



**Financial intelligence and anti-money laundering:
avoiding pitfalls, scams and dirty tricks
in the real estate sector**

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“I cannot teach them anything, I can only make them think”

- Socrates



Tentative schedule for this session

▶ **14h30-14h45:** foundations of AML/CFT/AC legislation

▶ **14h45-14h55:** « gateway professions »

▶ **14h55-15h20:** a comparative analysis of 4 jurisdictions

15h20-15h30: tea break

▶ **15h30-15h55:** examples flagged by the FATF

▶ **15h55-16h15:** examples of real estate scams in

▶ Mauritius

Charte du participant

- ▶ En participant à la présente formation, vous vous engagez à:
 - ▶ suivre avec attention le contenu de la formation
 - ▶ participer en toute civilité et courtoisie aux échanges avec les formateurs
 - ▶ vous abstenir de citer des noms de clients ou de praticiens en exercice pour illustrer vos propos éventuels (seuls pourront être cités des noms expressément mentionnés dans la jurisprudence)
 - ▶ limiter votre temps de parole de manière à donner à vos confrères l'occasion de s'exprimer également



I. AML/CFT/AC: from international initiatives to domestic legislation

I.A United Nations Convention against Corruption (UNCAC)

- ▶ Mauritius signed the UN Convention against Corruption on 9 December 2003 and ratified it on 15 December 2004
- ▶ Money-laundering, concealment (arts. 23 and 24)
- ▶ Liability of legal persons (art. 26)
- ▶ Participation and attempt (art. 27)
- ▶ Law enforcement cooperation; joint investigations (arts. 48, 49 and 50)
- ▶ special investigative techniques (art. 50 of the Convention)

I.B (AML/CFT) – STAR Initiative

- ▶ FATF 40 + 9 Recommendations
- ▶ **Stolen Asset Recovery Initiative (StAR)** StAR is a partnership between the World Bank and the UN Office on Drugs and Crime (UNODC) to **end safe havens for corrupt funds**
- ▶ Asset Recovery Act 2011
- ▶ recover assets which are proceeds or instrumentalities of crime or terrorist property
- ▶ Both conviction-based and non-conviction based

I.C Institutional set-up for AML/CFT/AC

- ▶ Independent Commission Against Corruption set up under the Prevention of Corruption Act 2002
- ▶ Financial Intelligence Unit set up in 2002 under the Financial Intelligence and Anti-Money Laundering Act 2002
- ▶ Other institutions: Bank of Mauritius, the Financial Services Commission, the State Law Office, the Assets Recovery Office, the Gaming Regulatory Authority and the Mauritius Revenue Authority
- ▶ National Committee on Anti-Money Laundering and Combating the Financing of Terrorism
- ▶ Mutual Assistance in Criminal and Related Matters Act, passed in 2003

I.D Good Governance and Integrity Reporting

- ▶ Good Governance and Integrity Reporting (GGIR) Act
- ▶ Applies to citizens of Mauritius only, to property acquired after 2009, and in excess of MUR 10 million
- ▶ “unexplained wealth” includes any property –
 - ▶ (a) under the ownership of a person to an extent which is disproportionate to his emoluments and other income;
 - ▶ (b) the ownership, possession, custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses, has custody or control of the property; or
 - ▶ (c) held by a person for another person to an extent which is disproportionate to the emoluments or other income of that other person;
- ▶ Any application made under this Act shall constitute civil proceedings and the onus shall lie on the respondent to establish, on a balance of probabilities, that any property is not unexplained wealth
- ▶ IRSA → IRB → Judge in Chambers → UWO (confiscation)
- ▶ IRSA may inscribe a privilege on the respondent’s properties for 42 days

I.E Lawyers and notaries

- ▶ Lawyers: barristers, solicitors/attorneys, notaries
- ▶ A notary is a law practitioner holding a delegation of State power, who is impartial and independent from the parties that he advises, and who authenticates deeds, thereby verifying the legality of the transaction a notarised deed carries a presumption of validity, and a right of automatic enforceability **to the same extent as a Court judgement**
- ▶ Role as property conveyancers
- ▶ Unannounced inspections by Regulatory Body

I.F Lawyers and notaries' duties under FIAMLA

- ▶ Every [...] member of a **relevant profession** or occupation shall forthwith make a report to the FIU of any transaction which the [...] member of the relevant profession or occupation has reason to believe may be a **suspicious transaction**
- ▶ a transaction (including a “*proposed transaction*”) which
 - ▶ **is made in circumstances of unusual or unjustified complexity;**
 - ▶ **appears to have no economic justification or lawful objective;**
 - ▶ **gives rise to suspicion for any other reason**
- ▶ Information is privileged unless “*unless it has been communicated to him with a view to the furtherance of a criminal or fraudulent purpose*”
- ▶ May seek advice from their AML/CFT Regulatory Body

I.G Lawyers and notaries under AC legislation

- ▶ Recovery, seizure and confiscation in respect of benefits (including monetary gain, movable or immovable property and equitable interests in property) directly or indirectly derived from an offence or unlawful activity
- ▶ Where **“a person was in possession of any property or has derived a benefit from an unlawful activity, and that he did not have a legitimate source of income sufficient to justify his interest in the property or the benefit derived by him, the onus shall, on a balance of probabilities, lie on that person to show that the property was not obtained, or the benefit was not derived, from an unlawful activity.”**
- ▶ Scope of involvement:
 - ▶ dealing with client money;
 - ▶ complicity – custody of proceeds or unlawful benefit – or aiding and abetting;
 - ▶ testimony

I.H Trustees' duties of confidentiality and disclosure

- ▶ Trusts Act 2001 – obligation to have a qualified trustee (licensed by the FSC) – inspections by FSC
- ▶ fiduciary “duty of confidentiality”
- ▶ statutory “duty of confidentiality” as per Section 33 Trusts Act 2001
- ▶ *Tournier v National Provincial and Union Bank of England [1924]*
- ▶ Section 62 of the Trusts Act 2001 in Mauritius: application for directions
- ▶ Guernsey Court of Appeal case of *In re B; B v T*
- ▶ ¹³(*Court of Appeal, 11 July 2012*)

II. Practical analysis: real estate conveyancing

II.A Real estate : the dark side of Brexit

- ▶ National Crime Agency (NCA) estimates : 2-5% of GDP, i.e. at least tens of billions of Pounds Sterling.
- ▶ Based on open-source info (e.g. Panama Papers): 160 properties in UK(total £ 4.4 billion) bought by high corruption risk individuals
- ▶ 84% in London
- ▶ £ 170 m worth of properties frozen by the Internation Corruption Unit
- ▶ £ 9.5 billion in Lybian funds also subject to freezing orders

II.A Reasons for the UK's poor AML record

- ▶ Ease of use of opaque corporations (BVI)
- ▶ Lack of proper PEP identification and flagging
- ▶ E.g. Nawaz Sharif (Pakistan) : 6 luxury properties in London
- ▶ Low rate of reporting of suspicious transactions
- ▶ Poor due diligence checks
- ▶ Complicity of enablers : estate agents, solicitors, even banks
- ▶ Wrong incentives : high remuneration, low penalties
- ▶ E.g. Aliyeva sisters : daughters of Azerbaijan's 10-year president failed to be reported by law firm Child & Child

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- ▶ “Professional enablers such as solicitors and accountants facilitate bribery and corruption, committed by UK entities and PEPs, through their perceived respectability and integrity. **Their expertise is crucial to the laundering of illicit funds internationally and into the UK.** It involves drafting of documentation, dissemination of funds, creation of corporate structures, and in some cases acting as intermediaries.”

NCA National Strategic Assessment of Serious and Organised Crime
2016

II.B Four-country assessment by Transparency Foundation

- ▶ 10 main issues identified in UK, Aus, US, Can.:
 - ▶ Inadequate coverage of anti-money laundering provisions
 - ▶ No identification of beneficial owners of legal entities, trusts
 - ▶ Easy access to property market by foreign corporations
 - ▶ Over-reliance on due diligence checks by financial institutions
 - ▶ Insufficient rules on STRs and weak implementation
 - ▶ Weak or no checks on PEPs and their associates
 - ▶ No « fit and proper test » on real estate professionals
 - ▶ Poor understanding of ML risks in the sector
 - ▶ Inconsistent supervision
 - ▶ Lack of sanctions

II.C Potential for misuse of real estate sector

- ▶ Attractive characteristics of real estate sector for potential misuse by money launderers or terrorist financiers : market size, access to the market, high value of transactions, growth of real estate-backed securities, unsophisticated regulations in emerging markets, camouflage amongst large volume of genuine transactions.

- ▶ Possible techniques:
 - ▶ Use of complex loans or credit finance.
 - ▶ Use of non-financial professionals.
 - ▶ Use of corporate vehicles.
 - ▶ Manipulation of the appraisal or valuation of a property.
 - ▶ Use of monetary instruments.
 - ▶ Use of mortgage schemes.
 - ▶ Use of investment schemes and financial institutions.
 - ▶ Use of properties to conceal money generated by illegal activities

Example 1: misuse of notaries

- ▶ Central role in carrying out real-estate transactions
- ▶ Example:
 - ▶ Notary's services engaged for a property acquisition
 - ▶ Price paid through notary's client trust account
 - ▶ As part of post-closing verifications, notary notices after the transaction that purchaser company is liquidated, and property bought back at overvalue
 - ▶ Insertion of illicit money in the amount of the gain
 - ▶ Notary reported case to relevant FIU

Example 2: misuse of client trust account

- ▶ a separate bank account, which a third party holds on behalf of the two parties involved in a transaction
- ▶ **Example:**
 - ▶ solicitor organised conveyancing for the purchase of residential property and carried out structured transactions
 - ▶ structured payments were used to purchase properties and pay off mortgages
 - ▶ cheques were regularly cashed or issued, under the pretense of being linked to the solicitor's professional activities
 - ▶ properties were ostensibly purchased for relatives of the individual client (a known narcotics dealer)

Example 3: Legal Arrangements : trusts and foundations

- ▶ Exploiting nature and structure of trusts:
- ▶ Unregistered deeds
- ▶ Discretionary appointment of beneficiaries
- ▶ Escape or flee clauses

- ▶ **Example:**
 - ▶ Two trusts established in an IFC by a law firm
 - ▶ Trustee requested to accept 2 payment orders in favour of a bank to buy real estate
 - ▶ Communication between trusts and their trustee only through the law firm
 - ▶ Actual beneficiaries of the trusts were individuals who were under judicial investigation regarding serious tax fraud

Example 4: Property management companies

- ▶ mixing cash of illegal origin with legitimate rental income:
- ▶ RES and IRS schemes in Mauritius
- ▶ Licensed rental pool managers
- ▶ No control of who actually rents or occupies property
- ▶ Request KYC/CDD from rental pool manager

Example 5: Under- or over- valuation – Successive sales

- ▶ Shell companies destined for winding up
- ▶ Sale at undervalue, with difference paid under the table
- ▶ Successive sales with high margins = injection of laundered funds in the legitimate sector

Example 6: Hotels and restaurants

- ▶ Real estate is used for « Integration » or the final phase of money laundering
- ▶ Cash-based industry
- ▶ Example:
 - ▶ Asian national purchases real estate to start a restaurant financed by a mortgage at Bank A
 - ▶ Mortgage repaid by transfers from an account opened with Bank B in name of spouse
 - ▶ Spouse collected cash income from « restaurant operation »
 - ▶ Investigation showed various unexplained transfers to and from China
 - ▶ Trafficking in illegal labour force

What to watch out for ?


- ▶ « *If it looks too good to be true, it usually is* »
- ▶ **Criteria issued by UINL and FATF**
 - ▶ Substitution of parties
 - ▶ Lack of reasonable interest in characteristics of the property
 - ▶ Foreign parties only interested in large-scale operations
 - ▶ Payment of price and costs by third-party
 - ▶ Use of private contracts rather than registered notarised deeds
 - ▶ Frequent changes of notary
 - ▶ Rapid succession of resales
 - ▶ Sales at blatant under- or over-value.

Mauritian folklore

- ▶ Impersonation and identity theft
- ▶ Fictitious plots of land (countermeasure : PIN)
- ▶ Forged powers of attorney to sell (esp. from abroad)
- ▶ Large-scale scams (A&A, etc. – Apollonia case in France)
- ▶ A great classic: the false affidavit of succession (*acte de notoriété*) of Mr De La Rochefoucauld (1820-1870), a wealthy landowner cursed with a single descending line out of wedlock, leading to the surprisingly tanned and destitute Rochefoucauld family nowadays...
- ▶ CPD for crooks : a new twist on the false affidavit –
▶ obtaining a Court seal through ADR

Further queries:

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