FIAU MALTA

FINANCIAL INTELLIGENCE ANALYSIS UNIT

GUIDANCE PAPER FOR THE PROPERTY SECTOR

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RISK FACTORS, MITIGATING MEASURES, RED FLAGS AND CASE STUDIES

ISSUED BY THE FINANCIAL INTELLIGENCE ANALYSIS UNIT IN TERMS OF THE PROVISIONS OF THE PREVENTION OF MONEY LAUNDERING AND FUNDING OF TERRORISM REGULATIONS (S.L. 373.01)

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INTRODUCTION

Chapter 3 of the FIAU Implementing Procedures Part I ("**IPs**") requires subject persons to know the money laundering and funding of terrorism ("**ML/FT**") risks they are exposed to, and to adopt anti-money laundering and counter-funding of terrorism ("**AML/CFT**") measures, controls and procedures which are varied depending on the level and nature of the different risks. This is referred to as the 'risk-based approach'. Applying a risk-based approach ensures that subject persons can ask their customers relevant questions, and can apply their AML/CFT resources and efforts where they are needed most.

In practice, this means that subject persons need to understand the specific risks they are faced with when dealing with a customer, and whether the customer due diligence measures taken to combat those risks are effective, or whether they are all necessary in the first place. Subject persons are then in a position to apply more intensive, targeted measures where there is a higher risk, while taking simpler, or more standard measures when the risk is lower. Subject persons may find a detailed explanation of the risk-based approach in the IPs.

PURPOSE AND SCOPE OF THIS GUIDANCE PAPER

This Guidance Paper is intended to assist those subject persons who provide services associated with the buying, selling and leasing[1] of property (real estate) to understand the different risks that they may be exposed to when providing such services. The property sector sees the involvement of a number of different players, and so this guidance paper is particularly relevant to Notaries, Real Estate Agents and Credit Institutions, as well as Accountants and Lawyers where these are involved.

This Guidance Paper is divided into two sections:

'Section 1 – Risk Factors and Mitigating Measures' – This section provides subject persons with a list of ML/FT risk factors relating to the property sector, which subject persons may consider when preparing the business risk assessment and when carrying out the individual customer risk assessment. The risk factors are complemented by examples of measures which subject persons may take to mitigate that risk. This section also provides some factors which tend to decrease the ML/FT risk of a transaction.

'Section 2 – Red Flags and Case Studies' – This section lists a number of red flags, which are those situations, behaviour or circumstances which subject persons need to watch out for when dealing with customers, as they indicate that there may be possible suspicion of ML/FT. The section on case studies includes scenarios based on real cases analysed by the FIAU where one or more subject persons involved in a property transaction were suspected of being used to facilitate money laundering.

This Guidance Paper is not legally binding and **must be read in conjunction with the relevant chapters of the IPs**, as this document builds on what is already set out in those chapters.

1. Relevant activity for real estate agents includes letting.

A NOTE ON THE APPLICABILITY OF AML/CFT OBLIGATIONS TO ALL THE PARTIES IN A TRANSACTION

Where the subject person acts for both parties to a transaction (e.g.: a Notary Public publishing a deed of sale, or a real estate agent brokering a property deal), the word 'customer' must be interpreted to include both the purchaser and the vendor (or the lessor and the lessee where applicable). This applies even though the subject person may have only been approached or paid by one party. AML/CFT obligations are applicable vis-à-vis both parties, and the IPs do not draw a distinction between the purchaser and the vendor. Both are considered to be the 'customer'. This means that subject persons must still identify and verify the identity of the vendors and request information such as whether they are PEPs. However, applying a risk-based approach means taking steps to understand what risks each person and situation poses, and determining the appropriate measures to reduce or mitigate that risk.

Whenever there is an assignment of the rights arising from a promise of sale, customer due diligence measures have to be carried out with respect to the assignor.

Within the real estate sector, the most significant ML/FT risks arise from the potential use of dirty money to buy or rent property. Since it is the purchaser who takes out funds and transfers them to the vendor to acquire property, it is the purchaser who most of the time will pose the higher risk of money laundering. The same applies with respect to the lessee. The vendor, assignor and lessor, on the other hand, do not take out any funds. For this reason, it should not be standard procedure to request information such as the source of wealth or the source of funds of these parties. Subject persons should consider asking for information on source of wealth and source of funds from a given party only when they determine that such a measure is appropriate and necessary in order to mitigate a particular ML/FT risk identified. There is a section dedicated to red flags relating to the vendor, which may assist subject persons in making such a determination. Ultimately, a common sense approach should be applied, both when it comes to determining which information and documents to request from the customers, but also when assessing whether the situation as a whole makes sense or whether there is something suspicious.

Throughout this document, the word 'customer' includes the purchaser and the vendor as well as the lessor and the lessee, unless the context indicates otherwise.

SECTION 1 – RISK FACTORS

The term 'risk factors' refers to those situations or sources from which risk may manifest itself. As a minimum, subject persons need to assess four categories of risk:

(a) Customer risk

(b) Geographical risk

(c) Product, service and transaction risk

(d) Delivery channel risk

These risk categories are already explained in more detail in Sections 3.2.1 to 3.2.4 of the IPs, which also provide some of the main risk factors that are common to all subject persons. Thus, it is essential that this document is read together with these Sections of the IPs. The suggested mitigating measures are part of the wider set of customer due diligence measures that must be carried out with respect to each and every customer.

The following sections provide a non-exhaustive list of factors which are considered to increase the ML/FT risk, and a brief explanation on why such factors give rise to risk. Some examples of the risk factor are also given. For each factor, a commensurate mitigating measure is suggested.

Subject persons should bear in mind that the presence of one or more higher risk factors does not necessarily mean that the overall relationship is one of high ML/FT risk. Subject persons should assess all the factors present before determining the overall level of risk. In all cases where the mitigating measures do not sufficiently address the risk or red flag identified, subject persons should consider their obligation to file a suspicious transaction report.

1.1 CUSTOMER RISK FACTORS

These factors relating to the customer are considered to present a *higher* risk of ML/FT:

Risk Factor	Suggested mitigating measure
The purchaser/lessee does not have an apparent meaningful connection with Malta. *Persons may try to distance their assets from their country of residence by buying (or renting) property in a different country, making it difficult for authorities to trace such assets. The risk therefore arises from the lack of connection with Malta, which makes it harder to justify the legitimate purpose of the purchase.*	**Take steps to understand why the customer wants to buy property in Malta. The measures taken need to give reassurance that there is a reasonable explanation for the purchase or lease of the property. The type of property sought should also make sense for the purpose.**
For example: The purchaser is a company established in Malta but does not carry out activities in Malta.	Understand the business rationale behind the acquisition of the property and how it fits within the business activities pursued by the company, perhaps the company intends to start carrying out activity in Malta.
A representative of a legal entity established outside Malta is looking for property (whether to buy or rent) in Malta on behalf of the entity.	If the purchaser is a legal entity such as a company, understand why it is seeking property in Malta if it does not appear to carry out any meaningful activity in Malta.
A non-resident is looking to buy or rent property in Malta.	Understand why they are seeking to buy or rent property in Malta: whether they plan on working in or re-locating to Malta, or on using the property as a holiday home.
The customer is a legal person with a complex structure. *The ML/FT risk arises from the possibility that persons could be utilising a structure to hide the identity of the owner(s) or to hide any connection with criminality. The use of complex structures makes it difficult to identify the individual(s) behind the structure. Not all legal persons or arrangements give rise to a higher ML/FT risk. However, the less meaningful the connection with Malta is, and the more complex the structure is, or the*	**In addition to the legal requirement to determine the beneficial owner(s) in terms of Regulation 7(1)(b) of the PMLFTR, take steps to understand the activities of the entity or arrangement and how the property fits in with this. Understand why the property is needed in Malta: what it will be used for and whether this is in line with the customer's business or activities. Ultimately you need to be satisfied that there is a genuine purpose for the property being sought.**

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Risk Factor	Suggested mitigating measure
more jurisdictions the structure is linked to, the higher the risk. **For example:** The entity's ownership structure involves a number of other entities/arrangements and layers of ownership. The entity's structure is composed of entities/arrangements each set up or incorporated in different jurisdictions.	
The purchaser's income is derived from business activities considered to be high-risk. *The ML/FT risk arises from the possibility that the customer is seeking to mix illicitly obtained or otherwise undeclared cash with proceeds from the business activity, to give legitimacy to the funds being used. This risk factor focuses on the income of owners/shareholders of such business entities, and excludes the fixed salaries of their employees.* **For example:** The purchaser owns a cash intensive business; The purchaser owns a business commonly associated with a higher risk of corruption (refer to Section 3.2.1 of the IPs); The purchaser is a business associated with higher ML/FT risks such as money remittance or virtual financial assets.	**Take steps to ensure the funds are legitimate.** If the purchaser is acquiring from own funds, obtain information to be satisfied that the income derived from their occupation or business activity is in line with the amount to be paid using own funds. Where the risk is high, ask for supporting documents such as tax declarations or financial statements. Carry out checks on open source information to determine whether there is any adverse information on the business which may indicate a higher risk of ML/FT. If the purchaser is acquiring through a bank loan, ensure that the value of the property makes sense when compared with the income or proceeds of the purchaser's business.

Risk Factor	Suggested mitigating measure
The customer is a Politically Exposed Person[2]. *The risk associated with PEPs is laid out in Section 4.9.2.2 of the IPs.*	
The purchaser is a PEP. Within the property sector, the risk arises from the possibility that a PEP may be buying property to launder money earned through bribery or corruption. Although enhanced due diligence measures must be taken with respect to all PEPs, generally speaking, the ML/FT risk when dealing with foreign PEPs becomes higher, as their connection with the property sought in Malta is less apparent.	**Take steps to ensure the funds are legitimate.** For subject persons dealing with both parties to the transaction (purchaser, vendor) all persons must be checked for their PEP status. However, the risk of ML/FT is more significant when the **purchaser** is a PEP. The most important measure to take with respect to a PEP purchaser is to ascertain that the funds to be taken out by the PEP are in line with their salary and other declared earnings, and that they have been derived from a legitimate source. In a number of countries, PEPs earn a fixed salary and may be required to publicly disclose their assets. If the PEP declares that the funds are derived from business earnings, subject persons should ascertain the nature of the business and seek to ensure that the PEP really does carry out that type of business. Substantiating documents should be obtained as part of the enhanced due diligence measures that must be carried out when dealing with PEPs. A similar approach should be applied when the lessee is a PEP.

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2. The ML/FT risks attributed to PEPs are equally applicable to their family members and close business associates, as per Regulation 11(8) of the PMLFTR.

Risk Factor	Suggested mitigating measure
The vendor is a PEP.	Where the **vendor** is a PEP, subject persons should assess whether there are any unusual circumstances surrounding the sale, such as: • The PEP is selling the property shortly after having acquired it, without any logical reason to do so; • The PEP is selling the property at a price that is significantly above market value, where the difference may be the purchaser's payment of a bribe (for this to apply, the purchaser would have to be in collusion with the PEP).
The purchaser is a non-EU national who is acquiring property pursuant to a scheme which grants residence or citizenship rights in exchange for the purchase of property, capital transfer or other investment, or has benefitted from such a scheme. *The risk associated with such customers is primarily derived from the lack of a genuine connection with Malta, which is explained above in more detail under the first Customer Risk factor. Such persons may apply for citizenship schemes for legitimate purposes however they may also be seeking to evade law enforcement and investigation in their home country or to protect their assets by transferring them out of their country of origin.*	**Establish the purchaser's source of wealth and source of funds and carry out background checks.** Request information on the purchaser's source of wealth and source of funds and verify such information against documentation. In some cases, information on their wealth, occupation and business activities may be available online. This information may further corroborate their declared source of wealth. Carry out open source/internet checks on the purchaser to ensure that there is no adverse media.

Risk Factor	Suggested mitigating measure
The purchaser is looking to buy multiple properties. *The possibility to launder large sums of money at a single time through the acquisition of one or more properties, or over a number of transactions within a short period of time, makes the property sector a target for money laundering.*	**Where you become aware that the purchaser is looking to buy multiple properties, you must seek to understand the reasons for this. Take measures to ensure that the wealth or income of the purchaser is commensurate with the total value of the properties and that the source of funds is legitimate (refer to the risk factors and mitigating measures under 'Product, Service and Transaction Risk Factors').** If the purchaser is acquiring with their own funds, you should take additional measures to ensure that the funds have been obtained through legitimate activities. You should request information on the purchaser's occupation or business activities. Where the risk is high, ask for supporting documents to substantiate the declared earnings, such as payslips, FS3 documents or financial statements. If the purchaser is borrowing funds to finance the purchase, take measures to be satisfied that the lender is a licensed financial institution in a reputable jurisdiction, and that there is no adverse information which may indicate inadequate application of AML/CFT obligations. If the lender is not a licensed financial institution, take additional measures to identify and verify the identity of the lender and to ensure the legitimate source of the funds. Similarly, assess whether there is any adverse information about the lender.

Risk Factor	Suggested mitigating measure
The customer is introduced to the Notary by a third person. *Persons seeking to launder money may select a specific service provider because they believe that they are more easily abused. Thus, sometimes, the use of introducers increases the ML/FT risk. This factor in itself should not automatically indicate a higher ML/FT risk as very often one is introduced by a third person for legitimate reasons. For instance, persons who have never engaged a Notary before may ask acquaintances for a recommendation. However, if a subject person notices that they are repeatedly being targeted by unknown clients, they should seek to understand why this is happening and who is introducing them.*	**Seek to understand why the person was introduced to you, as a Notary, and whether the person who introduced you has any particular interest in doing so. This is particularly relevant for Notaries.**
The purchaser repeatedly changes notaries. *The risk associated with persons who repeatedly change notaries is that they may be trying to operate under the radar, for instance to avoid detection when buying multiple properties, or when purchasing, selling and repurchasing within a relatively short amount of time.*	**If you become aware that the purchaser frequently changes notaries, you should seek to understand the reasons for these repeated changes.**

1.2 GEOGRAPHIC RISK FACTORS

These jurisdictional connections are considered to present a *higher* risk of ML/FT. Subject persons should read this section in conjunction with Chapter 8 of the IPs, which deals with high risk jurisdictions.

Risk Factor	Suggested mitigating measure
The purchaser's funds are coming from a high-risk jurisdiction. In situations where the purchaser's funds were or will be generated in a jurisdiction which poses a high ML/FT risk, there is a higher possibility that the funds were obtained through criminal activity in that jurisdiction and are being laundered in Malta to obscure the connection. **For example:** The country is subject to sanctions, embargoes, or similar measures issued by international bodies. The country is identified by credible sources as having significant levels of corruption. The country is known for any other type of criminal activity which generates illicit funds (e.g.: drug trafficking, human trafficking, smuggling or otherwise a notable presence of organised crime groups). The purchaser has other established links with a high-risk jurisdiction, as this would indicate that their funds may also be derived from that jurisdiction. The purchaser or the purchaser's UBO is residing or has resided in a high-risk jurisdiction. Where the customer is a legal person or entity having its place of business or registered office in a high-risk country.	**Assess the nature and extent of the connection that the customer has with that jurisdiction. Refer to Section 8.1.3 of the IPs for more information. Take measures to ensure that the source of funds is a legitimate one.** If the purchaser is a natural person, obtain information on employment and business activities and, depending on the level of risk, request supporting documentation such as payslips or tax returns. If the purchaser is a company, take all the measures necessary to understand its business activities and verify that the funds have been generated from such activities. Request supporting documentation, such as recent financial statements of the company, which would also assist to establish that it is capable of generating the necessary funds to finance the acquisition or service the loan granted to the company to carry out this acquisition.

1.3 PRODUCT, SERVICE AND TRANSACTION RISK FACTORS

These services, products or funding methods are considered to present a *higher* risk of ML/FT:

Risk Factor	Suggested mitigating measure
Use of own funds. *The risk arises from the possibility that a person is seeking to launder a large amount of illicitly obtained funds through a one-time transaction.* *Refer also to the use of cash, below.* **For example:** The customer will not be taking out a loan to purchase the property, and will be funding the acquisition directly through own funds.	**Request information and documents to substantiate the source of the funds to understand and justify how the purchaser can make such a transaction without financial assistance. The higher the amount to be taken out of own funds, the more important it becomes to obtain justification, including supporting documentation.** For example, if the source of funds is declared to be from investments, request dividend warrants or documents to prove the sale of investments. In cases of inheritance, request a copy of the declaration causa mortis to verify that the funds originated from inheritance and request a bank statement in addition to this to document that the funds devolved on the customer from a deceased person. If the purchaser states that the funds were accumulated over time, such as savings from income, obtain information on the activities which generated the customer's wealth over the years (source of wealth) to ensure that the amount to be paid by the purchaser could have been accumulated given the occupation or business income in the past. Even if the funds are being taken out of deposits from an account with a credit or financial institution, depending on the level of risk (including the value), one should still take measures to understand how the

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Risk Factor	Suggested mitigating measure
	purchaser obtained the funds; that is, the activity which generated that money. The level of detail and documentation requested should be based on the level of ML/FT risk posed, including the amount to be paid out of own funds. As a general rule, the higher the amount being paid out of own funds, the higher the risk.
Use of cash[3]. *The word 'cash' is used to refer to physical coins and banknotes. Cash is a popular means of payment in the criminal world: cash payments are anonymous and do not leave a trace, allowing persons to disassociate themselves from financial transactions carried out in cash. Similarly, the cash used by the purchaser may have been provided by an unknown third person and a subject person might not be able to detect this and, moreover, will not be able to identify the third person and their potential links with suspicious activity.* *Vendors may try to reduce the tax owed on capital gains by under-declaring the value of the property on the contract of sale, then collecting the difference 'under the table' in cash.* *It is also easier for a lessor to avoid declaring rental income where the payment is received in cash, as cheques or bank transfers may be*	**There may be legitimate practical or cultural reasons for paying in cash however the higher the amount, the higher the risk. Subject persons need to take appropriate measures to understand the activities which generated the cash and where necessary obtain supporting documents.** Subject persons should also question why the purchaser is resorting to paying in cash or why the vendor will only accept cash buyers. If the purchaser does not provide reassuring information as to the source of the cash, or, in all cases where the amount to be paid in cash is high, you should request information on the general source of wealth which generated their income over time. In all cases, use your experience and resources to ensure that the value being declared on the agreement is more or less in line with the market value of the

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3. At the time of publication there were no restrictions or limitations on the use of cash to acquire property. Upon the introduction of any legislative provisions which restrict or limit the use of cash for the acquisition or lease of property, such provisions must of course be adhered to and the respective risk factors must be considered in light of any such restrictions.

Risk Factor	Suggested mitigating measure
detected by financial institutions or tax authorities. **For example:** The customer is buying property in cash, whether in whole or in part. The vendor or lessor is looking for people to buy or rent in cash only.	property. Should you need additional reassurance, particularly in high risk cases, consider obtaining a second opinion on the value of the property. The higher the amount being paid out in cash, the more information and documentation would be needed. If you are not satisfied and if there are grounds for suspicion, you should consider filing a suspicious transaction report.
Non-bank loans. *Persons or companies that are not banks or are not otherwise authorised to grant credit facilities to finance the acquisition of real estate may seek to launder illicitly obtained funds by giving out loans to private entities or individuals to finance the acquisition of property, and legitimising the funds through loan repayments.* **For example:** The property is being end-financed (whether in whole or in part) through a loan from a person or entity which is not a licensed and regulated financial institution (i.e.: a non-bank loan).	**Take all measures to understand where the loan is coming from. Seek to understand the connection between the lender and the borrower.** In some cases, the connection is apparent, e.g. parents lending money to their children. In such cases, subject persons should consider requesting the source of funds or source of wealth of the parents making the donation, taking into consideration the amount of the donation. Where the connection is not apparent, scrutinise the circumstances surrounding the agreement for any suspicious indicators. Obtain information on the identity of the lender (and its beneficial owner(s) if applicable) and on the activities which generated the funds of the loan. Carry out checks for any adverse information on the lender. Additionally, take measures to understand how the loan is going to be paid and the source of the purchaser's funds. Obtain a copy of the loan agreement and consider if the loan conditions are in line with prevalent market conditions.

Risk Factor	Suggested mitigating measure
Third-party funds. *Where a third person is funding the purchase (fully or partially), one should always seek to understand why funding is being provided by a third party as this may increase risk. In particular, it could be an indication that the property is not intended for the person posing as the purchaser, and the purchaser is there as a front or to act as a cover for the actual intended owner. Where the purchaser is a PEP, this may be an indication of a pay-off.* **For example:** The deposit (or partial payment) for the property being bought is paid through a cheque or other payment instrument issued by a third party and not by the purchaser. The deposit (or partial payment) is being paid by a third person.	Where the amount is substantial, the subject person should seek to establish whether the reason for this is perfectly legitimate (e.g.: parents assisting their children with purchasing their first property) or whether on the other hand, the reason or connection is not so clear. Where a third party is making or has made a donation towards the purchase, assess the relationship between the third party and the purchaser. Consider requesting supporting documentation such as a copy of the private writing. Depending on the level of ML/FT risk posed, including the value, the subject person should request information on the source of the third-party funds and the activities which generated the funds, and if necessary, substantiating documentation.
Use of virtual financial assets (“VFAs”). *The use of VFAs increases the risk of ML/FT because of a number of factors, anonymity being the most significant one. The level of anonymity and traceability varies from one VFA to another, however holders of private wallets are not usually identified and verified, unless they interact with someone licensed to carry out a VFA service.* **For example:** The customer is looking to buy or rent using cryptocurrencies (whether in full or in part). The customer is looking for purchasers who will pay using cryptocurrencies (whether in full or in part).	**Take measures to determine how the purchaser or the lessee obtained the assets, and, if necessary, obtain supporting documentation.** Refer also to the use of own funds, above. Check whether the payment is made through a private wallet or a wallet held by a custodian (in the latter case, there is a possibility that the custodian would have carried out some checks on the origin of the currency). Seek to understand why the seller is looking to sell the property exclusively through cryptocurrency transactions.

Risk Factor	Suggested mitigating measure
Unusual funding methods. *The use of unusual or non-traditional payment methods should be approached with caution, particularly when one considers the security and reliability associated with the more common methods used in real estate transactions.*	**Determine why the customer seeks to use such methods and whether there is a legitimate reason for it. Additionally, take all measures necessary to ensure that the source generating the funds is a legitimate one.** Determine whether you are satisfied with the information and whether the transaction is in line with your risk appetite.
High Value Transaction. *The risk arises from the ease with which one may launder a significant sum of money in one single transaction.*	**Determine the source of wealth and the source of funds of the purchaser to ensure that the funds are legitimate.** If the purchaser is a natural person, obtain information on employment and business activities and, depending on the level of risk, request supporting documentation such as payslips or tax returns. If the purchaser is acquiring through a bank loan, ensure that the value of the property makes sense when compared with the income or proceeds of the purchaser's business. The more expensive the property being acquired, the more checks the subject person must conduct to ensure that the purchaser really affords to purchase the property with legitimate funds.
The deposit will not be retained by the Notary. *Where the deposit is not retained by the Notary for safekeeping, but transferred directly to the vendor, a transaction will have effectively been completed, even though the actual sale is still to take place.*	Where the parties agree to do this, and the sum exceeds the threshold for an occasional transaction, you should consider the transaction as an occasional transaction and hence carry out all the customer due diligence measures in terms of the PMLFTR before executing it.

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Risk Factor	Suggested mitigating measure
In such cases, there is also a risk that the promise of sale may be a fictitious one created as a basis to move funds (the deposit itself) from one person to another, after which the promise of sale is withdrawn or terminated.	You should also ensure that the transaction is actually taking place in your presence. Where, however, funds have already passed between the parties, you should understand why payment was executed at an earlier stage. In all cases, you are to obtain and retain documentation proving that this transaction effectively took place (e.g.: copy of cheque, or bank receipt showing the account from which the funds were paid out).

1.4 DELIVERY CHANNELS RISK FACTORS

These delivery channels are considered to present a *higher* risk of ML/FT:

Risk Factor	Suggested mitigating measure
The customer (whether buying or selling, or renting) is being represented by somebody else. *Persons associated with criminality may seek to distance themselves from the transaction by introducing a third person to represent them. Without knowing who you are actually providing a service to, you increase the risk of being used for ML/FT purposes.*	**Not all such scenarios are suspicious or increase the risk of ML/FT. You must understand why you are not dealing with the actual purchaser or vendor, and see that this makes sense.** For instance, where the vendors are old or ill, or reside outside Malta then the reason is evident, and so the risk arising from being represented by somebody else is lower, and obtaining a copy of the power of attorney may be enough. It is also common for persons in business to have a power of attorney to carry out transactions on behalf of their spouses. Nevertheless, you must ensure you know and verify the identity of the person who is actually buying, selling or renting.

Risk Factor	Suggested mitigating measure
The customer is interacting on a non-face-to-face basis. *This is particularly relevant where real estate agents broker a deal without having had any physical contact neither with the customer, whether purchaser, seller, lessor or lessee, nor with an agent representing that customer.* *When dealing with customers on a non-face-to-face basis as described above it becomes harder to verify the authenticity of documents such as identity cards or passports. This increases the risk that the customer may be hiding behind another identity.*	**Take measures to ensure that the identification documents are genuine. Refer to Section 4.3.1.1 (iv) of the IPs for assistance with checks on authenticity.** Consider obtaining additional documents to further ascertain the identity of the customer. Refer to Section 4.3.1.2 of the IPs for additional verification measures in the cases of non-face to face transactions.

1.5 LOW RISK FACTORS

In the same way that certain factors increase the ML/FT risk of a transaction, other factors are indicative of a lower ML/FT risk. Of course, the existence of one or two lower risk factors within a given scenario do not necessarily pinpoint to an overall low ML/FT risk. Once again, subject persons are expected to assess all the factors present before determining the overall level of risk.

(a) The property is being end-financed through a bank loan from a reputable jurisdiction.

When a licensed credit institution is financing a transaction, there is a reasonable assumption, although it is not a given, that the purchaser shall be making gradual loan repayments from funds derived from employment or other economic activity. It is arguably easier to obtain satisfactory information on the source of funds when it comes to lower value, incremental payments than of large lump sum payments. There is an additional degree of comfort knowing that the loan repayments to the credit institution will be made through the purchaser's bank account with that institution, which serves to link the purchaser to the funds, to a great extent. This is not the case when it comes to repayments of non-bank loans, for instance, as such repayments may potentially also be made in cash, which cannot be linked to the person who is supplying the cash, making it easier for a third person to supply the funds for repayments without attracting the attention of subject persons.

When assessing the risk associated with a transaction financed by a bank loan, subject persons should check whether there is publicly available information indicating serious AML/CFT shortcomings by the bank or which otherwise links that institution to the facilitation of financial crime.

If the loan is from a bank outside Malta, subject persons should also take measures to ensure that the bank is set up in a reputable jurisdiction (refer to Chapter 8 of the IPs).

When considering the risk associated with such a transaction, subject persons should also assess the percentage of the value being financed through a loan, and the amount of the deposit being paid from own funds. Where the deposit is substantial (i.e.: more than is reasonable for an average purchaser to raise in a few years), the subject person should ensure that this amount makes sense in view of the income, occupation or overall wealth of the purchaser.

Thus, subject persons should still assess all risk factors surrounding the transaction before deeming the scenario to be one of lower risk.

(b) The value of the property is relatively low.

A lower value property decreases the ML/FT risk because it is easier for a subject person to establish that the prospective purchaser is financially able to purchase a low value property, than it is in the case of a high value property. Notwithstanding the low value of the property, where the purchaser does not have an apparent meaningful income, such as a student or a person who claims to be unemployed, the subject person will need to consider obtaining information and, if needed, documentation on the source of funds to be reassured that the purchaser really is in a position to legitimately fund the purchase.

(c) The property is being acquired or leased by Maltese residents with the purpose of establishing their primary residence.

In the same way that the lack of a connection with Malta is considered to pose a higher ML/FT risk, where the property is being acquired by Maltese residents, the purpose of the transaction is self-evident and is not hidden, which decreases the ML/FT risk to an extent.

(d) The customer has been met face-to-face and original documentation pertaining to verification has been seen in original.

By seeing and communicating directly with the customers on a face-to-face basis, the risk of hiding behind false or stolen identities is significantly reduced.

(e) The vendors have inherited the property being sold or have otherwise owned the property for a considerable number of years.

(f) There are multiple vendors on a deed to the extent that the sum payable to each vendor is relatively low.

As stated above, the risk of ML/FT is more likely to emanate from the purchaser than from the vendor. Nevertheless, subject persons must identify and verify the identity of the vendors in terms of Regulation 7 of the PMLFTR. In cases outlined above, the measures undertaken to verify the identity may be simplified in terms of Regulation 10(1)(b) of the PMLFTR.

The example described below illustrates how several different factors combine together to create a scenario which lowers ML/FT risk:

Two Maltese residents approach a real estate agent to assist them in their search for their first home, which they will be buying together. They advise the agent that they are looking for an apartment or a small townhouse and they disclose their budget, which in the agent's opinion and experience is a modest one. The agent meets the prospective buyers in person and strikes up a conversation to better understand what they are looking for. Having asked a few questions, the real estate agent establishes that they are both employed and that their budget is in line with the typical salaries associated with their employment. The agent further establishes that their property will be end-financed through a bank loan with a local credit institution, which will cover 90% of the consideration. The remaining 10% will be financed by both buyers from funds which they accumulated through their earnings.

After viewing a few properties, the buyers are set on one particular apartment and wish to enter into a promise of sale agreement with the vendor. The agent provides them with a form requesting certain identification details as well as basic information on their occupation and income bracket. The replies of the prospective buyers are verified against government issued verification documents and the information initially provided on their occupation is written down on the form.

1. RISK FACTORS CONTINUED

These are some of the factors which altogether indicate that this scenario is one of lower risk:

- The purpose of the transaction and the connection with Malta are evident – to establish primary residence;
- The value of the property is a modest one and the consideration will further be divided among two purchasers;
- The consideration of the property is commensurate with the average income for their known occupation;
- The financing through a loan is typical of first-time buyers and also presumes the gradual repayment through sums of a low value;
- The purchasers are being met in person and documentation has been seen in original;
- At this stage there are no apparent unusual indicators or behaviour.

If the property were of a significantly higher value than the average first time purchasers would typically look for, the subject person may consider taking mitigating measures such as obtaining documents to substantiate their stated occupation or income, in order to help justify how such persons can afford to finance a higher value property.

SECTION 2 – RED FLAGS AND CASE STUDIES

2.1 RED FLAGS

Red flags are possible indicators that ML/FT may be taking place. The existence of a red flag does not automatically mean that ML/FT is taking place, but should serve as a trigger for further questioning or to undertake more rigorous due diligence measures, such as obtaining documents to support claims made by the customer. If the subject person is not satisfied with the information obtained after the detection of a red flag, the subject person should consider whether there are grounds to suspect ML/FT or criminal proceeds and hence file a suspicious transaction report in terms of Regulation 15 of the PMLFTR.

Being aware of the common red flags associated with property and the real estate sector in general places subject persons in a better position to detect potential cases of ML/FT and prevent the misuse of their services for criminal purposes.

When looking out for red flags, subject persons should bear in mind the context and all relevant factors surrounding the parties and/or the transaction. It should also be noted that subject persons may have different visibility over the various aspects that form part of the transaction, and so not all such red flags are relevant to all subject persons. For instance, Notaries are not typically involved in the negotiations of the price.

2.1.1 Red flags relating to the purchaser

- The purchaser wants to buy multiple properties at once.
- The purchase has or is in the process of buying multiple properties all within a relatively short time frame.
- The source of the purchaser's funds is questionable, or the purchaser is highly uncooperative when asked to provide information on the source of funds.
- The purchaser is not so interested in the location or condition of the property, or even in the projected repair or refurbishment costs.
- At the last minute, the purchaser introduces an unknown party or substitutes the purchasing party's name for no apparent reason.
- The purchaser is utilising obscure or very unusual means of financing the property.
- The subject person is unable to properly identify the customer or beneficial owner or there are questions surrounding the customer's identity.

- The purchaser is highly uncooperative when it comes to providing basic identification and verification information or is avoiding providing such information.
- The purchaser provides information which is vague, misleading, or difficult to verify.
- The purchaser provides false, misleading, incorrect or conflicting information, or provides documents which appear to be forged, counterfeited or somehow altered.
- There is adverse media about the purchaser.
- The value of the transaction is significantly inconsistent with the occupation or financial standing of the purchaser, or does not reflect market values.
- The purchaser is evidently living beyond their means.
- The purchaser appears to be using funds or assets held by their company to finance property in their own personal name (or vice-versa: the corporate purchaser is using the personal funds of shareholders or other officers within the company).
- The purchaser is seeking to use large amounts of cash to fund the purchase.
- The purchaser has been identified or designated on sanctions lists linking them to terrorist organisations or terrorist activities.

2.1.2 Red flags relating to the vendor

- The vendor is not interested in obtaining a better price for the property.
- It seems that there may be an 'under the table' payment, whereby the parties agree on one price on the contract, but an additional sum is being paid to the vendor.
- The property is being sold for significantly more or significantly less than the market value.
- The purchaser and the vendor know each other and are appearing to collude with each other.
- The purchaser is financing the property from a loan given by the vendor.

- The vendor is pressuring the purchaser into using the services of a Notary of the vendor's choice.
- The property is being resold immediately after purchase, or within a short period of time, for no apparent or logical reason.
- The property to be sold was acquired relatively recently, and the sale of the property entails a significant increase or decrease in the price for which it was acquired, with no credible justification provided for this purpose.
- The parties declare that the funds have already been transferred to each other.
- There is adverse media about the vendor.
- The vendor is seeking to sell the property exclusively to persons who will pay in cash or through cryptocurrencies (whether wholly or in part).

2.1.3 Red flags in the nature of the lease

- The property is being leased for significantly less than rental value (at least on paper).
- The lessee is not interested in the features or conditions of the property or has not even bothered to view the property.
- The value of the lease in significantly inconsistent with the customer's profile.
- The purpose of the lease does not make sense.

2.1.4 Red flags in the transaction

- The transaction is being carried out on behalf of minors, incapacitated persons, or other persons who appear to lack the capacity, economical or otherwise, to make such a purchase/lease.
- The parties want to complete the transaction urgently without a reasonable explanation.
- There are unexplained or last-minute changes in the financing methods of the transaction.
- The Notary is being requested to declare a different payment method on the contract to the method actually used.

- The Notary is being requested to declare a payment method on the contract yet there is no evidence of that transaction.
- There is a donation or third-party payment from/to a person who is a PEP.
- The transaction is aborted without the parties providing a reasonable explanation for doing so.
- The transaction is aborted, and any funds held by the notary are requested to be transferred through a different payment channel or remitted to a different account/party than the original one.

2.2 LOCAL CASE STUDIES

The case studies below are based on actual cases analysed by the FIAU.

CASE STUDY 1

A Maltese individual sought to launder their spouse's illictly obtained funds through the purchase of a substantial number of properties in Malta over a ten year period. The spouse was a notorious criminal, and was always listed by name on the contract of sale. The buyer was unemployed, and this fact was also declared on each contract of sale.

None of the properties acquired were financed through a bank loan, and in a number of the purchases, the money used by the buyer had never even entered the financial system through a bank or other institution.

The properties were all situated in different areas in Malta, and were all of differing values, but none of them were deemed to be high-end properties with a very high market value.

The FIAU analysed the facts of the case and determined that there was a reasonable suspicion of money laundering.

From the facts outlined above one can notice a number of high-risk factors and red flags:

i) An unemployed individual seeking to buy property;

ii) An individual connected to criminality;

iii) An unemployed individual in a position to fund property through large lump sum payments each time, without having to borrow from third parties such as banks;

iv) The same individual effecting multiple property purchases using the services of the same subject person;

In the face of the above high-risk factors and red flags, the subject person involved in most of the above transactions should have:

- Requested the source of wealth and source of funds of the purchaser to understand how such purchases are being made without an income and without third party financing;
- Conducted a quick open source check on the purchaser and their spouse, which would have resulted in adverse media linking the spouse to criminal activity;
- Filed a suspicious transaction report on the basis of an unsatisfactory explanation as to the legitimate source of funds and of connections with criminality.

Such scrutiny would have led the subject person to having sufficient grounds to detect suspicion of money laundering or criminal proceeds.

CASE STUDY 2

A foreign individual connected with lucrative criminal activity outside Malta sought to launder funds in Malta through the purchase of real estate. Within a short span of time, the individual bought five luxurious apartments with a combined value of €3.5 million. For each and every purchase, the individual used the services of the same notary.

Some of the apartments were bought by the individual in their own name, while others were bought by local legal professionals acting as trustees for trusts which had been set up for the benefit of the individual and his children.

The subject persons involved in the property transactions did not file a STR.

From the facts outlined above one can notice the following high-risk factors and red flags, indicating possible suspicion of money laundering or criminal proceeds:

i) An individual with no meaningful connection to Malta seeking to buy property in Malta;

ii) An individual seeking to buy multiple properties;

iii) A number of high value transactions;

iv) The same individual effecting multiple property purchases (each time using the services of the same subject person, and thus that subject person should have been aware of the other transactions);

v) The use of structures and legal arrangements to acquire property.

The number of high risk factors and red flags outlined in the above case should have prompted the subject person to request information on the purchaser's source of wealth and source of funds to determine whether the purchaser was in a position to acquire the properties with legitimate funds. Moreover, the subject person in question should have established the beneficial owners, including the beneficiaries, of the trust involved. This would have led the subject person to determine connections with the purchaser.

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