

# Art Market Principles and Best Practices

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## INTRODUCTION

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Art Basel believes that trust is the essential element underlying the sales that are crucial to the success of our exhibitors, both at our shows and on an ongoing basis. Thus, we firmly believe that the integrity of the gallerists participating in the Art Basel shows should be a primary criterion for their inclusion. And therefore, we must take seriously any case involving acts that could harm the broader trust essential to a sound art market.

While one of Art Basel's defining qualities is the diversity of galleries represented – both in terms of their geographic locations across many markets, as well as the breadth of artists represented and artworks displayed – certain professional standards are so fundamental that they embody the core values of the art market wherever a gallery may be active.

Therefore we have expanded upon our existing exhibitor regulations to specify how we will address cases that risk causing reputational damage – to Art Basel, to our Exhibitors, and to the art market in general.

By putting in place the guidelines and protocols below, Art Basel aims to reinforce the fundamental strength of the international art market, built on trust and serving as a source of indispensable patronage for artists.

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## OVERVIEW

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Developed in collaboration with legal and art-market experts from across the world, the following guidelines and protocol related to exhibiting gallery activities are divided into two parts:

Section 1: **Best Practice Guidelines**, which suggest professional standards for Art Basel Exhibitors year-round, and which will be considered by Art Basel's Selection Committees as part of evaluating the gallery's overall activities whenever it applies to participate in our shows.

Section 2: The **Legal Compliance Process**, which is limited to dealing with cases involving intentional criminal activity directly related to an Exhibitor's professional art-market activities, and meeting certain criteria defined in this document, including that the case has progressed beyond the investigation stage, meaning either: the relevant administrative or judicial authorities find sufficient evidence of a criminal offence having been committed to bring the case to court via indictment; or there has been a criminal conviction, plea of nolo contendere, or other finding or admission of guilt. Such cases shall be subject to review in a process involving independent legal and market experts – a measure that goes above and beyond the scope of Art Basel's Selection Committees

### Preliminary Notes and Definitions

The provisions detailed below are part of the Art Basel Exhibitor Contract. By signing any official Art Basel application form, the Exhibitor accepts the Art Basel's Art Market Principles and Best Practices and the Legal Compliance Process as binding for themselves, their employees and their representatives, and agrees to be bound by the process and decisions of Show Management in regards to all cases brought before the Legal Compliance Panel. The Exhibitor irrevocably waives any related rights and claims that the Exhibitor might have against Show Management in connection with the Art Basel's Art Market Principles and Best Practices and the Legal Compliance Process.

Swiss law shall be the basis of definition between:

1. civil-law issues, covered in Section 1, Best Practice Guidelines, and
2. potential criminal violations, which shall be handled as detailed in Section 2, Legal Compliance Process.

Except as otherwise specified herein, all terms used in the Art Market Principles and Best Practices have the meanings ascribed to them in Art Basel's Exhibition Regulations.

The term 'Show Management' refers to the entity of MCH Group Ltd. responsible for organizing and staging the Art Basel international art fairs at the location to which a reported Exhibitor's application refers or at which the Exhibitor participates, i.e. to MCH Swiss Exhibition (Basel) Ltd. for the show in Basel, Switzerland; Art Basel U.S. Corp. for the show in Miami Beach, USA; and Asian Art Fairs Ltd. for the show in Hong Kong.

The term 'Exhibitor' refers to any person and organization participating or applying to participate in Art Basel, including the beneficial owners, directors, officers, and any other persons controlling and/or managing an Exhibitor.

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## SECTION 1: BEST PRACTICE GUIDELINES

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### Overview

Art Basel recommends that its Exhibitors adhere to the following Best Practice Guidelines on an ongoing basis in their regular course of business. Based on Section 4.1 of Art Basel's Exhibition Regulations, the Best Practice Guidelines will continue to be a factor taken into consideration by the Art Basel's Selection Committees in selecting exhibitors for participation in Art Basel shows in Basel, Miami Beach and Hong Kong.

### 1. WORKING WITH ARTISTS AND CONSIGNORS

#### 1.1

While pursuing their own commercial interests, Exhibitors shall also act in the interest of their artists (including artist estates, foundations and trusts) and consignors, and shall fulfill their financial and legal responsibilities to protect these interests.

#### 1.2

Exhibitors shall exercise appropriate due diligence in establishing the origin and authenticity of works they offer for sale, and neither accept for consignment nor sell any artwork that they know to be, or have reasonable suspicion to believe may be, stolen, looted, illegally exported, inauthentic (including forgeries and misattributions), the product of other criminal activity or subject to any current legal claim.

#### 1.3

Exhibitors shall only sell works when, to the best of their knowledge, the artist and consignor have clear title to the works, free of all encumbrances and possible ownership claims. Whenever possible, Exhibitors shall obtain written confirmation to this effect from consignors.

#### 1.4

Whenever possible, Exhibitors shall accept works on consignment only once terms have been agreed in writing.

#### 1.5

Exhibitors shall only sell works that they are authorized by the owner to sell, and only on the terms approved by the owner.

#### 1.6

Exhibitors shall communicate with artists and consignors in an accurate fashion concerning all issues related to potential sale, per the terms established in their consignment agreement.

### 2. CONDITIONS OF SALE

#### 2.1

Upon selling a work, Exhibitors shall provide the buyer with a written invoice containing the description and image of the work, the identity of the artist, the dimensions and medium of the work, the sale price, the identity of the buyer and any other customary information related to that transaction.

#### 2.2

Exhibitors shall not include information in invoices and other documents that they know or have reason to believe to be false.

#### 2.3

If Exhibitors accept cash payments for works of art or for services, they shall do so in accordance with all applicable laws and regulations.

#### 2.4

When payment is received from a buyer for a consigned work, Exhibitors shall make complete payment to the consignor or the artist in accordance with an agreed payment schedule, including any pre-agreed deductions.

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## **3. RECORDS**

Exhibitors shall keep proper transactional and accounting records, including, where applicable:

- a) Records on the origin of the artworks they are offering for sale;
- b) The identity and address of consigners, artists and buyers;
- c) Contracts with artists, consigners and third parties;
- d) Invoices, statements on payments made and received and on any other costs incurred; and,
- e) Shipping and customs documents, etc.

## **4. RESOLVING COMPLAINTS**

Exhibitors shall promptly and thoroughly investigate any complaints or concerns from their consigners, artists or buyers and attempt to resolve complaints in good faith.

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## SECTION 2: LEGAL COMPLIANCE PROCESS

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### Overview

Exhibitors must comply with all applicable laws in the country or countries where they do business, including statutes governing forgery of artworks and provenance; dealing with stolen, looted, embezzled or forged artworks; money laundering; forgery of documents; fraud; misappropriation; and illegal import and export of cultural property.

The following gives an overview of Art Basel's procedure (detailed below) in case of perceived potential criminal conduct by Exhibitors:

1. When Show Management becomes aware of potential criminal conduct by an Exhibitor, Show Management will submit reports of such potential criminal conduct ('Reports') to a Legal Compliance Board for assessment.
2. If upon analysis of the case the Legal Compliance Board finds that a Legal Compliance Panel ('Panel') is warranted, such a Panel shall be established by Show Management.
3. The Legal Compliance Panel will analyze the case and issue a recommendation to Show Management.
4. Based upon the recommendation of the Legal Compliance Panel, Show Management will decide on whether to take action concerning the Exhibitor and, if so, which measures to take.

Nota bene: In no way shall any decision reached by Show Management be construed or intended to be construed as a determination of guilt (or lack of guilt) but, rather, simply as a judgment based upon the potential and/or existing damage to Art Basel's reputation, its other Exhibitors and the market in general.

### 1. LEGAL COMPLIANCE BOARD AND PANEL

#### 1.1

A legal Compliance Board – comprised of a member of MCH Group Ltd.'s legal department and three Swiss experts in law and art-market matters appointed by MCH Group Ltd. and assisted by a member of MCH Group Ltd.'s legal department – will determine whether cases shall be forwarded for review to a Legal Compliance Panel.

#### 1.2

Show Management shall maintain a pool of Legal Compliance Panel members, from which it selects the Panel members reviewing and assessing individual cases. The pool shall include art-market experts, members of the legal profession familiar with art law and other persons whom Show Management considers appropriate for this function.

#### 1.3

For each case, Show Management will appoint a Panel of three members from the pool based upon the specifics of the case, including a chairperson who will lead the process. Based upon the specifics of the case, additional experts relevant to assessing it may be recruited for their relevant knowledge and experience.

#### 1.4

All Panel members must be impartial and independent from any party having reported relevant criminal activity by an Exhibitor to Show Management and likewise from the Exhibitor against which a Report is directed.

#### 1.5

The chairperson of the Panel will coordinate the work within the Panel and the Panel's communication with parties involved.

#### 1.6

Under no conditions may a member of the Legal Compliance Board or the appointed Legal Compliance Panel be involved in cases relating to their past or current clients.

#### 1.7

The following may not serve as members of a Legal Compliance Panel: Employees of MCH Group; Members of the Art Basel Selection Committee; owners or employees of galleries who applied to Art Basel or exhibited at any time in the last five calendar years prior to the date of a Report to be examined (including their shareholders, directors and employees).

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## 2. RELEVANT CRIMINAL ACTIVITIES

### 2.1

The Legal Compliance Panel will review reported potential violations constituting criminal conduct as defined under Swiss law.

### 2.2

The Legal Compliance Panel will limit its review to criminal activities that meet the following criteria cumulatively:

- a) The activities are directly related to an Exhibitor's professional art-trade activities and were alleged to have, or found to have, been committed in the exercise of the Exhibitor's commercial activities;
- b) The activities appear or are alleged to have been committed intentionally;
- c) The activities may potentially damage the reputation and interests of Art Basel, its Exhibitors or the art market in general;
- d) The activities have been or are being investigated by the administrative or judicial authorities in charge of examining the criminal offense at issue;
- e) The activities have resulted in a finding by the relevant administrative or judicial authorities that there is sufficient evidence of a criminal offence having been committed to bring the case to court via indictment, or there has been a criminal conviction, plea of nolo contendere, or other finding or admission of guilt

## 3. THIRD PARTIES SUBMITTING REPORTS

### 3.1

Reports meeting the standards defined in Section 3.2 below are to be submitted to Show Management, which shall take appropriate action based on its good-faith determination. Show Management may disregard Reports not meeting the required standards.

### 3.2

Reports must be drafted in English. They must include the name, address and other contact information of the person submitting the Report. Show Management will not accept Reports submitted anonymously. In addition, Reports must contain a thorough description of the facts giving rise to the Report and a copy of the relevant documents as per Section 2.2 above, establishing that a competent administrative or judicial authority has investigated and found that a relevant criminal offence has been committed, or potentially committed, to the degree that criminal court proceedings have been initiated.

## 4. RECEIPT AND INITIAL REVIEW OF REPORTS

### 4.1

Upon receipt of a Report, or when it learns in other ways (including published reports in the media) of cases meeting the standards defined in Section 2.2, Show Management will submit the Report to the Legal Compliance Board who shall decide on a prima facie basis whether the case meets the criteria defined in Section 2.2 and the standards defined in Section 3.2 for review by a Legal Compliance Board. This decision will be made unanimously or by majority vote according to procedures established by the Board. The determination of the Panel is final and non-appealable, and need not include a description of the grounds for such determination.

### 4.2

Should the case involved qualify on a prima facie basis, a Legal Compliance Panel shall be established by Show Management, with members appropriate to the case.

### 4.3

The Panel will examine the Report. If on a prima facie basis a Report does not sufficiently establish a relevant potential violation as per Section 2 above, the Panel will terminate the process.

### 4.4

If a Report is insufficiently substantiated or documented, the Panel may invite the person submitting the Report to amend the Report within a time limit to be set by the Panel.

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## 5. RIGHT OF RESPONSE

If on a *prima facie* basis a Report demonstrates facts suggesting a relevant criminal offence as per Section 2.2 above, the Panel will transmit a copy of the Report to the Exhibitor and invite the Exhibitor to comment in writing. The Comments must meet the same requirements as the Report.

## 6. PROCEEDINGS

### 6.1

The Panel determines the procedure at its discretion, including the establishing of reasonable time limits for submissions and communications with the Panel.

### 6.2

After the Report and Response from the Exhibitor, there ordinarily will be no further exchange of submissions and documents. The Panel will form its opinion and reach a recommendation on the basis of these documents. Beyond assessing the information contained in the Report and Comments, the Panel will not engage in extensive additional investigation or establish facts on its own initiative.

### 6.3

In exceptional circumstances, the Panel may request additional information, comments, documents and other evidence from parties or other persons and may invite parties or other persons to a meeting to discuss the matter.

### 6.4

If rapid action is required to protect the interests of Art Basel, its Exhibitors and the art market, the Legal Compliance Board or a designated Panel may alert Show Management with recommendations for immediate provisional measures. Show Management may also act on its own initiative in exercising its responsibility as organizer of the shows.

## 7. REACHING A RECOMMENDATION BY THE PANEL

### 7.1

The Panel will examine the documents received and reach a recommendation of potential measures, as detailed in the next section. To decide upon this recommendation, the Panel members will either meet in person or, if this is logistically impractical, discuss the matter by audio or video conference.

### 7.2

The recommendation to Show Management shall take into account the existence and severity of the actual or alleged criminal activity; the interests at stake of Art Basel and the Exhibitors; the impact on the broader art market; known patterns of repeated criminal activities; the offender's level of responsibility and fault for the alleged acts or omissions; and any other factors the Panel reasonably deems relevant.

### 7.3

The recommendation must include a short summary of the case and the grounds for the recommendation.

### 7.4

If there is disagreement among the Panel as to the recommendation, the Panel may reach its recommendation on the basis of a majority vote and communicate this situation to Show Management. A dissenting Panel member may append an addendum with his or her own written dissent.

### 7.5

The Panel may not communicate to the parties its recommendation and information on its internal and confidential discussion of the case.

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## 8. DECISION BY SHOW MANAGEMENT

### 8.1

Show Management will make all final decisions on the measures to be taken based on the Legal Compliance Panel's recommendation and based on its own judgment concerning the best interests of Art Basel, its Exhibitors and the art market.

### 8.2

Recommended measures and sanctions may include, but are not limited to:

- a) Deciding the matter does not warrant any measures, given the current stage and nature of the case;
- b) Waiting for a court ruling before recommending specific measures;
- c) Putting an Exhibitor on notice that they must henceforth systematically comply with the relevant regulatory and statutory obligations;
- d) Refusal of admission to Art Basel for a particular show;
- e) Refusal of admission to Art Basel for an extended period of time;
- f) Revocation of admission already granted for a particular Art Basel show;
- g) In extremis, expulsion from a running Art Basel show, in which case Show Management will grant a short time period to the Exhibitor to clear its booth and remove artworks from the premises of Art Basel.

### 8.3

In no event will any refund be made to an Exhibitor of any participation fees in an Art Basel show.

### 8.4

The measures decided by Show Management will be communicated to the Exhibitor, the Legal Compliance Board and Panel for the case, and Art Basel's Selection Committees. The person having submitted a Report will be informed that the matter has been examined and dealt with. Show Management may inform third parties (such as the relevant legal authorities and the media) of a case and measures taken.

### 8.5

Any such measure will be imposed without prejudice to any other legal rights and remedies of MCH Group Ltd. or any affiliate thereof and MCH reserves the right to seek indemnification from Exhibitor without limitation for any damages or losses incurred as result of Exhibitor's established or alleged criminal conduct.

## 9. NEW FACTS AND CIRCUMSTANCES

Show Management, the Legal Compliance Board and the Legal Compliance Panel will not review appeals to their recommendations and decisions. However, in connection with applications for subsequent years and shows, Exhibitors may inform Show Management of new facts and circumstances that were not known to the Exhibitor at the time of responding to a Report and that are of such relevance as to call for a re-evaluation of the situation. Unless Show Management decides to re-evaluate the situation and revoke or amend measures taken, any application to Art Basel by an Exhibitor that has been refused admission to its shows will not be submitted to the Art Basel Selection Committee for consideration for future shows.

## 10. EXCLUSION OF LIABILITY

By executing the Art Basel Exhibitor Contract, the prospective Exhibitor i) acknowledges and agrees that Show Management, the members of the Legal Compliance Board and Panel, the members of the Art Basel Selection Committee, the members of the Appeals Board, and any of their employees, advisors, representatives and agents shall not be liable to any person for any act or omission in connection with these Rules on the Compliance Board, (ii) irrevocably waives any claim against any and all of the foregoing individuals and entities for any action they may take in good faith pursuant to the terms of Art Basel's Best Practice Guidelines and Legal Compliance Process, and (iii) agrees to indemnify, defend and hold any and all of the foregoing individuals and entities for any loss, cost, damage or expense suffered by reason of any claim made against such parties for any action they may take in good faith pursuant to the terms of Art Basel's Best Practice Guidelines and Legal Compliance Process with respect to such Exhibitor. The validity of this exclusion of liability under this Section 10 shall be unlimited in time.

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**Nota Bene**

Art Basel's Best Practice Guidelines and Legal Compliance Process do not constitute legal advice, and Exhibitors are encouraged to consult with legal counsel of their choosing for any matter relating to the terms set forth herein or for any other legal matter.

**Date of Rules**

The Rules have been adopted by the Show Management of Art Basel on September 1, 2017 and will be part of the exhibitor regulations included in the applications for all three Art Basel shows going forward, coming into effect with the Miami Beach show in 2018.