



FMA Communication No. 1/2005

concerning the

Due Diligence Obligations of Dealers in High-value Goods

In response to several inquiries, this FMA Communication provides information on the interpretation and "practice" in connection with the due diligence obligations of dealers in high-value goods.

1. Personal scope of application: Dealers in high-value goods

According to the explanations on article 3, paragraph 1(n) of the Due Diligence Act in the Report and Application by the Government to the Parliament of the Principality of Liechtenstein concerning the Total Revision of the Due Diligence Act, the following dealers shall be deemed dealers in high-value goods "until further notice" (when dealing in the goods in question):

- jewelers,
- goldsmiths,
- dealers in precious metals,
- dealers in precious stones,
- dealers in coins,
- dealers in antiques,
- art dealers,
- furriers,
- arms dealers.

The FMA applies the cited Report and Application as an interpretation aid for article 3, paragraph 1(n) DDA and accordingly represents the legal view that the dealers enumerated in the Report and Application (when dealing in the goods in question) shall be considered dealers in high-value goods for the purposes of article 3, paragraph 1(n) DDA.

2. Reporting obligations of dealers in high-value goods

Dealers belonging to a category mentioned above ***must in all cases notify the FMA of the initiation or exercise of activities relevant to due diligence***. The FMA requests dealers to use the appropriate [form](#).

3. Consequences of the report

Reporting the activity to the FMA entails that ***the FMA will regularly (as a rule once a year) request the dealer to notify the FMA whether financial transactions or commercial transactions equivalent to financial transactions (article 4, paragraph 4(a) DDA) have been conducted in the past year.***

- a) If this question is ***answered in the negative*** (the FMA reserves the right to verify the information), ***no due diligence inspection takes place in principle.***
- b) If the question is ***answered in the affirmative***, however, the FMA will call upon the dealer to ***submit an annual report*** (article 21, paragraph 3 DDA) which in principle will allow the FMA to carry out the ordinary due diligence inspection (article 24, paragraph 1 DDA) itself. ***Until further notice, no costs will arise from this inspection.***

4. Obligations arising only if the material scope of application is met

According to paragraph 3, paragraph 1(n) DDA, dealers in high-value goods have been subject to the personal scope of application of the Due Diligence Act since 1 February 2005. They must therefore ***fulfill the applicable due diligence obligations if they also fall within the material scope of application (article 4 DDA) of the Act***, i.e. specifically:

- a) ***if they conduct commercial transactions for which payment is made in cash and the amount exceeds 25,000 francs*** (commercial transactions equivalent to financial transactions according to article 4, paragraph 4(a) DDA), or
- b) ***if they conduct financial transactions within the meaning of article 4, paragraph 2 DDA (e.g. when arranging payments for clients or business partners).***

As long as the dealer in high-value goods therefore does not conduct financial transactions or transactions equivalent to financial transactions, the dealer is in particular also not subject to the organization and documentation obligations under articles 20 et seq. DDA.

5. Important notes if due diligence obligations apply

If a dealer in high-value goods does conduct financial transactions or transactions equivalent to financial transactions, however, the dealer must fulfill all due diligence obligations. In particular, the following points must be observed:

Also in the case of transactions equivalent to financial transactions according to article 4, paragraph 4(a) DDA, the persons subject to due diligence may, according to article 7, paragraph 1 DDA, ***in principle start from the assumption that the contracting party is identical to the beneficial owner.*** As long as no doubts arise concerning the assumption and no case under article 7, paragraph 2 DDA arises, ***no written declaration must therefore be requested from the contracting party identifying the beneficial owner.*** (In the case of transactions equivalent to financial transactions under article 4, paragraph 4(a) DDA, the FMA does not consider such transactions to be spot transactions within the meaning of article 7, paragraph 2(a) DDA in conjunction with article 1(a) of the Due Diligence Ordinance, since only financial spot transactions and not commercial spot transactions must be covered.)

In the case of transactions equivalent to financial transactions according to article 4, paragraph 4(a) DDA, such transactions will only constitute long-term business relationships within the meaning of articles 13 et seq. DDA on an exceptional basis, since such transactions are commercial transactions and as a rule are concluded after the exchange of goods and payment. Accordingly, ***the obligation to monitor the business relationship on an ongoing basis, including the obligation to compile a profile, is regularly waived.***

Additionally, the organization and documentation obligations pursuant to articles 20 et seq. DDA must be fulfilled in accordance with the type and size of the business and the number, type, and complexity of the business relationships. Accordingly, lower demands on dealers in high-value goods will certainly be made in comparison with "classical" financial intermediaries such as banks, professional trustees, etc., with respect to fulfillment of due diligence obligations in a broader sense.

Vaduz, 17 May 2005

The image shows two handwritten signatures in black ink. The signature on the left is for Dr. Stephan Ochsner, and the signature on the right is for exam. iur. Dunja Süssli. Both signatures are written in a cursive, flowing style.

Dr. Stephan Ochsner
Chief Executive Officer

exam. iur. Dunja Süssli
Director of Other Financial Service Providers