

Art Law

Contributing editor
Pierre Valentin



2018

GETTING THE
DEAL THROUGH

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Contributing editor
Pierre Valentin
Constantine Cannon LLP

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Preface

Art Law 2018

First edition

Getting the Deal Through is delighted to publish the first edition of *Art Law*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Pierre Valentin of Constantine Cannon LLP, for his assistance with this volume.

GETTING THE 
DEAL THROUGH 

London
April 2018

Sweden

Clas Romander, Jenny Sverker and Sofie Haggård Larsson

Advokatfirman Delphi

Buying and selling

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

The moment of transfer of title depends on whether an object has been bought at an auction, if the buyer is a consumer or the sale is made business to business or between private persons. For auction sales and consumer sales, the transfer of title – as well as protection for the buyer against a seller's creditors – occurs as per the agreement. For sales made business to business or between private persons, however, a transfer of the object from the seller to the buyer is necessary to receive protection from third-party claims.

2 Does the law of your jurisdiction provide that the seller gives the buyer an implied warranty of title?

The term 'warranty of title' is not used in Swedish law. However, the Sale of Goods Act and the Consumer Sales Act provide sanctions if a third party owns the object (legal fault). A person is obligated to give notice of complaint within reasonable time from the time the legal fault was or should have been discovered, normally immediately. The two-year limitation period provided for other types of faults is not applicable on legal faults.

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 for this, but there are private initiatives such as the non-profit anti-theft organisation SSF Stöldskyddsföreningen, which offers registration for a limited period of time against a fee.

A lost or stolen object can be reported to the Swedish police, which keeps a national database where all lost property is registered.

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

The victim of theft is preferred, but there are provisions that offer protection to a buyer acting in good faith.

The Good Faith Acquisition of Personal Property Act may be applicable if a work of art is bought from someone who was not the rightful owner.

The main rule is that the buyer is protected from restitution claims from the original owner if the buyer is in possession of the object and has acted in good faith at the time of the purchase.

Likewise, where a person has held personal property in good faith for 10 years after acquiring the object, he or she acquires title to the object by way of prescriptive title – regardless of the object being stolen. However, the ownership will not be transferred if he or she, at the time of the purchase or thereafter, should have suspected that the transferor was not entitled to dispose of the object.

An original owner who has lost the ownership of an object because of somebody else's good-faith acquisition or because of a prescriptive title is, however, still entitled to recover the object against payment. The payment shall encompass what the new acquirer has paid, including costs for improvements of the object. Such a demand for restitution must be made within six months of the day on which he or she became aware, or must be assumed to have become aware, of the whereabouts of the property (three months for acquisition prior to 1 July 2003). The

acquirer has the burden of proving that the restitution claim was made too late.

If the buyer has acquired stolen or unlawfully taken goods, he or she can lose title to it and be forced to return the goods without being entitled to compensation, even if the purchase has been made in good faith. In such a case, the original owner of the stolen goods must make the claim within six months of the day on which he or she became, or must be assumed to have become, aware of the whereabouts of the lost property. A buyer losing title this way may, in theory, turn to the seller of the object, revoke the purchase and reclaim what was paid for it, or even claim damages from the seller.

The buyer's good faith is assessed considering the nature of the object, the conditions under which it was offered and whether the other circumstances of the case were such that he or she was not given reason to suspect that the transferor was not entitled to dispose of the object.

Normally, a higher degree of care should be exercised when purchasing a valuable object, such as a work of art, particularly if the seller is a private person. In this case, a buyer is expected to ask a seller to identify himself or herself and share the details of the provenance of the object as well as his or her title to it. Extra caution should be exercised when a seller presents himself or herself as being an authorised person, agent or director of a company. In such case, a buyer is recommended to ask for a letter of authorisation, power of attorney or other documents that proves the transferor's authority. If a private person is making a purchase at a public auction or at a fair organised by an auction house or a similar type of business, no duty of diligence normally applies, unless the circumstances indicate that extra care is called for. However, more recent statements concerning cultural objects indicate that when assessing good faith, it is worth considering whether the buyer did any research in the various international public registers over stolen cultural objects, such as Interpol's database of stolen works of art.

A court will require a higher degree of care by a professional trader than by a private person with no special knowledge of the art trade.

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 certain period?

See question 4.

6 Can ownership in art, antiques or collectibles vest in the acquirer in bad faith after a period?

No.

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

The main rule is that the seller vests the risk until the object has been physically delivered to the buyer.

If the object is to be collected it should be made available for delivery at the business location. The risk passes to the buyer when the buyer physically takes possession of the goods. However, if there is a delay in the collection of the goods, it is the party that causes the delay that stands the risk.

If the parties agree that the object shall be transported to the buyer, the risk can pass in two ways. If delivery is carried out within a determined location or within an area where the seller in general undertakes

the transport (on-site purchases), the risk passes from the seller to the buyer when the object is handed over. If the parties have otherwise agreed on transportation of the object and this transportation is performed by an independent carrier (distance purchases), the risk passes to the buyer when the object is handed over to the carrier.

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

No laws in Sweden specifically govern the liability of a buyer of art and antiques to investigate the legal characteristics of an object. Freedom of contract is thus the starting point. A buyer and a seller may agree upon due diligence standards, guarantees and other conditions relevant to the purchase of an object.

If no specific agreement has been made between the parties, business-to-business sales and sales between private persons are regulated by the Sale of Goods Act. These fallback rules do not require a buyer to examine an item before the purchase, but a buyer who has actually done so, or who has refrained from doing so, may not later complain about 'defects' that he or she should have noted.

An object may be considered to have defects if it does not comply with a standard that the parties have agreed upon, if it cannot be used the way the buyer intended to use it or if it deviates from the buyer's reasonable expectations.

Moreover, an object shall be considered to have defects if it does not conform to information relating to the characteristics of it or its use that the seller (or a person other than the seller on behalf of the seller) has provided in the context of marketing the goods, or otherwise prior to the sale.

Objects sold at auction are considered to be sold in 'as is' condition, which means that special rules on defects apply. Even so, goods shall be considered to have defects if they do not conform to information on their characteristics or use given by the seller. Information not given by the seller can also make the rules on defects apply, if it concerns important characteristics or use of an object that the seller presumably knew about and the buyer could reasonably have expected to be informed of.

A professional seller who can be presumed to have relevant knowledge of export restrictions or other relevant rules applicable to the products sold is therefore advised to inform a foreign buyer that this may be the case.

If no specific agreement has been made and the buyer and seller are business operators that have their places of business in different countries, the United Nations Convention on Contracts for the International Sale of Goods (CISG) may be applicable. The CISG requires that the buyer examines the goods as soon as possible. The legal consequence for a buyer who does not examine the goods as soon as possible after the purchase is that he or she loses the right to complain about defects that the buyer should have noticed. The CISG is not applicable to auction sales.

9 Must the seller conduct due diligence enquiries?

Depending on the circumstances, information given (or not given) by the seller that has, or can be presumed to have, influenced the buyer to make the purchase may constitute a defect that gives the buyer an opportunity to revoke the purchase.

In consumer sales, a seller has a more extensive obligation towards the buyer to inform him or her of a matter relating to the characteristics or use of an object that the seller was aware of, or should have been aware of, and about which the buyer could reasonably expect to be informed.

In general, professional traders often have more extensive knowledge of the goods sold than a private person and, as such, they generally have increased responsibility.

10 Does the law provide that the seller gives the buyer implied warranties other than an implied warranty of title?

As stated in question 2, implied warranty is not a term that is used in Swedish law. However, the notion of implied warranties, meaning that goods must reasonably conform to the buyers' expectations, is part of Swedish contractual law. This also follows from the Sale of Goods Act and the CISG.

Consequently, one of the implied warranties in Swedish law is, if the parties have not agreed otherwise, an implied warranty of fitness for a buyer's particular purpose.

The quality of the product can, however, be limited contractually or through expressed disclaimers made by the seller before the sale – for instance by selling the product 'as is' or by similar wording. See questions 8 and 9.

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

The remedies provided in the event of a purchased object being defective are not very well adapted to works of art. The only reasonable sanction if a purchased object proves to be forged, fake or counterfeit is revoking the contract in connection with a claim for damages. Other statutory remedies available are correction, delivery of a new object and price reductions. To our knowledge, the application of remedial actions to fake or counterfeit works of art has rarely been used in Swedish courts.

12 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 law of contracts is governed mainly by the Contracts Act and the principle of *pacta sunt servanda*.

A contract can be considered void if, for example, the buyer acted in a fraudulent manner or took advantage of a seller's distress, lack of judgement or dependence on him or her.

Further, the Contracts Act provides two legal bases to void a contract. The minor general clause is applicable if the circumstances at the time of the deal were such that it would be considered against good faith and fair dealing to enforce the contract. A precondition is that the contracting party trying to enforce the contract knew, or ought to have known, about the circumstances in question. It is not, therefore, bad faith regarding the legal transaction that may void the contract, but the circumstance that would make it contrary to good faith and fair dealing to enforce the agreement.

The main general clause can void a contract wholly or partly if it is concluded that it would be unfair – with regard to the conditions of the contract, the circumstances at the time of the deal, events that occurred subsequently or the circumstances in general – to enforce it. Special concern should be given to the need to protect consumers or the weaker party in the contractual relationship.

Export and import controls

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

Most contemporary cultural objects do not require any special permission (except a general export declaration), but all goods must be classified by the correct commodity code, selected from the common nomenclature used in the European Union. Since some contemporary art may be difficult to classify, it is recommended to ask customs for assistance.

Some cultural objects require an export permit or licence. There is no general definition of cultural property in Swedish legislation, but for the purposes of export there is one definition applicable to objects intended for export outside of the European Union (requiring a licence) and another applicable to objects intended for export into another member state (requiring a permit).

Annex I of Council Regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods defines certain types of objects as cultural goods, depending on the age and value of the item.

For export within the European Union, it is sufficient to apply the Swedish national definition of a cultural object, as given in the Historic Environment Act and the Historic Environment Regulation. Only cultural objects assumed to have been in Sweden for at least 75 years and considered to be of major importance for the protection of national cultural heritage may be refused an export permit or licence. However, there are also a number of special conditions under which a permit must be given even if the object is considered to be of major importance to national cultural heritage, such as if the cultural property has been acquired by an institution abroad.

An application is made by filling in a form on the National Heritage Board's website. A decision is often reached within two weeks. A permit or licence is valid for a year from the date of the decision. A refusal

of the application may be appealed to a Swedish general administrative court.

Intentional illegal export of cultural property, including attempted export, is punishable as a smuggling offence. The sanction is either a fine or a maximum of six years' imprisonment. The object is forfeited if this is not considered undue. Negligent failure to seek permission for an export and negligent illegal export also constitutes an offence, and intentional packing, transporting, storing, concealing, processing, buying and selling cultural property may be sanctioned by a fine or imprisonment for unlawful dealing in smuggled goods.

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

A liability to pay customs duty and value added tax (VAT) arises upon import of some cultural property to Sweden, but many traditional types of art and antiques are exempt from customs duty. Temporary import (eg, for the purpose of an exhibition) does not give rise to customs duty and VAT but requires the importer to provide security for the potential taxes that will arise if the work of art is sold.

Export does not give rise to any liability to pay customs duty.

Direct and indirect taxation

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

Private persons reselling art (created by someone else) pay 30 per cent tax on the profit of the sale. However, since basic deductions can be made for sales worth up to 50,000 Swedish kronor, there is seldom any taxation for this type of sale.

If the total value of artworks sold by an artist in one year is less than 336,000 Swedish kronor, the sales will be exempt from VAT. If sales exceed 336,000 Swedish kronor, the artist must add 12 per cent VAT on all sales during the year.

VAT of 25 per cent applies to art dealers and galleries, and artists selling their own artwork through a partnership or a limited company wholly owned by the artist.

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

If artwork is purchased by someone who does not have the right to deduct input VAT when purchasing the goods (ie, a non-taxable person; a taxable person who himself or herself has used profit margin taxation in Sweden or in another EU country; or a non-taxable person who is not liable for VAT on sales), VAT can be calculated from the difference between the selling price and the purchase price, instead of the sales price (profit margin taxation). VAT is then 25 per cent on the profit margin. If VAT has been charged by the seller, however, the buyer cannot use profit margin taxation when he or she resells the goods.

Borrowing against art

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

There is no specific regulation on how to provide security. Ordinary rules on pledge apply, meaning the lender must take the pledged item in his or her possession in order to obtain a valid security. Since banks rarely agree to store movable property, pawnbrokers are generally used to borrow against art.

18 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?

Normally, if the borrower qualifies as a consumer the loan will automatically qualify as a consumer loan and the Consumers Credit Act will be applicable. However, the Consumers Credit Act is not applicable when borrowing from a pawnbroker. Instead, the lender has to act in accordance with mandatory rules in the Pawnbrokers Act regarding the terms of the loan.

19 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, but pawnbrokers are obligated to preserve certain information about a pledge according to the Pawnbrokers Act. A right of pledge in movable property requires possession of the object, hence a register would not serve any purpose.

20 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?

In general, the parties agree on how to regulate the lender's authority to sell the collateral. In such a case, the contract will be decisive. If the lender is a pawnbroker, there are mandatory regulations. The Pawnbrokers Act stipulates that the collateral may not be sold until two months have passed after the day of maturity, unless the borrower approves. The collateral must be sold at a public auction and the lender has to account for the surplus. Permission from the court is not required in either case.

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

In case of bankruptcy or execution, the lender has specific rights of priority according to the Rights of Priority Act. According to this Act, the pledgee has paramount rights, meaning he or she will take precedence over all other creditors.

Intellectual property rights

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

Copyright vests automatically in the creator in accordance with the Act on Copyright in Literary and Artistic Works.

23 What is the duration of copyright protection?

Seventy years after the death of the creator.

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

Yes, as long as the creator's non-economic rights are respected (eg, the right to acknowledgement).

25 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, but only if the purpose is to advertise the exhibition and only to the extent needed for the promotion. It is only permitted to depict an artwork without the consent of the creator if it is part of a collection in a catalogue in hard copy – it cannot be in digital format.

26 Are public artworks protected by copyright?

Yes, public artworks are protected by copyright. In a decision from 2016, the Supreme Court held that it is not permitted to publish pictures of public sculptures on websites.

27 Does the artist's resale right apply?

Yes, if a sold artwork is resold within the 70-year limit of the copyright, the creator or his or her successor is entitled to remuneration. The requirements are that the object sold must be an original work and at least one party involved must be a professional trader (ie, the buyer, seller or intermediate, or all three).

The amount to be paid is a percentage scale based on the sale price, excluding VAT, which ranges from 5 per cent if the sale price is less than €50,000, up to 0.25 per cent if the sale price is more than €500,000. The amount paid cannot exceed €12,500. If the sale price is below 2,275 Swedish kronor the sale is exempted from the resale right.

Further exemptions are a work of art that is a building or if a private person sells the object to a non-profit museum open to the public and without a professional trader as intermediate.

The professional party makes the payment. If more than one professional party has participated, the seller is responsible for the payment. Collective management is compulsory. As of 1 July 2018, professional traders active on the art market as seller, buyer or intermediary will be obligated to report remunerating sales to the collecting organisation.

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

Moral rights of the artist encompass the right to acknowledgement as creator (ie, to have the artist's name presented when his or her work of art is exhibited) and the right of respect for the work (ie, the work of art may not be used or altered in a way that offends the artist).

The possibility to waive moral rights is very limited and this kind of agreement could lack legal effect in respect of the creator. There is no limit for moral rights.

Agency

29 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 is no specific act governing agents in the art industry. An artist and an art gallery or other art dealer that have a working relationship are free to negotiate the terms of their cooperation agreement in accordance with the principle of freedom of contracts. In the absence of an explicit contract, different statutes may apply to the relationship depending on the characteristics of it. The Commission Agents Act (2009:865) is applicable to an art gallery acting in its own name on behalf of an artist. The gallery shall then account for what it has received from sales and what part of this constitutes its commission.

If the sale is independently conducted by the agent but in the name of the artist, which to our knowledge is very uncommon, the Commercial Agents Act (1991:351) will apply. The agent is not authorised to receive payment for the sold artwork unless this has been specifically agreed upon.

30 Does disclosure to the principal that the agent will receive a commission allow the agent to keep the commission unless the principal objects?

The principal is responsible for the payment of a commission to the agent within a certain time. Normally the agent is not entitled to keep any money before the commission has been determined.

31 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 the Commercial Agents Act is applicable and a third party has paid an unauthorised agent, the principal (when he or she becomes aware of the sale) is obliged to inform the third party without unreasonable delay if he or she does not want to approve the sale. If the Commission Agents Act is applicable, the principal has the right to refuse the agreement if the agent has acted in an economically negligent way.

Consigning items

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

The Commission Agents Act protects the consignor if the dealer goes into liquidation, as he or she remains the owner of the artworks until the ownership passes to a third party. The consignor thus has the right to separate the artworks from the dealer's creditors. If the ownership has passed to a third party but payment is outstanding, the claim is reserved for the consignor prior to the dealer's creditors.

Auctions

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

Yes. An auctioneer must adhere to the provisions of the Sale of Used Goods Act (1999:271) and the Sale of Used Goods Regulation (1999:272). The latter Regulation provides for a list of objects, which includes paintings, drawings and sculptures.

Update and trends

The Department of Culture is currently investigating if and how foreign cultural property will be immune from seizure.

The National Heritage Board has recently started a project together with the Swedish museums and the Sami Parliament to develop guidelines for meeting demands of restitution and repatriation in accordance with international agreements. The explicit goal for the project is to set a good example internationally.

Anyone aspiring to commercially sell objects within the scope of the Regulation (eg, an auctioneer) has to register with the police prior to starting the trade. In addition, the trader must take notes on the goods bought and sold and, upon request, turn these over to the police. The trader of used goods is further prohibited from acquiring goods from anyone unable to, in a reliable way, prove his or her identity or that he or she is otherwise known to the trader, or a person under 18 years old.

The Enforcement Code (1981:774) also provides special provisions for execution sales. For other forms of auction, general contract law applies to the buyer and seller, most notably the Sale of Goods Act and the Consumer Sales Act (see questions 1-12).

For online auctions, see questions 48 and 49.

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

Yes, auctioneer offices may sell items privately and some offer private sales. They may also offer their customers advances in the ordinary scope of business, but are not allowed to offer loans against art as security as a side business (ie, as pawnbrokers).

Auction guarantees are not prohibited by law but are not the regular practice of larger auctioneers' offices.

Spoliation during the Nazi era

35 If a court in your jurisdiction agrees to hear a claim to art lost during the Nazi era, applying the local law, in what circumstances would the heirs of the party wrongly dispossessed typically prevail over the current possessor?

The determination of a restitution case and the chances of success depend, to begin with, on whether the current possessor acquired the stolen art before or after 2003. As explained in question 4, Swedish law prefers the victim of theft. Prior to 2003, however, it was possible to make good-faith acquisitions regardless of the history of an object. Hence, a current possessor having bought a work of art before 2003 from somebody who had made an acquisition in good faith is protected from restitution claims and must only release the property against compensation.

Accordingly, the chances of success are much higher if the current possessor acquired the object after 2003, since the buyer in this case does not have any protection against title claims from the original owner (see question 4).

The burden of proof is on the claimant to prove the origins and the original title to the object.

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

No. Sweden took part in the Washington Conference on Holocaust-Era Assets and has signed the Terezin Declaration, but has not adopted any specific laws or national dispute procedures for Nazi-looted art.

Lending to museums

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

The National Heritage Board is responsible for issuing the government's exhibition guarantee, a state indemnity for objects on loan to exhibitions in Sweden. A guarantee may be applied for by non-profit organisations, such as public museums, and is granted provided that the security arrangements of the exhibition are sufficient. An application should be filed (by the arranger) at least three months prior to the exhibition's opening. An application fee of between 6,000 Swedish kronor and 120,000 Swedish kronor is charged.

38 Are artworks, antiques or collectibles loaned to a public museum in your jurisdiction immune from seizure?

No. Sweden has signed the United Nations Convention on Jurisdictional Immunities of States and their Property, but no national legislation is yet in force.

Cultural patrimony**39 Is there a list of national treasures?**

No.

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

No.

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

Ownership of ancient artefacts (ie, objects without an owner and found on or near an archaeological site) automatically vests in the state. Ancient artefacts found in other circumstances must be offered for sale to the state, which has a right of pre-emption if the object can be presumed to date from before 1850 and certain other criteria are met. Ownership of ancient artefacts found in the ocean in a foreign jurisdiction, collected by a Swedish ship or brought to Sweden, also vests in the state.

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

Sweden is a party to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, which means that a cultural object illegally exported to Sweden after 2011, from another contracting party, shall be returned to that state upon request. The reclaiming state must bring an action in public court against the possessor of the object within three years from gaining knowledge of where the object is located and who the possessor is, before 50 years have passed from the illegal export. To succeed with a claim, the export must still be illegal when the case is initiated.

Similar rules exist for restitution claims concerning illegally exported cultural property from another EU member state. As Directive 2014/60/EU of 15 May 2014 targets restitution claims between the member states, a private or legal person seeking restitution this way must ask for assistance from the relevant authority in his or her own country. A claim must be brought before three years have passed from the date when the relevant authority of the requesting state gained knowledge of the whereabouts of the object.

If the court rules in favour of a reclaiming UNIDROIT or EU state, the possessor of the object is entitled to fair compensation for returning the object, provided that due care and attention in acquiring the object was exercised. Hence, the burden of proof is on the possessor.

Restitution claims that fall outside the scope of Directive 2014/60/EU and the UNIDROIT Convention seem to be handled on a case-by-case basis diplomatically.

Sweden is also a party to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Anti-money laundering**43 What are the anti-money laundering compliance obligations placed on the art trade?**

All professional buyers and sellers of art must comply with the Money Laundering and Terrorist Financing (Prevention) Act if the operations of the business involve sales of art amounting to €5,000 or more in cash.

First, a general risk assessment in accordance with the Act should be performed and documented by the art trader. Secondly, customer due diligence must be performed to assess the customer's risk profile, which should include the following information: his or her identity; the beneficial owner's identity (if applicable); whether he or she is a politically exposed person; and if he or she is established in a high-risk country (as identified by the European Commission) outside the European Union. In addition, information of the purpose and nature of the transaction should be obtained.

Endangered species**44 Is your jurisdiction a party to the CITES Convention?**

Yes, Sweden adopted the CITES Convention in 1975. As with all EU member states, CITES is enforced through special regulations applicable in each state. The responsible national authority is the Swedish Board of Agriculture, which consults with the Swedish Environmental Protection Agency. The former can issue permits and certificates.

45 Is the sale, import or export of pre-1947 worked endangered species subject to a licence?

An antique exemption is applied for sales of items processed prior to 3 March 1947, which means that the owner does not have to apply for a CITES certificate for the items. However, the owner must have evidence of the age of the object, which is also required if he or she were to apply for either a CITES certificate or a CITES import or export permit. The evidence must be available prior to the use of the item in a commercial activity. The requirement for evidence is particularly important regarding high-risk objects, such as objects made of elephant ivory and rhino horn (see question 47). For these species, an expert certificate from an independent expert is required. A permit for export is also required.

Lack of evidence of the item's age may result in prosecution for violation of protection of species.

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46 Is the sale, import or export of post-1947 worked endangered species authorised? On what conditions?

With regard to species listed in Appendix A to Council Regulation (EC) No. 338/97, commercial activities are prohibited unless the Swedish Board of Agriculture grants exemption by issuing a CITES certificate.

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

The use of unprocessed ivory, for example a polished elephant tusk, is prohibited in commercial activities, regardless of the age of the object. This means that no CITES certificates or permit for export can be issued. For ivory processed after 3 March 1947, a CITES certificate can be applied for, if the owner is able to provide documentation that the object was obtained lawfully.

Regarding rhino horn, an export permit may be granted only in limited cases, for example if the competent authority is convinced that the object is a work of art and that its value ensures that the object will not be used for other purposes.

More details can be found on the Swedish Board of Agriculture's website: www.jordbruksverket.se/swedishboardofagriculture.

Consumer protection**48 In what circumstances may consumers cancel the sale of art, antiques or collectibles?**

If the buyer is a consumer, contractual terms that are disadvantageous to the buyer in comparison with the consumer protection rules are unenforceable against the buyer.

Further, a consumer is always entitled to withdraw from the contract within 14 days of the date on which the consumer takes physical possession of the object, if he or she has purchased an object on the internet or otherwise off the premises of the seller. This also applies to auction sales of art and antiques, if the auction is only available through the internet (hence not if the consumer can choose to participate in the auction at the auctioneer's place of business). The obligation for the seller to inform the customer of the right to cancel a purchase has also been established in Swedish case law.

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

In general, the same rules apply for all types of sales, regardless of whether the sale is made face to face, by telephone or through other platforms on the internet (see questions 1-12). Determining which set of rules applies to a specific case depends on whether goods or services are sold.

In the case of online sales, the Distance and Off-Premises Contracts Act (2005:59) and the E-Trade and other Services in the Information Society Act (2002:562) apply. The former contains specific regulations concerning the information duty of the seller when providing goods or services on online platforms, and the latter gives consumers the right of regret (see question 48) as well as further requirements on what kind of information a seller needs to give the consumer prior to a sale over the internet.

A seller must provide certain information to the buyer prior to a sale made outside the seller's place of business, including his or her name, corporate identity number, telephone and fax number, and address and email address. If the seller is an agent or acting on somebody else's behalf, the seller needs to provide the buyer with the same information regarding the principal. In general, the seller must provide the necessary information for the consumer to reach the him or her.

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
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Foreign Investment Review
Franchise
Fund Management
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mergers & Acquisitions
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public-Private Partnerships
Public Procurement
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
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Tax Controversy
Tax on Inbound Investment
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