Montserrat Financial Services Commission

Handbook for the Prevention and Detection of Money Laundering, the Financing of Terrorism and Proliferation Financing for the Real Estate Sector

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Sector Specific Guidance Real Estate Sector

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Foreword

A. What is Money Laundering?

Money Laundering is the process by which funds derived from criminal activity ("dirty money") are given the appearance of having been legitimately obtained, through a series of transactions in which the funds are 'cleaned'. Its purpose is to allow criminals to maintain control over those proceeds and, ultimately, provide a legitimate cover for the source of their income.

For money laundering to take place, first, there must have been the commission of a serious crime (also referred to as a predicate offence) which resulted in benefits/gains (illegal funds) to the perpetrator. The perpetrator will then try to disguise the fact that the funds were generated from criminal activity through various processes and transactions which may also involve other individuals, businesses and companies.

There is no one single method of laundering money. Methods can range from the purchase and resale of a luxury item (e.g., cars or jewellery) to passing money through legitimate businesses and "shell" companies.

A.1 The Stages of Money Laundering

The money laundering process is generally described as taking three stages. It is important to remember that the three stages are not necessarily sequential. For example, the laundering of the proceeds of corruption typically commences at the layering stage as the proceeds are already in the banking system and diverted through layering out of the hands of the rightful owner.

A.1.1 Placement

Criminally derived funds are brought into the financial system. In the case of drug trafficking, and some other serious crimes, such as robbery, the proceeds usually take the form of cash which needs to enter the financial system. Examples of placement are depositing cash into

bank accounts or using cash to purchase assets. Techniques used include Structuring – breaking up a large deposit transaction into smaller cash deposits and Smurfing – using other persons to deposit cash.

A.1.2 Layering

This takes place after the funds have entered into the financial system and involves the movement of the funds. Funds may be shuttled through a complex web of multiple accounts, companies, and countries in order to disguise their origins. The intention is to conceal and obscure the money trail in order to deceive Law Enforcement Agencies and to make the paper trail very difficult to follow.

A.1.3 Integration

The money comes back to criminals "cleaned", as apparently legitimate funds. The laundered funds are used to fund further criminal activity or spent to enhance the criminal's lifestyle. Criminals may use services to assist in investment in legitimate businesses or other forms of investment, to buy a property, set up a trust, acquire a company, or even settle litigation, among other activities.

Successful money laundering allows criminals to use and enjoy the income from the criminal activity without suspicion.

B What is Financing of Terrorism?

Financing of Terrorism is the process by which funds are provided to an individual or group to fund terrorist activities. Unlike money laundering, funds can come from both legitimate sources as well as from criminal activity. Funds may involve low dollar value transactions and give the appearance of innocence and a variety of sources. Funds may come from personal donations, profits from businesses and charitable organizations e.g., a charitable organization may organise fundraising activities where the contributors to the fundraising activities believe that the funds will go to relief efforts abroad, but, all the funds are actually transferred to a terrorist group.

Funds may come, as well as from criminal sources, such as the drug trade, the smuggling of weapons and other goods, fraud, kidnapping and extortion.

Unlike money laundering, which precedes criminal activity, with financing of terrorism you may have fundraising or a criminal activity generating funds prior to the terrorist activity actually taking place.

However, like money launderers, terrorism financiers also move funds to disguise their source, destination and purpose for which the funds are to be used. The reason is to prevent leaving a trail of incriminating evidence - to distance the funds from the crime or the source, and to obscure the intended destination and purpose.

1 Introduction

Criminals have sought other means to convert their proceeds of crime as a response to the anti-money laundering and prevention of financing measures taken by the traditional financial sector over the past decade. Professionals such as Realtors, who facilitate transactions such as property purchase and sale have, in some jurisdictions, been used as a conduit for criminal property to enter the financial system.

The real estate sector in the Montserrat should be on guard to ensure that it is not used as such a conduit. In particular, criminals and money launderers may try to exploit the services offered by Realtors, through the business of undertaking property transactions.

In response to the changing landscape of money laundering and terrorist financing, inter-governmental and international standard setting organisations, notably the Financial Action Task Force (FATF) and the Caribbean FATF (CFATF) styled body have extended the scope of recommended prevention measures. FATF recommendations now include Anti-Money Laundering and Combating Terrorist Financing responsibilities to a group of businesses and professions collectively named as Designated Non-Financial Businesses and Professions. (Referred to as DNFBP). On Montserrat, DNFBPs encompass Lawyers, Accountants, Real Estate Agents and Dealers in High Value Goods.

The FATF, has found that globally Realtors are susceptible to being used not only in the layering and integration stages of money laundering, as has been the case historically, but also as a means to disguise the origin of funds before placing them into the financial system. Realtors are often the first professionals consulted for property dealing advice.

The FATF characterises Realtors as “Gatekeepers” because they “protect the gates to the financial system,” through which potential users must pass in order to succeed. The term also includes professional experts who provide financial expertise to launderers, such as, lawyers, accountants, tax advisers, and trust and service company providers. The FATF has noted that gatekeepers are a common element in complex money laundering schemes. Gatekeepers’ skills are important in

identifying legal structures that could be used to launder money and for their ability to manage and perform transactions efficiently and to avoid detection.

Montserrat has adopted the international standards to guard against money laundering and terrorist financing and has integrated the requirements into the legal and regulatory system.

Realtors are key professionals in the business and financial world, facilitating vital property transactions that underpin the Montserrat economy. As such, they have a significant role to play in ensuring that their services are not used to further a criminal purpose. As professionals, Realtors must act with integrity and uphold the law, and they must not engage in criminal activity.

The continuing ability of the Montserrat financial services industry to attract legitimate clients with funds and assets that are clean and untainted by criminality depends, in large, upon the jurisdiction's reputation as a sound, well-regulated jurisdiction. Any real estate agent that assists in laundering the proceeds of crime, or financing of terrorism, whether:

- with knowledge or suspicion of the connection to crime; or
- in certain circumstances, acting without regard to what it may be facilitating through the provision of its services,

will face the loss of its reputation, and damage the integrity of the professional and financial services industry as a whole, and may risk prosecution for criminal offences.

2 Purpose of this Guidance Document

The purpose of this document is to provide industry specific guidance for Real Estate Agents on their legal obligations to deter and detect money laundering and financing of terrorism activities.

Reference is made throughout this document to AML/CTF. See Glossary at the end of this document. The Regulations refer to Anti Money Laundering and Countering (or Combating) of Terrorist Financing.

3 Status of this Guidance

The objective of this guidance document is to supplement, with specific reference to the real estate profession, the detailed guidance and reference to to the Proceeds of Crime Act, Cap. 04.04, ("POCA"), the Anti-Money Laundering and Terrorist Financing Regulations ("the AML/TF Regulations") and the Anti-Money Laundering and Terrorist Financing Code 2016 ("the Code").

In case of doubt between this document and the AML/TF legislation, the legislation will take precedence. This guidance is provided as general information only. It is not legal advice, and is not intended to replace the POCA, AML/TF Regulations or Code.

This guidance is intended for use by senior management and compliance staff of a real estate firm to assist in the development of systems and controls. It is not intended to be used by real estate agents as an internal procedure manual.

4 The Montserrat Financial Services Commission as the Supervisory Authority.

The Montserrat Financial Services Commission (The Commission) has the role required by the AML/TF Regulations to supervise the effectiveness of the anti-money laundering regime for DNFBP. The AML/TF Regulations seek to reduce businesses' vulnerability to being used for money laundering or terrorist financing.

In accordance with Regulation 18 of the AML/TF Regulations, the Commission has been appointed the sole supervisory authority of all DNFBP for the purposes of Section 156 (2) of the POCA.

As the Supervisor, the Commission is required to:

- Establish and maintain a Register of all DNFBPs.

- Monitor compliance with the Regulations.
- Take appropriate enforcement action.

5 Businesses and Individuals within the Scope of this Guidance

5.1 To Whom do these Obligations Apply?

These obligations apply to real estate agents operating on Montserrat. This is irrespective of the fact that a lawyer is always involved in a property transaction and no capital movements are overseen by estate agents.

Typical activities of a real estate agent are the specified activity of buying and selling of real estate. Real estate transactions apply to both residential and commercial purchases. A "transaction" includes the receiving or making of a gift, so no dollar limits or thresholds apply to this specified activity.

5.2 Obligations under the Regulations

As a Realtor, the main obligations under the AML/CTF Regulations are summarized below:

1. Register with the Financial Services Commission (FSC) as a DNFBP;
2. Submit Suspicious Activity Reports (SARs) to the Financial Crime and Analysis Unit (FCAU);
3. Avoid "Tipping-off";
4. Keep Records;
5. Verify and Confirm Client Identity;
6. Establish Source of Funds and Where Necessary Sources of Wealth
7. Ascertain whether the Client is Acting for a Third Party;
8. Appoint a Money Laundering Compliance Officer;
9. Appoint a Money Laundering Reporting Officer;
10. Develop an Effective Compliance Programme and
11. Implement the Compliance Programme and Conduct Periodic Reviews (Testing for Effectiveness).

6 Legislation

This section provides a brief overview only of the legislation and regulations.

6.1 Legislation, Regulations and The Code

The Proceeds of Crime Act was amended in 2010, 2011, 2013, 2014 and 2015.

- Proceeds of Crime Act, Cap. 04.04 (as amended)
- The Anti-Money Laundering and Terrorist Financing Regulations 2012
- The Anti-Money Laundering and Terrorist Financing Code 2016

6.2 Money Laundering Offences

Money Laundering is dealt with in Part 6 Sections 116 – 133 of the Proceeds of Crime Act, Cap. 04.04 (POCA)

Establishment Operations and Functions of the Money Laundering Reporting Authority.	**Sections 128 – 133**
Criminal Property	**Section 116 – 117**
Offences of Concealing, Disguising, Converting, Transferring and Removing Criminal Property	**Section 118**
Offence of Arrangements	**Section 119**
Offences of Acquisition, Use and Possession of Criminal Property	**Section 120**
Offences of Attempting, Conspiring and Inciting	**Section 121**
Duty to Disclose Knowledge or Suspicion of Money Laundering	**Sections 122 – 123**
Offence of Prejudicing Investigations and Tipping Off	**Section 124 – 125**
Protection of Disclosures	**Section 127**

6.2.1 Non-Compliance with Money Laundering Regulations

Non-compliance with obligations under the AML/CFT laws and regulations may result in criminal and or administrative sanctions. Penalties include fines and terms of

imprisonment, and sanctions include possible revocation of licenses, issuance of directives and court orders.

7 Registration with the Financial Services Commission

7.1 Registration Procedure

- Applicants for registration must complete and submit a paper copy of the Application to Register.
- The application form is available from the Financial Services Commission and may be prepared electronically and printed for submission to the Commission.
- An advance copy of the Application to Register may be submitted by email to the address: info@fsc.ms.
- A signed paper printed copy of the Application to Register together with supporting documents must be delivered by hand to the offices of the Commission.
- The application must fulfill the following requirements (as prescribed by Regulation 20 of the AML/TF Regulations):
  - be in writing and in the form specified by the Supervisor (typed);
  - be signed by the applicant or by a person acting on the applicant's behalf;
  - be accompanied by such documents or information as may be specified on the application form or by the Supervisor.

7.1.1 Supporting Documents

The Application to Register and the following documents which must be provided to verify information:

- Biographical affidavit form (complete with two (2) forms of IDs) to be completed by all shareholders, directors, management and senior officers with decision making powers.
- Personal Questionnaire to be completed by all shareholders and directors.
- Incorporation certificate if incorporated as a company.

Every effort will be made by the Commission to reduce the amount of verification documentation which must be provided, wherever possible, by utilising information and documentation already provided or available to the Commission.

Documents which must be submitted as verification by individuals/companies outside of Montserrat must be certified by one of; a Notary Public, Justice of the Peace, or Commissioner of Oaths, as a true copy of the original.

7.1.2 Receipt of Registration Application by the Commission

The Commission undertakes to acknowledge receipt within two to five working days of receiving the Application to Register.

The Commission will advise by a letter to the applicant, within thirty (30) days of receipt, of the outcome of the application unless additional information is requested. The response shall be one of:

- Registration Confirmed.
- Registration Refused.
- A request for further information or documentation. (In such cases the Commission shall keep the applicant advised of progress.)

7.1.3 Refusal of a Request for Registration

A refusal of the Application will be in written form and will state the grounds for refusal.

The grounds upon which the Commission may refuse an Application for Registration are one or more than one of the following criteria:

a) The applicant does not comply with Regulation 20.
b) The applicant fails to provide any information or documents required by the Supervisor under Regulation 20 (3).
c) The Supervisor is of the opinion that –

- The applicant does not intend to carry on the relevant business for which it seeks registration.
- The business or any of its directors, senior officers or owners does not satisfy the Supervisors fit and proper criteria.
- It is contrary to the public interest for the business to be registered.

For full details of grounds for refusal please refer to the Regulations which can be found in Regulation 22 of the AML/CFT Regulations.

7.1.4 Registration Refused: Right to Appeal

In the event that an application to register is refused by the Commission, the applicant may submit an appeal, within 28 days of the date of the refusal, to the Court for leave to appeal against the decision. The decision of refusal of the application to register made by the Commission will remain intact during the period of the appeal and until otherwise directed by the Court.

For further details on the conditions for appeal, please refer to section 171 of the Act.

7.1.5 Forms

The following forms to be used can be accessed on the FSC website at fscmontserrat.org.

7.1.6 Continuing Registration and Material Changes

Subsequent to the initial submission, registration is an on-going process. Renewals of existing successful applications will take place on an annual basis and must be renewed by 31st January each year, i.e. registration is valid for a one year period.

All individuals and businesses are required to register as soon as they begin to provide the services designated for their business or profession.

If at any time after registration there are material changes to the information supplied as part of

the application, or it becomes apparent that there is a significant inaccuracy in the details provided, the business must notify the Commission, as soon as possible, of the changes occurring or the inaccuracy being discovered.

If a business does not notify the Commission of any material changes or inaccuracies in the details provided for registration, it will be in breach of the Regulations and may be subject to civil penalties or prosecution.

7.1.7 Offence - Failure to Register

A business shall not carry out a relevant business as a Designated Non-Financial Business and Profession (DNFBP) until registered with the FSC.

Failure to register when required may result on summary conviction to imprisonment for a term of twelve months, or a fine of $20,000 or both. On conviction from indictment to imprisonment for a term of five years or to a fine of $100,000 or to both.

For further details on failure to register, please refer to section 159 of the Act.

8 Anti-Money Laundering Systems and Controls

8.1 Corporate Governance

Corporate governance is the system by which businesses are directed and controlled and the business risks managed. Money laundering and terrorist financing are risks that must be managed in the same way as other business risks.

8.2 Responsibilities of the Board

It is the responsibility of the Board, or senior management, or the owner(s) to ensure that the organisational structure of the business effectively manages the risks it faces.

Part 2, Section 5 of the Code provides the principal responsibilities of the Board. Senior Management, the Money Laundering Compliance Officer and the Money Laundering Reporting Officer. will assist the Board in fulfilling these responsibilities.

Larger and more complex firms may also require dedicated risk and internal audit functions to assist in the assessment and management of money laundering and terrorist financing risk.

8.3 Policies, Systems and Controls

8.3.1 Establish and Maintain Systems and Controls

A law firm must establish and maintain systems and controls to prevent and detect money laundering and terrorist financing that enable the business to;

- Apply appropriate client due diligence (CDD) policies and procedures that take into account vulnerabilities and risk. Policies and procedures must include;
  - The development of clear client acceptance policies and procedures and ongoing monitoring.
  - Identifying and verifying the identity of the applicant of the business and the corporate status of the business.
  - Identifying and verification of large or complex transactions, unusual patterns of transactions and any other transaction or activity that may pose a risk of money laundering.
  - Identifying politically exposed persons.
- Monitor and review instances where exemptions are granted to policies and procedures or where controls are overridden.
- Report to the Montserrat Financial Crime and Analysis Unit when it knows or has reasonable grounds to know or suspect that another person is involved in money laundering or terrorist financing, including attempted transactions.
- Ensure that relevant employees are:
  - adequately screened when they are initially employed,
  - aware of the risks of becoming concerned in arrangements involving criminal money and terrorist financing,
  - aware of their personal obligations and the internal policies and procedures concerning measures to combat money laundering and terrorist financing, and

    - provided with adequate training.
- Maintain adequate records
- Liaise closely with the Commission and the FCAU on matters concerning vigilance, systems and controls.

In maintaining the required systems and controls, a firm must ensure that the systems and controls are implemented and operating effectively.

A firm must also have policies and procedures in place to address specific risks associated with non-face to face business relationships or transactions, which should be applied when conducting due diligence procedures.

8.3.2 Internal Controls

The level of internal controls, and the extent to which monitoring needs to take place will be affected by

- The firm's size;
- The nature and the scale of the practice, and;
- The overall risk profile.

Issues which may be covered in an internal controls system include;

- The level of personnel permitted to exercise discretion on the risk-based application of regulations and under what circumstances.
- CDD requirements to be met for simplified, standard and enhanced due diligence.
- When outsourcing of CDD obligations or reliance upon third parties will be permitted and under what conditions.
- How the firm will restrict work being conducted on a file where CDD has not been completed.
- The circumstances in which delayed CDD is permitted.
- When cash payments will be accepted.
- When payments will be accepted from or made to third parties
- The manner in which disclosures are to be made to the MLRO.

8.3.3 Monitoring Compliance

Monitoring compliance will assist a firm to assess whether the policies and procedures that have been implemented are effective in managing the risk of money laundering and terrorist financing.

Procedures to be undertaken to monitor compliance may involve:

- Random file audits.
- File checklists to be completed before opening or closing a file.
- An MLRO's log of situations brought to their attention including queries from staff and reports made.
- How the firm rectifies lack of compliance when identified.
- How lessons learnt will be communicated back to staff and fed back into the risk profile of the firm.
- All employees involved in the day-to-day business of a law firm should be made aware of the policies and procedures in place in their firm to prevent money laundering and financing of terrorism risks. It is essential for businesses to evaluate compliance by staff with policies and procedures, in particular, CDD record keeping and suspicious transactions reporting. Best practice indicates that internal testing should be carried out by someone other than the Money Laundering Compliance Officer (MLCO), to avoid potential conflict since the Money Laundering Compliance Officer (MLCO) is responsible for implementation of the Compliance Programme (CP), its measures and controls.
- If the MLCO is also the most senior employee (person at the highest level in the organization) additional care must be exercised to test compliance with obligations in respect of AML/CFT obligations.
- Such reviews (whether they may be internal or external) must be documented and made available to the Financial Services Commission when requested.

8.3.4 Compliance Programme

After a firm has registered with the FSC, a written Compliance Programme (CP) must be

developed. If an organization, the Compliance Programme also has to be approved by senior management.

The CP is a written document explaining the system of internal procedures, systems and controls which are intended to make the business less vulnerable to money laundering and the financing of terrorism. The CP encapsulates the guidance provided in the section policies, systems and controls (Part 2 of the Code).

These policies, procedures and controls, must be communicated to employees, and fully implemented.

The CP must be reviewed at a minimum of every two years, or more frequently if the initial and on-going business risk assessment warrants or if there are changes to Legislation, Regulations or The Code.

A well-designed, applied and monitored regime will provide a solid foundation for compliance with the AML/CTF laws. As not all individuals and entities operate under the same circumstances, compliance procedures will have to be tailored to fit individual needs. It should reflect the nature, size and complexity of the operations as well as the vulnerability of the business to money laundering and terrorism financing activities.

9 Risk Based Approach

9.1 Overview

System and controls will not detect and prevent all money laundering or terrorist financing. A risk-based approach will, however, serve to balance the cost burden placed on individual firms and on their clients with a realistic assessment of the threat of a firm being used in conjunction with money laundering or terrorist financing by focusing where it is needed and has the most impact.

The possibility of being used to assist with money laundering and terrorist financing poses many

risks to real estate businesses including;

- Criminal and disciplinary sanctions for firms and for individual real estate agents
- Civil action against the firm as a whole and against individual partners.
- Damage to reputation leading to loss of business.

These risks must be identified and mitigated as any other risk which the business faces. Such an approach;

- Recognises that the money laundering and terrorist financing threats to a real estate business vary across clients, jurisdictions, services and delivery channels.
- Allows real estate businesses to differentiate between clients in a way that matches risk in a particular business.
- Establishes minimum standards while allowing a real estate business to apply its own approach to systems and controls and other arrangements in particular circumstances.
- Helps to produce a more cost-effective system.

A firm is expected to conduct and keep up to date a business risk assessment, which considers the business activities and structure and concludes on the real estate business's exposure to money laundering and terrorist financing risk. The real estate business must use the outcome of the risk assessment in the development of appropriate risk management systems and controls and the business's policies and procedures.

Firms must develop CDD procedures that take into account risk and to apply enhanced CDD procedures to higher risk client relationships. Simplified due diligence can also be applied in circumstances where the money laundering risk is considered to be at its lowest.

An effective and documented risk-based approach will enable a firm to justify its position on managing money laundering and terrorist risks to law enforcement, the courts, regulators and supervisory bodies.

A real estate business may extend its existing risk management systems to address money laundering and terrorist financing risks. The detail and sophistication of these systems will depend on the size and the complexity of the business it undertakes. Ways of incorporating a

firms' business risk assessment will be governed by the size of the real estate business firm and how regularly compliance staff and senior management are involved in day-to-day activities.

9.2 Business Risk Assessment: Key Concepts

The business risk assessment will depend on the firm's size, type of clients and the practice area it engages in.

Identifying, assessing and understanding Money Laundering and Terrorist Financing risks is an essential part of developing an effective AML/CTF regime. It assists in prioritisation and the efficient use of resources. Once risks are understood businesses may apply AML/CTF measures in a way that ensures they are commensurate with those risks.

This section addresses the Business Risk Assessment at the portfolio level of the firm. Real Estate businesses are also encouraged to consider Money Laundering and Terrorist financing risk at the client level.

A risk assessment views risk as a function of three factors, threat, vulnerability and consequence.

9.2.1 Threat

A threat is a person, group of people, an activity or object which may do harm to the business. In the money laundering/terrorist financing context this includes criminals, terrorist groups, and their facilitators.

9.2.2 Vulnerabilities

In risk assessment vulnerability comprise those things that can be exploited by the threat or that may support or facilitate those activities.

Looking at vulnerabilities as distinct from threat means focusing upon the factors that represent weaknesses in anti-money laundering and prevention of terrorist financing systems or controls, for example a particular service or product which has certain features which make them

attractive for money laundering or terrorist financing purposes.

9.2.3 Consequence

Consequence refers to the impact or harm that money laundering or terrorist financing may cause. The consequences may be short or long term, ranging from prosecution of the individuals concerned and, reputational damage to the firm or forfeiture of laundered assets.

Assessing consequence may be challenging, given the lack of clear data and experiences. It is not always necessary to assess consequence in a sophisticated manner, but a high level understanding of the impacts and consequences should be assessed as a benchmark of what may happen.

The key is that any risk assessment adopts an approach that attempts to distinguish the extent of different risks to assist in prioritising mitigation efforts.

9.2.4 Sources of Risk

Sources may be organised into three groupings described below.

9.2.4.1 Country / Geographic Risk

There is no universally agreed definition that prescribes whether a particular country or geographic area represents a higher risk. Country risk in conjunction with other risk factors provides useful information as to potential money laundering and terrorist financing risks. Money laundering and terrorist financing risks have the potential to arise from almost any source, such as the domicile of the client, the location of the transaction, and the source of the funding. Countries that pose a higher risk include:

- Countries subject to sanctions, embargoes or similar measures issued by, for example, the United Nations (UN), Office of Financial Sanctions Implementation (OFSI) and Office of Foreign Assets Control (OFAC). In addition, in some circumstances, countries subject to sanctions or measures similar to those issued by bodies such as the UN, OFSI and OFAC, but that may not be universally recognised, may be taken into account by a real estate professional because of the standing of the issuer of the sanctions and the nature of the

measures.

- Countries identified by credible sources as generally lacking appropriate AML/CFT laws, regulations and other measures.
- Countries identified by credible sources as being a location from which funds or support are provided to terrorist organizations.
- Countries identified by credible sources as having significant levels of corruption or other criminal activity.

9.2.4.2 Client Risk

Determining the potential money laundering or terrorist financing risks posed by a client, or category of clients, is critical to the development and implementation of an overall risk-based framework. Based on its own criteria, a real estate business should seek to determine whether a particular client poses a higher risk and the potential impact of any mitigating factors on that assessment. Application of risk variables may mitigate or exacerbate the risk assessment.

Categories of clients whose activities may indicate a higher risk include:

- Politically Exposed Persons (PEPs) are considered as higher risk clients – If a real estate agent is advising a client that is a PEP, or where a PEP is the beneficial owner of the client, then a real estate agent will need to carry out appropriate Enhanced Due Diligence (EDD). Relevant factors that will influence the extent and nature of EDD include the particular circumstances of a PEP, the PEP's home country, the type of work the PEP is instructing the real estate agent to perform or carry out, and the scrutiny to which the PEP is under in the PEPs home country.
- Clients, where the structure or nature of the entity or relationship makes it difficult to identify in a timely fashion the true beneficial owner or controlling interests, such as the unexplained use of legal persons or legal arrangements, nominee shares or bearer shares.
- Clients that are cash (and cash equivalent) intensive businesses.

There are many other situations which may constitute higher risk and reference should be made to the "red flags" section of this Handbook together with any client level risk profiling adopted by the business.

9.2.4.3 Service Risk

An overall risk assessment should also include determining the potential risks presented by the services offered by a real estate professional. The context of the services being offered or delivered is always fundamental to a risk-based approach. Any one of the factors discussed in this Guidance alone may not itself constitute a high-risk circumstance. High risk circumstances can be determined only by the careful evaluation of a range of factors that cumulatively and after taking into account any mitigating circumstances would warrant increased risk assessment.

When determining the risks associated with provision of services related to specified activities, consideration should be given to such factors as:

- Services where real estate agents are acting as financial intermediaries, actually handle the receipt and transmission of funds through accounts they actually control in the act of closing a business transaction.
- Services which conceal improperly beneficial ownership from competent authorities.
- Services requested by the client for which the real estate agent does not have expertise.
- Transfer of real estate between parties in a time period that is unusually short for similar transactions with no apparent legal, tax, business, economic or other legitimate reason.
- Payments proposed from un-associated or unknown third parties and payments for fees in cash where this would not be a typical method of payment.

9.2.5 Variables which may Impact Risk

Due regard must be accorded to the vast and profound differences in, size, scale and expertise, amongst real estate agents. As a result, consideration must be given to these factors when creating a reasonable risk-based approach and the resources that can be reasonably allocated to implement and manage it. For example, a sole realtor would not be expected to devote an equivalent level of resources as a large real estate business; rather, the sole realtor would be expected to develop appropriate systems and controls and a risk-based approach proportionate to the scope and nature of the practitioner's practice.

A significant factor to consider is whether the client and proposed work would be unusual, risky

or suspicious for the particular real estate agent. This factor must always be considered in the context of the realtor's type of business. A realtor's risk-based approach methodology may thus take into account, risk variables specific to a particular client or type of work. Consistent with the risk-based approach and the concept of proportionality, the presence of one or more of these variables may cause a realtor to conclude that either enhanced due diligence and monitoring is warranted, or conversely that normal CDD and monitoring can be reduced, modified or simplified. These variables may increase or decrease the perceived risk posed by a particular client or type of work and may include:

- The level of regulation or other oversight or governance regime to which a client is subject. For example, a client that is a financial institution or regulated in a country with a satisfactory AML/CFT regime poses less risk of money laundering than a client in an industry that has money laundering risks and yet is unregulated for money laundering purposes.
- The reputation and publicly available information about a client. Legal persons that are transparent and well known in the public domain and have operated for a number of years without being convicted of proceeds generating crimes may have low susceptibility to money laundering.

9.3 Money Laundering Compliance Officer and Money Laundering Reporting Officer

9.3.1 Overview

Section 8 and 9 of the AML Code provides detailed explanation of the roles of the responsibilities of the Money Laundering Reporting Officer (MLRO) and Money Laundering Compliance Officer (MLCO)

The MLRO is required to:
Assess internal suspicious activity reports and submit suspicious activity reports when required to the Montserrat Financial Crime and Analysis Unit.

The MLCO is required to:

- Develop and maintain systems and controls (including policies and procedures) for both

anti-money laundering and prevention of terrorist financing in line with evolving requirements;

- Undertake regular reviews (including testing) of compliance with policies and procedures to counter money laundering and the financing of terrorism;
- Report periodically to and advise senior management on anti-money laundering and terrorist financing compliance issues that need to be brought to its attention;
- Respond promptly to requests for information made by the Commission.

9.3.2 Criteria

Depending upon the size and organisational structure of the real estate business the same person may operate as both the MLRO and the MLCO. This is not a requirement of the AML/CFT Regulations, but firms may make this decision for reasons of business efficiency and expertise. In the case of a sole trader the owner adopts, by default, the role of both MLCO and MLRO.

The important factor is the nomination of an individual(s) who will then be expected to take advantage of any available training provided by the Commission, as well as making their own arrangements to up skill the individual, by means of the various source of professional qualification.

9.3.2.1 Positioning the MLRO and MLCO within the Organisational Structure.

The appointed person must possess sufficient independence to perform the role objectively, having unfettered access to all business lines, support departments and information necessary. Firms must assess and implement their own approach to the two roles of MLRO and MLCO, within the existing organisational structure and the level of AML/CTF risk assessed.

Organisational matters to be considered are such that the MLRO/MLCO must have;

- Adequate resources including sufficient time.
- An appropriate level of authority within the business.
- Regular contact with the Board or senior management.
- Adequate knowledge and experience in AML and CTF matters.
- Local residency and be employed by the business.

9.4 Outsourcing

Depending upon the nature and the size of the real estate business the roles of the MLRO and the MLCO may require additional support and resources. Where a real estate business elects to bring in additional support or to delegate areas of the MLRO or MLCO functions to third parties, the MLRO and MLCO shall remain directly responsible for their respective roles, and senior management will remain responsible for overall compliance with the money laundering regulations and by extension the Guidance Notes.

The methodology and approach to risk assessment is the decision of the individual real estate business and is dependent on the nature of the firm and its business.

Any arrangement to outsource its compliance function must have the prior approval of the Commission and be covered by way of a contractual agreement in which defined responsibilities must be clearly stated and acknowledged by all parties.

10 Client Due Diligence (CDD)

10.1 Introduction

Part 3 of the Code provides extensive detail on the requirements of Client Due Diligence (CDD).

10.2 Risk Approach to Client Due Diligence

Using the risk characteristics identified following the business lever risk assessment, client on boarding should include a risk assessment of each client. Businesses are expected to assess the inherent AML and CTF risk associated with each individual new client and also re-assess that risk periodically.

10.2.1 Client Profile

It is necessary to prepare a profile on each client on the basis of expected activity and transactions.

The client profile must contain sufficient information to identify:

- Identity information and verification of CDD information.
- A pattern of expected business activity and transactions within each client relationship; and
- Unusual, complex or higher risk activity and transactions that may indicate money laundering or terrorist financing activity.

The client level risk assessment may be developed upon a series of characteristics**.** In conjunction with the Business Risk Assessment findings, listed below are a series of characteristics which businesses may wish to use in developing a client risk profile.
It is recommended that a suitable matrix of risk characteristics is drawn up to evaluate and evidence the client risk assessment.

10.3 Client Risk

Determining the potential money laundering or terrorist financing risk posed by a client or category of clients is critical to the development and implementation of an overall risk-based framework. Based upon its own criteria a real estate business should seek to determine whether a particular client poses and higher risk and the potential impact on that assessment.

- Transparency of applicant or client. For example, persons that are subject to public disclosure rules, e.g. on exchanges or regulated markets (or majority-owned and consolidated subsidiaries of such persons), or subject to licensing by a statutory regulator, may indicate lower risk.
- Clients where the structure or nature of the entity or relationship makes it difficult to identify the true beneficial owners and controllers may indicate higher risk;
- Secretive clients. Whilst face to face contact with clients is not always necessary or possible, an excessively obstructive or secretive client may be a cause for concern;
- Reputation of applicant or client. For example, a well-known, reputable person, with a long history in its industry, and with abundant independent information about it and its beneficial owners and controllers may indicate lower risk;
- Behaviour of applicant or client. For example, where there is no commercial rationale for the service that is being sought, or where undue levels of secrecy are requested, or where

it appears that an "audit trail" has been deliberately broken or unnecessarily layered, may indicate higher risk;

- The regularity or duration of the relationship. For example, longstanding relationships involving frequent client contact that result in a high level of understanding of the client relationship may indicate lower risk;
- Value of assets or scale and size of transactions.
- Delegation of authority by the applicant or client. For example, the use of powers of attorney, mixed boards and representative offices may indicate higher risk;

10.4 Geographical Risk

Money laundering and terrorist financing risks have the potential to arise from almost any source, such as the domicile of the client, the location of the transaction and the source of the funding. Countries that pose a higher risk include;

- Residence in, or connection with, higher risk jurisdictions.
  - those that are generally considered to be un-cooperative in the fight against money laundering and terrorist financing;
  - those that have inadequate safeguards in place against money laundering or terrorism;
  - those that have high levels of organised crime;
- Those countries that have strong links (such as funding or other support) with terrorist activities;
  - those that are vulnerable to corruption; and
  - those that are the subject of United Nations ("UN") or United Kingdom (UK) sanctions measures.
- Geographical sphere of business activities, e.g. the location of the markets in which a client does business.
- Familiarity with a country, including knowledge of its local legislation, regulations and rules, as well as the structure and extent of regulatory oversight, for example, as a result of a firm's own operations within that country.

10.5 Service Risk

An overall risk assessment should also include determining the potential risks presented by the services offered by a real estate agent. The context of the services being offered or delivered is always fundamental to a risk-based approach. Any one of the factors considered below may not in itself constitute a high risk circumstance. High risk circumstances can be determined only by the careful evaluation of a range of factors that cumulatively, and after taking into account any mitigating circumstances would warrant increased risk assessment.

- Instructions that are unusual in themselves or that are unusual for the firm or the client may give risk to concern, particularly where no rational or logical explanation can be given.
    - Taking on work which is outside the firm's normal range of expertise can present additional risks because the money launderer might be using the firm to avoid answering too many questions.
    - Realtors should be wary of niche areas of work in which the firm has no background, but in which the client claims to be an expert.
    - If the client is based outside Montserrat, consider why there is such an instruction. For example, have the firm's services been recommended by another client?
    - Firms should be wary of:
        - loss making transactions where the loss is avoidable;
        - dealing with property where there are suspicions that it is being transferred to avoid the attention of either a trust in a bankruptcy case, a revenue authority, or a law enforcement agency; or
        - settlements which are intended to be paid in cash, particularly where cash is to be passed directly between sellers and buyers without adequate explanation.

10.6 Ascertain Client Identity – Know your Client

10.6.1 Overview

The general principle is that a Realtor must establish satisfactorily that he is dealing with a real person or organization (not fictitious) and obtain identification evidence sufficient to establish that the client is that person or organization. In the case of an organization, it must be ascertained

that the client is duly authorized to act for the organization.

Identity information must be verified by reference to independent and reliable source material. The Code, Part 3 provides full details of the approach to verification of client information.
If a prospective client cannot satisfactorily satisfy usual due diligence measures for example unable to identify and verify a client's identity or obtain sufficient information about the nature and purpose of a transaction, then the transaction must not be carried out the business relationship must not be established.

Real Estate firms must also consider submitting a suspicious activity report (SAR) to the Financial Crime and Analysis Unit.

10.7 Source of Funds

The source of funds for each applicant client must be established.

Source of funds is regarded as the activity which generates the funds for a relationship e.g. a client's occupation or business activities. Information concerning the geographical sphere of the activities may also be relevant.

This Guidance stipulates record keeping requirements for transaction records which require information concerning the remittance of funds also to be recorded (e.g. the name of the bank and the name and account number of the account from which the funds were remitted). This is the source of transfer and must not be confused with source of funds.

10.8 Source of Wealth

Source of wealth is distinct from source of funds, and describes the activities which have generated the total net worth of a person both within and outside of a relationship, i.e. those activities which have generated a client's funds and property. Information concerning the geographical sphere of the activities that have generated a client's wealth may also be relevant. In determining source of wealth it will often not be necessary to establish the monetary value of

an individual's net worth.

10.9 Is the Client Acting for a Third Party?

Reasonable measures must be taken to determine whether the client is acting on behalf of a third party.

Such cases will include where the client is an agent of a third party who is the beneficiary and who is providing the funds for the transaction. In cases where a third party is involved, information on the identity of the third party and their relationship with the client must be obtained.

In deciding who the beneficial owner is in relation to a client who is not a private individual, (e.g., a company or trust) it is essential to look behind the corporate entity to identify those who have ultimate control over the business and the company's assets, with particular attention paid to any shareholders or others who inject a significant proportion of the capital or financial support.

Reference should be made to the Code for further information on the concept of beneficial ownership.

Particular care should be taken to verify the legal existence and trading or economic purpose of corporates and to ensure that any person purporting to act on behalf of the company is fully authorized to do so.

10.10 High Risk Client/ Transactions

There are clients and types of transactions, services and products which may pose higher risk to a business.

Where a relationship or transaction is assessed as presenting a higher risk, firms must perform appropriate Enhanced Due Diligence (EDD).

Where a relationship or transaction involves a Politically Exposed Person (PEP) then it must always be considered to present a higher risk.

A firm must apply one or more enhanced due diligence measures with higher risk client relationships. The nature of the measures to be applied will depend on the circumstances of the relationship or transactions and the factors leading to the relationship being considered as higher risk.

Enhanced due diligence measures include:

- Requiring higher levels of management approval for higher risk new client relationships.
- Obtaining further client due diligence (CDD) information (identification information and relationship information, including further information on the source of funds and source of wealth), from client or independent sources, such as the internet, public and commercially available databases.)
- Taking additional steps to verify the CDD information obtained.
- Commissioning due diligence reports from independents experts to confirm the veracity of CDD information held.
- Requiring more frequent review of client relationships.
- Requiring the review of client relationship to be undertaken by the compliance function, or other employees not directly involved in managing the client relationship; and
- Setting lower monitoring thresholds for transactions connected with the client relationship.

10.11 Politically Exposed Persons (PEPs)

Corruption by some high profile individuals, generally referred to as PEPs inevitably involves serious crime, such as theft or fraud and is of global concern. The proceeds of such corruption are often transferred to other jurisdictions and concealed through private companies, trusts or foundations, frequently under the names of relatives or close associates.

By their very nature, money laundering investigations involving the proceeds of corruption

generally gain significant publicity and are therefore very damaging to the reputation of both businesses and jurisdictions concerned, in addition to the possibility of criminal charges.

Indications that an applicant or client may be connected with corruption include excessive revenue from “commissions” or “consultancy fees” or involvement in contracts at inflated prices, where unexplained “commissions” or other charges are paid to third parties.

The risk of handling the proceeds of corruption, or becoming engaged in an arrangement that is designed to facilitate corruption is greatly increased when the arrangement involves PEP. Where the PEP also has connections to countries or business sectors where corruption is widespread, the risk is further increased.

PEP status itself does not of course, incriminate individuals or entities. It will however put an applicant for business or client into a higher risk category.

11 Monitoring Client Activity

11.1 Introduction

A risk assessment and development of the client profile will provide knowledge of expected activity. This will provide a basis for recognising unusual and higher risk activity or transactions which may indicate money laundering or terrorist financing. Additional or more frequent monitoring is required for relationships that have been designated higher risk.

Real Estate businesses must, as part of its on-going client due diligence procedures, establish appropriate client activity and transaction monitoring procedures to identify and scrutinise complex, unusual higher risk activity or where there is no apparent economic or visible lawful purpose.

For full details in relation to monitoring customer activity can be found in Code 32, Part 4 of the Code.

11.2 Approach to Monitoring

In determining the nature of the monitoring procedures that are appropriate a real estate business may have regard to the following factors.

- Its business risk assessment
- The size and complexity of the business
- The nature of its services
- Where it is possible to establish appropriate standardised parameters by unusual activity and
- The monitoring procedures that already exist to satisfy other business needs.

An effective monitoring system requires firms to maintain up to date CDD information and to ask pertinent questions to determine whether there is a rational explanation for the activity or transactions identified. The scrutiny of activity and transactions may involve requesting additional CDD information. The more a firm knows about its clients and develops an understanding of the instructions, the better placed it will be to assess risks.

Monitoring may involve real time and post event monitoring, and is likely to be most effective when undertaken on a case by case basis by fee earners, administration and accounts staff. Sufficient guidance and training of fee earners, account and administration staff is essential to enable them to recognise money laundering and terrorist financing activity.

For the purposes of this section “monitoring” does not oblige the real estate business to function as, or assume the role of, a law enforcement or investigative authority vis-a-vis his or her client. It rather refers to maintaining awareness throughout the course of work for a client to money laundering or terrorist financing activity and/or changing risk factors.

Real Estate businesses should also assess the adequacy of any systems, controls and processes on a periodic basis. Monitoring programs can fall within the system and control framework developed to manage the risk of the firm. The results of the monitoring should also be documented.

11.3 Identifying Unusual Activity/Transactions

Appropriate factors to consider in determining whether activity or transactions are unusual include:

- The expected frequency, size, and origin/destination of client funds or other activity for individual clients; and
- The presence of risk factors specific to the nature of the activity or matter undertaken for the client. A firm should determine risk factors based on its knowledge of its client and should have regard to typologies (whether from its own experience or from external sources) relevant to the nature of its business activities.

11.4 Examining Unusual Activity

The examination of unusual and higher risk activity or transactions may be conducted either by fee earners or by accounts and administration staff. In any case the firm must ensure that the reviewer has access to relevant CDD information and that the enquiries made, and conclusions reached by the reviewer are adequate.

Appropriate action may include:

- Making further enquiries to obtain any further information required to enable a determination as to whether the activity/transaction has a rational explanation and;
- Considering the activity or transaction in the context of any other relationship connected with the client.
- Updating CDD information to record the results of the enquiries made.
- Reviewing the appropriateness of the client risk assessment in light of the unusual activity and/or additional CDD information obtained.
- Applying increased levels of monitoring to particular relationships.
- Where the activity or transaction does not have a rational explanation considering whether the circumstances require a suspicious activity report.

12 Reporting Suspicious Activity and Transactions

12.1 Overview

Section 122 (1) of The POCA prescribes that:

Where a person

a) knows or suspects or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering; and
b) the information or other matter on which his knowledge or suspicion is based or which gives reasonable grounds for such knowledge or suspicion, came to him in the course of a relevant business;

he shall disclose the information or other matter as soon as is practicable after it comes to him to the relevant MLRO or to the Reporting Authority.

In Montserrat, the Reporting Authority is the Montserrat Financial Intelligence Unit (FIU). For full details in relation to suspicious activity and transactions reporting can be found in Code 34, Part 5 of the Code.

12.2 What Constitutes Knowledge or Suspicion

12.2.1 Knowledge

Knowledge means actual knowledge.

12.2.2 Suspicion

The test for whether a person holds a suspicion is a subjective one. If someone thinks a transaction is suspicious they are not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the crime. They may have noticed something unusual or unexpected and, after making enquiries, the facts do not seem normal or make commercial sense. There does not have to be evidence that money laundering is taking place for there to be a suspicion.

If someone has not yet formed a suspicion, but they have cause for concern, a firm may choose to ask the client or others more questions. The choice depends upon what is already known, and

how easy it is to make enquiries.

12.2.3 Reasonable Grounds to Suspect

A person would commit an offence even if they did not know that or suspect that a money laundering offence was being committed, if they had reasonable grounds for knowing or suspecting that it was.

If there are factual circumstances from which an honest and reasonable person, engaged in a similar business, should have inferred knowledge or formed the suspicion that another was engaged in money laundering or that there was knowledge of circumstances which would put a reasonable person to enquiry.

It is important that realtors and their staff do not turn a blind eye to information that comes to their attention. Reasonable enquiries should be made, such as a professional in that profession would, based upon their qualifications, experience and expertise might be expected to make in such a situation within the normal scope of their client relationship.

Exercising a healthy level of professional skepticism should be adopted. If in doubt a professional should exercise a level of caution and report to the firms MLRO.

12.3 Failure to Report

Failing to report to the FCAU knowledge or suspicion of crime proceeds or terrorist property is a criminal offence. If such a transaction is allowed to continue despite there being reasonable grounds to believe that the funds are criminal proceeds or terrorists' funds and a report is not submitted to the FCAU then an offence of money laundering or financing of terrorism may have been committed.

12.4 Reporting Procedures

It is the responsibility of the MLRO to submit Suspicious Activity Reports (SARs) to the FCAU.

The relationship between reporting entities and the FCAU is a key one, because the FCAU can only perform its analytical function to produce financial intelligence if the various reporting entities report the critical information they have.

12.4.1 Internal Reporting Procedures

Firms but not sole practitioners need to have a system clearly setting out the requirements to submit an internal SAR. These may include:

- The circumstances in which a disclosure is likely to be required;
- How and when information is to be provided to the MLRO;
- Resources which can be used to resolve difficult issues around making a disclosure;
- How and when a disclosure is made to the FCAU;
- How to manage a client when a disclosure while waiting for consent and;
- The need to be alert to tipping off issues;
- Establishing and maintaining arrangements for disciplining an employee who fails to make an internal suspicious activity report if there is knowledge or reasonable grounds for the suspicion of money laundering or terrorist financing.

Once employees have reported their suspicions under the internal procedures to the MLRO, they have fully satisfied their statutory obligations.

12.5 Evaluation of SARS by MLRO

In order to demonstrate that a report is considered in light of all relevant information when evaluating a suspicious activity report, the MLRO may:

- Review and consider transaction patterns and volumes, previous patterns of instructions, the length of the business relationship and CDD information; and
- Examine other connected accounts or relationships. Connectivity can arise through commercial connections, such as transactions to or from other clients or common introducers, or through connected individuals, such as third parties, common ownership of entities or common signatories.

However, the need to search for information concerning connected accounts or relationships should not delay the making of a report to the FCAU.

12.6 Reports to Reporting Authority (FCAU)

The MLRO will submit suspicious activity reports to the FCAU in writing on the suspicious activity report (SAR) form electronically via email or they may be delivered by hand. A copy of the SAR form is available by contacting the Commission at 664-491-6887/8 or info@ fsc.ms or they can be provided by contacting the FIU directly at 664-491-2766/6887 or fcimni@live.co.uk.

A SAR must be made as soon as it is reasonably practicable to do so, or within seven (7) days, once knowledge or suspicion, or reasonable grounds to know or suspect, has been formulated. As such it must be made either before a transaction occurs, or afterwards, if knowledge or suspicion is formulated with the benefit of hindsight after a transaction or activity occurs.

Firms should keep comprehensive records of suspicions and disclosures because disclosure of a suspicious activity or transaction is a defence to criminal proceedings. Such records may include notes which contain:

- on-going monitoring undertaken and concerns raised by fee earners and staff;
- discussions with the MLRO regarding concerns;
- advice sought and received regarding concerns;
- why the concerns did not amount to a suspicion and a disclosure was not made;
- copies of any disclosures made;
- conversations with FCAU, insurers, supervisory authorities etc. regarding disclosures made; and
- decisions not to make a report to FCAU which may be important for the MLRO to justify his position to law enforcement.

12.7 Tipping Off

When an SAR has been submitted to the FCAU, the Realtor or any member of staff must not disclose that such a report or the content of such report to any person including the client. It is an offence to deliberately tell any person, including the client, that the business has filed a suspicious transaction report about the client's activities/transactions.

12.7.1 Normal Enquiries

There is nothing in the legislation which prevents a firm from making normal enquiries about a client's instructions, and the proposed retainer, in order to remove, if possible any concerns and enable a firm to decide whether there is a suspicion. Firms may also need to raise questions during a retainer to clarify such issues.

It is not tipping-off to include a paragraph about a firm's obligations under the money laundering legislation in a firm's standard client care letter.

In circumstances where a SAR has been filed with the FCAU, but CDD procedures are incomplete, the risk of tipping-off a client (and its advisers) may be minimised by: ensuring that employees undertaking due diligence enquiries are aware of tipping-off provisions and are provided with adequate support, such as specific training or assistance from the MLRO; obtaining advice from the FCAU where a financial services business is concerned that undertaking any additional due diligence enquiries will lead to the client being tipped-off; and obtaining advice from the FCAU when contemplating whether or not to ask for non-routine information or questions in relation to such clients.

12.8 Consent to Activity

12.8.1 Pre-Transaction Consent

When a SAR is made before a suspected transaction or event takes place, FCAU consent must be obtained before the event occurs. Consent will only be given in respect of that particular transaction or activity and future transactions or activity should continue to be monitored and reported as appropriate.

In the vast majority of instances in which a SAR for consent is made to the FCAU, consent to continue an activity or to process a suspected transaction will be provided within seven (7) days of receipt of a report. Whilst this is what generally occurs in practice, the FCAU is not obliged under the legislation to provide consent within a particular timeframe, or at all. In particular, consent may be delayed where information is required by the FCAU from an overseas financial intelligence unit.

For full details on the conditions for obtaining consent for suspicious activity reporting, please refer to Section 117 of the POCA.

12.9 Terminating the Relationship

A firm is not obliged to continue relationships with clients if such would place them at commercial risk. However, to avoid prejudicing an investigation, the FCAU may request that a relationship is not terminated.

If a firm, having filed a SAR, wishes to terminate a relationship or transaction, and is concerned that, in doing so, it may prejudice an investigation resulting from the report, it should seek the consent of the FCAU to do so. This is to avoid the danger of tipping off.

13 Employee Training and Awareness

13.1 Overview

One of the most important controls over the prevention and detection of money laundering and terrorist financing is to have appropriately vetted staffs who are:

- Alert to money laundering and terrorist financing risks.
- Well trained in the identification of unusual or higher risk activities or transactions, which may indicate money laundering or terrorist financing activity.

The effective application of even the best designed control systems can be quickly compromised

if staff lack competence or probity, are unaware of or fail to apply systems and controls and are not adequately trained.

In particular fee earners and those who handle or are responsible for the handling of client transactions will provide the business with either its strongest defence or weakest link.
A firm should also encourage its fee earners and other staff to "think risk" as they carry out their duties within the legal and regulatory framework governing money laundering and terrorist financing.

13.2 Obligations

Real Estate businesses must provide their staff with appropriate and proportional AML/CFT training. There must be a commitment to having appropriate controls which rely fundamentally on both training and awareness. This requires a firm-wide effort to provide all relevant real estate employees with at least general information on AML/CFT laws, regulations
and internal policies. To satisfy a risk-based approach, particular attention should be given to risk factors or circumstances occurring in the realtor's own practice.

Employers are encouraged to produce continuing education/training programs on AML/CFT and the risk- based approach.

Applying a risk-based approach to the various methods available for training however, gives each real estate business flexibility regarding the frequency, delivery mechanisms and focus of such training. Real estate business management should review their own staff and available resources and implement training programs that provide appropriate AML/CTF information that is:

- Tailored to the relevant staff responsibility (*e.g.* client contact or administration). At the appropriate level of detail (*e.g.* considering the nature of services provided by the real estate agent).
- At a frequency suitable to the risk level of the type of work undertaken by the real estate agent.
- Used to assess and test staff knowledge of the information provided.

14 Record Keeping

The record keeping obligations are essential to facilitate effective investigation, prosecution and confiscation of criminal property.
Records must be kept in a manner which allows for swift reconstruction of individual transactions and provides evidence for prosecution of money laundering and other criminal activities.

Records may be kept in electronic or written form for a period of five (5) years after the end of the business relationship or completion of a one- off transaction.

If a business outsources record keeping to a third party, the business remains responsible for the record keeping requirements of the AML/CTF Regulations and the Code.
For full details on employee training and awareness, please refer to Part 7, sections 39 to 45 of the Code.

15 Appendix A

15.1 Money Laundering and Terrorist Financing Vulnerabilities and Risks in a Real Estate Agency

15.1.1 Introduction

Criminal conduct generates huge amounts of illicit capital and these criminals proceeds need to be integrated into personal lifestyles and business operations. Law enforcement agencies advise that property purchases are one of the most frequently identified methods of laundering money. Property can be used either as a vehicle for laundering money or as a means of investing laundered funds.

Criminals will buy property both for their own use e.g. as principals residences or second homes, business or warehouse premises, and as investment vehicles to provide additional income.

15.1.2 Criminals Use of Conveyancing Services

The real estate agent is but one of the professionals who will be involved in a property transaction. Every property transaction requires a legal practitioner to undertake the conveyancing and this is one of the criminals most frequently utilised services. Conveyancing is a comparatively easy and efficient means to launder money with relatively large amounts of criminal money cleaned in one large transaction. Whilst many legal practitioners will be unwitting accomplices, some corrupt legal practices will provide deliberate assistance and estate agents should be vigilant of any sign that this is occurring.

The purchase of real estate is commonly used as part of the last stage of money laundering. Such a purchase offers the criminal an investment which gives the appearance of financial stability. The purchase of a hotel for example, offers particular advantages as it is often a cash-intensive business. Cash remains the mainstay of much serious organised criminal activity. It has the obvious advantage that it leaves no audit trail and is the most reliable form of payment as well as the most flexible.

Retail businesses provide a good front for criminal funds where legitimate earnings can be mixed with the proceeds of crime.

15.2 Recognising Suspicious Behaviour and Unusual Instructions

The following are examples of potentially suspicious events, both prior to and during the life of a property transaction.

15.2.1 Secretive Clients

Whilst face to face contact with clients is not always necessary, it is unusual for there not to be such contact. Real Estate agents should satisfy themselves that the absence of a face to face meeting is not designed to assist a prospective client to present a false identity.

An excessively obstructive or secretive client may also be a cause for concern. For example, is the client reluctant to answer due diligence questions or provide evidence of their identity or

identify underlying beneficial owners? Is the client trying to use intermediaries to protect their identity or to hide their involvement?

15.2.2 Absence of Normal Commercial Rationale

Activity that does not appear to make good business sense may indicate that it is linked to criminal activity. For example, where the prospective purchaser is willing to pay significantly over the market value for a property, particularly where the purchase is being undertaken by a cash-rich company.

A property sale or purchase that is subject to any last minute changes of significance may indicate that there is an attempt to confuse the client due diligence information.

A client that has no apparent reason for using your firm (for example the location of the property or type of business) where another firm would be better placed to act may indicate that the client is trying to make it harder for CDD measures to be completed. Alternatively, the client may hope that if the transaction, outside the normal size handled or that is particularly lucrative, a blind eye may be turned to any unusual or suspicious activity.

Where a client has declined services that you would normally expect them to use, or show little interest in the transaction, this may indicate that the property deal is a sham and merely being used to confuse the audit trail for criminal money. (Part of the layering stage of the laundering proceeds.).

15.2.3 Ownership Issues

Properties owned by nominee companies or those with complex structures may be used for money laundering vehicles to disguise the true owner and /or confuse the audit trail. In such cases verifying the identity of the ultimate beneficial owner of the corporate structure is vital.

Last minute changes of instructions concerning the identity of the prospective purchaser in whose name the property is to be registered should give rise to additional due diligence.

Changes in beneficial ownership of a company owning and managing a property where the new beneficial owner's source of funds for the company purchase is unclear or dubious may indicate that criminal funds have been injected into the company. This risk is heightened if known, reputable lawyers have not been appointed by either or both sides to act for them.

15.2.4 Property Values

A significant discrepancy between the sale price and what would be considered to be normal for such a property may indicate fraud or money laundering.

Properties sold below market value to an associate may have the objective of obscuring the title to the property while the original owner still maintains the beneficial ownership.

15.2.5 Valuations and Surveys

When estate agents provide a valuation service prior to being instructed as selling agents or when they are providing a service as surveyors, it is important that they are vigilant. If there is any indication that the property is being used for criminal conduct, a suspicious activity report must be submitted to the MLRO of the realtor.

15.2.6 Funding Issues

Whilst lawyers normally handle the funds provided for a property purchase, or the sale proceeds, estate agents will often become aware of the funding arrangements. Suspicions should not be ignored merely because a lawyer is also involved and the sale or purchase funds are not passing through the Estate Agent.

For example, a client who advises that the funds from the sale will be going overseas and paid to an unrelated third party may indicate that the funds are being laundered on behalf of the third party. Similarly, where the source of funding for a purchase is obscure or appears unusual this may indicate laundering of criminal funds, particularly if the funds are offered in cash or are coming in from an overseas bank account that is unconnected to the purchaser.

Situations where a particular purchaser requests an estate agent to hold the potential purchase funds in their client account, this must be treated with extreme caution. This type of situation should raise an alarm because large amounts of cash cannot normally be deposited without suspicions being raised. Criminals will often use other professionals as gatekeepers. Placing cash into the banking system through client accounts of professional firms is a classic money laundering technique. As lawyers tighten up on the circumstances in which they will hold client money other gateways will be sought. Where a client withdraws from a transaction after paying money to a realtor's (client) account, the client will subsequently receive a cheque (or electronic transfer) from the lawyer or estate agent which makes the funds appear legitimate.

16 Appendix B Red Flag Indicators

Based upon the analyses of the typologies exercise undertaken by the FATF the following red flags are provided for information. It must be remembered that these are red flags, which should prompt further enquiry and consideration. Appearance does not necessarily indicate money laundering.

This list is not exhaustive and non-appearance of a factor or characteristic on this list does not mean automatically that it is an acceptable situation.

- Client arrives at a real estate closing with a significant amount of cash.
- Client purchases property in the name of a nominee such as an associate or a relative (other than a spouse).
- Client does not want to put his or her name on any documents that would connect him or her with the property or uses different names on the offer to purchase, closing documents and deposit receipts.
- Client inadequately explains the last minute substitution of the purchasing part's name.
- Client pays substantial down payment in cash and balance is financed by an unusual source or offshore bank,
- Client purchases property without inspecting it.
- Client purchase multiple properties in a short period, and seems to have few concerns about the location, condition, and anticipated repair costs etc. of each property.

- Client pays rent or the amount of a lease in advance using a large amount of cash.
- Client is known to have paid large remodelling or home improvement invoices with cash, on a property for which property management services are provided.
- Transactions involve a disproportionate amount of private funding/cash which is inconsistent with the socio-economic profile of the individual
- Transaction is unusual because of the manner of execution. For example the depositing of the total purchase price early in the transaction.
- The client claims lack of access to a bank account. This may be an indication of financial sanctions or a court freezing order.
- Request to act for multiple parties without meeting them.
- Involvement of third parties funding without apparent connections or legitimate explanation.
- Transactions are unusual because they are inconsistent with the age and profile of the parties.
- Multiple appearances of the same parties in transactions over a short period of time.
- Back to Back property transactions with rapidly increasing value
- Client changes legal advisor a number of times in a short space of time without legitimate reason
- Client provides false documentation.
- Client is known to have convictions of acquisitive crime
- Attempts to disguise the real owners or parties to the transaction.
- Mortgages repaid significantly prior to the initial agreed maturity date with no logical explanation.
- Client using a bank account from a high risk jurisdiction
- Unexplained changes in instructions especially last minute.
- Use of complicated structure without legitimate reason.

17 Appendix C – Guidance Template on Structuring a Compliance Program

17.1 Table of Contents

1) **Introduction**
2) **The Written Compliance Program**
    - A. **Table of Contents (Appendix 1)**
    - B. **Policy Statement**
    - C. **Overview of Money Laundering, Terrorist Financing and Proliferation Financing Crimes**
    - D. **Internal Policies, Procedures and Controls Which Describes the Who, What, Why, When and How of the Program**
    - E. **Designation of a Money Laundering Compliance Officer and Money Laundering Reporting Officer**
    - F. **Ongoing Employee Training**
    - G. **Review of the Program**

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1) Introduction

Legislation requires that supervised entities register with the Financial Services Commission and adopt a written AML/CFT/PF Compliance program which is reasonably designed to ensure proper record keeping and reporting of certain transactions to prevent the supervised entity from being used to launder money or to finance terrorism.

An AML/CFT/PF Compliance program should be designed to suit its individual business to address money laundering/financing of terrorism/proliferation financing (ML/FT/PF) risks identified. In developing its program, risk factors including the size, location, complexity of business activities, cash intensity, type of products offered and the types of transactions in which its customers engage should be considered and weighted. Once these risks are assessed, the compliance program should reflect the higher risk areas and the policies and procedures to mitigate the identified risks.

As evidence of approval, the written AML/CFT/PF compliance program must bear the signature/stamp/seal of approval of senior management officials (directors/partners/ owner of the business) and the date of approval. The policies contained in the approved in the compliance program must be effectively communicated to all staff for immediate implementation thereafter.

This AML/CFT/PF compliance program must be reviewed annually to ensure it complies with the legal requirements and is in line with the business risk profile, incorporating benchmarking and best practice. Once gaps are identified, amendments must be made to strengthen the compliance program and resubmitted to senior management for approval.

2) The Written Compliance Program

The written well-structured AML/CFT/PF compliance program should have these five (5) key components for compliance with the national AML/CFT/PF obligations and easy to apply in practice:

a) Risk assessment
b) A system of internal compliance controls
c) Designated AML/CFT/PF Compliance Officer
d) Training of employees and senior management
e) Independent audit to test the system

Any well-structured AML/CFT/PF compliance program should include:

A. Table of Contents (Appendix I)

B. Policy Statement

A policy statement is designed to give an outline of the purpose of the AML/CFT/PF compliance program. This can include:

i. The supervised entity's commitment to fulfilling its AML/CFT/PF obligations and initiatives of the Government of Montserrat in combating money laundering, financing of terrorism, proliferation financing and other related crimes.
ii. The regulatory requirements, the policies and procedures developed are designed to meet obligation in the POCA, Cap. 04.04, AML/TF Regulations and Code.
iii. A statement that the compliance program is designed to help employees at all levels detect and prevent money laundering, terrorist financing and proliferation financing and report the same accordingly.
iv. The obligation that all employees are required to abide by the AML/CFT/PF policies and procedures must be made explicit.

C. Overview of Money Laundering, Terrorist Financing and Proliferation Financing Crimes

i. Explain the crimes of money laundering, terrorist financing and proliferation financing. Reference can be made to the definitions stated in guidelines published by the FATF or other international agencies and the AML/CFT/PF legislation of Montserrat.

ii. Explain that the laws (the POCA, AML/TF Regulations, Code and the Sanctions Orders), require certain businesses to file specific reports, maintain records on certain transactions and to obtain documentation that may be used to detect, investigate and prosecute money laundering, financing of terrorism and proliferation financing crimes/offences.

D. Internal Policies, Procedures and Controls Which Describes the Who, What, Why, When and How of the Program

This section communicates the policies, procedures and controls that officers and employees are expected to follow to ensure that the supervised entity complies with its AML/CFT legal obligations.

These internal policies and controls should include:

i. A clear statement of the persons to whom the manual applies – i.e. all staff (including senior management) and all directors. Additionally, some businesses have included a declaration for staff to attest as having seen and read the compliance program.

ii. Identify the supervised entity responsibilities under the law including the POCA, AML/TF Regulations, Code and the Sanctions Orders.

iii. Identify and assess the types of AML/CFT/PF risk and where the high risk activities in the organization.

iv. Detail the customer due diligence (CDD) measures for individuals and companies. Include when these measures must be applied and the customer identification documentation required for customers (this should be based on risk). For example, valid forms of photo identification, current utility bill as proof of address, job letter or payslip as proof of employment, etc.

v. Detail measures for confirmation and verify customer identification information to be carried out. This includes consulting the United Nations Sanctions Listings (UN Sanctions), Office of Foreign Assets Control (OFAC) and Office of Financial

Sanctions Implementation, HM Treasury (OFSI/HMT) to determine whether a new or existing customer may be a designated individual or entity.

vi. Detail the enhanced due diligence (EDD) measures for high risk customers such as non-face to face customers, politically exposed persons (PEPs), persons (whether local or foreign), for non-residents and when business is obtained through introducers. Indicate whether copies of documentation are acceptable and whether they need to be certified and by whom. Include CDD details in accordance with Regulations 5, 6, 7, 8 and 9 of the AML/CTF Regulations. Sample identification forms listing the identification data to be collected could be attached as an Appendix.

vii. Include the measures for monitoring of the business relationship which will identify unusual, large or suspicious business transactions.

viii. Include procedures to govern all payment methods. Is there a threshold for cash or other payment methods? Include the compulsory requirements of due diligence on:

- large transactions of EC$27,000 (the equivalent of US$10,000) and over
- wire transfers of EC$2,500 and over
- occasional transactions (structured/linked transactions).

Is there a threshold for particular kind of payment method? State when a customer would be required to complete a source of funds declaration (SOFD). The SOFD form could be attached as an Appendix.

ix. Include the measures to be adopted for due diligence for cross border business.

x. Include the EDD measures to be adopted in respect of business transactions with persons and FIs from other countries which do not sufficiently comply with the recommendations of the Financial Action Task Force (FATF).

xi. Clearly state the internal reporting procedures. The law requires the filing of a suspicious transaction/activity report (STR/SAR) with the FCAU for any transaction or pattern of transactions that is attempted or conducted for ANY amount that you know or suspect or have reason to suspect:

- Involves funds derived from a specified offence or is intended to hide funds derived from a specified offence;
- Is structured to avoid recordkeeping or reporting requirements;
- Has no business or apparent lawful purpose; or
- Facilitates criminal activity.

xii. Indicate When and How a suspicious transaction or activity will be reported to the Compliance Officer (the CO). A sample for employees to make internal suspicious

report to the CO may be attached as an Appendix.

xiii. Include a notification to all employees that it is illegal to tell a customer that they are considering or filing a STR/SAR (tipping-off). "Tipping-Off" should be clearly explained and behaviour that would constitute "tipping-off" should be illustrated.

xiv. Include a caution that employees must not reveal the identity of the CO; his/her identity must be held in strict confidence.

xv. Maintain records of transactions and identification data for at least 5 years and for at least 5 years after the relationship with a customer ends. State how the records will be kept – electronic or written form. Depending on the size of the organization, this may be a function of the Records Management Department. In such case, the CO should have unrestricted access.

xvi. An Appendix illustrating examples of suspicious activities or transactions that are industry specific may also be included.

E. Designation of a Compliance Officer (CO) and Alternate Compliance Officer (ACO)

i. Identify the level at which the designated CO and the ACO is in the Organisation, (the CO should be at a responsible level, preferably at management level). It is not necessary to state CO and ACO's name in the written AML/CTF/PF compliance program. The CO's and the ACO's identities and contact details must be provided to the Commission under separate cover.

ii. State the responsibilities of the CO. The CO is responsible for the day-to-day compliance with the AML/CFT/PF's Laws and Regulations such as the submission of STRs/SARs, quarterly terrorist reports (QTRs), Terrorist Funds Reports (TFRs) where applicable and economic sanctions reports (ESRs) to the FCAU.

iii. Include the CO's functions under the entity's reporting obligations and specifically the following:

   a. that the STR/SAR should be in the form approved by the FCAU (You may include a copy of the form as an Appendix);
   b. the time within which the report must be sent to the FCAU (section 123 (1) of the POCA)
   c. the duty to co-operate with the FCAU
   d. the submission of a SAR if there is reasonable belief that property is being used for terrorist activities.

iv. Include other duties of the CO which may include:
    a. to monitor lists published by the FATF, CFATF, and other jurisdictions or agencies; and
    b. to keep a Register of enquiries made by LEA and a register of STRs/SARs submitted to the FIU.

F. Ongoing Employee Training

Include measures to ensure all employees and directors are made aware of the relevant laws governing AML/CTF/PF. Measures should include:

- Provision of AML/CTF/PF training at least annually especially for personnel directly involved in the compliance function. The training should cover topic area relevant to the job function; and
- Measures of training of new employees.

The CO and the ACO will need more in-depth training.

G. Review of Program

i. The supervised entities must periodically assess the risk of criminal conduct and take appropriate steps to design, implement, or modify its compliance program to reduce the risk of criminal conduct identified through this process.
ii. How often? The compliance program must be reviewed annually to ensure its adequacy and the revised compliance program approved by the senior management.
iii. External Audit – Indicate how often and how it will be done, whether a written report will be prepared and to whom it will be sent.
iv. Independent Internal Audit – Indicate how often it will be conducted and whether a written report will be prepared and to whom it will be sent. By 'independent audit' is meant review, (by persons who are not part of the AML/CTF/PF policies and procedures), for their appropriateness, compliance and effectiveness.

NB: Supervised entities are required to follow all of the requirements of AML/CTF/PF laws and regulations. This guide may NOT contain all those requirements and does not create a safe harbour from regulatory responsibility. Further, an AML/CTF/PF compliance program is not a "one-size-fits-all", and you must tailor your plan to fit your particular financial institutions' or listed business operations and strategic objectives.

Appendix 1

COMPLIANCE PROGRAM

Table of Contents

18 Glossary

AML/TF	Anti-Money Laundering and Terrorist Financing	Description used in Montserrat legislation.
AML/CTF	Anti-Money Laundering and Combating (or Countering) Terrorist Financing	An alternative shortened form used by other Anti-Money Laundering bodies.
BO	Beneficial Owner	The natural person who ultimately owns or controls the client relationship through which a transaction is being conducted. It also incorporates those persons who exercise ultimate control over a legal person or arrangement.
CDD	Client Due Diligence	Includes not only establishing the identity of clients, but also monitoring activity to identify those transactions that do not conform with the normal or expected transactions for that client or type of account
CFATF	Caribbean Financial Action Task Force	A FATF styled regional body comprising Caribbean states.
DNFBP	Designated Non-Financial Businesses and Professions	Within its 2003 revision FATF recommended the inclusion of a series of additional businesses and professions within the scope of the Anti-Money Laundering Regulations.
FATF	Financial Action Task Force	An international policy making body that sets anti-money laundering standards and counter-terrorist financing measures worldwide. Thirty-four countries and two international bodies are members.
FIU	Financial Intelligence Unit.	The Financial Intelligence Unit (FIU) of Montserrat is the Money Laundering Reporting Authority (MLRA) which has been established under section 128 of the Proceeds of Crime Act, Cap. 04.04 authorised to receive Suspicious Activity Reports (SARs).
LEA	Law Enforcement Agencies	Generic term. In the case of Montserrat, the FIU is a Law Enforcement Agency. The Royal Montserrat Police Service (RMPS) is the other Law Enforcement Agency on Montserrat.
MLCO	Money Laundering Compliance Officer	Regulation 16 of the AML/TF Regulations prescribes the function of the MLCO.
MLRO	Money Laundering Reporting Officer	Regulation 17 of the AML/TF Regulations prescribes the function of the MLCO.

OFAC	Office of Foreign Assets Control	Office within the U.S. Department of the Treasury that administers and enforces economic and trade sanctions against targeted foreign countries, terrorist-sponsoring organisations, terrorists, international narcotics traffickers, and others based on U.S foreign policy and national security goals.
OFSI/HMT	Office of Financial Sanctions Implementation, HM Treasury	The HMT sanctions list contains individuals and entities subject to specific financial restrictions as part of the UK's domestic counter-terrorism regime policy. It also includes those individuals prohibited by the United Nations and/or European Union. The purpose of financial sanctions in the UK is to achieve specific foreign policy or national security goals.
POCA	Proceeds of Crime Act	The Proceeds of Crime Act, Cap. 04.04 is the main legislation which directs the anti-money laundering framework on Montserrat.
PEP	Politically Exposed Person	An individual who has been entrusted with prominent public functions in a foreign country, such as head of State, senior political, senior government official, judiciary, or military official, senior executive of a state-owned corporation or important political party official, as well as their families and close associates.
PF	Proliferation Financing	Proliferation financing refers to financing for the purchasing of weapons of mass destruction.
UN SANCTIONS	United Nations Sanctions Listings	UN sanctions lists are diplomatic decisions enforced by the United Nations member states against states, entities, or individuals. These sanctions are measures of safety to preserve national safety interests, peace, and international law.

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