

RESPONSIBLE ART MARKET
Anti-Money Laundering Guidelines

COUNTRY GUIDE: LUXEMBOURG

Part 1 – AML regime overview

	Aspect	Overview
-	What is the applicable AML legislation?	<ul style="list-style-type: none"> • The law of 12 November 2004, on the fight against money laundering and terrorism financing (“AML/CTF”), as amended (the “2004 Law”); • The Grand Ducal regulation of 1st February 2010 providing details on certain provisions of the 2004 Law, as amended (the “GDR”); • The <i>Commission de Surveillance du Secteur Financier</i> (“CSSF”) regulation n° 12-02 of 14 December 2012 on AML/CTF (the “CSSF Regulation”); • The Luxembourg criminal code. <p>For the sake of completeness, please also find below some of the most important texts which are currently applicable in Luxembourg:</p> <ul style="list-style-type: none"> • The <i>Cellule de Renseignement Financier</i> (“CRF”) circular letter 22/10 relating to Article 5 of the 2004 Law, as amended, on the AML/CTF and CRF circular letter 2015/01 addressed to the professionals of the financial and insurance sectors, relating to the status of the operations following a suspicion report; • The CSSF circular letters, such as CSSF circular letter 11/529 on risk analysis regarding the AML/CTF; CSSF circular letter 13/556 relating to the entry into force of the CSSF Regulation; CSSF circular letter 16/645 relating to the Financial Action Task

		<p>Force (“FATF”) statements¹.</p> <ul style="list-style-type: none"> Ministerial regulations such as the ones referred to on the Ministry of Finance’s website: http://www.mf.public.lu/publications/index.html; <p>(hereinafter collectively referred to as the “Luxembourg AML Legislation”).</p>
-	<p>Which institutions / persons must carry out AML measures?</p>	<p>Based on Article 2 (1) of the 2004 Law, the professional obligations relating to AML/CTF matters apply, <i>i.a.</i>, to:</p> <ul style="list-style-type: none"> credit institutions, professionals of the financial sector (“PFS”), payment institutions and electronic money institutions ; insurance undertakings, insurance intermediaries and professionals of the insurance sector ; undertakings for collective investment and investment companies in risk capital (SICAR), which market their units, securities or partnership interests; management companies which market units, securities or partnership interests of undertakings for collective investment or perform additional or auxiliary activities; pension funds; managers and advisors of undertakings for collective investment, investment companies in risk capital (SICAR) and pension funds; statutory auditors; accountants, real estate agents, notaries; lawyers for certain types of activities; casinos;

¹ Note that these circulars regarding the FATF statements are generally updated three times a year.

		<ul style="list-style-type: none"> • operators in a free zone authorised to carry out their activity pursuant to an authorisation by the <i>Administration des Douanes et Accises</i> (customs and excise) within the Community control type 1 free zone located in the municipality of Niederanven Section B Senningen called Parishaff L-2315 Senningerberg (Hoehenhof); and • persons trading in goods accepting cash <u>payments exceeding EUR 15,000</u> for a single transaction or series transactions which appear to be linked²; • persons exercising for commercial purpose certain types of activities or operations. In the context of Art Businesses, the following are most applicable: credit operations and safe rentals; <p>(hereinafter collectively referred to as the “Professionals”).</p>
-	<p>What due diligence requirements apply?</p>	<p>Under Luxembourg law, the main customer due diligence (“CDD”) requirements are the followings:</p> <ol style="list-style-type: none"> 1. Identification measures and verification of the identity of (i) clients, (ii) beneficial owners, (iii) proxies of the clients, if applicable. 2. Obtaining information on the purpose and intended nature of the business relationship. 3. Ongoing monitoring of the business relationships and transactions. 4. Risk assessment of the business relationship. 5. Ensuring that the documents, data and information held are kept up to date. <p>Article 3 (1) of the 2004 Law provides that CDD measures must be taken:</p> <ul style="list-style-type: none"> - when establishing a business relationship; - when carrying out occasional transactions amounting to EUR 15,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked;

² Note that with the 4th AML Directive the threshold will be reduced to EUR 10,000.

- when there is a suspicion of money laundering or terrorism financing, regardless of any derogation, exemption or threshold;
- when there are doubts about the veracity or adequacy of previously obtained customer identification data.

The identification of the client and beneficial owner must, in principle, be completed before establishing a business relationship or before undertaking any transaction.

The CDD obligations may be modulated based on the result of the risk assessment carried out by the Professionals:

1. Simplified CDD measures may be applied in lower risk situations, such as; *i.a.*:

- where the relevant client is a credit institution or financial institution subject to the 2004 Law;
- where the client is a listed company whose securities are admitted to trading on a regulated market and satisfies a series of conditions;
- where the client is a public authority which satisfies a series of conditions;
- where the client is a legal person representing a low risk of money laundering or terrorism financing and satisfies a series of conditions;
- where certain transactions representing a low risk of money laundering and terrorism financing and satisfying a series of conditions are concerned.

2. Enhanced CDD measures shall be applied in higher risk situations, such as:

- Non-face-to-face relationships³;
- Correspondent banking relationships;

³ Note that with the 4th AML Directive, non-face-to-face relationships will no longer entail an automatic application of enhanced CDD measures.

		<ul style="list-style-type: none"> - Relationships with Politically Exposed Persons; - Relationships with clients from high-risk third countries.
-	Do the AML rules identify high risk categories of customers / business partners / transactions?	Yes (<i>cf.</i> our developments above).
-	What record keeping requirements apply?	<p>Professionals are subject to record keeping obligations pursuant to which they must keep all relevant documents and information obtained for a minimum duration of 5 years, without prejudice to longer retention periods which may be imposed by law. In this context, the following documents must be kept by the Professionals:</p> <ul style="list-style-type: none"> • As regards CDD, a copy or the references of the documents required; • As regards the business relationships and transactions, the supporting evidence and records, consisting of originals or certified copies of the documents.
-	What reporting requirements apply?	<ol style="list-style-type: none"> 1. Active cooperation: Professionals are required to inform without delay, on their own initiative, the CRF when they know, suspect or have reasonable grounds to suspect that money laundering or terrorism financing is being committed or has been committed or attempted. This report must be accompanied by all supporting information and documents having prompted the report. 2. Passive cooperation: Professionals must further provide without delay to the FIU, at its request, any information requested by the authorities. This obligation includes the submission of the documents on which such information is based. <p>Professionals must not disclose to the customer concerned or to any third party the fact that a suspicious activity report has been filed or that a money laundering or terrorism financing investigation is being conducted (no-tipping-off obligation).</p> <p>The aforementioned obligations and prohibitions apply without prejudice to other reporting requirements which may be applicable to Professionals under any other law or regulation in Luxembourg.</p>
-	Where can I report suspicions of money laundering?	<p>To the CRF</p> <p>41B, bd. Franklin D. Roosevelt</p>

		<p>L-2450 Luxembourg</p> <p>Adresse postale : L-2080 Luxembourg</p> <p>Tél. : (+352) 475981-447</p> <p>Fax : (+352) 26 20 25 29</p> <p>The relevant forms can be found on the website of the CRF: http://www.justice.public.lu/fr/organisation-justice/ministere-public/parquets-arrondissement/lutte-anti-blanchiment/faire-declaration/index.html.</p>
-	Which aspects of the AML regime are particularly relevant for Art Businesses?	As a matter of principle, all these provisions have material importance because they are criminally sanctioned and may also be subject to administrative sanctions. However, the Art Businesses <i>per se</i> should not be directly impacted by the Luxembourg AML Legislation except where payments are received in cash for an amount exceeding EUR 15,000 in a single transaction or series of transactions which appear to be linked (to the exception of free port operators which will always be subject to these obligations). ⁴
-	Where can I find more information and assistance on AML?	Please refer to the contact details of the CRF mentioned above.

Part 2 – AML regime – Legal / ethical overview

Requirement	Auction house when acting as financial intermediary	Art dealer when acting as financial intermediary	Art dealer or auction house when not acting as financial intermediary	Art fairs	Free ports operators	Buyers other than dealers (museums, private collectors, etc.) Δ	Logistics and insurance
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⁴ Note that with the 4th AML Directive the threshold will be reduced to EUR 10,000.

Establish client's identity Guideline 4	Yes*	Yes*	Yes*	Yes*	Yes	Yes*	Yes*
Establish identity of the beneficial owner Guideline 4	Yes*	Yes*	Yes*	Yes*	Yes	Yes*	Yes*
Establish the origin of funds used in a transaction Guideline 6	Yes*	Yes*	Yes*	Yes*	Yes	Yes*	Yes*
Establish the provenance of the artwork Guideline 5	Yes*	Yes*	Yes*	Yes*	Yes	Yes*	Yes*
Keep records Guideline 7	Yes*	Yes*	Yes*	Yes*	Yes	Yes*	Yes*
Train staff Guideline 8	Yes*	Yes*	Yes*	Yes*	Yes	Yes*	Yes*
Decline transactions / Report grounded	Yes*	Yes*	Yes*	Yes*	Yes	Yes*	Yes*

suspicious							
Guideline 9							

*subject to them being directly implicated in cash transactions exceeding EUR 15,000.

Colour codes

Red – legal requirement

Green – ethical requirement

Articles mentioned in the table refer to the Guidelines