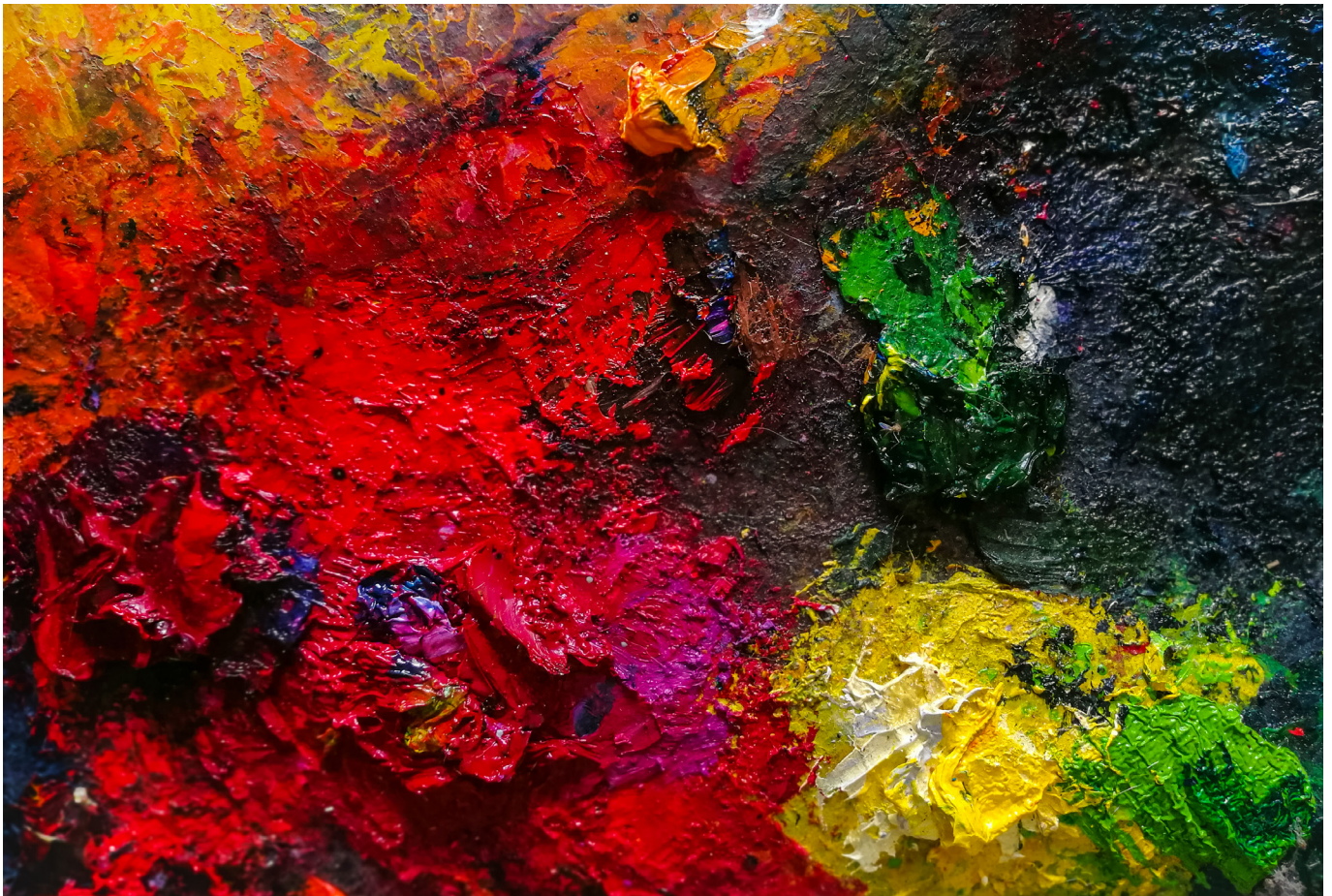


The art of regulation

10 January 2020

Anti-money laundering compliance hits the art market

From today, the art market is subject to the EU anti-money laundering regime. The UK Government rushed out implementing legislation¹ just before Christmas 2019, giving businesses little time to prepare. So if you're in the art market, what do you need to do?



Does it apply to you?

The UK anti-money laundering (AML) regime will now apply to “art market participants”, ie firms or sole practitioners who trade in, or act as intermediaries in the sale or purchase of, works of art in transactions worth EUR10,000 or more. This includes linked transactions whose values add up to EUR10,000 or more.² It therefore extends to art dealers (unless transactions are very low value), auction houses, anyone who stores art in freeports by way of business and some art advisers, where they operate in the UK.

Failure to comply may amount to a criminal offence, and may prevent contracts you enter into with clients from being enforceable.

What do you need to do?

Assuming the AML regime does apply to you, you will need to:

Assess the money laundering risks in your business and put in place appropriate controls

You must have a written risk assessment setting out the money laundering risks in your business.³

You should consider at least:

- your clients, especially if any of them are “Politically Exposed Persons” (ie those exercising senior or high profile public roles⁴) or connected to such “PEPs”
- the geographical areas you trade in
- the nature of the services you offer and the type of art you trade in, and
- how you deal with clients and your payment processes.⁵

Once you’ve carried out a risk assessment of your business, you must produce, and review at least annually, written policies, controls and procedures proportionate to your business to safeguard the business from any money laundering risks identified.⁶

Register with HMRC, and obtain approval for senior management and owners (or sole traders)

HMRC is the designated supervisor for the art market in respect of the AML regime. By 9 January 2021, you must have:

- registered with HMRC (the form is [here](#)⁷),⁸ and
- applied for approval from HMRC for all the beneficial owners, officers or managers of your business (or yourself, if you are a sole trader).⁹

If you don’t register with HMRC in time, you may commit a criminal offence, and may invalidate any contracts you enter into.¹⁰

Appoint a Money Laundering Reporting Officer (and possibly a compliance officer)

Unless you operate on your own, you must appoint as a Money Laundering Reporting Officer (MLRO) someone senior in the business who will be responsible for receiving suspicious activity reports from employees and making onward reports to the National Crime Agency in appropriate cases.¹¹

If it’s appropriate for the size and nature of your business, you must also appoint someone senior to be responsible for compliance with the AML regime.¹²

Conduct due diligence on your clients

You will need to conduct due diligence on your clients or customers with whom you enter a business or professional relationship.¹³ This includes any trade in which you engage involving art whose value amounts to EUR10,000 or more.¹⁴

The obligation to conduct “customer due diligence” (CDD) is likely to be the most onerous element of the AML regime for most art businesses, and to have the most direct impact on your clients. It’s also likely to have a significant impact on the culture of the art market, which has not historically had to scrutinise those participating in it.

What due diligence must be done?

Due diligence is intended to:

- identify your clients
- verify their identity by obtaining independent confirmatory evidence (eg in the case of an individual, a passport), and
- assess, and where appropriate obtain information, on the purpose and intended nature of the business relationship/transaction.¹⁵

If you are dealing with an agent, or someone acting on behalf of the ultimate client, as well as doing due diligence on the ultimate client, you must identify and verify the agent’s identity and verify that they are authorised to act for the ultimate client.

What this means in practice will depend on the nature of the client and of the business in question.

For example, if the client is a private company, you will need to obtain and verify:

- the name of the company
- its company number
- the address of its registered office and principal place of business, and
- to the extent reasonably practicable, the law to which the company is subject, its constitution and the full names of the board of directors and senior management.¹⁶

You will also need to identify the beneficial owner(s) of the company (ie those who own or control it with shareholders of 25% or more), take reasonable steps to verify the beneficial owner(s) and if the beneficial owner(s) is itself a legal entity to take reasonable steps to understand the ownership and control of that legal entity.¹⁷

In addition “enhanced due diligence” (EDD) must be done in certain situations where the risk of money laundering is higher (eg the transaction is unusually large or complex) or the customer is a current or recent Politically Exposed Person, or a family member or close associate of a “PEP”.¹⁸ This means obtaining even more detailed information on the identity of the client, the transaction/relationship and the client’s financial situation.¹⁹ Note that the law considers that any transaction relating to cultural artefacts or items of archaeological, historical, cultural or religious significance is a factor suggesting a higher risk of money laundering.²⁰

We expect that there will shortly be industry guidance specific to the art market to help you navigate the details of client due diligence. Some digital tools are also being developed to help art businesses manage client due diligence. However, if you rely on a third party to carry out client due diligence for you, you must be able to obtain immediately from the third party copies of all the information and verification documents, and you remain liable for any failure to conduct the required due diligence.²¹

When do I have to do due diligence?

All of this should be done before entering into a business relationship with a client, or conducting a trade, and should be refreshed periodically (typically at least every two years).²² Existing clients for whom you have not done any due diligence will also need to be reviewed.

You will also need to monitor the relationship on an ongoing basis to ensure that transactions are consistent with what you know about the client, and the client’s risk profile.²³ If enhanced due diligence was required, the ongoing monitoring will need to be correspondingly more stringent.

What if I find a discrepancy in the information?

You may need to report inconsistencies with information obtained from Companies House to the Companies Registrar (the form is [here](#)²⁴).²⁵ Depending on the nature of the inconsistency, this might also give rise to a suspicion of money laundering which you must report to the MLRO (if you have one) or directly to the National Crime Agency (NCA) (if you do not).²⁶

Keep records

You must keep records of all documents obtained for the purposes of due diligence for at least 5 years (but no more than 10 years) from completion of the transaction or the end of the business relationship and enough records to reconstruct any transactions.²⁷

You will need to have systems which allow you to answer questions rapidly to law enforcement as whether you have had a business relationship with any given person in the previous five years, and the nature of that relationship.²⁸

Report any suspicions of money laundering

If you come across any information in the course of your business that suggests that another person has or is dealing with the benefit of any crime – or of an activity that would have been a crime if it had happened in the UK – you must report it to your MLRO (if you have one) or the National Crime Agency (NCA) (if you don’t) (the form is [here](#)²⁹).³⁰ Clients should not be informed of this; if an investigation by the authorities were prejudiced as a result, the disclosure to the client could amount to a criminal offence.³¹

If you have employees, you will also need to:

Train your staff

You must train periodically employees who are responsible for compliance with the AML regime or would contribute to stopping any money laundering in the business, to ensure that they are aware of the relevant law, your procedures and how to recognise suspicious transactions.³² This is likely to include anyone responsible for finance processes and client-facing staff. You must also keep a written record of the training.³³

You may also need to:

Screen relevant employees

This applies if it is appropriate for the size and nature of your business. If so, you will need to assess the skills, knowledge and integrity of employees who are responsible for compliance with the AML regime or would contribute to stopping any money laundering in the business.³⁴

Establish an audit function

This applies if it is appropriate for the size and nature of your business. If so, an independent audit function will need to evaluate the effectiveness of your AML practices and recommend improvements where needed.³⁵

Apply the same policies across the group

If you have subsidiaries outside the UK, you must apply the same AML policies and procedures to your foreign subsidiaries.³⁶

Where can I get help?

It is expected that HM Treasury will approve industry guidance specific to the art market and compliance with that guidance will then be good evidence that you have complied with your obligations.³⁷ Until then, you may find the

guidelines produced by the Responsible Art Market initiative or the Basel Art Trade Anti-Money Laundering Principles helpful in developing your own procedures.

Otherwise, please feel free to contact **Davina Given** or **Sam Tate** at RPC or your usual RPC contact.



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Endnotes

1. The Money Laundering and Terrorist Financing (Amendment) Regulations 2019, which in turn amended the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the ML Regs), where most of the substantive rules are set out.
2. Reg 8 and 14(1)(d), ML Regs.
3. Reg 18, ML Regs.
4. Reg 35(12), ML Regs: "an individual who is entrusted with prominent public functions, other than as a middle-ranking or more junior official", including for a period of 12 months after they no longer have those functions (Reg 35(9), ML Regs). Examples include heads of state, members of parliament, members of governing bodies of political parties, members of supreme courts, ambassadors, members of the board of state-owned enterprises and directors of international organisations (Reg 35(14), ML Regs).
5. Reg 18(2), ML Regs.
6. Reg 19, ML Regs.
7. <https://www.gov.uk/guidance/register-or-renew-your-money-laundering-supervision-with-hmrc>
8. Reg 55(3) of the ML Regs.
9. Reg 26, ML Regs.
10. Reg 56(5), 86, and 75, ML Regs and Sch 6, paras 1 and 10, ML Regs.
11. Reg 21(3), ML Regs.
12. Reg 21(1), ML Regs.
13. Reg 27, ML Regs.
14. Reg 27(7C), ML Regs.
15. Reg 28(2), ML Regs.
16. Reg 28(3), ML Regs.
17. Reg 28(4), ML Regs.
18. Reg 33(1), 35, ML Regs.
19. Reg 33(3A), (4), (5), 35, ML Regs.
20. Reg 33(6)(b), ML Regs.
21. Reg 39, ML Regs.
22. Reg 27(8) and 30, ML Regs.
23. Reg 28(11), ML Regs.
24. <https://www.smartsurvey.co.uk/s/report-a-discrepancy/>
25. Reg 30A, ML Regs.
26. S330, Proceeds of Crime Act 2002.
27. Reg 40, ML Regs.
28. Reg 21(8), ML Regs.
29. [https://www.ukciu.gov.uk/\(4yb1f5zccowchbqpq5ketbr\)/saronline.aspx](https://www.ukciu.gov.uk/(4yb1f5zccowchbqpq5ketbr)/saronline.aspx)
30. S330 and Sch 9, para 1 of the Proceeds of Crime Act 2002.
31. S342, Proceeds of Crime Act 2002.
32. Reg 24, ML Regs.
33. Reg 24(1)(b), ML Regs.
34. Reg 21(1)(c) and 21(2) of the ML Regs.
35. Reg 21(1)(c), ML Regs.
36. Reg 20, ML Regs.
37. Reg 86(2), ML Regs.

The information and opinions provided in these articles should not be relied upon, or be used, as a substitute for legal advice on how to act in a particular case.

About RPC

RPC is a modern, progressive and commercially focused City law firm. We have 78 partners and over 600 employees based in London, Hong Kong, Singapore and Bristol. We put our clients and our people at the heart of what we do.

“... the client-centred modern City legal services business.”

We have won and been shortlisted for a number of industry awards, including:

- Best Legal Adviser every year since 2009 – Legal Week
- Best Legal Employer every year since 2009 – Legal Week
- Shortlisted – Banking Litigation Team of the Year – Legal Week Awards 2019
- Shortlisted – Commercial Litigation Team of the Year – Legal Business Awards 2019
- Shortlisted – Best Copyright Team – Managing IP Awards 2019
- Shortlisted – Insurance Team of the Year – Legal Business Awards 2018
- Winner – Best Employer – Bristol Pride Gala Awards 2018
- Winner – Client Service Innovation Award – The Lawyer Awards 2017
- Shortlisted – Corporate Team of the Year – The Lawyer Awards 2017
- Winner – Adviser of the Year – Insurance Day (London Market Awards) 2017
- Winner – Best Tax Team in a Law Firm – Taxation Awards 2017
- Winner – Claims Legal Services Provider of the Year – Claims Club Asia Awards 2016

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