



TURKS AND CAICOS ISLANDS FINANCIAL SERVICES COMMISSION

Regulating with Honesty, Integrity and Transparency

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GUIDANCE ON CUSTOMER DUE DILIGENCE (CDD) REQUIREMENTS FOR THE PARTIES TO A REAL ESTATE TRANSACTION

Who is required to apply CDD to the parties involved in a real estate transaction?

1. The Anti-Money Laundering and Prevention of Terrorist Financing Code (“AML Code”) at section 13A requires a financial business that engages in “realtor activities” to conduct customer due diligence on both the buyer and seller of real property, even if the financial business acts for only one of the parties to the transaction. Realtor activities is defined by regulation 2 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations (“AML Regulations”) as “providing realtor services to both the purchaser and vendor of property”.
2. The Financial Services Commission (the “Commission”) has adopted the approach established by the Financial Action Task Force in its Risk Based Approach Guidance for the Real Estate Sector, that realtor services may be any of the following activities when linked to the buying and selling of real estate:
 - i) Traditional exclusive (and non-exclusive) seller representation.
 - ii) Traditional exclusive (and non-exclusive) buyer representation.
 - iii) Representation of both buyer and seller in the same transaction.
 - iv) Representation at auctions (and auctioneers).
 - v) Financial settlement.
 - vi) Real estate brokerage.
3. The Turks and Caicos Islands (“TCI”) National Risk Assessment (“NRA”) of 2017 highlighted the attractiveness of real estate in the TCI to criminals. The NRA also noted the involvement of realtors¹ and independent legal professionals² (“ILPs”) in real estate transactions.

¹ Regulation 2 of the Anti-Money Laundering and Prevention of Terrorist Financing Regulations (as amended) defines a realtor as a professional that operates within the real estate sector and is involved in transactions for a client concerning the buying and selling of real estate.

² Independent legal professional means a firm or sole practitioner who, by way of business, provides legal or notarial services to other persons, when preparing for or carrying out transactions for a customer in relation to—

- (a) the buying and selling of real estate and business entities;
- (b) the managing of client money;
- (c) the opening or management of bank, savings or securities accounts;
- (d) the organisation of contributions necessary for the creation, operation, or management of companies; or



4. Realtors may advise clients on the listing of property. Realtors may also market properties to potential buyers, arrange for and conduct the viewing of properties by potential buyers, manage negotiations between sellers and potential buyers of a property, and oversee the exchange of contracts between the seller and potential buyer of a property.
5. ILPs may advise on the purchase and sale of the property, may hold funds in escrow until contractual obligations in relation to the purchase of property are fulfilled, and are involved in the transfer of the property from one owner to the next.
6. Given the role played by realtors and ILPs, both are expected to obtain customer due diligence on both the purchaser and vendor of the property under transaction. Financial businesses such as accountants, banks, insurance companies, other entities that provide financing for real estate such as mortgage lenders, are not expected to perform CDD on both buyers and sellers of a property under transaction; CDD measures should only be applied to the customers of the financial business.

What CDD should be applied to the parties involved in a real estate transaction?

7. Where either party to the transaction is the customer of the realtor or ILP, the realtor or ILP is required to apply customer due diligence measures as defined by regulation 11 of the AML Regulations. Where a party is not the customer of the realtor or ILP, the realtor or ILP should only obtain identification information and verify the identity of the party.

Reliance on introducer or intermediary for CDD?

8. The Commission recognises the burden placed on the realtor or ILP to conduct CDD on the party to the property sale that is not their client. In certain circumstances, the realtor or ILP can rely on customer due diligence carried out by third parties.
9. Realtors or ILPs may rely on third parties such as introducers and intermediaries to apply CDD measures with respect to the purchaser and vendor of a property under transaction, if:
 - i) the introducer or intermediary is a regulated person or a foreign regulated person; and
 - ii) the introducer or intermediary consents to being relied on.
10. Before relying on an introducer or intermediary to apply customer due diligence measures with respect to the purchaser or vendor of a property under transaction, the realtor or ILP must obtain adequate assurance in writing from the intermediary or introducer that:

(e) the creation, operation or management of trusts, companies or similar structures, excluding any activity that requires a licence under the Trustees Licensing Ordinance or the Company Management (Licensing) Ordinance.



- i) the intermediary or introducer has applied the CDD measures to the standard required in the AML Regulations for which the realtor or ILP intends to rely on;
 - ii) the intermediary or introducer is required to keep, and does keep, a record of the evidence of identification relating to each of the customers of the intermediary or introducer;
 - iii) the intermediary or introducer will, without delay, provide the information in that record to the financial business at the realtor's or ILP's request;
 - iv) the intermediary or introducer will, without delay, provide the information in the record to the Commission, where requested by the Commission; and
 - v) the intermediary understands and obtains information on the purpose and intended nature of the business relationship.
11. Realtors or ILPs must consider whether an introducer or intermediary is regulated and supervised, or monitored, and has measures in place for compliance with customer due diligence and record keeping requirements. Realtors or ILPs must also take into consideration the level of risk of countries in which the introducer or intermediary is located. Realtors or ILPs should not rely on an introducer or intermediary that is established in a high risk third country.
12. Realtors or ILPs must perform CDD themselves in transactions where the introducer or intermediary does not meet the criteria set out in paragraphs 9 and 10. Also, realtors or ILPs and their senior management remain responsible for complying with the requirements of regulation 13A of the AML Regulations. Every realtor or ILP must retain adequate documentation to demonstrate that customer due diligence has been properly implemented.

Please be guided accordingly.

TCI Financial Services Commission