

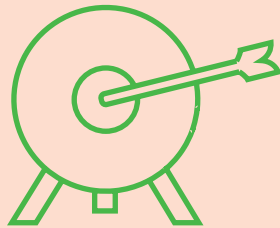
# ART MARKET PARTICIPANTS CLIENT ADVICE

## ARE CRIMINALS TARGETING YOUR BUSINESS?

The risk of criminals laundering funds through the art market and new obligations for art market participants under the updated Money Laundering Regulations 2017

*Criminals will try to legitimise their illicit gains in different ways. This may include the buying and selling of high value goods. From January 2020, art market participants who deal in sales, purchases and / or storage of works of art with a value of 10,000 euros or more, are subject to new anti-money laundering obligations, under the Money Laundering Regulations 2017.*

*So how can you identify cases of concern, ensure your business is safe and compliant, and find help and support?*



## INTRODUCTION

In its recent strategic assessment, the National Crime Agency (NCA) [reported](#) that over 350,000 individuals are estimated to be involved in serious and organised crime and that the cost to the UK economy is at least £37 billion a year. The NCA also notes how “it remains difficult to quantify the scale of money laundering impacting on the UK, but given the UN estimates that 2-5% of global GDP is laundered and London’s position as one of the world’s largest financial centres, there is a realistic possibility that it is in the hundreds of billions of pounds annually”.

New legislation was introduced in the UK in January 2020 to implement the European Union’s (EU) Fifth Money Laundering Directive (5MLD). This new legislation is designed to minimise the risk of criminals exploiting the prevalence of confidentiality in the art market to launder the proceeds of crime. Each business should carefully consider its own legal obligations under this new legislation and how the risks of failing to comply with it can be mitigated. This note provides an introduction to the new legislation and the issues arising out of it for businesses in the art market. It does not constitute legal advice and you should take steps to consider the new legislation and the relevant guidance referred to below in full.

## WHAT IS THE NEW LEGISLATION?

For many years, offences in relation to money laundering have existed through the provisions of the Proceeds of Crime Act 2002.

On 10 January 2020, the [Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019](#) came in to force. This legislation was enacted to ensure the UK's compliance with 5MLD and amended the [Money Laundering, Terrorist Financing and Transfer of Funds \(Information on the Payer\) Regulations 2017 \(the Money Laundering Regulations\)](#). The Money Laundering Regulations (as amended) place certain new Anti-Money Laundering (AML) obligations on art market participants from 10 January 2020.



## WHAT IS AN ART MARKET PARTICIPANT?

The Money Laundering Regulations define an art market participant as:

*“A firm or sole practitioner who:*

- i. by way of business trades in, or acts as an intermediary in the sale or purchase of, works of art and the value of the transaction, or a series of linked transactions, amounts to 10,000 euros or more; or*
- ii. is the operator of a freeport when it, or any other firm or sole practitioner, by way of business stores works of art in the freeport and the value of the works of art so stored for a person, or a series of linked persons, amounts to 10,000 euros or more.”*

A “work of art” is defined in [s21 of the Value Added Tax Act 1994](#). This definition is comprehensive, but includes, for example, hand executed paintings, drawings, collages, decorative plaques, engravings, lithographs or prints, as well as sculptures, tapestries and photographs. However, it does not include technical drawings, maps or plans.

## WHY ARE ART MARKET PARTICIPANTS SUBJECT TO THE MONEY LAUNDERING REGULATIONS?

Commercial and personal confidentiality have long been an important feature of the art market, for valid reasons. However, these new rules are designed to limit the risk of confidentiality being abused to conceal illicit activity. Amongst other things, the amended Money Laundering Regulations require art market participants to identify the physical person they are dealing with in any transaction or, when dealing with a corporate body or a trust, the person or persons who control that entity. This is known as client due diligence (CDD).

Without adequate CDD being carried out, the art market could be used by criminals to launder the proceeds of criminal activity. These proceeds could be derived from drug trafficking, modern slavery, tax evasion, corruption or theft. There is also a terrorist financing risk particularly where an item may be stolen or looted.

Further information and guidance about the implications of the Money Laundering Regulations for businesses in the art market has been provided by The British Art Market Federation (BAMF) in its [\*Guidance on Anti Money Laundering\*](#).

## WHAT DOES THIS MEAN FOR ME?

As set out in the BAMF's Guidance on Anti Money Laundering, for those that fall under the definition of art market participant you are required to:



Full details of each of these obligations and what this means in practice can be found in the BAMF Guidance referred to above, as well as the Money Laundering Regulations themselves.

<sup>1</sup> HMRC registration information:  
[gov.uk/guidance/register-or-renew-your-money-laundering-supervision-with-hmrc](https://www.gov.uk/guidance/register-or-renew-your-money-laundering-supervision-with-hmrc)

## WHAT CHALLENGES MIGHT I FACE?

As well as the increased management time and financial cost of implementing the measures required under the Money Laundering Regulations, you might have difficulties navigating the following:

- Cash purchases and how to handle cash;
- Identifying the ultimate buyer, who may use third parties. Money may also come from an intermediary's bank account;
- Respecting longstanding relationships and genuine sensitivities around privacy, balancing the client's request for privacy and anonymity against the need for AML checks;
- Completing all necessary checks ahead of an auction / sale, especially where there is a late registration of interest;
- International aspects and the movement of works of art across borders.



Whilst putting in place appropriate policies and procedures to comply with the requirements of the Money Laundering Regulations may seem daunting, the new obligations on art market participants are a positive development to assist in the ongoing fight against financial crime and terrorist financing. The new obligations will also assist you in getting to know your clients better.

## HOW DO I IDENTIFY CASES OF CONCERN? WHAT RED FLAGS COULD I LOOK OUT FOR?

Red flags are not necessarily indicative of suspicious behaviour on their own but may be “warning signs”. We set out below some potential red flags which you may come across. You may wish to consider conducting extra due diligence checks and / or reporting your suspicions if any of these apply. Red flags can relate to your client, the work of art or the actual transaction. This list is not exhaustive and is intended for guidance purposes only. If you have any concerns about a client and/or a transaction you should seek your own legal advice to ensure that you are complying with your obligations under the Money Laundering Regulations.

### POTENTIAL RED FLAGS

Client refusal or reluctance to provide requested information

Inconsistencies in information provided by / expected from buyer or seller

Incomplete or inaccurate documentation

### POTENTIAL ACTIONS

Consider advising the client it is a requirement of your business to provide the information when asked.

Consider asking the client for their reasons in writing for not providing any requested information.

Consider verifying any ID documents and source of funds documentation supplied and seek separate corroboration where possible.

Consider asking the client to account for any inconsistencies in writing.

Consider verifying any ID documents that are provided.

Consider asking the client for written clarification / explanation where there is missing or inaccurate information.

## POTENTIAL RED FLAGS

Unusual and / or generic address (such as a PO Box or virtual address) given

Involvement of corporate structures which are complex, opaque and / or offshore

Links to jurisdictions with money laundering concerns (see [FATF website](#))

Unusual use of a third party

Money moved from or to third party bank accounts

## POTENTIAL ACTIONS

Consider asking for written confirmation of the address and supporting documentation to verify the client's link to that address.  
Consider conducting further open source research on the address.

Consider further checks through screening tools and / or open source information.

Consider further research to determine whether the link to a jurisdiction in that particular case is genuine and plausible.  
Consider further research to understand the context of specific money laundering concerns associated with that country.

Consider asking the client to provide evidence of the rationale and their connection to the third party.  
Consider further scrutinising the source of funds.  
Consider identifying the third party yourself independently through screening tools and/ or open source information.

## POTENTIAL RED FLAGS

Involvement of / links to Politically Exposed Persons (PEP)

Involvement of / links to sanctioned persons

Adverse media and press, particularly in relation to criminal or regulatory proceedings

Unusual or unexpected links between buyer / seller / intermediaries

Inconsistent / implausible history to the work of art and / or its acquisition

Unusual urgency to transaction

Last minute registration

## POTENTIAL ACTIONS

Consider performing PEP screening to see if they hold a position entrusted with a prominent public function.

Consider performing sanctions screening to see if they are subject to any sanctions.

Consider performing “Adverse Press Checks” to establish if they have been subject to any investigations or previous allegations of corruption.

Consider screening and reviewing on a frequent basis.

Consider asking the clients for a written explanation of their relationship with the other parties.

Consider further checks through screening tools and / or open source information.

Consider asking the client for additional paperwork and a written explanation.

Consider asking the client their reasons for the urgency / short notice interest.

Consider scrutinising the source of funds / work of art more closely.



## HOW DO I REPORT MY CONCERNS?

If you have any suspicions that money laundering or terrorist financing is occurring, or has occurred, you must report this to the NCA. The NCA's [website](#) provides full guidance on how to submit a Suspicious Activity Report, where to find out more information and key contacts. There are also details on the process for reporting suspicions in the [BAMF Guidance](#) (Part II, Section 6).



## WHERE CAN I FIND OUT / READ MORE?

- The BAMF [Guidance on Anti-Money Laundering For Art Market Participants](#), which has been approved by HM Treasury.
- The [Responsible Art Market's website](#), including its slides on [Anti-Money Laundering Regulation: What You Need to Know](#).
- The following slides from an [HMRC presentation](#).



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