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Reforms bring art market participants within scope of the UK's anti-money laundering regime

The art market has now been brought within scope of the UK's anti-money laundering regime and the majority of art traders, intermediaries and other participants in the market will now need to ensure that they comply with the relevant regulations in order to avoid facing a range of civil and criminal sanctions, as well as regulatory and reputational risks.

How did we get here?

The UK has transposed the Fifth Anti-Money Laundering Directive into domestic law in the UK by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (the 2019 Regulations), which came into force on 10 January 2020 and amend the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the MLRs).

Prior to the recent changes, only "high value dealers" in the art market (broadly, businesses making or receiving cash payments for a transaction of at least €10,000) were subject to the MLRs. Traders and intermediaries could therefore remain outside the scope of the regime, as long as they did not accept cash payments.

However, participants in the art market will now fall within the scope of the MLRs if they are involved in transactions amounting to €10,000 or more, irrespective of the method of payment. These firms will need to register with HMRC as their AML supervisor and comply with the MLRs' requirements with respect to risk assessments, policies and procedures, customer due diligence (CDD), and suspicious transaction reporting, for example.

Implications for those already subject to the MLRs

Art market traders who have already been complying with the MLRs will also have to pay attention to the changes introduced to the existing regime by the 2019 Regulations. These include:

1. A further push towards greater transparency on beneficial ownership

The rules on CDD are amended to impose an obligation on firms, before establishing a business relationship with certain types of company or partnership, to collect proof of that customer's registration with Companies House; and, in due course, report to the Registrar of Companies any discrepancies they uncover between information filed on the Persons with Significant Control Register and any other information relating to a customer's beneficial ownership of which they might become aware.

Where firms have exhausted all possible means of identifying the beneficial owner of a corporate customer and are not satisfied that they have been able to do so, they must take reasonable measures to identify – and verify the identity – of the senior person responsible for managing that customer and keep records of all of the actions and difficulties encountered in doing so.

2. Expansion and clarification of the circumstances in which enhanced due diligence (EDD) is required.

There has also been an expansion and clarification of firms' EDD obligations. For example:

- an express requirement to apply EDD in relation to any relevant transaction where either of the parties to it are established in a "high-risk third country";

- some slight changes in the wording previously used in the MLRs (the replacement of some "and"s with "or"s) has resulted in an increased range of transactions in respect of which it is necessary for firms to conduct EDD. This is now required in circumstances where a transaction is complex, or unusually large, or where there is an unusual pattern of transactions, or where the transactions in question have no apparent economic or legal purpose; and
- further specific risk factors to which firms should have regard when assessing whether a situation presents a higher AML/CTF risk have been added to the current list, including whether the customer is seeking residence rights in exchange for an investment in the relevant EEA state.

What should businesses in the art market be doing?

As well as registering with HMRC as their AML supervisor, firms who are now caught by the MLRs for the first time will need to introduce policies and procedures (or update existing policies and procedures) to ensure they comply with the key elements of the regime:

- CDD;
- EDD;
- identification of beneficial owners;
- ongoing monitoring and risk assessments; and
- record-keeping requirements.

They will need to notify and train staff and monitor compliance with new policies and procedures.

Firms that have already been complying with the MLRs will need to make appropriate changes to reflect the amended legislation, including undertaking a gap analysis to identify where changes are required to existing processes and procedures, considering the extent to which the amendments have any impact on the firm's risk appetite and financial crime risk assessment, and notifying and training staff on the changes.

Firms should make sure that the exercise is documented so that HMRC can see that the firm has taken the appropriate steps to ensure compliance.

Firms in breach of the MLRs might be subject to a wide range of civil and criminal sanctions, as well as regulatory and reputational risks. Firms should therefore ensure that they take the steps outlined above in order to comply with the MLRs and avoid the risk of sanctions.

We have extensive experience of designing and implementing tailored AML systems and controls including:

- risk appetite statements;
- financial crime risk assessments;
- AML policies and procedures relating to CDD;
- monitoring processes and procedures;
- record-keeping policies; and
- staff training.

We would be delighted to assist you in putting an appropriate compliance programme in place or updating existing policies and procedures.

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