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Understanding and Mitigating ML/TF/PF Risks in the Real Estate Sector

Overview

In this edition, we will focus on understanding and mitigating money-laundering (ML), terrorist financing (TF) and proliferation financing (PF) in the Real Estate Sector. The Financial Action Task Force's (FATF) updated its Risk-based Approach Guidance for the Real Estate Sector in July 2022. The Guidance applies to all types of real estate including residential, commercial, agricultural, industrial and rural. The document is aimed at professionals working in and involved with the selling and buying of real estate.

It states that real estate professionals include not only real estate agents but also those professionals that may carry out or prepare transactions for clients involving the buying and selling of real estate such as lawyers, notaries, real estate developers, title insurers, other independent legal professionals and accountants.

The real estate sector is not expected to entirely avoid ML/TF/PF risks. However, real estate professionals are expected to identify and assess their own ML/TF/PF risks by considering the findings of available risk assessments, becoming familiar with their Government's Assessment of risk in line with Recommendation 1 as well as the national legal and regulatory frameworks. This includes any areas of significant risk and associated mitigation measures. These professionals are required to take appropriate steps to have policies, controls and procedures that enable them to manage and mitigate effectively the risks that have been identified.

Risks faced by the Sector

Several activities have been identified as indications of ML/TF/PF via the real estate sector. These include the following:

⇒ The use of shell companies or other legal entities to conceal the true ownership of a property. These entities may be used to launder money or finance terrorism or proliferation, making it difficult to trace the source of the funds.

⇒ The use of cash or other non-traceable methods of payment. This can be a red flag for money laundering or terrorist financing/proliferation, as it makes it difficult to trace the source of the funds.

⇒ The location of the property is also a risk factor, as some geographic areas may be at higher risk of money laundering or terrorist financing/proliferation. For example, properties located in areas with weak regulatory frameworks or a history of financial crime may be more vulnerable to illicit activities.

⇒ The identity of the buyer and seller is another risk factor to consider. Individuals or entities with a history of financial crime or other illicit activities may use real estate transactions to launder money or finance terrorism or proliferation; and

⇒ The use of complex legal structures or other mechanisms to hide the true ownership of a property is a significant risk factor. This can make it difficult to trace the source of the funds and identify any potential red flags.

Recommended Mitigation Practices

Mitigating ML/TF/PF risks in the real estate sector involves implementing a range of measures to prevent illicit activities and protect the integrity of the industry. These measures include:

⇒ Customer due diligence (CDD), which involves verifying the identity of buyers and sellers as well as identifying any potential red flags such as the use of shell companies or individuals with links to criminal or sanctioned activities. Enhanced due diligence (EDD) may be necessary for higher-risk transactions or individuals and should involve additional measures such as source of funds and wealth checks or background checks and increased monitoring.

⇒ Transaction monitoring which involves ongoing monitoring of transactions and accounts to detect any suspicious activities. (This can involve the use of automated systems or manual reviews by trained staff and should include measures such as the review of transaction patterns or identifying unusual behaviour.)

⇒ Reporting suspicious activities to the relevant authorities which is a critical component of mitigating ML/TF/PF risks. Real estate professionals have a responsibility to report any suspicious activities to the relevant authorities and may be subject to legal and reputational risks if they fail to do so.

⇒ Training and awareness-raising activities which can also play a crucial role in mitigating ML/TF/PF risks in the real estate sector. Real estate professionals should receive regular training on AML/CFT/CPF regulations, requirements and best practices and should be aware of the risks and red flags associated with ML/TF/PF activities.

⇒ Cooperation and information sharing among real estate professionals and with relevant authorities which can help to prevent illicit activities and protect the integrity of the industry. Real estate professionals should be proactive in sharing information and reporting suspicious activities, and should work together to develop effective AML/CFT/CPF internal controls and compliance programs.

CASE STUDIES

Case study 1: Misuse of a real estate agent to gain introduction to a financial institution: possible link to terrorist financing

(Predicate offence: terrorist financing)

A trustee for a trust established in an offshore centre approached a real estate agent to buy a property in Belgium. The real-estate agent made inquiries with the bank to ask whether a loan could be granted. The bank refused the application as the use of a trust and a non-financial professional appeared to be deliberately done to disguise the identity of the beneficial owner. Subsequently, the bank submitted a suspicious transaction report. Following the analysis by the Financial Intelligence Unit (FIU), one of the members of the Board of the trust was found to be associated with a bank with suspected links to a terrorist organization.

Indicators and methods identified in the scheme:

1. Instruments real estate, loan.
2. Mechanisms: bank, trust, real-estate agent
3. Techniques: offshore customer, non-account holder, intermediary, high risk jurisdiction, loan, purchase of real estate.
4. Opportunity taken: using a trust and engaging a non-financial profession was clearly done to disguise the identity of the beneficial owner.

Guidelines

The Federation has issued general guidance to all DNFBPs (which includes Real Estate Professionals) concerning money laundering, terrorist financing and proliferation financing. This can be located in the Law Library on the FSRC's website: www.fsrc.kn. The regulatory authority continues its outreach to the sectors participants to educate and inform of all regulatory, and legal requirements that have been set.

This newsletter should be read in conjunction with the September 2019 Newsletter: Money Laundering through Real Estate.

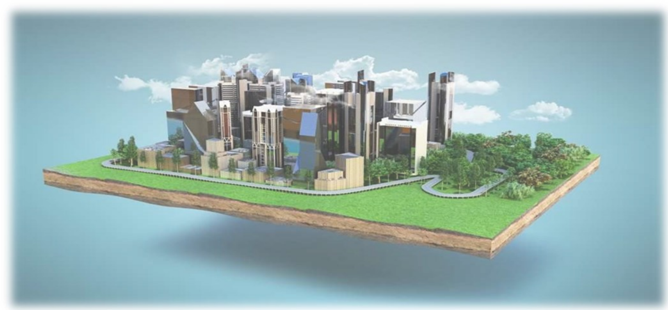
Case study 2: Use of a solicitor to perform financial transactions

(Predicate offence: distribution of narcotics)

An investigation of an individual revealed that a solicitor acting on his behalf was heavily involved in money laundering through property and other transactions. The solicitor organized conveyancing for the purchase of residential property and carried out structured transactions in an attempt to avoid detection. The solicitor established trust accounts for the individual under investigation and ensured that structured payments were used to purchase properties and pay off mortgages. Some properties were ostensibly purchased for relatives of the individual even though the solicitor had no dealings with them. The solicitor also advised the individual on shares he should buy and received structured payments into his trust account for payment.

Indicators and methods identified in the scheme:

1. Instruments: cash deposits, real estate.
2. Mechanisms: solicitor, trust accounts.
3. Techniques: structured cash transactions, establishment of trust accounts to purchase properties and pay off mortgages, purchase of property in the name of the main target.
4. Opportunity taken: the solicitor set up trust accounts on behalf of the target and organized for transactions to purchase the property, pay off mortgages and shares were purchased to avoid detection. In some cases properties were purchased in the names of relatives of the target.



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REFERENCES

FATF Risk Based Approach Guidance for the Real Estate Sector July 2022

FATF/GAFI - Money Laundering and Terrorist Financing through the Real Estate Sector

St. Kitts and Nevis National Risk Assessment 2019

St. Kitts and Nevis National Risk Assessment Follow-up Report 2021