



EAA issues guidelines on compliance of anti-money laundering and counter-terrorist financing requirements for the estate agency sector

(21 February 2018) Subsequent to the passing of Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance 2018 at the Legislative Council last month, which specifies the requirements on customer due diligence and record-keeping in specified transactions conducted by designated non-financial businesses and professions (including estate agents), the Estate Agents Authority (“EAA”) issued a relevant new practice circular today which will take effect on 1 March 2018, the same effective date of the abovementioned Amendment Ordinance.

The EAA issued this practice circular (No. 18-01(CR)) with the guidelines on compliance of estate agents regarding anti-money laundering and counter-terrorist financing requirements according to section 7 of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“AMLO”), which was renamed pursuant to the Amendment Ordinance. It is aimed at providing guidelines to estate agents that participate in the sale and purchase transaction of properties. The new practice circular will replace three existing circulars, No. 00-07(CR), No. 04-01(CR) and No. 08-05(CR) that the EAA issued in the past on this subject, after the new circular becomes effective on 1 March 2018.

The new circular provides general background information and practical guidelines on anti-money laundering and counter-terrorist financing to the trade which assists estate agencies and their senior management to establish and execute policies, procedures and monitoring measures in order to fulfill the relevant requirements in the AMLO.



The EAA Chief Executive Officer, Ms Ruby Hon Yuen-ping, said “In so far as money-laundering or terrorists-financing risks in property transactions are concerned, the role played by estate agents in property transactions is limited. Unlike estate agents in other jurisdictions, estate agents in Hong Kong do not act as escrow agents for receiving deposits or proceeds on behalf of clients but simply as a middleman between purchasers and vendors in arranging property inspections and the signing of provisional agreements for sale and purchase. However, as the Hong Kong estate agency trade has been included under the purview of the AMLO, the EAA issued these guidelines to assist estate agents in better understanding and complying with the requirements of the AMLO and taking relevant measures so that they could avoid breaching the law.”

Generally speaking, according to the circular, estate agents must take all reasonable steps to mitigate the risk of money-laundering and terrorist financing as well as to ensure appropriate preventive measures are in place. To fulfill the abovementioned responsibilities, estate agency companies and their senior management should establish and implement various policies, procedures and monitoring measures, including risk assessment, customer due diligence measures, continuous monitoring of customers, suspicious transactions reporting, record-keeping and staff training.

Among the above, carrying out customer due diligence and record-keeping are the most important. Customer due diligence requires estate agents to identify the customer and verify the customer’s identity. If there is a beneficial owner in relation to the customer, estate agents need also to identify the beneficial owner and verify the beneficial owner’s identity by taking reasonable measures. If a person purports to



act on behalf of a customer, licensees must identify the representative and take reasonable measures to verify the representative's authority to act on behalf of the customer.

As for record-keeping, according to the AMLO, when identifying and verifying the identity of a customer or beneficial owner in relation to the customer, the original or a copy of the documents and a record of the data and information obtained should be kept. In addition, estate agents should keep the original or a copy of the files relating to the customer's business relationship and business correspondence with the customer and any beneficial owner of the customer; and keep the relevant records throughout the continuance of the business relationship with the customer and for a period of at least five years beginning on the date on which the business relationship ends.

As far as practicable, estate agency companies and senior management should establish an independent compliance and audit function which should have a direct line of communication to the senior management. Moreover, they should establish, maintain and operate appropriate procedures to screen relevant staff before they take up their post to assess that they are effective in carrying out their functions and should provide appropriate training to staff.

The EAA will organise relevant continuing professional development seminars later to explain to practitioners the circular in detail so that they can comply with the requirements of the circular. At the same time, the EAA will prepare relevant forms for the trade's reference, and also produce relevant posters and leaflets, which will be distributed to all estate agency shops in Hong Kong together with the printed copies of the new circular, in a bid to aid them to familiarise themselves with the guidelines and to explain to their clients why more information needs to



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be obtained from the clients as required by the law (e.g. customer due diligence on client's identity).

The key points of the practice circular are listed in the **Annex** of this press release. The full set of the practice circular and a set of detailed “Questions and Answers” have already been posted on the EAA website.

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**Practice Circular on Compliance of Anti-money Laundering
("AML") and Counter-Terrorist Financing ("CTF")
Requirements for the estate agency sector (No. 18-01(CR))
Issued by the EAA**

Key Points

(A) AML/CTF obligations

- Estate agents should take all reasonable measures to mitigate money laundering ("ML")/terrorist financing ("TF") risks and to ensure that proper safeguards exist
- Estate agency companies and senior management should develop and implement AML/CTF systems on:
 - risk assessment;
 - customer due diligence measures;
 - continuous monitoring of customers;
 - suspicious transactions reporting ("STR");
 - record keeping; and
 - staff training.

(B) On AML/CTF systems, estate agency companies and senior management should:

- Ensure the AML/CTF systems are effective.
- Appoint a compliance officer ("CO").
- Appoint a money laundering reporting officer ("MLRO").
- Review the implementation of the AML/CTF controls through the compliance and audit function.



- Screen staff to ensure good conduct and integrity and provide appropriate training to staff.

(C) Risk-based Approach (“RBA”) and Risk Assessment

- Adopt a RBA in taking measures to manage and mitigate ML/TF which are proportionate to the risks identified.
- Estate agency companies and senior management should identify, assess and understand ML/TF risks.
- Assess the ML/TF risks by assigning a ML/TF risk rating to a customer.
- Consider the following risk factors in deciding the risk assessment of a customer:
 - customer risk;
 - country/geographic risk;
 - service risk;
 - delivery channel risk; and
 - other specific factors.
- Keep records and relevant documents of the risk assessment.

(D) Apply the customer due diligence (“CDD”) requirements.

- Identify the customer.
- Verify the customer’s identity.
- Where there is a beneficial owner in relation to the customer:
 - identify the beneficial owner’s identity; and
 - take reasonable measures to verify the beneficial owner’s identity.
- If a person purports to act on behalf of the customer:
 - identify that person;
 - take reasonable measures to verify that person’s identity; and
 - verify that person’s authority to act on behalf of the



customer.

(E) Timing on conducting CDD

- Estate agents must complete the CDD process before establishing any business relationship or carrying out a specified occasional transaction.
- May complete the CDD process after establishing the business relationship, if:
 - this is necessary not to interrupt the normal conduct of business; and
 - any ML/TF risk is effectively managed.
- A licensee that carries out verification after establishing a business relationship with a customer must complete the verification as soon as reasonably practicable.
- Adopt appropriate risk management policies and procedures where a business relationship is established prior to identity verification.
- When a licensee is unable to complete the CDD process, he:
 - must not establish a business relationship or carry out any occasional transaction;
 - must terminate the established business relationship as soon as reasonably practicable; and
 - should consider filing an STR with the Joint Financial Intelligence Unit (“JFIU”).

(F) Estate agents must identify and verify customer’s identity and customer’s beneficial owner

- Identify and verify the customer’s identity by reference to documents, data or information provided by a reliable and independent source.
- Follow the guidance for the identification and verification of



customers and their beneficial owners.

- Take reasonable measures to verify the identity of a beneficial owner so as to know who the beneficial owner is and to understand the ownership and control structure of the customer if it is a legal person.
- A beneficial owner in relation to a corporation is an individual who owns or controls, directly or indirectly, more than 25% of the issued share capital or voting rights, or who exercises ultimate control over the management of the corporation.
- For companies with multiple layers in their ownership structures, the intermediate layers of the companies should all be identified, e.g.:
 - obtain a director's declaration annexing an ownership chart so as to identify the names and place of incorporation of all the companies in the intermediate layers and to identify the individuals, who are the ultimate beneficial owners; and
 - verify the identity of those individuals, who are the ultimate beneficial owners.

(G) When applying simplified CDD (“SCDD”) under the AMLO, estate agents should:

- Identify the customer.
- Verify the customer.
- There is no need to identify the beneficial owner or to verify his identity.
- Customers to whom SCDD may be applied are set out in Section 4(3) of Schedule 2 to the AMLO.

(H) About enhanced CDD (“ECDD”)



- Estate agents must take additional measures in high-risk situations e.g.:
 - customer not physically present for identification purposes;
 - customer or his beneficial owner being a politically exposed person (“PEP”);
 - customer from high-risk jurisdiction; and
 - any situation specified in a notice given by the EAA.
- If a customer or beneficial owner is a PEP, apply the following measures:
 - obtain approval from the senior management;
 - take reasonable measures to establish the customer’s or beneficial owner’s source of wealth and the source of the funds involved in the business relationship; and
 - apply enhanced monitoring.

(I) Regarding pre-existing customers

- Estate agents must perform CDD measures in respect of pre-existing customers in certain situations, including:
 - a transaction takes place with regard to the customer which, by virtue of the amount or nature of the transaction, is unusual or suspicious; or is not consistent with the licensee’s knowledge of the customer or the customer’s business or risk profile, or with its knowledge of the source of the customer’s funds;
 - a material change occurs in the way in which the customer’s business is operated;
 - suspects that the customer or the customer’s business is involved in ML/TF; or
 - doubts the veracity or adequacy of any information



previously obtained for the purpose of identifying the customer or for the purpose of verifying the customer's identity.

(J) Continuous monitoring

- Estate agents must review from time to time information of the customer to ensure it is up-to-date and relevant.
- Conduct scrutiny of transactions to ensure that they are consistent with the customer's business, risk profile and source of funds.
- Identify complex transactions that have no apparent economic or lawful purpose.

(K) Reporting suspicious transactions

- Make an STR to the JFIU once a transaction is identified or suspected to be related to ML/TF activity.
- Failing to report knowledge or suspicion of crime proceeds or terrorist property is a criminal offence.
- MLRO should act as a central reference point for reporting suspicious transactions to the JFIU.
- Estate agency companies and senior management should establish and maintain a record of all STRs made to the JFIU.

(L) Financial Sanctions and Terrorist Financing

- Estate agents should conduct name checks of customers and beneficial owners against the latest list of the designated individuals and entities that are subject to financial sanctions and of terrorist suspects.
- Have an appropriate system to conduct name checks against the relevant up-to-date lists of names of the designations and



terrorist suspects.

(M) Record-keeping

- In respect of each customer,
 - estate agents should keep the original or a copy of the documents, and a record of the data and information for identifying and verifying the identity of the customer or any beneficial owner of the customer in accordance with Part 2 of Schedule 2 to the AMLO;
 - keep the original or a copy of the files relating to the customer's business relationship and business correspondence with the customer and any beneficial owner of the customer; and
 - keep the relevant records throughout the continuance of the business relationship with the customer and for a period of at least 5 years beginning on the date on which the business relationship ends.

- In respect of each transaction,
 - estate agents should keep the original or a copy of the documents, and a record of the data and information obtained in connection with the transaction in accordance with Part 2 of Schedule 2 to the AMLO; and
 - keep the relevant records for a period of at least 5 years beginning on the date on which the transaction is completed.

(N) Staff awareness and training

- Estate agency companies and senior management should conduct awareness and training programmes on the effective



implementation of AML/CTF systems for:

- new staff
 - front-line staff
 - back-office staff
 - managerial staff
 - MLRO
- Estate agency companies and senior management should monitor the effectiveness of the training.