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# Information and frequently asked questions on the art trade and auctioning business

## A. General Information

### I. Introduction

Switzerland joins the US, England, France and Germany as one of the world's largest art markets. The Cultural Property Transfer Act (CPTA, SR 444.1) and the corresponding Ordinance (CPTO, SR 444.11) implement the 1970 UNESCO Convention on measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in national law (and the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage). The 1970 UNESCO Convention is a multilateral international treaty which formulates the fundamental principles governing the protection of cultural property, containing minimum requirements for legislative, administrative, treaty-related measures, which states parties are required to undertake to prevent the illegal trade in cultural property.

The CPTA and CPTO consider the principle of individual responsibility within the art trade to the greatest extent possible. At the same time, persons active in the art trade and auctioning business in Switzerland are subject to special duties of diligence related to the import and transfer of cultural property, which are explained in the following.

### II. Duty of diligence for persons engaged in the art trade and auction business

According to the general principle defined in Art. 16, para. 1, CPTA, cultural property may only be transferred when it can be assumed that the property is not stolen or otherwise lost against the will of the owner, illicitly excavated or illegally imported into Switzerland.

Cultural property that is «lost against the will of the owner» refers in particular to illegally excavated archeological or paleontological objects, provided that the state qualifies them as state property (refer to Art. 724, para. 1, Swiss Civil Code, for Swiss law). Parallel to Switzerland, this is the case for example in Egypt, Greece, Italy and Turkey.

From that general principle (Art. 16, para. 1, CPTA) derive special duties of diligence applying to all persons active professionally in the art trade and auctioning business (Art. 16, para. 2, CPTA).

Persons, subject to these duties of diligence, must:

- establish the identity of the supplier or seller. The required information includes: last name, first name, birth date, domicile address and citizenship for persons and company name and domicile address for legal entities (Art. 16, para. 2.a, CPTA in conjunction with Art. 17, para. 1, CPTO). This information has to be reviewed based on probative documents to the extent questions exist requiring a challenge to the correctness of the information (Art. 17, para. 2, CPTO);
- require a written declaration on the right to dispose of the cultural property from the supplier or seller (Art. 16, para. 2.a, CPTA);
- inform customers on existing import and export regulations of the contracting states of the 1970 UNESCO Convention (Art. 16, para. 2.b, CPTA);
- maintain written records on the acquisition of cultural property; the required information includes: description and origin of the cultural property, date of transfer of cultural property, sale price or appraised value as well as information on identity and address of the supplier or the seller and

written declaration on the right to dispose (Art. 16, para. 2.c, CPTA in conjunction with Art. 19 CPTO). Details on object description are regulated in Art. 1, provisions a and b, CPTO.

- Records and receipts on the cultural property must be stored for 30 years (Art. 16, para. 3, CPTA).

### **III. Controls and possible sanctions**

The Specialised Body for the International Transfer of Cultural Property of the Federal Office of Culture inspects compliance with duties of diligence of persons active in the art trade and auctioning business (Art. 17 and Art. 18, provision i, CPTA).

The inspections apply in particular to documents maintained on traded cultural property; they must be maintained in such a manner as to be presented pursuant to any requests for information (Art. 19, para. 2 and Art. 20, para. 2, CPTO). All necessary information on fulfilling this duty of diligence must be provided to the Specialised Body (Art. 16, para. 2.d, CPTA).

To this end, the Specialised Body has access to business rooms and storage areas of persons active in the art trade and auctioning business. On-site inspections are announced in advance unless a risk exists that the cultural property or associated documents will be removed from inspection (Art. 17 CPTA in conjunction with Art. 20, para. 1, CPTO).

When the Specialised Body has a reasonable suspicion that criminal activity is present under the CPTA, it files a complaint with the competent criminal prosecution authorities (Art. 17, para. 2, CPTA). The competent criminal prosecution authorities will order the seizure of the cultural property when suspicion exists that the cultural property was stolen, lost against the will of the owner, or illicitly imported into Switzerland (Art. 20, CPTA).

Possible criminal sanctions are outlined in Art. 24 ff., CPTA.

## **B. Frequently Asked Questions**

### **1. For which objects are the special duties of diligence to be observed according to Art. 16 CPTA?**

Special duties of diligence are generally to be observed for cultural property within the meaning of Art. 2 para. 1 CPTA (for the definition of cultural property, see [www.bak.admin.ch/kgf](http://www.bak.admin.ch/kgf) > Cultural Property).

The special duties of diligence do not apply when the purchase price or appraised value of cultural property is less than CHF 5'000.- (Art. 16, para. 2, CPTO). However, this exception does not apply for archaeological, paleontological or ethnological objects and portions of dismembered artistic or historical monuments (Art. 16, para. 3, CPTO). For this type of cultural property, the special duties of diligence must therefore be observed in every case.

### **2. To whom do the special duties of diligence apply?**

The special duties of diligence affect persons and legal entities active in the art trade and auctioning business trading on a professional basis in cultural property within Switzerland. Decisive for determining professionalism is an obligation to register in the commercial register (Art. 1, provision e.1, CPTO). The special duties of diligence apply accordingly to persons domiciled abroad and to legal entities headquartered abroad (Art. 1, provision e.2, CPTO).

What triggers an obligation to register in the commercial register? Registration in the commercial register is a prerequisite of incorporation for certain forms of legal entities (in particular, companies limited by shares, limited liability companies, cooperatives). They operate without further measures on a professional basis in terms of the CPTA. Registration in the commercial register is required for all other legal entities and persons when they operate a business commercially, i.e. – in general – conduct economic activities targeted toward long-term income and achieve annual sales of at least CHF 100,000.- (Art. 36 ff. Ordinance on the Commercial Register, OCR, SR 221.411).

N.B. The special duties of diligence and the corresponding control measures do not apply to normal collection activities of private persons. On the other hand, the criminal provisions of Art. 24 ff. CPTA must be observed by everyone.

### **3. Where do the special duties of diligence apply?**

Provisions of the CPTA and CPTO apply to the transfer of cultural property out of or into Switzerland (Art. 1, para. 1, CPTA). The special duties of diligence apply to persons active in the art trade and the auctioning business to the extent they transfer cultural property within Switzerland (Art. 16, para. 1, provision b, CPTO).

### **4. What has to be considered for the import, transit and export of cultural property?**

Comprehensive information on this is available on the homepage of the Specialised Body for the International Transfer of Cultural Property at the following link:

[www.bak.admin.ch/kgf](http://www.bak.admin.ch/kgf) > Import, transit and export of cultural property

### **5. Do the special duties of diligence also apply to transactions long past?**

The CPTA does not apply retroactively (Art. 33, CPTA). In other words, its provisions only became applicable after its entering into force on June 1, 2005. Transactions completed prior to June 1, 2005, are not covered by the Act. However, it is applicable to all subsequent transactions.