Guide on the real estate sector

UIFAND
UNITAT D'INTEL·LIGÈNCIA FINANCERA

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1. INTRODUCTION

In the past few years, the magnitude and dynamism of the real estate sector in the Andorran economy has been underlined, among other issues, by the volume -both in terms of the amount and the number- of real estate purchase transactions carried out.

According to data from the Department of Statistics of the Government of Andorra, the total number of real estate transactions carried out in the Principality of Andorra in 2022 amounts to 2,072 transactions, which represents an increase of over 28% since 2019.

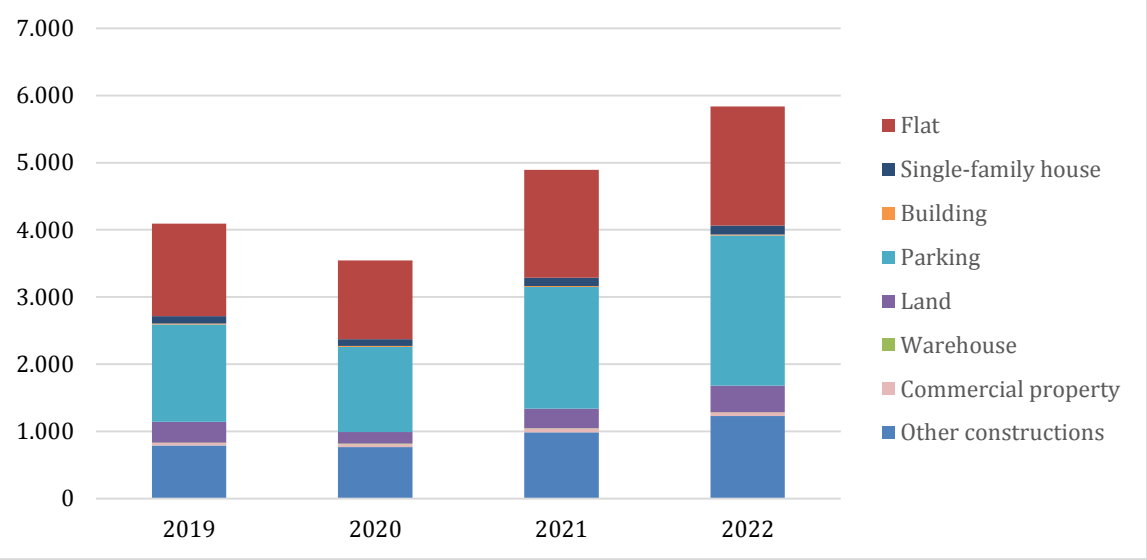
Figure 1: Number of real estate transactions

Description	2019	2020	2021	2022	Variation between 2019 and 2022
Total number of real estate transactions	1,621	1,318	1,948	2,072	28%

Source: Department of Statistics, Government of Andorra

This increase in real estate transactions corresponds to an increase in the sale of different types of properties (mainly flats, car parking and other constructions), as shown in the graphic below:

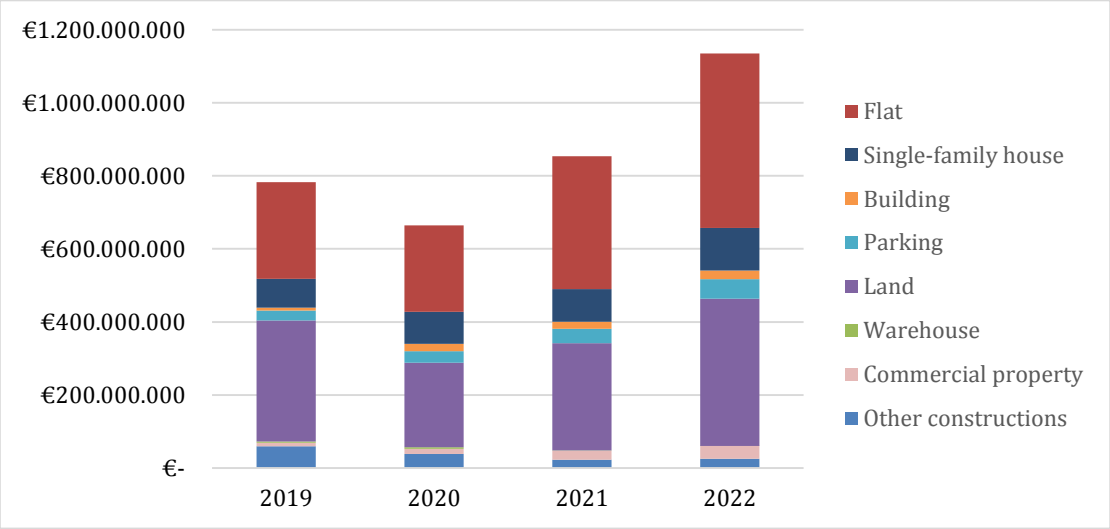
Figure 2: Number of real estate assets transacted by typology



Source: Department of Statistics, Government of Andorra

Likewise, in terms of the monetary volume of real estate transactions, flats account for a significant amount, but land also represents a significant part of the total volume, due to its unit value, as shown in the following graphic:

Figure 3: Real estate assets transacted by prices



Source: Department of Statistics, Government of Andorra

These increases, both in terms of the number of transactions and the monetary magnitudes involved, have their origin in the attraction of investment in the real estate sector, in an upward trend in prices and in an increase in the number of new building permits granted by the administration. Real estate promotions aimed at the construction of luxury apartment buildings are an important part of this dynamic.

From this perspective, criminals or criminal organisations could take advantage of an evolving market that requires the movement of large amounts of money to conceal its operations. In this sense, in order to operate in the sector, criminals could use individuals, corporate structures or intermediaries, as well as the increase in private foreign investment in real estate, which has become a strategic tool for promoting economic growth.

Therefore, bearing in mind that the real estate sector has traditionally been used for ML/FT purposes, this guide aims to collect the main risks inherent to the sector, as well as provide detail regarding the main prevention obligations in order to avoid this fraudulent use of the sector.

1.1. Purpose

The purpose of this guide is to provide guidelines on the main anti-money laundering and counter-terrorist financing (AML/CFT) obligations of reporting entities involved in the real estate sector, identifying the specific risks of the sector and providing examples of good practices in relation to the correct identification, management and mitigation of the risks detected, so that reporting entities have robust and consistent preventive and control systems in place.

Specifically, this guide aims to:

a) Raise awareness among reporting entities of the existence and risks associated with the real estate sector;

b) Issue guidelines that take into account new and emerging threats/vulnerabilities, developments and the national context of this sector;

c) Specify the main AML/CFT obligations of the reporting entities involved and participants in this sector; and

d) Detail practical examples for the correct management and mitigation of the risks inherent to the sector.

1.2. Target audience

Pursuant to the modification introduced to *Law 14/2017, on the prevention and fight against money laundering and terrorist financing* (hereinafter, Law 14/2017) through *Law 37/2021, December 16, amending Law 14/2017, on the prevention and fight against money laundering and terrorist financing*, the transactions related to the real estate sector subject to the provisions of the AML/CFT regulations are those carried out by:

1) Real estate agents carrying out activities related to buying and selling properties, and also

2) Real estate agents when acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to €10,000 or more.

3) Notaries, lawyers and other independent legal professionals, where they participate, whether by acting on behalf of and for their client in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their client concerning the buying and selling or other disposition acts of real property.

4) Non-resident natural and legal persons who carry out in the Principality of Andorra any activity of the same nature as those listed above.

At this point, it should be noted that this Guide is aimed more specifically at real estate agents, defined in article 1 of the Law on real estate agents and professionals of 15 December 2000, as those individuals and legal entities that obtain their income professionally, intervening in the following operations:

(i) mediation activities in transactions relating to the purchase, sale and exchange of real estate;

(ii) mediation activities in leases, subleases, assignments, transfers of real estate, whether built or under construction, whatever its use;

(iii) the administration and management of all types of real estate assets on behalf of third parties, whatever their nature, as well as all types of rights over these assets;

(iv) the taxation at market value of real assets and rights, as well as the taxation of rights over the same assets and rights.

In addition to the aforementioned professionals, there are other participants or players in the sector, such as individuals or companies operating on their own account or real estate developers, who, depending on the casuistry of their activity, may not be obliged to comply with Law 14/2017. Nevertheless, these persons are also exposed to some extent to ML/TF risk in the real estate sector and for whom the content of this guide could be relevant

1.3. Internal legal references and other applicable publications

For a better understanding, it is recommended that this Guide be read in conjunction with the applicable legislation in this area and the following publications:

- *Law 14/2017, of 22 June, on the prevention and fight against money laundering and terrorist financing;*
- *Regulation of Law 14/2017, of 22 June, on the prevention and the fight against the laundering of money or assets and against terrorist financing*, approved by Decree 76/2022 of 2 March 2022;[1]
- *Informative note addressed to the real estate sector issued by UIFAND on 17 May 2023;*[2]
- *Guidance for a Risk-Based Approach related to the Real Estate Sector* issued by FATF in July 2022.[3]

[1] The national legislation on AML/CFT is available on the UIFAND website (w https://www.uifand.ad/en/home), in the "Regulation"> "National legislation" section.
[2] The national legislation on AML/CFT is available on the UIFAND website (w https://www.uifand.ad/en/home), in the "Publications"> "Other publications" section.

2. RISKS ASSOCIATED WITH THE REAL ESTATE SECTOR

The real estate market in the Principality of Andorra is a very significant sector, both in terms of the income it generates, and the wide range of economic transactions it covers, with repercussions in areas such as the social and environmental spheres as well as in the economic stability of the country.

Moreover, the Andorran real estate market encompasses a wide variety of properties, from modest apartments in buildings constructed years ago, or large units in newly constructed buildings, to luxury homes located in privileged areas of the Andorran territory, as well as other types of real estate such as commercial premises, warehouses, houses or industrial buildings.

The volume, dynamism and diversity evident in the sector can encourage investment and the integration into the legal economic system of funds derived from criminal activities.

In this regard, it should be borne in mind that the risks associated with the sector are diverse, making the sector and its various participants vulnerable to being used for ML/TF purposes.

For this reason, this section sets out the characteristic features of the risks that reporting entities participating in the sector must take into account when entering into a business relationship.

2.1. High value and occasional real estate operations

The economic transactions that take place in the real estate sector are mostly of a considerable amount, a fact that can lead to transactions involving real estate assets becoming a common channel for investing and introducing funds of illicit origin into the legal economy.

Apart from this, the occasional nature of real estate transactions demands that the real estate agent applies all the controls during the course of the operation and, on most occasions, does not establish a professional relationship with the buyer or seller of the transaction. This reality does not enable a degree of knowledge of the client similar to those achieved through a continuous business relationship to be generated.

Some real estate agents state that, under certain ML/TF risk characteristics, they choose not to enter into a business relationship. This solution is not in line with the design of a risk-based preventive system, and could make it difficult for investigating authorities to stop any ML/TF process, as a money launderer would try to proceed with the same transaction with another reporting entity or would mask the transaction.

[3] This Guide is available on the FATF website (www.fatf-gafi.org/en/home.html) in the "Home">"Publications">"Risk-based Approach Guidance for the Real Estate Sector" section.

Therefore, risk mitigation measures include the following, among others:

- The amount of the transaction is a very important element of risk in the design of the reporting entity's preventive system. Real estate agents have to focus resources and intensify controls on those transactions that entail the greatest risk, and the amount of the transaction is a characteristic to be taken into account.
- In the event of detecting suspicions that the funds coming from the parties involved in the operation are the proceeds of a criminal activity, the real estate agent must make the mandatory declaration of suspicion before the UIFAND, regardless of the acceptance of the client. It should be remembered that article 20.1 of Law 14/2017 obliges the real estate agent to declare all suspicious transactions, including attempted transactions.

2.2. Volatility of real estate prices

The rental and housing market has increased exponentially, which attracts investors and private individuals looking for immediate returns on their real estate assets.

This increase is usually linked to the rise in the cost of living, which means that one of the main characteristic features of real estate is the volatility of its prices, since these prices can vary significantly depending on the economic and social circumstances of the country. In this regard, in recent years this circumstance has been constantly in evidence, a fact that can encourage criminals to launder large amounts of money by means of a reduced number of operations. If we look at the average value per transaction according to the type of property, the figures are as follows:

Figure 4: Real estate assets traded by imports

Average value	2019	2020	2021	2022	Variation (2019-2022)
Flats	€192,103	€201,734	€226,528	€269,823	40%
Single-family houses	€695,183	€899,935	€717,434	€879,164	26%
Lands	€1,066,326	€1,355,090	€1,006,240	€1,028,827	-4%
Parking	€18,958	€24,845	€21,809	€23,700	25%
Commercial properties	€240,192	€320,370	€417,531	€626,577	161%

Source: Department of Statistics, Government of Andorra

In line with the abovementioned, it should be borne in mind that the valuation and taxation of real estate assets can be connected to aspects not directly derived from the economic value of the asset itself. This means that criminals can use the real estate sector to bring in a larger amount of money of illicit origin, justifying this by inflated taxation of the property in question at the time of the subsequent sale and thus recovering the funds.

Therefore, risk mitigation measures include, among others, the following:

- In transactions that require a valuation, the real estate agent must check that the quotation report identifies a value with knowledge and experience, i.e. with the capacity to issue a true and certain valuation, as well as explaining the valuation methodology used.
- Real estate agents, in accordance with their experience and knowledge in the field, must pay close attention to ensure that the offer price and the price at which the participants in the transaction finally agree do not differ by more than the price they consider to be objectively consistent.

2.3. Actions seeking anonymity

Historically, real estate has been acquired by individuals or legal entities for the purpose of obtaining residency in the Principality or for specific business purposes. However, nowadays it is also common for companies, investment funds or other types of legal structures to be associated for the purpose of property management or promotion. These companies or investment vehicles may use funds provided by third parties to make these investments and, among others, these need to be identified.

The increasing prevalence of these types of private investors and the use of these types of legal structures, used to facilitate this type of investment, sometimes makes it difficult for real estate agents to identify and verify both the clients and the beneficial owners of the transaction, and to verify their identity. It is important to highlight the following cases:

- Through foreign legal entities:

The inherent characteristics of real estate assets, such as their durability, profitability and price revaluation, mean that real estate sales and purchases have become an ideal means of concealing the true origin of the funds as well as the identity of the beneficial owner.

Likewise, in the real estate market it is common to find that the ownership of real estate is formalised by asset-holding companies or special purpose vehicles, or through legal structures not incorporated in the country, with the result that, if an exhaustive procedure for identifying and verifying the identity of the beneficial owner is not available, the latter remains hidden in the corporate framework and is exempt from the application of the necessary due diligence measures.

- Through representatives:

In the real estate sector, it is also common for foreign individuals to use intermediaries, who manage the final real estate transaction on behalf of the client. In these cases, there is a risk that the professionals in the sector do not know the identity of the client / beneficial owner, and only apply due diligence measures to the client's representative, assuming until the final stage of the transaction that this is the beneficial owner of the transaction, thus enabling the concealment and anonymity of the real beneficial owner.

Therefore, risk mitigation measures include the following, among others:

- The real estate agent must identify the beneficial owner of the transactions, both for natural persons and especially for legal entities.
- It is necessary to determine, by requesting the necessary documentation, who is the owner of the property to be sold, and to this end, it is recommended that more exhaustive measures of due diligence be applied in the case of actions carried out through representatives.
- In cases where the client's counterparty acts through representatives, the real estate agent must, firstly, identify the beneficial owner counterparty and its representatives, and secondly, ensure that the real estate agent of said counterparty has adequate procedures and policies in place to ensure the correct application of the necessary due diligence measures, in order to mitigate the aforementioned risks.

2.4. Intermediation of different reporting entities in the same transaction

The professionals involved in the real estate sector are very varied, as they may include banking institutions, lawyers, notaries and real estate agents, among others.

In this regard, real estate agents may feel that, since clients undergo different filters for the application of due diligence measures by other professionals, the controls that they themselves have to apply may be less exhaustive. This erroneous practice implies a reliance on the actions of a third party or even a tacit delegation of the fulfilment of the obligations of the reporting entities, a fact that money launderers can exploit to find a loophole in the general AML/CTF system.

In this regard, it should be recalled that Article 18 of Law 14/2017 only allows the delegation of the identification and verification of the identity of the client and the beneficial owner, as well as the obtaining of information on the purpose and nature of the business relationship, but not the application of continuous monitoring measures, nor in relation to the assessment, understanding and obtaining of information to identify and verify the origin of the funds. In any case, the delegating reporting entity remains responsible for the fulfilment of these obligations. For this reason, it is highly recommended that, if it is decided to make a delegation to third parties, this should be reflected in a written document.

Role of notaries in real estate transactions.

Within the AML/CFT system at the national level, notaries play a crucial role mainly with regard to controls on the transfer of assets, the identification and verification of the identity of persons, the creation of companies and other legal entities, and, not least, the reporting of suspicions to UIFAND.

Although other professionals or entities also apply their AML/CTF controls, notaries are in a privileged position to detect suspicions, as they have a global view of all the parties involved in a transaction. Moreover, notaries have professional judgement and extensive experience that enables them to detect unusual transactions or certain transactions that do not make economic or any other sense.

Moreover, it should be borne in mind that the deeds formalised by notaries are documents that are often used by other reporting entities to verify the origin of the funds, to determine the beneficial owner or for some other due diligence measure applicable in their business relations.

This is why it is necessary to highlight certain practices of the notarial profession that mitigate certain risks associated with real estate transactions:

- Considering that the controls are applied prior to the date of formalisation of the real estate transaction and that the documentation is provided by intermediaries (real estate agents, agencies, lawyers, etc.), it is advisable for the notary to identify these professionals and verify their capacity to act, as well as to have minimum AML/CTF controls in place.

- Notaries identify and verify the identity of the parties in real estate transactions, as well as the beneficial owners that have been determined. These verifications include the validation of the powers of representation of companies or other persons for the performance of real estate transactions.

- Alongside the checks on the origin of the funds, notaries verify the movement of funds in the transactions described in the deeds. This means that they verify, by means of a transfer order, a cheque, or some other proof of a means of payment, that the person buying a property has paid the agreed price to the seller. The notary records in the deed any sum of money exchanged between the parties outside the notarial act and which does not have documentary evidence, which entails a high risk of ML/TF.

2.5. Use of different means of payment

For real estate transactions, different means of payment are allowed, such as cash or negotiable bearer instruments, which encourage anonymity and, therefore, make it difficult to trace the funds. Special attention should also be paid to the use of split payments over short periods of time or to financing with funds from countries considered to be tax havens or high-risk territories.

The risks associated with each of these means of payment can make it difficult to verify the origin of these funds and hinder the examination of transactions and the consequent detection of potential ML/TF suspicious activities.

Therefore, recommended measures for action include, among others, the following:

- The reporting entity must identify those means of payment that do not allow the traceability of funds and implement more exhaustive controls in this type of operations. For instance, in the use of cash, either for the whole operation or for part of it (payment of a deposit, or earnest money contract -"*contracte d'arres*"-, etc.).
- The reporting entity must be extremely vigilant to new means of money, such as crypto currencies, in order to prevent fraudulent use of these means.

2.6. Receipt and administration or custody of third-party funds

Real estate activity may involve some of the professionals operating in the sector receiving funds from a third party for different purposes. For example, real estate agents may take custody of money as payment of a deposit for a property, or as part of an earnest money contract. These guarantee funds are usually retained during the process of buying and selling a property and are designed to ensure that the property is paid out once certain requirements have been met.

Nevertheless, the intervention of professionals in the administration or custody of third-party funds is not only limited to real estate agents. Other professionals, such as lawyers or company services providers, usually receive a mandate to act on behalf of their client that could involve carrying out certain transactions, and implicitly the custody or administration of third-party funds.

Considering the ML/TF risks inherent in the receipt and administration or custody of third-party funds, the following practices could be enunciated as practices that mitigate the risks:

- Differentiate the customer's money and the treasury of the reporting entity. It is advisable, and indeed necessary, that the funds deposited with the real estate agent in the context of a purchase and sale transaction should be deposited in a different account to the one used by the reporting entity in its day-to-day business operations. Furthermore, even though the ownership of the accounts corresponds to the real estate company, the fact that they contain funds on behalf of third parties should be identified in the description.
- The earnest money contract or any other document that records the receipt of the funds must clearly identify the buyer and seller parties of the property. In cases where a third party appears, whether acting through the purchasing party or through the selling party, the real estate agent must ensure the correct identification and verification of the identity of the beneficial owners.

- The real estate agent must keep records that make it possible, at any time, to determine the clients to whom the funds deposited in the account belong, and to discern the position of each client. Likewise, a match between the registers of the real estate agent and the balance of the bank account must be guaranteed on a regular basis.
- Ensure the transparency of transactions involving third-party funds. In this sense, the real estate agent must require that the funds of a certain client come from an account that it owns, by means of a transfer or a cheque in which it appears as the originator or issuer.
- It is advisable to minimise or avoid the use of cash, or other means of payment that do not allow the traceability of funds, due to the risk they entail. However, in certain cases, such as a payment for the reservation of a property, it may be common to accept a sum of money in cash. In these cases, the real estate agent has to differentiate this money from his own treasury and keep it in safekeeping for as long as the reservation is maintained. Subsequently, and in the event that an earnest money contract is signed, it is highly recommended that the payment of the deposit is returned to its owner and that the totality of the funds that are deposited in guarantee of the deposit are provided with means that allow their traceability.
- The guarantee funds must not be used for any other purpose, but only for the purpose specified in the deposit. For example, if a real estate agent receives money from a third party and in favour of his customer in the framework of an earnest money contract, at the moment of the realisation of the purchase-sale, this money must be transferred or paid to the client in its totality, without deducting or affecting them to other expenses such as the payment of the fees of the real estate agent himself.

2.7. Real estate developments

Overall, real estate development activity consists of the purchase, construction or renovation of land and buildings for subsequent sale or rental. This activity represents an important role in the economy and urban development, as it contributes to the construction of homes and other buildings that are essential for everyday life.

The activity could be carried out by a single company in charge of the different stages of the project, but it is common for different specialised companies to take part, whether they are legal advisors, banks, builders or companies in charge of marketing, among others.

Likewise, real estate developments can be financed with the developer's own funds, but also by means of a credit line granted by a banking institution, with loans from future buyers (in the case, for example, of off-plan purchases), with project finance platforms, or with a combination of different sources.

In any case, real estate developments are an activity vulnerable to being used for ML/TF purposes for various reasons.

Firstly, and as highlighted above, the real estate sector usually involves large amounts of money, which makes it an attractive option for money launderers for the placement of illicit money, putting at risk the integrity of the sector and society in general. The main problem lies in the fact that not all those involved in this activity are reporting entities as regards of Law 14/2017, which means that there is no obligation to develop an AML/CTF system for different real estate developers who, for example, act on their own behalf or do not intermediate in the subsequent purchase and sale of real estate.

Secondly, the evolution of the real estate sector and the high prices attract foreign entrepreneurs with the will to start real estate developments in the Principality of Andorra, mostly aimed at investors who also live abroad. In the event that a criminal plot would be tempted to take advantage of this situation, the detection of links between developers and investors could be crucial to dismantle it.

In third place, the real estate sector is prone to the use of shell companies and nominees, as well as cash transactions. This means that criminals can use these tactics to hide their true identity and the origin of their funds. Alternatively, real estate developments can be used to add a layer of obfuscation to the illicit origin of the funds, by allowing the recovery of funds previously invested in the project, the transfer of the investment to a third party or the acquisition of the property by a person other than the client who made the payment.

In view of the above, it is necessary to highlight some practices that mitigate the aforementioned risks associated with real estate transactions:

- It is crucial that all professionals involved in real estate promotions implement policies and procedures of due diligence to prevent the risks of the activity and protect the integrity of the sector and, thus, avoid the introduction of illicit money into the economic system.
- It is highly recommended that the professionals involved in real estate transactions derived from a real estate promotion, apply due diligence measures to all those who have participated from the beginning of the project, among others, the real estate promoters, in order to prevent them from being used to obtain the ML through the promotion and to detect possible links between promoters and investors.

3. OBLIGATIONS RELATED TO THE REAL ESTATE SECTOR

The main obligations of reporting entities established by the AML/CFT regulations are as follows:

3.1. Individual Risk Assessment (IRA)

Reporting entities must have an Individual Risk Assessment (hereinafter, IRA). This is an analytical document, which reflects the risk profile of the reporting entity and that must be used to identify and adequately manage the ML/TF risks to which it is exposed. Consequently, the purpose of this study is to detect those areas that are most vulnerable and on which control measures should be concentrated to reduce the associated risk to the acceptable level of tolerance determined by each reporting entity.

For instance, if a real estate agent's target market is foreign legal entities with the purpose of investing in real estate, this factor must be taken into account when developing the IRA in order to implement the necessary controls.

This document must be approved by the Board of Directors and is the basis for developing policies and procedures to mitigate ML/TF risks.

This IRA shall [4]:

- Be appropriately documented and reflected in a written report;
- Take into account all the relevant risk factors before determining the global level of risk and the appropriate mitigation measures. These risk factors shall include those relating to their customers, countries or geographic areas, products, services, transactions or delivery channel;
- Be periodically reviewed and, particularly, when there are major events or developments in the management or activity of the reporting entity.

Likewise, the IRA shall be made immediately available to the UIFAND upon its request at any time.

3.2. Appointment of an Internal Control and Communication Body (ICCB) and representatives before the UIFAND

Reporting entities shall appoint an Internal Control and Communication Body (hereinafter, ICCB) and notify this appointment to the UIFAND. This body is in charge of verifying the constant and effective compliance with the respective obligations by the entity, by its administrators, by its directors and by its employees.

[4] For more information, the Individual Risk Assessment Guide, updated in February 2023, is available on the UIFAND website (https://www.uifand.ad/en/home).

To this end, the ICCB must have the necessary authority and resources to establish an effective ML/FT prevention and combating programme and, therefore, must have the capacity and knowledge of the subject matter and the applicable ML/FT regulations. In addition, the ICCB must have immediate access to documentation relating to customer identification, other documentation relating to the fulfilment of due diligence obligations, transaction records and any other relevant information.

ICCB members must meet, as a minimum, the following requirements prior to their appointment:

1) Be members of the management or the senior management of the reporting entity.
2) They should be designated by the Board of Directors or by the general management.
3) They should possess the necessary professionalism to carry out their functions with integrity.
4) They should possess the experience, knowledge of the Andorran legislative framework in matters of AML/CTF, availability, and authority within the entity as are necessary to carry out their functions within the internal body in an effective way.
5) They should have the authority to propose at their own initiative to the top management, all the measures and means necessary to ensure compliance with and the effectiveness of the internal measures for AML/CTF.

This body can be single-person or collegiate, with a composition adapted to the structure, complexity and size of the business, although, on most occasions, in practice, this body in the real estate sector is single-person:

i) If the reporting entity is a natural person who is the owner of the activity, he/she shall be considered the ICCB by default and must fill out the form for the designation of the ICCB and the representative[5], duly signed, on paper or electronic support.[6].

ii) If, on the other hand, the reporting entity is a legal person, the ICCB can be either a single person or a collegiate body, depending on the structure, complexity and size of the business. The above-mentioned form must be filled in, duly signed, on paper or electronically.

Together with the communication of the composition of the ICCB, the reporting entity must designate the representative before the UIFAND and communicate it to this Unit using the same form.

[5] This form is available at the UIFAND website (https://www.uifand.ad/en/home), in the "Other publications" > "Forms" section.
[6] The addresses for submitting the form, on paper or electronically, are, respectively, as follows:
- Physical address: C/ Dr. Vilanova, 15-17, floor -4, AD500, Andorra la Vella.
- E-mail address: uifand@andorra.ad

Its functions are as follows:

- To submit the suspicious transaction reports referred to in Article 20 of Law 14/2017; and
- To receive the inquiries and requests from the UIFAND.
- The necessary requirement to be a representative before UIFAND is to be a manager member of the ICCB, under the criteria of training, suitability and experience in the sector.
- Any change in the person designated as representative before UIFAND or in any member of ICCB must be notified to UIFAND within a maximum period of fifteen days, using an updated form.

3.3. Internal controls and procedures

Reporting entities must formalise in writing, taking into account the size of the business, internal policies and control procedures that enable them to manage and mitigate the risks detected, in the following areas:

(i) Policy of admission of customers based on the assessment and management of risks, which should include a description of the types of customers who could pose a high risk of ML/TF in accordance with the criteria for establishing enhanced due diligence measures. The customer admission policy should be gradual and enhanced precautions should be adopted with regard to customers who pose a higher-than-average risk.

(ii) Due diligence with respect to the identification of the customer and of the beneficial owner.

(iii) Procurement of information and verification of the identity of the customer and of the beneficial owner.

(iv) Measures of confidentiality, conservation of documents, and updating of data.

(v) Internal procedure and channel of communication of possible suspicious transactions, to the ICCB, and measures of confidentiality.

(vi) Channel and procedure of communication of suspicious transactions to UIFAND.

(vii) Specific independent and anonymous channel for communication of infringements at internal level.

(viii) Suitable policies and procedures to ensure high ethical standards in the hiring of employees, executives and agents.

(ix) Procedure for the identification of persons and entities appearing on the United Nations List as well as procedures for action in the event of a positive finding.

(x) Procedure for the identification of persons sanctioned as a result of the conflict between Ukraine and the Russian Federation, in compliance with *Decree 111/2022 of 25-03-2022 on restrictive measures in relation to the conflict between Ukraine and the Russian Federation*.[7]

The internal policies and control procedures have to be approved by the top management. In all cases, the internal policies should be approved by the Board of Directors.

It should be borne in mind that the drafting of the internal procedures manual, apart from being a legal obligation, is a tool available to reporting entities in order to establish risk-based controls and to verify, in the case of collaborating with other reporting entities, that they have AML/CFT policies and apply the minimum requirements of Law 14/2017.

3.4. Categorisation of the risk of the intervening parties

Reporting entities must categorise their customers according to a high, medium or low level of risk, or in any other way that adequately identifies the risk categories.

This obligation must involve a procedure that is objective and reproducible for all customers and which is based on criteria that apply to the business of the reporting entity.

The purpose of categorising customers according to the level of ML/TF risk is to tailor due diligence measures to the level of exposure generated by the business relationship. In other words, reporting entities must intensify controls or due diligence measures for those customers that present the greatest risk, a subject that will be dealt with in the next section. This is the basis of the risk-based methodology that reporting entities are expected to implement.

Nevertheless, the fact that a customer presents an isolated risk factor, such as a high-risk professional activity, does not necessarily imply that it must be classified as high risk.

3.5. Application of due diligence measures

Customer due diligence measures shall comprise:

a) Identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source, including, where available, electronic identification means as set out in the Law on electronic trust services in force;[8]

[7] Both Decree 111/2022 and the subsequent decrees amending it are available on the UIFAND website (https://www.uifand.ad/en/home).
[8] At the date of publication of this Guide, *Law 35/2014, of 27 November, on electronic trust services*, as amended by *Law 9/2021, of 29 April, amending Law 35/2014, of 27 November, on electronic trust services*, is in force.

b) Identifying the beneficial owner and taking reasonable measures to verify that person's identity, on basis of documents, data or information obtained from a reliable and independent source, so that the reporting entity knows who the beneficial owner is.

   Additionally, as regards legal persons, trusts, companies, foundations and similar legal arrangements, taking reasonable measures to understand the ownership and control structure of the customer.

   Where the beneficial owner identified is the person who acts as a senior managing official or with equivalent executive powers, reporting entities shall take the necessary reasonable measures to verify the identity of this natural person and shall keep records of the actions taken and any difficulties encountered during the verification process.

c) Assessing and, as appropriate, obtaining information on the purpose and intended nature of the business relationship;

d) Conducting ongoing monitoring of the business relationship including:

   - Scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the reporting entities knowledge of the customer, the business and risk profile, including the source of funds; and
   - Adopt measures to ensure that the documents, data or information held are kept up-to-date and are appropriate, verifying the existing documentation, especially for high-risk customers.

e) The assessment, understanding, and procurement of information to identify and to verify the origin of the funds which are the object of the business relationship or of the occasional transaction.

At this point it is also necessary to mention the cooperation between reporting entities involved in these types of transactions. In this regard, it should be borne in mind that, with regard to the application of due diligence measures, the reporting entities involved may only delegate to third parties[9] the execution of the obligations set out in a), b) and c) previously described, provided that they are not established in countries considered to be high risk, so that the remaining obligations must be applied directly by the reporting entities. Nevertheless, each of them continues to be responsible for the fulfilment of these obligations, even if they have been delegated and, furthermore, they must obtain from

[9] In accordance with article 18.2 of 14/2017, 'third parties' means parties under obligation listed in article 2 of this Law, or other entities or persons situated in other countries that: a) apply customer due diligence requirements and record-keeping requirements that are consistent with those laid down in this Law; and b) have their compliance with the requirements of domestic law supervised in a manner consistent with the Andorran legislation.

these third parties the necessary information on the requirements of due diligence established in the aforementioned letters a), b) and c).

In this sense, it is highly recommended that a written record be made of the fulfilment of these obligations by third parties, establishing the scope of the same.

Furthermore, due diligence measures must be applied in the following circumstances:

- When establishing a business relationship;
- When carrying out an occasional transaction that amounts to EUR 15,000 or more, whether that transaction is carried out in a single operation or in several operations which appear to be linked;
- When there are suspicions of ML/TF;
- When there are doubts about the veracity, adequacy or validity of previously obtained customer identification data;
- When the conduct is classified as likely to involve money laundering or terrorist financing operations or is classified as requiring special vigilance by UIFAND, by means of Technical Communiqués;

Finally, it should be borne in mind that the level of application of due diligence measures and the volume of information obtained on the basis of these measures will be in accordance with the level of risk obtained once the analysis of the aforementioned variables has been carried out.

Based on the foregoing, reporting entities must graduate the due diligence measures, and may apply simplified or reinforced diligence measures, adjusting or increasing the volume of information to be obtained, as well as the frequency of updating the data and monitoring of the operations in application of the aforementioned diligence measures.

Additionally, on the basis of this information obtained, reporting entities must draw up a customer risk profile, which determines the level and type of on-going monitoring measures and supports decisions regarding business relationships.

In any case, the reporting entities must be in a position to demonstrate to UIFAND that the due diligence measures adopted are appropriate to the ML/TF risks detected, which is why it is highly recommended that a written and justified record of the analysis of the aforementioned factors be kept for each participant and for each business relationship.

3.5.1. Identification and verification of the customer and beneficial owner's identity

Reporting entities must identify their customers and beneficial owners[10] and take reasonable steps to:

- Understand its ownership and control structure and,
- Verify the identity of clients and their beneficial owners on the basis of documents, data or information obtained from reliable and independent sources.

This identification and verification of the identity of the customer and the beneficial owner can be carried out in the following way:

a) Before a business relationship is established or a transaction is carried out.

b) Where the risk of ML is low, the identification check may be completed during the establishment of a business relationship, where this is necessary to avoid disrupting the normal conduct of business, provided that there are sufficient guarantees that neither the customer nor other persons on his behalf will carry out transactions until the customer and the beneficial owner have been identified and their identity verified.

For natural persons and cash beneficiaries, the reporting entities must verify their identity by showing at least a copy of their official identity document with a photograph.

If it is a person acting on behalf of another person (natural or legal), the reporting entity must ensure that he/she has a copy of the powers of attorney.

With regard to clients who are legal entities, trusts, legal instruments with similar structures or functions and other legal entities, the reporting entities must identify the client and the beneficial owner and verify their identity through the documents, data or information they obtain, among others, from the articles of incorporation, bylaws, a certificate from the Register, etc. Likewise, reasonable measures must be taken to understand the ownership and control structure of the customer.

It should be borne in mind that, in establishing a new business relationship with this type of client, the reporting entities require proof from the competent registry or an extract from it.

However, if the reporting entities are unable to identify and/or verify the identity of the client and/or beneficial owner or doubt the veracity or suitability of the information provided, they must refrain from initiating the business relationship with this person and assess the need to make a suspicious transaction declaration to UIFAND.

[10] For more information, the Guide on the Beneficial Owner, updated as of February 2023, is available on the UIFAND website (https://www.uifand.ad/en/home).

Reporting entities may not complete the process of identification and verification of identity if they consider that it could alert the customer to any suspicions they may have, provided that a suspicious transaction report is filed before the UIFAND.

Regarding pre-existing relationships, the reporting entities must establish a periodicity for reviewing the identification and verification of the beneficial owner according to the risk of the customer, and this period cannot exceed 5 years, either when the circumstances of the customer change, or when the reporting entity has the legal obligation, during the course of the corresponding calendar year, to contact the customer.

Based on the above, it is important to remember that it is highly advisable to apply the measures of identification and verification of identity, in addition to the customer, also to the counterpart intervening in the operation subject to Law 14/2017.

3.5.2. Identification and verification of the purpose and intended nature of the business relationship

Reporting entities must assess, understand and obtain information on the purpose and reason for which the client is contracting the service or acquiring the product offered.

This means that the reporting entities must obtain a detailed explanation of the grounds on which the intervening parties are participating in the subject transaction, whether for reasons of investment, residence or other reasons, and must provide a written record, and bearing in mind that these grounds must be consistent with the knowledge, activity and source of funds of the customer/intervening party.

Accordingly, it is not sufficient to merely state whether the real estate transaction is a purchase or sale or a lease and, consequently, it is necessary to focus on the real purpose of these transactions (i.e. whether it is done so that the parties can settle in the country, or because they wish to make an investment, among other reasons). Moreover, this purpose must be contrasted with the rest of the information obtained by the customer, so that the purpose stated by the customer is consistent with the rest of the documentation and information available.

3.5.3. Ongoing monitoring of the business relationships measures

Although in the real estate sector most transactions are occasional, it is important that in the case of recurrent customers, the reporting entities apply measures to the ongoing monitoring of the business relationship.

Accordingly, in the case of an ongoing business relationship with the customer, the reporting entities must have procedures in place to supervise the customer's behaviour, analyse it and review the level of risk that was initially attributed to him, if necessary. In this regard, the reporting entities must identify the customer's normal and reasonable activity and set up mechanisms to warn of possible deviations from normal operations, unusual or suspicious transactions.

By means of the actions described above, therefore, the reporting entities scrutinise the transactions carried out throughout the relationship in order to ensure that they are in line with their knowledge of the customer and their profile, including the origin of the funds, and they must adopt measures to ensure that the documents, data or information obtained in application of due diligence measures are updated and adequate, reviewing the existing documentation, especially for high-risk customers.

In practice, in order to carry out the monitoring of their clients, reporting entities must implement a risk-based approach and carry out checks with different degrees of exhaustiveness and frequency depending on the client's profile. This means that the extent of monitoring must be proportional to the risk presented by the client.

Likewise, it is highly recommended to reflect the follow-up of clients in written documents.

3.5.4. Identification and verification of the origin of funds

Reporting entities shall assess, understand and procure information to identify and to verify the origin of the funds which are the object of the business relationship or of the occasional transaction. Hence, it can be stated that, in the framework of the application of due diligence measures, the origin of the funds corresponds to the activity that has generated them, e.g. a professional activity, an inheritance, a loan, or others.

At this point, it is a common mistake to confuse the origin of funds with the source of funds, which allows the reporting entity to follow the traceability of the funds but usually does not provide any insight into how they have been generated.

The verification of the origin of funds can take place through various processes set up by the reporting entity at its own discretion. For example, this can be done, inter alia, by requesting tax returns, audited account records or the customer's payroll.

In the specific case of mortgage loans, reporting entities must have proof of the customer’s statements prior to the transaction. Likewise, if the loan is granted by a foreign financial institution, due diligence measures must be reinforced to confirm that it has the necessary structure and authorisation, for example, by ensuring that the foreign institution is known, conducting searches in open sources, among others.

Furthermore, it is highly recommended that in the event that the direct client is the selling/renting party, to have documentation accrediting the ownership of the property to be sold or rented.

3.6. Record-keeping

Andorran legislation establishes a record-keeping period of at least 5 years for documentation relating to ML/TF. This period of record-keeping starts from the date of termination of the business relationship or the date of the occasional transaction. At this point, it is important to recall that the UIFAND may further extend the retention period for another maximum period of 5 years, in an individual and reasoned manner.

The documentation subject to the retention obligation must include the data and information obtained in compliance with Law 14/2017 (identity of the customer, the nature and date of the transaction, the origin of the funds, the type of currency and the amount of the transaction and the purpose and nature of the commercial relationship with the customer), as well as the supporting documents and records of transactions and operations, account information and business correspondence. Likewise, the reporting entity must also keep copies of all documents relating to the analyses carried out in relation to clients, when unusual transactions are detected, including, if applicable, the information obtained by relevant electronic identification means in accordance with the current Law on electronic trust services, as well as in the case of submitting a declaration of suspicious transactions, and all notifications of internal infringements.

It is highly recommended that the reporting entity identifies, from among all the information and documentation held on the client and the counterparty, that which corresponds to the fulfilment of AML/CTF obligations and, if possible, for each of the obligations. Furthermore, it should be recalled that Law 14/2017 specifically provides that reporting entities must act diligently when verifying documents, information and any other data requested from their customers.

3.7. Suspicious transaction report (STR)

It should be remembered that all the aforementioned obligations (risk assessment, implementation of internal policies and procedures for applying due diligence to customers, among others) are aimed at detecting possible suspicions of ML/TF in business relations with customers. In addition, the suspicion does not have to involve a certainty that the customer has a clear objective of ML/TF through the real estate transaction, but rather it is sufficient that there are reasonable grounds to suspect that the transaction is linked to ML/TF. Thus, the real estate agent, in compliance with Article 20 of Law 14/2017, must declare this transaction on his own initiative, and this disclosure is made by means of an STR.

Therefore, the STR is a document that the reporting entity submits to UIFAND (through its representative before UIFAND) on its own initiative to report an operation or attempted transaction relating to funds of which it is certain or knows, has suspicions or reasonable grounds for considering that they could be related to ML/TF. This report must be made in accordance with instructions[11] and must be submitted using the form[12] provided for this purpose. It should be noted that the performance of a STR cannot be delegated to another reporting entity or person.

In any case, the STR must be accompanied by at least the following information:

a) List and identification of the natural persons or legal entities and their beneficial owners who take part in the transaction, as well as the concept of their participation in such transaction.

b) List of the transactions, specifying date, purpose, currency, amount, and method and place or places of performance.

c) Copy of the documentation by which identification has been made of the customer who has requested the performance of the suspicious transaction and, when appropriate, copy of the documentation by which identification has been made of the beneficial owner.

d) Copy of the documentation by means of which the customer has justified the transaction.

e) Statement of all the circumstances of the suspicious transaction which are known to the reporting entity.

Furthermore, it should be remembered that Law 14/2017 requires the totality of suspicious transactions, including attempted transactions, to be declared. Further, these declarations to UIFAND must also be made in respect of transactions already carried out when, subsequent to the execution of the transactions, there are suspicions that they could constitute a ML/TF operation.

Prior to the submission of the STR, which must be made before the reporting entity has carried out the suspicious transaction, the reporting entity must agree by telephone the date and time for submitting the written declaration to the UIFAND offices. Subsequent to the suspicion declaration, any new elements known about the declaration must be submitted to UIFAND.

[11] These instructions are available on the UIFAND's website (https://www.uifand.ad/en/home), in the "Publications" > "Forms" section.
[12] This form is available on the UIFAND's website (https://www.uifand.ad/en/home), in the "Publications" > "Forms" section.

At this point, it is worth recalling two additional obligations derived from the suspicious transaction declarations, which are as follows:

(i) The obligation to refrain from carrying out transactions that they suspect or there are reasonable grounds to suspect that they are related to the proceeds of criminal activities or to TF until they have made the mandatory declaration of suspicion before UIFAND and have complied with any additional instructions from the latter; and

(ii) The prohibition of disclosure, in the sense that reporting entities and their managers and employees do not disclose to the customer concerned or to third parties that information is being, will be, or has been transmitted to UIFAND or that a ML/TF analysis or investigation is being or may be carried out; and, more specifically, in relation to STRs, this prohibition on disclosure does not include information to competent authorities, including self-regulatory bodies, provided that such disclosure is previously authorised in writing by UIFAND.

3.8. Application of restrictive measures

The main objective of the restrictive measures set out in Article 49 of Law 14/2017[13] is to prevent individuals and entities linked to terrorism, terrorist financing or the financing of weapons of mass destruction to use the global system, financial or non-financial, to promote or perform these criminal activities. To this end, the international community has agreed to adopt Restrictive Measures with regard to persons and entities that appear in national and international lists (see Lists of the Security Council of the United Nations), which are public so that everyone can apply the restrictive measures that are derived.

In this regard, reporting entities must ensure that none of the persons with whom they have any kind of business relationship appear on the United Nations List, which is the document that is regularly updated and which includes persons and entities linked to terrorist activities, their financing or the financing of the proliferation of weapons of mass destruction.

This involves developing controls to periodically check the customer database (including beneficial owners, representatives and other parties involved in business relations) against the United Nations List, as well as the implementation of procedures for action in the event of a positive finding.

[13] UIFAND issued a "Guide on the application of restrictive measures", created in February 2017 and updated in December 2019, which is available on the UIFAND website (https://www.uifand.ad/en/home), in the "Restrictive measures" section.

It should be borne in mind that this list includes people who have already been designated as terrorists or linked to terrorism, so that they have been already given financial penalties. The key lies in confirming that the reporting entities are not dealing either with any entity controlled directly or indirectly by any person or entity on the list or with any person or entity acting on behalf of or under the instructions of the persons or entities included on the List.

In this regard, it is necessary to regularly check that the list used to check the customers or parties involved in a transaction, in which the reporting entities are the intermediaries, is the updated List. It is worth recalling that the different professional groups provide access to different tools (e.g., *Namebook, Worldcheck,* among others) which include the updated List and which facilitate this verification by the reporting entities.

Law 5/2022, of 3 March, on the application of international sanctions, developed by Decree 111/2022, of 25-03-2022

It is worth remembering that in the wake of the conflict between Ukraine and the Russian Federation, *Law 5/2022 of 3 March on the application of international sanctions*, implemented by *Decree 111/2022 of 25-03-2022 on restrictive measures in relation to the conflict between Ukraine and the Russian Federation*[14], was approved in the Principality of Andorra, with the aim of regulating the restrictive measures to be applied to individuals, legal entities or other subjects of law, listed in the annexes and other measures of a general nature, in view of the destabilising actions of the Russian Federation and Belarus in Ukraine.

3.9. Training

Reporting entities must develop measures that include training plans on AML/CFT and special updating courses aimed at employees.

The training must be given to all those directly involved in real estate operations, as well as to all those responsible for implementing ML/FT policies and procedures and all members of the management bodies.

The content of the training should include:

- General knowledge of ML/TF concepts,
- The specific types of ML/TF that apply to the real estate sector,
- The entity's policies and procedures,

[14] Both the Law and this Decree and the subsequent Decrees amending it are available on the UIFAND website (https://www.uifand.ad/en/home).

- The identification and verification of the identity of clients and beneficial owners, the custody of documentation,
- The ICCB,
- The sector's risk indicators, among others.

In any case, it has to provide up-to-date information adapted to the workplace and exposure to ML/TF risk of the employees and to the reality and risk characteristics of the business, to help employees to detect events or transactions that may be related to ML/TF, and how to proceed in such cases.

In general, the members of the reporting entity must have the capacity to understand the obligations that being a reporting entity entails, the vulnerabilities to which they are exposed, the internal policies and control procedures established to comply with the legal obligations in terms of ML/TF.

Likewise, the reporting entity must record the people who are to attend the training, the content, the frequency, the method (face-to-face, virtual, external) and, preferably, verify the attendance and the degree of use of the training.

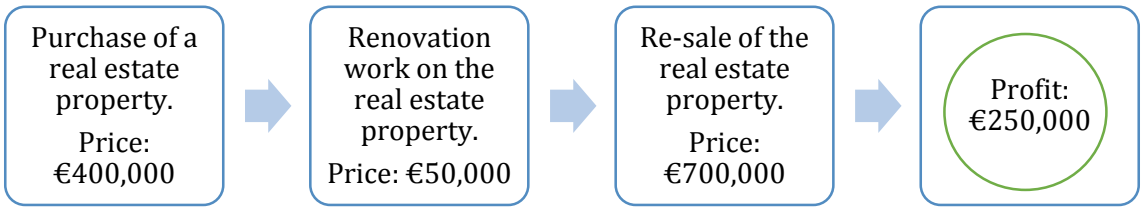
4. PRACTICAL EXAMPLES FROM THE REAL ESTATE SECTOR

4.1 *Flipping house*

The "*flipping house*" or "*flipping"* is a real estate strategy consisting of the purchase of real estate with the aim of obtaining a profit through its subsequent sale in the shortest possible time, taking advantage of the volatility of real estate price market.

For instance, a flipping operation could be a real estate purchase-sale operation that is accompanied by a restoration of the property and, therefore, from which an economic gain is obtained from the subsequent sale, as detailed in the following chart:

Figure 5: Example of *flipping* operation



These kind of strategies always share two common elements: on the one hand, the purchase of a property for speculative purposes and, on the other hand, the prevision of a purchase of a property followed by an immediate sale, which implies that two or more transactions involving the same property take place within a relatively short period of time.

From this perspective, it should be borne in mind that these purchases of real estate followed by a sale are likely to be used for ML purposes:

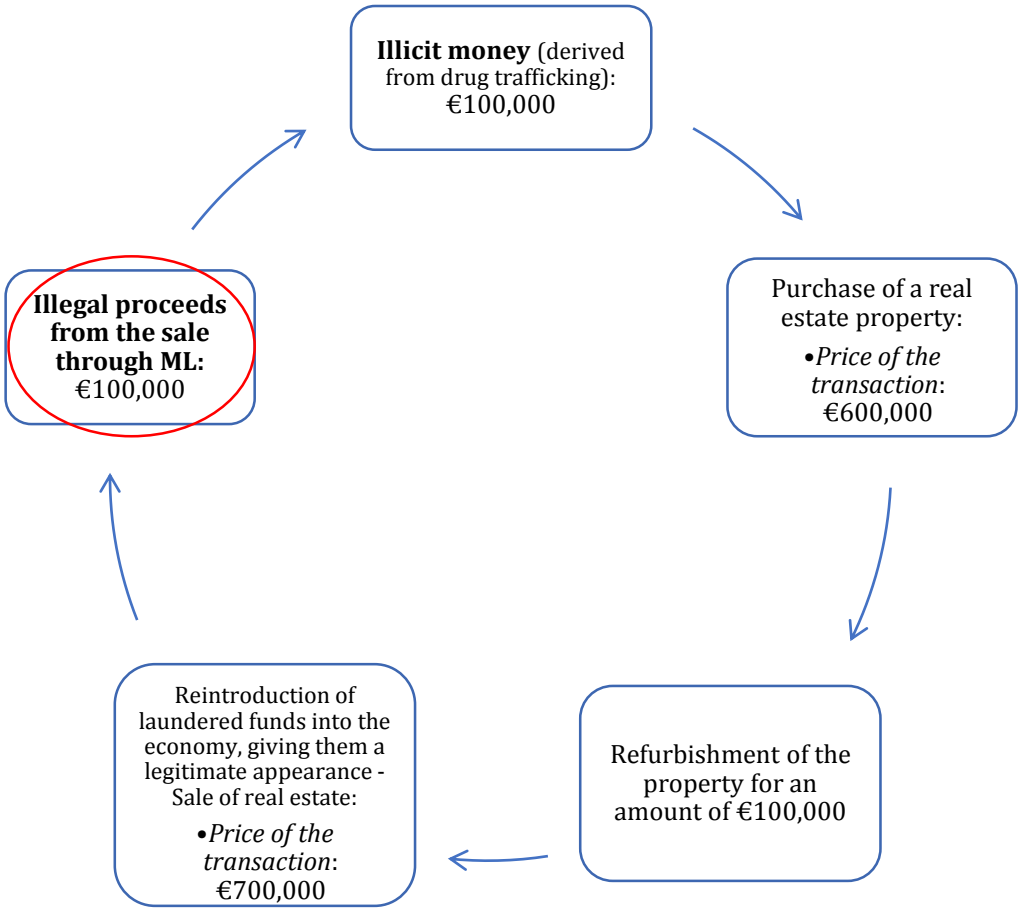
Practical example - "F*lipping"* for ML purposes:

A person (A) has €100,000 from drug trafficking that he wants to introduce into the economic system. For this purpose, he buys a property for €600,000.

In a short period of time, person A renovates this property for €100,000, paid with the money of illicit origin and later, once renovated, he sells this property for €700,000.

In this case, person A, with the final result of the sale, has managed to introduce the €100,000 of illicit origin into the economic system, using the refurbishment of the property as a pretext, with a deed of sale that justifies it.

Figure 5: Scheme of *flipping* operation for ML purposes



Accordingly, a good practice for detecting suspicions in this type of operation is to obtain information and/or documentation to assess the consistency of the project with the client. In this sense, relevant information could be as follows:

- Determination of the ownership of the property,
- The professional activity of the customer, especially in the case of companies whose corporate purpose is very unrelated to the real estate sector,
- The time elapsed between the initial purchase and the intention to sell,
- The initial purchase price of the property and the proposed sale price, with its coherence with market values at all times,
- That the refurbishment carried out is consistent with the valuation of the property to which it has been applied.

Nevertheless, when reporting entities are faced with a similar typology, they must go further and apply enhanced due diligence measures in order to specify and determine whether it is a suspicion to be reported to UIFAND. For instance, if a customer wants to do business through this form of *flipping* and it is not their main sector of activity, this could be a first trigger for a potential ML suspicion. However, it is highly recommended that special attention be paid to the statements of customers/participants, which should be documented in the client's file and carefully analysed according to the risk involved.

4.2 Real estate transaction by means of loans between private individuals and foreign investment

Section 2 of this Guide, entitled "*Risks associated with the real estate sector*", refers to the risks arising from the different means of payment used in real estate transactions and the use of foreign capital to finance these transactions.

As mentioned throughout this Guide, the fact that foreign investment requires prior authorisation does not mean that the due diligence measures to be applied in the operation can be less exhaustive.

Practical example - Real estate operation by means of loans between individuals and foreign investment for ML purposes:

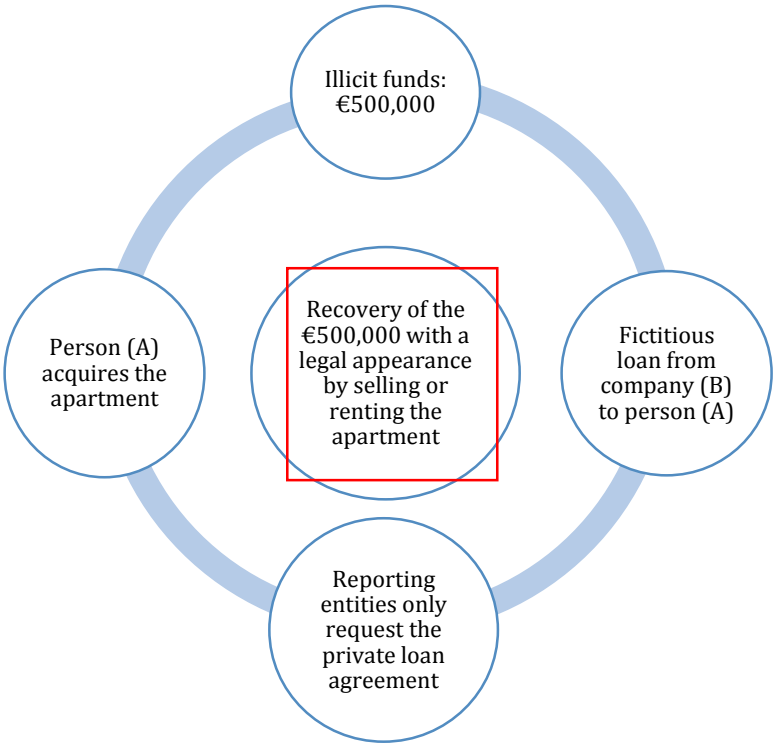
A person (A), non-resident, has €500,000 from a scam that he wants to introduce into the economic system. To this end, he applies and obtains the corresponding foreign investment authorisation to buy an apartment.

This person (A) is the owner of a foreign company with a commercial activity (B) and to justify the origin of the €500,000, he takes out a loan from the aforementioned company on a personal basis.

In this case, given that (A) has already obtained the foreign investment authorisation, the reporting entities involved only request, in order to comply with the accreditation and verification of the origin of the funds, the private loan contract made between the company (B) and the person (A), and intermediate the purchase of the property in question.

Consequently, these funds of illicit origin are integrated into the economic system, allowing the funds to be recovered with the subsequent sale or lease of the property and having an apparently lawful justification.

Figure 6: Scheme of real estate operation by means of loans between individuals and foreign investment for ML purposes.



Accordingly, reporting entities must ensure, for all their business relationships that the information and documentation accrediting the origin of the funds provided by customers is sufficient and adjusted to the level of risk presented by each customer.

In this case, given that it is a loan between private individuals, the fact of obtaining only the private loan contract cannot be considered an adequate measure for verifying the origin of the funds, since this document is provided by the client, and therefore does not have a basis of independence and reliability. Nor can the reporting entities rely on the fact that the foreign investment authorisation has been obtained, as Law 14/2017 does not allow the delegation to third parties of the obligation to verify the origin of funds.

Consequently, in cases such as the one described above, it will be necessary to apply enhanced due diligence measures to obtain the corresponding documentation in order to determine the link between the parties and to have knowledge of the motives and purpose of the operation.

In this sense, and bearing in mind that the third-party lender is a legal entity owned by the person (A), it would be necessary, at least, to verify the economic situation of the company to provide this funding, based on documentation that reflects a true picture of the company's financial situation, for example, preferably audited financial statements.

4.3 Purchase of properties in a real estate development

Section 2 of this Guide, entitled "*Risks associated with the real estate sector*", refers to the inherent risks of real estate developments, which make this activity vulnerable to being used for ML/FT purposes.

In particular, the fact that a real estate development involves professionals who are not reporting entities, as well as the fact that the necessary funds for the purchase of the property are provided during a certain period of time, means that the due diligence measures to be applied must be more exhaustive and sustained over time.

Practical example - Real estate development (part 1)

A foreign investor (in an individual capacity) expresses his intention to acquire 3 properties for future construction in the Principality of Andorra. To this end, he signs reservation contracts for each of the 3 properties with the real estate developer for a total amount of €3,750,000 (€1,250,000 for each of the properties).

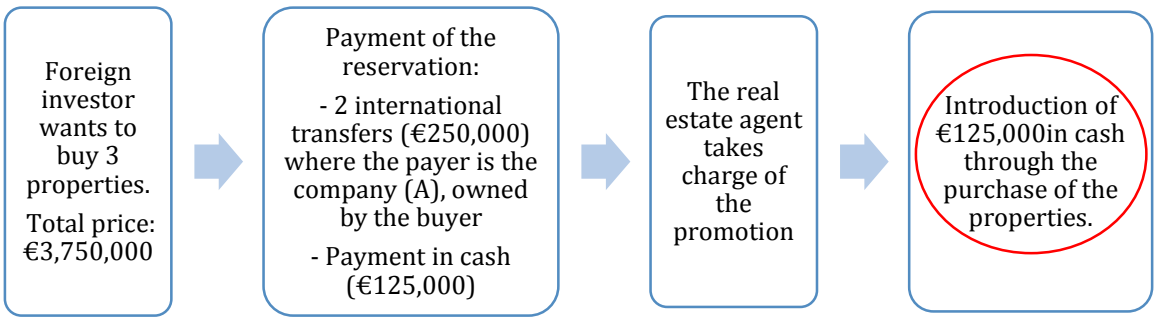
At the time of signing the aforementioned contracts, it contributes 10% of the total purchase price (375.000€), by means of the following payments:

- Two (2) international transfers for an amount of €125,000 each (€250,000 in total), in concept of "invoice payment" and where a Spanish company (A), owned by the foreign investor, appears as the payer.
- The rest of the outstanding amount is paid in cash (€125,000).

The real purpose of the foreign investor is to introduce into the banking system part of the assets he holds in cash of illicit origin and, at the same time, to reduce the tax base of the company (A) in his country of origin.

Subsequently, at the time of the final purchase of the 3 properties, a real estate agent takes charge of the promotion and the foreign investor becomes its customer.

Figure 7: Example of a real estate purchase and sale transaction through a real estate development



In this case, the fact that the real estate developer received the funds from the deposit could mean that due diligence measures have not been applied, and the foreign investor has been able to introduce €125,000 into the system that he had in cash and of illicit origin. Therefore, in order to prevent situations of this nature from occurring, all professionals involved in real estate development must apply the necessary due diligence measures and for each of the different payment modalities.

In particular, reporting entities could request the declaration of cross-border transportation of cash to the Customs Department[15], and/or proof of cash refund, in order to verify whether the cash was previously banked. Once these verifications have been carried out, it will be necessary to request documentation accrediting the origin of these funds.

Likewise, reporting entities involved must identify the buyer and require that the payments be ordered or made by the same person who has signed the reservation of the property. In the present case, the payments would have to be made by the foreign investor personally, as it is he and not the company (A) who ultimately buys the property.

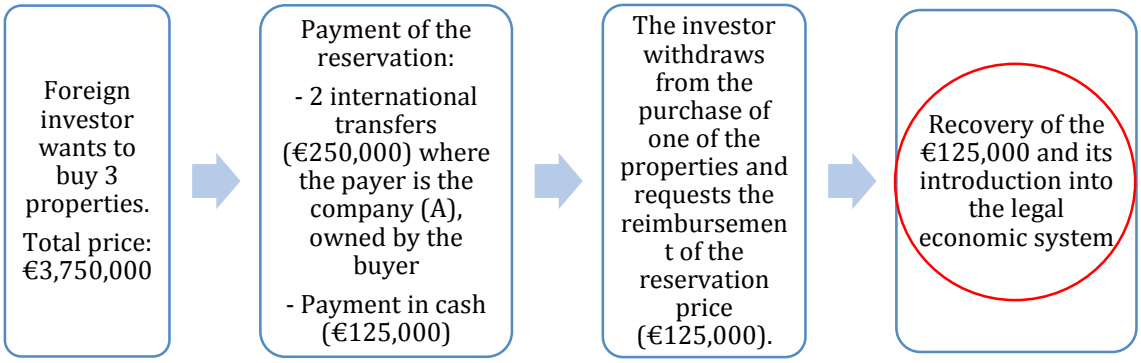
With regard to payments made by bank transfer, the parties involved should ensure that the concept of the transfer is clear and refers specifically to the purchase of the property. In this way, it is possible to prevent the act of buying and selling real estate from implying transfers of assets beyond that which corresponds to the buyer and the seller with regard to the property in question.

Finally, controls must be tightened in cases of cash payments, especially in situations where funds are reintegrated, as a money launderer could use the bank account of the real estate agent or real estate developer to illegally introduce the funds into the financial system.

Practical example - Real estate development (part 2)
Continuing with the previous case, before making the purchase and sale of the 3 properties, the foreign investor finally withdraws from the purchase of 1 of them and requests the return of the amount paid under the reservation contract for this property (1).
This reimbursement is intended to be returned to his personal account in Spain, by means of a transfer under the concept of "disinvestment of property".

[15] In compliance with the provisions of chapter eight of Law 14/2017 and *Decree 377/2022, of 21-9-22, which approves the Regulation on the declaration of cross-border transportation of cash*, which develops both the obligation to declare accompanied cash and the obligation to inform unaccompanied cash, collecting both necessary forms, and determining, among other issues, the place and form of presentation of the same.

Figure 8: Example of withdrawal from a real estate transaction



In this scenario, the reintegration of the price paid for the reservation of the property allows the investor to recover the illicit funds (€125,000) with the appearance of legality as they have been introduced into the banking system in advance, and he will be able to justify the funds before any other banking institution in accordance with the return of the reservation of a property that he has not bought in the end.

For this reason, a good practice to follow in cases where third party money is held in custody is for reporting entities to ensure that the customer's funds come from an account of their own or, if the funds have been provided in cash, that they are held and returned in the same way.

Notwithstanding the above, it is advisable to minimise the use of cash, as it does not allow traceability of the funds, and therefore entails an additional ML/TF risk.