

Locke Lord QuickStudy: Anti-Money Laundering Act's Impact on Dealings in Art and Antiquities

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The Anti-Money Laundering Act of 2020 (the "AMLA"), which became law January 2, 2021 with Congress' override of then President Trump's veto of the Defense Appropriations Act of 2021¹ included provisions bringing dealers in antiquities under the same anti-money-laundering ("AML") regulatory framework as previously applied to financial institutions under the Bank Secrecy Act.²

The U.S. Treasury Department and Financial Crimes Enforcement Network (FinCEN) are directed by the AMLA to issue appropriate regulations to deal with dealers in antiquities and other financial institutions involved in the industry. The duties imposed by Section 6110(a) of the AMLA will take effect on the effective date of those final regulations. However, on March 9, 2021, FinCEN issued a notice (FIN-2021-NTC2) to financial institutions (which now include dealers in antiquities) relating to trading in antiquities and art.³ Although the AMLA did not specifically cover art, by its bringing dealers in antiquities under the definition of a "financial institution" dealers who deal in antiquities as well as art are brought within FinCEN's jurisdiction and the CDD "know your customer" rule under the Bank Secrecy Act.⁴ As such, they will now have a duty to file Suspicious Activity Reports ("SARs") related to trades and dealings in antiquities and art that specifically disclose the relationship to art and antiquities and identify the pieces and the location of the pieces involved and where photographs of the pieces can be found.⁵ The notice also advised that "Financial institutions with existing BSA obligations, including the reporting of suspicious activities should be aware that illicit activity associated with the trade in antiquities and art may involve their institutions."

The FinCEN notice advises financial institutions that

Crimes relating to antiquities and art may include looting or theft, the illicit excavation of archaeological items, smuggling, and the sale of stolen or counterfeit objects. Crimes relating to antiquities and art also may include money laundering and sanctions violations, and have been linked to transnational criminal networks, international terrorism, and the persecution of individuals or groups on cultural grounds.⁶

Given the new and far reaching jurisdiction of FinCEN over dealers and other financial institutions involved in the antiquities trade, now art galleries as well as art and antiquities dealers and other financial institutions need to take heed of the notice and their obligations with respect to the AMLA, BSA and SARs filing responsibilities.⁷ Dealers should now make efforts to identify the beneficial owners of the art and antiquities with which they are dealing, adopt appropriate compliance policies, keep accurate ownership, provenance and transaction records, train their staffs on appropriate record keeping and reporting obligations and audit their recordkeeping and compliance measures.

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1. National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283.; See our [QuickStudy on the AMLA dated January 4, 2021](#)
 2. Section 6110(a) of the AMLA.?
 3. [FinCEN Informs Financial Institutions of Efforts Related to Trade in Antiquities and Art](#)
 4. See [FinCEN Reminds Financial Institutions that the CDD Rule Becomes Effective Today](#)
 5. In the notice, “FinCEN requests that financial institutions reference “FIN-2021-NTC2” in SAR field 2 (Filing Institution Note to FinCEN) and the narrative portion of the SAR to indicate a connection between the suspicious activity being reported and the activities highlighted in this notice.”
 6. [FinCEN Informs Financial Institutions of Efforts Related to Trade in Antiquities and Art](#) at page 2.
 7. It should also be noted that dealers in art and antiquities may need to be cognizant of and take into account the European Union’s Fifth Money Laundering Directive and Sixth Money Laundering Directive (the 6AML went into effect on December 3, 2020) requiring know your customer/client diligence, disclosures and filings and severe penalties for money laundering offences, financial crimes and terrorist financing.

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