

For Official Use Only

TYOLOGIES OF MONEY LAUNDERING THROUGH THE REAL ESTATE SECTOR IN WEST AFRICA

Final Report

*For further Information, Please contact : Inter-Governmental Action Group against Money Laundering in West Africa (GIABA),
Sacré Cœur 3 Pyrotechnie x VDN, Villa N° 101, P.O. Box 32400, Ponty, DAKAR, SENEGAL,
TEL: (+221) 33 859 18 18, FAX: (+221) 33 824 17 45, Email: secretariat@giaba.org; Website: www.giaba.org*

CONTENTS

Preface	
Abbreviations	
Executive Summary	6
Introduction.....	8
Objectives.....	9
Methodology.....	9
Nature of the Real Estate Sector in West Africa.....	10
Overview of the Legal and Regulatory Framework.....	13
Key Findings.....	15
Overview of Money Laundering Trends in the Region.....	16
Basic Techniques	17
TYPOLOGIES.....	17
Typology 1: Use of monetary instruments.....	17
Typology 2: Misuse of tontines: informal micro-finance schemes	22
Typology 3: Use of non-financial professionals and other corporate vehicles	23
Typology 4: Mortgage schemes.....	27
Typology 5: Use of real estate to conceal illegal activities.....	28
General comments and recommendations.....	29
Annexes	31
1 RED FLAG INDICATORS	31
2 ISSUES FOR CONSIDERATION	35
Case Studies and diagram of operation	37
TERMINOLOGY.....	39

PREFACE

Estimated money laundering flows are reported to be in the range of over US\$1 trillion,¹ which are laundered every year by criminals such as drug dealers, arms dealers and traffickers and smugglers of people. In recent years there have been rapid changes in the financial services industry and growing regulatory expectations and pressures. Combating money laundering and terrorist financing continues to be a major challenge, particularly for the banking sector as gatekeepers to the financial system. Even more challenging is the struggle against money laundering in cash-based economies.

Constructing typologies to determine the trends, methods and intermediaries of money laundering and terrorist financing is one of the main thrusts of the activities of the Inter-Governmental Action Group against Money Laundering in West Africa (GIABA). The purpose of this is to provide sufficient information to policy-makers and practitioners to guide them in establishing and implementing robust anti-money laundering and counter-financing of terrorism (AML/CFT) regimes in their respective jurisdictions.

Against this backdrop, GIABA conducted a typologies exercise in its member states in order to determine the techniques used by criminals to launder their illicit profits through the real estate sector in particular. This exercise was intended to build on the findings from the last typologies exercise on money laundering through cash transactions and cash couriers. The current exercise reviews existing institutional, regulatory and legal arrangements for the supervision of the real estate business and determines the vulnerabilities of the sector to money laundering and terrorist financing.

The exercise was carried out through an assessment of the operations of real estate agencies and agents in the member states; by public perception of money laundering throughout the sector; and by the institutional, regulatory, legal and law enforcement provisions governing the sector. Experts from Benin, Côte d'Ivoire, Ghana, Guinea-Bissau, Liberia, Niger, Nigeria, Senegal, Sierra Leone and Togo provided information and case studies for this report. Compiling it has not been an easy task because there is so little data in the region on reported or investigated cases of money laundering in the sector under review.

The report reveals the gaps in the control and supervision of the real estate sector for the prevention of money laundering in many countries in the region. A few countries, such as

¹ KPMG International, *Advisory Forensic Global Anti-Money Laundering Survey*, 2007

Nigeria and Senegal, have attempted to put control mechanisms in place for the regulation of this sector, but most have not yet established a sound AML/CFT guideline for real estate agents.

It is hardly necessary to emphasise that countries should review their laws on the regulation and supervision of the real estate sector, in particular with regard to the prevention and control of money laundering. National AML/CFT strategies and implementation mechanisms should incorporate the role of real estate agents in the fight against money laundering, and by extension against terrorism, though this is not dealt with in this report, as indicated in the relevant FATF Recommendations and guidance notes.

Overall, this report is concise and straight to the point. It concludes with a set of recommendations that GIABA member states need to implement. Following the adoption of this report during the 10th GIABA Plenary/Technical Commission Meeting held in Dakar, Senegal, on 16–18 November 2008, and subsequent approval by the GIABA Ad Hoc Ministerial Committee, I have the honour to present the report to our line Ministers in charge of Finance, Justice and Interior for implementation. I also strongly commend the report to the general public, especially the private sector and those who seek to increase their knowledge on the problems of money laundering and terrorist financing. I believe they would find this report interesting and useful.

Finally, I thank all our members and especially those experts who contributed to the success of this exercise.

Abdullahi Y. Shehu
Director-General
31 December 2008

ABBREVIATIONS

AML	Anti-Money Laundering
ARS	Alternative Remittance Systems
BCEAO	Central Bank of West African States
CDD	Customer Due Diligence
CENTIF	Cellule Nationale de Traitement d'Informations Financières
CFT	Counter-Financing of Terrorism
DNFBP	Designated Non-Financial Businesses and Professions
DNFI	Designated Non-Financial Institution
ECOWAS	Economic Community of West African States
FATF	Financial Action Task Force
FI	Financial Institution
FINCEN	US Financial Crimes Enforcement Network
FIU	Financial Intelligence Unit
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
ICPO/INTERPOL	International Police Organisation
NFIU	Nigeria Financial Intelligence Unit
OCTRIS	Office central de répression du trafic illicite des stupéfiants (France)
PEP	Politically Exposed Person
SCUML	Special Control Unit against Money Laundering (Nigeria)
SRO	Self-Regulated Organisation
STR	Suspicious Transaction Report
CTR	Currency Transaction Report
UEMOA	Union Économique et Monétaire Ouest Africaine
UNCTED	UN Counter Terrorism Executive Directorate
UNODC	United Nations Office on Drugs and Crime

Executive Summary

1. Various studies, including those carried out by the Financial Action Task Force (FATF) over the past few years, suggest that advances in technology and the progressive tightening of anti-money laundering (AML) regulations are leading money launderers to make more complex arrangements outside the formal financial services industry, such as the use of various professional services, and in particular the real estate business.

2. The primary objective of this typologies exercise is to carefully examine the vulnerability of the real estate sector in West Africa, given the large volume of monetary transactions involved and its significant impact on geo-political and socio-economic conditions in the West African region. The exercise also attempts to shed light on how the real estate sector in West Africa could be especially attractive to launderers.

3. The study aims essentially at (i) exploring the means by which illicit funds are channelled through the real estate sector to be integrated into the formal economy, and (ii) identifying the control measures in place to combat this form of abuse in member states. It is essential to note that one of the most effective ways of gathering information on how the sector is manipulated is to examine concrete case studies. The report is therefore based on information provided by GIABA members who took part in the 2008 typologies exercise.

4. The fact that there is no average market price for real estate property in the region, coupled with the extensive use of bulk cash for payment, poses a particular difficulty in determining who is actually laundering money and how they are proceeding in this sector. The fact that prices vary widely across towns and districts throughout the region reinforces the difficulty. And the involvement of legal professionals in the completion of real estate transactions makes this category of professionals one of the links in the anti-money laundering and combating the financing of terrorism (AML/CFT) process, albeit a weak one, since in some countries most of them are not covered by AML/CFT obligations. In particular, the principle of endorsing “out of sight” payments by legal practitioners involved in real estate transactions creates the opportunity for criminals to abuse and misuse non-financial professionals such as lawyers, notaries and registrars, who can endorse cash sales or purchases of property that may have been paid for with “dirty money” out of their sight.

5. The typologies exercise revealed that money laundering throughout the sector could easily be disguised as genuine commercial transactions among the large number of transactions taking place. The risks and vulnerabilities detected show that there is an urgent need to raise awareness of the effects of money laundering through the real estate sector, address the lack of real estate regulation in the region, expose the possible socio-

political costs of money laundering through the sector, and recommend ways of addressing these issues.

6. In addition, the report identifies, through case examples, some basic techniques that have been used, such as the use of unregistered real estate agents and other front men, mortgage schemes and advance fee fraud, and parallel (alternative) money transfer systems. The report also looks at the characteristics that make the real estate sector in West Africa particularly attractive to potential misuse and abuse by criminals, and briefly describes each money laundering technique, followed by one or more case examples. It is hoped that the money laundering indicators identified will assist financial institutions and real estate businesses in setting up measures to enforce customer due diligence (CDD) rules and record-keeping, as well as performing a risk analysis on both new and existing clients.

7. The report also highlights some the efforts made so far in the region, including the criminalisation of money laundering through the enactment of anti-money laundering (AML) legislation in all member states, and the gradual establishment of financial intelligence units (FIUs) in each state.

8. The exercise identified five areas that are particularly vulnerable to misuse in money laundering schemes involving real estate: the use of monetary instruments; third parties, front men and businesses; legal practitioners; service providers; and financial institutions, including alternative transfer systems. These areas, however, deserve further in-depth research if more concerted action is to be taken. The report concludes by making some policy recommendations consistent with the basic FATF 40+9 Recommendations.

9. Experts from Benin, Côte d'Ivoire, Ghana, Guinea-Bissau, Liberia, Niger, Nigeria, Senegal, Sierra Leone and Togo took part in the exercise and provided useful information and case studies which formed the basis of this report.

Introduction

10. In the past decade, studies have shown that West Africa has witnessed a tremendous increase in construction in the real estate sector. In large part this is the result of diaspora Africans wanting to own a place they can call home, as well as providing for their families. Migration, it is believed, has played a major role in the structural transformation of West African cities. The studies have shown the significant investments of migrants in real estate and their influence on the transformation of major cities in the region. West African migrants living abroad maintain strong links with their countries of birth. Their foreign wages give them high purchasing power, which allows them to invest in their villages and towns by building houses, health centres, schools, religious centres and so on, thereby contributing to the social improvement of the lives of their families.

11. It is believed that the inadequacy of AML/CFT legislation and the lack of knowledge and enforcement of the relevant laws in member states constitute an attraction to the real estate sector for criminals. The predominantly cash-based nature of the economies of the region, coupled with the ease with which individuals could acquire properties in many countries without being subject to CDD requirements, also make the region in general, and the real estate sector in particular, vulnerable to launderers and terrorist financiers.

12. In its effort to protect the economies of ECOWAS member states, to contribute to the economic development of the peoples of the region and to promote good governance and the rule of law, GIABA has set out to determine and describe the typologies of money laundering as part of its strategic objectives and its Action Plan for 2007–09.

13. During its 8th Technical Commission/Plenary Meeting held in Ouagadougou, Burkina Faso, in November 2007, GIABA agreed to undertake a typologies exercise in order to determine the techniques, mechanisms, methods and trends of laundering through the real estate sector in the region.

14. Considering the large scale of monetary transactions involved in the real estate sector and the significant social and economic impact this has on the region, the real estate sector merits closer consideration. The object of such scrutiny is to make it more difficult for criminals to launder their illicit proceeds by investing in real estate. It is important to emphasise that DNFBPs,² when acting in a professional capacity, and in particular when carrying out transactions for a client in relation to buying and selling real estate, are obliged to comply with FATF Recommendations 5, 6 and 8–11 with respect to CDD, record-keeping and the monitoring of transactions.

15. Understanding the nature of the real estate business in West Africa is a prerequisite for a better understanding of the methods and trends of money laundering through this

² Designated non-financial businesses and professions

sector. Promoting increased knowledge in this area is in fact one of the main thrusts of the GIABA Strategic Plan of Action.

Objectives

16. The primary objective of this typologies exercise was to determine the vulnerabilities of the real estate sector and to identify the techniques, methods and mechanisms for laundering the proceeds of crime through the sector.

17. The specific objectives were to:

- study the techniques and methods used by criminals to launder money through the sector;
- expose the possible social and political costs of money laundering through the real estate sector, highlighting the influence of criminal organisations and their capacity to weaken the social fabric, ethical standards and ultimately the democratic institutions of society;
- demonstrate the ways in which real estate transactions can serve as an integration tool for launderers, i.e. once the funds have been moved through the financial system sufficiently to make their origins extremely difficult, if not impossible to trace, they can be enjoyed by the criminals or employed as capital in furthering their criminal deeds;
- raise awareness of the fact that the lack of real estate regulations in West Africa can be a significant barrier to investment in member countries; and
- make recommendations to improve compliance through the introduction of acceptable standards and good practices.

Methodology

18. A questionnaire was designed and sent to participating member states for data collection. Real estate agents/agencies, banks and other financial institutions, accountants, notaries, public institutions such as investigative authorities, enforcement and regulatory authorities, all contributed by providing relevant information for the success of the exercise. Information was also gathered from open sources such as the media. Semi-structured interviews were conducted with relevant public service and private sector officials and with service providers regarding cases of laundering through the sector. Real estate agencies/agents, banks, lands commissions, the Nigerian Financial Intelligence Unit (NFIU), the Special Control Unit against Money Laundering at the Nigerian Federal Ministry of Commerce (SCUML), as well as other private and public sector officials in member states, provided information to enhance the findings of the typologies exercise.

19. Analysis of the questionnaire responses showed that only Nigeria had a coordinating body to which designated non-financial institutions (DNFIs) including real estate

agencies, transmitted cash transaction reports, which were then forwarded to the Nigerian FIU. Some member states do not have any type of regulatory body responsible for the real estate sector. Other countries have scattered supervisory authorities which supervise various areas of activities or functions covered by the real estate sector, e.g. the registration, acquisition, management or development of land/property. In addition, a few of the countries had self-regulatory organisations such as Surveyors Associations or Real Estate Developers Associations, but these have no regulatory function with regard to real estate agents or agencies.

20. Statistics on money laundering through the sector were difficult to obtain. This is understandable because all but one of the countries passed their AML laws only during the last year and are yet to prosecute money laundering cases.

21. A regional workshop which brought together experts from the real estate sector, the legal sector, law enforcement and other relevant institutions was organised in May 2008 in Accra, Ghana. The workshop was attended by the following member states and Observers: the Republics of Benin, Cote d'Ivoire, Ghana, Liberia; the Federal Republic of Nigeria; the Republics of Senegal, Sierra Leone, Togo; and Sao Tome and Principe as Observers. International and regional organisations/institutions, such as the UN Office on Drugs and Crime (UNODC), the Financial Action Task Force (FATF), the Financial Crimes Unit of the UK, US Department of Treasury, US Financial Crimes Enforcement Network (FINCEN), US Department of State Money Laundering/Terrorist Financing Unit, the Nigerian Financial Intelligence Unit, the Central Bank of West African States (BCEAO), the Commonwealth Secretariat, the International Police Organisation (ICPO – INTERPOL), UN Counter Terrorism Executive Directorate (UNCTED), CENTIF – Côte d'Ivoire and CENTIF – Niger. The ECOWAS Unit Heads of Côte d'Ivoire, Ghana and Guinea-Bissau also participated in the workshop.

Nature of the Real Estate Sector in West Africa

22. West Africa is characterised by informal economies with strong parallel or alternative economies depending on financial flows in local³ as well as foreign currencies. Generally, there is high unemployment and low direct productive investments.⁴ Since the purchase or sale of a property is one of the largest single transactions a family or individual may undertake, changes in property prices have a substantial impact on the decisions taken by potential buyers and sellers of property.⁵ Changes in property prices therefore affect consideration of where to live and work. It is

³ Eight (8) member States belonging to the Union économique et monétaire ouest africaine (UEMOA) zone use a common currency known as the CFA franc. This arrangement not only facilitates movements of cash between the members but also facilitates parallel non-reported (informal) economic transactions between and among the member countries.

⁴ ILO, *The global employment challenge* (accessed on the web 18 Sept. 2008)

⁵ FATF Report on ML and TF through the real estate sector, June 2007

relevant to mention that the West African real estate sector comprises land developments in residential, commercial, industrial and institutional properties as well as agricultural real estate. The typologies exercise revealed that participants in the sector are mainly real estate developers, appraisers, architects, quantity surveyors, land surveyors, lawyers, notaries, the banks and other financial/non-financial institutions, and individual property owners/developers.

23. According to the Knight Frank Africa report, the urban sector of the real estate market in West Africa has in the past few years seen an upsurge of redevelopment schemes comprising mainly residential and commercial properties erected by the private sector. In the central business districts of cities across the region, there have been many conversions from residential to commercial properties and the development of new high-rise offices and shopping centres.

24. Property values have appreciated tremendously in of the potential for both rental and capital resale over the same period. There seems to be a new wave of interest in property acquisition and ownership, possibly due to more money being in the hands of people who want to invest in real estate, as well as remittances in foreign exchange from members of the West African diaspora who are interested in investing in and owning properties in their home countries. Despite this, it is puzzling that the significant growth of the real estate sector in major West African cities in recent years does not seem to be correlated to ratios of banking mortgages.⁶

25. The real estate sector is of great importance to the economy of the region in general and to the financial market in particular because of the large monetary transactions involved. It is not uncommon, however, to find residential, commercial and agricultural real estate businesses lumped together as a single activity and carried out by one agency or agent without distinction, even though the business transactions may differ in each case.

26. In some of the countries, there are legally registered real estate developers and surveyors who are part of incorporated and self-regulated organisations (SROs) such as Real Estate Developers Associations, who also perform agency roles in the sale of their developed properties to their clients. There is also a multitude of uncoordinated and untrained groups of estate agents who perform more of the agency work and who are not legally registered with any organised group. A number of participating countries do not even have any kind of associations or bodies that group real estate agents/agencies, developers and builders together.

⁶ UNODC project I25 – ToR – Studies (2007)



BATIFLOR Bâtiment, Espace Vert, Travaux Publics
Gestion Immobilière
06 BP 6723 Abidjan 06 - Tel: 22 41 43 96 Cel: 08 31 23 98- 66 11 60 78-01 38 61 76

BATIFLOR LOUE ET VEND

VENTE
Riviera Golf Terrain (avec titre foncier) de 5000 m2 Prix : 250 000 000 Fefa à débattre
Riviera M'Badon : Un terrain de 3000 m2 Prix : 100 000 000 Frs Cfa à débattre
Riviera Golf : vers ambassade des USA 1 terrain de 1150 m2 Prix : 50 millions
Plateaux Dokui Une villa duplex de 5 pièces sur 500 m2 Prix 35 000 000 Fefa à débattre

VEND BINGERVILLE
Terrain de 10 hectares Prix 3500 Fefa M2

VEND COCODY
-Riviera II environ André Malraux
1 immeuble R+2 sur 1000 m2 avec des appartements de 2 pièces et 3 pièces revenu mensuel de 2 millions huit cent mille francs Prix : 325 000 000 Fefa à débattre

-II PATEAUX (7e TRANCHE) : 1 terrain de 1170 m2 avec CPF
-Prix = 30 000 000 Frs CFA (visite sur RDV)

-ANGRE : 1 villa de 4 pièces modifiée avec garage
-Prix = 35 000 000 Frs CFA

-II PLATEAUX 5EME TRANCHE
- 1 villa duplex de 10 pièces Prix : 100 millions à débattre

LOCATION
Génie 2000 Akouédo extension
-Immeuble comportant des studios + balcon + parking intérieur Loyer : 50 000 Fefa
II Plateaux environ SOCOCHI magasin de 30 m2 Loyer : 160 000 Frs Cfa
Riviera Akouédo Extension, magasin de 20 m2 Loyer : 50 000 Frs Cfa.

VENTE
-BONOUMIN (en bordure de lagune) : 1 terrain de 1300 m2 -Prix = 150.000.000 Frs CFA à débattre
-ANGRE (Cafetier) : 1 villa de 4 pièces + 2 dépendances -Prix = 35. 000.000 Frs CFA
-II PLATEAUX 7e TRANCHE : 1 terrain de 4000 m2 avec ACP -Prix = 150.000.000 Frs CFA à débattre
-II PLATEAUX 6e TRANCHE : 1 terrain de 1200 m2 bien situé avec CPF -Prix = 50.000.000 Frs CFA

GRAND BASSAM
-ROUTE DE BASSAM : 15 ha de terrain à 3 500 Frs CFA/m2
06 ha de terrain à 3 500 Frs CFA/m2

Samelli 26 - Dimanche 27 Avril 2008 Nord-Sud Quotidien N°883

Examples of “local” real estate agents/agencies in Abidjan. *These photographs are for illustrative purposes only and should not be interpreted as indicating that those firms are involved in money laundering or any other offences.*

27. A glance at the West African real estate business shows that the lack or inadequacy of appropriate internal control mechanisms, policies, training and audit systems, among other things, makes the sector attractive to criminals. It is believed that this may be attributed to the small size of the businesses, and to the products and services available or proposed by each agent or agency.

28. Some participating countries have as few as two registered real estate agencies and a myriad of unregistered small agencies and freelance agents with no specific business locations but who perform agency work, i.e. the leasing, buying and selling of real estate.

29. Property markets are segmented according to location, family and ethnic groupings. Prices depend on the property’s location, and on the buyer or seller. Because of the lack of reliable data, it is not easy to monitor and explain the variations in prices. This is also true when ascertaining the volume of cash transactions conducted outside the financial sector in relation to the real estate business, because of the informality of such

transactions and the attendant poor record-keeping. Understanding the factors that underlie the pricing of property in the region is therefore crucial.

30. It should be mentioned that investment in the sector offers advantages both for legitimate and law-abiding individuals and businesses and for criminals who may abuse the system. The facility that the sector provides for obscuring the true origin of funds and the true identity of the beneficial owner of the property, which are the key elements of the money laundering process, make the sector very attractive for misuse by criminals.

31. Considering the largely informal and cash-based nature of the economies of the region, it is very difficult to give figures on how much money is laundered through real estate, especially as the use of cash payments leaves no paper trail for audit. Reported cases and prosecutions in some countries show that the real estate sector has the capacity to absorb illicit funds that run into billions of US dollars annually, with about N22.6 billion (US\$180 million) recorded in Nigeria alone during the period January 2006 to March 2007.⁷

Overview of the Legal and Regulatory Framework

32. All countries in the region have enacted AML legislation criminalising money laundering and providing for the establishment of FIUs. But most of these laws have not yet been tested by the prosecution of money laundering offences. Other enabling laws, e.g. Anti-corruption, General Criminal Offences and Narcotics Drug Control legislation, have also served as legal measures put in place to respond to money laundering originating from specific predicate offences.

33. The exercise revealed, however, that most countries in West Africa have neither a central national body to regulate the activities of the real estate sector nor an FIU to which suspicious activity reports should be forwarded. There are nevertheless scattered supervisory authorities in some of the countries which supervise the various activities or functions covered by the real estate sector, such as the registration, acquisition, management or development of land or property. However, the fact that these scattered supervisory authorities seldom coordinate or share information among themselves leaves the sector vulnerable to abuse by criminals. For effectiveness and efficiency, all these supervisory bodies would need to be brought together under one umbrella in order to facilitate information-sharing and coordination, particularly with regard to monitoring the activities of known criminals.

34. The use of bulk cash in payments for real estate property and other high-value transactions puts the region at risk of being used by criminals and criminal organisations for the laundering of their illicit funds. It is important to note that even though some

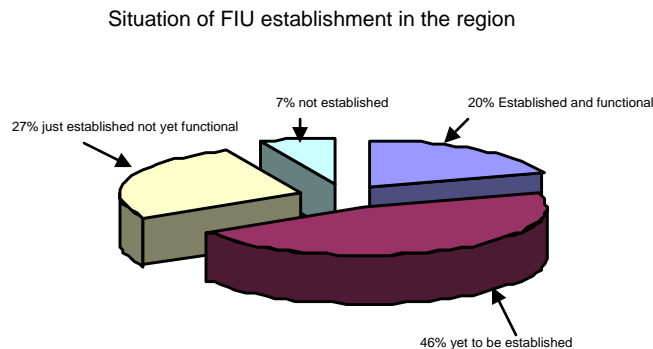
⁷ NFIU, May 2008

member states have set payment thresholds for cash transactions, the study revealed that in practice, throughout the region bulk cash is preferred to any other form of payment. The non-prohibition of bulk-cash payments demonstrates that not only are international standards being violated but that it is practically impossible to conduct any kind of monitoring in order to track criminal transactions, unless the funds go through lawyers and/or banks.

35. Furthermore, even though FATF recommendations stipulate that both purchasers and vendors of a property should be required by law or regulation to comply with essential criteria 13.1 of Recommendation 13, most real estate agencies interviewed were unaware of this. GIABA therefore needs to engage in systematic awareness-building campaigns to ensure that this and all other recommendations are brought to the attention of the pertinent actors in order to ensure an effective and efficient AML/CFT regime in all member states.

Country situation as regards the establishment of financial intelligent units

36. The FIU is a relatively new element in the AML/CFT framework, but by far one of the most important for the prevention and control of money laundering. While all countries in the region have committed to the establishment of this structure, only a few have succeeded so far in actually making their FIU operational. The challenges are many, and include inadequate resources, the need to strengthen the necessary legal provisions for the establishment of the FIU, and the political will to actually establish it. The chart below shows that only four member states have established functional FIUs. Another three have nominated or designated the officials for the FIU but are yet to start functioning. Seven member states have taken the legal steps towards establishing and housing their FIUs, while one is yet to put the necessary measures in place to have an FIU established. The chart below shows the position of FIUs in the region as at August 2008, in percentage terms. Without a functional FIU, member states fall short of the FATF recommendations, which require that all financial institutions and DNFPBs should make suspicious and/or cash transaction reports (STRs/CTRs) to the FIU.



37. In Nigeria and Senegal, where there are functional FIUs, the exercise revealed that the enabling legislation requires DNFBPs, including real estate agents, to file STRs/CTRs directly to the FIU or through their supervisory bodies. However, reporting obligations on DNFBPs in Nigeria are just evolving and the volume of reports may be far lower than the true volume of business. Also, the overwhelming number of unregistered real estate agents is a major bottleneck in this endeavour.

38. FATF Recommendation 12 requires that the CDD, record-keeping and transactions-monitoring provisions set out in Recommendations 5, 6 and 8–11 also apply to DNFBPs when they are involved in transactions for their clients concerning the buying and selling of real estate.⁸ However, in all the countries where the exercise was undertaken, these requirements are not fully observed.

39. In addition, most of the cases presented also showed that the actions of corrupt officials contribute, to a large extent, in blunting AML efforts in the region, particularly in the area of enforcement.

Key Findings

While a country like Guinea-Bissau has only two registered real estate agencies, data from Senegal for instance showed that Dakar, the capital city, has about 300 registered such agencies, with another 20 in Saint-Louis, 25 in Ziguinchor, nine in Kaolack, eight in Thiès, 11 in Mbour, seven in Dioubel, six in Tamba, 10 in Matam, 10 in Fatick, 10 in Kolda, five in Sédhiou, 15 in Louga, 20 in Saly Portudal and 15 at Cap Skiring, for a total of about 500 registered real estate agencies in Senegal. However, the information showed that more than 1500 other unregistered agencies do the same type of work, including over 20,000 individual agents. Most of these registered and unregistered agencies and agents perform general leasing, buying and selling transactions.

40. The following reasons were adduced as to why the real estate sector was attractive as a vehicle for money laundering in the region:

- Investment in real estate easily serves as a means to wash criminal proceeds in order to gain legitimate profits, which are then used to commit further crimes, such as financing the proliferation of small arms and light weapons used to fuel conflicts in most parts of the region.
- Illicit funds directly invested in real estate are easily laundered when properties are subsequently hired, leased or used as educational, health and other facilities.
- Ownership of real estate can often be held by trusts and companies, and in the names of fictitious persons or front men, while beneficial owners live in other countries.

⁸ Risk Based Approach – Guidance for real estate agents

- The real estate sector may be used for mortgage scams or frauds.
- There is a lack of AML/CFT experience and expertise within the region.
- The main actors are not always covered by AML/CFT regulations.
- Modern banking transactions facilitate electronic purchase of real estate through agents in offshore jurisdictions via the internet.
- Money laundering through the real estate sector could also serve as a vehicle for foreign exchange violations and to conceal the proceeds of corruption.
- Manipulation of public funds through legitimately registered companies for the purposes of money laundering is very easy.

The findings also highlighted some general indicators, none of which on their own provided sufficient proof that money had been laundered; however, a combination of a number of indicators would tend to raise red flags (see Annex 1).

41. The exercise revealed a number of predicate offences which generate illicit funds that are laundered through the real estate business. These include but are not limited to:

- embezzlement or misappropriation of state assets
- counterfeiting
- corruption
- drug trafficking
- frauds and other financial crimes
- insider trading
- stock manipulation
- illicit trade in gold and other mineral resources, e.g. diamonds
- oil bunkering
- advance fee fraud (a.k.a. '419'), etc.

Overview of Money Laundering Trends in the Region

42. The case studies revealed that the weak AML/CFT regimes in most countries in the region, coupled with corrupt practices, tended to stifle AML/CFT compliance. In addition, the lack of regulatory bodies to oversee target industries, in this instance the real estate sector, was a major challenge. As a result, enforcement of regulations as well as the sensitisation of the public to a hands-on approach is in most cases almost nonexistent.

43. Some money laundering trends noted in the region include direct cash purchase of properties; establishment of shell or front companies; use of legitimate companies to launder illicit funds; use of third parties or front men to purchase properties; and use of fictitious names to purchase property. Also, politically exposed persons (PEPs) are

regularly involved in real estate acquisitions both at home and abroad using proceeds from corruption. For example, most investigated, prosecuted or convicted public officials in Nigeria usually used their ill-gotten funds to acquire land or luxury properties.

44. Even though there were no reported cases of under- or overvaluation of property, this is a general occurrence in most parts of the region, according to the experts. The mechanisms used for purchasing property are generally international transfers or direct cash or cheque purchases. Barter trading (exchange of property) was also mentioned in some isolated cases.

45. The following cannot be overemphasised: awareness-raising and capacity-building for relevant officials, cooperation through information-sharing, and the need to ensure that the real estate sector is regulated to reduce its vulnerability and consequently to strengthen its development potential in the region.

Basic Techniques

46. Launderers use many methods, techniques, mechanisms and instruments in order to launder funds through the real estate sector. Some of the methods are not illegal acts if they are not associated with a money laundering or terrorist financing scheme (or if the association goes undetected).

47. Cases examined both within this and the previous typologies exercise revealed some common methods used in the region, which have been grouped as follows:

- use of monetary instruments
- use of informal micro-credit schemes (tontines)
- use of non-financial professionals and other service providers
- use of mortgage schemes
- use of real estate to conceal illegal activities.

TYPLOGIES

Typology 1: Use of monetary instruments

48. In all GIABA member states it is common practice for individuals to pay cash up front in the purchase of real estate property without raising any suspicion. Even though some of the countries in the region have regulations regarding payment methods, sanctions are rarely applied to those who make payments above the stipulated threshold. The Money Laundering (Prohibition) Act (2004) of Nigeria provides that any cash transactions beyond the threshold of Naira 500,000 (about US\$5000) should be reported.

But since the law came into force in 1993 (it was amended in 2004), there is no record of any reported case of cash transactions other than cash that was seized by law enforcement in the course of investigations. Consequently, there has been no trial or conviction resulting from transacting business in cash beyond the threshold. For the UEMOA countries an instruction⁹ from the West African Central Bank (BCEAO) stipulates that the threshold for cash transactions is 100,000 CFA (about US\$225) between private and public entities; any transaction above that level should be made through other bearer instruments such as cheques. Even with this stipulation, there has been no record of reported cases of transactions in cash beyond the prescribed threshold in any of the UEMOA countries.

49. Monetary instruments used by criminals in their real estate transactions have generally been cash, cheques and wire transfers.

Cash transactions

50. It is clear that transactions involving huge amounts of cash leave no audit trail and this makes the sector a high-risk area, attracting criminals to invest proceeds from drug trafficking, for example, and using the profits generated by the investment of the illicit funds to commit further crimes. The boom in the real-estate sector in most parts of the region without any correlation to ratios of banking mortgages raises the question of whether the sector may be misused to serve as an integration tool for launderers and terrorist financiers. This is sustained by the cases received from law enforcement, which show that proceeds from drug trafficking and corruption are generally laundered into the real estate sector.

SIGI-CI
Agent & Promoteur Immobilier

PRIX PROMOTIONNELS, DU 14 AVRIL AU 15 MAI À LA SIGI-CI

Site	Sup (m2)	Coût comptant	Coût à crédit	Apport Initial	Mens	Abouts
Opération CANAAN, route d'alépé	500 (18 lots)	800 000	1 200 000	450 000	10 mois	Titre foncier Vente notariée
SONGON, route de Dabou	1000 (6 lots)	1 200 000	1 500 000	700 000	10 mois	En bordure de voie Près de la SP de Songon
	1500 (7 lots)	1 800 000	2 100 000	900 000		
Riviera Palmeraie, Extension 1&2	500	3 700 000				Zone d'Opération immobilière
	600	4 000 000 5 000 000				
N'Dotré, stade Olympique	500	650 000	800 000	400 000	10 mois	Lettre d'attribution

pièces à fournir : La photocopie de la CNI
Mode de paiement : En espèce ou par chèque
Contacts Tél : 22 40 99 40 - 22 40 99 42 - Fax : 22 43 17 82-05 71 90 00-05 71 90 00-07 06
14 00 00 64 42 30 - 05 70 84 20

Le co
rie c
Préfet
fense
terme
DIAL
OUR
leur j
mon
2008
Nou
cèret
-Au
dépu
-Au h
de B
-Au s
de B
-Au t
-A n
dépt
-A n
dépt
-A n
dépt

Real estate announcement: *cash or cheque payments are acceptable*

⁹ Instruction N°01/2003/SP of 8 May 2003

Other payment methods

51. The use of cheques and other negotiable instruments in most jurisdictions has proved ineffective because of the problems arising from unpaid (bounced) cheques as well as the limited access to banking facilities in the region, particularly in the rural and suburban areas. A few jurisdictions are making maiden attempts at moving towards electronic payment methods in order to cut down on the use of cash in transactions. However, business conducted in the large informal sector is worth billions of dollars in cash, thus creating opportunities for criminals to misuse the informal sector without being detected. The GIABA typologies report on cash transactions and cash couriers showed that in-bound and out-bound cross-border smuggling of currency is rife across all jurisdictions.

52. The exercise revealed that local parallel money changers are also used by criminals to structure local and foreign currencies through deposits at local banks and/or exchange bureaux, sums that are then injected into the financial system through real estate property renovation and building or acquisition in many parts of the region. The ease with which currency exchange regulations are violated through exchange bureaux can also be explained by the fact that most of the operators in the region converted from what used to be known as the “black market” money changers.

Case 1

Laundering the proceeds of drug trafficking through the real estate sector

In November 2003, the services of a country T took Mr TM in for questioning, as well as AN who is suspected of being an intermediary between TM and a Colombian cartel. Questioned by the judge, Mr TM denied any participation in the cocaine trafficking network between Columbia, Country T and Europe. His associate, Mr NA, on the other hand, had revealed the existence of drug business relations between Mr TM and Columbians Z and B, and had narrated how and by what means the drogue was transported to Europe via country T. In January 2004, a team of OCTRIS¹⁰ agents and the French judiciary police arrived in country T in order to take in Mr TM for interrogation. This French intervention was justified by the fact that the two traffickers taken in for questioning in Paris for being in possession of 6 kg of cocaine had already declared being in the service of Mr TM. But well informed by the accomplices, Mr TM was taken into custody for interrogation and handed over by the law enforcement services of country T.

In 2004, an international rogatory commission visited country T, within the framework of the investigation of the case that was opened by a French investigation firm for hearing.

Mr TM, who claimed to be a trader in his country, made large investments in the real estate sector with a significant number of constructions as well as a vehicles park with diverse brands, ranging from low- to high-quality luxury vehicles.

Predicate offence: drug trafficking

¹⁰ Office central de répression du trafic illicite des stupéfiants (France)

Technique: use of service provider; shell company

Mechanism: cash

Source: Togo

Case 2

Abuse of alternative remittance systems (ARS); use of real estate to conceal illegal activities

Many West Africans rely on remittances from friends and relatives abroad. As such, money transfers and secondary loan schemes are common in the region. There are suspicions that this is another easy and quick way to legitimise illegal wealth. This suspected case in country L is attributed to a business that involved parallel money transfer other than MoneyGram, Western Union and IB X press in country L.

The subject, Mr X, began business by giving a loan of US\$10,000 to five family friends who went abroad through the DV program in the year 2000 and paid back in kind through used vehicles.

Mr X sold the vehicles and bought a parcel of land, established and registered a local Forex Bureau and began money exchange at a starting capital of US\$20,000. After six months, he injected US\$300,000 into the business and began remitting US\$300,000 each quarter in money transfer. He received used vehicles from friends abroad in exchange for providing loans to family members in Liberia, Ghana and Guinea. He justified his wealth by the resale of collaterals obtained from loans issued, foreign exchange, and remittance services. In 2005 he put another huge amount of cash into the business and is now constructing multi-complex stores and residential buildings in the suburb of the capital of country L, which are valued up to US\$500,000.

The point of suspicion is that Mr X's business growth is astronomically unprecedented – from a US\$20,000 investment in 2000 to more than half a million in 2005. (This is an example of a case with a suspected link to drug trafficking).

Predicate offence: drug trafficking

Technique: ARS; service provider; shell companies

Mechanism: cash, bank; ARS; real estate

Source: Liberia

Advance fee fraud ('419')

53. A few cases showed that some accounts were opened just for transfer operations. The use of third party (front men/businesses) accounts as “payable through accounts” for large amounts to be channelled through these accounts were also identified. The advance fee fraud technique is a scheme that generates huge sums of cash, generally made possible through wire transfers and use of transit accounts. This type of fraud derives its appellation from section 419 of the Criminal Code of Nigeria and comes in many forms.¹¹ The most common are proposals of huge contracts in the mining or oil extraction sectors, with requests for advance payments before execution of the contract.

¹¹ GIABA Typologies report 2007, p. 19

54. One case illustrated how one criminal, with the assistance of many con men, managed to defraud a bank by using a complex web of shell companies, front men and wire transfers to launder illicit funds without detection.

Case 3

Advance fee fraud

A certain Chief N of country X in West Africa presented himself to Bank B in Latin America as a legitimate businessman seeking an offshore bank account to transfer outstanding payments that were due to a company for contracts executed in country X.

Bank B was promised a percentage of the total sum for its services once the transaction was successfully concluded.

Bank B bought into the proposal and thereafter made initial payments to Chief N for the purpose of documentation and processing of the payment to Bank N.

However, what started off as a simple and straightforward transaction became very complex, transcending the initial proposal into other carefully orchestrated business proposals with tempting offers running into millions of dollars.

At the end, Bank B was conned into making remittances totalling US\$200 million through several third parties (for the ultimate benefit of Chief N) in return for nothing.

A significant portion of the proceeds of this crime was used to purchase real estate in country X and in Europe. It was a classic case of an advance fee fraud (a.k.a. 419).

The crime was committed between 1995 and 1998.

More interesting to the present study, however, is the process leading to the laundering of the criminal proceeds.

At the initial stage of transaction, Chief N instructed Bank B to remit funds in favour of appointed local banks in country X. Thereafter, he instructed the local banks to raise separate drafts in favour of real estate agents and vendors to purchase and/or develop real estate for himself and for legal entities in which he held undisclosed controlling interests via nominees.

Because of certain drawbacks, Chief N bypassed the local banks and opted to use an Asian merchant, Mr A, based in Country X on the recommendations of the local banks he had previously used. Consequently, Chief N would instruct Bank B to make remittances in favour of Mr A, who maintained offshore bank accounts in Hong Kong and Switzerland for the primary purpose of aiding the money laundering designs of Chief N.

Bank B complied and made several remittances totalling US\$120 million.

For each remittance to the offshore accounts, Mr A would provide country X's local currency equivalent, after which Chief N would further instruct Mr A to make remittances directly in favour of third-party vendors of real estate and other assets.

In order to meet the local currency requirements of Chief N, Mr A continued to source and maintain a ready pool of individuals and other entities with the ability to provide the local currency in exchange for the equivalent in hard currency, which was often remitted to offshore destinations on the instructions of the individuals and entities.

The payments in the local currency frequently took the form of bank drafts. Chief N would then take these drafts to the vendors and acquire assets in his name and in the names of companies he had established.

In many cases there was no direct link between the funds taken from Bank B, including the intermediary banks, and Chief N. This way, Chief N successfully isolated himself from the proceeds of the crime and indeed laundered the proceeds without detection.

The link only became apparent after the funds were traced to Mr A's accounts and Mr A was arrested and required to explain the transactions.

For properties purchased in Europe, Chief N opened a Swiss offshore bank account and instructed Mr A to remit funds directly to that account, which Chief N subsequently used to purchase the real estate.

The transactions involved several reputable FIs and DFNIs, individuals, legitimate and front companies, cutting across several countries and gulping a whopping sum of nearly US\$200million at the expense of Bank B.

So far, three individuals and five companies have been convicted in a single suit. None of those convicted was a financial institution.

Predicate offence: fraud (419)

Mechanism: solicitation of advance fee for fraudulent contract

Technique: use of con men

Source: Nigeria

Typology 2: Misuse of tontines: informal micro-finance schemes

55. A tontine is an age-old traditional system of financing small projects such as small retail businesses, small farming, health and education schemes. The system consists of a group of people, generally women, coming together and agreeing on how much to contribute and when each member benefits from the scheme. The arrangements are very flexible in that they allow those with legitimate reasons, e.g. critical financial constraints, to swap turns with those who have less urgent need for funds. The group meets at an agreed time – once a month, week or day, depending on the kind of activities being carried out by the members of the group – where the agreed amount is paid down. The total amount of funds collected is then paid to one member of the group. Members of the group benefit from the operation in turns, at each meeting and collection day. This scheme has been particularly helpful for women and makes up for the lack of banking facilities in rural and suburban areas. It has given women the opportunity to boost their businesses and build houses for their families. These schemes have been helpful for most women in West and Central Africa because in Benin, Côte d’Ivoire, Cameroon, Ghana, Nigeria and Togo it gave them more financial independence and the ability to provide for their families.

56. The process of becoming a member of the scheme does not entail the requirements that a regular bank would demand. The scheme is based on trust and most of the participants know each other because they are often members of the same market or trade. Generally, no records are kept because of the high level of illiteracy among the members. This is not a problem because each person knows when they are due for collection, as would have been agreed at the outset.

57. Because of the lack of CDD requirements, a tontine could be abused by criminals or their partners, who might use the system to launder the proceeds of their criminal activities. Tontines are officially recognised as a genuine transaction in countries where they are practised. Therefore the funds of any individual wanting to invest bulk cash in construction of a property can be regarded without suspicion if s/he is able to show that

the amount is from a tontine. Funds collected could be directly injected into the financial system through the real estate sector.

58. As in the case of corporate vehicles, apart from obscuring the identity of the beneficial owner and the origin and destination of funds, tontine schemes can be used by criminals as a source of cleaning dirty money. This is further facilitated if the leader of the group is a criminal or the partner of a criminal, with a great deal of illicit funds to launder through the scheme.

Case 4

Misuse of collective savings schemes

- Drogue
- Tontine
- Acquisition of land
- House rent
- Bank deposit

Delinquent X takes advantage of the fact that tontines are well known in Africa, so with his dirty money he participates in big tontines with a fee of 10 million frs CFA per draw.

He takes 10 “hands” of 1 million frs CFA each.

Every month, he contributes 1 million frs CFA \times 10, in other words, 10 million frs CFA. There are 10 members in the tontine with a contribution of 1 million frs CFA each, in addition to Delinquent X’s 10 million frs CFA. When it is his turn, the sums of money are deposited for him in an account in a bank, C.

He applies for a loan of 100 million frs CFA at the bank, and obtains it. He invests a sum of 20 million frs CFA in land acquisition and gets a residential house built for him for a sum of 250 million frs CFA, which includes a personal contribution of 170 million frs CFA. He pays back the loan before the due date while buying back the interest. With the knowledge of all the participants, he undertakes the same operation several times without being detected by the relevant authorities. He currently owns several blocks of flats and exchange bureaux in a town, X, and handles billions of CFA francs.

Predicate offence: drug trafficking

Technique: use of collective saving schemes

Mechanism: abuse of tontines, cash deposits, bank transactions

Source: Senegal

Typology 3: Use of non-financial professionals and other corporate vehicles (notaries, lawyers, real estate agents, registrars and other service providers)

59. Corporate vehicles are legal persons of all types as well as various legal arrangements that are often misused in order to hide the true origin, ownership and purpose of activities related to money laundering and terrorist financing. Apart from obscuring the identity of the beneficial owner of a property or the origin and destination

of funds, these corporate vehicles can be used in criminal schemes as a source of legal income.¹² In addition to shell companies, there are other specialised companies that carry out legitimate businesses relating to real estate which have sometimes been misused for money laundering purposes. The use of corporate vehicles is further facilitated if the company is entirely owned or controlled by criminals.

60. The legislation of most of the countries, where notaries' services are essential in real estate transactions, does not prohibit out-of-sight payments; this implies that notaries and other legal practitioners are legally permitted to endorse such out-of-sight payments for the lease, sale and/or purchase of real estate property. This disposition makes these corporate vehicles vulnerable to abuse by criminals who intend to disguise the origin as well as the beneficial owner of the funds or property. This not only opens an avenue for corruption by the corporate vehicles themselves but also attracts criminals to use them to launder their criminal proceeds for a fee.

¹² FATF report on ML and TF through the real estate sector, p. 12

Case 5

Misuse of corporate vehicle (lawyer) and resale of real estate property

A private subject, under the protection of a certain public figure, obtained business registration through the efforts of a lawyer from a certain law firm, who later became a board member of the new company. The Article of Incorporation was processed, including business registration. A business activity licence was obtained for the designated regulatory authority.

A company established as a subsidiary of a Europe-based communication entity wired US\$1.6 million from the company's accounts through a local bank to begin communication operations.

Withdrawal was made from the bank between December 1998 and July 1999 and was used to construct an office complex for the new company.

The building was later sold to another business entity on the grounds that the private subject could not meet up with new GSM age. (A brief portion of this case was reported in the *Concord Times* newspaper, 22 December 1999.)

Mechanism: financial institution; corporate vehicle

Technique: wire transfer, resale of property; use of corporate vehicle (lawyer)

Source: Liberia

Case 6

Misuse of construction service provider; payment of cash for real estate

Mr X has a construction company and offers construction services and acquisition of real estate property. One of his customers entrusts him with not only construction works, but also the mandate to handle the purchase of land for construction and pays him on the spot a sum of 15 million frs CFA cash for the acquisition of the land, while also showing him a building plan of the house with a value of 80 million frs CFA. Mr EK, from country T, succeeded in obtaining Belgian nationality and it was under the cover of Belgian citizenship that he dealt in second-hand cars. It was agreed between Messrs NR and EK that once the land was acquired, he should proceed with the construction works. According to the facts narrated, Mr EK travelled to Europe at least twice a month for reasons that nobody could suspect. The bare land having since been acquired, nobody heard from his client any more. Seeking to contact Mr EK, news came to the contractor that his client had been arrested and jailed in Europe for drug trafficking.

Predicate offence: drug trafficking

Technique: use of service provider

Mechanism: bulk cash payment

Source: Togo

Case 7

Proceeds from corruption: establishment of shell companies and use of front men

Mr A is a public official who controls a huge budgetary allocation. With the intention of stealing public funds, he devised a criminal scheme by setting up a bogus development board with powers to grant contracts to enhance the infrastructural base of the state. Mr A went ahead and instructed that some shell companies be established. He approved very large amounts of money to the spurious development board and went behind the scenes to ensure that all contracts from the said board went to the various interested shell companies.

With the connivance of selected officials of the board, fake payment vouchers were made out and signed on behalf of those companies, whereas in truth all the monies to the shell companies were later aggregated and transferred to a particular real estate and construction company that protects the interests of Mr A.

Monies collected by the real estate and construction company were later used to build personal buildings and commercial estates for Mr A.

A link was clearly established that the money to the camouflage development board came directly from the government account. The fake payment vouchers for the shell companies were designed to cover the audit trail and assume legitimacy cover for the transactions, but in fact they were formed simply for cash collection and ultimate transfer of money to the real estate and construction company that represents the interests of Mr A.

Predicate offence: Corruption (embezzlement of public funds)

Technique: establishment of shell companies; use of front men

Mechanism: cash transaction; cheque payment; banks; construction company

Source: Nigerian Financial Intelligence Unit

Case 8

Use of shell/front company/business

Private-Public Partnership: A suspect who worked for a public corporation obtained wealth by authorising payment of fictitious vouchers to a certain businessman.

The funds were given to the suspect, Mr X, with a 15% deduction on the total amount. Mr X, who has a huge plot of land, leased the plot to a foreign merchant for a period of 15 years. The merchant entered into a lease contract using Mr X's own cash to construct a multistorey business complex.

From 1993 to 2007, all financial transactions of Mr X were settled by the merchant. This included education of his children abroad, sponsoring of his political campaign, and financial support for small projects and relatives.

After resigning from public office, Mr X obtained a loan from a bank at low interest using inherited land as collateral. He then established an oil retailing business, and after a year entered into partnership with Business A, sub-leased from the merchant.

After a year, Business A closed down and turned its assets over to Mr X.

The case is currently being prosecuted under the Economic Crime and Sabotage disposition.

Predicate offence: fraudulent procurement services; corruption

Technique: over-invoicing

Mechanism: use of foreign service provider

Source: Liberia

Typology 4: Mortgage schemes

61. Mortgages are of course not of themselves the result of criminal acts; however, criminals may obtain loans to legally fund mortgages on properties and then pay off the mortgage before the term of the contract with dirty money. In this way, illicit funds are injected into the formal financial system. Sometimes the property is initially purchased as a home and subsequently transformed into a haven to carry out other criminal activities (e.g. selling or storing drugs or counterfeit products, or housing the criminals).

Illegal funds in mortgage loans and interest payments

62. Illegal actors may obtain mortgage loans from a bank to buy property. More often than not, illegal funds obtained earlier or later are used to pay the interest or repay the principal on the loan, either as a lump sum or in instalments.¹³

Under- or overvaluation of real estate

63. Anecdotal evidence shows that there are widespread cases of manipulation of real estate values. The over- and undervaluation of real estate property in the region involves illicit actors omitting a part of the price from the purchase contract or adding to it. In other words, the real price of the sale contract is either less or more than the price paid. The price shown on the contract is used to collect a loan from the bank. In the case of undervaluation, the amount shown on the contract is paid for with the loan, whereas the amount omitted from the contract is paid for in cash, which may be from criminal sources. When the property is resold at the fair market price, the illicit actor converts illegal income into seemingly legitimate profits.

Overvaluation is generally done to obtain the biggest possible loan from the banks. It involves manipulation, based on false documents, of the actual price by a licensed estate valuer at the request of the client. This may be done more to defraud the mortgage-granting body than to launder the funds.

¹³ FATF 2008 Typologies report on ML and TF through the real-estate sector

Case 9

Mortgage scam (loan repayment before its term); back-to-back loan arrangements

- Drug
- Bank loan
- Land acquisition
- Construction of a block of flats
- Loan repayment before its term
- House rents
- Deposit in a bank account

Mr X has 100 million frs CFA of dirty money that he acquired from drug-related activities.

He has a bank account in due form. He approaches his banker for a ten-year real estate loan of 50 million frs CFA to acquire land to build a block of flats.

He obtains the loan and buys land. He builds a block of flats for 75 million frs CFA, with an equity capital of 25 million frs CFA. At the end of six months, he repays the loan before its term, buying back the interest calculated on the loan.

After two months, he asks for another loan of 25 million frs CFA to be paid over five years with the anticipated rents to be collected from his tenants.

In this way, this delinquent will have laundered his dirty money and it will still be convenient for him to pay back before the term of the loan and continue to launder for as long as he remains undetected.

Source: Senegal

Typology 5: Use of real estate to conceal illegal activities

64. The use of real estate to launder funds offers criminals and criminal organisations many advantages. It allows them to introduce illegal funds into the system; it allows them to make and enjoy the profits that the illegal funds generate; and they may benefit from tax advantages¹⁴ and from any rise in the value of the real estate (though there is also a downside risk if the property falls in value).

65. The upsurge of the hotel and hospitality industry in most countries in the region shows that some areas in the real estate sector are more attractive than others for laundering purposes, since the financial flows associated with them are considerable. The volume of transactions in the hospitality industry, for example, makes it easier to hide the origin of the illegal funds.

66. Since the acquisition of real estate falls within the final stage of laundering known as the 'integration' stage, purchasing real estate provides criminals with the opportunity to

¹⁴ *ibid.*

make an important investment that has the appearance of financial stability.¹⁵ Investing in a hotel, restaurant or shopping mall offers further advantages, especially because it brings with it business activities that use extensive cash transactions where co-mingling of legitimate and illicit funds may go undetected.

Case 10

Laundering the proceeds of drug trafficking through real estate

Mr A, who lives in a port city in a West African country, is ordinarily known as a businessman and has high-level business and political connections. He imports trucks from Europe and Russia and owns a fishing fleet whose catch is sold in that country and also exported.

He enjoyed political and security patronage and protection from his high-level connections. He was also known to be a financier of a large political party in that country.

Mr A has recently been linked to some notorious drug barons in South America and Europe. He used his fishing vessels to import drugs into the country through the fishing harbour. The drugs were normally packaged the same way as the cartons of fish and mixed with the frozen fish. They easily passed through the port security into the country and were exported to other parts of the world without being detected.

Mr A got into real estate development as a faceless investor, i.e. through front men, and developed high-rise office complexes and shopping malls in a prime area in country X. He also invested in large plots of land and luxury hotels in an emerging exclusive residential area of that city.

Through international intelligence collaboration, one of his vessels with a large quantity of cocaine was seized in the territorial waters of that country. Mr A was thereafter arrested with other accomplices. He was tried, convicted and sentenced to prison for possessing and doing business in hard drugs (cocaine).

Predicate Offence: drug trafficking

Technique: co-mingling; use of legitimate business

Mechanism: cash transactions and wire transfers.

Source: Senegal

General comments and recommendations

67. The cases in this report have demonstrated how the real estate sector is being abused by criminals. It is important to note that rental or sale of an improved property moves the transaction further away from its illicit or criminal origin, thereby making it very difficult to trace back to the initial criminal activity.

68. This criminal activity promotes unhealthy competition between legitimate and criminal businesses. The socio-economic impact of such conditions on the various countries is significant, though not readily measurable. It is important, therefore, that the sector is examined more critically and appropriate recommendations made for policy-makers to adopt measures in order to reform the sector and make it less attractive to launderers and terrorist financiers.

¹⁵ *ibid.*

69. It is essential to note that Nigeria is playing a pioneer role in organising and coordinating the DNFIs through a Special Control Unit against Money Laundering (SCUML), at the Federal Ministry of Commerce. This unit serves as the interface between the DNFIs and the NFIU. Cash transaction reports are filed by the DNFIs, including the real estate and hotel businesses, to the unit, which then reports to the NFIU. The Nigerian experience is not without difficulty because of the hundreds of thousands of non-registered real estate agents who operate outside the system, but this experience is worthy of emulation by other member states.

70. The findings revealed the existence of associations for surveyors and developers in a few countries, but these associations do not have a regulatory role for the members.

71. In order to meet acceptable standards, member states need to establish and enforce the necessary measures both within the formal and informal financial sectors to prevent money laundering and terrorist financing, and to ensure that AML/CFT measures are put in place to guarantee compliance of DNFBPs, including real estate businesses, notaries, registrars and legal advisors.

72. Finally, it is essential that an in-depth examination through a risk and vulnerability assessment be carried out to determine the social and economic cost and impact of money laundering and possible terrorist financing through the sector in member states.

73. GIABA should play a pivotal role – together with the FATF and other development partners – in developing appropriate measures throughout the region, as a way to impede illegal money flows.

Annex 1

RED FLAG INDICATORS¹⁶

74. Building on the cases and other information analysed, the participants in this study also identified a number of common characteristics that, when detected individually or in combination, might indicate potential misuse of the real estate sector for the purposes of money laundering or terrorist financing. These “red flag” indicators, when available, can assist financial institutions and others in the conduct of customer due diligence for new and existing clients. They also may help in performing necessary risk analysis in the more general sense for the sector. Thus valid indicators may help in identifying suspicious activity that should be reported to competent national authorities according to AML/CFT legislation.

75. These indicators are not intended to represent an exhaustive list of all the possible types of transactions that might be linked to ML or TF. Nor should it in any way be implied that the transactions listed here are *necessarily* linked to such activities. It should be remembered that activities related to ML or TF are always carried out with the aim of appearing to be “normal”. The criminal nature of the activity derives from the origin of the funds and the aim of the participants.

Natural persons

- Transactions involving persons residing in tax havens or other high-risk territories, when the characteristics of the transactions match any of those included in the list of indicators.
- Transactions carried out on behalf of minors, incapacitated persons or other persons who, although not included in these categories, appear to lack the economic capacity to make such purchases.
- Transactions involving persons who are being tried or have been sentenced for crimes or who are publicly known to be linked to criminal activities involving illegal enrichment, or where there are suspicions of involvement in such activities, which may be considered to underlie money laundering.
- Transactions involving persons who are in some way associated with the foregoing (e.g. through family or business ties, common origins, where they share an address, telephone number or have the same representatives or attorneys).
- Transactions involving an individual whose address is unknown or is merely a correspondence address (e.g. a “care of” address), or where the details are believed to be or likely to be false.
- Several transactions involving the same party or those undertaken by groups of persons who may have links to one another (e.g. family ties, business ties, persons of the same nationality, persons sharing an address or having the same representatives or attorneys).

¹⁶Extract from the FATF 2007 Typologies report on ML and TF through the real estate sector, pp. 34–7

- Transactions by individuals who unexpectedly repay problematic loans or mortgages or who repeatedly pay off large loans or mortgages early, particularly if they do so in cash.
- Transactions by individuals who participate in expensive tontines (also known as *susu* – in Ghana and Togo) and represent several “hands” (persons).

Legal persons

- Transactions involving legal persons or legal arrangements domiciled in tax havens or high-risk territories, when the characteristics of the transaction match any of those included in the list of indicators.
- Transactions involving recently created legal persons, when the amount is large compared to their assets or verified legitimate business activities.
- Transactions involving legal entities, when there does not seem to be any relationship between the transaction and the activity carried out by the buying company, or when the company has no business activity.
- Transactions involving foundations, cultural or leisure associations, or non-profit-making entities in general, when the characteristics of the transaction do not match the goals of the entity.
- Transactions involving legal persons which, although incorporated in the country, are mainly owned by foreign nationals who may or may not be resident for tax purposes.
- Transactions involving legal persons whose addresses are unknown or are merely correspondence addresses (e.g. a shared office or shared business address or telephone), or where the details are believed to be or likely to be false.
- Various transactions involving the same party. Similarly, transactions carried out by groups of legal persons who may be related (e.g. through family ties between owners or representatives; business links; sharing the same nationality as the legal person or its owners or representatives; sharing an address; in the case of legal persons or their owners or representatives, having a common owner, representative or attorney; entities with similar names).
- Establishment of a legal person or increases to its capital in the form of non-monetary contributions of real estate, the value of which does not take into account the increase in market value of the properties used.
- Establishment of legal persons to hold properties with the sole purpose of placing a front man or straw man between the property and the true owner.
- Contribution of real estate to the share capital of a company which has no registered address or permanent establishment that is open to the public.
- Transactions in which unusual or unnecessarily complex legal structures are used without any economic logic.

Natural and legal persons

- Transactions in which there are signs, or it is certain, that the parties are not acting on their own behalf and are trying to hide the identity of the real customer.
- Transactions which are begun in one individual's name and finally completed in another's without a logical explanation for the name change. (For example, the sale or change of ownership of the purchase or option to purchase a property that has not yet been handed over to the owner, reservation of properties under construction with a subsequent transfer of the rights to a third party, etc.).

Other transactions

Those in which the parties

- do not show particular interest in the characteristics of the property (e.g. quality of construction, location, date on which it will be handed over) that is the object of the transaction;
- do not seem particularly interested in obtaining a better price for the transaction or in improving the payment terms;
- show a strong interest in completing the transaction quickly, without there being good cause; or
- show considerable interest in transactions relating to buildings in particular areas, without caring about the price they have to pay.

Those in which the parties are foreign or non-resident for tax purposes and their only purpose is a capital investment (i.e. they do not show any interest in living at the property they are buying, even temporarily); or they are interested in large-scale operations (e.g. buying large plots on which to build homes, buying complete buildings or setting up businesses relating to leisure activities).

Those in which any of the payments are made by a third party other than the parties involved. Cases where the payment is made by a credit institution registered in the country at the time of signing the property transfer, due to the granting of a mortgage loan, may be excluded.

Intermediaries

- Transactions performed through intermediaries when they act on behalf of groups of potentially associated individuals (e.g. through family or business ties, shared nationality, persons living at the same address).
- Transactions carried out through intermediaries acting on behalf of groups of potentially affiliated legal persons (e.g. through family ties between their owners or representatives, business links, the fact that the legal entity or its owners or representatives are of the same nationality, that the legal entities or their owners or representatives use the same address, that the entities have a common owner, representative or attorney, or in the case of entities with similar names).

- Transactions taking place through intermediaries who are foreign nationals or individuals who are non-resident for tax purposes.

Means of payment

- Transactions involving payments in cash or in negotiable instruments which do not state the true payer (e.g. bank drafts), where the accumulated amount is considered to be significant in relation to the total amount of the transaction.
- Transactions in which the party asks for the payment to be divided in to smaller parts with a short interval between them.
- Transactions where there are doubts as to the validity of the documents submitted with loan applications.
- Transactions in which a loan was granted or an attempt was made to obtain a loan, using cash collateral or where this collateral is deposited abroad.
- Transactions in which payment is made in cash, bearer cheques or other anonymous instruments, or where payment is made by endorsing a third party's cheque.
- Transactions with funds from countries considered to be tax havens or risk territories, according to AML legislation, regardless of whether the customer is resident in the country or territory concerned or not.
- Transactions in which the buyer takes on debt that is considered significant in relation to the value of the property. Transactions involving the subrogation of mortgages granted through institutions registered in the country may be excluded.

Nature of the transaction

- Transactions in the form of a private contract, where there is no intention to notarise the contract, or where this intention is expressed but does not finally take place.
- Transactions which are not completed, in seeming disregard of a contract clause penalising the buyer with loss of the deposit if the sale does not go ahead.
- Transactions relating to the same property or rights that follow in rapid succession (e.g. purchase and immediate sale of property) and which entail a significant increase or decrease in the price compared with the purchase price.
- Transactions entered into at a value significantly different (much higher or much lower) from the real value of the property or differing markedly from market values.
- Recording of the sale of a building plot followed by the recording of the declaration of a completely finished new building at the location at an interval less than the minimum time needed to complete the construction, bearing in mind its characteristics.
- Recording of the declaration of a completed new building by a non-resident legal person having no permanent domicile, indicating that the construction work was completed at that person's own expense without any subcontracting or supply of materials.

ISSUES FOR CONSIDERATION¹⁷

76. Regarding the real estate sector, there are other issues apart from those already mentioned that can play a key role in the process of detecting misuse within the sector as a way to channel illicit money. Additionally, all the concerns expressed in the report have policy implications that need to be considered by countries at the national level.

77. This study of typologies should help to identify the weaknesses or the lack of regulatory systems in member states, and may lead to the setting up or development of measures to protect the sector from criminal activities linked to money laundering, and thus avoiding the region becoming an attractive destination for money laundering.

78. It is therefore important to emphasise that this exercise is the beginning of a more in-depth study whose aim will be a better understanding of how the system is abused in order to establish preventive measures that are needed to detect and deter ML/TF through the real estate sector. It must be pointed out that the lack or inadequacy of controls can only represent an enormous boost to the success of investments in the real estate sector by criminals.

79. Finally, as the key parties to real estate transactions, DNFBPs need to be encouraged by organisations and legislators in the fight against ML/TF. Real estate agents in particular are involved in the vast majority of real estate transactions and therefore can play a key role in detecting ML/TF schemes. This research has also demonstrated that the use of large cash payments for real estate transactions attracts criminals and incites them to abuse the system because of anonymity. Because the real estate agents are in direct contact with buyers and sellers, they generally know their clients better than the other parties in the transactions. Thus they are well placed to detect suspicious activity or identify red flag indicators.

80. The FATF Recommendations recognise the importance of customer due diligence, record-keeping and reporting requirements for the real estate sector. To ensure effective compliance with these requirements, it is important that authorities inform the sector of its obligations and share sector-specific indicators with the industry.

81. Finally, as they are key figures within the real estate sector and its transactions, DNFBPs need to be encouraged by organisations and legislators to implement effective AML/CFT measures.

¹⁷ FATF 2007 Typologies report on ML and TF through the real estate sector, pp. 29–30

Emerging markets

82. The worldwide market growth of real-estate-backed securities and the development of property investment funds have meant that the range of options for real estate investments has also grown. Emerging markets in particular can offer attractive returns at low prices with considerable room for growth. This has not gone unnoticed by many suspected criminals.

83. This, it is believed, is what has resulted in the property boom in the region. Complicating matters is the fact that there is no established average market price for real estate in the region. Prices vary across sectors and districts. As examining every transaction is impossible, obtaining a clear valuation of the real price is therefore also impossible. This situation is aggravated by the fact that the insufficiently developed banking sector, in terms of its financial products and conditions, has resulted in financial and company structures that make the tasks of supervision or investigation even more difficult. Further work in this area is therefore essential in order to deal with the issues.

84. Emerging markets often contain several characteristics that are highly favourable for money laundering, including:

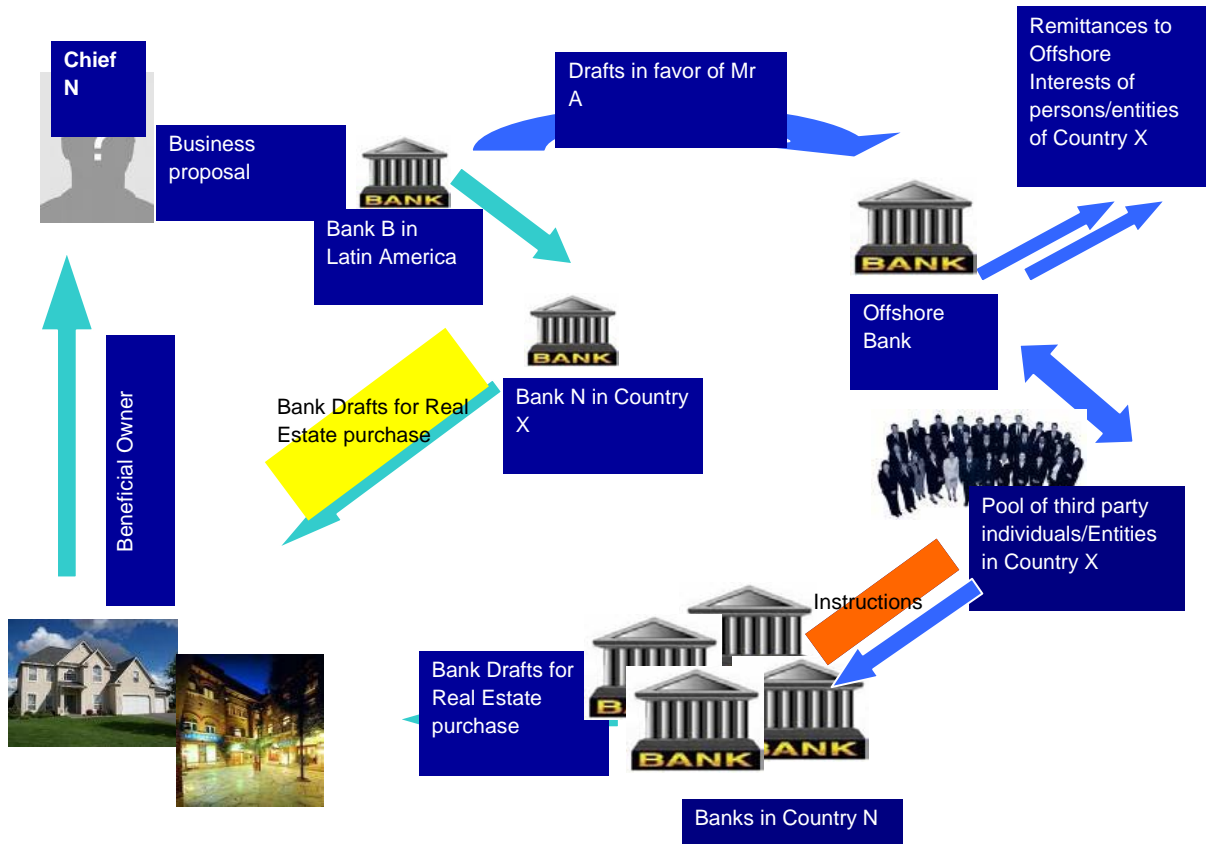
- a high level of state intervention as a result of private sector financial structures and banking systems still at the embryonic stage;
- absence or limited development of AML/CFT legislation and absence of indicators of the seriousness and social impacts of these phenomena;
- lack of foreign capital in sectors other than raw materials;
- lack of training of banking and other competent authorities (i.e. law enforcement, tax authorities, courts, etc.), and lack of the means necessary to detect and combat ML/TF.

Notaries, registrars and similar figures

85. Because notaries, lawyers and registrars seem to be some of the weakest links in the chain of real estate transactions, they may be able to play a part in the detection of high-risk transactions relating to the real estate sector. The importance of AML/CFT requirements for third parties has already been recognised by the FATF under Recommendation 9. Because of their central position in the legal system in relation to these real estate transactions, they could potentially also perform a role in centralising and filtering information.

Case Studies and diagram of operation

Diagram of the Operation for Case study 3: Advance fee fraud (a.k.a. 419)



Other Cases

- 1 A casino owner calls on ZZ Real Estate Agency to purchase a building which he intends to turn into a hotel for sexual exploitation purposes.
- 2 The manager of Company XX bought 50% of the shares of a duly registered real estate agency. After a year, the agency has built 100 units with a housing capacity reaching 1500 persons, making an annual profit of one billion francs.
- 3 An housing assistance NGO received funds that were proceeds from illegal arms trafficking of country FRR. According to the law, importations by NGOs benefit from tax exemption.

- 4 A real estate agency bought by contract 5 buildings in an urban residential area on behalf of Mr.GGT and received 100.000.000 XOF for the transaction. Mr. GGT was a drug dealer.
- 5 AMZZ real estate agency bought by contract with MANGA.SA, a construction company, 10 buildings under its own name. One of the buildings was actually destined to the setting up and training of a suicide commando.

Annex 4

TERMINOLOGY¹⁸

Beneficial owner: This term refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement. As used in this study, the term *beneficial owner* applies as well to the true owner of real property.

Instrument: An ML/TF *instrument* is an object of value (or one which represents value) that in some way or other is used to carry out ML/TF activity. Examples of ML/TF *instruments* include cash funds, cheques, travellers' cheques, precious metals or stones, securities, real property, etc.

Legal arrangements: This term refers to express trusts or other similar structures, such as (for AML/CFT purposes) the *fiducie*, *Treuhand* and *fideicomiso*.

Legal persons: A legal person is a corporate body, foundation, Anstalt, partnership or association, or any similar entities that can establish a permanent customer relationship with a financial institution or otherwise own real property.

Mechanism: An ML/TF *mechanism* is a system or element that carries out part of the ML/TF process. Examples of ML/TF *mechanisms* include financial institutions, money remitters, legal entities and legal arrangements, etc.

Method: In the ML/TF context, a *method* is a discrete procedure or process used to carry out ML/TF activity. It may combine various techniques, mechanisms and instruments, and it may or may not represent a typology in and of itself.

Scheme: An ML/TF *scheme* is a specific operation or case of money laundering or terrorist financing that combines various methods (techniques, mechanisms and instruments) into a single structure.

Technique: An ML/TF *technique* is a particular action or practice for carrying out ML/TF activity. Examples of ML/TF *techniques* include structuring financial transactions, co-mingling of legal and illegal funds, over- and under- valuing merchandise, transmission of illicit funds by wire transfer, etc.

Typology: An ML/TF *typology* is a pattern or series of similar types of money laundering or terrorist financing schemes or methods.

This report uses the terminology commonly used by the FATF in its typologies analysis.

¹⁸ FATF 2007 Typologies report on ML and TF through the real estate sector, p. 32

Annex 5

FATF RISK-BASED APPROACH : GUIDANCE FOR REAL ESTATE AGENTS