

# RUSSIA

Alekseyev Maxim, Egorova Kira, Ostashenko Maria, Sakovich Apollinaria and Artemiev Sergey | Alrud Law Firm

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## 1. CULTURAL HERITAGE AND ART MARKET

### 1.1 Does your country have regulations on national patrimony, cultural heritage, indigenous art and the like and, if so, what are the essentials?

Russian regulation of cultural and art objects includes general legislation such as the Constitution and the Law on Protection of Consumers' Rights. It also includes more specific rules under the Fundamental Principles of Culture, special federal laws, laws of constituent entities of Russia and subordinate legislation on culture.

The main social and cultural rights of individuals are established by the Constitution which states that everyone has the right to participate in cultural life, to make use of cultural institutions of and have access to items of cultural value. The Constitution also states that for the purpose of protection of cultural values, certain restrictions on movement of goods and services can be imposed.

The Fundamental Principles of Culture of the Russian Federation govern activities in the spheres of research, protection, use and restoration of historical and cultural monuments, literature, cinematography, architecture and design. The document defines items of cultural value broadly, meaning moral and aesthetic ideals, rules and models of behaviour, languages, dialects and modes of speech, national traditions and handicrafts, works of culture and arts, results and methods of scientific research of cultural activities, buildings, constructions, objects and technologies with historic and cultural value as well as territories and objects of unique historical and cultural interest.

The following federal laws are worth mentioning:

- The Federal Law On Items of Cultural Heritage (Monuments of History and Culture) of Peoples of the Russian Federation regulates preservation, use, popularisation and state protection of items of cultural heritage and defines items of cultural heritage as real estate objects (including objects of archaeological heritage) and other historically important objects, works of arts, sculpture and crafts, objects of science and technology and other objects of material culture arising from historical events and being of special value from historical, archaeological, architectural, urban construction, arts, science and technology, aesthetic, ethnologic, anthropologic or social cultural point of view and being evidence of epochs and civilisations, original sources of information on cultural origination and evolution.
- The Federal Law On Export and Import of Items of Cultural Value sets out rules on crossing borders for items of cultural value and state control over them. The law applies the term "items of cultural value" in its short meaning as movable items of the material world such as historical values, archaeological items, artistic values, art and craft items, items of traditional folk artistic craft, components and fragments of architectural, historical, artistic memorials and memorials of monumental art, ancient books, publications of special interest and others.
- The Federal Law On the Museum Fund of the Russian Federation and Museums in the Russian Federation (the Museums Law) establishes a special legal status for the museum fund and the procedures for creating museums in Russia and their legal status.

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- The Federal Law On Archive-Keeping in the Russian Federation regulates storing, gathering, listing and using documents of the Archive Fund of Russia.

Rules on items of cultural heritage connected with land use and town planning activities can be found in the Land Code, the Town-Planning Code and other related laws.

The list is not exhaustive and other rules on cultural and art objects are set out in other pieces of legislation.

## **1.2 Is your country a party to the 1970 UNESCO Convention? What are the most distinguishing features of your national implementation legislation?**

The USSR ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property in 1988. Russia, being the legal successor of the USSR, is currently a party to the Convention.

The most distinguishing features of the Russian implementation legislation are as follows:

- In accordance with its Fundamental Principles of Culture, Russia has adopted and implements a policy aimed at returning items of cultural value illegally exported from its territory. Russia elaborates and takes the required action for the preservation of its cultural heritage.
- The Ministry of Culture and the State Archive Agency are the state authorities that exercise supervision over import and export of items of cultural value in Russia. The Federal Service on Preservation of Cultural Values is a dedicated state authority controlling import and export of items of cultural value.
- The Ministry of Culture is in charge of registering events of loss, forfeit and theft of items of cultural value, arranging and informing state authorities and the public on such events under the 1970 UNESCO Convention.

## **1.3 Is the country a party to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and/or any other international conventions or bi-lateral treaties relating to cultural property and the relevant trading activities?**

Russia signed the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects on 29 June 1996. However, Russia has yet not ratified the Convention and it is, therefore, not in effect.

Nevertheless, Russia has ratified a number of other international conventions relating to cultural property and the relevant trading activities, including:

- Convention for the Protection of Cultural Property in the Event of Armed Conflict and Protocol to the Hague Convention.
- Convention Concerning the Protection of the World Cultural and Natural Heritage.

Russia is also a party to various bi-lateral treaties on cultural collaboration.

## **1.4 Is the art and cultural property market thriving in your country?**

The cultural property market is growing steadily. There are a number of large associations, antiquarian saloons, galleries, auction houses and independent dealers both domestic and international represented in the market.

The main dealers operating in the cultural property market in Russia are:

- International auction houses like Sotheby's, Christie's, MacDougall's and Bonhams.
- Local auction houses, the two biggest being Gelos Auction House and Russian Action House.

Data on the volumes of trade in Russia is not publicly available.

## 2. PURCHASE AND EXPORT

### 2.1 What due diligence is required from a buyer?

Due diligence requirements with regard to import and export are provided in the Federal Law On Export and Import of Items of Cultural Value. Accordingly, the buyer must comply with the following due diligence procedure and obtain this information:

- The origin of the items (whether illegal acquisition and import into Russia might have taken place).
- Whether pieces are of historical, artistic, scientific or any other value.
- Whether the items are entered on registers of state-protected items.
- Whether the items are permanently stored in state and municipal museums, archives, libraries and any other state storage facilities.
- The date of creation of the item (whether it was created 100 or more years ago).

In any of the above circumstances, the items of cultural value are forbidden from being sold and exported from the Russia without complying with the following special procedures and obtaining special permissions for export:

- Expert valuing of the items of cultural value to be exported. In Russia, this examination is conducted by experts accredited by the Ministry of Culture.
- Verifying the legal capacity of seller, ownership title to the items and establishing lack of third party rights over the relevant artwork (for example, the pre-emptive right of Russia).

### 2.2 Are there any particular features of local laws that particularly require a buyer's attention, whether in private treaty purchase or purchase at auction? What about a seller's warranty of title and warranty of authenticity? What about the moment of transfer of title?

The following must be taken into account by a buyer when purchasing items of cultural value:

- Transactions involving items of cultural value must be concluded in writing otherwise the transaction will be declared invalid.
- Transactions involving items of cultural value included in the Russian Museum Fund are subject to registration with the State Catalogue of the Russian Museum Fund.

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- Russia has a pre-emptive right to buy items of cultural value belonging to museums and museum collections included in the Museum Fund.
- The owner of an item of cultural value listed in the Museum Fund of Russia must obtain a special permit from the Ministry of Culture to sell or otherwise dispose of the item.
- Export of items of cultural value is allowed only with permission from the Government of Russia.
- If the item's title documents were never acquired or are missing, one of the means of proving ownership rights is to refer to acquisition of ownership rights by usucaption. Russian law provides that persons can acquire ownership of an item of cultural value after 20 years of public and faithful possession.
- Russian law provides an option to deprive the owner of items of cultural heritage of title to the items if the owner uses them in an improper manner (that is, threatening their safety or reducing their value).

Title to items of cultural value is normally confirmed by documentary proof of acquisition (for instance, purchase or inheritance). Items of cultural value declared for export or return after temporary export must have an expert's certificate confirming its authenticity.

Under general rules of Russian law, a buyer acquires title to an item purchased under contract from the moment of transfer, unless the law or the contract provide otherwise. When disposal of item is subject to state registration, title to it occurs on completion of the registration unless the law provides otherwise. Title to items of cultural value included in the Russian Museum Fund transfers on the day of state registration of the transaction in the State Catalogue of Museum Fund of the Russian Federation.

In view of the amendments in the Russian Civil Code which entered into force in 2013, the good faith of the participants in a contract is presumed and, therefore, if a dispute arises a defendant is not obliged to prove his good faith. The burden of proof lies with the party claiming return of the property that the other party failed to act in good faith.

At the time of writing, a draft law on circulation of cultural values has been suggested and is currently under review and discussion by the competent state authorities. The draft law provides for creation of a unified register of cultural value to be in circulation. The register is expected to, in particular, help verify ownership title to items as well as their authenticity. The draft also introduces the new concept of a passport for cultural value, which will contain the most important information on the item, in particular:

- Its cultural value category.
- Country and region where the item was manufactured.
- Creation date.
- Authorship details.
- Detailed description of the item.
- Data on the expert who conducted the valuation.

With regard to the formal requirements applicable to transactions dealing with cultural value items, the draft law suggests they be certified by a notary public.

The draft law has not been officially introduced to the public so far but it has already received a number of criticisms which suggested introductions from market participants and the Ministry of Culture.

### **2.3 Are there any consumer protection rules that apply?**

Consumer protection rules are provided under the Law on Protection of Consumers' Rights. The Law sets out general rules sellers' obligations to consumers, quality and safety requirements for products (works/services) and liability of a seller for providing inaccurate information on products.

### **2.4 What are the statutory remedies in the event of fake, forgery or counterfeit?**

In Russia faking, forging or counterfeiting incur civil, administrative or criminal liability depending on the level of illegality of the infringer's behaviour.

The Russian Civil Code provides that a seller must provide a buyer with reliable information on the item offered for sale. If a seller fails to comply with this obligation the buyer is entitled to claim the following civil law remedies:

- Rejection of the contract and return of the paid price for the item.
- Damages.
- An additional penalty.
- Compensation for moral damage.

Under Russian law, damages include expenses that a claimant suffered or will suffer for recovery of the violated rights, real damage and lost profit. The amount of damages must be claimed with reasonable accuracy. Otherwise the amount will be determined by a court considering all the details of the case and based on the principles of reasonableness and adequacy given the level of the violation.

The new amendments to the Civil Code, which entered into force on 1 June 2015 provides the possibility for the parties to agree on certain indemnities to cover specific circumstances. The amount of the indemnity agreed by the parties cannot be mitigated by the court.

Alternative to claiming repayment of the price paid for the item, under the rules of the Law on Protection of Consumers' Rights the buyer affected by the fake, forgery or counterfeit can demand replacement for a different item or a decrease in the purchase price.

Russian law provides for administrative liability for illegal use of copyright in the form of seizure of counterfeit products and imposition of a fine as follows:

- RUB1,500 to 2,000 for individuals.
- RUB10,000 to 20,000 for officials.
- RUB30,000 to 40,000 for legal entities.

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Illegal use of copyright can lead to criminal liability with the following punishments:

- A fine up to RUB200,000 or up to 18 months' salary.
- Compulsory work for up to 480 hours or remedial work for up to two years.
- Imprisonment for up to two years.

## **2.5 Is there any VAT or sales tax?**

Generally, selling goods and services and performing works in the territory of Russia are taxable transactions. Only legal entities and individual entrepreneurs using the general tax system are obliged to pay VAT in Russia. On the other hand, legal entities and individual entrepreneurs using the simplified tax system and individuals (natural persons, but not individual entrepreneurs) are exempt from VAT.

On sale of works of art in Russia, the general VAT rate is 18%, irrespective of whether the buyer is a local or a foreign company.

Exporting artworks is also taxable but the applicable tax rate is 0%. Therefore, taxpayers are exempt from the obligation to pay export VAT, but not exempt from the obligation to draft the necessary primary accounting documents. This is done by the government in order to provide the opportunity for the taxpayer and its counteragents to deduct VAT. However, there are some qualifications and restrictions that must be taken into account when exporting works of art (see *Question 2.7*).

## **2.6 Is there an artist's resale right (*droit de suite*) and, if so, how does it apply?**

Russian law recognises an artist's resale right (*droit de suite*). When an original piece of art is disposed of by its author, he is entitled to a percentage of its price on each further public resale of the original through a gallery, art saloon, store or similar organisation. The amount of the percentage payable to the author depends on the resale price of the original. The resale right is inalienable but can be inherited within the maturity period of this right (25 years).

The author's fees can be collected by either the Partnership on Protection and Management of Rights in the Sphere of Art (non-profit partnership), or the author himself.

## **2.7 Are there any export restrictions and for what kinds of works of art/cultural property? Are there any prior export notification or licence requirements?**

The Federal Law On Export and Import of Items of Cultural Value sets out a list of cultural items that are not allowed to be exported from Russia:

- Movable items of cultural value classified as particularly valuable objects of cultural heritage (being objects of cultural heritage within the federal meaning included in the register and recognised by the government as such), regardless of the time of their creation.
- Movable items of cultural value regardless of the time of their creation, protected by the state and fixed in security lists and registers under the procedure established by law.

- Items of cultural value permanently stored in state and municipal museums, archives, libraries, other state warehouses.
- Items of cultural value created over 100 years ago (if otherwise not established by law).

The above list is exhaustive. Any items of cultural value not listed above can be exported pursuant to decisions of the state authorities on the possibility of export. Items of exported cultural value are subject to obligatory expert evaluation.

The right to export items of cultural value is confirmed by a certificate issued upon successful completion of an expert evaluation. Export of items without obtaining such a certificate is prohibited. The items of cultural value can be exported by their legal owner (the person authorised by such owner) or the author of such items of cultural value.

## **2.8 Are there any “free ports” and, if so, what is their regime?**

Special economic zones (port zones) as well as the Free port of Vladivostok and advanced special economic zones (if applicable) are available to provide its investors/residents with a “free ports” regime. The regime includes simplified customs procedures, reduced or excluded taxes (for example, VAT at 0%), and customs duties (for example, import and export customs duties at 0%).

The Free port of Vladivostok provides the opportunity to store and present luxury goods and curiosities as is already done in Luxembourg, Singapore and Switzerland.

## 3. PEACEFUL ENJOYMENT

### **3.1 What are the rules on import clearance, customs and VAT?**

The transaction of importing artworks into Russia is subject to VAT at the general tax rate of 18%, but is exempt from import customs duties.

Alternatively, cultural items can be imported using a temporary import procedure (regime) that allows for either a full or partial exemption from import duties and VAT for the goods that are temporarily imported.

The temporary import regime is applied by the customs authorities based on the statement of the applicant on the purposes and circumstances of the import and cannot exceed a specified time period (two years). However, in practice, the customs authorities establish the temporary import term for up to one year.

Since 2015, the Eurasian Economic Union (EEU) operates between Russia, Belarus, Kazakhstan, Armenia and Kyrgyzstan. The EEU was formed on the basis of the Customs Union between Russia, Belarus and Kazakhstan established in 2010. Thus, the EEU has a unique customs territory and the same customs regulations apply to the members of the EEU (between these countries, special customs rules and VAT regulations apply).

Customs laws provide for various benefits in respect of temporary import of cultural items. For instance, cultural items originated over 100 years ago can be imported into the EEU free of tax and duties for five years. On the expiration of this period, the owner of the items must export them or pay import VAT (18% of their value) and the relevant amount of interest. Otherwise, legal liabilities will arise. The relief is granted only in respect of cultural items owned by foreigners and imported to the EEU free of charge for exhibitions.

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It is important to understand that import of cultural items is not subject to VAT if the purchaser of a piece of art is a Russian public institution.

In all the above cases, the cultural items imported into Russia must be duly declared to Russian customs authorities.

### **3.2 Does a buyer have protection against title claims, in general? Is there protection of the acquirer in good faith?**

A good faith buyer is protected under Russian law. In general, a buyer enjoys a good faith defence to vindication claims. In order to protect its rights, a buyer must provide evidence of payment for the property, made in good faith (demonstrated by having taken all reasonable measures to verify the seller's powers to dispose of the property). However, this protection will be lost where the property acquired by a buyer was earlier lost by its owner or a person to whom it was transferred by its owner and/or the property was stolen from those persons and/or possession of the property was lost against the will of the owner.

Specific rules in this regard apply to Russia's state and state-owned museums, archives, libraries and similar organisations. These organisations are entitled to claim for the return of illegally exported items of cultural value without any limitations. A buyer acting in good faith can receive compensation provided that there is a treaty between Russia and the buyer's state providing for payment of such compensation, or it is granted on the basis of reciprocity.

### **3.3 What is the buyer's protection against Holocaust-based claims?**

There are no special rules with regard to a buyer's protection against Holocaust-based claims in Russia.

### **3.4 What is the buyer's protection against restitution claims for breach of foreign export restrictions ("looted property")? Please explain briefly the conditions and recent practice on when your jurisdiction grants assistance to foreign countries seeking repatriation of cultural objects.**

The Federal Law On Export and Import of Items of Cultural Value prohibits import of cultural items which are on the wanted list with reference to international agreements or requests from competent authorities of foreign countries. The detected cultural items detained for the purpose of returning them to their legal owners.

If a good faith buyer purchases the cultural item that was illegally imported from another state (or stolen or lost) the item will be restored to its legitimate owner. At the same time, a good faith purchaser has the right to fair compensation, if the return of the cultural item is requested by a member state of an international agreement effective in Russia, or if compensation is granted on the basis of the principle of reciprocity.

The return of cultural items moved to the USSR in the course of the Second World War is subject to separate a regulation called Federal Law On Items of Cultural Value Moved to the USSR as a Result of the Second World War and Located in the Territory of the Russian Federation dated April 15, 1998 No. 64-FZ.

Based on the provisions of this law, any interested state (except for Russia, Belarus, Latvia, Lithuania, Moldova, Ukraine and Estonia) is entitled to claim the return and repatriation of cultural items. To do this, the interested state



must officially confirm that it did not receive any consideration from Germany or its military allies: Bulgaria, Hungary, Italy, Romania and Finland (“former enemy states”) and one of the following conditions provided by the law:

- Cultural items from interested states were forcibly confiscated and illegally removed from their territory by former enemy states.
- Cultural items were the property of religious organisations or charitable institutions and did not serve the interests of militarism and/or Nazism (or Fascism).
- Cultural valuables belonged to individuals who were deprived of them because of their active struggle against Nazism (or Fascism) and/or because of their race, religion, or national affiliation.

Former enemy states are also entitled to claim return and repatriation of cultural valuables if they can prove the last two conditions.

A claim can be exercised if the interested state offers to Russia, on the principle of reciprocity, no less favourable legal conditions for the return of cultural valuables from Russia plundered by former enemy states that are currently located (or may appear in the future) in the territory of the interested state.

A claim to return and repatriate cultural items can be filed at any time as soon as the interested state becomes aware that any illegally exported items of cultural value are located in Russia, but not later than 18 months from the date of publication of the information on the website that is the official source of the Russian government for posting information on such items.

### **3.5 What are the policies, regulations and practices when your country seeks the repatriation of its own illegally exported cultural property?**

The Fundamental Principles of Culture establish that Russia conducts a focused policy on return of illegally exported cultural valuables. All illegally exported cultural items recognised as the cultural domain of Russia must be returned irrespective of their current location, time and circumstances of export. Similar rules are set out in the Federal Law On Export and Import of Items of Cultural Value which provides that cultural property illegally exported from Russia must be returned in accordance with international treaties and Russian legislation.

The Federal Service on Preservation of Items of Cultural Value and the Ministry of Culture are the competent authorities to claim unlawfully exported or stolen items of cultural value back to Russia.

To prevent the illegal export and import of cultural valuables and the transfer of ownership rights, and to restore illegally exported and imported cultural valuables to their legitimate owners, Russian state agencies regulating the export and import of cultural items co-operate with similar authorities, governmental and non-governmental organisations in other countries.

### **3.6 Is there a regime of anti-seizure guarantee ensuring the safe return to the lender abroad of items on loan to local institutions or other exhibitors?**

There is no special legislation on anti-seizure guarantees or immunity from seizure in Russia. With regard to temporarily imported items of cultural value, the Federal Law On Export and Import of Items of Cultural Value establishes specific rules on customs control and registration. Items of cultural value that are temporarily imported

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into Russia for the purposes of cultural co-operation and which are the property of foreign states, foreign individuals or legal entities will be protected by Russia. They are subject to the rules on preservation of the Russian people's national heritage. State guarantees of protection in respect of items of cultural value must be provided in each case individually in accordance with international treaties based on the principle of mutuality. Granting a state guarantee in respect of financial coverage for all risks in relation to the temporarily imported items of cultural value is regulated by the Russian government.

### **3.7 Can the owner of a work of art still covered by copyright freely exhibit it in public, or is the consent of the author or copyright owner required?**

An author enjoys an exclusive right to his work from the date of its creation and on disposal of the original. Therefore, the author's consent is required for third parties to use the work. This exclusive right is effective in Russia for the entire lifetime of the author plus 70 years after his death.

The author of works of visual art has the right to access all of his works, and the owner of the original of any particular work must provide such access to the author. The author of works of architecture is entitled to make photographs or shoot a video of his works.

### **3.8 Can a work of art still covered by copyright be freely reproduced (i) in museum catalogues or websites or (ii) in auction catalogues?**

As a general rule, a work of art still covered by copyright cannot be freely reproduced in museum catalogues or websites or in auction catalogues.

The legal owner has the discretion to permit or prohibit other persons from using the result of his intellectual or artistic activity. The absence of prohibition does not imply consent (permission). Other persons cannot use the corresponding result of the intellectual or artistic activity without consent from the copyright holder.

Bringing the work to the public so that anyone can access it from any place and at any time of their choice counts as use of the work. Using the work without permission, regardless of whether the relevant actions are committed for profit or not, is a violation of the owner's exclusive rights.

When the owner of the original of the work is different from the author, he has a right to reproduce the work in catalogues at exhibitions and in publications dedicated to its collection, and also to hand over the original work to be shown at exhibitions organised by any other persons without the author's consent, and without paying a fee to the author.

A photographic work, an architectural work or an artistic work permanently located in an open place can be reproduced without the consent of its author and without paying a fee, except for cases where the imaging of the work in this way is the main object of the reproduction, broadcast or cable transmission, or where an image of the work is used for commercial purposes.

After 70 years from the author's death, a work of art can be freely reproduced (including in museum catalogues, websites and auction catalogues).

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## 4. SALE

### 4.1 What is the due diligence procedure required from the seller?

The seller is recommended to observe the following rules when intending to sell items of cultural value:

- A seller must verify and ensure the legal status and transferability of an item of cultural value.
- With regard to transactions on donation or purchase and sale in respect of museum items and museum collections belonging to the private part of the Museums Fund, a donee or purchaser must comply with all the obligations of the donor or seller. Nevertheless, with regard to items of cultural value in this category, the state has a pre-emptive right to purchase.
- If the sale and purchase of items of cultural value is performed for their subsequent import, the restrictions set out in the Federal Law On Export and Import of Items of Cultural Value outlined in *Question 1.2* above must also be taken into account. Transactions should be in writing.

The seller must also conduct due diligence in respect of the buyer and verify the buyer's legal capacity to enter into the transaction.

### 4.2 Are there any particular standards of due diligence applicable to the trade (dealers and auction houses) that extend to collectors?

There are no particular standards that apply. Dealers, auctioneers and collectors must observe the standards of due diligence stated in *Question 4.1* above.

### 4.3 What anti-money laundering rules apply to individual sellers, dealers and auction houses, and agents?

Under the Federal Law On Combating Legalisation of Illegally Gained Income and Financing of Terrorism, information on operations with monetary funds or other property is subject to obligatory control if the value of the transaction is equal to or exceeds RUB600,000 or its equivalent in foreign currency. Information on such transactions must be provided to the Federal Service for Financial Monitoring.

In addition, Russian authorised bodies participate in the international exchange of information with other states for the purposes of detection and confiscation of criminally generated income.

### 4.4 Is there a regime of temporary import for sale?

The customs laws only foresees a regime for temporary import, but there is no special regime of temporary import for sale. Under the regime of temporary import, a change of primary owner is not allowed, all declared goods should be preserved in the ownership of the applicant who imported them into Russia and should be transferred back to the country from which they originated. As a rule, under the temporary import regime, the owner can only transfer the declared goods for their temporary use.

Selling temporarily imported pieces of art in Russia is subject to 18% VAT and interest at the Russian Central Bank rate from the date when the works of art were imported into Russia.

## **4.5 What are the remedies against a defaulting buyer (private treaty sale and public auction)?**

A seller is entitled to enforce the full range of remedies set out in Russian civil law against a defaulting buyer, in particular:

- Recovery of damages that occurred as a result of the buyer's failure to pay.
- Recovery of penalties if such penalties are provided for by the contract.
- Recovery of interest for use by the buyer of the seller's cash funds (valuables).
- Suspension of fulfilment of the seller's obligations under the contract or rescission of the contract and claim for compensation of damages.

With regard to any public auction, if a buyer who won the public auction avoids entering into an agreement, the seller is entitled to take legal action requiring the buyer to enter into the agreement and reimburse him for the losses caused by failure to do so. Moreover, if the buyer who won the public auction avoids entering into an agreement, the buyer will lose its advance deposit.

## 5. ART PHILANTHROPY

### **5.1 What are the essential rules (other than tax rules) and practices in relation to loan, deposit and donation to public museums?**

There are no special regulations with regard to any loan, deposit or donation to public museums. The rules in relation to loans, deposits and donations are set out in the civil law and depend on the status of the public museum. Generally, there are three legal types of public museums: autonomous, budgetary and governmental. In particular, public museums (being governmental institutions) have a number of restrictions with regard to their economic activities. Such museums cannot lend and receive credits and loans, or purchase any securities. All earnings received from the lease of immovable property must be transferred to the budget. Autonomous and budgetary public museums are more independent, since earnings from any profitable activities and donations are at their disposal. Earnings received from the lease of immovable property can be used only for the maintenance of the immovable property.

General rules applicable to donations are set out in the Russian Civil Code. In accordance with these rules donations to museums are expressly allowed, with no consents required. Donations are also regulated by special legislation, in particular, the Federal Law On Charity and Charitable Organisations dated August 11, 1995 No 135-FZ. This provides that individuals and legal entities can carry out charitable activities based on voluntariness and freedom of choice without any obstacles.

### **5.2 What is the legal regime of private foundations and private museums?**

Private museums generally operate as private foundations, which means that they are not entitled to alienate or otherwise dispose of property given by its owner. Such a foundation is entitled to perform commercial activities only if that right is granted to it in its constituent documents and it helps to pursue the objectives provided in the

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Museums Law. Private museums can also carry out any other activities not prohibited by Russian legislation and not contradictory to the purposes of the museum's activities in Russia. Earnings and property received from such commercial activities are transferred to private foundations.

As a general rule, the owner has a right to withdraw excessive, unused or improperly used property transferred to a private foundation or purchased by it using the means given by the owner for its purchase. The owner can dispose of the withdrawn property at its own discretion. However, the Museums Law specifies that immovable property can be withdrawn from private museums only where it is not being used for its intended purpose or liquidation of the museum.

The condition of private collections belonging to the Russian Museum Fund and activities of private museums in Russia is under the control of the Ministry of Culture. Such control encompasses, in particular, the examination of safety and storage conditions of museum items and museum collections, relocation issues and requesting and receiving information. State and municipal authorities can also support private foundations and private museums in different forms.

## 6. TAX

### 6.1 Is wealth tax imposed on art and other cultural property assets?

Currently, there is no wealth tax in Russia.

### 6.2 Is there capital gains tax on their disposal and similar transactions?

From a tax point of view, all income received by an individual from the sale of property is subject to personal income tax (PIT).

Different tax rates apply to residents and non-residents:

- **Tax residents.** PIT at 13% (general tax rate) applies, with an obligation to file tax returns on worldwide income received from the disposal of property. (Russian tax residency is established if an individual is physically present in Russia for at least 183 calendar days during 12-month continuing period).
- **Tax non-residents.** PIT at 30% applies on all types of Russian-sourced income.

For sales of property, a deduction will be available depending on the type of property and the holding period, for example, in respect of the disposal of works of art and any other cultural property, a tax resident can obtain a full tax exemption. The only criterion is that the taxpayer should own the property for more than three years.

If that criterion is met, there is no need to submit a PIT return to the tax authorities. However, the relevant supporting documents proving the period of ownership are required to secure the deduction. If the supporting documents are absent, the taxpayer will pay PIT under the general rate of 13% and declare his income up to 30 April. In this case, tax residents can only apply for a tax deduction in an amount not exceeding RUB250,000.

Non-residents for tax have no tax preferences in respect of income received in Russia.

## 6.3 Is there any applicable gift and/or inheritance tax?

Both inheritance tax and gift tax are part of PIT. In this respect they are not specified as separate taxes for Russian taxation purposes.

- **Inheritance tax.** Generally, all inherited monetary income and incomes in kind are exempt from taxation. However, there are special exemptions, for example, income received from inheriting the right to collect royalties for certain intellectual property is PIT taxable under general conditions.
- **Gift tax.** Gifts in monetary form and in kind from other individuals are not taxable for the grantor and donor. This rule does not apply for gifted real estate, motor vehicles and shares.

All gifts valued more than RUB4,000 and received from legal entities are PIT taxable. Any gifts made between close family members (spouses, parents and children, including foster parents and adopted children, grandparents and grandchildren, siblings (with the same parent)) are not subject to taxation.

## 6.4 What are the tax breaks, if any, available when lending/depositing, gifting or bequeathing art or any other cultural property to public institutions or other charitable entities?

Special tax breaks in respect of any activities of individuals related to public institutions are not specified, therefore, the obligation to pay taxes arises automatically when the recipient of income receives any income from carrying out such activities.

For example, where lending of high-value paintings is performed free of charge there is no obligation for the owner to pay any taxes. The situation will change when the owner enters into a copyright agreement (transfer of the right for temporary use) which provides for royalty payments. If so, all income received must be properly taxed and declared by the taxpayer.

However, if the owner (tax resident) elects to make a gift for the benefit of any public non-commercial cultural, educational or similar institution, a social tax deduction up to RUB120,000 can be claimed in respect of taxable income. Unfortunately, in practice, the application of social deductions can vary because the tax authorities act differently in each situation and frequently don't approve the reduction where a donation is granted in the form of property rather than cash. Nevertheless, the most recent court practice is favourable for taxpayers and supports them in respect of a certain portion of the property value.

## 6.5 What is the taxation of private foundations and private museums, upon creation/endowment and thereafter?

Russian tax laws contain no special regulations for private museums or foundations. At present, private museums and foundations are taxed as ordinary legal entities. They must pay profit tax, VAT, property tax as well as making social contributions in respect of their employees and other taxes depending on their operations.

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## 7. USEFUL PRACTICAL INFORMATION/REFERENCES

### 7.1 Principal laws and regulations

- Constitution of the Russian Federation.
- Fundamental Principles of Culture of the Russian Federation.
- Federal Law On Items of Cultural Heritage (Monuments of History and Culture) of Peoples of the Russian Federation dated June 25, 2002 No.73-FZ.
- Federal Law On Export and Import of Items of Cultural Value dated April 15, 1993 No. 4804-1.
- Federal Law On Museum Fund of the Russian Federation and Museums in the Russian Federation dated May 26, 1996 No 54-FZ.
- Federal Law On Archive-Keeping in the Russian Federation dated October 22, 2004 No. 125-FZ.

### 7.2 Selected law enforcement authorities

- The Ministry of Culture of the Russian Federation.
- The State Archive Agency of Russia.
- The Federal Service on Preservation of Items of Cultural Value.
- The Federal Agency on Culture and Cinematography.

### 7.3 Selected collector and trade associations

- CIS & Russian International Confederation of Art & Antique Dealers (ICAAD).
- Gelos Antiques and Auction House.
- Auction House Magnum Ars.
- The Albion Gallery.
- Leonid Shishkin Gallery.
- Auction House Kabinet.
- Russian Auction House.

### 7.4 Selected publications

- *International Conventions and Domestic Law on Preservation of Cultural Values* by A.I. Vilkov, published by the Russian State University for the Humanities, 2009.
- *Destiny of Cultural Values* by M. Boguslavsky, published by Jurist, 2006.
- *Cultural heritage. The Price and the Law* by V. Neshataeva, published by Publishing House of the Higher School of Economics, 2012.