

MEASURES TO FREEZE, CONFISCATE AND RECOVER PROCEEDS OF CORRUPTION INCLUDING PREVENTION OF MONEY LAUNDERING IN THE PHILIPPINES

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I. INTRODUCTION

Money is the barometer of a society's virtue. When you see that trading is done, not by consent, but by compulsion—when you see that in order to produce, you need to obtain permission from men who produce nothing—when you see that money is flowing to those who deal, not in goods, but in favors—when you see that men get richer by graft and by pull than by work, and your laws don't protect you against them, but protect them against you—when you see corruption being rewarded and honesty becoming a self-sacrifice—you may know that your society is doomed.

- Ayn Rand

A. Defining Graft and Corruption

The term “graft” means the “acquisition of gain or advantage by dishonest, unfair or sordid means, especially through the abuse of his position or influence in politics, business, etc.”¹ while the term “corruption” generally means “the misuse of entrusted power for private benefit.”² In a bigger sense, both terms are synonymous and interchangeable.³

In the Philippine setting, the term “graft” lacks an exact legal definition. The *Anti-Graft and Corrupt Practices Act*,⁴ merely enumerates a number of punishable corrupt practices of public officers, while the *Code of Conduct and Ethical Standards for Public Officials*⁵ declares as unlawful certain prohibited acts and transactions.

Generally, courts and laws do not give a clear-cut definition of the terms graft and corruption, considering the extreme difficulty to “contain all the elements of the different types of ‘graft’ or ‘corruption’ in one sweeping generalization.”⁶ Each case must be evaluated on the basis of its own facts.⁷

1. Forms

Corruption takes a number of different forms and is found at different levels of government.

Corruption has been classified in various manners, according to:

(i) Place where corruption occurs⁸--

a. Public-sector corruption is that which happens in the government offices.⁹

b. On the other hand, private-sector corruption involves businesses and other non-state sectors --

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1. Resolution No. 559, Amending the Existing Board Policy on Conferment of CES Eligibility to Applicants with Pending Cases.

2. J.J. Senturia, *Encyclopedia of Social Sciences*, Vol. VI (1993).

3. L.V. Carino, Ed., *Bureaucratic Corruption in Asia: Causes, Consequences and Controls* (Quezon City: CPA, University of the Philippines).

4. Republic Act No. 3019 (1960).

5. Republic Act No. 6713 (1989).

6. Sofronio B. Urusal, *Anti-Graft Guidebook 6*, 2006, [hereinafter Urusal].

7. *Ibid.*

8. *Investigating Corruption*, A Do-It Yourself 10-12, 2002 [hereinafter *Investigating Corruption*].

9. *Ibid.*

churches, NGOs, foundations, and professional associations.¹⁰

- c. Bureaucratic corruption occurs in the civil service, especially among state officials and employees who run the day-to-day affairs of the government. It may involve low-level government employees and/or higher-level officials. It happens when low-level government employees are given small amounts as “grease” to speed up transactions for licenses, permits or other processes in their offices. On the other hand, higher-level officials, such as district or provincial highways engineers, or members of bid committees who get considerable amount of commissions for awarding government contracts to favored firms, commit this form of corruption.¹¹
- d. Political corruption, as the name implies, takes place among elected officials. It involves vote buying, corruption of the electoral system, the political harassment of opponents, and the preferential treatment of friends and cronies. It also refers to the use of influence to obtain positions, appointments, tax incentives, behest loans, and other special considerations from the government. Illustrative examples include: 1) approval of hundred-million peso worth of preferential loans from state banks to Former President Ferdinand Marcos’ cronies; and 2) acquisition of shares of stock from favored companies using state pension funds upon instruction of Former President Joseph Estrada.¹²

(ii) “Scale and intensity”¹³

- a. Retail, petty or street-level corruption is what the general public encounters in their daily activities. This form of corruption involves those who are providing frontline services¹⁴ or lower-level administrative bureaucrats who transact with the public on matters involving taxes, traffic regulations, licensing requirements or the discretionary allocation of government benefits such as subsidized food and fertilizer, disaster relief, or low-level jobs in state-funded projects. A motorist paying a policeman to escape from a traffic violation; or a person availing the services of a fixer to hasten the processing of a driver’s license or an NBI clearance, are illustrative examples of this type. Petty corruption involves lower-level administrative bureaucrats, while grand corruption involves big amounts.¹⁵
- b. Isolated corruption occurs in bureaucracies or sectors that are normally honest. These corrupt acts do not normally happen in such sectors.¹⁶
- c. Systematic corruption is prevalent in almost all levels of a government agency. This is perceived to be the case with the Department of Public Works and Highways (“DPWH”). Studies have shown that corruption permeates the entire life of most DPWH projects --from bidding to completion. Collusion among bidders for a project is a practice that cannot be discounted, resulting in the rigging of bids.¹⁷

(iii) “Types of corrupt action or behaviour”¹⁸

- a. Bribery is the act of the “public officer who receives a gift, present, offer or promise by reason or in connection with the performance of his official duties.”¹⁹ It is probably the most common and visible type of corruption
- b. Patronage is also considered a form of corruption. It is a way of acquiring, maintaining, and

10. *Ibid.*

11. *Ibid.*

12. *Ibid.*

13. *Id.* at 12-14.

14. “Frontline Service” refers to the process or transaction between clients and government offices or agencies involving applications for any privilege, right, permit, reward, license, concession, or for any modification, renewal or extension of the enumerated applications and/or requests which are acted upon in the ordinary course of business of the agency or office concerned. (An Act to Improve Efficiency in the Delivery of Government Service to the Public by Reducing Bureaucratic Red Tape, Preventing Graft and Corruption, and Providing Penalties therefor [R.A. 9485], June 2, 2007).

15. Investigating Corruption, *supra* 8 at 12.

16. *Id.* at 13.

17. *Id.* at 14.

18. *Id.* at 14-16.

19. Leonor D. Boado, Notes and Cases on the Revised Penal Code 535, 2004.

expanding political power by distributing economic benefits from the state and dispensing them to political allies, and cronies in exchange of the latter's political support.²⁰

- c. Cronyism is present when personal relationships become a consideration in state policy-making and the allocation of public resources.²¹
- (iv) *“General Modes of Committing Graft”*²²
 - a. Administrative grafts are those occurring in government agencies. It includes anomalies concerning the receipt, custody, and expenditure of public funds, and in the “acquisition, procurement, utilization, and disposal of government property.”²³
 - b. Policy-related grafts refer to irregularities committed by senior public officials who are vested with extensive discretionary authorities to determine public policies entailing financial implications.²⁴
 - c. Grafts in arbitrations include “abuses committed by authorities imbued with judicial, quasi-judicial, or prosecutory powers” regarding cases pending before them.²⁵
 - d. Political grafts have two forms. “One form includes bribery and inducement of election officials to alter election results, as well as vote-buying of the electorate by candidates during periods of elections. The other form of political graft involves politicians who undertake to sponsor or to block requests needing executive approval or requiring legislative authorization” with regard to any past or political favors of the requesting party.²⁶
- (v) *“Based on rank and service of public officer committing the act”*²⁷
 - a. Graft in the career service may be committed by: “(i) clerical and custodial service personnel involved in non-professional or sub-professional work; (ii) personnel involved in professional or technical work, up to Division Chief level; (iii) Career Executive Service Officers; (iv) career service heads of government agencies; and (v) members of the judiciary.”²⁸
 - b. Graft in the Non-career Service may be committed by: “(i) impeachable officials, such as the President, the Vice President, the Members of the Supreme Court, the Members of the Constitutional Commission, and the Ombudsman; (ii) elective national and local officials, such as members of Congress, Provincial Governors, and City and Municipal Mayors; (iii) Department Secretaries and other officials of Cabinet rank; (iv) and the personal or confidential staff of the enumerated officials.”²⁹

B. Root Causes

1. Individual Causes

Individual causes are “attributed to weak moral fiber and distorted values among bureaucrats, such as materialism, lack of integrity and nationalism.”³⁰

2. Organizational Causes

One of the major causes of corruption in many offices and organizations is office politics. In particular, these causes refer to deficiencies in the bureaucratic apparatus such as low salary or inadequate compensation levels of public servants, poor recruitment and selection procedures as well as red tape in

20. *Supra* 8 at 15.

21. *Id.* at 16.

22. Urusal, *supra* 6 at 93.

23. *Ibid.*

24. *Ibid.*

25. *Ibid.*

26. *Ibid.*

27. *Id.* at 94-95.

28. *Ibid.*

29. *Ibid.*

30. Nelson Nogot Moratalla, *Graft and Corruption: The Philippine Experience*, available at <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019122.pdf> (last accessed 28 October 2009).

the government. It also includes poor working conditions and facilities in public offices and dependence of employees on patronage with superiors and colleagues.³¹

It is not uncommon in government agencies for a superior to employ his or her own confidants and team of advisers. The persons employed may be relatives, friends, classmates or associates. The appointee expectedly becomes a loyal follower of the appointing official. The "*padrino* system" likewise occurs in government offices. Instances abound where promotions are based on right connections rather than on seniority or merit. Equally rampant is the "*compadre* system" whereby a subordinate takes his superior to be the godfather of his son expecting to reap benefits such as promotion or salary increase as a result of the relationship.³²

3. Societal Causes

Society may itself contribute to corruption as a norm in the workplace. These may include the difficulty of proving cases of corruption in court and lack of political will to pursue a fight against graft and corruption.³³

C. Effects

Corruption has intense consequences on individuals, firms, social sectors, and the progress and safety of the society. Experts find corruption to be damaging in various manners, such as the following:

1. "Corruption impedes Economic Growth"³⁴

The most significant impact of corruption on growth is the reduction of investments. Economists have shown that improvements in the corruption index play a vital role in affecting the result of growth rates.³⁵

In the Philippines, the devastation brought by corruption on economic development is evident. Exaction from corrupt officials is a major cause in raising the costs of business.³⁶ As a result, businesses lower the standards of production or increase the price of goods and services in order to compensate for the amount of money wasted on bribes.

2. Corruption worsens Poverty³⁷

To reiterate, the costs of corruption are borne by the less fortunate sectors of society. "Corruption in textbook procurements means that poor students don't have books; kickbacks from public works contracts mean poor farmers will not have roads for transporting their produce; and under-the-table commissions from the purchase of vaccines mean poor children becoming prone to disease."³⁸

Even if the less fortunate receive inadequate services, they remain obliged to contribute to government funds thru indirect taxes. On the other hand, the rich who bribe revenue officials are able to evade income taxes.³⁹ When the budget for procuring goods and services is inflated by graft, and tax revenues are low because of widespread corruption in the tax-collection system, the government has no choice but to raise more taxes and cut spending.⁴⁰

Social spending on services that benefit the poor is unduly lessened, so the poor are caught up deeper in despair. Money that should be spent on more important projects, *i.e. clinics or schools*, are diverted to

31. Alan R. Cañares, CORRUPTION : THE PHILIPPINE EXPERIENCE, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices.

32. Prevention of Graft and Corruption, *available at* http://www.livinginthephilippines.com/prevention_of_graft_and_corruption.html (last accessed 28 October 2009).

33. *Supra* 31.

34. *Investigating Corruption, supra* 8 at 17.

35. *Ibid.*

36. *Id.* at 18.

37. *Ibid.*

38. *Ibid.*

39. *Ibid.*

40. *Id.* at 19.

insignificant infrastructure projects where kickbacks are prevalent. Corruption undeniably drains resources available for advancement, distorts access to services for poor communities, and weakens public confidence in the government capacity to serve the poor.⁴¹

3. “Corruption damages Political Legitimacy and stunts Democracy”⁴²

Government officials may neglect their public duties to promote general welfare as they busy themselves to their corrupt activities. Manifestations of prevalent corrupt practices in the bureaucracy are: “(1) below standard public infrastructures; (2) decreased business investments; (3) rising unemployment; (4) increased incidence of criminality; and (5) low morale of the civil service and the military.”⁴³

As a result, corruption shatters the faith of citizens to their political leaders, government and even to democracy. Citizens begin to be too inquisitive and mistrust the intentions of those in authority.⁴⁴

4. “Corruption endangers Public Order and Safety”

Corruption results in disregard of rules and subversion of formal processes. For instance, corruption in the judiciary suspends the rule of law, so that criminals and lawbreakers are free to operate with impunity. Corruption in the police force facilitates the activities of syndicates involved in drugs, theft, gambling, smuggling, prostitution and kidnapping, making cities and communities unsafe.⁴⁵ Some police officers have been providing “protection” to syndicates, thus making themselves part of these syndicates.⁴⁶

Thai scholar Pasuk Phongpaichat’s description of the “syndication” of police corruption in Thailand also applies in the Philippine setting, to wit:

Corruption within the police force is held to be sustained by regular redistribution of revenues from corruption widely through the police force itself and through other related institutions. It is sustained also by a subculture which strengthens the group loyalty of those involved, legitimizes the acceptance of revenues from corruption as supplementary income and binds together vertical networks of bosses and subordinates who share the tasks of collecting and redistributing revenue. The values of group loyalty and hierarchy which underlie this subculture are first nurtured in the police cadet school. They are further reinforced at work by the examples of other police officers and the pressure from superiors and peers involved in the corruption networks. Not all policemen are involved in these networks. But the proportion which is corrupt is large enough to maintain the syndicate.⁴⁷

5. “Corruption causes Bureaucratic Inefficiency and Demoralization”⁴⁸

Corruption results in awful services. When government officials and personnel employ unreasonable impediments in the completion of transactions for “grease” money, the delivery of services is delayed. Bureaucratic red tape results and public service is gravely affected.⁴⁹

D. Statistics

Aware of its duty to the public, the Philippine government continues to play an active role in combating the proliferation of corrupt practices.

41. *Ibid.*

42. *Ibid.*

43. Urusal, *supra* 6 at 10.

44. Investigating Corruption *supra* 8 at 18.

45. *Ibid.*

46. *Ibid.*

47. *Id.* (citing Phongpaichit, Pasuk and Sungsidh Piriya-rangsan. 1994. *Corruption and Democracy in Thailand*. Chiang Mai: Silk-worm Books).

48. *Id.* at 22.

49. *Ibid.*

The presentation below illustrates the number of responses from the government on corrupt practices.

Table 1⁵⁰

| | Target (2006) | Actual (March 2009) |
|---|---------------|---------------------|
| Ombudsman Conviction Rates | 40% | 73.42% |
| Ombudsman Cases Successfully Mediated | 450 | 688 |
| Revenue Integrity Protection Service or ‘Lifestyle Checks’ Cases Filed | 116 | 140 |
| Suspended by Ombudsman thru Revenue Integrity Protection Service | 35 | 38 |
| Run After the Tax Evaders cases filed with Department of Justice (DOJ) | 116 | 117 |
| Run After The Smugglers cases filed with DOJ | 61 | 95 |
| Run After The Smugglers cases filed with the Court of Tax Appeals (CTA) | 28 | 33 |

Table 2⁵¹
Number of Complaints Received by the OMB, 2006 to 2008

| No. of complaints received per calendar year | 2008 | 2007 | 2006 |
|--|--------|--------|--------|
| Complaints received annually | 13,225 | 10,824 | 13,602 |
| Monthly Average (annual no. of complaints divided by 12 months) | 1,102 | 902 | 1,134 |
| Daily Average (monthly ave. no. of complaints divided by 22 working days) | 50 | 41 | 52 |

50. Philippine-US Partnership in Fighting Corruption: Indicators from the Millennium Challenge Account- Philippine Threshold Program, 1 June 2009, available at

<http://www.philippineembassy-usa.org/UPDATE43.pdf> (last accessed 27 October 2009).

51. Marking Milestones, the 2008 Annual Report of the Office of the Ombudsman, available at <http://www.ombudsman.gov.ph/docs/statistics/Annual%20Report%202008.pdf> (last accessed 29 October 2009).

Table 3⁵²
List of high ranking officials dismissed, suspended and prosecuted by
the OMB (as of March 2009)⁵³

| Preventive Suspension | Suspended without Pay | Dismissed from Public Service | Under Prosecution |
|--|--|---|--|
| <ul style="list-style-type: none"> • DPWH Asst. Secretary • Municipal Mayors • City and Municipal Treasurers • BIR Regional Director • BIR Chief Revenue Officer • BOC Deputy District Collector • Register of Deeds • Commanding General, Infantry Division, Philippine Army • Army Brigadier General • Presidents of State Colleges and Universities | <ul style="list-style-type: none"> • Agriculture Undersecretary/ Presidential Assistant • Municipal Mayor • Navy Lt. Commodore • Presidents of State Colleges and Universities • DepEd District Supervisor • DPWH District Engineers • BOC Intelligence Officers • BIR Revenue District Officers • BIR Examiners • State College Administrator | <ul style="list-style-type: none"> • Municipal Mayor • DENR-LMB Asst. Director • Register of Deeds • DA-Fisheries and Aquatic Resources Bureau Regional Director • BIR Regional Director • BIR Revenue District Officers • DPWH Regional Directors • State College President • DepEd School Principals | <ul style="list-style-type: none"> • DOJ Secretary • DOTC Secretary • DOF Undersecretary • Governors • City and Municipal Mayors • NHA Manager • NEDA Regional Director • PNP Provincial Directors • DOJ Prosecutors • Philippine Navy Flag Officers |

E. Philippine Constitution and Laws

The Philippine legal system is replete with constitutional provisions and pertinent laws combating graft and corruption. For easier reference, they shall be discussed in the following sequence:

1. Pertinent provisions in the 1987 Philippine Constitution;
2. Provisions in the Revised Penal Code relating to crimes committed by public officers;
3. Specific Anti-Graft Laws, namely: (i) the Anti-Graft and Corrupt Practices Act;⁵⁴ (ii) the Code of Conduct and Ethical Standards for Public Officials and Employees;⁵⁵ (iii) the Civil Service Law;⁵⁶ (iv) the Forfeiture of Unlawfully Acquired Property;⁵⁷ (v) the Anti-Money Laundering Act;⁵⁸ and, (vi) the Plunder Law.⁵⁹

52. *Id.*

53. *Id.*

54. Republic Act No. 3019 (1960).

55. Republic Act No. 6713 (1989).

56. Presidential Decree 807.

57. Republic Act 1379 (1955).

58. Republic Act 9160 (2001), as amended by Republic Act 9194 (2003).

59. Republic Act 7080 (1991).

1. The 1987 Philippine Constitution

Significant constitutional provisions strengthening the government's power to combat corruption are found in Article XI "Accountability of Public Officials" vis-à-vis Article II "State Policies". These include the following:

- a. It is a state policy to maintain honesty and integrity in the public service and to take positive and effective measures against graft and corruption;⁶⁰
- b. It is a state policy to adopt and implement a policy of full public disclosure of all its transactions involving public interest, subject to reasonable conditions prescribed by law;⁶¹
- c. Declaring that the anti-graft court, the Sandiganbayan, shall continue to function and exercise its jurisdiction⁶² over civil and criminal cases involving graft and corruption;
- d. Creating the independent Office of the Ombudsman⁶³ to investigate any public official or government agency for acts or omissions which are illegal, unjust, improper or inefficient; to determine the causes of such acts; to recommend the elimination; and to observe high standards of ethics and efficiency;
- e. The State has the authority to recover unlawfully acquired properties;⁶⁴
- f. The State requires public officers to declare under oath their assets, liabilities and net worth upon assumption of office, and as may be required by law;⁶⁵
- g. Prohibiting the President from appointing his/her spouse or relatives within the 4th civil degree as members of the Constitutional Commissions, Ombudsman, Secretaries or under-Secretaries, Chairmen or heads of bureaus or offices, including government corporation and their subsidiaries;⁶⁶
- h. Requiring public officers and employees to lead modest lives and act with patriotism and justice;⁶⁷
- i. Making "bribery," "graft and corruption" and "betrayal of public trust" as grounds to impeach the President, Vice-President, members of the Supreme Court, members of the Constitutional Commissions and the Ombudsman;⁶⁸
- j. Prohibiting government-owned or controlled bank or financial institution from extending loans or other financial accommodations for any business purpose to the President, Vice-President, members of the Supreme Court, members of the Constitutional Commissions, and the Ombudsman;⁶⁹
- k. Prohibiting the enactment of a law that exempts any entity of government or its subsidiary, or any investment of public funds, from the audit of the Commission on Audit.⁷⁰ The COA examines government income and expenditures.
- l. Creating the Civil Service Commission that promotes responsive public service as a career. Its anti-corruption function involves promoting public accountability, enforcing ethical standards and behavior, and conducting values orientation workshops.

2. The Revised Penal Code⁷¹ on Crimes Committed by Public Officers

The Revised Penal Code enumerates certain crimes that a public officer may commit.

60. Sec. 27, Art. II, 1987 Constitution.

61. Sec. 28, *ibid.*

62. Sec. 4, Art. XI, 1987 Constitution.

63. Sec. 5, *ibid.*

64. Sec. 15, *ibid.*

65. Sec. 17, *ibid.*

66. Sec. 13, Art. VII, 1987 Constitution.

67. Sec. 1, *supra* 62.

68. Sec. 2, *ibid.*

69. Sec. 16, *ibid.*

70. Sec. 3, Art. IX-D, *ibid.*

71. The Revised Penal Code of the Philippines (Act No. 3815, as amended). It took effect on January 1, 1932.

- a. *Malfesance and Misfeasance in Office* are classified into:
- (i) Dereliction of duty,⁷² which includes: knowingly rendering unjust judgment; judgment rendered through negligence; unjust interlocutory order; malicious delay in the administration of justice; negligence in prosecution of offenses; betrayal of trust by an attorney; and
 - (ii) Bribery,⁷³ which includes direct bribery; indirect bribery; qualified bribery; and corruption of public officials.
- b. *Frauds and Illegal Exactions and Transactions*⁷⁴ including frauds against the public treasury; other frauds; prohibited transactions; and possession of prohibited interest by a public officer.
- c. *Malversation of Public Funds or Property*⁷⁵ including failure of accountable officer to render accounts; failure of a responsible public officer to render accounts before leaving the country; illegal use of public funds or property; and failure to make delivery of public funds or property.
- d. *Infidelity of Public Officers* is classified into:
- (i) Infidelity of public officers⁷⁶ including the crimes of conniving with or consenting to evasion; and evasion through negligence;
 - (ii) Infidelity in the custody of documents⁷⁷ including the crimes of removal, concealment or destruction of documents; officer breaking seal and opening of closed documents; and
 - (iii) Revelation of secrets⁷⁸ including the crimes of revelation of secrets by an officer; and public officer revealing secrets of private individual.
- e. *Other Offenses or Irregularities by Public Officers* are classified as follows:
- (i) Disobedience, refusal of assistance and maltreatment of prisoners⁷⁹ including the crimes of open disobedience; disobedience to order of superior officer when said officer was suspended by inferior officer; refusal of assistance; refusal to discharge elective office; and maltreatment of prisoners;
 - (ii) Anticipation, prolongation and abandonment of the duties and powers of public office⁸⁰ including the crimes of anticipation of duties of a public office; prolonging performance of duties and powers, and abandonment of office or position;
 - (iii) Usurpation of powers and unlawful appointment,⁸¹ including the crimes of usurpation of legislative powers; usurpation of executive functions; usurpation of judicial functions; disobeying request for disqualification; orders or requests by executive officers to any judicial authority; and unlawful appointments, and;
 - (iv) Abuses against chastity.⁸²

72. Arts. 204-209, Title Seven, *ibid*⁷³ Arts 210-212, *ibid*.

74. Arts. 213-216, *ibid*.

75. Arts. 217-222, *ibid*.

76. Arts. 223-225, *ibid*.

77. Arts. 226-228, *ibid*.

78. Arts. 229-230, *ibid*.

79. Arts. 231-236, *ibid*.

80. Arts. 236-238, *ibid*.

81. Arts. 239-244, *ibid*.

82. Art. 245, *ibid*.

3. Other Laws on Graft and Corruption

- (a) **Republic Act 3019** or the **Anti-Graft and Corrupt Practices Act**⁸³ has the most comprehensive enumeration of corrupt practices of public officers. These include the following:
- (i) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense;
 - (ii) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law;
 - (iii) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act;
 - (iv) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination;
 - (v) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions;
 - (vi) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party;
 - (vii) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby;
 - (viii) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest;
 - (ix) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group;
 - (x) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled; and,
 - (xi) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

83. Sec. 3, Republic Act No. 3019 (1960).

R.A. 3019 also contains provisions in reference to private individuals. The said law prohibits persons who have family or close personal relations with a public official to take advantage thereof by requesting or receiving gifts or pecuniary advantage from persons who have business transactions with such public official.⁸⁴ It also prohibits the spouse or any relative within the 3rd civil degree of the President, Vice-President, the Senate President and the Speaker of the House of Representatives to intervene in any business or transaction with the Government, subject to certain exceptions.⁸⁵

(b) **Republic Act 6713** or the **Code of Conduct and Ethical Standards for Public Officials and Employees**⁸⁶ also declares the following as prohibited acts and transactions:

- (i) *Financial and material interest.* — Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.
- (ii) *Outside employment and other activities related thereto.* — Public officials and employees during their incumbency shall not:
 - 1. Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;
 - 2. Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or
 - 3. Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office.
- (iii) *Disclosure and/or misuse of confidential information.* — Public officials and employees shall not use or divulge, confidential or classified information officially known to them by reason of their office and not made available to the public, either:
 - 1. To further their private interests, or give undue advantage to anyone; or
 - 2. To prejudice the public interest.
- (iv) *Solicitation or acceptance of gifts.* — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

As to gifts or grants from foreign governments, the Congress consents to:

- 1. The acceptance and retention by a public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy;
- 2. The acceptance by a public official or employee of a gift in the nature of a scholarship or fellowship grant or medical treatment; or
- 3. The acceptance by a public official or employee of travel grants/expenses for travel taking place entirely outside the Philippines of more than nominal value if such acceptance is appropriate or consistent with the interests of the Philippines and permitted by the head office, branch or agency to which he belongs.

84. Sec. 4, *ibid.*

85. Sec. 5, *ibid.*

86. Became effective in 1989.

- (c) The **Civil Service Law**⁸⁷ enumerates the grounds for disciplinary action of government personnel, to wit:
- (i) Dishonesty; Oppression; Neglect of duty; Misconduct; Disgraceful and immoral conduct; Being notoriously undesirable; Discourtesy in the course of official duties; and Inefficiency and incompetence in the performance of official duties;
 - (ii) Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith, when such are given in the hope or expectation of favorable or better treatment⁸⁸; Conviction of a crime involving moral turpitude; Improper or unauthorized solicitation of contributions from subordinates and by teachers or school officials from school children;
 - (iii) Violation of existing Civil Service Law or rules, or reasonable office regulations; Falsification of official document; Frequent unauthorized absences or tardiness in reporting for duty, loafing or frequently unauthorized absence during regular office hours; Habitual drunkenness; and Gambling;
 - (iv) Refusal to perform official duty or render overtime service; Disgraceful, immoral or dishonest conduct prior to entering service; Physical or mental incapacity or disability due to immoral or vicious habits; Borrowing money by superior officers from subordinates or lending by subordinates to superior officers; Lending money at usurious rates of interest; Willful failure to pay just debts or willful failure to pay taxes due to the government;
 - (v) Contracting loans of money or other property from persons with whom the office of the employee concerned has business relations; Pursuit of private business, vocation or profession without the permission required by Civil Service rules; Insubordination; Engaging directly or indirectly in partisan political activities by one holding a non-political office;
 - (vi) Conduct prejudicial to the best interest of the service; Lobbying for personal interest or gain in legislative halls and offices without authority; Promoting the sale of tickets in behalf of private enterprises that are not intended for charitable or public welfare purposes and even in the latter cases if there is no prior authority; Nepotism.
- (d) **Republic Act 1379** or the law on **Forfeiture of Illegally Acquired Wealth**⁸⁹ declares as forfeited any property found to have been unlawfully acquired by any public officer or employee after appropriate judicial proceedings. The Ombudsman has the authority to investigate and initiate the proper action for the recovery of ill-gotten and /or unexplained wealth of public officials or employees.⁹⁰
- (e) **Republic Act 9160**, as amended, or the **Anti-Money Laundering Act of 2001**⁹¹ (“**AMLA**”) defines the term “money laundering” as a crime whereby the proceeds of an unlawful activity are transacted, to make them appear as originating from legitimate sources. A crime under this law is committed by any person who knowingly transacts monetary instrument or property from the proceeds of unlawful activities. Among the unlawful activities under the AMLA, as

87. Title I-A, Book V, Executive Order No. 292, Administrative Code of 1987.

88. “Moral turpitude includes everything which is done contrary to justice, honesty, modesty, or good morals.” (*In Re: Basa*, 41 Phil 275, 7 December 1920).

89. Became effective in 1955.

90. Section 15, Republic Act 6770 or the Ombudsman Act.

91. Became effective in 2001.

amended, are the commission of the acts under Section 3, paragraphs b,⁹² c,⁹³ e,⁹⁴ g,⁹⁵ h⁹⁶ and i⁹⁷ of Republic Act 3019 or the Anti-Graft and Corrupt Practices Act as well as Plunder under Republic Act 7080, as amended.

- (f) **Republic Act 7080**, as amended, or the **Plunder Law**⁹⁸ punishes any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Sec. 1(d) of the law in the aggregate amount of at least Seventy-Five Million Pesos (P75,000,000.00).

F. Remedies

There are a number of remedies available against abuses of public officials including the forfeiture of their unlawfully acquired property. These are: (a) impeachment; (b) recall; (c) civil action for damages; (d) administrative disciplinary action; (e) criminal complaint; (f) special civil action; (g) general election;⁹⁹ (h) forfeiture under RA 1379; and (i) civil forfeiture under RA 9160, as amended.

a. *Impeachment*

It is a procedure provided by the Constitution¹⁰⁰ for removing the following government officials: President, the Vice-President, the members of the Supreme Court, the members of the Constitutional Commissions, and the Ombudsman. The grounds for impeachment are: culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, and betrayal of public trust.

b. *Recall of Local Elective Officials*

Recall is a process whereby a registered voter removes an elective local official on the basis of loss of confidence.¹⁰¹

c. *Civil Action to Claim Damages*

Philippine laws incorporate provisions that make public officials liable for damages in instances when they commit bad faith, malice or gross negligence. The Administrative Code of 1987 explicitly provides that “a public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.”¹⁰² Also, “any public officer, who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within

92. “Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.”

93. “Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.”

94. “Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporation charged with the grant of licenses or permits or other concessions.”

95. “Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.”

96. “Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.”

97. “Directly or indirectly becoming interest, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board; committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong.”

98. As amended by Republic Act 7659.

99. Ursal *supra* note 6 at 235.

100. Art. XI, 1987 Philippine Constitution.

101. Secs. 69-75, R.A. No. 7160 (1991)

102. Sec. 38, Book I, Chapter 9.

a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.”¹⁰³

Heads of departments or superior public officers, however, shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of their subordinates, unless they have actually authorized by written order the specific act or misconduct complained of.¹⁰⁴

On the other hand, subordinate public officers or employees shall be civilly liable for acts done by them in good faith in the performance of their duties. But they shall be liable for willful or negligent acts done by them which are contrary to law, morals, public policy and good customs even if they acted under orders or instructions of their superiors.

The Civil Code of the Philippines also provides recourse against abuses or neglect of duty of public officials or employees. Under the Civil Code, any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.¹⁰⁵ Moreover, a violation by any public officer or employee of the constitutional rights and liberties of another person, shall entitle the latter to damages.¹⁰⁶

d. *Administrative Disciplinary Action*

An administrative action against a public officer or employee is the common and most frequently used remedy resorted to by an aggrieved party.¹⁰⁷

To avail of this remedy, a complaint may be initiated with the *Civil Service Commission* or with the Department Secretaries and heads of agencies, instrumentalities, provinces, cities and municipalities which have jurisdiction to investigate and decide on the disciplinary action against the subject officers and employees.¹⁰⁸

With regard to elective and appointive government officials, except those removable only by impeachment, an administrative complaint may also be filed against them with the *Ombudsman*.

Another remedy is to file a complaint with the *Presidential Anti-Graft Commission*. The latter has the authority to investigate administrative complaints against presidential appointees in the government occupying the positions of assistant regional director, or equivalent rank and higher, as well as those classified as Salary Grade “26” and higher¹⁰⁹

e. *Criminal Complaint*

A criminal complaint may be brought for an offense in violation of *R.A. 3019 (Anti-Graft and Corrupt Practices Act)*, as amended; *R.A. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees)*; *Title VII Chapter II, Section 2*¹¹⁰ *of the Revised Penal Code (Act No. 3815 [1932])*; *R.A. 7080 (Plunder)*, as amended, and for other offenses committed by public officers and employees in relation to their office.¹¹¹

f. *Special Civil Action*

Special Civil Actions like *certiorari*, prohibition and *mandamus* may be invoked by victims of grave abuse of discretion amounting to lack or in excess of jurisdiction; and unlawful neglect to perform a duty by any government official or body exercising judicial, quasi-judicial or ministerial function.¹¹²

103. *Ibid.*

104. *Ibid.*

105. Section 27, Civil Code.

106. Section 32, *Ibid.*

107. *Id.* at 253.

08. *Ibid.*

109. Sec. 4, Executive Order No. 12 (2001), as amended.

110. Bribery.

111. Ural *supra* note 6 at 260.

112. *Id.* at 262.

g. *Election*

Citizens may not be aware that during elections, the fate of the elective officials is in their hands. The citizenry has the capacity to evict from power abusive politicians whom they perceive can no longer serve the common good.¹¹³

h. *Forfeiture under RA 1379*

Ill-gotten, unexplained and unlawfully acquired wealth of public officers and employees shall be forfeited in favor of the State after appropriate judicial proceedings. The proper action for the recovery of such ill-gotten, unexplained or unlawfully acquired wealth shall be initiated by the Office of the Ombudsman.¹¹⁴

i. *Civil Forfeiture under RA 9160, as amended*

Property, monetary instrument and or proceeds representing, involving, or relating to an unlawful activity or a money laundering offense under RA 9160, as amended, shall be forfeited in favor of the State after appropriate judicial proceedings. Among the unlawful activities provided in the law are RA 3019 (*Anti-Graft and Corrupt Practices Act*) and RA 7080 (*Plunder Law*). The petition for civil forfeiture shall be initiated by the Anti-Money Laundering Council through the Office of the Solicitor General.

G. Challenges¹¹⁵

Despite the passage of numerous anti-graft laws in the Philippines and ratification of the *UN Convention Against Corruption*,¹¹⁶ the perception that cases filed against corrupt officials and employees do not succeed still persists.¹¹⁷ There are also numerous reports that graft and corruption are highly pervasive in this country.

The Philippine government must maintain both long-term and short-term resolutions on the issue of corruption. Values formation is the key to a long-term victory. It develops citizens and public officials to become honest and trustworthy individuals. The government must also seek short term solutions to lessen, if not to eradicate, the effects of graft and corruption.¹¹⁸

“Short Term: Demonstrate Crime Doesn’t Pay”¹¹⁹

Anti-graft and corruption laws must be strictly implemented and task force and agencies made to defeat graft and corruption must efficiently function in order to win the battle against theft in the government.¹²⁰

“Strict Accountability and Oversight”¹²¹

The *Commission on Audit*, being the entity in charge of financial accountability and legality of government operations, must expose graft and corruption by all means. Individuals composing the said commission must be able to reveal the cause and the persons behind the diminishing funds of the government. Notably, it is their duty to endure pressure from individuals or syndicates protecting or conducting activities detrimental to the government.¹²²

1113. *Id.* at 264.

114. *Supra* 90.

115. Gary W. Elliott, Antidote for Philippine Corruption, Philippine Anti-Graft Institution, But Integrity is Lacking, *available at* http://philippines.suite101.com/article.cfm/antidote_for_philippine_corruption, (last accessed 28 October 2009).

116. Convention Against Corruption, December 14, 2005.

117. Llanesca T. Panti, Ira Karen Apanay, Crisis, elections feed graft: Corruption’ brutal’ to poor - UN, *available at* http://www.undp.org.ph/?link=news&news_id=171&fa=2 (last accessed 29 October 2009).

118. *Ibid.*

119. *Ibid.*

120. *Ibid.*

121. *Ibid.*

122. *Ibid.*

“Prosecution and Punishment”¹²³

The *Ombudsman* must work hand in hand with the *Commission on Audit* in investigating officials and employees. Furthermore, the *Sandiganbayan*¹²⁴ should grant clemency under very strict guidelines. The government must sustain its zeal in prosecuting offenders.¹²⁵

While “asset forfeiture can be an effective tool to recover assets connected to crime, it should not be used as an alternative to criminal prosecution when a jurisdiction has the ability to prosecute the violator. In other words, criminals should not be allowed to avoid prosecution by pointing to the asset forfeiture regime as the mechanism for seeking redress for crimes that have been committed. Forgoing a criminal prosecution, when available, in return for asset forfeiture has the appearance of a violator buying his or her way out of prosecutions, convictions, and forfeiture. Thus, criminal prosecutions should be pursued whenever possible to avoid the risk that prosecutors, courts and the public would view disgorgement of assets as a sufficient sanction when criminal laws have been violated.”¹²⁶

“Restoring Stolen Assets”¹²⁷

One of the biggest challenges in fighting corruption is the recovery of public properties or moneys unlawfully acquired. As reported by the *Philippine National Police*, authorities are having a difficult time retrieving properties or moneys which were obtained thru corruption.

In relation to this concern, it is important to note that the anti-graft law provides for confiscation of unexplained wealth. Now, to resolve the issue, the Philippine government must aggressively pursue recovery of public funds, whether within the country or not.¹²⁸

“Long Term: Values Formation”¹²⁹

The most effective means of defeating corruption is probably the values formation. However, the metamorphosis does not happen in a short period of time. This long-term solution works by changing socio-cultural norms thru instilling new values. The problem with this though is that there “exists a conflict between traditional values relating to ‘obligation toward kinship, friendship, and primary groups,’ common in the rural and tribal contexts, and values necessary for nation building.” Values formation, or reformation, must engender a view of government posts as positions to serve the public, and not as a means for personal profit.¹³⁰

After all, “public office is a public trust;” and public officers -- who are not at all times accountable to the people -- are called upon to “serve them with utmost responsibility, integrity, loyalty, and efficiency.”¹³¹

123. *Ibid.*

124. A special court in the Philippines created under Presidential Decree 1606. Its jurisdiction covers cases involving public officials occupying positions classified as salary grade “27” and higher. It is presently composed of a Presiding Justice and fourteen (14) Associate Justices who sit in five (5) Divisions of three (3) Justices each in the trial and determination of cases. Its rank is equivalent to the Court of Appeals.

125. *Ibid.*

126. Greenberg, et al., *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture*, The International Bank for Reconstruction and Development/The World Bank 2009, p. 29.

127. *Ibid.*

128. *Ibid.*

129. *Ibid.*

130. *Ibid.*

131. Section 1, Article XI, 1987 Philippine Constitution..

II. CIVIL FORFEITURE AS A REMEDY

A. Defining Civil Forfeiture under the AMLA¹³²

Forfeiture is defined as the “divestiture of property without compensation. It is the loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty. In contrast to *seizure* which is merely an act or an instance of taking possession of a person or property by legal right or process, forfeiture entails the instantaneous transfer of title to another, such as the government, a corporation, or a private person.”¹³³

Civil forfeiture, in the context of the AMLA, may be defined as the divestiture in favor of the State of monetary instrument, property and/or proceeds representing, involving, or relating to an unlawful activity or a money laundering offense under the said Act.

In enacting the AMLA, the Philippine Congress declared money laundering as a criminal offense and provided for civil forfeiture as an “appropriate remedy for the seizure and forfeiture to the State, without the necessity of conviction or prosecution in a criminal offense, of monetary instrument, property or proceeds involved in or related to unlawful activity or money laundering offense as defined in the law.”¹³⁴

B. Philippine Constitution and Other Laws

There are constitutional and other legal provisions relating to seizure and forfeiture of property:

1. The 1987 Philippine Constitution

The Philippine Constitution provides that “no person shall be deprived of life, liberty or property without due process of law.”¹³⁵ “Due process has both a procedural and a substantive aspect. As a substantive requirement, it is a prohibition of arbitrary laws; because if all that the due process clause required were proper procedure, then life, liberty or property could be destroyed arbitrarily provided proper *formalities* are observed. As a procedural requirement, it relates chiefly to the mode of procedure which government agencies must follow in the enforcement and application of laws. It is a guarantee of *procedural fairness*.”¹³⁶

2. The Revised Penal Code¹³⁷

The Revised Penal Code (“RPC”) provides that “every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed. Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, unless they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.”¹³⁸

3. Republic Act 3019 or the Anti-Graft and Corrupt Practices Act

RA 3019 provides that any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3 (Corrupt Practices of Public Officers), 4 (Prohibition on Private Individuals), 5 (Prohibition on Certain Relatives) and 6 (Prohibition on Members of Congress) thereof shall

132. *Supra* 92.

133. *Black’s Law Dictionary*, West Publishing Company, 8th Ed., 1999.

134. Justice Jose C. Vitug, et al., *A Summary of Notes and Views on the 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*, Central Book Supply, Inc., Quezon City, Philippines, 2006, [hereinafter “Rule of Procedure, etc.”].

135. Section 1, Article III.

136. Joaquin G. Bernas, S.J., *The 1987 Philippine Constitution A Reviewer-Primer*, 4th Edition, 2002

137. *Supra* 70.

138. Revised Penal Code, Article 45, Section III, Chapter III.

be “punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and *confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.*”¹³⁹

4. Republic Act 1379 or the Law on Forfeiture of Illegally Acquired Wealth

Under this law, “whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired.”¹⁴⁰

“If the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property, *forfeited* in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State.”¹⁴¹

5. Republic Act 7080 or the Plunder Law

As discussed, this involves “any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in the law, in the aggregate amount or total value of at least Seventy-five million pesos (P75,000,000.00).”¹⁴²

“The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment thereof *forfeited* in favor of the State.”¹⁴³

6. The Civil Code of the Philippines¹⁴⁴

a. *Unjust Enrichment*

Article 22 of the Civil Code provides that “every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.” This is the principle of unjust enrichment which requires two conditions: (i) that a person is benefited without a valid basis or justification, and (ii) that such benefit is derived at another’s expense or damage.¹⁴⁵

The principle of unjust enrichment, which involves the acquisition of any material possession or benefit by a person who is not entitled thereto, differs from the concept of civil forfeiture under the AMLA as the latter involves the forfeiture of monetary instrument, property or proceeds representing, involving, or relating to an unlawful activity or a money laundering offense.

b. *Implied Trust*

“Trusts are either express or implied. While express trusts are created by the intention of the trustor or of the parties, implied trusts come into being by operation of law. Implied trusts are those which, without being expressed, are deducible from the nature of the transaction as matters of intent or which are superinduced on the transaction by operation of law as matters of equity, independently of the particular intention of the parties.”¹⁴⁶

“Implied trusts may either be resulting or constructive trusts, both coming into being by operation

139. RA 3019, Section 9; Emphasis supplied.

140. RA 1379, Section 2.

141. *Id.*, Section 6.

142. RA 7080, Section 2, as amended.

143. *Ibid.*

144. Republic Act 386 (1949).

145. *Privatization and Management Office v. Legaspi Towers 300, Inc.*, G.R. No. 147957, 22 July 2009, citing *Car Cool Philippines, Inc. v. Ushio Realty and Development Corporation*, G.R. No. 138088, January 23, 2006.

146. *Philippine National Bank v. Court of Appeals*, G.R. No. 97995, 21 January 1993.

of law. xxx *Resulting trusts* are based on the equitable doctrine that valuable consideration and not legal title determines the equitable title or interest and are presumed always to have been contemplated by the parties. They arise from the nature or circumstances of the consideration involved in a transaction whereby one person thereby becomes invested with legal title but is obligated in equity to hold his legal title for the benefit of another. On the other hand, *constructive trusts* are created by the construction of equity in order to satisfy the demands of justice and prevent unjust enrichment. They arise contrary to intention against one who, by fraud, duress or abuse of confidence, obtains or holds the legal right to property which he ought not, in equity and good conscience, to hold.”¹⁴⁷

Title V, Chapter III of the Civil Code enumerates instances when an implied trust is created, viz:

- (i) There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.¹⁴⁸
- (ii) There is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he nevertheless is either to have no beneficial interest or only a part thereof.¹⁴⁹
- (iii) If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him.¹⁵⁰
- (iv) When land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner.¹⁵¹
- (v) If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each.¹⁵²
- (vi) When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated.¹⁵³
- (vii) If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him.¹⁵⁴
- (viii) When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.¹⁵⁵

147. *O’Laco v. Co Cho Chit*, G.R. No. 58010, 31 March 1993; emphasis supplied.

148. Article 1448.

149. Article 1449.

150. Article 1450.

151. Article 1451.

152. Article 1452.

153. Article 1453.

154. Article 1454.

155. Article 1455.

- (ix) If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.¹⁵⁶

The powers of public officers occupying a position akin to corporate directors are power in trust. “He who is in such fiduciary position cannot serve himself first and his *cestuis* second. xxx He cannot manipulate the affairs of his corporation to their detriment and in disregard of the standards of common decency. He cannot, by the intervention of a corporate entity violate ancient precept against serving two masters. xxx He cannot utilize his inside information and strategic position for his own preferment. He cannot violate rules of fair play by doing indirectly through the corporation what he could not do so directly. He cannot use his power for his personal advantage and to the detriment of the stockholders and the creditors no matter how absolute in terms that power may be and no matter how meticulous he is to satisfy technical requirements. For that power is at all times subject to the equitable limitation that it may not be exercised for the aggrandizement, preference, or advantage of the fiduciary to the exclusion or detriment of the *cestuis*.”¹⁵⁷

7. Uniform Rules on Administrative Cases in the Civil Service¹⁵⁸

The rules shall be applicable to all cases brought before the Civil Service Commission and other government agencies, except where a special law provides otherwise.¹⁵⁹

The penalty of *forfeiture of retirement benefits* is provided as an accessory to administrative penalties.¹⁶⁰ For example, the penalty of dismissal shall carry with it that of cancellation of eligibility, *forfeiture of retirement benefits*, and the perpetual disqualification from reemployment in the government service, unless otherwise provided in the decision.¹⁶¹

C. Ancillary Remedies

The AMLA provides for other remedies ancillary to a civil forfeiture. These are the remedies of: (i) Freeze Order; and, (ii) Bank Inquiry.

1. Freeze Order

Under Section 10 of the AMLA, as amended, the Court of Appeals, upon application *ex parte* by the Anti-Money Laundering Council (“AMLC”) through the Office of the Solicitor General, and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity, may issue a freeze order which shall be effective for twenty (20) days. The freeze order may be extended for a maximum period of six (6) months.¹⁶²

2. Bank Inquiry

Section 11 of the AMLA authorizes the AMLC to 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 the AMLA, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity or a money laundering offense. No court order is required in cases involving the unlawful activities of Kidnapping for Ransom under Article 267 of the Revised Penal Code, as amended, Violations under Republic Act 9165 or the Comprehensive Drugs Act of 2002, and Hijacking and other violations under Republic Act 6235, destructive arson and murder as

156. Article 1456.

157. *Gokongwei v. Securities and Exchange Commission*, G.R. No. L-45911, 11 April 1979.

158. Resolution 99-1936, published in *The Manila Standard*, 11 September 1999.

159. *Id.*, Section 2.

160. *Id.*, Section 57.

161. *Id.*, Section 58.

162. *Supra* 133, Section 53 (b).

defined under the Revised Penal Code, as amended, including those perpetrated by terrorists against non-combatant persons and similar targets.

An application for bank inquiry is filed with the regional trial court which has jurisdiction over the case. In *Republic of the Philippines v. Eugenio, et al.*,¹⁶³ the Supreme Court declared that bank inquiry proceedings may not be done *ex parte*; hence, prior notice and hearing are required.

D. Procedure

1. Venue

An action for civil forfeiture may be instituted by the Republic of the Philippines, through the AMLC, represented by the Office of the Solicitor General (“OSG”), by filing a petition¹⁶⁴ in any regional trial court of the judicial region where the monetary instrument, property, or proceeds representing, involving, or relating to an unlawful activity or to a money laundering are located. If, however, all or any portion of the monetary instrument, property, or proceeds is located outside the Philippines, the petition may be filed in the regional trial court in Manila or of the judicial region where any portion of the monetary instrument, property, or proceeds is located, at the option of the petitioner.¹⁶⁵

The petition shall be filed directly with the executive judge of the regional trial court, or, in his absence, the vice-executive judge or, in their absence, any judge of the regional trial court of the same station. He shall act on the petition within twenty-four (24) hours after its filing.¹⁶⁶

2. Contents of the Petition, Notice and Service

The petition for civil forfeiture shall be verified and shall contain: (a) the name and address of the respondent; (b) a description with reasonable particularity of the monetary instrument, property, or proceeds, and their location; (c) the acts or omissions prohibited by and the specific provisions of the AMLA, as amended, which are alleged to be the grounds relied upon for the forfeiture of the monetary instrument, property, or proceeds; and, (d) the reliefs prayed for¹⁶⁷ including the issuance of a provisional asset preservation order and an asset preservation order.

Notice of the petition shall be given to respondents in the same manner as service of summons under the Rules of Court.¹⁶⁸ Where the respondent is an unknown owner or his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected by publication of the notice of the petition in a newspaper of general circulation in such places and for such time as the court may order. Should the cost of publication exceed the value or amount of the property to be forfeited by ten (10) percent, publication shall not be required.¹⁶⁹

3. Confidentiality

The logbook where the petition is entered shall be kept strictly confidential and maintained under the responsibility of the executive judge. Contempt of court shall be imposed on any person, including court personnel, who discloses, divulges or communicates to anyone, directly or indirectly, in any manner or by any means, the fact of the filing of the petition, its contents and its entry in the logbook except those authorized by the court.¹⁷⁰

4. Comment or Opposition

The respondent shall file a verified comment or opposition, not a motion to dismiss the petition,

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

164. Rule of Procedure, etc., Section 2, Title II.

165. *Id.*, Section 3, Title II.

166. *Id.*, Section 5, Title II.

167. *Id.*, Section 4, Title II.

168. *Id.*, Section 8, Title II.

169. *Ibid.*

170. *Id.*, Section 7, Title II.

within fifteen (15) days from service of notice or within thirty days from publication.¹⁷¹ Failure to do so shall authorize the court to hear the case *ex parte* and render such judgment as may be warranted by the facts alleged in the petition and its supporting evidence.¹⁷²

5. Provisional Asset Preservation Order (“PAPO”)

Where the judge executive judge of the regional trial court, or, in his absence, the vice-executive judge or, in their absence, any judge of the regional trial court of the same station has determined that probable cause exists on the basis of the allegations of a verified petition sufficient in form and substance, with a prayer for the issuance of an asset preservation order, the court may issue *ex parte* a PAPO effective immediately and for a period of twenty (20) days from service to the concerned parties, forbidding any transaction, withdrawal, deposit, transfer, removal, conversion, concealment or other disposition of the subject monetary instrument, property, or proceeds.¹⁷³

6. Asset Preservation Order (“APO”)

Within the twenty-day period of effectivity of the PAPO, the court shall conduct a summary hearing at which the respondent may for good cause show why the PAPO should be lifted. The court shall determine within the same period whether the PAPO should be modified or lifted or an APO should issue, and act accordingly.¹⁷⁴

The APO shall: (a) issue in the name of the Republic of the Philippines represented by the AMLC; (b) state the name of the court, the case number and title, and the subject order; and (c) require the sheriff or any proper officer to serve a copy thereof upon the respondent or any person acting on his behalf, and upon the covered institution or government agency.¹⁷⁵

The asset preservation order shall be served personally by the sheriff or other proper officer designated by the court in the manner set forth in the rules. If personal service is not practicable, the order shall be served in any other manner which the court may deem expedient.¹⁷⁶

When authorized by the court, service may be effected upon the respondent or any person acting in his behalf and upon the treasurer or other responsible officer of the covered institution or the head of the covered government agency, by facsimile transmission (fax) or electronic mail (e-mail). In such cases, the date of transmission shall be deemed to be *prima facie* the date of service. The asset preservation order shall be enforceable anywhere in the Philippines.¹⁷⁷

Should the court issue an APO, the respondent may raise in a motion or in the comment or opposition grounds for its discharge. The following grounds for discharge of the APO may be raised: (a) the order was improperly or irregularly issued or enforced; (b) any of the material allegations in the petition, or any of the contents of any attachment to the petition thereto, or its verification, is false; and (c) the specific personal or real property ordered preserved is not in any manner connected with the alleged unlawful activity.¹⁷⁸

(i) Guidelines in Serving the APO

For perishable property, the petitioner may file a verified motion praying for the sale at public auction of said perishable property. If the court grants the motion, the sale shall be conducted in the manner as property sold under execution.¹⁷⁹ Written notice must be given, before the sale, by posting of the time and place of the sale in three (3) public places, preferably in conspicuous areas of the municipal or city hall, post office and public market in the municipality or city where the perishable property is located and where

171. *Id.* Section 9, Title II.

172. *Id.* Section 10, Title II.

173. *Id.* Section 11, Title III.

174. *Id.* Section 12, Title III.

175. *Id.* Section 13, Title III.

176. *Id.* Section 14, Title III.

177. *Ibid.*

178. *Id.* Section 17, Title III.

179. *Id.* Section 19, Title IV..

the sale is to take place, for such time as may be reasonable, considering the character and condition of the property. The proceeds shall be deposited with the Clerk of Court to be disposed of according to the final judgment of the court.¹⁸⁰

For real property, there shall be: (a) no physical seizure thereof; (b) no eviction of the owner thereof and/or occupants therein; (c) notice of the APO to the owner/s thereof, if known, and the occupant/s therein; and (d) posting of a copy of the APO in a conspicuous place on the real property.¹⁸¹

Upon verified motion, a receiver may be appointed by the court under such terms and conditions as the court may deem proper in the following instances:

- (a) When it appears that the party applying for the appointment of a receiver has an interest in the property or fund and that such property or fund is in danger of being lost, removed or materially injured;
- (b) When it appears that the property is in danger of being wasted or dissipated or materially injured;
- (c) After judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment or to aid execution when the execution has been returned unsatisfied or the judgment obligor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect; and
- (d) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of administering or disposing of the property in litigation.¹⁸²

7. Pre-trial and Trial

Pre-trial is mandatory.¹⁸³ It is a procedural device intended to clarify and limit the basic issues between the parties. Failure of the petitioner or counsel to appear at the pre-trial conference shall be cause for dismissal of the petition. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the respondent or counsel shall be cause to allow the petitioner to present its evidence *ex parte* and the court to render judgment on the basis thereof.¹⁸⁴

The rules on amicable settlement, mediation and other alternative mode of dispute resolution shall not apply.¹⁸⁵

No prior criminal charge, pendency of or conviction for an unlawful activity or money laundering offense is necessary for the commencement or the resolution of a petition for civil forfeiture.¹⁸⁶

Any criminal case relating to an unlawful activity shall be given precedence over the prosecution of any offense or violation under the AMLA, as amended, without prejudice to the filing of a separate petition for civil forfeiture or the issuance of an asset preservation order or a freeze order. Such civil action shall proceed independently of the criminal prosecution.¹⁸⁷

The trial shall proceed in accordance with the applicable provisions of the Rules of Court.¹⁸⁸

8. Factors in determining Preponderance of Evidence

In rendering judgment, the court may consider the following factors to determine where lies the preponderance of evidence:

- (a) That the monetary instrument, property, or proceeds are represented, involved, or related to an unlawful activity or a money laundering offense:

180. *Ibid.*

181. *Id.*, Section 20, Title IV.

182. *Id.*, Section 21, Title IV.

183. *Id.*, Section 22, Title V.

184. *Id.*, Section 24, Title V.

185. *Id.*, Section 26, Title V.

186. *Id.*, Section 27, Title VI.

187. *Id.*, Section 28, Title VI.

188. *Id.*, Section 29, Title VI.

- (1) If the value or amount involved is not commensurate with the business, financial or earning capacity of the person;
- (2) If any transaction indicates a clear deviation from the profile or previous transactions of the person;
- (3) If a person opens, maintains or controls an account with a covered institution not in his own name or registered business name unless authorized under existing law;
- (4) If a person has structured transactions in order to avoid being the subject of reporting requirements under Republic Act No. 9160, as amended; or
- (5) If any transaction exists that has no apparent underlying legal or trade obligation, purpose or economic justification;

or

- (b) That the monetary instrument, property, or proceeds, the sources of which originated from or are materially linked to monetary instruments, properties, or proceeds used in the commission of an unlawful activity or money laundering offense, are related to the said unlawful activity or money laundering offense.¹⁸⁹

9. Judgment and Appeal

The court shall render judgment within thirty (30) days from submission of the case for resolution. It shall grant the petition if there is preponderance of evidence in favor of the petitioner and declare the monetary instrument, property, or proceeds *forfeited* to the State or, in appropriate cases, order the respondent to pay an amount equal to the value of the monetary instrument or property and adjudge such other reliefs as may be warranted.¹⁹⁰

An aggrieved party may appeal the judgment to the Court of Appeals by filing within fifteen (15) days from its receipt a notice of appeal with the court which rendered the judgment and serving a copy upon the adverse party.¹⁹¹

10. Claims against Forfeited Assets

Where the court has issued an order of forfeiture of the monetary instrument or property in a civil forfeiture petition for any money laundering offense defined under the AMLA, as amended, any person who has not been impleaded nor intervened claiming an interest therein may apply, by verified petition, for a declaration that the same legitimately belongs to him and for segregation or exclusion of the monetary instrument or property corresponding thereto. The verified petition shall be filed with the court which rendered the order of forfeiture within fifteen (15) days from the date of finality of the order of forfeiture, in default of which the said order shall be executory and bar all other claims.¹⁹²

Within fifteen (15) days after notice, petitioner shall file a comment admitting or denying the claim specifically, and setting forth the substance of the matters which are relied upon to support the admission or denial. If the petitioner has no knowledge sufficient to enable it to admit or deny specifically, it shall state such want of knowledge. The petitioner in its comment shall allege in offset any fees, charges, taxes and expenses due to it. A copy of the comment shall be served on the claimant.¹⁹³

The court may, without hearing, issue an appropriate order approving any claim admitted or not contested by the petitioner.¹⁹⁴

Upon the filing of a comment contesting the claim, the court shall set the claim for hearing within thirty (30) days with notice to all parties.¹⁹⁵

189. *Id.*, Section 31, Title VI.

190. *Id.*, Section 32, Title VI.

191. *Id.*, Section 34, Title VI.

192. *Id.*, Section 34, Title VII b.

193. *Id.*, Section 38, Title VII.

194. *Id.*, Section 39, Title VII.

195. *Id.*, Section 40, Title VII.

The court shall issue a final order on the contested claim within thirty (30) days from submission.¹⁹⁶ An appeal to the Court of Appeals may be taken by filing within fifteen (15) days from receipt of the order a notice of appeal with the court which rendered the order and serving a copy upon the adverse party.¹⁹⁷

E. Statistics

The following shows the number of civil forfeiture cases filed in court relative to the unlawful activities involving graft and corruption as well as the amount of money or property subject of forfeiture:

Table 4¹⁹⁸
List of Civil Forfeiture Cases filed based on Unlawful Activity related to Graft and Corruption
As of October 2009

| Unlawful Activity or Violation under the AMLA | Number of Civil Forfeiture Cases filed in Court |
|---|---|
| Violation of Republic Act 3019 or the Anti-Graft and Corrupt Practices Act | 8 |
| Violation of Republic Act 6713 or Conduct and Ethical Standard for Public Officials and Employees | 3 |
| Violation of Republic Act 7080 or the Plunder Law | 1 |

F. Strengths and Challenges

In Jeffrey Simser's article on *Civil Forfeiture Practices in Other Common Law Jurisdictions*,¹⁹⁹ citing an article by Anthony Kennedy, he posed this question: *Is the legislative response of civil forfeiture proportional to an existing societal problem?* To this protean question, the response was: Civil forfeiture is a proportional and necessary response to a societal problem. Much is true in the Philippine anti-money laundering regime. The non-conviction based forfeiture is a response to a compelling state interest --- that of removing illicit assets from circulation and taking away from the criminal the benefits of his crime.

Section 12 of the AMLA contains provisions for the recovery of proceeds of crime. This can occur as a result of the conviction of a person for a criminal offense or as a result of a civil forfeiture order. In relation to civil forfeiture, paragraph 12(a) of the AMLA states:

Civil forfeiture. – When there is a covered transaction report made, and the court has, in a petition filed for the purpose ordered seizure of any monetary instrument, or property, in whole or in part, directly or indirectly, related to said report, the Revised Rules of Court on civil forfeiture shall apply.

The procedure in the prosecution of civil forfeiture made reference to the Revised Rules of Court on civil forfeiture. At the time of the enactment of AMLA in 2003, however, there was no specific rule on civil forfeiture. The Office of the Solicitor General was then constrained to utilized relevant provisions

196. *Id.*, Section 41, Title VII.

197. *Id.*, Section 42, Title VII.

198. Case Records, Lorenzo Tanada Division, Office of the Solicitor General.

199. Paper presented as background to a Best Practices Roundtable discussion at the Court Procedures in Money Laundering and Civil Forfeiture Conference in Manila on April 28, 2005.

and remedies to ensure that civil forfeiture cases may nonetheless be prosecuted. Temporary restraining orders and writs of preliminary injunction were resorted to in order that property or monetary instruments may not be disposed, removed or dissipated during the pendency of the proceedings. Eventually, the AMLC, the OSG and representatives of the *Supreme Court Committee on Revision of Rules* drafted rules for consideration by the Supreme Court. The draft rules became the working draft for the *Rules of Civil 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*, which was adopted by the Supreme Court as A.M. No. 05-11-04-SC. The *Rules on Civil Procedure, etc.* took effect on 15 December 2006.

The salient features of the rules are:

(a) The proceeding for civil forfeiture is *sui generis*²⁰⁰

Explaining the nature of civil forfeiture in the Philippines, the *Committee on the Revision of the Rules of Court* adopted the best aspects of actions *in personam*, *in rem* and *quasi in rem*, and integrated them into the rule to ensure compliance with the Constitutional provision that no person shall be deprived of property without due process of law in both substantive and procedural aspects.²⁰¹

As an action *in personam*, the rules require that notice shall be served on respondent personally. But, where the respondent is designated as an unknown owner or his whereabouts are unknown, service of notice may be by publication (action *in rem*). While at the first instance, it appears that the action is directed against specific persons (by personal service of notice to them), it actually seeks judgment against the thing or property (petition can proceed against the property of an unknown owner).

For practical purposes, however, publication is not required when “the cost of publication exceeds the value or amount of the property to be forfeited by ten percent (10%).”²⁰²

(b) Petition for civil forfeiture is filed directly with the executive judge of the Regional Trial Court to ensure confidentiality of the proceeding in the meantime that a PAPO has not been issued.²⁰³

The petition may be filed in any regional trial court of the judicial region where the monetary instrument, property, or proceeds representing, involving, or relating to an unlawful activity or to a money laundering offense are located. In the event that all or any portion of the monetary instrument, property, or proceeds is located outside the Philippines, the petition may be filed in the regional trial court in Manila or of the judicial region where any portion of the monetary instrument, property, or proceeds is located, at the option of the petitioner.²⁰⁴

(c) PAPO is issued *ex-parte* upon determination that probable cause exists that the monetary instrument, property, or proceeds are *in any way* related to an unlawful activity under the AMLA.²⁰⁵

(d) The PAPO, which is effective immediately, forbids the property owner or any covered institution or government agency from making any transaction, withdrawal, deposit, transfer, removal, conversion, concealment or other disposition of the monetary instrument, property or proceeds subject of the petition. This also insures that the monetary instrument, property or proceeds will not be concealed, altered, destroyed or will not diminish in value or rendered worthless by persons in control of such monetary instrument, property or proceeds.²⁰⁶

200. Vitug, *supra* 124.

201. *Id.* at pp. 6-7.

202. Rules on Civil Forfeiture, etc., Section 8.

203. *Id.* Sections 5, 6 and 7.

204. *Id.* Section 3.

205. *Id.* Section 11.

206. Vitug, *Supra* 124 at 39.

(e) Respondent has the burden to show cause why the PAPO should be lifted; otherwise, an APO is issued.²⁰⁷

(f) A PAPO is valid only for twenty (20) days. Within the twenty-day period, the court shall conduct summary hearing. At this point since the court has issued a PAPO *ex parte* on the finding of the existence of probable cause, the burden of evidence is shifted to the respondent to show why it should be modified or lifted.²⁰⁸

(g) No prior charge, pendency or conviction for an unlawful activity or money laundering offense is necessary for civil forfeiture.²⁰⁹ Section 27 of the Rules explicitly provides that there is no need of a prior charge or conviction for any predicate crime or money laundering offense under AMLA. The monetary instrument, property or proceeds shall be forfeited in favor of the State if there is preponderance of evidence showing that these are involved in or related to an unlawful activity or a money laundering offense as defined in the law.²¹⁰

(h) Specific factors have been enumerated which the court may consider in determining where lies preponderance of evidence.²¹¹

(i) Procedure on claims against forfeited assets has been incorporated.²¹²

The provisions on claims against forfeited assets are designed to give an opportunity to a *bona fide* claimant, not a party to nor an intervenor in the case, to claim an interest in the forfeited asset or property if the same “legitimately belongs” to him. Section 35 of the Rules provide that such claim can be filed *only* after an order of forfeiture has already been issued.

The Rules provide:

Sec. 35. *Notice to file claims.* – Where the court has issued an order of forfeiture of the monetary instrument or property in a civil forfeiture petition for any money laundering offense defined under Section 4 of Republic Act No. 9160, as amended, any person who has not been impleaded nor intervened claiming an interest therein may apply, by verified petition, for a declaration that the same legitimately belongs to him and for segregation or exclusion of the monetary instrument or property corresponding thereto. The verified petition shall be filed with the court which rendered the order of forfeiture within fifteen days from the date of finality of the order of forfeiture, in default of which the said order shall be executory and bar all other claims.

That indeed, an order of forfeiture is a condition *sine qua non* before a claim can be made has been confirmed in *Bedayo, et al. v. Court of Appeals*:²¹³

Intervention before Order of Forfeiture, Improper:

To begin with, RTC, Manila, Branch 32, in its assailed April 20, 2004 Order, granted petitioners’ Petition and Motion for the Release of Funds by

207. *Id.*, Section 12.

208. *Supra* 40 at p. 40-41.

209. *Id.*, Section 27.

210. Vitug, *Supra* 124 at 63.

211. *Id.*, Section 31; As discussed under D (vii) herein.

212. *Id.*, Sections 35-42, Title VII.

213. G.R. 169031-32, 26 September 2005.

treating the same as a “third party claim that should be categorized under Rule 60 of the Revised Rules of Court on Replevin,” specifically Section 7 thereof.

The rules on replevin, however, require the posting of a bond to answer for whatever damage that may be incurred by the adverse party in the event the order of release or delivery is adjudged erroneous. Issuing an order of replevin despite absence of a bond is perilous as it might render nugatory the judgment in the civil forfeiture proceeding.

On a more crucial point, Civil Case No. 03-107306 of RTC, Manila, Branch 32, from whence the assailed orders sprung, is an action for “Forfeiture of Assets” filed by the Republic of the Philippines, through the Anti-Money Laundering Council. The complaint was anchored on the civil forfeiture provision of Republic Act 9160, as amended, which makes no categorical, much less a fleeting reference to the rules on replevin. On this score alone, the Orders assailed in the consolidated petitions for certiorari in CA-G.R. SP. Nos. 87159 and 87406 must be struck down.

Section 12 (b) of RA 9160 provides the proper procedure for claims on forfeited assets:

“Sec.12. Forfeiture Provisions. –

(b) Claim on Forfeited Assets .- Where the court has issued an order of forfeiture of the monetary instrument or property in a criminal prosecution for any money laundering offense defined under Section 4 of this Act, the offender or any other person claiming an interest therein may apply, by verified petition, for a declaration that the same legitimately belongs to him and for segregation or exclusion of the monetary instrument or property corresponding there to . The verified petition shall be filed with the court which rendered the judgment of conviction and order of forfeiture, within fifteen (15) days from the date of the order of forfeiture, in default of which the said order shall become final and executory. This provision shall apply in both civil and criminal forfeiture.”

The quoted provision recites in detail what must be followed by any person who may have a legitimate claim over monetary instrument or property forfeited. The procedure applies to criminal, as well as civil forfeiture. As it is, petitioners did not even attempt to comply with Sec. 12 (b), supra, of Ra 9160. **Worse, and as borne by the records, there is not even an order of forfeiture yet, which is a condition sine qua non before a petition for segregation of funds may be filed.** To say the least, it is beyond the court’s comprehension why the Manila RTC failed to appreciate the clear and unmistakable mandate of Sec. 12 (b) of Ra 9160. In fine, the appellate court correctly nullified the Order dated 20 April 2004 and all other subsequent challenged Orders issued by the Manila RTC, Branch 32, in its Civil Case No. 03-107306.

(j) The ancillary remedy of Freeze Order is made effective for a maximum period of six (6) months. The said period is intended to provide the AMLC the opportunity to finish its investigation and when evidence so warrant, file the necessary forfeiture proceedings. Experience, however, teaches that in complex and intricate cases, the six (6) month period is insufficient to conclude an extensive investigation more so, as instances abound where the related order of bank inquiry is obtained by AMLC only a few days before or even beyond the effectivity of a freeze order.

(k) Relatedly, the notice and hearing requirement in the ancillary remedy of bank inquiry pose

a difficulty in the expeditious completion of financial investigations. In cases where there are several respondents, the bank inquiry proceedings become protracted thereby setting a drawback in terms of the sufficiency of evidence for the filing of a civil forfeiture case.

(l) A freeze order granted by the Court of Appeals may be appealed. Such an appeal, however, does not stay the enforcement of a decision or ruling on the freeze order.²¹⁴

G. Recent Supreme Court Doctrines involving the AMLA

1. Republic v. Glasgow, et al., (G.R. No. 170281, January 18, 2008)

Venue for Complaint of Civil Forfeiture:

On November 15, 2005, this Court issued A.M. No. 05-11-04-SC, the 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 RA 9160, as amended (Rule of Procedure in Cases of Civil Forfeiture). The order dismissing the Republic's complaint for civil forfeiture of Glasgow's account in CSBI has not yet attained finality on account of the pendency of this appeal. Thus, the Rule of Procedure in Cases of Civil Forfeiture applies to the Republic's complaint. Moreover, Glasgow itself judicially admitted that the Rule of Procedure in Cases of Civil Forfeiture is "applicable to the instant case."

Section 3, Title II (Civil Forfeiture in the Regional Trial Court) of the Rule of Procedure in Cases of Civil Forfeiture provides:

Sec. 3. Venue of cases cognizable by the regional trial court. — A petition for civil forfeiture shall be filed in any regional trial court of the judicial region where the monetary instrument, property or proceeds representing, involving, or relating to an unlawful activity or to a money laundering offense are located; provided, however, that where all or any portion of the monetary instrument, property or proceeds is located outside the Philippines, the petition may be filed in the regional trial court in Manila or of the judicial region where any portion of the monetary instrument, property, or proceeds is located, at the option of the petitioner. (emphasis supplied)

*Under Section 3, Title II of the Rule of Procedure in Cases of Civil Forfeiture, therefore, **the venue of civil forfeiture cases is any RTC of the judicial region where the monetary instrument, property or proceeds representing, involving, or relating to an unlawful activity or to a money laundering offense are located.** Pasig City, where the account sought to be forfeited in this case is situated, is within the National Capital Judicial Region (NCJR). Clearly, the complaint for civil forfeiture of the account may be filed in any RTC of the NCJR. Since the RTC Manila is one of the RTCs of the NCJR, it was a proper venue of the Republic's complaint for civil forfeiture of Glasgow's account.*

214. *Supra* 186, Section 57.

Summons by Publication Proper in Civil Forfeiture case:

In Republic v. Sandiganbayan, this Court declared that the rule is settled that forfeiture proceedings are actions in rem. While that case involved forfeiture proceedings under RA 1379, the same principle applies in cases for civil forfeiture under RA 9160, as amended, since both cases do not terminate in the imposition of a penalty but merely in the forfeiture of the properties either acquired illegally or related to unlawful activities in favor of the State.

*As an action in rem, it is a proceeding against the thing itself instead of against the person. In actions in rem or quasi in rem, jurisdiction over the person of the defendant is not a prerequisite to conferring jurisdiction on the court, provided that the court acquires jurisdiction over the res. Nonetheless, summons must be served upon the defendant in order to satisfy the requirements of due process. **For this purpose, service may be made by publication as such mode of service is allowed in actions in rem and quasi in rem.***

In this connection, Section 8, Title II of the Rule of Procedure in Cases of Civil Forfeiture provides:

Sec. 8. Notice and manner of service. — (a) The respondent shall be given notice of the petition in the same manner as service of summons under Rule 14 of the Rules of Court and the following rules:

1. The notice shall be served on respondent personally, or by any other means prescribed in Rule 14 of the Rules of Court;

2. The notice shall contain: (i) the title of the case; (ii) the docket number; (iii) the cause of action; and (iv) the relief prayed for; and

3. The notice shall likewise contain a proviso that, if no comment or opposition is filed within the regulatory period, the court shall hear the case ex parte and render such judgment as may be warranted by the facts alleged in the petition and its supporting evidence.

(b) Where the respondent is designated as an unknown owner or whenever his whereabouts are unknown and cannot be ascertained by diligent inquiry, service may, by leave of court, be effected upon him by publication of the notice of the petition in a newspaper of general circulation in such places and for such time as the court may order. In the event that the cost of publication exceeds the value or amount of the property to be forfeited by ten percent, publication shall not be required. (emphasis supplied)

2. Republic v. Eugenio, et al., (G.R. No. 174629, February 14, 2008)

Bank inquiry proceedings not ex-parte:

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.**

X X X

Without doubt, a requirement that the application for a bank inquiry order be done with notice to the account holder will alert the latter that there is a plan to inspect his bank account on the belief that the funds therein are involved in an unlawful activity or money laundering offense. Still, the account holder so alerted will in fact be unable to do anything to conceal or cleanse his bank account records of suspicious or anomalous transactions, at least not without the whole-hearted cooperation of the bank, which inherently has no vested interest to aid the account holder in such manner.

Accounts prior to AMLA, Open for Inquiry:

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

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

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

H. Case Studies

Several cases have been filed against erring public officials and employees seeking to forfeit their bank deposits and other real and personal properties which are believed to be materially linked to the predicate offenses of violation of RA 3019, RA 7080 and RA 1379.

1. The Airport Controversy

Respondents are government officials and other individuals who facilitated the awarding of a US\$350M government contract involving the construction of an international airport. The contract was eventually nullified by the Supreme Court for being anomalous.

Finding probable cause that there was a violation of R.A. 3019, the AMLC filed an application to inquire into or examine the bank deposits of the respondents.

The RTC initially granted the application for inquiry, but later ordered its suspension when one of the respondents appeared and questioned the inquiry on several constitutional grounds. Hearings were thereafter conducted.

In particular, said respondent averred that before an inquiry may be allowed, the person/s subject of the inquiry must be convicted of the predicate crime alleged. Also, respondent invoked the right to privacy and due process.

The Supreme Court ruled that *Notice and Hearing* are pre-requisites in a *Petition for Bank Inquiry*.

2. The Stealing Soldiers

Respondents are military officials charged under R.A. 3019 and R.A. 1379.

The assets of respondents were garnished pursuant to R.A. 1379. The AMLC proceeded with its own investigation and acquired a *Bank Inquiry Order*. Thereafter, the AMLC proceeded with the filing of a *Petition for Freeze Order* which was subsequently granted by the Court of Appeals.

The respondents questioned before the Supreme Court the Republic's motion for an extension of the freeze order, arguing, among others, that there is no necessity for a freeze order considering that an *Order* of garnishment was already issued by the *Sandiganbayan*.

The Supreme Court denied the petition.

The AMLC, through the OSG, proceeded with the filing of a civil forfeiture case before the appropriate regional trial court which eventually issued a PAPO and APO.

The bottom line is that remedies under RA 1379 are mutually exclusive to the remedies provided under the AMLA.

3. The Embattled Prosecutor

Respondent is a State Prosecutor charged with violation of Section 5, in relation to Sections 3(ee) and 92 of R.A. 9165,²¹⁵ as well as, Section 3(b) and (e) of R.A. 3019.

Finding probable cause that violations under R.A. 9165 and R.A. 9160, as amended, were committed, the AMLC filed a petition for the issuance of a freeze order which was granted by the Court of Appeals.

On the basis of Section 11 of R.A. 9160, as amended, the AMLC conducted a bank inquiry

215. Comprehensive Drugs Act of 2002.

sans a court authority.

Accordingly, a petition for civil forfeiture was filed with R.A. 3019 as the predicate offense. The same is pending before the regional trial court. A PAPO and APO were eventually issued.

The bottom line is that no court order for bank inquiry is required in cases involving the unlawful activities of Violations under Republic Act 9165 or the *Comprehensive Drugs Act of 2002*.

4. The Syndicated Schemes

During the last quarter of 2008, a group of companies composed of, among others, rural banks, pre-need companies and real estate companies abruptly closed down and ceased operations. In the aftermath, allegations abounded that illicit activities and fraudulent transactions -- ranging from misappropriation of funds, misrepresentation, and falsification of documents -- amounting to syndicated estafa and violations of the Securities Regulation Code ("SRC"), had been egregiously carried out by respondents (the aforesaid group of companies and their officers and directors) against unsuspecting depositors, investors, policy holders and other credulous individuals.

The AMLC conducted an independent investigation and discovered that respondents committed: (i) the crime of syndicated estafa by employing various fraudulent and devious schemes (*Double-Your-Money Scheme, Motor Cycle Loan and Investment Loan Program*); (ii) violations of Sections 8 and 26 of the SRC; and (iii) violation of Section 16 of the SRC in relation to Pre-Need Rules 34.1 and 35.5 of the New Rules on the Registration and Sale of Pre-Need Plans.

Four (4) *Ex-Parte Petitions for the Issuance of a Freeze Order* covering numerous bank accounts, insurance policies and vehicles were filed before the Court of Appeals. Accordingly, the Court of Appeals issued several freeze orders over the aforementioned bank accounts, assets and properties, which all expired on 13 October 2009.

Before the expiration of the freeze orders or on 20 April 2009, an *Application for Bank Inquiry and/or Examination* was filed before the appropriate regional trial court. It was only on 10 November 2009 that the RTC released an Order allowing the inquiry and/or examination of the bank accounts.

Meanwhile, on 26 October 2009, a petition for civil forfeiture was filed before the appropriate regional trial court and a Provisional Asset Preservation Order was subsequently issued. No Asset Preservation Order has yet been issued.

Notably, the application for bank inquiry was granted and issued after the expiration of the freeze orders. Hence, the petitioner was constrained to file a petition for civil forfeiture based on available evidence and before the bank inquiry could be completed.

I. Conclusion

The Philippines has put forward anti-money laundering provisions which, though still imperfect, show great potential for success. The law may have been enacted with idealism as stimulant, the implementation thereof puts into proper perspective the positive direction being taken by the Philippines in the global fight against money laundering. Indeed, the challenges are enormous yet the hurdles are met with enthusiasm and ingenuity. The subsequent issuance of the *Rules on Civil Forfeiture, etc.*, while demanding, is likewise motivating. The bottom line therefore is that the issues are diverse as they are sometimes complicated.

The cases pending before the trial courts will be the source of emerging jurisprudence on the Philippine anti-money laundering regime and non-conviction based civil forfeiture. Although developing jurisprudence may take time, the Philippines can learn from the experiences of other non-conviction based civil forfeiture regimes.