

**SUBSIDIARY LEGISLATION 415.03****ARTISTS' RESALE RIGHT REGULATIONS**

14th August, 2006

*LEGAL NOTICE 174 of 2006.*

- 1.** The title of these regulations is the Artists' Resale Right Regulations. Title.
- 2.** The purpose of these regulations is the implementation of Directive 2001/84/EC of the European Parliament and of the Council of the 27th September, 2001 on the Resale Right for the Benefit of the Author of a Work of Art. Purpose.
- 3.** In these regulations, unless the context otherwise requires - Definitions.
- "art market professional" *inter alia* means sales rooms, art galleries and dealers in works of art in general;
- "author", in relation to a work, means the person who creates the work;
- "collecting society" has the meaning given in regulation 11;
- "contract date", in relation to a sale, means the time at which the contract of sale of the work was made;
- "copyright" has the meaning given in article 2 of the Copyright Act; Cap. 415.
- "EEA State" means a Member State, Iceland, Liechtenstein or Norway;
- "resale" refers to the sale of the work by the art market professional after the first transfer of ownership by the author;
- "resale right" and "resale royalty" have the meaning as given in regulation 4;
- "sale price" is the price obtained for the sale, net of the tax payable on the sale, and converted into euro at the European Central Bank reference rate prevailing at the contract date;
- "the seller" means the person or undertaking on whose behalf the sale is conducted;
- "transfer of ownership by the author" includes in particular -
- (a) the sale of the work by the author;
  - (b) the giving of the work as a gift by the author;
  - (c) transmission of the work from the author by testamentary disposition, or in accordance with the rules of intestate succession; and
  - (d) disposal of the work by the author's personal representatives for the purposes of the administration of his estate;
- "work" means any work of graphic or plastic art such as a

picture, a collage, a painting, a drawing, an engraving, a print, a lithograph, a sculpture, a tapestry, a ceramic, an item of glassware and a photograph:

Provided that a copy of a work is not to be regarded as a work unless the copy is one of a limited number which have been made by the author or under his authority.

The resale right.

**4.** The author of a work of art in which copyright subsists shall, in accordance with these regulations, have a right, known as the resale right, to a royalty on any sale of the work which is a resale subsequent to the first transfer of ownership by the author. Such right is inalienable and cannot be waived, even in advance.

Applicability.

**5.** (1) The resale right shall apply to all acts of resale conducted by art market professionals.

(2) The royalty shall be payable by the art market professional who effects a sale of the work which is a resale subject to the first transfer of ownership by the author.

Limitations.

**6.** (1) The resale right shall not apply in the case of a work which fulfils the following two conditions:

- (a) the seller previously acquired the work directly from the author less than three years before the sale; and
- (b) the work has a sale price not exceeding 10,000 euros.

(2) The resale right shall not apply in respect of works the sale price of which is less than 1,500 euros.

(3) The resale right shall not apply to those acts of resale effected directly between persons acting in their private capacity without the participation of an art market professional.

(4) The resale right shall not extend to acts of resale to museums which are not for profit and are open to the public:

Provided that the persons effecting the sale are so doing in their personal capacity.

Royalty calculation.

**7.** The royalty provided for in regulation 4 shall be calculated as follows:

- (a) 0% for the portion of the sale price up to and including euros 1,499;
- (b) 4% for the portion of the sale price from euros 1,500 to euros 50,000;
- (c) 3% for the portion of the sale price from euros 50,000.01 to euros 200,000;
- (d) 1% for the portion of the sale price from euros 200,000.01 to euros 350,000;
- (e) 0.5% for the portion of the sale price from euros 350,000.01 to euros 500,000;
- (f) 0.25% for the portion of the sale price exceeding euros 500,000:

Provided that the total amount of royalty may not exceed

euros 12,500 and the sale prices referred to above are net of tax.

**8.** (1) The royalty provided for in regulation 4 shall be payable to the author of the work and, after his death, to his successor. Entitlement to royalties.

(2) A successor in title shall benefit from the resale right only after 2010 in respect of a resale which takes place after that date:

Provided that the Minister may by order extend the above commencement date until 2012 after representations made by Malta with the European Commission.

**9.** (1) The resale right in respect of a work is transmissible by testamentary disposition or in accordance with the rules of intestate succession; and it may be further so transmitted by any person into whose hands it passes. Persons entitled on succession.

(2) The resale right may be so transmitted only to a natural person.

(3) Notwithstanding subregulation (2), a resale right may be transmitted as *bona vacantia*.

(4) Where a resale right is transmitted to more than one person, it shall belong to such persons in co-ownership.

**10.** The resale right connected with a work shall continue until the copyright in the work expires. Term of resale right.

**11.** The resale right may be exercised by the holder independently or through a collecting society operating under the conditions provided for in the Copyright Act and regulations made thereunder. Collection of royalties. Cap. 415.

**12.** (1) A holder of resale right in respect of a sale, or a person acting on his behalf shall have the right to obtain information from any art market professional in relation to the sale. Right to information.

(2) The information that may be so requested is any that may be necessary in order to secure payment of the resale royalty.

(3) The art market professional to whom the request is made shall do everything within his power to supply the information requested within ninety days of the receipt of the request.

(4) If information is not supplied in accordance with subregulation (3), the person making the request may, by application to be filed in the First Hall of the Civil Court within one month from the expiry of the ninety days mentioned in subregulation (3), demand an order from the said court compelling the person from whom the information may be demanded to supply the information. The application shall be secured on the other party who shall also have a right to reply.

(5) Information obtained under this regulation shall be treated as confidential.

**13.** (1) The resale right may only be exercised in respect of a sale by a natural person who is a national of an EEA State. Requests as to nationality.

(2) An author who is a national of a third country and his successors in title shall enjoy the resale right in accordance with this regulation only if, the legislation in the country of which he or his successor in title is a national, accords resale right protection to authors from the Member States of the European Union and their successors in title.

Transitional provisions.

**14.** (1) The provisions of these regulations -

(a) do not apply to sales where the contract date precedes the commencement of these regulations; but

(b) apply notwithstanding that the work sold was "made" before such commencement.

(2) Subject to the provision of regulation 8, where an author of a work who is also the owner of copyright in the said work died before the commencement of these regulations, he shall be deemed to have transferred his resale right to his successor in title.

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