

Anti-money laundering and combatting the financing of terrorism (AML/CFT)

Risk Assessment Guidance for Real Estate Agents (REAs) and High Value Dealers (HVDs)

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Disclaimer

The information contained in these guidelines is not intended to be legal advice and is for guidance and information purposes only. For the definitive authority on your legal obligations regarding anti-money laundering and combatting the finance of terrorism, please refer to the Proceeds of Crime Act 2015 and to the OFT's Guidance Notes for REAs and HVDs.

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1. Risk Assessment Guidance

1.1 Purpose of these Guidance Notes?

This guidance is designed to help Real Estate Agents (REAs) and High Value Dealers (to include Potential High Value Dealers and High Risk Dealers) (HVDs) to carry out a money laundering and terrorism financing (ML/TF) risk assessment of their business.

Where relevant, references in this guidance to 'you' and 'your' should be interpreted as references to REAs and HVDs.

1.2 Why is a business risk assessment necessary?

Section 25A of the Proceeds of Crime Act 2015 (POCA) requires you to:

"...take appropriate steps to identify and assess the risks of money laundering and terrorist financing, taking into account risk factors including those relating to their customers, countries or geographic areas, products, services, transactions or delivery channels, and any information that is made available to the relevant financial business pursuant to the [National Risk Assessment (NRA)]".

The risk assessment must:

1. be proportionate to the nature and size of your business (section 25A(2)); and
2. be documented, kept up-to-date and made available to the OFT (section 25A(3)).

1.3 What are risk assessments for?

A risk assessment of your business's ML/TF risks is the essential first step that allows you to create appropriate Anti-Money laundering and countering the financing of terrorism (AML/CFT) policies and procedures for your business. These

policies and procedures are a legal requirement under section 26 of POCA.

1.4 Won't setting AML/CFT policies and procedures disrupt my business?

No, as long as the risk assessment is carried out appropriately.

An appropriately carried out risk assessment will support your business allowing you:

1. to set bespoke policies and procedures based on:
 - a. the risk to your business; and
 - b. your business's risk appetite (the level of risk that you want your business to take);
2. to establish a risk-based approach that does not disrupt business; and
3. to reduce your regulatory risks by allowing you to comply easily with your AML/CFT obligations.

On the other hand, an inappropriately carried out risk assessment may damage your business as the policies and procedures you set:

1. may not suit your business;
2. may be too restrictive and obstructive to your business or not be sufficiently robust to deal with your ML/TF risks;
3. may leave your business exposed to being used for ML/TF; and
4. may leave your business exposed to potential regulatory enforcement action and criminal prosecution for failure to meet your POCA obligations.

1.5 A risk-based approach.

By adequately assessing your ML/TF risks you can apply a risk-based approach to your customers that will give you flexibility when

dealing with them. This will enable you to efficiently and effectively manage and prioritise your response to ML/TF risks:

1. applying less profound measures in situations where there are limited risks; and
2. applying more resources and more robust measures in situations where the risk is higher.

An appropriate risk-based approach also **empowers you** to engage in transactions/activities or to establish business relationships with higher-risk customers with confidence based on your business's risk appetite.

1.6 Can I get someone else to do the risk assessment for me?

You can seek professional assistance in carrying out a risk assessment and creating your policies and procedures, however you should note that the responsibility shall remain yours and your POCA obligations still need to be met by you and not your adviser.

In any event you should consider that **you** understand your business better than anyone else and that **you** are therefore best placed:

1. to identify ML and TF risks that your business faces;
2. to determine the level of risk that you want your business to take; and
3. to develop appropriate strategies to manage and control those risks.

1.7 What does carrying out a risk assessment involve?

It involves identifying and assessing the inherent ML/TF risks your business may reasonably face while operating. Thereafter you can then put in place AML/CFT policies

and procedures that minimise or mitigate those identified risks.

Your AML/CFT policies and procedures **must**:

1. be based on your risk assessment.; and
2. manage and mitigate the ML/TF risks faced by your business.

1.8 Proposed risk assessment process.

The proposed step-by-step risk assessment process set out in the Schedule below sets out one way in which your business can carry out its risk assessment to help you meet your POCA obligations. It identifies the most common factors that you need to take into account.

It should be noted however that this is not the only way to carry out a risk assessment and that the factors raised are not an exhaustive list of items to consider. It is important therefore that you use this as a guide only and that you make the risk assessment relevant to your business and consider any other factors relevant to it.

Finally, whatever way you decide to carry out your risk assessment, it is important that you appropriately record it and that a copy of the risk assessment is submitted to the OFT. Revised assessments should be submitted annually with your business's AML/CFT annual report.

1.9 Why is the OFT issuing these guidance notes?

The OFT is issuing these Guidance Notes to accompany the OFT's AML/CFT Guidance Notes for REAs and HVDs:

1. in response to shortcomings identified by the OFT regarding the quality of risk assessments submitted by REAs and HVDs;



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2. in response to requests from REAs and HVDs to provide guidance for the preparation of risk assessments; and
3. in order to assist REAs and HVDs with the preparation of quality and appropriate risk assessments.

The OFT's AML/CFT Guidance Notes for REAs and HVDs may be found in the 'Documents' section of the 'AML/CFT' page of the OFT's website (www.oft.gov.gi) along with a pdf copy of these Guidance Notes and other useful documents to assist REA's and HVD's to comply with their AML/CFT obligations.

2. Useful Contacts

2.1 Office of Fair Trading

The Office of Fair Trading (OFT) has been appointed as a supervisory authority under the Proceeds of Crime Act 2015. Additionally, it is responsible for business licensing and for consumer protection in Gibraltar.

Suite 975 Europort, Gibraltar

Tel: (+350) 20071700

aml.oft@gibraltar.gov.gi

www.oft.gov.gi

2.2 Gibraltar Financial Intelligence Unit

The Gibraltar Financial Intelligence Unit (GFIU) receives, analyses and disseminates financial intelligence gathered from Suspicious Activity Reports (see 5.8 above).

Suite 832, Europort, Gibraltar

Tel: (+350) 20070211

Fax: (+350) 20070233

gfiu@gcid.gov.gi

www.gfiu.gov.gi

Schedule - Proposed risk assessment process

Below are the steps which the OFT considers are essential in order to carry out an appropriate risk assessment.



We shall consider each of these steps in turn:

STEP 1 – Identify Your Business’s ML/TF Risks

These are the factors that determine the inherent attractiveness and vulnerability of your business to ML/TF and the resulting risk that your business may be used for ML and/or TF.

If you understand the ML/TF risk faced by your business you can then implement bespoke and appropriate mitigations and controls to ensure you protect your business. Consider how these and other risks may apply to YOUR business.

1. The nature and size of your business:

Consider the following features about the transactions carried out by your business:

1. size
2. value
3. volume
4. complexity
5. regularity

Could these transactions:

1. be used to mask ML/TF activity?
2. make AML/CFT measures difficult to implement?

2. Risks posed by your customers:

Do your customers:

1. operate through complex structures?
2. carry out complex transactions with no obvious commercial reason for doing so?
3. operate in high risk occupations and industries?
4. have cash intensive businesses?

Are your customers:

1. from high risk jurisdictions or does their primary source of income originate from a high risk jurisdiction?
2. high net worth individuals?
3. politically exposed persons (PEP) or a PEPs family or close associate?
4. the subject of adverse media reports?
5. the subject to civil sanctions, previous regulatory measures or have they been previously convicted?

3. The risk created by the type of products and/or services your business provides:

Do your products and services:

1. present a heightened risk according to:
 - the NRA;
 - the OFT's AML/CFT Guidance Notes; or
 - international sectorial guidance e.g. from the FATF?
2. support the use of cash transactions;
3. support payments from third parties or non-customers
4. support remote transactions e.g. on the internet?
5. favour anonymity or obscure information underlying customer transactions?

Do your workers get paid commission based on their sales?

4. Risk in your business practices and /or delivery methods:

- Does the method of delivery used in your business:
1. provide for anonymity?
 2. depend on intermediaries?
 3. remove or minimise face to face contact with customers?

5. Country or jurisdictional risks:

- Does your business have dealings with countries that:
1. have inherent AML/CFT risks?
 2. have been identified as having a high risk for ML/TF predicate offending?
 3. have weak AML/CFT measures?
 4. are considered to be uncooperative with respect to tax transparency?
 5. have strong secrecy laws or are considered to be offshore tax havens?
 6. have high levels of organised crime?
 7. have significant terrorist activity?
 8. have drug, arms and/or people trafficking and smuggling?
 9. have high levels of corruption and bribery;
 10. are in conflict zones or are bordering a conflict zones?

STEP 2 – Identify Your Business’s Regulatory Risks

This is the risk to your business of failing to meet your AML/CFT obligations. Not meeting these obligations exposes your business to enforcement action, including decision notices, fines, the disqualification of the business’s directors and the revocation of your licence.

These can happen if you fail to:

1. carry out a ML/TF risk assessment of your business;
2. implement adequate AML/CFT procedures and policies;
3. train your staff adequately;
4. appoint an MLRO;
5. understand who your customer is and who is benefiting from transactions with your business;
6. collect adequate customer due diligence (CDD);
7. identify suspicious activity and/or submit suspicious activity reports to the GFIU;
8. risk assess your clients;
9. keep adequate records; and
10. submit annual reports to the OFT.

STEP 3 – Score Your Business’s Inherent ML/TF risks

Once you have identified your business's inherent AML/CFT risks need to be scored based on a combination of two criteria, LIKELIHOOD and IMPACT. An initial AML/CFT risk assessment will measure the inherent risk that exist without any controls or measure in place.

Combining likelihood and impact within a risk matrix will allow you to generate a risk score.

LIKELIHOOD x IMPACT = RISK SCORE

Likelihood scale

This refers to the potential of AML/CTF risk occurring in your business.

Rating	Likelihood of a ML/TF risk
Very likely	Almost certain: Will probably occur several times a year.
Likely	Likely: High probability that it will happen once a year.
Unlikely	Unlikely: Probably will not happen, but not impossible.

Impact scale

This refers to the consequences of loss or severity of damage that may result if the risk happens.

Rating	Impact of risk
Major risk	Major damage, serious terrorist activity or a significant risk of ML: More stringent measures are required. Enhanced CDD must be performed and transactions monitored rigorously.
Medium Risk	Moderate effects and level of ML/TF impact - some level of risk to ML: Additional scrutiny is required. More than just simplified CDD to be performed depending on the area of risk.
Low risk	Minor effects - normal expected activity representing baseline of ML/TF risk: Basic CDD is sufficient.

A risk matrix is then used to combine the individual likelihood and impact scores to obtain a risk score. Below is an example of the combined risk score based on likelihood and impact.

		RISK SCORE		
LIKELIHOOD ↑	Very Likely	Medium	High	Very High
	Likely	Low	Medium	High
	Unlikely	Very Low	Low	Medium
		Negligible	Moderate	Severe
		IMPACT →		

This combined score may be used to aid decisions about what actions are necessary to mitigate the inherent risks to your business and to help you to determine the business’s risk appetite.

STEP 4 - Create Risk Reduction Measures and Key Controls

Once the business’s inherent ML/TF risk are known you can then implement measures to manage these risks.

Manage the business and regulatory risks

This can be done by applying risk management and mitigation strategies including the implementation of comprehensive AML/CFT policies and procedures, including:

1. how you will determine when to carry out simplified and enhanced CDD;
2. how you will establish whether a customer or beneficial owner is a PEP;
3. how you will monitor accounts and activities and report suspicious activity;
4. appropriate record keeping processes; and
5. vetting processes and training of your employees.

This list is not exhaustive. All measure should aim at reducing the ML/TF risks that you have identified affect your business.

STEP 5 – Evaluate Your Business’s Residual ML/TF Risks

One you have created risk reduction measures and key controls for your business you should once again re-evaluate all the ML/TF previously risks identified in light of these measures. You should update the risk scores in Step 3 and reassess each risk with a risk matrix once again (see Step 3 above).

If the measures introduced are effective they should lower the ML/TF risk that business is now exposed to.

The remaining level of risk after taking into consideration mitigation measures and controls is the ‘real’ ML/TF risk that the business faces.



Steps 6 - Apply Risk Reduction Measures and Key Controls to High-Risk Situations

You must adequately implement the reduction measures and key controls used to reduce your risk scores in order to avoid ML/TF happening through the business, particularly in high-risk transactions and with high-risk customers.

To do so your staff must be aware and understand the business's ML/TF risks, its policies and procedures implemented to mitigate these risks and be able to apply them appropriately. It is also essential that you keep accurate records.

If these measures are not being implemented then your risk assessment may not be appropriate.

Recording Your Risk Assessment - Risk Assessment Register

Your scores must be adequately recorded in order to demonstrate that you have carried out your risk assessment and implemented the relevant mitigation measures. Your business's risk assessment will need to be provided to the OFT annually with the business's AML/CFT annual report.

The OFT suggests that a register of risks is created to clearly demonstrate the risks identified, their inherent risk score, the mitigating measures applied and the residual risk scores. This can be in the form of a table, an example of which is provided below that can be adapted to your business's needs:

Identified ML/TF Risk	Risk rating	Risk reduction measures and control strategies	Residual ML/TF risk	Are mitigating actions efficient/ risk rate acceptable?	Review date

Keep the table brief, to the point and update it on a regular basis. The advantages of using a table as a record of risk analysis is that it concisely shows the business and the OFT the risks and the planned actions to reduce the threat of and vulnerability to ML/TF.

Step 7 - Continually Monitor and Review the Risks

The six steps set out above are the steps required to create your business's initial risk assessment. This however is only part of the cyclical risk assessment process (see diagram below).

Business's should implement a monitoring regime and keep necessary records to review the business's risk plan and its AML/CFT policies and procedures. It will enable you to ensure that your business's procedures are effective against your actual ML/TF risks and to meet your AML/CFT obligations. This should happen annually at least, as part of a cyclical process, as per the diagram below:

