

# Guidelines on combatting Money Laundering and Terrorist Financing

Art Businesses should ensure the AML (Anti-money laundering) measures they adopt satisfy any legal obligations to which they are subject, and are adequate and appropriate to their business and the risk profile of their clients and the artworks they handle.

## What are the aims of these Guidelines?

These Guidelines aim to:

- raise awareness in the art market of the threats and risks of money laundering and terrorist financing;
- provide a general framework and understanding of “risk based” anti-money laundering and terrorist financing measures, including the key elements of client, artwork and transaction due diligence;
- help Art Businesses:
  - implement “risk based” anti-money laundering and terrorist financing measures appropriate to the size and nature of their business;
  - identify “red flags” (indicators of suspicious activity) and take appropriate action in response.

Ultimately these Guidelines aim to facilitate transactions in artworks (rather than hinder them) by encouraging responsible practices by all art market participants.

In these Guidelines, we use the term “**AML**” to refer to measures designed at combating both money laundering and terrorist financing.

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## Who should follow these Guidelines?

These Guidelines are intended for anyone operating in the art market (“**Art Businesses**”). They are most relevant to those Art Businesses involved in transacting sales of artworks, including but not limited to:

- dealers,
- galleries,
- auction houses;
- art advisors, brokers and other intermediaries; and
- other professionals advising clients on transactions.

Art Businesses providing ancillary services (including but not limited to transport, storage, insurance, inspection and restoration), whilst not directly impacted, may choose to adopt all or some of these measures as a matter of best practice.

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## Guideline 1 - Know and understand the risks

### Context

Money laundering and terrorist financing are international concerns. They threaten the integrity of the international financial system and its markets, including the art market. As such they are a priority for the Financial Action Task Force<sup>[1]</sup> and the United Nations Security Council<sup>[2]</sup> who continue efforts to raise awareness of money laundering and terrorist financing threats and measures which can be adopted to combat them.

The art market can play its part in combatting money laundering and terrorist financing threats, by being aware of these risks and the methods and techniques used by criminals to disguise the illegal origin of their wealth or the illegal destination and purposes for which it is being used.

[1] The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 which sets standards and promotes effective implementation of legal, regulatory and operational measures for combatting money laundering, terrorist financing and other related threats to the integrity of the international financial system.

[2] See for example United Nations Security Council Resolution 2199 (2015) <http://www.un.org/press/en/2015/sc11775.doc.htm> - underlining Member States' obligations to take steps to prevent terrorist groups in Iraq and Syria from benefiting from trade in oil, antiquities and hostages and from receiving donations.

## What is money laundering and terrorist financing?

Money Laundering is the process by which proceeds of crime are converted into 'clean' money or assets with no obvious link to their criminal origins. Examples include criminals laundering stolen items or the proceeds of tax crimes, public officials laundering bribes and kick-backs and organized criminal groups laundering the proceeds of drug trafficking and commodity smuggling. Money launderers rely on anonymity and deception to cover their tracks, disguise the origin of their funds and hide the real purpose behind their business and transactions. Merely accepting the proceeds of crime can also constitute Money Laundering.

Terrorist Financing refers to activities that provide financing or financial support to individual terrorists or terrorist groups. Terrorists need money to carry out their atrocities and adopt techniques similar to those used by money launderers to conceal money and the destination and purpose for which it is being collected.

Criminals wanting to avoid the suspicion of law enforcement agencies use Money Laundering and Terrorist Financing techniques to disguise the illegal origin of their wealth, protect their asset bases and finance illegal activities. Money Laundering and Terrorist Financing therefore fuels crime and corruption.

## The art market

Certain features of the art market make it vulnerable to abuse by criminals seeking to launder the proceeds of crime or finance illegal activities. These include:

- High value goods;
- International market and networks;
- Common use of intermediaries or proxies for transactions;
- Common use of foreign / offshore structures and accounts;
- Culture of discretion. Buyer and Seller often unknown to each other;
- Buying an artwork, artefact or antiquity legitimises cash or funds and converts them into an asset that gains value and can be sold at a later date.

Art Businesses could unwittingly become involved in Money Laundering and/or Terrorist Financing schemes and techniques. They therefore need to be vigilant to Money Laundering, Terrorist Financing and illicit trafficking activities and adopt measures to counter them.

## Consequences for Art Businesses

If an Art Business engages in a transaction, knowing or suspecting that a client's funds or property are the result of criminal activity, it could commit a money laundering or terrorist financing offence. The penalties are severe and may entail:

- criminal liability, including fines and imprisonment;
- reputational damage;
- restrictions imposed on the Art Business's ability to operate freely, for example the loss of operating licenses.

Adopting measures to detect and prevent Money Laundering and Terrorist Financing is important to identify and stop criminal and terrorist activity and to protect the reputation of Art Businesses and the art market.

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## Guideline 2- Do a risk assessment of your business

To determine the Money Laundering and Terrorist Financing risks to which it is exposed, an Art Business should consider the following questions:

- What AML measures has the Art Business already adopted?
  - What types of transaction does the Art Business undertake?
  - What information about clients is gathered and recorded?
  - What due diligence on artworks is undertaken?
  - What controls are in place regarding cash payments and checking the source of funds?
  - What awareness of the risks exists amongst staff? What ongoing training is provided?
  - Are processes and procedures reviewed regularly? Could improvements be made?
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## Guideline 3 - Apply risk based measures and be alert to red flags

It is generally accepted that responsible AML measures for art transactions should be founded on a “**risk based**” approach. This means adopting AML processes, procedures and compliance controls based on the type and level of risk associated with your business.

A **risk based approach** includes the following **areas of enquiry**:

- Risk profile of the Art Business (see Guideline 3);
- Client due diligence (see Guideline 4);
- Artwork due diligence (see Guideline 5);
- Transaction due diligence (see Guideline 6).

The enquiries made should focus in particular on indicators of suspicious activity (“**red flags**”) (see Guidelines 4, 5, 6, and appendices 1, 2 and 3).

In addition, a **risk based approach** requires the Art Business to implement systematic reviews and controls, including:

- **Recording and documenting** information gathered (see Guideline 7);
- **Training staff** regularly on the risks, how to mitigate them and when and to whom to report suspicions (see Guideline 8);
- **Reviewing** the effectiveness and implementation of the controls and making improvements where necessary (see Guideline 8).

For further detail please see the Guidelines which follow.

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## Guideline 4 - Know Your Clients (KYC) and establish their risk profiles - Check for client red flags

Knowing your clients and being alert to red flags (indicators of suspicious activity) are at the heart of effective AML programs.

To establish the client’s risk profile the Art Business will need to obtain information on the client and understand the purpose and intended nature of the transaction (“**Client Due Diligence**”). Understanding the client’s source of wealth (i.e. how they made their money and/or acquired their art collection) can also help establish a client’s risk profile. The client’s risk profile will inform the applicability and level of ongoing monitoring of the transaction.

### Who is a client?

A **client** is the person or entity with whom an Art Business forms a contractual relationship. In an art transaction, this could be the seller and/or the buyer of the artwork, or a broker or agent acting for

either of them.

If the client is a company, trust or other corporate vehicle, in addition to establishing if the corporate vehicle carries out any trading activities or simply exists to hold assets, the Art Business will also want to identify the natural person(s) who control that entity ("**Beneficial Owner(s)**").

Art Businesses should endeavour to ensure they conduct business only with clients they can be reasonably sure are engaging in legitimate business. To meet this obligation, Art Businesses should implement adequate and reasonable measures to establish the identity of their clients and ensure the funds used to purchase artworks are provided by the buyer of the artwork and not by a third party.

Art Businesses should also carry out due diligence on the intermediaries (e.g. art advisors and/or brokers) acting for one of the parties to a transaction.

## Identifying the client

Client identity is generally established by obtaining the following information *insert the graphic from Appendix 1*.

Art Businesses should request documents to verify the client's identification information as follows:

- **Individuals:** Identity should be verified based on official identity papers (e.g. passport or national ID card) together with other reliable, independent source documents, data, or information as may be appropriate under the circumstances (e.g. copy of a bank statement or utility bill for proof of address).
- **Legal entities (e.g. companies, associations, partnerships, foundations, trusts):** Identity should be verified based on official documents proving these entities were properly formed and exist (e.g. certificate issued by the relevant company registry including details of directors, and shareholders, or partners as the case may be, and for trusts, the trust deed including details of the trustees, settlor(s) and beneficiaries).

The documents used to verify the client's identity must be current at the time of undertaking the due diligence and the Art Business should keep copies of the documents in line with any legal time periods or standard practice applying in the jurisdiction where it is carrying out business.

## Identifying the beneficial owner

The "**Beneficial Owner**" refers to the natural person who enjoys the ultimate benefit of ownership of an artwork, asset, legal entity, bank account or wealth.

If the Art Business knows, or has reason to suspect that the client they are transacting with is acting on behalf of another individual or entity, the Art Business must use best efforts to establish:

- the identity of that other individual or entity, i.e. the Beneficial Owner; and
- the capacity in which the contracting client is representing the Beneficial Owner.

If the Beneficial Owner is a company or other form of legal entity, Art Businesses should make further enquiries to establish the individual with ultimate ownership or control of that entity.

Best efforts should be made to identify the Beneficial Owner even if the contracting client raises confidentiality concerns because of the reputational and other risks entailed if the Art Business is found to be involved in Money Laundering or Terrorist Financing schemes.

Art Businesses may also choose to include appropriate warranties and representations in their agreements with their clients to emphasise the importance of this point.

## Client red flags

Examples of client red flags include, where the client is a "Politically Exposed Person", an "offshore company", or resident of a country on the [FATF watch list](#). Other examples of client red flags can be found in the Client [Red Flag List](#).

Practical measures Art Businesses can adopt to help identify client red flags may include (depending on the circumstances and resources available):

- Screening the names of clients, beneficial owners and intermediaries against PEP lists, sanctions lists, terrorist financing and other watch lists and similar information issued by government and international organisations from time to time;
- Media searches using the names of clients, beneficial owners and intermediaries and other appropriate keywords.

For existing clients, this due diligence should be updated when they enter into new transactions, in line with any legal requirements applying in the jurisdiction where the Art Business is operating.

## Enhanced due diligence

If red flags are identified the Art Business will want to undertake enhanced due diligence to ensure the client's activities do not raise any Money Laundering or Terrorist Financing concerns. Enhanced due diligence generally involves requesting and/or obtaining additional information or documentation. Please see the Client Red Flag List for guidance on the types of additional enquiries which could be pursued. In certain circumstances, the client's reaction to such requests for additional information and/or documentation can be an indicator of risk.

The Art Business should document the enhanced due diligence it undertakes on its clients (for example by printing sanction list information and the results of keyword internet searches etc.). Art Businesses should keep all documents and data for a reasonable period in line with any legal time periods applying in the jurisdiction where it is carrying out business.

If "red flags" (indicators of suspicious activity or AML concerns) remain following the Art Business carrying out enhanced due diligence, the matter should be escalated within the Art Business to a member of senior management and/or the Art Business' appointed AML officer (if it has one) to decide on next steps. See Guideline 9 "*Grounded suspicions: Declining transactions / reporting*" for further guidance.

## Guideline 5 - Research the artwork, its ownership and provenance - Check for artwork red flags

An undisputed and uninterrupted provenance history and proven authenticity of the artwork is clearly the aim in all transactions. Depending on the nature and age of the artwork, realistically this may, or may not always be possible. It is important to obtain and publish in any catalogue or sales document as much information as possible about the artwork, including any known provenance.<sup>[1]</sup> In addition, and applying a risk based approach, the Art Business should check major databases of stolen and looted art and obtain any relevant and available legal documents, witness declarations, expert opinions as the case may be.

In applying a risk based approach to artwork due diligence as part of AML checks the Art Business will want to satisfy itself of the following:

- **Ownership** - In the absence of valid objections it is reasonable to suppose that the possessor of an artwork enjoys full ownership, but possession of itself is not a guarantee of ownership or rights of disposal. It is advisable for the Art Business to ask the seller to confirm if they are the owner of the artwork and if not, to identify the actual owner of the artwork. This will help the Art Business identify all its clients in a particular transaction, where, for example, an agent or broker is consigning a work for sale on behalf of the actual owner (see Guideline 4 "*Client Due Diligence - Know Your Client (KYC)*" above).
- **Provenance** - The Art Business will want to be reasonably sure that the known history of previous owners of the artwork has been established as far as it is reasonably possible to do so. For antiquities for example Art Businesses will want to be sure the objects have not been recently dug out of the ground or looted from their source country.

Documents which can be helpful in establishing ownership and provenance include; invoices, receipts, dated photographs, insurance records, valuations, official records, exhibition catalogues, invoices for restoration work, diaries, dated newspaper articles, original signed and dated letters.

In addition to assisting with AML checks, provenance and ownership information when combined with a physical examination of the artwork and technical analysis and dating of materials used, plays an important role in helping to establish the authenticity of artworks.

[1] Typically, such information comprises the name of the artist or maker, the title of the work, known provenance, the

number of parts/pieces, the presence of a signature, date and/or other inscription, the date of creation (if known), the country of creation/origin (if known), dimensions, materials and technique (e.g. oil on canvas, watercolor on paper, bronze sculpture, mixed media, video installation, etc.).

## Artwork red flags

Certain types of artworks may require enhanced due diligence. The Artwork [Red Flag List](#) contains examples of such Artwork “red flags” and suggestions of enhanced due diligence which could be carried out if any artwork “red flags” are identified.

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## Guideline 6 - Know the background and purpose of transaction - Check for transaction red flags

Understanding the background and purpose of the transaction can be helpful when combined with the client due diligence and client’s risk profile to inform the applicability and level of ongoing monitoring of the transaction which the Art Business should carry out.

Art Businesses should examine in particular:

- The purpose of the transaction;
- The form and structure of the transaction; and
- The source of funds.

### Purpose of the transaction

The Art Business should examine the client’s background and purpose behind the contemplated transaction. For example, are the artworks being sold by the client consistent with what is known about the client’s collection? Is the level at which the client is selling or buying consistent with their past transactions and what is known about their professional activities and personal wealth? If not, the Art Business may want to ask the client for further information including a financial reference or recent bank statement.

### Form of the transaction

Art Businesses should also consider the form of the transaction, such as whether the transaction is taking place through intermediaries, face to face, entirely via the Internet, over the phone, or by any other similar non face to face means.

In some circumstances, depending on the nature and value of the transaction, enhanced due diligence may be appropriate.

### Source of funds

Art Businesses should pay particular attention to the source of funds used in a transaction.

#### Cash payments

Art Businesses should generally discourage cash payments wherever possible. The source of cash cannot be traced in the way that payments made through established banking systems can. Accordingly, there can be no guarantee that the cash source is legitimate and clean.

Where Art Businesses accept cash they should keep the amounts small. The European Union has imposed a cash limit of EUR 10,000 per transaction or series of related transactions. Art Businesses should check the limits (if any) applying in the jurisdictions where they operate. See the Country Guides appended to these Guidelines for further details.

Art Businesses should not accept single or multiple cash payments for an artwork in excess of the legally

imposed threshold. If there is no legal threshold, Art Businesses are advised to conduct enhanced due diligence on the buyer and the source of funds so that they are satisfied that no money laundering risk exists.

### **Third party payments**

Art Businesses are encouraged to decline payments from a third party who is not their client and buyer of record. If there are legitimate reasons why it is justified for the Art Business to accept payment from a third party, before doing so the Art Business should conduct enhanced due diligence on both their buyer of record and the third party payer and only proceed with accepting the payment if satisfied that no Money Laundering or Terrorist Financing risk exists.

### **Payments from bank accounts located in non AML regulated jurisdictions**

The preference for all transactions should be for the Art Business only to accept payments from reputable banks in jurisdictions subject to AML regulation and supervision. In this way Art Businesses can rely on the fact that the financial institutions handling the funds (which are subject to a high degree of AML regulation) will have carried out the necessary checks and verification and be satisfied that the source of funds is clean.

Art Businesses should be wary about accepting payments from bank accounts located in high risk or non-cooperative AML jurisdictions. To identify such jurisdictions Art Businesses are encouraged to consult the [list of "High Risk and Non-Cooperative Jurisdictions"](#) published by the Financial Action Task Force's (FATF).

## **Transaction red flags and enhanced due diligence**

Any activity relating to a contemplated transaction that is not consistent with what is known about the client, and the client's risk profile or which otherwise raises "red flags" should be the subject of enhanced due diligence by the Art Business.

See the [Transaction Red Flag List](#) for examples of transaction red flags and the enhanced due diligence which could be carried out in response.

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## **Guideline 7 - Keep records**

It is important that Art Businesses maintain records of the due diligence checks they carry out and have systems in place for recording and storing the documentation and information they gather in the course of their due diligence and other enquiries.

Having a full record of the information and documentation available to the Art Business on a given date in relation to its clients, the artworks and transactions carried out, enables Art Businesses to:

- make informed and appropriate risk assessments of particular clients and transactions and determine if enhanced due diligence and enquiries are required;
- comply with any legal obligations to which they may be subject;
- identify "red flags" related to their clients, artworks and transactions and take appropriate action;
- determine if sufficient suspicions exist to justify declining the transaction and where appropriate report the situation to relevant law enforcement bodies;
- review their AML measures and controls and improve them where appropriate;
- comply with legal obligations to respond to requests for information and assistance from relevant law enforcement bodies.

Documenting "red flag" situations and the outcome of enhanced due diligence enquiries conducted as a result, assists Art Businesses in making important judgment calls about whether to proceed with a proposed transaction and /or file an AML report.

All documents issued by an Art Business in connection with a transaction (e.g. valuations, sale and purchase agreements, invoices, shipping documents, import / export declarations etc.) should be true, accurate and contemporaneous and represent the honestly held professional opinions of the Art Business. Art Businesses should refuse all requests from clients to alter, back date, falsify or otherwise provide incomplete or misleading documentation or information relating to a transaction. If there are legitimate reasons for altering a document (e.g. invoicing error etc.) the circumstances and

justification should be fully documented and retained on file for future reference and audit.

Art Businesses should keep their records for the legally required period or where no legal requirement exists, in accordance with standard practice in the jurisdictions where they are operating. Depending on the jurisdiction, the period is typically anything between 5 to 10 years from completion of the transaction or the end of the business relationship. See the Country Guides appended to these Guidelines for further details.

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## **Guideline 8 - Train staff and monitor processes and procedures**

Staff should be trained on Money Laundering and Terrorist Financing risks regularly so they are clear about their roles and responsibilities to prevent, detect and report suspicions. They should know to whom they should report internally. The person(s) designated to receive such reports should know how to handle them and when to report them to the appropriate authorities.

Training of new staff members should take place as soon as reasonably practical after they join and refresher training should be conducted as appropriate to ensure staff remain aware of new risks or changes to the risk profile of the Art Business.

It is recommended that Art Businesses nominate someone within their organization to be responsible for managing and implementing the AML controls and measures which they put in place and to be the person to whom suspicions are reported. Art Businesses may set up an "AML reporting hotline" or encourage staff to use "whistleblowing hotlines" for AML reporting if they exist within the organisation.

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## **Guideline 9 - If grounded suspicions exist, know how to act**

Where the circumstances of a transaction give rise to grounded suspicions of Money Laundering or Terrorist Financing and in the absence of a plausible explanation or further documentation allaying those suspicions, Art Businesses should consider:

- refraining from entering into or completing the transaction; and/or
- reporting the suspicions to the appropriate authorities in the relevant jurisdiction, where an obligation to report exists.

See the Country Guides section of these Guidelines for basic information on the reporting requirements which certain countries have adopted to combat Money Laundering, including whether such reporting is mandatory.

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## **Guideline 10 - Know and comply with the laws where you are doing business**

Different national AML regimes have been adopted by countries around the globe. A single, harmonised, global legal regime does not exist.

Art Businesses will therefore need to be up to date with and comply with the legal requirements which apply to their activities in the countries where they operate.

The Country Guides section of these Guidelines provides basic information on the approach which certain countries have adopted to combat Money Laundering.

- [Country Guide Switzerland](#)
  - [Country Guide Luxembourg](#)
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## Glossary of terms / definitions and acronyms

<b>Anti-Money Laundering (AML)</b>	In these Guidelines, unless indicated otherwise, we use the term “Anti-Money Laundering” to refer to measures designed to combat both money laundering and terrorist financing.
<b>Art Business</b>	As defined in the Introduction, Section 4 of these Guidelines.
<b>Beneficial Owner</b>	As defined in Guideline 4.
<b>Client Due Diligence</b>	See Know Your Client (KYC).
<b>Financial Action Task Force (FATF)</b>	An intergovernmental body tasked with examining money laundering techniques and trends, reviewing legislative and law enforcement actions relating to money laundering at the national and international levels, and issuing recommendations to combat money laundering and stem terrorist financing.
<b>Know Your Client (KYC)</b>	As explained in Guideline 4.
<b>Money laundering</b>	As defined in Guideline 1
<b>Politically Exposed Persons (PEPs)</b>	<p><b>Foreign PEPs</b> are individuals who are or have been entrusted with prominent public functions by a foreign country, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.</p> <p><b>Domestic PEPs</b> are individuals who are or have been entrusted domestically with prominent public functions, for example Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials.</p> <p><b>International Organisation PEPs:</b> Persons who are or have been entrusted with a prominent function by an international organisation i.e. members of senior management, including directors, deputy directors and members of the board or equivalent functions. The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories.</p> <p>Persons closely connected with such individuals are also considered PEPs</p>
<b>Terrorist Financing</b>	As defined in Guideline 1
<b>Red flag</b>	An indicator of suspicious activity.
<b>Responsible Art Market Group (“RAM”)</b>	As explained in the “ <a href="#">About Us</a> ” page of this website

## Downloads

Register to download

- Red Flag List
- Quick Reference Guide
- Country Guide Switzerland
- Country Guide Luxembourg
- Full guidelines

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