The importance of due diligence for the value of a collection

Sandrine Giroud
How to enjoy art peacefully and optimize its value
The value of art

- Art & wealth management: art is part of a diversified portfolio
- Art-secured lending
- Art as a financial investment
- Risk managing and regulation

Top 3 - Biggest threats to the reputation of the art market

- Authenticity: 63%
- Price manipulation: 82%
- Lack of transparency: 62%
New era: finance & transparency

Great Wave off Kanagawa, Hokusai

New world
- Litigation / mediatisation
- Tax pressure
- Art as a financial investment
- Technology

Interests at stake
- Artwork value
- Reputation
- Emotion
Factors of change

Rylkoiev v. Bouvier

Wildenstein case
When buying

- Appraisal
- Applicable law & Disputes
- Contract
- Provenance (Stolen art)
- Cultural goods
- Intellectual property
- Insurance
- Customs & Taxes
- Condition
When collecting

- Collector’s objectives
- Legal planning
  - Applicable law to the estate and matrimonial property regime
  - Legal structures: e.g. direct ownership, companies, trusts, foundations, donation to public museums
- Taxes
- Best practices
Salvator Mundi, Leonardo Da Vinci

- 1958: private sale USD 60
- 2011: auctioned at Sotheby’s USD 80 million
- 2011: private sale USD 127 million
- 2017: estimated price USD 100 million
- → sold for USD 450 million
Footman with samovar, Malevitch (1)

- Swiss Federal Supreme Cour decision (139 III 305 dated 18 April 2013)
- Buyer considered in «bad faith»
Footman with samovar, Malevitch (2)

- **Buyer:**
  - Was considered experienced collector
  - Bought from a reputable gallery
  - Knew the person who later claimed restitution and who never indicated the theft of that painting
  - Asked for a rep & warranty on the seller’s ownership rights
  - Checked INTERPOL but USSR was not a member
  - Demanded an authenticity report by a specialist who mentioned a rumour that there was a stolen Malevitch painting on the market
  - Checked with a previous auction house that refused to buy
Footman with samovar, Malevitch (3)

- Swiss Federal Supreme Court considered that this measures were insufficient

→ buyer in bad faith

→ no title over the artwork and restitution
The tide of AML / CFT regulation

- **2012** FATF recommendations: serious tax offence becoming predicate offence to money-laundering

- **2015** UN resolution 2199: underlining Member States’ obligations to take steps to prevent terrorist groups in Iraq and Syria from benefiting from trade in oil, antiquities and hostages

- **2016** Luxembourg: all entities operating in the Luxembourg freeport (including e.g. transporters) subject to AML regulation

- **2017** EU Commission supranational risk assessment of money laundering and terrorist financing: recommendation to include auction houses, art and antiques dealers and specific traders in high-value goods in AML list of obliged entities
Self-regulation and best practices initiatives

- **2012**: Basel Art Trade Guidelines
- **2017**: The Responsible Art Market Initiative
- **2017**: Art Basel Art Market Principles and Best Practices
The Responsible Art Market Initiative

http://responsibleartmarket.org/

Raising awareness of risks faced by the art industry and providing practical guidance on establishing and implementing responsible practices to address those risks.
What due diligence?

2017

Guidelines on combatting Money Laundering and Terrorist Financing

2018

**Art Transaction Due Diligence Toolkit**
- Client
- Artwork
- Transaction

Consultation **NOW**
RAM Art Transaction Due Diligence Toolkit

- The Toolkit comprises the following documents, which you can access below:
  - Due Diligence Checklist
  - Red Flag List
  - Due Diligence Explanatory Notes

Due diligence matters

- **Ensures the initial value** of your collection
- **Preserves** your collection from collateral costs (legal, reputational or financial costs)
- **Allows to leverage** the value of your collection
Questions?