

Due diligence in practice

Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)

For a buyer, a seller or a bank financing a purchase, due diligence in the art market comprises three layers. The first concerns the parties. It requires the identification of the buyer and the seller, of the beneficial owners behind any companies or trusts and of any agents acting for undisclosed principals. A careful participant also clarifies the source of the funds used for the purchase. That clarification includes the economic origin of the wealth, as a bank would examine it under Swiss law, and its proximity to persons subject to sanctions. Where the counterparty is a politically exposed person or resides in a high-risk jurisdiction, enhanced checks apply.¹

The second layer concerns the object. It includes the examination of the work's attribution, often with reference to the *catalogue raisonné*, the scholarly catalogue of an artist's complete works prepared by a recognised expert or committee. It also requires the reconstruction of the provenance, with particular attention to the years 1933 to 1945 and to antiquities without documented history before 1970. Searches in databases of stolen and looted works, such as the Art Loss Register, the Interpol database of stolen works of art and the German Lost Art database, complete the examination. Where gaps in the provenance remain, the parties must decide whether they are acceptable and how they are reflected in the price and the contract.²

The third layer concerns the transaction. Contracts of sale in the upper market typically contain warranties of title and authenticity, provisions on the allocation of risk where claims arise and clauses that determine the applicable law and forum. Swiss law provides a statutory warranty for defects, which parties often modify by contract. Title insurance offers protection against the risk that a third party later asserts ownership, for example as the heir of a dispossessed collector. Under Swiss law, the transfer of ownership of a movable requires the transfer of possession. The

location of the work at the moment of sale, whether in a gallery, a private home or a freeport, therefore has legal consequences that the parties must consider.³

1 Notes

1. On customer due diligence and source-of-funds verification in art transactions, see the Basel Art Trade Guidelines, the RAM guidelines and the FATF report (2023), cited above. To be verified. ↩
2. On the use of catalogues raisonnés and the databases of the Art Loss Register, Interpol and the German Lost Art Foundation (lostart.de) in provenance research, see the specialist literature. To be verified. ↩
3. On warranties in the sale of works of art under Art. 197 ff. of the Swiss Code of Obligations, title insurance for works of art and the transfer of ownership of movables under Art. 714 of the Swiss Civil Code, see the Swiss literature on art law. To be verified. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/basel-due-diligence-in-practice