

# Antiquities Transaction Due Diligence Toolkit (Annex)

Due diligence forms an essential part of art transactions. Investigating and obtaining as much information as possible about the parties to the proposed transaction, the artwork and the transaction itself protects art businesses and collectors and helps art businesses manage their reputational and financial risks. Gathering and holding such information may entail additional responsibilities particularly in terms of data protection where personal information relating to individuals is concerned.

In the antiquities market, a proper due diligence is also essential to protect the market from illegal transactions. This market presents unique challenges. For this reason, this appendix has been developed. In order to carry out a complete analysis of a transaction, it is therefore necessary to refer to the main checklist (Client due diligence toolkit; Artwork due diligence toolkit; transaction due diligence toolkit) and the Explanatory Notes.

## Antiquities due diligence checklist

### 2.1 Identification

Provenance for antiquities should not be considered a single state of information. Rather, best practice is to investigate and make explicit what is known at a given point in time in a simple form that should address each of these categories. When that information is updated in the ordinary course, a new statement of knowledge should be completed but the prior statements should be retained. In this way, the state of knowledge can be seen over time.

### 2.2 Trade restrictions

Antiquities carry an acute risk of trade restriction compliance. In addition to national laws and bilateral agreements,

- [the United Nations Educational, Scientific and Cultural Organization \(UNESCO\) 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict;](#)
- [the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;](#)
- [the 1995 \(UNIDROIT\) Convention On Stolen Or Illegally Exported Cultural Objects;](#)
- [the Convention on International Trade in Endangered Species \(CITES\) of Wild Fauna and Flora;](#)
- [the Regulation \(EU\) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods;](#)
- Domestic customs laws.
- The UNESCO's list of List of National Cultural Heritage Laws (<https://en.unesco.org/cultnatlaws/list>) is helpful guidance as well.

### 2.3 Recent Ownership and Sales

Verifying the identity of the current and most recent owner is optimal and strongly advised. Names associated with publicly-reported allegations of illicit activity bear particular scrutiny, though allegations should not be considered automatically disqualifying. If transacting at auction or with an intermediary where local law does not compel disclosure, ensuring that the auction house or intermediary has verified these facts through adequate diligence is important.

### 2.4 Provenance & exhibition history

Antiquities present particular issues with regard to provenance and exhibition history. Exhibiting objects of unverified or dubious provenance bolsters the legitimacy of what otherwise be an object not properly documented. Of particular concern are references that lack specificity, like "private collection." Similarly, antiquities often have customs clearance in their history and, as such, may be accompanied by documents from legal authorities in multiple jurisdictions. Care should be taken to ask for all available documentation, and to ask questions about the provenance and documentation provided. Care should also be taken to assure proper translation of such documents and confirmation that any official signs like stamps are genuine or were validly issued. Check databases and with experts about the object, and also the provenance and documents received, as they may have more information about the object or its provenance.

Databases of lost and stolen art should be checked: Examples include:

- Interpol's "Works of Art" database and its ID-Art application
- The Art Loss Register.
- ICOM Red Lists Database

### 2.5 Artwork location & recent movement

Known conflict zones in an object's recent history should be cause for particular scrutiny. Even with regard to commercial centers outside of areas of conflict, it should still be ensured that no names or locations are associated with the object in an otherwise lawful location. UNESCO's list of World Heritage in Danger (<https://whc.unesco.org/en/danger/>) is instructive.

### 2.6 Authenticity

Consistent with vigilance about exhibition history used to imbue an object with unearned authenticity, the scholarly reputation of any attribution must be considered and kept current. This latter point is key; the reputation of previously well-regarded experts changes and must be considered objectively when new facts are learned. Authenticity analysis is not limited to consideration of material analysis or condition.

### 2.7 Condition

In addition, while many antiquities cannot be authenticated with certainty, analysis of materials and condition can yield important information that rules out authenticity or give clues to other concerns related to excavation. (*e.g.*, damage, or soil).

## 2.8 Antiquities red flags checked (you may also refer to the main toolkit)

Example red flag situations include:

- Suspiciously low price, or price out of line with the market segment.
- A seller or intermediary who has been reported frequently in connection with unauthorized excavation or cultural property sales.
- The antiquity is presented with very limited or no documentation or provenance.
- Contradictory or inconsistent information about the same object.
- Documentation for the object (e.g. authorisation, export licenses, provenance documents) appears to be false.
- Indication of recent presence in an active conflict zone where excavation or export permission would have been unlikely under the circumstances.
- Payment requests in currency or jurisdictions with no apparent connection to the transaction.