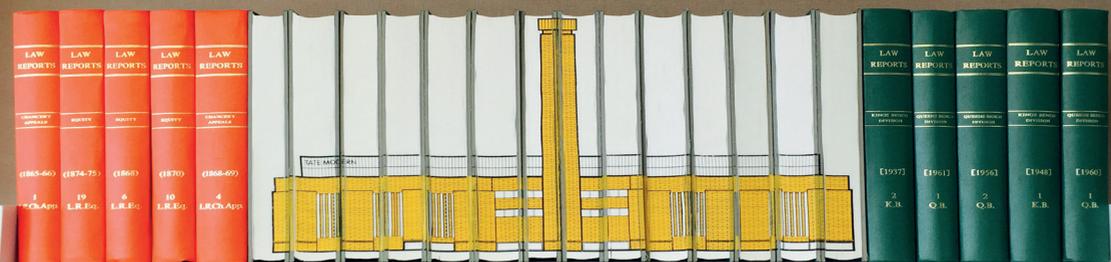


# Boodle Hatfield.

By the book...  
Business advice for art galleries.



# Boodle Hatfield has been giving expert advice to collectors of and investors in Art for nearly 300 years.

Our outstanding reputation reflects the experience and expertise that we have accumulated by helping long-standing clients who are active in the Art World. With offices in two of London's largest artistic hubs, Mayfair and Bankside, our team has a deep understanding of the market. We effectively blend arts knowledge with legal expertise to ensure we get the best results. Those clients include leading landed estates, private individuals from both the UK and overseas, Trustees, Galleries, Art and Antique dealers, Institutional Art collectors and valuers.

Many of our clients own valuable Art collections and we offer advice on areas such as taxation, the specific provisions relating to heritage property, succession and devolution including conflict of law issues. When doing so we liaise closely with leading valuers and Institutions.

We also advise Art Galleries, dealers and collectors in connection with Art-related disputes such as disagreements about authenticity or claims relating to damaged artwork.

## Services

### Commercial Advice

- Contracts for artists, collectors, dealers and auction houses
- Property finance advice to art galleries
- Sale and purchase agreements
- Art investment funds
- Employment-related advice

## **Tax-Efficient Structuring and Devolution**

- Inheritance and capital gains tax planning for chattels and historic buildings
- Conditional Exemption claims
- The Acceptance in Lieu Scheme
- Gifts and leasebacks of chattels
- Loans to Museums and Galleries
- Import and export controls on the movement of art
- Owners' and Trustees' responsibilities

## **Dispute Resolution**

- Ownership
- Authenticity and provenance
- Misattribution
- Damaged artwork
- Restitution and holocaust claims
- Art fraud
- Loss of sale and associated damages
- Breach of contract

## **Advice related to Charities**

- Gifts and bequests
- The Cultural Gifts Scheme
- Establishing and running private charitable Foundations
- Other tax-efficient gifts to the Arts

# Know your client

## What do you need to know about Anti Money Laundering?

- Anti Money Laundering procedures are an essential safeguard for art market businesses.
- The recent allegations against Yves Bouvier brought into the spotlight a growing need for transparency in the international art market, highlighting possible vulnerability to money laundering, tax evasion, insider trading and price manipulation.
- The Money Laundering Regulations 2007 is the current legislation which details requirements and thresholds. The legislation emphasises a risk based approach - there are no exemptions for small art market businesses and HMRC have the power to issue penalties.
- Financial Action Task Force - The Recommendations. These are recognised as the international standard for combating money laundering and terrorist financing, ensuring a co-ordinated response to such threats.
- Anti-corruption organisation Transparency International reported on the arts and luxury markets sector in November 2015.
- The Swiss approach. From January 2016 there are restrictions on cash payments combined with a possible review of freeports regulation. Art collectors and art dealers (also encompassing the storage of art) must now comply with new anti-money laundering and terrorist financing laws.
- The proposed Fourth Money Laundering Directive, in force in the UK before June 2017, specifies lower thresholds for high value cash payments and the need for increased due diligence.

***"Whether we like it or not, art is used for tax avoidance and evasion. It can be used for money laundering. You can buy something for half a million, not show a passport and ship it". - Nouriel Roubin***

# Know your source

## What do you need to consider?

Consider provenance: the chain of ownership, due diligence as to title, current ownership and historic ownership. Remember:

- Provenance is not only about adding value.
- If there is no central register then it may be difficult to obtain good title free of encumbrances.
- Always verify the provenance provided for accuracy and authenticity.

Consider any potential disputes that may arise before or during a transaction such as:

- Family disputes
- Divorce
- Lending/Security
- Prior promises/gifts
- Looted works
- Illegally procured/excavated or exported works
- Stolen works

Make sure you have safeguards in place:

- Use art databases and carry out basic due diligence.
- Analyse the piece's geographical origin for any risk factors.
- Can title insurance be obtained in a similar way as for property transactions?

Mitigate the risk of purchasing a fake or looted artwork by considering:

- Prevalence
- Legal implications
- Safeguards

# Know your premises

## What to look out for when negotiating a new lease?

- Watch out for a landlord's standard retail lease that is likely to be used as the basis for your letting. You need to make sure it is amended so that it is suitable for an art gallery.
- Make sure the permitted use covers all aspects of your business. Art galleries do not just display art, there are likely to be catered events involving serving food and drink.
- Be aware that restrictions on use can be contained in many areas of the lease including restrictions on when the premises can be used. There might also be restrictions on serving alcohol.
- Consider if controversial artwork might be prohibited for display by the lease. Many landlords retain the right to require tenants to remove anything that they (rather than an objective person) considers objectionable.
- Look to see if the landlord owns other property in the area that you could obtain beneficial restrictions over. You might, for example, be able to persuade your landlord not to let adjoining premises to a fast food outlet. But, always take advice so as to avoid falling foul of competition law.
- Ensure your insurer's requirements can be complied with and do not conflict with the provisions of the lease.
- Provide for a list of "entry requirements" that the landlord has to comply with when exercising its rights of access.
- Have regard to the location of sprinkler and leak detection systems and ensure these are properly maintained.
- Minimise the impact of scaffolding by requiring prior consultation and an obligation to provide appropriate signage.
- Consider your exit strategy if the premises cease to be suitable for your purposes. You will want to have the widest group of people to consider as potential assignees to your lease.

# Know your business

## Raising money for your business; a loan or a new investor?

Borrowing from a bank comes with the obvious advantage that you retain full (or almost full) control of your business whereas taking new investment means parting with some of your business. The flip side of the coin is that with an investor you get someone whose interests are aligned with yours without having to make regular interest and loan repayments.

**Borrowing from a bank:** Most successful businesses are financed by banks. Their primary aim is to be repaid the money they have lent and see a reasonable return. Be prepared to answer in-depth questions about your business. For example:

- Have you borrowed from banks before and successfully repaid them?
- Why do you want the money?
- Do you have a contingency plan in place?
- Do you have a cashflow model showing you can service repayments?

It's not all about just getting money from the bank. You want your bank to support you if things go wrong and therefore choosing the right (and not just the cheapest) one is important.

**Raising new investment:** Bringing in another investor can have many potential benefits. They can bring new ideas, new contacts and new skills to your business and more. Investors will want to see many of the same things that banks want to see. They want to see that they can make a good return on their investment. Be prepared to answer questions about:

- Your track record.
- Where do you want your business to be in the short, medium and long term and how will you get there?
- Is your business profitable?
- Why should the investors invest in you?

It's not just about getting the new investment. Make sure you have a shareholders' agreement in place in the event things don't go as planned.

# Understand the risks

## What do you need to know about tax structuring risks and issues?

- Be aware that many significant items are owned by corporate entities/trust structures established in offshore jurisdictions.
- For galleries it is important to identify who is the “buyer” and who is the “seller”.
- Don’t be afraid to ask your advisors for clarity... Even to the compliance departments of large international banks tax structures can be opaque and often incomprehensible.
- Know that as of 6 April 2016 there is a requirement to maintain a register of Persons with Significant Control “PSC Register” for galleries which are established as UK companies. This is in the context of an increasingly global focus on tax transparency.
- Ensure that you are up to date with the latest legislation requirements and thresholds. Tax issues on bringing art to the UK for the purpose of displaying/selling can raise a number of traps for the unwary.
- Many of the tax issues will relate to the buyer/seller of the art but with the increased scrutiny on money laundering/tax evasion, galleries should be aware of the following:
  - taxable remittances
  - is the gallery an “approved establishment”?
  - timing restrictions on display in the UK
  - removal of sale proceeds from the UK within certain timeframes

# Contact Us

---



## **Tim Maxwell**

**Partner, Litigation**

**t:** +44 (0)20 7079 8337

**e:** tmaxwell@boodlehatfield.com



## **Simon Williams**

**Partner, Property**

**t:** +44 (0)20 7079 8159

**e:** swilliams@boodlehatfield.com



## **Rudy Capildeo**

**Associate, Corporate**

**t:** +44 (0)20 7079 8141

**e:** rcapildeo@boodlehatfield.com



## **Salpy Kouyoumjian**

**Partner, Private Client & Tax**

**t:** +44 (0)20 7079 8245

**e:** skouyoumjian@boodlehatfield.com



## **Simon Fitzpatrick**

**Partner and Head of Litigation**

**t:** +44 (0)20 7079 8162

**e:** sfitzpatrick@boodlehatfield.com

**“They have a good team of  
lawyers, who understand  
issues specific to the art world  
which are not at all obvious”**  
- Chambers UK

**Find out more...**

**Read our art law blog:**

[www.artlawandmore.com](http://www.artlawandmore.com)

**Follow us on Twitter:**



[@ArtLawandMore](https://twitter.com/ArtLawandMore)

**Boodle Hatfield LLP | 240 Blackfriars Road, London SE1 8NW**

| 6 Grosvenor Street, London W1K 4PZ | 6 Worcester Street, Oxford OX1 2BX |

| +44 (0)20 7629 7411 | [bh@boodlehatfield.com](mailto:bh@boodlehatfield.com) | [www.boodlehatfield.com](http://www.boodlehatfield.com) |