

## *DRAFT FOR PUBLIC CONSULTATION*

### **2<sup>nd</sup> Draft Guidance Paper for consideration and agreement to public consultation**

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## Acronyms

<b>AML/CFT</b>	Anti-money laundering/ Countering the financing of terrorism
<b>CDD</b>	Customer due diligence
<b>DNFBP</b>	Designated non-financial businesses and professions
<b>FIU</b>	Financial intelligence unit
<b>FSRB</b>	FATF Style Regional Body
<b>INR.</b>	Interpretive Note to Recommendation
<b>ML</b>	Money laundering
<b>MLRO</b>	Money Laundering Reporting Officer
<b>MLCO</b>	Money Laundering Compliance Officer
<b>NRA</b>	National Risk Assessment
<b>PEP</b>	Politically Exposed Person
<b>R.</b>	Recommendation
<b>RBA</b>	Risk-based approach
<b>SRB</b>	Self-regulatory body
<b>STR</b>	Suspicious transaction report
<b>TF</b>	Terrorist financing

## Executive Summary

1. In June 2021, the FATF agreed that the FATF Risk-Based Guidance to the Real Estate Sector should be updated as a matter of priority to reflect the evolution of money laundering and terrorist financing (ML/TF) and to ensure that the Sector remains well-placed to counter such activity.
2. This Guidance was primarily developed for the Sector to outline the principles and benefits of adopting a risk-based approach to tackling ML/TF. It is designed to be read alongside the FATF Recommendations (2012) and provides real estate agents, as well as other professionals that perform the same functions of real estate agents, with the requisite tools and examples to support the implementation of FATF standards enabling the implementation of a risk-based approach to anti-money laundering and countering the financing of terrorism (AML/CFT). Such an approach is considered to be an essential foundation of a country's AML/CFT framework, which must reflect the characteristics of legal, regulatory and financial frameworks.
3. The success of a risk-based approach is dependent on a comprehensive understanding, assessment and management of ML/TF risks, and on taking appropriate measures to mitigate these risks effectively. The Guidance is split into three main sections including an overview of the FATF's risk-based approach, including the general risks and challenges that real estate professionals might be exposed to and how these can be effectively mitigated and managed.
4. The following section sets out the primary risk categories that the Real Estate Sector might be exposed to and makes recommendations on the types of mitigation policies that should be devised, implemented, and reviewed, including ensuring Customer Due Diligence (CDD) and identifying beneficial ownership measures are undertaken. The Guidance furthermore emphasises the need for training and awareness that real estate professionals and relevant personnel should have to meet the requirements.
5. The final section provides guidance for supervisors and self-regulatory bodies (SRBs) and highlights the need for adequate powers to enable such bodies to perform their functions effectively. This includes powers to monitor activity and impose appropriate sanctions where necessary. Further recommendations are provided to enable effective supervision, including on the allocation of resources based on the degree of ML/TF risk and assessment of the effectiveness and suitability of controls implemented by real estate professionals.

## 1. INTRODUCTION AND KEY CONCEPTS

### Box 1.1. Relevant FATF Recommendations and Guidance

This Guidance should be read in conjunction with the following, which are available on the FATF website: [www.fatf-gafi.org](http://www.fatf-gafi.org)

- a The FATF Recommendations, especially Recommendations 1, 10, 11, 12, 15, 17, 19, 20 to 25, 28, and their Interpretive Notes (INR), as well the FATF Glossary
- b Other relevant FATF Guidance documents such as:
  - FATF Guidance on Transparency and Beneficial Ownership (October 2014)
  - Terrorist Financing Risk Assessment Guidance (July 2019)
  - FATF Guidance on Digital ID (March 2020)
  - FATF Guidance on Risk-Based Supervision (March 2021)
  - FATF Recommendations 18 and 23: Explanatory Materials (November 2021)
- c Other relevant FATF reports such as:
  - The Joint FATF and Egmont Group Report on Concealment of Beneficial Ownership (July 2018)

### 1.1. Background and Context

1. The implementation of the risk-based approach (RBA) is key to the effective implementation of FATF Standards. In 2008, FATF published its RBA Guidance for Real Estate Agents as part of the ongoing efforts to strengthen the implementation of the Standards with Designated Non-Financial Businesses and Professions (DNFBPs).
2. These guidelines have been incorporated into national jurisdictions legislative and supervisory practices. In some instances, national authorities have further developed guidelines setting forward more detailed requirements and context specific advice.
3. In June 2021, the FATF agreed that the 2008 document should be updated as a matter of priority to reflect the recognition of the evolving nature of the sector as well as changes that occurred to FATF Recommendations and industry best-practices as well as to account for the evolution of the RBA. Additionally, the FATF notes that money laundering through real estate continues to be well documented across FATF and FSRB members.
4. This updated Guidance provides private sector practitioners, supervisors, regulators, and policy-makers with additional strategies and tools to inform and contribute towards a more effective anti-money laundering and countering the financing of terrorism (AML/CFT) system.
5. This Guidance supports national regulations and guidelines issued by FATF and FSRB members that may set forward more detailed requirements for the sector than what appears in the guidance. This Guidance is non-binding and does not overrule the purview of national authorities, including on their local assessment and categorisation

of real estate professionals based on the prevailing ML/TF risk situation and other contextual factors.<sup>1</sup>

## 1.2. Purpose, Target Audience and Content of the Guidance

6. The purpose of this Guidance is to:
  - Support the implementation of FATF standards for the real estate sector, including residential and commercial real-estate.
  - Indicate good practices in the design and implementation of an effective risk-based approach.
  - Update the previous FATF guidance in line with new and emerging threats, sector developments and ever-evolving international context.
7. This Guidance is aimed at professionals working in and involved with the selling and buying of real estate, generally known in this guidance as *real estate professionals*, to include real estate agents as well as other well as those professionals that may carry out or prepare for transactions for clients involving the buying and selling of real estate, such as lawyers, notaries, real estate developers, title insurers, other independent legal professionals and accountants – all professions covered under countries’ FATF obligations under R.22<sup>2</sup>. This Guidance also includes examples directed for banks that provide services that may facilitate real estate transactions, such as mortgage lending, as well as other entities that provide financing for real estate such as independent mortgage lenders.
8. This Guidance provides context and further information on how to implement the RBA for the sector, assisting supervisors and practitioners alike in their development of best practices, as well as discussing key items for practitioners to consider for their internal control systems and reporting. In particular, it provides a detailed description of how sector supervisors and practitioners should implement the FATF Standards in an adequate, risk-based and effective manner.
9. This Guidance furthermore offers examples of relevant money laundering (ML) and terrorist financing (TF) risk indicators associated with the real estate sector to inform supervisors and practitioners as they seek to carry out an RBA.
10. This Guidance also offers case-studies and real examples of private sector and supervisory practices aimed at illustrating and improving the assessment and understanding of sector specific risks rather than instituting best-practices.

## 1.3. Terminology

11. Similar terms are often used to refer to the different intermediaries that can be found in real estate markets worldwide. This Guidance is generally focused on real

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<sup>1</sup> National authorities may however take the Guidance into account when carrying out their supervisory functions.

<sup>2</sup> FATF Recommendation 22 - The customer due diligence and record-keeping requirements set out in Recommendations 10, 11, 12, 15, and 17, apply to designated non-financial businesses and professions (DNFBPs) in the following situations: “...b) Real estate agents – when they are involved in transactions for their client concerning the buying and selling of real estate. . . . d) Lawyers, notaries, other independent legal professionals and accountants – when they prepare for or carry out transactions for their client concerning the following activities: buying and selling of real estate....”

estate agents and other professionals that may carry out transactions for clients when they buy or sell real estate to the extent required by FATF Recommendation 22. For the purpose of clarity, the term real estate professionals included in this guidance henceforth includes a number of functions, to include those involving real estate agents, listed below, which should allow supervisors and practitioners to develop a common understanding of when the application of the risk-based approach should be applied, regardless of specific terminology. The use of this term therefore applies to real estate agents, other DNFBP's, and professionals whilst practicing or involved in the activities described below. In particular the term real estate professionals may include those individuals and entities that carry out:

- Traditional exclusive (and non-exclusive) seller representation.
- Traditional exclusive (and non-exclusive) buyer representation.
- Representation of both buyer and seller in the same transaction.
- A number of agents representing sellers or buyers.
- Practitioners involved in brokering sales of newly constructed and existing properties.
- National and transnational referrals.
- Representation at auctions (and auctioneers).
- Financial settlement.
- Real estate brokerage.

12. Additionally, this Guidance may be applicable to real estate developers, whom in some instances, may carry out similar activities to those described above – to include the sale of property – but who do not fall under the same category as real estate agents.

13. It may also be helpful to apply this guidance to banks and others lending entities that provide financing for real estate transactions, as some lenders may be exposed to similar risks facing real estate agents due to the type of services provided by banks to those looking to buy and sell real estate.

14. In some markets real estate agents may additionally assume additional functions relative to the transaction, such as conducting a mortgage loan assessment, valuation/appraisal and conveyance of property.

15. This Guidance is also applicable to other professionals – notaries, lawyers, lenders, property value assessors – when these professionals engage in interactions or functions related to the buying and selling of real estate. These professionals are broadly referred to as real estate professionals, a term which also encompasses real estate agents, real estate developers, and other DNFBPs.

16. Among other obligations, real estate professionals should always comply with their due diligence obligations with respect to both the vendors and purchasers of the property.

## 2. THE FATF'S RISK-BASED APPROACH TO AML/CFT

### 2.1. The RBA in context

17. An RBA to AML/CFT means that countries, competent authorities, financial institutions and DNFPBs are expected to identify, assess and manage the ML/TF risks to which they are exposed, and take AML/CFT measures commensurate to those risks in order to mitigate risks effectively. The FATF Recommendations consider the RBA to be an 'essential foundation' of a country's AML/CFT framework. This is an overarching requirement applicable to all relevant FATF Recommendations.

18. FATF Recommendation 1, which is directed towards assessing risks and applying a risk-based approach, sets out the scope of application of the RBA as follows:

- a **Who should be subject to a country's AML/CFT regime?** In addition to the sectors and activities already included in the scope of the FATF Recommendations<sup>3</sup>, countries should extend their regime to additional institutions, sectors or activities if they pose a higher risk of ML/TF. In strictly limited and justified circumstances countries could also consider exempting certain institutions, sectors or activities from some AML/CFT obligations where specified conditions are met, to include when there is a proven low risk of ML/TF.<sup>4</sup>
- b **How should those subject to the AML/CFT regime be supervised for compliance with this regime?** AML/CFT supervisors should ensure that real estate professionals are implementing their obligations under R.1, R.22 and other relevant recommendations. AML/CFT supervisors should specifically assess the risks of the real estate sector to inform mitigation and acknowledge the degree of discretion allowed under the RBA.
- c **How should those subject to the AML/CFT regime be required to comply?** Where there are higher risks, enhanced measures should be taken to manage and mitigate those risks. The range, degree, frequency or intensity of preventive measures and controls conducted should be stronger in higher risk scenarios. When involved in transactions for a client that includes the buying and selling of real estate<sup>5</sup>, real estate professionals are required to apply each of the Customer Due Diligence (CDD) measures below<sup>6</sup>:
  - i. identification and verification of the client's identity;
  - ii. use of reasonable measures to verify the identity of the beneficial owner;
  - iii. understanding the purpose and nature of the business relationship;
  - iv. and on-going monitoring of the relationship.

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<sup>3</sup> See Glossary, definitions of "Designated non-financial businesses and professions" and "Financial institutions".

<sup>4</sup> See INR.1.

<sup>5</sup> This means that real estate agents should comply with the requirements set out in Recommendation 10 with respect to both the purchasers and the vendors of the property.

<sup>6</sup> See R.10.

- v. Generally speaking, however, where the ML/TF risk is assessed as lower, the degree, frequency and/or intensity of the controls conducted will be less stringent. Where risk is assessed at a normal level, the standard AML/CFT controls should apply.

**d Consideration of the engagement in client relationships:** FATF does not require the real estate sector to entirely avoid ML/TF risks. Real estate agents and other real estate professionals that have been identified as vulnerable to risk may still operate in the sector or with a particular type of customer, provided sufficient mitigating measures are in place. Notably, even if the services they provide to their clients are considered vulnerable to the risks of ML/TF based on risk assessments, it does not mean that all real estate professionals and all their clients or services pose a higher risk if sufficient risk mitigation measures have been put in place.

19. Access to accurate, timely and objective information on ML and TF risks is a prerequisite for an effective RBA. INR.1.3 requires countries to have mechanisms to provide appropriate information on the results of the risk assessments to all relevant competent authorities, self-regulatory bodies (SRBs), financial institutions and DNFBPs. Where information is not readily available - for example where competent authorities have inadequate data to assess risks, or are unable to share important information on ML/TF risks and threats, or where access to information is restricted - it will be difficult for real estate professionals to correctly identify ML/TF risk.

20. R.34 requires competent authorities, supervisors and SRBs to establish guidelines and provide feedback to financial institutions and DNFBPs – as defined in paragraph 7 - to help these entities apply national measures to combat money laundering and terrorist financing. Such guidelines and feedback allow institutions and businesses to identify the ML/TF risks and to adjust their risk mitigation programmes accordingly.

### *2.1.1. Allocating responsibility under an RBA*

21. An effective risk-based regime builds on and reflects a country's legal and regulatory approach, the nature, diversity and maturity of its financial sector and its risk profile. Real estate professionals and other service providers should identify and assess their own ML/TF risks by considering undertaking National Risk Assessments (NRAs) in line with R.1 as well as the national legal and regulatory frameworks, including any areas of significant risk and associated mitigation measures.

22. Real estate professionals are required to take appropriate steps to identify and assess their ML/TF risks and have policies, controls and procedures that enable them to manage and mitigate effectively the risks that have been identified.<sup>7</sup> Where ML/TF risks are higher, real estate professionals should have additional mitigation measures in place, and should apply enhanced due diligence, while taking into account that national law or regulation might not prescribe exactly how these higher risks are to be mitigated (e.g. varying the degree of enhanced ongoing monitoring).

23. Strategies adopted by real estate professionals to mitigate ML/TF risks must take into account the applicable national legal, regulatory and supervisory frameworks and strategies. When determining risk mitigation strategies, countries should consider the ability of the sector to effectively identify and manage ML/TF risks as well as the

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<sup>7</sup> R.1 and INR.1

expertise and resources of supervisors to adequately evaluate how real estate professionals manage ML/TF risks and take action to address any failures.

24. Countries may also consider evidence from competent authorities on the level of compliance in the sector and the sector's approach to dealing with ML/TF risks. Countries with emerging real estate sectors or related functions or countries that have legal, regulatory, and supervisory frameworks that are still developing may determine that real estate professionals are not fully equipped to effectively identify and manage ML/TF risks. In such cases, additional attention and supervisory focus on AML/CFT requirements on real estate professionals, other DNFBP's, and banks involved in the industry may be appropriate until the sector is mature and better able to mitigate ML/TF risks.

25. Certain roles in the real estate sector should not necessarily be exempt from AML/CFT supervision even where their compliance controls are adequate.

26. The adequate implementation of FATF Standards and the RBA requires a solid understanding of the ML/TF risks facing the sector. Stakeholders should demonstrate an effective ability to review, update and reflect their evolving position in the real estate environment while remaining cognizant of ML/TF risks.

### ***2.1.2. Developing a common understanding of the RBA***

27. The effectiveness of an RBA depends on a common understanding by competent authorities, supervisors and real estate professionals of what the RBA entails, how it should be applied and how ML/TF risks should be addressed. In addition to a legal and regulatory framework that spells out the degree of discretion provided to real estate professionals, the RBA requires real estate professionals to address identified risks. Competent authorities should provide information and guidance on regulatory developments – including specific regulations - to real estate professionals to help meet their legal and regulatory AML/CFT obligations. Facilitating ongoing and effective communication between competent authorities and the sector is essential.

28. A successful RBA will also need to take into account the overlap of coverage under AML/CFT frameworks for the non-real estate agent professionals that operate in the real estate sector such as bankers, lawyers, and accountants. Competent authorities, supervisors, and the relevant professionals covered under an AML/CFT regime should maintain an understanding of their individual obligations and ML/TF risks while remaining cognizant of the general regulatory posture towards the sector. Similarly, the underlying risk of illicit activity may be mitigated by coverage of various different intermediaries or at different points in the transaction process.

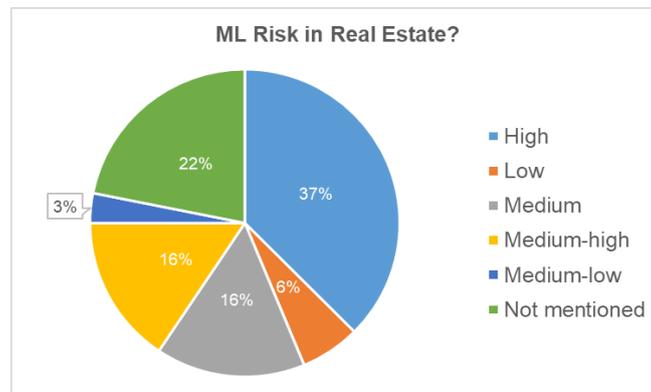
### ***2.1.3. Identifying ML/TF risk in the real estate sector***

29. Data gathered for this project<sup>8</sup> suggests that a significant portion of the countries assessed during the FATF 4<sup>th</sup> Round of mutual evaluations define the real estate sector as having a high ML/TF risk.

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<sup>8</sup> This data was obtained through the review of 32 FATF and FSRB MERs carried out in the 4<sup>th</sup> Round of evaluations.

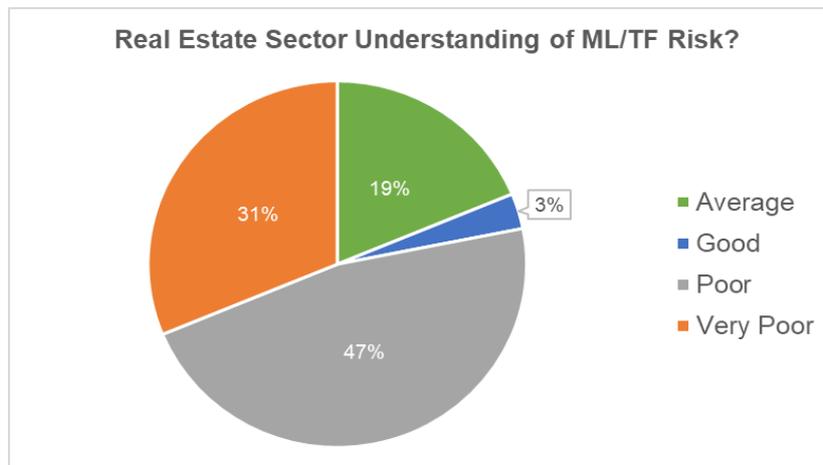
**Figure 2.1. Ranking of ML risk in the real estate sector**



Source: Sample of 32 FATF/FSRBs countries, FATF 2021

30. 37% of countries surveyed have found the sector associated risk to be high versus 9% which consider it low or medium-low. The degree to which ML/TF risk is considered high by the jurisdictions is helpful to inform specific guidance and the extent to which the risk-based approach is implemented.

**Figure 2.2. Understanding of ML/TF Risk**



Source: Sample of 32 FATF/FSRBs countries, FATF 2021

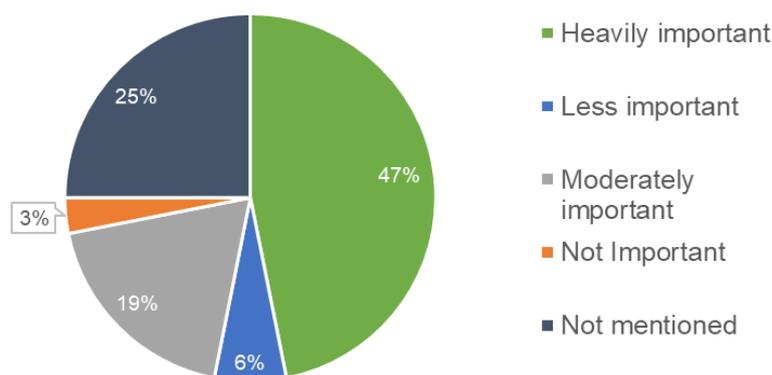
31. In addition, countries’ real estate sectors have been found to have a poor level of understanding of the relevant ML/TF risks. As of 2021, 78% of 4<sup>th</sup> round assessed MERs suggested there is a poor or very poor rating in this area. The low levels of ML/TF risk awareness in the sector appear to be mostly linked to the nature, size and functions present in the sector, which challenge its ability to have a shared understanding of risks, as well as criminal trends and potential shared threats.

32. The data collected on how countries understand ML/TF risk in the real estate sector suggests the implementation of FATF Standards continues to require improvement and demonstrates a lower level of understanding of ML/TF risks when compared to other DNFBP sectors and financial institutions.

33. The suggested low level of understanding of ML/TF risks becomes particularly relevant when assessed in relation to the sector’s identified high risks.

34. The real estate sector’s understanding of risk should be addressed in order to allow for the adoption of adequate mitigation strategies that are fit to respond to the sector-specific threats.

**Figure 2.3. Real Estate Sector weighting in countries’ economies**



Source: Sample of 32 FATF/FSRBs countries, FATF 2021

35. The combined assessment of the FATF findings suggest the need to refine best practices and improve overall compliance with FATF Standards for the sector. The adequate implementation of the risk-based approach should allow countries and practitioners alike to respond to the identified risks and threats in a manner which is compatible with their countries’ own context, ability and need.

36. Identifying ML/TF risks in the real estate sector and clearly communicating those findings so they can become part of an overall strategy is foundational to countries’ and regulated sectors’ overall AML/CFT effectiveness. As described in the FATF methodology, countries with effective AML/CFT systems feature systems in which “money laundering and terrorist financing risk are understood and, where appropriate, actions coordinated domestically to combat money laundering and the financing of terrorism and proliferation”<sup>9</sup>.

37. As previously indicated in various FATF documents and guidance<sup>10</sup>, ML/TF risk is inherently unique to each country, and can vary with regards to the different types of property (i.e. commercial, residential or other). However, there are shared vulnerabilities across jurisdictions faced by the real estate sector due to criminals’ preference for the purchase of real estate with illicit proceeds given the value of real property as an asset. Evaluating these purchases helps identify trends of ML/TF activity.

#### **2.1.4. Sector specific ML/TF risks**

38. As indicated in the section above, a persistent challenge to ensure the effectiveness of FATF Standards for the real estate sector across FATF and FSRB members is the lower level of implementation of the standards in jurisdictions, as well

<sup>9</sup> FATF Methodology, Immediate Outcome 1 on Risk, Policy, and Coordination.

<sup>10</sup> See Box 1.1 for a detailed list.

as a lower understanding of risk within the sector itself. In many countries, real estate firms are not required to file suspicious transaction reports despite taking on large amounts of funds – including cash – from disparate sources originating from high-risk jurisdictions or business relationships. Supervisors and other competent authorities may not have the capacity to monitor individual or aggregate transactions involving the real estate agent or firm.<sup>11</sup> This arrangement can make it difficult to identify specific ML/TF risks in the real estate sector. Box 2.1 gathers a few case-studies of identified criminal behaviour through real estate.

### Box 2.1. Case studies

- Mr. Jones was convicted in April 2019 of fraud and money laundering and sentenced to 8 years in prison. Mr. Jones and his associate Mr. Brown who had been previously convicted of fraud visited a solicitor to buy a property for £350,000. The name on the solicitors' file was then changed to Mr Brown's partner. Between the 18th December and 12th February 2019 Jones and Brown's solicitor received a series of unsolicited electronic payments into their client account totalling £250,025. The funds had originated in their entirety from the bank account of a limited company (Company A) for which Brown's partner was, at the time of the transactions, again a director and the sole authorised signatory. In accordance with Money Laundering Regulations the solicitor contacted Brown's partner seeking proof of the provenance of the funds on several occasions, but no evidence was provided. Mr. Brown changed the name of the property to be bought several times and eventually notified the solicitor he needed the money back. The solicitor submitted a consent SAR asking for permission to pay the money back to the client, the permission was refused, and the money was ultimately forfeited via the Proceeds of Crime Act (POCA). Had the solicitor refunded the upfront payment received on their client accounts they would have enabled money laundering.
- Entity E was operating as an online peer-to-peer lending finance company in Country C until the authorities uncovered that it was conducting a large-scale Ponzi scheme. Among others, proceeds from Entity E's Ponzi scheme were intended to be used to purchase a private residential property in Singapore worth more than S\$23 million. An estate agent referred a foreign customer who was interested in purchasing a property in Singapore to a Singapore lawyer for conveyancing. The lawyer subsequently discovered that the foreign customer had been arrested in their home country in relation to Entity's E Ponzi scheme and was under investigation for fraud. The lawyer and real estate agent had suspected that the monies provided by the customer for the purchase of the property were illicit proceeds but did not file a Suspicious Transaction Report required under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act. Eventually the property and other relevant proceeds were seized, amounting to S\$27 million. These proceeds have been successfully returned to Country C.

<sup>11</sup> Transparency International, "Three Ways To Stop Money Laundering Through Real Estate", 6 September 2019. Available at: <https://www.transparency.org/en/news/three-ways-to-stop-money-laundering-through-real-estate>

- Ms X is a national from a country outside of the EU. She is not a resident in France for tax purposes. She wanted to buy a three-million-euro property in the South of France. In the course of negotiation, she said that the funds would be paid from her husband's bank account which is located in a country known as a tax shelter. Formalities were completed by a natural person born in a country – known to present ML/TF risks - according to the French financial intelligence unit (TRACFIN). This person had a power of attorney to sign the deed of sale. After an investigation on open data bases, TRACFIN found out that Ms X was the wife of a politically exposed person who was known for embezzlement in his country. This information was corroborated by the FIU of the country Ms X was from. In addition, this couple had been the subject of freezing of assets.<sup>12</sup>
- In 2016, in Oakland, California, real estate agent Y was sentenced after pleading guilty to conspiracy to commit bank fraud and money laundering. The real estate agent used straw buyers to purchase real estate through “short sales,” and falsified documents to aid in the purchases. He ultimately used his own funds to purchase the properties at prices steeply reduced due to Y's fraud. The properties were purchased in the names of the straw buyers, and often resold for a significant profit. The real estate agent also accepted \$550,000 from an undercover agent posing as a drug dealer and attempted to launder the money by wiring the funds from his business bank accounts.<sup>13</sup>

Source: UK, France, US and Singapore input

## 2.2. General ML/TF risks facing the real estate sector

39. Criminals gravitate towards sectors that apply or are believed to apply less-comprehensive regulation and mitigation measures or where supervision is found to be lacking. Unlike banking, insurance, money-service-businesses, and other industries, buyers and sellers of real estate do not tend to maintain a relationship over a period of time with a regulated entity, which can make it difficult for supervisors and real estate professionals to examine series of transactions and identify suspicious activity. The nature of transactions also reduces the level of understanding of customer profiles and the incentive for investing and adequately implementing customer due diligence requirements.

40. In many jurisdictions, means to determine adequate, accurate, and up-to-date information on the beneficial owner[s] behind real estate transactions are few and in some cases there is a lack of requirement to collect this information. Many cases also lack adequate and accessible mechanisms where information on beneficial owners of real estate can be easily found for investigative or analytical purposes. The lack of transparency into beneficial ownership information allows criminals to abuse nominees as well as legal persons and arrangements – such as shell companies and trusts - to obfuscate their involvement in any money laundering or terrorist financing activity. This arrangement can also be attractive to criminals because the purchase of real estate allows for the movement of large amounts of funds all at once as opposed to in a single transaction.

<sup>12</sup> Input by France to FATF RBA Guidance for the Real Estate Guidance

<sup>13</sup> Input by U.S. to FATF RBA Guidance to the Real Estate Sector, <https://www.justice.gov/usao-ndca/pr/danville-real-estate-agent-sentenced-four-years-prison-bank-fraud-and-money-laundering>

41. In some countries, real estate also offers secondary benefits for criminals, such as helping with attempts to secure residency and/or citizenship, conveying social respectability, and simply providing an immediately available good of material benefit. Criminal networks and drug traffickers have been documented to purchase real estate for their use as supply houses, or as a location to grow, manufacture, or distribute illicit narcotics. While in some cases, criminals are not able to make tangible use of financial assets, such is not the case with real estate adding to its appeal as a criminal profit tool.

42. Successful AML/CFT supervision of the real estate sector must contend with the veil of true ownership provided by legal entities or arrangements, while recognizing that individuals often have legitimate reasons to use these vehicles to purchase real estate, such as to ensure privacy or for tax planning purposes. Across various jurisdictions, some Politically Exposed Persons (PEPs) have sought to launder ill-gotten funds into the real estate sector in both the residential and commercial sectors. PEPs that misuse their positions for personal enrichment present a high ML risk to the real estate sector and the larger financial sector more broadly given the PEP connections to governmental entities and possible access to government funds.

43. The real estate sector remains attractive for criminals and corrupt PEPs for ML because of the ability of individuals to transfer the value of funds into both commercial and residential property. Real estate is often a stable investment and an appreciating asset that can generate returns.

44. In addition to the lack of transparency described above, criminals may also be aided by the ability to use legal entities to obfuscate their involvement in the purchase of various type of properties aided by the fact that real estate professionals may not be able or obligated, by virtue of different AML/CFT legal frameworks, to identify and verify customer information – to include beneficial ownership information - or the source of funds used for the real estate transaction.

45. Commercial real estate may be especially vulnerable to money laundering due to the increased prevalence of legal entities and vehicles used by corporate buyers and sellers that seek out these properties for investment and revenue. Additionally, the high-value of these properties may also require multiple types of financing, which may complicate efforts to identify the source of funds.

46. In some instances, criminals may seek to falsify information – such as asset holdings, falsified or stolen identities, and income information – to obtain a loan from a bank or other lender. In these instances criminals may have no intention of using the funds to acquire a property and may seek to use the real estate loan to disguise the origin of funds for another use. Illicit proceeds may be used to pay off loans, allowing criminals to place ill-gotten gains into the financial system. In some instances, criminals may rely on complicit bankers and lending professionals to help obtain a mortgage and ultimately help them avoid detection. They may also seek out straw buyers or nominees to obtain the mortgage.

47. However, for non-financed purchases, the risk posed by complicit professionals is even more significant, given the ability of the transacting parties to avoid going through highly-regulated financial institutions to obtain financing to close a deal. This allows for real estate professionals to use their market knowledge to knowingly or unknowingly facilitate real estate purchases for criminals without adhering to CDD obligations required by covered financial institutions. This risk may be exacerbated in jurisdictions with minimal beneficial ownership requirements.

48. Criminals may seek to launder funds by paying for property at a higher or lower value than true property value, indicating that the property may not be intended for a legitimate use and that the transaction is designed to hide illicit activity or gains.

49. In many cases, cross border purchases of real estate may also carry more elevated risks for practitioners and supervisors, to consider when the purchaser is based in a high-risk jurisdiction. This may include instances where the purpose of the transaction is questionable, i.e. not for residence, or when the value associated with the transaction is abnormal for the buyer or the market.

### ***2.2.1. Importance of identifying ML/TF risks for a successful RBA***

50. Despite the presence of the potential risks described above, successful implementation of an RBA to combating money-laundering and terrorist financing in the real estate industry depends on a sound understanding and judgment of the threats and vulnerabilities focused on the specific context experienced by the supervisors or practitioners.

51. Depending on the structure of competent authorities and the overall real estate sector, each country's risks, along with the risks assessments and mitigation strategies will be unique. A country must maintain a mechanism to ensure that all competent authorities and DNFPBs involved in the real estate sector are aware of those unique risks to the sector as identified in the risk assessment.

52. The real estate sector is not constrained to residential real estate. All professions involved in both residential and commercial real estate transactions to include lawyers, bankers, lenders, investment advisors, settlement companies, insurers, and others should be considered when seeking to identify risks associated with the sector and be aware of the national risk assessment and strategy, and play a part in risk mitigation strategies.

53. In sum, the real estate sector is prone to abuse and can assist criminals in their illicit activities or the laundering of criminal profits. A previous FATF report<sup>14</sup> has identified and summarised several activities that may be indicative of money laundering via the real estate sector, namely:

- Use of complex loans or credit finance
- Use of non-financial professionals
- Use of corporate vehicles or complex structures
- Unexplained use of virtual assets
- Manipulation of the appraisal or valuation of a property
- Use of monetary instruments
- Unexplained cash payments
- Use of client accounts
- Construction and renovation of real estate
- Use and purchase of commercial properties inconsistent with business purpose.

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<sup>14</sup> FATF, Money Laundering & Terrorist Financing Through The Real Estate Sector, June 2007, para.12. Available at : <https://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20through%20the%20Real%20Estate%20Sector.pdf>

### 2.3. Assessing ML/TF risk

54. The process of assessing risks should be done holistically and include input and participation of all relevant stakeholders. An NRA need not be a single formal process or document, but it is rather a mechanism that allows competent authorities, supervisors and DNFPBs, including real estate professionals, to be in a position to design and implement measures to mitigate the identified risks based on accurate and up to date information.

55. Policy-makers in partnership with law enforcement bodies, FIUs, designated competent authorities and real estate sector representatives are best placed to bring their knowledge and expertise to bear in developing a risk-based approach that is appropriate for their particular country context. Their assessments will not be static and will change over time, depending on how circumstances develop, how the threats evolve, and how well mitigation works. As such, the sharing - of information and expertise among different agencies and entities and with the real estate sector is important.

56. The process of assessing risks may be informed by different mechanisms which, depending on the context, facilitate the better understanding of the identified risks and contribute towards stronger risk assessments. For example:

- Whether through formal and informal events, public and private sector organizations may benefit from information sharing and discussions about general and specific ML/TF risks facing the sector. This type of collaboration allows competent authorities to be aware of the risks identified by the private sector – who often operate the various systems and processes at risk for money laundering and terrorist financing – whilst also allowing for information sharing on country priorities which may enhance the private sector’s ability to mitigate risk following the RBA.
- Reviewing money laundering and other criminal activity that is no longer under active investigation – i.e. the use of sanitised case studies - allows for both the competent authorities and the private sector to identify various money laundering and terrorist financing typologies which may allow for more effective assessments and mitigation of the related risks.
- When relevant and applicable, collect additional data on specific sector ML/TF risks and related issues from credible sources<sup>15</sup> or expert insights to inform and advance risk assessment and mitigation strategies.
- Competent authorities may also consider using tools available to them that are not publicly available to assess risks that will ultimately inform efforts to address money laundering and terrorist financing. For example, if a specific type of transaction is deemed potentially risky in a specific jurisdiction – such as all-cash purchases of real estate over a certain threshold – the competent authorities may direct entities involved with these transactions to record information on the purchase to facilitate efforts to collect data and to improve authorities’ understanding of the issue. To the extent possible, STR information is also a

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<sup>15</sup> “Credible sources” refers to information that is produced by reputable and universally recognised international organisations and other bodies that make such information publicly and widely available. In addition to the FATF and FATF-style regional bodies, such sources may include, but are not limited to, supra-national or international bodies such as the International Monetary Fund, the World Bank and the Egmont Group of Financial Intelligence Units.

critical tool for public authorities to use as they are in a unique position to analyse this confidential data.

57. As exemplified by Box 2.2 guidelines should be developed specifying which issues in real estate transactions present a high risk. For example, lawyers, notaries and other self-employed members of legal advisory professions are under INR. 23 not required to report suspicious transactions if the information was obtained in circumstances in which it is subject to professional secrecy or legal professional privilege. This privilege should be taken into account when assessing national risks, as legal professionals are often involved in real estate deals. If the national risk analysis reveals that certain real estate transactions in which legal professionals are involved have a high risk and that legal privilege in these cases prevents reporting to the FIU, targeted measures should be taken by policy-makers to address these deficiencies.

58. Guidance on this issue should help supervisory authorities collect more information about cases pertaining to professional privilege but also assist private sector players assess and understand their risks and make an appropriate contribution to counteracting high risks in real estate transactions. In addition to gaining a broad range of information on certain real estate transactions, the associated transparency also contributes towards risk mitigation efforts. Box 2.2 offers an example of enhanced response measures that may be taken when specific risks are identified.

### **Box 2.2. Suspicious real estate transaction reporting by legal professionals**

- In its NRA, Germany rated the real estate sector as having an increased risk of money laundering. The identified issues resulted in an increased risk in the entire national real estate sector.
- In this respect, the high degree of involvement of legal professionals was recognized. At the same time, professional secrecy was identified as a key factor for the low number of STRs stemming from these professionals.
- As a result, a reporting obligation was introduced for legal advisory professionals in order to ensure that professional privilege does not preclude the submission of an STR in identified high risk situations in the real estate sector.
- Specifically, legal advisers are required to report to the FIU whenever standardized facts point to those high risks. For reasons of legal certainty, the typologies have been defined by law. Whenever case specific additional facts refute the indication of high risk, exemptions apply to ensure that STRs are grounded in suspicion.:
- First experiences indicate the high effectiveness of this legislation, displayed by a significant increase in STRs and enhanced sensibility of legal professionals for ML/TF risk in real estate transactions

Source: German input

59. Ultimately the purpose of a national risk assessment is to increase the levels of awareness and knowledge, of both public and private sectors, regarding ML/TF risks in a way which allows countries to guide the design of appropriate strategies to address the risks. It should inform how resources are applied in line with the national strategy to combat ML/TF.

## 2.4. Managing and Mitigating of ML/TF risk

60. Countries should take enhanced measures to manage and mitigate situations when the ML/TF risk is higher. In lower risk situations, less stringent measures may be applied.<sup>16</sup>

- Countries may decide not to apply some of the FATF Recommendations requiring real estate professionals to take certain actions, provided (i) there is a proven low risk of money laundering and terrorist financing (and this occurs in strictly limited and justified circumstances and it relates to a particular category of real estate agent or type of transaction) or (ii) a financial activity is carried out by a natural or legal person on an occasional<sup>17</sup> or very limited basis such that there is a low risk of ML/TF, such that the exemptions of INR 1.6 are met.
- Countries looking to apply simplified measures should conduct an assessment to ascertain if there is a lower risk connected to the category of customers and clients or products, and define the extent and the intensity of the required AML/CFT measures to mitigate the risk, provided that the specific conditions required for one of the exemptions of INR.1.6 are met. Specific FATF Recommendations set out in more detail how this general principle applies in particular circumstances.<sup>18</sup> Risks may change over time and should be monitored to ensure the low-risk rating remains valid.

61. Real estate agent supervisory authorities should employ skilled and trusted personnel, have requisite knowledge and technical tools commensurate with their responsibilities. Similarly, service providers responsible for customer due diligence, report filing, or transaction monitoring must ensure they have the expertise and staff necessary to accomplish these functions. For instance, real estate agents and other real estate professionals that are required to routinely conduct a high volume of enquiries when on-boarding clients, may consider engaging skilled and trusted specialized personnel who are appropriately recruited and vetted (as regards to their skills, knowledge, integrity and/or criminal records where needed). Such real estate professionals are also likely to consider using the various technological options (including artificial intelligence) and software programs that are now available to assist in this regard. See Box 2.3.

62. Real estate professionals should develop internal policies, procedures and controls, and appropriate screening and investigations to ensure high standards when hiring employees.

63. Real estate professionals should also develop or have in place an ongoing employee training programme. Such training programmes can also be facilitated or provided by professional associations representing agents and the real estate sector.

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<sup>16</sup> Subject to the national legal framework providing for Simplified Due Diligence.

<sup>17</sup> An *occasional transaction* in this context can be interpreted as the expected, and most common, use of real estate services. For example, for the purchase of property for personal (i.e. residential) purposes without there being any elements of complexity associated to the individual buyer, transaction or property.

<sup>18</sup> For example, R.10 and INR.10 on Customer Due Diligence.

Real estate professionals should be trained commensurate with the complexity of their responsibilities.

64. The use of new or innovative technological tools to facilitate AML/CFT implementation should be encouraged as part of a proactive posture with regards to identifying and mitigating ML/TF risk. The implementation of the RBA does not need to imply additional effort or burden, rather it should be a reflection of the identified and assessed ML/TF risks and the adequate deployment of mitigation resources.

### **Box 2.3. Managing and mitigating risks with AML/CFT electronic tools in the EU – Case studies from Slovakia and Belgium**

#### **Belgium**

Introduced in the Belgian market in 2017, the so-called “AML tool” is the result of the private-public collaboration between a private Belgian tech developer, the Belgian Professional Institute for Real Estate Agents, the Financial Intelligence Processing Unit and the Federal Public Service Economy. The tool guides and advises real estate agents and other parties involved in the process in fulfilling their AML/CFT obligations by offering the following key digital features:

- Digital screening of clients / contract parties with a clear Acceptance policy
- Automatic assessment of the Alertness level and Risk profile
- For clients / contract parties
- Transaction level
- Escalation procedure to the Property Services Regulatory Authority
- Possibility for automated annual reports
- Digital archive
- Supported and recognized by the Belgian regulator
- Support of different roles including regular employees and AML officers.

This tool has proven to be an efficient tool to assess and mitigate ML/TF risks linked to potential transactions, allowing the agents to decide whether to accept or refuse a contract based on calculated advice regarding customer acceptance provided by the tool.

When a contract is accepted, a risk profile is also calculated and the office employee can decide if they want to accept the risk profile calculated by the tool based on the level of vigilance or to report it to the AML officer, who will then be able to decide at their turn whether it is appropriate to accept the contracts or to report it now to the local authorities for assessment.

Transactions follow a very similar approach. When profiles for both the buyer and the seller parties are inserted in the tool system, a series of questions must be answered to allow the tool to calculate again a risk profile.

In addition, annual reports are pre-filled automatically by the tool and can also be submitted always via the tool, which also maintains a digital archive.

In May 2017, FPS Economy officially recognized the AML tool for the Belgian market. This means that if the tool is used as designed, the user is deemed to be AML/CFT compliant.

### **Slovakia**

In 2020, an AML “workflow” tool for real estate agents has been introduced in Slovakia to simplify and digitalise the workstream of agents. The tool allows different electronic features/steps such as:

- the electronic identification of the client (e-ID);
- the risk assessment and basic screening and automatic identification of the level of risk. This first basic screening indicates in an automated way if the client or BO of the client is a PEP or person of the sanction lists;
- automated indication of next steps, e.g. if a declaration of financial sources or any other additional steps and controls are required, always providing an indication of the level of risk;
- an archive feature for past transactions that includes an indication of the type of case, risk level and date of completion;
- the access to API modules for larger companies.

The tool is highly appreciated in Slovakia as it brings effectiveness and also ensures the agents’ better understating of the due diligence process, ensuring high compliance scores. Through its use real estate agents can much better assess transactions and hence, manage and mitigate ML related risks. To date, however, the tool remains quite expensive for a large segment of the industry, in particular for smaller businesses.

To encourage wider use of this and similar tools, the National Association of Real Estate Offices of Slovakia, expressed the wish for such a tool to be financially supported by the public sector nationally or at a supra-national level, so as to improve the financial accessibility of such tools and enable more and more real estate agents to use them and hence increase the effectiveness and compliance of AML rules’ enforcement.

Source: European Association of Real Estate Profession (CIB Vlaanderen and NARKS, the National Association of Real Estate Offices in Slovakia)

## **2.5. Challenges**

65. Main challenges to the effective implementation of FATF Standards by the real estate sector relate to the specific nature of the sector and its particularities (to include the various size of real estate firms), as well as to the somewhat nascent nature of AML/CFT compliance and regulation of the sector in many countries.

66. Real estate sector ML/TF vulnerabilities continue to exist despite the implementation of an AML/CFT framework compatible with FATF Standards. See Box 2.4.

### Box 2.4. Identified challenges in AML/CFT compliance by the real estate sector

The Financial Supervisory Authority of Norway has uncovered the following shortcomings in estate agencies' compliance with the anti-money laundering legislation:

Estate agencies acquire their risk assessment/control system from an external supplier and fail to properly acquaint themselves either with the risk assessment or working and control procedures required.

There is a lack of connection/link between the risk assessment and the routines that have been established.

The anti-money laundering system is not adequate to confirm that the agency is not being exploited for money laundering purposes, including:

- The agency's money laundering risk has not been assessed or analysed, or the risk assessment is very deficient, or not adapted to the actual business.
- The business routines are deficient. Deficiencies related to basic customer measures such as obtaining information about the purpose of the transaction and beneficial owners, as well as clarifying PEP status, are still uncovered.
- There are deficiencies in the basic investigations to clarify whether there are suspicious circumstances related to who pays the purchase price into the broker's client account, as well as who receives the payments.
- Routines for checking their own compliance (control routines) are few and lacking. Agencies often do not have routines for detecting lack of risk assessment, lack of control of indications of suspicious transactions, nor to detect failure to report suspicious conditions.
- The detailed investigations that need to be initiated where suspicious circumstances are present are not suited to confirm or disprove the suspicion, but in many cases merely aim to confirm the circumstances giving rise to the suspicion.
- The use of estate agent software systems is no guarantee that genuine assessments of customers and transactions are made before such assessments are actually recorded in the system. Moreover, random checks also show that not all control measures referred to in an agency's procedures, are in fact performed.
- Training of the anti-money laundering officer and the employees in combating money laundering is either not provided, or it is limited to filling in the estate agent software system's checklists and how to conduct customer due diligence. As a result, the employees are unaware of money laundering typologies and are unable to uncover indications of suspicious transactions.
- Low knowledge of relevant TF indicators and risk profiles is assumed. Significant shortcomings have also been identified in the companies' screening towards the sanction lists.

Source: Input by Norway

67. The use of technology by bad actors may complicate real estate professionals efforts to identify, assess, and mitigate ML/TF risk. When appropriate, real estate professionals may consider adopting new technological practices to aid their AML/CFT efforts. Notably, technology is not the sole answer to all ML/TF risks facing real estate professionals, and real estate professionals should utilize technology in conjunction with other tools and methods.

## **2.6. Sector specific challenges**

### ***2.6.1. Nature of real estate industry***

68. Sales of property typically take place as occasional transactions rather than business relationships that result in the routine transfer of funds. Most buyers seek only one or two properties in their lifetime, and consequently do not commonly enter into an ongoing relationship with their agent. This makes ongoing monitoring a less relevant means of identifying suspicious transactions, and so more focus should be placed on understanding the purpose of the occasional transaction and again the source of funds.

69. This should improve the covered entity's understanding of the specific transaction as well as their ability to detect red flags in the transaction and ultimately help inform the view of supervisors and SRBs on the sector.

### ***2.6.2. International Systems***

70. Real estate professionals must be familiar with the AML/CFT provisions of the countries where clients are located or where their source of wealth or funds originates. Despite commitments from the FATF member jurisdictions and regional organisations all remain vulnerable to the risk of money laundering and corruption due to the differences of legislation, with many countries failing to extend due diligence requirements to the sector.

71. Those who are subject to the provisions vary between the member jurisdictions and regional organisations, with some real estate professionals not having any requirements as the anti-money laundering measures apply to other professionals, such as lawyers and accountants, while other jurisdictions may place the obligation on the real estate agent to identify both buyer and seller.

72. Care must be taken that a real estate agent or relevant DNFBP does not become complacent and accepts funds that have been generated by criminal activity in another jurisdiction where regulations differ from their own.

### ***2.6.3. Anonymous Companies***

73. The disparities with the legal structures and regulations across jurisdictions means property can still be simply acquired by shell companies or trusts based in secrecy jurisdictions which may allow for money to be easily laundered.

74. Real estate professionals must consider the risks when the customer is an anonymous offshore company or a company where nominee shareholders are permitted. Very often these companies are incorporated in a country where there is no requirement to register with or disclose the ownership or control structure of the company, rendering it nearly impossible to determine the legitimacy of the real owner of the company or the source of funds.

75. Regardless of the regulations, real estate professionals are governed by the risk-based approach which should, as part of their due diligence on customers, require real estate professionals to identify the beneficial owners of customers in every transaction.

#### ***2.6.4. Suspicious Transaction Reports***

76. Disparities between the member jurisdictions and regional organisations' legal structures and regulations mean that real estate professionals in certain jurisdictions are not required to submit suspicious transaction reports, while other jurisdictions' real estate agents as well as other professionals involved in real estate dealings may be required to submit a suspicious transaction report<sup>19</sup> when they have reasonable grounds to suspect a transaction is related to a money laundering or terrorist financing offence.

77. Due to low reporting by the sector in certain jurisdictions, it can be difficult for supervisors or competent authorities to identify ML/TF activity, which may prevent their ability to directly provide feedback to the sector on the common type of suspicious activities occurring within the Sector or to provide feedback on the quality of the STR reports, to include sharing information on STRs role in ML investigations or prosecutions.

#### ***2.6.5. Gatekeepers***

78. Real estate agents may be reliant on a wide range of professionals, including gatekeepers, who are governed by different regulations and anti-money-laundering obligations.

79. Where there are a number of gatekeepers involved in a real estate transaction, the real estate agent may be relying on the gatekeepers to conduct the required due diligence. However, those gatekeepers involved in the real estate transaction may not have sufficiently robust AML/CFT obligations, which may complicate efforts to verify beneficial ownership and source of funds information. Real estate agents may be unable to verify this information themselves, as they may only be able to view incomplete transaction information

80. The challenge for real estate agents is to overcome the inherent risks they face when the regulations allow them to rely on the customer due diligence checks carried out by gatekeepers or third parties involved in the system.

#### ***2.6.6. Virtual Assets***

81. Real estate professionals may have difficulties in meeting their customer due diligence obligations if a buyer or seller is using virtual assets. In some instances, it can be difficult for real estate professionals to identify the source of funds behind the virtual assets.

#### ***2.6.7. Supervisory and Regulatory***

82. The difficulties of supervision – particularly the low level of AML/CFT obligations being implemented by different sectors across jurisdictions - translate into low reporting by the real estate sector, in some countries, which in turn challenges supervisors' ability to understand risks and provide relevant feedback on the implementation of the RBA.

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<sup>19</sup> As required by FATF R.23.

83. Lack of sector specific knowledge is further complicated by underreporting or a complete lack of STR filings for the sector which provides less visibility for investigators and prosecutors.

84. The real estate sector's fragmented yet large nature makes it difficult for the sector as a whole to maintain consistent compliance with minimal AML/CFT obligations. Specifically, the presence of many firms that provide differing services result in a widely different interpretation of the AML/CFT obligations at an operational level.

### Box 2.5. Supervisory challenges

#### *Work-related crimes in Norway*

Work-related crimes are actions that break Norwegian laws concerning salary and employment, benefits and taxes and duties. The crimes are often organised and exploit employees, distort competition and undermine the social structure.

Real estate agencies regularly have clients connected to high-risk industries where, as regards *work-related crimes*. Although real estate agents routinely check that enterprises are registered in various public registers, this is not sufficient to uncover all indicators of work-related crimes.

Where the real estate agencies are involved in the sale of real estate under construction, they can obtain a self-declaration from the customer/contractor that confirms that tariff and legal provisions are complied with, also at subcontractor level. However, the Financial Supervisory Authority considers it less likely that the developers in such a self-declaration will provide honest answers indicating or contributing towards the identification of suspicious activity.

Where work-related crime has been committed on the buyer's side, the Financial Supervisory Authority assumes that a risk-based approach to buyers from high-risk industries (such as the construction industry, restaurant/nightlife, car care, etc.) means that real estate agencies must implement measures to clarify the origin of the funds. However, the Financial Supervisory Authority assumes that investigations will not detect underlying work-related crime because of associated challenges.

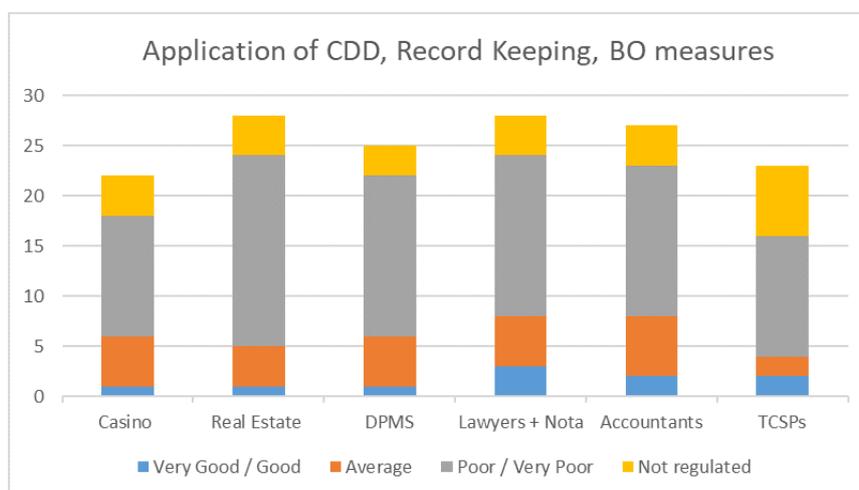
The Financial Supervisory Authority assumes that the detection of work-related crime in practice presupposes an interdisciplinary collaboration between a number of public bodies, i.e. labour inspection authorities, the police and the tax administration, and that in the absence of concrete and verifiable documentation, it will not be possible for real estate agencies to detect crimes as would be desirable.

Source: Input by Norway

### 2.6.8. CDD and access to beneficial ownership information

85. Overall the level of implementation of CDD and Beneficial Ownership measures by the real estate sector compared poorly in relation to other DFBCPs assessed in the context of the FATF 4<sup>th</sup> round of mutual evaluations.

**Figure 2.4. Implementation of CDD, Record Keeping and BO information by real estate sector in comparison to other sectors**



Source: Sample of 32 FATF/FSRBs countries, FATF 2021

86. CDD and BO challenges within the real estate sector typically relates to the nature of the business and the different obstacles that may arise related to the verification of beneficial ownership.

87. These challenges are often associated with the specific function of the real estate agent and its potential incompatibility with the process associated with collecting CDD information. The type of transaction, time constraints and ad hoc nature of transactions are other mounting factors.

88. Additionally, due to the number of intermediaries involved in a real estate transaction, the sector may rely on third parties to conduct due diligence. In some cases intermediaries involved in real estate transactions may not have AML/CFT obligations (mortgage brokers, etc.). Ultimately this may restrict the sector's ability to view all elements of the transactions.

89. The use of cash in some markets to purchase real estate sometimes further complicates these disjointed efforts if the use of cash precludes specific CDD requirements associated with client onboarding, such as when a prospective homebuyer applies for a mortgage.

90. Real estate professionals also face challenges obtaining CDD information from the clients that may not be willing to trust professionals with personal information in the same way they would trust banks and independent legal professionals. This may be due to cultural reasons or lack of awareness of real estate professionals' role in AML/CFT regimes.

91. Professionals acting only on behalf of one party (e.g.: the buyer) may also face challenges in obtaining information from the other party (the seller) due to customary practices that may not result in much interaction between all counterparties.

92. When buyers and sellers rely on attorneys to represent them in a real estate transaction, real estate professionals may find it difficult to rely on attorneys to provide beneficial ownership and other information due to attorney-client privilege permitted under the national framework.

93. Additionally, the use of nominees and complex structures for purchases will further complicate CDD requirements, especially if the use of cash is involved. These arrangements may prevent the sector from possessing beneficial ownership information and in some cases act as a hurdle for law enforcement and supervisors who seek to access to this information in a timely manner.

94. In highly desirable locations where there are many foreign buyers, it can be difficult for real estate professionals to obtain the requisite information on the buyer of a property in the same way that it is for buyers who are located within the jurisdiction of the property.

95. Commercial real estate presents challenges that compound the previously described items due to the associated complexity of its transactions. Unlike residential real estate transactions, in which there are two parties – a buyer and a seller – commercial real estate transactions often involve multiple parties involved in various parts of the transaction due to the more complex financing arrangements required to close these deals. They are also more likely to involve legal entities as well as natural persons when compared to the residential real estate market. This presents an opportunity for their misuse and allows for obfuscation of the buyer and seller - and may often rely on other DNFBPs – such as lawyers and notaries - adding an additional layer of difficulty for effective CDD and beneficial ownership information.

### 3. GUIDANCE FOR PRIVATE SECTOR PLAYERS

96. This specific guidance to the private sector is primarily intended for real estate agents – who are often the profession responsible for facilitating the purchase of real estate. However, professions such as lawyers, real estate developers, notaries, and others, may provide similar services to those provided by real estate agents also fit within the scope of this guidance. Additionally, these professions may have different ways to address risks facing real estate agents. In some instances, these professions may also face other risks that real estate agents do not.

97. This guidance also seeks to provide best practices to banks that provide services related to buying and selling real estate. Given the prevalence of mortgages provided by banks, as well as the use of various account types to settle real estate transactions, banks are well-positioned to adopt a risk-based-approach to mitigate specific risks arising from the real estate sector.

98. Mortgage lenders who are separate from financial institutions may also benefit from this guidance due to their key role in approving mortgages which greatly facilitate the purchase of real estate. Adopting a risk-based approach will allow them to be in a good position to mitigate risk related to specific mortgages that may be indicative of ML/TF activity.

99. With regards to real estate professionals, guidance will need to be considered in specific context and it is possible that these professionals may implement these practices considering their unique circumstances and business models. This may be particularly evident for small businesses or real estate professionals who perform these functions without assistance from dedicated specialists. In these instances, firms and agents should use their discretion to ensure that they comply with jurisdiction's legal and regulatory requirements while taking steps to implement these best practices in a manner that is feasible for them based on the size of their business and their different roles and responsibilities. Regardless of the factors facing firms, AML/CFT controls and procedures should be understood by real estate professionals and tailored to the specific circumstances, services and risks of the agent or firm.

#### 3.1. Risk Assessment

100. Real estate professionals must understand how the business could be exposed to ML/TF risks and ensure that systems are designed and implemented to deal with these risks.

101. A risk assessment will aid the real estate business in identifying the ML/TF risks the business is potentially exposed to during the course of its activities. A documented risk assessment should include current and emerging ML/TF trends facing the business while considering how such issues may impact the business. The risk assessment should be kept up to date and take into consideration the following:

- Geographical risks, such as the areas of operation and those countries identified by FATF or other regional and national authorities as high-risk
- Customer risks including other parties in a transaction and any underlying beneficial owners.
- Transaction risks including the methods of financing and delivery channels.

102. Real estate businesses should rely on their assessment of the inherent risks to the business in relation to customers and the services being provided and should take into account the full range of circumstances associated with a client or buyer based on the real estate agent's concerns and suspicions or general behaviour of customers - especially those indicative of higher risks.

103. The risk assessment should follow an approach that considers the size of the real estate professionals' business, the financial value of the transactions involving the real estate firm, how the firm became involved in the real estate transaction, as well as the nature of the transaction itself, to include whether it is an overseas purchase or involves commercial or residential real estate.

104. Other DNFPBs and banks involved in the real estate sector should adopt a risk-based approach that considers their exposure to AML/CFT risks in the sector that considers the issues detailed above, but in a manner that is consistent with their larger effort to take a risk-based approach for their functions as a whole.

## 3.2. Risk Categories

105. When a real estate business is identifying the potential risks to the business, the primary risk categories may include:

### 3.2.1. Geographical factors

106. When identifying risks associated with geographic areas and other countries, including the origin of legal persons as well as natural ones, a real estate agent, other relevant DNFPBs, and banks should determine whether a high risk is present by considering the following geographical factors:

- The effectiveness of the country's AML/CFT regime and whether they have been identified as having deficiencies in their AML/CFT regime.
- 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.
- Whether a country is subject to economic or financial sanctions, embargoes or similar measures, issued by international organisations such as the United Nations.
- 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 if the business relationship has been conducted without face-to-face meetings.

### 3.2.2. Client risk<sup>20</sup>

107. Real estate professionals along with banks must consider the degree of risk associated with its customers and take into account situations that can present a higher risk, including:

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<sup>20</sup> In some jurisdictions or professions, the term "client" is used, which has the same meaning as "customer" for the purposes of this document.

- Whether the buyer or seller is from a high-risk country identified by credible sources as, for example, being complicit in corruption, organised crime or serious fraud or providing funding or support for terrorist activities that have designated terrorist organisations operating within them.
- Whether the client has connections to the industry or industries associated with ML/TF risks.
- Unexplained or otherwise unusual source of funds that cannot be verified
- How the business relationship begins and is subsequently conducted, to include inconsistencies in customer behaviour, avoidance of face-to-face contact in unusual situations<sup>21</sup>
- The use of intermediaries or legal persons used to protect a person's identity or hide involvement.
- Undue pressure or abnormal haste from the customer for the transaction to be concluded expeditiously.
- The profile of the customer does not fit with the transaction with regard to the property value.
- A group of buyers with similar profiles buying new builds or off plan property (organised mortgage fraud).
- Whether the client refused, or appeared reluctant, to provide required client due diligence information or documentation or provided false or inaccurate information (i.e. incomplete addresses, use of business addresses, etc.).
- A sudden change to the pattern of behaviour 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, to include customers that are companies, partnerships, or trusts, or a combination of each; particularly when the legal and corporate structure of the client entity and its ownership and control of the structure appears unusual for the purposes of the transaction.
- The reputation and profile of the customer and whether there has been any adverse media reports or other adverse information from a reliable source about the owner 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 business has previously been suspicious of the customer 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.

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<sup>21</sup> For example, consider the means used to establish the relationship. Non face-to-face transactions could pose higher risks if absent the right mitigating tools.

- The customer 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.
- Additionally, lawyers may consider evaluating whether customers using their services for real estate transactions where the involvement of a lawyer is not customary may be seeking actual or perceived anonymity to purchase or sell real estate for nefarious purposes.
- Given their visibility into real estate transactions and familiarity with financial details related to these transactions, notaries may also be in a position to consider whether the use of an attorney presents a ML/TF risk.

### Box 3.1. Specific challenges associated with complex ownership structures

The fragmentation of the real estate market and change in ownership of real property have been identified as significant challenges to the real estate sector's ability to mitigate ML/TF risks.

Historically, real estate properties have been owned by a natural or legal person that purchased property to serve as a residence or for specific commercial purposes. These days, it is common, for companies, investment funds and entities created specifically for the purpose of developing and managing real estate to purchase property. These companies and investment vehicles may carry funds provided by third parties to effectuate these investments intended for business purposes. Often time, these investments are held in various corporate legal entities that are solely created to facilitate specific transactions.

The growing prevalence of these private investors and the accompanying corporate and legal entities used to facilitate their investment activities often makes it difficult for real estate agents to form an accurate picture of the parties seeking to buy or sell real estate. Additionally, for these entities themselves, ensuring that AML/CFT obligations are being met may be difficult if these entities rely on third parties to manage the various corporate and legal structures – a common practice for the corporate real estate sector - - due to the lack of visibility into the various holdings nominally under control by these entities.

Source: Input by Spain

### 3.2.3. Transaction risks

108. As financing practices differ between countries, particularly where there are those who have a culture to deal with cash transactions on a regular basis and also those involved in obtaining, processing or closing of loan, mortgage or financial instruments, real estate businesses and other DNFPBs should ensure their risk assessment is tailored to their own business practices and consider when the following factors related to financing, which may suggest a transaction is high risk:

- The use of third parties, overseas accounts, or persons or entities in countries identified as high-risk jurisdictions to send or receive funds on behalf of the buyer or seller.

- A proposal from buyer, seller or any party to settle by way of virtual assets, if it is thought to make some part of the transaction undisclosed or less transparent.
- Use of complex loans or other unusual means of financing (i.e. diversified and unexplained payment sources and types).
- Unexplained or abrupt changes in financing arrangements.
- 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.
- 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.
- A previously sold property is re-marketed following renovation without an obvious source of funding.
- 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 obfuscated.
- Investments or property management companies involved in a transaction not engaged in identifiable business activity.
- A sudden or unexplained change in ownership.
- Requests to expedite transactions, possibly over or under value.
- 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)
- 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.
- Clients ask a real estate business to hold a large sum in their client account, and request a refund to a different banking account than that associated with the original transaction.

109. Banks may be well-positioned to respond to these types of ML/TF risks due to their access to client information and payment information related to the purchase of real estate when purchases are made using their services. Specifically, they may be able to report suspicious activity that real estate professionals and others may not see as well as close problematic accounts. Banks may also be in a position to address misuse of mortgages due to their status as lending institutions which puts them in a unique position to filter any activity indicative of ML/TF.

110. While mortgage lenders that are separate from banks may not have the same visibility into account and payment information that banks do, these lenders do have insight into key beneficial ownership and financial details provided by those seeking mortgages. This arrangement makes mortgage lenders a key player in the AML/CFT efforts for the sector as real estate agents and other professionals providing similar services will not be in a position to access this information and evaluate it for any ML/TF

risk. Additionally, mortgage lenders' ability to approve mortgages puts them in an effective position to immediately address any ML/TF risk by choosing not to approve certain mortgages that may be indicative of ML/TF activity.

111. More broadly, in countries in which the real estate sector presents high risks, private sector players should have specific guidelines at their disposal as to which issues in real estate transactions are to be assessed as having a high risk. These guidelines are intended to ensure that private sector players correctly assess transaction risks, that high-risk issues are reported to the FIU or other competent authorities and that legal advisors do not refrain from reporting on the basis of professional privilege based on their own deliberations. See above Box 2.2 for an example of how countries may respond in case high-risks are identified in relation to a specific area of business.

### 3.3. Documentation of Risk Assessments

112. Real estate professionals must have a good understanding of the ML/TF risks that they may encounter as a result of their business activities and clients. They should document business risks and rate their level in the form of a documented risk assessment. Assessing ML/TF business risks is important to developing and implementing mitigation measures.

113. Real estate professionals may fail to satisfy their AML/CFT obligations by relying only on a checklist approach to conduct their risk assessment, especially when there are other clear indicators of potential illicit activity. Completing risk assessments in a time efficient yet comprehensive manner is important for being able to identify and assess potential gaps or weaknesses in the compliance program.

114. Each of these risks could be assessed using a scalable approach such as low risk, medium risk and/or high risk. A short explanation of the reasons for each attribution should be documented and an overall assessment of risk determined. An action plan (if required) should then be outlined to accompany the assessment, and dated for follow up purposes.

115. Real estate professionals and firms should also evaluate the risk for each specific client and service but these assessments should also be done business-wide as part of the larger risk assessment process. It is important to remember that assessing and mitigating the risk of ML/TF is not a static exercise. The risks identified may change or evolve over time as new products, services, affiliations, or developments and technologies enter the business of an agent or its environment. ML/TF-related risks should be regularly reassessed by the professionals, and the documentation of that assessment kept up to date. For example, if real estate professionals offer a new product, service, or technology, or open a new location of business, they should evaluate and document the associated risks of this change to the business.

116. The documented risk assessment should be made accessible to all professionals having to perform AML/CFT duties within a business.

### 3.4. Risk Mitigation

117. The following ML/TF mitigation policies should be devised, implemented and often reviewed:

### ***3.4.1. Customer Due Diligence***

118. A real estate professionals must be able to form a reasonable belief that they know the true identity of each customer and the ultimate beneficial owner of the property. CDD measures must be conducted to allow the professionals to form these beliefs by facilitating the identification and verification of the identity of customers and beneficial owners as well as information that details the ongoing purpose and intended nature of the business relationships.

119. Lawyers and notaries, when involved in real estate transactions, may also opt to apply specific checks on the settlement destinations of transactions (i.e. performing limited diligence on the seller of real property, when acting for the buyer and the seller and the buyer appear to be related parties).

120. Banks may also conduct CDD when onboarding clients, approving mortgages, and sending and receiving funds, and may perform their own diligence per their regulatory obligation which may complement measures taken by DNFPBs and real estate agents. Mortgage lenders whilst separate from banks may also conduct these functions.

121. To determine the level of CDD required a real estate professionals must be able to identify and assess the ML/TF risk in relation to the customer and the transaction.

122. Evidence of identity can take a number of forms and the risk assessment should set out the documents and information which the real estate agent or business will accept and the related circumstances that allow for the use of these documents and information in order to confirm the identity and verification of a customer. Identification documents should be in a secure form as recognised by the respective country. An assessment on the level of risk posed by the customer will take into account the extent of verification needed, requiring greater checks for those in higher risk situations.

123. The risk assessment should consider differences in CDD measures due to variations in risk levels between customers, buyers, sellers, and nature of transactions, such as whether financing or cash is used.

124. CDD involves more than customer verification processes and a real estate business should gather and assess all relevant information to ensure that the business:

- Can verify the identity of every customer and those purporting to act on their behalf.
- Has taken all sufficient measures to determine the identity of the beneficial owner.
- Fully understands the customers circumstances and business, including the expected nature of transactions.
- Understands the source of funds.

125. In order to implement an effective AML/CFT framework to the real estate sector it is important to emphasise that both the buyers and sellers are subject to risk-based CDD measures.

### ***3.4.2. Simplified Due Diligence***

126. A real estate professional's business may implement Simplified Due Diligence (SDD) measures when warranted if it has been reasonably established that the customer and transaction represent a lower degree of ML/TF risk.

127. SDD measures can include:

- Verifying the identity of the customer and beneficial owner after the business relationship has been established but before the transaction is completed.
- Changing the extent of information required for identification, verification or monitoring purposes.
- Changing the quality or source of information obtained for identification, verification or monitoring purposes by accepting information obtained from the customer rather than an independent source.
- Reducing the degree and the frequency of CDD updates and monitoring of the business relationship.
- Lawyers may be well-positioned to facilitate simplified due diligence for real estate agents and other DNFPBs, such as notaries, in specific circumstances in which they are able to represent the client directly to the entity fulfilling the real estate agent function if a jurisdiction's regulatory framework and custom allow for such an arrangement and if the arrangement allows for the collection of sufficient customer information.

128. When SDD measures have been applied, all real estate businesses must ensure they have obtained sufficient information to enable them to be reasonably satisfied that the ML/TF risk associated with the relationship is low risk.

129. Implementing SDD measures does not exempt any real estate business from reporting any suspicious transactions.

### ***3.4.3. Enhanced Due Diligence***

130. If the circumstances have determined that customers, a third party, or a business transaction presents a higher risk of ML/TF to the business, a real estate professional must apply proportionate levels of Enhanced Due Diligence (EDD). The rationale for applying EDD measures should be clearly documented in the policies and procedures of the business.

131. EDD measures must be applied in higher risk situations to manage and mitigate the appropriate risks and are applied in addition to CDD measures.

132. A real estate business should consider applying EDD measures when any of the above listed geographical, customer and transactional risks are present, but in particular when:

- Customers have links to high-risk jurisdictions.
- The customer is a PEP residing in a different geographical location to the purchased property.
- Complex ownership structures are deliberately used to obfuscate beneficial ownership.
- The real estate professional has not received adequate information from the customer and has to:
  - Take reasonable steps to establish the customer's source of wealth or source of funds.

- Request additional information regarding the customer including further CDD information where concerns have arisen about the veracity or adequacy of information previously obtained.
- Customers are involved in cash sensitive businesses or are requesting to settle a transaction by way of virtual assets without transparency of the source of payment.

133. In response to the risk identified, real estate professionals should exercise more scrutiny regarding the source of funds and the purpose of the transaction. For ML/TF, the source of funds is a significant factor in the overall risk and is often only mitigated by obtaining sufficient information/documentation to verify the source of funds. This is even more important when considering that most real estate transactions are one-off, unique transactions and cannot be subject to ongoing monitoring.

#### ***3.4.4. Beneficial ownership***

134. In mitigating the risk where beneficial ownership may be a factor the risk assessment for the business should:

- Carry out all necessary measures to understand the ownership and control structure of any legal entity.
- Assess the degree of verification required regarding the beneficial owners depending on the associated ML/TF risks.
- Document the additional procedures to be applied and the measures taken to identify the beneficial owner, as well as the difficulties encountered in establishing identity.
- Carry out a thorough search of relevant and available beneficial ownership information, where available to the public, financial institutions, or DNFBPs.
- Have a clear and concise policy for the basis of a real estate professional or any relevant employee within the business to lodge a suspicious transaction report when the identity of the beneficial owner has not been satisfied due to a lack of CDD information.

### **3.5. Regulatory obligations**

135. Real estate professionals and their businesses must adopt appropriate internal controls with regard to the size and nature of the business.

#### ***3.5.1. Internal controls***

136. There is no standard solution to the design of internal control systems, and this should be considered when real estate professionals are devising a framework to counter money laundering and terrorist financing.

137. Internal controls will also depend on the business structure, size and internal organisation without prejudice to the effectiveness of the system.

138. Policies, procedures and control systems must be designed and implemented ensuring the ML/TF risks are promptly identified and mitigated. Internal control systems must be evaluated to determine how effectively they are dealing with the overall risks.

139. Risk-based processes must be established within the internal controls of the businesses to be effective. To be successful, internal policies and procedures are largely dependent on the internal control systems.

140. The internal controls for a real estate professional's business should:

- Have an adequate and effective AML/CFT compliance function with a process in place for a regular review of the policies at appropriate levels.
- Implement risk-based CDD policies, procedures and processes.
- Ensure there are adequate controls for higher risk customers, transactions and products, including the launch of new products or services, such as transaction thresholds or management approvals.
- Focus more resources on the operations of the business that are perceived to be a higher risk to ML/TF.
- Regularly review a company's risk assessment, taking into account geographical, transaction and client associated risks.
- Contain a detailed documented suite of policies that accurately reflect the operational practices of the business and demonstrate compliance with all legal and regulatory requirements that may also be supplemented and supported by guidance from supervisors or competent authorities.
- Have policies that are easily accessible and fully implemented and adhered to by all staff which are regularly reviewed, approved and updated.
- Enable the timely identification of reportable transactions and ensure accurate filing of required reports.
- Ensure continuity of internal controls regardless of any changes in management or employee composition or structure.
- Focus on meeting all regulatory record keeping and reporting requirements while providing for timely updates that respond to changes in regulations.
- Incorporate AML/CFT compliance into job descriptions and performance evaluations of appropriate personnel, and provide for robust training of those personnel to ensure sufficient expertise.

141. When applicable, lawyers, notaries, and other DNFPBs, along with banks, may follow these general practices as part of their larger efforts to implement an RBA for their professions and sector.

### **3.5.2. Governance**

142. Governance is a main factor to AML/CFT compliance for real estate professionals. When devising an appropriate framework, accountability and responsibility for management of the risk must be established at the outset.

143. A business with deficient or non-existent risk management, governance, policies, controls and procedures is exposed to considerable risks to include compliance, operational, and reputational risks.

144. Effective ML/TF risk management should be rooted in the the corporate governance structure, systems and controls and be proportionate to the size and nature of the business and its ML/TF risk exposure.

145. The business should ensure there is clearly defined and documented guidance for those with AML/CTF responsibilities and documented guidance should make clear the roles and responsibilities of Boards, Senior Management, the Compliance function, including the Money Laundering Reporting Officer (MLRO), where applicable.

#### *Roles and responsibilities*

146. A real estate professionals and relevant employees of the business should ensure relevant knowledge of:

- AML/CFT legislation.
- Their responsibilities under the policies and procedures of the business for the prevention of money laundering and terrorist financing, including CDD and PEP specificities.
- Relevant industry guidance.
- The ML/TF risks faced by the business.
- The procedures for managing the risks faced by the business.
- What happens in the absence of the personnel responsible for AML/CFT efforts and how to act in the case of conflict of interests or instances where persons in these functions are found complicit in money laundering activities?

147. Board members, senior management, compliance officers – if such roles exist - and real estate professionals must be able to demonstrate an effective governance and supervision of the AML/CFT compliance framework of the business. If board members and senior management are not present at the company, those responsible for AML/CFT measures are responsible for implementing the requirements.

148. Whilst resource and structural constraints are acknowledged for smaller firms, these should, nevertheless take a risk-based approach and take steps to figure out their risk exposure and what they can mitigate within the constraints of their business. In some instances, real estate professionals' AML/CFT obligations interactions with their business obligations may impact what clients they take on.

149. Supervisory measures should include the following processes:

#### *Board members and Senior Management*

150. Where the size and nature of the real estate business warrants having a Board of directors, the directors should:

- Review the approach used for undertaking the Business Risk Assessment and review the Business Risk Assessment on an annual basis or sooner should new risks arise.
- Make certain the AML/CFT measures are appropriate to address the ML/TF risks the firm is facing.
- Board meetings regularly feature AML/CFT issues as an agenda item.
- Regularly review and approve the AML/CFT policies and procedures.
- Where applicable, ensure the Compliance Officer has a mechanism for direct contact with the Board to escalate AML/CFT issues for discussion or immediate attention.

- Have the Compliance Officer deliver regular reports to the Board.
- Make sure the business is adequately resourced in terms of staff and systems to adequately reflect the level of ML/TF risk faced by the business.
- As part of the record keeping policy, record appropriate evidence of discussions at Board meetings concerning AML/CFT issues affecting the business.

151. Where the appointment of Senior Management (roles to be defined by the entities) responsible for AML/CFT is appropriate in regard to the size and nature of the business and its ML/TF risk exposure. Senior Management will be primarily responsible for the implementation, management and monitoring of the company's compliance with the AML/CFT measures.

152. It is essential that persons in this role maintain the relevant knowledge and skills regarding the management of the ML/TF risks and the implementation of AML/CFT policies, controls, and procedures to protect the business.

153. Senior management must lead by example and have a good understanding of the business and the real estate sector as well as the extent to which the business could be exposed to ML/TF risks.

154. Where the Board of a real estate business is discharging its duties for the implementation and management of AML/CFT measures to Senior Management, they will then be fully responsible for the implementation and management of AML/CFT procedures.

155. Senior Management must:

- Regularly communicate with the Board to ensure they are aware of the ML/TF risks to the business.
- Approve and review the Business Risk Assessment.
- Implement the policies, controls and procedures and carry out regular reviews ensuring their effectiveness.
- Appoint compliance officers when needed and ensure they have all the necessary information, personnel support and technical resources to perform their tasks.
- Be available to all staff on AML/CFT matters.

156. Senior Management should understand the importance of AML/CFT and promote a culture of compliance.

157. Where it has been established a real estate business may be exposed to a significant degree of inherent ML/TF risk both Senior Management and Board members should devote additional focus to AML/CFT risk management.

### *Compliance officers*

158. A Compliance officer, or the other persons responsible for AML/CFT compliance, must:

- Have relevant knowledge, experience and understanding regarding the identification, assessment and management of the ML/TF risks the business is exposed to.

- Possess sufficient and appropriate knowledge of the relevant jurisdiction’s legal and regulatory AML/CFT framework to facilitate the implementation of AML/CFT policies, controls and procedures.
- Have a high degree of autonomy, authority and influence as well as direct access to adequate resources within the business to carry out their duties effectively.
- Have the knowledge and experience to oversee the identification and assessment of suspicious transactions and to submit reports and work with the relevant authorities where necessary in relation to such transactions.
- Monitor regulatory and legislative changes as well as current and emerging ML/TF trends and issues in the industry and understand how such issues may impact the business.
- Be able to challenge the Senior Management and Board on AML/CFT matters when necessary.
- Have a direct reporting line up the hierarchical structure while ensuring that all communications, which should occur on a regular basis and in a timely manner:
  - Comment on the effectiveness of the AML/CFT systems and controls of the business.
  - Are proportionate to the size and nature of the business.
  - Recommend any improvements for the management of the ML/TF risks.
  - Contain sufficient detail ensuring Senior Management and the Board can make informed and detailed decisions.

### *Compliance culture*

159. Having an appreciation for the importance of addressing ML/TF risk and, the necessary expertise and experience to do so is of critical significance for ensuring a culture of compliance for an organization to ultimately tackle ML/TF effectively.

160. Real estate professionals must recognise the importance a positive culture has in the fight against ML/TF and adopt an approach to compliance that considers regulations and legislation only as a starting point on the road to AML/CFT effectiveness.

161. Developing a robust and positive compliance culture is the responsibility of the business leaders. Board directors and senior management must approve and promote adequate internal controls, as well as create a positive culture of compliance to grow and ensures that all employees adhere to policies and procedures as part of core functions.

### **3.6. Training and awareness**

162. A business operating in the real estate sector is responsible for ensuring that:
- Real estate professionals and relevant employees have undergone sufficient personal vetting. Prior to assuming a position and during employment, staff are screened to assess their skills, knowledge and expertise as well as identify any relevant training needs.
  - Relevant AML/CFT Training programmes are developed and implemented.

- All staff are appropriately trained at regular intervals and have a good understanding of money laundering and terrorist financing risks and practices.
- Written records are maintained for staff training and awareness.

163. The nature and extent of training should be tailored to the scale and complexity of the business and appropriate to the level of ML/TF risk faced by the business and must be undertaken by real estate professionals and all relevant persons of the business.

164. In deciding what training measures are appropriate a real estate professional must consider:

- The nature of its business, its size, and the nature and extent of the ML and TF risks that face the business
- Any guidance issued by its supervisor, or any other appropriate body approved by the relevant competent authorities.

165. It is critically important that real estate professionals, as well all relevant employees of the business are regularly trained to understand and apply their legal and regulatory obligations, to recognise transactions that may prove to be suspicious, and deal effectively with risks of money laundering and terrorist financing facing the business, including escalating concerns as necessary. These persons should also remain up to date on ML/TF trends and typologies, including those issued by their supervisor or competent authorities.

166. A real estate agent or the person who acts as the MLRO or MLCO for the business should consider whether it is appropriate to obtain a relevant professional AML/CFT related qualification or undertake additional training to carry out their duties competently.

167. A business should ensure that employees are aware of their training obligations and have suitable knowledge to identify and report on ML/TF suspicious activities.

168. Training should be delivered through a mixture of techniques and provided by compliance experts (internal and external). Where appropriate real estate professionals and relevant employees may consider on-line learning systems if these provide an adequate and time saving solution to their training needs.

169. Concentrated face-to-face classroom is encouraged. Case-study based learning is advised.

170. Procedural manuals, whether in paper or digital format, are useful in raising awareness and can supplement more dedicated forms of training. However, their main purpose is to provide an ongoing reference and should not be considered as written training material.

171. The nominated training expert should understand the business model and ensure that the training is applicable to all staff and their daily functions.

172. Training must be ongoing and should be taken at appropriate intervals by all professionals and relevant employees. A larger business should consider introducing a continuous training programme.

173. Records of training must be maintained to monitor those who have been trained, when they received the training, the nature of the training given and its effectiveness.

174. One action to complement internal and external training opportunities for specific professionals and entities is to participate in industry events that seek to provide guidance and awareness for the sector as a whole on ML/TF issues. Entities may

consider participating in such events to share best practices and ML/TF typologies as well as seek feedback from competent authorities in public-private partnership events. Financial institutions involved in real estate transactions may consider sharing related financial intelligence with supervisors and other competent authorities to inform their approach to AML/CFT issues facing the sector and provide guidance to real estate professionals who may not have access to transactional information that banks maintain.

## 4. GUIDANCE FOR SUPERVISORS

### 4.1. The Risk-Based Approach to Supervision

175. R.28 requires that real estate agents, and other DNFBP's, be subject to adequate AML/CFT regulation and supervision. A risk-based approach to AML/CFT means that measures taken to reduce ML/TF are proportionate to the risks. Supervisors and SRBs should have a clear understanding of the ML/TF risks present in their own jurisdiction, as well improve supervisory effectiveness by allocating resources to areas of higher ML/TF risk, in line with the applicable legal framework and the RBA.

176. A country's AML/CFT framework must take into account other professions involved in the real estate industry – such as lawyers, notaries accountants, investment advisors, mortgage lenders, bankers, and other financial intermediaries. The RBA to AML/CFT aims to develop prevention and mitigation measures commensurate with the ML/TF risks identified across the entirety of the sector.

#### *4.1.1. Supervisors and SRBs' role in Supervision and Monitoring*

177. According to FATF R.28, countries must ensure that DNFBPs are subject to effective oversight through the supervision performed by a competent authority, including non-public bodies, or by an SRB, when applicable and provided that an SRB is able to enforce AML/CTF obligations and effectively regulate its members.

178. An SRB is a body representing a profession (e.g., legal professionals, notaries or real estate agents), made up of member professionals that has a role (either exclusive or in conjunction with other regulatory entities) in regulating the persons that are qualified to enter and to practise in the profession. An SRB also performs supervisory or monitoring functions (e.g., to enforce rules to ensure that high ethical and moral standards are maintained by those practising the profession). Rec 28 allows a role for SRBs, but only to the extent that they are able to enforce compliance and when the country has a rationale for choosing an SRB to perform supervisory duties as opposed to or in conjunction with a designated competent authority. Mitigating the risks of real estate is an area in which the private sector has an important role, but governments must also remain involved to avoid the appearance that real estate is an unregulated area or one in which compliance is voluntary, which would be inconsistent with the FATF standards.

179. Supervisors and SRBs should have adequate powers to perform their functions, which should include powers to monitor and to impose effective, proportionate and dissuasive sanctions, as well as possess the ability to maintain adequate financial, human and technical resources. They should determine the frequency and intensity of their supervisory or monitoring actions and required reporting on real estate agents and brokerages as well as other professions involved in the industry, on the basis of their

understanding of the ML/TF risks while taking into consideration the characteristics of the professionals, in particular their diversity and number.

180. Countries should ensure that supervisors and SRBs are equipped to identify and dissuasively sanction non-compliance by their regulated entities or members. Countries should also ensure that SRBs are well-informed about the importance of AML/CFT supervision, as well as the need to engage in enforcement actions as needed, and that regulation and supervision of real estate is legally binding.

181. Countries should also address the risks stemming from the conflicting priorities of a SRB that represents their members but that is also responsible for their AML/CFT supervision. If a SRB contains members of the supervised population, or represents the sector, it must ensure the absence of conflict of interests such as the monitoring/supervision of a member's own practice/firm. SRBs whose core mission is to represent the interests of the members must be adequately supervised and monitored by a competent authority.

182. Supervisors and SRBs should clearly allocate responsibility for managing AML/CFT related activity, where they are also responsible for other regulatory areas.

#### **Box 4.1. Examples of Supervisory best practices**

##### ***The RBA in Hong Kong, China***

The Estate Agents Authority ("EAA") has adopted a risk-based approach in supervising the estate agency trade practitioners regarding compliance with AML/CFT requirements. Under the EAA's supervision, the estate agencies' policies, procedures and control systems will be examined from time to time. Feedback will be provided to practitioners by various means, e.g. onsite-meetings, trade liaison meetings and advisory letters, etc. Furthermore, the EAA has been encouraging practitioners to promote/create an AML/CFT compliance culture through educational programs. The information collected from the trade meetings and findings obtained from the supervision will, in return, help to update the risk profiles of estate agency companies. Since April 2020, 60 agencies have been adjusted to lower risk groups as a result of enhancing AML/CFT compliance work and measures, such as review of companies' policies and procedures to ensure AML/CFT compliance and establishment of written policies or guidelines for dealing with AML/CFT matters.

##### ***AML/CFT Supervisory Practices of Registered Estate Agents in Malaysia***

###### **Fit and Proper Requirements – Self Regulatory Bodies (SRBs)**

Registered Estate Agents (REA) in Malaysia are regulated by the Board of Valuers, Appraisers, Estate Agents and Property Managers (BOVEAP). The Board is governed by the provision of Valuers, Appraisers, Estate Agents and Property Managers Act 1981. To practice, REA are subject to appropriate market entry controls, which include fulfilling the 'fit and proper' and practical experiences requirements as well as relevant technical and competency tests.

###### **REA Supervision, Risk Assessment and Awareness**

Under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA), Bank Negara Malaysia (BNM) is the competent authority for the AML/CFT supervision of the Designated Non-Financial Businesses and Professions (DNFBPs) & Other Financial Institutions in Malaysia, including REA. BNM adopts a risk-based supervision on REA, in which the differentiation is guided by the outcome of the National ML/TF Risk Assessment (NRA) and the application of Risk-Based Supervisory Framework for DNFBPs and Other Financial Institutions (D'SuRF).

Under the NRA, the REA sector is assessed as part of the sectoral risk assessment for DNFBPs sectors, supported by both quantitative and qualitative inputs from various sources. The assessment evaluates the net ML/TF risks of the sector taking into consideration the sectoral inherent features and characteristics and overall effectiveness of the control measures in mitigating the risks. The assessment also covers interlinkages of the REA sector with other sectors and susceptibility of REA being abused by crimes. Supervision on the REA sector focuses on on-site and, off-site monitoring and awareness initiatives. On-site examination is targeted on reporting institutions (RIs) that are selected based on robust selection process under the D'SURF, which is in line with risk profile of the RIs. The on-site examination is in-depth, with assessments covering the RI's inherent risk and quality of risk management based on criteria under the D'SurF. In applying the risk-based approach, the intensity of the supervisory action is determined based on the overall ML/TF risks of the RIs, where more stringent supervisory monitoring is imposed on RIs with heightened risks, including requirements to submit an action plan and progress report on rectification measures to address supervisory issues as well as an independent audit report to validate adequacy and effectiveness of rectification measures undertaken.

For off-site monitoring, BNM deploys mandatory Data and Compliance Report (DCR) as an off-site monitoring tool that requires submission of RIs' information and self-assessment of their compliance level in order for BNM to understand the overall risk profile of the sector as well as identify any emerging risks and mitigating measures required.

BNM undertakes a multi-pronged approach in its awareness programmes, including in collaboration with REA's licensing authority and industry associations. The awareness initiatives include conduct of technical trainings through physical and virtual sessions as well as during national conferences in collaboration with the industry associations, dissemination of AML/CFT materials via issuance of FAQs (Frequently Asked Questions), guidance, newsletters and awareness videos to ensure the RIs are kept abreast with the latest domestic and global AML/CFT developments.

*Source: Input by Hong Kong, China and Malaysia*

#### **4.1.2. Understanding ML/TF risk: The role of countries**

183. Countries should ensure that real estate professionals and others apply an RBA that reflects the nature, diversity and maturity of the sector and its risk profile as well the ML/TF risks associated with individual real estate professionals.

184. Access to information about ML/TF risks is essential for an effective RBA. Countries are required to take appropriate steps to identify and assess ML/TF risks on an ongoing basis in order to: (a) inform potential changes to the country's AML/CFT regime, including changes to laws, regulations and other measures; (b) assist in the

allocation and prioritisation of AML/CFT resources by competent authorities; and (c) make information available for AML/CFT risk assessments conducted by real estate professionals and the jurisdiction's national risk assessment.

185. Countries should keep the risk assessments up-to-date and should have procedures in place to provide appropriate information on the results to competent authorities, SRBs and real estate professionals. In situations where some real estate professionals have limited capacity to identify ML/TF risks, countries should work with the sector to understand their risks as exemplified in Box 4.2. To the greatest extent possible, countries should make public detailed information on civil enforcement actions or criminal cases to inform all relevant stakeholders about ML/TF risks.

#### **Box 4.2. The importance of communication and cooperation to an effective RBA**

##### **France**

French inspection units have been asked to target certain types of real estate activities, which are more likely to be exposed to money laundering and terrorist financing risk, on the basis of their location and the clientele they deal with. For that purpose, they have to send a preliminary questionnaire to a certain amount of estate property agencies, which have to fill it with information on their activity (including turnover, average amount of transactions and type of clientele) and their awareness of AML/CFT obligations, such as transmission of suspicion declarations to the FIU.

This information combined with the knowledge of past records on obliged entities (such as penalties pronounced against them or information taken from other investigations in the consumer protection field) will help the investigation units assess the risk of real estate agents' exposure to ML/TF. The implementation of this technique has enabled investigation units to detect a greater number of non-compliant entities.

DGCCRF, the French supervisory authority, has also participated in more awareness events with the FIU in order to mobilize professional organizations and obliged entities in AML/CFT. More suspicion transactions were reported in 2018 and 2019 by professionals after these events, even though the level of reporting remains limited in comparison with the number of transactions, completed by real estate agents.

Source: Input by France

186. Supervisors and SRBs should, as applicable, draw on a variety of sources to identify and assess ML/TF risks. These may include, but will not be limited to, the jurisdiction's national risk assessments, supranational risk assessments, domestic or international typologies, supervisory expertise, and FIU feedback. The necessary information can also be obtained through information-sharing and collaboration practices among AML/CFT supervisors, when there is more than one regulator for different sectors (e.g., legal professionals, accountants and real estate agents).

187. These sources can also be helpful in determining the extent to which real estate professionals are able to effectively manage ML/TF risks. Information-sharing and collaboration should take place among AML/CFT supervisors across all sectors (e.g. legal professionals, accountants, real estate agents etc.).

188. FIUs are notably in a unique position to inform supervisor's efforts due to their independence and role analysing and disseminating financial intelligence to facilitate

development of regulations and enforcement actions related to ML/TF risks. Supervisors should rely on and empower FIUs to leverage their access to confidential financial information and familiarity with law enforcement investigations to improve supervisors' understanding of risk and vulnerabilities in the real estate sector as well as red flag indicators that real estate professionals and banks can use. Supervisors should rely on FIUs to provide both routine and non-frequent products towards the real estate industry as part of the FIU's mandate regarding sharing of information under R.29 Adopting this type of approach towards an FIU will lead to a better-informed supervisory organization that can make more decisive actions with regards to identifying and mitigating ML/TF risk, monitoring and supervision, enforcement actions, sectoral risk assessments, and supervisors' ongoing review of the risk-based approach.

189. Supervisors and SRBs should issue guidance to real estate professionals on issues of concern. Guidance should be updated as necessary to remain accurate and current (i.e., reflect current realities in evolving risks including new technologies and emerging trends).

190. Competent authorities may also consider undertaking a targeted sectoral risk assessment to enhance their understanding of the specific environment in which real estate professionals operate in the country and the nature of services they provide. This could include an assessment of other interconnected sectors that are also involved in real estate transactions such as institutions arranging or offering financing, legal professionals, appraisers, etc.

191. In addition, supervisors and SRBs should:

- Understand the level of inherent risk including the nature and complexity of services provided by the real estate professionals. Supervisors and SRBs should also consider the type of services the real estate professionals are providing as well as their size and business model, corporate governance structure, the compliance culture within the organisation, financial and accounting information, delivery channels, client profiles, geographic location and countries of operation.
- Consider the controls real estate professionals have in place and the resources available for mitigating ML/TF risk (e.g., the quality of the risk management policy, the functioning of the internal oversight functions and the quality of oversight of any outsourcing and subcontracting arrangements). Supervisors and SRBs should require real estate professionals to have group wide AML/CFT programmes. Policies and procedures should be consistently applied and supervised across the group.<sup>22</sup>
- Seek to ensure real estate professionals are fully aware of, and compliant with, measures to identify and verify a client (both persons and entities), obtain the client's source of wealth and funds where required, and ensure transparency of beneficial ownership. These are all cross-cutting issues that affect several aspects of AML/CFT supervision.

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<sup>22</sup> For more on group policies as relevant to DNFBP's please see FATF Recommendations 18 and 23: The Application of Group-Wide Programmes by Non-Financial Businesses and Professions, November 2021. Available at : <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/Explanatory-Materials-R18-R23.pdf>

- Review their assessment of real estate professionals ML/TF risk profiles periodically, including when circumstances change or relevant new threats emerge and appropriately communicate this assessment to the industry.
- Ensure that they properly assess the risks associated with legal persons and legal arrangements, such as trusts. This includes risk around legal persons or legal arrangements being misused to obfuscate the beneficial ownership of a real estate property for criminal purposes.

#### ***4.1.3. Mitigating ML/TF risk***

192. Supervisors and SRBs should take appropriate and proportionate measures to mitigate and manage ML/TF risk, including allocating more supervisory resources to areas of higher ML/TF risk. Similarly, supervisors and SRBs should determine the frequency and intensity of these measures based on their understanding of the inherent ML/TF risks. This means that supervisors should determine the frequency and intensity of periodic assessments based on the level of ML/TF risk to which the sector and individual entity are exposed. It also means that where detailed supervision of all agents, brokerages, and other relevant professions for AML/CFT purposes is not feasible, supervisors should give priority to the areas posing the highest risk while undertaking less resource-intensive supervisory exercises on professionals posing a lower risk. (e.g., off-site examinations and questionnaires).

193. The characteristics and vulnerabilities of the sector should be identified in order to determine which real estate professionals pose the greatest risk of being used by criminals for ML/TF purposes. This involves considering the probability and impact (both nationally and internationally) of ML/TF risk. Probability means the likelihood of ML/TF taking place as a consequence of the activities undertaken by real estate professionals and the environment they operate within. The risk can also increase or decrease depending on other factors, such as:

- Service and product risk (the likelihood that services or products can be used for ML/TF);
- Client risk (e.g. the likelihood that customers' funds may have criminal origins among others);
- The nature of transactions (e.g., payment method, frequency, volume, type of property being purchased, counterparties involved);
- Geographical risk (whether the real estate professionals conduct business in riskier locations e.g., certain regions or areas); and
- Other indicators of risk are based on a combination of objective factors and experience, such as the supervisor's wider work with real estate professionals and firms as well as information on a firm's compliance history, complaints about the agent or the quality of its internal controls.
- Other such factors may include information from government/law enforcement sources, whistle-blowers or negative news reports from credible sources or media particularly those related to predicate offences for ML/TF or to financial crimes.

194. In adopting an RBA, supervisors and SRBs may consider allocating supervised entities sharing similar characteristics and risk profiles into groupings for supervisory purposes. Some sectors, in particular DNFBPs, which include real estate agents, have a very large number of entities such that understanding ML/TF risks of each entity is

difficult as supervisors may have little to no data on individual entity activities. As such, supervisors of real estate professionals may seek to identify sub-sectors or market segments or clusters within the sector and understand their respective features or characteristics so that risk profiles can be established at the sub-sectorial or segment level. This could include groups such as: non-residents/foreign buyer markets, luxury property markets, residential real estate markets, commercial real estate markets, large-scale construction project markets, as well as the various types of supervised entities, to include large firms with more dedicated resources and personnel for AML/CFT and smaller firms with individuals that conduct AML/CFT duties in addition to other roles.

195. Using such groupings could allow supervisors to take a comprehensive view of the real estate sector, as opposed to an approach where the supervisors concentrate on the individual risks posed by the individual professionals. Similar to the above, examples of characteristics and risk profiles could include the size of business, type of properties involved in a transaction, type of clients and geographic areas of activities.

196. Supervisors and SRBs should update their assessment of risks on an ongoing basis. The result from the assessment will help determine the resources required to supervise the real estate agents, as well as other professions and firms, and help them adjust their regulatory approach.

197. Domestic co-operation and information exchange between FIU and supervisors of the real estate sector and others including law enforcement, intelligence authorities, tax authorities, can also be important for effective monitoring and supervision of the sector. Such co-operation and co-ordination may help avoid gaps and overlaps in supervision and ensure sharing of good practices and findings. Information sharing about active misconduct investigations and completed cases between supervisors and law enforcement agencies should be encouraged where appropriate. When sharing information, protocols and safeguards should be implemented in order to protect personal data.

## **4.2. Supervisory Tools and Supervision of the Risk-Based Approach**

### ***4.2.1. General Approach***

198. Supervisors should educate, encourage and monitor real estate professionals' adoption of an RBA that is in line with the FATF recommendations, and that is risk-appropriate in line with the business models and activities, size of operations, and operating environments.

199. The real estate sector is inter-connected with other sectors that are also involved in real estate transactions, which includes the banking sector and other entities involved in real estate transactions either who have no AML/CFT requirements or that are applied differently across jurisdictions (e.g., mortgage brokers, private lenders, appraisers etc.). Supervisors should get a good understanding of the ML/TF factors affecting the real estate sector and make appropriate adjustments where necessary to their supervisory RBA.

200. Supervisors should note that under the RBA, particularly in the real estate sector, given the diversity in size, scale of operations, business models and domestic regulatory requirements, there may be valid reasons for differences in controls. There is therefore no one-size-fits-all approach and, in evaluating the adequacy of their RBA, supervisors and SRBs should take into consideration the merits of these differences, applying a proportionate response.

201. The task of supervising the implementation of the RBA is a challenging one. To be effective, a supervisor should consider the following general principles:

- a) Secure adequate resources and their effective allocation
  - Knowledge about ML/TF in the real estate sector and how the sector is vulnerable to ML/TF activities is important for understanding the required resources and skillsets required as a supervisor. Based on the ML/TF risks, and the size and complexity of the sector, supervisors should have adequate financial, human and technical resources to properly develop and apply risk-based supervision.
- b) Strong supervisory focus on effective implementation of controls by real estate professionals.
  - For an effective RBA, supervisors should also focus on assessing the quality of the real estate business risk mitigation efforts. Supervisors should clearly articulate and communicate their expectations, including the necessary rectification measures or penalties where there are deficiencies or non-compliance in a brokerages' AML/CFT controls.
- c) Conducting an ongoing review to develop a robust risk-based approach.
  - Supervisors and SRBs should use their findings to review and update their ML/TF risk assessments and, where necessary, consider whether their approach to AML/CFT supervision and the existing AML/CFT rules and guidance remain adequate. Whenever appropriate, and in compliance with relevant confidentiality requirements, these findings should be communicated to real estate brokers to enable them to enhance their own RBA.
- d) Measuring the effectiveness of the risk-based supervision.
  - Record keeping is important, so that supervisors can document and evaluate the significant decisions relating to AML/CFT supervision. Supervisors should have an appropriate information retention policy and be able to easily retrieve information while complying with the relevant data protection legislation. Record keeping is crucial and fundamental to the supervisors' work but also to the broader AML/CFT regime. Undertaking adequate quality assurance is also fundamental to the supervisory process to ensure decision-making/sanctioning is consistent across the supervised population.
- e) Remediation, proportionate and dissuasive sanctions
  - Supervisors should practice continuous active supervision, including on-site and desk based reviews and exams. Supervisors must have the willingness and ability to apply proportionate and dissuasive sanctions. This kind of active supervision is essential as countries institute new or enhanced controls and try to change old assumptions about ML/TF risk mitigation in real estate.
- f) Reporting and data
  - Supervisors and SRBs should continuously assess the type of data made available to them by the sector and within their own organization. They should consider what decisions rely on specific types of data and whether additional data sources could be useful to inform decision making as well as how to store data effectively. However, supervisors and SRBs must also avoid relying too heavily on data to inform all

supervisory functions and rely on other resources when there is incomplete data available. Types of data that may be of interest could include data related to suspicious transaction reporting, general annual reporting metrics on number of transactions and accounts, as well as data on cash payments.

### *Investigative tools*

202. Supervisors and SRBs should also continuously assess whether new investigative tools should be adopted to enhance the overall ability to identify, assess, and mitigate ML/TF risk. While this can be based on the own initiative of a supervisor and SRB, supervisors and SRBs should also be encouraged to adopt new tools in response to identified risks or other ML/TF issues. Tools can include various new types of data collection measures, or any other element that facilitates supervisors' ability to identify, assess, and mitigate ML/TF risk. Examples of past tools adopted in response to significant ML/TF risks include the UK's unexplained wealth order and the geographic targeting order in the United States.

### *Monitoring and Supervision*

203. Supervisors and SRBs should take measures to effectively monitor the real estate sector. The nature of this monitoring will depend on the risk profiles prepared by the supervisor or SRB and the connected risk-based approach. As well, the supervisory approach should be fluid with the supervisor or SRB being able to adjust or update their assessment of risks on an ongoing basis. The result from each assessment will help determine the resources allocated to the supervision of real estate professionals or of groups of real estate professionals or firms and help supervisors and SRBs adjust their regulatory approach effectively. Ways in which supervisors can adjust their approach to better target risks include:

- a) Selecting the type of AML/CFT supervision
  - Supervisory tools that can be used individually or in combination to achieve the intended supervisory outcomes.
  - Off-site supervision may include off-site monitoring that helps keep supervisors up-to-date on the ML/TF risk landscape, inherent risk profiles of regulated entities, and potential control weaknesses in these entities. It may also include undertaking thematic reviews, which may include a focused scope on one or more specific aspects of the entities' AML/CFT systems and controls, such as transaction monitoring or treatment of PEPs. Off-site supervision alone may not be appropriate in higher risk situations.
  - On-site supervision offers supervisors an opportunity to conduct a more thorough review of the entities' controls through the performance of sampling tests. For example, it may involve interviewing staff, reviewing documentation, and testing their monitoring systems (whether automatic or manual). Relatedly, there can also be an off-site process (pre-engagement) where the regulated entities' risk assessment is re-validated prior to an on-site inspection.
  - Some or all elements of supervisory inspections, including sample testing may also be effectively carried out off-site, by obtaining the information from the entity and the application of Supervisor Technology (SupTech) tools. Where live testing is not possible off-site, the prior standard sample testing can augment additional, more targeted live testing during the on-site

visit– e.g., when carrying out a walkthrough of a CDD system, select customers (random selection/based on level of risk etc.) and in a “live” assessment, request the member of the entity to produce the customer risk assessment, CDD documentation etc.

- b) Adjusting the frequency of ongoing AML/CFT supervision
  - Supervisors and SRBs should proactively adjust the frequency of AML/CFT supervision in line with the risks identified and combine periodic reviews and ad hoc AML/CFT supervision as issues emerge (e.g., as a result of whistleblowing, information from law enforcement, or other supervisory findings resulting from real estate brokerages’ inclusion in thematic review samples).
- c) Adjusting the nature and intensity of AML/CFT supervision:
  - Supervisors should decide on the appropriate scope or level of assessment in line with the risks identified, with the aim of assessing the adequacy of a real estate firm’s policies and procedures that are designed to prevent them from being abused.
  - Examples of more intensive supervision could include: detailed testing of systems and files to verify the implementation and adequacy of the firm’s risk assessment, files on CDD and reporting including the reporting of suspicious transactions, record-keeping policies, ongoing monitoring measures and processes and internal auditing. This may also include interviews with operational staff, real estate professionals acting on behalf of a firm, senior management and the Board of directors, where applicable, as well as conducting AML/CFT assessments of particular lines of business.

204. While most supervisory resources should be dedicated to the higher ML/TF risk areas, supervisory strategies should also set out the supervisory approach for areas of lower ML/TF risk. For example, supervisors should also ensure that education and outreach extend to lower risk sectors to enable them to implement risk-based, proportionate measures and to help identify and report any ML/TF risks that may arise. Importantly, supervisors should detail that real estate professionals should still provide resources and attention to areas identified as presenting a low ML/TF risk.

### Box 4.3. Case studies of the RBA to supervision of the real estate sector

#### Singapore

Singapore’s Council for Estate Agencies (“Regulator”) regulates the real estate agency sector by adopting a risk-based approach to supervision and subjecting higher-risk estate agencies to more supervisory scrutiny. This primarily involves more frequent on-site inspections on higher-risk estate agents (property agencies) to assess their compliance with AML/CFT requirements. In addition, through the use of data analytics on property transactions, the Regulator is able to scrutinise transactions deemed to be of higher risk during inspections (e.g. transactions involving private properties which are more susceptible to ML, transactions involving countries with ML/TF deficiencies).

For lower-risk estate agents, surveillance and monitoring are still conducted regularly through the Regulator’s off-site desk-based inspections. This also reduces the need for physical interactions in light of the ongoing COVID-19 pandemic. For non-compliances found during such desk-based inspections, the Regulator would issue a warning to the estate agent and require the remediation of the deficiencies found. Should the estate agent be found to have inadequate AML/CFT controls (e.g. failure to conduct CDD, lack of internal policies, procedures and controls to manage and effectively mitigate ML/TF) during the off-site inspection, the Regulator would follow up with a comprehensive on-site inspection with the estate agent involved.

The Regulator also conducts ad-hoc inspections when it receives any credible adverse information or intelligence (e.g. from law enforcement agencies through the Risk and Typologies Inter-Agency Group, which comprises all relevant supervisory, regulatory, law enforcement and policy agencies) on estate agents or their salespersons.

Source: Input by Singapore

#### *Enforcement*

205. R.28 requires supervisors to have adequate powers to perform their functions, including powers to monitor compliance by real estate agents and other professions under their review. R.35 requires countries to have the power to impose sanctions, whether criminal, civil or administrative, on DNFPBs. Sanctions should be available for the board and senior management of a brokerage or real estate firm when they fail to comply with requirements.

206. Supervisors should use proportionate actions within their legal framework, including a range of supervisory interventions and corrective actions to ensure that any identified deficiencies are addressed in a timely manner. Sanctions may range from informal or written warnings, reprimand and censure to punitive measures (including license withdrawal and criminal prosecutions where appropriate) for more egregious non-compliance, as identified weaknesses can have wider consequences. Generally, systemic breakdowns or significantly inadequate controls will result in more severe supervisory responses.

207. Enforcement by supervisors and SRBs should be proportionate while having a deterrent effect. Supervisors and SRBs should have (or should delegate to those who have) sufficient resources to investigate and monitor non-compliance. Enforcement should aim to remove the benefits of non-compliance.

### *Guidance, Feedback and Collaboration*

208. As part of a supervisory strategy, supervisors should communicate their expectations of professionals or their businesses' compliance with their legal and regulatory obligations. This could be done through a consultative process after engaging with relevant stakeholders such as the private sector. This guidance may be in the form of high-level requirements based on desired outcomes, risk-based rules, and information about how supervisors interpret relevant legislation or regulation, or more detailed guidance about how particular AML/CFT controls are best applied. Guidance issued to the real estate sector should also discuss ML/TF risk within their sector and outline ML/TF indicators (transactional and behavioural) in order to help them identify suspicious transactions.

209. Where supervisors' guidance remains high-level and principles-based, this may be supplemented by further guidance produced by the industry or their representatives, which may cover operational issues, and be more detailed and explanatory in nature. Additionally, supervisors may consider issuing operational-level guidance if deemed helpful for the larger supervisory effort. Those who issue guidance should note, however, that the private sector guidance they take into consideration should be consistent with national legislation and with any guidelines issued by competent authorities and international standards.

210. Supervisors should communicate with other relevant domestic regulatory and supervisory authorities to secure a coherent interpretation of the legal obligations and to minimise disparities. This is particularly important where more than one supervisor is responsible for supervision (e.g., where the market conduct supervisor and the AML/CFT supervisors are in different agencies or in separate divisions of the same agency). Multiple guidance should not create opportunities for regulatory arbitrage, loopholes or unnecessary confusion among real estate brokerages and other firms involved in the real estate industry. When possible, relevant regulatory and supervisory authorities should consider preparing joint guidance.

211. To the extent possible, supervisors and FIUs should provide timely feedback to real estate brokerages and other firms in the industry on effectiveness of their monitoring/reporting systems, quality of STRs filed and AML/CFT controls in general. A well-defined and institutionalised feedback mechanism can enhance the effectiveness of the monitoring and surveillance system to capture as many suspicious transactions as possible. Guidance on potential risk indicators in the real estate sector, in consultation with the industry, where feasible, can also be considered.

212. Information exchange between the public and private sector such as sharing i) ML/TF risk assessments; ii) typologies (i.e., case studies) of how money launderers or terrorist financiers can misuse the real estate sector, can assist in providing relevant and updated guidance and feedback. To develop a good understanding of the risks facing supervised entities, supervisors should maintain ongoing engagement with the private sector. ML/TF typologies evolve rapidly and the private sector may be able to detect these changes first – given their direct contact with customers – and inform supervisors. The private sector is likely to identify these changes before supervisors since they have direct contact with customers. On-going co-ordination between supervisors and other government authorities in their engagement with the private sector ensures clear messages are sent on expectations for risk management. If possible industry engagement should include education and awareness raising.

### *Training*

213. Training is important for the supervision staff to understand the sector's vulnerabilities of ML/TF risk, which includes understanding the real estate sector's business models, regulatory environment, challenges and any emerging trends. In particular, supervisors should ensure that the staff are trained to assess the quality of real estate ML/TF risk assessments and the adequacy, proportionality, effectiveness, and efficiency of AML/CFT policies, procedures and internal controls in light of its risk assessment. Supervisors should also be prepared to maintain similar levels of preparedness for those responsible for supervising the related professions involved in the real estate industry.

214. Training should allow the supervisory staff to assess and form sound judgments about the quality of the firms risk assessment and effectiveness of the brokerages' AML/CFT controls. It should also aim at achieving consistency in the supervisory approach at the national level in case of multiple competent supervisory authorities or when the national supervisory model is devolved or fragmented.

215. Given the diversity and complexity within the real estate sector (e.g., diverse clientele, cross-jurisdictional nature, use of lawyers and nominees, etc.), supervisory authorities should conduct continuous training programmes for supervisors, so that they can develop and maintain their proficiency. A training programme could include the following topics:

- General AML/CFT issues;
- Business models of various sub-segments of the real estate sector (e.g., various size of brokerages, number of agents, real estate developers and other professions, and the associated ML/TF risks or issues);
- Interaction among the various sub-segments of the real estate sector, and with other parts of the financial system (e.g., the banking system), as well as the impact on the scale and nature of ML/TF risks;
- Sanctions, embargoes or similar measures, issued by international organisations such as the United Nations.
- National and international supervisory cooperation mechanisms; and
- Other pertinent issues (e.g., implementation of common reporting standards for a specific country, enhancing transparency of beneficial ownership, and the effect of financial technology developments including the use of virtual assets on ML/TF risks, as well as country relevant case studies).

### *Ongoing Review of Supervisory Risk-Based Approach*

216. Supervisors should ensure that their supervisory strategies are kept under regular review. In implementing the strategy, supervisors will develop a better understanding of the quality of the supervised entities' AML/CFT controls and the ML/TF risk profiles of the business models, as well as the effectiveness of various supervisory tools. This knowledge should be utilised to enhance the overall ML/TF risk understanding at both the sectoral and the individual entity levels along with consideration of any new/emerging ML/TF risks.

217. Further, supervisory authorities should use the experience garnered from carrying out supervisory tasks to enhance the effectiveness of their supervisory strategies and to continuously refine and enhance these methods. Any changes to the

ML/TF risk understanding and/or proposals for refinement or enhancement of the mix of supervisory tools to be applied should be considered in the context of the review of the overall strategy with the aim of continuing to improve and strengthen the supervisory approach to ensure it remains effective.

218. Supervisors should implement mechanisms to ensure sound and consistent supervisory assessments and independence regarding decision-making in AML/CFT risk-based supervision. For example, when determining a risk rating for a sector and for individual entities the decision should be supported by a documented outline of the assessment (including findings from onsite and offsite activities etc.) and the rationale to explain the proposed risk rating.

### *Measuring the Effectiveness of the Supervisory Risk-Based Approach*

219. Supervisors should also properly record, monitor, and analyse their own supervisory activities and outputs. Supervisors, when developing their supervisory approach, should ensure that they have a repository for recording engagement activities (ideally in digital form) with each entity including details of the issues identified, relevant action plans and the risk assessment for each entity. The supervisor should be able to extract data and management information (MI) to:

- Illustrate how supervision has impacted risk management and compliance, both at the firm and sectoral level;
- Identify changing patterns in terms of numbers, degree of seriousness of issues identified overtime and fluctuations in ratings of the effectiveness of the controls; and
- Measure performance against key risk indicators and on issues identified and risk profiles of each individual entity and sector, and feed these in aggregate form back into the NRA process.

220. Supervisors are encouraged to use data to determine and demonstrate the impact of their supervision. For example, using a system to record supervisory engagements that enables the extraction of data can help. However, supervisors should be wary of the overreliance of data, and make sure to take into account all information when making decisions based on incomplete and low-quality data.

221. This information should also be used to better target the application of supervisory resources and supervisory tools and to inform the approach on outreach initiatives. For example, analysis of the supervision data may indicate increasing problems resulting from potential deficiencies in the transaction monitoring capabilities of the regulated entities, leading the supervisor to issue new guidance or requirements to address this developing trend. On the other hand, data can also indicate whether supervisory efforts are succeeding in terms of their impact on the improvement of AML/CFT measures in an entity or across a sector. For example, findings identified during an inspection may initially show significant gaps in the entity's AML/CFT program but overtime, the findings identified should be of a less serious nature and more in the space of refinements or enhancements. Improvements in the quality of risk assessments undertaken by entities may be another measure of effectiveness.

222. Another measure that can assist supervisors in determining the impact of their supervision on entities' risk management effectiveness is to consider the key outputs from AML/CFT frameworks, e.g., the quality of suspicious transaction reports. Supervisors should either review these outputs themselves, or seek feedback from the jurisdictions' FIU as to the number, quality and timeliness of reports they have received

from sectors and entities, as improvements in this area can also be an indicator of the successful results of supervisory activities.

## 5. CONCLUSIONS

223. This Guidance sets out the key principles of a risk-based approach to AML/CFT and builds on the FATF Recommendations to provide viable suggestions and best practice examples to enable the establishment and implementation of appropriate AML/CTF regimes. The Guidance emphasises the importance of a comprehensive understanding of the risk-based approach and the threats real estate professionals might be exposed to in carrying out their day-to-day functions, whilst recognising that legal and regulatory frameworks vary by country, making a ‘one size fits all’ approach to AML/CTF unfeasible.

224. The Guidance recommends that an understanding of the risk-based approach should form the basis of an AML/CTF regime, enabling appropriate measures to be taken to prevent, mitigate and manage ML/TF activity that are proportionate to the risk posed. In doing so, resources are likely to be allocated more efficiently, targeted on the basis of risk, and outcomes consequently improved. A robust risk assessment that anticipates and responds to changes in risks and severity of risks is crucial, and a National Risk Assessment (NRA) is necessary to increase levels of awareness and knowledge of ML/TF risks and enable appropriate strategies to be developed in response.

225. In following the recommendations outlined in the Guidance, real estate professionals will be better placed to develop effective processes and procedures to identify, mitigate and manage ML/TF risk and ensure that the risk-based approach to ML/TF is implemented. In doing so, those dealing with property, which has been identified as high-risk for ML/TF activity, can remain vigilant in their approach to AML/CFT.

## Annex A.

### *GLOSSARY OF TERMINOLOGY*

#### **Beneficial Owner**

[PLACEHOLDER]

#### **Competent authorities**

Competent authorities refers to all public authorities<sup>61</sup> with designated responsibilities for combating money laundering and/or terrorist financing. In particular, this includes the FIU; the authorities that have the function of investigating and/or prosecuting money laundering, associated predicate offences and terrorist financing, and seizing/freezing and confiscating criminal assets; authorities receiving reports on cross-border transportation of currency & BNIs; and authorities that have AML/CFT supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and DNFBPs with AML/CFT requirements. SRBs are not to be regarded as a competent authorities.

#### **Designated Non-Financial Businesses and Professions (DNFBPs)**

Designated non-financial businesses and professions means:

- a) Casinos
- b) Real estate agents.
- c) Dealers in precious metals.
- d) Dealers in precious stones.
- e) Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to ‘internal’ professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to AML/CFT measures.
- f) Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere under these Recommendations, and which as a business, provide any of the following services to third parties:
  - acting as a formation agent of legal persons;
  - acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
  - providing a registered office; business address or accommodation,
  - correspondence or administrative address for a company, a

- partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an
- express trust or performing the equivalent function for another
- form of legal arrangement;
- acting as (or arranging for another person to act as) a nominee
- shareholder for another person.

### **Politically Exposed Persons (PEPs)**

Foreign PEPs are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Domestic PEPs are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Persons who are or have been entrusted with a prominent function by an international organisation refers to members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions.

The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories.

### **Supervisors**

Supervisors refers to the designated competent authorities or non-public bodies with responsibilities aimed at ensuring compliance by financial institutions (“financial supervisors”) and/or DNFBPs with requirements to combat money laundering and terrorist financing. Non-public bodies (which could include certain types of SRBs) should have the power to supervise and sanction financial institutions or DNFBPs in relation to the AML/CFT requirements. These non-public bodies should also be empowered by law to exercise the functions they perform, and be supervised by a competent authority in relation to such functions.