

ROYAL DECREE 1680/1991, of 15th November, implementing the ninth additional provision of Law 16/1985, of 25th June of the Spanish Historic Patrimony, on State guarantee for works of cultural interest (Official State Gazette of the 28th November 1991).

The ninth additional provision of Law 16/1985, of 25th June, of the Spanish Historic Patrimony, introduced by the first additional provision of Law 37/1988, of 28th December, on General State Budgets for 1989, institutes "the State guarantee for works of cultural interest" and qualifies the Ministries of Culture and Economy and Finance to propose the Royal Decree ruling the procedure and requirements for granting this commitment and the form of implementing it, if applicable.

By virtue thereof, at the proposal of the Ministers of Culture and Economy and Finance, in agreement with the Council of State and prior to debate by the Cabinet of Ministers at its meeting held on the 15th November 1991,

I DECREE:

Article 1.

1. In accordance with the provisions contained in the ninth additional provision, one, of Law 16/1985, of 25th June, of the Spanish Historic Patrimony, the State may commit itself to compensate the destruction, loss, abstraction or damage to those works of relevant artistic, historic, paleontological, archaeological, ethnographic, scientific or technical interest that are temporarily or finally assigned, for their contemplation by the public, to Museums, Libraries or Archives, titled by the State and being the sole business of the Ministry of Culture and its Autonomous Bodies.¹
2. As far as this provision is concerned, the Fundación Colección Thyssen Bornemisza will receive the same consideration than Museums designated in the precedent paragraph.²
3. The Minister of Culture, in each case, will grant the State commitments prior the application of the assignee.
The agreement will state the work or works concerned, the amount, the security and protection requirements and the obligations to be fulfilled by those interested.
4. The highest limit for the commitments granted to a work or series of works to be exhibited in the same exhibition, as well as the limit of the

¹ Additional provision of Law 37/1988, of 28th December, of General State Budgets for 1989, that was given a new drawing up by Law 42/1994, of 30th. December, on fiscal administrative and social measures (additional provision 1st.)

² Item 2 of 14th. Additional provision of Law 65/1997, of 30th. December, of General State Budgets for 1998, lays down that the State Guarantee could be applied to the exhibitions organised by the "Sociedad Estatal para la Conmemoración de los Centenarios de Felipe II y Carlos V" to take place in institutions dependent of the State General Administration.

total amount of the commitments granted by the State will be established in the Laws on General State Budgets for that year.³

Article 2.

1. The grant of the State guarantee for works of relevant cultural interest may be applied for at the Ministry of Culture by Museums, Libraries and Archives titled by the State and being the exclusive competence of the Ministry of Culture and its autonomous bodies and assimilated entities⁴ assignees of the works referred to in item 1 of the foregoing article. The application shall contain the following particulars:
2. The application shall contain the following particulars:
 - a) Duration of the exhibition and its venue.
 - b) Description of the works, justifying the relevant artistic, cultural, scientific or technical interest.
 - c) Value of each of the works declared by the assignor and accepted by the Director of the Institution submitting the application. In the event of intervention by appraisers or experts, a copy of the appraisal they have made will be included.
 - d) Procedures foreseen to perform the reports on the state of preservation of the works prior to their delivery to the assignee institution and at the time of their return to the assignor.
 - e) Preservation and safety measures in the packing, transport and during the exhibition of the works, with express mention of the maximum value of the works that will be transferred in a single transport.
 - f) Contracted insurance, or insurance which it is intended to contract, to attend to the amounts not covered by the guarantee in accordance with article 6.2 of this Royal Decree, and also other similar guarantees to the State guarantee granted, when applicable, by other Public Administrations.
3. The applicant institution will submit a written document evidencing the approval of the assignor of the work for the points contained in the application, and also that it expressly submits to the present Royal Decree and other rules regulating the State guarantee for works of cultural interest.

Art. 3.

1. The Directorate General for Fine Arts and Archives will, when applicable, forward whatsoever complementary conditions it considers pertinent to the assignee institution, in order that it express its approval therewith in writing.

³ Law 65/1997, of 30th December, on General State Budgets for 1998, in item 1 of 14th Additional Provision states that the commitments temporarily granted for their exhibition in institutions being the exclusive competence of the Ministry of Education and Culture and its autonomous bodies (including comparable institutions) will not be higher than the accumulated amount at 31st December surpassing 30.000 millions pesetas. It makes out that the higher limit of the specific commitments granted for the first time in 1998 for works or series of works intended to be displayed in a same exhibition will be of 10.000 millions pesetas.

⁴ See point 2, item 1 of the present Royal Decree and reference point nr 2

2. The Board of Qualification, Appraisal and Export of Assets of the Spanish Historic Patrimony will advise about the questions it is consulted on the matter by the Director General for Fine Arts and Archives.
3. The Directorate General for Fine Arts and Archives will report on the applications for the State guarantee for works of relevant cultural interest and, when applicable, it will propose the granting of the commitments to the Ministry of Culture.
4. The Order granting the guarantee will express the State's commitment to compensate for the destruction, loss, abstraction or damage of the works mentioned in the application, in accordance with the values and conditions stated therein, which will, when applicable, include the complementary ones to which number 1 of this article refers.

Art. 4.

1. The grant of the State guarantee obliges the assignee institution to observe all that is set out in this Order of grant.
2. In addition, in the event of destruction, loss, abstraction or damage of a work, the assignee institution shall:
 - a) Immediately notify the Ministry of Culture about this incident, with detailed information about its circumstances and consequences.
 - b) Adopt the necessary measures to reduce the effects thereof where possible.

Art. 5. The State guarantee does not cover the destruction, loss, abstraction or damage to the works caused by:

- a) Own defect or intrinsic quality of the goods object of the guarantee.
- b) The mere lapsing of time.
- c) The deliberate action or omission by the assignor of the works, by its employees or by its agents.
- d) Attachment, withholding, seizure of the work or similar measure urged by a third party and agreed by the competent body.
- e) Nuclear explosion.

Art. 6.

1. The amount of the indemnities resulting, when applicable, from the commitment granted by the State shall be determined in accordance with the following rules:

1st - For loss, abstraction or destruction of the work, the Ministry of Culture will pay the assignor of the work a sum equal to the value of the work declared in the application and acknowledged in the Order of grant of the State guarantee.

2nd - For damage to the work, the compensation shall include: a) the reasonable cost of restoring the work established by mutual agreement between the assignor and the Ministry of Culture or, if no agreement is reached, the amount determined by an Expert mutually accepted by both parties, and, b) an amount equal to the depreciation in the market value

of the work, following its restoration, establishing this amount by mutual agreement between the assignor and the Ministry of Culture or, if there is no such agreement, the amount determined by an Expert accepted by both parties. The sum of this compensation shall not exceed the value of the work declared in the application and acknowledged in the Order of grant of the State guarantee.

2. The guarantee granted by the State for works forming one and the same exhibition shall not cover compensations for the destruction, loss abstraction or damage of these works up to a limit of:
 - The first 2,000,000 pesetas (12,020.24 €) when the total value of the works guaranteed by the State for the exhibition does not exceed 250,000,000 pesetas (1,502,530.26 €).
 - The first 3,500,000 pesetas (21,035.42 €) when the total value of the works guaranteed by the State for the exhibition exceeds 250,000,000 pesetas (1,502,530.26 €) to 1,250,000,000 pesetas (7,512,651.30 €).
 - The first 6,000,000 pesetas (36,060.73 €) when the total value of the works guaranteed by the State for the exhibition is more than 1,250,000,000 pesetas (7,512,651.30 €) to 2,500,000,000 pesetas (15,025,302.61 €)
 - The first 10,000,000 pesetas (60,101.21 €) if the total value of the works guaranteed by the State for the exhibition exceeds 2,500,000,000 pesetas (15,025,302.61 €).

Art. 7. Each party will pay the fees incurred from the advisory services of their respective experts. The Experts appointed by mutual agreement shall be the responsibility and payment, half and half, of the Ministry of Culture and of the assignor of the work.

Art. 8. Once the State Administration has paid the compensation, it may:

- a) Recur against the assignee institution for the amount paid, when the destruction, loss, abstraction or damage to the work has occurred by breach in the provisions set out in the Order of grant of the guarantee, serious negligence or fraud) of that institution, or
- b) Exercise the rights and actions that by reason of the loss should fall to the assignee institution and to the assignor of the work vs. any person other than them who is responsible for the loss and up to the limit of the compensation.

The Administration shall not be entitled to subrogation against packers, carriers or any other person or Entity related with the handling, transport and installation of the works, except when the destruction, loss, abstraction or damage of the works has been caused by negligence or fraud.

Art. 9. In the event of recovery of the lost or abstracted work, the assignor may preserve his right on the works, prior to returning the compensation he has

received to the State Administration, duly updated in accordance with the Consumer Price Index published by the National Statistics Institute.

ADDITIONAL PROVISIONS

One.- The grant of the State guarantee, valid for more than one year, for works of cultural interest, shall be made in accordance with the following terms:

1. The application of the percentages to which article 61 of the revised text of the General Budgets Law refers, approved by Royal Legislative Decree 1091/1988, of 23rd September, shall be made on the amount established in the Law on General State Budgets as limit in the amount accrued from the commitments that may be granted in the year.
2. In accordance with the assignor of the works, the State may be limited to guaranteeing:
 - a) A percentage of the value of the works during the time they are exhibited at the facilities of the assignee institution. Compensation derived from these commitments shall be determined in accordance with the provisions laid down in article 6 of this Royal Decree, but the amount payable by the Administration shall be proportional to the percentage of the value of each work covered by the State guarantee.
 - b) A percentage of the overall value of the works assigned by one and the same assignor.
The overall amount guaranteed for these works represents the maximum limit of the compensations derived from these commitments that shall be determined in accordance with the provisions laid down in article 6 of this Royal Decree.
3. The possibility of reviewing the value of the works estimated by the assignor may be foreseen, although this revision shall only be effective from the moment they are accepted by the assignor, by the Director of the assignee institution of the work and by the Ministry of Culture.

Two.- The grant and application of the State guarantee for the works of the Thyssen-Bornemisza collection shall be made in the terms foreseen in the agreement completed by the Kingdom of Spain and "Favorita Trustees Limited", and authorised by Royal Decree 1525/1988, of 16th December, which lays down the conditions for installing in Spain the main part of the Thyssen-Bornemisza collection.

FINAL PROVISIONS

One.- The Ministers of Culture and Economy and Finance are authorised, by joint Order, to update the amounts laid down in article 6.2 of this Royal Decree.

Two.- The Ministers of Culture and Economy and Finance may rule the necessary provisions for the implementation of the present Royal Decree in the scope of their respective competences.

Three.- This Royal Decree will come into force the day following its publication in the “Official State Gazette”.

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