

## **AML/CFT GUIDANCE FOR THE REAL ESTATE SECTOR**

### PURPOSE AND CONTENTS

The Financial Intelligence Unit of Trinidad and Tobago (“the FIU”) provides the following overview of the obligations under the Anti-Money Laundering/Counter Financing of Terrorism (“AML/CFT”) regime of Trinidad and Tobago for the Real Estate Sector.

The purpose of this guidance is to provide compliance guidance for the real estate sector on their legal obligations to deter, detect and report money laundering and financing of terrorism activities. Because AML/CFT obligations are contained in several laws, amendments and regulations, our aim is that the real estate sector will find this guidance useful as a reference to the relevant provisions pertaining to their legal obligations. This guidance uses plain language to explain the most common situations under the specific laws and related regulations which impose AML/CFT requirements. It is provided as general information only. It is not legal advice, and is not intended to replace the AML/CFT Acts and Regulations.

The use of the word “**must**” indicates a mandatory requirement, “**should**” indicates a best practice and the word “**may**” indicates an option for you to consider.

This guidance, which is divided into eleven (11) parts, include:

1.	Do these obligations apply to you?
2.	What is a Listed Business?
3.	About the FIU
4.	What the FIU does
5.	What is Money Laundering
6.	What is Financing of Terrorism
7.	Why are entities in the Real Estate Sector designated as Listed Business(es)
8.	Examples of Money Laundering using the Real Estate Sector

9.	What are your AML/CFT legal obligations
10.	Offences & Penalties
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**PART 1**

**DO THESE OBLIGATIONS APPLY TO YOU?**

This guidance applies to you if you are an individual or company, partnership or firm carrying on the business of buying, selling or leasing land or any interest in land or any buildings thereon and appurtenances thereto (“real estate”).

These legal obligations apply to you if you are an individual, company, partnership or firm or when you act as an agent regarding the purchase, sale or lease of real estate. The leasing of real estate refers to the leasing of registrable interests, that is, long leases of duration three (3) years or more and which is executed by a Deed of Lease.

If you are an employee of such an individual, company, partnership or firm, these obligations are the responsibility of your employer.

If you are a real estate developer, these obligations apply to you when you sell or lease to the public a new house, a new condominium unit, a new townhouse, a new commercial or industrial building, or a new multi-unit residential building.

If you are an entity that is a company, you are subject to the obligations in this guideline whether you sell those buildings on your own behalf or on behalf of a subsidiary or affiliate.

These obligations do not apply to you for activities solely related to property management. This means that if you deal only in property management transactions, **not** in purchases or sales or leases, the obligations explained in this guideline do not apply to you.

## PART 2

### WHAT IS A LISTED BUSINESS?

A listed business is any business activity or profession listed in the First Schedule to the Proceeds of Crime Act Chap 11:27 (“POCA”). Entities operating within the real estate sector, in common with all citizens of Trinidad and Tobago, are subject to the POCA and the Anti-Terrorism Act (“ATA”). However, further obligations are imposed on those business activities which face a greater risk of coming across crime proceeds and terrorist property. Business activities which have been identified as more vulnerable include those in the real estate sector. Other types of businesses also include attorneys-at-law, accountants and motor vehicle dealers among others. Each of these is identified as a “Listed Business” under the First Schedule to the POCA.

Listed Businesses fall under the supervisory remit of the FIU. It is your duty to comply with legal obligations under the AML/CFT laws of Trinidad and Tobago and the FIU as your Supervisory Authority monitors your compliance. Your obligations apply to those activities identified where there is a high risk of money laundering or financing of terrorism occurring.

The AML/CFT laws of Trinidad and Tobago in which you will find your obligations are:

- (1) Proceeds of Crime Act, Chap: 11:27 as amended by Act No. 15 of 2014 (“the POCA”) - applies to all persons, but certain offences such as failure to report and the “tipping-off” offences only apply to persons who are engaged in activities in the regulated sector.
- (2) Anti-Terrorism Act, Chap: 12:07 as amended by Act No 15 of 2014 (“the ATA”) - establishes several offences about engaging in or facilitating terrorism, as well as raising or possessing

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funds for terrorist purposes. The Anti-Terrorism Act applies to all persons but certain offences such as the failure to report and “tipping-off” offences only apply to persons who are engaged in activities in the regulated sector.

- (3) Financial Intelligence Unit of Trinidad and Tobago Act, 2009, Chap 72:01 as amended by Act No. 15 of 2014;
- (4) Financial Obligations Regulations, 2010 as amended by The Financial Obligations (Amendment) Regulations, 2014 (LN No.392) ;
- (5) Financial Intelligence Unit of Trinidad and Tobago Regulations, 2011 as amended by the Financial Intelligence Unit of Trinidad and Tobago (Amendment) Regulations, 2014 (LN No. 403); and; and
- (6) Financial Obligations (Financing of Terrorism) Regulations, 2011.

These laws are available on the FIU’s website <http://www.fiu.gov.tt/>



The FIU is Trinidad and Tobago’s Financial Intelligence Unit. The FIU was established under the FIU Act pursuant to Recommendation 29 (previously recommendation 26 of the 40+9 Recommendations of the Financial Action Task Force (“the FATF”). Recommendation 29 mandates all its member jurisdictions to have a FIU to serve as the information related arm in efforts to combat Money Laundering, Financing of Terrorism and related crimes. The FIU was created as an administrative type FIU, in that it does not have law enforcement or prosecutorial powers. Rather, it is a specialised intelligence agency which is legally responsible for producing financial intelligence for Law Enforcement Authorities (“LEAs”).

The FIU became operational in 2010 upon the proclamation of the FIUTT Act. It is an autonomous department within the Ministry of Finance and the Economy.

The FIU works in very close partnership with individuals and entities that have obligations under the AML/CFT laws such as Financial Institutions and Listed Businesses to ensure that those individuals and entities comply with their obligations to report certain information to the FIU known

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collectively as “reporting entities” and the FIU also and supervises and monitors Listed Businesses for compliance with their AML/CFT obligations. Entities within the real estate sector as “listed businesses” which is supervised by the FIU and they also have reporting obligations as a reporting entity.

## **PART 4**

### **WHAT THE FIU DOES**

#### **(1) Analyses and Produces Intelligence Reports**

Essentially, the FIU is responsible for producing financial intelligence that is then disclosed to law enforcements agencies (“LEAs”) for investigation. To do this, the FIU receives suspicious transaction reports and requests financial information from various reporting entities such as banks, credit unions and other financial institutions, accountants, attorneys- at-law, money services businesses, art dealers, motor vehicle sales, real estate, private members’ clubs. A total of seventeen (17) different reporting sectors must make suspicious transactions or suspicious activity reports (“STRs/SARs”) to the FIU.

On receipt of the STR/SAR report the FIU analyses and looks for links between the financial information received, other relevant information from different sources, intelligence provided by LEAs, as well as from other international partners. Once the analysis leads to the belief that the transaction is related to the commission of an offence of Money Laundering or Financing of Terrorism, the FIU sends an intelligence report to the LEAs with a recommendations that the matter by investigated. The LEAs who the FIU may report to that carry out any criminal investigation are the Commissioner of Police, Comptroller of Customs and Excise, Chief Immigration Officer and Chairman of the Board of Inland Revenue.

The FIUTT receives many reports of suspicious transactions/activities from reporting entities; but some reports may be legitimate transactions when further enquiry is made. The FIU's analysis is therefore, to ensure that only those transactions on which there are reasonable grounds to suspect that they are related to Money Laundering or Financing of Terrorism are disclosed to LEAs. Only transactional information and information relating to the suspicion of Money Laundering

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and Financing of Terrorism are contained in the Intelligence report. For example, the name and other information of the person who actually submitted the report would not be provided to LEAs.

## **(2) Supervises for AML/CFT Compliance**

Another important function of the FIU is the responsibility to ensure compliance with obligations under the POCA, the ATA, the FIU Act and the Regulations made under those Acts. The FIU is the Supervisor for listed businesses and non-regulated financial institutions which have obligations under those Acts and Regulations and is responsible for making sure that they are meeting those obligations.

Activities related to the FIU's compliance mandate would be educating and providing guidelines (such as this ), and enhancing public awareness of Money Laundering and Financing of Terrorism to allow entities who have AML/CFT obligations to be aware and know exactly what they need to do with regard to of meeting their legal obligations. The FIU also conducts on-site inspections and takes action to ensure that the law is being complied with by the supervised entities.



### **WHAT IS MONEY LAUNDERING?**

The offence of money laundering is the process by which illegally obtained funds are given the appearance of having been legitimately obtained. Money laundering begins with the commission of criminal activity which resulted in benefits/gains (illegal funds) to the perpetrator. The perpetrator will then try to disguise the fact that the funds were generated from criminal activity through various processes and transactions which may also involve other individuals, businesses and companies. There is no one single method of laundering money. Methods can range from the purchase and resale of a luxury item (e.g., cars or jewellery) to passing money through legitimate businesses and “shell” companies or as in the case of drug trafficking or other serious crimes. The proceeds usually take the form of cash which needs to enter the financial system by some means.

There are three (3) acknowledged methods in the Money Laundering process. However, the broader definition of Money Laundering offences in POCA includes even passive possession of criminal property.

**(1) Placement**

'Placement' refers to the process by which funds derived from criminal activity are introduced into the financial system. In the case of drug trafficking, and some other serious crimes, such as robbery, the proceeds usually take the form of cash which needs to enter the financial system. Examples of Placement are depositing cash into bank accounts or using cash to purchase assets. Techniques used include "structuring" or 'smurfing'- where instead of making a large deposit transaction and in order to avoid suspicion or detection the illegal receipts are broken up into smaller sums and deposited into single or multiple accounts sometime using other persons to deposit the cash.

**(2) Layering**

Layering place after the funds have entered into the financial system. It involves the movement of the money. Funds may be shuttled through a complex web of multiple accounts, companies, and countries in order to disguise their origins. The intention is to conceal, and obscure the money trail in order to deceive LEAs, to make the paper trail very difficult to follow and to hide the criminal source of the funds.

**(3) Integration**

The money comes back to criminals "cleaned", as apparently legitimate funds. The laundered funds are used to fund further criminal activity or spent to enhance the criminal's lifestyle such as investment into real estate and the purchase of luxury assets.

Successful Money Laundering allows criminals to use and enjoy the income from the criminal activity without suspicion which is why the AML/CTF legislative and compliance regimes are important crime fighting tools.

## PART 6

### WHAT IS FINANCING OF TERRORISM?

Financing of Terrorism is the process by which funds are provided to an individual or group to fund terrorist activities. Unlike Money Laundering, funds can come from both legitimate sources as well as from criminal activity. Funds may involve low dollar value transactions and give the appearance of innocence and may come from a variety of sources. Funds may come from personal donations, profits from businesses and charitable organizations e.g., a charitable organization may organise fundraising activities where the contributors to the fundraising activities believe that the funds will go to relief efforts abroad, but, all the funds are actually transferred to a terrorist group. Funds may also originate from criminal sources, such as the drug trade, the smuggling of weapons and other goods, fraud, kidnapping and extortion.

Unlike money laundering, which always involves proceeds derived from criminal activity, the financing of terrorism involves both legitimate funds as well as funds derived from criminal activity being used in support of executed and planned terrorist activity.

Similar to money launderers, terrorist financiers also move funds to disguise their source, destination and purpose for which the funds are to be used. This is to prevent leaving a trail of incriminating evidence, to distance the funds from the crime or the source, and to obscure the intended destination and purpose thereby avoiding suspicion or detection.

## PART 7

### WHY ARE ENTITIES IN THE REAL ESTATE SECTOR DESIGNATED AS LISTED BUSINESSES?

The FATF, an inter-governmental body which sets international policies for Anti-Money Laundering and Counter-Financing of Terrorism issued forty (40) recommendations on Money Laundering and Terrorist Financing, in a bid to combat the misuse of financial systems by persons laundering money and financing terrorism. Recommendation 28 specified that certain non-financial businesses and professions (referred to as listed businesses), should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary measures to detect and deter money laundering and financing of terrorism.

Various reports produced by the FATF over the last few years have made reference to the fact that the real-estate sector may be one of the many vehicles used by criminal organisations to launder their illicitly obtained money. The real estate sector merits close consideration given the large scope of monetary transactions, its significant social impact, and because of the number of cases in which money laundering, and in limited circumstances terrorist financing and tax fraud schemes, have been detected. Abuse in this sector also has the undesirable effect of political, institutional and economic destabilisation. Moreover, due to the international nature of the real-estate market, it is often extremely difficult to identify real estate transactions associated with money laundering or terrorist financing.

Historically there exists a commercial and residential real-estate market, and the property in both types of market may be bought and sold, managed and/or developed. More recently, new investment vehicles have emerged, including *property investment funds* (PIF) and *real estate investment trusts* (REIT). Such instruments allow average citizens to invest in markets – historically only available to the very wealthy – in order to create a diversified portfolio.

Investment in the real-estate sector offers advantages both for law-abiding citizens and for those who would misuse the sector for criminal purposes. Real property has historically appreciated in value, and many countries offer incentives to buyers, including government subsidies and tax reduction. Most importantly for misuse by criminals, however, is the facility the sector may provide for obscuring the

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true source of the funds and the identity of the (ultimate) beneficial owner of the real asset, which are two key elements of the money laundering process.

The real-estate sector is therefore of extraordinary importance to the economy in general and the financial system in particular. The widespread use of mechanisms allowing households to access the property market, the elimination of personal limitations on property ownership, the economic development and growth of tourism in many regions have all led to exponential growth in the number of financial transactions linked to real-estate. The extraordinary range of possibilities for misusing these processes also allows suspected criminals to integrate and enjoy illegally obtained funds.

Through the implementation of international standards in recent years, countries have put various measures into place within their formal financial sector – which includes, among others, banks and credit unions – in order to prevent money laundering and terrorist financing. Because of the tendency for illegal activity to move to other financial / economic areas that may have less formal oversight or where there is relatively less potential for detection, countries must consider extending AML/CFT measures to other parts of their economies, if they want to respond successfully to this threat. For the real-estate sector, this would necessarily include such key players as real-estate agents, legal advisors and notaries, all of whom are subject to AML/CFT supervision.

## PART 8

### EXAMPLES OF MONEY LAUNDERING USING THE REAL ESTATE SECTOR\*

#### **Case 1 - Use of Illegal Funds in Mortgage Loans and Interest Payments**

(Predicate offence: forgery, deception, fraud, money laundering)

Mr. X was the owner of Company A and the individual controlling its activities. Mr. X hired Mr. Y as front man of Company A. Company A had some low-profile activities in managing and exploiting properties. During the life of Company A, Mr. Y set up a relationship with Bank EUR that provided for accounts and payment services. The property managed by Company A was used for activities by other companies owned by Mr. X (for storage, for example).

Mr. X. planned to buy office buildings for EUR 8 000 000 via Company A. The office buildings had to be renovated to be marketable. Mr. X. knew a licensed assessor (real estate agent), Mr. Z. Mr. X. and Mr. Z found a way to set up a false but plausible assessments of the market value of the office buildings after renovation (EUR 13 000 000). Mr. X ordered Mr. Y to negotiate a mortgage with Bank EUR to finance the purchase and renovation of the property. Based on the assessment, Bank EUR was willing to grant a mortgage of EUR 13 000 000. Mr. Y entered into the loan agreement on behalf of Company A as the buying party. After the disbursement of the loan, the real estate was paid for. Mr X. then paid Mr. Y EUR 500 000 and had the remaining EUR 4.5 million, together with the proceeds of other criminal activities, transferred into several bank accounts in countries with strict bank secrecy. The mortgage of Bank EUR was presented to the foreign banks as the legitimate source of the funds that were being transferred to the accounts. In this way, the money was layered and integrated. The renovation of the office buildings never took place. Meanwhile the activities of Company A rapidly decreased. Company A finally went into default. Bank EUR called the loan, but Mr. Y was not in a position to reimburse it along with the interest payment. Mr Y stated that he was not aware of the persons behind Company A, their whereabouts and the background of the accounts to which the money was transferred.

#### **Indicators and methods identified in the scheme:**

- Applying for a loan under false pretences.
- Using forged and falsified documents.
- The client persisted in a picture of the financial situation that was unrealistic or that could not be supported by documents.
- The loan amount did not relate to the value of the real estate.
- Successive buying and selling of the real property involved.
- The client had several mortgage loans relating to several residences

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\*Cases taken from FATF Report - *Money Laundering and Terrorist Financing through the Real Estate Sector* – March 2007

### **Case 2 – Back-to-back Loan Used to Launder Funds**

(Predicate offence: forged loan agreement, in particular the failure to mention the security underlying the loan and money laundering)

Mr. X was a criminal who deposited funds via one of his corporate vehicles (Company A) into an account at Bank S. Company A was in an offshore jurisdiction that had strict bank secrecy. Mr X. was the owner of Company A, did not want to disclose his identity and thus used a **TCSP** to manage Company A. Mr. X used Company C to mask his real identity. Mr X also set up and controls Company B of which he is the owner. According to the public registers, the official owner and manager of Company B was Mr. Y who acts as a **front-man**. Company B owned several buildings that were rented out to natural persons and companies. This way Mr. X generated legal rental income via Company B. Mr. X was short of money from legitimate sources to expand his legal activities. Based on the financial situation of Company B, Bank N was not willing to grant a loan without additional security. He set up a **back-to-back loan** structure to use his criminal money to invest in real estate.

Bank N was willing to lend money to Company B under the condition that Company B provided sufficient collateral and was willing to pay a high-risk premium on top of the market interest rate. Mr. X. arranged for Bank S to provide a **bank guarantee** to Bank N which could be drawn by Bank N on Bank S in case of a default on the loan. Bank N's credit risk regarding Company B was then fully covered. The loan fit into the financial situation and activities of Company B.

Bank S was willing to provide the bank guarantee to Bank N in name of Company A, with the **pledged deposit** as collateral. The money deposited in Bank S originated from the criminal activities of Mr. X. If Bank N were to withdraw the guarantee on Bank S, Bank S would have used the deposit pledged by Company A to settle the payment with Bank N. For Bank N the original collateral provider Company A, *i.e.* Mr X, was not visible. Bank N only saw Bank S's guarantee. Bank N lent the money to Company B. Through the payment by Bank N as part of the reimbursement of the back-to-back loan, Mr. X was able to provide a valid reason for the money used to finance the real estate. The collateral originated from criminal activities. The laundered money was invested in real estate that provided for legal rental income.

The earnings of Company B were continuously skimmed off by Mr. X to finance his illegal activities. Company B initially made loan and interest payments to Bank N. After a period of time, Company B stopped the payment of the principal and interest. Based on the loan agreement and the banking terms, Bank N withdrew the bank guarantee on Bank S. Bank S used the pledged deposit to settle the payment to Bank N.

#### **Indicators and methods identified in the scheme:**

- No reference in the loan agreement to the underlying collateral.
- The collateral provided was not sufficient
- The collateral provider and other parties involved in the loan structure were not known.
- The borrower of the money was not willing to provide information on the identity and background of the collateral provider nor on the other parties involved in the loan structure.
- The complex nature of the loan scheme could not be justified
- There was an unexpected loan default.

## PART 9

### WHAT ARE YOUR AML/CFT LEGAL OBLIGATIONS?

The AML/CFT laws of Trinidad and Tobago impose obligations on you to:

- I. Register with the FIU*
- II. Submit Reports to the FIU*
- III. Not to "Tip-off"*
- IV. Keep Records*
- V. Ascertain client identity*
- VI. Ascertain whether the client is acting for a Third Party*
- VII. Appoint a Compliance Officer and Alternate Compliance Officer*
- VIII. Develop a written effective Compliance Programme*
- IX. Implement your Compliance Programme and conduct periodic reviews*

#### **I. REGISTRATION WITH THE FIU**

You must register with the FIU for the purpose of identifying yourself as an entity which is supervised by the FIU if you perform any of the specified activities.

You must register with the FIU within three (months) of commencing business activity or incorporation as a company, whichever is the earlier date.

You must also notify the FIU where there is a change of Directors, Owners, Partners or Compliance Officer within six (6) months of such change.

You must also notify the FIU of a change of address of your registered office or principal place of business within six (6) months of such change.

##### **(1) How to Register**

The registration process is very simple and free of charge. On-line pre-registration is available through the FIU's website. However, you must download and print the completed pre-registration form. To complete the registration process you must sign your printed pre-registration form and **manually submit this to the FIU**. Register on **the FIU Registration Form** which **you may access by [clicking here](#)**.

**(2) Offences**

Failure to register within the time stipulated is an offence and you are liable on summary conviction to a fine of \$50,000 and to a further fine of \$5,000 for each day the offence continues.

Failure to notify the FIU of a change of address of your registered office or principal place of business within six months is an offence and you are liable on summary conviction to a fine of \$20,000.

Failure to notify the FIU of a change of Directors, Owners, Partners or Compliance Officer within six (6) months will be an offence and you will be liable on summary conviction to a fine of \$20,000.

**II. SUBMITTING REPORTS TO THE FIU**

**(1) Suspicious Transactions/Activities Reports**

You are required to send to the FIU two (2) types of reports:

- a) **reports of Suspicious Transactions or Activities (STRs/SARs) ; and**
- b) **reports of Terrorist Funds in your possession.**

The relationship between reporting entities and the FIU is a key one, because the FIU can only perform its analytical function to produce financial intelligence if the various reporting entities report the critical information they have.

**Failing to report to the FIU knowledge or suspicion of crime proceeds or terrorist property is a criminal offence.** If you continue to deal with such a transaction or funds knowing or having reasonable grounds to believe that the funds are crime proceeds or terrorists' funds and you do not report it to the FIU then you may have committed the offence of Money Laundering or Financing of Terrorism.

**a) Reporting Suspicious Transactions/Activities**

i. You must submit a Suspicious Transaction Report or Suspicious Activity Report (STR/SAR) to the FIU where you know or have reasonable grounds to suspect:

- that funds being used for the purpose of a transaction are the proceeds of a crime; or
- a transaction or an attempted transaction is related to the commission or attempted commission of a Money Laundering offence; or
- that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.

The STR/SAR must be submitted within fourteen (14) days of the date the transaction was **deemed** to be suspicious.

ii. You **must** submit a STR/SAR to the FIU **immediately** if a designated entity\* attempts to enter into a transaction or continue a business relationship. You must not enter into or continue a business transaction or business relationship with such entity.

**\*A designated entity means any individual or entity and their associates designated as terrorist entities by the Security Council of the United Nations.**

Report using the STR/SAR Form which you may access by [clicking here](#).

You may access the Security Council of the United Nations List ("the UN list") by [clicking here](#).

[Click here](#) for STR Reporting Standard No 1 of 2011 to guide you in completing the STR/SAR form.

iii. ***Defining Knowledge and Suspicion***

The first criterion provides that, before you become obliged to report, **you must know or have reasonable grounds for suspecting**, that some other person is engaged in Money Laundering or Financing of Terrorism.

If you actually 'know' that your client is engaged in Money Laundering, then your situation is quite straightforward – the first criterion is met. However, knowledge can be inferred from the

surrounding circumstances, for example, a failure to ask obvious questions may be relied upon by a jury to imply knowledge.

You are also required to report if you have 'reasonable grounds' to suspect that the client or some other related person is engaged in Money Laundering or Financing of Terrorism. By virtue of this second, 'objective' test, the requirement to report will apply to you if based on the facts of the particular case, a person of your qualifications and experience would be expected to draw the conclusion that those facts should have led to a suspicion of Money Laundering or Financing of Terrorism. The main purpose of the objective test is to ensure that Trust and Company Service Providers (and other regulated persons) are not able to argue that they failed to report because they had no conscious awareness of the Money Laundering activity, e.g. *by having turned a blind eye to incriminating information which was available to them or by claiming that they simply did not realise that the activity concerned amounted to money laundering.*

#### **iv. Attempted Transactions**

You also have to pay attention to **suspicious attempted transactions**. If a client attempts to conduct a transaction, but for whatever reason that transaction is not completed, and you think that the attempted transaction is suspicious, you must report it to the FIU.

Therefore, an attempt is only when concrete action has been taken to proceed with the transaction.

**NOTE:** It is only when you know or reasonably suspect that the funds are criminal proceeds or related to Money Laundering or Financing of Terrorism that you have to report: you do not have to know what the underlying criminal activity is or whether illegal activities have actually occurred.

Money Laundering can take place with any amount of money/cash. If you think a \$1,000 transaction is suspicious, you must report it to the FIU.

You must report suspicious transactions/activities and terrorist funds **on the STR/SAR Form which you may access by [clicking here](#).**

[Click here](#) for **Guidance Note on Suspicious Transaction/Activity Reporting Standards to guide you in completing the STR/SAR form.**

❖ ***Identifying a Suspicious Transaction/Activity***

You must determine whether a transaction or activity is suspicious based on your knowledge of the customer and of the industry. You are better positioned to have a sense of particular transactions which appear to lack justification or cannot be rationalized as falling within the usual methods of legitimate business. While general indicators may point to a suspicious transaction, industry-specific indicators would also help you and your employees to better identify suspicious transactions whether completed or attempted.

What are the risk indicators for the Real Estate Sector?

The real estate sector can be used to facilitate money laundering through each of the three money laundering stages: placement, layering and integration and/or the financing of terrorism. The following circumstances may indicate a risk of money laundering or terrorism financing occurring:

- i. Client sells property below market value with an additional 'under the table' payment;
- ii. Client purchases property without inspecting it;
- iii. Client buys back a property that he or she recently sold;
- iv. Client 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;
- v. Frequent change of ownership of same property, particularly between related or acquainted parties;
- vi. If a property is re-sold shortly after purchase at a significantly different purchase price, without corresponding changes in market values in the same area;

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- vii. Client wants to purchase property in someone else's name such as an associate or a relative (other than a spouse) or makes a last minute substitution of the purchasing party's name without a reasonable explanation.
- viii. Client does not want to put his/her name on any document that would connect him/her with the property or uses different names such as on Offers to Purchase, contract for sale and deposit receipts;
- ix. Transactions which are not completed in seeming disregard of a contract clause penalizing the buyer with loss of the deposit if the sale does not go ahead;
- x. Client pays initial deposit with a cheque from a third party, other than a spouse or a parent;
- xi. Client pays substantial down payment in cash and balance is financed by an unusual source for example a third party or private lender;
- xii. Transactions in which the parties show a strong interest in completing the transaction quickly, without there being good cause;
- xiii. Client's home or business telephone number has been disconnected or there is no such number;

See the [Appendix](#) (pages 27-30) for a list of red flags and suspicious indicators of which you should be cognizant.

**(2) Reporting Terrorist Property/Funds**

a. You **must report immediately** to the FIU the existence of funds within your business where you know or have reasonable grounds to suspect that the funds belong to an individual or legal entity who:

- i. commits terrorist acts or participates in or facilitates the commission of terrorist acts or the financing of terrorism; or
  - ii. is a designated entity according to the United Nations Security Councils 2253 listings;
- or

iii. is a Listed Entity as included in the Trinidad & Tobago Consolidated List of Court Orders? [Click here](#) for Trinidad & Tobago Consolidated List of Court Orders web page.

b. You **must report immediately** to the FIU where you know or have reasonable grounds to believe that a person or entity named on the UN list or the list circulated by the FIU has funds in Trinidad and Tobago.

Report the existence or suspicion of terrorist funds on the **Terrorist Funds Report - FIU TFR Form** which [you may access by clicking here](#).

### III. NO TIPPING-OFF

When you have made a suspicious transaction report to the FIU, you or any member of your staff must not disclose the fact or content of such report to any person. It is an offence to tell any person, including the customer, that you have or your business has filed a suspicious transaction report (STR/SAR) about the customer's transactions.

You must also not disclose to anyone any matter which may prejudice Money Laundering or Financing of Terrorism investigation or proposed investigation.

This prohibition applies to any person acting, or purporting to act on behalf of the business including any agent, employee, partner, director or other officer, or any person engaged under a contract for services.

### IV. RECORD KEEPING

You are required to keep a record of each and every transaction for a specified period. Record keeping is important for use in any investigation into, or analysis of, possible Money Laundering or Financing of Terrorism offence. Records must be kept in a manner which allows for swift reconstruction of individual transactions and provides evidence for prosecution of Money Laundering and other criminal activities.

You must keep the following records in electronic or written format for at least six (6) years or such longer period as the FIU directs. The records must be kept for six (6) years after the end of the business relationship or completion of a one-off transaction:

(1). All domestic and international transaction records;

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- (2). Source of funds declarations;
- (3). Client identification records;
- (4). Client information records;
- (5). Copies of official corporate records;
- (6). Copies of suspicious transaction reports submitted by your staff to your Compliance Officer;
- (7). A register of copies of suspicious transaction reports submitted to the FIU;
- (8). A register of all enquiries made by any Law Enforcement Authority or other competent authority;
- (9). The names, addresses, position titles and other official information pertaining to your staff;
- (10). All Wire transfers records (originator and recipient identification data); and
- (11). Other relevant records.

#### V. ASCERTAINING IDENTITY

You must identify and verify the identity of customers who engage in financial transactions equal to or above TTD 90,000. Financial transactions equal to or above TTD 90,000 include situations where the transaction is carried out in a single operation or in several operations that appear to be linked.

If you are unable to identify and verify a client's identity or obtain sufficient information about the nature and purpose of a transaction, you must **NOT** carry out a transaction for that client or enter into a business relationship with the client and you must terminate any business relationship already established. You should also consider submitting a STR/SAR to the FIU.

*Verifying a client's identity* will include gathering relevant identification documentation which will be a valid passport, national identification card or driver's licence. You should also obtain the permanent address of such a person and proof of address. In the case of an organization, you must ascertain that the client is duly authorized to act for the organization. Where acting for a corporate client for a transaction you should ascertain the identity of the Directors, partners, beneficial owners and other relevant officers of the company. Further and to the extent which may be relevant obtain the certificate

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of incorporation, copy of byelaws (where applicable), management accounts and information on identity of shareholders holding more than 10% of paid up share capital.

There are circumstances where the risk of money laundering or terrorist financing is higher, and Enhanced Due Diligence (EDD) measures have to be taken. You must take specific measures to identify and verify the identity of the following high risk persons (individuals or entities):

1. Any person who conducts a large cash transaction or receives a large pay-out i.e. equal to or over TTD 90,000;
2. Any person who conducts business transactions with persons and financial institutions in or from other countries which do not or which insufficiently comply with the recommendations of the Financial Action Task Force ("the FATF").

[Click here](#) for FATF High Risk and Non-Cooperative Jurisdictions;

3. Domestic and Foreign Politically Exposed Persons (PEPs).

[Click here](#) for Customer Due Diligence Guide No. 1 of 2011 for the categories of persons who are PEPs;

4. Any client or transaction or service or product type that you have identified as posing a higher risk to your business e.g., transactions which involve high levels of funds or cash.
5. Any individual or entity who conducts complex, unusual large transactions, (whether completed or not), unusual patterns of transaction and insignificant but periodic transactions which have no apparent economic or visible lawful purpose;
6. Any individual or entity who conducts business transactions with persons and financial institutions in or from other countries which do not or insufficiently comply with the recommendations of the Financial Action Task Force ("the FATF").  
[Click here](#) for **FATF High Risk and Non-Cooperative Jurisdictions**.
7. Any individual or entity for whom you have to send a suspicious transaction report to the FIU (reasonable measures and exceptions apply e.g. to avoid **tipping-off**)

You must apply EDD measures to high risk clients and situations which include, but are not limited to:

- Obtaining additional information on the customer e.g., additional form of Government issued identification;
- Obtaining details of the source of the client's funds and the purpose of the transaction if relevant;
- Verifying the source of funds for the transaction e.g., if client states the cash is from his bank account, ask for proof;
- Obtaining approval from a senior officer to conduct the transaction;

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- Applying supplementary measures to verify or certify the documents supplied or requiring certification by a financial institution;
- Ongoing monitoring (e.g., monthly, quarterly, annually or on a transaction basis) of the client's account throughout the relationship; and
- implementing any other customer identification policies and procedures to prevent money laundering and financing of terrorism.

#### **VI. Is the Client acting for a Third Party?**

You must take reasonable measures to determine whether the client is acting on behalf of a third party especially where you have to conduct EDD.

Such cases will include where the client is an agent of the third party who is the beneficiary and who is providing the funds for the transaction. In cases where a third party is involved, you must obtain information on the identity of the third party and their relationship with the client.

[Click here](#) for Customer Due Diligence Guide No. 1 of 2011

#### **VII. APPOINT A COMPLIANCE OFFICER**

You must appoint a senior employee or other competent professional as approved in writing by the FIU as a designated Compliance Officer ("CO") for your business/firm. The individual you appoint will be responsible for the implementation of your compliance regime. Where an external party is the designated CO the responsibility for compliance obligations will be that of the business.

You must also appoint an alternate for the CO ("ACO") who shall be a senior employee or such other competent professional as approved in writing by the FIU. The alternate shall discharge the functions of the CO in his absence.

The identity of the CO and ACO must be treated with the strictest confidence by you and your staff.

You must obtain the approval of the FIU for the person nominated as the CO and ACO. If you change your CO and ACO you must inform the FIU immediately and get the FIU's approval for the new CO and ACO.

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Your CO should have the authority and the resources necessary to discharge his or her responsibilities effectively. Depending on your type of business, your CO should report, on a regular basis, to the board of directors or senior management, or to the owner or chief operator.

If you are a small business, employing five (5) persons or less, the CO must be the person in the most senior position.

If you are the owner or operator of the business and do not employ anyone, you can appoint yourself as CO.

If you are a business employing over five [5] persons, the CO should be from a senior management level and have direct access to senior management and the board of directors. Further, as a good governance practice, the appointed CO in a large business should not be directly involved in the receipt, transfer or payment of funds.

Your CO should have the authority and the resources necessary to discharge his or her responsibilities effectively. The CO must:

- a) have full responsibility for overseeing, developing, updating and enforcing the AML/CFT Programme;
- b) have sufficient authority to oversee, develop, update and enforce AML/CFT policies and procedures throughout the company; and
- c) be competent and knowledgeable regarding AML/CFT issues and risks.

Depending on your type of business, your CO should report, on a regular basis, to the board of directors or senior management, or to the owner or chief operator of the business.

The CO's responsibilities include:

- i. Submitting STRs/SARs and TFRs to the FIU and keeping relevant records;
- ii. Acting as Liaison officer between your business and the FIU;
- iii. Implementing your Compliance Programme;
- iv. Directing and enforcing your Compliance Programme;

- v. Ensuring the training of employees on the AML/CFT; and

For consistency and ongoing attention to the compliance regime, your appointed CO may choose to delegate certain duties to other employees. For example, the officer may delegate an individual in a local office or branch to ensure that compliance procedures are properly implemented at that location. However, where such a delegation is made, the CO retains full responsibility for the implementation of the compliance regime.

### **VIII. DEVELOP, AND IMPLEMENT A COMPLIANCE PROGRAMME**

After you have registered with the FIU as a reporting entity, you must develop a written Compliance Programme (“CP”). If you are an organization the CP also has to be approved by senior management.

[Click here](#) for the CP Check list.

The CP is a written document which should include a risk assessment of your particular business and which sets out your system of internal procedures, systems and controls which are intended to mitigate the vulnerabilities and inherent risks identified by you which can be exploited by money launderers and terrorism financiers.

Your CP will contain measures that ensure that you comply with your reporting, record keeping, client identification, employee training, and other AML/CFT obligations. These policies, procedures and controls, must be communicated to employees, and when fully implemented, will help reduce the risk of your business being used for Money Laundering or to Finance Terrorism.

It is advisable to revise the CP on a regular basis say every 2 years, to ensure that measures in place remain commensurate with the risks posed to the business and are current with legal obligations.

A well-designed, applied and monitored regime will provide a solid foundation for compliance with the AML/CFT laws. As not all individuals and entities operate under the same circumstances, your compliance regime will have to be tailored to fit your individual needs. It should reflect the nature, size and complexity of your operations as well as the vulnerability of your business to money laundering and terrorism financing activities.

**The following five (5) elements must be included in your compliance regime:**

- (1). The appointment of a staff member as CO and his/her responsibilities;
- (2). internal compliance policies and procedures such as reporting suspicious transactions to the CO; application of CDD, EDD and record keeping;
- (3). your assessment of your risks to money laundering and terrorism financing, and measures to mitigate high risks;
- (4). ongoing compliance training for all staff at the level appropriate for their job duties; and
- (5). periodic documented review/audits of the effectiveness of implementation of your policies and procedures, training and risk assessment.

[Click here](#) to access the **Guide to Structuring an AML/CFT Compliance Programme**

#### **IX.) IMPLEMENT AND TEST YOUR COMPLIANCE PROGRAMME**

Your obligations include implementing your written CP. The FIU may conduct an onsite examination to determine the effectiveness of implementation of the measures outlined in your CP.

The FIU may conduct an onsite examination to determine whether the measures outlined in your CP are effectively implemented.

All employees involved in the day-to-day business should be made aware of the policies and procedures in place in the business to prevent Money Laundering and Financing of Terrorism.

You must conduct internal testing to evaluate compliance by your staff with your CP, in particular, CDD, EDD, record keeping and suspicious transactions reporting.

In addition, you must conduct internal testing and external independent testing to evaluate the effectiveness of your systems and controls and implementation of same. Such reviews must be documented.

## PART 8

### OFFENCES & PENALTIES

Non-compliance with your obligations under the AML/CFT laws and regulations may result in criminal and or administrative sanctions.

[Click here](#) to access a summary of the Offences and Penalties under the AML/CFT laws and regulations of Trinidad and Tobago.

This summary is intended to guide you in fulfilling your legal obligations under the AML/CFT laws. You may access the laws on the FIU's website, [www.fiu.gov.tt](http://www.fiu.gov.tt) under "Legal Framework".

[Click here](#) to access the laws.

## PART 9

### ADDITIONAL RESOURCES

Additional reference materials include:

- the AML/CFT laws available on the FIU's website, [www.fiu.gov.tt](http://www.fiu.gov.tt) under "Legal Framework". The FATF recommendations at [www.fatf-gafi.org/recommendations](http://www.fatf-gafi.org/recommendations).
- the FATF recommendations at

[http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF\\_Recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf)

- the FATF Report - *Money Laundering and Terrorist Financing through the Real Estate Sector* – March 2007 at <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20through%20the%20Real%20Estate%20Sector.pdf>

Revised as of August 2017

Susan Francois

Director

**Appendix<sup>2</sup>**

**AML/CFT Suspicious Indicators for the Real Estate Sector**

*Natural persons*

- Transactions involving persons residing in tax havens or risk territories, when the characteristics of the transactions match any of those included in the list of indicators.
- Transactions carried out on behalf of minors, incapacitated persons or other persons who, although not included in these categories, appear to lack the economic capacity to make such purchases.
- Transactions involving persons who are being tried or have been sentenced for crimes or who are publicly known to be linked to criminal activities involving illegal enrichment, or there are suspicions of involvement in such activities and that these activities may be considered to underlie money laundering
- Transactions involving persons who are in some way associated with the foregoing (for example, through family or business ties, common origins, where they share an address or have the same representatives or attorneys, etc.).
- Transactions involving an individual whose address is unknown or is merely a correspondence address (for example, a PO Box, shared office or shared business address, etc.), or where the details are believed or likely to be false.
- Several transactions involving the same party or those undertaken by groups of persons who may have links to one another (for example, family ties, business ties, persons of the same nationality, persons sharing an address or having the same representatives or attorneys, etc.).
- Individuals who unexpectedly repay problematic loans or mortgages or who repeatedly pay off large loans or mortgages early, particularly if they do so in cash.

*Legal persons*

- Transactions involving legal persons or legal arrangements domiciled in tax havens or risk territories, when the characteristics of the transaction match any of those included in the list of indicators.
- Transactions involving recently created legal persons, when the amount is large compared to their assets.

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\* The information reproduced in this section is taken from the Financial Action Task Force (FATF) Report – *Money Laundering and Terrorist Financing through the Real Estate Sector* – March 2007

**AML/CFT Suspicious Indicators for the Real Estate Sector (continued)**

- Transactions involving legal entities, when there does not seem to be any relationship between the transaction and the activity carried out by the buying company, or when the company has no business activity. Transactions involving foundations, cultural or leisure associations, or non-profit-making entities in general, when the characteristics of the transaction do not match the goals of the entity.
- Transactions involving legal persons which, although incorporated in the country, are mainly owned by foreign nationals, who may or may not be resident for tax purposes.
- Transactions involving legal persons whose addresses are unknown or are merely correspondence addresses (for example, a PO Box number, shared office or shared business address, etc.), or where the details are believed false or likely to be false.
- Various transactions involving the same party. Similarly, transactions carried out by groups of legal persons that may be related (for example, through family ties between owners or representatives, business links, sharing the same nationality as the legal person or its owners or representatives, sharing an address, in the case of legal persons or their owners or representatives, having a common owner, representative or attorney, entities with similar names, etc.).
- Formation of a legal person or increases to its capital in the form of non-monetary contributions of real estate, the value of which does not take into account the increase in market value of the properties used.
- Formation of legal persons to hold properties with the sole purpose of placing a front man or straw man between the property and the true owner.
- Contribution of real estate to the share capital of a company which has no registered address or permanent establishment which is open to the public in the country.
- Transactions in which unusual or unnecessarily complex legal structures are used without any economic logic.

*Natural and legal persons*

- Transactions in which there are signs, or it is certain, that the parties are not acting on their own behalf and are trying to hide the identity of the real customer.
- Transactions which are begun in one individual's name and finally completed in another's without a logical explanation for the name change. (For example, the sale or change of ownership of the purchase or option to purchase a property which has not yet been handed over to the owner, reservation of properties under construction with a subsequent transfer of the rights to a third party, etc.).

*(continued on next page)*

**AML/CFT Suspicious Indicators for the Real Estate Sector (continued)**

- Transactions in which the parties:
  - o Do not show particular interest in the characteristics of the property (*e.g.* quality of construction, location, date on which it will be handed over, etc.) which is the object of the transaction.
  - o Do not seem particularly interested in obtaining a better price for the transaction or in improving the payment terms.
  - o Show a strong interest in completing the transaction quickly, without there being good cause.
  - o Show considerable interest in transactions relating to buildings in particular areas, without caring about the price they have to pay.
- Transactions in which the parties are foreign or non-resident for tax purposes and:
  - o Their only purpose is a capital investment (that is, they do not show any interest in living at the property they are buying, even temporarily, etc.).
  - o They are interested in large-scale operations (for example, to buy large plots on which to build homes, buying complete buildings or setting up businesses relating to leisure activities, etc.).
- Transactions in which any of the payments are made by a third party, other than the parties involved. Cases where the payment is made by a credit institution registered in the country at the time of signing the property transfer, due to the granting of a mortgage loan, may be excluded.

*Intermediaries*

- Transactions performed through intermediaries, when they act on behalf of groups of potentially associated individuals (for example, through family or business ties, shared nationality, persons living at the same address, etc.).
- Transactions carried out through intermediaries acting on behalf of groups of potentially affiliated legal persons (for example, through family ties between their owners or representatives, business links, the fact that the legal entity or its owners or representatives are of the same nationality, that the legal entities or their owners or representatives use the same address, that the entities have a common owner, representative or attorney, or in the case of entities with similar names, etc.).
- Transactions taking place through intermediaries who are foreign nationals or individuals who are non-resident for tax purposes.

*(continued on next page)*

**AML/CFT Suspicious Indicators for the Real Estate Sector (continued)**

*Means of payment*

- Transactions involving payments in cash or in negotiable instruments which do not state the true payer (for example, bank drafts), where the accumulated amount is considered to be significant in relation to the total amount of the transaction.
- Transactions in which the party asks for the payment to be divided in to smaller parts with a short interval between them.
- Transactions where there are doubts as to the validity of the documents submitted with loan applications.
- Transactions in which a loan granted, or an attempt was made to obtain a loan, using cash collateral or where this collateral is deposited abroad.
- Transactions in which payment is made in cash, bank notes, bearer cheques or other anonymous instruments, or where payment is made by endorsing a third-party's cheque.
- Transactions with funds from countries considered to be tax havens or risk territories, according to anti-money laundering legislation, regardless of whether the customer is resident in the country or territory concerned or not.
- Transactions in which the buyer takes on debt which is considered significant in relation to the value of the property. Transactions involving the subrogation of mortgages granted through institutions registered in the country may be excluded.

*Nature of the Transaction*

- Transactions in the form of a private contract, where there is no intention to notarise the contract, or where this intention is expressed, it does not finally take place.
- Transactions which are not completed in seeming disregard of a contract clause penalising the buyer with loss of the deposit if the sale does not go ahead.
- Transactions relating to the same property or rights that follow in rapid succession (for example, purchase and immediate sale of property) and which entail a significant increase or decrease in the price compared with the purchase price.
- Transactions entered into at a value significantly different (much higher or much lower) from the real value of the property or differing markedly from market values.
- Transactions relating to property development in high-risk urban areas, in the judgement of the company (for example, because there is a high percentage of residents of foreign origin, a new urban development plan has been approved, the number of buildings under construction is high relative to the number of inhabitants, etc.).

**Please note that this is not an exhaustive list of suspicious indicators.**