



Philippines Property Markets Scorecard

Conditions for Small Businesses



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Introduction

Property rights are among the most fundamental principles enshrined in Article 17 of the United Nations' Universal Declaration of Human Rights and constitutionally protected in most states. Despite this worldwide legal recognition of the importance of property rights to building peaceful, democratic, and prosperous societies, access to and protection of property rights vary greatly in practice. What is more, in many countries understanding of property rights often remains limited to property titles, without deeper appreciation of the underlying and interconnected institutions that make property rights meaningful and allow property markets to function.

The International Property Markets Scorecard is a tool jointly developed by the Center for International Private Enterprise (CIPE) and the International Real Property Foundation (IRPF) in order to map the institutional components of property markets and evaluate their effectiveness. The Scorecard provides a methodology for property market system analysis to investigate the six core elements necessary for sustainable property market development – property rights laws and enforcement, access to credit by small businesses, efficiency of governance, rational dispute resolution, financial transparency, and appropriate regulations.

This approach not only illustrates the linkages between property market elements but also identifies gaps where some of those important institutions remain weak, either due to the lack of a proper legal and regulatory framework or its weak implementation. Such gaps represent key areas that countries should prioritize when considering reforms to strengthen institutions that support healthy and inclusive property markets.

In the Philippines, CIPE and the Institute for Solidarity in Asia (ISA) have been working together to use the Scorecard methodology to examine the strength of urban, commercial property markets in two major cities and highlight barriers that small businesses face, with the particular focus on property rights and access to credit. Similar efforts by CIPE and local partners are also taking place in Armenia, China, Kenya, and Russia.

The Scorecard consists of two major levels of inquiry – desktop or secondary research and field assessments of actual property market conditions in two select cities. Desk research is conducted using established indexes from multilateral development agencies such as the World Bank and the World Economic Forum as well as other publicly available sources. To maintain consistency and comparability the desk research remains consistent across each country. Given the unique character and background of each country, field assessments are more flexible.

ISA tailored the fieldwork in the Philippines through a mix of focus groups and interviews to obtain the most accurate snapshot of the conditions entrepreneurs face in dealing with the government, banks, and professional services providers in the property sector. Focus groups and interviews were conducted in Manila and San Fernando, Pampanga. Although necessarily subjective, these views from small businesses and property markets experts have a unique power to illustrate key problem areas in property markets precisely because of the real, personal experiences they reflect. The result presented here is a report that explains and supplements the Scorecard findings, and provides reform recommendations.

Section 1

Country Context

Property rights in the Philippines

According to Nobel Laureate Dr. Douglass North, “Institutions provide the incentive structure of an economy; as that structure evolves, it shapes the direction of economic change towards growth, stagnation, or decline.”¹ Dr. North gives such importance to institutions because of the way they define the costs of production and transactions and, as a result, impact “the feasibility and profitability of engaging in economic activity.” Property rights are among the most crucial institutions affecting economic outcomes.

Before the Philippines came under the colonial influences, first Spanish and then American, “private ownership of land was a generally accepted institution.”² During the Spanish period several innovations such as land registration were introduced, mostly to facilitate the plantation boom that fueled agricultural economy. With the rise of industries beyond agriculture in the 20th century and greater integration into the global economy, the use of land has been diversified to include not just commercial or residential purposes but also as collateral for loans. The Bill of Rights (Article III) of the Philippine Constitution promulgated in 1987 protects the rights over land and other private property: “No person shall be deprived of life, liberty or property without due process of law nor shall any person be denied the equal protection of the laws” (Sec. 1) and decrees that “Private property shall not be taken for public use without just compensation” (Sec. 9).

The Constitution also states that “individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands” (Sec. 6, of Article XII). Thus, while private property rights are legally established, the constitution also seeks to ensure that this shall not come at the expense of the national economy and patrimony. This dichotomy on who ultimately decides on the use of property leaves room for different interpretations and conflicts that affect the actual protection of private property rights.

The Importance of Property Rights

Property rights are crucial for the business sector because these rights ensure that private property, which is used for production and other transactions, will not be taken without due process that is fair and efficient. Agencies that facilitate land administration include the Land Registration Authority (LRA), which is the central repository of titles, as well as the Register of Deeds, which interfaces with the public for transactions facilitating registration and transfers of property titles. Local government units (LGUs) likewise guide the use of property through their Comprehensive Land Use Plans (CLUP); these are tools mandated by the Department of the Interior and Local Government (DILG) for planning the long-term development of local government-owned land. The courts likewise influence the resolution of disputes on ownership of property, especially in cases of interventions of the state, to ensure that the owners are properly compensated.

The use of property for credit increases its value to the economy because credit and mortgage allow owners to convert their properties into more liquid assets such as bonds and cash. The Bangko Sentral ng Pilipinas (BSP) – Central Bank of the Philippines – regulates the credit industry. The BSP enforces the General Banking Law of 2000 (RA 8791), which prescribes the maximum percentage of the appraised value that can be used for credit, as well as the requirements for accessing credit. Microfinance is likewise an emerging trend in the country to allow smaller businesses access to capital, as guided by the Social Reform and Poverty Alleviation Act (RA 8425) of 1998 that governs the practice of microfinance services for the poor, requiring government financing institutions to meet various credit needs.

Institutions providing information on creditors are now made increasingly available for smoother processing of loans. The creation of a public credit bureau has recently been legislated. Prior to this, private associations such as the Bankers Institute of the Philippines (BAI-PHIL) had already taken the initiative to form databases containing credit history of borrowers.

Recent Reforms

Given the growing importance of the real estate sector, the Real Estate Service Act (RA 9646 or RESA) was passed in 2008. The law created a body for regulating the sector, the Real Estate Services Board, and provided guidelines on the certification of real estate professionals (brokerage, valuation/appraisal, and consultancy). Subsequently, the Real Property Valuation Reform Act of 2009 (SB No. 3519) was enacted in 2010, so that

“valuation standards (will) conform with the generally accepted valuation principles and internationally accepted standards.” Moreover, private associations now exist for voicing the concerns of real estate professionals. Among these are the Chamber for Real Estate Builders and Associates, the Real Estate Brokers’ Association of the Philippines, the Philippine Association of Building Administrators, the Philippine Association of Realty Appraisers, and many others.

Section 2

Urban Commercial Property Markets

Research shows that in the first quarter of 2011, real estate had the largest contribution to foreign direct investments (FDI), contributing 42.5 percent, followed by mining and quarrying (21.97 percent) and manufacturing (10.12 percent), according to the Bangko Sentral ng Pilipinas.³ Moreover, the real estate and business activities generated PHP 588.9 billion, which was 7.79 percent of Gross National Income in 2010.⁴ A year-on-year comparison of the contribution of real estate, renting and business activities to employment shows that it rose from 3.1 percent of employment in January 2010 to 3.3 percent in January 2011.⁵ Prices for housing and housing repairs have increased by 1.86 percent for the same period.⁶

Through the above contributions by the property market, it is very clear that the real property sector is very important to the national economy, in particular to domestic output, foreign direct investments, construction, and employment. The proper functioning of this sector is of great importance to the continued improvement of the economy.

Micro-, Small- and Medium-Scale Enterprises (MSMEs)

According to the Department of Trade and Industry (DTI), Micro-, Small- and Medium-Scale Enterprises (MSMEs)⁷ contribute 35.7 percent of the total sales and value added in the manufacturing industry.⁸ Moreover, MSMEs generated 3,595,641 jobs in 2009, which is almost 63.2 percent of the total jobs created by all types of businesses that year.⁹ Therefore, small businesses are important contributors to the improvement of both economic growth and social equity in the Philippines.

According to Peruvian economist Hernando de Soto, “A good legal property system is a medium that allows us to understand each other, make connections, and

synthesize knowledge about our assets to enhance our productivity.”¹⁰ As such, property rights are very important for small businesses. However, property rights are not enough for property to be used effectively. If the ability to use property as collateral for loans is not there, the ownership titles represent ‘dead capital’ – assets that cannot be collateralized or sold. Therefore, access to credit based on clear title needs to be available on a scale that corresponds to the development of the market.

The key barrier that affects small businesses more than it does larger businesses is access to credit for financing. The General Banking Law of 2000 (Republic Act No. 8791) prescribes that before granting a loan or other form of credit, a bank must ascertain that the debtor is capable of fulfilling his or her commitments to the bank in the form of a statement of their assets and liabilities and of their income and expenditures for proper evaluation of the credit application. These requirements are especially difficult to meet for small businesses that may not have sophisticated financial records or assets that can be pledged.

Even for those small businesses who own real property that may be utilized as collateral or security, access to credit may not necessarily come easy as they must hurdle technical and legal obstacles set by bank policies governing real property-secured loans. The steps required before the loan is finally approved entail not only documentation requirements for loan contract or real estate mortgage contract, but also dealing with a notary public, the assessor’s office, and the register of deeds. Before a real property owner decides to secure a loan, he or she also has to research the appraisal value, interest rates, and duration of the loan. The need to acquire all this information and follow the many steps involved in obtaining a loan makes the whole process complex and often challenging for MSMEs.

Section 3

Key Scorecard Findings

The following summary of key findings on the six Scorecard elements is largely based on secondary sources (see the Appendix for details). Those international surveys and rankings were subsequently supplemented by on-the-ground focus groups and interviews with MSMEs and experts conducted by ISA in Manila and San Fernando, Pampanga.

Property Rights – Weak

The legal framework that deals with securing and protecting property rights is well defined thanks to the constitutional provisions, Philippine Civil Code on ownership, Administrative Code, and related laws and regulations at the national and municipal levels. Rules on government expropriation are also clear and citizens can challenge the legality of state decisions (Rule 67, Revised Rules of Court). The rules for just compensation require the government to select three competent and disinterested people to ascertain the appropriate rate and the owner has the power to contest the people selected, as well as the rate ascertained. Nonetheless, businesses report that there is a discrepancy between laws on the books and how they are applied in practice.

Cadastral information is currently publicly available on the website of the Department of Environment and Natural resources but it is incomplete with over 5.6 million hectares that have not yet been surveyed.¹¹ There are also proposals in Congress to have a new cadastral survey for the entire Philippines. The system used by the Land Registration Authority is the Torrens System of title guarantees by the government, an internationally accepted standard. However, transactions with title registries take too long (39 days, because of 8 steps involved) and cost too much for small businesses (4.8 percent of the transaction value, not including creditable withholding tax).¹²

The extent of informal settlements is a serious problem impeding the development of secure property rights system in the Philippines. According to the United Nations Development Program, in 2005,¹³ close

to half (43.7 percent) of the population were living in slums, and were thus unregistered. Informality in the business sector is likewise an issue, with 37.5 percent of firms reporting competition with unregistered or informal firms. This is evidence that barriers or disincentives to formal ownership of property persist.

One key factor contributing to extensive informality is the aforementioned lax implementation of the laws on property rights, in part due to bureaucracy involved. There are 19 agencies involved in property administration and new laws are continually being passed. Many of the laws are outdated and conflicting, and there are inconsistencies and overlap between the function and mandates of the agencies. Thus there remains a large presence of unregistered or illegal uses of property, as well as a large presence of informal markets for goods. Small businesses see that the rule of law is not followed and are therefore discouraged from participating in the formal system.

Access to Credit – Weak

In the global context, the country's banks are relatively strong, ranking 46th out of 142 in the *Global Competitiveness Report 2011-2012*. However, uncompetitive processes for acquiring loans exist (rank 52nd out of 142), based on enterprise surveys. This weak access to bank loans is at least in part compensated by the growth of MSME-focused microfinance.

Microfinance institutions currently have a broad depth of services for small entrepreneurs, including those offered by the Development Bank of the Philippines and the Land Bank of the Philippines. The Magna Carta for Micro, Small and Medium Enterprises¹⁴ created a Small Business Guarantee and Finance Corporation charged with implementing “comprehensive policies and programs to assist MSMEs in all areas, including but not limited to finance and information services, training and marketing” (Sec. 11). The institution is also responsible for extending various forms of financial assistance to MSMEs and making venture

capital available for them. Yet, interviewed entrepreneurs believe that the implementation of such efforts is insufficient and they are still experiencing significant difficulties with access to credit.

There is currently no public institution that provides credit information, although the private sector partly compensates for this with private credit bureaus.

Effective Governance – Weak

The Philippines, democratic according to its Constitution, ideally should have a government that guarantees political and economic freedom to individuals and support to equitable property markets. World Bank surveys show relatively high ratings in democratic representation in terms of freedom of expression, association, and the existence of free media.¹⁵ The country, however, is weak when it comes to transparency and integrity mechanisms aggravated by perceived high levels of corruption.¹⁶ The problem is the persisting gap between laws on the books and their actual implementation.

When it comes to property markets – as in many other areas involving interaction with public officials and agencies – overlapping processes and multiple layers of bureaucracy, weak organizational coordination, and the lack of institutional capacity hinder effectiveness and create opportunities for corruption.

Rational Dispute Resolution – Weak

The judicial system is subject to political influences. This high degree of partiality is expressed in the low level of trust placed by citizens in the police, courts, and contract enforcement as well as the low level of judicial accountability.

The weakness of the rule of law is aggravated by the time-consuming and inefficient mechanisms for enforcing contracts. According to World Bank's most recent *Doing Business* report, judicial enforcements in the Philippines, on average, are found to take more than two years to implement, with 37 steps for resolution of commercial disputes, costing 26 percent of claim value. Given the weakness of the courts, most foreclosures are handled outside the court system.

There has been some improvement as specialized commercial courts are now designated for handling property disputes and foreclosures. Standards for alternative dispute resolution are also being set by the Office for Alternation Dispute Resolution (ADR) as provided for in the ADR Act of 2004.

Financial Transparency – Weak

A costly and time-consuming insolvency process (38 percent of the estate value with proceedings taking 5.7 years, according to World Bank's *Doing Business*) severely affects property market efficiency. The market is also hampered by the incomplete implementation of reforms meant to professionalize real estate services.

The Real Estate Service Act, or RESA, was passed in 2008 to regulate the practice of real estate in the Philippines. However, it is still too early to judge the impact of the Act. The development of the real estate profession is also limited by weak data standards, as accurate property information is not made available electronically in formats that are consistent with international standards. For instance, there is no standard system for interface among brokers and agents where they can share contracted listings of properties for sale.

At the same time, some improvements in the quality of valuation are on the horizon. International Valuation Standards are in use by valuers connected to international firms and are part of pending legislation dealing with the valuation profession.

Appropriate Regulation – Weak

The Real Estate Service Act requires real estate practitioners (valuers, brokers, and agents) to have several qualifications for licensing, and includes measures for disciplining professionals who engage in misconduct. However, the act does not cover mortgage professionals.

The overall tax rate for entrepreneurs and foreign businesses is high. While the Philippine financial sector remains underdeveloped, capital standards and oversight have improved in recent years.

Section 4

Overview of the Fieldwork

This assessment validated the issues identified in secondary research,¹⁷ exploring root causes and the perspectives of small businesses on the barriers they face in property rights and access to credit, and focusing on necessary improvements. The goal was to field test the scorecard, solicit feedback from various stakeholders, and come up with policy recommendations that will form part of a broader advocacy campaign. To address these objectives, the focus group discussion (FGD) framework considered various modes of access to property rights (ownership and leasing), aspects of property rights administration (acquisition, maintenance, transfer), binding constraints for accessing property rights, common problem areas, and threats, concerns and challenges faced by the various users of property rights.

ISA also gathered additional quantitative data to fill in gaps in the scorecard information. Government databases and officials were consulted when information was not otherwise available.

ISA conducted focus group discussions with small business owners and interviews with experts in banking and real estate. The FGDs were organized in the cities of Manila and San Fernando, Pampanga. While the former is the capital city of the Philippines, the latter is a significant urban center outside of Manila in which the private sector is active and participative in the affairs of the local government. This level of private sector engagement provided an excellent base for effective focus group discussions. The FGD in Pampanga made use of a World Cafe method¹⁸ and in Manila an open discussion was held with small businesses. The Philippine Chamber for Commerce and Industry, as well as the Pampanga Chamber of Commerce and the Manila Chamber of Commerce helped solicit the participation of over 45 small business owners. ISA likewise included inputs from property market experts and associations involved in banking and real estate.

Summary of FGD findings

Security of Property Rights

The majority of interviewed stakeholders felt that property rights and ownership are secure in the Philippines, although in Manila the views on property rights security were mixed. Some stakeholders argue that standard rules are not being followed in relation to expropriation, and conflicts of decisions between national and local governments on implementation of relevant policies often take place.

Legal Protection

A common legal issue raised in both FGDs is the Urban Development and Housing Act of 1991 (Republic Act No. 7279 also known as the Lina Law) that has served as a legal shield for informal settlers. This law was intended to provide compensation and comparable conditions to informal settlers when they unlawfully occupy land and are forced to move to another location. In practice, however, the law gave rise to “professional” squatters who occupy valuable, strategically located land anticipating expropriation and compensation. Stakeholders noted that the Lina Law undermines legitimate and legal ownership with respect to property rights.

Expropriation by government was another issue of concern identified during FGDs. It often lacks proper valuation standards and there are enormous delays in case settlement such as a reported case in Manila where the settlement of an expropriated property has been delayed for more than 10 years.

Corruption and red tape were also common themes in the FGDs. Stakeholders argued that even with the enactment of laws that are

supposed to guard against corruption and red tape, the contrary still persists. Stakeholders signaled that such corruption and red tape take place mostly at the level of national government agencies dealing with property rights, notably in the areas related to taxation, registries, titling, and transfers.

Moreover, the lack of valuation and land use laws often results in less competitive property markets affecting both investor confidence as well as value of real property.

Systems and Procedures

In both FGDs, computerization was highlighted as a major milestone in property administration while at the same time it appears to be a failure at the onset of its implementation. Stakeholders argued that the computerization program created more delays rather than solving the problem of long transaction turnover. Stakeholders believed that the computerization program in the long term would address corruption but the lack of capacity building and technology know-how among the implementing agencies must be improved.

What is more, overlapping processes and multiple layers of bureaucracy among national government agencies (i.e. Bureau of Internal Revenue, Registry of Deeds and Land Registration Office) are hindrances to having a competitive property rights market. Stakeholders noted that such problems make the entire bureaucracy susceptible to corruption and political favors.

Processes and structures prevailing in various agencies with respect to lost titles and settlement of taxes are particularly burdensome. Again, stakeholders in both cities underscored the need to have consistent, time-bound and accountable channels that would better

protect the rights of property owners and promote better systems and procedures.

Information and records management systems need to address the following gaps: (1) safe-keeping of relevant and important records used to determine proper legal ownership of properties; (2) lack of available centralized information that entrepreneurs, creditors, and real estate professionals can access in relation to acquiring and selling property; (3) credit providers' need to have consistent and reliable information to conduct due diligence and proper assessments.

Institutions and Agencies

Weak organizational coordination among agencies was highlighted as another important issue in property rights administration. Both stakeholder groups discussed the needed for better coordination between national agencies and local government units on records management and information sharing, calling for the creation of a one-stop shop system.

The capacity of institutions to address illegal settling, and implement valuation standards, land use, and expropriation policies was also raised. According to the stakeholders, political considerations tend to take precedent over rules, structures, processes and procedures. Another gap that needs to be addressed is dispute resolution, especially in resolving informal settling and rightful ownership disputes. Stakeholders underscored the need to equip government agencies with resources, negotiators, and knowledge in tackling these disputes.

Stakeholders in both cities underscored the need to have consistent, time-bound and accountable channels that would better protect the rights of property owners and promote better systems and procedures.

Financing and Access to Credit

Both stakeholder groups highlighted that MSMEs are having difficulty accessing loans regardless of the fact that the health of the country's financial system is relatively strong. Entrepreneurs complained about the lack of teeth in the implementation of the mandatory lending to small businesses found in the MSME Magna

Carta as well as the Agri-Agra Law.¹⁹

Stakeholders identified banks' reliance on collateral-based lending as a key impediment in the access to credit and financing. The process of acquiring loans is too cumbersome and inflexible for MSMEs. The FGD participants emphasized that both the government and financial sector should provide capacity building programs to help MSMEs develop good business plans that can be used as a viable basis for financing. Microfinance is gaining ground and has enabled micro and small business (especially the ones rejected by commercial banks) to access credit. Stakeholders, however, acknowledged that there are limitations to micro-lending and that bigger banks still need to contribute to expand lending windows for MSMEs.

While development finance institutions such as the Development Bank of the Philippines have the mandate to provide lending to MSMEs and do so through wholesale channels to microfinancing institutions and rural banks, BSP (Central Bank) guidelines and rules prohibit many commercial banks from providing more avenues for MSME financing. Banks in general are audited by the BSP and have to meet specific caps on non-performing loans and asset turnover. These contribute to the rather conservative position of some banks when it comes to financing MSMEs.

It is also necessary for banks to have better access to quality, concise, and reliable information when it comes to property. Some interviewed banks have noted that the system is not well organized and developed in its current form—even with the computerization in progress. Further work still needs to be undertaken to ensure that banks are able to rely on accurate information regarding crucial elements of property administration such as rightful ownership, valuation, taxes, and land classification.

Real Estate Regulations

Interviewed property market experts pointed out that the implementation of the Real Estate Service Act (RESA Law, RA 9646) poses some challenges to real estate professionals. While the intention of the law is to professionalize the industry and develop the capacity of real estate agents and brokers, some feel that the costs involved in mandatory licensing and training tend to outweigh the benefits.

Stakeholders also noted that the bureaucracy itself is a problem in the administration of property rights. Real estate professionals underscored the need to develop a more structured, accountable, and transparent process to address the gaps in property rights administration such as better systems of checks and balances or development of expertise and a culture of professionalism in the civil service. Also necessary are the infrastructure and technology to enhance the services rendered by various government agencies involved in property transactions.

Summary of Findings from Interviews with Local Government Officials

ISA also held interviews with local government unit departments that deal with property administration. In both Manila and San Fernando, ISA reached out to the City Assessor's Office, City Legal Office, and City Planning and Development Office. In Manila, ISA also spoke with officials at the Urban Settlements Office, Drafting and Survey Division of the City Engineer's Office, and Bureau of Permits. In San Fernando, ISA spoke with the Local Housing and Settlement Section of the Community Affairs Division, Local Building Official Division of the City Administrator's Office, and City's Economic Enterprises Division. The key issues that emerged were:

Informal settlements: Both cities have undertaken initiatives aimed at reducing the numbers of informal settlers through various relocation schemes. Local governments conduct dialogue and site visits with the poor to facilitate relocations, and compensation is given to individuals for returning to their provinces.

Illegal uses of property and the informal sector: Both cities admitted to multi-level subleasing being an issue. One way in which they try to address this problem is through temporary permits that do not require bulk payments (as in property registration processes) but are instead smaller daily payments, which are easier for microenterprises to comply with. Other approaches include the improvement of formal market facilities so that vendors can see the value in registering, and the establishment of cooperatives that help in building social capital towards greater compliance with the laws.

Section 5

Expert Roundtable Findings

On July 12, 2011 at Makati City, the Center for International Private Enterprise (CIPE) and the Institute for Solidarity in Asia (ISA) organized the experts' roundtable to validate the findings and further elaborate on the recommendations of the International Property Markets Scorecard.

Approximately 30 officials and representatives of businesses, banks and financial intermediaries, various national government agencies, local government units, think tanks, non-government organizations, small and medium enterprises, and members of Congress and representatives from the Senate participated in the roundtable. Follow-up interviews were also conducted with some of these stakeholders to provide more perspective on the issues they brought up.

Overall, the participants agreed with the key findings of the focus group discussions and interviews, citing the need for reforms in the conduct and administration of property rights in the Philippines. These reforms should be undertaken within the frame of greater inter-linkage between national government offices and local government units and policy coherence and coordination between the executive, legislative, and judicial branches of government.

Corruption as a major drawback

The experts unanimously agreed that corruption is a major impediment to the development of a well-functioning property market in the Philippines. Experts identified examples of corruption cases happening at both national and local agencies in charge of administering property transactions. These include overpricing of land sold to developers, bribes generated by cumbersome and multi-layered bureaucratic red tape which includes 32 signatures for transactions related to land development, rampant "fixing,"²⁰ discriminatory zoning favoring landowners and some politicians, charging of impact fees²¹ that are not within the purview of international standards, and excessive land value appreciation charges.

Experts called for stronger enforcement of laws and policies matched with

the political will to address corruption. The following were mentioned among the needed reforms:

- Passage of the Whistleblower Protection Act, Valuation Reform Bill, and a comprehensive land use plan law;
- Streamlining of processes in property administration and registration;
- Benchmarking with other countries on appropriate levels of impact and environmental fees and implementation of zoning policies, and,
- The codification of property rights laws to include the review, amendment, or repeal of obsolete laws that become loopholes to corruption. As examples, the experts cited laws governing construction, land classification, zoning, and urban planning.

Overlapping functions of agencies

Another issue mentioned is the need to harmonize and streamline the functions and procedures of agencies involved in land administration. The overlapping functions of agencies create layers of bureaucracy making property administration a cumbersome process. The experts urged reform measures both at national and local levels to streamline the mandates of various agencies, unify them under a single focal institution (benchmarked with other countries), and devolve other functions of land administration at the local government unit (LGU) level through a land management office, or a one-stop shop center.

Experts advocate the passage of the Land Administration Act (also known as the LARA Bill), which would address the overlap of agencies, as well the creation of the Land Administration Authority (LAA) to oversee the process.²²

Computerization as key to reforming property administration

The computerization program of the Land Registration Authority (LRA) aims to enhance the titling and registry system to effectively manage property records and streamline procedures in the administration of property-related information and data. LRA's computerization program is a major milestone in unifying the existing systems to enhance coordination among agencies involved in land administration. Moreover, it has the potential to address the problem of "claim jumping" mentioned by the experts where multiple titles legalized by unethical lawyers exist for the same parcel of land. With poorly organized property records, LGUs have little incentive to correct the situation since they get to collect multiple taxes for the same property but computerization can change that. However, experts agreed that more work needs to be done to improve the current set-up and disseminate relevant information about the computerization program to users.

Experts also noted the need to match the computerization program with an integrated change management system to ensure: (1) development of required personnel skills and proficiency in computer applications; (2) funding for hardware infrastructure, and (3) ensuring seamless connectivity, accessibility, and consistency of the information systems with other agencies and local government units.

Experts also see the need to revisit the government procurement process and determination of qualified service providers. Reforms in these areas are necessary to address the gaps in management and infrastructure development of the hardware and information systems.

Informal settlements

The problem of informal settlers was a centerpiece issue in focus group discussions in Manila and San Fernando, Pampanga. Experts in the roundtable similarly agreed that it remains a crucial challenge but that the repeal of the Lina Law as recommended during FGDs may not be feasible in the short term.

Experts emphasized instead the need for strengthened coordination and information sharing between national government agencies and LGUs in the proper implementation of the Urban Development and Housing Act. Such coordination should involve urban planning activities, funding for

Reforms are needed both at national and local levels to streamline the mandates of various agencies involved in land administration.

legal settlements, proper zoning, title distribution, and integrated city development that matches social, education, and livelihood needs of citizens.

With respect to improved property titling, broader implementation of the Residential Free Patent Law (RA 10023) enacted in March 2010 that allows people to obtain title to land they have lived on for 10 years without going through the normal and costly procedures has a great potential to unclog the property sector and help with the problem of informal settling. LGUs should be educated about this law to take full advantage of it for titling small parcels that can bring not only secure ownership to small entrepreneurs but also increased tax revenue to local governments.

Improvement of the judiciary

The judiciary needs further training, capacity building, and accountability mechanisms in the settlement of property-related cases and issues, notably expropriation, legal ownership, and informal settlement. Targeted reforms need to be implemented, especially in the fair resolution of disputes and clearing the longstanding backlog of cases related to property administration. Experts noted that one step in this direction is the fact that the Supreme Court is currently drafting the rules on handling expropriation cases.

Access to financing is still a problem

Experts agreed on the need to improve access to credit and financing programs by instituting both policy reforms and flexibility in lending to micro, small and medium-sized enterprises. The following issues were identified as the key hurdles in enabling expanded access of MSMEs to bank financing: (1) use of land as collateral and other collateral-based lending as a general requirement by banks; (2) unstructured Credit Information Bureau where the implementing rules and regulations for its operations are not yet finalized; (3) limited options for microfinancing programs; (4) need for stricter implementation of the lending compliance mechanism of the Magna Carta for MSME and Agri-Agra Law; and (5) insufficient incentives for banks to go into MSME lending.

To overcome these hurdles, the experts championed the following approaches:

- Push for the realization of the Implementing Rules and Regulations (IRR) of the Credit Information Bureau;
- Pass the National Land Use Act, currently under legislative consideration;
- Encourage the development of a uniform valuation system through the Valuation Reform Law (House Bill 4400, currently in Congress);
- Encourage the development and disseminating of an industry-wide harmonized credit scoring system and underwriting policies;

- Promote incentives to banks for collateral-free lending, innovative financing, and microlending;
- Encourage financial intermediaries to look into the potential and opportunities of risk-based lending by engaging associations like the Association of Development Financing Institutions in Asia and the Pacific (ADFIAP), Bankers Association of the Philippines (BAP) and Rural Bankers Association (RBA);
- Advocate LGUs' support for the development of credit cooperatives that are linked with MSMEs as clients and networks;
- Advocate the review of BSP's regulations and guidelines related to setting of caps in assets, deposits, and loan exposures that limit MSME access to credit;
- Strengthen capacity of banks, financial intermediaries, and chambers of commerce in providing assistance to MSMEs in the development of business plans, bookkeeping, and financial projections; and
- Advocate the development of other financial instruments that can enhance financing for MSMEs such as collateralization of leasehold agreements or business contracts and providing access to venture capital.

The problem of informal settlers was a centerpiece issue in focus group discussions and remains a crucial challenge in property rights protection.

Section 6

Conclusion and Recommendations

Multi-Dimensional, Interrelated Issues

Although private property rights in the Philippines are well-established at the level of the Constitution, the laws and policies that support them are problematic in practice. Barriers are evident in the overprotection of informal settlers at the expense of formal private owners and in ineffective registries that do not guard against lost title. Outdated and conflicting laws do not give clear guidelines on implementation and lead to coordination problems and corruption among agencies. These have led to high transaction costs over and above the already high formal costs for owning, maintaining, and transferring property. Given the great contributions of the real estate sector and of micro, small and medium-scale enterprises to the Philippine economy, these barriers need to be addressed if the country is to become competitive and to truly progress.

Problems affecting property markets in the Philippines are multi-dimensional. Consider for instance the issue of informal settlers. Property rights in this area are greatly affected by weak rational dispute resolution mechanisms and weak rule of law. The continued presence of informal settlers can also be greatly attributed to the preferential treatment given to them by the laws and to the difficulty in obtaining legal property titles by the poor. Governance is likewise a key issue since informal settlers are voters and favor-seeking behavior practiced by politicians leads to policies that keep them in place without addressing the core reason why they remain informal. Removing informal settlers and reforming the system that perpetuates informality thus becomes a political decision, rather than simply a socio-economic and administrative policy matter.

The relationship between governance and property rights can likewise be seen in title registries. Corruption, ineffective administration, and inadequate computerization increase the transaction costs for accessing registries, while the lack of applicability of outdated laws leads to confusion and difficulties in coordination among agencies responsible

for land administration. A weak legal framework and weak capabilities of citizens to effectively contest decisions by the government make for partiality and discrimination in the implementation of laws. Moreover, a high level of corruption leads to weak contract enforcement and to poor respect for the rule of law.

Regarding access to credit, the biggest hurdles reported by both MSMEs and experts were the cumbersome processes in accessing loans, which are partly due to the way banks implement the BSP lending guidelines. While microfinance was generally considered strong in terms of services provided, it was rated as weak in terms of outreach.

Recommendations

In the words of Nobel Laureate Douglass North, institutions in the Philippines and in all other countries contribute greatly to directing “economic change towards growth, stagnation, or decline”²³ because of the way they structure transaction costs and the relationships among the various buyers and sellers in the economy. The problems are systemic: laws and policies are not properly aligned to avoid inefficiencies, corruption, and informality.

Given that institutional problems are multi-dimensional and interrelated, the solutions must also be multi-faceted and interlinked.

Legislative reforms and stronger implementation of existing laws

Passage of the National Land Use Act could have the great potential of streamlining and consolidating the many institutions and procedures that currently deal with property markets. Similarly, passage of the Valuation Reform Law could help address multiple standards currently used in the valuation process. At the same time, better implementation of the

regulations such as those on the Credit Information Bureau is needed to improve access to credit for MSMEs. Likewise, the implementation of the Urban Development and Housing Act more in line with its original intent and more vigorous implementation of the Residential Free Patent Law are necessary to address the widespread problem of informal settlers.

Better coordination between national and local governments

There is an urgent need for the national government and local government units to interact more effectively, especially in the administration of property related to zoning, valuation, registries, records management, titling, and taxation. They must unify and harmonize structures, systems, and institutions to make their functions responsive to the needs of the stakeholders and the general public, and less prone to corruption.

Improved cooperation between the public and private sector

There needs to be greater cooperation and engagement by the private sector with government institutions so that reforms benefiting property markets for MSMEs can be implemented. To demand change and suggest concrete reform solutions, private sector stakeholders should participate in various public hearings, technical working groups, and consultations undertaken at the level of Congress, government agencies, and at the local level. These feedback mechanisms should then be institutionalized to allow stakeholders to continually provide their grassroots insights to policymakers in order to improve the administration of property rights.

In addition, a more consistent and reliable e-governance framework and integrity pledge among government institutions is needed to guard against corruption, minimize bureaucratic layers, and cut processing and transaction costs. At the same time, the private sector must keep in mind that corruption is a two-way street and implement internal anti-corruption measures when it comes to interacting with public officials on property transactions and other business issues.

Broader access to credit for MSMEs

Regarding access to credit, the Central Bank needs to incentivize the participation of financial institutions in expanding access to financing and developing the capacity of MSMEs to become bankable and credit-worthy clients. This includes reorienting policies and practices in credit scoring, underwriting, and use of collateral to make them more attuned to the needs and potentials of MSMEs in contributing to various economic

activities including job generation. There is also a need to improve sector cooperation between non-governmental organizations, cooperatives, microfinance institutions, and local governments in providing alternative and readily available formal lending windows for MSMEs. The creation and proper operation of a credit bureau can also be an important step in greatly reducing the time and effort it takes for banks to assess loans and to make good credit decisions.

Uniform valuation standards

Introducing uniform valuation standards for lending, taxation, and expropriation combined with professional, independent valuation services could lower the costs of gathering information and negotiation in transfers of property and in accessing loans. It is important that the standards are not too difficult to understand or too expensive to comply with. There is also room for improvement in the regulation and licensing of professional asset valuers and real estate brokers including making sure that the costs of education and licensing are in line with the benefits.

These are by no means trivial tasks. Accomplishing them will require the continued commitment of each of the stakeholders involved. Innovative ideas such as the one-stop shop for land administration and property-related matters in LGUs are a crucial next step and will require a series of dialogues between various stakeholders. However, given the need and opportunity for reform, now is the time to push for these initiatives and see a transformed property market in the Philippines.

Endnotes

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3. Table: Contribution of Real Estate to Foreign Direct Investments in the first quarter of 2011 http://www.bsp.gov.ph/statistics/spei_new/tab21.1.htm.
4. Table: Contribution of Real Estate and Business Activities to Gross National Income in 2010 http://www.bsp.gov.ph/statistics/spei_new/tab44.htm.
5. Table: Contribution of Real Estate, Renting and Business Activities to Employment, National Statistics Office, www.census.gov.ph/data/sectordata/2009/lf0904r10.pdf (for Jan 2010) and www.census.gov.ph/data/sectordata/2011/lf110101.pdf (for Jan 2011).
6. Table: CPI by Region for Housing and Repairs, 2003-2011, Philippine Institute of Development Studies <http://econdb.pids.gov.ph/tablelists/table/245>.
7. Micro enterprises in the Philippines are defined as those with total assets of no more than P3 million; small enterprises have total assets between P3 million to P15 million; medium enterprises have total assets between P15 million to P100 million, <http://business.inquirer.net/money/topstories/view/20080523-138295/Arroyo-signs-Magna-Carta-for-MSMEs>.
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12. *Doing Business 2012 – Registering Property*, World Bank.
13. United Nations Development Programme, Philippines, www.undp.org.ph.
14. The law was amended in 1997 by Rep. Act No. 8289, and in 2009 by Rep. Act No. 9501. It aims to strengthen financial and other support mechanisms for MSMEs. The law also changed the definition of micro enterprise by raising the ceiling to qualify to not more than P3 million in assets, up from P1.5 million, and increased the capital stock of the Small Business Corporation.
15. *Governance Matters*, World Bank, 2010.
16. The Philippines rank 134th out of 178 countries rated in Transparency International's *2010 Corruption Perceptions Index*.
17. Included in background papers "Property Rights" and "Access to Credit" by Lat and Claver, 2010. Background papers, along with detailed FGD methodology and interview findings, are available at www.isacenter.org.
18. <http://www.peopleandparticipation.net/display/Methods/World+Cafe>.
19. The revised MSME Magna Carta requires banks and lending institutions to allocate at least 8 percent of their loan portfolio to micro and small enterprises and 2 percent to medium enterprises. The Agri-Agra Law, or Presidential Decree No. 717, amended by Republic Act No. 10000 known as the Agri-Agra Reform Credit Act of 2010, requires banks to earmark 10 percent of their portfolio for loans to agrarian reform beneficiaries and 15 percent for agriculture credit.
20. Fixing refers to an act of facilitating speedy completion of a transaction without complying with the regular rules and procedures of a given office in consideration of, or in exchange for, pecuniary gain. Fixing is done by a person who is not officially involved in the operations of a particular government office but has access to people working therein and acts in collusion with them.
21. An impact fee is a charge on new development paid for the construction or expansion of off-site capital improvements (i.e. new infrastructure) that are necessitated by new development for its benefit.
22. Article 3, Land Administration Reform Act, <http://www.senate.gov.ph/lisdata/62275565!.pdf>.
23. North, D. (1991). "Institutions" *Journal of Economic Perspectives* Vol. 5 No. 1, p. 97.

Appendix

Philippines Property Markets Scorecard



The Scorecard reflects the status of the six Core Elements necessary for transparent and efficient property market development. Each Core Element includes three Lead Indicators that are further divided into Sub-Indicators. Colors signify the strength of institutions that support market development – very strong, strong and weak. No color indicates that institutions are very weak. Gray indicates more information is needed for an objective determination.

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The International Property Markets Scorecard Project is the latest development in the continued cooperative work between the Center for International Private Enterprise (CIPE) and the International Real Property Foundation (IRPF). The Scorecard derives from the work of an academic panel led by Richard Green, PhD., Director of the University of California's Lusk Center for Real Estate and the University of Denver, Burns School of Real Estate and Construction Management's Global Real Estate Project under the direction of Dr. Mark Lee Levine.

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Scorecard Methodology

The International Property Markets Scorecard is a systems analysis tool to measure the strength of institutional support for transparent, rational and effective property markets. It provides stakeholders with a visual representation of the status of the core elements necessary for sustainable property markets that help to distribute power and economic opportunity.

Quantitative and qualitative measures are taken from established international economic development organizations (information current as of October 2011) and paired with on-the-ground assessments of market participants. The purpose of the Scorecard is to bring about an awareness of the interconnections between the microeconomic factors necessary for development and provide advocates, policymakers, and development groups with clear, actionable goals for continuous improvement.

Property markets are inherently local and can vary widely from one city to another, even from one block to the next. The Scorecard is meant to measure how policy decisions and levels of implementation affect property markets. It is not meant to provide specific guidance, measures or predictions of individual property performance. For detailed information on the Scorecard methodology please contact forum@cipe.org.



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Property Rights

Goal – Property rights that are legally protected, secure, recorded in a single, accurate, widely accessible electronic registry and that lead to high levels of formal ownership for all citizens

1.1 Legal Protection

Core Question: Does an effective and sufficient legal framework exist to protect property rights for all citizens? **No – Weak – a survey of the land administration laws affirms that these laws are “outdated and conflicting with each other. Due to the large number of these laws, inconsistencies often arise, especially on the mandates and functions of agencies.”**

Source: Rheya Lyn M. Dealca, “Initiatives to Improve Land Administration in the Philippines,” www.fig.net/pub/vietnam/papers/ts03d/ts03d_dealca_3652.pdf

Legal Framework

1.1.1 Are property rights clearly defined and protected by law? **No – Weak – Ranking 105th out of 142; Score 3.61 out of 7 Trend ↓**

Security of Tenure

1.1.2 Can citizens challenge the legality of government takings? **No – Very Weak – 118th out of 142; Score 2.78 out of 7 Trend ↓**

Source: *Global Competitiveness Report 2011-2012* – World Economic Forum www.weforum.org/issues/global-competitiveness

Bundle of Rights

Survey Question

SQ1: What is the bundle of rights (group of rights such as occupancy, use and the right to sell or lease) associated with both residential and commercial property ownership? **Strong – the 1987 Constitution sets out three types of ownership – ancestral, public and private. Moreover, the following bundle of rights is associated with ownership of residential and commercial property:**

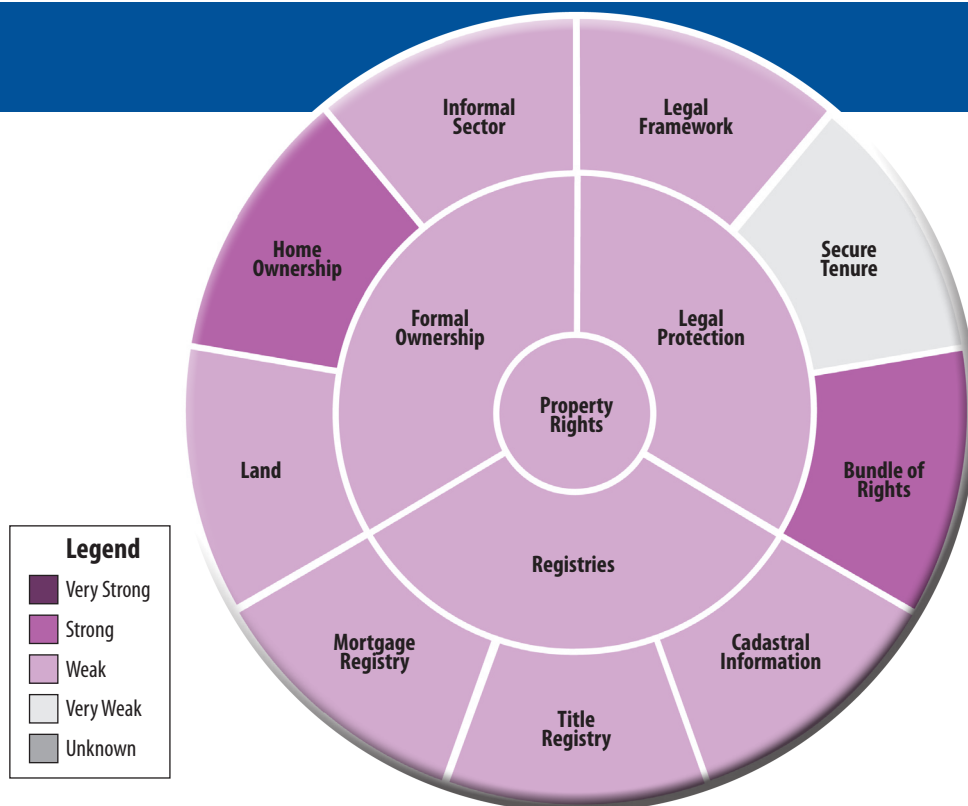
- (1) **Ownership**
- (2) **Possession/Occupancy (Art. 523, Civil Code)**
- (3) **Use of and the right to the fruits of the property (Art. 437, 440, Civil Code)**
- (4) **Right to sell/convey/mortgage the property (Art. 428, Civil Code)**
- (5) **Right to lease the property (Art. 525, Art. 1643, Art. 1650, Civil Code)**

1.2 Registries

Core Question: Does a reliable property registry exist including cadastral, title and mortgage lien information? **No – Weak, there are great problems in enforcement and with unregistered land. Moreover, there are complaints about the national government departments that hand out titles, as well as those that facilitate registration.**

1.2.1 Cadastral Information

Status – Weak. Implementing regulations for The Cadastral Act (Act No. 2259) were



revised in July 2007 but a large portion of land still has not been surveyed.

Survey Questions

- SQ2:** Is cadastral information (information about the dimensions and location of land parcels) accessible to the public? **Yes**
- SQ3:** Is zoning/permitted use information included and are use regulations respected and enforced? **No**
- SQ4:** Are Geographic Information Systems (GIS) including Global Positioning Satellite (GPS) information used to create and update the registry? **Yes, but not at all levels. Though this has been mandated by the national government, city governments have not entirely migrated to GIS. In Manila, this is not yet in place due to budgetary constraints. However, in the City of San Fernando Pampanga, the first stage of the GIS is already complete.**

Source: *Revised Regulation on Land Surveys*, Dept of Environment and Natural Resources <http://gepwebportal.com/docs/dump2000/1211250715-RevisedRegulationsOnLandSurveys.pdf>
Civil Society Resource: Geodetic Engineers of the Philippines <http://gepwebportal.com/index.php>

1.2.2 Title Registry

Weak – Ranking – 117th out of 183 Trend ↓

- 1.2.2.1 What is the number of procedures required to register the transfer of a property from one owner to another? **8 to 9**
- 1.2.2.2 What is the duration of time in calendar days that it would take to complete the transfer? **39**
- 1.2.2.3 What is the total cost of the transfer including all fees, taxes, etc. expressed as a percentage of the value of the property? **4.8% (not**

including creditable withholding tax)

Source: *Doing Business 2012 – Registering Property*, World Bank www.doingbusiness.org/data/exploreeconomies/philippines

1.2.3 Mortgage Registry

Status – Weak, while the registry follows the Torrens System of title guarantees, implementation and capacity at the regional level is insufficient.

Survey Questions

- SQ5:** The mandatory use of notaries or similar officials slows down and adds cost to the process. Does a notary need to be involved in the registration process? **Yes**
- SQ6:** Is information in the registry available electronically? **Yes, but this is still limited. The repository of Land Information is still in the process of transition from manual to electronic. See www.lra.gov.ph/**
- SQ7:** Title insurance is indemnity insurance against financial loss from defects in title and from the invalidity or unenforceability of mortgage liens. Is title insurance available to lenders? **No. However, there have been attempts to enact relevant legislation. See www.nenepimentel.org/bills/SBN-116.asp**

1.3 Formal Ownership

Core Question: Do citizens understand and trust property rights institutions and avoid the informal sector? **Yes – but Weak. Although significant legal advances have been achieved over the last few years, more than half the properties remain unregistered.**

Survey Questions

1.3.1 Land

SQ8: What is the status of land ownership? **Weak**

– 19 different government agencies are involved in land administration.

Source: Rheyra Lyn M. Dealca, cited above

Home Ownership

SQ9: What is the percentage of formal home ownership? **Strong – City records show: in Manila, 66.43% estimated formal home ownership as of 2007. In San Fernando Pampanga, 90.5%**

Source: City Governments of Manila and San Fernando Pampanga

Informal Sector

1.3.3 What is the percentage of service firms that report competing with unregistered or informal firms? **37.5% – Weak. In Manila, 22.6% of formal sector businesses reported competing with informal markets in the industries of printing and contracting.**

Source: Enterprise Surveys 2009, www.enterprisesurveys.org/ExploreEconomies/?economyid=153&year=2009

In-Country Assessment Information

Field Question (FQ) 1: Even if legal provisions exist, what is the actual status of property rights and ownership for small businesses?

Despite the legal framework enacted to secure the formal ownership of property, widespread informal activity exists in the Philippine property market. This includes illegal possession or occupation of public and private property by impoverished populations, non-registering of property titles, and unrecorded transactions due to high transactional costs. As a result, the property market has been significantly less transparent and considered more hostile compared to other countries within the Asia-Pacific region. It is very common to find land squatters blatantly occupying property illegally not only in rural areas but within the central urban districts as well. Throughout Metropolitan Manila, slum shanty towns are built up adjacent to waterways and the fringe areas of modern urban corridors of formal property developments, reflecting the socio-economic dichotomy that clearly exists in the Philippines between the affluent and the impoverished.

Source: "Recommendations on Real Estate Market Reform in the Philippines," Capstone Thesis, Brandon Feráren, 2010, Georgetown University School of Continuing Studies.

There are what is called "professional squatters and squatting syndicates," which abuse the law on the Urban Development and Housing Act of 1992. Politics likewise plays a part in the determination of properties for expropriation. There has been a national drive, backed by legislation, to remove professional squatters. However, the conflict is more political. Professional squatters are protected because they add to the votes that local chief executives receive, so there is a greater incentive to appease them rather than relocate them outside of the already densely populated urban areas.

FQ 2: Are standard purchase contracts used for commercial properties? If not, how are property purchases usually completed?

No. Purchase transactions are usually done with varying purchase contracts. Moreover, the City

Governments are not mandated to intervene except when the transactions deal with City Property. As such, there has been no mandate to enforce standardized purchase contracts. The process involves (after the buyer and seller discuss and agree on the price), obtaining the deeds from the City Assessor's Office and Tax Clearance, and proceeding to the Treasurer's Office to pay Transfer Tax.

FQ 3: Do separate contracts or other means exist to hide value from authorities when registering property transactions?

Yes. There are instances where the buyer and seller try to hide the value from authorities to avoid paying high taxes. However, even if buyers understate the sale value, they will eventually pay a standard fee based on the zoning value or the fair market value, whichever is higher.

FQ 4: Are standard leases used for commercial space? If not, what is a typical arrangement for rental?

No. The law that governs this is Art. 1654 of the Civil Code, and it lists the obligations of lessors/building owners, which includes the obligation to deliver services "in such a condition as to render it fit for the use intended." This may include "all the necessary repairs in order to keep it suitable for the use which it has been devoted." However, there is also the provision that these will happen "unless there is a stipulation to the contrary" which may lead to confusion at times.

FQ 5: What are the typical rates, terms and availability of office, retail, manufacturing and logistics facilities?

	Office Facilities	Retail Facilities	Manufacturing Facilities	Logistics Facilities
Rates	Php250 – Php900 per sq meter per month depending on location and age of building	Php650 – Php1,200 per sq meter per month plus percentage of sales	Php250- Php500 per sq meter per month depending on location and age of building	Php250- Php500 per sq meter per month depending on location and age of building
Terms	3 years	2 years	2 years	2 years
Availability	Sufficient supply	Sufficient supply	Sufficient supply	Sufficient supply

Source: Ms. Marissa Benitez, Director for Valuation & Advisory Services from Colliers International

FQ 6: What are the processes for government expropriation of property especially notice and due process for owners? Are those laws followed or do expropriations happen by collusion between officials and connected elites?

The process for government expropriation can be found in Rule 67 of the Rules of Court. Expropriation requires the filing of a complaint for expropriation with the Regional Trial Court, which will then proceed to determine: (1) whether due process was followed in the expropriation of the property, and (2) if due process was indeed followed, the proper amount of compensation to be paid to the property owner. Local government units can also expropriate land to reclassify residential, commercial or industrial lands within their jurisdiction.

Despite the rules, however, politics seems to play a part in the determination by the bodies responsible

for the process of expropriation, both at the local and the national government level. When it comes to executing the expropriation, there are also instances when payment is delayed due to a failure to agree on the rate of compensation. In some instances, the expropriation proceedings take years to be completed.

Sources: Rules of Court; "Standards for the Assessment of the Value of the Land Subject of Expropriation Proceedings or Negotiated Sale"; interviews with industry practitioners.

FQ 7: Are businesses owners compensated fairly when their property is taken for public use?

While Philippine law requires just compensation, in practice the determination of the just compensation takes too long, so that there are great opportunity costs for small businesses that are not paid immediately as a result of a failure to agree on the proper amount for compensation, even when their land has already been taken.

FQ 8: What protections do businesses who lease space have from arbitrary eviction by owners?

The main protection that businesses have from arbitrary eviction by property owners are the terms and conditions of the lease. If there is no lease, or if there are gaps in the lease, provisions of the Civil Code will apply. It is worth noting that Section 10 of the Rent Control Law of 2009 prohibits the lessor or his successor-in-interest from ejecting the lessee simply by reason of sale or mortgage of the property being leased. In practice, for as long as there is a lease contract, the lessees are able to obtain sufficient protection from arbitrary eviction.

FQ 9: What services are typically provided to tenants (common areas, public access, security) and what means of redress are available if services are not provided?

Currently, electricity and water services are provided by the lessor, while the lessee usually pays on the basis of consumption. There is a common understanding that the lessor should cover repairs due to the normal wear and tear of the leased property, while the lessee shall cover repairs due to wrong use of the property.

FQ10: What is the actual experience of transferring a property, accessing the registry and dealing with registry officials?

Although there is a title registry system currently in place, many properties have not yet been registered. Over the years, improper dealings, unrecorded property transfers, or attempts to avoid taxation and/or lessen transactional costs, have discouraged property owners from utilizing the proper formal procedures for property transactions and transfers. Only 10 million of the estimated 23 million (40%) parcels are registered. The Philippines has one of the highest costs associated with property transactions and requires a number of procedures (more than typical) compared to other countries in the Asia-Pacific region. As a result, informal activities, such as bribery and not recording property, occur to avoid high taxation and transactional costs.

Source: "Recommendations on Real Estate Market Reform in the Philippines," Capstone Thesis, Brandon Feráren, 2010, Georgetown University School of Continuing Studies.

FQ 11 How large is the presence of unregistered and/or illegal uses of commercial property?

It is hard to put a number on the unregistered/illegal uses of commercial property in both cities because officials claim that these improper uses are addressed as soon as these are tracked. The most common illegal use of property is subleasing.

FQ 12 How large is the presence of informal markets for goods, i.e. itinerate vendors?

Both cities have ongoing programs to reduce the presence of informal markets. However, the presence of informal markets is seen not as a factor of inefficient government but as a result of poverty. The City Governments have thus tried to improve the situation with more flexible rates for

registering businesses through a daily payment to the city's bureau in charge of registration. These daily rates, while they are equivalent to the total amount of yearly payment, are easier to comply with for formerly unregistered small businesses.

Source: Unless noted, research and interviews conducted by the Institute for Solidarity in Asia in June and July 2011.

Access to Credit

Goal – An efficient, transparent financial sector that provides a broad range of citizens with access to multiple forms of competitive credit so that they can start businesses, build wealth, and purchase property

2.1 Banks

Core Question: Are traditional banking services robust and extensive enough to serve the needs of the population to help them build wealth and purchase property?

Yes – Strong, the IMF notes that the financial sector has remained resilient and that non-performing loans are relatively low at under 5%.

Access

2.1.1 How easy is it to obtain a bank loan?
Strong – Ranking 52nd out of 142; Score 3.03 out of 7 Trend ↑

Soundness

2.1.2 How sound are the country's banks? **Strong – Ranking 46th out of 142; Score 5.57 out of 7**

Source: *The Global Competitiveness Report 2011-2012*, World Economic Forum
www.weforum.org/issues/global-competitiveness

2.1.3 Microlending

Status – Strong, although microfinance institutions have a great number of services, small businesses have difficulty getting loans due to the lending requirements.

2.1.3.1 Microfinance allows citizens without traditional creditworthiness to build a credit history. How many microfinance institutions are operating in the country? **202**

ASA Philippines Foundation	www.asaphil.org/
CARD Bank	cardbankph.com/wp_cardbankph/home.php
KMBI	www.kmbi.org.ph/
Life Bank Foundation	
TSPI Development Corporation	www.tspi.org/

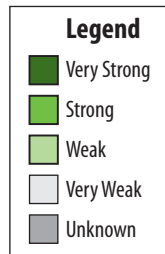
2.1.3.2 What is the number of active borrowers per institution?

ASA Philippines Foundation	179,626
CARD Bank	725,800
KMBI	186,170
Life Bank Foundation	236,917
TSPI Development Corporation	264,089

Source: Microfinance Information Exchange www.mixmarket.org/mfi

2.2 Other Sources

Core Question: Are entrepreneurs free to raise capital outside the banking system including venture capital



and/or by issuing stock in a well-regulated stock exchange? **No – Weak, access to capital outside banks remains weak and as a result some small businesses resort to informal lending. Informal lending is based on trust, confidence, and familiarity but can only provide limited capital.**

Financial Freedom

2.2.1 How much control does the government exert over financial services? **Weak for entrepreneurs – Score 50 out of 100 – Considerable government control**

Source: *Index of Economic Freedom 2011*, Heritage Foundation
www.heritage.org/index/Country/Philippines

Venture Capital

2.2.2 How easy is it for entrepreneurs to find venture capital? **Weak – There are start-up loans granted by the Small Business Corporation, created by law to provide access to credit to entrepreneurs, as well as by the Landbank of the Philippines, the Development Bank of the Philippines and others. However, interviewed MSMEs feel that those initiatives are insufficient.**

Source: Financing Programs for Micro, Small and Medium Enterprises in the Philippines, Bureau of Micro, Small and Medium Enterprises, Department of Trade and Industry.

Equity Investors

2.2.3 How easy is it to raise money by issuing shares on the stock market? **Strong – 44th out of 142; Score 3.98 out of 7 Trend ↑ although not relevant for MSMEs**

Source: *The Global Competitiveness Report 2011-2012*, World Economic Forum
www.weforum.org/issues/global-competitiveness

2.3 Credit Bureau

Core Question: Is comprehensive credit information available through public and private credit bureaus? **No – Weak, the public credit bureau (enacted by the Credit Information Systems Act in 2008) has yet to become operational. In the meantime, there are private credit bureaus formed by the credit/banking associations.**

Overall Ranking 126th out of 183 Trend ↓

Coverage

2.3.1 What is the depth of information available in credit bureaus? **Strong – Score – 3 out of 6 with a higher number indicating more information is available**

Public

2.3.2 What is the extent of public credit registry coverage? **Very Weak – not available**

Private

2.3.3 What is the extent of private credit registry coverage? **8.2% Weak**

Source: *Doing Business 2012 – Getting Credit*, World Bank
www.doingbusiness.org/data/exploreeconomies/philippines

In-Country Assessment Information

FQ13: How available are mortgage loans for purchasing commercial property (office, retail, industrial and logistics), who is the typical user and what are the prevailing trends?

While the basic legal framework of the banking system is in place, access to credit by MSMEs is hardly robust. Even for those who own real property that may be utilized as collateral or security, access to credit may not necessarily come easy as they must hurdle technical and legal obstacles related to policies governing real property-secured loans. The steps required before the loan is finally approved entail not only documentation (preparation or signing of loan contract/real estate mortgage contract), but also dealing with a notary public, the concerned assessor's office, and the Register of Deeds. Even before a real property owner decides to secure a loan, she/he has to consider the appraisal value, interest rates and duration of the loan.

FQ14: What are the interest rates, term and loan-to-value ratios?

Interest rates: The rates range from 6% to 24% per annum depending on the type of product. Loan-to-value ratios: The General Banking Law provides that loans against real estate shall not exceed 75% of the appraised value of the real estate security, plus 60% of the appraised value of the insured improvements. Term: Based on an interview with a banking expert, the duration of loans is usually from 3 months to 5, 7, or 10 years, depending on the business. However, more flexible loan arrangements with lower requirements as can be found in the database of the Bureau of Micro, Small and Medium Enterprise Development.

FQ15: To what extent are microenterprises (5 or fewer employees) active in the country? Approximately what percentage are formally registered firms?

According to the Department of Trade and Industry, as of 2009, there were 780,437 business enterprises operating in the Philippines. Of these, 99.6% (777,357) were micro, small, and medium enterprises (MSMEs) and the remaining 0.4% (3,080) were large enterprises. Of the total number of MSMEs, 91.4% (710,822) were microenterprises, 8.2% (63,529) were small enterprises, and 0.4% (3,006) were medium enterprises. The majority of MSMEs in operation as of 2009 were in the wholesale and retail trade industries with 385,610 business establishments, followed by manufacturing with 111,987, and hotels and restaurants with 97,298.

FQ16: What services other than loans such as insurance, funds transfers, and business development training are available from microfinance organizations for formal businesses?

MFI provide a broad range of financial services such as deposits, loans, payment services, money transfers and insurance products to the poor and low-income households and their microenterprises, although outreach has been largely disappointing.

FQ17: What professional financial services are available outside state-owned banks including insurance, credit cards and investment management?

The banking sector is dominated by five large commercial banks. Two large state-owned banks account for about 15 percent of total assets. Credit is generally available at market terms, but banks are required to lend specified portions of their funds to preferred sectors, including MSMEs.

FQ18: What has been the appreciation (or depreciation) rate for commercial property over the last several years?

In the City of Manila, the schedule of fair market values has not increased since 1986. For the City of San Fernando Pampanga, the schedule of fair market values has not changed since 2009, although between 1996 and 2009 there was a 30 to 35% appreciation rate on residential and agricultural land.

Source: Interview and documents from the Assessor's Offices in both cities.

FQ19: How available is seed money or angel investors for the start up of small businesses?

There have been significant efforts on the part of the Central Bank as well as the Bureau of Micro, Small and Medium Enterprises to make loans available for business start-ups. The Magna Carta for Small Enterprises requires that banks make available a certain portion of their loans for use by MSMEs. Moreover, other initiatives are being undertaken to make start-up lending friendlier to small businesses. They include: Real Estate/Chattel Mortgage (REM/CHM), Hold-out on Deposits, Assignment of Receivable and/or Inventory, JSS of Principal Stockholders/Officers, Guarantee cover from Small Business Corporation (SB Corporation), if required. Development banks are also increasingly considering business plans of small and medium enterprises, assignment of project income, purchase orders, export receivables, etc. as acceptable collateral. However, the challenge is to get more banks to actually implement the above initiatives and to develop the attitude of serving small businesses. Outside of banks, severely resource-constrained small vendors operating in public markets rely heavily on informal lenders or financiers known as "5-6." However, they charge exorbitant interest rates and lack government supervision to protect borrowers. 5-6 moneylenders charge a nominal interest rate of 20 percent over an agreed period of time. A person who borrows 5 pesos from a 5-6 moneylender over a period of one week repays 6 pesos. 5-6 moneylenders do not require collateral or documents from their borrowers. Instead, the borrower's credibility is determined by his or her business and loan repayment history. Since informal lenders collect on a daily basis, they tend to seek out businesses that generate cash on a daily basis. These include vendors, proprietors of

small businesses, and small service providers (e.g., groceries, eateries, tailoring shops, and hair salons).

FQ20: Do small businesses have access to credit information about potential customers?

Generally, no. Comprehensive credit information is only available through private credit bureaus as no public credit information bureau exists at present (although the establishment of one is underway). The Bankers Association of the Philippines (BAP) Credit Bureau and the Credit Management Association of the Philippines are private initiatives that maintain records of creditworthiness. This information is not easily accessible to the public. Credit information is not heavily relied upon for purposes of obtaining financing because current lending practices favor collateral as a measure for hedging financing risks.

FQ21: Can businesses gain access to information about them contained in credit bureaus and correct inaccuracies?

To address the lack of a credit bureau, the Credit Information System Act (Republic Act No. 9510) was passed on October 31, 2008. Section 5 of the law provides for the creation of a Central Credit Information Corporation "whose primary purpose shall be to receive and consolidate basic credit data, to act as a central registry or central repository of credit information, and to provide access to reliable, standardized information on credit history and financial condition of borrowers." As such, reliable and correct data is required by the law. However, the implementing rules and regulations are still in progress.

Source: Unless noted, "Access to Credit, a Background Paper" by Atty. Tanya Lat and Atty. Francisca Claver and information confirmed in focus groups and interviews conducted by the Institute for Solidarity in Asia in June and July 2011 in Manila and San Fernando, Pampanga.

Effective Governance

Goal – A popularly elected government free of corruption and functioning efficiently and transparently enough to guarantee economic freedom to individuals and support equitable property markets

3.1 Democratic Representation

Core Question: Does the country have free and open elections for the leadership and can citizens engage in free enterprise?

Yes – Weak, while the constitutionally prescribed democratic practices and mechanisms are in place, elections are often marred with corruption and vote-buying. However, there are no legal barriers that keep citizens from engaging in free enterprise.

3.1.1 Voice & Accountability

3.1.1.1 Are citizens able to elect their government and do they enjoy freedom of expression, association and a free media? **Yes – Weak – Percentile Rank – 46.9 Trend ↑**

Sources: *Governance Matters 2010*, World Bank http://info.worldbank.org/governance/wgi/sc_chart.asp

3.1.1.2 Are citizens free to form political and civic organizations free of state interference and surveillance? **Yes – Strong – Score 9.12 out of 10**

Overall Ranking – 74th out of 167

Source: *The Economist Intelligence Unit 2010 Democracy Index* http://graphics.eiu.com/PDF/Democracy_Index_2010_web.pdf

3.1.2 Public Information

Overall Ranking – Very Weak. The 2010 score 57 out of 100 has decreased significantly compared with 2008 (71) primarily due to the growing gap between the laws on the books and their actual implementation. Trend ↓

3.1.2.1 Are there regulations governing conflicts of interest in the executive and legislative branches of government? **Yes – Executive Score 34 out of 100 – Very Weak; Legislative Score 61 out of 100 – Weak**

3.1.2.2 Can citizens access legislative processes and documents? **No – Score 42 out of 100 – Very Weak**

Source: *Global Integrity Report 2010* www.globalintegrity.org/report/Philippines/2010/

3.1.3 Market Intervention

Overall Ranking – Weak 109th out of 179 Trend =

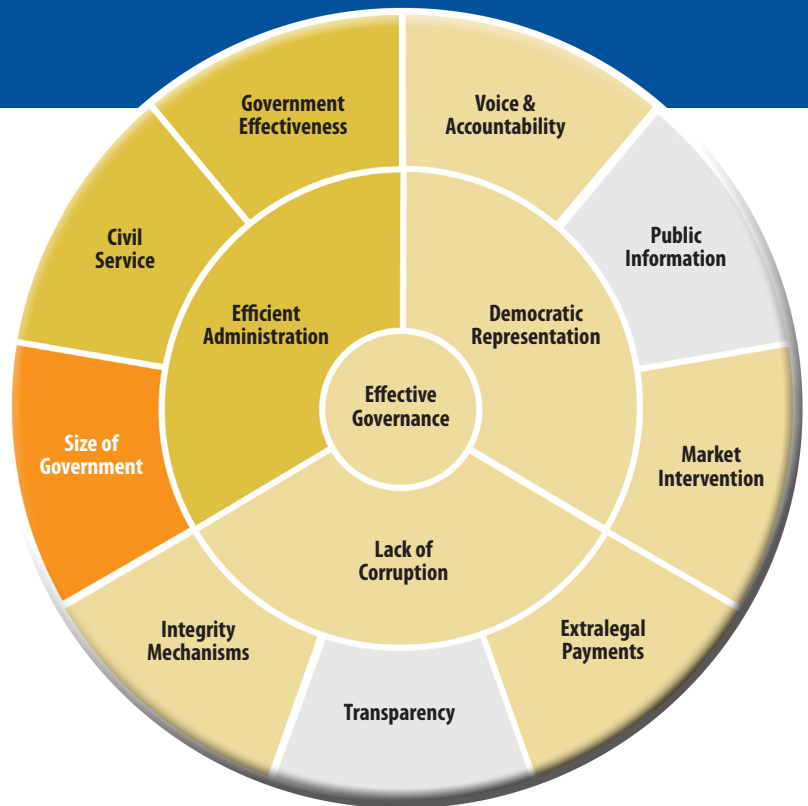
3.1.3.1 To what extent does the government intervene in the private sector including state-owned industries? **Little intervention in most sectors – Score 91 out of 100 with a higher score indicating less intervention**

3.1.3.2 To what extent does the government control prices? **Moderate intervention in utilities, telecommunication and transportation, Score 76.3 out of 100 with a higher score indicating less control**

Source: *Index of Economic Freedom 2011* – Heritage Foundation www.heritage.org/index/Country/Philippines

3.2 Lack of Corruption

Core Question: Is the public sector transparent and free of corruption? **No – Weak, endemic and institutionalized corruption have compromised prevention efforts.**



Transparency

3.2.1 What is the perceived level of corruption in the country? **Very Weak – Ranking – 134th out of 178; Score 2.4 out of 10 Trend =**

Source: *Corruption Perception Index 2010*, Transparency International www.transparency.org/policy_research/surveys_indices/cpi/2010/results

Integrity Mechanisms

3.2.2 A National Integrity System is a framework where the principle institutions that contribute to integrity, transparency and accountability in a society can address corruption in a systematic way. Does a National Integrity System exist? **Yes – Weak, although a system is in place, it has difficulty functioning effectively. However, processes for the government agencies to report to the public regularly on their performance are being put in place.**

Source: *National Integrity System Assessment*, Transparency International www.transparency.org/policy_research/nis/nis_reports_by_country

Extralegal Payments

3.2.3 How often do companies report that officials and/or companies expect additional payments to “expedite” services or gain business? **18.6% of firms surveyed by the World Bank say they are expected to make unofficial payments – Weak, SMEs believe true incidence of bribery is higher.**

Source: *Enterprise Surveys 2009*, World Bank www.enterprisesurveys.org/ExploreEconomies/?economyid=153&year=2009

3.3 Efficient Administration

Core Question: Are quality services and qualified civil servants available to the public through the efficient use of public money free of corruption? **Yes – Strong,**

overall progress has been mixed, but some fiscal reforms have been accomplished.

Size of Government

3.3.1 What is the size of government relative to GDP? **17.3% – 25 to 30% considered optimum – Very Strong**

Source: *2011 Index of Economic Freedom*, Heritage Foundation www.heritage.org/index/Country/Philippines

Civil Service

3.3.2 What is the quality of the civil service? **Strong – Score 71 out of 100**

Source: *Global Integrity Report 2010* www.globalintegrity.org/report/Philippines/2010/

Government Effectiveness

3.3.3 What is the overall effectiveness of the government? **Strong – Percentile Ranking – 51.7 Trend ↑**

Source: *Governance Matters 2010*, World Bank http://info.worldbank.org/governance/wgi/sc_chart.asp

In-Country Assessment Information

FQ22: What is the actual experience of small businesses in dealing with the government, particularly the number and complexity of required procedures and the prevalence of extra payments to facilitate services such as licenses or permits?
Overlapping processes and multiple layers of bureaucracy among national government agencies i.e., BIR, Registry of Deeds, and Land Registration Office are hindrances to having a competitive property rights market. Stakeholders noted that this problem makes the entire bureaucracy susceptible to corruption and political favors. Processes and structures prevailing in various agencies with respect to lost titles and settlement of taxes are

burdensome. Stakeholders underscored the need to have consistent, time-bound and accountable channels that would protect the rights of property owners and promote better systems and procedures. Stakeholders also note that the records and information system has to be developed to address the following gaps: (1) safe-keeping of relevant and important records used to determine proper legal ownership of properties; (2) lack of available centralized information that entrepreneurs, creditors and real estate professionals can access in relation to acquiring and selling property; (3) credit providers' need to have consistent and reliable information to conduct due diligence and proper assessments. Weak organizational coordination among agencies was highlighted as another important issue in

property rights administration. Stakeholders discussed the need for coordination between national agencies and local government units on records management and information sharing. Computerization was highlighted as a major milestone in property administration while at the same time it appears to be a failure at the onset of its implementation. Stakeholders argued that the computerization program created more delays rather than addressing the problem of long transaction turnover. Stakeholders believe that while the computerization program in the long term will address corruption, the lack of staff capacity and technology know-how among the agencies implementing undermines its purpose in the short term. Capacity of institutions to address illegal settling

as well as implement valuation and land use and expropriation policies was also in question. According to the stakeholders, political considerations tend to prevail over rules, structures, processes and procedures. Institutions and agencies, therefore, are susceptible to political dynamics both at local and national levels. Another gap that needs to be addressed is the conduct of dispute resolution especially in resolving informal settling and rightful ownership issues. Stakeholders underscore the need to equip government agencies with resources, negotiators, and knowledge in tackling disputes.

Source: Findings from focus groups and interviews conducted by the Institute for Solidarity in Asia in June and July 2011 in Manila and San Fernando, Pampanga.

Rational Dispute Resolution

Goal – An efficient institutional framework that balances the rights of the public, owners, lenders and borrowers in the event of a dispute or loan default

4.1 Rule of Law

Core Question: Do all market participants abide by the rule of law and have confidence in the courts and the ability of police to control crime? **No – Very Weak, the judicial system remains weak and vulnerable to political influence.**

Impartiality

4.1.1 What is the confidence level of the strength and impartiality of the police, courts and contract enforcement? **Weak – Percentile Ranking – 34.6 Trend ↓**

Source: *Governance Matters 2010*, World Bank http://info.worldbank.org/governance/wgi/sc_chart.asp

Independent Judiciary

4.1.2 Can members of the judiciary be held accountable for their actions? **No – Score 45 out of 100 – Very Weak**

Source: *Global Integrity Report 2010* – www.globalintegrity.org/report/Philippines/2010/

Costs of Crime

4.1.3 What are the business costs of crime and violence? **Moderate Costs – Ranking 112th out of 142 – Score 3.8 out of 7, Very Weak**

Source: *The Global Competitiveness Report 2011-2012*, World Economic Forum www.weforum.org/issues/global-competitiveness

4.2 Enforcement of Contracts

Core Question: Are systems in place for timely and efficient enforcement of contracts? **Commercial – No – Weak, time is the major constraint.**

4.2.1 – Judicial Enforcement

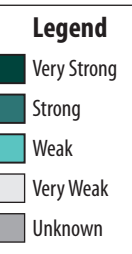
Commercial – Weak – Ranking 112nd out of 183 Trend ↑

4.2.1.1 What is the number of procedures involved in resolving a commercial dispute? **37**

4.2.1.2 What is the time between the filing of a lawsuit and resolution in judicial enforcements? **842 days**

4.2.1.3 What is the cost of judicial enforcements as a percentage of debt value? **26%**

Source: *Doing Business 2012* – Enforcing Contracts www.doingbusiness.org/data/exploreeconomies/philippines



4.2.2 – Summary Proceedings

SQ 10: Summary proceedings are alternative dispute resolution processes where creditors can apply for a direct court order in property disputes. What is the time between notice of intent to foreclose and loan collection in summary proceedings if available to lenders? **Not available – Very Weak**

SQ 11: What is the cost of summary proceeding if available to lenders as a percentage of property value? **Not available – Very Weak**

4.2.3 – Power-of-Sale

SQ 12: Power-of-sale agreements give creditors to power to sell properties after notice to the borrower without court intervention. What is the time between notice of intent to sell and loan collection for power-of-sale agreements if available to lenders? **Very Strong – Practically all defaulted mortgages are now foreclosed extra judicially.**

Source: Asian Development Bank, *Insolvency Law Reform* www.adb.org/documents/others/insolvency/local_study_phi_c.pdf

SQ 13: What is the cost of power-of-sale agreements if available to lenders as a percentage of property value? **Unknown**

4.3 Commercial Dispute Resolution

Core Question: Can commercial disputes be resolved efficiently and fairly without exorbitant expense and delay? **Yes – Strong, the policy of the state is to actively promote Alternative Dispute Resolution to achieve speedy and impartial justice.**

Survey Questions

Commercial Courts

SQ 14: Do specialized commercial courts exist for the handling of property disputes and foreclosures? **Yes – Strong, there are 64 special commercial law courts designated by the Supreme Court.**

Source: Insolvency Systems in Asia, Organization for Economic Cooperating and Development www.oecd.org/dataoecd/48/57/33937132.pdf

Alternative Dispute Resolution

SQ 15: Are alternative dispute resolution mechanisms in place including commercial arbitration, private mediation and community based processes? **Yes – Very Strong, ADR Act of 2004 gives the Office of ADR the power to set standards and certify practitioners.**

Source: Philippine Dispute Resolution Center, www.pdrci.org/web1/rules.html

Commercial Treaties

SQ 16: What bilateral, regional and international commercial treaties exist concerning business between countries? **Strong, the Philippines is a member of the World Trade Organization, the ASEAN Free Trade Area,**

various ASEAN-plus free trade agreements, the Philippines-Japan Economic Partnership Agreement and more than 40 bilateral trade agreements.

Source: Association of Southeast Asian Nations www.aseansec.org/index.html; World Trade Organization www.wto.org; and www.bilaterals.org.

In-Country Assessment

FQ23: To what extent do small businesses trust public institutions to support contract enforcement?

Small business owners have shown confidence that contracts will be supported by the law.

FQ24: To what extent are alternative dispute resolution procedures used and trusted by small businesses?

Special commercial courts within the Regional Trial Courts focus on commercial disputes due to the specificity

and complex nature of these disputes. Through these special courts, commercial disputes can be resolved with reasonable expertise; however, the courts still lack efficiency in regards to time and costs. As a result, many businesses prefer to utilize alternative dispute resolution. This primarily includes commercial arbitration, private mediation, and community-based practices. Moreover, ADR is also popular because contractual provisions are usually decided on the basis of discussions between the seller and the buyer, with minimal intervention by the government (unless public land is involved).

Source: Research and interviews conducted by the Institute for Solidarity in Asia in June and July 2011 in Manila and San Fernando, Pampanga.

Financial Transparency

Goal – A well developed and transparent financial system that includes strong supporting institutions and highly trained and ethical professionals that contribute to effective financial intermediation and deep and broad access to capital and financial services

5.1 Market Stability

Core Question: Are market risks sufficiently transparent and diversified so that efficient capital allocation can occur? **No – Weak, although capital standards and oversight have improved.**

Financial Reporting

5.1.1 What is the strength of the country's auditing and reporting standards? **Strong – 62nd out of 142; Score 4.77 out of 7**

Financial Services

5.1.2 Does the financial sector provide a wide variety of financial services to businesses? **Yes – Strong – 50th out of 142; Score 4.89 out of 7**

Source: *The Global Competitiveness Report 2011–2012*, World Economic Forum www.weforum.org/issues/global-competitiveness

Insolvency Process

Very Weak – Ranking – 163rd out of 183 Trend ↓

5.1.3 What is the average time to complete bankruptcy proceedings? **5.7 years**

5.1.4 What is the cost of bankruptcy proceedings as a percentage of the estate? **38%**

5.1.5 What is the recovery rate of bankruptcy proceedings? **4.7 cents on the dollar**

Source: *Doing Business 2012 – Closing a Business* www.doingbusiness.org/data/exploreeconomies/philippines

5.2 Independent Asset Valuers

Core Question: Do trained, independent and ethical asset valuers exist for all types of assets? **Yes – Strong, the Central Bank is committed to reliable and transparent real estate valuations. Moreover, Congress recently passed the Real Estate Service Act (RA 9646), which created a professional regulatory board for the real estate industry.**

Survey Questions



Standards

SQ 17: How easy is it to find a valuer who implements International Valuation Standards (IVS)? **Very Strong – IVS are being adopted as the national standards. However, not all property valuers have adopted these national standards; it is usually the international firms that do so.**

Training

SQ 18: What is the level of training of valuers? **Strong – Advanced programs are available. However, under the Real Estate Service Act (RESA), the government has yet to release implementing rules and regulations regarding the training standards to be followed.**

Civil Society Resource: Appraisal Institute www.appraisalinstitute.org

Ethics

SQ 19: Are opinions offered by valuers free of influence from

parties to the transaction? **Strong, as members of IVSC, valuers are expected to follow the IVS Code of Conduct.**

Civil Society Resource: International Valuation Standards Council www.ivsc.org

5.3 Data Standards

Core Question: Is accurate property information available electronically in formats that are consistent with international standards? **No – Weak, although more and more information is becoming available, Philippine markets are rated as semi-transparent by Jones Lang LaSalle.**

Survey Questions

Sales & Operating Data

SQ 20: A multiple listing service is an electronic exchange system where brokers and agents can widely share contracted real estate listings of properties that are for

sale. Do multiple listing type services exist? **Yes – Weak, MLS services exist but are not standardized.**

Civil Society Resource: International Consortium of Real Estate Associations www.worldproperties.com

SQ 21: Do resources exist for obtaining building income and expense estimates? **No – Very Weak**

Civil Society Resource: Institute of Real Estate Management www.irem.org

Interchange Formats

SQ 22: Do electronic data interchange formats conform to international standards (ebXML – electronic business using extensive markup language)? **Yes – Weak, Electronic Commerce Act of 2000 provides for the use of ebXML, but it is not used for real estate transactions.**

Source: Electronic Commerce Act www.chanrobles.com/republicactno8792.htm

Civil Society Resource: Open Standards Consortium for Real Estate International www.oscre.org

Technical Standards

SQ 23: Do building codes and office building measurement standards (ANSI/BOMA Z65.1) conform to international standards? **Yes – Strong, Philippine Association of Building Administrators (PABA) is affiliated with Building Owners and Managers Association International (BOMA).**

Source: The National Building Code of the Philippines

www.chanrobles.com/republicactno6541.htm
Civil Society Resource: Philippine Association of Building Administrators <http://paba.org.ph/about.html>

In-Country Assessment

Valuation Profession

FQ25: How many independent valuers exist in the market? Can small businesses obtain fair valuations for property they want to buy or sell?

From interviewing a few appraisers, there are plenty of independent valuers; however, many are not licensed or trained according to acceptable standards.

FQ26: What are the valuation standards and do they conform to international and regional standards?

International Valuation Standards are in use and are part of pending legislation dealing with the valuation profession. The standards for appraisers are in the RESA examination components for becoming a real estate valuer. These include: fundamentals of real estate principles and practices; standards and ethics; theories and principles in appraisal; human and physical geography; methodology of appraisal approaches; valuation procedures and research; appraisal of machinery and equipment; practical appraisal mathematics; appraisal report writing; real estate finance and economics; case studies; land management system and

real property laws; and any other related subjects as may be determined by the Board (Sec. 13, Scope of Examination).

Source: The RESA law www.lawphil.net/statutes/repacts/ra2009/ra_9646_2009.html.

FQ27: What valuation methods and techniques are used in the market?

Generally Accepted Valuation Principles as defined by the IVSC are used. During expropriation, land is valued at the zonal value (based on the Bureau of Internal Revenue's maps) and the value of the property on the land is added.

Data Availability

FQ28: How available is information for commercial properties that are for sale or that have sold?

Knowledge about commercial properties for sale usually spreads through word of mouth, advertisement (flyers / signboards / classified ads in newspapers) and the databases of real estate brokers. Sold properties have deeds of sale, and are issued new titles. These titles are available with the Register of Deeds and the City Assessor's Office. After foreclosures, properties are subject to public bidding/auction if they are below 250 sqm. The property, in this case, is published in newspapers with national circulation.

Source: Research and interviews conducted by the Institute for Solidarity in Asia in June and July 2011 in Manila and San Fernando, Pampanga.

Appropriate Regulation

Goal – A comprehensive regulatory regime that is transparent, efficient, simple in its implementation and that leads to accurate reporting of property values and prudent protection from market risks

6.1 Fair Tax Regime

Core Question: Do market participants feel the overall tax rate is fair and participate in formal transactions? **Yes – Weak – while taxes involved in property transfers are relatively low, the overall tax rate on businesses is high.**

Transfer Tax

6.1.1 What is the total property transfer tax including all duties and payments? **Strong – 4.8%**

Overall Tax

6.1.2 What is the overall tax rate on entrepreneurs (as a percentage of profits)? **46.5% – Ranking – 136h out of 183, Weak – Trend ↓**

Divestment

Survey Question

SQ 24: What is the tax on profits for foreign investors when divesting property? **32% top corporate tax rate – Very Weak**

Source: *Doing Business 2012 – Paying Taxes & Registering Property*, World Bank www.doingbusiness.org/data/exploreconomies/philippines

6.2 Professional Services

Core Question: Are the professional services necessary for efficient and transparent property markets available, appropriately regulated and supervised? **Yes – Weak,**



the Real Estate Services Act which regulates professional service providers was only signed in June of 2009, so it is still too early to tell its effect.

Asset Valuers

Survey Questions

SQ 25: Are property valuers licensed and/or certified by the government? **Yes – Weak, the Professional Regulatory**

Board of Real Estate Service has only recently become active, although private sector associations have been promoting international valuation standards.

Source: Real Estate Services Act, www.lawphil.net/statutes/repacts/ra2009/ra_9646_2009.html

SQ 26: How effective are mechanisms in place to discipline valuers who engage in misconduct? **Weak – although**

the Professional Regulatory Board has disciplinary powers such as the ability to impose fines and imprisonment, the implementing rules and regulations for the Board have yet to be passed.

Brokers & Agents Survey Questions

SQ 27: Are real estate brokers and agents licensed and/or certified by the government? **Yes – Strong, Brokers are licensed based on exams or other defined criteria, as stipulated in the RESA; sales persons must work under a licensed broker.**

Source: Real Estate Services Act, www.lawphil.net/statutes/repacts/ra2009/ra_9646_2009.html

Registered individual brokers: <http://prcboardresult.blogspot.com/2011/03/real-estate-brokers-2011-list-of.html>

SQ 28: How effective are mechanisms in place to discipline brokers or agents who engage in misconduct? **Weak – there are still large numbers of unlicensed brokers.**

Mortgage Professionals Survey Questions

SQ 29: Are mortgage professionals licensed and/or certified by the government? **No – Weak, the mortgage market is still underdeveloped in terms of professionals.**

SQ 30: How effective are mechanisms in place to discipline mortgage professionals who engage in misconduct? **Very Weak – none in place**

6.3 Capital Markets

Core Question: Are capital markets well-regulated and diversified enough to provide financial resources to private sector entrepreneurs and innovators? **No – Weak, capital standards and oversight have improved, however.**

Capital Flows

6.3.1 How restricted is the flow of capital into and out of the country? **Significant restrictions, Weak – Ranking 89th out of 142; Score 4.39 out of 7**

Security Exchanges

6.3.2 Is the regulation of securities exchanges transparent, effective and free of influence from government and industry? **Yes – Strong, Ranking 64th out of 142; Score 4.25 out of 7**

Source: *The Global Competitiveness Report 2011-2012*, World Economic Forum www.weforum.org/issues/global-competitiveness

Securitization

6.3.3 What is the depth of asset-backed securities, mortgage-backed securities, high-yield bonds and highly leveraged loans? **Weak – Ranking 31st out 55, Score 2 out of 7.**

Source: *The Financial Development Report*, World Economic Forum www3.weforum.org/docs/WEF_FinancialDevelopmentReport_2010.pdf

In-Country Assessment

Taxation

FQ29: What is the level of taxation for small businesses? Are any of those taxes an excessive burden on small businesses? Are any tax discounts provided for small businesses?

Tax rates reflect the real property taxes levied based on location: maximum of 1% for provincial location, and

maximum of 2% for locations in Metro Manila (Sec.215, Local Government Code, 1991). Moreover, these taxes are imposed on 20% of the market value for residential areas, 40% for agricultural land areas, and 50% for commercial areas (Sec.233, Local Government Code). The level of taxation for small businesses is similar to that for regular businesses. However, the Magna Carta for Small Entrepreneurs states that through the Micro, Small and Medium Enterprise Development Council, small businesses shall gain "...easier access to tax credits and other tax and duty incentives as provided by the Omnibus Investment Code and other laws" (Sec. 7B, Powers and Laws of the Micro, Small and Medium Enterprise Development Council).

Professional Services

FQ30: What is the experience of small businesses in dealing with professional property market service providers such as real estate agents, brokers and valuers?

There were no problems reported in dealings with private service providers. Most of the conflicts are at the level of dealings with the national government. With the enactment of Real Estate Service Act, dealings with the real estate profession may improve further.

Source: Research and interviews conducted by the Institute for Solidarity in Asia in June and July 2011 in Manila and San Fernando, Pampanga.

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