Due diligence in the art market: a check list for responsible practices

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Association of International Business Lawyers (AIBL)
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Art: a **passion** investment

- 2017: estimated **USD 63.7 billion** market
- Increase of **12%** from 2016
- US (42%), China (10%), UK (4%)
- Art fairs: **USD 15.5 billion**
- Online sales: 72% increase over 5 years; **USD 5.4 billion**

*Source: The Art Basel and UBS Global Art Market*
Global UHNWI art & collectibles wealth
2016-26 – USD 1.622 to USD 2.706 billion
Corporate art collections

- UBS art collection, Deutsche Bank Art Collection, Progressive Art Collection, JP Morgan Chase Art Collection, Fleming Art Collection, The Bank of America Art Collection, Microsoft Art Collection

- Switzerland: BNP Paribas Swiss Foundation Collection, Collection Pictet, die Mobiliar Art Collection, EFG Art Collection, Helvetia Art Collection, Julius Baer Art Collection, Nestlé Art Collection, Novartis Art Collection, Roche Art Collections
Geneva’s art industry

- Collectors
- Freeports & service providers
- Art fair
- Auction houses
- Museums, galleries, dealers
- Artists

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Art & finance

- Wealth management services
- Art funds
- Art-secured lending

64 percent of wealth managers, 67 percent of private banks, and 55 percent of family offices surveyed said they were actively offering services related to art and collectibles, including entertainment and client hospitality.

The art-secured lending market in the US reached an estimated US$17-20 billion in 2017 which represents a 13.3 percent growth from 2016.
Challenges & risks in the art market

- High value & moveable goods
- Culture of discretion / lack of transparency
- International market
- Lack of supervision / specific regulation
- Passion
Factors of change (1/2)

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

Interests at stake
- Reputation
- Artwork value

Great Wave off Kanagawa, Hokusai
Factors of change (2/2)

Ryolovlev v. Bouvier

Wildenstein case
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 → 5th AML Directive
Art Basel believes that trust is the essential element underlying the sales that are crucial to the success of our exhibitors, both at our shows and on an ongoing basis. Thus, we firmly believe that the integrity of the gallerists participating in the Art Basel shows should be a primary criterion for their inclusion. And therefore, we must take seriously any case involving acts that could harm the broader trust essential to a sound art market.
The Responsible Art Market Initiative

Raising awareness of risks faced by the art industry and providing practical guidance on establishing and implementing responsible practices to address those risks.
What is the Responsible Art Market Initiative?

The Responsible Art Market Initiative ("RAM") is a cross industry initiative formed in Geneva in 2015. RAM’s members span the entire spectrum of the art market from galleries, dealers, auction houses, advisors and service providers, to lawyers, academics and public prosecutors specialising in art related matters.
Who?

CHRISTIE’S  SGS  PORTS FRANCS  FDA

SEYDOUX & ASSOCIÉS  Fine Art  UNIVERSITÉ DE GÈNEVE

Jean-Bernard Schmid

Professor Ursula Cassani  Galerie Grand Rue
Advantages

- Greater efficiency
- Lower compliance costs

- Meet the industry technical requirements

- Mitigate conflict of interest
- Increase support

- Avoids jurisdictional conflicts
RAM’s projects: responsibleartmarket.org

Building an Art Market for the Future
Guidelines for Countering Money Laundering and Terrorist Financing Threats

Thursday, 26 January 2017 | 14:00 - 17:30

Building an Art Market 2.0
Art Transaction Due Diligence Toolkit

Friday, 2 February 2018 | 08:30 - 12:30
artgenève, Salon d’art - Palexpo, Geneva
An aide-mémoire

- Non-exhaustive
- Risk-based approached
- No uniform standard

Please note:

- The following client, artwork and transaction due diligence checklists serve as an "aide-mémoire" of the various checks which can be considered and/or carried out when conducting art transaction due diligence.
- They are a compilation of best practices and are not exhaustive.
- The checklists do not purport to set a standard to be applied in all situations.
- They should be used applying a "risk-based" approach to determine the level of due diligence required. Enquiries should be tailored to any risk factors (red flags) which are present.
- When collecting and holding personal data, data protection obligations should be considered and respected.
- The checklists should be read together with the Explanatory Notes.
The Art Transaction Toolkit

Check lists
- Client
- Artwork
- Transaction

Red flags

Explanatory notes

Risk-based approach
Art transaction due diligence

Client
- Identity
- Role
- Authority

Artwork
- Ownership
- Provenance
- Authenticity
- Condition

Transaction
- Purpose
- Form
- Source of funds

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How to use the toolkit

1. Ask questions
2. Identify red flags
3. Collect information and where necessary document
   → Consider data protection issues
Salvator Mundi, Leonardo da Vinci

- Painted circa 1500
- Original once owned by Charles I
- Disappeared completely in 1763
- Surfaced in 1900 but attributed to one of Leonardo’s followers
- Sold in 1958 only for GBP 45 and vanished
- Reappeared in 2005 but almost unrecognizable due to damage
- 2013 bought by D. Rybolovlev for USD 127 million
- Auction history on 15 November 2017 when sold for USD 450 million (with commission)
Art due diligence serves

- Manage litigation risks
- Protect reputation
- Preserve value
Thank you