

REPUBLIC OF THE PHILIPPINES, Represented by THE ANTI-MONEY LAUNDERING COUNCIL (AMLC), Petitioner, vs. HON. ANTONIO M. EUGENIO, JR., AS PRESIDING JUDGE OF RTC, MANILA, BRANCH 34,...

G.R. No. 174629. February 14, 2008

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TINGA, J.:

The present petition for certiorari and prohibition under Rule 65 assails the orders and resolutions issued by two different courts in two different cases. The courts and cases in question are the Regional Trial Court of Manila, Branch 24, which heard SP Case No. 06-114200[1] and the Court of Appeals, Tenth Division, which heard CA-G.R. SP No. 95198.[2] Both cases arose as part of the aftermath of the ruling of this Court in *Agan v. PIATCO*[3] nullifying the concession agreement awarded to the Philippine International Airport Terminal Corporation (PIATCO) over the Ninoy Aquino International Airport – International Passenger Terminal 3 (NAIA 3) Project.

I.

Following the promulgation of *Agan*, a series of investigations concerning the award of the NAIA 3 contracts to PIATCO were undertaken by the Ombudsman and the Compliance and Investigation Staff (CIS) of petitioner Anti-Money Laundering Council (AMLC). On 24 May 2005, the Office of the Solicitor General (OSG) wrote the AMLC requesting the latter's assistance "in obtaining more evidence to completely reveal the financial trail of corruption surrounding the [NAIA 3] Project," and also noting that petitioner Republic of the Philippines was presently defending itself in two international arbitration cases filed in relation to the NAIA 3 Project.[4] The CIS conducted an intelligence database search on the financial transactions of certain individuals involved in the award, including respondent Pantaleon Alvarez (Alvarez) who had been the Chairman of the PBAC Technical Committee, NAIA-IPT3 Project.[5] By this time, Alvarez had already been charged by the Ombudsman with violation of Section 3(j) of R.A. No. 3019.[6] The search revealed that Alvarez maintained eight (8) bank accounts with six (6) different banks.[7]

On 27 June 2005, the AMLC issued Resolution No. 75, Series of 2005,[8] whereby the Council resolved to authorize the Executive Director of the AMLC "to sign and verify an application to inquire into and/or examine the [deposits] or investments of Pantaleon Alvarez, Wilfredo Trinidad, Alfredo Liongson, and Cheng Yong, and their related web of accounts wherever these may be found, as defined under Rule 10.4 of the Revised Implementing Rules and Regulations;" and to authorize the AMLC Secretariat "to conduct an inquiry into subject accounts once the Regional Trial Court grants the application to inquire into and/or examine the bank accounts" of those four individuals.[9] The resolution enumerated the particular bank accounts of Alvarez, Wilfredo Trinidad (Trinidad), Alfredo Liongson (Liongson) and Cheng Yong which were to be the subject of the inquiry.[10] The rationale for the said resolution was founded on the cited findings of the CIS that amounts were transferred from a Hong Kong bank account owned by Jetstream Pacific Ltd. Account to bank accounts in the Philippines maintained by Liongson and Cheng Yong.[11] The Resolution also noted that "[b]y awarding the

contract to PIATCO despite its lack of financial capacity, Pantaleon Alvarez caused undue injury to the government by giving PIATCO unwarranted benefits, advantage, or preference in the discharge of his official administrative functions through manifest partiality, evident bad faith, or gross inexcusable negligence, in violation of Section 3(e) of Republic Act No. 3019.”[12]

Under the authority granted by the Resolution, the AMLC filed an application to inquire into or examine the deposits or investments of Alvarez, Trinidad, Liongson and Cheng Yong before the RTC of Makati, Branch 138, presided by Judge (now Court of Appeals Justice) Sixto Marella, Jr. The application was docketed as AMLC No. 05-005.[13] The Makati RTC heard the testimony of the Deputy Director of the AMLC, Richard David C. Funk II, and received the documentary evidence of the AMLC.[14] Thereafter, on 4 July 2005, the Makati RTC rendered an Order (Makati RTC bank inquiry order) granting the AMLC the authority to inquire and examine the subject bank accounts of Alvarez, Trinidad, Liongson and Cheng Yong, the trial court being satisfied that there existed “[p]robable cause [to] believe that the deposits in various bank accounts, details of which appear in paragraph 1 of the Application, are related to the offense of violation of Anti-Graft and Corrupt Practices Act now the subject of criminal prosecution before the Sandiganbayan as attested to by the Informations, Exhibits C, D, E, F, and G.”[15] Pursuant to the Makati RTC bank inquiry order, the CIS proceeded to inquire and examine the deposits, investments and related web accounts of the four.[16]

Meanwhile, the Special Prosecutor of the Office of the Ombudsman, Dennis Villa-Ignacio, wrote a letter dated 2 November 2005, requesting the AMLC to investigate the accounts of Alvarez, PIATCO, and several other entities involved in the nullified contract. The letter adverted to probable cause to believe that the bank accounts “were used in the commission of unlawful activities that were committed” in relation to the criminal cases then pending before the Sandiganbayan.[17] Attached to the letter was a memorandum “on why the investigation of the [accounts] is necessary in the prosecution of the above criminal cases before the Sandiganbayan.”[18]

In response to the letter of the Special Prosecutor, the AMLC promulgated on 9 December 2005 Resolution No. 121 Series of 2005,[19] which authorized the executive director of the AMLC to inquire into and examine the accounts named in the letter, including one maintained by Alvarez with DBS Bank and two other accounts in the name of Cheng Yong with Metrobank. The Resolution characterized the memorandum attached to the Special Prosecutor’s letter as “extensively justif[ying] the existence of probable cause that the bank accounts of the persons and entities mentioned in the letter are related to the unlawful activity of violation of Sections 3(g) and 3(e) of Rep. Act No. 3019, as amended.”[20]

Following the December 2005 AMLC Resolution, the Republic, through the AMLC, filed an application[21] before the Manila RTC to inquire into and/or examine thirteen (13) accounts and two (2) related web of accounts alleged as having been used to facilitate corruption in the NAIA 3 Project. Among said accounts were the DBS Bank account of Alvarez and the Metrobank accounts of Cheng Yong. The case was raffled to Manila RTC, Branch 24, presided by respondent Judge Antonio Eugenio, Jr., and docketed as SP Case No. 06-114200.

On 12 January 2006, the Manila RTC issued an Order (Manila RTC bank inquiry order) granting the Ex Parte Application expressing therein “[that] the allegations in said application to be impressed with merit, and in conformity with Section 11 of R.A. No. 9160, as amended, otherwise known as the Anti-Money Laundering Act (AMLA) of 2001 and Rules 11.1 and 11.2 of the Revised Implementing Rules and Regulations.”[22] Authority was thus granted to the AMLC to inquire into the bank accounts listed therein.

On 25 January 2006, Alvarez, through counsel, entered his appearance[23] before the Manila RTC in SP Case No. 06-114200 and filed an Urgent Motion to Stay Enforcement of Order of January 12, 2006.[24] Alvarez alleged that he fortuitously learned of the bank inquiry order, which was issued following an ex parte application, and he

argued that nothing in R.A. No. 9160 authorized the AMLC to seek the authority to inquire into bank accounts ex parte.[25] The day after Alvarez filed his motion, 26 January 2006, the Manila RTC issued an Order[26] staying the enforcement of its bank inquiry order and giving the Republic five (5) days to respond to Alvarez's motion.

The Republic filed an Omnibus Motion for Reconsideration[27] of the 26 January 2006 Manila RTC Order and likewise sought to strike out Alvarez's motion that led to the issuance of said order. For his part, Alvarez filed a Reply and Motion to Dismiss[28] the application for bank inquiry order. On 2 May 2006, the Manila RTC issued an Omnibus Order[29] granting the Republic's Motion for Reconsideration, denying Alvarez's motion to dismiss and reinstating "in full force and effect" the Order dated 12 January 2006. In the omnibus order, the Manila RTC reiterated that the material allegations in the application for bank inquiry order filed by the Republic stood as "the probable cause for the investigation and examination of the bank accounts and investments of the respondents." [30]

Alvarez filed on 10 May 2006 an Urgent Motion[31] expressing his apprehension that the AMLC would immediately enforce the omnibus order and would thereby render the motion for reconsideration he intended to file as moot and academic; thus he sought that the Republic be refrained from enforcing the omnibus order in the meantime. Acting on this motion, the Manila RTC, on 11 May 2006, issued an Order[32] requiring the OSG to file a comment/opposition and reminding the parties that judgments and orders become final and executory upon the expiration of fifteen (15) days from receipt thereof, as it is the period within which a motion for reconsideration could be filed. Alvarez filed his Motion for Reconsideration[33] of the omnibus order on 15 May 2006, but the motion was denied by the Manila RTC in an Order[34] dated 5 July 2006.

On 11 July 2006, Alvarez filed an Urgent Motion and Manifestation[35] wherein he manifested having received reliable information that the AMLC was about to implement the Manila RTC bank inquiry order even though he was intending to appeal from it. On the premise that only a final and executory judgment or order could be executed or implemented, Alvarez sought that the AMLC be immediately ordered to refrain from enforcing the Manila RTC bank inquiry order.

On 12 July 2006, the Manila RTC, acting on Alvarez's latest motion, issued an Order[36] directing the AMLC "to refrain from enforcing the order dated January 12, 2006 until the expiration of the period to appeal, without any appeal having been filed." On the same day, Alvarez filed a Notice of Appeal[37] with the Manila RTC.

On 24 July 2006, Alvarez filed an Urgent Ex Parte Motion for Clarification.[38] Therein, he alleged having learned that the AMLC had began to inquire into the bank accounts of the other persons mentioned in the application for bank inquiry order filed by the Republic.[39] Considering that the Manila RTC bank inquiry order was issued ex parte, without notice to those other persons, Alvarez prayed that the AMLC be ordered to refrain from inquiring into any of the other bank deposits and alleged web of accounts enumerated in AMLC's application with the RTC; and that the AMLC be directed to refrain from using, disclosing or publishing in any proceeding or venue any information or document obtained in violation of the 11 May 2006 RTC Order.[40]

On 25 July 2006, or one day after Alvarez filed his motion, the Manila RTC issued an Order[41] wherein it clarified that "the Ex Parte Order of this Court dated January 12, 2006 can not be implemented against the deposits or accounts of any of the persons enumerated in the AMLC Application until the appeal of movant Alvarez is finally resolved, otherwise, the appeal would be rendered moot and academic or even nugatory." [42] In addition, the AMLC was ordered "not to disclose or publish any information or document found or obtained in [v]iolation of the May 11, 2006 Order of this Court." [43] The Manila RTC reasoned that the other persons mentioned in AMLC's application were not served with the court's 12 January 2006 Order. This 25 July 2006 Manila RTC Order is the first of the four rulings being assailed through this petition.

In response, the Republic filed an Urgent Omnibus Motion for Reconsideration[44] dated 27 July 2006, urging that it be allowed to immediately enforce the bank inquiry order against Alvarez and that Alvarez's notice of appeal be expunged from the records since appeal from an order of inquiry is disallowed under the Anti money Laundering Act (AMLA).

Meanwhile, respondent Lilia Cheng filed with the Court of Appeals a Petition for Certiorari, Prohibition and Mandamus with Application for TRO and/or Writ of Preliminary Injunction[45] dated 10 July 2006, directed against the Republic of the Philippines through the AMLC, Manila RTC Judge Eugenio, Jr. and Makati RTC Judge Marella, Jr.. She identified herself as the wife of Cheng Yong[46] with whom she jointly owns a conjugal bank account with Citibank that is covered by the Makati RTC bank inquiry order, and two conjugal bank accounts with Metrobank that are covered by the Manila RTC bank inquiry order. Lilia Cheng imputed grave abuse of discretion on the part of the Makati and Manila RTCs in granting AMLC's ex parte applications for a bank inquiry order, arguing among others that the ex parte applications violated her constitutional right to due process, that the bank inquiry order under the AMLA can only be granted in connection with violations of the AMLA and that the AMLA can not apply to bank accounts opened and transactions entered into prior to the effectivity of the AMLA or to bank accounts located outside the Philippines.[47]

On 1 August 2006, the Court of Appeals, acting on Lilia Cheng's petition, issued a Temporary Restraining Order[48] enjoining the Manila and Makati trial courts from implementing, enforcing or executing the respective bank inquiry orders previously issued, and the AMLC from enforcing and implementing such orders. On even date, the Manila RTC issued an Order[49] resolving to hold in abeyance the resolution of the urgent omnibus motion for reconsideration then pending before it until the resolution of Lilia Cheng's petition for certiorari with the Court of Appeals. The Court of Appeals Resolution directing the issuance of the temporary restraining order is the second of the four rulings assailed in the present petition.

The third assailed ruling[50] was issued on 15 August 2006 by the Manila RTC, acting on the Urgent Motion for Clarification[51] dated 14 August 2006 filed by Alvarez. It appears that the 1 August 2006 Manila RTC Order had amended its previous 25 July 2006 Order by deleting the last paragraph which stated that the AMLC "should not disclose or publish any information or document found or obtained in violation of the May 11, 2006 Order of this Court." [52] In this new motion, Alvarez argued that the deletion of that paragraph would allow the AMLC to implement the bank inquiry orders and publish whatever information it might obtain thereupon even before the final orders of the Manila RTC could become final and executory.[53] In the 15 August 2006 Order, the Manila RTC reiterated that the bank inquiry order it had issued could not be implemented or enforced by the AMLC or any of its representatives until the appeal therefrom was finally resolved and that any enforcement thereof would be unauthorized.[54]

The present Consolidated Petition[55] for certiorari and prohibition under Rule 65 was filed on 2 October 2006, assailing the two Orders of the Manila RTC dated 25 July and 15 August 2006 and the Temporary Restraining Order dated 1 August 2006 of the Court of Appeals. Through an Urgent Manifestation and Motion[56] dated 9 October 2006, petitioner informed the Court that on 22 September 2006, the Court of Appeals hearing Lilia Cheng's petition had granted a writ of preliminary injunction in her favor.[57] Thereafter, petitioner sought as well the nullification of the 22 September 2006 Resolution of the Court of Appeals, thereby constituting the fourth ruling assailed in the instant petition.[58]

The Court had initially granted a Temporary Restraining Order[59] dated 6 October 2006 and later on a Supplemental Temporary Restraining Order[60] dated 13 October 2006 in petitioner's favor, enjoining the implementation of the assailed rulings of the Manila RTC and the Court of Appeals. However, on respondents' motion, the Court, through a Resolution[61] dated 11 December 2006, suspended the implementation of the

restraining orders it had earlier issued.

Oral arguments were held on 17 January 2007. The Court consolidated the issues for argument as follows:

1. Did the RTC-Manila, in issuing the Orders dated 25 July 2006 and 15 August 2006 which deferred the implementation of its Order dated 12 January 2006, and the Court of Appeals, in issuing its Resolution dated 1 August 2006, which ordered the status quo in relation to the 1 July 2005 Order of the RTC-Makati and the 12 January 2006 Order of the RTC-Manila, both of which authorized the examination of bank accounts under Section 11 of Rep. Act No. 9160 (AMLA), commit grave abuse of discretion?

(a) Is an application for an order authorizing inquiry into or examination of bank accounts or investments under Section 11 of the AMLA ex-parte in nature or one which requires notice and hearing?

(b) What legal procedures and standards should be observed in the conduct of the proceedings for the issuance of said order?

(c) Is such order susceptible to legal challenges and judicial review?

2. Is it proper for this Court at this time and in this case to inquire into and pass upon the validity of the 1 July 2005 Order of the RTC-Makati and the 12 January 2006 Order of the RTC-Manila, considering the pendency of CA G.R. SP No. 95-198 (*Lilia Cheng v. Republic*) wherein the validity of both orders was challenged?[62]

After the oral arguments, the parties were directed to file their respective memoranda, which they did,[63] and the petition was thereafter deemed submitted for resolution.

II.

Petitioner's general advocacy is that the bank inquiry orders issued by the Manila and Makati RTCs are valid and immediately enforceable whereas the assailed rulings, which effectively stayed the enforcement of the Manila and Makati RTCs bank inquiry orders, are sullied with grave abuse of discretion. These conclusions flow from the posture that a bank inquiry order, issued upon a finding of probable cause, may be issued ex parte and, once issued, is immediately executory. Petitioner further argues that the information obtained following the bank inquiry is necessarily beneficial, if not indispensable, to the AMLC in discharging its awesome responsibility regarding the effective implementation of the AMLA and that any restraint in the disclosure of such information to appropriate agencies or other judicial fora would render meaningless the relief supplied by the bank inquiry order.

Petitioner raises particular arguments questioning Lilia Cheng's right to seek injunctive relief before the Court of Appeals, noting that not one of the bank inquiry orders is directed against her. Her "cryptic assertion" that she is the wife of Cheng Yong cannot, according to petitioner, "metamorphose into the requisite legal standing to seek redress for an imagined injury or to maintain an action in behalf of another." In the same breath, petitioner argues that Alvarez cannot assert any violation of the right to financial privacy in behalf of other persons whose bank accounts are being inquired into, particularly those other persons named in the Makati RTC bank inquiry order who did not take any step to oppose such orders before the courts.

Ostensibly, the proximate question before the Court is whether a bank inquiry order issued in accordance with Section 10 of the AMLA may be stayed by injunction. Yet in arguing that it does, petitioner relies on what it posits as the final and immediately executory character of the bank inquiry orders issued by the Manila and Makati RTCs. Implicit in that position is the notion that the inquiry orders are valid, and such notion is susceptible to review and validation based on what appears on the face of the orders and the applications which triggered their issuance, as well as the provisions of the AMLA governing the issuance of such orders. Indeed, to test the viability of petitioner's argument, the Court will have to be satisfied that the subject inquiry orders are valid in the

first place. However, even from a cursory examination of the applications for inquiry order and the orders themselves, it is evident that the orders are not in accordance with law.

III.

A brief overview of the AMLA is called for.

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.”[64] Even before the passage of the AMLA, the problem was addressed by the Philippine government through the issuance of various circulars by the Bangko Sentral ng Pilipinas. Yet ultimately, legislative proscription was necessary, especially with the inclusion of the Philippines in the Financial Action Task Force’s list of non-cooperative countries and territories in the fight against money laundering.[65] The original AMLA, Republic Act (R.A.) No. 9160, was passed in 2001. It was amended by R.A. No. 9194 in 2003.

Section 4 of the AMLA states that “[m]oney laundering is a crime whereby the proceeds of an unlawful activity as [defined in the law] are transacted, thereby making them appear to have originated from legitimate sources.”[66] The section further provides the three modes through which the crime of money laundering is committed. Section 7 creates the AMLC and defines its powers, which generally relate to the enforcement of the AMLA provisions and the initiation of legal actions authorized in the AMLA such as civil forfeiture proceedings and complaints for the prosecution of money laundering offenses.[67]

In addition to providing for the definition and penalties for the crime of money laundering, the AMLA also authorizes certain provisional remedies that would aid the AMLC in the enforcement of the AMLA. These are the “freeze order” authorized under Section 10, and the “bank inquiry order” authorized under Section 11.

Respondents posit that a bank inquiry order under Section 11 may be obtained only upon the pre-existence of a money laundering offense case already filed before the courts.[68] The conclusion is based on the phrase “upon order of any competent court in cases of violation of this Act,” the word “cases” generally understood as referring to actual cases pending with the courts.

We are unconvinced by this proposition, and agree instead with the then Solicitor General who conceded that the use of the phrase “in cases of” was unfortunate, yet submitted that it should be interpreted to mean “in the event there are violations” of the AMLA, and not that there are already cases pending in court concerning such violations.[69] If the contrary position is adopted, then the bank inquiry order would be limited in purpose as a tool in aid of litigation of live cases, and wholly inutile as a means for the government to ascertain whether there is sufficient evidence to sustain an intended prosecution of the account holder for violation of the AMLA. Should that be the situation, in all likelihood the AMLC would be virtually deprived of its character as a discovery tool, and thus would become less circumspect in filing complaints against suspect account holders. After all, under such set-up the preferred strategy would be to allow or even encourage the indiscriminate filing of complaints under the AMLA with the hope or expectation that the evidence of money laundering would somehow surface during the trial. Since the AMLC could not make use of the bank inquiry order to determine whether there is evidentiary basis to prosecute the suspected malefactors, not filing any case at all would not be an alternative. Such unwholesome set-up should not come to pass. Thus Section 11 cannot be interpreted in a way that would emasculate the remedy it has established and encourage the unfounded initiation of complaints for money laundering.

Still, even if the bank inquiry order may be availed of without need of a pre-existing case under the AMLA, it

does not follow that such order may be availed of ex parte. There are several reasons why the AMLA does not generally sanction ex parte applications and issuances of the bank inquiry order.

IV.

It is evident that Section 11 does not specifically authorize, as a general rule, the issuance ex parte of the bank inquiry order. We quote the provision in full:

SEC. 11. Authority to Inquire into Bank Deposits. â€- Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non bank financial institution upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof, except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)1, (2) and (12).

To ensure compliance with this Act, the Bangko Sentral ng Pilipinas (BSP) may inquire into or examine any deposit or investment with any banking institution or non bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP.[70] (Emphasis supplied)

Of course, Section 11 also allows the AMLC to inquire into bank accounts without having to obtain a judicial order in cases where there is probable cause that the deposits or investments are related to kidnapping for ransom,[71] certain violations of the Comprehensive Dangerous Drugs Act of 2002,[72] hijacking and other violations under R.A. No. 6235, destructive arson and murder. Since such special circumstances do not apply in this case, there is no need for us to pass comment on this proviso. Suffice it to say, the proviso contemplates a situation distinct from that which presently confronts us, and for purposes of the succeeding discussion, our reference to Section 11 of the AMLA excludes said proviso.

In the instances where a court order is required for the issuance of the bank inquiry order, nothing in Section 11 specifically authorizes that such court order may be issued ex parte. It might be argued that this silence does not preclude the ex parte issuance of the bank inquiry order since the same is not prohibited under Section 11. Yet this argument falls when the immediately preceding provision, Section 10, is examined.

SEC. 10. Freezing of Monetary Instrument or Property. â€- The Court of Appeals, upon application ex parte by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court.[73]

Although oriented towards different purposes, the freeze order under Section 10 and the bank inquiry order under Section 11 are similar in that they are extraordinary provisional reliefs which the AMLC may avail of to effectively combat and prosecute money laundering offenses. Crucially, Section 10 uses specific language to authorize an ex parte application for the provisional relief therein, a circumstance absent in Section 11. If indeed the legislature had intended to authorize ex parte proceedings for the issuance of the bank inquiry order, then it could have easily expressed such intent in the law, as it did with the freeze order under Section 10.

Even more tellingly, the current language of Sections 10 and 11 of the AMLA was crafted at the same time, through the passage of R.A. No. 9194. Prior to the amendatory law, it was the AMLC, not the Court of Appeals, which had authority to issue a freeze order, whereas a bank inquiry order always then required, without exception, an order from a competent court.[74] It was through the same enactment that ex parte proceedings were

introduced for the first time into the AMLA, in the case of the freeze order which now can only be issued by the Court of Appeals. It certainly would have been convenient, through the same amendatory law, to allow a similar ex parte procedure in the case of a bank inquiry order had Congress been so minded. Yet nothing in the provision itself, or even the available legislative record, explicitly points to an ex parte judicial procedure in the application for a bank inquiry order, unlike in the case of the freeze order.

That the AMLA does not contemplate ex parte proceedings in applications for bank inquiry orders is confirmed by the present implementing rules and regulations of the AMLA, promulgated upon the passage of R.A. No. 9194. With respect to freeze orders under Section 10, the implementing rules do expressly provide that the applications for freeze orders be filed ex parte,[75] but no similar clearance is granted in the case of inquiry orders under Section 11.[76] These implementing rules were promulgated by the Bangko Sentral ng Pilipinas, the Insurance Commission and the Securities and Exchange Commission,[77] and if it was the true belief of these institutions that inquiry orders could be issued ex parte similar to freeze orders, language to that effect would have been incorporated in the said Rules. This is stressed not because the implementing rules could authorize ex parte applications for inquiry orders despite the absence of statutory basis, but rather because the framers of the law had no intention to allow such ex parte applications.

Even the Rules of Procedure adopted by this Court in A.M. No. 05-11-04-SC[78] to enforce the provisions of the AMLA specifically authorize ex parte applications with respect to freeze orders under Section 10[79] but make no similar authorization with respect to bank inquiry orders under Section 11.

The Court could divine the sense in allowing ex parte proceedings under Section 10 and in proscribing the same under Section 11. A freeze order under Section 10 on the one hand is aimed at preserving monetary instruments or property in any way deemed related to unlawful activities as defined in Section 3(i) of the AMLA. The owner of such monetary instruments or property would thus be inhibited from utilizing the same for the duration of the freeze order. To make such freeze order anteceded by a judicial proceeding with notice to the account holder would allow for or lead to the dissipation of such funds even before the order could be issued.

On the other hand, a bank inquiry order under Section 11 does not necessitate any form of physical seizure of property of the account holder. What the bank inquiry order authorizes is the examination of the particular deposits or investments in banking institutions or non-bank financial institutions. The monetary instruments or property deposited with such banks or financial institutions are not seized in a physical sense, but are examined on particular details such as the account holder's record of deposits and transactions. Unlike the assets subject of the freeze order, the records to be inspected under a bank inquiry order cannot be physically seized or hidden by the account holder. Said records are in the possession of the bank and therefore cannot be destroyed at the instance of the account holder alone as that would require the extraordinary cooperation and devotion of the bank.

Interestingly, petitioner's memorandum does not attempt to demonstrate before the Court that the bank inquiry order under Section 11 may be issued ex parte, although the petition itself did devote some space for that argument. The petition argues that the bank inquiry order is "a special and peculiar remedy, drastic in its name, and made necessary because of a public necessity... [t]hus, by its very nature, the application for an order or inquiry must necessarily, be ex parte." This argument is insufficient justification in light of the clear disinclination of Congress to allow the issuance ex parte of bank inquiry orders under Section 11, in contrast to the legislature's clear inclination to allow the ex parte grant of freeze orders under Section 10.

Without doubt, a requirement that the application for a bank inquiry order be done with notice to the account holder will alert the latter that there is a plan to inspect his bank account on the belief that the funds therein are involved in an unlawful activity or money laundering offense.[80] Still, the account holder so alerted will in fact

be unable to do anything to conceal or cleanse his bank account records of suspicious or anomalous transactions, at least not without the whole-hearted cooperation of the bank, which inherently has no vested interest to aid the account holder in such manner.

V.

The necessary implication of this finding that Section 11 of the AMLA does not generally authorize the issuance ex parte of the bank inquiry order would be that such orders cannot be issued unless notice is given to the owners of the account, allowing them the opportunity to contest the issuance of the order. Without such a consequence, the legislated distinction between ex parte proceedings under Section 10 and those which are not ex parte under Section 11 would be lost and rendered useless.

There certainly is fertile ground to contest the issuance of an ex parte order. Section 11 itself requires that it be established that “there is probable cause that the deposits or investments are related to unlawful activities,” and it obviously is the court which stands as arbiter whether there is indeed such probable cause. The process of inquiring into the existence of probable cause would involve the function of determination reposed on the trial court. Determination clearly implies a function of adjudication on the part of the trial court, and not a mechanical application of a standard pre-determination by some other body. The word “determination” implies deliberation and is, in normal legal contemplation, equivalent to “the decision of a court of justice.”[81]

The court receiving the application for inquiry order cannot simply take the AMLC’s word that probable cause exists that the deposits or investments are related to an unlawful activity. It will have to exercise its own determinative function in order to be convinced of such fact. The account holder would be certainly capable of contesting such probable cause if given the opportunity to be apprised of the pending application to inquire into his account; hence a notice requirement would not be an empty spectacle. It may be so that the process of obtaining the inquiry order may become more cumbersome or prolonged because of the notice requirement, yet we fail to see any unreasonable burden cast by such circumstance. After all, as earlier stated, requiring notice to the account holder should not, in any way, compromise the integrity of the bank records subject of the inquiry which remain in the possession and control of the bank.

Petitioner argues that a bank inquiry order necessitates a finding of probable cause, a characteristic similar to a search warrant which is applied to and heard ex parte. We have examined the supposed analogy between a search warrant and a bank inquiry order yet we remain to be unconvinced by petitioner.

The Constitution and the Rules of Court prescribe particular requirements attaching to search warrants that are not imposed by the AMLA with respect to bank inquiry orders. A constitutional warrant requires that the judge personally examine under oath or affirmation the complainant and the witnesses he may produce,[82] such examination being in the form of searching questions and answers.[83] Those are impositions which the legislative did not specifically prescribe as to the bank inquiry order under the AMLA, and we cannot find sufficient legal basis to apply them to Section 11 of the AMLA. Simply put, a bank inquiry order is not a search warrant or warrant of arrest as it contemplates a direct object but not the seizure of persons or property.

Even as the Constitution and the Rules of Court impose a high procedural standard for the determination of probable cause for the issuance of search warrants which Congress chose not to prescribe for the bank inquiry order under the AMLA, Congress nonetheless disallowed ex parte applications for the inquiry order. We can discern that in exchange for these procedural standards normally applied to search warrants, Congress chose instead to legislate a right to notice and a right to be heard— characteristics of judicial proceedings which are not ex parte. Absent any demonstrable constitutional infirmity, there is no reason for us to dispute such legislative policy choices.

VI.

The Court's construction of Section 11 of the AMLA is undoubtedly influenced by right to privacy considerations. If sustained, petitioner's argument that a bank account may be inspected by the government following an ex parte proceeding about which the depositor would know nothing would have significant implications on the right to privacy, a right innately cherished by all notwithstanding the legally recognized exceptions thereto. The notion that the government could be so empowered is cause for concern of any individual who values the right to privacy which, after all, embodies even the right to be "let alone," the most comprehensive of rights and the right most valued by civilized people.[84]

One might assume that the constitutional dimension of the right to privacy, as applied to bank deposits, warrants our present inquiry. We decline to do so. Admittedly, that question has proved controversial in American jurisprudence. Notably, the United States Supreme Court in *U.S. v. Miller*[85] held that there was no legitimate expectation of privacy as to the bank records of a depositor.[86] Moreover, the text of our Constitution has not bothered with the triviality of allocating specific rights peculiar to bank deposits.

However, sufficient for our purposes, we can assert there is a right to privacy governing bank accounts in the Philippines, and that such right finds application to the case at bar. The source of such right is statutory, expressed as it is in R.A. No. 1405 otherwise known as the Bank Secrecy Act of 1955. The right to privacy is enshrined in Section 2 of that law, to wit:

SECTION 2. All deposits of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and its instrumentalities, are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation. (Emphasis supplied)

Because of the Bank Secrecy Act, the confidentiality of bank deposits remains a basic state policy in the Philippines.[87] Subsequent laws, including the AMLA, may have added exceptions to the Bank Secrecy Act, yet the secrecy of bank deposits still lies as the general rule. It falls within the zones of privacy recognized by our laws.[88] The framers of the 1987 Constitution likewise recognized that bank accounts are not covered by either the right to information[89] under Section 7, Article III or under the requirement of full public disclosure[90] under Section 28, Article II.[91] Unless the Bank Secrecy Act is repealed or amended, the legal order is obliged to conserve the absolutely confidential nature of Philippine bank deposits.

Any exception to the rule of absolute confidentiality must be specifically legislated. Section 2 of the Bank Secrecy Act itself prescribes exceptions whereby these bank accounts may be examined by "any person, government official, bureau or office"; namely when: (1) upon written permission of the depositor; (2) in cases of impeachment; (3) the examination of bank accounts is upon order of a competent court in cases of bribery or dereliction of duty of public officials; and (4) the money deposited or invested is the subject matter of the litigation. Section 8 of R.A. Act No. 3019, the Anti-Graft and Corrupt Practices Act, has been recognized by this Court as constituting an additional exception to the rule of absolute confidentiality,[92] and there have been other similar recognitions as well.[93]

The AMLA also provides exceptions to the Bank Secrecy Act. Under Section 11, the AMLC may inquire into a bank account upon order of any competent court in cases of violation of the AMLA, it having been established that there is probable cause that the deposits or investments are related to unlawful activities as defined in Section

3(i) of the law, or a money laundering offense under Section 4 thereof. Further, in instances where there is probable cause that the deposits or investments are related to kidnapping for ransom,[94] certain violations of the Comprehensive Dangerous Drugs Act of 2002,[95] hijacking and other violations under R.A. No. 6235, destructive arson and murder, then there is no need for the AMLC to obtain a court order before it could inquire into such accounts.

It cannot be successfully argued the proceedings relating to the bank inquiry order under Section 11 of the AMLA is a “litigation” encompassed in one of the exceptions to the Bank Secrecy Act which is when “the money deposited or invested is the subject matter of the litigation.” The orientation of the bank inquiry order is simply to serve as a provisional relief or remedy. As earlier stated, the application for such does not entail a full-blown trial.

Nevertheless, just because the AMLA establishes additional exceptions to the Bank Secrecy Act it does not mean that the later law has dispensed with the general principle established in the older law that “[a]ll deposits of whatever nature with banks or banking institutions in the Philippines x x x are hereby considered as of an absolutely confidential nature.”[96] Indeed, by force of statute, all bank deposits are absolutely confidential, and that nature is unaltered even by the legislated exceptions referred to above. There is disfavor towards construing these exceptions in such a manner that would authorize unlimited discretion on the part of the government or of any party seeking to enforce those exceptions and inquire into bank deposits. If there are doubts in upholding the absolutely confidential nature of bank deposits against affirming the authority to inquire into such accounts, then such doubts must be resolved in favor of the former. Such a stance would persist unless Congress passes a law reversing the general state policy of preserving the absolutely confidential nature of Philippine bank accounts.

The presence of this statutory right to privacy addresses at least one of the arguments raised by petitioner, that Lilia Cheng had no personality to assail the inquiry orders before the Court of Appeals because she was not the subject of said orders. AMLC Resolution No. 75, which served as the basis in the successful application for the Makati inquiry order, expressly adverts to Citibank Account No. 88576248 “owned by Cheng Yong and/or Lilia G. Cheng with Citibank N.A.,”[97] whereas Lilia Cheng’s petition before the Court of Appeals is accompanied by a certification from Metrobank that Account Nos. 300852436-0 and 700149801-7, both of which are among the subjects of the Manila inquiry order, are accounts in the name of “Yong Cheng or Lilia Cheng.”[98] Petitioner does not specifically deny that Lilia Cheng holds rights of ownership over the three said accounts, laying focus instead on the fact that she was not named as a subject of either the Makati or Manila RTC inquiry orders. We are reasonably convinced that Lilia Cheng has sufficiently demonstrated her joint ownership of the three accounts, and such conclusion leads us to acknowledge that she has the standing to assail via certiorari the inquiry orders authorizing the examination of her bank accounts as the orders interfere with her statutory right to maintain the secrecy of said accounts.

While petitioner would premise that the inquiry into Lilia Cheng’s accounts finds root in Section 11 of the AMLA, it cannot be denied that the authority to inquire under Section 11 is only exceptional in character, contrary as it is to the general rule preserving the secrecy of bank deposits. Even though she may not have been the subject of the inquiry orders, her bank accounts nevertheless were, and she thus has the standing to vindicate the right to secrecy that attaches to said accounts and their owners. This statutory right to privacy will not prevent the courts from authorizing the inquiry anyway upon the fulfillment of the requirements set forth under Section 11 of the AMLA or Section 2 of the Bank Secrecy Act; at the same time, the owner of the accounts have the right to challenge whether the requirements were indeed complied with.

VII.

There is a final point of concern which needs to be addressed. Lilia Cheng argues that the AMLA, being a substantive penal statute, has no retroactive effect and the bank inquiry order could not apply to deposits or investments opened prior to the effectivity of Rep. Act No. 9164, or on 17 October 2001. Thus, she concludes, her subject bank accounts, opened between 1989 to 1990, could not be the subject of the bank inquiry order lest there be a violation of the constitutional prohibition against ex post facto laws.

No ex post facto law may be enacted,[99] and no law may be construed in such fashion as to permit a criminal prosecution offensive to the ex post facto clause. As applied to the AMLA, it is plain that no person may be prosecuted under the penal provisions of the AMLA for acts committed prior to the enactment of the law on 17 October 2001. As much was understood by the lawmakers since they deliberated upon the AMLA, and indeed there is no serious dispute on that point.

Does the proscription against ex post facto laws apply to the interpretation of Section 11, a provision which does not provide for a penal sanction but which merely authorizes the inspection of suspect accounts and deposits? The answer is in the affirmative. In this jurisdiction, we have defined an ex post facto law as one which either:

- (1) makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act;
- (2) aggravates a crime, or makes it greater than it was, when committed;
- (3) changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed;
- (4) alters the legal rules of evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense;
- (5) assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and
- (6) deprives a person accused of a crime of some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal, or a proclamation of amnesty. (Emphasis supplied)[100]

Prior to the enactment of the AMLA, the fact that bank accounts or deposits were involved in activities later on enumerated in Section 3 of the law did not, by itself, remove such accounts from the shelter of absolute confidentiality. Prior to the AMLA, in order that bank accounts could be examined, there was need to secure either the written permission of the depositor or a court order authorizing such examination, assuming that they were involved in cases of bribery or dereliction of duty of public officials, or in a case where the money deposited or invested was itself the subject matter of the litigation. The passage of the AMLA stripped another layer off the rule on absolute confidentiality that provided a measure of lawful protection to the account holder. For that reason, the application of the bank inquiry order as a means of inquiring into records of transactions entered into prior to the passage of the AMLA would be constitutionally infirm, offensive as it is to the ex post facto clause.

Still, we must note that the position submitted by Lilia Cheng is much broader than what we are willing to affirm. She argues that the proscription against ex post facto laws goes as far as to prohibit any inquiry into deposits or investments included in bank accounts opened prior to the effectivity of the AMLA even if the suspect transactions were entered into when the law had already taken effect. The Court recognizes that if this argument were to be affirmed, it would create a horrible loophole in the AMLA that would in turn supply the means to fearlessly engage in money laundering in the Philippines; all that the criminal has to do is to make sure that the

money laundering activity is facilitated through a bank account opened prior to 2001. Lilia Cheng admits that “actual money launderers could utilize the ex post facto provision of the Constitution as a shield” but that the remedy lay with Congress to amend the law. We can hardly presume that Congress intended to enact a self-defeating law in the first place, and the courts are inhibited from such a construction by the cardinal rule that “a law should be interpreted with a view to upholding rather than destroying it.”[101]

Besides, nowhere in the legislative record cited by Lilia Cheng does it appear that there was an unequivocal intent to exempt from the bank inquiry order all bank accounts opened prior to the passage of the AMLA. There is a cited exchange between Representatives Ronaldo Zamora and Jaime Lopez where the latter confirmed to the former that “deposits are supposed to be exempted from scrutiny or monitoring if they are already in place as of the time the law is enacted.”[102] That statement does indicate that transactions already in place when the AMLA was passed are indeed exempt from scrutiny through a bank inquiry order, but it cannot yield any interpretation that records of transactions undertaken after the enactment of the AMLA are similarly exempt. Due to the absence of cited authority from the legislative record that unqualifiedly supports respondent Lilia Cheng’s thesis, there is no cause for us to sustain her interpretation of the AMLA, fatal as it is to the anima of that law.

IX.

We are well aware that Lilia Cheng’s petition presently pending before the Court of Appeals likewise assails the validity of the subject bank inquiry orders and precisely seeks the annulment of said orders. Our current declarations may indeed have the effect of preempting that0 petition. Still, in order for this Court to rule on the petition at bar which insists on the enforceability of the said bank inquiry orders, it is necessary for us to consider and rule on the same question which after all is a pure question of law.

WHEREFORE, the PETITION is DISMISSED. No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Austria-Martinez, Carpio-Morales, and Velasco, Jr., JJ., concur.

[*] As replacement of Justice Antonio T. Carpio who inhibited himself per Administrative Circular No. 84-2007.

[1] Entitled “In the Matter of the Application for An Order Allowing An Inquiry Into Certain Bank Accounts or Investments and Related Web of Accounts, The Republic of the Philippines Represented by the Anti-Money Laundering Council, Applicant.”

[2] Entitled “Lilia Cheng v. Republic of the Philippines represented by the Anti-Money Laundering Council (AMLC), Hon. Antonio M. Eugenio, As Presiding Judge of the RTC Manila, Br. 24; Hon. Sixto Marella, Jr., as Presiding Judge of RTC, Makati City, Br. 38; and John Does.”

[3] G.R. No. 155001.

[4] Rollo, p. 96.

[5] Id. at 97.

[6] Sec. 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not

qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

[7] Rollo, p. 98.

[8] Id. at 96-100.

[9] Id. at 99-100.

[10] Id. at 98.

[11]Id.

[12] Id. at 99.

[13] Id. at 101.

[14]Id.

[15] Id.

[16] Id. at 27.

[17] Id. at 104.

[18] Id.

[19] Id. at 105-107.

[20]Id. at 106.

[21] See id. at 109-110.

[22]Id. at 109.

[23]Id. at 111.

[24] Id. at 111-117.

[25] Id. at 111.

[26] Id. at 118.

[27] Id. at 119-130.

[28]Id. at 131-141.

[29] Id. at 142-147.

[30] Id. at 146.

[31] Id. at 148-149.

[32] Id. at 150.

[33] Id. at 151-158.

[34]Id. at 167.

[35] Id. at 168-169.

[36] Id. at 171.

[37] Id. at 172-173.

[38] Id. at 174-175.

[39] Id. at 174.

[40] Id. at 175.

[41] Id. at 68-69.

[42] Id. at 69.

[43] Id.

[44] Id. at 176-186.

[45] Id. at 187-249.

[46] Id. at 189.

[47] Id. at 200-201.

[48] Id. at 73-77.

[49] Id. at 78.

[50] Order dated 15 August 2006, see id. at 71.

[51] Id. at 285-287.

[52] Id. at 285-286.

[53] Id. at 286.

[54] Id. at 71.

[55] Id. at 6-65.

[56] Id. at 299-304.

[57] See id. at 310.

[58] Id. at 302.

[59] Id. at 297-298.

[60] Id. at 312-313.

[61] Id. at 549-551.

[62] Id. at 752-753.

[63] See rollo, pp. 786-828; 867-910; 913-936.

[64] See Funds derived from criminal activities (FOPAC), (<http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/default.asp>, last visited 8 December 2007). See also J.M.B. TIROL, THE ANTI-MONEY LAUNDERING LAW OF THE PHILIPPINES Annotated (2nd ed., 2007), at 3.

[65]TIROL, *supra* note 64, at 4-6. The Financial Action Task Force was established in 1989 by the so-called Group of 7 countries to formulate and encourage the adoption of international standards and measures to fight money laundering and related activities. *Id.* at 28.

[66] Republic Act No. 9160 (2002), Sec. 4.

[67] Republic Act No. 9160 (2002), Secs. 7(3) and (4).

[68] See rollo, pp. 809-810, 932.

[69] *Id.* at 600-601.

[70] Republic Act No. 9194 (2003), Sec. 11.

[71] Under Article 267 of the Revised Penal Code.

[72] Particularly Sections 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, and 16 thereof.

[73] Republic Act No. 9194 (2003), Sec. 10.

[74] Unlike in the present law which authorizes the issuance without need of judicial order when there is probable cause that the deposits are involved in such specifically enumerated crimes as kidnapping, hijacking, destructive arson and murder, and violations of some provisions of the Dangerous Drugs Act of 2002. See Sec. 11, R.A. No. 9194, in connection with Section 3(i).

[75] “Rule 10.1. When the AMLC may apply for the freezing of any monetary instrument or property.

(a) after an investigation conducted by the AMLC and upon determination that probable cause exists that a monetary instrument or property is in any way related to any unlawful activity as defined under section 3(i). The AMLC may file an ex-parte application before the the Court of Appeals for the issuance of a freeze order on any monetary instrument or property subject thereof prior to the institution or in the course of, the criminal proceedings involving the unlawful activity to which said monetary instrument or property is any way related.” Rule 10.1, Revised Implementing Rules And Regulations R.A. No. 9160, As Amended By R.A. No. 9194. (Emphasis supplied)

[76] See Rule 11.1, Revised Implementing Rules And Regulations R.A. No. 9160, As Amended By R.A. No. 9194. “Rule 11.1. Authority to Inquire into Bank Deposits With Court Order. Notwithstanding the provisions of Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution AND THEIR SUBSIDIARIES AND AFFILIATES upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments involved are related to an unlawful activity as defined in Section 3(j) hereof or a money laundering offense under Section 4 hereof; except in cases as provided under Rule 11.2.”

[77] Republic Act No. 9160 (See Section 18, AMLA).

[78] Effective 15 December 2005.

[79] See Title VIII, Sec. 44, Rule Of Procedure In Cases Of Civil Forfeiture, Asset Preservation, And Freezing Of Monetary Instrument, Property, Or Proceeds Representing, Involving, Or Relating To An Unlawful Activity Or Money Laundering Offense Under Republic Act No. 9160, As Amended.

[80] Republic Act No. 9160 (2002), Sec. 11.

[81] See J. Tinga, Concurring and Dissenting, *Gonzales v. Abaya*, G.R. No. 164007, 10 August 2006, 498 SCRA

445, 501; citing 12 Words and Phrases (1954 ed.), p. 478-479 and 1 BOUVIER'S LAW DICTIONARY (8th ed., 1914), p. 858.

[82] CONST., Art. III, Sec. 2.

[83] 2000 RULES OF CRIMINAL PROCEDURE, Rule 126, Sec. 5.

[84] Perhaps the prophecy of Justice Brandeis, dissenting in *Olmstead v. U.S.*, 227 U.S. 438, 473 (1928), has come to pass: "[T]ime works changes, brings into existence new conditions and purposes." Subtler and more far-reaching means of invading privacy have become available to the Government. Discovery and invention have made it possible for the Government, by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet...Moreover, "in the application of a constitution, our contemplation cannot be only of what has, been but of what may be." The progress of science in furnishing the Government with means of espionage is not likely to stop with wiretapping. Ways may someday be developed by which the Government, without removing papers from secret drawers, can reproduce them in court, and by which it will be enabled to expose to a jury the most intimate occurrences of the home." *Id.* at 473-474.

[85] 425 U.S. 435 (1976).

[86] "Even if we direct our attention to the original checks and deposit slips, rather than to the microfilm copies actually viewed and obtained by means of the subpoena, we perceive no legitimate "expectation of privacy" in their contents. The checks are not confidential communications but negotiable instruments to be used in commercial transactions. All of the documents obtained, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business. The lack of any legitimate expectation of privacy concerning the information kept in bank records was assumed by Congress in enacting the Bank Secrecy Act, the expressed purpose of which is to require records to be maintained because they "have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings." *Ibid.* The passage by the U.S. Congress in 1978 of the Right to Financial Privacy Act was essentially in reaction to the *Miller* ruling. *Tirol*, *supra* note 64, at 155.

[87] See *TIROL*, *supra* note 64, citing GABRIEL SINGSON, *LAW AND JURISPRUDENCE ON SECRECY OF BANK DEPOSITS*, 46 *Ateneo Law Journal* 670, 682.

[88] See *Ople v. Torres*, 354 Phil. 948 (1998).

[89] "The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law."

[90] "Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest."

[91] *Chavez v. PCGG*, 360 Phil. 133, 161, citing *V Record of the Constitutional Commission* 25 (1986).

[92] See *Phil. National Bank v. Gancayco, et al.*, 122 Phil. 503, 506-507 (1965).

[93] Section 8 of R.A. Act No. 6770, or the Ombudsman Act of 1989 empowers the Ombudsman to "[a]dminister oaths, issue subpoena and subpoena duces tecum and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records." See Sec. 8, Rep. Act No. 6770 (1989). In *Marquez v. Hon. Desierto*, 412 Phil. 387 (2001), the Court, interpreted this provision in line with the "absolutely

confidential” nature of bank deposits under the Bank Secrecy Act, *infra*, and mandated: “there must be a pending case before a court of competent jurisdiction[;] the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court of competent jurisdiction[;] the bank personnel and the account holder must be notified to be present during the inspection, and such inspection may cover only the account identified in the pending case.” *Id.* at 397. With respect to the Ombudsman’s power of inquiry into bank deposits, *Marquez* remains good law. See *Ejercito v. Sandiganbayan*, G.R. Nos. 157294-95, 30 November 2006, 509 SCRA 190, 224 and 226.

[94] Under Article 267 of the Revised Penal Code.

[95] Particularly Sections 4, 5, 6, 8, 9, 10, 12, 13, 14, 15, and 16 thereof.

[96] Republic Act No. 1405 (1955), Sec. 2.

[97] *Rollo*, p. 98.

[98] A copy of such certification was attached to *Cheng’s Comment* as Annex “2”. See *id.* at 421.

[99] CONST., Art. III, Sec. 22.

[100] In the Matter of the Petition for the Declaration of the Petitioner’s Rights and Duties under Sec. 8 of R.A. No. 6132, 146 Phil. 429, 431-432 (1970). See also *Tan v. Barrios*, G.R. Nos. 85481-82, 18 October 1990, 703.

[101] Interpretate *fienda est ut res valeat quam pereat*.

[102] *Rollo*, p. 818, citing House Committee Deliberations on 26 September 2001.

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