

Guide to Section II of risk based supervision data: Estate Agents

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1 General guidance

1.1 Scope

- 1.1.1 In 2018 the JFSC collected supervisory risk data for Reporting Entities for the first time. This exercise was repeated in 2019 and, as advised on 30 October 2019ⁱ, the JFSC is collecting the same data in 2020.
- 1.1.2 This guidance document relates to Section II of the 2020 risk based supervision data collection which requires the provision of activity based data from Reporting Entities registered to carry on estate agency services.
- 1.1.3 Estate agency services is a financial services business activity as set out in Schedule 2 to the Proceeds of Crime (Jersey) Law 1999, specifically paragraph 3 of Part B of Schedule 2 (see below).

3 Estate agency services

- (1) *The business of providing estate agency services for or on behalf of third parties concerning the buying or selling of freehold (including flying freehold) or leasehold property (including commercial and agricultural property), whether the property is situated in Jersey or overseas.*
- (2) *The business of providing estate agency services for or on behalf of third parties concerning the buying or selling of shares the ownership of which entitles the owner to occupy immovable property, whether the property is situated in Jersey or overseas.*

1.2 Excel workbook

- 1.2.1 The Excel workbook for a reporting entity carrying on estate agency services comprises 5 spreadsheets, as follows:
 - (a) CA - Compliance Data
 - (b) CB - Client Data
 - (c) CC - Beneficial Ownership
 - (d) CD - Use and application of concessions granted by the MLOⁱⁱ
 - (e) CE - Country List
- 1.2.2 Spreadsheet CE is an input sheet for the responses to questions CA6, CC1, CC2, and CD4.

1.3 Clients

- 1.3.1 Estate agents should provide data in respect of their clients.
- 1.3.2 A client is a person:
 - (a) for whom an estate agent has acted in a property sale (freehold, flying freehold, leasehold or share transfer) and for which they have received/will receive a fee in accordance with a signed contract; or
 - (b) from whom an estate agent receives a retainer to find a property.
- 1.3.3 If an estate agent also provides relocation, property management or letting agency services, any person who **only** utilises these services is not to be counted as a client.

1.4 Data reporting period

- 1.4.1 Generally, data should be provided for the period 1/1/2019 to 31/12/2019.
- 1.4.2 There are a few data items where the data should be provided as at the end of the reporting period (31/12/2019 or closest business day).

1.5 Data Submission

- 1.5.1 Whilst the JFSC will be collecting the same data as it did in 2019, estate agents are still recommended to consider the data request as soon as possible. It may take some time to gather the data requested and the deadline for submission is **17:00 on 31 March 2020**.
- 1.5.2 Each estate agent will be submitting a completed Excel Workbook through the JFSC Portal, and each estate agent has a designated individual who is the JFSC Portal contact, which, in the vast majority of cases, is the money laundering compliance officer.
- 1.5.3 Notwithstanding that the JFSC Portal contact has responsibility for submitting the data, the board, or equivalent, of the estate agent should have oversight of the content of the submission made on their behalf.
- 1.5.4 Having completed the data return twice the JFSC expects estate agents to be in a better position to report their 2019 data and that only on an exceptional basis will responses be derived by extrapolation or estimates supported by specific criteria.
- 1.5.5 The JFSC continues to acknowledge that system changes take time to implement. Where an estate agent needs to extrapolate or estimate its data, as system changes are still being implemented, the comments section at the bottom of the relevant spreadsheet should highlight which data elements have been extrapolated / estimated and when the relevant system changes will take effect.
- 1.5.6 Where the estate agent feels it necessary to provide additional data to enable the JFSC to understand the response, this information should also be included in the comments section at the bottom of each relevant spreadsheet.
- 1.5.7 With the exception of spreadsheet *CE-Est Ag-Country list*, all parts of each question should be answered. Consequently, please insert a "0" where relevant.

1.6 Integrity checking your submission

- 1.6.1 Before submitting your data the JFSC suggests that the integrity checks highlighted in paragraphs 1.6.2 to 1.6.8 should be completed.
- 1.6.2 Sum of CA1(a) to (c) needs to agree to the sum of CB1(i) to (v).
- 1.6.3 CA1(a) should equal sum of CB3(i) to (v).
- 1.6.4 No response in CB2 should exceed CB1, in any given column.
- 1.6.5 CB3 to CB11 cannot be individually greater than CB2, in any column.
- 1.6.6 CB11 should not exceed CB9 or CB10 in any given column.
- 1.6.7 CB11 should not exceed CB4.
- 1.6.8 CD7(a) should equal the sum of CD7(b) to (e).

2 Section CA – estate agents compliance data

2.1 Overview

2.1.1 This section collects data on:

- (a) client risk ratings;
- (b) business which has been declined, terminated or withdrawn due to customer due diligence or other financial crime concerns;
- (c) referred business (the extent to which clients are obtained on the basis of referrals from other businesses);
- (d) cash transactions (the extent to which cash is used) and
- (e) transaction monitoring processes.

2.2 Risk Rating

CA1 Number of clients in each category of risk (as defined by the estate agent) during the data reporting period

CA2 Do the estate agent's risk ratings include factors other than money laundering and the financing of terrorism? (Yes; No) If yes, please provide details at CA13(a)

2.2.1 Question **CA1** requests data about the number of clients that have been assessed as presenting (a) higher, (b) standard or (c) lower ML/TF risk (on the basis of factors set out in section 3.3.4 of the Estate Agents AML/CFT Handbook).

2.2.2 Where use is made of a more precise risk scoring scale, it will be necessary to determine which categories in that scale approximate to higherⁱⁱⁱ, standard or lower risk. For example, if an estate agent measures risk on a score of 1 to 10, it may consider anything between 1 and 3 to present a lower risk, 4 to 7 to present a standard risk, and 8 to 10 to present a higher risk.

2.2.3 If an estate agent includes other factors e.g. commercial risk, in its risk rating of clients and the ML/TF risk element cannot be reported separately, please report the combined risk rating.

2.2.4 If a combined rating is reported please select "yes" when responding to **CA2**.

2.2.5 Please provide an answer for every element of CA1.
For example an estate agent with zero higher risk, 4 medium risk and 6 lower risk clients and who only considers money laundering and terrorist financing when risk rating a client, should complete the fields as follows:

CA1(a) - Higher	0
CA1(b) - Medium	4
CA1(c) - Lower	6
CA2	Choose "No" from the dropdown

2.2.6 Please note the sum of CA1(a) to (c) should equal the sum of CB1(i) to (v).

2.3 Declined, terminated and withdrawn business

CA3 Number of applications from prospective clients to either (i) establish a client relationship, or (ii) carry out a one-off transaction, declined due to CDD issues or other financial crime concerns, during the data reporting period

CA4 Number of client relationships terminated, due to CDD issues or other financial crime concerns, during the data reporting period

- 2.3.1 In line with Section 2.4.1 of the Estate Agents AML/CFT Handbook (paragraph 76), questions CA3 and CA4 request data about:
- (a) the number of prospective client relationships or one-off transactions that have been **declined (CA3)**; and
 - (b) client relationships that have been terminated due to CDD issues or other financial crime concerns (**CA4**).
This will include cases where:
 - › it has not been possible to complete identification measures (before or during a client relationship) under the Money Laundering Order, including establishing the source of funds;
 - › the ML/TF risk has been assessed as being too high (and so outside the estate agent's risk appetite); and
 - › there is suspicion of ML/TF.
- 2.3.2 This question applies also to cases where:
- (a) an application to form a client relationship or carry out a one-off transaction is handled by a third party, e.g. a law firm, and where there is no direct contact with the prospective client; and
 - (b) an application to form a client relationship or carry out a one-off transaction has not yet been formally submitted, e.g. where CDD is applied at the time that business is being solicited (where this data is recorded).
- 2.3.3 Please do not leave fields blank, insert a "0" in CA3 and CA4 if no prospective clients have been declined or clients terminated.

CA5 Number of applications from prospective clients who have withdrawn due to CDD issues, during the data reporting period (where this data is collected)

- 2.3.4 Question **CA5** collects data on client applications withdrawn solely or partly on the basis of CDD requested.
- 2.3.5 It is recognised that this data may not be recorded by an estate agent. If this is the case please respond with "0". Do not leave the field blank.
- 2.3.6 This question also applies to cases where an application to form a business relationship or carry out a one-off transaction is handled by a third party, e.g. a law firm, and where there is no direct contact with the prospective client.

2.4 Referred business

- 2.4.1 Questions CA6, CA7 and CA8 request data about those persons who referred clients to an estate agent on a regular basis during the data reporting period.
- 2.4.2 Where business is referred to an estate agent but neither a one-off transaction nor client relationship result this is not considered referred business for the purpose of responding to CA6, CA7 and CA8.
- 2.4.3 Persons who refer clients to an estate agent may be third parties such as lawyers, accountants and trust company businesses.
- 2.4.4 Additionally, if an estate agent is part of a group, any referrals from group companies or other branches of the same company should be included here. For example, if a Jersey estate agent is part of a group/company that has a

Guernsey company/branch then referrals from the Guernsey operation should be reported.

2.4.5 The following should not be reported as persons who refer clients:

- (a) a third party or group entity that acts as an obliged person under Articles 16 or 16A of the Money Laundering Order (data on these persons is collected through spreadsheet CD (Use of MLO concessions)); or
- (b) a client acting on behalf of one or more third parties (data on these persons is collected through spreadsheet CC (3rd party and beneficial ownership)); or
- (c) A person who refers clients on a basis that cannot be considered regular. The meaning of regular will vary by estate agent and will depend on a number of factors such as the size of their current client base and the amount of referred business.

2.4.6 Note: A person may be classified as having referred business even if the estate agent does not pay that person a fee for the referrals.

CA6 Number of persons who referred clients to the estate agent during the data reporting period, analysed by country

2.4.7 Question **CA6** requires the number of persons who referred clients to be analysed by country, using spreadsheet CE.

2.4.8 Please note:

- (a) the countries are listed on spreadsheet CE alphabetically; and
- (b) only positive responses are required i.e. there is no need to insert "0" against every country.

CA7 Number of persons who referred clients to the estate agent during the data reporting period, which carry on the following activities

2.4.9 Question **CA7** requires analysis of the number recorded at CA6 between those that are:

- (a) Lawyers;
- (b) Accountants; and
- (c) Other, which includes any referrals from another group company or a trust company business.

2.4.10 Where an estate agent responds that the majority of the persons that are referring clients fall in "Other" (CA7(c)) please provide further details at CA13 (General comments on section CA). This may include referrals from existing clients.

2.4.11 If an estate agent considers that it does not have any persons that refer business then please insert "0" into each of CA7(a), CA7(b) and CA7(c).

CA8 Number of relationships with persons who referred clients to the estate agent during the data reporting period that were terminated due to CDD issues, or other financial crime concerns

2.4.12 Question **CA8** requires an estate agent to record the number of times, during the data reporting period, that a relationship between them and a person who referred clients has been terminated, by either party, because of a CDD issue or other financial crime concern.

For example, in a case where the person referring clients considers that CDD measures applied by the estate agent are impractical or excessive.

- 2.4.13 If no terminations have occurred, please insert a “0” in response to CA8.

2.5 Cash transactions

CA9 Number and value of cash transactions (i.e. notes and coins) for clients during the data reporting period (receipt or payment) in any jurisdiction

- 2.5.1 Question **CA9** requests data about the number (CA9(a)) and value (CA9(b)) of cash transactions (using notes and coins) conducted for clients.
- 2.5.2 This question is intended to determine the extent to which physical cash is still used in the estate agency sector. **For the avoidance of doubt, this does not include bank transfers, cheques or any form of virtual currency transaction.**
- 2.5.3 Whilst we recognise that the use of cash is minimal in the Jersey-based estate agency sector, it is important that this assumption is validated as cash transactions are a key risk indicator for money laundering and the financing of terrorism.
- 2.5.4 If no cash transactions occurred during the data reporting period, please insert “0” at both CA9(a) and CA9(b).

2.6 Transaction monitoring

- 2.6.1 Whilst it is understood that the majority of transactions with an estate agent will be “one-off” it is also understood that some clients may have an ongoing relationship with an estate agent. For example, a client may be in the business of developing property.
- 2.6.2 Where an ongoing relationship is established transaction monitoring must be undertaken (Article 13 of the Money Laundering Order).

CA10 What is the timing of the ongoing monitoring of transactions during a client relationship? (Real-time ; Post-event ; Both ; N/A)

CA11 Are monitoring procedures automatic or manual? (Automated ; Manual ; Both ; N/A)

CA12 What rules are applied to the transaction monitoring procedures? (Generic ; Tailored ; Both ; N/A)

- 2.6.3 Questions **CA10**, **CA11** and **CA12** need only be answered in respect of clients with an ongoing relationship.
- 2.6.4 Where an estate agent has no ongoing client relationships, please respond to each of CA10, CA11 and CA12 with “N/A”.

2.7 General Comments

CA13 Please provide any explanations or context comments below

- 2.7.1 A freetext box is provided at **CA13(b)** to provide general comments, explanations or context comments in relation to the other responses in section CA-estate agents compliance data.
- 2.7.2 Where an estate agent responds that the majority of the persons that are referring clients fall in “Other” (CA7(c)) please provide further details at CA13(b) in respect of those persons reported as “Other”. This may include referrals from existing clients.

3 Section CB – estate agents client data

3.1 Client data overview

- 3.1.1 This section collects data about:
- (a) an estate agent’s clients which exhibit higher ML/TF risk characteristics; and
 - (b) the estate agent’s activities.
- 3.1.2 Section CB collects data by type of client in order to establish whether any particular client type exhibits higher risk factors than others. Responses need to be provided in the following client types:
- (a) Individuals that are Jersey resident;
 - (b) Individuals that are not Jersey residents;
 - (c) Jersey companies;
 - (d) Non-Jersey companies; and
 - (e) Other.
- 3.1.3 “Other” includes a client that is any of the following, noting that there is no need to distinguish between Jersey and non-Jersey in the “other” category:
- (a) Foundations
 - (b) Trusts
 - (c) Limited Partnerships
 - (d) Limited Liability Partnerships
 - (e) Separate Limited Partnerships
 - (f) Incorporated Limited Partnerships

3.2 Client analysis

CB1 Number of clients that are:

(i) Individuals – Jersey resident; (ii) Individuals - non-Jersey resident; (iii) Jersey Companies; (iv) Non-Jersey Companies; and (v) Other

- 3.2.1 Question **CB1** requests the total number of clients for 2019 analysed by client type as listed in 3.1.2 and further explained in 3.1.3.
- 3.2.2 Please note that the response provided to question CB1 provides the base for responding to all other Section CB questions.
- 3.2.3 For example, given a response to question CB1 as set out in the table below then the number of clients is the maximum number that can appear in the relevant column for all other Section CB questions:

Client type	Number of clients
Individuals – Jersey resident	10
Individuals - non-Jersey resident	2
Jersey Companies	1

Client type	Number of clients
Non-Jersey Companies	0
Other	1

3.2.4 Where an estate agent has no clients of a particular type please insert “0”.

3.2.5 Please note the sum of CB(i) to (v) should equal the sum of CA(a) to (c).

3.3 Enhanced CDD measures

3.3.1 Information regarding enhanced CDD measures can be found in Section 7 of the Estate Agents AML/CFT Handbook.

3.3.2 In addition to an estate agent deciding that a client presents a higher risk of money laundering or financing terrorism, there are some circumstances where enhanced CDD measures are required by Articles 15 and 15A of the Money Laundering Order, Such as where the client:

- (a) is, or some other prescribed person is, a politically exposed person (**PEP**) (section 7.6)
- (b) has a “relevant connection” to an “enhanced risk state” (section 7.5)
- (c) is a company with nominee shareholders or issues bearer shares (section 7.9)
- (d) is a personal asset holding vehicle (section 7.8)
- (e) is, or one or more beneficial owners/controllers of the client is, not physically present for identification purpose (section 7.4) or
- (f) is non-resident (not a resident of Jersey) (section 7.7).

CB2 Number where enhanced CDD measures have been applied:

(i) Individuals – Jersey resident; (ii) Individuals - non-Jersey resident; (iii) Jersey Companies; (iv) Non-Jersey Companies; and (v) Other

3.3.3 Using the response to question CB1 as the base for responding, question **CB2** requires data about the number of clients to which enhanced customer due diligence (**CDD**) measures have been applied during 2019.

3.3.4 For example, using the example laid out in 3.2.3, if 3 of the 10 clients that are reported as “Individuals – Jersey” have been subject to enhanced CDD measures then respond “3”.

3.3.5 If an estate agent has no clients which have been subject to enhanced CDD measures then insert “0” in each green box.

CB3 Number that present higher risk of ML/TF:

(i) Individuals – Jersey resident; (ii) Individuals - non-Jersey resident; (iii) Jersey Companies; (iv) Non-Jersey Companies; and (v) Other

3.3.6 Where an estate agent has determined that a client presents a higher risk of money laundering or financing terrorism, enhanced CDD measures must be applied, therefore the response to question CB3 cannot be greater than the response to question CB2.

3.3.7 There are circumstances where enhanced CDD measures must be applied but the estate agent may not consider the client presents a higher risk, therefore the response to CB3 may be lower than the response to CB2. For example, a Jersey resident purchasing a property through an asset holding vehicle.

3.3.8 If an estate agent has no clients which present a higher risk please do not leave a cell blank, please insert "0" in each green box.

3.3.9 The total of this row should be the same as the answer to question CA1(a).

CB4 Number that are, or who are connected with, a PEP:

(i) Individuals – Jersey resident; (ii) Individuals - non-Jersey resident; (iii) Jersey Companies; (iv) Non-Jersey Companies; and (v) Other

3.3.10 Using the response to question CB2 as the base for responding, question **CB4** requires the number of clients to which enhanced CDD measures have been applied due to a PEP connection.

3.3.11 On 12 June 2019, the Money Laundering Order was amended (see Article 15A(3) of the Money Laundering Order and Section 7.6.1 of the AML/CFT Handbook). From this date enhanced CDD measures became mandatory for the following:

- (a) a domestic politically exposed person only where a high-risk business relationships or high-risk one-off transactions is involved (**domestic PEP**);
- (b) a foreign politically exposed person (**foreign PEP**);
- (c) a prominent person;
- (d) individuals falling within (a), (b) or (c) that are:
 - › beneficial owners or controllers of the client;
 - › a third party for whom the client acts AND the third parties beneficial owners or controllers ;
 - › purporting to act on behalf of the client.

3.3.12 When considering whether a client is connected with a domestic PEP or foreign PEP it must be remembered that the definition of a PEP includes close associates and immediate family members of any individual. Close associate and immediate family members are both defined in Article 15A(3) of the Money Laundering Order.

3.3.13 The information to be considered when deciding if a person is a close associate of a domestic PEP or foreign PEP is limited to information in the possession of the estate agent or information that is publicly known (Article 15A(4) of the Money Laundering Order).

3.3.14 If an estate agent has no clients who are a PEP, or who are connected with a PEP, please do not leave a cell blank, please insert "0" in each green box.

CB5 Number that have a relevant connection to an enhanced risk state:

(i) Individuals – Jersey resident; (ii) Individuals - non-Jersey resident; (iii) Jersey Companies; (iv) Non-Jersey Companies; and (v) Other

3.3.15 Using the response to question CB2 as the base for responding, question **CB5** requires the number of clients to which enhanced CDD measures have been applied because the client has a connection to an enhanced risk state.

3.3.16 Appendix D1 of the Estate Agents AML/CFT Handbook provides a list of the countries and territories that are considered an enhanced risk state. As at 20 December 2019 the following were listed:

- (a) Iran; and
- (b) The Democratic People's Republic of Korea (North Korea).

3.3.17 Section 7.5 of the Estate Agents AML/CFT Handbook provides further guidance, including an example of what may constitute a relevant connection.

3.3.18 For example: a client's source of funds is, or derives from:

- (a) assets held in either Iran or North Korea by the client or any person on behalf of a client; or
- (b) income arising in Iran or North Korea.

In either scenario the estate agent should take reasonable measures to find out the source of wealth of the client.

3.3.19 If an estate agent has no clients with a relevant connection to an enhanced risk state, please do not leave a cell blank, please insert "0" in each green box.

**CB6 Number that have one or more nominee shareholders:
(iii) Jersey Companies; and (iv) Non-Jersey Companies**

**CB7 Number of non-Jersey companies that have issued bearer shares or warrants:
(iv) Non-Jersey Companies**

3.3.20 Using the response to question CB2 as the base for responding, questions CB6 and CB7 require information on:

- (a) the number of clients which are companies (Jersey or non-Jersey) which have one or more nominee shareholders (**CB6**); and
- (b) the number of clients which are non-Jersey companies that have issued bearer shares or warrants (**CB7**).

3.3.21 Section 7.9 of the Estate Agents AML/CFT Handbook explains that, where one or more of the following circumstances apply, the company should not be considered to have issued bearer shares:

- (a) the bearer shares are issued by a company in a country or territory that has fully enacted appropriate legislation to require bearer shares to be registered in a public registry and the bearer shares are so registered; or
- (b) the bearer shares are traded on an approved stock exchange; or
- (c) all issued bearer shares are held in the custody of the client or trusted external party along with an undertaking from that trusted external party or client to inform the estate agent of any transfer or change in ownership.

3.3.22 If an estate agent has no clients which are companies (Jersey or non-Jersey) that have one or more nominee shareholders, please do not leave either cell blank, please insert "0" in each green box.

3.3.23 If an estate agent has no clients which are non-Jersey companies that have issued bearer shares or warrants, please do not leave the cell blank, please insert "0" in the green box.

**CB8 Number that are personal asset holding vehicles:
(iii) Jersey Companies; (iv) Non-Jersey Companies; and (v) Other**

3.3.24 Using the response to question CB2 as the base for responding, question **CB8** requests data regarding personal asset holding vehicles which are described at paragraph 55 of section 7.8 of the Estate Agents AML/CFT Handbook as being a legal person or legal arrangement established by individuals for the specific purpose of holding assets for investment.

3.3.25 The personal asset holding vehicle:

- (a) may be the client of the estate agent (individual selling a property is a company which has held the property as an investment) OR

- (b) may be the third party for whom a client is acting. For example, the client may be a trustee acting for a trust which is a personal asset holding vehicle.

3.3.26 In the following circumstances the client is not to be considered a personal asset holding vehicle, as the vehicle was not established for the specific purpose of holding an investment:

- (a) client selling a property is a company established to hold a property for a “J” category employee (common practice pre the Control of Housing and Work (Jersey) Law 2012);
- (b) the company’s only asset is the property being sold; and
- (c) the property has been the principal private residence of the individuals that also own the company.

3.3.27 If an estate agent has no clients which are either personal asset holding vehicles or who act on behalf of a personal asset holding vehicle, please do not leave the cells blank, please insert “0” in the two green boxes.

CB9 Number of individuals who have not been met:

(i) Individuals – Jersey resident; and (ii) Individuals - non-Jersey resident

CB10 Number where one or more beneficial owners/controllers of clients, or other persons who must be identified under Article 3 of the Money Laundering Order, were not physically present for identification purposes

CB11 In relation to CB9 and CB10, number of clients who are, or who are connected to, a PEP

3.3.28 Using the response to question CB2 as the base for responding, questions **CB9** to **CB11** request data about whether a client, and the beneficial owners and controllers of clients, have been physically present for identification purposes.

3.3.29 An individual may be considered to have been physically present for the purpose of questions CB9 and CB10 where they have been met and seen:

- (a) by the estate agent (physically or through video conferencing facilities);
- (b) by a suitable certifier in line with section 4.3.3 of the Estate Agents AML/CFT Handbook; or
- (c) by a company in the same group as the estate agent where that company is regulated and supervised for AML/CFT purposes (the meeting can be physical or through video conferencing facilities).

3.3.30 Where either the client or the beneficial owner/controller of the client has not been physically present **and** they are a PEP then question **CB11** needs to record the number of such persons.

3.3.31 If, having taken account of paragraph 3.3.2, an estate agent considers that all clients and beneficial owners/controllers were physically present for identification purposes please do not leave the cells blank, please insert “0” in each green box.

3.4 Estate agency services

3.4.1 Questions CB12 to CB17 request data about the services provided by an estate agent to its clients. The objective is to analyse the response provided at CB1 into the:

- (a) types of property an estate agent is dealing with (questions CB12 and CB13);
- (b) location of the properties (questions CB14 and CB15); and

(c) nature of the property (questions CB16 and CB17).

3.4.2 It is recognised that different risks are associated with different services and different clients therefore this section gathers data to enable the JFSC gain a better understanding of an estate agent's risk profile.

CB12

(a) **Number of clients that relate to the buying or selling of freehold, flying freehold or leasehold property**

(b) **Value of transactions involving sales (in GBP)**

(c) **Value of transactions involving purchases (in GBP)**

CB13

(a) **Number of clients that relate to the buying or selling of share transfer property**

(b) **Value of transactions involving sales (in GBP)**

(c) **Value of transactions involving purchases (in GBP)**

3.4.3 Using the response to question CB1 as the base for responding, questions CB12 and CB13 request data about the **types of property** which were the subject of the estate agents service.

3.4.4 Question **CB12** requests data about any clients where the purchase or sale was in respect of **freehold, flying freehold or leasehold property**. The property could be located in Jersey or outside of Jersey and be residential or commercial property.

3.4.5 With respect to CB12(b) and CB12(c) the values should be:

- (a) the gross values i.e. before the deduction of any fees, and
- (b) quoted in GBP. Where a transaction took place in a currency other than GBP (e.g. Euros) please convert the transaction value to GBP using the most appropriate exchange rate.

3.4.6 Question **CB13** is similar to CB12 in terms of the data requested but requests data about transactions for clients relating to share transfer properties.

3.4.7 Please note for each client type the total of CB12(a) plus CB13(a) should equal the response provided to CB1. For example, using the data at 3.2.3, an estate agents response may look as follows:

Client type	Number of clients	CB12(a)	CB13(a)
Individuals – Jersey resident	10	4	6
Individuals - non-Jersey resident	2	1	1
Jersey Companies	1	1	0
Non-Jersey Companies	0	0	0
Other	1	1	0

3.4.8 Please do not leave a cell blank, please insert a "0" into all relevant green boxes.

CB14

- (a) **Number of transactions involving property situated in Jersey (freehold, flying freehold, leasehold or share transfer)**
- (b) **Value of the above (in GBP)**

CB15

- (a) **Number of transactions involving property situated outside Jersey (freehold, flying freehold, leasehold or share transfer)**
- (b) **Value of the above (in GBP)**

- 3.4.9 Using the response to question CB1 as the base for responding, questions CB14 and CB15 request data about the **location of the property** which was the subject of the estate agent's service.
- 3.4.10 There is no need to separate between sales and purchases nor between types of property transaction.
- 3.4.11 Question **CB14**, requests data regarding clients where the transaction involved property situated in Jersey and **CB15** property situated outside Jersey.
- 3.4.12 Please do not leave any cells blank. For example, if all transactions relate to property situated in Jersey please insert a "0" into each green box on row CB15.

CB16

- (a) **Number of transactions involving residential property (freehold, flying freehold, leasehold or share transfer)**
- (b) **Value of the above (in GBP)**

CB17

- (a) **Number of transactions involving commercial property (freehold, flying freehold, leasehold or share transfer)**
- (b) **Value of the above (in GBP)**

- 3.4.13 Using the response to question CB1 as the base for responding, questions CB16 and CB17 request data about the **nature of the property** which was the subject of the estate agent's service.
- 3.4.14 There is no need to separate between sales and purchases nor between location of the property.
- 3.4.15 Question **CB16**, requests data regarding clients whose property transaction involved residential property and **CB17** commercial property.
- 3.4.16 Where a property has mixed usage please report the client at CB17 - commercial property.
- 3.4.17 Please do not leave any cells blank. For example, if all transactions relate to residential property please insert a "0" into each green box on row CB17.

4 Section CC – Beneficial ownership

4.1 General

- 4.1.1 Where CDD exemptions from applying identification requirements under Article 18 of the Money Laundering Order have been utilised and no data is held, an estate agent is not expected to gather information for the purpose of completing questions CC1 and CC2.
- 4.1.2 Data in respect of using Article 18 is to be reported in response to question CD7 (Further exemptions from applying identification requirements (Article 18 of the MLO)).

4.2 Clients who are individuals and beneficial owners or controllers of clients that are not individuals

CC1 Number and principal country of residence of: (i) individuals who are clients; and (ii) individuals who are the beneficial owner or controller of a client that is not an individual

- 4.2.1 The principal country of residence of an individual who is a client, or the beneficial owners and controllers of clients who are not individuals, is recognised as a key factor in determining the riskiness of a client – section 3 of the Estate Agents AML/CFT Handbook provides further guidance.
- 4.2.2 The term “beneficial ownership and control” is defined in Article 2 of the Money Laundering Order. It refers to the individuals who ultimately own or control a customer that is a legal person^{iv}. In line with guidance provided in the Estate Agents AML/CFT Handbook, the following will be considered to be the beneficial owner or controller of a company.
 - (a) Each individual with a material controlling ownership interest in the capital of the company (through direct or indirect holdings of interests (shares) or voting rights) or who exerts control through other ownership means.
 - (b) To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control of the company through other means.
 - (c) Where no individual is otherwise identified, individuals who exercise control of the company through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions - directors).
- 4.2.3 Question **CC1** requests an estate agent provide by country (using spreadsheet *CE-Est Ag-Country list*) the total number of clients who are individuals and beneficial owners or controllers of clients that are not individuals, as at 31 December 2019.
- 4.2.4 Unlike other questions, there is no need to insert a response in each cell of excel spreadsheet *CE-EST Ag-Country list*.
- 4.2.5 For example, using the data at 3.2.3, an estate agent may look as follows:

Client type	Number of clients	Principal country of residence
Individuals – Jersey resident	10	Jersey

Client type	Number of clients	Principal country of residence
Individuals - non-Jersey resident	2	UK Guernsey
Jersey Companies (4 shareholders each with 25% share capital)	1	Jersey (2) UK Germany
Non-Jersey Companies	0	
Other	1	Switzerland

Spreadsheet *CE-Est Ag-Country list* would therefore have the following entries in the column for question CC1:

ISO Code	Country	Number and principal country of residence of: (i) individuals who are clients; and (ii) individuals who are the beneficial owners or controllers of a client that is not an individual
		CC1
276	Germany	1
831	Guernsey	1
832	Jersey	12
756	Switzerland	1
826	UK	2

4.3 Client acting on behalf of a third party

CC2 Number and principal country of residence of third parties on whose behalf a client is acting

- 4.3.1 Question **CC2** collects data on the principal country of residence of third parties on whose behalf a client acts.
- 4.3.2 For example, if an estate agent has a lawyer as their client in a property sale it may be the case that the lawyer is acting on behalf of a third party(ies). This could be the case where a property is being sold as part of a deceased's estate. In this instance the principal country of residence of all the executors to the will would need to be reported here.
- 4.3.3 Should the lawyer not be acting on behalf of individuals (may be acting for a company or trustee of a trust) then the estate agent should have identified the persons for whom the lawyer is acting in line with Article 3(2) of the Money Laundering Order and the guidance provided in section 4 of the Estate Agents AML/CFT Handbook. For ease guidance has been provided below:
- (a) In a case where the third party is a legal person (e.g. a company), data should be provided on the individuals who are beneficial owner or controller of that legal person (Article 3(2)(b)(ii) of the Money Laundering Order).

- (b) In a case where a third party is a trust (other than a collective investment fund), data should be provided on:
 - › the settlor^v;
 - › the protector;
 - › beneficiaries with a vested right;
 - › other beneficiaries and persons who are the object of a power that have been identified as presenting a higher risk; and
 - › any other person who exercises ultimate effective control over the trust (Article 3(7) of the Money Laundering Order).
- (c) In a case where a third party is a limited partnership (other than a collective investment fund), data should be provided on the limited partners (Article 3(7) of the Money Laundering Order).
- (d) In a case where a third party is a collective investment fund, data should be provided on any beneficial owners and controllers, i.e. individuals exercising control of the collective investment fund through ownership means, other means or through the position that they hold (see section 14.3.2 of the Regulated Financial Services Business AML/CFT Handbook (Funds and Fund Services Business)).

5 Section CD – Use and application of concessions granted by the Money Laundering Order

5.1 General

- 5.1.1 This section collects data about the application of concessions set out in the Money Laundering Order that can be used in the circumstances prescribed in **Articles 13** (client identification and verification), **16** (reliance on obliged persons), and **Part 3A** (CDD exemptions).
- 5.1.2 On 12 June 2019, Article 18 of the Money Laundering Order was replaced however, the policy behind the Article was substantially unchanged. Therefore, whilst the text in this guidance document reflects Article 18 as at 20 December 2019, questions should be answered for the whole of 2019.
- 5.1.3 The following table provides guidance on the period to be covered by each question:

Question	Data period	Date(s)
Client identification and verification		
CD1	At end of reporting period	31/12/2019 or closest business day
CD2	During the reporting period	1/1/2019 – 31/12/2019
Reliance on obliged persons (Article 16 of the MLO)		
CD3	During the reporting period	1/1/2019 – 31/12/2019
CD4	At end of reporting period	31/12/2019 or closest business day
CD5	At end of reporting period	31/12/2019 or closest business day
CD6	During the reporting period	1/1/2019 – 31/12/2019
Further exemptions from applying identification requirements (Article 18 of the MLO)		
CD7	During the reporting period	1/1/2019 – 31/12/2019

5.2 Client identification and verification

CD1 Number of clients, as at the end of the data reporting period, where identity has not yet been verified as the relationship started before February 2008 and Article 13(2) of the MLO is being relied upon

- 5.2.1 Article 13(2) of the Money Laundering Order provides for the timing of identification measures for the existing clients of an estate agent at the time the Money Laundering Order came into force – 4 February 2008.

5.2.2 Article 13(2) sets out very particular circumstances which enabled an estate agent to delay verification of a client's identity – section 4.7.3 of the Estate Agents AML/CFT Handbook provides further guidance.

5.2.3 An estate agent should have finalised the position of its existing clients by 31 December 2014, unless a later date has been agreed by the JFSC (paragraphs 206 and 207 of section 4.7.3 of the Estate Agents Handbook). Consequently, it is expected that most estate agents will report "0" in respect of **CD1**.

CD2 Number of clients where delayed verification in line with Article 13(4) of the MLO was applied during the data reporting period

5.2.4 In accordance with Article 13(4) of the Money Laundering Order an estate agent is permitted to delay verifying the identity of client where (finding out the identity of the client must not be delayed):

- (a) it is necessary not to interrupt the normal course of business;
- (b) there is little risk of money laundering or financing of terrorism occurring as a result of obtaining evidence of identity after establishing the relationship; and
- (c) evidence of identity is obtained as soon as reasonably practicable.

5.2.5 Question **CD2** collects data about the number of clients where delayed verification in line with Article 13(4) of the Money Laundering Order has been applied.

5.2.6 If an estate agent has not delayed the verification of any client's identity during the data reporting period, please respond with "0".

5.3 Reliance on obliged persons (Article 16 of the MLO)

5.3.1 In line with Article 16 of the Money Laundering Order, reliance may be placed on an obliged person only where the six conditions, explained in section 5.1 of the Estate Agents AML/CFT Handbook, are met. In practice, this has the effect of:

- (a) limiting the number of obliged persons that can be relied upon; and
- (b) requiring the basis for placing reliance to be recorded in writing.

CD3 Number of clients where reliance has been placed on obliged persons during the data reporting period

CD4 Number of obliged persons on which reliance was placed, by country, as at the end of the data reporting period

CD5 Number of obliged person(s) carrying on financial services business or equivalent business, relied upon as at the end of the data reporting period:

5.3.2 It is important to understand the extent to which an estate agent makes use of these concessions and information regarding the obliged person, consequently:

- (a) Question **CD3** requests the number of clients where reliance has been placed on obliged persons during the data reporting period (please insert "0" if no reliance has been placed);
- (b) Question **CD4** requests the country of the obliged person on whom reliance is being placed (responses should be provided on spreadsheet *CE-Est Ag-Country list*, nil responses are not required); and
- (c) Question **CD5** requests the number of obliged persons split by the type of business that is carried on, at the end of the reporting period (please insert "0" if no obliged persons are used).

CD6 Number of obliged persons relied upon, who failed to provide information and evidence on demand and without delay, during the data reporting period

- 5.3.3 Where an estate agent relies on an obliged person, the Money Laundering Order (Article 16(5)) requires that an estate agent test, in such manner and at such intervals as they consider appropriate:
- (a) whether or not the obliged person has appropriate policies and procedures in place to apply the identification measures;
 - (b) keeps the evidence of identity; and
 - (c) will provide that evidence without delay if requested to do so.
- 5.3.4 In light of 5.3.3(c), question **CD6** requires an estate agent to report the number of obliged persons that failed to provide information and evidence on demand and without delay.
- 5.3.5 Please do not leave a cell blank, insert "0" if no obliged persons are used or obliged persons did provide information and evidence when requested.

5.4 CDD exemptions (Article 18 of the MLO)

CD7 (a) Number of clients to whom further CDD exemptions have been applied during the data reporting period

Of the above, number of clients to whom the exemptions have been applied:

(b) Article 18(4) - public authorities, companies listed on an IOSCO-compliant market or regulated market

(c) Article 18(3) - regulated businesses or equivalent

(d) Article 18(5) - employees of regulated businesses or equivalent

(e) Article 18(6) - Control of Housing and Work (Jersey) Law 2012

- 5.4.1 Article 18 of the Money Laundering Order sets out a number of very specific circumstances where an estate agent may be able to apply CDD exemptions. See sections 7.14 the Estate Agents AML/CFT Handbook for further guidance. Specifically, section 7.14.6 of the Estate Agents AML/CFT Handbook provides guidance and a code of practice with respect to Jersey property transactions passed before the Royal Court.
- 5.4.2 If an estate agent has applied exemptions from CDD identification measures to any clients during the data reporting period the number of clients should be reported in response to **CD7(a)**.
- 5.4.3 If exemptions from CDD identification measures have not been applied please do not leave the cells blank, insert a "0" in response to CD7(a)-(e).
- 5.4.4 If exemptions from CDD identification measures have been applied, CD7(b) to (e) provides the four circumstances which are relevant for an estate agent, with CD7(e) being the most likely circumstance. The total of CD10(b) to (e) should equal the number in cell CD10(a).
- 5.4.5 Please do not leave any cells blank, insert a "0" where applicable.

ⁱ Industry update: [2019 and 2020 Supervisory Risk Data Collection Exercise](#)

ⁱⁱ The Money Laundering (Jersey) Order 2008 is referred to as both the Money Laundering Order and the MLO in the supervisory risk data collection exercise.

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- iii Section 2.4.1 of the Estate Agents AML/CFT Handbook (paragraph 76) explains that an estate agent may demonstrate that it checks that systems and controls are operating effectively where the Board periodically considers the effect of those systems and controls in light of the number and percentage of clients that have been assessed as presenting a higher risk.
 - iv No individual is to be treated as a beneficial owner of a body corporate the securities of which are listed on a regulated market. For the purpose of this section it is assumed that an estate agent is most likely to deal with legal persons that are companies therefore the text has been amended accordingly.
 - v Excluding a settlor of a trust who is deceased in line with paragraph 71 of section 4.4 of the Estate Agents AML/CFT Handbook.