Financial Intelligence Centre

ASSESSMENT OF THE INHERENT MONEY LAUNDERING AND TERRORIST FINANCING RISKS

ESTATE AGENTS

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1. INTRODUCTION

Money laundering can be described as the process whereby criminals attempt to conceal the proceeds of their criminal activities from the actual crime, thereby giving the funds derived from criminal activities an appearance of legitimacy.

This may be done by investing in different immovable and movable assets. Estate agencies are one of the sectors identified by the international anti-money laundering community as being potentially vulnerable for money laundering. Terrorist financing is the process by which individual terrorists and terrorist organisations obtain funds to commit acts of terrorism.

In 2019, the Financial Intelligence Centre (FIC) conducted its first risk assessment of the inherent money laundering and terrorist financing (ML and TF) risks affecting the estate agency sector in South Africa. During this process, estate agencies were surveyed to ascertain their views on their sector's vulnerability to money laundering and terrorist financing. Although a survey was not sent to the sector to update their risk assessment, it must be noted that the FIC implemented a self-assessment ML and TF tool, in the form of the "risk and compliance return". This is a compulsory questionnaire to be completed by all accountable institutions in the category of designated non-financial businesses and professions (DNFBPs), of which estate agentcies are a part. The FIC is in the process of assessing the inputs on the questionnaires.

This updated report is based on the feedback provided in 2019 and also open-source information on national and international money laundering risks in the estate agents' sector. In addition, the FIC's regulatory knowledge of the sector and the analysis of the regulatory reports submitted by the estate agents' sector to the FIC are also considered.

The report offers valuable insights for the sector, its relevant supervisory body, the Property Practitioners Regulatory Authority, previously the Estate Agency Affairs Board (EAAB), and the FIC. While it is understood that the ML and TF environment may change from time to time, the risks identified from the survey feedback and from other sources are significant observations, which is expected to assist the sector in having a better understanding of their ML and TF risks.

2. SCOPE, LIMITATIONS AND METHODOLOGY OF THE RISK ASSESSMENT

This sector risk assessment principally addresses the inherent money laundering risks facing the estate agents' sector pertaining to products, services, clients, transactions, delivery channels, and geographical location, as well as the terror financing risk. Although it is recognised that these risks could be mitigated by introducing processes and procedures in accordance with the requirements and obligations of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001) (FIC Act), such mitigation factors were not included in this report.

3. OVERVIEW OF THE SECTOR AND LEGISLATIVE FRAMEWORK PERTAINING TO THE FIC ACT

3.1. Nature and regulation of the sector

3.1.1. There are several types of property, each with a unique purpose and utility. The main categories of property transactions include undeveloped land, residential, commercial (office and retail), industrial and agricultural. Estate agencies are involved in selling and buying, as well as the renting of properties on behalf of the property owners or acting on behalf of purchasers.

3.1.2. In terms of the previous Estate Agency Affairs Act, 1976 (Act 112 of 1976) (EAA Act) all estate agents and agencies were required to register with the Property Practitioners Regulatory Authority (PPRA) – previously known as the Estate Agency Affairs Board (EAAB). This Act has been replaced by the Property Practitioners Act 2019 (Act 22 of 2019) (PP Act). Although the scope of the PP Act is wider than that of the now withdrawn EAA Act, it must be noted that item 3 of Schedule 1 of the FIC Act has not as yet been amended and therefore the FIC Act currently only applies to those property practitioners that were previously included under the definition of estate agents in the EAA Act. This sector risk assessment report will refer to those practitioners as "estate agentcies" or "estate agents". Schedule 1 of the FIC Act will be amended to provide for the legislative amendments applicable to estate agents. In the meantime, the FIC has published public compliance communication (PCC) 56 to explain the FIC Act's interpretation if property practitioners during the interim period.

Estate agencies in South Africa include persons and institutions who, as a regular feature of their business and on behalf of another person, buy and/or sell immovable property, let or lease immovable property, or collects or receives monies in respect of the purchase or lease of immovable property.

3.1.3. Role players in the sector can vary from large institutions with different branches and/or subsidiaries, to small family-operated businesses. While the large institutions usually operate through branches and/or franchises in different geographical areas, the smaller agencies often operate in a limited geographical area. Accordingly, the ML and TF risks of these various role players differ considerably.

3.1.4. Upon their successful registration, the PPRA annually issues estate agencies a Fidelity Fund Certificate (FFC), which allows estate agencies to conduct the business of an estate agency. Currently FFCs are valid for a calendar year. Estate agency firms are audited annually on their compliance with the PP Act and sections 28 and 43B of the FIC Act.

4. INTERNATIONAL MONEY LAUNDERING RISKS, AND TERRORIST AND PROLIFERATION FINANCING RISKS ASSOCIATED WITH ESTATE AGENCIES

4.1. Investment in property provides a stable, high-value and secure asset, and is therefore a popular investment choice for both law-abiding citizens and criminals. Laundering money through property transactions easily integrates illicit funds into the legal economy, while providing a safe and often lucrative investment. It allows for criminals to enjoy assets and, in some instances, derive an income from their investment, while still camouflaging the origin of the illicit money used for payment or rental of properties.

4.2. Purchasing or renting property is internationally recognised as a practice employed by criminals to launder the proceeds of crime. In South Africa, property transactions usually create an audit trail involving banks, estate agencies and attorneys through conveyancing. The involvement of the other financial role players means that estate agencies seldom receive funds and do not register property. In most instances, they act as agents for their clients, who can either be the sellers, buyers or renters. Although there are also other accountable institutions involved, it must be noted that estate agents are, in most instances, the first person (and accountable institution) in contact with the client in the process of acquiring, selling or renting property.

4.3. Internationally, criminals use different techniques to launder the proceeds of their illegal activities through property transactions. This includes cash or opaque financing schemes, over-valuing or under-valuing the price of properties, using false documentation and/or cancelling property transactions with a request for a refund of deposits paid. In addition, non-transparent companies as well as trusts or third parties are often used by criminals to hide the identity of the true owners.

4.4. Geographical factors such as the distance between the property and the buyer can also be regarded as a possible indicator of the laundering of criminal funds. In most instances there are no international restrictions to purchasing property across borders, and money can often flow through more than one jurisdiction in this way. Often this occurs via a jurisdiction with less stringent money laundering controls.

4.5 Money laundering via the property sector can impact negatively on the economy of a country, region or even a suburb. It can lead to distortions in property prices because of criminals being willing to pay in excess of market value. Similarly, the rental market can also be distorted because criminals are willing to pay a higher rent for a property from which they can engage in criminal activities, including possible terrorist activities. In this way, ordinary citizens are precluded from being able to afford renting or owning immovable property in certain regions or neighbourhoods.

4.6 To determine the existence of the risk of money laundering, estate agencies need to conduct a thorough assessment of property transactions based on their client's profile. Such an assessment may provide indications that raise red flags and trigger estate agencies to submit regulatory reports as required by the FIC Act. In turn, this will alert the FIC to potential criminal activities taking place.

5. REPORTING BY ACCOUNTANTS UNDER THE FIC ACT

5.1. The volume of reports received from estate agencies

5.1.1. Over the past five years – from April 2018 to March 2023 – a total of 36 653 cash threshold reports (CTRs[1]) were filed by estate agents at an average of 7 331 per year. It must be noted that the threshold amount for the filing of CTRs were increased from R24 999.99 to R49 999.99 with effect from November 2022, which explains the drop in the number of CTR reports filed at the end of the 2022/23 financial year. During the same period, estate agents filed 926 suspicious and unusual transaction reports (STRs[2]) at an average of 185 per year.

The number of regulatory reports filed by estate agents with the FIC in each financial year from 2018 to 2023 is depicted in Table 1, below.

Table 1: Regulatory reports filed by estate agents

Reports filed	2018/19	2019/20	2020/21	2021/22	2022/23	Total	Average number of reports
CTRs	5032	11 351	6 128	10 340	3 802	36 653	7 331
STRs	71	214	162	227	252	926	185

5.2. Types of reports filed

The majority of reports filed to the FIC have been CTRs. This indicates that cash (in the form of notes and coins) is still being used in the sector. This is especially relevant in the rental of business and office space.

[1] Reports on cash transactions exceeding R49 999.99
[2] Reports on transactions that are regarded as unusual or suspicious, as explained in section 29(1) of the FIC Act

6. RISKS BASED ON THE RESULTS OF THE 2019 QUESTIONNAIRE AND RESEARCH

The risk factors used in this report align with those used in the FIC's Guidance Note 7A which also includes a reference to the risk of terrorist financing. Guidance Note 7A is available on www.fic.gov.za. Estate agents must consider these factors when conducting their daily business.

6.1. Products and services risks

6.1.1. Certain products and services are regarded as being of higher risk for money laundering purposes.

6.1.2. Estate agents can provide services in respect of sales and rental of different types of properties such as residential, undeveloped land, commercial (office and retail), agricultural and industrial. The money laundering risks associated with these different types of properties may vary considerably.

6.1.3. The method of payment for property is an important criterion that can point to the possible laundering of proceeds of crime. In instances where bonds are not obtained to fund property transactions, or large amounts are paid as deposits on properties, estate agents should ask additional questions to obtain clarity from their clients on their source of funding or consider submitting STRs to the FIC.

6.1.4. The deal value of property transactions might also be an indication that proceeds of crime could possibly be involved in transactions. Internationally, crime syndicates often invest in high-value property. Estate agencies in South Africa that deal with high-value properties should take steps to obtain information on their client's source of funds and test affordability in respect of their client's profile. They must be vigilant in situations where a seller insists on a particular selling price which is not market related and then suddenly a buyer emerges who is willing to pay the exact or similar purchase price.

6.1.5. In respect of rentals, agencies should be aware of the purpose for which the property is required, whether the rental required and paid is market-related, whether rental payments are made in advance and/or whether there are requests for cancellation of transactions and refunds of monies already paid.

6.2. Client risks

6.2.1. Listed as accountable institutions under the FIC Act, estate agencies are required to rate the money laundering risks associated with their clients. Some clients, such as foreign politically exposed persons (FPEPs) and domestic politically exposed persons (DPEPs), and complex legal structures and foreigners, pose a potentially higher risk for money laundering. The establishment of complex structures, involving legal arrangements such as companies, trusts and partnerships could be aimed at concealing the identities of the ultimate beneficial owner of such legal arrangements. This can manifest whether the clients act as sellers or purchasers, or landlords or tenants.

6.2.2. When dealing with their clients, estate agents should be aware of, among other aspects, the following scenarios that could point to money laundering:

- Clients trying to conceal their identity
- Transactions inconsistent with client's stated income or occupation
- Clients making use of an unusual source of funds to transact
- Properties sold or bought at prices that do not correspond with the market value of the property
- Transactions without legitimate reasons
- Clients that cease their business relationships upon a request for customer due diligence information
- Deposits paid by third parties
- Buying property in the name of a third party for no valid reason.

6.3. Transaction risks

In addition to considering whether a transaction makes economic and/or business sense and whether the prices of the properties are market related, an estate agency must also consider the use of cash in the buying and renting of properties. In South Africa cash is still used to a large extent, which is evident by the number of CTRs the FIC has received over the past five years, as mentioned under paragraph 5.1. In addition to the receipt of cash in their own trust accounts, estate agencies should also be aware of instances where cash is paid into the trust accounts of conveyancing attorneys in respect of transactions where they acted as an agent for the buyer, seller or landlord.

6.4. Risks relating to delivery channels

6.4.1. An estate agent is most often the first point of contact in a property transaction while others in the value chain such as attorneys or finance providers become involved after the estate agent has facilitated the transaction. It is, however, possible that an estate agent could make use of another person or entity to market or promote its services or use an alternative delivery channel such as the internet or social media. In such instances, the estate agent must be aware of the potential higher money laundering risks associated with the use of alternative delivery channels due to the possibility that parties to the transaction may conceal their identities.

6.4.2. Not meeting clients face-to-face or having other persons acting on behalf of clients, may also hamper the customer due diligence process and conceal the true identity of the client. In such instances, estate agents must take extra care to ensure that the parties to the transactions are identified and their identities verified.

6.5. Geographic risk

6.5.1. Some jurisdictions pose a higher risk for money laundering. It is important that estate agents are aware of the risks posed by clients from these jurisdictions and that they have the necessary risk mitigation processes in place. This risk is exacerbated by property transactions taking place across regions and national jurisdictions.

6.5.2. The geographic location of estate agencies and the properties they market are also important factors that determine the ultimate money laundering risks to the estate agency. International experience has shown that criminals are attracted to high-value properties. Estate agencies must therefore be vigilant when conducting business that deals in high-value property. It is a known that, in South Africa record high prices have been paid recently for properties in certain Cape Town suburbs, such as in Constantia and on the Atlantic Seaboard, as well as other Western Cape towns like Stellenbosch and Franschhoek. Such properties are often acquired by international buyers who are aided by the decline in the value of the South African currency. Estate agents involved in such transactions must take the necessary additional steps to mitigate and manage the ML and TF risks pertaining to clients and geographic areas as explained in this report. (Annexure A below provides additional information on this trend)

6.5.3. Estate agents must also be aware of the potential higher risks posed by foreign clients, in particular from the following jurisdictions:

- Countries that are subject to a travel ban
- Countries regarded by the Financial Action Task Force as being of high risk for money laundering
- Countries that are regarded as high-secrecy jurisdictions
- Countries or jurisdictions regarded as tax havens.

6.6. Terrorist financing and proliferation financing risks

6.6.1. Where estate agencies conduct business with non-profit and non-governmental organisations, they should ensure that the funds used and the properties involved are in accordance with the stated objectives of these organisations.

6.6.2. Estate agents should also be aware of the appropriate compliance obligations referred to in sections 28A and 26A of the FIC Act. Estate agents must know how to access the referenced lists of persons and institutions that are subject to United Nations Security Council sanctions and determine whether they are conducting business with individuals and institutions on such lists.

6.6.3. Estate agencies should be aware of landlords who give instructions to pay their monthly rental income to third parties.

6.6.4 Enquiries for properties from offshore clients or local clients with offshore operations may possibly carry a higher risk for TF and financing the proliferation of weapons of mass destruction, depending on the nature of the client's business and their geographic location. Estate agencies must understand the international risks relating to TF and the areas that are regarded as higher risk areas and must take the necessary steps to mitigate and manage these risks.

6.6.5 Clients that are involved in the manufacturing or distribution of any product that may be used in the proliferation of weapons of mass destruction or that are exporting to countries regarded as high risk for such activities, including countries that are geographically close to high-risk countries, should be considered for enhanced due diligence. This requirement is of particular importance for estate agents that are involved in rental transactions and in transactions that involve commercial properties.

7 INDICATORS OF MONEY LAUNDERING AND TERRORIST FINANCING ACTIVITY FOR THE SECTOR

The FIC has compiled the risk indicators based on information from the Financial Action Task Force[3], as well as analysis of regulatory reports received from the estate agency sector.

- Customer is reluctant or refuses to produce personal identification documents for the transaction to be completed
- Customer pays rent in advance and thereafter requests a refund
- Customer makes a substantial down payment in cash and balance is financed by an unusual source, such as, a third party or private lender
- Purchases carried out on behalf of any natural person who appears to lack the economic capacity to make such purchases
- Customer is known to have a criminal background
- Customer uses or produces identification documents with different names
- Customer does not want to put their name on any document that would connect them to the purchase or rental
- Customers concerned that they may be reported to the FIC
- Customer may appear to want to finalise the purchase as a matter of urgency
- The purchase price appears to be beyond the customer's means based on their stated or known occupation and/or income

[3] The Financial Actions Task Force is the international standard setting body for money laundering and terrorist financing control. South Africa is a member of the Financial Actions Task Force and has to comply with its standards.

- Structuring cash deposits below the reporting threshold, or purchasing properties with sequentially numbered checks or money orders
- Accepting third-party payments, particularly from jurisdictions with ineffective or weak money laundering controls
- Customers renting property are hesitant to allow the agent access to the property or appears to be hiding something.

8 CONCLUSIONS

8.1 Based on international experience and the risk factors described above, it is evident that estate agents are at high risk of potentially being exposed to money laundering. They should therefore take all necessary precautions to reduce their risk of exposure to being abused by criminals who want to launder their proceeds of crime through the sector or from clients seeking to use the proceeds of transactions for the financing of terrorist activities or being involved in the proliferation of weapons of mass destruction.

8.2 Overall, risk of money laundering for the estate agency sector in South Africa, based on national and international experience is classified as high and the inherent terrorist financing risk is regarded as low.

Annexure A

Case Study – International buyers of Cape Town properties [4]

International buyers are acquiring Cape Town properties as 2023 sales exceed 2021 and 2022.

Economic and geopolitical challenges have driven European and other foreign buyers to Cape Town, to take advantage of South Africa's currency.

Foreign buyers have been shown to be from the United Kingdom, Germany, France, Netherlands, as well as an increase in Russian and American buyers.

Camps Bay has been a preferred property investment location for international and South African expat buyers since the COVID-19 pandemic and when the Russia-Ukraine war broke out.

The Atlantic seaboard and city bowl have proven to be the most lucrative. Sales recorded in May and July 2023 amounted to approximately R220 million.

[4] International buyers snatch prime Cape Town properties | The Citizen