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TURKS AND CAICOS ISLANDS
FINANCIAL SERVICES COMMISSION

Regulating with Honesty Integrity and Transparency

REAL ESTATE SECTOR

AML RISK OUTLOOK

INSIDE THIS ISSUE

- Purpose
- Money Laundering, Terrorist Financing Risk in the Real Estate Sector
- Threat Analysis
- Vulnerabilities Analysis
- Trends and Emerging Issues

High Risk Sectors for ML/TF

- Banking
- Company Managers and Agents
- Independent Legal Professionals
- Professional Trustees
- Money Service Businesses
- Investments
- Real Estate
- High Value Dealers
- Accountants
- International Insurance

Purpose

Real estate professionals are required to maintain an accurate view of the money laundering (ML), terrorist financing (TF) and proliferation financing (PF) risks to which they are exposed.

This quarterly AML Risk Outlook report was produced to inform real estate professionals' money laundering (ML), terrorist financing (TF) and proliferation financing (PF) risk assessments and risk mitigation measures.

Ultimately, real estate professionals should ensure that they design and implement risk mitigation measures that are tailored to their risk and risk in real estate sector, considering the findings of this report and the legal requirements.

Money Laundering and Terrorist Financing Risk in the Real Estate Sector

The Turks and Caicos Islands (TCI) National Risk Assessment 2017 rated real estate professionals among financial businesses with the second highest risk of money laundering. This was attributed to the availability of high-end properties in the TCI, which can allow criminals to acquire assets of value. The purchase of real estate allows for the movement of large amounts of funds all at once as opposed to multiple transactions.

Other factors attributing to the risk for money laundering include, but is not limited to, the TCI being a high-end tourist destination, the rapid rate of economic growth, and increased access to the TCI by foreign persons visiting and choosing to purchase property in the TCI.

Threat Analysis

The TCI's real estate sector face a high threat that the money used to finance real estate transactions may be from foreign proceed-generating crimes as well as domestic proceed-generating crimes, both of which are listed in the table below.

TF and PF risks are broadly low; however, these threats are considered elevated at the international level, particularly, through the misuse of companies and trusts formed in the TCI which can be used to hide ownership of real estate by terrorists or their sympathizers.

The proceeds of sale of real estate can be remitted outside of TCI to support terrorism. Real estate may also be held indefinitely to secure a steady income from rent which may also be remitted outside of TCI to support terrorism.

ML/TF Predicate Activities	**Source**
Relevant Domestic Threats:	
Corruption	TCI National Risk Assessment 2017
Drug dealing	TCI National Risk Assessment 2017
Human trafficking	TCI National Risk Assessment 2017
Relevant Foreign Threats:	
Tax evasion	TCI National Risk Assessment 2017
Corruption	TCI National Risk Assessment 2017
Drug trafficking	TCI National Risk Assessment 2017
Human smuggling	TCI National Risk Assessment 2017
Human trafficking	TCI National Risk Assessment 2017
Fraud	TCI National Risk Assessment 2017

Vulnerabilities Analysis

The real estate sector is vulnerable to abuse by criminals for a number of reasons. The table below provides a list of vulnerabilities the Commission has identified in the real estate sector based on several sources including analysis of supervisory questionnaires (Update Forms) submitted by real estate professionals. The table also provides guidance for real estate professionals to mitigate the vulnerabilities identified.

Indicator of vulnerability	**Buying and selling of high value property**
Why? High value property is attractive to criminals because it provides the means to legitimise their ill-gotten gains by allowing for the movement of significant amounts of funds in a single transaction.	
Measures DNFBP should adopt to mitigate the vulnerability Seek to understand how the client can afford to purchase the property and their funding arrangement. In the case of foreign clients, ascertain the reason for choosing to purchase property in the TCI. This should form part of your overall application of CDD measures and should be documented. Registrants should also have regard to the AML Guidance Notes as well as the DNFBP Guidance on CDD for more information on undertaking source of funds.	
Indicator of vulnerability	**Number of customers not resident in the TCI**
Why? Customers that acquire the services of real estate professionals via non-face-to-face means pose a greater risk of money laundering and terrorist financing because their identity cannot be reliably verified. Additionally, even where real estate professionals meet face-to-face with a foreign customer, ascertaining source of funds and source of wealth may be difficult to identify and verify.	
Measures DNFBP should adopt to mitigate the vulnerability The risk assessment of customers not resident in the TCI should recognise that these people present a higher level of money laundering risk. If the real estate professional has not met the customer in person, and are not able to obtain and verify basic CDD information, enhanced due diligence ("EDD") measures should be applied to compensate for the higher risk presented in this area. For example, EDD measures that real estate professionals can consider include searching online databases, reviewing social media to gather information on the customer's identity, among other measures. Note that a customer's overall risk assessment should not be rated "high" based solely on the customer not being resident in the TCI.	

Vulnerabilities Analysis

Indicator of vulnerability	Prevalence of legal entities and legal arrangements

Why?
The use of legal entities and arrangements may allow criminals to conceal their ownership of property and to obscure the trail of funds making it challenging for law enforcement to trace the illicit gains.

Measures DNFBP should adopt to mitigate the vulnerability
Identify and verify the identity of the beneficial owners including the ultimate natural person who is the beneficial owner of a legal entity. This includes companies, foundations, trusts, limited partnerships, etc.
Regulations 5, 11 and 13 of the AML Regulations, Part 3 of the AML Code and sets out the relevant requirements regarding the beneficial owners of legal entities. Real estate professionals should also have regard to the AML Guidance Notes as well as the DNFBP Guidance on CDD.

Indicator of vulnerability	Shortness of business relationship between clients and real estate firms

Why?
The nature of transactions in the real estate sector do not normally allow for a sufficient level of understanding of customer profiles and enable monitoring as buyers and sellers of real estate do not usually maintain a relationship over a period of time with a real estate professional. The absence of an ongoing business relationship which prevents real estate professionals from updating client information and assessing series of transactions to identify suspicious activity.

Measures DNFBP should adopt to mitigate the vulnerability
Ensure that appropriate CDD measures are applied to customers, including:
(a) Identify, verify, and assess clients (based on customer risk, product/services risk, delivery channels risk and country risk) before establishing a business relationship or carrying out an occasional transaction for them.
(b) Ascertain the purpose and nature of the intended business relationship.
(c) Ascertain the type, volume, and value of a customer's expected activity.
(d) Ascertain the reason for using the real estate professional and for purchasing property in the TCI.
(e) Determine if a client is acting for a third party and apply the same steps in (a).
(f) Establish the source of the funds presented by customers and, in the case of high-risk customers, their source of wealth.
(g) Keep the records obtained for the purpose of applying CDD measures for a minimum period of five years and, where dealing with repeat customers, update these records on a risk sensitive basis.

Vulnerabilities Analysis

Indicator of vulnerability	Involvement of gatekeepers e.g. lawyers/accountants in purchase/transfer of real estate

Why?
Gatekeepers e.g. lawyers, accountants, etc. otherwise referred to as intermediaries or introducers, may be used by criminals to assist them to achieve their criminal objective.

Measures DNFBP should adopt to mitigate the vulnerability
Ensure that introducers/intermediaries are registered as a DNFBP with the Financial Services Commission, or in the case of a foreign introducer/intermediary, a foreign regulator. This information can be found on the Commission's website at www.tcifsc.tc/list-of-approved-dnfbps/.

If a real estate professional intends to rely on introducers/intermediaries for aspects of CDD for its customer, real estate professionals must first ensure that:

(a) the lawyer is a regulated person; and
(b) the lawyer consents to being relied on.

Before relying on the CDD through an introducer/intermediary, the real estate professional must obtain adequate assurance in writing from the introducer/intermediary that:

(a) the introducer/intermediary has applied the CDD measures for which the real estate professional intends to rely on it;
(b) the introducer/intermediary is required to keep, and does keep, a record of the evidence of identification relating to each of the customers of the lawyer;
(c) the introducer/intermediary will, without delay, provide the information in that record to the real estate professional at the real estate professional's request;
(d) the introducer/intermediary will, without delay, provide the information in the record to the Commission, where requested by the Commission, and
(e) the introducer/intermediary understands and obtains information on the purpose and intended nature of the business relationship.

Real estate professionals must consider whether an introducer/intermediary is regulated and supervised, and has measures in place for compliance with customer due diligence and record keeping requirements. Real estate professionals must also take into consideration the level of risk of the countries in which the introducer/intermediary is located. Real estate professionals should not rely on a lawyer that is established in a high risk third country.

Real estate professionals must perform CDD themselves in transactions where the introducer/intermediary does not meet the criteria set out above. Also, real estate professionals remain responsible for complying with the requirements of regulation 13A of the AML Regulations. Every real estate professional must retain adequate documentation to demonstrate that customer due diligence has been properly implemented.

Vulnerabilities Analysis

Indicator of vulnerability	Lack of appreciation of money laundering/terrorist financing risks and appropriate policies and procedures to mitigate these risks

Why?
Identifying real estate firms' exposure to money laundering, terrorist financing and proliferation financing risks will help these firms to understand what aspects of their business increase the chances of them being used for financial crime and will also allow them to target their resources to the areas that put them at risk of abuse by criminals.

Measures DNFBP should adopt to mitigate the vulnerability
Real estate professionals must assess their money laundering, terrorist financing and proliferation financing risks based on the following risk categories:
(a) the organisational structure of the real estate professional, including the extent to which it outsources activities;
(b) the persons to whom and how the real estate professional delivers its services;
(c) the countries with which the real estate professional's customers are connected;
(d) the services that the real estate professional provides or offers to provide;
(e) the nature, scale, and complexity of the activities of the real estate professional;

Real estate professionals are advised to be mindful that, based on the National Risk Assessment ("NRA"), the most significant threat to the TCI for ML, TF and PF arise from persons outside the TCI. The high values associated with real estate in the TCI, coupled with its access to the international financial system, makes the jurisdiction attractive to bad actors. Domestically, real estate professionals should also pay attention to customers that are PEPs.

In assessing their risks, real estate professionals must have regard to the NRA, sectoral risk assessments issued by the Commission, and other supervisory products such as this Risk Outlook.

A detailed guide explaining the steps to be taken to carry out a proper business risk assessment is set out in the Commission's Guidelines on Risk Assessment.

Indicator of vulnerability	Weak application or non-application of Customer Due Diligence (CDD) Measures

Why?
Failure to properly apply CDD measures can result in criminals achieving their criminal objective, frustrate the efforts of law enforcement to hold criminals to account for their crimes, and also damage the reputation of the TCI.

Measures DNFBP should adopt to mitigate the vulnerability
The measures set out under "Prevalence of legal entities and legal arrangements" applies.

Vulnerabilities Analysis

Indicator of vulnerability	**Lack of competent Money Laundering Reporting Officers (MLROs)**

Why?
The MLRO is responsible for receiving internal reports of suspicious activity and determining whether to make an external report to the Financial Intelligence Agency ("FIA"). The decision to recognise and report suspicious activity to the FIA is dependent on an MLRO possessing the necessary knowledge, experience and expertise to fulfil the responsibilities of the role.

Measures DNFBP should adopt to mitigate the vulnerability
Real estate professionals should ensure that the person appointed to be their MLROs possess the following skills:

- Knowledge of the real estate industry
- Experience in applying CDD measures
- Knowledge of the real estate professional's risk assessment, in particular the areas of vulnerability
- In-depth knowledge of the real estate professional's and the TCI's suspicious activity reporting framework
- In-depth knowledge of money laundering, terrorist financing, proliferation financing red flags involving real estate

Training activities should be documented to provide details, at a minimum of the nature/description, length, number of persons trained and the name and position of those trained.

Indicator of vulnerability	**Lack of staff training on recognising suspicious activity**

Why?
Staff will be unable to identify and report suspicious activity if they do not know what red flags to look for, which areas of the firm can be exploited by criminals, the firm's procedures to report suspicious activity.

Measures DNFBP should adopt to mitigate the vulnerability
Real estate professionals must remain abreast and current regarding money laundering, terrorist financing and proliferation financing risks and laws in order to ensure their staff are made aware of same.

Real estate professionals must ensure that their employees are trained on:

- their AML/CFT procedures, systems, and controls;
- employees' potential personal liability (criminal, regulatory and disciplinary) for breaches of the Proceeds of Crime Ordinance (POCO);
- potential implications to the real estate professional for any breaches of POCO; and
- how to identify and report suspicious activity.

Trends & Emerging Issues

Issue	Amendment to Anti-Money Laundering and Prevention of Terrorist Financing Code ("AML Code")

Background
The TCI Caribbean Financial Action Task Force Mutual Evaluation Report of 2020 found that real estate agents were not required to undertake CDD on both the buyer and seller of a property under transaction. This deficiency resulted in a recommendation to impose the requirement on real estate agents in order to satisfy the Financial Action Task Force 40 Recommendations.

Action Taken
The AML Code was amended by inserting section 13A which requires real estate professionals to conduct customer due diligence on both the buyer and seller of real property, even if the real estate professional acts for only one of the parties to the transaction.

Issue	Update of ML/TF Risk Profile of Real Estate Professionals

Background
The Commission conducts AML/CFT monitoring of DNFBPs, including real estate professionals, to ensure that its risk profile of these businesses and professions remain up-to-date. AML/CFT monitoring is also conducted for the purpose of carrying out continuing fit and proper assessments of the owners, directors, managers, Money Laundering Compliance Officer and Money Laundering Reporting Officer in accordance with the DNFBP Fit and Proper Criteria set out under regulation 27A of the AML Regulations and the DNFBP Fit and Proper Guidelines.

Action to be Taken
The Commission will request real estate professionals to submit an Update Form by 31st May 2024 covering the period 1st January to 31st December 2023.

Following analysis of the submitted Update Form by real estate professionals, the Commission will identify real estate professionals to receive a compliance visit (examination) by the Commission in accordance with section 164 of the POCO. The scope of the compliance visit will include a review of real estate professionals AML compliance programme including policies and procedures for customer risk identification, customer due diligence and suspicious activity reporting framework.

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