

Cyprus Estate Agents Registration Council

The Prevention and Suppression of Money Laundering Activities and the Financing of Terrorism Laws of 2007 -2018

Directive to the members of the Cyprus Estate Agents Registration Council

INTRODUCTION

Laundering of proceeds from illegal activities

The laundering of funds which stem from illegal activities is the process through which individuals, who have acquired such funds, try to conceal their true source. When they achieve to do so, they are in control of these illegal funds and are then able to present them as legally acquired.

The laundering of illegal proceeds is a problem which affects all states. In an effort to conceal the true source of funds, criminals may use banking institutions and a number of other professionals who, unknowingly may offer them assistance in laundering their illegally acquired funds.

In most cases, persons who conceal such funds attempt to involve others, often to their unawareness, such as lawyers, accountants, traders in precious stones or metals, stock brokers, estate agents and others.

Therefore, combating crime presupposes the prevention of the laundering of proceeds which are the product of illegal activities, since this renders the criminal activity unattractive, as well as the financing of terrorism.

LEGISLATION

In an effort to prevent the use of the financial system and the services provided by a number of other professions by the criminals, the EU member states and other third countries have enacted legislation which provides, among other things, for the establishment of Supervisory Authorities and the adoption of procedures which must be followed by various professionals.

The intergovernmental organization FATF (Financial Action Task Force) prepared a report which is publicized on its website in relation to the risks faced by the real estate agents and listed measures which must be adopted by the professionals in the field, in an effort to prevent and combat money

laundering activities. The report of the FATF can be found by clicking on the following link:

<http://www.fatfgafi.org/publications/fatfrecommendations/documents/fatfguidanceontherisk-basedapproachforrealestateagents.html>

Directives of the European Union

The Directives of the Council state the obligations of the member states in relation to the combating of money laundering. The Directives list a big number of professions, the services of which may be used by various individuals to launder illegal funds. Estate agent constitute one of these high risk professions.

Domestic Law: The Prevention and Suppression of Money Laundering Activities and the Financing of Terrorism Laws of 2007-2018

The main aim of the Law is to establish preventive measures which must be in place, to criminalise the laundering of the proceeds which stem from criminal offences and to provide for the forfeiture of these proceeds, with the intention of depriving criminals of their illegal profits. The main provisions of the Law are:

Prescribed Offences (Article 3 of the Law)

The Law is applied to all offences which are referred to as prescribed offenses and are:

- A. laundering offences
- B. predicate offences

Laundering offences (Article 4 of the Law)

(1) Every person who-

- (a) knows
- (b) or at the material time ought to have known that any kind of property constitutes proceeds from the commission of a predicate offence, carries out the following activities:

(i) converts or transfers or removes such property, for the purpose of concealing or disguising its illicit origin or of assisting in any way any person who is involved in the commission of the predicate offence to carry out any of the above actions or acts in any other way in order to evade the legal consequences of his actions;

(ii) conceals or disguises the true nature, the source, location, disposition, movement of and rights in relation to, property or ownership of this property;

- (iii) acquires, possesses or uses such property;
- (iv) participates in, associates, co-operates, conspires to commit, or attempts to commit and aids and abets and provides counselling or advice for the commission of any of the offences referred to above;
- (v) provides information in relation to investigations that are carried out for laundering offences for the purpose of enabling the person who acquired a benefit from the commission of a predicate offence to retain the proceeds or the control of the proceeds from the commission of the said offence,

commits an offence punishable by fourteen years' imprisonment or by a pecuniary penalty of up to €500.000 or by both of these penalties in the case of (a) above and by five years' imprisonment or by a pecuniary penalty of up to €50.000 or by both of these penalties in the case of (b) above.

Predicate Offences (Article 5)

A predicate offence is any offence which is defined as a criminal offence by the Law of the Republic of Cyprus.

The Unit for Combating Money Laundering (MOKAS)

In line with the requirements of the Law, the Unit for Combating Money Laundering (MOKAS) was established in 1996. The Unit is composed of representatives of the Attorney-General, police officers, customs and excise officers and financial analysts. The Unit is presided by a representative of the Attorney-General of the Republic.

According to Article 54 of the Law, the Unit, inter alia, shall-

- (a) be responsible for the gathering, classification, evaluation and analysis of suspicious transactions relevant to laundering offences, associated predicate offences and terrorist financing
- (b) disseminates information and data to the police and other government departments such as the Tax and Customs departments, whenever deemed necessary, for the purpose of conducting investigations provided there is reasonable suspicion that a money laundering, or terrorist financing offence or other offences may have been committed, or for information purposes
- (c) issue directives for the better exercise of its functions
- (d) co-operates with corresponding Units abroad for the purposes of analysis of information and/or investigation of money laundering and terrorist financing offences as well as associated predicate offences with the exchange of information and other relevant ways of co-operation.

- (e) conducts investigations in order to trace illegal proceeds and other related assets which may be the subject of a freezing or a confiscation order
- (f) MOKAS can issue an administrative order to obliged entities for the suspension or non-execution of a transaction or to request the monitoring of a bank account if there are reasonable grounds to suspect that a transaction is related with money laundering or terrorist financing for the purpose of analysis of a suspicious transaction. The Unit may also issue an administrative order if it is in the process of registering a foreign Order, a freezing or a confiscation Order
- (g) The order for the postponement or non-execution of a transaction may be valid for seven working days but can be renewed for a period that may not exceed, in total, 30 working days.

The Unit can apply to the Court in Cyprus for the issue of a Freezing or a Confiscation Order in relation to funds or immovable property, or for the issue of a Disclosure Order.

Offences in relation to the disclosure of information (Article 48)

It constitutes a criminal offence if an individual makes a disclosure which may impede or prejudice the interrogation and investigation in relation to predicate offences, by revealing to the suspect or to any other third person that information relating to suspicious transactions has been transmitted, is in the process of being transmitted or will be transmitted to MOKAS, when he or she knows or suspects that the authorities are conducting such interrogations and investigations. The illegal disclosure of such information is punishable by imprisonment not exceeding two years or by a pecuniary penalty of up to €50,000 or by both of these penalties.

Supervisory Authorities (Article 59)

Based on the Amending Legislation of 3rd April 2018 of the Prevention and Suppression of Money Laundering Activities and the Financing of Terrorism Laws, the Supervisory Authority for the professional activities of the real estate agents is the Cyprus Real Estate Registration Council, which is also responsible for the guidance and training of the real estate agents on issues of money laundering and terrorist financing.

According to the Law, the basic task of the Cyprus Real Estates Registration Council is to supervise the effective implementation of the Law, to issue directives or Guidance to those under its supervision which are obligatory and binding and finally to assist with their compliance to the provisions of the relevant Law.

The members of the Cyprus Real Estates Registration Council must take appropriate measures in order to recognize and evaluate the risks associated with money laundering and terrorist financing, including the risks associated with their customers' transactions and customers' geographical regions.

The members must also be particularly careful when they are approached by customers who wish to buy a property in Cyprus for the purpose of obtaining the Cypriot citizenship and implement appropriate due diligence procedures with respect to know your customer.

The Cyprus Real Estates Registration Council can perform sudden on site visits from time to time to real estate agents for monitoring and /or ensuring compliance of its members to the relevant provisions of the Law.

REQUIREMENTS BY THE MEMBERS OF THE ESTATE AGENTS REGISTRATION COUNCIL

A. Procedures for the prevention of money laundering and terrorist financing offences

According to Article 58 of the Law, the members of the Real Estates Registration Council must apply the following preventive measures when conducting business activities:

- I. customer identification and customer due diligence
- II. record-keeping
- III. internal reporting and reporting to MOKAS
- IV. internal control, risk assessment and risk management in order to prevent money laundering and terrorist financing;
- V. detailed examination of each transaction which by its nature may be considered to be particularly vulnerable to be associated with money laundering offences or terrorist financing and in particular complex or unusually large transactions and all other unusual patterns of transactions which have no apparent economic or visible lawful purpose

All members must take from time to time appropriate measures to train their employees, whose activities include real estate agency services, and inform them of the following :

- The procedures from I – V
- The provisions of the relevant Law, the Directives which are issued by the competent Supervisory authority and relevant EU Directives.

- VI. Any other appropriate procedures for internal control and/or communication which aim to prevent money laundering or terrorist financing activities.

- A. Must offer their employees training on a regular basis on issues of recognition and handling of suspicious transactions

Ways of application of customer due diligence and identification procedures (Article 60)

According to the Law, it is required that all persons (physical and legal) who conduct real estate agency activities apply procedures for customers' ID identification. (In the Directives this procedure is called ID confirmation). If no adequate information is obtained in relation to the customers' ID within a reasonable time period, then the business relationship must not continue or the single transaction must not be executed. In certain cases the denial of the client to provide satisfactory ID details can by its own lead to the suspicion of possible money laundering or terrorist financing activities.

If an estate agent suspects that the candidate customer is involved in money laundering or terrorist financing activities the member may refuse to act on behalf of the customer, however, the member has the obligation to submit a report to MOKAS. In this case, the ID identification procedure is not necessary. Also, no information may be disclosed to the potential customer or a third person.

When there is reasonable evidence that physical or legal persons comply with the Law they are excluded from the provisions of the law. This exclusion does not apply to cases when the customer is a credit or financial institution in another country or an EU member state.

Non Cypriot residents

Regarding foreign customers, the real estate agent can ask for the passport or the national ID card of a potential customer. Also, the identity card and the permanent address must be verified via a credible financial organization or a professional consultant in the country of the potential customer or the country of residency of the potential customer.

Special attention must be given to those cases when the customer is not residing in Cyprus and there is no personal contact with the customer, hence not covered by the provisions of article 65. The procedures in this case are the following:

- A credible legal consultant in the country of the candidate customer may be appointed to ascertain his or her identity
- The member can receive a copy of the passport which is certified by a lawyer or consulate
- The confirmation details involving the name, address or signature of the customer may be checked via a credible financial organization or professional consultant in the country of the candidate customer

Legal persons (companies)

Due to the difficulty in identifying the ultimate beneficial owners and the complexity of their structures, legal entities and trusts are among the most attractive means for laundering illegal proceeds.

Before carrying out any transactions, members must conduct a search at the Registrar of Companies, or seek information from other sources, to ensure that the company is not in a stage of dissolution or liquidation or deregistration from the Registrar of Companies. Special attention must also be paid in ensuring that any persons claiming to be acting on behalf of the company are actually entitled to do so.

If at a future stage there are changes in the ownership structure of the company or in the event that suspicions are raised due to a change in the nature of its transactions, further due diligence must be carried out to establish the nature and consequences of these changes.

Companies and partnerships

When carrying out transactions on behalf of local companies, the procedure followed should aim in verifying the identity of:

- I. the company
- II. at least one company director
- III. regarding private firms, the ultimate beneficial owners

No additional measures are usually required for identity verification, other than the usual trading practices, when the prospective client is:

- a company registered in a recognized Stock Exchange or
- a subsidiary of a company listed in a recognized Stock Exchange

The member should also ask and obtain the following documents:

- A copy of the last annual report and of the accounts
- A copy of the registration documents
- The Articles of Association
- In the case of foreign companies which have been registered in Cyprus, a copy of the approval issued by the Central Bank of Cyprus must be provided. The identity of all foreigners associated with such companies must be verified according to the procedure established for non-residents of Cyprus.

The real estate agent may make its own investigation by requesting a letter of recommendation from a bank or a professional consultant.

B. Record keeping (Article 68)

According to Article 68, the members of the Real Estate Agents Registration Council are required to keep records of the following documents, for a period of at least five years, which may be used as evidence when investigating a money laundering or a terrorist financing offence:

- (a) Copies of the customer's identity,
- (b) information on business transaction (eg, date of transaction, amount, etc)

The five year period is calculated from the date that the relative work has been completed or all transactions related with it have been completed.

According to the Law, the date that the business relationship with the customer has been terminated, is the following:

- the date that the execution of a single transaction or the last out of many transactions, has been executed
- the date that the business relationship has been terminated
- if the business relationship has not been officially terminated, then it is the date of the last transaction executed.

The information must be kept according to the requirements of the law such that it can enable any competent third person to evaluate the record keeping procedures and at the same time recover the details of any transaction that may have been carried out by the real estate agent.

The reason is that the members of the Real Estate Agents Registration Council may, at any time, be asked to comply with MOKAS requirements during investigations or disclose information which may be requested by Court Orders.

The details of the transaction of any customer must also be kept, such as the name, address, customer's ID, written instructions and information on the ordering bank account.

Form of records

The records can be kept in any form, other than their original form, such as electronic or other. The Law provides that when the relevant information is in a computer it must be handed to the members of MOKAS in a readable and identifiable form.

C. Identification and Reporting of Suspicious Transactions

Identification of suspicious transactions

It is difficult to define the term 'suspicious transaction', since the type of transactions which may be conducted by the persons who engage in laundering illegal proceeds, are endless. However, a suspicious transaction is often one which is not in line with the usual lawful activities or transactions of the customer. Therefore, the term "know your customer" is very important since the member is given the opportunity to recognize whether a transaction is unusual.

Some of the warning signs which may indicate that the transactions of a customer, who has engaged in a business relationship with a real estate agent, are suspicious, include the following:

- Big or unusual transactions in cash - Criminal X will buy property which costs 250,000 EUR and then attempts to make part or several payments to the seller in cash. Funds which stem from illegal activities may also be used in rental transactions.
- Successive Selling / Parking of property - Criminal X who bought a property for 250,000 EUR is subsequently asking a selling price of 600,000 EUR even though the market price is lower.
- In-direct payment – Criminal X gives cash to Individual Y to buy property in Y's name, even though the ultimate beneficial owner will be X.
- Over valuation or Under Valuation – to buy or sell a property at a price above or below its market value. This process should raise suspicions as should the successive sale or purchase of property with unusual profit margins.
- Use of shell companies - An example would be to set up a number of shell companies to buy real estate. The companies are then voluntarily wound up and the criminals re-purchase the property at higher prices. This enables them to insert money in the financial system equal to the original price plus the capital gain and conceal origin of illicit funds.
- To buy land for residential purposes and then reclassify it a short time later for commercial development. In addition, a property's value may be difficult to estimate, eg, golf centres, hotels, shopping centres, holiday homes. This difficulty facilitates manipulation of prices to the benefit of criminals.
- Use of Mortgage schemes - an individual may purchase a property with the use of a loan and later repay the loan from illicit funds.

The above list is not exhausting.

Reporting of suspicious transactions

According to Article 27, if any professional has knowledge or suspicion that illegal funds are being concealed, he must immediately report it to MOKAS. The Law (Article 26) recognizes also that, in certain cases, suspicions may arise after the completion of a transaction and therefore the report to MOKAS can take place subsequently, provided that this is done without delay and on the initiative of the professional involved.

Failure to report to MOKAS (Article 27)

If a person knows or reasonably suspects that another person is engaged in laundering or financing of terrorism offences and this knowledge was obtained or the suspicion arose in the course of his trade, profession, business or employment and fails to report it to MOKAS as soon as is reasonably practicable, is guilty of an offence punishable by imprisonment not exceeding five years or by a pecuniary penalty not exceeding €5000 or by both of these penalties.

D. Internal procedures and reporting to MOKAS – Compliance Officer (Article 69)

According to the Law, the members of the Real Estate Agents Registration Council are required to employ a compliance officer. In the event that the estate agent is the only person in the business, the compliance officer can be the estate agent himself or a member of his personnel who has been assigned by him to act so.

The members should inform the Real Estate Registration Council of the names and positions of the persons who are appointed by them as compliance officers.

The duties of the compliance officer include the following:

(a) To obtain information which comes to the attention from the employees and which, in their opinion, creates the suspicion that a person is engaged in a money laundering or terrorist financing offence.

(b) To confirm and examine this information in order to verify whether it proves or creates suspicions that another person is involved in a money laundering offence. The compliance officer will discuss the circumstances of the case with the person who made the report and, if necessary, with the head of the department. The evaluation of the information handed to the compliance officer must be saved and archived.

(c) If after the evaluation of the information the compliance officer decides to contact MOKAS, he must make a written report which will submit to the Unit as soon as possible. A sample of the report by the compliance officer is attached. All such reports must be kept in an archive.

(d) Once the report is submitted to MOKAS, the compliance officer acts as a point of contact with MOKAS, at the start and during the investigation.

(e) The compliance officer responds to MOKAS' requests for additional information and cooperates fully with the Unit

(f) The compliance officer provides guidance to all employees on issues of laundering illegal proceeds

(h) The compliance officer acquires that knowledge which is needed and must be used for the improvement of the internal procedures of the business regarding the recognition and reporting of suspicions of money laundering.

Transactions with high risk countries or territories.

Special attention should be given to transactions linked in any way with high risk countries and territories i.e. countries or territories which do not apply or apply inadequately FATF's recommendations against money laundering and terrorist financing. A list of these countries can be found on the FATF Web site <http://www.fatf-gafi.org>.

**Report by the compliance officer to the Unit for Combating Money
Laundering (MOKAS)**

I. General information

Name of office which submits the report: -----

Address, tel. and fax -----

Date that a business relationship began or a transaction carried out: -----

Services offered to the customer: -----

**II. Details of the natural person (s) or/and legal entity (entities) involved
in the suspicious transaction (s) activity (ties)**

(A) Natural persons

Name and Surname -----

Home address -----

Business address -----

Profession -----

Nationality and -----

passport number -----

(B) Legal Entities

Name of company, country and -----
 date of establishment -----

Business address -----

Main activities -----

	Name and Surname	Nationality and passport number	Date of birth	Home address (if known)	Profession and employer
Registered shareholder	1. 2. 3.				
Beneficial shareholder (s) (if different from above)	1. 2, 3.				
Directors					

III. Details of the transaction (s) or the activity (ties) which cause suspicion

IV. Reasons for the suspicion

V. Other information

Accounts of the customer with local or international banks (if known)

Other information which the office may wish to submit to MOKAS

Signature of the Compliance Officer

Date -----

Note: The abovementioned report must be submitted with copies of the following:

1. For natural persons, the relevant pages of their passports which confirm their identity
2. For legal entities, articles of association and the memorandum of association
3. All documents relating to the suspicious transaction (s) or activity (ties)