International Loans:
State Immunity and Anti-Seizure Laws

By

Stephen J. Knerly, Jr.
Kristen L. Gest
Hahn Loeser & Parks LLP
Cleveland, Ohio
I. INTRODUCTION

Immunity as a term, when applied to the loan of a work of art across international borders, has many potential meanings. Because immunity is a construct of an individual country’s laws, a potential lender must review the laws of the nation of the borrowing institution in order to determine the potential risks in making the proposed loan. For example, immunity can mean immunity from any lawsuit involving the work, or immunity from any action to seize the work, or immunity of the lender from any action involving title to the work. In addition, some countries characterize immunity as a “guarantee” of return.

The following summary is based on information publicly available for review and on translations from original language documents. There may be nuances lost in translation and changes to existing laws may occur before such revisions become available to the general public. Prior to entering into exhibition or loan agreements, a museum should confirm with counsel and with the borrowing institution the appropriate procedures to be followed.

A. Types of Immunity.¹

• Automatic immunity - no action is required of a museum and the object is protected by legislation during the term of the loan (see information on Belgium, British Columbia, New York, Rhode Island, and Texas).

• Immunity after application - the borrower or a museum, as the particular law may provide, requests immunity and after an administrative process, the immunity request can be granted with effect usually upon publication (see information on Alberta, Manitoba, Ontario and Quebec).

• Immunity after application and publication for a specific period of time (see information on United Kingdom).

• Immunity after application, publication and a period of non-objection - Like immunity after application, but requires the additional time of non-objection after publication (see information on France and Switzerland).

• Immunity after application, publication and judicial determination - The borrower makes a request for immunity and notice is published; actual determination of immunity is made by the judicial process (see information on United States).
• Immunity from specific object forfeiture - The domestic law prohibits possession of a type of object that includes the work to be loaned, for example, one that was illegally exported from a foreign country or one that is a protected cultural antiquity, but there is an exception for works on loan to an approved institution (see information on Australia and Ireland).

B. What is protected?

• Generally, only the objects loaned are protected from judicial process, seizure, or attempts to interfere with their return.

• In some instances, courts are prohibited from hearing the borrower may also have rights either by implication or directly under the legislation (for example, under the statute in Alberta).

• A museum generally has no judicial immunity under these statutes, so whether the actual presence of a museum (for example if a representative of a museum attends the opening) or the presence of the works alone would expose a museum to jurisdiction in the courts of the country where the exhibition is to be held is usually a matter of law separate and apart from the immunity statutes.

C. Procedure.

• For those countries where immunity is not self-executing, the procedure to be followed is extremely important.

• In many cases, failure to follow the mandated procedures means immunity is not available.

• Because immunity often rests on following the applicable procedures, publication requirements and movement restrictions, strict compliance with the procedures is critical to obtaining and maintaining the immunity.

II. COMPARATIVE LAW

Sample clause in “Conditions of Loan”:

Immunity from seizure or guaranty of return, depending on the applicable law, will be required from all borrowers as to each venue in a jurisdiction that provides such protection. [Lending Museum] must receive documentation confirming that any required application has been completed and the protection is in effect well in advance of any shipment.

Although the United States was the first nation to enact an immunity from seizure statute, an increasing number of nations, and subdivisions of nations, have followed suit.