



REAL ESTATE SECTOR

A Money Laundering/Terrorism Financing/Proliferation Financing Assessment

Executive Summary

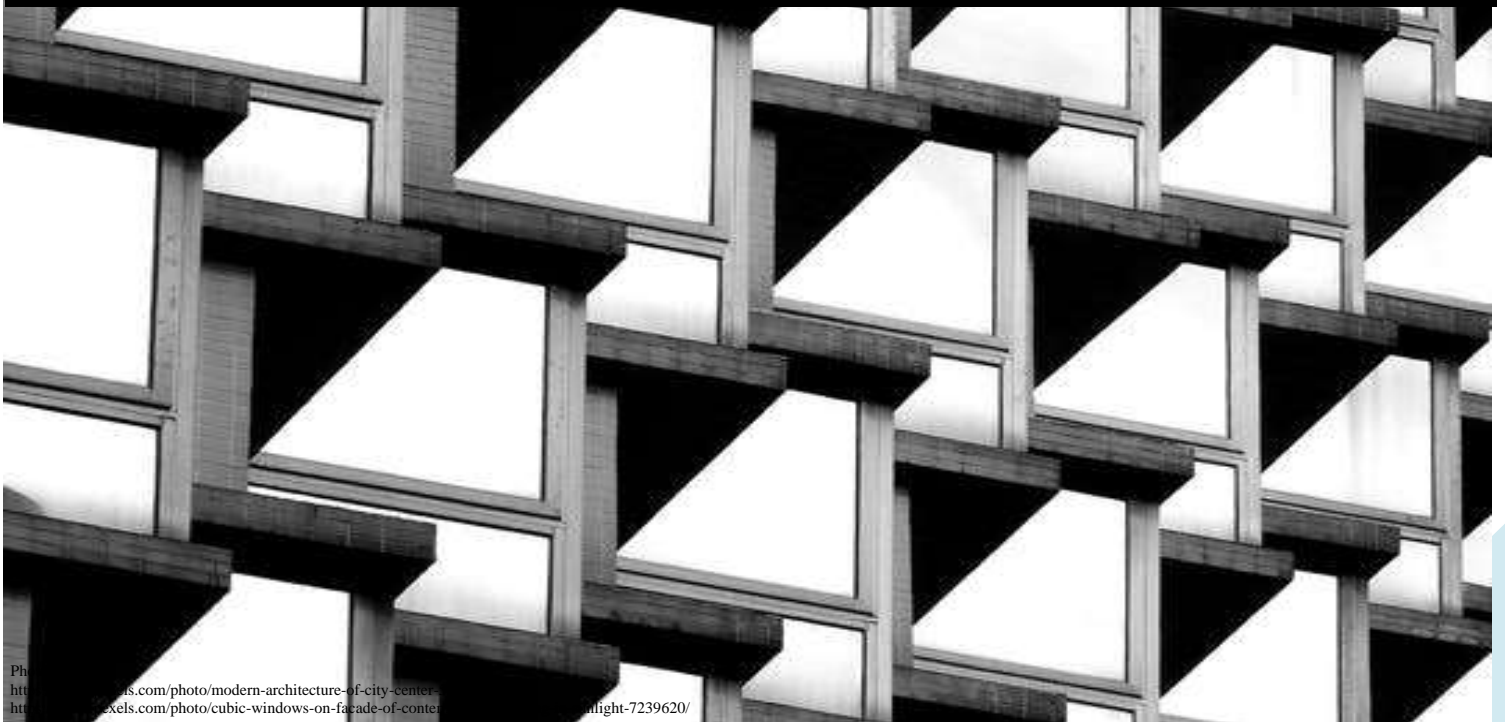


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EXECUTIVE SUMMARY

Investment in the real estate sector offers advantages for both legitimate investors and for those who intend to misuse the sector for criminal purposes. Price appreciation in the real estate sector refers to the increase in the value of a real estate property over a period of time for both residential and commercial properties. One of the goals of investing in real estate is to get a positive return on the investment when the investor decides to sell the property in the future. Criminals, however, abuse the facility of the sector while providing an avenue for obscuring the true source of funds and the identity of the ultimate beneficial owner of the real asset, which are the two key elements of the money laundering process.

The real estate sector, including the steady appreciation of its price over time, is therefore considered an extraordinary importance to the economy in general and the financial system in particular. The widespread use of mechanisms allowing households to access the property market; the elimination of personal limitations on property ownership; and the economic development and growth of tourism in many regions have all led to the exponential growth in the number of financial transactions linked to real estate. The extraordinary range of possibilities for misusing these processes also allows suspected criminals to integrate and enjoy illegally obtained funds.

The Financial Action Task Force (FATF)¹ has included real estate agents in the FATF Forty Recommendations as a designated non-financial business and profession (DNFBP), “*when they are involved in transactions for their client concerning the buying and selling of real estate.*” This subjects the sector to compliance with the relevant preventive measures and recommendations, such as conducting customer due diligence (CDD), reporting suspicious transactions, and keeping records of customers and clients, including their transactions. An interpretive note clarifies that real estate agents should comply with CDD requirements “*with respect to both the purchasers and vendors of the property.*” According to FATF, real estate accounted for up to 30% of criminal assets confiscated worldwide between 2011 and 2013.²

Certain characteristics of the real estate sector make it attractive for potential use and misuse by criminals to launder proceeds. The 2007 FATF report³ outlines the basic techniques on how the sector is exploited, such as the use of complex loans or credit finance, the use of non-financial professionals, the use of corporate vehicles, among others. Further, the report provides a description of the techniques, including case examples. The report also includes a basic list of risk indicators derived from the case examples, which can assist financial institutions and other agencies/institutions involved in

¹ The Financial Action Task Force (FATF) is the global money laundering and terrorism financing watchdog. The intergovernmental body sets international standards that aim to prevent these illegal activities and the harm they cause to society. As a policy-making body, the FATF works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. To achieve the global implementation of the FATF Recommendations, the FATF relies on a strong global network of FATF-Style Regional Bodies (FSRBs), in addition to its own 39 members. The nine FSRBs have an essential role in promoting the effective implementation of the FATF Recommendations by their membership and in providing expertise and input in FATF policy-making. (www.fatf-gafi.org)

² <https://transparency.eu/wp-content/uploads/2018/01/TBABP-scoping-paper-AML-gaps-in-real-estate-sector.pdf>

³ <https://www.fatf-gafi.org/documents/documents/moneylaunderingandterroristfinancingthroughtherealestatesector.html>

certain types of real estate activities in CDD and in performing risk analysis on new and existing clients.

In the Philippines, the Anti-Money Laundering Act of 2001 (AMLA), which was recently amended by Republic Act No. (RA) 11521, has included real estate brokers and developers as covered persons (CPs) under the anti-money laundering/counter-terrorism financing (AML/CTF) regime. Further, RA 11521 defines covered transactions for the real estate-CPs as single cash transactions in excess of PhP7.5 million, or its equivalent in any other currency.

METHODOLOGY AND SCOPE

The sector review assessment intends to identify existing and potential risks present in the sector and to develop risk measures. The assessment of risk will be based on existing threats and vulnerability assessments. The *threat* is based on the assumption that money laundering and terrorism financing (ML/TF) are functions of “proceeds of crime” and, therefore, assesses the generation of funds, its flows, and patterns of proceeds of crime; while *vulnerability* assesses the defense and reaction mechanisms available for combating ML/TF. *Vulnerability* aims to identify the weaknesses, gaps, and deficiencies in the AML/CTF systems or controls. The study also employs the modified *World Bank* tool,⁴ as one of its assessment instruments in evaluating the vulnerability of the real estate sector. Proliferation financing⁵ (PF), will be assessed in a similar linear fashion to TF and in the narrowest sense: threats and factors on the financing of activities or certain actions/proliferators related to United Nations Security Council Resolutions (UNSCR) 1540,⁶ 1718,⁷ and 2231;⁸ and their successor resolutions.

In November 2020, the Anti-Money Laundering Council (AMLC) initiated collecting information from the real estate sector in the form of a survey questionnaire. The questionnaire, which contains requests for information on the real estate landscape, regulatory and financial record, perception of threats, vulnerabilities and consequences, and other challenges (i.e., COVID-19 pandemic experience), was shared with real estate industry associations and other real estate players.

The survey questionnaire was intended to gauge the sector’s understanding of ML/TF and associated risks. Considering that the real estate was not yet covered under the AMLA, as

⁴ The 2015 WB tool uses a combination of Bayesian network and weighted average to determine the degree of dependence or correlation among the variables. The AML controls are assessed by estimating the extent to which the AML regulations, laws, and AML process address the gaps and conform with the international standards. Bayesian network (BN) is a type of **Probabilistic Graphical Model** used to build models from data and/or expert opinion. It is a form of conditional dependencies which can be estimated using statistical and computational methods. It combines the principles of graph theory, probability theory, computer science, and statistics. (Second NRA, 2017)

⁵ There is at present no internationally agreed definition of *proliferation financing* (PF). The nature of PF is multifaceted – a financial crime risk, a sanctions risk, and a risk to international counter-proliferation measures (RUSI Guide to National PF Risk Assessment). FATF defines ‘Proliferation financing’ as – an act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual-use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations (FATF, Combating Proliferation Financing)

⁶ [https://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1540%20\(2004\)](https://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1540%20(2004))

⁷ <http://unscr.com/en/resolutions/1718>

⁸ <https://www.un.org/securitycouncil/content/2231/background>

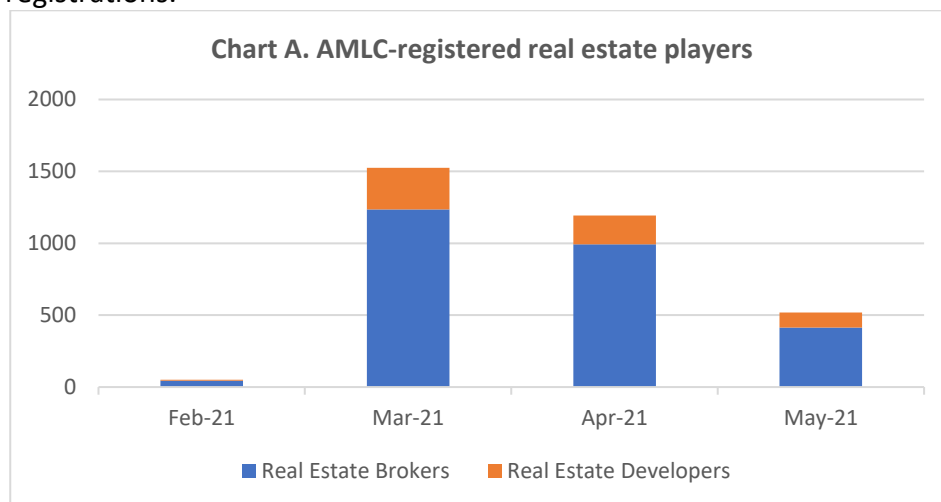
amended, at the time of the survey propagation, a low appreciation and response rate was received from the sector. Nevertheless, the sector review assessment was complemented by credible information and data from government websites, industry associations websites, AMLC database, published studies, and engagement with the real estate sector. Further, the sector review was supported with the assessment of covered and suspicious transactions filed on real estate entities based on predefined set of criteria. The transaction assessment covered the period 2019 to 2020.

Albeit the study is preliminary, an impact assessment has also been factored. The level of risk is based on factors assessed using the numerical scale and will be supported with quantitative and qualitative data, and critical judgment.

SECTOR ASSESSMENT OF MONEY LAUNDERING, TERRORISM FINANCING, AND PROLIFERATION FINANCING RISKS

Real estate transactions allow integration of illicit funds into the legal economy while serving as a safe investment. These transactions provide a “veneer of respectability, legitimacy, and normality” to the criminal funds. Real estate is as attractive to criminals as it is to any investor, since its prices are generally stable and are likely to appreciate over time. Moreover, real estate can be an avenue for “clandestine for operations,” used as a safehouse/second home, or rented out to generate income.

Since the recent inclusion of real estate brokers and developers as CPs under the AMLA, as amended, in January 2021, around 3,288 real estate brokers/developers (REBs/REDs) have registered with the AMLC as of May 2021. The number of registrations in March 2021 surged to 1,526, registering a 2,952% increase from 50 registrations in February 2021. Over hundreds of RED/REB registrations are still pending approval by the AMLC, upon submission of relevant documents. The volume of registrations is also challenged by the limited manpower of the AMLC’s Compliance and Supervision Group (CSG), which handles DNFBP⁹ registrations.



**As of run date 31 May 2021. Over hundreds of RED/REB registrations are still pending approval, upon submission of relevant documents.*

⁹ The Compliance and Supervisions Group of the Anti-Money Laundering Council handles registrations of thousands of designated non-financial businesses and professions, such as casinos, lawyers and accountants, jewelry dealers, and real estate brokers and dealers.

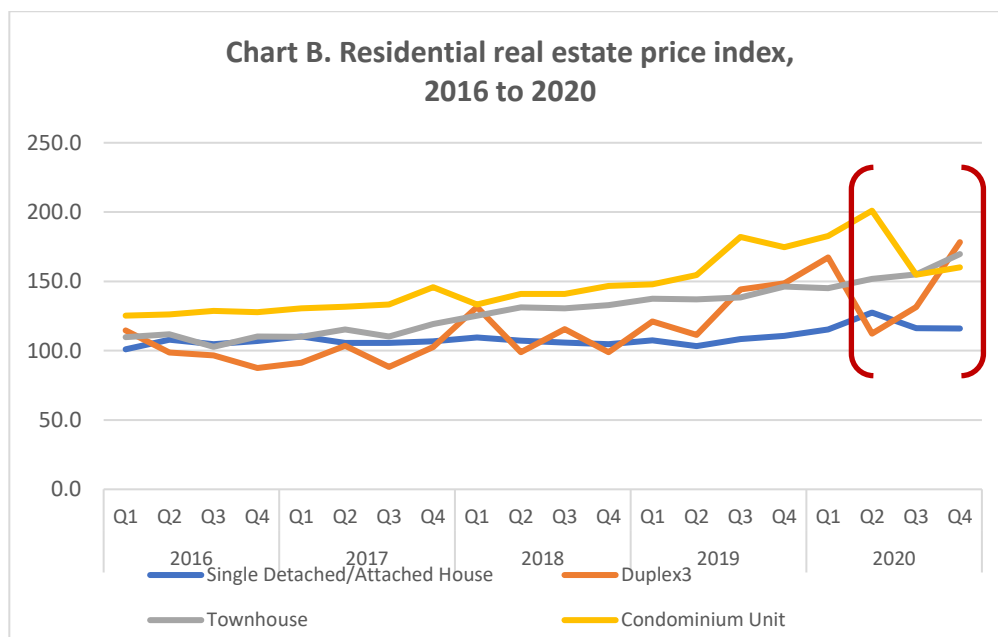
COVID-19 pandemic and its impact on the real estate sector in the Philippines

The Coronavirus disease identified in 2019, commonly called COVID-19, that escalated to a pandemic in 2020, has caused businesses to slump as the greater population is required to stay home and work virtually in most cases. Further, people appear to have shifted in behavior and preferences, particularly when it comes to living spaces. A smart home office has now become a requirement for business owners and working professionals, who have the privilege to avail of work-from-home (WFH) arrangements.

As the effects of COVID-19 are felt worldwide, real estate companies are affected in different ways. Real estate executives are becoming more concerned with preserving value and liquidity, while keeping tenants and visitors safe, and complying with governmental agency requirements.

Rise in property demand, particularly in affordable housing, was seen in 2020. While numerous global industries have been greatly affected by the pandemic, the nationwide residential property prices in the Philippines recorded a 27.1% growth in the second quarter of 2020, according to the Bangko Sentral ng Pilipinas (BSP).¹⁰ This demand is seen in the areas of suburban residential and affordable housing.

Historical data report on residential real estate price indices (RREPI)¹¹ published by BSP shows a decline in property prices of condominium units, while prices for townhouse and duplex houses continue to rise in the third and fourth quarters of 2020, as the Philippines eases the lockdowns amidst the pandemic (Chart B). The slump in property prices of condominium units may be attributed to the postponement of launches by developers and low demand for transient dwelling due to the pandemic.











¹⁰ <https://manilastandard.net/mobile/article/350698>

¹¹ https://www.bsp.gov.ph/Pages/MediaAndResearch/PublicationsAndReports/regular_RREPI.aspx, accessed 10 June 2021

On the other hand, smart home offices appear now as among the priorities, as more corporations and their workers adjust to WFH arrangements as quarantines have been enforced. Some are now looking at community quarantine-facility-friendly with smart home-office setup. Prices likewise increased, registering a 9.4% growth in 2020 compared with 2019 at 6.2%, year on year. Prices for single detached/attached house account for the highest increase for both in the National Capital Region (NCR) and outside NCR.

Chart C. Residential real estate price index

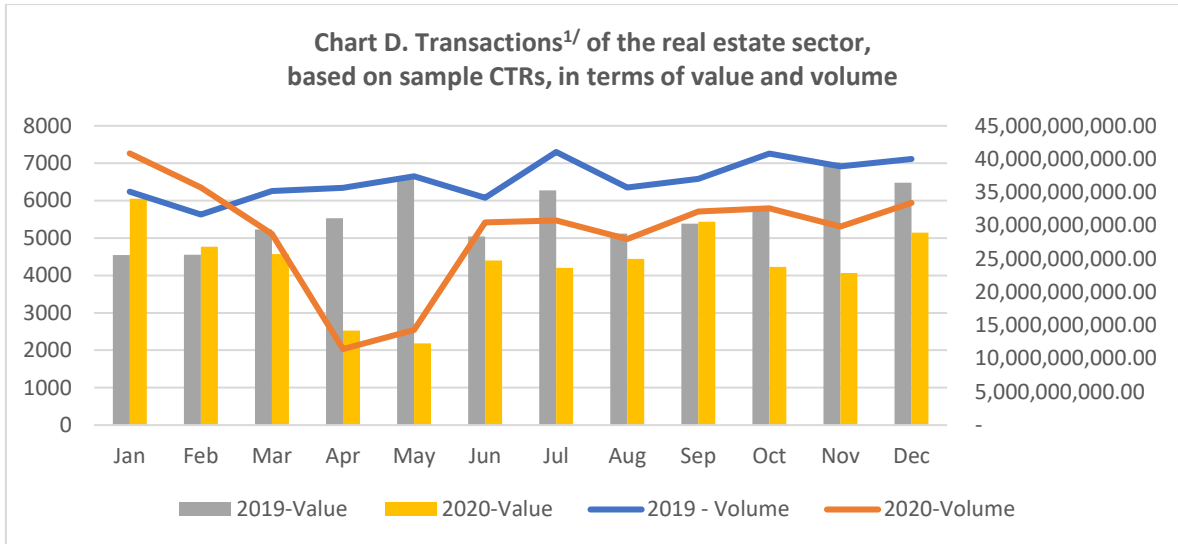
NCR			OUTSIDE NCR		
2019	2020		2019	2020	
-2.4	22.8		0.8	9.8	
7.1	-1.2		16.8	15.4	
-7.7	7.0		14.6	12.2	
18.9	6.9		7.5	2.4	

Data Source: BSP; Illustration: AMLC

In a Colliers’ report, the highest transaction level was observed in the first quarter of 2021, since the lockdown caused by COVID-19 began in 2020. It was further mentioned that Metro Manila’s office market demand recovery hinges on the pace of the vaccination program.¹² Consequently, as the vaccination program progresses, the market reopens as more employees are back to working physically. On the other hand, Colliers projected retail rents to decline another 5% in 2021 from a 10% drop in 2020 as vacancy increases caused by the weakened demand on non-essential purchases and closure of physical stores. Thus, this projects a substantial supply of rental space as of end year 2021.

In the sample covered transaction reports (CTRs) involving real estate, a notable decline was recorded in April 2020, the time when the entire country was put into enhanced community quarantine or “lockdown.” It only started to improve in June 2020 when some of the regions had eased the community quarantine.

¹² <https://www.colliers.com/en-ph/research/colliers-quarterly-property-market-report-q1-2021-philippines>



^{1/}Based on CTRs filed by CPs on accounts involving real estate

Money laundering and terrorism financing cases and related reports

Under RA 11521, real estate-CPs are required to report, as covered transactions, single cash transactions in excess of PhP7.5 million or its equivalent in other currency. Real estate-CPs, however, are required to report suspicious transactions regardless of the amount and mode of payment. Considering its recent inclusion as CPs, no CP-real estate entity has reported covered and suspicious transactions to AMLC at the time of the assessment.

To assess the potential risks involving the real estate sector, the study used sample CTRs and suspicious transaction reports (STRs) filed by CPs on select real estate entities, and ML/TF investigations and cases filed by the AMLC.

Covered and suspicious transaction reports

Using a set of criteria,¹³ a total of 142,562 CTRs and 5,416 STRs, involving real estate entities filed by CPs from 2019 to 2020, were collected and analyzed for the study.

CTRs collected on real estate account for less than 0.3% of the total CTRs filed from 2019 to 2020. In relation to transactions, notably, most are check-related with majority of reported values between PhP500,000 and PhP3 million. These values are 60% to 93% below the reporting threshold set in RA 11521 (in excess of PhP7.5 million or its equivalent in other currency) for the real estate sector.

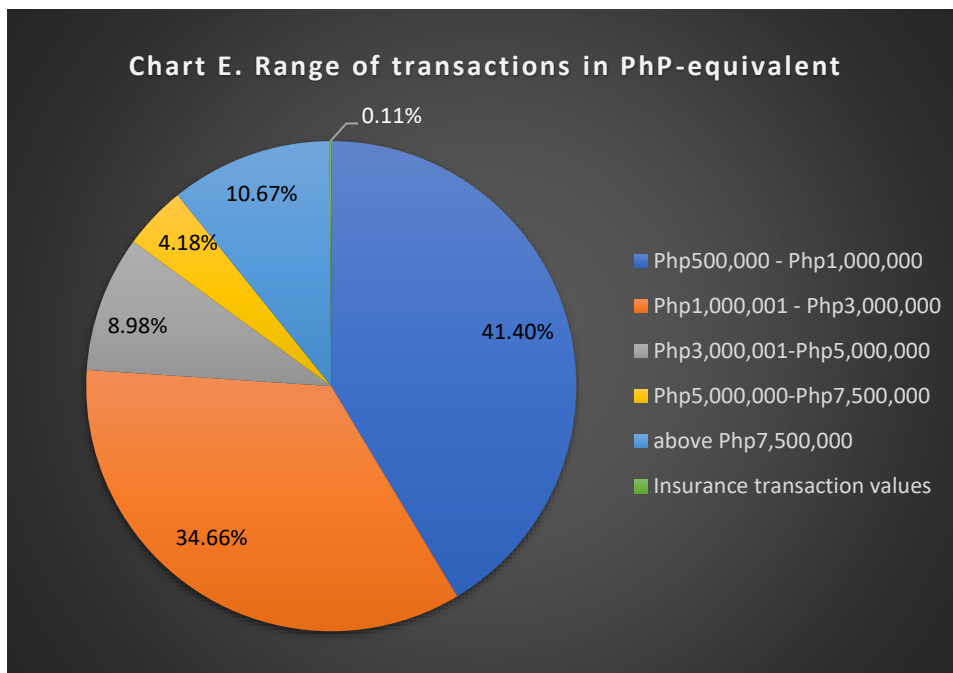
Table A. Common covered transactions of real estate, 2019 to 2020

TRANSACTIONS	NO. OF CTRS	EST. VALUE IN PHP (in millions)
CHECK-CLEARING	32,502	101,490.70
DEPOSIT – CHECK	31,751	96,954.32
ON-US CHECK DEPOSIT	13,881	72,139.32
INTER-ACCOUNT TRANSFERS (SAME BANK)	12,155	69,807.75

¹³ Covered and suspicious transaction reports were collected by applying a SQL query, using a certain set of criteria (keywords “Real Estate,” “Realty,” “Land Development,” etc.)

TRANSACTIONS	NO. OF CTRS	EST. VALUE IN PHP (in millions)
DEPOSIT – CASH	10,494	28,795.51
PURCHASE OF MC/CC/DD/TC – DEBIT MEMO	6,734	39,837.23
ENCASHMENT	4,513	8,240.96
<i>OTHER TRANSACTIONS used</i>	30,532	267,135.52
TOTAL	142,562	684,401.30

Most of the sample CTRs filed on accounts involving the real estate sector range between PhP500,000 and PhP3 million, accounting for 76.06%. Only 10.67% of the sample CTRs are in excess of PhP7.5 million.



Banks reported 99% of the CTRs. Commercial banks account for 85.84% of the CTRs, followed by savings and mortgage banks at 8.37%, and government banks at 3.25%. Private development banks and rural banks share 1.25% of the CTRs.

Suspicious transaction reports

From 2019 to 2020, CPs reported 5,416 STRs with an estimated STR value of PhP321.40 billion (including STRs using ZSTR¹⁴ code) on accounts involving real estate entities, based on the criteria set. Of these STRs, 76% were reported under the categories of *suspicious indicators*, while 24% were reported by CPs on associated predicate crimes.

¹⁴ STR filed on the basis of suspicious trigger even if the subject has no monetary transaction with the covered person at the time the suspicious activity was determined. In some instances, CPs reflect the account balance or use nominal values in the transaction amount data field.

Table B. STRs filed on real estate players

STR CATEGORY	NO. OF STRS	EST. VALUE IN PHP (in millions)
ASSOCIATED PREDICATE CRIME/UNLAWFUL ACTIVITY		
SWINDLING	896	42,074.94
FRAUDULENT PRACTICES AND OTHER VIOLATIONS UNDER THE SECURITIES REGULATIONS CODE OF 2000	276	640.40
PLUNDER	39	34.59
VIOLATION OF THE ANTI-CARNAPPING ACT OF 2002	24	-
GRAFT AND CORRUPT PRACTICES	23	5.01
DRUG TRAFFICKING AND RELATED OFFENSES	11	158.62
OTHER PREDICATE CRIMES	33	60.62
SUBTOTAL	1,302	42,974.18
OTHER SUSPICIOUS INDICATORS		
THE AMOUNT INVOLVED IS NOT COMMENSURATE WITH THE BUSINESS OR FINANCIAL CAPACITY OF THE CLIENT.	1,611	2,500.99
THERE IS NO UNDERLYING LEGAL OR TRADE OBLIGATION, PURPOSE OR ECONOMIC JUSTIFICATION.	1,490	274,619.33
THE TRANSACTION IS SIMILAR, ANALOGOUS OR IDENTICAL TO ANY OF THE FOREGOING.	737	1,277.80
THE TRANSACTION IS STRUCTURED TO AVOID BEING REPORTED.	161	29.52
THERE IS A DEVIATION FROM THE CLIENT'S PROFILE/PAST TRANSACTIONS.	94	2.74
THE CLIENT IS NOT PROPERLY IDENTIFIED.	21	0.14
SUBTOTAL	4,114	278,431.52
TOTAL	5,416	321,404.70

Swindling/fraud, violations of the Securities Regulation Code (SRC), plunder/corruption and illegal drugs were the most reported suspicious transactions associated with predicate crimes, in terms of value and volume. In relation to STRs filed on other suspicious indicators, there appears a large percentage of STRs related to indicators: (1) *“The amount involved is not commensurate with the business or financial capacity of the client;”* and (2) *“There is no underlying legal or trade obligation, purpose or economic justification.”* These STRs may likewise be related to other financial crimes and tax offenses. Transaction analysis reveals that in terms of STR value, cash and check-related transactions, and inward remittances rank among the top five (5) of the most reported suspicious transactions.

In relation to terrorism, only one (1) STR was reported by a CP under the criteria set for the real estate sector. Further probing on the STRs shows two (2) subject accounts with 132 STRs possibly related to terrorism and TF, which were reported by CPs under the category of suspicious indicators. The estimated value of STRs involved in the three (3) STR-TF-related cases which totaled PhP86.3 million, accounts for 0.03% of the estimated STR-value of the sample STRs. The STRs narrated the possible co-mingling of funds to finance legitimate business and terrorism activities. Moreover, the account signatories in the 61 STRs are included in the watchlist for terrorism activities.

Transaction analysis further reveals that in terms of STR value, cash and check-related transactions, and inward remittances rank among the top five (5) of the most reported suspicious transactions. The use of cash obscures the source of funds, thus making it difficult to determine the nexus of proceeds with the illegal activity.

Table C. Top transactions reported as STRs, 2019 to 2020

TRANSACTION TYPE	NO. OF STRS	ESTIMATED VALUE IN PHP (IN MILLIONS)
CASH DEPOSIT	1,517	2,550.31
INTERACCOUNT TRANSFERS (SAME BANK)	1,281	717.97
ATM WITHDRAWALS	448	5.66
CHECK-CLEARING	332	713.53
CHECK DEPOSIT	296	1,255.98
INTERNATIONAL INWARD REMITTANCE-- CREDIT TO A BENEFICIARY'S ACCOUNT	227	270,025.45
WITHDRAWALS – OVER THE COUNTER	193	355.21
RETURNED CHECK	141	136.48
BILLS PAYMENT – DEBIT MEMO	112	2.47
ON-US CHECK DEPOSIT	81	524.79
ENCASHMENT	60	110.16
PURCHASE ELECTRONIC CASH CARD	51	0.24
DOMESTIC INWARD REMITTANCE-- CREDIT TO BENEFICIARY'S ACCOUNT	50	157.72
DOMESTIC OUTWARD REMITTANCE/TT – ADVISE AND PAY BENEFICIARY	50	0.64
DOMESTIC OUTWARD REMITTANCE/TT-- CREDIT TO BENEFICIARY'S ACCOUNT	48	2.75
INTERNATIONAL OUTWARD REMITTANCE/TT – CREDIT TO BENEFICIARY'S ACCOUNT	40	197.76
DOMESTIC INWARD REMITTANCE - CREDIT TO BENEFICIARY ACCOUNT VIA ELECTRONIC BANKING	39	1.05
DOMESTIC INWARD REMITTANCE-- FOR FURTHER CREDIT TO ANOTHER ACCOUNT	34	1.54
PURCHASE OF MC/CC/DD/TC – DEBIT MEMO	28	1,064.21
STR TRANSACTIONS (ZSTR)	201	42,587.01
<i>OTHER TRANSACTIONS</i>	187	993.74
TOTAL	5,416	321,404.69

Money laundering, terrorism financing, proliferation financing cases involving the sector

In the 2019 Philippine Mutual Evaluation Report (MER), the AMLC reported that the value of real properties subject of civil forfeiture proceedings from 2013 to 2017 is estimated at PhP737.07 million, and 11 other real properties are still subject of valuation. This is estimated to be 14% of the total assets subject of civil forfeiture proceedings for the same period.

Table D. Real properties subject of civil forfeiture, 2013 to 2017

2013 -2017 ML/TF cases ^{2/}	No. of cases	Est. value of real estate properties in PhP millions	Other real property assets pending valuation
Fraud	1	26.57	
Graft/corruption, plunder	2	225.74	
Drug trafficking	5	353.94	11 real properties
SRC violations	1	130.82	
TOTAL	9	PhP737.07 million (USD14.74 million)	11 real properties

^{2/}Updated as of October 2020

From 2018 to 2020, the value of real properties/assets subject of freeze orders and civil forfeiture is estimated at **PhP139.29 million (USD14.74 million)**. Sixty-four (64) other real properties are still pending valuation as of the time of the assessment.

Table E. Real properties subject of freeze order and civil forfeiture cases, 2018 to 2020

2018 - 2020 ML/TF cases	No. of cases	Est. value in PhP millions	Other real properties pending valuation
Fraud	1	52.30	
Drug trafficking	7	86.99	35 real properties
SRC violations	2		29 real properties
TOTAL	10	PhP139.29 million (USD2.79 million)	64 real properties

^{3/} as of May 2021

The seven (7) cases predicated on drug trafficking involve PhP86.99 million worth of real estate properties and 35 other real properties pending valuation. On the other hand, one (1) fraud case involves property worth PhP52.30 million, subject of freeze order. Further, in certain cases predicated on SRC violations, a total of 29 real properties have been identified and subject of freeze orders. Six (6) of the presented 2018 to 2020 cases have pending civil forfeiture orders.

Real property assets subject of freeze order and civil forfeiture only account for less than 5% of the total assets subject of freeze order and civil forfeiture from 2018 to 2020.

In relation to terrorism and TF, **126 hectares of real properties** were subject of freeze orders from 2019 to 2020, which includes a five (5)-hectare land from two (2) UNSCR-designated individuals frozen in 2019. In March 2021, a real property owned by a certain alleged associate of a designated-terrorist group has been subject of freeze order.

Since December 2020, the AMLC has issued notices on sanctions freeze orders (SFO) in relation to domestic designations by the Anti-Terrorism Council (ATC), and other relevant issuances on targeted financial sanctions (TFS).¹⁵ The public, covered institutions or

¹⁵ <http://www.amlc.gov.ph/images/PDFs/TF%20Reso%20No.%2033.pdf>;
<http://www.amlc.gov.ph/images/PDFs/TF%20Reso%20No.%2034.pdf>;

covered persons as defined under the under the Terrorism Financing and Prevention Act of 2012 (TFPSA), and all relevant government agencies, including the Land Transportation Office, Land Registration Authority, Registry of Deeds, Maritime Industry Authority, and the Civil Aviation Authority of the Philippines, are informed to comply with the SFO issued by the AMLC, consistent with the Philippines' international obligations and binding terrorism-related resolutions, including UNSCR 1373, pursuant to Article 41 of the UN Charter, and freeze without delay the properties and funds, including related accounts of designated terrorists.

Proliferation financing (PF)

In relation to PF, no STR or case has involved the real estate sector from 2018 to 2020. On 1 February 2021, the AMLC issued the TFS¹⁶ related to Proliferation of Weapons of Mass Destruction and Proliferation Financing.¹⁷ No bank returns or reports have been received yet from any covered person on assets or real properties relating to PF.

While the understanding of TFS on TF and PF of the real estate sector is arguably in its developing stage, this does not mean that threats on PF and TF do not exist.

Corruption cases and real estate

One of the biggest corruption cases in the Philippines in 2014, or the *Priority Development Assistance Fund (PDAF) scam*, stemmed from complaints filed with the Office of the Ombudsman (OMB) by a certain law enforcement agency (LEA) for graft and corruption plunder, malversation, and direct bribery on the use legislators' PDAF allocations, or commonly known as pork barrel allocations. Several legislators allegedly misused their PDAF allocations by funding "ghost" projects. The alleged main player of the scam, Ms. X, concocted these "projects" through her "non-governmental organizations" (NGOs) with her employees named as incorporators or directors.

One of the laundering schemes of the subject involved the transfer of funds to an offshore jurisdiction and the purchase of high-value real estate. The funds collected by Ms. X, which were transferred to the United State of America (USA), were used to purchase high-value real estate (i.e., property in a luxury hotel in the USA).

Consequently, plunder and corruption charges were filed against Ms. X, her employees, the officials of the implementing agencies, and the lawmakers.

For the period 2013 to 2017, the value of real properties frozen in relation to corruption account for about 30% of the total estimated value of real properties on cases subject of AMLC freeze orders. From 2018 to 2020, financial channels and assets involved in ML cases predicated on corruption and related activities mostly include bank accounts and cash, and other investments.

<http://www.amlc.gov.ph/images/PDFs/AMLC%20RESO%20TF-35%20SERIES%20OF%202021.pdf>;

<http://www.amlc.gov.ph/images/PDFs/Notice%20of%20AMLC%20Resolution%20TF-39,%20s%202021.pdf>

<http://www.amlc.gov.ph/images/PDFs/Notice%20of%20AMLC%20Resolution%20TF-40,%20s%202021.pdf>

¹⁶ Targeted financial sanctions mean both asset-freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities (Sanctions Guidelines, 2020); [http://www.amlc.gov.ph/images/PDFs/SANCTIONS%20GUIDELINES%202020%20v%2030%20June%202020%20\(1\).pdf](http://www.amlc.gov.ph/images/PDFs/SANCTIONS%20GUIDELINES%202020%20v%2030%20June%202020%20(1).pdf)

¹⁷ <http://www.amlc.gov.ph/un-sanctions-list/notice-on-tfs-obligations-on-proliferation-financing-of-wmd>

Corruption remains a perennial problem, particularly for developing countries, such as the Philippines. Further, corruption and money laundering activities continue to evolve as criminals find numerous ways to hide and move illegal proceeds. The scheme of purchasing properties from proceeds of corruption is still one of the most common methods of money laundering. Illegal funds used to purchase properties are made to appear from businesses of officials/officers from public office. Typologies also suggest the use of family members, associates, or “dummies” by public officers to transact on their behalf in order to conceal the beneficial or actual owners of the properties.

While there appears a decrease in the ML investigations predicated on corruption cases, the threat still remains at medium level. Corruption still infiltrates as criminals and their associates find numerous ways to move and hide illegally obtained proceeds. In the recent Corruptions Perception Index (CPI),¹⁸ the Philippines’ CPI score for 2019 and 2020 dropped to 34 from 36 in 2018, thus placing 115th in 2020 from 99th in 2018, relative to least corrupt jurisdictions.

Based on STRs, investigations, and cases, the real estate sector is more at risk to illegal drugs, corruption, and fraud, including SRC violations. Criminals potentially facilitate movement and hide illegal proceeds through the purchase of or investment in real properties. These assets are also used as clandestine hideouts for illegal operations. In the case of terrorism and TF, properties were allegedly used to train recruits to perform terrorism-related activities. TF-related STRs, albeit limited, may suggest financing of terrorism activities through posing as real estate investments.

Based on the assessment, the overall sector threat is **medium**.

Level of threat assessment				
Low	All other crimes	Illegal drugs, corruption, fraud, Terrorism, and TF	Medium-High	High
0 to 20%	21 to 40%	41 to 60%	61 to 80%	81 to 100%
Negligible/very low volume of criminal activities and associated factors	Low volume of criminal activities and associated factors	Moderate volume of criminal activities and associated factors	Significant volume of criminal activities and associated factors	Extremely high volume of criminal activities and associated factors

Vulnerability assessment

Vulnerability is based on the criteria set in the assessment specific to the real estate sector. Factors used are as follows:

1. Total size/volume of the real estate sector;
2. Client base profile;
3. Level of cash activity related to business operations;

¹⁸ <https://www.transparency.org/en/cpi/2020/index/nzl>

4. Use of agents and professional intermediaries and level of anonymity and non-face-to-face use of the accounts;
5. Difficulty in tracing transaction records;
6. Existence of ML typologies and use of the business/profession in tax/fraud schemes; and
7. Cross-border international transaction.

Information on the foregoing enumerated factors are sourced from the survey, transaction reports, previous studies, open-source materials, and capacity building assessments.

1. Total size/volume of the business/sector – **High**

In the 2017 Annual Survey of Philippine Business and Industry (ASPBI),¹⁹ the number of establishments engaged in real estate activities declined by 6.5% from 5,065 in 2016 to 4,734 in 2017.

The real estate sector has seen a negative slope since the start of the pandemic in the first quarter of 2020 and has been slowly recovering in fourth quarter of 2020. The stricter lockdowns also caused vacancies as physical stores shut down operations in several regional and superregional malls in capital regions.

In a report of the BSP²⁰ on 26 March 2021, nationwide residential property prices were perceived to have recovered after a steep decline in the previous quarter based on the Residential Real Estate Price Index (RREPI). Prices of duplexes, townhouses, and single detached/attached houses rose in the fourth quarter of 2020 by 20%, 16.1%, and 4.7%, respectively, while prices of condominium units contracted by 8.4% in fourth quarter of 2020. The decrease in the prices of condominium units may be attributed to the postponement of new launches by developers and low demand for transient dwelling due to the pandemic.

Historical data from the BSP shows continued increase in real estate loans except in June 2020 and September 2020, amid the pandemic, when it recorded a 2%-to-3% decline in commercial loans since March 2020.

In relation to data on bank and trust real estate loans, a low relative change was recorded in the first quarter of 2020 compared with last quarter of 2019; and continued to weaken until June 2020. The sector bounced back, albeit marginal, in September 2020 with a 0.59% increase.

In 2019, the Housing and Land Use Regulatory Board (HLURB)²¹ listed 4,174 registered real estate brokers. In the Second National Risk Assessment (NRA), the Professional Regulatory

¹⁹ <https://psa.gov.ph/content/2017-annual-survey-philippine-business-and-industry-aspbi-real-estate-activities-sector-all>, Release date: 21 November 2019

²⁰ <https://www.bsp.gov.ph/SitePages/MediaAndResearch/MediaDisp.aspx?ItemId=5721>

²¹ <https://hlurb.gov.ph/services/brokers/list-of-brokers/>

Commission (PRC) – Board of Real Estate Service accounted 30,232 registered real estate brokers, as of August 2017.²²

The Second NRA also noted that the Real Estate Brokers Association of the Philippines, Inc. (REBAP) has around 1,200 active members spread in 27 chapters in the country, while the Philippine Association of Real Estate Board (PAREB) has a membership of around 3,600.

REBAP is an association registered as an organization with the Securities and Exchange Commission (SEC). As of May 2021, the REBAP has 39 chapters across the regions of the Philippines.²³

Considering the business and scope of real estate sector across all regions, the size/volume of real estate business is rated as high.

2. Client base profile – **Medium**

In the Second NRA, client base profile of the real estate business was rated low risk. This rating was given by the presumption that most of the real estate transactions passed through the banking sector.

The real estate sector caters to all classes of the society, as the sector offers low-cost housing, rental/lease space, and commercial space. Among the drivers identified, pre-pandemic, are the working class from Business Process Outsourcing (BPO), foreign workers, overseas Filipino workers (OFWs), among others. At the time of assessment, there is no recorded or published information on the extent of impact of these drivers.

Considering the foregoing, the client-based risk of the sector is raised to medium.

3. Use of agents and level of anonymity – **Medium**

RA 9646 or the Real Estate Service Act (RESA) made the real estate profession as a regulated profession similar to other licensed professions, such as doctors and lawyers. Real estate players are required to take a licensure exam with the PRC – Board of Real Estate Service and adhere to their Code of Ethics and Responsibilities.²⁴ Real estate broker licenses have to be renewed every three (3) years. Section 14 of RESA requires brokers to earn at least 120 units of Continuing Professional Development (CPD) education from an accredited real estate service training provider and pass the PRC licensure examination as requirements for a broker's license.

In a news article²⁵ published in December 2020, titled “PAREB pushes for active participation of brokers in flagging suspicious transactions,” PAREB was said to have proposed that all contract documents on the sale of real estate, exchange, mortgage, lease, or joint ventures

²² Philippines' Second National Risk Assessment, 2017

²³ <https://rebap.com.ph/chapter>

²⁴ The Board of Real Estate Service is tasked to be the policymaker, administrator of licensure examinations, promulgator, and enforcer of the rules and regulations necessary in carrying out the provisions of the law.

²⁵ <https://www.bworldonline.com/pareb-pushes-for-active-participation-of-brokers-in-flagging-suspicious-transactions/>

should be sealed and signed by a registered broker. It was also mentioned that real estate brokers are trained in real estate documentation and processes; and thus, they can detect suspicious transactions.

The PAREB, which traces its beginnings to 1938 and which was incorporated on 15 May 1960, is the oldest and the largest real estate service organization in the country. It is composed of 57 member boards strategically located in four (4) regions of the country, with over 3,600 members nationwide.²⁶ PAREB has always been at the forefront of professionalizing the real estate service profession as well as promoting and expanding trade linkages to ensure dynamism in the real estate industry to assist in the government's efforts towards genuine and sustainable development.

REBAP, an association registered as an organization with the SEC, has 39 chapters across all regions of the Philippines as of May 2021. According to the Tourism Board Philippines website,²⁷ the estimated number of members is 1,200.

The Chamber of Real Estate and Builders' Associations (CREBA), a private non-stock non-profit corporation established under Philippine law, started out as the union of Philippine business and trade associations in the real estate, housing and construction industry. CREBA is an umbrella organization of some 4,000 firms, individuals, and associations that are directly or indirectly involved in land and housing, construction, allied industries, and various professional fields of discipline. Further, CREBA's membership extends to developers of land, housing subdivisions, condominiums, industrial estates, resorts, hotels, and retirement facilities; home builders; brokers; building contractors; professionals in the fields of urban and environmental planning, architecture, engineering, and real estate management; property appraisers; financial advisors; and suppliers of land development and construction inputs.²⁸

The National Real Estate Association, Inc. (NREA), which was established in 1991, is another one-stop trade organization for real estate, housing, construction, and allied services. NREA promotes the optimum utilization and growth of real estate, based on the core values of the nobleness, reasonable, enthusiasm, and accountability. NREA has 16 chapters situated across all regions of the Philippines.²⁹

The above associations are among the many organizations that have membership bases larger than other real estate practitioners in the Philippines.³⁰ These associations have the vision to promote, develop, and advance the concepts and ideals of real estate practitioners in the Philippines.

Considering the foregoing, the potential risk in relation to the use of agents and level of anonymity is medium. Non-face-to-face transactions also exist in the sector. While there are controls and measures as regards market entry of brokers/agents, a certain level of

²⁶ <http://www.plareb.org/410319850>; (<http://pareb.org.ph/> is inaccessible at the time of the assessment)

²⁷ https://www.tpb.gov.ph/alpha_listing/real-estate-brokers-association-of-the-philippines-rebap/

²⁸ <https://creba.ph/index.php>

²⁹ <https://www.bria.com.ph/articles/bria-homes-affordable-house-and-lot-philippine-non-government-real-estate-organizations/> (NREA Philippines website was inaccessible at the time of assessment.)

³⁰ <https://creba.ph/>; <https://parebmls.com/>

anonymity exists in relation to identification of ultimate beneficial owners. Typologies suggest the use of dummies and “associate” brokers in facilitating purchase and lease of real estate properties.

4. Level of cash activity – **Medium** and 5. Difficulty in tracing the transaction records – **Easy to Moderate**

The Second NRA found that the sector predominantly conducts business using non-cash transactions, such as cheques/checks or other services provided by banks. Cash payment is generally discouraged for control purposes. Further, internal financing arrangements also require the posting of postdated checks that will be drawn against client’s bank deposits as payments. Cash transaction, however, is not absent, especially for those who are selling their own properties.

In the sample CTRs and STRs used in the study, the top transactions involve check-related and loan transactions. Cash-based transactions, however, exist, accounting for 4.21% in terms of CTR value.

Check, loan, and remittance transactions can be monitored from the banks and other CPs’ transaction records. In relation to cash, there exists a potential risk as it poses certain anonymity and conceals the source or beneficial owner of the funds.

In some scenarios and as typologies suggest, real estate clients can pay off the purchase of properties or lease/rental payments.

Considering these factors, the risk to difficulty in tracing records is raised to medium, as there appears to be a certain difficulty in tracing records for cash-based transactions; and considering that real estate brokers and developers have yet to report CTRs and STRs of their customers.

6. Existence of ML typologies and use of the sector in tax/fraud schemes – **Exist**

As presented in the cases and typologies in the threat section, the level of threat for the real estate sector is medium low to medium. The sector appears more at risk on certain crimes, such as illegal drugs, corruption, fraud, and SRC violations.

7. Cross-border international transactions – **Medium**

In relation to cross-border transactions, international remittance-related CTRs, which account for 0.81% of the total sample CTRs used in the study, may indicate that the sector is cautious in accepting international transactions as payments. In relation to STRs, international inward remittance reports relate to fictitious accounts and transactions perpetrated by freelance real estate agents/brokers. Moreover, a certain number of international remittance-STRs are related to terrorism and TF of a certain account. This raises the level of risk of cross-border to medium.

Vulnerability Assessment: The stage of AML/CTF understanding and AML compliance of the real estate sector is still developing, considering its recent inclusion as covered persons under the AMLA, as amended. Further, there appears to be unregulated or informal businesses that expose the real estate sector to ML and TF threats.

In the Second NRA, the overall AML controls for the real estate is assessed as absent or close to nothing. With its recent inclusion under the AMLA, as amended, the AML framework has seen minimal upgrades as follows:

Table F. Comparison assessment of AML controls

GENERAL AML CONTROLS ³¹	Second NRA	As of May 2021
Comprehensiveness of AML legal framework	Does not exist	Medium low
Effectiveness of supervision/oversight activities	Does not exist	Very low
Availability and enforcement of administrative sanctions	Does not exist	Very low
Availability and enforcement of criminal sanctions	Low	Medium low
Availability and effectiveness of entry controls	Medium high	Medium high
Integrity of business/profession staff	Low	Low
AML knowledge of business/profession staff	Close to nothing	Low
Effectiveness of compliance function (organization)	Does not exist	Very low
Effectiveness of suspicious activity monitoring and reporting	Does not exist	Does not exist*
Availability and access to beneficial ownership information	Medium low	Medium low
Availability of reliable identification infrastructure	Medium high	Medium high
Availability of independent information sources	Medium	Medium
Overall AML controls	(0.07 or close to nothing AML controls)	(0.27 – Low)

* Suspicious transaction reporting does not exist at the time of assessment.

Supervision of the sector is likewise in its premature stage as the AMLC is still in the process of rolling out its supervisory or regulatory actions. Nevertheless, AML/CTF trainings and webinars have commenced to update the risk understanding of the sector. A series of targeted trainings/meetings and focus group discussions with the PRC, REBAP, CREBA, RE/MAX, and other real estate sectors have been initiated.

Thirteen (13) webinars, where 4,543 real estate players participated in, focused on the following topics:

1. Fundamentals of ML/TF;
2. Overview of risk management system and preventive measures; and
3. AMLC online registration system and reporting.

³¹ Modified World Bank tool, 2017

Following these webinars and engagements, AMLC registrations of real estate brokers and developers started to peak in March 2021. Currently, AMLC-registered real estate CPs are in the process of developing their systems for electronic reporting of covered and suspicious transactions. Through focus group discussions and meetings, the sector has demonstrated an understanding of detecting suspicious transactions.

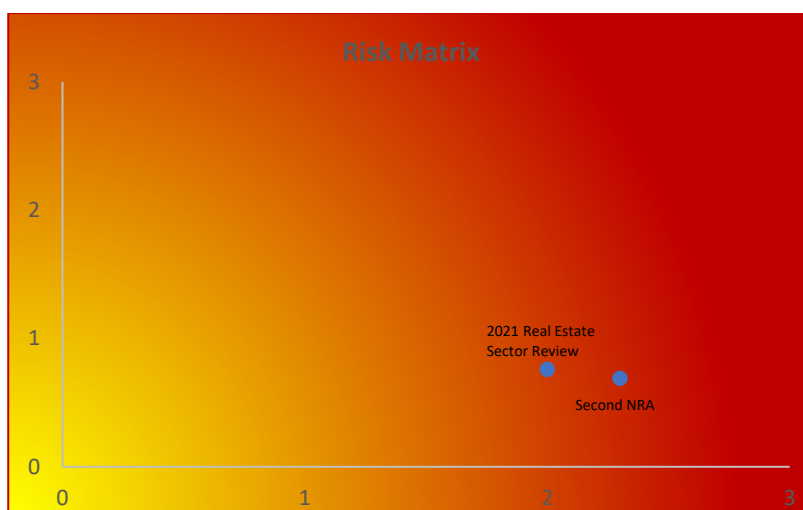
Level of vulnerability and controls				
			Real Estate Sector	
Low	Medium-Low	Medium	Medium-High	High
0 to 20%	21 to 40%	41 to 60%	61 to 80%	81 to 100%
High - very high and effective controls	Medium controls	Medium low controls	Low controls	Very low or close-to-none controls

Overall Assessment: While the AML/CTF controls have improved, the overall risk is still within the **medium high** level. Contributory factors include the low level supervision of the sector for AML/CTF; increase in sector’s threat to ML and TF; increase in customer risk (fake accounts, involvement of accounts under the TF watchlist, use of agents, among others); transaction risk in relation to use of cash, existence of STRs, non-face-to-face, etc.).

GENERAL CONCLUSION AND FINDINGS

The overall threat of the real estate sector is rated **medium** as the sector is exposed to illegal drugs, corruption, fraud, and terrorism threats. On the other hand, the limited AML/CTF regulation of the sector at the time of the assessment has exposed the sector to **medium high** vulnerability to ML/TF. The AML/CTF compliance of the real estate sector is still developing, considering its recent inclusion as CP under the AMLA, as amended. While the AML/CTF controls have improved since the Second NRA, the overall risk is still within the **medium high** level. Effective coordination and collaborative activities of the AMLC, PRC, HLURB³² real estate industry associations, and other relevant agencies present a high probability of achieving desired results as these agencies focus on one goal in combating potential ML/TF threats and other related threats within the sector.

³² Republic Act 11201 reconstituted the Housing and Land Use Regulatory Board (HLURB), and the Housing and Urban Development Coordinating Council (HUDCC) into the newly created Department of Human Settlements and Urban Development (DHSUD).



General findings on the risks and gaps based on quantitative and qualitative assessments are as follows:

1. AML/CTF compliance of the sector is still developing, considering its recent inclusion as covered person under the AMLA, as amended. Further, the unregulated or informal businesses within the real estate sector pose a certain level of threat. Nevertheless, regulatory efforts have been enhanced to ensure that the sector is informed and is aware of its risks and AML/CTF obligations.
2. Based on STRs, ML investigations, and cases, the real estate sector is more at risk to illegal drugs, corruption, and fraud, including SRC violations. Criminals potentially facilitate movement and hide illegal proceeds through the purchase of or investment in real properties. Assets are also used as clandestine hideouts for illegal operations.
3. In the case of terrorism and TF, properties were allegedly used to train recruits to perform terrorism-related activities based on TF cases handled by the AMLC. TF-related STRs, albeit limited, may suggest financing of terrorism activities through transactions posing as real estate investments.
4. Cash transactions expose the sector to ML threat as typologies suggest that the use of cash disguises the true nature of funds. Given the anonymous character of cash, authorities face difficulties in tracing the source of funds associated with criminal activities.
5. The average transaction of the real estate players, based on CTRs, appears significantly lower compared with the reporting threshold for CTRs set in the AMLA, as amended. This may result or contribute to unreported or undetected risk should the real estate brokers and developers commence reporting of CTRs and STRs.

6. There are processes and regulations in place regarding the identification of beneficial owners within the real estate sector. This, however, is challenged by the presence of gatekeepers acting on behalf of the actual owners.
7. Factoring the inherent risks, vulnerability factors, and controls, priority ranking shows AML awareness, supervision, and compliance as among the top priorities for the supervisor/s in regulating the real estate sector.

PRIORITY RANKING FOR GENERAL INPUT VARIABLES/ AML CONTROLS	PRIORITY RANKING**
Comprehensiveness of AML legal framework	5a
Effectiveness of supervision/oversight activities	2
Availability and enforcement of administrative sanctions	7
Availability and enforcement of criminal sanctions	8
Availability and effectiveness of entry controls	9
Integrity of business/profession staff	5b
AML knowledge of business/profession staff	1
Effectiveness of compliance function (organization)	3
Effectiveness of suspicious activity monitoring and reporting	4
Availability and access to beneficial ownership information	10
Availability of reliable identification infrastructure	11
Availability of independent information sources	12

RECOMMENDATIONS AND MITIGATION STRATEGY

To mitigate the potential threats and vulnerabilities involving the real estate sector, the following strategies may be considered or implemented:

Priority 1: Enhance understanding on money laundering/terrorism financing risks

1. The AMLC, in coordination with the PRC and HLURB (now DHSUD),³³ and real estate associations, must conduct AML/CTF training to real estate brokers/agents/developers and other salespersons, as regards the potential risks and AML/CTF sanctions. Continuous engagement with the real estate sector would improve their risk understanding, reporting obligations, and know-your-customer/CDD/enhanced due diligence procedures.

³³ Ibid.

2. The AMLC should issue a report on typologies and list of ML/TF indicators, involving the sector for the guidance of covered persons and the public.
3. Supervising agencies and regulators must conduct or update their own risk assessments on ML/TF in relation to cross-sector threats that may involve the real estate sector.
4. The AMLC should disseminate the study and typologies to the PRC, DHSUD, real estate associations, and other relevant authorities.

Priorities 2-5b: Enhance supervision and regulatory controls; and compliance function

5. The AMLC, with the assistance of PRC and DHSUD,³⁴ may need to conduct environmental scanning and commence offsite and onsite supervision of the real estate brokers and developers.
6. The AMLC, as the primary AML/CTF regulator, needs to monitor online AML/CTF registration and compliance, and impose appropriate measures for non-registration and non-compliance as required by law.

The AMLC should monitor and ensure that real estate brokers and developers comply with the AML/CTF regulatory issuances consistent with risk-based applications. Should there be any violations, the AMLC must apply prompt, timely, and effective enforcement actions on violations of the AMLA, as amended, its Implementing Rules and Regulations (IRR), TFPISA, and other related issuances.

Further, supervision of the projected volume of covered persons will be challenged by the limited manpower complement. The AMLC should look into assessing its current complement to ensure effective supervision of the sector, and if warranted, consider expanding its compliance and supervision unit, and other units directly coordinating with the sector.

7. The AMLC should extend assistance to the sector and regularly conduct STR quality assessments submitted by the real estate sector to ensure prompt and quality suspicious transaction reporting.

Priorities 7 – 8: Promote effective coordination mechanisms and enhance enforcement actions

8. The AMLC, as the primary agency tasked with the prevention, detection, and investigation of ML/TF, may need to ensure engagement of the PRC and DHSUD in the National AML/CTF Strategy.

³⁴ Ibid.

9. Real estate brokers and developers, as covered persons, should extend assistance and coordinate with appropriate and competent authorities should there be investigations involving the sector. This is to ensure that the sector will not be used and abused by criminals and terrorists.
10. The AMLC and other supervising agencies and appropriate government agencies should issue guidance to their respective regulated covered persons to conduct commensurate measures and consider the results of the sector review assessment in applying risk profiling involving the real estate sector.

Recommended action plan and timeline

ACTION PLAN	PRIMARY AGENCY	SECONDARY AGENCY	TIMELINE
<p><u>Priority 1: Enhance understanding on money laundering/terrorism financing risks</u></p> <ol style="list-style-type: none"> 1. Conduct AML/CTF training to real estate brokers/agents/developers and other salespersons, as regards the potential risks and AML/CTF sanctions. 2. Issue a report on typologies and list of ML/TF indicators, involving the sector for the guidance of covered persons and the public. 3. Conduct or update risk assessments on ML/TF in relation to cross-sector threats that may involve the real estate sector. 4. Disseminate the study and typologies to the PRC, real estate associations, and other relevant authorities. 	<p>AMLC</p> <p>AMLC</p> <p>AMLC</p> <p>AMLC</p>	<p>PRC, DHSUD, and other real estate associations</p> <p>Supervising agencies</p> <p>Supervising agencies</p>	<p>Commenced in Feb 2021</p> <p>Continue engagement</p> <p>Post executive summary in the AMLC website 3Q – 4Q 2021</p> <p>2022 – 2024</p> <p>3Q – 4Q 2021</p>
<p><u>Priorities 2-5b : Enhance supervision and regulatory controls; and compliance function</u></p> <ol style="list-style-type: none"> 5. Conduct environmental scanning and commence offsite and onsite supervision of the real estate brokers and developers. 	<p>AMLC</p>	<p>PRC, DHSUD</p>	<p>3Q 2021 – 2023</p>

ACTION PLAN	PRIMARY AGENCY	SECONDARY AGENCY	TIMELINE
<p>6. Monitor online AML/CTF registration and impose appropriate measures for non-registration as required by law.</p> <p>7. Monitor and ensure compliance of real estate brokers and developers with the AML/CTF regulatory issuances consistent with the risk. Should there be any violations, the AMLC must apply prompt, timely and effective enforcement actions on violations of the AMLA, as amended, its IRR, TFPSA, and other related issuances.</p> <p>8. Extend assistance to the sector and regularly conduct STR quality assessments submitted by the real estate sector to ensure prompt and quality ST reporting.</p> <p>9. AMLC should review its current manpower complement, and if warranted, consider expanding its resources to ensure effective supervision of the sector</p>	<p>AMLC</p> <p>AMLC</p> <p>AMLC</p> <p>AMLC</p>	<p></p> <p></p> <p></p> <p>BSP</p>	<p>Regular monitoring</p> <p>Regular monitoring</p> <p></p> <p>3rd Q 2021 – 2022</p>
<p><u>Priorities 7 – 8: Promote effective coordination mechanisms and enhance enforcement actions</u></p> <p>10. Engage the PRC and DHSUD in the National AML/CTF Strategy.</p> <p>11. Issue guidance to regulated covered persons to conduct commensurate measures and consider the results of the sector review assessment in applying risk profiling involving the real estate sector.</p>	<p>NACC</p> <p>AMLC, SAs</p>	<p>AMLC as NACC secretariat</p>	<p>2021 – 2022</p> <p>2021 – 2022</p>

ANNEX A. AML/CTF Practices in the Real Estate Sector

A. Basic techniques on the use and misuse of the real estate sector to ML/TF

In one of the published reports of the FATF, it was noted that a number of methods, techniques, mechanisms, and instruments are available in order to abuse and misuse the real estate sector, particularly in relation to ML/TF activities. Majority of the methods are illegal, but some might be considered legal as if they were not associated with any ML/TF scheme.³⁵

The following are the identified more common or basic methods:

1. **Use of complex loans or credit finance.** Credit finance or complex loans have become a frequent instrument used as a means for raising funds; and these kinds of loans may also be used in the real estate sector. There are two schemes identified in the misuse of the instruments:
 - b. **Loan-back schemes.** These refer to transactions, either direct or indirect, made through the purchase of shares in property investment funds. Suspected criminals lend themselves money, making it appear that the funds are legitimate and are derived from a real business activity. The purpose is to hide the true identity of the parties in the transaction and to give the source of the money an appearance of legitimacy.
 - c. **Back-to-back loan schemes.** In this scheme, a financial institution lends money based on the existence of collateral posted by the borrower in the usual way. The collateral presented to the financial institution, however, originates from illegal sources.
2. **Use of non-financial professionals.** This pertains to seeking out the experience of professionals, such as lawyers, tax advisors, accountants, financial advisors, notaries, and registrars in order to create the structures needed to move illicit funds unnoticed.

These professionals are considered gatekeepers by providing access to the international financial system, and, knowingly or not, can also facilitate concealment of the true origin of funds. In certain real estate transactions, these professionals are being exploited or used to gain credibility, during the process, applying for a mortgage, opening bank accounts, and contracting other financial products. In some typologies, bank accounts are opened in the name of non-financial professionals, and allow these non-financial professionals to carry out various financial transactions on behalf of the beneficial owners. Examples include depositing cash, issuing and cashing cheques, sending and receiving international fund transfers, etc., directly through traditional saving accounts or indirectly through correspondent accounts.

³⁵ <https://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20through%20the%20Real%20Estate%20Sector.pdf>

There have also been incidences of irregularities in the notaries and registrars, such as the signing of the property transfer documents (for example, using different names or insisting on paying a substantial part of the cost of the transaction in cash). Other examples include buying land designated as residential through a legal person and then reclassifying it a short time later for commercial development. Professionals working with the real estate sector are in a position to be key players in the detection of schemes that use the sector to conceal the true source, ownership, location, or control of funds generated illegally, as well as the companies involved in such transactions.

3. **Use of corporate vehicles.** The misuse of corporate vehicles occurs if the company is entirely controlled or owned by criminals. Corporate vehicles may come in the form of offshore companies, legal arrangements, shell companies, property management companies, and non-trading real estate investment companies.

When using the real estate sector, the purchase or construction of properties is a commonly used means by which criminals hide illegally obtained proceeds. The property that is bought or constructed using the illegally obtained funds may subsequently be rented out to provide an apparently legal source of income in order to conceal movements of funds between stakeholders, or across borders or jurisdictions (for example, the tenant and the landlord are located in different locations/jurisdictions).

4. **Manipulation of the appraisal or valuation of a property.** Manipulation of the real value of properties in relation to real estate involves the over-valuation or under-valuation of a property, which may be followed by a series of sales and purchases. The over-valuation or under-valuation consists of buying or selling a property at a price above or below its market value. Shell companies are likewise being set up to buy real estate. After acquiring properties, criminals repurchase the property at a price considerably above the original purchase price, which technically enables them to insert a sum of money into the financial system equal to the original purchase price plus the capital gain, thereby allowing them to conceal the origin of their funds.
5. **Use of monetary instruments.** The use of monetary instruments in real estate transactions has dealt with the use of cash, cheques, loans, and wire transfers over the years. The use of cash, however, continues to be one of the ways of obtaining and handling funds of illegal origin. In some cases, criminals used in their real estate activities, cheques, and wire transfers through conduit or correspondent bank accounts. Some examples or typologies involving monetary instruments are:
 - a. **Cash.** The purchase of high-value properties in cash is a way to integrate illegal funds with legitimate money into the legal financial system. Cash is also used in currency exchange and to structure deposits. Cash is also used in rental or financial leasing transactions. These processes may be used by money launderers or terrorists to obtain the use of a property without having to fear losing it through its being seized or frozen if their criminal activity is discovered

by the authorities. Moreover, it can also be used directly by criminals to settle contracts close to the start of the operation, receiving a reimbursement from the leasing company in the form of a cheque, for example, thus giving the transaction an air of legitimacy.

- b. **Cheque or wire transfers.** Another scheme is the use of *payable-through accounts* to channel a large amount of money, generally through a series of transactions. Funds are initially paid into these accounts via cash, cheques, or international wire transfers. The money never stays in the account for long, the rate of turnover of the funds is high, and the funds are then used to purchase real estate. There would appear to be no commercial or economic justification for using these accounts. The same could apply to correspondent accounts when used as transit account. Suspicion about a legitimate use can be appropriate, when the account has high turnover; it appears to deal exclusively with wire transfer payments; or cheques and the account appear to have no commercial or economic justification for such use.

B. Mitigating risks and detecting suspicious transactions³⁶

The challenge is to spot ML behind the real estate transaction. Possible indicators of ML (red flags) help risk-based assessment. Guidance has been established as a tool for the sector at both global and national levels. Professional representative bodies have also developed implementing tools.

The process demands familiarity with the normal conduct of business to be able to identify unusual or suspicious patterns relating to customer risk, transaction risk, or geographical risk (these are sometimes clustered in pairs, geographical aspects being added to the first two risk types). Depending on the responses, several questions need to be asked before a transaction is found to be suspicious and reporting obligations triggered.

Customer risk relates primarily to the buyer, but concerns may broaden to include the seller and any other persons intervening in the transaction. The ability to identify the real purchaser and ascertain whether involvement of third parties or a corporation obscures the owner's identity (without a legitimate business explanation) is central to ascertaining customer risk. Customer risk also covers purchases involving high-ranking foreign officials or their families, who require specific attention either as politically exposed persons (PEPs) or because of specific international provisions, such as sanctions.

Transaction risk relates to a variety of elements regarding, for instance, the type of property, successive transactions, under- or over-valuation, mismatch between buyer and property, and financing risks relating to the source of funds, use of cash or use of complex loans. Concerns can be aroused as a result, for example, of a lack of interest in obtaining a better price, or a buyer purchasing property without viewing it, or with no visible interest in its characteristics. In short, this relates to the concern that the transaction does not appear to make professional or commercial sense.

³⁶ https://www.europarl.europa.eu/cmsdata/161094/7%20-%2001%20EPRS_Understanding%20money%20laundering%20through%20real%20estate%20transactions.pdf

Geographical risk can relate to both the property and the buyer. The first question is whether the location of the property matches the location of the buyer and the seller. Then the question arises as to whether they are located in a jurisdiction with weak AML regimes, that supports or funds terrorism, or that displays a high degree of corruption. The same questions apply to the origin of the funds. Another scrutiny-raising factor can be a large unexplained geographical distance between the location of the property and that of the buyer.

ANNEX B. LIST OF TERMS AND DEFINITIONS

The AMLA, as amended, and its IRRs define the following terms as follows:

- a. **Account** refers to a bank account, electronic money account, investment account, insurance policy, membership account, and other similar contract or service agreement, business or professional relationships between a covered person and its customers where funds or any monetary instrument of the latter are held by the former.
- b. **Anti-Money Laundering Act of 2001 (AMLA)** refers to RA 9160, as amended by RA 9194, 10167, 10365, 10927, and 11521.
- c. **Anti-Money Laundering Council (AMLC)** refers to the Philippines' central AML/CTF authority and financial intelligence unit, which is the government instrumentality mandated to implement the AMLA and RA 10168, or the Terrorism Financing Prevention and Suppression Act (TFPSA).
- d. **Appropriate Government Agency (AGA)** refers to the Philippine Amusement and Gaming Corporation (PAGCOR), Cagayan Economic Zone Authority (CEZA), Aurora Pacific Economic Zone and Freeport Authority (APECO), or other government agency, as may be determined by law, which may authorize casinos to engage in gaming operations.
- e. **Asset** refers to a monetary instrument, property, or both.
- f. **Beneficial Owner** refers to any natural person who:
 1. Ultimately owns or controls the customer and/or on whose behalf a transaction or activity is being conducted;
 2. Has ultimate effective control over a juridical person or legal arrangement; or
 3. Owns, at least, 20% of the shares, contributions, or equity interest in a juridical person or legal arrangement. Control includes whether the control is exerted by means of trusts, agreements, arrangements, understandings, or practices, and whether or not the individual can exercise control through making decisions about financial and operating policies.
- g. **Beneficial Ownership Verification** is the process of taking reasonable measures to identify and verify the beneficial owner, including the determination of the true nature of the beneficial owner's capacities and duties vis-à-vis his agent, nominee, or trustee.
- h. **Beneficiary** refers to:
 1. Generally, any person for whose benefit an account was created or a transaction was made;
 2. For trust agreements, any person for whose benefit the trust has been created;
 3. For life insurance or investment-linked insurance policies, any person who will be paid the policy proceeds; and
 4. For wire transfers, refers to a person or legal arrangement who is identified by the originator as the receiver of the requested wire transfer.
- i. **Civil Forfeiture (CF)** refers to the non-conviction-based proceedings aimed at forfeiting, in favor of the government, monetary instruments or properties related to an unlawful activity or money laundering offense defined herein.
- j. **Close Relationship/Associate** refers to persons who are widely and publicly known, socially or professionally, to maintain a particularly close relationship with the PEP,

and include persons who are in a position to conduct substantial domestic and international financial transactions on behalf of the PEP.

- k. **Covered Transaction** refers to:
 - 1. A transaction in cash or other equivalent monetary instrument exceeding Five Hundred Thousand Pesos (PhP500,000) within one (1) banking day;
 - 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);
 - 3. A casino cash transaction exceeding Five Million Pesos (PhP5,000,000) or its equivalent in other currency for covered persons under Section 3(a)8 of the AMLA, as amended; and
 - 4. A single cash transaction involving an amount in excess of Seven Million Five Hundred Thousand Pesos (PhP7,500,000) or its equivalent in any other currency.
- l. **Covered Transaction Report (CTR)** refers to a report on a covered transaction, as herein defined, filed by a covered person before the AMLC.
- m. **Cross-Border Wire Transfer** refers to any wire transfer where the originating and/or beneficiary financial institutions are located in different countries. It shall also refer to any chain of wire transfers in which, at least, one (1) of the financial institutions involved is located in a different country.
- n. **Customer/Client** refers to any person who keeps or maintains an account, or otherwise transacts business with a covered person. It includes the following:
 - 1. Beneficial owner, or any natural person who ultimately owns or controls a customer and/or on whose behalf an account is maintained, or a transaction is conducted;
 - 2. Transactors, agents, and other authorized representatives of beneficial owners;
 - 3. Beneficiaries of trusts, investment and pension funds, insurance policies, and remittance transactions;
 - 4. Persons whose assets are managed by an asset manager;
 - 5. Trustors/grantors/settlers of a trust; and
 - 6. Insurance policy holders, whether actual or prospective.
- o. **Customer Due Diligence (CDD)** refers to the procedure of identifying and verifying the true identity, of customers, and their agents and beneficial owners, including understanding and monitoring of their transactions and activities.
- p. **Designated Non-Financial Businesses and Professions (DNFBP)** refer to businesses and professions, which are not under the supervision or regulation of the BSP, SEC, and Insurance Commission (IC), and designated as covered persons under the AMLA, as amended.
- q. **Domestic Wire Transfer** refers to any wire transfer where the originating and beneficiary financial institutions are located in the same country. It shall refer to any chain of wire transfers that takes place entirely within the borders of a single country, even though the system used to transfer the payment message may be located in another country.
- r. **Enhanced Due Diligence (EDD)** refers to the enhanced level of scrutiny intended to provide a more comprehensive understanding of the risks associated with the client, as well as confirmation of factual information provided by the client, to mitigate risks presented.

- s. **Financial Intelligence** refers to the gathering and analysis of information about the transactions and financial activities of persons of interest to understand their nature and capabilities and predict their future actions. It may also refer to intelligence information, which is the result of the analysis of the information gathered.
- t. **Financial Intelligence Unit (FIU)** refers to the national center for the receipt and analysis of: (1) suspicious transaction reports; and (2) other information relevant to ML/TF and associated unlawful activities, and for the dissemination of the results of that analysis.
- u. **Financial Investigation** refers to an inquiry into the financial affairs of persons related to ML/TF and associated unlawful activity, with a view to:
 1. Identify the extent of criminal networks and/or the scale of criminality;
 2. Identify and trace the proceeds and instrumentalities of crime, terrorism funds, or any other assets that are, or may become, subject to forfeiture proceedings; and
 3. Develop and/or gather evidence, which can be used in litigation of cases.
- v. **Freeze Order (FO)** refers to a provisional remedy aimed at blocking or restraining monetary instruments or properties in any way related to an unlawful activity, as herein defined, from being transacted, withdrawn, deposited, transferred, removed, converted, concealed, or otherwise moved or disposed without affecting the ownership thereof.
- w. **Institutional Risk Assessment** refers to a comprehensive exercise to identify, assess and understand a covered person's ML/TF threats, vulnerabilities, and consequential risks with a view to mitigate illicit flow of funds and transactions.
- x. **Law Enforcement Agency (LEA)** refers to the Philippine National Police, National Bureau of Investigation, and other government agencies that are responsible for the prevention, investigation, apprehension, and/or detention of individuals suspected of, or convicted for, violations of criminal laws.
- y. **Money Laundering (ML)** refers to the crime defined under Section 4 of the AMLA, as amended.
- z. **National Risk Assessment (NRA)** refers to a comprehensive exercise to identify, assess, and understand a country's ML/TF threats, vulnerabilities, and consequential risks with a view to mitigate illicit flow of funds and transactions.
- aa. **Politically Exposed Person (PEP)** refers to an individual who is or has been entrusted with prominent public position in (a) the Philippines with substantial authority over policy, operations, or the use or allocation of government-owned resources; (b) a foreign State; or (c) an international organization.
- bb. **Proceeds** refers to an amount derived or realized from any unlawful activity, as herein defined.
- cc. **Property** refers to any thing or item of value, real or personal, tangible or intangible, or any interest therein, or any benefit, privilege, claim, or right with respect thereto, including:
 1. Personal property, including proceeds derived therefrom, or traceable to any unlawful activity, as herein defined, such as, but not limited to: (a) cash; (b) jewelry, precious metals and stones, and other similar items; (c) works of art, such as paintings, sculptures, antiques, treasures, and other similar precious objects; (d) perishable goods; and (e) vehicles, vessels, aircraft, or any other similar conveyance;

2. Personal property, used as instrumentalities in the commission of any unlawful activity, as herein defined, such as: (a) computers, servers, and other electronic information and communication systems; and (b) any conveyance, including any vehicle, vessel, and aircraft;
 3. Real estate, improvements constructed, or crops growing thereon, or any interest therein, standing upon the record of the registry of deeds or local government unit in the name of the party against whom the freeze order or asset preservation order is issued, or not appearing at all upon such records, or not belonging to the party against whom the freeze order or asset preservation order is issued and held by any other person, or standing on the records of the registry of deeds or local government unit in the name of any other person, but are: (a) derived from, or traceable to, any unlawful activity; (b) used as an instrumentality in the commission of any unlawful activity, as herein defined.
- dd. **Request for Information (RFI)** refers to a request for information by FIUs, LEAs, and other government agencies (OGAs), whether domestic or foreign, for intelligence or investigative purposes only.
- ee. **Risk** refers to risk of loss arising from ML/TF activities.
- ff. **Risk-Based Approach** refers to the process by which countries, competent authorities, and covered persons identify, assess, and understand the ML/TF risks to which they are exposed, and take the appropriate mitigation measures in accordance with the level of risk. This includes prioritization and efficient allocation of resources by the relevant key players and stakeholders in applying AML/CTF measures in their operations in a way that ensures that they are commensurate with the risks involved.
- gg. **Sectoral Risk Assessment** refers to a comprehensive exercise to identify, assess, and understand an industry's, or business or professional sector's, threats, vulnerabilities, and consequential risks with a view to mitigate illicit flow of funds and transactions.
- hh. **Source of Fund** refers to the origin of the funds or other monetary instrument that is the subject of the transaction, or business or professional relationship between a covered person and its customer, such as cash on hand, safety deposit box with a covered person, and a particular bank or investment account.
- ii. **Strategic Analysis** refers to the high-level macro analysis of data to decipher the underlying patterns and trends that would enable the AMLC to draw conclusions and develop long-term strategies for the prevention of ML/TF, and to provide input for policy formulation.
- jj. **Supervising Authority (SA)** refers to the BSP, SEC, IC, or other government agencies designated by law to supervise or regulate a particular financial institution or DNFBP.
- kk. **Suspicious Circumstance** refers to any of the following circumstances, the existence of which makes a transaction suspicious:
1. There is no underlying legal or trade obligation, purpose or economic justification;
 2. The client is not properly identified;
 3. The amount involved is not commensurate with the business or financial capacity of the client;
 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 AMLA;

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 person;
 6. The transaction is in any way related to ML/TF or related unlawful activity that is about to be committed, is being or has been committed; or
 7. Any transaction that is similar, analogous, or identical to any of the foregoing, such as the relevant transactions in related and materially linked accounts, as herein defined.
- ll. **Suspicion** refers to a person's state of mind—based on his skills, experience, and/or understanding of the customer profile—which considers that there is a possibility that any of the suspicious circumstances exists.
 - mm. **Suspicious Transaction** refers to a transaction, regardless of amount, where any of the suspicious circumstances, as herein defined, is determined, based on suspicion or, if available, reasonable grounds, to be existing.
 - nn. **Suspicious Transaction Report (STR)** refers to a report on a suspicious transaction, as herein defined, filed by a covered person before the AMLC.
 - oo. **Tactical Analysis** refers to the analysis of data directed towards the short-term development of investigative priorities and deployment of resources, which includes the analysis of time, space, offender, victim, and modus operandi for individual high-profile crimes, repeat incidents, and crime patterns, with a specific focus on crime series.
 - pp. **Terrorism Financing (TF)** refers to the crime defined under Sections 4 of the TFP SA.
 - qq. **Terrorism Financing Prevention and Suppression Act (TFPSA)** refers to RA 10168.
 - rr. **Transaction** refers to any act establishing any right or obligation, or giving rise to any contractual or legal relationship between the covered person and its customer. It also includes any movement of funds, by any means, in the ordinary course of business of a covered person.
 - ss. **Trustee** refers to a person in whom confidence is reposed as regards property for the benefit of another person called the trustor/grantor/settlor.
 - tt. **Wire Transfer** refers to any transaction carried out on behalf of an originator, through an originating/ordering financial institution, by electronic means, with a view to making an amount of funds available to a beneficiary at a beneficiary financial institution, irrespective of whether the originator and the beneficiary are the same person

On the other hand, the RA 9646, or the Real Estate Service Act of the Philippines (RESA), defines the following:

- a. **Real Estate Developer** refers to any natural or juridical person engaged in the business of developing real estate development project for his/her or its own account and offering them for sale or lease.
- b. **Real Property** includes all the rights, interests, and benefits related to the ownership of real estate.
- c. **Real Estate Service Practitioners** refer to and consist of the following:
 1. A real estate consultant – a duly registered and licensed -natural person who, for a professional fee, compensation or other valuable consideration, offers or renders professional advice and judgment on: (i) the acquisition, enhancement,

- preservation, utilization, or disposition of lands or improvements thereon; and (ii) the conception, planning, management, and development of real estate projects;
2. Real estate appraiser – a duly registered and licensed natural person who, for a professional fee, compensation, or other valuable consideration, performs or renders, or offers to perform services in estimating and arriving at an opinion of or acts as an expert on real estate values, such services of which shall be finally rendered by the preparation of the report in acceptable written form;
 3. Real estate assessor – a duly registered and licensed natural person who works in a local government unit and performs appraisal and assessment of real properties, including plants, equipment, and machineries, essentially for taxation purposes;
 4. Real estate broker – a duly registered and licensed natural person who, for a professional fee, commission, or other valuable consideration, acts as an agent of a party in a real estate transaction to offer, advertise, solicit, list, promote, mediate, negotiate, or effect the meeting of the minds on the sale, purchase, exchange, mortgage, lease or joint venture, or other similar transactions on real estate or any interest therein.
 5. Real estate salesperson – a duly accredited natural person who performs service for, and in behalf of a real estate broker who is registered and licensed by the Professional Regulatory Board of Real Estate Service for or in expectation of a share in the commission, professional fee, compensation or other valuable consideration.

On the other hand, real estate brokers are the only entities permitted to facilitate the sale and purchase of real estate in the Philippines under RA 9646.

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