



# Financial Intelligence Unit

## Government of the Cook Islands

### Financial Transactions Reporting Act 2017 Practice Guideline for Real Estate Agents

#### 1. Introduction

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The purpose of this document is to provide guidance specifically for the real estate sector.

This document is designed to assist you with your Anti Money Laundering and Terrorist Financing (AML/CFT) obligations and should be read in conjunction with the Financial Transactions Reporting Act 2017 (FTRA), the Financial Transactions Reporting Regulations 2017 (Regulations) and the Practice Guidelines for the Financial Transactions Reporting Act 2017 (Guidelines).

It should be noted these guidelines are not law and do not constitute legal advice. They should not be relied upon as evidence of you complying with your obligations under the FTRA and the Regulations. You should seek your own independent legal advice on the interpretation and requirements of the FTRA and the Regulations.

If you have any questions or require more information concerning these guidelines, the FTRA, the Regulations and the Guidelines please contact the Financial Intelligence Unit.

#### 2. Who has obligations under the FTRA?

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As a person who carries on business in the real estate sector (“real estate agent”) you are captured by the FTRA if you undertake any of the following activities:

- Bringing together, or taking steps to bring together, the vendor and a prospective purchaser (this means doing more than merely facilitating the advertisement of real estate);
- Negotiating as to the terms of the sale with the vendor or a prospective purchaser;
- Acting as an auctioneer.

The activities above relate to the sale, or proposed sale, of real property in accordance with Cook Islands land tenure system.

The FTRA is not intended to capture:

- people who rent or let homes, holiday homes or accommodation.
- the statutory or customary processes relating to alienation, determination of interests and entitlements of native freehold land.

### 3. What are your obligations under the FTRA?

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You must develop internal policies, procedures, controls and systems to ensure the following obligations are met:

- internal compliance programme and risk assessments under Part 2, including;
  - appointing a Money Laundering Reporting Officer (MRLO) to oversee your compliance programme;
  - training employees to be aware of the policies, procedures and audit systems adopted by your organisation to deter money laundering and the financing of terrorism;
  - screening directors and key employees before appointing them; and
  - establishing an internal review function to test the effectiveness of your compliance programme and its compliance with the FTRA.
- customer due diligence including identifying Politically Exposed Persons (PEPs) and record keeping under Part 3;
- reporting of cash transactions and suspicious activities under Part 4.

Please refer to the Guidelines for further information and assistance in relation to each of the obligations mentioned above.

### 4. What are some of the risks specific to the Real Estate Sector?

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Guidance in relation to risk assessments is provided under the FTRA practice guidelines. While the Cook Islands land tenure system means the risks faced by the sector is generally lower than in other jurisdictions, it does not mean there is no risk at all. **This section aims to provide further guidance to the risks faced by the real estate sector generally.**

In many jurisdictions the services of the real estate sector may be used by money launderers to provide an additional layer of legitimacy to the criminal's financial arrangements, especially where the sums involved may be larger.

Real estate is a relatively stable and safe investment which has the capacity to generate returns or capital appreciated much more effectively than much of the securities market. This makes real estate an attractive and sound investment for those seeking a return on their money. As a direct consequence of this, the real estate market is an attractive place for money launderers to integrate or layer their assets. Real estate agents are in a unique position to deal with the customer and develop much more of a relationship with that customer than a bank or legal professional, as such they are in a position to be able to identify unusual or suspicious behaviour and file appropriate disclosures.

The use of real estate to launder money appears to afford criminal organisations three key advantages:

- it allows them to introduce illegal funds into the legitimate economy;
- earning of additional profits through rental income or purchase and resale; and
- in some cases obtaining tax advantages (such as rebates, subsidies, etc.).

Some areas within the real-estate sector are more attractive than others for money laundering purposes. This makes the task of hiding the funds of illegal origin in the total volume of transactions easier. The real estate sector offers numerous possibilities for money laundering, however the areas identified as being of the highest risk include:

- hotel businesses;
- construction/development firms; and;

- development of public or tourist infrastructure (especially luxury resorts).

In many overseas jurisdictions studies have shown the over-valuation or under-valuation of real estate presents a particular vulnerability of money laundering. This technique consists of buying or selling property at a price above or below its market value. This process should raise suspicion, as should the successive sale or purchase of properties with unusual profit margins.

## 5. High Risk Indicators

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As with all types of risk assessment, a holistic approach should be applied and the indicators below should be taken into consideration along with following factors

- The customer is:
  - evasive or over secretive about where the money is coming from;
  - avoiding personal contact without good reason;
  - known to have convictions for acquisitive crime, known to be currently under investigation for acquisitive crime or have known connections with criminals;
  - prepared to pay substantially higher fees than usual without legitimate reason;
  - using an unknown address or just a correspondence address (for example, a PO Box, shared office or shared business address, etc.), or where the details are believed or likely to be false;
  - hurrying along the transaction with no regard to added cost etc.; and / or; unexpectedly repays problematic loans or mortgages or who repeatedly pays off large loans or mortgages early, particularly if they do so in cash.
- The transaction involves:
  - persons who are being tried or have been sentenced for crimes or who are publicly known to be linked to criminal activities involving illegal enrichment, or there are suspicions of involvement in such activities and that these activities may be considered to underlie money laundering;
  - the use of monetary instruments i.e. the use of cash and/or cheques which do not state the true payer (for example, bank drafts), where the accumulated amount is considered to be significant in relation to the total amount of the transaction;
  - the use of unusual or unnecessarily complex legal structures without any economic logic;
  - the use of mortgage schemes inappropriately (e.g. obtaining mortgages and using illegal funds to repay the loan / interest), also use of front men /actors to obtain mortgages);
  - the use of complex loans / credit finance (e.g. back to back loan schemes, loan back schemes);
  - the use of non-finance professionals in the transaction i.e., sectors with possibly less regulation;
  - manipulation of the appraisal or valuation of a property followed by a succession of sales and purchases;
  - the party asking for the payment to be divided in to smaller parts with a short interval between them;
  - doubts as to the validity of the documents submitted with loan applications;
  - the buyer taking on debt which is considered significant in relation to the value of the property;

- 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;
- the parties not showing particular interest in characteristics of the property and / or;
- the use of investment schemes and financial institutions.
- There is an absence of documentation to support the customer's story, previous transactions or business activities.
- There are unexplained changes in instructions, especially at the last minute.
- The use of an intermediary without appropriate rationale.
- Transactions 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, etc.)

The above list is not exhaustive. New methods for laundering money and financing terrorism are constantly being developed. Typologies reports produced by the FIU are available on the FSC's website and you should contact the FIU for the latest information where you are uncertain or have questions on any risk matter.

## **6. When should you conduct Customer Due Diligence?**

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During the sale of real estate or property the customer in the transaction is typically the vendor and the real estate agent is required to undertake due diligence procedures on the them. However given the Cook Islands land tenure system, real estate agents should undertake customer due diligence on the person whom they consider is their customer whether vendor, purchaser or both.

If your customer is a native landowner(s)<sup>1</sup> wishing to sell a lease, then you are not required to undertake customer due diligence. If your customer is a foreign enterprise approved by the BTIB<sup>2</sup> and you have made enquiries and are satisfied that the BTIB has been given full disclosure of directors and shareholders and supporting documentation required in terms of its due diligence requirements then you only need to undertake simplified due diligence.

If a real estate agent considers there is suspicious activity in its dealings with any of its customers, you are still required to report a suspicious transaction in accordance with section 47.

## **7. Record Keeping**

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All copies of customer due diligence information and transactional information must be kept for a minimum period of 6 years from the date of the transaction or the end of an ongoing business relationship.

## **8. What must be reported to the FIU?**

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### **Suspicious Activity**

Any activity or requests by a client or intending client that appears to you to be unusual or suspicious in your experience with dealing with that client in particular or with clients

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<sup>1</sup> that is a person or persons with rights to the land on the basis of their familial or blood connection to that land as recognised by the Court or custom.

<sup>2</sup> Business Trade and Investment Board

generally must be reported to the FIU under section 47. The list in Part 5 above provides guidance as to the type and nature of transactions, events and circumstances that might give you reasonable cause to suspect an activity is suspicious.

### **Cash Transactions**

A purchase of any property or business in cash above the \$10,000 NZD threshold must be reported to the FIU in the required form and manner.

## **9. FIU's Approach to Compliance Monitoring & Enforcement**

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The FIU has a responsibility to ensure that all reporting institutions are complying with all legislative requirements under the FTRA. To do this, the FIU is being empowered under the Financial Intelligence Act 2015 (FIU Act) to examine your compliance with the FTRA. The FIU may request information from you, conduct on-site examinations and provide reports to you for this purpose.

The FIU is empowered under section 31 of the FIU Act to enforce compliance on reporting institutions that have failed to comply in whole or in part with any of the obligations under the FTRA, or have failed to undertake directives issued by the FIU to take remedial actions.

## **10. Penalties for Non-Compliance**

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Failure to comply without reasonable excuse may cause the FIU to bring legal proceedings including prosecution of which a penalty of up to \$250,000 or a term of imprisonment of up to 5 years may be applied to an individual, or penalty of up to \$1,000,000 for a body corporate.

## **11. FIU Contact**

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For further information about your obligations under the Act, or the FIU and its activities, or, contact the FIU Office on (682) 29182 or email: [intel@cifu.gov.ck](mailto:intel@cifu.gov.ck)

## **12. Other resources**

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- FATF Risk Based Approach GUIDANCE FOR REAL ESTATE AGENTS:

<http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20Guidance%20for%20Real%20Estate%20Agents.pdf>