



الإمارات العربية المتحدة  
وزارة الإقتصاد

# **Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations**

**Guidelines for Designated Non-Financial  
Businesses and Professions**

**Supplemental Guidance for the Real Estate  
Sector**

May 2, 2019

## 11.3 Supplemental Guidance for DNFBPs Engaged in the Real Estate Sector

### 11.3.1 Introduction

Transactions involving the sale, purchase, leasing, and financing of real estate have long been established as a typology for money laundering and the financing of terrorism, both as a part of the money laundering process itself and as a mechanism for further facilitating criminal operations. Recent studies<sup>1</sup> indicate that in the MENA region, after the use of cash and cheques, real-estate based ML represents one of the top trends in ML/FT typologies each year.

Some of the reasons often attributed to the incidence of ML-based real estate include:

- Relatively lower level of awareness of ML/FT typologies and customer due-diligence (CDD) requirements on the part of professionals engaged in the Real Estate sector;
- Lower degree of transparency (for example, in some countries, real estate brokers and agents often do not have access to detailed information concerning the financial flows related to real estate transactions in which they are involved);
- Size of the real estate markets, and the relative ease of doing business in them through intermediaries or proxies, which attracts individuals and groups involved in illicit activities;
- Relative stability and profitability of the real estate market.

Furthermore, the National Risk Assessment has identified professional third-party money launderers (PMLs) as one of the greatest ML/FT threats facing the State. It has been established that one of the techniques favoured by PMLs is investment in or other transactions involving real estate.<sup>2</sup>

The misuse of the real estate sector by criminals involved in ML/FT can have widespread harmful effects with regard to the national economy. The purchase or sale of real property is one of the most significant financial transactions that a family or an individual can undertake, often playing an important role in household debt and net worth. Moreover, real estate prices strongly influence rents and developments in the construction industry. Therefore, arbitrary or artificial fluctuations in property prices that can be caused by real estate transactions entered into for illicit purposes can distort economic activity, price stability, and the distribution of income.

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<sup>1</sup> See, for example, *Money Laundering and Terrorist Financing Trends and Indicators in the Middle East and North Africa Region—Update*, Middle East and North Africa Financial Action Task Force (MENAFATF), 2013; *Biennial Typologies Report*, MENAFATF, 2014.

<sup>2</sup> See, for example, *Professional Money Laundering*, FATF, July 2018, and *Money Laundering & Terrorist Financing through the Real Estate Sector*, FATF, June 2007.

Given the above, it is critical that DNFBPs engaged in activities in the real estate sector, whether within the State or outside of it, are well acquainted with their CDD obligations under the UAE's AML/CFT legislative and regulatory framework, as well as with the various risk factors and indicators that can help them to identify and report suspicious transactions. While the former have already been covered in depth in the *Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations Guidelines for Designated Non-Financial Businesses and Professions*, it is the intent of this supplemental guidance to cover the latter in greater detail with respect to the real estate sector.

### 11.3.2 Summary of DNFBPs' AML/CFT Obligations

According to Article (3) of the AML-CFT Decision, the definition of Designated Non-Financial Businesses and Professions (DNFBPs) includes:

- Brokers and real estate agents when they conclude operations for the benefit of their customers with respect to the purchase and sale of real estate; and
- Lawyers, notaries, and other independent legal professionals and independent accountants, when preparing, conducting or executing financial transactions for their customers in respect of the purchase and sale of real estate.

DNFBPs, including brokers and real estate agents (as well as lawyers, notaries, and other independent legal professionals and independent accountants) who engage in activities related to the sale and purchase<sup>3</sup> of real estate on behalf of customers, are required by the AML-CFT Law and the AML-CFT Decision to fulfil certain obligations which constitute the basis of an effective risk-based AML/CFT programme. These include:

- Identifying and assessing ML/FT risks (see Guidelines [Section 4](#));
- Establishing, documenting, and updating policies and procedures to mitigate the identified ML/FT risks (see Guidelines [Section 5](#));
- Maintaining adequate risk-based customer due-diligence (CDD) and ongoing monitoring procedures (see Guidelines [Section 6](#));
- Identifying and reporting suspicious transactions (see Guidelines [Section 7](#));
- Putting in place an adequate governance framework for AML/CFT, including appointing an AML/CFT Compliance Officer (see Guidelines [Section 8](#));

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<sup>3</sup> Article (3) of the AML-CFT Decision does not make specific reference to transactions involving the leasing or rental of real estate. However, due to the nature of the UAE's real estate market, the characteristics of such transactions are so similar to those involving the sale and/or purchase of real estate in some circumstances, that from a ML/FT risk perspective, DNFBPs should treat them the same.

- Maintaining adequate records related to all of the above (see Guidelines [Section 9](#)); and
- Comply with the directives of the Competent Authorities of the State in relation to the United Nations Security Council resolutions under Chapter VII of the Charter of the United Nations, as well as in relation to Cabinet Decision No. (20) of 2019 Regarding Terrorism Lists Regulation and Implementation of UN Security Council Resolutions On the Suppression and Combating of Terrorism, Terrorists Financing & Proliferation of Weapons of Mass Destruction, and Related Resolutions (see Guidelines [Section 10](#)).

The ultimate purpose of these measures is to establish a reliable paper trail of business relationships and transactions, and to trace the true beneficial ownership and movement of assets related to real estate transactions, in order to prevent DNFBPs involved in activities in the real estate sector from being exploited for the purposes of money laundering and/or the financing of terrorism, and to aid the Competent Authorities of the State by reporting suspicious transactions.

The sections below provide additional guidance specific to the real estate sector, in regard to the identification of risk, customer due diligence, and the identification of suspicious transactions.

### **11.3.3 Risk Factors Specific to the Real Estate Sector**

The AML-CFT Decision specifies certain risk factors that should be taken into consideration by DNFBPs when identifying and assessing ML/FT risk at both the enterprise and the customer levels. General guidance on these risk factors is provided in [Section 4.4](#) of the Guidelines.

In addition to these generalized risk factors, there are a number of additional risk factors which are specific to the real estate sector, which real estate agents and brokers, as well as other DNFBPs involved in activities related to the sale and purchase of real estate on behalf of their customers (such as lawyers, notaries, and other independent legal professionals and independent accountants), should be aware of and should take into consideration in identifying and assessing the ML/FT risks to which they are exposed. Some of these risk factors depend on the specific role of the real estate agent/broker or other DNFBP in the business relationship or the transaction. Other risk factors relate to the nature and type of customer or transaction.

#### **Role of the Real Estate Agent/Broker**

The laws and regulations concerning real estate in the UAE vary by Emirate. Thus, depending on the specific location involved, a real estate agent/broker or other professional involved in activities related to the sale, purchase, or leasing of real estate on behalf of customers may be authorised to perform various roles or functions relating to the transactions. These roles may include, but are not limited to:

- Representing one (or, in some instances, more than one) party to a transaction, and intermediating between the parties in terms of negotiation and execution of an agreement or contract;
- Acting in a fiduciary, trustee, or secretarial capacity with regard to the transmission, delivery, and/or recording of various financial instruments, securities, bonds, title deeds, or other documents and information related to real estate transactions;
- Arranging, advising or consulting on financial resources, including the obtaining of mortgage financing, for the completion of a real estate transaction.

Generally speaking, a real estate agent or broker acting in any of the roles mentioned above, whether singly or in combination, must carefully consider factors such as the customer risk, geographic risk, and channel risk (see Guidelines Sections [4.4.1](#), [4.4.2](#) and [4.4.4](#)). In particular, consideration should be given to such factors as:

- Customer type, complexity and transparency (e.g. whether the customer is a physical person, a legal person or a legal arrangement; and if a legal person or arrangement, whether the customer is part of a larger, more complex group);
- Customer's country of origin (whether a UAE national or a foreign customer, and in the case of the latter, whether the customer is associated with a High Risk Country—see Guidelines [Section 6.4.3](#));
- Channel by which the customer is introduced (e.g. referrals versus walk-in customers, or customers sourced via the internet or other media) and communicates (e.g. remote or personal contact).

At the same time, in identifying and assessing ML/FT risks, real estate professionals having information about, or acting in the capacity of fiduciary agents, trustees, or advisors on behalf of customers with regard to, financial arrangements must also take into consideration other risk factors such as, but not limited to:

- Type, size, complexity, transparency, and geographic origins of financial instruments and/or arrangements associated with the transaction (see Guidelines [Section 4.4.3](#), among others);
- Novelty or unusual nature of the financial instruments or arrangements associated with the transaction, particularly compared with what is normal practice in the local market (see Guidelines Sections [4.4.5](#) and [4.5.4](#), among others).

### **Nature and Type of Customer and/or Transaction**

In addition to the factors mentioned above, when identifying and assessing ML/FT risk, real estate agents and brokers should also consider such factors as:

- Customer's residence status (whether a UAE National, a foreign resident, or an offshore/non-resident person or legal entity);
- Type of real estate transaction (for example, whether residential or commercial; whether for the customer's own use, or for resale or investment purposes);
- Speed and frequency of transactions (e.g. whether there is a requirement to expedite the transaction, or a customer engages in multiple transactions in a relatively short time span).

Thus, the customers of real estate agents and brokers dealing with, for example, middle-income UAE nationals for the sale, purchase, or rental of real property for residential or commercial purposes may have a very different ML/FT risk profile from those of real estate agents/brokers dealing with foreign nationals or corporate clientele, engaged in the sale, purchase, or leasing of residential or commercial property for resale or investment purposes. The types of risk profiles identified and assessed, and the resultant risk ratings applied to the customers (see Guidelines [Section 4.5.1](#)), should be used in determining the efficient allocation of AML/CFT resources, as well as the appropriate application of reasonable and proportionate risk-mitigation measures, including customer due-diligence measures (discussed below).

In assessing ML/FT risk and assigning risk ratings to their customers, real estate agents and brokers may utilize a variety of methods, depending on the nature and size of their businesses. These may include more sophisticated models, such as the application of risk weightings to the various risk factors identified, and the calculation of an overall risk score for each customer; or simpler methods such as the development of indicative customer ML/FT risk profiles based on their business models, standard market practices, and target customer segments, against which customers may be filtered and risk-rated. Whatever methods they choose, real estate agents and brokers should clearly document them (including the rationale for their use), and apply them consistently across their business activities.

#### **11.3.4 Customer Due Diligence (CDD) in the Real Estate Sector**

Together with the accurate identification and assessment of ML/FT risks, the implementation of reasonable and proportionate customer due-diligence measures and the ongoing monitoring of customer relationships and transactions are two of the key components of an effective risk-based AML/CFT programme. However, because of the transactional nature of the real estate sector and the limited roles which its actors play in many situations, it is not always possible for real estate agents and brokers to monitor the activities and transactions of their customers on an ongoing basis. It is therefore even more critical for DNFBPs in such situations to focus particular attention on the effectiveness of their CDD measures.

The *Anti-Money Laundering and Combating the Financing of Terrorism and Illegal Organisations Guidelines for Designated Non-Financial Businesses and Professions*, of which this supplemental guidance is a part, discusses customer due diligence (including enhanced and simplified customer due diligence measures) in detail, and real estate agents and brokers should study the related sections of the Guidelines carefully. Nevertheless, there are some additional points that are of particular relevance to the real estate sector.

First, real estate agents and brokers should ensure that they have in place a process for screening customers and prospective customers against Sanctions Lists (see [Guidelines Section 10, International Financial Sanctions](#)), and for performing background checks (such as internet searches) to identify any potentially adverse information (including associations with financial or other crime, or with politically exposed persons) about their customers or prospective customers.

Second, a characteristic technique used in real estate-based ML/FT is the attempt to conceal beneficial ownership through the use of third-party intermediaries, proxies, or legal structures or arrangements, which can help to create distance between the source of the illicit funds and the real estate transaction. Such third-party intermediaries may include family members, friends, business associates, legal representatives, or other third persons. In this regard, real estate professionals should be particularly attentive to establishing and verifying the identity of the beneficial owner and, whenever possible, corroborating their source of funds through reliable independent sources.

Generally speaking, real estate professionals may request bank references or bank account information as part of this corroboration process. In cases where the source of funds for a real estate transaction is income related to a previous real estate transaction (such as a sale or a mortgage taken on another property), such sources may also include the use of land registries (domestic or foreign, as the case may be), as well as references from other real estate agents or brokers, real estate regulatory bodies or industry associations, or financial institutions, among others.

Real estate agents and brokers should also be alert to customer due-diligence factors such as:

- Compatibility of the customer's profile (including their economic or financial resources, and their personal or professional circumstances) with the specifics (including nature, size, location, frequency) of the real estate transaction or transactions involved;
- Utilization of complex or opaque legal structures or arrangements (such as trusts, foundations, personal investment companies, investment funds, or offshore companies), which may tend to conceal the identity of the true beneficial owner or source of funds;
- Possible association with politically exposed persons (PEPs), especially in regard to foreign customers;



- Possible prior association between the parties to the transaction (buyer and seller).

Third, another technique often employed in real estate-based ML/FT is the use of fraudulent and/or forged documents. In cases in which the real estate agent, broker, or legal professional involved in a real estate transaction acts in a fiduciary, trustee, or secretarial capacity with regard to the transfer, delivery, or registration of financial instruments, securities, bonds, title deeds, or other documents and information, such DNFBPs should pay particular attention to the authenticity of such instruments or documents.

### 11.3.5 Ongoing Monitoring in the Real Estate Sector

Due to the transactional nature of the real estate sector, and the limited access real estate agents and brokers may have to customers' financial transactions in many instances, it may not always be possible for real estate professionals to perform ongoing monitoring of their customers' activity. Nevertheless, in circumstances in which high-risk customers have been identified, real estate professionals should make reasonable efforts to monitor activity related to properties with which they have been involved.

For example, this may take the form of periodic checking of the land registry for a given property, to determine whether there have been any changes in information, or a quick succession of transactions in a relatively short time period, after the initial transaction in which they were involved. Furthermore, in cases in which the real estate agent or broker plays a fiduciary, trustee, or secretarial role concerning financial instruments, securities, bonds, or other documents or information concerning a real estate transaction, they should monitor the status of those instruments throughout the course of the transaction life cycle in order to detect any unusual changes or substitutions.

### 11.3.6 ML/FT Typologies and Indicators of Suspicious Transactions in the Real Estate Sector

#### **Real Estate-Based ML/FT Typologies**

As mentioned in the Guidelines (see [Section 4.3 ML/FT Typologies](#)), the methods used by criminals for money laundering, the financing of terrorism, and the financing of illegal organisations are continually evolving and becoming more sophisticated. It is therefore impossible to provide an exhaustive list of ML/FT typologies for the real estate sector, as new typologies and techniques are constantly being developed and attempted.

Nevertheless, research on the subject, and analysis of case studies from around the world, has identified a series of some of the most common basic methods used by criminals to launder money and/or to finance terrorist and illegal organisations through the real estate sector. These methods broadly align with the classical stages of the ML/FT process (i.e. placement, layering, and integration; see Guidelines [Section 4.2, The Standard ML Model](#)



[and Generic ML/FT Risks](#)), and can be organised into three major categories, according to their primary purpose. Specifically:

- Concealing or disguising the identity of the beneficial owner or owners;
- Concealing or disguising the illicit origin of the funds involved;
- Transferring or extracting value or utility from the real estate involved for the benefit of the criminal perpetrators.

Real estate agents and brokers should recognize that, often, multiple ML/FT typologies and techniques are used in a single transaction or in a series of transactions. They should therefore be alert to indicators of potentially suspicious transactions from all categories. Furthermore, they should be sure to incorporate the regular review of ML/FT trends and typologies into their compliance training programmes (see Guidelines [Section 8.2, Staff Screening and Training](#)), as well as into their risk identification and assessment procedures.

The following are some of the most common typologies used for ML/FT through the real estate sector, according to the Financial Action Task Force (FATF):

- Use of complex loans or credit finance;
- Use of non-financial professionals (such as real estate and legal professionals);
- Use of corporate vehicles;
- Manipulation of the appraisal or valuation of a property;
- Use of monetary instruments (including bearer negotiable instruments);
- Use of mortgage schemes (including fraudulent mortgage schemes);
- Use of investment schemes and financial institutions;
- Use of properties to conceal money generated by illegal activities.

Examples of several of these typologies are provided below, organised according to the primary purposes discussed above.

### **Concealment of the Identity of the Beneficial Owner(s)**

Criminals often go to great lengths to distance themselves from the transactions through which they attempt to launder money or finance terrorist or illegal organisations. Some of the techniques they may use include, but are not limited to, entering into real estate transactions, or seeking to obtain financing for such transactions, through the use of:

- Third-party intermediaries or proxies, including family members, friends, business associates, legal representatives, or paid third persons;
- Legal structures, including corporate entities or groups, limited partnerships, investment vehicles (such as property investment companies or funds), or non-profit organisations;
- Legal arrangements, such as trusts or foundations, clubs, or similar organisations of a legal character.

In this regard, real estate agents and brokers should give special attention to the identification of the true party to the transaction and beneficial owner of the funds involved. This includes assessing whether the nature, type, and size of the transaction is consistent with the profile of the customer. In situations in which real estate professionals handle financial instruments and/or documents on behalf of customers, they should also be particularly alert to the involvement of any third parties in the transfer or delivery process.

Real estate agents and brokers should also be alert to customers' attempts to use them as intermediaries or go-betweens with regard to arranging financing for transactions, as the below example from a FATF report illustrates:

**Example 1: Misuse of a real estate agent to gain introduction to a financial institution, possible link to terrorist financing<sup>4</sup>**

A trustee for a trust established in an offshore centre approached a real estate agent to buy a property in Belgium.

The real-estate agent made inquiries with the bank to ask whether a loan could be granted. The bank refused the application, as the use of a trust and a non-financial professional appeared to be deliberately done to disguise the identity of the beneficial owner. The bank submitted a suspicious transaction report.

Following the analysis of the financial intelligence unit, one of the members of the board of the trust was found to be related to a bank with suspected links to a terrorist organisation.

**Example 2: Family members used as a front for purchasing property<sup>5</sup>**

A Canadian career criminal, with a record including drug trafficking, fraud, auto theft, and telecommunications theft, deposited cash into a bank account in his parents' name. The

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<sup>4</sup> *Money Laundering & Terrorist Financing through the Real Estate Sector*, FATF, June 2007, p. 9.

<sup>5</sup> *Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals*, FATF, 2013, p. 49.

accused purchased a home with the assistance of a lawyer, the title of which was registered to his parents. He financed the home through a mortgage, also registered to his parents. The CAD 320,000 mortgage was paid off in less than six months.

**Example 3: Exploitation of a legitimate charity**<sup>6</sup>

A suspicious transaction report (STR) was made following an attempt by Individual A, to deposit substantial amounts of cash into the account of a charity – over which he had power-of-attorney – with the instruction that it be transferred onward to a notary as an advance for the purchase of real estate. The Investigation revealed that payments into the account consisted of multiple cash deposits (presumably donations), but also payments directly from the account of Individual A. In turn, A's personal account revealed multiple cash deposits that corresponded to donations from private individuals. The debit transactions consisted of transfers to the non-profit organisation and international transfers to Individual B. Police sources revealed that A had links with individuals that were known for terrorist activities, including B.

**Example 4: Use of company to launder money through a real estate purchase and sale**<sup>7</sup>

An East European was acting under a cover name as the director of a company for which he opened an account with a Belgian bank. Transfers were made to this account from abroad, including some on the instructions of “one of our clients.”

The funds were then used to issue a cheque to a notary for the purchase of a property. The attention of the notary was drawn to the fact that some time after the purchase, the company went into voluntary liquidation, and the person concerned bought the property back from his company for an amount considerably above the original price. In this way the individual was able to insert money into the financial system for an amount corresponding to the initial sale price plus the capital gain. He was thus able to use a business account, front company customer, purchase of real estate, cross border transaction and wire transfers to launder money that, according to police sources, came from activities related to organised crime.

It appeared that the company acted as a front set up merely for the purpose of carrying out the property transaction.

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<sup>6</sup> Terrorist Financing Typologies, FATF, February 2008, p. 12.

<sup>7</sup> Money Laundering & Terrorist Financing through the Real Estate Sector, FATF, June 2007, p. 10.

### **Concealment of the Illicit Origin of the Funds Involved**

A key goal of criminals involved in ML/FT operations is to conceal the illicit source of the funds they are attempting to launder, in order to be able to place those funds into the financial system. As with the concealment of the identity of the beneficial owners, some of the techniques used in concealing the illicit source of funds include, but are not limited to the use of third-party intermediaries, legal structures, and legal arrangements. Furthermore, a variety of techniques, including but not limited to the use of bearer financial instruments (such as cash, bank drafts, cashier's cheques, etc.) are often used to conceal the illegal proceeds of funds used in real estate transactions. Some indicative examples are provided below.

#### **Example 5: Abuse of a notary's client account<sup>8</sup>**

A company purchased property by using a notary's client account. Apart from a considerable number of cheques that were regularly cashed or issued, which were at first sight linked to the notary's professional activities, there were also various transfers from the company to his account.

By using the company and the notary's client account, money was laundered by investing in real estate in Belgium, and the links between the individual and the company were concealed in order to avoid suspicions.

Police sources revealed that the sole shareholder of this company was a known drug trafficker.

#### **Example 6: Use of Individuals and Companies to Conceal the Source of Illicit Funds<sup>9</sup>**

A criminal organisation (led by a Hungarian citizen) committed tax fraud with the use of individuals and companies dealing in the area of service provision (labour force for the security industry). The proceeds obtained from tax fraud were transformed into tangible assets (e.g. real estate, cars, etc.) of another company (a legitimate one) run by the offender, in order to cover its origin. In the course of the investigation it was established that the company had no income-generating activities and no registered employees.

The dirty money was provided in cash by the leader of the criminal organisation with instructions to purchase real estate. In order to disguise the origin of the proceeds, the

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<sup>8</sup> Ibid., p. 12

<sup>9</sup> Typologies Report on Laundering the Proceeds of Organised Crime, MONEYVAL, April 2015, p. 74.

money was deposited in smaller amounts in bank accounts by natural persons and then transferred into the company's account. Furthermore, for the real estate transactions, VAT refunds were claimed and obtained from the state budget. Due to those VAT refunds, the company made apparently legitimate sources of revenue.

**Example 7: Use of Cash Transport, Exchange Houses, and Real Estate Purchases to Conceal the Source of Illicit Funds<sup>10</sup>**

The members of an organised crime group (OCG) created a money laundering system by using other people to exchange money for them, using their family members to purchase real estate in Croatia in their name, and setting up businesses in order to invest and conceal the true source of money which they had acquired through drug trafficking. Since drug trafficking involved a large number of individuals who operated in different countries (Netherlands, United Kingdom, Sweden, Austria, Italy and Croatia), one of the key features was to avoid banks and STRs filed to the FIU. In this case, the drugs were procured by the defendants in Netherlands and the United Kingdom, where they were packed and shipped illegally by trucks or refrigerator cars and delivered to unknown persons, who were then in charge of distributing them to end buyers in the United Kingdom, Sweden, Austria and Italy.

Some of the money obtained was used to purchase further quantities of drugs and to settle the costs of transport and hired help, and the rest of the money (the profit) was transported to Croatia. The money was transported by persons employed in legitimate transport companies, who were hired by OCG members to hide the money in their vehicles and cross the border without reporting the money to customs. Subsequently, the transporters exchanged the money using banks and exchange offices and hand it over to Mr I, the ML defendant.

In order to conceal its true source, Mr I invested the money in real estate and motor vehicles in Croatia, buying some of the property in his own name or in the names of his wife and son. During the investigation it was determined that Mr I bought 5 apartments, one office space and one plot of land in his own name. He also bought 7 apartments and one vehicle in the names of his wife and son. From the testimony of the real estate sellers, the property was usually paid for in cash, in Euros.

In one instance Mr I applied for a loan with a bank in Croatia in order to buy the real estate, which loan was later repaid with the money he obtained by drug trafficking. Some of the illegally gained money was also used to invest in the construction of buildings in Zagreb.

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<sup>10</sup> Ibid., p. 77

The property was used by Mr I to set up a company, as well as a number of restaurants in Croatia, which he would later use to launder the money from future illegal profits.

**Example 8: Use of Smurfing, Cash, and Cashier's Cheques to Conceal the Illicit Source of Funds for the Purchase of Real Estate<sup>11</sup>**

The US attorney Mr P was convicted on a federal charge of money laundering for handling USD 177,500 in cash from a former client who is now facing prison for drug offences. Before the money laundering allegations came to light, Mr P served as defence attorney and had a lucrative side business as an agent for professional hockey players.

Mr J, the attorney's client, was targeted in a federal investigation in 2012 after authorities learned of his involvement in a large-scale drug organised crime smuggling operation spanning from California to Maine. The laundering was done through smurfing and during the investigation Mr P admitted that when he received more than USD 10,000 from Mr J at one time, he broke up the deposits into amounts under USD 10,000 to avoid the currency reporting requirements, which was in violation of federal law. The money was deposited into the attorney's escrow account and subsequently, cashiers' cheques were issued based on those deposits and used to partially cover the price of real estate bought jointly by Mr J and Mr P.

Although the real estate was bought jointly by Mr J and Mr P, they intentionally removed J's name from the paperwork toward the end of the transaction. To explain the smurfing, Mr P stated he did not want to file paperwork regarding the deposits. In addition to the above, Mr J purchased an interest in a sports agency owned by Mr P for \$250,000 paid in instalments of \$50,000 in cash, all delivered in backpacks.

**Realisation of Value or Utility for the Benefit of the Perpetrators of ML/FT**

In addition to the placement and layering of funds for the purposes of money laundering or the financing of terrorism, criminals must also eventually integrate the proceeds of crime into the legitimate economy. In this regard, real estate transactions may be used as part of the ML/FT process itself, and they may also be used to facilitate ongoing criminal activity. An example of the later has already been provided (Example 7), in which the members of an organised crime group purchased property with which they set up a company and restaurants, which they intended to use for the laundering of future illicit proceeds. Below are further examples illustrating the typologies associated with these activities.

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<sup>11</sup> Ibid., p. 82

**Example 9: Use of Successive Transactions for ML Purposes**<sup>12</sup>

A lawyer created several companies the same day (with ownership through bearer shares, thus hiding the identity of the true owners). One of these companies acquired a property that was an area of undeveloped land. A few weeks later, the area was re-classified by the town hall where it is located so that it could be urbanised.

The lawyer came to the Property Registry and in successive operations, transferred the ownership of the property by means of the transfer of mortgage loans constituted in entities located in offshore jurisdictions.

With each succeeding transfer of the property, the price of the land was increased. The participants in the individual transfers were shell companies controlled by the lawyer. Finally the mortgage was cancelled with a cheque issued by a correspondent account. The cheque was received by a company different from the one that appeared as acquirer on the deed (cheque endorsement). Since the company used a correspondent account exclusively, it can be concluded that this company was a front company set up merely for the purpose of carrying out the property transactions.

After investigation it was learned that the purchaser and the seller were the same person: the leader of a criminal organisation. The money used in the transaction was of illegal origin (drug trafficking). Additionally, in the process of reclassification, administrative anomalies and bribes were detected.

**Example 10: Purchase of Real Estate with Illicit Funds for the Establishment of a Restaurant**<sup>13</sup>

An Asian national had purchased real estate in order to start a restaurant that he had financed by a mortgage at Bank A. This mortgage was repaid by transfers from an account opened with Bank B in name of his spouse. Within one year his spouse's account was credited by cash deposits and debited by cash withdrawals, as well as transfers to Bank A.

On the debit side of the account, there were also various transfers to China in favour of a natural person, as well as the repayment of the mortgage by transfers from an account

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<sup>12</sup> *Money Laundering & Terrorist Financing through the Real Estate Sector*, FATF, June 2007, p. 18.

<sup>13</sup> *Ibid.*, p. 27



opened with another bank in name of his spouse. The main individual involved was known to be part of network that illegally smuggled foreign workers to Europe.

### **Indicators of Suspicious Transactions in the Real Estate Sector**

From the examples provided above, it can be seen that the techniques used in exploiting the real estate sector for the purposes of ML/FT are numerous, constantly evolving, and in many cases are specific to the particularities of a given real estate market. The following list of indicators of potentially suspicious transactions is therefore by no means exhaustive. Real estate professionals are also reminded that the presence of one or more of the indicators below does not necessarily mean that a transaction involves ML/FT; however, it is an indication that enhanced due diligence or further investigation may be required, so that an appropriate determination can be made by the DNFBP's appointed compliance officer as to whether the transaction is suspicious or not.

### **Indicators of the Possible Concealment of the True Beneficial Owner**

The Physical Person Customer:

- Is reluctant or refuses to provide personal information.
- Is reluctant, unable, or refuses to explain:
  - their business activities and corporate history;
  - the identity of the beneficial owner;
  - their source of wealth/funds;
  - why they are conducting their activities in a certain manner;
  - who they are transacting with;
  - the nature of their business dealings with third parties (particularly third parties located in foreign jurisdictions).
- Insists on the use of an intermediary (either professional or informal) in all interactions, without sufficient justification.
- Actively avoids personal contact without sufficient justification.
- Is a foreign national with no significant dealings in the country, and no clear economic or other rationale for a real estate transaction in the country.
- Refuses to co-operate or provide information, data, and documents usually required to facilitate a transaction.
- Makes unusual requests (including those related to secrecy) of the real estate agency, brokerage, or its employees.

- Is a politically exposed person, or has familial or professional associations with a person who is politically exposed.
- Is conducting a transaction which appears incompatible with their socio-economic, educational, or professional profile, or about which they appear not to have a good understanding.
- Is the signatory to company accounts (especially multiple companies) without sufficient explanation.
- Is interested in foreign company formation, particularly in jurisdictions known to offer low-tax or secrecy incentives, without sufficient commercial explanation.
- Takes an unusual interest in assisting or helping to facilitate the business arrangements of the other party to the transaction.

The Legal Person or Legal Arrangement Customer:

- Cannot demonstrate a history or provide evidence of real activity.
- Cannot be found on the internet or social business network platforms (such as LinkedIn or others).
- Is registered under a name that does not indicate the activity of the company, or that indicates activities different from those it claims to perform.
- Is registered under a name that appears to mimic the name of other companies, particularly high-profile multinational corporations.
- Uses an email address with a public or non-professional domain (such as Hotmail, Gmail, Yahoo, etc.).
- Is registered at an address that does not match the profile of the company, or that cannot be located on internet mapping services (such as Google Maps).
- Is registered at an address that is also listed against numerous other companies or legal arrangements, indicating the use of a mailbox service.
- Has directors or controlling shareholder(s) who cannot be located or contacted, or who do not appear to have an active role in the company, or where there is no evidence that they have authorised the transaction.
- Has directors or controlling shareholder(s) and/or beneficial owner(s) who are also found to be representatives of other legal persons or arrangements, indicating the possible use of professional nominees.

- Has an unusually large number of beneficiaries and other controlling interests, or has authorised numerous signatories for the transaction without sufficient explanation or business justification.
- Is incorporated or established in a jurisdiction that is considered to pose a high money laundering or terrorism financing risk.
- Is incorporated/established in a jurisdiction that does not require companies to report beneficial owners to a central registry.
- Has a complex corporate structure that does not appear to be necessary or that does not make commercial sense.

The Physical or Legal Person/Arrangement Customer:

- Conducts an unusual number or frequency of transactions in a relatively short time period.
- Asks for short-cuts or excessively quick transactions, even when it poses an unnecessary business risk or expense.
- Requires introduction to financial institutions to help secure banking facilities.
- Makes deposits or other payments from multiple accounts or sources.
- Appears to engage multiple professionals in the same country to facilitate the same (or closely related) aspects of a transaction without a clear reason for doing so.
- Provides falsified records or counterfeit documentation.
- Is a designated persons or groups (i.e. is on a Sanctions List).

The transaction:

- Involves the use of a large sum of cash, without an adequate explanation as to its source or purpose.
- Appears to be between parties with a questionable connection, or generates doubts that cannot be sufficiently explained by the customer.
- Appears to be between two or more parties that are connected without an apparent business or trade rationale.
- Is a business transaction that involves family members of one or more of the parties without a legitimate business rationale.

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- Involves a repeat transaction (including repetitive financial arrangements) between parties over a contracted period of time.
- Is financed by a non-financial institution third party, whether a natural or a legal person, with no logical explanation or commercial justification.
- Loans are received from private third parties without any supporting loan agreements, collateral, or regular interest repayments.
- Involves funds received from a legal entity which subsequently goes into liquidation or receivership, or is struck off the register (either voluntarily or compulsorily).
- Is executed from a business account but appears to involve personal purchases or sales.
- Involves complicated transaction routings without sufficient explanation or trade records.
- Involves the transfer of real property from a natural to a legal person in an off-market sale.
- Involves the use of multiple large cash payments to pay down a loan or mortgage.
- Involves the early repayment of a loan or mortgage (especially when penalties or losses are involved).
- Includes contractual agreements with terms that are unusual or that do not make business sense for the parties involved.
- Involves funds that are sent to, or received from, a foreign country when there is no apparent connection between the country and the client, and/or which are sent to, or received from, a low-tax offshore jurisdiction or one that is considered to pose a high ML/FT risk.
- Involves property purchased with cash, which is then used as collateral for a loan within a short period of time.
- Involves the unexplained use of powers-of-attorney or other delegation processes (for example, the use of representative offices).
- Involves persons residing in tax havens or High-Risk Countries, when the characteristics of the transactions match any of those included in the list of indicators.
- Is carried out on behalf of minors, incapacitated persons or other categories of persons who appear to lack the mental or economic capacity to make such decisions.

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- Involves persons who are being tried or have been sentenced for crimes or who are publicly known to be linked to criminal activities, or who are associated with such persons.
- Involves several transactions which appear to be linked, or which involve the same parties or those persons who may have links to one another (for example, family ties, business ties, persons of the same nationality, persons sharing an address or having the same representatives or attorneys, etc.).
- Involves recently created legal persons or arrangements, when the amount is large compared to the assets of those legal entities.
- Involves foundations, cultural or leisure associations, or non-profit-making entities in general, when the characteristics of the transaction do not match the goals of the entity.
- Involves legal persons which, although incorporated in the country, are mainly owned by foreign nationals, who may or may not be resident for tax purposes.
- Involves the contribution of real estate to the share capital of a company which has no registered address or permanent establishment in the country.
- Shows signs, or it is certain, that the parties are not acting on their own behalf and are trying to hide the identity of the real customer.
- Involves unexplained last-minute changes involving the identity of the parties (for example, it is begun in one individual's name and finally completed in another's without a logical explanation for the name change, such as the sale or change of ownership of the purchase or option to purchase a property which has not yet been handed over to the owner, or the reservation of properties under construction with a subsequent transfer of the rights to a third party, etc.) and/or the details of the transaction (such as the amount or property valuation) and/or the details of the financing (for example, a mortgage is arranged, but cash is used as the final payment method).
- Involves circumstances in which the parties:
  - Do not show particular interest in the characteristics of the property (e.g. quality of construction, location, date on which it will be handed over, etc.);
  - Do not seem particularly interested in obtaining a better price for the transaction or in improving the payment terms;
  - Show a strong interest in completing the transaction quickly, without there being good cause;
  - Show considerable interest in transactions relating to buildings in particular areas, without caring about the price they have to pay.
- Involves parties who are foreign or non-resident for tax purposes and:

- Their only purpose is a capital investment (that is, they do not show any interest in living at the property they are buying or leasing, even temporarily, etc.);
- They are interested in large-scale operations (for example, to buy large plots on which to build homes, buying complete buildings or setting up businesses relating to leisure activities, etc.).
- Is performed through intermediaries, when they act on behalf of groups of potentially associated individuals (for example, through family or business ties, shared nationality, persons living at the same address, persons with similar last names, etc.).
- Is carried out through intermediaries acting on behalf of groups of potentially affiliated legal persons (for example, through family ties between their owners or representatives, business links, the fact that the legal entity or its owners or representatives are of the same nationality, that the legal entities or their owners or representatives use the same address, that the entities have a common owner, representative or attorney, or in the case of entities with similar names, etc.).
- Takes place through intermediaries who are foreign nationals or individuals who are non-resident for tax purposes.

#### The Means of Payment:

- Involves cash or negotiable instruments which do not state the true payer (for example, bank drafts, cashier's cheques, or the endorsement of a third-party cheque), especially where the amount of such instruments is significant in relation to the total value of the transaction.
- Is divided in to smaller parts with a short interval between them.
- Involves doubts as to the validity of the documents submitted with loan applications.
- Involves a loan granted, or an attempt to obtain a loan, using cash collateral, especially when this collateral is deposited abroad.

#### Other:

- The transaction involves a private contract, where there is no intention to notarise or register the contract, or if when this intention is expressed, it does not finally take place.
- There is a cancellation of the contract, especially in disregard of a clause penalising the buyer with loss of the deposit if the sale does not go ahead, or when the cancellation is agreed in a separate document, leaving the parties in possession of the original contract.
- There are subsequent additional transactions relating to the same property or rights that follow in rapid succession (for example, purchase and immediate sale of property) and

which entail a significant increase or decrease in the price compared with the original purchase price.

- The agreed value is significantly different (much higher or much lower) from the real value of the property or differs markedly from market values.
- The transaction involves property development in an area considered to be high-risk for economic, environmental, or other reasons.
- The customer requests the recording of the sale of a building plot followed by the recording of the declaration of a completely finished new building at the location at an interval less than the minimum time needed to complete the construction under the specific circumstances.