Anti-Money Laundering Regulation

What you need to know
The Responsible Art Market Initiative
London Committee

https://responsibleartmarket.org
What is the Responsible Art Market Initiative?

• Not for profit, cross-industry initiative
• By the art market for the art market
• Practical tools & guidelines
• Market consultations & conferences
• Foster dialogue & debate

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What you need to know
What is Money Laundering & Terrorist Financing?

Why does it matter?

- Estimated £100bn annually laundered through UK (NCA)
- Estimated $1.6trillion laundered annually (2009 UN report)
- Estimated £13bn annually generated from serious & organised crime; total economic and social cost of £36bn
- Terrorist financing a component of this; low cost/ high impact
How is money laundered?

1. PLACEMENT
   - Illegal money into the financial system
   - Financial institutions with lax controls? Using otherwise legitimate businesses as a front?

2. LAYERING
   - Through various financial transactions, hide the original source of funds
   - Would include utilising other stores of value (e.g. crypto and artwork) with near term conversion back into “cash”

3. INTEGRATION
   - Once a legitimate story supporting the funds is created, other assets can be acquired
The UK Legal Framework

Proceeds of Crime Act 2002 (POCA)

Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

Money Laundering & Terrorist Financing (Amendment) Regulations 2019

+ Don’t forget about Sanctions
Are you an “Art Market Participant”? 

“...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

(ii) ...the value of the transaction (or series of linked transactions) amounts to €10,000 or more (approx. £8,400)...”
Are you trading in “Works of Art”?

2D & 3D original artworks, handmade or from a limited edition

VAT Act 1994 s.21 (value of imported goods)

**Includes**
- Paintings, drawings, collages, decorative plaques or pictures executed by hand
- Engravings, lithographs or prints produced from plates executed by hand (unique or edition of 8)
- Photographs (unique or edition of 30)
- Sculptures & statuary
- Ceramics executed by hand and signed by the maker
- Tapestries (unique or edition of 8)
- Enamel on copper (unique or edition of 8)

**Excludes**
- Furniture
- Photos or prints made by a mechanical / photomechanical process
- Antique coins, books, furniture & ornaments.
- Collectors items (archaeological, historical, numismatic, philatelic)
- Watches
- Jewellery

*NB: Could be a High Value Dealer if accepting cash*
Are you transacting at or above €10,000?

- Convert from £ to €
- Final invoiced price to the buyer (including commissions, taxes, ARR)
- Single invoiced payment or instalment payments where together they ≥€10k
- Payment method irrelevant: Wire transfer, credit card, cash
What is a linked transaction?

• E.g. Client buys 2 artworks at auction (one for a hammer price of £8,000 the second for a hammer price of £3,000).

• Total invoiced amount (including BP) = £13,000

• Applying the £ to € FX rate at the date of the invoice – total invoiced amount = €15,300.

• €10,000 threshold exceeded so auction house is an “Art Market Participant” & subject to the Money Laundering Regulations
Key Obligations of Art Market Participants
What are your obligations?

- Register with HMRC
- Customer Due Diligence & Red Flags
- Keep records
- Risk Assessment
- Money Laundering Reporting Officer
- Report suspicions
- Document policies, controls & procedures
- Train staff
Register with HMRC

• Register online: [https://www.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)

• Approval: HMRC must approve beneficial owners and senior management of AMPs

• Registration Period: 10 Jan 2020 to 9 Jan 2021

• Cost:
  • Premises registration fee: £300 for each UK address where carrying out regulated business
  • Approval process fee: £40 per person
  • Annual renewal fee: £300 per UK premise at the time of renewal
  • Small business reduction: If annual turnover below £5,000
Risk Assessment

• **Evaluate critically** the potential money laundering & terrorist financing risk represented by your business & customers

• **Consider:**
  
  • **Risk profile of your business**
    • Existing, policies, controls & procedures?
    • Size & nature of your business – mainly UK based clients or international?
    • Selling channels - mainly face to face or on-line?
    • Type & value of Works of Art you transact?
    • How often you carry out regulated transactions?
    • Do you get third party payment requests?
  
  • **Risk profile of your customers?**
    • Politically Exposed Persons?
    • Customers from high risk jurisdictions with weak money laundering controls?

• **No one size fits all.** Each business is different.

• **In writing** - You may be asked to produce it on an HMRC audit

• **Update regularly** – at least annually or more frequently if there are changes in your business or external risk factors
Document Policies, Controls & Procedures

- **Tailored to risks identified** in your risk assessment
- **Relevant and proportionate** to the size and nature of your business and the risks identified
- **Written** – Use to train staff. Will be asked to produce on an HMRC audit
- **Points to cover include:**
  - Risk assessment outcomes
  - Responsibilities of staff
  - CDD measures & monitoring customer transactions
  - Reporting procedures (internally and to the National Crime Agency)
  - Use of outsourcing / reliance
- **Review & update** to ensure remain effective and new risks addressed
Customer Due Diligence & Red Flags

• Who is my customer?

• Is there an Ultimate Beneficial Owner?
  • The individual who owns or controls the customer or on whose behalf the transaction is being carried out

• Consider the presence of Red flags - in relation to:
  • The customer
  • The artwork
  • The transaction itself
Typical art transaction situations

AMP selling own stock to a Buyer

AMP

Invoices sale to the buyer

Sale Contract

CDD obligation

Buyer
AMP selling on consignment

Agency contract

Sale contract

Seller

CDD obligation

AMP

Invoices sale to the buyer

CDD obligation

Buyer
Ultimate Beneficial Owner on selling side

Agency contract

Agency contract

Sale contract

AMP

Invoices
sale to the
buyer

CDD obligation

CDD obligation

Seller

Seller’s Agent

Buyer
Ultimate Beneficial Owner on buying side

Agency contract -> AMP
AMP -> (Sale contract)
Sale contract -> Buyer’s Agent
Buyer’s Agent -> Buyer

AMP:
Invoices sale to the buyer

CDD: 
Seller -> AMP -> Buyer’s Agent
Buyer’s Agent -> Buyer
### What level of CDD?

- Depends on **risk profile of customer & transaction**

<table>
<thead>
<tr>
<th>Simplified</th>
<th>Standard (Default)</th>
<th>Enhanced</th>
</tr>
</thead>
<tbody>
<tr>
<td>Very low risk customer &amp; no Red flags</td>
<td>Low risk customer &amp; no Red flags</td>
<td>Higher risk customer or Red flags exist</td>
</tr>
<tr>
<td>e.g. Company listed on a regulated market with disclosure obligations</td>
<td>e.g. Customers with a long-term and active relationship with the AMP</td>
<td>e.g.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• PEPs (Politically Exposed Persons)</td>
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<tr>
<td></td>
<td></td>
<td>• Customers resident in money laundering blacklisted jurisdictions</td>
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<tr>
<td></td>
<td></td>
<td>• Customers subject to criminal investigations/prosecution</td>
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<tr>
<td></td>
<td></td>
<td>• Sanctioned persons !</td>
</tr>
</tbody>
</table>
The risk spectrum and how you can respond

<table>
<thead>
<tr>
<th>Simplified CDD</th>
<th>Standard CDD</th>
<th>Enhanced CDD</th>
<th>Prohibited Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>May accept the business relationship</td>
<td>Must refuse</td>
<td>Low risk</td>
<td>High risk</td>
</tr>
</tbody>
</table>

Remember: No Tipping Off!
What Customer ID do I need?

- Depends on type of Customer and their risk profile but **Standard CDD** (the default) typically requires

<table>
<thead>
<tr>
<th>Minimum Information</th>
<th>Document to verify</th>
<th>Minimum Information</th>
<th>Document to verify</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals</td>
<td>Companies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name</td>
<td>Passport</td>
<td>Name &amp; business type</td>
<td></td>
</tr>
<tr>
<td>Permanent Residential Address</td>
<td>National ID card</td>
<td>Incorporation place &amp; date</td>
<td></td>
</tr>
<tr>
<td>Photo</td>
<td>Photo driving licence</td>
<td>Directors</td>
<td></td>
</tr>
<tr>
<td>Date of Birth</td>
<td>Utility Bill, Bank Statement, Tax authority letter (dated last 3 months)</td>
<td>Ultimate Beneficial Owner(s) of the Company</td>
<td></td>
</tr>
<tr>
<td>Nationality</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Official company registry documentation confirming the minimum information + CDD for the Ultimate Beneficial Owner(s)</td>
<td></td>
</tr>
</tbody>
</table>

- **Screening services / web searches** are useful to help identify High Risk clients & Sanctioned Persons
- **Data Protection / GDPR obligations** in handling and storing data collected
- See also the **RAM AML Guidelines – Quick Reference Guide**
When do I need the Customer ID?

• All **New Clients** transacting at or above €10,000

• All **Existing Clients** transacting at or above €10,000

• Clients transacting **below €10,000** where **Red Flags exist**

• AMPs are required to hold the Customer ID before “completing the transaction” i.e.
  • For Buyers, before releasing the artwork
  • For Sellers, before releasing payment
Train Staff

• **Train and train again**...should be repeated (including new joiners or when roles change)

• **Many formats** - in person, online, seminars & conferences

• **Tailor to the employee and their role** where possible e.g.
  • Client facing staff need to know how to do CDD and watch for forged documents
  • Staff handling payments, need to watch for third party payments
  • Highlight “red flags” to watch for

• **Clear internal reporting procedures**
Money Laundering Reporting Officer

• AMPs must

• appoint an “MLRO”, responsible for:
  • Receiving suspicious activity reports internally
  • Deciding whether to make a suspicious activity report to the NCA
  • Receiving consent from the NCA where needed as a defence against a money laundering offence

• notify identity of MLRO to HMRC within 14 days

• if appropriate for the size and nature of the business, appoint an “MLCO” (Money Laundering Compliance Officer) to be responsible for compliance with the ML Regs

• notify identity of any MLCO to HMRC within 14 days
Report suspicions

• AMPs and their employees must report to the MLRO / NCA
  • Knowledge or suspicion ("a possibility that is more than fanciful")
    • OR reasonable grounds to know or suspect
  • In the course of business
  • That another person is engaged in money laundering, ie dealing with the benefit of any crime in the UK or any act that would be a crime in the UK, subject to limited exceptions
  • And the information will identify or help identify that person or the laundered property

• [https://www.ukciu.gov.uk/(iqhavp45evqmzbfvxevr5d45)/saron line.aspx](https://www.ukciu.gov.uk/(iqhavp45evqmzbfvxevr5d45)/saron line.aspx)
Get a defence against money laundering

• AMPs and their employees should seek consent (via the MLRO / NCA) if any activity they are engaged in might:
  • Result in the AMP money laundering
    • eg receiving tainted funds in return for art
    • Help another person launder money

• Timescales:
  • 7 working days for NCA to refuse consent
  • Up to 217 days (31 weeks) for NCA to take action if consent refused

• AMPs (and their employees) MUST NOT disclose that a report or request for consent has been made ("tipping off")
Report discrepancies in ownership

- AMPs (and their employees) must report to Companies House any discrepancy between information at Companies House and information collected by the AMP as to the beneficial ownership of the customer

Keep records

• Risk assessment
  • May have to provide to HMRC on request
• Written policies, controls & procedures
• Training records
  • What training has been given
  • Who received it
• Customer due diligence & transaction records
  • Sufficient to reconstruct a transaction and to inform authorities “fully and rapidly” of any relationship with a customer in the last 5 years
  • 5-10 years from transaction / end of relationship
  • Ideally keep personal data separately
• Internal and external suspicious activity reports
Anti-Money Laundering Supervision

What is it? What does it mean for you?
Sources of guidance
Guidance on Anti Money Laundering for UK Art Market Participants

- HM Treasury approved guidance
The Responsible Art Market Initiative

Guidelines on Combatting Money Laundering & Terrorist Financing Risks

http://responsibleartmarket.org/guidelines/
Example Red Flags

- Politically Exposed Persons (PEPs) including persons closely associated with PEPs
- Offshore structures (such as companies or trusts) which exist to hold assets only
- Clients known to be (or associated with) persons subject to criminal or regulatory investigation, prosecution or conviction
- Agents for undisclosed buyers or sellers
- Clients who without plausible reason, operate through multiple private investment companies or offshore structures whose ownership, control and/or beneficiary structure is opaque
- Unexplained or inconsistent changes in ownership
- The seller changes their story as to how they acquired the artwork
- The artwork is subject to trade restrictions (e.g. sanctions prohibiting the trade in items originating from Syria and Iraq)
- Artworks presenting unusual fluorescence under UV light (e.g. as a result of special varnishes used to hide details of restoration)
- Artworks where the original canvas and tacking edges cannot be accessed
- Artworks with unexplained or extensive restorations
- For high value artworks, no insurance and/or storage records exist
- Client is evasive or reluctant to provide adequate information relating to their identity or the artwork
- Seller requests the sale proceeds to be paid to a third party
- The documentation provided is inaccurate or incomplete
- The seller and buyer (or their intermediaries) are connected
- The client's profile or business structure is inconsistent with the proposed transaction
- Parties to the transaction have conflicts of interest
Practical issues?
Practical solutions?
Panel discussion
Thank you

http://responsibleartmarket.org/