

- **How to protect your art business against money laundering?**

**An introduction.**

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# How will recent regulatory changes impact key money-laundering provisions?

## Definitions

- Money laundering is the process of making illegally-gained proceeds (i.e. "dirty money") appear legal (i.e. "clean")
- A 2011 study by the United Nations Office on Drugs and Crime (UNODC) estimated the magnitude of illicit funds generated by drug trafficking and organized crimes to 3.6% of global GDP<sup>(1)</sup>
- Money laundering starts with a predicate crime: organized crime, corruption, financial crimes, etc
- Typically, it involves three steps: placement, layering and integration
- Examples of exposure of the art market to money laundering:
  - Corrupt foreign officials buying a piece of art with bribe money
  - Drug traffickers moving a piece of art, diamonds or gold in lieu of stacks of cash
  - Trafficking of stolen or looted goods (e.g. Syria)

(1) [http://www.unodc.org/unodc/en/frontpage/2011/October/illicit-money\\_-how-much-is-out-there.html](http://www.unodc.org/unodc/en/frontpage/2011/October/illicit-money_-how-much-is-out-there.html)

# How will recent regulatory changes impact key money-laundering provisions?

## A strong regulatory push

- Art Dealers are not currently covered by the Financial Action Task Force (FATF) recommendations
  - But, the Dealers in precious metals and precious stones are classified already as “designated non-financial businesses and professions” on recommendation 16. (1)
- In recent months, the perception of the art market by regulators has changed.
- Regulators show strong interest in addressing the money laundering risk in art:
  - The Belgium mutual evaluation FATF report of April 2015 mentions “*antiquities and art merchants*” as “*particularly exposed*” to money laundering risks, along precious metals and diamonds. (2)
  - The Swiss national evaluation report of June 2015 has five pages on the free ports and the art business calling the money laundering risk in art a “*worrisome situation*”. (3)
- Recent regulatory changes calls for greater transparency in the high value goods market
  - The Fourth European Union AML/CTF Directive (2015/849 EU) demands that dealers in high value goods must undertake protective measures for payments in cash over a threshold of 10.000 EUR. (4)
  - Starting 2016, diligence in Switzerland will be required on cash transactions over 100.000 CHF or on unusual transactions or transactions that went through a financial intermediary subject to the Swiss AML law. (5)
  - In Luxembourg, the new law of 24 July 2015 requires Freeport forwarders to be subject to AML laws. (6)

(1) [http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/fatf\\_recommendations.pdf](http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/fatf_recommendations.pdf)

(2) Rapport Evaluation mutuel, Point 1.7, p. 30 -

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Rapport-evaluation-mutuelle-Belgique-2015.pdf>

(3) Rapport Suisse, <http://www.news.admin.ch/NSBSubscriber/message/attachments/39966.pdf>, p. 117

(4) <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32015L0849>

(5) <http://www.news.admin.ch/NSBSubscriber/message/attachments/39966.pdf>, p. 120

(6) [http://www.impotsdirects.public.lu/legislation/legi15/Memorial-A---N\\_-145-du-29-juillet-2015.pdf](http://www.impotsdirects.public.lu/legislation/legi15/Memorial-A---N_-145-du-29-juillet-2015.pdf)

# How will recent regulatory changes impact key money-laundering provisions?

## Embracing change

- The Head of the Swiss Money Laundering Reporting Office, Stiliano Ordilli, was quoted on 1 June in the press (Swissinfo) saying (1):

*“There must be a real regulation of the art market, if only to protect the honest traders.”*

### Your responsibility:

- Money laundering charges could be pressed against you typically if you are:
  - buying an item previously purchased with illegal proceeds
  - selling an item in exchange of money from criminal activities
- You may face reputational risks, fines, imprisonment

(1) [http://www.swissinfo.ch/eng/opaque-art\\_art-the-new-frontier-in-the-fight-against-money-laundering/41461526](http://www.swissinfo.ch/eng/opaque-art_art-the-new-frontier-in-the-fight-against-money-laundering/41461526)

# How can adequate procedures, training and customer files mitigate my risks of money laundering?

## Protect your business and increase clients' trust

- Avoid being abused by money launderers
- Lower the risks of civil fines, criminal charges and the reputation risks that will follow once a regulatory framework is in place and enforcement commenced.
  - These risks can break a business.
  - Banks already faced the reach and the cost of probes by authorities.
- Helps you assess and mitigate the money laundering and terrorism financing risks in a formal manner
- Focuses your resources on the real areas of concern with a risk-based approach
- Enables increased coherence and consistency in overall business operations
- Protects your business with an effective AML implementation and proper documentation
- Increases your clients' trust by meeting the social demand for fair and ethical business practices

# What should I know about my customers and their transactions?

## Customer and transaction due-diligence

- **Example of an art dealer:**
  - Mr. Z contacts you to find a buyer for a Ming vase he wants to sell
  - He acts as intermediary
  - The Ming vase is owned by Dehua Trust, a trust setup in Singapore
- **You will need to perform Know Your Customer (KYC) and Know Your Transactions (KYT) on both the seller and the buyer**
- **What would you like to know about the seller ?**
- **Key points:**
  - Collect documentation from the client and on the piece of art
  - Corroborate this information, whenever possible, with external sources
  - Assess your risks of money laundering and terrorism financing
  - Decide whether to accept the client and the transaction
  - Document your due-diligence efforts and your findings



\* for illustration purposes only

# What should I know about my (prospective) art inventory from a money laundering perspective?

## The importance of traceability



- **Example of a collector\*:**
  - Mr. Y is a Germany gallerist. He has been a long time contact
  - He is willing to sell you this painting “landscape with one figure”
  - Condition is good, price is attractive and your authenticity check did not reveal any concerns
  - Mr. Y says he purchased it recently in Germany from a Bosnian collector
- **I am concerned about the art he is selling. What should I know about the art ?**
- **Findings:** stolen in Syria and listed on INTERPOL’s database of stolen works of art
- **Key Points:**
  - Find experts with knowledge of the risks, recent trends and schemes of money launderers and terrorists
  - Perform due-diligence on your art inventory
  - Investigate pieces with sub-standard traceability

\* for illustration purposes only

# How can business intelligence (background check) help me in my due diligence routines?

## Corroborate and investigate

- **Enhanced Customer Due Diligence:**
  - Screen against sanctions lists
  - Confirm whether or not a person is politically exposed
  - Find whether or not a person or entity have been featured in newspapers as involved in past criminal activities
  - **Hint: You should consider subscribing to a service allowing you to screen names of clients and beneficial owners against sanctions lists, PEP lists and watchlists**
- **Stolen and Looted Art Due-Diligence:**
  - Search in major stolen art database
  - Search in databases listing art looted from the Jewish community during World War II
- **Asset tracing and recovery:** information gathering on assets (e.g. identification, origin, location, current owners, etc.), organization of profiles, financial data analysis, inventory recording, liquidation of confiscated assets
- **Integrity investigations:** Detection of collusive or unfair transactions due to related parties (conflict of interest, corruption, bid rigging, etc)



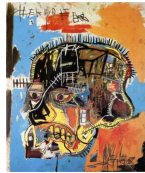
# Case Study

## Money laundering through arts



Buys expensive art items with embezzled proceeds

\$ 8 M



Jean-Michel Basquiat "Hannibal"

\$ XX?



Roman Togatus statue

Places the items in various locations



Warehouse (in the Netherlands)

**Edemar Cid Ferreira,**  
(Founder and President of Banco Santos)



Mr. Ferreira embezzles the bank on millions of USD



**Banco Santos S.A.**

The Brazilian bank went bankrupt in 2005, with debts of over \$1 billion.

Attempts to conceal the items by moving them from the Netherlands to New York City, USA



**Government of USA**

U.S. Customs & Prosecutor's Office  
Stops the transaction and seizes the items



Warehouse (in New York City, USA)



**Brazilian court**

Orders seizure of \$20-30 million worth of art that was bought with embezzled proceeds.



**Interpool & Brazil**

In 2007, Interpool and Brazil requested USA's assistance to locate and seize the missing art items.

USA reverts the items to Brazil

## Case Study

### Money laundering through arts – Context and consequences

#### CONTEXT

- Banco Santos S.A. went bankrupt in September 2005 and left behind over \$1 billion in debts. → In November 2005, the Brazilian Central Bank seized control of Banco Santo S.A.
- Brazilian federal prosecutor charged Mr. Edemar Cid Ferreira (controlling shareholder of Banco Santo S.A., and an avid art collector) for bank fraud and money laundering: “Ferreira’s artworks and mansion were purchased with funds diverted from Banco Santos”.
- A Brazilian court ordered the seizure of \$20-30 million worth of art, saying that Mr.Ferreira and his relatives and close associates had bought the works with proceeds of illegal schemes.
- Among others valuable art items, Jean-Michel Basquiat’s “Hannibal” was missing; a painting valued for \$8 million.

#### CONSEQUENCES

- Mr.Ferreira attempted to conceal, among others, “Hannibal” and a Roman Togatus statue from the Brazilian authorities by moving these items from a warehouse in the Netherlands to another in New York City, USA. In September 2010, US authorities seized the items and returned it to Brazil at their and Interpool’s request.
- In December 2006, Mr.Feirrera was sentenced for 21 years of imprisonment for crimes against the national financial system and money laundering.

## Case Study

### Money laundering through arts – Lessons learnt and red flags

#### LESSONS

- Due diligence (ID, background search etc.) on customers and intermediaries should be considered.
- National customs are **not** responsible for AML/CTF measures – galleries, warehouses, auction houses, etc. are!
- The traceability of the art piece should be transparent (known history of previous owners, checks against stolen or looted lists).
- Clients' names and their beneficial owner(s) should be screened against official sanction lists.

#### RED FLAGS

- New clients with unknown background and source of wealth.
- Beware of inflated price offers and commissions.
- Transaction involving large sum of cash.
- Payment to offshore accounts.