

PANORAMIC

ART LAW 2024

Contributing Editor

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 LEXOLOGY

Art Law 2024

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Quick reference guide enabling side-by-side comparison of local insights, including into buying and selling; export and import controls; taxation; borrowing against art; intellectual property rights; agency; consigning items; auctions; spoliation during Nazi era; lending to museums; cultural patrimony; anti-money laundering; endangered species; consumer protection; art market regulators; and recent trends.

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Art Law: Introduction

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The international art market has struggled in 2023. Just look at some of the headlines: ‘New York Old Master sales deliver tepid results at Christie’s and Sotheby’s’, ‘Jitters, few jolts at Phillips’s 20th century & contemporary evening sale in London’ and “‘We can feel instability”: Italian dealers weigh up the market at Artissima in Turin’. According to the 2023 A Year in Review report by ArtTactic, the London-based art market analytics firm, auction sales of Old Master, Impressionist, Modern and contemporary works at Sotheby’s, Christie’s and Phillips – the key publicly available indicators of health (or otherwise) in the art industry – dropped 27 per cent last year, to US\$5.76 billion. ArtTactic ‘largely’ attributed this result to ‘a 30 per cent fall in the number of US\$10 million-plus lots entering the market in 2023.’ In China, meanwhile, fine art sales dwindled from US\$921.7 million in 2022 to US\$847.8 million in 2023 – a shrinkage of 8 per cent – across the Hong Kong, Beijing and Shanghai salerooms of Christie’s, Sotheby’s, Phillips, China Guardian and Poly Auction.

2023 was a somewhat tempestuous year for museums too. Climate activists have continued to draw attention to their cause by targeting major artworks hanging in museum galleries. In April, two climate activists smeared red and black paint on the pedestal and plexiglass case of *Little Dancer Aged Fourteen* by Edgar Degas in the National Gallery of Art in Washington, DC, the first instance of a climate-protest attack on an artwork in the United States. Most attacks have occurred in Europe, where paint or soup is regularly being thrown at artworks on display. In November, an activist group seeking to pressure the UK government into ending its licensing of new fossil fuel projects, smashed hammers into the glass protecting Diego Velázquez’s *The Toilet of Venus* (1647-51) at London’s National Gallery, thankfully causing only minor damage to the painting’s surface.

Restitution of African and Oceanic art seized during the colonial period, as well as the return of Native American and indigenous Canadian artefacts, continues to be a hot topic, particularly items looted in the late 19th century by British troops during battles at Maqdala (Ethiopia), Benin (present-day Nigeria) and the Asante empire (present-day Ghana). Museums in Europe and North America will continue to face calls for restitution in the coming year.

Then there was the crisis that hit the British Museum last summer. Revelations that a senior curator allegedly stole 2,000 antiquities from the museum over a 25-year period, seemed almost unbelievable. The director of the museum resigned, and the main challenges for the new director will be to restore the British Museum’s reputation, and hopefully procure that artworks in storage are inventoried, a mammoth task, given the quantity of artworks stored in the museum’s vaults.

One of the most talked about topics in the world in 2023 was the ascendance of AI and the legal issues thrown up by AI-art generators. In January 2023, a trio of US-based artists and illustrators – Sarah Andersen, Kelly McKernan and Karla Ortiz – filed a class action in California against three AI companies. The complaint accused Midjourney, DeviantArt and Stability AI of copyright infringement arising from the use of the artists’ works in the

databases of images hoovered by the companies to train their algorithmic image generators without compensating the artists or seeking their consent. AI tools such as Stability AI's Stable Diffusion, Midjourney, and the DreamUp generator on DeviantArt, allow users to create artworks by typing phrases. The emergence of AI-generated artwork has sparked controversy among artists, leading to protests and culture wars on social media. Content creators such as Polish artist Greg Rutkowski, known for creating fantasy landscapes, have become the face of campaigns protesting the treatment of artists by generative AI startups. Rutkowski has complained about the fact that typing text like 'Wizard with sword and a glowing orb of magic fire fights a fierce dragon Greg Rutkowski' will create an image that looks very similar to his original work – threatening his income. AI is also being used to assess authenticity, applying different techniques to connoisseurship. For lawyers, the intersection of art and AI throws up fascinating legal issues, and the infinite potential of AI is bound to continue to inspire new creative movements.

2023 was also a year of conflict and destruction. In the wake of the October terrorist attack by Hamas on civilians in Israel, the devastating war in Gaza has resulted in the loss of thousands of lives along with the destruction of mosques and archaeological sites. In Ukraine, cultural and heritage buildings continue to be damaged and destroyed. UNESCO has moved to protect Ukraine by adding the historic centre of Odesa, the Saint Sophia Cathedral in Kyiv and the Kyiv-Pechersk Lavra monastery complex, and the entire historic centre of the city of Lviv, on its list of endangered World Heritage sites. The war has led to a restitution debate. An investigation by *The Art Newspaper* raised serious concerns that works of art taken by Russian troops in occupied Ukraine may not be repatriated once peace is restored. Hundreds of paintings were removed from the Kherson Regional Art Museum in November and dispatched to Simferopol in Crimea, a territory seized by Russia in 2014. Other Ukrainian museums have suffered similar fates.

Finally, climate change continues to challenge our ability to protect places of collective heritage. Catastrophic natural disasters included a huge earthquake that struck Turkey and Syria in February, leaving nearly 60,000 people dead and destroying many archaeological sites and ancient buildings. In September, a major 6.8 magnitude earthquake struck western Morocco, wreaking havoc on the country's museum sector and protected heritage sites.

All is not doom and gloom. The return of physical art events and fairs after pandemic restrictions has been significant. Online sales, which thrived during the pandemic, continue to be a vital source of revenue for galleries. The art world now strikes a balance between in-person relationship-building and online sales mechanisms. Secondary-market demand remains strong, especially for mid-career and ultra-contemporary artists born after 1975. Female artists have also been celebrated. While uncertainties persist, the art world continues to evolve, driven by a blend of tradition and innovation.

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BUYING AND SELLING

Passing of title

1 | When does ownership of art, antiques and collectibles pass from seller to buyer?

Ownership of art, antiques and collectibles passes from seller to buyer as soon as they have agreed on the artwork to be sold and on its sale price. This is the case even if the art, antique or collectible has not yet been delivered or the price has not yet been paid (article 1583, Civil Code). However, the buyer and the seller can contractually agree to postpone the transfer of ownership, until payment or delivery of the artwork, for example.

Law stated - 20 February 2024

Implied warranties

2 | Does the law of your jurisdiction provide that the seller gives the buyer any implied warranty?

Under French law, there is no implied warranty of title per se. However, the seller gives the buyer an implied warranty of peaceful possession. In other words, the seller warrants to the buyer that the art, antique or collectible is sold free of any third-party claims. Hence, if the buyer's title is challenged, the seller may have to refund the sale price independent of damages. The implied warranty of peaceful possession may be excluded or limited by contract. An action based on a breach of warranty of peaceful possession is subject to a five-year statute of limitations, which starts to run as of the date of the breach.

Law stated - 20 February 2024

Registration

3 | Can the ownership of art, antiques or collectibles be registered? Can theft or loss of a work be recorded on a public register or database?

There is no title registry of art, antiques or collectibles.

There is also no public database of stolen works. International databases are typically used, such as the Art Loss Register and the Interpol database. The French Central Office for the Fight against Illicit Traffic in Cultural Goods has a specific database called TREIMA, but it is not available to the public.

However, art, antiques and collectibles that either belong to public entities or are classified as historical monuments are respectively registered on the Joconde and the [Palissy database](#). These databases contain lists of stolen artworks owned by public entities or classified as historic monuments.

Law stated - 20 February 2024

Good-faith acquisition of stolen art

4 | Does the law of your jurisdiction tend to prefer the victim of theft or the acquirer in good faith of stolen art?

French law tends to prefer the acquirer in good faith of stolen art over the victim of theft for several reasons.

First, each transfer of an artwork creates a new title (independent from the former) that stems from the mere possession of the artwork, according to a core principle under French law that states that possession equals title as far as movable goods are concerned (article 2276, Civil Code). If the possessor of the stolen art, antique or collectible acquired it in good faith, ownership in the art, antique or collectible automatically vests in the acquirer.

Second, the claim of ownership of the victim of theft is subject to a three-year statute of limitations, which is shorter than the ordinary five-year limitation period.

Third, if the good-faith possessor of a stolen artwork, antique or collectible acquired it at an art fair, at auction or from a professional of the art market, the original owner may only obtain its restitution in consideration of the reimbursement of the price the possessor paid for it (article 2277, Civil Code).

Finally, good faith is always presumed (article 2274, Civil Code). A possessor is in good faith if he or she regards himself or herself as entitled to the property, and this belief must be reasonable. The burden of proof of the possessor's bad faith thus lies with the victim of theft.

As an exception to the above principles, when the victim of theft is a public entity, and the stolen art, antique or collectible belongs to the public domain (in the sense of public property law, not to be confused with the public domain in the sense of intellectual property law), the public victim's restitution claim is not subject to any statute of limitations, and the good-faith possessor is not entitled to any compensation.

Law stated - 20 February 2024

Acquiring title to stolen art through prescription

5 | If ownership in stolen art, antiques or collectibles does not vest in the acquirer in good faith, is the new acquirer protected from a claim by the victim of theft after a period of time?

Ownership in stolen art, antiques or collectibles automatically vests in the possessor who acquired them in good faith. The victim of theft may only claim ownership for a period of three years as of the date of the theft.

Law stated - 20 February 2024

Passing of risk of loss and damage

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6 | When does risk of loss or damage pass from seller to buyer if the contract is silent on the issue?

In the absence of any contrary stipulations of the contract on the issue, and similar to the transfer of ownership, risk of loss or damage automatically passes from seller to buyer as soon as both have agreed on the artwork to be sold and on its sale price, even if the buyer is not in possession of the art, antique or collectible (article 1196, Civil Code).

The parties may contractually agree that the risk will pass at a different time, notably upon delivery of the artwork to the buyer. This clause is commonly negotiated by the buyer to protect himself or herself against the hazards that may notably occur during transportation of the artwork.

Law stated - 20 February 2024

Due diligence by buyer

7 | Must the buyer conduct due diligence enquiries? Are there non-compulsory enquiries that the buyer typically carries out?

There is no formal legal obligation for the buyer to conduct due diligence enquiries when buying art, antiques or collectibles. However, in the event the buyer wishes to have the sale voided on the basis of an error committed on the substantial qualities of the artwork bought – such as an error on the correct attribution of the work, on its dating or on its condition – the courts may take into account the due diligence enquiries carried out by the buyer.

In the absence of such enquiries, the courts may find the professional buyer to have been reckless in his or her purchasing of the art, antique or collectible (particularly when the buyer is a professional of the art market). However, a non-professional buyer may reasonably rely on the description of the artwork when buying from a professional seller.

Typically, when conducting due diligence enquiries, the buyer should do the following:

- request documents confirming the validity of the seller's title (free of any third-party claims);
- request documents evidencing the provenance of the art, antique or collectible;
- search available databases of stolen works – notably the Art Loss Register – if any doubt arises on the provenance of the art, antique or collectible;
- confirm the authenticity of the art, antique or collectible and possibly request an expert opinion; and
- establish whether the art, antique or collectible was legally imported into the country or, if it is to be exported, whether an export certificate or licence has been obtained or if he or she must obtain it.

Law stated - 20 February 2024

Due diligence by seller

8 | Must the seller conduct due diligence enquiries?

There is no formal legal obligation for the seller to conduct due diligence enquiries when selling art, antiques or collectibles. However, similarly to the buyer, in the event the seller purports to have the sale of an artwork, antique or collectible voided based on an error and in the event his/her liability is challenged, the courts will take into account the due diligence enquiries carried out by the seller. In the absence of such enquiries, the courts may find the seller to have been reckless in his or her selling of the art, antique or collectible and either reject the action to void the sale or find him/her liable for having sold an inauthentic piece.

Professionals of the art market are subject to anti-money laundering obligations according to which they must in particular conduct due diligence on the identity and title of the sellers, when the transaction or series of transactions in which they are involved amounts to €10,000 or more. In addition, certain art market professionals have adopted codes of ethics in which they provide for a certain number of due diligence enquiries to be conducted, mainly on the authenticity and the provenance of the art, antique or collectible. Most codes of ethics are soft laws (ie, not binding), but courts usually rely on these sets of non-binding rules to assess the potential liability of art market professionals.

Law stated - 20 February 2024

Acquisition in bad faith

9 | Can ownership in art, antiques or collectibles vest in the acquirer in bad faith after a period of time?

Yes, ownership in art, antiques or collectibles may vest in the acquirer in bad faith after a period of adverse possession. Possession is composed of two elements: a physical element (material acts similar to those that a legitimate owner would perform) and a psychological element (the intention to hold for oneself).

To adversely possess, the possession must be continuous and uninterrupted, peaceful, public and unequivocal (article 2261, Civil Code). If one of those requirements is absent, the possession is vitiated, and the possessor is unable to acquire property through the passage of time.

There is controversy surrounding the period of time that is required for the ownership of movable property (as opposed to real property), such as art, antiques or collectibles, to vest in the acquirer in bad faith as there is no specific provision in the law. Depending on the interpretation of the provisions of the Civil Code, the period may be five years or 30 years. Authors generally consider that 30 years of adverse possession is more consistent with the legal framework.

Law stated - 20 February 2024

Register of sales

- 10 | Must a professional seller of art, antiques or collectables maintain a register of sales?

To ensure the traceability of objects, all art market professionals (including auctioneers) must maintain a register of sales (article 321-7, Penal Code).

The register must include the seller's and the professional intermediary's identity and domicile, a precise description of each object, including its nature and provenance (article R321-3, Penal Code), the purchase price and the method of payment (article R321-5, Penal Code). Those elements must be kept for a decade and can be consulted by the police and tax services, customs, competition, consumer affairs and fraud prevention services (article R321-10, Penal Code).

Breaches of those obligations are punishable by six months' imprisonment and a fine of €30,000 (article 321-7, Penal Code).

Law stated - 20 February 2024

Protection of interest in consigned works

- 11 | How can consignors of artworks to dealers protect their interest in the artwork if the dealer goes into liquidation?

A consignment agreement does not transfer ownership from the consignor to the consignee. A dealer who holds artworks on consignment does not own the artworks.

Creditors may only exercise their privilege over the debtor's assets and not on assets that belong to third parties. Therefore, should the dealer go bankrupt, his or her creditors cannot reach the artworks that are held on consignment. To avoid any confusion between the dealer's assets and the consigned assets, the consignor should be mindful to have his or her artwork registered in the dealer's book as the consignor's property.

If a consigned artwork were to be erroneously apprehended as one of the dealer's assets, the consignor may file a claim in the dealer's bankruptcy proceedings.

There is no register under which consignors may register their interest in consigned artworks.

Law stated - 20 February 2024

Cancelling the purchase of a forgery

- 12 | If the buyer discovers that the art, antique or collectible is a forgery, what claims and remedies does the buyer have?

The buyer of an artwork that transpires to be a forgery may bring an action to void the sale on the basis that his or her consent was vitiated by an error on the authenticity of the artwork. If the buyer successfully demonstrates that his or her consent was vitiated, the contract is voided ab initio (ie, the sale is treated as having never been concluded). Hence the parties must be returned to the situation they were in before contracting the sale: the buyer must return the artwork to the seller, and the seller must refund the price to the buyer.

The action to void a sales contract is subject to a five-year limitation period, which starts to run from the discovery of the error, it being specified that no action on a contract may be brought once 20 years have elapsed after the date the contract was entered into.

If the seller is in bad faith (ie, he or she sold the artwork, antique or collectible knowing it was a forgery), the buyer may also claim for damages on the basis of a contractual liability action. The act of knowingly selling a forgery as an original is also subject to criminal sanctions.

Law stated - 20 February 2024

Cancelling the sale of a sleeper

- 13 | Can a seller successfully void the sale of an artwork of uncertain attribution subsequently proved to be an autograph work by a famous master by proving mistake or error?

This depends on the seller's understanding at the time of the sale and on the wording used to describe the artwork. If the artwork is sold as a 'copy of', 'studio of' or 'circle of' and the seller can show that he or she contracted the sale in the erroneous belief that the artwork could not be an autograph work, he or she will have an action to void the sale.

On the other hand, if the artwork is sold as 'attributed to', the seller does not have an action to void the sale as he or she accepts the risk that the work might be an autograph piece (as it also might not be).

Law stated - 20 February 2024

EXPORT AND IMPORT CONTROLS

Export controls

- 14 | Are there any export controls for cultural property in your jurisdiction? What are the consequences of failing to comply with export controls?

Yes, there are export controls for cultural property of major interest for national heritage from a historical, artistic or archaeological point of view. The export of this cultural property is contingent upon the issuance of an export certificate (and an export licence if the item is exported outside the European Union) if it falls within the 15 categories listed by the Heritage Code. Major interest for national heritage is defined in the list according to two criteria: age and value.

The following are subject to the prior issuance of an export certificate:

- paintings (except watercolour, gouache and pastel pieces) that are over 50 years old and worth more than €300,000;
- photographs that are over 50 years old and worth more than €25,000; and
- archaeological objects that are over 100 years old and worth more than €3,000.

The value thresholds were recently raised significantly (in some cases even doubled), showing a growing leniency in favour of foreign transactions (to the detriment of the national protection of cultural heritage).

The procedure of issuance of an export certificate is designed to give the French administration time to review the cultural value of the property and decide whether to classify it as a national treasure (ie, to ensure that the item will permanently remain in France).

The owner of an asset intended for export must file an application in person or through an agent with the Ministry of Culture, including a photograph of the item. The Ministry of Culture has four months to review the application. When this period has expired, the Minister must issue or deny the certificate.

When granted, the certificate permanently attests that the cultural property is not a national treasure, which therefore means that the certificate is granted on a permanent basis (except for property that is less than 100 years old).

If the Minister of Culture refuses to grant an export certificate, a 30-month period commences during which the cultural property may not leave France. The applicant may not claim for any compensation for the refusal of his or her export certificate (but he or she can challenge the decision before the administrative tribunal).

Upon the expiration of the 30-month period, a new application for the issuance of an export certificate can be made, except if the cultural property has either been classified as a historic monument or if the state has made an offer to purchase it. If the owner refuses the state's purchase offer, the refusal to deliver the certificate is renewed with no compensation (ie, the item continues to be restricted to France).

Penalties in the event of failure to apply for an export certificate or to comply with refusal are the same: €450,000 fine, two years' imprisonment and confiscation of the item.

Law stated - 20 February 2024

Import controls

- 15 | Other than in relation to endangered species, are there any import controls for cultural property in your jurisdiction? What are the consequences of failing to comply with import controls?

As a principle, under French law, cultural goods are treated as any other merchandise and may be freely imported.

Following a July 2016 law, some controls were implemented on the import of certain cultural goods. In effect, the import of cultural property of archaeological, prehistoric, historical, literary, artistic or scientific interest imported directly from a non-member state of the European Union and a party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is subject to the presentation of a certificate or any other equivalent document authorising the export from the exporting state when provided by the state's legislation. Failure to show the certificate will result in the import being forbidden (article L111-8 of the Heritage Code).

The import of cultural goods that have left the territory of a state unlawfully is also forbidden (article L111-9 of the Heritage Code).

Cultural goods that have been seized at customs because they left the territory of a non-EU member state may be placed in a museum accredited by the French state for the purpose of their conservation and presentation to the public while the research of the legitimate owner by the competent authorities is ongoing.

Law stated - 20 February 2024

Export and import tax

16 | Does any liability to pay tax arise upon exporting or importing art, antiques or collectibles?

The tax treatment of international transfers of art, antiques or collectible assets depends on the legal or tax qualification of the assets transferred and of the transaction itself (export, import, sale, gift, etc). Exports are exempt from VAT, while imports and transactions realised within the European Union are subject to a 5.5 per cent VAT rate, unless carried out by national or public museums or certain foundations. Art market professionals were recently extremely concerned by the risk of a dramatic rise of the VAT regime on the import of art and its implications for the French art market in the wake of the adoption of a 2022 EU VAT directive. The preferential VAT rate of 5.5 per cent was however retained following the adoption of the 2024 French finance law.

Law stated - 20 February 2024

DIRECT AND INDIRECT TAXATION

Taxes

17 | Outline the main types of tax liability arising from ownership and transfer of art, antiques and collectibles.

Buyers of art, antiques or collectibles are subject to 5.5 per cent, 10 per cent or 20 per cent VAT when they import, export or acquire within the European market, or from an artist or an art gallery and intermediary.

During the period of ownership, art, antiques or collectibles, defined as such by the Common Customs Tariff, are not subject to wealth tax. Their sale or export outside the

European Union by a French resident (unless for a limited period) exposes the owner to a specific 6.5 per cent tax rate (including additional social charges) on the sale price or customs valuation. In the case of omission, a fine is assessed at the rate of 25 per cent of the tax and is due in addition to the tax itself.

Gift and inheritance taxes are due upon transfer, in consideration of the market value of the art, antique or collectible transferred and kinship between the donor or the deceased and the beneficiary. Those taxes can be paid by donating works of art of a high artistic and historical value to the state.

Law stated - 20 February 2024

Tax exemptions

18 | Outline any tax exemptions or special conditions applicable to art, antiques and collectibles.

French law provides for several specific tax breaks to the benefit of public institutions and private charities, notably:

- VAT exemption on all imports of art, antiques and collectibles made to the benefit of public institutions;
- lifetime gifts made to charities situated in an EU member state, Norway, Iceland or Liechtenstein, which gives rise to tax credits of either 60 per cent offset against corporate income tax due by the corporation that made the gift within a limit of five per 1000 of its annual turnover, or 66 per cent of the asset value given by an individual, within a limit of 20 per cent of the donor's annual income; and
- inheritance tax exemption on transfers made through a lifetime gift or death to the benefit of the state, public institutions and charities as defined by the legislation.

Law stated - 20 February 2024

BORROWING AGAINST ART

Types of security interest

19 | In your jurisdiction what is the usual type of security interest taken against art, antiques and collectibles?

The usual type of security interest taken against art, antiques and collectibles is the pledge, which is an agreement by which the pledger gives to a creditor the right to be paid in preference to his or her other creditors out of a corporeal movable asset or a set of corporeal movable assets, present or future (article 2333, Civil Code).

A pledge is perfected by a written document that contains the description of the debt secured, the quantity of assets pledged, and their kind or nature. It may be with or without dispossession. A pledge without dispossession confers a fictitious lien to the lender insofar as the collateral is not handed over by the borrower to the lender.

Law stated - 20 February 2024

Consumer loans

- 20 | If the borrower borrowing against art assets in your jurisdiction qualifies as a consumer, does the loan automatically qualify as a consumer loan, and are there any exemptions allowing the lender to make a non-consumer loan to a private borrower?

French law is silent on this issue.

There is only one type of credit institution, the Crédit Municipal, which may grant loans secured against art, antiques or collectibles. The Crédit Municipal has a monopoly over pledged loans.

Law stated - 20 February 2024

Register of security interests

- 21 | Is there a public register where security interests over art, antiques or collectibles can be registered? What is the effect of registration? Is the security interest registered against the borrower or the art?

There is no specific public register where security interests over art, antiques or collectibles are registered. However, pledges without dispossession must be published on a registry held at the commercial court register in order to be enforceable against third parties.

Law stated - 20 February 2024

Non-possessory security interests

- 22 | Can the lender against art collateral perfect its security interest without taking physical possession of the art?

Yes. The usual type of security interest taken against art, antiques and collectibles is the pledge, which is an agreement by which the pledger gives to a creditor the right to be paid in preference to his or her other creditors out of a corporeal movable asset or a set of corporeal movable assets, present or future (article 2333, Civil Code).

Law stated - 20 February 2024

Sale of collateral on default

- 23 | If the borrower defaults on the loan, may the lender sell the collateral under the loan agreement, or must the lender seek permission from the courts?

French law makes a distinction between civil and commercial pledges based on the civil or commercial nature of the debt that is secured. If the pledge is civil, the lender is not allowed to sell the collateral under the loan agreement without the prior permission of the courts. However, if the pledge is commercial, the lender may sell the collateral without seeking permission from the courts eight days after sending a simple notice to the defaulting borrower.

In the event of a pledged loan, the Crédit Municipal sells the art, antiques or collectibles used as collateral at auctions that are organised by the institution.

Law stated - 20 February 2024

Ranking of creditors

24 | Does the lender with a valid and perfected first-priority security interest over the art collateral take precedence over all other creditors?

In general, a creditor with a valid and perfected first-priority security interest takes precedence over creditors with no security interest. Generally, the privilege of the tax authority and of employees ranks higher than a credit, even with a first-priority security interest.

Law stated - 20 February 2024

INTELLECTUAL PROPERTY RIGHTS

Creator copyright

25 | Does copyright vest automatically in the creator, or must the creator register copyright to benefit from protection?

The author of a work of the mind automatically enjoys in this work, by the mere fact of its creation, exclusive intellectual property rights, which are enforceable against all persons (article L111-1 of the Intellectual Property Code); therefore, no formalities, such as registration, are required for an author to benefit from intellectual property right protection.

Law stated - 20 February 2024

Copyright duration

26 | What is the duration of copyright protection?

An author enjoys two types of intellectual property rights: moral rights and economic rights. Moral rights are perpetual; economic rights last for the duration of the author's lifetime plus 70 years after his or her death, after which time his or her works fall into the public domain (in the sense of intellectual property law) and may be used freely.

Law stated - 20 February 2024

Display without right holder's consent

27 | Can an artwork protected by copyright be exhibited in public without the copyright owner's consent?

No, the right of exhibition is exclusively held by the author of the artwork (it is one of the attributes of his or her economic rights with the reproduction right). Hence, all public exhibitions of the author's work require his or her prior consent. This is an application of a core principle under French intellectual property law, according to which the ownership of the intellectual property right is independent from any ownership right in the physical object (ie, in the artwork itself (article L111-3 of the Intellectual Property Code)).

Law stated - 20 February 2024

Reproduction of copyright works in catalogues and adverts

28 | Can artworks protected by copyright be reproduced in printed and digital museum catalogues or in advertisements for exhibitions without the copyright owner's consent?

In theory, no. Each reproduction of an artwork must be authorised by the author. However, the law provides for an exception to the right of reproduction when the reproduction is made by libraries, museums or archival services for conservation purposes only. Another exception is the reproduction in catalogues of auction sales after seizure; voluntary auction sales are not covered by this exception.

Law stated - 20 February 2024

Copyright in public artworks

29 | Are public artworks protected by copyright?

An artwork is protected if it is an original work of the mind of the author, irrespective of the place where it is displayed. However, copyright protection may be attenuated based on public order considerations (and, notably, public security) when an artwork is displayed in a public space. Furthermore, for architectural works and sculptures made to be permanently located in public places, the panorama exception to copyright allows those works to be reproduced without authorisation or remuneration of the author.

It has been disputed whether street art should be protected by copyright insofar as the creation in itself is illicit; however, with the growing fame of street artists, there is less contention, and the courts tend to grant intellectual property protection to the artists.

Law stated - 20 February 2024

Artist's resale right

30 | Does the artist's resale right apply?

Yes. The royalty is levied on sales involving art market professionals as sellers, buyers or intermediaries (ie, art galleries, art dealers and auction houses). The royalty right benefits the artist during his or her lifetime and benefits his or her heirs and legatees for 70 years after his or her death. The possibility for an author to bequeath his or her royalty right only became available in July 2016.

No royalty is levied on first direct sales by the artist or his or her heirs or on the resale by a seller who has acquired the artwork directly from the artist less than three years before that resale and where the resale price does not exceed €10,000 or on any resales for a price lower than €750.

The rates of the royalty applicable are regressive:

- 4 per cent for any part of the sale price between €750 and €50,000;
- 3 per cent for any part of the sale price between €50,000 and €200,000;
- 1 per cent for any part of the sale price between €200,000 and €350,000;
- 0.5 per cent for any part of the sale price between €350,000 and €500,000; and
- 0.25 per cent for any part of the sale price over €500,000.

The total amount of the royalty may not exceed €12,500. In other words, all artworks sold for €2 million or more will be subject to a flat royalty of €12,500.

The seller of the artwork is normally responsible for the payment of the royalty, although the Supreme Court has recently finally decided that the burden of the royalty may contractually be shifted to the buyer. The art market professional that acts as an intermediary in the sale (eg, an auction house) is responsible for collecting the royalty from the seller and passing it to the relevant collecting agency.

Law stated - 20 February 2024

Moral rights

31 | What are the moral rights for visual artists? Can they be waived or assigned?

French law grants authors moral prerogatives on their work. These rights are directly attached to the author as a person; they are perpetual, inalienable and imprescriptible.

There are four types of moral prerogative:

- the right of paternity, allowing the author to command that his or her name be associated with his or her work;
- the right of integrity of the work, which allows the author to oppose any alteration of his or her work and any misuse of the work;

- the right of disclosure, which allows the author to decide when and how his or her work will be communicated to the public and to oppose the exploitation of a work that he or she has not made public; and
- the right of withdrawal or reconsideration, which allows the author to decide either to discontinue the exploitation (right of withdrawal) or to alter the work (right of reconsideration).

Law stated - 20 February 2024

COMMISSIONS

Accounting to the principal

- 32** | Does the law require the agent to account to the principal for any commission or other compensation received by the agent while conducting the principal's business?

Yes, the agent is bound by law to report and account to the principal for his or her management, which may include any commission or compensation received while conducting the principal's business. The agent must also return to the principal all that he or she received by virtue of his or her mandate, even if what he or she received was not owed to the principal (article 1993, Civil Code).

Law stated - 20 February 2024

Principal's consent

- 33** | Does disclosure to the principal that the agent will receive a commission allow the agent to keep the commission unless the principal objects?

Yes, the agent may keep a commission received from a third party if he or she discloses this information to the principal and the principal agrees to the commission being received by the agent. The disclosure must be sufficiently clear to comply with the agent's legal obligation to report and account to the principal for his or her management.

Law stated - 20 February 2024

Undisclosed agent commission

- 34** | If a third party pays a commission to an agent that is not disclosed to the principal, can the principal claim the commission from the third party?

Yes. The agent cannot do anything beyond his or her mandate. This obligation is tied to the agent's obligation to report and account to the principal for his or her management.

Law stated - 20 February 2024

AUCTIONS

Regulation

35 | Are auctions of art, antiques or collectibles subject to specific regulation in your jurisdiction?

Yes, auctions are strictly regulated, although a recent law, passed in February 2022 aiming at modernising the regulation of the art market, has tended to alleviate some constraints on the professionals of the auction world. The law defines what types of goods may be sold at auction, who may sell at auction, who may conduct the auctions and the modalities of the auction sales. There is a regulatory authority of auction sales, which has recently been renamed, the Council of Auctions Houses, to which all auction houses must declare their activity and which has disciplinary powers. This representative authority has undergone major changes, in particular in terms of representativity, to include more members from the auction world.

Online auctions are subject to the same rules (article L321-3 of the Commercial Code).

Law stated - 20 February 2024

Ancillary services by auctioneers

36 | May auctioneers in your country sell art, antiques or collectibles privately; offer advances or loans against art, antiques or collectibles; and offer auction guarantees?

Auctioneers may conduct private sales either independently from an auction or after an item failed to sell at auction.

An auctioneer may offer an advance to the seller on the sale of the art, antique or collectible (article L321-13 of the Commercial Code). Auctioneers may not, however, offer loans against art, antiques or collectibles.

An auctioneer may guarantee to the seller a minimum auction price for the art, antique or collectible offered for sale. In the event the item has been valued, the guaranteed price may not be inferior to the low estimate. If the guaranteed price is not reached, auctioneers are authorised to declare themselves the successful bidders of the artwork at this price. Otherwise, they must pay the seller the difference between the guaranteed minimum price and the auction price (article L321-12 of the Commercial Code).

Law stated - 20 February 2024

SPOILIATION DURING THE NAZI ERA

Claims to Nazi-looted art

37 | In what circumstances would the heirs of the party wrongly dispossessed typically prevail over the current possessor, if a court in your country accepted jurisdiction and applied its own law to a claim to art lost during the Nazi era?

To prevail (following a case-by-case analysis), the claimant in a Nazi-looted art claim must first establish the ownership of his or her ancestor over the item, which becomes more difficult with the passage of time. The claimant must also show that his or her ancestor was wrongly dispossessed during the Nazi occupation. Wrongful dispossession may be presumed on the basis of contextual elements, such as the date of the transaction (during Nazi occupation in France), the identities of the parties to the transaction (such as parties known for their implication in the Nazi regime) and the conditions of the sale (if the sale was made under threat of violence, for instance). Finally, the claimant must show that he or she was unable to launch an action before 31 December 1949.

Law stated - 20 February 2024

Ad hoc tribunal to hear claims outside court system

38 | Is there an ad hoc body set up to hear claims to Nazi-looted art?

No. Nazi-looted art claims are heard by the ordinary national courts.

However, an administrative body, the [Commission for the Compensation of Victims of Spoliation](#), was set up in France in 1999 to examine individual claims presented by victims or their heirs for damage resulting from the spoliation of property that occurred as a result of anti-Semitic laws passed during the Nazi occupation, both by the occupant and by the Vichy authorities. The Commission, which is not a jurisdiction, is responsible for conceiving and recommending appropriate reparations or compensation. It is empowered to make any useful recommendation, particularly regarding compensation.

A number of artworks were recuperated at the end of the war by the French authorities. Those whose owners were not identified were placed in custody in national museums pending their restitution to their rightful owners; they are classified as 'national museum recoveries'. The inventory of these is freely available online at the website of the [National Museums Recovery](#). Some of these artworks are still being detained by the state due to a lack of claims. Some artworks were also bought by the state in the regular market and were eventually proved to have been looted. When they are owned by public entities, these works become inalienable. Since recently, to allow for their restitution, a bill had to be passed to allow for their deaccessioning from the public collections. For instance, a law was adopted in February 2022 to allow for the return of 14 works from the public collections looted during Nazi occupation. Finally, a framework deaccessioning law was adopted on 22 July 2023 which provides for an exception to the inalienability principle of public collection to allow for the restitution of the Nazi-looted items in public collection.

Law stated - 20 February 2024

LENDING TO MUSEUMS

Insurance

39 | Who is responsible for insuring art, antiques or collectibles loaned to a public museum in your jurisdiction?

The state may insure art, antiques or collectibles that are loaned to a public museum for a temporary exhibition. Typically, private insurance is subscribed on a case-by-case basis to cover the transportation of the items on loan from the lending institution to the borrowing public institution.

Law stated - 20 February 2024

Immunity from seizure

40 | Are artworks, antiques or collectibles loaned to a public museum in your country immune from seizure?

Art, antiques or collectibles that are loaned to a public museum in France may be protected against seizure for the period of the loan if the lender is a foreign country, public body or cultural institution. In this case, a request must be filed with the Ministry of Culture to obtain an anti-seizure order made jointly by the Minister of Culture and the Minister of Foreign Affairs. The request must describe, in detail, the art, antiques or collectibles for which the anti-seizure order is requested and provide pictures of the item.

This process is not applicable to foreign private individuals or foreign private for-profit organisations.

Law stated - 20 February 2024

CULTURAL PATRIMONY

National treasures

41 | Is there a list of national treasures?

Art, antiques and collectibles may be categorised as national treasures depending on their legal status. Not all of them are listed.

The following are considered national treasures:

- items that form part of the collections of the museums labelled 'Museum of France': these collections are exhaustively listed in the [Joconde database](#);
- public and historic archives: a number of those archives are available online listed in various inventories; and
- artworks that have been classified as historical monuments: those artworks are listed in the [Palissy database](#).

The unilateral classification of an item belonging to a private individual as a historical monument may give rise to compensation because the item may no longer be exported outside France. The compensation is generally equivalent to the loss of profit for the owner owing to the impossibility to sell the work on the international market, which explains why this unilateral classification rarely happens.

All other items belong to the public domain. The classification of an item as belonging to the public domain is not the result of an administrative decision (although some artworks belong to the public domain because of their legal status, for instance items classified as historical monuments). Items may be recognised as belonging to the public domain if they belong to a public institution and if they are of particular interest from a historical, artistic, archaeological, scientific or technical point of view. Items belonging to the public domain may not be sold, unless an administrative decision has been taken on the basis that the item has lost its interest (which hardly ever happens). Most of these items are listed on the Palissy database.

All other items of major interest for national heritage from a historical, artistic or archaeological point of view are those that fall within the 15 categories listed by the Heritage Code, for which an export certificate is required when they meet the age and value thresholds provided for in the law.

A list of the national treasures that have been refused an export certificate is available online at the website of the [Ministry of Culture](#).

The refusal of an export certificate does not give rise to any compensation.

Law stated - 20 February 2024

Right of pre-emption

42 | If the state is interested in buying an artwork for the public collections, does it have a right of pre-emption?

Yes, the state has a right of pre-emption on all auction sales or private sales of items unsold at auction. In practice, the pre-emption right is exercised by an administrative agent, who makes an announcement after the auctioneer's hammer falls for the artwork that the state wishes to pre-empt.

Law stated - 20 February 2024

Automatic vesting in the state

43 | In what circumstances does ownership in cultural property automatically vest in the state?

Ownership in cultural property automatically vests in the state when a 'treasure' is found on grounds that belong to the state or its regional or local authorities; conversely, if the treasure is found on private grounds, the state has no claim except if the findings are immovable and, since 2016, movable archaeological remains.

Ownership also automatically vests in the state over the estate of a deceased with no heirs, which may comprise cultural items.

Law stated - 20 February 2024

Illegally exported property claimed by foreign state

44 | How can a foreign state reclaim in your jurisdiction cultural property illegally exported from its territory?

Directive 2014/60/EU dated 15 May 2014, implemented into French law, provides a legal framework for the return of cultural objects unlawfully removed from the territory of a member state. The courts will order the return of the cultural object when it is found to have been removed unlawfully from the requesting member state. The possessor is entitled to fair compensation, provided that he or she demonstrates that he or she exercised due care and attention in acquiring the object.

It is, however, highly difficult for non-EU member states to successfully claim the restitution of cultural property illegally exported from their territory. French courts apply French law to those types of claims (ie, the law where the object is located) and, notably, the principle according to which possession is equal to title as far as movable goods are concerned. In other words, the good-faith possessor will prevail over the requesting state. Foreign states may, however, avail themselves of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property for illicit exports after 1997 – the year that France ratified the Convention.

France is not a party to the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 24 June 1995.

Law stated - 20 February 2024

NON-FUNGIBLE TOKENS

Regulation and case law

45 | How are non-fungible tokens (NFTs) regulated in your jurisdiction? Is there any case law on NFTs in your jurisdiction?

France has not yet adopted a specific regulation for NFTs and their trade so far. The legal status of NFTs is still under debate.

Some consider that NFTs can be classified as digital assets in the sense of the Financial and Monetary Code, as a consequence of which traders of NFTs must register with the French regulatory body of financial markets, the AMF and are subject to its supervisory control.

NFT traders and marketplace holders may also be subject to consumer law, and notably the obligations of online platform operators obligations, including pre-contractual information and transparency.

NFTs are also subject to copyright if the art connected to the NFT satisfies the conditions to be protected (ie, is an original creation of the mind).

A 2022 law authorised auction houses to sell incorporeal goods, including NFTs.

Law stated - 20 February 2024

AI-GENERATED ART

Regulation and case law

- 46** | How is AI-generated art regulated in your jurisdiction? Is there any case law on AI-generated art in your jurisdiction?

AI-generated art is not yet regulated. A bill dated 12 September 2023 proposed that works generated by AI should be protected by copyright, which would be attributed to those whose works helped train the AI to generate them. Questions relating to work traceability, author remuneration and ethical implications remain major concerns.

Law stated - 20 February 2024

Copyright

- 47** | Is there copyright in AI-generated art in your jurisdiction?

In France, if the creation is simply computer-assisted, then the individual holds copyright over his or her work. On the other hand, if the creation is generated without the intervention of an individual, then it will not qualify as a 'work' expressing the author's personality, since, under French law, authorship is reserved to individuals.

Law stated - 20 February 2024

ANTI-MONEY LAUNDERING AND SANCTIONS

AML compliance

- 48** | What anti-money laundering (AML) compliance obligations are placed on the art trade?

Professionals of the art market (auction houses, art dealers, gallerists, etc) are subject to anti-money laundering obligations. Notably, art market professionals must carry out anti-money laundering checks, such as on the identity, domicile and profession of their clients, and gather all relevant elements on the client's estate and provenance of the sums. These information must appear in the police registry, upon penalty of fine and imprisonment.

Art market professionals must also declare to Tracfin, the French anti-money laundering unit, any sums they suspect may be the product of a criminal offence punishable by a prison sentence of more than one year, or that may be connected to the financing of terrorism.

Law stated - 20 February 2024

Sanctions compliance

49 | What sanctions-related compliance obligations are placed on the art trade?

The obligation for art market professionals to keep a register of sales, which forms part of the AML-FT arsenal, is punishable by six months' imprisonment and a fine of €30,000.

In addition, breaches of compliance obligations are subject to administrative sanctions (L. 561-40 of the Monetary and Financial Code), ranging from a warning to a ban on professional activity. They may be made public and combined with a fine of up to €5 million.

Late October 2023, the first two sanctions against art galleries and their managers were issued by the French National Sanctions Committee for breaches of AML/FT obligations. The sanctions ordered included suspended temporary bans on their activities, as well as heavy fines of up to €30,000 for one of the galleries concerned.

Law stated - 20 February 2024

ENDANGERED SPECIES

CITES

50 | Is your jurisdiction a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

Yes, France is a party to the CITES Convention. Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (the EU Wildlife Trade Regulation) ensures the application of the CITES Convention within the European Union.

The management authority of the CITES Convention in France is the Directorate-General for Planning of the Ministry of Ecology. The CITES documents (import and export permits and re-export certificates) are issued by the Regional Directorates of Environment, Planning and Housing.

Law stated - 20 February 2024

Specific endangered animal products

51 | Are there any special rules for works of art made of elephant ivory, rhino horn or other specific endangered animal products?

Yes. France has adopted several decrees to specifically regulate the trade of elephant ivory and rhino horn. Under the most recent decree adopted on the matter (Decree of 4 May 2017 amending the Decree of 16 August 2016 on the prohibition of trade in elephant ivory and rhino horn in the national territory), the trade of post-1975 worked items made of ivory or rhino horn is strictly prohibited, while the following may be traded subject to a prior declaration:

- worked items made between 2 March 1947 and 1 July 1975 of an amount of ivory or rhino horn below 200 grams; and
- worked items made before 1 March 1947 with less than 20 per cent volume of ivory or rhino horn.

As of 19 January 2022, the European regulation has restricted the trade in elephant ivory, which is now largely banned in the EU (Regulation (EU) 2021/2280 of 16 December 2021). The new rules prohibit the trade of unprocessed ivory in Europe. Only a few old, processed works may still be bought and sold in the EU, provided they are supported by a certificate issued specifically for this purpose. These new rules do not apply to rhino horn.

On the European market, trade of processed ivory is now authorised only for:

- musical instruments made before 1975, with a certificate issued by CITES; and
- processed works dating from before 1947, with a certificate issued by CITES.

For imports into the EU and exports to third countries, trade of processed ivory is now authorised only for:

- musical instruments made before 1975 with a certificate issued by CITES; and
- culturally, historically or artistically important objects dating from before 1947, intended for museums, with a certificate issued by CITES.

The regulation also stipulates that certificate delivered prior to 19 December 2022 will no longer be valid from 19 December 2023.

Possessors of those items must be able to prove the date by any expert means and, if necessary, by carbon dating.

Law stated - 20 February 2024

Pre-CITES endangered species

52 | Is the sale, import or export of pre-CITES endangered species subject to a licence?

In principle, intra-EU trade of specimens of the most endangered species (listed in Annex A to the EU Wildlife Trade Regulation) is subject to obtaining a CITES certificate from the competent authority. However, worked specimens that were acquired before 1947 are exempt from the certificate requirement if an expert or a specialist has certified in writing, among other things, the age of the specimen. The import and export of the specimen is, similarly, not subject to a licence.

Law stated - 20 February 2024

Post-CITES endangered species

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53 | Is the sale, import or export of post-CITES worked or antique endangered species authorised? On what conditions?

The sale, import or export of post-CITES worked endangered species is normally subject to the EU Wildlife Trade Regulation. The owner of a worked endangered species must comply with the requirement to obtain CITES documents (import or export permits, or trade or re-export certificates).

Law stated - 20 February 2024

CONSUMER PROTECTION

Cancelling purchases

54 | In what circumstances may consumers cancel the sale of art, antiques or collectibles?

Consumers may void the sale of art if their consent is vitiated by an error on the authenticity of the art or if their consent was given in circumstances of deceit.

In distance sales, consumers have the right to cancel the sale within a period of 14 working days, which starts running from the date of receipt of the item purchased. This right to cancel the sale does not apply to auction sales, including phone or online bids.

Law stated - 20 February 2024

Duties of businesses selling to consumers

55 | Are there any other obligations for art businesses selling to consumers?

Yes, professionals are bound by a duty to provide information to consumers, in a clear and comprehensible manner, on the main features of the item sold, its price and the delivery deadlines.

Law stated - 20 February 2024

REGULATION

Art market regulator

56 | Is there a specific regulatory body overseeing the art market or certain business activities carried out within the art market in your jurisdiction?

The Conseil des ventes volontaires (CVV), renamed in February 2022 the Conseil des Maisons de Ventes (council of auction houses), is the specific regulatory body overseeing the public auction market. It has undergone major changes, following the adoption of a recent 2022 law aiming at modernising the regulations of the art market. All auction

houses must declare their activity to the CVV. The CVV ensures auction houses comply with their legal, regulatory or professional obligations. It has disciplinary powers – which have been recently increased – and may impose sanctions ranging from a warning to a temporary or permanent ban on exercise. The 2022 recent reform included a change in the representativity of the council, which now includes more members from the auction world.

Law stated - 20 February 2024

Other regulators

57 | What other forms of regulation are professional art market participants in your jurisdiction subject to?

Many art market professionals are grouped in companies or unions that self-regulate, in particular, with the adoption of codes of ethics. But those companies or unions are not regulators per se.

Law stated - 20 February 2024

UPDATE AND TRENDS

Key developments of the past year

58 | Are there any other current developments or emerging trends that should be noted?

The French authorities are continuing their pursuit to return certain cultural objects to their rightful owners, in particular those taken from African countries during colonial times. President Emmanuel Macron expressed this public wish in a speech on 28 November 2017 in Ouagadougou. Since then, a number of cultural objects have been restituted to various African countries, such as 26 objects recently restituted to Benin and a sword to Senegal. To serve this purpose, a law was adopted on 7 December 2020, followed by a decree adopted on 23 July 2021, to simplify the procedure of deaccessioning artworks or cultural objects from public collections.

Three framework deaccessioning law have been announced by the government. One related to the deaccessioning of nazi-looted artworks was adopted on 22 July 2023. Another law pertaining to the restitution of human remains was adopted on 26 December 2023. A third framework deaccessioning law is still under scrutiny for the return of colonial items. These laws are made to circumvent the principle of inalienability of public collection and designed to avoid the burdensome procedure that imposed to pass a new law authorising the state to deaccession cultural objects from the public collection everytime works were to be restituted.

Law stated - 20 February 2024



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UPDATE AND TRENDS

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BUYING AND SELLING

Passing of title

1 | When does ownership of art, antiques and collectibles pass from seller to buyer?

According to the Greek Civil Code, ownership passes when the contract of sale is concluded. Two conditions must be met for the contract of sale of art to be concluded: (1) agreement to sell or buy; and (2) physical delivery of the object from seller to buyer. No formalities are required. Both oral and written agreements are valid.

The seller and buyer are free to agree when ownership passes. Usually, the seller reserves title until receipt of payment.

Law stated - 11 March 2024

Implied warranties

2 | Does the law of your jurisdiction provide that the seller gives the buyer any implied warranty?

In a contract of sale, the seller must transfer title of the art to the buyer free from any third-party rights. Breach by the seller of this obligation is considered to be either non-performance of a contractual obligation or defective performance and it incurs liability, unless the buyer had knowledge of any third-party rights at the time of sale (with the exception of a pledge or seizure).

As a general rule, the fulfilment of a seller's obligations must take place as dictated by good-faith and commercial practices, and also taking into account the parties' particular agreements. Sellers who do not perform their obligations according to the specific agreements or good faith and moral ethics are liable for breach of contract.

The warranties implied by law in relation to title arising from the principle of good faith are mandatory. The parties may agree that the seller limits or excludes the warranty of title, but any agreement limiting the seller's liability caused by intent or gross negligence is null and void.

The buyer can rely on the warranty of title for 20 years. This limitation period starts running from the moment the claim arises and pursuit becomes possible. All provisions on limitation periods are mandatory law.

Law stated - 11 March 2024

Registration

3 | Can the ownership of art, antiques or collectibles be registered? Can theft or loss of a work be recorded on a public register or database?

There is no public register of art, antiques and collectibles. Possessors of movable objects characterised as national cultural patrimony must register them with the Ministry of Culture and Sport. This register is not public.

The owner can register the loss or theft of art on international, private databases, such as the Art Loss Register. INTERPOL also keeps a database of stolen art but does not receive requests or theft reports directly from private individuals. Rather, the owner has to report the event to the local police, who could then inform the National Central Bureau of INTERPOL to have the stolen item recorded on INTERPOL's Stolen Works of Art Database. The public have only partial access to this database.

Law stated - 11 March 2024

Good-faith acquisition of stolen art

4 | Does the law of your jurisdiction tend to prefer the victim of theft or the acquirer in good faith of stolen art?

According to the Greek Civil Code, the general principle is that ownership of stolen art vests with the original owner and does not pass to the good-faith acquirer. However, ownership to the good-faith acquirer passes if the stolen object is sold at a public auction or on the open market.

Although there is a general rule that the person who possesses, in good faith, a movable object for three years without interruption obtains ownership through constructive adverse possession, the good-faith acquirer of stolen art does not obtain ownership, as good faith is not recognised as a ground for passing title of stolen objects. The acquirer of stolen art can only obtain ownership after 20 years of uninterrupted possession, pursuant to the provisions on actual adverse possession.

For the acquirer to be deemed in good faith, they must either genuinely believe that the seller had good title or be unaware of the defective title, provided that both states of mind are not derived from gross negligence. By contrast, the acquirer is deemed to be in bad faith if they knew of the seller's lack of legal title or was unaware of the lack of title because of gross negligence. Good faith is presumed, while bad faith must be proved by the claimant.

Law stated - 11 March 2024

Acquiring title to stolen art through prescription

5 | If ownership in stolen art, antiques or collectibles does not vest in the acquirer in good faith, is the new acquirer protected from a claim by the victim of theft after a period of time?

The good-faith acquirer of stolen art is protected from a claim by the victim of theft if 20 years of peaceful, uninterrupted possession have passed from the date of possession. This does not apply to cultural objects protected by the state as cultural patrimony.

The statute of limitations can also aid the good-faith acquirer. Specifically, a claim by the victim of theft may be time-barred after five years from the date of theft of the art. However, if the stolen art was removed from a collection in public view or in a public space, the victim of theft will be time-barred after 15 years from the date of theft.

Law stated - 11 March 2024

Passing of risk of loss and damage

6 | When does risk of loss or damage pass from seller to buyer if the contract is silent on the issue?

The risk of loss or damage passes from seller to buyer upon delivery of the art, regardless of whether legal title passes with delivery or at a later stage. Risk also passes where the buyer is unable to take delivery of the art due to their own fault.

The parties are free to agree the passing of loss or damage at some other stage. In practice, the seller expressly assumes the risk of loss or damage until delivery, obtaining insurance for transport risks.

Law stated - 11 March 2024

Due diligence by buyer

7 | Must the buyer conduct due diligence enquiries? Are there non-compulsory enquiries that the buyer typically carries out?

There is no obligation to conduct due diligence when buying art. However, a well-advised buyer will seek assurances in relation to the following:

- the seller's unencumbered legal title;
- the artwork's provenance;
- certificates from stolen art databases;
- expert opinions in relation to authenticity; and
- compliance with any cross-border obligations.

Law stated - 11 March 2024

Due diligence by seller

8 | Must the seller conduct due diligence enquiries?

In October 2020, [Law 4734/20](#) transposed into Greek legislation Directive (EU) 843/2018 and introduced due diligence obligations in respect of the client to professional sellers

of fine art if the price exceeds €10,000. Specifically, they must identify the customer and beneficial owner and verify their identities, assess the purpose and intended nature of the business relationship and conduct ongoing monitoring. Private sellers, on the other hand, do not have an obligation to conduct due diligence enquiries.

Law stated - 11 March 2024

Acquisition in bad faith

- 9 | Can ownership in art, antiques or collectibles vest in the acquirer in bad faith after a period of time?

A bad-faith acquirer with 20 years of peaceful, uninterrupted possession can obtain ownership.

Law stated - 11 March 2024

Register of sales

- 10 | Must a professional seller of art, antiques or collectables maintain a register of sales?

There is no obligation on the seller of art to maintain a sales register, with the exception of auctioneers offering at auction an item protected as Cultural Patrimony. In this case, auctioneers are obliged to keep a Special Auction Registry in which all such items are entered immediately after the item's entry in the auctioneers' premises. This Special Auction Registry must contain details of the items to be auctioned, and specifically, description, photo, provenance, details of the owner, successful bidder, any acquisition and import documents, any possession license from the Ministry of Culture and Sports as well as price and date of sale.

Law stated - 11 March 2024

Protection of interest in consigned works

- 11 | How can consignors of artworks to dealers protect their interest in the artwork if the dealer goes into liquidation?

In the event that a dealer goes into liquidation, the consignor can claim the artwork from the creditors, provided that the artwork remains in the liquidated estate of the dealer. If the consigned artwork has been sold and the price has not yet been paid to the consignor at the time of filing for liquidation, the consignor can claim it directly from the buyer.

In order to be able to protect their interests, consignors will have to be able to demonstrate that they are owners of the artwork. It is good practice to enter into a written consignment agreement with the dealers to avoid any disputes in relation to proprietary rights.

There is no register where consignors can register their interest in consigned works.

Law stated - 11 March 2024

Cancelling the purchase of a forgery

12 | If the buyer discovers that the art, antique or collectible is a forgery, what claims and remedies does the buyer have?

If the buyer discovers that the art is a forgery, the following options are available.

- On the basis of breach of the implied warranties of agreed quality or material defects, the buyer can:
 - request substitution of the forgery with another genuine artwork (which is impracticable owing to the unique nature of artworks);
 - ask for a reduction of the purchase price (this is pointless in practice as the value of a genuine artwork becomes obsolete if it turns out to be a forgery);
or
 - rescind the contract and demand return of the purchase price. Alternatively, the buyer can claim damages for non-performance of the contract. The buyer has two years to bring a claim.
- On the basis of fraudulent deception on the part of the seller, the buyer can:
 - rescind the contract and request the rectification of any other damage (including actual damage and lost profits); or
 - accept the contract and request the rectification of damage (including actual damage and lost profits).

Law stated - 11 March 2024

Cancelling the sale of a sleeper

13 | Can a seller successfully void the sale of an artwork of uncertain attribution subsequently proved to be an autograph work by a famous master by proving mistake or error?

Any party to a contract can request to void the transaction if the party erred in relation to one of the essential components of the contract. Selling an artwork as a 'copy of' that is subsequently proven to be an autograph work will probably satisfy the essential component requirement. The seller bears the burden to prove the mistake and, if he or she is successful in doing so, can void the transaction.

Law stated - 11 March 2024

EXPORT AND IMPORT CONTROLS

Export controls

14 | Are there any export controls for cultural property in your jurisdiction? What are the consequences of failing to comply with export controls?

According to Law [4858/2021](#), which recently codified [Law 3028/2002](#), art, antiques and collectibles that fall under the category of cultural patrimony are subject to export controls. Specifically, the following movable monuments require an export licence:

- those dating up to 1453;
- those dating between 1453 and 1830 that constitute findings from excavation or other archaeological research, or have been removed from immovable monuments, as well as church icons and liturgical tools from the same era;
- those dating between 1453 and 1830 that do not fall under the category above, as long as they are characterised as monuments because of their social, technical, folkloric, ethnological, artistic, architectural, industrial or generally historical or scientific significance; and
- those that are more recent, as long as they are characterised as monuments because of their social, technical, folkloric, ethnological, artistic, architectural, industrial or generally historical or scientific significance.

The general rule is that export of such objects is forbidden, with exceptions for: (1) monuments that are of no great significance to the cultural heritage of the country and whose export does no harm the unity of a collection; and (2) temporary export. Moreover, movable monuments dating to before 1830 can be exported if it can be proven that they were imported into Greece less than 50 years ago, provided they have not been exported before that.

The export licence is issued by virtue of a decision of the Minister of Culture based on the opinion of the Central Archaeological Council.

Exporting a cultural object in breach of the above-mentioned export controls is a criminal offence and carries a 10-year prison sentence. If an object has been granted a temporary export licence and the owner fails to import it back, the owner is liable for up to five years' imprisonment. If, however, the owner applied for a temporary export licence without the intention of importing it back, this too carries a 10-year prison sentence. The illegally exported cultural objects are seized if they belong to the perpetrator or an accomplice. Alternatively, a criminal fine is imposed amounting to half of the value of the illegally exported objects.

In relation to objects that do not fall under the cultural patrimony definition above, permission for export must be obtained from the competent service of the National Gallery. This permission is purely administrative and is granted unless the object falls under the definition of cultural patrimony.

Finally, for artworks exported from Greece to a non-EU country, an EU export licence is required if the EU age and value thresholds are met.

Law stated - 11 March 2024

Import controls

- 15 | Other than in relation to endangered species, are there any import controls for cultural property in your jurisdiction? What are the consequences of failing to comply with import controls?

No licence is required for importing cultural goods that were either created or discovered in the customs territory of the European Union.

However, Greece is bound by Regulation (EU) 2019/880 on the introduction and the import of cultural goods, which applies to cultural goods either created or discovered outside of the European Union's customs territory.

Accordingly, as of 28 December 2020, the import of certain cultural goods that were removed from the territory of the country where they were created or discovered in breach of the laws of that country are prohibited. Greece has not yet enacted rules on penalties for infringements of this prohibition.

Additionally, although not yet applicable in practice, certain import conditions will have to be met for cultural objects that fall under the following categories: (1) products of archaeological excavations or discovery, as well as elements of artistic or historical monuments or archaeological sites that are more than 250 years old, regardless of their financial value; and (2) other items that are more than 200 years old and have a minimum financial value of €18,000 (indicatively, ancient coins, paintings, sculptures, prints, rare manuscripts, old books, etc).

Import licence

Objects under category (1) above require an import licence. The holder of the goods must apply for an import licence to the Greek customs authorities via a centralised electronic system. The application must be accompanied by supporting documents providing evidence that the cultural goods have been exported from the country where they were created or discovered in accordance with the laws of that country or providing evidence of the absence of such laws and regulations at the time the cultural goods were taken out of its territory.

The import licence may be denied where the customs authorities:

- have information or reasonable grounds to believe that the goods were removed from the territory of the country where they were created or discovered in breach of the laws of that country;
- have not been provided with the required supporting documents and information;
- have information or reasonable grounds to believe that the holder of the goods did not acquire them lawfully; or

- have been informed that there are pending claims for the return of the cultural goods by the country where they were created or discovered.

Importer statement

Objects under category (2) above require an importer statement. The holder of the goods must submit, via the same centralised electronic system, an importer statement and a standardised document. The importer statement must consist of a declaration signed by the holder of the goods stating that the cultural goods have been exported from the country where they were created or discovered in accordance with the laws of that country at the time they were taken out of its territory. The standardised document must describe in detail the cultural goods in question.

If the country where the cultural goods were created or discovered cannot be reliably determined or the cultural goods were taken out of the country where they were created or discovered before 24 April 1972, the import licence application may be accompanied by supporting documents and the declaration (if the objects fall under category (2)) may instead state that the cultural goods have been exported in accordance with the laws and regulations of the last country where they were located for a period of more than five years and for purposes other than temporary use, transit, re-export or transshipment.

Sanctions

Greece has not yet enacted rules on penalties for infringements in relation to import licences and importer statements but is expected to impose penalties that will be effective, proportionate and dissuasive by 28 June 2025.

Application

In practice, the requirements for both import licences and importer statements are expected to be deferred until 2024 or 2026 to enable the development of the centralised online system.

Law stated - 11 March 2024

Export and import tax

- 16 | Does any liability to pay tax arise upon exporting or importing art, antiques or collectibles?

No tax liability arises upon the export of art, antiques and collectibles from Greek territory. Conversely, duties and VAT at a reduced rate of 13 per cent are applicable to the import of the same goods and are payable upon import. Nevertheless, a number of exemptions are provided for in cases where special customs schemes are applicable. In such cases, where the goods enter into Greek territory under a special customs regime (such as the temporary import regime or the intra-EU transit regime), the applicable duties or VAT will become payable as soon as the goods exit these special import regimes. Moreover, in cases where the goods imported into Greece are destined for subsequent export to a third country, their import is VAT-exempt (provided that the lawful requirements are met).

Law stated - 11 March 2024

DIRECT AND INDIRECT TAXATION

Taxes

- 17 | Outline the main types of tax liability arising from ownership and transfer of art, antiques and collectibles.

Personal income tax

If the seller is an individual tax resident in Greece and the transfer of art, antiques and collectibles is carried out for the purposes of gaining profit, then the transfer can be considered to be a business transaction; any profit from the transaction will be subject to personal income tax at progressive rates of up to 44 per cent. A business transaction occurs whenever a single transaction takes place for profit or whenever 'consistent similar transactions' (ie, three similar transactions within a six-month period) take place.

Deemed personal income tax

The acquisition by an individual tax resident in Greece of movable objects (including art, antiques and collectibles) of a value higher than €10,000 will be taxed as deemed personal income, unless the value of the acquisition is covered by the declared income or capital of the buyer.

Deemed income is taxed only in case the actual income earned by the individual is lower than the deemed one.

Corporate income tax

If the seller is a legal person or entity that is tax resident in Greece or has a Greek permanent establishment (to which the profits from selling art are attributable), then any

business profits from selling art, antiques and collectibles are subject to corporate income tax at a rate of 22 per cent.

Inheritance and donation tax

The gratuitous transfer of art, antiques and collectibles may be subject to Greek inheritance and donation tax, under certain circumstances, at progressive rates of up to 10 per cent, 20 per cent or 40 per cent, depending on the family relationship between the transferor and the transferee. As of 1 January 2021, the tax-free bracket applicable in case of gifts between first-degree relatives (ie, spouses, parents, children and grandchildren) has been increased to €800,000, whereas the excess amount (ie, any amount exceeding €800,000) is taxed at a 10 per cent flat rate.

Wealth tax

Greece does not levy any wealth tax on the ownership of movable objects.

Reporting of art, antiques and collectibles

The obligation for specific categories of individuals (such as politicians, public servants, judges, corporate executives, etc) to report – by means of a special return – movable assets and collections with a value higher than €40,000 (including VAT) has been abolished.

VAT

The transfer of art, antiquities and collectibles by an individual or legal person or entity subject to VAT will be subject to VAT at the standard 24 per cent rate (or in some specific cases to a reduced 13 per cent rate) if the transfer is taxable in Greece.

Law stated - 11 March 2024

Tax exemptions

18 | Outline any tax exemptions or special conditions applicable to art, antiques and collectibles.

Corporate income tax

The revenues of not-for-profit legal persons or legal entities are exempt from income tax if they are realised in the context of fulfilling the not-for-profit purpose of the legal persons or entities. Revenues from activities that are not considered part of this purpose are subject to corporate income tax (at a rate of 22 per cent).

Inheritance and donation tax

If the transferee is a not-for-profit legal person or entity, then the applicable tax rate is 0.5 per cent on gifts in most cases.

VAT

A reduced VAT rate (13 per cent) is applicable to the import of art, antiques and collectibles and the sale of the same goods made by their creator or his or her successors. Moreover, a special VAT scheme is provided for the resellers of art, antiques and collectibles. For resellers who opt for this special VAT scheme, the VAT due is calculated on their profit margin. For this special regime to apply, the law provides for specific requirements and for a detailed procedure that should be followed.

Law stated - 11 March 2024

BORROWING AGAINST ART

Types of security interest

19 | In your jurisdiction what is the usual type of security interest taken against art, antiques and collectibles?

Under Greek law, a pledge may be taken against movable assets, including movable artwork, antiques and collectibles. Pledges are established for the purpose of securing certain claims, present or future.

Law stated - 11 March 2024

Consumer loans

20 | If the borrower borrowing against art assets in your jurisdiction qualifies as a consumer, does the loan automatically qualify as a consumer loan, and are there any exemptions allowing the lender to make a non-consumer loan to a private borrower?

A loan does not automatically qualify as a consumer loan if the borrower qualifies as a consumer. In general, consumer loans are granted for purposes that fall outside the scope of the borrower's business activities. Private borrowers can be granted other types

of loans, such as loans for the purposes of their business activities or for the purposes of the acquisition of real estate property.

Law stated - 11 March 2024

Register of security interests

- 21 | Is there a public register where security interests over art, antiques or collectibles can be registered? What is the effect of registration? Is the security interest registered against the borrower or the art?

There is no special public register where security interests over artworks are registered. The establishment of a typical pledge over a movable asset does not require any public registration. However, Law 2844/2000 provides for a specific type of pledge that can be established without delivery of the pledged asset, by virtue of the parties' relevant written agreement under certain conditions. The establishment and effectiveness of this kind of pledge requires registration and publication with the pledge registry of the borrower's residence or registered seat (or the Athens pledge registry if the borrower is not based in Greece). For the purposes of this registration, the parties submit a form including their details and the details of the pledged assets and secured claims. All submitted forms are registered and kept, and can be found on the basis of the pledgor's name.

Law stated - 11 March 2024

Non-possessory security interests

- 22 | Can the lender against art collateral perfect its security interest without taking physical possession of the art?

Law 2844/2000 provides for a specific type of pledge that can be established without delivery of the pledged asset, by virtue of the parties' relevant written agreement. For the pledge to be established, the following criteria must be met: (1) the borrower and the lender must be professionals or businesses; (2) the security must be granted for the purposes of the borrower's business activities or profession; and (3) the pledge must be registered and published with the pledge registry of the borrower's residence or registered seat (or the Athens pledge registry if the borrower is not based in Greece). For these reasons, this type of pledge mostly applies to professional entities, such as galleries and collections.

Law stated - 11 March 2024

Sale of collateral on default

- 23 | If the borrower defaults on the loan, may the lender sell the collateral under the loan agreement, or must the lender seek permission from the courts?

The only way to sell a pledged work of art is to have it seized by a bailiff and sold via auction within seven to eight months of it being seized. The auction is conducted electronically through an e-auction platform before a notary and the interested party can participate by paying a guarantee two working days before the date of the auction.

Law stated - 11 March 2024

Ranking of creditors

24 | Does the lender with a valid and perfected first-priority security interest over the art collateral take precedence over all other creditors?

The creditor in whose favour the pledge has been established must announce his or her claim to the auctioneer within 15 days of the auction. The pledge set on the auctioned object induces special privilege for the creditor, which, in an auction with general privileges (tax, insurance contributions, employees, etc), is satisfied in 65 per cent of the auction. The general privileges are classified in the remaining 25 per cent and claims that are deprived of privilege are classified in the remaining 10 per cent.

Law stated - 11 March 2024

INTELLECTUAL PROPERTY RIGHTS

Creator copyright

25 | Does copyright vest automatically in the creator, or must the creator register copyright to benefit from protection?

Pursuant to [Law 2121/1993](#), with the creation of the work, creators automatically have the right of copyright in that work, which includes the economic right and the moral right. No registration or other formality is required. Exceptions to this rule apply for works created by employees in the course of employment.

Law stated - 11 March 2024

Copyright duration

26 | What is the duration of copyright protection?

The duration of copyright protection is as follows:

- for artistic works, the whole of the creator's life plus 70 years after their death;
- for works of joint authorship, the whole of the life of the last surviving author plus 70 years after their death; and
- for anonymous or pseudonymous works, 70 years from 1 January of the year after that in which the work is lawfully made available to the public. However, if, during

this period, the author discloses their identity, or when the pseudonym adopted by the author leaves no doubt as to their identity, the general rules for artistic works apply.

Law stated - 11 March 2024

Display without right holder's consent

27 | Can an artwork protected by copyright be exhibited in public without the copyright owner's consent?

The presentation of a work of fine art to the public is permissible without the consent of the creator and without payment, to the extent necessary to promote its sale.

Law stated - 11 March 2024

Reproduction of copyright works in catalogues and adverts

28 | Can artworks protected by copyright be reproduced in printed and digital museum catalogues or in advertisements for exhibitions without the copyright owner's consent?

Museums that own the physical carriers into which works of fine art have been incorporated can, without the consent of the creator and without payment, reproduce those works in catalogues or advertisements for exhibitions, provided that such reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author.

Law stated - 11 March 2024

Copyright in public artworks

29 | Are public artworks protected by copyright?

Public artworks, including street art, are protected by copyright. This is the case irrespective of whether the rights of third parties (especially, property rights) are violated. Nevertheless, the exercise of certain exploitation rights granted by copyright protection may be restricted owing to claims by affected third parties (eg, property owner).

Law stated - 11 March 2024

Artist's resale right

30 | Does the artist's resale right apply?

The creator of an original work has a non-transferrable, non-waivable resale right to receive a royalty based on the sale price obtained for any resale of the work by an art market professional, subsequent to the first transfer of the work by the creator. Copyright duration provisions apply for the resale right as well. The beneficiaries are the creator and his or her heirs or assignees.

The creator's percentage of the resale price is calculated as follows:

- 5 per cent for the portion of the sale price up to €50,000;
- 3 per cent for the portion of the sale price from €50,000.01 to €200,000;
- 1 per cent for the portion of the sale price from €200,000.01 to €350,000.01;
- 0.5 per cent for the portion of the sale price from €350,000.01 to €500,000; and
- 0.25 per cent for the portion of the sale price exceeding €500,000.

The total amount of the royalty may not exceed €12,500.

The royalty is payable by the seller. When an intermediary art market professional is involved, they share liability with the seller for payment of the royalty.

The management and protection of the resale right may be entrusted to collective management organisations or can be collected directly by the creator.

Law stated - 11 March 2024

Moral rights

31 | What are the moral rights for visual artists? Can they be waived or assigned?

The moral rights for visual artists are as follows: right to attribution; right of publication; right of integrity; and right to access.

The moral rights can be inherited but cannot be assigned. They can be waived only partially.

Law stated - 11 March 2024

COMMISSIONS

Accounting to the principal

32 | Does the law require the agent to account to the principal for any commission or other compensation received by the agent while conducting the principal's business?

Pursuant to Greek Civil Code, the agent is obliged to account to the principal for any commission or other compensation received while managing the principal's business.

Law stated - 11 March 2024

Principal's consent

- 33** | Does disclosure to the principal that the agent will receive a commission allow the agent to keep the commission unless the principal objects?

The parties are free to agree on whether the agent will be remunerated with a commission or not. However, it must be an express agreement. In addition, the agent must disclose all material information in relation to the commission, including the amount received.

Law stated - 11 March 2024

Undisclosed agent commission

- 34** | If a third party pays a commission to an agent that is not disclosed to the principal, can the principal claim the commission from the third party?

Contractual terms are binding only on the contracting parties, and the parties alone may seek their enforcement. Therefore, the principal does not have a claim for the commission against the third party but will have to claim the undisclosed commission from the agent, as the agent is accountable even for negligent conduct pursuant to their obligation to report and account to the principal for their management.

Law stated - 11 March 2024

AUCTIONS

Regulation

- 35** | Are auctions of art, antiques or collectibles subject to specific regulation in your jurisdiction?

Where an auction is organised for antiques that fall under the category of cultural patrimony, the permission of the competent authority of the Ministry of Culture and Sport is required for the specific list of objects. If a monument is sold at auction, the Greek state, the authorised museums and the monument collectors have a pre-emption right to purchase it at the same price. This pre-emption right must be exercised within 10 days of the date of the auction.

No specific regulation exists for auctioning artworks that do not fall under the category of cultural patrimony.

Law stated - 11 March 2024

Ancillary services by auctioneers

- 36** | May auctioneers in your country sell art, antiques or collectibles privately; offer advances or loans against art, antiques or collectibles; and offer auction guarantees?

Auctioneers of art, antiques or collectibles can sell privately either after the auction, if the lot has failed to sell, or independently of an auction.

Offering advances or granting loans or other credit facilities are activities reserved for financial institutions subject to the supervisory control of the Bank of Greece. There is no law regulating auction guarantees.

Law stated - 11 March 2024

SPOILIATION DURING THE NAZI ERA

Claims to Nazi-looted art

- 37** | In what circumstances would the heirs of the party wrongly dispossessed typically prevail over the current possessor, if a court in your country accepted jurisdiction and applied its own law to a claim to art lost during the Nazi era?

There are no specific provisions regulating claims to art looted during the Nazi era in Greece. General provisions on good-faith acquisition of stolen objects and acquiring title to stolen objects through prescription would apply.

Law stated - 11 March 2024

Ad hoc tribunal to hear claims outside court system

- 38** | Is there an ad hoc body set up to hear claims to Nazi-looted art?

There is no such body.

Law stated - 11 March 2024

LENDING TO MUSEUMS

Insurance

- 39** | Who is responsible for insuring art, antiques or collectibles loaned to a public museum in your jurisdiction?

The question of who bears responsibility for insuring art, antiques or collectibles loaned to a public museum is a matter of agreement between the lender and the borrower. In practice, the public museum will provide private, all-risk, nail-to-nail insurance for loaned objects. This insurance is usually pre-approved by the lender and the premium is paid by the borrowing institution.

The possibility for the Greek state to offer a guarantee to indemnify for loss or damage caused to antiquities and works of art exhibited in Greece by virtue of a loan from foreign museums is included in Law 4858/2021 (Codification of Law on the Protection of Antiquities

and Cultural Heritage). For this state indemnity to take effect, the domestic exhibition must be organised or co-organised by the Ministry of Culture and Sports or by domestic public museums or museums established by law. The requirement that the exhibition must have special cultural or historical value to qualify for this state indemnity and the complex state processes for granting it could present a hurdle that is hard to overcome and commercial insurance may, in many instances, remain the only practical option.

Law stated - 11 March 2024

Immunity from seizure

40 | Are artworks, antiques or collectibles loaned to a public museum in your country immune from seizure?

There are no provisions for immunity from seizure for artworks, antiques or collectibles loaned to a public museum. It is common practice for an immunity from seizure declaration or a letter of comfort to be issued by the museum or the Ministry of Culture and Sport, assuring that they will put their best efforts into returning the goods under loan to the country of origin.

Artworks belonging to museum collections cannot be confiscated.

Law stated - 11 March 2024

CULTURAL PATRIMONY

National treasures

41 | Is there a list of national treasures?

Pursuant to Law 3028/2002, art, antiques and collectibles that fall under the category of cultural patrimony are deemed to be national treasures.

The following movable monuments fall under the category of 'cultural patrimony':

- those dating up to 1453;
- those dating between 1453 and 1830, which constitute findings from excavation or other archaeological research, or have been removed from immovable monuments, as well as church icons and liturgical tools from the same era;
- those dating between 1453 and 1830 that do not fall under the category above, as long as they are characterised as monuments due to their social, technical, folkloric, ethnological, artistic, architectural, industrial or generally historical or scientific significance; and
- those which are more recent, as long as they are characterized as monuments due to their social, technical, folkloric, ethnological, artistic, architectural, industrial or generally historical or scientific significance.

The owner or possessor of such an artwork is responsible for: (1) its safekeeping; (2) informing the competent authorities about its location, and any transport and loss; (3) allowing it to be supervised by the competent authorities; and (4) refraining from exporting it without an official export licence.

Law stated - 11 March 2024

Right of pre-emption

42 | If the state is interested in buying an artwork for the public collections, does it have a right of pre-emption?

If a cultural object that is considered a national treasure is sold at auction, the Greek state, the authorised museums and the monument collectors have a pre-emption right to purchase it at the same price. This right must be exercised within 10 days of the auction.

Further, the state has a right of pre-emption in relation to a private sale. Specifically, the owner must notify the Ministry of Culture and Sport of their intention to sell, whom they intend to sell to and the price. The owner must then wait for a period of one month to allow the state to exercise its right of pre-emption. A sale without observing the above procedure is null and void.

Law stated - 11 March 2024

Automatic vesting in the state

43 | In what circumstances does ownership in cultural property automatically vest in the state?

Ownership of cultural objects dated up to 1453 and excavation findings, irrespective of their chronology, are automatically vested in the state.

Law stated - 11 March 2024

Illegally exported property claimed by foreign state

44 | How can a foreign state reclaim in your jurisdiction cultural property illegally exported from its territory?

Greek Law 4355/2015 implemented Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a member state. If the foreign state reclaiming the cultural good is an EU member state, Greece will apply the export laws of the country of origin, and if the object is deemed to have been illegally exported, Greece will order its return. The good-faith acquirer may be awarded fair and equitable compensation. The requesting state may not initiate the return proceedings (1) more than three years after it became aware of the location of the object and of the possessor's identity and (2) more

than 30 years after the object was unlawfully removed from the territory of the requesting state.

If the foreign state is not an EU member state, it is possible for it to rely on the UNIDROIT Convention on stolen or illegally exported cultural objects, provided it is also party to the Convention. The reclaiming state can request the Greek court to order the return of a cultural object illegally exported if the object is of significant cultural importance for the requesting state or if the removal of the object significantly impairs certain interests listed in the Convention.

Relevant bilateral agreements related to the protection of cultural property in Greece are:

- a memorandum of understanding between Greece and China;
- a bilateral agreement between Greece and Switzerland; and
- a cooperation agreement between Greece and Russia.

Law stated - 11 March 2024

NON-FUNGIBLE TOKENS

Regulation and case law

45 | How are non-fungible tokens (NFTs) regulated in your jurisdiction? Is there any case law on NFTs in your jurisdiction?

NFTs have not been a subject matter in any piece of legislation per se, including the recently revised IP Law.

Generally applicable laws or regulations that apply to NFTs include Intellectual Property Laws concerning mainly the transfer or licensing of IP rights and Consumer Protection Laws, in cases when a party to a smart contract acts under its capacity as a consumer.

Applying to blockchain technology in general and NFTs in particular to the extent that the latter are governed by a smart contract, [Law 4961/2022](#) on Emerging Technologies has recently introduced a definition for smart contracts and provisions on the elements that qualify a data record as a smart contract, as well as the validity and evidentiary effect of smart contracts and their enforcement.

Briefly, smart contracts are valid so long as they meet the criteria of Greek contract law as set out in the Civil Code and the Code for Civil Procedure. Where signature is required for the conclusion of a contract, the Law recognises electronic signatures.

Moreover, on the basis of consumer protection laws, smart contracts which govern an NFT are considered contracts conducted by distance means, therefore distance contract consumer protections will be applicable where one of the parties is a consumer.

NFTs have not been the subject of litigation before the Greek courts.

Law stated - 11 March 2024

AI-GENERATED ART

Regulation and case law

- 46** | How is AI-generated art regulated in your jurisdiction? Is there any case law on AI-generated art in your jurisdiction?

AI-generated art has not yet been regulated and no AI-generated case law has been adjudicated by Greek courts.

Law stated - 11 March 2024

Copyright

- 47** | Is there copyright in AI-generated art in your jurisdiction?

Currently, the creator of copyrighted material can only be a natural person. Although legal entities can be copyright holders, they can be so by virtue of the transfer of such rights from the creator, who can only be a natural person. If this provision is not amended to include machines as creators of copyrighted works, it is hard to see how AI-generated art can be subject to copyright.

Law stated - 11 March 2024

ANTI-MONEY LAUNDERING AND SANCTIONS

AML compliance

- 48** | What anti-money laundering (AML) compliance obligations are placed on the art trade?

Those who store, trade or act as intermediaries in the sale of fine art and antiquities valued €10,000 or more are required to conduct customer due diligence, in other words: identify the customer and beneficial owner and verify their identity, assess the purpose and intended nature of the business relationship and conduct ongoing monitoring.

Additionally, enhanced due diligence must be conducted where:

- (a) the transaction is particularly complex, unusually large, conducted in an unusual manner or seems to lack economic or lawful purpose;
- (b) the transaction relates to a cultural artefact; and
- (c) a high-risk third country is involved.

In these instances, art market participants need to: obtain more in-depth information in relation to the client and the beneficial owner, the source of funds, obtain senior management approval, conduct more frequent ongoing monitoring of the business relationship, ensure that any payments are made through an account in the name of the

client or beneficial owner held in a financial institution with adequate anti-money laundering controls.

It is to be noted that, where an intermediary is involved, the above due diligence obligations must be conducted for both the intermediary and the end client.

Law stated - 11 March 2024

Sanctions compliance

49 | What sanctions-related compliance obligations are placed on the art trade?

Where an art transaction – whether concluded or attempted – appears suspicious, art professionals must report it to the competent authorities, regardless of the amount of money involved, and must promptly respond to requests by the competent authorities for additional information. Failure to do so may result in civil, administrative or criminal liability. Specifically, art professionals who deliberately omit to report a suspicious transaction to the authorities may face imprisonment up to two years and/or a financial penalty up to €1 million.

Law stated - 11 March 2024

ENDANGERED SPECIES

CITES

50 | Is your jurisdiction a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

Both Greece and the European Union have acceded to CITES. The Convention is applied within the European Union through the EU Wildlife Trade Regulations.

The management authority of the Convention is the Ministry of the Environment and Energy. The competent authorities for granting permits and certificates are the decentralised administration authorities around the country.

Law stated - 11 March 2024

Specific endangered animal products

51 | Are there any special rules for works of art made of elephant ivory, rhino horn or other specific endangered animal products?

The European Commission adopted revised guidance on the EU regime governing elephant ivory on 16 December 2021. The new measures affect both commercial trade and imports and exports of raw and worked elephant ivory.

Intra-EU commercial trade is suspended for:

- raw ivory, except for the exclusive purpose of repairing objects containing pre-1975 musical instruments and pre-1947 antiques of high cultural, artistic or historical importance – these exceptions will require a certificate from the Ministry of Environment and Energy; and
- worked ivory items, unless the items in question pre-date 1947. Even then, commercial transactions are only permitted with a certificate from the Ministry of Environment and Energy.

Re-exports and imports are suspended for raw ivory items. They are allowed strictly for worked ivory to pre-1975 musical instruments and sales of pre-1947 antiques of high cultural, artistic or historical importance to museums. The guidance further allows for a permit to be issued where the object in question either forms part of a genuine exchange of cultural goods between reputable institutions, or is an heirloom being moved as part of a family relocation or for enforcement, scientific or educational purposes.

In respect of rhino horn, no export permits or re-export certificates are issued, except if the relevant decentralised administration authority is satisfied that the permit or certificate will be used for a narrow list of legitimate purposes. Greece, in principle, will not grant any certificate for intra-EU trade of rhino horn. The import of hunting trophy rhino horn from outside the European Union may be permitted for personal use only.

Law stated - 11 March 2024

Pre-CITES endangered species

52 | Is the sale, import or export of pre-CITES endangered species subject to a licence?

Intra-EU trade and movement is allowed for specimens of species listed in Annexes B, C and D of Regulation (EC) No. 338/97 only if they have been acquired or imported into the European Union in accordance with the provisions of CITES and the EU Wildlife Trade Regulations. Specimens of species listed in Annex A are generally not allowed to be used for commercial purposes and their export to another EU country is subject to a licence. The Annexes are periodically amended so the latest versions should be consulted.

For CITES endangered species to be imported in the European Union, an import permit is required for species in Annexes A and B and an import notification is required for species in Annexes C and D. Further, the import of some species in the European Union is prohibited. The Commission periodically updates the list of CITES endangered species whose import into the European Union from the countries of origin is prohibited.

Exceptions apply for 'worked specimens' (ie, specimens that are significantly altered from their natural raw state for jewellery, adornment, art, utility or musical instruments) acquired before 3 March 1947, which can be traded in the European Union without a certificate. The age must be determined in writing by a recognised, independent expert and maybe also accompanied by a radiocarbon dating or isotope analysis special lab report.

Law stated - 11 March 2024

Post-CITES endangered species

53 | Is the sale, import or export of post-CITES worked or antique endangered species authorised? On what conditions?

Post-CITES worked or antique endangered species are subject to the EU Wildlife Trade Regulations and their sale, import and export are subject to the restrictions and conditions that apply to CITES (and pre-CITES) endangered species.

Law stated - 11 March 2024

CONSUMER PROTECTION

Cancelling purchases

54 | In what circumstances may consumers cancel the sale of art, antiques or collectibles?

A buyer may withdraw from a contract if the seller does not fulfill their obligations, (eg, delays the delivery of the product or is unable to supply it owing to their own fault). The products sold need in general to conform with the sales contract (eg, be of the description, type, quantity and quality, and not possess the functionality and other features, as required by the sales contract, be fit for any particular purpose for which the consumer requires it, be fit for the purposes for which goods of the same type would normally be used, etc). Consumers are entitled to either a proportionate reduction of the price, or, in case of a major lack of conformity of the product, withdraw from the sales contract if the seller has declared, or it is clear from the circumstances, that the seller will not bring the goods into conformity or the seller does not fully and properly bring the goods into conformity or a lack of conformity appears despite the seller having attempted to bring the goods into conformity or the lack of conformity is of such a serious nature as to justify an immediate price reduction or termination of the sales contract or the lack of conformity is identified within 30 days of delivery and the consumer accordingly informs the seller without any undue delay.

In addition to these general provisions, consumers are protected by Law 2251/1994, which protects all types of consumers and includes no specific provisions for artwork consumers. In particular, this framework applies in the case of distant or out-of-store contracts. Distant contracts are concluded without the physical presence of the parties and by means of distance communication (eg, teleshopping) whereas out-of-store contracts are concluded in places where transactions are not usually carried out (eg, contracts concluded at the buyer's workplace), with the suppliers using the technique of surprise (as the consumers and buyers are requested to enter into a transaction at a time when they are not prepared to do so).

In such cases, the consumer has the right to withdraw from the contract within 14 days, without stating any reason. The consumer bears only the direct cost of returning the goods, unless the supplier has agreed to bear the cost himself or herself or has failed to inform the consumer about that cost.

Law stated - 11 March 2024

Duties of businesses selling to consumers

55 | Are there any other obligations for art businesses selling to consumers?

A seller is obliged to deliver the product on time, without any defects and with the special features agreed between the parties.

With regard to distant contracts, Law 2251/1994 on consumer protection imposes additional obligations on suppliers. Each supplier who intends to conclude distant contracts is obliged to register his or her relevant activity in the General Commercial Registry. The supplier must also provide the consumer with the mandatory relevant information regarding the description of the product, the identity of the supplier, the price, the delivery procedures, the right of withdrawal, etc. As for out-of-store contracts, the supplier must provide the consumer with a copy of the executed contract or confirmation of the contract in writing.

When it comes to standard terms and conditions, the supplier must indicate their existence to the consumer and provide real knowledge of their content, otherwise the consumer is not bound by them. In general, pre-formulated terms are interpreted in favour of the consumer and should not – under any circumstances – overburden his or her position in a contract.

The aforementioned obligations concern sales in general – and the protection of all types of consumers – and no specific obligations are imposed on art businesses regarding the sale of artworks.

Law stated - 11 March 2024

REGULATION

Art market regulator

56 | Is there a specific regulatory body overseeing the art market or certain business activities carried out within the art market in your jurisdiction?

There is no regulatory body overseeing the art market, with the exception of the Ministry of Culture and Sport overseeing auction sales for objects falling under the cultural patrimony category.

Law stated - 11 March 2024

Other regulators

57 | What other forms of regulation are professional art market participants in your jurisdiction subject to?

Credit and financial institutions (that offer loans in general) are supervised by the Bank of Greece, in cooperation with the European Central Bank under the Single Supervisory Mechanism. The purpose of this supervision is to ensure the stability and smooth operation of the financial system as well as the transparency of trading procedures and conditions. Beyond supervisory responsibilities, the Banking Supervision Department has suggested imposing administrative sanctions on supervised institutions.

Insurance companies and insurance brokers are supervised by the Department of Private Insurance Supervision of the Bank of Greece. To be able to offer private insurance products, they must be registered with the Special Registry of the Bank of Greece.

Finally, if a supplier – who must be registered in the General Commercial Registry (GEMI) – intends to conclude distant contracts, he or she must register this activity with GEMI. In the case of violations of the provisions regarding registration in the GEMI, a fine corresponding to the gravity of the violation is imposed. GEMI is supervised by the Ministry of Development and Investments.

The aforementioned regulations concern the institutions and the suppliers of distant contracts in general.

Law stated - 11 March 2024

UPDATE AND TRENDS

Key developments of the past year

58 | Are there any other current developments or emerging trends that should be noted?

No updates at this time.

Law stated - 11 March 2024



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UPDATE AND TRENDS

Key developments of the past year

BUYING AND SELLING

Passing of title

1 | When does ownership of art, antiques and collectibles pass from seller to buyer?

In the Italian legal system, property is generally transmitted by the legitimately expressed consent of the parties, according to article 1376 of the [Italian Civil Code](#) (ICC).

As soon as this exchange of mutual consent occurs, the seller transfers the item's ownership to the buyer.

Therefore, ownership of movable art, antiques or collectibles passes from the seller to the buyer when the parties enter into a sale agreement. No formality is required for finalising the sale agreement of a movable good.

It is customary in the Italian art market that sale agreements are made with retention of title, meaning that the title passes to the buyer when the seller has received full payment of the sale price in cash or cleared funds.

Law stated - 30 January 2024

Implied warranties

2 | Does the law of your jurisdiction provide that the seller gives the buyer any implied warranty?

[Article 1476](#), paragraph 1(2), ICC provides that sellers must warrant that they are the owners or have been legitimately authorised by the owners to sell the asset.

Pursuant to [article 1483](#), ICC, sellers shall warrant buyers against dispossession. If buyers are dispossessed by a third party, they are entitled to rescind the contract if they had ignored in good faith that sellers did not own the purchased item when they entered the contract. Furthermore, they are entitled to the reimbursement of the price paid, the documented [expenses connected to the purchased asset \(including restoration expenses\)](#) [and the damages suffered as a result of the dispossession \(article 1479](#), ICC).

The parties may agree on a limitation or exclusion of the sellers' warranty of title, but sellers always remain liable if buyers suffer dispossession as a result of the sellers' misconduct.

If a third party sues the buyer alleging to be the owner of the asset, the buyer can file a third-party complaint against the seller. If they fail to do so and an irrevocable judgment by a court order them to release the purchased asset to the third party, they no longer have a warranty of title against the seller, if the latter proves that there was a sufficient ground to dismiss the dispossession claim.

The warranty of title claim limitation period is 10 years ([article 2946](#), ICC) and starts on the date the dispossession is confirmed by an irrevocable judgment (Court of Cassation, 10 January 1997, No. 184).

Law stated - 30 January 2024

Registration

- 3 | Can the ownership of art, antiques or collectibles be registered? Can theft or loss of a work be recorded on a public register or database?

In general, ownership of artworks is not subject to registration. Article 85, [Legislative Decree No. 42 of 22 January 2004](#) (the Italian Cultural Heritage Code (IHC)) has established a register for stolen cultural goods, available on the Carabinieri, an Italian police department, [webpage](#).

Law stated - 30 January 2024

Good-faith acquisition of stolen art

- 4 | Does the law of your jurisdiction tend to prefer the victim of theft or the acquirer in good faith of stolen art?

Italian law favours good-faith acquirers against victims of theft.

According to article 1147, ICC, if buyers are – not recklessly – unaware that they are in possession of stolen property and infringing the theft victim's rights, they are considered 'bona fide' possessors. Good faith possession is presumed and its existence at the time of purchase suffices.

[Article 1153](#), ICC, adds that those who receive a movable property, from someone who is not the owner, acquire ownership through possession, if they are in good faith and own a valid title attesting the transfer of ownership.

However, good faith does not suffice if buyers have not exercised even the minimum degree of diligence requested by law (ie, the average diligence required to those performing the same kind of activity), which would have enabled them to sense that the purchase was likely to result in the impairment of others' rights.

The presumption of good faith implies that those aiming at challenging its existence have the burden of proving serious and concrete – hence, not merely hypothetical – circumstances that support the formulation of a doubt.

Therefore, the purchase of an artwork is valid if it is accompanied by good faith and when no concrete element reasonably suggests its non-existence. On these grounds, buyers of artworks are protected by the law, rather than the victims of theft.

Recently, the Court of Cassation has stated that good faith is excluded if, at the moment of the purchase of an artwork, the buyer did not request a provenance certificate (No. 18997/2023).

If acquirers are in bad faith, they shall become the owner of the asset after 20 years of uninterrupted possession ([article 1161](#), paragraph 1, ICC) provided that the possession has not been acquired with duress or in a clandestine manner.

The above principles do not apply to assets that were either stolen or illegally removed from collections of the Italian state or other public entities: no one can ever acquire the ownership of an asset that is part of the State's (or other public entities') patrimony and was either stolen or otherwise illicitly disposed of by a public officer. The same exception applies to art, antiques or collectibles belonging to ecclesiastical entities (article 822 et seq, ICC).

Lastly, the victim of the theft can address the competent court and initiate a so-called 'azione di rivendicazione'. According to article 948, ICC, who claims to be the owner of a good, but is not in possession of it, may address the court to have their right of ownership ascertained and the person who owns or holds it without any valid title ordered to return it.

This claim is characterised by a particularly onerous and difficult burden of proof for the plaintiff.

The action aims at the ascertainment of the existence of the alleged right of ownership of the plaintiff, as well as the restitution of the property owned or held by others, as a result of a judgment.

Law stated - 30 January 2024

Acquiring title to stolen art through prescription

- 5 | If ownership in stolen art, antiques or collectibles does not vest in the acquirer in good faith, is the new acquirer protected from a claim by the victim of theft after a period of time?

Whilst the claims provided for in article 948, ICC, are not subject to statute of limitations, the right of ownership can be acquired through peaceful, non-violent and uninterrupted possession of real estate property for at least 20 years (article 1158, ICC) and of movable goods for at least 10 years (article 1161, ICC). In case of bad faith, the term is longer (20 years).

To acquire ownership through possession, the interested parties shall exercise the rights arising from an ownership title throughout the above-mentioned term. They shall not act as bailees or custodians.

It is irrelevant whether possession is of good or bad faith, but it must be manifested to the public and freely enjoyed.

Law stated - 30 January 2024

Passing of risk of loss and damage

- 6 | When does risk of loss or damage pass from seller to buyer if the contract is silent on the issue?

Normally, the risk of loss or damage lies with the owner of the lost or damaged asset.

Indeed, the transfer of ownership takes place through the simple exchange of legitimately manifested consents between the parties, pursuant to article 1376 ICC, and so usually does the risk of loss or damage.

If the contract is silent on the issue, the risk passes on to the buyer when the contract is entered into, regardless of whether the buyer has received the asset already or has paid the purchase price or not (article 1465, paragraph 1, ICC).

The general rule is subject to two exceptions, when the transfer of ownership: (1) is not immediate, but is deferred until the expiry of an initial term; and (2) takes place upon payment of the last instalment, pursuant to article 1523, ICC. Even in these cases, however, passing of risk is immediate, because of the conclusion of the contract, when the loss or damage is not attributable to the seller.

However, if a retention of title clause is agreed and the asset is delivered to the buyer, the risk passes to the latter at the time of delivery, even if not yet the owner of the asset (article 1523, ICC). Instead, if the transfer of title is subject to a condition precedent and the asset is lost before the condition has occurred, the risk remains with the seller (article 1465, paragraph 4, ICC).

If the asset needs to be shipped by the seller to the buyer, the former is released from any obligations related to the asset (and, consequently, to the risk of loss or damage) at the time of delivery to the shipping agent (article 1510, paragraph 2, ICC).

Law stated - 30 January 2024

Due diligence by buyer

7 | Must the buyer conduct due diligence enquiries? Are there non-compulsory enquiries that the buyer typically carries out?

In addition to the general obligation of the parties to negotiate the contract in good faith (article 1337, ICC), the buyer does not have specific due diligence enquiry obligations set forth by the law.

However, due diligence is advisable to conclude a safe transaction, avoiding claims. Therefore, it should be carried out by experts in the field: for transactions involving artworks, the buyer is advised to seek support of art experts and lawyers.

Firstly, complete data on the original attribution of the artwork is necessary: type, author's name (and whether or not the artwork is signed), title, date and period of execution, possible change of attribution and its cause, bibliography, restorations.

Then, possible illegal provenance of the artwork shall be verified through investigations in international databases, such as the database of the Italian police (Carabinieri) and the Art Loss Register.

Thirdly, the prospect buyer shall reconstruct the artist's biography, identify the previous owners and check the state of conservation of the artwork. It is also useful to search where the artwork was possibly exhibited or the museum in which it was hosted and stored.

On the legal aspects, it is important to ascertain who the owner is (museum, private person, etc) and whether they can sell the artwork, if it has a certificate of authenticity and who issued it, if it is subject to Italian copyright law ([Law No. 633/1941- ICL](#)) as a work of authorship, and/or to the ICHC as a good of cultural interest, and if it complies with these or other regulations, that might be of interest in particular cases (eg, CITES).

Furthermore, it is pivotal to conduct specific research on provenance and prior circulation of the item, especially if coming from a foreign country, also to comply with the ICHC rules on import of cultural goods (in particular in order to obtain a import/shipping certificate) and the EU Regulation on import of cultural heritage (EU Regulation 2019/880).

It is good practice to archive all the documentation collected in these verification operations.

Due diligence is key not only for buying and selling, but also for loans to institutions, appraisals, insurance claims, litigation and any operations in the art market.

Law stated - 30 January 2024

Due diligence by seller

8 | Must the seller conduct due diligence enquiries?

In addition to the general obligation of the parties to negotiate the contract in good faith (article 1337, ICC), the seller does not have due diligence enquiry obligations.

However, professional sellers need to enquire on the provenance and authenticity or attribution of artworks before the sale, to be able to provide the buyer with a certificate of authenticity and provenance, insofar as it is required by article 64, ICHC.

Moreover, pursuant to Legislative Decree No. 231/2007, professional sellers:

- (1) trading in artworks or acting as intermediaries in the trade of artworks, even when such activity is carried out by art galleries or auction houses referred to in article 115 of the [Consolidated Law on Public Security \(TULPS\)](#) when the value of the transaction (even if fractioned) or of any related transactions is equal to or greater than €10,000; and
- (2) preserving or trading in artworks or acting as intermediaries in the trade of artworks, when such activity is carried out within free ports and the value of the transaction (even if fractioned) or of any related transactions is equal to or greater than €10,000

are obliged to apply customer due diligence in order to identify and mitigate risks such as money laundering, financing terrorism, and other illicit activities.

Law stated - 30 January 2024

Acquisition in bad faith

9 | Can ownership in art, antiques or collectibles vest in the acquirer in bad faith after a period of time?

Pursuant to article 1161, paragraph 2, ICC, bad-faith acquirer of a movable asset becomes its rightful owner, by maintaining its possession for an uninterrupted period of 20 years. However, if the possession was acquired with duress or in a clandestine manner, the term will start running from the date the duress or the secret possession has ceased (article 1163, ICC).

The above principle does not apply to goods that were either stolen or illegally removed from collections belonging to the state or other public entities.

Law stated - 30 January 2024

Register of sales

10 | Must a professional seller of art, antiques or collectables maintain a register of sales?

According to article 63, ICHC, and [article 128](#) of [Royal Decree No. 773/1931](#) (as implemented by article 247 of Royal Decree No. 635/1940), any professional seller who trades in antiquities or used goods above certain monetary thresholds must maintain a register of the operations carried out on a daily basis, on which daily operations and the identity of the counterparts in such operations must be recorded, along with the description of the characteristics of the goods. The monetary thresholds are determined at a municipal level.

This register is prescribed by public security regulations, describing the artworks' characteristics in case of sale of goods belonging to Annex A, point a), ICHC.

Law No 124/2017 (article 1, paragraph 175) amended article 63, paragraph 2, ICHC, by introducing the electronic register.

The latter will be accessible by the Ministry in real time and will be divided into two lists: the first one will include goods that must be presented to the Export Office for further inspection before being exported; the second list will include goods that do not need to be presented to the Export Office and can thus immediately obtain a digital free circulation certificate. The Ministry will have the power to request at any time that any of the goods indicated in the second list be presented for direct examination. The electronic register has not been implemented yet.

Every professional seller is also required to register sales for tax purposes. Therefore, this register can only be consulted by the owner, by the dedicated staff and by the police force specialised in tax inspections ('Guardia di Finanza'). In addition, the Italian Society of Authors and Publishers, the Italian collecting society competent for artists' resale rights, can ask to access the business registry to control the regular payment of the resale right.

Law stated - 30 January 2024

Protection of interest in consigned works

11 | How can consignors of artworks to dealers protect their interest in the artwork if the dealer goes into liquidation?

In case of a voluntary liquidation, the consignor may request immediate restitution of the consigned work and obtain a restitution order pursuant to article 633, [Italian Civil Procedure Code](#).

In case of bankruptcy or other reorganisation proceedings, a court-appointed administrator or trustee will prepare an inventory of the dealer's assets and an inventory of the third party's assets in consignment.

Dealers are obliged to list in a register all the works they have on consignment (article 120, Royal Decree No. 773/1931), to be shown to public authorities upon their request (article 16, Regulation 635/1945).

The register will be used by the court-appointed administrator to process the restitution claims filed by consignors (see articles 87, 88 and 103, [Italian Bankruptcy Law](#) - Royal decree 267/1942).

Law stated - 30 January 2024

Cancelling the purchase of a forgery

12 | If the buyer discovers that the art, antique or collectible is a forgery, what claims and remedies does the buyer have?

If the sold artwork is a forgery, the buyer is entitled – without prejudice to criminal proceedings against the counterfeiter/seller – to sue the seller for the restitution of the amount paid, and claim damages (article 1223, ICC). Indeed, an *aliud pro alio* sale occurs when a completely different good from the one agreed upon is delivered to the buyer.

If the buyer discovers that the art, antique or collectible is a forgery, the following claims and remedies are available:

- Termination of the contract because the asset sold is different from the asset that was promised in the contract (article 1453, ICC, for its application to artworks see Court of Cassation, 27 November 2018, No. 30713). The claim is time-barred after 10 years from the sale.
- Termination of the contract based on alleged defects of the purchased asset (article 1490 et seq, ICC); the claim is time-barred if the defect was not communicated to the seller within eight days of its discovery and one year after delivery of the good to the buyer.
- Termination of the contract based on alleged lack of promised or essential qualities (article 1497, ICC); the claim is time-barred if the defect was not communicated to the seller within eight days of its discovery and one year after the delivery of the good to the buyer, provided that the absence of the required quality exceeds usual tolerance limits.
- Cancellation of the contract based on mutual mistake or wilful misconduct (articles 1429 and 1439, ICC). The claim is subject to a five-year limitation period, starting from the date the mistake or the wilful misconduct is discovered by the claimant.

Remedies are likely to include damages in each of the cases mentioned.

The seller would also be obliged to pay statutory interest accrued from the day on which payment of the price was made. As to the damage compensation, it consists in the increased value (unrealisable for the buyer) that the work would have achieved over time if it had been authentic (subject to evidence of such possible increase).

Law stated - 30 January 2024

Cancelling the sale of a sleeper

- 13 | Can a seller successfully void the sale of an artwork of uncertain attribution subsequently proved to be an autograph work by a famous master by proving mistake or error?

Sellers can request that the sale of an artwork of uncertain attribution, then discovered to be an autograph work by a famous master, be declared void by proving mistake of fact. In 1998, the Court of Cassation held that the sale of a fifteenth-century wooden statue attributed to an unknown author from Siena at the time of the sale and later re-attributed to Jacopo della Quercia could be voided to the benefit of the seller (Court of Cassation, 2 February 1998, No. 985).

Law stated - 30 January 2024

EXPORT AND IMPORT CONTROLS

Export controls

- 14 | Are there any export controls for cultural property in your jurisdiction? What are the consequences of failing to comply with export controls?

Italian law allows goods to be permanently moved from the state after obtaining specific permits: (a) a free circulation certificate, for movements within Europe (article 68, Italian Cultural Heritage Code (ICHC)); (b) an export licence, for movements outside Europe (article 74, ICHC), together with the free circulation certificate.

Export control is carried out at a local level by the Export Offices of the Ministry of Culture (Ministry) located throughout Italy.

Pursuant to articles 10 and 65, ICHC, the following categories of goods cannot be exported on a permanent basis from Italy:

- any good having an artistic, historical, archaeological or ethno-anthropological interest owned by the state (or any public entity) or a private non-profit organisation, provided that it was made more than 70 years ago and that its author is deceased; and
- any privately owned good made more than 70 years ago by a deceased author, provided that it is classified as a cultural good by the Ministry.

Privately owned cultural goods that were made more than 70 years ago by a deceased author and have a monetary value of more than €13,500 may be exported on a permanent basis from Italy if the competent Export Office grants an export permit.

To obtain an export permit, the interested party must file an export licence request and physically submit the goods to the export office.

The Export Office can either grant or deny the export permit if the goods show particular cultural significance.

In granting export licences, the Export Offices shall follow the criteria set forth by the [Ministerial Decree No. 537/2017](#). It refers to the aesthetic quality, rarity, importance of the representation, provenance from a relevant collection and historical relevance of the goods, connection with Italy (for foreign goods), allowing wide discretion to the Ministry.

Export Offices generally conclude the proceeding within 40 days of the date the goods are presented to them, but this time frame is not mandatory.

If the permit is denied, the interested party is entitled to file a complaint within 30 days of the date of service of the denial directly with the Ministry or, within 60 days, serve a petition on the Ministry, which will be filed with the competent administrative regional court within 30 days from the service.

If the first option is chosen, the Ministry has 90 days to decide on the complaint. Then, the party is entitled to file a petition with the administrative regional tribunal after the deadline for the decision by the Ministry on the complaint (60 days for the service on the Ministry and 30 days for the filing with the court).

The administrative court will not assess the merits of the denial decision, but whether the administration correctly applied the law and made appropriate use of its discretionary power (eg, by providing adequate motivation to the export denial, based on thorough art historical research).

Artworks by living artists, artworks by non-living artists that are less than 70 years old and artworks that are more than 70 years old and worth less than €13,500 do not need export permits, but if exported, they must be accompanied by a unilateral declaration by the exporter detailing its characteristic, author and year of creation. For items between 50 and 70 years old by deceased authors, the permanent removal may be prevented if the Ministry declares them to be of exceptional historical or artistic interest within 60 days from the date on which the self-certification is entered in the online SUE (the Export Offices Information System).

The export declaration must be filed through the SUE to the competent Export Office, which shall acknowledge receipt of the declaration by applying a stamp and delivering the original to the interested party.

The violation of export control provisions results in the following sanctions: an administrative fine from €77.50 to €465 (article 165, ICHC) and a criminal sanction of two to eight years of imprisonment and a criminal fine up to €80,000 (article 518 – *undecies* of the [Italian Criminal Code](#), recently introduced by Law No. 22 /2022, replacing article 174, ICHC). The judge shall also order the forfeiture of the artwork, unless it belongs to someone not involved in the crime (article 518 – *duodevicies*, Italian Criminal Code).

The denial of the export licence automatically triggers the proceeding of declaration of cultural interest. When a particularly/exceptionally important cultural interest subsists pursuant to article 10, paragraph 3, ICHC, a declaration of cultural interest is issued, pursuant to articles 13 and 14, ICHC: the so-called notification.

In this case, the object's circulation is subject to a particular regime of limitation: it cannot leave the Italian territory permanently and the owner must request an authorisation to move the object, even within the borders of the state.

Should the sale of the property occur, this must be subject to the state not exercising its pre-emption right within 60 days from the date of the presentation of the communication of transfer set forth by article 59, ICHC ([article 61, ICHC](#)).

Law stated - 30 January 2024

Import controls

- 15 | Other than in relation to endangered species, are there any import controls for cultural property in your jurisdiction? What are the consequences of failing to comply with import controls?

Upon request of the interested party, Export Offices may grant import certificates (in case the object is imported from outside the EU: so-called CAI) or shipping certificates (in case the object is shipped from an EU country to Italy: so-called CAS). In either case, the certificate has a validity of five years upon request (article 72, ICHC). The aforesaid certificates are issued within 40 days from the submission of the application, which must include documentation identifying the asset and provide information on its legitimate foreign provenance. If doubts arise on the reliability of the documentation or information, the applicant is informed and the 40-day term is suspended for the duration of the controls, or in any case, for no more than 30 days. Import or shipping certificates grant an extra-territorial status to the objects, they are issued for, ie such objects cannot be classified as cultural properties.

From a customs law perspective, artworks can also be imported using the special regime of temporary importation, whose function is to exempt – totally or partially – from custom duties, other charges and commercial policy measures goods intended for re-exportation, not to be modified, identifiable and whose holder is a person established outside the European Union.

The temporary importation regime must therefore be terminated within period of time, never exceeding 24 months, normally established by the customs authority: for goods imported for an exhibition or an auction, the term will probably be linked to the duration of such event. The customs declaration and the request of authorisation for the special procedure must be submitted to the office located where the works will be exhibited. At the end of the exhibition, the goods, if unsold or sold to a person established outside the European Union who wishes to re-export them, can be re-exported. At the time of export, to be carried out within the term set forth in the temporary admission authorisation, the regime is considered definitively discharged, and the customs operation is concluded.

Diversely, if the work is sold to a subject established in the European Union, it must be definitively imported by lodging a new customs declaration attesting the new customs procedure applicable to the good. In this case too, the new declaration shall be submitted within the period of validity of the temporary importation: indeed, at the end of the period indicated by the customs authorities, the temporary importation procedure must necessarily be discharged. In case of untimely declarations, the imported goods lose the status of temporarily admitted goods, becoming goods illegally circulating in the territory of the European Union.

This means that the holder of the goods may incur, in addition to the obligation to fix the irregularity from the customs point of view (through a custom-specific procedure), the penalties provided for in the case of smuggling.

In the case of purchase of an artwork coming from a non-EU territory and its permanent introduction into the European Union, it will be necessary to proceed immediately to a definitive import procedure. In this case, the importation of the artwork is subject to the same customs formalities applicable to normal goods: the artwork must therefore be presented to the customs authorities and declared in an ordinary declaration, specifying the procedure to be applied to it. This time, obviously, the special regime of temporary admission will not be selected, but it will be necessary to opt for the release into free circulation, in other words definitive importation.

Regarding archaeological goods, the Ministry of Culture issued a regulation ([Circolare No. 1/2022](#)) which restate the principle set forth in article 3, [EU Regulation 880/2019](#), by providing an absolute ban on the introduction into the Italian territory of cultural goods removed from the territory of the third country where they were made or discovered, in violation of the laws and regulations of that country.

Moreover, although the Regulation is not yet fully applicable, it is important to note that the European Union has made special arrangements for the access of archaeological goods within its borders. According to article 4, Regulation, as from 28 June 2025, at the latest, the importation of certain cultural goods shall require an import licence issued by the competent authority of each member state. In particular, this applies to:

- archaeological discoveries on land or underwater that are more than 250 years old, including results of excavations (regular and clandestine); and
- dismembered elements of artistic or historical monuments or archaeological sites, older than 250 years.

The issuance or denial of the import licence shall take place within 90 days from the receipt of the application. Pursuant to article 4, paragraph 7, Regulation, the competent authority shall reject the application under certain reasonably grounded circumstances:

- when information is available about the cultural goods possibly results as illicitly removed from the country where they were created or discovered ('country of origin');
- when evidence on the lawful export of the cultural goods from the country of origin is not provided;

- if it is reasonable to presume that the holder of the goods did not acquire them lawfully; or
- there are pending claims for the restitution of the cultural goods by the authorities of the country of origin.

Cultural goods listed in the Regulation, Annex, Part C, shall not require an import licence but a statement by the importer (article 5, Regulation). These goods are collections and rare specimens of fauna, flora, mineralogy and anatomy, goods concerning history, science, military history, antiques, coins, objects of artistic interest (manuscripts, drawings, paintings, engravings, sculptures, prints, etc) that have reached a certain value and age threshold, different for each category.

The statement, to be submitted through a specific electronic system, shall include:

- a declaration signed by the goods' owner stating that they have been exported from the country of origin pursuant to the relevant law, applicable at the time they were exported; and
- a standard document describing the cultural goods in question in enough detail for the authority to identify them and perform risk analyses and targeted controls.

Law stated - 30 January 2024

Export and import tax

16 | Does any liability to pay tax arise upon exporting or importing art, antiques or collectibles?

Exporting art, antiques or collectibles is not subject to any specific tax.

The submission of the customs declaration for the import of an artwork is accompanied by the fulfilment of the tax obligations arising therefrom (ie, the payment of VAT on importation and customs duties) but taking into account that works of art are duty-free and benefit from a reduced tax rate.

Pursuant to article 39, [Legislative Decree No. 41/1995](#), a rate of 10 per cent value added tax (VAT) applies to the import of artworks (the ordinary rate is 22 per cent).

The above applies to artworks wholly handmade by the artist and that have up to eight sculpture casts (made with supervision of the artists or their heirs).

Pursuant to article 250, [EU Regulation No. 952/2013](#), it is possible to apply the regime of temporary admission, which grants a total or partial exemption from import tax (eg, in case of import for expositions, exhibitions and art fairs).

Law stated - 30 January 2024

DIRECT AND INDIRECT TAXATION

Taxes

17 | Outline the main types of tax liability arising from ownership and transfer of art, antiques and collectibles.

In Italy there is no wealth tax based solely on the possession of art, antiques and collectibles.

Private sales of art, antiques and collectibles are not subject to VAT or capital gains tax. VAT (22 per cent) and income tax apply to sales made by professional dealers. If the artists or their heirs are the sellers, a reduced VAT rate of 10 per cent applies.

The inheritance and donation tax varies depending on the degree of kinship between the deceased and the heirs: for the spouse and lineal relatives, 4 per cent of the total value of the inherited goods in excess of the threshold of €1 million for each of the heirs; for each of the siblings the tax rate is 6 per cent of the total value in excess of €100,000; for other relatives within the fourth degree of kinship the rate is 6 per cent; and for any other subjects the rate is 8 per cent. There is no de minimis threshold in the last two instances.

Pursuant to article 9, [Legislative Decree No. 346 /1990](#), artworks kept in private homes are presumed to be included in the hereditary assets for an amount equal to 10 per cent of the total net taxable value of the inheritance, even if not declared or declared for a lower amount.

Goods classified as cultural property are exempted from inheritance and donation taxation.

If the purchase is made in a gallery in the European Union, you pay VAT at the rate of the EU country on the sale price and VAT at the rate in force in the EU country on the margin.

If the purchase is made in an Italian gallery, you pay 22 per cent VAT on the sale price and 22 per cent VAT on the margin.

If the purchase takes place in a non-EU gallery, no foreign VAT is applied. Instead, 10 per cent VAT is paid when the work is brought into Italy through customs. In this case, duties do not apply.

The collector who, outside the exercise of a business activity of buying and selling, even occasionally, resells artworks, even if he realises capital gains on the sale of works, is not subject to personal income tax and the consequent obligations to declare them. The possession of artworks must be declared only if the collector holds them abroad, through the compilation of a specific form of the tax declaration.

The collector, if not professionally engaged in the buying and selling of works of art, is not a VAT-taxable person and, therefore, whenever he or she sells an artwork, this transaction is not subject to VAT. Obviously, the collector pays VAT at the time of purchase or import, without being able to deduct it.

Artworks, like any other movable property, do not form the taxable base for inheritance tax, since they are included in 10 per cent of the value of the estate if they were located in the house of the deceased at the time of the succession (article 9, paragraph 3, Legislative Decree 346/1990), and unless (1) they are held in a bank vault or other deposit or (2) they are included in an inventory drawn up pursuant to article 769, [Italian Civil Procedure Code](#).

Notified goods that obtained the declaration of good conservative status are excluded from the assets of the estate (article 13, Legislative Decree 346/1990).

If artworks are part of a trust, the Italian Income Revenue Authority ('Agenzia delle Entrate') recently issued [Circolare No. 34/E of 20 October 2022](#) containing clarifications on the tax regime of goods assigned to a trust. In particular, such goods shall not be taxed at the time of their assignment to the trust but at the time of their devolution to the trust's beneficiaries.

Law stated - 30 January 2024

Tax exemptions

- 18** | Outline any tax exemptions or special conditions applicable to art, antiques and collectibles.

There are tax exemptions and special conditions applicable to art, antiques and collectibles. A margin VAT scheme is applicable to sales of used goods. Article 40-bis of Legislative Decree No. 41/1995 introduced a special regime for auction companies acting as intermediaries in the secondary market and operating in their own name and on behalf of the seller. The tax base is the hammer price minus the seller's commission.

Notified cultural goods are not subject to taxation. There is no tax on transfers to the state and other public entities, private foundations and recognised non-profit organisations.

Law No. 106/2014 introduced a tax credit for three consecutive tax years on donations made by individuals or companies through traceable payment instruments for maintenance, protection and restoration of cultural goods belonging to public entities, to support public cultural sites.

Tax benefits are also granted to owners of buildings listed as cultural goods, both when determining their rental income tax and in connection with interventions aimed at the maintenance, protection or restoration.

Law stated - 30 January 2024

BORROWING AGAINST ART

Types of security interest

- 19** | In your jurisdiction what is the usual type of security interest taken against art, antiques and collectibles?

Art, antiques and collectibles, as with all movable goods, may be pledged as collateral to secure a loan (article 2784, Italian Civil Code (ICC)).

Law stated - 30 January 2024

Consumer loans

- 20** | If the borrower borrowing against art assets in your jurisdiction qualifies as a consumer, does the loan automatically qualify as a consumer loan, and are there any exemptions allowing the lender to make a non-consumer loan to a private borrower?

If the borrower qualifies as a consumer (ie, as a natural person who is acting for purposes that are outside his or her trade, business or profession) and the credit agreement falls within the scope of the [Consumer Credit Directive \(2008/48/EC\)](#), transposed into Italian law by [Legislative Decree No. 141/2010](#), the loan automatically qualifies as a consumer loan.

Consumer credit provisions do not apply, inter alia, to loans to natural persons for an amount exceeding €75,000 (article 122, paragraph 1(a), [Legislative Decree No. 385/1993](#)).

Law stated - 30 January 2024

Register of security interests

- 21 | Is there a public register where security interests over art, antiques or collectibles can be registered? What is the effect of registration? Is the security interest registered against the borrower or the art?

There is no public register for security interests over art, antiques or collectibles as collateral for loans.

However, Law No. 119/2016 introduced the possibility for professional dealers to create non-possessory liens to secure credits related to their business activity (which are not private loans). Those can only be granted over movable property intended for their business activity. This lien must be registered in the online register managed by the Revenue Agency of the Ministry of Economy and Finance.

Law stated - 30 January 2024

Non-possessory security interests

- 22 | Can the lender against art collateral perfect its security interest without taking physical possession of the art?

Professional dealers can create non-possessory liens to secure credits related to their business activity (which are not private loans). Those can only be granted over movable property intended for their business activity.

Law stated - 30 January 2024

Sale of collateral on default

- 23 | If the borrower defaults on the loan, may the lender sell the collateral under the loan agreement, or must the lender seek permission from the courts?

Lenders can sell the collateral and do not need to obtain a court's permission. However, before selling the pledged item, the creditor must serve a demand notice on the pledger requesting payment within five days of the service date. If no payment is made, the creditor

is entitled to sell the collateral at a public auction under the court's supervision. Article 2797, ICC, provides that the parties to a collateral agreement may agree that the sale can be carried out by a private auction company.

Law stated - 30 January 2024

Ranking of creditors

24 | Does the lender with a valid and perfected first-priority security interest over the art collateral take precedence over all other creditors?

According to article 2748, ICC, the lender with a valid and perfected first-priority security interest takes precedence over the other creditors.

Law stated - 30 January 2024

INTELLECTUAL PROPERTY RIGHTS

Creator copyright

25 | Does copyright vest automatically in the creator, or must the creator register copyright to benefit from protection?

Copyright vests automatically in the author : the author acquires all the rights related to the artwork by simply creating it. This is established in article 2576, Italian Civil Code (ICC), which resumes article 6, Italian Copyright Law (ICL).

Therefore, the original qualification for the acquisition of copyright is the creation of the work, as a particular expression of intellectual work.

An original work that meets certain minimum requirements is immediately subject to copyright and its creator acquires all the rights and powers provided for by law.

Nevertheless, article 105, ICL, prescribes the obligation to deposit a copy of the work in a special office (set up at the Presidency of the Council of Ministers); however, failure to do so does not affect the acquisition and exercise of copyright, as established by article 106, ICL.

To provide evidence of the date of creation, it is advisable to deposit a photograph of the copyrighted work with the Italian Society of Authors and Publishers (SIAE) or a public notary.

Law stated - 30 January 2024

Copyright duration

26 | What is the duration of copyright protection?

Copyright expires 70 years after the death of the author (article 25, ICL). This general principle applies to copyright but not to moral right.

Economic exploitation rights offer exclusively to the right holders to authorise the use and to receive remuneration for each use of the work. They include the right of reproduction, the right of performance, the right of communication to the public, the right of distribution, the right of rental, etc.

Moral right protects the author's persona. It is not subject to a time limit, and can be enforced by the author's descendants and other family members at any time after the author's death.

Law stated - 30 January 2024

Display without right holder's consent

27 | Can an artwork protected by copyright be exhibited in public without the copyright owner's consent?

Displaying someone else's artwork without their consent could result in copyright infringement.

Artists have the right to publish their work, which includes the right to exhibit their creation in a public venue for the first time (article 12, ICL).

It is questionable whether this right should prevail over the owner's right to display artworks they own. Owners have the full and exclusive right to enjoy and dispose of their property, within the limits established by law (article 832, ICC). It could be argued that when artists sell their work to collectors, especially if during a fair or an exhibition, their right to publish the work is exhausted. However, artists could always try to enforce their moral right when artworks are exhibited in a manner or venue that they consider detrimental to their honour or reputation. Furthermore, the copyright holder's consent is always required for reproductions of the artist's work (eg, catalogues and marketing material related to an exhibition).

Owners and exhibition curators should not be considered liable, if they fail to secure the artist's consent before an exhibition, although it is customary and advisable to obtain it in writing.

Pursuant to article 15, [Law No. 37/2019](#), the acts of reproduction, communication to the public, making available to the public, distribution and lending of works protected by copyright for the benefit of blind persons, visually impaired or with other difficulties in reading printed texts are free.

Law stated - 30 January 2024

Reproduction of copyright works in catalogues and adverts

28 | Can artworks protected by copyright be reproduced in printed and digital museum catalogues or in advertisements for exhibitions without the copyright owner's consent?

The copyright owner's consent always needs to be obtained for the reproduction of artworks in printed and digital museum catalogues or in advertisements for exhibitions.

Exceptions have a very narrow scope. Under article 70, ICL, partial reproductions of works can be communicated to the public for purpose of criticism and discussion, if such use does not conflict with the normal exploitation of the work. A recent case established that such exception does not apply to a catalogue of works of an artist, realised without the consent of the rights holder, as it contains full reproduction of the works (Cassation Court, No. 4038 dated 1 December 2021 to 8 February 2022). Making the digital reproduction of works in the collection of a museum available to the public only at the venue, only for research purposes falls under an exception (article 71ter, ICL).

Pursuant to article 15 of Law No. 37/2019, the acts of reproduction, communication to the public, making available to the public, distribution and lending of works protected by copyright for the benefit of persons blind, visually impaired or with other difficulties in reading printed texts, are free.

Law stated - 30 January 2024

Copyright in public artworks

29 | Are public artworks protected by copyright?

Copyright law protects all creative works, regardless of their form of expression: therefore, copyright protects street art and public works, as well.

No copyright exception allows for reproduction of public monuments (ie, freedom of panorama; see article 5, paragraph 3(h), [Directive 2001/29/EC](#)).

Street art is also subject to copyright, although most cases involving street artists have been criminal law cases, where the artist faced criminal liability based on the offence of damaging or spoiling a public space or private property (article 639, Italian Criminal Code).

Regardless of copyright, cultural heritage items owned by public entities or part of public collections cannot be reproduced without the authorisation of the Ministry.

Law stated - 30 January 2024

Artist's resale right

30 | Does the artist's resale right apply?

Artist's resale right (ARR) applies when art market professionals are involved in the sale.

In general, ARR provides that after artists sell or donate artworks, a royalty must be recognised and paid to them, or, after their death, to their heirs, in relation to all subsequent sales.

Article 144, ICL, provides that authors of artworks and manuscripts are entitled to royalties on the price of each resale.

ARR does not apply (1) when the seller has bought the work directly from the author less than three years before the resale and the resale price does not exceed €10,000, (2) when the net price is equal to or less than €3,000 and (3) to sales between private individuals.

Article 150, ICL, quantifies the amount of the right due in relation to the sale price and provides for different brackets with percentage values inversely proportional to the increase in the price. The amount due as ARR cannot in any case exceed € 12,500 for each sale.

ARR lasts for 70 years after the death of the artist. It is granted to Italian artists or non-EU artists residing in Italy, EU nationals, and citizens of a third country, provided the laws of that country recognise the same right applicable to Italian nationals.

ARR is set at the following rates:

- 4 per cent for the portion of the sale price up to €50,000;
- 3 per cent for the portion of the sale price from €50,000.01 to €200,000;
- 1 per cent for the portion of the sale price from €200,000.01 to €350,000;
- 0.5 per cent for the portion of the sale price from €350,000.01 to €500,000; and
- 0.25 per cent for the portion of the sale price exceeding €500,000.

Article 152, ICL, entrusts SIAE to collect ARR. SIAE makes available a special website section where professionals in the art market can fulfil all the obligations connected with ARR.

Law stated - 30 January 2024

Moral rights

31 | What are the moral rights for visual artists? Can they be waived or assigned?

Moral right protects the author's personality. It is not subject to a time limit. The right to claim or deny authorship and the right of integrity of the work, for example, are part of the artist's moral right. After the artist's passing, moral right automatically arises to the benefit of the heirs.

The right of paternity protects the author's recognition as the author of the work. The right of integrity allows the author or their heirs to object to any alteration of the work that may result in damage to the author's honour or reputation.

Moral right cannot be waived or assigned (article 22, ICL).

Law stated - 30 January 2024

COMMISSIONS

Accounting to the principal

- 32** | Does the law require the agent to account to the principal for any commission or other compensation received by the agent while conducting the principal's business?

Pursuant to article 1713, Italian Civil Code (ICC), agents shall account to the principal for any commission or other compensation received by them while conducting the principal's business.

Law stated - 30 January 2024

Principal's consent

- 33** | Does disclosure to the principal that the agent will receive a commission allow the agent to keep the commission unless the principal objects?

The parties are free to negotiate whether the agent is entitled to receive the sale proceeds from the buyer and withhold their commission from that amount (which is customary), or whether the commission shall be paid directly by the principal. Any amount that the agent receives (including from the buyer) or pays (eg, to an introducer) should be adequately disclosed to the principal.

Law stated - 30 January 2024

Undisclosed agent commission

- 34** | If a third party pays a commission to an agent that is not disclosed to the principal, can the principal claim the commission from the third party?

The principal does not have a claim against a third party, which may have paid a commission to the agent, as long as the payment of that commission did not cause damage to the principal. For example, the agent may have introduced the principal to auction company A (which paid the commission), although auction company B offered a better deal to the principal. In such a case, the principal could sue both the agent and the auction company.

Law stated - 30 January 2024

AUCTIONS

Regulation

- 35** | Are auctions of art, antiques or collectibles subject to specific regulation in your jurisdiction?

The sale of artworks by a professional through the internet is covered by the rules on distance contracts laid down in [Legislative Decree No. 206/2005](#) (Consumer Code), and is subject to a whole series of rules aimed at protecting consumers, who find themselves

purchasing a good (such as an artwork) without the possibility of viewing it and negotiating the sale in person.

The Decree applies to auctions and second-hand goods sales.

Consequently, art market professionals using e-commerce must comply with this legislation, requiring that the professional provide the potential customer with all the necessary information (such as the characteristics of the good, the contact details of the professional, the essential elements on price, payment method, delivery of the good, right of withdrawal, etc) in an appropriate manner, in simple and comprehensible language, and protect consumers' rights.

Additionally, article 64, Italian Cultural Heritage Code, requires art market professionals (including auction houses) to provide the buyer with certificates of authenticity or probable attribution and provenance of the work, or at least disclose all the available information, possibly on a photographic reproduction of the work.

Law stated - 30 January 2024

Ancillary services by auctioneers

36 | May auctioneers in your country sell art, antiques or collectibles privately; offer advances or loans against art, antiques or collectibles; and offer auction guarantees?

Auction houses are allowed to sell art, antiques or collectibles privately.

Granting loans or other credit facilities are activities reserved to financial institutions subject to the supervision of the Bank of Italy. However, there are no regulatory provisions preventing auction houses from providing auction guarantees to their consignors and also to make advances on such guarantees.

Auction guarantees cannot be considered as activities reserved to banks and financial intermediaries subject to the supervisory authority of the Bank of Italy, pursuant to [Directive 2013/36/EU](#) on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, and Italian banking law.

Although irrevocable bids are not common practice in Italy, they should be considered permitted under Italian law and there are no provisions prohibiting the compensation of irrevocable bidders.

Law stated - 30 January 2024

SPOILIATION DURING THE NAZI ERA

Claims to Nazi-looted art

37 | In what circumstances would the heirs of the party wrongly dispossessed typically prevail over the current possessor, if a court in your country accepted jurisdiction and applied its own law to a claim to art lost during the Nazi era?

There are no specific provisions currently in force in Italy regulating claims to art lost or looted during the Nazi era in Italy. Nazi-looted artworks (or artworks that may have been subject to a forced sale during the Nazi or Fascist regime) that may have been acquired by the Italian state or any other public institution cannot be returned to the heirs of the looted owner(s) because they are considered part of the inalienable patrimony of the Italian state or other public entity.

With regard to privately owned goods, general provisions regarding private ownership and acquisition of movable goods as a result of uninterrupted possession for a period corresponding to the statutory provisions would regulate claims to Nazi-looted art.

As Italian law admits adverse possession in favour of bad faith possessors after 20 years, claims brought by the heirs of a victim of looting during the Nazi era have little chance of succeeding, unless the defendant fails to prove that their possession has been carried out uninterrupted for the statutory period (starting on the date it became public).

Law stated - 30 January 2024

Ad hoc tribunal to hear claims outside court system

38 | Is there an ad hoc body set up to hear claims to Nazi-looted art?

No.

Law stated - 30 January 2024

LENDING TO MUSEUMS

Insurance

39 | Who is responsible for insuring art, antiques or collectibles loaned to a public museum in your jurisdiction?

Public museums normally provide all-risks 'nail-to-nail' insurance coverage to art, antiques or collectibles exhibited at their premises. The insurance premium is paid by the borrowing institution.

As an alternative to private insurance coverage, a public insurance policy covering the risks of loss and damage may be granted by the state for cultural goods that have been granted participation to exhibitions in Italy or abroad (article 48, paragraph 5, Italian Cultural Heritage Code).

Law stated - 30 January 2024

Immunity from seizure

40 | Are artworks, antiques or collectibles loaned to a public museum in your country immune from seizure?

There is no legislation on immunity from seizure.

Law stated - 30 January 2024

CULTURAL PATRIMONY

National treasures

41 | Is there a list of national treasures?

There is no list of national treasures accessible to the public. As the original cultural heritage law ([Law No. 364/1909](#)) dates back to 1909 and there is no central database listing all classified artworks, state authorities themselves do not have an accurate knowledge of the amount of art, antiques and collectibles that have been declared of cultural interest.

Objects belonging to the State, the Regions, other public territorial entities, as well as to any other public bodies and institutions and private non-profit legal persons (eg, private foundations), including civilly recognised ecclesiastical entities, are presumed of cultural interest. Article 12 of the Italian Cultural Heritage Code (ICHC) provide a specific proceeding aimed at ascertaining the cultural interest and, if the proceeding has a positive outcome, the cultural interest of the object is confirmed.

The main consequences arising from an object being declared of cultural interest are the following:

- it cannot be permanently exported from Italy;
- the state has a pre-emption right in any sale transaction regarding such object;
- the state must be notified of any event regarding a notified work (eg, succession or relocation of the work following the owner's move to a different house); and
- any restoration, exhibition, intervention must be authorised in advance by the state.

Although the above consequences significantly affect the owner's rights, there is no compensation if an object is declared to be of cultural interest.

Law stated - 30 January 2024

Right of pre-emption

42 | If the state is interested in buying an artwork for the public collections, does it have a right of pre-emption?

According to article 61, ICHC, the Italian state has a right of pre-emption when a classified artwork is sold.

Both the seller and the buyer (or the intermediary on their behalf) must inform the local office of the Ministry of the sale and provide all the details (including the price of the artwork)

within 30 days of the sale date. Within the following 60 days, the state must communicate whether it intends to buy the artwork at the sale contract price.

Pending the 60-day time frame, the sale contract is subject to the condition precedent that the state will not exercise its pre-emption right and the artwork must not be delivered to the buyer. The payment of the sale price, as well as the buyer's premium and all other costs associated with the sale (such as artists' resale right, if any), are suspended.

If the state exercises its pre-emption right, it will only pay the sale price and will not be obliged to pay the buyer's premium and all other costs associated with the sale.

If the state does not exercise its pre-emption right, the sale between the original parties will become effective.

Law stated - 30 January 2024

Automatic vesting in the state

43 | In what circumstances does ownership in cultural property automatically vest in the state?

There is a presumption of the state's ownership for archaeological objects discovered after 1909 (article 91, ICHC).

If the owner is not able to prove that the archaeological object in their possession was found or purchased before 1909, the state's ownership of it is established.

Law stated - 30 January 2024

Illegally exported property claimed by foreign state

44 | How can a foreign state reclaim in your jurisdiction cultural property illegally exported from its territory?

Pursuant to article 77, ICHC (implementing [Directive 2014/60/EU](#)), EU member states are entitled to a restitution claim aimed at repatriating cultural property that was illegally exported from the territory of the requesting member state.

The claim must be filed before the court having jurisdiction over the place where the cultural property is located. The claim may not be brought: (1) more than one year after the competent central authority of the requesting member state became aware of the location of the cultural property and of the identity of its possessor or holder; and (2) more than 30 years after the object was unlawfully removed from the territory of the requesting member state.

The procedure is regulated by the Italian *lex fori*. The requesting member state must submit, as exhibits to the complaint, a document describing the property and qualifying it as cultural property, and a declaration by the competent authority of the requesting state with regard to the illicit export from the national territory.

The statement of claims must be served on the possessor of the property and the Ministry of Culture.

According to article 79, ICHC, the competent court may order that fair and equitable compensation be paid to the bona fide possessor of an illegally exported cultural object.

Italy ratified the following international conventions related to the export of cultural property:

- 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage;
- 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects;
- 1972 UNESCO Convention concerning the Protection of World Cultural and Natural Heritage;
- 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;
- 1969 European Convention on the Protection of Archaeological Heritage;
- 1954 European Cultural Convention; and
- 1954 UNESCO Convention on the Protection and Promotion of the diversity of Cultural Expression.

Italy has also entered into a number of bilateral agreements, including the following:

- 2008 bilateral agreement between Italy and Switzerland on the import and repatriation of cultural property; and
- 2001 memorandum of understanding on import restrictions of archaeological material to fight art trafficking between Italy and the United States (amended in 2006).

Law stated - 30 January 2024

NON-FUNGIBLE TOKENS

Regulation and case law

45 | How are non-fungible tokens (NFTs) regulated in your jurisdiction? Is there any case law on NFTs in your jurisdiction?

Currently, there is no specific legislation on NFTs. When the token is related to a pre-existing artwork, the Italian Copyright Law applies, just as it does if a new artwork is transferred along with the token.

As far as the digital reproduction of artworks belonging to the national cultural heritage owned by the state and detained by Italian museums is concerned, the Ministry recently drafted guidelines on the digitisation of Italy's cultural heritage ([National cultural heritage digitisation plan](#)). The Ministry also recently developed guidelines for the determination of the fees for the digital reproduction of artworks belonging to the national cultural heritage ([Ministerial Decree No. 161/2023](#) amended by [Ministerial Decree No. 187/2023](#)).

A recent case has granted protection to notorious trademarks used as NFTs by unauthorised third parties (Court of Rome, preliminary order of 20 July 2022).

Law stated - 30 January 2024

AI-GENERATED ART

Regulation and case law

46 | How is AI-generated art regulated in your jurisdiction? Is there any case law on AI-generated art in your jurisdiction?

At the present time there is no specific legislation on this topic.

On December 9th 2023 the EU Parliament and the Council reached a provisional agreement on the first comprehensive law on this subject (the [AI Act](#)), which will be directly applicable in EU States without requiring a national law to transpose it and it will provide an initial comprehensive legislative framework.

The final draft was released on 21 January 2024.

Law stated - 30 January 2024

Copyright

47 | Is there copyright in AI-generated art in your jurisdiction?

Currently, there is no specific regulation on this subject.

However, recently, the Supreme Court ([ordinanza No. 1107/2023](#)), in a case regarding the non-authorised use of an artwork created by means of an algorithm, stated that the creation of artworks through the use of algorithms does not per se exclude copyright protection of the result: the creative contribution of the human artist, which gives the inputs to the AI, should be considered with more attention and should be decisive, especially with regard to his personal and innovative way of expression of an idea.

Law stated - 30 January 2024

ANTI-MONEY LAUNDERING AND SANCTIONS

AML compliance

48 | What anti-money laundering (AML) compliance obligations are placed on the art trade?

The Fifth Anti-Money Laundering Directive ([Directive \(EU\) 2018/843](#)) has been transposed into Italian national law by Legislative Decree No. 125/2019, which amended [Legislative Decree No. 231/2007](#) (AML).

According to the AML, the following subjects are 'other non-financial operators' that are subject to AML obligations:

- traders in antique goods, persons who trade in artworks or act as intermediaries in the trade of artworks, even when such activity is carried out by art galleries or auction houses referred to in article 115 of the [Consolidated Law on Public Security \(TULPS\)](#) when the value of the transaction (even if fractioned) or of any related transactions is equal to or greater than €10,000 (article 3, paragraph 5, letter b, AML); and
- persons who preserve or trade in artworks or act as intermediaries in the trade of artworks, when such activity is carried out within free ports and the value of the transaction (even if fractioned) or of any related transactions is equal to or greater than €10,000 (article 3, paragraph 5, letter c, AML).

The AML requires that art market professionals comply with the following obligations:

- carry out adequate customer due diligence by identifying the customer and the beneficial owner (article 17 et seq, AML);
- conduct ongoing monitoring of the business relationship, which encompasses scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being conducted are consistent with the knowledge of the customer and the business and risk profile, including where necessary the source of the funds and ensuring that the documents, data or information held are updated (article 19, AML);
- apply enhanced customer due diligence measures where there is a high risk of money-laundering or terrorist financing (articles 24 and 25, AML);
- store documents, data and information on possible money laundering activities for at least ten years ([article 31](#), AML);
- communicate the suspect transactions to the Financial Intelligence Unit at the Bank of Italy (article 35, AML); and
- a prohibition to communicate to the interested client or third-party information on the communication of the suspect transaction (article 39, AML).

The Ministry of Economy and Finance, based on a proposal by the Financial Security Committee, may exempt persons engaged in a financial activity on an occasional or very limited basis where there is a low risk of money laundering or terrorism financing, and where such financial activity is not carried out as the main activity (article 4, paragraph 3, AML).

Pursuant to article 21, Royal Decree No. 773/1931, legal entities required to be registered in the Business Register and trusts which produce tax-relevant legal effects or related legal entities must communicate the information relating to their beneficial owners to the Business Register. A special section of the Business Register specifically destined to collect information about beneficial owners (Register of Beneficial Owners) is set to be created. At the time of writing, the Register of Beneficial Owners has not yet been enacted.

Law stated - 30 January 2024

Sanctions compliance

49 | What sanctions-related compliance obligations are placed on the art trade?

In addition to the sanctions already mentioned in the other points, Part IV of the Italian Cultural Heritage Code (articles 160 to 181) is specifically dedicated to administrative sanctions referred to cultural heritage.

Focusing on art trade, for instance article 166 punishes with the payment of between €103.50 and 620 to anyone who exports a cultural heritage outside the European Union and fails to return to the competent export office the appropriate documentation relating to the export authorisation (Regulation No. 1081/2012, European Commission). Moreover, the Criminal Code states that the sanction for crimes against cultural heritage is increased if such crime are committed within a professional activity.

The reform of the criminal provisions set forth by article 518-bis et seq of the Italian Penal Code entails the application, also for cultural heritage-related crimes, of administrative sanctions on liability of entities (Legislative Decree 231/2001).

Omission in filling the daily business register kept by dealers is an administrative offence (article 17-bis TULPS), while falsification of such register is a crime (article 484 Criminal Code).

Law stated - 30 January 2024

ENDANGERED SPECIES

CITES

50 | Is your jurisdiction a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

Italy ratified the CITES Convention through [Law No. 150/1992](#), which is enforced by the Ministry of the Environment. The Ministry of Economic Development is in charge of export and import licences. The Carabinieri and Guardia di Finanza (military enforcement units) both have competence on the enforcement of CITES.

Law stated - 30 January 2024

Specific endangered animal products

51 | Are there any special rules for works of art made of elephant ivory, rhino horn or other specific endangered animal products?

Italian rules for works of art made of elephant ivory, rhino horn or other specific endangered animal products are directly linked to European regulations that, after the issuance of Guidance Document 2021/C 528/03 and Commission Regulation (EU) No. 2021/2280,

prohibit sale, import and export for commercial purposes of products made of certain materials.

As far as ivory is concerned, it is no longer possible to import/export it or trade in artefacts containing it for commercial purposes, even if they were introduced into the territory of the state before the time of entry into force of the Convention on International Trade of Endangered Species (CITES) in 1973, except for musical instruments or goods of cultural importance intended for Italian Museums.

Moreover, certificates for intra-EU commercial exploitation (article 8 Regulation No. 338/1997) for objects containing elephant ivory issued before 19 January 2022 ceased to be valid on 19 January 2023.

Pursuant to EU Regulation 2019/220, which amended EU Regulation 865/2006, permits and certificates for live rhinoceros and live elephants shall include a condition stating that horn or ivory from those animals or from their progeny may not enter commercial trade or commercial activities within the Union.

The European Commission has published a notice containing specific guidance document on the export, re-export, import and intra-Union trade of rhinoceros horns, as well (2019/C 386/04).

Law stated - 30 January 2024

Pre-CITES endangered species

52 | Is the sale, import or export of pre-CITES endangered species subject to a licence?

A CITES permit must be requested from the Ministry of Economic Development for the export or import of pre-CITES worked endangered species. The permit is normally issued 30 days after the filing date. In case of import, the applicant should submit the export permit issued by the third country of origin and evidence that the work was legally purchased.

For more details, open this [link](#).

Law stated - 30 January 2024

Post-CITES endangered species

53 | Is the sale, import or export of post-CITES worked or antique endangered species authorised? On what conditions?

Yes, if approved, an import or export licence will be released within 30 days from the date of the request. This term is suspended if the National Scientific Committee has not released an opinion. Foreign CITES authorities may also be consulted by the Italian issuing authority.

Sale of items made of endangered species listed in Annex B to the EU Regulation 338/1996 imported for personal purposes, under article 7, paragraph 3 of the EU Regulation

338/1996, shall be authorised by the competent authority (ie, Carabinieri - Nucleo CITES), pursuant to article 58-bis of EU Regulation 865/2006.

Law stated - 30 January 2024

CONSUMER PROTECTION

Cancelling purchases

54 | In what circumstances may consumers cancel the sale of art, antiques or collectibles?

Consumers may avail themselves of the remedies set forth by the general provision of the Italian Civil Code (ICC) if the sale was of a forgery.

Furthermore, consumers are entitled to withdraw, without giving a reason, from the sale of art, antiques or collectibles in the case of distance contracts or contracts negotiated off-premises with professional counterparties (article 52, [Legislative Decree No. 206/2005 Consumer Code](#)), within 14 days of the day on which the consumer or a third party other than the carrier, and indicated by the consumer, acquires physical possession of the good.

The withdrawal right does not apply in the case of contracts concluded at a public auction (ie, by a method of sale where goods or services are offered by the trader to consumers who attend or are given the possibility to attend the auction in person) through a transparent, competitive bidding procedure run by an auctioneer, and where the successful bidder is bound to purchase the goods or services (article 59, Consumer Code). Conversely, the right of withdrawal exists in case of sales concluded at online-only auctions where the bidder is not able to attend the auction in person.

Law stated - 30 January 2024

Duties of businesses selling to consumers

55 | Are there any other obligations for art businesses selling to consumers?

Art businesses selling to consumers must comply with article 1341 ICC, which requires for standard terms and conditions unilaterally drafted by the seller and submitted to the other party (regardless of whether the latter is a professional or a consumer) that the party specifically approves in writing clauses limiting the liability of the proposing party or the right of the assenting party to raise claims against the seller, or modifying the statutory judicial venue in case of disputes.

Professional sellers entering a distance or an off-premises contract must provide the mandatory relevant information prescribed by article 49 et seq, Consumer Code, before the consumer is bound to the contract. Such relevant information includes the description of the artwork, the identity of the trader, the total price and means of payment, and whether or not a right of withdrawal exists – and, if it does, the conditions, time limit and procedures for exercising that right.

Following the reform of the Consumer Code in 2021, article 128 et seq, regarding the legal guarantee of conformity of goods apply also to second-hand goods, also when sold at a public auction, if consumers did not receive proper, clear and complete information on the inapplicability of those dispositions.

Finally, pursuant to article 64 of the Italian Cultural Heritage Code, art businesses must provide the buyer with a certificate of authenticity or attribution and provenance of the artwork

Law stated - 30 January 2024

REGULATION

Art market regulator

56 | Is there a specific regulatory body overseeing the art market or certain business activities carried out within the art market in your jurisdiction?

Regarding art sales, the Italian Competition Authority (Autorità Garante della Concorrenza e del Mercato - AGCM) is the administrative independent body in charge of vigilance against abuses from market dominance, enforcing both Italian and European consumer protection/competition laws.

To this end, AGCM can conduct investigations and issue sanctions towards art professionals. For example, AGCM can order auction operators to suspend their campaigns for winning over new clients, on the grounds of insufficient transparency and/or lack of information.

With regard to the AML, there are multiple authorities, described in section II of Legislative Decree No. 231/2007 (AML), in charge of verifying the compliance of AML subjects (including art professionals) with AML obligations, namely:

- the Ministry of Economy and Finance and its Financial Security Committee (articles 4 and 5 AML);
- the Financial Intelligence Unit of the Bank of Italy (article 6 AML);
- the Sector Supervisory Authority (article 7 AML);
- the Anti-Mafia and Anti-Terrorism Investigation Department (article 8 AML);
- the Special Currency Police Unit of the Guardia di Finanza (article 9 AML);
- public administration (article 10 AML);
- self-regulatory bodies (article 11 AML).

Such authorities act in strong cooperation, conducting investigations and issuing sanctions in case of breach of AML obligations.

With regards to artist's resale right (ARR), the Italian Society of Authors and Publishers (SIAE) is in charge of administering ARR on behalf of all artists, even those not adhering to SIAE. In addition, it receives and distributes to its associated authors ARR collected by its sister companies abroad.

Article 153, paragraph 2, Italian Copyright Law, states that professionals involved in the transfer of an artwork have the obligation to provide SIAE, at the latter's request, all the information needed to ensure payment of ARR for a period of three years following the sale. Failure to comply with such obligation can result in the transfer being considered as having been carried out in breach of the rules on ARR, and therefore in the sanction provided for at article 172, paragraph 3, ICL (suspension of professional or commercial activity from six months to one year, as well as an administrative sanction from €1,034 to 5,165).

Law stated - 30 January 2024

Other regulators

57 | What other forms of regulation are professional art market participants in your jurisdiction subject to?

Art loans are subject to authorisation by the Ministry of Cultural Heritage if the artwork is of cultural interest (article 48, ICHC).

Art-backed loans can only be granted by intermediaries authorised by the Bank of Italy and are subject to supervisory controls. Professional insurance intermediation is an activity reserved to licensed insurance brokers and is subject to supervisory controls by the Institute for Insurance Supervision (IVASS).

Law stated - 30 January 2024

UPDATE AND TRENDS

Key developments of the past year

58 | Are there any other current developments or emerging trends that should be noted?

This year, the Ministry of Culture issued two important circulars (*Circolari*), documents aimed at ensuring a uniform interpretation of the law throughout the territory: Circolare 12/2023, which clarified some interpretative doubts related to the criteria for approving or denying the export of a cultural property; and Circolare 33/2023, which modified the previous regulations on import and shipping certificates (respectively: CAI/CAS), admitting that these certificates now can be issued for cultural property created between 50 and 70 years ago, since previously this category could not enjoy extraterritoriality status.

Furthermore, in a legal opinion dated 27 June 2023 on the possibility to grant CAS/CAI certificates to archaeological artefacts (specifically, coins), the Legal Department of the Ministry of Culture has clarified that the export office receiving the application shall ascertain the legitimate foreign provenance of such goods and shall not request to the owner to provide additional proof of the previous legitimate exit from the national territory as this would impose an excessive – almost impossible – burden of proof (so called *probatio diabolica*), unless doubts on the lawfulness of the possession of the items can be raised.

In 2023, case law on cultural property expressed some important principles: the Council of State (No. 9962/2023) established that a person who submits to the export office only the mandatory data related to an artwork which he intends to export, omitting optional details that could influence the decision of the Public Administration, cannot be held accountable for deceiving the export office. Consequently, the export permit cannot be revoked according to article 21 *nonies*, paragraph 2-bis, Law 241/1990, which allows the Public Administration to annul an authorisation it has issued based on false or mendacious information or statements by the applicant.

Some decisions (eg, Administrative Court of Lombardy No. 2601/2023, No. 2666/2023) interpreted the concept of 'connection with the Italian cultural heritage' expressed by point 6 of the ministerial guidelines (D.M. No. 537/2017). In these cases, the Court deemed valid and well-motivated the denial of export licence for artworks by non-Italian authors, based on alleged stylistic influence and the authors' personal links to Italy, totally unrelated to the artwork (eg, author's friendship with an Italian art dealer).

In other cases (eg, Administrative Court of Lombardy No. 475/2023) the Court highlighted that the investigation and research activity conducted by the Public Administration with the purpose of acknowledging if an artwork should be declared of public interest, must be extensive and coherent; otherwise, the alleged reasons underlying the declaration of cultural interest will not be upheld by a Court.

Other rulings (eg, Administrative Court of Lombardy No. 2059/2023) focused on article 10, paragraph 3, letter d), Italian Cultural Heritage Code (IHC), establishing that the declaration of public interest justified by the relationship between the artwork and history or identity of the Nation, shall be grounded on a specific relevant event (historical, cultural, artistic), not simply recall a generic relevant value (eg, the representation of the painting being the country house of an author where he or she frequently painted).

Finally, the Administrative Court of Lazio (No. 19029/2023), ascertained the contradiction between a sub-legislative source (DM No. 246/2018, article 7, co 3), which granted the export office a broader power to declare cultural interest than the one provided by the law (article 65, IHC), thus compressing private individual rights outside the cases provided by the law, and deemed void both the declaration of cultural interest in the specific case, and the part of article 7, co 3, of the DM No. 246/2017, where it mentions both the declaration of particularly important and exceptional interest, instead of only the latter.

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Law stated - 30 January 2024

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BUYING AND SELLING

Passing of title

1 | When does ownership of art, antiques and collectibles pass from seller to buyer?

Under Mexican law, a purchase and sale agreement is deemed perfect and finalised upon the specific consent of the parties in relation to the goods that are the subject matter thereto and the price, even if the goods have not yet been delivered and the price not yet paid. Therefore, ownership is deemed to have passed from seller to buyer upon perfection of the agreement.

Notwithstanding the above, article 2312 of the Federal Civil Code provides that the parties may agree for the seller to maintain the ownership of the goods until the price has been paid. In such a case, if the buyer receives the merchandise, until the price is paid and ownership is transferred to the buyer, the buyer shall be deemed as a lessee of such merchandise.

Law stated - 30 January 2024

Implied warranties

2 | Does the law of your jurisdiction provide that the seller gives the buyer any implied warranty?

Yes, Mexican law provides an implied warranty of title by imposing on the seller the obligation of restitution in the event of eviction; that is, if the buyer is deprived of the acquired merchandise by a final judgment due to a third-party right existing prior to the acquisition. The parties may increase or limit the effect of such warranty of title or even exclude it. However, if there was bad faith from the seller, any agreement releasing him or her from such warranty of title shall be deemed null; if the buyer renounced its right to restitution, the seller will only deliver the price of the merchandise, except if the buyer acknowledged the risk of eviction and assumed such risk; and if both parties act in bad faith, the buyer shall have no right to restitution.

Law stated - 30 January 2024

Registration

3 | Can the ownership of art, antiques or collectibles be registered? Can theft or loss of a work be recorded on a public register or database?

Mexico does not have a specific register for the ownership of art, antiques or collectibles. However, registration of ownership of intellectual property rights on any artwork must be made before the National Copyright Institute, and individuals and private entities must register ownership of any historic, archaeological and palaeontological assets with the [Public Register of Historic and Archaeological Monuments](#) (registration of those owned

by the state and public entities is made directly by the National Fine Arts and Literature Institute and the National Institute of Anthropology and History).

Law stated - 30 January 2024

Good-faith acquisition of stolen art

- 4 | Does the law of your jurisdiction tend to prefer the victim of theft or the acquirer in good faith of stolen art?

There is no specific regulation regarding stolen art and, therefore, general prescription rules apply. Mexican law provides that ownership of movable assets (such as art or antiques) possessed in good faith, continuously and in a peaceful manner, vests in the acquirer after three years.

Law stated - 30 January 2024

Acquiring title to stolen art through prescription

- 5 | If ownership in stolen art, antiques or collectibles does not vest in the acquirer in good faith, is the new acquirer protected from a claim by the victim of theft after a period of time?

There is no specific regulation regarding stolen art and, therefore, general prescription rules apply. If there is no good faith, Mexican law provides that ownership of movable assets (such as art or antiques) vests in the acquirer after five years. If possession was acquired by means of violence, prescription will apply after five years counted from the moment the violence ceased. If possession was acquired by means of a crime (such as theft), the period for prescription will begin after the corresponding sentence has been extinguished or the criminal action has ceased. In such a case, possession is considered to be in bad faith and a five-year period applies.

Law stated - 30 January 2024

Passing of risk of loss and damage

- 6 | When does risk of loss or damage pass from seller to buyer if the contract is silent on the issue?

According to legal provisions foreseen in the Federal Code of Civil Procedures in Mexico, the risk of loss or damage passes to the buyer with the possession of the goods, unless the seller and the buyer have agreed on something different. If the contract regulating the purchase of artwork is silent on the risk of loss, it will be passed to the buyer upon delivery of the artwork.

Law stated - 30 January 2024

Due diligence by buyer

- 7 | Must the buyer conduct due diligence enquiries? Are there non-compulsory enquiries that the buyer typically carries out?

There is no legal obligation regarding due diligence; however, it is common practice to carry out, at minimum, provenance enquiries.

Law stated - 30 January 2024

Due diligence by seller

- 8 | Must the seller conduct due diligence enquiries?

There is no legal obligation regarding due diligence; however, it is common practice to carry out, at minimum, provenance enquiries.

Law stated - 30 January 2024

Acquisition in bad faith

- 9 | Can ownership in art, antiques or collectibles vest in the acquirer in bad faith after a period of time?

Yes. If possession is not in good faith, they vest in the acquirer after five years. If possession was acquired by means of violence, prescription will apply after five years counted from the moment the violence ceased. If possession was acquired by means of a crime (such as theft), the period for prescription will begin after the corresponding sentence has been extinguished or the criminal action has ceased. In such a case, possession is considered to be in bad faith and a five-year period applies.

Law stated - 30 January 2024

Register of sales

- 10 | Must a professional seller of art, antiques or collectables maintain a register of sales?

There is no specific obligation for professional sellers of art, antiques, or collectables to register the sales. However, if the value of art antiques or collectables exceeds 1,198,598 Mexican pesos, the professional seller must submit a notice before the Ministry of Finance in terms of the Antibribery Mexican Law.

In addition, if the art, antiques, or collectables qualify as monuments, the National Fine Arts and Literature Institute (INBAL) or the National Institute of Anthropology and History

(INAH) must register the artwork in the Public Register of Artistic and Historic Monuments. Finally, the authors of artwork can register their art, antiques, or collectables before the National Institute of Copyrights (INDAUTOR) to protect their copyright.

Law stated - 30 January 2024

Protection of interest in consigned works

11 | How can consignors of artworks to dealers protect their interest in the artwork if the dealer goes into liquidation?

If the consignor has agreed not to pass the legal title over the artwork to the dealer, but only has passed possession on a mandate for sale (a consignment for sale), the consignor has a right to separate the artwork from the dealer's estate. The effect of this separation action is that the bankruptcy court will not consider the artwork as part of the bankruptcy estate. If the legal title has passed from the consignor to the dealer (or to a third party), the consignor will only have a right for the payment, subject to the bankruptcy rules.

Law stated - 30 January 2024

Cancelling the purchase of a forgery

12 | If the buyer discovers that the art, antique or collectible is a forgery, what claims and remedies does the buyer have?

The Federal Criminal Code foresees a term of three to 10 years in prison and a fine of 2,000 to 20,000 days of minimum wage applied in Mexico City, to whoever produces, reproduces, imports, stores, transports, distributes, sells or rents copies of works protected by the Copyright Law, with malicious intent for the purpose of commercial speculation and absent consent from the copyright holder. The fines shall apply regardless of any damages, whose amount shall not be less than 40 per cent of the retail price of each forged product.

From a contractual perspective, the claims and remedies would be subject to the terms of the specific purchase agreement, unless the validity of the contract is challenged in a court of law (due to fraud or bad faith). The purchase agreement would be declared void by a civil court if there is a judicial decision declaring the criminal offence. Therefore, regardless of the absence of an express warranty of authenticity, if a forged artwork (illicit object) is sold, the buyer who subsequently establishes that the artwork is not by that artist could succeed in a claim against the seller and be awarded damages.

Law stated - 30 January 2024

Cancelling the sale of a sleeper

13 | Can a seller successfully void the sale of an artwork of uncertain attribution subsequently proved to be an autograph work by a famous master by proving mistake or error?

Mexican law does not provide a legal basis for any such claim, and therefore it would be subject to the terms and clauses set forth in the purchase agreement.

Law stated - 30 January 2024

EXPORT AND IMPORT CONTROLS

Export controls

- 14 | Are there any export controls for cultural property in your jurisdiction? What are the consequences of failing to comply with export controls?

Yes. To protect, conserve and restore artistic, historic and archaeological monuments, the [Federal Law of Archaeological, Artistic and Historic Monuments and Areas](#) (FLAHAM) provides export controls when goods such as art, antiques and collectible items qualify as national monuments in terms of the FLAHAM. Moreover, to export goods such as artwork from the twentieth and the twenty-first centuries, which do not qualify as monuments, it is necessary to submit an electronic notice. Finally, artwork can be subject to an anti-bribery notice before the tax authorities when its value exceeds 1,198,598 Mexican pesos. The procedures and criteria to obtain and submit such permits and notices are explained below.

Export permits for artistic and historic monuments

In accordance with article 33 of the FLAHAM, artistic monuments are those movable assets with a significant aesthetical value created by Mexican and foreign artists. When an artistic work is considered a monument, it must have an export permit issued by the National Fine Arts and Literature Institute (INBAL).

Under this category of artistic monuments, art antiques and collectible items may be classified. Currently, INBAL considers as artistic monuments paintings, drawings, sculptures, engravings, prints, serigraphs and lithographs, and other works of José María Velasco, José Clemente Orozco, Diego Rivera, Gerardo Murillo Coronado, David Alfaro Siqueiros, Frida Kahlo, Saturnino Herrán, María Izquierdo and Remedios Varo Uranga. According to article 32 of the [FLAHAM Regulations](#), these artistic monuments can only be exported on a temporary basis.

Moreover, antiques that are over 100 years old are subject to an export permit issued by the National Institute of Anthropology and History (INAH) or INBAL when they qualify as a historical monument. According to articles 35 and 36 of the FLAHAM, historical monuments are those goods linked to the history of Mexico since the establishment of the Hispanic culture, in terms of the corresponding declaration statement or by law determination. In this regard, historic monuments determined by law include movable assets located inside properties built during the sixteenth to nineteenth centuries. Relevant documents, manuscripts and books related to the history of Mexico may be considered historic monuments. The term for temporary export depends on its purpose and is determined by INBAL or INAH.

To obtain the 'Export permit for temporary export of artwork declared as an artistic or historical monument' from INBAL it is necessary that applicants submit their request through the Foreign Trade Window (VUCEM). Based on the provisions of article 36 of the Regulations, a bond must be placed in favour of INBAL, to guarantee the return and conservation of the monument.

To obtain a 'Permit for temporary or definitive export of monuments or historical movable assets' from INAH, it is necessary to file an application through VUCEM.

Article 53 of the FLAHAM provides that anyone extracting or intending to extract an artistic or historic monument without permission from INBAL or INAH will be subject to five to 12 years of imprisonment and a monetary fine up to 1,244,650 Mexican pesos. In addition, when non-tariff regulations, such as export permits, are not filed before customs authorities, article 151, section II and article 178, section IV of the Customs Law provide for a precautionary seizure of the goods and a monetary fine equivalent to at least 70 per cent of the commercial value of the goods.

It is important to mention that archaeological monuments are movable assets and real estate resulting from cultures prior to the establishment of Hispanic culture in Mexican territory, as well as human remains, flora and fauna related to these cultures. However, when goods qualify as archaeological monuments, they cannot be exported except for exchanges or donations to governments or foreign scientific institutes by agreement of the President of Mexico.

Export notice of artwork from the twentieth and twenty-first centuries

When exporting artworks from the twentieth and twenty-first centuries that do not qualify as artistic monuments in terms of the FLAHAM, a notice must be submitted before the [National Organisation of Visual Arts](#) (CNAV). Through this notice, the CNAV issues an opinion on the artworks to be exported, notifying that they do not qualify as monuments.

If the interested person is a foreign individual or entity, it must file a writ electronically through VUCEM before the CNAV explaining the reasons for exporting such artwork, the duration of the export and the destination of the goods, among other specific requirements.

Law stated - 30 January 2024

Import controls

- 15** | Other than in relation to endangered species, are there any import controls for cultural property in your jurisdiction? What are the consequences of failing to comply with import controls?

The importation of art, antiques or collectible items may be subject to the following permits when certain conditions are met.

Notice for the importation of artwork from the twentieth and twenty-first centuries

To import artworks into Mexico from the twentieth and twenty-first centuries that do not qualify as artistic monuments in terms of the FLAHAM, it is necessary to submit a notice before the CNAV, which issues an opinion on the artworks to be imported, notifying that the items do not qualify as monuments.

If the applicant is a foreign individual or entity, it must file a writ electronically through VUCEM before the CNAV from INBAL explaining the details of importing the artwork, the duration of the import, the destination of the goods and technical information on the artwork.

Notice for the importation of plastic works from artists whose work has been declared as an artistic or historic monument

With the notice of import of plastic works of artists whose work has been declared as artistic or historical monuments, INBAL, through the General Subdirectorates of Artistic Heritage, issues an authorisation for those works to enter the country.

In accordance with article 33 of the FLAHAM, artistic monuments are those movable assets with a significant aesthetical value created by Mexican artists. Foreign artists' works can also be considered artistic monuments when created in Mexico. INBAL may declare that certain artworks are artistic or historic monuments. Regarding historic monuments, INBAL may declare that a plastic work is a monument when those goods are linked to the history of Mexico after the establishment of Hispanic culture.

Law stated - 30 January 2024

Export and import tax

16 | Does any liability to pay tax arise upon exporting or importing art, antiques or collectibles?

According to the Law of General Taxes on Importation and Exportation (LIGIE), artwork, antiques or collectibles classified under Chapter 97 (Works of art, collectors' pieces and antiques) are exempted from the payment of import or export taxes. However, the importation and exportation of these goods result in liability to pay customs processing fees (DTA). DTA for the importation is calculated as 0.008 per cent of the customs value of the goods, while an export operation is subject to a fixed fee of 409 Mexican pesos.

In general, the importation of goods is levied with a 16 per cent rate of VAT. However, some exceptions may apply when importing certain artwork. In accordance with article 25, sections V and VI of the VAT Law, artwork that, due to its quality and cultural value is recognised as such by authorised institutions such as INBAL, is exempted from the payment of VAT, provided that it is intended for permanent public exhibition and is imported by the author.

The above-mentioned exemptions apply specifically to paintings, drawings, engravings, stamps, lithography, sculptures and other artwork classified under HTS codes 9701.21.01, 9701.91.01, 9702.10.01, 9702.90.99, 9703.10.01, and 9703.90.99 of the LIGIE. In

connection to exports, under article 29, section I of the VAT Law, artwork as other goods are subject to a zero per cent VAT rate when they are exported on a permanent basis.

Law stated - 30 January 2024

DIRECT AND INDIRECT TAXATION

Taxes

- 17** | Outline the main types of tax liability arising from ownership and transfer of art, antiques and collectibles.

Mexican tax legislation does not establish any type of tax liability arising from ownership of assets comprising art, antiques and collectibles.

However, the transfer of property of such goods triggers a direct tax on the income and, in some cases, an indirect tax, such as VAT or duties.

For direct taxes (income tax), the seller of the art, antiques and collectibles must accrue as taxable income the profits from the sale, and pay the corresponding income tax in Mexico. If the seller is a corporation, as a general rule, the profits will be taxed with a fixed rate of 30 per cent; if the seller is an individual, the profits will be taxed with a progressive rate of up to 35 per cent.

In both scenarios, some deductions may be applied to the taxable income.

Regarding individuals, if the sale exceeds 272,655 Mexican pesos, a monthly payment of the estimated income tax on account of the corresponding annual tax must be made. Such monthly payments are subject to the 20 per cent rate applied to the total value of the consideration; if the acquirer is a national resident or a foreign resident with a permanent establishment in Mexico, he or she is obliged to withhold the corresponding monthly income tax of the seller.

In addition, in the case of individuals, the income from the alienation of art of their authorship shall be accrued and taxed as income derived from entrepreneurial activities, in which case, the specific rules applicable to said activities shall apply.

For indirect taxes (eg, VAT), an exemption is provided for sales of art, antiques and collectibles. In these cases, instead of applying the general tax rate of 16 per cent, the tax will not be paid on the transfer of 'used personal property or used goods'; however, this exemption is only applicable when these objects are not alienated by enterprises. If these goods are alienated by enterprises, or by individuals carrying out entrepreneurial activities, the seller shall levy the VAT that results from applying the 16 per cent rate to the total amount of the consideration.

Law stated - 30 January 2024

Tax exemptions

- 18** | Outline any tax exemptions or special conditions applicable to art, antiques and collectibles.

The Income Tax Law provides that individuals who obtain income from the sale of goods may deduct the verified acquisition cost; however, this cost shall not be reduced by reason of the passage of years.

By an executive order issued in 1994, national resident individuals that independently dedicate themselves to creating plastic art may opt to pay with paintings, prints or sculptures of their authorship the income tax and VAT that correspond to the income generated by the sale of their works. This option is also applicable for foreign resident individuals that totally or partially create works of art in Mexico that are sold in the country and trigger federal taxes. This executive order also establishes a special tax regime for individuals that alienate works of art or antiques not of their authorship. Under this regime, as long as the acquirer of the art or antique is a corporation with national residence whose commercial activity is art trading, the individual may opt to pay the income tax triggered by the sale through a withholding tax of 8 per cent applied to the total amount of the transaction. The 8 per cent rate is significantly lower than the standard progressive rate that ranges from zero per cent to 35 per cent for individuals. This special tax regime is also applicable to trade commissions between individuals and corporations whose activity is art trading.

The VAT Law sets an exemption for the 16 per cent import VAT when recognised works of art are imported to the national territory for permanent public display. The same exemption applies for recognised works of art created on foreign territory by Mexican nationals or national residents that are imported to Mexico by their authors.

In those cases of exporting goods, article 29 of the Mexican VAT Law provides that 'the companies resident in the country shall calculate VAT by applying the rate of 0% to the value of the sale of goods when they are exported.'

However, this article will not be applicable to individuals who do not meet the rules to be considered as a 'company' and therefore does not update the normative precept for the application of the zero per cent rate in the exportation of goods.

In addition, article 9, part IV of the LIVA, expressly provides for an exemption in which no VAT will be paid on the disposal of goods which are regarded as 'used movable goods'.

Some Art such as paintings or certain antiques are considered as 'used movable property', as they have already been used and are in accordance with the provisions of Rule 11.1.6 of the Miscellaneous Tax Resolution applicable in 2023, which states that 'works of plastic arts and antiques are regarded as used movable goods within the meaning of Article 9, Section IV of the VAT Act'.

Law stated - 30 January 2024

BORROWING AGAINST ART

Types of security interest

- 19 | In your jurisdiction what is the usual type of security interest taken against art, antiques and collectibles?

Property that constitutes movable tangible or intangible assets of the debtor can be used to secure obligations of the debtor by means of a pledge agreement granted in favour of the creditor. Traditional pledge agreements may cover art, antiques and collectibles. For this type of pledge, according to Mexican law, it is necessary to dispossess the debtor of the pledged assets to perfect the security interest created by the pledge agreement. This can be achieved by delivering the pledged assets to the creditor or to a third party to act as a depository for the benefit of the creditor.

Mexican law also contemplates another form of pledge without dispossessing the debtor of the pledged assets in which the debtor may retain possession of its assets and would be allowed to use it in its ordinary course of business. The pledged assets must be movable tangible or intangible and may be existing or future assets. Art, antiques and collectibles may be also covered by this type of pledge when the debtor maintains the possession of the art, antique or collectible.

However, as these types of assets can be considered manifestations of national culture, the Mexican government can impose certain limitations by declaring them to be artistic monuments through an administrative procedure established in Mexican law. Artistic monuments can still be granted as collateral and be transferred or sold, provided that certain registration and notification requirements are fulfilled.

Law stated - 30 January 2024

Consumer loans

- 20** | If the borrower borrowing against art assets in your jurisdiction qualifies as a consumer, does the loan automatically qualify as a consumer loan, and are there any exemptions allowing the lender to make a non-consumer loan to a private borrower?

Loans against art assets will not automatically be considered consumer loans.

Law stated - 30 January 2024

Register of security interests

- 21** | Is there a public register where security interests over art, antiques or collectibles can be registered? What is the effect of registration? Is the security interest registered against the borrower or the art?

To be enforceable against third parties, the pledge agreement must be recorded with the Public Registry of Movable Collateral.

Although the pledge is perfected between the parties by the delivery of the assets, it will be necessary to notarise it and record it with the public registry of the domicile of the debtor to have preference for payment over other creditors, except for other mandatory preferred creditors (eg, employees of the debtor and the tax authorities) and so that the guarantee is opposable against third parties.

Regarding artistic monuments, the owner must register the artwork in the Public Registry of Monuments and Artistic Areas (this registration does not guarantee the authenticity of the artwork) and notify the National Institute of Fine Arts of (1) any change of owner or holder (which should be made by public deed), (2) any lien or guarantee constituted over the artistic monument, (3) any change of location even if the move is temporary and (4) any alteration, change or deterioration.

Law stated - 30 January 2024

Non-possessory security interests

22 | Can the lender against art collateral perfect its security interest without taking physical possession of the art?

Yes, a non-possessory pledge allows the pledgor to grant a security interest in favour of the pledgee over specifically identified movable assets (eg, art) allowing the pledgor to retain possession of the pledged assets and to use such assets in accordance with the terms agreed upon in the financing arrangements.

Law stated - 30 January 2024

Sale of collateral on default

23 | If the borrower defaults on the loan, may the lender sell the collateral under the loan agreement, or must the lender seek permission from the courts?

The execution of the pledge depends on whether the pledge is with or without dispossession of the debtor's pledged assets.

In a traditional pledge, the creditor is entitled to request the court to authorise the sale of the pledged assets if any of the following occurs:

- a default in the secured obligations;
- the price of the pledged assets is reduced to an amount not sufficient to equal the amount of the underlying obligation plus 20 per cent; or
- the debtor fails to provide the creditor with the necessary funds to pay any required exhibitions under negotiable instruments on time.

For a non-possessory pledge, the pledge would provide for the circumstances under which the assets that comprise the security could be sold or in any other way disposed by the debtors and the manner in which the proceeds of such sale or disposition would be treated, allowing the possibility of including a non-judicial foreclosure procedure that would have to be agreed by the pledgor. The creditor would follow the non-judicial foreclosure procedure set forth in the pledge agreement in case of any breach of the secured obligations. Nevertheless, the debtor shall have the option to authorise the payment of the underlying debt with the pledge cash, if any, avoiding all foreclosure procedures.

Law stated - 30 January 2024

Ranking of creditors

- 24 | Does the lender with a valid and perfected first-priority security interest over the art collateral take precedence over all other creditors?

The pledge would provide a first-priority security interest on the pledged assets in favour of the creditor, subject to the rights of mandatory preferred creditors, such as employees of the debtor and certain tax authorities.

Law stated - 30 January 2024

INTELLECTUAL PROPERTY RIGHTS

Creator copyright

- 25 | Does copyright vest automatically in the creator, or must the creator register copyright to benefit from protection?

The Federal Copyright Law (LFDA), building on the international standards set forth by the Berne Convention, establishes that original works of authorship shall be protected even absent registration or publication. Nevertheless, registration before the National Copyright Institute (INDAUTOR) – an independent agency of the Ministry of Culture responsible for the administrative enforcement of copyright laws – grants legal certainty and publicity to the copyrighted work. Therefore, although registration in Mexico is not mandatory, it is advisable to register copyrighted works as this grants pre-emptive rights in favour of its owner (meaning that the burden of proving the ownership over the copyrighted work will shift to benefit the author, who will be the one stated on file unless proven otherwise).

The basic requirements for obtaining authors' rights protection are outlined below.

- **Fixation:** authors' rights protection exists in Mexico as a matter of law from the moment of fixation, which is defined as '[t]he incorporation of letters, signs, sounds, images and others elements in which the work has been expressed, or the digital embodiment of said elements, which, in any form or material, including electronic means, permits its perception, reproduction or any form of communication.' The lack of formalities required to obtain authors' rights protection is expressly mentioned in the LFDA. This statute provides that the '[r]ecognition of authors' rights and neighbouring rights does not depend on prior registration nor on any document or formality'.
- **Authorship:** only individuals can be granted authors' right protection. The LFDA makes clear that legal entities (or corporations) may only be holders of authors' rights as agents or representatives of the original author, and may only exploit or acquire the patrimonial rights of a work.
- **Originality:** under the LFDA, a work must be original to qualify for authors' rights protection.

Law stated - 30 January 2024

Copyright duration

26 | What is the duration of copyright protection?

The LFDA grants an author both moral and patrimonial rights. Moral rights recognise the author as the first and sole perpetual owner of the rights, and patrimonial rights allow the author to exploit the work exclusively or authorise others to exploit it. An author's patrimonial rights are protected in Mexico for the life of the author plus 100 years. In the case of joint works, the protection is granted for the same period after the death of the last surviving author. Moral rights protection lasts for a perpetual term that can be transmitted to the legitimate heirs or to any person through a will or any other legal means of transmission of rights after an individual is deceased.

Law stated - 30 January 2024

Display without right holder's consent

27 | Can an artwork protected by copyright be exhibited in public without the copyright owner's consent?

Under the provisions of the LFDA, holders of an author's patrimonial rights have the right to authorise or prohibit the public communication of the author's literary or artistic works, including through public exhibition by any means or procedure. The reproduction, communication and distribution of drawings, paintings, pictures and audiovisual works visible from public places are expressly excluded from this right.

As a general rule, and unless otherwise agreed to, the sale of any pictorial, sculptural or plastic artwork does not include the right to reproduce such work. Although the acquirer may, at its discretion, display it and include it in catalogues, the author may oppose the exercise of these rights when the exhibition is carried out in conditions that may harm the author's honour or professional reputation.

Law stated - 30 January 2024

Reproduction of copyright works in catalogues and adverts

28 | Can artworks protected by copyright be reproduced in printed and digital museum catalogues or in advertisements for exhibitions without the copyright owner's consent?

Pursuant to the provisions of the LFDA, the patrimonial right of reproduction and publication permits the making of one copy or several copies of an artwork. These copies can be

made in any tangible form, including temporary or permanent storage by electronic means. However, this right is subject to several limitations.

Artworks protected by copyright may be reproduced under certain circumstances without the copyright owner's consent (including for scientific, literary or artistic criticism) provided the normal exploitation of the work is not adversely affected thereby and that no alteration is made to the work. For instance, a lawful user of a literary or artistic work can make one copy of such works for private use, provided that the copy is made without intent to profit.

On the other hand, the LFDA establishes that literary and artistic works may be used in shops or establishments open to the public that distribute copies of such artworks, provided that no charge is made for admission and that the use does not go beyond the place in which the sale is effected, and serves the sole purpose of promoting the sale of copies of the relevant artworks. The holders of the patrimonial rights of the author may claim compensatory remuneration for any copying or reproduction done without their consent.

Law stated - 30 January 2024

Copyright in public artworks

29 | Are public artworks protected by copyright?

Original works of art that have been fixed into public spaces are not excluded from protection according to the provisions of the LFDA; therefore, an argument can be made that they are protected by copyright laws in Mexico.

Law stated - 30 January 2024

Artist's resale right

30 | Does the artist's resale right apply?

The artist's resale right is not regulated or covered in the LFDA.

Law stated - 30 January 2024

Moral rights

31 | What are the moral rights for visual artists? Can they be waived or assigned?

In Mexico, moral rights are considered attached to the author – hence, they are perpetual, inalienable, irrevocable and cannot be waived, seized or pledged. Under the LFDA, an author has the moral right to:

- determine if the work is to be published and the way to do it, or to determine the mechanisms to keep his or her work unpublished (unedited);

- demand the recognition of author status with respect to the work and order its publication as an anonymous or pseudonymous work;
- demand respect for the work, opposing any deformation, mutilation or modification, as well as to any action or attempt that causes a demerit or prejudice to the author's reputation;
- modify the work;
- withdraw the work from commerce; and
- oppose any attribution of a work that is not of his or her creation.

Heirs may exercise only the rights provided for in subparagraphs I, II, III and VI, whereas the state (where applicable – ie, when the works are of interest to the national cultural heritage) may exercise only the rights provided for in subparagraphs III and VI.

Law stated - 30 January 2024

COMMISSIONS

Accounting to the principal

- 32** | Does the law require the agent to account to the principal for any commission or other compensation received by the agent while conducting the principal's business?

There are no rules under Mexican Law and, therefore, it would be subject to the terms of the agency agreement between the parties.

Law stated - 30 January 2024

Principal's consent

- 33** | Does disclosure to the principal that the agent will receive a commission allow the agent to keep the commission unless the principal objects?

There are no rules under Mexican Law and, therefore, it would be subject to the terms of the agency agreement between the parties.

Law stated - 30 January 2024

Undisclosed agent commission

- 34** | If a third party pays a commission to an agent that is not disclosed to the principal, can the principal claim the commission from the third party?

There are no rules under Mexican Law and, therefore, it would be subject to the terms of the agency agreement between the parties.

Law stated - 30 January 2024

AUCTIONS

Regulation

- 35** | Are auctions of art, antiques or collectibles subject to specific regulation in your jurisdiction?

There is no specific regulation in Mexico regarding auctions or provisions to transactions related to them.

Law stated - 30 January 2024

Ancillary services by auctioneers

- 36** | May auctioneers in your country sell art, antiques or collectibles privately; offer advances or loans against art, antiques or collectibles; and offer auction guarantees?

As there is no specific regulation, auctioneers may sell art, antiques or collectibles privately, and offer advances or loans in the same terms as any individual or private entity.

Law stated - 30 January 2024

SPOILIATION DURING THE NAZI ERA

Claims to Nazi-looted art

- 37** | In what circumstances would the heirs of the party wrongly dispossessed typically prevail over the current possessor, if a court in your country accepted jurisdiction and applied its own law to a claim to art lost during the Nazi era?

Mexico has no specific regulation or precedent on the matter and general prescription rules will most likely apply.

Law stated - 30 January 2024

Ad hoc tribunal to hear claims outside court system

- 38** | Is there an ad hoc body set up to hear claims to Nazi-looted art?

No.

Law stated - 30 January 2024

LENDING TO MUSEUMS

Insurance

- 39** | Who is responsible for insuring art, antiques or collectibles loaned to a public museum in your jurisdiction?

Obligations such as insurance would have to be agreed and established between the parties in the corresponding agreement.

Law stated - 30 January 2024

Immunity from seizure

- 40** | Are artworks, antiques or collectibles loaned to a public museum in your country immune from seizure?

There is no specific regulation. In addition, there is no legal definition of 'museum'. However, general seizure rules apply, which means that only assets owned by the debtor (or the joint guarantor) are subject to seizure.

Law stated - 30 January 2024

CULTURAL PATRIMONY

National treasures

- 41** | Is there a list of national treasures?

Under Mexican law, national treasures are classified as artistic monuments, which are assets with a relevant aesthetic value declared as such by the Mexican government with the following considerations:

- only the artworks of dead artists can be declared as artistic monuments, which means that while the artist is still alive, the art can be traded without further limitations;
- the artworks of Mexican artists can be declared as artistic monuments regardless of the place they are produced; however, in the case of artworks produced by foreign artists, they can only be declared as artistic monuments if they are produced in Mexico;
- the declaration of artistic monuments can include all or only part of an artist's work; and
- works of artists whose identity is unknown can be declared artistic monuments.

Currently, the National Fine Arts and Literature Institute (INBAL) considers as artistic monuments those paintings, drawings, sculptures, engravings, prints, serigraphs and

lithographs, and other works of José María Velasco, Jose Clemente Orozco, Diego Rivera, Gerardo Murillo Coronado, David Alfaro Siqueiros, Frida Kahlo, Saturnino Hérran, María Izquierdo and Remedios Varo Uranga.

The owner of an artistic monument must comply with registration and notification requirements and must preserve the artwork and, if necessary, restore it, with authorisation from INBAL. The Mexican Ministry of Culture and INBAL may conduct inspection visits to monitor compliance with the law.

Likewise, as a general rule, the export of artistic monuments is forbidden; however, INBAL can authorise exceptions for a specific period of time provided that certain actions are granted to ensure re-entry to Mexico, or indefinitely when the artistic monuments are acquired by a museum or gallery of recognised prestige to be exhibited publicly in a manner convenient to the cultural interest of Mexico. Likewise, artistic monuments whose integrity could be affected by their transportation or by changing the conditions in which they are located cannot be temporarily exported.

Law stated - 30 January 2024

Right of pre-emption

42 | If the state is interested in buying an artwork for the public collections, does it have a right of pre-emption?

No.

Law stated - 30 January 2024

Automatic vesting in the state

43 | In what circumstances does ownership in cultural property automatically vest in the state?

Ownership of archaeological monuments (movable assets and real estate resulting from cultures prior to the establishment of Hispanic culture in Mexican territory, as well as human remains, flora and fauna related to these cultures) vests in the Mexican state.

Law stated - 30 January 2024

Illegally exported property claimed by foreign state

44 | How can a foreign state reclaim in your jurisdiction cultural property illegally exported from its territory?

On 4 January 1973, Mexico became a signatory to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. The Convention was one of the first worldwide agreements on the protection of

cultural property to reduce illicit trade in antiques and cultural goods. Furthermore, as of 27 December 2021, Mexico is officially part of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (the UNIDROIT Convention).

Under the UNIDROIT Convention, the possessor of a cultural object that has been stolen must return it. According to article 5 of the Convention, a state party may request the court or other competent authority of another state party to order the return of a cultural object illegally exported from the territory of the requesting state. Under this scenario, the court or the competent authority of the state addressed shall order the return of an illegally exported cultural object if the requesting state establishes that the removal of the object from its territory significantly impairs one or more of the following:

- the physical preservation of the object or its context;
- the integrity of a complex object;
- the preservation of information of, for example, a scientific or historical nature; or
- the traditional or ritual use of the object by a tribal or indigenous community, or if it has been established that the object is of significant cultural importance for the requesting state.

The request for return must contain or be accompanied by information of a factual or legal nature that may assist the court or the competent authority of the state addressed in determining whether the above-mentioned requirements have been met. This request shall be brought within a period of three years from the time when the requesting state knew the location of the cultural object and the identity of its possessor, and in any case within a period of 50 years from the date of the export or from the date on which the object should have been returned (temporary exportation for purposes of exhibition, research or restoration).

Moreover, and according to the information provided by the Ministry of Culture and the Ministry of International Affairs, Mexico has signed different bilateral agreements regarding the protection, preservation, return and restitution of cultural property and the prevention of theft, clandestine excavation, and illegal import and export of cultural property.

Law stated - 30 January 2024

NON-FUNGIBLE TOKENS

Regulation and case law

45 | How are non-fungible tokens (NFTs) regulated in your jurisdiction? Is there any case law on NFTs in your jurisdiction?

Non-fungible tokens (NFTs) are not regulated in Mexico and, therefore, there is no case law to date in connection to such. However, under certain circumstances NFTs can be interpreted as analogous to certain rights recognised under Mexican law (including copyrights or property laws), depending on the nature of the specific NFT and the asset to which the NFT relates to, or is referenced (eg, art, shares or stock, etc).

Law stated - 30 January 2024

AI-GENERATED ART

Regulation and case law

46 | How is AI-generated art regulated in your jurisdiction? Is there any case law on AI-generated art in your jurisdiction?

Generative AI has not yet been regulated in Mexico. The topic has aroused significant attention from legislators and regulators alike. Mexican Congress has already drafted several bills of law, but they have not yet been discussed nor voted on. The Senate created, under the advice of UNESCO, the Mexican Alliance of Artificial Intelligence, ANIA, whose members have provided advice and opinions on how to properly regulate AI in Mexico. Despite being an electoral year, we can expect this topic will advance, mirroring what is being done in the United States and the EU, among other countries. On the regulatory side are the Telco regulator (IFT), privacy regulator (INAI), consumer protection (Profeco) and trademark/copyright (IMPI/Indautor). Most of them have issued guidelines and opinions, but none are binding.

We are not aware of any case law in local or federal courts where generative AI has been discussed, neither as a topic nor the legal consequences of their actions. There is a newsworthy criminal case related to sexual deepfakes, which might open the debate around generative AI.

At the same time, different industries have manifested their concern, particularly the collective societies. While most of them relate to musical work, they share alike the same concerns around art and generative AI.

Law stated - 30 January 2024

Copyright

47 | Is there copyright in AI-generated art in your jurisdiction?

No. The current regulation does not recognise nor clarify what happens with AI-generated works. The law is precise in defining the author as a physical person. This is consistent with the Berne Convention and the Universal Convention on Copyright, which, despite lack of definition of author, mentions that the rights are inherited after the author's death, and thus, such requires being a physical person. Despite Mexico lacking a case similar to the Naruto monkey case, it has repeatedly insisted that authors are only physical persons.

Future regulations in Mexico will likely cover AI-generated works, authorship and copyright. However, we should consider that depending on the AI model used, in some cases it will be extremely hard to determine either authorship or liability as deep learning can behave as a black box.

Law stated - 30 January 2024

ANTI-MONEY LAUNDERING AND SANCTIONS

AML compliance

48 | What anti-money laundering (AML) compliance obligations are placed on the art trade?

According to article 17 of the Anti-Money Laundering Law, the trade of artworks is subject to an anti-money laundering notice. As before explained, this notice must be filed electronically by those who, with the authorisation granted by the Ministry of Finance and Public Credit, promote on behalf of others the customs clearance regarding the export of the artwork (customs brokers) or those involved in purchase or sale transactions of artwork with a value higher than 1,198,598 Mexican pesos. In terms of articles 53 and 54 of the Anti-Money Laundering Law, failure to comply with the filing of notices under this law carries a penalty of 49,786 to 497,860 pesos.

Law stated - 30 January 2024

Sanctions compliance

49 | What sanctions-related compliance obligations are placed on the art trade?

According to article 17 of the Anti-Money Laundering Law, regardless of whether an artistic work qualifies as a monument or not, paintings and drawings are subject to an anti-money laundering notice when their value exceeds 1,198,598 Mexican pesos. This notice must be filed electronically by those who, with authorisation granted by the Ministry of Finance and Public Credit, promote on behalf of others the customs clearance regarding the export of the artwork (customs brokers). In terms of articles 53 and 54 of the Anti-Money Laundering Law, failure to comply with the filing of notices under this law carries a penalty of 49,786 to 497,860 pesos.

Law stated - 30 January 2024

ENDANGERED SPECIES

CITES

50 | Is your jurisdiction a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

Yes, CITES entered into force in Mexico in September 1991. Thus, regarding its implementation in Mexico, there are three CITES authorities, as follows:

- the administrative authority is the General Directorate of Wildlife of the Ministry of Environment and Natural Resources (SEMARNAT);

- the scientific authority is the National Commission for the Knowledge and Use of Biodiversity; and
- the law enforcement authority is the Federal Prosecutor's Office for Environmental Protection.

Law stated - 30 January 2024

Specific endangered animal products

- 51 | Are there any special rules for works of art made of elephant ivory, rhino horn or other specific endangered animal products?

The General Law of Wildlife provides that the import, export and re-export of specimens, parts and derivatives of wildlife species (including elephant ivory and rhino horn) are covered by CITES, and that all activities in connection with the trade of these specimens, parts or derivatives, or goods comprising them, are ruled by the Convention.

CITES states that the import of any specimen of a species comprising parts of endangered animal products requires a specific authorisation, a special import permit and an export permit or a re-export certificate issued by the Mexican authorities.

In addition, Mexico strictly regulates the export of its native animal and plant species, such as parrots, reptiles, cacti, palms, cycads and orchids, some of which are rare and endangered in the wild. If a person considers trading any piece of art or goods made from the leather of endangered species, the corresponding permits and authorisations must be complied with in all circumstances.

Law stated - 30 January 2024

Pre-CITES endangered species

- 52 | Is the sale, import or export of pre-CITES endangered species subject to a licence?

According to article 55 of the General Law of Wildlife and article 56 of its Regulations, the importation, exportation and re-exportation of specimens, parts and derivatives of wild species included in CITES shall be carried out in accordance with the Convention. The General Law of Wildlife does not establish a distinction between pre- or post-CITES endangered species, but prior permits apply to species regardless of whether they are listed in CITES.

In this regard, article III of CITES establishes that the export and import of species included in Appendix I (Endangered species) shall require the prior grant and presentation of an export or import permit, which shall only be granted when certain conditions are met, for instance:

- the scientific authority of the state of import or export has advised that such import or export will not be detrimental to the survival of that species;

- a management authority of the state of export is satisfied that the specimen was not obtained in contravention of the state's laws on flora and fauna;
- a management authority of the state of export is satisfied that any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment;
- a scientific authority of the state of import has advised that the import will be for purposes that are not detrimental to the survival of the species involved; and
- a management authority of the state of import is satisfied that the specimen is not to be used for primarily commercial purposes.

In connection with the above, according to Mexican laws, a permit must be obtained from the SEMARNAT when importing, exporting or re-exporting specimens, parts and derivatives of wildlife regardless of whether they are listed in the CITES Appendices. For these purposes, the procedure is carried out before the SEMARNAT.

Law stated - 30 January 2024

Post-CITES endangered species

53 | Is the sale, import or export of post-CITES worked or antique endangered species authorised? On what conditions?

The General Law of Wildlife does not differentiate between pre- or post-CITES endangered species, but establishes that it is necessary to obtain a permit from the SEMARNAT when importing, exporting or re-exporting specimens, parts and derivatives of wildlife regardless of whether they are listed in the CITES Appendices.

The procedure is carried out before the SEMARNAT and the corresponding form must be filled out. The applicant must submit the documentation that proves the legal origin of the specimens, parts or derivatives (through invoices or sales notes, authorisation of use or subsistence authorisation). Finally, proof of payment of fees must be submitted, taking into account that for the reception and processing of each application, regardless of its resolution, a fee of 811 Mexican pesos must be paid.

Law stated - 30 January 2024

CONSUMER PROTECTION

Cancelling purchases

54 | In what circumstances may consumers cancel the sale of art, antiques or collectibles?

There are no specific rules regarding art, antiques or collectibles. However, general rules would apply and consumers may report deceiving advertisements, which may result in the authorities imposing certain fines or cancelling the sale of such goods.

Law stated - 30 January 2024

Duties of businesses selling to consumers

55 | Are there any other obligations for art businesses selling to consumers?

No.

Law stated - 30 January 2024

REGULATION

Art market regulator

56 | Is there a specific regulatory body overseeing the art market or certain business activities carried out within the art market in your jurisdiction?

No.

Law stated - 30 January 2024

Other regulators

57 | What other forms of regulation are professional art market participants in your jurisdiction subject to?

Not applicable.

Law stated - 30 January 2024

UPDATE AND TRENDS

Key developments of the past year

58 | Are there any other current developments or emerging trends that should be noted?

There are no updates at this time.

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Law stated - 30 January 2024



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UPDATE AND TRENDS

Key developments of the past year

BUYING AND SELLING

Passing of title

1 | When does ownership of art, antiques and collectibles pass from seller to buyer?

In principle, ownership passes to the buyer with the transfer of possession (article 714, [Civil Code](#); article 184, [Code of Obligations](#)). Instead of a physical transfer of possession, the parties may agree that the buyer receives the means to access the art, antique or collectible, for example because it will remain stored at a freeport (article 922, Civil Code). However, the parties may also provide that the buyer takes possession of the art, antique or collectible and acquires ownership only on receipt of payment. In the latter event, the seller's retention of title must be registered in the official debt enforcement register at the buyer's place of residence (article 715, Civil Code).

Law stated - 13 February 2024

Implied warranties

2 | Does the law of your jurisdiction provide that the seller gives the buyer any implied warranty?

Statutory law provides a warranty of title according to which the seller must transfer the collectible free from any rights enforceable by third parties against the buyer that exist at the time the contract is concluded (article 192, Code of Obligations). Buyers are therefore entitled to a legal claim if they have bought a collectible that actually belonged to a third party. No implied warranty of title exists if, at the time of the agreement, the buyer knew or should have known of any third-party rights. Actions for breach of warranty of title regarding cultural property as defined by the [Cultural Property Transfer Act \(CPTA\)](#) become time-barred one year after the buyer discovered the defect of title, but in any event, 30 years after the contract was concluded (article 196a, Code of Obligations). To qualify as cultural property under the CPTA, the property must:

- belong to one of the categories provided for under article 1 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the 1970 UNESCO Convention); and
- be meaningful property from a religious or secular point of view for archaeology, prehistory, literature, art or sciences.

The Swiss federal administration published a checklist to help determine whether a property can be considered as cultural property, which includes a description of categories of the 1970 UNESCO Convention and list of significant areas such as archaeology, art or science.

The implied warranty of title can be limited or excluded by contract. Such an agreement is, however, void if the seller has intentionally concealed the right of a third party. Owing to the protection of the good-faith purchaser, the warranty of title was of little practical relevance.

Since the limitation period for a good-faith acquisition has increased to 30 years for cultural property, this is likely to change in the future.

Law stated - 13 February 2024

Registration

- 3 | Can the ownership of art, antiques or collectibles be registered? Can theft or loss of a work be recorded on a public register or database?

No. Ownership of art, antiques or collectibles cannot be registered in Switzerland, nor is there any public register or database of stolen art. Storing cultural property at freeports is subject to inventory, registering a date of deposit, description of the object, its provenance, its value and the owner's identity.

In sale transactions whereby the buyer acquires possession of the property before payment is made, the parties may register the seller's retention of title in the official debt enforcement register at the buyer's place of residence, but this rarely occurs in practice.

Law stated - 13 February 2024

Good-faith acquisition of stolen art

- 4 | Does the law of your jurisdiction tend to prefer the victim of theft or the acquirer in good faith of stolen art?

In principle, Swiss law protects the acquirer in good faith. The acquisition in good faith of an artwork in due possession of the transferor is not open to challenge, regardless of whether the transferor lacked actual power of disposal, unless the artwork was either stolen or lost or otherwise taken from the original owner against their will.

In the event of stolen or lost artwork, the original owner can claim it back (article 934, Civil Code). The claim to recover cultural property falling under the definition of the CPTA is limited to one year from the day the owner discovers the current possessor's identity and location of the object, and 30 years since the loss of the object. Before the entry into force of the CPTA on 1 June 2005, artworks and collectibles were subject to a five-year limitation period, which is still applicable for chattels other than cultural property.

For artwork sold at auction or by an art dealer, the original owner may only reclaim his or her property against the reimbursement of the price paid by the good-faith purchaser. This price does not include any increase in value of the artwork since the purchase.

The question of whether the purchaser was in good faith when buying the artwork must be determined based on the facts of the case. The good-faith purchaser must exercise the required care and attention in the particular circumstances. The Federal Court has not imposed a general duty on the buyer to investigate the seller's ownership title. Instead, it distinguishes between businesses that are particularly exposed to the supply of goods of dubious origin and those that are not so exposed. In the latter event, the buyer has a duty to investigate the seller's legitimacy only if any suspicions have arisen. In the former event,

the buyer must be inquisitive at the outset of the transaction. Federal case law suggests that the antiquities market is considered a business that is particularly exposed to title risks, whereas the Federal Court has held otherwise for the sale of works of classical modern art from the former Soviet Union (see Federal Court decisions BGE 122 III 1 and BGE 139 III 305). More importantly, the courts take into account the buyer's expertise and knowledge of the market to establish the requisite level of due diligence. Heightened expectations are not only held against dealers and auction houses, but also collectors. Guidelines and ethics codes of dealers' associations may serve judges as a basis to determine the diligence required under the given circumstances. The CPTA provides further details.

In terms of the burden of proof, there is a presumption of good faith (article 3, Civil Code). Hence, the party alleging bad faith bears the burden of proof (article 8, Civil Code), which can be difficult in practice.

Law stated - 13 February 2024

Acquiring title to stolen art through prescription

5 | If ownership in stolen art, antiques or collectibles does not vest in the acquirer in good faith, is the new acquirer protected from a claim by the victim of theft after a period of time?

Yes. The acquirer in good faith of stolen or lost cultural property is protected upon expiry of the limitation period, that is if the original owner failed to file a claim one year after they knew about the current possessor's identity and location of the object, and 30 years after the loss.

Law stated - 13 February 2024

Passing of risk of loss and damage

6 | When does risk of loss or damage pass from seller to buyer if the contract is silent on the issue?

In general, the risk of loss or damage is passed to the buyer upon delivery, unless otherwise provided by law or agreed upon by the parties. The buyer bears the risk if:

- the artwork fails to be delivered within the agreed time limit because of a reason attributable to the buyer, who bears the risk from the date of breach of contract;
- the artwork was delivered to a transportation carrier and is in transit, the risk being passed to the buyer on the date when the contract was established, unless otherwise agreed by the parties;
- the artwork is delivered to a carrier according to the buyer and seller's agreement, at the place as the buyer designated, and if there is no reached or clear agreement and transportation is needed, the risk is borne by the buyer after the artwork is delivered to the first carrier; and
-

the artwork is placed at the delivery place and the buyer fails to take the delivery, therefore resulting in a breach of the contract.

Law stated - 13 February 2024

Due diligence by buyer

7 | Must the buyer conduct due diligence enquiries? Are there non-compulsory enquiries that the buyer typically carries out?

Buyers need to perform appropriate due diligence in order to rely on good faith. It will typically involve requesting information from the seller on the provenance of the work and consulting the relevant sale catalogues and stolen art registers.

Law stated - 13 February 2024

Due diligence by seller

8 | Must the seller conduct due diligence enquiries?

The CPTA establishes a general and a specific duty of diligence for the sale of cultural property. Both the general and the special duty of diligence apply only to transactions involving at least one person active in the art trade or auction business. These are defined as persons domiciled in Switzerland and companies having their registered office in Switzerland that acquire cultural property for the purpose of reselling it for their own account or on behalf of third parties. It also applies to persons domiciled abroad and to companies having their registered office abroad, provided they conduct more than 10 transactions with cultural property with a turnover of more than 100,000 Swiss francs a year for the purpose of reselling the property for their own or a third party's account.

Under the general duty of diligence, any seller must refrain from transferring ownership to the cultural property unless they can assume, under the given circumstances, that the object was neither stolen nor lost against the will of the owner or illegally excavated, and not exported in breach of a bilateral agreement (article 16(1), CPTA). This general duty of diligence only applies to art sales involving a transfer of ownership, unlike loans, storage, donations and other legal relationships. The person bearing the duty is primarily the owner of the cultural property or the intermediary acting on the owner's behalf.

Moreover, under the specific duty, professional sellers are obliged, according to article 16(2) of the CPTA, to:

- establish the identity of the supplier or seller and ask for a written declaration from them of their right to dispose of the cultural property;
- inform their customers about existing import and export regulations of the contracting states;
-

maintain written records on the acquisition of cultural property by specifically recording the origin of the cultural property, to the extent known, and the name and address of the supplier or seller, a description as well as the sales price of the cultural property (such records must be stored for 30 years); and

- provide all necessary information on fulfilling this duty of diligence to the Specialised Body for the International Transfer of Cultural Property at the Swiss Federal Office of Culture (the Specialised Body).

Art collectors who do not act as professionals pursuant to article 16 of the CPTA may be subject to criminal sanctions should they sell, import, distribute, procure, acquire or export cultural property stolen or otherwise lost against the will of the owner (article 24, CPTA).

Further due diligence requirements are provided by anti-money laundering provisions and import and export laws.

Law stated - 13 February 2024

Acquisition in bad faith

- 9 | Can ownership in art, antiques or collectibles vest in the acquirer in bad faith after a period of time?

No, ownership never passes to a purchaser in bad faith (article 936, Civil Code).

Law stated - 13 February 2024

Register of sales

- 10 | Must a professional seller of art, antiques or collectables maintain a register of sales?

Yes if the sale concerns a cultural property item with a purchase or estimate price over 5,000 Swiss francs. The dealer must record the identity of the seller or consignor (such as name, address, nationality, date of birth, etc), the location of origin or discovery of the property, a description (including information such as the kind of object, its dimensions, weight, subject matter, any inscriptions, etc), date of the sale and sale price. The Specialised Body may request the dealer to consult the register.

Law stated - 13 February 2024

Protection of interest in consigned works

- 11 | How can consignors of artworks to dealers protect their interest in the artwork if the dealer goes into liquidation?

A consignment contract or a deposit contract that makes it clear that the consignor is the actual owner of the work is the most practicable option. There is no register under Swiss law whereby consignors can register interest in consigned artworks. If the artwork is stored at a freeport, it is listed in an inventory together with the identity of its owner.

Law stated - 13 February 2024

Cancelling the purchase of a forgery

12 | If the buyer discovers that the art, antique or collectible is a forgery, what claims and remedies does the buyer have?

The buyer of a forgery may rescind the sale agreement either on the grounds of a fundamental mistake or under the seller's liability against defects. Both are subject to any disclaimer included in the contract. Under a mistake claim, the seller must allege that the description of the object at sale, which is part of the contract, differed from what the object actually is – a typical example is the sale of a forgery (article 24, Code of Obligations). However, should the buyer have known about the art object's attribution, the court will likely reject their claim based on the principle of fairness in commercial transactions.

Liability against defects is a cause of action specific to sale contracts. Upon the delivery of the object, buyers must immediately verify its condition and notify the seller of any defects. The buyer may then cancel the sale contract and request the reimbursement of the price paid plus interest and expenses against the restitution of the artwork.

Law stated - 13 February 2024

Cancelling the sale of a sleeper

13 | Can a seller successfully void the sale of an artwork of uncertain attribution subsequently proved to be an autograph work by a famous master by proving mistake or error?

Sellers may rescind the sale agreement based on a mistake claim. A cause of action for mistake arises when the seller misconceived the art object's attribution, such as believing the painting to be by a follower instead of the master painter. The seller must show that, had they known about the true situation, they would not have concluded the sale agreement (or at least not under the same subject terms of the contract). Courts further assess whether any third party hypothetically placed in the position of the claimant would have considered the mistake to be decisive to such an extent that it would not have concluded the agreement, or at least only under different conditions. The mistake claim is subject to any disclaimer included in the contract.

For sales at auction, sellers may act based on the auction house's duty of care, the extent of which is determined by the parties' express or implicit agreement, including any disclaimer of liability. The duty of care supposes that the auction house acts in accordance with the level of diligence that may be expected of a knowledgeable professional acting under the same circumstances. Thus, it has an obligation to use all the diligence that a conscientious

auction house would use in the same situation to attribute and evaluate the consigned artwork.

Law stated - 13 February 2024

EXPORT AND IMPORT CONTROLS

Export controls

- 14 | Are there any export controls for cultural property in your jurisdiction? What are the consequences of failing to comply with export controls?

Under Swiss law, only a narrow range of cultural property, which is listed in the federal or cantonal register, requires specific authorisation to be exported. A specific export licence also applies to objects containing endangered species according to the CITES Convention. Moreover, Iraqi and Syrian cultural property that was stolen or illicitly exported from those countries is protected by specific legislation prohibiting their import, export, transit, sale and distribution. All other cultural property can be exported upon customs clearance.

A person who exports or imports cultural property must include in the customs form the cultural property object type and a description of the place of manufacture, or if it originates from archaeological or palaeontological excavations, its place of discovery. The person importing cultural property from a 1970 UNESCO Convention contracting state must further indicate whether, according to the laws of that state, an export licence was required for the property. If so, the required licence must be submitted with the form.

In the case of suspicion, customs authorities may withhold cultural property. Illegally exporting cultural property is a criminal offence, which may lead to fines of up to 200,000 Swiss francs and imprisonment (article 24 et seq, Cultural Property Transfer Act (CPTA)). In some cases, tougher criminal rules may apply. Cultural property is confiscated if suspicion exists that it was stolen, lost against the will of the owner or illegally imported into Switzerland.

Law stated - 13 February 2024

Import controls

- 15 | Other than in relation to endangered species, are there any import controls for cultural property in your jurisdiction? What are the consequences of failing to comply with import controls?

The import of cultural property (defined as 'significant property from a religious or universal standpoint for archaeology, prehistory, history, literature, arts or sciences belonging to the categories under article 1 of the UNESCO Convention of 1970', article 2, paragraph 1, CPTA) is subject to customs clearance requiring a detailed description of the object (eg, kind of object, place of manufacture or discovery, article 25, [Cultural Property Transfer Ordinance](#)). Import from a state with which Switzerland has concluded a bilateral agreement is subject to evidence of compliance with that state's export regulations and

an export permit must be submitted. An intentionally false declaration or illicit import is punishable by imprisonment up to one year or a fine up to 100,000 Swiss francs (article 24, paragraph 1, CPTA). In the event of negligence, the sanction is a fee of up to 20,000 Swiss francs, and if the offender acts on a professional basis, the sanction is imprisonment for up to two years or a fine of up to 200,000 Swiss francs (article 24, paragraphs 2 and 3, CPTA).

Law stated - 13 February 2024

Export and import tax

16 | Does any liability to pay tax arise upon exporting or importing art, antiques or collectibles?

Import and export of art, antiques and collectibles are subject to the usual customs and tax duties. Customs duty is generally not levied on such items but each property must be related to a specific tariff number to establish its treatment. Import VAT is, in principle, levied on import of art, antiques and collectibles (from 1 January 2024 at a rate of 8.1 per cent) and the valuation of these items is key and not always straightforward in practice (the market value must be determined – if documents are missing, an expert valuation can be carried out).

Specific regimes exist for art, antiques and collectibles to avoid taxes upon import. For example, items that will be sold by art galleries can be subject to the temporary admission procedure, which is limited to two years and can be extended. Specific customs declaration must be given and the necessary information must be gathered, such as the size of the painting, the name of the artist and proof of value or, in the case of an antique, its age. Items can also be stored in duty-free warehouses to avoid any tax and duties (transit items can be stored free of import tax; for items that will be sold, import duties only need to be paid upon the end of stockpiling).

Law stated - 13 February 2024

DIRECT AND INDIRECT TAXATION

Taxes

17 | Outline the main types of tax liability arising from ownership and transfer of art, antiques and collectibles.

Various taxes can be levied on the transfer and ownership of art, antiques and collectibles.

When individuals own art, antiques and collectibles, wealth tax may be levied on the market value of the property (the rates vary greatly depending on the canton, from 0.1 per cent in Nidwalden to 1 per cent in Geneva). For companies, art collections are treated as an asset of the corporation.

Under Swiss tax law, private capital gains are exempt from income tax. However, capital gains will be taxed (as income) if they are considered to be the result of professional trading

(it is, therefore, essential to distinguish between the independent activity and the simple management of private assets, but it can be difficult to do so).

Consequently, it will be necessary to determine whether an art collector can be considered self-employed, regardless of their main activity in order to establish the tax treatment of his or her assets (and the potential profit made from selling the works of art).

The Federal Court refers to the following criteria (each of which may be enough to qualify the activity as professional) in order to separate taxable self-employed activity from the simple management of the private assets: the systematic or planned nature of the activities; the frequency of the transactions and the short period of ownership; the link between the taxpayer's professional activity, the use of special knowledge and the activity in partnerships; the access to foreign funds; and the use of revenue and the reinvestment.

An overview of the rulings of the Federal Court will be required in each case to determine the above criteria. In general, the Federal Court considers that the boundary between a taxable income generated by an independent activity and tax-free capital gains must be assessed by taking into account all of the circumstances of the particular case at hand. From an external point of view, whether the taxpayer takes part in the trade is not decisive. Moreover, the criteria developed by real estate and securities trading case law can be applied by analogy to the sale of works of art, although the peculiarities related to it (such as the irregularity of the income) must be taken into consideration.

If a Swiss company sells works of art, this activity is considered to generate taxable corporate income subject to the different applicable rates depending on the canton of incorporation of the company (eg, 13.99 per cent in Geneva).

A person is subject to VAT (article 10, [Value Added Tax Act](#)) if they operate a business and provides assets and services in Swiss territory through that business, or has their registered office, domicile or permanent establishment in Swiss territory (this individual is, however, exempt from tax liability if within one year they generate turnover, in Swiss territory and abroad, from supplies of less than 100,000 Swiss francs that are not exempt from tax).

Law stated - 13 February 2024

Tax exemptions

18 | Outline any tax exemptions or special conditions applicable to art, antiques and collectibles.

In Switzerland, wealth tax is levied at the cantonal level (for movable assets, wealth tax applies if the taxpayer resides in Switzerland) and the rates vary considerably (from 0.1 per cent to 1 per cent). In terms of wealth tax, in Geneva the law expressly exempts certain art and scientific collections from wealth tax. However, collections held for a purely speculative purpose are not exempt. In any case, an artwork that is part of the taxpayer's business assets is taxable (professional trade of works of art). Therefore, the purpose and the use of the goods are crucial, and legal scholars mention other criteria that must be taken into consideration, such as the relationship between the value of the work of art and the global assets or the manner in which the work of art is ensured. In this context, the high value

of a painting cannot, in principle, constitute grounds for refusing tax exemption. However, collections simply stored in safes or freeports are normally taxable. The taxpayer bears the burden to prove that an artwork is exempt.

Specific indirect tax regimes exist for art, antiques and collectibles to avoid taxes upon import. Thus temporary admission procedures, duty-free warehouses and freeports may lead to avoiding tax and duties or postponing tax liability. Moreover, if an artist brings artwork they created into Switzerland, this may be done duty-free.

If the person liable for tax has acquired collectors' items, such as artwork or antiques, in order to calculate the tax, they may deduct the purchase price from the selling price provided they have not deducted input tax from the purchase price (margin taxation). If the purchase price is higher than the selling price, the loss may be set off, as the difference is deducted from taxable turnover (article 24a, Value Added Tax Act).

In some cantons, works of art may be used to pay a taxpayer's gift or estate tax.

Law stated - 13 February 2024

BORROWING AGAINST ART

Types of security interest

19 | In your jurisdiction what is the usual type of security interest taken against art, antiques and collectibles?

The usual type of security interest is a pledge (the creditor has a right to the sale of the pledged asset if the amount due is not reimbursed) or a transfer of ownership as guarantee (the creditor becomes the owner of the asset).

Law stated - 13 February 2024

Consumer loans

20 | If the borrower borrowing against art assets in your jurisdiction qualifies as a consumer, does the loan automatically qualify as a consumer loan, and are there any exemptions allowing the lender to make a non-consumer loan to a private borrower?

No, the loan does not automatically qualify as a consumer loan. The [Federal Credit Consumer Act](#) provides that a consumer concludes a loan for a purpose outside their commercial or professional activity (article 3). The Act does not apply to loans in excess of 80,000 Swiss francs and short-term loans of up to three months. If a borrower qualifies as a consumer, the provisions of the Act may not be waived at their expense.

Law stated - 13 February 2024

Register of security interests

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- 21 | Is there a public register where security interests over art, antiques or collectibles can be registered? What is the effect of registration? Is the security interest registered against the borrower or the art?

No.

Law stated - 13 February 2024

Non-possessory security interests

- 22 | Can the lender against art collateral perfect its security interest without taking physical possession of the art?

In principle, nothing prevents the lender from having the art stored at a third-party place (such as a warehouse) under its control. With regard to the borrower, it cannot keep possession of the art (or have sole control over access to it).

Law stated - 13 February 2024

Sale of collateral on default

- 23 | If the borrower defaults on the loan, may the lender sell the collateral under the loan agreement, or must the lender seek permission from the courts?

According to the [Federal Act on Debt Enforcement and Bankruptcy](#), the lender is not required to seek permission from the courts if the borrower has not lodged opposition to the payment order. In the opposite event, they must file a claim with the courts. The parties may not anticipate and forego this procedure by inserting a clause in the loan agreement.

Law stated - 13 February 2024

Ranking of creditors

- 24 | Does the lender with a valid and perfected first-priority security interest over the art collateral take precedence over all other creditors?

Yes.

Law stated - 13 February 2024

INTELLECTUAL PROPERTY RIGHTS

Creator copyright

- 25 | Does copyright vest automatically in the creator, or must the creator register copyright to benefit from protection?

Copyright automatically vests in the natural person who has created the work. An exception to this general principle concerns publishing contracts. According to statutory provisions (the Code of Obligations), where one or more authors accept a commission to work on a project originated by a publisher, the publisher owns the copyright to the work as a whole. In addition, copyright over software developed by an employee in the course of their professional duties belongs to the employer alone.

No copyright registration system exists under Swiss law.

Law stated - 13 February 2024

Copyright duration

26 | What is the duration of copyright protection?

Copyright protection begins upon the creation of the work. For computer programs, the protection lasts 50 years following the death of the author. 'Non-individual' photographs (those without individual character) of three-dimensional objects benefit from copyright protection for a period of 50 years from the date of creation of the photograph. All other types of work are protected for 70 years following the death of the author.

Law stated - 13 February 2024

Display without right holder's consent

27 | Can an artwork protected by copyright be exhibited in public without the copyright owner's consent?

Copyright owners have a moral right to decide if, when, how and under what name their artwork may be published for the first time (article 9(2), [Federal Act on Copyright and Neighbouring Rights \(FACN\)](#)). Once they have made use of this right and published their artwork, it may be exhibited in public without their consent.

Law stated - 13 February 2024

Reproduction of copyright works in catalogues and adverts

28 | Can artworks protected by copyright be reproduced in printed and digital museum catalogues or in advertisements for exhibitions without the copyright owner's consent?

An exception to copyright protection exists for printed and digital museum catalogues if issued by the organiser of the exhibition. It extends to public and private collections, and temporary and permanent exhibitions as long as the exhibition is publicly accessible. It does not cover postcards, posters and websites. The same rule applies to the publication of auction, gallery and fair catalogues.

Law stated - 13 February 2024

Copyright in public artworks

29 | Are public artworks protected by copyright?

Artworks that are permanently situated in a place that is accessible to the public or that are visible from such a place may be reproduced. The reproductions may be made available, sold, broadcast or otherwise distributed. However, the reproductions cannot be three-dimensional or serve the same purpose as the original.

Law stated - 13 February 2024

Artist's resale right

30 | Does the artist's resale right apply?

There is no artist's resale right under Swiss law.

Law stated - 13 February 2024

Moral rights

31 | What are the moral rights for visual artists? Can they be waived or assigned?

Visual artists have the right to be recognised as the author of their work and to decide whether, when and under what name their work shall be published for the first time (article 9, FACN). They further have the right to prohibit any distortion, mutilation or modification of their work that is prejudicial to their reputation or personality (article 11, FACN). Other moral rights that are less relevant in practice include the artist's right to seek access to their work from the current possessor if the access is essential for them to exercise copyright (article 14(1), FACN). The artist may also request the possessor to provide them with the work for an exhibition in Switzerland (article 14(2), FACN). The latter two moral rights are only granted upon the balancing of the interests at issue. Finally, artists also have a right to protect their single original work from destruction in that the possessor cannot destroy the work without first offering it to the artist against the price of the raw materials (article 15, FACN).

Moral rights are non-assignable by nature as they are considered to be inextricably linked to an author's personality. Nonetheless, artists often waive the exercise of their moral rights on a contractual basis. This practice is accepted as long as it does not appear inequitable (ie, an excessive restriction as regards the author's own personality (article 27(2), Civil Code)).

Law stated - 13 February 2024

COMMISSIONS

Accounting to the principal

- 32** | Does the law require the agent to account to the principal for any commission or other compensation received by the agent while conducting the principal's business?

The agent must perform the contractual obligation faithfully, which gives rise to several responsibilities (article 398(2), Code of Obligations). Primarily, the agent must safeguard the principal's interests and place them above any other interests. Moreover, the agent owes the principal a duty to inform regarding the diligent performance of the services and accountability of their agency activities. The extent of this duty is mainly dependent upon the parties' degree of specialisation and knowledge as well as their access to information. It does not require the agent to inform the principal on all essential facts in the contract. Brokers are not allowed to act for both parties by being involved in the contractual negotiations as this creates a conflict of interest amounting to a breach of his or her fiduciary duties. The Federal Court has not ruled on the matter of secret commissions in art transactions. Nonetheless, it may be held that if an agent conceals from the principal the ultimate price paid in order to earn an additional fee, they breach their fiduciary duty.

Law stated - 13 February 2024

Principal's consent

- 33** | Does disclosure to the principal that the agent will receive a commission allow the agent to keep the commission unless the principal objects?

If the broker is involved in the negotiation of the sale contract, they are not allowed to act for both parties at the same time. Consequently, they lose their entitlement to a commission (article 415, Code of Obligations).

Law stated - 13 February 2024

Undisclosed agent commission

- 34** | If a third party pays a commission to an agent that is not disclosed to the principal, can the principal claim the commission from the third party?

There is no specific statutory basis for such a claim. The principal may have to consider the general provisions in tort (article 41 et seq, Code of Obligations).

Law stated - 13 February 2024

AUCTIONS

Regulation

35 | Are auctions of art, antiques or collectibles subject to specific regulation in your jurisdiction?

No specific regulation exists on a national level, except for articles 229 to 236 of the Code of Obligations. These statutory provisions concern very specific aspects of compulsory and voluntary auctions. More specifically, provisions on voluntary auctions pertain to: the conclusion of the sale upon the fall of the auctioneer's hammer; the binding nature of bids at auction; the ability to file a claim for auction whose outcome was influenced by any unlawful or immoral means; the applicable warranty and possible disclaimer; and the transfer of ownership for the sale of movable property upon the fall of the hammer.

Several cantons have implemented laws on procedural matters including the required authorisation to conduct an auction sale, the publicising of the sale, and the responsibility of the auctioneer and the bailiff. Most of these cantonal provisions are mandatory and subject to criminal or civil liability.

Switzerland has no law that governs online art sales.

Law stated - 13 February 2024

Ancillary services by auctioneers**36** | May auctioneers in your country sell art, antiques or collectibles privately; offer advances or loans against art, antiques or collectibles; and offer auction guarantees?

There is no law that specifically prohibits such practices – they are subject to general contract law.

Law stated - 13 February 2024

SPOILIATION DURING THE NAZI ERA**Claims to Nazi-looted art****37** | In what circumstances would the heirs of the party wrongly dispossessed typically prevail over the current possessor, if a court in your country accepted jurisdiction and applied its own law to a claim to art lost during the Nazi era?

Title never passes to a purchaser in bad faith (article 936, Civil Code) and no time limitation applies to the restitution claim (see article 641, Civil Code). Hence, the wrongly dispossessed party would have to show that the current possessor acquired the art in bad faith, and that all previous owners did so too.

Law stated - 13 February 2024

Ad hoc tribunal to hear claims outside court system

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38 | Is there an ad hoc body set up to hear claims to Nazi-looted art?

The government has set up the Contact Bureau on Looted Art, which responds to claims regarding Nazi-looted art in public collections (the federal art collections, the National Museum and the National Library). The Bureau also relays claims regarding art held by other institutions or private parties to the relevant institution or person. It promotes an amicable resolution approach to such disputes with the aim of reaching a just and fair solution as promulgated by the 1998 Washington Principles on Nazi-Confiscated Art. Factors to be considered are the unequivocal determination of the artwork's provenance and the multitude of solutions in respect of ownership and acknowledgment of the circumstances. In terms of the dispute resolution process, the Bureau either intervenes as an intermediary facilitator or refers to the UNESCO mediation and conciliation process, and to the International Council of Museums art and cultural heritage mediation.

The Swiss government is in the process of establishing a commission to hear claims to cultural heritage that is 'contaminated', in particular Nazi-looted art and cultural property from a colonial context. According to the ordinance on the independent commission, the commission will advise the federal government and its authorities on questions related to such cultural heritage and will issue recommendations specific to each case upon request. Such recommendations will not only lead to the restitution of the object, but may also include more general recommendations. The ordinance further states that the expert commission will take into account the Washington Principles on Nazi-Looted Art and the Terezin Declaration on Holocaust Era Assets and Related Issues.

Law stated - 13 February 2024

LENDING TO MUSEUMS**Insurance****39** | Who is responsible for insuring art, antiques or collectibles loaned to a public museum in your jurisdiction?

The framework contract of the Swiss Museums Association provides that all fees resulting from the loan, including insurance costs, are borne by the borrowing institution. The property on loan must be insured for its full value as per the lender's evaluation agreed by the borrower before its delivery. Moreover, the insurance must designate the lender as the beneficiary and cover all risks on a nail-to-nail basis, including transit, transport and storage. Regular insurance cover limitations for damage caused by events such as ordinary wear and tear, cleaning or restoration, war, terror, strikes, nuclear radiation and earthquakes or volcanic eruptions are permitted.

Law stated - 13 February 2024

Immunity from seizure**40** | Are artworks, antiques or collectibles loaned to a public museum in your country immune from seizure?

The Cultural Property Transfer Act (CPTA) provides for an anti-seizure regime regarding cultural property on temporary loan from a 1970 UNESCO Convention contracting state for an exhibition in a museum or other cultural institute in Switzerland (articles 10 to 13, CPTA). The art must qualify as cultural property according to the 1970 UNESCO Convention and be the subject of a loan agreement for a temporary exhibition. The loan agreement must stipulate that the cultural property will be returned to its country of origin following the conclusion of the exhibition. The lender may be either a private or a public institution, or an individual. The borrower must be a museum or any other cultural institution in Switzerland that has a collection open to the public. To obtain such a return guarantee, the borrowing institution must file a request with the Specialised Body for the International Transfer of Cultural Property at the Swiss Federal Office of Culture (the Specialised Body) to issue a return guarantee to the lender for the period of the exhibition. The application must be submitted at least three months before the intended import date of the cultural property into Switzerland, together with a copy of the loan agreement.

If the request meets these requirements, the application form, together with a description of the item and information on the provenance of the cultural property, is published in the Federal Bulletin. Any person whose rights might be affected by the contemplated immunity, in particular any person asserting title to the cultural property, may file a written objection to the Specialised Body within 30 days of publication. In the absence of any objection, the return guarantee will be issued provided the import meets the requirements of the CPTA (articles 7 and 8). The effect of the guarantee is to protect the cultural property from any legal claims by private parties or authorities while in Switzerland. However, the guarantee does not stand in the way of action by Swiss criminal enforcement authorities.

Law stated - 13 February 2024

CULTURAL PATRIMONY

National treasures

41 | Is there a list of national treasures?

The Cultural Property Transfer Act (CPTA) provides for a federal inventory of cultural objects that are of significant importance for cultural heritage and are the property of the state (article 3). It also enables the cantons to draw up their own inventories of cultural property. As a consequence of their registration, these objects cannot be acquired in good faith, and their return is not subject to any statute of limitation. Their export from Switzerland is also prohibited. Listed objects must qualify as cultural property according to the 1970 UNESCO Convention. The federal inventory is published online. Cantons have established inventories of monuments that may not be exported out of the canton without a licence or without notifying the authorities. No process exists under Swiss law whereby private property can be considered as national treasure and therefore be blocked from being exported.

Law stated - 13 February 2024

Right of pre-emption

42 | If the state is interested in buying an artwork for the public collections, does it have a right of pre-emption?

No.

Law stated - 13 February 2024

Automatic vesting in the state

43 | In what circumstances does ownership in cultural property automatically vest in the state?

Excavation findings of scientific interest belong to the canton in which they were found (article 724, Civil Code). Ownership in such objects is thus automatically vested in the canton.

Law stated - 13 February 2024

Illegally exported property claimed by foreign state

44 | How can a foreign state reclaim in your jurisdiction cultural property illegally exported from its territory?

Switzerland has signed and implemented the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Moreover, Switzerland signed the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects on 26 June 1996, but it has not ratified it.

Switzerland has concluded nine bilateral agreements thus far allowing for the repatriation of cultural property imported into Switzerland in breach of the contracting state's export regulation (article 9, CPTA). The agreements are with Italy, Greece, Colombia, Egypt, Cyprus, China, Peru, Mexico and Turkey. All of the agreements have entered into force except for the most recent one concluded with Turkey. Repatriation claims must be filed within a year of the authorities gaining knowledge of where and with whom the cultural property is located and, at the latest, within 30 years of its illicit export. The requirements of the repatriation claim, applicable law and rules governing the procedure are laid out in the respective bilateral agreement.

Where no bilateral agreement exists, the import of cultural property into Switzerland may only be held to be illegal under Swiss law if the object was lost against the will of the owner or incorrectly declared during import or transit.

If the current possessor acquired the cultural property in good faith and must return it owing to a repatriation claim, they have a right to be compensated. Such compensation is based

on the purchase price and necessary and useful expenses for protecting and maintaining the object. It is due by the requesting state and must be paid before the repatriation.

Law stated - 13 February 2024

NON-FUNGIBLE TOKENS

Regulation and case law

45 | How are non-fungible tokens (NFTs) regulated in your jurisdiction? Is there any case law on NFTs in your jurisdiction?

There is no specific regulation applying to NFTs, nor is there any known case law on NFTs to date. Some scholars suggest that certain kinds of NFTs may fall under the legal regime applicable to ledger-based securities (article 973d et seq, Code of Obligations).

Law stated - 13 February 2024

AI-GENERATED ART

Regulation and case law

46 | How is AI-generated art regulated in your jurisdiction? Is there any case law on AI-generated art in your jurisdiction?

There is no law specific to AI-generated art in Switzerland. To our knowledge, no case law exists so far relating to AI-generated art.

Law stated - 13 February 2024

Copyright

47 | Is there copyright in AI-generated art in your jurisdiction?

Copyright law does not specifically regulate AI-generated art. Hence, such art falls under the common rules for copyright protected works. Legal scholars consider that any AI-generated art that is automatically created by a machine is not copyrightable. Simple prompts, selecting a work among others or small retouching does not allow for the output to be protected by copyright. If the output is reworked by a human being (with or without the use of AI) to an extent that the modifications are creative, then such output may benefit from copyright protection.

Law stated - 13 February 2024

ANTI-MONEY LAUNDERING AND SANCTIONS

AML compliance

48 | What anti-money laundering (AML) compliance obligations are placed on the art trade?

Under Swiss criminal law, any person who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets that he or she knows or must assume originate from a felony or aggravated tax misdemeanour is liable to a custodial sentence not exceeding three years, or to a monetary penalty (article 305-bis, Criminal Code).

Since 1 January 2016, the Anti-Money Laundering Act applies to all natural persons and legal entities that deal in goods professionally and receive cash payments of more than 100,000 Swiss francs. Accordingly, they must comply with specific obligations (unless the amount above 100,000 Swiss francs is processed by a financial intermediary covered by the Act), including verifying the customer's identity and transaction, establishing the identity of the beneficial owner and keeping records. In some cases, a clarification of the economic background of a transaction is necessary (eg, if the transaction appears unusual, unless its legality is clear). In the event of serious suspicion, the dealer or intermediary must report the transaction to the Money Laundering Reporting Office Switzerland.

Moreover, the Customs Ordinance stipulates various rules for freeports, which must hold an inventory with the address and name of the owner of the property, etc. However, no inventory of the beneficial owner is compulsory to date.

Law stated - 13 February 2024

Sanctions compliance

49 | What sanctions-related compliance obligations are placed on the art trade?

The Swiss legislator has implemented Russian sanctions applying to the art trade that are very similar to the sanctions existing under EU law. The Ukraine Ordinance of 4 March 2022 has introduced a luxury goods ban on the sale, delivery, export, transport and transit of luxury goods that applies to any person or entity in Russia or to any luxury good to be used in Russia. The provision of any services in relation to such goods is also forbidden. The notion of 'luxury goods' includes, but is not limited to, art objects, antiques, watches, cars, bags, clothes, music instruments, collectibles and antiques. It is worth noting that art loans to Russia in the frame of an official cultural collaboration with the Russian Government may be exempted from the above prohibition, subject to a decision from the State Secretariat for Economic Affairs, which is the responsible body for the enforcement of the Ukraine Ordinance in Switzerland.

Moreover, the Swiss government has introduced a general financial freeze of assets and economic resources under the direct and indirect control of all natural and legal persons listed in the sanctions list, updated from time to time by the Federal Department of Economic Affairs, Education and Research.

Additional due diligence measures apply to transactions that are carried out for or by a natural or legal person established in an uncooperative state or territory, under international sanction, or which has not put in place adequate anti-money laundering measures.

Law stated - 13 February 2024

ENDANGERED SPECIES

CITES

50 | Is your jurisdiction a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

Yes, Switzerland is a party to the CITES Convention. It entered into force in 1975. The Federal Council has the power to sign international conventions on the cross-border movement of endangered species. The Federal Food Safety and Veterinary Office (FSVO) (part of the Federal Department of Home Affairs) is the competent authority to approve any changes to CITES Appendices and to deal with any issues that arise with regard to their application.

Law stated - 13 February 2024

Specific endangered animal products

51 | Are there any special rules for works of art made of elephant ivory, rhino horn or other specific endangered animal products?

These items are subject to the same licence requirements as any other endangered species falling under the scope of CITES.

Law stated - 13 February 2024

Pre-CITES endangered species

52 | Is the sale, import or export of pre-CITES endangered species subject to a licence?

Yes. The FSVO will issue an import licence for species listed in CITES Appendices I-III that were acquired before the provisions of CITES applied to that specimen, provided that the competent authority in the country of origin has issued a certificate to that effect. For the re-export of such species, the FSVO issues a certificate subject to the same condition as when they are imported into Switzerland. In the event of an export of such species out of Switzerland, the FSVO requires sufficient proof that they were acquired before being listed in the CITES Appendices in order to issue a certificate to that effect (article 11, [CITES Ordinance](#)).

Law stated - 13 February 2024

Post-CITES endangered species

53 | Is the sale, import or export of post-CITES worked or antique endangered species authorised? On what conditions?

The import, export and transit of worked endangered species listed in CITES Appendices I-III require authorisation from the FSVO. No import or transit licence is required for products made of skins of animals listed in CITES Appendices II and III (article 10, [CITES Control Ordinance](#)). Customs verify the import licence (if applicable) and the CITES export licence issued by the authorities of the country of origin. The requirements to obtain a licence are listed in articles 8 to 10 of the [Ordinance on the transfer of animals and plants of protected species](#). Upon customs clearance, the item must be presented at one of the species conservation control offices that will verify whether they are consistent with the accompanying documents. The process to obtain a licence for the export or import generally takes five working days. As items are originally imported into Switzerland, they are dated and identified by the authorities of the country of origin. The item must be documented by import papers or certificates of origin. For items of a species that is not critically endangered, authorities may also accept purchase receipts, delivery confirmation, photographs or witness testimony as evidence if the likelihood that the item is illegally circulating on the market is low (article 4, CITES Control Ordinance).

Law stated - 13 February 2024

CONSUMER PROTECTION

Cancelling purchases

54 | In what circumstances may consumers cancel the sale of art, antiques or collectibles?

In contrast to EU law, which allows consumers to cancel an online sale 14 days after the date of sale, Swiss law has no such cancellation right for consumers unless the contract is concluded by phone (article 40a et seq, Code of Obligations). In any other event, statutory law on the sale of goods applies.

Swiss law provides an alternative place of jurisdiction to consumers as they may apply to a court in their place of residence and, in the case of an international contract, invoke the law of their place of residence.

Law stated - 13 February 2024

Duties of businesses selling to consumers

55 | Are there any other obligations for art businesses selling to consumers?

For telephone sales, art businesses must inform the consumer in writing of their right to cancel the contract, as well as how and within what time frame they must do so (article

40(d), Code of Obligations). If the consumer rescinds the sale, both parties must reverse their actions (eg, return the artwork and reimburse the purchase price).

Law stated - 13 February 2024

REGULATION

Art market regulator

56 | Is there a specific regulatory body overseeing the art market or certain business activities carried out within the art market in your jurisdiction?

There is no specific regulatory body overseeing the art market in Switzerland. Several cantonal laws foresee that a third party intervenes in an auction sale. The third party (eg, *huissier* in Geneva, *Gemeindeammann* in Zurich and *Versteigerungsbehörde* in Lucerne) is a representative of the cantonal authorities who ensures the orderly running of auctions. Cantons often require auction houses to obtain authorisation to organise auctions, another supervisory element in the process of auctions.

Law stated - 13 February 2024

Other regulators

57 | What other forms of regulation are professional art market participants in your jurisdiction subject to?

Regulations concerning consumer protection, anti-money laundering and terrorist financing and trade in endangered species involve specific regulation and a supervisory authority. However, there is no cross-market supervisory authority for the art market.

Law stated - 13 February 2024

UPDATE AND TRENDS

Key developments of the past year

58 | Are there any other current developments or emerging trends that should be noted?

On 1 January 2021, the latest amendment to the Cultural Property Transfer Act (CPTA) came into force. A new article 4a was adopted, following, among other things, a decision of the Swiss Federal Court, which highlighted the lack of definition and clarity regarding the notions of 'illicit import' and 'incorrect declaration'. According to article 4a of the CPTA, 'Any person who imports, carries in transit or exports cultural property [...] must declare it to customs'. Also, the CPTA now provides for two distinct criminal offences for the illicit import of cultural property and an incorrect customs declaration (article 24, paragraph 1, letter c and c-bis, CPTA). As a consequence, the inaccurate or missing customs declaration

when importing or exporting cultural property is subject to criminal sanctions, regardless of whether a bilateral agreement pursuant to article 7 of the CPTA exists.

Law stated - 13 February 2024



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UPDATE AND TRENDS

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BUYING AND SELLING

Passing of title

1 | When does ownership of art, antiques and collectibles pass from seller to buyer?

In principle, the transfer of possession of art, antiques and collectibles to the buyer is required for the ownership to pass from seller to buyer (article 210, Turkish Code of Obligations; article 763, Turkish Civil Code). Regarding art, antiques and collectibles sold at an auction, 'the person who buys a movable good at an auction acquires its ownership at the time of the auction' (article 279, Turkish Code of Obligations).

Furthermore, the parties may agree to reserve the ownership of the art, antiques and collectibles subject to the sale, despite delivery to the buyer, where it is agreed that the ownership will remain with the seller and pass to the buyer only upon full payment of the price. The agreement must be registered in the special registry of the notary public in the place of residence of the buyer for the reservation of ownership to be valid (article 764, Turkish Civil Code).

Law stated - 29 February 2024

Implied warranties

2 | Does the law of your jurisdiction provide that the seller gives the buyer any implied warranty?

The seller is liable to the buyer if all or part of the collectibles sold are taken away from the buyer due to a third party's existing right at the time of the conclusion of the sales contract. No implied warranty exists if the buyer knew the third party's existing right at the time of the agreement unless the seller undertakes to do so. However, the agreement to remove or limit the seller's liability would be null and void, if the seller had concealed the third party's existing right (article 214, Turkish Code of Obligations).

There is no time limit specified in the law regarding implied warranty, therefore it is subjected to the general statute of limitations period of 10 years. The law also does not specify when the statute of limitations period starts running, and there are contradicting views regarding the issue in Turkish doctrine. However, the Court of Cassation accepts the moment of the seizure as the beginning of the statute of limitations in its decisions.

Furthermore, in case the subject matter of the sale does not have the characteristics that were agreed upon in the contract or that would be ordinarily expected, such a qualitative failure is defined as 'defect' in the context of the law, and the seller is generally liable for these defects. Article 219 of the Turkish Code of Obligations and its continuation guarantees the buyer's interest herein. In line with the general principle of freedom of contract, the parties are free to negotiate the terms of the contract and include provisions that may affect the scope of certain guarantees. However, if the seller is grossly negligent in transferring the goods in a defective condition, any agreement that removes or limits his or her liability for the defect will be null and void.

Law stated - 29 February 2024

Registration

- 3 | Can the ownership of art, antiques or collectibles be registered? Can theft or loss of a work be recorded on a public register or database?

In principle, the risk of loss and damage of the sale belongs to the seller until the transfer of possession. However, if the buyer defaults in taking possession of the sold goods, the risk of loss and damage of the sold goods passes to the buyer as if the transfer of possession has taken place (article 208, Turkish Code of Obligations).

Law stated - 29 February 2024

Good-faith acquisition of stolen art

- 4 | Does the law of your jurisdiction tend to prefer the victim of theft or the acquirer in good faith of stolen art?

In principle, individual ownership of art, antiques or collectibles cannot be registered in Türkiye. However, if a work of art, antique or collectible that falls within the definition of 'movable cultural and natural assets that need to be protected' in accordance with the Law on the Protection of Cultural and Natural Property has various qualifications specified in the relevant legislation, its purchase and sale must be registered with the Ministry of Culture and Tourism (articles 23, 24, 26, 27, 30, Law on the Protection of Cultural and Natural Property). The National Inventory System of Museums serves as a [registry](#) for movable cultural and natural assets.

In order to facilitate the tracing of stolen or lost cultural property, Türkiye has a database on lost artefacts, which is maintained by the 'General Directorate of Cultural Heritage and Museums' under the Ministry of Culture and Tourism. Announcements are made on the [website](#) of the Ministry of Culture and Tourism regarding stolen and lost cultural property.

Law stated - 29 February 2024

Acquiring title to stolen art through prescription

- 5 | If ownership in stolen art, antiques or collectibles does not vest in the acquirer in good faith, is the new acquirer protected from a claim by the victim of theft after a period of time?

According to the Law on Cultural and Natural Property, the collectors of movable cultural heritage must keep an updated inventory of their activities and transactions.

Anti-money laundering regulations also require the art market participants to maintain records of the transactions and inform the authorities of any suspicious transactions. Within the scope of 'know your customer' requirements, identity documents of the transacting

parties, including ultimate beneficial owner and other details of the transaction must be recorded. The Financial Crimes Investigations Board under the Ministry of Treasury and Finance can request all these records and information on the transactions for investigation purposes.

Law stated - 29 February 2024

Passing of risk of loss and damage

6 | When does risk of loss or damage pass from seller to buyer if the contract is silent on the issue?

In principle, Turkish law protects the acquirer in good faith. Article 989 of the Turkish Civil Code stipulates that if the stolen artwork in question was acquired in good faith from the auction or market or from those who sell similar goods; a lawsuit can be filed against the first and subsequent good faith acquirers only on the condition that the price paid is returned to the acquirer in good faith. A person whose art, antique or collectible has been stolen, lost or otherwise disposed of against their will may file a lawsuit within five years against anyone who has possession of it. However, they must prove that the acquirer acted in bad faith and that the possession was lost unintentionally, and the burden of proof lies with the original owner.

The good-faith possessor can request the incurred expenses for the stolen art and may refrain from returning the property until such compensation is paid (article 994, Turkish Civil Code).

Under article 7 of the 1970 UNESCO Convention, which has been ratified by Türkiye as of 1981, states are required, 'to confiscate stolen and imported cultural property upon application by the State Party concerned and to return it to the owner who acquired it as a bona fide purchaser, subject to the payment of an equitable compensation' at the request of the state of origin.

Law stated - 29 February 2024

Due diligence by buyer

7 | Must the buyer conduct due diligence enquiries? Are there non-compulsory enquiries that the buyer typically carries out?

Yes, the acquirer in good faith of stolen art, antiques or collectibles is protected upon expiry of the limitation period of five years following the acquisition (article 777, Turkish Civil Code).

Law stated - 29 February 2024

Due diligence by seller

8 | Must the seller conduct due diligence enquiries?

No, a purchaser in bad faith cannot acquire the ownership of the artwork. The owner is always entitled to request restitution of the artwork from the bad-faith possessor.

Law stated - 29 February 2024

Acquisition in bad faith

- 9 | Can ownership in art, antiques or collectibles vest in the acquirer in bad faith after a period of time?

Although Turkish law does not require the buyer to run a due diligence, buyers are advised to act with a duty of care in this regard to rely on good faith. They are often encouraged to conduct preliminary due diligence investigations, particularly in transactions involving high value items such as works of art, antiques or collectibles. Such due diligence may include requesting information for authenticity, liens and encumbrances on the item in question, provenance and ownership history and a condition report.

Law stated - 29 February 2024

Register of sales

- 10 | Must a professional seller of art, antiques or collectables maintain a register of sales?

Dealers and auctioneers of historical artefacts, antiques and works of art are required under the anti-money laundering regulations, to identify the customer or the proxy and take necessary measures to reveal the beneficial owner of the transaction, when establishing a permanent relationship; or if the transaction values at least 185,000 Turkish liras (15,000 Turkish liras for wire transfers) in single or related multiple transactions; or regardless of the value, if the transaction appears suspicious. The relevant information and supporting documents must be obtained and restored by the seller before the closing of the transaction or the business relationship is formed.

Law stated - 29 February 2024

Protection of interest in consigned works

- 11 | How can consignors of artworks to dealers protect their interest in the artwork if the dealer goes into liquidation?

In order to safeguard the interest in the artwork, the consigner must be able to prove that it holds the title to the consigned artwork. Ledgers of the parties, invoices, a well drafted consignment agreement and any document historically evidencing the title to the artwork, can be used in this respect for the restitution claim.

Law stated - 29 February 2024

labelling="Section-Header">Cancelling the purchase of a forgery

12 | If the buyer discovers that the art, antique or collectible is a forgery, what claims and remedies does the buyer have?

If the purchased art, antique or collectible is discovered to be a forgery, the buyer has the right to rescind the contract, to request a discount on the price, and, if possible, to request replacement with the original artwork, under the seller's liability against defects (article 227, Turkish Code of Obligations). If the seller is grossly negligent in transferring the artwork in a defective condition, any agreement that removes or limits their liability for the defect would be null and void. Where a defect leads to rescission of the contract, the buyer is entitled to recover the contract price with interest, and to claim for payment of damages for all losses that have been the direct result of the defective goods, such as the costs of the proceedings and the expenses incurred for delivery of the artwork. To rely on such claim, the buyer should examine the artwork upon delivery.

In spite of an expressed warranty, if the particular circumstances concerning the transaction suggests that the buyer can reasonably expect the artwork to be authentic, the courts would reward the buyer's claim based on defect.

Law stated - 29 February 2024

labelling="Section-Header">Cancelling the sale of a sleeper

13 | Can a seller successfully void the sale of an artwork of uncertain attribution subsequently proved to be an autograph work by a famous master by proving mistake or error?

The seller may rely on a mistake claim, as the party who has made a fundamental mistake during the conclusion of the contract shall not be bound by the contract in accordance with article 30 of the Turkish Code of Obligations. Accordingly, if the seller is mistaken in an artwork's attribution, such as believing the artwork to be a copy instead of an original, it may be deemed a fundamental mistake that would give the mistaken seller the right to not be bound by the sale contract. The seller may not be bound by the contract even if they are mistaken through their own fault. If the seller is at fault for the mistake, they are obliged to compensate the damage arising from the nullity of the contract. However, if the other party knew or should have known of the mistake, compensation cannot be claimed.

Depending on the identity of the seller, the courts may expect a heightened level of duty of care to rely on fundamental mistake.

Law stated - 29 February 2024

EXPORT AND IMPORT CONTROLS

Export controls

14 | Are there any export controls for cultural property in your jurisdiction? What are the consequences of failing to comply with export controls?

Movable cultural and natural assets that require protection (as defined in article 23 of the Law on the Protection of Cultural and Natural Property) cannot be taken abroad. However, if considered to be in Türkiye's national interests, they may be temporarily exported for exhibition based on a Presidential decision, on the condition that they will be brought back, provided that they are insured and secured by the host country against any loss and damage.

Moreso, pursuant to article 4 of Regulation on Ethnographic Movable Cultural Assets, ethnographic cultural assets belonging to geological, prehistoric and historical periods; and all kinds of movable cultural assets that have documentary value in terms of geology, anthropology, prehistory, archaeology and art history and that reflect the social, cultural, technical and scientific characteristics and level of the period they belong to; and Ethnographic cultural assets that symbolise the traditions and customs, religious beliefs of the Turkish Nation until the end of the Ottoman Empire Period, which are rare, are of complementary quality to museum collections, have documentary value; and movable cultural assets that need to be protected belonging to the National Struggle, the History of the Turkish Republic and Atatürk, cannot be taken abroad. Any property that is determined to be outside the definition in the Regulation on Ethnographic Movable Cultural Assets may be removed from the country subject to the permission of the museums affiliated to the Ministry of Culture and Tourism.

Failure to comply with export control rules can result in imprisonment from five to 12 years and a judicial fine of up to 5,000 Turkish liras. At the end of the control carried out at the customs exit gates, cultural assets that are deemed unsuitable to be exported abroad are identified and returned to their owners, subject to their evaluation within the country.

The 1970 UNESCO Convention was ratified by Türkiye in 1981. Article 5 of the Convention require states to establish one or more Cultural Property Protection Services to prevent the illegal import, export and transfer of cultural property. Article 6 of the Convention requires an export certificate in the case of the export of cultural property and prohibits the export of cultural property without this export certificate issued by the competent authorities of the state. Article 13 of the Convention provides for the unconditional return to their owners of artefacts smuggled abroad.

Law stated - 29 February 2024

Import controls

15 | Other than in relation to endangered species, are there any import controls for cultural property in your jurisdiction? What are the consequences of failing to comply with import controls?

Pursuant to article 33 of the Law on the Protection of Cultural and Natural Heritage, cultural property can be freely imported into the country. However, there are certain controls on the import of cultural property. Pursuant to the Regulation on Movable Cultural Property

of Ethnographic Nature, importers are obliged to declare to customs an inventory list of the cultural property, including photographs, names, dimensions and classification and a copy of this inventory list must be submitted to the authorised museums in Türkiye as they have pre-emption right. Furthermore, under article 6 of the UNESCO Convention ratified by Türkiye in 1980, require contracting states to 'provide an appropriate certificate from the exporting state stating that the export of the cultural property in question is authorized'. Imports from a state party without an appropriate certificate would be illegal under this convention. Customs can therefore seize the cultural property for the purpose of returning it to its owner.

In addition, an example of this import control is the international agreement No. 6988 between the Government of the Republic of Türkiye and the Federal Council of Switzerland on the Prevention of Illegal Import, Transit and Return of Archaeological Cultural Property signed on 15 November 2022.

Law stated - 29 February 2024

Export and import tax

16 | Does any liability to pay tax arise upon exporting or importing art, antiques or collectibles?

A temporary import permit shall be granted for goods offered for display or use in exhibitions, fairs, meetings and similar events. The goods within this scope must be temporarily imported for the purpose of display and use in a general exhibition, fair, meeting and similar events and it must be proved that they will be temporarily imported for this purpose with the document to be obtained from the relevant exhibition or fair organisation. In addition, antiques brought to auction for the purpose of sale and works of art, collectibles and antiques brought to be exhibited for possible sale are also granted a temporary import permit for a period of two months. This period may be extended under certain conditions. Temporary imported goods are exempt from customs duty and VAT. On the other hand, if a work of art is imported for purchase, 20 per cent VAT will be applied on the sale value of the work.

Law stated - 29 February 2024

DIRECT AND INDIRECT TAXATION

Taxes

17 | Outline the main types of tax liability arising from ownership and transfer of art, antiques and collectibles.

The two main types of tax applicable to transfer of artworks are VAT and income tax.

The sale of an artwork by private entities (auction house, galleries etc), an artist or individual collector is subject to VAT currently at the rate of 20 per cent over the sales price. Personal income tax or the corporate income tax will also be levied on the income or profit

generated from the sales transaction for those who engage in sales of art works, antiques and collectibles.

Wealth tax is not levied based on ownership of the artwork.

Law stated - 29 February 2024

Tax exemptions

- 18 | Outline any tax exemptions or special conditions applicable to art, antiques and collectibles.

Culture and art activities and organisations on the national and international level, excavation projects, and efforts towards restitution of cultural property can be exempt from income tax if approved by the Ministry of Culture and Tourism.

Law stated - 29 February 2024

BORROWING AGAINST ART

Types of security interest

- 19 | In your jurisdiction what is the usual type of security interest taken against art, antiques and collectibles?

The usual type of security interest taken against art, antiques and collectibles is a pledge.

Law stated - 29 February 2024

Consumer loans

- 20 | If the borrower borrowing against art assets in your jurisdiction qualifies as a consumer, does the loan automatically qualify as a consumer loan, and are there any exemptions allowing the lender to make a non-consumer loan to a private borrower?

The main issue to be evaluated in relation to this question is whether the borrower is acting on commercial or non-commercial grounds. In order for the matter to be evaluated within the scope of the Law on Consumer Protection, the borrower must act for a non-commercial purpose, only in this case the loan type can be qualified as a consumer loan. A limited number of private banking institutions offer a discrete credit facility for consumers to purchase artworks exhibited at art fairs under the name of 'artworks credit', which includes the possibility of pledging the purchased artwork to the bank as collateral for the loan.

Law stated - 29 February 2024

Register of security interests

- 21** | Is there a public register where security interests over art, antiques or collectibles can be registered? What is the effect of registration? Is the security interest registered against the borrower or the art?

There is no public register specifically for security interests over art, antiques or collectibles. However, the Law on Pledges over Movable Assets in Commercial Transactions (Law No. 6750) enabled a pledge over movable assets in commercial transactions through a registration system without the transfer of possession. Accordingly, the pledge is effective against third parties if the pledge agreement is registered with the registry set up by the Ministry of Customs and Trade.

Law stated - 29 February 2024

Non-possessory security interests

- 22** | Can the lender against art collateral perfect its security interest without taking physical possession of the art?

The Law on Pledges over Movable Assets in Commercial Transactions (Law No. 6750) enables the parties of a commercial transaction to perfect the security interest through the registration system without requiring the transfer of possession.

Law stated - 29 February 2024

Sale of collateral on default

- 23** | If the borrower defaults on the loan, may the lender sell the collateral under the loan agreement, or must the lender seek permission from the courts?

If the borrower does not object the payment order to be issued through enforcement offices or pay the debt within seven days from the receipt of the payment order, the lender will then be entitled request the sale of the collateral from the enforcement office.

The title to collateral cannot be automatically transferred to the lender based on borrower's default. The lender will collect the loan from the proceeds received via the sale of the collateral by the enforcement office.

Law stated - 29 February 2024

Ranking of creditors

- 24** | Does the lender with a valid and perfected first-priority security interest over the art collateral take precedence over all other creditors?

Yes, a valid and perfected first priority security interest holder has priority over unsecured creditors.

Law stated - 29 February 2024

INTELLECTUAL PROPERTY RIGHTS

Creator copyright

- 25 | Does copyright vest automatically in the creator, or must the creator register copyright to benefit from protection?

Works protected under the Law on Intellectual and Artistic Works begin to be protected from the moment the work is created and copyright automatically vests in the creator.

There is no obligation to register the copyright, but registration provides legal assurance to the creator. Pursuant to article 5 of the Regulation on the Recording and Registration of Intellectual and Artistic Works, the work groups subject to compulsory registration are cinematic and musical works. In other groups of works, the creators may optionally register their works.

Law stated - 29 February 2024

Copyright duration

- 26 | What is the duration of copyright protection?

The copyright arises with the creation of work and covers the term of 70 years following the death of the owner. If there are multiple authors of a single work, the copyright protection shall remain until the 70-year period expires upon the death of the last surviving author.

Law stated - 29 February 2024

Display without right holder's consent

- 27 | Can an artwork protected by copyright be exhibited in public without the copyright owner's consent?

No. The author shall exclusively determine whether or not a work shall be made public and the time and manner of its publication (article 14, Law on Intellectual and Artistic Works).

Law stated - 29 February 2024

Reproduction of copyright works in catalogues and adverts

- 28 | Can artworks protected by copyright be reproduced in printed and digital museum catalogues or in advertisements for exhibitions without the copyright owner's consent?

Yes, it is permissible to reproduce and distribute a work exhibited or auctioned in public places by means of catalogues, guides or similar printed publications issued for this purpose by the organisers of the exhibition or auction (article 40, Law on Intellectual and Artistic Works).

Law stated - 29 February 2024

Copyright in public artworks

29 | Are public artworks protected by copyright?

Yes, public artworks such as public sculpture or street art are protected by copyright. However, it is permissible to reproduce and distribute such works of art without the copyright owner's consent by means of paintings, graphics, photographs and the like, to display them in public places by projection, and to broadcast them by radio and similar means (article 40, Law on Intellectual and Artistic Works).

Law stated - 29 February 2024

Artist's resale right

30 | Does the artist's resale right apply?

Yes. Article 45 of the Law on Intellectual and Artistic Works provides for a resale right for artistic works, throughout the copyright protection period, for the transactions valuing at least 5,000 Turkish liras. The architectural works are excluded from the resale right.

The resale royalty fee is:

- 10 per cent, if the price difference between the two consecutive sales is 50 per cent to 100 per cent;
- 9 per cent, if the price difference between the two consecutive sales is 101 per cent to 200 per cent; and
- 8 per cent, if the price difference between the two consecutive sale is at least 201 per cent.

Law stated - 29 February 2024

Moral rights

31 | What are the moral rights for visual artists? Can they be waived or assigned?

Moral rights on the work are among the rights strictly attached to the person. For this reason, moral rights cannot be limited by the author and moral rights cannot be waived. The

moral rights of the author are the right of publicity, the right to be named, the right to prohibit modification of the work and the rights of the author against the owner and possessor. The rights of the author against the possessor and the owner include the right to request the use of the originals for a temporary period of time and, if the work is unique and original, the right to request the work for a temporary period of time for the purpose of using it in their own works and exhibitions, provided that they fulfil the conditions of protection and return it (articles 14, 15, 16 and 17, Law on Intellectual and Artistic Works).

Law stated - 29 February 2024

COMMISSIONS

Accounting to the principal

32 | Does the law require the agent to account to the principal for any commission or other compensation received by the agent while conducting the principal's business?

Article 532 of the Turkish Code of Obligations regulates purchase and sale brokerage and states that 'A purchase or sale brokerage is a contract in which the broker undertakes the purchase or sale of negotiable instruments and movables on his own behalf and for the account of the principal in return for a fee.' Article 533 regulates the broker's obligation to inform the principal about the work performed by the broker and, in particular, to inform them immediately that their instructions have been fulfilled. In this context, if an agent conceals the final price paid from the principal in order to earn an additional fee, they would be in breach of their fiduciary duty.

Law stated - 29 February 2024

Principal's consent

33 | Does disclosure to the principal that the agent will receive a commission allow the agent to keep the commission unless the principal objects?

The agent has a number of legal obligations to the principal, including the duty of loyalty and care. Furthermore, according to article 533 of the Turkish Commercial Code, the agent has an obligation to inform the principal about the performance of the commission agreement (duty of accountability) and compliance with the principal's instructions. Therefore, the agent is obliged to disclose any commission to the principal, who must authorise it. In general, it is advisable to define in the contract between the agent and the principal when the agent is entitled to a commission, the amount of the commission and when the commission is payable.

Law stated - 29 February 2024

Undisclosed agent commission

34 |

If a third party pays a commission to an agent that is not disclosed to the principal, can the principal claim the commission from the third party?

Under Turkish law, as the agreement binds only the parties to the contract, the principal will not be able to claim such a right from the third party.

Law stated - 29 February 2024

AUCTIONS

Regulation

35 | Are auctions of art, antiques or collectibles subject to specific regulation in your jurisdiction?

There are certain provisions in the Turkish Code of Obligations, the Turkish Commercial Code and the Law on Intellectual and Artistic Works, as well as specially issued regulations that include provisions regarding auctions of art, antiques or collectibles. Examples of these are: Regulation on Ethnographic Movable Cultural Assets, Regulation on the Export and Import of Movable Cultural and Natural Assets in Need of Protection, Regulation on the Collecting and Control of Movable Cultural and Natural Assets in Need of Protection, and Regulation on the Trade in Movable Cultural Property and the Inspection of Workplaces and Warehouses for this Trade.

Law stated - 29 February 2024

Ancillary services by auctioneers

36 | May auctioneers in your country sell art, antiques or collectibles privately; offer advances or loans against art, antiques or collectibles; and offer auction guarantees?

Auctioneers may sell works of art, antiques or collectibles privately, as well as provide advances or loans and auction guarantees in exchange for works of art pursuant to contracts to which they will be a party.

Law stated - 29 February 2024

SPOILIATION DURING THE NAZI ERA

Claims to Nazi-looted art

37 | In what circumstances would the heirs of the party wrongly dispossessed typically prevail over the current possessor, if a court in your country accepted jurisdiction and applied its own law to a claim to art lost during the Nazi era?

There are no regulations in Türkiye specifically related to the Holocaust. Claims for compensation may be subject to the general rules against transactions involving stolen

property, including in particular those relating to the protection of the good faith of the acquirer, as well as the victim's right to claim against acquirer in bad faith.

Law stated - 29 February 2024

Ad hoc tribunal to hear claims outside court system

38 | Is there an ad hoc body set up to hear claims to Nazi-looted art?

No.

Law stated - 29 February 2024

LENDING TO MUSEUMS

Insurance

39 | Who is responsible for insuring art, antiques or collectibles loaned to a public museum in your jurisdiction?

There is no legal requirement currently in place for insuring the art, antiques or collectibles loaned to public entities or museums. Responsibility for insurance of loaned art, antiques or collectibles to a public museum is a matter of negotiation between the lender and the museum.

When a public museum in Türkiye wants to bring a collection from abroad for exhibition, it is usually a sponsor (eg, a private company or a bank) that assumes the insurance costs of the exhibition or, depending on mutual agreements, the country that owns the collection. The proportion of insurance costs covered by the relevant ministry is very low.

Law stated - 29 February 2024

Immunity from seizure

40 | Are artworks, antiques or collectibles loaned to a public museum in your country immune from seizure?

In the case of loans to museums, the rights and ownership of these works usually belong to the lending organisation or individual. However, when loaned works are exhibited in public museums, they will be considered to be under public protection and will be subject to a different legal regime than normal trade or commerce transactions. Seizures generally involve the seizure of assets by creditors in order to collect their receivables. One of the protections enjoyed by public property is that it cannot be seized. Works of art, antiques and collectibles exhibited in public museums are also public property at the time of their exhibition and are exempt from seizure. Furthermore, when a public museum in Türkiye wants to bring in a collection from abroad for exhibition, the Turkish state guarantees that the works will not be seized.

Law stated - 29 February 2024

CULTURAL PATRIMONY

National treasures

41 | Is there a list of national treasures?

The Law on Cultural and Natural Property defines 'cultural property' as, any immovable or movable property, whether owned by the public or privately, that has to do with science, culture, religion, or the fine arts and that is related to prehistoric and historic periods, or as artefacts from these periods that have scientific or cultural significance and may be found above ground, below ground, or underwater.

The Law further distinguishes, 'movable cultural property to be protected', specifying a list of movables that must be 'reflecting the social, cultural, technical and scientific characteristics and level of the period they belong to' to qualify as such.

The National Inventory System of Museums serves as an online national inventory for movable cultural property.

The owner of a movable cultural property to be protected is responsible for (1) maintenance and safekeeping, (2) informing the authorities – in case of any sale, damage, loss or the original owner's death – (3) not taking the movable property abroad other than in narrowly defined exceptions and (4) documenting any sales transactions.

Movable cultural and natural assets that need to be protected in the country cannot be taken abroad by their owners, except in certain exceptional cases. Moreso, movable cultural and natural assets that are deemed necessary to be placed in public museums may be purchased by the Ministry of Culture and Tourism by paying their value to their owners and placed in public museums.

Law stated - 29 February 2024

Right of pre-emption

42 | If the state is interested in buying an artwork for the public collections, does it have a right of pre-emption?

Yes. According to the Law on Cultural and Natural Property, any individual or legal entity can become a collector of 'movable cultural property to be protected' by obtaining a permit from the Ministry of Culture and Tourism. The collectors must inform of their activities to the Ministry and keep an updated inventory. The collectors can exchange or sell these artworks provided that the Ministry is informed of such transaction at least 15 days in advance. The Ministry has a pre-emption right to buy the artwork over a valuation to be determined by a commission under the Ministry. The collector can challenge the Ministry's valuation before the court. If the Ministry does not exercise its pre-emption over the price ruled by the court, the collector will then be able to sell the artwork to a third party at any price.

Law stated - 29 February 2024

Automatic vesting in the state

43 | In what circumstances does ownership in cultural property automatically vest in the state?

According to the Law on Cultural and Natural Property, any above-ground and underground cultural property to be protected, as set out in articles 3(a)(1), 6 and 23 of the legislation, 'has the attribute of state property,' whether the object or archaeological site has been discovered yet or not. Any individual that finds or knows the existence of such property must notify the authorities within three days, which must then report it to the Ministry and the regional museum directorate.

Law stated - 29 February 2024

Illegally exported property claimed by foreign state

44 | How can a foreign state reclaim in your jurisdiction cultural property illegally exported from its territory?

Türkiye ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in 1981 and the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage in 1983.

Under article 7 of the 1970 UNESCO Convention, states are required, 'to confiscate stolen and imported cultural property upon application by the State Party concerned and to return it to the owner who acquired it as a bona fide purchaser, subject to the payment of an equitable compensation' at the request of the state of origin.

Türkiye has also ratified the following conventions regarding preservation of cultural property.

Council of Europe:

- European Cultural Convention (Paris, 1954);
- Convention for the Protection of the Architectural Heritage of Europe (Granada, 1985);
- European Convention on the Protection of the Archaeological Heritage (Valetta, Malta, 1992); and
- European Landscape Convention (Florence, 2000).

UNESCO:

- Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention, 1954);

- Convention for the Safeguarding of the Intangible Cultural Heritage (Paris, 2003); and
- Convention on the Protection and Promotion of the Diversity of Cultural Expressions (with reservations and declarations) (Paris, 2005).

Türkiye has entered into bilateral agreements for the cooperation in combatting illicit trafficking of cultural property with several countries including, Iran, Greece, China, Bulgaria, Peru, Turkmenistan, Uzbekistan, United States and Switzerland.

Law stated - 29 February 2024

NON-FUNGIBLE TOKENS

Regulation and case law

- 45 | How are non-fungible tokens (NFTs) regulated in your jurisdiction? Is there any case law on NFTs in your jurisdiction?

In Türkiye, 'NFTs' are defined as 'qualified intellectual property deeds' by the Digital Transformation Office of the Presidency and, are not yet regulated with any specific legislation.

A Turkish court has rendered a preliminary injunction concerning NFTs. The heir to Cem Karaca, a renowned Turkish artist and composer, has requested the court to determine the unauthorised use of Cem Karaca's look on NFT format and cease the sale of the content on the marketplace called OpenSea. Based on the expert opinion, the preliminary judgement was granted and the sale of NFT has been ceased. While the court did not elaborate on the technical features of the NFTs, the ruling is still significant as it is the first judgement on NFTs, also confirming that they can be subject to a preliminary injunction.

Law stated - 29 February 2024

AI-GENERATED ART

Regulation and case law

- 46 | How is AI-generated art regulated in your jurisdiction? Is there any case law on AI-generated art in your jurisdiction?

There is no specific regulation or reported case law in Türkiye that directly addresses AI-generated art.

Law stated - 29 February 2024

Copyright

- 47 ¹ Is there copyright in AI-generated art in your jurisdiction?

Turkish law does not yet specifically mention AI-generated art in its copyright legislation, which provides the framework for copyright in Türkiye, protecting the rights of authors of original works.

Law stated - 29 February 2024

ANTI-MONEY LAUNDERING AND SANCTIONS

AML compliance

48 | What anti-money laundering (AML) compliance obligations are placed on the art trade?

The Law on Prevention of Laundering Proceedings of Crime (No. 5549), among other sectors, requires art participants, more specifically, ‘those who engage in exchange of historical artefacts, art works, antiques or intermediaries in these operations and auctioneers’ to observe and implement a set of rules towards combatting anti-money laundering. Accordingly, art market professionals, must (1) conduct customer due diligence (know your customer procedures), (2) report suspicious transaction to Financial Crimes Investigations Board and (3) provide ongoing reporting for transactions exceeding the threshold announced by the Ministry of Treasury and Finance. The Law does not require the art market participants to appoint a compliance officer.

Dealers and auctioneers of historical artefacts, antiques and works of art are required under the anti-money laundering regulations, to identify the customer or the proxy and take necessary measures to reveal the beneficial owner of the transaction, when establishing a permanent relationship; or if the transaction values at least 185,000 Turkish liras (15,000 Turkish liras for wire transfers) in single or related multiple transactions; or regardless of the value, if the transaction appears suspicious. The relevant information and supporting documents must be obtained and restored by the seller before the closing of the transaction or the business relationship is formed.

Art market participants must keep monitoring the transactions conducted by their customers, and check whether they are in line with the information regarding the customer’s profession, commercial activities, business history, financial status, risk profile and sources of funds within the scope of permanent business relationships and keep up-to-date information, documents and records regarding the customer.

Law stated - 29 February 2024

Sanctions compliance

49 | What sanctions-related compliance obligations are placed on the art trade?

All of the compliance obligations of the art market participants regarding anti-money laundering efforts overseen by Financial Crimes Investigation Board under the Ministry of Treasury and Finance, such as conducting customer due diligence (know your

customer procedures), reporting suspicious transactions and providing ongoing reporting of suspicious transactions also apply to any art trade transactions with states and/or persons who have been imposed sanctions by the Turkish Government.

Law stated - 29 February 2024

ENDANGERED SPECIES

CITES

50 | Is your jurisdiction a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

Yes. Since 1996, Türkiye has been a party to the CITES Convention, which it put into effect by passing a regulation in 2001.

General Directorate of Nature Conservation and National Parks, under the Ministry of Agriculture and Forestry, is authorised to issue CITES certificates and take the necessary measures for birds, reptiles, mammals (except marine mammals), reptiles, arthropods and other species. The Ministry also performs tasks such as coordination, reporting and training. Türkiye is placed in Category A based on its successful efforts.

Law stated - 29 February 2024

Specific endangered animal products

51 | Are there any special rules for works of art made of elephant ivory, rhino horn or other specific endangered animal products?

The specimen may be exempt from sales, import, or export restrictions if a pre-CITES certificate from the CITES management authorities certifies that it was obtained prior to Türkiye's accession to the CITES Convention or prior to the date the species was listed under CITES.

Law stated - 29 February 2024

Pre-CITES endangered species

52 | Is the sale, import or export of pre-CITES endangered species subject to a licence?

For the sale, import, export and re-export of any species included in Türkiye's CITES laws, CITES certifications may be issued by the Ministry of Forest and Water Management. The six-month certificate of validity must be attached by exporters to their customs declaration form. The validity of import certificates is one year.

Law stated - 29 February 2024

Post-CITES endangered species

53 | Is the sale, import or export of post-CITES worked or antique endangered species authorised? On what conditions?

No, such endangered animal products are monitored, inspected and investigated within or comparatively to the Türkiye's CITES laws.

Law stated - 29 February 2024

CONSUMER PROTECTION

Cancelling purchases

54 | In what circumstances may consumers cancel the sale of art, antiques or collectibles?

According to the Law on Consumer Protection (No. 6502), consumers can withdraw from the sale of art, antiques or collectibles within 14 days following the transaction based on any reason and free of any costs. As for the sales with multiple instalments, the consumer can withdraw from the transaction within seven days.

The consumer can also cancel the sale transactions, if the artwork found to be defective.

Law stated - 29 February 2024

Duties of businesses selling to consumers

55 | Are there any other obligations for art businesses selling to consumers?

In parallel to other consumer transactions, art businesses must primarily comply with the requirements of Law on Consumer Protection (No. 6502). Accordingly, art businesses are also required to give customers clear information about the artwork (prince tags, manuals, etc), follow advertising guidelines, inform the consumer of right of withdrawal and make sure the item meets the qualities promised to the buyer or that can be reasonably expected, free from any defects.

Any sales transaction through phone, email, text, social media and online sales, are deemed to be 'distance sale', where the seller must comply with a comprehensive set of requirements such as informing the buyer before the closing of the transaction, of the features of the product, identity of the seller, consumer's right of withdrawal, etc. The seller must also provide a copy of the executed sales contract to the consumer post-closing.

Law stated - 29 February 2024

REGULATION

Art market regulator

- 56 | Is there a specific regulatory body overseeing the art market or certain business activities carried out within the art market in your jurisdiction?

There is no specific regulatory body exclusively for the art market in Türkiye. Nonetheless, a number of public organisations are in charge of managing certain parts of the art market, such as financial compliance, cultural heritage preservation and consumer protection.

Law stated - 29 February 2024

Other regulators

- 57 | What other forms of regulation are professional art market participants in your jurisdiction subject to?

In connection with answer to the previous question, art market participants in Türkiye may be subject to regulation by financial authorities (for AML compliance), the Ministry of Culture and Tourism (for cultural heritage and export of art) and consumer protection agencies, among others.

Law stated - 29 February 2024

UPDATE AND TRENDS

Key developments of the past year

- 58 | Are there any other current developments or emerging trends that should be noted?

In 2022 and 2023, many important artefacts were brought back to Türkiye. The head of Eros, the missing piece of the Sidamara sarcophagus discovered 140 years ago in the ancient city of Sidamara in Karaman and exhibited in the Istanbul Archaeological Museums, was brought from the Victoria and Albert Museum in London and put back in its place.

The statue of Lucius Verus, statuettes of Attis and Apollo, a Kusura-type idol, the terracotta slab of the duver and a four-piece sarcophagus with columns, including artefacts looted from ancient cities in Anatolia and smuggled to the United States, for which efforts have been made for their return since the 1970s, were brought back to Türkiye. Also in the United States, 28 artefacts, 14 of which were part of the ancient art collection of billionaire Michael Steinhardt, were returned to Türkiye.

On the other hand, five gold coins seized in Istanbul and a stone artefact purchased by a Turkish collector from a foreign auction without knowing its origin were returned to Iraq, and artefacts including a 19th century Kaaba key, a metal key and lock and a Kaaba key case were returned to Egypt.

As a result, 1121 artefacts in 11 different groups were returned in 2022 and 2023 and started to be exhibited in the lands where they belong.

The historical tomb stele, which was smuggled from the ancient city of Zeugma and found in Italy last year, was received at the end of April at the Embassy of Türkiye in Rome as a result of the efforts carried out in cooperation with the Italian gendarmerie, the Ministry of Foreign Affairs and the Ministry of Culture and Tourism.

Many artefacts that were taken abroad in different periods are still visited by millions of people in the world's most important museums.

Among these historical artefacts are the Lion of Cnidus, the Nereids Monument, the Altar of Zeus, the agora gate of the ancient city of Miletus, the Trysa Monument, the Old Fisherman, the tombs of Selim II and Murat III, the tiles of the Mahmut I Library and various mosaics.

Law stated - 29 February 2024



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UPDATE AND TRENDS

Key developments of the past year

BUYING AND SELLING

Passing of title

1 | When does ownership of art, antiques and collectibles pass from seller to buyer?

The seller and buyer are free to agree when ownership passes. It is common practice to agree that ownership passes when payment is received by the seller (reservation of title clause).

Unless otherwise agreed by way of contract, or unless the circumstances point to the parties having agreed that ownership will pass at a different point in time, ownership passes from seller to buyer when the contract is concluded, regardless of whether payment has been made or delivery has occurred.

Law stated - 20 February 2024

Implied warranties

2 | Does the law of your jurisdiction provide that the seller gives the buyer any implied warranty?

In a contract of sale, there is an implied term on the part of the seller that he or she has a right to sell the goods, and in the case of an agreement to sell, he or she will have this right at the time when the property is to pass. There are two additional implied terms in a contract for sale. The first is that the goods are free (and will remain free until the time when property passes) from any charge or encumbrance not disclosed or known to the buyer before the contract is made; and the second is that the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance so disclosed or known.

These implied terms cannot be excluded by way of contract. Most business contracts fall within the scope of the Unfair Contract Terms Act 1977 (UCTA), with a few specific exceptions set out in the Act. In the likely event that the UCTA applies to a business contract, or if the contract is with a consumer, the seller cannot exclude its liability under the implied terms specified in this question. Any clause attempting to do so is void.

However, the seller can limit the title that he or she transfers to the buyer to the title that he or she possesses. This limitation can be expressed in the contract, or title may be limited if it can be inferred from the circumstances of the transaction that it was the intention of the parties that the seller only intended to transfer the title that he or she possessed.

The statute of limitations provides that the buyer shall have six years from the date of the breach (which for an implied term will be the date of the contract) to bring a claim. If the contract was made by deed, the limitation period is extended to 12 years from the date of the breach.

Law stated - 20 February 2024

Registration

- 3 | Can the ownership of art, antiques or collectibles be registered? Can theft or loss of a work be recorded on a public register or database?

There is no register of ownership of art, antiques or collectibles in England and Wales, with some exceptions such as cars.

However, owners and insurers can register art, antiques or collectibles on a positive database held by the [Art Loss Register](#). This is done on a purely voluntary basis. The positive database cannot be searched by the public.

If art, antiques or collectibles are stolen, the owner or insurer can register them as such with any of the lost or stolen art databases, such as the Art Loss Register or Interpol. The Interpol database of stolen works of art can be searched by accredited users using login details provided on request.

Law stated - 20 February 2024

Good-faith acquisition of stolen art

- 4 | Does the law of your jurisdiction tend to prefer the victim of theft or the acquirer in good faith of stolen art?

English common law prefers the dispossessed owner from whom the artwork was stolen. This is illustrated by the legal principle 'no one gives what he does not have'. The thief cannot acquire ownership, and in principle, nor can anyone who derives possession of the stolen artwork from the thief.

However, the statute of limitations comes to the rescue of the buyer in good faith: the ownership of the dispossessed owner whose artwork was stolen is extinguished after six years from the date of the first acquisition in good faith. This applies regardless of when the dispossessed owner discovered (or could have discovered) the whereabouts of the artwork. If the dispossessed owner's title has expired, the current possessor will typically have possessory title to the artwork; accordingly, he or she will prevail. Note that it is sufficient if the defendant in a recovery action by the dispossessed owner shows that someone in the chain of possession acquired the artwork in good faith more than six years before the claim was made, even if the defendant cannot show that he or she, himself or herself, bought the artwork in good faith.

The party relying on his or her or another possessor's good faith has the burden of proving good faith. Good faith is a matter of fact left to the discretion of the courts. In assessing good faith, a court will typically consider the circumstances of the buyer's acquisition, including the due diligence carried out with regard to the buyer's expertise and resources. If a buyer did not exercise any due diligence, discharging the burden of proving good faith may be difficult.

Law stated - 20 February 2024

Acquiring title to stolen art through prescription

- 5 | If ownership in stolen art, antiques or collectibles does not vest in the acquirer in good faith, is the new acquirer protected from a claim by the victim of theft after a period of time?

If there is no good-faith acquisition on which the current possessor can rely (or the six-year period following a good-faith acquisition has not yet expired), the dispossessed owner has a right to reclaim the artwork. However, if the dispossessed owner discovers (or ought reasonably to have known) the whereabouts or possessor of the artwork, he or she must bring a claim for the stolen artwork without unreasonable delay. The current possessor could defend his or her possession of the artwork by arguing that the dispossessed owner has unreasonably delayed bringing a claim, despite the fact that he or she knew (or ought reasonably to have known) the whereabouts or possessor of the artwork. This is known as the equitable doctrine of laches.

Law stated - 20 February 2024

Passing of risk of loss and damage

- 6 | When does risk of loss or damage pass from seller to buyer if the contract is silent on the issue?

Seller and buyer are free to agree when risk of loss of, or damage to, art, antiques and collectibles passes from seller to buyer. In practice, they often agree that risk will pass when ownership passes or upon delivery of the artwork by seller to buyer.

Unless otherwise agreed by contract, or the circumstances point to the parties having agreed that risk will pass at a different point in time, risk passes with ownership in business-to-business contracts. In consumer contracts, however, the artwork remains at the trader's risk until it comes into the possession of the consumer (or someone identified as taking possession for the consumer).

Law stated - 20 February 2024

Due diligence by buyer

- 7 | Must the buyer conduct due diligence enquiries? Are there non-compulsory enquiries that the buyer typically carries out?

In general, there are no mandatory due diligence enquiries that a buyer must legally carry out, but the burden of due diligence rests with the buyer (in accordance with the 'buyer beware' doctrine) unless otherwise agreed by the parties. Buyers typically search the stolen art database of the Art Loss Register and conduct enquiries on the ownership, authenticity, condition, provenance and lawful export of art, antiques and collectibles prior to completing a transaction. Due diligence depends on the type of asset, its value and the information

volunteered by the seller. Buyers of cultural property, particularly antiquities and items removed from monuments and sites, should be mindful of the following legislation relating to cultural property: the Dealing in Cultural Objects (Offences) Act 2003; the Cultural Property (Armed Conflicts) Act 2017. It is a criminal offence in England and Wales to deal in 'tainted' cultural property, including cultural property that has been unlawfully excavated or removed from a building, structure, monument or site after the Dealing in Cultural Objects (Offences) Act came into force.

The buyer should also ensure that they are not acting in contravention of any UN security council resolutions or UK sanctions enacted from time to time restricting the import or trade in cultural property – for example, the Iraq (United Nations Sanctions) Order 2003, the Export Control (Syria Sanctions) Order 2013, and the Russia (Sanctions) (EU Exit) Regulations 2019.

A buyer should also be mindful not to acquire criminal property as defined in the Proceeds of Crime Act 2002, which sets out money laundering offences.

Law stated - 20 February 2024

Due diligence by seller

8 | Must the seller conduct due diligence enquiries?

Sellers of cultural property are subject to the Dealing in Cultural Objects (Offences) Act 2003, the Cultural Property (Armed Conflicts) Act 2017 and any UN security council resolutions enacted from time to time restricting the import or trade in cultural property. They should, therefore, carry out due diligence to ensure that they are not in breach of the relevant legislation by dealing in such cultural property. However, by making these enquiries, sellers protect themselves rather than the buyer. It is good practice for professional sellers (such as galleries and auction houses) to conduct due diligence on the owner before accepting property on consignment for sale. Professional sellers subject to the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 must also identify and verify personal details of buyers.

Law stated - 20 February 2024

Acquisition in bad faith

9 | Can ownership in art, antiques or collectibles vest in the acquirer in bad faith after a period of time?

In English law, the thief and subsequent possessors in bad faith cannot acquire ownership.

Law stated - 20 February 2024

Register of sales

I

10 | Must a professional seller of art, antiques or collectables maintain a register of sales?

Generally, there is no requirement for professional sellers of art, antiques or collectibles to maintain a register of sales under English law. However, the [Money Laundering and Terrorist Financing \(Amendment\) Regulations 2019](#) have created requirements for certain art market participants to identify and verify the identity of parties to the transaction.

Law stated - 20 February 2024

Protection of interest in consigned works**11** | How can consignors of artworks to dealers protect their interest in the artwork if the dealer goes into liquidation?

The entry of a dealership into a formal insolvency process does not defeat the proprietary interest of the consignor in art held by the dealership on consignment. A consignor who can show that it (rather than the insolvent dealership) holds title to an asset is entitled to have the asset transferred to it. If the liquidator sells the asset, the consignor is entitled to an account of the realisations made in respect of the asset.

To protect their interest and to avoid any dispute with the liquidator or other creditors over the basis upon which the dealer is in possession of the artwork, consignors ought to record the terms of the consignment in writing and consider how the consigned item might be labelled, separately stored or otherwise identified to indicate a separate proprietary interest.

A dealer has a potential lien against an artwork for any fees (subject to the terms and conditions agreed) incurred to a warehouse or other third party for any amounts owed to it by the dealer, in respect of anything that comes into its possession. To protect from this, insofar as is possible, the terms should include a specific provision prohibiting the artwork being passed to any third party (for storage) or to the extent that is necessary, prohibiting any lien or other security being held over it.

Law stated - 20 February 2024

Cancelling the purchase of a forgery**12** | If the buyer discovers that the art, antique or collectible is a forgery, what claims and remedies does the buyer have?

Unless the contract expressly states otherwise, authenticity is not guaranteed by the seller. This is usually the case even if the name of the artist is stated on the invoice. However, if the sale is considered to be a sale by description: and the name of the author of the artwork is part of that description, the buyer may have the right to cancel the sale if the artwork turns out to be a forgery or not by that artist. Judging by the case law, it is unlikely that a statement by the seller that the artwork is by a named artist would be considered as more

than a statement of opinion (although each case will depend on its facts) and therefore provided the opinion is reasonable and genuinely held, the buyer is unlikely to have any recourse against the seller.

If the seller has represented to the buyer that the artwork is authentic, and the statement is deemed by the court to amount to a statement of fact rather than a mere statement of opinion (even if such statement is oral), the buyer may have a claim that the seller is liable for misrepresentation. Misrepresentation can result in the rescission of the sale, or an award of damages for the difference in value.

There may be circumstances where the seller has assumed a duty of care towards the buyer, in which case the buyer may succeed in showing that the seller was negligent in discharging that duty when attributing the artwork to a given artist. This is more unusual because in an arm's-length transaction, such as one between seller and buyer, in principle the parties do not owe each other a duty of care.

Law stated - 20 February 2024

Cancelling the sale of a sleeper

- 13 | Can a seller successfully void the sale of an artwork of uncertain attribution subsequently proved to be an autograph work by a famous master by proving mistake or error?

The seller is unlikely to have a good claim against the buyer if he or she sold an artwork believing, for example, that it was a copy when it turns out that it was authentic. The doctrine of mistake is notoriously difficult to rely upon in subjective art-related matters, and the concept of 'fundamental error' at the root of the contract does not exist in English law. However, the seller may well have a claim against his or her professional selling agent. The seller may succeed against the selling agent in a claim in negligence or misrepresentation. There is case law on this point. The standard of due care is set higher for specialist selling agents than generalist selling agents. Recent leading cases on the point include *Countess of Wemyss and March & Anor v Simon C. Dickinson Ltd* [2022] EWHC 3091 (Ch) and *Lancelot Thwaytes v Sotheby's* [2015] EWHC 36 (Ch).

Law stated - 20 February 2024

EXPORT AND IMPORT CONTROLS

Export controls

- 14 | Are there any export controls for cultural property in your jurisdiction? What are the consequences of failing to comply with export controls?

Exporters must apply for a UK export licence to export from Great Britain (England, Wales and Scotland) objects that reach or exceed specific age and monetary value thresholds (Northern Ireland follows special rules).

There are open licences permitting the export of certain specified objects without the need to obtain an individual export licence. There are two types currently in operation: the Open General Export Licence (Objects of Cultural Interest) (OGEL); and the Open Individual Export Licence (OIEL):

- The OGEL permits the permanent export to any destination, except an embargoed one, of certain classes of cultural goods provided the value of the object is less than the figure specified in the OGEL for the relevant class.
- Exporters who regularly export items (eg, for fairs) may obtain an OIEL for certain documents, manuscripts or archives and such licenses may be issued for certain other classes of cultural goods. There is also a 'Museums and Galleries' OIEL that permits the temporary export of any object owned by or under the care of the museum holder for a period of up to three years, and an 'Objects of Cultural Interest' OIEL that allows the permanent export of any goods imported into the UK within 50 years of the date of export.

If a licence is required but an open licence is not available, exporters must apply for an individual export licence for permanent or temporary export. A temporary licence will not normally be issued for a period of more than three years.

Export licences are issued by the Export Licensing Unit of the Arts Council. The application may be referred to an expert adviser, usually a museum curator. The expert adviser will consider if the artwork meets one or more of the Waverley criteria (see below), which are used to decide if an artwork is sufficiently important to warrant being 'saved for the nation'. If the exporter can show that the artwork has been in the UK for less than 50 years, an export licence must be obtained if the artwork requires one, but the application will not, in principle, be referred to an expert adviser. Accordingly, in such cases, the export licence will be granted.

The Waverley Criteria are as follows:

- Is the object closely connected with the history and national life [of the UK]?
- Is the object of outstanding aesthetic importance?
- Is the object of outstanding significance for the study of some particular branch of art, learning or history?

If the expert adviser considers that the artwork meets one or more of the Waverley criteria, the export licence application is referred to the Arts Council Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest. The Reviewing Committee will consider the application and hold a meeting during which the applicant has the opportunity to argue that the artwork does not meet the Waverley criteria. If the Reviewing Committee concludes that the artwork meets one or more of the Waverley criteria, it will recommend to the Secretary of State for the Department of Digital, Culture Media and Sport that the export licence be deferred for an initial period (usually two to four months) to allow a UK institution or a private buyer to come forward and make an offer to buy the artwork. The Secretary of State can extend the deferral period if a UK institution has a reasonable prospect of raising the funds to acquire the artwork however, if funds cannot be raised by the end of

the maximum deferral period (including any extension), an export licence will be granted, and the owner will be free to export the artwork.

Failure to obtain an export licence or providing inaccurate or misleading information to obtain an export licence constitutes a criminal offence subject to penalties including criminal prosecution under the Customs and Excise Management Act 1979. Convictions for offences under section 68(1) are punishable by a maximum fine of up to three times the retail value of the goods or a level 3 fine whichever is the greater. Convictions under section 68(2) in the magistrates' court carry a maximum fine of three times the value of the goods or a term of imprisonment not exceeding the general limit in a magistrates' court, or both. In the Crown Court, those convicted face an unlimited fine and a prison sentence of up to seven years. The unlicensed object may also be subject to seizure under the provisions of the same Act.

There are additional export controls in respect of artworks containing CITES-listed materials.

In October 2022, Arts Council England commissioned the development of a new digital system to manage the application and processing of export licences. A temporary procedure is being used until the new system is ready.

Law stated - 20 February 2024

Import controls

15 | Other than in relation to endangered species, are there any import controls for cultural property in your jurisdiction? What are the consequences of failing to comply with import controls?

In April 2019, the EU adopted a Regulation (Regulation (EU) 2019/880) to introduce an import licensing system for certain categories of cultural property imported into the EU that were created or discovered outside the EU.

The regulation contains a 'general prohibition' that prohibits the introduction into the EU (and Northern Ireland) of cultural goods that have been illegally exported from a third country. The regulation defines two categories of cultural goods – a category B of 'high-risk' goods and a category C of 'low-risk' goods that can be imported subject to obtaining an import licence or submitting an 'importer statement'. Two derogations apply to both category B and category C objects concerning the evidence required to be submitted with a licence application or in an 'importer statement'. The full effect of the regulation is now subject to the introduction of a centralised electronic system for the storage and exchange of information between customs authorities of the different EU member States (the ICG system). The date when the ICG system is expected to become operational is not yet known, however the EU has set a deadline of 28 June 2025.

With respect to imports into Great Britain: there are no licensing requirements for importing objects of cultural interest. There are however certain prohibitions enacted from time to time as a result of trade, import and export sanctions and embargoes such as those set by the UN Security Council. As at January 2024, the sanctions affecting the import of cultural property include: the Syria (United Nations Sanctions) (Cultural Property) (EU Exit)

Regulations 2020, which restricts the import of cultural property illegally exported from Syria after 15 March 2011 and the Iraq (Sanctions) (EU Exit) Regulations 2020, which restricts the import of cultural property illegally exported from Iraq after 6 August 1990. Some other UK sanctions regulations include prohibitions on categories of goods that could include art, antiques and collectibles.

Offences under these regulations are generally subject to the same penalties under the Customs and Excise Management Act 1979 as are applicable to export-related offences as set out above.

In addition, the Cultural Property Armed Conflicts Act 2017H (implementing in the UK the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict) prohibits the importation into the UK after 12 December 2017 of unlawfully exported cultural property where the importer knows or has reason to suspect that the object has been unlawfully exported. For the purposes of this legislation, unlawfully exported cultural property is cultural property that satisfies the three conditions below:

- the cultural property in question must have been exported from occupied territory as defined in international law;
- its export must have been unlawful under either the laws of the territory in question or any rule of international law; and
- either the state from which it was exported or the occupying state must have been a state party to the First or Second Protocol to the 1954 Hague Convention at the time of export.

Where unlawfully exported cultural property has been imported into Great Britain, it shall in most cases be seized by the relevant authorities and returned to the country of origin. There are very limited circumstances whereby the good faith possessor shall be entitled to fair compensation. Offences are subject to penalties of up to seven years imprisonment or a fine or both.

With respect to Northern Ireland: EU Regulation 2019/880 applies to cultural goods imported into Northern Ireland, including from Great Britain. It does not apply to cultural goods that were originally created or discovered in an EU Member State or Northern Ireland even if they have left the EU and are now returning. It does not apply to imports into Great Britain.

Law stated - 20 February 2024

Export and import tax

16 | Does any liability to pay tax arise upon exporting or importing art, antiques or collectibles?

No UK tax is payable upon the export of works of art, antiques and collectible items from the UK.

No UK customs duty is payable for the import of such items, irrespective of their country of origin.

Such items are entitled to a reduced valuation for VAT purposes for import into Great Britain. This applies whether imported privately or by VAT-registered businesses. The reduced valuation is calculated as the customs valuation plus any additional costs, multiplied by 25 per cent. This reduces the effective VAT rate from the standard rate of 20 per cent to 5 per cent. Items eligible for this reduced valuation are classified in the UK Tariff under the following headings: 9701 (paintings, drawings), 9702 (engravings and prints produced in limited numbers), 9703 (statues), 5805 (tapestries, ceramics, certain photographs), 9706 (antiques over 100-years-old), 9704 and 9705 (collectors' items and Items of historical significance no more than 99-years-old). Satisfactory documentary evidence may need to be provided at import. Goods that are neither antiques, works of art nor collectors' items are subject to the standard rate of import VAT (currently 20 per cent).

It is possible for a trade importer to delay or avoid import VAT if Temporary Admission relief is granted in respect of the goods at the time of entry. The importer must either provide a security guarantee to cover the 5 per cent import VAT or have a Customs Comprehensive Guarantee in place.

Works of art, antiques and collectors' items imported into Great Britain in low value consignments with an intrinsic value of £135 or less by businesses and operators of online marketplaces are treated as supplied in the UK and are not subject to import VAT.

Law stated - 20 February 2024

DIRECT AND INDIRECT TAXATION

Taxes

- 17 | Outline the main types of tax liability arising from ownership and transfer of art, antiques and collectibles.

The sale of an artwork by the artist directly or by a gallery or dealer will give rise to a liability to pay income tax or corporation tax. In the UK, income tax is applied at a progressive rate from 20 per cent to 45 per cent (income below £12,571 is generally zero-rated for income tax purposes). From 2013, the small profits rate of corporation tax is currently set 19 per cent with the main rate rising to 25 per cent.

The resale of artworks by a private collector will typically result in a liability to pay capital gains tax, which ranges from 10 per cent to 20 per cent for works of art. There is an annual exemption allowance for individuals currently set at £6,000.

The beneficiary of a lifetime gift or a legacy involving artworks may be liable to paying inheritance tax up to 40 per cent.

Currently, there is no tax on wealth in the UK.

Law stated - 20 February 2024

Tax exemptions

- 18 |

Outline any tax exemptions or special conditions applicable to art, antiques and collectibles.

Many art dealers make use of the UK VAT margin scheme where possible, which allows them to reduce the 20 per cent VAT liability on the total price of art, antiques and collectibles to a rate of 16.67 per cent VAT on the difference between the price at which they bought the artwork and the price at which they are selling the artwork (the margin).

Since 1 January 2021, purchasing works under the margin scheme from sellers located in EU member states is no longer possible. All works purchased from the EU will now be imports into the UK. For the importer to divert an import of a work of art into margin scheme stock, it will have to opt to not recover the import VAT payable on the import. This option is a formal notification to His Majesty's Revenue and Customs, which would remain in place for a period of at least two years and would require all imported works to be treated in this way.

Under the Cultural Gifts Scheme, UK taxpayers who make donations to public institutions and registered charities may qualify for a tax reduction calculated with reference to the value of the artwork donated. Similarly, UK taxpayers may use the Acceptance in Lieu scheme to deduct the full market value of artworks transferred to public ownership from their inheritance tax liability. In addition, the rate of the inheritance tax payable can be reduced on estates that leave at least 10 per cent of the assets to a registered charity.

Law stated - 20 February 2024

BORROWING AGAINST ART

Types of security interest

19 | In your jurisdiction what is the usual type of security interest taken against art, antiques and collectibles?

Under English law, security over a work of art may be in the form of a mortgage, charge, pledge or bill of sale.

Mortgage

A mortgage (legal or equitable) can be taken where the borrower/owner is a corporate entity (rather than an individual).

A legal mortgage (often referred to in this context as a chattel mortgage) involves the transfer of legal ownership in the art to the lender, subject to the borrower's right to re-transfer on repayment, and will be contained in a written agreement.

The mortgage will be equitable where the borrower's interest in the work of art is itself an equitable one, such as an interest under a trust. Lenders usually insist on a legal mortgage for the additional rights it gives the lender.

Charge

A charge involves an agreement by the borrower to give the lender a proprietary interest in an asset as security for a liability. In most cases this is effected very simply by the borrower executing a document by which the debtor is expressed to charge a particular asset as security for a particular debt. The distinction between an equitable mortgage and a charge is a narrow one. An equitable mortgage or charge will generally be overridden by a purchaser in good faith of the legal interest in the art without notice of the lender's security and only a legal mortgagee can transfer legal title to the art to a purchaser without the help of the court or some other device.

Pledge

A pledge requires the delivery of possession of the work of art to the lender, with the intent to create a pledge. The delivery may be actual or constructive. Actual possession is where the lender actually has possession of the work of art, but for practical reasons lenders are often reluctant to physically hold works of art themselves. Constructive possession is where a third party is in possession of goods and undertakes to the lender to hold them to the order of the lender (a process known as attornment). The pledge must, however, arise by actual or constructive delivery of possession, not under a security document.

Bill of Sale

A security interest (other than a pledge) created by an individual or a partnership (other than a limited liability partnership) over personal chattels is subject to the Bills of Sale Act 1878 and the Bills of Sale Act (1878) Amendment Act 1882. A work of art such as a painting or sculpture is a personal chattel for this purpose. Unless it falls within one of the very limited statutory exemptions, the security and the underlying loan will be void unless it is in the strict form required by, and is registered under, the Bills of Sale Acts. In practice because these formalities are onerous (and non-compliance would have the effect of rendering the security and loan void), this means that although technically possible, a bill of sale over works of art from an individual is seldom taken by lenders as a reliable security interest.

Law stated - 20 February 2024

Consumer loans

20 | If the borrower borrowing against art assets in your jurisdiction qualifies as a consumer, does the loan automatically qualify as a consumer loan, and are there any exemptions allowing the lender to make a non-consumer loan to a private borrower?

Loans to individuals, small partnerships, unincorporated trustees and unincorporated associations must be considered in the context of the UK consumer credit regulations to determine whether they are regulated credit agreements. If a loan agreement is a regulated credit agreement, it will be subject to various requirements and restrictions prescribed by law, or an exemption may be available that would take the loan outside the scope of the consumer credit regulations. In addition, the lender itself would need to be authorised to carry on a regulated activity if an exemption did not apply to what would otherwise be a regulated loan.

The most commonly used exemptions under the UK consumer credit regulations are (1) the high net worth exemption (the loan must exceed £60,260 and be for a purpose other than renovation of residential property, or to acquire or retain property rights in land or in an existing or projected building) and (2) the business purposes exemption (for loans exceeding £25,000 made for predominantly business purposes). Both exemptions are subject to the appropriate procedures being followed including the provision of financial statements and declarations.

Law stated - 20 February 2024

Register of security interests

21 | Is there a public register where security interests over art, antiques or collectibles can be registered? What is the effect of registration? Is the security interest registered against the borrower or the art?

Security interests can be registered at the Art Loss Register, though these registrations are made against the artworks themselves and not the individual or entity that owns the art. The register can be searched by anyone for a fee payable to the Art Loss Register. Registration is not a perfect requirement and just has the effect of putting anyone who searches the register in respect of those works on notice that there is a registered security interest against such works. In addition, the Art Loss Register will notify the holder of a registered security interest in any works if searches are carried out by third parties against such.

If the borrower is incorporated in England and Wales, any security interest created by it must be registered at the UK Companies Registry within a strict 21 day time frame. This is a public registry

If the loan is made to a company incorporated in England and Wales, the charge should be registered in the register of charges of the company at Companies House. Registration perfects the lender's security interest and gives the lender priority subject to prior registered charges. The charge must be registered within 21 days, beginning the day after the charge is created. Failure to register a charge against a company registered in England and Wales within the 21-day period would invalidate the security interest and any priority over subsequent charges correctly registered.

If the loan is made to a private individual by way of a bill of sale (a document creating a charge in the artwork for the benefit of the lender while the borrower retains possession of the artwork), the bill of sale must be registered in the register of bills of sale. If it is not, the charge created by the bill of sale is void against third parties and the borrower. The register of bills of sale is maintained by the High Court. Non-possessory security interests.

Law stated - 20 February 2024

Non-possessory security interests

22 | Can the lender against art collateral perfect its security interest without taking physical possession of the art?

If the loan is to an individual, it is possible to create a charge on the art by way of a bill of sale, without the lender having to take possession. However, given the many pitfalls and restrictions associated with bills of sale, they are rarely used by lenders against art. Depending on the situation, there may be ways to structure the transaction to allow the borrower to keep possession while at the same time perfecting the lender's security interest, however this is potentially complex and can give rise to unacceptable tax liability for the borrower. If the loan is to an English company, and the lender's charge is registered on the company's register of charges at Companies House within the 21-day period, the lender has a perfected security interest through registration and taking possession is not necessary to perfect the security interest.

Law stated - 20 February 2024

Sale of collateral on default

23 | If the borrower defaults on the loan, may the lender sell the collateral under the loan agreement, or must the lender seek permission from the courts?

The lender may, under the terms of the loan agreement and relevant security document, sell the art without permission from the courts. Note, however, that where enforcement proceedings have been initiated and the artworks are located in a private residence, a court order will be required to enter the property to obtain possession of the artworks. (to the extent the individual owner of such private residence is not cooperating).

Law stated - 20 February 2024

Ranking of creditors

24 | Does the lender with a valid and perfected first-priority security interest over the art collateral take precedence over all other creditors?

Yes, under English law a fixed charge holder has priority over all other creditors (including liquidator or administrator expenses) other than prior fixed charge holder.

Note that the doctrine of *lex situs* applies under English law, which means that the laws of the jurisdiction in which the art is situated at the time of any enforcement would apply. Therefore, to the extent the artwork is no longer located in England, consideration must be had to local law as to whether such jurisdiction recognises the English law security interest and order of priority.

Law stated - 20 February 2024

INTELLECTUAL PROPERTY RIGHTS

Creator copyright

25 |

Does copyright vest automatically in the creator, or must the creator register copyright to benefit from protection?

The author of a work made on or after 1 August 1989 is automatically the first owner of any copyright in it ([Copyright, Designs and Patents Act 1988 \(CDPA\)](#)). There is no need for registration. The predecessor of the CDPA, the [Copyright Act 1956](#), provided for the same. There are exceptions to the general rule, including for literary, dramatic, musical or artistic works made by employees in the course of employment, Crown copyright, parliamentary copyright and copyright owned by certain international organisations. The copyright protection of works created by artificial intelligence was considered by the Intellectual Property Office in a consultation that ran from October 2021 to January 2022. The government sought evidence and views on a range of options on how AI should be dealt with in the patent and copyright systems. The Government's conclusions confirmed that it does not plan changes to the law for computer-generated works due to the difficulty of providing an accurate evaluation of the options and the risk that changes to the law could have unintended consequences. No changes to UK patent law are planned for AI-devised inventions either. This position was further reinforced by the recent unanimous decision by the Supreme Court in *Thaler v Comptroller-General of Patents, Designs and Trade Marks* ([2023] UKSC 49), which held that an AI machine cannot be an 'inventor' under the Patents Act 1977, and that ownership of an AI machine does not confer on its owner a right to apply for or be granted patents for anything created by that machine. The government has, however, confirmed that it will keep these areas of the law under review.

Law stated - 20 February 2024

Copyright duration

26 | What is the duration of copyright protection?

The duration of copyright protection is as follows:

- artistic works: 70 years from the end of the calendar year in which the author dies;
- works of joint authorship or co-authorship: 70 years from the end of the calendar year in which the last known author dies;
- works of unknown authorship: copyright expires at the end of the period of 70 years from the end of the calendar year in which the work was made or if, during that period, the work is made available to the public, at the end of the period of 70 years from the end of the calendar year in which it is first made available; and
- computer-generated literary, dramatic, musical or artistic works: 50 years from the end of the calendar year in which the work was made.

Law stated - 20 February 2024

Display without right holder's consent

27 |

Can an artwork protected by copyright be exhibited in public without the copyright owner's consent?

Yes, for paintings, sculptures and other artistic works. However, the moral rights of the author, unless expressly waived, have to be respected at all times.

In addition, under the CDPA, consent is required to perform, show or play a literary, dramatic or musical work in public.

Law stated - 20 February 2024

Reproduction of copyright works in catalogues and adverts

28 | Can artworks protected by copyright be reproduced in printed and digital museum catalogues or in advertisements for exhibitions without the copyright owner's consent?

Under English Law, two exceptions permit the reproduction of an artwork in printed and digital catalogues or in advertisements for exhibitions without the copyright owner's consent.

Under the first exception, the copyright owner's consent is not required for the illustration of the artwork in a catalogue or marketing brochure advertising its sale, provided that the catalogue or marketing brochure makes clear that the artwork is for sale. Once the work has been sold or the right to sell the work expires (ie, the consignment agreement expires), this exemption no longer applies. Care needs to be taken following the sale to obtain copyright consent for any further commercial use of the image of the sold artwork.

In addition, the fair dealing exception permits the limited use of copyright material without consent from the copyright owner for the purpose, among others, of criticism and review. It may be possible to rely upon the fair dealing exception in the case of printed and digital catalogues. Whether or not something is considered fair dealing is a fact-specific enquiry. As such, much will depend on the context of the catalogue. Factors to be considered are commercial use, quantity and proportionality. For example, a free leaflet or catalogue that includes guidance or commentary on the nature and purpose of the artworks in the exhibition may be regarded as fair. Advertisements, however, are less likely to fall within the scope of this exception.

In general, museums, auction houses and galleries considering reproducing an artwork protected by copyright in catalogues and advertisements will need to carefully consider the exemptions under English law and the context before reproducing the artwork without consent.

Law stated - 20 February 2024

Copyright in public artworks

29 | Are public artworks protected by copyright?

Certain categories of artistic works may be reproduced without the copyright owner's consent if they are permanently situated in a public place or in premises open to the public. These include buildings, sculptures, models for buildings and works of artistic craftsmanship. Copyright in these works is not infringed by making a graphic work representing it, taking a photograph or making a film of it, or broadcasting a visual image of it. This exception does not extend to all forms of public art, such as street art, therefore legal advice should be sought in relation to other artistic works.

Law stated - 20 February 2024

Artist's resale right

30 | Does the artist's resale right apply?

The artist's resale right (ARR), also known as the *droit de suite*, applies in the UK. The ARR entitles authors of original works of art in which copyright subsists and their successors in title to a royalty each time one of their works is resold through an auction house or an art market professional. The right to this royalty lasts for the same period as copyright in that work of art. There are certain exceptions to the ARR, including where the work being resold was bought directly from the artist less than three years previously and it is being resold for €10,000 or less. In addition, sales between private individuals, without the use of an art market professional, or to public, non-profit making museums do not attract royalty payments.

The ARR only applies when the sale price reaches or exceeds the sterling equivalent of €1,000 and is calculated on a sliding scale as follows:

Royalty Portion of the resale price

- 4 per cent up to €50,000
- 3 per cent between €50,000.01 and €200,000
- 9 per cent between €200,000.01 and €350,000
- 0.5 per cent between €350,000.01 and €500,000
- 0.25 per cent in excess of €500,000

Royalties are also capped so that the total amount of the royalty paid for any single sale cannot exceed €12,500. ARR is exempt from VAT.

Collective management of ARR is compulsory in the UK. The two main collecting societies are the Artists' Collecting Society and the Design and Artists Copyright Society, which collect and distribute the royalty. Individual artists and estates cannot seek payment directly from art market professionals.

ARR continues to apply in the UK following Brexit.

Law stated - 20 February 2024

Moral rights

31 | What are the moral rights for visual artists? Can they be waived or assigned?

Under English law, moral rights for visual artists are personal rights that apply to literary, dramatic, musical or artistic works and films. They were introduced by the CDPA and, therefore, only apply to artists living on or after 1 August 1989. The rights are as follows:

- the paternity right: the right to be identified as the author or director of a copyright work, which lasts for the life of the author plus 70 years;
- the right of integrity: the right to object to derogatory treatment of a copyright work, which lasts for the life of the author plus 70 years;
- false attribution: the right not to have a literary, dramatic, musical or artistic work falsely attributed to him or her as author and not to have a film falsely attributed to him or her as director, which lasts for the life of the author plus 20 years; and
- the right of privacy: the right to privacy of certain films and photographs, which lasts for the life of the author plus 70 years.

Moral rights can be waived contractually. If a waiver is agreed, its terms should be specific so as to avoid uncertainty and should include, among other things, a detailed description of the specific work, whether the waiver is subject to conditions or subject to revocation, and whether it extends to licensees and successors in title to the owner (or prospective owner) of the copyright in the work.

Moral rights cannot be assigned they will remain with the creator of the work and pass to the artist's estate on death.

Law stated - 20 February 2024

COMMISSIONS

Accounting to the principal

32 | Does the law require the agent to account to the principal for any commission or other compensation received by the agent while conducting the principal's business?

Yes. As a matter of English law, an agent owes fiduciary duties to his or her principal. These are implied duties in addition to any duties that may have been agreed between the principal and the agent. One such implied fiduciary duty is a duty to account for any commission, benefit or profit made or received by the agent when conducting the principal's business. The commission, benefit or profit belongs to the principal, and the agent can keep it for his or her own account only with the principal's consent.

Law stated - 20 February 2024

Principal's consent

- 33** | Does disclosure to the principal that the agent will receive a commission allow the agent to keep the commission unless the principal objects?

The agent will generally be able to retain his or her commission where he or she has disclosed to the principal: that he or she will receive a commission; and the amount of the commission. Ideally, the principal then gives his or her express consent to the agent retaining the commission for his or her own account.

If there is no disclosure at all, the commission retained by the agent amounts to a secret commission. Secret commissions are treated by the law as a special type of fraud or bribe, and the agent must account for it in full. By taking a secret commission, the agent may find that he or she must pay to the principal all remuneration received by him or her in the course of conducting the principal's business, not just the commission. The principal may also be entitled to damages for fraud (for the amount of any actual loss). Transactions involving secret commissions are voidable at the election of the principal.

If there is a degree of disclosure but the principal has not given informed consent, the commission is not secret; however, the principal may still be entitled to the commission and other remedies. This half-way category arises where the possibility of a commission payment was disclosed but not the fact that such commission had actually been paid or its amount.

The question as to what constitutes informed consent is a question of fact. English judges have held that there is no precise formula which will determine all cases. It may be sufficient for the agent to disclose to the principal that he or she will receive a sum of money from a third party, leaving it to the principal to enquire as to the amount. However, informed consent typically requires not just disclosure that a commission will be paid, but also the amount of the commission.

Law stated - 20 February 2024

Undisclosed agent commission

- 34** | If a third party pays a commission to an agent that is not disclosed to the principal, can the principal claim the commission from the third party?

Yes. Upon discovery that a third party paid a secret commission to his or her agent, the principal can claim the commission either from the agent or from the third party. If the third party is held liable to pay the commission to the principal, it will have paid the commission twice, leaving it with a claim against the agent for the return of the commission paid to him or her.

Law stated - 20 February 2024

AUCTIONS

Regulation

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35 | Are auctions of art, antiques or collectibles subject to specific regulation in your jurisdiction?

There is no government-appointed regulator in charge of regulating auctioneers of art, antiques and collectibles.

No general trading licence is required from auctioneers selling art, antiques and collectibles, except in relation to certain categories of collectibles, such as wine, spirits and tobacco. However, certain local councils, including Westminster City Council, require auction houses to register with the council.

Regulations applicable to auction sales are found in different statutes. These regulations have not been consolidated. For example, in live auctions, the name of the auctioneer must be publicly displayed throughout the course of the auction (Auctioneers Act 1845), bid rigging is prohibited (Auctions Bidding Agreements Acts 1927 and 1969; Enterprise Act 2002) and, where a sale by auction is not notified to be subject to a right to bid by or on behalf of the seller, the seller cannot bid himself or herself or employ any person to bid at the sale (section 57(4), Sale of Goods Act 1979).

Law stated - 20 February 2024

Ancillary services by auctioneers

36 | May auctioneers in your country sell art, antiques or collectibles privately; offer advances or loans against art, antiques or collectibles; and offer auction guarantees?

Auctioneers are given wide discretion to provide other services to sellers and buyers beyond auction services. The larger auction houses offer sellers the opportunity to sell their artworks privately as opposed to at auction. Moreover, auction houses routinely sell artworks that did not sell at the auction privately, after the auction. Some auction houses offer seller advances over sale proceeds, or loans secured against artworks that are not consigned for sale. Auction guarantees are available for higher-value lots.

Law stated - 20 February 2024

SPOILATION DURING THE NAZI ERA

Claims to Nazi-looted art

37 | In what circumstances would the heirs of the party wrongly dispossessed typically prevail over the current possessor, if a court in your country accepted jurisdiction and applied its own law to a claim to art lost during the Nazi era?

As a general rule, the possessor of an artwork cannot transfer title to it that they themselves do not have (also known as the *nemo dat quod non habet* rule). This means that, in principle, anyone deriving possession from the thief cannot claim good title. There are exceptions to this rule but, if this were the only rule, the victim of a wrongful dispossession would have a good claim against the current possessor for the return of the artwork. However, by

application of the Limitation Act 1980, a claim to a stolen artwork must be made within six years of the date of the first acquisition in good faith. The Limitation Act goes further: if more than six years have passed, the claim is barred and the victim's ownership is extinguished. In practice, this means that if English law applies, and if the current possessor can show that more than six years have passed since the first acquisition in good faith, any legal claim brought against the possessor will fail. It is important to note, however, that the current possessor may not be able to market, sell or do anything else with the artwork, even if title vests in them, as long as there is an unresolved claim hanging over the artwork.

Law stated - 20 February 2024

Ad hoc tribunal to hear claims outside court system

38 | Is there an ad hoc body set up to hear claims to Nazi-looted art?

In the UK, the Spoliation Advisory Panel was established in 2000 as an alternative dispute resolution process for claims from persons dispossessed between 1 January 1933 and 31 December 1945 whose artworks are today held in UK national collections, museums or galleries 'for the public benefit'. The claim must relate to 'events occurring during the Nazi era'. Recommendations by the Spoliation Advisory Panel are not legally enforceable, but both sides are expected to accept them. The Panel may recommend the return of an artwork to the claimant, a compensatory or ex gratia payment, or other 'fair and just solutions' (such as the attachment of plaques next to exhibits explaining the history of the artwork in question and providing details on the dispossessed person and his or her fate during the Nazi era).

In making its recommendations, the Spoliation Advisory Panel's remit is not restricted to the technical legal entitlements of claimants but takes into account moral considerations as well. The Panel may also be called upon to make a recommendation about a claim for an artwork in a private collection, where both claimant and current possessor jointly request it to do so. However, this has not happened thus far.

Law stated - 20 February 2024

LENDING TO MUSEUMS

Insurance

39 | Who is responsible for insuring art, antiques or collectibles loaned to a public museum in your jurisdiction?

In England and Wales, art on loan to a public museum is typically insured under the Government Indemnity Scheme. Pursuant to the Scheme, the government covers the risk of loss or damage to the art on loan. The Scheme acts as an alternative to commercial insurance, as it allows art and cultural objects to be shown publicly in the UK that might not have been otherwise because the cost of insurance would have been prohibitively high. The Scheme covers loans from private lenders in the UK and abroad, as well

as loans from UK non-national museums and galleries. In England, the Scheme is administered by Arts Council England. Under the Scheme, certain risks are excluded and these exclusions are non-negotiable. As such, borrowers and lenders sometimes rely on commercial insurance to cover risks excluded under the Scheme. Public regional museums and galleries (including historic houses, libraries and archives) may also request funding from the Art Fund (the national fundraising charity for art) to secure important strategic loans from major UK collections. Grants cover all costs associated with securing and displaying loans to these cultural institutions, such as insurance.

Law stated - 20 February 2024

Immunity from seizure

40 | Are artworks, antiques or collectibles loaned to a public museum in your country immune from seizure?

Cultural objects in England and Wales are protected from seizure by the Tribunals, Courts and Enforcement Act 2007. To benefit from immunity from seizure, the following conditions must be met:

- the object is usually kept outside the UK;
- the object is not owned by a person who is a resident in the UK;
- the import of the object does not contravene any law;
- the object is brought into the UK for the purpose of a temporary public exhibition at an approved museum or gallery; and
- the museum or gallery has published information about the object where required to do so by regulations.

A list of approved museums and galleries can be found on the website of Arts Council England. In England, to obtain approved status, the museum or gallery must submit a completed questionnaire along with supporting evidence to the Secretary of State for Digital, Culture, Media and Sport, demonstrating that it has satisfactory due diligence processes in place for examining the history of loans and for provenance research. It should also demonstrate that it will not borrow objects if there is any suspicion that they were stolen, looted or illegally obtained. Once approved status has been granted, the museum or gallery is required to list the works that are immune from seizure on its website, providing details of the loan and of the exhibition. Immunity is then automatic. Approved museums are not required to reapply for each exhibition or item that needs to be protected, but they must meet the conditions for protection each time. Approval can be withdrawn if an institution has inadequate procedures for establishing an item's place of origin or ownership, or fails to comply with the Protection of Cultural Objects on Loan (Publication and Provision of Information) Regulations 2008.

Law stated - 20 February 2024

CULTURAL PATRIMONY

National treasures

41 | Is there a list of national treasures?

There is no list of national treasures in England and Wales.

Law stated - 20 February 2024

Right of pre-emption

42 | If the state is interested in buying an artwork for the public collections, does it have a right of pre-emption?

There is no right of pre-emption in England and Wales. However, when an export licence is requested and the Secretary of State decides that an artwork meets one or more of the Waverley criteria, the export licence application will be suspended to allow UK organisations, typically public museums, or individuals to make an offer to buy it.

Law stated - 20 February 2024

Automatic vesting in the state

43 | In what circumstances does ownership in cultural property automatically vest in the state?

Ownership of cultural property can automatically vest in the Crown when, for instance, it qualifies as a treasure within the meaning of the Treasure Act 1996 (as amended by the Treasure (Designation) Order 2002).

The Act designates several categories of objects that are considered treasure. These categories include objects that are at least 300 years old that meet the following criteria:

- not a coin but containing at least 10 per cent precious metal;
- one of at least two coins in the same find containing at least 10 per cent precious metal; or
- one of a group of at least 10 coins in the same find.

On 30 July 2023, a new definition of 'treasure' came into force in England, Wales and Northern Ireland. The Treasure (Designation) (Amendment) Order 2023 modified the existing definition under the Treasure Act 1996. The reform introduced an entirely new, additional class of objects that are deemed legally to constitute 'treasure'. This is the first time that the law in England, Wales and Northern Ireland has recognised a 'significance-based' class of treasure, as opposed to a definition based solely on precious material composition and the age of items found. Under the newly expanded definition, any object, any part of which is metal, and is at least 200 years old when found, will be deemed to be treasure if:

a. it provides an exceptional insight into an aspect of national or regional history, archaeology or culture by virtue of one or more of the following:

- (1) its rarity as an example of its type found in the United Kingdom;
- (2) the location, region or part of the United Kingdom in which it was found; or
- (3) its connection with a particular person or event; or

b. although it does not, on its own, provide such an insight, it is, when found, part of the same find as one or more other objects, and provides such an insight when taken together with those objects.

Law stated - 20 February 2024

Illegally exported property claimed by foreign state

44 | How can a foreign state reclaim in your jurisdiction cultural property illegally exported from its territory?

In the EU, a member state can seek the return of cultural property illegally exported to another member state by relying on Directive 2014/60/EU of 15 May 2014. Prior to Brexit, the UK implemented this Directive through the Return of Cultural Objects (Amendment) Regulations 2015 (the 2015 Regulations). However, under the power in section 8 of the Withdrawal Agreement, the Return of Cultural Objects (Revocation) Regulations 2018 was introduced to revoke the 2015 Regulations to avoid a one-sided obligation for the UK in the event of a no-deal Brexit.

The EU–UK Trade and Cooperation Agreement (TCA) specifically provides that the EU and the UK will continue to cooperate in facilitating the return of cultural property illicitly removed from the other party's territory, having regard to the 1970 UNESCO Convention. In practice, the TCA maintains the mutual cooperation part of the European Directive, which requires parties to notify each other when cultural property is found in their territory and whether there are reasonable grounds for believing the property was illicitly removed from the other party, but unlike the European Directive, it does not maintain the UK's right of action in the courts of EU member states to recover such cultural property and equally, an EU member state does not have a right of action to recover cultural property in the UK.

As the TCA does not maintain the right of action under the European Directive, the options are limited for cultural property that was illegally exported but not stolen, save for the limited cases where cultural property was imported into the UK in breach of the relevant cultural property import restrictions. The UK does not have bilateral treaties with other countries designed to facilitate the return of illegally exported property. Save for repatriation of cultural property between states pursuant to the 1970 UNESCO Convention (which the UK ratified in 2002 and implemented by enacting the Dealing in Cultural Objects Offences Act 2003), English courts will not apply the export laws of other countries. The UK has not ratified the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects that could, in theory, pave the way for the return of illegally exported cultural property to the country of origin. If the English courts found that English law was violated, for example English customs laws,

this could lead to the court ordering the seizure or confiscation of the illegally exported cultural property, and its possible repatriation to the country of origin.

Law stated - 20 February 2024

NON-FUNGIBLE TOKENS

Regulation and case law

45 | How are non-fungible tokens (NFTs) regulated in your jurisdiction? Is there any case law on NFTs in your jurisdiction?

Regulation

NFTs are not currently regulated in the UK (provided that they are in fact akin to digital collectibles artworks, as opposed to financial services or products). It is likely that future regulation will clarify this situation.

NFTs are not covered by the UK financial promotions regime, nor would they be subject to the Treasury's proposed expansion to include crypto assets. Crypto assets that are not regulated products, including NFTs, are, however, included in the Advertising Standards Authority (ASA) guidance insofar that advertisements of these products must state prominently that they are not regulated.

NFTs fall under the Money Laundering Regulations (MLRs) requiring a business to be registered with the Financial Conduct Authority before issuing and or exchanging crypto assets if conducting business within the UK so as to comply with anti-money laundering rules.

Current discussions on proposed regulatory changes may impact NFT regulations and determine which ones they will be categorised under.

Case law

The unique nature of NFTs means that they do fall within private property law definitions, raising the question as to whether they can be considered 'property'. On 10 March 2022, the High Court handed down judgment in *Osbourne v Persons Unknown & Anor* [2022] EWHC 1021, confirming the treatment of the NFTs in question as property. In that case, two NFTs in Ms Osbourne's account in Ozone's NFT marketplace were removed from her account without her knowledge and found in two other anonymous accounts opened by Ozone. Ms Osbourne sought to freeze the removed NFTs, requiring Ozone to not allow for any subsequent transfers of her stolen NFTs. HHJ Pelling KC stated that '[t]here is clearly going to be an issue at some stage as to whether non-fungible tokens constitute property for the purposes of the law of England and Wales, but I am satisfied... that there is a least a realistically arguable case that such tokens are to be treated as property as a matter of English law'. The case therefore gives authority for the courts to treat NFTs as property, although this does not extend to the underlying content that the NFTs represent.

D'Aloia v Person Unknown & Others [2022] EWHC 1723 saw the claimant allege that the defendant fraudulently induced him to transfer crypto currency assets into various wallets.

The case is of note because the High Court allowed service of proceedings by NFT directly to the defendants' digital wallet.

Both cases extend rights to those who are the victims of crypto fraud. Though the latter case does not specifically concern the regulation of NFTs, it is of interest considering the future role of NFTs and how they may be regulated in both courts and beyond.

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Law stated - 20 February 2024

AI-GENERATED ART

Regulation and case law

46 | How is AI-generated art regulated in your jurisdiction? Is there any case law on AI-generated art in your jurisdiction?

While the UK Government expressed its desire to be a 'global AI superpower' in its 2021 National AI Strategy paper, regulation in this area is still largely up in the air.

In March 2023, the UK Government published a White Paper entitled A pro-innovation approach to AI regulation that showed its intention for a light touch and pro-innovative approach to AI. A 12-week consultation on the proposals set out in the White Paper commenced upon publication and the Government's response was subsequently published on 6 February 2024. This response set out that the UK is 'on course for more agile AI regulation, backing regulators with the skills and tools they need to address the risks and opportunities of AI.' Earlier in November 2023, a Private Members' Bill entitled Artificial Intelligence (Regulation) Bill, which provides for 'the regulation of artificial intelligence; and for connected purposes', had its first reading in UK Parliament. Its main purpose is to establish a central 'AI Authority' to oversee the regulatory approach to AI and to set out some key principles (such as safety, security and robustness, transparency and explainability, fairness etc) that the AI Authority must consider when regulating AI.

The Bill also includes provisions relating to the protection of IP in the use of AI. For example, section 2 of the Bill provides a general principle that businesses that develop or deploy or use AI should comply with IP, and section 5 requires those involved in training AI to supply a record of all third-party IP used in that training. This is in line with the EU AI Act that proposed last minute protections for the use of copyright in generative AI, requiring the disclosure of any copyright material used to train an AI model.

The Bill has not yet passed through both Houses of Parliament for it to become law but it is an interesting development, nonetheless.

Law stated - 20 February 2024

Copyright

I

47 | Is there copyright in AI-generated art in your jurisdiction?

Section 1(1) of the Copyrights, Designs and Patents Act 1988 (CDPA) sets out the works that that copyright subsists in. When it comes to AI-generated art, it is possible copyright may subsist in data scraped to train the AI models (such as online images), the output artwork that is generated, software (eg, source code) and any databases of works may be protected by database rights. The normal rules of copyright may apply to generated artwork, including that the works must be original for copyright to subsist and have not been copied along with the same rules as to length of copyright protection.

Section 9(3) CDPA sets out that the author of such works is the person who makes the 'arrangements necessary' for the works. There has been a flurry of debate as to who this should be in AI-generated works. For example, arguments can be made that the author is either the inventor of the AI program, the author of the works used to train the AI model or perhaps even the user to instructs the AI to create a certain type of work.

Law stated - 20 February 2024

ANTI-MONEY LAUNDERING AND SANCTIONS

AML compliance

48 | What anti-money laundering (AML) compliance obligations are placed on the art trade?

Anti-money laundering legislation applicable to the art market in the UK is chiefly comprised of: (1) the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the 2017 Regulations) that transposed the EU's Fifth Anti-Money Laundering Directive into English law, as amended by the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 (the 2019 Regulations) that brought 'art market participants' within the regulated sector for anti-money laundering and further amended by the Money Laundering and Terrorist Financing (Amendment) (No. 2) Regulations 2022 (the 2022 Regulations); (2) the Proceeds of Crime Act 2002 (POCA); and (3) the Terrorism Act 2000 and Terrorism Act 2006 (jointly, the TA).

2017 Regulations

Pursuant to the 2017 Regulations, art market professionals and businesses fell within the regulated sector only if they qualified as high-value dealers, or if they provided financial-type services such as loans or advances secured by works of art, antiques or collectibles. The 2017 Regulations define a high-value dealer as any business or sole trader that accepts or makes high-value cash payments of €10,000 or more (or its equivalent in any currency) in exchange for goods. The 2017 Regulations impose significant obligations on high-value dealers, including registering with His Majesty's Revenue and Customs (HMRC) for supervision, identifying clients and verifying clients' identity, and training employees to identify suspicious transactions.

2019 Regulations

The 2019 Regulations extended the application of anti-money laundering regulations to art market participants (AMPs) defined as a firm or sole practitioner trading in or acting as an intermediary in the sale or purchase of works of art, where the value of the transaction, or a series of linked transactions, amounts to €10,000 or more (regardless of method of payment).

'Works of art' within the 2019 Regulations are defined by reference to section 21(6) of the Value Added Tax Act 1994, as amended, and broadly cover paintings and drawings as well as original and limited edition engravings, prints, sculptures, tapestries, enamels, ceramics and photographs. Other items such as furniture, coins, stamps, jewellery, automobiles, antiques and collectibles are not included in the definition of 'works of art' (unless they otherwise fall within the categories mentioned above).

Pursuant to the 2019 Regulations, dealers, intermediaries, auction houses and freeports who fall under the definition of AMP must:

- register for supervision with HMRC;
- carry out a written risk assessment of their clients and their businesses, including identifying low-risk and high-risk clients and transactions;
- develop written anti-money laundering policies and procedures;
- conduct customer due diligence (CDD) and transaction due diligence;
- train staff on anti-money laundering regulations and relevant internal policies and procedures;
- appoint a nominating officer who, among other things, will be in charge of reporting suspicious activity to the National Crime Agency; and
- maintain records relating to due diligence on individual transactions, staff training programmes and AML policy and risk assessment updates.

The British Art Market Federation has issued detailed guidance approved by His Majesty's Treasury (HMT) on the interpretation of the 2017 Regulations in the art market context (the Guidance). The Guidance falls within the definition of 'relevant guidance issued by any other supervisory authority or appropriate body and approved by the Treasury' (Regulation 86(2)(b)(ii)) and therefore must be taken into account by the courts in deciding whether an offence has been committed under the 2017 Regulations. The Guidance provides the most comprehensive description of the application of the 2017 Regulations in the art market. At the date of writing, the February 2023 Guidance is the most up to date version.

The Guidance has clarified the definitions of 'intermediary' caught by the AML Regulations in an art market context, clarified that sales by artists are not subject to the AML Regulations and clarified that art sale contracts can be agreed before customer due diligence (CDD) has been completed, so long as the required CDD is completed prior to release of the art and transfer of ownership.

CDD entails the following: identifying the AMP's 'customer' (as defined in the Guidance) and, where relevant, the beneficial owner of the customer; verifying the customer's identity; and assessing the purpose and intended nature of the business relationship or occasional transaction. There are three levels of CDD, namely standard, enhanced and simplified. The level of CDD to be carried out will vary depending on the AMP's assessment of

the customer's and the transaction's money laundering risk, based upon the customer profile, the nature of the business relationship or transaction and relevant political and geographical risk factors.

The baseline requirement for identifying an individual is most commonly independently produced documentation showing the individual's name, address, date of birth, residential address and likeness, such as passports, driving licences or utility bills. Where the transaction is not conducted in person, the AMP should take steps to verify that the person conducting the transaction is the person identified in the documentation supplied. Where the AMP's customer is a company, trust or partnership, the Guidance sets out detailed requirements for identification and verification of the customer. Where the AMP's customer is known to be acting as an agent for another party, the AMP has also to conduct CDD on the other party and verify that the agent is authorised so to act.

POCA

All art market professionals and businesses must comply with POCA, including those that do not fall within the scope of the 2017, 2019 and 2022 Regulations. POCA establishes a series of criminal offences in relation to money laundering, including:

concealing, disguising, converting, transferring or removing criminal property from the UK;
entering into or becoming involved in an arrangement that facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person; or
acquiring, using or having possession of criminal property.

A person convicted of a substantive offence under POCA is liable to imprisonment for up to 14 years or to pay a fine, or both. The main defence against committing a primary money laundering offence under POCA is to seek consent from the National Crime Agency before concluding the transaction in relation to which there is knowledge or suspicion of money laundering.

TA

The TA set out a series of offences relating to the funding of terrorism. An individual or other entity selling cultural property from countries occupied by or known to be associated with terrorists is at risk of committing an offence under the TA, the most relevant offence being the retention or control of (or facilitation of the retention or control of) terrorist property.

Law stated - 20 February 2024

Sanctions compliance

49 | What sanctions-related compliance obligations are placed on the art trade?

UK sanctions are restrictive measures imposed by the government to achieve a specific foreign policy or national security objectives. Common sanctions include financial sanctions (asset freezes), trade sanctions and travel bans. All UK individuals and legal entities who are within or undertake activities within the UK's territory must comply with UK sanctions.

Legal framework

The most significant pieces of legislation for the purposes of UK sanctions law are: (1) the Sanctions and Anti Money Laundering Act 2019 (SAMLA); (2) the Counter Terrorism Act 2008; and (3) the Anti-Terrorism, Crime and Security Act 2001. The types of sanctions most applicable to the art market are financial sanctions and trade sanctions. In summary:

- Financial sanctions are imposed on designated persons to restrict access to funds and economic resources. The prohibition also extends to those acting on behalf of the designated person, and to entities owned or controlled by the designated person. Financial sanctions are the responsibility of the Office of Financial Sanctions Implementation (OFSI).
- Trade sanctions are restrictions on exporting, supplying, delivering or making available listed goods and technology; restrictions on providing financial, insurance and technical services related to listed goods and technology; and restrictions on brokering, arranging and negotiating the provision of restricted goods and services. Trade sanctions are the responsibility of the Department for International Trade (DIT).

It is important to note that the sanctions regime is complex and constantly evolving. Since the 2022 invasion of Ukraine, the UK has imposed a significant number of sanctions on Russia and Belarus, including the Russia (Sanctions) (EU Exit) Regulations 2019 (the Russia Sanctions), which provide for a more rigorous regime of financial prohibitions placed on Russian entities and which are subject to regular amendment. Information on the UK sanctions currently in place is published on the [Foreign, Commonwealth & Development Office](#) website.

Risks for high value dealers and AMPs

In recognition of the UK's role in the art and auction market, in 2023 OFSI published [guidance](#) (the OFSI Guidance) on some of the risks for high value dealers and AMPs (as defined by the 2019 Regulations) operating in the art market, including:

- the movement of assets that were previously associated with a sanctioned entity;
- the use of intermediaries and shell companies to source, buy or sell high value goods; and
- the use of cultural property to finance terrorist operations.

The OFSI Guidance defines the UK high value dealer sector relatively widely, to include fine art, antiques, precious metals and other tangible assets such as investments in wine and spirits.

Under UK sanctions law, all individuals or entities operating in the art market must not receive or administer funds from or to a designated person, or provide services to a designated person, unless they have been granted express authorisation from OFSI in the form of a licence. A breach of financial sanctions may be a criminal offence, and there are both civil and criminal enforcement options to remedy breaches of financial sanctions.

In addition, the UK sanctions regime currently includes specific trade prohibitions relating to cultural property and luxury goods.

On 14 April 2022, the Russia Sanctions were amended to include the prohibition of luxury goods to, or for use in, Russia or making luxury goods available to person 'connected with' Russia (the Russia (Sanctions) (EU Exit) (Amendment) (No. 8) Regulations 2022). The list of luxury items is extensive, and includes works of art, antiques, collectors' pieces and musical instruments (a full list of prohibited items is set out in [Schedule 3A](#) of the Russia Sanctions). Recent amendments to the Russia Sanctions include the provision of technical assistance relating to luxury goods to a person connected with Russia or for use in Russia (the Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2023) and prohibitions on the import, acquisition, supply or delivery of diamonds and diamond jewellery that are located or originate in, or are consigned from, Russia (the Russia (Sanctions) (EU Exit) (Amendment) (No 5) Regulations 2023).

At the time of writing, the Syria (United Nations Sanctions) (Cultural Property) (EU Exit) Regulations 2020 and the Iraq (Sanctions) (EU Exit) Regulations 2020 also impose trade sanctions relating to illegally removed cultural property.

Compliance

Art market professionals and businesses have a legal obligation under UK sanctions law to ensure they are not dealing or transacting with any sanctioned entity. Whilst there are no set requirements under the UK sanctions regime to have specific policies and procedures in place, the OFSI Guidance emphasises the importance of taking a risk-based approach and conducting enhanced due diligence checks, such as identifying and verifying the ultimate customer. It is the responsibility of the individual or organisation to ensure that it has put in place sufficient measures to ensure it does not breach financial sanctions.

Other diligence measures include:

- Conducting checks of the [Consolidated List](#) of all targets to whom financial sanctions apply, which is maintained by OFSI and includes all individuals and entities that are subject to financial sanctions in the UK.
- Running checks on online resources, such as lost/stolen art databases.
- Carrying out checks with Companies House and other databases to verify complex ownership structures.

OFSI's approach to compliance and enforcement is detailed in its [general guidance](#) document.

Other regulatory authorities, such as the National Crime Agency (NCA), are also issuing guidance and alerts on sanctions and money laundering as part of their collaborative work with the Joint Money Laundering Intelligence Taskforce. In January 2024 the NCA issued an [alert](#) highlighting the sanctions evasion and cultural property trafficking risks presented to the art storage sector, including artwork storage facilities, auction houses, art dealerships, galleries, museums and freeports. The alert is intended to promote awareness and bring about preventative action and includes:

- Key indicators and useful questions to aid due diligence checks, including: changes in client circumstances; changes in ownership and control of cultural property; attempts to transfer property to an intermediary or another jurisdiction; and the use of trust structures where the UBO is unclear.

- Case studies to demonstrate sanctions evasion and/or cultural property trafficking, including an investigation into a designated Hezbollah financier who had £1 million in fine artwork storage facilities in the UK.
- Breakdown of sanctions evasion and money laundering offences.
- Overview of reporting obligations to support firms in remaining compliant with financial sanctions.

Law stated - 20 February 2024

ENDANGERED SPECIES

CITES

50 | Is your jurisdiction a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

The UK is a party to CITES. The EU Wildlife Trade Regulations (Council Regulation (EC) No. 338/97 and Commission Regulation (EC) No. 865/2006), which were in force in the UK before Brexit, continue to apply in England and Wales as retained EU legislation, albeit in an amended form.

England and Wales is now considered a 'third country' and will have to abide by the requirements set out in the Regulations when exporting items containing endangered species to the EU.

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England and Wales is now considered a 'third country' and will have to abide by the requirements set out in the Regulations when exporting items containing endangered species to the EU. Under the EU's revised guidance on the ivory trade, as of January 2024 the only exceptions for import of ivory for commercial purposes are: (1) musical instruments pre-dating 1975 or (2) antiques pre-dating 1947 that are sold to museums, after the relevant authority responsible for cultural heritage confirms their importance and supports the transaction. Import of raw ivory or worked ivory specimens for non-commercial purposes is permitted subject to a high level of scrutiny. In any case, objects submitted for import require a permit.

In England and Wales, CITES licensing is operated by the Department of Environment, Food and Rural Affairs, with a designated management authority in charge of administering its licensing system (the Animal and Plant Health Agency (APHA)). Violation of the EU Wildlife Trade Regulations is a criminal offence, attracting a maximum conviction of a five-year custodial sentence or a fine, or both. The Wildlife Crime Unit is responsible for enforcement.

Regarding the ivory trade, as of December 2021 the only exceptions for import of ivory for commercial purposes are: (1) musical instruments pre-dating 1975 or (2) antiques

pre-dating 1947 that are sold to museums, after the relevant authority responsible for cultural heritage confirms their importance and supports the transaction. Import of raw ivory or worked ivory specimens for non-commercial purposes is permitted subject to a high level of scrutiny. In any case, objects submitted for import require a permit.

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Law stated - 20 February 2024

Specific endangered animal products

51 | Are there any special rules for works of art made of elephant ivory, rhino horn or other specific endangered animal products?

In 1989, CITES effectively banned the international trade of African elephant ivory, save for very exceptional circumstances, by adding it to Appendix I of CITES. This ban has been recognised in the UK since that date, but prior to Brexit, trade across the EU was not considered international. Accordingly, there were exceptions to the ban (such as the antique exemption for pre-1947 worked specimens) that allowed a limited trade in ivory objects. Trade in raw ivory, however, was completely prohibited in the UK, regardless of its age. Post Brexit, these exemptions will not apply to trade with the EU. Furthermore, the Ivory Act (see below) will prohibit most of the trade that would have benefited from such exemptions.

In December 2018, the UK enacted the Ivory Act 2018, which imposes a ban on dealing in elephant ivory of any age subject to certain narrow exemptions (listed below). Dealing includes selling, buying, hiring, offering or arranging to offer, keeping for sale and importing to or exporting from the UK with the intention to sell or hire. The Ivory Act has wide application and applies to anyone within the UK, including non-residents who are visiting the UK temporarily. It also expressly applies to sales and loans outside the UK, where the arranging takes place from the UK. Accordingly, dealers and collectors cannot avoid the ban by moving objects out of the UK while continuing to do business from the UK. However, the Act does not apply to purchases outside the UK, so it is still possible (subject to CITES permits) to acquire an ivory object outside the UK and bring it back to the UK.

The Ivory Act sets out the following narrow exemptions whereby dealing is permitted.

Pre-1918 'outstandingly valuable and important' exemption: ivory objects assessed by a panel of recognised specialists to be of 'outstandingly high artistic, cultural or historical value'. These must be the rarest of their type. Two factors will be considered: whether the item is rare, and the extent to which the item is an important example of its type.

Pre-1918 portrait miniatures exemption: portrait miniatures painted on thin slivers of ivory if they were made before 1918, possess a surface area of no more than 320cm² (excluding the frame) and are registered.

Pre-1947 de minimis exemption: worked ivory objects produced before 1947 that contain less than 10 per cent ivory by total volume, where the ivory is integral to the object (ie, the ivory cannot easily be removed without damage to the object).

Musical instruments exemption: music instruments produced before 1975 that contain less than 20 per cent ivory by volume.

Museum exemption (ivory of any age): sales, loans and exchanges by individuals and companies to accredited museums and between accredited museums. Accredited museums are those accredited by Arts Council England, the Welsh government, Museums Galleries Scotland or the Northern Ireland Museums Council in the UK, or if outside the UK, museums that are members of the International Council of Museums.

DEFRA launched a consultation on the possible extension of the Ivory Act to other species (such as hippopotamuses, walruses and whales), which closed in autumn 2021. As a result of this consultation, we DEFRA announced that it would extend the ban on dealing ivory to the following species:

- common hippopotamus
- killer whale
- narwhal
- sperm whale
- walrus

Secondary legislation to extend the Ivory Act 2018 to these species will be in due course.

In February 2022, the Ivory Act (Commencement No. 1) Regulations 2022 entered into force in the UK (the Commencement Regulations). The Commencement Regulations implement specific provisions of the 2018 Ivory Act dealing with exemptions and registration (sections 1 to 11) so that applications can be made. The scope of the Commencement Regulations includes acquisitions by qualifying museums. The Commencement Regulations also implement general provisions on the extent and application of the Ivory Act (sections 38 to 44), but provisions on criminal and civil sanctions, powers of entry, search and seizure, and retention and disposal or return of items were not in force until 6 June 2022. Notably, the meaning of 'ivory' for purposes of this and related legislation is restricted to material originating from elephant species in accordance with section 37(1), (7) and (8) of the Ivory Act.

The Ivory Prohibitions (Exemptions) (Process and Procedure) Regulations 2022 (the Prohibitions Regulations) also entered into force in February 2022. The Prohibitions Regulations include further details on the information required for exemption certificate and registration applications, fees and appeals processes for the refusal or revocation of an application. There are specific provisions addressing exemption certificates that are issued in another person's name. The Schedule of the Prohibitions Regulations contains a list of Prescribed Institutions authorised to assess items whose owners have applied for exemption certificates for the purpose of sale. Prescribed Institutions include the Ashmolean Museum of Art and Archaeology in Oxford, Glasgow museums in Scotland and the Victoria and Albert Museum in London.

The Ivory Act 2018 entered into force on 6 June 2022. Under the Act, exempt items must be declared and registered before any transaction can take place. Owners of objects containing ivory can verify their eligibility and apply for exemption certificates using the government's digital ivory service. While it is permitted to bequeath, donate or lend ivory items provided that no exchange or payment is involved (for instance, through a will or gift), trading unregistered items in the UK is considered an offence with a maximum fine of £250,000 or five years' imprisonment.

Law stated - 20 February 2024

Pre-CITES endangered species

52 | Is the sale, import or export of pre-CITES endangered species subject to a licence?

The import and export of pre-CITES endangered species is subject to a licence. Before Brexit, many artworks containing CITES-listed species (both pre- and post-1947) could move freely between the UK and the EU without import and export licences. As England and Wales is now considered international, a CITES export licence is required to remove endangered species from England and Wales, and a CITES import licence to import endangered species into the country of destination, irrespective of whether the country of destination is within or outside the EU. To import endangered species in England and Wales, a CITES export licence must be obtained from the country of export (whether EU or non-EU) and a UK CITES import licence. The APHA requires the export licence from the exporting country or the application for a UK import licence will be refused.

The APHA currently aims to decide on each export licence application within two weeks, but if the movement also requires an import permit from the destination country (which is now the case for exports from the UK to the EU), applicants will need to factor in the time it takes to apply for an import permit.

Trade with countries that are not party to CITES and do not issue comparable documentation is not permitted.

Unless there is an exemption (such as the 'antique' exemption), any artworks and antiques containing a CITES-listed species that appear on Annex A in the EU Wildlife Trade Regulations (which is equivalent to CITES Appendix I) require licences before they can be advertised for sale or sold. The decision on whether to issue a licence is based on the guidance set out in the EU Wildlife Trade Regulations, as applicable domestically in England and Wales.

Alterations to the CITES Annexes are adopted by the EU following each conference of the parties, which typically take place every two or three years. It is therefore important to check the current restrictions and requirements regularly. It remains to be seen whether England and Wales will adopt the EU updates to the Annexes, or whether it will adopt the CITES Appendices instead, as the EU Annexes are generally stricter than the CITES Appendices.

Law stated - 20 February 2024

Post-CITES endangered species

53 | Is the sale, import or export of post-CITES worked or antique endangered species authorised? On what conditions?

The UK (and the EU) allows certain exemptions for antique artworks, which exempt these artworks from certain restrictions and conditions that would otherwise be required for import, export and trade. An artwork is considered antique if it is a worked specimen acquired before 3 March 1947. An object is considered worked if it has been significantly altered from its natural state (eg, fashioned into jewellery, musical instruments or furniture), provided that it was worked before 3 March 1947. Items that were worked before that date and have been reworked after it (eg, if an ivory sculpture carved before 1947 is reworked into a piece of jewellery after 1947) will no longer be considered antique and will not benefit from the exemptions.

Law stated - 20 February 2024

CONSUMER PROTECTION

Cancelling purchases

54 | In what circumstances may consumers cancel the sale of art, antiques or collectibles?

Pursuant to the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, consumer-buyers have the right to cancel distance and off-premises sales at any time during the statutory cancellation period – 14 calendar days from the day on which the consumer or his or her agent takes possession of the artwork – without giving any reason and without incurring any liability, except in limited circumstances. The Regulations have carved out an exemption for property offered for sale in public auctions where the consumer is able to attend in person; in these instances, traders do not have to offer the right to cancel.

Where the right to cancel is exercised by the consumer within the statutory period, the trader must reimburse the consumer. Where the right to cancel applies and the trader fails to inform the consumer of this right, the Regulations automatically extend the cancellation period by 12 months, unless the dealer subsequently notifies the consumer of the right to cancel, in which case it runs for 14 days from the date of notification.

Law stated - 20 February 2024

Duties of businesses selling to consumers

55 | Are there any other obligations for art businesses selling to consumers?

Schedule I of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 sets out mandatory information to be provided to consumers for sales

made on-premises. Schedule II of the Regulations sets out mandatory information to be provided in the context of distance and off-premises sales, including but not limited to the identity of the seller if he or she is acting on behalf of another trader. A failure to provide the relevant information to the consumer, when entering into an off-premises contract, is a criminal offence.

For distance contracts concluded by electronic means, the trader must ensure that the consumer, when placing the order, explicitly acknowledges that the order implies an obligation to pay. If placing an order entails activating a button or a similar function, the trader must ensure that the button or similar function is labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader. The trader must also ensure that any trading website through which the contract is concluded indicates clearly and legibly, at the latest at the beginning of the ordering process, whether any delivery restrictions apply, and which means of payment are accepted.

The Consumer Rights Act 2015 applies alongside the Regulations. The Act sets out the remedies available to consumers for breach of their statutory rights, including but not limited to the right to reject the goods for a full refund or to obtain a price reduction where goods are not of satisfactory quality, fit for purpose and as described. The Act further consolidates the law on unfair contract terms in consumer contracts and introduces the right for consumers to bring competition infringement proceedings against traders in the courts.

Law stated - 20 February 2024

REGULATION

Art market regulator

- 56** | Is there a specific regulatory body overseeing the art market or certain business activities carried out within the art market in your jurisdiction?

There is no regulator in England and Wales specifically assigned to regulating the art market.

Law stated - 20 February 2024

Other regulators

- 57** | What other forms of regulation are professional art market participants in your jurisdiction subject to?

The following regulators in England and Wales have regulatory authority over certain activities carried out by art market participants.

Competition and Markets Authority

There is a broad range of rules applicable to businesses entering into transactions with consumers. These regulations govern most of the aspects of business-to-consumer

transactions, from advertising to the avoidance of unfair contract terms, and consumer remedies. The authority in charge of ensuring compliance with consumer protection laws is the Competition and Markets Authority (CMA). The CMA's powers include investigating business practices that are detrimental to consumers and contravene the existing legislation, and prosecuting traders that engage in unfair commercial practices. The CMA also has authority to investigate cartels and other anticompetitive behaviours (eg, unlawful bidding arrangements and other types of collusion over pricing).

Financial Conduct Authority

Arranging insurance of artworks is regulated by the Financial Conduct Authority (FCA). Businesses offering insurance products must either be authorised to do so by the FCA or be registered as an exempt business. FCA authorisation is usually needed when dealing in, arranging or assisting with the performance of an insurance contract. Exclusions may apply, but their availability depends on the circumstances, the nature of the activities carried out and the degree of involvement of the art market professional. Providing insurance-related services in breach of the authorisation or exemption requirements constitutes a criminal offence and may lead to the unenforceability of the agreement drawn up in breach of the applicable regulations. Art market participants, including dealers, are generally unlikely to be recognised as exempt businesses, as exemptions are very strictly defined and only apply to a limited number of organisations, including members of controlled professions and banking authorities.

The FCA also regulates loans to consumers.

His Majesty's Revenue and Customs

High-value dealers and art market participants as defined in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 and the Money Laundering and Terrorist Financing (Amendment) Regulations 2019 must register with His Majesty's Revenue and Customs (HMRC) and are subject to supervision by HMRC.

Trade Associations

While trade associations do not have regulatory authority, they exercise peer pressure and, in some cases, they have the power to exclude a member from the association. Many auctioneers in England and Wales are members of the Society of Fine Art Auctioneers and Valuers, and Sotheby's, Christie's, Phillips and Bonhams are members of the British Art Market Federation. Fine art dealers are typically members of one of the three leading trade associations, namely the Society of London Art Dealers, the Association of Art and Antiques Dealers and the British Antique Dealers' Association.

Law stated - 20 February 2024

UPDATE AND TRENDS

Key developments of the past year

58 | Are there any other current developments or emerging trends that should be noted?

New technology

The blockchain technology continues to increasingly being used in the art world to achieve multiple objectives, including recording provenance, facilitating authentication and tracing artworks. New companies are launching new blockchain-related products all the time. This is set to continue in 2024.

In recent years, the development of sophisticated artificial intelligence systems is ushering in a new era of digital art. AI Art, the art that is produced by generative AI systems, has been met with equal amounts of excitement and uncertainty. These tools have the power to both enhance and threaten the creative industry as we know it. While it is creating new opportunities for artists, it is also raising legal and ethical questions. Many in the creative industry are concerned about the 'input' data that is used to develop these systems. They worry about how information is scraped from the internet, including art protected by copyright, and it is then used to produce 'new' images without permission from the copyright holder. Further, there is confusion around whether the generated products, the 'output', attracts copyright protection. And if it does, who owns that copyright. Consequently, a plethora of lawsuits involving generative AI systems are producing different answers to the question of whether AI-generated art attracts copyright and whether AI system training is lawful.

On 2 February 2024, the pre-final text of the European Union's Artificial Intelligence Act (EU AI Act) – the world's first comprehensive horizontal legal framework for the regulation of AI systems across the EU – was endorsed by all 27 EU Member States. Under recital 60c of the final version of the Act, generative AI systems qualify as a type of general-purpose AI (GPAI) model. Within the text, there is a newly constructed chapter dedicated to GPAI models. Accordingly, providers of generative AI systems must comply with these obligations imposed by the Act. They include:

- Drawing up technical documentation, including training and testing processes and evaluation results.
- Drawing up information and documentation to supply to downstream providers who intend to integrate the GPAI model into their own AI system to ensure the latter has a good understanding of the model, its capabilities and limitations.
- Establishing a detailed summary of the use of training data protected by copyright. If a creator opted-out of the TDM exception, the GPAI model would need to obtain their authorisation to use the protected content for training purposes.
- Publishing a sufficiently detailed summary about the content used for training the GPAI model.

These obligations, except for specific cases, do not apply to providers of GPAI models available under a free and open licence. This exemption does not apply to open-source GPAI models that are considered to present a systemic risk. Overall, the requirement of transparency is one of the central focuses of regulating GPAI models. In relation to 'deep fakes', where a generative AI system has been used to create text, video or audio that appears to be authentic or truthful while it is not, the users that created such content must disclose that the content is AI generated or manipulated. Further, providers of AI systems who create synthetic text, videos, images etc are required to watermark the outputs of

their AI systems in a machine-readable format to clearly indicate that the work is artificially generated.

The EU AI Act will come into force progressively. Awaiting the final EU voting stages that will occur between February and April 2024, it is expected to come into effect early summer 2024. This will be followed by a two-year grace period until 2026 with some exceptions. On a fast track, compliance obligations affecting GPAI models will have 12 months to apply (Article 85(3)), expected come into force in mid-2025.

Restitution and interpretation

Western institutions have continued to grapple with the need to address colonial issues, both in terms of acknowledging their own roles in the acquisition of cultural objects and in the need to provide more accurate representations of the cultures featured in their collections. Repatriation made headlines throughout 2023,

A focus on climate protest

Throughout 2023, museums have continued to be the setting for and in some cases targets of protests and demonstrations – from actions aimed at the slow-moving response to the climate crisis to expressions of solidarity with the uprisings in Iran – a trend that looks likely to continue in 2024.

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Law stated - 20 February 2024

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UPDATE AND TRENDS

Key developments of the past year

BUYING AND SELLING

Passing of title

1 | When does ownership of art, antiques and collectibles pass from seller to buyer?

The Uniform Commercial Code (UCC), which has been adopted in some form by every state in the United States, is a collection of laws governing commercial transactions in the country. Sales of tangible personal property, such as fine art, are governed by article 2 of the UCC. Section 2-401(2) of the UCC provides that title to artwork will generally pass from the seller to the buyer upon the physical delivery of an artwork. The parties may seek to circumvent this by agreeing that title will not pass until receipt of payment. The majority view, however, is that after physical delivery of the work, the seller will be left with a security interest in the work, but not title to it.

Law stated - 13 February 2024

Implied warranties

2 | Does the law of your jurisdiction provide that the seller gives the buyer any implied warranty?

According to section 2-312(1) of the UCC, unless excluded or modified by specific language or circumstances, a contract for the sale of an artwork will include a warranty by the seller that 'the title conveyed shall be good, and its transfer rightful; and the goods shall be delivered free from any security interest or other lien or encumbrance of which the buyer at the time of contracting has no knowledge.' This warranty may be limited with specific language or circumstances that give the buyer reason to know that the seller does not claim title in him or herself, or that the seller is purporting to sell only such right or title as the seller or a third person may have.

Where the seller is a merchant, the UCC also provides the buyer with an implied warranty that 'the goods shall be delivered free of the rightful claim of any third person by way of infringement or the like'. Pursuant to the UCC, a merchant is 'a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction'. In the art context, this definition most often applies to galleries, art dealers and auction houses.

An action for breach of warranty must be commenced within four years after the cause of action has accrued. In general, accrual is measured from the date of the breach, which occurs when 'tender of delivery is made', regardless of a lack of knowledge of the breach. The UCC provides an exception, however, where a warranty 'explicitly extends to future performance' and 'discovery of the breach must await the time of such performance'. Under those circumstances, the cause of action will accrue when the breach is or should have been discovered.

Law stated - 13 February 2024

Registration

- 3 | Can the ownership of art, antiques or collectibles be registered? Can theft or loss of a work be recorded on a public register or database?

The United States does not have a public register for recording ownership of artworks. If a work of art is lost or stolen, the Federal Bureau of Investigation's [National Stolen Art File](#) is a database that may be consulted. The objects listed in this database are submitted by law enforcement agencies in the United States and abroad. Once an object is recovered, it is removed from the database.

Law stated - 13 February 2024

Good-faith acquisition of stolen art

- 4 | Does the law of your jurisdiction tend to prefer the victim of theft or the acquirer in good faith of stolen art?

A basic tenet of US law is that a good faith purchaser for value cannot obtain good title to stolen property. This rule applies regardless of whether the purchaser acquired the artwork at auction or by private sale, or from a subsequent purchaser rather than directly from the thief. Thus, the true owner has the right to reclaim such property unless barred by the statute of limitations or other defence. On its face, this rule tends to prefer the true owner's rights over those of the possessor's. The statute of limitations and other defences such as laches, however, may tip the scales in favour of the possessor. Whether a purchaser is considered to be in good faith depends on the facts and circumstances of the case, but, as a general matter, the possessor's good faith will be contingent on his or her lack of knowledge that the object was stolen.

Law stated - 13 February 2024

Acquiring title to stolen art through prescription

- 5 | If ownership in stolen art, antiques or collectibles does not vest in the acquirer in good faith, is the new acquirer protected from a claim by the victim of theft after a period of time?

Where the possessor is in good faith, in some states, including New York, a 'demand and refusal' rule applies, under which the three year limitations period will not begin to run until the owner makes a demand of the possessor for the return of the property and the possessor refuses. The majority of states, however, follow a discovery rule. In these states, the limitations period, which differs depending on the state, begins to run when the plaintiff discovers, or after the exercise of reasonable diligence should have discovered, the whereabouts of the artwork. Where the statute of limitations runs, a claim for the return of stolen art will typically be barred, unless an equitable doctrine is applied to toll the applicable period. As a counterpoint to the statute of limitations, the equitable doctrine of

laches may also bar otherwise timely art claims. To establish the defence, a possessor must show that the claimant unreasonably delayed in bringing the action to the prejudice of the possessor. A court may also weigh the relative equities between the parties in determining whether to apply a laches defence.

Law stated - 13 February 2024

Passing of risk of loss and damage

- 6 | When does risk of loss or damage pass from seller to buyer if the contract is silent on the issue?

Where the contract is silent on the issue, the UCC provides that the risk of loss passes to the buyer from a merchant seller upon receipt of the artwork. If the seller is a non-merchant, the risk will pass to the buyer upon 'tender of delivery' of the artwork (ie, when the buyer receives notification reasonably necessary to enable him or her to take delivery of the artwork). The UCC also sets forth specific provisions concerning risk of loss when the artwork: (1) is either required or authorised by the contract to be shipped by common carrier; or (2) is held by a bailee to be delivered without being moved. The UCC provides that the risk of loss may be altered by contrary agreement of the parties.

Law stated - 13 February 2024

Due diligence by buyer

- 7 | Must the buyer conduct due diligence enquiries? Are there non-compulsory enquiries that the buyer typically carries out?

US law does not impose due diligence requirements on the buyer. Nonetheless, the amount of due diligence conducted may impact a buyer's remedies in the event of a claim. Courts also consider whether a buyer is a merchant or non-merchant in evaluating the reasonableness of the buyer's due diligence. Thus, though not required by law to do so, buyers are typically advised to undertake certain threshold enquiries, such as determining whether there are indications that the artwork may have been stolen and to research the provenance of the work (eg, by contacting former owners of the artwork).

Law stated - 13 February 2024

Due diligence by seller

- 8 | Must the seller conduct due diligence enquiries?

Although US law does not impose a requirement on sellers to conduct due diligence prior to selling an artwork, proper due diligence on the part of the seller is advised. Pursuant to the UCC, the buyer is provided with various warranties that relate to, for example, the artwork's authenticity, authorship and title. When the seller is a merchant, the UCC provides

the buyer with additional implied warranties with respect to the artwork. Therefore, at a minimum, the seller of an artwork should endeavour to ensure that the artwork conforms to these warranties and avoid liability for a breach.

Law stated - 13 February 2024

Acquisition in bad faith

9 | Can ownership in art, antiques or collectibles vest in the acquirer in bad faith after a period of time?

In the United States, title does not pass to a purchaser in bad faith, irrespective of the amount of time that has elapsed. Nonetheless, a claim for the return of the property may be barred as a result of the statute of limitations or pursuant to the equitable doctrine of laches.

Law stated - 13 February 2024

Register of sales

10 | Must a professional seller of art, antiques or collectables maintain a register of sales?

US law does not require an art dealer to maintain a register of sale.

Law stated - 13 February 2024

Protection of interest in consigned works

11 | How can consignors of artworks to dealers protect their interest in the artwork if the dealer goes into liquidation?

When a gallery files for bankruptcy, under the UCC and bankruptcy law, repaying creditors may supersede returning the consigned artwork to its owner if the work is not properly protected. Consignors can protect their artworks by perfecting their security interest in the artwork and filing a UCC 1 financing statement –a legal notice filed by a creditor as a way to publicly declare its rights to seize property of a debtor, in this case the gallery, which may have defaulted on its loans. The financing statement is generally filed with the office of the secretary of state in the state where the debtor resides, which perfects the lender's security interest in the artwork. Many states also have enacted legislation to protect artists (although not collectors) who consign their works, and they receive priority of ownership ahead of a creditor's claim to the artwork as an asset of the gallery.

Law stated - 13 February 2024

labelling="Section-Header">Cancelling the purchase of a forgery

12 | If the buyer discovers that the art, antique or collectible is a forgery, what claims and remedies does the buyer have?

Where an artwork is discovered to be a forgery or otherwise inauthentic, claims based on breach of warranties, fraud and mistake may be available to the buyer. Pursuant to the UCC, an express warranty may arise from any description or affirmation of fact or promise by the seller relating to the artwork that 'becomes part of the basis of the bargain'. Such statements may be made by the seller in written materials, such as sale documentation, advertisements, brochures and catalogues, or from a seller's oral statements to the buyer. Where the seller is a non-merchant, a court may consider such descriptions, including statements of attribution, to be mere opinion and not an express warranty. But, where the seller is a merchant or is otherwise considered to have a superior level of expertise, and the seller records the artist's name in the invoice, this will generally be considered an express warranty. Good faith on the part of the seller is no defence if the statement proves to be false.

A buyer may also bring a tort action for fraud against the seller. To establish fraud, the buyer must prove that: (1) the seller made a misrepresentation related to a material issue of fact, either by way of a misstatement or nondisclosure; (2) the misrepresentation was intentionally made with intent to induce reliance; and (3) the buyer did, in fact, rely on the misrepresentation to his or her detriment.

A similar tort action that may be available in a claim for negligent misrepresentation. In contrast to a fraud claim, this cause of action may arise where the seller negligently, instead of intentionally, asserts a false statement. Generally, the seller must also owe a duty of care to the buyer.

Alternatively, a buyer may bring a claim on the grounds of mutual mistake, in which both parties are mistaken with respect to a material assumption on which the contract was made – in this case, the authenticity of the artwork. If, however, the seller is aware of the mistake or has reason to know of it, a buyer may have a claim for unilateral mistake.

Law stated - 13 February 2024

labelling="Section-Header">Cancelling the sale of a sleeper

13 | Can a seller successfully void the sale of an artwork of uncertain attribution subsequently proved to be an autograph work by a famous master by proving mistake or error?

Where both the seller and the buyer are mistaken as to the attribution of an artwork, the seller may, under certain circumstances, succeed in an action for rescission of the sale. Where, however, the seller could have discovered the true attribution of the artwork prior to the sale but did not do so because of a lack of due care or diligence, a court is unlikely to find that a mistake of fact has been made.

Law stated - 13 February 2024

EXPORT AND IMPORT CONTROLS

Export controls

- 14 | Are there any export controls for cultural property in your jurisdiction? What are the consequences of failing to comply with export controls?

With the limited exception of export restrictions applying to archaeological objects removed from Native American or federal lands, the United States does not have export controls for cultural property. The Native American Graves Protection and Repatriation Act prohibits the trafficking of Native American human remains and cultural items, imposing criminal penalties. The Archaeological Resources Protection Act similarly imposes criminal penalties for the trafficking in archaeological resources unlawfully removed from federal and Native American lands.

Law stated - 13 February 2024

Import controls

- 15 | Other than in relation to endangered species, are there any import controls for cultural property in your jurisdiction? What are the consequences of failing to comply with import controls?

US import laws give US Immigration and Customs Enforcement and US Customs and Border Protection the authority to seize cultural property and art that are stolen or otherwise brought into the United States illegally. The persons involved in such violations may also be subject to civil and criminal penalties, including fines, probation, imprisonment or forfeiture of the artwork.

Law stated - 13 February 2024

Export and import tax

- 16 | Does any liability to pay tax arise upon exporting or importing art, antiques or collectibles?

Original works of art, antiques and certain other collectibles are generally not subject to customs duty and are covered under Chapter 97 of the [Harmonized Tariff Schedule](#). Duty does, however, apply to mass-produced reproductions or works of conventional craftsmanship of a commercial character, even if these articles are designed or created by artists.

Law stated - 13 February 2024

DIRECT AND INDIRECT TAXATION

Taxes

- 17 | Outline the main types of tax liability arising from ownership and transfer of art, antiques and collectibles.

With few exceptions, when an artwork is sold in the United States, the buyer is required to pay a state sales tax at the time of the purchase. This general rule applies unless the buyer first takes possession of the artwork in a state that does not charge a sales tax, or if another exception applies (eg, where an artwork is purchased for resale by a dealer who has registered with the relevant state sales tax department). In addition, most states impose a use tax. This tax applies on account of an artwork's use within the state, in contrast to its sale within the state. Where an artwork is purchased outside a certain state, the buyer may be responsible for paying a use tax once the artwork is brought into the state. In general, sales tax paid on a property will be credited against the owner's use tax liabilities. Nonetheless, a use tax analysis should be undertaken each time art is moved to another jurisdiction, even if merely for a loan.

Law stated - 13 February 2024

Tax exemptions

- 18 | Outline any tax exemptions or special conditions applicable to art, antiques and collectibles.

An art collector who makes a charitable transfer to a tax-exempt institution may receive a tax benefit as a result of the donation. The availability and amount of the deduction generally hinges on a specific set of requirements, including the status of the organisation, the type of property donated, the use of the donated work and whether a qualified appraisal has been prepared. A collector who transfers an artwork during his or her lifetime may receive an income tax deduction that, depending on the circumstances of the transfer, may be equal to the fair market value of the artwork. Likewise, where the transfer is part of a bequest, the donation may provide the estate with a reduction in the estate tax that is owned by the collector's estate.

Law stated - 13 February 2024

BORROWING AGAINST ART

Types of security interest

- 19 | In your jurisdiction what is the usual type of security interest taken against art, antiques and collectibles?

In most cases, a lender perfects its security interest in artwork by filing a UCC 1 financing statement – a legal notice filed by a creditor as a way to publicly declare its rights to a debtor's property. Attachment is a prerequisite to perfection and is achieved when: (1) the

lender gives value; (2) the debtor has rights in the artwork or the power to transfer rights in the artwork to the lender; and (3) the lender has possession of the artwork or the debtor enters into a security agreement.

Law stated - 13 February 2024

Consumer loans

- 20 | If the borrower borrowing against art assets in your jurisdiction qualifies as a consumer, does the loan automatically qualify as a consumer loan, and are there any exemptions allowing the lender to make a non-consumer loan to a private borrower?

This is not applicable in the United States.

Law stated - 13 February 2024

Register of security interests

- 21 | Is there a public register where security interests over art, antiques or collectibles can be registered? What is the effect of registration? Is the security interest registered against the borrower or the art?

UCC-1 financing statements are registered listing the debtor's name and address, the creditor's name and address and the collateral. The financing statement is generally filed with the office of the secretary of state in the state where the debtor resides, which perfects the lender's security interest in the artwork. Perfecting the security interest allows the debtor to retain possession of the artwork while the loan is outstanding.

Law stated - 13 February 2024

Non-possessory security interests

- 22 | Can the lender against art collateral perfect its security interest without taking physical possession of the art?

Yes, physical possession of the art collateral is not required by the secured creditor to perfect its security interest.

Law stated - 13 February 2024

Sale of collateral on default

- 23 | If the borrower defaults on the loan, may the lender sell the collateral under the loan agreement, or must the lender seek permission from the courts?

The consequences of default, including the lender's rights and remedies, are determined by the contract between the borrower and lender. Pursuant to the Uniform Commercial Code (UCC), however, a secured creditor-lender can, upon default, take possession of the collateral on its own without breaching the peace or pursuant to judicial action. Once in possession of the collateral, the secured creditor may retain or sell the property. Any sale or dispossession of the collateral must be in compliance with the UCC's notice provisions and be commercially reasonable in every aspect, including as to method, manner, time, place and any other terms. The lender also has the option of filing a lawsuit on the debt to obtain a favourable judgment and to levy the debtor's property to satisfy the debt.

Law stated - 13 February 2024

Ranking of creditors

24 | Does the lender with a valid and perfected first-priority security interest over the art collateral take precedence over all other creditors?

A lender with a valid and perfected first-priority security interest over the art collateral in most cases has priority over all other creditors, with some exceptions. For example, one who became a lien creditor before the security interest was perfected may have priority over the secured lender. Another secured creditor may have priority if it perfected its security interest before the secured lender. The rights of the secured lender are complex and differ based on the particular situation regarding the lender and creditor.

Law stated - 13 February 2024

INTELLECTUAL PROPERTY RIGHTS

Creator copyright

25 | Does copyright vest automatically in the creator, or must the creator register copyright to benefit from protection?

Copyright generally vests in the creator once the work is fixed in a tangible medium of expression without the need for copyright registration. Registration, however, is a prerequisite to filing a lawsuit for copyright infringement. A copyright registration certificate may be presumptive evidence of ownership of a valid copyright. Further, for a copyright owner to be eligible for an award of statutory damages and attorneys' fees, the registration must have occurred before the copyright infringement or within three months after the first publication of that work.

Law stated - 13 February 2024

Copyright duration

26 | What is the duration of copyright protection?

For works created on or after 1 January 1978, copyright protection extends from creation of the work and endures for a term consisting of the life of the author and 70 years after the author's death. For joint works, the term of copyright is the life of the last surviving author plus 70 years. For an anonymous work, a pseudonymous work or a work made for hire, the copyright endures for a term of 95 years from the year of its first publication or a term of 120 years from the year of its creation, whichever is shorter. The term of copyright for pre-1978 works is complex and depends on several factors. Thus, an attorney should be consulted to determine duration of the copyright for these works.

Law stated - 13 February 2024

Display without right holder's consent

27 | Can an artwork protected by copyright be exhibited in public without the copyright owner's consent?

While the copyright owner has the exclusive right to display a work publicly, copyright law carves out a special limited exception (tied to the first sale doctrine) for the display of a copy of a work rightfully owned without the authority of the copyright owner, to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located.

Law stated - 13 February 2024

Reproduction of copyright works in catalogues and adverts

28 | Can artworks protected by copyright be reproduced in printed and digital museum catalogues or in advertisements for exhibitions without the copyright owner's consent?

An owner of copyrighted artwork (with some limitations, including the exception of a fair use) has the exclusive rights to reproduce the copyrighted work in copies and distribute copies of the copyrighted work. It is thus advisable and common practice that museums seek permission from the copyright owner in connection with the reproduction of images of the copyrighted work in the museum's publications and marketing for exhibitions.

Law stated - 13 February 2024

Copyright in public artworks

29 | Are public artworks protected by copyright?

Public artwork, including 'street art', is afforded the same copyright protection as other artwork that is fixed in a tangible medium of expression.

Law stated - 13 February 2024

Artist's resale right

30 | Does the artist's resale right apply?

Although efforts have been made over several years to enact federal legislation providing for resale royalty rights, the United States does not recognise resale royalty rights. Under US copyright law's first sale doctrine, once an original copyright protected work of authorship is sold, the buyer and all subsequent purchasers are free to resell that work (but not any underlying copyright rights in the work) without having to provide any compensation to the original artist or author. Artists may contract for resale royalty rights, which has recently become a more popular practice. NFTs configured through 'smart contracts', for example, may automatically pay out royalties to the original artist with every future sale of the NFT on a specific platform.

Law stated - 13 February 2024

Moral rights

31 | What are the moral rights for visual artists? Can they be waived or assigned?

The United States acceded to the Berne Convention for the Protection of Literary and Artistic Works, an international treaty that governs and protects moral rights (among others), in 1988. In 1990, Congress enacted the Visual Artists Rights Act of 1990 (VARA).

VARA offers an artist of a 'work of visual art' the right of attribution – specifically, the right to:

- claim authorship of that work;
- prevent the use of his or her name as the author of any work of visual art that he or she did not create; and
- prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation or other modification of the work that would be prejudicial to his or her honour or reputation.

VARA also provides the right of integrity, specifically the right to:

- prevent any intentional distortion, mutilation or other modification of the work that would be prejudicial to the artist's honour or reputation; and
- prevent any destruction of a work of recognised stature, and any intentional or grossly negligent destruction of that work.

VARA rights extend for the life of the author for works created on or after its effective date, 1 June 1991, and for works created before 1 June 1991 to which the author still holds title on the same date, the life of the author plus 70 years. For joint works (two or more authors), VARA rights endure for the life of the last surviving author.

VARA rights may not be transferred but may be waived by a written instrument signed by the author.

Law stated - 13 February 2024

COMMISSIONS

Accounting to the principal

- 32** | Does the law require the agent to account to the principal for any commission or other compensation received by the agent while conducting the principal's business?

The law of agency varies from state to state. As a general matter, a fiduciary relationship exists between an agent and a principal, with the agent owing a duty to act loyally for the principal's benefit with respect to actions taken within the scope of the agency. Pursuant to this duty, an agent is required to make a full and fair disclosure to the principal of information that is material to the agent's duties. The agent also has a duty not to acquire a material benefit from a third party that results from the agent's position. Thus, absent an agreement to the contrary, an agent would be required to account to the principal for any commission received.

Law stated - 13 February 2024

Principal's consent

- 33** | Does disclosure to the principal that the agent will receive a commission allow the agent to keep the commission unless the principal objects?

In general, an agent may keep a commission where, acting fairly and in good faith, the agent has obtained the principal's consent based on a full and fair disclosure of material facts. Nonetheless, a principal and agent are permitted to modify the duties of the agent to the principal, even allowing the principal to consent to conduct that would otherwise result in a breach of the agent's fiduciary duties. Thus, an agent and principal may enter an agreement that allows the agent to withhold certain information, such as the amount of a commission or other compensation.

Law stated - 13 February 2024

Undisclosed agent commission

- 34** | If a third party pays a commission to an agent that is not disclosed to the principal, can the principal claim the commission from the third party?

If an agent receives a commission that is outside the bounds of his or her agreement with the principal, the principal is generally permitted to reclaim the ill-gotten commission from the agent. Absent a fiduciary relationship between the principal and the third party, however,

the principal may not have sufficient grounds for suing the third party for the unauthorised payment.

Law stated - 13 February 2024

AUCTIONS

Regulation

35 | Are auctions of art, antiques or collectibles subject to specific regulation in your jurisdiction?

Laws regulating auctions are generally governed by state law. On 15 June 2022, in what was considered a stealthy act, New York City eliminated long-standing regulations governing the auction industry. Auctioneers no longer have to obtain a licence to operate. Moreover, auctioneers no longer are required to make disclosures in their written consignment contracts, such as the amount of the auctioneers' commissions and charges. Nor in their auction catalogues are they required to disclose that a lot being sold is subject to a reserve price (which previously could not be above the low estimate) or that the auction house had a financial interest in the sale. The provisions designed to oversee 'chandelier bidding', whereby auctioneers invent fictitious bids to stir interest, were also repealed, and auctioneers are no longer prohibited from taking chandelier bids above the reserve price. As the large auction houses have not given any indication that they intend to change their practices as a result of the repeal, its effect on the industry is unclear.

Some sections of the Uniform Commercial Code also apply specifically to auction sales, including provisions related to bidding.

Law stated - 13 February 2024

Ancillary services by auctioneers

36 | May auctioneers in your country sell art, antiques or collectibles privately; offer advances or loans against art, antiques or collectibles; and offer auction guarantees?

Auction houses may sell art, antiques or collectibles privately, and auction houses have increasingly relied on such sales. Auctioneers may also offer advances or loans against art, which are usually secured by the consigned art as collateral. Auction guarantees are also permitted and commonplace.

Law stated - 13 February 2024

SPOILIATION DURING THE NAZI ERA

Claims to Nazi-looted art

37 |

In what circumstances would the heirs of the party wrongly dispossessed typically prevail over the current possessor, if a court in your country accepted jurisdiction and applied its own law to a claim to art lost during the Nazi era?

In the United States, no one, not even a good faith purchaser for value, can obtain good title to stolen property. Thus, in a civil claim for the return of art misappropriated by the Nazis, the heirs of the wrongly dispossessed party may prevail where the heirs can show that they possess a superior right of possession to the artwork, and that they are entitled to the immediate possession of the artwork. One of the main hurdles in Nazi-looted art actions, however, has been the use of defences such as the statute of limitations to prevent a case from reaching the merits. In 2016, a special statute of limitations was enacted in an effort to address this issue, establishing a uniform federal statute of limitations for recovery cases involving art lost during the Nazi era. Under the terms of the Holocaust Expropriated Art Recovery Act of 2016, a six-year limitation period applies, which begins to run upon the actual discovery by the claimant of the identity and location of the artwork and the claimant's possessory interest in that property. Nonetheless, other technical defences often stymie claims to Nazi-looted art in the United States, including the defence of laches.

Law stated - 13 February 2024

Ad hoc tribunal to hear claims outside court system

38 | Is there an ad hoc body set up to hear claims to Nazi-looted art?

Unlike in many European countries, there is no restitution commission or other ad hoc body that has been established in the United States for hearing claims to artworks that were lost during the Nazi era.

Law stated - 13 February 2024

LENDING TO MUSEUMS

Insurance

39 | Who is responsible for insuring art, antiques or collectibles loaned to a public museum in your jurisdiction?

The loan agreement between the lender and the public museum should describe the insurance coverage for the artwork, including the work's insurance value. Typically, the borrowing museum will insure the work. International loan agreements should also take into account whether any government insurance will be provided. In the United States, if the exhibition is insured through the Arts and Artifacts Indemnity Act of 1975, the US government will pay insurance claims in addition to the insurance coverage provided by the borrowing museum. This insurance applies to artworks loaned to US exhibitions, where the artworks are of educational, cultural or scientific value, and are certified by the Secretary of State as being in the national interest.

Law stated - 13 February 2024

Immunity from seizure

40 | Are artworks, antiques or collectibles loaned to a public museum in your country immune from seizure?

The Immunity from Judicial Seizure Statute protects certain objects from seizure by a US court. Pursuant to the federal statute, any not for profit museum, cultural or educational institution may apply to the US Department of State for a determination that art to be loaned from abroad for exhibition is culturally significant and that the exhibition is in the national interest. If the application is granted, the art is immunised from judicial seizure by the federal government.

Unlike with individual collectors, where the lender is a cultural institution owned by a foreign state, there are added issues to consider. Under the Foreign Sovereign Immunities Act of 1976 (FSIA), a foreign state and its agencies and instrumentalities are immune from suit in US courts unless certain exceptions apply. The Foreign Cultural Exchange Jurisdictional Immunity Clarification Act of 2016 (FCEJICA) added section 1605(h) to the FSIA, which made clear that activities of a foreign state associated with the temporary exhibition or display of art determined to be immune from seizure shall not fall under an exception to the FSIA. The FCEJICA itself, however, contains exceptions, allowing for jurisdiction over claims based on Nazi-era losses or based on other coercive confiscation occurring after 1900 from members of a targeted group.

Law stated - 13 February 2024

CULTURAL PATRIMONY

National treasures

41 | Is there a list of national treasures?

The United States does not maintain a list of national treasures.

Law stated - 13 February 2024

Right of pre-emption

42 | If the state is interested in buying an artwork for the public collections, does it have a right of pre-emption?

There is no federal right of pre-emption under US law. Moreover, in the United States, the vast majority of museums are privately owned or are owned by state and municipal authorities; very few are national museums.

Law stated - 13 February 2024

Automatic vesting in the state

43 | In what circumstances does ownership in cultural property automatically vest in the state?

Ownership of cultural property automatically vests in the state only where such property is found on federal or state land. In addition, the Native American Graves Protection and Repatriation Act provides that any Native American or Native Hawaiian human remains, funerary objects, sacred objects or objects of cultural patrimony found in or on federal or tribal lands vest in the affiliated Native American or Native Hawaiian tribe or, in the case of human remains and funerary objects, in the lineal descendant of the deceased individual.

Law stated - 13 February 2024

Illegally exported property claimed by foreign state

44 | How can a foreign state reclaim in your jurisdiction cultural property illegally exported from its territory?

In 1983, the United States enacted the Cultural Property Implementation Act (CPIA), which implements the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the world's first multilateral treaty to address the illicit trade in cultural property. Pursuant to the CPIA, the United States has entered into special bilateral agreements with a number of countries, including Albania, Algeria, Belize, Bolivia, Bulgaria, Cambodia, Chile, China, Colombia, Costa Rica, Cyprus, Ecuador, Egypt, El Salvador, Greece, Guatemala, Honduras, Italy, Jordan, Libya, Mali, Morocco, Nigeria, Peru and Türkiye. These bilateral agreements allow the United States to enforce those countries' export laws and give the government the power to seize and return undocumented archaeological or ethnological objects that were imported into the United States. Significantly, the CPIA allows the United States to do so even without requiring proof of ownership pursuant to those countries' patrimony laws.

The CPIA also provides for emergency implementation of import restrictions without the negotiation of a bilateral agreement for objects that are shown to be in particular jeopardy. The United States currently imposes emergency restrictions on archaeological and ethnological materials from Afghanistan, Iraq, Syria and Yemen. In addition, the CPIA bars the importation of any cultural object that is documented as belonging to a museum or to a public or religious institution located in a country that is a party to the UNESCO Convention.

Law stated - 13 February 2024

NON-FUNGIBLE TOKENS

Regulation and case law

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45 | How are non-fungible tokens (NFTs) regulated in your jurisdiction? Is there any case law on NFTs in your jurisdiction?

There are currently no government regulations in place specifically addressing non-fungible tokens (NFTs). The US Securities and Exchange Commission (SEC), however, has officially deemed NFTs to be securities subject to its rules in at least some cases. While it is likely that a single work of digital art or collectible will not be considered a security, the SEC has confirmed that NFTs that have the characteristics of an investment contract (ie, an NFT sold in groups or fractionalised) must comply with the applicable SEC rules. In early 2023, the US Treasury Department and the Internal Revenue Service announced that they intended to issue guidance regarding the tax treatment of NFTs as collectibles.

A number of lawsuits relating to NFTs have also been filed. Among the most notable in the past year are the following.

- *Hermès International et al v Rothschild*, No. 1:22-cv-00384 (S.D.N.Y.)– In January 2022, Hermès International and Hermès of Paris, Inc, filed suit in a New York federal court against Mason Rothschild, a digital artist, for trademark infringement related to his proposed sale of MetaBirkins, a collection of NFTs linked to digital images of faux-fur-covered versions of the luxury 'Birkin' handbags of plaintiffs. Hermès's claim survived a motion to dismiss and the Court denied the parties' cross-motions for summary judgment. In February 2023, applying the First Amendment test under *Rogers v Grimaldi*, 695 F. Supp. 112 (S.D. N.Y. 1988), *judgment aff'd*, 875 F.2d 994 (2d Cir. 1989), which weighs the artistic relevance and intentional misleadingness of an allegedly infringing mark, a jury returned a verdict in favour of Hermès. The jury found that First Amendment protection did not apply to the MetaBirkins, which failed to use Hermes's mark in an artistically relevant way without explicitly misleading consumers. Hermes won a permanent ban on sales of the MetaBirkins.
- *Nike, Inc v StockX, LLC*, No. 1:22-cv-00983 (S.D.N.Y.)– In February 2022, Nike, Inc brought a trademark suit in a New York federal court against StockX, LLC, sneaker resale marketplace, in a New York federal court, alleging that StockX infringed Nike's trademarks by selling NFTs associated with limited-edition Nikes in StockX's custody and linked to images of the sneakers.
- *Yuga Labs, Inc v Ripps et al*, No. 2:22-cv-04355 (C.D. Cal.)– In July 2022, Yuga Labs, a blockchain technology company and creator of the immensely successful Bored Ape Yacht Club (BAYC) NFT collection, filed a trademark infringement lawsuit in a California federal court against Ryder Ripps, and others, based on the creation of their own NFT collection, known as the Ryder Ripps Bored Ape Yacht Club (RR/BAYC), which pointed to the same online digital images as the BAYC collection but used verifiably unique entries on the Ethereum blockchain. In April 2023, the Court ruled in favor of Yuga Labs finding that the RR/BAYC collection did not express an idea or point of view but merely pointed to the same digital images of the BAYC collection and were likely to confuse potential consumers. In October 2023, Yuga Labs was awarded US\$1.5 million in damages plus legal fees.

Law stated - 13 February 2024

AI-GENERATED ART

Regulation and case law

- 46 | How is AI-generated art regulated in your jurisdiction? Is there any case law on AI-generated art in your jurisdiction?

There are currently no government regulations in place specifically addressing AI-generated artworks. The rise of AI-generative platforms that create images and art from a description of natural language, such as Midjourney, Stable Diffusion and DALL-E, have raised questions as to whether training these platforms on copyright-protected data is permissible under copyright law, whether the content created by these platforms is infringing if it uses copyright-protected data, and whether there is copyright protection for works created by AI. Artists have accused platforms of violating their copyrights by using their creative works to train the AI platforms (see, eg, *Andersen et al v Stability AI Ltd, et al*, No. 3:23-cv-00201 (N.D. Cal. 2023)). Whether these claims are viable has yet to be seen as there is an untested argument that this activity may be covered by fair use.

Law stated - 13 February 2024

Copyright

- 47 | Is there copyright in AI-generated art in your jurisdiction?

The United States Copyright Office, the government body that deals with a wide range of copyright issues, has long held that only human authorship is copyrightable and recently confirmed this position in its recent denials of copyright registration applications with respect to the portion of content generated by AI. The Copyright Office has also issued [guidance](#) confirming this position, and at least one US federal court has agreed with its reasoning. The difficulty with the requirement for human authorship, however, lies in trying to discern the human authorship elements in a work that was partially generated by AI and providing copyright protection for only those protected elements. Although untested, whether the work is copyrightable may depend on the amount of human editing done to the platform's outputs.

Law stated - 13 February 2024

ANTI-MONEY LAUNDERING AND SANCTIONS

AML compliance

- 48 | What anti-money laundering (AML) compliance obligations are placed on the art trade?

The US art market (as a whole) is not required by law to maintain anti money laundering (AML) policies. Although the large auction houses (Christie's, Sotheby's, Philips and Bonhams) do have written AML policies in place, on average, private art dealers do not.

In July 2020, the US Senate's Permanent Subcommittee on Investigations released a [report](#) documenting the lack of transparency in the US art market and recommending, among other things, that Congress amend the Bank Secrecy Act (BSA) to add art to its list of industries that must comply with its requirements. The BSA, which is the primary anti money laundering law in the United States, applies to dealers in precious metals, stones and jewels, as well as sellers of automobiles, planes and boats, casinos, real estate professionals, travel agencies and pawnshops – but not generally to dealers in art. On 1 January 2021, Congress passed the National Defence Authorization Act for 2021, which includes a new law, the Anti-Money Laundering Act of 2020 (AMLA), requiring individuals engaged in the antiquities trade to comply with the requirements of the BSA. The BSA includes requirements for monitoring and reporting suspicious activity to federal authorities, establishing and maintaining BSA and AML programmes, and identifying and conducting due diligence on customers. The law also requires the US Treasury department, specifically, the Financial Crimes Enforcement Network (FinCEN), to implement regulations and, in coordination with other government agencies, study and report on the facilitation of money laundering and financing of terrorism through the art market. On 23 September 2021, FinCEN issued an advance notice of proposed rulemaking (ANPRM) to solicit public comment on the implementation of AMLA regarding the trade in antiquities. On 4 February 2022, the US Treasury department released the [Study of the Facilitation of Money Laundering and Terror Finance Through the Trade in Works of Art](#), which examined the high-value art market and its participants that may present money laundering and terrorist financing risks and identified efforts that government agencies, regulators and market participants could undertake to further mitigate the laundering of illicit proceeds through the high-value art market in the United States. The Study indicates that anti-money laundering regulation of the art market (as a whole) is not coming soon.

Law stated - 13 February 2024

Sanctions compliance

49 | What sanctions-related compliance obligations are placed on the art trade?

All US citizens and lawful permanent residents wheresoever situated, individuals and entities within the United States, and all U.S. incorporated entities and their foreign branches, and in some cases foreign subsidiaries owned or controlled by US persons, are required to comply with the US Department of Treasury's Office of Foreign Assets Control (OFAC) regulations. As part of its enforcement efforts, OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Collectively, such individuals and companies are called Specially Designated Nationals or SDNs. US persons are generally prohibited from dealing with anyone on the SDN List, other blocked persons and those covered by comprehensive country or region embargoes. OFAC has issued a specific [advisory](#) on sanctions risks arising from dealings in high-value artwork (particularly artwork with an estimated market value of more than US\$100,000) associated with persons blocked pursuant to OFAC's authorities, including persons on OFAC's SDN List. The advisory

emphasises to art galleries, museums, private collectors, auction companies, agents, brokers and other art market participants the importance of maintaining a risk-based compliance program to mitigate such risks.

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ENDANGERED SPECIES

CITES

50 | Is your jurisdiction a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)?

The United States is a party to CITES. The United States Fish and Wildlife Service applies CITES provisions through the Endangered Species Act (ESA) and is charged with issuing permits for the import and export of species that are protected by CITES and the ESA. A species may require a permit under CITES or the ESA, or both.

Under CITES, a species is listed at one of three levels of protection in appendices that have different permit requirements for import and export. Appendix I covers species most at-risk owing to international trade, effectively banning commercial international trade. Appendix II include species that, although not yet at risk of extinction, may become extinct without trade restrictions. Appendix III species are those for which a country has requested the assistance of parties to CITES in controlling international trade.

The ESA prohibits interstate or international trade of endangered species, except under a federal permit. The ESA also protects 'threatened' species.

Law stated - 13 February 2024

Specific endangered animal products

51 | Are there any special rules for works of art made of elephant ivory, rhino horn or other specific endangered animal products?

The US federal government has implemented special rules for elephant ivory items. Different rules apply to African elephant ivory than Asian elephant ivory. On 6 July 2016, the United States instituted a near-total ban on commercial trade in African elephant ivory. The requirements for the import of African elephant ivory are stricter than those for Asian elephant ivory; however, with respect to interstate and foreign commerce, the requirements are stricter for Asian elephant ivory. More information about the specific requirements is available [here](#). Some states also have laws prohibiting or restricting the sale of elephant ivory and rhino horn. The United States has also enacted the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act (which protects endangered birds).

Law stated - 13 February 2024

Pre-CITES endangered species

52 | Is the sale, import or export of pre-CITES endangered species subject to a licence?

If a specimen of a CITES-listed species was obtained prior to the CITES listing date of that species –collected from the wild or held in captivity – it may be granted a pre-Convention certificate that will allow for the specimen to be exported. Documentation, including a signed statement, or other evidence may be required to show that the specimen was obtained or manufactured prior to the CITES listing date. CITES imposes no controls on interstate or intrastate shipments.

Specimens of ESA-listed species held in captivity or in a controlled environment on or before 28 December 1973 or the date the species was listed under the ESA, whichever is later, are exempt from the ESA prohibitions against import or export or violation of any regulation pertaining to endangered or threatened species promulgated under the ESA, provided such holding and any subsequent holding or use of the specimen was not in the course of a commercial activity. An affidavit and supporting material documenting pre-ESA status must accompany the shipment of listed species. The pre-ESA exemption does not apply to wildlife, including parts and products, offered for sale or other activities prohibited under the statute. The ESA does not impose controls on intrastate commerce; however, some states have laws regulating activity involved with protected species.

Law stated - 13 February 2024

Post-CITES endangered species

53 | Is the sale, import or export of post-CITES worked or antique endangered species authorised? On what conditions?

The import, export and interstate sale of ESA-listed species is prohibited without an ESA permit, except with respect to items that are ‘antique’. An item is antique if it is at least 100 years old, is comprised in whole or in part of an ESA-listed species, has not been repaired or modified with any such species after 27 December 1973, and is being or was imported through a port designated for the import of ESA antiques. Items imported prior to 22 September 1982, and items created in the United States and never imported do not need to comply with the designated port requirement. An importer or exporter of ESA antiques must provide documented evidence of species identification and age to demonstrate that the article qualifies as an ESA antique, which may include a qualified appraisal, documents that provide detailed provenance or scientific testing, or a combination of these. The ESA does not impose controls on intrastate commerce; however, some states have laws regulating activity involved with protected species.

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CONSUMER PROTECTION

Cancelling purchases

54 | In what circumstances may consumers cancel the sale of art, antiques or collectibles?

Federal Trade Commission regulations and state laws provide for special protections concerning 'door-to-door' sales, which permit a consumer to cancel a sale within a few days of the transaction, where the offer for sale and agreement to purchase takes place outside the seller's place of business.

Law stated - 13 February 2024

Duties of businesses selling to consumers

55 | Are there any other obligations for art businesses selling to consumers?

In addition to door-to-door regulations, the Magnuson–Moss Warranty – Federal Trade Commission Improvement Act is a federal law that regulates written warranties with respect to the sale of consumer products, including artworks, which are distributed in interstate commerce or that otherwise affect interstate commerce. The Act requires sellers to provide consumers with detailed information about warranty coverage for such products, including whether the warranty is full or limited. The Act applies to sales that are conducted at the seller's place of business, as well as to sales made through the mail or by telephone. More information about the Act is available [here](#).

Law stated - 13 February 2024

REGULATION

Art market regulator

56 | Is there a specific regulatory body overseeing the art market or certain business activities carried out within the art market in your jurisdiction?

There is no specific regulatory body overseeing the art market in the United States. Many states have, however, enacted specific laws that regulate certain business activities, such as auction sales.

Law stated - 13 February 2024

Other regulators

57 | What other forms of regulation are professional art market participants in your jurisdiction subject to?

There are a variety of regulations that indirectly govern art transactions and the art market participants involved. For example, when selling art to consumers, art dealers are prohibited from using unfair or deceptive acts or practices pursuant to the Federal Trade

Commission Act. In the past, the Federal Trade Commission has brought suit against sellers who violated the terms of the Act, seeking injunctive relief and restitution for the consumers damaged by the unfair or deceptive acts. Individual states have also enacted regulations that affect art market transactions.

Law stated - 13 February 2024

UPDATE AND TRENDS

Key developments of the past year

58 | Are there any other current developments or emerging trends that should be noted?

The rise of artificial intelligence (AI) is reshaping how the world thinks about the creation of art, with AI-generative platforms creating images and art from a description of natural language. The use of these platforms has raised numerous legal questions, including as to whether training these platforms on copyright-protected data and images is permissible under copyright law; whether the content created by these platforms is infringing if it uses copyright-protected data; and whether there is copyright protection for works created by AI. Individuals and businesses participating in the art market should consider the shifting implications of AI and its legal ramifications.

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