

November 3, 2020

## OFAC Issues Art Advisory, Highlighting Sanctions Risk in the Art Trade

On October 30, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) published an advisory to highlight sanctions risks arising from dealings in high-value artwork (the “Advisory”).<sup>1</sup> The Advisory emphasizes that artwork-related transactions involving sanctioned parties—even where the transaction otherwise would be exempt from OFAC’s jurisdiction—can expose U.S. persons to liability, particularly where the artwork is of high value and functions primarily as an investment asset or medium of exchange.<sup>2</sup>

**Attorneys**  
[Ama A. Adams](#)  
[Brendan C. Hanifin](#)  
[Emerson Siegle](#)  
[Nicole D. Horowitz](#)

The Advisory states that illicit actors have exploited vulnerabilities in the high-value art market to circumvent U.S. sanctions restrictions. Perceived vulnerabilities in the art trade include the ability of buyers and sellers of artwork to conceal their identities (including via shell companies and third-party intermediaries), as well as the portability and subjective value of artwork. The Advisory cites recent examples of exploitation of the art trade to evade sanctions restrictions, including:

- The December 2019 designation of a Lebanese art collector suspected of laundering substantial sums of money in support of Hizballah, a Specially Designated Global Terrorist group;
- Sanctioned Russian oligarchs’ use of shell companies to execute high-value artwork purchases; and
- North Korea’s production and export of statuary to third countries, earning the sanctioned jurisdiction tens of millions of dollars in revenues.

U.S. economic sanctions generally prohibit covered parties from engaging in transactions or dealings with (1) parties located, organized, or ordinarily resident in embargoed jurisdictions; and (2) parties included on, or majority owned by parties included on, OFAC’s Specially Designated Nationals And Blocked Persons (“SDN”) List. Since enactment of the Berman Amendment in 1988, U.S. sanctions regulations have recognized a general exemption for transactions related to sanctioned jurisdictions that involve the import or export of “information and informational materials,” defined to include artworks, publications, films, posters, and photographs (among other media). Importantly, however, OFAC has interpreted the Berman Amendment exemptions to exclude transactions involving certain categories of “blocked persons,” including (1) parties included on OFAC’s SDN List; and (2) entities majority-owned, individually or in the aggregate, by parties included on the SDN List.

Although the Advisory does not reflect a fundamental change in interpretation of the Berman Amendment, it is notable that OFAC felt compelled to clarify the scope of the information and informational materials exemption—in particular, its inapplicability to transactions involving blocked parties—as well as to highlight the Agency’s focus on the use of high-value artwork as an investment asset or medium of exchange. The Advisory encourages participants in the art market—including art galleries, museums, private collectors, auction companies, agents, and brokers—to adopt risk-based sanctions compliance programs, including procedures for conducting risk-based due diligence of counterparties. In view of OFAC’s 50 Percent Rule, such due diligence generally should include screening of counterparties’ significant beneficial owners, in addition to direct counterparty screening. Finally, as highlighted in our prior [alert](#), the Advisory signals that U.S. regulators have homed in on the art trade as particularly susceptible to misuse by bad actors, possibly portending increased regulation (and, subsequently, increased enforcement) post-election cycle.

<sup>1</sup> OFAC, Advisory and Guidance on Potential Sanctions Risks Arising from Dealings in High-Value Artwork (Oct. 30, 2020), available at [https://home.treasury.gov/system/files/126/ofac\\_art\\_advisory\\_10302020.pdf](https://home.treasury.gov/system/files/126/ofac_art_advisory_10302020.pdf).

<sup>2</sup> The Advisory does not define “high-value artwork,” but states that “OFAC would urge particular caution when dealing with artwork with an estimated market value of more than \$100,000.”