

ART LAW

Mexico



Art Law

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

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BUYING AND SELLING

Passing of title

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

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

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

Law stated - 06 March 2023

Implied warranty of title

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

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

Law stated - 06 March 2023

Registration

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

Mexico does not have a specific register for the ownership of art, antiques or collectibles. However, registration of ownership of intellectual property rights on any artwork must be made before the National Copyright Institute, and individuals and private entities must register ownership of any historic, archaeological and palaeontological assets with the Public Register of Historic and Archaeological Monuments (registration of those owned by the state and public entities is made directly by the National Fine Arts and Literature Institute and the National Institute of Anthropology and History).

Law stated - 06 March 2023

Good-faith acquisition of stolen art



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

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

Law stated - 06 March 2023

Acquiring title to stolen art through prescription

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

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

Law stated - 06 March 2023

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

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

Law stated - 06 March 2023

Must the professional seller of art, antiques or collectibles maintain a register of sales?

There are no specific obligations for a professional seller of art, antiques or collectibles to maintain a register of sales.

Law stated - 06 March 2023

Risk of loss or damage

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

Pursuant to article 377 of the Commercial Code, once the purchase agreement is finalised, any loss of or damage to the goods subject thereto shall be at the expense of the buyer if the goods have been delivered either physically, virtually or legally to the buyer. If the goods have not been delivered in any of those ways, the risk of loss or damage

remains with the seller. In the event of gross negligence or wilful misconduct, the author of such misconduct shall be responsible for the loss of or damage caused to the goods.

The Commercial Code considers that the goods have been virtually delivered to the buyer when the buyer accepts that the goods are at their disposal, and therefore the seller shall be deemed as a depositary.

Law stated - 06 March 2023

Due diligence

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

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

Law stated - 06 March 2023

Must the seller conduct due diligence enquiries?

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

Law stated - 06 March 2023

Other implied warranties

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

Mexican law provides an implied warranty for latent defects. The limitation period is six months, counted from the date the goods were delivered to the buyer.

Law stated - 06 March 2023

Voiding purchase of forgeries

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

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

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



and be awarded damages.

Law stated - 06 March 2023

Voiding inadvertent sales of works by masters

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

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

Law stated - 06 March 2023

EXPORT AND IMPORT CONTROLS

Export controls

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

Yes. To protect, conserve and restore artistic, historic and archaeological monuments, the Federal Law of Archaeological, Artistic and Historic Monuments and Areas (FLAHAM) provides export controls when goods such as art, antiques and collectible items qualify as national monuments in terms of the FLAHAM. Moreover, to export goods such as artwork from the twentieth and the twenty-first centuries, which do not qualify as monuments, it is necessary to submit an electronic notice. Finally, artwork can be subject to an anti-bribery notice before the tax authorities when its value exceeds 999,000 Mexican pesos. The procedures and criteria to obtain and submit such permits and notices are explained below.

Export permits for artistic and historic monuments

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

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

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

To obtain the 'Export permit for temporary export of artwork declared as an artistic or historical monument' from INBAL it is necessary that applicants submit their request through the Foreign Trade Window (VUCEM). Based on the



provisions of article 36 of the Regulations, a bond must be placed in favour of INBAL, to guarantee the return and conservation of the monument.

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

Article 53 of the FLAHAM provides that anyone extracting or intending to extract an artistic or historic monument without permission from INBAL or INAH will be subject to five to 12 years of imprisonment and a monetary fine up to 1,035,000 Mexican pesos. In addition, when non-tariff regulations, such as export permits, are not filed before customs authorities, article 151, section II and article 178, section IV of the Customs Law provide for a precautionary seizure of the goods and a monetary fine equivalent to at least 70 per cent of the commercial value of the goods.

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

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

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

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

Law stated - 06 March 2023

Import controls

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

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

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

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

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

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

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

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

Law stated - 06 March 2023

Export and import tax

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

According to the Law of General Taxes on Importation and Exportation (LIGIE), artwork, antiques or collectibles classified under Chapter 97 (Works of art, collectors' pieces and antiques) are exempted from the payment of import or export taxes. However, the importation and exportation of these goods result in liability to pay customs processing fees (DTA). DTA for the importation is calculated as .008 per cent of the customs value of the goods, while an export operation is subject to a fixed fee of 379 Mexican pesos.

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

The above-mentioned exemptions apply specifically to paintings, drawings, engravings, stamps, lithography, sculptures and other artwork classified under HTS codes 9701.21.01, 9701.91.01, 9702.10.01, 9702.90.99, 9703.10.01, and 9703.90.99 of the LIGIE. In connection to exports, under article 29, section I of the VAT Law, artwork as other goods are subject to a zero per cent VAT rate when they are exported on a permanent basis.

Law stated - 06 March 2023

DIRECT AND INDIRECT TAXATION

Taxes

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

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

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

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

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

Regarding individuals, if the sale exceeds 227,400 Mexican pesos, a monthly payment of the estimated income tax on account of the corresponding annual tax must be made. Such monthly payments are subject to the 20 per cent rate applied to the total value of the consideration; if the acquirer is a national resident or a foreign resident with a permanent establishment in Mexico, he or she is obliged to withhold the corresponding monthly income tax of the seller.

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

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

Law stated - 06 March 2023

Tax exemptions

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

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

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

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

In those cases of exporting goods, article 29 of the Mexican VAT Law provides that 'the companies resident in the country shall calculate VAT by applying the rate of 0% to the value of the sale of goods when they are exported.' However, this article will not be applicable to individuals who do not meet the rules to be considered as a 'company' and therefore does not update the normative precept for the application of the zero per cent rate in the exportation of goods.

In addition, article 9, part IV of the LIVA, expressly provides for an exemption in which no VAT will be paid on the disposal of goods which are regarded as 'used movable goods'. Some Art such as paintings or certain antiques are considered as 'used movable property', as they have already been used and are in accordance with the provisions of Rule 11.1.6 of the Miscellaneous Tax Resolution applicable in 2023, which states that 'works of plastic arts and antiques are regarded as used movable goods within the meaning of Article 9, Section IV of the VAT Act'.

Law stated - 06 March 2023

BORROWING AGAINST ART

Types of security interest

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

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

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

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

Law stated - 06 March 2023

Consumer loans

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

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

Law stated - 06 March 2023

Register of security interests

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

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

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

Regarding artistic monuments, the owner must register the artwork in the Public Registry of Monuments and Artistic

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

Law stated - 06 March 2023

Non-possessory security interests

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

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

Law stated - 06 March 2023

Sale of collateral on default

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

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

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

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

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

Law stated - 06 March 2023

Ranking of creditors

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

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

Law stated - 06 March 2023

INTELLECTUAL PROPERTY RIGHTS

Creator copyright

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

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

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

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

Law stated - 06 March 2023

Copyright duration

What is the duration of copyright protection?

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

Law stated - 06 March 2023

Display without right holder's consent

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

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

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

Law stated - 06 March 2023

Reproduction of copyright works in catalogues and adverts

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

Pursuant to the provisions of the LFDA, the patrimonial right of reproduction and publication permits the making of one copy or several copies of an artwork. These copies can be made in any tangible form, including temporary or permanent storage by electronic means. However, this right is subject to several limitations.

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

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

Law stated - 06 March 2023

Copyright in public artworks

Are public artworks protected by copyright?

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

Law stated - 06 March 2023

Artist's resale right

Does the artist's resale right apply?

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

Law stated - 06 March 2023

Moral rights

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

In Mexico, moral rights are considered attached to the author – hence, they are perpetual, inalienable, irrevocable and cannot be waived, seized or pledged. Under the LFDA, an author has the moral right to:

- determine if the work is to be published and the way to do it, or to determine the mechanisms to keep his or her work unpublished (unedited);
- demand the recognition of author status with respect to the work and order its publication as an anonymous or pseudonymous work;
- demand respect for the work, opposing any deformation, mutilation or modification, as well as to any action or attempt that causes a demerit or prejudice to the author's reputation;
- modify the work;
- withdraw the work from commerce; and
- oppose any attribution of a work that is not of his or her creation.

Heirs may exercise only the rights provided for in subparagraphs I, II, III and VI, whereas the state (where applicable – ie, when the works are of interest to the national cultural heritage) may exercise only the rights provided for in subparagraphs III and VI.

Law stated - 06 March 2023

AGENCY

Accounting to the principal

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

There are no rules under Mexican Law and, therefore, it would be subject to the terms of the agency agreement between the parties.

Law stated - 06 March 2023

Disclosed agent commission

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

There are no rules under Mexican Law and, therefore, it would be subject to the terms of the agency agreement

between the parties.

Law stated - 06 March 2023

Undisclosed agent commission

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

There are no rules under Mexican Law and, therefore, it would be subject to the terms of the agency agreement between the parties.

Law stated - 06 March 2023

CONSIGNING ITEMS

Protection of interests in consigned works

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

The Commercial Code provides that a commercial consignment is an agreement under which a person transfers the possession and availability (but not the ownership) of certain movable assets to a third party known as the consignor, for the consignor to pay him or her a price in the event of a sale under the terms agreed to or to return the assets if a sale is not obtained. Since ownership is not transferred in favour of the consignor, such assets are not bankruptcy remote; however, if a sale is obtained by a consignor and the owner does not or cannot transfer the assets to the buyer, he or she is obliged to pay for losses and damage as well as restitution in the event of eviction of the consigned assets or any latent defects.

Law stated - 06 March 2023

AUCTIONS

Regulation

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

There is no specific regulation in Mexico regarding auctions or provisions to transactions related to them.

Law stated - 06 March 2023

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

As there is no specific regulation, auctioneers may sell art, antiques or collectibles privately, and offer advances or loans in the same terms as any individual or private entity.

Law stated - 06 March 2023

SPOILIATION DURING THE NAZI ERA

Claims to Nazi-looted art

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

Mexico has no specific regulation or precedent on the matter and general prescription rules will most likely apply.

Law stated - 06 March 2023

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

No.

Law stated - 06 March 2023

LENDING TO MUSEUMS

Responsibility for insurance

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

Obligations such as insurance would have to be agreed and established between the parties in the corresponding agreement.

Law stated - 06 March 2023

Immunity from seizure

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

There is no specific regulation. In addition, there is no legal definition of 'museum'. However, general seizure rules apply, which means that only assets owned by the debtor (or the joint guarantor) are subject to seizure.

Law stated - 06 March 2023

CULTURAL PATRIMONY

National treasures

Is there a list of national treasures?

Under Mexican law, national treasures are classified as artistic monuments, which are assets with a relevant aesthetic value declared as such by the Mexican government with the following considerations:

- only the artworks of dead artists can be declared as artistic monuments, which means that while the artist is still alive, the art can be traded without further limitations;

- the artworks of Mexican artists can be declared as artistic monuments regardless of the place they are produced; however, in the case of artworks produced by foreign artists, they can only be declared as artistic monuments if they are produced in Mexico;
- the declaration of artistic monuments can include all or only part of an artist's work; and
- works of artists whose identity is unknown can be declared artistic monuments.

Currently, the National Fine Arts and Literature Institute (INBAL) considers as artistic monuments those paintings, drawings, sculptures, engravings, prints, serigraphs and lithographs, and other works of José María Velasco, Jose Clemente Orozco, Diego Rivera, Gerardo Murillo Coronado, David Alfaro Siqueiros, Frida Kahlo, Saturnino Hérran, María Izquierdo and Remedios Varo Uranga.

The owner of an artistic monument must comply with registration and notification requirements and must preserve the artwork and, if necessary, restore it, with authorisation from INBAL. The Mexican Ministry of Culture and INBAL may conduct inspection visits to monitor compliance with the law.

Likewise, as a general rule, the export of artistic monuments is forbidden; however, INBAL can authorise exceptions for a specific period of time provided that certain actions are granted to ensure re-entry to Mexico, or indefinitely when the artistic monuments are acquired by a museum or gallery of recognised prestige to be exhibited publicly in a manner convenient to the cultural interest of Mexico. Likewise, artistic monuments whose integrity could be affected by their transportation or by changing the conditions in which they are located cannot be temporarily exported.

Law stated - 06 March 2023

Right of pre-emption

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

No.

Law stated - 06 March 2023

Automatic vesting in the state

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

Ownership of archaeological monuments (movable assets and real estate resulting from cultures prior to the establishment of Hispanic culture in Mexican territory, as well as human remains, flora and fauna related to these cultures) vests in the Mexican state.

Law stated - 06 March 2023

Illegally exported property claimed by foreign states

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

On 4 January 1973, Mexico became a signatory to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. The Convention was one of the first worldwide agreements on the protection of cultural property to reduce illicit trade in antiques and cultural goods. Furthermore, as

of 27 December 2021, Mexico is officially part of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (the UNIDROIT Convention).

Under the UNIDROIT Convention, the possessor of a cultural object that has been stolen must return it. According to article 5 of the Convention, a state party may request the court or other competent authority of another state party to order the return of a cultural object illegally exported from the territory of the requesting state. Under this scenario, the court or the competent authority of the state addressed shall order the return of an illegally exported cultural object if the requesting state establishes that the removal of the object from its territory significantly impairs one or more of the following:

- the physical preservation of the object or its context;
- the integrity of a complex object;
- the preservation of information of, for example, a scientific or historical nature; or
- the traditional or ritual use of the object by a tribal or indigenous community, or if it has been established that the object is of significant cultural importance for the requesting state.

The request for return must contain or be accompanied by information of a factual or legal nature that may assist the court or the competent authority of the state addressed in determining whether the above-mentioned requirements have been met. This request shall be brought within a period of three years from the time when the requesting state knew the location of the cultural object and the identity of its possessor, and in any case within a period of 50 years from the date of the export or from the date on which the object should have been returned (temporary exportation for purposes of exhibition, research or restoration).

Moreover, and according to the information provided by the Ministry of Culture and the Ministry of International Affairs, Mexico has signed different bilateral agreements regarding the protection, preservation, return and restitution of cultural property and the prevention of theft, clandestine excavation, and illegal import and export of cultural property.

Law stated - 06 March 2023

NON-FUNGIBLE TOKENS

Regulation and case law

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

Non-fungible tokens (NFTs) are not regulated in Mexico and, therefore, there is no case law to date in connection to such. However, under certain circumstances NFTs can be interpreted as analogous to certain rights recognised under Mexican law (including copyrights or property laws), depending on the nature of the specific NFT and the asset to which the NFT relates to, or is referenced (eg, art, shares or stock, etc).

Law stated - 06 March 2023

ANTI-MONEY LAUNDERING

Compliance

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

According to article 17 of the Anti-Money Laundering Law, regardless of whether an artistic work qualifies as a monument or not, paintings and drawings are subject to an anti-money laundering notice when their value exceeds

999,000 Mexican pesos. This notice must be filed electronically by those who, with authorisation granted by the Ministry of Finance and Public Credit, promote on behalf of others the customs clearance regarding the export of the artwork (customs brokers). In terms of articles 53 and 54 of the Anti-Money Laundering Law, failure to comply with the filing of notices under this law carries a penalty of 41,500 to 414,900 pesos.

Law stated - 06 March 2023

ENDANGERED SPECIES

CITES

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

Yes, CITES entered into force in Mexico in September 1991. Thus, regarding its implementation in Mexico, there are three CITES authorities, as follows:

- the administrative authority is the General Directorate of Wildlife of the Ministry of Environment and Natural Resources (SEMARNAT);
- the scientific authority is the National Commission for the Knowledge and Use of Biodiversity; and
- the law enforcement authority is the Federal Prosecutor's Office for Environmental Protection.

Law stated - 06 March 2023

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

According to article 55 of the General Law of Wildlife and article 56 of its Regulations, the importation, exportation and re-exportation of specimens, parts and derivatives of wild species included in CITES shall be carried out in accordance with the Convention. The General Law of Wildlife does not establish a distinction between pre- or post-CITES endangered species, but prior permits apply to species regardless of whether they are listed in CITES.

In this regard, article III of CITES establishes that the export and import of species included in Appendix I (Endangered species) shall require the prior grant and presentation of an export or import permit, which shall only be granted when certain conditions are met, for instance:

- the scientific authority of the state of import or export has advised that such import or export will not be detrimental to the survival of that species;
- a management authority of the state of export is satisfied that the specimen was not obtained in contravention of the state's laws on flora and fauna;
- a management authority of the state of export is satisfied that any living specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment;
- a scientific authority of the state of import has advised that the import will be for purposes that are not detrimental to the survival of the species involved; and
- a management authority of the state of import is satisfied that the specimen is not to be used for primarily commercial purposes.

In connection with the above, according to Mexican laws, a permit must be obtained from the SEMARNAT when importing, exporting or re-exporting specimens, parts and derivatives of wildlife regardless of whether they are listed in the CITES Appendices. For these purposes, the procedure is carried out before the SEMARNAT.

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

The General Law of Wildlife does not differentiate between pre- or post-CITES endangered species, but establishes that it is necessary to obtain a permit from the SEMARNAT when importing, exporting or re-exporting specimens, parts and derivatives of wildlife regardless of whether they are listed in the CITES Appendices.

The procedure is carried out before the SEMARNAT and the corresponding form must be filled out. The applicant must submit the documentation that proves the legal origin of the specimens, parts or derivatives (through invoices or sales notes, authorisation of use or subsistence authorisation). Finally, proof of payment of fees must be submitted, taking into account that for the reception and processing of each application, regardless of its resolution, a fee of 778 Mexican pesos must be paid.

Law stated - 06 March 2023

Specific endangered animal products

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

The General Law of Wildlife provides that the import, export and re-export of specimens, parts and derivatives of wildlife species (including elephant ivory and rhino horn) are covered by CITES, and that all activities in connection with the trade of these specimens, parts or derivatives, or goods comprising them, are ruled by the Convention.

CITES states that the import of any specimen of a species comprising parts of endangered animal products requires a specific authorisation, a special import permit and an export permit or a re-export certificate issued by the Mexican authorities.

In addition, Mexico strictly regulates the export of its native animal and plant species, such as parrots, reptiles, cacti, palms, cycads and orchids, some of which are rare and endangered in the wild. If a person considers trading any piece of art or goods made from the leather of endangered species, the corresponding permits and authorisations must be complied with in all circumstances.

Law stated - 06 March 2023

CONSUMER PROTECTION

Cancelling purchases

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

There are no specific rules regarding art, antiques or collectibles. However, general rules would apply and consumers may report deceiving advertisements, which may result in the authorities imposing certain fines or cancelling the sale of such goods.

Law stated - 06 March 2023

Duties of businesses selling to consumers

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

No.

Law stated - 06 March 2023

REGULATION

Art market regulator

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

No.

Law stated - 06 March 2023

Other regulators

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

Not applicable.

Law stated - 06 March 2023

UPDATE AND TRENDS

Key developments of the past year











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

There are no updates at this time.

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Law stated - 06 March 2023

Jurisdictions

	China	Jingtian & Gongcheng
	France	UGGC Avocats
	Germany	SKW Schwarz
	Greece	KYRIAKIDES GEORGOPOULOS Law Firm
	Hong Kong	Angus Forsyth & Co
	Italy	CBM & Partners – Studio Legale
	Mexico	Galicia Abogados SC
	Switzerland	Borel & Barbey
	United Kingdom - England & Wales	Constantine Cannon LLP
	USA	Herrick Feinstein LLP