

**SUBIDO PAGENTE CERTEZA MENDOZA AND BINAY LAW OFFICES,
PETITIONER, V. THE COURT OF APPEALS, HON. ANDRES B. REYES,
JR., IN HIS CAPACITY AS PRESIDING JUSTICE OF THE COURT OF
APPEAL...**

G.R. No. 216914. December 06, 2016

Ponente: PEREZ, J.

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PEREZ, J.:

Challenged in this petition for certiorari[1] and prohibition under Rule 65 of the Rules of Court is the constitutionality of Section 11 of Republic Act (R.A.) No. 9160, the Anti-Money Laundering Act, as amended, specifically the Anti-Money Laundering Council's authority to file with the Court of Appeals (CA) in this case, an ex-parte application for inquiry into certain bank deposits and investments, including related accounts based on probable cause.

In 2015, a year before the 2016 presidential elections, reports abounded on the supposed disproportionate wealth of then Vice President Jejomar Binay and the rest of his family, some of whom were likewise elected public officers. The Office of the Ombudsman and the Senate conducted investigations[2] and inquiries[3] thereon ostensibly based on their respective powers delineated in the Constitution.

From various news reports announcing the inquiry into then Vice President Binay's bank accounts, including accounts of members of his family, petitioner Subido Pagente Certeza Mendoza & Binay Law Firm (SPCMB) was most concerned with the article published in the Manila Times on 25 February 2015 entitled "Inspect Binay Bank Accounts" which read, in pertinent part:

xxx The Anti-Money Laundering Council (AMLC) asked the Court of Appeals (CA) to allow the [C]ouncil to peek into the bank accounts of the Binays, their corporations, and a law office where a family member was once a partner.

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Also the bank accounts of the law office linked to the family, the Subido Pagente Certeza Mendoza & Binay Law Firm, where the Vice President's daughter Abigail was a former partner.[4]

The following day, 26 February 2015, SPCMB wrote public respondent, Presiding Justice of the CA, Andres B. Reyes, Jr.:

The law firm of Subido Pagente Certeza Mendoza and Binay was surprised to receive a call from Manila Times requesting for a comment regarding a [supposed petition] filed by the Republic of the Philippines represented by the Anti-Money Laundering Council before the Court of Appeals seeking to examine the law office's bank accounts.

To verify the said matter, the law office is authorizing its associate Atty. Jose Julius R. Castro to inquire on the veracity of said report with the Court of Appeals. He is likewise authorized to secure copies of the relevant

documents of the case, such as the petition and orders issued, if such a case exists.

As this is a matter demanding serious and immediate attention, the Firm respectfully manifests that if no written response is received within 24-hours from receipt of this letter, we shall be at liberty to assume that such a case exists and we shall act accordingly.

Hoping for your immediate action.

Respectfully yours,
For the Firm

CLARO F. CERTEZA[5]

Within twenty four (24) hours, Presiding Justice Reyes wrote SPCMB denying its request, thus:

Anent your request for a comment on a supposed petition to inquire into your law office's bank accounts, please be informed that a petition of this nature is strictly confidential in that when processing the same, not even the handling staff members of the Office of the Presiding Justice know or have any knowledge who the subject bank account holders are, as well as the bank accounts involved.

Please be informed further that clearly under the rules, the Office of the Presiding Justice is strictly mandated not to disclose, divulge, or communicate to anyone directly or indirectly, in any manner or by any means, the fact of the filing of any petition brought before this Court by the Anti-Money Laundering Council, its contents and even its entry in the logbook.

Trusting that you find satisfactory the foregoing explanation.[6]

By 8 March 2015, the Manila Times published another article entitled, "CA orders probe of Binay's assets" reporting that the appellate court had issued a Resolution granting the ex-parte application of the AMLC to examine the bank accounts of SPCMB:

The Court of Appeals (CA) has officially issued an order for examination of Vice President Jejomar Binay's bank accounts.

In granting the petition of the Anti-Money Laundering Council (AMLC), the CA also ordered the inspection of the bank deposits of Binay's wife, children, and a law office connected to him.

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The bank accounts of the law office linked to Binay - the Subido Pagente Certeza Mendoza & Binay where Binay's daughter, Makati City (Metro Manila) Rep. Mar-len Abigail Binay was a partner, are also included in the probe, the sources said.[7]

Forestalled in the CA thus alleging that it had no ordinary, plain, speedy, and adequate remedy to protect its rights and interests in the purported ongoing unconstitutional examination of its bank accounts by public respondent Anti-Money Laundering Council (AMLC), SPCMB undertook direct resort to this Court via this petition for certiorari and prohibition on the following grounds:

- THE ANTI-MONEY LAUNDERING ACT IS UNCONSTITUTIONAL INsofar AS IT ALLOWS THE EXAMINATION OF A BANK ACCOUNT WITHOUT ANY NOTICE TO THE AFFECTED PARTY:

1. IT VIOLATES THE PERSON'S RIGHT TO DUE PROCESS; AND

2. IT VIOLATES THE PERSON'S RIGHT TO PRIVACY.

- EVEN ASSUMING ARGUENDO THAT THE ANTI-MONEY LAUNDERING ACT IS CONSTITUTIONAL, THE RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION CONSIDERING THAT:

1.

THE REFUSAL OF RESPONDENT PRESIDING JUSTICE TO PROVIDE PETITIONER WITH A COPY OF THE EX-PARTE APPLICATION FOR BANK EXAMINATION FILED BY RESPONDENT AMLC AND ALL OTHER PLEADINGS, MOTIONS, ORDERS, RESOLUTIONS, AND PROCESSES ISSUED BY THE RESPONDENT COURT OF APPEALS IN RELATION THERETO VIOLATES PETITIONER'S RIGHT TO DUE PROCESS;

2.

A CARTE BLANCHE AUTHORITY TO EXAMINE ANY AND ALL TRANSACTIONS PERTAINING TO PETITIONER'S BANK ACCOUNTS VIOLATES THE ATTORNEY-CLIENT PRIVILEGE WHICH IS SACROSANCT IN THE LEGAL PROFESSION;

3.

A BLANKET AUTHORITY TO EXAMINE PETITIONER'S BANK ACCOUNTS, INCLUDING ANY AND ALL TRANSACTIONS THEREIN FROM ITS OPENING UP TO THE PRESENT, PARTAKES THE NATURE OF A GENERAL WARRANT THAT IS CLEARLY INTENDED TO AID A MERE FISHING EXPEDITION;

4.

THERE IS NOTHING IN THE ANTI-MONEY LAUNDERING ACT THAT ALLOWS OR JUSTIFIES THE WITHHOLDING OF INFORMATION AND/OR ANY COURT RECORDS OR PROCEEDINGS PERTAINING TO AN EXAMINATION OF A BANK ACCOUNT, ESPECIALLY IF THE COURT HAS ALREADY GRANTED THE AUTHORITY TO CONDUCT THE EXAMINATION;

5.

THE PETITIONER DID NOT COMMIT, NOR HAS THE PETITIONER BEEN IMPEADED IN ANY COMPLAINT INVOLVING ANY PREDICATE CRIME THAT WOULD JUSTIFY AN INQUIRY INTO ITS BANK ACCOUNTS; AND

7.

THE EXAMINATION OF THE PETITIONER'S BANK ACCOUNTS IS A FORM OF POLITICAL PERSECUTION OR HARASSMENT.[8]

In their Comment, the AMLC, through the Office of the Solicitor General (OSG), points out a supposed jurisdictional defect of the instant petition, i.e., SPCMB failed to implead the House of Representatives which enacted the AMLA and its amendments. In all, the OSG argues for the dismissal of the present petition, highlighting that the AMLC's inquiry into bank deposits does not violate due process nor the right to privacy:

1. Section 11's allowance for AMLC's ex-parte application for an inquiry into particular bank deposits and investments is investigative, not adjudicatory;
2. The text of Section 11 itself provides safeguards and limitations on the allowance to the AMLC to inquire into bank deposits: (a) issued by the CA based on probable cause; and (b) specific compliance to the requirements of Sections 2 and 3, Article III of the Constitution;
3. The ex-parte procedure for investigating bank accounts is necessary to achieve a legitimate state objective;
4. There is no legitimate expectation of privacy as to the bank records of a depositor;
5. The examination of, and inquiry, into SPCMB's bank accounts does not violate Attorney-Client Privilege; and
6. A criminal complaint is not a pre-requisite to a bank inquiry order.

In their Reply, SPCMB maintains that the ex-parte proceedings authorizing inquiry of the AMLC into certain bank deposits and investments is unconstitutional, violating its rights to due process and privacy.

Before anything else, we here have an original action turning on three crucial matters: (1) the petition reaches us from a letter of the Presiding Justice of the CA in response to a letter written by SPCMB; (2) SPCMB's bank account has been reported to be a related account to Vice President Binay's investigated by the AMLC for anti-money laundering activities; and (3) the constitutionality of Section 11 of the AMLA at its recent amendment has not been squarely raised and addressed.

To obviate confusion, we act on this petition given that SPCMB directly assails the constitutionality of Section 11 of the AMLA where it has been widely reported that Vice President Binay's bank accounts and all related accounts therewith are subject of an investigation by the AMLC. In fact, subsequent events from the filing of this petition have shown that these same bank accounts (including related accounts) were investigated by the Ombudsman and both Houses of the Legislature. However, at the time of the filing of this petition, SPCMB alleged that its accounts have been inquired into but not subjected to a freeze order under Section 10 of the AMLA. Thus, as previously noted, with its preclusion of legal remedies before the CA which under the AMLA issues the ex-parte bank inquiry and freeze orders, Sections 10 and 11, respectively, SPCMB establishes that it has no plain, speedy and adequate remedy in the ordinary course of law to protect its rights and interests from the purported unconstitutional intrusion by the AMLC into its bank accounts.

The foregoing shall be addressed specifically and bears directly on the disposition of the decision herein.

Additionally, we note that the OSG did not question how this petition reaches us from a letter of the appellate court's Presiding Justice, only that, procedurally, SPCMB should have impleaded Congress.

On the sole procedural issue of whether SPCMB ought to have impleaded Congress, the contention of the OSG though novel is untenable. All cases questioning the constitutionality of a law does not require that Congress be impleaded for their resolution. The requisites of a judicial inquiry are elementary:

1. There must be an actual case or controversy; party;

2. The question of constitutionality must be raised by the proper party;
3. The constitutional question must be raised at the earliest possible opportunity; and
4. The decision of the constitutional question must be necessary to the determination of the case itself.[9]

The complexity of the issues involved herein require us to examine the assailed provision vis-a-vis the constitutional proscription against violation of due process. The statute reads:

SEC. 11. Authority to Inquire into Bank Deposits. - 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, including related accounts, with any banking institution or non-bank financial institution 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 probable cause that the deposits or investments, including related accounts involved, 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 activities defined in Section 3(i)(1), (2), and (12) hereof, and felonies or offenses of a nature similar to those mentioned in Section 3(i)(1), (2), and (12), which are punishable under the penal laws of other countries, and terrorism and conspiracy to commit terrorism as defined and penalized under Republic Act No. 9372.

The Court of Appeals shall act on the application to inquire into or examine any deposit or investment with any banking institution or non--bank financial institution within twenty-four (24) hours from filing of the application.

To ensure compliance with this Act, the Bangko Sentral ng Pilipinas may, in the course of a periodic or special examination, check the compliance of a covered institution with the requirements of the AMLA and its implementing rules and regulations.

For purposes of this section, 'related accounts' shall refer to accounts, the funds and sources of which originated from and/or are materially linked to the monetary instrument(s) or property(ies) subject of the freeze order(s).

A court order ex parte must first be obtained before the AMLC can inquire into these related Accounts: Provided, That the procedure for the ex parte application of the ex parte court order for the principal account shall be the same with that of the related accounts.

The authority to inquire into or examine the main account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the 1987 Constitution, which are hereby incorporated by reference.[10]

The due process clause of the Constitution reads:

SECTION 1. No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws. [11]

The right to due process has two aspects: (1) substantive which deals with the extrinsic and intrinsic validity of the law; and (2) procedural which delves into the rules government must follow before it deprives a person of its life, liberty or property.[12]

As presently worded, Section 11 of the AMLA has three elements: (1) ex-parte application by the AMLC; (2) determination of probable cause by the CA; and (3) exception of court order in cases involving unlawful activities defined in Sections 3(i)(1), (2), and (12).

As a brief backgrounder to the amendment to Section 11 of the AMLA, the text originally did not specify for an

ex-parte application by the AMLC for authority to inquire into or examine certain bank accounts or investments. The extent of this authority was the topic of Rep. of the Phils. v. Hon. Judge Eugenio, Jr., et al. (Eugenio)[13] where the petitioner therein, Republic of the Philippines, asseverated that the application for that kind of order under the questioned section of the AMLA did not require notice and hearing. Eugenio schooled us on the AMLA, specifically on the provisional remedies provided therein to aid the AMLC in enforcing the law:

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. — 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 of 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. (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, certain violations of the Comprehensive Dangerous Drugs Act of 2002, 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. — 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.

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. 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, but no similar clearance is granted in the case of inquiry orders under Section 11. These implementing rules were promulgated by the Bangko Sentral ng Pilipinas, the Insurance Commission and the Securities and Exchange Commission, 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 to enforce the provisions of the AMLA specifically authorize ex parte applications with respect to freeze orders under Section 10 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. (Citations omitted.)

Quite apparent from the foregoing is that absent a specific wording in the AMLA allowing for ex-parte proceedings in orders authorizing inquiry and examination by the AMLC into certain bank deposits or investments, notice to the affected party is required.

Heeding the Court's observance in *Eugenio* that the remedy of the Republic then lay with the legislative, Congress enacted Republic Act No. 10167 amending Section 11 of the AMLA and specifically inserted the word ex-parte appositive of the nature of this provisional remedy available to the AMLC thereunder.

It is this current wording of Section 11 which SPCMB posits as unconstitutional and purportedly actually proscribed in *Eugenio*.

We do not subscribe to SPCMB's position.

Succinctly, Section 11 of the AMLA providing for ex-parte application and inquiry by the AMLC into certain bank deposits and investments does not violate substantive due process, there being no physical seizure of property involved at that stage. It is the preliminary and actual seizure of the bank deposits or investments in question which brings these within reach of the judicial process, specifically a determination that the seizure violated due process.^[14] In fact, *Eugenio* delineates a bank inquiry order under Section 11 from a freeze order under Section 10 on both remedies' effect on the direct objects, i.e. the bank deposits and investments:

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.[15]

At the stage in which the petition was filed before us, the inquiry into certain bank deposits and investments by the AMLC still does not contemplate any form of physical seizure of the targeted corporeal property. From this cite, we proceed to examine whether Section 11 of the law violates procedural due process.

As previously stated, the AMLA now specifically provides for an ex-parte application for an order authorizing inquiry or examination into bank deposits or investments which continues to pass constitutional muster.

Procedural due process is essentially the opportunity to be heard.[16] In this case, at the investigation stage by the AMLC into possible money laundering offenses, SPCMB demands that it have notice and hearing of AMLC's investigation into its bank accounts.

We are not unaware of the obiter in Eugenio[17] and cited by SPCMB, voicing misgivings on an interpretation of the former Section 11 of the AMLA allowing for ex-parte proceedings in bank inquiry orders, to wit:

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."

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. (Emphasis supplied)

On that score, the SPCMB points out that the AMLC 's bank inquiry is preliminary to the seizure and deprivation of its property as in a freeze order under Section 10 of the AMLA which peculiarity lends itself to a sui generis proceeding akin to the evaluation process in extradition proceedings pronounced in Secretary of Justice v. Hon. Lantion.[18] Under the extradition law, the Secretary of Foreign Affairs is bound to make a finding that the extradition request and its supporting documents are sufficient and complete in form and substance before delivering the same to the Secretary of Justice. We ruled:

[L]ooking at the factual milieu of the case before us, it would appear that there was failure to abide by the provisions of Presidential Decree No. 1069. For while it is true that the extradition request was delivered to the Department of Foreign Affairs on June 17, 1999, the following day or less than 24 hours later, the Department of Justice received the request, apparently without the Department of Foreign affairs discharging its duty

thoroughly evaluating the same and its accompanying documents. xxx.

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[T]he record cannot support the presumption of regularity that the Department of Foreign Affairs thoroughly reviewed the extradition request and supporting documents and that it arrived at a well-founded judgment that the request and its annexed documents satisfy the requirements of law. XXX.

The evaluation process, just like the extradition proceedings, proper belongs to a class by itself. It is sui generis. It is not a criminal investigation, but it is also erroneous to say that it is purely an exercise of ministerial functions. At such stage, the executive authority has the power: (a) to make a technical assessment of the completeness and sufficiency of the extradition papers; (b) to outrightly deny the request if on its face and on the face of the supporting documents the crimes indicated are not extraditable; and (c) to make a determination whether or not the request is politically motivated, or that the offense is a military one which is not punishable under non-military penal legislation. Hence, said process may be characterized as an investigative or inquisitorial process in contrast to a proceeding conducted in the exercise of an administrative body's quasi-judicial power.

In administrative law, a quasi-judicial proceeding involves: (a) taking and evaluation of evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved. Inquisitorial power, which is also known as examining or investigatory power, is one of the determinative powers of an administrative body which better enables it to exercise its quasi-judicial authority. This power allows the administrative body to inspect the records and premises, and investigate the activities, of persons or entities coming under its jurisdiction, or to require disclosure of information by means of accounts, records, reports, testimony of witnesses, production of documents, or otherwise.

The power of investigation consists in gathering, organizing, and analyzing evidence, which is a useful aid or tool in an administrative agency's performance of its rule-making or quasi-judicial functions. Notably, investigation is indispensable to prosecution.[19] (Emphasis supplied, citations omitted)

The submission of AMLC requires a determination whether the AMLC is an administrative body with quasi-judicial powers; corollary thereto, a determination of the jurisdiction of the AMLC.

Lim v. Gamosa[20] is enlightening on jurisdiction and the requirement of a specific grant thereof in the enabling law. We declared that the creation of the National Commission on Indigenous Peoples (NCIP) by the Indigenous Peoples Rights Act (IPRA) did not confer it exclusive and original, nor primary jurisdiction, in all claims and disputes involving rights of IPs and ICCs where no such specific grant is bestowed.

In this instance, the grant of jurisdiction over cases involving money laundering offences is bestowed on the Regional Trial Courts and the Sandiganbayan as the case may be. In fact, Rule 5 of the IRR is entitled Jurisdiction of Money Laundering Cases and Money Laundering Investigation Procedures:

Rule 5.a. Jurisdiction of Money Laundering Cases. The Regional Trial Courts shall have the jurisdiction to try all cases on money laundering. Those committed by public officers and private persons who are in conspiracy with such public officers shall be under the jurisdiction of the Sandiganbayan.

Rule 5.b. Investigation of Money Laundering Offenses. - The AMLC shall investigate:

- (1) suspicious transactions;
- (2) covered transactions deemed suspicious after an investigation conducted by the AMLC;
- (3) money laundering activities; and
- (4) other violations of the AMLA, as amended.

The confusion on the scope and parameters of the AMLC's investigatory powers and whether such seeps into and

approximates a quasi-judicial agency's inquisitorial powers lies in the AMLC's investigation and consequent initial determination of whether certain activities are constitutive of anti-money laundering offenses.

The enabling law itself, the AMLA, specifies the jurisdiction of the trial courts, RTC and Sandiganbayan, over money laundering cases, and delineates the investigative powers of the AMLC.

Textually, the AMLA is the first line of defense against money laundering in compliance with our international obligation. There are three (3) stages of determination, two (2) levels of investigation, falling under three (3) jurisdictions:

1. The AMLC investigates possible money laundering offences and initially determines whether there is probable cause to charge any person with a money laundering offence under Section 4 of the AMLA, resulting in the filing of a complaint with the Department of Justice or the Office of the Ombudsman;[21]
2. The DOJ or the Ombudsman conducts the preliminary investigation proceeding and if after due notice and hearing finds probable cause for money laundering offences, shall file the necessary information before the Regional Trial Courts or the Sandiganbayan;[22]
3. The RTCs or the Sandiganbayan shall try all cases on money laundering, as may be applicable.[23]

Nowhere from the text of the law nor its Implementing Rules and Regulations can we glean that the AMLC exercises quasi-judicial functions whether the actual preliminary investigation is done simply at its behest or conducted by the Department of Justice and the Ombudsman.

Again, we hark back to *Lantion* citing *Ruperto v. Torres*,[23-a] where the Court had occasion to rule on the functions of an investigatory body with the sole power of investigation:

[Such a body] does not exercise judicial functions and its power is limited to investigating facts and making findings in respect thereto. The Court laid down the test of determining whether an administrative body is exercising judicial functions or merely investigatory functions: Adjudication signifies the exercise of power and authority to adjudicate upon the rights and obligations of the parties before it. Hence, if the only purpose for investigation is to evaluate evidence submitted before it based on the facts and Circumstances presented to it, and if the agency is not authorized to make a final pronouncement affecting the parties, then there is an absence of judicial discretion and judgment.

adjudicate in regard to the rights and obligations of both the Requesting State and the prospective extraditee. Its only power is to determine whether the papers comply with the requirements of the law and the treaty and, therefore, sufficient to be the basis of an extradition petition. Such finding is thus merely initial and not final. The body has no power to determine whether or not the extradition should be effected. That is the role of the court. The body's power is limited to an initial finding of whether or not the extradition petition can be filed in court.

It is to be noted, however, that in contrast to ordinary investigations, the evaluation procedure is characterized by certain peculiarities. Primarily, it sets into motion the wheels of the extradition process. Ultimately, it may result in the deprivation of liberty of the prospective extraditee. This deprivation can be effected at two stages: First, the provisional arrest of the prospective extraditee pending the submission of the request. This is so because the Treaty provides that in case of urgency, a contracting party may request the provisional arrest of the person sought pending presentation of the request (Paragraph [1], Article 9, RP-US Extradition Treaty), but he shall be automatically discharged after 60 days if no request is submitted (Paragraph 4). Presidential Decree No. 1069 provides for a shorter period of 20 days after which the arrested person could be discharged (Section 20[d]). Logically, although the Extradition Law is silent on this respect, the provisions only mean that once a request is forwarded to the Requested State, the prospective extraditee may be continuously detained, or if not,

subsequently rearrested (Paragraph [5], Article 9, RP-US Extradition Treaty), for he will only be discharged if no request is submitted. Practically, the purpose of this detention is to prevent his possible flight from the Requested State. Second, the temporary arrest of the prospective extraditee during the pendency of the extradition petition in court (Section 6, Presidential Decree No. 1069).

Clearly, there is an impending threat to a prospective extraditee's liberty as early as during the evaluation stage. It is not only an imagined threat to his liberty, but a very imminent one.

Because of these possible consequences, we conclude that the evaluation process is akin to an administrative agency conducting an investigative proceeding, the consequences of which are essentially criminal since such technical assessment sets off or commences the procedure for, and ultimately, the deprivation of liberty of a prospective extraditee. As described by petitioner himself, this is a "tool" for criminal law enforcement. In essence, therefore, the evaluation process partakes of the nature of a criminal investigation. In a number of cases, we had occasion to make available to a respondent in an administrative case or investigation certain constitutional rights that are ordinarily available only in criminal prosecutions. Further, as pointed out by Mr. Justice Mendoza during the oral arguments, there are rights formerly available only at the trial stage that had been advanced to an earlier stage in the proceedings, such as the right to counsel and the right against self-incrimination.[24] (Citations omitted)

In contrast to the disposition in *Lantion* that the evaluation process before the Department of Foreign Affairs is akin to an administrative agency conducting investigative proceedings with implications on the consequences of criminal liability, i.e., deprivation of liberty of a prospective extraditee, the sole investigative functions of the AMLC finds more resonance with the investigative functions of the National Bureau of Investigation (NBI).

That the AMLC does not exercise quasi-judicial powers and is simply an investigatory body finds support in our ruling in *Shu v. Dee*.^[25] In that case, petitioner Shu had filed a complaint before the NBI charging respondents therein with falsification of two (2) deeds of real estate mortgage submitted to the Metropolitan Bank and Trust Company (Metrobank). After its investigation, the NBI came up with a Questioned Documents Report No. 746-1098 finding that the signatures of petitioner therein which appear on the questioned deeds are not the same as the standard sample signatures he submitted to the NBI. Ruling on the specific issue raised by respondent therein that they had been denied due process during the NBI investigation, we stressed that the functions of this agency are merely investigatory and informational in nature:

[The NBI] has no judicial or quasi-judicial powers and is incapable of granting any relief to any party. It cannot even determine probable cause. The NBI is an investigative agency whose findings are merely recommendatory. It undertakes investigation of crimes upon its own initiative or as public welfare may require in accordance with its mandate. It also renders assistance when requested in the investigation or detection of crimes in order to prosecute the persons responsible.

Since the NBI's findings were merely recommendatory, we find that no denial of the respondent's due process right could have taken place; the NBI's findings were still subject to the prosecutor's and the Secretary of Justice's actions for purposes of finding the existence of probable cause. We find it significant that the specimen signatures in the possession of Metrobank were submitted by the respondents for the consideration of the city prosecutor and eventually of the Secretary of Justice during the preliminary investigation proceedings. Thus, these officers had the opportunity to examine these signatures.

The respondents were not likewise denied their right to due process when the NBI issued the questioned documents report. We note that this report merely stated that the signatures appearing on the two deeds and in the petitioner's submitted sample signatures were not written by one and the same person. Notably, there was no categorical finding in the questioned documents report that the respondents falsified the documents. This report, too, was procured during the conduct of the NBI's investigation at the petitioner's request for assistance in the investigation of the alleged crime of falsification. The report is inconclusive and does not prevent the

respondents from securing a separate documents examination by handwriting experts based on their own evidence. On its own, the NBI's questioned documents report does not directly point to the respondents' involvement in the crime charged. Its significance is that, taken together with the other pieces of evidence submitted by the parties during the preliminary investigation, these evidence could be sufficient for purposes of finding probable cause — the action that the Secretary of Justice undertook in the present case.

As carved out in *Shu*, the AMLC functions solely as an investigative body in the instances mentioned in Rule 5.b.[26] Thereafter, the next step is for the AMLC to file a Complaint with either the DOJ or the Ombudsman pursuant to Rule 6.b.

Even in the case of *Estrada v. Office of the Ombudsman*,^[27] where the conflict arose at the preliminary investigation stage by the Ombudsman, we ruled that the Ombudsman's denial of Senator Estrada's Request to be furnished copies of the counter-affidavits of his co-respondents did not violate Estrada's constitutional right to due process where the sole issue is the existence of probable cause for the purpose of determining whether an information should be filed and does not prevent Estrada from requesting a copy of the counter-affidavits of his co-respondents during the pre-trial or even during trial. We expounded on the nature of preliminary investigation proceedings, thus:

It should be underscored that the conduct of a preliminary investigation is only for the determination of probable cause, and "probable cause merely implies probability of guilt and should be determined in a summary manner. A preliminary investigation is not a part of the trial and it is only in a trial where an accused can demand the full exercise of his rights, such as the right to confront and cross-examine his accusers to establish his innocence." Thus, the rights of a respondent in a preliminary investigation are limited to those granted by procedural law.

A preliminary investigation is defined as an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial. The quantum of evidence now required in preliminary investigation is such evidence sufficient to "engender a well founded belief" as to the fact of the commission of a crime and the respondent's probable guilt thereof. A preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. We are in accord with the state prosecutor's findings in the case at bar that there exists *prima facie* evidence of petitioner's involvement in the commission of the crime, it being sufficiently supported by the evidence presented and the facts obtaining therein.

Likewise devoid of cogency is petitioner's argument that the testimonies of Galarion and Hanopol are inadmissible as to him since he was not granted the opportunity of cross-examination.

It is a fundamental principle that the accused in a preliminary investigation has no right to cross-examine the witnesses which the complainant may present. Section 3, Rule 112 of the Rules of Court expressly provides that the respondent shall only have the right to submit a counter-affidavit, to examine all other evidence submitted by the complainant and, where the fiscal sets a hearing to propound clarificatory questions to the parties or their witnesses, to be afforded an opportunity to be present but without the right to examine or cross-examine. Thus, even if petitioner was not given the opportunity to cross-examine Galarion and Hanopol at the time they were presented to testify during the separate trial of the case against Galarion and Roxas, he cannot assert any legal right to cross-examine them at the preliminary investigation precisely because such right was never available to him. The admissibility or inadmissibility of said testimonies should be ventilated before the trial court during the trial proper and not in the preliminary investigation.

Furthermore, the technical rules on evidence are not binding on the fiscal who has jurisdiction and control over the conduct of a preliminary investigation. If by its very nature a preliminary investigation could be waived by

the accused, we find no compelling justification for a strict application of the evidentiary rules. In addition, considering that under Section 8, Rule 112 of the Rules of Court, the record of the preliminary investigation does not form part of the record of the case in the Regional Trial Court, then the testimonies of Galarion and Hanopol may not be admitted by the trial court if not presented in evidence by the prosecuting fiscal. And, even if the prosecution does present such testimonies, petitioner can always object thereto and the trial court can rule on the admissibility thereof; or the petitioner can, during the trial, petition said court to compel the presentation of Galarion and Hanopol for purposes of cross-examination. (Citations and emphasis omitted)

Plainly, the AMLC's investigation of money laundering offenses and its determination of possible money laundering offenses, specifically its inquiry into certain bank accounts allowed by court order, does not transform it into an investigative body exercising quasi-judicial powers. Hence, Section 11 of the AMLA, authorizing a bank inquiry court order, cannot be said to violate SPCMB's constitutional right to procedural due process.

We now come to a determination of whether Section 11 is violative of the constitutional right to privacy enshrined in Section 2, Article III of the Constitution. SPCMB is adamant that the CA's denial of its request to be furnished copies of AMLC's ex-parte application for a bank inquiry order and all subsequent pleadings, documents and orders filed and issued in relation thereto, constitutes grave abuse of discretion where the purported blanket authority under Section 11: (1) partakes of a general warrant intended to aid a mere fishing expedition; (2) violates the attorney-client privilege; (3) is not preceded by predicate crime charging SPCMB of a money laundering offense; and (4) is a form of political harassment [of SPCMB's] clientele.

We shall discuss these issues jointly since the assailed Section 11 incorporates by reference that "[t]he authority to inquire into or examine the main and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the 1987 Constitution." On this point, SPCMB asseverates that "there is nothing in the AMLA that allows or justifies the withholding of information and/or any court records or proceedings pertaining to an examination of a bank account, especially if the court has already granted the authority to conduct the examination."

The theme of playing off privacy rights and interest against that of the state's interest in curbing money laundering offenses is recurring.[28]

The invoked constitutional provisions read:

SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the person or things to be seized.

SEC. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public policy or order requires otherwise as prescribed by law.

(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Once again, Eugenio[29] offers guidance:

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.

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* held that there was no legitimate expectation of privacy as to the bank records of a depositor. 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.

Because of the Bank Secrecy Act, the confidentiality of bank deposits remains a basic state policy in the Philippines. 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. The framers of the 1987 Constitution likewise recognized that bank accounts are not covered by either the right to information under Section 7, Article III or under the requirement of full public disclosure under Section 28, Article II. 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, and there have been other similar recognitions as well.

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, certain violations of the Comprehensive Dangerous Drugs Act of 2002, 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." 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. (Citations omitted, emphasis supplied)

From the foregoing disquisition, we extract the following principles:

1. The Constitution did not allocate specific rights peculiar to bank deposits;
2. The general rule of absolute confidentiality is simply statutory,[30] i.e. not specified in the Constitution, which has been affirmed in jurisprudence;[31]
3. Exceptions to the general rule of absolute confidentiality have been carved out by the Legislature which legislation have been sustained, albeit subjected to heightened scrutiny by the courts;[32] and
4. One such legislated exception is Section 11 of the AMLA.

The warning in *Eugenio* that an ex-parte proceeding authorizing the government to inspect certain bank accounts or investments without notice to the depositor would have significant implications on the right to privacy still does not preclude such a bank inquiry order to be allowed by specific legislation as an exception to the general rule of absolute confidentiality of bank deposits.

We thus subjected Section 11 of the AMLA to heightened scrutiny and found nothing arbitrary in the allowance and authorization to AMLC to undertake an inquiry into certain bank accounts or deposits. Instead, we found that it provides safeguards before a bank inquiry order is issued, ensuring adherence to the general state policy of preserving the absolutely confidential nature of Philippine bank accounts:

- (1) The AMLC is required to establish probable cause as basis for its ex-parte application for bank inquiry order;
- (2) The CA, independent of the AMLC's demonstration of probable cause, itself makes a finding of probable cause that the deposits or investments are related to an unlawful activity under Section 3(i) or a money laundering offense under Section 4 of the AMLA;
- (3) A bank inquiry court order ex-parte for related accounts is preceded by a bank inquiry court order ex-parte for the principal account which court order ex-parte for related accounts is separately based on probable cause that such related account is materially linked to the principal account inquired into; and
- (4) The authority to inquire into or examine the main or principal account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the Constitution.

The foregoing demonstrates that the inquiry and examination into the bank account are not undertaken whimsically and solely based on the investigative discretion of the AMLC. In particular, the requirement of

demonstration by the AMLC, and determination by the CA, of probable cause emphasizes the limits of such governmental action. We will revert to these safeguards under Section 11 as we specifically discuss the CA's denial of SPCMB's letter request for information concerning the purported issuance of a bank inquiry order involving its accounts.

First. The AMLC and the appellate court are respectively required to demonstrate and ascertain probable cause. *Ret. Lt. Gen. Ligot, et al. v. Republic of the Philippines*,^[33] which dealt with the adjunct provisional remedy of freeze order under Section 10 of the AMLA, defined probable cause, thus:

The probable cause required for the issuance of a freeze order differs from the probable cause required for the institution of a criminal action, xxx.

As defined in the law, the probable cause required for the issuance of a freeze order refers to "such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or money laundering offence is about to be, is being or has been committed and that the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to said unlawful activity and/or money laundering offense."

In other words, in resolving the issue of whether probable cause exists, the CA's statutorily-guided determination's focus is not on the probable commissions of an unlawful activity (or money laundering) that the office of the Ombudsman has already determined to exist, but on whether the bank accounts, assets, or other monetary instruments sought to be frozen are in any way related to any of the illegal activities enumerated under R.A. 9160, as amended. Otherwise stated, probable cause refers to the sufficiency of the relation between an unlawful activity and the property or monetary instrument which is the focal point of Section 10 of RA No. 9160, as amended. xxx. (Emphasis supplied)

Second. As regards SPCMB's contention that the bank inquiry order is in the nature of a general warrant, Eugenio already declared that Section 11, even with the allowance of an ex parte application therefor, "is not a search warrant or warrant of arrest as it contemplates a direct object but not the seizure of persons or property."^[34] It bears repeating that the "bank inquiry order" under Section 11 is a provisional remedy to aid the AMLC in the enforcement of the AMLA.

Third. Contrary to the stance of SPCMB, the bank inquiry order does not contemplate that SPCMB be first impleaded in a money laundering case already filed before 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. 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.^[35] (Citation omitted)

Guided as we are by prior holdings, and bound as we are by the requirements for issuance of a bank inquiry order

under Section 11 of the AMLA, we are hard pressed to declare that it violates SPCMB's right to privacy.

Nonetheless, although the bank inquiry order ex-parte passes constitutional muster, there is nothing in Section 11 nor the implementing rules and regulations of the AMLA which prohibits the owner of the bank account, as in his instance SPCMB, to ascertain from the CA, post issuance of the bank inquiry order ex-parte, if his account is indeed the subject of an examination. Emphasized by our discussion of the safeguards under Section 11 preceding the issuance of such an order, we find that there is nothing therein which precludes the owner of the account from challenging the basis for the issuance thereof.

The present controversy revolves around the issue of whether or not the appellate court, through the Presiding Justice, gravely abused its discretion when it effectively denied SPCMB's letter-request for confirmation that the AMLC had applied (ex-parte) for, and was granted, a bank inquiry order to examine SPCMB's bank accounts relative to the investigation conducted on Vice-President Binay's accounts.

We recall the Presiding Justice's letter to SPCMB categorically stating that "under the rules, the Office of the Presiding Justice is strictly mandated not to disclose, divulge, or communicate to anyone directly or indirectly, in any manner or by any means, the fact of the filing of the petition brought before [the Court of Appeals] by the [AMLC], its contents and even its entry in the logbook." Note that the letter did not cite the aforementioned rules that were supposedly crystal clear to foreclose ambiguity. Note further that Rules 10.c.3 and 10.d of the IRR on Authority to File Petitions for Freeze Order provides that:

Rule 10.c. Duty of Covered Institutions upon receipt thereof. —

Rule 10.c.1. Upon receipt of the notice of the freeze order, the covered institution concerned shall immediately freeze the monetary instrument or property and related accounts subject thereof.

Rule 10.c.2. The covered institution shall likewise immediately furnish a copy of the notice of the freeze order upon the owner or holder of the monetary instrument or property or related accounts subject thereof.

Rule 10.c.3. Within twenty-four (24) hours from receipt of the freeze order, the covered institution concerned shall submit to the Court of Appeals and the AMLC, by personal delivery, a detailed written return on the freeze order, specifying all the pertinent and relevant information which shall include the following:

- (a) the account numbers;
- (b) the names of the account owners or holders;
- (c) the amount of the monetary instrument, property or related accounts as of the time they were frozen;
- (d) all relevant information as to the nature of the monetary instrument or property;
- (e) any information on the related accounts pertaining to the monetary instrument or property subject of the freeze order; and
- (f) the time when the freeze thereon took effect.

Rule 10.d. Upon receipt of the freeze order issued by the Court of Appeals and upon verification by the covered institution that the related accounts originated from and/or are materially linked to the monetary instrument or property subject of the freeze order, the covered institution shall freeze these related accounts wherever these may be found.

The return of the covered institution as required under Rule 10.c.3 shall include the fact of such freezing and an explanation as to the grounds for the identification of the related accounts.

If the related accounts cannot be determined within twenty-four (24) hours from receipt of the freeze order due to the volume and/or complexity of the transactions or any other justifiable factor(s), the covered institution shall effect the freezing of the related accounts, monetary instruments and properties as soon as practicable and shall

submit a supplemental return thereof to the Court of Appeals and the AMLC within twenty-four (24) hours from the freezing of said related accounts, monetary instruments and properties.

The foregoing rule, in relation to what Section 11 already provides, signifies that ex-parte bank inquiry orders on related accounts may be questioned alongside, albeit subsequent to, the issuance of the initial freeze order of the subject bank accounts. The requirements and procedure for the issuance of the order, including the return to be made thereon lay the grounds for judicial review thereof. We expound.

An act of a court or tribunal can only be considered tainted with grave abuse of discretion when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is well-settled that the abuse of discretion to be qualified as "grave" must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[36] In this relation, case law states that not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion.[37] The degree of gravity, as above-described, must be met.

That the propriety of the issuance of the bank inquiry order is a justiciable issue brooks no argument. A justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.[38]

As previously adverted to in our discussion on the right to privacy, the clash of privacy rights and interest against that of the government's is readily apparent. However, the statutorily enshrined general rule on absolute confidentiality of bank accounts remains. Thus, the safeguards instituted in Section II of the AMLA and heretofore discussed provide for certain well-defined limits, as in the language of *Baker v. Carr*, "judicially discoverable standards" for determining the validity of the exercise of such discretion by the appellate court in denying the letter-request of SPCMB.[39] In short, Section II itself provides the basis for the judicial inquiry and which the owner of the bank accounts subject of the AMLC inquiry may invoke.

Undeniably, there is probable and preliminary governmental action against SPCMB geared towards implementation of the AMLA directed at SPCMB's property, although there is none, as yet, physical seizure thereof, as in freezing of bank accounts under Section 10 of the AMLA.[40] Note, however, that the allowance to question the bank inquiry order we carve herein is tied to the appellate court's issuance of a freeze order on the principal accounts. Even in *Eugenio*, while declaring that the bank inquiry order under Section II then required prior notice of such to the account owner, we recognized that the determination of probable cause by the appellate court to issue the bank inquiry order can be contested. As presently worded and how AMLC functions are designed under the AMLA, the occasion for the issuance of the freeze order upon the actual physical seizure of the investigated and inquired into bank account, calls into motions the opportunity for the bank account owner to then question, not just probable cause for the issuance of the freeze order under Section I 0, but, to begin with, the determination of probable cause for an ex-parte bank inquiry order into a purported related account under Section II.

In enacting the amendment to Section II of the AMLC, the legislature saw it fit to place requirements before a bank inquiry order may be issued. We discussed these requirements as basis for a valid exception to the general rule on absolute confidentiality of bank accounts. However, these very safe guards allow SPCMB, post issuance of the ex-parte bank inquiry order, legal bases to question the propriety of such issued order, if any. To emphasize, this allowance to the owner of the bank account to question the bank inquiry order is granted only after issuance of the freeze order physically seizing the subject bank account. It cannot be undertaken prior to the issuance of the freeze order.

While no grave abuse of discretion could be ascribed on the part of the appellate court when it explained in its

letter that petitions of such nature "is strictly confidential in that when processing the same, not even the handling staff members of the Office of the Presiding Justice know or have any knowledge who the subject bank account holders are, as well as the bank accounts involved," it was incorrect when it declared that "under the rules, the Office of the Presiding Justice is strictly mandated not to disclose, divulge, or communicate to anyone directly or indirectly, in any manner or by any means, the fact of the filing of any petition brought before [the Court of Appeals] by the Anti-Money Laundering Council, its contents and even its entry in the logbook." As a result, the appellate court effectively precluded and prevented SPCMB of any recourse, amounting to a denial of SPCMB's letter request.

We cannot overemphasize that SPCMB, as the owner of the bank account which may be the subject of inquiry of the AMLC, ought to have a legal remedy to question the validity and propriety of such an order by the appellate court under Section 11 of the AMLA even if subsequent to the issuance of a freeze order. Moreover, given the scope of inquiry of the AMLC, reaching and including even related accounts, which inquiry into specifies a proviso that: "[t]hat the procedure for the ex-parte application of the ex-parte court order for the principal account shall be the same with that of the related accounts," SPCMB should be allowed to question the government intrusion. Plainly, by implication, SPCMB can demonstrate the absence of probable cause, i.e. that it is not a related account nor are its accounts materially linked to the principal account being investigated.[41]

In *BSB Group, Inc. v. Go*,[42] we recounted the objective of the absolute confidentiality rule which is protection from unwarranted inquiry or investigation if the purpose of such inquiry or investigation is merely to determine the existence and nature, as well as the amount of the deposit in any given bank account:

xxx. There is, in fact, much disfavor to construing these primary and supplemental exceptions in a manner that would authorize unbridled discretion, whether governmental or otherwise, in utilizing these exceptions as authority for unwarranted inquiry into bank accounts. It is then perceivable that the present legal order is obliged to conserve the absolutely confidential nature of bank deposits.

The measure of protection afforded by the law has been explained in *China Banking Corporation v. Ortega*. That case principally addressed the issue of whether the prohibition against an examination of bank deposits precludes garnishment in satisfaction of a judgment. Ruling on that issue in the negative, the Court found guidance in the relevant portions of the legislative deliberations on Senate Bill No. 351 and House Bill No. 3977, which later became the Bank Secrecy Act, and it held that the absolute confidentiality rule in R.A. No. 1405 actually aims at protection from unwarranted inquiry or investigation if the purpose of such inquiry or investigation is merely to determine the existence and nature, as well as the amount of the deposit in any given bank account. Thus,

x x x The lower court did not order an examination of or inquiry into the deposit of B&B Forest Development Corporation, as contemplated in the law. It merely required Tan Kim Liong to inform the court whether or not the defendant B&B Forest Development Corporation had a deposit in the China Banking Corporation only for purposes of the garnishment issued by it, so that the bank would hold the same intact and not allow any withdrawal until further order. It will be noted from the discussion of the conference committee report on Senate Bill No. 351 and House Bill No. 3977 which later became Republic Act No. 1405, that it was not the intention of the lawmakers to place banks deposits beyond the reach of execution to satisfy a final judgment Thus:

x x x Mr. Marcos: Now, for purposes of the record, I should like the Chairman of the Committee on Ways and Means to clarify this further. Suppose an individual has a tax case. He is being held liable by the Bureau of Internal Revenue [(BIR)] or, say, P1,000.00 worth of tax liability, and because of this the deposit of this individual [has been] attached by the [BIR].

Mr. Ramos: The attachment will only apply after the court has pronounced sentence declaring the liability of

such person. But where the primary aim is to determine whether he has a bank deposit in order to bring about a proper assessment by the [BIR], such inquiry is not allowed by this proposed law.

Mr. Marcos: But under our rules of procedure and under the Civil Code, the attachment or garnishment of money deposited is allowed. Let us assume for instance that there is a preliminary attachment which is for garnishment or for holding liable all moneys deposited belonging to a certain individual, but such attachment or garnishment will bring out into the open the value of such deposit. Is that prohibited by... the law?

Mr. Ramos: It is only prohibited to the extent that the inquiry... is made only for the purpose of satisfying a tax liability already declared for the protection of the right in favor of the government; but when the object is merely to inquire whether he has a deposit or not for purposes of taxation, then this is fully covered by the law.

x x x

Mr. Marcos: The law prohibits a mere investigation into the existence and the amount of the deposit.

Mr. Ramos: Into the very nature of such deposit. x x x (Citations omitted)

What is reflected by the foregoing disquisition is that the law plainly prohibits a mere investigation into the existence and the amount of the deposit. We relate the principle to SPCMB's relationship to the reported principal account under investigation, one of its clients, former Vice- President Binay. SPCMB as the owner of one of the bank accounts reported to be investigated by the AMLC for probable money laundering offenses should be allowed to pursue remedies therefrom where there are legal implications on the inquiry into its accounts as a law firm. While we do not lapse into conjecture and cannot take up the lance for SPCMB on probable violation of the attorney-client privilege based on pure speculation, the extent of information obtained by the AMLC concerning the clients of SPCMB has not been fully drawn and sufficiently demonstrated. At the same time, the owner of bank accounts that could be potentially affected has the right to challenge whether the requirements for issuance of the bank inquiry order were indeed complied with given that such has implications on its property rights. In this regard, SPCMB's obeisance to promulgated rules on the matter could have afforded it a remedy, even post issuance of the bank inquiry order.

Rule 10.b. of the IRR defines probable cause as "such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that the account or any monetary instrument or property sought to be frozen is in any way related to said unlawful activity and/or money laundering offense." Evidently, the provision only refers to probable cause for freeze orders under Section 10 of the AMLA. From this we note that there is a glaring lacunae in our procedural rules concerning the bank inquiry order under Section 11. Despite the advent of RA No. 10167, amending Section 11 of the AMLA, we have yet to draft additional rules corresponding to the ex-parte bank inquiry order under Section 11. A.M. No. 05-11-04-SC entitled "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," only covers what is already provided in the title. As we have already noted, the bank inquiry order must likewise be governed by rules specific to its issuance where the AMLC regularly invokes this provision and which, expectedly clashes with the rights of bank account holders.

Apart from Section 2, Rule IV of the 2009 Internal Rules of the CA (IRCA) reads:

SEC. 2. Action by the Presiding Justice or Executive Justice. — When a petition involves an urgent matter, such as an application for writ of habeas corpus, amparo or habeas data or for temporary restraining order, and there is no way of convening the Raffle Committee or calling any of its members, the Presiding Justice or the Executive Justice, as the case may be, or in his/her absence, the most senior Justice present, may conduct the raffle or act on the petition, subject to raffle in the latter case on the next working day in accordance with Rule

III hereof.

(AMLA cases are limited to the first three most senior Justices as stated in the law and are raffled by the Chairmen of the First, Second and Third Divisions to the members of their Divisions only.)

Nothing in the IRCA justifies the disallowance to SPCMB of information and/or court records or proceedings pertaining to the possible bank inquiry order covering its bank deposits or investment.

We note that the Presiding Justice's reply to the request for comment of SPCMB on the existence of a petition for bank inquiry order by the AMLC covering the latter's account only contemplates the provisions of Section 10 of the AMLA, its IRR and the promulgated rules thereon. Such immediate and definitive foreclosure left SPCMB with no recourse on how to proceed from what it perceived to be violation of its rights as owner of the bank account examined. The reply of the Presiding Justice failed to take into consideration Section 54 of A.M. No. 05-11-04-SC on Notice of Freeze Order which reads:

SEC. 54. Notice of freeze order.- The Court shall order that notice of the freeze order be served personally, in the same manner provided for the service of the asset preservation order in Section 14 of this Rule, upon the respondent or any person acting in his behalf and such covered institution or government agency. The court shall notify also such party in interest as may have appeared before the court. (Emphasis supplied)

We relate this Section 54 to the already cited Rule 10.d of the IRR

Rule 10.d. Upon receipt of the freeze order issued by the Court of Appeals and upon verification by the covered institution that the related accounts originated from and/or are materially linked to the monetary instrument or property subject of the freeze order, the covered institution shall freeze these related accounts wherever these may be found.

The return of the covered institution as required under Rule 10.c.3 shall include the fact of such freezing and an explanation as to the grounds for the identification of the related accounts.

If the related accounts cannot be determined within twenty--four (24) hours from receipt of the freeze order due to the volume and/or complexity of the transactions or any other justifiable factor(s), the covered institution shall effect the freezing of the related accounts, monetary instruments and properties as soon as practicable and shall submit a supplemental return thereof to the Court of Appeals and the AMLC within twenty-four (24) hours from the freezing of said related accounts, monetary instruments and properties. (Emphasis supplied)

demonstrating that the return of the Freeze Order must provide an explanation as to the grounds for the identification of the related accounts, or the requirement of notice to a party in interest affected thereby whose bank accounts were examined. This necessarily contemplates the procedure for a prior bank inquiry order which we ought to provide for.

For exact reference, we cite A.M. No. 05-11-04-SC, Title VIII on Petitions for Freeze Order in the CA which certain pertinent provisions we adopt and apply suppletorily as a separate Title on Petitions for Bank Inquiry Order:

TITLE VIII

PETITIONS FOR FREEZE ORDER IN THE COURT OF APPEALS

SEC. 43. Applicability. - This Rule shall apply to petitions for freeze order in the Court of Appeals. The 2002 Internal Rules of the Court of Appeals, as amended, shall apply suppletorily in all other aspects.

xxxx

SEC. 46. Contents of the petition. - The petition shall contain the following allegations:

(a)

The name and address of the respondent;

(b)

A specific description with particularity of the monetary instrument, property or proceeds, their location, the name of the owner, holder, lienholder or possessor, if known;

(c)

The grounds relied upon for the issuance of a freeze order; and

(d)

The supporting evidence showing that the subject monetary instrument, property, or proceeds are in any way related to or involved in an unlawful activity as defined under Section 3(i) of Republic Act No. 9160, as amended by Republic Act No. 9194.

The petition shall be filed in seven clearly legible copies and shall be accompanied by clearly legible copies of supporting documents duly subscribed under oath.

xxxx

SEC. 49. Confidentiality; prohibited disclosure. - The logbook and the entries therein shall be kept strictly confidential and maintained under the responsibility of the Presiding Justice or the Executive Justices, as the case may be. No person, including Court personnel, shall disclose, divulge or communicate to anyone directly or indirectly, in any manner or by any means, the fact of the filing of the petition for freeze order, its contents and its entry in the logbook except to those authorized by the Court. Violation shall constitute contempt of court.

xxxx

SEC. 51. Action by the Court of Appeals.- All members of the Division of the Court to which the assigned justice belongs shall act on the petition within twenty-four hours after its filing. However, if one member of the Division is not available, the assigned justice and the other justice present shall act on the petition. If only the assigned justice is present, he shall act alone. The action of the two justices or of the assigned justice alone, as the case may be, shall be forthwith promulgated and thereafter submitted on the next working day to the absent member or members of the Division for ratification, modification or recall.

If the Court is satisfied from the verified allegations of the petition that there exists probable cause that the monetary instrument, property, or proceeds are in any way related to or involved in any unlawful activity as defined in Section 3(i) of Republic Act No. 9160, as amended by Republic Act No. 9194, it shall issue ex parte a freeze order as hereinafter provided.

If the Court finds no substantial merit in the petition, it shall dismiss the petition outright, stating the specific reasons for such dismissal.

When the unanimous vote of the three justices of the Division cannot be obtained, the Presiding Justice or the Executive Justice shall designate two justices by raffle from among the other justices of the first three divisions to sit temporarily with them forming a special division of five justices. The concurrence of a majority of such special division shall be required for the pronouncement of a judgment or resolution.

SEC. 52. Issuance, form and contents of the freeze order - The freeze order shall:

(a)

issue in the name of the Republic of the Philippines represented by the Anti-Money Laundering Council;

(b)

describe with particularity the monetary instrument, property or proceeds frozen, as well as the names of their owner or owners; and

(c)

direct the person or covered institution to immediately freeze the subject monetary instrument, property or proceeds or its related web of accounts.

SEC. 53. Freeze order.

(a)

Effectivity; post issuance hearing. - The freeze order shall be effective immediately for a period of twenty days. Within the twenty-day period, the court shall conduct a summary hearing, with notice to the parties, to determine whether or not to modify or lift the freeze order, or extend its effectivity as hereinafter provided.

(b)

Extension. - On motion of the petitioner filed before the expiration of twenty days from issuance of a freeze order, the court may for good cause extend its effectivity for a period not exceeding six months.

SEC. 54. Notice of freeze order.- The Court shall order that notice of the freeze order be served personally, in the same manner provided for the service of the asset preservation order in Section 14 of this Rule, upon the respondent or any person acting in his behalf and such covered institution or government agency. The court shall notify also such party in interest as may have appeared before the court.

SEC. 55. Duty of respondent, covered institution or government agency upon receipt of freeze order. - Upon receipt of a copy of the freeze order, the respondent, covered institution or government agency shall immediately desist from and not allow any transaction, withdrawal, deposit, transfer, removal, conversion, other movement or concealment the account representing, involving or relating to the subject monetary instrument, property, proceeds or its related web of accounts.

SEC. 56. Consolidation with the pending civil forfeiture proceedings - After the post-issuance hearing required in Section 53, the Court shall forthwith remand the case and transmit the records to the regional trial court for consolidation with the pending civil forfeiture proceeding.

SEC. 57. Appeal.- Any party aggrieved by the decision or ruling of the court may appeal to the Supreme Court by petition for review on certiorari under Rule 45 of the Rules of Court. The appeal shall not stay the enforcement of the subject decision or final order unless the Supreme Court directs otherwise.

A reverse situation affords us a clearer picture of the arbitrary and total preclusion of SPCMB to question the bank inquiry order of the appellate court. In particular, in an occasion where the appellate court denies the AMLC's ex-parte application for a bank inquiry order under Section 11, the AMLC can question this denial and assail such an order by the appellate court before us on grave abuse of discretion. Among others, the AMLC can demonstrate that it has established probable cause for its issuance, or if the situation contemplates a denial of an application for a bank inquiry order into a related account, the AMLC can establish that the account targeted is indeed a related account. The resolution on these factual and legal issues ought to be reviewable, albeit post issuance of the Freeze Order, akin to the provision of an Appeal to the Supreme Court under Section 57 of A.M. No. 05-11-04-SC.

Palpably, the requirement to establish probable cause is not a useless supposition. To establish and demonstrate the required probable cause before issuance of the bank inquiry and the freeze orders is a screw on which the AMLC's intrusive functions turns. We are hard pressed to justify a disallowance to an aggrieved owner of a bank account to avail of remedies.

That there are no specific rules governing the bank inquiry order does not signify that the CA cannot confirm to the actual owner of the bank account reportedly being investigated whether it had in fact issued a bank inquiry order for covering its accounts, of course after the issuance of the Freeze Order. Even in *Ligot*,^[43] we held that by implication, where the law did not specify, the owner of the "frozen" property may move to lift the freeze order issued under Section 10 of the AMLA if he can show that no probable cause exists or the 20-day period of the freeze order has already lapsed without any extension being requested from and granted by the CA. Drawing a parallel, such a showing of the absence of probable cause ought to be afforded SPCMB.

Ligot clarifies that "probable cause refers to the sufficiency of the relation between an unlawful activity and the property or monetary instrument which is the focal point of Section 10 of the AMLA, as amended." This same probable cause is likewise the focal point in a bank inquiry order to further determine whether the account under investigation is linked to unlawful activities and/or money laundering offense. Thus, the specific applicability of Sections 52, 53, 54 and 57 Title VIII of A.M. No. 05-11-04-SC covering the following: (1) Issuance, Form and Content of the Freeze Order; (2) Effectivity of the Freeze Order and Post Issuance Hearing thereon; (3) Notice of the Freeze Order; and (4) Appeal from the Freeze Order as separate Rules for Petitions to Question the Bank Inquiry Order. And as held in *Eugenio* which now applies to the present Section 11 of the AMLA:

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. xxx.^[44]

The cited rules cover and approximate the distinction made by *Eugenio* in declaring that the bank inquiry order is not a search warrant, and yet there are instituted requirements for the issuance of these orders given that such is now allowed ex-parte:

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, such examination being in the form of searching questions and answers. 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.^[45]

Thus, as an ex-parte bank inquiry order which Congress has now specifically allowed, the owner of a bank account post issuance of the freeze order has an opportunity under the Rules to contest the establishment of

probable cause.

Again, we cannot avoid the requirement-limitation nexus in Section 11. As it affords the government authority to pursue a legitimate state interest to investigate money laundering offenses, such likewise provides the limits for the authority given. Moreover, allowance to the owner of the bank account, post issuance of the bank inquiry order and the corresponding freeze order, of remedies to question the order, will not forestall and waylay the government's pursuit of money launderers. That the bank inquiry order is a separate from the freeze order does not denote that it cannot be questioned. The opportunity is still rife for the owner of a bank account to question the basis for its very inclusion into the investigation and the corresponding freezing of its account in the process.

As noted in *Eugenio*, such an allowance accorded the account holder who wants to contest the issuance of the order and the actual investigation by the AMLC, does not cast an unreasonable burden since the bank inquiry order has already been issued. Further, allowing for 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. The account holder so notified remains 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. Rule 10.c.[46] of the IRR provides for Duty of the Covered Institution receiving the Freeze Order. Such can likewise be made applicable to covered institutions notified of a bank inquiry order.

On the other hand, a scenario where SPCMB or any account holder under examination later shows that the bank inquiry order was without the required probable cause, the information obtained through the account reverts to, and maintains, its confidentiality. In short, any and all information obtained therein by the AMLC remains confidential, as if no examination or inquiry on the bank account or investments was undertaken. The foregoing consequence can be added as a Section in the Rules entitled "Effect of absence of probable cause."

All told, we affirm the constitutionality of Section 11 of the AMLA allowing the ex-parte application by the AMLC for authority to inquire into, and examine, certain bank deposits and investments.

Section 11 of the AMLA providing for the ex-parte bank deposit inquiry is constitutionally firm for the reasons already discussed. The ex--parte inquiry shall be upon probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) of the law or a money laundering offense under Section 4 of the same law. To effect the limit on the ex-parte inquiry, the petition under oath for authority to inquire, must, akin to the requirement of a petition for freeze order enumerated in Title VIII of A.M. No. 05-11-04-SC, contain the name and address of the respondent; the grounds relied upon for the issuance of the order of inquiry; and the supporting evidence that the subject bank deposit are in any way related to or involved in an unlawful activity.

If the CA finds no substantial merit in the petition, it shall dismiss the petition outright stating the specific reasons for such denial. If found meritorious and there is a subsequent petition for freeze order, the proceedings shall be governed by the existing Rules on Petitions for Freeze Order in the CA. From the issuance of a freeze order, the party aggrieved by the ruling of the court may appeal to the Supreme Court by petition for review on certiorari under Rule 45 of the Rules of Court raising all pertinent questions of law and issues, including the propriety of the issuance of a bank inquiry order. The appeal shall not stay the enforcement of the subject decision or final order unless the Supreme Court directs otherwise. The CA is directed to draft rules based on the foregoing discussions to complement the existing A.M. No. 05-11-04-SC 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 for submission to the Committee on the Revision of the Rules of Court and eventual approval and promulgation of the Court en

banc.

WHEREFORE, the petition is DENIED. Section 11 of Republic Act No. 9160, as amended, is declared VALID and CONSTITUTIONAL.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Bersamin, Del Castillo, Mendoza, Reyes, Perlas-Bernabe, and Jardeleza, JJ., concur.

Peralta, J., no part.

Leonen, J., see separate concurring opinion.

Caguioa, J., on leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on December 6, 2016 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on January 4, 2017 at 11:17 a.m.

Very truly yours,

(SGD) FELIPA G. BORLONGAN-ANAMA
Clerk of Court

[1] Rollo, pp. 3-46.

[2] Fact-finding as preliminary investigation based on administrative supervision and powers to investigate government officials, Section 5, Article XI of the Constitution, Ombudsman Act of 1990.

[3] In aid of legislation under Section 21, Article VI of the Constitution.

[4] Rollo, p. 10

[5] Id. at 60.

[6] Id. at 51.

[7] Id. at 11.

[8] Id. at 12-13.

[9] *Dumlao v. Commission on Elections*, 184 Phil. 369, 376-377 (1980).

[10] Republic Act No. 9160 as amended by RA 10167.

[11] CONSTITUTION, Article III, Sec. 1.

[12] *Perez, et al. v. Philippine Telegraph and Telephone Co., et al.*, 602 Phil. 522, 545 (2009).

[13] 569 Phil. 98, 120-124 (2008).

[14] Republic of the Phils. v. Glasgow Credit and Collection Services, Inc., et al. 566 Phil. 94, 106-107 (2008).

[15] Supra note 13 at 124-125.

[16] Supra note 11 & 12.

[17] Supra note 13 at 126.

[18] 379 Phil. 165 (2000).

[19] Id. at 196-198.

[20] G. R. No. 193964, December 2, 2015.

[21] Rule 6.b. When the AMLC finds, after investigation, that there is probable cause to charge any person with a money laundering offense under Section 4 of the AMLA, as amended, it shall cause a complaint to be filed, pursuant to Section 7 (4) of the AMLA, as amended, before the Department of Justice or the Office of the Ombudsman, which shall then conduct the preliminary investigation of the case.

[22] Rule 6.c If after due notice and hearing in the preliminary investigation proceedings, the Department of Justice, or the Office of the Ombudsman, as the case may be, finds probable cause for a money laundering offense, it shall file the necessary information before the Regional Trial Courts or the Sadiganbayan.

[23] Rule 5.a. Jurisdiction of Money Laundering Cases. The Regional Trial Courts shall have the jurisdiction to try all cases on money laundering. Those committed by public officers and private persons who are in conspiracy with such public officers shall be under the jurisdiction of the Sandiganbayan.

[23-a] 100 Phil. 1098 (1957).

[24] Supra note 18 at 198-200.

[25] G.R. No. 182573, April 23, 2014, 723 SCRA 512, 522-523.

[26] Rule 5.b. Investigation of Money Laundering Offenses.- The AMLC shall investigate:

- (1) suspicious transactions;
- (2) covered transactions deemed suspicious after an investigation conducted by the AMLC;
- (3) money laundering activities; and
- (4) other violations of the AMLA, as amended.

[27] G.R. No. 212140-41, January-21, 2015.

[28] Recommended Citation, Robert S. Pasley, Privacy Rights v. Anti-Money Laundering Enforcement, I 6 N.C. Banking Inst. 147 (2002).

[29] Supra note 13 at 127-132.

[30] Bank Secrecy Act (BSA) of 1955, RA No. 1405.

[31] BSB Group, Inc. v. Go, 626 Phil. 501 (2010).

[32] Supra note 30 at 513; Sec. 2 of the BSA.

[33] 705 Phil. 477, 501-502 (2013).

[34] Supra note 13 at 127.

[35] Id. at 120.

[36] Republic of the Philippines v. Roque, 718 Phil. 294, 303 (2013).

[37] Villanueva v. Mayor Ople, 512 Phil. 187 (2005).

[38] Velarde v. Social Justice Society, 472 Phil. 285, 302 (2004)

[39] 369 U.S. 186 (1962), cited in Francisco, Jr. v. The House of Representatives, 460 Phil. 830, 890- 891 (2003).

[40] See note 13 at 124-125.

[41] Implementing Rules and Regulations of RA 9160 as amended by RA 9194 and RA 10167;

Rule 3.e.3. "Related Accounts" are those accounts, the funds and sources of which originated from and/or are materially linked to the monetary instruments or properties subject of the freeze order.

Rule 3.e.3.a. Materially linked accounts include but are not limited to the following:

(1)

All accounts or monetary instruments belonging to the same person whose accounts, monetary instruments or properties are the subject of the freeze order;

(2)

All accounts or monetary instruments held, owned or controlled by the owner or holder of the accounts, monetary instruments or properties subject of the freeze order, whether such accounts are held, owned or controlled singly or jointly with another person;

(3)

All accounts or monetary instruments the funds of which are transferred to the accounts, monetary instruments or properties subject of the freeze order without any legal or trade obligation, purpose or economic justification;

(4)

All "In Trust For" (ITF) accounts where the person whose accounts, monetary instruments or properties are the subject of the freeze order is either the trustee or the trustor;

(5)

All accounts held for the benefit or in the interest of the person whose accounts, monetary instruments or properties are the subject of the freeze order;

(6)

All accounts or monetary instruments under the name of the immediate family or household members of the person whose accounts, monetary instruments or properties are the subject of the freeze order if the amount or value involved is not commensurate with the business or financial capacity of the said family or household member;

(7)

All accounts of corporate and juridical entities that are substantially owned, controlled or effectively controlled by the person whose accounts, monetary instruments or properties are subject of the freeze order;

(8)

All shares or units in any investment accounts and/or pooled funds of the person whose accounts, monetary instruments or properties are subject of the freeze order; and

(9)

All other accounts, shares, units or monetary instruments that are similar, analogous or identical to any of the foregoing.

[42] Supra note 31 at 514-515.

[43] Supra note 33 at 483.

[44] Supra note 13 at 122.

[45] Id. at 127.

[46] Rule 10.c. Duty of Covered Institutions upon receipt thereof. -

Rule 10.c.1. Upon receipt of the notice of the freeze order, the covered institution concerned shall immediately freeze the monetary instrument or property and related accounts subject thereof.

Rule 10.c.2. The covered institution shall likewise immediately furnish a copy of the notice of the freeze order upon the owner or holder of the monetary instrument or property or related accounts subject thereof.

Rule 10.c.3. Within twenty-four (24) hours from receipt of the freeze order, the covered institution concerned shall submit to the Court of Appeals and the AMLC, by personal delivery, a detailed written return on the freeze order, specifying all the pertinent and relevant information which shall include the following:

(a)

the account numbers;

(b)

the names of the account owners or holders;

(c)

the amount of the monetary instrument, property or related accounts as of the time they were frozen;

(d)

all relevant information as to the nature of the monetary instrument or property;

(e)

any information on the related accounts pertaining to the monetary instrument or property subject of the freeze order; and

(f)

the time when the freeze thereon took effect.

CONCURRING OPINION

LEONEN, J.:

I concur in the result. It is my honor to do so considering that the majority opinion is the final ponencia for this Court En Banc of our esteemed colleague Justice Jose P. Perez.

I join the unanimous declaration that, based on the challenges posed by the present petitions and only within its ambient facts, Section 11 of Republic Act No. 9160 or the Anti-Money Laundering Act is not unconstitutional. Further, that we are unanimous in declaring that the depositor has no right to demand that it be notified of any application or issuance of an order to inquire into his or her bank deposit. The procedure in the Court of Appeals is ex parte but requires proof of probable cause of the occurrence of the predicate crime as well as the potential liability of the owner of the deposit.

After the inquiry of the bank deposits and related accounts within the limitations contained in the court order, it is still the option of the law enforcers or the Anti-Money Laundering Council, to proceed to request for a Freeze Order in accordance with Section 10 of the same law. The depositor is, thus, entitled to be informed only after the freeze order has been issued. In questioning the freeze order, the depositor may then raise defenses relating to the existence of sufficient evidence to lead the court to believe that there is probable cause that a covered crime has occurred, that the depositor is a participant in the crime, and that the stay of all transactions with respect to the bank account is essential in order to preserve evidence or to keep the proceeds of the crime intact for and on behalf of the victims.

I differ with the premises used to arrive at the same conclusion.

I

The numbers on a bank's ledger corresponding to the amounts of money that a depositor has and its various transactions, especially when digitized, are definitely not physical. Yet, just because they are not physical does not necessarily mean that they do not partake of the kinds of "life, liberty, or property"[1] protected by the due process clause of the Constitution. Neither should it mean that the numerical equivalent of the bank's debt to a depositor or the record of its various transactions have nothing to do with the "persons . . . papers, and effects"[2] constitutionally protected against "unreasonable searches and seizures." [3] The majority opinion's statement that the "inquiry by the [Anti-Money Laundering Council] into certain bank deposits and investments does not violate substantive due process, there being no physical seizure of property involved at that stage"[4] may have been inadvertent. It does, however, neglect that the penumbra of rights protected by the due process clause and the proscription against unreasonable searches and seizures also pertains to protecting the intangibles essential to human life. Definitely, every liberal democratic constitutional order has outgrown the archaic concept that life is only that which can be tangible.

The due process clause is crafted as a proscription. Thus, it states that "[n]o person shall be deprived of life, liberty, or property without due process of law[.]"[5] This means that there is a sphere of individual existence or a penumbra of individual autonomy that exists prior to every regulation that should primordially be left untouched. In other words, the existence of what Louis D. Brandeis and Samuel D. Warren once called "the right to be let alone"[6] is now broadly, though at times awkwardly referred to roughly as the right to privacy, presumed. Every regulation therefore that limits this aspect of individuality may be the subject of inquiry that it does not "deprive" one of their "life, liberty or property" without "due process of law".

Thus, in the often cited writings of Warren and Brandeis as early as 1890 on the right to privacy:

That the individual shall have full protection in person and in property is a principle as old as the common law; but it has been found necessary from time to time to define anew the exact nature and extent of such

protection. Political, social, and economic changes entail the recognition of new rights, and the common law, in its eternal youth, grows to meet the demands of society. Thus, in very early times, the law gave a remedy only for physical interference with life and property, for trespasses vi et armis. Then the "right to life" served only to protect the subject from battery in its various forms; liberty meant freedom from actual restraint; and the right to property secured to the individual his lands and his cattle. Later, there came a recognition of man's spiritual nature, of his feelings and his intellect. Gradually the scope of these legal rights broadened; and now the right to life has come to mean the right to enjoy life,— the right to be let alone; the right to liberty secures the exercise of extensive civil privileges; and the term "property" has grown to comprise every form of possession — intangible, as well as tangible.

Thus, with the recognition of the legal value of sensations, the protection against actual bodily injury was extended to prohibit mere attempts to do such injury; that is, the putting another in fear of such injury. From the action of battery grew that of assault. Much later there came a qualified protection of the individual against offensive noises and odors, against dust and smoke, and excessive vibration. The law of nuisance was developed. So regard for human emotions soon extended the scope of personal immunity beyond the body of the individual. His reputation, the standing among his fellow-men, was considered, and the law of slander and libel arose. Man's family relations became a part of the legal conception of his life, and the alienation of a wife's affections was held remediable. Occasionally the law halted,—as in its refusal to recognize the intrusion by seduction upon the honor of the family. But even here the demands of society were met. A mean fiction, the action per quod servitium amisit, was resorted to, and by allowing damages for injury to the parents' feelings, an adequate remedy was ordinarily afforded. Similar to the expansion of the right to life was the growth of the legal conception of property. From corporeal property arose the incorporeal rights issuing out of it; and then there opened the wide realm of intangible property, in the products and processes of the mind, as works of literature and art, goodwill, trade secrets, and trademarks.

This development of the law was inevitable.[7] (Citations omitted)

Nothing in the structure of the due process clause limits the protected sphere of individual existence or autonomy only to the physical or corporeal aspects of life. After all, as we have long held, life is not limited only to physical existence.[8] Property can be incorporeal.[9] Liberty denotes something more than just freedom from physical restraint.

More fundamentally, the reservation of a very broad sphere of individual privacy or individual autonomy is implied in the very concept of society governed under a constitutional and democratic order. The aspects of our humanity and the parts of our liberty surrendered to the government, in order to assure a functioning society, should only be as much as necessary for a just society and no more. While the extent of necessary surrender cannot be determined with precision, our existing doctrine is that any state interference should neither be arbitrary nor unfair. In many cases, we have held that due process of law simply means that regulation should both be reasonable and fair.

Reasonability and fairness is tentatively captured in the twin legal concepts of substantive and procedural due process respectively. Substantive due process is usually, though not in all cases, a nuanced means--to-end test. Basically, this means that the regulation which impinges on individual autonomy is necessary to meet a legitimate state interest to be protected through means that can logically relate to achieving that end.[10] Procedural due process is succinctly and most descriptively captured in the idea that in the kinds of deprivation of rights where it would be relevant, there should be an opportunity to be heard.[11]

In the due process clause, there is the requirement of "deprivation" of one's right to "life, liberty or property." In my view, this means more than the occasional and temporary discomforts we suffer, which is consistent with the natural workings of groups of human beings living within a society. De minimis discomfort is a part of group life,

independent of the workings of the State. The deprivation that may trigger a judicial inquiry should be more than momentary. It must be fundamentally disruptive of a value that we protect because it is constitutive of our concept of individual autonomy.

For instance, a person who chooses to walk down a public street cannot complain that a police officer glances or even stares at him or her. The discomfort of being the subject of the observation by others, under those circumstances, may be too fleeting and trivial that it should not cause any constitutional query. That we look at each other in public spaces is inherently a part of existing within a society. After all, one of the worst human indignities may be that we are rendered invisible to everyone for all time within public spaces.

On the other hand, the uninvited and unwelcome peering eyes of the State's agents as we reside in our most private spaces presumptively violates our right to life, liberty, and even our property. In such cases, even the most fleeting act of voyeurism can cause substantial disruption of our collective values. Certainly, there is reason to trigger judicial inquiry. If the intrusion is unreasonable, it violates the constitutional protection of the due process clause.

Examining the petitioner's bank accounts is analogous to the situation involving the uninvited and unwelcome glance. For some, their financial worth contained in the bank's ledgers may not be physical, but it is constitutive of that part of their identity, which for their own reasons, they may not want to disclose. Peering into one's bank accounts and related transactions is sufficiently disruptive as to be considered a "deprivation" within the meaning of the due process clause. It may be short of the physical seizure of property but it should, in an actual controversy such as this case at bar, be subject of judicial review.

I disagree with the majority's opinion that bank accounts do not have any "legitimate expectation of privacy[.]"[12] I believe that such opinion may be too broad a reading of *Republic v. Hon. Judge Eugenio, Jr., et al.*[13] It is true that no bank account or investment can be made without the cooperation of those who work with financial intermediaries. The possibility that there are those, who may come across personal financial information, should not be the measure of what may be "legitimate expectation" in a constitutional sense. We should start to distinguish between knowledge of the content of these accounts, storage of these information, exchange of data, and making public disclosures.

What we deal with when the Court of Appeals allows inquiry is simply providing the Anti-Money Laundering Council or the appropriate law enforcement agency with access to knowledge of the content of these accounts. The limits of its storage, how it is exchanged, and making public disclosures are another matter. Nothing in this decision should be used to imply the nature of the right to privacy or the factors to be considered to establish "legitimate expectation of privacy" as it applies to storage, exchange, and public disclosures of information.

The truth is that most of today's digital data is vulnerable to one who is curious enough, exceedingly determined, skillful, and willing to deploy the necessary time and resources to make discovery of our most private information. Ubiquitous surveillance systems that ensure the integrity as well as increase confidence in the security of the data kept in a system are ever present. Copying or transferring digital data occurs likewise with phenomenal speed. Data shared in cyberspace also tends to be resilient and difficult to completely delete. Users of various digital platforms, including bank accounts, are not necessarily aware of these vulnerabilities.

Therefore, the concept of "legitimate expectation of privacy" as the framework for assessing whether personal information fall within the constitutionally protected penumbra need to be carefully reconsidered. In my view, the protected spheres of privacy will make better sense when our jurisprudence in the appropriate cases make clear how specific types of information relate to personal identity and why this is valuable to assure human dignity and a robust democracy in the context of a constitutional order.

II

A bank inquiry order is a provisional relief available to the Anti--Money Laundering Council in aid of its investigative powers. It partakes of the character of a search warrant.

United Laboratories Inc. v. Isip^[14] discussed the nature of a search warrant:

On the first issue, we agree with the petitioner's contention that a search warrant proceeding is, in no sense, a criminal action or the commencement of a prosecution. The proceeding is not one against any person, but is solely for the discovery and to get possession of personal property. It is a special and peculiar remedy, drastic in nature, and made necessary because of public necessity. It resembles in some respect with what is commonly known as John Doe proceedings. While an application for a search warrant is entitled like a criminal action, it does not make it such an action.

A search warrant is a legal process which has been likened to a writ of discovery employed by the State to procure relevant evidence of crime. It is in the nature of a criminal process, restricted to cases of public prosecutions. A search warrant is a police weapon, issued under the police power. A search warrant must issue in the name of the State, namely, the People of the Philippines.

A search warrant has no relation to a civil process. It is not a process for adjudicating civil rights or maintaining mere private rights. It concerns the public at large as distinguished from the ordinary civil action involving the rights of private persons. It may only be applied for in the furtherance of public prosecution.^[15] (Emphasis supplied, citations omitted)

In a search warrant proceeding, there is already a crime that has been committed and law enforcers apply for a search warrant to find evidence to support a case or to retrieve and preserve evidence already known to them.

In the same way, a bank inquiry order is "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 [Anti-Money Laundering Act]."^[16] It is a preparatory tool for the discovery and procurement, and preservation — through the subsequent issuance of a freeze order — of relevant evidence of a money laundering transaction or activity.

Considering its implications on the depositor's right to privacy, Section 11 of the Anti-Money Laundering Act explicitly mandates that "[t]he authority to inquire into or examine the main account and the related accounts shall comply with the requirements of Article III, Sections 2 and 3 of the 1987 Constitution[.]"

Article III, Section II of the Constitution states:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

"The phrase 'upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce' allows a determination of probable cause by the judge [or the Court of Appeals in Anti-Money Laundering Act cases] ex parte." ^[17]

In *People v. Delos Reyes*,^[18] the Court held that due to the ex parte and non-adversarial nature of the proceedings, "the [j]udge acting on an application for a search warrant is not bound to apply strictly the rules of evidence."^[19]

The ordinary rules of evidence are generally not applied in ex parte proceedings, partly because there is no opponent to invoke them, partly because the Judge's determination is usually discretionary, partly because it is

seldom that, but mainly because the system of evidence rules was devised for the special control of trials by jury.[20](Emphasis supplied)

"The existence [of probable cause] depends to a large degree upon the finding or opinion of the judge [or magistrate] conducting the examination." [21] "However, the findings of the judge [or magistrate] should not disregard the facts before him nor run counter to the clear dictates of reason." [22]

Search warrant proceedings are ex parte because of the necessities of the investigation. *La Chemise Lacoste, S.A. v. Hon. Fernandez, etc. et al.*, [23] states:

... an application for a search warrant is heard ex parte. It is neither a trial nor a part of the trial. Action on these applications must be expedited for time is of the essence. Great reliance has to be accorded by the judge to the testimonies under oath of the complainant and the witnesses. [24] (Emphasis supplied)

Similarly, it is essential that investigations for Anti-Money Laundering Act offenses, including the proceedings for the issuance of bank inquiry orders, be kept ex parte, in order not to frustrate the State's effort in building its case and eventually prosecuting money laundering offenses.

III

The absence of notice to the owner of a bank account that an ex parte application as well as an order to inquire has been granted by the Court of Appeals is not unreasonable nor arbitrary. The lack of notice does not violate the due process clause of the Constitution.

It is reasonable for the State, through its law enforcers, to inquire ex parte and without notice because of the nature of a bank account at present.

A bank deposit is an obligation. It is a debt owed by a bank to its client-depositor. It is understood that the bank will make use of the value of the money deposited to further create credit. This means that it may use the value to create loans with interest to another. Whoever takes out a loan likewise creates a deposit with another bank creating another obligation and empowering that other bank to create credit once mere through providing other loans.

Bank deposits are not isolated information similar to personal sets of preferences. Rather, bank deposits exist as economically essential social constructs. The inherent constitutionally protected private rights in bank deposits and other similar instruments are not absolute. These rights should, in proper cases, be weighed against the need to maintaining the integrity of our financial system. The integrity of our financial system on the other hand contributes to the viability of banks and financial intermediaries, and therefore the viability of keeping bank deposits.

Furthermore, we are at an age of instantaneous financial transactions. It would be practically impossible to locate, preserve, and later on present evidence of crimes covered by the Anti-Money Laundering Act if the theory of the petitioner is correct. After all, as correctly pointed out by the majority opinion, the right to information accrues only after a freeze order is issued. It is then that limitations on the ability to transact the value of the bank account will truly affect the depositor.

Accordingly, with these clarifications, I vote to DENY the Petition.

[1] CONST., art III, sec. I provides:

ARTICLE III. Bill of Rights

SECTION I. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

[2] CONST., art. III, sec. 2 provides:

ARTICLE III. Bill of Rights

....

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

[3] CONST., art. III, sec. 2

[4] Ponencia, p. II.

[5] CONST., art III, sec. 1.

[6] Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890). See also Irwin R. Kramer, *The Birth of Privacy Law: A Century Since Warren & Brandeis*, 39 Cath. U.L. Rev. 703 (1990).

[7] Samuel D. Warren and Louis D. Brandeis, *The Right to Privacy*, 4 HARV. L. REV. 193, 193-195 (1890).

[8] *Secretary of National Defense, et al. v. Manalo, et al.*, 589 Phil. 1, 50 (2008) [Per C.J. Puno, En Banc], explained the concept of right to life:

While the right to life under Article III, Section I guarantees essentially the right to be alive - upon which the enjoyment of all other rights is preconditioned- the right to security of person is a guarantee of the secure quality of this life, viz.: "The life to which each person has a right is not a life lived in fear that his person and property may be unreasonably violated by a powerful ruler. Rather, it is a life lived with the assurance that the government he established and consented to, will protect the security of his person and property. The ideal of security in life and property ... pervades the whole history of man. It touches every aspect of man's existence." In a broad sense, the right to security of person "emanates in a person's legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation. It includes the right to exist, and the right to enjoyment of life while existing, and it is invaded not only by a deprivation of life but also of those things which are necessary to the enjoyment of life according to the nature, temperament, and lawful desires of the individual." (Citations omitted)

See also J. Leonen, *Separate Opinion in International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)*, G.R. No. 209271, December 8, 2015, 776 SCRA 434, 644 [Per J. Villarama, Jr., En Banc].

[9] CIVIL CODE, arts. 415(10), 417, 519, 520, 521, 613, 721, and 722 provide:

Article 415. The following are immovable property:

....

(10) Contracts for public works, and servitudes and other real rights over immovable property.

....

Article 417. The following are also considered as personal property:

(1) Obligations and actions which have for their object movables or demandable sums; and

(2) Shares of stock of agricultural, commercial and industrial entities, although they may have real estate.

....

Article 519. Mining claims and rights and other matters concerning minerals and mineral lands are governed by special laws.

Article 520. A trade mark or trade-name duly registered in the proper government bureau or office is owned by and pertains to the person, corporation, or firm registering the same, subject to the provisions of special laws.

Article 521. The goodwill of a business is property, and may be transferred together with the right to use the name under which the business is conducted.

Article 613. An easement or servitude is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner. The immovable in favor of which the easement is established is called the dominant estate; that which is subject thereto, the servient estate.

Article 721. By intellectual creation, the following persons acquire ownership:

- (1) The author with regard to his literary, dramatic, historical, legal, philosophical, scientific or other work;
- (2) The composer, as to his musical composition;
- (3) The painter, sculptor, or other artist, with respect to the product of his art;
- (4) The scientist or technologist or any other person with regard to his discovery or invention.

Article 722. The author and the composer, mentioned in Nos. 1 and 2 of the preceding article, shall have the ownership of their creations even before the publication of the same. Once their works are published, their rights are governed by the Copyright laws.

The painter, sculptor or other artist shall have dominion over the product of his art even before it is copyrighted.

The scientist or technologist has the ownership of his discovery or invention even before it is patented.

INTELLECTUAL PROP. CODE, secs. 28, 71, 103, 147.1, 165.1, 165.2, and 177 provide:

SECTION 28. Right to a Patent. The right to a patent belongs to the inventor, his heirs, or assigns. When two (2) or more persons have jointly made an invention, the right to a patent shall belong to them jointly.

....

SECTION 71. Rights Conferred by Patent.-

71.1. A patent shall confer on its owner the following exclusive rights:

- Where the subject matter of a patent is a product, to restrain, prohibit and prevent any unauthorized person or entity from making, using, offering for sale, selling or importing that product;
- Where the subject matter of a patent is a process, to restrain, prevent or prohibit any unauthorized person or entity from using the process, and from manufacturing, dealing in, using, selling or offering for sale, or importing any product obtained directly or indirectly from such process.

71.2. Patent owners shall also have the right to assign, or transfer by succession the patent, and to conclude licensing contracts for the same.

....

SECTION 103. Transmission of Rights.-

103.1. Patents or applications for patents and invention to which they relate, shall be protected in the same way as the rights of other property under the Civil Code.

103.2. Inventions and any right, title or interest in and to patents and inventions covered thereby, may be assigned or transmitted by inheritance or bequest or may be the subject of a license contract.

....

SECTION 147. Rights Conferred.-

147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

....

SECTION 165. Trade Names or Business Names.-

165.1. A name or designation may not be used as a trade name if by its nature or the use to which such name or designation may be put, it is contrary to public order or morals and if, in particular, it is liable to deceive trade circles or the public as to the nature of the enterprise identified by that name.

165.2.

a. Notwithstanding any laws or regulations providing for any obligation to register trade names, such names shall be protected, even prior to or without registration, against any unlawful act committed by third parties.

b. In particular, any subsequent use of the trade name by a third party, whether as a trade name or a mark or collective mark, or any such use of a similar trade name or mark, likely to mislead the public, shall be deemed unlawful.

....

SECTION 177. Copyright or Economic Rights. - Subject to the provisions of Chapter VIII, copyright or economic rights shall consist of the exclusive right to 'carry out, authorize or prevent the following acts:

177.1. Reproduction of the work or substantial portion of the work;

177.2. Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3. The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4. Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;

177.5. Public display of the original or a copy of the work;

177.6. Public performance of the work; and

177.7. Other communication to the public of the work.

[10] *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289, 311-312 [Per J. Tinga, En Banc], states, "[s]ubstantive due process, as that phrase connotes, asks whether the government has an adequate reason for taking away a person's life, liberty, or property. In other words, substantive due process looks to whether there is sufficient justification for the government's action. Case law in the United States (U.S.) tells us that whether there is such a justification depends very much on the level of scrutiny used. For example, if a law is in an area where only rational basis review is applied, substantive due process is met so long as the law is rationally related to a legitimate government purpose. But if it is an area where strict scrutiny is used, such as for protecting fundamental rights, then the government will meet substantive due process only if it can prove that the law is necessary to achieve a compelling government purpose."

Further, in *Mosqueda, et al. v. Pilipino Banana Growers & Exporters Association, Inc., et al.*, G.R. No. 189185, August 16, 2016 <

<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/august2016/189185.pdf> > 28 [Per J. Bersamin, En Banc], the Court referred to three levels of scrutiny in analysing the validity of governmental intrusion: the rational basis test, which inquires into the reasonable relation between the means and purpose of the law; the intermediate or heightened review where "the law must not only further an important governmental interest and be substantially related to that interest, but ... the classification ... must not depend on broad generalizations[;]" (Id.) and the strict scrutiny review, where the Government must prove the necessity "to achieve a compelling state interest, and that [the law or ordinance] is the least restrictive means to protect such interest." (Id.) In *Mosqueda*, The Court declared unconstitutional Davao City Ordinance No. 0309-07, (Id. at 46) which imposed a ban in aerial spraying as an agricultural practice, for being "broad because the ordinance applies irrespective of the substance to be aerially applied and irrespective of the agricultural activity to be conducted[;]" (Id. at 34) and for being unreasonable and oppressive, "in light of the existence and availability of more permissible and practical alternatives that will not overburden ... those who stand to be affected." (Id. at 36).

See also *Serrano v. Gallant Maritime Services, Inc., et al.*, 601 Phil. 245 (2009) [Per J. Austria-Martinez, En

Banc], *White Light Corporation, et al. v. City of Manila*, 596 Phil. 444, 461-464 (2009) [Per J. Tinga, En Banc]; *Blo Umpar Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992, 207 SCRA 712 [Per J. Gutierrez, Jr., En Banc].

[11] *Gutierrez v. Commission on Audit*, G.R. No. 200628, January 13, 2015, 745 SCRA 435, 452-453 [Per J. Leonen, En Banc]; *Montinola v. Philippine Airlines*, G.R. No. 198656, September 8, 2014, 734 SCRA 439, 459-460 [Per J. Leonen, Second Division]; *Department of Agrarian Reform v. Samson, et al.*, 577 Phil. 370, 380 (2008) [Per J. Ynares-Santiago, Third Division]; *F/O Ledesma v. Court of Appeals*, 565 Phil. 731, 740 (2007) [Per J. Tinga, Second Division]; *Air Philippines Corporation v. International Business Aviation Services Philippines, Inc.*, 481 Phil. 366, 386 (2004) [Per J. Panganiban, Third Division]; *Macayayong v. Hon. Ople*, 281 Phil. 419, 423-424 (1991) [Per J. Bidin, Third Division]; *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 641-642 (1940) [Per J. Laurel, En Banc].

[12] *Ponencia*, p. 11.

[13] 569 Phil. 98 (2008) [Per J. Tinga, Second Division].

[14] 500 Phil. 342 (2005) [Per J. Callejo, Sr., Second Division].

[15] *Id.* at 357-358.

[16] *Republic v. Hon. Judge Eugenio, Jr., et al.*, 569 Phil. 98, 120 (2008) [Per J. Tinga, Second Division].

[17] *Mendoza v. People, et al.*, 733 Phil. 603, 613 (2014) [Per J. Leonen, Third Division].

[18] *People v. Delos Reyes*, 484 Phil. 271 (2004) [Per J. Callejo, Sr., Second Division].

[19] *Id.* at 285.

[20] *Id.*, citing *Brinegar v. United States*, 93 L.ed. 1879 (1949).

[21] *Santos v. Pryce Gases, Inc.*, 563 Phil. 781, 793 (2007) [Per J. Tinga, Second Division].

[22] *Id.*

[23] 214 Phil. 332 (1984) [Per J. Gutierrez, Jr., First Division].

[24] *Id.* at 350.

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