

'Know-Your-Artwork' (KYA): AML requirements for art lenders

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The unique nature of the art-secured lending market requires more than just standard know-your-customer checks to comply with anti-money laundering obligations. This article outlines additional 'know-your-artwork' (KYA) checks that can be undertaken by art market participants to mitigate risks, such as incomplete or false provenance, associated with using art as collateral.

Art lending

Art lending allows individuals and entities to obtain loans using their artwork as collateral. As mentioned in a previous [column](#), the art-secured lending market has experienced significant growth and is estimated to be worth well in excess of USD 30 billion, with a forecast of continued growth. Considering the significance of this industry, and with the art market coming under increased scrutiny, ensuring compliance with anti-money laundering (AML) regulations is crucial.

Scope of this article

In the UK, the key AML obligations are set out in the Proceeds of Crime Act 2002 (POCA), the Money Laundering Regulations 2017 and the Terrorism Act 2000. These apply to art market participants (AMPs), including art-secured lenders, which are therefore required to comply with the AML framework to prevent money laundering and terrorist financing. Although anti-money laundering obligations apply of course generally in respect of lending transactions, art-secured lending entails some particularities. As such, in addition to the usual know-your-customer (KYC) requirements, due diligence must also be undertaken in respect of the artwork that is being used as collateral. Such transactions therefore also entail 'know-your-artwork' (KYA) requirements. This article focuses on the risks involved and steps to be taken in respect of the artwork itself, rather than the customer, as lenders will have to ensure, in so far as possible, that the item in question is not stolen or subject to other restrictions. As a result, whilst the KYC checks may come back positive, that may not necessarily be the case for the KYA.

Incomplete provenance

Provenance checks will need to be carried out to assess whether the prospective borrower has good title to the work in question. However, with the possible exception of contemporary art, documentation recording provenance is often incomplete. The problem is exacerbated by the fact that registration of ownership details and thefts is not compulsory and although databases recording stolen art exist, such as the [Art Loss Register](#) and INTERPOL's [Stolen Works of Art Database](#), there is no single comprehensive database for stolen or otherwise tainted art. Consulting these registers does not therefore provide a lender with an effective 'good title guarantee'.

Cultural objects from the Middle East are particularly problematic. The Taliban, Al Qaeda and ISIS are known to have looted, excavated and trafficked cultural objects to finance terrorism and circumvent sanctions. Identifying such objects is made more difficult by the fact that illegally excavated objects are unlikely to ever have been recorded. A study published in 2020 found that 98.5% of all objects from the eastern mediterranean region traded in Germany between 2015-2018 had no provenance at all, and only 2.1% of cultural objects offered on the German market were being traded legally. For objects from Iraq, this figure was just *0.4 percent*.

A separate looting and spoliation risk exists in respect of items that were located in Nazi-occupied territories between 1933-1948, or in Eastern Europe and the Soviet Union during the Communist era between 1949-1990. Specialist databases that can be consulted in this respect include the *Lost Art-Datenbank*, *lootedart.com*, *Mission de recherche et de restitution des biens culturels spoliés entre 1933 et 1945* and *Getty Provenance Index*.

Fake provenance

Next to the problem of incomplete provenance is that of false provenance. This may either be because of entirely fabricated documentation to give the appearance of a legitimate chain of ownership and provenance, or a succession of sham transactions, using straw buyers, nominees and shell companies, all acting on behalf or at the direction of the same individual, effectively laundering the artwork, providing it with an apparently credible provenance.

A notorious example in this respect is provided by Giacomo Medici, who excavated objects in Italy and transported them to a freeport in Switzerland. He then provided them with fake provenance, often alleging they had been obtained from an anonymous Swiss private collection, before selling them the world over, including to the Getty and MoMA.

Steps to take

In 2023, the British Art Market Foundation (BAMF) prepared guidelines (*BAMF: Guidance on Anti Money Laundering for UK Art Market Participants (February 2023)*) for AMPs in the UK art market to meet their legislative and regulatory obligations. These guidelines have been approved by HM Treasury and although they are not mandatory, AMPs must be prepared to justify departures from the guidelines. Their focus is however mainly on customer due diligence, rather than on the artwork in question. The Responsible Art Market, a non-profit cross-industry initiative created in 2015, has set out its own guidelines (*RAM: Guidelines on combatting Money Laundering and Terrorist Financing*) as well as a toolkit (*RAM: Toolkit: Guidelines on combatting Money Laundering and Terrorist Financing*), focusing on provenance and ownership checks. As part of the research of the work in question, AMPs, and thus art-secured lenders, should consider taking the following steps:

- Obtain any relevant and available documentation on the artwork, e.g. expert opinions, conservation reports, publications in auction catalogues, insurance and storage records, and export documentation.
- Check databases of stolen and looted art.
- Check whether the artwork is already subject to a security interest.

- Carry out a physical examination of the object wherever possible.
- Research the artist to check whether s/he is commonly forged.
- Identify the country of origin of cultural objects to determine whether they come from an area prone to looting or illicit trafficking or which is subject to trade restrictions. Consult the International Council of Museums (ICOM) red lists (for example as a result of UN Security Council resolution 2199 (2015) prohibits cross-border trade of Syrian and Iraqi cultural property).
- Verify the artwork's travel history to identify whether it may be subject to a claim for restitution.

This is not an exhaustive list and AMPs should refer to the guidance in full. The steps required are fact-specific and depend on the particular artwork and the circumstances of each transaction. The relevant steps have to be repeated in respect of each artwork, including when new objects are to be included in the collateral pool, for example following a margin call or as a result of a swap, e.g. when the original collateral is being sold. There is of course no guarantee that undertaking these steps and compliance with the guidelines generally constitutes an effective safeguard against all risks, especially as fraudsters become more creative and sophisticated. Separately, it is clear that this additional layer of due diligence adds to the cost of financing in respect of art lending transactions. However, considering the current market trend, it seems unlikely that it will slow down this buoyant market.

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