Consultation by HM Treasury regarding the Transposition of the Fifth Money Laundering Directive (April 2019)

Response from the Institute of Art and Law and Professor Janet Ulph

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The Institute of Art and Law
The Institute of Art and Law (IAL) is an educational organisation founded in 1995, engaged in teaching, research and publication in the area of art and cultural heritage law. The IAL consists of an executive body, researchers and a broad membership made up of public institutions and private entities, as well as individuals. It runs training courses for the arts and cultural heritage sector in the UK and abroad and publishes academic and practical texts on many areas within this field. See more at www.ial.uk.com.

Professor Janet Ulph
Janet Ulph is Professor of Commercial Law at the University of Leicester. Her research has focused on the laws governing moveable property and in particular, cultural property. She is the main author of *The Illicit Trade in Art and Antiquities: International Recovery and Criminal and Civil Liability* (Hart Publishing, 2012) and *Commercial Fraud: Civil Liability, Human Rights, and Money Laundering* (Oxford University Press, 2006). Janet has written a chapter on 'Reviewing Due Diligence Measures in the Art Market' for a *Research Handbook in Transnational Crime* (Edward Elgar, forthcoming). She has also produced extensive guidance on various areas of law and ethics for museums. Her proposals for law reform relating to museum collections now form part of the Law Commission's 13th Programme of Law Reform 2017 (Law Com, No 377).
E-mail: ju13@le.ac.uk

Box 2.D: Art intermediaries

26. What are your views on the current risks within the sector in relation to art intermediaries and free ports? Please explain your reasons and provide evidence where possible.

International organisations such as the United Nations,[1] non-profit, non-governmental bodies[2] and national governments, have recognised on many occasions and in many contexts that the art market is particularly susceptible to money laundering risks. The high value of many works of art, combined with their portability and, in some cases, their uncertain or inconclusive provenance makes them attractive targets for those seeking to 'launder' money representing the proceeds of crime. These factors are compounded by certain characteristics of the art market and the transactions through which art is typically bought and sold, including: the opacity which cloaks many art deals; the frequent use of intermediaries who are often remunerated through commission arrangements

[1] There have been a series of UN Security Council Resolutions aimed at combating the illicit trade in stolen and looted art and antiquities, or including measures to that effect. A recent example is UNSCR 2347 of 2017, Article 17(g) of which calls for governments to engage with the museum sector and art trade on 'differentiated due diligence' and other measures 'to prevent the trade of stolen or illegally traded cultural property.'
[2] A report produced by *Transparency International* in November 2015 commented that the art sector presented "relatively easy opportunities to launder large sums of cash, since few art dealers and auctioneers seem equipped to deal with the risk of their businesses being used to launder the proceeds of corruption". It also stated that despite these risks, the level of reporting of suspicious activity by the sector was extremely low; in 2013/4, only 0.004% of art deals were reported (15 in total).

which are sometimes vague and somewhat covert;[3] the international nature of the market which frequently sees works moving across state and continental borders with relative speed and frequency.

We therefore consider that the particular risks presented by the art market justify the expansion of the scope of the 2017 ML Regulations so that art traders and intermediaries become part of the regulated sector.

Intermediaries
We note that the amendment proposed by 5MLD (Article 1 (1) (i) and (j)) envisages expanding the scope of 'obliged entities' (regulated businesses) to cover both **persons trading *or* acting as intermediaries** in the trade of works of art (above the stipulated value per transaction/series of linked transactions) and those **storing, trading *or* acting as intermediaries** in trading by free ports. We further note that most of the questions in this section (Box 2.D) ask only about 'art intermediaries' but we consider that the risks identified, and the proposed measures to address those risks, generally apply equally to persons trading directly in the art market (at the relevant threshold) as well as those playing an 'intermediary' role. Our responses are therefore intended to cover both sets of art market participants (direct traders and intermediaries) except where the question clearly relates only to the intermediary group (27, 29).

Free ports
Although there are currently no free ports in the UK, this does not necessarily mean that the UK market is immune to the exploitation of free ports for money laundering activities. Given the international nature of the art trade, it is quite possible for (i) an artwork which has passed through a free port outside the UK to be bought by a UK resident and imported into the UK; and (ii) a UK national to be involved in trade in an artwork being stored in a free port outside the UK. Should any illicit dealings be involved in either of these cases, there would be a risk of money representing the proceeds of crime entering the UK market. While there are already certain regulatory and practical safeguards against such an occurrence, through customs facilitations for example, the additional protection to be provided by including those storing, trading or acting as intermediaries through free ports within the regulated sector in the UK would appear prudent.

27. Who should be included within the scope of the term 'art intermediaries'?

It is our view that the term 'art intermediary' should extend to those persons and entities directly involved in the commercial trade in works of art.

Commercial trade would involve dealing in a work of art for profit. Most obviously, it would include sale and purchase of a work of art. This would often be conducted by persons/entities such as gallery owners and private dealers. Such owners and dealers might trade directly with their counterparty (as seller and buyers respectively) or they might trade through 'middlemen' or 'intermediaries' such as brokers, agents and auctioneers. (In some cases these intermediaries might be engaged as professional advisers/managers/curators for a single collection/client. In others, they might act as

[3] See, for example, the cases of *Accidia Foundation v Simon Dickinson Ltd* [2010] EWHC 3058 (Ch) involving an agency arrangement for an undisclosed client (and see E. Weaver 'Dealer or Agent? And Why it Matters' (2011) XVI *Art Antiquity and Law* 309); and the recent case of *Staechelin & Ors v ACLBDD Holdings Limited & Ors* [2019] EWCA Civ 817, involving an undocumented commission arrangement worth US $10million (and see M. Bowmer 'On a Handshake: The Gaugin and the Ten Million-Dollar Commission' (2018) XXIII *Art Antiquity and Law* 77; and M. Bowmer 'Court of Appeal confirms $10m commission on Gauguin sale' on the Institute of Art and Law blog at: https://ial.uk.com/gauguin-appeal/.

agents or brokers for any number of clients). Those acting in such an 'intermediary' capacity for transactions or a series of linked transactions worth EUR 10,000 or more are clearly covered by the new legislation.

However, the concept of commercial dealings involving a work of art could also extend to other types of transaction including, for example, a commercial loan of an artwork, the use of an artwork as security or the exchange of a work of art in return for other property by way of non-cash payment. Arguably, those involved in an intermediary capacity in relation to any such transaction which involves the transfer of the stipulated sum of EUR 10,000 or more, or property of that value (in a single transaction or series of linked transactions) should be covered as well because they will have obtained a proprietary or contractual interest in the work of art.

There is an argument that the term 'art intermediaries' should also encompass those involved in providing services in relation to all of the above-mentioned transactions. Solicitors and accountants providing services already fall within the regulated sector. Other 'service providers' might be considered to include shippers, storage agents, fine art experts and conservators, amongst others. Given the many different entities which could be regarded as playing a part in an art transaction, and the many different levels of involvement concerned, it would be extremely difficult to create a workable definition to encompass all these entities. The level of risk involved in their respective roles would also be quite divergent (those involved in storage and transportation are arguably at higher risk than those involved in conservation and technical advice, for example). It is suggested that, in particular, those involved in the technical analysis and conservation of works of art without direct involvement in the commercial transaction, such as restorers and conservators, should be excluded.

As the intention of 5MLD is to cover those involved in *commercial* transactions relating to works of art, institutions not involved in the trading in works of art as part of their regular operations such as cultural heritage institutions, museums and public and non-trading galleries should be excluded from the scope of the term 'art intermediaries'. For the sake of certainty, this should be clarified either in a specific provision in the UK regulation transposing 5MLD or in accompanying guidance.

28. How should a 'work of art' be legally defined, do you have views on whether the above definitions of 'works of art' would be appropriate for AML/CTF? Please provide your reasoning.

Since the provisions of 5MLD relating to the art market are directed at transactions involving *physical* works of art, we do not consider the definition of 'artistic work' from the Copyright Designs and Patents Act 1988 (CDPA), which the consultation paper mentions, to be appropriate in the current context. The object of the CDPA is to protect the intangible aspects of a range of artefacts, rather than their physical manifestation, so a cross-reference to this Act may be confusing. In addition, the CDPA definition includes buildings which would be inappropriate in the context of the works of art to which 5MLD is directed, which are movable works.

The definition in s.21 of the VAT Act 1994 (as amended), relates to works of art as *physical* objects, and would therefore be a good option. However, it is important that the definition applied in the legislation transposing 5MLD is as wide as possible, to avoid the risk of loopholes which irreputable traders might seek to exploit. With this in mind, if the definition within the VAT Act 1994 is to be used:

- it may be advisable to include not only the definition of 'works of art' under s 21 (5(a)) and (6) but also s 21 (5)(b) and (c) (which include any antique that is more than one hundred years old not falling within the other subsections, and any collection or collector's piece that is of zoological, botanical, mineralogical, anatomical, historical, archaeological,

palaeontological, ethnographic, numismatic or philatelic interest). Such a broad definition would more closely resemble the definitions of cultural property commonly used within the art trade, and, notably set forth in the most important international conventions aimed at combating the international illicit trade in art and antiquities.

- it may be advisable to 'future-proof' the definition to include artistic works created by Artificial Intelligence, which are now starting to sell for very high prices.[4] (The definition currently refers frequently to works 'executed by hand').
- there may be a need to re-examine the maximum numbers of works permitted to be made as limited editions for a work to qualify as a work of art (e.g. eight for sculptures and tapestries; 30 for photographs).

There are other definitions commonly used in the art sector, and, notably in relation to combating the international illicit trade in art and antiquities which might also merit consideration, though they are generally wider than 'art' and extend to items of 'cultural property' or 'cultural objects'. A very wide list is provided in Article 1 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970. However, this list might be too vague for the purposes of criminal legislation, such as the 2017 ML Regulations. For example, 'property of artistic interest' is defined in terms of examples. More detailed advice can be found in legislation governing the export of cultural goods contained in Annex 1 of Council Regulation (EC) 116 of 2009. The categories in the Regulation may possibly be wider than the VAT Act: for example, toys over 50 years old are listed in Annex 1. Even so, s. 21(5) of the VAT Act casts its net wide in listing among other things a 'collector's piece' that is of 'historical' interest; this might well include toys as a result. A disadvantage of using Regulation 116 verbatim is that certain categories of objects are stated to be subject to financial thresholds. It could be confusing to use these financial limitations given that the 2017 ML Regulations already have a EUR 10,000 threshold.

In summary, we recommend that the definition contained in s. 21 of the VAT Act 1994 could be used but that this definition should include antiques and collectors' items. Removing the phrase 'executed by hand' should be considered.

29. How should art intermediaries be brought into scope of the MLRs? On whom should CDD be done and at what point?

Intermediaries such as solicitors and accountants will already be regulated by the 2017 ML Regulations. Other intermediaries will not, currently, unless they fall within the definition of a 'high value dealer'.

Since, by definition, an intermediary is generally facilitating, managing, negotiating, or sometimes entering into a transaction (or conducting any number of such roles) on behalf of another person/entity, identifying the point at which that intermediary becomes responsible for undertaking CDD is extremely difficult to define in any generalised manner.

This question might best be addressed by considering a number of specific examples (excluding auction house sales which are addressed below in response to question 30). On whom should the agent be obliged to conduct CDD and at what point?

[4] It was reported in October 2018 that a painting called *Portrait of Edmond de Belamy* by a French artists' collective (*Obvious*) was the first AI artwork ever sold at auction. It was sold at Christie's New York for $432,500, 43 times its initial estimate of $10,000.

- an agent acts as intermediary for both seller and buyer:
    - in order to satisfy the 2017 ML Regulations, as amended, the agent should conduct CDD on the seller and the buyer at the first point when the agent becomes aware that the sale price is likely to reach/exceed the threshold.
- an agent acts as intermediary for the seller only, in relation to a sale directly to a buyer:
    - as mentioned above, the agent should conduct CDD on the seller and buyer at the same point in time.
- an agent acts as intermediary for the seller only, in relation to a sale negotiated with the agent of the buyer:
    - the agent should conduct CDD on all three parties, the seller, the buyer's agent and the buyer at the first point when the agent becomes aware of that the sale price is likely to reach/exceed the threshold.

      A frequent problem in this scenario will be that the buyer's agent will be bound by confidentiality obligations not to disclose the identity of the buyer. The seller's agent may then have to rely on the assurance of the buyer's agent that he/she has conducted the requisite checks on the buyer. An agent relying on another entity to have conducted appropriate CDD should be required to obtain a written assurance of the same prior to proceeding with the relevant transaction. The question of reliance is discussed further below in response to questions 30 and 36.

The consultation paper points out that complications might arise if a transaction proceeds without the intermediary knowing, or before the intermediary can carry out CDD. Any accompanying guidance to the transposing legislation could suggest that the intermediary's obligations arise as soon as s/he should have known or should have reasonably suspected that the transaction is one which reaches/exceeds the threshold. An alternative, and arguably more robust approach could simply be to encourage the agent to routinely conduct CDD whenever an object is clearly worth more than a few hundred pounds (and regardless of the threshold). This latter approach would also reduce the risk of the agent committing an offence under POCA 2002 or other criminal laws (which do not involve financial thresholds).

30. Given that in an auction, a contract for sale is generally considered to be created at the fall of the gavel, what are your views on how CDD can be carried out to ensure that it takes place before a sale is finalised? How should the government tackle the issue around timing of CDD given the unpredictability of the sale value, and linked transactions which result in the EUR 10,000 threshold being exceeded?

Whilst we do not have direct experience of auction sale practices, it is our understanding that many auctioneers require both sellers and potential bidders to register prior to a sale, as a matter of common practice. In many instances, an application for registration may involve the provision of information sufficient to conduct a CDD check. Christie's standard Conditions of Sale, for example, (publicly available on its website) state that new clients must register at least 48 hours in advance of the sale and that Christie's may ask for a financial reference and/or deposit. Furthermore, if a prospective bidder does not, in Christie's opinion, "satisfy our bidder identification and registration procedures, including but not limited to completing any anti-money laundering and/or anti-terrorism financing checks we may require to our satisfaction, we may refuse to register you to bid, and if you make a successful bid, we may cancel the contract for sale between you and the seller." [5] The terms also include warranties requiring a bidder to warrant that the funds used for settlement

[5] Christie's 'Conditions of Sale', section B3

are not connected with any criminal activity, and that, importantly, if the bidder is acting as agent for another party, they have "conducted appropriate customer due diligence on the ultimate buyer(s) of the lot(s) in accordance with all applicable anti-money laundering and sanctions laws," and "consent to us relying on this due diligence."[6]

Subject to the proposal for a 'de minimis' exemption suggested in the penultimate paragraph to this section, it would not appear unduly onerous, and indeed, would seem to be a prudent safeguard for auction houses to conduct CDD checks on clients (both sellers and buyers) at the point of registration. This would seem to be a convenient juncture at which to conduct these checks and a systematised process of so doing would have benefits both for the auction houses in terms of public trust and reputation, and clients, who would come to expect such procedure as a standard measure, much as is commonly expected in other contexts (the opening of a bank account for example). This process could be strongly recommended through guidance and education, with the possibility of training programmes whereby the larger international auction houses could share best practice with smaller regional auctioneers and possibly also dealerships and commercial galleries too.

It is important to address the issue of timing which the consultation paper raises. Even if it has not proved possible to carry out the CDD checks on initial registration, as suggested above, we would submit that it might well be possible for an auction house to conduct the checks after the fall of the gavel but before any funds or the relevant object have changed hands. The standard terms of some auction houses stipulate that title does not pass until the purchase price has been paid in full, even if the object has already entered the possession of the buyer;[7] or that the auction house is not obliged to release a lot to the buyer until the title in the lot has passed and appropriate identification has been provided.[8] This would provide an opportunity for an auction house to decline to proceed with a sale if discrepancies are identified in a CDD check conducted after the fall of the gavel in respect of a transaction at/above the EUR 10,000 threshold.

The auction house is, of course, an intermediary in a transaction which may involve an array of additional parties, including not only a seller and a buyer, but also, potentially, at least one layer of agents/brokers for each of those parties. Quite clearly, a seller (or his agent) cannot know the identity of a buyer prior to the fall of the gavel, and in most instances, the buyer (or his agent) may well never discover the identity of the seller. In this situation, it seems that each of these parties (seller and buyer, and their agents) must, by necessity, rely on the CDD undertaken by the auction house. The need for reliance on CDD carried out by another party was clearly contemplated by HMRC as evidenced in the guidance it published for high value dealers. This states that a high value donor may rely on CDD conducted by a number of specified parties including another UK business subject to the Regulations[9] or a business in the EEA who is subject to 4MLD.[10] This same model might usefully be applied in respect of art market intermediaries, with the clear caveat that such reliance does not relieve an intermediary of the requirement to conduct its own risk assessment of customers and transactions and to monitor the business relationship on an ongoing basis. Auction houses will need to be made aware in accompanying guidance that reliance on a third party is not always appropriate and will need to be considered as a risk factor.[11]

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[6] Section E (Warranties) sub-section 3. The terms go on to require the bidder to retain the documentation evidencing such due diligence for a period of not less than 5 years and to make it promptly available for immediate inspection by any independent third-party auditor.

[7] Christie's Conditions of Sale, section F2

[8] Sotheby's Conditions of business for buyers

[9] i.e. the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

[10] HMRC *Anti-money laundering supervision: guidance for high value dealers* s. 4.103.

[11] HMRC *Anti-money laundering supervision: guidance for high value dealers,* ss. 4.105 - 4.106.

We note that there may be a small number of provincial auction houses for whom a sale at or above the threshold value has never occurred, and is most unlikely to occur, and for whom ongoing business relationships very rarely, if ever, result in receipt of funds at or over the EUR 10,000 threshold. An obligation on such businesses to conduct CDD as a matter of course prior to any sale and in relation to every ongoing business relationship would seem disproportionate and inappropriate. Such businesses should be exempt from any possible obligation (or any best practice guidance) requiring CDD checking at the point of registering prospective sellers and buyers. The obligation to conduct CDD would then arise only in the unlikely event that (i) an estimate at or above the threshold is attributed to a lot received for sale; or (ii) a lot unexpectedly sells for such a sum. In both instances, the CDD check could be conducted before funds are remitted and the object is transferred to the buyer.

Any exemption for provincial auction houses along the lines proposed would not, of course, render any less necessary the provision of training for these entities, which must be made aware of the regulations and the need for vigilance and ongoing monitoring to identify when the CDD obligations might be triggered. The same is true in respect of smaller art dealerships and commercial galleries whose transactions and business relationships would not ordinarily meet or exceed the threshold, but who need to be aware of situations where CDD obligations would arise. In summary, if an exemption is granted, we recommend that it should be done on the basis that these provincial auction houses and small dealerships must be able to demonstrate when required that there is appropriate and regular training for staff to ensure that they are not only aware of when CDD obligations would arise but are also aware of suspicious factors which might indicate that third parties were engaged in money laundering.

31. Should the government set a threshold lower than EUR 10,000 for including art intermediaries as obliged entities under the MLRs? Should the threshold be set in euros or sterling? Please explain your reasoning.

In the interests of balancing the need to monitor the operations of the art market in order to combat money laundering activity with the facilitation of a thriving art sector in which smaller art business can flourish, we do not consider that the threshold should be reduced below the EUR 10,000 threshold, although we would point out that we do not have empirical data to support such suggestion.

We would suggest maintaining the threshold in euros for the sake of consistency across EU Member States.

32. What constitutes 'a transaction or a series of linked transactions'? Please provide your reasoning.

As helpfully highlighted in the consultation paper, the issue of linked transactions has been clarified in guidance for high value dealers. A similar approach should be applied to art market traders and intermediaries, which covers instances where multiple payments are made against a single invoice at or above the threshold and where a number of payments are made over a short period of time which cumulatively reach/exceed the threshold. Research should be conducted to identify the appropriate period of time: something in the region of three to six months might be appropriate, but it may also be preferable to leave this time period open-ended, to take into account the pattern of transactions typical for each individual customer.

Art dealers should be expected to monitor payments received from customers with a view to identifying at what point they reach the EUR 10,000 threshold and to identify any changes in transacting behaviour for that particular customer.

33. What do you see as the main monetary and non-monetary costs to your business of complying with the MLRs (e.g. carrying out CDD, providing information to a supervisor, training staff etc.)? Please provide statistics (even if estimates) where possible.

We are not in a position to comment on this question from direct experience, but are aware, anecdotally, that the financial concerns of at least some smaller businesses are focused not so much on the potential costs of establishing procedures and processes, and implementing training in respect of CDD obligations, but on the potential losses of sales to prospective buyers who are affronted by the requirement to be CDD-checked, or are simply under too much time pressure to await the outcome of the identity checks. Art sales are often concluded swiftly, sometimes by 'impulse-buyers' driven by their passion for the work of art in question: some dealers fear that such sales will be thwarted by the requirement for CDD-checking prior to concluding the sale. Dealers have raised this concern regarding lost sales particularly in the context of trade fairs taking place in other countries.

On the other hand, dealers may eventually find that the CDD procedures have some benefits. A longer time period will give buyers the chance to check on whether an object is genuinely worth the price which is being asked (rather than bringing litigation based on a perceived bad bargain afterwards). The CDD checks may help to reinforce export and import regulations by reducing the likelihood that the object being purchased has been stolen or illegally excavated.

It is to be hoped that buyers of art either already are, or will quickly become accustomed to the requirement to provide identity information prior to entering into transactions or business relationships at the stipulated value. Indeed, art traders who also qualify as high value dealers under the existing ML regulations will already have been carrying out the required CDD for some time. Also, as noted above (in response to question 30) auction houses routinely conduct such checks.

It is to be hoped that many art traders will already be somewhat familiar with the ML requirements. As early as 1996, the Council for the Prevention of Art Theft (CoPAT) published a due diligence policy drawing attention to the ML regulations and the British Art Market Federation (BAMF) has published a very thorough guide since 2000. A notable initiative of more recent origin is the Responsible Art Market project which aims to raise awareness of the risks and to provide practical, non-binding guidance on best practice.[12]

34. What do you see as the main benefits for the sector and your business resulting from art intermediaries being regulated for the purposes of AML/CTF?

The main benefit from the regulation of art intermediaries as currently proposed will be to ensure that in respect of both (i) the regulation of the art trade in the UK and (ii) the broader initiative to combat money laundering and terrorist financing, the UK remains aligned, if not in a stronger position than its counterparts in the EU and elsewhere. The UK art market is currently second only to the US in its share of the global art market,[13] and it is submitted that in order to maintain this

[12] See http://responsibleartmarket.org/

[13] The UK had 21% of the global art market in terms of sales by value in 2018 (compared to the US with 44%): *Art Market Report 2019*, An Art Basel & UBS Report prepared by Dr. Clare McAndrew.

position over the longer term, the UK needs to demonstrate a strong commitment to the protection of the trade against illicit activity. This is required in order to create a confident environment in which legitimate trade can flourish. It was interesting to note the findings of professional services network, *Deloitte,* in its 2017 *Art and Finance Report* that 75 per cent of the wealth managers it surveyed expressed concern about lack of transparency in the art market. A similar proportion also considered that the sector's business practices required modernisation to meet the standards expected of a trustworthy and developed market place, with money laundering risks being raised as a particular concern in that regard.[14] Evidently, the practices and levels of regulation applied to the art market have traditionally been very different from those to which the financial markets are accustomed. There is a growing recognition of the need to breach this gap and the transposition of 5MLD into UK law is an opportunity to make significant progress on this front.

35. Should the government extend approval checks, under regulation 26, to art intermediaries? Should there be a "transition period" to give the supervisor and businesses time to complete relevant approval checks on the appropriate existing persons (beneficial owners, managers and officers)?

We see no reason why the checks applicable under regulation 26 to beneficial owners, officers and managers of other regulated entities (auditors, insolvency practitioners, external accountants and tax advisors; independent legal professionals; estate agents; high value dealers) should not also apply to art intermediaries. It would seem somewhat anomalous for art intermediaries to be subject to equivalent obligations to these other professional entities under the remainder of the regulations but to be exempt from these approval checks, designed to identify persons convicted of certain relevant criminal offences. It would be prudent to include an explanation of the approval process and the grounds for refusal (i.e. the types of criminal convictions which might result in refusal) in any guidance accompanying the regulations transposing 5MLD. It would seem reasonable to provide a transition period to allow the required checks to be completed.

36. Is there anything else that government should consider in relation to including art intermediaries under the MLRs e.g. how reliance could be used when dealing with agents representing a buyer or seller.

Please see the responses to questions 29 and 30 above in relation to the possible need to allow for the reliance of one art intermediary on another art intermediary in certain specified circumstances. Reliance clearly involves a level of risk – as highlighted in the HMRC guidance for high value dealers – and is not a substitute for ongoing vigilance and assessment of risk in relation both to individual transactions and to continuing business relationships.[15] In order to reduce the risk of reliance situations resulting in non-compliance, guidelines could be put in place urging any entity relying on the CDD checks implemented by another entity to require a legally binding promise that such checks have been conducted.

[14] See Deloitte, Art and Finance Report 2017 available at: https://www2.deloitte.com/lu/en/pages/art-finance/articles/art-finance-report.html

[15] See HMRC *Anti-money laundering supervision: guidance for high value dealers*, ss. 4.105 - 4.10 which state, amongst other matters, that a party relying on another party remains responsible for any failure to apply due diligence measures appropriately; and that when relying on a third party to undertake due diligence checks, a party will still need to do its own risk assessment of the customer and the transaction and must still carry on monitoring the business relationship.

In order to disrupt criminal activity, the Government could consider whether the standard due diligence steps which are expected of businesses operating in the regulated sector need some adjustment to take account of the special nature of the art market. Accompanying guidance to the transposing legislation would obviously refer to Regulation 18 of the 2017 ML Regulations. Regulation 18 requires the regulated sector to identify and assess the risks of money laundering and terrorist financing to which its business is subject, which include considering its customers, the countries or geographic areas in which it operates, its products or services and its transactions. But accompanying guidance could go on to suggest that more is required in the context of the art market. This would include recording a detailed description arising from an examination of the cultural object (work of art) rather than some vague statement such as "ancient statue from the Mediterranean." It would also include photos, showing the image of an object from various angles, together with scanned copies of accompanying documents such as export certificates. If these details are recorded as part of the due diligence process, they could be invaluable in a later criminal prosecution.

Many dealers are members of trade associations and no doubt these associations will draw the changes made to their members' attention. Indeed, we understand that the British Art Market Federation (BAMF) is in the process of providing new guidance. As the art market is such a specialist area, HMRC may wish to consult stakeholders further in drafting accompanying guidance. We are ready to assist and no doubt representatives from trade associations such as BAMF, leading auction houses and solicitors and barristers would volunteer their services too.