
INFORMATIVE NOTE ADDRESSED TO THE REAL ESTATE SECTOR

Date: 17th May 2023

Purpose: Based on the main trends in the real estate sector detected since the issuance of the last Informative Note (hereinafter, IN) addressed to this sector on 1st August 2018, this new IN responds to the need to expand and provide the newest conclusions and recommendations to reporting entities, adapting them to the new situation of the sector and partially replacing some of the previous ones, which should be taken into account to improve their internal control procedures for the prevention and fight against the laundering of money or assets and the terrorist financing (hereinafter, AML/TF), as well as other areas where weaknesses have been detected, including, inter alia, the identification of risks and the application of due diligence measures.

Likewise, it should be borne in mind that the areas covered in this informative note do not cover the totality of AML/CFT obligations, as these are included and extensively detailed in *Law 14/2017, of 22 June, on the prevention and the fight against the laundering of money or assets and against terrorist financing* (hereinafter, Law 14/2017) and in *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 2-3-2022* (hereinafter, Regulation implementing Law 14/2017).

Rationale:

Following the amendment of Law 14/2017 introduced by *Law 37/2021, of 16 December*, transactions related to the real estate sector subject to the provisions of the regulations on AML/TF 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.

Additionally, in the course of the on-site inspections carried out by UIFAND, during the 2018-2023 period, this Unit has detected a series of areas which, on a recurrent basis, present shortcomings and for which it has made a series of common recommendations, which are extended to the whole sector by means of this Informative Note. For instance, despite the increase in the number of transactions carried out, their amounts and the number of parties involved in them, there has been no observable growth in the number of suspicious transaction reports submitted to this Unit.

Accordingly, this IN aims to update of the recommendations addressed to the real estate sector, including the new improvement actions in order to address the shortcomings and risks detected that are present in the sector in a widespread manner.

At this point, it should be stressed that the supervision of systems for AML/TF must include controls on both parties involved in real estate transactions, namely both their customers and the counterparties to these types of transactions. Therefore, and taking into account the risk associated with the sector¹, it is essential that all of these reporting entities have robust and consistent preventive systems that guarantee the effectiveness of control systems as well as the availability and validity of documentation, information and knowledge, both of their operations and of their customers.

In short, this document, which should be taken into account together with the Guide addressed to the real estate sector, issued in May 2023, aims to compile a series of recommended actions for each of the areas for improvement detected, with the aim of extending them to all reporting entities in this sector, helping them to mitigate these risks.

Areas with detected deficiencies/risks and recommended actions

1. Internal procedures and controls

1.1. Internal control and communication body (ICCB)

Detected deficiencies/risks
<ul style="list-style-type: none"> • In general, the members of the ICCB do not have the required expertise, experience and knowledge of the Andorran AML/CFT legislative framework to carry out their functions. • In addition, the members of the ICCB do not keep a written record of the decisions taken, either in relation to the acceptance of a customer or those decisions in matters where this is expressly required by Law 14/2017. • On occasions, reporting entities do not have the necessary mechanisms in place to ensure that staff are aware of the composition of the ICCB.
Recommended improvement actions
<ul style="list-style-type: none"> • Ensure that the members of the ICCB are directors or officers of the reporting entity and that they meet the requirements established in article 17 of the Regulation implementing Law 14/2017. • Record in the internal regulations the composition and functions of the ICCB, as well as the channels of communication between the ICCB and the employees. • Ensure that there is a written record of the decisions taken by the ICCB, and more specifically, those decisions related, inter alia, to high-risk countries and politically exposed persons; scenarios in which approval by senior management is required. This recommendation also applies to single-member ICCBs.

¹ The risks associated with the real estate sector are detailed in the Guide addressed to the real estate sector, issued in May 2023 available on the UIFAND website (<https://www.uifand.ad/en/home>) in the "Publications" > "Other publications" section.

1.2. Individual Risk Assessment (IRA)

Detected deficiencies/risks
<ul style="list-style-type: none"> In general, reporting entities confuse the IRA with the risk categorisation of their customers, without complying with the provisions established in articles 5 of Law 14/2017 and 3 of the Regulation implementing Law 14/2017. On some occasions, the IRA is an excessively descriptive and general document (not based on the specific risk factors of each reporting entity), which does not enable the detection of the most vulnerable areas of their businesses, and on which, therefore, most of the control measures should be concentrated.
Recommended improvement actions
<ul style="list-style-type: none"> Consult the Guide on the Individual Risk Assessment,² issued by UIFAND in July 2018 and updated in February 2023, with the aim of providing reporting entities with basic guidelines to ensure that the IRA reflects the real risks to which they are exposed. The mitigation and control measures derived from the detection of the most vulnerable business areas must be consistent with the nature, size and complexity of the business and must guarantee an efficient distribution of resources, following a risk-based approach. Record the version of the document, the person responsible for its preparation and the person responsible for its approval.

1.3 Internal policies and procedures

Detected deficiencies/risks
<ul style="list-style-type: none"> In some cases, reporting entities do not have written AML/CFT internal control policies and procedures or these are not properly adapted to the characteristics of the reporting entity. In addition, reporting entities do not have internal policies and procedures that include all the matters defined in article 17.1 of the Regulation implementing Law 14/2017 that provide adequate management and mitigation of the risks identified in the IRA.
Recommended improvement actions
<ul style="list-style-type: none"> Ensure that internal policies and procedures or manuals are formalised in writing and contain all the matters included in article 17.1 of the Regulation implementing Law 14/2017. Ensure that the internal regulations faithfully reflect the reality of the business as well as the control measures and procedures that are carried out in practice. Develop in detail the entity's customer acceptance policy, including specifically under what circumstances the institution will not enter into a business relationship, as well as a description of the types of customers that could present a high ML/TF risk, taking into account the criteria for establishing enhanced due diligence measures.

² This Guide is available on the UIFAND website (<https://www.uifand.ad/en/home>) in the "Publications" > "Other publications" section.

- Specify the documentation to be requested in order to comply with the due diligence measures developed in the internal regulations.
- Indicate the internal communication channels for suspicious transactions, guaranteeing the confidentiality of communications.
- Include some of the scenarios that are considered to be suspicious operations adapted to the entity, although in practice, each case will have to be carefully analysed depending on the risk it presents.
- Record the version of the document, the person responsible for both its preparation and its approval.
- Ensure that the internal regulations are available to the company's employees, whether in paper or digital format, in order to accredit that all employees are aware of both their existence and their content, and in short, ensure that the procedures are understood and respected.

2. Risk categorisation of customers and counterparties intervening in the operation

Detected deficiencies/risks

- In general, reporting entities do not classify their customers according to their ML/FT risk, and therefore tend to consider their entire customer portfolio as low risk.

Recommended improvement actions

- Establish a procedure, with defined criteria, to classify customers according to their level of risk and justify the risk attributed to each customer.
- In a justified manner and on the basis of the established criteria, record in writing in each business relationship the risk presented by the same.
- Review the categories assigned to ensure that enhanced due diligence measures are applied to participants and beneficial owners who are nationals or residents of countries considered to be at risk according to the UIFAND Technical Communiqués.³
- Bear in mind that, in any case, operations related to the use of complex structures or risk jurisdictions cannot be classified as low risk.
- Carry out research in open sources (e.g. Google) to determine, among other issues, whether there is any negative information on the participants that could lead to them being considered high-risk.

³ Technical Communiqués issued by UIFAND are available on the UIFAND website (<https://www.uifand.ad/en/home>) in the "Regulation" > "Applicable Technical Communiqués" section.

3. Due diligence measures

3.1 Identification and verification of the identity of all the parties involved in the operation

Detected deficiencies/risks
<ul style="list-style-type: none"> In general, reporting entities do not use reliable and independent sources to identify and verify the identity of the parties involved in the transaction, especially in the case of legal entities.
Recommended improvement actions
<ul style="list-style-type: none"> In order to identify and verify the identity of the customer and the counterparty involved, carry out the necessary checks on the basis of documents, data or information obtained from reliable and independent sources, including, where available, relevant electronic means of identification in accordance with the current Law on electronic trust services, and keep a record of the checks carried out.

3.2 Identification and verification of the identity of the beneficial owner

Detected deficiencies/risks
<ul style="list-style-type: none"> In general, the reporting entities do not identify the beneficial owner, nor do they adequately document the analysis carried out to determine the natural person who holds this status. Sometimes, the identification and verification of identity is limited to that of the customer with whom the reporting entity is dealing, but does not extend to the beneficial owner of the transaction, if these persons are different.
Recommended improvement actions
<ul style="list-style-type: none"> Take all necessary measures to identify and verify the identity of the beneficial owner of the transaction that the real estate agent facilitates, especially in those business relationships in which legal entities are involved, as defined in article 3.3 of Law 14/2017. In the case of participants that are legal entities, the shareholding and control structure must also be documented. These necessary verifications may include searches of public registers, such as the Companies Register. As a complementary measure to the above, it is advisable to include, in each business relationship, a declaration, signed by the party involved, which certifies that it is the beneficial owner of the purchase/sale operation. Consult the "Guide on the beneficial owner"⁴ issued by UIFAND in March 2019 and updated in February 2023, with the aim of providing reporting entities with basic guidelines and practical examples to ensure the identification of beneficial owners in different types of legal structures. Document in writing the analysis carried out to determine the natural person who is the beneficial owner of the operation, especially in cases involving legal entities and

⁴ This Guide is available on the UIFAND website (<https://www.uifand.ad/en/home>) in the "Publications" > "Other publications" section".

ensure that the necessary documentation to justify the above analysis is available.

- Consult the electronic platform of the Companies Register, as required by article 10 of Law 14/2017⁵, which is available to all those persons designated as representatives before UIFAND. Access is personal and by means of a digital certificate.⁶

3.3 Knowledge of the customers

Detected deficiencies/risks
<ul style="list-style-type: none"> • In general, reporting entities usually do not have sufficient knowledge of their customers or this knowledge is obtained informally and is not properly formalised or documented. • Usually, reporting entities do not have knowledge of the counterparty involved in the subject transactions. • In addition, knowledge of the professional activity of the counterparties is limited only to their own statements, and these are excessively general and vague, for example, they indicate that they are entrepreneurs, but do not indicate the sector of activity. • On occasions, reporting entities have a limited view of the operations in which they participate, focusing only on the intermediation part on behalf of their customer.
Recommended improvement actions
<ul style="list-style-type: none"> • Draw up a “Know Your Customer” (KYC) form or, if one already exists, review it to ensure that it includes all the knowledge that the reporting entity may have of its customers as well as of the counterparty involved in the subjected operation. • Ensure that this form is completed for each business relationship and updated whenever there are significant amendments. • Ensure that the reporting entity has knowledge of the activity carried out by its customers, indicating and documenting what the activity carried out consists of (for example, if the customer is an entrepreneur, it is necessary to know the sector of his activity, as well as the company name). • If the customer is a legal entity, it is essential to have, inter alia, information on the type of company (active or asset-holding) and its activity (type of investments it makes, sector of activity, countries in which it has exposure, etc.). • In the case of investment in real estate by individuals and legal entities not residing in the Principality, intermediaries in the subject transactions cannot rely solely on the fact that these transactions have been previously authorised by the Ministry responsible for foreign investment. • In those cases in which searches are carried out in open sources, it is necessary to keep evidence of those searches and of the analysis carried out on the results, if necessary. • Apply due diligence measures based on the risk presented by the counterparty that

⁵ It should be borne in mind that the obligation of having proof of the Register is not sufficient in itself to accredit the verification of the identity of the beneficial owner.

⁶ To access the Companies Register platform, please see the following link: <https://aplicacions.govern.ad/consulteseconomia/>

is not a direct customer of the real estate company, in line with international standards, as well as having a global and complete view of the operation facilitated by the reporting entity.

- In the event that the counterparty's documentation has to be provided by another reporting entity, such as another real estate company, request the same detailed documentation that is required internally for customers.
- In the cases of selling customers who act on the basis of a private contract with the owner of the property, the due diligence measures carried out by the real estate agent with the customer must also be extended to the owner of the property.
- It is advisable to obtain a purchase deed in all transactions in which the real estate company has participated, in order to prove that the transaction has been formalised, for what amount, who the parties involved are and the purpose of the transaction.

3.4 Purpose and intended nature of the business relationship

Detected deficiencies/risks
<ul style="list-style-type: none"> • In general, reporting entities do not assess correctly or obtain adequate information on the purpose and nature of the business relationship, limiting themselves only to determining whether it is a sale and purchase or a lease, without considering the purpose of these operations.
Recommended improvement actions
<ul style="list-style-type: none"> • Ensure that the reason for the purchase, sale or lease of the property is determined, for example, whether it is because the parties involved are settling in the country, or because they wish to make an investment, among others, and accredit that the reason is consistent with the information available on the customer and the operation. • In the event that the parties involved are legal entities, ensure the rationale of the transaction, taking into account, inter alia, whether or not the company has any activity. For example, if the purchasing party is a company without activity, it may not make sense for it to buy commercial premises in order to exploit them; on the other hand, it may not make sense for a commercial company engaged in the purchase and sale of cars, to be the purchasing party of a property where its commercial activity cannot be carried out but uses it for housing purposes.

3.5 Ongoing monitoring of the operations

Detected deficiencies/risks
<ul style="list-style-type: none"> • In general, reporting entities do not examine the possible links that may exist between the various purchases and sales made by the same customer, even though these may occur at a later date. • Occasionally, in the case of recurring customers, reporting entities use the same documentation supporting the application of due diligence measures as that obtained in the first operation, without updating or verifying the potential changes in its content.
Recommended improvement actions
<ul style="list-style-type: none"> • In the case of customers with whom a new operation is carried out, after having

carried out previous operations with them, a new request must be made for the documentation supporting the application of the due diligence measures, in the event that the documentation obtained in previous business relationships is no longer in force.

- Likewise, analyse the consistency between operations that may show signs of being linked (for example, different purchase and sale operations).

3.6 Origin of funds provided by the customer

Detected deficiencies/risks
<ul style="list-style-type: none"> • In general, the origin of the funds provided by the customers who are the object of the business relationship is not duly proven. • In addition, real estate agents do not have documentation that proves the property of the asset they intend to sell or lease.
Recommended improvement actions
<ul style="list-style-type: none"> • Request documentation certifying the origin of the funds provided by customers (the activity that has generated them) and ensure, for all business relationships, that this is sufficient and adjusted to the level of risk of each customer. For instance, the receipt of a bank transfer cannot be considered as a means of verifying the origin of the funds, as this document only proves the means of payment used, but not the activity that generated them. • As a supplementary measure to the above, consider implementing, for each business relationship, a sworn statement to be signed by the customer attesting the legitimacy of the funds. • In the event that the funds come from a mortgage loan, it will be necessary to request the supporting documentation, the customer's statements not being sufficient. • In the case that the funds come from a private loan between parties, it will be necessary to apply exhaustive due diligence measures to obtain the corresponding documentation in order to determine the link between the parties and to have knowledge of the grounds and purpose of the loan. • In the event that the customer is the selling party, request the deed of ownership of the property or any other document resulting from a Register or from reliable and independent sources that accredits ownership.

4. Graduation of the due diligence measures

Detected deficiencies/risks
<ul style="list-style-type: none"> • Typically, reporting entities do not follow a risk-based approach and therefore apply the same level of due diligence to all their business relationships, which can sometimes result in insufficient and/or inadequate AML/CFT due measures being applied.
Recommended improvement actions
<ul style="list-style-type: none"> • Review internal procedures to ensure that due diligence measures are correctly graduated, adjusting the volume of documentation to be required and the intensity of controls according to the level of risk presented by each customer.

5. *Delegation to third parties*

Detected deficiencies/risks
<ul style="list-style-type: none"> • There is a very high degree of reliance on the control measures and procedures applied by other reporting entities of the same or other sectors, mainly including banking entities, to the detriment of reporting entities' own control measures and procedures. • Likewise, there is also a generalized view that the fact that an Andorran banking entity has intervened for a specific customer or transaction, exempts the real estate entity from applying its own due diligence measures or allows the level of exhaustiveness of its own due diligence measures to be lower.
Recommended improvement actions
<ul style="list-style-type: none"> • In the event that there is indeed a delegation to a third party, this situation should be formalized by means of a delegation agreement with the entity in question, specifying in which cases, to which reporting entities, and for which measures delegation is made, as long as such agreement complies with the requirements set for the delegation of due diligence measures to third parties as established by Article 18 of Law 14/2017.⁷ • It should be borne in mind that the obligation to apply due diligence measures is the responsibility of each individual reporting entity and, consequently, the fact that other reporting entities are involved in a single transaction does not release them from the obligation to apply the corresponding exhaustive due diligence measures.

6. *Suspicious transaction reports*

Detected deficiencies/risks
<ul style="list-style-type: none"> • The number of suspicious transaction reports submitted by reporting entities in the real estate sector is, in general, very low, especially taking into account that the intermediaries of the transactions are in a preferential position to detect an illicit use of the sector to launder money or securities or to finance terrorism • On occasions, when there are suspicions that a potential customer, the funds provided or the type of operation requested may be related to ML/TF, the only option is not to initiate the business relationship with that customer, but it is not considered to make the mandatory suspicious transaction report to the UIFAND.
Recommended improvement actions
<ul style="list-style-type: none"> • Document in writing the analysis carried out of potentially suspicious transactions, even if the possible declaration to UIFAND has been rejected. • Make suspicious transaction reports in those cases in which there are suspicions, reasonable grounds for suspicion or certainty that the funds are the proceeds of a

⁷ In this regard, it should be recalled that Article 18 of Law 14/2017 only enables the performance by third parties of the identification and verification of the identity of the customer and the beneficial owner, as well as the obtainment of information on the purpose and nature of the business relationship, but not the application of ongoing monitoring of the business relationship nor the assessment, understanding, and procurement of information to identify and to verify the origin of the funds. In any case, the delegating party remains responsible for the fulfilment of these obligations.

criminal activity, even if the business relationship with the potential customer has not been formalised, since, as established in article 20. 1 of Law 14/2017, "all suspicious transactions, including attempted transactions, shall be reported".

7. Restrictive measures

Detected deficiencies/risks

- There is widespread ignorance of the existence of the list of persons and entities designated by the United Nations for their links to terrorism or its financing, as well as of the obligations in relation to their consultation and the restrictive measures to be applied in the event that a customer appears on the aforementioned list.
- Occasionally, the reporting entities have not implemented a procedure to identify the persons sanctioned as a result of the conflict between Ukraine and the Russian Federation, in compliance with *Law 5/2022, of 3 March, on the application of International sanctions*, developed by *Decree 111/2022 of 25-03-2022 on restrictive measures in relation to the conflict between Ukraine and the Russian Federation*.⁸

Recommended improvement actions

- Check, at the beginning of the business relationship and periodically thereafter, that the entity's customers do not appear on the list of persons to whom restrictive measures are to be applied (Consolidated List of Sanctions of the United Nations Security Council, which includes persons and entities designated by the United Nations for links to terrorism or its financing).⁹

Establish a procedure for communicating the application of restrictive measures to UIFAND using the form provided for this purpose.¹⁰
- With regard to the application of restrictive measures in the event that any of the customers of the reporting entity appear on this list, consult the "Guide on the application of Restrictive Measures"¹¹, issued in February 2017 and updated in December 2019.
- Ensure that there is a written record of how false positives obtained on the Consolidated List of Sanctions of the United Nations Security Council are handled, i.e. how the it is concluded that the names listed there are not the same person who has presented themselves to the real estate agency for a real estate transaction has been reached.
- Consult the list of persons and entities sanctioned in the context of the conflict between Ukraine and the Russian Federation. Establish a procedure for communicating the application of restrictive measures to UIFAND using the form provided for this purpose, according to article 4 of *Decree 111/2022 of 25-03-2022*

⁸ Both this Decree 111/2022 and the subsequent decrees amending it are available on the UIFAND website (<https://www.uifand.ad/en/home>).

⁹ The link to this list is available on the UIFAND website (<https://www.uifand.ad/en/home>), in the "Restrictive measures" section.

¹⁰ The aforementioned form is available on the UIFAND website (<https://www.uifand.ad/en/publications/forms>), in the "Publications" > "Forms" section.

¹¹ This Guide is available on the UIFAND website (<https://www.uifand.ad/en/home>) in the "Publications" > "Other publications" section".

*on restrictive measures in relation to the conflict between Ukraine and the Russian Federation*¹².

8. Training

Detected deficiencies/risks
<ul style="list-style-type: none"> In general, reporting entities do not ensure that their staff have the necessary knowledge to detect facts or transactions potentially related to ML/TF, nor how to proceed in such cases.
Recommended improvement actions
<ul style="list-style-type: none"> Regularly attend external training courses adapted according to the responsibility of each employee, on AML/CTF matters, and ensure that the content is shared with collaborators or other staff who have not been able to attend them. Regularly consult the UIFAND website to be aware of newly issued Technical Communiqués¹³, Guides and INs, as well as any other UIFAND publications.

Supervision Area

¹² The aforementioned form is available on the UIFAND website (<https://www.uifand.ad/en/home>), in the "Publications" > "Forms" section.

¹³ Technical Communiqués issued by UIFAND are available on the UIFAND website (<https://www.uifand.ad/en/home>) in the "Regulation" > "Applicable Technical Communiqués" section.