

Guidelines on Compliance of Anti-Money Laundering (“AML”) and Counter-Terrorist Financing (“CTF”) Requirements for the Estate Agency Sector (Circular No. 23-01(CR)) (with cross references to the Guidelines in brackets as appropriate)

Checklist

Please read Circular No. 23-01(CR) before completing the checklist.

Basic requirements for licensees who are involved, in Hong Kong, in a transaction concerning the buying or selling of real estate for a client¹

- Fill out the Identity Verification Form (for individuals²) / (for corporations) before arranging for clients to enter into an agreement for sale and purchase (Annexes A & B herewith)
- Identify the client and verify the client’s identity (para. 4.3(a))
 - If the client is an individual, check client’s Hong Kong Identity Card / travel document (para. 2 of Appendix C)
 - If the client is a limited company incorporated in Hong Kong (para. 3 and 5 of Appendix D), EITHER
 - Obtain the following by conducting a company search at the Companies Registry:
 - a copy of the Certificate of Incorporation; and
 - a copy of the latest Annual Return or other records verifying the following:
 - Address of the registered office;
 - Names of the current director(s);
 - Names of the current shareholder(s); and
 - Names of the beneficial owner(s) (if different from shareholder(s))

OR

- Obtain from the client copies certified by a professional third

¹ “client” means any person who whether on his own behalf or on behalf of another person retains or otherwise uses the services of, or otherwise engages or employs, an estate agent.

² “individual” means a natural person, other than a deceased natural person.

party verifying the following:

- Certificate of Incorporation
 - Address of registered office
 - Names of the current director(s);
 - Names of the current shareholder(s); and
 - Names of the beneficial owner(s) (if different from shareholder(s))
- If the client is a corporation incorporated outside Hong Kong, EITHER
- Obtain from the client the following: (1) a company search report issued by the company registry in the place of incorporation or a similar or comparable document to a company search report; or (2) a certificate of incumbency or equivalent issued by the registered agent in the place of incorporation or a copy thereof certified by a professional third party in the relevant jurisdiction; or (3) any other written evidence issued by the government or an official authority in the place of incorporation (para. 4 and 5 of Appendix D)

OR

- Obtain from the client copies certified by a professional third party verifying the following:
 - Certificate of Incorporation
 - Address of registered office
 - Names of the current director(s);
 - Names of the current shareholder(s); and
 - Names of the beneficial owner(s) (if different from shareholder(s))
- If there are multiple layers in the company ownership structure, 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. Verify the information in respect of each intermediate layer of the companies and the identity of the individuals who are the beneficial owners of the customer (para. 8

of Appendix D)

- If a representative purports to act on behalf of a client, (para. 4.19)
 - identify the representative and take reasonable measures to verify the representative's identity
 - verify the representative's authority to act on behalf of the client (para. 4.19(C))
 - Obtain power of attorney; or
 - If the client is a legal person³, obtain board resolution or similar written authorization
- If there is a beneficial owner in relation to the client, identify the beneficial owner and take reasonable measures to verify the beneficial owner's identity so that the licensee is satisfied that he knows who the beneficial owner is (e.g. by verifying the beneficial owner's identity against his Hong Kong Identity Card / travel document) (para. 2 of Appendix C)
- Determine whether the client and/or beneficial owner is a PEP⁴. If so, determine the type of PEP and apply appropriate measures. (para. 4.32)
- Check whether the client and/or beneficial owner is a designated individual or entity subject to financial sanctions (para. 7.6)
- Check whether the client and/or beneficial owner is a terrorist suspect (para. 7.15)
- Assess the ML/TF risks (para. 3.5) (see section 5 of Annex A and section 6 of Annex B)
 - Assigning a ML/TF risk rating to the client (para. 3.9)
 - Documenting risk assessment (para. 3.11)
- Except for the situation specified in para. 4.38, if the client and/or beneficial owner is a PEP, apply ECDD measures (para. 4.35)
 - Obtain approval from the senior management; and
 - Take reasonable measures to establish the client's or the

³ According to Part 1 of Schedule 2 to the AMLO, "legal person" includes any public body and any body of persons, corporate or unincorporate.

⁴ For the definition of political exposed person, please see paragraph 4.30.

beneficial owner's source of wealth and the source of funds

- Apply ECDD measures in high-risk situations (para 4.25)
- Report suspicious transactions to the JFIU through the MLRO of the estate agency company (para. 6.9)
- Establish and maintain a record of all ML/TF reports made to the MLRO (para. 6.24)
- Keep for at least 5 years after the end of the business relationship
 - the original or a copy of the documents, and a record of the data and information for identifying and verifying the identity of the client, any beneficial owner of the client and representative of the client (para. 8.3(a)(i))
 - the original or a copy of the files relating to the client's business relationship and business correspondence⁵ with the client and any beneficial owner of the client (para. 8.3(a)(ii))
- Keep for at least 5 years after the completion of the transaction the original or a copy of the documents, and a record of the data and information obtained in connection with the transaction, which may include a copy of the provisional agreement for sale and purchase (para. 8.4)
- If the record consists of a document, either the original of the document must be retained or a copy of the document must be kept on microfilm or in the database of a computer. If the record consists of data or information, such record must be kept either on microfilm or in the database of a computer. (para. 8.5)

Additional tasks for estate agency companies and senior management

- Develop AML/CTF systems on risk assessment, CDD measures, continuous monitoring of customers, suspicious transactions reporting, record keeping and staff training (para. 2.2)
- Ensure that the AML/CTF systems are capable of mitigating the ML/TF risks (paras. 2.5 and 2.12 to 2.14)
 - Appoint a CO

⁵ Licensees are not expected to keep each and every correspondence, such as a series of emails with the client, the expectation is that sufficient correspondence is kept to demonstrate compliance with the AMLO.

- Appoint a MLRO
- Where practicable, establish an independent compliance and audit function to review the implementation of the AML/CTF controls
- Screen staff to assess that they are of good conduct and integrity
- Provide appropriate training to staff
- Identify and assess ML/TF risk in relation to the development of new services and new business practices and the use of new or developing technologies for new and pre-existing services (para. 3.6)
- Conduct risk assessment prior to the launch of the new services, new business practices or the use of new or developing technologies and take measures to manage and mitigate the risks identified (para. 3.7)
- Establish and maintain effective procedures (for example, making reference to publicly available information and/or screening against commercially available databases) for determining whether a client or a beneficial owner of a client is a PEP (para. 4.34(a))
- Ensure that they have an appropriate system to enable their staff to conduct name checks against the relevant lists of designated individuals and entities subject to financial sanctions and of terrorist suspects (paras.7.7 and 7.16)
- Ensure sufficient guidance is given to staff to enable them to form suspicion or to recognize the signs when ML/TF is taking place (para. 6.7)
- Set up and maintain procedures to ensure that all staff are made aware of the identity of the MLRO and the procedures to follow when making an internal disclosure report (para. 6.15)
- Establish and maintain a register of all STRs to the JFIU (para. 6.25)
- Conduct awareness and training programmes to staff (para 9.4)

Additional tasks for the CO (i.e. the compliance officer)

- Ensure that the estate agency company complies with the AML/CTF requirements (para. 2.6(a))

- Provide support and guidance to the senior management to ensure that ML/TF risks are adequately managed (para. 2.6(c))
- Develop and review the estate agency company's AML/CTF systems (para. 2.6(d))
- Oversee all aspects of the estate agency company's AML/CTF systems (para. 2.6(e))
- Carry out regular audits on compliance with AML/CTF requirements (para. 2.6(f))
- Oversee relevant staff screening (para. 2.6(g))

Additional tasks for the MLRO (i.e. the money laundering reporting officer)

- Review all internal reports of suspicious transactions (para. 2.7(a))
- Acknowledge receipt of the report of suspicious transaction and remind the reporting staff of the risk of tipping off (para. 6.18)
- Maintain all records of the internal reviews (para. 2.7(b))
- File a STR with the JFIU where necessary (para. 6.23)
- Provide guidance to staff on how to avoid “tipping off” if a STR is filed (para. 2.7(c))

Attention: This checklist is compiled to serve as general reference for licensees to review their practice and measures so as to comply with the relevant AML/CFT requirements under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (“AMLO”) and to ensure that they are in compliance with the Circular No. 23-01(CR) issued by the EAA only. The information contained in the checklist is not intended to be exhaustive. Licensees are reminded that they are obliged at all times to observe and comply with the applicable law and, in particular, the relevant provisions in the AMLO, the Estate Agents Ordinance and its subsidiary legislation, the Code of Ethics and all applicable guidelines set out in the relevant circulars issued by the EAA.