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Money laundering and sanctions evasion using the art market

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The art market is often described as 'niche'. In reality, it is a significant trade industry: sales of art and antiques by dealers and auction houses reached an estimated USD 65.1 billion in 2021. And like many industries of this size, it attracts people seeking to abuse it to launder proceeds of crime or evade sanctions.

This quick guide briefly explains the unique characteristics of the art market that make it vulnerable to this type of abuse. It also outlines steps that jurisdictions can take to prevent and combat abuse of the sector for illicit purposes.

The vulnerabilities of the art market

A number of characteristics make the art market vulnerable to abuse by those seeking to launder money and evade sanctions.

High value and easily transportable items

An individual work of art can be worth millions – often more than the property it sits in. Unlike the property however, the piece can easily be traded, transported internationally and stored discretely.

The case of Edemar Cid Ferreira and the painting *Hannibal* illustrates how launderers can exploit the portability of art. In 2006, Ferreira was convicted in Brazil for bank fraud, tax evasion and money laundering. Before his arrest, he converted much of the proceeds into an art collection – some of which he smuggled out of Brazil. This included the USD 1 million painting *Hannibal* by Jean-Michel Basquiat, which he managed to ship out of the jurisdiction as a package with a declared value of USD 100 – a miniscule fraction of its actual value (it was later sold at a 2015 auction for USD 13.2 million). The painting was eventually confiscated in New York, after having passed through several international borders, and returned to Brazil.

Lack of regulation and a culture of secrecy

The risks posed by the portability of artwork are compounded by a lack of regulation and a culture of secrecy in the industry.

While some jurisdictions (such as the EU and the United Kingdom) have introduced significant regulations on transactions involving art, most take a largely relaxed approach to regulating the market. In many jurisdictions, anti-money laundering (AML) laws do not apply to art transactions, meaning there are no legal requirements for the purchaser or seller to verify the identity of the other.

For example in the US, the strict AML procedures applicable to financial institutions outlined in the Bank Secrecy Act do not apply to art transactions facilitated by art dealers or auction houses (efforts were recently made to rectify this but were blocked by the US Senate). Instead, as described by a 2020 US Senate Report, the US art market is largely governed by ‘unwritten rules’.

Similarly in Switzerland, transactions in art through dealers and auction houses are not subject to the state’s AML law, providing that they do not include cash above CHF 100,000. While an initiative to rectify this was introduced in March 2022, it has not yet been discussed by parliament.

AML risks in these jurisdictions are further enhanced by an inherent culture of secrecy that exists within the industry. A large number of art sales take place through ‘intermediaries’ or ‘art advisors’ and often neither the seller nor the purchaser know the identity of the other. Additionally, the intermediaries are reluctant to reveal the identity of either for ‘fear of being cut out of the deal’.

As a result, it is easy for individuals to buy and sell art almost anonymously. This is particularly the case if individuals adopt traditional money laundering techniques, such as the use of shell companies, to further conceal their identity. For example, two Russian oligarchs, Arkady and Boris Rotenberg, were allegedly able to surpass US sanctions by using shell companies to anonymously purchase over USD 18 million in art through New York-based auction houses and art dealers.

Subjective and easily manipulated pricing

The appreciation of art is subjective. So too is its value. Unlike other high-value assets such as real estate, the exact value of an artwork can be extremely volatile and difficult to predict. Consequently, it is easy for criminals to manipulate the monetary amounts involved in art transactions without raising suspicion.

For example in 2017, an art dealer was caught by undercover US federal agents proposing to launder the funds of a stock manipulation scheme through a series of staged transactions involving a Picasso painting, *Personnages*. The dealer proposed to sell the artwork to the agent for an arbitrary figure (the exact amount of proceeds of crime from a stock manipulation offence) then buy back the artwork at an agreed reduced price. The difference in price would serve as the dealer’s fee, and the latter transaction would make it seem like the agent had received the proceeds of crime through a legitimate source.

Existence of freeports

The money-laundering risk associated with the art market is enhanced through the widespread existence of freeport storage facilities – highly secure warehouses located in special economic zones. They generally exist outside of the tax jurisdiction of the country in which they are located and are often used to store high-value items such as art.

Freeports are not considered financial institutions, and therefore are not generally required to perform customer due diligence checks on parties seeking to utilise their facilities to store high-value goods.

Therefore, those seeking to launder proceeds of crime or evade sanctions can easily buy, sell and store high-value artworks at these facilities tax free, often with minimal checks on their identity, and with no need to move these assets across international borders.

Stopping criminals from exploiting the art market

There are some key actions jurisdictions can take to both limit the abuse of the art market for criminal purposes and to identify instances of exploitation.

Extending AML regulations to the art market

A fundamental step is the introduction of robust AML regulations that adequately cover transactions in the art market.

A number of jurisdictions have already introduced laws that ensure that traders in art fall under the same AML safeguards and regulatory requirements as other sectors vulnerable to money laundering abuse, such as banking.

For example in 2018, the EU extended the application of its AML directive to those carrying out transactions relating to art where the value of the transaction is EUR 10,000 or more. The amendments also extended its application to the trading and storing of art in freeports.

Furthermore, the United Kingdom recently updated its *Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017* to cover 'art market participants'. As outlined by a government-approved guidance, this means that those who deal in the sale, purchase or storage of works of art above a value of EUR 10,000 are required to register with the UK's revenue agency, nominate a person responsible for AML compliance, train staff in AML, report suspicions and keep records – with a failure to do so inviting legal consequences. Other countries have implemented even stricter versions of the EU directive. For example in France, art transactions above EUR 1,000 already fall under AML regulations.

Nonetheless, the application of AML measures to the art sector is not globally consistent, and several notable jurisdictions are lagging behind. In the US, for example, while legislators in 2022 did extend AML laws to cover antiquities dealers, the recent blocking of the proposed Enablers Act prevented the expansion of this coverage to art dealers. As noted above, Switzerland's AML framework only applies specifically to art transactions involving cash of CHF 100,000 or more – far above the threshold recommended by the neighbouring EU.

Unless these also introduce stricter laws, there will always be havens through which criminals can continue to exploit the art market.

Coupling regulations with enforcement

Like with all AML efforts, initiatives that introduce new AML measures and safeguards must be coupled with parallel enforcement efforts. Jurisdictions must ensure that agencies tasked with monitoring the art market for AML or sanctions violations are properly resourced.

This includes with the skills required to understand both traditional parts of the art market as well as emerging trends such as the trade in digital art in the form of non-fungible tokens (NFTs).

An incomplete picture

The art market is certainly being exploited by those seeking to launder funds or evade sanctions. As noted by a recent FATF report, despite the high level of risk this market poses, very little analysis has been conducted to understand the techniques that criminals use to exploit it. Some countries have introduced legislation – but these laws are far from perfect and most countries haven't even taken this first step.

While many consider the art market as niche or insignificant, the money laundering and sanctions evasion risks associated with it are substantial. To combat them, governments and private-sector players need to enhance their efforts to prevent and combat abuse of the art trade for criminal purposes.

Learn more

See the separate Annex for further reading on money laundering risks in the art trade, including the Basel Institute's own Basel Art Trade Anti-Money Laundering Principles.

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