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ART LAW ALERT | NIXON PEABODY LLP

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## Art and money laundering: The U.K. enacts new art laws and all buyers and sellers need to pay attention

By Daniel Schnapp and Thaddeus Stauber

On January 10, 2020, the Money Laundering and Terrorist Finance Amendments Regulations 2019, implemented by the U.K. government, will take effect. Under the new U.K. regulations, the U.K. art market becomes regulated for anti-money laundering and counter-terrorist financing compliance for the first time and implements the EU's 5th Money Laundering Directive. Among other things, buyers, sellers, and other parties to an art transaction worth €10,000 EUR or more, as well as operators of art warehouses and storage facilities, known under the regulations as "art market participants," must now conduct "know your client" due diligence checks like those used by U.K. banks, accountants, and lawyers.

For participants in the art world, including buyers, sellers, auction houses, dealers, gallerists, and other parties, the new regulations are groundbreaking and will dictate (and complicate) how art transactions are conducted and scrutinized in the U.K. and internationally.

For example, a purchaser (an art market participant) based in the United States purchasing valuable art in London will need to know that their funds and identity will be scrutinized. This could mean, among other things, that the purchaser may be identified by name, date of birth, and address. If acting for a company, trust, partnership, or a consignor/counterparty representing an underlying client, art market participants now need to establish the relevant ownership structure and then conduct due diligence on the "ultimate beneficial owner." Inquiries will also be made about the purpose of the planned art transaction, the source of funds, and participants will be checked against "watch lists" for sanctioned individuals and "politically exposed persons."

The regulations are intended to directly address a longstanding issue in the art world—that is, how to more effectively monitor the widespread and significant use of laundered funds in the purchase and sale of fine art, which often results in problematic valuations and chains of title. The amounts implicated by money laundering in art are staggering—for example, the U.S. Department of Justice alleges that the infamous fugitive, Low Taek Jho (known as Jho Low), laundered billions of dollars stolen from a Malaysian state fund purchasing art from Sotheby's and Christie's.

Notably, the U.K.'s new regulations now impose greater scrutiny on the art market than the United States' own Bank Secrecy Act. In May 2019, the Illicit Art and Antiquities Trafficking Prevention

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Act was introduced in Congress and was intended to be an extension of the Bank Secrecy Act. If enacted, the bill would have removed art and antiquities dealers' current exemption from the Bank Secrecy Act, which requires businesses "whose cash transactions have a high degree of usefulness in criminal... matters" and other financial institutions to assist the U.S. government in detecting and preventing financial crimes. Dealers would also have been required to report transactions exceeding \$10,000 US. However, unlike in the U.K., the new U.S. legislation was not enacted.

Regardless of the jurisdiction, all art transactions carry risk. All parties to art transactions need to understand the provenance of the funds involved as well as the art, and now a more complicated system of regulations.

Nixon Peabody's team of art lawyers can guide clients and market participants as to how to comply with all regulations in order to conclude a successful and legal art transaction. For more information on the content of this alert, please contact one of our [Arts & Cultural Institutions Team](#) members, your Nixon Peabody attorney, or:

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