

A close-up, painterly portrait of a woman's face, focusing on her eye and ear. She has light skin, rosy cheeks, and a small, ornate teardrop earring. The background is a textured blue.

artaml

# How well do you know your customer?

A visual guide to anti-money  
laundering for the art market  
for **Private Sales**

Diagrams based on BAMF Guidance  
as approved by HM Treasury

Foreword by Ivan Macquisten

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Diagrams are based on British Art Market Federation *GUIDANCE ON ANTI MONEY LAUNDERING For UK Art Market Participants, APPROVED BY HM TREASURY (Part I: Overview, and Part II: Guidelines)*, dated 24 January 2020. Use of this publication is intended for businesses based and/or trading in the United Kingdom and the content is generally applicable in the European Union as per the 5th Money Laundering Directive. This guide might be more widely used as a reference.

See gov.uk for more information [www.artaml.io/AMPguidance](http://www.artaml.io/AMPguidance)

Further reading [www.artaml.com](http://www.artaml.com)

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*A visual guide to anti-money laundering for the art market* **for AUCTION sales**

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Front cover: Peter Paul Rubens, *Portrait of Susanna Lunden(?) ('Le Chapeau de Paille')*, probably 1622-5. National Gallery, London, England.

# Foreword

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The 5th Anti-Money Laundering Directive has passed in to UK law. Industry professionals have been rightly concerned at the lack of clarity accompanying its introduction, especially as this is, in my opinion, the most significant regulatory change applying to the art and antiques market in more than 20 years. This market is now directly regulated by an independent regulator in the form of HMRC.

Compliance is not simply a matter of adding a few reassuring words to your website; it is detailed and compulsory. It requires close study and a serious effort to put all the policies and procedures in place now. Failure to make that effort can, in itself, constitute a criminal offence. But it is also an opportunity to safeguard transactions and boost confidence among clients; to protect your own business from risk and to improve the general image of the market. Applied properly, these rules should create transparency while ensuring client

confidentiality – the trickiest balancing act for art market professionals.

Artaml was involved with HM Treasury's industry consultation in 2019. The team regularly consults with HMRC, the Supervisory Authority, in order to develop solutions that meet the requirements of the authorities while being genuinely workable in the marketplace and acceptable to collectors. The clear, practical guidelines published here show that they understand the concerns and needs of the market.

**Ivan Macquisten** | Art Market analyst, commentator and campaigner

Ivan is a member of the Artaml Advisory Panel

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## Getting started

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As a participant in a regulated sector, you are required to register with HMRC, the supervisory body for the art market. As part of the process, you will need to:

- Provide a **risk assessment**, which details your possible exposure to money laundering and terrorist financing.
- Create written **policies, controls, and procedures** detailing your responsibilities and processes.
- Appoint a **Nominated Officer (NO)** otherwise known as a **Money Laundering Reporting Officer or MLRO**.
- Register with HMRC.
- Train all staff and keep records of training.
- Carry out Due Diligence on your customers.
- Keep written records of all transactions and Due Diligence checks for at least 5 years.

The official Guidance issued by BAMF and HM Treasury, together with the HMRC website, provide comprehensive and detailed explanations. You should consult those for further information.

## A 'risk-based approach'

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The Guidance and the Regulations frequently refer to a 'risk-based approach'. Phrases such as 'appropriate steps', 'reasonable measures', and 'relevant and proportionate' make it difficult to know exactly what to do (or not to do).

The key to understanding this is to realise that the intent of the legislation is to help you develop a mindset where you are aware that others may try to use your business as a vehicle to launder money, and what you should do in order to prevent them.

**AMPs** (see p.4) are generally salespeople who are good at spotting prospective buyers and closing deals. Such interpersonal skills are a great asset - if you feel there is something not quite right about a transaction, or a client is unwilling to provide the documents you need, then you need to dig deeper to find out what is going on.

Identifying your 'customer(s)' is something you are required to do, and is key to understanding if they pose any risk to you. **Who** you should check is shown diagrammatically in this booklet and **how** the checks are done is covered in the Guidance in great detail.

This Due Diligence may occasionally find '**red flags**'. These are likely to be cleared up by getting more information, but may occasionally lead you to decide not to proceed with a transaction. Your record of how these 'red flags' are navigated and (possibly) reported is a crucial part of your obligations.

Lastly, your business will change over time, and so will the money laundering risks you may face. Keeping those changing risks in mind and updating your policies is the foundation of a solid and successful 'risk-based approach'.

# Art Market Participants (AMPs)

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An **Art Market Participant** is a firm or sole practitioner who trades in, or acts as an intermediary in the sale or purchase of, works of art and the value of the transaction, or a series of **linked transactions**, amounts to €10,000 or more.

The €10,000 limit is the final invoiced price, including taxes, commission and ancillary costs. HMRC considers multiple payments against a single invoice, which together exceed the €10,000 threshold, to be **linked**, regardless of how long it takes to make payment.

**Work of art** is defined in Section 21(6) of the 1994 VAT Act, and is too long to be quoted here, but includes paintings, collages, drawings, engravings, prints and lithographs, sculptures, statues, tapestries and photographs. **Antiques** are not included, but are affected by another part of the legislation, which requires Enhanced

Due Diligence (**EDD**) to be carried out when there is a transaction *“related to oil, arms, precious metals, tobacco products, cultural artefacts, ivory or other items related to protected species, or other items of archaeological, historical, cultural or religious significance or of rare scientific value”*. (See Amendment of Part 3: **Customer Due Diligence**)

**Senior managers** have significant responsibilities under the regulation. Senior managers include the chief executive, owner, director, manager, company secretary, a sole proprietor or a partner in a partnership.

It is the responsibility of senior management to guide the risk-based approach, approve and implement policies to mitigate risk, appoint a **Money Laundering Reporting Officer (MLRO)**, and to monitor compliance throughout the firm.

# Customers, and Customer Due Diligence (CDD)

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The complexities of the art market mean that the role of '**customer**' is not always clear. The regulations say "it will be the purchaser of a work of art, and any **broker** or **agent** acting for them. It will be the **seller**, where the AMP provides a service to, and receives financial value from, them".

The diagrams later in this booklet give examples of who the **customer(s)** are in various scenarios. Bear in mind that a '**customer**' can be a company, trust, or foundation, as well as a person.

CDD means that you must collect enough information to be able to identify your '**customer**'. The Guidance covers this in great detail. Your checks may occasionally bring up '**red flags**', which are signs that there may be a higher than normal risk associated with the transaction.

Some examples of '**red flags**' are:

- The customer is based in a country that has been designated as having poor money laundering controls or a regime that finances terror. Note that this refers to geographical location, not nationality.
- The customer refuses to provide the requested information. This includes an agent or broker concealing the identity of a buyer.
- The customer wants to structure the transaction in a complex way with no obvious purpose.

'**Red flags**' mean that you may decide to carry out **Enhanced Due Diligence (EDD)** - see page 7.

## PEPs

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### Politically Exposed Persons (PEPs)

In carrying out your CDD, you will need to find out if your customer is a **Politically Exposed Person (PEP)**. A **PEP** is an individual with a high profile political role, or who has been entrusted with a prominent public function. **PEPs** represent a higher risk because they are more likely to become involved in financial crimes like money laundering or the financing of terrorism than other customers.

Relatives and close associates of **PEPs** are also considered a higher risk.

If a customer is a **PEP** or associate, it should be treated as a '**red flag**'. It does not automatically mean that you should not carry out the transaction. Regardless, **senior management** should always approve such transactions.

## POCA and Sanctions

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### Proceeds of Crime Act (POCA) 2002

As a regulated business, you now have additional obligations under the Proceeds of Crime Act 2002. This means that you need to ensure that any work of art you are dealing with is not stolen, or purchased with the proceeds of crime. In most cases this involves checking the **provenance** of the art, which is a process familiar to most AMPs.

### Sanctions

Sanctions are preventative measure put in place by governments and international institutions to prohibit illicit activity. You must check to ensure you are not dealing with sanctioned individuals, companies, or even countries. Transactions with sanctioned entities can lead to serious criminal and financial penalties.



# Enhanced Due Diligence (EDD)

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If you have suspicions about a customer or transaction, or '**red flags**' become apparent, you must carry out **Enhanced Due Diligence (EDD)**.

The purpose of **EDD** is to provide you with the information that will allow you to judge whether the increased level of risk is real. Examples of steps you take could include:

- Asking for additional identification documents.
- Asking for more information on the purpose of the transaction.
- Obtaining more information on the **source of funds** (i.e where the money being transferred from).
- Requiring settlement from a bank account in the customer's name from their country of residence, (assuming this is not a high-risk country).
- Source of wealth - the origin of the money. If inheritance, then a copy of the will might be

needed. If the sale of property, then proof of conveyancing, and so forth.

How far you need to investigate depends on what you assess the risk to be. Identifying a customer as carrying a higher risk of money laundering or terrorist financing does not automatically mean that they are a money launderer, or a financier of terrorism.

## Foreign Language Documents

If you receive foreign language documents as part of your **CDD** or **EDD**, you must take steps to ensure that they provide the evidence you expect - this may mean you need to get documents translated.

## Reporting

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If you know or suspect that, or have reasonable grounds for knowing or suspecting that a person is engaging in money laundering or terrorist financing, then you must make a report to the **National Crime Agency (NCA)**.

The report is called a Suspicious Activity Report (**SAR**). Your **Money Laundering Reporting Officer (MLRO)** is responsible for making these reports and must have sufficient authority to do this independently.

If you wish to carry out a transaction where you suspect money laundering may be taking place, you may submit a Defence Against Money Laundering **SAR**. The **NCA** will provide a response in 7 working days, saying whether you may proceed or not.

If you are making a **SAR**, you must not let the subject of the report know that you are doing so.

## Record keeping

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You must retain, amongst other details:

- Copies of Due Diligence data and of customer transactions.
- Details of actions taken with regard to **SARs**, both raised internally and externally.
- Details of information considered by the **MLRO**, where they do not make an external report. These records must be kept for 5 years after the end of the business relationship. Records can be kept as documents, copies or scans, or electronically.

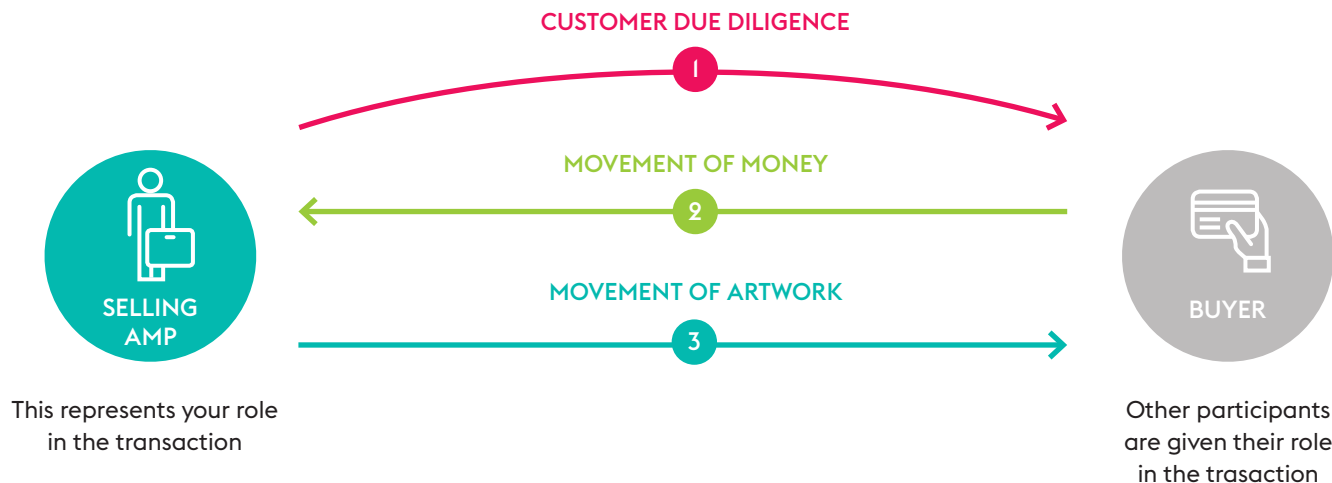
You must also have written records of your risk assessment, **policies, controls** and **procedures**, and staff training records.

The Guidance contains a complete list of the records that must be retained.

# How to read the diagrams

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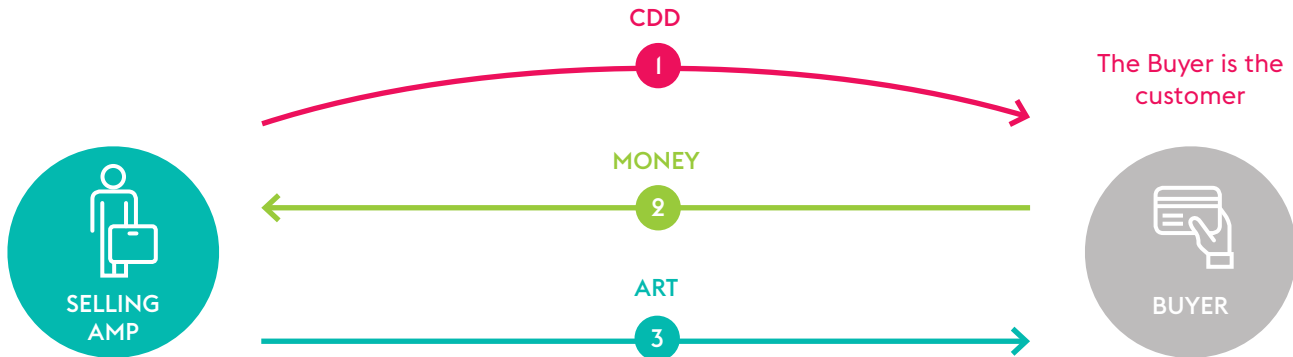
All Art Market Participants (regulated entities) are labelled with 'AMP' and their role in the transaction.



# Selling to a customer

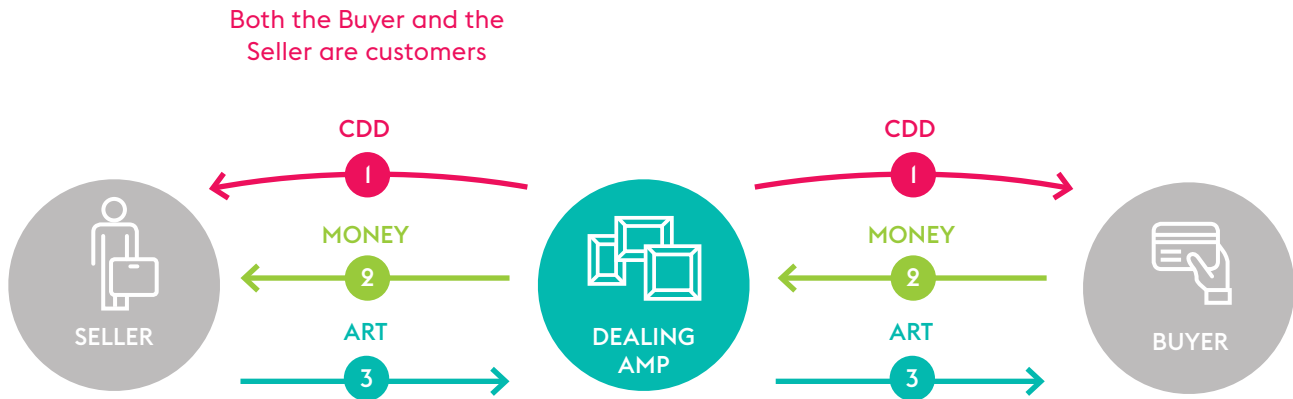
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Regulated Dealer/Gallery ('Selling AMP') is selling a work of art to a Buyer.



# Selling on behalf of a customer

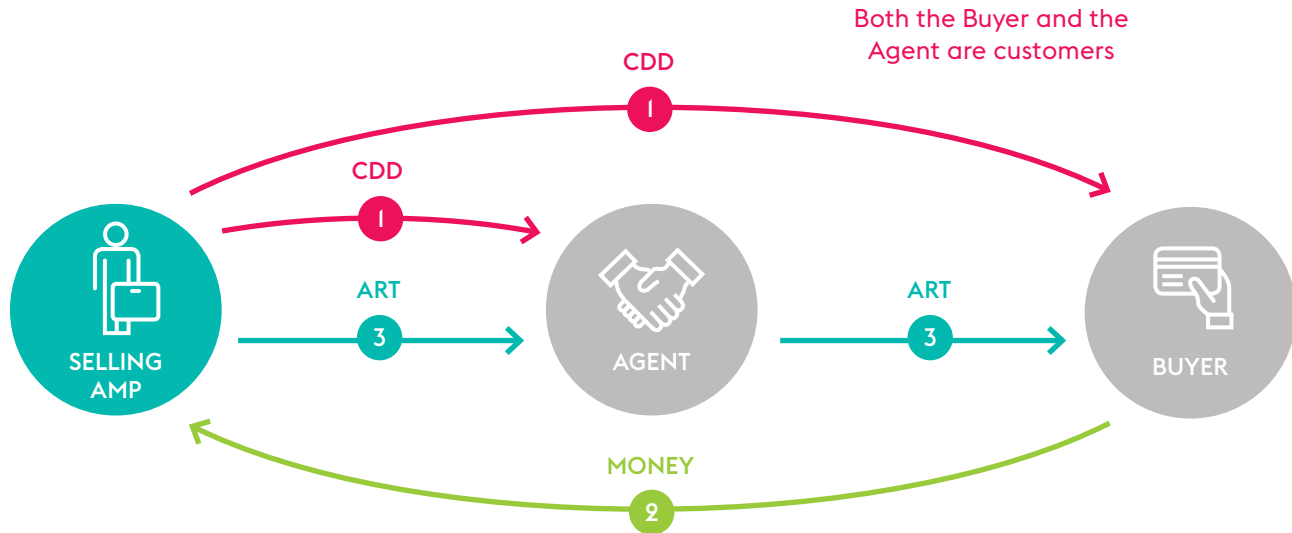
Regulated Dealer/Gallery ('Dealing AMP') is selling a work of art to a Buyer, on behalf of a Seller.



# Selling via an intermediary

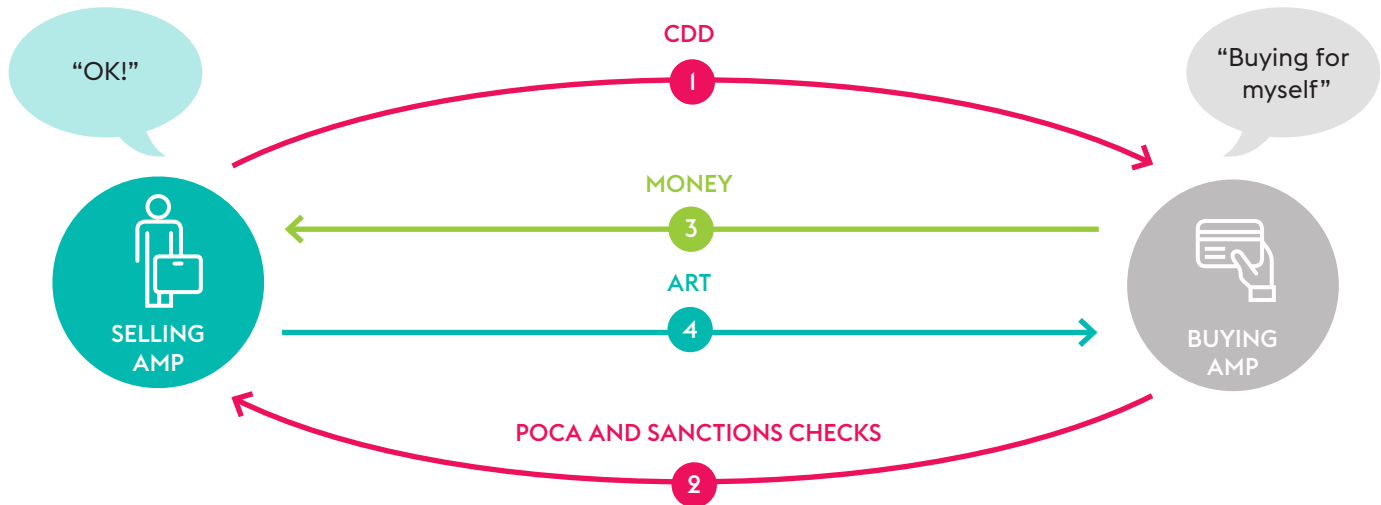
Regulated Dealer/Gallery ('Selling AMP') is selling a work of art to a Buyer.

An Agent is acting for the Buyer but the Buyer is paying the 'Selling AMP' direct.



## Selling to another AMP

Regulated Dealer/Gallery ('Selling AMP') is selling a work of art to a Buying Dealer ('Buying AMP'). The Buying Dealer has confirmed that they are buying with their own money.



# Is there a concealed Buyer?

Regulated Dealer/Gallery ('Selling AMP') is selling a work of art to a 'Selling AMP'.

The Buying Dealer has said that they are buying with their own money, but the Dealer/Gallery suspects they are paying with money from an underlying Buyer.

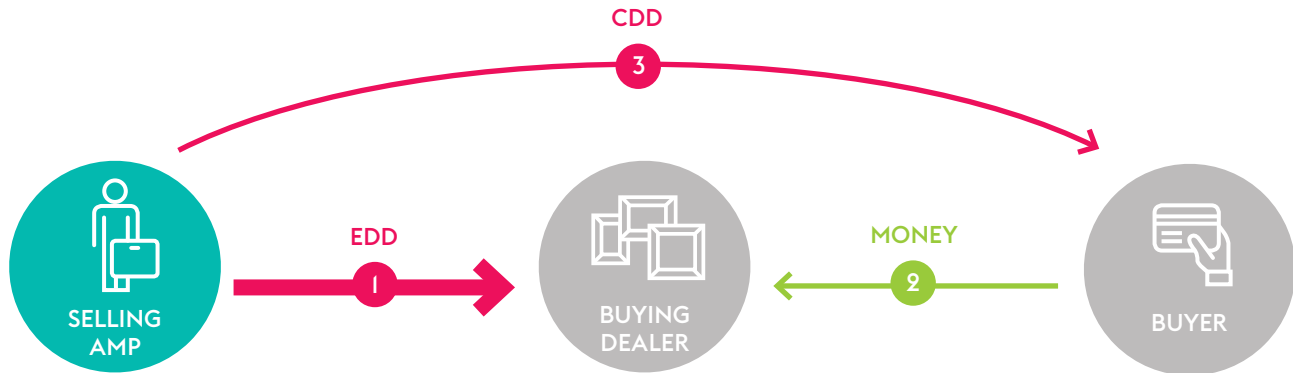


(part 1/3)



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Selling AMP should consider whether 'Enhanced Due Diligence' is appropriate, in view of suspicions over the source of funds. If funds are coming from an underlying Buyer, they are also a customer.



(part 2/3)

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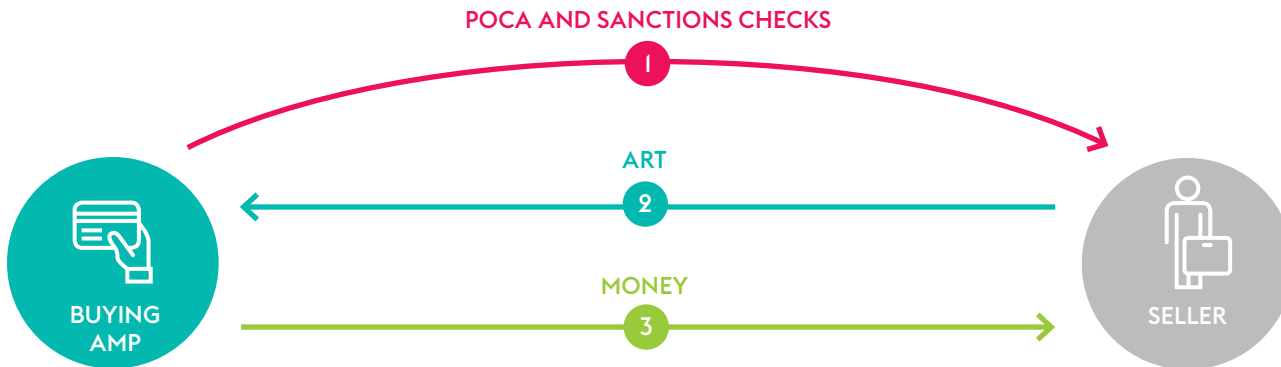
If the Buying Dealer is regulated i.e. they are an AMP, then they need to carry out POCA and sanction checks. As a regulated entity, the Buying Dealer also must carry out CDD on the buyer, and they should not be concealing the source of funds. (This is not explicitly stated in Section 5.19 of the guidelines for this example).



(part 3/3)

# Buying from a collector

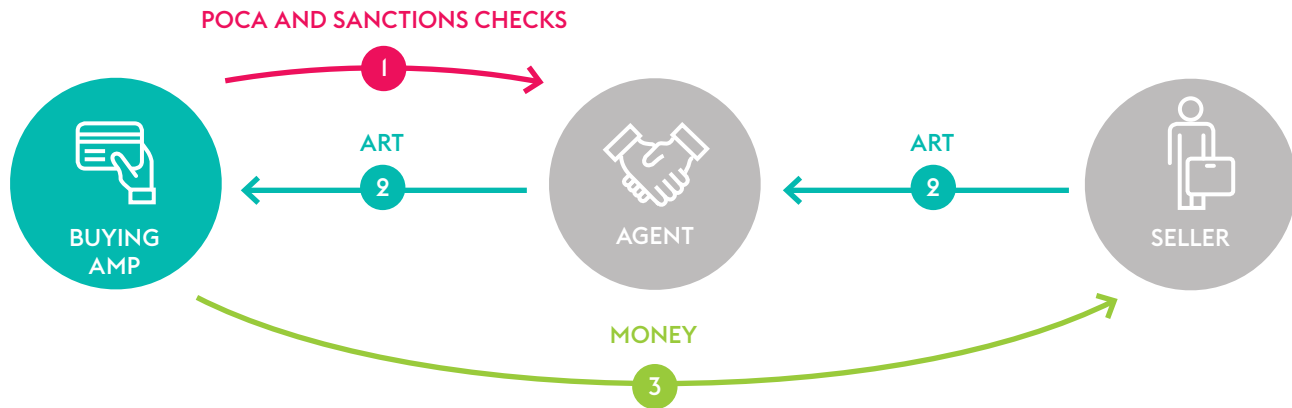
Regulated Dealer/Gallery ('Buying AMP') is buying a work of art from a Seller.



You are not providing a service and receiving money from the collector, so they are not the 'customer' for the purposes of the Regulations.

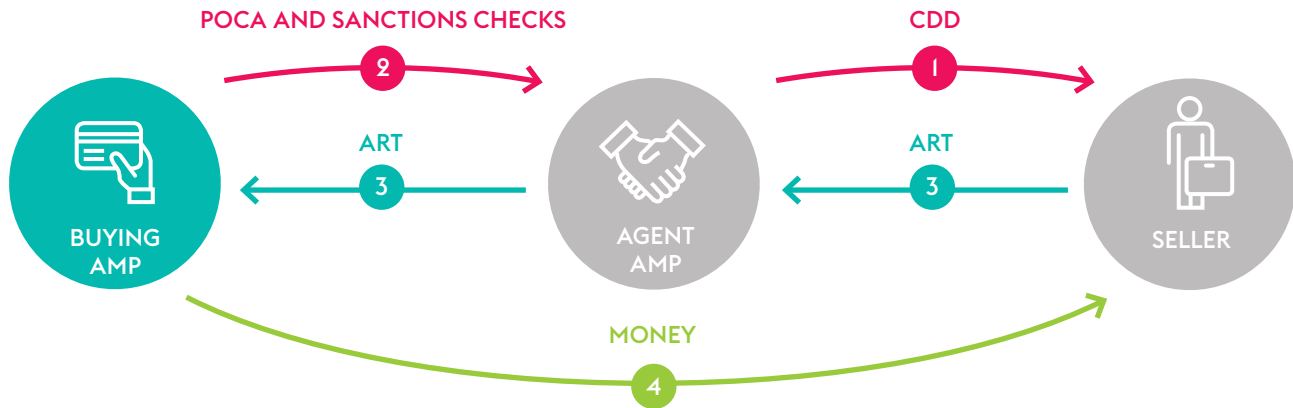
## Buying from a collector via an intermediary

Regulated Dealer/Gallery ('Buying AMP') is buying a work of art from a Seller who is represented by a (non-regulated) Agent. Payment will transfer direct to the Seller.



# Buying from a collector via another AMP

Regulated Dealer/Gallery ('Buying AMP') is buying a work of art from a Seller who is represented by a Regulated Agent ('Agent AMP'). Payment will transfer direct to the Seller.



## Useful links

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### **Guidance**

[www.artaml.io/AMPguidance](http://www.artaml.io/AMPguidance)

### **Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017**

[www.artaml.io/Regulations2017](http://www.artaml.io/Regulations2017)

### **The Money Laundering and Terrorist Financing (Amendment) Regulations 2019**

[www.artaml.io/AmlAmendments2019](http://www.artaml.io/AmlAmendments2019)

### **VAT Act 1994**

[www.artaml.io/VatAct1994](http://www.artaml.io/VatAct1994)

### **Register with HMRC**

[www.artaml.io/RegisterWithHmrc](http://www.artaml.io/RegisterWithHmrc)

### **HMRC Fees**

[www.artaml.io/HmrcFees](http://www.artaml.io/HmrcFees)

### **EU High risk countries**

[www.artaml.io/EuHighRiskCountries](http://www.artaml.io/EuHighRiskCountries)

### **HM Govt Sanctions and Embargoes**

[www.artaml.io/GovtSanctionsAndEmbargoes](http://www.artaml.io/GovtSanctionsAndEmbargoes)

### **Sanction information sign up**

[www.artaml.io/SanctionsInformation](http://www.artaml.io/SanctionsInformation)

### **FCA Guidance on PEPs**

[www.artaml.io/FcaGuidanceOnPeps](http://www.artaml.io/FcaGuidanceOnPeps)

### **HMRC on training and NO**

[www.artaml.io/MLROsAndEmployeeTraining](http://www.artaml.io/MLROsAndEmployeeTraining)

### **National Crime Agency**

[www.artaml.io/NCA](http://www.artaml.io/NCA)

### **Reporting SARs**

[www.artaml.io/ReportingSARs](http://www.artaml.io/ReportingSARs)

### **HM Govt Official Monthly Exchange Rates**

[www.artaml.io/GovtMonthlyExchangeRate](http://www.artaml.io/GovtMonthlyExchangeRate)

### **Proceeds of Crime Act 2002**

[www.artaml.io/POCA](http://www.artaml.io/POCA)





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