COPBLAC

GUIDELINES FOR COMPLIANCE WITH OBLIGATIONS RELATING TO ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (AML/CFT)

SMALL BUSINESSES AND RETAILERS IN THE JEWELLERY, PRECIOUS STONES AND PRECIOUS METALS SECTOR

I. GENERAL ASPECTS.

What is the purpose of this document?

The purpose of this guidance document is to assist the jewellery sector in complying with the obligations set out in Law 10/2010 of 28 April, which deals with Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT), and in its implementing Regulations. It has been drawn up in collaboration with the Spanish Association of Jewellers, Silversmiths and Watchmakers

What is the objective of the measures set out in Law 10/2010 on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT)?

Law 10/2010 aims to protect the integrity of the Spanish financial system by establishing obligations regarding Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT), which are imposed on professionals and businesses in certain sectors – referred to in the law as 'obligated entities' – including those who trade professionally in jewellery, precious stones or precious metals.

Who is this document intended for?

These guidelines are specifically aimed at smaller businesses in the jewellery sector, which have fewer than 10 employees and whose annual turnover or annual balance sheet total is less than two million euros, and which are not part of a business group that, as a whole, exceeds these figures.

What obligations does the regulation impose on these professionals?

The obligations are divided into two categories:

- 'Know your customer' due diligence measures, the content of which will vary depending on whether the transaction is a retail sale or not.

- Reporting measures, including the analysis of suspicious transactions, the reporting of transactions to SEPBLAC and the retention of documentation.

To what type of transactions do these measures apply?

All transactions carried out in the course of their professional activity by anyone registered as a trader in jewellery, precious stones and precious metals are subject to the obligations laid down by the Law.

The following transactions are therefore subject to these obligations: sales, purchases, manufacturing, acting as an intermediary in sales, the acquisition of materials or items for sale and manufacturing, the barter of goods, etc., regardless of whether these transactions take place within or outside the national territory, whether any of the parties involved are non-Spanish nationals or are resident abroad, the country in which payment for the transaction is made, or the country from which the goods forming the subject of the transactions originate or to which they are dispatched.

II. OBLIGATIONS OF DUE . APPLICABLE APPLICABLE TO RETAIL SALES TRANSACTIONS.

What is meant by 'retail sales' in the context of Money Laundering?

For the purposes of applying Money Laundering regulations, a retail sale is defined as one carried out in premises open to the public and involving customers who are not acting in a professional capacity.

In other words, in retail sales, only natural persons who buy or sell goods in a personal capacity – and not in the course of a professional activity or on behalf of a legal person – are considered customers.

Within the same business, for example, retail transactions may take place – such as the sale of an item to a private individual – alongside transactions that are not retail in nature, such as the purchase of goods from a supplier or the sale of goods on behalf of a company or sole trader. Depending on the type of transaction in question, the same business must apply one set of due diligence measures or another.

What kind of due diligence obligations does the Law impose in the case of retail sales transactions?

The regulations require that, for retail sales transactions, the customer's identity must be formally verified using reliable documents, and that the documents and information relating to the transactions must be retained.

What are the formal identification obligations?

Where the value of transactions is equal to or greater than 1,000 euros, and payment is made in cash or by other means such as a bank card, cheque, etc., customers must be formally identified using valid identification documents prior to the transaction being carried out.

For transactions worth less than 1,000 euros: it is not necessary to identify the customer.

It should be noted, however, that where a sale or purchase transaction with a value exceeding 1,000 euros is split into several transactions that do not exceed that limit, it will be considered a single transaction: in other words, the customer must be formally identified.

How is the value of the transaction calculated when there is an exchange of goods between the buyer and the seller?

Where goods are received as part of the payment for the sale of other goods or for the performance of a service, the monetary value of the transaction must be calculated by adding the market value of the goods delivered as part of the payment to the monetary amount of the transaction. Where, for example, gold is provided for the bespoke manufacture of a piece of jewellery, the value of the transaction shall be calculated by adding the market price of the gold received to the money paid by the customer.

In the case of an exchange of goods or barter, it shall be deemed that two sales transactions are taking place, and the market value of the goods exchanged shall be assigned to each as the monetary value.

Which documents are considered valid for the purposes of formal identification?

- Individuals of Spanish nationality: National Identity Card.
- Foreign nationals: Residence Card, Foreigner's Identity Card, Passport, identity document issued by the Ministry of Foreign Affairs and Co-operation for staff of diplomatic and consular missions of third countries in Spain or, for citizens of the European Union, the official personal identity document, letter or card issued by the authorities of their country of origin.
- Other personal identity documents issued by a government authority may be accepted provided they offer guarantees of authenticity – that is, there is no doubt that they have not been forged or altered, for example – and they include a photograph of the holder.

How should information on retail sales be retained?

In cases where the customer has been formally identified, copies of the identification documents and documents evidencing the sale must be retained for a period of ten years from the date of the sale.

As an alternative to retaining copies of these documents, the identifying details of customers and transactions must be recorded in a register, in physical or electronic form, which must be made available to the COPBLAC. In such cases, the register must contain at least the following details:

- The customers' identifying details, namely their first name and surname, their National Identity Card number (or other documents considered reliable for the purposes of formal identification), and their nationality.

- Details identifying the transactions, which shall include the date of the transaction, a description of the transaction, the amount involved and the method of payment.

The register referred to in the Regulations under the Law on Articles Made of Precious Metals is accepted as valid.

III. DUE DILIGENCE OBLIGATIONS. RULES APPLICABLE TO BUSINESS RELATIONSHIPS WITH CUSTOMERS WHO ARE LEGAL ENTITIES OR PROFESSIONALS.

What is meant by business relationships or non-retail transactions?

These are defined as business relationships with professionals such as suppliers, or those in which the jeweller sells their products to a legal entity, whether or not for the purpose of resale. Therefore, purchases made by companies for marketing purposes or as corporate gifts are not considered retail sales.

What are the due diligence obligations in the case of transactions that are not retail sales?

In this case, the standard due diligence measures set out in Law 10/2010 of 28 April must be applied. These include:

- Formal identification of the legal entity and the natural person representing it.
- Identification of the beneficial owner. The beneficial owner is defined as the natural person who controls the legal entity, either by holding more than 25 per cent of the shares or voting rights, or through other mechanisms.
- Information on the nature of the customer's professional or business activity.

  To verify beneficial ownership and the client's professional or business activity, a signed declaration by the client regarding these matters shall suffice. Where the transaction presents a higher risk and warrants the application of enhanced due diligence measures, both circumstances must be verified using reliable third-party sources.

What documents are accepted as valid proof of identity for legal entities?

Natural persons (including directors of legal entities) shall be identified in accordance with the valid documents listed above. In the case of legal entities, identification shall be carried out by means of:

- Public documents proving their existence and containing their company name, legal form, registered office, the identity of their directors, articles of association and tax identification number.

- In the case of legal entities of Spanish nationality, a certificate from the provincial Commercial Register, provided by the client or obtained via an online enquiry, will be acceptable.

When must enhanced due diligence measures be applied?

In addition to the standard due diligence measures listed above, enhanced measures must be applied where there is a higher risk of Money Laundering or Terrorist Financing.

Some examples of situations involving a higher risk are:

1. Business relationships and transactions with companies having bearer shares.
2. Business relationships and transactions with customers from high-risk countries, territories or jurisdictions, or involving the transfer of funds to or from such countries, territories or jurisdictions, including, in all cases, those countries for which the FATF requires the application of enhanced due diligence measures.

Which countries, territories or jurisdictions are considered high-risk?

- Countries, territories or jurisdictions that do not have adequate systems in place for Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT).
- Countries, territories or jurisdictions subject to sanctions, embargoes or similar measures adopted by the European Union, the United Nations or other international organisations
- Countries, territories or jurisdictions with significant levels of corruption or other criminal activities.
- Countries, territories or jurisdictions where funding or support is provided for terrorist activities.
- Countries, territories or jurisdictions with a significant offshore financial sector (i.e. 'offshore' centres), that is to say, countries with a banking or financial sector in which a high proportion of clients – or suppliers – are foreign.
- Countries, territories or jurisdictions considered to be tax havens.

What enhanced due diligence measures must be applied when the risk is considered to be above average?

The activities declared by customers – or suppliers – and the identity of the beneficial owner must always be verified using reliable third-party sources (such as copies of documents provided by the customer themselves).

Furthermore, depending on the circumstances and specific risks, one or more of the following measures shall be applied:

- Obtaining additional documentation or information on the source of the funds.
- Obtain additional documentation or information on the source of the customer's assets.
- Obtain documentation or information on the purpose of the transactions.
- Examine and document the consistency of the business relationship or transactions with the documentation and information available on the customer – or supplier.
- Require that payments or receipts be made to an account in the name of the customer – or supplier – held with a credit institution domiciled in the European Union or in equivalent third countries.
- Limit the amount of transactions or the means of payment used.
- Ongoing monitoring of the business relationship. Where the transaction is not a one-off but forms part of an ongoing business relationship, that relationship must be monitored in order to detect any inconsistencies or suspicious circumstances.

How should information on this type of transaction be retained?

The transaction and copies of the identification documents or other relevant documents must be retained for a period of ten years following the transaction; simply recording them in the register is not sufficient.

IV. REPORTING OBLIGATIONS. REGIME APPLICABLE TO ALL TRANSACTIONS.

What do the reporting obligations entail?

The collection of information on the customer – or supplier – and the transactions carried out is intended to enable the company or professional to identify potential transactions showing signs or giving rise to suspicion, so that they can be analysed in detail and, depending on the outcome of that analysis, a suspicious transaction report can be submitted to SEPBLAC.

What characteristics will be taken into account to determine whether a transaction is likely to be linked to Money Laundering or Terrorist Financing and warrants special scrutiny?

Generally speaking, transactions that are complex, unusual or lack an apparent economic or lawful purpose, or which show signs of fraudulent simulation, will be examined.

- Where the nature or volume of transactions carried out by customers – or suppliers – is inconsistent with their business activity.
- Where payment is made by bank transfer originating from or destined for high-risk territories or countries.
- Where the payment is made by bank transfer that does not include the identity of the payer or the account number from which the transfer originates.

The Commission for the Prevention of Money Laundering and Terrorism Financing has drawn up a list of examples of high-risk transactions in the jewellery, precious stones and metals, art and antiques sectors, which is extremely useful for identifying the risk associated with a transaction.

Transactions with the characteristics outlined above that have been attempted but not carried out shall also be subject to analysis.

What should be done if there is a suspicion that a transaction may be linked to Money Laundering or Terrorist Financing?

If there is a suspicion that the transaction may be linked to Money Laundering or Terrorist Financing, an attempt must be made to obtain additional information and carry out a detailed analysis or special review of the transaction.

If the suspicions are not dispelled, SEPBLAC must be notified and the transaction must not be carried out.

What does a special review involve?

A special review is the process whereby, upon detection of a transaction that may be linked to Money Laundering or Terrorist Financing, an analysis is carried out of the available information on the customer and the transaction, drawing on available third-party sources. This analysis must lead to a conclusion as to whether the transaction is justified or whether there are still indications of Money Laundering and Terrorist Financing.

What must be reported to SEPBLAC?

Transactions must be reported where, following the special review, there are indications or certainty that they are linked to criminal activities.

How is the report submitted?

There is an approved form for this purpose, which sets out the key details to be provided: http://www.sepblac.es/espanol/sujetos_obligados/datos-cos-regi-general.htm

This must include the details of the person making the report and, where applicable, the organisation they represent, so that the Executive Service can contact them if necessary.

What if, following a proper investigation by the authorities, the reported transaction is deemed legitimate and not linked to criminal activities?

The reporting in good faith of transactions that were considered suspicious shall not give rise to any liability on the part of the person making the report, regardless of the final outcome of the investigations.

What documentation must be retained?

In addition to the obligations regarding the retention of customer identification data or documents already listed, documents relating to all domestic and international transactions must be retained, and records must be kept for a period of ten years from the date the transaction was carried out, so that, if necessary, each individual transaction can be reconstructed.

In the case of suspicious transactions, all additional documentation gathered to carry out the analysis and the following details must be retained:

- Start and end dates of the analysis,
- The reason for analysing the transaction,
- A description of the transaction analysed,
- Conclusions reached following the examination,
- The grounds on which the conclusions are based,
- Decision on whether or not to notify the Commission's Executive Service and the date thereof,
- Date on which, where applicable, the notification was made.

V. EXEMPTIONS

Which obligations under Law 10/2010 do these smaller jewellery businesses not have to comply with?

The businesses in the sector to which this document is addressed – those with fewer than 10 employees and whose annual turnover or annual balance sheet total is less than two million euros – are not required to adopt internal prevention procedures, but they are required to comply with all other measures for Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT).

Given their small size, these businesses are not subject to the following obligations:

- Written approval of prevention procedures
- To carry out a documented risk analysis
- To draw up a prevention manual
- To appoint a representative to the Executive Service
- To establish a supervisory body
- To carry out an external audit
- To approve an annual training plan
- To use computerised tools for generating alerts
- To draw up a list of transactions that may be linked to Money Laundering or Terrorist Financing and to circulate this list amongst its directors, employees or agents.

These exemptions do not amount to a full exemption from compliance with the obligations set out in the Law. It will always be necessary to comply with the due diligence and reporting obligations detailed in this document.

VI. CATALOGUE OF SUSPICIOUS TRANSACTIONS

Is there any guidance on detecting suspicious transactions?

COPBLAC, in collaboration with industry associations and with the aim of assisting regulated entities in detecting suspicious or high-risk transactions, has drawn up a Catalogue of examples of transactions that may be linked to Money Laundering and Terrorist Financing in the jewellery, precious stones and metals, art and antiques sectors.

This Catalogue is available to all professionals in the sector and is intended to serve as a guide to help them draw up and update their own catalogue of suspicious transactions.

Is it sufficient simply to examine the transactions listed in the Catalogue?

No. The Catalogue provided by the Commission on Money Laundering and Monetary Offences is not an exhaustive list. It includes examples and indicators of potential high-risk transactions. Only the professional themselves can determine the specific risks associated with the particular circumstances of their business.

What types of high-risk transactions are included in the Catalogue?

The Catalogue classifies potential risks into three groups:

- Risks relating to customer identification, which detail risks associated with the formal identification of the customer and the use of intermediaries and front men to carry out transactions.
- Risks relating to the characteristics and methods of payment or to the customer's behaviour.
- Risks relating to the characteristics of the transaction, listing, on the one hand, risks associated with transactions in the art and antiques sector and, on the other, those associated with the jewellery, precious stones and precious metals sector.

With the exception of risks relating to the art and antiques sector, all the examples and guidelines listed in the catalogue apply to the sector.