Financial Reporting Centre

ESTATE AGENTS

This information sheet is meant to provide an overview of the Anti-Money Laundering/Counter Terrorism Financing (AML/CFT) obligations for estate agents. These obligations are part of Kenya's national framework aimed at combatting money laundering, associated criminal activity and terrorism financing.

The following summary of the legislative requirements under the Proceeds of Crime and Anti-Money Laundering Act (POCAMLA) (No. 9 of 2009) applies to you if you are an estate agent when you undertake activities that are in connection with selling and mortgaging, charging, letting or management or immoveable 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.

INTERNAL CONTROLS

You shall develop and implement Board approved policies, controls and procedures that will enable you to effectively manage and mitigate identified risks on the basis of the results of your money laundering and terrorism financing risk assessment.

The following elements shall be included in your internal controls:

- The appointment of a Money Laundering Reporting Officer at the management level (MLRO)
- Programs for assessing risk related to money laundering (see section above)
- The development and application of written, board approved compliance policies, controls and procedures that manage and mitigate identified risks
- Implementation and documentation of an ongoing compliance training program
- A documented audit of the effectiveness of policies, controls and procedures, training program and risk assessment
- Ensure that your foreign branches and subsidiaries observe AML measures consistent with POCAMLA.

RISK ASSESSMENT

You shall undertake and document a money laundering risk assessment, commensurate with the nature and size of your institution, to enable you to identify, assessment, monitor, manage and mitigate the risks associated with money laundering. The risk assessment should be conducted at least every two years.

REPORTING

Suspicious Transactions

You shall report to the Financial Reporting Centre (FRC) instances where transactions, activities or attempted transactions could constitute or be related to money laundering or to the proceeds of crime, in the prescribed form immediately and, in any event, within seven days of the date the transaction or activity that is considered to be suspicious occurred.

Large Cash Transactions

You shall report large cash transactions involving amounts of US$15,000 or its equivalent in any other currency carried out by the Friday in the week in which the transaction occurred.

Targeted Financial Sanctions

You shall disclose to the FRC the existence of any funds or property which is to your knowledge owned or controlled by or on behalf of a terrorist group or, information regarding a transaction or proposed transaction in respect to any funds or property.

Registration with Financial Reporting Centre (FRC)

You shall register with the FRC as soon as your operations begin.

Annual Compliance Report

You shall submit to the FRC by the 31st of January of every year a compliance report detailing the institution's compliance with POCAMLA and associated regulations and the institution's AML rules.

ON-GOING MONITORING

You shall establish monitoring programmes in relation to complex, unusual or large or suspicious activities. The results of the monitoring should be documented.

ASCERTAINING IDENTITY AND CUSTOMER DUE DILIGENCE

You shall take reasonable measures to satisfy yourself as to the true identity of any applicant seeking to enter into a business relationship with you or to carry out a transaction or series of transactions with you.

Customer due diligence measures should include:

a) The identification of the customer and verification of that customer using reliable, independent source documents data or information
b) Identifying the beneficial owner
c) Understanding and, as appropriate, obtaining information on the purpose and nature of the business relationship
d) Conducting on-going due diligence on the business relationship and scrutiny of transactions undertaken through the course of that relationship to ensure that the transactions being conducted are consistent with your knowledge of the customer, their business and risk profile, including where necessary source of funds.

THIRD PARTY DETERMINATION

You shall take reasonable measures to determine whether the individual is acting on behalf of another person.

In cases where a third party is involved, you should take reasonable measures to establish the true identity about the third party and their relationship with the individual or entity on whose behalf the transaction is being conducted.

ENHANCED DUE DILIGENCE

You shall apply enhanced due diligence measures to persons and entities that present a higher risk to you through the following measures:

a) Obtaining further information that may assist in establishing the customer's identity
b) Applying extra measures to verify the documents supplied
c) Obtaining senior management approval for the new business relationship or transaction
d) Establishing the person's or entity's source of funds
e) Carrying out on-going monitoring of the business relationship.

POLITICALLY EXPOSED PERSONS

You shall have appropriate risk management systems to determine whether your customer and beneficial owner is a politically exposed person. You shall take the following measures where a customer or beneficial owner is a politically exposed person:

a) Obtaining senior management approval to transact or establish the relationship
b) Take adequate measures to establish the source of wealth and source of funds which are involved in the proposed business relationship or transactions
c) Obtain information on the immediate family members or close associates of the person who may be having transaction authority over the account
d) Determine the purpose of the transaction or account and the expected volume and nature of account activity
e) Review public sources of information on the politically exposed person
f) Conduct enhanced due diligence of the relationship.

RECORD KEEPING

You shall ensure that you maintain and keep records of all transactions and customer due diligence measures for a minimum period of 7 years from the date the relevant business or transaction was completed or following the termination of an account or business relationship.

NEW TECHNOLOGIES

You shall take reasonable measures to prevent the use of new technologies for money laundering purposes by conducting and documenting a money laundering risk assessment prior to the introduction of a new product, business

Additional information on how to comply with these obligations can be found on the Financial Reporting Centre's Website: www.frc.go.ke . This includes an AML/CFT Guidance on Suspicious Transaction Reporting and Guidance Notes on Implementing Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Obligations for Designated Non-Financial Businesses and Professions (DNFBP) which explains how to implement the requirements outlined above.