



LALIVE
THE DISPUTES POWERHOUSE

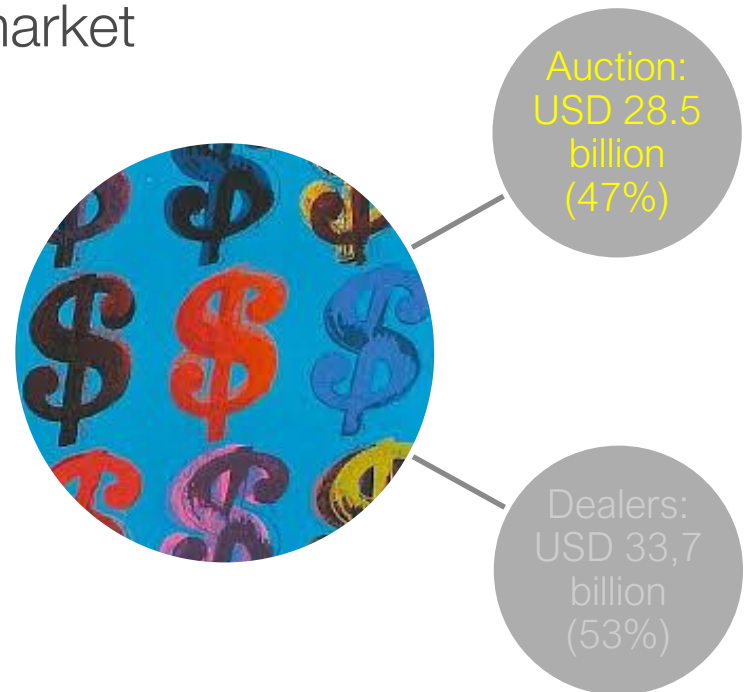
Due diligence in the art market: a check list for responsible practices

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Association of International Business Lawyers (AIBL)
Geneva, 27 April 2018

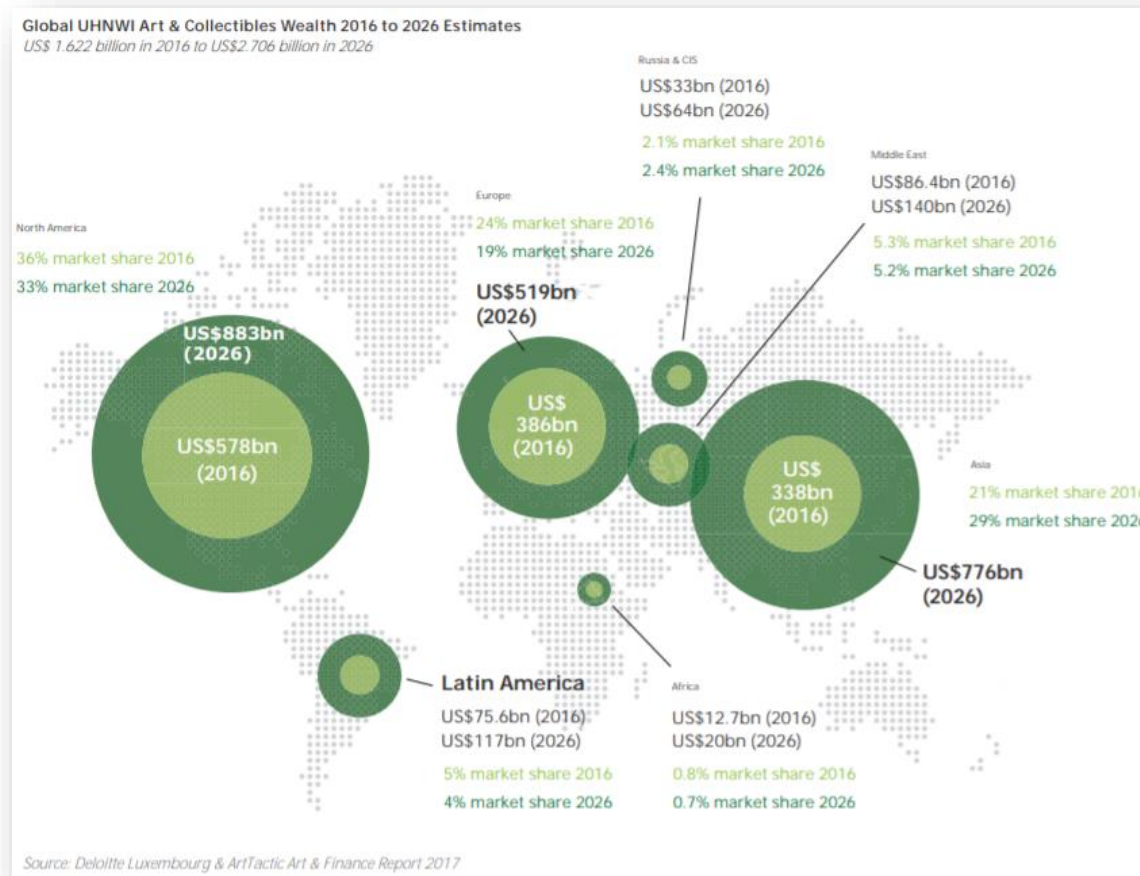
Art: a **passion** investment

- 2017: estimated **USD 63.7 billion** market
- Increase of **12%** from 2016
- US (42%), China (10%), UK (4%)
- Art fairs: USD 15.5 billion
- Online sales: 72% increase over 5 years; USD 5.4 billion



Source: *The Art Basel and UBS Global Art Market*

Global UHNWI art & collectibles wealth 2016-26 – USD 1.622 to USD 2.706 billion



Corporate art collections

- UBS art collection, Deutsche Bank Art Collection, Progressive Art Collection, JP Morgan Chase Art Collection, Fleming Art Collection, The Bank of America Art Collection, Microsoft Art Collection
- **Switzerland:** BNP Paribas Swiss Foundation Collection, Collection Pictet, die Mobiliar Art Collection, EFG Art Collection, Helvetia Art Collection, Julius Baer Art Collection, Nestlé Art Collection, Novartis Art Collection, Roche Art Collections

Geneva's art industry



Art & finance

64 percent of wealth managers, **67 percent** of private banks, and **55 percent** of family offices surveyed said they were actively offering services related to art and collectibles, including entertainment and client hospitality



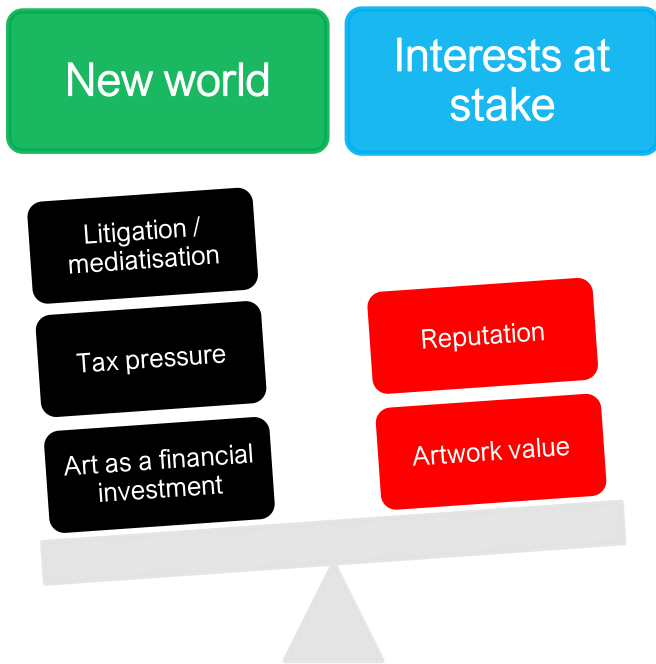
- Wealth management services
- Art funds
- Art-secured lending

The art-secured lending market in the US reached an estimated **US\$17-20 billion** in 2017 which represents a 13.3 percent growth from 2016

Challenges & risks in the art market

- High value & moveable goods
- Culture of discretion / lack of transparency
- International market
- Lack of supervision / specific regulation
- Passion

Factors of change (1/2)



Great Wave off Kanagawa, Hokusai

Factors of change (2/2)



Ryolovlev v. Bouvier



Wildenstein case



The Black-Market Battleground

Degrading and destroying ISIS could take place in houses, not the Pentagon.

BY JUDY WIEGANDER | OCTOBER 27, 2014



The tide of AML / CFT regulation

- **2012 FATF recommendations:** serious tax offence becoming predicate offence to money-laundering
- **2015 UN resolution 2199:** underlining Member States' obligations to take steps to prevent terrorist groups in Iraq and Syria from benefiting from trade in oil, antiquities and hostages
- **2016 Luxembourg:** all entities operating in the Luxembourg freeport (including e.g. transporters) subject to AML regulation
- **2017 EU Commission supranational risk assessment of money laundering and terrorist financing:** recommendation to include auction houses, art and antiques dealers and specific traders in high-value goods in AML list of obliged entities → 5th AML Directive

Art | Basel

Art Market Principles and Best Practices

Art Basel believes that trust is the essential element underlying the sales that are crucial to the success of our exhibitors, both at our shows and on an ongoing basis. Thus, we firmly believe that the integrity of the gallerists participating in the Art Basel shows should be a primary criterion for their inclusion. And therefore, we must take seriously any case involving acts that could harm the broader trust essential to a sound art market.

The Responsible Art Market Initiative



Raising awareness of risks faced by the art industry and providing practical guidance on establishing and implementing responsible practices to address those risks.

What?

What is the Responsible Art Market Initiative ?

The Responsible Art Market Initiative ("RAM") is a cross industry initiative formed in Geneva in 2015. RAM's members span the entire spectrum of the art market from galleries, dealers, auction houses, advisors and service providers, to lawyers, academics and public prosecutors specialising in art related matters.

Who?

CHRISTIE'S



FDA
fondation
pour le droit de l'art
art law foundation

SEYDOUX & ASSOCIÉS Fine Art



Jean-Bernard Schmid

Professor Ursula Cassani

Galerie Grand Rue

Advantages

Flexibility and speed in developing and adapting

- Greater efficiency
- Lower compliance costs

Bespoke

- Meet the industry technical requirements

Participatory process

- Mitigate conflict of interest
- Increase support

Transcend national boundaries

- Avoids jurisdictional conflicts

RAM's projects: responsibleartmarket.org



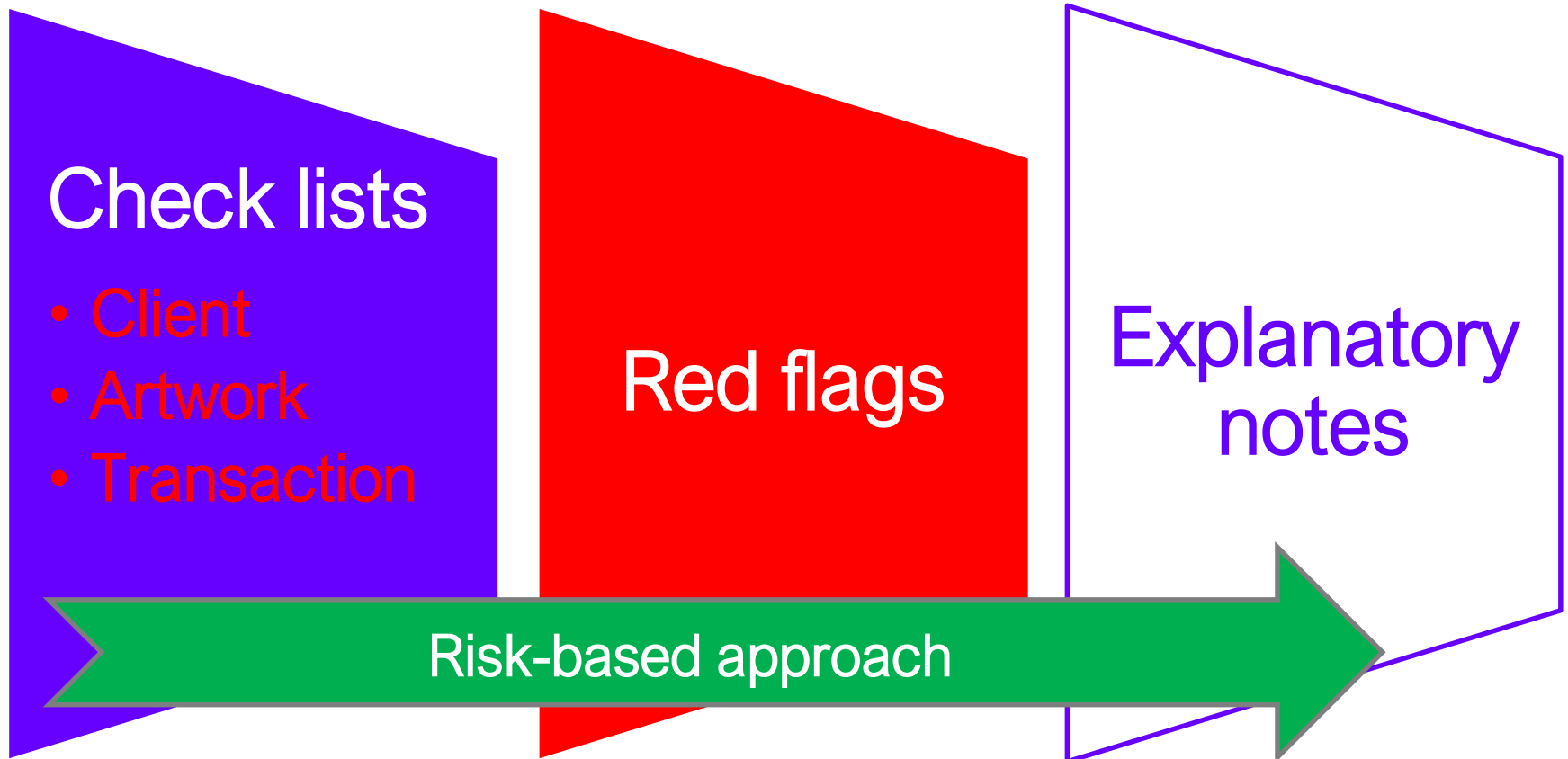
An aide-mémoire

- Non-exhaustive
- Risk-based approached
- No uniform standard

Please note:

- *The following client, artwork and transaction due diligence checklists serve as an "aide-memoire" of the various checks which can be considered and/or carried out when conducting art transaction due diligence.*
- *They are a compilation of best practices and are not exhaustive.*
- *The checklists do not purport to set a standard to be applied in all situations.*
- *They should be used applying a "risk-based" approach to determine the level of due diligence required. Enquiries should be tailored to any risk factors (red flags) which are present.*
- *When collecting and holding personal data, data protection obligations should be considered and respected.*
- *The checklists should be read together with the Explanatory Notes.*

The Art Transaction Toolkit



How to use the toolkit

1. Ask questions
2. Identify red flags
3. Collect information and where necessary document
→ Consider data protection issues

Salvator Mundi, Leonardo da Vinci

- Painted circa 1500
- Original once owned by Charles I
- Disappeared completely in 1763
- Surfaced in 1900 but attributed to one of Leonardo's followers
- Sold in 1958 only for GBP 45 and vanished
- Reappeared in 2005 but almost unrecognizable due to damage
- 2013 bought by D. Rybolovlev for USD 127 million
- Auction history on 15 November 2017 when sold for USD 450 million (with commission)



Art due diligence serves

- Manage litigation risks
- Protect reputation
- Preserve value

Thank you



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