

# CHALLENGES IN ADDRESSING ILLICIT FINANCE

**KENYAN REAL  
ESTATE SECTOR**

CIFAR  
BRIEFING  
PAPER

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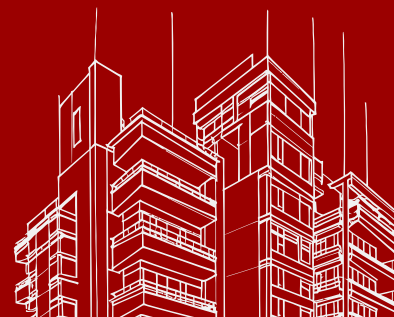
This paper was prepared by Lewis Kundai and Jackson Oldfield in December 2025. It was reviewed by Agatino Camarda, CiFAR. The authors have made reasonable steps to ensure that the content is accurate.

CIFAR is responsible for case studies in Kenya within the research project *Corruption in Paradise: An Ecology of Money Laundering through Real Estate in the Touristic Global South*. This project investigates how six tourism-focused cities/regions from Brazil, Kenya, and Indonesia address illicit finance in the real estate market.

The *Corruption in Paradise* research project is coordinated by GRIP (Public Integrity Research Group) at USI (Università della Svizzera italiana) and also includes FGVceapg (Center for Public Administration and Government Studies at the Getúlio Vargas Foundation's São Paulo School of Business Administration) and the CACG (Center of Anti-Corruption and Governance Studies) at Politeknik STIA LAN Jakarta.

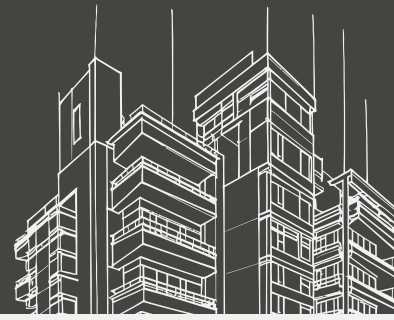
This research is part of the Governance & Integrity Anti-Corruption Evidence (GI ACE) programme which generates actionable evidence that policymakers, practitioners and advocates can use to design and implement more effective anti-corruption initiatives. This GI ACE project is funded by UK International Development. The views expressed in this report do not necessarily reflect the UK Government's official policies.

# CONTENTS



<b>EXECUTIVE SUMMARY</b>	<b>1</b>
Recommendations	3
<b>INTRODUCTION</b>	<b>6</b>
Real Estate Ecosystem	7
About the project	7
<b>BACKGROUND</b>	<b>9</b>
Avenues through which illicit finance enters the real estate market	10
<b>CHALLENGES</b>	<b>12</b>
Legislative reform	12
Real estate agents	14
Oversight bodies	17
Enforcement of rules	19
Access to information	20
Extent of the ecosystem	21
<b>CONCLUSIONS</b>	<b>22</b>
<b>REFERENCES</b>	<b>23</b>

# EXECUTIVE SUMMARY



Illicit finance continues to pose a significant threat to the integrity of Kenya's real estate sector. Although Kenya has addressed gaps in its anti-money laundering and countering the financing of terrorism (AML/CFT) laws and deficiencies identified in the 2022 **Eastern and Southern Africa Anti-Money Laundering Group** (ESAAMLG) Mutual Evaluation, the system still struggles in practice. The Financial Action Task Force (FATF) grey-listed Kenya in February 2024, citing serious deficiencies in its ability to prosecute money-laundering offenses and weaknesses in its anti-money laundering and counter-terrorism financing regime.

The real estate sector remains a high-risk area for money laundering and terrorist financing due to pervasive use of cash, the involvement of politically exposed persons (PEPs), as well as weaknesses in the regulatory ecosystem.

Illicit funds commonly enter the property market through **cash-based transactions**, abuse of financial instruments, and opaque ownership structures. Cash is frequently used to avoid reporting thresholds, including splitting up transactions into lower value deposits and cross-border smuggling of currency. In addition, criminals integrate dirty money into the formal financial system via falsified loan documentation, inflated property valuations, straw borrowers, and mortgages repaid with illicit proceeds.

**PEPs involvement** is particularly prominent. The use of shell companies, relatives, proxies, and legal representatives, including lawyers, obscures beneficial ownership, while there are weaknesses in verifying ownership and limited interoperability between registries. Domestic PEPs are considered to present a higher risk than foreign PEPs, with lawyers and bankers often facilitating the movement and integration of illicit funds. The regulatory ecosystem faces several challenges in responding to these threats. Real estate agents play a central role in property transactions, yet a large proportion operate outside formal structures. Nearly half of real estate firms are not registered with regulatory bodies, and even among those registered, suspicious transaction reporting is extremely low. Barriers to registration keep many agents outside the AML/CFT framework.

# EXECUTIVE SUMMARY

Institutions responsible for supervision face resource constraints that limit inspections, training, and compliance monitoring. Some cannot fulfil statutory responsibilities due to insufficient funding or capacity. Industry associations without statutory mandates also lack AML/CFT expertise.

Corruption, political interference, and the centrality of land in political networks make enforcement of AML/CFT rules particularly difficult. Law enforcement agencies may struggle to pursue land-related corruption or money laundering cases involving high-profile political figures. Information is difficult to access, with the beneficial ownership registry not available to civil society and journalists, who could otherwise support efforts to identify illicit finance in the real estate sector.

Finally, the real estate oversight ecosystem comprises numerous actors with potentially overlapping mandates. This fragmentation may create confusion about roles, duplication of effort, and missed opportunities for detection and enforcement. Addressing these challenges could substantially strengthen the ability of the ecosystem to respond to illicit finance. Yet it will require practical, targeted reforms that go beyond tightening rules. Solutions should focus on making AML/CFT compliance workable for the real estate market as it functions in practice, and on enabling cooperation across ecosystem actors, including statutory bodies, industry associations, and civil society.

# EXECUTIVE SUMMARY

## RECOMMENDATIONS

### LEGISLATIVE REFORM

With legislative loopholes largely closed, focus should be placed on the practical difficulties in enforcing AML/CFT legislation in the real estate sector. These remain substantial and may require further legislative reform for these to be addressed.

At the same time, legislative and regulatory changes should consider the ability of the sector to implement the changes and sufficient notice and support should be provided to legislative compliance by designated entities.

### REAL ESTATE AGENTS

Requirements for registration with the Estate Agents Registration Board (EARB) need to change to focus on achieving maximum registration of working real estate agents rather than the current focus on a criteria-based profession, or

The link between registration with the EARB and reporting to the Financial Reporting Centre (FRC) should be reconsidered, to enable unregistered real estate agents to report suspicious transactions to the FRC.

Systematic training in ML/TF risks, KYC and reporting obligations is needed for registered and unregistered real estate agents, through legal oversight and registration bodies and through informal associations.

Assessments and engagement with unregistered real estate agents and firms should take place to understand their ML/TF risk profiles and to work with them on reporting.

# EXECUTIVE SUMMARY

## RECOMMENDATIONS

### OVERSIGHT BODIES

Work with oversight bodies to assess the resources needed to fulfil their roles under AML/CFT legislation and regulations and, where necessary, increase resources to a level to enable them to perform that role.

If increasing resources is not possible, work with oversight bodies to identify the most strategic uses of available resources. This may include, for example, identifying higher risk designated entities and focussing inspections on firms operating in these areas, or removing requirements for oversight bodies to receive STRs, freeing up oversight bodies to focus on training and inspection.

Ensure that oversight bodies are able to provide regular training to their members on AML/CFT rules and regulations.

Consider providing support for industry associations without a statutory oversight function to provide training for their members on AML/ CFT obligations, particularly where oversight bodies have limited reach.

### ENFORCEMENT OF RULES

Support at the highest levels should be expressed for law enforcement investigations and prosecutions into illicit finance in the real estate market

Efforts should be made to enhance law enforcement cooperation and information sharing, to enable law enforcement to more effectively detect, investigate and respond to illicit finance in the real estate market.

# EXECUTIVE SUMMARY

## RECOMMENDATIONS

### ACCESS TO INFORMATION

Access to beneficial ownership registries should be made public to facilitate identification of potential use of illicit funds to purchase real estate through company ownership.

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Land registry digitisation should be completed and access to land registers should be facilitated for actors with a legitimate interest.

### EXTENT OF THE ECOSYSTEM

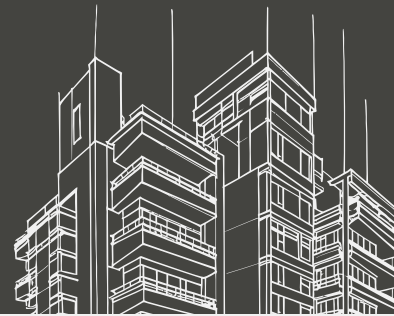
Actors across the ecosystem should be brought together to develop a common understanding of their roles with respect to the real estate market and illicit finance and the ways in which their roles interact with each other.

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A common strategy across the different real estate ecosystem actors could be established with a view to activating the different actors to take proactive and coordinated steps to addressing illicit finance.



# INTRODUCTION



In 2022, Kenya underwent a Mutual Evaluation Review (MER) by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) to assess its compliance with the Financial Action Task Force (FATF) recommendations.<sup>1</sup> The MER, together with a National Risk Assessment (NRA), identified Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) vulnerabilities across several sectors, culminating in Kenya's grey-listing in 2024.<sup>2</sup> The designation pointed to strategic deficiencies that the country should address to more effectively combat money laundering and terrorist financing.

Among the high-risk areas flagged was the real estate sector. It was considered that the sector was high-risk driven by: Politically Exposed Persons (PEPs)- linked investment both domestically and across borders; the high and appreciating value of property, which enables the movement and concealment of large proceeds of crime; and cash-based transactions that could present challenges with tracking and reporting. These drivers were worsened by gaps in the policy and legal framework and weak regulation over the actors who facilitate transactions in the sector. The NRA highlighted weaknesses in the sector as limitations with the AML framework and practice, including within supervision, monitoring, and reporting of suspicious activity.<sup>3</sup>

This paper explores the challenges that are present in AML/CFT controls relevant to the real estate sector in Kenya. Drawing on our two previous papers looking at the legal regulation of the sector and describing the real estate ecosystem as a whole, as well as further research, it identifies the challenges the sector faces in fighting illicit finance. It does this through first describing the problem of illicit finance in the real estate sector, before looking at the mechanics of how illicit finance is entering the market in Nairobi, Mombasa and Kenya more broadly. It finally looks at the challenges institutions and actors face in responding to this threat. Its approach in doing so is to move towards solutions: challenges are identified to stimulate meaningful discussion about change needed to reduce the threat of illicit finance and to form the basis of further discussions on solutions within this project.

# INTRODUCTION

## Real Estate Ecosystem

This paper is part of a series on the Kenyan real estate ecosystem and should be read alongside other forthcoming papers. The 'ecosystem', which this report and the project it sits within use, identifies and categorizes actors present and involved in the real estate market into five different units of analysis: sellers, intermediaries, buyers, influencers and rule-makers.<sup>4</sup>

- *Sellers* are those selling property or land. They can include developers or construction companies.
- *Intermediaries* are all professionals involved in the process of selling and registering a property. Intermediaries usually at the centre of these processes are real estate agents. However, other professionals can be involved, such as lawyers and notaries. Banks and bank employees can also act as intermediaries, when property transactions include real estate financing.
- *Buyers* can be an individual or a legal entity, they can also be a national or foreign investor.
- *Influencers* are actors who intend to influence the (formal or informal) rules of the game. This includes professional associations, industry bodies and civil society.
- *Rule-makers* establish rules that try to govern and stabilize the system. Rule-makers are typically from government, quasi-governmental, and self-regulatory bodies. The term "rules" here refers to all norms, be they formal or informal, including laws and regulations, but not limited to these.

This report is designed to provide a framework for future research and looks therefore primarily at AML/CFT rules. While cross-cutting, it is consequentially specifically relevant for intermediaries, who are the main class of actor to whom AML/CFT rules apply, as well as rule-makers and influencers engaging in ongoing reform efforts.

## About the project

Real estate is a significant asset class and a primary vehicle for money laundering. While knowledge products and policy options have been discussed in places such as London, Vancouver, or the United States' major cities, there is far less data, knowledge, and locally anchored policy solutions focused on cities in the Global South.

The *Corruption in Paradise* project<sup>5</sup> looks at the ecology of the sector as it exists in cities in Brazil (São Paulo City and Santa Catarina state's northern coast), Kenya (Nairobi and Mombasa), and Indonesia (Jakarta and Bali province) and focuses on one of the critical actors in the system: real estate agents. It evaluates a) how the environment in which real estate agents operate enables or inhibits integrity and b) how policy interventions could make a difference and positively rewire these incentive systems.

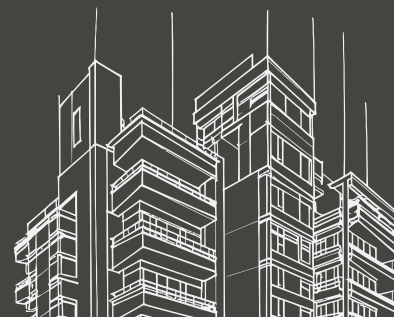
# INTRODUCTION

Through this analysis, we seek to draw conclusions that can contribute to policy and legal reforms and a broader understanding of the environment around real estate. We aim to add much-needed actionable knowledge on the risks of corruption and money laundering in the world's most dynamically growing urban areas. Plus, by applying an ecosystem approach aiming to look at the sector in the context of its wider value chain, stakeholder networks, and incentives, we seek to develop a more comprehensive understanding of the actual risks and feasible policy interventions along the lines of a broader political economy analysis.

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# BACKGROUND



The ESAAMLG published in 2022 a mutual evaluation report of Kenya, which highlighted the potential risk of the real estate sector contributing to money laundering and illicit financial flows. The real estate sector was highlighted as an area of concern due to its outsized contribution to the economy - 8.8% of GDP in 2021, compared to the financial and insurance sector at 7.1%<sup>6</sup> - and given the "high participation of unregistered players that are not regulated and the use of cash".<sup>7</sup> The report also highlighted that lawyers were at the time not subject to supervision for AML and CFT purposes and that the licensing regime and regulation of the real estate sector was weak.<sup>8</sup> Noted too was that very few suspicious transaction reports were submitted by the real estate sector<sup>9</sup> - amounting to only two reports out of 25,500 over a period of 4 years.<sup>10</sup>

The risks for money laundering and terrorist financing stemming from the real estate sector were also identified in research by Kenya's Business Registration Service. In their 2022 National Risk Assessment on Money Laundering and Terrorism Financing of Legal Persons and Legal Arrangements, risks were particularly highlighted in related to construction. Assessing the overall risk as 'medium', the report nevertheless identified that despite only 20% of legal persons are engaged in construction, the construction sector accounted for 57% of money laundering cases, followed by the real estate sector at 8%. It also identified that the involvement of PEPs in these kinds of case is high.<sup>11</sup> The real estate sector specifically was further identified as the second most prominent sector for terrorism financing in Kenya.<sup>12</sup>

This vulnerability to illicit finance in the real estate sector has been identified as being driven by several factors, including;

1. the involvement of PEPs in property investments both domestically and from across borders
2. the high and appreciating value of property that enables concealment and movement of large criminal proceeds, and
3. the prevalence of cash-based transactions that hinder effective tracking and reporting.<sup>13</sup>

# BACKGROUND

National risk assessments have highlighted weaknesses in the regulation of the sector, including deficiencies in the anti-money laundering legal framework as an issue, with legal structures most frequently abused for money laundering purposes are concentrated in construction, real estate, manufacturing, and financial services sectors.<sup>14</sup>

CiFAR's 2025 briefing *Anti-Money Laundering Rules & Reporting*, however, found that many of these legislative gaps have since been closed. Practice however remains quite different. CiFAR's 2025 report *Kenya's Real Estate Ecosystem*, while not explicitly focussing on challenges, nevertheless highlighted that the ecosystem is stronger on paper than in reality. Several issues were found which undermine the effectiveness of legal rules and regulations, including resource and coverage constraints by bodies responsible for ensuring AML/CFT compliance. It also highlighted that the close connection between political figures, corruption and the real estate sector likely makes it hard for the system to act to prevent illicit finance entering the property market more broadly.<sup>15</sup>

## **Avenues through which illicit finance enters the real estate market**

The Financial Reporting Centre (FRC) reported in its 2024 annual report that illicit funds typically enter the property market through various ways that exploit weak controls and cash-based transactions.<sup>16</sup>

Cash payments are a particular problem for the real estate sector in Kenya. While the AML regime mandates the filing of suspicious transactions for transactions exceeding USD 15,000, payments are either at times below the threshold or, for high-value purchases, using cash deposits below required thresholds.<sup>17</sup> Interviews have also suggested that cash has been smuggled across borders into Nairobi to avoid customs declarations or through the use of informal arrangements to avoid bank transfers.<sup>18</sup>

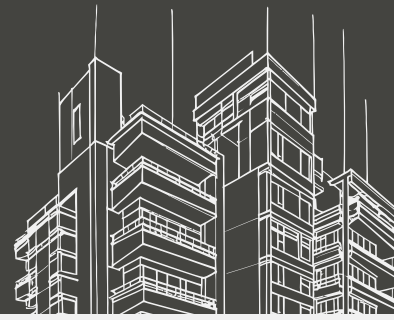
Loans and other financial instruments from financial service providers have also been obtained fraudulently in some instances through falsified documentation, overvalued property appraisals, or through straw borrowers: individuals who take out loans on behalf of someone else, often concealing the true borrower's identity and acting on behalf of illicit buyers.<sup>19</sup> In such cases, illicit funds can potentially be used to quickly repay loans or default strategically, thereby integrating the money into the financial system. Weak income verification practices and limited scrutiny by lenders further facilitate such schemes, especially where credit approval processes rely heavily on self-reported income or unverifiable collateral property valuations.<sup>20</sup> Illicit purchasers may also be using mortgages as a way to integrate illicit finances into the property market in Kenya, through repayments made with illicit funds.<sup>21</sup>

# BACKGROUND

The use of shell companies, relatives, or legal representatives, particularly but not exclusively by PEPs is another avenue used to introduce illicit finance into the real estate market. The proceeds of major corruption scandals have frequently flowed through real estate investments, often disguised as legitimate development projects or joint ventures with genuine investors. The opacity of beneficial ownership and the limited integration of registries across agencies make tracing such flows challenging, allowing for easy laundering and integration of illicit funds.<sup>22</sup>

The perceived level of involvement of PEPs in these cases is high, although the use of complex legal structures to conceal ownership or control by PEPs appears relatively less frequent. Risk assessment data suggests that abuse by domestic PEPs is more prevalent than that involving foreign PEPs, with lawyers often implicated in the creation of legal structures and the movement of illicit funds, while bankers have played a role in the processing and integration of those funds.<sup>23</sup>

# CHALLENGES FACED BY THE ECOSYSTEM



Kenya has undertaken several reforms to address these vulnerabilities, including introducing new laws, setting up inter-agency coordination mechanisms, and the establishment of dedicated task forces. However, challenges persist in coverage, enforcement, supervision, and inter-institutional collaboration. The gap between policy formulation and operational implementation remains the major concern with respect to AML/CFT compliance within the real estate sector.

## **Legislative reform**

Legislative reform has closed many of the loopholes in the real estate sector identified in the 2022 Mutual Evaluation Report and subsequent reports that led to Kenya's grey listing. The principal legislation for the regulation of the real estate sector on money laundering in Kenya is the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA), as progressively amended, supplemented by the Proceeds of Crime and Anti-Money Laundering Regulations, 2023.<sup>24</sup> Together, they form Kenya's AML/CFT framework, constituting relevant rules across different sectors, including the real estate sector. The legislation and its regulations criminalise money laundering which it defines in various ways, including the act of transacting, acquiring and moving property, assets or monetary instruments which one knows or ought to have reasonably known to be proceeds of crime or are intended to be used for such in an effort to conceal it, assist an offender or diminish it.<sup>25</sup>

POCAMLA Part IV requires real estate agents to register, report, conduct customer due diligence and record keeping.<sup>26</sup> POCAMLA Regulations also emphasise that reporting institutions include real estate brokers and require them to implement robust preventative measures such as risk assessments, and know your customer (KYC) procedures. Real estate agents are specifically required to conduct customer due diligence on all buyers and sellers they broker deals for, and for all transactions, notwithstanding the value. Part III of the POCAMLA Regulation obliges real estate agents to identify and verify the identity of their clients, determine beneficial owners if the client is a company/legal entity and know the purpose of the transaction.

# CHALLENGES

Real estate agents should also record details of the property transaction and payment method. If an agent receives or handles cash of USD 15,000 or above from a client, it should be reported to the FRC. They are also required to monitor for any suspicious transactions that raise questions and, if identified, subsequently file Suspicious Transaction Reports (STRs) to the FRC within seven working days. Additionally, if they are unable to identify a client and cannot complete customer due diligence, they are required to file a STR. In all transactions undertaken they should maintain records for at least seven years. Real estate agents also have a duty to identify politically exposed persons (PEPs) involved in transactions and perform enhanced due diligence.<sup>27</sup>

Of note were reforms introduced to bring legal professionals into the AML regime. Under the Proceeds of Crime and Anti-Money Laundering (Amendment) Act 2021, advocates, notaries, and independent legal professionals are designated as reporting institutions when they prepare or carry out certain transactions for clients.<sup>28</sup> Subsequent amendments oblige lawyers to submit suspicious transaction reports to the Law Society of Kenya, as well as to the Financial Reporting Centre (FRC).<sup>29</sup>

## RECOMMENDATIONS

### LEGISLATIVE REFORM

With legislative loopholes largely closed, focus should be placed on the practical difficulties in enforcing AML/CFT legislation in the real estate sector. These remain substantial and may require further legislative reform for these to be addressed.

At the same time, legislative and regulatory changes should consider the ability of the sector to implement the changes and sufficient notice and support should be provided to legislative compliance by designated entities.



# CHALLENGES

## Real estate agents

Despite these reforms, real estate agents often operate outside of formal mechanisms, i.e. are not registered with the Estate Agents Registration Board, as required under legislation. The consequence is that unregistered real estate agents are not easily able to report to authorities when a property transaction raises suspicions of money laundering and nor can they access training provided to registered agents. However, it should be noted that even registered real estate agents are not reporting suspicious transactions, according to latest figures. Therefore, registration alone would not appear likely to address this issue without adequate training for real estate agents on AML/CFT requirements and enforcement of obligations by authorities.

## Registration

While there are no exact figures of the total number of individual real estate agents in Kenya, a 2023 study undertaken by the Kenya National Bureau of Statistics showed that 47.1% of real estate firms were not registered with any relevant professional or regulatory institutions.<sup>30</sup> Interviews undertaken for this study further highlighted that registration is not common among real estate agents.<sup>31</sup> Analysis of the members directory posted on the Estate Agents Registration Board website indicates no registration number higher than 2,000 as of the last update to the list in 2020.<sup>32</sup> In its 2023 annual report, the FRC indicated that 86 real estate agencies and 1504 real estate agents were registered directly with the FRC.<sup>33</sup>

The lack of registration seems to be attributed to two main factors:

- **Lack of interest** in registration: the 2023 National Bureau of Statistics study identified the main reasons for non-registration by real estate firms as lack of interest and not viewing the registration as necessary.<sup>34</sup>
- **Barriers to registration**: a second, and more substantial, barrier to registration identified through our research is difficulties for those working as a real estate agent in meeting the criteria for registration with the EARB.<sup>35</sup> These requirements included in 2023: a) educational certificates, b) a recommendation from a registered agent who has provided at least two years of training to the applicant; c) a referee from a person in good standing, and d) a fee of KES 1000.<sup>36</sup> Interviews conducted indicated that these requirements will mean that most agents will continue to avoid registration, as working agents cannot afford, for example, the time to apprentice for two years to a registered agent.<sup>37</sup>

# CHALLENGES

In an effort to curb this lack of registration, the FRC issued a regulation on the 21<sup>st</sup> of October 2025, requiring all real estate agencies to register with the Centre by the 14<sup>th</sup> of November 2025. They require estate agents to submit details of their legal entity, certificates of incorporation/registration, tax numbers, names of senior directors and a designated money laundering reporting officer. They announced support will be offered for this and that legal action would be taken against those who fail to comply.<sup>38</sup>

However, while the efforts by the FRC to increase registration are welcome, they primarily address the first of the reasons for non-registration and do not remove the institutional barriers to registration that many working real estate agents face. In other words, the short time frame and the requirement to register with the EARB, means that it is unlikely that this regulation will bring unregistered real estate agents into the AML/CFT compliance system.

## RECOMMENDATIONS

Two separate issues need to be addressed:

### REAL ESTATE AGENT REGISTRATION

Requirements for registration with the Estate Agents Registration Board (EARB) need to change to focus on achieving maximum registration of working real estate agents rather than the current focus on a criteria-based profession, or

The link between registration with the EARB and reporting to the Financial Reporting Centre (FRC) should be reconsidered, to enable unregistered real estate agents to report suspicious transactions to the FRC.

# CHALLENGES

## Reporting and training

A second but interrelated challenge with real estate agents and AML/CFT compliance is the lack of reporting. In the 2024 Annual Report of the FRC, it is recorded that of the 7,287 suspicious transaction reports received in 2024, only 1 came from real estate, with zero from lawyers. Similarly in 2023, of the 6,131 reports, no reports came from lawyers or real estate firms.<sup>39</sup>

This lack of reporting may of course be linked to the lack of registration: persons involved in introducing illicit finance into the real estate market may be using unregistered real estate firms and individuals who face barriers to reporting suspicious transactions under current rules. Aside from formal barriers related to registration, these unregistered agents may also face practical barriers. Interviews suggested that even those unregistered agents who join voluntary professional associations are unlikely to receive training on money laundering and illicit finance risks due to a lack of capacity to do so and smaller firms are unlikely to have the staffing capacity to provide in-house training.<sup>40</sup>

However, the lack of reporting also seems to represent a challenge even for registered firms, given that only one report has been received from the real estate sector between 2023-2024. In the FRC's institutional ML/TF risk profiling of 80 real estate agencies that had registered with the Centre, it found that 24 posed a high risk, 27 a medium risk and 29 were low risk.<sup>41</sup> Further reports indicate that many real estate firms still lack basic AML controls such as know-your-customer (KYC) procedures, compliance officers, and reporting systems.<sup>42</sup>

## RECOMMENDATIONS

### REAL ESTATE AGENT REPORTING AND TRAINING

Systematic training in ML/TF risks, KYC and reporting obligations is needed for registered and unregistered real estate agents, through legal oversight and registration bodies and through informal associations.

Assessments and engagement with unregistered real estate agents and firms should take place to understand their ML/TF risk profiles and to work with them on reporting.

# CHALLENGES

## **Oversight bodies**

Research identified several issues faced by bodies responsible for overseeing actors within the real estate ecosystem. As highlighted in CiFAR's parallel reports, these actors play multiple roles – including often both being responsible for receiving suspicious transaction reports and overseeing compliance with AML/CFT rules. The challenges identified may come from the multiple roles they play, but maybe also be a result of more systemic challenges they face.

A challenge noted across several oversight bodies was lack of resources needed to perform their role, which then spilt over into a lack of capacity to fulfil vital functions related to the real estate sector and illicit finance, including with respect to inspections and reporting.

Research indicated that both the Law Society of Kenya (LSK) and the Sacco Societies Regulatory Authority (SASRA) lack the resources to effectively carry out all of their roles assigned by legislation: the former lacking the resources to receive suspicious transaction reports,<sup>43</sup> the latter only able to undertake less than half the number of inspections it should to comply with statutory requirements due to a lack of resources.<sup>44</sup>

While these were the only two explicit statements of a lack of resources identified, insufficient funding likely affects other entities. Overall, on-site AML/CFT inspections within the real estate sector are rare<sup>45</sup> and resource constraints are therefore likely limiting the scope of action across many oversight bodies for the real estate sector with respect to the requirements set out in AML/CFT legislation and regulations.

Related to this is the fact that industry associations without a statutory oversight function often also do not have the capacity or know-how to conduct trainings for their members in the area of AML/CFT compliance.<sup>46</sup> Therefore there is also likely to be a training gap for persons working in the real estate sector.

# CHALLENGES

## RECOMMENDATIONS

### OVERSIGHT BODIES

Work with oversight bodies to assess the resources needed to fulfil their roles under AML/CFT legislation and regulations and, where necessary, increase resources to a level to enable them to perform that role.

If increasing resources is not possible, work with oversight bodies to identify the most strategic uses of available resources. This may include, for example, identifying higher risk designated entities and focussing inspections on firms operating in these areas, or removing requirements for oversight bodies to receive STRs, freeing up oversight bodies to focus on training and inspection.

Ensure that oversight bodies are able to provide regular training to their members on AML/CFT rules and regulations.

Consider providing support for industry associations without a statutory oversight function to provide training for their members on AML/ CFT obligations, particularly where oversight bodies have limited reach.

# CHALLENGES

## Enforcement of rules

A last but difficult challenge relates to the enforcement of existing legal obligations and is tied to the politics of land and corruption in Kenya. As discussed in CiFAR's report Kenya's Real Estate Ecosystem, a challenge when it comes to enforcement of AML/CFT rules is likely to come from the relationship between political actors, corruption and land in Kenya.<sup>47</sup>

Reports and court documents indicate land and property as a preferred vehicle for corruption by politicians and persons within the public service. This can either be direct, fraudulent land transfers from public ownership to private hands, or the investment of the proceeds of corruption into property and land.<sup>48</sup>

Interviews suggest that this intertwining of land and corruption domestically hampers the ability of law enforcement agencies to effectively investigate and prosecute land and property-based corruption, due to direct or indirect political concerns.<sup>49</sup> While this may be particularly the case for high-profile public figures, as case based information shows that land investigations are an important part of law enforcement's work in addressing corruption,<sup>50</sup> it may nevertheless reduce the effectiveness of law enforcement more generally when looking into suspicious land and property transactions for fear of possible political backlash.

Further, although there has been multi-agency coordination established through inter-agency frameworks such as the Multi-Agency Team (MAT), these often lack operational synergy.<sup>51</sup> Agencies operate within siloed mandates, resulting in delayed intelligence sharing, duplication of effort, and limited enforcement impact. The lack of a centralized data sharing platform means that each actor has only partial visibility of the broader laundering networks operating through real estate.<sup>52</sup>

## RECOMMENDATIONS

### ENFORCEMENT OF RULES

Support at the highest levels should be expressed for law enforcement investigations and prosecutions into illicit finance in the real estate market

Efforts should be made to enhance law enforcement cooperation and information sharing, to enable law enforcement to more effectively detect, investigate and respond to illicit finance in the real estate market.

# CHALLENGES

## Access to information

A further challenge when it comes to the ability of the ecosystem to respond to illicit finance is the lack of access to information, which is particularly a challenge particularly for journalists and civil society to support institutional responses by ecosystem actors, including oversight bodies and law enforcement, by raising concerns of property and land purchased using illicitly acquired funds.

The Beneficial Ownership (BO) register remains inaccessible to the public, reducing transparency and accountability.<sup>53</sup> While efforts are being made to progressively extend Ardhisa (the Land Registry), it was not nationwide at the time of this report,<sup>54</sup> making access to land records also a challenge.

This fragmented data landscape makes it difficult to trace ownership of property holdings and identify property that has been potentially purchased through proceeds of crime and corruption, especially but not only for non-state actors.

## RECOMMENDATIONS

### ACCESS TO INFORMATION

Access to beneficial ownership registries should be made public to facilitate identification of potential use of illicit funds to purchase real estate through company ownership.

Land registry digitisation should be completed and access to land registers should be facilitated for actors with a legitimate interest.

# CHALLENGES

## Extent of the ecosystem

A final but overarching challenge that the ecosystem faces in responding to illicit finance is the multitude of actors with responsibility for addressing illicit finance in the real estate sector.

As identified in the Kenya's *Real Estate Ecosystem* report and *Anti-Money Laundering Rules & Reporting* briefing, not only are there multiple actors responsible for formally overseeing entities within the real estate sector, but there are also multiple reporting channels and law enforcement agencies responsible for ensuring that AML/CFT rules are complied with. Additionally, there are several industry associations covering different actors in the real estate system, some of whom are not covered by AML/CFT legislation and regulations. There are also multiple levels of government and different government and quasi-government agencies who interact with actors potentially introducing illicit finance into the real estate market.

While this means that there are multiple actors with the potential to respond to illicit finance entering the real estate market, it also means that there may be confusion around roles or different actors may work against each other. To address this, ensuring that actors understand the different roles they could play is important.

## RECOMMENDATIONS

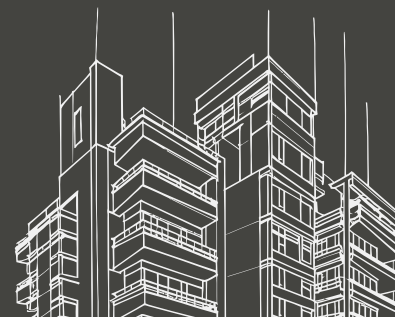
### EXTENT OF THE ECOSYSTEM

Actors across the ecosystem should be brought together to develop a common understanding of their roles with respect to the real estate market and illicit finance and the ways in which their roles interact with each other.

A common strategy across the different real estate ecosystem actors could be established with a view to activating the different actors to take proactive and coordinated steps to addressing illicit finance.



# CONCLUSIONS



Illicit finance is a major problem for the Kenyan property market. It enters through common methods such as cash-based transactions, exploitation of the financial system to launder money through deposits below thresholds and mortgage schemes, and the use of proxies and shell companies.

The real estate ecosystem in Kenya has a strong legal basis to address money laundering and terrorist financing, with major players covered by AML/CFT obligations and systems established to oversee and enforce compliance. This picture though is undermined by the operation of the system in practice.

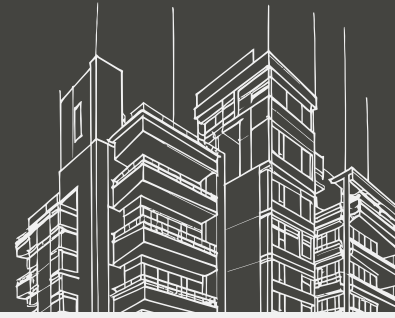
Real estate agents – major players in the ecosystem – are not all registered with their oversight body, the Estate Agents Registration Board, seriously hampering efforts for them to receive training on AML/CFT compliance and to be inspected for adherence to rules. Lacking registration also excludes them to an extent from channels to report, further weakening the system.

Oversight bodies, while in place, are not fully resourced to play all their statutory roles, and law enforcement cooperation, as well as cooperation with oversight bodies could be strengthened. A lack of access to information, particularly around land and beneficial ownership, also makes it harder for journalists and civil society to play their roles within the ecosystem. The number of actors within the ecosystem also presents a challenge, with the potential for different entities to pull in different directions, undermining each other's efforts.

Simply increasing attempts to enforce compliance with existing legislation will not address these problems. For real estate registration in particular, given the registration requirements, this is likely to be a substantial challenge. Efforts should therefore be focussed on identifying practical and workable ways to close these gaps, which may involve a more holistic approach that brings in statutory and independent industry bodies together on solutions, together with county and national governments, and with civil society.

Such changes would strengthen the ability of the ecosystem to respond to illicit finance.

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