



ANTI-MONEY LAUNDERING/COUNTERING FINANCING OF TERRORISM (AML/CFT); GUIDANCE NOTE FOR THE REAL ESTATE SECTOR/AGENTS

1.1. INTRODUCTION

The Anti- Money Laundering Act, 2013 (the “AMLA”) lists real estate agents as accountable persons and therefore are subject to the requirements under the AML/CFT legislation and regulations. This guidance is issued by the Financial Intelligence Authority (FIA) pursuant to S. 20(d) of the Anti-Money Laundering Act, 2013.

The purpose of this Guidance is to provide industry specific guidance for the real estate agents on their legal obligations on measures to deter and detect money laundering and the financing of terrorism activities. It provides clarity and interpretation of the issues arising out of the AMLA and the AML regulations. This guidance explains the most common situations under the specific laws and related regulations which impose AML/CFT requirements. It is provided as general information for guidance. It is not legal advice, and is not intended to replace the Acts and Regulations.

The real estate agents by their nature are vulnerable to crimes. A real estate agency may be set up as a sham business to bring illegally obtained funds into the financial system. Legitimately obtained funds can be channeled through real estate and misused by terrorists to finance terrorist activities.

1.2 THE MAJOR RISKS OF ML/TF AND VULNERABILITIES STEM FROM THE FOLLOWING FACTORS:

Uganda's ML/TF National Risk Assessment (NRA) found that, a significant ML and TF risk exists in this sector due to lack of sufficient regulation and a comprehensive legal framework covering the real estate sector which raises the risk of ML/FT in this sector. Criminals may be drawn to the real estate as a channel to launder illicit funds due to the ability to buy real estate using cash; ability to disguise the ultimate beneficial owners of the real estate; relative stability and reliability of real estate development; and ability to renovate and improve real estate and thereby increase the value. The following were the highlighted factors leading to AML/CFT vulnerabilities;

- a) The unregulated nature of the real estate sector. There over 1,000 unregistered and unregulated real estate agents in the industry.
- b) Lack of KYC and CDD procedures by real estate agents.
- c) A large number of the properties being unregistered and leading to lack of beneficial ownership identification.
- d) Lack of an effective central registry for real estate transactions.
- e) A significant growth in the real estate sector possibly attributed to illicit proceeds.
- f) Records largely still being kept manually.
- g) Rapidly escalating prices of residential and business properties and the correct value of real estate can be easily under/over declared.
- h) Corruption and/or other related crimes proceeds of which are used to acquire immovable property.

- i) Difficulty to obtain timely and reliable information on property sales and money transfers associated with the real estate sector.

2. THIS GUIDANCE, IS DIVIDED INTO ELEVEN (11) PARTS:

1. Do these obligations apply to you?
2. Who is an accountable person?
3. What the FIA does
4. What is money laundering
5. What is financing of terrorism
6. Why is the real estate sector designated as a reporting industry
7. Examples of money laundering using the real estate sector
8. What are the AML/CFT legal obligations
9. The risk indicators for the real estate sector?
10. Suspicious indicators for the real estate sector
11. Offences & Penalties

2.1 DO THESE OBLIGATIONS APPLY TO YOU?

- i. This guidance applies if you are an individual or company, partnership or firm carrying on the business of buying, selling or leasing land or any interest in land or any buildings thereon and appurtenances thereto (“real estate”).
- ii. These legal obligations apply to you if you are an individual, company, partnership or firm or when you act as an agent regarding the purchase, sale or lease of real estate. The leasing of real estate refers to the leasing of registrable interests, that is, long term leases of three (3) years duration or more and which is executed by a lease agreement.
- iii. If you are an employee of such an individual, company, partnership or firm, these obligations are the responsibility of your employer.

- iv. If you are a real estate developer, these obligations apply to you when you sell or lease to the public a new house, a new condominium unit, a new commercial or industrial building, or a new multi-unit residential building.
- v. If you are a company, you are subject to the obligations in this guideline whether you sell those buildings on your own behalf or on behalf of a subsidiary or affiliate.

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

The real estate industry being without a supervisor or regulator is supervised by the FIA for purposes of money laundering and terrorism financing.

2.2 WHO IS AN ACCOUNTABLE PERSON?

An accountable person is any business activity or profession listed in the Second Schedule to the Anti-Money Laundering Act, 2013 as amended. Entities operating within the real estate sector, in common with all citizens of Uganda, are subject to the AMLA and the Anti-Terrorism Act (“ATA”), 2002 as amended. However, further obligations are imposed on those business activities which face a greater risk of coming across proceeds of crime and terrorist property. Business activities which have been identified as more vulnerable include those in the real estate sector.

It is the duty of all real estates sector to comply with the legal obligations under the AML/CFT laws of Uganda and the FIA as its supervisory authority monitors its compliance.

2.3 WHAT THE FIA DOES

Section 21A, of the AMLA, 2013 as amended provides for the powers of the FIA and include the following;

- a) It analyses and produces intelligence reports essentially, the FIA is responsible for producing financial intelligence that is then disclosed/disseminated to Law Enforcements Agencies (“LEAs”) for investigation. To do this, the FIA receive suspicious transaction reports and requests financial information from various reporting entities such as banks, credit unions and other financial institutions, accountants, lawyers, mobile money services, motor vehicle sales, real estate agents among others. Different reporting sectors must make suspicious transactions or suspicious activity reports (“STRs”) to the FIA.

On receipt of the STR the FIA analyses and looks for links between the financial information received, other relevant information from different sources, intelligence provided by LEAs, as well as from other international partners.

Once the analysis leads to the belief that the transaction is related to the commission of an offence of money laundering or financing of terrorism, the FIA sends an intelligence report to the LEAs with a recommendations that the matter by investigated. The LEAs who the FIA may determinate to that carry out any criminal investigation may be Police, URA, and IG, DPP, OAG among others. The FIA receives many reports of suspicious transactions/activities from reporting entities; but some reports may be legitimate transactions when further enquiry is made.

The FIA's analysis is therefore, to ensure that only those transactions on which there are reasonable grounds to suspect that they are related to money laundering or financing of terrorism are disclosed to LEAs. Only transactional information and information relating to the suspicion of

money laundering and financing of terrorism are contained in the intelligence report.

- b) Supervises the AML/CFT compliance; Another important function of the FIA is the responsibility to ensure compliance with obligations under the AMLA, the ATA, and the Regulations made under those Acts. The FIA is the Supervisor for non-regulated accountable persons/ entities which have obligations under those Acts and Regulations and is responsible for making sure that they are meeting those obligations.
- c) Activities related to the FIA's compliance mandate include educating and providing guidelines (such as this), and enhancing public awareness of money laundering and financing of terrorism to allow entities who have AML/CFT obligations to be aware and know exactly what they need to do with regard to meeting their legal obligations.
- d) The FIA also conducts on-site inspections and imposes sanction to ensure that the law is being complied with by the supervised entities.

2.4 WHAT IS MONEY LAUNDERING?

Section 1 of the AMLA, 2013 as amended defines the offence of money laundering as a process by which illegally obtained funds are given the appearance of having been legitimately obtained. Money laundering begins with the commission of a criminal activity which results in benefits/gains (illegal funds) to the perpetrator. The perpetrator will then try to disguise the fact that the funds were generated from criminal activity through various processes and transactions which may also involve other individuals, businesses and companies. There is no one single method of money laundering. Methods can range from the purchase and resale of a luxury item (e.g., cars or jewelry) to passing money through legitimate businesses and "shell" companies or drug trafficking or other serious crimes. The proceeds usually take the form of cash which needs to enter the financial system by some means.

There are three (3) acknowledged methods in the process of money laundering.

- a) Placement 'Placement' refers to the process by which funds derived from criminal activity are reintroduced into the financial system. In the case of drug trafficking, and some other serious crimes, such as robbery, the proceeds usually take the form of cash which needs to enter the financial system. Examples of Placement are depositing cash into bank accounts or using cash to purchase assets. Techniques used include "structuring" or 'smurfing'-where instead of making a large deposit transaction and in order to avoid suspicion or detection the illegal receipts are broken up into smaller sums and deposited into single or multiple accounts sometime using other persons to deposit the cash.
- b) Layering "Layering" place after the funds have entered into the financial system. It involves the movement of the money. Funds may be shuttled through a complex web of multiple accounts, companies, and countries in order to disguise their origin. The intention is to conceal, and obscure the money trail in order to deceive LEAs, to make the paper trail very difficult to follow and to hide the criminal source of the funds.
- c) Integration. The money comes back to criminals "cleaned", as apparently legitimate funds. The laundered funds are used to fund further criminal activity or spent to enhance the criminal's lifestyle such as investment into real estate and the purchase of luxury assets. Successful Money Laundering allows criminals to use and enjoy the income from the criminal activity without suspicion which is why the AML/CTF legislative and compliance regimes are important crime fighting tools.

2.5 WHAT IS FINANCING OF TERRORISM?

Section 9A of the Anti- Terrorism Act, 2002 as amended, provides that financing of terrorism is the process by which funds are provided to an individual or group

to fund terrorist activities. Unlike money laundering, funds can come from both legitimate sources as well as from criminal activity.

- i. Funds may involve low dollar/shilling value transactions and give the appearance of innocence and may come from a variety of sources.
- ii. Funds may come from personal donations, profits from businesses and charitable organizations
- iii. A charitable organization may organise fundraising activities where the contributors to the fundraising activities believe that the funds will go to relief efforts abroad but all the funds are actually transferred to a terrorist group.
- iv. Funds may also originate from criminal sources, such as the drug trade, the smuggling of weapons and other goods, fraud, kidnapping and extortion.

Unlike money laundering, which always involves proceeds derived from criminal activity, the financing of terrorism involves both legitimate funds as well as funds derived from criminal activity being used in support of executed and planned terrorist activity. Similar to money launderers, terrorist financiers also move funds to disguise their source, destination and purpose for which the funds are to be used. This is to prevent leaving a trail of incriminating evidence, to distance the funds from the crime or the source, and to obscure the intended destination and purpose thereby avoiding suspicion or detection.

2.6 WHY IS THE REAL ESTATE SECTOR DESIGNATED AS A REPORTING INDUSTRY

The FATF (Financial Action Task Force), an inter-governmental body which sets international policies for Anti-Money Laundering and countering the financing of terrorism issued forty (40) recommendations on money laundering and terrorist financing, in a bid to combat the misuse of financial systems by persons laundering money and financing terrorism. Recommendation 28 specifies that

certain non-financial businesses and professions (referred to as listed businesses), should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary measures to detect and deter money laundering and financing of terrorism. Various reports produced by the FATF over the last few years have made reference to the fact that the real-estate sector may be one of the many vehicles used by criminal organisations to launder their illicitly obtained money.

The real estate sector merits close consideration given the large scope of monetary transactions, its significant social impact, and because of the number of cases in which money laundering, and in limited circumstances terrorist financing and tax fraud schemes, have been detected. Abuse in this sector also has the undesirable effect of political, institutional and economic destabilisation. Moreover, due to the international nature of the real-estate market, it is often extremely difficult to identify real estate transactions associated with money laundering or terrorist financing. Historically there exists a commercial and residential real-estate market, and the property in both types of market may be bought and sold, managed and/or developed. More recently, new investment vehicles have emerged, including Property Investment Funds (PIF) and Real Estate Investment Trusts (REIT). Such instruments allow average citizens to invest in markets –historically only available to the very wealthy –in order to create a diversified portfolio.

Investment in the real-estate sector offers advantages both for law-abiding citizens and for those who would misuse the sector for criminal purposes. Real property has historically appreciated in value, and many countries offer incentives to buyers, including government subsidies and tax reduction. Most importantly for misuse by criminals, however, is the facility the sector may provide for obscuring the true source of the funds and the identity of the (ultimate) beneficial owner of the real asset, which are two key elements of the money laundering process. The real-estate sector is therefore

of extraordinary importance to the economy in general and the financial system in particular.

The widespread use of mechanisms allowing households to access the property market, the elimination of personal limitations on property ownership, the economic development and growth of tourism in many regions have all led to exponential growth in the number of financial transactions linked to real-estate. The extraordinary range of possibilities for misusing these processes also allows suspected criminals to integrate and enjoy illegally obtained funds. Through the implementation of international standards in recent years, countries have put various measures into place within their formal financial sector –which includes, among others, banks and credit unions –in order to prevent money laundering and terrorist financing. Because of the tendency for illegal activity to move to other financial / economic areas that may have less formal oversight or where there is relatively less potential for detection, countries must consider extending AML/CFT measures to other parts of their economies, if they want to respond successfully to this threat. For the real-estate sector, this would necessarily include such key players as real-estate agents, legal advisors and notaries, all of whom are subject to AML/CFT supervision.

2.7 EXAMPLES OF MONEY LAUNDERING USING THE REAL ESTATE SECTOR

These cases are taken from the FATF Report -Money Laundering and Terrorist Financing through the Real Estate Sector–March 2007

- a) Use of illegal funds in mortgage loans and interest payments (Predicate offence: forgery, deception, fraud, money laundering) For example, Mr. P was the owner of Company A and the individual controlling its activities. Mr. P hired Mr. Y as front man of Company A. Company A had some low-profile activities in managing and exploiting properties. During

the life of Company A, Mr. Y set up a relationship with Bank EUR that provided for accounts and payment services. The property managed by Company A was used for activities by other companies owned by Mr. P (for storage, for example). Mr. P. planned to buy office buildings for EUR 8 000 000 via Company A. The office buildings had to be renovated to be marketable. Mr. P. knew a licensed assessor (real estate agent), Mr. Z. Mr. P. and Mr. Z found a way to set up a false but plausible assessments of the market value of the office buildings after renovation (EUR 13 000 000). Mr. P ordered Mr. Y to negotiate a mortgage with Bank EUR to finance the purchase and renovation of the property. Based on the assessment, Bank EUR was willing to grant a mortgage of EUR 13,000,000. Mr. Y entered into the loan agreement on behalf of Company A as the buying party. After the disbursement of the loan, the real estate was paid for. Mr P. then paid Mr. Y EUR 500 000 and had the remaining EUR 4.5 million, together with the proceeds of other criminal activities, transferred into several bank accounts in countries with strict bank secrecy. The mortgage of Bank EUR was presented to the foreign banks as the legitimate source of the funds that were being transferred to the accounts. In this way, the money was layered and integrated. The renovation of the office buildings never took place. Meanwhile the activities of Company A rapidly decreased. Company A finally went into default. Bank EUR called the loan, but Mr. Y was not in a position to reimburse it along with the interest payment. Mr Y stated that he was not aware of the persons behind Company A, their whereabouts and the background of the accounts to which the money was transferred. Indicators and methods identified in the scheme: -Applying for a loan under false pretenses. -Using forged and falsified documents. -The client persisted in a picture of the financial situation that was unrealistic or that could not be supported by documents. -The loan amount did not relate to the value of the real estate. -Successive buying

and selling of the real property involved. -The client had several mortgage loans relating to several residences.

- b) Back-to-back loan used to launder funds (Predicate offence: forged loan agreement, in particular the failure to mention the security underlying the loan and money laundering) Mr. X was a criminal who deposited funds via one of his corporate vehicles (Company A) into an account at Bank S. Company A was in an offshore jurisdiction that had strict bank secrecy. Mr X. was the owner of Company A, did not want to disclose his identity and thus used a TCSP to manage Company A. Mr. X used Company C to mask his real identity. Mr X also set up and controls Company B of which he is the owner. According to the public registers, the official owner and manager of Company B was Mr. Y who acts as a front-man. Company B owned several buildings that were rented out to natural persons and companies. This way Mr. X generated legal rental income via Company B. Mr. X was short of money from legitimate sources to expand his legal activities. Based on the financial situation of Company B, Bank N was not willing to grant a loan without additional security. He set up a back-to-back loan structure to use his criminal money to invest in real estate. Bank N was willing to lend money to Company B under the condition that Company B provided sufficient collateral and was willing to pay a high-risk premium on top of the market interest rate. Mr. X. arranged for Bank S to provide a bank guarantee to Bank N which could be drawn by Bank N on Bank S in case of a default on the loan. Bank N's credit risk regarding Company B was then fully covered. The loan fit into the financial situation and activities of Company B. Bank S was willing to provide the bank guarantee to Bank N in name of Company A, with the pledged deposit as collateral. The money deposited in Bank S originated from the criminal activities of Mr. X. If Bank N were to withdraw the guarantee on Bank S, Bank S would have used the deposit pledged by Company A to settle the payment with Bank N. For

Bank N the original collateral provider Company A, i.e. Mr X, was not visible. Bank N only saw Bank S's guarantee. Bank N lent the money to Company B. Through the payment by Bank N as part of the reimbursement of the back-to-back loan, Mr. X was able to provide a valid reason for the money used to finance the real estate. The collateral originated from criminal activities. The laundered money was invested in real estate that provided for legal rental income. The earnings of Company B were continuously skimmed off by Mr. X to finance his illegal activities. Company B initially made loan and interest payments to Bank N. After a period of time, Company B stopped the payment of the principal and interest. Based on the loan agreement and the banking terms, Bank N withdrew the bank guarantee on Bank S. Bank S used the pledged deposit to settle the payment to Bank N. Indicators and methods identified in the scheme: -No reference in the loan agreement to the underlying collateral. -The collateral provided was not sufficient -The collateral provider and other parties involved in the loan structure were not known. -The borrower of the money was not willing to provide information on the identity and background of the collateral provider nor on the other parties involved in the loan structure. -The complex nature of the loan scheme could not be justified -There was an unexpected loan default.

2.8 WHAT ARE THE AML/CFT LEGAL OBLIGATIONS FOR REAL ESTATES?

The AML/CFT laws of Uganda impose obligations on the real estate sector to:

- 1) Register with the FIU (Regulation 4 of the AMLA Regulations, 2015)
- 2) Submit Reports to the FIU
- 3) Not to "Tip-off"
- 4) Keep Records
- 5) Ascertain client identity (KYC/CDD/EDD)

- 6) Ascertain whether the client is acting for a Third Party
- 7) Appoint a Compliance Officer and Alternate Compliance Officer
- 8) Develop a written effective Compliance Programme and Implement your Compliance Programme and conduct periodic reviews

2.8.1 REGISTRATION WITH FIA

Regulation 4 of the AMLA Regulations, 2015, requires the real estates agents to register with the FIA for the purpose of identifying themselves as an entity which is supervised by the FIA. It must also notify the FIA of a change of address of its registered office or principal place of business.

How to Register

On-line registration can be done through the FIA's website; www.fia.go.ug. Alternatively, you may download the form from the website, have it filled and physically delivered to FIA office on; Plot 6 Nakasero Road, 4th Floor Rwenzori Towers (Wing B).

2.8.2 SUBMITTING REPORTS TO THE FIA

- (1) Suspicious transactions/activities reports real estates agents are required to send to the FIA three (3) types of reports:
 - a) Reports of suspicious transactions or Activities (STRs)
 - b) Reports of terrorist funds in your possession.
 - c) Large cash transaction report

The relationship between reporting entities and the FIA is a key one, because the FIA can only perform its analytical function to produce financial intelligence if the various reporting entities report the critical information they have. Failing to report to the FIA knowledge or suspicion of crime proceeds or terrorist property is a criminal offence.

If an accountable person/entity continues to deal with such a transaction or funds knowing or having reasonable grounds to believe that the funds are proceeds of crime or terrorists' funds and you do not report it to the FIA then you may have committed the offence of money laundering or financing of terrorism.

a) REPORTING SUSPICIOUS TRANSACTIONS/ACTIVITIES.

Section 9 of the AMLA (as amended), imposes an obligation on the real estate agents to submit a suspicious transaction report (STR) to the FIA where:

- 1) They know or have reasonable grounds to suspect:-that funds being used for the purpose of a transaction are the proceeds of a crime; or;
- 2) A transaction or an attempted transaction is related to the commission or attempted commission of a money laundering offence; or-
- 3) That funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism. According to section 9(2) of the AMLA, an STR must be submitted within two (2) days of the date the transaction was deemed to be suspicious.

Regulation 12 (7) and (8) requires real estate agents to **submit an STR to the FIA immediately** if a designated entity attempts to enter into a transaction or continue a business relationship. **Real estate gents must not enter into or continue a business transaction or business relationship with such entity.**

A designated entity means any individual or entity and their associates designated as terrorist entities by the United Nations Security Council. Visit the UN website to access the UN list.

i. The meaning of knowledge and suspicion

- a) The first criterion provides that, before you become obliged to report, you must know or have reasonable grounds for suspecting, that some other person is engaged in Money Laundering or Financing of Terrorism. If you actually 'know' that your client is engaged in Money Laundering, then your situation is quite straightforward –the first criterion is met. However, knowledge can be inferred from the surrounding circumstances, for example, a failure to ask obvious questions may be relied upon by a jury to imply knowledge.
- b) You are also required to report if you have '**reasonable grounds**' to suspect that the client or some other related person is engaged in money laundering or financing of terrorism. By virtue of this second, 'objective' test, the requirement to report will apply to you if based on the facts of the particular case, a person of your qualifications and experience would be expected to draw the conclusion that those facts should have led to a suspicion of money laundering or financing of terrorism. The main purpose of the objective test is to ensure that trust and company service providers (and other regulated persons) are not able to argue that they failed to report because they had no conscious awareness of the money laundering activity, e.g. by having turned a blind eye to incriminating information which was available to them or by claiming that they simply did not realise that the activity concerned amounted to money laundering.

ii. Attempted transactions:

You also have to pay attention to **suspicious attempted transactions**. If a client attempts to conduct a transaction, but for whatever reason that

transaction is not completed, and you think that the attempted transaction is suspicious, you must report it to the FIA.

NOTE: It is only when you “*know*” or “*reasonably suspect*” that the funds are proceeds of crime or related to money laundering or financing of terrorism that you have to report: you do not have to know what the underlying criminal activity is or whether illegal activities have actually occurred.

b) REPORTING TERRORIST FUNDS.

In accordance with regulation 12(7) and (8) of the Anti-Terrorism Regulations 2016, real estates agents ***must report immediately*** to the FIA the existence of funds within your business where you know or have reasonable grounds to suspect that the funds belong to an individual or legal entity who:

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

You ***must report immediately*** to the FIA where you know or have reasonable grounds to believe that a person or entity named on the UNSC list or the list circulated by the FIA has funds in Uganda.

You can access the UNSC Sanctions’ list (“the UN list”) by visiting the United Nations website.

C) LARGE CASH TRANSACTION REPORT

By virtue of section 8 of the AMLA, real estate agents are required to report all cash and monetary transactions equivalent to or exceeding one thousand currency points, which is equivalent to twenty million Uganda shillings (UGX. 20,000,000).

REPORTING STANDARDS TO GUIDE YOU IN COMPLETING THE STR FORM.

i. IDENTIFYING A SUSPICIOUS TRANSACTION/ACTIVITY

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

2.8.3 NO TIPPING-OFF

When a real estate agent has made a suspicious transaction report to the FIA, you or any member of your staff must not disclose the fact or content of such report to any person. It is an offence to tell any person, including the customer, that you have or your business has filed a suspicious transaction report (STR) about the customer's transactions as per section 117 of the AMLA, 2013. You must also not disclose to anyone any matter which may prejudice money laundering or financing of terrorism investigation or proposed investigation. This prohibition applies to any person acting, or purporting to act on behalf of the business including any agent, employee, partner, director or other officer, or any person engaged under a contract for services.

2.8.4 RECORD KEEPING

Section 7 of the AMALA, provides that real estate agents are required to keep a record of each and every transaction for a minimum period of 10 (ten) years. Record keeping is important to anti-money laundering investigation and analysis which allows for swift reconstruction of individual transactions and provides evidence for prosecution of money laundering and other criminal activities.

Real estates agents must ensure that proper financial accounts and records are kept including:

- a) All sums of cash received and expended and the matters in respect of which the receipt and expenditure relate;
- b))All gifts, sales and purchases of property;
- c) All sums of cash raised through fundraising;
- d) Non-monetary transactions of property as may be prescribed by Regulations; and
- e) All assets and liabilities.

Real Estate agents must keep the following records in electronic or written form for a period of ten (10) years or such longer period as the FIA may direct. The records must be kept for ten (10) years after the end of the business relationship or completion of a one-off transaction.

- a) All domestic and international transaction records;
- b) Source of funds declaration, where applicable;
- c) Identification data obtained through the customer due diligence process;
- d) Copies of internal STRs submitted by staff to the Compliance Officer;
- e) A register of copies of STRs/SARs filed with the FIA;
- f) A register of all enquiries (containing -date, nature of enquiry, name of officer, agency and powers being exercised) made by law enforcement authorities;
- g) The names, addresses, position titles and other official information pertaining to your staff;
- h) All wire transfer records (originator and recipient's identification data);
- i) Account files and business correspondence; and

- j) The results and any analysis undertaken related to a donor, beneficiary or transaction.
- k) Other relevant records.

8.2. 5. ASCERTAINING IDENTITY /KYC AND CDD

If real estate agents are unable to identify and verify a client's identity or obtain sufficient information about the nature and purpose of a transaction, they ***must NOT carry out a transaction for that client*** or enter into a business relationship with the client and must terminate any business relationship already established.

- i. They should also consider submitting a STR to the FIA. Verifying a client's identity will include gathering relevant identification documentation which will be a valid passport, national identification card or driver's licence.
- ii. They should also obtain the permanent address of such a person and proof of address. In the case of an organization, you must ascertain that the client is duly authorized to act for the organization.
- iii. Where acting for a corporate client for a transaction they should ascertain the identity of the Directors, partners, beneficial owners and other relevant officers of the company.
- iv. Further and to the extent which may be relevant obtain the certificate of incorporation, copy of byelaws (where applicable), management accounts and information on identity of shareholders. There are circumstances where the risk of money laundering or terrorist financing is higher, and Enhanced Due Diligence (EDD) measures have to be taken. They must take specific measures to identify and verify the identity of the following high risk persons (individuals or entities):

- v. Any person who is a politically exposed person
- vi. Any person who conducts business transactions with persons and financial institutions in or from other countries which do not or which insufficiently comply with the recommendations of the Financial Action Task Force (“the FATF”).
- vii. Any client or transaction or service or product type that you have identified as posing a higher risk to your business e.g., transactions which involve high levels of funds or cash.
- viii. Any individual or entity who conducts complex, unusual large transactions, (whether completed or not), unusual patterns of transaction and insignificant but periodic transactions which have no apparent economic or visible lawful purpose;
- ix. Any individual or entity who conducts business transactions with persons and financial institutions in or from other countries which do not or insufficiently comply with the recommendations of the Financial Action Task Force (“the FATF”).
- x. Any individual or entity for whom you have to send a suspicious transaction report to the FIU (reasonable measures and exceptions apply e.g. to avoid tipping-off) You must apply EDD measures to high risk clients and situations which include, but are not limited to:-Obtaining additional information on the customer e.g., additional form of Government issued identification;-Obtaining details of the source of the client’s funds and the purpose of the transaction if relevant;-
- xi. Verifying the source of funds for the transaction e.g., if client states the cash is from his bank account, ask for proof;-Obtaining approval from a senior officer to conduct the transaction; Applying supplementary measures to verify or certify the documents supplied or requiring certification by a financial institution;-Ongoing monitoring (e.g., monthly,

quarterly, annually or on a transaction basis) of the client's account throughout the relationship; and-implementing any other customer identification policies and procedures to prevent money laundering and financing of terrorism.

2.8.6 IS THE CLIENT ACTING FOR A THIRD PARTY?

Real estates agents must take reasonable measures to determine whether the client is acting on behalf of a third party especially where they have to conduct EDD. Such cases will include where the client is an agent of the third party who is the beneficiary and who is providing the funds for the transaction. In cases where a third party is involved, they must obtain information on the identity of the third party and their relationship with the client.

2.8.7 APPOINT A COMPLIANCE OFFICER

Real estates agents must appoint a senior employee or other competent professional as a designated Money Laundering Control Officer ("MLCO") for the business/firm. The individual appointed will be responsible for the implementation of the compliance regime.

In accordance with section 9A of the AMALA, the identity of the MLCO must be treated with the strictest confidence by you and your staff. If you change your MLCO you must inform the FIA immediately. Your MLCO should have the authority and the resources necessary to discharge his or her responsibilities effectively. The ML CO should be from a senior management level and have direct access to senior management and the board of directors. Further, as a good governance practice, the appointed MLCO in a large business should not be directly involved in the receipt, transfer or payment of funds. The MLCO must:

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

The MLCO's responsibilities include:

- a) Submitting STRs and TFRs to the FIA and keeping relevant records;
- b) Acting as Liaison officer between your business and the FIA;
- c) Implementing the compliance policy/ programme;
- d) Directing and enforcing your compliance policy/ Programme
- e) Ensuring the training of employees on the AML/CFT; and for consistency and ongoing attention to the compliance regime, your appointed MLCO may choose to delegate certain duties to other employees. For example, the officer may delegate an individual in a local office or branch to ensure that compliance procedures are properly implemented at that location. However, where such a delegation is made, the MLCO retains full responsibility for the implementation of the compliance regime.

2.8.8 DEVELOP, AND IMPLEMENT A COMPLIANCE POLICY

After a real estate agency has registered with the FIA as a reporting entity, it must develop a written compliance policy("CP"). If it's an organization the CP also has to be approved by senior management. The CP is a written document which should include a risk assessment of your particular business and which sets out your system of internal procedures, systems and controls which are intended to mitigate the vulnerabilities and inherent risks identified by you which can be exploited by money launderers and terrorism financiers. The CP will contain measures that ensure that you comply with your reporting, record

keeping, client identification, employee training, and other AML/CFT obligations. These policies, procedures and controls, must be communicated to employees, and when fully implemented, will help reduce the risk of your business being used for money laundering or to finance terrorism. It is advisable to revise the CP on a regular basis, to ensure that measures in place remain commensurate with the risks posed to the business and are current with legal obligations. A well-designed, applied and monitored regime will provide a solid foundation for compliance with the AML/CFT laws. As not all individuals and entities operate under the same circumstances, your compliance regime will have to be tailored to fit your individual needs. It should reflect the nature, size and complexity of your operations as well as the vulnerability of your business to money laundering and terrorism financing activities

The following five (5) elements must be included in the compliance policy:

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

2.9 THE RISK INDICATORS FOR THE REAL ESTATE SECTOR

The real estate sector can be used to facilitate money laundering through each of the three money laundering stages: placement, layering and integration

and/or the financing of terrorism. The following circumstances may indicate a risk of money laundering or terrorism financing occurring:

- a) Client sells property below market value with an additional 'under the table' payment;
- b) Client purchases property without inspecting it;
- c) Client buys back a property that he or she recently sold;
- d) Client purchases multiple properties in a short time period, and seems to have few concerns about the location, condition, and anticipated repair costs, etc. of each property;
- e) Frequent change of ownership of same property, particularly between related or acquainted parties;
- f) If a property is re-sold shortly after purchase at a significantly different purchase price, without corresponding changes in market values in the same area.
- g) Client wants to purchase property in someone else's name such as an associate or a relative (other than a spouse) or makes a last minute substitution of the purchasing party's name without a reasonable explanation.
- h) Client does not want to put his/her name on any document that would connect him/ her with the property or uses different names such as on Offers to Purchase, contract for sale and deposit receipts;
- i) Transactions which are not completed in seeming disregard of a contract clause penalizing the buyer with loss of the deposit if the sale does not go ahead;
- j) Client pays initial deposit with a cheque from a third party, other than a spouse or a parent;
- k) Client pays substantial down payment in cash and balance is financed by an unusual source for example a third party or private lender;
- l) Transactions in which the parties show a strong interest in completing the transaction quickly, without there being good cause;

- m) Client's home or business telephone number has been disconnected or there is no such number;

2.10 SUSPICIOUS INDICATORS FOR THE REAL ESTATE SECTOR

NATURAL PERSONS

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

- g) Individuals who unexpectedly repay problematic loans or mortgages or who repeatedly pay off large loans or mortgages early, particularly if they do so in cash.

LEGAL PERSONS

- a) Transactions involving legal persons or legal arrangements domiciled in tax havens or risk territories, when the characteristics of the transaction match any of those included in the list of indicators.
- b) Transactions involving recently created legal persons, when the amount is large compared to their assets.
- c) Transactions involving legal entities, when there does not seem to be any relationship between the transaction and the activity carried out by the buying company, or when the company has no business activity.
- d) Transactions involving foundations, cultural or leisure associations, or non-profit-making entities in general, when the characteristics of the transaction do not match the goals of the entity.
- e) Transactions involving legal persons which, although incorporated in the country, are mainly owned by foreign nationals, who may or may not be resident for tax purposes.
- f) Transactions involving legal persons whose addresses are unknown or are merely correspondence addresses (for example, a PO Box number, shared office or shared business address, etc.), or where the details are believed false or likely to be false.
- g) Various transactions involving the same party. Similarly, transactions carried out by groups of legal persons that may be related (for example, through family ties between owners or representatives, business links, sharing the same nationality as the legal person or its owners or representatives, sharing an address, in the case of legal persons or their owners or representatives, having a common owner, representative or attorney, entities with similar names, etc.).

- h) Formation of a legal person or increases to its capital in the form of non-monetary contributions of real estate, the value of which does not take into account the increase in market value of the properties used.
- i) Formation of legal persons to hold properties with the sole purpose of placing a front man or straw man between the property and the true owner.
- j) Contribution of real estate to the share capital of a company which has no registered address or permanent establishment which is open to the public in the country.
- k) Transactions in which unusual or unnecessarily complex legal structures are used without any economic logic.

NATURAL AND LEGAL PERSONS

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

Transactions in which the parties:

- i. Do not show particular interest in the characteristics of the property (e.g. quality of construction, location, date on which it will be handed over, etc.) which is the object of the transaction.
- ii. Do not seem particularly interested in obtaining a better price for the transaction or in improving the payment terms.
- iii. Show a strong interest in completing the transaction quickly, without there being good cause.

- iv. Show considerable interest in transactions relating to buildings in particular areas, without caring about the price they have to pay.
- c) Transactions in which the parties are foreign or non-resident for tax purposes and:
 - i. Their only purpose is a capital investment (that is, they do not show any interest in living at the property they are buying, even temporarily, etc.).
 - ii. They are interested in large-scale operations (for example, to buy large plots on which to build homes, buying complete buildings or setting up businesses relating to leisure activities, etc.).
- d) Transactions in which any of the payments are made by a third party, other than the parties involved. Cases where the payment is made by a credit institution registered in the country at the time of signing the property transfer, due to the granting of a mortgage loan, may be excluded. Intermediaries
- e) Transactions performed through intermediaries, when they act on behalf of groups of potentially associated individuals (for example, through family or business ties, shared nationality, persons living at the same address, etc.).
- f) Transactions carried out through intermediaries acting on behalf of groups of potentially affiliated legal persons (for example, through family ties between their owners or representatives, business links, the fact that the legal entity or its owners or representatives are of the same nationality, that the legal entities or their owners or representatives use the same address, that the entities have a common owner, representative or attorney, or in the case of entities with similar names, etc.).
- g) Transactions taking place through intermediaries who are foreign nationals or individuals who are non-resident for tax purposes.

MEANS OF PAYMENT

- a) Transactions involving payments in cash or in negotiable instruments which do not state the true payer (for example, bank drafts), where the accumulated amount is considered to be significant in relation to the total amount of the transaction.
- b) Transactions in which the party asks for the payment to be divided in to smaller parts with a short interval between them.
- c) Transactions where there are doubts as to the validity of the documents submitted with loan applications.
- d) Transactions in which a loan granted, or an attempt was made to obtain a loan, using cash collateral or where this collateral is deposited abroad.
- e) Transactions in which payment is made in cash, bank notes, bearer cheques or other anonymous instruments, or where payment is made by endorsing a third-party's cheque.
- f) Transactions with funds from countries considered to be tax havens or risk territories, according to anti-money laundering legislation, regardless of whether the customer is resident in the country or territory concerned or not.
- g) Transactions in which the buyer takes on debt which is considered significant in relation to the value of the property.
- h) Transactions involving the subrogation of mortgages granted through institutions registered in the country may be excluded. Nature of the Transaction
- i) Transactions in the form of a private contract, where there is no intention to notarise the contract, or where this intention is expressed, it does not finally take place.
- j) Transactions which are not completed in seeming disregard of a contract clause penalising the buyer with loss of the deposit if the sale does not go ahead.
- k) Transactions relating to the same property or rights that follow in rapid succession (for example, purchase and immediate sale of

property) and which entail a significant increase or decrease in the price compared with the purchase price.

- l) Transactions entered into at a value significantly different (much higher or much lower) from the real value of the property or differing markedly from market values.
- m) Transactions relating to property development in high-risk urban areas, in the judgement of the company (for example, because there is a high percentage of residents of foreign origin, a new urban development plan has been approved, the number of buildings under construction is high relative to the number of inhabitants, etc.).

PLEASE NOTE THAT THIS IS NOT AN EXHAUSTIVE LIST OF SUSPICIOUS INDICATION.

2.11 OFFENCES AND PENALTIES FOR NON-COMPLIANCE

Failure to comply with the obligations under the AMLA and the AML regulations may result in criminal and/or administrative sanctions.

Penalties may include fines and terms of imprisonment. Sanctions include possible revocation of licenses, issuance of directives and court orders.

The offences under the AMLA include;

- a. Money Laundering (section 3 and 116);
- b. Tipping Off (section 117);
- c. Falsification, Concealment of documents (section 118);
- d. Failure to identify persons (section 119);
- e. Failure to keep records (section 120);
- f. Facilitating money laundering (section 121);
- g. Destroying or tampering with records (section 122);
- h. Refusal, omission, neglect or failure to give assistance (section 123);
- i. Failure to report cash transactions (section 124);
- j. Failure to report suspicious or unusual transactions (section 125);

- k. Failure to report conveyance of cash into or out of Uganda (section 126);
- l. Failure to send a report to the Authority (section 127);
- m. Failure to comply with orders made under the Act (section 128);
- n. Contravening a restraining order (section 129);
- o. Misuse of information (section 130);
- p. Obstructing an official in performance of functions (section 131);
- q. Influencing testimony (section 132);
- r. General non-compliance with requirements of this Act and conducting transactions to avoid reporting duties (section 133);
- s. Unauthorised access to computer system or application or data (section 134);
- t. Unauthorised modification of contents of computer system (section 135).

Penalties

According to section 136 of the AMLA, a person who commits money laundering is liable on conviction to:-

- a. in the case of a natural person, imprisonment for a period not exceeding fifteen years or a fine not exceeding one hundred thousand currency points or both;
- b. in the case of a legal person by a fine not exceeding two hundred thousand currency points.

According to section 136(2) of the AMLA, a person who commits any other offence under the Act is punishable-

- a. if committed by a natural person, by imprisonment for a period not exceeding five years or a fine not exceeding thirty three thousand currency points, or both;
- b. if committed by a legal person such as a corporation, by a fine not exceeding seventy thousand currency points;

- c. if a continuing offence, by a fine not exceeding five thousand currency points for each day on which the offence continues; or
- d. if no specific penalty is provided, by a fine not exceeding nine thousand currency points and in case of a continuing offence, to an additional fine not exceeding five thousand currency points for each day on which the offence continues

3. REVIEW OF THE GUIDELINES

REAs are encouraged to compile and record any comments, which arise in relation to these guidelines, and forward them to the Financial Intelligence Authority for its appropriate action.