

AML/CFT GUIDANCE FOR THE ART SECTOR

PURPOSE AND CONTENTS

The Financial Intelligence Unit of Trinidad and Tobago (“the FIU”) provides this sector specific guidance to entities collectively referred to as ‘the art sector’ on their legal obligations under the Anti-Money Laundering/Counter Financing of Terrorism (AML/CFT) laws of Trinidad and Tobago. In this guidance, these entities collectively referred to as ‘the art sector’ include any individual or company that buys and sells works of any category of art.

This guidance uses plain language to explain the most common situations under the specific laws and related regulations which impose AML/CFT obligations. It is provided as general information only. Because AML/CFT obligations are contained in several laws, amendments and regulations, it would be easier for the gambling sector to access the relevant provisions pertaining to their obligations in one place. It is not legal advice, and is not intended to replace the AML/CFT Acts and Regulations.

The use of the word “**must**” indicates a legislative requirement, “**should**” indicates a best practice and the word “**may**” states an option for you to consider.

This guidance, which is divided into ten (10) parts, includes:

1.	Do these obligations apply to you? - Clarification on the specified business activities which apply to the Art Sector.
2.	What is a Listed Business?
3.	The role and function of the FIU in the AML/CFT regime.
4.	What is Money Laundering?
5.	What is Financing of Terrorism?
6.	Why are entities in the Art Sector designated as a Listed Business?
7.	Examples of Money Laundering using the Art Sector.
8.	What are your AML/CFT legal Obligations? - An explanation of the main AML/CFT legal obligations, how they should be applied and Best Practices.

9.	Offences & Penalties.
10	Additional Resources.
Appendix – Suspicious Transactions/Activities Indicators	

PART I

DO THESE OBLIGATIONS APPLY TO YOU?

Clarification on the specified business activities which apply to the Art Sector

These obligations apply to all types of Listed Business in the art sector that satisfy the criteria below. If you are an employee of a Listed Business, these obligations are the responsibility of your employer except with respect to reporting suspicious transactions and terrorist property, which is applicable to both.

The Art Sector

An art dealer is a Listed Business described in the First Schedule to the Proceeds of Crime Act Chap. 11:27 (“the POCA”) as *‘an individual or company that buys and sells works of any category of art’*.

Therefore, if you buy and sell works of any category of art or own or operate a company which does so, the AML/CFT obligations detailed herein apply to you.

Accordingly, this guidance applies to you if you are a buyer, vendor, or intermediary involved in the sale of art works as professionals and includes for example auction houses, galleries, museums and art fairs and other art market operators.

Art includes works of drawing, painting, sculpture, engraving, lithography, photography and tapestry.

PART 2**WHAT IS A LISTED BUSINESS?**

A Listed Business is any business activity or profession listed in the First Schedule to the POCA. Listed Businesses are those business activities and professions which have been identified as being at the highest risk of coming across crime proceeds and terrorist property. Business activities which have been identified as more vulnerable include buying and selling works of any category of art.

If you carry on the business activities described in Part 1 you are a Listed Business. Your business falls under the supervisory remit of the FIU. You have to comply with legal obligations under the AML/CFT laws of Trinidad and Tobago and the FIU as your Supervisory Authority monitors your compliance.

The AML/CFT laws of Trinidad and Tobago in which you will find your obligations are:

- (1) **Proceeds of Crime Act, Chap. 11:27 (“the POCA”)** - applies to all persons, but certain offences such as failure to report suspicious transactions only apply to Listed Business and Financial Institutions.
- (2) **Anti-Terrorism Act, Chap. 12:07 (“the ATA”)** - establishes several offences for engaging in or facilitating terrorism, as well as raising or possessing funds for terrorist purposes. The ATA applies to all persons but certain offences such as the failure to report suspicious transactions only apply to Listed Business and Financial Institutions.
- (3) **Financial Intelligence Unit of Trinidad and Tobago Act, 2009, Chap. 72:01 (“the FIU Act”);**
- (4) **Financial Obligations Regulations 2010;**
- (5) **Financial Intelligence Unit of Trinidad and Tobago Regulations 2011;** and
- (6) **Financial Obligations (Financing of Terrorism) Regulations 2011.**

PART 3

THE ROLE AND FUNCTION OF THE FIU IN THE AML/CFT REGIME

The FIU is Trinidad and Tobago's Financial Intelligence Unit. The FIU was established under the FIU Act pursuant to Recommendation 26 of the 40+9 Recommendations of the Financial Action Task Force (the FATF). Recommendation 26 (now Recommendation 29 of the new FATF's 40 Recommendations) mandates every country in the world to have a FIU to serve as the information related arm in efforts to combat Money Laundering, Financing of Terrorism and related crimes.

The FIU was created as an administrative type FIU, in that it does not have law enforcement or prosecutorial powers. Rather, it is a *specialised intelligence agency* which is legally responsible for producing financial intelligence for Law Enforcement Authorities (LEAs).

The FIU became operational in 2010 when it was established by virtue of the proclamation of the FIU Act. It is an autonomous department within the Ministry of Finance and the Economy.

The FIU works in very close partnership with Financial Institutions and Listed Businesses to ensure that those individuals and entities comply with their obligations to report certain information to the FIU. The FIU supervises and monitors Listed Businesses for compliance with their AML/CFT obligations.

(1) Analyses and Produces Intelligence Reports

Essentially, the FIU is responsible for producing financial intelligence that is then disclosed to LEAs for investigation. To do this, the FIU receives suspicious transaction reports and requests financial information from various reporting entities such as banks, credit unions and other financial institutions, accountants, attorneys-at-law, money services businesses, art dealers, motor vehicle sales, real estate, private members' clubs. A total of seventeen (17) different reporting sectors **must** provide suspicious transaction reports and financial information to the FIU.

When the FIU receives the suspicious transaction reports and information, the FIU conducts analysis and looks for links between the financial information received, other relevant

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information from different sources, information provided by LEAs, as well as from other international partners. Once the analysis leads to the belief that the transaction is related to suspicions of Money Laundering or Financing of Terrorism, the FIU sends an *intelligence report* to the LEAs who will investigate the matter. The LEAs who investigate intelligence reports from the FIU are the Commissioner of Police, Comptroller of Customs and Excise, Chief Immigration Officer and Chairman of the Board of Inland Revenue.

The FIU receives many reports of suspicious transactions from reporting entities; but within those reports are legitimate transactions. The FIU's analysis is therefore; to identify from the reports those transactions on which there are reasonable grounds to suspect involvement in Money Laundering or Financing of Terrorism or related crimes. These transactions are disclosed to LEAs in an intelligence report.

Only transactional information and information relating to the suspicion of Money Laundering and Financing of Terrorism are contained in the FIU's Intelligence reports. For example, the name and other information of the person who or entity which actually submitted the report would not be provided to LEAs.

(2) Supervises for AML/CFT Compliance

Another important function of the FIU is to ensure compliance with obligations under the POCA, the ATA, the FIU Act and the Regulations made under those Acts. The FIU is the Supervisor for Listed Businesses and non-regulated financial institutions which have obligations under those Acts and Regulations and is responsible for making sure that they are meeting those obligations.

Activities related to the FIU's compliance mandate include educating and providing guidelines (such as this one), and enhancing public awareness of Money Laundering and Financing of Terrorism to allow entities who have AML/CFT obligations to be aware and know exactly what they need to do in terms of meeting their obligations. The FIU also approves compliance programmes, conducts on-site inspections and takes action to ensure that the law is being respected by the entities it supervises.

PART 4

WHAT IS MONEY LAUNDERING?

Money Laundering is the process by which funds derived from criminal activity (“dirty money”) are given the appearance of having been legitimately obtained, through a series of transactions in which the funds are ‘cleaned’. Money Laundering allows criminals to maintain control over those proceeds and, ultimately, provide a legitimate cover for the source of their income.

For Money Laundering to take place, first, there must have been the commission of a serious crime which resulted in benefits/gains (illegal funds) to the perpetrator. The perpetrator will then try to disguise the fact that the funds were generated from criminal activity through various processes and transactions which may also involve other individuals, businesses and companies. There is no one single method of laundering money. Methods can range from the purchase and resale of a luxury item (e.g., cars or jewellery) to passing money through legitimate businesses and “shell” companies or as in the case of drug trafficking or other serious crimes, the proceeds may be in the form of cash which needs to enter the financial system by some means.

There are three (3) acknowledged methods in the Money Laundering process. However, the broader definition of Money Laundering offences in POCA includes even passive possession of criminal property.

(1) Placement

Criminally derived funds are brought into the financial system. In the case of drug trafficking, and some other serious crimes, such as robbery, the proceeds usually take the form of cash which needs to enter the financial system. Examples of Placement are depositing cash into bank accounts or using cash to purchase property/assets. Techniques used include Structuring - breaking up a large deposit transaction into smaller cash deposits and Smurfing – using other persons to deposit cash.

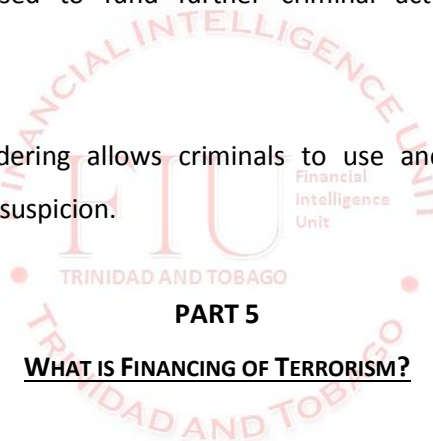
(2) Layering

This takes place after the funds have entered into the financial system and involves the movement of the funds. Funds may be shuttled through a complex web of multiple accounts, companies, and countries in order to disguise their origins. The intention is to conceal, and obscure the money trail in order to deceive LEAs, to make the paper trail very difficult to follow and to hide the criminal source of the funds.

(3) Integration

The money comes back to criminals “cleaned”, as apparently legitimate funds. The laundered funds are used to fund further criminal activity or spent to enhance the criminal's lifestyle.

Successful Money Laundering allows criminals to use and enjoy the income from their criminal activity without suspicion.



Financing of Terrorism is the process by which funds are provided to an individual or group to fund terrorist activities. Unlike Money Laundering, funds can come from both legitimate sources as well as from criminal activity.

Funds may involve low dollar value transactions and give the appearance of innocence and may come from a variety of sources. Funds may come from personal donations, profits from businesses and charitable organizations e.g., a charitable organization may organise fundraising activities where the contributors to the fundraising activities believe that the funds will go to relief efforts abroad, but, all the funds are actually transferred to a terrorist group. Funds may come, as well as from criminal sources, such as the drug trade, the smuggling of weapons and other goods, fraud, kidnapping and extortion.

Unlike Money Laundering, which precedes criminal activity, with Financing of Terrorism you may have both legitimate fundraising as well as a criminal activity generating funds prior to the terrorist activity actually taking place. However, like money launderers, terrorism financiers also move funds to disguise their source, destination and the purpose for which the funds are to be used. The reason is to prevent leaving a trail of incriminating evidence - to distance the funds from the crime or the source, and to obscure the intended destination and purpose of the funds.

PART 6

WHY ARE ENTITIES IN THE ART SECTOR DESIGNATED AS A LISTED BUSINESS?¹

The FATF, an inter-governmental body established in 1989, sets international standards with the aim of protecting the international financial system from misuse. These standards have been revised and expanded to cover emerging threats of money laundering well beyond drug money and to deal with the issue of funding terrorist activities. In 2012 the FATF reviewed its recommendations and reissued 40 Recommendations on Combating Money Laundering, the Financing of Terrorism and Proliferation. All countries must implement effective measures to bring their national systems into compliance with these revised FATF Recommendations. FATF Recommendation 28 requires that certain non-financial businesses and professions (referred to as Listed Businesses), should be subject to a comprehensive regulatory and supervisory regime that ensures that they have effectively implemented the necessary measures to detect and deter money laundering and financing of terrorism. These listed businesses include those businesses which deal in goods of high value such as works of art.

¹ The information reproduced here is extracted in part from:

Basel Art Trade Guidelines, Working Paper series No 12, Thomas Christ, Claudia von Selle, 2012;
Money Laundering and the Art Market, Paris, 1 March 2012, Art Media Agency (AMA)
<http://en.artmediaagency.com/37635/money-laundering-and-the-art-market/>; and

Valuable as Art, but Priceless as a Tool to Launder Money by Patricia Cohen, 12 May 2013, The New York Times
<http://www.nytimes.com/2013/05/13/arts/design/art-proves-attractive-refuge-for-money-launderers.html?pagewanted=all&r=0>

As traditional money laundering techniques have come under closer scrutiny persons with illegally obtained funds have increasingly turned to the art market. The Basel Art Trade Guidelines have estimated the global art trade to be in the region of 30 to 40 billion Euros annually. ²

Studies have found that certain characteristics peculiar to the art sector make it susceptible to illegal activity such as:³

1. It is characterized by discreet, confidential transactions, often of a high value.
2. The art sector is an extremely diverse market area bringing together a wide range of highly diverse players. Market participants can assume the multiple roles of auctioneers, dealers and collectors which, in other markets, would involve conflicts of interest.
3. The art sector is dominated by a few auction houses and a myriad of art-dealers. These in turn are organised in a variety of trade associations which may subscribe to a great range of different ethical standards.
4. The art sector largely operates independently of the financial markets and the fluctuations of share prices, yet displays comparable characteristics by exposing its trade objects to often dramatic and sometimes inexplicable changes in value.
5. Akin to the real estate sector, the art sector has the reputation of a '*refuge de valeur*', which means that the more tightly the financial sector is regulated and controlled, the more copiously funds flow into the art world.
6. Apart from the use of art sales for the purpose of money laundering the volume of illegal or legally questionable transactions encompasses looted art, professional counterfeiting and fake certificates.

The art market has other advantages for launderers apart from the difficulty in accurately discerning a work's worth, and that is of the highly mobile and informal nature of exchanges. Art works are often highly valuable and readily transported, and may be privately sold without respecting the correct

² Basel Art Trade Guidelines, Working Paper series No 12, Thomas Christ, Claudia von Selle, 2012

³ *ibid*

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formalities. Though there are no hard statistics on the amount of laundered money invested in art, law enforcement officials and scholars agree they are seeing more of it.

Therefore, as an entity in the Art Sector you are part of the national safeguard efforts to prevent money laundering and financing of terrorism as you and your business are at risk of becoming an unwitting party to these crimes.

PART 7

EXAMPLES OF MONEY LAUNDERING USING THE ART SECTOR

Case 1: Fake Auction

The process involves a launderer putting a work up for auction which will be bought by an accomplice paying the auctioneer in cash using dirty money. The launderer/seller then receives a cheque from the auctioneer, and the money has thus been successfully laundered. The same technique can be used to the benefit of a dealer.

In August of 2000, the client entered a contract with a Swiss art dealer to buy and sell a well-known piece of art. The art dealer obtained the painting from a renowned European gallery for USD 10 million. The art dealer then sold the painting to an overseas company for USD 11.8 million. This company was acting as the exclusive agent of yet another overseas company. The two end buyers of the painting were the beneficial owners of that company. For their services rendered, the persons involved in the deal were to share the difference between the purchase price and the sales price; the client should receive USD 1.5 million, and the art dealer USD 100,000. Those involved in the deal did not know each other, nor were they aware of how much money each would receive. A few days after it had been bought, the painting was turned over to an auction house for further sale.

In May 2001, the Swiss art dealer learned that one of the end-buyers was allegedly entangled in an international corruption and money-laundering scheme. A high-ranking dignitary and fellow countryman of the person were reportedly also involved in this affair. Considering these circumstances, it was likely that the money used to buy this painting was of criminal origin. The Swiss art dealer notified MROS about his suspicions. The case has been passed on to law enforcement.

Source: Egmont Group, The Role of Financial Intelligence Units in Fighting Corruption and Recovering Stolen Assets, An Egmont Group White Paper.

Case 2: Smuggling Artwork

The painting known as “Hannibal” was snuck into the U.S. in 2007 as part of a Brazilian embezzler’s intricate scheme to launder money. The top-level artwork by American artist Jean-Michel Basquiat was worth \$8 million.

“Hannibal” was shipped to New York in 2007, passing through four shipping agents in two countries before ultimately landing at New York’s JFK Airport. An air bill, stamped on the crate arriving at JFK Airport from London, claimed there was an untitled painting inside worth \$100. Merchandise that is valued at less than \$200 is allowed to enter the United States without customs documentation, duty or tax. “Hannibal” – which according to its label was only valued at \$100 – was cleared for entry even before the airplane carrying it landed in New York. It was subsequently confiscated at a warehouse in Manhattan by U.S. investigators.

Source: *Stolen Asset Recovery Initiative (STAR) – The World Bank and UNODC – Corruption Cases*
<http://star.worldbank.org/corruption-cases/node/18495>

Case 3: Drug Trafficking funds expensive art collection purchase

A Financial Intelligence Unit received information that a previously convicted drug trafficker had made several investments in real estate and was planning to buy an expensive art collection. An assessment of his financial situation did not reveal any legal source of income, and he was subsequently arrested and charged with an offence of money laundering.

Further investigation substantiated the charge that part of the invested funds were proceeds of his own drug trafficking. He was charged with substantive drug trafficking, drug money laundering and other offences.

The criminal's lawyer received the equivalent of approximately US\$70,000 cash from his client, placed this money in his client's bank account and later made payments and investments on the client's instructions. He was charged with money laundering in relation to these transactions. The drug trafficker was convicted of drug trafficking, sentenced to seven and one half years imprisonment, and a confiscation order was made for US\$450,000. The lawyer was convicted and sentenced to 10 months imprisonment

Extracted with minor alterations from: *Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Estate Agents and High Value Dealers Statutory and Regulatory Requirements and Guidance Notes* - The Jersey Financial Services Commission, August 2008

[http://www.jerseyfsc.org/pdf/Handbook Estate Agents and High Value Dealers August 2008 Consolidated Version.pdf](http://www.jerseyfsc.org/pdf/Handbook_Estate_Agents_and_High_Value_Dealers_August_2008_Consolidated_Version.pdf)

Case 4: Gallery Curator sells counterfeit works of art and transfers profits to himself

Over the course of several years Mr. T, a gallery curator sold more than 60 never-before exhibited and previously unknown works of art that he claimed were painted by some of the most famous artists of the 20th century. Mr. T sold these works of art to two prominent galleries for approximately \$10 million. In selling some of the paintings to the two galleries, he purported to represent a client with ties to France who had inherited the paintings and wanted to sell them, but who also wished to remain anonymous (the “purported French client”). For the remainder of the paintings, he purported to represent a Spanish collector (the “purported Spanish collector”). Mr. T also claimed that a portion of the price paid by the Manhattan galleries would be his commission for selling the paintings and that the remainder would be passed along to his clients.

In fact, as an investigation would later reveal:

- The paintings Mr. T sold were fake, that is, not by the hand of the artists that he represented them to be;
- Mr. T knew that the paintings were counterfeit and that the statements she made about their provenance were false;
- The purported French client on whose behalf he purported to sell most of the paintings to the Manhattan galleries never existed;
- The purported Spanish collector on whose behalf he claimed to sell the remainder of the paintings to the Manhattan galleries never owned the paintings;
- Instead of passing along a substantial portion of the proceeds of the sale of the various paintings, he kept all or substantially all the proceeds and transferred substantial portions of the proceeds to an account maintained by his family relative; and
- Mr. T concealed and disguised the nature, location, source, ownership, and control of the proceeds of sales of the fake works by causing the galleries to transfer substantial portions of the proceeds of the sales to foreign bank accounts, and by transferring, and causing to be transferred, proceeds of the sales from foreign bank accounts to accounts maintained in the his country of origin.

Extracted with minor alterations from: Long Island Art Dealer Indicted in Massive Art Fraud, Money Laundering, and Tax Scheme Glafira Rosales Charged with Knowingly Selling Fake Artworks Purportedly by Renowned Artists in \$30 Million Scheme – The Federal Bureau of Investigation, U.S. Attorney’s Office, July 17, 2013

<http://www.fbi.gov/newyork/press-releases/2013/long-island-art-dealer-indicted-in-massive-art-fraud-money-laundering-and-tax-scheme>

PART 8**WHAT ARE YOUR AML/CFT LEGAL OBLIGATIONS?**

The AML/CFT laws of Trinidad and Tobago impose obligations on you to:

- I. *Register with the FIU;*
- II. *Submit Reports to the FIU;*
- III. *Not to “Tip-off”;*
- IV. *Keep Records;*
- V. *Ascertain client identity;*
- VI. *Ascertain whether the client is acting for a Third Party;*
- VII. *Appoint a Compliance Officer;*
- VIII. *Develop a written effective Compliance Programme and submit to the FIU;*
- IX. *Implement your Compliance Programme and conduct periodic reviews.*

I. REGISTRATION WITH THE FIU

You **must** register with the FIU for the purpose of identifying yourself as an entity which is supervised by the FIU if you perform any of the specified activities. You **must** also notify the FIU of a change of address of your registered office or principal place of business within six (6) months of such change.

Businesses in existence on or before February 10, 2011, were required to register within three (3) months from the coming into effect of the FIU Regulations, i.e. by May 9, 2011.

If you commence business after May 9, 2011 you must register as soon as you commence operations or as soon as you register under the Registration of Business Names Act or incorporate or register under the Companies Act, whichever is the earlier date.

(1) How to Register

Register on **the FIU Registration Form** which you may access by [clicking here](#).

(2) Offences

- Failure to register within the time stipulated is an offence and you are liable on summary conviction to a fine of \$50,000 and to a further fine of \$5,000 for each day the offence continues.

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- Failure to notify the FIU of a change of address of your registered office or principal place of business is an offence and you are liable on summary conviction to a fine of \$20,000.

II. SUBMITTING REPORTS TO THE FIU

You are required to send to the FIU two (2) types of reports:

- (1) reports of Suspicious Transactions or Activities; and**
- (2) reports of Terrorist Funds in your possession.**

The relationship between reporting entities and the FIU is a key one, because the FIU can only perform its analytical function to produce financial intelligence if the various reporting entities report the critical information they have.

Failing to report to the FIU knowledge or suspicion of crime proceeds or terrorist property is a criminal offence. If you continue to deal with such a transaction or funds knowing or having reasonable grounds to believe that the funds are crime proceeds or terrorists' funds and you do not report it to the FIU then you may have committed the offence of Money Laundering or Financing of Terrorism.

a) Reports of Suspicious Transactions/Activities

- i. You must submit a Suspicious Transaction Report or Suspicious Activity Report (STR/SAR) to the FIU where you know or have reasonable grounds to suspect:
 - that funds being used for the purpose of a transaction are the proceeds of a crime; or
 - a transaction or an attempted transaction is related to the commission or attempted commission of a Money Laundering offence; or
 - that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.

The STR/SAR must be submitted **within fourteen (14) days of the date the transaction was deemed to be suspicious.**

- ii. You **must also** submit a STR/SAR to the FIU **immediately** if a terrorist entity* attempts to enter into a transaction or continue a business relationship. You must not enter into or continue a business transaction or business relationship with such entity.

***A terrorist entity means any individual or entity and their associates designated as terrorist entities by the Security Council of the United Nations or any individual or entity listed on the consolidated list circulated by the FIU.**

Report using the **STR/SAR Form** which you may access by [clicking here](#).

You may access the **Security Council of the United Nations List ("the UN list')** by [clicking here](#).

[Click Here](#) for **STR Reporting Standard No 1 of 2011** to guide you in completing the STR/SAR form.

iii. ***Defining Knowledge and Suspicion***

The first criterion provides that, before you become obliged to report, **you must know or have reasonable grounds for suspecting**, that some other person is engaged in Money Laundering or Financing of Terrorism.

If you actually 'know' that your client is engaged in Money Laundering, then your situation is quite straightforward – the first criterion is met. However, knowledge can be inferred from the surrounding circumstances, for example, a failure to ask obvious questions may be relied upon by a jury to imply knowledge.

You are also required to report if you have 'reasonable grounds' to suspect that the client or some other related person is engaged in Money Laundering or Financing of Terrorism. By virtue of this second, 'objective' test, the requirement to report will apply to you if based on the facts of the particular case, a person of your qualifications and experience would be expected to draw the conclusion that those facts should have led to a suspicion of Money Laundering or Financing of Terrorism. The main purpose of the objective test is to ensure that the Art Sector (and other regulated persons) are not able to argue that they failed to report because they had no conscious awareness of the Money Laundering activity, e.g. by having turned a blind eye to incriminating information which was available to them.

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iv. *Attempted Transactions*

You also have to pay attention to **suspicious attempted transactions**. If a client attempts to conduct a transaction, but for whatever reason that transaction is not completed, and you think that the attempted transaction is suspicious, you must report it to the FIU.

Example of suspicious attempted transaction: a visitor walks into your art gallery. He says he would like to buy a painting for his living room; he has \$ 10,000 in cash to spend. He says his name is John X but when you ask him for identification he replies that he left it in his car. You insist he provide it. He goes away to get it but does not return. If you think from all the information you have that this is unusual or the transaction is related to some crime you have to report that attempted transaction to the FIU.

NOTES:

It is only when *you know or reasonably suspect* that the funds are criminal proceeds or related to Money Laundering or Financing of Terrorism that you have to report: you do not have to know what the underlying criminal activity is or whether illegal activities have actually occurred.

Money Laundering can take place with any amount of money/cash. If you think a \$ 1,000 transaction is suspicious, you must report it to the FIU.

You must report suspicious transactions/activities and attempts by a terrorist entity* to enter into a transaction or continue a business relationship **on the STR/SAR Form which you may access by [clicking here](#).**

[Click here](#) for Guidance Note on Suspicious Transaction/Activity Reporting Standards to guide you in completing the STR/SAR form.

v. *Identifying a Suspicious Transaction/Activity*

You must determine whether a transaction or activity is suspicious based on your knowledge of the customer and of the sector. You are better positioned to have a sense of particular transactions which appear to lack justification or cannot be rationalized as falling within the usual methods of legitimate

business. While general indicators may point to a suspicious transaction, sector-specific indicators would also help you and your employees to better identify suspicious transactions whether completed or attempted.

What are the risk indicators for the Art Sector?

The art sector can be used to facilitate money laundering through each of the three money laundering stages: placement, layering and integration and/or the financing of terrorism.

The following circumstances may pose a higher risk of money laundering or terrorism financing:

- **Large cash Transactions**
Cash is the mainstay of much organised criminal activity. For the criminal, it has the obvious advantage of leaving no discernable audit trail. Cash is also a weakness for criminals. Whilst they hold cash they are more at risk of being traced to the predicate offence. They will therefore often seek to dispose of cash into high value goods.
- **High Value goods**
Money launderers normally want to move funds quickly in order to avoid detection. This is more easily done in one-off transactions. The purchase of high value goods, paid for in cash, with good portability represents an attractive area for money launderers. Goods purchased with cash that can easily be sold on (even for a loss) for 'clean money' are especially attractive. High value goods are also a useful store of value and may form part of a criminal lifestyle. Goods purchased would generally be luxury items that could be potentially sold on through the black market, for example, jewellery, antiques and high performance cars.
- **Customer's behaviour**
Risk can be indicated by a customer's behaviour. For example, where a customer initially proposes to pay for goods by credit/debit card/cheque and then at the last minute presents cash as the means of payment prior to taking ownership of the goods.
- **Provenance**
Unclear or doubtful or incomplete provenance of the goods.

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- Requests for non-disclosure to third parties.

See the Appendix for a list of red flags and suspicious indicators of which you should be cognizant.

(b) Reports of Terrorist Property/Funds

- You **must report immediately** to the FIU the existence of funds within your business where you know or have reasonable grounds to suspect that the funds belong to an individual or legal entity who:
 - commits terrorist acts or participates in or facilitates the commission of terrorist acts or the financing of terrorism; or
 - is a terrorist entity.
- You **must report immediately** to the FIU where you know or have reasonable grounds to believe that a person or entity named on the UN list or the consolidated list circulated by the FIU has funds in Trinidad and Tobago.

Report the existence or suspicion of terrorist funds on the **Terrorist Funds Report - FIU TFR Form** which you may access by [clicking here](#).

III. NO TIPPING-OFF

When you have made a suspicious transaction report to the FIU, you or any member of your staff must not disclose the fact or content of such report to any person. It is an offence to deliberately tell any person, including the customer, that you have or your business has filed a suspicious transaction report about the customer's transactions.

You must also not disclose to anyone any matter which may prejudice Money Laundering or Financing of Terrorism investigation or proposed investigation.

This prohibition applies to any person acting, or purporting to act on behalf of the business including any agent, employee, partner, director or other officer, or any person engaged under a contract for services.

IV. RECORD KEEPING

You are required to keep a record of each and every transaction for a specified period. Record keeping is important for use in any investigation into, or analysis of, possible Money Laundering or Financing of Terrorism offences. Records must be kept in a manner which allows for swift reconstruction of individual transactions and provides evidence for prosecution of Money Laundering and other criminal activities.

You must keep the following records in electronic or written format for at least six (6) years or such longer period as the FIU directs. The records must be kept for six (6) years after the end of the business relationship or completion of a one-off transaction:

- (1) All domestic and international transaction records;
- (2) Source of funds declarations;
- (3) Client identification records;
- (4) Client information records;
- (5) Copies of official corporate records;
- (6) Copies of suspicious transaction reports submitted by your staff to your Compliance Officer;
- (7) A register of copies of suspicious transaction reports submitted to the FIU;
- (8) A register of all enquiries made by any Law Enforcement Authority or other competent authority;
- (9) The names, addresses, position titles and other official information pertaining to your staff;
- (10) All Wire transfers records (originator and recipient identification data); and
- (11) Other relevant records.

V. ASCERTAINING IDENTITY – KNOW YOUR CLIENT

If you are unable to identify and verify a client's identity or obtain sufficient information about the nature and purpose of a transaction, you must **NOT** carry out a transaction for that client or enter into a business relationship with the client and you must terminate any business relationship already established. You should also consider submitting a STR/SAR to the FIU.

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The art sector's main difference from other business is found in the necessity to subject almost every transaction to two questions. Firstly, 'Is the ownership of an art object up for sale traceable?' (provenance of the object); secondly, 'Are the buyers and their sources of funds identifiable?' (provenance of the funds).

While "provenance of the funds" applies to all sectors which have AML/CFT obligations, disclosure of the "provenance of the object" may be an issue due to the conflicting priorities of transparency and discretion.

Some sellers and buyers may have reasonable grounds to prefer to remain anonymous to third parties (discretion) while the need to ensure clarity on the provenance of art objects and funds has to be adequately addressed (disclosure).

Consequently, the identity of the seller and the buyer must be known to each other, and to all intermediaries involved, including to third parties with a legitimate legal interest (e.g., insurers).

Identifying the seller reduces the risks resulting from any ambiguity regarding provenance, illicit trade and forbidden exportation. Identifying the buyer reduces the risks of money laundering and illicit enrichment and serves to preserve the records on provenance of the art object. The art market operator therefore has to ensure full identification and documentation of the seller and the buyer ('know your customers' rule).

The Customer Due Diligence (CDD) obligations are designed to make it more difficult for you or your company to be used by criminals for money laundering or terrorist financing.

CDD involves determining the customer's identity. Where there is a business relationship i.e., a formal or an informal arrangement between the business and the customer that anticipates an ongoing relationship between the two parties (regular customer) it will also be necessary to ascertain the intended nature and purpose of the business relationship. Information that might be relevant to obtain

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to understand the purpose and intended nature of the relationship may include some or all of the following:

- 1) Details of the customer's business or employment;
- 2) The expected source and origin of the funds to be used in the relationship;
- 3) Copies of recent and current financial statements;
- 4) The relationships between signatories and underlying beneficial owners;
- 5) The anticipated level and nature of the activity that is to be undertaken through the relationship.

High Risk Clients/Transactions

There are circumstances where the risk of money laundering or terrorist financing is higher, and Enhanced Due Diligence (EDD) measures have to be taken. You must take specific measures to identify and verify the identity of the following high risk persons (individuals or entities):

- (1) Any person who conducts a **large cash transaction** i.e. equal to or over TTD 90,000;
- (2) Domestic and Foreign Politically Exposed Persons (PEPs);
[Click here](#) for **Customer Due Diligence Guide No. 1 of 2011** for the categories of persons who are PEPs;
- (3) Any client or transaction or service or product type that you have identified as posing a higher risk to your business e.g., transactions which involve high levels of funds or cash;
- (4) Any individual or entity who conducts complex, unusual large transactions, (whether completed or not), unusual patterns of transaction and insignificant but periodic transactions which have no apparent economic or visible lawful purpose;
- (5) Any individual or entity who conducts business transactions with persons and financial institutions in or from other countries which do not or insufficiently comply with the recommendations of the Financial Action Task Force ("the FATF");
[Click here](#) for **FATF High Risk and Non-Cooperative Jurisdictions**.
- (6) Any individual or entity for whom you have to send a suspicious transaction report to the FIU (reasonable measures and exceptions apply e.g. to avoid **tipping-off**).

You must apply **EDD measures** to high risk customers and situations as detailed in Part II, which include, but are not limited to:

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- (1) Obtaining additional information on the customer e.g., additional form of Government issued identification;
- (2) Obtaining details of the source of the client's funds and the purpose of the transaction if relevant;
- (3) Verifying the source of funds for the transaction e.g., if client states the cash is from his bank account, ask for proof;
- (4) Obtaining approval from a senior officer to conduct the transaction;
- (5) Applying supplementary measures to verify or certify the documents supplied or requiring certification by a financial institution;
- (6) Ongoing monitoring (e.g., monthly, quarterly, annually or on a transaction basis) of the client's account throughout the relationship; and
- (7) Implementing any other customer identification policies and procedures to prevent money laundering and financing of terrorism.

VI. Is the Client acting for a Third Party?

You must take reasonable measures to determine whether the client is acting on behalf of a third party especially where you have to conduct EDD.

Such cases will include where the client is an agent of the third party who is the beneficiary and who is providing the funds for the transaction.

In practice, this means that if the art market operator knows, or has reasonable suspicion to believe that the other party to a transaction is, in fact, acting on behalf of someone else (e.g. another buyer or seller), the art market operator must establish the identity of the true beneficial owner and their relationship with the client. This identification of the beneficial owner should take place even if the identity is to ultimately remain unknown to third parties.

[Click here](#) for Customer Due Diligence Guide No. 1 of 2011

VII. DESIGNATE A COMPLIANCE OFFICER

You must designate a senior employee at managerial level as Compliance Officer (CO). The individual you appoint will be responsible for the implementation of your compliance regime. The identity of the CO must be treated with the strictest confidence by you and your staff.

You must obtain the approval of the FIU for the person chosen as the CO. If you change your CO you must inform the FIU immediately and get the FIU's approval for the new CO.

Your CO should have the authority and the resources necessary to discharge his or her responsibilities effectively. Depending on your type of business, your CO should report, on a regular basis, to the board of directors or senior management, or to the owner or chief operator.

If you are a small business, employing five (5) persons or less, the CO must be the person in the most senior position. If you are the owner or operator of the business and do not employ anyone, you can appoint yourself as CO.

If you are a business employing over five [5] persons, the CO should be from a senior management level and have direct access to senior management and the board of directors. Further, as a good governance practice, the appointed CO in a large business should not be directly involved in the receipt, transfer or payment of funds.

Your CO should have the authority and the resources necessary to discharge his or her responsibilities effectively. The CO must:

- (1) have full responsibility for overseeing, developing, updating and enforcing the AML/CFT Programme;
- (2) have sufficient authority to oversee, develop, update and enforce AML/CFT policies and procedures throughout the company; and
- (3) be competent and knowledgeable regarding AML/CFT issues and risks.

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Depending on your type of business, your CO should report, on a regular basis, to the board of directors or senior management, or to the owner or chief operator of the business.

The CO's responsibilities include:

- a) Submitting STRs/SARs and TFRs to the FIU and keeping relevant records;
- b) Acting as Liaison officer between your business and the FIU;
- c) Implementing your Compliance Programme;
- d) Directing and enforcing your Compliance Programme;
- e) Ensuring the training of employees on the AML/CFT; and
- f) Ensuring independent audits of your Compliance Programme.

For consistency and ongoing attention to the compliance regime, your appointed CO may choose to delegate certain duties to other employees. For example, the CO may delegate an individual in a local office or branch to ensure that compliance procedures are properly implemented at that location.

However, where such a delegation is made, the CO retains full responsibility for the implementation of the compliance regime.

Best Practice:

You should appoint an alternate CO to perform the CO's functions in the event the CO is absent for any reason. You will need to obtain the FIU's approval for the person to act as alternate CO.

VIII. DEVELOP, SUBMIT AND IMPLEMENT A COMPLIANCE PROGRAMME

After you have registered with the FIU as a reporting entity, you **must** develop a written Compliance Programme ("CP"). If you are an organization the CP also has to be approved by senior management.

You **must** submit the CP to the FIU and you should submit the CP checklist as well to assist the FIU in its review of the CP.

[Click here](#) for the CP Check list.

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The CP is a written document explaining your system of internal procedures, systems and controls which are intended to make your business less vulnerable to being used by money launderers and terrorist financiers. Your CP will contain measures that ensure that you comply with your reporting, record keeping, client identification, employee training, and other AML/CFT obligations. These policies, procedures and controls, must be communicated to employees, and when fully implemented, will help reduce the risk of your business being used for Money Laundering or to Finance Terrorism.

The CP must be reviewed every two (2) years.

The FIU will examine your CP and approve or recommend amendments if deficiencies are identified. A well-designed, applied and monitored regime will provide a solid foundation for compliance with the AML/CFT laws. As not all individuals and entities operate under the same circumstances, your compliance regime will have to be tailored to fit your individual needs. It should reflect the nature, size and complexity of your operations as well as the vulnerability of your business to money laundering and terrorism financing activities.

The following five (5) elements must be included in your compliance regime:

- (1) The designation of a staff member as CO and his/her responsibilities;
- (2) Internal compliance policies and procedures such as reporting suspicious transactions to the CO; application of CDD, EDD and record keeping;
- (3) Your assessment of your risks to money laundering and terrorism financing, and measures to mitigate high risks;
- (4) Ongoing compliance training for all staff at the level appropriate for their job duties; and
- (5) Periodic documented review of the effectiveness of implementation of your policies and procedures, training and risk assessment.

[Click here](#) to access the **Guide to Structuring an AML/CFT Compliance Programme**

IX. IMPLEMENT AND TEST YOUR COMPLIANCE PROGRAMME

Your obligations include implementing your written CP. The FIU may conduct an onsite examination to determine the effectiveness of implementation of the measures outlined in your CP.

The FIU may conduct an on-site examination to determine whether the measures outlined in your CP are effectively implemented.

All employees involved in the day-to-day business should be made aware of the policies and procedures in place in the business to prevent Money Laundering and Financing of Terrorism.

You must conduct internal testing to evaluate compliance by your staff with your CP, in particular, CDD record keeping and suspicious transactions reporting.

In addition, you must conduct internal testing and external independent testing to evaluate the effectiveness of your systems and controls and implementation of same. Such reviews must be documented.

Best practice:

Internal testing should be carried out by someone other than the CO, to avoid potential conflict since the CO is responsible for implementation of the CP, its measures and controls.

PART 9

OFFENCES & PENALTIES

Non-compliance with your obligations under the AML/CFT laws and regulations may result in criminal and or administrative sanctions.

[Click here](#) to access a summary of the Offences and Penalties under the AML/CFT laws and regulations of Trinidad and Tobago.

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This summary is intended to guide you in fulfilling your legal obligations under the AML/CFT laws. You may access the laws on the FIU's website, www.fiu.gov.tt under "Legal Framework".

[Click here](#) to access the laws.

PART 10

ADDITIONAL RESOURCES

This summary is intended to guide you in fulfilling your legal obligations under the AML/CFT laws.

Additional reference materials include:

- I. The AML/CFT laws available on the FIU's website, www.fiu.gov.tt under "Legal Framework".
- II. FATF Report – Vulnerabilities of Casinos and Gaming Sector – March 2009 at <http://www.fatf-gafi.org/topics/methodsandtrends/documents/vulnerabilitiesofcasinosandgamingsector.html>
- III. The FATF recommendations at http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf



APPENDIX**AML/CFT Suspicious Indicators for the Art Sector**

Cash is the mainstay of much organised criminal activity. For the criminal, it has the obvious advantage of leaving no discernable audit trail. Cash is also a weakness for criminals. Whilst they hold cash they are more at risk of being traced to the predicate offence. They will therefore often seek to dispose of cash into high value goods.

Money launderers normally want to move funds quickly in order to avoid detection. This is more easily done in one-off transactions. The purchase of high value goods, paid for in cash, with good portability represents an attractive area for money launderers. Goods purchased with cash that can easily be sold on (even for a loss) for 'clean money' are especially attractive. High value goods are also a useful store of value and may form part of a criminal lifestyle. Goods purchased would generally be luxury items that could be potentially sold on through the black market, for example, jewellery, antiques and high performance cars.

- 1) There are no genuine reasons for paying large sums of money in cash.
- 2) Customer identification issues such as -
 - a) The customer refuses or appears reluctant to provide information requested;
 - b) There appears to be inconsistencies in the information provided by the customer;
 - c) The customer purchases are inconsistent with other profile details such as employment, area of residence;
 - d) The customer is in a hurry to rush a transaction through, with promises to provide the information later.
- 3) The goods purchased, and/or the payment arrangements are not consistent with normal practice for that type of transaction Businesses where the level of cash activity is higher than the underlying business would justify.
- 4) The customer is paying in used notes or in small denominations.
- 5) The customer will not disclose the source of cash or there appears to be inconsistencies in the information provided by the customer
- 6) In the case of regular or established customers , there is a sudden increase in the frequency/value of transactions of a particular customer without reasonable explanation
- 7) The customer is buying from an unusual location in comparison to their location.
- 8) The method of delivery is unusual, for example, a request for immediate delivery, delivery to an address other than the customer's address, or the loading of high volume/bulky goods immediately into the customer's own transport.
- 9) Cash payment is only mentioned by the customer at the conclusion of the transaction.
- 10) Instruction on the form of payment changes suddenly just before the transaction goes through.

- 11) Customer's behaviour ; for example, where a customer initially proposes to pay for goods by credit/debit card/cheque and then at the last minute presents cash as the means of payment prior to taking ownership of the goods.
- 12) Goods that are purchased and subsequently returned. (Returning high value goods paid for in cash and obtaining a refund by way of cheque enables the laundering of 'dirty money' by exchanging it for a legitimate retailer's cheque).
- 13) In the case of refunds, the customer:
 - a) Enquires about the business's refund policy;
 - b) Seeks a refund for spurious reasons;
 - c) Seeks the repayment in the form of a cheque.

Please note that this is not an exhaustive list of suspicious indicators.



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