



## Art market regulation - Recent AML and financial crime developments

### Introduction

Tackling economic crime has moved to the top of the UK political agenda, with a key focus on combatting fraud. The publication of *the Economic Crime and Corporate Transparency Act 2023* at the end of last year brought in robust new laws and enforcement strategies to fight fraud, counter corruption and bolster legitimate interest and, showcases the Government's intention to make the UK the hardest place in the world for economic criminals to operate.

The Global Art Market has for some time, been seen as a "high-risk industry" for money laundering and terrorist financing. Indeed, in February 2023, the Financial Action Task Force published a report in which it categorised the Global Art Market as one which has historically "*attracted criminals, organised crime groups and terrorists seeking to launder the proceeds of crime*". In line with this, regulatory scrutiny of the Art Market in the UK is tighter than ever with an enhanced emphasis placed on identifying and raising awareness of the inherent risks within the Art Market and improving the safeguards put in place by Art Market Participants to mitigate against these risks. In January, the National

Crime Agency issued an Amber Alert on *Financial Sanctions Evasion, Money Laundering & Cultural Property Trafficking Through the Art Storage Sector* (available [here](#)).

In this Article, we look at the key updates to the regulatory landscape which Art Market Participants need to be aware of in order to ensure they, and their businesses, have the requisite policies and procedures in place to meet the relevant laws and regulations.

### Updates to BAMF Guidance

The UK Money Laundering and Terrorist Financing Regulations 2019 took effect on 10 January 2020 (the "**Regulations**") and brought the Art Market into the scope of the Money Laundering Regulations 2017 (the "**MLRs**") (as amended) via the introduction of the concept of Art Market Participants ("**AMPs**"). For the purposes of the Regulations, AMP is defined as:

*"A firm or sole practitioner who by way of business trades in, or acts as an intermediary in the sale or purchase of, works of art and the value of the transaction, or a series of linked transactions, amounts to 10,000 euros or more"*.

Shortly following the publication of the Regulations, the British Art Market Federation ("**BAMF**") published sector specific guidance, approved by HM Treasury, to assist the Art Market in understanding

their responsibilities under the MLRs (the "**Guidance**"). The Guidance has been updated twice since its original publication with the most recent version being published on 6 February 2023.

In accordance with the provisions of the MLRs, AMPs are required to conduct customer due diligence measures ("**CDD**") on customers to: (i) identify the customer; (ii) verify the customer's identity; and (iii) assess the purpose and intended nature of the business relationship or occasional transaction with that customer.

The definition of "*customer*" for the purposes of AMP's requirements under the MLRs has evolved since the original publication of the Guidance. Under the original Guidance, "*customer*" for CDD purposes was both the direct customer (which for industry purposes, is usually the buyer's broker) and the "*ultimate customer*" (i.e. the "*end*" buyer). However, revisions to the Guidance have since removed the notion of "*ultimate customer*". In some cases, and with reference to the examples of multi-party transactions given in the Guidance, this amendment may serve to streamline the CDD process.



The identify of a person "*behind*" a transaction however remains relevant and important. AMPs have obligations under the Proceeds of Crime Act 2002 ("**POCA**") and UK Sanctions Regime to ensure that they are not dealing with or transacting with any sanctioned person. AMPs may therefore need to conduct further checks which may involve the AMP identifying and verifying the identity of the person "*behind*" a transaction to ensure compliance. Careful consideration must also be given to the definition of "*beneficial owner*", under the MLRs, which can include, "*the individual ... on whose behalf a transaction is being conducted*". Reg 28(4) of the MLRs requires AMLs to "*identify the beneficial owner*" and "*take reasonable measures to verify the identity of the beneficial owner so that the relevant person is satisfied that it knows who the beneficial owner is*".

## Updates to the proceeds of Crime Act 2002

The Economic Crime and Corporate Transparency Act 2023 ("**ECCTA**") came into force on 26 October 2023 with the objective of taking forward the government's focus on combatting economic crime and increasing corporate transparency. In line with this, the ECCTA brought about important amendments to POCA, many of which became effective on 15 January 2024. Of key significance for AMPs are the provisions relating to *mixed property transactions and, customer information sharing*.

### Mixed Property Transactions

In accordance with section 183 ECCTA, where a business in the regulated sector (i.e., an AMP) converts, transfers or removes criminal property in the course of business on behalf of a client into an account and that business knows or suspects that some of the amount in the account is criminal property, but cannot identify which part, the business can deal with the property in the account, so long as the value of the funds in the account does not reduce to less than the value of the criminal property.

Previously, where a business received funds which were believed to be criminal property into an account, the entire account was deemed to be "*tainted*" and could not be dealt with in any way, without permission being received from the National Crime Agency ("**NCA**") in the form of a DAML. The amendments brought in by the ECCTA are therefore particularly helpful where an AMP operates a mixed account. Going forward, where funds are received which are suspected to represent criminal property, the AMP may continue to deal with the account (e.g., pay wages and overhead costs), so long as the balance of the account does not fall below the value of the suspected criminal property.

### Customer Information Sharing

Historically, businesses in the regulated sector (including AMPs) have been constrained in their ability to share information regarding customers. The amendments to POCA, contained in section 188 of the ECCTA, are designed to make it easier for relevant businesses to be able to share customer information with each other for the purposes of preventing, investigating and detecting economic crime, by removing civil liability for breaches of confidentiality where information is shared for such purposes.

In accordance with section 188 ECCTA, businesses in the regulated sector may share information where the entity sharing the information ("A"), is satisfied that the disclosure of the information to B would assist B in carrying out the relevant functions of B, for example the prevention or detection of economic crime. Note, information subject to legal privilege cannot be shared, however, in all other circumstances, A may share the information with B, without breach of confidentiality or civil liability on the part of A.



In order for the provisions of section 188 to apply, either the request condition or the warning condition must be met:

- 1) **Request Condition:** where disclosure is made by A in response to a request by B and, at the time the request is made, B has reason to believe A holds information about a customer of A which would / might assist B in carrying out the relevant functions of B; or
- 2) **Warning Condition:** due to risks of economic crime, A has decided to take safeguarding action against the relevant customer.

Within the Art Market, the provisions of section 188 ECCTA should serve as particularly useful for the identification and communication of "red flag" clients who are known across the market.

### Updates to the List of High-Risk Jurisdictions

In accordance with the provisions of the MLRs, regulated businesses are required to undertake enhanced due diligence ("**EDD**") measures and enhanced ongoing monitoring in any business relationship or transaction with a person or entity established in a "*high risk third country*".

The Money Laundering and Terrorist Financing (High Risk Countries) (Amendment) Regulations 2024

came into force on 23 January 2024 (the "**2024 Regulations**"). Prior to the publication of the 2024 Regulations, the list of high risk third countries was set out in Schedule 3ZA of the MLRs. The 2024 Regulations have however, deleted and replaced Schedule 3ZA by redefining high risk third countries as those countries identified by the FATF on either of the lists it publishes from time to time, known as the "black list" and the "grey list", available here:

["Black and grey" lists \(fatf-gafi.org\)](https://www.fatf-gafi.org/en/black-and-grey-lists)

The 2024 Regulations are intended to streamline updates to the list of high-risk jurisdictions in respect of which EDD must be conducted by aligning the UK list with the FATF lists.

AMPs, as regulated businesses, must take note of the FATF lists, and ensure that policies and procedures are updated to reflect the revised list. Crucially, EDD and enhanced ongoing monitoring must be applied to all customers, new and existing, established in any of the high-risk jurisdictions, as identified by the FATF lists.

### What to do next

In line with the updates noted above and the Government's renewed focus on fighting economic crime particularly within what it deems high risk sectors, AMPs need to be more vigilant than ever in ensuring that they have in place policies and procedures which comply with the relevant regulatory regime.

We have set out below four key takeaways for AMPs:

- 1) AMPs should review their Anti-Money Laundering policies against the new BAMF Guidance and update those policies where necessary;
- 2) AMPs should ensure they remain up to date on legislative and policy amendments as they are released, including the FATF lists and NCA / BAMF bulletins and guidance;
- 3) AMPs should be prepared in the event of an inspection from HMRC and take note of the need to demonstrate compliance with applicable legislation and show the existence of robust systems; and
- 4) AMPs should be aware of the obligation to disclose and the new rules on information sharing and mixed property transactions.

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