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NEWS ART MARKET

Tough UK anti-money laundering law comes into force tomorrow—here's what you need to know

A lawyer's advice to art dealers, agents and galleries who could be unprepared for the hastily enforced new regulations

KENNETH MULLEN

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The EU's Fifth Anti-Money Laundering Directive means many art dealers will have to comply with obligations designed to combat financial crime and terrorist funding
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With almost no warning, on the last working day before Christmas the UK Parliament implemented the European Union's stringent 5th Money Laundering Directive. The new regulations take effect tomorrow, 10 January 2020, with major consequences for UK art market players.

Aside from some of the largest galleries and auction houses, many will be unprepared for the regulations, given there has been very little opportunity to see the rules in their final form. Despite a consultation paper in April 2019, an official response never materialised. Instead, the regulations take a “principles-based approach”, appearing to re-use many of the EU Directive's provisions without providing further detail on their scope and application.

Nonetheless, the regulations are now with us and we recommend that those doing business in the UK (and/or other parts of the EU) immediately review their current internal procedures and put into place measures to ensure that relevant client due diligence (CDD) is conducted on any new clients.

What do the new regulations cover?

The new directive ([outlined here](#)) updates and extends the current UK Money Laundering Regulations 2017 and applies to all “art market participants”. Such participants are defined as a firm or individual who trades in—or acts as an “intermediary” in the sale or purchase of—works of art, or is the operator of a freeport used to store works of art.

The regulations do not give guidance on whether an “intermediary” includes dealers and others involved in a transaction who provide advice to owners and collectors, but who do not actually send or receive any of the sale proceeds. However, subject to further guidance, any professional taking a substantive role in the planning or execution of a sale should assume that the regulations apply to them.

The regulations also apply regardless of the size of the business, so sole traders and small galleries will be subject to the same rules as the large international auction houses. Under the regulations, “works of art” are as defined under current UK VAT legislation, which appears to exclude collectors' items and antiques, so transactions involving these ostensibly remain outside the scope of the regulations.

What action you need to take now

- Draw up a checklist of documents and procedures you need to verify client identity. [The Responsible Art Market provide helpful guidance](#).
- Money should not be accepted from new clients or a transaction executed on their behalf before conducting appropriate due diligence, and records should be securely kept of the client documentation that has been obtained.

- Some online tools can assist with carrying out due diligence, such as subscribing to services or databases that search sanctions lists or for politically exposed persons (PEPs).
- Set up a chain of responsibility for AML compliance in your business. Staff who take on new client business or have client facing roles must be made aware of the new requirements and given appropriate training.
- Undertake a risk assessment for existing clients to consider whether the information you hold on their identity is sufficient and up to date. If anything has changed since you took the client on that renders the information you have about them out of date, then you need to conduct CDD on them.
- Ensure that any parties with whom you contract understand the new requirements. The requirement to obtain relevant CDD documents and any other compliance information should be written into your invoices and contracts.
- Consider the GDPR implications of having to conduct background checks on clients, and (if needed) amend your privacy notices to highlight these checks and personal data you will need to use in order to meet GDPR fairness and transparency principles.
- Register your entity and owners/officers/senior managers with HMRC by 10 January 2021.
- Unless you are a sole trader or very small business, designate a director or senior manager with responsibility for AML compliance and also a money laundering reporting officer (MLRO).
- Questions around transactions should be raised through the MLRO, who has responsibility for reporting issues. The MLRO should be particularly familiar with rules around making suspicious activity reports to the UK National Crime Agency.
- If a client, potential client or their representative refuses to provide CDD documentation or delays without good reason, you should not act for them. Legitimate clients should be prepared to provide the same CDD documents that they currently provide to banks and other regulated organisations.

- If you do business through establishments in other EU member states, take advice on the national implementing AML legislation in these countries.
- The British Art Market Federation is expected to provide guidance for the art sector and HMRC is likely to provide further information about registration, so keep an eye on this.
- Kenneth Mullen is a partner in the intellectual property and technology team at Withers