



# Combating Financial Crime within the Art Trade

## Bridging Provenance Research and AML Compliance

### Financial Crime risks within the art trade

Falsifying an entire art collection, as in the forgery scandal surrounding Wolfgang Beltracchi and the alleged Jägers Collection, may be an extreme example, but there is no doubt that art and the art market are by nature attractive targets of crime and criminals. While we know that the trade in stolen art and cultural goods is used to finance terrorist activities and that secret hiding places for such contraband are found in free trade zones (FTZs), perhaps the most problematic issue in the art market is its traditional emphasis on privacy

and anonymity. The 2020 national risk assessment (NRA) of money laundering and terrorist financing states that the art market is particularly vulnerable to money laundering due to its international character, the highly volatile art market prices and the ability to conceal the true beneficial owner of an artwork and the source of the funds used to acquire it.<sup>1</sup> In a recently published guidance on understanding money laundering risks and taking action for art market participants (AMPs), HM Revenue & Customs (HMRC) further pointed out that art, due to its size, can be transported with ease across borders, making the

trade in art more attractive to criminals.<sup>2</sup> Cultural goods such as antiquities and archaeological artefacts are also at high risk of illegal excavation and smuggling. Since illicit trafficking in these items has already entered the realm of terrorism and ever-greater fortunes are being invested in art, international payment flows in the art market are becoming increasingly complex and opaque. ➤

<sup>1</sup> HM Treasury, National risk assessment of money laundering and terrorist financing 2020, December 2020, p. 140.

<sup>2</sup> HM Revenue & Customs, Guidance: Understanding money laundering risks and taking action for art market participants, June 2021.

### Regulating the art trade – where do we stand?

To address this risk, the European Union (EU) and the United Kingdom (UK) implemented the Fifth Anti-Money Laundering Directive (AMLD5) in January 2020, which brings AMPs into the regulated sector for anti-money laundering (AML) purposes when the value of the goods traded is EUR 10,000 or more, regardless of the payment method. As of May 2021, 70% of EU member states have fully transposed the new directive.<sup>3</sup> The United States (US) passed its own Anti-Money Laundering Act of 2020 (AMLA) in January 2021, which requires antique dealers to follow standards imposed by the Bank Secrecy Act (BSA). Similar to the regulations in the EU and the UK, dealers are now subject to AML and customer due diligence in the US as well.

Insofar as AML compliance is a rather novel concept in the art trade, it is no surprise that the new legal provisions in place in Europe and the UK raise a number of practical issues – especially since there is no “one size fits it all” standardized due diligence process for the art market. Smaller dealers in particular feel that the new regulations are too difficult and expensive to implement, and that the overall process is too burdensome relative to the size of their business. However, if applied correctly, this new set of controls can actually help AMPs build trust with their clients and protect their own businesses from financial and reputational risk.

In this environment, art collectors will also be required to provide more transparency in support of the global efforts to reduce the risk of money laundering and terrorist financing in the art trade. Both sides need to ensure that they know who is on the other side of the deal, which is where provenance (ownership history) comes into play. Both provenance research and AML

compliance rely on detailed documentation and help assess the risk of a business deal in terms of the customer, product and country of origin, with the aim of exposing illicit transactions. However, AML regulations focus mainly on the buying and selling process – in other words, the origin of the money used in the transaction – but do not take into account art-related specifics such as the ownership history. So, let’s say there is a collector interested in buying a work of art, and their trusted gallery owner takes the necessary measures to prevent money laundering. What happens when the work turns out to be the product of looting, bribery or even forgery, even though nothing suspicious was found by the gallerist? This example shows that despite careful implementation of the new requirements, there may still be a residual risk. One way to avoid such pitfalls is to carefully trace and verify the ownership history of an artwork.

### Provenance research – what is to be considered

Works of art are often put on the market with incomplete provenance or only a vague ownership history, such as “Private collection Italy”. Many buyers are therefore unaware where the object comes from, who is selling it to them or who owned the work in the past. Many collectors purchase artwork in good faith, assuming that someone along the line must have conducted the appropriate research for it to be freely traded on the market. A museum, for example, may be persuaded to gloss over dubious provenance in order to possess an extraordinary object, which on closer inspection is too good to be true and turns out to be a fake or a looted artefact. In July 2021, for example, the National Gallery of Australia announced it was returning 16 objects from its Asian collection to India, their country of origin.<sup>4</sup> The museum had reportedly acquired these artefacts from New York art dealer Subhash Kapoor,

whom the US Immigration and Customs Enforcement (ICE) agency described as one of the world’s “most prolific commodities smugglers”.<sup>5</sup> The National Gallery launched its Asian Art Provenance Project<sup>6</sup> in 2014 and has since deaccessioned and repatriated numerous objects based on the research into their provenance.

Filling in provenance gaps can take a lot of time and ultimately depends on the information available. We must also accept that not every work will have a traceable provenance. However, anyone active in the art sector should understand how important it is to have the full history and ownership details of an artwork to determine both its authenticity as well as its legal title. An artwork with good provenance and a complete or at least almost complete set of supporting documentation (including invoices, inventory records, historical photographs, archival material and any papers documenting the biography of a work of art) will enhance its value, while unclear titles and gaps in provenance, for example during World War II, may raise questions and perhaps even restitution claims. These, in turn, could lead to a reduction in the artwork’s value, loss of ownership or reputational damage. The same applies to art that has flawless provenance, but can be traced back to a dubious owner.

We must keep in mind that provenance information can also be falsified, as was the case with the artefacts traded by Subhash Kapoor, and collectors should therefore look closely at the information publicly available. Ideally, provenance documentation will contain verifiable facts about the ownership history from the time the artist produced it to the present. How was the object transferred from one owner to another, i.e., through a dealer, auction or inheritance? What about the exhibition history: Who lent it to which museum? Also of interest are queries about the country of origin and how the object in question survived during wartime. Was it stolen or looted? Can the seller prove a clean title, i.e., do they legally own the work?

<sup>3</sup> European Commission, Anti-money laundering directive V (AMLD V) – transposition status, June 2020.

<sup>4</sup> Elisabeth Fortescue, “National Gallery of Australia to return 13 stolen objects to India that it bought from disgraced art dealer Subhash Kapoor”, *The Art Newspaper*, July 29, 2021.

<sup>5</sup> U.S. Immigration and Customs Enforcement, “ICE seizes statues allegedly linked to Subhash Kapoor, valued at \$5 million”, press release, December 4, 2012.

<sup>6</sup> National Gallery of Australia, “Asian Art Provenance Project”, accessed July 30, 2021.

A good starting point for anyone interested in provenance research is the Provenance Guide published by the International Foundation for Art Research (IFAR).<sup>7</sup> The guide includes links to important archives, image databases, dealer and sales records as well as other web resources for art theft such as INTERPOL's database on stolen artworks<sup>8</sup> and the Art Loss Register,<sup>9</sup> a private fee-based international organization offering services in the location and recovery of stolen or looted works of art. Another digitized resource is the Lost Art Database,<sup>10</sup> administered by the German Lost Art Foundation (Deutsches Zentrum Kulturgutverluste),<sup>11</sup> in Magdeburg, Germany, which serves as the national and international contact partner for all matters pertaining to the illegal seizure of cultural assets in Germany in the 20th century. With steady growth in the number of sources publicly available, those mentioned here should be seen purely as examples.

### What's next?

As is the case in other regulated sectors, we can expect criminals to adapt their behaviour to circumvent these new regulations. At the very least, however, the new policies, procedures and controls – when properly implemented by all AMPs – will help mitigate risks. Assessing an AMP's exposure to the risk of dealing in illegally obtained art plays a crucial role in designing the right controls. We recommend a tailored risk assessment including proper provenance research of the objects being traded, not only to better understand the exposure of AMPs to higher risk products, such as antiques, but also to determine the best way to minimize the risk of looted objects being sold to an unwitting buyer. As part of this process, the assessment of an AMP's records and market experience can help provide a more general understanding of their exposure to art-related criminal risk in several regulated sectors.

We expect to see an increase in law enforcement activity and investigations in the art market. It would therefore be prudent for any AMP subject to these new guidelines to invest time and effort in thorough due diligence and documentation. By doing so, they will ensure that their own business practices comply with the new regulations, and that they are able to quickly provide comprehensive documentation on a particular transaction in the event of a sudden investigation by regulators.

„A demonstrably verifiable and validated provenance should be the minimum, not the exception, just as robust due diligence prior to acquisition should be encouraged and not resisted.“

**Arthur Tompkins, Art Crime and its Prevention:  
A Handbook for Collectors and Art Professionals  
(London: Lund Humphries, 2016), p. 208.**

<sup>7</sup> International Foundation of Art Research, "Provenance Guide", accessed July 30, 2021.

<sup>8</sup> INTERPOL, "Stolen Works of Art Database", accessed July 30, 2021.

<sup>9</sup> The Art Loss Register, accessed July 30, 2021.

<sup>10</sup> The Lost Art Database, accessed July 30, 2021.

<sup>11</sup> German Lost Art Foundation, accessed July 30, 2021.

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