



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

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Estate Agents

Sector Specific AML/CFT Guidance Notes

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Whilst this publication has been prepared by the Financial Services Authority, it is not a legal document and should not be relied upon in respect of points of law. Reference for that purpose should be made to the appropriate statutory provisions.

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Version history

<p>Version 2 (August 2021)</p>	<p>Updates made to links in relation to the updated NRA</p> <p>Updates to reflect changes to the main structure of the AML/CFT Handbook</p> <p>Updates to the Who is your customer?, SoF and SoW sections and the case studies</p>
<p>Version 3 (July 2023)</p>	<p>Updates made to links and link added to the FATF guidance July 2022</p> <p>Updates to the following sections following the updated FATF guidance; Foreword, Who is your customer?, Risk Guidance, General Higher Risk Indicators, Red Flags, Risk factors specific to the sector, SoF</p> <p>Section 6 added on EDD</p>

1. Foreword

For the purposes of this sector specific guidance, the term Estate Agent refers to a business conducting activity included in paragraph 2(6)(o) [Schedule 4 to the Proceeds of Crime Act 2008](#) (“POCA”). The activity is defined as follows:

(o) subject to sub-paragraph (18), an estate agent;

“**estate agent**” means a person who practices, or carries on business, as an estate agent, within the meaning of section 15 of the *Estate Agents Act 1975*;

(18) Sub-paragraph (6)(o) does not apply where there is a grant of tenancy agreement and the estate agent does not take possession of funds from a tenant.

As stated in section 15 of the [Estate Agents Act 1975](#):

15 Persons treated as practising, or carrying on business, as estate agents

(1) For the purposes of this Act, practice as an estate agent shall be taken to be, and only to be, the doing, in connection with the sale or proposed sale of land of any of the following acts, namely —

- (a) bringing together, or taking steps to bring together, the vendor and a prospective purchaser;
- (b) negotiating as to the terms of the sale with the vendor or a prospective purchaser;
- (c) acting as an auctioneer¹

“Sale of land” includes the grant of a tenancy at a rent and any other disposal for valuable consideration of an estate, interest or right in or over land, whether subsisting before or created by the disposal, and “vendor” and “purchaser” shall be construed accordingly.

For the avoidance of doubt, estate agency activity is captured by the Island’s AML/CFT framework where the transaction involves IOM land.²

The term ‘Real Estate Agent’ is defined by the FATF as follows:

“A real estate agent should be broadly understood as a professional that operates within the real estate sector and is involved in transactions for a client concerning the **buying** and **selling** of real estate.”

¹ Please refer to section 15 of the Estate Agents Act 1975 for the full list of activities referred to in relation to acting as an auctioneer

² Land is defined in the Estate Agents Act 1975

By virtue of being included in Schedule 4 to POCA, the business of an estate agent is subject to the [Anti-Money Laundering and Countering the Financing of Terrorism Code 2019](#) (“the Code”). Also, this sector is included in the [Designated Businesses \(Registration and Oversight\) Act 2015](#) (“DBROA”) which came into force in October 2015. The DBROA gives the Isle of Man Financial Services Authority (“the Authority”) the power to oversee this sector for Anti-Money Laundering and Countering the Financing of Terrorism (“AML/CFT”) purposes.

2. Introduction

The purpose of this document is to provide guidance specifically for Estate Agents in relation to AML/CFT. This document should be read in conjunction with both the Code and the main body of the [AML/CFT Handbook](#) (“the Handbook”).

Though the guidance in the Handbook, and this sector specific guidance, is neither legislation nor constitutes legal advice, it is persuasive in respect of contraventions of AML/CFT legislation dealt with criminally, by way of civil penalty or in respect of the Authority’s considerations of a relevant person’s (as such a term is defined in paragraph 3 of the Code) regulatory / registered status and the fit and proper status of its owners and key staff where appropriate.

This document covers unique Money Laundering and Terrorist Financing (“ML/TF”) risks that may be faced by Estate Agents and provides further guidance in respect of approaches to customer due diligence. Also, some case studies have been included to provide context to the risks of the sector.

This document is based on the following documents:

- [FATF Risk-based Approach Guidance – Real Estate Sector - July 2022](#);
- [FATF Money Laundering & Terrorist Financing through the Real Estate Sector – June 2007](#); and
- [UK HMRC Estate agency guidance for money laundering supervision – July 2022](#)

There are also references to Estate Agents which are worth considering in the following documents published by Transparency International:

- [Corruption on your Doorstep](#) – 2015; and
- [Towards better AML Practice – Real Estate Scoping Paper](#) – 2018.

The Authority recommends that relevant persons familiarise themselves with these documents and other typology reports concerning the sector.

2.1 National Risk Assessment

The Island's [National Risk Assessment](#) ("NRA") was published in 2015 and was updated in 2020. Estate Agents must ensure their business risk assessment (and customer risk assessments where necessary) take into account any relevant findings of the NRA.

The main vulnerability of the sector, the purchase and selling of land and property to disguise the proceeds of crime and corruption, is a significant typology internationally. Real estate is a relatively stable and safe investment which can be effective in generating returns or capital; it is therefore attractive to money launderers seeking to integrate or layer their assets. The NRA sets out the main risks and vulnerabilities in further detail.

The ML risk for Estate Agents in the IoM is assessed as medium low. This is because the sector is small and highly domestic in nature, the sector is not primarily cash based, there are a number of other financial and non-financial professionals engaged in the transactions and active oversight takes place. The TF risk for purchase of property in the IoM is regarded as low.

3. Who is your customer?

3.1 Sales

In relation to the sale of real estate, as the Code stands currently, the Estate Agent's customer is the person selling the property. However, it is the expectation of the Authority, in line with international standards, for Estate Agents to identify and verify the identity of both the buyer as well as the seller in an arrangement³. Therefore, the requirements of the Code such as risk assessment, customer due diligence (including source of funds), ongoing monitoring, record keeping etc. are expected to be applied to both parties.

Where the seller is a legal person or a legal arrangement, the beneficial ownership and control requirements of paragraph 12 of the Code must also be complied with.

It is important to note that a property sale may be undertaken as an occasional transaction rather than treated as a business relationship. This is because, due to the nature of the industry, most transactions are likely to be one-off with buyers and sellers of real estate. This therefore means that customers are not entering into an ongoing business relationship with an Estate Agent. Where it is an occasional transaction, the level of understanding of customer profiles is reduced making ongoing monitoring less effective, specifically in regards to identifying any suspicious or unusual activity. Therefore, where an occasional transaction takes place, it is imperative, and a Code requirement, that the source of funds and the purpose of the transaction are fully understood, satisfied and documented.

³ It is proposed the Code will be amended in due course to reflect international standards.

If the Estate Agent suspects that any party involved in the transaction may be involved in ML/TF, the Estate Agent must make a disclosure on that person⁴. Please see Part 7 of the Code and chapter 5 of the Handbook for further details in relation to disclosures.

3.2 Letting

3.2.1 What is in scope?

Estate agency business as referred to in section 15 of the *Estate Agent Act 1975* includes letting activity, namely:

- (a) bringing together, or taking steps to bring together, the vendor and a prospective purchaser;
- (b) negotiating as to the terms of the sale with the vendor or a prospective purchaser;
- (c) acting as an auctioneer⁵

3.2.2 What is out of scope?

If the person is solely collecting rent from a tenant and not doing any of the above estate agency activities included in (a) to (c), the person would not be caught by the Estate Agents Act 1975 and would not be subject to schedule 4 of POCA and therefore is not in scope of the Code.

Further, Paragraph 2(18) of schedule 4 to POCA excludes letting activity where the Estate Agent, although conducting estate agency activities, does not take possession of funds from a tenant. Therefore, there is no requirement to comply with the Code in such arrangements.

3.2.3 Who is the customer?

In cases where the person is conducting Estate Agency activity included in (a) to (c), and is taking possession of funds from a tenant, both the landlord and the tenant would be customers of the Estate Agent. As this would be a business relationship rather than an occasional transaction all requirements of the Code apply to these persons such as risk assessment, customer due diligence (including source of funds), ongoing monitoring, record keeping etc.

⁴ The obligation to disclose under section 142 of POCA is not limited to a regulated person's customer.

⁵ Please refer to section 15 of the Estate Agents Act 1975 for the full list of activities referred to in relation to acting as an auctioneer

If the Estate Agent suspects that any party involved in the transaction may be involved in ML/TF, the Estate Agent must make a disclosure on that person. Please see Part 7 of the Code and chapter 5 of the AML/CFT Handbook for further details in relation to disclosures.

4. Risk Guidance

Real estate is a relatively stable and safe investment which has the capacity to generate returns or capital appreciation much more effectively than much of the securities market. This makes real estate an attractive and sound investment for those seeking a return on their money. The letting of property also offers opportunities for a regular flow of payments to be made and received. As a direct consequence of this, the real estate market is an attractive place for money launderers to integrate or layer their assets. Further, it is important to note that transactions involving TF may be particularly difficult to identify.

Real estate professionals must understand how the business can be exposed to ML/TF risks and ensure systems and controls are designed and implemented to address these risks. The following sections of the guidance covers some of the risk factors specifically related to this particular sector. Further guidance surrounding the risk assessments is outlined in chapter 2 of the Handbook.

A number of risk assessments must be carried out by sectors as set out in the Code, including:

- a business risk assessment (paragraph 5);
- customer risk assessments (paragraph 6); and
- a technology risk assessment (paragraph 7).

These risk assessments should be used to adopt a risk based approach in assessing the risks relating to its business, its customers and any technology used, it should also assist in determining what CDD is required for that customer. The facilitation of ML/TF is a serious problem that businesses should be aware of, and whilst utilising a risk based approach cannot provide a full guarantee to a firm that it will be protected from being used to facilitate ML/TF, it can assist businesses in understanding its risks and implementing AML/CFT measures to manage and mitigate these risks effectively.

Although, when acting for a seller of property, Estate Agents may not handle funds, they do deal with the customer and may develop a more in depth relationship with that customer than a bank or legal professional; as such they are in a position to be able to identify unusual or suspicious behaviour and file appropriate disclosures. In a letting scenario the Estate Agent may also handles funds. Therefore, vigilance is key in all aspects of the relationship including:

- the on-boarding of the customer;
- instructions given by a customer;
- transactions entered into by the customer;
- ongoing monitoring of the business relationship; and

- technology / security issues if there is an online element to the business relationship.

4.1 General Higher Risk Indicators

As with the basic elements of a risk assessment, discussed in chapter 2 of the Handbook, the following activities may increase the risk of the relationship. Just because an activity / scenario is listed below it does not automatically make the relationship high risk; the rationale / nature / purpose of the business relationship etc. should be considered in all cases.

If a business is unable to obtain a satisfactory explanation from a customer in the event of the following situations, features, or activities, or any other features which cause it concerns, it should be determined whether this is suspicious or unusual activity. Please refer to chapter 5 of the Handbook for further detail of the Island's suspicious activity reporting regime.

As stated in paragraph 13 (Ongoing monitoring) of the Code:

13 Ongoing monitoring

- (2) Where a relevant person identifies any unusual activity in the course of a business relationship or occasional transaction the relevant person must –
- (a) perform appropriate scrutiny of the activity;
 - (b) conduct EDD in accordance with paragraph 15; and
 - (c) consider whether to make an internal disclosure.
- (3) Where a relevant person identifies any suspicious activity in the course of a business relationship or occasional transaction the relevant person must –
- (a) conduct EDD in accordance with paragraph 15 of the Code, unless the relevant person believes conducting EDD will tip off the customer; and
 - (b) make an internal disclosure.

This list of higher risk indicators is by no means exhaustive, and relevant persons should be vigilant for any transactions where suspicion may be aroused and take appropriate measures. Also please see the list of red flags included at 4.2.

- Where a customer is reluctant to provide normal information or provides only minimal information.
- Where a customer's documentation cannot be readily verified.
- Where a legal owner is the customer, where it is difficult to identify the owner or the controlling interest.
- The customer is reluctant to provide the business with complete information about the nature and purpose of the relationship including anticipated activity.
- The customer is located in a higher risk jurisdiction.
- Property transactions involving numerous and/or higher risk jurisdictions.
- The proceeds of rental are sent to a high-risk jurisdiction or a third party.

- Property sales involving large amounts of cash⁶, especially where the amount is considered to be significant in relation to the total amount of the transaction.
- Property sales involving complex loan arrangements, credit finance, or other obscure means of finance, rather than loans from regulated financial institutions.
- Property sales involving commercial real estate, particularly where a number of commercial properties are purchased without reasonable explanation.
- Property sales involving luxury real estate.
- The use of corporate vehicles, nominees or complex structures that may obscure beneficial ownership.
- The use of monetary instruments.
- The use of mortgage schemes inappropriately (e.g. obtaining mortgages and using illegal funds to repay the loan / interest), also use of front men / actors to obtain mortgages).
- The customer unexpectedly repays problematic loans or mortgages or who repeatedly pays off large loans or mortgages early, particularly if they do so in cash.
- Manipulation of the appraisal or valuation of a property followed by a succession of sales and purchases.
- The customer has no discernible reason for using the business' services, or the business' location.
- Unexplained changes in financing arrangements.
- Unexplained use of virtual assets.
- Where the customer is considered to be a PEP, having greater exposure to bribery and corruption.
- Where a property which was sold previously is re-marketed following renovation without clear rationale and source of funding.
- The customer's address is associated with multiple accounts that do not appear to be related.
- The customer is known to be experiencing extreme financial difficulties.
- The nature of property sale does not seem in line with the customer's expected activity and / or customer's profile.
- The customer undertakes transactions without any regards to loss, commissions or other costs associated with that account / product.
- The customer has not viewed the property.
- The customer does not appear particularly interested in the characteristics of the property e.g. quality of construction, location etc.
- The customer does not seem particularly interested in obtaining a better price or improving payment terms.
- The customer acts through intermediaries such as money managers or advisers in order not to have their identity registered.
- The required service was refused by another estate agent or the relationship with another estate agent was terminated.

⁶ Whilst Estate Agents may not handle cash directly, they may be aware of large amounts of cash being involved in a property sale or transaction.

- The customer exhibits unusual concern with the businesses' compliance with Government reporting requirements / AML/CFT policies and procedures.

4.2 Red Flags

In addition to the above higher risk indicators, there are some factors that are likely to be “red flags” in relation to that particular relationship or occasional transaction and would therefore usually be suspicious activity. If a relevant person identifies suspicious activity appropriate steps as explained in section 3 of this document, chapter 5 of the Handbook and in the Code, must be taken. This list of red flags is by no means exhaustive and is as follows:

- where it is identified a customer provides false or misleading information;
- where it is identified a customer provides suspicious identification documents;
- the customer refuses to provide the business with relevant / accurate information about the nature and intended or ongoing purpose of the relationship;
- the customer is secretive / evasive when asked to provide more information;
- when requested, the customer refuses to identify a legitimate source of funds or source of wealth;
- the customer refuses to provide details on beneficial owners of an account or provides information which is false, misleading or substantially incorrect;
- transactions which are begun in the name of one individual and completed in the name of another without a logical explanation for the name change;
- the customer wishes for the transaction to be unduly expedited without a reasonable explanation;
- the customer settles a transaction by way of virtual assets and refuses to provide details regarding the rationale for the payment or the source of funds or source of wealth;
- the customer enquires about how quickly they can end a business relationship where it is not expected;
- where the business relationship is ended unexpectedly by the customer and the customer accepts unusually high fees to terminate the relationship without question;
- the customer appears to be selling properties immediately before restraint or insolvency;
- the introduction of unknown parties at a late stage in transactions;
- the use of nominees and complex structures preventing beneficial ownership information from being determined;
- third parties being used within the process in order to obscure the true buyer;
- the customer appears to be acting on behalf of someone else and does not provide satisfactory information regarding whom they are acting for;
- successive transactions, especially of the same property in a short period of time, with unexplained changes in value;

- the customer is known to have criminal / civil / regulatory proceedings against them for crime, corruption, misuse of public funds or is known to associate with such persons; and
- the customer is interested in paying higher charges to keep their identity secret.

4.3 Risk factors specific to the sector

The estate agency sector is attractive to launder money as it appears to afford criminal organisations the following advantages:

- it allows them to introduce illegal funds into the legitimate economy;
- it allows the earning of additional profits through rental income, purchase and/or resale;
- in some cases obtaining tax advantages (such as rebates, subsidies, etc.);
- it allows for the movement of large amount of funds in a single transaction; and
- the nature of transactions reduces the level of understanding of customer profiles.

Examples of how the sector can be used for money laundering include the following:

- buying property using proceeds of crime and then selling, or renting, the property to then give an apparent legitimate source of funds;
- the operation of a cash intensive business such as a hotel or construction business;
- over, or under, estimation of property value;
- complex ownership structures involved in the property purchase e.g. involvement of anonymous companies or companies with nominee shareholders obscuring the real owner or the source of funds;
- property sales involving luxury real estate which may allow for criminals to place larger amounts of funds in a single transaction;
- property sales involving commercial real estate which may involve multiple parties in various parts of the transaction obscuring the source of funds;
- source of funds being the result of a mortgage fraud;
- a more direct method of paying an Estate Agent a large amount of money and reclaiming it later on; and
- rental stream payments themselves may be criminal proceeds even if the landlord is legitimate, either in residential rental accommodation or commercial operating premises.

The over-valuation, or under-valuation, of real estate presents a particular vulnerability of money laundering. This technique consists of buying or selling property at a price above or below its market value. This process should raise suspicions, as should the successive sale or

purchase of properties with unusual profit margins and purchases by apparently related participants.

An often-used structure is, for example, the setting up of shell companies to buy real estate. Shortly after acquiring the properties, the companies are voluntarily wound up, and the criminals then repurchase the property at a price considerably above the original purchase price. This enables them to insert a sum of money into the financial system equal to the original purchase price plus the capital gain, thereby allowing them to conceal the origin of their funds.

In the case of successive sales and purchases, the property is sold in a series of subsequent transactions, each time at a higher price. Law enforcement cases have shown that these operations also often include, for example, the reclassification of agricultural land as building land. The sale is therefore fictitious, and the parties involved belong to the same criminal organisation or are non-financial professionals in the real-estate sector who implicitly know the true purpose of the transactions or unusual activity.

A number of cases reveal that criminals and terrorists have used non-financial professionals or gatekeepers to access financial institutions. This is especially important during the process of determining eligibility for a mortgage, opening bank accounts, and contracting other financial products, to give the deal greater credibility.

5. Customer due diligence

Part 4 of the Code requires relevant persons to undertake customer due diligence and ongoing monitoring in relation to all business relationships. Chapter 3 of the Handbook provides guidance on how to identify and verify the identity of the customer in relation to both a natural and legal person. It also provides general guidance on the timing of identification and verification of identity. For details of particular concessions which may be relevant please see chapter 4 of the Handbook.

In all cases where the requirements of Part 4 of the Code cannot be met (Paragraphs 8(5), 9(9), 10(5), 12(11), 14(6), 15(8) and 19(11)) the procedures and controls must ensure that —

- (a) the business relationship must proceed no further;
- (b) the relevant person must consider terminating⁷ the business relationship; and
- (c) the relevant person must consider making an internal disclosure.

⁷ In relation to a new business relationship (paragraph 8) the business relationship must be terminated.

5.1 Source of funds

Paragraph 8(3)(e) of the Code requires the taking of reasonable measure to establish the source of funds for all new business relationships.

8 New business relationships

(e) taking reasonable measures to establish the source of funds, including where the funds are received from an account not in the name of the customer —

- (i) understanding and recording the reasons for this;
- (ii) identifying the account holder and on the basis of materiality and risk of ML/FT taking reasonable measures to verify the identity of the account holder using reliable, independent source documents, data or information; and
- (iii) if the account holder is assessed as posing a higher risk of ML/FT, satisfying the requirements in paragraph 15.

The requirement is to take “reasonable measures to establish” source of funds rather than requiring relevant persons to “verify” such. These two terms are distinct. Whereas “verify” would require the use of reliable, independent source documents, data or information in every case, “reasonable measures to establish” allows greater flexibility according to the particular materiality and risk of ML/TF of the business relationship / occasional transaction. Those “reasonable measures to establish” in any given case may therefore range from obtaining information to verifying that information using reliable, independent source documents, data or information, and all the steps in between to enable a relevant person to manage and mitigate their identified ML/TF risks.

It is particularly important for Estate Agents to understand the source of funds in an occasional transaction as relationships of this nature are not subject to ongoing monitoring.

Please also see section 3.8 of the Handbook for guidance in relation to source of funds and source of wealth.

5.1.1 Sales

Estate Agents must establish the source of funds used to purchase the property that is now being placed on the market for sale.

Where the purchase of the property was fully or partially funded by a mortgage or other lending instrument the Estate Agent should take reasonable steps to establish who the lender was. The Estate Agent should also establish the source of funds of any deposit used to fund the purchase.

Where the property was purchased outright the Estate Agent must establish the source of the funds used for the purchase.

Estate Agents may also wish to obtain a signed undertaking from the seller stating at the property is owned by them and that they have the right to dispose of the property.

5.1.2 Letting

Where a letting arrangement is caught by the Code the Estate Agent must establish the source of funds of the customer (the Authority would expect this to include both the landlord and the tenant(s)).

For landlords the Estate Agent must establish the source of funds used to purchase the property that is being let, as detailed in 5.1.1.

For tenants the Estate Agent must establish the source of funds of the rent that is being received e.g. salary. For tenants, as funds are being received by the Estate Agent, the means through which the funds are transferred must also be established.

6. Enhanced due diligence

Paragraph 15 of the Code requires enhanced due diligence to be undertaken in certain circumstances, for example in relation to a higher risk customer and where unusual and / or suspicious activity is identified. Paragraph 15(2) states enhanced due diligence includes:

15 Enhanced due diligence

- (a) considering whether additional identification information needs to be obtained and, if so, obtaining such additional information;
- (b) considering whether additional aspects of the identity of the customer need to be verified by reliable independent source documents, data or information and, if so, taking reasonable measures to obtain such additional verification;
- (c) taking reasonable measures to establish the source of the wealth of a customer;
- (d) undertaking further research, where considered necessary, in order to understand the background of a customer and the customer's business; and
- (e) considering what additional ongoing monitoring should be carried out in accordance with paragraph 13 and carrying it out.

Estate Agents should consider applying EDD measures when any of the above listed higher risk factors occur. Further guidance on enhanced due diligence is at section 3.4.7 of the Handbook.

7. Case Studies

The case studies below are real life examples of risks that have crystallised causing losses and / or sanctions (civil and criminal) against the sector.

7.1 Funds of drug trafficking used to fund a hotel purchase

A financial intelligence unit received information that a previously convicted drug trafficker had made several investments in real estate and was planning to buy a hotel. An assessment of his financial situation did not reveal any legal source of income. He was subsequently arrested and charged with an offence of money laundering. Further investigation substantiated the charge that part of the invested funds were proceeds of his own drug trafficking. He was charged with substantive drug trafficking, drug money laundering and other offences.

In the same case the criminal's lawyer received the equivalent of approximately US\$ 70 000 cash from his client, placed this money in his client's bank account and later made payments and investments on the client's instructions. He was charged with negligent money laundering in relation to these transactions.

The drug trafficker was convicted of drug trafficking and sentenced to seven and a half years imprisonment, and a confiscation order was made for USD450,000. The lawyer was convicted and sentenced to 10 months imprisonment.

7.2 An individual attempts to launder their spouses illicitly obtained funds through property

An individual sought to launder their spouse's illicitly obtained funds through the purchase of a substantial number of properties over a ten year period using the same Estate Agent. The spouse was a well-known criminal, and was always listed by name on the contract of sale. The buyer was unemployed, which was also declared on each contract of sale.

None of the properties acquired were financed through a bank loan, and in a number of the purchases, the money used by the buyer had never even entered the financial system through a bank or other institution.

The properties were all situated in different areas, and were all of differing values, but none of them were deemed to be high-end properties with a very high market value.

When this case was analysed it was determined that there was a reasonable suspicion of money laundering.

7.3 Foreign individual attempting to launder funds through property

A foreign individual connected with lucrative criminal activity outside the jurisdiction sought to launder funds in the jurisdiction through the purchase of real estate. Within a short span of time, the individual bought five luxurious apartments with a combined value of EUR3.5 million. The individual used the services of the same notary for every purchase.

Some of the apartments were bought by the individual in their own name, while others were bought by local legal professionals acting as trustees for trusts which had been set up for the benefit of the individual and his children.