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GUIDANCE NOTE NO. 04 OF 2023

GUIDANCE ON THE IMPLEMENTATION OF RISK BASED CONTROLS AND REPORTING SUSPICIONS: REAL ESTATE AGENCIES/AGENTS

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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;

“Monitoring” as defined in the FIA, for purposes of Sections 23, 24 and 25 of the Act includes -

- a. the monitoring of transactions and activities carried out by the client to ensure that such transactions and activities are consistent with the knowledge that the accountable institution has of the client, the commercial or personal activities and risk profile of the client;
- b. the enhanced monitoring of transactions and activities of identified high risk clients in order to timeously identify suspicious transactions and activities; and
- c. the screening of the name of a client or potential client, and the names involved in transactions, against the sanctions lists issued by the United Nations Security Council under Chapter VII of the United Nations Charter; for purposes of combating money laundering, the financing of terrorism and the funding of proliferation activities.

“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;

“SNMA” refers to a Sanction Name Match Activity Report. When a potential sanctions match is detected, institutions should file a SNMA with the FIC. With effect from 17 April 2023, all sanctions name matches should be reported through SNMA reports and no longer through STRs or SARs;

“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;

“TPFA” means Terrorist & Proliferation Financing Activity report. Reporting any other Activity (or attempted transaction which was not completed) which may point to, or be linked to potential terrorism, TF or PF;

“TPFT” means Terrorist & Proliferation Financing Transaction report. Reporting any other Transaction (actual transaction that has taken place) which may point to, or be linked to potential terrorism, TF or PF;

“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.

“Without delay” means taking required actions within a few hours, as advised in Namibia’s September 2022 Mutual Evaluation Report.

1. BACKGROUND

This Guidance Note is issued in terms of Section 9(1)(h) of the Financial Intelligence Act, 2012 (The FIA). It avails guidance on effective implementation of a risk based internal control system, focusing on customer diligence and reporting of suspicions as per the FIA. Risk based control systems are built on the understanding of risks which often commences with risk assessments. Guidance Note 03 of 2023 guides Real Estate Agents on the execution of risk assessments and potential indicators of Money Laundering (ML), Terrorism and Proliferation Financing (TF/PF) activities. This Guidance Note should be read with such.

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.

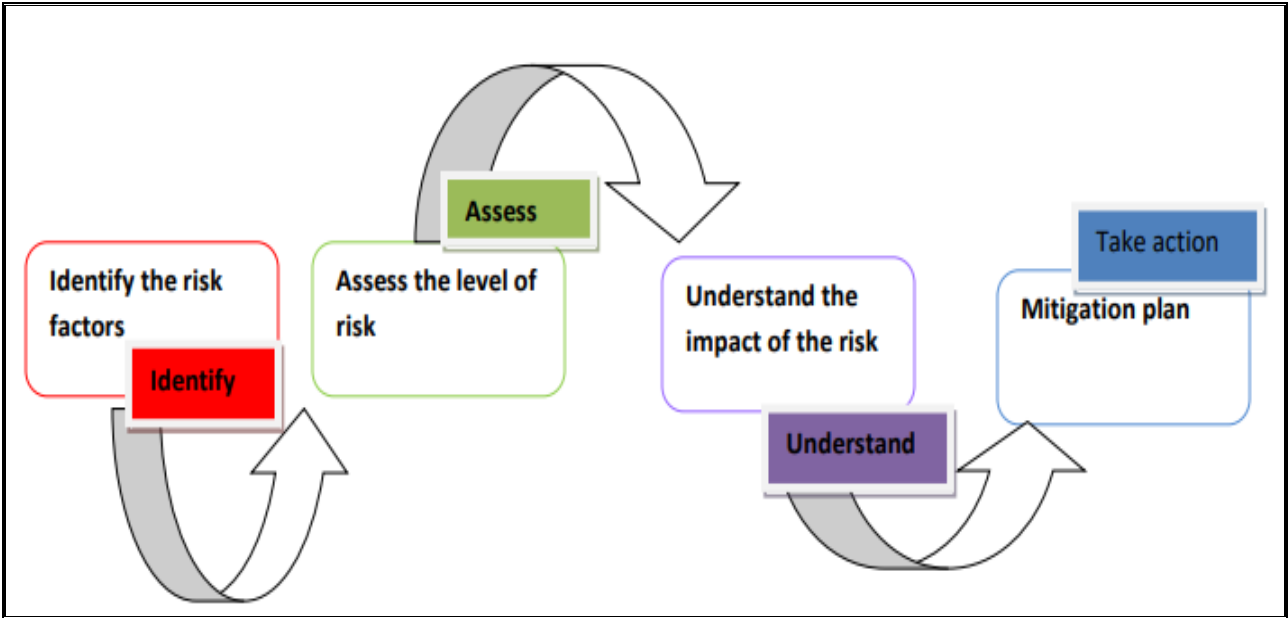
It is common cause that services offered by Estate Agencies have been subject to ML abuse domestically. Internationally, there are trends and typologies which suggest such abuse to advance TF/PF activities. To help mitigate ML/TF/PF risks, the Financial Intelligence Centre (FIC) issues this Guidance 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. THE RISK BASED APPROACH

As explained in Guidance Note 03 of 2023 and other FIC publications, 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. Such understanding is what informs the design, nature and extent of controls implemented to mitigate risks (mitigation plan). See diagram below. 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

Guidance Note 03 of 2023 deals with the identification and assessment or evaluation of risks presented by customers/clients and the vulnerability of services or transactions related to such. This Guidance Note uses an understanding of sectoral risks and avail considerations Estate Agents should take into account when implementing risk-based controls to combat ML, TF and PF risks. The guidance herein focuses on primary controls such as: effecting appropriate CDD¹

¹ FIA Sections 21 and 22

measures for customers; on-going and enhanced due diligence of client behaviour²; record keeping³ to assist criminal investigations; monitoring⁴ to detect suspicions and reporting⁵.

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

3.1. Extent of Customer Due Diligence Measures

The nature and extent of CDD measures depends on the degree of risk a client, in view of the transaction, they wish to access, presents to the Real Estate Agency.

CDD goes beyond simply carrying out identity checks to understanding who one is dealing with. This is important because even people known to the Real Estate Agency may become involved in illegal activities at some point, for example, if their personal circumstances change or they face new financial pressures. The Real Estate Agency should be able to demonstrate that the extent of the CDD measures applied for each client are appropriate to mitigate risk exposure. When considering CDD, agents should bear in mind that there is likely to be different levels of risk between buyers and sellers in general as both sides are participating in a financial transaction, either by releasing finance from a property they already own, or by introducing purchasing funds⁶ or by trying to sell property which was initially financed with proceeds of crime.

3.2. Simplified Due Diligence

The below explains simplified CDD for natural persons when they buy (or sell) properties in their personal capacities. Such is also applicable for natural persons when acting on behalf of legal persons such as Close Corporations or Companies and such arrangements like Trusts.

² FIA Sections 23 and 24

³ FIA Sections 26 and 27

⁴ FIA Section 24

⁵ FIA Section 33

⁶ RBA Guidance for Real Estate Agents, FATF (2008)

3.2.1 Extent of Simplified CDD

The extent to which simplified due diligence should be applied is essential to financial inclusion objectives. For this reason, identification in terms of the FIA should only be applied when so required. Given this, it is important to note that identification of clients, as per FIA, is only required when a business relationship is established (or facilitating the buying and selling of properties) for transactions which exceed the NAD 4,999.99 threshold. This is in reference to the value of a property deal and not the commission an Agency is entitled to.

A Real Estate Agency may apply simplified due diligence measures where the business relationship or transaction is considered low risk in terms of ML, TF or PF. Deals completely funded through mortgages are typical examples of lower risk transactions, especially if both buyers and sellers are assessed to be low risk as well. FIA Regulations 6 to 11 provide guidance on the minimum identification procedures that should be followed for the various types of clients. This guidance builds on same.

3.2.2 Ascertainment and Verification of Information

When simplified due diligence is applicable, Estate Agents are still required to identify and verify or ascertain customers' identification information. Below is a list of the type of information which needs to be ascertained/verified and that which needs to be obtained (from client):

- a. Verification: full names;
- b. Verification: nationality;
- c. Verification: If citizen – national ID no./ passport no./date of birth;
- d. Verification: Non-citizen – passport no./national ID no./date of birth;
- e. Obtain: Namibia residential address for citizens OR if non-citizen, residential address in his/her country or physical address in Namibia, if any; and
- f. Contact particulars.

Real Estate Agents need to ensure due verification of identification information before facilitating property deals. Verification should ideally be done with the Ministry of Home Affairs' National

Identification Database. However, such is not possible at the time of issuing this guidance. Real Estate Agents should use other reliable means to verify identify of clients such as comparing ID document to passports, driver's license cards, voter's cards, birth certificates and such other reliable mechanisms.

3.2.3 Tips on simplified CDD

Real Estate Agents may:

- a. use information already at hand such as client profile, without unduly requesting for more. For example, if you identified your customer as a Manager in a local shop or pensioner, you can assume what the source of funds is, unless other factors exist (such as higher financial values which may be beyond reasonable earnings of such person); and
- b. adjust the frequency of CDD reviews when necessary, for example, when a change occurs which may suggest escalation of the low-risk behaviour.

3.2.4 Pre-requisites for Simplified Due Diligence

To apply simplified due diligence, a Real Estate Agent must ensure:

- a. it is supported by internal customer risk assessment;
- b. enhanced due diligence does not apply (there is no high risk in terms of client, payment method etc.);
- c. there is no structuring of property deals/transactions to reduce detection or EDD measures;
- d. monitoring the business relationship or transactions (e.g with frequent transactions of similar client) to ensure that there is nothing unusual or suspicious from the outset;
- e. customer is not from, nor associated with a high risk country;
- f. the customer is not a PEP, a family member, or a known close associate of a PEP;
- g. the real customer is seen face-to-face (and not having others transact on his/her behalf unduly to evade detection);
- h. the source of funds or wealth are transparent and understood; and
- i. the transaction is not complex or unusually large.

Guidance Note 03 of 2023 avails detailed guidance on how to assess the risk level emanating from transactions or clients.

3.2.5 When to cease Simplified Due Diligence and commence EDD:

- a. If suspicions of ML, TF or PF arise;
- b. doubt whether documents obtained for identification are genuine;
- c. doubt whether the customer is indeed the one demonstrated in the documentation;
- d. indications that client may be transacting on behalf of another unduly;
- e. The structure or nature of the entity or relationship makes it difficult to identify the true owner. Be careful of true owners who do not wish to be recorded on company or trust documents. They usually present high ML, TF, PF risks. Checks can be done via the Deeds Office to identify the owner of local properties or through NATIs, BIPA, local authorities etc., to verify information. If a customer seeking to buy a property is a corporate vehicle and you cannot identify the beneficial owner, you should:
 - keep records in writing of all the actions taken to identify the beneficial owner of the body corporate; and
 - take reasonable measures to verify the identity of the senior person in the body corporate (or whichever entity) responsible for managing it and keep records in writing of the actions taken to do so, and any difficulties encountered. Consider carefully the risks associated with beneficial owners as per Guidance 03 of 2023 and various other publications.
- f. suspect that the documents obtained for identification maybe lost, stolen or otherwise fraudulently acquired. Impact of identity theft is rife especially with online activities;
- g. circumstances change and your risk assessment no longer considers the customer, transactions, or location as low risk; and
- h. Any other considerations that do not maintain the low risk of client or specific transaction(s).

Guidance Note 03 of 2023 avails detailed guidance on risk levels for various types of transactions or clients.

4. ENHANCED DUE DILIGENCE (EDD)

It is critical that a Real Estate Agent has measures that can identify when to escalate from simplified due diligence to EDD, e.g identifying that a client meets the definition of a PEP.

EDD applies when a client's risk profile or transaction is not low. It includes taking additional measures to identify and verify customer identity, creating a client's financial profile including the source of funds and conducting additional due diligence depending on circumstances at hand.

4.1. Nature and Type of EDD Measures

It is essential to keep in mind that identification procedures as per FIA Regulations 6 to 11 regulate obtaining the minimum identification information while Regulation 12 provides for EDD or obtaining additional information⁷. EDD means building onto the basic identification information obtained as per simplified due diligence measures in parts 3.2.1 and 3.2.3 above. Such EDD information primarily includes the following and is useful in monitoring transactional behaviour:

Type of EDD Information	Usefulness of Such
Nature & location of business activities	Creating client financial profile: Helps Real Estate Agency create context around magnitude of clients' earning capabilities, especially for self-employed or businesspeople.
Occupation or source of income	
Source of funds involved in transaction (both as commission and funding property)	Enables a comparison of transacting behaviour through funds to be used or existing properties being sold and the financial profile of client.

The said controls should be clearly outlined in the AML/CTF/CPF policies, procedures and internal controls of the agency.

⁷ the extent of which is dependent on the risk the client/transaction may pose to the ADLA.

4.2. When to undertake EDD

- a. As per internal risk assessment, a Real Estate Agency has determined that there is a high risk of ML, TF or PF associated with the client or transaction;
- b. FIC or another supervisory or law enforcement authority provides information that a particular situation or client is high risk;
- c. a customer originates from or has ties to a high risk country;
- d. client has given you false or stolen documents to identify themselves (immediately consider reporting this as suspicious transaction/activity);
- e. a customer is a Politically Exposed Person (PEP), an immediate family member or a close associate of a PEP;
- f. the transaction is complex, or unusually large, or with an unusual pattern and have no apparent legal or economic purpose;
- g. client deposits or introduces funds into the Real Estate Agency and soon thereafter, without logical explanation, chooses to withdraw from transaction and asks for a transfer/refund;
- h. client refusing to continue with transaction when asked to avail EDD information; and
- i. Any other considerations enhancing client or transaction risk.

Guidance Note 03 of 2023 avails detailed guidance on how to assess risk levels associated with different transactions and/or clients.

4.3. Understanding the concept of additional measures

For EDD to be undertaken duly, the Real Estate Agency must do more to verify, identify and scrutinise the background and nature of clients and their relevant conduct. This is usually more extensive than simplified due diligence measures. The extent to which EDD goes beyond simplified due diligence must be clearly stated in the Real Estate Agencies' AML/CFT/CPF policies and procedures. For example, the Real Estate Agency should:

- a. obtain additional information or evidence to establish the identity from independent sources, such as supporting documentation on identity or address or electronic verification alongside manual checks;
- b. take additional measures to verify the documents supplied such as by checking them against additional independent sources, or require that copies of the customer's documentation are certified by a bank, financial institution, lawyer or notary who is competent at document inspection and impostor detection, or a person from a regulated industry or in a position of trust;
- c. when receiving funds for the deal (even if it is paid to conveyancing attorney), ensure such funds are being introduced by the client and not another person merely using a client to introduce funds in the deal;
- d. the following measures must be taken when the transaction relates to a PEP, a family member or known close associate of a PEP:
 - obtain senior management approval before establishing a business relationship with that person;
 - take adequate steps to establish their nature of business activities, source of wealth and actual source of funds to be used in the deal; and
 - conduct enhanced ongoing monitoring if transactions are frequent or appear structured.
- e. carry out more scrutiny of the client's known (or accessible record of) transactions/conduct and satisfy yourself that it is consistent the client profile;
- f. measures which must be taken when a client originates from, or has ties to a high-risk main or third country⁸:
 - i. Obtain additional information on the customer and the customer's beneficial owner(s), if they identify themselves as associated with a high risk entity;
 - ii. Obtain the approval of senior management for establishing or continuing the business relationship; and

⁸ (a business is established in a country if they are incorporated there, is their principal place of business, or they are regulated there as a financial or credit institution; an individual is established in a country if they are resident there)

- iii. Enhance monitoring of the business relationship by increasing the number and timing of controls applied and select patterns of transactions which require further examination.

5. CDD RELATED TO LEGAL PERSONS, TRUSTS AND OTHER ARRANGEMENTS

This section outlines considerations as per the FIA when identifying legal persons and trusts.

5.1. Ascertainment of information: Companies and Close Corporations (CCs)

Estate Agents are encouraged to keep in mind that CCs are the most abused entities in the advancement of ML locally, as per the 2023 National Risk Assessment Update. While companies may not be as highly exposed to risks as CCs, their vulnerability is still very high for comfort. It is essential that the following information is obtained, as a minimum, for identification purposes:

- a) its **registered name**;
- b) the **name under which it conducts business** in the country in which it is incorporated;
- c) if the company or close corporation is incorporated outside of Namibia and conducts business in Namibia using a name other than the name specified under paragraph (a) or (b),
- d) **the name used in Namibia**;
- e) its **registration number**;
- f) the **registered address** from which it operates in the country where it is incorporated, or if it operates from multiple addresses in that country the address of its head office;
- g) the **identification particulars for natural persons** who exercise **effective control** of such CCs, as referred to in 3.2. The following are indications of such persons:
 - i. the executive manager/s chief executive officer and beneficial owners of the company or, in the case of a close corporation, each executive manager/s, each member/s who individually or collectively holds a controlling interest and the beneficial owners;

- ii. each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable or reporting institution on behalf of the company or close corporation; and
- iii. each natural person holding 20% or more of the voting rights at a general meeting of the company concerned or acting or purporting to act on behalf of such holder of such voting rights. **Real Estate Agents need to deliberately make efforts to identify any other persons, other than the stated owners/members, who may be exercising effective control or 'directing affairs' of the CC in the background, as stated in the section below. Usually, the risk is higher when such persons are recorded on CC documents.**

5.1.1 Ultimate Beneficial Ownership in CCs

At the time of publishing this guidance, the Business and Intellectual Authority (BIPA) is in the process of sourcing all relevant ultimate beneficial ownership (UBO) information not in its possession and uploading same on an accessible portal which can be used by Accountable Institutions for verification as per the FIA. The ideal expectation is that all UBO information should be verified with relevant authorities such as BIPA.

TCSPs should understand who the beneficial owners are from accessing CC incorporation documents. Beneficial ownership includes not only interest holders/shareholders but importantly those who exercise effective control such as Executive Management. CC incorporation documents reflect Members as the UBOs or shareholders. If it becomes apparent, during property deals, that other persons not listed as such exercise control which is ideally expected of members or owners, such person(s) should be duly identified and the Real Estate Agent should understand why such person(s) is not listed on the CC incorporation documents as a Member. If there are no logical explanations, the Agency should file STRs or SARs with the FIC.

5.1.2 Ultimate Beneficial Ownership in Companies (including section 21 companies)

BIPA currently obtains information around the Directors of companies. It was found that BIPA has not been obtaining information about the identification of the UBO such as shareholders. This creates challenges with verification requirements as per the FIA. Real Estate Agents, like all other Accountable Institutions need to access the company incorporation documents and request of relevant parties to the transaction to avail information such as share certificates which may confirm shareholder information. Other verification exercises can also be considered, such as enquiries with relevant Trust and Company Service Providers, Accountants and Auditors of such companies etc.

5.2. Ascertainment of information: Associations and other Entities

Real Estate Agent must ascertain, in respect of ALL entities in the form of associations, government organs/departments, non-governmental organisations, ALL non-profit organizations (NPOs), international organisations, intergovernmental organisations:

- a) the **registered name** of the entity, if so registered;
- b) the **office or place of business**, if any, from which it operates;
- c) the **registration number**, if any;
- d) its **principal activities**; and
- e) the **full name, residential address**, and one of the following, listed in the order of preference – the national identity number; the passport number; or date of birth, of the natural person purporting to be **authorised to establish a business relationship or to enter into a transaction** through the Estate Agent **on behalf of such entity** and each beneficial owner. Persons who **exercise such effective control** of a legal person or arrangement should be identified as per section 5.1(g) above.

5.2.1 NPOs

It is generally accepted that Specified NPOs are highly vulnerable to TF. The 2020 NRA found Faith Based Organisations (FBOs) to be most vulnerable to TF domestically. Internationally, trends suggest charity organisations are most vulnerable to TF abuse. This naturally also exposes Namibia to enhanced TF risks associated with charities, especially given the global reach of some. Real Estate Agents are therefore reminded that FBOs and charities, being Specified NPOs, generally present increased TF risks. Worth noting is that domestically, FBOs have also been greatly abused to advance ML activities. In risk mitigation, the Real Estate Agency shall, in addition to the CDD measures in 5.2 above, ensure that FBOs and charities are subjected to the following:

- a) obtain **senior management's approval** while establishing business relationship but before availing any services;
- b) ensure that the business relationship **may not be used for unlawful objects**;
- c) issue the sales agreements/instruments etc., **in the name of the relevant NGO, NPO** or charity, as given in its constituent documents and **not other names**;
- d) subject the authorized agents or representatives of the customer to comprehensive CDD/KYC as stated herein (section 3.1); and
- e) ensure that the NPO itself, its **authorized agents or representatives are not listed on any sanctions list nor affiliated directly or indirectly with listed or proscribed persons or entities**, whether under the same name or a different name.

It is reiterated that Specified NPOs speaks to FBOs and charities only. The sector is further cautioned against unduly subjecting all other types of NPOs to EDD measures, if there is no indication of increased risk. Going beyond these two NPOs sub-sectors does not align to the RBA and will unduly undermine operations of low risk NPOs.

5.3. Ascertainment of Information: Partnerships

Real Estate Agents must ascertain, in respect of a partnership:

- a) its name, or where applicable its registered name;
 - b) its office or place of business, if any, or, where applicable, its registered address;
 - c) where applicable, its registration number; and
 - d) the full name, residential address (if available), and one of the following, listed in the order of preference – the national identity number; the passport number; or date of birth,
- of each partner, including silent partners and partners *en commandite*, beneficial owners and any other natural person **who purports to be authorised** to establish a business relationship or to enter into a transaction via the Estate Agent on behalf of the partnership. Persons who **exercise such effective control** of a legal person or arrangement should be identified as per section 5.1(g) above. **Real Estate Agents must have measures to identify persons who could be ‘directing the affairs’ of the partnership without appearing anywhere on any documents as partners or in some logically clear capacity. Beneficial owners or those controlling partnerships without being duly identified increase the ML/TF/PF risk exposure of partnerships.**

5.4. Ascertainment of Information: Trusts

A Real Estate Agent must ascertain the following in respect of a trust:

- a) its **registered name**, if any;
- b) the **registration number**, if any;
- c) the **country where it was set up**, if the trust was set up in a country other than Namibia;
- d) the **management company of the trust**, if any;
- e) the **full name; the residential address, contact particulars and one of the particulars enumerated**, in the order of preference, under section 3.1 above, of each natural person

who purports to be **authorised to establish a business relationship** or to enter into a transaction via the Estate Agent on behalf of the trust; and

- f) the **full name**, and one of the following, listed in the order of preference – national identity number; passport number; or date of birth; of the following persons -
- each **trustee of the trust**;
 - each **beneficiary or class of beneficiaries** of the trust referred to by name in the trust deed or other founding instrument in terms of which the trust is created;
 - the **founder of the trust**;
 - each **person authorised to act on behalf of the trust**; and
 - each person **exercising ultimate effective control** over the trust or/and each beneficial owner.
- g) If the beneficiaries of the trust are not referred to by name in the trust deed or founding instrument in terms of which the trust is created, the Estate Agent must follow the natural person identification procedure stated herein above [section 5.1(g)] to ascertain the names of the beneficiaries and document the method of determining such beneficiaries. **Real Estate Agents must have measures to identify persons who could be 'directing or managing the affairs' of the trust without appearing anywhere on any documents as trustees or other beneficial owner or in some logically clear capacity. Beneficial owners or those controlling trusts without being duly identified increase the ML/TF/PF risk exposure of partnerships.**

5.4.1 Risks with trusts

In Namibia, a trust can either be a private trust or a public charitable trust. The 2023 NRA update suggests only *inter-vivo trusts*⁹ may have been abused in advancing ML. All such trusts were all (100%) Namibian initiated or founded (owned). Also, 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. For risk mitigation purposes, *inter-*

⁹ Trusts created between living persons registered under the Trust Moneys Protection Act 34 of 1934.

vivos trusts are high risk. With beneficial owners in trusts, Namibian and South African citizens present the highest risks.

6. SUSPICIOUS TRANSACTION OR ACTIVITY REPORTS (“STRs/SARs”)

The primary reason for due diligence and monitoring transactions carried out by clients is to ensure that such transactions are consistent with the Real Estate Agent/Agency’s knowledge of the client, the client’s commercial or personal activities and risk profile. Suspicions are often detected from client behaviour or activities outside the known client profile. Thus, understanding client profile is essential as it places the Real Estate Agent/Agency in positions to effectively detect and report suspicions when they arise. Guidance Note 03 of 2023 helps detail high risk situations, clients and activities that may be suspicious.

New report types have been introduced to enhance effectiveness. With effect from 17 April 2023, TF and PF suspicions, as well as sanctions screening name matches shall no longer be reported through STRs and SARs on goAML. TF and PF suspicions shall only be reported through TPFA and TPFT reports, as explained in section 8 herein below. Similarly, sanctions screening name matches shall only be reported through Sanctions Name Match Activity reports (SNMAs). Only ML suspicions shall be reported through STRs and SARs.

STRs are reports that explain suspicious transactions for ML. The term suspicion is meant to be applied in its everyday, normal sense. The suspicion, as an example, could be the funds involved in the transaction are the proceeds of any crime or linked to terrorist activity. The Real Estate Agent does not need to know what sort of crime may have been committed, but one or more red flags or warning signs of potential ML, which cannot be reasonably explained by the customer, should be adequate to reach the standard of what constitutes a suspicion worth reporting to the FIC.

SARs are reports which, under normal circumstances explain potential suspicious activity related to clients but may not necessarily be transactions whereas STRs refer to actual suspicious

transactions. For example, if a client attempts to transact and after EDD enquiries does not proceed with finalizing the transaction, and the activities or his/her behaviour around such is suspicious, then the appropriate report to file with the FIC is a SAR and not a STR.

6.1. Practical controls

Operating frameworks or controls in the Real Estate Agency must enable the following:

- a. Staff must raise an internal report where they know or suspect, or where there are reasonable grounds for having knowledge or suspicion, that persons involved in the transaction could be engaged in ML, TF or PF;
- b. The Real Estate Agency's AML Compliance Officer, or their appointed alternative, must consider all such internal reports. The Compliance Officer must submit the relevant report to the FIC via GoAML;
- c. Such relevant report should be reported **without delay** (within a few hours of detecting the suspicion) to enhance the effectiveness of combatting activities;
- d. After filing such report, the Real Estate Agency should consider all risk exposure and whether it is prudent to continue availing services to such client;
- e. It is a criminal offence for anyone, following a disclosure to a Compliance Officer or to the FIC, to do or say anything that might either 'tip off' another person that a disclosure has been made or prejudice an investigation. An Estate Agency's policies should clearly state this;
- f. Important actions required:
 - enquiries made in respect of internal reports (red flags) must be recorded;
 - the reasons why a report was, or was not, submitted should be recorded;
 - keep a record of any communications to or from the FIC about a suspicious transaction or activity report.

The requirement to make reports should be supported by the following (within the Agent's AML/CFT Procedures):

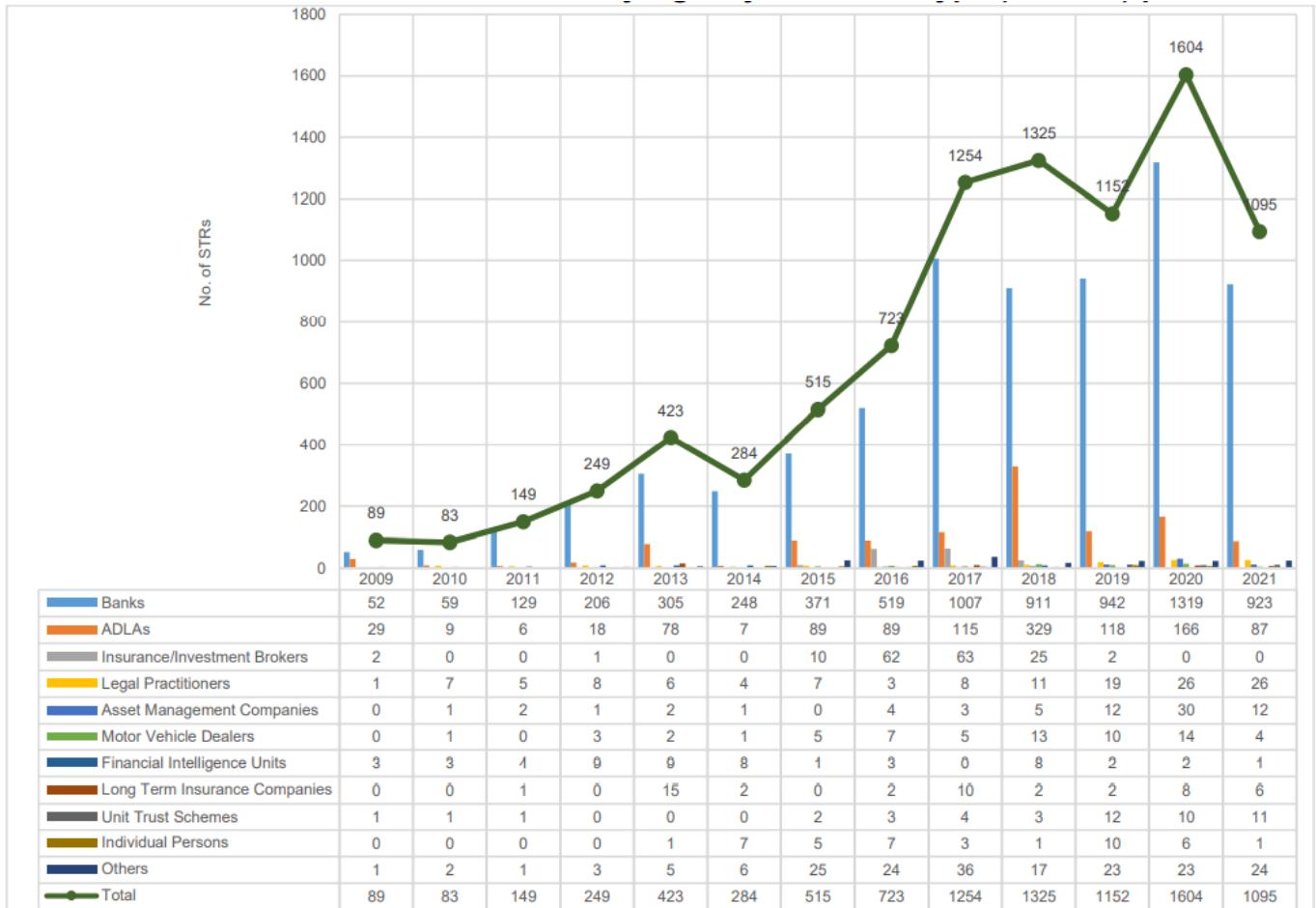
- g. Staff internal reporting line to the AML Compliance Officer;

- h. Confidentiality of reports, i.e. how to deal with customers, and others involved in a transaction, after an internal or external report has been made.

6.2. Sectoral Reporting Behaviour

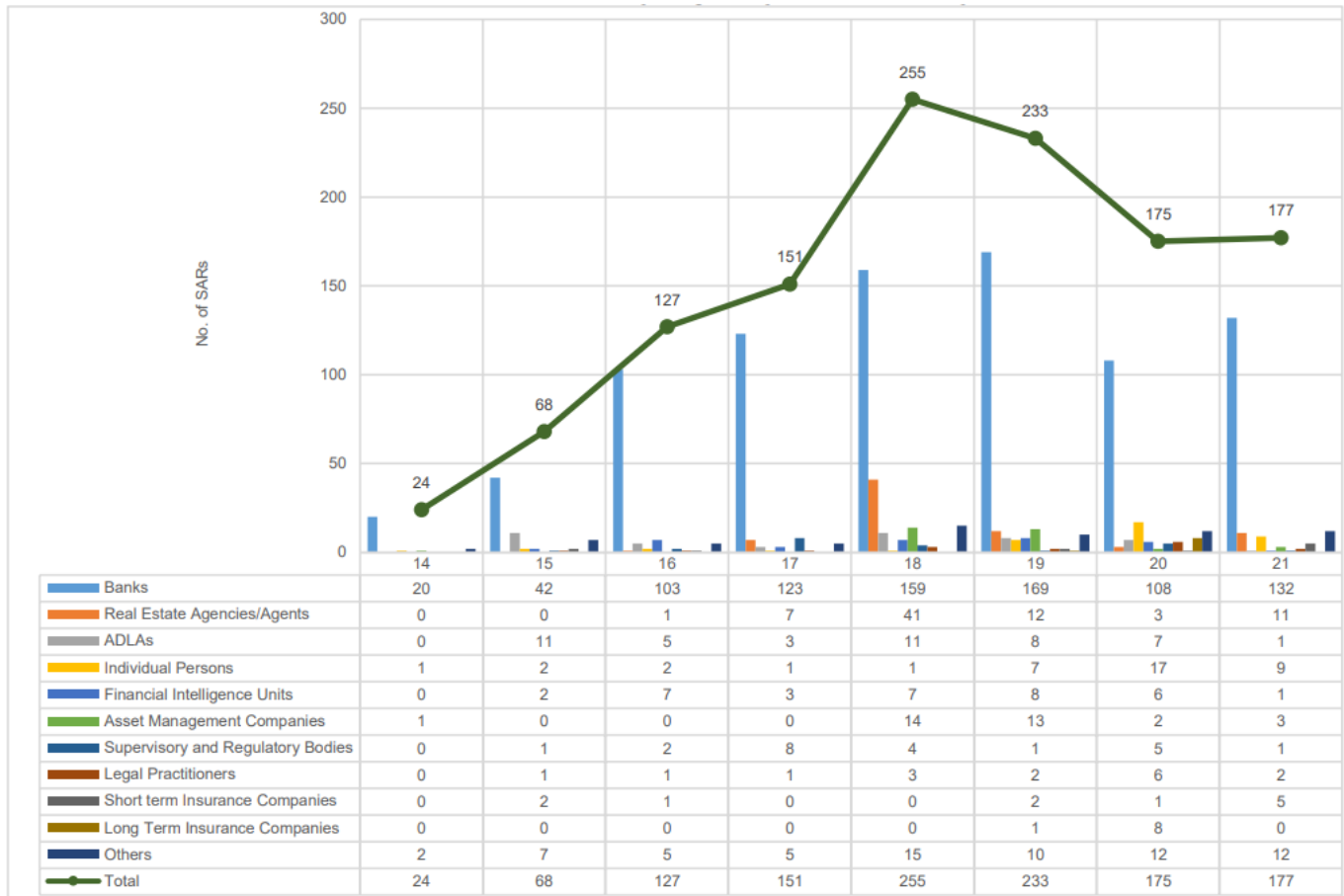
Overall, 8,945 STRs were received by the FIC since the reporting obligation commenced until 31 December 2021 (see Chart below). The banking sector submitted the most reports in such period, filing 78% (or 6,991) of reports followed by ADLAs¹⁰ who submitted 13% (or 1,140). The high number of reports from the banking sector could be attributed to various factors, including the fact that banks appear to have the most matured AML/CFT/CPF control systems (enhanced ability to detect and report). It can also be argued that banking services are inherently exposed to a higher risk of abuse as almost all other sectors make use of the banking systems. For Real Estate Agents however, the reported amounts of STRs are insignificant. Given the vulnerability level of the sector as per the 2020 NRA, the sector's reporting volumes could be enhanced.

¹⁰ Authorised Dealers in Foreign Currency with Limited Authorization.



Classification of STRs as received from various sectors

The FIC received 1,210 SARs since the reporting obligation commenced until 31 December 2021 (see Chart below). Similar to STRs, the banking sector submitted the most reports, filing 71% (or 856) of reports. Unlike the comparatively poor reporting behaviour observed with STRs, Real Estate Agencies submitted 6% of the SARs, second only to the banking sector. Most SARs are reported by the sector on the basis of clients cancelling transactions when CDD/EDD information is requested by Real Estate Agents. The FIC holds the view that more reporting should come from the sector, especially considering the fact that a few medium-to-large agents reported the most SARs and STRs.



Classification of SARs as received from various sectors

7. RECORD KEEPING

7.1. What Records must be kept?

- a. the identity, address and all such client identification records as stated in part 3.1 herein;
- b. the date, time and financial value involved in the activities/transactions;
- c. information relating to all reports filed with the FIC; and
- d. any other information which the FIC may specify in writing.

Real Estate Agents should satisfy themselves that the records they obtain would meet the required standard as per the FIA and summarised herein.

7.2. Who must keep records?

The Real Estate Agency (as Accountable Institution) ought to keep records as per the FIA. A third party may keep records on behalf of a Real Estate Agent but the Agent remains ultimately accountable for ensuring such records are kept as per the FIA. Estate Agency must engage the FIC when proposing to outsource record keeping responsibilities. Further, the records of two or more Accountable or Reporting Institutions that are supervised by the same supervisory body can be centralised.

7.3. Manner of Record Keeping

The records must be kept:

- a. in a manner that protects the integrity of the transactions;
- b. in a manner which permits reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity or civil asset forfeiture procedures.

The Golden Rule with record keeping is enabling an effective reconstruction of identification or transacting activities by competent authorities.

Further, records can be kept in hard copy or electronic format as long as a paper copy can be readily produced. Estate Agency should maintain effective record-keeping systems to enable the FIC and other relevant authorities to access such records in a timely fashion.

7.4. Period for which records must be kept

Records that relate to the establishment of a business relationship (e.g client identification records) must be kept as long as the business relationship exists and for at least five years from the date on which the business relationship is terminated. Records that relate to single transactions must be kept for five years from the date on which the transaction was concluded. Records that relate to copies of reports submitted to the FIC must be kept for a period of not less than five years from date of filing such report. However, records must be kept for longer than the

5-year period if the Real Estate Agency is requested to do so by the FIC, the Office of the Prosecutor-General or by any other law enforcement body.

8. UNSC SANCTIONS SCREENING

The object of sanctions screening is to implement Targeted Financial Sanctions (TFS) towards anyone listed by the UNSC.

Real Estate Agents are expected in terms of section 24 and Regulation 15(5)¹¹ of the FIA to screen clients or potential clients involved in transactions against the relevant sanctions lists issued by the United Nations Security Council (UNSC). Such screening should take place before accounts are opened or client is granted access to services, regardless of whether the client transacts below or above the CDD threshold. If the Real Estate Agent in any way makes use of middlemen or brokers/agents to facilitate the deal, the Estate Agent needs to ensure that such third parties duly attend to their AML/CFT/CPF responsibilities if any reliance is placed on them. This is essential to combat TF and PF activities by ensuring designated persons, organizations or countries are identified and not unduly availed services, while their assets and funds are accordingly frozen. The term Targeted Financial Sanctions primarily speaks to **asset freezing without delay** and **prohibition** from making funds or other assets or services, directly or indirectly, available for the benefit of sanctioned individuals, entities, or groups.

Locally, the National Security Commission (NSC) is the body with statutory responsibilities in terms of the PACOTPAA¹² to propose persons or entities to the 1267/1989 Committee for designation and to for proposing persons or entities to the 1988 Committee for designation. To date, the NSC has not seen the need to designate any person. Estate Agents are required to continue screening against relevant sanctions lists as explained above.

¹¹ Accountable institution to conduct on-going and enhanced customer due diligence: (5) An accountable institution must also, in the process of monitoring, screen - (a) names of prospective clients, before acceptance of such a client; (b) names of existing clients, during the course of the business relationship; and (c) all the names involved in any transaction, against the sanctions lists issued by the United Nations Security Council under Chapter VII of the United Nations Charter for purposes of combating the financing of terrorism and the funding of proliferation activities.

¹² Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014).

Screening against other designations lists such as OFAC, though not mandatorily required by domestic laws is very helpful in the overall risk management effectiveness. For any transactions or currency exchanges in USD for example, there is an inherent requirement to screen involved parties against the OFAC list. Similarly, when dealing in British Pounds or the Euro, screening against lists issued by such relevant authorities is an inherent requirement.

This section avails basic guidance on TFS. Real Estate Agents are required to further consider the detailed guidance around reporting, sanctions screening and TFS contained in Guidance Note 07 of 2023.

8.1 Effective Client Screening

In order to effectively implement Targeted Financial Sanctions (TFS), Estate Agents must ensure:

- a. sanction screening is performed on all clients before availing them services; and
- b. no services are availed to clients before the sanction screening is completed and evidence of same has been documented. Screening should **not be undertaken after** availing services or facilitating transactions. Prior screening **enables detection of sanctioned persons**. If such sanctioned persons are detected, such should not be granted access to any services at all and their attempted transactions should be reported to the FIC promptly and without delay, while the assets (or funds) involved are frozen or further transactions prohibited, as per the FIA and PACOTPAA. **In practice, policies and operating procedures therefore need to ensure clients are allowed to at least attempt the transaction to ensure due identification, which will enable effective screening and, if client is listed, eventual freezing of the funds which the clients attempt to transact with, followed by complete prohibition to transact any further.**

The following databases of the Estate Agency must be included in the screening process:

- a. Existing customer databases. All systems (if any) containing customer data and transactions need to be mapped to the screening system to ensure full compliance;
- b. Potential customers before conducting any transactions or entering a business relationship with any person;
- c. Names of parties to any transactions (e.g., buyer, seller etc.¹³);
- d. Ultimate beneficial owners, both natural and legal;
- e. Names of individuals, entities, or groups with direct or indirect relationships with them; and
- f. Directors and/or agents acting on behalf of customers (including individuals with power of attorney).

8.2 Where to find the updated Sanctions Lists?

Estate Agents, like all other Accountable and Reporting Institutions are required to access lists of sanctioned persons and screen their clients against such lists before establishing a business relationship and whenever the sanctions lists is updated. Domestically, at the time of issuing this Guidance, the NSC has not designated or listed any persons yet. At an international level however, the information on designated individuals, entities or groups in the Sanctions Lists is subject to change. The most recently updated sanctions list of the UNSC¹⁴ can be found on the UNSC website or via the following link: <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>

8.3 Targeted Financial Sanctions (TFS)

As mentioned above, the term Targeted Financial Sanctions includes **asset freezing without delay** and **prohibition** from making funds or other assets or services, directly or indirectly, available for the benefit of sanctioned individuals, entities, or groups.

¹³ Other sectors such as Banks need to include agents, freight forwarders, vessels etc.

¹⁴ The UNSC has a UN Consolidated List of all the sanctioned individuals, entities, or groups designated by the United Nations Sanctions Committees or directly by the UNSC.

8.3.1 Asset freezing without delay

In terms of international standards, without delay means **within a matter of hours**. Freezing is the prohibition to transfer, convert, dispose, or move any funds or other assets that are owned or controlled by designated individuals, entities, or groups in the Local Terrorist List or UN Consolidated List. It includes:

- a. The freezing of funds and other financial assets and economic resources, and includes preventing their use, alteration, movement, transfer, or access; and
- b. The freezing of economic resources also includes preventing their use to obtain funds or other assets or services in any way, including, but not limited to, by selling or mortgaging them.

Examples of freezing:

- i. ***Financial Institutions:*** a freezing measure can be suspending listed client's access to bank accounts which have funds or blocking transactions which can deplete such;
- ii. ***DNFBPs like real estate agents and law firms:*** a freezing measure can be to hold onto the funds/assets (including any deposits paid) of listed client while stopping services which client requested be completed/finalised; and
- iii. ***VASPs¹⁵:*** a freezing measure can be holding onto the funds/value from client (e.g in VASP's custody) to trade and transfer virtual assets, despite client having asked for same.

8.3.2 Prohibition

The principle is prohibition from making funds or other assets or services available. This means the prohibition to provide funds or other assets to or render financial or other services to, any designated individual, entity, or group.

Examples of prohibition:

- i. ***Financial institutions:*** prohibition from offering banking or transactional services;

¹⁵ Virtual Asset Service Providers such as those dealing in Bitcoin etc.

- ii. **DNFBPs, like real estate agents and law firms:** prohibition from the provision of any services, such as agency or legal services to transfer asset ownership, buying or selling real estate, selling jewellery, precious metals, natural resources, etc.;
- iii. **VASPs:** prohibition from the provision of any services, including but not limited to trading and transferring virtual assets.

8.3.3 Object of freezing and prohibition

Note however that even when freezing measures are taken or enacted, there should be no restrictions on client introducing or depositing more funds with the Estate Agency (or paying further funds towards the property deal). As long as the service which the listed client so desires cannot be finalised for them, prohibition and asset freezing requirements will be met on condition whatever has already been frozen is not further depleted. The object remains to deprive listed/designated/proscribed persons from as much funds/assets as possible so they can be denied access to resources which may be used to fund terrorist or proliferation activities. This is the essence or primary goal of TFS measures. Accountable and Reporting Institutions need to consider appropriate implementation given the circumstances they may find themselves in, with each transaction/client.

8.4 Reporting Possible Matches

The mechanism to report any freezing or suspension measures taken upon identifying confirmed or potential matches is through the goAML platform. The use of the goAML platform for TFS reporting purposes eases the burden of reporting and avails the necessary confidentiality required for this sensitive process. As mentioned above, institutions should no longer report sanctions screening matches, TF or PF suspicions via STRs or SARs. New report types have been created to enhance effectiveness, especially around TFS measures. From 17 April 2023, sanctions screening matches as well as TF and PF suspicions or transactions should be reported as per below:

Reportable Activity or Transaction	Type of Report
Detection of a possible sanctions screening match .	SNMA - Sanction Name Match Activity report
Reporting any other Activity (or attempted transaction which was not completed) which may point to, or be linked to potential terrorism, TF or PF.	TPFA - Terrorist & Proliferation Financing Activity report
Reporting any other Transaction (actual transacting) which may point to, or be linked to potential terrorism, TF or PF.	TPFT- Terrorist & Proliferation Financing Transaction report

The following information must be shared when submitting a SNMA report:

- a. The full name of the 'confirmed match'. Attach ID documents of the 'confirmed match', such as passport or other ID documents for individuals, and relevant legal person incorporation documents such as CC incorporation forms, articles of association, trust establishing documents etc.; and
- b. If any, amount of funds or other assets frozen (e.g., value of real estate, value of funds in bank accounts, value of transactions, value of securities, etc.). Attach proof documents such as bank statements, transaction receipts, securities portfolio summary, title deeds, etc., if such are at hand.

A Real Estate Agent identifies a confirmed match when screening parties to a property sale transaction.

Person A is the prospective seller of the real estate. The Real Estate Agents must block the transaction immediately, refrain from offering any services to Person A, and submit a SNMA report via goAML. The SNMA report must include attachments that clarify:

- a. *The type, value and location of the real estate being sold. Include supporting documents such as title deeds. Obtain all records of buyer, such as funding method/proof of funds, if such buyer is indeed a listed person;*
- b. *ID documents of the confirmed match, such as ID card, travel documents, trade licenses, etc.*

When a possible match is reported to the FIC, the FIC or such relevant competent authorities will direct all activities related to the frozen assets or funds. The Estate Agent/Agency may not release frozen assets or do anything related to such assets without being instructed to do so.

9. ROLE OF AML COMPLIANCE OFFICER

The effectiveness of the Compliance Officer¹⁶ usually impacts an Accountable Institution's overall risk management level. The AML/CFT/CPF controls within an Agency should therefore ensure the Compliance Officer is placed in a position to execute his/her FIA responsibilities as required. Such responsibilities primarily include ensuring that:

- a. internal ML/TF/PF risk assessments are undertaken and results thereof duly implemented. Periodically, such risk assessments are duly revised or updated in line with SRAs, NRAs, typology reports locally and internationally;
- b. the AML/CFT/CPF Controls (policies, procedures etc) are at all times aligned to risk levels;
- c. front-line staff (staff members who directly deal with customers) are duly trained on CDD measures as per the FIA;
- d. he/she undertakes monitoring transactions, e.g. routine or spot checks. With Estate Agency services, given the impact of huge financial values involved, compliance officers and/or their alternates need to duly review each transaction/deal;
- e. measures to internally detect and escalate¹⁷ potential ML/TF/PF indicators or red flags are prudent and enable the required level of confidentiality;
- f. he/she files all types of reports with the FIC, without delay;
- g. he/she regularly reports to senior management about AML/CFT performance; and
- h. he/she attends to any other activities necessary to enhance FIA compliance.

Compliance Officers ought to have adequate managerial authority and capacity within an Accountable Institution to lead compliance activities, as per the FIA. With one-man Agencies,

¹⁶ Appointed as per Section 39 of the FIA.

¹⁷ To the Compliance Officer for analysis and decision on whether to report same to the FIC.

the individual Agent has a responsibility to attend to all the responsibilities of a Compliance Officer duly. Depending on the size of the Real Estate Agent/Agency, volume of transactions, overall risk etc., regard has to be had with the Agency/Agent's ability to duly attend to all responsibilities as per the FIA. Such factors should guide resourcing of a Compliance function.

10. GENERAL

This Guidance 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 herein is intended to only provide a summary on these matters and is not intended to be comprehensive.

11. 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.

12. GENERAL

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

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