

Art and Heritage Laws and Conventions

Foreword

Acknowledgements

Introduction: Art Law and Policy Manual

- 1. Indicative List of Indian Laws Relating to Protection, Preservation & Conservation of Art**
- 2. Compendium of Laws Applicable to the Preservation, Protection and Conservation of Art and Architecture in India**
- 3. Frequently Asked Questions**
- 4. Sample Artwork Loan or Exhibition Agreement**
- 5. Sample Loan Condition Report Format**

DRAFT

INDEX

Foreword

Acknowledgements

Introduction: Art Law and Policy Manual

1. Indicative List of Indian Laws Relating to Protection, Preservation & Conservation of Art

- 1.1. Central Laws
- 1.2. International Laws to which India is a Signatory or Party
- 1.3. State Laws
- 1.4. Ministries and Departments Related to Archaeology, Museums, Tourism and Culture, and Various Schemes Developed by Them

2. Compendium of Laws Applicable to the Preservation, Protection and Conservation of Art and Architecture in India

2.1. Central Statutes

- 2.1.1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958, as amended (“AMASAR Act”) and the Rules framed thereunder (“AMASAR Rules”)
- 2.1.2. The Antiquities and Art Treasures Act, 1972 (“Antiquities Act”), as amended and the Rules framed there under (“Antiquities Rules”)
- 2.1.3. The Indian Arts and Crafts Act, 1990, as amended (“IAC Act”)
- 2.1.4. The Handlooms (Reservation of Articles for Production) Act, 1985, as amended (“HRAP Act”)
- 2.1.5. The Indian Treasure Trove Act, 1878, as amended (“ITT Act”)
- 2.1.6. The Architects Act, 1972, as amended (“Architects Act”)
- 2.1.7. The Antiquities Export Control Act, 1947, as amended (“Antiquities Export Control Act”) and the Rules framed thereunder (“Antiquities Export Control Rules”)
- 2.1.8. The Prevention of Damage to Public Properties Act, 1984 (“PDPP Act”)
- 2.1.9. The Indian Penal Code, 1860 (“IPC”)
- 2.1.10. The Customs Act, 1962, as amended (“Customs Act”)
- 2.1.11. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (“COFEPOSA”)
- 2.1.12. The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (“SAFEMA”)
- 2.1.13. The Indian Contract Act, 1872 (“Contract Act”)
- 2.1.14. The Transfer of Property Act, 1882 (“ToPA”)
- 2.1.15. The Sale of Goods Act, 1930 (“SoGA”)
- 2.1.16. The Copyright Act, 1957, as amended (“Copyright Act”), and the Rules framed thereunder (“Copyright Rules”)
- 2.1.17. The Designs Act, 2000, as amended (“Design Act”), and the Rules framed thereunder (“Design Rules”)
- 2.1.18. The Trademarks Act, 1999, as amended (“Trademarks Act”)
- 2.1.19. The Geographical Indications of Goods (Registration and Protection) Act, 1999, as amended (“GI Act”)

- 2.1.20. The Patents Act, 1970, as amended (“Patents Act”)
- 2.1.21. The Registration Act, 1908, as amended (“Registration Act”)
- 2.1.22. The Indian Museum Act, 1910, as amended (“Museum Act”)
- 2.1.23. The Companies Act, 2013 (“Companies Act”)
- 2.1.24. The Foreign Contribution (Regulation) Act, 2010 (“FCRA”)

2.2. International Treaties/ Conventions to which India is a Party

- 2.2.1. The International Copyright Order, 1999
- 2.2.2. UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 (“UNESCO Heritage Convention”)
- 2.2.3. UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 (“UNESCO Convention”)
- 2.2.4. Berne Convention for Protection of Literary and Artistic Works, 1887 (“Berne Convention”)
- 2.2.5. Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1975 (“CITES”)
- 2.2.6. UNESCO Treaty for Protection of the Underwater Cultural Heritage, 2001 (“Underwater Treaty”)
- 2.2.7. Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 (“PCPEAC Convention”)
- 2.2.8. UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expression, 2005 (“Cultural Expression Convention”)
- 2.2.9. Convention Establishing the World Intellectual Property Organization, 1967 (“WIPO Treaty”)
- 2.2.10. World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”)
- 2.2.11. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 1995 (“UNIDROIT Convention”)

2.3. State Laws

- 2.3.1. Delhi
The Delhi Urban Art Commission Act, 1973 (“DUAC Act”)
- 2.3.2. Rajasthan
The Rajasthan Monuments, Archaeological Sites and Antiquities Act, 1961 (“Rajasthan Act”)
- 2.3.3. Maharashtra
The Chhatrapati Shivaji Maharaj Vastu Sangrahalaya Act, 1909

3. Frequently Asked Questions

- 6.1. General Information on Artworks
- 6.2. Display in Museums, Galleries and other Platforms
- 6.3. Processes and Measures of Maintenance and Restoration
- 6.4. Enforcement of Laws against Art-Related Offences

4. Sample Artwork Loan or Exhibition Agreement

5. Sample Loan Condition Report Format

FOREWORD

This first phase of the Art Conservation Resurgence Project supported by Sir Dorabji Tata Trust was a three-year-long project, initiated in February 2012. Through a collaborative approach it aims to create a seed base of reference documents that would help address outstanding issues in conservation of art in the Indian context and will serve the needs of practicing conservators, custodians of cultural heritage, cultural institutions, scholars, planners and policy makers. In the series of reference documents that are being compiled, is this one on art laws and policies, as there is a felt need to understand how the various laws and regulations in India network with the subject of historic and artistic works.

Art law in India is currently a complex amalgamation of various areas of law including public law, personal property laws, contract law, tax law and intellectual property laws which support the acquisition, retention, management, restoration and disposition of fine art. This is further compounded by our federal-cum-unitary constitutional structure and several state specific statutes governing the subject. The result is that 21st-century art world participants are frequently unsure of their legal rights and obligations. The goal of this Art Law & Policy Manual is to promote discussion of art law legal issues for all relevant players, so as to provide greater transparency, stability and predictability in the area. We hope to keep refining it based on discussions with stakeholders as this area evolves further and catches up with global best practices.

This is being placed online for inviting suggestions and contribution of case studies. We look forward to receiving inputs and suggestions on how to update this document. All suggestions will be acknowledged in the final document as a reference. Suggestions and comments may be sent to publication@csmvs.org

Documents such as draft loan agreements, exhibition protocols, collection care protocols and draft loan condition report formats for reference have also been compiled and can be accessed from the CSMVS Museum Art Conservation Centre.

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INTRODUCTION: ART LAW AND POLICY MANUAL

Art Law in India is currently a complex amalgamation of personal property laws, contract law, tax law and intellectual property laws which support the acquisition, retention, management, restoration and disposition of fine art. The result is that 21st-century art market participants are frequently unsure of their legal rights and obligations. The goal of this Art Law & Policy Manual (“**Manual**”) is to promote discussion of art law legal issues for lawyers and non-lawyers alike, so as to provide greater transparency, stability and predictability in the area.

For this reason, we have divided this Manual into three parts in order to address legal issues of practical significance to artists, art collectors, dealers, scholars and the general art-minded public. In **Section 1**, we have set out an indicative list of the central and state laws in India governing various aspects of artworks – including their creation, sale-purchase, trade, management, restoration, and protection (“**Indicative List of Indian Art Laws**”). In **Section 2**, we have expanded on the more critical art laws in India, in the form of a summary-based compendium (“**Compendium of Indian Art Laws**”). Please note that **Sections 1 and 2** of this Manual are only indicative in nature, not exhaustive, as the art law area in India presently is still developing, and is presently too vast, scattered and variable to tabulate absolutely. Finally, in **Section 3**, we have provided a few Frequently Asked Questions (“**FAQs**”), which address the legal issues frequently encountered by the artists/ owners of artworks, and the museums, galleries, exhibitions, libraries, auctions, online portals, and other similar platforms which house such artworks from time to time.

The best approach to using this Manual is to imagine the lifecycle of an artwork in four stages:

- (a) In the first stage, the artwork is created, and with its creation, the artist acquires certain intellectual property rights over it.
- (b) In the second stage, the artwork may be acquired by a collector, a dealer, or any platform which seeks to make it available to the public – such as a museum or a gallery. The acquisition of the artwork may be in the form of an art loan, a donation, a sale-purchase (including an auction sale), trade, a gift, a cultural property exchange between two museums, and so forth.
- (c) The third stage of the artwork begins from the time the buyer acquires the artwork. The buyer is now responsible for complying with regulatory requirements pertaining to the artwork – including registration of antiquities, payment of taxes and duties on the earnings from the artwork, insurance of the artwork, chemical restoration of the artwork, and so forth. If the new owner is a museum or gallery, etc., then it is expected to maintain a certain standard of care and safety for all artworks housed or displayed by it, depending on the terms of the contract and its own constitutional documents. This third stage is a continuous stage and continues till the artwork changes hands again.
- (d) The final and fourth stage is not a phase of the natural life-cycle of an artwork and arises only in cases where the artwork has been damaged, lost, stolen, smuggled or destroyed. The artists, owner of the artwork, or the museum, gallery, etc. then may seek to enforce penalties against the offenders through the courts, and/or to recover the missing artwork. If the enforcement authorities

have reason to believe that the artwork has been illegally acquired, they may also proceed to confiscate the artwork. This final enforcement stage is a tedious and long-drawn affair, and can be avoided if proper steps had been taken during the first three stages.

Sections 1, 2 and 3 of this Manual clarify these stages in the “lifecycle of an artwork” mentioned above.

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1. INDICATIVE LIST OF INDIAN LAWS RELATING TO PROTECTION, PRESERVATION & CONSERVATION OF ART

| S. No. | Name of the Statute |
|--------------------------|---|
| 1.1. CENTRAL LAWS | |
| 1. | The Antiquities and Art Treasures Act, 1972, and the Rules framed thereunder |
| 2. | The Indian Arts and Crafts Act, 1990, amended 2010 |
| 3. | The Indian Treasure Trove Act, 1878 |
| 4. | The Ancient Monuments and Archaeological Sites and Remains Act, 1958, amended 2010, and the Rules framed thereunder |
| 5. | The Indian Museum Act, 1910 |
| 6. | The Antiquities Export Control Act, 1947, and the Rules framed thereunder |
| 7. | The Handlooms (Reservation of Articles for Production) Act, 1985 |
| 8. | The Architects Act, 1972 |
| 9. | The Customs Act, 1962 |
| 10. | The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 |
| 11. | The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 |
| 12. | The Indian Penal Code, 1860 |
| 13. | The Indian Contract Act, 1872 |
| 14. | The Transfer of Property Act, 1882 |
| 15. | The Sale of Goods Act, 1930 |
| 16. | The Prevention of Damage to Public Properties Act, 1984 |
| 17. | The Copyright Act, 1957, and the Rules framed thereunder |
| 18. | The Designs Act, 2000, and the Rules framed thereunder |
| 19. | The Trademarks Act, 1999, and the Rules framed thereunder |
| 20. | The Registration Act, 1908 |

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| 21. | The Geographical Indications of Goods (Registration and Protection) Act, 1999 |
| 22. | The Patents Act, 1970 |
| 23. | The Companies Act, 2013 |
| 24. | The Foreign Contribution (Regulation) Act, 2010 |
| 1.2. INTERNATIONAL LAWS TO WHICH INDIA IS A SIGNATORY OR PARTY | |
| 25. | The International Copyright Order, 1999 |
| 26. | UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 |
| 27. | UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 |
| 28. | UNESCO Treaty For Protection of the Underwater Cultural Heritage, 2001 |
| 29. | Berne Convention for Protection of Literary and Artistic Works, 1887 |
| 30. | Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1975 |
| 31. | Memorandum of Understanding between India and the other country for import/ export of artworks |
| 32. | Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 |
| 33. | UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expression, 2005 |
| 34. | Convention Establishing the World Intellectual Property Organization, 1967 |
| 35. | World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights |
| 36. | UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 1995 |
| 1.3. STATE LAWS | |
| Delhi | |
| 37. | The Delhi Urban Art Commission Act, 1973 |
| Andhra Pradesh | |
| 38. | The Salar Jung Museum Act, 1961 |

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| Rajasthan | |
| 39. | The Rajasthan Monuments, Archaeological Sites and Antiquities Act, 1961 |
| Maharashtra | |
| 40. | Shivraj Fine Art Litho Works Acquisition and Transfer of Undertaking Act, 1984 |
| 41. | Chhatrapati Shivaji Maharaj Vastu Sangrahalaya Act, 1909 |
| West Bengal | |
| 42. | West Bengal Preservation of Historical Monuments and Objects and Excavation of Archaeological Sites Act, 1957 |
| 43. | Indian College of Arts and Draftsmanship Act, 1977 |
| 44. | Bengal Natural History Society (Acquisition of the National History Museum) Act, 1993 |
| 45. | West Bengal Heritage Commission Act, 2001 |
| Goa | |
| 46. | Cultural Policy of Goa, 2007 |
| 47. | Citizen's Charter of Directorate of Craftsmen Training of Goa |
| Karnataka | |
| 48. | Hampi World Heritage Act |
| 49. | Mysore Palace (Acquisition and Transfer) Act, 1998 |
| Odisha | |
| 50. | Orissa Ancient Monuments Preservation Act 1956 |
| 51. | Orissa Artistes' Welfare Fund Rules 1991 |
| 52. | Orissa Cultural Grants Rules, 1995 |
| 1.4. MINISTRIES AND DEPARTMENTS RELATED TO ARCHAEOLOGY, MUSEUMS, TOURISM AND CULTURE, AND VARIOUS SCHEMES DEVELOPED BY THEM | |
| 53. | Archeological Survey of India (including its Underwater Archaeology Wing and Scientific Department) |
| 54. | Centre for Cultural Resources and Training |

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| 55. | National Culture Fund |
| 56. | Zonal Cultural Centres (Eastern, North Central, South Central, Western) |
| 57. | National Archives of India |
| 58. | National Monuments Authority |
| 59. | National Handicrafts and Handlooms Museum under the Ministry of Textile |
| 60. | National Mission for Manuscripts |
| 61. | National Mission for Monuments/ Antiques |
| 62. | North Eastern Handicrafts and Handloom Development Corporation |
| 63. | National Gallery of Modern Art |
| 64. | National Museum Institute |
| 65. | Indian National Trust for Art and Cultural Heritage |
| Schemes | |
| 66. | Scheme for financial assistance for promotion and strengthening of regional and local museums |
| 67. | Scheme for Development of the Cultural Heritage of Himalayas |
| 68. | Scheme for the Award of Fellowships to Outstanding Persons in the field of Culture |
| 69. | Scheme for Scholarships to Young Artistes in different Cultural Fields |

Notes:

1. Apart from the bodies mentioned above, various states have established their own directorates which/ departments which handle matters related to archaeology, museums, handicrafts and cottage industries, handlooms and textiles, manuscripts, libraries and archives and other forms of art and cultural resources. Several private research laboratories and studios are also involved in the management, maintenance, conservation and protection of artworks in India, an exhaustive list of which is out of the scope of this Section 1 of the Art Law Manual.
2. In Section 2 of this Art Law Manual, we have expanded on the more critical laws applicable to the sphere of artworks, or at least, the more critical provisions of such laws, as listed out in this Section 4. However, Section 2 too is limited in its nature and scope, and provides only the basic summaries of the relevant statutes/ their provisions. The purpose of Section 2 is not to present an exhaustive commentary, but only an indicative snapshot, of the laws applicable to artworks.

2. COMPENDIUM OF LAWS APPLICABLE TO THE PRESERVATION, PROTECTION AND CONSERVATION OF ART AND ARCHITECTURE IN INDIA

Listed out below is a compendium of all the statues, guidelines and policies applicable to various forms of art and architecture in India in relation to their preservation, protection, conservation, exhibition and restoration.

2.1. CENTRAL STATUTES

2.1.1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958, as amended (“**AMASAR Act**”), and the Rules framed thereunder (“**AMASAR Rules**”)

Objective & Applicability: The AMASAR Act and AMASAR Rules set out the criteria for identifying and protecting the archaeological remains of India. Archaeological remains include ruins, sites or relics of historical or archaeological importance, and ancient monuments of national importance, which have been in existence for 100 years or more (“**archaeological objects**”).

Brief Summary: The AMASAR Act defines ancient monument, as any structure, erection or monument, or any tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archeological or artistic interest and which has been in existence for not less than 100 years, and includes:

- (i) the remains of an ancient monument
- (ii) the site of an ancient monument
- (iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and
- (iv) the means of access to, and convenient inspection of an ancient monument.

These would include any caves covered with frescos, rock-sculptures, inscriptions or monoliths, or even the pathways of an ancient monument.

Artworks that may be archaeological objects of national importance are determined and duly notified by the Central Government. A lot of discretion has been granted to the Central Government for the determination and protection of such archaeological objects, including the power to prevent their movement without due permission from the Director-General/ Central Government. The Central Government can also compulsorily acquire them, and even for their repair, renovation, or re/construction, the permission of Central Government must be sought. Non-compliance with the AMASAR Act and AMASAR Rules amounts to a criminal offence, although good faith actions may count as a viable defence. For instance, the Taj Mahal, being an ancient monument, falls under the purview of the AMASAR Act.

The AMASAR Act has been ratified in the following states and union territories: Andhra Pradesh, Assam, Punjab, Goa, Daman & Diu, Arunachal Pradesh, Delhi, Bihar, Karnataka, Rajasthan, Mysore, and Himachal Pradesh. However, some other states have incorporated certain regional variations as well. For instance, the Maharashtra Ancient Monuments and Archaeological Sites and Remains Act, 1960 has

changed the cut-off time period of the AMASAR Act of 100 years to 50 years. This implies that in Maharashtra, a greater share of property needs to be registered as an “archaeological remain” than several other parts of the country.

2.1.2. The Antiquities and Art Treasures Act, 1972 (“**Antiquities Act**”), as amended and the Rules framed thereunder (“**Antiquities Rules**”)

Objective & Applicability: The Antiquities Act and the Antiquities Rules apply to “antiquities” and “art treasures”. An “**antiquity**” is an item of historic interest which has been in existence for 100 years or more, and could include any coin, sculpture, painting, epigraph, craft, articles detached from a building or a cave, articles illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages. Manuscripts and other documents of scientific, historical, literary or aesthetic value are also counted as ‘antiquities’ if they have been in existence for 75 years or more. These may or may not be human-made. An “**art treasure**”, on the other hand, means any work of art created by human beings and having artistic or aesthetic value, *not being an antiquity*, if so declared by the Central Government.

Brief Summary: Under the Antiquities Act, the Central Government has the power to notify certain artworks as “art treasures” or artworks younger in time than 100 years as “antiquities”. As per the Antiquities Act, there is a total prohibition of the export of antiquities and art treasures. Further they can be sold only by a person licensed to do so by the Central Government. Apart from these restrictions on export and sale, the Central Government has also issued several notifications from time to time, requiring that the following antiquities and art treasures be compulsorily registered with the Central Government:

- (i) Sculptures in stone, terracotta, metal, ivory and bone;
- (ii) Paintings (including miniatures and *tankhas*) in all media, that is to say, paper, wood, cloth, silk and the like;
- (iii) Manuscripts, where such manuscripts contain paintings, illustrations or illuminations;
- (iv) Sculptured figures in wood (both in relief and round).

The registration must be sought by any person who owns, controls or possesses any such antiquity, and any transfers of such antiquity must also be notified to the authorized officer. The Central Government has several powers in relation to the same, including determination of which objects classify as antiquities or art treasures, search and seizure powers in relation to such objects. Non-compliance with the Antiquities Act and the Antiquities Rules is punishable with imprisonment, fine, and/or confiscation of antiquity or art treasure, as the case may be. Good faith actions, however, constitute a viable defence under the Antiquities Act and the Antiquities Rules.

2.1.3. The Indian Arts and Crafts Act, 1990, as amended (“IAC Act”)

Objective & Applicability: The IAC Act promotes the development of Indian arts and crafts and creates a board to assist for such purposes.

Brief Summary: The IAC Act provides for

- (i) creation of the board; or
- (ii) an individual Indian or Indian tribe or Indian arts and crafts organization; or
- (iii) trademarks of genuineness and quality for Indian products and the products of an individual Indian or particular Indian tribe or Indian arts and crafts organization; or
- (iv) establishing standards and regulations for the use of Government-owned trademarks by corporations, associations, or individuals, and to charge for such use under such licenses; or
- (v) registration of any such trademark owned by the Government in the United States Patent and Trademark Office without charge and assign it and the goodwill associated with it to an individual Indian or Indian tribe without charge; and
- (vi) pursuing or defending in the courts any appeal or proceeding with respect to any final determination of that office.

2.1.4. The Handlooms (Reservation of Articles for Production) Act, 1985, as amended (“HRAP Act”)

Objective & Applicability: The HRAP Act provides for reservation of certain articles for exclusive production by handlooms and for matters connected therewith.

Brief Summary: The HRAP Act specifies that the Central Government has the power to direct, from time to time, by publishing orders in the Official Gazette that any article or class of articles, from such date as may be specified in the order, is to be reserved for exclusive production by handlooms.

The procedure for the same may be expedited if, after considering the recommendations made to the Central Government by the advisory committee, the Central Government is satisfied that it is necessary to do so for the protection and development of the handloom industry.

The advisory committee considers the following matters, and communicates its recommendations to the Central Government:

- (i) the articles or class of articles being produced by handlooms for mass consumption; or
- (ii) the articles or class of articles being produced traditionally by handlooms; or
- (iii) the level of employment likely to be generated by the production of the article or class or articles or class of articles referred to above; or
- (iv) the protection of interests of persons engaged in the handloom industry and the need for the continued maintenance of the industry, etc.

2.1.5. The Indian Treasure Trove Act, 1878, as amended (“ITT Act”)

Objective & Applicability: The ITT Act deals with amendment of law relating to Treasure-trove.

Brief Summary: As per the ITT Act, treasure is defined as anything of value hidden in the soil or anything affixed thereto.

There are provisions in the ITT Act whereby if any treasure, exceeding the value of INR 10 (Rupees ten only), is found by any person(s), then such person(s) is required to give a notice in writing to the Collector, as soon as practicable specifying the nature of such treasure found, the place where it was found and the date of finding the same. Such person(s) is either required to submit the treasure found at the nearest Government treasury or give the Collector security as the Collector thinks fit, to produce the treasure at such time and place as he may from time to time require to.

On receiving such notice, the Collector, after making enquiry, is to publish a notification in such a manner as prescribed by the State Government from time to time. The notification must include all details like the date, nature of treasure, amount and approximate value, place, etc. It is required that all persons claiming the treasure are to appear personally or by agent before the Collector on a fixed day and at a fixed place, not later than 4 to 6 months after the date of the publication of such notification.

2.1.6. The Architects Act, 1972, as amended (“Architects Act”)

Objective & Applicability: The Architects Act provides for the registration of architects and for matters connected therewith.

Brief Summary: The Architects Act provides for a Council to be known as the Council of Architecture. It is a body corporate having perpetual succession and a common seal, with power to acquire, hold and dispose of property, and to contract, and to sue or be sued in its name.

The provisions of the Architects Act require that the Central Government is to prepare a register of architects for India. The register must include the following particulars, namely:

- (i) the full name with date of birth, nationality and residential address of the architect; and
- (ii) his qualification for registration, and the date on which he obtained that qualification and the authority which conferred it.

The pre-requisites for being a member of the said register are that the architect:

- (i) holds a recognized qualification; or
- (ii) if he does not hold such a qualification but being a citizen of India, has been engaged in practice as an architect for a period of not less than five years prior to the date appointed; or
- (iii) possesses such other qualifications as may be prescribed by rules.

2.1.7. The Antiquities Export Control Act, 1947, as amended (“Antiquities Export Control Act”) and the Rules framed thereunder (“Antiquities Export Control Rules”)

Objective & Applicability: The Antiquities Export Control Act and Antiquities Export Control Rules provide to:

- (i) regulate the export trade in antiquities and art treasures;
- (ii) prevent smuggling of, and fraudulent dealings in, antiquities;
- (iii) compulsorily acquisition antiquities and art treasures for preservation in public places; and
- (iv) do certain other ancillary or connected matters.

Brief Summary: As per the Antiquities Export Control Act and Antiquities Export Control Rules, antiquity means:

- (i) any coin, sculpture, painting epigraph or other work of art or craftsmanship; or
- (ii) any article, object or thing detached from a building or cave; or
- (iii) any article, object or thing illustrative of science, art, crafts, literature, religion, customs, morals or politics; or
- (iv) any article, object or thing of historical interest; or
- (v) any article, object or thing declared by the Central Government, by notification in the Official Gazette, to be an antiquity for the purposes of this Act, which has been in existence for not less than one hundred years; and
- (vi) any manuscript, record or other document which is of scientific, historical, literary or aesthetic value and which has been in existence for not less than seventy-five years.

Similarly, art treasure is deemed to mean any human work of art, not being an antiquity, declared by the Central Government, by notification in the Official Gazette, to be an art treasure having regard to its artistic or aesthetic value.

The Antiquities Export Control Act and Antiquities Export Control Rules provide for a procedure for application of license. Any person desiring to carry on, himself or by any other person on his behalf, the business of selling or offering to sell antiquities is required to make an application for the grant of a license to the licensing officer having jurisdiction.

Further, the Central Government may, from time to time, by notification in the Official Gazette, specify those antiquities which shall be registered under the Antiquities Export Control Act. The Central Government is required to have regard to the following factors:

- (i) The necessity for conserving the objects of art; and
- (ii) The need to preserve such objects within India for the better appreciation of the cultural heritage of India.

If the Central Government is of opinion that it is desirable to preserve any antiquity or art treasure in a public place, the Government may make an order for the compulsory acquisition of such antiquity or art

treasure. On the making of an order, the Collector of the district in which such antiquity or art treasure is kept is required to give notice to the owner, intimating him of the decision of the Central Government to acquire the same and it is lawful for the Collector to take possession of such antiquity or art treasure, for which purpose the Collector may use such force as may be necessary.

Where the owner of any antiquity or art treasure the possession of which has been taken over by the Collector, objects to the taking over of such possession, he may, within a period of 30 (thirty) days from the date on which such possession was taken over, make a representation to the Central Government putting forth his objections. On receipt of any such representation, the Central Government, after making such inquiry as it deems fit and after giving to the objector an opportunity of being heard in the matter, within a period of ninety days from the date of receipt of the representation, either rescind or confirm the order made earlier.

When the order made by the Central Government is rescinded, the antiquity or art treasure is required to be returned to the owner without delay and at the expense of the Central Government, and when the order made by the Central Government is confirmed, the antiquity or art treasure is required to vest in the Central Government with effect from the date on which the possession has been taken over by the Collector.

The power of compulsory acquisition conferred does not extend to any object, being an antiquity or art treasure, used for bona fide religious observances.

2.1.8. The Prevention of Damage to Public Properties Act, 1984 (“PDPP Act”)

Objective and Applicability: Mischief to property means the intentional destruction of any property, or any such change in any property or in the situation, so as to destroy or diminish its value or utility, or affect it injuriously. Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly, or to any other person. The Indian Penal Code defines and prescribes punishment for mischief caused to any property – public or private. But the PDPP Act specifically and more stringently penalizes mischief caused to public property.

Brief Summary: Under the PDPP Act, "public property" has been defined as any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of — (i) the Central Government; (ii) any State Government; (iii) any local authority; (iv) any corporation established by, or under, a central, state or provincial statute; (v) any company as defined in Section 617 of the Companies Act, 1956; or (vi) any governmental institution, concern or undertaking notified by the Central Government. Any person who commits mischief against any public property shall be punishable with imprisonment upto five years and with fine. If such mischief has been caused by means of fire or explosive substance, the person shall be punishable with rigorous imprisonment upto one year, but which may extend to ten years, and/or fine. Recently, the state of Uttaranchal has enacted the Uttaranchal Prevention of Defacement of Public Property Act, 2003, which incorporates the same purpose and principles as the PDPP Act.

2.1.9. The Indian Penal Code, 1860 (“IPC”)

Objective and Applicability: The IPC is the sum of all substantive aspects of Indian criminal law. The IPC covers the general principles of criminal law, the various ingredients for identifying various kinds of offences, the punishment of offenders (including sentence and fine), and the possible defences or mitigating factors against such offences. Once an offence has been established and the charges identified under the IPC, the procedure prescribed in the Code of Criminal Procedure, 1973.

Brief Summary: The IPC is divided into 23 chapters and 511 sections. The chapters under the IPC particularly categorize offences as:

- offences against the State,
- offences relating to the army,
- offences against public tranquility,
- offences by or relating to public servants,
- offences relating to elections,
- contempt of the lawful authority of public servants, giving false evidence and offences against public justice,
- offences relating to coins and government stamps, offences relating to weights and measures,
- offences affecting the public health, safety, convenience, decency and morals,
- offences relating to religion,
- offences affecting the human body,
- offences against property,
- offences relating to documents and to property marks,
- criminal breach of contract of service,
- offences relating to marriage,
- cruelty by husband or relatives of husband,
- abetment or attempt to commit offences, criminal conspiracy, defamation, criminal intimidation, and other specific offences.

Among the offences listed, identified and punishable under the IPC, the offences which particularly relate to offences against works of archaeological, historical or artistic value include: theft, vandalism, damage to public property, smuggling, extortion, robbery, dacoity, criminal misappropriation or criminal breach of trust, fraud, criminal trespass, cheating, mischief, forgery and other related offences.

2.1.10. The Customs Act, 1962, as amended (“Customs Act”)

Objective and Applicability: The Customs Act contains various provisions relating to imports and exports of goods and merchandise as well as the baggage of persons arriving in India and is the basic statute for the levy and collection of customs duty in India. However, its main purpose is the prevention of illegal imports and exports of goods. The Customs Act extends to the whole of India (including all territories and territorial waters of India).

Brief Summary: Under the Customs Act,

- (i) ***Imposition of Customs Duty:*** Goods become liable to import duty or export duty when there is import into (i.e. a good is brought into India from a place outside India), or export from India (i.e. a good is taken out of India to a place outside India) respectively. The rates of this duty, popularly known as basic customs duty, are indicated in the First Schedule of the Customs Tariff Act, 1975, as amended from time to time under the annual Finance Acts. The duty may be fixed on ad-valorem basis or specific rate basis, i.e. a percentage of the value of the goods or at a specific rate, respectively. Further, the Central Government has emergency powers to change the duty rates and levy fresh export duty depending on the circumstances.
- (ii) ***Import/ Export of Prohibited Goods:*** The import and export of goods may be prohibited in certain cases, including for the purpose(s) of: reasons of security, public order, decency or morality; (b) prevention of smuggling; (c) conservation of foreign exchange; (d) the protection of national treasures of artistic, historic or archaeological value; (e) protection of patents, trademarks and copyrights; (f) prevention of deceptive practices; (g) implementation of any treaty, agreement or convention with any country; (h) prevention of the contravention of any law for the time being in force; and (i) any other purpose conducive to the interests of the general public. For checking the illegal export/ import of goods, the Central Government may notify goods of such class or description which have to be examined from time to time. Persons possessing the notified goods must intimate to the customs officials the place of storage, warehousing, etc. of the notified goods, if the market price of such goods exceeds INR 15,000.
- (iii) ***Prescribed Import/ Export Procedures:*** The Customs Act also prescribes procedures for loading or unloading of goods being exported or imported and the treatment of goods in transit, including the permits and reporting required, the locations and the timelines.
- (iv) ***Prevention of Smuggling:*** “Smuggling” has been defined under the Customs Act to mean any act or omission which will render any goods being exported or imported liable to confiscation under the Customs Act, and would include any movement of the prohibited goods. The prevention of smuggling is one of the key purposes of the Customs Act.
- (v) ***Powers of Search, Seizure, Confiscation and Arrest, etc.:*** If customs officials suspect that the import or export of certain goods (including the personal baggage of passengers) is illegal or amounts to smuggling, they have the powers of search and inspection (including screening or X-ray screening, breaking open the locks or doors), stoppage of movement, and seizure with respect to such goods, or the related documents, in any premises (including areas around the land frontiers or coasts), on the person, or any vessel, vehicle, aircraft, animal or other conveyance of the alleged offender. In emergency situations, chasing of and firing at the impugned vessel or

vehicle is also permitted. The customs officials may confiscate the impugned goods, the sale proceeds of the smuggled goods, the vessel or vehicle conveying such goods, and the goods used for concealing the smuggled goods. The alleged offender may also be arrested.

- (vi) ***Penalties Imposed:*** Any person who in relation to any prohibited goods, does or omits to do any act which act or omission would render such goods liable to confiscation, or abets the doing or omission of such an act, or who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any prohibited goods would be punishable under the Customs Act. Penalty applicable in case of illegal import or export could be INR 5,000, or the value of the impugned good, whichever is greater. Similarly, penalties are also applicable for the use of false and incorrect materials and for not fully accounting for the goods being transported.

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2.1.11. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
("COFEPOSA")

Objective and Applicability: The COFEPOSA was enacted in order to provide for preventive detention in certain cases for the purposes of: (a) conservation and augmentation of foreign exchange; and (b) prevention of smuggling activities and for matters connected therewith.

Brief Summary: Under the COFEPOSA, the Central Government or the State Government, or any officer of the Central Government or State Government, has the power to make orders with regard to detention of persons that may be involved in (a) smuggling of goods, (b) abetment of such smuggling, (c) transporting, concealing, or keeping of, or dealing in, smuggled goods, and (d) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods. Such persons may be Indian citizens or foreigners. The maximum period for which any person may be detained under the COFEPOSA for smuggling is two years from the date of detention, subject to the approval of the Advisory Board established under the COFEPOSA and the Government. The COFEPOSA is a very stringent law, and courts have generally struck down preventive detention orders as invasive of the Fundamental Rights of Indian citizens.

2.1.12. The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (“SAFEMA”)

Objective and Applicability: The SAFEMA was enacted in order to provide for preventive detention in certain cases for the purposes of: (a) conservation and augmentation of foreign exchange; and (b) prevention of smuggling activities and for matters connected therewith, and serves as a less stringent statute than the COFEPOSA. Further, while the COFEPOSA only envisages detention of alleged offenders, the SAFEMA enumerates certain other remedies and penalties as well.

Brief Summary: The SAFEMA defines "illegally acquired property" as any property acquired by any smuggler, any person detained under the COFEPOSA, any person convicted under the Customs Act, or such person's relative or spouse (including any such person's transferor before him/ it/ her), where such property has been acquired wholly or partly out of or by means of any earnings attributable to any activity prohibited under any Indian law, or from earnings whose source cannot be proved or traced (for example, due to money laundering activities).

Under the SAFEMA, where any person holds any illegally acquired property, such property shall be liable to be forfeited to the Central Government, free from all encumbrances. A show cause notice and a reasonable opportunity of being heard shall be accorded to each person suspected of holding illegally acquired property. The declaration of forfeiture may be withdrawn and the property released, if the person has acquired less than one-half of the impugned property, and if the alleged offender affected pays off a fine equivalent to one and one fifth times the value of such part or proportion.

2.1.13. The Indian Contract Act, 1872 (“Contract Act”)

Objective and Applicability: The Contract Act mostly deals with the general principles and rules governing contracts. The Contract Act is divisible into two parts: (a) the first part (Sections 1-75) deals with the general principles of the law of contract, and therefore applies to all contracts irrespective of their nature; and (b) the second part (Sections 124-238) deals with certain special kinds of contracts, e.g., indemnity, guarantee, bailment, pledge, and agency.

Brief Summary: To form a valid contract, there must be (1) an agreement, (2) based on the genuine and free consent of the parties in the same sense, (3) supported by consideration of equitable value, (4) made for a lawful object, and (iv) between parties competent to contract. The validity or enforceability of a contract can be vitiated in case there has been (i) flawed capacity or incapacity of the parties to contract; (ii) a mistake of fact or law; (iii) misrepresentation or fraudulent representation by either party; (iv) undue influence, coercion of economic duress; (v) illegality of contractual terms; and (v) impossibility of performance of contracts. Such contracts may be void, or voidable at the option of the other party. In case of breach of contract, the other party can choose to terminate the contract, and/or claim damages and specific performance, or partake of any other remedy available under the contract. Among the special contracts are the following:

- (a) ***Contracts of indemnity:*** A contract of indemnity is a contract by which one party promises to save the other party from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person. A contract of insurance is an example of a contract of indemnity. Under Contract Act, the contract of indemnity is restricted to only those cases where the loss, promised to be reimbursed, is caused by the actual conduct of the promisor or of any other person; other losses cannot be reimbursed.
- (b) ***Contracts of guarantee or surety:*** A contract of guarantee is a contract to perform the promise, or discharge the liability of a third person in case of his default. Unlike a contract of indemnity, a contract of guarantee involves three different parties: the principal debtor, the creditor, and the surety who provides a guarantee against future default by the principal debtor.
- (c) ***Contracts of agency:*** When one person (i.e. the agent) promises to act on behalf of another person (i.e. the principal), the resulting contract is a contract of agency. The principal is vicariously liable for all the acts of an agent which are lawful and within the scope of agent's authority. It is important to differentiate between a contract of agency and a simple master-servant or employer-employee relationship.
- (d) ***Contracts of pledge or pawn:*** Pledge or pawn is a contract whereby an article is deposited with a lender of money or the pledgee as security for the repayment of a loan or performance of a promise. Since pledge is a branch of bailment, the pledgee is bound to take reasonable care of the goods pledged with him. Marketable securities are often pledged to secure the obligations of companies.
- (e) ***Contracts of bailment:*** A bailment is a contract under which one person delivers goods to another person for some temporary purpose, upon the condition that when the purpose is accomplished, the goods are to be returned or otherwise disposed of according to the directions of the person delivering them. Bailments may be gratuitous or for a consideration.

2.1.14. The Transfer of Property Act, 1882 (“ToPA”)

Objective and Applicability: The ToPA is the primary law in India governing the transfers or dealings, in whole or in part, of different kinds of property in India, creation of security and encumbrances on such property, and enforcement of agreements related to such transfers, encumbrances, or dealings.

Brief Summary: The "transfer of property" has been defined as any act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons. The ToPA lays down the principles related to transfers of property, including: the types of property that may be transferred, competence of transferor and transferee, modus operandi of any transfer, conditions that may be imposed on any transfer or property being transferred, rule against perpetuity, priority of rights created by the transfer, etc. Various types of transfers possible have been described in details – including contingent transfers, assignments, mortgages, transfers by co-owners or joint owners, fraudulent transfers, sale, gift, exchange, lease, transfer of actionable claims or insurance policies, etc. The rights and responsibilities of the transferor and the transferee are also laid out in detail

2.1.15. The Sale of Goods Act, 1930 (“SoGA”)

Objective and Applicability: The SoGA was specifically enacted to deal with the sale of every kind of movable property other than actionable claims and money, including stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Brief Summary: The SoGA categorizes the movable goods being sold as existing or future goods, perishable goods, etc., and also categorizes the modes of sale as: sale by description, sale by sample, auction sale, sale by contract, etc. The various possible modes of delivery of goods upon sale have also been listed. The SoGA describes in detail the processes and procedures required with respect to the formalities of the agreement to sell or contract of sale, ascertainment of price and time for sale, conditions, warranties and undertakings that may be imposed on any sale or seller or buyer, and the rights and responsibilities of the seller and the buyer. In case of any discrepancies of sale, such as defective title of goods, negligence, poor quality and fitness of goods being sold, non-payment or delay in payment of consideration, the SoGA also describes the consequences and the remedies (including damages) available.

2.1.16. The Copyright Act, 1957, as amended (“**Copyright Act**”), and the Rules framed thereunder (“**Copyright Rules**”)

Objective & Applicability: The Copyright Act and Copyright Rules aim to amend and consolidate the law relating to copyright.

Brief Summary: As per the Copyright Act as well as Copyright Rules, any work of architecture or any artistic work including a painting, scripture, photograph, or craftsmanship which is the original work of the author, needs to be published for the public under the author’s copyright. In case of artistic work, copyright means to reproduce the work in any material form including the storing of it in any medium, or depiction in three-dimensions of a two-dimensional work or vice-versa. It also includes communication of the work to the public, issuance of copies of the work to the public not being copies already in circulation, etc.

Copyright subsists throughout India within the lifetime of the author until sixty years from the beginning of the calendar year, next following the year in which the author dies for any original literary, dramatic, musical and artistic work.

It is specifically provided in the Copyright Act and the Copyright Rules, that in case of work of architecture, the copyright subsists only in the artistic character and design and does not extend to the processes or methods of construction.

There is penalty imposed on the person(s) for infringing the copyright of the author i.e. by reproduction of the artistic work otherwise than prescribed by the author.

2.1.17. The Designs Act, 2000, as amended (“Design Act”), and the Rules framed thereunder (“Design Rules”)

Objective & Applicability: The Design Act and the Design Rules aims to promote and protect the design element of industrial protect the design element of industrial production and innovative activity in the field of industries.

Brief Summary: Under the Design Act, “**design**” means the features of shape, configuration, pattern or ornament or composition of lines or color or combination of these features, applied to any article whether two dimensional, three dimensional or in both forms, by any industrial method or means, whether manual, mechanical or chemical, separate or combined which in the finished article appeal to and are judged solely by the eye, but does not include any mode or principle or construction or any thing which is in substance a mere mechanical device, and does not include any trademark, property mark or artistic works. Further, “**article**” has been defined as any article of manufacture and any substance, artificial, or partly artificial and partly natural, and includes any part of an article capable of being made and sold separately.

The Design Act aims to protect new or original designs so created to be applied or applicable to a particular article to be manufactured by industrial process or means. Sometimes, purchase of articles for use is influenced not only by their practical efficiency but also by their appearance. The important purpose of design registration is to see that the artisan, creator, or originator of a design having aesthetic look is not deprived of his bona fide reward by others applying it to their goods. Under the Design Act, designs of articles which serve the purpose of visual appeal are registrable. The designs should represent a shape, configuration, pattern or ornamentation of an article. The design should be capable of being applied to an article to enhance its appeal. The Design Act broadly does the following:

- (i) Clarifies the scope of definition of “**article**” and “**design**”.
- (ii) Amplifies scope of “prior publication” of the design.
- (iii) Incorporates provisions for identification of non-registrable designs.
- (iv) Contains provisions for substitution of application before registration of design.
- (v) Introduces Locarno of classification in the place of Indian classification.
- (vi) Contains provisions for restoration of lapsed designs due to non-payment of extension fees within prescribed time.
- (vii) Provides for compulsory registration of any document for transfer of any right in the registered design.
- (viii) Contains provisions for allowing of priority to other convention countries and countries belonging to group of countries or inter-governmental organizations apart from United Kingdom and other commonwealth countries.

2.1.18. The Trademarks Act, 1999, as amended (“**Trademarks Act**”)

Objective & Applicability: The Trademarks Act was developed after a comprehensive review of the already existing law and the developments in trading and commercial practices, increasing globalization of trade and industry, the need to encourage investment flows and transfer of technology, the need for simplification and harmonization of trademarks system, and to give effect to important judicial decisions.

Brief Summary: The Trademarks Act incorporates:

- (i) Registration of trademark for services, in addition to goods.
- (ii) Registration of trademarks which are imitations of well known trademarks not permitted.
- (iii) Providing for the registration of registration of “collected” marks owned by associations, etc.

“Trademark” means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others.

2.1.19. The Geographical Indications of Goods (Registration and Protection) Act, 1999, as amended (“GI Act”)

Objective and Applicability: The GI Act is a *sui generis* federal legislation enacted by the Parliament of India for protection of geographical indications in India. India, as a member of the World Trade Organization enacted the Act to comply with the Agreement on Trademark related aspects of Intellectual Property Rights. The GI tag ensures that none other than those registered as authorized users are allowed to use the popular product name.

Brief Summary: Geographical Indication (“GI”) has been defined as “an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating or manufactured in the territory of the country, or a region or a locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be. A GI is registered for an initial period of 10 years and can be registered from time to time.

2.1.20. The Patents Act, 1970, as amended (“Patents Act”)

Objective and Applicability: The Patents Act came into force amending and consolidating the existing laws related to patents in India. An invention relating to a product or process that is new, involving inventive step and capable of industrial application can be patented in India. The latest amendment came into force in April, 2005.

Brief Summary: “**Invention**” is defined under the Patents Act, as a “new product or process involving an inventive step and capable of industrial application.” Inventors may apply for patent, i.e. primary or exclusive right to usage of a particular product or process for a limited time frame. The latest amendment to the Patent Act has enabled the authorities to grant product patent for pharmaceutical substances.

The key features of the Patents Act in this respect are:

- (i) Allowing for oppositions to grant of patent (both pre- and post- grant of patent);
- (ii) Listing out of non-patentable inventions;
- (iii) Power of issuing compulsory licenses;
- (iv) Restrictions related to parallel imports; and
- (v) Detailed procedures for opposition proceedings.

The provision of “**compulsory licensing**” is especially relevant in a country like India, because it prevents the exploitation of patent rights by patentee, by ensuring that the patentee uses its patent under reasonable terms only, in general public interest. All in all, the Patents Act is a suitable balance between reasonable rights and reasonable obligations of patentees of inventions.

2.1.21. The Registration Act, 1908, as amended (“Registration Act”)

Objective & Applicability: The Registration Act aims to provide a method of public registration of documents so as to give information to people regarding legal rights and obligations arising or affecting a particular property and to perpetuate documents which may be of legal importance and also to prevent fraud. Primarily:

- (i) The conservation of evidence
- (ii) Assurance of title, publicity of documents and prevention of fraud
- (iii) Registration ensures and safeguards the interest of an intending purchaser

Brief Summary: The scheme of the Registration Act is to consolidate the law relating to registration and to provide for the establishment of its registration. It lays down what documents require compulsory registration. Section 23 of the Registration Act provides the time for presenting the documents for registration. It provides limitation for getting a document registered. Section 25 of the Registration Act provides for condonation of delay in presenting documents for registration. Section 34 of the Registration Act specifically provides for that enquiry that can be held before the registration by the Registering Officer.

It is well settled that an instrument which creates a right or interest in the rents, profits, benefits and income from an immovable property, is a document which is compulsorily registrable. Thus, a document creating an assignment of a debt will not require registration, but a document assigning rents will require registration. If the power of attorney in question is to be treated as creating an equitable assignment of rents, it will require registration and if not registered, will be void and unenforceable. The power of attorney does not create or recognize any right in or relating to any immovable property or benefit arising there from in favor of the bank. It merely authorizes the bank to act as the company's agent to perform the acts stated in the power of attorney.

2.1.22. The Indian Museum Act, 1910, as amended (“Museum Act”)

Objective & Applicability: The Museum Act is for consolidation and amendment of law relating to the Indian Museum in Kolkata, West Bengal.

Brief Summary: As per the Museum Act, the trustees under the Museum Act are required to form a body corporate, by the name of "**The Trustees of the Indian Museum**", with perpetual succession and a common seal, with power to acquire and hold property, to enter into contracts, and to sue or be sued in its name, and to do all acts necessary as prescribed by the Museum Act.

The nominated Trustees are to hold the office for a term of 3 (three) years. The minimum number of members to exercise the powers of such body as mentioned above, is 6 (six) and the quorum necessary for transaction of business is of minimum 4 (four) members.

The Trustees are required to cause every article in the collections in the said Indian Museum formerly belonging to the Asiatic Society of Bengal, now known as the Asiatic Society, Kolkata and all additions that may be made to such article(s) otherwise than by purchase, to be marked and numbered and to be kept and preserved in the said Museum with such marks and numbers.

An inventory of such additions shall be made by the Asiatic Society, and 1 (one) copy is required to be signed by the Trustees and delivered to the Asiatic Society, and another copy by the Council of the Asiatic Society and delivered to the Trustees. These copies are to be kept by them along with the inventory delivered to the predecessors in office of the Trustees when the said collections were deposited in the said Museum.

The Museum Act also provides for the following:

- (i) recruitment and conditions of service of the officers and servants of the Indian Museum;
- (ii) form and manner in which the accounts of the Indian Museum may be maintained and the manner in which such accounts may be audited; and
- (iii) conditions subject to which the Trustees may deliver possession of any property in their possession to any other person.

2.1.23. The Companies Act, 2013 (“Companies Act”)

The Companies Act finds relevance in the context of this Section 2 of the Art Law Manual because certain provisions under the Companies Act proscribe that Indian companies make mandatory contribution to the Corporate Social Responsibility (“**CSR**”) programme, under which programme, the protection and promotion of art is a crucial target goal. CSR in a broader sense, refers to economic, environmental, social and governance responsibilities of business, and is rooted in philanthropy. Set out hereunder are the basic norms governing the CSR mandatory regime in India under the Companies Act:

- (i) Sections 134 and 135 of the Companies Act mandate that CSR must be adopted by every company having: (a) net worth of INR 500 crores (Rupees five hundred crores) or more; (b) turnover of INR 1,000 crores (Rupees one thousand crores) or more; or (c) net profit of INR 500 crores (Rupees five crores) or more, during any financial year. Such companies would include holding companies, subsidiaries, and foreign companies having branch office(s) or project office(s) in India.
- (ii) Each such company must constitute a corporate social responsibility committee (“**CSR Committee**”), comprising of three or more directors of its board of directors (“**Board**”), out of which at least one director shall be an independent director.
- (iii) In any general meeting of such company, the directors’ report to be laid before the company must include details about the CSR policy developed and implemented by the company during the financial year (“**CSR Policy**”), and must also disclose the composition of the CSR Committee.
- (iv) For the purposes of the CSR Policy, the company may undertake activities geared towards specific sectors only (“**Target Activities**”). These include: health & poverty alleviation; education; social empowerment; environmental protection, welfare of armed forces; promotion of sports; contributions to government welfare schemes; contributions to technology incubators; rural development; and as mentioned earlier, protection of cultural heritage. Although none of these Target Activities has been defined, protection of cultural heritage has been described as “*protection of national heritage, art and culture including restoration of buildings and sites of historical importance and works of art; setting up public libraries; promotion and development of traditional arts and handicrafts*”;
- (v) It has been mandated that the company spends, in every financial year, at least 2% (two percent) of the average of its net profits during the immediately preceding 3 (three) financial years (“**Earmarked Amount**”), in pursuance of its CSR Policy.
- (vi) The responsibilities of the CSR Committee include: drafting the CSR Policy, computing the budget for the CSR Policy, disclosing the CSR Policy and the budget to the relevant authorities, and also monitoring the CSR Policy of the company from time to time. The Board has to ensure the implementation of the CSR Policy for the specific Target Activity(ies) upto the Earmarked

Amount (or more).

- (vii) The company would have to give preference to the local area(s) of its operations for spending the Earmarked Amount (or more).

In furtherance of the Companies Act, the Ministry of Corporate Affairs has also issued and notified rules on CSR which lay down the framework and guidance on the manner in which every eligible company is expected to undertake CSR initiatives (the “**CSR Rules**”). The CSR Rules lay down the following guidance:

- (i) Only such CSR activities will be taken into consideration as are undertaken within India.
- (ii) Activities which are exclusively for the benefit of employees of the company or their family members shall not be considered as CSR activity.
- (iii) CSR activities may generally be conducted as projects or programmes (either new or ongoing) excluding activities undertaken *in pursuance of the normal course of business of the company*.
- (iv) Contribution of any amount directly or indirectly to any political party cannot be considered as a CSR activity.
- (v) The CSR Committee shall prepare a transparent monitoring mechanism for ensuring implementation of the projects / programmes / activities proposed to be undertaken by the company.
- (vi) The CSR programmes may be undertaken directly or indirectly:
- a. *Direct Implementation:* The company may directly invest the Earmarked Amount (or more) in any of the Target Activities, or in any related fields by means of an in-house department.
 - b. *Implementing Agencies:* A company may also conduct/ implement its CSR programmes through a: (a) registered trust; (b) registered society; (c) a company established by the company; (d) its holding company or is subsidiary or associate company (“**group companies**”); or (e) a Section 8 company. Specific qualifications have been laid out for the establishment of such implementing agencies.
 - c. *Collaborations:* Companies may also collaborate or pool resources with other companies to undertake CSR activities and any expenditure incurred on such collaborative efforts would qualify for computing the CSR Spend. Further guidelines have been enumerated for such collaborations.

- (vii) The company may build CSR capacities of its own personnel or that of its implementation agencies through other institutions which have an established track record of 3 years, but expenditure on such capacity-building must not exceed 5% of the total CSR Spend of the company in any financial year.

2.1.24. The Foreign Contribution (Regulation) Act, 2010 (“FCRA”)

The donation of any artwork whose market value exceeds INR 25,000 or the donation of cash by a foreign national or foreign entity to an association or a company licensed under Section 8 of the Companies Act, 2013 in India (such as a museum) would amount to a “**Foreign Contribution**”. Foreign Contributions are governed by the provisions of the FCRA. The receiver of the Foreign Contribution must have received registration under the FCRA from the Central Government. Such a certificate of registration needs to be renewed every five years. The FCRA sets out various conditions that need to be satisfied for grant of such registration, some of which include:

- (i) The applicant has not been found guilty of and is not likely to cause diversion or misutilization of its funds for personal gains or undesirable purposes;
- (ii) The applicant has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilized;
- (iii) The applicant (or its directors/ office bearers) has not been convicted and does not face prosecution for any offence.
- (iv) The registration being granted to the applicant should not prejudicially affect the sovereignty, integrity, economic interests or the foreign policy of India.

A Foreign Contribution made in kind would constitute a “**capital account transaction**” and would be governed by The Foreign Exchange Management (Permissible Capital Account Transactions) Rules, 2000 (“**PCAT Rules**”). A “**capital account transaction**” has been defined as a transaction which alters the assets or liabilities outside India of persons resident in India, or assets or liabilities in India of persons resident outside India. Only transactions under Schedule 1 and 2 of the PCAT Rules are permissible, and various requirements have been further prescribed under PCAT Rules according to the nature, size and purpose of the Foreign Contribution.

A Foreign Contribution by way of cash would, on the other hand, constitute a “**current account transaction**”, which is governed by The Foreign Exchange Management (Current Account Transactions) Rules, 2000 (“**CAT Rules**”). Current account transactions have been defined to mean any transaction other than a capital account transaction. The CAT Rules classify current account transactions as prohibited transactions, transactions requiring approval from RBI, and transactions requiring approval from the Central Government. Any transaction in foreign exchange falling under Schedule I of the CAT Rules is prohibited. In Schedule III, Entry 3 pertaining to “Gift remittance exceeding USD 5,000 per remitter/donor per annum” and Entry 4 pertaining to “Donation exceeding USD 1,00,000 per remitter/donor per annum” are of relevance to Foreign Contributions by way of cash to Indian associations.

2.2. INTERNATIONAL TREATIES/ CONVENTIONS TO WHICH INDIA IS A PARTY

2.2.1. The International Copyright Order, 1999

Objective & Applicability: In exercise of the powers conferred by the Copyright Act, 1957 and in supersession of the International Copyright Order, 1991, the Central Government made the International Copyright Order of 1999.

Brief Summary: Subject to the provisions the Copyright Act, 1957, all those provisions which apply exclusively to Indian works, are now to be applied to any work first made or published in a country mentioned in the Schedule of the International Copyright Order, 1999, in like manner as if it was first published in India.

As per the International Copyright Order, 1999, the term of copyright in a work shall not exceed that which is enjoyed by it in its country of origin.

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2.2.2. UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 (“UNESCO Heritage Convention”)

Objective & Applicability: The UNESCO Heritage Convention came into being in November, 1972 and the World Cultural Heritage programme was adopted by UNESCO. This programme aims to promote cooperation among nations to protect “**natural heritage**” and “**cultural heritage**” around the world that is of such outstanding universal value, so that its conservation is important for current and future generations.

Brief Summary: Under Article 1 of the UNESCO Heritage Convention, “**cultural heritage**” refers to monuments- architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science; group of buildings (i.e. groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science); sites (i.e. works of man or the combined works of nature and man); and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.

Article 2 of the UNESCO Heritage Convention defines “**natural heritage**” as natural features consisting of physical and biological formations or groups of such formations, which are of outstanding universal value from the aesthetic or scientific point of view; geological and physiographical formations and precisely delineated areas which constitute the habitat of threatened species of animals and plants of outstanding universal value from the point of view of science, conservation or natural beauty.

Each State Party to the UNESCO Heritage Convention recognizes that the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of the cultural and natural heritage rests primarily on the State. The State is required to do all it can at its end, to the utmost of its own resources and, where appropriate, with any international assistance and co-operation which it may be able to obtain.

India is a state party to this convention.

2.2.3. UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 (“**UNESCO Convention**”)

Brief Summary: The UNESCO Convention is a multi-lateral treaty intended to control the trade of cultural projects. It was adopted by the UNESCO General Conference on November 14, 1970 in Paris and came into force on April 24, 1972.

Brief Summary: The illicit trade in cultural objects is deemed to have caused the impoverishment of the cultural heritage of the states of origin and the convention was created to protect the world’s cultural patrimony. The UNESCO Convention is intended to apply both during war and in times of peace. State Parties are committed to return cultural objects that was illegally acquired or traded to other state party. The State Parties are also committed to strengthen their import and export barriers. The UNESCO Convention also seeks to raise awareness about the protection of cultural heritage. The UNESCO Convention is a softer alternative to the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects that was adopted in Rome in 1995.

India is a party to the UNESCO Convention.

2.2.4. Berne Convention for Protection of Literary and Artistic Works, 1887 (“Berne Convention”)

Objective & Applicability: The Berne Convention is an international agreement governing copyright, first adopted in Berne, Switzerland in 1886. The Berne Convention requires its signatories to recognise the copyright of works of authors from other signatory countries (known as members of the Berne Union) in the same way as it recognises the copyrights of its own nationals.

The Berne Convention applies to nationals and residents of signatory countries and to works first published, or simultaneously published (i.e. published within 30 days in a signatory country). Under Article 4, it also applies to cinematic works by persons who have their headquarters or habitual residence in a signatory country, and to architectural works situated in a signatory country.

Brief Summary: The Berne Convention rests on 3 basic principles:

1. Works of the author of which is a national of such a state must be given the same protection in each of the other contracting states as the latter grants to the works of its own nationals.
2. Such protection must not be conditional upon compliance with any formality.
3. Such protection is independent of the existence of protection in the country of origin of the work, however, a contracting state provides for a longer term than the minimum prescribed by the convention and the work ceases to be protected by the country of origin, protection may be denied once protection in the country of origin ceases.

It also states that all works except photographic and cinematographic shall be copyrighted for at least 50 years after the author’s death, but parties are free to provide longer terms. However, the copyright law of the country where the copyright is claimed shall be applied, i.e. an author is normally not entitled a longer copyright abroad than at home, even if the laws abroad give a longer term.

The agreed statement of the parties to the World Intellectual Property Organization Copyright Treaty of 1996 states that: “It is understood that the mere provision of physical facilities for enabling or making a communication does not in itself amount to communication within the meaning of this Treaty or the Berne Convention.”

India is a party to this treaty.

2.2.5. Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1975 (“CITES”)

Objective & Applicability: The CITES, was established as a response to growing concerns that over-exploitation of wildlife through international trade was contributing to the rapid decline of many species of plants and animals around the world. The CITES was signed by representatives of 80 countries in Washington, D.C. and came into force on July 1, 1975.

Brief Summary: The CITES regulates international trade in species by including endangered species of flora and fauna on any of these 3 categories:

1. Species cannot be traded for primarily commercial purposes
2. Species can be traded internationally for commercial purposes, under strict regulations, requiring determinations of sustainability and legality.
3. A species included at the request of a country which then needs the corporation of other countries to help prevent illegal exploitation.

Depending on its categorization, measures have been proposed for the protection and conservation of the endangered species.

India is a state party to the CITES.

2.2.6. UNESCO Treaty for Protection of the Underwater Cultural Heritage, 2001 (“Underwater Treaty”)

Objective & Applicability: The Underwater Treaty was adopted on November 2, 2001 by the General Conference of the United Nations Educational, Scientific and Cultural Organization (“UNESCO”). The objective of the Underwater Treaty is to enable and engender State Parties to protect underwater cultural heritage, using for this purpose the best practicable means at their disposal and in accordance with their capabilities. The Underwater Treaty defines “**underwater cultural heritage**” as all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years, such as:

- (i) sites, structures, buildings, artifacts and human remains, together with their archaeological and natural context;
- (ii) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and
- (iii) objects of prehistoric character.

Brief Overview: The Underwater Treaty prescribes that conservation of underwater cultural heritage is best done by *in situ* (i.e. on site) means, before allowing or engaging in any activities directed at this heritage. Recovered underwater cultural heritage should be deposited, conserved and managed in a manner that ensures its long-term preservation, and should not be commercially exploited. For this reason, the Underwater Treaty prescribes the following basic principles of conservation of underwater cultural heritage:

- (i) Where such underwater heritage is recovered within territorial waters, internal waters and archipelagic waters, or within the contiguous zone, States Parties, in the exercise of their sovereignty, would have the exclusive right to regulate and authorize activities directed at underwater cultural heritage
- (ii) Where such underwater heritage is discovered in the exclusive economic zone or on the continental shelf, conservation should be by way of mutual notification and cooperation among the State Parties. Steps would include the following:
 - (a) The national or flagship of any State Party must immediately notify the relevant State Party of the discovery of or any activity done in relation to any underwater cultural heritage. The other cooperating State Parties must also be notified of the same.
 - (b) The cooperating State Parties must consult each other on how best to protect the underwater cultural heritage. The measures (including any measures for seizure, recording, protection or stabilization of underwater cultural heritage) mutually agreed upon must then be implemented by the original State Party, or any of the other State Parties agreeing to do so.
 - (c) States Parties shall take measures to prevent the entry into their territory, the dealing in, or the possession of, underwater cultural heritage which has been or is being illicitly exported and/or recovered.

- (d) States Parties shall take all practicable measures to ensure that their nationals and flagships do not engage in any activity in contravention of the Underwater Treaty.
 - (e) Disputes under the Underwater Treaty may be resolved by amicable discussions, mediation, or the procedure prescribed under the United Nations Convention on the Law of the Sea (to which India is a party).
- (iii) Activities directed at underwater cultural heritage should (i) not adversely affect the underwater cultural heritage more than is necessary for the objectives of the project; (ii) use techniques and survey methods as nondestructive as possible, with respect to the recovery or excavation of objects, for scientific studies or the ultimate protection of the underwater cultural heritage; (iii) avoid the unnecessary disturbance of human remains or venerated sites; and (iv) be strictly regulated to ensure proper recording of cultural, historical and archaeological information.
- (iv) Underwater cultural heritage shall not be commercially exploited, i.e. it should not be traded, sold, bought or bartered as commercial goods.
- (v) An environmental policy would have to be prepared that is adequate to ensure that the seabed and marine life are not unduly disturbed.

India is a state party to the Underwater Treaty.

2.2.7. Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 (“PCPEAC Convention”)

Objective & Applicability: The PCPEAC Convention recognizes that cultural property becomes subject to grave damage during armed conflict and seeks to provide international protection in order to preserve the cultural heritage of the peoples of the world. It is based on the Convention of The Hague, 1899 and 1907 as well as the Washington Pact, 1935.

The PCPEAC Convention applies in cases of declared war or any other armed conflict which may arise between two or more of the contracting parties to the PCPEAC Convention, even if the state of war is not recognized by one or more of them. It also applies to all cases of partial or total occupation of the contracting parties, even if there is no armed resistance. If one of the States involved in the conflict is not a party to the PCPEAC Convention, the States which are party thereto remain bound by it. Furthermore, a State not party thereto can accept the provisions of the PCPEAC Convention to the extent it pertains to them.

Brief Overview: Article 1 of the PCPEAC Convention defines “cultural property” as

“irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above ;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centres containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as ‘centres containing monuments’.”

In times of peace, contracting parties to the PCPEAC Convention should prepare for the safeguards of their cultural property by taking appropriate measures such as fixing a distinctive emblem upon the items in order to facilitate recognition and to foster a spirit of respect towards such property within their military regulations.

Under the PCPEAC Convention, refuges intended to shelter cultural property may be placed under special protection. Furthermore, property receiving special protection in its transportation is immune from seizure, capture and placing in prize. However, the PCPEAC Convention does not limit the right of visit and search of these properties.

Thus, the PCPEAC Convention provides for the protection, safeguarding, transport under special protection, and immunity from capture or seizure of cultural property during times of armed conflict. Sanctions may be imposed for infringement of the PCPEAC Convention, and technical assistance may be sought from the United Nations Educational, Scientific and Cultural Organization. The PCPEAC Convention requires some procedural formalities before cultural property may be granted protection or refuge during armed conflict, including designating and affixing such property with the country's emblem, submitting an identity card for the personnel protecting it, requesting for safe transport to a depository territory/ refuge, etc. Considering that most armed conflict is sudden, a planned strategy for protecting cultural property under the PCPEAC Convention may not be possible. Further, although currently, 126 countries are parties to the PCPEAC Convention, its enforcement is still not very effective.

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2.2.8. UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expression, 2005 (“Cultural Expression Convention”)

Objective & Applicability: The Cultural Expression Convention seeks to protect and preserve diverse cultural expressions and foster conditions for cultures to flourish and freely interact in a mutually beneficial manner. The Cultural Expression Convention also aims to reaffirm the link between culture and development for all countries, especially developing countries, by promoting equitable respect and awareness of its value at local, national and international levels.

Brief Overview: According to the Cultural Expression Convention, groups and societies express, augment and transmit their heritage in varied manners of artistic creation, production, dissemination, distribution and enjoyment, facilitated by an array of means and technologies. Thus, “cultural expressions” are those expressions that result from the creativity of individuals, groups and societies, and that have cultural content, and would include various forms or artworks as well.

Parties to the Cultural Expression Convention can provide protection to expressions which are at a risk of extinction or are in urgent need of safeguarding, by reporting their concerns to the intergovernmental committee set up under the Cultural Expression Convention and taking action based on the recommendations made thereunder.

Additionally, parties to the Cultural Expression Convention are encouraged to develop partnerships between and within the public and private sectors and non-profit organizations, in order to cooperate with developing countries in the enhancement of their capacities in the protection and promotion of the diversity of cultural expressions. Cultural exchanges between developed and developing countries are facilitated by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals/ practitioners, as well as cultural goods and services from developing countries.

Furthermore, the Cultural Expression Convention has provided for the establishment of a data bank on different sectors and governmental, private and non-profit organizations involved in the area of cultural expressions in order to encourage parties to share, analyze and disseminate information. Under Article 18 of the Cultural Expression Convention, an international fund for cultural diversity has also been set up in order to meet these objectives. Resources are obtained by voluntary contributions, gifts or bequests by parties, public or private bodies and by funds of the General Conference of UNESCO.

India has both signed and ratified the Cultural Expression Convention, and is a State party to it.

2.2.9. Convention Establishing the World Intellectual Property Organization, 1967 (“WIPO Treaty”)

Objective & Applicability: The WIPO Treaty was signed in Stockholm on July 14, 1967. The objective of the World Intellectual Property Organization (“WIPO”) is to promote the protection of intellectual property around the world through cooperation among States and collaboration with international organizations. The WIPO is one of the specialized agencies of the United Nations, administers 26 related international treaties (including the Berne Convention), and is headquartered in Geneva, Switzerland.

Brief Overview: The WIPO Treaty is significant in the context of protection of copyrighted materials, inventions, etc., including artworks. It cites the appropriate procedures and timelines that must be adopted by the countries of the world for a more systematic and harmonized cultural property protection paradigm. Article 2 of WIPO Treaty defines “intellectual property” very broadly to include rights relating to:

- (1) Literary, artistic and scientific works;
 - (2) Performances of performing artists, phonograms, and broadcasts;
 - (3) Inventions in all fields of human endeavor;
 - (4) Scientific discoveries;
 - (5) Industrial designs;
 - (6) Trademarks, service marks, and commercial names and designations;
 - (7) Protection against unfair competition;
- and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

Article 4 of WIPO Treaty further illustrates the functions of WIPO, as carried out by its appropriate organs, which include:

- (1) Promoting the development of measures designed to facilitate the efficient protection of intellectual property and to harmonize national legislation in this field;
- (2) Performing the administrative tasks of the Paris Union, the Special Unions established in relation with that Union, and the Berne Union;
- (3) Assuming or participating in the administration of any other international agreement to promote the protection of intellectual property;
- (4) Encouraging the conclusion of international agreements designed to promote the protection of intellectual property;
- (5) Cooperating with States requesting legal–technical assistance in the field of intellectual property;
- (6) Assembling and disseminating information concerning the protection of intellectual property, carrying out and promoting studies in this field, and publishing the results of such studies;
- (7) Maintaining services facilitating the international protection of intellectual property and, where appropriate, providing for registration in this field and the publication of the data

concerning the registrations;

- (8) All other appropriate actions.

India has acceded to the WIPO Treaty, but has not yet ratified it.

2.2.10. World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS Agreement”)

Objective & Applicability: The TRIPS Agreement is the most comprehensive multilateral agreement on intellectual property. It seeks to reduce distortions and impediments to international trade by taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade.

Brief Overview: “Intellectual property” protected under the TRIPS Agreement includes the following categories:

- a) copyright and related rights;
- b) trademarks;
- c) geographical indications;
- d) industrial designs;
- e) patents;
- f) layout-designs (topographies) of integrated circuits;
- g) protection of undisclosed information; and
- h) control of anti-competitive practices in contractual licences.

The three main features of the TRIPS Agreement are:

- (i) *Standards:* The TRIPS Agreement sets out the minimum standards of protection to be provided by each member State. Elements requiring protection include subject matter to be protected, rights to be conferred, and minimum duration for protection.
- (ii) *Enforcement:* The TRIPS Agreement seeks to ensure that the procedures for the enforcement of intellectual property rights are fair, equitable, not unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays. Developing countries are granted a longer time period to make the necessary arrangements. These include domestic procedures and remedies, civil and administrative procedures, provisional remedies, special requirements pertaining to border measures and criminal procedures.
- (iii) *Dispute settlement:* Disputes are settled subject to the World Trade Organization’s procedures.

India has signed and ratified the TRIPS Agreement, and is a State party to it.

2.2.11. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 1995 (“UNIDROIT Convention”)

Objective & Applicability: The UNIDROIT Convention was framed with the objective of reducing illegal traffic of cultural property by obligating buyers to check the legitimacy of their purchase. The UNIDROIT Convention was aimed at harmonizing the private laws of various states so as to reduce the harmful effects that occur when laws conflict. It established common rules for the restitution and return of cultural objects between states party to the Convention. At present, there are 29 State Parties to the UNIDROIT Convention.

Brief Overview: Article 3.1 of the UNIDROIT Convention states that if a cultural property was stolen or illegally exported it has to be returned. The UNIDROIT Convention also deals with the question of who should pay the compensation to the claimant. The UNIDROIT Convention introduces an innovative attitude to the problem – that the dealer should be responsible to prove that a cultural object has a legitimate origin. Article 4.1 of the UNIDROIT Convention states that in case certain cultural property is stolen, the final purchaser would have to pay the compensation to the affected party, unless he proves that he acted with “due diligence”. Moreover, if an illegally exported cultural object is inherited or received as a gift, then the new possessor has the same responsibilities as a buyer. Therefore, museums and other public institutions have to check the origin of donated objects as well. To check the legitimacy of the object, the UNIDROIT Convention provides that the original dealer may use international and national databases on the subject of cultural property protection. The largest among these databases is the INTERPOL Stolen Works of Art Database, which collects information about stolen or illegally exported cultural property and issues identification numbers of cultural objects. The UNIDROIT Convention also imposes a limitation time period in which the restitution claims for various kinds of artworks may be made.

The UNIDROIT Convention follows the key terminology and basic principles enshrined in the UNESCO Convention. Compared to the UNESCO Convention the UNIDROIT Convention is more focused on recovery phase and establishes conditions for restitution and return claims on stolen or illegally exported cultural objects, and the two treaties are complementary to each other.

While the UNESCO Convention allowed only member States to request restitution of stolen or illegally exported objects, the UNIDROIT Convention remedies this oversight by allowing private parties to initiate restitution as well. The UNIDROIT Convention, unlike the UNESCO Convention, provides that a *bona fide* purchaser of stolen objects will not receive a good title over the cultural property. The purchaser must instead return the object, and is entitled to “payment of fair and reasonable compensation,” provided she had no knowledge of the object’s prior theft and exercised due diligence when the object was purchased. This important good faith requirement could act to deter illicit trade, by requiring each purchaser to police their own acquisitions, and is a marked deviation from the UNESCO Convention.

However, it should be noted that the UNIDROIT Convention is not a retroactive treaty. Article 10 of the UNIDROIT Convention states that its provisions only apply to cultural property stolen *after* the UNIDROIT Convention entered into force. This indicates that the UNIDROIT Convention was intended to focus on prevention of illegal traffic rather than on repatriation claims arising from colonization consequences and war compensations.

2.3. STATE LAWS

2.3.1. New Delhi

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| The Delhi Urban Art Commission Act, 1973 (“ DUAC Act ”) |
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Objective & Applicability: The DUAC Act provides for the establishment of the Delhi Urban Art Commission (“**Commission**”) with a view to preserving, developing and maintaining the aesthetic quality of urban and environmental design within Delhi.

Brief Summary: As per the DUAC Act, the Commission is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract and to sue or be sued in its name.

As per the DUAC Act, the general duty of the Commission is to advise the Central Government in the matter of preserving, developing and maintaining the aesthetic quality of urban and environmental design within Delhi and to provide advice and guidance to any local body in respect of any project of building operations or engineering operations or any development proposal which affects or is likely to affect the sky-line or the aesthetic quality of surroundings or any public amenity provided under the DUAC Act.

Further, the Commission has the power to scrutinize, approve, reject or modify proposals in respect of the following matters:

- (i) development of district centers, civic centers, areas earmarked for Government administrative buildings and for residential complexes, public parks and public gardens;
- (ii) re-development of the area within the jurisdiction of New Delhi Municipal Committee including Connaught Place Complex and its environs, Central Vista, the entire bungalow area of Lutyen's New Delhi, and such other areas as the Central Government may, by notification in the Official Gazette, specify;
- (iii) plans, architectural expressions and visual appearance of new buildings in the centers, areas, parks and gardens specified above including selections of models for statues and fountains;
- (iv) re-development of areas in the vicinity of Jama Masjid, Red Fort, Qutab, Humayun's Tomb, Old Fort, Tuglakabad and of such other places of historical importance as the Central Government may, by notification in the Official Gazette, specify;
- (v) conservation, preservation and beautification of monumental buildings, public parks and public gardens including location or installation of statues or fountains;
- (vi) under passes, over-passes and regulations of street furniture and hoardings;
- (vii) location and plans of power houses, water towers, television and other communication towers and other allied structures;
- (viii) any other projects or lay-out which is calculated to beautify Delhi or to add to its cultural vitality or to enhance the quality of the surroundings;
- (ix) such other matters as may be prescribed by rules; and

- (x) promote and secure the development, re-development or beautification of any areas in Delhi in respect of which no proposals in that behalf have been received from any local body.

2.3.2. Rajasthan

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| The Rajasthan Monuments, Archaeological Sites and Antiquities Act, 1961 (“ Rajasthan Act ”) |
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Objective & Applicability: The Rajasthan Act aims to provide for the preservation, protection, upkeep maintenance, acquisition and regulation of, and control over, ancient and historical monuments, archaeological sites and antiquities in the State of Rajasthan.

Brief Summary: Under the Rajasthan Act, ancient or historical monument is defined as any archaeological building, structure, erection or monument or any tumulus, tomb or place of interment or any cave, rock-sculpture, rock-painting or sculpture of or on stone, metal, terracotta or other immovable object or any inscription or monolith, which is of historical, archaeological or artistic importance, interest or value, and includes-

- (i) any remains thereof;
- (ii) the site thereof;
- (iii) The portion of land adjoining such site which may be necessary or required for the preservation, protection, upkeep and maintenance of the same, and
- (iv) The means of access thereto and of convenient inspection and repairs thereof;

but does not include an ancient monument as defined in the Central Act.

2.3.3. Maharashtra

The Chhatrapati Shivaji Maharaj Vastu Sangrahalaya Act, 1909

Objective & Applicability: The Chhatrapati Shivaji Maharaj Vastu Sangrahalaya Act, 1909 aims to provide for the establishment and management of the Chhatrapati Shivaji Maharaj Vastu Sangrahalaya.

Brief Summary: The Chhatrapati Shivaji Maharaj Vastu Sangrahalaya Act, 1909 provides for the intention to construct and maintain a museum as a memorial at Bombay upon the visit of His Royal Highness the Prince of Wales to Bombay in 1905 – the CSMVS Museum, earlier known as the Prince of Wales Museum. Under the Chhatrapati Shivaji Maharaj Vastu Sangrahalaya Act, 1909, trustees have been provisionally appointed to take custody of the land and money set aside for the purpose of construction, and maintenance of the CSMVS Museum.

Most public museums have been set up under similar specific statutes.

3. FREQUENTLY ASKED QUESTIONS

These Frequently Asked Questions (“FAQs”) relate to the brief overview of the legal procedures, measures, rights and remedies available to artists, owners and managers of artworks in India in relation to their protection, preservation, sale-purchase and trade. Although the FAQs in each of these sections are interlinked and may generally overlap in case of application, they have been segregated into four separate heads primarily for ease of reference. These four heads are: (a) general information on artworks and the laws pertaining to them; (b) display in museums, exhibitions, galleries and other platforms; (c) processes and measures of maintenance and restoration, and procedures related to the sale-purchase, import-export and trade, of artworks; and (d) enforcement of laws against perpetrators of art-related offences, including theft, vandalism and art counterfeit.

We have tried to annotate this Section 3 of the Manual with the relevant information sources/ citations, to the maximum extent possible. However, please keep in mind that some issues, which remain purely a matter of choice of the parties involved and private contractual law cannot be sufficiently annotated, and our perspectives on the same is based on past practical ground-level experience.

3.1. General Information on Artworks

- 1. What are some of the artworks that may be exhibited, displayed or preserved by museums in India?*
- 2. Who has the power to make laws in relation to antiquities, art treasures, treasure troves and archaeological sites and remains?*
- 3. What are some of the laws regulating the protection, preservation, conservation, sale, display, trade and taxation of artworks in India?*
- 4. Does the State have the power to compulsorily acquire objects held in private possession of individual owners?*
- 5. What happens when an object, less than 100 years old, suddenly becomes an “antiquity” a few years from now?*
- 6. Do the artists or creators of the artworks have any intellectual property rights over them in India?*

3.2. Display in Museums, Exhibitions, Galleries and Other Platforms

7. *What is the legal structure of a museum? How are museums in India governed?*
8. *What procedures are applicable in case a particular artwork is created/ owned by more than one person, and has been contracted for display in a gallery?*
9. *How does a museum stock up artworks which are not of Indian origin or discovery?*
10. *Is photography permitted of the artworks being displayed at a museum or gallery or some other exhibition? Are there any legal restrictions on such photography?*
11. *What kind of clearances may be required for an artwork to be displayed in a museum, gallery, exhibition or other publication platforms? Are there any additional clearances required if these artworks have been imported from some other country?*
12. *What methods may be used for the measurement of the age and the valuation of artworks, and what are their advantages and disadvantages?*
13. *What are the rights of the organiser of an art show, gallery or exhibition? What are the rights and remedies of the artist/ owner of an artwork if the related event (such as an art show or exhibition) is subsequently cancelled, or if the artwork is removed from the event?*
14. *What would be the consequences if a museum/ gallery or other institution housing the artwork becomes insolvent or bankrupt?*

3.3. Processes and Measures of Maintenance and Restoration

15. *By what modes can an artwork be legally acquired in India?*
16. *What is the nature of relationship between a museum and the artists/ owner of the artwork? What are the museum's rights or responsibilities towards the artist/ artwork owner under such relationship?*
17. *Have any guidelines been issued in relation to proper storage of antiquities?*
18. *Are the various forms of art subject to taxation in India?*
19. *Is withholding tax applicable on the earnings of an artwork owner/ artist if a particular artwork is sold through a gallery based abroad?*
20. *What is the procedure for art conservation and restoration in India?*
21. *Are there any Indian laws which prevent or mandate disclosure of information related to conservation treatments applied to artworks?*
22. *Are the various forms of art covered by insurance or any specific insurance law in India?*
23. *If any of the loaned artworks is damaged while on display, can the insurance company be made to pay for the damages?*
24. *Can a museum receive monetary donations or grants?*
25. *Can artworks be digitalized? Are there any specific guidelines that should be considered for such digitalization?*

3.4. Enforcement of Laws against Art-Related Offences

26. *What penal consequences are attracted if a gallery / dealer fails to return unsold or loaned artworks?*
27. *What are the penal provisions in relation to vandalism of artworks in India?*
28. *Which laws protect and what remedies are available to the art-collector or the museum against theft of artworks in India?*
29. *Is good faith a likely defense for the buyer or the exporter guilty of contravening any of the Indian art laws?*
30. *Who is liable for losses or damage caused to art loans to museum collections?*
31. *Who is liable to bear the costs of the inherent or latent deterioration of the artwork?*
32. *In case of public museums, can the State be held responsible for any damage caused to museum collections?*
33. *When can an artwork be confiscated? Can the customs officials confiscate an artwork in the process of being exported or shipped to the rightful buyer? What happens if customs officials confiscate a particular artwork?*
34. *What happens to an impugned artwork when it has been recovered back from its theft or smuggling?*
35. *What remedies are available to an artwork owner/ artist if the artwork is damaged after submitting it to a third party, such as a dealer or an art restoration studio?*
36. *Who decides disputes in case of foreign artworks, foreign owners/ artists, or foreign galleries/ museums, i.e. when one or more of the interested parties is a non-resident?*
37. *Can claims be made for the repatriation or restitution of artworks that have changes hands due to crises such as armed conflicts, war, looting, theft, etc.?*

3.1. General Information on Artworks

The **FAQs** in this section relate to certain basic information related to the Indian laws regulating artworks. The intent is to make the user of this Art Law Manual better-versed and more familiar with the nature of artworks, and the rights and obligations of artists and acquirers of artworks alike.

1. **What are some of the artworks that may be exhibited, displayed or preserved by museums in India?**

Museums in India display or exhibit various kinds of artworks, such as antiquities, art treasures, archaeological remains, and even treasure troves. It is important to note that often these categories of artworks overlap with each other.

An '**antiquity**', according to the Antiquities and Art Treasures Act, 1972 ("**Antiquities Act**"), is an item of historic interest which has been in existence for 100 years or more, and could include any coin, sculpture, painting, epigraph, craft, articles detached from a building or a cave, articles illustrative of science, art, crafts, literature, religion, customs, morals or politics in bygone ages. These may or may not be human-made. The Central Government may also notify certain objects as 'antiquities' even if these are younger in time. Further, manuscripts and other documents of scientific, historical, literary or aesthetic value will be counted as 'antiquities' if they have been in existence for 75 years or more.¹ An '**art treasure**', on the other hand, means any human work of art having artistic or aesthetic value, not being an antiquity, if so declared by the Central Government.²

Remains of ancient monuments, i.e. '**archaeological remains**', may also be preserved by museums. As per the Ancient Monuments and Archaeological Sites and Remains Act, 1958 ("**AMASAR Act**"), archaeological remains would include ruins, sites or relics of historical or archaeological importance, which have been in existence ancient monument for 100 years or more. These would include any caves covered with frescos, rock-sculptures, inscriptions or monoliths, or even the pathways of an ancient monument.³

'**Treasures**', as per the Indian Treasure Trove Act, 1878 ("**Treasure Trove Act**"), mean anything of any value hidden in the soil, or in anything affixed thereto.⁴ Treasure troves are often unearthed from within forgotten archaeological remains, old temples and palaces, and could be anything from coins, gold bullion, burial offerings, to even geological fossils.

¹ Section 2(1)(a) of the Antiquities Act.

² Section 2(1)(b) of the Antiquities Act.

³ Sections 2(a) and 2(d) of the AMASAR Act.

⁴ Section 3 of the Treasure Trove Act.

2. Who has the power to make laws in relation to antiquities, art treasures, treasure troves and archaeological sites and remains?

The Seventh Schedule of the Constitution of India demarcates the spheres over which the Central Government and/or the State Government(s) can legislate. At present, “archaeology” comes under the Concurrent List of this Schedule, i.e. both central and state governments can draft laws relating to protection, preservation and conservation of archaeological sites and remains. Based on similar principles of construction, “antiquities” would also be subject to both central and state level regulations. On the other hand, “museums” and other publication platforms would be governed by state laws. The relevant entries of the Seventh Schedule read as follows:

- ❖ List I (Union List), item 67: ancient and historical monuments and records, and archaeological sites and remains declared by or under law by Parliament to be of national importance.
- ❖ List II (State List), item 12: libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance.
- ❖ List III (Concurrent List), item 40: archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.

It should be further noted that treasure troves, however, fall under the State List (item 44, List II), and would be regulated by local state-level laws.

3. What are some of the laws regulating the protection, preservation, conservation, sale, display, trade and taxation of artworks in India?

The protection and the preservation of artworks are mainly governed by two statutes – The Antiquities and Art Treasures Act, 1972 and The Ancient Monuments and Archaeological Sites and Remains Act, 1958. At present, laws have not been framed with respect to the conservation, including chemical treatments, of artworks, although the Archaeological Survey of India (“ASI”) has framed a few principles in this respect, which have been discussed below in **FAQ #20**. The sale-purchase, loan, trade and other dealings of artworks would be governed by The Indian Contract Act, 1872, The Sale of Goods Act, 1930 and The Transfer of Property Act, 1882. With respect to export-import of artworks in and out of India, the Customs Act, 1962 (“**Customs Act**”), The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (“**COFEPOSA**”), The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (“**SAFEMA**”), and the foreign exchange control regulations would apply. Separate tax statutes have been framed, which govern the taxation of artworks in India, including The Income-tax Act, 1961 and The Wealth Tax Act, 1957. Confiscation, forfeiture and detention are penalties applicable under the abovementioned laws for illegal trade or smuggling of artworks. Penalties of imprisonment and fines for contravention of the relevant laws may also be imposed separately under the Indian Penal Code, 1860, and The Prevention of Damage to Public Properties Act, 1984.

4. Does the State have the power to compulsorily acquire objects held in private possession of individual owners?

The Central Government can acquire artworks in private possession of owners/ collectors in two situations: (a) when an archaeological remain or site is deemed to be of “national importance”; and (b) when an antiquity or art treasure should be preserved, in the opinion of the Central Government, in a public place.

(a) Acquisition of an Archaeological Remain or Site of National Importance

Section 4 of the AMASAR Act empowers the Central Government to declare archaeological sites and remains to be of national importance by way of a separate notification in the Official Gazette, if it so deems fit on the basis of the historical, archaeological and architectural value of the artwork, and other factors. The effect of such declaration is that such archaeological remains would be taken over by the Central Government so that they may become available for display or exhibition to the public.

The Central Government usually gives a 1 (two) months’ notice of its intention to declare such archaeological remains to be of national importance, and interested parties – such as the private museum housing the artwork, or the collector of such artwork – may object to such declaration by the Central Government within these 2 (two) months. After taking into consideration these objections, the Central Government may decide to withdraw the declaration, or to finalize it. It should be noted that ancient and historical records of national importance would also constitute antiquities⁵.

(b) Compulsory Acquisition of Antiquities and/or Art Treasures

Similarly, under Section 19 of the Antiquities Act, the Central Government also has the power to compulsorily acquire antiquities and/or art treasures if it is of the opinion that it is desirable to preserve such artworks in a public place. Upon such order of the Central Government, the Collector of the local district gives a 30 (thirty) days’ notice to the owner of the relevant artwork, and can then proceed to acquire such artwork away from the owner’s possession, using such force as may be necessary.

The owner may present objections to such dispossession to the Central Government within the allotted 30 (thirty) days. An opportunity of hearing would have to be given to the owner, and taking a fair and proper inquiry into the merits of the case, the Central Government may rescind its acquisition order or declare it final and binding. If the acquisition order is rescinded, the artwork is returned to the possession of the owner at the expense of the Central Government. If such order is not rescinded, then a just and equitable compensation would be payable to the owner by the Central Government, where such compensation is fixed by means of a bilateral agreement or by the decision of an arbitrator appointed by the Central Government.⁶

⁵ *Rameshwar Prasad Mittal v. State (Central Bureau of Investigation)*, 119 (2005) DLT 576.

⁶ See also *A.K. Gupta v. Customs Commissioner (New Delhi)*, 1999 (83) ECR 475 (Tri.-Delhi).

However, it should be noted that antiquities and art treasures used for *bona fide* religious observances may not be thus compulsorily acquired.

5. *What happens when an object, less than 100 years old, suddenly becomes an “antiquity” a few years from now?*

Once an artwork has crossed the 100 year mark, it becomes an antiquity or archaeological remains. The Government may also notify a specific artwork of being of national importance. These scenarios have been discussed in **FAQ#1**. In each of these events, every person who owns, controls or is in possession of such antiquity must register such artwork with the concerned authorities. In case any such registered artwork is being transferred, then the transfer must be intimated to the concerned authorities. If the registration or requisite intimation is not undertaken within time, the artwork would be liable to confiscation by the authorities.⁷ At present, the law is very strict about such confiscation, and advice should be sought from the relevant authorities in order to avoid any unpleasant consequences later on.

6. *Do the artists or creators of the artworks have any intellectual property rights over them in India?*

Copyright comprises of a bundle of rights that include the right to copy, reproduce, perform, make a film or recording, make a translation, make an adaptation, rental rights, communicate to the public by way of broadcast or through other medium and to sell, offer to sell or import the work. Copyright protection is conferred on creative works that are original and which are in some tangible form. Works entitled to protection under the Copyright Act, 1957 (“**Copyright Act**”) include artistic works, musical works, literary works, etc.⁸

The term of copyright varies depending on the subject matter. Copyright subsists in literary, dramatic, musical or artistic works for a period of 60 years from the date of the death of the author. The term of copyright in photographs is 60 years from beginning of the year next following the year in which the photographer dies. For all other works, anonymous works, pseudonymous works, posthumous works and government works, the term of copyright is 60 years from the date of first publication.⁹

Registration of copyright is not mandatory and copyright protection is granted by virtue of the work being original, in some tangible form and being published. India is also a party to the Berne Convention and the Universal Copyright Convention. Therefore, the Copyright Act, 1957 also protects foreign works of convention countries in a manner as if they were works first published under the Copyright Act, 1957, in India.¹⁰

⁷ Section 14(3)(b) and Section 17 of the Antiquities Act.

⁸ Section 2(y) of the Copyright Act.

⁹ Section 22 of the Copyright Act.

¹⁰ Section 40 of the Copyright Act.

Museums, galleries, exhibitors of artworks, etc., must ensure that: (a) the artists/ owners of such artworks legally and validly hold the copyright or other intellectual property rights over the artwork, (b) the term of such copyright or other intellectual property right has not expired, and (c) due consent has been taken from such artists/ owners for display of the artworks.

3.2. Display in Museums, Exhibitions, Galleries and Other Platforms

The **FAQs** in this section relate to the exhibition and display of artworks in museums, exhibitions, galleries and other publication platforms from time to time, such as conferences, libraries, auctions, or any place which is open to the use of the public, whether on payment of fees or not, or whether actually used by the public or not.

7. **What is the legal structure of a museum? How are museums in India governed?**

Museums in India may be private museums (set up by collectors, artists or their families) or public museums (set up under a separate statute framed by the central government or the state government). For example, the Salar Jung Museum has been set up under the Salar Jung Museum Act, 1961, and the Chhatrapati Shivaji Museum has been set up under the Chhatrapati Shivaji Maharaj Vastu Sangrahalaya Act, 1909.¹¹

The creation of a museum is primarily for the object of general public utility and benefit, i.e. education of the public. However, this does not automatically mean that all museums are in the nature of a charitable organization, or even an educational institution. Most museums are set up in the form of foundations, i.e. trusts or societies, and the terms of the applicable trust deed, agreement or statute determine the legal structure and nature of the museum.¹²

Under such trust deed or agreement, or under the statute establishing the public museum, generally a board of trustees (or, less commonly, a society of members) is established as the governing body. As discussed above, these statutes may have been framed by the central government or the relevant state government. The board of trustees or society is empowered under the main statute to frame byelaws for the governance, maintenance and upkeep of the museum, according to the principles and objects set out in the main statute. The board is also empowered to frame recruitment guidelines under which it can appoint keepers, curators and other staff for the various departments of the museum (such as archaeology, numismatics, epigraphy, anthropology, etc.).¹³

Several museums are also engaged in profit-making activities, providing public entertainment in the form of sound-and-light shows, conferences, sale exhibitions and outlet shops. Where museums (or their

¹¹ See, e.g. *Mrs. Dolly Mukherjee v. The Trustees of the Indian Museum*, (1989) 1 CAL LT 170 (HC), in contrast to *Dolagovinda Sethi v. Kanika Museum*, AIR 1989 Ori 60; *Dr. J. Kedareshwari v. Union of India*, 2009 (3) APLJ 401.

¹² *Dolagovinda Sethi v. Kanika Museum*, AIR 1989 Ori 60; *Commissioner of Income Tax v. Maharaja Sawai Mansinghji Museum Trust*, [1988] 169 ITR 379 (Raj).

¹³ *Mrs. Dolly Mukherjee v. The Trustees of the Indian Museum*, (1989) 1 CAL LT 170 (HC).

governing bodies) are regularly involved in profit-making trading or business activities, such as setting up showrooms and exhibitions, print and sell periodicals, etc, then these museums may have to be registered as “commercial establishments” under the local Shops and Establishments Act.¹⁴

8. *What procedures are applicable in case a particular artwork is created/ owned by more than one person, and has been contracted for display in a gallery?*

Two or more persons may have created or may own the same artwork, in equal proportion, or in unequal shares. Conversely, an artwork may have two or more components, which are owned separately by two or more owners and which may or may not be capable of dismantling or proportionate division/ sharing. When the artwork is owned jointly in equal proportions, or when the artwork’s components cannot be dismantled and used independently of each other, then each such artist/ owner may be referred to as a “*joint-owner*”. If the artwork has been created or is owned in unequal shares (for instance, on the basis of the consideration paid) or if its components can be dismantled and used independently of each other, then each artist/ owner may be referred to as a “*co-owner*”. Co-ownership and/or joint-ownership structures are preferred because of the associated tax benefits.

Section 44 of the Transfer of Property Act, 1882 (“**ToPA**”) deals with transfer by a co-owner and it also deals with the rights of a transferee in this type of a transaction. In the following paragraphs, we have summarised the main principles of this Section 44 of ToPA:

a) In case of Joint Ownership, i.e. Ownership in Equal Proportions

According to this provision, every joint-owner has a proprietary right to the entire property. Hence, any sale has to be done with the consent of all the joint-owners involved. If, however there are specific conditions in the agreement binding such persons that gives a joint-owner exclusive rights to certain parts/portions of the property, a joint-owner can sell his/her portion to whom he chooses.

b) In case of Co-Ownership, i.e. Ownership in Unequal Proportions

By default, every co-owner has a separate and unequal fractional interest(s) in the property. For instance, if A has borne 75% of the expenses of creating a particular artwork, A has an exclusive right to the related 75% of the artwork’s value or component. To the extent of such fractional interest, each co-owner may freely transfer his/her own interest in the property to any third person, including contract it to a gallery.

Either scenario creates a conundrum for the gallery - an artwork may be incapable of being displayed in a gallery if all of its components are not brought together, or if all the joint-owners have not consented to the display.

¹⁴ *Maharaja of Jaipur Museum Trust, City Palace, Jaipur v. The State of Rajasthan*, AIR 1971 Raj 151; *Chief Commissioner, Delhi v. Federation of Indian Chambers of Commerce and Industry, New Delhi*, AIR 1974 SC 1527; *Mumbai Grahak Panchayat v. State of Maharashtra*, 1983 (85) BOMLR 218.

Therefore, where a particular artwork has been created or is owned by more than one person, it is necessary that the other artists or owners have acknowledged the joint ownership/ creation in one way or another. It is advisable that the artist/ owner should also secure a written collaborator's agreement with the remaining artist/ owner, for the continuation of ownership and/or development of this joint work. However, if the collaborator has already and unilaterally broken the original collaborative agreement with the artist/ owner, then the artist/ owner may consider proceeding without such further agreement from the collaborator.

In the absence of a written contract between the artists, specifying who will be the artist/ owner of the collaborative work and how the financing of the work will be dealt with, the general provisions of the Copyright Act (and its amendments) will apply. This means that the copyright including the moral rights in the work created, and any expressions of rough/ developing ideas (including drawings and photographs), will be owned jointly. Copyright will last for the lifetime of the last surviving collaborator, plus 60 years after that person's death.

9. *How does a museum stock up artworks which are not of Indian origin or discovery?*

Most artworks reposed in Indian museums, galleries, etc. are of Indian origin, or have been discovered in India. As discussed earlier in **FAQ #4**, these may have been compulsorily acquired or deemed to be nationally important.

At other times, sometimes, museums in India enter into a memorandum of understanding (“**MoU**”) with another foreign museum, galleria, etc., so that items of historical, archaeological, aesthetic or otherwise relevant interest may be exchanged between the two museums for temporary periods. The foreign museum loans the artifacts to the Indian museum for the purposes of education and international cultural exchange for a definite period, upon the expiry of which, the artifacts are returned to the foreign museum; in the next round, artifacts from the Indian museum are similarly exported to the foreign museum, and returned after a specific period. Apart from museum-to-museum exchanges of artworks, private individuals may also donate artworks to museums and galleries, for limited periods or permanently.¹⁵ We have included a sample MoU between India and other countries in **Annexure A** to this Manual, under which Indian artworks may be loaned to a museum/ gallery or other institution outside India for a temporary period for the purposes of promoting cultural, scientific or educational exchange.

For all artworks being loaned or donated to the museum, gallery, etc. – whether of Indian or foreign origin or discovery – it is always advisable to have a written agreement in place, as proof of clearances that may be required by the Central Government and/or State Government(s) from time to time. Artworks donated or moneys for restoration/ preservation of such artworks donated by persons abroad may also be subject to foreign exchange laws, such as the Foreign Contribution (Regulation) Act, 2010.

¹⁵ Till date, the Ministry of Culture has signed over 126 cultural exchange agreements with foreign countries, and enters into cultural exchange programmes for limited time periods as well, including the aforementioned MoUs. See Press Release at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=101829> and the collection of MoUs uploaded at <http://www.indiaculture.nic.in/indiaculture/mou.html>. We also refer to our discussions from time to time.

10. *Is photography permitted of the artworks being displayed at a museum or gallery or some other exhibition? Are there any legal restrictions on such photography?*

There is no central law on photography in India. Generally, photography is permitted in Indian museums, galleries, etc. for private non-commercial uses only, except where otherwise posted. Most museums and galleries mandate that any photographs taken cannot be published, sold, reproduced, transferred, distributed or otherwise commercially exploited in any way. Video cameras and tripods are usually not permitted, though some museums may permit videotaping with small, personal recording devices for non-commercial uses.¹⁶

In case filming or photography needs to be done for commercial purposes, special permits would have to be taken from the governing body of the museum, gallery, etc. Further, if certain artifacts at the gallery or museum have been loaned or bailed to it for temporary or limited display, then the photographer or videographer of such artifacts must ensure that the relevant agreement does not contain any term prohibiting such photography/ videography. Breach of such provision may entail penal consequences for the museum and the photographer/ videographer.¹⁷

If the museum, gallery etc. is located within certain areas in or around a forest or a tribal area, wildlife Park or sanctuary, permission from the Ministry of Environment and Forests and the local forest department may also have to be sought. In several archaeological sites, permit may have to be taken from the Archaeological Survey of India (“ASI”), especially for use of tripod and artificial light on monuments.¹⁸ Certain archaeological sites used for *bona fide* religious or sacred sites purposes, such as ancient mosques and *maths*, may also ban photography/ videography.¹⁹

¹⁶ This is based on our general reading of the FAQs and byelaws of various museums. For example, the National Museum in New Delhi permits photography for non-commercial purposes, but prohibits videography without specific prior permission from the museum authorities (please see the FAQs available at www.nationalmuseumindia.gov.in/faqs.asp).

¹⁷ One example of this situation is envisaged under Rule 8(d) of the AMASAR Rules, which states that “No person shall, within a protected monument.... take his photograph for monetary consideration, except under the authority of, or under, and in accordance with the conditions of, a license granted by an archaeological officer.”

¹⁸ For instance, please see Rule 42 of the AMASAR Rules, which state that “No person other than an archaeological officer or an officer authorized by him in this behalf shall undertake any filming operation at a protected monument or part thereof except under and in accordance with the terms and conditions of a license granted under Rule 44.

¹⁹ In India, every person has the right to freedom of religion under Article 25 of the Constitution of India, 1950, and in many cases, temples and other holy places are managed privately by religious communities. Such temples, *maths* and other sacred sites may choose to ban photography/ videography, which is the case in the Jagannath Temple in Odisha and the Jain Dilwara Temples of Rajasthan.

11. *What kind of clearances may be required for an artwork to be displayed in a museum, gallery, exhibition or other publication platforms? Are there any additional clearances required if these artworks have been imported from some other country?*

Since museums and other related publication platforms are governed by state-level laws, there is a lot of variation in the kinds of permits required for their display of artworks. Depending on their legal structure, museums, galleries, etc. may require a governmental consent as a “commercial establishment” under the local Shops and Establishments Act, as discussed in **FAQ #7**. The statute or deed establishing the museum must also authorize the museum to enter into MoUs with other museums within or outside India, if applicable, which has been discussed earlier in **FAQ #9**. The institution or the individual from whom the artwork has been received must have the requisite copyright or other proprietary rights over the artwork, as described earlier in **FAQ #6**. Clearances may be required with respect to specific components of the artwork, such as clearances for any co-owners, content control or censorship boards, etc. Permission may have to be sought for any temporary locale in which the exhibition is being arranged, or for the construction of any structure outside the museum’s authorized premises. For instance, a ‘license-to-occupy’ agreement may have to be signed between the owner of the premises/ building/ space, and the museum’s governing body as the hirer.²⁰ Security personnel may have to be arranged for the safety of the artworks as well.²¹

If the funding of the exhibition or the MoU has been made via foreign donations, permissions under the foreign exchange control regulations must be sought. Private donations by resident Indians also require permissions to be undertaken under the Foreign Exchange Management Act, 1999, the Foreign Contribution (Regulation) Act, 2010, and the rules framed thereunder. This has been discussed in more detail in Section 2 of this Manual and under **FAQ #9**.

The export of artworks outside India under the MoU must be permitted by the customs authorities under the Customs Act. If artifacts are being imported into India, permission may have to be sought from the airport or shipping authorities in relation to the size and insecticidal treatment of wooden crates carrying artworks to international destinations, or for their temporary storage in State warehouses.²² In some cases, with respect to artworks imported from foreign museums for temporary cultural exchanges and display in India, consents may be required from various governmental departments, including the Indian Ministry of Culture. For example, a taxidermist specimen of a rare and extinct animal may require clearance for import-export from the Indian Ministry of Environment and Forests under the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1975, to which India is a party.²³

²⁰ See, e.g. *Subhas Datta v. Union of India*, 2013 (1) SCALE 380.

²¹ *Subhas Datta v. Union of India*, 2013 (1) SCALE 380.

²² See e.g. Rule 9 of the Airports Authority of India (Storage and Processing of Cargo, Courier and Express Goods, and Postal Mail) Regulations, 2003.

²³ See e.g. Article III(1), III(2), IV(1), IV(2), V(1), V(2), and VIII(1) read with Appendices I, II and III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1975.

Many a time, consents may have to be obtained from the Director General of Foreign Trade (“DGFT”), which is the final authority in India for deciding the availability of export-import benefits to exporters and importers. Under the Foreign Trade (Development and Regulation) Act, 1992 read with the Foreign Trade Policy, 2013, the DGFT is empowered to issue notifications pertaining to classifications of import and export items, and to revise the Import Policy and the Export Policy from time to time. These notifications have included the instruction that the import of antiquities and antiquarian books should be free, and that the importer must abide by the rules relating to export of such item, of the country from where imports are sought to be made.²⁴ However, the DGFT has also prescribed that:

- (i) the import of swords and firearms of 'antiquarian value', or their replicas, by a private person would require an import license from the DGFT;²⁵
- (ii) worked ivory and articles of ivory cannot be imported into India;²⁶
- (iii) only restricted import-export would be permitted with respect to worked tortoise-shell, mother of pearl; bone (excluding whale bone); horn, coral and other animal carving materials²⁷, stuffed animals and birds²⁸, and articles made of such materials; and
- (iv) paintings and other display articles required for competitions or exhibitions may be imported into India without an import license / authorization / permission from DGFT, provided that the imports do not involve any remittance of foreign exchange and subject to the condition of eventual export of such items (except consumables).²⁹

The consents required for the display of artworks in museums, galleries, etc. cannot be listed out in exhaustive detail, and would vary from case to case.

²⁴ See Chapter 97 (Works of Art, Collectors' Pieces and Antiques), of Schedule 2 of the Import Policy of India, ITC (HS), 2012, amended by DGFT Notification No. S.O. (E) 97(RE-2008)/ 2004-2009, New Delhi, dated 17th March, 2009.

²⁵ *Union of India v. Prince Muffakam Jah*, AIR 1995 SC 227. See also Chapter 93 (Arms and Ammunition; Parts and Accessories thereof) and Chapter 97 (Works of Art, Collectors' Pieces and Antiques), of Schedule 2 of the Import Policy of India, ITC (HS), 2012.

²⁶ See “List of Prohibited Items for Import” and Chapter 96 (Miscellaneous Manufactured Articles), of Schedule 2 of the Import Policy of India, ITC (HS), 2012.

²⁷ See Chapter 96 (Miscellaneous Manufactured Articles), of Schedule 2 of the Import Policy of India, ITC (HS), 2012.

²⁸ See Chapter 97 (Works of Art, Collectors' Pieces and Antiques), of Schedule 2 of the Import Policy of India, ITC (HS), 2012.

²⁹ See also “General Notes regarding Import Policy”, Schedule 1 of the Import Policy of India, ITC (HS), 2012.

12. *What methods may be used for the measurement of the age and the valuation of artworks, and what are their advantages and disadvantages?*

Various private institutions and individuals may provide *ad hoc* valuation of the artwork, along with an examination of its age. In case, an artwork has been valued too diversely (for instance, for insurance purposes) by the interested parties, then a third party expert may be called in.³⁰

The Indian Courts and the ASI often call in external experts to verify or examine whether a particular artwork has been in existence for more than 100 years, i.e. whether it is an antiquity or not, and to examine the fair market valuation of the relevant artwork.³¹ Where the expert evidence has been presented by a nominee member or committee of the ASI, such decision is considered binding.³² However, for such expert evidence to be relied upon, it is necessary that the proper procedure has been followed. The evidence must be preferably in written form, and copies must be provided to relevant parties (such as the alleged owner of the artwork). The expert evidence must have taken into account the age of the material using appropriate methods, such as carbon dating tests.³³ Further, it is advisable that the interested parties be permitted to participate in the examination or at least be present for it.³⁴

13. *What are the rights of the organiser of an art show, gallery or exhibition? What are the rights and remedies of the artist/ owner of an artwork if the related event (such as an art show or exhibition) is subsequently cancelled, or if the artwork is removed from the event?*

For the exhibition, etc. of artworks, the artist/ owner of the artwork and the museum/ gallery owner usually enter into a hiring or bailment contract. The contractual rights of the artist/ owner of the artwork will depend on the terms of the contract.

Usually, the museum/ gallery will be in breach of the contract if they fail to hold the fair and to provide an exhibition, or they may be obliged to provide a full refund. Under the wording of the relevant contract, museum/ gallery may be entitled to hold the fair at an alternative equivalent venue. If the failure to showcase the event occurs due to certain unavoidable events, such as a natural disaster or riot, etc. (such events being called “**force majeure events**”), then the contract may contain a clause absolving the

³⁰ *Union of India v. Prince Muffakam Jah*, AIR 1995 SC 227; *NB Jaffar Ali Khan v. Assistant Commissioner of Wealth-Tax*, [2003] 87 ITD 359 (Hyd).

³¹ *Antiquity v. Customs Commissioner (Hyderabad)*, 2000 (93) ECR 469; *Union of India v. Prince Muffakam Jah*, AIR 1995 SC 227; *V.J.A. Flynn and Mr. Shyam Sunder Rastogi v. Union of India*, 2003 (66) DRJ 381.

³² *Antiquity v. Customs Commissioner (Hyderabad)*, 2000 (93) ECR 469 (NULL); *V.J.A. Flynn and Mr. Shyam Sunder Rastogi v. Union of India*, 2003 (66) DRJ 381; *Bowrings Fine Art Auctioneers Pvt. Ltd. v. Central Bureau of Investigation*, 148 (2008) DLT 135; *Rameshwar Prasad Mittal v. State (Central Bureau of Investigation)*, 119 (2005) DLT 576.

³³ *Antiquity v. Customs Commissioner (Hyderabad)*, 2000 (93) ECR 469; *Bowrings Fine Art Auctioneers Pvt. Ltd. v. Central Bureau of Investigation*, 148 (2008) DLT 135.

³⁴ *Antiquity v. Customs Commissioner (Hyderabad)*, 2000 (93) ECR 469; *Bowrings Fine Art Auctioneers Pvt. Ltd. v. Central Bureau of Investigation*, 148 (2008) DLT 135.

museum/ gallery of any liability for the cancellation of the event.³⁵ The contract may even allow the gallery/ museum to remove an artwork from the event, if it, in their judgment, is inappropriate to be shown in their premises.³⁶ This is because if a particular artwork does not fit the original criteria intended for the relevant gallery/ exhibition event, the changed circumstances make the performance of the contract impossible, and parties may get absolved from the further performance of it, as they did not promise to perform an unforeseeable and “impossible” act.³⁷ Insolvency or bankruptcy of the museum/ gallery showcasing the artwork may also lead to cancellation of the exhibition/ show and/or removal of the artwork from such show/ exhibition, an event described in more detail in **FAQ #13** below.

In the absence of a written contract, the event organizer may even remove the relevant artwork from the showcase list. If a claim is subsequently raised against such removal by the artist/ owner of the artwork, the courts may seek to resolve the matter by implying the terms and conditions which the parties would have reasonably contemplated at the time of their oral agreement, and actions evidencing their intentions.³⁸

14. *What would be the consequences if a museum/ gallery or other institution housing the artwork becomes insolvent or bankrupt?*

The consequences of the insolvency of the museum/ gallery/ other institution depend on the legal structure of the museum/ gallery/ other institution, i.e. whether it has been set up as a company, trust, or society. The legal status of such entities has been discussed earlier in **FAQ #7** above. Please bear in mind that the consequences of the insolvency of the museum/ gallery/ other institution would also lead to cancellation of a show or exhibition, or removal of the artwork from such show/ exhibition, as has been discussed above in **FAQ #13**.

Usually, in case an exhibition event has been cancelled due to insolvency and/or winding-up of the museum/ gallery, then a claim may be made before the liquidator or court receiver by the artist/ owner of the artwork. However, certain governmental dues may have priority over the claims of such artists. These governmental dues attach as charges on the properties of the borrower and are recoverable as arrears of land revenue by the government. Such governmental claims would include all those revenues, taxes, cesses and rates due from the insolvent museum/ gallery, etc. to the Central or State Government or any local/ statutory/ regulatory authority, for instance, water and electricity dues, customs duties, fines and

³⁵ *Dhanrajamal Gobindram v. Shamji Kalidas and Co.* AIR 1961 SC 1285; *Serajuddin v. State of Orissa* AIR 1969 Ori 152; *Podar Trading Co Ltd, Bombay v. Francois Tagher, Barcelona*, [1949] 2 KB 227; *Industrial Finance Corporation of India Ltd. v. The Cannanore Spinning & Weaving Mills Ltd.* AIR 2002 SC 1841.

³⁶ *Industrial Finance Corporation of India Ltd. v. The Cannanore Spinning & Weaving Mills Ltd.* AIR 2002 SC 1841; *Naihati Jute Mills Ltd. v. Khyaliram Jagannath* AIR 1968 SC 522.

³⁷ *Satyabrata v. Mugneeram* AIR 1954 SC 44; *Sushila Devi v. Hari Singh* AIR 1971 SC 1756; *Bisadendu Biswas v. Sakina Begum*, AIR 1973 Cal 135.

³⁸ *Industrial Finance Corporation of India Ltd. v. The Cannanore Spinning & Weaving Mills Ltd.* AIR 2002 SC 1841; *Naihati Jute Mills Ltd. v. Khyaliram Jagannath* AIR 1968 SC 522; *Satyabrata v. Mugneeram* AIR 1954 SC 44; *Sushila Devi v. Hari Singh* AIR 1971 SC 1756; *Bisadendu Biswas v. Sakina Begum*, AIR 1973 Cal 135

penalties payable to the government, unpaid stamp duties in certain cases, and so forth. In case the museum/ gallery, etc. has been established as a company, then besides the governmental dues, the wages payable to the employees and any secured creditors of the museum/ gallery etc. could also have priority over the claims of the artist.³⁹

If the museum/ gallery has been set up as a trust, then the money or assets entrusted in the nature of a trust are usually beyond the purview of the receiver/ liquidator, and therefore, the trust funds/ assets cannot be used to pay off secured or unsecured creditors, so the claim of the artist would have additional protection. In case a trust fund (of the museum/ gallery, etc.) is running into losses or is being mismanaged by its trustees (so that the trust fund is 'insolvent', so to speak), the civil courts in India also have the power to decree a new scheme for the trust, and appoint new trustees for the better management of the trust/ funds and assets of the trust.⁴⁰

3.3. Processes and Measures of Maintenance and Restoration

The **FAQs** in this section relate to the processes and measures that may be or must be undertaken by an acquirer of artwork. Beyond the rights and obligations in relation to display of artworks, museums, exhibitions, galleries and other platforms have the obligation – voluntary or mandatory – of safeguarding and/or improving the artworks, and paying off any dues in relation to the same.

15. *By what modes can an artwork be legally acquired in India?*

The artist may choose to sell off the artwork created by him or her freely.⁴¹

However, with respect to artworks which are antiquities, sale may only be made by a person duly licensed under the Antiquities Act. Collectors or other purchasers of antiquities must take care to ensure that the auctioneer or the vendor is duly licensed in this regard.⁴² Artworks of various kinds may be donated, gifted or loaned to museums, galleries and other platforms by their present owner; it, however, must be ensured that such person has valid legal title and authority to donate, gift or loan such artworks.⁴³ For example, in case the artwork being transferred is an antiquity, it must have been duly registered under the Antiquities Act. Similarly, in case an artwork is owned by more than one person, all the co-owners must have consented to the transfer of the artwork. These issues have been described under various **FAQs** in this Art Law Manual. Further, ancient monuments, archaeological remains and sites cannot be sold or acquired at all, unless specific authorization has been obtained from the government in this regard.⁴⁴

³⁹ See Section 530 of the Indian Companies Act, 1956.

⁴⁰ See Section 74 of the Indian Trusts Act, 1882.

⁴¹ For instance, please see Section 15 of the Copyright Act, or Section 14 of the Sale of Goods Act, 1930 which speak of such right to sell goods/ artworks as long as the seller has the rightful title to them.

⁴² Please see Sections 5 and 7(1) of the Antiquities Act, which mandate sellers of antiquities to obtain license from the governmental authority before such sale(s).

⁴³ See the Transfer of Property Act, 1882 and the Sale of Goods Act, 1930, generally.

⁴⁴ Please see the AMASAR Act and the AMASAR Rules generally.

16. What is the nature of relationship between a museum and the artist/ owner of the artwork? What are the museum's rights or responsibilities towards the artist/ artwork owner under such relationship?

Where the artwork is not of national importance, but is owned by a private person and has been “loaned” to the museum for a temporary period, such an art loan constitutes a “bailment” within the meaning of the Indian Contract Act, 1872. A bailment is a contract under which one person delivers goods to another person for some temporary purpose, upon the condition that when the purpose is accomplished, the goods are to be returned or otherwise disposed of according to the directions of the person delivering them. Bailments may be gratuitous or for a consideration. The bailment may be gratuitous or reward-based. In gratuitous bailment, neither the bailor nor the bailee receives any remuneration, but in reward-based bailment, both parties must receive some mutual benefit.⁴⁵

Under the Contract Act, some basic principles of bailment apply to the relationship between the museum, as the bailee, and the artist or the owner of the artwork, being the bailor:

- (i) *Bailee's Duty of Care*: The bailee must take as much care of the goods bailed as a man of ordinary prudence would take, under similar circumstances, of his own goods of the same bulk, quality and value as the goods bailed. If such standard of care is exercised by the bailee, the bailee cannot be held liable for any loss, destruction, or deterioration of the goods bailed. The bailee will also not be responsible for any loss, destruction, or deterioration caused due to force majeure events (events outside his control, such as natural disasters, wars, riots, acts of God, etc.).⁴⁶
- (ii) *Authorised Use Only*: The bailee is under a duty not to use the goods in an unauthorized manner or for unauthorised purposes; otherwise the bailor can terminate the bailment, and claim damages for any loss or damage caused by the unauthorised used.⁴⁷
- (iii) *No Mixing of Goods*: The bailee must keep the goods bailed to him separate from his own goods, and not mix them up without authorization. If the goods get mixed and are separable, then the bailor will have a proportionate share in them; if the goods get mixed but are inseparable, then the bailor is entitled to compensation.⁴⁸
- (iv) *No Adverse Possession*: The bailee cannot set up an adverse title to the goods, i.e. cannot claim the bailed goods to be his own property.⁴⁹

⁴⁵ Sections 148, 149 and 159 of the Indian Contract Act.

⁴⁶ Sections 151 and 152 of the Indian Contract Act.

⁴⁷ Section 154 of the Indian Contract Act.

⁴⁸ Sections 153, 155, 156 and 157 of the Indian Contract Act.

⁴⁹ Sections 154, 160, and 161 of the Indian Contract Act.

- (v) *Timely Return of Goods and its accretions:* The bailee must return the goods without demand on the time fixed or when the purpose is accomplished to the bailor; if the bailed goods are not returned on schedule, the bailee will be liable for any loss, destruction or deterioration of the goods even without negligence on his part. In the absence of any contract to the contrary, the bailee must also return to the bailor any increase, accretion, or profits which have accrued from the goods bailed.⁵⁰
- (vi) *Bailor's Liability for Patent Defects:* The bailor must disclose all the known faults in the goods; and if he fails to do so, he will be liable for any damage resulting directly from the faults. If the bailee is the carrier vehicle, then he would be liable for the damage arising from the faults even if they were not known to the bailee. Any extraordinary expenses incurred (i.e. expenses incurred outside the ordinary course of the bailment) or any additional services rendered by the bailee with respect to the bailed goods would have to be paid by the bailor. The bailor is also bound to indemnify the bailee for any cost or costs which the bailee may incur because of the defective title of the bailor of the goods bailed. Till such payments have been made by the bailor, the bailee acquires and can exercise a lien on the goods bailed, i.e. the bailee can retain the goods until his charges in respect of such additional services are paid off by the bailor.⁵¹
- (vii) *Termination of Bailment:* A bailment is terminated when the subject matter of bailment is destroyed, has expired, or by reason of change in its nature, becomes incapable of use for the purpose of bailment. Where the bailee wrongfully uses or dispose of the goods bailed, the bailor may terminate the bailment.⁵²

All bailments are subject to the rights and obligations mentioned above, and bailment contracts are negotiated on the basis of the same. The final terms of the relationship between the museum and the artwork owner will depend on the terms of the relevant bailment contract.

17. *Have any guidelines been issued in relation to proper storage of antiquities?*

No guidelines have been issued with respect to storage of antiquities or other artworks, other than those envisaged under the relevant contract, as discussed above in **FAQ #16**. Storage guidelines have been issued for cases where the goods, byproducts or wastes involved are of inherently dangerous quality, such as hazardous chemicals, explosives, toxic wastes, etc.⁵³ The Airports Authority of India (“AAI”) has come out with the AAI (Storage and Processing of Cargo, Courier and Express Goods and Postal Mail)

⁵⁰ Section 160 of the Indian Contract Act.

⁵¹ Section 150 of the Indian Contract Act.

⁵² Sections 154, 159, 160, 161, 162 of the Indian Contract Act.

⁵³ See, for instance, Hazardous Wastes (Management and Handling) Rules, 1989; Hazardous Wastes (Management Handling and Transboundary Movement) Rules, 2008; Dangerous Goods (Classification, Packaging and Labelling) Rules, 2013; Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989; Municipal Solid Wastes (Management and Handling) Rules, 2000 – all of which have been framed under the Environment Protection Act, 1986.

Regulations, 2003, under which demurrage, terminal, storage and processing charges are levied on baggages, consignments, etc. being transported by Indian aircrafts, depending on the weight of such goods, the space occupied by such goods and the time periods for their temporary storage before, during and after transit.⁵⁴ Special charges would be applicable to the more valuable goods (e.g. precious metals, bullion, jewels) or perishable items (fruits and vegetables) or other special items (such as cargo in cold storage, live animals, hazardous goods, human remains).⁵⁵ Carting orders would have to be sought for the transport of such cargo, and the cargo would have to be stored at the cargo terminal/ allied structures in return for a license fee.⁵⁶ The AAI would act as custodian of the cargo, provided that there is such a bilateral agreement between the aircraft and the AAI, and provided that customs authorities would have the right to inspect the cargo under the Customs Act, or other applicable laws.⁵⁷ The AAI must apply the standard of care as a reasonable person in similar circumstances for the proper storage and safe custody of the goods.⁵⁸ If such standard of care has been undertaken, then in the absence of a contract to the contrary, the AAI would not be liable for any loss to, deterioration to or destruction of the cargo. The extent of AAI's liability would, however, be determined by the contract between AAI and the aircraft.⁵⁹

18. *Are the various forms of art subject to taxation in India?*

Depending on the nature of artworks, taxes may be imposed on the owner, for instance, the wealth tax under the Wealth Tax Act, 1957⁶⁰ or the capital gains tax on income from art investments⁶¹. The interstate transit or movement of artworks may also be subject to taxation in the form of octroi, entry tax, local body tax, etc.⁶² Any storage of art, exhibition, display, etc. would also be subject to taxes at the local rates, which vary across states, such as business exhibition service taxes, service taxes for storage and warehousing services. Sometimes, a particular artist, artwork or museum/ gallery may also win awards or

⁵⁴ See AAI (Storage and Processing of Cargo, Courier and Express Goods and Postal Mail) Regulations, 2003 generally.

⁵⁵ See the definitions of "special import cargo" and "valuable cargo" under AAI (Storage and Processing of Cargo, Courier and Express Goods and Postal Mail) Regulations, 2003.

⁵⁶ Regulation 3 of AAI (Storage and Processing of Cargo, Courier and Express Goods and Postal Mail) Regulations, 2003.

⁵⁷ Regulation 8(1) of AAI (Storage and Processing of Cargo, Courier and Express Goods and Postal Mail) Regulations, 2003.

⁵⁸ Regulation 8(2) of AAI (Storage and Processing of Cargo, Courier and Express Goods and Postal Mail) Regulations, 2003.

⁵⁹ Regulation 8(2) of AAI (Storage and Processing of Cargo, Courier and Express Goods and Postal Mail) Regulations, 2003.

⁶⁰ Sections 3 and 4 of the Wealth Tax Act, 1957 which imposes wealth tax on net worth of individuals. Net worth includes the worth of items like jewellery, etc., which could even be part of artworks.

⁶¹ News Article: S. Kalidas, "Raiders of the Lost Art: Art Attack by Tax Department", *India Today*, May 14, 2007.

⁶² News Article: "Local Body tax in Maharashtra is a burden", Nitasha Chawla, June 7, 2013, Available at: <http://electronicsb2b.com/industry-buzz/local-body-tax-in-maharashtra-is-a-burden-will-lead-to-corruption-say-traders/#>.

grants in certain art fairs, competitions, bursaries, exhibitions etc. In such cases, such grants or awards may be taxable.⁶³

Some of the museums may also be required to pay entertainment tax, based on the region or locality in which they have been set up, where such museums provide any form of entertainment or amusement to the museum-goers, for example in the form of exhibitions, light-and-sound shows, etc.⁶⁴

Several state governments have also launched schemes for exempting taxes. For instance, under Section 5(1)(xii) of The Wealth Tax Act, 1957, tax exemption is granted to objects which are “works of art”. All artworks, including jewellery pieces, that have been declared as “art treasures” by the ASI or the government of India are granted tax exemptions under this provision.⁶⁵

Further detailed specific advice should be sought from chartered accountant or tax specialist dealing with artists.

19. *Is withholding tax applicable on the earnings of an artist/ artwork owner if a particular artwork is sold through a gallery based abroad?*

‘Withholding tax’ is an amount held by the party making a payment to a payee, which would have to be paid to the taxation authorities. It is usually withheld from payment because the paying party has an agreement with the tax authorities to speed up collection of taxes by withholding known amounts of tax, rather than the taxation authority having to pursue all payees to collect tax. A good example of this is when in a full-time or part-time job, the employer deducts the withholding tax from the employee’s pay cheque and passes it on in the form of income tax collections to the tax authorities. It is essential that the artist/ owner of the artwork clarifies the deduction of any withholdings taxes with the gallery/ museum at the outset of any relationship. If the two parties belong to different countries, they may be exempt from withholding taxes under a special double taxation avoidance treaty as well.⁶⁶

For more specific tax advice, queries should be referred to an accountant or tax specialist who deals with artists.

⁶³ For more information, please refer to the website of the Directorate General of Service Tax, available at <http://servicetax.gov.in>.

⁶⁴ *Maharaja of Jaipur Museum Trust, City Palace, Jaipur v. The State of Rajasthan*, AIR 1971 Raj 151; *Mumbai Grahak Panchayat v. State of Maharashtra*, 1983 (85) BOMLR 218.

⁶⁵ *Commissioner of Wealth Tax v. Sb. Zainab Noorul Sayeed*, [2003] 262 ITR 306 (AP); *NB Jaffar Ali Khan v. Assistant Commissioner of Wealth-Tax*, [2003] 87 ITD 359 (Hyd).

⁶⁶ See Chapter XVII-B and Section 195 of the Indian Income-tax Act, 1961 for more information on withholding of taxes.

20. *What is the procedure for art conservation and restoration in India?*

Art conservation and restoration in India are still in their incipient stages. In reality, there is no specific codified law governing this arena. Some state laws address procedures such as limewashing, sandblasting, storage of chemicals, etc., but these are rare, scattered and varied, almost impossible to trace.⁶⁷ The scientific department of the Archaeological Survey of India has come up with some basic features for chemical procedures of preservation in India by way of recommendation:⁶⁸

- (i) They must assure reversibility, i.e. if technically possible, use materials whose effect can be reversed.
- (ii) They must not prejudice a future intervention whenever one may become necessary.
- (iii) They must not hinder the possibility of later access to all evidence incorporated in the object.
- (iv) They must maintain authenticity, i.e. allow the maximum amount of existing historical material to be retained ensure harmony with original design and workmanship (in colour, tone, texture, form and scale).
- (v) New additions should not be permitted to dominate over the original fabric, but respect its archaeological potential, and meet the test of authenticity in design, material, workmanship or setting and in the case of cultural landscape, their distinctive character and components.

21. *Are there any Indian laws which prevent or mandate disclosure of information related to conservation treatments applied to artworks?*

As of this date, there is no law which mandates disclosure of any conservation treatments undertaken with respect to a particular artwork. Generally, the art conservator keeps all records related to the artwork as private and confidential. If the contract so prescribes, the treatment processes may not be publicized in any academic journals/ papers either. Public servants, such as the officials of ASI, may also maintain confidentiality with respect to any conservation treatments undertaken on any artwork. The terms of disclosure with respect to any conservation or restoration practices would depend on the terms of the contract between the owner and the art dealer, the artwork donor and the museum, or the seller and the buyer. However, as discussed under **FAQ #16**, the seller of an artwork may be required to disclose any such conservation treatments if these pertain to any patent defects in the artwork.

22. *Are the various forms of art covered by insurance or any specific insurance law in India?*

In India, some collectors and private art studios have opted for non-life specialised insurance for artworks, especially for insuring the artworks during transport from one locale to another. Further, if

⁶⁷ For instance, see the Punjab Factories Rules, 1952 and the Goa Factories Rules, 1985.

⁶⁸ Available at: http://asi.nic.in/asi_aboutus_organization_science.asp.

there are any artworks being imported from or exported to any other country outside India, the memorandum of understanding/ bilateral treaty between the parties or the countries often require the artworks to be specifically insured. However, as of now, art insurance is not common in India. In most cases, these are standard form insurance policies, and terms vary according to the value of the artwork involved. The apex authority, Insurance Regulatory and Development Authority of India (“**IRDA**”), has not set out any specific price administration norms for such insurance. This means that the insurance premium is generally quite high, starting off above 1% of the value of the artwork involved.⁶⁹

It should always be kept in mind, that in case insurance for the artwork has been taken, then the artist/ owner of the artwork must always keep the insurance agencies informed about any changes in the status of the artwork. For instance, if the artwork is being restored by the artist, then the insurers must be informed about the costs involved for the time, materials and agency of the restoration process, lest it affects the future enforceability of the insurance contract.

23. If any of the loaned artworks is damaged while on display, can the insurance company be made to pay for the damages?

The question of whether the insurance company would pay for the damage caused to artworks on display depends on a number of factors. If the work has been damaged while on display, it would imply that the museum/ gallery, being the bailee of the loaned artworks, has neglected its duty of care in relation to the artwork. The insurance company would undertake its own survey, and on that basis, pay for the insured artwork’s damage. Since the sale price is a good indicator of insurance value, the artist should receive this amount in full, if the work cannot be repaired. On the other hand, depending on the terms of the insurance policy taken, the insurance company may refuse to pay for the damage caused, citing carelessness by the handlers or transporters of the artwork. All-in-all, the terms of the insurance policy would determine the success or failure of an insurance claim by the artist/ owner of an artwork, or the museum/ gallery/ dealer.

⁶⁹ News Article: Masoom Gupte, “Want to insure art? Be ready for tough norms”, *Rediff Business*, September 18, 2011.

24. Can a museum receive monetary donations or grants?

Donations or grants are often made to museums in cash, for purposes of repair and restoration of the museum and its assets. As long as these grants have been contributed voluntarily and are used by the museum for the charitable purposes stipulated by the contributor only – and not for personal uses of any member of the governing body – these grants would be exempt from income tax under Sections 2(15) (*definition of “charitable purpose”*), 11 (*Income from property held for charitable or religious purposes*), 12 (*Income of trusts or institutions from contributions*), 12A (*Conditions as to registration of trusts, etc.*) and 13 (*Section 11 not to apply in certain cases*) of Income-tax Act, 1961. It is also required that the trust body governing the museum should be specifically empowered in the trust deed to incur expenses in relation to the preservation and restoration of the museum and its assets.⁷⁰ Once the donation has been made, it becomes the property of the concerned museum.

In case such contributions are being made by foreign institutions or non-resident individuals, then foreign exchange control requirements under the Foreign Exchange Management Act, 1999, the Foreign Contribution (Regulation) Act, 2010 and the rules framed thereunder may also apply. This has been discussed in more detail in the summary provided in Section 2 of this Manual.

25. Can artworks be digitalized? Are there any specific guidelines that should be considered for such digitalization?

Computer technology together with communications technology has now enabled authors to create digital libraries and hypertext publishing systems. The development of the computer and personal electronic devices such as the Kindle, google books, online archives, ejournals, blogs, iPad, iPod, etc. as alternative means of delivering information have brought about a revolution in the artist-audience relationship.⁷¹

Many contracts nowadays contain phrases such as, "*the right to publish works based on the work in and through all existing and future media and forms of distribution (emphasis supplied)*"⁷², which may give the gallery/ museum, etc. a right to digitalise the artworks. This means that artists will no doubt be afraid that their agreements with museums/ galleries, etc. will seek to snatch away their rights of online archiving of their manuscripts and their derivative works or excerpts for fair use purposes and scholarly reasons. If an unsuspecting artist has granted away all his/ her ‘existing and future technology’ rights, with no caveats to the gallery/ museum, s/he will miss the chance to make a more advantageous bargain based on those rights at a later date.⁷³ Several times, galleries etc. have also assumed that if they have

⁷⁰ *Mehrangarh Museum Trust v. Assistant Commissioner of Income Tax*, (2013) 156 TTJ (JD) 425.

⁷¹ Pamela Samuelson and Robert J. Glushko, “Intellectual Property Rights For Digital Library And Hypertext Publishing Systems”, *Harvard Journal of Law & Technology*, Vol. 6 (Spring Issue, 1993) pp. 238-261.

⁷² Martin P. Levin, “The Contemporary Guide to Negotiating the Author-Publisher Contract”, 54 N.Y. L. Sch. L. Rev. 447 (2009-2010).

⁷³ Authors’ Guild, Inc., MODEL TRADE BOOK CONTRACT AND GUIDE, 1st ed. 2000, at p. 37.

been granted print reproduction rights by the author, then they have also automatically been given digital reproduction rights.⁷⁴

While some courts have held that copyright law does not permit museums/ galleries to license individually copyrighted works for inclusion in electronic databases, other courts have held that so long as no changes are made to the content, the transfer of a work from one medium to another does not alter the character of that work for copyright purposes, nor is there any copyright infringement. This is the test of 'media neutrality' which means that museums/ galleries have the right to reproduce their materials in digital format without paying any additional royalties to the artists.⁷⁵ Most standard private exhibition contracts are therefore drafted in such a way as to secure all electronic rights for the future and to effectively strip the authors of their pecuniary rights entirely. This development is causing great anxiety among the artists and their representatives.⁷⁶

In order to avoid these pitfalls, both parties should negotiate on addenda which state that the gallery may charge an access fee for works on a database, for allowing the artist to retain control over any effects added to the work electronically or to any abridged version, in case of a reversion of any unexploited rights clause, and a good-faith renegotiation of terms if the gallery/ museum wishes to issue a work in electronic format.⁷⁷

3.4. Enforcement of Laws against Art-Related Offences

These **FAQs** relate to the prosecution of offences related to artworks, and the enforcement of relevant Indian laws against the offenders. Offences related to artworks would include their theft, smuggling, forgery, illegal import-export, unauthorized sale-purchase, non-registration (if applicable), gross negligence, etc. In general, penalties that may be imposed on the offenders range from confiscation of the impugned artwork to imprisonment and fine.

26. What penal consequences are attracted if a gallery / dealer fails to return unsold or loaned artworks?

The museum/ gallery, being the bailee of the artwork, must return the unsold or loaned artworks at the end of the agreed period. The terms of such bailment contract and the rights and obligations of the bailee

⁷⁴ Martin P. Levin, "The Contemporary Guide to Negotiating the Author-Publisher Contract", 54 N.Y. L. Sch. L. Rev. 447 (2009-2010).

⁷⁵ *Greenberg v. Nat'l Geographic Society*, 533 F.3d 1244 (11th Cir. 2008); *Faulkner v. Nat'l Geographic Enters. Inc.*, 409 F.3d 26 (2d Cir. 2005); *Auscape Int'l v. Nat'l Geographic Society*, No. 02-CV-6441-LAK, 2002 U.S. Dist. LEXIS 26318 (S.D.N.Y. Oct. 8, 2002); *Ward v. Nat'l Geographic Society*, 208 F. Supp. 2d 429 (S.D.N.Y. 2002). See also Jason Koransky, "Magazine Publishers Exhale: Exploiting Collective Works After Greenberg", 8 J. MARSHALL REV. INTELL. PROP. L. 161 (2009).

⁷⁶ Bernt Hugenholtz & Annemique de Kroon, "The Electronic Rights War: Who Owns The Rights To New Digital Uses Of Existing Works Of Authorship?", 6 Int'l Intell. Prop. L. & Pol'y 88-1 (2001).

⁷⁷ Authors' Guild, Inc., MODEL TRADE BOOK CONTRACT AND GUIDE, 1st ed. 2000, at p. 37.

have been discussed above in **FAQ #16**. It is always advisable to have the terms mutually agreed and set into a written form.

If the parties – the artist/ owner of the artwork, and the museum/ gallery/ art dealer – belong to different countries, then the contract must also determine which country's laws apply, and which forum should resolve disputes. Without having a written contract, it may be difficult for either party to establish when and in what circumstances the owner/ artist is entitled to request the return of unsold works. Another crucial concern would be the bearing of costs, such as the costs of exhibiting the work at art fairs; the museum/ gallery may seek to retain artworks against costs that they have incurred on behalf of the artist, but the artist may expect these costs to be borne solely by the museum/ gallery/ dealer. Even if an agreement was not entered into at the time of the art loan or artwork bailment, such an agreement can be negotiated and signed subsequently.

27. *What are the penal provisions in relation to vandalism of artworks in India?*

As per the Prevention of Damage to Public Properties Act, 1984, whoever causes any damage to public property shall be punished with imprisonment for upto five years and with fine.⁷⁸ Antiquities, ancient monuments, archaeological remains – all these count as public property, and damage to them would be punishable accordingly.⁷⁹ Some unscrupulous agents also use fire or explosive substances to cause damage intentionally, which is further punishable with rigorous imprisonment upto ten years with fine.⁸⁰ Provisions of the Indian Penal Code, 1860 would also apply.⁸¹

28. *Which laws protect and what remedies are available to the art-collector or the museum against theft of artworks in India?*

Often, smuggling and stealing of idols and other articles of antiquarian or historical significance are carried out by organized gangs, and a special police team is required to crack down on them.⁸² In several cases, individuals have been known to donate personal assets to museums for temporary periods, but

⁷⁸ Section 3 of the Prevention of Damage to Public Properties Act, 1984.

⁷⁹ Section 2(b) of the Prevention of Damage to Public Properties Act, 1984 defines "**public property**" as (b) "public property" means any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of— (i) the Central Government; or (ii) any State Government; or (iii) any local authority; or (iv) any corporation established by, or under, a Central, Provincial or State Act; or (v) any government company; or (vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf.

⁸⁰ Section 4 of the Prevention of Damage to Public Properties Act, 1984.

⁸¹ For instance, see Section 425 of the Indian Penal Code, 1860 on 'mischief' caused to public property. '**Mischief**' is committed by a person when such person, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously.

⁸² *Neeraj Jain v. State of Madhya Pradesh*, 1990 J.L.J. 684; *Vaman Narayan Ghiya v. State of Rajasthan, and Pradeep Malhotra v. The State of Rajasthan*, MANU/RH/0084/2008; *State of Karnataka v. P. Gopalakrishna Panikar*, 1991 (2) KarLJ 76.

these have ended up being stolen. Penal provisions apply under state laws, because these donated articles will (presumably) not be of national importance.⁸³

There is no separate specific law governing cases of theft of artworks in India. At present, the Indian Penal Code, 1860 (“**IPC**”) punishes wrongdoers who illegally take the artwork out of the rightful possession of the owner. Whoever commits such theft is punishable with imprisonment upto three years, or with fine, or with both. Further, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (“**COFEPOSA**”) provides for preventive detention of persons suspected of smuggling the artworks illegally out of India. The Customs Act, 1962 (“**Customs Act**”) also penalizes any illegal import of any artworks in contravention of any Indian law in force at the time. In Section 2 of this Manual, we have also discussed the provisions of The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (“**SAFEMA**”), which although less stringent than the COFEPOSA, prescribes penalties for illegal acquisition of property, include forfeiture of the stolen property by the Government of India.

Besides vandalism, complaints may be lodged against the theft or smuggling of artworks under the provisions of IPC. These penal provisions include Sections 120B (*criminal conspiracy*), 457 (*lurking, house-trespass or house-breaking by night*), 380 (*theft in dwelling house*), 411 (*dishonestly receiving stolen property*) and 413 (*habitually dealing in stolen property*) of the I.P.C.

Other specialized local laws may have also been enacted to take cognizance of offences related to illegal trading, looting, excavation, theft and smuggling of artworks. For example, in Madhya Pradesh, the M.P. Dakaiiti Aur Byapharan Prabhavit Kshetra Adhiniyam, 1981 has been enacted under which special courts have been established to deal with offences that may overlap with the offences mentioned in the IPC.⁸⁴ Besides the buyer who buys an artwork that has crossed the 100-year mark but which has not been registered, the exporter may also be accused for the documentation and processing of shipping bills of the impugned artworks.⁸⁵

It should be kept in mind that provisions of the Customs Act are now applicable only for confiscation of suspicious artworks, and not for prosecution of the actual offenders. Actual prosecution is permitted through the mechanism of the Antiquities Act, the IPC, and the SAFEMA.⁸⁶

A brief overview of the penalties applicable has been set out below in this table:

| S. NO. | STATUTE | OFFENCE | PENALTY |
|--------|-------------------------------|-------------------------------|--|
| 1. | Antiquities and Art Treasures | Illegal export of antiquities | Imprisonment for 6 months to 3 years; and/or fine. |

⁸³ See, e.g., *Madhav Rao Scindia v. State of M.P.*, 1994 JLJ 36.

⁸⁴ See, e.g., *Madhav Rao Scindia v. State of M.P.*, 1994 JLJ 36.

⁸⁵ *Directorate of Revenue Intelligence v. Girish Dhawan*, 129 (2006) DLT 588.

⁸⁶ *V.J.A. Flynn and Mr. Shyam Sunder Rastogi v. Union of India*, 2003 (66) DRJ 381; *Directorate of Revenue Intelligence v. Girish Dhawan*, 129 (2006) DLT 588.

| | | | |
|----|---|--|--|
| | Act, 1972 | Unlicensed sale or transfer of antiquities; or non-registration of antiquities. | Confiscation of impugned artwork; Imprisonment for 6 months; and/or fine. |
| | | Preventing any licensing or authorized officer from inspecting any record, photograph or register required to be maintained in relation to the antiquity, or any searches in relation to such antiquities. | Imprisonment for 6 months; and/or fine. |
| 2. | Ancient Monuments and Archaeological Sites and Remains Act, 1958 | Destruction, removal, injury to, alteration, defacement, imperilment or misuse of a protected monument; removal of any part of a protected monument; unauthorized construction of buildings in any protected area or regulated area. | Imprisonment upto 2 years; and/or fine upto INR 1 Lakh. |
| | | Movement of antiquities against any restraint order by the Central Government. | Imprisonment upto 2 years; and/or fine upto INR 1 Lakh. |
| 3. | Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 | Smuggling, or abetting of smuggling of goods, including antiquities; transporting, concealing or keeping smuggled goods, including antiquities; harbouring smugglers or abettors of smuggling; otherwise dealing in smuggled goods, including antiquities. | Detention order against offender upto 2 years from the date of detention. |
| 4. | Customs Act, 1962 | Attempt to export goods, including antiquities, without due authorization and in contravention of the Customs Act; the loading or attempt to load such goods on any conveyance (including waterborne conveyances); submission of inaccurate information in relation to such goods. | Confiscation of impugned artwork. Fine in lieu of confiscation may be paid, which may extend upto the market price of the goods confiscated, alongwith any duty and charges payable in respect of such goods. |
| | | Attempt to illegally export, or abetment of illegal export of, antiquities in contravention of the Customs Act. | Fine upto three times the value of the goods as declared by the exporter, or the value as determined under Customs Act, whichever is greater. |

| | | | |
|---------|---------------------------------------|--|--|
| | | Cases of contravention of the Customs Act for which no express penalty has been specified. | Fine upto INR 1 Lakh. |
| 5. | Indian Penal Code, 1860 | Theft | Imprisonment upto 3 years and/or fine |
| | | Fraud | Imprisonment upto 2 years and/or fine |
| | | Criminal Conspiracy | Rigorous imprisonment upto 2 years (for offences punishable with death) or imprisonment upto 6 months (for other offences) and/or fine |
| | | Robbery | Rigorous imprisonment upto 10 years and/or fine |
| | | Dacoity | Life imprisonment, or rigorous imprisonment upto 10 years and/or fine |
| | | Criminal Trespass | Imprisonment upto 3 months and/or fine upto INR 500 |
| | | Extortion | Imprisonment upto 3 years and/or fine |
| | | Criminal Misappropriation | Imprisonment upto 2 years and/or fine |
| | | Criminal Breach of Trust | Imprisonment upto 3 years and/or fine |
| | | Cheating | Imprisonment upto 7 years and/or fine |
| | | Mischief | Imprisonment upto 3 months and/or fine |
| Forgery | Imprisonment upto 2 years and/or fine | | |

29. *Is good faith a likely defence for the buyer or the exporter guilty of contravening any of the Indian art laws?*

The buyer or exporter of an artwork, which has crossed the 100 year mark but has not been registered as an antiquity, may choose to present good faith as a likely defence. The reasoning is that the buyer/exporter was unaware of the true facts on hand – owing to misleading information or misrepresentation or omission of information by the seller – and therefore, should not be blamed for his actions.⁸⁷

However, even a good faith defence must be proved before the courts/ authorities. The view taken is generally that the buyer (if not the exporter) should have taken some basic steps to ensure or verify that the impugned artwork had not crossed the 100 year mark or had been registered if it had. The buyer should make a basic inquiry about the origin, manufacture and the chain of ownership of the artwork before him, and is possible, should have asked an independent valuer to examine it. Thus, the caveat emptor principle, i.e. buyer beware, is always an obstacle to the buyer's defence of *good faith* actions.⁸⁸

30. *Who is liable for losses or damage caused to art loans to museum collections?*

Museum collections may be a reserve of artworks of national importance, artworks purchase or acquired by the museum, and artworks in custody of or bailment with the museum. These modes of legal acquisition of artworks have been described previously under **FAQ #15**. In case the artworks have been bailed to the museum by the artist or the owner of the artwork, then as described above in **FAQ #16**, the museum owes the duty of standard care to the artist/ owner. As long as the museum has taken due care of the artwork in its hold, has used it only for the authorized purposes under the bailment contract, has not adversely claimed it, and has returned it on time and in full – then the museum cannot be held liable for any losses or damage caused to the loaned artworks. Further, if the damage to the artwork is a byproduct of the defects inherent in the artwork, and these defects were known to the artist/ owner, then the museum cannot be held responsible for the damage arising from such defects. This scenario has been discussed below in more detail in **FAQ #31** below. Finally, in case the artwork has been damaged or lost due to poor storage, bad care or negligence of the museum, then the museum can be held liable for the losses or damage.⁸⁹

31. *Who is liable to bear the costs of the inherent or latent deterioration of the artwork?*

Defects in any artwork may be of two types – patent defects, which are visible, or capable of being detected with reasonable care or due diligence; and latent defects, which are invisible, or incapable of

⁸⁷ See Sections 41 and 43 of the Transfer of Property Act, 1882, and Sections 27 and 29 of the Sale of Goods Act, 1930. See also *Hardev Singh v. Gurmail Singh*, AIR 2007 SC 1058.

⁸⁸ *Antiquity v. Customs Commissioner (Hyderabad)*, 2000 (93) ECR 469; *S.R. Kiran v. Central Bureau of Investigation, Bangalore Branch*, 1999 CriLJ 3079.

⁸⁹ For further information, please see the principles of bailment enunciated in **FAQ #16**. A museum/ gallery (especially a private one) would be a bailee of artworks loaned to it for a fixed duration, and would be responsible for its standard care.

being detected with reasonable care or due diligence. With respect to latent defects, the liability of the bailor or the seller of the artwork is limited, because knowledge cannot usually be attributed to the bailor or seller in these cases. On the other hand, with respect to patent defects, it is generally presumed that the seller or the bailor knew of these defects, and is also expected to disclose them to the bailee or the buyer. As it is, the bailee has a duty to disclose defects in the goods, especially patent ones, which has been discussed earlier in **FAQ #16**. It should also be kept in mind, that besides the bailor or the seller, the bailee/ buyer also needs to be aware of the details of the transaction and must carry out some reasonable examination at his own end – a principle commonly known as *caveat emptor*, or buyer beware⁹⁰. Based on the above principles, the responsibility for inherent deterioration of the artwork due to latent or patent defects may or may not be allocated to the seller/ bailor.⁹¹

32. *In case of public museums, can the State be held responsible for any damage caused to museum collections?*

In case of public museums established under statute, Courts in India have generally held that they do not constitute an instrumentality or agency of the State, although this is a question that depends largely on the facts. Scientific literacy, promotion of scientific approach and dissemination of scientific knowledge are not primary functions of the State; the State enters these fields only because it is concerned with public welfare. This does not mean that every unit, body, society or agency which is substantially or wholly aided by government's funds, advice and personnel, constitutes "State" or other "authority" within the meaning of Article 12 of the Constitution of India or an "authority" within the meaning of Article 226 of the Constitution of India. The museum's business is carried on by its governing body, independently of governmental control. Thus, the activities of the museum are not the "public obligation of the Government", and the State cannot be held responsible for losses or damages caused to the public museum and its collections.⁹²

33. *When can an artwork be confiscated? Can the customs officials confiscate an artwork in the process of being exported or shipped to the rightful buyer? What happens if customs officials confiscate a particular artwork?*

An artwork can be confiscated by police officials, officials from the Central Bureau of Investigation ("CBI"), income tax authorities, or any other enforcement agency established under any regulation in

⁹⁰ See Section 16 of The Sale of Goods Act, 1930, which categorizes defects in goods (including artworks) as patent defects and latent defects.

⁹¹ See *McKenzie & Co. (1919) Ltd. v. Nagendranath*, ILR (1946) 1 Cal 225; *Sorabji Joshi & Co. v. V.M. Ismail*, AIR 1960 Mad. 520; *Hasenbhoj Jetha v. New India Corporation Ltd.*, AIR 1955 Mad 435.

See also Section 17(2)(c) of The Sale of Goods Act, 1930 which states that in any contract for sale (including that of an artwork), there is an implied condition that "*that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.*" This implies a covenant for the seller to disclose any patent defects in the artwork, including defects in its title and/or legal provenance.

⁹² *Anil Dutta Mishra v. Gandhi Smarak Sangrahalaya Samiti*, MANU/DE/3044/2013; *T. Rajan v. State*, 1994 (1) KLJ 402.

India, if they have reasonable suspicion that the impugned artwork is actually an antiquity.⁹³ Private articles may be confiscated from private homes if the officials have reason to suspect that these articles have not been registered under the Antiquities Act despite being 100 years old or more.⁹⁴ Customs officials may also confiscate antiquities being shipped or exported in contravention of the Customs Act⁹⁵, or pass detention orders under Section 3 of the COFEPOSA, or pass orders for forfeiture of goods being smuggled under the SAFEMA⁹⁶.

It should be noted that such seizure must be based on a written complaint by an officer authorized in this behalf by the Central Government (for instance, the Superintending Archaeologist appointed under the Customs Act), and not every aggrieved person.⁹⁷ Many a time, the local Police Act contains an express provision enabling the police to examine and/or confiscate artifacts which the police have reason to believe is stolen property or fraudulently obtained.⁹⁸ Mere suspicion cannot be ground for confiscation; it has to be a *bona fide* and *reasonable* suspicion.⁹⁹

At the time of sale of an artwork (such as at an auction-house, or a local market), the buyer may not be aware that the artwork being bought is an antiquity, and subsequently finds, to his dismay, that customs officials (or other enforcement agency) have confiscated it on suspicion of the artwork being over 100 years old. Typically, the officials thereafter refer the matter to the Director General, ASI. The Director General appoints certain other delegates or any external experts as his nominees to, or may on his own, examine the age of the impugned artwork. A show cause notice is issued to the buyer to file any objections or expert opinions favouring the buyer's claim to the artwork. The opinion of the Director General of ASI, or his nominees, or any committee formed for this purpose, is considered final. During the examination and valuation proceedings of ASI/ its nominee/ committee, the interested parties have a right to be present and/or participate. Even within the committee formed for the valuation of the articles, there may be a difference of opinion, in which case, the majority opinion will be referred to. If there is undue delay in the proceedings, the buyer (or exporter) may seek to file a judicial application. Till the time such final decision is rendered by ASI, the ASI is responsible for the protection and safe custody of the impugned artworks. However, if the order is in favour of the buyer/ exporter, then from the time the final order is passed, the safekeeping of these artworks becomes the obligation of the buyer/ exporter, and

⁹³ *Directorate of Revenue Intelligence v. Girish Dhawan*, 129 (2006) DLT 588; *S.R. Kiran v. Central Bureau of Investigation, Bangalore Branch*, 1999 CriLJ 3079; *State of Karnataka v. P. Gopalakrishna Panikar*, 1991 (2) KarLJ 76.

⁹⁴ *S.R. Kiran v. Central Bureau of Investigation, Bangalore Branch*, 1999 CriLJ 3079; *Neeraj Jain v. State of Madhya Pradesh*, 1990 JLJ 684.

⁹⁵ Section 111 or Section 113 of the Customs Act.

⁹⁶ Sections 6 and 7 of the SAFEMA.

⁹⁷ *V.J.A. Flynn and Mr. Shyam Sunder Rastogi v. Union of India*, 2003 (66) DRJ 381; *State of Karnataka v. P. Gopalakrishna Panikar*, 1991 (2) KarLJ 76.

⁹⁸ *State of Karnataka v. P. Gopalakrishna Panikar*, 1991 (2) KarLJ 76.

⁹⁹ *V.J.A. Flynn and Mr. Shyam Sunder Rastogi v. Union of India*, 2003 (66) DRJ 381.

is no longer an obligation of the ASI or the enforcement authorities¹⁰⁰. If the order is not in favour of the buyer/ exporter, the property thus confiscated gets vested with the Central Government.¹⁰¹

34. *What happens to an impugned artwork when it has been recovered back from its theft or smuggling?*

When enforcement authorities confiscate an artwork into their custody for suspected contravention of any of the Indian art laws, the impugned artwork is usually deposited in the police *malkhanas*. However, application to Court may be made to permit the state museum to take over temporary custody of such artworks, till such time as a final order is passed. The museum would have to sign an undertaking that it would be fully responsible for their safe custody, and would display them with adequate identification. Police personnel may also be requested to assist in their display and protection. Once the final order has been passed, the recovered artworks may be moved to the possession of the actual owners, or if no owner is identified, then they remain in the possession of the museum.¹⁰²

35. *What remedies are available to an artist/ artwork owner if the artwork is damaged after submitting it to a third party, such as a dealer or an art restoration studio?*

It is always advisable that a museum, institution or professional artist who submits an artwork to a third party, such as an art dealer, restorer, or gallery owner, enter into a written contract with such third party, or get the relevant artwork insured. Considering the fact that art insurance in India is still in its incipient stages, as discussed above in **FAQ #22**, a written agreement is always a good alternative. Such an agreement must set out the terms of liability for any defacement to or the destruction of the artwork consigned.

For instance, if the artwork has been consigned to an independent restorer, then some provision must be included in the contract to ensure that the artwork would never be so badly restored that it becomes the subject of derogatory treatment, becomes unrecognizable, or such that the artist loses his moral rights over it. In such a scenario, an indemnity clause must be available in the contract under which the restorer must be made liable to the artist. There may also be a provision in the contract that if the artist/ owner is not satisfied with the restoration process, then the artist/ owner reserves the right to disclaim authorship of the artwork or get the costs reimbursed, as the case may be.

36. *Who decides disputes in case of foreign artworks, foreign artists/ owners of artworks, or foreign galleries/ museums, i.e. when one or more of the interested parties is a non-resident?*

¹⁰⁰ *Works of Art (Pvt.) Ltd. v. Union of India*, 1992 (42) ECR 75 (Bombay).

¹⁰¹ *Antiquity v. Customs Commissioner (Hyderabad)*, 2000 (93) ECR 469; *V.J.A. Flynn and Mr. Shyam Sunder Rastogi v. Union of India*, 2003 (66) DRJ 381; *Bowrings Fine Art Auctioneers Pvt. Ltd. v. Central Bureau of Investigation*, 148 (2008) DLT 135; *Rameshwar Prasad Mittal v. State (Central Bureau of Investigation)*, 119 (2005) DLT 576; *A.K. Gupta v. Customs Commissioner (New Delhi)*, 1999 (83) ECR 475 (Tri.-Delhi).

¹⁰² *Suo motu - In Re: Preservation of Antiquities involved in Criminal Trials*, AIR 1999 Ori 53.

Given that there is always a risk of not being paid (properly or at all) and/or the physical work not being sold or being lost/stolen/damaged, or the artwork not being copyrighted, etc., the risk of disputes arising is very real. In the case of two parties located in different countries, the MoU between the museums or the contract between the two parties must always contain a term in relation to the governing law/ forum for the contract. In most cases, arbitration is the preferred route of dispute resolution, as it is more time- and cost- efficient.

Alternatively, parties may choose the law/courts of the country where the gallery, museum etc. is based – because the assets of the museum/ gallery, including the consigned artworks, would be located there. For instance, when the artist or the artwork is from England, but the gallery or museum is located in India, parties may prefer Indian law as the governing law. Such a choice, however, has the disadvantage of requiring the artist based abroad to make some payments or claims in India in a foreign currency. On the other hand, if English law/courts were chosen, a claim would first have to be made in England and, if it succeeds, then a further claim/application would have to be made to that English court to transfer the judgment/ award to the Indian courts for enforcement against the Indian gallery/ museum¹⁰³.

37. *Can claims be made for the repatriation or restitution of artworks that have changes hands due to crises such as armed conflicts, war, looting, theft, etc.?*

Usually, demands for artwork/ cultural property repatriation arise from countries which were previously under colonial rule or were affected by events of armed conflict (mostly, developing countries, such as Greece, Egypt, countries of Latin America, certain parts of Africa, and India) – during which times, these artworks became subject to trafficking, dispossession or annexation of a territory, shipwreck, looting, theft or plunder. Many of these States are parties to various treaties relating to protection of cultural property, the most significant ones having been summarized in Section 2 of this Manual.

The Convention for the Protection of Cultural Property in the Event of Armed Conflict, 1954 (“**PCPEAC Convention**”) has been discussed in some detail in Section 2 of this Manual. It is important to note that while the PCPEAC Convention provides for the protection, safeguarding, transport under special protection, and immunity from capture or seizure of cultural property *during times of armed conflict*, it does not address issues of return of cultural property that has been looted during armed conflict.

The most important treaty relating to artwork repatriation would be the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 (“**UNESCO Convention**”) and/or the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 1995 (“**UNIDROIT Convention**”). Most countries base their repatriation claims on the UNESCO Convention as it has always supported a nationalistic view. However, this route has involved some obstacles, as defendant nations may argue that the UNESCO Convention is not directly applicable to them and no implementing/ ratifying legislation had been enacted by them. Defendant nations have also claimed that they had a legal and legitimate link to the artworks/ cultural property, and that the collections, once acquired by the defendant nation and maintained by its institutions

¹⁰³ Sections 13 and 14 of the (Indian) Code of Civil Procedure, 1908.

over a prolonged period, have entered the public domain of such defendant nation and have become “inalienable”. Further, both the UNESCO Convention and the UNIDROIT Convention came into force much after the World Wars/ colonization era, and their provisions may not be retrospectively applicable.

Lacking such formal legal recourse, alternative means of settling conflicts of interest in the ownership of cultural property are becoming increasingly popular in many forms: unilateral decisions or bilateral agreements that may involve various forms of intermediary (namely, mediation, conciliation, or arbitration). Further, the idea that there is a moral duty to make a restitution of, or pay compensation for, highly valuable or significant cultural heritage items is strongly gaining ground, especially when the dispossession dates back to a period of colonial domination. Dispute resolution is certainly moving toward the recognition, and therefore reconciliation, of the legitimate interests of both sides.

Several organizations have been set up to work on seeking interstate solutions in specific cases of restitution or return, including the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Unlawful Appropriation, the International Council of Museums (ICOM), the International Law Association (ILA) and the Institut de Droit International. The proliferation of forums in which issues of restitution are discussed has undoubtedly encouraged the development of practices and methods in this field.

In the past, the restitution of cultural property has always been primarily an affair of state, and of disputes between states. However, lately, non-State entities such as museums and national professional organizations have also become active in claiming restitution.

Modern forms of bilateral agreements have included the concept of “dual nationality” (i.e. the artwork is owned collectively/ jointly by both claimant and defendant), the tendency to “uncouple” ownership of the artwork (of the claimant) from its possession (by the defendant), conversion of the status of the artwork to a “long-term artwork loan” or “donation”, and the production of a replica of one of the cultural objects in question, all as part of the settlement.

All this indicates a strong background for the growth of an international jurisprudence concerning repatriation of artworks.¹⁰⁴

¹⁰⁴ Marie Cornu and Marc-André Renold, “New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution”, *International Journal of Cultural Property* (2010) 17:1–31.

4. SAMPLE ARTWORK LOAN OR EXHIBITION AGREEMENT**ANNEXURE A****¹⁰⁵ AGREEMENT BETWEEN INDIA AND [INSERT NAME OF COUNTRY 2]****FOR THE EXHIBITION OF [INSERT COLLECTION NAME]
IN [MENTION PLACE]**

This agreement (“**Agreement**”) is made on this ____ day of _____
BY AND BETWEEN:¹⁰⁶

[The **President** of India, acting through and represented by *[insert name of representative]*, *[insert designation]*, *[insert name of institution in India]*, Ministry of Culture, Government of India, New Delhi, (hereinafter referred to as the “**GOVERNMENT**”)]¹⁰⁷ which expression shall, unless repugnant to the context or meaning thereof, be deemed to include its successors-in-office and permitted assigns) of the ONE PART;

AND

[insert name of museum/ gallery/ institution in Country 2], acting through and represented by *[insert name of representative]*, *[insert designation]*, *[insert specific address of such institution]* (hereinafter referred to as the “**HOST ORGANIZATION**”, which expression shall unless repugnant to the context or meaning thereof, be deemed to include its respective administrators, successors and permitted assignees and include its successors-in-office and assigns) of the OTHER PART.

WHEREAS:

- A. The HOST ORGANIZATION has been established in order to (i) to preserve the historic *[insert name of artwork/ artwork collection]*, to provide access to it and communicate it to the public; and (ii) *[insert other objective/ goal/ purpose of the HOST ORGANIZATION]* [under the *[insert name and year of the statute or other regulation/ order establishing the HOST ORGANIZATION]*

¹⁰⁵ **USER GUIDE:** AT THE TIME OF EXECUTION, PLEASE (A) REVIEW ALL SQUARE BRACKETED PORTIONS; (B) FILL IN ALL BLANKS BY TYPING OR BY WRITING SUBJECT TO SIGNING INITIALS IN HAND ADJACENT TO SUCH INFORMATION; (C) INCORPORATE SCHEDULES AFTER THE MAIN BODY OF THIS ARTWORK LOAN AGREEMENT; (D) DELETE ALL FOOTNOTES AND COMMENTS (INCLUDING THESE COMMENTS) PRIOR TO PRINTING OF FINAL DOCUMENTS.

¹⁰⁶ **AZB Note:** Please note that this particular agreement is intended for the loan of artworks from an Indian governmental organization to a foreign institution located outside India.

¹⁰⁷ **AZB Note:** This Recital is built on the assumption that the museum is a public museum established under a governmental authority. For private museums, Recital may be re-worded as:

“*[insert name of museum/ gallery/ institution in India]*, acting through and represented by *[insert name of representative]*, *[insert designation]*, *[insert specific address of such institution]* (hereinafter referred to as the “**INDIAN MUSEUM**”. Throughout the document, thereafter “GOVERNMENT” should be replaced by “INDIAN MUSEUM”.

or the specific artwork collection]]¹⁰⁸.

- B. The GOVERNMENT is seized, entitled and possessed of certain objects of art preserved at [insert name of museum/ gallery/ institution], [insert location] in India (hereinafter, collectively referred to as the “Art Objects” or the “Exhibits”, and individually referred to as the “Art Object” or the “Exhibit”), the agreed value/ insurance value of each such Art Object/ Exhibit being specified in **Schedule A** hereto.
- C. The HOST ORGANIZATION, under the aegis of these presents, has approached and proposed the GOVERNMENT to temporarily lend the said Exhibits [solely for the purpose of exhibiting the same in the Exhibition titled “[INSERT NAME OF EXHIBITION OF THE ART OBJECTS]” to be organized by the HOST ORGANIZATION from [insert commencement date] to [insert final date] at [insert location in Country 2] (hereinafter referred to as the “Exhibition”).]¹⁰⁹
- D. [The GOVERNMENT, having favourably considered the request of the HOST ORGANIZATION, has acceded to the proposal of the HOST ORGANIZATION for borrowing and exhibiting the said Exhibits at [insert location in Country 2] [entirely at the responsibility of the HOST ORGANIZATION]¹¹⁰, and has agreed to lend the Exhibits to the HOST ORGANIZATION, through the [National Gallery of Modern Art, Ministry of Culture, Government of India, New Delhi]¹¹¹, as the nodal or supervisory agency of the GOVERNMENT (hereinafter referred to as the “SPONSORING ORGANISATION”, which expression shall, unless repugnant to the context or meaning thereof, include its management, successors-in-office and assigns), acting through and represented by [insert name of representative], [insert designation], on the considerations, stipulations, conditions and reservations hereinafter contained.]¹¹²

NOW IT IS HEREBY AGREED TO AND DECLARED BY AND BETWEEN BOTH THE PARTIES HERETO AS FOLLOWS:

1 Title

The Exhibition of the Art Objects shall be called “[INSERT TITLE]”.

¹⁰⁸ **AZB Note:** Such a statute/ regulation/ order may not be available/ applicable in case of each HOST ORGANIZATION from which the artwork collection is being loaned to India.

¹⁰⁹ **AZB Note:** This Recital may need to be amended from time to time in accordance with the purpose of the loan of the said Art Objects.

¹¹⁰ **AZB Note:** It is certainly in the interests of the Lending Institution that the Exhibition is organized and completed at the responsibility of the HOST ORGANIZATION alone; however, this may be subject to negotiation between the parties.

¹¹¹ **AZB Note:** Please replace with the name of the correct Nodal Agency, as applicable.

¹¹² **AZB Note:** This Recital about the Nodal Agency may be deleted if such Nodal Agency is not sponsoring or supervising the Exhibition. Thereafter, all references to the “SPONSORING ORGANIZATION” in this Agreement would have to be replaced by the “GOVERNMENT” or the “representative of the GOVERNMENT”, as the case may be.

2 Organizing and Co-organizing bodies

The exhibition will be held from [*insert commencement date*] to [*insert final date*] at [*insert location in Country 2*] under the auspices of HOST ORGANIZATION.

3 Loan of the Exhibits

The Exhibits shall be lent to the HOST ORGANIZATION as per the list of Exhibits annexed herewith in **Schedule A**, which shall be an integral part of this Agreement, signed by both the parties for and during the aforesaid period necessary for holding the Exhibition from [*insert commencement date*] to [*insert final date*] at [*insert location in Country 2*] (i.e. the period of the loan of the Exhibits).

4 Un-Packing and Repacking of Exhibits

Un-Packing of the Exhibits at the HOST ORGANIZATION at [*insert location in Country 2*] shall be done at least 15 days before the beginning of the Exhibition. Repacking of the Exhibits at the HOST ORGANIZATION at [*insert location in Country 2*] shall be done at the end of the Exhibition but not exceeding 15 days from the end of the Exhibition. Both the un-packing and repacking of the Exhibits will be done by the HOST ORGANIZATION in the presence of and under the supervision of the representative of the SPONSORING ORGANISATION as per the standard measures, to the entire satisfaction of such representative.

5 Inspection of the Exhibits

After unpacking and before re-packing of the Exhibits at [*insert location in Country 2*], the Exhibits shall undergo thorough inspection by the representatives of the HOST ORGANIZATION and the SPONSORING ORGANISATION, in respect of the condition of the Exhibits, with due reference to their original condition reports prepared by the SPONSORING ORGANISATION.

6 Transportation and Customs Clearance, etc.

6.1 The HOST ORGANIZATION shall be responsible for the crating and transportation of the Exhibits from India to the International Airport at [*insert location in Country 2*] and by covered truck(s) operated by a corporation specializing in the business of [fine arts]¹¹³, from the airport in [*insert location in Country 2*] to the venue of the Exhibition, and back to the SPONSORING ORGANISATION in India upon the end of such Exhibition. The expenditure involved in this regard shall be borne by HOST ORGANIZATION.

6.2 The HOST ORGANIZATION shall arrange for the transportation of the consignments of the Exhibits from the airport in [*insert location in Country 2*] in covered trucks under proper security

¹¹³ **AZB Note:** To be replaced case-by-case.

to the venue of the Exhibition, and shall bestow utmost care and attention while unloading the Exhibits from the aircraft, while loading them on the covered trucks, and while unloading them at the venue of the Exhibition, in the presence of the representative of the SPONSORING ORGANISATION. [The boxes containing the Exhibits shall not be kept in the open, and shall not be stacked one upon the other.]¹¹⁴

- 6.3 The HOST ORGANIZATION shall arrange to bring the consignment(s) of the Exhibits directly from the airport in *[insert location in Country 2]* to the premises of the HOST ORGANIZATION/ the venue for the Exhibition in *[insert location in Country 2]*. In the very unlikely event that the Customs Officials in *[insert location in Country 2]* require to see and/ or inspect the Art Objects, the crated Art Objects will be transported to the HOST ORGANIZATION under a customs bond, where customs examinations can be undertaken safely in the presence of the representatives of the SPONSORING ORGANISATION. The consignment(s) of the Exhibits shall under no circumstances be opened at the Airport in *[insert location in Country 2]* for customs examination or for any other clearance purposes in *[insert name of Country 2]*. The authorised agent for handling such Exhibits and arranging for such customs bond and customs examination (“**Customs Representative**”) shall be nominated by the HOST ORGANIZATION after having been agreed to by the SPONSORING ORGANISATION.
- 6.4 The crates/ boxes containing the Exhibits shall be opened by competent technical persons appointed by the HOST ORGANIZATION having experience in handling fine art objects, in the premises of the HOST ORGANIZATION in the presence of the representative of the SPONSORING ORGANISATION, and the Customs Representative (if necessary). The representative of the SPONSORING ORGANISATION present at such time will physically hand over each Exhibit, and the Condition Report of the SPONSORING ORGANISATION prepared at the time of dispatch (and its photographs), to the authorized representative of the HOST ORGANIZATION against a proper receipt for each such delivered Exhibit.
- 6.5 The representatives of the HOST ORGANIZATION shall compare the Condition Report and photographs supplied to them by the SPONSORING ORGANISATION, and mark out or make note of any discrepancy or fresh damage in the form of cracks, flaking, loss, abrasion, scratch, dent, hole/ tear or any other change that may have occurred while in transit and get such remarks countersigned by the representatives of the SPONSORING ORGANISATION. Fresh photographs of the damaged portions of such Exhibits, if any, may be taken by the HOST ORGANIZATION for record and for settlement of any dispute whatsoever. A copy of the photograph of the damaged Exhibit may also be sent to the *[insert designation of relevant department/ officer of the SPONSORING ORGANIZATION]*. The empty boxes with the packing materials shall be kept separately in closed rooms.

Customs Clearance:

- 6.6 The HOST ORGANIZATION shall ensure that the required customs clearance in *[insert name of Country 2]* for the Exhibits is arranged by the Fine Art Handling Agent, so as to avoid reopening and inspection of the exhibits at the Airport in *[insert location in Country 2]* / *[insert location of relevant international airport in India]*.

¹¹⁴ **AZB Note:** Other unloading/ loading/ transit conditions to be mentioned here.

7 Delivery of Consignments

The HOST ORGANIZATION shall make arrangements with the customs authorities in [*insert name of Country 2*] for taking the delivery of the consignment containing exhibits packed in the boxes at the airport in [*insert location in Country 2*] immediately upon their arrival, in no case shall the consignment be allowed to remain at the airport in [*insert location in Country 2*] for more than twenty-four hours from the time of its arrival. However, the consignment of exhibits shall always be under cover and never under open sky at the airport in [*insert location in Country 2*] or India. The authorized representative of the HOST ORGANIZATION shall meet the representative of the SPONSORING ORGANISATION accompanying the consignment at the airport in [*insert location in Country 2*] and take delivery of the boxes/ crates containing the Exhibits. The names of the representative(s) of the SPONSORING ORGANISATION and the HOST ORGANIZATION will be intimated in advance.

8 Handing over of the Exhibits

The handing over of the exhibits will be done by the representative of the SPONSORING ORGANISATION in the premises of the HOST ORGANIZATION to the authorized representative of the HOST ORGANIZATION in the presence of the Director / Curator and the Conservator of the HOST ORGANIZATION.

9 Display of the Exhibits

- 9.1 [The HOST ORGANIZATION shall ensure that the galleries where the Exhibits are to be displayed must be fully equipped with adequate lighting system and should maintain temperature around [22°] ([±1°] Celsius) a relative humidity at constant level, which should be between [45%] and [55%]. To maintain such conditions in the galleries and in case of failure of power supply, stand-by, etc., other relevant equipment should be provided by the HOST ORGANIZATION.]¹¹⁵
- 9.2 The Exhibits shall not be taken out of the galleries or removed from display for any purpose except with prior consent of the SPONSORING ORGANISATION and the Embassy of India in [*insert name of Country 2*] except in case of emergency such as accident, fire, earthquake, etc. No exception shall be made to these reservations for any purpose connected with conference, seminar or private research. Copying of any art object in order to make any kind of reproduction shall not be permitted except for marketing and publicity purposes as agreed in Clause 17 (*Catalogue and Promotional Materials*).
- 9.3 No physical change of any kind such as fixing of nails/clamps, etc. will be attempted in the process of installation of the Exhibition, or otherwise in respect of the Exhibits, by the HOST ORGANIZATION.

¹¹⁵ **AZB Note:** The temperature and the humidity conditions mentioned herein may be subject to change on a case-by-case basis.

- 9.4 In case any damage or deterioration is found in the condition of the Exhibits during the period of the Exhibition, the causes responsible for such damage or deterioration and responsibility for it shall be ascertained by the representatives of both the Parties. In such a case, the parties will use the photographs taken before the dispatch of the Exhibits, the conservation/ condition reports prepared by the SPONSORING ORGANISATION and those prepared by the HOST ORGANIZATION upon their arrival in [insert name of Country 2] and while they were in the possession of the HOST ORGANIZATION, or any other relevant evidence.
- 9.5 In case of any damage, or deterioration of the Exhibits, the HOST ORGANIZATION must immediately report this to the SPONSORING ORGANISATION. No action of conservation and/or restoration should be attempted on such Exhibits, unless emergency measures so require, in which case, such conservation, restoration or other similar step must be agreed to by the representative of the SPONSORING ORGANISATION in writing.
- 9.6 The representative of the SPONSORING ORGANISATION shall have the right to withdraw all or any Exhibit from the Exhibition in case the proper security and technical measures required for the safety of Exhibits as stated in this Agreement are found to be inadequate.
- 9.7 The representative of the SPONSORING ORGANISATION will have the authority to inspect at any time the loaned Exhibits which are in the custody of the HOST ORGANIZATION, whether on display or in storage, if he/she deems it necessary to do so.
- 9.8 If any Exhibit(s) is (are) damaged, while in possession of the HOST ORGANIZATION, the same shall be returned to the SPONSORING ORGANISATION in whatever condition it is (they are). The amount of insurance fixed for exhibits shall also be paid to the SPONSORING ORGANISATION by the HOST ORGANIZATION.
- 9.9 Any sum received by the SPONSORING ORGANISATION in accordance with the provisions of the relevant insurance policy shall satisfy the HOST ORGANIZATION'S liability under this Agreement to the extent of the amount so received. The HOST ORGANIZATION will treat as strictly confidential, all information related to the amount of the sum insured by the insurance policy and the HOST ORGANIZATION will not disclose the same to any third party without the prior written consent of the SPONSORING ORGANISATION.
- 9.10 If any Exhibit is lost while in the custody of the HOST ORGANISATION, the HOST ORGANIZATION shall make all possible efforts to trace the Exhibit(s) through the help of local police at its own cost. Till such lost Exhibit is traced and recovered, the HOST ORGANIZATION shall have to pay to the SPONSORING ORGANISATION the agreed insurance value of the Exhibit(s) as compensation and interim arrangement. As soon as the lost Exhibit surfaces, and is returned in its original condition to the SPONSORING ORGANISATION, the amount paid as compensation will be refunded. In the event it is not traced, the amount paid shall not be refunded. It is further clarified that the ownership right of the SPONSORING ORGANISATION over the Exhibit(s) shall not be absolved

by paying the amount as compensation.

10 Insurance

- 10.1 The SPONSORING ORGANISATION shall arrange the insurance cover of the Exhibits for the entire period commencing upon the taking out of the Exhibits from the [*insert name of institution in India*] in India and ending with the return of the Exhibits to the [*insert name of institution in India*] or the SPONSORING ORGANIZATION or on to the next venue on a wall-to-wall basis. The expenditure of the insurance premium shall be borne by the HOST ORGANIZATION.
- 10.2 The HOST ORGANIZATION hereby agrees to provide comprehensive insurance for the loaned Exhibits for the value assessed by the [National Screening and Evaluation Committee (of India)] on wall-to-wall basis, such insurance cover being provided through an Indian nationalized insurance company recognized by the Government of India. [The SPONSORING ORGANISATION agrees to organize the insurance on behalf of the HOST ORGANIZATION, as noted in Clause 20.3 of this Agreement.]¹¹⁶
- 10.3 The Parties shall always comply with the terms and conditions contained in the insurance policy for the Exhibits and the Parties shall not do any act or omission which vitiates the terms and conditions of such insurance policy.

11 Return of the Exhibits

The HOST ORGANIZATION shall return the Exhibits to the [*insert name of institution in India*] or to the SPONSORING ORGANISATION, as the case may be, within [____] days of the closing of the Exhibition]¹¹⁷ i.e. by [*insert specific date*] and in any case, before the expiry of the insurance cover.

12 Airlifting of the Exhibits and their Escorts

The Exhibits shall be airlifted in [_____] consignment(s) and the consignment will be escorted from India to HOST ORGANIZATION by the representative(s) of the SPONSORING ORGANISATION who will stay in [*insert name of Country 2*] till the checking, handing over and mounting of the Exhibits is over. When the Exhibition is over, the representative(s) of the SPONSORING ORGANISATION shall be deputed to [*insert name of Country 2*] to escort the exhibits back to the [*insert name of institution in India*] or to the SPONSORING ORGANIZATION, as the case may be.

13 Security of the Exhibits

The HOST ORGANIZATION shall be responsible for the security and safety of the Exhibits during their packing and unpacking, transit or carriage both ways, by air or road or any other means of transportation, as well as for any other stage during the entire period that the Exhibits

¹¹⁶ **AZB Note:** This clause may be subject to negotiations.

¹¹⁷ **AZB Note:** Dates for returning the Exhibits would vary on a case-to-case basis.

are in [*insert name of Country 2*].

14 Cost

All costs related to, to-and-fro international transportation and all internal transport within [*insert name of Country 2*], unpacking and repacking of the Exhibits for the Exhibition, any display arrangements, all necessary security arrangements at the Exhibition, and all costs for press, advertising, communication, staff, security, climate control shall be borne by the HOST ORGANIZATION.

15 Couriers

- 15.1 The HOST ORGANIZATION agrees that the SPONSORING ORGANISATION will dispatch a maximum of two (2) experts (hereinafter referred to as the “**Courier(s)**”). Details of the Couriers and the period of their stay in [*insert name of Country 2*] shall be indicated below, and further details related to them will be discussed and agreed by both parties hereto.
- 15.2 The HOST ORGANIZATION will bear the reasonable expenses of their local hospitality, including hotel accommodation with all charges and taxes, traveling expenses of the Couriers, including to and fro airfares between India and [*insert name of Country 2*], internal transport in [*insert name of Country 2*] related to the Exhibition and per diem daily allowance at the rate of US\$ [_____] per person according to the rates presented by the [Ministry of External Affairs, Government of India.] Medical aid, if required, will be covered under traveler insurance provided by HOST ORGANIZATION for a period of [7 days]. The place of stay for the Courier(s) shall not be too far from the premises of the Exhibition.
- 15.3 The SPONSORING ORGANIZATION agrees to provide requested information about the Courier(s) to enable the HOST ORGANIZATION to arrange the necessary travel insurance. The SPONSORING ORGANISATION shall intimate the HOST ORGANIZATION about the schedule of Courier(s) each time. The schedule for the Courier(s) would be as follows:
- a) One Courier will escort the consignment to [*insert name of Country 2*] and will hand over the record consignment to HOST ORGANIZATION, [*insert address in Country 2*] and supervise the unpacking of Exhibits and their display.
 - b) The second Courier will arrive in [*insert name of Country 2*] immediately after closing of the Exhibition at the [*insert name of museum/ gallery/ institution in Country 2*] to examine the Exhibits and escort the consignment back to India.
- 15.4 The Courier shall be responsible for the following services and performance as the representative of the SPONSORING ORGANISATION:
- a) To cooperate with the HOST ORGANIZATION during the period of their official dispatch and stay in [*insert name of Country 2*] under this Agreement;
 - b) To give appropriate guidance and instructions to the HOST ORGANIZATION when necessary, in accordance with this Agreement; and

- c) To supervise the overall performance and enforcement of this Agreement,
- so that the Exhibits may be handled, treated, moved safely and kept secure at each occasion of packing, unpacking, exhibiting, withholding, shifting, loading and unloading.

16 Delegation

The HOST ORGANIZATION shall invite one person, designated by the GOVERNMENT or the SPONSORING ORGANISATION from India to attend the opening ceremony of the Exhibition for not more than [_____] days. The HOST ORGANIZATION in [*insert name of Country 2*] shall bear the expenses for the to-and-fro international airfare, hotel accommodation charges (room charge and tax thereof), internal travel expenses in [*insert name of Country 2*] necessary and related to the Exhibition, and per diem daily allowance as per the rates presented by the [Ministry of External Affairs, Government of India], in [*insert name of Country 2*]. The HOST ORGANIZATION shall make appropriate arrangements for his/her stay in [*insert name of Country 2*].

17 Catalogue and Promotional Materials

- 17.1 The HOST ORGANIZATION, in collaboration with the SPONSORING ORGANISATION, shall edit and publish a catalogue for the Exhibition, as well as art folios/posters and other publicity materials, its own cost, based on explanatory materials to be provided by the experts of the SPONSORING ORGANISATION. The HOST ORGANIZATION shall provide 10 copies of the catalogue and copies of other publications brought out at the time of the Exhibition to the SPONSORING ORGANISATION free of cost and bear freight charges on their shipment from [*insert name of Country 2*] to the SPONSORING ORGANIZATION and/or the GOVERNMENT in India, as the case may be.
- 17.2 Photography or making replicas, slides or any form of reproduction of the Exhibits on display is strictly prohibited for commercial purposes. However, permission will be granted by the SPONSORING ORGANISATION to the HOST ORGANIZATION to allow the press and the television media to advertise the Exhibition or produce television programmes related to the Exhibition. The HOST ORGANIZATION may produce, use and/or put for sale, the posters, postcards and other publicity materials and related merchandise, only during the period of the Exhibition.

18 Related Programming for Television

- 18.1 The SPONSORING ORGANISATION shall co-operate in the greatest possible extent with the production of the television programmes related to the Exhibition (including programmes aimed at the promotion of the Exhibition) by the HOST ORGANIZATION. Copyright of such television programmes shall belong to the producer of such programmes.
- 18.2 The SPONSORING ORGANISATION will be the academic and technical collaborator in the Exhibition and all related television programmes. The SPONSORING ORGANISATION accepts

that these programmes will be broadcast within [*insert name of Country 2*] and that there may be other possibilities for such programmes to be broadcast overseas. The SPONSORING ORGANISATION also accepts that there will be secondary usage of the programmes in the form of video production and the publication of memoirs to introduce and/or promote the inspiring cultural heritage of India.

- 18.3 After the broadcast of the programme, the HOST ORGANIZATION shall provide the SPONSORING ORGANISATION with 3 copies of DVDs/CDs of the programmes.

19 Actions Upon Closing of the Exhibition

After the closing of the Exhibition, Exhibits will be dismantled by the competent technical agent(s) appointed by the HOST ORGANIZATION and the SPONSORING ORGANISATION, experienced in handling the Art Objects. Such agents shall also be involved in packing the Art Objects in the same boxes/ crates in which they were transported to [*insert name of Country 2*] in the presence of the representative of the SPONSORING ORGANISATION, using the same packing material kept inside the boxes/ crates with due care. The HOST ORGANIZATION shall also provide extra packing materials if required, and manpower for lifting, shifting, loading the Art Objects on trucks at the airport in [*insert name of Country 2*].

20 Obligations on the part of the SPONSORING ORGANISATION including Financial Liabilities

- 20.1 The SPONSORING ORGANISATION and/or its representative(s) shall:

- a) Conserve, collect, pack, manage, maintain and ensure the safe arrival of the Exhibits at the [*insert airport location in Country 2*] airport in [*insert name of Country 2*]. The expenditure on crating and shipment of the Exhibits from India to [*insert name of Country 2*] will be borne by the HOST ORGANIZATION.
- b) Escort the Exhibits during their transportation from the [*insert name of museum/ gallery/ institution*] in India to [*insert airport location in Country 2*] airport in [*insert name of Country 2*], and after the closing of the Exhibition in [*insert name of Country 2*], escort back all the Exhibits to the [*insert name of museum/ gallery/ institution*] in India. The entire expenditure on this account will be borne by the HOST ORGANIZATION.
- c) Provide comprehensive insurance cover from wall-to-wall against all risks, of the loaned Exhibits for the value assessed by the [National Screening and Evaluation Committee, India] in accordance with Clause 10 of this Agreement through an Indian nationalized insurance company recognized by the Government of India. The expenditure on this account will be borne by the HOST ORGANIZATION.

- 20.2 It is hereby clarified that the SPONSORING ORGANISATION shall have no financial liabilities in respect of organizing the Exhibition in [*insert name of Country 2*].

21 Obligations on the part of the HOST ORGANIZATION including Financial Liabilities

21.1 The HOST ORGANIZATION shall:

- a) Take full responsibility for security and safety of the loaned Exhibits from the time of their arrival at Frankfurt Airport and shipment to *[insert location in Country 2]* in *[insert name of Country 2]* and during the entire Exhibition period and thereafter till their return to the SPONSORING ORGANISATION in New Delhi
- b) Guarantee and ensure the return of all the items of loaned Exhibits within 15 days i.e. by 15th July, 2013 to the National Gallery of Modern Art, New Delhi.
- c) Comply strictly with all scientific and technical requirements (such as Temperature, humidity control, lighting system, etc) in display of the Exhibits.
- d) Provide adequate safety, security and vigil for the Exhibits round the clock by qualified guards in required numbers and with state of art technology.
- e) Provide covered surface transport for the transportation of the Exhibition consignments from the Frankfurt Airport to HOST ORGANIZATION in *[insert location 1 in Country 2]* and from HOST ORGANIZATION in *[insert location 1 in Country 2]* to *[insert location of airport in Country 2]* Airport in *[insert name of Country 2]* with adequate security.
- f) Arrange for the exhibits to be airlifted in not more than one consignment and the consignment will be escorted by the representative of the SPONSORING ORGANISATION who will stay till the checking and handing over of the exhibits and objects in the consignment is complete; Accommodation, local transport and per diem US \$ 100 per person, per day, as per rates presented by the Ministry of External Affairs, Government of India, shall be provided by the HOST ORGANIZATION to the representatives of the SPONSORING ORGANISATION. The Place of their stay is expected to be not far from the place of the exhibition in *[insert name of Country 2]*. All reasonable and necessary expenditure linked to oversee the installation and de-installation of the exhibition, shall be borne by the HOST ORGANIZATION
- g) Provide manpower, material for loading, unloading, mounting, dismounting, packing, unpacking and shifting of the Exhibits from the time of their arrival in *[insert name of Country 2]* to the time of their return from *[insert name of Country 2]* to the National Gallery of Modern Art, New Delhi.
- h) Assist in providing medical treatment of the representative of the SPONSORING ORGANISATION in case of his/her illness during the period of his/her deputation to *[insert name of Country 2]*.
- i) Guarantee the payment of maintenance and per diem US\$ 100 per person per day as per rates presented by Ministry of External Affairs, Government of India, to the representative of the SPONSORING ORGANISATION accompanying exhibits, on the same terms and conditions' in case of his/her being held up on the territory of *[insert*

name of Country 2] because of unforeseen circumstances.

- j) Invite one person designated by the GOVERNMENT/ SPONSORING ORGANISATION and pay per diem \$ 100 as per rates presented by the Ministry of External Affairs, Government of India, besides lodging and transport in [*insert name of Country 2*].
 - k) Provide photographic documentation of the exhibits on display in the exhibition.
 - l) Take the responsibility of all expenditure related to the exhibition including but not limited to, such as
 - (i) Shall meet all the expenses related to the transportation of the exhibits from the SPONSORING ORGANISATION and all their return to the SPONSORING ORGANISATION including both the international and internal transportation costs,
 - (ii) Shall meet the expenses on the insurance cover for all the exhibits beginning with the taking out of the exhibits from the (SPONSORING ORGANISATION and ending with their return to the SPONSORING ORGANISATION.
 - m) shall bear all the expenses on international airfare (to and fro) and local transport for two couriers and one delegate to be invited at the time of inauguration of the exhibition in [*insert name of Country 2*].
 - n) Payment of accommodation, local transport in [*insert name of Country 2*] per diem of \$100 or as per rates presented by the Ministry of External Affairs, Government of India to the accompanying curators/escorts of; consignments and to the representative staying in [*insert name of Country 2*] while mounting and dismounting the exhibits.
- 21.2 Guarantee that any map to be published or displayed in connection with the exhibition showing the international boundaries of the participating countries, specially the map of India should be duly approved by the Survey of India, Government of India. It shall be the city of the HOST ORGANIZATION to get prior approval of such geographical material of the exhibits in this regard from the Embassy of India in [*insert name of Country 2*].
- 21.3 Notwithstanding anything contained in this Agreement, the HOST ORGANIZATION agrees and accepts that the SPONSORING ORGANISATION reserves the right to reacquire the return of all the exhibits or anyone or more of them, if the HOST ORGANIZATION shall be in breach of any of the provisions of this Agreement and the HOST ORGANIZATION shall comply forthwith with any such requirement.

22 Amendment to the Agreement

Any amendment to this Agreement shall be-effective only if it is agreed in writing and signed by the duly authorized signatories of both parties.

23 Arbitration

- (i) In the event of any dispute or difference-between the parties hereto, such disputes or differences shall be resolved amicably by mutual consultation.
- (ii) If such amicable resolution is not possible, then the unresolved dispute shall be referred to arbitration of the [sole arbitrator to be appointed by _____]¹¹⁸. The arbitration shall be conducted under the provisions of Arbitration and Conciliation Act, 1996 (No. 26 of 1996). The venue of such arbitration shall be at [_____]¹¹⁹ or any other place, as may be decided by the arbitrator. The language of arbitration proceedings shall be English, the arbitrator shall make a reasoned award (the “**Award**”), which shall be final and binding on the parties. The costs of the arbitration shall be shared equally by the Parties, to the Agreement. However, expenses incurred by each party in connection with the operation, presentation shall be borne by the party itself.
- (iii) Pending the submission of and/or decision on a dispute, difference or claim or until the Award is published, the Parties shall continue to perform all of their obligations under this Agreement without prejudice to a final adjustment in accordance with such Award.

24 Consultations

Any matters not provided for in this Agreement shall be dealt with through consultations between the Parties hereto. This Agreement shall come into force from the date of its signing by the duly authorized signatories of both parties.

¹¹⁸ **AZB Note:** This may be changed to “arbitration panel appointed by the Parties”, as the case may be.

¹¹⁹ **AZB Note:** It would be preferable for the venue to be the city where the nodal agency is situated, or where the museum is located; however, this may be open to negotiation by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year first above written.

SIGNED AND DELIVERED in English in duplicate and each Party retaining one copy thereof:

For and on behalf of [*INSERT FULL NAME OF INSTITUTION IN INDIA*]

For and on behalf of [*INSERT FULL NAME OF INSTITUTION IN COUNTRY 2*]

Name:
Designation:
Address

Name:
Designation:
Address:

Sd/-
In presence of
(Witnesses)

Sd/-
In presence of
(Witnesses)

1. _____

1. _____

2. _____

2. _____

5. SAMPLE LOAN CONDITION REPORT FORMAT

CSMVS
Museum Art
Conservation Centre

BRIEF CONSERVATION STATUS AND REMARKS
OBJECT TRAVELLING ON LOAN / EXHIBITION

| | | | |
|--|----|--|--------------|
| LOAN / EXHIBITION | | CONTACT Name, Designation, Email, Tel | |
| VENUE | | | |
| DETAILS OF THE OBJECT | | | |
| ACC. No | | OBJECT TYPE | |
| PROVENANCE | | TITLE / THEME | |
| PERIOD | | MATERIALS | |
| NUMBER OF PARTS | 1. | DIMENSIONS cm | |
| EXHIBITION / STORAGE CONDITIONS RECOMMENDED | | | |
| RH: Temperature range: | | | |
| GENERAL CONDITION STATEMENT : | | | |
| | | | |
| HANDLING: | | | |
| HANDLING: | | | |
| SPECIAL ATTENTION REMARKS (if any): | | | |
| SPECIFIC PACKING INSTRUCTIONS: | | | |
| Chief Conservator | | Mobile: | DATE: |

Chhatrapati Shivaji Maharaj Vastu Sangrahalaya (Formerly Prince of Wales Museum of Western India)

159-161 Mahatma Gandhi Road, Fort, Mumbai – 400023, Maharashtra, India.

Ph: +91-(0)22-22844484, 22844519; Fax: 022-22045430; Email: <csmvsmumbai@gmail.com>



CSMVS
Museum Art
Conservation Centre

EXAMINER AND BORROWER TO SIGN AND DATE AT EACH VENUE

| EXAMINER AND BORROWER TO SIGN AND DATE AT EACH VENUE | | | | | |
|---|------------------|-----------------|------------------|-----------------|------------------|
| VENUE 1: | | VENUE 2: | | VENUE 3: | |
| ARRIVAL | DEPARTURE | ARRIVAL | DEPARTURE | ARRIVAL | DEPARTURE |
| | | | | | |
| VENUE 4: | | VENUE 5: | | VENUE 6: | |
| ARRIVAL | DEPARTURE | ARRIVAL | DEPARTURE | ARRIVAL | DEPARTURE |
| | | | | | |
| VENUE 7: | | VENUE 8: | | VENUE 9: | |
| ARRIVAL | DEPARTURE | ARRIVAL | DEPARTURE | ARRIVAL | DEPARTURE |
| | | | | | |
| CONDITION OF OBJECT ON RETURN TO CSMVS: | | | | | |
| | | | | | |
| COMMENT IF CONDITION HAS CHANGED | | | | | |
| | | | | | |
| NAME: | | | DATE: | | |
| | | | | | |

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