Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

REPUBLIC OF THE PHILIPPINES, represented by the ANTI-MONEY LAUNDERING COUNCIL, Petitioner, -versus- **THE SANDIGANBAYAN and OFFICE OF THE OMBUDSMAN, represented by the OFFICE OF THE SPECIAL PROSECUTOR,** Respondents.	**G.R. Nos. 232724-27** Present: LEONEN, *J., Chairperson,* HERNANDO, INTING, DELOS SANTOS, and LOPEZ, *J., JJ.* **Promulgated:** February 15, 2021

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DECISION

LEONEN, *J.*:

The Anti-Money Laundering Council is not merely a repository of reports and information on covered and suspicious transactions. It was created precisely to investigate and institute charges against those suspected to commit money laundering activities.

The criminal prosecution of such offenses would be unduly hampered if it were to be prohibited from disclosing such information. For the Anti-Money Laundering Council to refuse disclosing the information required of it would be to go against its own functions under the law.

This Court resolves a Petition for Certiorari[1] assailing the Resolution[2] and Order[3] of the Sandiganbayan, which denied the Anti-Money Laundering Council's Motion to Quash the Subpoena *Duces Tecum* and *Ad Testificandum* and its subsequent Motion for Reconsideration.[4]

This Petition is an offshoot of a criminal case, *People v. P/Dir. General Jesus Versoza*. In *Versoza*, the Office of the Special Prosecutor charged former First Gentleman Jose Miguel T. Arroyo (Arroyo) with, among others, plunder for his involvement in the Philippine National Police's anomalous purchase of two secondhand helicopters.[5]

The seller, Lionair, Inc. (Lionair), sold the helicopters as brand new, as required by law, even if they were already used.[6] Lionair's president Archibald L. Po (Po), however, testified that Arroyo was the helicopters' real owner. He alleged that Lionair imported the helicopters from the United States and sold it to Arroyo, who, in turn, deposited partial payment to Lionair's account with the Union Bank.[7]

Lionair's savings account passbook reflected the following deposits:

Teller	Date	Transaction	Amount (USD)
S733	02/27/04	Credit Memo	408,067.06
S733	02/27/04	Credit Memo	509,065.41
T731	03/01/04	Cash	148,217.53[8]

To verify the source of the deposits, the Office of the Special Prosecutor presented Katrina Cruz-Dizon (Cruz-Dizon), the manager of the Union Bank branch where the account was maintained. Cruz-Dizon testified that the account was closed on March 6, 2006, and as five years had lapsed since, the bank has already disposed the account records. She suggested that the Bangko Sentral ng Pilipinas or the Anti-Money Laundering Council (Council) may have reports on the transactions, as banks are required to report covered transactions.[9]

Thus, the Sandiganbayan, upon the Office of the Special Prosecutor's request, issued a Subpoena *Duces Tecum* and *Ad Testificandum* directing

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1 *Rollo*, pp. 3–21.
2 Id. at 46–51. The March 28, 2017 Resolution was approved by Associate Justices Alexander G. Gesmundo (now a member of this Court), Ma. Theresa Dolores C. Gomez-Estoesta, and Zaldy V. Trepeses of the Seventh Division, Sandiganbayan, Quezon City.
3 Id. at 65. The May 12, 2017 Order was signed by Associate Justices Ma. Theresa Dolores C. Gomez-Estoesta, Zaldy V. Trespeses, and Alex L. Quiroz of the Seventh Division, Sandiganbayan, Quezon City.
4 Id. at 3–4.
5 Id. at 5.
6 Id.
7 Id. at 6.
8 Id.
9 Id.

Executive Director Julia C. Bacay-Abad, then Secretariat of the Council, to testify and to produce Lionair's bank records.[10]

The Council moved to quash the Subpoena, arguing that whatever information it has on Lionair's bank account is confidential under Republic Act No. 9160, or the Anti-Money Laundering Act.[11] However, on March 28, 2017, the Sandiganbayan issued a Resolution[12] denying the Motion to Quash, disposing thus:

> WHEREFORE, in view of the foregoing, the AMLC's Motion to Quash (Subpoena *Duces Tecum* and *Ad Testificandum* dated 10 October 2016) is DENIED for lack of merit.
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> SO ORDERED.[13]

The Sandiganbayan ruled that the Council's misgivings on the disclosure of the bank records were outweighed by the importance of these documents.[14]

The Council moved for reconsideration, but it was likewise denied.[15] The Sandiganbayan noted that the Council was not present during the hearing of the Motion for Reconsideration, and that the accused and their counsels were not furnished copies of the pleading.[16]

Thus, the Council, representing the Republic of the Philippines, filed this Petition for Certiorari.[17] It mainly argues that it is prohibited by law to disclose the relevant bank records of Lionair.

Petitioner argues that it cannot disclose Lionair's bank records because they are confidential.[18] It avers that the disclosure of reports on covered and suspicious transactions is prohibited under Section 9(c) of the Anti-Money Laundering Act.[19] It explains that Section 9(c) adheres to international standards, which recommend that financial institutions and their officers be prohibited from disclosing covered and suspicious transaction reports, or "tipping-off" that a case is being filed.[20]

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10 Id. at 5–6.
11 Id. at 6–7.
12 Id. at 46–51.
13 Id. at 51.
14 Id.
15 Id. at 7–8.
16 Id. at 8.
17 Id. at 9.
18 Id. at 10.
19 Id. at 10–11.
20 Id. at 11–12.

Further, petitioner explains that the transactions are made confidential to encourage those persons covered to report transactions "without fear of reprisal from their customers, or fear of losing the confidence of their clientele[.]"[21] It adds that the confidentiality requirement keeps "suspected money launderers oblivious of the fact that their financial transactions are being monitored and reported by the covered person to [petitioner]."[22] If confidential reports were divulged, it says, money laundering investigations and prevention would be impeded.[23]

Then, petitioner avers that Section 9(c) covers it, and not only financial institutions. To prohibit financial institutions from disclosing reports but allow petitioner to divulge the same reports would be absurd, it says, pointing out that such act would be indirectly doing what cannot be done directly.[24]

Aside from the law, petitioner cites its Revised Implementing Rules and Regulations, which states that petitioner and its secretariat are prohibited from revealing any information related to the transactions.[25]

Petitioner likewise argues that respondent failed to reasonably describe the documents subpoenaed, saying that the description falls short of the requirement under the Rules of Court because the electronic database contains millions of reports from millions of entities. Without a specific description, petitioner says it would be difficult to trace the records demanded.[26]

Petitioner points out that it is not required to furnish the accused or their counsels a copy of its Motion for Reconsideration, because it is only a nominal party. Thus, it argues that the Sandiganbayan committed grave abuse of discretion in denying its Motion on this ground.[27]

Lastly, petitioner prays for the issuance of a temporary restraining order and/or writ of preliminary injunction, claiming that it is bound to suffer great and irreparable injury should respondent implement the Subpoena.[28]

In its Comment,[29] respondent Office of the Ombudsman argues that the Sandiganbayan did not abuse its discretion when it denied petitioner's

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21 Id. at 12.
22 Id.
23 Id.
24 Id. at 13–14.
25 Id. at 14. Petitioner cites the Revised Implementing Rules and Regulations of Republic Act No. 9160 (2016), Rule 22(B), which provides:
(B) Information Security and Confidentiality – The AMLC and its Secretariat shall protect information received or processed and shall not reveal, in any manner, any information known to them by reason of their office. This prohibition shall apply even after the separation from the AMLC.
26 Id. at 15.
27 Id. at 16.
28 Id.
29 Id. at 90–109.

Motions.[30] It says the prohibition on disclosure under Section 9(c) of the Anti-Money Laundering Act only applies to covered persons—such as financial institutions, dealers, and company service providers—which do not at all include petitioner.[31]

Respondent avers that while the Anti-Money Laundering Act does intend to preserve the confidentiality of bank transactions, its fundamental objective remains to prohibit money laundering through the reporting of covered and suspicious transactions.[32]

Besides, respondent says that Lionair has waived its rights to confidentiality through a written permission, and granted the prosecution access to its bank account under the Foreign Currency Deposit Act.[33] In any case, respondent asserts that petitioner's contentions are outweighed by the need to materialize the objectives of the Anti-Money Laundering Act and to enforce the principles of public accountability.[34]

Respondent further argues that the Subpoena complies with the requirements laid down by the Rules of Court,[35] as it readily identifies the documents requested from petitioner, namely: (1) the reports; (2) identification documents; (3) statement of accounts; and (4) other transaction documents which pertain to the three specific transactions of Lionair's Union Bank Account No. 13133-000119-3.[36]

Contrary to petitioner's claim, respondent contends that it would be easy to retrieve the specific records from their pool of transactions, as these are electronically processed and may be searched within seconds or minutes.[37]

Moreover, respondent belies petitioner's claim that it was not required to furnish copies of the Motion for Reconsideration for being a nominal party.

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30 Id. at 94.
31 Id. at 95–97.
32 Id. at 98.
33 Id. at 99, citing Republic Act No. 6426 (1972), sec. 8, which provides:
SECTION 8. *Secrecy of foreign currency deposits.* — All foreign currency deposits authorized under this Act, as amended by PD No. 1035, as well as foreign currency deposits authorized under PD No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositor, in no instance shall foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office whether judicial or administrative or legislative, or any other entity whether public or private; Provided, however, that said foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.
34 Id. at 100.
35 Id. at 101–102.
36 Id. at 91 and 102.
37 Id. at 102.

Citing the Rules of Court,[38] respondent argues that proof of service of the Motion is required, in line with the requirements of due process.[39]

Respondent points out that even the Office of the Solicitor General agrees that the bank documents may be subpoenaed, and that Lionair has waived confidentiality through a Secretary's Certificate.[40]

Lastly, respondent asserts that the temporary restraining order and/or writ of preliminary injunction should not be issued considering that petitioner failed to prove having a clear and existing right enforceable by law,[41] and any material or substantial invasion of that right.[42]

On June 19, 2018, absent a temporary restraining order or writ of preliminary injunction, petitioner, through Jerry L. Leal, acting director of the Financial Analysis Group, testified.[43] Nevertheless, petitioner still addressed respondent's contention in this case.[44]

In its Reply,[45] petitioner reiterates that although Section 9(c) of the law does not explicitly say so, the prohibition on disclosure extends to petitioner, it having been mandated to keep such reports confidential. Otherwise, it says, the confidentiality requirement would be for naught.[46]

Petitioner adds that the reports are pieces of financial intelligence information that should not be used as evidence because they are merely leads in the investigation of money laundering activities.[47] To use these reports as evidence, Section 11 of the Anti-Money Laundering Act authorizes petitioner to inquire into the transaction but only upon the Court of Appeals' order.[48]

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38 RULES OF COURT, Rule 15, secs. 4–6 provide:
SECTION 4. *Hearing of motion.* — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant. Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
SECTION 5. *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.
SECTION 6. *Proof of service necessary.* — No written motion set for hearing shall be acted upon by the court without proof of service thereof.

39 *Rollo*, p. 103.

40 Id. at 105.

41 Id. at 105–107.

42 Id. at 107.

43 Id. at 123.

44 Id.

45 Id. at 122–129.

46 Id.

47 Id. at 124–125.

48 Id. at 125 citing Republic Act No. 9160 (2001), sec. 11, which provides:
SECTION. 11. *Authority to Inquire into Bank Deposits.* — Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments are related to

Thus, petitioner says the disclosure of reports directed by the Subpoena will only bypass the bank inquiry process laid down by law.[49]

Moreover, petitioner argues that Lionair's written permission cannot allow the disclosure of the transactions because the subpoena will necessarily include the counterpart transactions from which the funds originated. In this case, petitioner notes, the originating account is owned by another person who has not executed a similar waiver.[50]

The main issue for this Court's resolution is whether or not the Sandiganbayan gravely abused its discretion in denying the Motion to Quash and Motion for Reconsideration of petitioner Anti-Money Laundering Council. To answer this, the following issues must first be resolved:

First, whether or not petitioner Anti-Money Laundering Council is required to furnish the respondent a copy of the Motion for Reconsideration;

Second, whether or not Section 9(c) of the Anti-Money Laundering Act prohibits petitioner Anti-Money Laundering Council from disclosing confidential and suspicious transaction reports;

Third, whether or not the written permission of Lionair, Inc. is sufficient to disclose the transaction reports; and

Finally, whether or not the Subpoena failed to reasonably describe the documents sought to be produced.

I

Rule 15 of the Rules of Court lays down the basic rules on the filing and hearing of a motion:

> SECTION 4. Hearing of motion. — Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.
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> Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by

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an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)(1), (2) and (12).
To ensure compliance with this Act, the Bangko Sentral ng Pilipinas (BSP) may inquire into or examine any deposit or investment with any banking institution or non-bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP.

49 Id.

50 Id. at 126.

> the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.
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> SECTION 5. Notice of hearing. — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.
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> SECTION 6. Proof of service necessary. — No written motion set for hearing shall be acted upon by the court without proof of service thereof.

Under Rule 15, Section 4, every written motion must be set for hearing by the applicant, except when the court deems it prejudicial to the other party. The motion shall then be served together with its notice of hearing in a manner that would ensure receipt by the other party at least three days before the date of hearing, unless the court, for good cause, sets the hearing on shorter notice.

Sections 5 and 6 state that the notice of hearing shall be addressed to the parties concerned and shall specify the time and date of the hearing. No motion shall be acted upon by the court without proof of service of its notice, except when the court is satisfied that the adverse party's rights are not affected.

In *Valderrama v. People*,[51] this Court emphasized that these requirements are mandatory. While there may be motions which the court may resolve without prejudice to the opposing party, the general rule holds that all motions must set a hearing, including motions for reconsideration. These rules are in place to satisfy the requirements of due process:

> The intention behind the notice requirements is to avoid surprises and to provide the adverse party a chance to study the motion and to argue meaningfully against it before the court's resolution.
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> This Court has allowed exceptions to this rule when to do so would not cause prejudice to the other party nor violate his or her due process rights.[52] (Citations omitted)

Hence, the notice of hearing on the motion must be furnished to the adverse party, and the latter must be informed of the time and date of the hearing. Failure to comply means the motion is defective, reducing it to a mere scrap of paper.[53]

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51 808 Phil. 70 (2017) [Per J. Leonen, Second Division].
52 Id. at 82–83.
53 Id. at 82.

Jurisprudence amply supports this rule. In *De la Peña v. De la Peña*,[54] this Court cited a series of cases where a motion for reconsideration was rendered defective due to a lack of notice of hearing:

> In *New Japan Motors, Inc. v. Perucho* defendant filed a motion for reconsideration which did not contain any notice of hearing. In a petition for certiorari, we affirmed the lower court in ruling that a motion for reconsideration that did not contain a notice of hearing was a useless scrap of paper. We held further —
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> > Under Sections 4 and 5 of Rule 15 of the Rules of Court, . . . a motion is required to accompanied by a notice of hearing which must be served by the applicant on all parties concerned at least three (3) days before the hearing thereof. Section 6 of the same rule commands that '(n)o motion shall acted upon by the Court, without proof of service of the notice thereof . . . .' It is therefore patent that the motion for reconsideration in question is fatally defective for it did not contain any notice of hearing, We have already consistently held in a number of cases that the requirements of Sections 4, 5 and 6 of Rule 15 of the Rules of Court are mandatory and that failure to comply with the same is fatal to movant's cause.
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> In *Sembrano v. Ramirez* we declared that —
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> > (A) motion without notice of hearing is a mere scrap of paper. It does not toll the running of the period of appeal. This requirement of notice of hearing equally applies to a motion for consideration. Without such notice, the motion is *pro forma*. And a *pro forma* motion for reconsideration does not suspend the running of the period to appeal.
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> In *In re Almacen* defendant lost his case in the lower court. His counsel then filed a motion for reconsideration but did not notify the adverse counsel of the time and place of hearing of said motion. The Court of Appeals dismissed the motion for reason that "the motion for reconsideration date July 5, 1966 does not contain a notice of time and place of hearing thereof and is, therefore a useless piece of paper which did not interrupt the running of the period to appeal, and, consequently, the appeal was perfected out of time." When the case was brought to us, we reminded counsel for the defendant that —
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> > As a law practitioner who was admitted to the bar as far back as 1941, Atty. Almacen knew — or ought to have known — that a motion for reconsideration to stay the running of the period of (sic) appeal, the movant must not only serve a copy of the motion upon the adverse party . . . but also notify the adverse party of the time and place of hearing. . .
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> Also, in *Manila Surety and Fidelity Co., Inc. v. Bath Construction and Company* we ruled —

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[54] 327 Phil. 936 (1996) [Per J. Bellosillo, First Division].

> The written notice referred to evidently is that prescribed for motions in general by Rule 15, Sections 4 and 5 (formerly Rule 26), which provide that such notice shall state the time and place of hearing and shall be served upon all the parties concerned at least three days in advance. And according to Section 6 of the same Rule no motion shall be acted upon by the court without proof of such notice. Indeed it has been held that in such a case the motion if nothing but a useless piece of paper. The reason is obvious; unless the movant sets the time and place of hearing the court would have no way to determine whether that party agrees to or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition.
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> In fine, the abovecited cases confirm that the requirements laid down in Sec. 5 Rule 15 of the Rules of Court that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion, are mandatory. If not religiously complied with, they render the motion *pro forma*. As such the motion is a useless piece of paper that will not toll the running of the prescriptive period.[55] (Citations omitted)

In this case, petitioner does not deny that it failed to furnish the accused or their counsels their copies of the Motion for Reconsideration. However, it contends that it is not required to follow this rule because it is merely a nominal party.

We do not agree.

First, petitioner cannot claim that it is merely a nominal party.

A nominal or *pro forma* party is a person "who is joined as a plaintiff or defendant, not because such party has any real interest in the subject matter or because any relief is demanded, but merely because the technical rules of pleadings require the presence of such party on the record."[56] On the other hand, an indispensable party is "a party in interest without whom no final determination can be had of an action without that party being impleaded."[57] They are parties with "such an interest in the controversy that a final decree would necessarily affect their rights, so that the court cannot proceed without their presence."[58]

Petitioner is not a nominal party as it claims to be. It has an interest in this case, and the relief respondent prays for is exactly directed at it. This makes petitioner an indispensable party. As petitioner alleged in its pleadings,

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55 Id. at 940–943.

56 *Samaniego v. Aguila*, 389 Phil. 782, 784 (2000) [Per J. Mendoza, Second Division].

57 RULES OF COURT, Rule 3, sec. 7 provides:
SECTION 7. *Compulsory joinder of indispensable parties*. — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

58 *Samaniego v. Aguila*, 389 Phil. 782–787, 783–784 (2000) [Per J. Mendoza, Second Division].

it is the agency directed to act, and it claims that it will suffer injury if the Subpoena will be implemented. Without petitioner, there can be no relief accorded. It was also petitioner that filed the Motion to Quash and the Motion for Reconsideration.

Even if petitioner were just a nominal party, it is still required to comply with the requirements under the Rules of Court. Courts only dispense with the requirement of notice when it will not prejudice the adverse party or violate their right to due process.

Here, the lack of notice of the Motion for Reconsideration will clearly violate respondent's due process rights. The character and tenor of the Motions filed by petitioner precisely demand respondent's participation. If respondent was not informed of their contents and did not appear during the hearing, it will be robbed of the opportunity to oppose them.

II

The Anti-Money Laundering Act was passed "to protect and preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity."[59]

Section 7 of the law creates the Anti-Money Laundering Council, which is mandated "to require and receive covered transaction reports from covered institutions[,]" as well as "to issue orders . . . to determine the true identity of the owner of any monetary instrument or property subject of a covered transaction report . . . on the basis of substantial evidence, . . . involving, or related to, directly or indirectly, in any manner or by any means, the proceeds of an unlawful activity[.]"[60]

A covered transaction refers to "a single, series, or combination of transactions involving a total amount in excess of [₱4,000,000.00] or an equivalent amount in foreign currency" which has no credible purpose, origin, or underlying trade obligation or contract.[61]

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59 Republic Act No. 9160 (2001), sec. 2 provides:
SECTION 2. *Declaration of Policy.* — It is hereby declared the policy of the State to protect and preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity. Consistent with its foreign policy, the State shall extend cooperation in transnational investigations and prosecutions of persons involved in money laundering activities wherever committed.

60 Republic Act No. 9160 (2001), sec. 7(1).

61 Republic Act No. 9160, (2001) sec. 3(b) provides:
SECTION 3. *Definitions.* — For purposes of this Act, the following terms are hereby defined as follows:
(b) "Covered transaction" is a single, series, or combination of transactions involving a total amount in excess of Four million Philippine pesos (Php4,000,000.00) or an equivalent amount in foreign currency based on the prevailing exchange rate within five (5) consecutive banking days except those between a covered institution and a person who, at the time of the transaction was a properly identified client and

Covered transactions also include: (1) transactions in cash or other equivalent monetary instrument exceeding ₱500,000.00; (2) transaction with or involving jewelry or precious stone dealers in cash or other equivalent monetary instrument exceeding ₱1,000,000.00; and (3) casino cash transaction exceeding ₱5,000,000.00 or its equivalent are also deemed covered transactions.[62]

On the other hand, suspicious transactions are transactions with covered institutions, regardless of the amounts involved, where any of the following circumstances exists:

> 1. there is no underlying legal or trade obligation, purpose or economic justification;
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> 2. the client is not properly identified;
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> 3. the amount involved is not commensurate with the business or financial capacity of the client;
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> 4. taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under the Act;
>
> 5. any circumstance relating to the transaction which is observed to deviate from the profile of the client and/or the client's past transactions with the covered institution;
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> 6. the transaction is in any way related to an unlawful activity or offense under this Act that is about to be, is being or has been committed; or
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> 7. any transaction that is similar or analogous to any of the foregoing.[63]

Section 9(c) of the Anti-Money Laundering Act further details how the covered and suspicious transactions will be reported. Under this provision, covered institutions and their officers and employees are prohibited from

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the amount is commensurate with the business or financial capacity of the client; or those with an underlying legal or trade obligation, purpose, origin or economic justification.
It likewise refers to a single, series or combination or pattern of unusually large and complex transactions in excess of Four million Philippine pesos (Php4,000,000.00) especially cash deposits and investments having no credible purpose or origin, underlying trade obligation or contract.

62 Implementing Rules and Regulations of Republic Act No. 9160 (2001), Rule 2, sec. 1 provides:
SECTION 1. *Definitions.* —
For purposes of this IRR, the following terms are hereby defined as follows:
. . . .
(w) "Covered Transaction" refers to:
(1) A transaction in cash or other equivalent monetary instrument exceeding Five Hundred Thousand pesos (PHP500,000.00).
(2) A transaction with or involving jewelry dealers, dealers in precious metals and dealers in precious stones in cash or other equivalent monetary instrument exceeding One Million pesos (Php1,000,000.00).
(3) A casino cash transaction exceeding Five Million Pesos (PHP5,000,000.00) or its equivalent in other currency.

63 Republic Act No. 9160 (2001), sec. 3, as amended by Republic Act No. 9194 (2003), sec. 2.

communicating that a covered or suspicious transaction report was made, its contents, or any information related to the reports. Section 9(c) states:

> SECTION 9. Prevention of Money Laundering; Customer Identification Requirements and Record Keeping. —
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> . . . .
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> (c) Reporting of Covered and Suspicious Transactions. — Covered institutions shall report to the AMLC all covered transactions and suspicious transactions within five (5) working days from occurrence thereof, unless the Supervising Authority prescribes a longer period not exceeding ten (10) working days.
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> Should a transaction be determined to be both a covered transaction and a suspicious transaction, the covered institution shall be required to report the same as a suspicious transaction.
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> When reporting covered or suspicious transactions to the AMLC, covered institutions and their officers and employees shall not be deemed to have violated Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791 and other similar laws, but are prohibited from communicating, directly or indirectly, in any manner or by any means, to any person, the fact that a covered or suspicious transaction report was made, the contents thereof, or any other information in relation thereto. In case of violation thereof, the concerned officer and employee of the covered institution shall be criminally liable. However, no administrative, criminal or civil proceedings, shall lie against any person for having made a covered or suspicious transaction report in the regular performance of his duties in good faith, whether or not such reporting results in any criminal prosecution under this Act or any other law.
>
> When reporting covered or suspicious transactions to the AMLC, *covered institutions and their officers and employees are prohibited from communicating directly or indirectly, in any manner or by any means, to any person or entity, the media, the fact that a covered or suspicious transaction report was made, the contents thereof, or any other information in relation thereto.* Neither may such reporting be published or aired in any manner or form by the mass media, electronic mail, or other similar devices. In case of violation thereof, the concerned officer and employee of the covered institution and media shall be held criminally liable.[64] (Emphasis supplied)

Section 3 enumerates the covered institutions required to report to the Anti-Money Laundering Council:

> SECTION 3. Definitions. — For purposes of this Act, the following terms are hereby defined as follows:
>
> (a) "Covered institution" refers to:

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64 Republic Act No. 9160 (2001), as amended by Republic Act No. 9194 (2003), sec. 9(c).

> (1) banks, non-banks, quasi-banks, trust entities, and all other institutions and their subsidiaries and affiliates supervised or regulated by the Bangko Sentral ng Pilipinas (BSP);
>
> (2) insurance companies and all other institutions supervised or regulated by the Insurance Commission; and
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> (3) (i) securities dealers, brokers, salesmen, investment houses and other similar entities managing securities or rendering services as investment agent, advisor, or consultant, (ii) mutual funds, closed-end investment companies, common trust funds, pre-need companies and other similar entities, (iii) foreign exchange corporations, money changers, money payment, remittance, and transfer companies and other similar entities, and (iv) other entities administering or otherwise dealing in currency, commodities or financial derivatives based thereon, valuable objects, cash substitutes and other similar monetary instruments or property supervised or regulated by Securities and Exchange Commission.

The prohibition applies to institutions and persons that, under the law and by reason of their business, possess information on covered and suspicious transactions. It supports the functions of the Anti-Money Laundering Council and other prosecuting agencies. If these institutions were allowed to disclose information to anyone, especially to persons subject of the report, their investigatory functions will be rendered ineffective.

Meanwhile, the Anti-Money Laundering Council is the financial intelligence unit tasked to analyze the covered transaction reports and suspicious transaction reports submitted to it. It "shall require and receive [covered transaction reports] and [suspicious transaction reports] from covered persons"; "formulate guidelines and develop protocols necessary to require covered persons to submit relevant information"; and "access all relevant financial, administrative and law enforcement information for a holistic financial intelligence analysis of [covered transaction reports] and [suspicious transaction reports]."[65]

Aside from collecting and analyzing reports of covered and suspicious transactions, the Anti-Money Laundering Council is also tasked to be the investigator and complainant in money laundering or money terrorism finance cases. Section 7 of the Anti-Money Laundering Act states in part:

> (3) to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General;
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> (4) to cause the filing of complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offenses;
>
> (5) to initiate investigations of covered transactions, money laundering activities and other violations of this Act;

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[65] Implementing Rules and Regulations of Republic Act No. 9160 (2018), Rule 6, secs. 1(B), 1.6.1–1.6.3.

> (6) to freeze any monetary instrument or property alleged to be proceeds of any unlawful activity[.][66]

To perform these functions, the Anti-Money Laundering Council is authorized to "issue orders addressed to the appropriate [supervising authority] or the covered person to determine the true identity of the owner of any monetary instrument or property: (a) subject of [covered transaction report] or [suspicious transaction report]; (b) subject of request for assistance from a foreign State or jurisdiction; or (c) believed by the Council, on the basis of substantial evidence, to be, in whole or in part, wherever located, representing, involving, or related to, directly or indirectly, in any manner or by any means, the proceeds of any unlawful activity."[67]

Here, petitioner Anti-Money Laundering Council argues that the prohibition extends to it. It claims that as a covered institution, it cannot be forced to disclose such prohibited information.

This argument is untenable.

First, as the text of the Anti-Money Laundering Act reveals, petitioner is not one of the covered institutions prohibited from disclosing information on covered and suspicious transactions. Section 3(a) enumerates those that are prohibited from disclosing such information, and petitioner is not one of them.

Second, contrary to petitioner's claim, the rationale behind the prohibition does not extend and apply to it. To reiterate, covered institutions are precluded from disclosing the reports or the fact they are reported to petitioner, because it will impede the possible investigation on the covered and suspicious transactions. Unlike covered institutions, petitioner is mandated to investigate and use the information it has to institute cases against violators.

The international standards that petitioner cites, which advocate confidentiality of the transaction reports and prohibits their disclosure, only apply to covered institutions. As the wording of the standards shows, the prohibition avoids "tipping-off" or situations where covered transactions will warn depositors and possible violators that they are being reported to petitioner.

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66 Republic Act No. 9160 (2001), sec. 7.

67 Implementing Rules and Regulations of Republic Act No. 9160 (2018), Rule 6, secs. 1(C), 1.8.1.

Third, the prohibition and confidentiality provisions cannot apply to petitioner; otherwise, it would contravene its direct mandate under Section 7 of the Anti-Money Laundering Act.

Petitioner is not merely a repository of reports and information on covered and suspicious transactions. It is created precisely to investigate and institute charges against the offenders. Section 7 clearly states that it is tasked to institute civil forfeiture proceedings and other remedial proceedings, and to file complaints with the Department of Justice or the Office of the Ombudsman for anti-money laundering offenses.

In addition, the criminal prosecution of anti-money laundering offenses would be unduly hampered if petitioner were prohibited from disclosing information regarding covered and suspicious transactions. It would be antithetical to its own functions if petitioner were to refuse to participate in prosecuting anti-money laundering offenses by taking shelter in the confidentiality provisions of the Anti-Money Laundering Act.

This is not the first time that petitioner was called to participate in the investigation and prosecution of cases involving banking transactions.

For instance, in *Revilla v. Sandiganbayan*,[68] the Anti-Money Laundering Council was presented as a witness during the Sandiganbayan trials in the plunder cases involving the pork barrel scam. In one of the cases, the Council reported that several investment and bank accounts of accused Ramon Revilla, Jr. were terminated immediately before and after the PDAF scandal leaked to the public.[69]

The Anti-Money Laundering Council testified to bank transaction records showing that the accounts of the involved nongovernment organizations with the Land Bank of the Philippines and Metropolitan Bank and Trust Company were only temporary repositories of money, and that the withdrawals were done only after the approval of accused Janet Napoles (Napoles). The Council also testified that the bank accounts were opened using the identification cards of Napoles's corporations, consistent with the other accused's testimonies.[70]

The Sandiganbayan used the Council's report as basis to issue a writ of preliminary attachment. This Court affirmed the writ's validity, citing the Council's report as strong evidence against the accused.[71]

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68 G.R. Nos. 218232, et al., July 24, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64378> [Per J. Carpio, En Banc].

69 Id.

70 Id.

71 Id.

Thus, in this case, petitioner's reliance on the confidentiality provision is misplaced. It was specifically created as the country's financial intelligence unit to ensure that our financial institutions are not used as conduits to perpetuate unlawful activities.

III

Republic Act No. 6426, or the Foreign Currency Deposit Act, provides the rule on secrecy of foreign currency deposits. Section 8 states:

> SECTION 8. Secrecy of foreign currency deposits. — All foreign currency deposits authorized under this Act, as amended by PD No. 1035, as well as foreign currency deposits authorized under PD No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositor, in no instance shall foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office whether judicial or administrative or legislative, or any other entity whether public or private; Provided, however, that said foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.[72]

As a rule, foreign currency deposits are absolutely confidential, and thus, are not susceptible to examination and inquiry by any person. The law further mandates that foreign currency deposits are exempt from attachment, garnishment, or any other order or process of any court or government agency.

Nevertheless, this rule admits an exception. Section 8 itself states that a foreign currency deposit may be inquired into and examined if there is a written permission from the depositor.[73]

In *China Banking Corporation v. Court of Appeals*,[74] complainant Jose Gotianuy accused his daughter Margaret Dee and his son-in-law of stealing huge sums of money from his US dollar deposit account with Citibank. Allegedly, his daughter received the money from Citibank through checks she deposited with the China Banking Corporation (Chinabank).

To prove his theory, the complainant presented the US dollar checks withdrawn by his daughter from his US dollar placement with Citibank. The trial court then subpoenaed employees of Chinabank to testify on the case. The Court of Appeals affirmed the trial court's order.[75]

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72 Republic Act No. 6426 (1972), sec. 8.
73 *Intengan v. Court of Appeals*, 427 Phil. 293 (2002) [Per J. De Leon, Jr., Second Division].
74 540 Phil. 130 (2006) [Per J. Chico-Nazario, First Division].
75 Id. at 134.

Ultimately, this Court agreed with the lower courts. It ruled that the complainant, as the owner of the funds, had the right to inquire into the deposits.[76] This is the exception to the secrecy of foreign currency deposits under Section 8 of Republic Act No. 6426. Thus:

> [T]he law provides that all foreign currency deposits authorized under Republic Act No. 6426, as amended by Sec. 8, Presidential Decree No. 1246, Presidential Decree No. 1035, as well as foreign currency deposits authorized under Presidential Decree No. 1034 are considered absolutely confidential in nature and may not be inquired into. There is only one exception to the secrecy of foreign currency deposits, that is, disclosure is allowed upon the written permission of the depositor.
>
> . . . .
>
> . . . As a corollary issue, sought to be resolved is whether Jose Gotianuy may be considered a depositor who is entitled to seek an inquiry over the said deposits. The Court of Appeals, in allowing the inquiry, considered Jose Gotianuy, a co-depositor of Mary Margaret Dee. It reasoned that since Jose Gotianuy is the named co-payee of the latter in the subject checks, which checks were deposited in China Bank, then, Jose Gotianuy is likewise a depositor thereof. On that basis, no written consent from Mary Margaret Dee is necessitated.
>
> We agree in the conclusion arrived at by the Court of Appeals.
>
> The following facts are established: (1) Jose Gotianuy and Mary Margaret Dee are co-payees of various Citibank checks; (2) Mary Margaret Dee withdrew these checks from Citibank; (3) Mary Margaret Dee admitted in her Answer to the Request for Admissions by the Adverse Party sent to her by Jose Gotianuy that she withdrew the funds from Citibank upon the instruction of her father Jose Gotianuy and that the funds belonged exclusively to the latter; (4) these checks were endorsed by Mary Margaret Dee at the dorsal portion; and (5) Jose Gotianuy discovered that these checks were deposited with China Bank as shown by the stamp of China Bank at the dorsal side of the checks.
>
> Thus, with this, there is no issue as to the source of the funds. Mary Margaret Dee declared the source to be Jose Gotianuy. There is likewise no dispute that these funds in the form of Citibank US dollar Checks are now deposited with China Bank.
>
> As the owner of the funds unlawfully taken and which are undisputably now deposited with China Bank, Jose Gotianuy has the right to inquire into the said deposits.
>
> A depositor, in cases of bank deposits, is one who pays money into the bank in the usual course of business, to be placed to his credit and subject to his check or the beneficiary of the funds held by the bank as trustee.[77] (Citations omitted)

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[76] Id. at 140.

[77] Id. at 137–140.

Here, there is no question that the owner of the bank account submitted its written permission to allow the inquiry and examination of its accounts. Lionair, the owner of the dollar account subject of the Subpoena, waived its rights under the Foreign Currency Deposit Act and granted the prosecution access to its account. It issued a Board Resolution reflecting this waiver:

> RESOLVED, as it is hereby resolved, to approve the waiver by the Company of its rights under the Bank Secrecy Law and grant the Special Prosecutors, access to LIONAIR INCORPORATED's bank account No. 13133-000199-3 with Union Bank Philippines, Richville Tower Branch, Madrigal Business Park, Alabang, Muntinlupa City;
>
> RESOLVED FURTHER, as it is hereby resolved, to authorize and direct the Union Bank of the Philippines and its duly authorized representatives to allow access to the Special Prosecutors to examine, look into and obtain copies of the records of the Company's bank account No. 13133-000119-3[.][78]

Thus, petitioner's arguments invoking confidentiality should not be an issue, because the owner and depositor of the bank account itself has already waived its rights. Lionair, as the owner of the account and its funds, has the right to inquire into the deposits and its records. Its written permission is sufficient basis for petitioner to disclose the records.

Yet, petitioner cites Section 11 of the Anti-Money Laundering Act, arguing that before the bank records are disclosed, the Court of Appeals must have first issued an order upon finding probable cause. Section 11 states:

> SECTION 11. Authority to Inquire into Bank Deposits. — Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)(1), (2) and (12).
>
> To ensure compliance with this Act, the Bangko Sentral ng Pilipinas (BSP) may inquire into or examine any deposit or investment with any banking institution or non-bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP.[79]

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78 *Rollo*, p. 99.

79 Republic Act No. 9160 (2001), as amended by Republic Act No. 9194 (2003), sec. 11.

Petitioner's reliance on Section 11 is misplaced. It is not this provision of the Anti-Money Laundering Act that applies here, but Republic Act No. 6426.

As the provision reads, Section 11 of the Anti-Money Laundering Act is only an exception to Republic Act No. 6426, as well as Republic Act Nos. 1405 and 8791. Section 11 applies to situations where there is no written permission from the depositor and owner of the bank account. Thus, in Section 11, there is a need for a finding of probable cause and a court order.

Here, the order to produce Lionair's records is not anchored on Section 11 of the Anti-Money Laundering Act, but on the written permission of Lionair, satisfying the requirement under Republic Act No. 6426. Hence, there is no need to require an inquiry order from the Court of Appeals. As shown in *China Banking Corporation* and *Government Service Insurance System*, a subpoena on the disclosure of bank transactions and accounts under Republic Act No. 6426 only requires the depositor's written permission.

IV

Petitioner argues that the description provided in the Subpoena falls short of the requirement under the Rules of Court.

Rule 21 states the requirements of a subpoena. For a subpoena *duces tecum*, Section 3 demands a reasonable description of the books, documents, or things demanded, and these must appear to be relevant. Per Section 4, a party may move to quash the subpoena if it is unreasonable and oppressive, or if the books, documents, or things are not relevant:

> SECTION 3. Form and Contents. — A subpoena shall state the name of the court and the title of the action or investigation, shall be directed to the person whose attendance is required, and in the case of a subpoena duces tecum, it shall also contain a reasonable description of the books, documents or things demanded which must appear to the court prima facie relevant.
>
> SECTION 4. Quashing a Subpoena. — The court may quash a subpoena *duces tecum* upon motion promptly made and, in any event, at or before the time specified therein if it is unreasonable and oppressive, or the relevancy of the books, documents or things does not appear, or if the person in whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.
>
> The court may quash a subpoena *ad testificandum* on the ground that the witness is not bound thereby. In either case, the subpoena may be quashed on the ground that the witness fees and kilometrage allowed by these Rules were not tendered when the subpoena was served.[80]

[80] RULES OF COURT, Rule 21, secs. 3–4.

A subpoena *duces tecum* may be issued if the tests of relevancy and definiteness are satisfied. The court must ensure that "(1) the books, documents or other things requested must appear prima facie relevant to the issue subject of the controversy (test of relevancy); and (2) such books must be reasonably described by the parties to be readily identified (test of definiteness)."[81]

In *Presidential Commission on Good Government v. Sandiganbayan*,[82] a petition was filed assailing sequestration order involving the shares of stock of Lucio C. Tan, among others. Upon motion, the Sandiganbayan then issued a subpoena *ad testificandum* and *duces tecum*, requiring the Presidential Commission on Good Government's records officer to produce the following documents:

> 1. The documents, records and other evidence considered by the PCGG and on the basis of which the PCGG issued the Sequestration Order dated June 19, 1986 (Annex "A," hereof) and the Writ of Sequestration dated June 19, 1986 (Annex "B," hereof); and
>
> 2. The minutes of the meeting(s) of the PCGG at which the Sequestration Order dated June 19, 1986 (Annex "A" hereof) and Writ of Sequestration dated June 19, 1986 (Annex "B" hereof) was authorized to be issued and which chronicles the discussion (if any) and the decision (of the PCGG Chairman and Commissioners) to issue the Sequestration Order dated June 19, 1986 (Annex "A," hereof) and the Writ of Sequestration dated June 19, 1986 (Annex "B," hereof).[83]

The Presidential Commission on Good Government moved to quash the subpoena, but when this was denied, it petitioned the case to this Court, arguing that the subpoena was unreasonable and oppressive.[84]

In dismissing the petition, this Court ruled that the subpoena passed the test of definiteness. It gave credence to respondents' argument that "the documents sought are material and relevant to the issues and are properly described and identified[.]"[85] Thus, the Sandiganbayan did not commit grave abuse of discretion in issuing the subpoena.[86]

In this case, petitioner assails the validity of the Subpoena *Duces Tecum* for failing to reasonably describe the documents sought to be produced. We disagree.

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81 *Roco v. Contreras*, 500 Phil. 275, 284 (2005) [Per J. Garcia, Third Division].
82 562 Phil. 557 (2007) [Per J. Sandoval-Gutierrez, First Division].
83 Id. at 559.
84 Id. at 560.
85 Id. at 562.
86 Id. at 563.

The Subpoena *Duces Tecum* issued by the Sandiganbayan satisfies the test of definiteness. Its simple reading clearly shows which specific reports and transactions are being requested. The contested paragraph of the Subpoena reads:

> "Documents to be produced:
>
> The original or certified copies of any and all reports, identification documents, statement of accounts and other transaction documents obtained by the said office from any and all banking institutions, non-bank financial institutions and other covered institutions, in connection with the above-specified transactions reflected in the savings passbook of Lionair under Union Bank Savings Account No.13133-000119-3. Copy of said passbook is hereby attached for easy reference."[87]

The documents requested are readily and reasonably identifiable: (1) the reports; (2) identification documents; (3) statement of accounts; and (4) other transaction documents particularly pertaining to the specific account number and three specific bank transactions.

Finally, petitioner cannot excuse itself from complying with the Subpoena by raising the difficulty of retrieving the records. As petitioner itself admitted, the transactions are done electronically, and this Court is well aware that the advancement in technology with our banking system allows for easier retrieval of these records. In any case, petitioner failed to show how it would be impossible for it to retrieve the reports from its system.

In sum, there was no showing that the Sandiganbayan gravely abused its discretion in issuing the Subpoena *Duces Tecum* and *Ad Testificandum* and denying petitioner's Motion to Quash and Motion for Reconsideration. Instead of avoiding compliance with the Subpoena, petitioner must firmly perform its mandate as an investigatory body and independent financial intelligence unit.

WHEREFORE, the Petition for Certiorari is **DISMISSED.** The March 28, 2017 Resolution and May 12, 2017 Order of the Sandiganbayan in Criminal Case Nos. SB-12-CRM-0164 to 0167 are **AFFIRMED.**

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

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87 *Rollo*, p. 102.

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice