# RED FLAG INDICATORS IN THE REAL ESTATE SECTOR

The Compliance Commission of The Bahamas

**Date: December 7th 2021** 



# **STAGES OF MONEY LAUNDERING**

1. Placement

• Physical deposit of criminal proceeds into financial system

2. Layering

- Conceal the origin of criminal proceeds through various financial transactions
- e.g., transfers of illegal funds to various bank accounts; purchasing property; renovating

3. Integration

- Create an apparent legal origin for criminal proceeds
- e.g., proceeds from sale; rent

Sources:

Financial Action Task Force ("FATF")

National Association of Realtors, "Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals", 16 February 2021 - https://www.nar.realtor/money-laundering-and-

terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals

# WHY REAL ESTATE IS ATTRACTIVE

- COVER OF RESPECTABILITY, PRESTIGE & LEGITIMACY
- APPRECIATION POTENTIAL/INVESTMENT OPPORTUNITY
- WEAK REGULATORY OVERSIGHT IN CERTAIN JURISDICTIONS

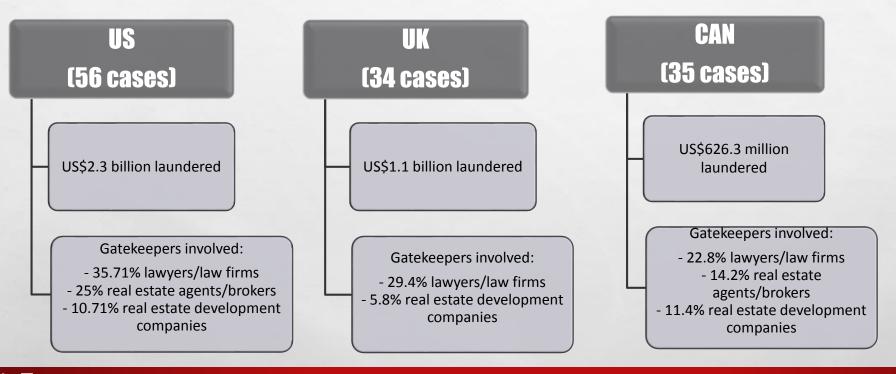
### **WHY THE BAHAMAS?**

- ACCORDING TO THE NRA:
  - AVAILABILITY OF HIGH-VALUED PROPERTIES TO INTERNATIONAL BUYERS
  - PURPORTED NON-COMPLIANCE WITH LEGAL PROVISIONS BY SOME REAL ESTATE DEVELOPERS, AND THE NEED TO STRENGTHEN THE SECTOR'S GOVERNING LEGISLATION



# **REAL ESTATE STATISTICS**

- MONEY LAUNDERING ESTIMATED TO REACH \$800 BILLION TO \$2 TRILLION A YEAR WORLDWIDE APPROXIMATELY 2-5% OF THE WORLD'S GDP
- MORE THAN \$2.3 BILLION HAS BEEN LAUNDERED THROUGH U.S REAL ESTATE (2015-2020)
- COMMERCIAL REAL ESTATE FEATURED IN MORE THAN 30 PERCENT OF THE CASES



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# **INVOLVEMENT OF REAL ESTATE PROFESSIONALS**

ML/TF **Red Flags** identified **Being Corrupted** Wilfully blind Wilful blindness persists for repeat **Being Corrupted** instructions, from Actual knowledge of the same client, the the criminality in client's associates or which they are other matters with involved in similar red flag indicators

Source:

FATF, "Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals", June 2013 - https://www.fatf-gafl.org/documents/documents/mltf-vulnerabilities-legal-

# **RED FLAG INDICATORS**

Client's Identity

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- Appears hesitant or declines to put their name on transactional documents
- Use of fraudulent documents and identities
- Alters the transaction or instructions after being asked for identity documents

Identity (

- Common identifiers are used by multiple clients purchasing properties that do not appear to be related
- Unusual or unnecessarily complex legal structures without any economic logic
- Acting on behalf of another party and refuses to disclose the identity of the beneficial owner(s)



#### Sources:

National Association of Realtors, "Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals", 16 February 2021 - https://www.nar.realtor/money-laundering-and-

# **RED FLAG INDICATORS**

- Foreign PEPs
- Countries with:
  - weak financial safeguards
  - weak ML/TF controls
  - ongoing conflicts
  - secretive banking laws
  - UN Sanctions List
  - high-risk or non-cooperative by FATF

# Geographic Risks



- Funds from unusual third party
- Use of multiple bank accounts
- Funds through bank account in different jurisdiction

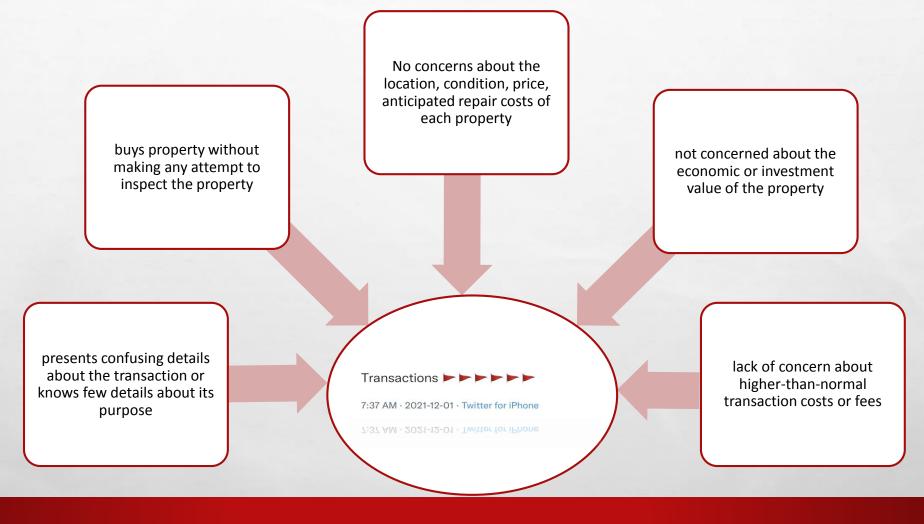
# Financing Risks



**Sources:** 

National Association of Realtors, "Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals", 16 February 2021 - https://www.nar.realtor/money-laundering-and-

### **Red Flag Indicators – Transactions**



#### **Sources:**

National Association of Realtors, "Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals", 16 February 2021 - <a href="https://www.nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals">https://www.nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals</a>

FINTRAC, "Money laundering and terrorist financing indicators—Real estate", January 2019 - https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-

# **Red Flag Indicators - Transactions**

value significantly lower (undervaluation) from the real or market value of the property

buys multiple properties in a short time period

value significantly higher (overvaluation) from the real or market value of the property

Short time between acquisition and subsequent transfer either of property ownership directly or to another

#### **Sources:**

National Association of Realtors, "Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals", 16 February 2021 - <a href="https://www.nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals">https://www.nar.realtor/money-laundering-voluntary-guidelines-for-real-estate-professionals</a>

FINTRAC, "Money laundering and terrorist financing indicators—Real estate", January 2019 - <a href="https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicateurs/real">https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators-indicators-indicateurs/real</a> mltf-eng#s5

# **Red Flag Indicators - Transactions**

last minute change in purchaser in the transaction

rent level is disproportionate compared to value property

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Transactions ► ► ► ► ► ►

any other activities which demonstrate suspicious behavior and do not make professional or commercial sense

#### Sources:

National Association of Realtors, "Anti-Money Laundering Voluntary Guidelines for Real Estate Professionals", 16 February 2021 - <a href="https://www.nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals">https://www.nar.realtor/money-laundering-and-terrorism-financing/anti-money-laundering-voluntary-guidelines-for-real-estate-professionals</a>

FINTRAC, "Money laundering and terrorist financing indicators—Real estate", January 2019 - https://www.fintrac-canafe.gc.ca/guidance-directives/transaction-operation/indicators—

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### **RED FLAGS: CASE STUDY 1 – 1MDB SCANDAL**

#### **Jho Low & Associates**

Najib Razak – stepson of the Malaysian Prime Minister

corporate entities created

- defrauding banks
- sending wires to offshore accounts and
- laundering the proceeds in the U.S.

#### **Real Estate Portfolio**

Beverly Hills mansions

Manhattan penthouses
interests in hotels in LA and New
York, including Park Lane hotel

real estate agents were paid high fees for facilitating the property acquisitions

five different title insurance and escrow companies carried out the transactions

New York based law firms for the corporate entities purchasing the properties on client's behalf and used Interest on Lawyer Trust Accounts (IOLTA)

a major real estate investment firm partnered to purchase the Park Lane hotel

Wells Fargo bank granted a mortgage for the Park Lane acquisition

#### Source:

Global Financial Integrity, "Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream", August 2021 https://gfintegrity.org/report/acres-of-

money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/

# **CASE STUDY 1: THE 1MDB SCANDAL**Red Flag Indicators and Key Elements



Politically Expose Persons (PEPs)



Complex Corporate Structures



Use of Gatekeepers – lawyers, banks, real estate agents

Source:

Global Financial Integrity, "Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream", August 2021 https://gfintegrity.org/report/acres-of

### **RED FLAGS: CASE STUDY 2**

Son and Daughter of Congolese ruler Denis SassouNgeusso allegedly used millions of embezzled state funds Acquired luxury apartments in Florida and NY

including the acquisition of a US\$7 million apartment in the Trump International Hotel & Tower.

Top U.S. law firm K&L Gates LLP incorporating a company in New York, used their New Jersey office as the registered address and one of their own lawyers as the director

Trump International Realty acted as the broker in the sale

Trump International Management received monthly maintenance fees after the purchase.

Source:

Global Financial Integrity, "Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream", August 2021 https://gfintegrity.org/report/acres-of-

money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/

# CASE STUDY 2 Red Flag Indicators and Key Elements



Politically Expose Persons (PEPs)



Complex Corporate Structures



Use of Third Parties



 The Democratic Republic of The Congo is on The UN Sanctions List



Use of Gatekeepers – real estate agents, lawyers

#### Sources:

Global, Financial Integrity, "Acres of Money Laundering: Why U.S. Real Estate is a Kleptocrat's Dream", August 2021 <a href="https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-actate-is-a-kleptocrats-dream/">https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-actate-is-a-kleptocrats-dream/</a>

UN, "Sanctions on Democratic Republic of Congo, Extends Expert Group Mandate, Unanimously Adopting Resolution 2582 (2021)", 29 June 2021 - https://www.un.org/press/en/2021/sc14565.doc.htm

### **CASE STUDY 3**

#### Title: Gambian dictator, buys multi-million-dollar home in Potomac next to fellow dictator Teodoro Obiang

- The president of Gambia only made a modest 'official salary'
- In 2010, Jammeh and his wife Zineb Jammeh purchased a multi-million-dollar mansion in Potomac using a US\$3.5 million bribe that was paid to him by a petroleum company.
- Engaged a real estate broker and instructed that a large home was needed for the family and staff of Zineb Jammeh, upon which the broker forwarded details of properties in the area, including the Maryland mansion.
- Jammeh family purchased the property through the MYJ family trust, wiring US\$3.5 million directly to paragon title and escrow company in Maryland. the property deed was issued to the trustees of the myj family trust.
- Jammeh accumulated 281 properties and over 100 bank accounts
- Real Estate Broker did not make any enquiries

# **MITIGATING THESE RISKS**

#### REAL ESTATE BROKERS/AGENTS/LAND DEVELOPERS' AML/CFT/CPF OBLIGATIONS

#### IMPLEMENTING A COMPLIANCE PROGRAM THAT ENCOMPASSES THE OBLIGATIONS LISTED BELOW:

- conduct and document a risk assessment of the company/firm's inherent risks to determine the level of exposure to the risks of ML/TF/PF, other
  identified risks and controls to mitigate risks;
- establish written risk-based policies and procedures that comply with the provisions of AML laws and guidelines this is to be kept up to date, approved by senior management and/or board of directors, available to the competent authority and includes enhanced measures to mitigate risk;
- identify and verify customers when opening an account, establishing a business relationship or carrying out the transaction and their source of funds and source of wealth;
- appoint a senior management CO and a MLRO;
- keep transaction, identification and verification records;
- conduct on-going monitoring of customer transactions;
- report suspicious transactions to the FIU

#### Source:

Compliance Commission of The Bahamas, "Real Estate Brokers and Land Developers Obligations for Anti-money Laundering and Combatting The Financing of Terrorism & Other Identified Risk", 2020 - <a href="https://ccb.finance.gov.bs/compliance-articles/">https://ccb.finance.gov.bs/compliance-articles/</a>

### **MITIGATING THESE RISKS**

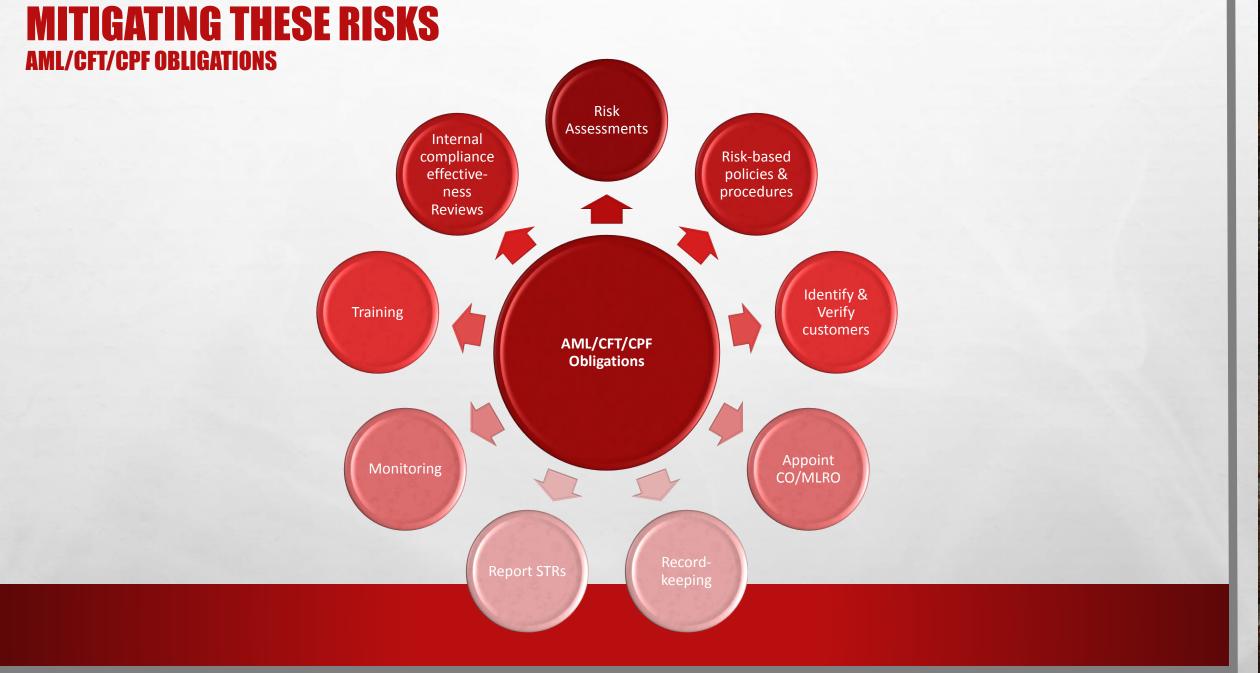
#### REAL ESTATE BROKERS/AGENTS/LAND DEVELOPERS' AML/CFT/CPF OBLIGATIONS

#### IMPLEMENTING A COMPLIANCE PROGRAM THAT ENCOMPASSES THE OBLIGATIONS LISTED BELOW:

- the management and appropriate staff receive AML/CFT/CPF training annually;
- conduct internal compliance effectiveness reviews of its operations at least once every two (2) years;
- submit to an AML examination;
- high risk client relationships must be approved by senior management
- a risk management system for customers and BOs and screen clients through World Check or other systems to determine and monitor
  if they are listed on the United Nations Sanctions List; and
- a risk management system for customers and BOs and screen clients to determine if they are:
  - PEPS and higher risk relationships
  - originate from a higher risk country as defined by FATF

#### Source:

Compliance Commission of The Bahamas, "Real Estate Brokers and Land Developers Obligations for Anti-money Laundering and Combatting The Financing of Terrorism & Other Identified Risk", 2020 - https://ccb.finance.gov.bs/compliance-articles/



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#### **SOURCES:**

- COMPLIANCE COMMISSION OF THE BAHAMAS, "REAL ESTATE BROKERS AND LAND DEVELOPERS OBLIGATIONS FOR ANTI-MONEY LAUNDERING AND COMBATTING THE FINANCING OF TERRORISM & OTHER IDENTIFIED RISK", 2020 HTTPS://CCB.FINANCE.GOV.BS/COMPLIANCE-ARTICLES/
- FATF, "MONEY LAUNDERING AND TERRORIST FINANCING VULNERABILITIES OF LEGAL PROFESSIONALS", JUNE 2013 <u>HTTPS://WWW.FATF-GAFI.ORG/DOCUMENTS/DOCUMENTS/MLTF-VULNERABILITIES-LEGAL-PROFESSIONALS.HTML</u>
- FINTRAC, "MONEY LAUNDERING AND TERRORIST FINANCING INDICATORS—REAL ESTATE", JANUARY 2019 HTTPS://WWW.FINTRAC-CANAFE.GC.CA/GUIDANCE-DIRECTIVES/TRANSACTION-OPERATION/INDICATORS-INDICATEURS/REAL MLTF-ENG#S5
- GLOBAL FINANCIAL INTEGRITY, "ACRES OF MONEY LAUNDERING: WHY U.S. REAL ESTATE IS A KLEPTOCRAT'S DREAM", AUGUST 2021 <a href="https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/">https://gfintegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/</a>
- NATIONAL ASSOCIATION OF REALTORS, "ANTI-MONEY LAUNDERING VOLUNTARY GUIDELINES FOR REAL ESTATE PROFESSIONALS", 16 FEBRUARY 2021 HTTPS://WWW.NAR.REALTOR/MONEY-LAUNDERING-AND-TERRORISM-FINANCING/ANTI-MONEY-LAUNDERING-VOLUNTARY-GUIDELINES-FOR-REAL-ESTATE-PROFESSIONALS
- UNITED NATIONS OFFICE ON DRUGS AND CRIME, <u>HTTPS://WWW.UNODC.ORG/UNODC/EN/MONEY-LAUNDERING/OVERVIEW.HTML</u>
- UNITED NATIONS, "SANCTIONS ON DEMOCRATIC REPUBLIC OF CONGO, EXTENDS EXPERT GROUP MANDATE, UNANIMOUSLY ADOPTING RESOLUTION 2582 (2021)", 29 JUNE 2021 https://www.un.org/press/en/2021/sc14565.doc.htm