

EFIU REAL ESTATE AGENTS AML/ CFT GUIDELINE



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ACRONYMS

AML/CFT	Anti-money Laundering/ Countering the Financing of Terrorism
AML/CFT/PF	Anti-money Laundering and Combating Financing Terrorism and Proliferation Financing
CDD	Customer Due Diligence
CRMP	Compliance Risk Management Program
CTR	Cash Transaction Report
DNFBP	Designated Non-Financial Businesses and Professions
EDD	Enhanced Due Diligence
EFIU	Eswatini Financial Intelligence Unit
FATF	Financial Action Task Force
FSRB	FATF Style Regional Body
INR.	Interpretive Note to Recommendation
KYC	Know Your Customer
ML	Money laundering
MLFTP	Money Laundering and Financing of Terrorism (Prevention) Act, 2011 as amended.
PEP	Politically Exposed Person
PF	Proliferation Financing
RBA	Risk-based Approach
SRB	Self-regulatory Body
STR	Suspicious Transaction Report
TF	Terrorist Financing
TCSP	Trusts and company service providers
TPR	Terrorist Property Reporting
UNSCR	United Nations Security Council Resolution

1. SECTION 1: INTRODUCTION AND KEY CONCEPT

This Guideline is issued in terms of Section 18bis of the MLFTP, 2011 (as amended). Section 6 of the MLFTP (amendment) Act, 2016 requires that Real Estate Agent include the application of a risk-based approach to the management of financial crime risk. The risk-based approach requires that anti-money laundering (AML) and the combating of the financing of terrorism (CFT) requirements, systems, controls, and preventative measures adopted are commensurate to the risks that are being managed. By applying enhanced measures and controls where the financial crime risks are higher, with the option of applying simplified measures where the risks are lower, Real Estate Agents will be able to target their resources more effectively, whilst ensuring that these risks are efficiently mitigated. Real Estate Agents shall be required to prepare and submit periodically AML/CFT specific risk assessments to the EFIU at least annually or as and when directed.

The application of a risk-based approach also affords Real Estate Agents flexibility to use a range of mechanisms to establish and verify the identities of their clients, creating opportunities to explore more innovative ways of offering services to a broader range of clients and bringing previously excluded sectors of society into the formal economy. This improves the efficacy of measures to combat money laundering and terrorist financing by deploying limited resources to high-risk areas.

The application of a risk-based approach, as also provided for in Recommendation 1 of the Financial Action Task Force (FATF) and section 6 of the Money Laundering and Financing of Terrorism (Prevention) Act, 2011, requires Real Estate Agents to clearly identify, assess and understand and mitigate the financial crime risks that affect their business. Risk in this context refers to the possible threats and vulnerabilities that could lead to Real Estate Agents' systems, processes or other elements of the business being abused for purposes of ML/FT/PF, specifically including the facilitation of money laundering, terrorism financing, weapons proliferation, and international sanctions circumvention. By understanding the scope and nature of these risks (through risk profiling and risk assessments), Real Estate Agents can make informed decisions as to the appropriate methods and controls that should be applied in any given circumstance.

Financial crime risk must be assessed on a holistic basis and by means of a systematic approach. This guideline sets out such an approach, together with the risk framework and minimum requirements that real estate agents should apply when assessing financial crime risk.

Although the risk-based approach aims to manage financial crime risks more efficiently and effectively, it is not possible to eliminate all financial crime risks. It is important to note that the risk-based approach does not exempt Real Estate Agents from mitigating financial crime risks where these risks have been assessed as low.

Furthermore, assessing and mitigating the risk of financial crime is not a static exercise. The risks that have been identified may change or evolve over time as new products or new threats enter the business context.

1.1. Purpose of the guideline

The purpose of this guideline is to provide minimum criteria for the application of a risk-based approach by Real Estate Agents to assist the business in proactively managing financial crime risk by providing for the consistent design, application, and implementation of a risk-based approach. This will further allow for the optimization of resources to ensure that the allocation of such resources is commensurate with the level of risk identified.

1.2. Scope of the guideline

The guideline applies to all Real Estate Agents.

1.3. Ownership and review of guideline

This guideline is owned by the EFIU and shall be reviewed as and when the need arises and especially informed by legislation or industry practices.

1.4. Publication and effective date of guideline

This guidance shall be made available on the EFIU official website on the day of its effective date.

1.5. Risk management concepts

The application of a risk-based approach is based on the following concepts:

1.5.1. Risk

Risk can be described as the likelihood and impact of uncertain events on set objectives. The likelihood and impact of such events should be analysed in terms of threats and vulnerabilities.

A threat is a person or group of people, object, or activity with the potential to cause harm. In the context of money laundering and terrorist financing this includes criminals, terrorist groups and their facilitators, their funds, as well as any past, present, and future money laundering, or terrorist financing activities.

The concept of vulnerabilities comprises those things that can be exploited by the threat or that may support or facilitate its activities. Identifying vulnerabilities, as distinct from threats, means focusing on, for example, the factors that represent weaknesses or features that may be exploited in any given system, institution, product, service, etc.

Consequences refers to the impact of a threat or the exploitation of a vulnerability if this impact is to materialize.

Risk in the context of money laundering and terrorist financing therefore refers to the likelihood and impact of money laundering or terrorist financing activities that could materialize because of a combination of threats and vulnerabilities manifesting in the business, or that may jeopardize the detection, investigation or prosecution of these activities or the possibility of the forfeiture of proceeds of unlawful activities.

To have a robust financial crime risk management system, all Real Estate Agents must be able to demonstrate how they contextualize the concept of “financial crime risk” within their businesses as having an impact on their operational, line management and strategic objectives.

1.5.2. Inherent Risk and Residual Risk

Inherent risk is the risk of an event or circumstance that exists before controls or mitigation measures are applied. Residual risk is the level of risk that remains after controls and mitigation measures have been implemented.

1.5.3. Risk Management

Financial crime risk management is a process that includes the identification of financial crime risks, the assessment of these risks, and the development of methods and controls to manage and mitigate the risks that have been identified.

Financial crime risk, as with other risks, can be managed and mitigated either by avoiding, transferring, tolerating, or treating different risks. Treating financial crime risk entails that the various franchises, segments, subsidiaries, and international operations must develop systems and controls to manage the risks identified. These systems and controls should comprise of all the risk mitigation measures at the business’ disposal and should relate to the nature of risks. Such mechanisms include, *inter alia*:

- i. the application of client due diligence measures;
- ii. the monitoring of business relationships with clients;
- iii. managing delivery channels for products and services;

- iv. geographic factors
- v. structuring the features of products and services; etc.

The process to manage financial crime risk is a continuous cycle. A Real Estate Agent should be satisfied that the financial crime risk management systems and controls remain adequate in view of changing circumstances relating to emerging threats and vulnerabilities, product innovations, new target markets, changes in circumstances of individual clients or classes of clients, changes in business strategy, etc. This means that financial crime risks, controls and the levels of residual risk must be reassessed at regular intervals. The financial crime risk management systems and controls must also be always adhered to.

1.6. Real Estate Agent's activities and vulnerabilities for ML/TF

1.6.1 The activities of a Real Estate Agent are diverse, as are the applicable Real Estate Agent's obligations. A Real Estate Agent may provide a vast range of services to a broad and diverse range of clients. For example, FATF Recommendation 22 (d) provides that:

- i. A Real Estate Agent should be required to comply with the CDD requirements set out in Section 3 of this guideline when they are involved in transactions for a client concerning the buying and selling of real estate.

1.6.2 Criminals gravitate towards sectors that apply or are believed to apply less-comprehensive regulation and mitigation measures or where supervision is found to be lacking. The purchase of real estate allows for the movement of large amounts of funds all at once in a single transaction as opposed to multiple transactions of smaller values. In many countries, relevant AML/CFT requirements are minimal. Unlike banking, insurance, money-service-businesses, and other industries, buyers and sellers of real estate do not tend to maintain a relationship over a period with a regulated entity, which can make it difficult for supervisors and real estate professionals to examine series of transactions and identify suspicious activity. The nature of transactions also reduces the level of understanding of customer profiles and the incentive for investing and adequately implementing customer due diligence requirements.

1.6.3 Commercial real estate may be vulnerable to money laundering due to the increased prevalence of legal entities and vehicles used by corporate buyers and sellers that seek out these properties for investment and revenue. Additionally, the high value of these properties may also require multiple types of financing, which may complicate efforts to identify the source of funds.

1.6.4 Criminals may seek to launder funds by paying for property at a higher or lower value than true property value, indicating that the property may not be intended for a legitimate use and that the transaction is designed to hide illicit activity or gains. Moreover, infusion of large amounts of laundered money to purchase real estate with little regard to cost can significantly increase housing costs in some circumstances, creating hardship for genuine buyers seeking affordable housing.

1.6.5 In many cases, cross border purchases of real estate may also carry more elevated risks for practitioners and supervisors, especially when the buyer is based in a high-risk jurisdiction. This may include instances where the purpose of the transaction is questionable, i.e. not for residence, or when the value associated with the transaction is abnormal for the buyer or the market.

It is important to bear in mind when considering the range of tasks undertaken by a Real Estate Agent that only specified activities under FATF Recommendation 22 must be subject to the AML/CFT regime. The specifics of the risk-based processes of an individual Real Estate Agent and should accordingly be determined based on the activities undertaken by the Real Estate Agent, the ethical and existing supervisory structure for Real Estate Agents and the susceptibility or vulnerability of activities of a Real Estate Agent to ML/TF. An RBA requires a Real Estate Agent to mitigate the risks that they face and with due regard to the resources available. Mitigating practices will invariably include initial CDD and ongoing monitoring, as well as a range of internal policies, training, and systems to address the vulnerabilities faced in the operating setting of a Real Estate Agent.

As a matter of general principle Real Estate Agents who knowingly engaged in criminal activities do not warrant any special treatment. If they are so engaged, they are criminals and should be treated accordingly. The basic intent behind the FATF Recommendations is consistent with the role of a Real Estate Agent, and an agent is subject to ethical obligations, namely, to avoid knowingly assisting criminals or facilitating criminal activity. Some of the underlying ethical principles that the Real Estate Agent uphold, namely, to avoid facilitating criminal activity and being unwittingly involved in the pursuit of criminal activity, supports the role that a real estate agent needs to play in the fight against ML/TF.

2. SECTION 2: AML/CFT/PF RISK BASED APPROACH

2.1. The guiding principles to risk based approach

A Real Estate Agent should base their own risk-based assessments and supporting operating standards and procedures on the following guiding principles:

- 2.1.1. It is advised that Real Estate Agents adopt and demonstrate a zero tolerance for wilful and deliberate non-compliance with AML legislation and regulations.
- 2.1.2. When applying a risk-based approach, Real Estate Agents must comply with all minimum regulatory requirements and all applicable financial crime policies and standards and directives adopted and approved by their boards.
- 2.1.3. Consequences for non-adherence with minimum regulatory and policy requirements should be clearly articulated, specifically for staff members.
- 2.1.4. Each Real Estate Agent's Financial Crime Risk Management and Compliance Program will comprise of a collection of documents. These various documents should, as far as possible, provide sufficient guidance on a practical level to its targeted audiences.
- 2.1.5. These documents should, where relevant and appropriate, be read in conjunction with any applicable market conduct standards or guidance.
- 2.1.6. Where applicable, definitions should be agreed and applied consistently across the Real Estate Agent. .
- 2.1.7. The design of a risk-based approach must be geared towards truly understanding clients and the risk that they represent, supported by robust client due diligence standards and procedures, and must not simply constitute a tick-box exercise.
- 2.1.8. The risk-based approach adopted by the Real Estate Agent should, as far as possible, be designed to be client friendly and not unnecessarily burden the client.
- 2.1.9. The application of a risk-based approach should support the development and strengthening of a culture of compliance in the real estate agent's business.
- 2.1.10. The application of a risk-based approach should improve the business' ability to make risk-based decisions.
- 2.1.11. The risk-based approach should enable the use of innovative and cost-effective controls and measures, including the use of new technologies where this is appropriate and effective in managing risk.
- 2.1.12. The risk-based approach should facilitate synergies across franchises, segments, and business units where this is possible and efficient.
- 2.1.13. The risk assessments and franchise risk-based approach documentation must be periodically re- evaluated and updated for it to remain appropriate and current to the risks faced by the business.

2.2. Risk management

Risk management framework is a process used to identify the potential threats to an organization and to define the policies and procedures to eliminate or minimize the threats as well as develop a strategy or guideline to monitor and review those identified risk.

An effective financial crime control framework/program requires that the Real Estate Agent's business clearly articulate, document, and enforce the way it manages its ML/TF risk. This includes setting specific minimum and maximum levels of risk that must be applied when determining whether a risk can be accepted or not. Some of the questions that the Real Estate Agent may want to answer are:

- 2.2.1. Is the business willing to accept regulatory, reputation, legal or financial risks?
- 2.2.2. What risks is the business willing to accept only after implementing some mitigation measures?
- 2.2.3. What risks is the business not willing to accept?

Accepting risk always requires the application of robust governance procedures, which must include escalation of the risk acceptance for approval to the appropriate governance bodies, which must be at an executive committee level.

2.3 ML/TF/PF risk assessment and risk rating framework

- 2.3.1. A risk-based approach to AML/CFT means that measures taken to reduce ML/TF are proportionate to the risks. Supervisors and SRBs should have a clear understanding of the ML/TF risks present in their own jurisdiction, as well as improve supervisory effectiveness by allocating resources to areas of higher ML/TF risk, in line with the applicable legal framework and the RBA.
- 2.3.2. Importantly the Real Estate Agent's business must include the way it identifies, assesses, mitigates, and manages the ML/TF/PF risk, this includes the ML/TF/PF risk assessment and risk rating methodology in its CRMP document. The Real Estate Agent must express and include the inherent ML/TF/PF risk understanding flowing from the ML/TF/PF risk and the risk mitigation, monitoring, and management measures in the CRMP document.
- 2.3.3. This risk-based approach must provide for:
- i. A business level risk assessment indicating the ML/TF/PF risk each of the real estate agent's different business areas faces.
 - ii. The way the Real Estate Agent's business assesses new products and processes, developed to determine the ML/TF/PF risk ratings or weightings.
 - iii. A client level risk assessment indicating the ML/TF/PF risk different types of clients pose.
 - iv. Some of the indicators which broadly includes client type, delivery channel, geographic location, products, and services as well as any other relevant factors.
 - v. The Real Estate Agent must stipulate which indicators should be considered when conducting the risk assessments. The real estate agent is cautioned to consider the holistic indicators.
 - vi. The Real Estate Agent must provide evidence that it has conducted client level risk assessments before establishing a business relationship or concluding single transactions with each client.
 - vii. The Real Estate Agent must provide evidence of a business level risk assessment, as well as new products and processes assessment.
 - viii. A risk matrix could serve as a tool to provide an objective basis to the assessment of several risk indicators because the real estate agent's business risk rates/weights the various indicators characteristics and the method of determining the overall risk ratings/weightings. The method may be either a manual or automated manner of calculating ML/TF/PF risk ratings.
 - ix. The risk-based approach framework should set out the intervals at which the risk rating will be determined including at the establishment of a new business relationship, before conducting a single transaction and thereafter at predetermined ongoing due diligence intervals.
 - x. The actual risk rating or weighting assigned to each factor's characteristic should be recorded as part of the methodology and applied uniformly when risk rating.
 - xi. The way to record the outcome/results of the risk assessments that are conducted. (e.g., when a client establishes a business relationship the outcome risk rating is recorded on the client file).
 - xii. Real Estate Agents can take an informed decision as to the appropriate methods and levels of verification and enhanced controls that must be applied in each circumstance based on risk assessment results.
 - xiii. The monitoring, mitigating and management controls that must be applied to the different risk ratings must be clearly noted. The steps that must be taken after having assessed the risk must be indicated.
 - xiv. The CRMP document must provide for the documenting of decisions taken when dealing with the different levels of ML/TF/PF risk that result.
 - xv. The Real Estate Agents should conduct ML/TF/PF risk assessments and share with the EFIGU at least annually.

2.4 Application of the risk-based approach

The application of a risk-based approach consists of the following distinct steps:

2.5 Identification and assessment of inherent risks

In terms of the new section 6 above, a Real Estate Agent must complete regular financial crime risk assessments. Through these assessments, a Real Estate Agent should identify the financial crime risks they may face in the context of their business and analyse these with a view to understand the likelihood of the risk materializing and the impact that this would have.

The mechanisms used by the Real Estate Agent's businesses to identify and assess their financial crime risks must be proportionate to their size and complexity. The risk assessment process therefore might be quite simple or very sophisticated depending on the size and structure of the business and the nature and range of products and services it offers. These risk assessments must form the basis of the risk-based approach that is adopted by the Real Estate Agent's business.

Factors that may be indicative of financial crime risks relate to several aspects, including:

- i. product offered,
- ii. service features associated to products or as stand-alone service,
- iii. delivery channels,
- iv. geographic areas; and
- v. the client risk profile of the business' client base.

Each of these may interact differently with the characteristics of different types of clients.

The examples of factors that may be indicative of financial crime risk provided in **Annexure 1** are not an exhaustive list and a Real Estate Agent must therefore also consider other factors that may be relevant to their own businesses. Furthermore, the examples provided here are phrased in neutral terms – i.e., a factor may be indicative of either higher or lower risk depending on the context within which it is considered. It is important therefore to demonstrate how different indicators are brought to bear on a given scenario to reach an appropriate risk classification.

A business risk assessment could utilize a combination of internal subject matter experts; the business risk function; available publications; and external advice. It could also incorporate any future initiatives, previously reported financial crime incidents or events, issues and control failures identified by the respective assurance functions. The assessment must be dynamic and responsive to current and emerging risks.

To be effective, the risk assessment must be properly documented, maintained, and communicated to relevant personnel within the business. A detailed and well documented compliance regime shows commitment to prevent, detect and address non-compliance within the business.

2.6 Creating risk- reduction measures and controls

Risk mitigation in the context of financial crime refers to the activities and methods used by the Real Estate Agent's business to control and minimize the inherent financial crime risks it has identified. The Real Estate Agent's business should therefore apply its knowledge and understanding of its financial crime risks, as assessed per the guidance above, in the development of control measures to mitigate the risks identified. The risk assessment process will therefore assist the Real Estate Agent's business in determining the nature and extent of resources necessary to mitigate identified risks.

Each business unit or segment of the Real Estate Agent's business must establish and implement systems and controls in response to the assessed risks. These controls must be designed to detect money laundering and terrorist financing and respond appropriately when risks materialize. Where the risks are higher, enhanced measures must be taken to mitigate those risks. This means that the range, degree, frequency or intensity of preventive measures and controls conducted will be stronger in higher risk scenarios. Where the risks have been assessed as lower, simplified measures may be permitted, such as that the degree, frequency and/or the intensity of the controls conducted may be relatively lighter. A Real Estate Agent should always have grounds on which they can base their justification for a decision that the appropriate balance was struck in any given circumstance.

The following are some measures that may be applied in cases of higher risk:

- i. Increased automated transaction monitoring,
- ii. increased intensity of CDD measures,
- iii. increased review periods of client information,
- iv. utilizing more or higher quality sources for the vetting of information (impacts both quality and quantity),
- v. senior management involvement in decisions to on-board clients,
- vi. dedicated specialist staff managing enhanced due diligence for specific clients; and
- vii. limited reliance on another accountable institution's controls, together with additional controls.

It is important to note that the risk-based approach requires the business segments of the Real Estate Agent to adopt effective AML/CFT controls that are commensurate to their assessed risks. It is the responsibility of the business unit to effectively manage all financial crime risks and to meet all applicable minimum legal requirements as the first line of defense.

The systems and controls by which the business decides to manage financial crime risks must be documented in the applicable and relevant accountable institution's processes and procedures.

2.7 Assessing residual risks

Residual risk is the risk remaining after taking into consideration the impact and effectiveness of risk mitigation measures and controls. It is important to note that no matter how robust the risk mitigation and risk management program is, the business may always have some exposure to residual risk which must be managed. These risks have been reduced but not eliminated and are therefore still risks.

2.8 Evaluating residual risk against set risk appetite

Finally, it must be assessed whether the residual risk that has been identified falls within the set risk appetite of the business. Where the level of residual risk falls outside of the scope of acceptable risk, additional controls and measures must be adopted to mitigate the risk further.

2.9 Reviewing the risk- based approach

The risk-based approach implemented by the Real Estate Agent's business should be subject to periodic review, as required in terms of paragraph 6 above which is to the effect that a Real Estate Agent carrying out the activities under FATF Recommendation 22 above is an accountable institutions and shall update their risk assessment policies and programs regularly but at least annually considering new markets and introduction of new products and services, to test the effectiveness of the compliance regime. This review includes but is not limited to:

- i. applicable policies and procedures
- ii. the risk assessment related to financial crime, including the adequacy of controls and other risk mitigation measures; and
- iii. the training program used for employees and senior management.

The risks that have been identified will change or evolve over time as new products or new threats enter the business context. Consequently, the adherence and completion of this step is crucial to the implementation of an effective risk-based approach.

Whose responsibility is it to undertake a risk assessment?

The Board of Directors is ultimately responsible for risk management within the Real Estate Agent. The board of directors and senior management of the Real Estate Agent is expected to formulate and implement an ML/TF/PF risk assessment framework. The risk assessment must be documented and made available for analysis by EFIU. The board of directors should have a clear understanding of ML/FT/PF risks. Information about ML/FT/PF risk assessment should be communicated to the board in a timely, complete, understandable, and accurate manner so that it is equipped to make informed decisions.

It should be noted that, while the Board of a Real Estate Agent may delegate the risk assessment process, the ownership of the risks remains with the operational business units, who are responsible for carrying

out any actions resulting from the gaps or deficiencies identified by the risk assessment exercise. Hence the contribution required from each party should be clearly outlined. A Real Estate Agent should also ensure that timely and appropriate training and guidance is provided to staff members involved in the completion of the risk assessment to ensure that a consistent approach is taken.

2.10 Clients risk profiling requirements

2.10.1 Clients risk assessments

A Real Estate Agent's business' AML/CFT Program and policy must require that all clients be risk assessed at the time of on-boarding, or as soon as possible thereafter, and for the duration of the client relationship life cycle on an on-going basis. This initial risk rating therefore represents the inherent risk posed by the client (prior to transactional behaviour commencing) and it is important for purposes of *inter alia* applying the appropriate level of due diligence during the on-boarding process.

A client, for purposes of this guideline, is a natural person or corporate vehicle with whom the Real Estate Agent's business has established a business relationship as listed under FATF Recommendation 22 above. A business relationship is created at the point at which the client is enabled by the business to transact, deposit, receive funds or accept products or services offered by the Real Estate Agent's business.

Risk-rating implies assigning different categories to different levels of risk per a risk scale and classifying the financial crime risks pertaining to different relationships or client engagements in terms of the assigned categories.

The on-going risk assessment of clients comprises of at least two types of risk assessments:

2.10.2 Initial risk assessment

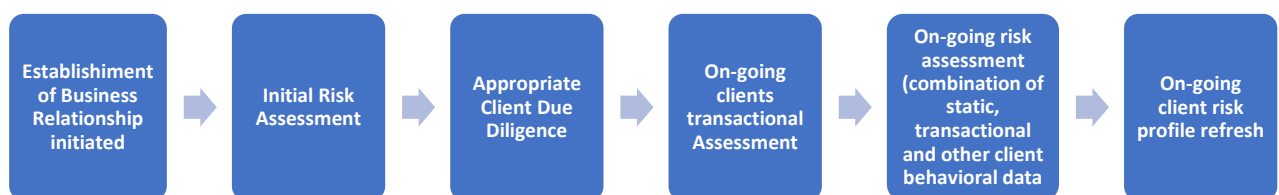
A risk-based approach commences with the assessment of risk that needs to be managed, i.e., the initial risk assessment. This should, where possible, be performed at the time of client on-boarding. Alternatively, the initial risk assessment must be completed as soon as possible once a business relationship has been established.

The initial risk assessment should at a minimum incorporate all relevant and available static client data obtained through the application of the required client due diligence measures.

2.10.3 On-going comprehensive risks assessments

While a risk assessment should be performed at the inception of the client relationship, a comprehensive risk profile of the client will only become evident once the client has begun transacting through an account or begins utilizing a service or product. The monitoring of transactions; other client behaviour; and the business relationship are therefore important elements of a well-designed risk-based approach. Once a client has been risk rated, this rating must therefore be continuously re-assessed for the duration of the client relationship life cycle. This risk assessment process flow is illustrated below:

Figure 1: Risk assessment process flow



The on-going comprehensive risk assessment models should, in addition to the static factors used for the initial client risk assessment, and to the extent possible, include a dynamic component incorporating the transactional or other behaviour of the client into their risk rating. Once the client starts transacting

(where this is applicable), the initial risk assessment may therefore change due to the nature of transactional behaviour of the client or other subsequent factors which may emerge. A lower risk client may thus become higher risk, or alternatively, a higher risk client may become lower risk, based on considerations of both the client static data and transactional behaviour, providing a consolidated and true view of risk of the client relationship.

Where possible, this process is to be embedded as an on-going process and not performed as a calendar driven event.

2.11 Risk model

Both the initial client risk assessment models and the on-going comprehensive risk assessment models for individuals and entities must be determined by each business segment, based on the risk criteria contained in each Real Estate Agent’s Financial Crime Policy and this guidance, as well as any factors unique to that Real Estate Agent’s business.

Such models must enable effective and appropriate client risk categorization, considering the money laundering and terrorist financing risk to each Real Estate agent’s business across its clients; the industries and jurisdictions in which they operate; products offered; delivery channels utilized; and the on-going transactional behaviour of its clients. The ultimate risk rating must be the result of a holistic consideration of these factors.

The following risk factors / variables that, either on their own or in combination, may increase or decrease risk, should be considered when determining the risk rating of a client, unless reasons can be provided showing that a factor is not relevant to a specific risk model in the context of the business in which it will be used:

Table 1: Inherent Client Risk

Static Variables	
Inherent Client Risk	An assessment of the inherent risk of the client, including factors such as the residency status of a client; the nature and frequency of transactions; the legal status of the client (natural person or corporate vehicle) or the entity type or structure through which the client operates. Inherent client risk can also include factors such as whether the client has been linked to adverse media relating to financial crime.

Table 2: Static Variables

Static Variables	
Products & services offered	An assessment of the financial crime risk posed by the products and/or services utilized by the client. It is important to note that criminals constantly alter their methods and techniques and therefore the assessment of products and services must be dynamic.
Geography	An assessment of the jurisdictions within which the business operates as well as assessment of where clients live and work.
Client industry (Including business activity)	An assessment of the industry the client works in or, in the case of a business or corporate, the nature of the business. Certain industries are more closely associated with money laundering or terrorist financing risks, as determined by FATF from time to time. Cognizance should also be taken of whether the industry is regulated in the jurisdiction within which it operates.
Distribution channel (which can be assessed as part of product risk)	The method of distributing products and services at point of account opening as well as on an on-going basis.

Table 3: Dynamic Variables

Dynamic Variables	
Transactional behaviour	Where applicable, once the client starts transacting, financial crime risk must be assessed based on the client’s transactional behaviour. Aggregated transactional risk assessment models for transaction types (e.g., debit card transactions; credit card transactions; electronic funds transfers; and SWIFT transactions) may be used to assess client risk in conjunction with the criteria reflected above.
Other behavioral factors	Where applicable, any other behavioral factors relevant to an assessment of the client’s expected behaviour vs. their actual behaviour, and which indicates risk, should be included in the risk model.

It is imperative that the money laundering risk in any given circumstance be determined on a holistic basis. In other words, the ultimate risk rating accorded to a business relationship or transaction must be a function of all factors that may be relevant to the combination of a client profile, product type and transaction.

The aggregated model should be combined with the initial risk assessment to provide a view of the ongoing risk the client poses to the business. This is illustrated in the diagram below:

Table 4: Risk assessment Diagram

Risk Assessment Diagram					
Risk Assessment	Initial Assessment <i>(Analytical Modelling)</i>	Risk +	Transactional Risk Assessment <i>(Analytical Modelling)</i>	=	On-going consolidated Risk Assessment <i>(Analytical Modelling)</i>
	↓		↓		↓
Controls	Level of Client Due Diligence <ul style="list-style-type: none"> • Simplified due diligence. • Standard due diligence. • Enhanced due diligence. 		Transaction Monitoring <ul style="list-style-type: none"> • Suspicious transactions monitoring • Cash Threshold monitoring • Scenario monitoring • Terrorist property monitoring 		Client Refresh Cycle <ul style="list-style-type: none"> • Enhanced due diligence <i>(Annual Refresh)</i> • Standard due diligence <i>(Refresh every 3 years or at trigger event)</i> • Simplified due diligence <i>(Refresh every 5 years or at trigger event)</i>

The risk-rating methodology and procedures that have been adopted for purposes of client risk rating must be properly documented and are subject to approval by each Real Estate Agent’s board (where

applicable). It must furthermore record the basis for allocating risk categories to individual and aggregate risks and the rationale for setting controls against specific risks, including the rationale for the configuration of the financial crime automated systems and risk models.

The factors underlying any given risk-rating will furthermore inevitably change over time. It is therefore essential that the relevance of particular risk factors and the appropriateness of previous risk-ratings be re-assessed on a periodic basis, or when changes to the business, legislative or regulatory environment require such updates.

2.12 Automatically high-risk clients

All clients that are deemed to be high risk in accordance with applicable domestic legislation must be risk rated as high, irrespective of any of the other factors in the applicable risk assessment model.

In addition, the following client relationships, when evident, will also result in the overall client relationship becoming high risk, irrespective of any of the other factors in the risk assessment model:

- i. Politically Exposed Person as defined in section 2 of the Money Laundering and Financing of Terrorism (Prevention) Act, 2011 (MLFTP) 2011 (as amended)
- ii. Persons identified as “Persons of Interest” through internal governance structures, and who have been included on the internal business watch lists or exit lists
- iii. Money service businesses (MSBs).
- iv. Virtual currency providers and exchanges.
- v. High commissions and embassies of high-risk jurisdictions, as per the business’ Risk Matrix
- vi. Foreign charities and foreign trusts.
- vii. Arms dealers.
- viii. Correspondent banking (Vostro accounts).
- ix. Second-hand gold and scrap metal dealers; and
- x. Trade, dealing in or breeding endangered or protected species.

The categories of automatically high-risk clients will be reviewed and updated from time to time by each Real Estate Agent, as the need arises.

Automatically high-risk clients may be reclassified post the completion of EDD. However, where it is a regulatory requirement that a client automatically be deemed to be high risk – as is the case with PEPs. Reclassification is prohibited.

2.13 Impact of client risk rating

The client risk rating should inform and determine the processes and controls applicable to that client, or class of clients, which are proportionate to the level of money laundering and terrorism financing risk presented by each client relationship. These processes include, but is not limited to:

- i. the appropriate level of client due diligence (CDD) that must be conducted.
- ii. the appropriate level of management approval / acceptance required to establish or continue with a business relationship.
- iii. the appropriate level of monitoring (transactions and activities); and
- iv. the appropriate level and frequency of on-going due diligence (ODD) to be applied.

The processes and controls relating to client due diligence will be set out in further detail in each Real Estate Agent’s Client Due Diligence Minimum Operating Standard.

2.14 De-risking

It is important to note that risk assessment does not imply that the Real Estate Agents’ business should seek to avoid risk entirely (also referred to as de-risking), for example, through wholesale termination of client relationships for certain sectors. De-risking poses a threat to financial integrity in general and to the risk-based approach specifically, as it creates opacity in the affected persons’ or entities’ financial conduct, and it eliminates the possibility to treat financial crime risks. Wholesale refusal of services or

termination of services to a class of clients may further give rise to financial exclusion risk and consequently also reputation risk to accountable institutions.

The wholesale termination or restriction of business relationships should therefore, where possible, be avoided as this is an example of inadequate risk management.

2.15 Financial crime risk management

- i. Real Estate Agent's in their effort to implement an effective Financial Crime Risk Management (FCRM) will develop the client static and transaction risk models as well as the overall risk model which considers both initial and transaction risk as a combined risk.
- ii. A Real Estate Agent's business' (conducting any of the activities under FATF Recommendation 22 above) FCRM shall be responsible for documenting the detailed business systems and model configurations and ensuring that these are approved by the Boards or other relevant governance forum. The rationale for the adoption of such system and model configurations, as well as the implementation of the controls must be recorded and monitored by FCRM function of the Real Estate Agent's business.

2.16 Compliance risk management program (CRMP)

A Real Estate Agent must develop, document, maintain and implement a CRMP for anti-money laundering, combating the financing of terrorism and counter proliferation financing (AML/CTF/CPF), which programme is referred to as the DNFBPs CRMP. The CRMP must provide for all the requirements as set out in the MLFTP Act, UNSCR (2016) and Suppression of Terrorism Act, 2008.

- i. A Real Estate Agent must have a main consolidated document or overarching apex document that records the AML/CFT obligations of the accountable institution, which document is referred to as the CRMP.
- ii. A Real Estate Agent must express and include the inherent money laundering, terrorist financing and proliferation financing (ML/TF/PF) risk, and its understanding flowing from the ML/TF/PF risk assessments, and the risk mitigation, monitoring as well as the management measures in the CRMP.

3. SECTION 3: CUSTOMER DUE DILIGENCE

3.1 When to undertake CDD measures:

- 3.1.1. Establishing business relations;
- 3.1.2. There is a suspicion of ML/TF, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations; or
- 3.1.3. When a Real Estate Agent has doubts about the veracity or adequacy of previously obtained customer identification data.

3.2 A Real Estate Agent shall comply with the CDD requirements set out in Section 6 of MLTFP Act 2011, in the following situations:

- 3.2.1. When they are involved in transactions for a client concerning the buying and selling of real estate

3.3 Principles of CDD / KYC

A Real Estate Agent shall abide by the following principles for the effective implementation of their KYC policies.

- 3.3.1. A Real Estate Agent should know its customers and shall not deal with any person on an anonymous basis, or any person using a fictitious name and should give special attention to the risks arising from new or developing technologies that may favour the anonymity of customers.
- 3.3.2. A Real Estate Agent shall be required to identify the customer (whether permanent or occasional, and whether a natural or legal person or legal arrangement) and verify that customer's identity using reliable, independent source documents, data, or information (identification data). Provided that, in verifying a natural person's identity, a Real Estate Agent shall require, among others, the following documents: Full legal names used, including aliases;

3.3.2.1. Natural Person:

- i. National Identity documents (Copy of National ID for Swazi's and Passport for non-Swazis)
- ii. Physical address: through Proof of Residence
- iii. Sources of Income/wealth
- iv. Customer Occupation and Name of Employer (if self-employed, the nature of self-employment)
- v. Contact number

3.3.2.2. Legal Persons and Legal Arrangements:

- i. Name of Company and its Directors: (*National ID for Swazi Directors and Passports for Non-Swazi Directors*)
- ii. Company Registered Physical Address
- iii. Company Registration Number: (Memorandum and Articles of Associations, Certificate of Incorporation)
- iv. Company Contact Person (Name and contact number)

3.3.2.3. Clubs, Societies and Associations:

- i. Name of Club, Society and Association
- ii. Registered address of Club, Society and Association
- iii. Company Contact Person (Name and contact number)
- iv. By laws or constitutions or rules or regulations of the club or Society or Association. (Certified copies of Club, Society or Association Chairman and signatories)

- 3.3.3. A Real Estate Agent shall be required to verify that any person purporting to act on behalf of the customer is so authorised and identify and verify the identity of that person.

- 3.3.4.** A Real Estate Agent shall be required to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using the relevant information or data obtained from a reliable source, such that the Accountable Institution is satisfied that it knows who the beneficial owner is.
- 3.3.5.** A Real Estate Agent shall be required to inquire if any beneficial owner exists in relation to a customer. Where there is one or more beneficial owners in relation to a customer, a Real estate agent should take reasonable measures to obtain information sufficient to identify and verify the identity of the beneficial owner(s).
- 3.3.6.** A Real Estate Agent shall understand and, as appropriate, obtain information on, the purpose and intended nature of the business relationship.
- 3.3.7.** A Real Estate Agent should be required to conduct ongoing due diligence on the business relationship, including:
- 3.3.7.1.** Scrutinizing transactions undertaken throughout that relationship to ensure that the transactions being conducted are consistent with the Real Estate Agent's knowledge of the customer, their business, and risk profile, including where necessary, the source of funds; and;
 - 3.3.7.2.** Ensuring that documents, data, or information collected under the CDD process is kept up-to-date and relevant by undertaking periodic reviews of existing records, particularly for higher-risk categories of customers.
 - 3.3.7.3.** A Real Estate Agent should pay special attention to all complex or unusually large transactions or unusual patterns of transactions that have no apparent economic or lawful purpose. To the extent possible, the Real Estate Agent should inquire into the background and purpose of all such transactions and document their findings to make this information available to the EFIU should the need arise.
- 3.3.8.** For customers that are legal persons or legal arrangements, a Real Estate Agent should be required to understand the nature of the customer's business and its ownership and control structure.
- 3.3.9.** For customers that are legal persons or legal arrangements, the Real Estate Agent should be required to identify the customer and verify its identity through the following information:
- 3.3.9.1.** name, legal form and proof of existence;
 - 3.3.9.2.** the powers that regulate and bind the legal person or arrangement, as well as the names of the relevant persons having a senior management position in the legal person or arrangement; and
 - 3.3.9.3.** the address of the registered office and, if different, a principal place of business
- 3.3.10.** For customers that are legal persons, a Real Estate Agent should be required to identify and take reasonable measures to verify the identity of beneficial owners through the following information:
- 3.3.10.1.** the identity of the natural person(s) (if any) who ultimately has a controlling ownership interest in a legal person; and
 - 3.3.10.2.** to the extent that there is doubt under (a) as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) or where no natural person
 - 3.3.10.3.** exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means; and
 - 3.3.10.4.** where no natural person is identified under (a) or (b) above, the identity of the relevant natural person who holds the position of senior managing official

3.3.11. For customers that are legal arrangements, a Real Estate Agent should be required to identify and take reasonable measures to verify the identity of beneficial owners through the following information:

- i. for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership);
- ii. for other types of legal arrangements, the identity of persons in equivalent or similar positions.

3.4 Timing of verification

3.4.1. A Real Estate Agent shall verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers; or (if permitted) may complete verification after the establishment of the business relationship, provided that:

- i. this occurs as soon as reasonably practicable;
- ii. this is essential not to interrupt the normal conduct of business; and
- iii. the ML/TF risks are effectively managed

3.4.2. A Real Estate Agent shall adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification.

3.5 Existing Customers

A Real Estate Agent shall apply CDD requirements to existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.

3.6 Risk Based Approach

A Real Estate Agent shall perform enhanced due diligence where the ML/TF risks are higher. A Real Estate Agent may only be permitted to apply simplified CDD measures where lower risks have been identified, through an adequate analysis of risks by the country or the real estate agent. The simplified measures should be commensurate with the lower risk factors, but are not acceptable whenever there is suspicion of ML/TF, or specific higher risk scenarios apply.

3.7 Failure to satisfactorily complete CDD:

Where a Real Estate Agent is unable to comply with relevant CDD measures:

- i. it should be required not to open the account, commence business relations or perform the transaction; or should be required to terminate the business relationship; and
- ii. it should be required to consider making a suspicious transaction report (STR) in relation to the customer

3.8 CDD and tipping-off

In cases where a Real Estate Agent forms a suspicion of money laundering or terrorist financing, and they reasonably believe that performing the CDD process will tip-off the customer, they should be permitted not to pursue the CDD process, and instead should be required to file an STR.

3.9 Simplified Customer Due-Diligence

Where the risks of ML/TF are lower, a real estate agent is permitted to conduct simplified CDD measures, which should take into account the nature of the lower risk. The option to apply simplified due diligence is not mandatory, it is something a real estate agent may elect to do. Simplified due diligence is not an exemption from any of the CDD measures, however it allows a real estate agent to adjust the amount, timing, or type of each or all of the CDD measures in a way that is commensurate to

the low risk identified. Therefore, simplified measures shall be commensurate with the lower risk factors (e.g. the simplified measures could relate only to customer acceptance measures or to aspects of ongoing monitoring).

Examples of possible measures are:

- i. Verifying the identity of the customer and the beneficial owner after the establishment of the business relationship (e.g. if account transactions rise above a defined monetary threshold).
- ii. Reducing the frequency of customer identification updates.
- iii. Reducing the degree of on-going monitoring and scrutinising transactions, based on a reasonable monetary threshold.
- iv. Not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship, but inferring the purpose and nature from the type of transactions or business relationship established.

Simplified CDD measures are not acceptable whenever there is a suspicion of money laundering or terrorist financing, or where specific higher-risk scenarios apply.

3.10 Non-face-to-face Verification

- i. A Real Estate agent should put in place policies and procedures to address specific risks associated with non-face-to-face business relationships or transactions, which should be implemented when establishing business relations and transacting through instructions conveyed by customers over the post, telephone, or Internet.
- ii. Where there is no face-to-face contact, a real estate agent should use equally effective identification and verification procedures as those available for face-to-face customer acceptance, supplemented with specific and adequate measures to mitigate the higher risk. It is important to note that not all non-face-to-face business relationships will present higher risk.

3.11 Customer exit

A Real Estate Agent must implement procedures and processes to manage the exit of customer relationships where they are prohibited or present an unacceptable financial crime risk. This must include the requirement to:

- i. Assess the customer relationship and document.
- ii. The financial crime risks posed by the customer with reference to the AML/ CFT risk appetite and any contractual conditions, regulatory expectations and, where applicable, competition law, that must be considered in deciding whether to retain or exit the customer relationship as well as the rationale for the decision to exit the customer relationship.
- iii. Specify a plan and timeline for exiting the customer relationship in line with the existing forum established for this purpose.

4. SECTION 4: POLITICALLY EXPOSED PERSONS

4.1. When EDD is Required

- 4.1.1.** A Real Estate Agent is required to apply EDD for such categories of customers, business relationships, or transactions that are determined to present higher ML/TF risk due to business activity, ownership structure, nationality, residence status, politically exposed status, or other higher-risk indicators.
- 4.1.2.** A Real Estate Agent shall ensure that monitoring systems are appropriately tailored and provide timely and comprehensive reports to facilitate effective monitoring of such relationships and periodic reporting on such relationships to senior management and the Board.

4.2. Enhanced Monitoring

The following are examples of measures a Real Estate agent may employ to monitor high-risk customers:

- i. Conducting more frequent reviews of the business relationship and establishing more stringent thresholds for updating CDD information;
- ii. Setting specific business limits or parameters regarding accounts or transactions that would trigger early warning signals and require mandatory review;
- iii. Requiring senior management approval at the transaction level for products and services that are new for the customer;
- iv. Reviewing transactions more frequently against red flag indicators relevant to the relationship. This may include establishing the purpose and destination of funds and obtaining more information on the beneficiary before conducting the transaction;
- v. Flagging unusual activities and escalating concerns and transactions for senior management's attention.
- vi. Ascertain source of funds and source of wealth of the customer and of the customer's beneficial owner

4.3. Examples of EDD Measures

Where the risks of money laundering or terrorist financing are higher, a real estate agent should be required to conduct enhanced CDD measures, consistent with the risks identified. In particular, they should increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious. Examples of enhanced CDD measures that could be applied for higher-risk business relationships include:

- i. In any case which real estate agent has identified presents a high risk of ML/TF
- ii. in any transaction or business relationship with a person established in a high risk jurisdiction.
- iii. Where the customer/potential customer is a PEP, or a family member, or a close associate with a PEP.
- iv. Where the customer is a foreign PEP
- v. Where a customer has provided false or stolen identity documentation or information in any case where :
- vi. the matter or transaction is complex or unusually large or there is an unusual pattern of transaction.
- vii. transaction have no apparent economic or legal purpose or in any other case by its nature can present high risk of ML/TF.

4.4. How to Conduct EDD

- 4.4.1.** Obtaining additional information on the customer (e.g. occupation, volume of assets, information available through public databases, internet, etc.), and updating more regularly the identification data of customer and beneficial owner.
- 4.4.2.** Obtaining additional information on the intended nature of the business relationship.
- 4.4.3.** Obtaining information on the source of funds or source of wealth of the customer.
- 4.4.4.** Obtaining information on the reasons for intended or performed transactions.

- 4.4.5. Obtaining the approval of senior management to commence or continue the business relationship.
- 4.4.6. Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.
- 4.4.7. Requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards.

4.5. High risk jurisdiction

- i. A Real Estate Agent shall apply enhanced due diligence measures to business relationships and transactions with natural and legal persons, and financial institution, from countries for which this is called for by the FATF. The type of enhanced due diligence measures applied should be effective and proportionate to the risks.
- ii. A Real Estate Agent shall consider establishing adequate internal policies, procedures, and controls in relation to the application of EDD measures and risk proportionate effective countermeasures to customers and business relationships associated with high-risk countries commensurate with the nature, size of the business and the risks involved.

4.6. EDD measures in high-risk jurisdictions

EDD measures for matters involving high-risk third countries must include:

- i. obtaining additional information on the customer and on the customer's beneficial owner.
- ii. obtaining additional information on the intended nature of the business relationship
- ii. ii) obtaining information on the source of funds and source of wealth of the customer and of the customer's beneficial owner
- iii. iii) obtaining information on the reasons for the transactions
- iv. obtaining the approval of senior management for establishing or continuing the business relationship
- v. conducting enhanced monitoring of the business relationship by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination

4.7. Politically Exposed Persons (PEP)

A Politically Exposed Persons (PEP) is an individual who is entrusted with prominent public functions, other than as a middle-ranking or more junior official, including:

- i. heads of state, heads of government, ministers and deputy or assistant ministers
- ii. members of parliament or of similar legislative bodies
- iii. members of the governing bodies of political parties
- iv. members of supreme courts, of constitutional courts or of any other judicial body the decisions of which are not subject to further appeal except in exceptional circumstances
- v. members of courts of auditors or of the boards of central banks
- vi. ambassadors, charges d'affaires and high-ranking officers in the armed forces
- vii. members of the administrative, management or supervisory bodies of State-owned enterprises
- viii. directors, deputy directors and members of the board or equivalent function of an international organization

Individuals who have, or have had, a high political profile, or hold, or have held, public office, can pose a higher money laundering risk to organizations as their position may make them vulnerable to corruption. This risk also extends to members of their immediate families and known close associates. Politically exposed person (PEP) status itself does not, of course, incriminate individuals or entities, but it does put the customer or the beneficial owner into a higher risk category.

A real estate agent must have in place appropriate risk-management systems and procedures to determine whether a customer or its beneficial owner is (i) a PEP, and/or (ii) a family member or known close associate of a PEP and to manage the enhanced risks arising from institutions' business relationship or transactions with such a customer.

4.8. Domestic PEPs

In relation to domestic PEPs or persons who have been entrusted with a prominent function by an international organisation, in addition to performing the CDD measures required under section 6 of the MLTFP Act, a Real estate agent is required to:

- i. take reasonable measures to determine whether a customer or the beneficial owner is such a person; and
- ii. in cases when there is higher risk business relationship with such a person, real estate agent shall:
- iii. put in place risk management systems to determine whether a customer or the beneficial owner is a PEP;
- iv. obtain senior management approval before establishing (or continuing, for existing customers) such business relationships;
- v. take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs; and
- vi. conduct enhanced ongoing monitoring on that relationship.

4.9. Foreign PEPS

In relation to foreign PEPs, in addition to performing the CDD measures required under Section 3 of the guideline, real estate agents shall:

- i. put in place risk management systems to determine whether a customer or the beneficial owner is a PEP;
- ii. obtain senior management approval before establishing (or continuing, for existing customers) such business relationships;
- iii. take reasonable measures to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs; and
- iv. conduct enhanced ongoing monitoring on that relationship.

Real estate agents shall apply relevant requirements of domestic and foreign PEPs to family members or close associations of all types of PEP.

4.10. How to Identify PEPs

A Real Estate Agent shall have in place appropriate risk-management systems and procedures to determine whether a customer or its beneficial owner is a PEP, and/or a family member or known close associate of a PEP and to manage the enhanced risks arising from institutions' business relationship or transactions with such a customer.

A combination of activities may be used to make the PEP determination. For example, a Real estate Agent may:

- 4.10.1.** periodically monitor their existing client base against changes in the PEP universe and not just at the time of client on-boarding.
- 4.10.2.** Outside of periodic screening, a real estate agent may also rely on media monitoring to identify PEPs. For example, newspaper announcements regarding changes to board members of state-owned corporations. Additional sources of information include the Government website (foreign or domestic), and Parliament website (foreign or domestic), the EFIU website (foreign or domestic); and the website of the FATF.
- 4.10.3.** If the individual customer is a close family member or close associate, the relationship of the person to the PEP must be documented;
- 4.10.4.** Understanding and documenting the nature and intended purpose of the relationship/account, the source of the initial funds (where appropriate), and the anticipated levels of account activity;
- 4.10.5.** Understanding and documenting the customer's source of funds and source of wealth (e.g. salary and compensation from official duties and wealth derived from other sources). Where the risks are high or there are doubts as to the veracity of the information provided by the customer, A Real estate agent must validate this information using independent and reliable sources;
- 4.10.6.** Conduct Negative News or Adverse Media screening on the customer and evaluate any positive hits.

4.10.7. during account opening procedures, include a specific question on PEP status and/or capture occupation to identify holders of public office.

4.11. Politically exposed persons documentation

Real Estate Agents must document their processes regarding Politically Exposed Persons in the CRMP document which sets out:

- i. The way to scrutinise prospective clients, persons acting on behalf of the client and beneficial owner's information to determine whether they are domestic PEPs, their immediate family members or known close associates.
- ii. The way the real estate agent will obtain senior management approval to establish a business relationship with a Foreign PEP & local PEP.
- iii. The data sources relied upon to determine whether a client is a PEP.

4.12. PEP categorization

In terms of this guideline, and in accordance with FATF Recommendation 12, and the Money Laundering and Terrorist Financing (Prevention) Act 2011, as amended, PEPs have been categorized as follows:

- 4.12.1.** A Head of State or Government- King, Prime Minister, Deputy Prime Minister, and all cabinet Ministers.
- 4.12.2.** A politician on the national level- All members of the house of Senate and House of Assembly, Consular, Ambassadors.
- 4.12.3.** A senior Government official: Undersecretary, Private secretary, Chiefs, Tindvuna.
- 4.12.4.** Judiciary- The country's judicial members including all Judges and Magistrates.
- 4.12.5.** Military Official-Head of Royal Eswatini police, Eswatini Umbutfo Defence Force, His Majesty's Correctional services, Fire, and emergency services.
- 4.12.6.** A senior executive of a State-owned enterprise.
- 4.12.7.** An individual or undertaking identified as having.
 - i. close family ties or personal or business connections to any of the persons.
 - ii. Immediate Family Members due to their proximity to the person entrusted with the prominent public office, the associated PEP may be able to abuse the position of a family member to undertake illicit activities.
- 4.12.8.** To this section, an immediate family member includes –
 - i. the spouse, civil partner, or life partner.
 - ii. the previous spouse, civil partner, or life partner, if applicable
 - iii. children and stepchildren and their spouse, adopted children and their adoptive parents, civil partner, or life partner.
 - iv. parents; and siblings and step siblings and their spouse, civil partner or life partner and known close associates. Known close associates should be similarly categorized and subjected to the same requirements set out in this guideline, as applicable.

The category of "closely associated persons" typically includes close business colleagues and personal advisers / consultants to the PEP, as well as persons who obviously benefit significantly from being close to such a person. Close associates can therefore be individuals who are closely connected to a PEP, either socially or professionally. Due to their proximity to the person entrusted with the prominent public office, the PEP may be able to abuse the position of an associate to undertake illicit activities.

5. SECTION 5: AML/CFT INTERNAL CONTROLS

Real estate agents must adopt appropriate controls regarding the size and the nature of the business. There is no standard solution to the design of internal control systems, and this should be considered when Real Estate Agents are devising an AML/CFT framework. Internal controls will also depend on the business structure, size, and internal organisation without prejudice to the effectiveness of the system. Policies, procedures, and control systems must be designed and implemented with a view to ensuring the ML/TF risks are promptly identified and mitigated in line with the RBA. Internal control systems must be evaluated to determine how effectively they are dealing with the overall risks. Risk-based processes must be established within the internal controls of the businesses to be effective. To be successful, internal policies and procedures are largely dependent on the internal control systems.

5.1 The internal controls for Real Estate Agents

Real Estate Agents' businesses should include the following internal policies, procedures and controls:

- i. compliance management arrangements (including the appointment of a compliance officer at the management level);
- ii. screening procedures to ensure high standards when hiring employees;
- iii. an ongoing employee training programme; and
- iv. an independent audit function to test the system.

5.2 Governance

For the AML/CFT/PF framework of a Real Estate Agent to be effective, it must be based on the foundation of a sound governance structure and held together by a strong compliance culture. This includes appropriate management structures that are accountable for clear ML/TF/PF risk management and mitigation measures, as well as appropriate independent control functions. It is therefore imperative that the board and senior management of a real estate agent ensure that the policies, procedures, systems, and processes put in place to prevent ML/TF are appropriate. The AML/CFT/PF program of a real estate agent must be risk-based and commensurate with the nature, size, complexity, and inherent risks of the real estate agent.

5.2.1. The Role of the Board

The Board of Directors of a Real Estate Agent has oversight and accountability for the AML/CFT/PF compliance program and monitoring the effectiveness of the AML/CFT/PF Risk Management and Compliance Program regularly. It is the responsibility of the Board to ensure compliance by a real estate agent and its employees with the provisions of the MLTFP Act and the AML/CFT/PF Risk Management and Compliance Program.

Key responsibilities of the Board include:

- i. Approving the AML/CFT/PF compliance program including all AML/CFT/PF policies;
- ii. Ensuring the establishment of appropriate mechanisms to periodically review key AML/CFT/PF policies to ensure their continued relevance in line with changes in the products and services and to address new and emerging ML/TF/PF risks of a real estate agent;
- iii. Ensuring the establishment of an appropriate AML/CFT/PF risk management framework with clearly defined lines of authority and responsibility for AML/CFT/PF and effective separation of duties between those implementing the policies and procedures and those enforcing the controls;
- iv. Ensuring that the Board receives the requisite training on AML/CFT/PF generally as well as on a real estate agent's specific AML/CFT/PF risks and controls;
- v. Ensuring receipt of regular and comprehensive management information and reports on the AML/CFT/PF risks from the Compliance Officer and or senior management or board committees of the real estate agent.

5.2.2. Role of Senior Management

Senior Management is responsible and accountable for the day-to-day implementation and management of the AML/CFT/PF Compliance Program. Senior Management has to ensure that it is adequate to

mitigate ML/TF/PF risks and that it is implemented effectively in all relevant business areas, including ensuring adherence to established AML/CFT/PF policies and procedures.

Senior Management should ensure that:

- i. policies and procedures are risk-based, proportional, and adequate to mitigate ML and TF risks of the Accountable Institution;
- ii. the Accountable Institution complies with all relevant AML/CFT/PF laws, regulations and guidelines;
- iii. are implemented effectively across relevant business areas or throughout the financial group as applicable;
- iv. review policies and procedures periodically for consistency with the business model, product and service offerings, and risk appetite of the Accountable Institution;
- v. Senior Management must review policies and procedures periodically for consistency with the business model, product and service offerings, and risk appetite of the Accountable Institution. Attention should be paid to new and developing technologies and Accountable Institutions should identify and assess the ML/TF/PF risks arising from new products, services and delivery channels; new business practices and new or developing technologies for new and existing products; and put measures in place to manage and mitigate such risks;
- vi. Risk assessments take place before the launch or use of such products, services, channels, business practices, and technologies;
- vii. All significant recommendations made by internal and external auditors and regulators in respect of the AML/CFT/PF program are acted upon in a timely manner;
- viii. Relevant, adequate, and timely information regarding AML/CFT/PF matters is provided to the Board;
- ix. There is an ongoing employee training program that enables employees to have sufficient knowledge to understand and discharge their AML/CFT/PF responsibilities.

5.2.3. Vetting of Compliance Officer

A Real Estate Agent should check that staff have integrity and are adequately skilled and possess the knowledge and expertise necessary to carry out their function, in particular where staff are responsible for implementing AML/CFT controls in line with Section 18 of the MLFTP Act.

The level of vetting procedures of staff should reflect the ML/TF risks to which individual staff are exposed and not focus merely on senior management roles. Steps should be taken to manage potential conflicts of interest for staff with AML/CFT/PF responsibilities

Appointment and Responsibilities of the Compliance Officer:

- i. For purposes of ensuring compliance with Section 18 of the MLFTP Act, a real estate agent must appoint a Compliance Officer with the appropriate seniority status, relevant qualifications, and experience to perform the statutory duties and responsibilities associated with this role, including keeping abreast of the latest developments in ML/TF/PF techniques and the AML/CFT/PF best practices within the industry. The Compliance Officer must have sufficient authority, independence, and seniority to be able to effectively carry out his duties in accordance with the MLFTP Act.
- ii. This individual is responsible for creating, deploying, and organizing AML systems and controls. In addition, they report to state and federal authorities in the event of suspicious activity or financial crimes. Where a real estate agent does not employ more than five (5) employees, the most senior employee shall be the Compliance Officer. The Compliance Officer has the overall responsibility for the implementation of the enterprise-wide AML/CFT/PF compliance program.
- iii. The nature of the reporting line of the Compliance Officer – the Compliance Officer should have a direct reporting line to the Board of Directors (or relevant Committee of the Board) of a real estate agent. For smaller real estate agent settings where independence may not be practical, that real estate agent must consider the administrative reporting lines of the Compliance Officer. Ultimately, a real estate agent must be able to demonstrate the independence of the Compliance Officer in instances where practically, independence cannot be achieved functionally.

5.3 Employee Vetting and Recruitment

Real estate agents should check that staff have integrity and are adequately skilled and possess the knowledge and expertise necessary to carry out their functions.

In addition to knowing the customer, a Real Estate Agent must have robust procedures in place for knowing its employees. In this regard, every Real Estate Agent should have a know-your-employee or recruitment policy to attract and retain employees of the highest levels of integrity and competence. The ability to implement an effective AML/CFT/PF program depends in part on the quality and integrity of employees.

5.3.1 A Real Estate Agent should undertake due diligence on prospective employees and throughout employment. A real estate agent shall, amongst others:

- i. Verify the applicant's identity and personal information including employment history and background.
- ii. Develop a risk-based approach to determining when pre-employment background screening is considered appropriate or when the level of screening should be increased, based on the position and responsibilities associated with a particular position. The sensitivity of the position or the access level of an individual employee may warrant additional background screening, which should include verification of references, experience, educational, professional qualifications, and financial crime background;
- iii. Maintain an ongoing approach to screening for specific positions, as circumstances change, or for a comprehensive review of employees over a period of time. Internal policies and procedures should be in place (e.g., codes for conduct, ethics, conflicts of interest) for assessing employees;
- iv. Have a policy that addresses appropriate actions when pre-employment or subsequent due diligence detects information contrary to what the applicant or employee provided;
- v. Have a robust recruitment policy: a real estate agent should implement ongoing monitoring of employees to ensure that they continue to meet the standards of integrity and competence of the real estate agent.

5.3.2 Employee Due Diligence Process - Existing Employees

- i. If an Employee is offered a promotion or is offered a role which increases their level of responsibility or autonomy, the human resources department must give the employee a description of the role.
- ii. Having regard to the Real Estate Agent's ML/TF risks, the HRM must assign the proposed role a risk rating, having regard to whether the role would be reasonably likely to allow the person a significant opportunity to facilitate ML or TF activity.
- iii. If the HRM assigns a high risk to the role, the HRM must ensure to obtain, to the extent that they have not earlier been obtained in relation to the Employee, the results of the same checks.
- iv. If these checks reveal any adverse or seriously inconsistent results, the AML/CFT Compliance Officer and human resources department will consider and make appropriate decision. A record of all searches conducted and any discussions in relation to a decision to employ must be recorded and maintained in accordance with the record keeping obligations.

5.4 Training

The effective application of AML/CFT/PF policies and procedures depends on staff's knowledge and understanding of not only the processes they are required to follow but also the risks these processes are designed to mitigate, as well as the possible consequences of those risks. The Real Estate Agent must ensure that staff receive AML/CFT/PF training, which should be:

- i. of high quality, relevant to the institution's ML/TF risks, business activities and up to date with the latest legal and regulatory obligations, and internal controls;
- ii. obligatory for all relevant staff;

- iii. tailored to particular lines of business within the institution, equipping staff with a sound understanding of specialized ML/TF/P risks they are likely to face and their obligations in relation to those risks;
- iv. effective, which can be checked for example by requiring staff to pass tests or by monitoring levels of compliance with the institution's AML/CFT/P controls and applying appropriate measures where staff are unable to demonstrate the level of knowledge expected;
- v. ongoing, regular, relevant, and not be a once-off exercise; and
- vi. complemented by AML/CFT/P information and updates that are disseminated to relevant staff as appropriate.

5.5 Audit and Assessment of Controls

Real Estate Agents should conduct independent testing on the AML/CFT/PF compliance program. A Real Estate Agent should maintain an adequately resourced and independent audit function to test compliance with policies, procedures and controls.

An internal audit system and an independent audit program will ensure the completeness and accuracy of information obtained from customers. A real estate agent shall specify in writing the examination scope of independent audits, which shall include ensuring checking the accuracy and completeness of identification documents, cash transaction report (CTR) and suspicious transaction report (STR) submitted to the EFIU, and records retained in compliance with this framework, as well as assuring adequacy and effectiveness of the real estate agent's training programs.

6. SECTION 6: TARGETED FINANCIAL SANCTIONS

6.1 United Nations Security Council Resolutions

The sanctions review aims to apply Targeted Financial Sanctions (TFS) against all individuals listed by the UN Security Council. A real estate agent must screen customers or potential customers involved in transactions against United Nations Security Council Resolution (UNSCR) sanctions lists. Such screening must be performed before opening accounts or before giving a customer access to the services, regardless of whether the customer is dealing below or above the CDD threshold. This is necessary to combat TF and PF activities by ensuring that selected individuals, organizations, or countries are identified and do not benefit from improperly exploited services and that their funds and assets are frozen accordingly. The term "targeted economic sanctions" primarily refers to the immediate freezing of assets and the prohibition of making funds or other property or services directly or indirectly available to sanctioned individuals, entities, or groups.

Freezing is the prohibition to transfer, convert, dispose, or move any funds or other assets that are owned or controlled by designated individuals, entities, or groups in the Local Terrorist List or UN Consolidated List. In terms of international standards, without delay means within a matter of hours.

Asset freezing includes:

- i. The freezing of funds and other financial assets and economic resources, including preventing their use, alteration, movement, transfer, or access; and
- ii. The freezing of economic resources also includes preventing their use to obtain funds or other assets or services in any way, including, but not limited to, selling or mortgaging them.
- iii. Reporting transaction under this part to the EFIU.

6.2 Obligation to report sanctions

A person to whom a designation or sanctions list is submitted, shall where applicable;

- i. Take necessary steps to freeze the funds owned or controlled by the designated entity without delay and without notice to the entity;
- ii. Within twenty-four hours of detecting the funds and freezing the funds, file a suspicious transaction report with EFIU in such form as may be required under Section 12 of the MLFTP Act.
- iii. Take such other action as may be necessary to give effect to resolution 1267, 1373, 1718 and 1988 and other related resolutions.

6.3 Sanction Screening

- i. Real estate agents must be able to determine whether they have a sanctioned person or entity as a client or whether a prospective client is a sanctioned person or entity to determine their exposure to TFS-related obligations. This implies that a real estate agent which is likely to encounter sanctioned persons or entities can screen clients and prospective clients against the relevant sanction's lists. This should be done during the client-take-on process as well as subsequently as and when the UNSC adopts new TFS measures or expand existing ones.
- ii. Real estate agents must therefore determine the likelihood that their client base and intended target market may include sanctioned persons or entities. This should assist the real estate agents in determining the amount of effort and resources it requires to determine whether they have sanctioned persons or entities as a client or whether prospective clients are sanctioned persons or entities. Real estate agents that have business relationships with foreign persons and entities are more vulnerable to dealing with sanctioned persons and entities.

6.4 Mechanism for implementation

Mechanisms for the implementation of the UNSC Resolutions include the circulation of the Designation or List by the United Nations Security Council Resolutions Implementation Committee to the EFIU, other supervisory authority, Royal Eswatini Police Service, such other law enforcement agencies.

The EFIU or a supervisory body shall, upon receipt of the designations or sanctions list submitted to it under sub-regulation (4);

- i. Circulate the designations or sanction list to reporting entities under its purview for their information and action;
- ii. Where necessary, provide guidance to reporting institutions holding funds or other assets of a designated person, in relation to their obligations under UNSC Regulations and
- iii. Ensure that the reporting institutions comply with the requirements of these UNSC Regulations

6.5 Targeted financial sanctions controls relating to terrorist financing.

6.5.1. Real Estate Agents must detail the process to comply with the targeted financial sanctions regime aimed at terrorist financing in the CRMP document.

6.5.2. A targeted financial sanctions process must provide for:

- i. The way the Real Estate Agents will scrutinize client information to identify persons listed on a United Nations Security Council 1267 resolutions list, OFAC, EU
- ii. The systems used and supporting processes for scrutinizing client information.
- iii. The freezing of accounts process that must be followed should a client or potential client be listed on a TF list.
- iv. It is important to note that client information includes information regarding the client, prospective client, beneficial owner, person acting on behalf of the client and transaction/payment information.

6.6 Targeted financial sanctions controls relating to proliferation financing.

6.6.1. Real Estate Agents must document its process in place to comply with the targeted financial sanctions regime aimed at proliferation financing in the CRMP document.

6.6.2. A targeted financial sanctions process must provide for:

- i. The way the real estate agent’s business will scrutinize client information to identify persons listed on a TF list as published in terms of UNSC Regulations.
- ii. The systems used and supporting processes for scrutinize client information.
- iii. The freezing process that must be followed should a client or potential client be listed on a sanction list.
- iv. It is important to note that client information includes information regarding the client, prospective client, beneficial owner, person acting on behalf of the client and transaction/payment information.

6.7 Importance of an effective freezing regime

Effective freezing regimes are critical to combating the financing of terrorism and, as a preventive tool, accomplish much more than freezing terrorist-related funds or other assets present at any time. Effective freezing regimes also combat terrorism by:

- i. Deterring non-designated persons or entities who might otherwise be willing to finance terrorist activity.
- ii. Exposing terrorist financing “money trails” that may generate leads to previously unknown terrorist cells and financiers.
- iii. Dismantling terrorist financing networks by encouraging designated persons or entities to disassociate themselves from terrorist activity and renounce their affiliation with terrorist groups.
- iv. Terminating terrorist cash flows by shutting down the pipelines used to move terrorist.
- v. related funds or other assets.

6.8 Identifying information

- i. For the effective implementation of an asset freeze, robust identifying information is essential. At the extreme end of the scale, poor quality identifiers are an obstacle to the enforcement of an asset freeze. Single name identifiers represent problems for enforcement.
- ii. Best efforts should therefore be made to ensure as much identifying information as possible is provided upon designation, and that such information be updated as more identifying data become available.

7. SECTION 7: RECORD KEEPING

7.1. Obligation to keep records

A Real Estate Agent is to adopt appropriate record keeping guidelines in accordance with Section 8 of MLFTP Act as amendment). The nature and size of the business will determine the type of documents to be kept, and the method that will be used. The system used to retain the documents should be eligible enough to allow the company to be able to reconstruct records in the event a supervisory authority requests the Real Estate Agent's business to do so. The customer records to be kept should be relevant to the customer's profile. A Real Estate Agent shall maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction.

7.1 Obligation to keep CDD and transactions records

- i. A Real Estate Agent shall keep all records obtained through CDD measures, account files and business correspondence, and results of any analysis undertaken, for at least five years following the termination of the business relationship or after the date of the occasional transaction.
- ii. Transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.
- iii. A Real Estate Agent shall ensure that all CDD information and transaction records are available swiftly to domestic competent authorities upon appropriate authority.

7.2 Obligation to keep STR and CTR records

- i. A Real Estate Agent shall maintain records concerning its internal reporting of STR and CTR, and decision making whether to file or not to file said reports, for atleast a period of five (5) years from the date of submission.

7.3 Manner in which records must be kept

- i. A Real Estate Agent shall also maintain and safely store for atleast five (5) from the dates the contractual relationship was terminated, all records of customer identification and transaction documents.
- ii. A Real Estate agent shall like-wise keep electronic copies of all covered STR and CTR records or reports for atleast five years from the date of filing.
- iii. A Real Estate Agent should put in place a documented record keeping and reporting policy that provides for maintenance of variety of records.

7.4 Reliance on third parties

A Real Estate Agent may use the services of a third party for collecting and the performance of CDD measures, keeping and maintaining of records as long as the records can be obtained upon request and without delay by internal, and external auditors, law and that the third party adheres to the record-keeping provisions of Section 8 bis of MLFTP (Amendment) Act.

- i. In addition, a Real Estate Agent shall satisfy itself that it has measures in place for compliance with record keeping requirements in line with section 8 bis of the MLFTP (Amendment)
- ii. The records must be kept in a manner that will ensure that they are safe from any hazards as such as water, fire or pest that may deface them.
- iii. A Real Estate Agent should keep records in a secure manor and ensure that access to this facility is managed or controlled. It is important that the access and movement of a document is monitored or controlled within the organization to ensure that documents taken from files are returned and are not lost.

8. SECTION 8: SUSPICIOUS TRANSACTIONS REPORTING

8.1. Obligation to report an STR

- i. A Real Estate Agent must report suspicious transactions, attempted suspicious transactions, and where there are reasonable grounds to suspect that a transaction may be related to the commission of a criminal activity or related to ML/TF/PF. A real estate agent must provide any additional information required by the EFIU in relation to the filed suspicious transaction reports.
- ii. All suspicious or unusual transactions must be reported to the EFIU within two (2) days of forming the suspicion regardless of the amount of transaction or funds involved.
- iii. To fulfil the reporting obligation, a Real Estate Agent must have a policy that will establish procedures for statutory obligations on suspicious activity reporting to the EFIU. These procedures should also reflect the principle of confidentiality, ensure that investigation is conducted swiftly and that reports contain relevant information and are produced and submitted in a timely manner. The Compliance Officer must ensure prompt disclosures where funds or other property that is suspected to be the proceeds of crime remain in an account.

8.1 Identification, investigation, and reporting of suspicious transactions

- i. A Real Estate Agent shall implement adequate internal policies, procedures and controls in relation to identification and reporting of suspicious transactions to the EFIU. These should be communicated to all staff members of the real estate agent.
- ii. Where Real Estate Agents suspect, or has reasonable grounds to suspect, that funds are the proceeds of crime or are related to terrorist financing, it shall report its suspicions not later than two (2) working days to the EFIU. Real Estate Agents should have the ability to flag unusual movement of funds or transactions for further analysis.
- iii. Further, Real Estate Agents should have appropriate case management systems so that such funds or transactions are scrutinized in a timely manner to whether the funds or transaction are suspicious.
- iv. To fulfil this obligation, a Real Estate Agent must also put in place and update indicators that can be used to identify the suspicion of criminal activity and involvement in ML/TF/PF activities. Examples of suspicious activities are set out in Annexure 1 of the guideline.

8.2 Tipping-off and Confidentiality

8.3.1 Real Estate Agents, directors, officers, employees, and auditors of the real estate agent are:

- i. prohibited from disclosing (“tipping-off”) the fact that a suspicious transaction report (STR) or related information is being filed with the EFIU; and
- ii. protected from civil, criminal, or disciplinary proceedings if they report their suspicions in good faith to the EFIU, even if they did not know precisely what the suspected criminal activity was, and regardless of whether the illegal activity occurred.

8.3.2 A risk exists that customers could be unintentionally tipped off when a Real Estate Agent performs its CDD obligations. A customer’s awareness of a possible STR or investigation could compromise future efforts to investigate the suspected money laundering or terrorist financing activity. Therefore, where a Real Estate Agent forms a suspicion that a transaction or transactions relate to money laundering or terrorist financing, a Real Estate Agent should take into account the risk of tipping off when performing the CDD process.

8.3 Cash reporting.

The EFIU has issued a Cash threshold reporting guideline, 2024. To accountable institutions on this obligation and reference must be made to it. This guideline is found in the EFIU website.

9. SECTION 9: REGISTRATION

Over and above registration with the Prudential Supervisors all Real Estate Agents are required to register their prescribed particulars with Eswatini Financial Intelligence Unit for the purposes of supervising compliance with the Money Laundering and Financing of Terrorism Prevention Act, 2011. All Real Estate Agents are required to self-register on EFIU website through a link under registration.

10. SECTION 10: SANCTIONS FOR NON-COMPLIANCE WITH THE GUIDELINE

Non-compliance with the Guideline will expose Real Estate Agents to disciplinary action in terms of section 35 of the Money Laundering and Terrorism Financing (Prevention) Act 2011. Real Estate Agents should further note that compliance with the Guideline does not constitute a defence for prosecution for an offence under the MLTFP Act. Therefore, entities are encouraged to take steps to ensure that they comply with the Guideline, and the MLTFP Act.

11. SECTION 11: GUIDANCE AND FEEDBACK

The EFIU, in assisting a Real Estate Agent to comply with this guideline will provide feedback, which will assist Real Estate Agents in applying national AML/CFT/PF measures, and in particular, in detecting and reporting suspicious transactions.

END

12. Annexure1: ML Red Flags

ML Red Flags

These are not exhaustive:

- a) Customer uses an unknown intermediary to approach Real Estate Agent,
- b) Customer wants to use foreign companies but does not seem to have a legitimate, legal, or commercial reason for doing so,
- c) Third party is present for all transactions but does not participate in the actual transaction,
- d) Customer negotiates a purchase for market value or above asking price, but records a lower value on documents, paying the difference “under the table”.
- e) Customer purchases personal use property under corporate veil when this type of transaction is inconsistent with the ordinary business practice of the customer,
- f) Customer purchases property in the name of a nominee such as an associate or a relative (other than a spouse),
- g) Customer purchases multiple properties in a short period and seems to have few concerns about the location, condition, and anticipated repair costs, etc. of each property,
- h) Customer insists on providing signature on documents by fax only,
- i) Customer’s documentation to ascertain identification, support income or verify employment is provided by an intermediary who has no apparent reason to be involved,
- j) Customer seems unconcerned with terms of credit or costs associated with completion of a loan transaction; and xxiv. Customer frequently uses trust accounts for transactions where it may not make business sense to do so.
- k) Client exhibits nervous behavior or has a defensive stance to questioning.
- l) The client refuses to identify a source for funds or provides information that is false, misleading, or substantially incorrect.
- m) Client makes inquiries/statements indicating a desire to avoid reporting or tries to persuade the reporting entity not to file/maintain required reports.
- n) The transactional activity is inconsistent with the client’s apparent financial standing, their usual pattern of activities or occupational information.