PPRA
PROPERTY PRACTITIONERS
REGULATORY AUTHORITY

To All stakeholders

Friday , 27 May 2022

RE-EVALUATION OF INHERENT MONEY LAUNDERING / TERRORIST FINANCING RISK UNDERSTANDING AS RECORDED IN THE RISK MANAGEMENT AND COMPLIANCE PROGRAMME OF ESTATE AGENTS

The Financial Action Task Force (FATF) mutual evaluation report of South Africa published on 7 October 2021 (the Mutual Evaluation Report 2021) indicated that designated non-financial businesses and professions (DNFBPs), which includes estate agents (property practitioners), legal service practitioners, trust service providers, casinos and other licensed gambling entities, have a poor understanding of their money laundering (ML) and terrorist financing (TF) inherent risks. Also, the Mutual Evaluation Report 2021 indicated that therefore DNFBPs' risk management and compliance programmes (RMCPs) were largely rules based, and not risk-based, and do not mitigate the inherent ML/TF risks.

The FATF report recommends that South Africa must ensure that DNFBPs, as accountable institutions, remediate and enhance their RMCPs, in the following manner:

"Priority Action (j) - South Africa should ensure that AIs (accountable institutions) adequately implement an RBA (risk-based approach), including through better assessing and understanding their inherent (ML/TF) risks and refining and implementing their Risk Management and Compliance Programs to mitigate their (ML/TF) risks."

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Furthermore, the Mutual Evaluation Report 2021, in Immediate Outcome 4 Preventative Measures, Key Finding (c) provides that: ***"Overall, DNFBP's understanding of ML risks and Financial Intelligence Centre obligations is underdeveloped, and mitigating measures are not risk-based, with casinos as a positive outlier."***

The development and implementation of an adequate RMCP, as envisaged in section 42 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), (FIC Act) is the foundation of a risk-based approach. RMCPs play a crucial role in an institution's understanding of its inherent ML/TF risks and its allocation of resources to mitigate such identified inherent ML/TF risks.

In order to ensure that DNFBP entities remediate and enhance their RMCPs, in accordance with the required Recommended Actions in Immediate Outcome 4 Preventative Measures of the Mutual Evaluation Report, the Property Practitioners Regulatory Authority (PPRA) is requesting all property practitioners previously included in the definition of "estate agent" in the repealed Estate Agency Affairs Act, No. 112 of 1976 (estate agents) to undertake an RMCP remediation and enhancement exercise, as explained below, to satisfy the required improvements as expressed in the abovementioned Priority Action (j).

The RMCP remediation and enhancement exercise to respond to Priority Action (j), would involve five steps, of which (b), (c) and (d) in bold below, should be immediately undertaken by all estate agents, upon receipt of this letter:

a) The PPRA would establish the current state of RMCPs of estate agents by requesting certain identified estate agents to provide a copy of their current RMCP to the PPRA, in terms of section 42(4)(b) of the FIC Act;

b) All estate agents must immediately undertake a re-assessment on an enterprise-wide basis of their business activities, products and services to re-identify, re-assess and better understand their inherent ML/TF risks, and record this risk re-assessment in a revised RMCP and in doing this, the contents of the sector risk assessment for estate agents that was published in March 2022 by the FIC must be taken into consideration. The sector risk assessment can be accessed here;

c) In addition to recording this risk re-assessment in a revised RMCP, estate agents must identify and record in the revised RMCP how they intend to monitor, mitigate and manage these better understood ML/TF risks through business processes and controls and compliance preventive measures in terms of the FIC Act.

d) The revised RMCP must be updated as soon as possible, but not later than 15 July 2022, and estate agents must be ready to make the revised RMCP available to the PPRA and the FIC, upon request.

e) The revised RMCP may be requested by the PPRA and the FIC, and upon receipt of the revised RMCP, the PPRA and the FIC may evaluate the extent and adequacy of the inherent ML/TF risk and compliance mitigation and management improvements implemented by estate agents, as demonstrated by the content of the revised RMCP.

As mentioned in paragraph (a) above, some identified estate agents will be requested in terms of section 42(4)(b) of the FIC Act, to provide the PPRA and the FIC with an electronic copy (in MS Word or PDF) of their current RMCP, as well as any supporting documents relating to policies and procedures that are used within the institution, within three business days from the date of the request.

In instances where the current RMCP or any other attached document applies to more than one registered estate agent (e.g. in the case of branches or franchises), the names and FIC registered ORG ID numbers of all the institutions to which the RMCP and related documents apply, must be provided.

Once the PPRA and the FIC had the opportunity to scrutinise the submitted RMCPs and accompanying documents, the PPRA and the FIC may provide those estate agents with feedback on the content and adequacy of their RMCPs.

We wish to thank you in advance for your cooperation and we trust that this process will contribute to an improvement in the state of adequacy of your institution's RMCP and assist the country to better comply with the FATF requirements.

Best Regards

Property Practitioners Regulatoy Authority