ART SALES VAULT

Introduction to Anti-Money Laundering for Art Market Participants

Preparing for London Frieze

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If you are in the business of selling art, you know that it is relatively rare to sell to someone you have not met. However, as the United Kingdom, European Union and United States bring more and more industries under anti-money laundering regulations, criminals have been searching for a new way to launder their money. In fact, the UK and EU already have brought the art market under anti-money laundering regulations because of this concern. Even sellers of fine art who are based in the US or online must comply with EU and UK regulations when conducting transactions in Europe.

How do you protect yourself, your business and your clients from unsuspectingly getting involved with money laundering? It is actually quite straightforward if you know where to start.

There are three key steps in the prevention of money laundering: (1) know the nature of your business, (2) know your customer due diligence, and (3) analyze the risk of your business and transactions.

Step 1 **"Know Your Business"**	**Step 2** **"Know Your Customer"**	**Step 3** **"Know Your Risks"**
Size	Identification and verification of purchaser	Identify any Red Flags
Nature		Analyze if further information is required
Client base	Identification and verification of funds	
Transaction size	Purpose of transaction	Develop and implement risk mitigation procedures
Transaction frequency	Background check	Use neutral, risk-based rules to determine whether to proceed with the transaction
Staff awareness and training	Continued Monitoring	

- ART SALES VAULT ("ASV") CAN HELP
- VIEW ASV SERVICES HERE
- USE PROMO CODE **LONDONFRIEZE** FOR FREE CONSULTATION

What is Money Laundering?

Money laundering is defined as turning money that is the proceeds of a theft or other illegal activity into clean money—which can be hidden in the form of a material product. Money laundering is one of the most difficult crimes to detect. The crime can be tax evasion, fraud, theft, or the possession of stolen goods. Criminals may invest the proceeds of their crimes in artworks. The funds used to purchase the artworks may be from bribery or corruption, illegal trade in stolen goods, insider trading, market abuse, or drug trafficking. There is also a risk that the funds are linked to terrorist financing. Similar to money laundering it is illegal sell to a person who is under a sanction or a resident of a sanctioned country.

Examples from HMRC publications:

(1) A gallery facilitates the purchase of an artwork for an inflated price and later allows the seller or someone representing the seller to buy it back at a lower price.

(2) An art dealer sells a sculpture and pays the net proceeds of sale to the seller. Had the dealer, prior to the sale, carried out a lost/stolen art database check, they would have discovered that the sculpture had been stolen from a museum. The art dealer has transacted with the proceeds of crime and could be liable for the facilitation of money laundering.

(3) An art collector who has recently been sentenced to imprisonment for a long history of insider dealing has their spouse buys a painting at auction. Funds are wired to the auction house from a Panamanian business that is solely owned by the art collector through a different corporation. The auction house accepts the funds, releases the painting to the collector's spouse and pays the seller. There is a risk that the auction house has accepted criminally derived funds and facilitated money laundering.

What are the Regulations?

US

There are no preventative anti-money laundering ("AML") regulations currently in effect in the US. There are no current requirements to take measures to ensure that you are not unknowingly facilitating money laundering for the art market. However, the act of intentional money laundering is a crime. It is a crime to enter an arrangement that facilitates the laundering of criminal or terrorist property. Similarly, transacting with a sanctioned individual is a crime. You are not guilty if you simply made a mistake but being innocent does not shield you from finding yourself caught up in an investigation by an agency like the Office of Foreign Asset Control. Just being investigated can result in bad financial and reputational consequences.

UK

If you want to conduct sales in the UK, you must comply with the anti-money laundering ("AML") guidance described in this pamphlet as well as certain other requirements. Prior to, or within a reasonable time, of selling an artwork over €10,000 at to an entity or individual located in the UK, even US-based intermediaries such as galleries, online platforms, art consultants and dealers are required to register with Her Majesty Revenue and Customs ("HMRC"). The steps for registration are as follows:

(1) Non-UK sellers must register using the non-established taxpayers ("NETP") VAT registration process. Apply for VAT here.

(2) Register as an Art Market Participant ("AMP") with the HMRC. Apply to register as an AMP here.

If you have any questions, contact Art Sales Vault ("ASV") at orders@artsalesvault.com.

Once registered, you must comply with the "Know Your Business" (the Risk Assessment Policy), "Know Your Customer" (due diligence) , and "Know Your Risk" (decision making, reporting, and retention), described in in further detail below.

The EU regulations are generally similar to the UK but does not require registration.

Compliance with AML Regulations

There are three key steps to establishing your anti-money laundering compliance. The first step is to set up a dedicated team and educate them on the regulatory requirements. This team will be led by your Nominated Compliance Officer. Your compliance officer could be the owner or a member of senior management. Their job is to supervise the creation of your Risk Assessment Policy , the implementation of due diligence, adherence to reporting requirements and proper record keeping of the reports that you are required to develop and maintain throughout the AML process. By instituting these practices your can help minimize the risk of your business incurring fines or criminal liability due to violations and, if needed, provide a defense to an allegation that you knowingly participated in a criminal transaction.

Know Your Business: Creating Your Risk Assessment Policy .

Step 1: Analysis.

The Compliance Officer and staff should conduct a self-analysis of your business' risk by creating a written Risk Assessment Policy, which begins by considering and including the following:

A. The Size and Nature of Your Business

What is your annual number of sales; how many are over €10,000; how many could be considered cash sales? How often are your transactions international? How often do transactions occur in the UK or EU? Do most if your transactions occur within the United States? How often do your transactions involve geographic risks? (sanctioned countries or individuals)? How often are your transactions with customers who present risks, e.g, transactions with Politically Exposed Persons ("PEP")? What channels of selling do you utilize, for example, public auction, gallery, shops (storefront or online), or private sales? What is the type and value of works of art generally offered?

B. Which of your sales do you consider risky and which sales do you consider low risk?

Will all transactions over €10, 000 require enhanced due diligence? If you know the buyer personally, will you allow for simplified due diligence to be conducted? Do you check the art loss register prior to selling a work created in a high-risk jurisdiction? When is a thorough provenance check required? Will you accept funds from multiple sources to complete a transaction? How will you ensure your Risk Assessment Policy will be followed?

Based on the answer to these types of questions you will be able to determine where your resources should be focused. Those areas which carry the greatest risk of money laundering or terrorist financing should be carefully managed and monitored, while those areas determined to present a low risk may be subject to lighter touch risk mitigation and controls. All of these considerations will make up the substance of your Risk Assessment Policy.

Step 2: Development of Prevention Plan.

There are three broad groups of money laundering offenses that AMPs need to avoid committing. These are:

- knowingly assisting (in a number of specified ways) in concealing, or entering into arrangements for the acquisition, use, and/or possession of, criminal property;
- failing to report knowledge, suspicion, or where there are reasonable grounds for knowing or suspecting, that another person is engaged in money laundering; and
- tipping off or prejudicing an investigation.

The techniques used by money launderers constantly evolve to meet the needs of the criminal and avoid the legislative, regulatory, law enforcement tactics. Your Risk Assessment Policy must expressly state what factors will be considered during a transaction and the processes you will follow to prevent unwitting involvement in money laundering. Each staff member (full-time, part-time, temporary) must be trained and aware of their responsibilities under the Risk Assessment Policy.

ASV offers consultations and development of you Risk Assessment Policy. We also offer trainings for Compliance Officers and staff.

Know Your Client Due Diligence ("KYC"):

Based on your Risk Assessment Policy and the specifics of a transaction, KYC (also called "Customer Due Diligence" or "CDD" in the UK regulations) can take various forms. The art market participant ("AMP") involved in the transaction must complete due diligence on the person or entity who is paying *before* establishing a business relationship or *before* the transfer of title in the artwork. When a buyer is not physically in front of the AMP it is highly recommended that the AMP verify the buyer's identity either by a video call or approved identity verification application such as ID-Pal, which is utilized by Art Sales Vault, and integrated with the ASV due diligence screening platform.

Finally, any data collected during KYC may be used for purposes of preventing money laundering ONLY. If the subject of the KYC is located in the UK and EU, their information must be held in compliance with their applicable local data privacy laws. These requirements are further described in the Know Your Risk section, below.

A. Identification of Individuals.

The key point to consider is: how do you truly identify an individual? In general, your Risk Assessment Policy should include: the various means that you use to identify your client and how ascertain the accuracy of the identification. For example, you may identify the buyer by considering the history of the relationship of the gallery with the client, securing a valid photographic government issued document, or at minimum obtaining the buyer's legal name, date of birth, and legal address. More information may be required based on the specific circumstances of the transaction.

B. Verification.

The next step is to run an accepted professional analysis of the information and documentation collected as required by your Risk Assessment Policy. For example, Art Sales Vault uses World Check One to conduct due diligence. World Check includes global surveys of:

- Politically exposed persons
- State owned entities
- Current sanctions
- Negative media screening
- Regulatory and law enforcement
- Beneficial ownership information

C. Intermediaries in a Transaction.

The AMP seller must conduct KYC on the person or entity who is paying. If the person who is paying is an intermediary, the AMP must conduct KYC on the intermediary and the intermediary is responsible for conducting due diligence on the buyer. Intermediaries are defined as: "someone who, by way of business, actively transacts in the sale or purchase of works of art on behalf of a seller or buyer under whose authority they act" such as an art dealer or agent, art gallery, an online sales platform, an auction house, an art consultant, or interior designer who receives a commission on the UK sale.

D. Identification and Verification of Entities.

If the purchasing party is an organization, such as, a corporation, LLC, limited company or type of entity structure the purchaser must be an owner whose share in the business is greater than 20% or a legal representative of the owner. The identification of the owner and/or the representative must be verified by KYC in the same manner as an individual. If a deeper risk analysis is required by your Risk Assessment Policy further research into the corporate officers of the entity may be required. Art Sales Vault provides entity structure searches as an add-on to our standard KYC searches.

Art Sales Vault offers KYC searches. Purchase here.

Know Your Risk: Decision-making, Reporting, and Retention.

Accepting or rejecting the sale is based on balancing any potential risk that may arise throughout the sale. Government agencies provide lists of potential risks, these are generally referred to as Red Flags. Some examples include:

- association with high-risk jurisdictions,
- being a politically exposed person, or an associate thereof,
- unnecessarily complex transaction,
- hesitation in complying with any due diligence measures.

The AMP is required to consider all of the elements of the transaction when weighing its potential risk. This is value judgment based on your Risk Assessment Policy. However, the Risk Assessment Policy can pre-determine the outcome of certain scenarios.

Examples:

(1) Your Risk Assessment Policy requires that when a client refuses to provide identification, wants to rush the sale, and the funds are coming from multiple accounts, one of which is located in a high-risk jurisdiction, may automatically be cancelled.

(2) Your Risk Assessment Policy requires that when a long-term client purchases a work, the Senior Director is allowed to sign off on simplified due diligence.

(3) Your Risk Assessment Policy requires that any red flag found during due diligence that pertains to financial crime, the Compliance Officer requires the buyer to sign a declaration stating that no funds used in the transaction are the proceeds of crime.

(4) Your Risk Assessment Policy requires that when a known money-laundering is found the Compliance Officer must file a Suspicious Activity Report (“SAR”) with the applicable jurisdiction within the specified time.

As stated in the last example, there may be times when you are required to report suspicious activity. When a KYC search returns red flags where you believe or have reason to believe the buyer intended to hide illicit funds by purchasing an artwork you must submit a SAR report following the procedures of the applicable jurisdiction.

Finally, as the information required to conduct KYC and adhere to your regulatory mandates is extremely personal. You must also have sufficient data security to be able to retain your client’s information, your decision, and if applicable any SAR reports for at least 5 years.

Art Sales Vault’s entire process is designed to facilitate your transactions while providing proper security for you and your clients. Although nothing is entirely secure, we pride ourselves in ensuring our products meet HIPAA and GDPR requirements.

Ready to Commit to the Reduction of Money Laundering in the Art World?

Contact Art Sales Vault today.
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