



## **GUIDANCE NOTE**

# **REPORTING OBLIGATIONS FOR REAL ESTATE AGENTS AND BROKERS ON SUSPICIONS OF MONEY LAUNDERING OR TERRORIST FINANCING**

## **1 INTRODUCTION**

- 1.1 It is important to protect Kuwait against both money laundering, terrorist financing and proliferation financing. Such types of crime can undermine the economic stability and security of the country, given that these crimes are supportive of organised crime and terrorism, and they weaken the integrity of the Kuwaiti financial system and other important businesses and professions. Professions involved in buying and selling of real estate play an important role in protecting Kuwait against these kinds of crimes.
- 1.2 **Real estate professions covered by the legislation on money laundering and terrorist financing**
- 1.3 Article 1 of law no. 106 of 2013 on Anti-Money Laundering and Combatting the Financing of Terrorism sets out that "real estate agents" and "lawyers, independent legal professionals and accountants" when they prepare, execute, or conduct transactions for customers in relation to "purchase or sale of real estate" are covered by the law. In the following these professions are simply referred to as "real estate agents and brokers".
- 1.4 **What is money laundering?**
- 1.5 Money laundering is the process of disguising the origins of illegally obtained money to make it appear as though it comes from legitimate sources. Money laundering is thus always associated with an under-lying proceed-generating crime, the so-called predicate crime. Money laundering schemes can be very simple or highly sophisticated. Examples of simple money laundering operations are breaking up large amounts of cash into smaller sums and depositing into a bank account, transporting cash across borders, or buying high value goods such as artworks or precious metals and stones. A more sophisticated money laundering operation might involve a complex layer of financial transactions, such as converting cash into monetary instruments or using offshore shell companies to disguise the origin of the proceeds.
- 1.6 **What is terrorist financing?**
- 1.7 Terrorist financing is the process of directly or indirectly raising/collecting, moving, or using funds to support terrorist activities, individual terrorists, or terrorist organisations. These funds can be used for various purposes, including planning attacks, recruiting members, spreading propaganda, acquiring weapons, and establishing networks or safe havens. The funds or assets used for terrorism can come from both legal and illegal sources, making it challenging to detect.



- 1.8 **What are the main differences between money laundering and terrorist financing?**
- 1.9 The Customer Due Diligence (CDD) requirements that so-called obliged entities, including real estate agents and brokers, will have to comply with, are very much the same for money laundering and terrorist financing, since the financial system and other relevant businesses and professions (such as real estate agents and brokers) can be misused by both money launderers and terrorist financiers. However, conceptually there are differences between the two types of serious crimes, some of which are shown in the table right below:

	Money Laundering	Terrorist Financing
Motivation	Financial gain and/or financing of new crimes.	Funding of terrorist activities, for example for political or ideological reasons.
Source of funds	Always an underlying predicate crime to generate the proceeds.	The funding can be through both legal and illegal sources.
Amounts involved	Often involves large sums of money.	Generally, smaller amounts are needed for the terrorist activities, so transactions are often smaller and thereby hard to detect.
Methods of concealment	Both simple and complex money laundering schemes exist, but professional money launderers often use complex transactions, shell companies, offshore accounts, and investments to make funds appear legitimate.	Often uses simpler and harder-to-detect methods, like small wire transfers, cash smuggling, crowdfunding, or "front" organisations such as charities.

## 2 **MONEY LAUNDERING AND TERRORIST FINANCING RISKS ASSOCIATED WITH THE REAL ESTATE SECTOR**

- 2.1 The Financial Action Task Force (the FATF) is the most important global standard setter in relation to anti-money laundering and combatting the financing of terrorism. In the July 2022 Guidance Note on a Risk Based Approach to the real estate sector the FATF writes that real estate is a popular choice for investment, but it also attracts criminals who use real estate in their illicit activities or to launder their criminal profits. It allows criminals networks to thrive and grow using the profits of their illegal activities, which impacts society and undermines the rule of law. In some countries, these practices also contribute to driving up the prices of real estate, making housing inaccessible to many as well as further incentivizing the criminal activity.



- 2.2 FATF assessments show that the real estate sector often has poor understanding of these risks
- 2.3 and regularly fails to mitigate them. The sector needs to take appropriate measures to adequately mitigate these risks. This includes effective customer due diligence measures.
- 2.4 The money laundering and terrorist financing risks of the real estate sector are also addressed in the June 2022 money laundering and terrorist financing National Risk Assessment of Kuwait and in the AML/CFT Mutual Evaluation Report (MER) of Kuwait adopted October 2024 by the FATF.
- 2.5 **The June 2022 National Risk Assessment of Kuwait**
- 2.6 Kuwait in June 2022 adopted a National Risk Assessment (NRA) on money laundering and terrorist financing. The following is generally stated about the real estate sector:
- "The real estate sector is a cornerstone of the global economic system, as the real estate sector has a prominent role in development by attracting investment projects. It is one of the non-financial designated business and professions sector listed by the Financial Action Task Force (FATF) within the bodies concerned with implementing the requirements for combatting money laundering and financing of terrorism, due to the possibility of exploiting the real estate sector as an umbrella for laundering money obtained from crimes through large real estate investments."
- 2.7 The NRA also contains information on the parties of a real estate transaction, as well as the payment methods and the registration:
- "The mechanism of the buying and selling process takes place with the presence of three parties, namely the broker, the seller, and the buyer, provided that the initial contract is signed in the brokerage book by the three parties, after filling in the data of the seller, buyer, and broker, the description of the property, the agreed amount, the value of the deposit paid, the method of paying it, and the method of paying the balance amount. If the payment is made by a cheque, the cheque number should be stated. Then, the real estate property is registered in the Ministry of Justice in the Real Estate Registration Department and through them. Prior to the process of transferring ownership, the property and its value are verified by the real estate evaluator and their expert."
- 2.8 As for the specific risk associated with the real estate sector the NRA states the following:
- "The level of money laundering risks to which the real estate sector is exposed in the State of Kuwait is Medium High (MH). The level of risk is the result of the level of threat to which the sector is exposed to which is Medium High (MH) and the vulnerabilities of the sector were assessed as Medium High (MH). The threat level facing the real estate sector, which is assessed as Medium High (MH), stems from:



- (i) Possibility of receiving cash amounts resulting from real estate sales, including brokerage commission.
- (ii) Phantom sales, especially since banks consider the initial sale contract from the brokerage book as a source of funds and accept cash from the seller/broker.
- (iii) There are (25) investigations and (12) trials in money laundering cases, and (7) convictions."

## 2.9 **The October 2024 Mutual Evaluation Report (MER) of Kuwait**

- 2.10 The MER addresses the money laundering (and terrorist financing) risk of the real estate sector from different perspectives. First of all it is stated that the absence of any reporting by the real estate sector since 2019 is of most concern, as Kuwait provided a case study demonstrating that real estate was purchased with criminal proceeds. On the other hand, the MER also states that there are some clear examples of specific policies to address risk, e.g., a ban on purchasing real estate in cash (except for the downpayment).

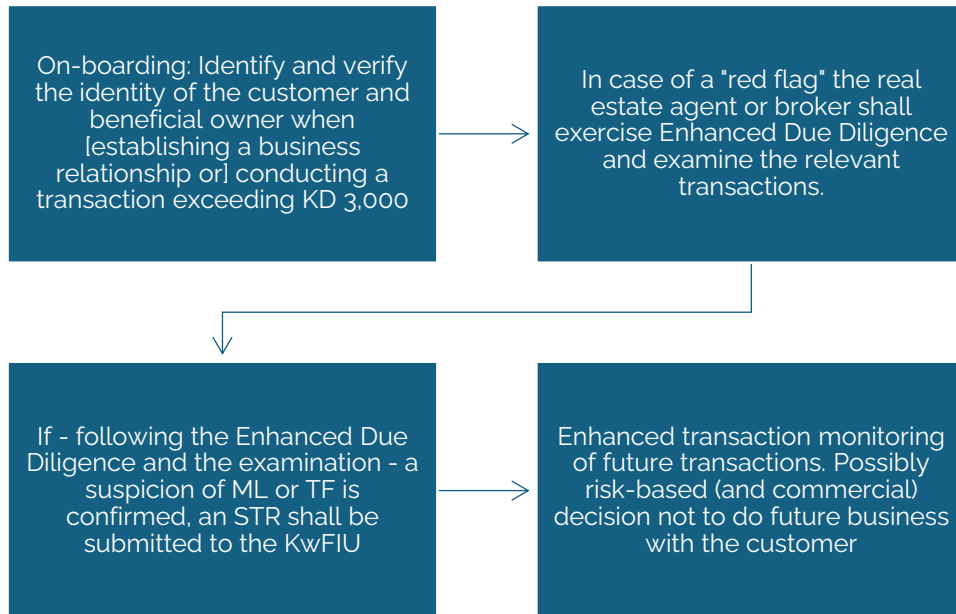
## 3 **HIGH-LEVEL CUSTOMER DUE DILIGENCE (CDD) REQUIREMENTS FOR REAL ESTATE AGENTS AND BROKERS OF RELEVANCE TO THE REPORTING OBLIGATION**

### 3.1 **Relevant legal basis**

- 3.2 International organisations such as the FATF have defined standards on how countries are supposed to fight money laundering and terrorist financing. There are several different provisions, many of them of relevance to the reporting obligation. Kuwait have implemented these standards into national policies, co-operation practices between the relevant authorities, and legislation. In Kuwait the most important single piece of legislation is law no. 106 of 2013. This law is supported by Ministerial Resolution no. 37 of 2013 - Executive Regulation for law 106 of 2013.

### 3.3 **High-level CDD requirements of direct relevance to the reporting obligation**

- 3.4 The high-level Customer Due Diligence (CDD) requirements for real estate agents and brokers of direct relevance to the reporting obligation can be illustrated by the following process diagram:



- 3.5 According to article 1 of law no. 106 of 2013, a "business relationship" is expected to have an element of duration. In reality, such an element of duration is probably rarely seen in the real estate sector that for the most consists of single transaction. Furthermore, article 6 of law no. 106 of 2013 explicitly states that the CDD requirements for real estate agents and brokers shall apply "when they are involved in transactions concerning the buying and selling of real estate", leading to the conclusion, that real estate agents and brokers are only comprised by the law (including the reporting obligation) when carrying out specific transactions (which is why the words "establishing a business relationship or" is in square brackets in the first box above).
- 3.6 The threshold of KD 3,000 is defined in the Ministerial Resolution no. 37 of 2013.
- 3.7 "Red flags" specifically for real estate agents and brokers will be detailed further below under section 4 of this Guidance Note and the reporting obligation, including the concepts of an STR and an FIU, will be detailed further under section 5.
- 3.8 Article 16 of the Ministerial Resolution defines a time limit of 2 days for reporting to the KwFIU after a suspicion (or reasonable grounds to suspect) has materialised.
- 3.9 More information about the CDD requirements for the real estate sector in Kuwait can be found in [reference to CDD Guidance Note]
- 4 RED FLAGS FOR MONEY LAUNDERING OR TERRORIST FINANCING IN THE REAL ESTATE SECTOR**
- 4.1 As mentioned above in the process diagram a so-called "red flag" requires the real estate agent or broker to conduct Enhanced Due Diligence and examine the transaction in question. A "red flag" is a warning sign or indicator that suggests a transaction, activity, or behavior may be suspicious and could be linked to money laundering, terrorist financing, fraud, or other financial crimes. Red flags do not automatically mean that a crime has been committed, but they signal the need for further diligence and examination.



- 4.2 Key characteristics of a red flag are mentioned in article 5 of law 106 of 2013:
- (i) Complex unusual large transactions
  - (ii) Unusual patterns of transactions for which there are no clear economic or visible lawful purposes or objectives
- 4.3 The transactions in question can be transactions deviating from normal business or customer behaviour, or transactions not matching the customer's known profile, financial history or industry standards, or transactions to which the customer cannot provide a clear or logical explanation, or transactions involving high-risk jurisdictions.
- 4.4 A red flag will depend on the sector or profession in question. Even within a specific sector or profession (in this case real estate agents and brokers in Kuwait) the red flags will depend on the legislative, financial, commercial and product framework.
- 4.5 For real estate agents and brokers in Kuwait the following types of money laundering and terrorist financing red flags can be relevant, again depending on the activities conducted by the individual agent/broker:
- (i) Customer related red flags
  - (ii) Transaction related red flags
  - (iii) Property related red flags
  - (iv) Jurisdictional red flags
  - (v) Financing and loan red flags
  - (vi) Terrorist financing specific red flags
- 4.6 **Customer related red flags**
- 4.7 Unusual buyer behavior:
- Buyer refuses to provide personal or business details.
  - Use of complex corporate structures, trusts, or offshore entities to conceal ownership.
  - Buyer is a politically exposed person (PEP) or has connections to high-risk individuals or entities.
  - Use of false or misleading documents.
  - Unwillingness to disclose beneficial ownership.
- 4.8 Inconsistent Customer Profile:
- Buyer has no obvious source of income but is purchasing high-value real estate.
  - Buyer's profession or business does not match the value of the transaction.
  - Buyer is reluctant to disclose the source of funds.



4.9 Unusual use of third parties:

- Transaction is conducted through a proxy buyer or intermediary with no clear reason.
- Third party is not related to the buyer but funds the purchase.
- A law firm, accountant, or real estate agent is making the purchase on behalf of the buyer without clear explanation.

4.10 **Transaction related red flags**

4.11 Unusual payment methods:

- Use of large amounts of cash (in Kuwait only downpayments) or bearer instruments.
- Multiple payments from different accounts or jurisdictions.
- Payment through cryptocurrency or unregulated financial institutions.

4.12 Over- or undervalued properties:

- Property is purchased well above or below market value without logical reason.
- Property is quickly resold (flipping) at a significantly higher or lower price.
- Unusual use of non-traditional valuation methods.

4.13 Structuring of payments:

- Payments are split into smaller transactions without a logical explanation
- Multiple payments from different sources or individuals for a single property.
- Use of multiple financial institutions for different parts of the transaction.

4.14 **Property related red flags**

4.15 High-risk property transactions:

- Purchase of luxury real estate or commercial properties in high-demand areas without a clear business purpose
- Buyer is purchasing multiple properties in a short period with no clear reason.
- Property remains vacant, underused, or unoccupied for an extended period.

4.16 Frequent buying or selling:

- Rapid resale (flipping) with no real economic benefit.
- Sale or transfer of property to related parties at artificial prices.





4.17 **Jurisdictional red flags**

4.18 High-risk locations:

- Buyer is from a jurisdiction with weak AML/CFT regulations, including countries designated by the FATF as having strategic AML/CFT deficiencies.
- Funds originate from offshore financial centers or tax havens.

4.19 Unusual cross-border transactions:

- Money is transferred from high-risk countries or through multiple jurisdictions.
- Buyer has business ties to sanctioned countries or entities.
- Payments are made through correspondent banking relationships in jurisdictions with weak AML/CFT regulations, including countries designated by the FATF as having strategic AML/CFT deficiencies.

4.20 **Financing and loan red flags**

4.21 Unusual mortgage or loan arrangements:

- Buyer pays off a mortgage unusually quickly (e.g., lump sum payments).
- Loan comes from non-traditional lenders, including foreign or private entities.
- Buyer has no apparent income but secures a large mortgage.

4.22 Unusual lease or rental arrangement:

- Tenant pays rent in advance for a long period.
- Rental payments come from third parties with no link to the property.
- Rent is significantly higher or lower than market rates.

4.23 **Terrorist financing specific red flags**

4.24 Use of NPOs or charities:

- Property is owned or financed by an NPO or charity with unclear financial flows.
- Donations from high-risk regions are used to buy real estate.

4.25 Unusual business activities:

- Property is used for businesses with no real commercial activity.
- Property is used for logistics, meetings, or safe houses linked to suspected terrorism.





## 5 EXAMINATION AND REPORTING OF SUSPICIOUS TRANSACTIONS

- 5.1 As mentioned above under section 3, it follows from article 5 of law no. 106 of 2013, that a transaction needs to be further examined if it is complex and unusually large or if there is a pattern of transactions for which there are no clear economic or visible lawful purpose or objective. The red flags are used to determine whether such an examination is needed.
- 5.2 An examination according to article 5 is usually conducted by the risk function of the business entity or the compliance function, i.e., operational staff with insights into money laundering and terrorist financing risks. If this function assesses the transaction to be suspicious this assessment is usually escalated up the formal hierarchy with the real estate or broker and the formal decision to submit a report to KwFIU is usually taken by persons higher up the formal hierarchy. In some reporting entities, there is a designated committee established for this purpose, however, due to their usual size, this is probably not the case with real estate agents or brokers, where the decision normally would be taken by the Director or owner.
- 5.3 The legislation does not define a maximum timeline for the examination, just like there is no timeline defined for the escalation and formal decision-making by the hierarchy of the company. However, these processes obviously need to be concluded as quickly as possible.
- 5.4 **Suspicious Transaction Reporting**
- 5.5 When the real estate agent or broker has taken the formal decision that a transaction shall be deemed suspicious, a Suspicious Transaction Report (an "STR") shall be sent to the KwFIU, which is the national Financial Intelligence Unit ("FIU") of Kuwait. Real estate agents and brokers shall report "without delay" suspicious transactions or attempted transactions.
- 5.6 The term "without delay" gives very little time available, and in any case the STR needs to be submitted to KwFIU no later than 2 working days after the suspicion (or reasonable grounds to suspect) has materialised (see article 16 of the Ministerial Resolution no. 37 of 2013).
- 5.7 It follows explicitly from both article 12 of law no. 106 of 2013 and article 15 of Ministerial Resolution no. 37 of 2013, that a suspicion has to be reported "regardless of its value". In that context the threshold of KD 3,000 that follows from article 6 of the Ministerial Resolution should be born in mind, meaning that in reality an STR might be required even where the real estate agent or broker has not (yet) exercised CDD against the customer.
- 5.8 An STR is not a police complaint or a police report, and the STR cannot be used by law enforcement or prosecution as evidence of criminality. An STR is a piece of intelligence that the KwFIU can use in its' work.
- 5.9 An STR shall usually detail the following:
- (i) The customer in question, i.e., name, address, ID, occupation etc.
  - (ii) The transaction in question, i.e., amount, currency, date, method, involved parties, purpose etc.



- (iii) All information related to the examination leading to the reporting, including analysis
  - (iv) The reason for suspicion, i.e., explanation of the "red flags" (this part of the STR is called the narrative).
  - (v) Supporting documentation (if applicable), e.g. transaction transcripts, copies of CDD documents etc..
- 5.10 It is important to note, that it is illegal to inform a customer about an STR being submitted to the KwFIU (so-called tipping off).
- 5.11 **Role of the KwFIU**
- 5.12 The legal basis for the KwFIU is article 16 of law 106 of 2013, whereafter a unit called the "Kuwait Financial Intelligence Unit" shall be established. The KwFIU is an independent legal person and serve as the agency responsible for receiving, requesting, analysing, and disseminating information concerning suspected proceeds of crime or funds related, linked to or to be used for money laundering or terrorism financing. The KwFIU is not a law enforcement body but rather an administrative authority.
- 5.13 STRs submitted to KwFIU need to be communicated via a digital platform called GoAML, that all reporting entities in Kuwait are obliged to use.
- 5.14 The KwFIU conducts strategic analysis of important topics related to money laundering and terrorist financing. The KwFIU also conducts operational analysis of the STRs received from real estate agents and brokers and other professions comprised by law 106 of 2013, not least the financial sector. When the operational analysis made by the KwFIU confirms the suspicion of money laundering or terrorist financing, it follows from Law no. 106 of 2013 that a dissemination report has to be sent to the Public Prosecutor's Office (PPO). Often the PPO would then decide that the Money Laundering Unit or the Terrorist Financing Unit of the Ministry of Interior (MOI) should carry out the preliminary investigation, including collection of evidence, whereafter the PPO will decide whether to prosecute or not.
- 5.15 The KwFIU is also responsible for identifying high-risk countries and prescribe the measures to be applied in relation to such countries.
- 5.16 The KwFIU is authorised to obtain from any person subject to the reporting obligation in Law no. 106 of 2013 any additional information it deems necessary to carry out its functions.

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