



THE FINANCIAL REPORTING CENTRE

**ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING
GUIDANCE FOR REAL ESTATE AGENCIES**

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OVERVIEW

Real estate agencies play a vital role in the real estate sector due to their direct contact with sellers and buyers. They act as advisors, negotiators, facilitators and brokers of legal and natural persons looking to purchase, rent, sell or lease property. Real estate agencies are therefore uniquely positioned in the detection of money laundering and terrorism financing.

The National Money Laundering and Terrorism Financing Risk Assessment Report 2021 (NRA) identified real estate as a high-risk sector for money laundering and terrorist financing (ML/TF). This is partly attributed to increased Anti-Money Laundering and Counter-Financing of Terrorism (AML/CFT) regulations and controls in the financial sector, forcing criminals to look for alternative ways of laundering illicit proceeds. Designated Non-Financial Businesses and Professions (DNFBPs) such as real estate agencies, with weak AML/CFT measures become relatively attractive.

In order to prevent the exploitation of the real estate sector by criminals, there is a need to enhance the implementation of AML/CFT measures to counter the ML/TF risks. As such, real estate agencies as core players in the real estate sector need to be aware of their obligations under the AML/CFT legal framework and encouraged to fulfill them.

In light of the above, this Guidance shall: discuss the real estate sector vulnerability by highlighting the findings of the NRA; discuss the role of the Financial Reporting Centre as the supervisor of all reporting institutions, and Estate Agents Registration Board (EARB) as a supervisory body; inform real estate agencies of their obligations under the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA) and the Proceeds of Crime and Anti-Money Laundering Regulations, 2013 (POCAML Regulations); and highlight other matters including the protection from liability when fulfilling their obligations and offences related to ML/TF.

ABBREVIATIONS

ACR	Annual Compliance Report
AML/CFT	Anti-Money Laundering and Counter-Financing of Terrorism
CDD	Customer Due Diligence
DNFBP	Designation Non-Financial Businesses and Professionals
EARB	Estate Agents Registration Board
EDD	Enhanced Due Diligence
MLRO	Money Laundering Reporting Officer
ML/TF	Money Laundering and Terrorism Financing
NRA	the National Money Laundering and Terrorism Financing Risks Assessment Report 2021
PEP	Politically Exposed Persons
POCAMLA	Proceeds of Crime and Anti-Money Laundering Act 2009
POCAML Regulations	Proceeds of Crime and Anti-Money Laundering Regulations 2013
STR	Suspicious Transaction Report
SAR	Suspicious Activity Report

1. SCOPE AND STATEMENT OF GUIDANCE

1.1. Title

Anti-Money Laundering and Counter-Terrorism Financing Guidance for Real Estate Agencies, 2023

1.2. Authorization

This Guidance is issued pursuant to Section 24A of the Proceeds of Crime and Anti Money Laundering Act, 2009 (POCAMLA).

1.3. Application

This Guidance applies to real estate agencies.

1.4. Purpose

The purpose of this Guidance is to provide direction to real estate agencies in relation to their AML/CFT statutory obligations. The Guidance, therefore, complements existing AML/CFT legislation, and should not be taken as a substitute for them.

1.5. Responsibility

It is the real estate agencies' responsibility to ensure compliance with this Guidance and the existing AML/CFT legal framework. Accordingly, real estate agencies are encouraged to read and understand this Guidance.

1.6. Review

The Guidance shall be subject to review at least once every two years and may be updated when the need arises.

2. DEFINITION OF TERMS

"Beneficial owner" means a person who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted, and any person who ultimately exercises effective control over a legal person or arrangement.

"Business relationship" means an arrangement between a person and a reporting institution, where the purpose or effect of the arrangement is to facilitate the carrying out of transactions between the person and the reporting institution on a frequent, basis.

"Centre" the Financial Reporting Centre established under Section 12 of the POCAMLA.

“Competent authority” means a public authority other than a self-regulatory body with designated responsibilities for combating money laundering.

“Customer” in relation to a transaction or an account, includes—

- (a) the person in whose name a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;
- (c) any person to whom a transaction has been assigned or transferred;
- (d) any person who is authorized to conduct a transaction; or
- (e) such other person as the Centre may specify.

“Estate agency” in connection with the selling, mortgaging, charging, letting or management of immovable property or of any house, shop or other building forming part thereof, means doing any of the following acts—

- (a) bringing together, or taking steps to bring together, a prospective vendor, lessor or lender and a prospective purchaser, lessee or borrower; or
- (b) negotiating the terms of sale, mortgage, charge or letting as an intermediary between or on behalf of either of the principals.

“Proceeds of crime” means any property or economic advantage derived or realized, directly or indirectly, as a result of or in connection with an offence irrespective of the identity of the offender and includes, on a proportional basis, property into which any property derived or realized directly from the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains or benefits derived or realized from such property from the time the offence was committed.

“PEP” means a person who has been entrusted with a prominent public function in a country or jurisdiction including—

- (a) members of Cabinet;
- (b) senior executives of state-owned corporations;
- (c) important political party officials;
- (d) senior military officials and other members of the disciplined forces;
- (e) members of the Judiciary;
- (f) senior State Officers;
- (g) senior Public Officers;
- (h) senior Official of an International Organisation;

- (i) any immediate family member or close business associate of a person referred to under this sub regulation; and
- (j) any other category of persons as the Centre may determine.

“**Third party**” means another financial institution or designated non-financial business or a person that is supervised or monitored by a competent authority.

3. LEGISLATIVE FRAMEWORK

3.1. Proceeds of Crime and Anti-Money Laundering Act 2009 and Proceeds of Crime and Anti-Money Regulations 2013:

- (a) Criminalize the offence of money laundering
- (b) Provide for preventative measures for combatting ML/TF
- (c) Establish the Financial Reporting Centre, Asset Recovery Agency and the Anti-Money Laundering Advisory Board
- (d) Provide for the obligations of reporting institutions
- (e) Set out the role of supervisory bodies towards supervising and enforcing compliance
- (f) Provide for the identification, tracing, freezing, seizure and confiscation of the proceeds of crime
- (g) Provide for offences and penalties

3.2. Prevention of Terrorism Act 2012:

Provide for counter-terrorism measures including counter-terrorism financing

3.3. Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on the Suppression of Terrorism) Regulations 2022:

- (a) Establish the Counter Financing of Terrorism Inter-Ministerial Committee
- (b) Provide for the procedure for dissemination of designated lists
- (c) Provide for the freezing of assets, travel ban, and embargo

4. SECTOR VULNERABILITY

The NRA report assessed the real estate sector as high risk. The rating was attributed to the weak AML/CFT measures within the sector. The report also projected that the money laundering threat assessment is likely to increase due to the attractiveness of the sector catalyzed by the return on investment in real estate, demand for housing and appreciation in land value.

Some relevant issues identified in the report include:

- (a) Presence of a large number of unregistered real estate agencies making it difficult to effectively regulate and supervise them;
- (b) Low enforcement level of sanctions;
- (c) Integrity issues among some real estate professionals making the sector susceptible to collusion with criminals, corruption and unethical behaviors; and
- (d) Low levels of AML/CFT awareness and sensitization.

5. ROLES OF THE FINANCIAL REPORTING CENTRE IN RELATION TO SUPERVISION

The Financial Reporting Centre (Centre) is established under the POCAMLA. It's main objective is the identification of the proceeds of crime and the combating money laundering and terrorism financing.

The Centre is the primary AML/CFT supervisor and regulator of all reporting institutions including real estate agencies. Its supervisory functions include:

- (a) Receiving all statutory reports;
- (b) Conducting inspection of real estate agencies;
- (c) Issuing instructions, directions, guidelines or rules to real estate agencies;
- (d) Designing training requirements and may train real estate agencies;
- (e) Instructing real estate agencies to provide information or documents for effective discharge of mandate and to facilitate investigations;
- (f) Imposing civil and administrative penalties; and
- (g) Setting national AML/CFT policies.

6. EARB AS A SUPERVISORY BODY

The Estate Agents Registration Board (EARB) is the designated supervisory body for real estate agencies. As a supervisory body, EARB and its employees have the responsibility of reporting any suspicious transaction that they may encounter in the normal course of their duties. EARB in the fulfillment of its duties and responsibilities shall coordinate with the Centre.

7. OBLIGATIONS OF REAL ESTATE AGENCIES AS REPORTING INSTITUTIONS

7.1. Registration with the Centre

Real estate agencies are required to register with the Centre, within such period and manner as the Centre may prescribe. Guidance on the registration process can be found on the Centre's website.

Change of particulars of the real estate agency should be communicated to the Centre within 90 days from the date when the change is made.

Failure to register with the Centre is an offence.

7.2. Money Laundering Reporting Officer (MLRO)

Real estate agencies are required to appoint a Money Laundering Reporting Officer (MLRO) shall be responsible for ensuring compliance with AML/CFT measures.

The MLRO must have relevant and necessary competence, authority and independence in conducting his/her functions. Moreover, the MLRO must be of management position with clear reporting lines.

The Chief Executive and the internal auditor are prohibited from holding the position of an MLRO except for sole proprietorships.

Real estate agencies should notify the Centre of the appointment or removal of the MLRO within fourteen days from the date of appointment or removal.

7.2.1. Functions of the MLRO

Real estate agencies have a responsibility to ensure compliance with AML/CFT measures. All staff in the real estate agencies shall monitor and report to the MLRO any suspicious activity on ML/TF. The MLRO shall report forthwith to the Centre, any transaction or activity that he has reason to believe is suspicious.

In addition, the MLRO shall ensure that;

- (a) He is informed of all suspicious activities available to the real estate agency and take action on suspicious disclosures from officers and employees as soon as practical so as not to delay the reporting of such disclosures;
- (b) Where a disclosure is made, he applies internal risk management procedures on a suspicious transaction;
- (c) He reports disclosures deemed suspicious to the Centre;
- (d) Officers and employees of the real estate agency are made aware of POCAMLA as well as the audit systems adopted; and
- (e) In liaison with the real estate agency's human resource department, persons are screened before being hired as employees.

7.3. Risk Assessment

A real estate agency shall conduct ML/TF risk assessment to identify, assess, monitor, manage and mitigate risks associated with money laundering and terrorist financing.

When undertaking ML/TF risk assessments, real estate agencies are required to take the following measures:

- (a) Develop and implement a framework to identify and assess risk consistent with the nature and size of institution and the outcome of such assessment shall be documented;
- (b) Develop and implement board-approved policies, controls and procedures to manage and mitigate the identified risks;
- (c) Monitor the implementation of the controls and enhance if necessary;
- (d) Update risk assessment policies from time to time but at least once every two years taking into account new developments such as entry into new markets or the introduction of new products and services.

It is a requirement to conduct a risk assessment before the launch of a new product, a new business practice, or a new technology on either new or pre-existing products. This assessment should be documented and produced to the Centre upon request.

7.3.1. Risk-Based Approach

Real estate agencies shall formulate and implement a risk-based approach to their AML/CFT programs. In a risk-based approach, risks are first identified, assessed, and categorized; then the controls are put in place to manage and mitigate the risks.

In the implementation of the set controls, higher risks are prioritized in terms of mitigation and management and more resources are allocated towards them. Lower risks that pose minimal threats are afforded the least priority and allocated minimal resources if any. Finally, the risk program is reviewed from time to time and updated taking into consideration the evolution of risks.

The risk-based approach has several benefits key amongst them being the effective utilization of resources i.e. the application of resources is determined by the level of risk. It also allows real estate agencies to meet their objectives by focusing on the areas that require the most attention.

7.3.2. Risk Categorization

Real estate agencies can assess ML/TF risks by using various categories and indicators. The three common risk areas for real estate agencies are customer risks, geographical risks, and transaction risks.

Table 1: Risk Categorization

Customer indicators	Geographic indicators	Transactional indicators
<ul style="list-style-type: none"> • Cash intensive businesses • Charities and non-profit organizations • Whether the buyer or seller is from a high-risk country identified by credible sources as, for example, being complicit in corruption, organized crime or serious fraud or providing funding or support for terrorist activities that have designated terrorist organizations operating within them. • Whether the customer is listed on any list of targeted financial sanctions, or subject to sanctions, embargoes or similar measures issued by international organizations such as the United Nations. • Whether the customer has direct dealings in sectors identified as high-risk in the NRA • Unexplained or otherwise unusual source of funds that cannot be verified • Inconsistencies in customer behavior e.g. avoidance of face-to-face contact in unusual situations. • The use of intermediaries or legal persons used to protect a person's identity or hide involvement • The use of foreign companies for purchase of real estate • Undue pressure or abnormal haste from the customer for the transaction to be concluded expeditiously • The profile of the client does not fit with the transaction with regard to the property value. • Whether the client refused, or appeared reluctant, to provide required client due diligence information or documentation or provided false or inaccurate information 	<ul style="list-style-type: none"> • Ineffectiveness of the country's AML/CFT regime and whether it has been identified as having deficiencies • Countries with significant levels of corruption or other criminal activity • Countries with no mandatory registration or real property • Countries identified as funding or supporting terrorist activities and have designated terrorist organizations within them. • Countries subject to sanctions, embargoes, or similar measures that are universally recognized • The level and nature of both threats and vulnerabilities relevant to real estate in the given geography • The level of legal transparency and compliance with existing legal frameworks for countries that have been identified as lacking appropriate AML/CFT laws and regulations • Where the property is located • Where the buyer and seller are located and the nature and purpose of the business relationship within the country. • Whether the funds have been generated from abroad and the business relationship has been conducted without face-to-face meetings 	<ul style="list-style-type: none"> • Unduly expedited transactions without reasonable explanation • Same property transactions within a short period of time • Introduction of unknown parties at the late stages of the transaction • Third-party vehicles used to obscure the true identity of the parties • Property value not in the profile of the customer • Undervalued or Overvalued property • Location of the customer's source of funds • Unusual sources e.g. funds obtained from unknown individuals or unusual organizations • Purchase with large amounts of cash • Unexplained changes in financing arrangements • Use of complex loans or other obscure means of finance out of the regulated financial institutions • The use of third parties, overseas accounts, or persons or entities in countries identified as high-risk jurisdictions to send or receive funds on behalf of the buyer or seller • Use of promissory notes, bills of exchange, titles of credit, exchange titles, securities or any other negotiable instrument outside the financial system that can be paid by the debtor in cash. • Use of cash in a quick sale, cash exchanges directly between seller and buyer, to include a cash deposit or a large one-off cash transaction • Part or full settlement in cash or foreign currency, lacking valid reason (e.g. personal or professional links to the currency) or a buyer will not

<ul style="list-style-type: none"> • A sudden change to the pattern of behavior of the client or the introduction of unknown third parties during the transactional process or involvement from other parties such as lawyers, notaries or financial institutions, when such involvement is not routine • The use of complex legal structures that may obscure beneficial ownership • The reputation and profile of the client and whether there has been any adverse media reports or other adverse information from a reliable source about the owner or beneficial owner • The business has previously been suspicious of the client or beneficial owner and filed a suspicious transaction report or has gathered information in the course of the business relationship questioning the integrity and motives of the customer or beneficial owner • If the owner, beneficial owner or any persons publicly known to be closely associated have been convicted or suspected of being complicit in any ML/TF activities. • The client or beneficial owner has political connections and is considered a PEP or the customer or beneficial owner has other links to a PEP or persons who hold a prominent political or public position. 		<p>disclose source of funds for an unusually big cash or foreign currency transaction.</p> <ul style="list-style-type: none"> • Transaction costs or invoices of the seller or buyer are paid by a third party that has no connection to the transaction or through unusual channels (e.g. unrelated financial institution) • Multiple properties being sold/purchased, re-sold or exchanged at the same time or successive transactions of the same property in a short period of time with unexplained changes in value • Transactions which make no obvious economic sense, particularly where there is an obvious loss. • Transactions which evidence complex ownership structures or where the beneficial owner is hidden. • A sudden or unexplained change in ownership, in particular, when within a short period prior to closing the transaction • Requests to expedite transactions, possibly over or under value • The customer requests the proceeds of a sale or rental be sent to a high-risk jurisdiction or a third party apparently unconnected to the transaction • Transactions concerning the indirect transfer of properties, or transfer of properties between persons or entities in which no money changes hands, and the creation of equitable interest in properties.
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Understanding risks inherent to the real estate sector, more so, those specific to the real estate agencies will assist the real estate agencies in managing and mitigating their exposure to money laundering and terrorism financing.

7.3.3. Risk Mitigation and Management

Having categorized the risk associated with the estate agency business, the real estate agency should formulate measures to mitigate and manage the identified risk using the risk-based approach. This includes coming up with internal controls and processes, and a review mechanism to ensure that the controls and processes are not only adequate, implemented, and effective, but also alive to the evolving risks.

7.4. Internal Controls

POCAMLA provides for the internal control obligation requiring real estate agencies to develop and implement internal control measures and procedures to combat ML/TF, including:

- (a) Formulating programs for identifying, assessing, understanding, monitoring, managing and mitigating ML/TF risk;
- (b) Developing monitoring programs in relation to complex, unusual or large transactions or suspicious transactions/activities;
- (c) Establishing EDD procedures with respect to persons and business relations and transactions carrying high risk and with persons established in jurisdictions that do not have adequate systems in place to combat ML/TF;
- (d) Providing AML/CFT training to the employees to facilitate the implementation of the real estate agency's compliance with the AML/CFT measures and to skill them in handling suspicious transactions and activities;
- (e) Formulating and maintaining a manual of compliance procedures, processes, and working methods in relation to ML/TF;
- (f) Providing for the necessary processes and working methods to ensure compliance with AML/CFT legislation and internal rules; and
- (g) Provide for the responsibility of the management of the reporting institution in respect of compliance with the AML/CFT legislation and internal rules.

The purpose of the internal controls and procedures is to ensure overall compliance with the AML/CFT legislation and internal rules.

7.5. Customer Due Diligence (CDD)

Real estate agencies have an obligation to identify and verify the customers' identity using reliable, independent source documents, data or information. CDD is conducted on a customer, beneficial owner(s) and those purporting to act on behalf of a customer.

CDD is done at different levels within the interactions with customers, including:

- (a) when establishing initial business relations;
- (b) when undertaking occasional or one-off transactions;
- (c) when there is cause to be suspicious; and
- (d) when there is doubt about veracity or adequacy of previously obtained customer information.

Real estate agencies should also conduct ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the agencies' knowledge of the customer, their business and risk profile, including the source of funds.

The POCAML Regulations provide comprehensive information on the documents and information to source from customers ranging from natural persons to legal persons and legal arrangements such as trusts. Therefore, real estate agencies should familiarize themselves with the POCAMLA and POCAML Regulations for further guidance.

7.5.1. Enhanced Due Diligence (EDD)

Real estate agencies are required to undertake enhanced due diligence on high-risk persons such as PEPs, legal persons, legal arrangements by taking measures to:

- (a) Obtain further information relevant to verifying the customer's true identity;
- (b) Apply extra measures to verify the documents provided;
- (c) Obtain senior management approval before establishing the new business relationship;
- (d) Establish the customer's source of funds; and
- (e) Conduct ongoing monitoring through the subsistence of the relationship.

Real estate agencies are additionally required to establish the identity of ultimate beneficial owners behind legal persons or legal arrangements. They should therefore take necessary steps to identify the natural persons exercising control and ownership behind the legal persons and legal arrangements.

Real estate agencies are prohibited from establishing or maintaining a business relationship with an anonymous customer or a customer using a fictitious name. For non-face-to-face customers, real estate agencies are required to guard against the risk of possible false identities and impersonations by employing additional or enhanced measures to supplement the documentary or electronic data.

7.5.2. Reliance on Third Parties for CDD

Where the real estate agency outsources CDD services from a third party, the ultimate responsibility to ensure compliance with CDD requirements under the POCAMLA and the POCAML Regulations lies with the real estate agency. Reliance on third parties is subject to the following conditions:

- (a) The real estate agency relying on a third party shall enter into an agreement with the third party outlining the responsibilities of each party.
- (b) The ultimate responsibility for CDD measures remains with the institution that is relying on the third party.
- (c) The real estate agency relying on a third party shall immediately obtain the necessary information concerning the relevant elements of CDD measures as required by these Regulations.
- (d) The real estate agency shall take adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to the CDD requirements shall be made available from the third party without delay upon request.
- (e) The real estate agency intending to rely on a third party shall ensure that the third party is regulated, supervised or monitored by a competent authority and has measures in place for compliance with, CDD and record-keeping requirements in line with international best practice.

Where a real estate agency intends to rely on a third party that is based in another country, the institution shall assess the anti-money laundering risks that the country poses and the adequacy of CDD measures adopted by financial institutions/DNFBPs in that country.

7.6. Record-Keeping

Real estate agencies have an obligation to establish and maintain the following records for at least seven years or such longer periods as the Centre may require;

- (a) Records of all transactions
- (b) Records obtained through CDD measures such as copies or records of official documents like passports, identification cards or similar documents
- (c) Business correspondence
- (d) The result of any analysis undertaken such as inquiries to establish the background and purpose of complex, unusual, large transactions for the period specified.

The above records must be maintained in a manner that permits reconstruction of individual transactions where necessary. These records are also to be made available to competent authorities upon request and in a timely manner on appropriate authority.

Other records that ought to be maintained for a reasonable period of time in accordance with the agency's internal record keeping policies include:

- (a) Account files maintained in the correct name of the customer;
- (b) Training records i.e. content of the training program, training schedule, attendance sheets for the training, training policy, training plan;
- (c) Documentation of internal controls and processes such as policies and procedures in relation to AML/CFT;
- (d) Reports made by the MLRO to the senior management and board of directors on AML/CFT compliance measures;
- (e) Documentation of findings of an independent audit; and
- (f) Board discussions on AML/CFT issues affecting the business where applicable.

7.6.1. Reliance on Third Parties for Record-Keeping

Where the real estate agency outsources record-keeping services from a third party, they should take necessary steps to ensure that the documents are made available without unnecessary delay. The ultimate responsibility of ensuring compliance with the record-keeping requirements lie with the real estate agency and its MLRO.

7.7. Reporting and Monitoring

Real estate agencies have an obligation to submit Cash Transaction Reports (CTR) for all transactions equivalent to or exceeding USD 10,000 or its equivalent in any other currency, whether they appear to be suspicious or not.

Real estate agencies have an obligation to report upon suspicion any suspicious or unusual transaction or activity to the Centre immediately and in any event within seven days of the date of transaction or activity is considered to have occurred. Failure to file the report within the stipulated timeline is an offence attracting a penalty of either a fine or imprisonment. The procedure for filing STRs and SARs may be accessed on the Centre's website.

Real estate agencies are required to monitor on an ongoing basis all complex, unusual, suspicious, large transactions whether completed or not. They are also required to pay attention to all unusual patterns of transactions and to insignificant but periodic patterns of transactions which have no apparent economic or lawful purpose.

The Centre may require a real estate agency to provide particulars of any matter concerning suspicion to which the report relates and the grounds upon which it is based. The real estate agency is required to furnish the Centre with the required particulars and copies of documents to the extent that such particulars or documents are available to that person within a reasonable time, but in any case not later than thirty days from the date of the receipt of the request.

Real estate agencies are required to submit a report listing customers, both natural and legal persons, and legal arrangements, originating from higher risk countries to the Centre on an annual basis.

Real estate agencies additionally have an obligation to submit an Annual Compliance Report (ACR) in the prescribed form to the Centre by 31st January of the following calendar year or as may be required by the Centre. The ACR is used to gauge real estate agencies' compliance with the POCAMLA, POCAML Regulations, and its internal rules in relation to AML/CFT. The procedure for filing ACRs may be accessed on the Centre's website.

7.8. Training

Real estate agencies should ensure that staff, including the board and management, are adequately and regularly trained on AML/CFT measures in the prevention, detection and control of ML/TF.

The training should cover among other areas, AML/CFT regulatory requirements, the real estate agency's AML/CFT policies, procedures and controls, and identification and handling of suspicious activities that may be indicative of ML/TF.

A real estate agency shall provide appropriate training tailored to the individual specific roles. For instance, frontline staff should be trained on detection and escalation of suspicion.

A real estate agency should ensure that employees are trained upon being hired and regularly to refresh, expand their knowledge and remind them of the emerging risks. Other factors such as change of roles, change of legislation or regulations, launch of new products or services may trigger training.

7.9. Independent Audit

Real estate agencies are required to adopt an independent audit function to check for compliance with AML/CFT regulatory requirements and assess effectiveness of internal

policies, controls and procedures. The function can be conducted by an internal or external auditor.

The purpose of an independent audit is to test the effectiveness of the AML/CFT program including:

- (a) adequacy of and adherence to the real estate agency's internal policies, procedures and controls;
- (b) consistency of reviewing and updating the real estate agency's internal controls;
- (c) adherence to AML/CFT regulatory framework in relation to their functions and obligations;
- (d) adequacy of the AML/CFT risk assessment;
- (e) adequacy of board, senior management and staff training; and
- (f) involvement of the senior management in the implementation of the internal controls, for instance, updating management through compliance reports and the provision of resources by senior management to the real estate agency to fulfil its functions and obligations.

The findings of the independent audit should be documented and reported to the board and senior management including MLRO. The management should ensure any deficiencies identified are addressed and the implementation of the recommendations tracked.

The Centre may request for the independent audit report and the MLRO is required to provide the audit report upon receiving the request.

8. PROTECTION FROM LIABILITY

Real estate agencies in the fulfilment of their obligations under POCAMLA are protected from liability pursuant to Section 19. The section provides that legal proceedings shall not lie against any reporting institution, their partner or employee, or a third party on behalf of the above-mentioned persons, performing a function or in the exercise of an obligation under POCAMLA provided that it is done with due diligence and in good faith.

The Centre as the principal regulator, or any other government entity or any officer or any employee are likewise protected from liability as provided under Section 19 in the performance of their functions or obligations under POCAMLA.

9. OFFENCES RELATED TO MONEY LAUNDERING

Offences in relation to the POCAMLA and POCAML Regulations include:

POCAMLA		
Offence	Description	Penalty
Money Laundering Section 3	A person who knows or who ought reasonably to have known that property is or forms part of the proceeds of crime and— (a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether that agreement, arrangement or transaction is legally enforceable or not; or (b) performs any other act in connection with such property, whether it is performed independently or with any other person, whose effect is to— (i) conceal or disguise the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or (ii) enable or assist any person who has committed or commits an offence, whether in Kenya or elsewhere to avoid prosecution; or (iii) remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, commits an offence.	<u>Natural person</u> Imprisonment of a term not exceeding 14 years or a fine not exceeding 5 million <u>Body corporate</u> A fine not exceeding 25 million
Acquisition, Possession, or Use of Proceeds of Crime Section 4	A person who— (a) acquires; (b) uses; or (c) has possession of, property and who, at the time of acquisition, use or possession of such property, knows or ought reasonably to have known that it is or forms part of the proceeds of a crime committed by him or by another person, commits an offence.	<u>Natural person</u> Imprisonment of a term not exceeding 14 years or a fine not exceeding 5 million <u>Body corporate</u> A fine not exceeding 25 million
Failure to Report Suspicion regarding Proceeds of Crime Section 5	A person who willfully fails to comply with an obligation contemplated in section 44(2) commits an offence	<u>Natural person</u> Imprisonment of a term not exceeding 7 years or a fine not exceeding 2.5 million

		<u>Body corporate</u> A fine not exceeding 10 million
Financial Promotion of an Offence Section 7	A person who, knowingly transports, transmits, transfers or receives or attempts to transport, transmit, transfer or receive a monetary instrument or anything of value to another person, with intent to commit an offence, that person commits an offence.	<u>Natural person</u> Imprisonment of a term not exceeding 14 years or a fine not exceeding 5 million <u>Body corporate</u> A fine not exceeding 25 million
Tipping off Section 8	A person who— (i) knows or ought reasonably to have known that a report under section 44 is being prepared or has been or is about to be sent to the Centre; and (ii) discloses to another person information or other matters relating to a report made under paragraph (i), commits an offence	<u>Natural person</u> Imprisonment for a term not exceeding seven years, or a fine not exceeding two million, five hundred thousand shillings, or to both <u>Body corporate,</u> A fine not exceeding ten million shillings or the amount of the value of the property involved in the offence, whichever is the higher
Misrepresentation Section 9	A person who knowingly makes a false, fictitious or fraudulent statement or representation, or makes, or provides, any false document, knowing the same to contain any false, fictitious or fraudulent statement or entry, to a reporting institution, or to a supervisory body or to the Centre, commits an offence.	<u>Natural person</u> Imprisonment of a term not exceeding 2 years or a fine not exceeding 1 million <u>Body corporate</u> A fine not exceeding 5 million
Malicious Reporting Section 10	Any person who willfully gives any information to the Centre or an authorized officer knowing such information to be false commits an offence.	<u>Natural person</u> Imprisonment of a term not exceeding 2 years or a fine not exceeding 1 million <u>Body corporate</u> A fine not exceeding 5 million
Non-Compliance Section 11 (1)	A reporting institution that fails to comply with any of the requirements of sections 44, 45 and 46, or of any regulations, commits an offence	<u>Natural person</u> Imprisonment of a term not exceeding 7 years or a fine not exceeding 2.5 million <u>Body corporate</u> A fine not exceeding 10 million
Misuse of Information Section 13 (1)	A person who knows or ought reasonably to have known—	<u>Natural person</u>

	(a) that information has been disclosed under the provisions of Part II; or (b) that an investigation is being, or may be, conducted as a result of such a disclosure, and directly or indirectly alerts, or brings information to the attention of another person who will or is likely to prejudice such an investigation, commits an offence	Imprisonment of a term not exceeding 7 years or a fine not exceeding 2.5 million <u>Body corporate</u> A fine not exceeding 10 million
Hindering a Person in Performance of Functions under this Act Section 15	A person who hinders a receiver, a police officer or any other person in the exercise, performance or carrying out of their powers, functions or duties under this Act, commits an offence.	

POCAML Regulations		
General Penalty for Contravention of the Regulations Regulation 42	Any person, reporting institution or supervisory body who contravenes the provisions of these Regulations commits an offence	Imprisonment of a term not exceeding 3 years or a fine not exceeding 5 million or both

In addition to criminal sanctions, the Centre may also impose civil and administrative sanctions.

9.1. Civil Sanctions

Where a person or a real estate agency is in breach of, or fails to comply with any instruction, direction or rules issued by the Centre;

- (a) in the case of a natural person, a person shall be liable to a monetary penalty not exceeding five million shillings;
- (b) in the case of a corporate body, the corporate body shall be liable to a monetary penalty not exceeding twenty-five million shillings;
- (c) in the case of continued failure, the person or reporting institution shall be liable to an additional monetary penalty of ten thousand shillings per day on which such failure continues for a maximum period of one hundred and eighty days.

Before imposing a monetary penalty on any person or real estate agency, the Centre shall give not less than fourteen days’ notice in writing, requiring the person or real estate agency to show cause as to why the prescribed monetary penalty should not be imposed.

9.2. Administrative Sanctions

The Centre may for reasons disclosed in writing;

- (a) issue a warning to a specified person or real estate agency;
- (b) issue an order requiring a specified person or real estate agency to comply with any specific instruction or direction issued by the Centre;
- (c) issue an order barring an individual or individuals from employment within the specified real estate agency whether entirely or in a specified capacity; or
- (d) issue an order to a competent supervisory authority requesting the suspension or revocation of a license, registration, permit or authorization of a specified real estate agency whether entirely or in a specified capacity or of any director, principal, officer, agent or employee of the real estate agency.

Before taking administrative action imposed against any person or real estate agency, the Centre shall give the person or real estate agency a written notice of not less than fourteen days requiring the person or real estate agency to show cause as to why the prescribed administrative action should not be taken.

10. EFFECTIVE DATE

The effective date of this Guidance shall be [].

11. ENQUIRIES

For more information and queries regarding the Guidance, you can reach Centre through:

The Director General
Financial Reporting Centre
TEL: +254709858000
E-mail: info@frc.go.ke