

Questionnaire: Proposed Reporting Obligations: Extending Relevant Firms Measure

Respondent Information
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<input checked="" type="checkbox"/> Please tick if you are responding on behalf an organisation
Name of organisation (if applicable): British Art Market Federation on behalf of Antiquarian Booksellers' Association, Antiquities Dealers' Association, Bonhams Auctioneers, The British Antique Dealers' Association, Christie's Auctioneers, LAPADA the Association of Art & Antique Dealers, Phillips Auctioneers, The Society of Fine Art Auctioneers and Valuers, The Society of London Art Dealers and Sotheby's Auctioneers.
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<p>OFSI is currently exploring potential changes to enhance the UK's sanctions reporting framework. These changes may include expanding the scope of reporting obligations to further align with the sectors currently set out in anti-money laundering regulations by including Art Market Participants, High Value Dealers, Letting Agency Businesses and Insolvency Practitioners in the definition of 'relevant firms' required to report certain information to OFSI. OFSI believes extending reporting obligations to these sectors may improve OFSI's understanding of how sanctions are implemented and complied with in the UK. In turn, this may support HMT in achieving its functions of monitoring compliance and detecting evasion, as well as assist wider Government objectives such as assessing the efficacy of existing and proposed UK sanctions.</p> <p>By extending this reporting requirement to your sector, firms/persons in your sector would be required to report the following to HMT:</p> <ol style="list-style-type: none"> If they have encountered suspected designated persons ("DPs") (asset freeze targets only) in the course of business. The nature and amount of any funds or economic resources they hold on behalf of these DPs. If they suspect that a person has committed certain offences under sanctions legislation. <p>Every year OFSI also carries out a review to update our records to reflect any changes to frozen assets during the reporting period. As part of this review, OFSI requests all persons that hold or control funds or economic resources belonging to, owned, held, or controlled by a designated person, to provide a report to us with the details of these assets. By way of example, OFSI's information request for its 2023 Frozen Assets review can be found here.</p> <p>We would be grateful for your views on the proposed changes through answering the questions below. These questions are aimed at improving OFSI's understanding of the impact of the proposed measure (including the nature and extent of any changes that sectors might need to introduce to ensure compliance).</p>

1. Do you foresee any benefits with the proposed change?

Limited benefits.

Sanctions legislation currently in force prohibits transactions with designated persons, freezes their assets and imposes reporting obligations in relation to assets held.

Further, the Proceeds of Crime Act 2002 also make it an offence to deal with criminal property, being a benefit resulting from criminal conduct

Art Market Participants (AMPs) and banks are also already subject to extensive reporting obligations in relation to suspected money laundering and suspected criminal conduct – which would include sanctions breaches such as the purchase of works of art by sanctioned persons.

Alerts issued by the NCA (e.g. the January Amber Alert *Financial Sanctions Evasion, Money Laundering & Cultural Property Trafficking Through the Art Storage Sector*) ensure heightened awareness and that sanctions and money laundering are addressed together as part of the same co-ordinated initiative.

These legal transactional prohibitions and obligations are in our view sufficient to prevent dealings by AMPs with DPs and ensure that breaches are reported.

2. Do you foresee any challenges with the proposed change?

It should be understood that most AMPs are micro businesses that only occasionally carry out transactions that come within scope of the regulations (when selling works of art for €10,000 or more), and they already find their AML obligations extremely onerous. The addition of yet more reporting obligations will add to their compliance burden (described further in the answer to question 3).

AMPs do not currently fall within the definition of Relevant Firms and are therefore not currently under an obligation to report funds or economic resources belonging to a designated person which are held for the designated person.

There are some practical challenges with the proposals in relation to reporting encounters and suspected breaches:

Reporting encounters with DPs in the course of business.

Non-transactional encounters with DPs or their assets are not generally prohibited

Sanctions impose a prohibition on transacting with or dealing with the assets of designated persons. There are no obligations in the legislation relating to encounters with a designated person, whether in the course of business or otherwise, so we do not believe that it is appropriate to have a reporting obligation in respect of any such encounters.

Reporting encounters may be contrary to the subject's GDPR rights

In the absence of an offence having been committed or the investigation of a crime, reporting an encounter may well constitute a breach of the subject's data protection rights. An AMP would need to take advice in each case on whether the reporting obligation over-rides the subject's GDPR rights. And if the reporter made the wrong judgment it would be exposed to a complaint and subject to fines and penalties by the Data Commissioner.

Lack of clarity in circumstances where complete clarity is required

The consequences of failure to comply with sanctions reporting obligations are unusually serious. As a result nothing less than absolute clarity is required to ensure that the public are clear about what is permissible or not and what circumstances will trigger an obligation to report.

Encounters are not currently prohibited or reportable because – we would suggest - in contrast to transacting or dealing with assets, it would be difficult or impossible for any person to determine with any certainty what constitutes an encounter and what type or circumstances of an encounter might trigger a reporting obligation. An encounter could be a transaction, but it could equally be coming across someone in the street in London's art district, being at an art fair at the same time as someone, being in the same restaurant as someone else, an invitation to lunch, quasi social/business encounters, an invitation to visit someone at home or on holiday. It would be difficult to know which of these are encounters which could or should be reported. It would also be extremely difficult for an organisation to set up a monitoring and reporting system to ensure that such incidental and chance encounters are logged and reported. A serious obligation which arises in circumstances which are not clear would be unfair on the public given the serious consequences for failure to report.

Suspicion that a person has committed certain offences under sanctions legislation.

AMPs are also currently reporting transactions where there are suspicions of money laundering or illegal activity to the NCA using SARs. Reporting of sanctions breaches using the SAR system is explicitly encouraged by the NCA (see January 2024 Amber Alert). Suspicious transactions involving AMPs are therefore subject to an existing reporting regime.

Requiring AMPs to report sanctions breaches through another reporting regime would then result in two separate reporting regimes which could cause confusion.

3. What existing policies, systems and processes do firms in your sector currently have in place to ensure sanctions compliance and to capture sanctions evasion?

AMPs are subject to the obligations of the Money Laundering, Terrorist Financing and Transfer of Funds (information on the payer) Regulations 2017. Extensive guidance is given in the Treasury-approved BAMF guidelines which require risk assessments, written AML policies, AML training, customer KYC and verification, reporting of suspicious transactions to the NCA and record keeping. Compliance is audited by HMRC who have access to NCA suspicious activity reports.

AMPs are also subject to the requirements and sanctions under the Proceeds of Crime Act 2002 in relation to the acquisition, possession or handling of criminal property.

Policies, systems and controls are likely to vary substantially across the AMP sector due to the different sizes of the firms involved and the different resources available. An auction house's

sanctions screening systems may be relatively sophisticated, but a small one-man dealership is will have a much more basic approach.

4. Will the introduction of this measure have any impact or cost implications on your sector's current procedures, systems and processes?

Yes. Compliance will involve very significant resources, particularly given the uncertainty around the circumstances giving rise to a reporting obligation. There will need to be training, monitoring, legal advice and time spent reporting. This will be onerous for all organisations but particularly for small to medium sized firms without legal and compliance functions. We believe that this is disproportionate to any benefit given that the existing prohibition on dealing with DPs or their assets – and the existing reporting obligations provide ample insurance against non-compliance with sanctions legislation. The additional administrative burden would also put the UK art market at a significant disadvantage to art markets elsewhere. Because AMPs are subject to strict anti money laundering and POCA requirements they are alert to the requirements of sanctions. Building two reporting regimes is likely to cause confusion and quite possibly reduce their effectiveness in practice. Clarity is key.

5. Are there any further sector-specific considerations HM Treasury should be aware of if it proceeds with expanding the relevant firms list to these sectors?

Please e-mail this form by **11 March 2024** to: ofsiengagement@hmtreasury.gov.uk