

Sandrine Giroud Exclusive Interview for Rosemont Art Advisory

27/03/2020



Sandrine Giroud is a partner of LALIVE and she specialises in domestic and international litigation, with a focus on commercial disputes, fraud and asset recovery, white collar crime, mutual legal assistance in civil and criminal matters (including extradition), art and cultural property, trust and estate, media law, as well as public international law (including immunities from jurisdiction and enforcement) and human rights. As part of her practice, she also represents collectors, art market professionals and museums on dispute resolution and transactional matters in art. Her experience in the management of particularly sensitive matters allows her to tackle not only legal but also strategic aspects such as reputation and media.

Karolina Blasiak interviewed her for **Rosemont Art Advisory monthly newsletter**. If you want to receive our newsletter, please contact her: k.blasiak@rosemont-mc.com

Please share with our readers your professional journey as a lawyer, what inspired you to specialize in art law?

I have always been drawn to colours and images and younger I have enjoyed going to one of the few museums in my region, the [Fondation Gianadda](#), which hosts a beautiful sculpture garden and world-class exhibitions. When I trained as a lawyer, art law wasn't a field of law taught at university. It is when I joined my present firm, LALIVE, that I got the chance to work on art law cases with Prof. Lalive, one of the founders of our firm, as well as a lover of the arts and a prominent professor of private international law. Art law covers a wide spectrum of fields of the law: from criminal law to contract law, philanthropy, tax law, etc. However, given the international nature of the art market, art law always has a connection to international law, which is one my specialities. I trained on the field by handling art law related cases and now have a regular practice which I enjoy tremendously. I also sit on the board of several Swiss museums or art related foundations among which the Swiss National Museum and the International Red Cross and Red Crescent Museum. Practicing art law allows me to combine my love for the art and for the law. It has led me to meet many passionate collectors and colourful characters and to dive into history to track provenance and owners' incredible stories.

RAM is the first of its kind, non-profit, cross market initiative formed in Geneva, Switzerland in 2013 under the auspices of the Geneva-based Art Law Foundation (ALF) and the University of Geneva's Art-Law Centre (ALC). Its mission is to raise awareness amongst art businesses of risks faced by the art industry and to provide practical guidance and a platform for sharing best practices to address those risks. RAM's founding members span the entire spectrum of the art market and include art businesses, academic institutions and attorneys.

To date, RAM has published two sets of practical guidelines and checklists which are increasingly used and referred to: the [Guidelines on Combatting Money Laundering and Terrorist Financing](#), the [Art Transaction Due Diligence Toolkit](#) and [Guidelines for experts authenticating works of fine art](#). RAM holds an annual conference in Geneva during the art Genève art fair which is an opportunity for art market professionals to meet and exchange on market practices, challenges and new initiatives.

From the outset, RAM has endeavoured to go beyond the question of whether the art market should self-regulate and to focus rather on gathering industry knowledge and practices through dedicated working groups composed of a diverse array of professionals, synthesizing and structuring the information into practical take-aways and best practices, testing them through surveys and bilateral discussions with industry stakeholders, before sharing and subjecting them to public debates during RAM's numerous events. As such, these responsible practices are not exhaustive and are bound to evolve or adapt depending on the art business or industry sector considered. They do not purport to set a standard to be applied in all situations; rather, RAM advocates for a "risk-based" approach to determine the degree of due diligence required in relation to a specific issue.

Free ports have been hot in the press in particular in England following Brexit but they have also been heavily criticised for being a money laundering tool. What is the current situation for Swiss free ports which are renown worldwide?

Geneva is host to one of largest free ports in the world, which is home to billions of Swiss francs' worth of fine art and other high-value collectables, such as precious stones, wine and antiques. In recent years, critics have highlighted the risk of money laundering and tax evasion, as well as the reputational risk for customs warehouses. Globalisation and the aftermath of the financial crisis have triggered a substantial growth in investments in high-value artworks and other extremely valuable goods considered more as commodities. However, tighter regulations and fiercer competition abroad (e.g., the Luxembourg free port recently passing scrutiny by the European Parliament and the UK prime ministers' proposal to develop future free ports and related warehouses in the region) are forcing such facilities to adapt their storage services and due diligence processes to accommodate some of the estimated \$1.742 trillion worth of art and collectables of ultra-high-net-worth individuals (UHNWI).

Although significant antimoney laundering (AML) regulations were already in place, with specific provisions in the Swiss Criminal Code and the Federal Anti-money Laundering Act, no rule specifically addressed money laundering in the art trade. In particular, the Federal Law on the International Transfer of Cultural Property regulates the import of cultural property into Switzerland, its transit and export, and its repatriation from Switzerland, but does not provide for AML obligations.

In 2016, new legislation entered into force as:

- The amended AMLA now includes "natural persons or legal entities who deal in goods professionally and receive cash payments (dealers)". Hence, art dealers and auction companies who fall under this definition and accept cash payments exceeding the amount of CHF 100,000 – even in several instalments

The amended Customs Ordinance includes measures to ensure a clear distinction between goods intended for storage in free ports and those intended for export (e.g., a six-month time limit on the storage of goods intended for export, extendable if proper grounds are determined), as well as the obligation to register the goods and their owner in an inventory and the expansion of the definition of 'sensitive goods' required to be classified as investment in records (e.g., alcohol, tobacco and cars).

In December 2016, the Financial Action Task Force (FATF) published its fourth mutual evaluation report on AML and counter-terrorist financing measures in place in Switzerland. Referring to the Swiss national assessment and observing overall good results, the FAFT nevertheless identified weaknesses and made recommendations for further regulation and enforcement to promote greater transparency in the art sector.

In parallel and following the Panama papers scandal, the EU Fifth AML Directive (2018/843/EU) entered into force on 9 July 2018 and had to be transposed into national law by member states by 10 January 2020. The most significant change foreseen by the EU Fifth AML Directive for 'art intermediaries' (i.e., art dealers, auction houses and other entities transacting in art) is that they will be treated as financial intermediaries. Thus, art market players will be required to conduct, at the same level as financial intermediaries, risk-based due diligence enquiries on purchases amounting to EUR 10,000 or more, irrespective of the method of payment.

Following FATF's 2016 report, the AMLA is also undergoing changes. In particular, the threshold for cash payments will be reduced from CHF 100,000 to CHF 15,000. Contrary to the EU Fifth AML Directive, this change will apply only to the trade of precious metals and stones and not to art intermediaries. On 26 June 2019 the Swiss government adopted the relative message amending the AMLA and Parliament was expected to begin addressing the measures in the second half of 2019. However, at the end of January 2020, the National Council's Legal Affairs Committee decided by 13 votes to 12 not to proceed with the amendment of the AMLA. The AMLA's fate thus remains to be seen, but eventual amendments, if any, are not expected to come into force until the start of 2021 at the earliest.

These developments show that the trend goes towards more transparency. In this context, RAM plays a central role. The RAM experience indeed shows that the art market needs and wants more dialogue on best practices. Whatever the direction taken to (self-)regulate or not the art market, dialogue must be the first step to ensure that the relevant information is shared and considered to set the basis for a sustainable art market.

For more information, please contact Karolina Blasiak, Art Advisor at k.blasiak@rosemont-mc.com

