is sometimes difficulty in proving the minority of the child. In these cases, it is wise to allege in the Information the means used in trafficking the victim.

pornography, sexual abuse or exploitation, production, creation, or distribution of CSAEM or CSAM, forced labor, slavery, involuntary servitude, or debt bondage;

xxx xxx xxx

(k) To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt or receive a child for purposes of exploitation or trading them, including but not limited to, the act of baring and/or selling a child for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include:

xxx xxx xxx

(2) The use, procuring or offering of a child for prostitution, for the production of CSAEM or CSAM, or for pornographic performances;

xxx xxx xxx

In R.A. No. 11862, the phrase "provide financial support" is inserted in section 4(l), thereby making those persons providing financial support for purposes of committing trafficking in persons criminally liable. The amended provisions states:

(l) To organize, provide financial support, or direct other persons to commit the offenses defined as acts of trafficking under this Act; and

xxx xxx xxx

B. ACTS THAT PROMOTE TRAFFICKING IN PERSONS

Another addition, this time in Section 5 of R.A. 11862, is the inclusion of "Acts that promote trafficking in persons," specifically related to OSAEC.

First, R.A. No. 11862 expands Section 5(a), which makes it a crime for persons to "knowingly lease or sublease, use or allow to be used" their various properties and tourist business for the purposes of trafficking. The revised provision now includes those who lease or sublease or use or allow to be used "... any of their computer system or computer hardware, other computer-related device, or any of their digital platform and application" for the purpose of trafficking.

Next, R.A. No. 11862 adds several new provisions in Section 5(k), (l), and (m). Subsections (k) and (l) provide criminal liability to persons/businesses (either internet intermediaries or internet cafes, kiosks, and hotspots, including establishments offering Wi-Fi access services to the public) who knowingly or by gross negligence[23] allow their internet infrastructures or facilities to be used for purposes of promoting trafficking in persons.

Similarly, Section 5(m) makes it unlawful for financial intermediaries to knowingly or by gross negligence allow their services, online platform, and applications, among others, to be used for the purpose of promoting trafficking in persons criminally liable. Financial intermediaries are "…person[s] or entit[ies] whose principal functions include lending, investing or placement of funds or evidence of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either

23 ***Gross negligence*** has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. (***Roberto P. Fuentes vs. People,* G.R. No. 186421, 17 April 2017**)

for their own account or for the account of others."[24] These include banks, credit card companies, money transfer or remittance centers, etc.[25]

Furthermore, persons violating Section 5(m) shall be deemed to have committed unlawful activities and penalized for money laundering,[26] as provided in Section 10(j) of the law.

C. QUALIFIED TRAFFICKING IN PERSONS

"Qualified trafficking in persons" crimes are more severe forms of trafficking in persons, such as when the trafficked person is a child, large-scale trafficking, continuous trafficking, or trafficking during times of crises, among other things. Qualified trafficking crimes also carry the highest penalty in the law of life imprisonment, along with fines of Two to Five Million Pesos. Under a new Section 6(o) of R.A. No. 11862, acts committed by or through the use of ICT (Information and Communications Technology) or any computer system shall be considered as qualified trafficking.

Under R.A. No. 9208, as amended by R.A. No. 10362 and R.A. No. 11862, qualified trafficking crimes include those where the trafficked person is a child, a person with disability, or a member of a religious or indigenous minority group, when the trafficking is committed by a syndicate or in large scale, when the trafficking acts occur over 60 days (continuous or not), when the offender is a close family member of the victim (i.e., spouse, parent, etc.) or a member of the military or law enforcement, when the person is adopted for purposes of exploitation, when the person is recruited for prostitution with military or law enforcement agencies, when the person suffers death or serious injury (insanity, AIDS/HIV, or mutilation), mental or emotional disorders, or becomes pregnant, when the offender or through another directs or manages the actions of a victim in carrying out trafficking, when the trafficking occurs during a time of emergency or crisis or when the person is a victim of the same, and when the act is committed by or through the use of ICT or any computer system. [27]

Furthermore, Section 6(a) has added language expressly stating that acts of online sexual abuse and exploitation of children shall be without prejudice to appropriate investigation and prosecution under other related laws. This proviso makes clear that the investigation and prosecution of a trafficking in persons crime of OSAEC does not prohibit investigation and prosecution of OSAEC under other laws that also criminalize OSAEC, as warranted by available evidence and provided the accused would not be placed in double jeopardy.

For instance, trafficking in persons for purposes of production, creation, or distribution of CSAEM, and qualified under subparagraph (a) (when the trafficked person is a child) and (o) (through the use of ICT or a computer system), may have similar elements as some prohibited acts under R.A. No. 11930. However, despite the similarities in the acts and purpose, it is submitted that perpetrators can still be prosecuted both under R.A. No. 11930 and R.A. No. 11862 in view of the saving clause provided the last paragraph of Section 4 of R.A. No. 11930, to wit:

> *[…] Provided,* That the investigation or prosecution of offenses under this Act shall be without prejudice to appropriate investigation and prosecution mechanisms under Republic Act No. 9208, otherwise known as the "Anti-Trafficking in Persons Act of 2003", as amended, and other related laws.

24 Rule 2, Section 1(k), AMLC IRR of R.A. No. 11862.
25 *See* Section 5(m), R.A. No. 9208, as amended by R.A. No. 11862.
26 Money laundering has been generally defined by the International Criminal Police Organization (Interpol) as "any act or attempted act to conceal or disguise the identity of illegally obtained proceeds so that they appear to have originated from legitimate sources. (Republic vs. Eugenio, Jr., et al., G.R. No. 174629, 14 February 2008)
27 *See generally* Section 6, R.A. No. 9208, as amended by R.A. No. 10362 and R.A. No. 11862.

DUTIES OF INTERNET AND FINANCIAL INTERMEDIARIES

Another significant change introduced in R.A. No. 11862 is the inclusion of duties and responsibilities of the private sector. Specifically, Section 9(a) lists the duties of internet intermediaries while Section 9(d) provides for the responsibilities of financial intermediaries. In general, these duties compel the internet and financial intermediaries to report and actively cooperate with law enforcement agents in their investigation of OSAEC or other trafficking cases.

A. INTERNET INTERMEDIARIES

Internet intermediaries have a specific duty, upon notice[28] from the appropriate government agencies or upon their own knowledge[29] of trafficking in persons activities, to immediately block access to, remove, or take down the internet address, URL, website, or any content thereof, containing all forms of trafficking, CSAEM or CSAM, or any form of sexual exploitation of children.[30]

Moreover, internet intermediaries must report to government agencies the "internet addresses or websites . . . or any form of unusual content or traffic data involving all forms of TIP, child pornography, or any form of sexual exploitation of children" that they block or otherwise remove within three (3) days of such blocking or removal.[31]

Internet intermediaries are also required to cooperate with law enforcement agencies in relation to criminal investigation, evidence gathering, and prosecution.[32] Such cooperation includes the duty, upon Law Enforcement Officers' (LEOs) written request,[33] to preserve evidence, which may include providing to law enforcement the subscriber information, traffic data, or both, of any person or subscriber who has committed, is committing, or is attempting to commit any violation of this law.[34]

Relatedly, internet intermediaries must "preserve and protect the integrity" of subscriber or registration information and traffic data. They must maintain such information for one (1) year, which may be extended to an additional one (1) year upon the request of an LEO for trafficking in persons investigation and prosecution purposes.[35] Additionally, internet intermediaries must compile and maintain a list of URLs related to CSAEM or other child trafficking, which should be updated regularly in coordination with widely-recognized organizations and coalitions that similarly maintain comprehensive lists of child abuse image content, URLs and image hashes, and other related information.[36]

28 *See* Section 145(e) of IRR of R.A. 11862 for the detailed list of legal requirements for the notice.

29 "'Knowledge' shall mean actual knowledge of the existence of an attempt to commit or an actual act of TIP being committed within their control, which may include the receipt of reports containing the specific internet address, URL, website, or any content to be blocked/removed/taken down, legal basis for alleged violation with reference to the specific provision of the Act alleged to be violated, and all other facts that the internet intermediaries may deem necessary for them to facilitate a full review of the report. The reports should clearly and distinctly state the facts from which it is apparent that the internet address, URL, website, or any content thereof, contains any form of TIP, CSAEM or CSAM, or any form of sexual exploitation of children." Section 145(e), IRR of R.A. No. 11862.

30 Section 9(a)(5), R.A. No. 9208, as amended by R.A. No. 11862.

31 Section 145(f), IRR of R.A. No. 11862; Section 9(a)(6), R.A. No. 9208, as amended by R.A. No. 11862.

32 Section 145(b), IRR of R.A. No. 11862; *see also* Section 9(a)(2), R.A. No. 9208, as amended by R.A. No. 11862.

33 *See* Section 110(b) of IRR of R.A. 11862 for the detailed list of legal requirements for the written request.

34 Section 9(a)(5); Section 145(b), IRR of R.A. No. 11862.

35 Section 145(d), IRR of R.A. No. 11862.

36 Section 145(c), IRR of R.A. No. 11862; Section 9(a)(3), R.A. No. 9208, as amended by R.A. No. 11862.

Furthermore, LEOs can request[37] and acquire from internet intermediaries subscriber information of any person who gained or attempted to gain access to an internet site or internet application which contains any form of child trafficking, CSAEM or CSAM, or any form of sexual exploitation of children.[38]

R.A. No. 11862 also requires internet intermediaries to have provisions in their terms of service or service agreements with third parties prohibiting "any form of child trafficking, CSAEM or CSAM, or exhibition of any form of sexual exploitation of children in their facilities, infrastructure, server and platforms."[39]

B. FINANCIAL INTERMEDIARIES

Under the AMLC IRR of R.A. No. 11862, financial intermediaries must register with AMLC's electronic reporting system and establish an internal trafficking in persons monitoring system to ensure "timely, accurate, and complete" reporting.[40] They must also have internal written procedures for "cooperating and complying with investigations, assessments, directives and orders" of government agencies and the courts.[41]

Financial intermediary monitoring includes looking at "primary indicators" of CSAEM activities, such as excessive continued expenses over time, amounts sent or received from suspected or known facilitators of OSAEC, small amounts sent by a foreigner to many recipients with "unjustified purpose and unknown relationship," money sent to OSAEC hotspot areas in the Philippines, or money spent on websites linked to trafficking in persons activities.[42] They should also monitor "secondary indicators" such as abrupt increases in spending over time, frequent transfers between bank accounts and websites like gaming and Bitcoin, e-money sent through mobile apps, money sent at inconsistent times for business hours, or money received by a foreign national who has sent money to different Filipino individuals.[43] The AMLC identifies several other red flags on both transactions and customers that financial intermediaries should be watching for as well.[44]

Furthermore, financial intermediaries must comply with any court orders obtained by LEOs allowing such LEOs to:[45] (a) inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution; or (b) require financial intermediaries, internet payment system providers, and other financial facilitators to provide financial documents and information.

37 Refer to Section 145(g) of IRR of R.A. 11862 for the detailed list of legal requirements for the request.
38 Section 9(a)(7), R.A. No. 9208, as amended by R.A. No. 11862.
39 Section 145(a), IRR of R.A. No. 11862; *see also* Section 9(a)(1), R.A. No. 9208, as amended by R.A. No. 11862.
40 Rule 4, Sections 3 and 4.1, AMLC IRR of R.A. No. 11862; *see also* Section 4.2 and 4.3 for the specific requirements for electronic monitoring systems and manual monitoring, respectively.
41 Rule 8, Section 1, AMLC IRR of R.A. No. 11862.
42 Rule 5, Section 3, AMLC IRR of R.A. No. 11862.
43 Rule 5, Section 4, AMLC IRR of R.A. No. 11862.
44 *See* Rule 4, Sections 5 and 6, AMLC IRR of R.A. No. 11862.
45 *See* Rule 6 of AMLC IRR of R.A. No. 11862 for instructions on filing of the *Ex Parte* Application for the Issuance of Bank Inquiry Order and Rule 7 of AMLC IRR of R.A. No. 11862 for instructions on filing of *Ex Parte* Application for the Issuance of an Order Allowing Access to Financial Documents and Information.

C. PROTECTION FOR INTERNET AND FINANCIAL INTERMEDIARIES

Notably, the last paragraph of Section 9 provides that:

> The duties and obligations of the above entities as stated herein, when requested by law enforcers, prosecutors and other investigative bodies through proper processes and done in good faith, shall not be construed as violation of Republic Act No. 10173 or the 'Data Privacy Act of 2012' or Republic Act No. 10175 or the 'Cybercrime Prevention Act of 2012'.

D. LIABILITY FOR INTERNET AND FINANCIAL INTERMEDIARIES

Significantly, internet or financial intermediaries that violate Section 9 and do not conform to their duties therein will be held *criminally liable* as provided in Section 10(g), including a fine of Two to Five Million pesos for the first offense, increasing to Two to Ten million pesos for subsequent offenses and a revocation of their relevant business license. Furthermore, juridical persons who own or manage the internet or financial intermediary businesses will also be liable.

OTHER SALIENT PROVISIONS

Amended Provisions Defining and Penalizing Trafficking in Persons

New Penalties

Investigation and Prosecution

Obtaining Information and Assistance from Internet and Financial Intermediaries

Family Court Jurisdiction

Protections for Survivors

Duties and Responsibilities of Other Members of the Private Sector

Extra-Territorial Jurisdiction

Decriminalization of Prostitution

Other Salient Provisions

AMENDED PROVISIONS DEFINING AND PENALIZING TRAFFICKING IN PERSONS

As noted above, Section 4 of R.A. No. 11862 amended and added to the acts constituting (i) trafficking in persons, (ii) promoting trafficking in persons, and (iii) qualified trafficking in persons.

For easy reference, the chart below provides a side-by-side comparison of the original and amended sections of Section 4, and the associated penalties:

R.A. No. 9208, as amended by R.A. No. 10364)	Amendments under R.A. No. 11862
Section 4: Acts of Trafficking in Persons	
(a) To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, or sexual exploitation	**(a)** To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual <u>abuse or</u> exploitation<u>, production, creation, or distribution of CSAEM or CSAM, forced labor, slavery, involuntary servitude, or debt bondage</u>
(b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage	**(b)** To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under <u>Republic Act No. 10906 or the Anti-Mail Order Spouse Act</u>, any Filipino to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage
(g) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography,	(g) To adopt or facilitate the adoption of persons <u>with or without consideration</u> for

sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage	the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage, or to facilitate illegal child adoptions or child-laundering, or for other exploitative purposes
(h) To recruit, hire, adopt, transport, transfer, obtain, harbor, maintain, provide, offer, receive or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person	**(h)** To recruit, hire, adopt, transport, transfer, obtain, harbor, maintain, provide, offer, receive, or abduct a person, for the purpose of removal or sale of organs of said person;
(k) To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt or receive a child for purposes of exploitation or trading them, including but not limited to, the act of baring and/or selling a child for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include: (1) All forms of slavery or practices similar to slavery, involuntary servitude, debt bondage and forced labor, including recruitment of children for use in armed conflict; (2) The use, procuring or offering of a child for prostitution, for the production of pornography, or for pornographic performances; (3) The use, procuring or offering of a child for the production and trafficking of drugs; and (4) The use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals;	**(k)** To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt, or receive a child for purposes of exploitation or trading them, including the act of buying or selling a child, or both, for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include: (1) All forms of slavery or practices similar to slavery, involuntary servitude, debt bondage, and forced labor, including recruitment of children for use in armed conflict; (2) The use, procuring or offering of a child for prostitution, for the production of CSAEM or CSAM, pornography, or for pornographic performances; (3) The use, procuring or offering of a child for the production and trafficking of drugs; and (4) The use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals;
	(m) To recruit, transport obtain, transfer, harbor, maintain, offer, hire, provide, receive, or adopt a child for deployment abroad as migrant worker.

Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00)[.][46]

R.A. No. 9208, as amended by R.A. No. 10364)	Amendments under R.A. No. 11862
Section 5: Acts that Promote Trafficking in Persons	
(b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers, overseas employment certificates or other certificates of any government agency which issues these certificates, decals and such other markers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons	**(b)** To produce, print and issue or distribute unissued, tampered, or fake passports, birth certificates, affidavits of delayed registration of births, foundling certificates, travel clearances, counseling certificates, registration stickers, overseas employment certificates or other certificates of any government agency which issues these certificates, decals and such other markers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons
(e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons	**(e)** To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports, knowing they are not in possession of required travel documents, or are in possession of unissued, tampered, fake, or fraudulently acquired travel documents for the purpose of promoting trafficking in persons
	(n) To knowingly or by gross negligence facilitate, assist, or help in the entry into the country of persons who are convicted sex offenders whether at international and local airports, territorial boundaries, and seaports for the purpose of promoting trafficking in persons

46 Section 10(a), R.A. No. 9208, as amended by R.A. No. 10364.

	(o) To arrange, facilitate, expedite, or cause the introduction or encounter of persons who are suspected or convicted sex offenders in any jurisdiction, to a child. The actual introduction or encounter need not occur to be liable under this provision. It is enough that there is a deliberate attempt to cause the introduction or encounter
Any person found guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00)[.][47]	

R.A. No. 9208, as amended by R.A. No. 10364)	Amendments under R.A. No. 11862
Section 6: Qualified Trafficking in Persons	
(h) When the offender commits one or more violations of Section 4 over a period of sixty (60) or more days, whether those days are continuous or not	**(h)** When the offender commits one or more violations of Section 4 over a period of <u>at least</u> sixty (60), whether those days are continuous or not
(i) When the offender directs or through another manages the trafficking victim in carrying out the exploitative purpose of trafficking	**(i)** When the offender<u>, or through another,</u> directs or manages the <u>actions of a</u> victim in carrying out the exploitative purpose of trafficking
	(j) <u>When the crime is committed during a crisis, disaster, public health concern, pandemic, a humanitarian conflict, or emergency situation, or when the trafficked person is a survivor of a disaster or a human-induced conflict</u>
	(k) <u>When the trafficked person belongs to an indigenous community or religious minority and is considered a member of the same</u>

47 Section 10(d), R.A. No. 9208, as amended by R.A. No. 10364.

	(l) <u>When the traffic person is a person with disability (PWD)</u>
	(m) <u>When the crime has resulted in pregnancy</u>
	(n) <u>When the trafficked person suffered mental or emotional disorder as a result of being victim of trafficking</u>
Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00)[.][48]	

Note: All <u>underlined</u> texts in this resource are **new or amended provisions.**

NEW PENALTIES

There are also new penalties for violation of the law. For instance, penalties are now imposed on recruitment or manning agencies which recruit or deploy an underage migrant worker. Their license shall be automatically revoked and shall be penalized with a fine of One to Three Million Pesos per recruited underage migrant worker.[49]

Moreover, penalties on offending juridical entities such as corporations, partnerships, associations, clubs, or establishments shall be imposed upon the owner, president, partner, manager, or any responsible officer, or any two or more of them who participated in the commission of the crime or have permitted or knowingly failed to prevent its commission.[50]

One provision which should be given emphasis to is Section 10(k), which penalizes any person who files a complaint under the new law with malice and solely for the purpose of harassing, persecuting, or subjecting the person to unwarranted surveillance or wiretapping, or both. The penalty is steep – imprisonment of not more than one year and a fine of Five Hundred Thousand to a Million Pesos.

48 Section 10(e), R.A. No. 9208, as amended by R.A. No. 10364.
49 Section 10(i), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
50 Section 10(l), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.

INVESTIGATION AND PROSECUTION

A. TIP AS A "PUBLIC CRIME"

R.A. No. 11862 further recognizes that the offenses are "public crimes," meaning they are viewed as being against public society more generally, not simply against the individual victim, and the nature of the crime is abhorrent. Hence, when it comes to prosecuting any of the offenses defined under the law, R.A. No. 11862 expands the list of persons who may file a complaint to include the following:

- officer or social worker or representative of a licensed child-caring institution,
- officer of social worker of the Department of Social Welfare and Development (DSWD),
- Philippine National Police (PNP),
- National Bureau of Investigation (NBI) officers,
- barangay chairperson, or
- at least three (3) concerned citizens where the violation occurred, provided that the same have personal knowledge of the commission of the offense.[51]

A further effect of the classification of trafficking in persons as a "public crime" is that execution of an affidavit of desistance (which is a sworn statement by a survivor that they are not interested in pursuing a criminal case) by the victims, their parents, or legal guardians will not warrant the dismissal of the case. Furthermore, attempt to unduly pressure the person to execute an affidavit of desistance is also punishable under the law.[52]

B. REPORTING

As noted above, under R.A. No. 11862, private sectors actors have reporting obligations when they encounter trafficking in persons activities. The 2022 Revised Rules and Regulations Implementing Republic Act No. 9208, as amended (IRR of R.A. No. 11862)[53] also make clear that *anyone* "who has any knowledge or learns of facts or circumstances that give rise to a reasonable belief that a person will be, or suspected to be, or is in the process of being trafficked" must report such facts and circumstances immediately. Reports can be made orally or in writing, and should be provided to:

- Barangay officials;
- Local Council for the Protection of Children (LCPC);
- Any local anti-trafficking committee;
- Local social welfare and development office (LSWDO);
- Police or other local enforcement agencies; or
- Any member of IACAT, or to IACAT via the 1343 Action Line, social media pages, or helplines of law enforcers, LGUs, and council members.

51 Section 8(h), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
52 Section 8(j), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
53 Section 6, 2022 Revised Rules and Regulations Implementing Republic Act No. 9208, as amended (IRR of R.A. No. 11862).

C. GENERAL INVESTIGATIONS

R.A. No. 11862 now mandates that LEOs initiate investigations and counter-trafficking-intelligence gathering *motu proprio*[54] or by proactively conducting investigations and intelligence gathering. While to a certain extent the LEOs already do this, under R.A. No. 11862, LEOs are now time-bound whenever they receive statements, reports, or affidavits from trafficking victims, their families, or those entities required to report suspicious activities. Within ten (10) days upon receipt of such information, LEOs must investigate and gather evidence, and for this purpose, the LEO shall closely coordinate with the reporting party or entity. LEOs shall also initiate bilateral or multilateral agreements with other States (countries) to allow cooperation and information-sharing between foreign internet intermediaries and local authorities in relation to the investigation.[55]

Additionally, investigators looking into trafficking crimes are required to conduct parallel investigations in the financial assets associated with the crime, such as proceeds or other "fruits" of the offense, and money used to commit the crimes. Agencies can coordinate with AMLC to obtain information about these assets and transactions, such as the location of such assets, the name of the owners, and the tracing of their use.[56] Agencies can also request that AMLC file a petition for a freeze order on such accounts.[57] Prosecutors may pursue criminal forfeiture against an offender, in addition to trafficking in persons crimes.[58]

During investigation and rescue operations, all involved parties must "ensure the full protection and respect the rights" of the trafficking survivors. This includes protecting such survivors' privacy, ensuring their immediate needs are addressed, keeping them informed of the situation and any ongoing legal processes, and placing them in temporary custody of IACAT. When taking survivor statements, interviews must be completed in a gender-sensitive and trauma-informed manner. If the survivor is a child, child sensitivity is required, including the presence of a social worker, or if one is not available, someone trained in giving such interviews to children. Furthermore, the use of videotaped interviews and limiting the number of times the survivors must give statements is encouraged to avoid re-traumatization.[59]

D. NEW INVESTIGATION TOOLS

R.A. No. 11862 substantially amended Section 8 of R.A. No. 10364 by adding provisions pertaining to Interception of Communications, Custody of Intercepted Communications, Disposition of Deposited Materials, and Evidentiary Value of Deposited Materials.

i. Interception of Communications

Under Section 8, as a general rule, law enforcement officers (LEOs) are required to secure a written order from the Regional Trial Court[60] to do interception of communication activities (such as, tracking, intercepting, viewing, monitoring, surveilling, listening to, and recording any communications, information, or messages) on trafficking suspects. LEOs are also required to establish probable cause before a court grants their request for the issuance of an order to allow the conduct of interception of communication activities.

54 In Latin, "on his own impulse." It describes an official act taken without specific request from someone else.
55 Section 8(a), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
56 Section 26, IRR of R.A. No. 11862.
57 Section 27, IRR of R.A. No. 11862.
58 Section 93, IRR of R.A. No. 11862.
59 Sections 17 – 19 and 112, IRR of R.A. No. 11862.
60 This written order can take the form of a warrant to intercept computer data.

The court order shall only be valid for thirty (30) days, which may be extended for another thirty (30) days.

ii. Custody and Disposition of Intercepted Communications

The newly amended Section 8 of R.A. No. 11862 also mandates LEOs to limit and record in an affidavit the number of copies of the intercepted evidence they acquired and possess by virtue of their online engagement or interception activities. Notably, LEOs are required to secure a court authorization before they may copy computer data for purposes of utilizing the same in case build-up or preliminary investigation. Copying without court authorization is considered a criminal offense and is punishable under this law. These pieces of evidence are likewise required to be deposited in court within a certain timeframe.

iii. Prior DOJ Authorization to File an *Ex Parte* Application to Intercept

Notably, Section 8(e) outlines the procedure for custody and disposition of intercepted communications, including the contents of the joint affidavit required to be submitted with the evidence. Note that Section 8(c)(4) (under contents of joint affidavit) states that "the date of the original written authorization granted by the DOJ to the applicant to file the *ex parte* application to conduct the interception" should form part of the joint affidavit. It must be highlighted, however, that Sections 8(a) and (b), which cover the procedure and requirements for the application to conduct interception, do not make mention of any prior authorization from the DOJ to file the application.

iv. Inadmissible Evidence and Criminal Liability

To reiterate, LEOs must strictly comply with the requirements provided above, otherwise, the intercepted pieces of evidence shall not be admissible.[61] Any person violating these requirements[62] shall be held criminally liable, as provided in Section 10(h).[63]

v. Exception to Requirement of a Court Order

However, there is an **exception to this requirement of a court order** when: (a) the suspected victim is a child; (b) the offense involves the use of computer systems and digital platforms; and (c) the surveillance and interception was done by LEOs in an undercover capacity. Senator Pia S. Cayetano, principal author of R.A. No. 11862, stressed the need for measures like this one to be included in the law, stating the "the complexity of ever-evolving digital technologies stresses the need to update our policies and equip our law enforcers with the necessary powers to go after perpetrators of human trafficking, and those who aid them."[64]

Section 8 also provides a safeguard for victims and for LEOs acting in an undercover capacity if either record their communications with a suspect, expressly stating that such recording shall not be considered criminal wiretapping or illegal interception. However, evidence obtained in violation of this Section shall be inadmissible in all proceedings.[65]

61 Section 8(g), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
62 Specifically, the requirements of Sections 8(b), (d), and (g).
63 Section 10(h), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
64 *Stronger law, institutions needed to defeat human trafficking By Senator Pia S. Cayetano Principal author*, *Republic Act 11862 Expanded Anti-Trafficking in Persons Act*, Press Release June 30, 2022, Senate of the Philippines.
65 *See* Section 8(b) & (g), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.

OBTAINING INFORMATION AND ASSISTANCE FROM INTERNET AND FINANCIAL INTERMEDIARIES

R.A. No. 11862 also gives law enforcement and prosecution new tools to secure evidence, information, and data that can aid in the investigation and prosecution of trafficking in persons crimes.

As noted above, LEOs can request subscriber information and traffic data from internet intermediaries[66] and require data preservation.[67] They can also require internet intermediaries to block, remove, or take down any internet websites, URLs, or other content that contains any kind of trafficking, including CSAEM.[68]

Similarly, information may be obtained from financial intermediaries upon issuance of a court order allowing LEOs to:[69] (a) inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution; or (b) require financial intermediaries, internet payment system providers, and other financial facilitators to provide financial documents and information. The IRR also confirms that law enforcement and other relevant agencies may provide information to the AMLC so that AMLC may petition for a freeze order of the suspect's assets.[70]

FAMILY COURT JURISDICTION

Importantly, cases must be filed and heard in the *Family Court* where the offense was committed or where any of its elements occurred, or where the trafficked person actually resides at the time of the commission.[71] Jurisdiction being vested in Family Courts, rather than cybercrime courts (although the crimes may also be cybercrimes), ensures that cases are handled by judges and court personnel who are experienced in dealing with survivors of exploitation and abuse.

PROTECTIONS FOR SURVIVORS

The right to privacy of the victims and their families must be respected and protected at all times. Therefore, all records and proceedings from the initial contact until the final disposition of the case shall be considered privileged and confidential. To this end, the Rule on Examination of Child Witnesses shall be followed when the testimony of the child shall be taken. In addition, digital media is also now included in the list of entities that will be held accountable should the same cause any publicity that may result in the further suffering of the survivor. Likewise, any person or agency involved in the reporting, investigation, or trial of cases of gender-based violence

66 Section 9(a)(7), R.A. No. 9208, as amended by R.A. No. 11862.
67 Section 9(a)(4), R.A. No. 9208, as amended by R.A. No. 11862.
68 Section 9(a)(5), R.A. No. 9208, as amended by R.A. No. 11862; note that the request must be in the form required under Section 145(e) of the IRR of R.A. No. 11862.
69 *See* Rule 6 of AMLC IRR of R.A. No. 11862 for instructions on filing of the *Ex Parte* Application for the Issuance of Bank Inquiry Order and Rule 7 of AMLC IRR of R.A. No. 11862 for instructions on filing of *Ex Parte* Application for the Issuance of an Order Allowing Access to Financial Documents and Information.
70 Section 27, IRR of R.A. No. 11862.
71 Section 8(i), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862; OCA Circular No. 05-2023 (January 6, 2023) (". . . where one or more of the victims is a minor at the time of the commission of the offense, the case shall be heard before a Family Court pursuant to Section S(a) of Republic Act No. 8369, otherwise known as the Family Courts Act of 1997").

shall refrain from any act or statement that may be construed as blaming the victim or placing responsibility for the offense committed against the victim.[72]

R.A. No. 11862 also reiterates the need to place trafficking victims under the protective custody of the DSWD immediately, when the same is warranted, pursuant to The Anti-Child Abuse Law (R.A. No. 7610). In the regular performance of this mandate, the law protects the DSWD from any administrative, civil, or criminal liability. In addition, custody proceedings shall still be in accordance with the Child and Youth Welfare Code (P.D. No. 603). The DSWD shall also provide immediate temporary protective shelter to all trafficking victims, regardless of age. In cases where the trafficked person is overseas, the relevant embassy or consulate shall provide said immediate temporary shelter.[73] Survivors are also entitled to free legal services, provided in a language they understand.[74]

Further protection shall be accorded to victims of trafficking and their family members as they have preferential entitlement to the rights and benefits of witnesses under R.A. No. 6981 (Witness Protection, Security, and Benefit Act), for as long as they are qualified under the same. Finally, a victim of trafficking shall also be entitled to claim compensation under Section 3(d) of R.A. No. 7309 (Act Creating a Board of Claims under the Department of Justice).[75]

DUTIES AND RESPONSIBILITIES OF OTHER MEMBERS OF THE PRIVATE SECTOR

R.A. No. 11862 recognizes that the private sector also plays a significant role in the possible prevention, detection, and elimination of human trafficking in the Philippines. Hence, aside from the internet and financial intermediaries mentioned above in relation to OSAEC cases, others in the private sector also have duties and responsibilities under this law.

All tourism enterprises, for example, are mandated to report to the DSWD, DOJ, DOLE, PNP, or NBI within forty-eight (48) hours from gathering facts and circumstances that trafficking in persons is being committed in their premises. They are also mandated to post notices containing hotlines of proper authorities to report to and engage in anti-trafficking advocacy. They shall also develop their own anti-trafficking policies, including training of employees to recognize and report suspected trafficking activities, in accordance with the guidelines from IACAT. These responsibilities shall be made part of the requirements for accreditation by local government and the issuance of a business permit to operate.[76]

Likewise, **owners, lessors, sub-lessors, or operators of hotels, transient and residential houses, condominiums, dormitories and apartments, or any analogous living spaces** are mandated by law to notify the PNP or NBI not later than forty-eight (48) hours from obtaining facts and circumstances that trafficking or OSAEC activities are being committed within their premises. Actual knowledge of such facts and circumstances is required for prosecution under the law. Should they receive information that trafficking activity has taken place within their premises, owners, lessors, sub-lessors, or operators are likewise responsible to notify the PNP or the NBI of said trafficking activities.[77]

Violations of this provision shall be meted with the penalty of a fine of Two to Five Million Pesos for the first offense, and Two to Ten Million Pesos and revocation of franchise and license to operate for subsequent offenses. Furthermore, juridical persons owning or managing said enterprises will also be subject to liability and their

72 Section 8(l), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
73 Section 8(k), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
74 Section 109, IRR of R.A. No. 11862.
75 Section 8(k), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
76 Section 9(c), R.A. No. 9208, as amended by R.A. No. 11862.
77 Section 9(b), R.A. No. 9208, as amended by R.A. No. 11862.

licenses/permits revoked. Finally, a willful and intentional violations carry a penalty of imprisonment of six years and fine of Five Hundred Thousand to One Million Pesos.[78]

EXTRA-TERRITORIAL JURISDICTION

Section 26-A of R.A. No. 9208, as amended by R.A. No. 10364, already recognized the extra-territorial jurisdiction of the Philippines over any act defined and penalized under the law, even if the same was committed outside of the Philippines and whether or not the act or acts constitute an offense at the place of commission, if the offense, being a continuing offense, was either commenced in the Philippines; or committed in another country.[79] The change in language here effectively confers jurisdiction on the State, even if all the acts constituting the offenses defined by the law, are committed in another country, if: (a) the act was committed by a Filipino citizen or a permanent resident of the Philippines, or (b) against a citizen of the Philippines.

DECRIMINALIZATION OF PROSTITUTION

Notably, the new law absolutely **repeals** Article 202 of the Revised Penal Code, as amended by R.A. No. 10158, which defined and penalized prostitution, effectively decriminalizing the said act.[80] Repealing Article 202 of the Revised Penal Code reinforces Section 17-A of R.A. No. 10364, which exempts victims of trafficking for the purpose of prostitution from criminal liability. In other words, regardless of whether a person is proved to be a trafficked victim or not, they will no longer be considered a criminal for habitually engaging in sexual intercourse or lascivious conduct for money or profit.

Furthermore, survivors of trafficking, particularly those who have suffered gender-based violence, must not be subject to victim-blaming by officials, officers, organizations, or any other involved party to their case. In particular, any evidence concerning the past sexual behavior of trafficking survivors is inadmissible if offered to prove "consent of the trafficked person to engage in sexual behavior," or "the predisposition, sexual or otherwise, of a trafficked person."[81]

78 Section 10(g), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
79 Section 26-A, R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
80 Section 21, R.A. No. 11862.
81 Section 102, IRR of R.A. No. 11862.

ADMINISTRATIVE PROVISIONS

Membership and Functions of the IACAT

Trust Fund and Additional Services to Trafficked Persons

Healing, Recovery, and Reintegration Program

Implementing Rules and Regulations

Repealing Clause

Administrative Provisions

MEMBERSHIP AND FUNCTIONS OF THE IACAT

R.A. No. 11862 requires more government agencies to support and help curb the proliferation of human trafficking activities and expands the responsibilities of currently involved agencies.[82]

The following agencies' mandates have been expanded under R.A. No. 11862: DFA, DSWD, DOLE, DOJ, BI, DILG, PCG, and PCTC.[83]

There are also several agencies that are newly tasked with establishing and implementing preventive, protective, and rehabilitative programs for trafficked persons. These are the (a) Commission on Filipinos Overseas,[84] (b) Local Government Units,[85] (c) Department of Health,[86] (d) Department of Information and Communications Technology,[87] (e) Department of Migrant Workers,[88] (f) Department of Tourism,[89] (g) Department of Education,[90] (h) Department of Agriculture and Bureau of Fisheries and Aquatic Resources,[91] (i) Department of Transportation,[92] (j) National Council on Disability Affairs,[93] (u) National Commission on Indigenous Peoples,[94] (v) Office of Civil Defense,[95] (w) Philippine Amusement and Gaming Corporation,[96] (x) Council for the Welfare of Children,[97] and (y) Philippine Ports Authority.[98]

Logically, the heads of these administrative agencies are made members of the IACAT, including the Executive Director of the Council for the Welfare of Children, National Authority for Child Care, Anti-Money Laundering Council, the Presidents of the Leagues of Provinces Municipalities, and Cities of the Philippines. It is important to note that for IACAT NGO members, there is an express view towards even geographical representation.[99]

Just as the membership in the IACAT has expanded, so did its powers and functions. Among those is utilizing a multi-disciplinary and collaborative approach in the service delivery to and case management of trafficking victims and survivors and their families, including livelihood opportunities, and the development of school- and community-based human trafficking preventive education programs, and psychosocial interventions by a multi-disciplinary team. Another is developing effective referral systems and integrated case management systems or trafficking in persons data sets for better coordination between government agencies and ensured necessary interventions or assistance, including recovery and reintegration. The IACAT shall also regularly assess current

82 Section 140, IRR of R.A. No. 11862 (providing a detailed list of the roles and responsibilities of these agencies under the law).
83 Section 16(a), (b), (c), (d), (f), (i), (s), and (x), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
84 Section 16(j), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
85 Section 16(k), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
86 Section 16(l), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
87 Section 16(m), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
88 Section 16(n), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
89 Section 16(o), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
90 Section 16(p), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
91 Section 16 (q), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
92 Section 16(r), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
93 Section 16(t), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
94 Section 16(u), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
95 Section 16(v), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
96 Section 16(w), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
97 Section 16(y), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
98 Section 16(z), R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862; *see also* Section 142, IRR of R.A. 11862 (providing a detailed list of the roles and responsibilities of these agencies under the law).
99 Section 20, R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.

data collection and the reporting and monitoring system for trafficking in persons, identify gaps in implementation, and conduct periodic studies with other stakeholders to build more empirical evidence on trafficking cases. Finally, R.A. No. 11862 gave the IACAT the power to impose administrative sanctions on the violations of the law and its implementing rules and regulations, its orders, and resolutions.[100]

The Secretary of Justice shall determine the organizational structure and staffing pattern of the Secretariat for the IACAT and the same shall be submitted to the Department of Budget and Management for approval. Likewise, the amount necessary for the implementation of the law shall be included in the annual General Appropriations Act.[101]

TRUST FUND AND ADDITIONAL SERVICES TO TRAFFICKED PERSONS

There are some significant amendments from R.A. No. 11862 which aim to improve the current implementation system. For instance, R.A. No. 11862 now requires that financial collections by the AMLC for money laundering in relation to human trafficking violations be deposited to the "Trust Fund." The Trust Fund is administered and controlled by IACAT, and all funds therein must be used exclusively for programs that will prevent acts of trafficking and protect, rehabilitate, and reintegrate trafficked persons into the mainstream of society.[102]

Furthermore, trafficked persons who are foreign nationals are entitled to interpreters and assistance with coordination with their respective embassies.[103]

HEALING, RECOVERY, AND REINTEGRATION PROGRAM

One provision that significantly impacts survivors is the incorporation of the Healing, Recovery, and Reintegration Program for Trafficked Persons (RRPTP) under Section 24(d) of R.A. No. 9208, as amended by Section 16 of R.A. No. 11862. The RRPTP was established under Memorandum Circular No. 20, series of 2015, by the Department of Social Welfare and Development (DSWD), in compliance with its mandate under Section 16 of R.A. No. 9208, as amended by R.A. No. 10364, and pursuant to other related local[104] and international[105] laws.

The provision mandates that DSWD and the LGUs develop and implement a healing, recovery, and reintegration program for trafficked persons which shall include a comprehensive package of services for the individual

100 Section 21, R.A. No. 9208, as amended by R.A. No. 11862.
101 Section 22, R.A. No. 9208, as amended by R.A. No. 10364 and R.A. No. 11862.
102 Section 15, R.A. No. 9208, as amended by R.A. No. 11862.
103 Section 19, R.A. No. 9208, as amended by R.A. No. 11862.
104 R.A. No. 7610 (Special Protection of Children against Abuse, Exploitation and Discrimination Act), R.A. No. 9775 (Anti-Child Pornography Act); R.A. No. 9231 (An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Children); R.A. No. 8042, as amended by R.A. No. 10022 (Migrant Workers and Overseas Filipinos Act); R.A. No. 8239 (Philippine Passport Act of 1996); R.A. No. 6955 (Mail Order Bride Law); and Article 341 of the Revised Penal Code.
105 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); 1989 UN Convention on the Rights of the Child; United Nations Declaration on the Elimination of Violence Against Women (DEVAW); 2002 UN Protocol to Prevent, Suppress and Punish Trafficking in Persons; UN Convention Against Transnational Organized Crime; International Labour Organization (ILO) Convention No. 13; ILO Convention No. 182 (1999); ASEAN Declaration against Trafficking in Persons Particularly Women and Children; and Declaration on the Elimination of Violence against Women in the ASEAN Region.

victim-survivor, their immediate family, and the community at large. This will now provide survivors with access to mental health services such as psychological assessment, counseling and therapy, and rehabilitation. It also provides for assistance in accessing judicial services, livelihood training and opportunities or skills enhancement training services, and economic integration services. The proper implementation of the RRPTP is the responsibility of the LGUs, while the DSWD shall monitor and evaluate such implementation and conduct an audit of the local social welfare and development offices.

IMPLEMENTING RULES AND REGULATIONS

The IACAT, in consultation with representatives from other relevant government agencies such as the CWC, DICT, CICC, PNP, NBI, NTC, internet intermediaries, and concerned NGOs, promulgated implementing rules and regulations for R.A. No. 11862. The 2022 Revised Rules and Regulations Implementing Republic Act No. 9208, as amended, was approved and signed on 23 June 2022 (IRR of R.A. No. 11862).[106]

Furthermore, the Revised Penal Code and other special laws shall be suppletorily applicable to the new law.[107]

REPEALING CLAUSE

Finally, though R.A. No. 11862 further amended R.A. No. 9208, as expanded by R.A. No. 10364, it expressly provides that it shall not in any way amend or repeal the Anti-Child Abuse Law (R. A. No. 7610).[108]

106 The 2022 Revised Rules and Regulations Implementing Republic Act No. 9208, as amended.
107 Section 29, R.A. No. 9208, as amended by Section 19 of R.A. No. 11862.
108 Section 21, R.A. No. 11862.

ANNEXES

Annex A

R.A. NO. 9208, AS AMENDED BY R.A. NO. 10364 AND R.A. NO. 11862 [109]

(RA 11862 amendments in bold)

SECTION 1. *Title. **This Act shall be known as the "Expanded Anti-Trafficking in Persons Act of 2022."***

SECTION 2. *Declaration of Policy.* – **It is hereby declared that the State values the dignity of every human person and guarantees the respect of individual rights. In pursuit of this policy, the State shall give highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, eliminate trafficking in persons, and mitigate pressures for involuntary migration and servitude of persons, not only to support trafficked persons but more importantly, to ensure their recovery, rehabilitation, and reintegration into the mainstream of society in a manner that is culturally-responsive, gender- and age-appropriate, and disability-inclusive.**

It shall be a State policy to recognize the equal and inalienable rights and inherent human dignity of all members of the human family, as enshrined in the United Nations Universal Declaration on Human Rights, United Nations Convention on the Elimination of All Forms of Discrimination Against Women, United Nations Convention on the Rights of the Child and its optional protocols to which the Philippines is a party, United Nations Convention on the Protection of Migrant Workers and their Families, United Nations Convention Against Transnational Organized Crime Including its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, International Labor Organization Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor, the UN Global Compact for Safe, Orderly and Regular Migration, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, and all other relevant and universally accepted human rights instruments and other international conventions to which the Philippines is a party. In all actions concerning children, their best interests shall be the paramount consideration. *(n)*

SECTION 3. *Definition of Terms.* – As used in this Act:

(a) *Trafficking in Persons* – **refers to the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others, or the engagement of others for the production or distribution, or both, of materials that depict child sexual abuse or exploitation, or other forms of sexual exploitation, forced labor or services, slavery, servitude, or the removal or sale of organs.**

The recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes, shall also

109 Copy retrieved from IJM Files – comparison of the laws.

be considered as 'trafficking in persons' even if it does not involve any of the means set forth in the preceding paragraph. ***(n)***

(b) *Child* – refers to a person below eighteen (18) years of age or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition.

(c) *Prostitution* – refers to any act, transaction, scheme or design involving the use of a person by another, for sexual intercourse or lascivious conduct in exchange for money, profit or any other consideration.

(d) *Forced Labor* – refers to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of, force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt-bondage or deception including any work or service extracted from any person under the menace of penalty.

(e) *Slavery* – refers to the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.

(f) *Involuntary Servitude* – refers to a condition of enforced and compulsory service induced by means of any scheme, plan or pattern, intended to cause a person to believe that if he or she did not enter into or continue in such condition, he or she or another person would suffer serious harm or other forms of abuse or physical restraint, or threat of abuse or harm, or coercion including depriving access to travel documents and withholding salaries, or the abuse or threatened abuse of the legal process.

(g) *Sex Tourism* – refers to a program organized by travel and tourism-related establishments and individuals which consists of tourism packages or activities, utilizing and offering escort and sexual services as enticement for tourists. This includes sexual services and practices offered during rest and recreation periods for members of the military.

(h) *Sexual Exploitation* – **refers to any means of actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes or lewd designs, including profiting monetarily, socially, or politically from the sexual exploitation of another, regardless of whether or not consent was given.** ***(n)***

(i) *Debt Bondage* – refers to the pledging by the debtor of his/her personal services or labor or those of a person under his/her control as security or payment for a debt, when the length and nature of services is not clearly defined or when the value of the services as reasonably assessed is not applied toward the liquidation of the debt.

(j) *Pornography* – **refers to any representation through publication, exhibition, cinematography, indecent shows, information technology, or by whatever means, of a person engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a person primarily for sexual purposes: Provided, That when a child is involved, the material shall be considered child sexual abuse and exploitation material as defined under paragraph (m) of this section.** ***(n)***

(k) *Council* – shall mean the Inter-Agency Council Against Trafficking created under Section 20 of this Act.

(l) *Child Laundering* – **refers to an act of stealing and selling a child to adopting parents under false pretenses and using schemes such as falsifying the child's details or manipulating the child's origins to make the child appear an orphan or foundling.** ***(n)***

(m) *Child Sexual Abuse and Exploitation Material or Child Sexual Abuse Material (CSAEM or CSAM)* – **refers to photos, images, videos, recordings, streams, or any other representation or form of media, depicting acts of sexual abuse and exploitation of a child or representation of a child as a sexual object, whether or not generated digitally or by, through, and with the use of information and communications technology. It shall also include materials that focus on real or simulated genitalia or other private body parts of a child.** ***(n)***

(n) *Communications* – **refer to any spoken or written conversations, exchanges, discussions, data, information, or messages for interception.** ***(n)***

(o) *Computer System* – **refers to any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automated processing of data. It covers any type of device with data processing capabilities including computers and mobile phones. The device consisting of hardware and software may include input, output process, and storage components which may stand alone or be connected in a network or other similar devices. It also includes computer data storage devices or media.** ***(n)***

(p) *Computer and Other Computer-Related Devices* – **refer to any device or group of interconnected or related devices, one or more of which, pursuant to a program, performs automated processing of data. It covers any type of device with data processing capabilities, including computers and mobile phones.**

(q) **Data – refers to both:**

> (1) **Content Data - the substance, meaning or purport of the communication, or the message ·or information being conveyed by the communication, other than traffic data; and**
> (2) **Traffic Data or Non-Content Data - any computer data other than the content of the communication, including the communication's origin, destination, route, time, date, size, duration, or type of underlying service.** ***(n)***

(r) *Information and Communications Technology (JCT)* – **refers to the totality of electronic means to access, create, collect, store, process, receive, transmit, present, and disseminate information.** ***(n)***

(s) *Interception* – **refers to the act of listening to, recording, monitoring, or surveillance of the content of communications, including procuring of the content data, either directly, through access and use of a computer system, or through the use of electronic eavesdropping or tapping devices, at the same time that the communication is occurring.** ***(n)***

(t) *Internet Intermediaries* – **refer to a natural or juridical person, or entity that provides infrastructure, platforms, access to host, transmit and index content, products and services originated by third parties on the internet. It includes among others:**

> **(1) Internet Service Providers (ISPs);**
> **(2) Data processing and web hosting providers including domain name registrars;**
> **(3) Internet search engines and portals;**
> **(4) E-commerce intermediaries;**
> **(5) Internet payment system providers, whether supervised by the Bangko Sentral ng Pilipinas (BSP) or not; and**
> **(6) Participative network platform providers or social media intermediaries.** ***(n)***

(u) *Subscriber's or Registrant's Information* – **refers to any information contained in the form of computer data or any other form that is held by internet intermediaries, relating to the subscribers or registrants who avail of services, other than traffic or content data, and by which any of the following can be established:**

> **(1) The type of communication service used, the technical provisions taken thereto, and the period of service;**
> **(2) The subscriber's or registrant's identity, postal or geographic address, telephone and other access number, any assigned network address, billing, and payment information that are available on the basis of the service agreement or arrangement; or**
> **(3) Any other available information on the site of the installation of communication equipment that is available on the basis of the service agreement or arrangement.** ***(n)***

(v) *Tourism Enterprises* – **refer to facilities, services, and attractions involved in tourism, such as travel and tour services; health, wellness, and medical tourism services; tourist transport services, whether for land, sea or air transportation; tour guides; adventure sports services involving sports, such s mountaineering, spelunking, scuba diving, and other sports activities of significant tourism potential; convention· organizers; accommodation establishments, including hotels, resorts, apartelles, tourist inns, motels, pension houses, and home stay operators; and tourism estate management services, restaurants, shops and department stores, sports and recreational centers, spas, museums and galleries, theme parks, convention centers, and zoos.** ***(n)***

(w) *Online Sexual Abuse and Exploitation of Children (OSAEC)* – **refers to the use of digital or analog communication and ICT as means to abuse and exploit children sexually, which includes cases in which contact child abuse or exploitation offline is combined with an online component. This can also include the production, dissemination, and possession of CSAEM or CSAM; online grooming of children for sexual purposes; sexual extortion of children; sharing image-based sexual abuse; commercial sexual exploitation of children; exploitation of children through online prostitution; and live-streaming of sexual abuse, with or without the consent of the victim.** ***(n)***

SECTION 4. *Acts of Trafficking in Persons.* – **It shall be unlawful for any person, natural or juridical, to commit by means of a threat, or use of force, or other forms of coercion, or through abduction, fraud, deception, abuse of power or of position, or through taking advantage of the vulnerability of the person, or by giving or receiving of payment or benefit to obtain the consent of a person having control over another person, any of the following acts:**

(a) To recruit, obtain, hire, provide, offer, transport, transfer, maintain, harbor, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual abuse or exploitation, production, creation, or distribution of CSAEM or CSAM, forced labor, slavery, involuntary servitude, or debt bondage; ***(n)***

(b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 10906 or the Anti-Mail Order Spouse Act, any Filipino to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage; ***(n)***

(c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;

(d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;

(e) To maintain or hire a person to engage in prostitution or pornography;

(f) To adopt persons by any form of consideration for exploitative purposes or to facilitate the same for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(g) To adopt or facilitate the adoption of persons with or without consideration for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage, or to facilitate illegal child adoptions or child- laundering, or for other exploitative purposes; ***(n)***

(h) To recruit, hire, adopt, transport, transfer, obtain, harbor, maintain, provide, offer, receive, or abduct a person, for the purpose of removal or sale of organs of said person; ***(n)***

(i) To recruit, transport, obtain, transfer, harbor, maintain, offer, hire, provide, receive, or adopt a child to engage in armed activities or participate in activities in the context of an armed conflict in the Philippines or abroad; ***(n)***

(j) To recruit, transport, transfer, harbor, obtain, maintain, offer, hire, provide, or receive a person by means defined in Section 3· of this Act for purposes of forced labor, slavery, debt bondage and involuntary servitude, including a scheme, plan, or pattern intended to cause the person either:

(1) To believe that if the person did not perform such labor or services, he or she or another person would suffer serious harm or physical restraint; or
(2) To abuse or threaten the use of law or the legal processes; ***(n)***

(k) To recruit, transport, harbor, obtain, transfer, maintain, hire, offer, provide, adopt, or receive a child for purposes of exploitation or trading them, including the act of buying or selling a child, or both for any consideration or for barter for purposes of exploitation. Trafficking for purposes of exploitation of children shall include:

(1) All forms of slavery or practices similar to slavery, involuntary servitude, debt bondage, and forced labor, including recruitment of children for use in armed conflict;
(2) The use, procuring or offering of a child for prostitution, for the production of CSAEM or CSAM, or for pornographic performances;
(3) The use, procuring or offering of a child for the production and trafficking of drugs; and
(4) The use, procuring or offering of a child for illegal activities or work which, by its nature or the circumstances in which it is carried out, is likely to harm their health, safety or morals; ***(n)***

(l) To organize, provide financial support, or direct other persons to commit the offenses defined as acts of trafficking' under this Act; and ***(n)***

(m) To recruit, transport, obtain, transfer, harbor, maintain, offer, hire, provide, receive, or adopt a child for deployment abroad as migrant worker. ***(n)***

Provided, That when the victim is a child, the means to commit these unlawful acts as enumerated in the first paragraph of this section shall not be necessary: Provided, further, That in the case of overseas domestic work, a 'child' means a person below twenty-four (24) years old. ***(n)***

SECTION. 4-A. *Attempted Trafficking in Persons.* – Where there are acts to initiate the commission of a trafficking offense but the offender failed to or did not execute all the elements of the crime, by accident or by reason of some cause other than voluntary desistance, such overt acts shall be deemed as an attempt to commit an act of trafficking in persons. As such, an attempt to commit any of the offenses enumerated in Section 4 of this Act shall constitute attempted trafficking in persons.

In cases where the victim is a child, any of the following acts shall also be deemed as attempted trafficking in persons:

(a) Facilitating the travel of a child who travels alone to a foreign country or territory without valid reason therefor and without the required clearance or permit from the Department of Social Welfare and Development, or a written permit or justification from the child's parent or legal guardian;
(b) Executing, for a consideration, an affidavit of consent or a written consent for adoption;
(c) Recruiting a woman to bear a child for the purpose of selling the child;
(d) Simulating a birth for the purpose of selling the child; and
(e) Soliciting a child and acquiring the custody thereof through any means from among hospitals, clinics, nurseries, daycare centers, refugee or evacuation centers, and low income families, for the purpose of selling the child."

SECTION. 4-B. *Accomplice Liability.* – Whoever knowingly aids, abets, cooperates in the execution of the offense by previous or simultaneous acts defined in this Act shall be punished in accordance with the provisions of Section 10(c) of this Act.

SECTION. 4-C. *Accessories.* – Whoever has the knowledge of the commission of the crime, and without having participated therein, either as principal or as accomplices, take part in its commission in any of the following manners:

(a) By profiting themselves or assisting the offender to profit by the effects of the crime;
(b) By concealing or destroying the body of the crime or effects or instruments thereof, in order to prevent its discovery;
(c) By harboring, concealing or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his or her public functions or is known to be habitually guilty of some other crime.

Acts defined in this provision shall be punished in accordance with the provision of Section 10(d) as stated thereto.

SECTION. 5. *Acts that Promote Trafficking in Persons*. **The following acts which promote or facilitate trafficking in persons shall be unlawful:**

(a) To knowingly lease or sublease, use, or allow to be used any house, building, tourism enterprise, or any similar establishment; or any vehicle or carrier by land, sea, and air; or any of their computer system or computer hardware, other computer-related devices, or any of their digital platform and application, for the purpose of promoting trafficking in persons; ***(n)***

(b) To produce, print and issue, or distribute unissued, tampered, or fake passports, birth certificates, affidavits of delayed registration of births, foundling certificates, travel clearances, counseling certificates, registration stickers, overseas employment certificates or other certificates of any government agency which issues these certificates, decals, and such other markers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons; ***(n)***

(c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;

(d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;

(e) To facilitate, assist, or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports, knowing they a.re not in possession of required travel documents, or are in possession of tampered, fake, or fraudulently acquired travel documents, for the purpose of promoting trafficking in persons; ***(n)***

(f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and

(g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery.

(h) To tamper with, destroy, or cause the destruction of evidence, or to influence or attempt to influence witnesses, in an investigation or prosecution of a case under this Act;

(i) To destroy, conceal, remove, confiscate or possess, or attempt to destroy, conceal, remove, confiscate or possess, any actual or purported passport or other travel, immigration or working permit or document, or any other actual or purported government identification, of any person in order to prevent or restrict, or attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel in order to maintain the labor or services of that person; or

(j) To utilize his or her office to impede the investigation, prosecution or execution of lawful orders in a case under this Act.

(k) For internet intermediaries to knowingly or by gross negligence allow their internet infrastructure to be used for the purpose of promoting trafficking in persons; ***(n)***

(l) For internet cafes, kiosks, and hotspots, including establishments offering Wi-Fi access services to the public, to knowingly or by gross negligence allow their facilities to be used for the purpose of promoting trafficking in persons; ***(n)***

(m) For financial intermediaries, including banks and credit card companies and money transfer or remittance centers, to knowingly or by gross negligence allow their services, online platform and applications, among others, to be used for the purpose of promoting trafficking in persons; ***(n)***

(n) To knowingly or by gross negligence facilitate, assist, or help in the entry into the country of persons who are convicted sex offenders whether at international and local airports, territorial boundaries, and seaports for the purpose of promoting trafficking in persons; or ***(n)***

(o) To arrange, facilitate, expedite, or cause the introduction or encounter of persons who are suspected or convicted sex offenders in any jurisdiction, to a child. The actual introduction or encounter need not occur to be liable under this provision. It is enough that there is a deliberate attempt to cause the introduction or encounter. ***(n)***

SECTION 6. *Qualified Trafficking in Persons.* – Violations of Section 4 of this Act shall be considered as qualified trafficking:

(a) When the trafficked person is a child:
***Provided*, That acts of online sexual abuse and exploitation of children shall be without prejudice to appropriate investigation and prosecution under other related laws;**

(b) When the adoption is effected through Republic Act No. 8043, otherwise known as the "Inter-Country Adoption Act of 1995" and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;

(d) When the offender is a spouse, an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;

(e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;

(f) When the offender is a member of the military or law enforcement agencies;

(g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS);

(h) When the offender, commits one or more acts of trafficking under Section 4 over a period of at least sixty (60) days, whether those days are continuous or not; ***(n)***

(i) When the offender, or through another, directs or manages the actions of a victim in carrying out the exploitative purpose of trafficking; ***(n)***

(j) When the crime is committed during a crisis, disaster, public health concern, pandemic, a humanitarian conflict, or emergency situation, or when the trafficked person is a survivor of a disaster or a human-induced conflict; ***(n)***

(k) When the trafficked person belongs to an indigenous community or religious minority and is considered a member of the same; ***(n)***

(l) When the trafficked person is a person with disability (PWD); ***(n)***

(m) When the crime has resulted in pregnancy; ***(n)***

(n) When the trafficked person suffered mental or emotional disorder as a result of being victim of trafficking; or ***(n)***

(o) When the act is committed by or through the use of ICT or any computer system. ***(n)***

SECTION. 7. *Confidentiality.* – At any stage of the investigation, rescue, prosecution and trial of an offense under this Act, law enforcement officers, prosecutors, judges, court personnel, social workers and medical practitioners, as well as parties to the case, shall protect the right to privacy of the trafficked person.[110] Towards this end, law enforcement officers, prosecutors and judges to whom the complaint has been referred may, whenever necessary to ensure a fair and impartial proceeding, and after considering all circumstances for the best interest of the parties, order a closed-door investigation, prosecution or trial. The name and personal circumstances of the trafficked person or any other information tending to establish the custody of the trafficked person and his or her family shall not be disclosed to the public.

It shall be unlawful for any editor, publisher, and reporter or columnist in case of printed materials, announcer or producer in case of television and radio, producer and director of a film in case of the movie industry, or any person utilizing tri-media facilities or electronic information technology to cause publicity of the name, personal circumstances, or any information tending to establish the identity of the trafficked person except when the trafficked person in a written statement duly notarized knowingly, voluntarily and willingly waives said confidentiality.

Law enforcement officers, prosecutors, judges, court personnel, social workers and medical practitioners shall be trained on the importance of maintaining confidentiality as a means to protect the right to privacy of victims and to encourage victims to file complaints.

110 Removed the right to privacy of the accused which was originally included in RA 9208.

SECTION 8. *Initiation and Prosecution of Cases. –*

(a) Initiation of Investigation. – Law enforcement agencies (LEAs) are mandated to immediately initiate investigation and counter- trafficking-intelligence gathering motu proprio or within ten (10) days upon receipt of statements, reports, or affidavit from victims of trafficking, migrant workers, or their families, internet intermediaries, and other persons who have personal knowledge or information about possible violations of this Act including the private sector, and for this purpose shall closely coordinate with one another.

They shall initiate bilateral or multi-lateral agreements with other States to allow foreign internet intermediaries to share with local authorities possible investigation data necessary for the prosecution of cases:

Provided*, That in all instances the right to privacy of the victims and their families must be respected and protected;** ***(n)

(b) Interception of Communications. – A law enforcement officer (LEO) may:

- **Upon a written order from the Regional Trial Court,**
- **Track, intercept, view, monitor, surveil, listen to, and record**
- **Involving at least one person charged with, or suspected, or reasonably believed to have committed violations under this Act,**
- **With the use of any mode, form, kind, or type of electronic or intercepting devices, any communications, information or messages, including procurement of content data transmitted by means of a computer system, or with the use of any other suitable ways and means for that purpose:**
- ***Provided*, That when the victim is a child and the offense involves the use of computer systems and digital platforms, a court order shall not be required in order for a LEO acting in an undercover capacity to intercept communication with a person reasonably believed to have committed, is committing, or about to commit any of the violations described under this Act:**
- ***Provided*, further, That notwithstanding the procedure in this provision, a LEO shall not be precluded from obtaining a warrant to intercept computer data under the rule on cybercrime warrants.**

The order shall only be issued or granted upon

- **ex parte written application of a LEO, who shall.be examined under oath or affirmation to establish the following facts or circumstances:**

  (1) That there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed, or is being committed, or is about to be committed;
  (2) That there are reasonable grounds to believe that evidence that will be obtained is essential to the conviction of any person for, or to the solution of, or to the prevention of, any such crimes; and
  (3) That there are no other means readily available for obtaining such evidence.

The order shall only be effective for the length of time as determined by the court, which shall not exceed a period of thirty (30) days from its issuance. The court issuing the order may, upon motion, extend its effectivity based only on justifiable reasons or that it is necessary in furtherance of the investigation or to serve the public interest, for a period not exceeding thirty (30) days after the expiration of the original period.

In case the original applicant is not available to file the application for extension or renewal, any other member of the team duly authorized by their superior-officer may instead file the application for extension or renewal: *Provided*, That the LEO shall have thirty (30) days after the termination of the period granted by the authorizing court as provided in the preceding paragraphs within which to file the appropriate case before the Public Prosecutors Office of the Department of Justice (DOJ) for any violation of this Act.

If no case is filed within the thirty (30)-day period, the LEO shall, within thirty (30) days after the expiration of the order, notify the authorizing court that no case has been filed. Failure to notify the authorizing court within the required period shall be penalized under Section 10(g) of this Act.

In investigating violations of this Act involving the use of the internet and other digital platforms, LEOs acting in an undercover capacity who record their communications with a person or persons reasonably believed to have committed, is committing, or is about to commit any of the violations under this Act, shall not be considered as wiretapping or illegal interception, and shall not be liable under the provisions of Republic Act No. 4200 or 'The Anti-Wiretapping Law': *Provided*, That victims of trafficking in persons, of whatever age, shall not be liable under the provisions of Republic Act No. 4200 and Republic Act No. 10175 or the 'Cybercrime Prevention Act of 2012', if they record, transmit, or perform any other acts directly or indirectly related to the reporting of any violation of this Act committed against them; *(n)*

(c) Classification and Content of the Order of the Authorizing Court. – The written order of the court authorizing the conduct of interception shall specify the following

(1) The identity, such as name and address, if known, of the charged or suspected person whose communications, are to be intercepted;
(2) In the case of communications made through the use of information and communications technology, the particular description of the number or account of the subscriber or registrant to be intercepted and their locations, if known;
(3) If the person suspected of the crime is not fully known, such person shall be subject to continuous surveillance provided there is a reasonable ground to do so;
(4) The identities of the intercepting LEOs, or the identities of individuals or juridical persons who will assist the LEA in carrying out said interception;
(5) The offense or offenses committed or being committed, or sought to be prevented; and
(6) The length of time within which the authorization shall be used or carried out; *(n)*

(d) Custody of Intercepted Communications. – All tapes, discs, and, recordings made pursuant to this section, including all excerpts and summaries thereof as well as all written notes or memoranda made in connection therewith, shall, within forty-eight (48) hours after the expiration of the period fixed in the written order, or within forty-eight (48) hours after the expiration of any extension or renewal, be submitted to the authorizing court or its appointed custodian. It shall be contained in a sealed envelope or package, as the case may be, and shall be accompanied by a joint affidavit of the LEO and the team members. In case of death or physical incapacity of the applicant to execute the required affidavit, the team member who is next in rank to the applicant named in the written order shall, together with the other team members execute the required affidavit. The LEA may, with proper court authorization, copy computer data that shall be utilized for case build-up or preliminary investigation purposes.

The copy of the computer data may be retained by the LEAs while the digital devices examined and the result of the digital forensic examination shall be deposited with the court that issued the court warrant, or in case where a criminal case is already filed in court, the court hearing the criminal case.

It shall be unlawful for any person, LEO, or any custodian to make a copy of the materials in their custody, such as tapes, discs, video footages and other recordings, or excerpts and summaries thereof including written notes and memoranda made in connection therewith, without court authorization, or to remove, delete, expunge, incinerate, shred, or destroy in any manner the items enumerated above in whole or in part under any pretext whatsoever; *(n)*

(e) Contents of Joint Affidavit. – The joint affidavit of the LEO and the individual team members shall state:
(1) The number of tapes, discs, and recordings that have been made, as well as the number of excerpts and summaries thereof, and the number of written notes and memoranda, if any, made in connection therewith;
(2) The dates and times covered by each of such tapes, discs, and recordings;
(3) The number of tapes, discs, and recordings, as well as the number of excerpts and summaries thereof and the number of written notes and memoranda made in connection therewith that have been included in the deposit; and

(4) The date of the original written authorization granted by the DOJ to the applicant to file the ex parte application to conduct the interception, as well as the date of any extension or renewal of the original written authority granted by the authorizing court.

The joint affidavit shall also certify under-oath that no unauthorized duplicates or copies of the whole or any part of any of such tapes, discs, and recordings, excerpts, summaries, written notes, and memoranda, have been made, or if made, that all such duplicates and copies are included in the sealed envelope or package, as the case may be, deposited with the authorizing division of the authorizing court;

(f) Disposition of Deposited Material. – The sealed envelope or package and the contents thereof, which are deposited with the authorizing court, deemed and are hereby declared classified information, shall not be opened. Its contents, including the tapes, discs, recordings, all the excerpts and summaries thereof, and the notes and memoranda made in connection therewith, shall not be divulged, revealed, read, replayed, or used as evidence unless authorized by written order of the authorizing court. For this purpose, the DOJ shall file a written application to open the sealed envelope or package before the authorizing court, with proper written notice to the person whose communications have been the subject of interception to open, reveal, divulge, and use the contents of the sealed envelope or package as evidence.

The written application with notice to the party concerned to open the deposited sealed envelope or package shall clearly state the purpose or reason:

(1) For opening the sealed envelope or package;
(2) For revealing or disclosing its classified contents;
(3) For replaying, divulging, or reading intercepted communications, including any of the excerpts and summaries thereof and any of the notes or memoranda made in connection therewith; and
(4) For using as evidence any of the intercepted communications, including any of the excerpts and summaries thereof and any of the notes or memoranda made in connection therewith;

(g) Evidentiary Value of Deposited Materials – Intercepted communications, or any part or parts thereof, or any information or fact contained therein, including their existence, content, substance, purport, effect, or meaning, which have been secured in violation of the pertinent provisions of this Act, shall absolutely not be admissible and usable as evidence again t any person in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding, or hearing;

(h) Prosecution. – Offenses punishable under this Act are public crimes. Any person who has personal knowledge of the commission of any offense under this Act, such as the trafficked person, the parents: spouse, siblings, children, legal guardian, officer or social worker or representative of a licensed child-caring institution, officer or social worker of the Department of Social Welfare And Development (DSWD), Philippine National Police (PNP) or National Bureau of Investigation (NBI) officers, barangay chairperson, or at least three (3) concerned citizens where the violation occurred, may file a complaint under this Act;

(i) Venue. – A criminal action arising from a violation of this Act shall be filed where the offense was committed, or where any of its elements occurred, or where the trafficked person actually resides at the time of the commission of the offense: Provided, That the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts. Cases involving trafficking in persons shall be heard in the chamber of. the Regional Trial Court duly designated as family courts;

(j) Affidavit of Desistance. – Cases involving trafficking in persons should not be dismissed based on the Affidavit of Desistance executed by the victims or their parents or legal guardians. Public and private prosecutors are directed to oppose and manifest objections to motions for dismissal. Any attempt to unduly pressure the complainant to execute an Affidavit of Desistance shall be punishable under this Act;

(k) Immediate Protection of Trafficking Victims. – Where warranted, trafficking victims shall immediately be placed under the protective custody of the DSWD, pursuant to Republic Act No. 7610, otherwise known as the

'Special Protection of Children Against Abuse, Exploitation and Discrimination Act'. In the regular performance of this function, the DSWD shall be free from any administrative, civil, or criminal liability. Custody proceedings shall be in accordance with the provisions of Presidential Decree No. 603 or 'The Child and Youth Welfare Code'.

Victims of trafficking of all ages shall be entitled to immediate temporary protective shelter from the DSWD: Provided, That if the trafficked person is overseas, it shall be the relevant embassy or consulate that· shall provide the same.

Victims of trafficking and their family members shall be entitled to protection as well as preferential entitlement to the rights and benefits of witnesses under Republic Act No. 6981, otherwise known as the 'Witness Protection, Security and Benefit Act': Provided, That they possess all the qualifications and none of the disqualifications under the said law.

A victim of trafficking shall also be considered as a victim of a violent crime as defined under Section 3(d) of Republic Act No. 7309, entitled 'An Act Creating a Board of Claims Under the Department of Justice for Victims of Unjust Imprisonment or Detention and Victims of Violent Crimes and for Other Purposes', so that the victim may claim compensation therein; ***(n)***

(l) Confidentiality. – All records and proceedings under this law, from the initial contact until the final disposition of the case, shall be considered privileged and confidential. The public shall be excluded during the proceedings and the records shall not be disclosed directly or indirectly to anyone by any of the parties or the participants in the proceedings for any purpose whatsoever where the testimony of the child shall be taken in accordance with A.M. No. 004-07-SC or the Rule on Examination of a Child Witness.

It shall be unlawful for any editor, publisher; reporter or columnist in case of printed materials, announcer or producer in case of television and radio broadcasting and digital media·, and producer and director of the film in case of the movie industry, to cause any publicity that may result in the further suffering of the victim. Any person or agency involved in the reporting, investigation, or trial of cases of gender-based violence shall refrain from any act or statement that may be construed as blaming the victim or placing responsibility for the offense committed against the victim. ***(n)***

SECTION 9. *Duties and Responsibilities of the Private Sector –*

(a) Duties of Internet Intermediaries. – Internet intermediaries, including internet service providers, internet content hosts, participative network platform providers, financial intermediaries, and electronic money issuers, shall:

> **(1) Adopt in their terms of service or service agreements with third-party users or creators of contents, products, and services the prohibition of any form of child trafficking, CSAEM or CSAM, or exhibition of any form of sexual exploitation of children in their facilities, infrastructure, server, and platforms;**
>
> **(2) Cooperate, as far as practicable, with LEAs for the prosecution of offenders and the preservation of evidence, including the provision of subscriber information, traffic data, or both, of any person or subscriber who has committed, is committing, or is attempting to commit any violation of this Act upon formal request of duly authorized law enforcement bodies, with no need of warrant, and in accordance with due process;**
>
> **(3) Compile and maintain a comprehensive list of child trafficking, CSAEM or CSAM, or any form of sexual exploitation of children-related Uniform Resource Locators (URLs): Provided, That the list is updated regularly by partnering with, or obtaining memberships in, organizations and coalitions that maintain a comprehensive list of child abuse image content URL list and image hashes, among others;**

(4) Preserve and protect the integrity of all subscriber's or registrant's information and traffic data, in its control and possession, relating to communication services provided by an internet intermediary, within one (1) year from the date of the transaction for the purpose of the investigation and prosecution of all forms of trafficking: Provided, That, upon notice by the DOJ, PNP, NBI, or the Department of Information and Communications Technology- Cybercrime Investigation and Coordinating Council (DICT-CICC), the preservation of such relevant evidence shall be extended for another year as may be deemed necessary: Provided, however, That the relevant evidence that needs preservation shall be expressly identified and specified;

(5) Immediately block access to, remove, or take down the internet address, URL, website, or any content thereof, containing all forms of trafficking, CSAEM or CSAM, or any form of sexual exploitation of children, within twenty-four (24) hours from notice of the DOJ, PNP, NBI, or the DICT-CICC, or upon knowledge of the existence of an attempt to commit or an actual act of trafficking in persons being committed within their control: Provided, That the provision in the preceding paragraph on preservation of subscriber data shall apply and shall be extended as may be deemed necessary by the DOJ, PNP, NBI, or the DICT-CICC; '

(6) Report to the DOJ, PNP, NBI, or the DICT-CICC the internet addresses or websites blocked, removed, or taken down, or any form of unusual content or traffic data involving all forms of trafficking, child pornography, or any form of sexual exploitation of children that is being committed using its server or facility within three (3) days of the blocking, removal, or taking down of the same: Provided, That in case a foreign internet intermediary is prohibited by its country to share data, the reports filed by such foreign internet intermediary to the corresponding entity tasked by its government to receive cybercrime reports shall be deemed in compliance with this provision: Provided, however, That the said foreign internet intermediary shall inform the DOJ, PNP, NBI, or the DICT-CICC of such reporting: Provided, further, That whatever relevant data said foreign internet intermediary is not prohibited to share shall nevertheless be reported to the DOJ, PNP, NBI, or the DICT-CICC: Provided, finally, That no internet intermediary shall be held civilly liable for damages on account of any notice given in good faith in compliance with this section; and

(7) Upon request and notwithstanding the provisions of Republic Act No. 10175 or the 'Cybercrime Prevention Act of 2012' and in accordance with Republic Act No. 10173, or the 'Data Privacy Act of 2012', provide the DOJ, PNP, NBI, or the DICT-CICC the· subscriber information of any person who gained or attempted to gain access to an internet site or internet application which contains any form of child trafficking, CSAEM or CSAM, or any form of sexual exploitation of children: Provided, That the request must particularly describe the information asked for and indicate the relevancy of such information to such case.

Nothing in this section may be construed to require internet intermediaries to engage in the monitoring of any user, subscriber, or customer, or the content of any communication of any such person.

These duties and obligations shall be without prejudice to other duties and obligations that may be imposed in other laws, particularly when the violations involve online sexual abuse and exploitation of children. ***(n)***

(b) Duties of Owners and Operators of Internet Cafes, Hotspots and Kiosks, Money Transfer and Remittance Centers, Transport Services, Tourism Enterprises, Malls, and Other Business Establishments Open and Catering to the Public. – Owners and operators of internet cafes, hotspots and kiosks, money transfer and remittance centers, transport services, tourism enterprises, malls, and other business establishments open and catering to the public are required to notify the PNP or NBI within forty-eight (48) hours from obtaining facts and circumstances that violations of this Act are taking place within their premises, or that their facilities and services are being used to commit violations of this Act: ***Provided*****, That public display of any form of CSAEM or CSAM within their premises is a conclusive presumption of the knowledge of the owners, operators, or lessors of business establishments of the violation of this Act. Establishments shall promote awareness against**

trafficking in persons through clear and visible signages in both English and the local dialect, with local and national hotlines posted within a conspicuous place in their facilities. Money transfer and remittance centers shall require individuals transacting with them to present valid government identification cards. ***(n)***

(c) Responsibilities of Tourism Enterprises. - All tourism enterprises shall notify the DSWD, DOJ, Department of Labor and Employment (DOLE), PNP, or the NBI within forty-eight (48) hours from obtaining facts and circumstances that trafficking in persons, including child trafficking or sexual exploitation of children, is being committed in their premises: ***Provided*****, That public display of any form of CSAEM or CSAM within their premises is a conclusive presumption of the knowledge of the owners, operators, or lessors of business establishments of the violation of this Act.**

All tourism enterprises shall post a notice containing the contact details of trafficking in persons hotlines, both national and local, in a conspicuous place near the public entrance, inside rest rooms, elevators, parking areas of the establishment, and in other conspicuous locations where similar notices are customarily posted in clear view of the public and employees. They shall likewise engage in anti- trafficking advocacy as part of their corporate responsibility. For this purpose, the Inter-Agency Council Against Trafficking (IACAT) shall develop a model notice that complies with the requirements of this section and will make it available for downloading in its internet website, and for posting of local government units (LGUs) and tourism enterprises.

Further, all tourism enterprises shall develop their own anti-trafficking tourism policy, in accordance with guidelines from IACAT and the Department of Tourism. They shall also, in cooperation with the DSWD, IACAT, or a reputable nongovernmental organization (NGO) focused on anti-trafficking in persons, train their employees who are likely to interact or come into contact with victims of trafficking in persons in recognizing the signs of human trafficking and how to report suspected trafficking activity to the appropriate LEA. The IACAT shall, together with the DSWD, develop a training curriculum or program and make the same available for downloading in its internet website.

The preceding responsibilities of tourism enterprises shall be made part of the requirements for accreditation by the local government and for the issuance of the local business permit to operate. ***(n)***

(d) Responsibilities of Financial Intermediaries. – Any financial intermediary or person working for, related to, or who has direct knowledge of any trafficking in persons-related financial activity or transaction conducted through a financial intermediary, shall have the duty to report any suspected trafficking in persons-related activity or transaction to the concerned LEAs. Likewise, financial intermediaries shall have the duty to report these activities to the Anti-Money Laundering Council (AMLC) in accordance with the suspicious transaction reporting mechanism under Republic Act No. 9160, otherwise known as the 'Anti-Money Laundering Act of 2001', as amended.

The AMLC shall promulgate the necessary rules and regulations for the implementation of this provision which shall include, among others, the guidelines to determine suspicious activity and indicators that trafficking in persons-related activities are being conducted. The, AMLC shall provide the necessary guidelines with regard to this provision within three (3) months from the effectivity of this Act.

Notwithstanding the provisions of Republic Act No. 1405 as amended, Republic Act No. 6426 as amended, Republic Act No. 8791 and other pertinent laws, the LEAs investigating cases of trafficking in persons may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution; or require financial intermediaries, internet payment system providers, and other financial facilitators to provide financial documents and information, upon order of any competent court based on an ex parte application in cases of violations of this Act, when it has been established that there is reasonable ground to believe that the deposit or investments, including related accounts involved, are related to trafficking in persons and violations of this Act. ***(n)***

(e) Hotels, Transient and Residential Houses, Condominiums, Dormitories and Apartments or any Analogous Living Spaces. – All owners, lessors, sub-lessors, operators of hotels, residential homes and dwellings offered

for transient use, condominiums, dormitories, apartments, or any analogous living spaces shall notify the PNP or the NBI immediately but not later than forty-eight (48) hours from obtaining facts and circumstances that trafficking activities or OSAEC activities are being committed within their premises: *Provided*, That actual knowledge by the owners, lessors, sub-lessors, operators; or owners, lessors, or sub-lessors of other business establishments is required for prosecution under this Act: Provided, further, That the receipt of information that trafficking activity has taken place in the premises also gives rise to the duty to notify the PNP or the NBI.

The duties and obligations of the above entities as stated herein, when requested by law enforcers, prosecutors and other investigative bodies through proper processes and done in good faith shall not be construed as a violation of Republic Act No. 10173 or the 'Data Privacy Act of 2012' or Republic Act No. 10175 or the 'Cybercrime Prevention Act of 2012'. *(n)*

SECTION 10. *Penalties and Sanctions.* – The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

(a) Any person found guilty of committing any of the acts enumerated in Section 4 shall suffer the penalty of imprisonment of twenty (20) years and a fine of not less than One million pesos (P1,000,000.00) but not more than Two million pesos (P2,000,000.00);

(b) Any person found guilty of committing any of the acts enumerated in Section 4-A of this Act shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

(c) Any person found guilty of Section 4-B of this Act shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

In every case, conviction shall cause and carry the automatic revocation of the license or registration of the recruitment agency involved in trafficking. The license of a recruitment agency which trafficked a child shall be automatically revoked.

(d) Any person found, guilty of committing any of the acts enumerated in Section 5 shall suffer the penalty of imprisonment of fifteen (15) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

(e) Any person found guilty of qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00);

(f) Any person who violates Section 7 hereof shall suffer the penalty of imprisonment of six (6) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

(g) Any person who violates Section 9 hereof shall suffer the penalty of a fine of not less than Two million pesos (P2,000,000.00) but not more than Five million pesos (P5,000,000.00) for the first offense. In case of subsequent offense, the penalty of a fine of not less than Two million pesos (P2,000,000.00) but not more than Ten million pesos (Pl0,000,000.00) and revocation of franchise and license to operate. Without prejudice to the criminal liability, of the person or persons willfully refusing to perform the responsibilities under Section 9 of this Act, juridical persons owning or managing the aforementioned enterprises shall be subsidiarily liable, and their license or permit to operate may be revoked.

Willful and intentional violations of Section 9 of this Act are subject to the penalties in paragraph (f) of this section; *(n)*

(h) Any person found guilty of violating paragraphs (b), (d), and (g) of Section 8 shall suffer the penalty of imprisonment of six (6) years and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (Pl,000,000.00): *Provided*, That the penalty of not less than six (6) years and one (1) day to twelve (12) years of imprisonment shall be imposed on any person who copies without court authorization, removes, deletes, expunges, incinerates, shreds or destroys the tapes, discs, and recording; and their excerpts and summaries, written notes, or memoranda made in connection with the authorized interception and recording thereof intentionally; or omits or excludes from the joint affidavit any item or portion thereof mentioned therein; *(n)*

(i) The license of a recruitment or manning agency which recruited or deployed an underage migrant worker shall be automatically revoked and shall be penalized with a fine of not less than One million pesos (Pl,000,000.00) but not more than Three million pesos (P3,000,000.00) per recruited underage migrant worker. All fees pertinent to the processing of papers or documents in the recruitment or deployment of the underage migrant worker shall be refunded by the responsible recruitment or manning agency, without need of notice, to the underage migrant worker or to the latter's parents or guardian. The refund shall be independent of and in addition to the indemnification for the damages sustained by the underage migrant worker. The refund shall be paid within thirty (30) days from the date of the mandatory repatriation; *(n)*

(j) Any person who violates Section 5(m) of this Act shall be deemed to have committed unlawful activities and penalized for money laundering as defined in Republic Act No. 9160, otherwise known as the 'Anti-Money Laundering Act of 2001', as amended; *(n)*

(k) Any person who files a complaint against another for violations of this Act and such complaint has been found to be with malice and solely for the purpose of harassing, persecuting or subjecting the latter to unwarranted surveillance or wiretapping, or both, shall suffer the penalty of imprisonment of not more than one (1) year and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One Million pesos (P1,000,000.00); *(n)*

(l) If the offender is a corporation, partnership, association, club, establishment or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager, or any responsible officer, or any two (2) or more of them, who participated in the commission of the crime or who shall have permitted or knowingly failed to prevent its commission; *(n)*

(m) The registration with the Securities and Exchange Commission (SEC) or the Department of Trade and Industry (DTI) and license to operate of the erring agency, corporation, association, religious group, tour or travel agent, club or establishment, any place of entertainment, or any of the enumerated entities under Section 9, shall be cancelled and revoked permanently. The owner, president, partner or manager thereof shall not be allowed to operate similar establishments in a different name; *(n)*

(n) If the offender is a foreigner, he or she shall be immediately deported after serving his or her sentence and be barred permanently from entering the country; *(n)*

(o) Any employee or official of government agencies who shall issue or approve the issuance of travel exit clearances, passports, registration certificates, counseling certificates, marriage license, and other similar documents to persons, whether juridical or natural, recruitment agencies, establishments or other individuals or groups, who fail to observe the prescribed procedures and the requirement as provided for by laws, rules and regulations, shall be held administratively liable, without prejudice to criminal liability under this Act. The concerned government officials or employees shall, upon conviction, be dismissed from the service and be barred permanently to hold public office and their retirement and other benefits shall likewise be forfeited; *(n)*

(p) Public or government officials and employees who are found guilty of any violation of this Act shall be punished with dismissal or removal from office after due notice and hearing by the appropriate agency. In

addition, such official or employee shall suffer perpetual absolute disqualification to hold public office and forfeiture of all retirement and other benefits; and

(q) Conviction, by final judgment of the adopter for any offense under this Act shall result in the immediate rescission of the decree of adoption. ***(n)***

SECTION 11. *Use of Trafficked Persons.* – Any person who buys or engages the services of a trafficked person for prostitution shall be penalized with the following: *Provided,* That the Probation Law (Presidential Decree No. 968) shall not apply:

(a) *Prision Correccional* in its maximum period to *prision mayor* or six (6) years to twelve (12) years imprisonment and a fine of not less than Fifty thousand pesos (P50,000.00) but not more than One hundred thousand pesos (P100,000.00): *Provided, however,* That the following acts shall be exempted thereto:

(1) If an offense under paragraph (a) involves sexual intercourse or lascivious conduct with a child, the penalty shall be *reclusion temporal* in its medium period to *reclusion perpetua* or seventeen (17) years to forty (40) years imprisonment and a fine of not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

(2) If an offense under paragraph (a) involves carnal knowledge of, or sexual intercourse with, a male or female trafficking victim and also involves the use of force or intimidation, to a victim deprived of reason or to an unconscious victim, or a victim under twelve (12) years of age, instead of the penalty prescribed in the subparagraph above the penalty shall be a fine of not less than One million pesos (P1,000,000.00) but not more than Five million pesos (P5,000,000.00) and imprisonment of *reclusion perpetua* or forty (40) years imprisonment with no possibility of parole; except that if a person violating paragraph (a) of this section knows the person that provided prostitution services is in fact a victim of trafficking, the offender shall not be likewise penalized under this section but under Section 10 as a person violating Section 4; and if in committing such an offense, the offender also knows a qualifying circumstance for trafficking, the offender shall be penalized under Section 10 for qualified trafficking. If in violating this section the offender also violates Section 4, the offender shall be penalized under Section 10 and, if applicable, for qualified trafficking instead of under this section;

(b) *Deportation.* – If a foreigner commits any offense described by paragraph (1) or (2) of this section or violates any pertinent provision of this Act as an accomplice or accessory to, or by attempting any such offense, he or she shall be immediately deported after serving his or her sentence and be barred permanently from entering the country; and

(c) *Public Official.* – If the offender is a public official, he or she shall be dismissed from service and shall suffer perpetual absolute disqualification to hold public, office, in addition to any imprisonment or fine received pursuant to any other provision of this Act.

SECTION 12. *Prescriptive Period.* – Trafficking cases under this Act shall prescribe in ten (10) years: *Provided, however,* That trafficking cases committed by a syndicate or in a large scale as defined under Section 6, or against a child, shall prescribe in twenty (20) years.

The prescriptive period shall commence to run from the day on which the trafficked person is delivered or released from the conditions of bondage, or in the case of a child victim, from the day the child reaches the age of majority, and shall be interrupted by the filing of the complaint or information and shall commence to run again when the proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not imputable to the accused.

SECTION 13. *Exemption from Filing Fees.* – When the trafficked person institutes a separate civil action for the recovery of civil damages, he/she shall be exempt from the payment of filing fees.

SECTION 14. *Confiscation and Forfeiture of the Proceeds and Instruments Derived from Trafficking in Persons*. – In addition to the penalty imposed for the violation of this Act, the court shall order the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the commission of the crime, unless they are the property of a third person not liable for the unlawful act; *Provided, however,* That all awards for damages shall be taken from the personal and separate properties of the offender; *Provided, further,* That if such properties are insufficient, the balance shall be taken from the confiscated and forfeited properties.

When the proceeds, properties and instruments of the offense have been destroyed, diminished in value or otherwise rendered worthless by any act or omission, directly or indirectly, of the offender, or it has been concealed, removed, converted or transferred to prevent the same from being found or to avoid forfeiture or confiscation, the offender shall be ordered to pay the amount equal to the value of the proceeds, property or instruments of the offense.

SECTION 15. *Trust Fund*. - **Trust Fund. – All fines imposed under this Act and the proceeds and properties forfeited and confiscated pursuant to Section 14 hereof, as well as those collected by the AMLC, shall accrue to a Trust Fund to be administered and managed by the Council to be used exclusively for programs that prevent acts of trafficking and protect, rehabilitate, reintegrate trafficked persons into the mainstream of society. Such programs shall include, but are not limited to, the following: (*n*)**

(a) Provision for mandatory services set forth in Section 23 of this Act;

(b) Sponsorship of a national research program on trafficking and establishment of a data collection system for monitoring and evaluation purposes;

(c) Provision of necessary technical and material support services to appropriate government agencies and non-government organizations (NGOs);

(d) Sponsorship of conferences and seminars to provide venue for consensus building amongst the public, the academe, government, NGOs and international organizations; and

(e) Promotion of information and education campaign on trafficking.

SECTION. 16. *Programs that Address Trafficking in Persons.* – The government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. For this purpose, the following agencies are hereby mandated to implement the following programs:

(a) Department of Foreign Affairs (DFA) – shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and implementation of relevant programs. It shall provide Filipino victims of trafficking overseas with free legal assistance and counsel to pursue legal action against his or her traffickers, represent his or her interests in any criminal investigation or prosecution, and assist in the application for social benefits and/or regular immigration status as may be allowed or provided for by the host country. The DFA shall repatriate trafficked Filipinos with the consent of the victims and assist in the prosecution of their traffickers.

The DFA shall take necessary measures for the efficient implementation of the Electronic Passporting System to protect the integrity of Philippine passports, visas and other travel documents to reduce the incidence of trafficking through the use of fraudulent identification documents.

In coordination with the DOLE, it shall provide free temporary shelters and other services to Filipino victims of trafficking overseas through the Migrant Workers and other Overseas Filipinos Resource Centers established overseas under Republic Act No. 8042, as amended.

In coordination with the Bureau of Immigration (Bl) and the DOJ, the DFA shall:

(1) Ensure, as far as practicable, that all convicted sex offenders in all jurisdictions, or those listed in the registry of sex offenders in their own countries shall not be allowed entry in the Philippines;
(2) Develop mechanisms to ensure the timely, coordinated, and effective response to cross-border cases of trafficking;
(3) Provide immediate protection, repatriation, or both, to Filipino victims of trafficking overseas;
(4) Recommend measures and undertake joint activities to enhance cooperative efforts and mutual assistance among foreign countries through bilateral or multi-lateral arrangements to promote the registration of trafficking and sex offenders and their notification to persons concerned;
(5) Adopt measures and policies to protect the rights and needs of victims who are foreign nationals or asylum seekers, refugees, stateless applicants and stateless persons in the Philippines and foreign NGOs caring for and protecting victims; and
(6) Initiate training programs to capacitate government agents and NGOs in identifying and providing the necessary measures for intervention or assistance to victims of trafficking. ***(n)***

(b) Department of Social Welfare and Development (DSWD) – shall develop gender- responsive and. trauma-informed counseling, rehabilitative, and protective programs for trafficked persons; including prevention, rehabilitation, and reintegration programs for children, taking into consideration the unique needs and requirements to enable them to cope with the trauma that they have suffered on account of trafficking. It shall ensure that the national recovery and reintegration database is updated and maintained, and that the national referral system which shall coincide with the local referral system, shall be implemented. It shall maintain a 24-hour call center for crisis calls and technology-based counseling and referral system.

The DSWD must conduct information campaigns in communities and schools, teaching parents and families that receiving consideration in exchange for adoption is punishable under the law. Furthermore, information campaigns shall educate and enjoin parents not to give their children up for adoption in exchange for any consideration. ***(n)***

(c) Department of Labor and Employment (DOLE) – shall ensure the strict implementation and compliance with the rules and guidelines relative to standard labor conditions and the employment of persons locally and overseas across all sectors. It shall likewise monitor, document and report cases of trafficking in persons involving employers and formal and informal labor recruiters across all sectors, provide employment facilitation and livelihood opportunities to trafficked victims and survivors. It shall assist in the prosecution of employers hiring trafficked foreign nationals. In coordination with the DFA, it shall provide free temporary shelters and other services to Filipino victims of trafficking through the Migrant Workers and Other Overseas Filipinos Resource Center under Republic Act No. 8042. It shall also provide reintegration support to these victims upon their repatriation. ***(n)***

(d) Department of Justice (DOJ) – shall ensure the prosecution of persons accused of trafficking and designate and train special prosecutors who shall handle and prosecute cases of trafficking. For this purpose, it shall provide legal and technical advice to the LEAs and facilitate international and mutual legal assistance on the preservation and production of computer data and collection of electronic evidence. It shall also establish a mechanism for free legal assistance for trafficked persons, in coordination with the DSWD, Integrated Bar of the Philippines (IBP) and other NGOs and volunteer groups. The DOJ shall conduct trainings and continuous education programs on investigation and prosecution for trafficking in persons and other related offenses for

prosecutors and LEOs; make or process requests for mutual legal assistance or extradition; coordinate with international law enforcement and prosecution authorities for the prosecution of human traffickers with a cross-border element; institutionalize border control mechanisms to enforce the provisions of this Act; and coordinate with and provide assistance to AMLC on cases of trafficking in persons with possible money laundry underpinnings. ***(n)***

(e) Philippine Commission on Women (PCW) – shall actively participate and coordinate in the formulation and monitoring of policies addressing the issue of trafficking in persons in coordination with relevant government agencies. It shall likewise advocate for the inclusion of the issue of trafficking in persons in both its local and international advocacy for women's issues.

(f) Bureau of Immigration (Bl) – shall strictly administer and enforce immigration and alien administration laws. It shall disallow entry of foreign nationals who have been blacklisted or placed in watchlist status for having committed sex offenses against women and children, or similar activities as trafficking in persons and OSAEC in any jurisdiction. It shall adopt measures for the apprehension of suspected traffickers both at the place of arrival and departure, ensure strong border protection against human trafficking including the regulation of visa upon arrivals, and shall ensure compliance by the Filipino fiancé/fiancées and spouses of foreign nationals with the guidance and counseling requirement as provided for in this Act. ***(n)***

(g) Philippine National Police (PNP) and National Bureau of Investigation (NBI) – shall be the primary law enforcement agencies to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking. They shall closely coordinate with each other and with other law enforcement agencies to secure concerted efforts for effective investigation and apprehension of suspected traffickers. They shall also establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations.

(h) Philippine Overseas Employment Administration (POEA) and Overseas Workers and Welfare Administration (OWWA) – POEA shall implement Pre-Employment Orientation Seminars (PEOS) while Pre-Departure Orientation Seminars (PDOS) shall be conducted by the OWWA. It shall likewise formulate a system of providing free legal assistance to trafficked persons, in coordination with the DFA.

The POEA shall create a blacklist of recruitment agencies, illegal recruiters and persons facing administrative, civil and criminal complaints for trafficking filed in the receiving country and/or in the Philippines and those agencies, illegal recruiters and persons involved in cases of trafficking who have been rescued by the DFA and DOLE in the receiving country or in the Philippines even if no formal administrative, civil or criminal complaints have been filed:

Provided, That the rescued victims shall execute an affidavit attesting to the acts violative of the anti-trafficking law. This blacklist shall be posted in conspicuous places in concerned government agencies and shall be updated bi-monthly.

The blacklist shall likewise be posted by the POEA in the shared government information system, which is mandated to be established under Republic Act No. 8042, as amended.

The POEA and OWWA shall accredit NGOs and other service providers to conduct PEOS and PDOS, respectively. The PEOS and PDOS should include the discussion and distribution of the blacklist.
The license or registration of a recruitment agency that has been blacklisted may be suspended by the POEA upon a review of the complaints filed against said agency.

(i) Department of the Interior and Local Government (DILG) – shall institute a systematic information and prevention campaign in coordination with pertinent agencies of government as provided for in this Act. In coordination with the IACAT, it shall provide training capacity-building and awareness-raising programs to LGUs, in coordination with their local anti-trafficking in persons committees or council to support the effective implementation of a community-based trafficking education program, and to ensure wide understanding and application of this Act at the local level., Together with the leagues of provinces, cities, and municipalities, it

shall also embed in the LGU accreditation and local permit processing of tourism enterprises a protocol that shall emphasize anti-trafficking objectives, the various forms by which trafficking in persons is committed, and the concomitant responsibility of these enterprises to report actual and possible acts of trafficking to the authorities.

It shall mandate LGUs to pass an ordinance to combat trafficking in persons and other forms of exploitation at the- local level; and develop and implement a trafficking in persons preventive education program aimed at educating and orienting the public about the crime and how it is perpetrated in current society, and the services available for victims and survivors. ***(n)***

(j) Commission on Filipinos Overseas (CFO) – shall conduct pre-departure counseling services for Filipinos in intermarriages and bi-national couples, including an orientation on human trafficking and other forms of exploitation and reporting mechanisms and services available to the victims and survivors; and maintain a watch list database of foreign nationals with a history of domestic violence, involvement in trafficking in persons, mail-order-bride schemes, child abuse, and sexual abuse. It shall develop a system of accreditation of NGOs that may be mobilized for purposes of conducting pre-departure counseling services for Filipinos in intermarriages and bi-national couples. As such, it shall ensure that the counselors contemplated under this Act shall have the minimum qualifications and training of guidance counselors as provided for by law.

It shall, in coordination with the IACAT, supervise the operation of a 24/7 hotline facility, 1343 Action line, against human trafficking that responds to emergency or crisis calls from victims of human trafficking, their families, and the general public.

It shall likewise assist in the conduct of information campaigns against trafficking in coordination with LGUs, the Philippine Information Agency (PIA), and NGOs. ***(n)***

(k) Local government units (LGUs) – shall develop and implement programs to prevent trafficking in persons, monitor and document cases of trafficking in persons, and provide support to victims of trafficking in persons including their subsequent rehabilitation and reintegration. To this end, they shall:

(1) Ensure that the Violence Against Women and Children desks in all barangays are activated and staffed by trained personnel who are able to provide immediate and appropriate support to victims of trafficking in persons;
(2) Organize and ensure the smooth functioning of a sub-committee on trafficking in persons as an integral part of the local anti-trafficking in persons council that shall recommend policies and programs aimed at ensuring the protection of children against trafficking and grant honoraria to local anti-trafficking in persons committees or council members to ensure total active participation;
(3) Document and monitor cases of trafficking in persons in their respective areas of jurisdiction, effect the cancellation of licenses of establishments which violate the provisions of this Act, ensure effective prosecution of such cases, and prescribe compliance with this Act as requisite for the issuance and renewal of licenses and permits to establishments within their respective jurisdictions, including internet service providers, internet content hosts, internet cafes and establishments offering Wi-Fi services, tourism enterprises and malls, transportation services, and financial intermediaries;
(4) Ensure the provision of necessary services to victims of trafficking in persons, such as temporary shelter, board and lodging, transportation, counseling and documentation, among others;
(5) Coordinate with, refer, and endorse to the DSWD all cases of trafficking in persons;
(6) Undertake an information campaign against trafficking. ·in persons through the establishment of the Migrants Advisory and Information Network (MAIN) desks in municipalities or provinces in coordination with the DILG, PIA, CFO, NGOs and other concerned agencies. They shall develop a system for accreditation among NGOs for purposes of establishing centers and programs for intervention in various levels of the community;
(7) Encourage and support community- based initiatives which address the trafficking in persons;
(8) Enact ordinances to localize and strengthen the implementation of this law by providing local services and programs to victims-survivors of trafficking and other exploitative behavior;

(9) Develop a system for accreditation of NGOs and civil society organizations (CSOs) for purposes of establishing centers and programs for interventions in the community;
(10) Submit regular reports to the IACAT on trafficking in persons cases and programs undertaken to prevent and address trafficking in persons; and
(11) Provide livelihood grants to support the economic empowerment of poor households, in order to increase their financial capacities and address household crises which force them to engage in trafficking.

In implementing this Act, the LGUs may seek and enlist the assistance of NGOs, people's organizations (POs), civic organizations and other volunteer groups.

The DILG shall investigate violations of this provision and recommend the appropriate filing of an administrative case against erring public officials to the Ombudsman.

Any act or omission that is violative of this provision, and which is defined and penalized under the Revised Penal Code or any statute, shall be prosecuted and punished under the applicable law. ***(n)***

(l) Department of Health (DOH) – shall make available resources and facilities in providing health care to victims, of trafficking, which shall at all times be held confidential. It shall likewise develop a comprehensive program to prevent the trafficking of persons for the removal or sale of organs for implementation by the local health offices, and render assistance in the investigation and prosecution of the same. It shall also undertake and sustain activities to increase public awareness on trafficking in persons for the removal or sale of organs, which may include awareness among medical practitioners, family and patient information and education, public education, and advocacy campaigns. It shall also provide assistance in the investigation and prosecution of traffickers of infants born in health facilities. It shall further render the same assistance in organ trafficking cases. ***(n)***

(m) Department of Information and Communications Technology (DICT) – in coordination with the Cybercrime Investigation and Coordinating Council (CICC), National Privacy Commission (NPC) and National Telecommunications Commission (NTC) shall formulate policies, rules, and regulations to ensure that internet intermediaries will comply with their duties to notify, preserve, and disclose data, as well as install available technology to block or filter any form of child trafficking, child sexual abuse, or CSAEM or CSAM.

It shall likewise extend immediate assistance for the prevention of the commission of cybercrime offenses related to trafficking in persons, particularly online exploitation of children; and assist law enforcement and prosecution agencies in the investigation of trafficking in persons committed through the use of information and communications technology. ***(n)***

(n) Department of Migrant Workers (DMW) – shall provide Filipino victims of labor trafficking overseas with free legal assistance and counsel to pursue legal action against the offenders; represent their interests in any criminal investigation or prosecution; and assist in the application for social benefits and the regularization of their immigration status as may be allowed _or provided for by the host country. The DMW shall repatriate trafficked Overseas Filipino Workers (OFWs), especially those whose ages fall below the minimum age requirement for overseas deployment, without delay, with the consent of the victims and assist in the prosecution of their traffickers. All responsible officers in the Foreign Service shall have the duty to advise the DMW through the fastest means of communication available the discovery and other relevant information on said trafficked migrant workers. ***(n)***

(o) Department of Tourism (DOT) - in coordination with the IACAT and other relevant government. agencies, shall formulate and implement preventive measures against sex tourism packages and the use of tourism enterprises as situs of human trafficking; develop a comprehensive program, including policies and guidelines, to address and prevent trafficking in persons in the travel and tourism industry and in places of amusement; develop a set of .criteria as basis for accreditation of tourism enterprises by its local tourism offices, such as the enactment of a local tourism child protection policy in partnership with an NGO that is

involved in preventing sexual exploitation of children in the travel and tourism industry; and ensure that all anti-trafficking in persons safeguards, and relevant national and local labor standards and practices are being followed, adopted and implemented in all tourism enterprises, the travel and tourism industry and in places of amusement. ***(n)***

(p) Department of Education (DepEd) – shall provide measures to prevent trafficking in persons and other exploitative acts such as OSAEC in educational institutions, such as the conduct of information campaigns and the establishment of reporting mechanisms in the school system consistent with its child protection and gender and development programs; and develop a teacher training manual and modules or curriculum for students aimed at raising their awareness on. the perils of trafficking in persons and the prevention of trafficking and other exploitative forms of behavior.
In coordination with the IACAT, the Commission on Higher Education (CHED), the Technical Education and Skills Development Authority (TESDA), and civil society actors, the DepEd shall implement a school-based anti-trafficking preventive education program. ***(n)***

(q) Department of Agriculture (DA) and Bureau of Fisheries and Aquatic Resources (BFAR) – shall institute a systematic information and prevention campaign in coordination with the agencies of government as provided for in this Act. It shall provide capacity-building programs to its regional, city, and municipal units, in coordination with the IACAT and other concerned agencies, to ensure wide understanding and application of this Act, including the local agriculture and fisheries sector. They shall encourage and support anti-trafficking initiatives in the national and local levels, and establish a system for receiving complaints and calls of assisting trafficked persons, and facilitating the referral of these complaints to the appropriate agency. ***(n)***

(r) Department of Transportation (DOTr) – consistent with its mandate to provide viable, efficient, fast, safe, and dependable transportation, shall develop a comprehensive program and awareness campaign to assist all transportation sectors, including Transport Network Vehicle Services (TNVS), and transportation personnel, such as airline flight attendants, airport agents, taxi and bus drivers, TNVS drivers, truckers, train and delivery drivers, and passenger boat crew in identifying victims of trafficking in persons and reporting incidents of trafficking in persons. ***(n)***

(s) Philippine Coast Guard (PCG) – consistent with its mandate to perform maritime search and rescue, maritime law enforcement, maritime safety, and maritime security, shall undertake regular inspections, surveillance, investigation, and arrest of individuals or persons suspected to be engaged in trafficking at sea. It shall closely coordinate with other LEAs to secure concerted efforts for effective investigation and apprehension of suspected traffickers and shall establish a system to receive complaints and calls to assist trafficked persons and conduct rescue operations. It shall provide capacity-building programs to its regional, city, and municipal units, in coordination with other concerned agencies, in ensuring wide understanding and application of this Act at the local level. It shall encourage and support anti-trafficking initiatives from the national to the local levels. ***(n)***

(t) National Council on Disability Affairs (NCDA) – in coordination with the IACAT, shall develop programs for the prevention of trafficking of PWDs; and provide assistance to PWDs who are victims of trafficking. ***(n)***

(u) National Commission on Indigenous Peoples (NCIP) – in coordination with the IACAT, shall develop a program for the prevention of trafficking in indigenous persons and in indigenous cultural communities: ***Provided*****, That trafficking in persons cases are matters that cannot be the subject of settlement in accordance with tribal customs.** ***(n)***

(v) Office of Civil Defense – National Disaster Risk Reduction and Management Council (OCD-NDRRMC) - in coordination with the IACAT, shall develop guidelines for the prevention of trafficking in persons in emergency; disaster, pandemic and crisis situations, as well as mandate the Local Disaster Risk Reduction Management Office (LDRRMO) and Council (LDRRMC) to develop programs to prevent and protect the survivors of disaster or conflict from perpetrators of trafficking in persons. ***(n)***

(w) Philippine Amusement and Gaming Corporation (PAGCOR) – in coordination with the IACAT and the DOLE, shall develop guidelines to monitor Philippine Off-Shore Gaming Operator establishments to ensure compliance with the provisions of this Act. It shall also monitor gaming and amusement venues to prevent sex trafficking and prosecute violators. ***(n)***

(x) Philippine Center on Transnational Crime (PCTC) – shall undertake strategic research on the structure and dynamics of trafficking in persons with transnational crime dimension, predict trends and analyze given factors for the formulation of individual and collective strategies for the prevention and detection of trafficking in persons and the apprehension of criminal elements involved; strengthen information exchange on trafficking in persons between and among government agencies, foreign counterparts and international organizations; serve as the focal point in international enforcement coordination on trafficking in persons particularly with the International Criminal Police Organization (INTERPOL) a:Jrd cooperation with regional and international foreign counterparts; and promote the development of training courses in relation to combating the crime of trafficking in persons. ***(n)***

(y) Council for the Welfare of Children (CWC) – shall integrate in its development and strategic frameworks issues and concerns affecting trafficking in children and ensure the adoption of such frameworks by the LGUs and other stakeholders; vigorously advocate against trafficking of children; improve data on trafficking in children through integration of critical and relevant indicators into the monitoring system for children; adopt policies and measures that will protect and promote the rights and welfare of children victims of trafficking and coordinate and monitor their implementation; and address issues on trafficking of children through policy and program interventions. ***(n)***

(z) Philippine Ports Authority (PPA) – consistent with its mandate, shai1 enhance its security measures and shall undertake regular inspections of the country's ports and harbors; coordinate with other LEAs for effective investigation and apprehension of suspected traffickers; and develop programs to address and prevent trafficking in persons committed within the ports under their jurisdiction. ***(n)***

SECTION 16-A. *Anti-Trafficking in Persons Database.* – An anti-trafficking in persons central database shall be established by the Inter-Agency Council Against Trafficking created under Section 20 of this Act. The Council shall submit a report to the President of the Philippines and to Congress, on or before January 15 of every year, with respect to the preceding year's programs and data on trafficking-related cases.

All government agencies tasked under the law to undertake programs and render assistance to address trafficking in persons shall develop their respective monitoring and data collection systems, and databases, for purposes of ensuring efficient collection and storage of data on cases of trafficking in persons handled by their respective offices. Such data shall be submitted to the Council for integration in a central database system.

For this purpose, the Council is hereby tasked to ensure the harmonization and standardization of databases, including minimum data requirements, definitions, reporting formats, data collection systems, and data verification systems. Such databases shall have, at the minimum, the following information:

(a) The number of cases of trafficking in persons, sorted according to status of cases, including the number of cases being investigated, submitted for prosecution, dropped, and filed and/or pending before the courts and the number of convictions and acquittals;

(b) The profile/information on each case;

(c) The number of victims of trafficking in persons referred to the agency by destination countries/areas and by area of origin; and

(d) Disaggregated data on trafficking victims and the accused/defendants.

SECTION 17. *Legal Protection to Trafficked Persons.* – Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such, shall not be penalized for unlawful acts committed as a direct result of, or as an incident or in relation to, being trafficked based on the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.

Victims of trafficking for purposes of prostitution as defined under Section 4 of this Act are not covered by Article 202 of the Revised Penal Code and as such, shall not be prosecuted, fined, or otherwise penalized under the said law."

SECTION 17-A. *Temporary Custody of Trafficked Victims.* – The rescue of victims should be done as much as possible with the assistance of the DSWD or an accredited NGO that services trafficked victims. A law enforcement officer, on a reasonable suspicion that a person is a victim of any offense defined under this Act including attempted trafficking, shall immediately place that person in the temporary custody of the local social welfare and development office, or any accredited or licensed shelter institution devoted to protecting trafficked persons after the rescue."

SECTION 17-B. *Irrelevance of Past Sexual Behavior, Opinion Thereof or Reputation of Victims and of Consent of Victims in Cases of Deception, Coercion and Other Prohibited Means.* – The past sexual behavior or the sexual predisposition of a trafficked person shall be considered inadmissible in evidence for the purpose of proving consent of the victim to engage in sexual behavior, or to prove the predisposition, sexual or otherwise, of a trafficked person. Furthermore, the consent of a victim of trafficking to the intended exploitation shall be irrelevant where any of the means set forth in Section 3(a) of this Act has been used."

SECTION 17-C. *Immunity from Suit, Prohibited Acts and Injunctive Remedies.* – No action or suit shall be brought, instituted or maintained in any court or tribunal or before any other authority against any: (a) law enforcement officer; (b) social worker; or (c) person acting in compliance with a lawful order from any of the above, for lawful acts done or statements made during an authorized rescue operation, recovery or rehabilitation/intervention, or an investigation or prosecution of an anti-trafficking case: *Provided,* That such acts shall have been made in good faith.

The prosecution of retaliatory suits against victims of trafficking shall be held in abeyance pending final resolution and decision of criminal complaint for trafficking.

It shall be prohibited for the DFA, the DOLE, and the POEA officials, law enforcement officers, prosecutors and judges to urge complainants to abandon their criminal, civil and administrative complaints for trafficking.

The remedies of injunction and attachment of properties of the traffickers, illegal recruiters and persons involved in trafficking may be issued *motu proprio* by judges.

SECTION 18. *Preferential Entitlement Under the Witness Protection Program*. – Any provision of Republic Act No. 6981 to the contrary notwithstanding, any trafficked person shall be entitled to the witness protection program provided therein.

SECTION 19. ***Trafficked Persons Who are Foreign Nationals*****. – Subject to the guidelines issued by the Council, trafficked persons in the Philippines who are nationals of a foreign country shall also be entitled to appropriate protection, assistance and services available to trafficked persons under this Act, including the provision of interpreters and coordination with their respective embassies with the express consent of the**

victims: ***Provided,*** **That they shall be permitted continued presence in the Philippines for a length of time prescribed by the Council as necessary to effect the prosecution of offenders.** ***(n)***

SECTION 20. *Inter-Agency Council Against Trafficking.* – **There is hereby established an Inter- Agency Council Against Trafficking (IACAT), to be composed of the Secretary of the Department of Justice as Chairperson and the Secretary of the Department of Social Welfare and Development as Co-chairperson and shall have the following as members:** ***(n)***

(a) Secretary, Department of Foreign Affairs;

(b) Secretary, Department of Labor and Employment;

(c) Secretary, Department of the Interior and Local Government;

(d) Secretary, Department of Education;

(e) Secretary, Department of Health;

(f) Secretary, Department of Information and Communications Technology;

(g) Secretary, Department of Migrant Workers;

(h) Secretary, Department of Tourism;

(i) Secretary, Department of Transportation;

(j) Administrator, Philippine Overseas Employment Administration;

(k) Commissioner, Bureau of Immigration;

(l) Commandant, Philippine Coast Guard;

(m) Chief, Philippine National Police;

(n) Chairperson, Philippine Commission on Women;

(o) Chairperson, Commission on Filipinos Overseas;

(p) Chairperson, National Commission on Indigenous Peoples;

(q) Director, National Bureau of Investigation;

(r) Executive Director, Philippine Center on Transnational Crime;

(s) Executive Director, Council for the Welfare of Children;

(t) Executive Director, National Authority for Child Care;

(u) Executive Director, Anti-Money Laundering Council;

(v) Presidents of the Leagues of Provinces, Municipalities, and Cities of the Philippines; and

(w) Three (3) representatives from NGOs, who shall include one (1) representative each from among the sectors representing women, overseas Filipinos, and children, with a proven record of involvement in the prevention and suppression of trafficking in persons, and with a view towards even geographical representation. These representatives shall be nominated by the government agency representatives of the Council, for appointment by the President for a term of three (3) years.

SECTION 21. *Functions of the Council*. – The Council shall have the following powers and functions:

(a) Formulate a comprehensive and integrated program to prevent and suppress the trafficking in persons, utilizing a multi-disciplinary and collaborative approach in the service delivery to and case management of trafficking victims and survivors and their families, including livelihood opportunities, and the development of school-based and community- based human trafficking preventive education programs, and psychosocial interventions by a multi- disciplinary team for the victims and their families; ***(n)***

(b) Promulgate rules and regulations as may be necessary for the effective implementation of this Act;

(c) Monitor and oversee the strict implementation of this Act;

(d) Coordinate the programs and projects of the various member agencies to effectively address the issues and problems attendant to trafficking in persons;

(e) Coordinate the conduct of massive information dissemination and campaign on the existence of the law and the various issues and problems attendant to trafficking through the LGUs, concerned agencies, and NGOs;

(f) Direct other agencies to immediately respond to the problems brought to their attention and report to the Council on action taken;

(g) Assist in filing of cases against individuals, agencies, institutions or establishments that violate the provisions of this Act;

(h) Formulate a program for the reintegration of trafficked persons in cooperation with DOLE, DSWD, Technical Education and Skills Development Authority (TESDA), Commission on Higher Education (CHED), LGUs and NGOs;

(i) Secure from any department, bureau, office, agency, or instrumentality of the government or from NGOs and other civic organizations such assistance as may be needed to effectively implement this Act;

(j) Complement the shared government information system for migration established under Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995" with data on cases of trafficking in persons, and ensure that the proper agencies conduct a continuing research and study on the patterns and scheme of trafficking in persons which shall form the basis for policy formulation and program direction;

(k) Develop the mechanism to ensure the timely, coordinated, and effective response to cases of trafficking in persons;

(l) Recommend measures to enhance cooperative efforts and mutual assistance among foreign countries through bilateral and/or multilateral arrangements to prevent and suppress international trafficking in persons;

(m) Coordinate with the DICT, DTI, and other NGOs in monitoring the promotion of advertisements that tend to promote trafficking in persons; ***(n)***

(n) Adopt measures and policies to protect the rights and needs of trafficked persons who are foreign nationals in the Philippines;

(o) Initiate training programs in identifying and providing the necessary intervention or assistance to trafficked persons; and

(p) Regularly assess current data collection on, and the reporting and monitoring system for trafficking in persons, and identify gaps in implementation; ***(n)***

(q) Develop an effective referral system which concerned government agencies and NGOs can use to coordinate the provision of the necessary intervention or assistance that can be provided to trafficked persons; ***(n)***

(r) Conduct periodic studies with other stakeholders such as LGUs, civil society, and the academe to build more empirical evidence on trafficking cases; ***(n)***

(s) Develop an integrated case management system or trafficking in persons data sets to facilitate the coordination and monitoring among the members of the Council and ensure the proper recovery and reintegration of the victim-survivors of trafficking; ***(n)***

(t) Impose administrative sanctions on the violations of this law and its implementing rules and regulations as well as its orders and resolutions; and ***(n)***

(u) Exercise all the powers and perform such other functions necessary to attain the purposes and objectives of this Act. ***(n)***

SECTION 22. *Secretariat to the Council.* – The Department of Justice shall establish the necessary Secretariat for the Council.

The secretariat shall provide support for the functions and projects of the Council. The secretariat shall be headed by an executive director, who shall be appointed by the Secretary of the DOJ upon the recommendation of the Council. The executive director must have adequate knowledge on, training and experience in the phenomenon of and issues involved in trafficking in persons and in the field of law, law enforcement, social work, criminology, or psychology.

The executive director shall be under the supervision of the Inter-Agency Council Against Trafficking through its Chairperson and Co-Chairperson, and shall perform the following functions:

(a) Act as secretary of the Council and administrative officer of its secretariat;

(b) Advise and assist the Chairperson in formulating and implementing the objectives, policies, plans and programs of the Council, including those involving mobilization of government offices represented in the Council as well as other relevant government offices, task forces, and mechanisms;

(c) Serve as principal assistant to the Chairperson in the overall supervision of council administrative business;

(d) Oversee all council operational activities;

(e) Ensure an effective and efficient performance of council functions and prompt implementation of council objectives, policies, plans and programs;

(f) Propose effective allocations of resources for implementing council objectives, policies, plans and programs;

(g) Submit periodic reports to the Council on the progress of council objectives, policies, plans and programs;

(h) Prepare annual reports of all council activities; and

(i) Perform other duties as the Council may assign.

The Secretary of Justice shall determine the organizational structure and staffing pattern of the Secretariat. Such organizational structure and staffing pattern shall be submitted to the Department of Budget and Management for approval. ***(n)***

SECTION 23. *Mandatory Services to Trafficked Persons*. – To ensure recovery, rehabilitation and reintegration into the mainstream of society, concerned government agencies shall make available the following services to trafficked persons:

(a) Emergency shelter or appropriate housing;

(b) Counseling;

(c) Free legal services which shall include information about the victims' rights and the procedure for filing complaints, claiming compensation and such other legal remedies available to them, in a language understood by the trafficked person;

(d) Medical or psychological services;

(e) Livelihood and skills training; and

(f) Educational assistance to a trafficked child.

Sustained supervision and follow through mechanism that will track the progress of recovery, rehabilitation and reintegration of the trafficked persons shall be adopted and carried out.

SECTION 24. *Other Services for Trafficked Persons.* –

(a) *Legal Assistance*. – Trafficked persons shall be considered under the category "Overseas Filipino in Distress" and may avail of the legal assistance created by Republic Act No. 8042, subject to the guidelines as provided by law.

(b) *Overseas Filipino Resource Centers*. – The services available to overseas Filipinos as provided for by Republic Act No. 8042 shall also be extended to trafficked persons regardless of their immigration status in the host country.

(c) *The Country Team Approach*. – The country team approach under Executive Order No. 74 of 1993, shall be the operational scheme under which Philippine embassies abroad shall provide protection to trafficked persons insofar as the promotion of their welfare, dignity and fundamental rights are concerned.

(d) Healing, Recovery, and Reintegration Program for Trafficked Persons (RRPTP) – The DSWD and the LGUs shall develop and implement a healing, recovery, and reintegration program for trafficked persons which shall include a comprehensive package of services for the individual victim-survivor of trafficking in persons, the victim's immediate family, and the community at large including mental health services such as psychological assessment, counseling and therapy, rehabilitation, upgrade of temporary shelters, assistance

in accessing judicial services, livelihood training and opportunities, psychoeducation services, educational scholarships, or skills enhancement training services, and economic reintegration services.

The LGUs shall be responsible for the proper implementation of the recovery and reintegration program for trafficked persons: *Provided*, That the DSWD shall monitor and evaluate the implementation of the program and conduct an audit of Local Social Welfare and Development Offices. ***(n)***

SECTION 25. *Repatriation of Trafficked Persons.* – The DFA, in coordination with DOLE and other appropriate agencies, shall have the primary responsibility for the repatriation of trafficked persons, regardless of whether they are documented or undocumented.

If, however, the repatriation of the trafficked persons shall expose the victims to greater risks, the DFA shall make representation with the host government for the extension of appropriate residency permits and protection, as may be legally permissible in the host country.

SECTION 26-A. *Extra-Territorial Jurisdiction.* – **The State shall exercise jurisdiction over any act defined and penalized under this Act, even if committed outside the Philippines and whether or not such act or acts constitute an offense at the place of commission, if the offense, being a continuing offense, was either commenced in the Philippines; or committed in another country: *Provided*, That in the case of the latter, the suspect or accused:** ***(n)***

(a) Is a Filipino citizen; or

(b) Is a permanent resident of the Philippines; or

(c) Has committed the act against a citizen of the Philippines.

No prosecution may be commenced against a person under this section if a foreign government, in accordance with jurisdiction recognized by the Philippines, has prosecuted or is prosecuting such person for the conduct constituting such offense, except upon the approval of the Secretary of Justice.

The government may surrender or extradite persons accused of trafficking in the Philippines to the appropriate international court if any, or to another State pursuant to the applicable extradition laws and treaties.

SECTION 27. *Reporting Requirements* – The Council shall submit to the President of the Philippines and to Congress an annual report of the policies, programs and activities relative to the implementation of this Act.

SECTION 28. *Appropriations.* – **The amount necessary for the implementation of this Act shall be included in the annual General Appropriations Act.** ***(n)***

SECTION 28-A. *Additional Funds for the Council.* – The amount collected from every penalty, fine or asset derived from any violation of this Act shall be earmarked as additional funds for the use of the Council. The fund may be augmented by grants, donations and endowment from various sources, domestic or foreign, for purposes related to their functions, subject to the existing accepted rules and regulations of the Commission on Audit.

SECTION 29. *Implementing Rules and Regulations.* – **The IACAT shall, in consultation with representatives from other relevant government agencies such as CWC, DICT, CICC, PNP, NBI, NTC, NPC, the internet intermediaries,**

and concerned NGOs, promulgate the necessary rules and regulations to implement this Act, within ninety (90) days after the effectivity.

The Revised Penal Code and other special laws shall be suppletorily applicable to this Act. ***(n)***

SECTION 30. *Non-restriction of Freedom of Speech and of Association, Religion and the Right to Travel.* – Nothing in this Act shall be interpreted as a restriction of the freedom of speech and of association, religion and the right to travel for purposes not contrary to law as guaranteed by the Constitution.

SECTION 31. *Separability Clause.* – **If any part of this Act is declared unconstitutional or invalid, the other provisions not affected thereby shall continue to be in full force and effect.** ***(n)***

SECTION 32. *Repealing Clause.* – **Article 202 of the Revised Penal Code, as amended by Republic Act No. 10158, is deemed repealed and Republic Act No. 9208, as amended by Republic Act No. 10364·, is hereby further amended. All laws, acts, presidential decrees, executive orders, administrative orders, and rules and regulations inconsistent with or contrary to the provisions of this Act are deemed amended, modified, or repealed accordingly: Provided, That this Act shall not in any way amend or repeal the provisions of Republic Act No. 7610, otherwise known as the "Special Protection of Children Against Abuse, Exploitation and LGU Act".** ***(n)***

SECTION 33. *Effectivity.* – **This Act shall take effect fifteen (15) days after its publication in the Official Gazette or in a newspaper of general circulation.**

Annex B

RULES AND REGULATIONS IMPLEMENTING SECTION 9(D) OF REPUBLIC ACT NO. 9208, AS AMENDED BY REPUBLIC ACT NO. 11862, OTHERWISE KNOWN AS THE EXPANDED ANTI-TRAFFICKING IN PERSONS ACT OF 2022"[111]

ANTI-MONEY LAUNDERING COUNCIL
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RULES AND REGULATIONS IMPLEMENTING SECTION 9(D) OF REPUBLIC ACT NO. 9208, AS AMENDED BY REPUBLIC ACT NO. 11862, OTHERWISE KNOWN AS THE EXPANDED ANTI-TRAFFICKING IN PERSONS ACT OF 2022

Pursuant to Section 9(d) of Republic Act No. 9208, as amended by Republic Act No. 11862, otherwise known as the *Expanded Anti-Trafficking in Persons Act of 2022*, the Anti-Money Laundering Council (AMLC) issues and promulgates the following set of rules and regulations:

Chapter I. General Provisions

Rule 1 – Title, Purpose, Coverage, and Policies
Rule 2 – Definition of Terms

Chapter II. Reporting Suspicious Activities and Transactions
Rule 3 – Reporting to Law Enforcement Agencies
Rule 4 – Reporting to the Anti-Money Laundering Council
Rule 5 – Suspicious Transactions and Activities

Chapter III. Bank Inquiry and Access to Other Financial Information
Rule 6 – Bank Inquiry
Rule 7 – Access to Other Financial Information

Chapter IV. Miscellaneous Provisions
Rule 8 – Compliance and Administrative Sanctions
Rule 9 – Transitory, Separability, and Effectivity Clauses

CHAPTER I
GENERAL PROVISIONS

RULE 1 – TITLE, PURPOSE, COVERAGE, AND POLICIES

Section 1. Title.

This set of rules and regulations shall be known as the "Rules and Regulations Implementing Section 9(d) of Republic Act No. 9208, as amended by Republic Act No. 11862, otherwise known as the Expanded Anti-Trafficking in Persons Act of 2022".

111 Copy retrieved from http://www.amlc.gov.ph/images/PDFs/PR2022/ARI4 S2022 RRI-9D EXPANDED ANTI-TRAFFICKING IN PERSONS ACT OF 2022.pdf.

Section 2. Purpose and Coverage.

2.1. These set of rules and regulations is promulgated to provide the details of implementation of Section 9(d) of Republic Act No. 11862.

2.2. This set of rules and guidelines covers the following:

(a) Reporting of any suspected trafficking in persons-related activity or transaction; and

(b) Procedure for conducting bank inquiry, or requiring financial intermediaries, internet payment system providers, and other financial facilitators to provide financial documents and information.

Section 3. State Policies

The provisions of this set of rules and regulations in line with the following State Policies:

(a) Give the highest priority to the enactment of measures and development of programs that will promote human dignity, protect the people from any threat of violence and exploitation, and eliminate trafficking in persons.

(b) Ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity.

RULE 2 – DEFINITION OF TERMS

Section 1. Definitions.

For purposes of this set of rules and regulations, the following terms are hereby defined as follows:

(a) "Account" refers to a bank account, electronic money account, investment account, insurance policy, membership account, and other similar contract or service agreement, or business relationship between a covered person and its customers where funds or any monetary instrument of the latter are held by the former.

(b) "Anti-Money Laundering Act" (AMLA) refers to Republic Act No. 9160, otherwise known as the Anti-Money Laundering Act of 2001, as amended by Republic Act No. 9194, 10167, 10365, 10927, and 11521.

(c) "Beneficiary" refers to:

(1) *General*: any person for whose benefit an account was created or transaction was made.

(2) *For trust agreements*: any person for whose benefit the trust has been created.

(3) *For life insurance or investment-linked insurance policies*: any person who will be paid the policy proceeds.

(4) *For wire transfers*: refers to a person or legal arrangement who is identified by the originator as the receiver of the requested wire transfer.

(d) "Child Sexual Abuse and Exploitation Material or Child Sexual Abuse Material"

(CSAEM or CSAM) refers to photos, images, videos, recordings, streams, or any other representation or form of media, depicting acts of sexual abuse and exploitation of a child or representation of a child as a sexual object whether or not digitally or by, through, and with the use of information and communications technology. It shall also include materials that focus on real or simulated genitalia or other private body parts of a child.

(e) "Covered Persons" refer to the covered persons under Section 3(a) of the AMLA.

(f) "Customer/Client" refers to any person who keeps or maintains an account, or otherwise transacts business with a covered person. It includes the following:

(1) Beneficial owner, or any natural person who ultimately owns or controls a customer and/or on whose behalf an account is maintained or a transaction is conducted;

(2) Transactors, agents and other authorized representatives of beneficial owners;

(3) Beneficiaries of trusts, investment and pension funds, insurance policies, and remittance of transactions;

(4) Persons whose assets are managed by an asset manager;

(5) Trustors/grantors/settlors of a trust;

(6) Insurance policy holders, whether actual or prospective; and

(7) Juridical persons.

For purposes of this set of rules and regulations, the term juridical person shall refer to an entity other than a natural person as defined under the Civil Code of the Philippines, including corporate clients who keep or maintain an account with a covered person.

(g) "Customer Due Diligence" (CDD) refers to the procedure of identifying and verifying the true identity, of customers, and their agents and beneficial owners, including understanding and monitoring of their transactions and activities.

(h) "Electronic Money" (E-money) refers to a monetary value represented by a claim on its issuer that is:

(1) Electronically stored in an instrument or device;

(2) Issued against receipt of funds of an amount not lesser in value than the monetary value issued;

(3) Accepted as means of payment by persons or entities other than the issuer; and

(4) Withdrawable in cash or cash equivalent

(i) "Electronic Money Issuers" (EMI) refer to entities accepting e-money as a retail payment medium such as banks, non-banking financial institutions, and non-bank institutions registered with the Bangko Sentral ng Pilipinas as a monetary transfer agent.

(j) "Expanded Anti-Trafficking in Persons Act" (Expanded Act) refers to Republic Act No. 11862 otherwise known as the Expanded Anti-Trafficking in Persons Act of 2022 (ATIP).

(k) “Financial Intermediary” refers to a person or entity whose principal functions include lending, investing or placement of funds or evidence of indebtedness or equity deposited with them, acquired by them, or otherwise coursed through them either for their own account or for the account of others.

For purposes of this set of rules and regulations, this term shall be interchangeably used with the term “covered persons” under the supervision or regulation of the Bangko Sentral ng Pilipinas, Securities and Exchange Commission, and Insurance Commission, as defined under Section 3(a) of the AMLA.

(l) “Information and Communications Technology” (ICT) refers to the totality of electronic means to access, create, collect, store, process, receive, transmit, present, and disseminate information.

(m) “Inter-Agency Council Against Trafficking” (IACAT) refers to the government body mandated by law to coordinate and oversee the implementation of Republic Act No. 9208, or the Anti-Trafficking in Persons Act of 2003, as amended.

(n) “Internet-based Payment System Provider” refers to a person or entity that provides mechanisms for customers to access, via the Internet, pre-funded accounts which can be used to transfer the electronic money or value held in those accounts to other individuals or businesses which also hold accounts with the same provider.

(o) “Law Enforcement Agency” (LEA) refers to Philippine National Police, National Bureau of Investigation, and other government agencies that are responsible for the
prevention, investigation, apprehension and/or detention of individuals suspected of, or convicted for, violation of the Expanded Act.

(p) “Money Laundering” (ML) refers to the crime defined under Section 4 of the AMLA.

(q) “Money or Value Transfer Service” (MVTS) refers to the financial services that involve the acceptance of cash, checks, other monetary instruments or other stores of value, and the payment of a corresponding sum in cash or other form to a beneficiary by means of a communication, message, transfer, or through a clearing network to which the service provider belongs.

(r) “Money Service Business” (MSB) refer to entities engages in remittance, money
changing and/or foreign exchange dealing(s) “Occurrence” refers to the date of establishment of suspicion or determination of the suspicious nature of the transaction.

(t) “Online Sexual Abuse and Exploitation” (OSAEC) refers to the use of digital or analog communication and ICT as means to abuse and exploit children sexually, which includes cases in which contact child abuse or exploitation offline is combined with an online component. This can also include the production, dissemination, and possession of CSAEM or CSAM; online grooming of children for sexual purposes; sexual extortion of children; sharing image-based sexual abuse; commercial sexual exploitation of children; exploitation of children through online prostitution; and live-streaming of sexual abuse, with or without the consent of the victim.

(u) “Other Financial Facilitators” refers to other persons or entities that facilitate financial transactions between parties.

(v) “Person” refers to any natural or juridical person.

(w) “Persons Related to a Financial Intermediary” refer to other persons, including outsourced personnel and service providers, providing services to support the
operations of the Financial Intermediary but falls outside the scope of Person Working for the Financial Intermediary

(x) "Persons Working for a Financial Intermediary" refer to the employees of the Financial Intermediary.

(y) "Qualified Trafficking in Persons" (Qualified Trafficking) refers to Section 6 of the Expanded Act.

(z) "Related Account" refers to an account, the funds and sources of which directly originated from and/or are materially-linked to the monetary instruments or properties subject of the freeze order or an order of inquiry.

(aa) "Suspicious Circumstance" refers to any of the following circumstances, the existence of which makes a transaction suspicious:

(1) There is no underlying legal or trade obligation, purpose or economic justification;

(2) The client is not properly identified;

(3) The amount involved is not commensurate with the business or financial capacity of the client;

(4) Taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under the AMLA;

(5) Any circumstance relating to the transaction which is observed to deviate from the profile of the client and/or the client's past transactions with the covered person;

(6) The transaction is in any way related to ML/TF or TIP that is about to be committed, is being or has been committed; or

(7) Any transaction that is similar, analogous or identical to any of the foregoing, such as the relevant transactions in related and materially-linked accounts.

(bb) "Suspicion" refers to a person's state of mind – based on his skills, experience, and/or understanding of the customer profile – which considers that there is a possibility that any of the suspicious circumstances exist.

(cc) "Suspicious Transaction" refers to a transaction, regardless of amount, where any of the suspicious circumstances, as herein defined, is determined, based on suspicion or, if available, reasonable grounds, to be existing.

(dd) "Suspicious Transaction Report" (STR) refers to a report on a suspicious transaction, as herein defined, filed by a covered person before the AMLC.

(ee) "Terrorism Financing" (TF) refers to the crime defined under Sections 4 of RA No. 10168 otherwise known as the Terrorism Financing Prevention and Suppression Act (TFPSA).

(ff) "Trafficking in Persons" (TIP) refers to any of the acts as enumerated in Sections 4 and 5 of the Expanded Act.

(gg) "Transaction" refers to any act establishing any right or obligation, or giving rise to any contractual or legal relationship between the covered person and its customer. It also includes any movement of funds, by any means, in the ordinary course of business of a covered person.

(hh) "Virtual Asset" (VA) refers to a digital representation of value that can be digitally traded, or transferred, and can be used for payment or investment purposes.

(ii) "Virtual Asset Service Provider" (VASP) refers to any person who, as a business, conducts one or more of the following activities or operations for or on behalf of another person:

(a) Exchange between virtual assets and fiat currencies;

(b) Exchange between one or more forms of virtual assets;

(c) Transfer (the conduct of a transaction on behalf of another person that moves a virtual asset from one virtual asset address or account to another) of virtual assets;

(d) Safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and

(e) Participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

(jj) "Wire Transfer" refers to any transaction carried out on behalf of an originator, through an originating/ordering financial institution, by electronic means, with a view to making an amount of funds available to a beneficiary at a beneficiary financial institution, irrespective of whether the originator and the beneficiary are the same person.

CHAPTER II
REPORTING SUSPICIOUS ACTIVITIES AND TRANSACTIONS

RULE 3
REPORTING TO LAW ENFORCEMENT AGENCIES

Section 1. Reporting of TIP-related Financial Activity or Transaction to the LEAs.

1.1. Reporting to LEAs.

The following persons or entity shall have the duty to report any suspected trafficking in persons-related activity or transaction to the concerned LEAs:

a. Financial intermediary;
b. Person working for a financial intermediary;
c. Person related to a financial intermediary; or
d. Person who has direct knowledge of any TIP-related financial activity or transaction conducted through a financial intermediary.

1.2. Creation of a Reporting Portal.

To facilitate the reporting of any TIP-related financial activity or transaction conducted through a financial intermediary and avoid duplication of reporting to multiple LEAs, the concerned LEAs, through the IACAT, shall create a centralized reporting portal accessible to all concerned the LEAs and financial intermediaries. It shall also have a mechanism to accept reports from any person working for, related to, or who has direct knowledge of any TIP-related financial activity or transaction conducted through a financial intermediary. Pending the creation of a reporting portal, reports shall be filed manually or electronically to the LEA offices or e-mail addresses to be determined by the concerned LEAs and to be announced by the IACAT and AMLC, through their respective advisories.

Section 2. Safe Harbor Provision.

No administrative, criminal, or civil proceedings shall lie against any person for having made a report on TIP-related financial activity or transaction conducted through a financial intermediary in the regular performance of his duties (for financial intermediaries) and in good faith (for financial intermediaries and other reporting persons), whether or not such reporting results in any criminal prosecution under the AMLA or the Expanded Act.

RULE 4
REPORTING TO THE ANTI-MONEY LAUNDERING COUNCIL

Section 1. Suspicious Transaction Reporting Framework.

When reporting TIP-related STRs to the AMLC, covered persons shall follow the suspicious transaction reporting framework under the AMLA and the registration and reporting guidelines of the AMLC.

Section 2. Reporting of Suspicious Transactions to the AMLC.

2.1. Filing of STRs.

Covered persons shall file all STRs, in accordance with the registration and reporting guidelines of the AMLC. STRs shall cover all transactions, whether completed or attempted.

2.2. Timing of Reporting

STRs shall be promptly filed within the next working day from occurrence thereof, which for purposes of this Rule, shall be the date of establishment of suspicion or determination of the suspicious nature of the transaction.

2.3. Quality and Form of Reports

(a) Covered persons shall ensure the completeness, accuracy, and timeliness of the STRs.

(b) STRs shall be filed in such form as may be prescribed by the AMLC and shall be submitted in a secured manner to the AMLC in electronic form.

Section 3. Registration with the AMLC.

Covered persons shall register with the AMLC's electronic reporting system in accordance with the registration and reporting guidelines.

Section 4. TIP Monitoring System

4.1. Establishing and Maintaining TIP Monitoring System

All covered persons shall adopt a TIP monitoring system that is appropriate for their risk profile and business complexity. The system should be capable of generating timely, accurate and complete reports to lessen the likelihood of any reputational and compliance risks, and to regularly apprise the board of directors and senior management on compliance with the Expanded Act. For this purpose, covered persons may use their existing anti-money laundering/counter-terrorism financing (AML/CTF) monitoring system to monitor TIP-related risks and transactions, *Provided*, that it is recalibrated to specifically monitor TIP-related transactions and activities.

4.2. Electronic Monitoring

(a) Complex covered persons, as determined by their supervising authorities, shall adopt an electronic TIP system for monitoring risks as well as generating timely reports for the guidance and information of its board of directors and senior management.

(b) The system must have, at least, the following automated functionalities:

(1) STR Monitoring – performs statistical analysis, profiling and able to detect unusual patterns of account activity;

(2) Watchlist Monitoring – checks transfer parties (originator, beneficiary, and narrative fields) and the existing customer database for any listed undesirable individual or corporation;

(3) Investigation – checks for given names throughout the history of payment stored in the system;

(4) Provides a complete audit trail;

(5) Capable of aggregating activities of a customer with multiple accounts on a consolidated basis for monitoring and reporting purposes; and

(6) Capable of recording all suspicious transactions and support the investigation of alerts generated by the system and brought to the attention of senior management whether or not a report was filed with the AMLC.

(c) Covered persons with an existing electronic system of flagging and monitoring transactions in place shall ensure that their existing system is updated.

4.3. Manual Monitoring

Covered persons not required to have an electronic system of flagging and monitoring transactions, as determined by their Supervising Authorities, shall ensure that they have the means of flagging and monitoring the TIP-related transactions. They shall be maintain a register of all transactions that have been brought to the attention of senior management, whether or not the same was reported to the AMLC.

Section 5. Confidentiality Clause.

All STRs are considered confidential information. Covered persons, their officers and employees are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person or entity, the media, the fact that a suspicious transaction has been or is about to be reported, the contents of the report or any information related thereto.

Section 6. Safe Harbor Provision.

No administrative, criminal, or civil proceedings shall lie against any person for having made an STR in the regular performance of one's duties and in good faith, whether or not such reporting results in any criminal prosecution under the AMLA or the Expanded Act.

Section 7. AMLC Registration and Reporting Guidelines.

Covered persons shall ensure compliance with the registration and reporting guidelines issued by the AMLC in complying with their obligations under Chapter II hereof.

RULE 5 – SUSPICIOUS TRANSACTIONS AND ACTIVITIES

Section 1. Suspicious Transactions.

Any transaction, regardless of amount, where any of the following suspicious circumstances, is determined, based on suspicion or, if available, reasonable grounds, to be existing shall be reported to the AMLC:

(a) There is no underlying legal or trade obligation, purpose or economic justification;

(b) The client is not properly identified;

(c) The amount involved is not commensurate with the business or financial capacity of the client;

(d) Taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under the AMLA;

(e) Any circumstance relating to the transaction which is observed to deviate from the profile of the client and/or the client's past transactions with the covered person;

(f) The transaction is in any way related to ML/TF or TIP that is about to be committed, is being or has been committed; or

(g) Any transaction that is similar, analogous or identical to any of the foregoing, such as the relevant transactions in related and materially-linked accounts.

Section 2. Red Flag Indicators.

Covered persons shall consider the red flag indicators in determining the existence of suspicious circumstances, which shall warrant the filing of STRs before the AMLC. By using a combination of broad primary indicators, followed by specific secondary indicators, and combined with the institutional knowledge about AMLA regulations and issuances, covered persons shall identify reportable financial transactions and activities related to TIP and report it to AMLC.

Section 3. Primary Financial Transaction Indicators.

3.1 Financial Transaction Indicators for Possible Victims of TIP.

The covered person shall recognize the following financial transaction indicators for its clients:

(a) The client incurs and declares a number of excessive continued expenses over an extended period of time such as, but not limited to bookings for airline tickets, payments transport network vehicle services, tickets for land or sea transportation, lodging expenses of a property, sustenance allowance, or maintenance of a rented location.

(b) The client receives third party cash deposits or wire transfers from various individuals that are excessive and do not appear to be commensurate client's business or financial capacity.

(c) The staff of the financial institution observes and detects coercive or forced behavior from their client. Unusual behaviors such as, but not limited to, another person accompanying the client and exerting control by checking deposits/statements, paying in high volumes of cash, or using automated machines to avoid the counters.

(d) Client receives transactions from an identified suspect for TIP.

(e) Beneficiary and/or sender is under investigation by LEAs for being a suspected facilitator of TIP/OSAEC, in possession of CSAEM, or with known association or transactions with TIP/OSAEC offenders.

3.2 Financial Transaction Indicators for Probable Perpetrators or Offenders.

The covered person shall recognize the following financial transaction indicators for perpetrators or offenders:

(a) The sender is a foreigner and makes relatively low-value international or domestic remittances to a large number of beneficiaries with unjustified purpose and unknown relationship.

(b) Inconsistencies between the client's purpose and the beneficiary do not match such as but not limited to, declaring the purpose for gifts to friends but beneficiaries claim that the purpose is for allowance, business, miscellaneous fees from a friend or an older individual.

(c) The client sends to individuals, notably minors, located in identified hotspots in the Philippines particularly in mostly rural or depressed areas.

(d) The client spends money on websites linked to TIP activities.

Section 4. Secondary Indicators.

Any or a combination of the following secondary indicators shall be combined with the primary indicators to identify and report suspicious transactions:

(a) There is a swift or abrupt increase in the volume and amount of transactions overtime.

(b) Frequent account transfers between the client's bank accounts and credit card, frequent purchases at online gaming sites, Bitcoin transactions/exchanges, payment processors, sports collectable stores, and money transfers with various individuals with unknown source and purpose.

(c) Beneficiary is unemployed and relies on remittances as sources of income.

(d) There is a significant turnover/frequency of transactions in the account despite the client status is unemployed.

(e) Remittances come from wire transfers or the use of money service businesses
(MSB).

(f) The money transfers through e-money issuers (EMIs) are made through mobile applications/online.

(g) Remittances come from different branches of an MSB or EMI within the same province or city.

(h) Beneficiaries claim remittances at least four times a month or at least twice a week from the same MSB.

(i) Automatic Teller Machine (ATM) usage often occurred at the same machine at the same time suggesting that a third party is in control of their card.

(j) The account is made as a pass-through account when the source of fund is immediately remitted to another individual with unknown source and purpose.

(k) Multiple beneficiaries (victims) sharing bank account information, such as address and phone number.

(l) Use of multiple bank accounts and credit cards, as well as multiple alias identities and addresses.

(m) Use of ATM and credit cards and fund transfer at times inconsistent with normal operating hours for the business.

(n) Client receives multiple international remittances from foreign nationals who appear to have sent multiple transactions to different Filipino individuals.

(o) Other similar or analogous circumstances that would lead a person to a suspicion that its client committed, is committing, or about to commit TIP or other violations of the Extended Act.

Section 5. Other Transactional/Financial Red Flags.

Covered persons may also consider the following TIP-related behaviors observable during account activity:

(a) A business customer does not exhibit normal payroll expenditures (e.g., wages, payroll taxes, social security contributions). Payroll costs can be non-existent or extremely low for the size of the customer's alleged operations, workforce and/or business line/model.

(b) Substantial deductions to wages. To the extent a financial institution is able to observe, a customer with a business may deduct large amounts from the wages of its employees alleging extensive charges (e.g., housing and food costs), where the employees only receive a small fraction of their wages; this may occur before or after the payment of wages.

(c) Cashing of payroll checks where the majority of the funds are kept by the employer or are deposited back into the employer's account. This activity may be detected by those financial institutions that have access to paystubs and other payroll records.

(d) The following two red flags may signal anomalous customer activity; however, they should be applied in tandem with other indicators when determining whether transactions are linked to human trafficking.

(1) Transactional activity (credits and/or debits) inconsistent with a customer's alleged employment, business or expected activity, or where transactions lack a business or apparent lawful purpose.

(2) Cash deposits or wire transfers are in the amount of PHP500,000.00 (or its equivalent in foreign currency) or below in apparent efforts to avoid the filing of Covered Transaction Reports (CTRs) with the AMLC.

(e) Frequent outbound wire transfers, with no business or apparent lawful purpose, directed to countries at higher risk for human trafficking1 or to countries that are inconsistent with the customer's expected activity

(f) A customer's account appears to function as a funnel account, where cash deposits occur in cities/states where the customer does not reside or conduct business. Frequently, in the case of funnel accounts, the funds are quickly withdrawn (same day) after the deposits are made.

(g) Multiple, apparently unrelated, customers sending wire transfers to the same beneficiary. These wire senders may also use similar transactional information including but not limited to a common address

and phone number. When questioned to the extent circumstances allow, the wire senders may have no apparent relation to the recipient of the funds or know the purpose of the wire transfers.

(h) Transactions conducted by individuals, escorted by a third party (e.g., under the pretext of requiring an interpreter), to transfer funds (that may seem to be their salaries) to other countries.

(i) Frequent payments to online escort services for advertising, including small posting fees to companies of online classifieds as well as more expensive, higher end advertising and website hosting companies.

(j) Frequent transactions, inconsistent with expected activity and/or line of business, carried out by a business customer in apparent efforts to provide sustenance to individuals (e.g., payment for housing, lodging, regular vehicle rentals, purchases of large amounts of food).

(k) Payments to employment or student recruitment agencies that are not licensed/registered or that have labor violations.

(l) Customers frequently appear to move through, and transact from, different geographic locations in the Philippines. These transactions can be combined with travel and transactions in and to foreign countries that are significant conduits for human trafficking.

(m) Transactions are inconsistent with a customer's expected activity and/or line of business in an apparent effort to cover trafficking victims' living costs, including housing (e.g., hotel, motel, short-term rentals, or residential accommodations), transportation (e.g., airplane, taxi, limousine, or rideshare services), medical expenses, pharmacies, clothing, grocery stores, and restaurants, to include fast food eateries.

(n) Transactional activity largely occurs outside of normal business operating hours (e.g., an establishment that operates during the day has a large number of transactions at night), is almost always made in cash, and deposits are larger than what is expected for the business and the size of its operations.

(o) A customer frequently makes cash deposits with no Automated Clearing House (ACH) payments.

(p) An individual frequently purchases and uses prepaid access cards.

(q) A customer's account shares common identifiers, such as a telephone number, email, and social media handle, or address, associated with escort agency websites and commercial sex advertisements.

(r) Frequent transactions with online classified sites that are based in foreign jurisdictions.

(s) A customer frequently sends or receives funds via cryptocurrency to or from darknet markets or services known to be associated with illicit activity. This may include services that host advertising content for illicit services, sell illicit content, or financial institutions that allow prepaid cards to pay for cryptocurrencies without appropriate risk mitigation controls.

(t) Frequent transactions using third-party payment processors that conceal the originators and/ or beneficiaries of the transactions.

(u) A customer avoids transactions that require identification documents or that trigger reporting requirements.

Section 6. Other Customer Interaction/Behavioral Red Flags.

Covered persons may also consider the following TIP-related behaviors observed while interacting with the public:

(a) A customer establishes an account or visits a branch to conduct transactions while always escorted by a third party (e.g., under the pretext of requiring an interpreter). Correspondingly, the third party escorting the customer may always have possession of the customer's ID.

(b) Common signer(s)/custodian(s) in apparently unrelated business and/or personal accounts. Similarly, common information (e.g., address, phone number, employment information) used to open multiple accounts in different names.

(c) Accounts of foreign workers or students where the employer or employment agency serves as a custodian.

(d) Unexplained/unjustified lifestyle incommensurate with employment or business line. Profits/deposits significantly greater than that of peers in similar professions/ business lines.

(e) Inflows are largely received in cash where substantial cash receipts are inconsistent with the customer's line of business. Extensive use of cash to purchase assets and to conduct transactions.

(f) A third party speaks on behalf of the customer (a third party may insist on being present and/ or translating).

(g) A third party insists on being present for every aspect of the transaction.

(h) A third party attempts to fill out paperwork without consulting the customer.

(i) A third party maintains possession and/or control of all documents or money.

(j) A third party claims to be related to the customer, but does not know critical details.

(k) A prospective customer uses, or attempts to use, third-party identification (of someone who is not present) to open an account.

(l) A third party attempts to open an account for a minor who is not under parental authority, guardianship, or the person exercising authority over the minor.

(m) A third party commits acts of physical aggression or intimidation toward the customer.

(n) A customer shows signs of poor hygiene, malnourishment, fatigue, signs of physical and/or sexual abuse, physical restraint, confinement, or torture.

(o) A customer shows lack of knowledge of their whereabouts, cannot clarify where they live or where they are staying, or provides scripted, confusing, or inconsistent stories in response to inquiry.

CHAPTER III
BANK INQUIRY AND ACCESS TO OTHER FINANCIAL INFORMATION

RULE 6
BANK INQUIRY

Section 1. Application for Issuance of Bank Inquiry Order.

By authority of the agency heads, the concerned LEA shall file before the competent Regional Trial Court, through the Office of the Solicitor General, a verified *Ex Parte* Application for the Issuance of Bank Inquiry Order to examine or inquire into any particular bank deposit or investment account that is related to TIP or other violations of the Expanded Act.

Section 2. Inquiry Into or Examination of Related Accounts.

A court order *ex parte* must be obtained before any LEA can inquire into the related accounts. The procedure for the *ex parte* application for issuance of bank inquiry order into the principal account shall be the same for that of the related accounts.

Section 3. No Prior Criminal Charge, Pendency of a Case, or Conviction Necessary.

No prior criminal charge, pendency of a case, or conviction for any TIP-related offense is necessary for the filing of an application for issuance of bank inquiry order.

Section 4. Bank Inquiry Order.

Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426 as amended, Republic Act No. 8791 and other pertinent laws, the LEAs investigating cases of trafficking in persons may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution, upon order of the competent Regional Trial Court based on an *ex parte* application, when it has been established that there is reasonable ground to believe that the bank deposit or investment account, including related accounts involved, are related to TIP or other violations of the Expanded Act.

Section 5. Rule of Procedure for Bank Inquiry under the Expanded Act.

The "Court of Appeals Rule of Procedure in Cases of Bank Inquiry Into or Examination of Deposit or Investment Account Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as Amended" (A.M. No. 21-03-05-CA) and other relevant provisions of the Rules of Court shall apply suppletorily to the proceedings for the *ex parte* issuance of bank inquiry order under the Expanded Act until the Supreme Court promulgates the specific rule that would apply thereto.

Section 6. Duties of the Covered Persons.

Covered persons shall have the following duties in relation to bank inquiry orders:

(a) The concerned covered persons shall immediately, upon receipt of the bank inquiry order, give the concerned LEA full access to all information, documents or objects pertaining to the deposit, investment, account and/or transaction.

(b) Certified true copies of the documents pertaining to deposit, investment, account and/or transaction subject of the bank inquiry shall be submitted to the concerned LEA, within five (5) working days from receipt of the bank inquiry order. Extension of the period of compliance may be allowed upon good causes, *Provided*, that a request to the concerned LEA is submitted before the expiration of the original five (5) working days.

(c) Keep the confidentiality of the inquiry, and ensure that the owner of any monetary instrument or property or other unauthorized personnel shall not be informed about the inquiry, to prevent tipping-off.

RULE 7
ACCESS TO OTHER FINANCIAL INFORMATION

Section 1. Application for Access to Other Financial Information.

By authority of the agency heads, the concerned LEA shall file before the competent Regional Trial Court, a verified *Ex Parte* Application for the Issuance of an Order Allowing Access to Financial Documents and Information not covered by *bank deposit secrecy laws* that are related to TIP or other violations of the Expanded Act.

Section 2. Inquiry Into or Examination of Related Accounts.

A court order *ex parte* must be obtained before any LEA can inquire into the related accounts. The procedure for the *ex parte* application allowing access to the document and information on the principal account shall be the same for that of the related accounts.

Section 3. No Prior Criminal Charge, Pendency of a Case, or Conviction Necessary.

No prior criminal charge, pendency of a case, or conviction for any TIP-related offense is necessary for the filing of an application for issuance of an order allowing access to financial documents and information not covered by *bank deposit secrecy laws*.

Section 4. Order Allowing Access to Financial Information.

The LEAs investigating cases of TIP may require financial intermediaries, internet payment system providers, and other financial facilitators to provide financial documents and information not covered by *bank deposit secrecy laws*, upon order of the competent Regional Trial Court, based on an *ex parte* application, when it has been established that there is reasonable ground to believe that the financial account, including related accounts involved, are related to TIP or other violations of this Act.

Section 5. Rule of Procedure for Accessing Financial Information under the Expanded Act.

The other relevant provisions of the Rules of Court shall apply suppletory to the proceedings for the issuance of an *ex parte* order allowing access to financial documents and information not covered by *bank deposit secrecy laws* under the Expanded Act until the Supreme Court promulgates the specific rule that would apply thereto.

CHAPTER 4
MISCELLANEOUS PROVISIONS

RULE 8
COMPLIANCE AND ADMINSTRATIVE SANCTIONS

Section 1. Compliance.

All covered persons shall have written procedures for cooperating and complying with investigations, assessments, directives and orders of the IACAT, the AMLC, the appropriate government agencies and the courts, as the case may be. When the covered person receives a request for information from any competent authority regarding inquiries into potential TIP-related activities, the covered person shall promptly inform the requestor in writing.

Section 2. Administrative Sanctions by the AMLC.

Violations or non-compliance with the suspicious transaction and activity reporting requirements prescribed herein shall subject the erring covered person, its responsible directors, officers, and employees, and other responsible persons to administrative sanctions under the *Rules of Procedure in Administrative Cases under Republic Act No. 9160, as Amended*.

Section 3. Administrative Sanctions by the IACAT. The imposition of the administrative sanctions by the AMLC shall be without prejudice to the imposition of administrative sanctions by the IACAT against the persons responsible for the violations of the requirements of the Expanded Act.

RULE 9
TRANSITORY, SEPARABILITY, AND EFFECTIVITY CLAUSES

Section 1. Transitory Provision.

1.1 For the reporting requirements to the LEAs under Rule 3 hereof: The AMLC shall, within thirty (30) days from the effectivity of this set of rules and regulations, prescribe the standard reporting template for manual reporting pending the adoption and implementation of a centralized reporting portal.

1.2 For covered persons and entities required to report to the AMLC under Rule 4 hereof: STRs shall be reported using the procedure, codes, and other reporting requirements for TIP-related transactions prescribed under the 2021 AMLC Registration and Reporting Guidelines, until the unlawful activities under the Expanded Act are expressly included in the future amendments thereof.

1.3 Within one (1) year from the effectivity of this set of rules and regulations, the LEAs, in coordination with the IACAT and the AMLC, shall adopt a central database for the receiving and maintenance of reports to the LEAs.

1.4 All covered persons shall adopt or update their TIP-monitoring system within one (1) year from the effectivity of this set of rules and regulations.

Section 2. Separability Clause.

If any provision of this set of rules and regulations or the application thereof to any person or circumstance is held to be invalid, the other provisions, and the application of such provision to other persons or circumstances, shall not be affected.

Section 3. Effectivity.

This set of rules and regulations shall take effect fifteen (15) days after the completion of its publication in the Official Gazette or a newspaper of general circulation, and filing before the Office of the National Administrative Register (ONAR), University of the Philippines, Diliman, Quezon City.

BY AUTHORITY OF THE AMLC:

(SGD) MATTHEW M. DAVID
Executive Director
Anti-Money Laundering Council

12 October 2022


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