

INFORMATIVE NOTE ADDRESSED TO THE REAL ESTATE SECTOR

Date: 1 August 2018

Purpose: On the basis of the principal trends of action in the real estate sector, we provide this compilation of the main recommendations in matters of the prevention of, and the fight against, the laundering of money or assets and terrorist financing.

Rationale:

In the course of the on-site inspections carried out by UIFAND on reporting entities belonging to the real estate sector, this Unit has detected a series of areas which recurrently present deficiencies, with regard to which we have drawn up a set of common recommendations which are made applicable to the sector as a whole by means of this informative note.

The repetition and the evidence detected in relation to the cases which are specified below lead us to believe that the aforementioned deficiencies are present in the sector in a widespread way. For this reason, recommended actions are described for each of the areas susceptible of improvement which have been detected, in order to help the reporting entities of the real estate sector to mitigate these risks.

Areas with detected deficiencies/risks and recommended actions

1. Identification of risks

1.1 Knowledge of customers

Detected deficiencies/risks
<ul style="list-style-type: none"> • On some occasions, the reporting entities do not have a sufficient knowledge of their customers, or the knowledge of their customers has been obtained in an informal way and it is not duly formalized or documented.
Recommended improvement actions
<ul style="list-style-type: none"> • A <i>Know Your Customer (KYC)</i> form should be prepared or, in the event that such a form is already on hand, it should be modified to make it more exhaustive, with the aim of centralizing all the knowledge which the members of the reporting entity may have of their customers. • It should be ensured that this document is completed for each business relation and that is updated each time any significant changes arise. • It should be considered whether this document should be signed in all cases by the customer in order to endow the information which it contains with a greater veracity.

1.2 Classification of customers according to their risk level

Detected deficiencies/risks

- Generally speaking, the reporting entities do not classify their customers in terms of the AML/CFT risk which they may potentially pose. The whole portfolio of customers is usually considered to be of “low risk”, regardless of their characteristics and/or particularities, and they are applied the same type of measures.

Recommended improvement actions

- A procedure with defined criteria should be established for classifying customers according to their risk level, and the risk attributed to each customer should be justified. The risk that each business relation presents should be stated in writing in a justified way on the basis of established criteria.
- The defined classification criteria and the measures to be adopted in each case should be stated in the internal rules.

1.3 Knowledge of transactions

Detected deficiencies/risks

- Generally speaking, the reporting entities of the real estate sector have a limited view of the transactions in which they take part, focusing only on the aspect of their intermediation on behalf of their customers.

Recommended improvement actions

- It would be of interest to have access to the deed of purchase and sale in all the transactions in which the real estate entity takes part, in order to verify that the real estate transaction in which it has participated has finally been formalized, the amount for which it has been formalized, the identity of the parties taking part in the transaction, and the purpose of the transaction.

1.4 Individual risk assessment (IRA)

Detected deficiencies/risks

- Generally speaking, the reporting entities have not yet begun to develop their Individual Risk Assessment (IRA), despite the fact that Law 14/2017 establishes a maximum time of two years counting from the entry into force of the Law (20 July 2017).

Recommended improvement actions

- The individual risk assessment should be developed, taking into account the risk factors established by Article 5 of Law 14/2017. These risk factors are dealt with in greater detail in Article 3 of the Regulations for application of Law 14/2017. These factors include, as a minimum, significant risk factors relating to customers, countries or geographical areas, products, services, transactions or distribution channel. The consideration of these factors should allow determination of the overall risk level of the reporting entity and the appropriate mitigation measures.
- On 18 July 2018, UIFAND published on its website the document entitled “Guide to the Individual Risk Assessment (IRA)” in order to help reporting entities to draft their respective IRAs.

2. Due diligence measures

2.1 Identification of all parties taking part in the transaction

Detected deficiencies/risks
<ul style="list-style-type: none"> Generally speaking, the reporting entities only apply due diligence measures to their customers, without identifying or verifying the identity of the counterparts in the transactions in which they take part, if such counterparts are not their direct customers.
Recommended improvement actions
<ul style="list-style-type: none"> Due diligence measures based on the risk presented by the counterpart who is not a direct customer of the real estate entity should be applied, in accordance with what is provided in the international standards, and a complete overall view of the transaction in which the reporting entity intervenes, should be obtained. In the event in which the documentation of the counterpart is to be provided by another reporting entity, such as may be another real estate entity, documentation with the same level of detail as is required internally for customers should be requested. In the case of seller-customers who act on the basis of a private contract with the owner of the respective real estate property, the due diligence measures applied by the real estate entity to the customer, should also be applied to the owner of the property. It should be considered whether to also apply the KYC form to the counterpart of the transaction who is not a direct customer of the real estate entity, as a measure of identification of same.

2.2 Identification of the beneficial owner

Detected deficiencies/risks
<ul style="list-style-type: none"> On some occasions, the identification and verification of the identity is limited to that of the customer with whom the reporting entity deals, without including the beneficial owner of the purchase and sale transaction in which the real estate entity intervenes, in the case in which such customer and such beneficial owner are not the same person.
Recommended improvement actions
<ul style="list-style-type: none"> All appropriate measures should be taken to identify and to verify the identification of the beneficial owner of the purchase and sale transaction in which the real estate entity intervenes, especially in the case of business relations in which legal entities take part, according to the definition of same established in Article 3.3 of Law 14/2017. In the case of customers who are legal entities, it will also be necessary to document their shareholding and control structure. These necessary verifications may include searches in public registers, such as the Register of Companies. As a complementary measure to the foregoing, it should be considered whether to include, in each business relation, a statement signed by the customer which proves that same is the beneficial owner of the respective purchase and sale transaction.

2.3 Professional activity

Detected deficiencies/risks
<ul style="list-style-type: none"> Generally speaking, the knowledge of the professional activity of customers is limited only to an oral confirmation of same by the customers.
Recommended improvement actions
<ul style="list-style-type: none"> The professional activity stated by customers should be proven by means of documents in a way that is consistent with the risk level which the customers present. This documentation should come from reliable independent sources and it may be supplemented by information provided by the customer himself (curriculum vitae, for example).

2.4 Source of the funds provided by customers

Detected deficiencies/risks
<ul style="list-style-type: none"> Generally speaking, the source of the funds provided by customers which are the object of the business relation is not duly proven.
Recommended improvement actions
<ul style="list-style-type: none"> Documentation proving the source of the funds provided by customers (the activity which has generated the funds) should be requested, and it should be ensured, for all business relations, that such documentation is sufficient and appropriate to the risk level of each customer. The fact that the funds are provided by means of a transfer from a banking entity cannot be considered a measure of verification of the source of the funds since this only proves the provenance of such funds or the respective method of payment used, but not the activity which has generated them. As a complementary measure to the foregoing, it should be considered whether to implement, for each business relation, a sworn declaration to be signed the customer, attesting to the legality of the funds.

2.5 Politically exposed persons (PEPs)

Detected deficiencies/risks
<ul style="list-style-type: none"> On some occasions, the politically exposed person (PEP) status of customers is not identified, according to the definition contained in the laws in force (Articles 3.6, 3.7 and 3.8 of Law 14/2017).
Recommended improvement actions
<ul style="list-style-type: none"> Systems should be established to identify and to verify the politically exposed person (PEP) status of customers, and the respective enhanced diligence measures should be applied.

2.6 Updating of documentation

Detected deficiencies/risks
<ul style="list-style-type: none"> The documentation relating to the due diligence measures which are adopted, especially with respect to identification, is not always duly updated, since it is only requested at the time of carrying out the first purchase and sale transaction, without

being updated in the event in which subsequent purchase and sale transactions are carried out.

Recommended improvement actions

- In the case of customers with whom a new purchase and sale transaction is carried out after having carried out previous purchase and sale transactions with them, the identification documents should be requested once again if the documents obtained in previous business relations are no longer effective.

3. *Other significant aspects*

3.1 *Internal control policies and procedures*

Detected deficiencies/risks

- Generally speaking, reporting entities do not have in place written internal control policies and procedures in matters of AML/CFT, or else such internal control policies and procedures present issues with respect to their content (they do not suitably fit the characteristics of the respective reporting entity) or to their effectiveness (they do not take into consideration the latest regulatory changes).

Recommended improvement actions

- The internal control policies and procedures should be reviewed in order to ensure that they include the minimum requirements which they are to contain, according to the provisions of Article 17.1 of the Regulations for application of Law 14/2017.
- The internal rules of the reporting entities in matters of AML/CFT should be updated in accordance with the laws in force in the shortest possible delay. Likewise, a continuous updating should be foreseen in accordance with any further changes in the law or regulatory developments.
- It should be ensured that the internal rules give a true picture of the reality of the business and of the control measures and procedures which are applied in practice.

3.2 *Internal control and communication body (ICCB)*

Detected deficiencies/risks

- On some occasions, reporting entities have not formally appointed the Internal Control and Communication Body (ICCB) in charge of the organization and the surveillance of compliance with the rules for the prevention of the laundering of money or assets and terrorist financing; or they have not given notification of same to UIFAND; or the employees are not aware of the existence of this body, its functions or the channels available to them to communicate with it.

Recommended improvement actions

- The Internal Control and Communication Body should be formally appointed, and its composition should be notified to UIFAND, following the procedure established in the UIFAND Technical Communiqué no. CT-04/2018.

- It should be ensured that the members of the ICCB are members of the Top Management and that they comply with the requirements established in Article 17 of the Regulations for application of Law 14/2017.
- The composition and functions of the ICCB, and the channels of communication between this body and employees, should be stated in the internal rules.
- The mechanisms necessary to ensure that all the personnel have a knowledge of the composition of the ICCB should be established.

3.3 Delegation to third parties

Detected deficiencies/risks

- 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

- In the event that, in effect, the degree of reliance on the controls of another reporting entity is high, 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.

In this respect, it is recalled here that the Law only allows the delegation of the identification and of the verification of the identity of the customer and of the beneficiary owner, and the procurement of information on the purpose and nature of the business relation, but it does not allow the application of measures of continuous follow-up. In all cases, the delegating reporting entity continues to be responsible for compliance with these obligations.

3.4 Suspicious transaction reports

Detected deficiencies/risks

- The number of suspicious transaction reports submitted by the reporting entities is, generally speaking, low.
- On some occasions, when there are suspicions that a potential customer, the funds which he provides, or the type of transaction which he requests, may be related to the laundering of money or assets or terrorist financing, it is merely chosen not to begin the business relation with such customer, without considering whether to submit the requisite suspicious transaction report to UIFAND.

Recommended improvement actions

- The analysis made of potentially suspicious transactions should be documented in writing, even if the submission of the respective reports is finally dismissed.
- Suspicious transaction reports should be submitted in the cases in which there are suspicions, there are reasonable grounds for suspecting, or there is the certainty that the respective funds are the proceeds of a criminal activity, even if the business relation with the potential customer has not come to be formalized, since just as is established in Article 20.1 of Law 14/2017, *“all suspicious transactions, including those which have remained in the phase of attempt”*, should be reported.

3.5 Restrictive measures and terrorist financing

Detected deficiencies/risks

- There is a generalized lack of knowledge of the existence of the list of persons and entities designated by the United Nations for their links to terrorism or to terrorist financing, and of the obligations with respect to the consultation of said list and to the restrictive measures to be applied in the event in which a customer were to appear on said list.

Recommended improvement actions

- It should be verified, at the beginning of the business relation and subsequently on a periodic basis, that the customers of the reporting entity do not appear on the list of persons to whom restrictive measures are to be applied (the consolidated list of sanctions of the United Nations Security Council, which lists the persons and entities designated by the United Nations for links to terrorism or to terrorist financing). The link to this list is available on the UIFAND website. In this respect, the website should be consulted periodically in order to learn of the changes which may appear in the list, since such changes are not reported by technical communiqués.
- With respect to the application of restrictive measures in the event in which a customer of the reporting entity were to appear in the aforementioned list, we refer you to the “Guide to the application of restrictive measures” issued to this end in February of 2017, which is also available on the UIFAND website.

Supervision Area