



Information and frequently asked questions about return guarantees

A. General Information

I. Promotion of the exchange of cultural property

The granting of return guarantees is becoming increasingly important in the context of international loans between museums. Many lending institutions today require a return guarantee from the host country before sending cultural property from their collections to a foreign exhibition. Such guarantees intend to protect the loaned items from third-party legal claims and related legal proceedings in Switzerland («safe conduct» or immunity).

In order to promote the exchange of cultural property between museums, the Cultural Property Transfer Act (CPTA, SR 444.1) introduced the possibility of return guarantees for cultural property lent by a foreign institution for exhibition purposes in Switzerland. The Specialised Body for the International Transfer of Cultural Property of the Federal Office of Culture (hereafter: Specialised Body) is responsible for issuing such return guarantees.

II. Procedure

If a museum or another cultural institution in Switzerland wishes to temporarily borrow cultural property coming from a lending institution of a UNESCO Contracting State, the borrowing institution may apply to the Specialised Body for a return guarantee for the cultural property for the duration of the exhibition (Art. 10 CPTA). The application must be submitted to the Specialised Body at least three months before the intended import date of the cultural property into Switzerland (Art. 7 para. 1 Cultural Property Transfer Ordinance, CPTO, SR 444.11). The application form is available on the homepage of the Specialised Body (www.bak.admin.ch/kgt > «Return Guarantee for Museums»). An excerpt of the loan contract must be enclosed.

If the application fulfils the legal requirements, it will be published in the Federal Gazette, including an object list with a description of the cultural property and information on its origin (Art. 11 para. 1 CPTA). Within a period of 30 days from the publication in the Federal Gazette, an objection to the issuing of the return guarantee may be filed in writing with the Specialised Body (Art. 11 Para. 3 CPTA). The legal holidays (Art. 22a Administrative Procedure Act, SR 172.021) must be observed. With the objection, a title of ownership of the cultural property can be asserted.

The Specialised Body decides on the application for a return guarantee (Art. 12 Para. 1 CPTA). A return guarantee can be issued if (a) no objection asserting a title of ownership is filed, (b) the import of the cultural property is not illicit within the meaning of Art. 2 para. 5 CPTA and (c) it is agreed in the loan contract that the cultural object, after completion of the exhibition, will return to the Contracting State from which it was borrowed (Art. 12 para. 2 CPTA).

III. Effect

Pursuant to Art. 13 CPTA, the return guarantee means that neither private parties nor authorities may assert legal claims to the cultural property for as long as it is located in Switzerland.

B. Frequently Asked Questions

1. Where can I find the application form?

All information and forms relevant to the return guarantees are available on the homepage of the Specialised Body for the International Transfer of Cultural Property with the following link:
www.bak.admin.ch/kgf > Return guarantee for museums.

2. Must the exact origin of the works be indicated in the object list to the application form?

Yes. According to the legal provisions regarding the issuing of return guarantees, the applicant institution must provide as precise information as possible on the origin/provenance of the cultural property (Art. 11 CPTA and Art. 7 CPTO). This requirement aims to create the best possible transparency to allow third parties to protect their eventual right of ownership.

Therefore, all past and current ownerships must be listed in a clearly identifiable and comprehensible manner. Anonymous or incomplete information on provenance is not permitted (e.g. "private collection").

3. Can the illustrations attached to the application form be submitted in a separate document?

Yes. The illustrations of the individual works can also be submitted in a separate document. However, it must be clear which illustration refers to which object in the object list to the application form.

4. Why is the application form to be submitted at least three months before the intended import date of the object?

The deadline for submitting the application form is set by the Cultural Property Transfer Ordinance (Art. 7 para. 1 CPTO). The purpose of the deadline is to ensure the correct procedure for issuing a return guarantee. The following procedural steps must be considered:

- Formal and material examination of applications;
- Possible addition to the application by the applying institution;
- Publication of the application in the Federal Gazette (editorial deadline 8 days before publication date);
- Objection period of 30 days;
- Eventual legal holidays;
- Preparation and dispatch of the decision.

5. Does the objection period necessarily have to be 30 days?

Yes. Since this is a legal deadline (Art. 11 para. 3 CPTA), a deadline of 30 days from publication of the application in the Federal Gazette must be respected. In particular, it cannot be shortened. During this period, a title of ownership of the cultural property can be asserted by means of an objection (Art. 11 para. 3 and Art. 12 CPTA). Under certain circumstances, legal holidays must be taken into account (see question 6).

6. When is a suspension of a limitation period to be considered?

Statutory or official limitation periods do not run (Art 22a Administrative Procedure Act, SR 172.021):

- a. from the seventh day before Easter up to and including the seventh day after Easter;
- b. from 15 July up to and including 15 August;
- c. from 18 December up to and including 2 January.

7. Can return guarantees be issued for cultural property from all countries?

Return guarantees can only be issued for cultural property borrowed from a state that has ratified the 1970 UNESCO Convention (Contracting State within the meaning of Art. 2 para. 3 CPTA).

The current list of states that have ratified the UNESCO Convention of 1970 can be consulted here:

www.unesco.org/eri/la/convention.asp?order=alpha&language=F&KO=13039%20

www.admin.ch/opc/de/classified-compilation/20012311/index.html

8. Does the loan agreement have to be submitted together with the application form?

No. The loan agreement signed by both parties can be submitted at a later time. It must, however, be submitted in order for the return guarantee to be issued.

9. Is a return guarantee valid retroactively?

No. A return guarantee begins at the earliest on the day on which the corresponding decision is issued. The duration of the return guarantee will be specified in this decision.

10. Can the order of the return guarantee be issued in English?

No. A return guarantee can only be issued in one of the three official languages German, French or Italian. However, an English standard version can be attached as a sample on request.

11. Can a return guarantee be extended?

Yes. An extension of the duration of a return guarantee is possible in exceptional cases (e.g. when an exhibition is extended). This will be examined in each individual case. If it is intended to apply for an extension, the Specialised Body can provide further information.

12. Where can I get further information on return guarantees?

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