



THE FINANCIAL REPORTING CENTRE

**ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF
TERRORISM GUIDANCE FOR REAL ESTATE AGENCIES, 2023**

OVERVIEW

Real estate agencies play a vital role in the real estate sector due to their direct contact with sellers and buyers in property transactions. They act as advisors, negotiators, facilitators and brokers of legal and natural persons seeking to purchase, rent, sell or lease property.

Cognizant of the unique position of real estate agencies in property transactions, they are required to have a good understanding of ML/TF risks and implement AML/CFT controls to safeguard against exploitation of real estate agencies and the real estate sector in general. Accordingly, the Proceeds of Crime and Anti-Money Laundering Act 2009 (POCAMLA) designates real estate agencies as reporting institutions in the Designated Non-Financial Businesses and Professionals (DNFBP) category. As reporting institutions, real estate agencies are required to comply with the provisions of the AML/CFT legislative framework.

Despite their designation as reporting institutions, real estate agencies were assessed as highly vulnerable to money laundering and terrorism financing (ML/TF) in the National Money Laundering and Terrorism Financing Risk Assessment Report 2021 (NRA Report). The finding was significantly attributed to the low level of understanding of ML/TF risks by the players in the sector including real estate agents; low AML/CFT controls by the real estate agencies and limited AML/CFT supervision of the real estate agencies. Accordingly, there is a need to encourage AML/CFT compliance of real estate agencies.

In light of the above, the Centre has developed this Guidance to give direction to real estate agencies in the implementation of AML/CFT preventive measures as required under the AML/CFT legislative framework.

ABBREVIATIONS

ACR	Annual Compliance Report
AML	Anti-Money Laundering, and
CDD	Customer Due Diligence
CFT	Countering the Financing of Terrorism
CPF	Countering Proliferation Financing
DNFBP	Designation Non-Financial Businesses and Professionals
EARB	Estate Agents Registration Board
EDD	Enhanced Due Diligence
MLRO	Money Laundering Reporting Officer
ML	Money Laundering and
NRA	the National Money Laundering and Terrorism Financing Risk 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 2023
STR	Suspicious Transaction Report
SAR	Suspicious Activity Report
TF	Terrorism Financing
PF	Proliferation Financing

TABLE OF CONTENTS

OVERVIEW.....	i
ABBREVIATIONS.....	ii
1. SCOPE AND STATEMENT OF GUIDANCE.....	1
2. DEFINITION OF TERMS.....	2
3. SECTOR VULNERABILITY.....	4
4. LEGISLATIVE FRAMEWORK.....	4
5. ROLE OF THE FINANCIAL REPORTING CENTRE IN RELATION TO SUPERVISION.....	5
6. EARB AS A SUPERVISORY BODY.....	5
OBLIGATIONS OF REAL ESTATE AGENCIES AS REPORTING INSTITUTIONS.....	5
7. REGISTRATION WITH THE CENTRE.....	5
8. RISK BASED APPROACH.....	6
9. RISK ASSESSMENT.....	6
10. INTERNAL CONTROLS.....	10
10.2. The Role of Management.....	10
11. APPOINTMENT OF A MONEY LAUNDERING REPORTING OFFICER (MLRO).....	11
12. SCREENING OF EMPLOYEES.....	12
13. CUSTOMER DUE DILIGENCE (CDD).....	12
13.2. Reliance on Third Parties for CDD.....	13
14. ENHANCED DUE DILIGENCE (EDD).....	13
15. SIMPLIFIED DUE DILIGENCE.....	14
16. MONITORING AND REPORTING.....	14
17. TRAINING.....	16
18. INDEPENDENT AUDIT.....	17
19. RECORD KEEPING.....	18
20. PROTECTION FROM LIABILITY.....	19
21. OFFENCES UNDER POCAMLA AND POCAML REGULATIONS.....	19
22. EFFECTIVE DATE.....	22
23. ENQUIRIES.....	22

1. SCOPE AND STATEMENT OF THE GUIDANCE

1.1.Title

Anti-Money Laundering and Countering the Financing of Terrorism 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/CPF statutory obligations. The Guidance, therefore, complements existing AML/CFT/CPF 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/CPF legislative 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 three years and may be updated when the need arises.

2. DEFINITION OF TERMS

“**Beneficial owner**” means a natural 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 or legal arrangement in whose name a transaction or account is arranged, opened or undertaken;
- (b) a signatory to a transaction or account;
- (c) any person or legal arrangement to whom a transaction has been assigned or transferred;
- (d) any person or legal arrangement who is authorised to conduct a transaction; or
- (e) such other person or legal arrangement as the Centre may specify.

“**Designated non-financial businesses or professions**” means —

- (a) casinos (including internet casinos);
- (b) real estate agencies;
- (c) dealing in precious metals;
- (d) dealing in precious stones;
- (e) accountants who are sole practitioners, partners or employees within professional firms;
- (f) non-governmental organisations;
- (fa) trust and company service providers;
- (fb) advocates, notaries and other independent legal professionals who are sole practitioners, partners or employees within professional firms;
- (g) such other business or profession in which the risk of money laundering exists as the Cabinet Secretary may, on the advice of the Centre, declare.

“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 Kenya or another 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) State Officers;
- (g) senior Public Officers;
- (h) senior Official of an International Organisation;
- (i) heads of state or government;
- (j) any immediate family member or close business associate of a person referred to under this sub-regulation; and
- (k) any other category of persons as the Centre may determine.

“Reporting institution” means a financial institution and designated non-financial business and profession;

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

3. SECTOR VULNERABILITY

- 3.1.1. The National Money Laundering and Terrorism Financing Risk Assessment Report 2021 (NRA Report) assessed the real estate sector as highly vulnerable for ML. The high rating was influenced by the low level of understanding of ML risks by the players in the sector including real estate agents; low AML controls by the real estate agencies and limited AML supervision of the real estate agencies.
- 3.1.2. The competitive environment of the real estate sector made the sector susceptible to corruption and unethical behaviour further contributing to the high rating.
- 3.1.3. The report further projected that the ML threat in the sector is likely to increase due to attractive return on investment, demand for housing, and appreciation in land value.

4. LEGISLATIVE FRAMEWORK

4.1. **Proceeds of Crime and Anti-Money Laundering Act 2009 and Proceeds of Crime and Anti-Money Regulations 2023:**

- (a) Criminalize money laundering;
- (b) Provide for preventive measures for combating ML, TF and PF;
- (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 related to ML, TF and PF.

4.2. **Prevention of Terrorism Act 2012:**

- (a) Provide for counter-terrorism measures including counter-terrorism financing;
- (b) Establish the Counter Financing of Terrorism Inter-Ministerial Committee;
- (c) Prohibit making funds available to designated persons and entities;
- (d) Criminalize terrorism financing;
- (e) Criminalize proliferation financing.

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

- (a) Provide for the procedure for dissemination of designated lists; and
- (b) Provide for implementation of targeted financial sanctions.

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

- 5.1.1. The Financial Reporting Centre (the Centre) is established under Section 21 the POCAMLA. Its main objective is the identification of the proceeds of crime and the combating money laundering, terrorism financing and proliferation financing.
- 5.1.2. 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) Compelling the production of information or documents for effective discharge of the Centre's mandate and to facilitate investigations;
 - (f) Imposing civil and administrative penalties;
 - (g) Setting national AML/CFT policies.

6. EARB AS A SUPERVISORY BODY

- 6.1.1. The Estate Agents Registration Board (EARB) is established under Section 3 of the Estate Agents Act Cap 533. The Board is in charge of the registration and regulation of real estate agents in Kenya.
- 6.1.2. Under POCAMLA, EARB is the designated supervisory body for real estate agents. 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.
- 6.1.3. EARB shall coordinate with the Centre in the fulfillment of its duties and responsibilities under the POCAMLA.

OBLIGATIONS OF REAL ESTATE AGENCIES AS REPORTING INSTITUTIONS

7. REGISTRATION WITH THE CENTRE

- 7.1.1. Real estate agencies shall register with the Centre, within such period and manner as the Centre may prescribe. Therefore, where the Centre issues a directive for registration of real estate agencies, real estate agencies are required to comply with the Centre.

- 7.1.2. Guidance on the registration process can be found on the Centre's website (www.frc.go.ke). In addition to the requirements under the registration guidance, real estate agencies are required to also provide a list of estate agents under their real estate agency. The template is also available on the Centre's website.
- 7.1.3. 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.
- 7.1.4. Failure to register with the Centre is an offence.

8. RISK-BASED APPROACH

- 8.1.1. Real estate agencies are required to apply a risk-based approach in implementing AML/CFT programs. Risk-based approach entails ensuring that the ML/TF risk management and mitigation measures are commensurate to the level of risk including the allocation of available resources. Accordingly, enhanced measures should be applied on high risk and simplified measures should be applied on low risk.
- 8.1.2. In implementing a risk-based approach, real estate agencies are required to identify, assess and understand ML/TF risks, manage the risks, and take commensurate measures to effectively mitigate the risks.
- 8.1.3. Therefore, an ML/TF risk assessment program is the basis of implementation of a risk-based approach in the real estate agencies internal AML/CFT program.

9. RISK ASSESSMENT

- 9.1.1. Real estate agencies are required to conduct risk assessment to identify, assess, understand, monitor, manage and mitigate ML/TF risks.
- 9.1.2. When undertaking ML/TF risk assessments, real estate agencies are required to:
 - (a) Incorporate the outcomes of the national and sectoral risk assessments in their internal risk assessment;
 - (b) Consider all relevant risk factors including customers, countries or geographical areas, products, services, transactions or delivery channels before determining level of overall risk and appropriate level and type of mitigation to be applied;
 - (c) Document the outcome of the ML/TF risk assessments;
 - (d) Develop and implement board approved policies, controls and procedures to manage and mitigate the identified risks;
 - (e) Monitor the implementation of the controls and enhance them if necessary;

- (f) Update the risk assessment policies or programs regularly but at least once every two years;
- (g) Conduct and update the risk assessment policies or programs before launch of:
 - (i) a new product;
 - (ii) a new business practice; or
 - (iii) a new technology on either new or pre-existing products.

9.2.Risk Categorization

9.2.1. Real estate agencies can assess ML/TF risk assessment by using various categories and indicators. The three common risk areas for real estate agencies are customer risks, geographical risks and transaction risks. These common risk areas assist the real estate agency in the identification of potential risks to the estate agency business.

Table of Risk Categorization

Customer indicators	Geographic indicators	Transactional indicators
<ul style="list-style-type: none"> • Cash intensive businesses • Charities and non-profit organisations • 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 organisations 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 organisations 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 	<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 organisations 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 	<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 organisations • 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

<p>person's identity or hide involvement</p> <ul style="list-style-type: none"> • 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 • 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>business relationship has been conducted without face-to-face meetings</p>	<p>or receive funds on behalf of the buyer or seller</p> <ul style="list-style-type: none"> • 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 disclose source of funds for an unusually big cash or foreign currency transaction. • 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
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		<ul style="list-style-type: none"> • 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.
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

9.3.Risk Assessment

- 9.3.1. Risk categories inform a risk assessment. Real estate agencies should consider all relevant risk factors including customers, countries or geographical areas, products, services, transactions or delivery channels before determining the level of overall risk.
- 9.3.2. The risk assessment should also incorporate the findings of the national and sectoral ML/TF risk assessments.
- 9.3.3. The outcome of the risk assessment should be documented.

9.4.Risk Mitigation and Management

- 9.4.1. Following the outcome of the risk assessment, the real estate agencies should develop internal controls and procedures to address the risks identified applying the risk-based approach i.e. the risk management and mitigation measures should be commensurate to the risks identified.
- 9.4.2. Further, real estate agencies shall implement the findings of the outcomes of the national and sectoral ML/TF risk assessments. Accordingly, when results of a national or sectoral risk assessment are released, real estate agencies have an obligation to apply risk management and mitigation measures on the outcomes. The POCAML Regulations require real estate agencies to address the identified high risks in relation to the national and sectoral risk assessments through the application of enhanced measures to manage and mitigate the risks.

9.5.Review and Update Risk Assessment

- 9.5.1. Real estate agencies shall keep up-to-date risk assessments. The risk assessment policies or programs should be updated regularly but at least once every two years. Other instances that require a review and update of the risk assessment policy or programs are:
 - (a) Before the launch of a new program;
 - (b) Before the launch of a new business practice;
 - (c) Before the launch of a new technology on either new or pre-existing products.

10. INTERNAL CONTROLS

10.1.1. Real estate agencies shall formulate, adopt and implement internal control policies, measures or procedures to combat ML, TF, and PF including:

- (a) Compliance management arrangements including the appointment of an MLRO;
- (b) Screening procedures to ensure high standards when hiring employees;
- (c) Ongoing employee training program;
- (d) An independent audit function;
- (e) Programs for ML/TF risk assessments;
- (f) Formulating of a control policy that covers issues or timing, degree of control, areas to be controlled, responsibilities and follow up;
- (g) Monitoring programs in relation to complex, unusual or large transactions or suspicious activities;
- (h) Enhanced due diligence procedures in relation to high risk individuals, legal persons, legal arrangements, and customers from countries with inadequate systems to combat ML, TF and PF;
- (i) Making employees aware of the procedures under the AML/CFT/CPF legislative framework, and internal controls adopted by the real estate agencies;
- (j) Establishing and maintaining a manual of compliance procedures in relation to AML/CFT/CPF;
- (k) providing for the necessary processes and working methods to ensure compliance with the AML/CFT/CPF legislative framework and the internal controls;
- (l) providing for the responsibility of the management of the reporting institution in respect of compliance with the AML/CFT/CPF legislative framework and the internal controls.

10.2. The Role of Management

10.2.1. The management in the real estate agencies play a vital role in the implementation of the internal controls. They have the ultimate responsibility of compliance with the AML/CFT/CPF legislative framework and their real estate agency's internal control.

10.2.2. The senior management of the real estate agency is responsible for the approval of new business relationships or transactions in cases where a person or entity presents a higher risk to the real estate agency.

- 10.2.3. The senior management of the real estate agency is also responsible for the approval of new business relationships or continuing a business relationship for existing customers who are foreign PEPs and high-risk domestic PEPs.
- 10.2.4. The Board is responsible for approving AML/CFT and CPF policies, controls and procedures for implementation by the real estate agencies.

11. APPOINTMENT OF A MONEY LAUNDERING REPORTING OFFICER (MLRO)

- 11.1.1. Real estate agencies shall appoint a Money Laundering Reporting Officer (MLRO). The MLRO shall be in charge of the real estate agency's compliance with the AML/CFT legislative framework.
- 11.1.2. The MLRO shall have relevant and necessary competence, authority and independence in conducting their functions. Moreover, the MLRO shall be in a management position with clear reporting lines to the Board.
- 11.1.3. The Chief Executive and the internal auditor are prohibited from holding the position of an MLRO except where the real estate agency is a sole proprietorship.
- 11.1.4. Real estate agencies shall notify the Centre of the appointment or removal of the MLRO within fourteen days from the date of appointment or removal.

11.2. Functions of the MLRO

- 11.2.1. Real estate agencies have a responsibility to ensure compliance with the AML/CFT legislative framework.
- 11.2.2. All employees 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.
- 11.2.3. 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 by the real estate agency; and
 - (e) In liaison with the real estate agency's human resource department, persons are screened before being hired as employees.

12. SCREENING OF EMPLOYEES

12.1.1. One of the functions of the MLRO is to work with the human resource department to ensure that the prospective employees of the real estate agency firm are screened before employment.

12.1.2. In that regard, the MLRO should ensure that employee screening procedures are incorporated into the real estate agency's recruitment process.

13. CUSTOMER DUE DILIGENCE (CDD)

13.1.1. Real estate agencies have an obligation to undertake customer due diligence (CDD). CDD is done at different levels including:

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

13.1.2. When conducting CDD, real estate agencies shall:

- (a) 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;
- (b) Identify and take reasonable steps to verify the beneficial owner to satisfy itself that it knows the beneficial owner and understands the ownership and control structure of the customer where the customer is a legal person or legal arrangement; and
- (c) Understand and obtain information on the purpose and intended nature of the business relationship.

13.1.3. Further, real estate agencies should 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.

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

13.2. Reliance on Third Parties for CDD

13.2.1. 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.

13.2.2. 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 real estate agency 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 accordance with the POCAMLA and POCAML Regulations.

13.2.3. Where the third party is based in another country, the real estate agency is shall:

- (a) assess the ML/TF risks that the country poses; and
- (b) the adequacy of CDD measures adopted by financial institutions/DNFBPs in that country.

14. ENHANCED DUE DILIGENCE (EDD)

14.1.1. If the results of a national, sectoral or the real estate agency's ML/TF internal risk assessment indicate that a customer, beneficial owner, third party or business relation or transaction present a higher risk for ML/TF, the real estate agency shall apply enhanced due diligence measures to manage and mitigate the identified risks. These EDD measures are applied in addition to CDD measures.

14.1.2. Real estate agencies have an obligation to develop enhanced due diligence procedures in relation to:

- (a) high-risk persons,
- (b) business relations and transactions that pose a high risk;

- (c) Persons or legal arrangements established in foreign countries with inadequate systems to combat ML/TF/PF.

14.1.3. In addition to developing EDD procedures, they shall implement the EDD measures on persons and entities that pose a high risk to their business. The application of EDD measures include:

- (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 business relationship.

14.1.4. Instances when EDD measures should be applied include:

- (a) When dealing with foreign politically exposed persons (PEPs);
- (b) When dealing with high-risk domestic PEPs;
- (c) When dealing in business relationships or transactions in sectors assessed as high risk in national or sectoral risk assessments;
- (d) When dealing with customers including legal arrangements, third parties, and beneficial owners assessed as posing a high risk to the real estate agency in its internal risk assessment;
- (e) When dealing with customers including legal arrangements, third parties, and beneficial owners or financial institutions from foreign countries identified as posing higher risks of ML/TF/PF.

15. SIMPLIFIED DUE DILIGENCE

15.1.1. Real estate agencies shall apply simplified customer due diligence. Simplified customer due diligence is applied where the customer poses low ML/TF risk following a risk assessment and where the simplified measures are commensurate with the lower risk factors.

15.1.2. Simplified customer due diligence measures may however not be applied where there is cause for suspicion of money laundering, terrorism financing or proliferation financing.

16. MONITORING AND REPORTING

16.1.1. The POCAMLA and POCAML Regulations require real estate agencies to monitor transactions and activities for the purpose of the identification of the

proceeds of crime and detection of ML/TF. The legislation further requires real estate agencies to file various reports with the Centre in compliance with their obligations under the legislation. These reports include: suspicious activity reports, suspicious transaction reports, annual compliance reports, and annual return of customers from high-risk jurisdictions.

16.2. Monitoring

16.2.1. Real estate agencies shall develop and implement monitoring programs in relation to complex unusual or large transactions or suspicious activities. Therefore, real estate agencies should have in place a policy or procedure for monitoring and reporting suspicious activities and suspicious transactions.

16.2.2. Real estate agencies are further required to monitor on an ongoing basis all complex, unusual, suspicious, and 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 that have no apparent economic or lawful purpose.

16.3. Suspicious Transaction Reports and Suspicious Activity Reports

16.3.1. Real estate agencies have an obligation to report a suspicious transaction or suspicious activity within two days after the suspicion arose that the transaction or activity could be related to money laundering, terrorism financing or proliferation financing.

16.4. Reporting Suspicious Activities or Transaction Reports

16.4.1. All staff of the real estate agency shall monitor and disclose to the MLRO any suspicious activity or suspicious transaction that may be related to ML/TF/PF.

16.4.2. The MLRO has an obligation to receive disclosures on suspicious activity or suspicious transactions from all employees in the real estate agency.

16.4.3. On receipt of the disclosures on suspicious activity or suspicious transactions, the MLRO shall examine the background and purpose of the transactions or activity and document the findings.

16.4.4. Where there is cause for suspicion that the suspicious activity or the suspicious transaction is related to ML/TF/PF, the MLRO has an obligation to file a suspicious activity report or a suspicious transaction report with the Centre within two days after forming the suspicion. The SARs or STRs shall be accompanied by support documents relevant to the suspicion and the grounds on which the report is based. The procedure for filing STRs and SARs may be accessed on the Centre's website (www.frc.go.ke).

16.4.5. Following the submission of the SAR or STR, the Centre may request additional information in regards to the filed SAR or STR. The real estate agency is

required to furnish the Centre with the additional information within a reasonable time but not later than thirty days from the date of receipt of the request for additional information.

16.4.6. Failure to file the report SAR or STR within the stipulated timeline is an offence attracting a penalty of either a fine or imprisonment.

16.5. Cash Transaction Reports

16.5.1. Real estate agencies have an obligation to submit Cash Transaction Reports (CTR) for all transactions equivalent to or exceeding USD 15,000 or its equivalent in any other currency, whether they appear to be suspicious or not. This requirement is applicable where real estate agencies handle their customer's cash in the course of offering estate agency services. The procedure for filing a CTR may be accessed on the Centre's website.

16.6. Annual Compliance Report

16.6.1. 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/CPF.

16.6.2. The procedure for filing ACRs may be accessed on the Centre's website.

16.7. Annual Return on Customers from High-Risk Countries

16.7.1. Real estate agencies have an obligation 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.

17. TRAINING

17.1.1. Real estate agencies have an obligation to develop and implement an ongoing training program including making the employees aware of the AML/CFT/CPF legislative framework and its internal AML/CFT/CPF controls.

17.1.2. The MLRO has a responsibility to ensure that the employees of the real estate agencies receive training on the AML/CFT/CPF legislative framework and its internal AML/CFT/CPF controls.

17.1.3. The aim of the training program is to ensure that the employees of a real estate agency have a good understanding of ML/TF risks; are aware of their AML/CFT/CPF obligations; and have adequate knowledge to identify and handle suspicious activities relating to ML/TF.

- 17.1.4. The training program should cover among other areas, AML/CFT/CPF legislative framework, the real estate agency's internal AML/CFT/CPF policies, procedures and controls, identification and handling of suspicious activities that may be indicative of ML/TF, and ML/TF trends and typologies of the real estate sector.
- 17.1.5. The MLRO should ensure that all employees including new employees, senior management and the board receive appropriate training on an ongoing basis and have a good understanding of ML/TF risks.
- 17.1.6. The MLRO should maintain records of the staff training and awareness to monitor attendance, timelines, nature and appropriateness of the training sessions.

18. INDEPENDENT AUDIT

- 18.1.1. Real estate agencies have an obligation to implement an independent audit function to check for compliance with the AML/CFT/CPF legislative framework and assess the effectiveness of internal controls, policies, and procedures. This function may be conducted by an internal or external auditor.
- 18.1.2. The purpose of an independent audit is to test the effectiveness of the AML/CFT/CPF 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/CPF legislative framework in relation to their functions and obligations;
 - (d) adequacy of the AML/CFT risk assessment;
 - (e) adequacy of the training program including training of the board, senior management and employees; and
 - (f) involvement of the senior management and the Board in the implementation of the internal controls, for instance, communication between the Board and the MLRO; approval of internal controls, policies and procedures; allocation of resources towards AML/CFT/CPF compliance function; and deliberation on AML/CFT/CPF matters in the senior management and Board meetings.
- 18.1.3. 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.

19. RECORD KEEPING

19.1.1. Real estate agencies have an obligation to establish and maintain a record of all transactions for at least seven years from:

- (a) The date the relevant business was completed;
- (b) The date the relevant transaction was completed;
- (c) The date when an account or a business relationship was terminated.

19.1.2. The POCAMLA and POCAML Regulations require real estate agencies to 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) Account files maintained in the correct name of the customer and business correspondence, results of any analysis undertaken such as inquiries to establish the background and purpose of complex, unusual, large transactions for a specified period
- (d) Business correspondence
- (e) The result of any analysis undertaken such as inquiries to establish the background and purpose of complex, unusual, large transactions for the period specified.

19.1.3. The above records must be maintained in a manner that permits reconstruction of individual transactions where necessary. Real estate agencies shall also make available the records to competent authorities upon request and in a timely manner.

19.1.4. 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) Training records i.e. content of the training program, training schedule, attendance sheets for the training, training policy, and training plan;
- (b) Documentation of internal controls and processes such as policies and procedures in relation to AML/CFT/CPF;
- (c) Reports made by the MLRO to the senior management and board of directors on AML/CFT/CPF compliance measures;
- (d) Documentation of findings of an independent audit; and

(e) Board discussions on AML/CFT/CPF issues affecting the business where applicable.

19.1.5. The real estate agency shall ensure that the records maintained are up-to-date and can be made available swiftly on request by competent authorities.

19.1.6. The record-keeping requirements under the POCAML Regulations are made without prejudice to any other records required to be kept by or under any other written law.

20. PROTECTION FROM LIABILITY

20.1.1. Real estate agencies in the fulfillment of their obligations under POCAMLA are protected from liability pursuant to Section 19. Section 19 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.

21. OFFENCES UNDER POCAMLA AND POCAML REGULATIONS

21.1.1. 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	<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

	(iii) remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence, commits an offence.	
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— (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	<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
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

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

21.2. Civil Penalty

21.2.1. Where a person or a real estate agency is in breach of, or fails to comply with any instruction, direction, rules or guidelines issued by the Centre, they shall be liable to monetary penalty.

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

21.3. **Administrative Sanctions**

21.3.1. 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.

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

22. **EFFECTIVE DATE**

22.1.1. The effective date of this Guidance shall be November 1, 2023.

23. **ENQUIRIES**

23.1.1. For more information or queries regarding the Guidance, you can reach the Centre through:

Tel: +254709858000

E-mail: compliance@frc.go.ke

Physical address: **Director General**
Financial Reporting Centre
13th Floor, Old Mutual Tower
Upper Hill Road
P.O. Box Private Bag - 00200
Nairobi