

British Art Market Federation

Anti-Money Laundering and Financial Crime

GUIDELINES FOR MEMBERS

The Principles of Conduct of The UK Art Market, adopted by The British Art Market Federation (published in 2000) declares that:

‘Members have agreed to make themselves aware of relevant anti-money laundering laws and regulations and where applicable to report suspicions of money laundering to appropriate authorities and/or in-house anti-money laundering officers’

While the varied nature of the many businesses represented by BAMF makes it difficult to provide detailed rules, relevant to all members, BAMF sets out below some general ‘best practice’ guidelines for members.

It should be emphasised, however, that the laws and regulations covering anti-money laundering are complex and those in any doubt should seek professional advice.

Introduction

The aim of money laundering regulations is to prevent criminals exploiting legitimate businesses to hide the proceeds of criminal activity. So far as the art market is concerned, the main burden of the regulations falls on High Value Dealers, those who opt to accept cash payments over the limit of €15,000. Businesses falling into this category will need to register and fulfil a number of requirements, summarized in 5, below. But even businesses that opt not to accept cash payments above the €15,000 limit are still under an obligation to report suspicious transactions, as explained below, and are strongly advised to take the following steps, most of which amount to no more than normal prudent business practice.

1. What is meant by Money Laundering?

Money laundering is the process by which criminals attempt to introduce “dirty money” into the financial system, to invest it in legitimate investments or other property, and to conceal the true origin and ownership of such investments or property.

The offence of money laundering can cover all those involved with any part of the process whereby criminal money is converted into clean money, handling the proceeds of crime or stolen goods, or being involved with the laundering of money which is intended to fund terrorism.

2. What does the law require?

If you are classified as a High Value Dealer (HVD) you fall within the Regulated Sector and you are therefore subject to the Money Laundering Regulations 2007. A HVD is a dealer who accepts payments in cash of €15,000 or above for a single transaction.

For guidance on HVD and the procedures that relate to them, see Part 5 below.

However, dealers and auctioneers that are not specifically covered by the Money Laundering Regulations still have duties and responsibilities under the Proceeds of Crime Act 2002. The main offences under the Act are:

- a) Concealing, disguising or transferring criminal property
- b) Entering into an agreement to facilitate the acquisition, retention, use or control of criminal property
- c) Acquisition, use or possession of criminal property.

Similar offences are in place in relation to involvement in transactions intended to fund terrorism.

A limited defence to any of the above offences is that a report was made to the Serious Organized Crime Agency (SOCA) with consent sought to go ahead with the transaction, or that a report was made as soon as practicable after the act if there was a good reason for not making the report beforehand. SOCA is a division of HM Treasury.

Penalties for non-compliance with the Proceeds of Crime Act are an unlimited fine, 14 years imprisonment or both.

3. How should you act?

Be alert to the risks of money laundering

A useful approach, recommended by the Government, is to identify the risk presented by customer types and behaviour, products and services offered and methods of payment, and to take appropriate action to mitigate these risks (known as a “risk based approach”).

A risk based approach is intended to be tailored to your business, to target your attention and that of your employees and available resources to the persons or transactions most likely to be involved with criminal activity.

You should ensure that your employees and colleagues are aware of your assessment of money laundering risks and that they know what they need to do to mitigate those risks.

A risk based approach is not a risk free approach and in most cases there is still the possibility for criminal activity to slip through. In recommending a risk based approach, the Government has recognised that in the real world of limited resources, effort must be concentrated on the situations which are most likely to be used by criminals, where reasonably possible.

Banks located in Financial Action Task Force (‘FATF’) jurisdictions are required under regulation to undertake their own due diligence and anti money laundering checks. Accordingly, if you receive a cheque from a client drawn on a bank located in a FATF jurisdiction, you could reasonably assume that anti-money laundering checks have been done and that there are no issues with the payment or client. For information about FATF see: <http://www.fatf-gafi.org/>

However, suspicion should be aroused if, for example, a buyer wishes to make an unusually large payment in cash or by means of a cheque drawn on a bank located outside FATF jurisdictions. Cash transactions are generally untraceable so when they are offered for purchases, consider the surrounding circumstances carefully. If you are suspicious, consider

whether you should proceed with the transaction or whether you should make a suspicious transaction report (see 4, below, for details).

The risks can be greater when dealing with companies or trusts or offshore accounts or with new overseas clients. Guidance on high risk countries and individuals can be found on HM Treasury Sanctions List at:

http://www.hm-treasury.gov.uk/fin_sanctions_index.htm

This provides information on financial sanctions, including names of individuals and regimes which have been placed under financial restrictions and a list of EU investment ban targets. There is also a subscription service available to allow alerts to be sent on updates to the list. It is illegal to make funds available to any persons included on the list.

Know who you are dealing with

A common indication of money laundering may be a lack of transparency concerning the true owner of the property for sale or the source of funds for the purchase. Take a risk-based approach to identifying purchasers and verification of their identity through secondary sources.

Maintain a paper trail:

For example, ensure that vendors provide their name and address and sign a form identifying the item for sale and confirming that it is the unencumbered property of the vendor or that they are authorised to sell it.

Endeavour to verify the identity and address of new vendors and record their details (for example by taking a copy of their passport, driving licence etc).

When offered cash for purchases, consider the reasons for it critically.

Make sure that your employees and business colleagues are aware of money laundering regulations and know what their obligations are.

4. What should you do if you are suspicious of money laundering?

If a person feels that they may be at risk of committing an offence under the Proceeds of Crime Act, they must make a report to the Serious Organised Crime Agency (SOCA) and seek consent before proceeding with the transaction. A report may be made after the transaction, if it is done as soon as possible after the act and there was a good reason for not doing so earlier.

If you have suspicions that a transaction might involve or be linked to the funding of terrorism, you must make a report whether or not you intend to proceed with the transaction.

The procedure for reporting to SOCA is as follows:

- Make a report either through the 'SARs online' system preferred by SOCA or by printing off and sending the form. Forms and details of how reports can be sent are available on the SOCA website (www.soca.gov.uk).
- If you want to go ahead with the transaction you must seek consent from SOCA by ticking the 'consent required' box on the form.
- SOCA will respond within seven working days, starting the day after your report was sent.
- If consent is granted you may proceed with the transaction.
- If you have not heard from SOCA within the seven day period, it would be best practice to follow up with SOCA prior to concluding a sale.
- If consent is not granted, a 31 day moratorium period begins to allow SOCA to take further action. You may not proceed with the transaction during this period.

Having made a report to SOCA, you must not tell the person in question that a report has been made as this can constitute 'tipping off' which is an offence under the Proceeds of Crime Act. You should not tell anyone else that you have made a report unless it is strictly necessary.

5. The Regulated Sector (High Value Dealers)

A High Value Dealer (HVD) is a dealer who accepts payments in cash of €15,000 or over for a single transaction. HVDs are subject to additional regulations over and above the requirements of the Proceeds of Crime Act. If you sell several items to the same person at the same time, that is considered a single transaction. It does not help to split payments artificially. Cash includes travelers' cheques.

If you are a HVD, you are legally obliged to:

Register

If you do wish to accept cash payments of €15,000 or over you must register with HM Revenue & Customs. You register by calling the HMRC National Advice Service on 0845 010 9000, Mon-Fri 8am to 8pm and asking for a registration pack. You will have to pay a fee of £60 per annum for each set of premises involved (i.e. each set of premises where cash payments might be taken). HMRC will process your application within 45 days. You will be issued with a registration number. You will be reminded each year of the need to renew your registration and notify the premises concerned.

Obligations of HVDs

Your further obligations are set out under the acronym **CATCH**.

Controlling Your Business

You will be required to identify and report (or as the regulations put it "disclose") to SOCA all suspicious cash payments. If possible you should inform SOCA in advance of a pending suspicious cash payment and not proceed with it without their prior clearance. But if your suspicions are only aroused after the event, you should report it afterwards. You are not obliged to report all cash payments over €15,000, only suspicious ones. You must however keep records of the ID of the customers concerned.

Appoint Money Laundering Reporting Officer

You must nominate a Money Laundering Reporting Officer (MLRO), unless you are a sole practitioner, whose task will be to receive reports from staff on any suspicious deals and decide whether or not these should be allowed to go ahead and whether they should be reported to SOCA. You will also need to establish a procedure for covering for the MLRO in his absence.

Training

You need to train all your staff to ensure that they understand the new money laundering regulations and your policies and procedures for complying with them. This training needs to cover knowing who the MLRO is and what his responsibilities are and the requirements for establishing ID and record keeping. This training needs to be regularly updated and records kept of when training was provided.

Controlling Identity

You need to know your customers and when you do not know them, to take steps to establish their identity. To establish ID you should ask for primary ID (ie a document issued by the Government which includes a photograph) and secondary ID (ie a document such as a utilities bill to verify the information of the primary ID). If you have an ongoing relationship with the customer, you are not required to check their identity each time you do business with them. If the deal is made through an intermediary, you should also verify the identity of the beneficial owner. If you cannot obtain proof of ID, you should not do the deal and should consider making a report to SOCA.

Holding Records

You are required to keep relevant records for 5 years from the date of the transaction or end of the business relationship. These should include details of all suspicious deals of whatever level, evidence of ID seen, though not necessarily photocopies, and records of any disclosures to or correspondence with SOCA.