The art of taking the initiative: the Responsible Art Market Initiative

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How best to protect the art market from money laundering and terrorist financing threats? This is not a new debate, and recent months have witnessed renewed global activity from legislators and the art market alike.

Globalised and diverse, the art market is constantly evolving to respond to new risks. Art is increasingly being sold online and collected as an investment, as well as for its intrinsic aesthetic, cultural or historical value. New methods of buying and collecting art bring with them new challenges when it comes to combating money laundering and terrorist financing. At the same time, the legal and regulatory framework within which art businesses are required to operate is becoming increasingly complex. Several countries have imposed (or are considering) anti-money laundering requirements on art dealers as part of ongoing efforts to protect the market from abuse.

On the European front, hot off the press is the Fifth European Union Anti-Money Laundering Directive[1] aimed at further improving transparency around financial transactions. Adopted in May 2018, with an implementation date of January 2020, this directive tightens the regulation of art market transactions valued at €10,000 or more. For the first time, art galleries, auction houses and freeports are specifically identified as 'obliged entities'. Such 'persons trading or acting as intermediaries in the trade or storage of works of art' are required to carry out customer due diligence where the value of the transaction (or series of linked transactions) amounts to €10,000 or more, irrespective of the payment method (credit card, bank transfer, cheque or cash) used. Previously, only art business involving cash transactions of €10,000 or more was regulated.

Across the water in the United States, a bill introduced in the House of Representatives in May 2018 (the Illicit Art and Antiquities Trafficking Protection Act)[2] proposes the addition of 'dealers in art or antiquities' to the list of persons obliged to follow reporting requirements for cash transactions greater than $10,000 and verify client identities in the same manner as banks. It remains to be seen whether this bill passes the legislative stages during the current administration.

Switzerland's reform of its anti-money laundering legislation[3] came into force in 2016, imposing additional due diligence obligations on 'dealers', defined as 'physical or moral persons who negotiate goods professionally and receive cash payments', thus including art dealers who accept cash payments exceeding CHF 100,000 in a single or series of related transactions. These include checking the identity of
their customer or their customer's representative, and identifying beneficial owners. While welcoming the reforms, in its 2016 Mutual Evaluation report for Switzerland, the Financial Action Task Force (FATF)\[^4\] commented that '[t]he threshold of CHF 100,000 (approximately $101,296/€91,340) seems very high, even for Switzerland, for ensuring transparency and limiting the use of cash usually associated with this type of measure.'\[^5\]

**Taking the initiative**

Against the backdrop of these legislative changes, and the operational and reputational threats that money laundering and terrorist financing pose to the art market, the Responsible Art Market Initiative (RAM), together with its online platform,\[^6\] was launched in Geneva, Switzerland on 26 January 2017.

This not-for-profit initiative formed under the auspices of the Geneva-based Art Law Foundation and the University of Geneva's Art-Law Centre is the first of its kind. With the aim of promoting the efficient functioning of the art market, it brings together actors from across the art market spectrum to identify risks affecting the market, and provides a forum for discussing and sharing responsible practices tailored to the needs of the art market.

Collaborative and interdisciplinary, RAM's Working Group members include international auction houses, galleries, art dealers, Geneva Freeport, specialist art lawyers (from Switzerland, France, the United Kingdom and United States), academics and art industry services, including providers of technical analysis and insurance. This interdisciplinary approach ensures that issues are addressed holistically from various perspectives.

The experience of the financial sector has shown that state imposed regulation can sometimes be ill-adapted to the needs of the industry. It can also result in the elimination of many small market players that are unable to support the investment required to meet heavy compliance obligations. In addition, it can take many years for regulations to pass through the various legislative hoops before they become law. RAM's self-regulatory approach based on responsible practices can be adapted more quickly to respond to risks as they evolve.

RAM exists to support art market actors by providing them with a practical and ethical compass to navigate an increasingly complex and fragmented legal framework.

It aims to do this by:

- raising awareness among art market actors of the risks they face as they do business;
- consolidating and sharing existing industry responsible practices; and
- providing practical guidelines and tools accessible to the entire market, including small art businesses, and individual dealers and collectors who do not have the financial resources to spend on large compliance departments or expensive lawyers.

RAM is not a standard setting organisation. Rather it works within and alongside existing legal frameworks, identifying responsible practices to help art businesses to comply with their legal obligations. By issuing practical guidelines and tools that take account of the specific needs of the art trade, RAM aims to have a greater impact when it comes to reducing risks for art businesses and collectors alike, thereby increasing public trust and confidence in the market.

Important aspects of RAM's collaborative, art market focused methodology are the public consultations it carries out prior to publishing its guidelines, and documentation and annual conferences it organises on topical issues in the art market. These bring together key art market stakeholders to discuss, improve,
simplify and enrich the set of principles laid down in its publications.

Guidelines on combatting money laundering and terrorist financing

RAM published its first set of guidelines on combatting money laundering and terrorist financing threats at its launch conference in Geneva on 26 January 2017.[7] The aim of the guidelines is to help art businesses to identify situations in which they may be exposed to money laundering and terrorist financing, and understand how they can mitigate and address these risks.

Founded on the 'risk-based' approach advocated by FATF and echoed by the European Anti-Money Laundering Directive, RAM's guidelines encourage art businesses to identify the risks in their business activities and adopt anti-money laundering processes, procedures and compliance controls consistent with the type and level of risks identified.

In keeping with its practical approach, RAM's guidelines focus on the following key areas of art transactions:

- the client
- the artwork; and
- the transaction itself.

They are supplemented with a Quick Reference Guide and Red Flag lists, highlighting situations that could be indicators of increased money laundering risk.

As the approach to anti-money laundering legislation varies from country to country, an important addition to RAM's guidelines are the 'Country Guides'. These outline requirements of anti-money laundering legislation relevant to art businesses in several jurisdictions, including Switzerland, the UK, Germany, France, the US, Brazil and India.

Art Transaction Due Diligence Toolkit

Furthering the dialogue on due diligence and sustainable art market practices, for its second and most ambitious project yet, RAM launched its Art Transaction Due Diligence Toolkit at its annual conference in Geneva on 2 February 2018.[8]

Due diligence forms an essential part of art transactions. Investigating and obtaining as much information as possible about the parties to the proposed transaction, the artwork and the transaction itself, protects collectors and their advisers, and helps art businesses manage reputational, financial and legal risk. Identifying if a buyer is a politically exposed person or if an antiquity has been illicitly excavated from a region in recent conflict can go a long way to improving transparency in art transactions and reduce the risk of exposure to money laundering and terrorist financing.

Transactions to which the Art Transaction Due Diligence Toolkit can be applied include:

- acquisitions, sales, donations, loans and exchanges of artworks;
- management of art collections by fiduciary service providers and advisers;
- financial transactions and investments involving artworks, including loans secured against artworks;
- curation of exhibitions and art fairs;
- arranging insurance, storage and/or transportation of artworks.
Working alongside and not as a substitute for existing legal obligations, the Art Transaction Due Diligence Toolkit comprises practical checklists and ‘red flag’ reminders, as well as detailed explanatory notes.

A non-exhaustive ‘aide-memoire’ of various checks that it can be helpful to consider and carry out when undertaking due diligence in art transactions, the toolkit does not purport to set a uniform standard to be applied in all transactions. Depending on the circumstances, the suggested checks may not be appropriate, practicable or necessary. Conversely, they may not be sufficient.

Can self-regulation in the art market make a difference?

Tackling money laundering and terrorist financing remains firmly on government agendas, with the focus increasingly turning to the art market to help in this fight.

For a market as complex, diverse and constantly evolving as the art market, a self-regulatory approach is widely recognised as having several advantages over externally imposed state regulation. These include:

- flexibility and speed: industry guidelines can be developed and updated more quickly than state-imposed legislation, which takes time to be approved and adopted, resulting in greater operating efficiencies for art businesses and, in turn, minimising compliance costs;
- better adaptation: greater technical and industry expertise can be achieved through industry-developed guidelines striking that critical balance between achieving the desired goal and not stifling the market so that it cannot operate;
- increased collaboration: conflicts of interest are mitigated through the participatory design process; and
- global scope: unlike territorial legislation, guidelines and codes of conduct can transcend national boundaries, resulting in a more flexible approach better adapted to serving a global market such as the art market.

As risks to the global economy and art market evolve, initiatives such as RAM provide a forum for international dialogue and collaboration. This could prove essential when it comes to developing appropriate ‘risk-based’ measures, and protecting the art market from money laundering and terrorist financing threats.

For more information: [http://responsibleartmarket.org](http://responsibleartmarket.org).

RAM will be holding its next annual conference in Geneva, Switzerland at Art Genève 2019.

Notes

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[4] The FATF is an intergovernmental body tasked with examining money laundering techniques and trends, reviewing legislative and law enforcement actions relating to money laundering at national and international levels, and issuing recommendations to combat money laundering and stem terrorist financing.


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