

# **MONEY-LAUNDERING IN CORRUPTION-RELATED CASES, EMERGING THREATS AND TRENDS: THE PHILIPPINE SCENARIO**

*Mary Susan S. Guillermo\**

## **I. INTRODUCTION**

Money-laundering is both a domestic and international menace, threatening states, institutions and people. For the Philippines, it poses a gargantuan challenge undermining National Security.<sup>1</sup> Money-laundering in simple terms is literally sanitizing the money path to legitimize criminally acquired assets or cash; hence, the term “laundering”. Considering the magnitude of this global problem, States Parties to the United Nations Convention Against Corruption (UNCAC) have adopted measures to combat money-laundering, terrorist financing and corruption.

In the Philippines, money-laundering was criminalized by the passage of Republic Act 9160, or the Anti-Money-Laundering Act of 2001, as amended. The Anti-Money-Laundering Council (AMLC), the Philippines’ Financial Intelligence Unit, is in the forefront of this battle against the ill effects of money-laundering and terrorist financing. With the advent of technological advancement, the dilemma becomes more complex and intricate. It enables individuals, banks, financial institutions, among others, to communicate, finalize their business dealings and transfer funds faster, deeper and cheaper than ever before, anywhere and anytime in the world. Indeed, the development and introduction of modern technologies have expanded the opportunities of money launderers, organized criminals and corrupt public officials and individuals to conceal their identities and the source of their illicit funds. The emergence of new threats and trends has given rise to greater risks, which presents a serious challenge to law enforcement agencies, financial regulators, investigators and prosecutors in countering money-laundering (ML), terrorist financing (TF) and corruption, both in the public and private sectors.

The Office of the Ombudsman, being the premiere anti-corruption body of the Philippines, is committed to fight corruption on all fronts and takes an active role in the prevention and detection of corruption-related offences including predicate crimes involving money-laundering and terrorist financing (ML/TF). For this purpose, it maintains a strong collaboration and coordination with the Anti-Money-Laundering Council and various law enforcement agencies on sharing of vital information to ensure effective investigation and prosecution of these offences involving public officials and employees and persons who conspired with them.

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\* Deputy Special Prosecutor, Office of the Ombudsman, Republic of the Philippines.

<sup>1</sup> National Defense College of the Philippines’ Definition of National Security: “The State or condition wherein the nation’s sovereignty and territorial integrity, the people’s well-being, core values, way of life and the State, and its institutions are protected and enhanced.”

Retrieved from <https://www.officialgazette.gov.ph/downloads/2018/08aug/20180802-national-security-strategy.pdf>

For the Office of the Ombudsman, it has also adopted a multi-sectoral approach in its corruption prevention programmes to deter the prevalence and commission of corruption-related offences, placing a premium on values formation.

Understanding the global threat of ML and the international community's response will assist law enforcement agencies pursuing the evidentiary trail of launderers by identifying the enforcement tools and techniques developed to overcome obstacles encountered when crossing international boundaries.<sup>2</sup>

This paper will discuss the structure and functions of the Philippines' Financial Intelligence Unit (FIU), the role of the Office of the Ombudsman (OMB) in combating ML and TF and corruption, the recent developments of the country's anti-money-laundering and combating terrorist financing (AML/CTF) regime, the challenges posed by digital or virtual currencies (VCs) in the fight against ML and TF and the measures adopted by the Philippines to prevent virtual currencies as a medium in committing money-laundering, terrorist financing and corruption. In this magical world, so to speak, of cyberspace and virtual reality, the Philippines remains vigilant in its efforts to combat money-laundering, terrorist financing and corruption.

## II. THE PHILIPPINES' FINANCIAL INTELLIGENCE UNIT

The Philippines' Financial Intelligence Unit (FIU) is the Anti-Money-Laundering Council (AMLC). It was created under Republic Act (RA) No. 9160, otherwise known as the *Anti-Money-Laundering Act of 2001* (AMLA). It is an active member of the Asia-Pacific Group on Money Laundering (APG). The AMLC is also a member of the Egmont Group, a worldwide association of Financial Intelligence Units (FIUs) which recognizes national and international efforts to fight money-laundering and counter financing of terrorism (AML/CFT) and provides an avenue for the protected exchange of expertise and financial intelligence to combat ML/TF.

### A. Composition of the AMLC

The AMLC is composed of the Governor of the Bangko Sentral ng Pilipinas (BSP) as Chairman, and the Commissioner of the Insurance Commission (IC) and the Chairman of the Securities and Exchange Commission (SEC) as members. It acts unanimously in the discharge of its functions. The AMLC is assisted by a Secretariat headed by an Executive Director.

### B. Objectives and Functions of the AMLC

As the Philippines' FIU, the AMLC is the lead agency primarily tasked to implement the AMLA, as amended by RA Nos. 9194,<sup>3</sup> 10167,<sup>4</sup> 10365<sup>5</sup> and 10927,<sup>6</sup> as well RA No. 10168,

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<sup>2</sup> Schroeder, W. R., Money Laundering: A Global Threat and the International Community's Response, FBI Law Enforcement Bulletin, May 2001. Retrieved <https://www.unl.edu>.

<sup>3</sup> An Act Amending Republic Act No. 9160, Otherwise Known as the "Anti-Money-Laundering Act of 2001.

<sup>4</sup> An Act to Further Strengthen the Anti-Money-Laundering Law, amending for the Purpose Sections 10 and 11 of Republic Act No. 9160, Otherwise known as the "Anti-Money-Laundering Act of 2001", as Amended, and For Other Purposes.

<sup>5</sup> An Act to Further Strengthening the Anti-Money-Laundering Law, amending for the Purpose Republic Act No. 9160, Otherwise Known as the "Anti-Money-Laundering Act of 2001", as Amended.

<sup>6</sup> An Act Designating Casinos as Covered Persons Under Republic Act no. 9160, Otherwise Known as the Anti-Money-Laundering Act of 2001, as Amended.

otherwise known as the “Terrorism Financing Prevention and Suppression Act of 2012”.

The primary objectives of the AMLC’s creation are:

1. To protect and preserve the integrity and confidentiality of bank accounts;
2. To ensure that the Philippines shall not be used as a money-laundering site for proceeds of any unlawful activity;
3. To extend cooperation in transnational investigation and prosecution of persons involved in money-laundering activities, wherever committed.<sup>7</sup>

The AMLA, as amended, and the Terrorist Financing Prevention and Suppression Act of 2012 authorized the AMLC to, among others, perform the following functions in relation to the investigation of money-laundering/terrorist financing (ML/TF) activities:

1. Investigate suspicious transactions (STs), covered transactions (CTs) deemed suspicious, ML activities and other violations of the AMLA, as amended;
2. Investigate TF activities and other violations of RA No. 10168;
3. Act on requests for investigation or requests for information from domestic law enforcement and other agencies of the government as well as requests for assistance of other jurisdictions and international organizations;
4. Gather evidence for the purpose of establishing probable cause required in the filing of petitions for freeze orders, applications for bank inquiry, civil forfeiture cases and criminal complaints for ML;
5. Conduct administrative investigation on violations by covered persons (CPs) of the AMLA, as amended, and its Revised Implementing Rules and Regulations.<sup>8</sup>

### **C. Suspicious Transaction (ST) and Covered Transactions (CT) Under the AMLA**

ST refers to a transaction, regardless of amount, where any of the following circumstances exist:

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;

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<sup>7</sup> <http://www.amlc.gov.ph/about-us>. Retrieved: 11/08/2019.

<sup>8</sup> AMLC Annual Report 2016, p. 15. Retrieved: <http://www.amlc.gov.ph>.

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 an unlawful activity or any money-laundering activity or offence 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.<sup>9</sup>

On the other hand, a CT refers to a transaction in cash or other equivalent monetary instrument exceeding Five Hundred Thousand pesos (Php500,000.00) within one banking day or a transaction exceeding One Million pesos (Php1,000,000.00) in cases of jewellery dealers, dealers in precious metals and dealers in precious stones.<sup>10</sup> In casinos, is a single casino transaction involving an amount exceeding Five Million pesos (Php5,000,000.00), or its equivalent in any foreign currency is considered a CT.<sup>11</sup>

#### **D. Predicate Crimes of ML under the AMLA, as amended**

For purposes of ML as defined under the AMLA, the term “unlawful activity” refers to predicate crimes or any act or omission or series or combination thereof involving or having direct relation to the following:

1. Kidnapping for ransom;
2. Drug trafficking and related offences;
3. Graft and corrupt practices;
4. Plunder;
5. Robbery and Extortion;
6. Jueteng and Masiao;
7. Piracy;
8. Qualified theft;
9. Swindling;
10. Smuggling;
11. Violations under the Electronic Commerce Act of 2000;
12. Hijacking; destructive arson; and murder, including those perpetrated by terrorists against non-combatant persons and similar targets;
13. Fraudulent practices and other violations under the Securities Regulation Code of 2000;
14. Felonies or offences of a similar nature that are punishable under the penal laws of other countries;
15. Terrorism financing and organizing or directing others to commit terrorism financing (R.A. 10168);
16. Attempt/conspiracy to commit terrorism financing and organizing or directing others to commit terrorism financing (R.A. 10168);
17. Attempt/conspiracy to commit dealing with property or funds of a designated person;
18. Accomplice to terrorism financing or conspiracy to commit terrorism financing;

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<sup>9</sup> Rule III, 2016 Revised Implementing Rules and Regulations of the AMLA, as amended. Retrieved: <http://www.amlc.gov.ph/laws/money-laundering/2016-revised-implementing-rules-and-regulations-of-republic-act-no-9160-as-amended>

<sup>10</sup> Ibid.

<sup>11</sup> Rule 3, Section 6 (M), IRR of RA 10927. Retrieved: <http://www.amlc.gov.ph/laws/money-laundering/casino-implementing-rules-and-regulations-of-republic-act-no-10927>

19. Accessory to terrorism financing.<sup>12</sup>

#### **E. Covered Persons (CPs) Under the AMLA**

The covered persons (natural or juridical) under the AMLA, as amended, are the following:

1. Persons supervised or regulated by BSP, such as:
  - a. Banks;
  - b. Non-banks;
  - c. Quasi-banks;
  - d. Trust entities;
  - e. Pawnshops;
  - f. Non-stock savings and loan associations;
  - g. Electronic money issuers;
  - h. All other persons, their subsidiaries and affiliates supervised or regulated by the BSP; and
  - i. Foreign exchange dealers, money changers, and remittance and transfer companies are covered persons under the supervision of the BSP.
  
2. Persons supervised or regulated by IC, such as:
  - a. Insurance companies;
  - b. Pre-need companies;
  - c. Insurance agents;
  - d. Insurance brokers;
  - e. Professional reinsurers;
  - f. Reinsurance brokers;
  - g. Holding companies;
  - h. Holding company systems;
  - i. Mutual benefit associations; and
  - j. All other persons and their subsidiaries and affiliates supervised or regulated by the IC.
  
3. Persons supervised or regulated by the Securities and Exchange Commission (SEC), such as:
  - a. Securities dealers, brokers, salesmen, investment houses, and other similar persons managing securities or rendering services, such as investment agents, advisors, or consultants.
  - b. Mutual funds or open-end investment companies, close-end investment companies or issuers, and other similar entities;
  - c. Other entities, administering or otherwise dealing in commodities, or financial derivatives based thereon, valuable objects, cash substitutes, and other similar monetary instruments or properties, supervised or regulated by the SEC.
  
4. The following Designated Non-Financial Businesses and Professions (DNFBPs):
  - a. Jewellery dealers, dealers in precious metals, and dealers in precious stones.
  - b. Company service providers which, as a business, provide any of the following services to third parties:
    - i. acting as a formation agent of juridical persons;

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<sup>12</sup> <http://www.amlc.gov.ph/2-uncategorised/20-amlaglance>

- ii. acting as (or arranging for another person to act as) a director or corporate secretary of a company, a partner of a partnership, or a similar position in relation to other juridical persons;
  - iii. providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; and
  - iv. acting as (or arranging for another person to act as) a nominee shareholder for another person.
- c. Persons, including lawyers and accountants, who provide any of the following services:
- i. Managing of client money, securities or other assets;
  - ii. Management of bank, savings, securities or other assets;
  - iii. Organization of contributions for the creation, operation or management of companies; and
  - iv. Creation, operation or management of juridical persons or arrangements, and buying and selling business entities.

Let it be stressed that the herein enumerated CPs are required to submit CT or ST reports with the AMLC and to comply with AML and/or CTF measures under the AMLA and its Implementing Rules and Regulations (IRR). Under RA No. 10927 and its IRR, all casinos, including internet and ship-based casinos, operating within the territorial jurisdiction of the Philippines and authorized by the Appropriate Government Agency (AGA) to engage in gaming operations are now CPs, and are required to comply with the AML measures and requirement.

#### **F. Investigation of Money-Laundering (ML) Offences**

As the Philippines' FIU, the AMLC investigates CT and ST reports submitted by covered institutions. These reports are submitted by the covered institution to the AMLC within five (5) working days from the occurrence of the transactions. Aside from the CT and ST reports, the AMLC may, in its own initiative conduct an investigation, or upon referrals or requests of law enforcement or government agencies. The AMLA also empowered the AMLC to act directly on requests from other countries for legal assistance relative to their own AML investigations.

When, after its investigation, the AMLC finds that money-laundering has been committed, it causes the filing of a criminal complaint with the Department of Justice (DOJ), in cases involving the private sector or with the Office of the Ombudsman (Ombudsman) in cases involving public officers or employees, which conducts the preliminary investigation of the case, including the administrative adjudication of the same. If the DOJ or the Ombudsman finds probable cause to indict the offenders, criminal cases are filed with the Regional Trial Courts which have the jurisdiction to try all cases of money-laundering, or with the Sandiganbayan if the offender is a high ranking public officer or a private person in conspiracy with the public officer.<sup>13</sup>

For the Philippines, the biggest stumbling block in the investigation of corruption-related offences is the Bank Secrecy Law (Republic Act 1405) whereby Philippine bank deposits are privileged and confidential and the subsequent ruling in the case promulgated by the Supreme Court entitled "Lourdes T. Marquez vs. Hon. Aniano A. Desierto, et al.," (G.R. No. 135882, June

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<sup>13</sup> J.B. Abad, Retrieved: [https://www.unafei.or.jp/publications/pdf/GG3/Third\\_GGSeminar\\_P34-38.pdf](https://www.unafei.or.jp/publications/pdf/GG3/Third_GGSeminar_P34-38.pdf)

27, 2001) which bar the Office of the Ombudsman from obtaining bank records which are crucial in validating the “money trail” in corruption cases.

### **G. Mutual Legal Assistance and Cooperation**

Mutual Legal Assistance (MLA) and cooperation (international and local) play a vital role in the investigation and prosecution of ML/TF and corruption-related offences. MLA refers to the formal method of cooperation between two jurisdictions for purposes of seeking assistance in the production of documents, asset freezing and forfeiture, extradition, enforcement of foreign judgments, and other kinds of legal assistance in criminal matters. The importance of MLA is increasing because the commission of crimes becomes more complex, and the risk of cross-border transactions is present. The Department of Justice for this purpose is the central authority.

As of December 2018, the AMLC has 43 Memoranda of Understanding (MOUs) with foreign FIUs and counterparts. The MOU conforms with the model MOU of the Egmont Group and is consistent with its Principles for Information Exchange between FIUs.<sup>14</sup> Moreover, the AMLC also enlists the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including government-owned and controlled corporations, in undertaking any and all AML/CTF operations.<sup>15</sup>

### **III. ROLE OF THE OFFICE OF THE OMBUDSMAN IN THE INVESTIGATION AND PROSECUTION OF ML-TF CASES**

The Office of the Ombudsman (OMB) was created by the 1987 Philippine Constitution as an independent body,<sup>16</sup> and to serve as protector of the people.<sup>17</sup> In order to achieve this role, the Constitution granted the Ombudsman powers to investigate and prosecute graft and corruption cases and to impose the administrative liabilities upon erring public officials and employees.<sup>18</sup> The Philippines, being a signatory to the United Nations Convention Against Corruption (UNCAC), is compliant with Article 1, Chapter 1, of the UNCAC, particularly on promoting and strengthening measures to prevent and combat corruption more efficiently and effectively. The Office of the Ombudsman, being the premiere anti-corruption body of the Philippines, takes centre stage in this regard. It has for its mandate, under Section 13 of Republic Act 6770 (An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes): “The Ombudsman and his Deputies, as protectors of the people shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people” (*Section 13, R.A. No. 6770; Section 12 Article XI of the 1987 Constitution*).

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<sup>14</sup> 2017-2018 AMLC Annual Report, page 22. Retrieved: <http://www.amlc.gov.ph/images/PDFs/2017-2018%20AMLC%20ANNUAL%20REPORT.pdf>

<sup>15</sup> Ibid.

<sup>16</sup> Section 5, Article XI, 1987 Philippine Constitution.

<sup>17</sup> Section 12, Ibid.

<sup>18</sup> Section 13, Ibid., see also Section 13 of RA No. 6770, or the Ombudsman Act of 1989.

The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offences as well as complaints involving large sums of money and/or properties (*Sec. 15, R.A. No. 6770*).

The power to investigate and to prosecute granted by law to the Ombudsman is plenary and unqualified. It pertains to *any act or omission of any public officer or employee when such act or omission appears to be illegal, unjust, improper or inefficient*. The law does not make a distinction between cases cognizable by the *Sandiganbayan* and those cognizable by regular courts. It has been held that the clause "any illegal act or omission of any public official" is broad enough to embrace any crime committed by a public officer or employee.<sup>19</sup>

While the jurisdiction of the Office of the Ombudsman extends to government officials and employees, including persons who conspired with them, the AMLC has the power to investigate money-laundering/terrorist financing offences committed by individuals, juridical persons, banks and financial institutions in the private sector and for unlawful activities/predicate crimes that may be committed by government officials and employees, which may be filed with the Office of the Ombudsman for possible investigation and prosecution. The AMLC's criminal complaints or charges involving public officials or employees are filed with the Ombudsman for the conduct of preliminary investigation to determine probable cause and that there are sufficient grounds to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction. All other ML cases not involving public officials or employees are filed with the Department of Justice (DOJ), likewise for preliminary investigation. Should the Ombudsman, after preliminary investigation, establish the existence of probable cause to warrant the filing of charge/s against the offending public officials, the Ombudsman shall cause the filing of criminal case/s with the *Sandiganbayan*<sup>20</sup> and prosecute the said case/s before said court.

#### **A. OMB-AMLC Areas of Cooperation**

The Office of the Ombudsman is also active in the prevention and detection of corruption-related offences including predicate offences involving money-laundering and terrorist financing (ML/TF). For this purpose, it maintains strong collaboration and coordination with various law enforcement agencies, including the AMLC, for intelligence and information sharing. Thus, the Office of the Ombudsman, since 2005, has an existing and operative Memorandum of Agreement (MOA) with the AMLC. The initial MOA was renewed in 2018 to further redefine the mutual covenant of the parties. The objective of the MOA is to promote and encourage cooperation and coordination between the parties to effectively prevent, control, detect and investigate the predicate offences of ML, especially when the ML offences under investigation are committed by public officials or employees, including private individuals who may have conspired with them, and the ML activities were committed in the Philippines. Under the MOA, the parties shall endeavour to

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<sup>19</sup> *Uy vs. Sandiganbayan*, G.R. Nos. 105965-70, March 20, 2001.

<sup>20</sup> The *Sandiganbayan* is a special court in the Philippines that has jurisdiction over criminal and civil cases involving graft and corrupt practices and other offences committed in relation to office by public officers with Salary Grade 27 and above, including those in government-owned and controlled corporations.

cooperate in the areas of information exchange and capacity-building measures to enhance both parties in addressing ML/TF and other unlawful activities in the Philippines.<sup>21</sup>

## **B. OMB-AMLC Areas of Cooperation**

Since 2005, the OMB and AMLC have maintained well established, good and dynamic cooperation and coordination in terms of corruption investigation, prosecution and intelligence sharing. In some instances, the OMB requested the AMLC to conduct investigation on the financial transactions of, and/or provide documents relative to, an accused/respondent of high-profile corruption cases. The result of the AMLC's investigation and the documents it gathered are vital evidence used by the OMB in prosecuting the corruption case. Also, the AMLC's financial investigators or financial analysts are utilized by the OMB as prosecution witnesses. The strong collaboration between the OMB and AMLC relative to case build-up, investigation and prosecution of money-laundering and corruption-related offences is a clear manifestation of their concerted efforts to give life and meaning to their respective mandates. As former US President John F. Kennedy said, "United there is little we cannot do in a host of cooperative ventures. Divided there is little we can do—for we dare not meet a powerful challenge at odds and split asunder."<sup>22</sup>

A corruption-related case may be emphasized in view of the efforts of the OMB in close coordination with the AMLC. The case in point addressed large-scale corruption through the use of non-governmental organizations (NGOs), dummy corporations, and foreign exchange dealers (AMLC Annual Report 2014).

In an alleged misuse of the Priority Development Assistance Fund (PDAF), or pork barrel, by several members of the Philippine Congress, the scam involved the funding of agricultural "ghost projects," using the PDAF of participating lawmakers. Funds would be processed through fake foundations and Non-Governmental Organizations (NGOs) established under the holding company of Ms. N. Each foundation or NGO served as an official recipient of a particular legislator's PDAF funds for the supposed implementation of these projects. The funds, however, would be withdrawn and split among Ms. N, the lawmaker, the facilitator of the fund transfers, and the local mayor or governor. Some of Ms. N's employees eventually became whistle-blowers, agreeing to expose the scam and testify against her. International Cooperation Investigations revealed that Ms. N and members of her family transferred money to the USA. Through the Egmont Secure Web (ESW) of the Egmont Group of Financial Intelligence Units, fostering reciprocal exchange of financial intelligence information, the AMLC sought the assistance of the Financial Crimes Enforcement Network (FinCen), the FIU of the US, yielding positive results. Material information showed how the money was transferred and established how money changers acted as conduits. In 2018, the AMLC, NBI, and OMB acted on the Mutual Legal Assistance Treaty (MLAT) request from the US for the production of documents in relation to the seizure and eventual forfeiture of the properties of Ms. N and members of her immediate family in the said jurisdiction, which were acquired during the pork barrel scam. Civil Forfeiture and ML cases resulting from the MLAT close coordination with US authorities have resulted to the filing of a civil forfeiture case against the assets of Ms. N found in the US, amounting to around USD12.5 million. On August 1, 2018, a US federal grand jury indicted Ms. N and her cohorts, for conspiring

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<sup>21</sup> OMB-AMLC Memorandum of Agreement dated May 22, 2018, at Article 1 thereof.

<sup>22</sup> <https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/inaugural-address-19610120>.

to funnel in and out of the US some USD20 million of Philippine public funds obtained through a multi-year bribery and fraud scheme.<sup>23</sup>

Related to this PDAF Scam, the OMB requested the AMLC to provide information and to conduct financial investigation on the bank accounts and transactions of the involved personalities in the scam. The result of AMLC's investigation and its supporting documents, as well as the evidence gathered by the OMB, were used as bases for the filing of a Plunder case with the Sandiganbayan against Ms. N and those involved public officials, including their cohort private individuals. This specific case of plunder involved Php224.5 million government funds diverted by the accused through the scam. In prosecuting the plunder case, the OMB utilized the AMLC's Financial Investigation Report and its supporting documents (e.g. bank records) as evidence for the prosecution to prove the paper trail of the diverted funds. The OMB likewise presented as vital prosecution witnesses the AMLC's investigating officers during the trial.

On December 7, 2018, the Sandiganbayan convicted Ms. N and one public official of the crime of Plunder and were sentenced to suffer the penalty of *reclusion perpetua* (30 years' imprisonment), with perpetual absolute disqualification to hold any public office. In addition, said accused were likewise ordered to return the amount plundered (Php124.5 million) to the Philippine National Treasury.<sup>24</sup>

#### **IV. A MORE VIBRANT APPROACH: THE OMB PUBLIC ACCOUNTABILITY BLUEPRINT (2019-2025)**

The Office of the Ombudsman is not just about investigation and prosecution of corruption-related offences that can possibly include money-laundering/terrorist financing predicate offences. Upon the assumption of Justice Samuel R. Martires (a retired Philippine Supreme Court Justice) as the Ombudsman of the Republic of the Philippines in August 2018, he developed and introduced the "*OMB Public Accountability Blueprint*" (OmbPAB), a more vibrant multi-sectoral approach on corruption prevention, to be implemented over the period 2019 to 2025. This OmbPAB outlines the policies/projects and strategies of the Office of the Ombudsman. The battle cry under the OmbPAB is "*WE PROTECT*" that stands for Working to Establish

*P-UBLIC*  
*R-ESPONSIBILITY*  
*O-UTCOMES*  
*T-HROUGH*  
*E-NFORCEMENT*  
*C-OLLABORATION and*  
*T-RANSFORMATION*

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<sup>23</sup> 2017-2018 AMLC Annual Report, at page 38. Retrieved: <http://www.amlc.gov.ph/images/PDFs/2017-2018%20AMLC%20ANNUAL%20REPORT.pdf>.

<sup>24</sup> People vs. Revilla, et al., Retrieved: [http://sb.judiciary.gov.ph/DECISIONS/2018/L\\_Crim\\_SB-14-CRM-0240\\_People%20vs%20Revilla,Jr,%20et%20al\\_12\\_07\\_2018.pdf](http://sb.judiciary.gov.ph/DECISIONS/2018/L_Crim_SB-14-CRM-0240_People%20vs%20Revilla,Jr,%20et%20al_12_07_2018.pdf).

with focus on corruption prevention, having in mind the old adage, “an ounce of prevention is better than a pound of cure,” and placing a premium on values formation, “return to values”, which is the long-term solution for addressing corruption.

The OmbPAB is envisioned with the purpose of making “*An Office of the Ombudsman that will transform public accountability into the norm and be recognized as the central corruption prevention arm of the government*”.

Multi-sectoral collaboration involving the religious, the academe, professionals, business, national government organizations and the media, among others, is a vital element in preventing corruption. Effective community participation in ensuring public accountability, return to values and engagement of the public in corruption prevention programmes are now being vigorously pursued and prioritized. For the Office of the Ombudsman, indeed, the long-term solution is values formation.

## V. RECENT DEVELOPMENTS OF THE PHILIPPINES’ AML/CTF REGIME

The Philippines underwent the Second (2nd) Round Mutual Evaluation (ME) in 2008, wherein its technical compliance with the Financial Action Task Force (FATF) Recommendations was assessed. The Philippines got a relatively poor rating due to major shortcomings in the country’s AML/CFT legal framework. As a result of this, the Philippines was placed on the FATF’s “grey list” and was subject to the FATF’s International Cooperation Review Group (ICRG) process.<sup>25</sup>

Since the 2<sup>nd</sup> ME back in 2008, the Philippines adopted measures to deal with ML/TF risks. In 2013, the country was removed from the “Grey List” of FATF’s ICRG, as most of the deficiencies identified in the 2<sup>nd</sup> ME have been addressed. The notable AML/CTF measures adopted by the Philippines to address the deficiencies noted during its 2<sup>nd</sup> ME back in 2008 were:

1. Passage on June 12, 2012 of RA No. 10168 or the Terrorism Financing Prevention and Suppression Act of 2012; The said law reinforced the Philippines’ fight against terrorism by criminalizing the financing of terrorism and related offences, and by preventing and suppressing the commission of said offences through freezing and forfeiture of properties and funds while protecting human rights.<sup>26</sup>
2. Passage on February 15, 2013 of RA No. 10365 which strengthened the AMLA, with additional predicate offences in accordance with Financial Action Task Force (FATF)-designated categories of offences; Other features of the said law include:
  - Expansion of the definition of the crime of money-laundering: AMLC can now go after persons who engage in the conversion, transfer, movement, disposal of, possession, use, and concealment or disguise, of the monetary proceeds of an unlawful activity, that was previously limited to the transaction of laundered funds and property;
  - Inclusion of jewellery dealers in precious metals and stones whose transactions are in excess of Php1,000,000.00 and company service

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<sup>25</sup> Operational Guidelines In The Conduct Of The 2018 Third Round Mutual Evaluation Of The Philippines. Retrieved: <http://www.amlc.gov.ph>.

<sup>26</sup> Retrieved: <http://www.amlc.gov.ph/laws/terrorism-financing/2015-10-16-02-51-58>.

- providers as defined and listed under RA 10365, are now included as “Covered Persons”;
- Expansion of the definition of unlawful activities relative to money-laundering. The additional crimes among others include trafficking in persons, bribery, counterfeiting, fraud and other illegal exactions, forgery, malversation, various environmental crimes, and terrorism and its financing;
  - Authorize the AMLC to require the Land Registration Authority and all its Registers of Deeds to submit reports to the AMLC covering real estate transactions in excess of P500,000.00;
  - Issuance of freeze order by the Court is now valid for a maximum period of six (6) months, from the previous twenty (20) days’ validity under RA 10167.<sup>27</sup>
3. Casinos are now covered persons (CPs) under RA No. 10927 signed into law on July 14, 2017, which amended the AMLA. In the same year (on November 4, 2017), the Casino Implementing Rules and Regulations were prescribed. New AMLC Registration and Reporting Guidelines for CPs, and the AMLC Registration and Reporting Guidelines for Casinos have been adopted as well.<sup>28</sup> Pursuant to RA 10927, casinos, including internet and ship-based casinos, with respect to their casino cash transactions related to their gaming operations, and such other entities as may be hereafter determined by Appropriate Government Agency (AGA), are hereby designated as covered persons under the AMLA. Further, under the same law, casinos shall be regulated to prevent money-laundering and terrorist financing, as well as from undermining the Philippine financial system. Casinos shall therefore apply the following principles throughout their businesses:
    4. Conform with high ethical standards and observe good corporate governance consistent with the guidelines issued by the AGA in order to protect the integrity of their operations and that of the gaming industry;
    5. Know sufficiently their customer to prevent suspicious individuals or entities from transacting with, or establishing or maintaining relationships with, casinos;
      - a. Adopt and effectively implement an appropriate anti-money-laundering (AML) and countering of financing of terrorism (CFT) risk management system that identifies, assesses, monitors, and controls risks associated with money-laundering and terrorist financing;
      - b. Ensure that officers and employees are aware of their respective responsibilities under this CIRR and carry them out in accordance with its Money Laundering Prevention Program; and
      - c. Cooperate with the AMLC and the AGA for the effective implementation of the AMLA and this CIRR, and other applicable issuances.

On November 12, 2018, the President of the Philippines issued Executive Order (EO) No. 68, a measure adopting the National Anti-Money-Laundering and Counter-Financing of Terrorism

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<sup>27</sup> Retrieved: [http://www.bsp.gov.ph/about/advocacies\\_anti.asp](http://www.bsp.gov.ph/about/advocacies_anti.asp).

<sup>28</sup> Retrieved: <http://www.amlc.gov.ph>.

Strategy (NACS) and the creation of the National AML/CTF Coordinating Committee.<sup>29</sup> The NACS was formulated by the AMLC, together with relevant government agencies, the Office of the Ombudsman included, to enable the government and the private sector to have a strategic and coordinated approach toward combating ML and TF. The NACS is envisioned to be implemented over the period 2018 to 2022.

The NACS 2018-2022 (NACS) contains the country's priority policies consistent with international standards, defined targets, action plans, and insights harvested during the dynamic involvement of all departments, bureaus, offices, and agencies of the Executive Branch, including government financial institutions and government-owned or controlled corporations.<sup>30</sup>

In particular, the NACS lays out seven (7) concrete strategic objectives<sup>31</sup> ranging from enhancement of Philippine laws and regulations, strengthening the AMLC's investigations and prosecutions, coordinated action among government agencies, development of mechanisms to deter ML/TF, improved supervision of covered persons, international cooperation, and information dissemination to combat ML/TF, specified as follows:

Strategic Objective 1: Enhance the Philippine AML/CFT Legal Framework in Order to Effectively Address the Country's ML/TF Risks and the Deficiencies in the Country's Compliance with the International Standards;

Strategic Objective 2: Strengthen the Anti-Money-Laundering Council and its Capacity for Money-Laundering and Terrorism Financing Intelligence Gathering, Investigations and Prosecutions in order to become a more Effective Partner in Combating Money-Laundering and its Predicate Offences, Terrorism and Terrorism Financing;

Strategic Objective 3: Improve Capacity and Collaboration among the Financial Intelligence Unit, Law Enforcement Agencies and Prosecutors for the Effective Investigation and Prosecution of, as well as the Confiscation of Proceeds Relating to Money-Laundering, its Predicate Offences, Terrorism and Terrorism Financing;

Strategic Objective 4: Enhance AML/CFT Regulation and Supervision Framework to Ensure Effective and Robust AML/CFT System in Supervised Institutions for The Purpose of Protecting the Financial System, Designated Non-Financial Businesses and Professions, and the Economy from the Threats of Money-Laundering and Terrorism Financing;

Strategic Objective 5: Develop and Strengthen Mechanisms to Prevent, Disrupt and Combat Terrorism, Terrorism Financing and Proliferation Financing Strategic Objective 6-Strengthen Domestic and International Cooperation Mechanisms for the Effective Exchange of Information, Facilitate Actions against Criminals and their Assets and Assist in the Capacity Building of Relevant Government Agencies;

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<sup>29</sup> Executive Order No. 68, s. 2018. Retrieved: <https://www.officialgazette.gov.ph/2018/11/12/executive-order-no-68-s-2018/>.

<sup>30</sup> NACS 2018 to 2022, at page 2. Retrieved: <http://www.amlc.gov.ph/images/PDFs/NACS.pdf>.

<sup>31</sup> NACS 2018 to 2022, at page 8. Retrieved: <http://www.amlc.gov.ph/images/PDFs/NACS.pdf>.

Strategic Objective 6: Promote AML/CFT Awareness of Government Agencies, Covered Persons and the General Public to Effectively Combat Money-Laundering and Terrorism Financing EO No. 68 also created the National AML/CFT Coordinating Committee (NACC), a body tasked to oversee implementation of the NACS, composed of various government agencies, including the Bangko Sentral ng Pilipinas (BSP), the Insurance Commission, the Securities and Exchange Commission (SEC), the Department of Finance, and the Department of National Defense, among others. The AMLC will serve as the Secretariat for the NACC.<sup>32</sup>

The National Anti-Money-Laundering and Counter Terrorism Financing Strategy and the creation of the National AML/CTF Coordinating Committee and National Law Enforcement Coordinating Committee (NALECC), may be considered as a powerhouse and a milestone for the Philippine Government as it provides effective coordination of all law enforcement activities of various government law enforcement agencies to ensure a united front in the suppression of criminal activities that includes investigation of money-laundering, terrorist financing and corruption-related cases – a best practice that may be highlighted.

## **VI. THREAT OF MODERN TECHNOLOGIES IN AML/CTF EFFORTS**

As the Internet becomes a worldwide phenomenon, prepaid card system, internet payment services and mobile payment services are potentially subject to a wide range of vulnerabilities that can be exploited for money-laundering. Numerous third-party payment service providers offer individuals the ability to make online purchases, funding accounts with wire transfers, money orders and even cash. In most cases, the provider of this service will not have a face-to-face relationship with its customers and may even allow anonymous accounts.<sup>33</sup>

Financial innovation has drastically changed the financial landscape. New technologies, services and products offer efficient alternatives to classic financial products and can improve financial inclusion. At the same time, the speed and anonymity of some of these innovative products can attract criminals and terrorists who wish to use them to launder the proceeds of their crimes and finance their illicit activities.<sup>34</sup>

## **VII. EMERGING THREATS AND TRENDS: VIRTUAL CURRENCIES**

The proceeds of corruption (in cash or fiat money) may be converted to digital or virtual currencies for money-laundering purposes. It may be noted that the digital or virtual currencies may now be used as a medium for laundering money because of new technologies. The identity of the person/s transacting can also be concealed in the process.

As modern technologies evolve, digital or virtual currencies (VCs) were introduced as an accepted payment scheme with worldwide recognition. Its electronic nature allows VCs to

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<sup>32</sup> Retrieved: <http://www.amlc.gov.ph/16-news-and-announcements/158-president-duterte-approves-national-aml-cft-strategy>.

<sup>33</sup> Tang J. & Ai L., New Technologies and Money Laundering Vulnerabilities. Retrieved <https://www.researchgate.net>.

<sup>34</sup> Guidance for a Risk-Based Approach to virtual Assets and Virtual Assets Service Providers. Retrieved: <https://www.fatf-gafi.org>.

facilitate the movement of funds at a faster, cheaper, and more convenient manner compared to traditional remittance and payment channels, which accrues benefits in areas such as (1) remittances and wire transfers, (2) electronic payments, and (3) financial inclusion.

However, the convenience of use and electronic character of VCs poses a challenge to regulators and law enforcement agencies around the world who are uncertain how to deal with this payment scheme or method, especially that VCs offer a high degree of anonymity which may be exploited for ML/TF and other unlawful activities.

#### **A. Definition of Virtual Currency**

Virtual Currency (VC) is defined as a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.<sup>35</sup> The Bangko Sentral ng Pilipinas (BSP) has defined VC as any type of digital unit that is used as a medium of exchange or a form of digitally stored value created by agreement within the community of VC users.<sup>36</sup>

#### **B. Advantages and Risks Associated with VC**

The legitimate use of VCs offers many benefits such as increased payment efficiency and lower transaction costs. VCs facilitate international payments and have the potential to provide payment services to populations that do not have access or limited access to regular banking services. However, other characteristics of VCs, coupled with their global reach, present potential AML/CFT risks, such as:

1. the anonymity provided by the trade in virtual currencies on the Internet;
2. the limited identification and verification of participants;
3. the lack of clarity regarding the responsibility for AML/CFT compliance, supervision and enforcement for these transactions that are segmented across several countries;
4. the lack of a central oversight body.<sup>37</sup>

#### **C. Philippines' AML/CTF Measure on VCs**

In response to VCs' vulnerabilities, the Philippines have adopted and implemented measures to thwart VCs as a vehicle for ML/TF, and to prevent the inflows of illicit funds into its economy and territory; and to ensure that the Philippines shall not be used as a money-laundering haven for proceeds of any unlawful activities.

Following the rise of the use of VCs for payments and remittances in the Philippines, the BSP issued Circular No. 944<sup>38</sup> (Guidelines for VC Exchanges) on February 6, 2017 establishing a formal regulatory framework for VC Exchanges in the Philippines. The adoption of the measure is in consonance with FTAF Recommendation No 14<sup>39</sup> that "*directs countries to register or license natural or legal*

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<sup>35</sup> An Introduction to Virtual Currency. Retrieved: <https://www.cftc.gov>.

<sup>36</sup> BSP Circular No. 944: "Guidelines for Virtual Currency (VC) Exchanges" issued on 6 February 2017.

<sup>37</sup> Virtual Currencies: Key Definitions and Potential AML/CFT Risks. Retrieved: <https://www.fatf-gafi.org>.

<sup>38</sup> BSP Circular No. 944. Retrieved: <http://www.bsp.gov.ph/downloads/regulations/attachments/2017/c944.pdf>.

<sup>39</sup> Guidance for a Risk-Based Approach: Virtual Currencies, at pages 9 and 10. Retrieved: <https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-RBA-Virtual-Currencies.pdf>.

persons that provide MVTs<sup>40</sup> (Money Value Transfer Service) in the country, and ensure their compliance with the relevant AML/CFT measures”.

Under the circular, VC exchanges or businesses engaged in the exchange of VCs for equivalent fiat money in the Philippines are required to register with the BSP as remittance and transfer companies. BSP-registered VC exchanges are now required to put in place adequate safeguards to address the risks associated with VCs such as basic controls on anti-money-laundering and terrorist financing, technology risk management and consumer protection.

In addition, the Circular requires of all BSP-registered VC exchanges that large value pay-outs of more than PhP500,000, or its foreign currency equivalent, in any single transaction with customers or counterparties, shall only be made via check payment or direct credit to deposit accounts. VC exchanges are now Covered Persons (CPs) required to submit Covered Transaction Report (CTRs) and Suspicious Transaction Reports (STRs) to the BSP through the appropriate department of the Supervision and Examination Sector (SES). In addition, a VC exchange shall maintain records and submit the following reports to the appropriate department of the SES:

<b>Nature of Report</b>	<b>Frequency</b>	<b>Due Date</b>
Audited financial statements (audited by any of the BSP selected external auditors)	Annually	Not later than 30 June following the reference calendar year
Quarterly Report on Total Volume and Value of VCs transacted*	Quarterly	Ten (10) business days from end of reference quarter
List of operating offices and websites*	Quarterly	Ten (10) business days from end of reference quarter

\* Duly certified by the Proprietor/Managing Partner/ President or any officer of equivalent rank

It should be emphasized, however, that though the BSP issued the mentioned circular on VC, it does not intend to endorse any VC, such as bitcoin, as a currency since it is neither issued or guaranteed by a central bank nor backed by any commodity. Rather, the BSP aims to regulate VCs when used for delivery of financial services, particularly, for payments and remittances, which have material impact on AML/CFT, consumer protection and financial stability.<sup>41</sup>

#### **D. VC Exchange Services and Exchanges in the Philippines**

VC exchange service refers to the conversion or exchange of fiat currency or other value into VC, or the conversion or exchange of VC into fiat currency or other value; while VC exchange refers to an entity that offers services or engages in activities that provide facility for the conversion or exchange of fiat currency to VC or vice versa.<sup>42</sup> Duly registered VC exchanges may perform other money or value transfer services such as the acceptance of cash, checks, and other monetary instruments, and/or payment to a beneficiary by means of a communication, message, transfer or

<sup>40</sup> Including domestic entities providing convertible VC exchange services between VC and fiat currencies (i.e. VCPPS) in a jurisdiction.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid., Subsection 4512N.2, at pars. b and f, respectively.

through a clearing network.<sup>43</sup> As of October 31, 2019, there are thirteen (13) operating BSP-registered VC exchanges in the Philippines<sup>44</sup>.

#### E. The AMLC’s Study of the Transaction Profile of Accredited Virtual Currency Exchanges in the Philippines<sup>45</sup>

In view of the expansion of the VC exchange industry in the Philippines, the Philippines’ FIU, or the AMLC, conducted a study for the purpose of assessing the transaction profile of BSP-registered VC exchanges, as these transactions relate to AML efforts. The data used by AMLC in its study are the CTRs and STRs submitted<sup>46</sup> by BSP-registered VC exchanges from March 6, 2017 to April 10, 2018 pursuant to BSP Circular No. 944. The result of the AMLC’s study was released on April 12, 2018.

#### F. Significant Observations

The AMLC’s study yielded the following significant observations that may be used as a basis for the formulation of policies or regulations to further strengthen existing AML/CTF measures:

##### 1. VC Exchange-Reported Transactions Increased Dramatically in Both Volume and Value for 2017

Following the BSP’s issuance of Circular No. 944 in February 2017, VC exchange-reported transactions increased dramatically in both volume and value for 2017. Total volume increased by 170% year-on-year (driven by 161% and 845% growth in STRs and CTRs, respectively), while total value increased by 608% year-on-year to reach an aggregate amount of PHP1.7 billion. Consider the following data of VC Exchange-Reported Transactions by Type<sup>47</sup>:

Transaction Year	CTR		STR		TOTAL	
	Volume	Value*	Volume	Value*	Volume	Value*
2014			10	1.9	10	1.9
2015			78	1.0	78	1.0
2016	74	175.8	5,583	67.1	5,657	242.9
2017	699	1,189.5	14,550	531.5	15,249	1,721.0
2018**	313	1,031.7	1,059	57.1	1,372	1,088.8
TOTAL	1,086	2,396.9	21,280	658.7	22,366	3,055.6

\*Values are in PHP million

\*\*Coverage of 2018 data is until 6 April 2018

While accreditation for VC exchanges commenced in 2017, it may be observed that transactions executed using the said platform date back to 2014. At that time, VC exchanges could

<sup>43</sup> <http://www.amlc.gov.ph/images/PDFs/Study%20on%20VC.pdf> at page 6.

<sup>44</sup> List of Remittance and Transfer Companies (RTC) with Money Changing (MC)/ Foreign Exchange Dealing (FXD) and Virtual Currency (VC) Exchange Service As of 31 October 2019: Source: FSD IX Database. Retrieved: <http://www.bsp.gov.ph/banking/MSB.pdf>.

<sup>45</sup> Strengthening Anti-Money-Laundering Surveillance Alongside Advancements in Financial Technology. Retrieved: <http://www.amlc.gov.ph/images/PDFs/Study%20on%20VC.pdf>.

<sup>46</sup> Betur, Inc. and Rebitance, Inc., registered and accredited by BSP in September and October 2017, respectively.

<sup>47</sup> The VC exchanges began submitting CTRs and STRs in 2017. Since STR submission hinges on the determination of the suspicious nature of a specific transaction regardless of the date it was executed, some reported transactions covered in the dataset were carried out on the VC exchanges’ platforms in previous years (i.e., starting 2014).

register their remittance business with the BSP under Circular No. 471 (Rules and Regulations for Foreign Exchange Dealers, Money Changers, and Remittance Agents) issued on January 24, 2005. Becoming duly registered remittance agents (RAs) would allow them to open bank accounts.

The narratives for some transactions were also noted to demonstrate a degree of coordination between the VC exchanges and other CPs (such as correspondent banks), which has aided the former in identifying suspicious individuals and transactions. These may be indicative of proactive AML investigation and robust controls on the part of the regulated entities. Inter-entity coordination and knowledge sharing would also strengthen the capacity of the broader financial system in detecting and countering money-laundering and terrorist financing.

2. Deviations Were Noted on the Clients' Profile and/or Transaction History, Including Transaction Amounts Not Commensurate with One's Financial Capacity

The bulk of the total number of STRs (at 41.9%) were tagged as deviations from the clients' profile and/or transaction history, including transaction amounts not commensurate with one's financial capacity. Aside from such reasons relating to doubts on the clients' profile and/or nature of transactions, the three most frequently cited reasons for suspicion or circumstances warranting the filing of STRs all shared links to investment fraud, such as participation in (1) investment schemes, (2) swindling, and (3) fraudulent practices and other violations under the Securities Regulations Code of 2000. Taken together, these account for 6,670 STRs amounting to PHP121.8 million (equivalent to 31.3% of the total volume and 18.5% of the total value of STRs)

3. Most Suspicious Transactions Reported by the VC Exchanges Are Smaller Ticket Items

Most suspicious transactions reported by the VC exchanges are smaller ticket items, with 95.7% of the sample amounting to below PHP100,000. Nonetheless, despite the volume of STRs from the smallest bracket of PHP 1–9,999 (at 9,231 transactions or 43.4% of total), these account for only 4.6% of the total value of transactions. On the other hand, while STRs belonging to the PHP 100,000–499,999 bracket comprise 4.2% of the total in terms of volume, these account for the largest aggregate value, at 35.7% of the total. To date, seven transactions exceeding PHP500,000 have been identified as suspicious, with reasons as follows: (1) association of account owner with online gambling; (2) account owner suspected to be in violation of the Cybercrime Prevention Act of 2012; and (3) no established legal/trade purpose nor economic justification for the transactions involved.

4. Suspicious Transactions Were Mostly Outward Remittances to Domestic Beneficiaries, While the Rest Were in the Form of Cash Deposits

In terms of volume, suspicious transactions were mostly outward remittances to domestic beneficiaries (comprising 59.4% of the total volume), while the rest were in the form of cash deposits (comprising 40.6% of the total volume). On the other hand, the reverse can be said about the composition of suspicious transactions in terms of value, where cash deposits dominate at 58.5% of the total, whereas the remaining 41.5% of transactions are composed of different forms of domestic outward remittances.

It can be observed that the volume and value of cash deposits tagged as suspicious have increased significantly in 2017, although these appear to have decreased in 2018 thus far. Examining monthly data, large cash deposit flows were noted for September to December 2017,

amounting to PHP237.7 million, or 73.0% of the total cash deposit STRs for the year. The large inflow of cash deposits was observed to continue to January 2018, which accounted for PHP32.0 million, or 82.1% of the total value of cash deposit STRs reported year-to-date.

## **G. Typologies and Indicators**

The AMLC's study of the transaction profile of accredited Virtual Currency exchanges in the Philippines revealed that various methods and techniques can be exploited and/or employed by criminals to usurp money from unsuspecting victims and/or launder the proceeds of illicit activities. The AMLC noted that the key element in the execution of such unlawful activities is anonymity, whether through means such as the extraction of funds in cash in order to remove the money trail or the usage of an untraceable mobile sim to be able to assume a fake identity in withdrawing funds. In particular, recurring schemes that may warrant enhanced monitoring and implementation of more stringent preventive measures include:

### **1. Unlicensed Investment Scheme**

In this scheme, the perpetrator uses an account in the VC platform to solicit funds for an unlicensed investment scheme. The victim opens an account in the VC platform or performs over-the-counter cash deposits to transfer money to the wallet address provided by the perpetrator. At first, the gains on the investment are delivered as promised, and the victim is encouraged to top up on the investment and refer more members in order to earn commissions. Eventually, an issue arises which allegedly causes the perpetrator to fail to deliver the funds as promised. Communication subsequently ceases and victims are unable to contact the perpetrator through all available channels. The perpetrator deliberately severs all connections –deactivating groups and pages, blocking the victim's account and the like.

### **2. Online Shopping Fraud**

The perpetrator poses as a seller of products/services in social media channels or online shopping sites, requiring a payment to an account within the VC platform prior to delivery of items. After the payment is made, the perpetrator promptly cuts all communication with the victim and removes/deactivates all social media connections. Delivery of the promised product/service is never fulfilled.

### **3. Identity Theft**

The perpetrator using this scheme assumes the identity of a legitimate online store and sells items on the Internet similar to those being sold by the online store, advising the victim—a prospective customer—to remit payments to an account in the VC platform prior to shipment of the purchased items. Payments are immediately withdrawn from the account and all communication with the victim is cut. The perpetrator may also deceive a victim by pretending to be the victim's relative and then requests money through a payment centre, possibly through a VC platform.

### **4. Unauthorized Withdrawal via Cybercrime**

The perpetrator accesses a client's account without authorization via online means such as hacking or phishing and then withdraws the funds in cash through the VC platform's payment partner using a fabricated identity, effectively eliminating the money trail.

5. Fraud (with Claims of Hacking of the Suspect's Account)

The victim is contacted by an acquaintance (in this particular case, a colleague) asking if there is a nearby payment centre to the victim and subsequently seeks assistance in making payments/deposits to particular reference numbers, promising to pay off the debt as soon as they meet. However, after completion of the transaction, the acquaintance claims that the account was hacked.

6. Fraud (via Exploitation of System Glitch)

The perpetrator avails the services of a VC platform's payment partner then exploits a glitch in its system wherein simultaneously triggering a credit in one's account and cashing out funds would result in an erroneous credit to one's account.

7. Advance Fee Fraud

The victim comes across a post on social media where the perpetrator, who claims to be part of a capital financing company, advertises loan offerings for additional capital (possibly targeting small-time entrepreneurs). The victim avails of the loan and is told that in order for the loan to be released, a processing fee must first be paid. The victim can no longer contact the perpetrator after payment of the processing fee.

8. Online Dating Fraud

The victim and perpetrator meet in a dating site and eventually agree to meet up at a particular place and time. The victim shoulders the transportation allowance of the perpetrator but is unable to communicate with the perpetrator subsequent to the deposit of funds. In addition, the AMLC's study likewise established the following red flags indicating that VCs are used in laundering illicit funds:

1. Unusually high volume of fund inflows (via cash deposits and/or incoming transfers from other VC platform users) and/or outflows (typically via outgoing transfers to external VC wallets or conversion to cash);
2. Multiple person-to-person (P2P) transfers from various accounts within the VC exchange;
3. Immediate turnover of newly received funds;
4. Attempts to purchase verified accounts within the VC platform.

## **VIII. CASE INVOLVING BITCOIN SCAM**

An individual used his company originally registered as a sole proprietorship under a different purpose to operate a pyramid scheme using VC bitcoin as a front to explain the company's source of earnings and VC exchange platforms to facilitate payments and investments. Under the scheme, investors were promised double-digit interest rates every few weeks. As the suspects resorted to pyramiding and employed middlemen to serve as recruiters of new investors, the scheme's geographical reach extended nationwide. The perpetrators were eventually arrested. Months prior to the arrest, the VC exchange's systems flagged suspicious account activities, transactions, and

individuals associated with the scheme, leading to the filing of STRs on the group and their associates/cohorts.<sup>48</sup>

## IX. CHALLENGES AND BEST PRACTICES

While the Philippines progress as a nation, it encounters challenges in the implementation of the policies and programmes to combat money-laundering, terrorist financing and corruption. With a strong bond between the Anti-Money-Laundering Council and the Office of the Ombudsman with the unwavering support of the various sectors of society, including the international community, we can win this battle to minimize if not altogether eliminate these menaces in our midst.

Relevant laws should be passed by Philippine legislators giving more powers to the Anti-Money-Laundering Council and the Office of the Ombudsman for more effective investigation and prosecution of cases. It is high time to revisit Republic Act 1405, for it impedes law enforcement authorities and investigators and prosecution officers in the performance of their duties and responsibilities.

The legislative proposals introduced by Philippine legislators to aid the AMLC and OMB to fulfil their respective mandates can be considered as a welcome development. These proposals include, among others, amendments to RA 1405; the Subscriber Identity Module (SIM) Card Registration Bill<sup>49</sup> to raise the level of the country's financial literacy and educate the public in performing their own due diligence, especially in assessing investment opportunities; classifying vote-buying and vote-selling as unlawful activity under the AMLA<sup>50</sup>; a proposal strengthening the institutional capacity of the Office of the Ombudsman by amending certain provisions of RA 6770 and giving power to the Office of the Ombudsman to employ wiretapping as an investigative technique.<sup>51</sup>

Moreover, instead of just legislative proposals, pertinent laws, rules and regulations should be adopted to counter ML-TF and corruption. The passage of Republic Act No. 11055, otherwise known as the Philippine Identification System Act, on August 6, 2018, is a step closer to aid in curbing anonymity. Pursuant to Section 2 of said law, it is a declared state policy, "to enhance administrative governance, to reduce corruption, and curtail bureaucratic red tape, to avert fraudulent transactions and misrepresentations, to strengthen financial inclusion and to promote ease of doing business. Towards this end, a resilient digital system shall be deployed to secure data collected and ensure that the people's right to privacy, confidentiality and other basic rights are at all times upheld and protected."<sup>52</sup>

While the emerging threats and trends in virtual currencies are present, the Bangko Sentral ng Pilipinas (BSP or the Central Bank of the Philippines) Issuance of Circular No. 944 Guidelines for

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<sup>48</sup> Strengthening Anti-Money-Laundering Surveillance Alongside Advancements in Financial Technology, at pages 13 to 14. Retrieved: <http://www.amlc.gov.ph/images/PDFs/Study%20on%20VC.pdf>.

<sup>49</sup> 2017=2018 AMLC Annual Report, p. 25. Retrieved: <http://www.amlc.gov.ph/images/PDFs/2017-2018%20AMLC%20ANNUAL%20REPORT.pdf>.

<sup>50</sup> SBN-926 Retrieved [https://www.senate.gov.ph/lis/bill\\_res.aspx?congress=18&q=SBN-926](https://www.senate.gov.ph/lis/bill_res.aspx?congress=18&q=SBN-926).

<sup>51</sup> <http://www.congress.gov.ph/members/search.php?id=cabochan-m>.

<sup>52</sup> <https://www.officialgazette.gov.ph/downloads/2018/08aug/20180806-RA-11055-RRD.pdf>.

Virtual Currency Exchanges provides a silver lining to counter money-laundering, terrorist financing and corruption. The adoption of the National Anti-Money-Laundering Counter Financing of Terrorism Strategy<sup>53</sup> and the creation of its National Anti-Money-Laundering Counter-Financing of Terrorism Coordinating Committee may be considered as a best practice for the Philippine Government since it adopts a holistic approach.

Most of these activities outlined in the NACS are not just good on paper but are already in place. In fact, an enhanced collaboration in the form of joint investigations, capacity-building and training and workshops between the AMLC and OMB investigators and prosecutors are good indicators of the serious efforts of the government to fight money-laundering, terrorist financing and corruption. It is hoped that more technical assistance may be provided by developmental partners in this score.

## **X. CONCLUSION/RECOMMENDATIONS**

Money-laundering, terrorist financing and corruption have adverse impacts on the economy and political stability of a country; thus, such crimes must be curbed with an iron hand. The Philippine Government, through the AMLC and the Office of the Ombudsman, in its unrelenting stance in fighting the menace of money-laundering, terrorist financing and corruption is taking positive steps. The strong collaboration between said offices manifested through their Memorandum of Understanding is indeed imperative.

The formulation of the National Anti-Money-Laundering and Counter-Financing of Terrorism Strategy (NACS) and the creation of the National AML/CTF Coordinating Committee, the passage of relevant laws, the legislative proposals of Philippine legislators and the issuance of guidelines for virtual currency exchanges by Bangko Sentral ng Pilipinas (BSP Circular No. 944) are manifestations of the government's serious efforts to counter money-laundering, terrorist financing and corruption.

On the emerging threats and trends, money-laundering/terrorist financing schemes have become sophisticated and complex because of modern technology. The introduction of virtual currencies as an accepted exchange or payment scheme has offered alternative pathways for criminals to launder illicit funds or finance terrorist activities. The use of virtual currencies is considered one of the latest challenging threats and trends in the fight against money-laundering/terrorist financing and corruption.

Clear understanding of the nexus of virtual currencies in various money-laundering/terrorist financing and corruption schemes will enable anti-money-laundering authorities to formulate effective laws, rules, regulations and regulatory frameworks to prevent virtual currencies as a vehicle for laundering illicit funds.

The establishment by the Bangko Sentral ng Pilipinas (The Central Bank of the Philippines) of a regulatory framework for virtual currencies exchanges has strengthened safeguards against risks associated with virtual currencies, such as controls on Anti-Money-Laundering and Counter Terrorist Financing, technology risk management and consumer protection. In particular, the

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<sup>53</sup> <http://www.amlc.gov.ph/images/PDFs/NACS.pdf>.

inclusion of virtual currencies exchanges as Covered Persons has allowed for more comprehensive monitoring of the financial behaviour of individuals and entities possibly connected to illicit activities as well as closer coordination and information sharing among Covered Persons in the conduct of Anti-Money-Laundering surveillance.

However, there is still much to be desired to mitigate the vulnerabilities of virtual currencies as tools or vehicles for laundering money and other crimes. To reduce the prevalence of fraudulent activities using virtual currency exchanges, the following measures should be adopted or imposed:

- a. Lower thresholds for the amount, volume and/or frequency of transactions in an account;
- b. More stringent Know Your Client (KYC) procedures;
- c. Stricter requirements for increasing an account's transaction thresholds;
- d. Release of constant advisories and reminders to accountholders on prohibited activities and possible penalties;
- e. More rigid Anti-Money-Laundering/due diligence standards for virtual currencies exchanges' payment partners, such as remittance centres or mobile payment systems.<sup>54</sup>

A multi-sectoral approach to corruption prevention programmes to deter the prevalence and commission of corruption-related offences, giving premium on values formation by the Office of the Ombudsman, is the long-term solution.

The adoption and effective implementations of the recommended measures are dependent on the political will of those in power. Political will is a necessary prerequisite to have a clean and honest governance. As Singapore's Prime Minister Lee Kuan Yew said: "*Political will is the key to a clean government*"<sup>55</sup>.

After all has been said and done, the strong political will of the national leadership would spell a great difference.

*"I now ask everyone, and I mean everyone, to join me as we embark on this crusade for a better and brighter tomorrow." President Rodrigo Roa Duterte, Philippines<sup>56</sup>*

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<sup>54</sup> 2017=2018 AMLC Annual Report, p. 25. Retrieved: <http://www.amlc.gov.ph/images/PDFs/2017-2018%20AMLC%20ANNUAL%20REPORT.pdf>.

<sup>55</sup> Retrieved: <https://www.cpiib.gov.sg/lee-kuan-yew-political-will-key-clean-government->.

<sup>56</sup> <https://www.officialgazette.gov.ph/2016/06/30/inaugural-address-of-president-rodrigo-roa-duterte-june-30-2016/>.