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GUIDANCE NOTE NO. 03 OF 2023

GUIDANCE ON RISK ASSESSMENTS AND ML/TF/PF INDICATORS:
REAL ESTATE AGENCIES/AGENTS

First Issued: 14 April 2023

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DEFINITIONS AND ABBREVIATIONS

“Accountable Institution (AI)” means a person or entity listed in Schedule 1 of the Act;

“Business relationship” means an arrangement between a client and an accountable or reporting institution for the purpose of concluding transactions on a regular basis;

“CDD” means Customer Due Diligence;

“Client and Customer” have their ordinary meaning and are used interchangeably herein;

“Customer Due Diligence” (CDD) means a process which involves establishing the identity of a client, the identity of the client’s beneficial owners in respect of legal persons and monitoring all transactions of the client against the client’s profile;

“Enhanced Due Diligence” (EDD) means doing more than the conventional simplified due diligence or the basic CDD measures mentioned above and includes, amongst others, taking measures as prescribed by the Centre to identify, as far as reasonably possible, the source of wealth, funds and any other assets of the client or beneficial owners whose activities may pose a risk of ML, TF or PF;

“Establish Identity” means a two-tier process consisting of *ascertainment or collecting* of certain identification information, and *verification* of some of the information against reliable documentation or information;

"FATF" means the Financial Action Task Force;

“FIA” refers to the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

“FIC” means the Financial Intelligence Centre;

“LEAs” means Law Enforcement Authorities such as the Namibian Police, Anti-Corruption Commission or NAMRA

"ML" means Money Laundering;

"PEPs" means Political Exposed Persons (See FIC Guidance Note 01 of 2019);

"PF" means proliferation financing;

"Records" means any material on which information is recorded or marked and which is capable of being read or understood by a person, or by an electronic system or other device;

"Regulations" refer to the FIA Regulations unless otherwise specified;

"Single Transaction" means a transaction other than a transaction concluded in the course of a business relationship;

"SAR" refers to a suspicious activity report submitted to the FIC in terms of sections 33 (1) & (2) of the Act;

"STR" refers to a suspicious transaction report submitted to the FIC in terms of sections 33 (1) & (2) of the FIA;

"TF" means Terrorist Financing;

"Transaction" means a transaction concluded between a client and an accountable or reporting institution in accordance with the type of business carried on by that institution, and includes attempted transactions.

1. BACKGROUND

This Guidance Note is issued in terms of Section 9(1)(h) of the Financial Intelligence Act, 2012 (The FIA). It is the first set of two sectoral guidance notes for the Real Estate Agents Sector. It focuses on identifying risks within Real Estate Agencies and highlights common indicators of Money Laundering (ML), Terrorism and Proliferation Financing (TF/PF) activities. This Guidance should be considered along with Guidance Note 04 of 2023 which avails guidance to Real Estate Agents on implementing controls which are risk based or informed by such identified risks. The sector is equally encouraged to consider all other guidance, directives and circulars issued (available on the FIC website), with emphasis on recent publications around Politically Exposed Persons, Non-Profit Organisations, Virtual Asset Service Providers (VASPs), the section around Targeted Financial Sanctions (TFS) in Guidance Note 04 of 2023, amongst others.

A person who is in private practice, or an estate agent as defined in the Estate Agents Act, 1976 (Act No. 112 of 1976), involved in the buying and selling of real estate for cash or otherwise is listed as an Accountable Institution in Items 1 and 2 of Schedule 1 of the FIA. For ease of reference, the term Estate Agent refers to a single natural person while Estate Agencies refers to an entity duly authorised to facilitate the buying and selling of real estate.

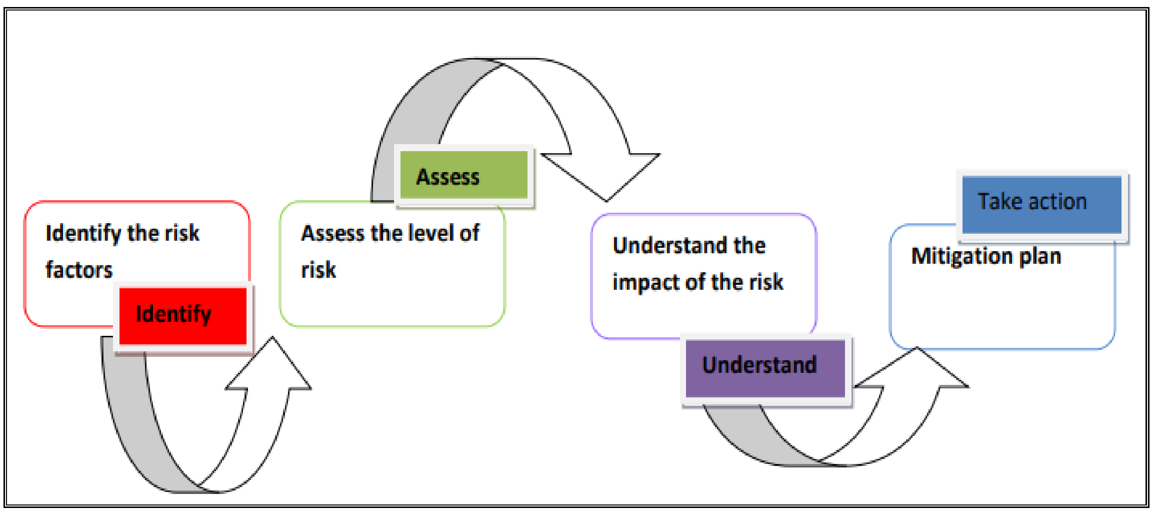
It is common cause that services offered by Real Estate Agencies (or Estate Agents) have been abused for ML domestically. Internationally, there are trends and typologies which suggest such abuse to advance TF/PF activities. To help mitigate ML/TF/PF risks, the Financial Intelligence Centre (FIC) issues this Guidance to help Estate Agents implement and enhance their internal Anti-Money Laundering, Combatting the Financing of Terrorism and Proliferation (AML/CFT/CPF) measures.

2. COMMENCEMENT

This Guidance Note comes into effect on **17 April 2023**.

3. UNDERSTANDING RISK AND THE RISK BASED APPROACH

The Risk-Based Approach (RBA) speaks to a control system premised on an Estate Agent or Agency's understanding of risks it may be exposed to. As shown in the diagram below, such understanding is what informs the design, nature and extent of controls implemented to mitigate risks (mitigation plan). The key features are identifying risks, assessing such risks to understand its levels and impact, followed by a mitigation plan aligned to such risk levels. An effective control implementation is also characterised by documenting ML/TF/PF risk findings (in a risk report) and updating such when the need arises. This enables a platform through which risks are tracked.



Risk Based Approach implementation framework

Money launderers look for cash-based service industries with high turnover rates. The buying and selling of real estate is a high turnover business, which also accepts cash transactions with ease. The ease with which clients can introduce cash in the buying and selling of real estate, which may be from illicit activities, is a major draw card for potential money launderers. Similarly, the ease with which cash or proceeds introduced (in real estate transactions) can be withdrawn and presented elsewhere in the financial system naturally distances such from illicit origins. Simply put, if a property was financed with proceeds of crime, such launderer has succeeded in benefiting from his criminal activities. Further, such property can be used as collateral or other means to finance other activities, which will not be readily traced back to the initial illicit activity which financed the property acquisition in the first place. Domestic typologies further suggest that property financed with proceeds from illicit activities can further be resold to obtain proceeds which will be far removed from the initial illicit activities. This is the ML risk the sector is required to prevent. With TF on the other hand, the essence lies in not granting opportunities for resourcing or financing terrorism activities, wherever they may be, with proceeds obtained from the buying and selling of properties.

As a control framework, the RBA ensures efficiency of operations within AML/CFT/CPF activities. If duly implemented, the RBA ensures prudent balancing of compliance costs to business and customers by prioritising and directing controls to where they are most needed, in a prudent manner. This ensures high risk clients and services are accorded controls which are commensurate to risk while lower risk clients and services are not burdened with unwarranted customer due diligence.

3.1. ML Risks in Real Estate Agencies

It may be difficult to distinguish a money launderer using illicit funds from a legitimate buyer or seller. Generally, the money laundering process can be described as follows:

a. Placement

Involves placing the proceeds of crime in the financial system. For example, buying real estate or financial instruments for resale, or depositing proceeds from crime in a bank account.

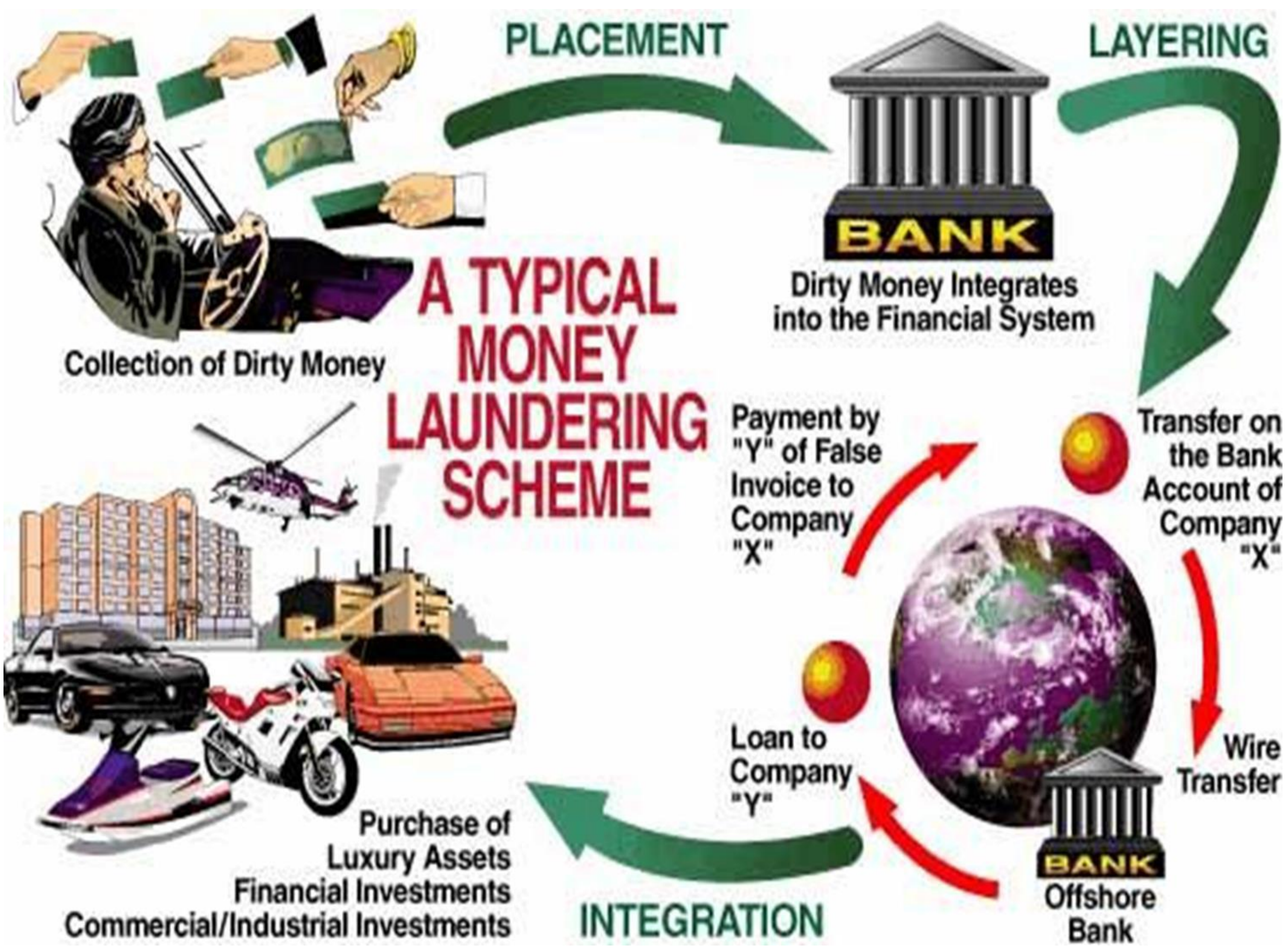
b. Layering

Involves converting the proceeds of crime into another form and creating complex layers of financial transactions to disguise the audit trail and the source and ownership of funds. *For example, at this stage, property bought with illicit proceeds is used as security (e.g for bank loans) to acquire/purchase other items or properties. Such can also be sold and proceeds presented as 'clean money' to buy other goods or invest elsewhere.* The aim is usually to create as much distance as possible between the illicit activity/criminal and the illegal proceeds.

c. Integration

Usually the last stage of the ML process. Integration is at times similar to or part of the layering process. The aim is to place the laundered proceeds back in the financial system under a veil of legitimacy. *For example, property purchased with illicit proceeds increases in value and the equity in such is used to buy other assets or invest elsewhere. Proceeds of crime can be used as part of down payment in a property deal.*

Below is a diagram of the three layers of ML.



Estate Agencies and Agents, as part of their risk assessment process, should assess the ML/TF/PF vulnerabilities and high-risk factors associated with each of their products/services. Annexure A attached hereto avails a list of some ML indicators[1] of high risk clients, activities, delivery channels, conduct and transactions.

3.2 Role of Estate Agents in the Value Chain

Many Estate Agents do not handle cash or client money directly, as such is either dealt with by Conveyancing Attorneys and/or banks. It is notable that this reduces the ML/TF risk to a certain degree as far as directly abusing Estate Agents' services is concerned.

The FIA and relevant ML/TF prevention methods are geared towards the protection of the entire real estate buying/selling value chain from being abused to advance laundering or TF activities. The services offered by Estate Agents enables them to have business relationships with both buyers and sellers of properties. Agents are thus in a position to help prevent and combat ML and TF activities by obtaining relevant buyer and seller information and employing relevant due diligence measures as per the FIA. Banks and Conveyancing Attorneys involved in property deals have equal obligations as Estate Agents in combatting ML and TF. At present, the law does not make provision for relying on the control measures employed by another Accountable Institution, except for record keeping. It is also helpful as various buffers are created along the value chain. For example, if controls at a financial institution for whatever reason fail, the Conveyancing Attorney or Estate Agent has an opportunity to serve as the reliable gatekeeper who can detect and prevent same.

3.3. TF Risks in Estate Agency

This section presents TF risk considerations for the sector. Guidance Note 04 of 2023 avails detailed guidance on implementing risk mitigation while Guidance Note 07 of 2023 speaks to Targeted Financial Sanctions (TFS) which are essential for TF combatting activities. Generally, control vulnerabilities exploited by TF threats can be similarly

[1] Such can also be helpful and relevant for potential TF suspicions.

exploited by PF threats. This context is helpful to bear in mind in this section as Real Estate Agents and Agencies equally need to combat PF risks.

3.3.1 Helpfulness of ML controls for TF: There are both similarities and differences in the application of the RBA to TF and ML. They both require a process for identifying and assessing risk. However, the characteristics of TF make its detection and the implementation of mitigation strategies challenging due to considerations such as the relatively low value of transactions involved in TF, or the fact that funds can be derived from legitimate as well as illicit sources. Namibia has not observed potential TF exposure within the Real Estate Agency sector. This does not however mean the sector is not vulnerable to such abuse. The buying and selling of properties locally, given its exposure to foreign clients, some of whom may hail from or have ties to high-risk countries, remains inherently[2] vulnerable to TF abuse;

3.3.2 Transnational[3] risks of TF: The 2020 National Risk Assessment (NRA) notes that whilst Namibia is not considered high-risk for TF, even small-scale financing raised from within Namibia could have a significant impact. When looking at the risk of non-Namibian clients, Estate Agents should consider not only high-risk countries but also their neighbouring countries, as TF often involves the movement of funds across borders. The NRA equally found that Namibia's porous borders present a significant vulnerability which enhances the ease with which proceeds can be moved in and out of the country. Proceeds used in, or derived from property deals could thus be easily from high-risk countries or taken to such countries, thereby increasing TF risk exposure;

3.3.3 Nature/Sources of TF funds: Funds that are used in TF may be derived from either criminal activity or may be from legal sources, and the nature of the funding sources may vary according to the type of terrorist organisation. Where funds are derived from criminal activity, the traditional monitoring mechanisms that are used

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[2] Inherent risks refer to the level of (original) risks prior to the implementation of controls to reduce the likelihood and impact of such risks.
[3] Extending or operating across national boundaries

to identify ML (as explained in this Guidance) may be appropriate for detecting potential TF, though the activity, which may be indicative of suspicion, may not be identified as or connected to TF;

3.3.4 **Size of funds for TF:** Transactions associated with TF may be conducted in very small amounts, which in applying a risk-based approach could be the very transactions that are frequently considered to be of minimal risk with regard to ML. Estate Agencies generally deal with amounts larger than what the world has observed as values transmitted for TF purposes. Where funds are from legal sources, it is even more difficult to determine if they could be used for terrorist purposes. The need to be mindful of ML indicators for TF is valuable but an Estate Agent's AM/CFT policy/procedures has to deliberately distinguish controls aimed at detecting potential TF;

3.3.5 **Covert nature of TF activities:** In addition, the actions of terrorists may be overt and outwardly innocent in appearance, such as the purchase of properties for them or their associates to stay in or conduct business from, with the covert operations could be generating funds or coordinating terrorism related activities from such premises to advance terrorism activities anywhere else. Therefore, while terrorist funds may be derived from criminal activity as well as from legitimately sourced funds, transactions that advance terrorism or TF may not exhibit the same traits as conventional ML and naturally thus not easy to detect.

TF covers a wide range of terrorism-related activity, including operational funds, equipment, salaries and family compensation, social services, propaganda (e.g radicalization), training, travel, recruitment and corruption. However, in all cases, it is not the responsibility of the Real Estate Agents to *determine the type of underlying criminal activity or intended terrorist purpose* as a pre-requisite for reporting TF suspicions. The Agent's role is to simply identify and report the suspicion without delay while treating same with the necessary sensitivity. The FIC and relevant Law Enforcement Authorities have the responsibility to examine the matter further and determine if there is a link to TF;

3.3.6 Study publications on TF Indicators, Trends and Typologies: TF detection efforts, absent of specific national/international guidance and typologies is limited and inadequate. Such is likely to be based on monitoring that only focuses on transactions with countries or geographic areas where terrorists are known to operate or on the other limited typologies available[4]. The ability of Real Estate Agents to detect and identify potential TF transactions is enhanced with guidance on TF typologies, risk assessment outcomes or acting on specific intelligence provided by authorities. The sector is therefore encouraged to duly consider the TF indicators in Annexure B, along with FIC publications such as the SRAs, NRAs and relevant TF related reports on the FIC website[5] and other sources[6];

3.3.7 TF risks associated with NPOs: It is internationally accepted that some NPO-types or their services can be easily abused to advance terrorism activities. This typically happens with NPOs abusing the legitimacy and social trust that the sector enjoys resourcing or finance terrorist activities directly or indirectly. In Namibia[7], Faith Based Organizations (FBOs) were identified as the high-risk sub-sector within NPOs. Estate Agents need to apply the necessary level of due diligence when facilitating property deals involving NPOs, especially FBOs. Amongst others, Estate Agents have to ensure due identification of ultimate beneficial owners of such NPOs and obtain information to gain assurance that proceeds or values related to such deals are not linked with persons associated with terrorism activities. It is also helpful to gain assurance that such NPOs are not subject to adverse reports around their governance frameworks, nor have associations with high-risk countries.

3.3.8 Exposure to Cryptocurrencies: Cryptocurrencies are mostly poorly regulated and thus present higher TF and ML risks. Risks are increased when clients to a property deal/transaction are involved in cryptocurrencies in one way or the other. Cryptocurrencies can easily facilitate the transfer of value to higher risk jurisdictions;

[4] Many of which are indicative of the same techniques as are used for ML.
[5] https://www.fic.na/ see under ML/TF/PF Risk Assessments, Trends and Typologies, Publications, amongst others.
[6] https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Guidance-rba-real-estate-sector.html
[7] 2020 NRA.

3.3.9 Screening Against Sanctions Lists: as explained in Guidance Note 04 of 2023 and several other FIC publications, Estate Agents need to continue screening of all parties involved in real estate transactions in addition to the measures mentioned above;

3.3.10 Potential Origin of TF Threats As per the various domestic SRAs, NRAs and consideration of TF trends internationally, the FIC highlights the following as primary TF threats Accountable Institutions, including Estate Agency, should consider:

a. *Overseas groups able to inspire support through ideology* – Individuals may be inspired to contribute to overseas terrorist groups by travelling to conflict zones, which requires self or third-party funding. Radicalised individuals may also choose to contribute to terrorism by raising (through properties) and contributing funds;

b. *Well-resourced groups with established networks* – This may involve the movement of larger sums of money for terrorism, in particular for or by state-sponsored groups; and

c. *Domestic terrorism* – given the low-to-non-existent level of domestic support for terrorist causes and absence of terrorist networks, it is more likely that financiers of domestic terrorism (if it were to happen domestically) could manifest in Namibia as isolated disaffected individuals or small groups.

Estate Agents need to duly identify their clients, assess their risk profiles to minimize abuse from those who may be radicalized or somehow raise funding to advance TF.

3.3.11 Nature of TF As mentioned herein above, the characteristics of TF can make it difficult to identify. The methods used to monitor ML can also be used for TF, as the movement of TF funds often relies on similar methods used for ML. Internationally the TF processes are considered to typically involve the following three stages:

a. *Raising funds* (through donations, legitimate wages, selling items, criminal activity);
b. *Transferring funds* (to a terrorist network, to a neighbouring country for later pick up, to an organisational hub or cell); and
c. *Using funds* (to purchase weapons or bomb-making equipment, for logistics, for compensation to families, for covering living expenses)

The risks associated with TF are highly dynamic. As such, Estate Agencies to ensure that their prevention and combatting measures are current, regularly reviewed and flexible. It is important to maintain preventative and combatting awareness as well as effective transaction monitoring systems that incorporate dynamic TF risks, along the more static risks associated with ML.

3.3.12 Namibia as a Conduit for TF The enhanced TF risk associated with foreign clients, especially those from high-risk countries, who are involved in buying or selling real estate locally, cannot be overemphasized. One of the potential consequences of transnational ML is that channels may be established that may also be exploited by terrorist financiers. Overseas groups may seek to exploit Namibia as a source or conduit for funds to capitalise on Namibia's reputation as being a lower risk jurisdiction for TF. For instance, funds originating in or passing through Namibia may be less likely to attract suspicion internationally.

TF through the DNFBPs[8] and the Estate Agency sector in particular, can be small-scale and indistinguishable from legitimate transactions. Generally, TF could involve structured deposits of cash into bank accounts followed by wire transfers out of Namibia. It could also involve remittance agents sending funds overseas. For Estate Agencies, proceeds from supposed property sales or increased property valuations

[8] Designated Non-Financial Businesses and Professionals.

could be moved in the financial system to advance TF with the Real Estate industry providing a form of legitimacy.

The same methods explained above through which Estate Agencies can be abused to advance TF are similar for PF. The due diligence and RBA, especially screening of clients/parties to transactions against sanctions lists is essential in combatting both TF and PF within the sector.

3.4 Foundation for RBA: Conducting Risk Assessments

The object of understanding client and transaction risks is to help the Real Estate Agency/Agent determine the level of due diligence such client should be subjected to. The principle in AML/CFT/CPF due diligence is that low risk clients making use of low risk services should be subjected to minimum or simplified due diligence. On the other hand, higher risk clients should be subjected to Enhanced Due Diligence (EDD). The nature and extent of EDD is dependent on the level of assurance/comfort that a Real Estate Agency needs to gain in reducing its ML/TF/PF risk exposure.

Estate Agencies, like all other Accountable Institutions are best placed to understand their risk exposure and thus implement controls to manage same. ML/TF risk considerations/assessments can be organised into three broad categories: (a) client risk profiles (b) transaction/service and associated delivery channel risk (c) country/geographic risk. The risks and red flags listed in each category herein below are not exhaustive but provide starting points for considerations when assessing risks or designing the RBA.

3.4.1 Undertaking ML/TF/PF Risk Assessments[9]

[9] FIA section 39(1) [Read with FIA section 23]: An accountable institution, on a regular basis, must conduct ML/TF/PF activities risk assessments taking into account the scope and nature of its clients, products and services, as well as the geographical area from where its clients and business dealings originate. Persons much measure, rank or rate (e.g low, medium and high) their level of risk for relevant elements of the services they aim to provide. You should rank each service as low, medium or high risk. The control measures should describe how the entity will reduce each level of risk, especially the medium and higher risk rated levels. The FIC may, in its interpretation however disagree with ratings not duly informed and request reconsiderations accordingly.

The 2020 NRA rated the sector's ML vulnerability as Medium High, a rating which places the sector amongst the most vulnerable nationally.

The comprehensiveness of risk assessments should be aligned to the nature, complexity and risk exposure of a Real Estate Agency's proposed products and services (or amendments to such). The primary elements the Agency is required to consider in risk assessments are: client risk profiles and transactional risks. Below is guidance on such elements in relation to the Real Estate Agency sector:

3.4.1.1 Evaluating Client Risk Profiles

The risk profiles of clients involved in the buying and selling of properties determine the level of due diligence they will be subjected to. Section 23 of the FIA prescribes obligations with regards to the treatment of "Risk clients". Where a client has been identified as high risk, the Estate Agency must apply EDD measures. The 2020 NRA observed that Real Estate Agency services attract foreign clients from all over the world. Some from countries without reliable identification infrastructure. There is a possibility that such clients could be linked to complex and opaque legal structures internationally, a factor which may enhance their inherent risk profile. Below are some typical client factors which affect the client ML (and also TF) risk profile:

a. ***High net worth individuals:*** *They are usually involved in property transactions with huge amounts. Depending on factors such as financing and payment methods, the risk that they present to the Agent could escalate;*

b. ***Politically Exposed Persons (PEPs)*** [10] ***:*** *This includes both domestic and international (PEPs). All PEPs are inherently high risk for ML/TF/PF. Comparatively, foreign PEPs present a higher risk than domestic PEPs, naturally as their CDD*

[10] Note that the proposed FIA amendments rather speak of a Prominent Influential Person (PIP). Similar to a PEP. See FIC Directive No. 02 of 2020 on PEPs as well as Guidance Note No. 01 of 2019 on the definition and due diligence required for PEPs: Both documents are available on the FIC Website under the "Publications" folder.

information cannot[11] *be effectively or readily verified with relevant domestic authorities. PEPs need to be subjected to Enhanced Customer Due Diligence (EDD) which include obtaining management approval before facilitating deals involving them, as per FIC Guidance of 2019 and EDD measures explained in Guidance Note 04 of 2023;*

c. ***Exposure to Cryptocurrencies:*** *Cryptocurrencies are mostly poorly regulated and thus present higher ML/TF/PF risks. It is commonly accepted that launderers would naturally target cryptocurrency platforms as a means to launder proceeds because of poor control frameworks in such sphere. If a client appears to be involved in the cryptocurrencies space, additional care should be taken to duly understand their financial profile and source of funds;*

d. ***Reluctance (or unconvincing explanation) to explain source of funds:*** *Your customer or the counterparties are unable or reluctant to provide information about the source of funds/wealth when this is requested. This could arise when there is a large and unexpected increase in the buyer's financial position and the buyer cannot explain the reason for their increased funds. Your customer's level and/or source of wealth may be inconsistent with their circumstances;*

e. ***Clients associated with adverse media reports:*** *Deals or transactions involving persons or entities identified by the media, law enforcement and/or intelligence agencies as being linked to criminal activities are naturally high-risk;*

f. ***Client exhibits knowledge of reporting thresholds:*** *For example, if client knows or appears to (ask about) focus on issues such as the Cash Reporting Threshold of NAD 99,999.99 or above. At times, client could simply be focusing on such and this may be suspicious attempts especially if they are to make deposit payments on the deal;*

[11] Risk assessments should thus always consider the reliability of national identification systems in foreign countries and the effectiveness of AML/CFT/CPF controls countries where clients originate from or have ties with

g. ***Challenges in client identification efforts:*** *There are numerous indicators of potential ML/TF suspicion. Some include: client refusing to provide information or provides information that is false, conflicting, misleading or substantially incorrect. Identification document presented by the client cannot be authenticated or client alters the transaction after being asked for identity documents; Attempts to verify the information provided by a new or prospective client are difficult; In some cases, client displays a pattern of name variations from one transaction to another or uses aliases; Estate Agencies need to look out for inconsistencies in the identification documents or different identifiers provided by the client, such as name, address, date of birth or phone number;*

h. ***Ultimate Beneficial Ownership and improper use of legal persons:*** *The ability for criminals to hide their identity behind complex legal structures when conducting commercial transactions remains an attractive characteristic of legal persons and such other arrangements for ML purposes. Below are results from the 2023 National Risk Assessment (NRA) update focusing on the ML vulnerability of various legal persons.*

CASES REFERRED FOR FURTHER INVESTIGATIONS: PERIOD: 2009 - 2021				
	Total STRs Received	**No. of Cases (SDs)**	**Total Financial Value from such Cases/SDs (NAD)**	**Average Financial value Per Case (NAD)**
Close Corporations (CCs)	228	104	34,807,766,160.75	334,690,059
Companies	232	115	8,659,067,618.13	75,296,240
Trusts	96	55	1,613,992,815.33	29,345,323
Natural Persons	5,690	1,696	23,404,719,080.81	13,799,952

Vulnerability of Close Corporations (CCs): *The 2023 NRA update suggests that CCs are the most abused type of legal persons in terms of financial values evaluated in cases that were analysed by the FIC and referred to various investigative authorities on findings that suggest possible ML. This observation suggests that large scale ML in terms of financial values or impact is more likely to be advanced through CCs and to a lesser extent through companies and trusts. There is a significant number of legal persons, especially CCs that are constantly used in the fraudulent transfer of fraudulent cases involving questionable property sales. Based on complaints filed with BIPA, STRs with the FIC and direct reports to the Namibian Police, the lengthy but often reliable normal property transfer process is fast tracked through the change of CC beneficial ownership when such CC owns property*[12]*. In the Fishrot case, shelf companies may have been used to receive bribes and any other payments for the benefit of implicated government officials. Overall, dealing with shell and shelf companies, even in property sales presents higher risks. If it becomes apparent that shell or shelf companies are being used, or were recently acquired, Real Estate Agents need to subject such transactions to EDD.*

CASES REFERED FOR INVESTIGATIONS, PER PREDICATE OFFENCE: PERIOD: 2009 - 2021						
	Fraud	**Total Financial Value (NAD)**	**Potential Tax Evasion**	**Total Financial Value (NAD)**	**Corruptio n**	**Total Financial Value (NAD)**
Close Corporation s (CCs)	25	404,533,140	66	28,400,797,080	7	394,575,890
Companies	56	656,836,151	141	738,080,077	35	284,419,187
Trusts	3	14,016,585	7	776,270,899	6	56,516,585
Natural Persons	667	1,695,855,636	2264	15,632,296,444	84	1,955,490,671

[12] Also reflected in the Mutual Evaluation Report of Namibia, paragraph 395. Page 118.

The high number of natural persons possibly implicated in ML activities still suggests that, by and large, people advance ML activities in their individual capacities, if the 2023 NRA update findings are anything to go by. Some STRs/SARs within the FIC suggests higher risks arise when there is a suspected use of personal funds for business purposes, or vice-versa.

Vulnerabilities with trusts: *In Namibian, a trust can either be a private trust or a public charitable trust. The 2023 NRA update found that all trusts suspected to have been abused in advancing ML were inter-vivos*[13] *trusts and (100%) Namibian initiated or founded (owned). Similarly, none of them are charitable trusts. The NRA further found that about 82% of these trusts have Namibian donors and Namibian trustees. Only 40% of the trusts involved in potential ML cases have foreign nationals listed as beneficiaries, with the majority being South African citizens.*

The concept of identifying the Ultimate Beneficial Owners is explained in Guidance Note 04 of 2023. All non-face-to-face clients or beneficial owners on whose behalf transactions are undertaken present inherently higher ML/TF/PF risks. All such clients should be subjected to EDD as explained in the said Guidance Note.

i. ***Complex ownership structure of legal person:*** *Where a legal person or trust (who may be the buyer or seller) has unreasonably complex legal or ownership structure, the inherent risk is high. Usually, the structure or nature of the entity or relationship makes it difficult to identify the ultimate beneficial owner or person with controlling interest. Such scenarios present higher risks and should be subjected to EDD as explained in Guidance Note 04 of 2023;*

j. ***Use of gatekeepers:*** *A gatekeeper is a person who controls access to the financial system and can act on behalf of a client. Such services can be abused so that*

[13] Trusts created between living persons registered under the Trust Moneys Protection Act 34 of 1934.

criminals have access to property deals or the financial system without being identified. Gatekeepers may include Trust and Company Service Providers, lawyers, accountants and other professions which can access the financial system on behalf of a client. While there are many transactions where it is "normal" to have a gatekeeper represent the interests of a client, such an appearance of normalcy can also be utilized to the advantage of criminals to provide the veneer of legitimacy to their transactions. The use of gatekeepers themselves is not an indicator of an ML/TF offence. However, entities should consider the following examples which can indicate misuse of the financial system access provided to gatekeepers:

- *Gatekeeper avoids identifying their client or disclosing their client's identity when such identification would be normal during the course of a transaction; and*
- *Gatekeeper is willing to pay higher fees and seeks to conduct the transaction quickly when there is no apparent need for such expediency.*

k. ***Charities and other NPOs:*** *Especially Faith Based Organisations (FBOs) and such that are not subject to effective monitoring or supervision present higher ML/TF risks.*

Tip – Practical Risk Identification
In practice, the overall risk is assessed periodically and client profile types/pools are identified, which can for example be: Foreign PEP, Domestic PEP, Self-Employed businessman, Government Employee, Teacher, Bank Manager/Employee etc. Inherent risk levels (high, medium, low) are then assigned to each such profile/type/pool. When a client is onboarded, he or she is placed in one of such profiles and then subjected to due diligence relevant for such profile. Such due diligence must then include reviewing information which may be specific to such individual client.

3.4.1.2 Evaluating Transactional Risks

There are various elements around the buying and selling of properties which inherently increase ML/TF/PF risk. Below are some elements:

a. Cash: *Customers making cash payments are inherently presenting higher ML/TF/PF risks. Cash in this instance refers to all property deals not financed by financial institutions (mortgages, bonds, loans). Legal persons or individuals from cash intensive businesses present a higher risk. Cash has limited audit trail, if any, making it the easier way to move around proceeds of crime without leaving traceable trails of such movements.* ***This naturally also implies that clients funded through loans or mortgages are lower risks as their sources of funds can be traced to Financial Institution loans. Lower risk clients should not be subjected to EDD. This not only creates inefficiencies but increase compliance efforts and costs;***

b. No apparent reason for using your Estate Agency: *Significant and unexplained geographic distance between the Agent and the location of the customer is inherently a red flag until proven otherwise. Agents should carefully consider the nature of the business relationship or transaction with client. For example, where the scale of the transaction or location of the property suggests that another Estate Agent would have been better placed to facilitate the deal, you should consider carefully why the customer chose your business. Illogical patterns may indicate efforts to lower the risk of detection (e.g. if the same customer is making other transactions with other Agents more local to them but does not want the scale of their activity known) or collusion between agents and the beneficial owner(s) of the property;*

c. Indications of unregistered/unlicensed Estate Agencies: *though not readily apparent, if it becomes apparent that client may have used unregistered or unauthorised Estate Agents in the past, such could be a high risk client who may have made use of such agents to circumvent required due diligence. If two Agencies are involved, gain assurance that the other agent is duly registered with the Board. It could be helpful to verify licensing with the Board or even verify its registration with the FIC;*

d. ***No concerns around prices unreasonably higher than valuation:*** *Sales at prices which are significantly above or below market price, or a transaction which appears uneconomic or inefficient is higher risk for ML and TF. Criminals do not mind slight losses at the opportunity of 'washing' their significant proceeds. An international typology (which could happen locally) suggests a purchaser organised with a supposed seller, for the purchaser to pay for property above the odds. The funds to pay could in fact be the property owner's proceeds of crime. This transaction provides an apparent legitimate source for those funds. The Agent must clearly understand the reasons for their customer requesting unusual sale prices in order to mitigate (or report) suspicions;*

e. ***Irregular/uncommon payment methods:*** *Part or full settlements in cash, cleared funds or foreign currency, with unconvincing reasons. This could indicate laundering of cash proceeds of crime, tax evasion, or to avoid insolvency or an order to recover property. Further, the use of irregular or complex loans, or other obscure means of financing as opposed to conventional loans from regulated financial institutions enhances ML risk exposure;*

f. ***Use of multiple accounts:*** *When client uses multiple accounts at several financial institutions for no apparent reason, it can be suspicious as they may be trying to structure huge amounts with different institutions. In some cases, Estate Agents need to be wary of clients using one or more foreign bank accounts for no apparent reason as such increases both ML and TF risks;*

g. ***Speed of the transaction:*** *transactions that are unduly expedited without a reasonable explanation may be higher risk. This is usually aimed at reducing time for adequate due diligence by the Agent, Banks, Attorneys or authorities;*

h. ***Type of properties vs client profile:*** *residential or commercial, vacant land, investment, high-turnover properties, multi-unit properties for lettings/leases. An assessment needs to be made whether the client profile fits the proposed deal. At times, the property value would not be in line with the profile of the customer; and* *i.* ***Attempts to avoid lawful interventions in ownership:*** *Sale of properties immediately before lawful restraint or insolvency.*

3.4.1.3 Considering Country or Geographic risk

There is no universal standard of what a high risk jurisdiction within the AML/CFT/CPF framework. Best practices, noted from the FATF[14], amongst others, largely guide considerations in this regard. The provision of services by a Real Estate Agent may be higher risk when features of such services (through client, associates, related third parties or other means) are connected to a higher risk country, for example:

a. ***Foreign customers:*** *Inherently higher risk. The NRAs and Sectoral Risk Assessments (SRAs) observe that Real Estate Agents attract foreign clients from all over the world. Some from countries without reliable identification infrastructure. There is a possibility that such clients could be linked to complex and opaque legal structures internationally, a factor which may enhance their inherent risk profile;*

b. ***Prevalence of crime, instability, terrorism, proliferation etc:*** *Other than poor national identification frameworks identified above in some countries, client risk can also be increased if a country a client is associated with has higher levels of bribery and corruption, tax evasion, capital flight, conflict zones, terrorism and organised crime within or within neighbouring[15] states. Information about high-risk jurisdictions is widely available, which is detailed from several open-source documents and media. The following are indications, based on credible sources, which may escalate the risk of a country that clients to a transaction may be associated with. These are countries:*

- *that have been found by organisations such as FATF, World Bank, Organisation for Economic Cooperation and Development and the International Monetary Fund as having in place ineffective AML/CFT/CPF measures;*

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[14] FATF Risk Based Guidance: Real Estate Sector, accessed via: https://www.fatf-gafi.org/content/dam/fatf/documents/RBA-Real-Estate-Sector.pdf.coredownload.inline.pdf

[15] it could also be neighbouring countries as money laundering or terrorist financing often involves the movement of funds across borders.

- *identified to be uncooperative in extraditions and providing beneficial ownership information to competent authorities, a determination of which may be established from reviewing FATF mutual evaluation reports or reports by organisations that also consider various co-operation levels such as the OECD Global Forum reports on compliance with international tax transparency standards;*
- *or areas identified by credible sources as providing funding or support for terrorist activities or that have designated terrorist organisations operating within them;*
- *identified as having significant levels of organised crime, corruption, or other criminal activity, including being a major source or a major transit country for illegal drugs, human trafficking and smuggling and illegal gambling;*
- *not subject to equivalent AML/CFT/CPF measures;*
- *subject to sanctions or embargoes issued by international community including the UN, OFAC, EU etc;*
- *providing funding or support for terrorism; and*
- *having terrorist organisations designated by the UN, US, EU, other countries, and international organisations.*

In addition to the above, client risk is increased if information at hand or from other sources links clients to being involved in dealings with the following: oil, arms and weapons, precious metals and stones, tobacco products, cultural artefacts; and ivory and other items related to protected species. The Real Estate Agent's periodic risk assessment should indicate the inherent risk level of different countries (or come up with risk levels for countries that meet certain criteria). This aids risk considerations for each foreign client.

3.5 Role of Key Partners/Stakeholders

The provision of some services in the sector may requires inputs or responsibilities undertaken by partners or stakeholders of the Real Estate Agent. If such partnership exists, the Estate Agent should duly understand the nature and effectiveness of

AML/CFT/CPF controls that are implemented by such partners or stakeholders in the value chain, should one choose to rely on such. Ensure that such partners or stakeholders have capacity and are willing to play their part in ensuring effective risk mitigation as per the FIA.

3.6 Type, Nature and Extent of Controls

To reduce inherent[16] risks to tolerable or acceptable residual[17] levels. Real Estate Agents have a responsibility to implement controls and duly demonstrate their effectiveness to authorities such as the FIC. The FIC must be satisfied, upon such presentation, that such residual risk levels are tolerable or acceptable to the national AML/CFT/CPF framework. The entirety of controls, aligned to risks, should be documented in an AML/CFT/CPF Program or Policy document which needs management approval.

3.7 External Risk Assessments

The considerations and indicators herein are not exhaustive. Real Estate Agents are required to consider observations from Sectoral Risk Assessment Reports and National Risk Assessments issued by the FIC. Local[18] and international trends and typology reports issued by bodies such as ESAAMLG[19] and FATF[20] (available on their websites) equally help highlight changing risks broadly and related to the sector. To the extent possible, this guidance has incorporated lessons and best practices from such local and international publications. ML and TF trends are dynamic, it is thus essential to keep abreast of updated publications in this regard.

[16] Inherent risks refer to the level of (original) risks prior to the implementation of controls to reduce the likelihood and impact of such risks.
[17] The remaining risk level after due controls have been implemented.
[18] Published on the FIC website under Risk Assessments folder while trends and typology reports are under Publications folder.
[19] https://www.esaamlg.org/index.php/methods_trends
[20] https://www.fatf-gafi.org/en/publications.html

3.8 Risk Assessment/Management Reports

All identified risks as far as clients and transactions are concerned should be documented in Risk Management Reports. Such report(s) should be periodically updated when material changes arise in risks and controls.

4 RISK BASED APPROACH

This Guidance Note deals with risk assessments as a foundational step for the implementation of an effective Risk Based Framework within Real Estate Agents. Real Estate Agents are further required to duly study Guidance Note 04 of 2023 which speaks to the practical implementation of controls to mitigate ML/TF/PF risks at institutional level.

The FIC website contains several other Directives, Guidance Notes, Circulars and Regulations which avail helpful guidance on measures to combat ML/TF/PF in terms of the FIA.

5. GENERAL

This document may contain statements of policy which reflect the FIC's administration of the legislation in carrying out its statutory functions. This guidance is issued without prejudice to the FIA and its complementing Regulations. The information contained in this document is intended to only provide a summary on these matters and is not intended to be comprehensive.

6. NON-COMPLIANCE WITH THIS GUIDANCE

This document is a guide. Effective implementation is the sole responsibility of Accountable and Reporting Institutions. Should an institution fail to adhere to the guidance provided herein, it will be such institution's responsibility to demonstrate alternative risk management controls implemented which are effective.

The Guidance Note can be accessed at www.fic.na

DATE ISSUED: 14 APRIL 2023

DIRECTOR: FINANCIAL INTELLIGENCE CENTRE

FIC CONTACT DETAILS

All correspondence and enquiries must be directed to:
The Director, Financial Intelligence Centre
P.O. Box 2882
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ANNEXURE A: ML INDICATORS[21]

Key Risk Indicators	Guidance/Considerations
Part or full settlements in cash, cleared funds or foreign currency, with weak reasons.	This could indicate laundering of cash proceeds of crime, tax evasion, or to avoid insolvency or an order to recover property.
Your customer or the counterparty declines services or facilities that they should find attractive without a clear reason.	If your client does not take up or use professional services that you would expect, for example they are reluctant to employ a solicitor or other professional for conveyancing, this may indicate a bogus transaction between complicit parties in order to launder proceeds of crime and maximise financial gain.
Your customer or the counterparties are unable or reluctant to provide information about the source of funds/wealth when this is requested.	This could arise when there is a large and unexpected increase in the buyer's financial position and the buyer cannot explain the reason for their increased funds. Your customer's level and/or source of wealth may be inconsistent with their circumstances. Although this is not a compulsory requirement for all transactions, in higher risk situations (such as when a PEP is involved) or as part of ongoing monitoring of a business relationship, Estate Agents may need to seek information on the source of funds.
Multiple payments of smaller amounts, possibly through different accounts.	This practice could be used to avoid thresholds put in place by overseas authorities and is an indication of potential money laundering.
Pattern of the transaction inexplicably changes.	This could arise when the transaction progresses at an unusual speed, when unknown parties are introduced at a late stage of transactions, and/or when there are unexplained changes in financial arrangements. Such scenarios all indicate and/or create a higher risk.
Successive sale transactions, especially of the same property, in a short period of time with unexplained changes in value.	This may indicate the repeated use of a single property to launder large sums of money through successive transactions, and/or efforts to obscure the identity of beneficial owners through repeated changes of ownership arrangements.

[21] These are primarily ML indicators (but can equally assist with TF detection) in property transactions. This is by no means an exhaustive list and neither are the circumstances noted automatically suspicious. They are general indicators of what could be suspicious dependent upon the individual circumstances.

Unusual sources of funds, for example, use of complex loans, mortgage from an unknown or overseas bank, or other obscure means of finance.	This could indicate that criminal funds are being used.
The Owner/builder is not fully complying with their legal obligations.	If other legal obligations are breached, it demonstrates that the owner/builder is open to potential corruption and/or bribery. This also means that there is a higher risk of money laundering.
Your client has multiple properties for sale and uses multiple lawyers or financial institutions.	It would normally be seen that a client involved with buying or selling multiple properties would use the same lawyer and or financial institutions. Where multiple intermediaries are involved for the same customer(s) activity or transaction, it may be that they are using multiple intermediaries to conceal the full scale of their activity, indicating an increased money laundering or terrorist financing risk.
The counterparty is known to the customer/beneficial owner.	A criminal may use an Estate Agent to legitimise the transaction.
A third party, apparently unconnected with your customer bears the costs, settles invoices, or otherwise pays the transaction costs. The customer requests payment to a third party who has no apparent connection with the customer. Unusual involvement of third parties, cash gifts, or large payments from private funds.	This could include unusual involvement of third parties, cash gifts, or large payments from private funds, The use of unknown third parties to facilitate transactions, particularly with high-risk countries, increases the money laundering and terrorist financing risk.
Searches on a party to a transaction or associate show, for example, adverse media attention, disqualification as a director, convictions for dishonesty or association with bribery in relation to contract procurement.	This indicates that your customer may be acting dishonestly in this transaction. Businesses should make every effort to satisfy themselves that this is not the case.
A group of purchasers with similar profiles purchase new builds or off-plan.	This could be indicative of organised mortgage fraud which may be linked to money laundering or terrorist financing.

ANNEXURE B: TF INDICATORS

In Namibia, it is a crime to knowingly collect or provide funds, property, which can include financial or other related services, for terrorist purposes. Such also includes the facilitation of services (e.g through property deals) which advances TF. This section is focused on examples that are specific to the possible commission of a TF offence. However, please note that the other ML indicators and examples in this guidance may also prove relevant in determining when you have reasonable grounds to suspect the commission of TF as the methods used by criminals to evade detection are similar. Below are some examples of indicators relating to TF:

a. **High-risk jurisdictions:** Transactions with a person who lives in, or an entity that operates out of, certain high-risk jurisdictions such as locations in the midst of or in proximity to armed conflict where terrorist groups operate or locations which are subject to weaker ML/TF controls;

b. **Reliable media reports on terrorism associations:** Client identified by media or law enforcement as having travelled, attempted or intended to travel to high-risk jurisdictions (including cities or districts of concern), specifically countries (and adjacent countries) under conflict and/or political instability or known to support terrorist activities and organizations;

c. **Law enforcement information:** information provided which indicates persons or entities may be linked to a terrorist organization or terrorist activities;

d. **Indications of supporting terrorism:** Person or entity states or eludes that they support violent extremism or radicalization;

e. **Irregularities in identification:** Client provides multiple variations on their name, address, phone number or additional identifiers. In some cases, this could be to evade detections especially when listed on sanctions lists;

f. **No concern for below valuation sales:** Client sells property below market value with an additional "under the table" payment offer;

g. **Illogical property deals:** Client buys back a property that he or she recently sold. Also includes if a property is re-sold shortly after purchase at a significantly different purchase price, without corresponding changes in market values in the same area;

h. **Frequent change of ownership of same property:** Particularly between related or acquainted parties; and

i. **Sanctioned or listed persons:** It goes without saying that persons listed on any sanctions/designated lists of the United Nations Security Council present higher TF risks. It is also helpful to consider other sanctions lists, including OFAC[22] and those of such other authorities to enhance overall TF risk management.

[22] The Office of Foreign Assets Control ("OFAC") of the US Department of the Treasury administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. Can be accessed at: https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information