

Basel Art Trade Principles on Anti-Money Laundering Green Paper for Public Consultation

17 June 2016

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Public consultation process

Comments on this Green Paper can be submitted online at www.baselgovernance.org/art-trade. The closing date for comments is September 30 2016. You may submit your remarks as a private individual or on behalf of an organization, and indicate whether you agree or not to have them published on the website during the consultation process.

Background

These Principles draw on the Basel Art Trade Guidelines issued in draft in 2012 (see <https://www.baselgovernance.org/publications/372>). This paper does not replace the Basel Art Trade Guidelines, but seeks to complement and set out in more detail the AML aspects of the 2012 Guidelines.

Introduction

1. The art trade is not immune to the risks of money laundering and the financing of terrorism (hereafter shortened to money laundering). Art Market Operators are at risk of being misused by persons seeking to launder the proceeds of criminal activity, thereby creating potentially serious reputational, legal and financial consequences for the art trade.¹
2. The risks of money laundering can be mitigated by implementing appropriate policies and procedures and by ensuring that employees understand their respective obligations.
3. It is acknowledged that the size of Art Market Operators varies widely.² As such, the measures taken by each Art Market Operator to avoid their involvement in criminal activity may vary, depending on the size, structure and the exposure of their business to money laundering risks.
4. The application of a risk based approach to determine the resources, measures and controls needed to mitigate those risks is regarded as an appropriate method to prevent and detect money laundering, and therefore an approach Art Market Operators may wish to consider when addressing this issue.
5. These principles do not seek to replace existing initiatives or any Art Market Operator's policies and procedures. Rather, they aim to contribute to a level playing field by providing Art Market Operators with a consistent method for applying a risk based approach to countering anti-money laundering (AML) risks in accordance with their particular exposure and risk profile.
6. The principles and their application rely on Art Market Operators' full compliance with applicable national legislation, international conventions and relevant internal Codes of Conduct, policies and procedures.

Scope

7. These principles are addressed principally to **Art Market Operators**, a term which includes all persons and entities that engage in the trade of art objects as well as intermediaries that are between the buyer and seller.
8. **Service industries** that support the trade in art objects and that are already subject to anti-money laundering laws and regulations (such as banks, insurance companies and lawyers) should

¹ See for example the Art and Finance Report 2016 by Deloitte at <http://www2.deloitte.com/lu/en/pages/art-finance/articles/art-finance-report.html>.

² Small businesses may not have the resources to address money-laundering risks in the same way that large auction houses or major dealers and galleries will have, and may have a different risk exposure.

identify their business involving the trade in art objects as higher risk as long as there are no internationally applicable standards.

9. **Other service industries** that are not regulated for anti-money laundering purposes may wish to consider where these principles would be of use and applicable to their businesses.

AML Standards for Art Market Operators

10. In order to avoid being misused for money laundering, the Art Market Operator has to ensure it conducts business relationships only with those clients it can be reasonably sure are engaging in legitimate business.
11. Good practice in anti money laundering (AML) suggests that Art Market Operators should implement a reasonably designed risk based approach by which they identify the criteria to measure potential money laundering risks. The identification of the money laundering risks of its clients, services and transactions will allow Art Market Operators to determine and implement proportionate measures and controls to mitigate these risks.
12. In practice the risk based approach will have to address the following three risk categories:
- a. Identity of the client (see section II on Know Your Customer (KYC) below);
 - b. Provenance of the art object (see section III on Provenance of the art object below); and,
 - c. Origin of the buyer's funds involved in the transaction (see section IV on Provenance of Funds below).

I. Applying a Risk Based Approach

13. The application of a risk based approach to address money laundering in the art market will require the Art Market Operator to establish its risk profile, taking account of the following, which is a non-exhaustive list:
- a. Countries where sales are conducted
 - b. Jurisdictions where the Art Market Operator obtains its inventory
 - c. Markets
 - d. Delivery channels
 - e. Services offered to clients
 - f. Types of transactions
 - g. Client profiles
 - h. The location of contracting parties
 - i. The source of funds
 - j. Financing methods
 - k. The value of the art objects; and,

- l. Any other factors that the Art Market Operator may determine relevant when establishing its own risk profile which it will then use to develop appropriate measures to mitigate the AML risks of its business.

14. In implementing a risk based approach the Art Market Operator should:

- a. Address the design and implementation of controls to mitigate the assessed risks;
- b. Conduct regular training of staff on money laundering risks including their roles and responsibilities to prevent, detect and report suspicions and to whom they should report internally. Training of new staff members should take place within a reasonable timeframe and refresher training should be conducted as appropriate to make sure staff remain aware of new risks or changes to the risk profile of the Art Market Operator;
- c. Provide special training to person(s) designated to receive internal reports of money laundering suspicion so that they know how to handle reports and when to report them to the appropriate authorities;
- d. Monitor the effectiveness and implementation of the controls and make improvements where required;
- e. Periodically review and update the policies, procedures and risk profile;
- f. Maintain records that evidence the implementation of the approach; and
- g. Document fully and contemporaneously any deviations from the application of its risk based approach.

II. Know Your Customer (KYC)

15. The client is the person or entity with whom a contractual relationship is formed and refers to the buyer as well as the seller. Know Your Customer (KYC) requirements however go beyond the basic knowledge of buyer and seller as referred to in any contract between them. KYC should therefore cover any natural person who, as the ultimate beneficial owner, may operate through another natural person or a corporate structure as an intermediary.
16. Beneficial ownership, for reasons that may be legitimate or not, can be obscured behind multiple layers of such intermediaries (usually so-called shell companies, or offshore companies involving trusts, foundations or bearer share companies, mostly located in offshore jurisdictions).
17. The KYC requirement demands that the Art Market Operator looks through all these layers until one or other of the following is identified: natural person(s); a company that is listed in a publicly accessible register; a company listed on a public stock-exchange. The beneficial owner should therefore be seen as the true owner of an art object on whose behalf the Art Market Operator agrees to sell, or the ultimate buyer of the artworks to whom art objects are sold (see further under Identifying the ultimate beneficial owner below).
18. The Art Market Operator should also clarify to the client whether it is acting in respect of its own stock or as agent. This would include the disclosure of actual or potential conflicts of interest where the Art Market Operator is not operating in its own name, but through a company of which it is the sole owner or beneficiary or whereof it may be a partner or holder of a material interest.
19. Art Market Operators must maintain records of all these checks.

i. Identification of the persons involved in artwork transactions

20. The ‘contracting party’ is the person or entity with which the Art Market Operator forms a contractual relationship. This contracting party may not necessarily be the owner of the artwork and may be an individual, entity or acting on behalf of a third party.
21. Client identification must be carried out before entering into a business relationship.
22. Identification of an individual requires obtaining the name, date of birth, address and such further information that may be appropriate or required by law or regulation.
23. Client identity verification involves obtaining supporting evidence that reinforces the claim of identity. Verification of identity will depend on the type of business relationship, as follows:
 - **Natural persons:** identity will be verified on the basis of official identity papers or other reliable, independent source documents, data, or information as may be appropriate under the circumstances. (This means requesting identity papers along with a proof of residency).
 - **Corporations, partnerships, foundations:** identity will be verified on the basis of documentary evidence of due organization and existence. (This also means requesting and checking a document proving that such entity is allowed to acquire or sell an art object).
 - **Trusts:** identity will be verified on the basis of appropriate evidence of formation and existence or similar documentation. The identity of the trustees will be established and verified. (This also means requesting and checking a document to prove that such entity is allowed to acquire or sell an art object).
24. Identification documents, if used for verification purposes, must be current at the time of establishing the business relationship and copies of such documents must be obtained.

ii. Identifying the ultimate beneficial owner

25. The ultimate beneficial owner refers to the natural person who enjoys the benefit of ownership of an art object, asset, legal entity, bank account, wealth etc. It also refers to the natural person(s) on whose behalf the transaction is conducted.
26. If the Art Market Operator knows, or has reasonable grounds to believe that the counterparty to a transaction is acting on behalf of someone else, the Art Market Operator must establish the identity of the ultimate beneficial owner and the capacity in which the counterparty is representing the beneficiary. The Art Market Operator may treat the identification of the beneficial owner with strict confidentiality, but the Art Market Operator cannot avoid its responsibility by relying on representations made by the counterparty.
27. Where there are multiple beneficial owners, all those with 25% ownership and above should be identified. Identity will be verified to the satisfaction of the Art Market Operator on the basis of official identity papers or other reliable, independent source documents, data or information as may be appropriate under the circumstances. In the event verification is based on identity papers, copies of such identity papers should be obtained.

iii. Enhanced due diligence

28. In the context of client identification, the following are categories of persons that may require enhanced due diligence:
- Persons residing in and/or having funds sourced from countries identified by credible sources as having inadequate AML standards or representing high risk for crime and corruption.
 - Persons engaged in types of economic or business activities or sectors known to be susceptible to money laundering.
 - Certain categories of “Politically Exposed Persons” (which may/may not include so called domestic PEPs), referring to individuals holding or, as appropriate, having held, senior, prominent, or important public positions with substantial authority over policy, operations or the use or allocation of government-owned resources, such as senior government officials, senior executives of government corporations, senior politicians, important political party officials, etc., as well as their close family and close associates.
 - Persons who are not physically present (see below on “non face-to-face transactions”).
29. Senior management approval should be obtained before entering into a business relationship with a client subject to enhanced due diligence.
30. Enhanced due diligence can be costly and time consuming. Depending on an Art Market Operator’s individual risk exposure, different means for conducting enhanced due diligence may be appropriate, ranging from in-depth background checks possibly using specialised firms to internet searches using appropriate keywords and combinations words.

iv. Intermediaries

31. An intermediary in this context refers to any individual or entity that is paid a commission for its role in the sale or consignment of an art object to the Art Market Operator.
32. Due diligence should be carried out on all intermediaries that act for or on behalf of the Art Market Operator’s client. Where the intermediary is an entity of any kind, the identity of the ultimate beneficial owner as a natural person should be obtained and verified by a written statement confirming this information. Copies of appropriate documents identifying the intermediary should be requested and obtained.
33. Where an Art Market Operator engages an intermediary, a written agreement (such as an Introductory Commission Agreement), should be in place before any services are rendered.

v. Powers of Attorney

34. The Art Market Operator should assess the risk associated with a person holding a power of attorney, and document the authorization to liaise directly with the person conferring the power of attorney.

vi. Non face-to-face transactions

35. Business relationships that are conducted through the Internet, telephone or similar technology or are otherwise through non face-to-face interactions will need to be assessed by the Art Market Operator prior to transactions taking place, and in some circumstances enhanced due diligence may be appropriate for such relationships.

III. Provenance of the art object

i. Establishing the provenance history and authenticity

36. An undisputed and uninterrupted provenance history and proven authenticity of the art object is the ideal aim in all transactions. It is acknowledged however that this is not always feasible. The traceability of the art object should however be transparent such that the Art Market Operator can be reasonably sure that the known history of previous owners has been established as far as it is reasonably possible to do so. In addition, and here too applying a risk based approach, the Art Market Operator will also:
- a. Search on Interpol art database and request a Certificate from the Art Loss Register
 - b. Search databases of looted art
 - c. Obtain the provenance history of the art object requesting any archives and documentation from the owner (including documents such as invoice, loan agreement, insurance certificate)
 - d. Obtain any relevant and available legal documents, witness declarations, expert opinions even if the work is reproduced in the *catalogue raisonné* or any reputable art books. If possible, request a Certificate of Authenticity or a written confirmation from relevant artist committee or expert
 - e. Check all the exhibition catalogues where the art object has been exhibited and
 - f. Check the art object and note any signature, number, frame or labels on the back, and
 - g. Check the restoration history as appropriate and presenting circumstantial evidence when no direct documentation is available.

ii. Incomplete Provenance

37. Being in possession of an art object does not in itself provide sufficient evidence of ownership and the rights of disposal. In the absence of valid objections it is, however, reasonable to suppose that the possessor enjoys full ownership of the art object.
38. In these and other cases where full evidence on the provenance of the art object could not be procured, but sufficient indications of legitimacy are available, the art object can still be sold, but only with full disclosure of the respective findings and preferably by way of a sale at a public auction.

IV. Provenance of funds

39. The Art Market Operator should:
- Only accept payments from reputable financial institutions in countries that have implemented reasonable measure to address money laundering, countering the financing of terrorism and tax evasion;
 - Adopt a policy of not accepting payments from third parties; and,
 - Not accept cash or multiple cash payments for high value transactions.
40. If the buyer is a domiciliary company, or acting as an intermediary or otherwise on behalf of a third party, the Art Market Operator must establish the ultimate beneficial owner of the funds (the natural person).
41. Cash transfers are generally to be discouraged wherever possible. Where cash transactions are permitted and exceed EUR 10 000 (or equivalent local currency) or the amount specified in applicable legal and regulatory standards, the Art Market Operator should conduct enhanced due diligence on the buyer.

V. Suspicion of Money Laundering

42. Even with AML checks and controls there are still risks that an Art Market Operator will be misused for criminal purposes, and knowing that a transaction is being undertaken to disguise the proceeds of a crime or suspecting that a relationship or transaction is being established to enable money to be laundered is a crime in many jurisdictions. For these reasons it is important for Art Market Operators to understand and be able to identify risk indicators, also known as red flags.
43. Money laundering suspicions may be raised in many ways, and the following examples of red flags may indicate increased money laundering risks, the client:
- a. Is evasive or reluctant to provide adequate information relating to their identity or property or provides information which appears to be false;
 - b. Insists on paying in cash (perhaps with a de minimis limit) or anonymous credit or cash cards;
 - c. Asks detailed questions about procedures for reporting suspicious activity and/or financial matters to tax authorities;
 - d. Knowingly wishes to sell at an artificially low or inflated price;
 - e. Makes multiple low value cash payments for a single or connected transactions;
 - f. Suggests unusually complicated structures for achieving a purchase or sale;
 - g. Is a Politically Exposed Person (PEP) or closely connected to a PEP e.g. government officials or persons who hold a prominent public function;
 - h. Is known to be (or associated with) a person subject to criminal or regulatory investigation, prosecution or conviction;
 - i. Lives, operates or banks in a higher risk jurisdiction such as countries where drug trafficking, terrorism and/or corruption are prevalent or where tax and money laundering regulations are less stringent.³

³ Such as by consulting the Financial Action Task Force website: <http://www.fatf-gafi.org/>.

44. Where a red flag is raised, the Art Operator should seek further information to satisfy itself that it will not be engaging in, or otherwise supporting money laundering. If it is not possible to obtain sufficient information to address the money laundering risk, or otherwise mitigate the red flag, then it may be advisable for the Art Operator to decline the transaction or not enter into the business relationship in the first place.

VI. Reporting

45. Where the source of funds gives rise to grounded suspicions of money laundering and in the absence of plausible explanation, the Art Market Operator must report those suspicions to the appropriate authorities. The art object may be subject to legal orders as required by local law and the transaction may be blocked.

VII. Record Keeping

41. Art Market Operators should keep records of: clients' identification as well as documents obtained in connection with verification of identity and the results of enhanced due diligence searches; evidence of searches carried out in relation to the provenance of the art object; and, any deviations from the risk based approach. These records should be maintained for a prescribed period of time (typically at least 5 years from completion of the transaction or the end of the business relationship, though some countries require substantially longer than this).