

Avoid shades of grey: Anti-money laundering regulation comes to the art market

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A new law, which came into force on 10 January, has ushered in material changes to the regulation of the art market, extending the application of the UK's anti-money laundering legislation to the sector.

The new law, incorporating the Fifth Money Laundering Directive, introduces increased compliance requirements and the risk of criminal liability for businesses operating in the art market, meaning that companies and sole traders alike must now ensure their anti-money laundering processes and procedures are fit for purpose.



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The enhanced regulatory obligations will clearly affect customers, as well as art dealers.

The new regulations – which essentially amend existing legislation (The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017) – set out the obligations on the regulated sector in combatting money laundering and terrorist financing.

From 10 January 2020 these regulations now apply to “art market participants”, defined as a firm or sole practitioner who, by way of its business, trades in, or acts as an intermediary in the sale or purchase of “works of art”.

The obligations contained in the regulations only apply where the value of a transaction, or a series of linked transactions, is €10,000 or more.

Additionally, the regulations also apply to operators of freeports, where they store works similarly valued. “Works of art” includes pictures, collages, sculptures, tapestries, textiles, prints and ceramics. Other antiques are excluded.

What obligations do the regulations impose?

Essentially, businesses in the art sector will have to perform due diligence checks on their customers, as financial institutions and professional services firms are required to do.

They will need to identify their customer, including the beneficial owner of any corporate customer, and verify that identification by obtaining appropriate documentation.

Part of that process demands that “politically exposed persons” are identified and are subject to enhanced checks around source of wealth.

Outside the context of specific transactions, businesses will also need to take appropriate steps to identify and assess the risks of money laundering on their business, before establishing and maintaining policies and procedures to manage and mitigate those risks effectively.

As well as enhancing the regulatory obligations placed on the art market, the change in the law introduces the risk of criminal liability for sector participants, where they fail to report suspected money laundering.

The Proceeds of Crime Act 2002 (POCA) stipulates specific reporting obligations on the ‘regulated sector’, which now extends to the art market.

Businesses in the sector will be required to make a report to the authorities where they have reasonable grounds to suspect that a transaction (of €10,000 or more) involves the proceeds of crime.

They will also need to identify a nominated officer, who will be tasked to assess any concerns raised internally to determine whether a report needs to be made. Affected businesses will have a year by which to register their nominated officer with HMRC, the supervisory body for the sector.

These changes will obviously be felt by customers. In order to satisfy their regulatory obligations, art dealers may, in certain circumstances, be required to ask additional questions about the origins of funds and the financial circumstances of the buyer.

Inevitably, an obligation to conduct customer due diligence, and identify the beneficial owner of any purchasing corporate vehicle or structure, may deter some customers who place great importance on confidentiality.

Time will tell whether, and how, increased compliance obligations impact upon the life of the London market.

However, with a rising tide of regulatory enforcement, and given the potential criminal consequences, businesses will need to get to grips with these changes fast

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