EN BANC

G.R. No. 222312 – MELISSA GAY CASTAÑEDA LIMLINGAN MANGANIP, BEATRICE EMILIA L. MANGANIP, PATRICIA GRACE LIMLINGAN PADUA, JOSE JERICHO PADUA III, GERARDO MARTIN C. LIMLINGAN,* CELESTE MAYA RECTO LIMLINGAN, and MANUELITA LIMLINGAN, Petitioners, **v. REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL,** Respondent;

G.R. No. 222313 – POWERLINK.COM CORP., Petitioner, **v. REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL,** Respondent;

G.R. No. 222314 – CODEWORKS.PH, INC., Petitioner, **v. REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL,** Respondent;

G.R. No. 222315 – OMNI SECURITY INVESTIGATION, INC., VIVE HOTEL, INC., CORPORATE SOLUTIONS MANPOWER & GENERAL SERVICES, INC., and UNANIMOUS HOLDINGS, INC., Petitioners, **v. REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL,** Respondent.

Promulgated:
May 20, 2025

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CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

The *ponencia* denies the instant petitions which challenge Sections 10 and 11 of the Anti-Money Laundering Act (AMLA), as amended, as well as Rules 10.a.3, 10.c.3 to 10.d of the 2012 Revised Implementing Rules and Regulations of the AMLA, as amended[1] (2012 AMLA Rules).

I concur only in the result.

To briefly recap the facts, on May 7, 2015, the Anti-Money Laundering Council (AMLC) filed an *Ex Parte* Petition for the issuance of a freeze order against the "bank accounts, insurance policies, and securities, <u>including all</u>

* Also known as "Gerardo Martin Castañeda Limlingan" in other parts of the records.

[1] Revised Implementing Rules and Regulations of Republic Act No. 9160, as amended by Republic Act No. 9194 and Republic Act No. 10167, approved on August 23, 2012.

related accounts" of Jejomar C. Binay, Jejomar Erwin S. Binay, Gerardo S. Limlingan, Jr., Eduviges D. Baloloy, Ernesto S. Mercado, Greenergy Holdings, Inc., Sunchamp Real Estate Development Corp., Earthright Holdings, Inc., Antonio L. Tiu, Millennium Food Chains Corp., BDO Unibank, Inc., BDO Private Bank, Inc., Land Bank of the Philippines, Metropolitan Bank and Trust Co., Ltd., Philippine National Bank, Secuirty Bank Corp., Rizal Commercial Banking Corp., Philippine Bank of Communications, Inc., RCBC Savings Bank, Inc., Philippines Business Bank, Inc., Agricultural Bank of the Philippines, Inc., Sterling Bank of Asia, Inc., Union Bank of the Philippines, Inc., Bank of the Philippine Islands, Asia United Bank Corp., Bankard, Inc., CLSA Philippines, Inc., SB Equities, Inc., Grepalife Financial, Inc., BDO Securities, Inc., First Metro Investment Corp., Philequity Management, Inc., RCBC Securities, Inc., Philippine AXA Life Insurance Corp., Elenita S. Binay, Lily Hernandez Crystal, Carmelita Palo Galvan, Francisco Balaguer Baloloy, Bernadette Cezar Portollano, Mitzi Ouano Sedillo, Marguerite Lichnock, Melissa Gay Castañeda Limlingan,[2] Victor S. Limlingan, Patricia Grace Limlingan Padua, Gerardo Martin Castañeda Limlingan, James Lee Tiu, Pei Feng Lee, Ann Loraine Buencamino Tiu, Frederick Dueñas Baloloy, Jennifer V. Baloloy, Mario Alejo Oreta, Jose Orillaza, Daniel C. Subido, Man Bun Chong, Erlinda S. Chong, April Joy Pascual Mercado, and Omni Security Investigation and General Services, Inc.,[3] in connection with the supposed irregularities surrounding the construction of the New Makati City Parking II Building.[4] Save for some of the petitioners in G.R. No. 222312[5] and G.R. No. 222315,[6] petitioners herein were not named in the AMLC's *Ex Parte* Petition.

On May 11, 2015, the Court of Appeals (CA) granted the petition and issued a Freeze Order, effective immediately for a period of six months.[7] The Freeze Order directed the therein respondent banks, insurance companies, and securities companies to: (i) FREEZE the specific accounts described in the freeze order, "*including all related accounts wherever they may be found*";[8] and (ii) SUBMIT to the CA and the AMLC within 24 hours from notice "a detailed return specifying pertinent and relevant information on all frozen bank accounts, insurance policies, securities and investments, *including all related accounts wherever they may be found*,"[9] pursuant to Rules 10.c.3 to 10.d of the 2012 AMLA Rules.

Thereafter, it appears that the AMLC and therein respondent banks conducted an analysis of the accounts described in the Freeze Order and determined that herein petitioners' accounts, though not described in the

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[2] Petitioner Melissa Gay Castañeda Limlingan Manganip was impleaded under her maiden name.
[3] Former name of petitioner Omni Security Investigation, Inc.
[4] *Ponencia*, p. 3.
[5] Namely, petitioners Melissa Gay Castañeda Limlingan Manganip, Patricia Grace Limlingan Padua, and Gerardo Martin Castañeda Limlingan (*id.* at 18).
[6] Namely, petitioner Omni Security Investigation, Inc. (*id.* at 22).
[7] *Id.* at 5.
[8] *Id.*
[9] *Id.* at 18.

Freeze Order, were "materially linked" to the accounts described in the Freeze Order and are therefore "related accounts" under the Freeze Order and the 2012 AMLA Rules.[10] On this basis, the banks froze petitioners' accounts.

Petitioners filed motions challenging the Freeze Order, arguing that there was no probable cause against them and that Sections 10 and 11 of the AMLA, as well as Rules 10.a.3, 10.c.3 to 10.d of the 2012 AMLA Rules are unconstitutional. The CA denied the motions, holding, among other things, that the six-month duration of the Freeze Order had already lapsed on November 11, 2015.[11]

Petitioners are now before the Court on the main argument that Sections 10 and 11 of the AMLA, as amended, as well as Rules 10.a.3, 10.c.3 to 10.d of the 2012 AMLA Rules violate Article III, Sections 1, 2, and 3 of the Constitution and should be struck down as unconstitutional.[12]

The *ponencia* ultimately upholds the validity of the questioned provisions of the 2012 AMLA Rules, holding that they do not conflict with the Constitution or with the AMLA.

While I concur in the result, I have a different opinion on the reasons why.

Verily, it is my view that Rules 10.c.1 and 10.d of the 2012 AMLA Rules should be interpreted in a manner consistent with the Constitution and the AMLA.

A. Rules 10.c.1 and 10.d of the 2012 AMLA Rules

Rule 10.c.1 and Rule 10.d of the 2012 AMLA Rules provide that, upon receipt of the freeze order, the covered institution (e.g., the bank) is required to "immediately" freeze the monetary instrument or property subject of the freeze order and determine and freeze "related accounts subject thereof". Thus:

> 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.**

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[10] *See id.* at 19–21.

[11] *Id.* at 19–26. In the Resolution dated January 19, 2016, the CA stated that the Freeze Order expired on November 12, 2015, *see id.* at 25.

[12] *Id.* at 26.

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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)

Under the 2012 AMLA Rules, accounts are deemed to be "related accounts" when their funds originated from and/or are "materially linked" to the monetary instruments or properties identified in a freeze order (hereafter, "principal accounts"), to wit:

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.

The AMLC and the respondent banks in the *Ex Parte* Petition opine that the challenged provisions allow the immediate freezing of "related accounts," without the need for a separate freeze order. Thus, in this case, they conducted an analysis of the principal accounts and determined that herein petitioners' accounts, although not described in the Freeze Order, were "materially linked" to the principal accounts, and are therefore "related accounts" under the Freeze Order and the 2012 AMLA Rules.[13] Accordingly, the banks froze petitioners' accounts. Apparently, the AMLC and the banks believed that the CA's May 11, 2015 Freeze Order for the principal accounts "including all related accounts wherever they may be found" was sufficient to freeze the accounts of petitioners.

This interpretation of the challenged provisions is unconstitutional.

To recall, Article III, Section 2 of the Constitution provides:

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.

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[13] *See id.* at 19–21.

Section 2 guarantees the people's right against **unreasonable** searches and **seizures of whatever nature and for any purpose.** As a general rule, a government seizure is reasonable when it complies with the following requirements:

(i) there is probable cause;
(ii) the probable cause is determined personally by the judge;
(iii) the judge has examined, in writing and under oath or affirmation, the complainant and the witnesses he or she may produce;
(iv) the applicant and the witnesses testify on the facts personally known to them; and
(v) the warrant specifically describes the place to be searched and the things to be seized.[14]

The freezing of monetary instruments or property under Section 10 of the AMLA is undeniably a seizure that must comply with the requirements imposed by Article III, Section 2 of the Constitution.

In *Ret. Lt. Gen. Ligot v. Republic*,[15] the Court explained the nature and purpose of a freeze order as follows:

> A freeze order is an ***extraordinary and interim relief*** issued by the CA to prevent the dissipation, removal, or disposal of properties that are suspected to be the proceeds of, or related to, unlawful activities as defined in Section 3(i) of [Republic Act] No. 9160, as amended. The primary objective of a freeze order is to **temporarily preserve** monetary instruments or property that are in any way related to an unlawful activity or money laundering, by preventing the owner from utilizing them during the duration of the freeze order. The relief is **pre-emptive** in character, meant to prevent the owner from disposing his property and thwarting the State's effort in building its case and eventually filing civil forfeiture proceedings and/or prosecuting the owner.[16] (Emphasis in the original; citations omitted)

In contrast to the bank inquiry order under Section 11 of the AMLA, ***a freeze order under Section 10 involves a seizure of property*** because the owner is "inhibited from utilizing the same." Thus, the Court in *Republic v. Hon. Judge Eugenio, Jr.*[17] explained:

> 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**

[14] *Del Castillo v. People*, 680 Phil. 447, 456 (2012) [Per J. Peralta, Third Division].
[15] 705 Phil. 477 (2013) [Per J. Brion, Second Division].
[16] *Id.* at 504–505.
[17] 569 Phil. 98 (2008) [Per J. Tinga, Second Division].

> **instruments or property would thus be inhibited from utilizing the same for the duration of the freeze order.** To make such freeze order anteceded by a judicial proceeding with notice to the account holder would allow for or lead to the dissipation of such funds even before the order could be issued.
>
> **On the other hand, a bank inquiry order under Section 11 does not necessitate any form of physical seizure of property of the account holder.** What the bank inquiry order authorizes is the examination of the particular deposits or investments in banking institutions or non-bank financial institutions. The monetary instruments or property deposited with such banks or financial institutions are not seized in a physical sense, but are examined on particular details such as the account holder's record of deposits and transactions. Unlike the assets subject of the freeze order, the records to be inspected under a bank inquiry order cannot be physically seized or hidden by the account holder. Said records are in the possession of the bank and therefore cannot be destroyed at the instance of the account holder alone as that would require the extraordinary cooperation and devotion of the bank.[18] (Emphasis supplied)

Consistent with the requirements of a search warrant under Section 2 of the Bill of Rights, Section 10 of the AMLA authorizes the freezing of monetary instruments or property ***only after*** the CA has determined that probable cause exists that the same are "in any way related to an unlawful activity as defined in Section 3(i)" of the AMLA.

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[18] *Id.* at 124–125.

The present version[19] of Section 10 is found in Republic Act No.

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[19] Section 10 has undergone several amendments through the years. At the time the 2012 AMLA Rules were still in effect, the following versions of Section 10 were in force:

Republic Act No. 10167 (Approved on June 18, 2012)	**Republic Act No. 10365 (Approved on February 15, 2013)**	**Republic Act No. 10927 (Approved on July 14, 2017)**
"SEC. 10. *Freezing of Monetary Instrument or Property.* — Upon verified *ex parte* petition 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,** the Court of Appeals 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. In any case, the court should act on the petition to freeze within twenty-four (24) hours from filing of the petition. If the application is filed a day before a nonworking day, the computation of the twenty-four (24)-hour period shall exclude the nonworking days." "A person whose account has been frozen may file a motion to lift the freeze order and the court must resolve this motion before the expiration of the twenty (20)-day original freeze order." "No court shall issue a temporary restraining order or a writ of injunction against any freeze order, except the Supreme Court." (Emphasis supplied)	"SEC. 10. *Freezing of Monetary Instrument or Property.* — Upon a verified *ex parte* petition 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,** the Court of Appeals may issue a freeze order which shall be effective immediately, and which shall not exceed six (6) months depending upon the circumstances of the case: *Provided,* That if there is no case filed against a person whose account has been frozen within the period determined by the court, the freeze order shall be deemed *ipso facto* lifted: *Provided, further,* That this new rule shall not apply to pending cases in the courts. In any case, the court should act on the petition to freeze within twenty-four (24) hours from filing of the petition. If the application is filed a day before a nonworking day, the computation of the twenty-four (24)-hour period shall exclude the nonworking days. "A person whose account has been frozen may file a motion to lift the freeze order and the court must resolve this motion before the expiration of the freeze order. "No court shall issue a temporary restraining order or a writ of injunction against any freeze order, except the Supreme Court." (Emphasis supplied)	"SEC. 10. *Freezing of Monetary Instrument or Property.* — Upon a verified *ex parte* petition 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,** the Court of Appeals may issue a freeze order which shall be effective immediately, for a period of twenty (20) days. Within the twenty (20)-day period, the Court of Appeals 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. The total period of the freeze order issued by the Court of Appeals under this provision shall not exceed six (6) months. This is without prejudice to an asset preservation order that the Regional Trial Court having jurisdiction over the appropriate anti-money laundering case or civil forfeiture case may issue on the same account depending upon the circumstances of the case, where the Court of Appeals will remand the case and its records: *Provided,* That if there is no case filed against a person whose account has been frozen within the period determined by the Court of Appeals, not exceeding six (6) months, the freeze order shall be deemed *ipso facto* lifted: *Provided, further,* That this new rule shall not apply to pending cases in the courts. In any case, the court should act on the petition to freeze within twenty-four (24) hours from filing of the petition. If the application is filed a day before a nonworking day, the computation of the twenty-four (24)-hour period shall exclude the nonworking days. "The freeze order or asset preservation order issued under this Act shall be limited only to

11521:[20]

"SEC. 10. *Freezing Monetary Instrument or Property.* —

"(a) Upon a verified *ex parte* petition 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**, the Court of Appeals may issue a freeze order which shall be effective immediately, for a period of twenty (20) days. Within the twenty (20)-day period, the Court of Appeals 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. The total period of the freeze order issued by the Court of Appeals under this provision shall not exceed six (6) months. This is without prejudice to an asset preservation order that the Regional Trial Court having jurisdiction over the appropriate anti-money laundering case or civil forfeiture case may issue on the same account depending on the circumstances of the case, where the Court of Appeals will remand the case and its records: *Provided*, That if there is no case filed against a person whose account has been frozen within the period determined by the Court of Appeals, not exceeding six (6) months, the freeze order shall be deemed *ipso facto* lifted: *Provided, further*, That this new rule shall not apply to pending cases in the courts. In any case, the court should act on the petition to freeze within twenty-four (24) hours from filing of the petition. If the application is filed a day before a nonworking day, the computation of the twenty-four (24)-hour period shall exclude the nonworking days.

"The freeze order or asset preservation order issued under this Act shall be limited only to the amount of cash or monetary instrument or value of property that court finds there is probable cause to be considered as proceeds of a predicate offense, and the freeze order or asset preservation order shall not apply to amounts in the same account in excess of the amount or value of the proceeds of the predicate offense.

"A person whose account has been frozen may file a motion to lift the freeze order and the court must resolve this motion before the expiration of the freeze order.

"No court shall issue a temporary restraining order or a writ of injunction against any freeze order, except the Supreme Court.

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		the amount of cash or monetary instrument or value of property that the court finds there is probable cause to be considered as proceeds of a predicate offense, and the freeze order or asset preservation order shall not apply to amounts in the same account in excess of the amount or value of the proceeds of the predicate offense." (Emphasis supplied)

[20] An Act Further Strengthening the Anti-Money Laundering Law, Amending for the Purpose Republic Act No. 9160, Otherwise Known as the "Anti-Money Laundering Act Of 2001", as Amended. Approved on January 29, 2021.

> "(b) For purposes of implementing targeted financial sanctions in relation to proliferation of weapons of mass destruction and its financing, as provided under Section 3(15), the AMLC shall have the power to issue, *ex parte*, an order to freeze without delay.
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> "The freeze order shall be effective until the basis for its issuance shall have been lifted. During the effectivity of the freeze order, the aggrieved party may, within twenty (20) days from issuance, file with the Court of Appeals a petition to determine the basis of the freeze order according to the principle of effective judicial protection: *Provided*, That the person whose property or funds have been frozen may withdraw such sums as the AMLC determines to be reasonably needed for monthly family needs and sustenance including the services of counsel and the family medical needs of such person.
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> "The AMLC, if circumstances warrant, may initiate civil forfeiture proceedings to preserve the assets and to protect it from dissipation. No court shall issue a temporary restraining order or a writ of injunction against the freeze order, except the Court of Appeals or the Supreme Court."[21]

As seen from Section 10, the AMLC must make a prior determination that certain monetary instruments or properties are related to any unlawful activity, and only then include these items in the application for the freeze order. Thereafter, these monetary instruments or properties may be frozen only after the CA has determined that probable cause exists that they are related to an unlawful activity as defined in the AMLA. Once the covered institutions receive the freeze order, *the only monetary instruments or properties that they can freeze are those indicated in the freeze order.* ***This is because only those monetary instruments or properties identified in the freeze order have been the subject of the CA's determination of probable cause.*** If a monetary instrument or property is not identified in the freeze order, that means that such an account was not included in the CA's determination of probable cause. ***Nothing in Section 10 grants the covered institutions the power to determine and immediately freeze additional accounts which they alone perceive to be "related" or "materially linked" to the principal accounts identified in the freeze order.***

It must be stressed that when the CA determines probable cause and issues the Freeze Order against the principal accounts, the CA is not yet informed at that point of what the "related accounts" are. Thus, it is impossible for the CA to determine probable cause against those yet-to-be identified accounts.

In the present case, the Court should not allow the covered institutions (i.e., the banks) to determine and freeze bank accounts which they believe are related to the principal accounts identified in the Freeze Order. ***Otherwise, the covered institutions (i.e., the banks) would effectively be allowed to***

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[21] Republic Act No. 11521, sec. 5 amending sec. 10 of the AMLA.

arrogate unto themselves the CA's duty to determine the existence of probable cause against those "related accounts." This would thus contravene both Section 2 of the Bill of Rights and Section 10 of the AMLA.

I thus agree with the *ponencia*'s ruling[22] that an *ex parte* petition before the CA for the issuance of a freeze order must already state and particularly describe any related and materially-linked accounts that may be involved, and that such accounts will also be the subject of the CA's determination of probable cause.

In this connection, the *ponencia* rules that the 2012 AMLA Rules, as amended, do not transgress the right against unreasonable searches and seizures enshrined in Article III, Section 2 of the Constitution. According to the *ponencia*, assuming that the freezing of related accounts in the Freeze Order amounts to a warrantless seizure, the same "cannot be said to be unreasonable when juxtaposed with the reality that a money launderer may open or create [an] intricate and diverse web of related and interlocking accounts in the different covered institutions to conceal his or her crime/s."[23] The *ponencia* states that since funds can now be transferred swiftly, time is of the essence and the government must act urgently to prevent the dissipation of properties that are suspected to be proceeds of, or related to, unlawful activities defined in the AMLA.[24] To rule otherwise, continues the *ponencia*, would thwart the objective of a freeze order which is the preservation of the money instruments or property that are related to money laundering.[25]

In other words, the *ponencia* anchors the constitutionality of the pertinent provisions of the 2012 AMLA Rules on the urgency or immediacy involved in preserving the funds suspected to be related to money laundering.

I respectfully disagree. I submit that this is an improper formulation of the lens through which the constitutionality issue should be resolved. To be sure, the urgency in preventing the dissipation of potentially laundered funds should not operate to dispense with the constitutional requirements of probable cause and particularity of the thing to be seized—requirements that qualify a seizure as reasonable under the Constitution. The said urgency may justify the *ex parte* application for a freeze order, as held in *Republic v. Hon. Judge Eugenio, Jr.*,[26] but **it would be dangerous for the Court to rule that "urgency" makes a seizure automatically reasonable** despite non-compliance with Article III, Section 2 of the Constitution. Such a pronouncement would virtually sacrifice constitutional safeguards for the sake of exigency. If the same urgency in preserving the funds of related accounts is present in preserving the funds of principal accounts, could it then

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22 *Ponencia*, p. 46.
23 *Id.* at 42.
24 *Id.*
25 *Id.*
26 *Supra* note 17.

be said that the amounts could be automatically frozen? In other words, is the probable cause requirement contained in Section 10 optional? May Congress remove the said requirement from Section 10 of the AMLA in future amendments? In my view, the urgent nature of freezing funds suspected to be related to money laundering does not justify non-observance of the requirements under Article III, Section 2 of the Constitution.

To make things worse, by directing the covered institutions to freeze the principal accounts "including all related accounts wherever they may be found," the CA not only unduly delegated its power to determine probable cause, but it also issued a general warrant that is prohibited by the Constitution.

A general warrant is a "warrant that is not particular as to the person to be arrested or the property to be seized."[27] It is one which "gives the officer executing the warrant the discretion over which items to take."[28] "Such discretion is abhorrent, as it makes the person, against whom the warrant is issued, vulnerable to abuses."[29]

Here, the banks were precisely given that prohibited discretion by the CA. Again, the petitioners' bank accounts were not particularly identified in the freeze order. They were only frozen because the banks determined that they were "related accounts" as defined in the 2012 AMLA Rules, but they were not particularly identified for purposes of satisfying the particularity requirement of Section 2 of the Bill of Rights.

Nonetheless, these erroneous actions do not necessarily render Rule 10.c.1 and Rule 10.d of the 2012 AMLA Rules unconstitutional.

In *Estrada v. Sandiganbayan*,[30] the Court ruled that courts should act with caution and forbearance in determining the validity of the acts of the legislature. Thus, "[e]very intendment of the law must be adjudged by the courts in favor of its constitutionality, invalidity being a measure of last resort. **In construing therefore the provisions of a statute, courts must first ascertain whether an interpretation is fairly possible to sidestep the question of constitutionality.**"[31] Consistent with this principle, the Court should pursue an interpretation of the assailed Rules which is consistent with the Constitution, rather than declare them as invalid.

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[27] *Worldwide Web Corp. v. People*, 713 Phil. 18. 43 (2014) [Per C.J. Sereno, First Division], *citing Black's Law Dictionary*, "warrant," p. 1585.

[28] *Worldwide Web Corp. v. People, id., citing Vallejo v. CA*, 471 Phil. 670, 687 (2004) [Per J. Callejo, Sr., Second Division].

[29] *Worldwide Web Corp. v. People, id.*

[30] 421 Phil. 290 (2001) [Per J. Bellosillo, *En Banc*].

[31] *Id.* at 342–343. (Emphasis supplied)

B. A freeze order does not authorize the examination of "related accounts"

The present case reveals an apparent confusion in the implementation of a freeze order. To recall, after receiving the Freeze Order, the covered institutions conducted an analysis of the principal accounts and determined that herein petitioners' accounts, though not described in the Freeze Order, were "materially linked" to the principal accounts and are therefore "related accounts" under the Freeze Order and the 2012 AMLA Rules. The records do not show that the analysis was conducted pursuant to a bank inquiry order issued by any court. Thus, it may be reasonably inferred that the same was done merely on the strength of the Freeze Order.

In my view, this is also erroneous.

A freeze order does not authorize the examination of monetary accounts. The "primary objective of a freeze order is to **temporarily preserve** monetary instruments or property that are in any way related to an unlawful activity or money laundering, by preventing the owner from utilizing them during the duration of the freeze order."[32] It is **not** meant as a tool to discover the accounts suspected of being related to money laundering. That is the function of the bank inquiry order. Although the petition for a freeze order is *ex parte*, the freeze order, upon its issuance, shall be served on the respondent-owner and the covered institution.[33]

A bank inquiry order under Section 11 of the AMLA 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 [AMLA]."[34] 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."[35] **The entire proceeding for a bank inquiry order—from the filing of the application until the conduct of the inquiry—is confidential and *ex parte*.**[36]

Section 11 of the AMLA provides:

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[32] *Ret. Lt. Gen. Ligot v. Republic, supra* note 15, at 504–505. (Citation omitted; emphasis in the original)

[33] *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,* A.M. No. 05-11-04-SC, November 15, 2005, sec. 54.

[34] J. Leonen, Concurring Opinion in *Subido Pagente Certeza Mendoza and Binay Law Offices v. CA*, 802 Phil. 314, 387–388 (2016) [Per J. Perez, *En Banc*], *citing Republic v. Hon. Judge Eugenio, Jr., supra* note 17, at 120.

[35] *Republic v. Ongpin*, 923 Phil. 257, 326 (2022) [Per J. Leonen, Second Division], *citing* J. Leonen, Concurring Opinion in *Subido Pagente Certeza Mendoza and Binay Law Offices v. CA*, *id.* at 388.

[36] *Republic v. Ongpin*, *id.* at 325.

"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."[37]

Notably, Section 11 authorizes a bank inquiry into "related accounts" but only after the CA determines probable cause that they are related accounts.[38] A bank inquiry order for "related accounts" must be preceded by a bank inquiry order for the principal account.[39] ***In other words, the probable cause determination for "related accounts" is separate and distinct from the***

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[37] Republic Act No. 10167, or An Act to Further Strengthen the Anti-Money Laundering Law, Amending for the Purpose Sections 10 and 11 of Republic Act No. 9160, Otherwise Known as the "Anti-Money Laundering Act of 2001", as Amended, and for Other Purposes. Approved on June 18, 2012.

[38] *Subido Pagente Certeza Mendoza and Binay Law Offices v. CA, supra* note 34, at 335.

[39] *Id.* at 355.

probable cause determination for the principal account.[40] For the principal account, there must be probable cause that the said account is related to an unlawful activity defined in the AMLA.[41] On the other hand, for "related accounts," there must be probable cause that they are materially linked to the principal account.[42] The discussion of the Court in *Subido Pagente Certeza Mendoza and Binay Law Offices v. CA*[43] is instructive:

> We thus subjected Section 11 of the AMLA to heightened scrutiny and found nothing arbitrary in the allowance and authorization to [the] 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.[44] (Emphasis supplied)

From the foregoing, it is clear that a bank inquiry order is entirely different from a freeze order. The former is a discovery tool availed of preparatory to the preservation of an account that is related to an unlawful activity as defined under the AMLA. It covers both: (1) the principal accounts

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40 *Id.*
41 *Id.* at 354.
42 *Id.* at 355.
43 *Id.*
44 *Id.* at 354–355.

indicated in the application for a bank inquiry order; and (2) other accounts that constitute "related accounts" as defined under Section 11.

In contrast, a freeze order is the preservative remedy that prohibits the owner of the funds from transacting the same during the duration of the freeze order. It covers only the principal accounts indicated in the petition filed with the CA.

In this case, the banks essentially merged the function of a bank inquiry order to that of a freeze order when they used the freeze order as apparent basis to discover "related accounts" and freeze them. Both this act of discovery and freezing are done without prior determination of probable cause by the CA, contrary to Article III, Section 2 of the Constitution and Sections 10 and 11 of the AMLA. The CA's prior determination of probable cause is crucial because it assures the bank account owner that a neutral and detached judge[45] has been persuaded that there is sufficient evidence for a reasonably discreet and prudent person to believe that his or her bank account "sought to be frozen [is] in any way related to any of the illegal activities enumerated under [Republic Act] No. 9160, as amended."[46] ***That guarantee is lost when the banks are empowered to determine what accounts should be frozen and why.***

In this connection, the *ponencia* rules that the probable cause requirement is complied with as to the related accounts even if not specifically identified in the application, because the subject of the probable cause determination and of the freeze order is ***the amount*** of the funds or monetary instrument contained in an account, and not the account itself.[47] In support, the *ponencia* highlights that portion of Section 10 of the AMLA, which states:

> SEC. 10. *Freezing Monetary Instrument or Property.* —
>
> . . . .
>
> The freeze order or asset preservation order issued under this Act **shall be limited only to the amount of cash or monetary instrument or value of property that court finds there is probable cause** to be considered as proceeds of a predicate offense, and the freeze order or asset preservation order **shall not apply to amounts in the same account in excess of the amount or value of the proceeds of the predicate offense.**[48] (Emphasis supplied)

Thus, according to the *ponencia*:

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45 *See Presidential Anti-Dollar Salting Task Force v. Hon. CA*, 253 Phil. 344 (1989) [Per J. Sarmiento, *En Banc*].

46 *Ret. Lt. Gen. Ligot v. Republic*, *supra* note 15, at 501.

47 *Ponencia*, pp. 42–44.

48 Republic Act No. 9160, as amended by Republic Act No. 11521.

> Once probable cause has been determined to exist that certain funds, monetary instrument, or property sought to be frozen, inquired into, or preserved is in any way related to any unlawful activity and/or money laundering offense, **such finding necessarily extends to all related accounts**. This is the only logical conclusion given that these related accounts are believed to have directly originated from and/or are materially linked to the monetary instruments or properties subject of the freeze order."[49] (Emphasis supplied)

Accordingly, when the covered institution implements the freeze order as to related accounts that are not identified in the freeze order, the *ponencia* rules that such institution does not determine probable cause which had already been done by the CA, but rather merely verifies if there are accounts related to the instrument subject of the freeze order and disallows any transactions from the account containing such funds, keeping in mind the definition of a "related account" in the AMLA Rules.[50]

I submit that this is egregious error.

Probable cause is determined against **both the amount of the funds and the bank account itself**, when the funds are contained in a bank account. This is supported by the text of Section 10 of the AMLA, as amended, which is replicated in full for easy reference:

> "SEC. 10. *Freezing Monetary Instrument or Property.* —
>
> "(a) Upon a verified *ex parte* petition 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, the Court of Appeals may issue a freeze order which shall be effective immediately, for a period of twenty (20) days. Within the twenty (20)-day period, the Court of Appeals 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. The total period of the freeze order issued by the Court of Appeals under this provision shall not exceed six (6) months. This is without prejudice to an asset preservation order that the Regional Trial Court having jurisdiction over the appropriate anti-money laundering case or civil forfeiture case may issue on the same ***account*** depending on the circumstances of the case, where the Court of Appeals will remand the case and its records: *Provided*, That if there is no case filed against a person ***whose account has been frozen*** within the period determined by the Court of Appeals, not exceeding six (6) months, the freeze order shall be deemed *ipso facto* lifted: *Provided, further*, That this new rule shall not apply to pending cases in the courts. In any case, the court should act on the petition to freeze within twenty-four (24) hours from filing of the petition. If the application is filed a day before a

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[49] *Ponencia*, p. 44.
[50] *Id.* at 45–46.

> nonworking day, the computation of the twenty-four (24)-hour period shall exclude the nonworking days.
>
> "The freeze order or asset preservation order issued under this Act shall be limited ***only to the amount of cash or monetary instrument or value of property*** that court finds there is probable cause to be considered as proceeds of a predicate offense, and the freeze order or asset preservation order **shall not apply to amounts *in the same account*** in excess of the amount or value of the proceeds of the predicate offense.
>
> "A person ***whose account has been frozen*** may file a motion to lift the freeze order and the court must resolve this motion before the expiration of the freeze order.
>
> "No court shall issue a temporary restraining order or a writ of injunction against any freeze order, except the Supreme Court.
>
> "(b) For purposes of implementing targeted financial sanctions in relation to proliferation of weapons of mass destruction and its financing, as provided under Section 3(15), the AMLC shall have the power to issue, *ex parte*, an order to freeze without delay.
>
> "The freeze order shall be effective until the basis for its issuance shall have been lifted. During the effectivity of the freeze order, the aggrieved party may, within twenty (20) days from issuance, file with the Court of Appeals a petition to determine the basis of the freeze order according to the principle of effective judicial protection: *Provided*, That the person whose property or funds have been frozen may withdraw such sums as the AMLC determines to be reasonably needed for monthly family needs and sustenance including the services of counsel and the family medical needs of such person.
>
> "The AMLC, if circumstances warrant, may initiate civil forfeiture proceedings to preserve the assets and to protect it from dissipation. No court shall issue a temporary restraining order or a writ of injunction against the freeze order, except the Court of Appeals or the Supreme Court."

As seen above, Section 10 of the AMLA expressly refers to the freezing of an "account." Further, the provision states that probable cause is determined against a "monetary instrument or property." The definition of a "monetary instrument" under the 2018 AMLA Rules[51] includes "bank deposits."[52] That the term "monetary instrument" contemplates bank accounts

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[51] 2018 Implementing Rules and Regulations of Republic Act No. 9160, Otherwise Known as the Anti-Money Laundering Act of 2001, as Amended, approved on November 22, 2018.

[52] The 2018 AMLA Rules, Rule 2, Section 1, (eee) provides:
(eee) "Monetary Instrument" refers, but is not limited, to the following:
(1) Coins or currency of legal tender of the Philippines, or of any other country;
(2) Credit instruments, including ***bank deposits***, financial interest, royalties, commissions, and other intangible property;
(3) Drafts, checks, and notes;
(4) Stocks or shares, participation or interest in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or

or bank deposits is even confirmed by the Senate's deliberations on the amendments to Section 10, as cited in the *ponencia*, to wit:

> **Senator Lacson.** So, *ano po ang* standards *na i*-establish *ng* AMLC? *Iyong mga* requisites or facts that are to be considered to establish that the accounts will fall on the so-called related web of accounts; and, No. 2, *kung magpo*-fall *ito roon sa* materially linked accounts?
>
> **Senator Guingona.** Any connection, Mr. President, sa movement of funds, in or out.
>
> **Senator Lacson.** *Pakibigay nga po ng ilang ehemplo. Halimbawa,* materially linked to the monetary instrument. *Ito po ba ay pwedeng. . .*
>
> **Senator Guingona.** ***The monetary instrument would be the deposit, the account,*** let us say, of General Ligot and then General Ligot transferred some funds to his brother-in-law, then the account of the brother-in-law would be materially linked and is, therefore, included in the web of accounts of General Ligot.
>
> **Senator Lacson.** So, sufficient *na basta't iyong isang* account nakahalo roon sa sinasabing *related web of accounts at iyong isa namang* account *ay* materially linked *doon sa isang nakapaloob doon sa mga* web of accounts, *maski saan doon kasama na iyon.*
>
> **Senator Guingona.** *Opo.*
>
> **Senator Lacson.** *Napakalawak nga po pala nito.*
>
> **Senator Guingona.** *Opo.*[53] (Emphasis supplied)

From the foregoing, it is clear that probable cause for the issuance of a freeze order is determined not only against the amount of the funds contained in a monetary instrument, but even against the monetary instrument itself, that is, the bank account containing the funds supposedly related to money laundering. The second paragraph of Section 10(a) is in the law to maintain the freezing of accounts within reasonable limits. The accounts are frozen—partially, instead of entirely—to the extent of the amount estimated by the court to be within the bounds of its probable cause determination. The second paragraph does not mean, and should not be taken to mean as the *ponencia* does, that only amounts are frozen but not accounts.

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electronic in character, including those enumerated in Section 3 of the Securities Regulation Code;

(5) A participation or interest in any non-stock, non-profit corporation;

(6) Securities or negotiable instruments, bonds, commercial papers, deposit certificates, trust certificates, custodial receipts, or deposit substitute instruments, trading orders, transaction tickets, and confirmations of sale or investments and money market instruments;

(7) Contracts or policies of insurance, life or non-life, contracts of suretyship, pre-need plans, and member certificates issued by mutual benefit association; and

(8) Other similar instruments where title thereto passes to another by endorsement, assignment, or delivery. (Emphasis supplied)

[53] *Ponencia*, pp. 38–39.

I therefore disagree with the *ponencia*'s ruling that the freezing extends only to the amounts but not the accounts, especially in this case where there is not even an amount indicated in the freeze order in question. I wish to highlight that the freeze order in the present case did not state the amount of funds to be frozen from the principal and related accounts.[54] It merely described the accounts to be frozen (i.e., name of the covered institution as well as the account name and the account number of the account to be frozen) without indicating the amounts to be frozen.

It is thus my view that the probable cause determination against the principal account does not, and should not, extend to the related accounts. By the language of the law and jurisprudence, there must be a separate determination of probable cause in order to freeze the funds contained in related accounts that are not identified in the freeze order. This interpretation applies the same framework adopted by the Court *En Banc* in *Subido* quoted above.

Although the ruling in *Subido* relates to the issuance of bank inquiry orders under Section 11 of the AMLA, the same rationale should also apply to freeze orders as the latter class involves a higher level of intrusion into the right to privacy. As previously discussed, a bank inquiry order merely authorizes the examination of accounts, whereas a freeze order prevents the owner from utilizing the funds in the frozen account. **If the probable cause requirement under Article III, Section 2 of the Constitution is applied to bank inquiry orders for related accounts, as done in *Subido*, then it should apply with more reason to freeze orders for related accounts.**

That said, it is possible that a joint hearing be held for the issuance of both a bank inquiry order and a freeze order. The Court's discussion in *Republic v. Ongpin*[55] is instructive:

> We agree with petitioner that the entirety of the proceedings for a bank inquiry order should be confidential and *ex parte*. Under the amended Section 11, *"ex parte"* modifies "application" and "court order." The bank inquiry proceedings, therefore, are *ex parte* beginning with the filing of the application, to the issuance of the bank inquiry order, until the very conduct of the inquiry, being the most vital part of the proceedings that requires utmost confidentiality.
>
> However, nothing in the law provides that the purely *ex parte* bank inquiry proceedings cannot be conducted jointly, albeit subsequently, with the proceedings for the freeze order. To recall, a bank inquiry "authorizes the examination of particular deposits or investments in banking institutions or non-bank financial institutions." Its function is to allow the Anti-Money

[54] *See rollo*, pp. 630–641.
[55] *Supra* note 35.

> Laundering Council to *acquire information* on the movement of funds into and from a bank account, but it does not prevent further deposits or withdrawals from the account. A freeze order is needed precisely to freeze, that is, to *prevent movement* of funds from and into the account. It keeps a bank account intact to allow forfeiture should it be found related to any of the predicate crimes under the Anti-Money Laundering Act.
>
> Considering the functions of a bank inquiry order and a freeze order, a joint hearing is inevitable when the subjects of a bank inquiry and of a freeze order are the same account. The results of the bank inquiry are usually used in the freeze order proceedings. The bank inquiry can be "preliminary to the seizure and deprivation of . . . property as in a freeze order" and "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." This is supported by the fourth paragraph of the amended Section 11, which defines the term "related accounts" as "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)." The fourth paragraph referred to "accounts . . . subject of the freeze order(s)," meaning, that any information obtained during the bank inquiry may be used to support a petition for freeze order.
>
> Further, reading the law, it is possible that a freeze order is first filed before an application for bank inquiry is availed of, as what petitioner did here. Nowhere in Republic Act No. 9160, as amended by Republic Act No. 10167, does it state that a petition for freeze order may be filed only after an application for bank inquiry has been previously availed of. In other words, the Anti-Money Laundering Council may file a petition for freeze order without the benefit of a bank inquiry if it is confident that the information it has at hand is sufficient to justify a finding of probable cause. In the end, it is a matter of strategy on what it should file first.[56] (Citations omitted; emphasis in the original)

C. Proper Interpretation of the AMLA and its Implementing Rules

Guided by the foregoing discussion, I propose the following guidelines in the proper interpretation and implementation of the bank inquiry order and freeze order under the AMLA and its implementing rules:

(1) An *ex parte* bank inquiry order under Section 11 of the AMLA is issued upon an *ex parte* application by a competent court after it is satisfied that there is probable cause that the bank account, deposit, or investment indicated in the application is related to an unlawful activity or a money laundering offense, as defined in

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[56] *Id.* at 325–326.

the AMLA.[57] The bank inquiry order shall authorize an inquiry into and examination of the particular deposit or investment.[58]

(2) Should accounts other than those indicated in the application be discovered by the AMLA to constitute "related accounts" as defined in Section 11 of the AMLA and its implementing rules, it may inquire into or examine these "related accounts" ***only after*** obtaining a separate *ex parte* bank inquiry order therefor.[59] The court's determination of probable cause for these related accounts shall be separately based on probable cause that such related accounts are materially linked to the principal account inquired into.[60]

(3) A freeze order under Section 10 of the AMLA is issued upon an *ex parte* petition after the CA determines that there is probable cause that the monetary instrument or property indicated in the petition is in any way related to an unlawful activity as defined in the AMLA.[61] The freeze order shall particularly describe the monetary instrument or property to be frozen, including the value thereof.[62]

The freeze order shall prevent any transaction or movement of funds in the monetary instrument or property subject of the freeze order.[63] ***A freeze order cannot be used by the covered institution as basis to inquire into or examine a frozen deposit or investment.*** Thus, the covered institution implementing the freeze order cannot use the same as basis to discover additional accounts that may be related to the principal accounts subject of the freeze order.

(4) Should the AMLC discover additional accounts (whether through the enforcement of a previously issued bank inquiry order or through another manner) which it perceives to be related to an unlawful activity as defined in the AMLA, these accounts may be frozen only after the CA has determined that there is probable cause that these additional accounts are in any way related to an unlawful activity as defined in the AMLA.[64]

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57 *See* Republic Act No. 9160, as amended by Republic Act No. 10167 (approved on June 18, 2012).
58 *Id.*
59 *Id.*
60 *Id. See also Subido Pagente Certeza Mendoza and Binay Law Offices v. CA, supra* note 34.
61 *See* Republic Act No. 9160, as amended by Republic Act No. 11521 (approved on January 29, 2021).
62 *Id.*, sec. 10.
63 *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,* A.M. No. 05-11-04-SC, November 15, 2005, sec. 55.
64 *See* Republic Act No. 9160, as amended by Republic Act No. 11521 (approved on January 29, 2021).

It must be emphasized that requiring a separate freeze order for the additional accounts discovered by the AMLC or the covered institution will not necessarily thwart the pre-emptive objective of a freeze order.

Again, the discovery of additional related accounts is not a function granted to covered institutions. **Nothing prevents the AMLC from first conducting an extensive inquiry into and examination of accounts it suspects to be involved in money laundering by obtaining bank inquiry orders under Section 11.** The entirety of the proceedings for a bank inquiry order—from the filing of the application until the conduct of the examination—are confidential and *ex parte*.[65] **This is the appropriate stage when the AMLC should conduct its financial analysis to discover the related web of accounts that may be involved in money laundering.**

Since the issuance of a freeze order would alert a supposed money launderer that he or she is being investigated,[66] **the logical strategy that the AMLC should adopt would be to first utilize the bank inquiry order to identify all the accounts related to the suspected AMLA violation before seeking a freeze order for any of those identified accounts.** Otherwise, any subsequent freeze order for additional accounts would likely be in vain as the supposed money launderer would have already transferred the funds to other accounts—as what happened in the case of *Ongpin*, thus:

> Here, petitioner chose to first file the Petition for Freeze Order on December 3, 2012. The Freeze Order was then issued on December 6, 2012, after which it filed the Application for Bank Inquiry on December 11, 2012.
>
> What happened here was an error in strategy. Because the application for bank inquiry was filed after the Freeze Order had been issued, notably with notice to the parties, the *ex parte* nature of the bank inquiry proceedings was rendered useless. Through the Freeze Order, respondents were notified of the ongoing money laundering investigation involving their accounts. As expected, and as will be discussed more fully later, the bank inquiry done after the Freeze Order had been issued revealed that most of the frozen accounts were already closed.[67]

Turning back to the present case, nothing in the 2012 AMLA Rules expressly directs the covered institution to freeze the additional "related accounts" even without a separate freeze order issued by the CA. **Therefore, there is nothing inherently unconstitutional in the text of the 2012 AMLA Rules.** ***Rather, it is its interpretation and implementation by the CA, the AMLC, and the covered institutions that is invalid.*** When Rule 10.c.1 and

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[65] *Republic v. Ongpin, supra* note 35, at 325.

[66] *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,* A.M. No. 05-11-04-SC, November 15, 2005, sec. 54.

[67] *Republic v. Ongpin, supra* note 35, at 326.

10.d provide that the covered institution shall immediately freeze the related accounts of those subject of the freeze order, the same should be construed to refer to a situation where a separate freeze order is issued for the said related accounts. This preserves the safeguards put in place by Article III, Section 2 of the Constitution. Again, this approach is consistent with the principle of judicial restraint. Nonetheless, the Court should advise the AMLC to make the necessary changes in its current AMLA Rules, conformable to the foregoing guidelines, in order to avoid any confusion.

D. Call for Amendment of A.M. No. 05-11-04-SC

Unfortunately, the same ambiguity in the 2012 AMLA Rules is also present in A.M. No. 05-11-04-SC.[68] As pointed out by the *ponencia*, Section 55 of A.M. No. 05-11-04-SC requires the covered institution to immediately freeze the principal account's "related web of accounts." Similarly, Section 52 provides that the freeze order shall contain a directive for the covered institution to freeze the principal account's "web of related accounts." Thus:

> SECTION 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.**
>
> . . . .
>
> SECTION 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 **of the account representing**, involving or relating to the subject monetary instrument, property, proceeds or its **related web of accounts.** (Emphasis supplied)

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[68] *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,* November 15, 2005.

Given the previous discussion on why a separate probable cause determination must be made for the freezing of related accounts, these provisions in A.M. No. 05-11-04-SC must be revisited and amended. Accordingly, I propose the following changes:

> SECTION 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, ***including the value thereof,*** 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***~~.
>
> ....
>
> SECTION 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 of the ***monetary instrument, property, or proceeds subject of the freeze order*** ~~account representing, involving or relating to the subject monetary instrument, property, proceeds or its related web of accounts~~.

All told, I vote that the Court **DENY** the petitions. I further urge that the AMLC be **ADVISED** to make the necessary changes in the current AMLA Rules to conform to the guidelines in this opinion.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice