



Financial Intelligence Unit

**GUIDELINES ON ANTI-MONEY LAUNDERING & COMBATING
FINANCING OF TERRORISM FOR THE REAL ESTATE
SECTOR, 2014**

[Issued in terms of the Money Laundering and Proceeds of Crime Act [Chapter 9:24]

These guidelines amplify and explain obligations which estate agency businesses are required to comply with under the Money Laundering and Proceeds of Crime Act [Chapter 9.24] (hereinafter referred to as “the Act”), and other applicable legislation and regulatory requirements.

The guidelines lay down the minimum standards on Anti Money Laundering and Combating Financing of Terrorism (AML/CFT) measures for the Real Estate Sector in order to guard estate agency businesses against the risks of money laundering and terrorist financing.

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Terms and Acronyms Used

Terms	Definition
AML / CFT	Anti Money Laundering and Combating Financing of Terrorism
Beneficial owner	Natural person who ultimately controls a natural or a legal person or the person on whose behalf a transaction is being conducted or an activity is being carried out and /or holds direct or indirect proprietary right or controls at least 25% of shares or of the right to vote of the legal person;
FIU	Financial Intelligence Unit
BUP Act	Bank Use Promotion Act [Chapter 24:24]
Business Relationship	‘Business relationship’ is any arrangement between a designated institution and the applicant for business, whose purpose is to facilitate the carrying out of transactions between the parties on a ‘frequent, habitual or regular’ basis and where the monetary value of dealings in the course of the arrangement is not known or capable of being ascertained at the outset.
Designated Institution	Means either a “financial institution” or a “designated non-financial business or profession” defined as such in section 13 of the Money Laundering and Proceeds of Crime Act [Chapter 9:24] and includes an individual or entity registered or required to be registered in terms of the Estate Agents Act [Chapter 27:17].
Money Laundering	An act or transaction intended to conceal or disguise the nature, source, location, disposition or movement of the proceeds of any unlawful activity or any interest which anyone has in such proceeds.
MLPC Act	Means the Money Laundering and Proceeds of Crime Act [Chapter 9:24].
Customer	In relation to a real estate business, means an individual or entity involved in a transaction to buy, sell or lease real estate property.
STR	Suspicious Transaction Report
Suspicious Transaction	Is any transaction which raises suspicion of a reasonable possibility that the funds or property involved is proceeds of crime or could be connected with financing of terrorism. This includes but is not limited to: <ul style="list-style-type: none"> • a transaction which is inconsistent with a customer’s known, legitimate business or personal activities; • a transaction which has no apparent or obvious economic rationale; • a transaction which is unusual because of its size, volume, type or pattern; or • a transaction which fits in with or is suggestive of known money laundering methods or financing of terrorism.
Terrorist financing or financing of terrorism	Refers to any transaction prohibited under section 9 of the MLPC Act, including a transaction involving mobilization or provision of funds or other resources where the funds or resources are intended to finance terrorists, terrorist organizations or terrorist activities.

1 INTRODUCTION

1.1 General Overview

- 1.1.1 Zimbabwe is a member of the Eastern and Southern Africa Anti Money Laundering Group (ESAAMLG). ESAAMLG, along with other FATF Style Regional Bodies (FSRBs), is an associate member of the Financial Action Task Force (FATF). The FATF is an inter-governmental body whose mandate is to set standards on Anti Money Laundering and Combating Financing of Terrorism (AML/CFT) and to monitor their implementation.
- 1.1.2 ESAAMLG and FATF members have undertaken to implement AML/CFT measures in their jurisdictions, guided by the FATF Recommendations.
- 1.1.3 In line with Zimbabwe's international obligations and the country's commitment to fighting money laundering and terrorist financing, the country has put in place an AML/CFT legal and institutional framework designed to prevent, detect and deter money laundering and financing of terrorism.
- 1.1.4 The country has passed various pieces of AML/CFT legislation, including the Money Laundering and Proceeds of Crime Act [Chapter 9:24] of 2013 and the Bank Use Promotion Act [Chapter 24:24].
- 1.1.5 The MLPC Act, as read with the BUP Act imposes certain AML/CFT obligations on designated institutions and establishes a the Bank Use Promotion and Suppression of Money Laundering Unit (commonly known as the Financial Intelligence Unit or, in short, the FIU or the Unit), whose main responsibility is to oversee compliance with the applicable AML/CFT legislation, guidelines and other regulatory requirements.
- 1.1.6 The FIU is empowered to issue guidelines and directives, to amplify and give effect to the provisions of the MLPC Act and related legislations.
- 1.1.7 It is against this background that the Unit has issued these guidelines, known as the Anti Money Laundering and Combating Financing of Terrorism Guidelines for the Real Estate Sector, 2014 (hereinafter simply referred to as "the Guidelines").

1.2 What is Money Laundering & Terrorist Financing?

- 1.2.1 Money Laundering is any act or transaction that is designed to disguise the illegal source of proceeds of crime, to make the illicit funds appear as if they came from a legitimate source.
- 1.2.2 The objective behind money laundering is that the criminals or their accomplices want to “clean up” proceeds of crime so that the funds are not easily traceable to their original illicit source.
- 1.2.3 There are various methods of laundering proceeds of crime, including introducing the funds into the formal financial system and purchasing high value assets, such as real estate.
- 1.2.4 For money laundering to take place, an offence or offences would have been committed from which the offender(s) derived a financial benefit. The primary offence from which the funds have been derived is called the “predicate offence”.
- 1.2.5 The offence of money laundering is committed when any person (who may or may not be the person who committed the predicate offence) performs any act or transaction with the intention of disguising the illicit nature or source of the funds, e.g. depositing or investing the funds with a financial institution or purchasing assets.
- 1.2.6 Examples of proceeds-generating predicate offences include: theft, fraud, corruption, drug dealing, human trafficking, sea piracy, tax evasion, among other offences.
- 1.2.7 The person laundering funds may or may not have been directly involved in the predicate offence. In other words the person who committed the predicate offence, say fraud, may launder the proceeds of his crime, thereby also committing the offence of money-laundering. A person who was not involved in committing the original offence may also commit the offence of money laundering by knowingly assisting a criminal to launder the proceeds.
- 1.2.8 The offence of terrorist financing usually involves one or both of the following:
- Mobilizing or providing funds or resources for purposes of financing terrorists, terrorist organizations or terrorist acts; or

- Dealing with funds or resources that one knows or has reasonable grounds to suspect may be used to fund terrorists, terrorist organizations or terrorists acts.

1.2.9 The offence of financing of terrorism is different from the offence of money laundering in that the funds are not necessarily linked to a predicate offence. Funds used to finance terrorism may come either from a legitimate or illegitimate source, and may involve small amounts.

1.3 Designated institutions

1.3.1 Designated institutions are those institutions defined in the MLPC Act either as “financial institutions” or as “designated non financial businesses and professions” and, as such, are required to submit STRs and to implement other specified AML/CFT measures.

1.3.2 Designated institutions include, but are not limited to:

Banks, insurance companies, legal practitioners, public accountants, real estate agents, moneylenders, pension funds, bureau de change, money transfer agencies, casino and gaming operators and entities in the insurance and securities sector.

1.3.3 For the purposes of these guidelines, the term “designated institutions” refers to persons or entities operating in the real estate sector that are registered or are required to be registered in terms of the Estate Agents Act [Chapter 27:17].

1.3.4 An estate agency business is required to undertake due diligence on both the seller and the buyer, with due regard to the money laundering and terrorist financing risks involved.

1.3.5 For the purposes of these Guidelines, the following persons or entities are required to put in place AML/CFT measures as prescribed in terms of the law and in these Guidelines:

- (i) Estate Agents
- (ii) Estate Brokers

1.4 The Role of the Financial Intelligence Unit (FIU)

1.4.1 The main statutory function of the FIU is to oversee compliance with AML/CFT legislation and regulatory requirements by designated institutions.

1.4.2 More particularly, the Unit is responsible for –

- a) Receiving STRs from designated institutions;
- b) Analyzing the received STRs;
- c) Disseminating financial intelligence to law enforcement agencies and other relevant competent authorities, for further investigation and / or prosecution;
- d) Supervising and monitoring designated institutions to ensure compliance with the Act and the Guidelines.

2 OBLIGATIONS OF REAL ESTATE BUSINESSES

2.1 REQUIREMENT TO CONDUCT MONEY LAUNDERING AND TERRORIST FINANCING RISK ASSESSMENT

- 2.1.1 In terms of FATF Recommendation 1, every designated institution is required to conduct a ML and TF risk assessment and to use a Risk-Based Approach to implement AML/CFT measures.
- 2.1.2 This means that every real estate business must carry out a ML/TF risk assessment of its business, clients and services in order to **identify, assess** and **understand** the business's ML/TF risks.
- 2.1.3 Adequate measures commensurate with the level of risk identified, should then be put in place to address or mitigate the risks.
- 2.1.4 Where risk is higher, enhanced measures should be applied. Where risk is demonstrably low, the real estate business may put in place less rigorous AML/CFT measures.
- 2.1.5 The risk assessment should be well-documented. There should be clear justification to support a finding of low risk.
- 2.1.6 A finding of low risk in a particular area or aspect of the institution's business shall not exempt the institution from implementing mandatory AML/CFT measures, but may only just reduced or simplified measures.
- 2.1.7 A properly done risk assessment allows the institution to apply its resources more efficiently, on a risk sensitive basis.
- 2.1.8 A risk assessment is not a once-off exercise but should be an ongoing process, requiring continuous review, as risk factors continuously evolve.
- 2.1.9 Higher risk customers, products and services, and geographical locations should be identified.

Risk Management

- 2.1.10 An estate agent business shall implement appropriate measures and controls to mitigate the money laundering and terrorist financing risks as identified and assessed under the risk assessment.

2.1.11 These measures and controls may include:

- a) Increased levels of KYC or enhanced due diligence, such as proactive contact with the customer to determine the reason for transactions and the source of funds.
- b) Increased levels of controls and frequency of reviews of customer relationships.
- c) Enhanced systematic controls and data integrity at the points of payment, particularly at higher risk agent location.

Risks posed by new or developing technologies

2.1.12 Designated institutions should pay special attention to any money laundering/terrorist financing threats that may arise from new or developing technologies, including transactions through internet, which might favour anonymity.

Implementation of Risk-Based Approach to AML/CFT Programmes

2.1.13 As already stated, estate agent businesses shall formulate and implement a risk-based approach to their AML/CFT programmes.

2.1.14 This approach requires an assessment of the risk posed by the nature of the business and the implementation of appropriate mitigation measures.

2.1.15 This should be evidenced by categorization of the customer base, products and services by risk rating (e.g. low, medium, and high) and identification of assigned actions by risk types.

2.1.16 As stated above, risk assessments are not supposed to be static, once off events. As such, estate agency business shall conduct periodic reviews (not more than two years apart) to determine whether any adjustment should be made to the risk rating.

2.1.17 The review of the risk ratings for high risk customers may be undertaken more frequently than for other customers.

2.1.18 Estate agents businesses shall design an AML/CFT framework that suits it, and should include at a minimum:

- a) Differentiation of customer relationships by risk categories (such as high, moderate or low);
- b) Differentiation of customer relationships by risk factors (such as products, customer type/profession, country of domicile, complexity of ownership and legal structure, source of business, type of assets, size, volume and type of transactions, cash transactions, adherence to customer activity profile);
- c) KYC documentation and due diligence information requirements appropriate for each risk category and risk factor; and
- d) Requirements for the approval of upgrading and downgrading of customer risk ratings.

2.1.19 Estate agent businesses shall establish a customer's profile, taking into account, at a minimum:

- a) The nature of the customer's business (whether cash intensive e.g. casinos and restaurants);
- b) The complexity, volume and pattern of transactions;
- c) Type of customer, based on specific risk factors (e.g. whether ownership of a corporate customer is highly complex for no apparent reason, whether the customer is a PEP, whether the customer's employment income supports transaction patterns, whether delegated authority such as power of attorney is in place);
- d) Delivery channels (e.g. mobile/internet banking, wire transfers to third parties);
- e) Geographical origin of the customer;
- f) Geographical area (e.g. whether business is conducted in or through jurisdictions with high levels of crime, e.g. drug trafficking, corruption, piracy, etc, or jurisdictions which do not adequately implement AML/CFT standards in the prevention of money laundering/financing of terrorism);
- g) Whether the source of funds can easily be verified and whether the audit trail has been deliberately broken and/or unnecessarily layered;
- h) Unwillingness of the customer to co-operate with the designated institution's customer due diligence process for no apparent reason;

- i) Any other information that raises suspicion of the customer's connection to money laundering or terrorist financing.

2.1.20 An estate agent business shall, therefore, apply customer due diligence measures on a risk sensitive basis, consistent with these guidelines, depending on the type of customer, business relationship or transaction.

2.1.21 Reduced due diligence is acceptable in cases where the risk of money laundering is low, for example where information on the identity of the customer or beneficial owner is publicly available.

2.1.22 On the other hand, a designated institution shall apply enhanced due diligence to customers where the risk of money laundering or terrorist financing is high.

2.2 CUSTOMER DUE DILIGENCE REQUIREMENTS

- Like all DNFBPs, estate agents are required to conduct CDD procedures, including:
 - identifying the customer;
 - verifying the customer's identity;
 - identifying the beneficial owner of a transaction (establishing whether a customer is acting on his /her / its own behalf or on behalf of someone else);
 - obtain information on the customer's nature of business and source of funds;
 - conduct ongoing due diligence for customers which the institution has an ongoing business relationship with:
 - Undertake enhanced CDD for higher risk customers, business relationships or transactions.
- AML/CFT legislation and the FATF Standards require designated institutions to carry out customer due diligence (CDD) measures so that they have a full understanding of the identity of their clients, the clients' nature of business and their source of funds and transacting patterns.

- Such an understanding, in turn, enables a designated institution to identify unusual and suspicious transactions which are not consistent with the client's normal, legitimate transacting patterns.
- Unlike financial institutions, most customers of estate agent businesses may be once-off clients. Even in such cases, the real estate agency business is required to undertake customer due diligence to satisfy itself of the identity of the customer and, further, that the funds are not proceeds of crime, nor intended to finance terrorists, terrorist organizations or terrorist acts.
- CDD requirements are detailed steps and procedures which a financial institution or DNFBP is required to undertake, at the beginning of a business relationship with a customer and, thereafter, on an ongoing basis (where applicable).
- CDD measures are designed to enable estate agency businesses to prevent money launderers from using the sector to clean their illegitimate proceeds, and to detect and report suspicious transactions.

2.2.1 Customer Identification and Verification Requirements

- 2.2.1.1 Every estate agency business is required to identify and verify the identity of every customer. In the case of a sale, the requirement applies to both the seller and the buyer. The estate agency business shall also identify and verify the identity of any beneficial owner (i.e. the natural person on whose behalf a transaction is being conducted or the natural person who ultimately controls the transacting party, especially where the transacting party is a legal person).
- 2.2.1.2 Designated institutions are required to identify every customer and verify his/her identity by means of reliable documents, data or information.
- 2.2.1.3 A designated institution shall obtain sufficient information necessary to establish the identity of each customer, whether regular, occasional or once off.
- 2.2.1.4 For customers who are natural persons, the designated institution shall obtain sufficient identification document/s to verify the identity of the customer, e.g.
 - (a) national identity document or
 - (b) a valid passport or
 - (c) valid driver's licence.

2.2.1.5 In addition to an identification document referred to above, the designated institution should also obtain the customer's proof of residence in the form of utility bills from a recognized public authority.

2.2.1.6 For customers who are legal persons (companies, trusts, clubs, societies and charities and legal arrangements), the designated institution shall establish the following, supported by relevant documentation:

- (i) name of the company or entity;
- (ii) the legal status of the entity, by obtaining relevant documents, such as certificate of incorporation and articles and memorandum of association, CR14 (in the case of a company), or equivalent documents in the case of entities other than companies;
- (iii) the identity of every director (in the case of a company), or equivalent office bearers (in the case of entities other than companies) and his/her proof of residence;
- (iv) in respect of any person purporting to act on behalf of the legal person, such person must be identified and his identity must be verified in the same way as an individual customer. The real estate business must also obtain proof that the person is authorized to act on behalf of the entity (through a valid resolution of the company or entity);
- (v) the designated institution must establish the ownership and control structure of the customer and determine who the beneficial owners of the entity are (i.e. the natural person or persons who ultimately own or control the entity);
- (vi) principal place of the company or entity's business operations;
- (vii) mailing address of company / entity and contact numbers;
- (viii) tax clearance certificate;
- (ix) board of directors' (or equivalent body) resolution to enter into the transaction, and identification documents of those who have authority to transact on behalf of the entity; and
- (x) nature and purpose of the business.

2.2.1.7 Estate agents businesses shall have a system of periodically updating customer identification data, if there is a continuing business relationship with the customer.

2.2.1.8 When there is suspicion of money laundering or financing of terrorism, or where there are doubts about the adequacy or veracity of previously obtained customer identification /verification data, the designated institution shall review all previously obtained information, including verifying again the identity of the customer and obtaining information on the purpose and intended nature of the business relationship, as the case may be.

2.2.2 Non Face-to-Face Identification

2.2.2.1 To guard against the risk of possible false identities and impersonations applicable to non face-to-face customers, additional / enhanced measures shall be undertaken to supplement the documentary or electronic data.

2.2.2.2 These additional measures/checks shall be applied whether the applicant is resident in Zimbabwe or elsewhere, and shall be particularly robust where the applicant is requiring a product/service that offers money transmission or third party payments.

2.2.3 Offshore Trusts

2.2.3.1 Offshore Trusts present a higher ML/FT risk and therefore additional identification measures are needed for special purpose vehicles or multinational companies connected to trusts, particularly when trusts are set up in offshore locations, with strict bank secrecy or confidentiality rules.

2.2.3.2 Trusts created in jurisdictions that do not implement adequate AML/CFT measures shall warrant additional CDD measures.

2.2.4 Introduced Business

2.2.4.1 In respect of group introducers from outside Zimbabwe, arrangements shall be put in place to ensure that the identity of the customer is verified in accordance with requirements and that the underlying records of identity are retained for the prescribed period (at least 5 years).

- 2.2.4.2 Where a customer is introduced by one division /unit of a real estate sector group to another, it is not necessary for identity to be re-verified or for the records to be duplicated provided that:
- i. the identity of the customer has been verified by the introducing parent company, branch, subsidiary or associate in line with the AML/CFT requirements of equivalent standards and taking account of any specific requirements;
 - ii. no exemptions or concessions have been applied in the original verification procedures that would not be available to the new relationship;
 - iii. a group introduction letter is obtained and placed with the customers' account opening records.
- 2.2.4.3 Designated institutions shall ensure that there is no secrecy or data protection legislation applying on the introducer, which would prevent or restrict free access to the records on request by the FIU, or by law enforcement agencies or relevant mutual assistance procedures.

2.2.5 *Establishing customer's nature of business and source of funds*

- 2.2.5.1 In addition to identifying every customer and verifying his /her / its identity by means of reliable official documents, the designated institution should gather sufficient information to be able to establish the customer's source of funds.
- 2.2.5.2 For ongoing business relationships, the designated institution must know its customer well enough, including the customer's nature of business. Such knowledge and understanding will enable the designated institution to know when a customer conducts a transaction which is unusual in terms of its nature or size, and which does not fit in with the customer's known profile.

2.2.6 *Additional CDD Requirements for Politically Exposed Persons (PEPs)*

- 2.2.6.1 A Politically Exposed Person is an individual who are or have been entrusted with prominent public functions in the country, in a foreign country, or hold a prominent position of leadership in an international organization.

- 2.2.6.2 A designated institution shall put in place adequate measures to be able to identify whether a customer is a PEP.
- 2.2.6.3 Having identified a person as a PEP, the designated institution must then apply enhanced due diligence measures to guard against the increased money laundering risks posed by PEPs.
- 2.2.6.4 The enhanced measures include gathering sufficient information on any customer in this category intending to undertake a transaction and check all publicly available information on the person.
- 2.2.6.5 The estate agent shall apply enhanced customer due diligence when verifying the identity of the PEP. The business shall seek information on the source of funds before accepting the PEP as a customer.
- 2.2.6.6 The decision regarding commencement of a business relationship or a transaction with a PEP shall be taken at a senior management level (and must be documented). This requirement shall be clearly spelt out in the estate business's Customer Acceptance Policy.
- 2.2.6.7 The above requirements shall also be applied to transactions with family members or close relatives or associates of a PEP. The requirements shall also extend to customers who become PEPs subsequent to the establishment of a business relationship.
- 2.2.6.8 These requirements are also applicable to transactions where a PEP is the beneficial owner of a transaction, or owns or controls a legal person or legal arrangement.
- 2.2.6.9 Every designated institution shall have appropriate ongoing risk management procedures for identifying and applying enhanced CDD to PEPs, family members or close relatives or associates of PEPs and transactions of which a PEP is the ultimate beneficial owner.

2.2.7 CDD on Existing Customers

- 2.2.7.1 Estate agents shall apply CDD requirements to existing customers on the basis of materiality and risk, and shall continue to conduct due diligence on all existing relationships.

2.2.8 On-going CDD

2.2.8.1 Estate agents shall conduct on-going CDD when:

- a) there is suspicion of money laundering or terrorist financing;
- b) the transaction is of significant value;
- c) there is a material change in the way that the account is being operated;
- d) the institution becomes aware that it lacks sufficient information about an existing customer.

2.2.9 Monitoring of Transactions

2.2.9.1 Designated Institutions are required to monitor their customers' transactions on an ongoing basis in order to have an understanding of the normal transacting patterns and source of funds of each of their customers. This will give the designated institution the means to identify transactions that fall outside the regular pattern of activity and are, therefore suspicious. Such monitoring mechanisms shall be well documented.

2.2.9.2 The extent of monitoring will, however, depend on the risk rating of the transaction and the customer. Special attention should be paid to all complex, unusually large transactions and all unusual patterns which have no apparent economic or visible lawful purpose.

2.2.9.3 An estate agent shall put in place a system of periodical review of risk categorisation of customers and the need for applying enhanced due diligence measures where higher risk has been identified.

2.2.9.4 Designated institutions shall examine the background and purpose of transactions with persons or entities from jurisdictions which do not sufficiently implement the FATF Standards.

2.2.9.5 If a transaction has no apparent economic or visible lawful purpose, the background and purpose of such transaction should, as far as possible, be examined and written findings, together with all the relevant documents should be retained and made available to the Financial Intelligence Unit upon request. Where appropriate, an STR should be filed with the FIU.

- 2.2.9.6 Where a designated institution is unable to apply appropriate CDD measures due to a customer's failure to furnish required information and /or non-cooperation by the customer, the designated institution shall not undertake the transaction.
- 2.2.9.7 In the case of an existing business relationship, the estate agent shall terminate such business relationship if the customer fails to comply with the customer due diligence requirements. Under these circumstances, the designated institution shall make a suspicious transactions report to the Unit, even if the transaction did not go through (attempted transaction).

3 INTERNAL CONTROLS, POLICIES & PROCEDURES

3.1 *Requirement for Internal Policies, Controls and Measures*

- 3.1.1 The Board of Directors or equivalent body of the estate agent business shall establish and put in place appropriate AML/CFT policies and procedures, and ensure their effective implementation.
- 3.1.2 The ultimate responsibility for AML/CFT compliance rests with the Board (if there is any) and Senior Management of the estate agent business.
- 3.1.3 The Board (where it exists), shall ensure that a comprehensive operational AML/CFT Policy Manual is formulated by Management and presented to the Board for consideration and formal approval. Where there is no board, the responsibility rests with Management.
- 3.1.4 The internal controls, policies and procedures shall cover proper management oversight systems and controls, segregation of duties, AML/CFT training of employees and other related matters.
- 3.1.5 Responsibilities shall be explicitly allocated within the estate agent business so as to ensure that the policies and procedures are implemented effectively.
- 3.1.6 The estate agent business's internal audit function has an important role in evaluating and ensuring adherence to the AML/CFT policies and procedures.

- 3.1.7 As a general rule, the audit should provide an independent evaluation of the estate agent's AML/CFT policies and procedures, including policies and procedures to comply with legal and regulatory requirements.
- 3.1.8 The real state business shall ensure that its AML/CFT function is adequately staffed with appropriately trained personnel.
- 3.1.9 Estate agent businesses are required to review their AML/CFT framework from time to time to keep them up-to-date, and identify other areas of risks not covered by the AML/CFT Policy Manual.

3.2 Appointment of a Money Laundering Reporting Officer (MLRO)

- 3.2.1 Every estate agent business shall appoint a Money Laundering Reporting Officer (MLRO). The MLRO shall be a senior member of management who shall be based at the head/corporate office of the institution.
- 3.2.2 The MLRO shall, among other things, be responsible for:
 - a) Acting as the institution's central point in receiving and submitting suspicious transaction reports, in line with the requirements of the MLPC Act and the Guidelines;
 - b) Overseeing and ensuring overall compliance with AML/CFT legislative and regulatory requirements;
 - c) Developing appropriate compliance management arrangements across the full range of AML/CFT areas (e.g. CDD, record keeping, etc.);
- 3.2.3 To enable the MLRO to discharge his/her responsibilities, the designated institution shall ensure that the MLRO and other appropriate staff members have unlimited access to customer identification data and other CDD information, transaction records and other relevant information.
- 3.2.4 Furthermore, the designated institution shall ensure that the MLRO is able to act independently and report directly to senior management or to the Board of Directors.
- 3.2.5 It should be noted however, that it is the ultimate responsibility of the Board and /or Senior Management to ensure that the institution /business is adequately implementing the AML/CFT requirements, and effectively supervise the MLRO.

- 3.2.6 Every estate agent business shall:
- a) Have procedures for the prompt identification and reporting of suspicious transactions by employees to the MLRO and by the latter to the FIU.
 - b) Provide the MLRO with the necessary access to systems and records to enable him /her to assess and submit to the Unit suspicious transaction reports received by him/her or which he/she identifies.
 - c) Advise all relevant employees of the identity of the MLRO and in his absence, the alternative MLRO and advise them of the requirements and procedures of reporting STRs.

3.3 *Training of Employees*

- 3.3.1 Designated institutions are required to formulate and implement, on an ongoing basis, comprehensive employee education and training programs to equip the employees with relevant skills required for the effective discharge of the institution's AML/CFT obligations. The institution shall maintain a board approved AML/CFT training policy document.
- 3.3.2 The timing, coverage and content of the employee training program shall be tailored to meet the needs of the estate agent business and in line with AML/CFT legislation.
- 3.3.3 The training programmes should cover compliance officers, new staff (as part of the orientation program for those posted to the front office), branch office staff (particularly cashiers, and marketing staff), internal control/audit staff and managers.
- 3.3.4 Estate agent businesses shall keep a record of all AML/CFT training materials used in its staff training.

4 REPORTING OF SUSPICIOUS TRANSACTIONS

- 4.1 The MLPC Act imposes obligations on designated institutions to report suspicious transactions to the Financial Intelligence Unit.
- 4.2 A designated institution shall prepare and submit a Suspicious Transaction Report (STR) to the Unit, if it has reasonable grounds to believe that the transaction involves proceeds of crime, or is linked to or intended for financing of terrorism.
- 4.3 Every suspicious transaction shall be reported to the Financial Intelligence Unit promptly, but in any case no later than three (3) days after its detection.
- 4.4 Some transactions may not appear to be suspicious when looked at in isolation but may become suspicious when it is determined that they are or may be part of a group or series of related transactions.
- 4.5 Once such a link is established and it is determined that the transactions, looked at as a whole, are suspicious, an STR should be submitted promptly.
- 4.6 The MLRO shall record his reasons for determining any transaction or a series of transactions as suspicious. The estate agent business shall ensure that there is no undue delay in identifying suspicious transactions and in reporting same to the FIU.
- 4.7 Where a customer aborts /abandons a transaction after being asked to provide more information, the designated institution shall report such attempted transaction as a suspicious transaction, irrespective of the amount involved.
- 4.8 Real estate agent businesses are required to use the form attached as **Annexure 1 to these guidelines**, as a template for reporting STRs.
- 4.9 In the context of creating KYC and AML/CFT awareness among employees the estate agents business may consider the following “red flags” examples as possible indicators of money laundering or terrorist financing, and which should, therefore be treated as suspicious.

Red Flag Indicators for possible money laundering

- a) Customer purchases property in the name of a nominee such as an associate or a relative (other than a spouse), or in the name of minors or incapacitated persons or other persons who lack the economic capacity to carry out such purchases.
- b) Customer does not want to put their name on any document that would connect them with the property or uses different names on offer letters to Purchase, or closing documents and deposit receipts.
- c) Customer attempts to hide the identity of the beneficial owner or requests that the transaction be structured to hide the identity of the beneficiary.
- d) Buyer is a shell company and representatives of the company refuse to disclose the identity of the beneficial owner.
- e) Address given by customer is unknown, believed to be false, or simply a correspondence address.
- f) Customer does not satisfactorily explain the last minute substitution of the purchasing party's name.
- g) Customer pays substantial down payment in cash and balance is financed by an unusual source or offshore bank.
- h) Customer purchases property without inspecting it.
- i) Customer purchases multiple properties in a short time period, and seems to have few concerns about the location, condition and anticipated repair costs, etc., of each property.
- j) Customer pays rent or the amount of a lease in advance using a large amount of cash.
- k) Customer is known to have paid large remodeling or home improvement invoices with cash, on a property for which property management services are provided.
- l) Transaction does not match the business activity known to be carried out by the customer.
- m) Transaction is entered into at a value significantly different (much higher or much lower) from the real or market value of the property.

- n) Property is sold in a series of successive transactions each time at a higher price between the same parties.
- o) Buyer takes on a debt significantly higher than the value of the property.
- p) Customer suddenly cancels / aborts transaction and requests refund either back to himself /herself / itself or to a third party.

NB: The above list is only indicative and not exhaustive.

4.10 **Confidentiality and Tipping-off**

Inapplicability of confidentiality provisions

- The reporting obligations of designated institutions as provided under the MLPC Act, override any confidentiality provisions in any other law. In other words, a designated institution cannot cite customer confidentiality in order to avoid reporting a suspicious transaction or to avoid furnishing any information required in terms of the Act.

Prohibition against tipping-off

- When a designated institution has submitted an STR or is considering submitting an STR, the designated institution and its employees or agents, are prohibited from alerting the customer or any other third party that an STR has been submitted or will be submitted in respect of any transaction.

5 MAINTENANCE OF RECORDS OF TRANSACTIONS

- 5.1 The MLPC Act imposes obligations on designated institutions to record and maintain customer information and transaction records.
- 5.2 The transaction information required to be maintained shall be such as to allow reconstruction of transactions, and if necessary, assist in providing meaningful evidence for prosecution of persons involved in criminal activities.
- 5.3 The customer and transactions information to be recorded and maintained include, at the minimum, the following:
- a) identity of the customer;
 - b) the type and nature of the transaction;
 - c) the amount involved in the transaction and the currency in which it was denominated;
 - d) date of transaction; and
 - e) the parties to the transaction.
- 5.4 An estate agent business shall take appropriate steps to put in place and maintain a system that allows data to be retrieved easily and quickly whenever required, or when requested by competent authorities.
- 5.5 The records shall be kept for at least **five (5) years** from the date of transaction.