



Ca' Foscari
University
of Venice

Master's Degree program
in Language and Management to China

Final Thesis

**The art auction
market in China:
a legal and operational overview**

Supervisor

Prof. Renzo Cavalieri

Graduand

Serena Butera

Matriculation Number 873033

Academic Year

2022 / 2023

前言

本论文旨在分析当今中国艺术品拍卖市场的法律框架，尤其是将注意力集中于规范拍卖业务的法律法规和规章制度。1996年，《中华人民共和国拍卖法》（一下称拍卖法）颁布，随后几年又正式出台了其他相辅相成的办法，促进了拍卖市场的规范化。然而，与其他主要国家市场不同的是，中国的艺术品市场在过去30年中才增长。它的发展速度那么快，以至于无法建立坚实的基础。尽管近十年来取得了进步，但是漏洞仍然存在于艺术法律体系，法律法规不完善。因此，迄今为止，这个不充分的制度导致中国拍卖市场仍然存在许多问题，比方说赝品和假货的流通。本论文的最终目标就是了解清楚拍卖法律体系，在拍卖领域有哪些规定，政府所制定的法规对拍卖市场有什么影响。

本论文分为三章：第一是拍卖法律体系，第二是免责条款和它的后果，第三是外国投资有关的法律法规。

关于第一章，也就是说拍卖法律体系，首先，作者将介绍中国拍卖市场（1.1节），概述其在过去30年的演变。文化大革命后，拍卖市场出现并开始以加速的速度发展。它于2010年达到顶峰，超过了领先的美国市场。后来，进入了一个稳定发展的阶段。现在，它是全球最大的拍卖市场之一。其次，本章将试图对拍卖法等相关法规进行分析（1.2节）。基本上，拍卖法规定拍卖的范围（1.3节），也就是说拍卖当事人、拍卖标的、拍卖程序。除了了解清楚拍卖法的条款以外，还有其他相辅相成的办法。办法旨在在某种领域上提供更多法律细节，因而是指拍卖法律体系的重要组成部分。值得注意的办法是《拍卖管理办法》、《拍卖监督管理办法》和《艺术品

《拍卖管理办法》。这些办法不仅仅明确了基本法的条款，而且提高了拍卖程序的整体效率和完整性。这些法律文本为拍卖市场的法律依据。此外，本章试图解释设立拍卖企业的手续是如何随着时间的推移而发生变化的。这些变化旨在简化获得拍卖许可的程序，并反映出对所分析的规定的修改。然后，本章将讨论文物及其管理规定（1.3.2 段落）。文物是指具有历史、艺术、科学或文化意义的古代艺术品、遗址、考古发现、结构、历史文献、传统工艺和更多物品。这些被认为对理解和保护一个社会的遗产和特性很有价值。中国高度重视保护其丰富的文化历史，有专门的法律法规来规范文物的处理、发掘和贸易。这方面的最高法源是《中华人民共和国文物保护法》与《中华人民共和国文物保护法实施条例》。《文物拍卖管理办法》对拍卖角度来看，发挥了至关重要的作用。有关文物拍卖的规定非常严格，尤其是对外国拍卖企业来说。外国公司被禁止交易这种特殊的拍卖标的。最后，本章将深入探讨拍卖市场的主要监管机构（1.4 节）。根据有关规定，最高政府机构是商务部和国家市场监督管理总局。这两个机构密切合作，监督和管理拍卖行业。此外，在中国有一个官方认可的非政府组织，名为中国拍卖行业协会。中拍协在促进合作和保持行业自律方面发挥着关键作用。除了组织拍卖师证书考试以外，它还发布重要的自律行业标准，编写中国市场的报告，起草拍卖师教材。

关于第二章，换句话说免责条款和它的后果，内容主要包括拍卖法第六十一条第二款的分析。因为中国艺术拍卖市场发展过快，所以法律法规跟不上步伐。因此，从很多角度来看，拍卖法律制度是不完善的，发现有许多漏洞和问题。本节试图认识到拍卖法缺失的原因，了解此情形会带来

什么问题，预测未来政府会不会完善拍卖法律制度。本章分为两个部分。第一部分将论述瑕疵免责条款（2.1节）。免责条款是一项合同条款，旨在消除或限制合同中一方在某些情况下的责任。这些条款通常用于在双方之间分配因违约而产生的某些事件、损失、损害或责任的风险。免责条款在每个国家都很常见、广泛使用，在中国也是如此。然而，与其他国家不同的是，在中国拍卖行业，免责条款直接存在于拍卖法中。拍卖法第六十一条第二款规定“拍卖人、委托人在拍卖前声明不能保证拍卖标的的真伪或者品质的，不承担瑕疵担保责任”。只有拍卖当事人尊重某些义务，这项条款才有效。首先，委托人必须向拍卖人说明其所知的艺术品信息，包括标的的来源和瑕疵。同样，拍卖公司必须给竞买人解释清楚他们知道或者应该知道的艺术品细节。其次，拍卖公司应当对拍卖标的进行审查和鉴定。不过，法律中没有强制要求拍卖人对艺术品进行审查的义务，这被视为“尽最大努力”的标准。最后，拍卖人应该保证竞买人有权对拍卖标的进行检查。拍卖企业未履行这些义务，免责条款就无效，拍卖人应该承担全部责任。竞买人必须意识到，通过参与拍卖会并竞买，他们接受了拍卖条件和物品的当前状况。为了规范拍卖行为，保护拍卖活动各方当事人的合法权益，制定本条款。然而，许多拍卖公司利用这种规定进行非法活动，以获取更高的利润。第二部分将论述免责条款的后果（2.2节）。本规定在拍卖市场上造成诸多不便，引发了大量问题，比方说赝品和假货的流通，以及延迟并拖欠付款。

关于第三章，也就是说外国投资有关的法律法规，焦点在于外国投资在中国大陆地区拍卖行业的监管格局。首先，本章的第一节（3.1节）试图

洞察 2019 年以前与以后外国投资法规的变化，并将特别关注艺术品和拍卖行业。直到 2019 年，在向中国市场注资时，外国投资者可以从三家外商投资企业中选择一家。这一类别包括中外合资经营企业、中外合作经营企业和外资企业。然而，每一项投资都必须由商务部根据内部规定进行审查和批准。1995 年，公布了限制和禁止行业的目录（外商投资产业指导目录），外国人才知道批准投资项目的标准。中国加入世界贸易组织后，政府在外商投资体制自由化方面迈出了重要步伐。符合中国对世贸的承诺，政府对投资目录进行了修订，以减少限制和禁止行业的数量。作为佣金代理服务的一部分，专门从事艺术品拍卖的公司首次获准在中国境内经营。不迟于 2004 年允许外国拍卖公司使用外方独资。2012 年，苏富比与北京歌华集团签署了合资经营企业合同。一年后，佳士得获得了在中国大陆地区独立举办拍卖会的许可。尽管这两家拍卖公司获得了一定程度的中国市场准入，但它们仍然被禁止出售文物。关于中国文化遗产，外国人，无论是在文物买卖方面，都面临着严格的限制。2019 年，《外商投资法》颁布，废除了所有外商投资企业及相关规章制度。自从那时以来，外国人可以在国内投资者可以使用的正常公司形式之间进行选择。对于被视为允许的行业，更精简的申报制度取代了个案行政审批。现在，艺术行业的所有业务都允许外国投资。不过，与文物相关的业务仍然受到限制。艺术市场发展面临的一个挑战是对艺术品征收高额税收和关税。然而，外国拍卖企业享受了在全国各地启动的几个自由贸易区项目。其次，本章的第二节（3.2 节）试图洞察国际拍卖公司在进入中国拍卖市场时所采用的投资方式和合作形式。作者将注意力集中于苏富比和佳士得进入中国艺术品拍卖市场的策略。

总之，这三章试图分析中华人民共和国拍卖法的某些方面，目的是验证拍卖法律制度适不适合当前拍卖市场和其问题。尽管最近取得了进步，但现有的法律法规并不适合现时的市场。许多学者提倡对拍卖法律制度的几个方面进行修改，专家认为有必要做出改变。然而，尽管中国拍卖市场目前处于稳定发展阶段，但还不够成熟。市场仍在发展和增长，任何修改现有法律或颁布新法规的努力都将在短时间内有利，直到情况再次发生变化。

INDEX

CHAPTER 1. Auction legal framework	7
1.1 Historical background	7
1.2 Current auction legislation	13
1.2.1 Pre-promulgation phase	13
1.2.2 Background of the Law	14
1.2.3 The importance of the Measures for the Administration of Auctions	17
1.3 Areas of management	20
1.3.1 Parties to the auction	20
1.3.2 Objects of auction	30
1.3.3 Auction procedure	40
1.4 Supervising authorities	44
1.4.1 Ministry of Commerce	44
1.4.2 State Administration for Market Regulation	45
1.4.3 China Association of Auctioneers	47
CHAPTER 2. Exemption clause and its consequences	51
2.1 Exemption clause	51
2.1.1 Exemption clause in the Chinese auction legislation	51
2.1.2 Origin of the exemption clause in the Auction Law	58
2.1.3 Misuse of the exemption clause	60
2.2 Consequences	65
2.2.1 Circulation of forgeries	65
2.2.2 Defaults and delays in payment	69
CHAPTER 3. Foreign auction houses approach to the Chinese market	77
3.1 Foreign investment legal framework	77
3.1.1 Foreign investment legal framework before 2019	77
3.1.2 Foreign investment legal framework after 2019	86
3.2 International auction houses in China	95
3.2.1 Sotheby's approach	95
3.2.2 Christie's approach	102
BIBLIOGRAPHY	109

CHAPTER 1

AUCTION LEGAL FRAMEWORK

1.1 Historical background

Some research testifies that a system resembling the current auction already appeared in some Chinese temples in the Wei-Jin period (240-440).¹ Moreover, starting from the Tang dynasty (618-907), a system similar to auctions was widely used in several Buddhist temples in order to collect contributions to maintain the building. It was called *chàngyī* 唱衣 “singing clothes”, because it was used to dispose of the clothes and private belongings of deceased monks. Such auctions gradually disappeared in temples around the end of the Yuan dynasty (1279-1368).² However, in imperial China, the rural and feudal systems prevented such auction mechanisms from further developing and these systems remained an isolated phenomenon.³

While in Europe the main auction houses were founded in the 18th century (Sotheby’s and Christie’s were founded in London in 1744 and 1766, respectively), in China the first auction houses appeared later on, only from the half of the 19th century. With the Opium Wars (1839-1842; 1856-1860), Western countries started to exert their influence in this field as well.⁴ In 1874, an English auction company established a subsidiary company in Shanghai, named *Shànghǎi lǔ yì sī mó pāimài yángháng* 上海鲁意斯摩拍卖洋行. From this moment on, foreign

¹ Giulia BERTUSSI, *Il mercato dell’arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d’aste* [Master’s thesis, Ca’Foscari University of Venice], 2014, [hdl.handle.net](https://hdl.handle.net/10278/10278), last access May 10, 2023, p.8.

² Giulia BERTUSSI, *Il mercato dell’arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d’aste* [Master’s thesis, Ca’Foscari University of Venice], 2014, [hdl.handle.net](https://hdl.handle.net/10278/10278), last access May 10, 2023, p.8. SHI Zhihao 施之昊, “Zhongguo gudai paimai de naxie shier” 中国古代拍卖的那些事儿 (Matters about ancient Chinese auctions), *Xinlang shoucang*, 2019, (collection.sina.com.cn), last access May 13, 2023.

³ Giulia BERTUSSI, *Il mercato dell’arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d’aste* [Master’s thesis, Ca’Foscari University of Venice], 2014, [hdl.handle.net](https://hdl.handle.net/10278/10278), last access May 10, 2023, p.8.

⁴ Giulia BERTUSSI, *Il mercato dell’arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d’aste* [Master’s thesis, Ca’Foscari University of Venice], 2014, [hdl.handle.net](https://hdl.handle.net/10278/10278), last access May 10, 2023, pp.8-9.

auction houses spread throughout the whole country, especially in Shanghai, Beijing, and Guangzhou.⁵

Starting from the 1940s, the complicated and unstable political situation led to a decline in foreign-capital auction houses. After the foundation of the People's Republic of China (hereinafter referred to as PRC) in 1949, in the context of planned economy and state monopoly on goods and resources, auction houses were seen as a capitalist by-product and were therefore banned.⁶ During this phase, art was viewed as detrimental for society, leading to the destruction of several monuments, works of art, books and other cultural items.⁷ By 1958, the auction sector had ceased to exist.⁸

After the end of the Cultural Revolution and the death of President Mao Zedong (1976), auction houses were reintroduced again in mainland China in the 1980s and the auction market started to grow again.⁹ In September 1986, the first state-owned auction company was founded in Guangzhou (*Guóyíng Guǎngzhōu pāimài háng* 国营广州拍卖行), immediately followed by others in first-tier cities, such as Shanghai, Beijing, Tianjin, and Shenzhen.¹⁰ These were all state-owned auction houses that primarily engaged in the sale of public goods and

⁵ BAIDU BAIKE 百度百科, "Paimai gongsi" 拍卖公司 (Auction company), *Baidu baike*, (baike.baidu.com), last access May 13, 2023. ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.33.

⁶ Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, p.50. Giulia BERTUSSI, *Il mercato dell'arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d'aste* [Master's thesis, Ca'Foscari University of Venice], 2014, hdl.handle.net, last access May 10, 2023, p.9.

⁷ Zuzanna KAMYKOWSKA, "Auctioning institutions in China: economic and legal aspects", *Ekonomia I Prawo. Economics and Law*, Vol. 22, No. 2, 2023, p.228.

⁸ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.34.

⁹ Officially, the auction activity was restored after 1991, when China's National Cultural Conference stated the importance of establishing an official auction market of artworks, in order to curb illicit commerce and regulate the market. [Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, p.50. Giulia BERTUSSI, *Il mercato dell'arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d'aste* [Master's thesis, Ca'Foscari University of Venice], 2014, hdl.handle.net, last access May 10, 2023, p.9. Meg MAGGIO, "Auctions (art and antiquities)", in Edward L. Davis (edited by), *Encyclopedia of contemporary Chinese culture*, New York: Routledge, 2005, p.22.]

¹⁰ Giulia BERTUSSI, *Il mercato dell'arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d'aste* [Master's thesis, Ca'Foscari University of Venice], 2014, hdl.handle.net, last access May 10, 2023, p.9. BAIDU BAIKE 百度百科, "Paimai gongsi" 拍卖公司 (Auction company), *Baidu baike*, (baike.baidu.com), last access May 13, 2023. YU Jinsheng 余锦生, "Zhongguo wenwu yishupin paimai sanshi nian" 中国文物艺术品拍卖 30 年 (30 years of auction of cultural relics and works of art in China), in *Art Market*, 2023.01, p.33. ZHOU Wei 周维, "Woguo wenwu yishupin paimai shichang de falü wenti yanjiu" 我国文物艺术品拍卖市场的法律问题研究 (Research on legal issues in the auction market of cultural relics and artworks in China), in *Legal System and Society*, 2011.03, p.121.

materials for production. Only a few of these occasionally sold antiques, handicrafts, paintings, and calligraphy. However, these attempts have played an important role in fostering the formation of the auction market for cultural relics and works of art in China.¹¹ In 1992, the “’92 Beijing International Auction” (‘92 Běijīng guójì pāimài huì, ‘92 北京国际拍卖会), the first official auction¹² of cultural relics and works of art in the Chinese territory, was held successfully.¹³ This kicked off the establishment of several auction companies specialized in the sale of cultural relics, for instance the Shanghai Duo Yun Xuan Auctioneer Co., Ltd. (*Shànghǎi duǒ yún xuān pāimài yǒuxiàn gōngsī* 上海朵云轩拍卖有限公司).¹⁴ In the following years, the sectors covered by auction houses witnessed an expansion, including cultural relics, paintings, calligraphy, porcelain items, jewelry, rare volumes, sculptures, stamps, public goods, copyrights, land usufruct rights, and other items.¹⁵

¹¹ YU Jinsheng 余锦生, “Zhongguo wenwu yishupin paimai sanshi nian” 中国文物艺术品拍卖 30 年 (30 years of auction of cultural relics and works of art in China), in *Art Market*, 2023.01, p.33.

¹² It received authorization from the Beijing Municipal Government and it entailed a partnership between State entities from the PRC, including those in charge of cultural relics, trade, and advertising, alongside an art consulting firm based in the Netherlands. [J. David MURPHY, “Art auctions in China”, *Art antiquity and law*, Vol. 1, No. 1, 1996, p.40.]

¹³ FENG Jiabo 冯家骏, “92 nian Beijing guoji paimai hui de quwen” 92 年北京国际拍卖会的趣闻 (News about the ‘92 Beijing International Auction), *Xinlang shoucang*, 2012, (collection.sina.com.cn), last access May 15, 2023. J. David MURPHY, “Art auctions in China”, *Art antiquity and law*, Vol. 1, No. 1, 1996, p.40. YU Jinsheng 余锦生, “Zhongguo wenwu yishupin paimai sanshi nian” 中国文物艺术品拍卖 30 年 (30 years of auction of cultural relics and works of art in China), in *Art Market*, 2023.01, p.33. HUANG Wei 黄蔚, “Dui Zhongguo yishupin paimai shichang rencai wenti de sikao” 对中国艺术品拍卖市场人才问题的思考 (Reflection on talents’ problem in China’s art auction market), in *Art Science and Technology*, 2014.04, p.116.

¹⁴ When the Shanghai Duoyunxuan Auctioneer Co., Ltd. was founded in 1992, the name was *Shànghǎi duǒ yún xuān yìshù pǐn pāimài yǒuxiàn gōngsī* 上海朵云轩艺术品拍卖有限公司 (Shanghai Duo Yun Xuan Art Auctioneer Co., Ltd.). Later on, the name was changed to *Shànghǎi duǒ yún xuān pāimài yǒuxiàn gōngsī* 上海朵云轩拍卖有限公司 (Shanghai Duo Yun Xuan Auctioneer Co., Ltd.). [YU Jinsheng 余锦生, “Zhongguo wenwu yishupin paimai sanshi nian” 中国文物艺术品拍卖 30 年 (30 years of auction of cultural relics and works of art in China), in *Art Market*, 2023.01, pp.33. ZHOU Wei 周维, “Woguo wenwu yishupin paimai shichang de falü wenti yanjiu” 我国文物艺术品拍卖市场的法律问题研究 (Research on legal issues in the auction market of cultural relics and artworks in China), in *Legal System and Society*, 2011.03, p.121. JING Cuicui 景翠翠, “Woguo yishupin paimai hangye cunzai de wenti ji duice” 我国艺术品拍卖行业存在的问题及对策 (Problems and countermeasures in China’s art auction industry), in *Regional Governance*, 2019.47, p.222.]

¹⁵ Giulia BERTUSSI, *Il mercato dell’arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d’aste* [Master’s thesis, Ca’Foscari University of Venice], 2014, hdl.handle.net, last access May 10, 2023, p.9. BAIDU BAIKE 百度百科, “Paimai gongsi” 拍卖公司 (Auction company), *Baidu baike*, (baike.baidu.com), last access May 13, 2023. Meg MAGGIO, “Auctions (art and antiquities)”, in Edward L. Davis (edited by), *Encyclopedia of contemporary Chinese culture*, New York: Routledge, 2005, p.23. JING Cuicui 景翠翠, “Woguo yishupin paimai hangye cunzai de wenti ji duice” 我国艺术品拍卖行业存在的问题及对策 (Problems and countermeasures in China’s art auction industry), in *Regional Governance*, 2019.47, p.222.

In 1995, the China Association of Auctioneers (*Zhōngguó pāimài hángyè xiéhuì* 中国拍卖行业协会) was established, the only Chinese national organization in the auction field.¹⁶ The Association played a very important role in promoting the formulation and promulgation of the Auction Law of the People's Republic of China (*Zhōnghuá rénmin Gònghéguó pāimài fǎ* 中华人民共和国拍卖法) in 1996.¹⁷

During the first ten years of the 21st century, the Chinese art market started to emerge and develop at an accelerated rate¹⁸, to reach its peak between 2010 and 2012. In this three-year period, it surpassed the English and American markets: China imposed itself as the first country in the world's art market, producing 41.4% of the whole worldwide turnover in 2011, corresponding to USD 4.9 billion out of a total of USD 11.78 billion.¹⁹ However, a large part of China's boom in 2010 and 2011 was due to a serious speculative bubble, which inflated the results and figures achieved.²⁰ Starting from 2012, the Chinese market began to slow down. Between 2013 and 2016, it entered a phase of stable development²¹, switching from quantity-driven growth to quality improvement.²² Moreover, the Chinese market started to open up to foreign auction houses too, although important limitations remain until today.²³ Starting from 2017, the legal foundations of the market have become increasingly solid, and some of the

¹⁶ YU Jinsheng 余锦生, "Zhongguo wenwu yishupin paimai sanshi nian" 中国文物艺术品拍卖 30 年 (30 years of auction of cultural relics and works of art in China), in *Art Market*, 2023.01, p.33.

¹⁷ *Ibidem*.

¹⁸ Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, [hdl.handle.net](https://hdl.handle.net/10278/43444), last access May 13, 2023, pp.66-71.

¹⁹ ARTPRICE, *Art market trends 2011*, in "Artprice", 2012, imgpublic.artprice.com, last access May 15, 2023, p.7. ARTPRICE, *The art market in 2013*, in "Artprice", 2014, imgpublic.artprice.com, last access May 15, 2023, p.18.

²⁰ Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, [hdl.handle.net](https://hdl.handle.net/10278/43444), last access May 13, 2023, pp.71-80.

²¹ Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, [hdl.handle.net](https://hdl.handle.net/10278/43444), last access May 13, 2023, pp.80-89. Giulia BERTUSSI, *Il mercato dell'arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d'aste* [Master's thesis, Ca'Foscari University of Venice], 2014, [hdl.handle.net](https://hdl.handle.net/10278/43444), last access May 10, 2023, pp.10-13.

²² YU Jinsheng 余锦生, "Zhongguo wenwu yishupin paimai sanshi nian" 中国文物艺术品拍卖 30 年 (30 years of auction of cultural relics and works of art in China), in *Art Market*, 2023.01, pp.33-34. JING Cuicui 景翠翠, "Woguo yishupin paimai hangye cunzai de wenti ji duice" 我国艺术品拍卖行业存在的问题及对策 (Problems and countermeasures in China's art auction industry), in *Regional Governance*, 2019.47, p.222.

²³ Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, [hdl.handle.net](https://hdl.handle.net/10278/43444), last access May 13, 2023, pp.52-53. Giulia BERTUSSI, *Il mercato dell'arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d'aste* [Master's thesis, Ca'Foscari University of Venice], 2014, [hdl.handle.net](https://hdl.handle.net/10278/43444), last access May 10, 2023, p.11 and 20.

main issues of the market have been partially solved.²⁴ Nevertheless, the speed at which the Chinese auction market has developed has prevented a consolidation of its foundations.²⁵ In China, the auction market has expanded too fast for regulators to keep pace, so that even today, there is a lack of legislation that controls fakes circulation, and auction houses take no responsibility for selling non-authentic works.²⁶

Internationally, the COVID-19 pandemic has had an impact across all regions, causing significant pressures in the global art market. The health crisis, regional lockdowns, travel restrictions, and disruptions and cancellations in auction cycles happened at different times, creating difficulties for the cosmopolitan art market to engage in consistent transactions and interactions.²⁷ In the initial outbreak of COVID-19 in 2020, the global auction market experienced a decline in value, as restrictions altered the frequency and format of sales. In response to the uncertainties, vendors held back, leading to a reduction in supply. These two years of decline (2019 and 2020) brought market values to their lowest point in a decade, impacting leaders in the market as well, including the US auction market.²⁸

In the initial stages of the pandemic, sales in China were less affected, witnessing a milder decline compared to other major markets in 2020, reaching a 11% decrease totaling USD 6.3 billion.²⁹ Notably, China's auction market quickly transitioned to virtual alternatives as soon as the pandemic hit, promptly promoting online auctions. In 2020 the volume of online auctions more than doubled compared to the previous year, with offline sales that included an online bidding option also achieving favorable outcomes.³⁰ Furthermore, they demonstrated notable resilience, displaying some of the most solid recovery in 2021 with a

²⁴ Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, pp.89-95.

²⁵ Giulia BERTUSSI, *Il mercato dell'arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d'aste* [Master's thesis, Ca'Foscari University of Venice], 2014, hdl.handle.net, last access May 10, 2023, p.9.

²⁶ Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, p.174. David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in "The New York Times", 2013, nytimes.com/china-art-fraud, last access May 13, 2023.

²⁷ ARTNET and CAA, *Global Chinese Art Auction Market Report 2020*, in "Artnet", 2021, cn.artnet.com/caa, last access November 8, 2023, p.22.

²⁸ ART BASEL and UBS, *The Art Market 2023*, in "Art Basel", 2023, cdn.sanity.io, last access November 10, 2023, pp.141 and 143.

²⁹ ART BASEL and UBS, *The Art Market 2023*, in "Art Basel", 2023, cdn.sanity.io, last access November 10, 2023, pp.141 and 144.

³⁰ ARTNET and CAA, *Global Chinese Art Auction Market Report 2020*, in "Artnet", 2021, cn.artnet.com/caa, last access November 8, 2023, p.21.

remarkable 40% increase, reaching USD 8.8 billion.³¹ In 2021, as travel policies remained somewhat restrictive, mainland China broadened the scope of online auctions.³² However, in 2022, sales saw a substantial 22% year-on-year decline, totaling just USD 6.9 billion, causing China to surrender its leading position to the US once again. The significant drop in sales during this period was largely attributed to the implementation of zero-COVID policies, resulting in the cancellation of several crucial auction sales in the autumn season.³³

As an emerging bidding method in recent years, online auctions have acquired increasing development and attention, especially since the pandemic. Online-only auctions, particularly popular among younger generations, have witnessed a surge in the number of participants and lots sold.³⁴

³¹ ART BASEL and UBS, *The Art Market 2023*, in “Art Basel”, 2023, cdn.sanity.io, last access November 10, 2023, pp.141 and 144.

³² ARTNET and CAA, *Global Chinese Art Auction Market Report 2021*, in “Artnet”, 2022, cn.artnet.com/caa, last access November 8, 2023, p.22.

³³ ART BASEL and UBS, *The Art Market 2023*, in “Art Basel”, 2023, cdn.sanity.io, last access November 10, 2023, pp.141 and 144.

³⁴ ARTNET and CAA, *Global Chinese Art Auction Market Report 2021*, in “Artnet”, 2022, cn.artnet.com/caa, last access November 8, 2023, p.22.

1.2 Current auction legislation

1.2.1 Pre-promulgation phase

As mentioned in the previous paragraph, following the Cultural Revolution, with Deng Xiaoping's policy of Reform and Opening up, several auction houses were established, and the art market gradually began to take shape. Very soon, the need for specific legal regulations for the control and supervision of auction activities became evident.³⁵ Therefore, at the beginning of the 90s, the China's National Cultural Conference decreed that an art auction market should be established in order to curb illicit trade and regulate the market.³⁶ Subsequently, in 1992, the General Office of the State Council issued the "Circular on the Public Auctioning of Disposed Public Property" (*Guówùyuyuàn bàngōngtīng guānyú gōngwù chǔlǐ shíxíng gōngkāi pāimài de tōngzhī* 国务院办公厅关于公物处理实行公开拍卖的通知), known as Document No. 48 (*48 hào wénjiàn*, 48 号文件).³⁷ This document formally re-affirmed the practice of auctions after the country's 30 years of planned economy, by endorsing public goods auctions.³⁸

However, Document No. 48 covered only the auction of public property. With a single scope of regulation, it was far from meeting the demands of the rapidly developing auction industry. Hence, at the beginning of 1994, the Standing Committee of the eighth National People's Congress included the promulgation of the Auction Law in its legislative planning.³⁹ At the end of the same year, the Ministry of Internal Trade⁴⁰ submitted the "Auction Law of

³⁵ CHINA AUCTION, "'Paimai fa' 20 sui le" 《拍卖法》20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.9.

³⁶ Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, p.50.

³⁷ *Ibidem*.

³⁸ CHINA AUCTION, "'Paimai fa' 20 sui le" 《拍卖法》20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.9. ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, pp.3-4.

³⁹ *Ibidem*.

⁴⁰ The Ministry of Internal Trade of the PRC (*Zhōnghuá rénmin gònghéguó guónèi màoyì bù* 中华人民共和国国内贸易部) was a former department of the State Council of the PRC. It was in charge of the national commodity circulation. It was established in 1994, according to the third State Council Institutional Reform Plan. However, such department was short-lived, since it was reorganized into the State Bureau of Internal Trade (*Guójīā guónèi màoyì jú* 国家国内贸易局) in 1998, in accordance with the following State Council Institutional Reform Plan. Some of the main duties of the Ministry of Internal Trade are: formulate guidelines and regulations in the commodity market and commodity circulation field, formulate management measures, cultivate and develop the commodity market, and so on. [BAIDU BAIKE 百度百科, "Zhonghua renmin gongheguo guonei maoyi bu" 中华人民共和国国内贸易部 (Ministry of Internal Trade of the PRC), *Baidu baike*, (baike.baidu.com), last access

the People's Republic of China (Draft for Review)" 《中华人民共和国拍卖法（送审稿）》 to the State Council. After receiving such document, the Legislative Affairs Office of the State Council solicited opinions from various parties and conducted research on relevant issues. The Legislative Affairs Office, together with the Ministry of Domestic Trade and other relevant departments, revised the draft and formed the "Auction Law of the People's Republic of China (Revised Draft)" 《中华人民共和国拍卖法（草案）》. This document has been discussed and adopted at the 39th executive meeting of the State Council.⁴¹ Following further deliberation, the 5th of July 1996 the final version of the Auction Law of the PRC 《中华人民共和国拍卖法》 was finally promulgated.⁴²

1.2.2 Background of the Law

The most important source of law governing the auction sector is the Auction Law of the People's Republic of China (*Zhōnghuá rénmin Gònghéguó pāimài fǎ* 中华人民共和国拍卖法, hereinafter referred to as the Auction Law). It was promulgated on July 5, 1996 and it was adopted at the 20th meeting of the Standing Committee of the 8th National People's Congress, issued by Order No. 70 of the President of the PRC.⁴³ It came into force on January 1,

October 17, 2023. GENERAL OFFICE of the STATE COUNCIL of the PRC 国务院办公厅, "Guowuyuan bangong ting guanyu yinfa guonei maoyi bu he guojia liangshi chubei ju zhineng peizhi, neishe jigou he renyuan bianzhi fang'an de tongzhi" 国务院办公厅关于印发国内贸易部和国家粮食储备局职能配置、内设机构和人员编制方案的通知 (Notice of the General Office of the State Council on issuing the functional allocation, internal organization and personnel establishing plan of the Ministry of Internal Trade and the State Bureau of Grain Reserve), *Zhongguo zhengfu wang*, 1994, (www.gov.cn), last access October 17, 2023.]

⁴¹ CHEN Bangzhu 陈邦柱, "Guanyu 'Zhonghua renmin gongheguo paimai fa (cao'an)' de shuoming" 关于《中华人民共和国拍卖法（草案）》的说明 (Explanation about the Auction Law of the People's Republic of China – draft), in *Gazette of the Standing Committee of the National People's Congress of the People's Republic of China*, 1996.06, pp.12-13.

⁴² CHINA AUCTION, "'Paimai fa' 20 sui le" 《拍卖法》20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.9.

⁴³ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo zhuxi ling (di 70 hao) 'Zhonghua renmin gongheguo paimai fa'" 中华人民共和国主席令（第70号）《中华人民共和国拍卖法》 (Order No. 70 of the President of the People's Republic of China "Auction Law of the People's Republic of China"), *Dang he guojia zhengce fagui ku*, 1996, (zcfg.cs.com.cn), last access September 24, 2023.

1997.⁴⁴ The Auction Law is the basic law in China’s auction industry, the foundation for the drafting of other regulations in the sector.⁴⁵ It consists of 69 articles organized in 6 chapters:

- I. General Provisions (总则 *zǒngzé*);
- II. Objects of Auction (拍卖标的 *pāimài biāodi*);
- III. Parties to Auction (拍卖当事人 *pāimài dāngshìrén*);
- IV. Auction Procedures (拍卖程序 *pāimài chéngxù*);
- V. Legal Responsibility (法律责任 *fǎlǜ zérèn*);
- VI. Supplementary Provisions (附则 *fùzé*).

The first section stipulates the general provisions and addresses the legislative purpose, the scope of application, the definition of the word “auction”, the basic principles of the auction activity, as well as the supervising authority.⁴⁶ The promulgation and implementation of the Auction Law marked the beginning of the legal and standardized development of the industry in China. Ji Tao 季涛⁴⁷, an authority in the auction market, believes that the introduction of the Auction Law has played a pivotal role in fostering a new phase of healthy and prosperous growth within the Chinese art market. This not only provides domestic auction houses with uniform legal guidelines to adhere to, but also facilitates comprehensive market

⁴⁴ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (fk.npc.gov.cn), last access June 5, 2023. Full English translation of the text at the following link: english.www.gov.cn.

⁴⁵ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.5.

⁴⁶ CHINA AUCTION, “‘Paimai fa’ 20 sui le” 《拍卖法》20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.9.

⁴⁷ Ji Tao 季涛 is an expert in the field of auctions, actively engaged in research on laws and regulations, the Chinese cultural relics and art auction market, as well as art investment and collection. As a registered auctioneer, he hosted several auctions of art, real estate, land, and so on. Currently, he is a researcher at the Auction Research Center of the Central University of Finance and Economics. In addition to this role, Ji Tao is a part-time professor at the China University of Political Science and Law. He holds a significant position as a member of the Legal Advisory and Theoretical Research Committee of the China Association of Auctioneers, demonstrating his commitment to the development and understanding of legal aspects in the auction field. Notably, he leads the auction terminology standardization drafting group, contributing to the establishment of clear and standardized language within the industry. He contributed to the formulation of the Auction Law in 1996. Furthermore, he also played a central role in the establishment of the certification exams to become a registered auctioneer with the China Association of Auctioneers. He collaborated on the development of national auction qualification examination textbooks and materials.

engagement and competition, cultivating a more mature and standardized market environment.⁴⁸ During the years, the Auction Law was amended twice, in 2004 and in 2015.⁴⁹

Following the promulgation of the central law, a series of secondary normative measures (*bànfǎ* 办法) were released by several departments throughout the years, each of them pertaining to a specific issue of the central law. The most important ones are:

- “Interim Measures for the Supervision and Administration of Auctions” 《拍卖监督管理暂行办法》, promulgated by the State Administration for Industry and Commerce (*Zhōnghuá rénmin gònghéguó guójiā gōngshāng xíngzhèng guǎnlǐ zǒngjú* 中华人民共和国国家工商行政管理总局), took effect on the 1st of March 2001; later substituted by the “Measures for the Supervision and Administration of Auctions” 《拍卖监督管理办法》, in effect since the 1st of March 2013;
- “Measures for the Administration of Auctions” 《拍卖管理办法》, published by the Ministry of Commerce (*Zhōnghuá rénmin gònghéguó shāngwù bù* 中华人民共和国商务部), in force since January 1, 2005;
- “Measures for the Examination of Cultural Relics as Objects of Auction” 《文物拍卖标的审核办法》, issued by the National Cultural Heritage Administration (*Guójiā wénwù jú* 国家文物局), came into force on March 9, 2016;
- “Measures for the Administration of Cultural Relics Auctions” 《文物拍卖管理办法》, released by the National Cultural Heritage Administration, became effective on the 20th of October 2016. These Measures substituted the “Interim Provisions on the Administration of Cultural Relics Auctions” 《文物拍卖管理暂行规定》, in force since the 14th of July 2003.
- “Measures for the Administration of Artwork Business” 《艺术品经营管理办法》, published by the Ministry of Culture (*Zhōnghuá rénmin gònghéguó wénhuà bù* 中华人民共和国文化部), took effect on November 14, 1994; later substituted by the

⁴⁸ CHINA AUCTION, “‘Paimai fa’ 20 sui le” 《拍卖法》20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.10. PANG Sijian 庞思建, “Cong wu fa kexun dao youfa keyi – yishupin shichang fagui 40 nian” 从无法可循到有法可依—艺术品市场法规 40 年 (From having no law to follow to having to follow a law: 40 years of art market regulations), in *Art Market*, 2018.08, p.42.

⁴⁹ *Ibidem*.

“Measures for the Administration of Artwork Business” 《艺术品经营管理办法》, in effect since March 15, 2016.⁵⁰

Furthermore, provincial administrations have issued local regulations that are specific to their individual provinces, municipalities and autonomous regions, while still being based on and reflecting quite entirely the central law. In other words, they are legal documents formulated by local governments according to relevant laws and regulations, in order to regulate auction behavior and market order in their competent jurisdictions. They have a supplementary and region-specific role within the framework of the national auction law system.⁵¹

On the matter of the auction of cultural relics, some provisions from the “PRC’s Law for the Protection of Cultural Relics” 《中华人民共和国文物保护法》 will be taken into consideration as well, and will be integrated with articles of the “Regulations for the Implementation of the PRC’s Law for the Protection of Cultural Relics” 《中华人民共和国文物保护法实施条例》.

1.2.3 The importance of the Measures for the Administration of Auctions

The Measures for the Administration of Auctions (*Pāimài guǎnlǐ bànfǎ* 拍卖管理办法, hereinafter referred to as Measures) were adopted by the Ministry of Commerce (*Zhōnghuá rénmín gònghéguó shāngwù bù* 中华人民共和国商务部) on December 2, 2004, issued by Order No. 24 [2004] of the Ministry of Commerce. They took effect the 1st of January 2005.⁵² During the years, they were revised twice, in 2015 and 2019. As of now, they consist of 51 articles organized in 6 chapters.⁵³

⁵⁰ All the cited measures can be found on the national laws and regulations database: Database of National Laws and Regulations (*Guojia falü fagui shujuku* 国家法律法规数据库), flk.npc.gov.cn, last access April 25, 2023.

⁵¹ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, pp.7-9.

⁵² MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Zhonghua renmin gongheguo shangwu bu ling (di 24 hao) ‘Paimai guanli banfa’” 中华人民共和国商务部令 (第 24 号) 《拍卖管理办法》 (Order No. 24 of the Ministry of Commerce of the People’s Republic of China “Measures for the Administration of Auctions”), *Zhongguo zhengfu wang*, 2004, (www.gov.cn), last access September 27, 2023.

⁵³ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa (2019 xiuding)” 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023.

These Measures are formulated on the basis of the Auction Law and relevant rules and administrative regulations.⁵⁴ Their function is to address the demands of China's rapidly evolving auction industry, foster regulatory compliance within the sector, promote the healthy development of the auction industry, uphold the commitments of the Chinese government to the WTO and facilitate the opening-up of the auction industry to the outside world. The Measures represent an expansion of the provisions and principles set forth in the Auction Law.⁵⁵

When comparing the Auction Law and the Measures, one can notice that the former focuses on the auction parties, whereas the latter places emphasis on the auction enterprises and administrative departments. As a matter of fact, the Measures dedicate a large number of articles to the establishment, alteration and termination of auction enterprises, as well as the role and responsibilities of the administrative authorities. Moreover, they not only emphasize the management of auctioneers' qualifications and practice, but they also highlight the operation and management of auction companies. Competent authorities are entrusted with the responsibility of managing and supervising the auction industry. Lastly, legal liabilities primarily target illicit business practices conducted by auction companies.⁵⁶

The Measures play a role of utmost significance in the auction industry. The reasons of such importance are threefold.

First of all, as the auction industry experiences rapid growth, both the scope and scale of auctions are expanding. Said expansion has given rise to numerous new challenges and issues within the industry. However, from a practical standpoint, certain provisions of the Auction Law are rather general, lacking specific and detailed guidelines for the conduct of auction companies. This gap has resulted in instances of friction and conflicts. Therefore, there was a critical need to formulate and promulgate the Measures as an essential supplement and improvement to the existing Auction Law. The Measures have enhanced the specificity and operability of the auction legal framework. Refining and expanding upon the provisions

⁵⁴ *Ibidem*, Art. 1.

⁵⁵ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.6.

⁵⁶ *Ibidem*.

outlined in the Auction Law, they offer a more detailed and comprehensive perspective on the management of the auction industry.⁵⁷

Secondly, in recent years, the swift expansion of the auction industry has led to an escalation of unethical business practices, increased unfair competition, and a growing industry monopoly. First of all, the entry threshold for auction companies is particularly low, and there are inadequate exit mechanisms. This leads to an oversaturation of auction companies vying for limited auction resources, thus exacerbating unfair competition. Moreover, some auction companies are backed by government and industry management departments. Due to this support, said companies have been able to gain monopolistic control over certain auction resources. Lastly, the Auction Law either lacks specific provisions or provides vague and impractical guidelines for addressing matters related to unfair competition, branch operations, commissions, and other issues. This deficiency has, to a certain degree, impacted the industry's public trust and credibility. Therefore, controlling unfair competition within China's auction practice is an immediate concern. Offering specific provisions to effectively regulate auction behavior and maintain order within the auction industry, these Measures are crucial for standardizing industry practices and promoting a healthy development.⁵⁸

Finally, the formulation of the Measures is essential for the Chinese government to meet its WTO obligations and facilitate the broader opening-up of the auction industry to the outside world. By promulgating these Measures and establishing clear provisions for foreign-invested auction companies' entry and exit⁵⁹, the auction industry's internationalization can be promoted, and foreign investments can be effectively guided. In summary, these updated provisions with fresh content mirror the auction industry's evolving approach to national development.⁶⁰

⁵⁷ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, pp.6-7. MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "'Paimai guanli banfa' jiedu" 《拍卖管理办法》解读 (Interpretation of the Measures for the Administration of Auctions), *Zhonghua renmin gongheguo shangwubu*, 2005, (tfs.mofcom.gov.cn), last access September 29, 2023.

⁵⁸ *Ibidem*.

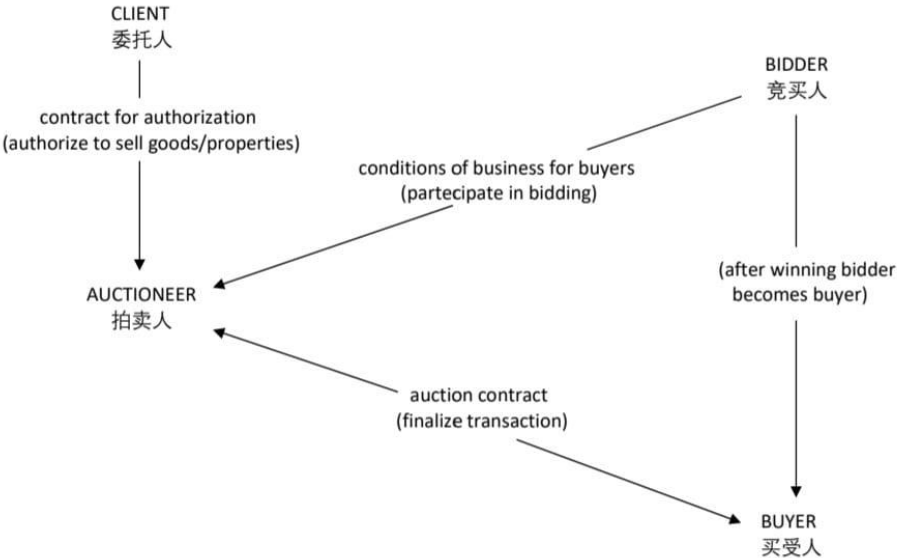
⁵⁹ Said provisions for the foreign-invested auction enterprises entry and exit refers to "Chapter 3 – Application for foreign-invested enterprises to obtain, modify and terminate licenses for auction business". Such chapter has been deleted with the 2019's revision.

⁶⁰ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, pp.6-7. MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "'Paimai guanli banfa' jiedu" 《拍卖管理办法》解读

1.3 Areas of management

1.3.1 Parties to the auction

In the auction industry, there are typically four key parties involved: the client, the auctioneer, the bidder and the buyer.



(a) Auctioneers

In a broad sense, the world auctioneer refers to a seller who presides over auction activities. However, in a more specific way, ‘auctioneer’ refers to an enterprise legal person⁶¹ who has

(Interpretation of the Measures for the Administration of Auctions), *Zhonghua renmin gongheguo shangwubu*, 2005, (tfs.mofcom.gov.cn), last access September 29, 2023.

⁶¹ Legal personality or juridical personhood (in Chinese *fǎrén zīgé* 法人资格) is a fundamental concept in the field of law, which grants entities and individuals the status of recognized legal persons under the jurisdiction of a specific legal system. This recognition affords them the capacity to engage in a wide range of legal activities, including the ability to enter into contracts, own property, sue or be sued in court, and assume legal rights and responsibilities. The concept of legal personality exists in China as well, but it is important to note that the specific legal framework and the rights and obligations of legal persons may vary from one country to another (while the general concept of legal personality is similar in many countries, the specific legal provisions and regulations that govern legal persons can differ). In China, the concept of legal personality is well-established, and it applies to various entities, such as enterprises, government agencies, and other organizations. China’s legal framework defines the rights and obligations of these legal persons, governing their activities and interactions within the country’s legal system. The specific legal provisions and regulations pertaining to legal personality in China are outlined in the country’s laws and regulations, particularly those concerning corporate and commercial entities. [Bryant SMITH, “Legal personality”, *Yale Law Journal*, Vol. 37, No. 3, 1928, pp.283-299. FU Tingmei, “Legal Person in China: Essence and Limits”, *The American Journal of Comparative Law*, Vol. 41, No. 2, 1993, pp.261-297. FEI

been entrusted by a client to auction other people's property in the company's own name and obtain a profit margin (referred to as commission). The Auction Law regulates auctioneers in the latter sense in articles 10 to 24.⁶² Article 10 of such law provides that:

第十条 拍卖人是指依照本法和《中华人民共和国公司法》设立的从事拍卖活动的企业法人。⁶³

Art. 10 An auctioneer refers to an enterprise legal person that is established in accordance with the present Law and the Company Law of the People's Republic of China and engaged in activities of auction.⁶⁴

Auction procedures have always to be conducted by an auction master.⁶⁵ As specified both in Article 16 of the Auction Law and in the second paragraph of Article 16 of the Measures, an auction master is a person who has passed the national qualification examination and has obtained an "Auction Master Qualification Certificate of the People's Republic of China" (*Zhōnghuá rénmin gònghéguó pāimài shī zhíyè zīgé zhèngshū* 中华人民共和国拍卖师职业资格证书), issued by the China Association of Auctioneers.⁶⁶ The auctioneer has the nature of an intermediary. Specifically, it is the client's agent. At the same time, the role of an auctioneer is relatively independent, as it acts in its own name and deals with bidders and buyers in its own name.⁶⁷

Anling, "La persona giuridica nei progetti di codice civile della Cina: discussioni e prospettive", *Bullettino dell'Istituto di diritto romano Vittorio Scialoja*, quarta serie, Vol. VI, 2016, pp.87-102.]

⁶² ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.12.

⁶³ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *Guojia falü faqiu shujuku*, 2015, (fk.npc.gov.cn), last access June 5, 2023, Art. 10.

⁶⁴ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 10.

⁶⁵ *Ibidem*, Art. 14. As a confirmation, one can read in Article 7 of the Measures for the Administration of Auctions that the presence of at least one auction master is one of the conditions for the establishment of an auction enterprise. [MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Paimai guanli banfa (2019 xiuding)" 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 7.]

⁶⁶ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 16. MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Paimai guanli banfa (2019 xiuding)" 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 16.

⁶⁷ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.13.

(b) Clients

Clients are covered under articles 25 to 31 of the Auction Law. The first one of these articles stipulates that:

第二十五条 委托人是指委托拍卖人拍卖物品或者财产权利的公民、法人或者其他组织。⁶⁸

Art. 25 A client refers to a citizen, legal person or other organization that authorizes an auctioneer to auction his or its articles, goods or property rights.⁶⁹

Therefore, a client can either be a citizen (natural person), a legal person (company) or other organizations. The Auction Law does not provide any particular condition for clients. However, on the basis of the Chinese legal system, there are some restrictions for covering such position. When it is a citizen that acts as a client, they are required to be 18 years old and have no limited capacity for civil conduct. Alternatively, they should be at least 16 years old, have income from labor, and have no limited capacity for civil conduct. If the client is a legal person, they are required to have capacity for civil conduct and civil rights. Whenever organizations act as clients, they are required to independently bear civil liability.⁷⁰ According to Article 26, a client may also decide to be represented by an agent.⁷¹

(c) Bidders and buyer

Articles 23 to 40 deal with bidders and buyers. According to the Auction Law, a bidder is defined as a citizen, legal person or other organization that takes part in the bidding for items of auction (Art. 32), whilst a buyer is described as a bidder that buys an auction item at the highest price offered by themselves (Art. 38).⁷² It follows that bidder and buyer are the same party in the auction legal relationship⁷³: in the process of competing with other participants,

⁶⁸ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *Guojia falü faqiu shujuku*, 2015, (fjk.npc.gov.cn), last access June 5, 2023, Art. 25.

⁶⁹ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 25.

⁷⁰ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.13.

⁷¹ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 26.

⁷² *Ibidem*, Art. 32 and Art. 38.

⁷³ A "legal relationship" refers to the connection or association between two or more parties that arises from legal rights and obligations. In other words, it signifies the rights and duties that exist between individuals, entities, or entities and individuals as recognized and governed by law. Legal relationships can take various forms

it is referred to as bidder; and it is called buyer when, at the end of the bidding process, it has purchased the object at auction. For one auction item, there can be more than one bidder (and there should be) but only one buyer, that must be one of the bidders.⁷⁴ Once again, no conditions are set forward, but Article 33 specifies that a bidder shall comply with any requirements set forth in law or administrative rules and regulations for selling and purchasing objects of auction.⁷⁵ As in the case of the client, also a bidder may be represented by an agent, according to Article 34.⁷⁶

(d) Registration procedure

The Auction Law was first amended on August 28, 2004, when the 11th session of the Standing Committee of the 10th National People's Congress of the PRC decided to revise it.⁷⁷ This amendment abrogated both the third paragraph of Article 5⁷⁸ and the fifth point in Article

and may arise from different contexts, such as contracts, family ties, property ownership, employment agreements, business transactions, and so on. These relationships are characterized by legal duties and responsibilities that the involved parties are bound to fulfill. The nature and scope of a legal relationship depend on the specific area of law and the circumstances surrounding the interaction between the parties.

⁷⁴ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.13.

⁷⁵ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.14.

⁷⁶ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 34.

⁷⁷ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Quanguo renmin daibiao dahui changwu weiyuanhui guanyu xiugai 'Zhonghua renmin gongheguo paimai fa' de jue ding" 全国人民代表大会常务委员会关于修改《中华人民共和国拍卖法》的决定 (The decision of the Standing Committee of the National People's Congress about amending the Auction Law of the People's Republic of China), *Zhongguo renda wang*, 2004, (www.npc.gov.cn), last access September 24, 2023.

⁷⁸ Third paragraph of Article 5 provided that: 公安机关对拍卖业按照特种行业实施治安管理。 "The public security organ shall exercise public order control over the auction trade in the same way as they deal with special trades." [STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo zhuxi ling (di 70 hao) 'Zhonghua renmin gongheguo paimai fa'" 中华人民共和国主席令 (第 70 号) 《中华人民共和国拍卖法》 (Order No. 70 of the President of the People's Republic of China "Auction Law of the People's Republic of China"), *Dang he guojia zhengce fagui ku*, 1996, (zcfg.cs.com.cn), last access September 24, 2023, Art. 5. CHINA AUCTION, "'Paimai fa' 20 sui le" 《拍卖法》 20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.10.]

12⁷⁹, which qualified auctions as a special industry or special trade (*tèzhǒng hángyè* 特种行业), thereby ending its status as such.⁸⁰

Special trades or industries refer to those trades in the industrial and commercial service sector that are more likely to be used by criminals as hiding places, as means of forging or altering documents and seals, or for concealing stolen goods, due to the content and nature of business operations. Hence, they are handed over to public security authorities for administration and supervision. Enterprises operating in these industries are subject to public order control by public order organs. According to relevant laws and regulations, anyone operating a special industry must report to the relevant department for approval, and apply to the local public security organ at the county level to obtain a permit for special trade (*tèzhǒng hángyè xǔkě zhèng* 特种行业许可证). At the same time, they should apply to the administrative department for industry and commerce at the county level for registration and the obtaining of a business license.⁸¹ The abolition of special industry licenses for auction enterprises has undoubtedly lowered the threshold for entry into the auction business.⁸²

⁷⁹ Article 12 stipulated the conditions to establish an auction enterprise. The fifth condition reads: (五) 有公安机关颁发的特种行业许可证. “(5) having the permit for special trade issued by the public security organ.” [STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo zhuxi ling (di 70 hao) ‘Zhonghua renmin gongheguo paimai fa’” 中华人民共和国主席令 (第 70 号) 《中华人民共和国拍卖法》 (Order No. 70 of the President of the People’s Republic of China “Auction Law of the People’s Republic of China”), *Dang he guojia zhengce fagui ku*, 1996, (zcfg.cs.com.cn), last access September 24, 2023, Art. 12. CHINA AUCTION, “‘Paimai fa’ 20 sui le” 《拍卖法》 20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.10.]

⁸⁰ CHINA AUCTION, “‘Paimai fa’ 20 sui le” 《拍卖法》 20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.10.

⁸¹ BAIDU BAIKE 百度百科, “Tezhong hangye” 特种行业 (Special industries), *Baidu baike*, (baike.baidu.com), last access May 29, 2023.

⁸² CHINA AUCTION, “‘Paimai fa’ 20 sui le” 《拍卖法》 20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.10.

Later, the Auction Law was amended again by the 14th session of the Standing Committee of the 12th National People’s Congress of the PRC on April 24, 2015.⁸³ On this occasion, four articles were modified.⁸⁴

BEFORE 2015

第十一条 拍卖企业可以在设区的市设立。设立拍卖企业必须经所在地的省、自治区、直辖市人民政府负责管理拍卖业的部门审核许可，并向工商行政管理部门申请登记，领取营业执照。

Art. 11 Auction enterprises may be established in cities divided into districts. Establishment of an auction enterprise shall be subject to examination, verification and permission by the department in charge of the auction trade under the people's government of the province, autonomous region, or municipality directly under the Central Government in the place where the enterprise is to be established, and shall be registered with the administrative

AFTER 2015

第十一条 企业取得从事拍卖业务的许可必须经所在地的省、自治区、直辖市人民政府负责管理拍卖业的部门审核批准。拍卖企业可以在设区的市设立。

Art. 11 An enterprise obtaining a permit to engage in auction business must be examined and approved by the department in charge of the auction trade under the people's government of the province, autonomous region, or municipality directly under the Central Government in the place where the enterprise is to be established. Auction enterprises may be established in cities divided into districts.

⁸³ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Quanguo renmin daibiao dahui changwu weiyuanhui guanyu xiugai ‘Zhonghua renmin gongheguo dianli fa’ deng liu bu falü de jue ding” 全国人民代表大会常务委员会关于修改《中华人民共和国电力法》等六部法律的决定 (The decision of the Standing Committee of the National People’s Congress about amending six laws including the Electric Power Law of the People’s Republic of China), *Zhongguo renda wang*, 2015, (www.npc.gov.cn), last access September 24, 2023.

⁸⁴ Information included in the next table is drawn from the website pkulaw.com (www.pkulaw.com) and from the following sources: STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2004 xiuzheng)” 中华人民共和国拍卖法(2004修正), (Auction Law of the People’s Republic of China – amended in 2004), *Zhongguo zhengfu wang*, 2004, (www.gov.cn), last access September 26, 2023. STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015修正), (Auction Law of the People’s Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023. STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Quanguo renmin daibiao dahui changwu weiyuanhui guanyu xiugai ‘Zhonghua renmin gongheguo dianli fa’ deng liu bu falü de jue ding” 全国人民代表大会常务委员会关于修改《中华人民共和国电力法》等六部法律的决定 (The decision of the Standing Committee of the National People’s Congress about amending six laws including the Electric Power Law of the People’s Republic of China), *Zhongguo renda wang*, 2015, (www.npc.gov.cn), last access September 24, 2023. CHINA AUCTION, “Jiedu ‘paimai fa’ de xiugai neirong” 解读《拍卖法》的修改内容 (Interpreting the content of the changes to the Auction Law), in *China Auction*, 2016.Z1, p.21. CHINA AUCTION, “‘Paimai fa’ 20 sui le” 《拍卖法》20岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.10.

department for industry and commerce for obtaining of a business license.

第十二条 设立拍卖企业，应当具备下列条件： [...]

Art. 12 To establish an auction enterprise, the following conditions shall be satisfied: [...]

第六十条 违反本法第十一条的规定，未经许可登记设立拍卖企业的， [...]

Art. 60 Whereas, in violation of the provisions of Article 11 of the present Law, an auction enterprise is established without permission and registration, [...]

第六十八条 本法施行前设立的拍卖企业，不具备本法规定的条件的，应当在规定的期限内达到本法规定的条件；逾期未达到本法规定的条件的，由工商行政管理部门注销登记，收缴营业执照。具体实施办法由国务院另行规定。

Art. 68 Auction enterprises, established prior to implementation of the present Law, that do not satisfy the conditions provided for in this Law shall, within the prescribed time limit, meet such conditions; with regard to those that fail to meet the said conditions within the time limit, the administrative department for industry and commerce shall cancel their registration and rescind their business licenses. Specific measures in this regard shall be formulated separately by the State Council.

第十二条 企业申请取得从事拍卖业务的许可，应当具备下列条件： [...]

Art. 12 An enterprise applying for a permit to engage in auction business shall satisfy the following conditions: [...]

第六十条 违反本法第十一条的规定，未经许可从事拍卖业务的， [...]

Art. 60 Whereas, in violation of the provisions of Article 11 of the present Law, auction business is carried out without a permit, [...]

/

[Abrogated in its entirety.]

This amendment mainly modified the procedure for the establishment of an auction enterprise⁸⁵, in accordance with the Reform Plan of the Registration System of Registered

⁸⁵ CHINA AUCTION, “Paimai fa’ 20 sui le” 《拍卖法》20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.10.

Capital.⁸⁶ Before the amendment, the system for setting up an auction corporation was the so-called *xiān zhèng hòu zhào zhìdù* 先证后照制度 (approval first license next system). The Auction Law provided that the establishment of an auction enterprise should first go through a process of examination and permission by the administrative department, before obtaining a license from the commercial and industrial department. After the 2015 amendment, it became *xiān zhào hòu zhèng zhìdù* 先照后证制度 (license first approval next system). First, the company should be registered with the commercial and industrial department for the purpose of obtaining the business license for its establishment. Once established, it has to apply for the qualification permit certificate for conducting auction operations and activities (*pāimài jīngyíng pīzhǔn zhèngshū* 拍卖经营批准证书, lit. auction business approval certificate), issued by the commercial department.⁸⁷

BEFORE 2015	AFTER 2015
一、经行政主管部门审核许可 1. Approval by administrative department	一、到工商部门领取执照（注册一家拍卖公司） 2. Obtainment of the license from commercial and industrial department (registration of the enterprise)
二、到工商部门领取执照 2. Obtainment of the license from commercial and industrial department	二、经商务主管部门审核批准，领取许可 2. Approval by relevant commercial department, obtainment of permit

⁸⁶ The Reform Plan of the Registration System of Registered Capital (*Zhùcè zīběn dēngjì zhìdù gǎigé fāng'àn* 注册资本登记制度改革方案) was issued by the State Council on February 7, 2014, with the Notice of the State Council on Issuing the Reform Plan of the Registration System of Registered Capital (*Guówùyuàn guānyú yìnfā zhùcè zīběn dēngjì zhìdù gǎigé fāng'àn de tōngzhī* 国务院关于印发注册资本登记制度改革方案的通知). Details on this topic at the following sources: STATE COUNCIL of the PRC 中华人民共和国国务院, “Guowuyuan guanyu yinfa zhuce ziben dengji zhidu gaige fang'an de tongzhi” 国务院关于印发注册资本登记制度改革方案的通知 (Notice of the State Council on issuing the Reform Plan of the Registration System of Registered Capital), *Zhongguo zhengfu wang*, 2014, (www.gov.cn), last access October 24, 2023. STATE ADMINISTRATION for INDUSTRY and COMMERCE 工商总局, “Zhuce ziben dengji zhidu gaige fang'an' jiedu yi” 《注册资本登记制度改革方案》解读一 (Interpretation 1 of the “Reform Plan of the Registration System of Registered Capital”), *Zhongguo zhengfu wang*, 2014, (www.gov.cn), last access October 24, 2023. STATE ADMINISTRATION for INDUSTRY and COMMERCE 工商总局, “Zhuce ziben dengji zhidu gaige fang'an' jiedu er” 《注册资本登记制度改革方案》解读二 (Interpretation 2 of the “Reform Plan of the Registration System of Registered Capital”), *Zhongguo zhengfu wang*, 2014, (www.gov.cn), last access October 24, 2023.

⁸⁷ Information included in the previous paragraph and in the next table is drawn from the following sources: CHINA AUCTION, “Jiedu ‘paimai fa’ de xiugai neirong” 解读《拍卖法》的修改内容 (Interpreting the content of the changes to the Auction Law), in *China Auction*, 2016.Z1, p.21. CHINA AUCTION, “‘Paimai fa’ 20 sui le” 《拍卖法》20岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.10. XIAO YANG WIRE 小杨线报, “Dai nin jiangjiang paimai de naxie shi, paimai hang sheli tiaojian ji liucheng” 带您讲讲拍卖的那些事, 拍卖行设立条件及流程 (Talking about the auction, the conditions and procedures for the establishment of the auction enterprise), *Weixin* (account number ymy082912yymy), (mp.weixin.qq.com), last access May 24, 2023.

In other words, this amendment aims at changing the procedure for the establishment of the auction enterprise from a pre-approval to a post-permit system, without any consistent changes in the management of daily auction activities. This amendment has led to a number of positive effects. For instance, the administrative approval procedure for the establishment of an auction business has been replaced by an administrative qualification permit for engaging in auction business, obtained only after the establishment of the enterprise. Furthermore, the act of engaging in auction business without a permit is clearly defined as illegal, penalties and punitive measures are clearly stated.⁸⁸ This is effective in curbing the spread of illegal business activities and provides a direct and efficient legal basis to fight the current chaotic order in the auction market.⁸⁹

In the same year, the Ministry of Commerce modified the Measures for the Administration of Auctions on October 28, in order to adapt their content to the changes introduced by the amendment to the Auction Law.⁹⁰ On this occasion, several articles in the second section have been revised and modified⁹¹, including the title of the section too. The most important

⁸⁸ See Auction Law, Art. 60; Measures for the Administration of Auctions, Art. 2-36.

⁸⁹ CHINA AUCTION, “Jiedu ‘paimai fa’ de xiugai neirong” 解读《拍卖法》的修改内容 (Interpreting the content of the changes to the Auction Law), in *China Auction*, 2016.Z1, p.21. CHINA AUCTION, “‘Paimai fa’ 20 sui le” 《拍卖法》20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.10.

⁹⁰ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Shangwu bu guanyu xiugai bufen guizhang he guifan xing wenjian de jue ding” 商务部关于修改部分规章和规范性文件的决定 (Decision of the Ministry of Commerce on amending some rules and regulatory documents), *Zhongguo zhengfu wang*, 2015, (www.gov.cn), last access September 25, 2023.

⁹¹ Some conditions for the establishment of auction enterprises and of subsidiaries have been changed (Art. 7 and Art. 11, which became Art. 7 and Art. 10 after 2015), as well as the materials to submit (Art. 8 and Art. 12, which became Art. 8 and Art. 11 after 2015). Article 10, which was abrogated with the revision, provided that: 拍卖企业的名称应当符合企业名称登记管理的有关规定。拍卖企业名称中的行业表述应当标明“拍卖”字样。 “The name of the auction enterprise shall comply with the relevant provisions on the registration and management of enterprise names. The name of the auction enterprise shall contain the word ‘auction’ as a description of the trade the company engages in.” In other words, after 2015, enterprises whose names do not include the word “auction” may also apply for the qualification permit to conduct auction operations. This loosening of the provisions is favorable to the expansion of the auction market and the development of the auction industry. Finally, Article 15 has undergone revisions (becoming Article 14), generally altering the conditions under which the competent commercial department shall revoke the auction operation approval certificate. [MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Zhonghua renmin gongheguo shangwu bu ling (di 24 hao) ‘Paimai guanli banfa’” 中华人民共和国商务部令 (第 24 号) 《拍卖管理办法》 (Order No. 24 of the Ministry of Commerce of the People’s Republic of China “Measures for the Administration of Auctions”), *Zhongguo zhengfu wang*, 2004, (www.gov.cn), last access September 27, 2023. MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa (2015 xiuding)” 拍卖管理办法(2015 修订), (Measures for the Administration of Auctions – revised in 2015), *Falu fagui ku*, 2015, (www.flfgk.com), last access September 26, 2023. CHINA AUCTION, “Jiedu ‘paimai fa’ de xiugai neirong” 解读《拍卖法》的修改内容 (Interpreting the content of the changes to the Auction Law), in *China Auction*, 2016.Z1, p.21. CHINA AUCTION, “‘Paimai fa’ 20 sui le” 《拍卖法》20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, p.10.]

changes may be seen in the former Article 13, which later became Article 12 after 2015. Such article explains in detail the procedure that enterprises and subsidiaries should follow when applying for obtaining the permit. The first and second paragraphs of the new Article 12 stipulate that:

第十二条 企业及分公司申请取得从事拍卖业务的许可，按照下列程序办理：

企业及分公司申请取得从事拍卖业务的许可，应当先经企业或分公司所在地市级商务主管部门审查后，报省级商务主管部门核准并颁发拍卖经营批准证书。⁹²

Art. 12 Enterprises and subsidiaries thereof shall apply for permission to engage in auction business, in accordance with the following procedures:

Enterprises and subsidiaries thereof applying for permission to engage in the auction business shall, after the examination of the city-level commercial department where the enterprise or the subsidiary thereof are located, report to the provincial-level commercial department for verification and issuance of the auction business approval certificate.

In other terms, applicant enterprises should submit all the needed materials to the relevant commercial department at the city level. The commercial department should review the applicants' materials within nine working days. If some errors are found, the applicant is notified, and he is asked to fix the mistakes. Otherwise, if all the materials are correct and the conditions are met, approval should be given by the commercial department at the provincial level and the auction business certificate should be issued. If the application demand is not approved, the relevant department should explain the reasons for the refusal.⁹³ Before 2015, certificates were all issued by the Ministry of Commerce; after the revision, this duty passed to the commercial department at the provincial level.⁹⁴

⁹² MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Paimai guanli banfa (2015 xiuding)" 拍卖管理办法(2015 修订), (Measures for the Administration of Auctions – revised in 2015), *Falü fagui ku*, 2015, (www.flfgk.com), last access September 26, 2023.

⁹³ Information included in the previous paragraph refers to Beijing municipality and is drawn from the following source: PEOPLE'S GOVERNMENT of BEIJING MUNICIPALITY 北京市人民政府, "Qiye qude congshi paimai yewu de xuke (xuke shenpi) (yiban banli fangshi)" 企业取得从事拍卖业务的许可（许可审批）（一般办理方式），(General processing method for enterprises to obtain a license to engage in auction business), *Beijing shi renmin zhengfu*, (banshi.beijing.gov.cn), last access September 27, 2023. The People's Governments of different provinces, autonomous regions, and municipalities have drawn up documents concerning guidelines for obtaining the auction business license. A comparison between such documents reveals that procedures are similar in the whole Chinese territory.

⁹⁴ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Zhonghua renmin gongheguo shangwu bu ling (di 24 hao) 'Paimai guanli banfa'" 中华人民共和国商务部令（第 24 号）《拍卖管理办法》(Order No. 24 of the Ministry of Commerce of the People's Republic of China "Measures for the Administration of Auctions"), *Zhongguo zhengfu wang*, 2004, (www.gov.cn), last access September 27, 2023, Art. 13. MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Paimai guanli banfa (2015 xiuding)" 拍卖管理办法(2015 修订), (Measures for the Administration of Auctions – revised in 2015), *Falü fagui ku*, 2015, (www.flfgk.com), last access September 26, 2023, Art. 12.

Additionally, the second paragraph of Article 2 points out that all auction activities shall be carried out by enterprises that have obtained a permit to engage in auction business, in accordance with law. Article 36 further specifies that enterprises participating in auction activities without the permit will face prohibition, in compliance with the relevant national regulations.⁹⁵

Two years later, also the Measures for the Supervision and Administration of Auctions were modified on September 30, 2017.⁹⁶ This revision once again reflected the changes introduced in the procedure for the establishment of an auction enterprise. The Article 4 was changed to read:

第四条 设立拍卖企业应当依照《中华人民共和国拍卖法》《中华人民共和国公司法》等法律法规的规定，向工商行政管理部门申请登记，领取营业执照，并经所在地的省、自治区、直辖市人民政府负责管理拍卖业的部门审核，取得从事拍卖业务的许可。⁹⁷

Art. 4 The establishment of an auction enterprise shall, in accordance with the provisions of the “Auction Law of the People’s Republic of China”, the “Company Law of the People’s Republic of China”, and other laws and regulations, apply for registration with the administrative department for industry and commerce to obtain a business license, and obtain a permit to engage in auction business after being reviewed by the department responsible for managing the auction industry in the local province, autonomous region, or municipality.

This article once more confirms the steps an auction company should follow before starting to conduct auction operations.

1.3.2 Objects of auction

“Objects of auction” in the broad sense refers to all types of property that can be transferred through auction, either tangible or intangible property.⁹⁸ The Auction Law regulates objects of auction in articles 6 to 9, but other provisions and details are provided by secondary sources,

⁹⁵ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa (2015 xiuding)” 拍卖管理办法(2015 修订), (Measures for the Administration of Auctions – revised in 2015), *Falü faqiu ku*, 2015, (www.flfgk.com), last access September 26, 2023.

⁹⁶ STATE ADMINISTRATION for INDUSTRY and COMMERCE 国家工商行政管理总局, “Guojia gongshang xingzheng guanli zongju ling (di 91 hao) ‘Paimai jiandu guanli banfa’” 国家工商行政管理总局令 (第 91 号) 《拍卖监督管理办法》 (Order No. 91 of the State Administration for Industry and Commerce “Measures for the Supervision and Administration of Auctions”), *Zhongguo zhengfu wang*, 2017, (www.gov.cn), last access September 28, 2023.

⁹⁷ *Ibidem*, Art. 4.

⁹⁸ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.14.

such as the measures and other auction-related laws. According to the Auction Law, objects of auction are “goods or property rights which are owned by the client or which the client may dispose of according to law” (Article 6).⁹⁹ Here, ‘goods’ (*wùpǐn* 物品) should be taken to refer to material and tangible property with substantial existence, whereas ‘property rights’ (*cáichǎn quánlì* 财产权利) should be read as immaterial and intangible property.¹⁰⁰ According to the official “Interpretation of Measures for the Administration of Auctions” drawn up by the Ministry of Commerce, auction targets include: works of art, cultural relics, real estate, motor-driven vehicles (such as ships), machinery equipment, stock ownership, agricultural and sideline products, raw materials for production, goods for everyday consumption, items for private collections, as well as vehicle operation rights, advertising management rights, commodity agency rights, commercial management rights, naming rights, contracting rights, land use rights, exploration and mining rights, state-owned property rights, and so on.¹⁰¹

In accordance with China’s auction legal system, all the objects of auction can be categorized into four groups based on the level of legal constraint on auction:

- (a) objects allowed to be auctioned;
- (b) objects restricted from auction;
- (c) objects auctioned by law;
- (d) objects prohibited for sale.¹⁰²

(a) Items and property rights that are allowed to be auctioned

There are no legal restrictions to free circulation in the market for this type of objects. This category includes, for instance, works of art and pieces of furniture.¹⁰³

⁹⁹ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *Guojia falü faqiu shujuku*, 2015, (fjk.npc.gov.cn), last access June 5, 2023, Art. 6. STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 6.

¹⁰⁰ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.14.

¹⁰¹ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa’ jiedu” 《拍卖管理办法》解读 (Interpretation of the Measures for the Administration of Auctions), *Zhonghua renmin gongheguo shangwubu*, 2005, (tfs.mofcom.gov.cn), last access September 29, 2023. ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.15.

¹⁰² ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.15.

¹⁰³ *Ibidem*.

(b) Items and property rights that are restricted from auction

This refers to properties that can be auctioned only after being examined and approved by the relevant authorities. For this type of targets, before the auction, the involved parties must follow the legal procedures for examination and approval according to law (Art. 8, Auction Law).¹⁰⁴ Examples belonging to this category are cultural relics, land contract rights, land use rights, exploration and mining rights, state-owned property rights, and so on.¹⁰⁵ With regard to cultural relics, the previously mentioned article specifies that they must undergo appraisal and obtain legal permission from the administrative department for cultural relics in the location where the auctioneer resides, before they can be auctioned.¹⁰⁶

Moreover, the second paragraph of Article 28 of the Measures for the Administration of Auctions further stipulates that if the auction items require administrative approval to be transferred in accordance with the law, the client must obtain the consent of the administrative approval authority, before the auction takes place.¹⁰⁷

(c) Items and property rights auctioned by law

They refer to properties that can only be transferred by auction or which have priority to be transferred by auction.¹⁰⁸ Goods confiscated and articles used to offset tax money or fines by the administrative organs of the State or by the People's Court according to law, retrieved objects that cannot be returned to their owners, and other special state-owned assets pertain to this category, and shall therefore be governed by the provisions of Article 9 of the Auction Law.¹⁰⁹ In the aforementioned situations, the auction is to be conducted by auctioneers

¹⁰⁴ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 8.

¹⁰⁵ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.15.

¹⁰⁶ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 8.

¹⁰⁷ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Paimai guanli banfa (2019 xiuding)" 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 28.

¹⁰⁸ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.15.

¹⁰⁹ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 9. MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Paimai guanli banfa (2019 xiuding)" 拍卖管理办

appointed by the People's Governments of the provinces, autonomous regions, municipalities directly under the Central Government or of the cities divided into districts, where such property is located.¹¹⁰ The second paragraph of Article 9 of the Measures for the Administration of Auctions further explains that the auction of these specific types of items must be conducted by auction enterprises possessing the corresponding auction qualification. The specific qualification requirements are to be formulated by the provincial-level commercial department in conjunction with other relevant departments¹¹¹, and must be submitted to the Ministry of Commerce for record.¹¹²

To sum up, the provisions of this section apply to confiscated goods, ownerless goods and special state-owned assets.¹¹³

(d) Items and property rights prohibited to be auctioned

These objects are not allowed to enter the auction market. Article 7 of the Auction Law provides that:

第七条 法律、行政法规禁止买卖的物品或者财产权利，不得作为拍卖标的。¹¹⁴

Art. 7 Goods or property rights prohibited for sale by laws or administrative regulations shall not be made objects of auction.¹¹⁵

Article 19 of the Measures for the Administration of Auctions also adds to the list those goods with disputed ownership or disposal rights that have not been legally determined by judicial

法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 9.

¹¹⁰ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 9.

¹¹¹ Said requirements are to be formulated on the basis of the "principle of standardized management and preferential selection" 规范管理、择优选用的原则 *guifan guānlǐ, zéyōu xuǎnyòng de yuánzé* (also known as "principle of standard management and selective preference"). It refers to standards and guidelines that guarantee efficient and standardized management practices while still allowing for selective or preferential choices based on certain criteria.

¹¹² MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Paimai guanli banfa (2019 xiuding)" 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 9.

¹¹³ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.16.

¹¹⁴ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023, Art. 7.

¹¹⁵ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 7.

or administrative authorities, and goods under customs control for which customs formalities have not yet been completed.¹¹⁶

In other words, objects restricted from the auction market fall within two main categories: (1) items and property rights prohibited from sale by laws and administrative regulations, comprising persons and their rights related to the body, land, weapons, ammunition, drugs, obscene and explicit materials, stolen property, smuggled goods, state secrets, items under customs surveillance, and so on; (2) articles or property rights subject to ownership or disposal right disputes.¹¹⁷

(e) Auction of cultural relics

The emergence of a socialist market economy in China has led to a surge in both domestic and global interest in Chinese cultural artifacts. This has resulted in a significant and complex trade in cultural objects, encompassing both legal and illegal activities. As a consequence, many protected cultural treasures left China, fueling practices like unauthorized excavation, theft, and the unlawful buying and selling of culturally significant items within the country. The Chinese government has taken on the responsibility of safeguarding the integrity of the country's cultural heritage, aiming to prevent any potential threats posed by overly rapid development and the trade in antiquities.¹¹⁸

The primary legal tool employed by the Government to pursue this objective is the PRC's Law for the Protection of Cultural Relics (*Zhōnghuá rénmín gònghéguó wénwù bǎohù fǎ* 中华人民共和国文物保护法, hereinafter referred to as LPCR)¹¹⁹, that deals with cultural relics in a very broad and general sense. Rules and provisions specifically dedicated to the auction of cultural relics can be found in the Measures for the Administration of Cultural Relics Auctions (*Wénwù pāimài guǎnlǐ bànfǎ* 文物拍卖管理办法).¹²⁰ Lastly, the Regulations for the

¹¹⁶ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Paimai guanli banfa (2019 xiuding)" 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 19.

¹¹⁷ ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022, p.16.

¹¹⁸ Phillip NEWELL, "The PRC's Law for the Protection of Cultural Relics", in *Art, Antiquity and Law*, Vol. 13, No. 1, 2008, pp.1-2. Zuzanna KAMYKOWSKA, "Auctioning institutions in China: economic and legal aspects", *Ekonomia I Prawo. Economics and Law*, Vol. 22, No. 2, 2023, pp.228-230.

¹¹⁹ Adopted by the Standing Committee of the National People's Congress on November 19, 1982; revised in 2002 and amended in 2007, 2013, 2015 and 2017; as of the end of January 2024 a new draft revision is pending.

¹²⁰ Adopted by the National Cultural Heritage Administration on October 20, 2016; amended in 2020. The enactment of such Measures has relaxed restrictions on the sale of cultural relics and streamlined the procedures for obtaining the license to deal with cultural relics. [Silvia BERTOLDO, *La nascita e l'evoluzione del mercato*

Implementation of the PRC's Law for the Protection of Cultural Relics (*Zhōnghuá rénmin gònghéguó wénwù bǎohù fǎ shíshī tiáolì* 中华人民共和国文物保护法实施条例) includes some additional articles on the subject.¹²¹

According to the Chinese legislation on the protection of cultural heritage, not all cultural relics can be sold and/or auctioned on the territory of mainland China. Article 14 of the Measures for the Administration of Cultural Relics Auctions provides a list of such prohibited lots: (1) state-owned immovable cultural relics and their components; (2) cultural relics collected and preserved by state-owned cultural relics collection units and other state organs, armed forces, state-owned enterprises, public institutions, as well as cultural relics collected by non-state-owned museums; (3) unearthed (or discovered underwater) cultural relics that should be submitted to the state; (4) cultural relics that have been stolen, excavated, smuggled, or clearly belong to the group of Chinese cultural relics that have been illegally looted in history; (5) cultural relics confiscated and recovered by law enforcement departments such as public security, customs, industry and commerce departments, as well as by people's courts and procuratorates; (6) cultural relics that are considered "precious"; and (7) objects suspected of harming national interests or potentially having adverse social impacts.¹²²

Under the LPCR, only two categories of commercial operations are allowed to deal with cultural relics: authorized shops (*wénwù shāngdiàn* 文物商店)¹²³ and State-sanctioned auction houses (*pāimài qǐyè* 拍卖企业)¹²⁴. The fourth item of Article 55 of the same Law reiterates:

第五十五条 [...] 除经批准的文物商店、经营文物拍卖的拍卖企业外，其他单位或者个人不得从事文物的商业经营活动。¹²⁵

dell'arte in Cina [Master's thesis, Ca'Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, p.52.]

¹²¹ Adopted by the State Council of the PRC on May 18, 2003; amended in 2013, 2016, 2017.

¹²² NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, "Wenwu paimai guanli banfa (2020 xiugai)" 文物拍卖管理办法(2020 修改), (Measures for the Administration of Cultural Relics Auctions – revised in 2020), *Pkulaw.com*, 2020, (www.pkulaw.com), last access October 12, 2023, Art. 14.

¹²³ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)" 中华人民共和国文物保护法(2017 修正), (PRC's Law for the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023, Art. 50-53.

¹²⁴ *Ibidem*, Art. 50-54.

¹²⁵ *Ibidem*, Art. 55.

Art. 55 [...] Except for approved cultural stores and auction enterprises that handle auctions of cultural objects, no other unit or individual is permitted to undertake commercial operational activities in cultural property.¹²⁶

Cultural relics shops are not allowed to operate as auction houses¹²⁷, and conversely auction houses are prohibited from establishing shops for the direct sale of relics.¹²⁸ It is possible that these regulations are in place to prevent potential instances of corruption or fraud¹²⁹, as administrative cultural departments and their personnel are expressly restrained from directly engaging in either of these activities.¹³⁰

Auction houses require a special permit from the National Cultural Heritage Administration (*Guójiā wénwù jú* 国家文物局, hereinafter NCHA)¹³¹ in order to engage in the auction of cultural relics (*wénwù pāimài xǔkě zhèng* 文物拍卖许可证).¹³² As one can read both in Article 4 of the Measures for the Administration of Cultural Relics Auctions and in paragraph one of Article 54 of the LPCR:

第四条 依法设立的拍卖企业经营文物拍卖的，应当取得省、自治区、直辖市人民政府文物行政部门颁发的文物拍卖许可证。¹³³

Art. 4 Auction enterprises established pursuant to law that engage in the cultural relics auction shall obtain a permit for cultural relics auction issued by the departments of

¹²⁶ Phillip NEWELL, “The PRC’s Law for the Protection of Cultural Relics”, in *Art, Antiquity and Law*, Vol. 13, No. 1, 2008, p.38.

¹²⁷ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)” 中华人民共和国文物保护法(2017 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023, Art. 53.

¹²⁸ *Ibidem*, Art. 54.

¹²⁹ Alice DESTO, *Cultural heritage protection in the People’s Republic of China: the import and export of cultural relics* [Master’s thesis, Ca’Foscari University of Venice], 2020-21, dspace.unive.it, last access October 12, 2023, p.32.

¹³⁰ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)” 中华人民共和国文物保护法(2017 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023, Art. 55.

¹³¹ While the Chinese denomination, adopted in 1998, has remained consistent throughout, the English name has experienced various transformations. It was initially known as the State Administration for Cultural Relics, then changed to State Administration for Cultural Heritage in 2003, commonly abbreviated as SACH. The current English denomination was formally adopted in 2018.

¹³² Phillip NEWELL, “The PRC’s Law for the Protection of Cultural Relics”, in *Art, Antiquity and Law*, Vol. 13, No. 1, 2008, p.39.

¹³³ NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Wenwu paimai guanli banfa (2020 xiugai)” 文物拍卖管理办法(2020 修改), (Measures for the Administration of Cultural Relics Auctions – revised in 2020), *Pkulaw.com*, 2020, (www.pkulaw.com), last access October 12, 2023, Art. 4. STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)” 中华人民共和国文物保护法(2017 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023, Art. 54.

cultural relics administration of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government.

Moreover, Article 7 of the Measures clarifies certain aspects for the obtainment of such permit. Within 30 working days from the date of receipt of an application for the permit to conduct cultural relics auctions, the provincial departments of cultural relics administration have to render a decision of approval or disapproval. In the event of approval, a cultural relics auction permit shall be duly issued. In cases of disapproval, the applicant shall be promptly notified in written form, and reasons for such decision must be provided.¹³⁴

The second paragraph of Article 8 of the Auction Law stipulates that cultural relics must undergo appraisal and obtain legal permission from the provincial-level administrative department for cultural relics in the location where the auctioneer resides, before they can be auctioned.¹³⁵ Detailed provisions on this matter can be found both in the Measures for the Administration of Cultural Relics Auctions and in the Measures for the Examination of Cultural Relics as Objects of Auction (*Wénwù pāimài biāodì shěnhé bànfǎ* 文物拍卖标的审核办法).¹³⁶ Auction houses have to preventively (20 working days before the announcement of the auction) submit all cultural relics soon to be auctioned to the provincial departments of cultural relics administration for inspection, for the purpose of verifying their eligibility for sale. Once the application is accepted, the competent provincial-level administrative department for cultural relics will coordinate a physical review. They have to finalize the review and approval documents within 20 working days and simultaneously submit them for record-keeping to the NCHA.¹³⁷ Moreover, auction enterprises have the duty to maintain

¹³⁴ NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Wenwu paimai guanli banfa (2020 xiugai)” 文物拍卖管理办法(2020 修改), (Measures for the Administration of Cultural Relics Auctions – revised in 2020), *Pkulaw.com*, 2020, (www.pkulaw.com), last access October 12, 2023, Art. 7. STATE COUNCIL of the PRC 中华人民共和国国务院, “Zhonghua renmin gongheguo wenwu baohu fa shishi tiaoli (2017 xiugai)” 中华人民共和国文物保护法实施条例(2017 修改), (Regulations for the Implementation of the PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Zhongguo zhengfu wang*, 2017, (www.gov.cn), last access October 13, 2023, Art. 42.

¹³⁵ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 8.

¹³⁶ Adopted by the National Cultural Heritage Administration on March 9, 2016; amended in 2020.

¹³⁷ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)” 中华人民共和国文物保护法(2017 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023, Art. 56. NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Wenwu paimai guanli banfa (2020 xiugai)” 文物拍卖管理办法(2020 修改), (Measures for the Administration of Cultural Relics Auctions – revised in 2020), *Pkulaw.com*, 2020, (www.pkulaw.com), last access October 12, 2023, Art. 12-13.

comprehensive records of all information pertaining to such relics and the private parties involved in the transaction, and to submit them to provincial departments of cultural relics administration for record. Said provincial departments should establish an information and credit management system for the purchase and auction of cultural relics.¹³⁸

Whenever cultural authorities identify a “precious” (*zhēngui* 珍贵) item that is legally listed for sale at an auction house, they may appoint a domestic institutional collector for direct purchase of said relic. The price is to be decided through negotiation (*xiéshāng* 协商) between the original owner and the collecting institution.¹³⁹ This poses an additional challenge to the full legalization of private trade in cultural relics: individuals are prohibited from both purchasing and selling State-owned relics, as well as all “precious” relics, whether they are part of institutional or private collections.¹⁴⁰ This effectively implies that “ordinary” relics can be legally exchanged.¹⁴¹

Furthermore, under any circumstances, non-state-owned immovable relics and movable relics banned from export cannot be sold, transferred, or mortgaged to foreigners.¹⁴² Finally,

NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Wenwu paimai biaodi shenhe banfa (2020 xiugai)” 文物拍卖标的审核办法(2020 修改), (Measures for the Examination of Cultural Relics as Objects of Auction – revised in 2020), *Zhonghua renmin gongheguo shangwubu*, 2020, ([fms.mofcom.gov.cn](https://www.mofcom.gov.cn)), last access October 12, 2023.

¹³⁸ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)” 中华人民共和国文物保护法(2017 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023, Art. 57. STATE COUNCIL of the PRC 中华人民共和国国务院, “Zhonghua renmin gongheguo wenwu baohu fa shishi tiaoli (2017 xiugai)” 中华人民共和国文物保护法实施条例(2017 修改), (Regulations for the Implementation of the PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Zhongguo zhengfu wang*, 2017, (www.gov.cn), last access October 13, 2023, Art. 43. NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Wenwu paimai guanli banfa (2020 xiugai)” 文物拍卖管理办法(2020 修改), (Measures for the Administration of Cultural Relics Auctions – revised in 2020), *Pkulaw.com*, 2020, (www.pkulaw.com), last access October 12, 2023, Art. 18. NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Wenwu paimai biaodi shenhe banfa (2020 xiugai)” 文物拍卖标的审核办法(2020 修改), (Measures for the Examination of Cultural Relics as Objects of Auction – revised in 2020), *Zhonghua renmin gongheguo shangwubu*, 2020, ([fms.mofcom.gov.cn](https://www.mofcom.gov.cn)), last access October 12, 2023, Art. 20.

¹³⁹ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)” 中华人民共和国文物保护法(2017 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023, Art. 58.

¹⁴⁰ *Ibidem*, Art. 51 and 56 and 58.

¹⁴¹ Alice DESTO, *Cultural heritage protection in the People’s Republic of China: the import and export of cultural relics* [Master’s thesis, Ca’Foscari University of Venice], 2020-21, (dspace.unive.it), last access October 12, 2023, p.32.

¹⁴² STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)” 中华人民共和国文物保护法(2017 修正), (PRC’s Law for

there is a provision that restricts foreigners from investing in Chinese cultural relics auction houses using any form of corporate structure.¹⁴³

Based on the CRPL, the NCHA is currently the highest administrative authority responsible for supervising the protection and management of cultural heritage within the territory of mainland China.¹⁴⁴ As of today, the NCHA holds the status of vice-ministry-level organization operating directly under the State Council.¹⁴⁵ The NCHA is responsible for the coordination and guidance of heritage protection across the entire nation. This includes the definition of uniform standards, policies and regulations that must be coherently applied nationwide to areas such as cultural relics identification, collection, transfer, purchase, protection, research and so on.¹⁴⁶ The NCHA plays a significant supervisory role, especially in a series of activities at the local level, such as the establishment of cultural relics shops and auction houses or the revision of cultural relics intended for auctions. These actions require prior authorization at the central level before they can be undertaken.¹⁴⁷ At the local level, county- and provincial-level cultural relics departments (*wénwù guǎnlǐ jú* 文物管理局) are charged with the task of protecting cultural heritage and managing cultural relics auction activities within their

the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023, Art. 25 and 52.

¹⁴³ *Ibidem*, Art. 55. Article 55 explicitly lists the three types of Foreign-Invested Enterprises - FIEs (*sān zī qǐyè* 三资企业): equity joint venture (EJV), cooperative joint venture (CJV), and wholly foreign-owned enterprise (WFOE). However, the Foreign Investment Law (FIL), introduced in 2019, marked the conclusion of the FIEs regime, substituting them with the same corporate structures available to local investors and entrepreneurs in China. Therefore, all FIEs related laws and regulations were abolished with the implementation of the FIL. FIEs are no longer an option for foreign investments entering the Chinese market, but the last amendment to the LPCR was in 2017, predating the FIL. Although Article 55 has not been formally amended yet, its current interpretation is: “It is prohibited to establish cultural relics shops and auction enterprises engaging in cultural relics auctions using any form of corporate structure”.

¹⁴⁴ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)” 中华人民共和国文物保护法(2017 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023, Art. 8.

¹⁴⁵ HUO Zhengxin, “Legal Protection of Cultural Heritage in China: a Challenge to Keep History Alive”, in *International Journal of Cultural Policy*, Vol. 22, No. 4, 2016, p.509.

¹⁴⁶ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)” 中华人民共和国文物保护法(2017 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023, Art. 8. NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Wenwu paimai guanli banfa (2020 xiugai)” 文物拍卖管理办法(2020 修改), (Measures for the Administration of Cultural Relics Auctions – revised in 2020), *Pkulaw.com*, 2020, (www.pkulaw.com), last access October 12, 2023, Art. 3.

¹⁴⁷ A list of the responsibilities of the NCHA is available on its official website: NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Zhuyao zhize” 主要职责 (Main responsibilities), *National Cultural Heritage Administration*, (www.ncha.gov.cn), last access October 20, 2023.

respective jurisdictions. They serve as intermediaries connecting local governments with cultural institutions (including museums, archeological teams, and so on).¹⁴⁸

1.3.3 Auction procedure

Despite the Chinese art market differs in several ways from the Western one, Chinese auction houses employ an approach that closely aligns with the more commonly practiced international model, known as the “English auction” or “open ascending price auction”. Such auctions are characterized by an open competition where several bidders vie for an item, submitting upward bids until the item is ultimately sold to the highest bidder.¹⁴⁹ The Auction Law deals with auction procedures in articles 41-57, including the period preceding the actual auction session.

In the first phase the client authorizes the auction house to sell goods or property rights either owned by the former or subject to their discretion for disposal. After the client provides all the needed materials, if the auctioneer accepts, they must sign a contract for authorization with the client (*wěituō pāimài hétóng* 委托拍卖合同). If the auctioneer deems it necessary, they may choose to arrange an evaluation of the auction item, and they can modify or cancel the authorization contract on the basis of the results.¹⁵⁰ The Measures of the Administration of Auctions further explain that the auction company must appoint a dedicated person specifically tasked with ensuring the appropriate storage of client-submitted auction items.

¹⁴⁸ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)” 中华人民共和国文物保护法(2017 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023, Art. 8. NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Wenwu paimai guanli banfa (2020 xiugai)” 文物拍卖管理办法(2020 修改), (Measures for the Administration of Cultural Relics Auctions – revised in 2020), *Pkulaw.com*, 2020, (www.pkulaw.com), last access October 12, 2023, Art. 3. HUO Zhengxin, “Legal Protection of Cultural Heritage in China: a Challenge to Keep History Alive”, in *International Journal of Cultural Policy*, Vol. 22, No. 4, 2016, p.508.

¹⁴⁹ Silvia BERTOLDO, *La nascita e l’evoluzione del mercato dell’arte in Cina* [Master’s thesis, Ca’Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, p.59.

¹⁵⁰ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023, Art. 41-44. STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 41-44.

They will also create a procedure for handling, storing, and transferring such items, while implementing essential safety measures.¹⁵¹

The second part involves the publication of the auction announcement and the display of the auction targets. The auction house should issue the announcement of auction with relevant information for bidders at least seven days before the scheduled session, by means of a newspaper with a large circulation or other media with equal influence designated by local commercial authorities. Such announcement should also include details regarding the time and location for the display of items, which should have a minimum duration of two days (except for fresh items or other objects that are difficult to preserve).¹⁵²

The following step includes the auction session itself. Auction enterprises may establish entrusted bidding seats at the auction site.¹⁵³ Before the actual sale, the auction master publicly declares the rules and addresses other relevant considerations.¹⁵⁴ During the auction process, the auctioneer announces the starting bid price and the bidders begin to compete, gradually increasing their offers.¹⁵⁵ In the event that the highest bid does not reach the reserve price (*bǎoliú jià* 保留价)¹⁵⁶, such offer is considered non-binding and the sale of the item is

¹⁵¹ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa (2019 xiuding)” 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 24.

¹⁵² STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023, Art. 45-48. STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 45-48. MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa (2019 xiuding)” 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 25-26.

¹⁵³ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa (2019 xiuding)” 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 29.

¹⁵⁴ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023, Art. 49. STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 49.

¹⁵⁵ BAIDU BAIKE 百度百科, “Paimai” 拍卖 (Auction), *Baidu baike*, (baike.baidu.com), last access October 4, 2023.

¹⁵⁶ A “reserve price” is the minimum price that a seller is willing to accept for an item in an auction or a sale. In other words, it is the lowest amount a seller is willing to sell their item for. The reserve price is typically set before the auction or sale begins. The item will only be sold if the bidding reaches or exceeds this minimum price. If the

suspended. The transaction is finalized when the auction master confirms the highest bid, whether by striking the gavel or employing another public acknowledgment method. A written confirmation (*chéngjiāo quèrèn shū* 成交确认书) should be drawn and signed by both the auctioneer and the buyer. Auction houses have to maintain all auction-related materials, along with the signed auction record, for a minimum period of five years, starting from the termination of the contract of authorization.¹⁵⁷

After the session, the auction house is responsible for the shipment of the auction object to the buyer and the delivery of the payment for the sold item to the client.¹⁵⁸

The auction procedure adheres to international standards; however, the Chinese auction market still appears to be relatively immature compared to that of other countries, posing ongoing challenges such as issues related to non-payment or payment delays. This has led many auction houses to introduce security deposits for bids on premium or high-value lots.¹⁵⁹

(a) Commission

The profit of the auction house consists of a commission calculated on the total transaction price. The Auction Law provides in Article 56 paragraph 1 that:

第五十七条 委托人、买受人可以与拍卖人约定佣金的比例。¹⁶⁰

bidding does not reach the reserve price during the auction, the item may remain unsold. The purpose of setting a reserve price is to ensure that the seller does not have to sell their item for less than what they consider an acceptable value. It provides a level of protection for the seller, but it may also influence bidders' behavior during the auction. The reserve price is typically not disclosed to bidders, so they may not know the exact price they need to reach for the item to be sold. According to the Auction Law, the reserve price should be decided by the client and specified in the contract for authorization (Art. 44). The Auction Law specifies that, if a certain item does not have a reserve price, the auction master has to make it clear before the auction sale (Art. 50). This does not necessarily mean that the auction master should reveal the reserve price, when there is one. However, the specific practices may vary depending on the auction house policies.

¹⁵⁷ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023, Art. 50-54. STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 50-54.

¹⁵⁸ Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, p.60.

¹⁵⁹ *Ibidem*.

¹⁶⁰ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023, Art. 56.

Art. 56 The client and the buyer may reach an agreement with the auctioneer on the proportion of the commission.¹⁶¹

In the event that such agreement is not reached, the auctioneer has the authority to impose a commission of up to five percent of the transaction price on both the client and the buyer. Finally, whenever the transaction does not reach a conclusion, the auctioneer can charge the client for the agreed-upon expenses. In cases where no specific agreement exists, the auctioneer has the discretion to assess a fair amount to cover the costs associated with the auction session.¹⁶²

¹⁶¹ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 56.

¹⁶² STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023, Art. 56. STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 56.

1.4 Supervising authorities

1.4.1 Ministry of Commerce

According to the Measures, currently the highest administrative authority responsible for supervision and management of the national auction industry within the Chinese territory is the Ministry of Commerce (*Zhōnghuá rénmin gònghéguó shāngwù bù* 中华人民共和国商务部, hereinafter referred to as MOFCOM).¹⁶³ MOFCOM¹⁶⁴ is a department of the State Council in charge of overseeing China’s domestic and foreign trade, as well as international economic cooperation. It plays a crucial role in formulating and implementing the nation’s economic and trade policies at home and abroad, while promoting increased openness to the global community.¹⁶⁵

In the auction industry, MOFCOM mainly covers the following duties:¹⁶⁶

- lead the development of pertinent rules, regulations and policies for the auction market;
- coordinate and guide the local government in the process of creating auction industry development plans;
- establish a system for industry supervision and verification, statistics and credit management;
- promote and manage foreign investments in the auction market;
- offer business support and advice to self-regulatory organizations within the auction industry;

¹⁶³ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa (2019 xiuding)” 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 4.

¹⁶⁴ The Ministry of Commerce was (re)established in 1982 under the name *Ministry of Foreign Economic Relations and Trade*. In 1993, it was renamed *Ministry of Foreign Trade and Economic Cooperation* (MOFTEC), and finally, in 2003, it merged with the *Ministry of Domestic Trade* to become the current *Ministry of Commerce* (MOFCOM). [Renzo CAVALIERI, “Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia”, *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, pp.141-168.]

¹⁶⁵ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Zhonghua renmin gongheguo shangwubu jianjie” 中华人民共和国商务部简介 (Brief introduction of the Ministry of Commerce of the PRC), *Zhonghua renmin gongheguo shangwubu*, 2005, (rss.mofcom.gov.cn), last access October 26, 2023.

¹⁶⁶ A list of the Ministry of Commerce main duties can be found at the following source in the official website of MOFCOM: MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, *Mission*, in “Zhonghua renmin gongheguo shangwubu”, (english.mofcom.gov.cn), last access October 26, 2023.

- be responsible for the interpretation of the Measures for the Administration of Auctions.¹⁶⁷

At the local level, provincial and municipal commercial departments supervise and manage the auction industry within their respective jurisdictions.¹⁶⁸ Moreover, the competent provincial commercial departments are also responsible for reviewing the applications submitted by enterprises and branches to obtain the licenses to conduct auction business. Verifications and inspections of auction companies' activities should be conducted annually by these departments. Finally, they are required to establish an interconnection network between the computer archive system of auction companies and other pertinent administrative bodies.¹⁶⁹

1.4.2 State Administration for Market Regulation

Another important administrative organ is the State Administration for Market Regulation (*Guójiā shìchǎng jiāndū guǎnlǐ zǒngjú* 国家市场监督管理总局, hereinafter referred to as SAMR). SAMR and MOFCOM work together to supervise and manage the auction industry.

On October 23, 2020, the Measures for the Supervision and Administration of Auctions were changed again.¹⁷⁰ Before this moment, the supervising authority for the auction activities was the State Administration for Industry and Commerce (*Guójiā gōngshāng xíngzhèng guǎnlǐ bùmén* 国家工商行政管理部门, hereinafter SAIC).¹⁷¹ After the 2020 revision, the supervising authority changed and the administrative department for industry

¹⁶⁷ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Paimai guanli banfa (2019 xiuding)" 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 33-50.

¹⁶⁸ *Ibidem*, Art. 4.

¹⁶⁹ *Ibidem*, Art. 34.

¹⁷⁰ STATE ADMINISTRATION for MARKET REGULATION 国家市场监督管理总局, "Guojia shichang jiandu guanli zongju ling (di 31 hao) 'Paimai jiandu guanli banfa'" 国家市场监督管理总局令 (第 31 号) 《拍卖监督管理办法》 (Order No. 31 of the State Administration for Market Regulation "Measures for the Supervision and Administration of Auctions"), *Zhongguo zhengfu wang*, 2020, (www.gov.cn), last access September 28, 2023.

¹⁷¹ STATE ADMINISTRATION for INDUSTRY and COMMERCE 国家工商行政管理总局, "Guojia gongshang xingzheng guanli zongju ling (di 91 hao) 'Paimai jiandu guanli banfa'" 国家工商行政管理总局令 (第 91 号) 《拍卖监督管理办法》 (Order No. 91 of the State Administration for Industry and Commerce "Measures for the Supervision and Administration of Auctions"), *Zhongguo zhengfu wang*, 2017, (www.gov.cn), last access September 28, 2023, Art. 3.

and commerce was substituted by the SAMR. Its main duties are listed in Article 3 and are: (1) register auctioneers in accordance with law; (2) supervise and manage auctioneers, clients, bidders and other parties involved in auction activities in accordance with law; (3) investigating and punishing illegal auctions in accordance with law; and (4) other duties stipulated by laws, regulations and rules.¹⁷²

SAMR is China's new market regulator. It is a ministerial-level agency directly under the State Council of the PRC. It was formally established on March 21, 2018, but it was introduced on the 17th of March 2018 with the approval of the State Council Institutional Reform Plan (*Guówùyùàn jīgòu gǎigé fāng'àn* 国务院机构改革方案).¹⁷³ SAMR is responsible for extensive market control, including issuance of business permits and licenses, regulation of anti-monopoly behavior and intellectual property rights, supervision of drug safety. It subsumes the responsibilities previously held by various regulators, such as the State Administration for Industry and Commerce (SAIC), the China Food and Drug Administration (CFDA), and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), which are abolished. Moreover, the National Development and Reform Commission's responsibilities for price supervision, inspection, and anti-monopoly law enforcement, as well as the Ministry of Commerce's anti-monopoly law enforcement for concentration of business operators and the Office of the State Council's Anti-Monopoly Commission, are integrated to form the State Administration for Market Regulation.¹⁷⁴

¹⁷² STATE ADMINISTRATION for MARKET REGULATION 国家市场监督管理总局, "Paimai jiandu guanli banfa (2020 xiuding)" 拍卖监督管理办法(2020 修订), (Measures for the Supervision and Administration of Auctions – revised in 2020), *Zhongguo zhengfu wang*, 2020, (www.gov.cn), last access September 28, 2023, Art. 3.

¹⁷³ WEI Changhao, *A guide to 2018 State Council Institutional Reforms*, in "NPC Observer", 2018, npcobserver.com, last access December 7, 2023. In the mentioned source, the name of such organ is translated as "State Market Regulatory Administration" instead of "State Administration for Market Regulation", because the official English translation of the new administrative bodies was not yet available.

¹⁷⁴ BAIDU BAIKE 百度百科, "Guojia shichang jiandu guanli zongju" 国家市场监督管理总局 (State Administration for Market Regulation), *Baidu baike*, (baike.baidu.com), last access September 28, 2023. Hugo BUTCHER PIAT, *China's new State Administration for Market Regulation*, in "China Briefing", 2018, www.china-briefing.com, last access September 28, 2023. XINHUA News Agency, "Zhonggong zhongyang yinfa 'shenhua dang he guojia jigou gaige fang'an'" 中共中央印发《深化党和国家机构改革方案》 (The Central Committee of the Communist Party of China has issued the "Plan for Deepening the Reform of Party and State Institutions"), *Zhongguo zhengfu wang*, 2018, (www.gov.cn), last access December 7, 2023.

1.4.3 China Association of Auctioneers

In June 1995, the China Association of Auctioneers (*Zhōngguó pāimài hángyè xiéhuì* 中国拍卖行业协会, hereinafter referred to as CAA) was established.¹⁷⁵ It is the only national association in China backed by governmental auction laws.¹⁷⁶ Indeed, Article 17 of the Auction Law provides that:

第十七条 拍卖行业协会是依法成立的社会团体法人，是拍卖业的自律性组织。拍卖行业协会依照本法并根据章程，对拍卖企业和拍卖师进行监督。¹⁷⁷

Art. 17 The China Association of Auctioneers is a public organization legal person established in accordance with law, and a self-disciplined organization in the auction industry. The China Association of Auctioneers shall, in accordance with the present Law and its own Articles of Association, exercise supervision over auction enterprises and auctioneers.¹⁷⁸

It is a non-profit social organization formed voluntarily by national auction companies, institutions, social groups, and individuals engaged in auction or related work. Approved by the Ministry of Civil Affairs of the PRC (*Zhōnghuá rénmín gònghéguó míngzhèng bù* 中华人民共和国民政部), it plays a leading role in the industry.¹⁷⁹ On the Chinese digital encyclopedia *Baidu Baike*, one can read that the CAA main purpose is to follow the leadership of the Communist Party of China, uphold the party's principles and policies, with the aim of serving its members, the industry, and the government; fulfill the functions of establishing connections, facilitating coordination, and delivering services, all while striving to enhance the overall social and economic outcomes of the industry.¹⁸⁰

¹⁷⁵ CHINA ASSOCIATION OF AUCTIONEERS, “Zhongguo paimai hangye xiehui jianjie” 中国拍卖行业协会简介 (Brief introduction of the China Association of Auctioneers), *China Association of Auctioneers*, (caa123.org.cn), last access May 18, 2023. J. David MURPHY, “Art auctions in China”, *Art antiquity and law*, Vol. 1, No. 1, 1996, p.41.

¹⁷⁶ ARTNET, *About the collaboration*, in “Artnet”, 2023, cn.artnet.com/en, last access May 18, 2023.

¹⁷⁷ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023, Art. 7.

¹⁷⁸ STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 7.

¹⁷⁹ BAIDU BAIKE 百度百科, “Zhongguo paimai hangye xiehui” 中国拍卖行业协会 (China Association of Auctioneers), *Baidu baike*, (baike.baidu.com), last access May 19, 2023. J. David MURPHY, “Art auctions in China”, *Art antiquity and law*, Vol. 1, No. 1, 1996, p.41.

¹⁸⁰ *Ibidem*.

Since its establishment, the CAA has been working hard to promote the development and reform of the auction industry in China. Some of its main duties are:

- supervise the industry by administering auctioneers and regulating auction houses;
- formulate norms and coordinate policies for the auction industry;
- enhance the cohesion of the auction industry and strengthen industry self-discipline management;
- coordinate relationships between member enterprises and relevant government departments and relationships between member companies;
- provide several services for member enterprises;
- safeguard the legitimate rights and interests of member enterprises;
- implement the credit management system of auction enterprises throughout the country under the guidance of the Ministry of Commerce;
- organize the examinations, assessment and qualification certification for auctioneers;
- report market data to the Chinese government and to member organizations;
- coordinate research studies and statistical investigations.¹⁸¹

In 1996, the Auction Law was issued. The CAA played an important role in its promotion, and it was also consulted by the Standing Committee of the National People's Congress in the process of drafting the law.¹⁸²

One year later, in 1997, the CAA elected the nation's first group of certified auctioneers.¹⁸³ From this moment on, the CAA took care of organizing the examination sessions to become a

¹⁸¹ ARTNET, *About the collaboration*, in "Artnet", 2023, [cn.artnet.com/en](https://www.artnet.com/en), last access May 18, 2023. Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, pp.60-61. MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Paimai guanli banfa (2019 xiuding)" 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 35.

¹⁸² ARTNET, *About the collaboration*, in "Artnet", 2023, [cn.artnet.com/en](https://www.artnet.com/en), last access May 18, 2023. Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, pp.60-61. CHINA ASSOCIATION OF AUCTIONEERS, "Zhongguo paimai hangye xiehui jianjie" 中国拍卖行业协会简介 (Brief introduction of the China Association of Auctioneers), *China Association of Auctioneers*, (caa123.org.cn), last access May 18, 2023.

¹⁸³ *Ibidem*.

certified auctioneer. The association also takes charge of compiling teaching materials for auction practitioners and auctioneers.¹⁸⁴

In 2000, the CAA established the “Chinese Cultural Artifacts Auction Professional Committee” (*Wénhuà yìshù pǐn pāimài zhuānyè wěiyuánhui* 文化艺术品拍卖专业委员会) in order to further regulate, guide, and supervise the art and antiques auction sector.¹⁸⁵

Ten years later, the Ministry of Commerce published the “Standard for Auction of Cultural Relics and Art Works” (*Wénwù yìshù pǐn pāimài guīchéng* 文物艺术品拍卖规程, SB/T 10538-2009) in September 2010.¹⁸⁶ This document was drafted by the CAA, and its function was to better regulate commercial transactions in order to promote the standardization of the auction market and encourage the shift from quantity-driven to quality-driven development in the art auction industry.¹⁸⁷ One year later, in June 2011, the CAA promulgated the “Self-discipline Convention of Chinese cultural relics and artworks auctions enterprises” (*Zhōngguó*

¹⁸⁴ From 1997 to 1998, four national auctioneer qualification examinations were held in Shanghai. At that time, the auctioneer exam only consisted of a written theoretical test, with no practical on-site exam for presiding skills and no corresponding pre-exam training. There was only one teaching material available for professional training, but no specialized materials for auctioneers. Starting from 1999, the CAA decided to hold two auctioneers’ qualification training and examination sessions simultaneously in Beijing and Guangzhou each year. Pre-exam training was introduced, followed by immediate examinations. For the first time, an on-site exam to assess the auctioneer’s presiding skills was added. Initially, provinces were divided between the two training centers for enrollment, with northern provinces associated with Beijing and southern provinces linked to Guangzhou. However, competition often blurred these boundaries, leading to friction and competition between the two training centers. Two years later, the CAA canceled the Guangzhou training center. Consequently, auctioneer pre-exam training and examinations have been solely conducted in Beijing, a practice that continues to this day. In 1999, teaching materials for qualification training were expanded and renamed as the “Basic Auction Course” and the “Practice Auction Course” to align with industry’s growing needs. In response to the increased need for knowledge, “Auction Legal Cases” was introduced. Later, in compliance with the personnel department’s requirements, the textbook “Auction Economics” was compiled. The theoretical level of teaching materials continued to increase, covering an expanding range of topics. [JI Tao 季涛, “Lioliiao 20 nian qian chuangjian paimai peixun de naxie shier” 聊聊 20 年前创建拍卖培训的那些事儿 (Talking about the creation of auction training 20 years ago), *Yachang yishu wang*, 2020, (news.artron.net), last access May 18, 2023.]

¹⁸⁵ ARTNET, *About the collaboration*, in “Artnet”, 2023, (cn.artnet.com/en), last access May 18, 2023. YU Jinsheng 余锦生, “Zhongguo wenwu yishupin paimai sanshi nian” 中国文物艺术品拍卖 30 年 (30 years of auction of cultural relics and works of art in China), in *Art Market*, 2023.01, p.33.

¹⁸⁶ CHINA ASSOCIATION OF AUCTIONEERS, “Wenwu yishupin paimai guicheng” 文物艺术品拍卖规程 (Standard for Auction of Cultural Relics and Art Works), *China Association of Auctioneers*, 2010, (www.caa123.org.cn), last access December 12, 2023.

¹⁸⁷ ARTNET, *About the collaboration*, in “Artnet”, 2023, (cn.artnet.com/en), last access May 18, 2023. Silvia BERTOLDO, *La nascita e l’evoluzione del mercato dell’arte in Cina* [Master’s thesis, Ca’Foscari University of Venice], 2019, (hdl.handle.net), last access May 13, 2023, p.61. CHINA ASSOCIATION OF AUCTIONEERS, “Zhongguo paimai hangye xiehui jianjie” 中国拍卖行业协会简介 (Brief introduction of the China Association of Auctioneers), *China Association of Auctioneers*, (caa123.org.cn), last access May 18, 2023. YU Jinsheng 余锦生, “Zhongguo wenwu yishupin paimai sanshi nian” 中国文物艺术品拍卖 30 年 (30 years of auction of cultural relics and works of art in China), in *Art Market*, 2023.01, p.35.

wénwù yìshù pǎimài qǐyè zìlǚ gōngyuē 中国文物艺术品拍卖企业自律公约).¹⁸⁸ Both of these documents aim to strengthen the self-discipline within the auction industry and promote the sector towards a path of internal standardized development. However, their current role remains relatively limited. In contrast to countries like the United Kingdom and the United States, the CAA in China currently lack the authority to impose penalties on dishonest enterprises or individuals. Additionally, the conventions and other documents formulated by the association also lack the mandatory regulatory force.¹⁸⁹

In 2013, the CAA and Artnet formed a partnership and started to collaborate to draft the annual Global Chinese Art Auction Market Report, in an attempt to give a truthful representation of the Chinese auction industry, provide an in-depth look at the market, develop new standards of transparency, and consolidate the art and antiques auction market.¹⁹⁰

In 2020, in response to the COVID-19 pandemic, the CAA played a major role in promoting the digitalization of the industry and the introduction of online auctions.¹⁹¹

¹⁸⁸ CHINA ASSOCIATION OF AUCTIONEERS, “Zhongguo wenwu yishupin paimai qiye zilü gongyue” 中国文物艺术品拍卖企业自律公约 (Self-discipline convention of Chinese cultural relics and artworks auctions enterprises), *China Association of Auctioneers*, 2011, (www.caa123.org.cn), last access December 12, 2023.

¹⁸⁹ TAO Yu 陶宇, YIN Heng 尹姮, “Yishupin paimai ‘baozhen’ zhidu de zhongwai jiejianyu bijiao – cong “Paimai fa” ‘xiaci mianze’ tiaokuan shuo qi” 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, p.99.

¹⁹⁰ ARTNET, *About the collaboration*, in “Artnet”, 2023, cn.artnet.com/en, last access May 18, 2023. Silvia BERTOLDO, *La nascita e l’evoluzione del mercato dell’arte in Cina* [Master’s thesis, Ca’Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, p.61.

¹⁹¹ ARTNET, *About the collaboration*, in “Artnet”, 2023, cn.artnet.com/en, last access May 18, 2023.

CHAPTER 2 EXEMPTION CLAUSE AND ITS CONSEQUENCES

2.1 Exemption clause

An exemption clause is a contractual provision that aims to exclude or limit the liability of one or more parties involved in the contract in certain circumstances. This clause is typically inserted to protect the party for whose benefit it was included. It typically specifies the conditions under which one party will not be held responsible for certain events, losses, damages, or liabilities arising from breach of contract. These clauses are often used to allocate risks between the parties involved in the contract. However, the enforceability of exemption clauses may be subject to legal scrutiny, especially if they seek to exclude liability for gross negligence or other wrongful acts. Exemption clauses are widely used in every country, and China is no exception.¹⁹²

2.1.1 Exemption clause in the Chinese auction legislation

In China, in the art auction context specifically, the exemption clause is not only a contractual term. A provision of this kind is directly inserted in the Auction Law, that is the highest source of law in the auction market. The second paragraph of Article 61 of the Auction Law provides that:

第六十一条 [...] 拍卖人、委托人在拍卖前声明不能保证拍卖标的的真伪或者品质的，不承担瑕疵担保责任。 [...] ¹⁹³

¹⁹² Stephen GRAW, *An introduction to the law of contract*, Pyrmont: Lawbook Co., 2005 (fifth edition), p.229. Eike VON HIPPEL, “The Control of Exemption Clauses a Comparative Study”, *International and Comparative Law Quarterly*, Vol. 16, No. 3, 1967, pp.591-612. Chiara NOBILI, *Le obbligazioni*, Collana notarile - Guido Capozzi, Giuffrè Francis Lefebvre, 2019 (third edition), p.153.

¹⁹³ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023, Art. 61.

Art. 61 [...] Where an auctioneer and client declare, prior to the auction sale, that they cannot guarantee the genuineness or quality of an object of auction, they shall not be liable for the guarantee of the object. [...] ¹⁹⁴

As long as the auction company explicitly states in the catalog and at the auction venue that they cannot assure the authenticity and/or quality of the auctioned item, they can successfully invoke such clause (hereinafter, “exemption clause” will be taken to refer specifically to Article 61, paragraph 2) in the event of a dispute over authenticity or defects, providing a strong defense against any claim.¹⁹⁵ In this way, risks and responsibilities are transferred to the bidder.¹⁹⁶ However, the validity of such clause should be based on a series of premises and obligations that must be respected by the parties involved.¹⁹⁷

First of all, as expressly stated in the provision, the auctioneer has the obligation to clearly declare the impossibility of guaranteeing that the auctioned item is authentic and/or free from defects. The auctioneer must communicate in writing and orally, both in the conditions of sale and at the auction site, that they do not guarantee the authenticity or quality of the items being auctioned. This declaration allows them to decline any responsibility only if clearly communicated to the buyers. The exemption agreement can only take effect if the bidders are made aware of the potential problems on the item. This statement by the auction house constitutes a solid legal basis for the exclusion of liability.¹⁹⁸

Both the auction house and the client should bear the obligation to disclose defects in artworks. Article 18 of the Auction Law grants the auctioneer the authority to compel clients to transparently disclose the origins and defects of auction items. Simultaneously, the

¹⁹⁴ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 61.

¹⁹⁵ ZHOU Wei 周维, “Woguo wenwu yishupin paimai shichang de falü wenti yanjiu” 我国文物艺术品拍卖市场的法律问题研究 (Research on legal issues in the auction market of cultural relics and artworks in China), in *Legal System and Society*, 2011.03, p.121.

¹⁹⁶ LI Rui 厉锐, “Shilun guonei yishupin paimai shichang zhong de ‘nanti’” 试论国内艺术品拍卖市场中的“难题” (On the “difficulties” in the domestic art auction market), in *Fine Arts*, 2021.08, pp.103-104. ZHENG Yaoqi 郑瑶琦, “Yishupin paimai shichang de guifan wenti yanjiu” 艺术品拍卖市场的规范问题研究 (Research on the regulation of the art auction market), in *The World of Chinese Painting and Calligraphy*, 2017.12, pp.93-94.

¹⁹⁷ MA Jay 马捷, “Tan yi lu: yishupin paimai ‘bu baozheng’ kao (shang)” 谈艺录: 艺术品拍卖“不保真”考 (上), (Discussion on art record I: an examination of “unfidelity” in artwork auction), *Weixin (account number KWM_China)*, 2022, (mp.weixin.qq.com), last access January 24, 2024.

¹⁹⁸ HUO Jincheng 霍进城, “Hetong bian shiwu (er): zhiliang xiaci danbao de lilun yu shiwu” 合同编实务 (二): 质量瑕疵担保的理论与实务 (Contract compilation practice II: theory and practice of exemption clause), *Weixin (account number gh_99f4c5f14a35)*, 2021, (mp.weixin.qq.com), last access January 24, 2024.

auctioneer is mandated by this article to inform bidders of any defects associated with the auctioned objects.¹⁹⁹ Correspondingly, Article 27 stipulates that clients are required to clarify the origins and defects of auction items to the auctioneer.²⁰⁰ Moreover, the second paragraph of Article 37 of the Measures for the Administration of Auctions further clarifies that “defects of the auction target that they [here ‘they’ refers to auctioneers] know or should know” have to be disclosed to bidders.²⁰¹ Therefore, laws and regulations clearly stipulate the legal obligations of the client and the auction company. In other words, the client is required to divulge to the auction company all information within their knowledge about the commissioned artwork. Similarly, the auctioneer must convey to the bidders all relevant details within their awareness concerning the auctioned item. However, it is evident that the Auction Law does not expressly mandate auction companies to “ensure authenticity”.²⁰² In order to safeguard against potential legal disputes, it is advisable for the parties involved to clearly articulate all the defects pertaining to the auction object within the contract for authorization.²⁰³ Failure by the client and auctioneer to disclose information within their knowledge shall result in legal accountability, as stipulated in Article 61, Paragraph 1 of the Auction Law:

第六十一条 拍卖人、委托人违反本法第十八条第二款、第二十七条的规定，未说明拍卖标的的瑕疵，给买受人造成损害的，买受人有权向拍卖人要求赔偿；属于委托人责任的，拍卖人有权向委托人追偿。[...]²⁰⁴

¹⁹⁹ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 18.

²⁰⁰ *Ibidem*, Art. 27.

²⁰¹ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa (2019 xiuding)” 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 37.

²⁰² LIU Shuangzhou 刘双舟, “Tan yishupin paimai zhong de baozhen wenti” 谈艺术品拍卖中的保真问题 (On the authenticity problem in art auctions), in *China Auction*, 2019.06, p.30.

²⁰³ ZHAO Qiang 赵强, “Shichang panzhengqi de wenwu yishupin paimai fengxian dianxing anli diaoyan fenxi” 市场盘整期的文物艺术品拍卖风险典型案例调研分析 (Research and analysis on typical cases of cultural relics and artworks auction risks during market consolidation period), in *China Collective Economy*, 2021.01, p.132. LIU Shuangzhou 刘双舟, “Tan yishupin paimai zhong de baozhen wenti” 谈艺术品拍卖中的保真问题 (On the authenticity problem in art auctions), in *China Auction*, 2019.06, p.31. LIU Lan 刘兰, “Lun paimai fa zhong xiaci mianze shengming yu yishupin jiangding de ruogan wenti” 论拍卖法中瑕疵免责声明与艺术品鉴定的若干问题 (On several issues concerning the disclaimer for defects and the appraisal of artworks in the Auction Law), in *Art Market*, 2023.01, p.70. MA Jay 马捷, “Tan yi lu: yishupin paimai ‘bu baozhen’ kao (shang)” 谈艺录: 艺术品拍卖“不保真”考 (上), (Discussion on art record I: an examination of “unfidelity” in artwork auction), *Weixin (account number KWM_China)*, 2022, (mp.weixin.qq.com), last access January 24, 2024.

²⁰⁴ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s

Art. 61 Where an auctioneer or client, in violation of the provisions of the second paragraph of Article 18, or Article 27 of this Law, fails to make clear defects of the objects of auction and thus causes losses to the vendee, the vendee shall have the right to claim compensation from the auctioneer; where the client is responsible for the loss, the auctioneer shall have the right of recourse against the client. [...] ²⁰⁵

Article 53 of the Measures reiterates this concept in paragraph one and also add in paragraph two the fact that whenever an auctioneer and/or a client clearly knows or should have known that the auction target was defective, the aforementioned disclaimer is invalid. ²⁰⁶

The auction house should examine and appraise the artworks. However, in this case, the law does not impose an appraisal obligation on the auctioneer, but it simply states that the auction house has the right to do so. Defects of the auction item mainly include: (a) inherent defects within the item itself, covering issues in quantity, quality, authenticity, etc.; (b) defects in the ownership of the item, indicating that the client does not possess rightful ownership; and (c) defects in the right to dispose, where the disposal right of the target object does not belong to the client, but it is sold by the auctioneer anyway. Typically, the primary concern for buyers is the authenticity of the auction item. To avoid the sale of items with such defects, the Auction Law grants auction companies a series of rights to understand the auction target. Article 41 stipulates that when a client entrusts the auction of items or property rights, they shall provide identification and proof of ownership of the auction target requested by the auctioneer, or proof that the object can be disposed of in accordance with the law, along with other requested materials. Article 42 states that the auctioneer shall verify the relevant documents and materials provided by the client. Finally, if the auctioneer deems an evaluation necessary, Article 43 authorizes the auction house to seek the opinion of external experts and appraisers. ²⁰⁷ While the Auction Law mandates the disclosure of the origin and defects of

Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flik.npc.gov.cn), last access June 5, 2023, Art. 61.

²⁰⁵ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015修正), (Auction Law of the People’s Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 61.

²⁰⁶ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa (2019 xiuding)” 拍卖管理办法(2019修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023, Art. 53. MA Jay 马捷, “Tan yi lu: yishupin paimai ‘bu baozheng’ kao (shang)” 谈艺录: 艺术品拍卖“不保真”考(上), (Discussion on art record I: an examination of “unfidelity” in artwork auction), *Weixin (account number KWM_China)*, 2022, (mp.weixin.qq.com), last access January 24, 2024.

²⁰⁷ MA Jay 马捷, “Tan yi lu: yishupin paimai ‘bu baozheng’ kao (shang)” 谈艺录: 艺术品拍卖“不保真”考(上), (Discussion on art record I: an examination of “unfidelity” in artwork auction), *Weixin (account number KWM_China)*, 2022, (mp.weixin.qq.com), last access January 24, 2024. HUO Jincheng 霍进城, “Hetong bian

auction items by both the principal and auctioneer, there exists no compulsory obligation for auctioneers to conduct a thorough review of the auction items.²⁰⁸ The auction houses' responsibility for the appraisal and authentication of auction objects is perceived by some experts as a demonstration of a "best efforts" or "best endeavor" standard²⁰⁹, inherently linked to the legal prohibition in engaging in false advertising.²¹⁰ Consequently, the inclusion of an exemption clause is viewed as a means to explicitly communicate the inherent limitations of both the auction house and the client in exerting their utmost efforts in the appraisal and authentication processes.²¹¹ It should be noted that for cultural heritage items, the Measures for the Examination of Cultural Relics as Objects of Auction at Article 3 mandates an appraisal process and legal permission from the provincial cultural relics administrative

shiwu (er): zhiliang xiaci danbao de lilun yu shiwu" 合同编实务 (二): 质量瑕疵担保的理论与实务 (Contract compilation practice II: theory and practice of exemption clause), *Weixin* (account number gh_99f4c5f14a35), 2021, (mp.weixin.qq.com), last access January 24, 2024. ZHAO Qiang 赵强, "Shichang panzhengqi de wenwu yishupin paimai fengxian dianxing anli diaoyan fenxi" 市场盘整期的文物艺术品拍卖风险典型案例调研分析 (Research and analysis on typical cases of cultural relics and artworks auction risks during market consolidation period), in *China Collective Economy*, 2021.01, p.132. STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法 (2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 41-43.

²⁰⁸ TAO Yu 陶宇, YIN Heng 尹姮, "Yishupin paimai 'baozhen' zhidu de zhongwai jiejianyu bijiao – cong "Paimai fa" 'xiaci mianze' tiaokuan shuo qi" 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the "responsibility" system in art auction between China and foreign countries: starting from the "disclaimer of liability" clause in the Auction Law), in *Art Market*, 2022.07, p.98.

²⁰⁹ A "best efforts clause", also known as a "best endeavor clause", is a contractual provision that outlines the level of effort or diligence one party is obligated to put forth to fulfill its obligations under the contract. This clause is often included in agreements to define the standard of performance expected from the parties involved. However, it's important to note that the specific language and implications of a best efforts clause can vary, and legal interpretations may depend on jurisdiction. In essence, a best efforts clause requires a party to make a genuine and sincere effort to achieve the contract's objectives, even if success is not guaranteed. It sets a standard for the level of commitment and diligence expected from the party, without imposing an obligation to achieve a particular result. [Michael GREATREX, "The Pursuit of Certainty: A New Approach to Best Endeavours Clauses", in *Te Mata Koi: Auckland University Law Review*, New Zealand: University of Auckland, 2019, pp. 155–172.]

²¹⁰ In a legal context, "must not engage in false advertising" is often used in regulations, contracts, or laws to prohibit or restrict deceptive or misleading promotional activities. It emphasizes that parties involved, such as businesses or individuals, are not allowed to make false or misleading statements in their advertising materials. This provision is aimed at ensuring transparency, protecting consumers from deceptive practices, and maintaining fair competition in the marketplace. In legal documents, this kind of language is commonly found in consumer protection laws, advertising regulations, or specific contractual clauses that address the obligations and responsibilities of parties regarding the accuracy of the information presented in their promotional materials. Violating such provisions may result in legal consequences, including fines or other penalties.

²¹¹ LIU Lan 刘兰, "Lun paimai fa zhong xiaci mianze shengming yu yishupin jiangding de ruogan wenti" 论拍卖法中瑕疵免责声明与艺术品鉴定的若干问题 (On several issues concerning the disclaimer for defects and the appraisal of artworks in the Auction Law), in *Art Market*, 2023.01, pp.69-70. MA Jay 马捷, "Tan yi lu: yishupin paimai 'bu baozheng' kao (shang)" 谈艺录: 艺术品拍卖“不保真”考 (上), (Discussion on art record I: an examination of "unfidelity" in artwork auction), *Weixin* (account number KWM_China), 2022, (mp.weixin.qq.com), last access January 24, 2024.

department, before such items can be auctioned. The auction targets must undergo physical inspection, which may be carried out by relevant professional institutions entrusted by provincial cultural relics administrative departments (Article 11). Moreover, according to Article 12, the examination of cultural relics auction items must involve at least three reviewers, including one member of the provincial cultural relics appraisal committee. However, Article 17 clearly states that the outcome of the examination process does not serve as a guarantee regarding the authenticity, age, quality, or defects of the items.²¹²

Finally, the auction house should ensure that bidders have the right to inspect any defects in the auction objects. Pursuant to Article 48 of the Auction Law, the auctioneer must arrange for an exhibition of the auction items a few days prior to the sale. During such exhibition, the auction house should provide suitable conditions and relevant information for viewing the auction items, ensuring that the display period lasts for a minimum time of two days. Conversely, Article 35 grants bidders the right to be informed about any defects in the auction objects, and to inspect them, as well as to access relevant auction information. The auctioneer must ensure that bidders fully comprehend both the procedural and substantive aspects of the auction before finalizing any transaction.²¹³

Failure by the auction house to fulfill its obligations regarding careful inspection and disclosure of defects, as well as lots exhibition, may nullify the exemption clause, thereby not absolving the auctioneer from liability for defects. Conversely, if the auctioneer has met all the aforementioned obligations, the bidder must be aware that by participating in the auction

²¹² MA Jay 马捷, "Tan yi lu: yishupin paimai 'bu baozheng' kao (shang)" 谈艺录: 艺术品拍卖“不保真”考 (上), (Discussion on art record I: an examination of “unfidelity” in artwork auction), *Weixin (account number KWM_China)*, 2022, (mp.weixin.qq.com), last access January 24, 2024. HUO Jincheng 霍进城, "Hetong bian shiwu (er): zhiliang xiaci danbao de lilun yu shiwu" 合同编实务 (二): 质量瑕疵担保的理论与实务 (Contract compilation practice II: theory and practice of exemption clause), *Weixin (account number gh_99f4c5f14a35)*, 2021, (mp.weixin.qq.com), last access January 24, 2024. NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, "Wenwu paimai biaodi shenhe banfa (2020 xiugai)" 文物拍卖标的审核办法(2020 修改), (Measures for the Examination of Cultural Relics as Objects of Auction – revised in 2020), *Zhonghua renmin gongheguo shangwubu*, 2020, (fms.mofcom.gov.cn), last access October 12, 2023, Art. 3 and 11-12 and 17.

²¹³ MA Jay 马捷, "Tan yi lu: yishupin paimai 'bu baozheng' kao (shang)" 谈艺录: 艺术品拍卖“不保真”考 (上), (Discussion on art record I: an examination of “unfidelity” in artwork auction), *Weixin (account number KWM_China)*, 2022, (mp.weixin.qq.com), last access January 24, 2024. HUO Jincheng 霍进城, "Hetong bian shiwu (er): zhiliang xiaci danbao de lilun yu shiwu" 合同编实务 (二): 质量瑕疵担保的理论与实务 (Contract compilation practice II: theory and practice of exemption clause), *Weixin (account number gh_99f4c5f14a35)*, 2021, (mp.weixin.qq.com), last access January 24, 2024. STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 35 and 48.

and placing bids they accept the conditions for the sale and the current condition of the item, waiving the possibility of seeking compensation. Placing a bid signifies automatic and implicit acceptance of this clause, with the bidder assuming responsibility for any losses. The content of this clause is legally binding for the bidder. The auctioneer's failure to disclose defects in the lot without fraudulent intent does not constitute fraud, and the exemption clause remains valid.²¹⁴

In the judicial practice, there is no unanimous viewpoint on the exemption clause, and interpretations vary. Although in most cases, the People's Court recognizes the validity of the clause, in certain particular cases, it may still order the auction house to assume the responsibility of compensation. Based on the analysis of cases, judicial practice is not consistent regarding the circumstances under which auction houses should refund commissions, as well as the application of the law.²¹⁵

Talking about the industry association point of view on this matter, the exemption clause is actively promoted by the CAA. In 2013, the association published the Legal Guiding Opinions of CAA about the Core Provisions of the "Bidding Agreement" (*Zhōngguó pāimài hángyè xiéhuì guānyú "jìngmǎi xiéyì" héxīn tiáokuǎn de fǎlù zhǐdǎo yìjiàn* 中国拍卖行业协会关于《竞买协议》核心条款的法律指导意见), which suggests to clearly stipulate the agreement:

"Unless the auctioneer clearly guarantees the authenticity or quality of the auction target, the description of the auction item by the auctioneer through forms such as catalogs, exhibitions, on-site presentations, website promotion, and verbal recommendations is only a reference for bidders and does not represent any commitment from the auctioneer; that is, the auctioneer shall not assume any responsibility for the authenticity and quality of the auction product in accordance with the law. The bidder has personally reviewed the displayed auction items, and has accurately judged the authenticity, quality, and value of the items based on examination or their own experience. They have fully understood their flaws and are willing to accept them."²¹⁶

²¹⁴ MA Jay 马捷, "Tan yi lu: yishupin paimai 'bu baozheng' kao (shang)" 谈艺录: 艺术品拍卖“不保真”考 (上), (Discussion on art record I: an examination of "unfidelity" in art work auction), *Weixin (account number KWM_China)*, 2022, (mp.weixin.qq.com), last access January 24, 2024.

²¹⁵ *Ibidem*.

²¹⁶ CHINA ASSOCIATION OF AUCTIONEERS, "Zhongguo paimai hangye xiehui guanyu 'jingmai xieyi' hexin tiaokuan de falu zhidao yijian" 中国拍卖行业协会关于《竞买协议》核心条款的法律指导意见 (Legal Guiding Opinions of CAA about the Core Provisions of the "Bidding Agreement"), *China Association of Auctioneers*, 2013, (www.caa123.org.cn), last access January 30, 2024.

In fact, all Chinese auction houses affiliated with the CAA have a comparable provision in their sale conditions.²¹⁷

2.1.2 Origin of the exemption clause in the Auction Law

The original intention of this clause was to provide a certain degree of protection to ensure the normal operation of the auction enterprise.²¹⁸ Given that artworks are not standardized commodities, there may be situations where the client is not aware of the true condition of the item, and/or the auctioneer is unable to ascertain the authenticity of the artwork after appraisal.²¹⁹ Assuming the complexity and challenges associated with art appraisal, it is evident that conclusively determining the authenticity or quality of all auction items is difficult.²²⁰ On one hand, authentication carries a certain degree of subjectivity and it is regarded as an expression of “opinion”, that depends on and may vary according to the different appraisers. On the other hand, due to the lack of legal appraisal authority, sometimes even if the auction company’s in-house experts conduct appraisal, buyers can still seek other experts to raise objections about the authenticity of the artwork.²²¹ Consequently, instances

²¹⁷ MA Jay 马捷, “Tan yi lu: yishupin paimai ‘bu baozheng’ kao (shang)” 谈艺录: 艺术品拍卖“不保真”考 (上), (Discussion on art record I: an examination of “unfidelity” in artwork auction), *Weixin (account number KWM_China)*, 2022, (mp.weixin.qq.com), last access January 24, 2024.

²¹⁸ TAO Yu 陶宇, YIN Heng 尹姮, “Yishupin paimai ‘baozhen’ zhidu de zhongwai jiejianyu bijiao – cong ‘Paimai fa’ ‘xiaci mianze’ tiaokuan shuo qi” 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, p.97.

²¹⁹ LIU Shuangzhou 刘双舟, “Tan yishupin paimai zhong de baozhen wenti” 谈艺术品拍卖中的保真问题 (On the authenticity problem in art auctions), in *China Auction*, 2019.06, p.30.

²²⁰ ZHENG Yaoqi 郑瑶琦, “Yishupin paimai shichang de guifan wenti yanjiu” 艺术品拍卖市场的规范问题研究 (Research on the regulation of the art auction market), in *The World of Chinese Painting and Calligraphy*, 2017.12, p.93. LIU Lan 刘兰, “Lun paimai fa zhong xiaci mianze shengming yu yishupin jianding de ruogan wenti” 论拍卖法中瑕疵免责声明与艺术品鉴定的若干问题 (On several issues concerning the disclaimer for defects and the appraisal of artworks in the Auction Law), in *Art Market*, 2023.01, pp.69-70.

²²¹ LIU Shuangzhou 刘双舟, “Tan yishupin paimai zhong de baozhen wenti” 谈艺术品拍卖中的保真问题 (On the authenticity problem in art auctions), in *China Auction*, 2019.06, p.31. LIU Lan 刘兰, “Lun paimai fa zhong xiaci mianze shengming yu yishupin jianding de ruogan wenti” 论拍卖法中瑕疵免责声明与艺术品鉴定的若干问题 (On several issues concerning the disclaimer for defects and the appraisal of artworks in the Auction Law), in *Art Market*, 2023.01, pp.69-70. XIAO Cheng 小成, ZHONG He 钟河, “Zhongguo yishupin paimai shichang si da jiaofeng wenti” 中国艺术品拍卖市场四大交锋问题 (Four major issues in the Chinese art auction market), in *Prosecutorial View*, 2011.24, p.12. ZHENG Yaoqi 郑瑶琦, “Yishupin paimai shichang de guifan wenti yanjiu” 艺术品拍卖市场的规范问题研究 (Research on the regulation of the art auction market), in *The World of Chinese Painting and Calligraphy*, 2017.12, p.93. TAO Yu 陶宇, YIN Heng 尹姮, “Yishupin paimai ‘baozhen’ zhidu de zhongwai jiejianyu bijiao – cong ‘Paimai fa’ ‘xiaci mianze’ tiaokuan shuo qi” 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art

may arise where authenticity remains uncertain.²²² As a result, auction companies find themselves facing a dilemma: on one hand, due to authentication issues, they are not able to fully comprehend the true situation of the auction item, particularly regarding authenticity; on the other hand, auction companies should provide legal protection to safeguard the interests of buyers.²²³ In these situations, imposing a strict obligation on auctioneers and clients to ensure the authenticity and quality of auction items may result in a reduction in the free flow or movement of artworks. This restriction, while aimed at maintaining high standards, might constitute an obstacle to the overall development of the auction industry. Conversely, in situations where emphasis is solely placed on facilitating circulation, without paying attention to quality assurance, the responsibility shifts to the personal integrity of auctioneers and clients. This dynamic sets forth a challenging equilibrium where the industry's growth is weighed against the need for ethical conduct in the absence of stringent regulations governing authenticity and quality.²²⁴ Therefore, it is precisely out of the willingness to reasonably balance the rights and obligations of auction parties, and from the perspective of preserving the normal functioning of the market, that the provision of the disclaimer of liability clause has been formulated.²²⁵

auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, pp.97-98. MA Jay 马捷, “Tan yi lu: yishupin paimai ‘bu baozheng’ kao (shang)” 谈艺录: 艺术品拍卖“不保真”考(上), (Discussion on art record I: an examination of “unfidelity” in artwork auction), *Weixin (account number KWM_China)*, 2022, (mp.weixin.qq.com), last access January 24, 2024.

²²² ZHENG Yaoqi 郑瑶琦, “Yishupin paimai shichang de guifan wenti yanjiu” 艺术品拍卖市场的规范问题研究 (Research on the regulation of the art auction market), in *The World of Chinese Painting and Calligraphy*, 2017.12, p.93. LIU Lan 刘兰, “Lun paimai fa zhong xiaci mianze shengming yu yishupin jiating de ruogan wenti” 论拍卖法中瑕疵免责声明与艺术品鉴定的若干问题 (On several issues concerning the disclaimer for defects and the appraisal of artworks in the Auction Law), in *Art Market*, 2023.01, pp.69-70.

²²³ LIU Shuangzhou 刘双舟, “Tan yishupin paimai zhong de baozhen wenti” 谈艺术品拍卖中的保真问题 (On the authenticity problem in art auctions), in *China Auction*, 2019.06, p.31.

²²⁴ ZHENG Yaoqi 郑瑶琦, “Yishupin paimai shichang de guifan wenti yanjiu” 艺术品拍卖市场的规范问题研究 (Research on the regulation of the art auction market), in *The World of Chinese Painting and Calligraphy*, 2017.12, p.93. TAO Yu 陶宇, YIN Heng 尹姮, “Yishupin paimai ‘baozhen’ zhidu de zhongwai jiejianyu bijiao – cong ‘Paimai fa’ ‘xiaci mianze’ tiaokuan shuo qi” 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, pp.97-98.

²²⁵ TAO Yu 陶宇, YIN Heng 尹姮, “Yishupin paimai ‘baozhen’ zhidu de zhongwai jiejianyu bijiao – cong ‘Paimai fa’ ‘xiaci mianze’ tiaokuan shuo qi” 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, pp.97-98.

2.1.3 Misuse of the exemption clause

The initial purpose of this regulation was to safeguard the lawful operations of auction companies and protect the legitimate rights and interests of the parties involved. However, this intent has been distorted by market operations. Certain auction houses have exploited it, turning it into a protective shield under which counterfeit goods find their way into auction.²²⁶ This situation allows both the client and the auctioneer ample space for speculation. The client can potentially submit items without a clear understanding of their authenticity, defects, origin, and other essential details. Simultaneously, the auctioneer can legitimately auction works of questionable authenticity, provided they include a disclaimer statement before the auction, absolving themselves of responsibility for the accuracy or legitimacy of the items being auctioned.²²⁷ The disclaimer of liability clause has been taken advantage of by certain auction houses with the intention of knowingly auctioning counterfeit items, colluding with clients, deliberately hiding authenticity issues during auctions, shifting potential risks and legal responsibilities onto the bidders.²²⁸ Such a clause not only emboldened certain auction houses to sell forgeries, but also led some auction companies to go as far as cooperating with counterfeiting groups, forming an industrial chain that integrates production, appraisal and sale.²²⁹ In order to avoid responsibility, many auctioneers expressly state in their auction rules that they disclaim any liability for guaranteeing the authenticity and quality of auctioned items. Yet, they strategically guide buyers towards purchases using tools like catalogs or auction

²²⁶ LI Jian 力简, "Qianxi muqian yishupin paimai shichang zhong cunzai de 'sanjia' wenti" 浅析目前艺术品拍卖市场中存在的“三假”问题 (Analysis of the problem of “three fakes” in the current art auction market), in *Art Market*, 2007.12, p.118. LI Rui 厉锐, "Shilun guonei yishupin paimai shichang zhong de 'nanti'" 试论国内艺术品拍卖市场中的“难题” (On the “difficulties” in the domestic art auction market), in *Fine Arts*, 2021.08, pp.103-104. TAO Yu 陶宇, YIN Heng 尹姮, "Yishupin paimai 'baozhen' zhidu de zhongwai jiejianyu bijiao – cong 'Paimai fa' 'xiaci mianze' tiaokuan shuo qi" 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, p.98.

²²⁷ PANG Sijian 庞思建, "Cong wu fa kexun dao youfa keyi – yishupin shichang fagui 40 nian" 从无法可循到有法可依—艺术品市场法规 40 年 (From having no law to follow to having to follow a law: 40 years of art market regulations), in *Art Market*, 2018.08, pp.42-43.

²²⁸ TAO Yu 陶宇, YIN Heng 尹姮, "Yishupin paimai 'baozhen' zhidu de zhongwai jiejianyu bijiao – cong 'Paimai fa' 'xiaci mianze' tiaokuan shuo qi" 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, p.98.

²²⁹ LI Rui 厉锐, "Shilun guonei yishupin paimai shichang zhong de 'nanti'" 试论国内艺术品拍卖市场中的“难题” (On the “difficulties” in the domestic art auction market), in *Fine Arts*, 2021.08, pp.103-104. LI Jian 力简, "Qianxi muqian yishupin paimai shichang zhong cunzai de 'sanjia' wenti" 浅析目前艺术品拍卖市场中存在的“三假”问题 (Analysis of the problem of “three fakes” in the current art auction market), in *Art Market*, 2007.12, p.118.

websites, creating circumstances where bidders might make uninformed decisions. In the event of a dispute over authenticity or quality after the transaction, auctioneers invoke the previously established disclaimer as a defense.²³⁰ In addition, in the event of the auction house knowingly selling the counterfeit item, it becomes exceptionally difficult for the buyer to demonstrate that the auctioneer was aware of the fact that the auction target in question was, indeed, a forgery. This further complicates the issue at hand and the challenge for the buyer is significantly heightened.²³¹ The existing legal loopholes have objectively contributed to the current situation of rampant counterfeiting, adversely impacting the market's integrity and reaching a juncture where resolution proves challenging without administrative intervention or legal enhancements.²³²

Ji Tao 季涛, an expert in the auction field, states that while Chinese laws have made significant progress compared to the past, they still fall behind Western legal standards. They are not entirely formulated to the present national and market conditions. They necessitate ongoing modifications and adjustments to align with the evolving dynamics of Chinese society, drawing insights from the well-established Western art market, that can provide valuable references in this regard.²³³ Several researchers and experts in the art market believe that the Chinese art auction market needs improvement and optimization.²³⁴ Qiu Baochang 邱宝昌²³⁵ advocated for an amendment of the Auction Law, proposing to modify Article 61. He put forward the possibility for the bidder to return or exchange the item in the event of evidence

²³⁰ TAO Yu 陶宇, YIN Heng 尹姮, "Yishupin paimai 'baozhen' zhidu de zhongwai jiejianyu bijiao – cong "Paimai fa" 'xiaci mianze' tiaokuan shuo qi" 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, p.98.

²³¹ ZHENG Yaoqi 郑瑶琦, "Yishupin paimai shichang de guifan wenti yanjiu" 艺术品拍卖市场的规范问题研究 (Research on the regulation of the art auction market), in *The World of Chinese Painting and Calligraphy*, 2017.12, pp.93-94.

²³² TAO Yu 陶宇, YIN Heng 尹姮, "Yishupin paimai 'baozhen' zhidu de zhongwai jiejianyu bijiao – cong "Paimai fa" 'xiaci mianze' tiaokuan shuo qi" 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, p.98.

²³³ PANG Sijian 庞思建, "Cong wu fa kexun dao youfa keyi – yishupin shichang fagui 40 nian" 从无法可循到有法可依—艺术品市场法规 40 年 (From having no law to follow to having to follow a law: 40 years of art market regulations), in *Art Market*, 2018.08, p.43.

²³⁴ LI Rui 厉锐, "Shilun guonei yishupin paimai shichang zhong de 'nanti'" 试论国内艺术品拍卖市场中的“难题” (On the “difficulties” in the domestic art auction market), in *Fine Arts*, 2021.08, pp.103-104.

²³⁵ Chinese lawyer specialized in the field of consumer rights protection, famous for his many representations in rights protection related cases. He has also participated in the formation and revision of laws, such as the Consumer Rights Protection Law, the Civil Procedure Law, the Property Law, the Anti-Monopoly Law, the Food Safety Law, and the E-Commerce Law. He died of a sudden illness in September 2020 in his house.

indicating defects in the auction after the transaction. Additionally, he recommended that, in cases involving suspected fraudulent activities, like false appraisals and collusion, criminal penalties should be imposed, alongside civil liabilities.²³⁶ Moreover, it has been suggested that, in instances where there is evidence indicating that the client or auctioneer intentionally concealed defects in the auction object, resulting in financial losses for the buyer, the applicability of the disclaimer of liability clause may be precluded, even if a declaration has been made before the auction.²³⁷ Other experts think that in order to safeguard consumer rights and interests, when the appraisal results are ambiguous, consumers should be afforded a certain window of time to exercise their legal “right of withdrawal”.²³⁸ Auction companies, in turn, should be encouraged to exercise caution when addressing potential authenticity or defect concerns.²³⁹ However, Fan Ganping 范干平²⁴⁰ cautions that any modification to the second paragraph of Article 61 in the Auction Law, if not carefully managed, has the potential to disrupt the auction industry, given its unique nature.²⁴¹ Furthermore, Wu Shu 吴树²⁴² expressed that given the numerous practical challenges confronting Chinese auction houses, it is unrealistic to expect a modification of the disclaimer of liability clause in the short term.²⁴³

²³⁶ XIAO Cheng 小成, ZHONG He 钟河, “Zhongguo yishupin paimai shichang si da jiaofeng wenti” 中国艺术品拍卖市场四大交锋问题 (Four major issues in the Chinese art auction market), in *Prosecutorial View*, 2011.24, p.12.

²³⁷ TAO Yu 陶宇, YIN Heng 尹姮, “Yishupin paimai ‘baozhen’ zhidu de zhongwai jiejianyu bijiao – cong ‘Paimai fa’ ‘xiaci mianze’ tiaokuan shuo qi” 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, p.98.

²³⁸ The right of withdrawal, commonly known as the right to reconsider or right to retract, typically refers to a legal provision that allows consumers the right to cancel or withdraw from a contract or transaction within a specified period, often without providing a specific reason. This right is commonly associated with consumer protection laws and is designed to give consumers the ability to reconsider and cancel a purchase under certain conditions, freeing himself from the contract concluded without giving any reason. The specific details of the right of withdrawal can vary by jurisdiction and the nature of the transaction. [Christian TWIGG-FLESNER, Reiner SCHULZE, Jonathon WATSON, “Protecting rational choice: information and the right of withdrawal”, in Geraint Howells, Iain Ramsay, Thomas Wilhelmsson (edited by), *Handbook of Research on International Consumer Law*, Edward Elgar Publishing, 2018, p.111.]

²³⁹ TAO Yu 陶宇, YIN Heng 尹姮, “Yishupin paimai ‘baozhen’ zhidu de zhongwai jiejianyu bijiao – cong ‘Paimai fa’ ‘xiaci mianze’ tiaokuan shuo qi” 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, p.99.

²⁴⁰ Auction master, researcher, part-time professor and author in the auction market in China.

²⁴¹ FAN Ganping 范干平, “Yifa jingying shi yishupin paimai lizu zhi ben” 依法经营是艺术品拍卖立足之本 (Managing according to law is the foundation of art auction), in *China Auction*, 2018.04, p.15.

²⁴² Cultural scholar, writer, journalist and national senior television director. He wrote and directed several TV art films and documentaries.

²⁴³ XIAO Cheng 小成, ZHONG He 钟河, “Zhongguo yishupin paimai shichang si da jiaofeng wenti” 中国艺术品拍卖市场四大交锋问题 (Four major issues in the Chinese art auction market), in *Prosecutorial View*, 2011.24, p.13.

However, not all the experts agree on the necessity to modify the disclaimer clause. For instance, Wang Fenghai 王凤海²⁴⁴ emphasized that the second paragraph of Article 61 of the Auction Law should not be touched. He believes that, during the exhibition, bidders have abundant time and space to independently review the subject matter before purchasing, and should therefore bear responsibility for their actions. Bidders should try to assess the current condition of the auction target more comprehensively, incorporating materials and supporting evidence provided by the auction house during the exhibition process.²⁴⁵ Opinions among experts in the field vary and encompass a diverse range of perspectives.

The legal system in China, particularly in the context of the art auction field, is currently insufficient and needs improvement. The liability system in the art auction field should be enhanced: provisions should be added to clarify the meaning of counterfeiting and sale of counterfeit items, as well as infringement and breach of contract; civil and criminal liabilities borne by these behaviors should be clearly defined and commensurate with the value of the illicit to prevent illegal activities.²⁴⁶ While enhancing the legal framework for China's art auction industry, it is important for the government to strengthen the legal awareness of practitioners through various channels, reinforcing supervision mechanisms and fostering the regulation of industry practices.²⁴⁷ Finally, blacklists of enterprises and individuals engaged in counterfeiting and illicit activities can be compiled and publicly disclosed, leveraging the role of media. This approach is effective in strengthening exposure and public awareness of illegal

²⁴⁴ Registered auctioneer, honorary director of the Research Center for Legal Market Regulation of the Central University of Finance and Economics and former vice-secretary of the CAA. He is one of the drafters of the Auction Law, and designer of China's auctioneer qualification system. He died in 2019 due to illness.

²⁴⁵ PANG Sijian 庞思建, "Cong wu fa kexun dao youfa keyi – yishupin shichang fagui 40 nian" 从无法可循到有法可依—艺术品市场法规 40 年 (From having no law to follow to having to follow a law: 40 years of art market regulations), in *Art Market*, 2018.08, p.43.

²⁴⁶ TAO Yu 陶宇, YIN Heng 尹姮, "Yishupin paimai 'baozhen' zhidu de zhongwai jiejianyu bijiao – cong "Paimai fa" 'xiaci mianze' tiaokuan shuo qi" 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, p.98. JING Cuicui 景翠翠, "Woguo yishupin paimai hangye cunzai de wenti ji duice" 我国艺术品拍卖行业存在的问题及对策 (Problems and countermeasures in China's art auction industry), in *Regional Governance*, 2019.47, p.223.

²⁴⁷ JING Cuicui 景翠翠, "Woguo yishupin paimai hangye cunzai de wenti ji duice" 我国艺术品拍卖行业存在的问题及对策 (Problems and countermeasures in China's art auction industry), in *Regional Governance*, 2019.47, p.223.

activities, with the aim of preventing the occurrence of counterfeit-related behaviors and fostering trustworthiness within the industry.²⁴⁸

²⁴⁸ TAO Yu 陶宇, YIN Heng 尹姮, “Yishupin paimai ‘baozhen’ zhidu de zhongwai jiejianyu bijiao – cong “Paimai fa” ‘xiaci mianze’ tiaokuan shuo qi” 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, p.99.

2.2 Consequences

The rapid expansion of the art industry in China has outpaced regulatory efforts, leaving the market exceptionally vulnerable and plagued with corruption. Such swift evolution has hindered the establishment of a solid legal framework, leaving several loopholes unsolved, such as the exploitation of the exemption clause. The inadequate and incomplete legislation has led to many issues affecting various stakeholders in the market, including artists, art dealers, galleries, and auction houses. With a focus on auction houses, significant challenges include the widespread proliferation of forgeries and instances of non-payment or delayed payment for acquired artworks.²⁴⁹ Despite the implementation of several regulations in China to address such market behaviors, these kinds of practices still persist. The honesty of the market is therefore constantly called into question, as it is considered lacking in credibility and reliability.²⁵⁰

2.2.1 Circulation of forgeries

David Bellingham²⁵¹ observes that creating copies of artworks has been a practice that has characterized the art history throughout its course. This is especially true in China, where students have always copied the works of great masters as a means of learning and practicing.²⁵² Sabrina Rastelli²⁵³ notes that: “In pre-20th century China, copies of old masters’ paintings and calligraphies were regarded as honourable works of art, set apart from forgeries made with the intent to deceive.”²⁵⁴ It is therefore crucial to differentiate between copies

²⁴⁹ David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in “The New York Times”, 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023. Silvia BERTOLDO, *La nascita e l’evoluzione del mercato dell’arte in Cina* [Master’s thesis, Ca’ Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, p.162.

²⁵⁰ David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in “The New York Times”, 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023. David BARBOZA, *Gaming China’s Art Market With Expert Forgeries*, in “The New York Times”, 2013, archive.nytimes.com/sinosphere.blogs, last access January 30, 2024.

²⁵¹ Art historian, author and Program Director at Sotheby’s Institute of Art, London.

²⁵² David BELLINGHAM, “Ethics and the Art Market”, in Iain Robertson and Derrick Chong (edited by), *The Art Business*, London: Routledge, 2008, pp.183-184. Audrey WANG, *Chinese Antiquities. An introduction to the art market*, “Handbooks in International Art Business”, Lund Humphries Publishers Ltd. in association with Sotheby’s Institute of Art, 2012, p.12.

²⁵³ Associate Professor and researcher of Chinese Art and Archaeology at Ca’ Foscari University, Venice.

²⁵⁴ Sabrina RASTELLI, “Conversing with the Past: the Value of Copying in Chinese Painting”, in *Raffaello and Zhang Zeduan. New Perspectives on Perspective*, Firenze: Mandragora, 2021, p.75.

created for educational purposes only, devoid of any malevolent intention, and those deliberately made to appear original and to be sold as authentic works.²⁵⁵ In China, the emulation of great masters' works is generally known as *lín mó* 临摹, and has served as a fundamental method for students to learn and refine their artistic skills: students would copy painting and calligraphy models to practice and then develop their own style. In the Chinese cultural interpretation, copying signifies a display of respect towards the past and elders.²⁵⁶ Simultaneously, it serves as an erudite declaration by the younger painter, showcasing their knowledge of the old masters.²⁵⁷

The problem in the Chinese market arises from the fact that this tradition of reproducing works of ancient Chinese masters has crossed paths with a new, highly lucrative art market: the replicas, often indistinguishable from the originals due to the artists' proficiency, are frequently presented as authentic articles in the market. The majority of copies are produced as replicas and sold as such, but a high number of these are nonetheless created with the sole purpose of deceiving buyers. The result is an environment ripe for the proliferation of fakes, where these forgeries find their way into auctions and are challenging to detect, posing a considerable problem within the Chinese art market.²⁵⁸ Counterfeiting in the art world is a widespread phenomenon that plagues all art markets in the world. Experts warn that the Chinese art market has proven to be particularly vulnerable, because rapid expansion has outpaced regulatory efforts, offering excellent opportunities for counterfeiters.²⁵⁹

²⁵⁵ David BELLINGHAM, "Ethics and the Art Market", in Iain Robertson and Derrick Chong (edited by), *The Art Business*, London: Routledge, 2008, pp.183-184. Craig CLUNAS, *Art in China*, New York: Oxford University Press, 2009, (1 ed. 1997).

²⁵⁶ Audrey WANG, *Chinese Antiquities. An introduction to the art market*, "Handbooks in International Art Business", Lund Humphries Publishers Ltd. in association with Sotheby's Institute of Art, 2012, p.12. David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in "The New York Times", 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023. FONG Wen C., "Chinese art and cross-cultural understanding", in Wen C. Fong and James C.Y. Watt (edited by), *Possessing the Past. Treasures from the National Palace Museum, Taipei, exhibition catalogue*, New York: Metropolitan Museum of Art, 1996, pp.27-35.

²⁵⁷ Sabrina RASTELLI, "Conversing with the Past: the Value of Copying in Chinese Painting", in *Raffaello and Zhang Zeduan. New Perspectives on Perspective*, Firenze: Mandragora, 2021, p.88.

²⁵⁸ David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in "The New York Times", 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023. Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, p.173.

²⁵⁹ HUI Zhong, *China's new law on art auctions*, in "Art, Antiquity and Law", Vol. 22, No. 3, 2017, pp.229-243. David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in "The New York Times", 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023. Audrey WANG, *Chinese Antiquities. An introduction to the art market*, "Handbooks in International Art Business", Lund Humphries Publishers Ltd. in association with Sotheby's Institute of Art, 2012, p.144. Toby BULL, Stephan BRUBER, "Forge and Export: The Trade in Fake

In China, the public sale of counterfeit artworks is widespread across many art stores, auction events, and online platforms.²⁶⁰ First of all, many auction companies often sell fake goods, without knowing that they are counterfeits. Due to various factors, the auction house may mistakenly treat the counterfeit item as an authentic product and proceed with the auction without realizing the error. For instance, authenticators from specific auction companies may misidentify certain counterfeit works as authentic due to their limited expertise, leading to the inclusion of these items in auctions. In the current art market, where counterfeiting and forgery methods and standards are exceptionally sophisticated, appraisal experts can easily be misled regarding authenticity. This confusion often results in auction companies making mistakes unknowingly.²⁶¹

However, at times, certain domestic auction firms, driven by the desire for economic gain, intentionally auction counterfeit goods, while pretending not to be aware.²⁶² Over the years, a significant portion of forgery remained undetected as artworks passed from hand to hand, seeing their prices escalating. However, a growing number of high-profile scandals are now bringing to light the widespread nature of these forgeries, casting doubts on the overall market.²⁶³ Some individuals employ various methods to submit counterfeit goods to auction houses, because acquiring the auction transaction certificate provides a “legal” basis for the future transactions and circulation of these counterfeit goods.²⁶⁴ Certain Chinese dealers and consignors introduce forgeries into auctions by manipulating old sales catalogs to fabricate a provenance. In some cases, they may even pay an auction house specialist to put the item

Antiquities from China”, in Joris Kila e Marc Balcells (edited by), *Cultural Property Crime: An Overview and Analysis on Contemporary Perspectives and Trends*, Brill, 2014, pp.61-76.

²⁶⁰ JING Cuicui 景翠翠, “Woguo yishupin paimai hangye cunzai de wenti ji duice” 我国艺术品拍卖行业存在的问题及对策 (Problems and countermeasures in China’s art auction industry), in *Regional Governance*, 2019.47, p.222.

²⁶¹ LI Rui 厉锐, “Shilun guonei yishupin paimai shichang zhong de ‘nanti’” 试论国内艺术品拍卖市场中的“难题” (On the “difficulties” in the domestic art auction market), in *Fine Arts*, 2021.08, p.103.

²⁶² LI Jian 力简, “Qianxi muqian yishupin paimai shichang zhong cunzai de ‘sanjia’ wenti” 浅析目前艺术品拍卖市场中存在的“三假”问题 (Analysis of the problem of “three fakes” in the current art auction market), in *Art Market*, 2007.12, p.118. LI Rui 厉锐, “Shilun guonei yishupin paimai shichang zhong de ‘nanti’” 试论国内艺术品拍卖市场中的“难题” (On the “difficulties” in the domestic art auction market), in *Fine Arts*, 2021.08, p.103.

²⁶³ David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in “The New York Times”, 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023.

²⁶⁴ LI Rui 厉锐, “Shilun guonei yishupin paimai shichang zhong de ‘nanti’” 试论国内艺术品拍卖市场中的“难题” (On the “difficulties” in the domestic art auction market), in *Fine Arts*, 2021.08, p.103. LI Jian 力简, “Qianxi muqian yishupin paimai shichang zhong cunzai de ‘sanjia’ wenti” 浅析目前艺术品拍卖市场中存在的“三假”问题 (Analysis of the problem of “three fakes” in the current art auction market), in *Art Market*, 2007.12, p.118.

with questionable authenticity at auction.²⁶⁵ At times, auction houses go to the extent of bribery by offering money to the families of calligraphers and painters. The aim is to obtain inscriptions on counterfeit works, thus falsely authenticating them. Such deceptive maneuver proves effective, particularly in misleading unfamiliar and novice bidders. The adoption of these reprehensible methods has resulted in a significant stream of counterfeits and forgeries into the art auction market. This has severely damaged the reputation of auction companies and posed a considerable obstacle to the prosperity and growth of the art market.²⁶⁶ This issue related to the authenticity of artworks negatively impacts not only mainland Chinese auction houses, but also those in Hong Kong, as well as Western auction houses operating in China, and those dealing with Chinese artworks in the West. However, in the market, there are also auction houses, such as China Guardian, known for their remarkable reputation in identifying counterfeits, a crucial element for the credibility of the auction house and, more generally, of the market.²⁶⁷

The reasons for the auction of forgeries are mainly two:

- a. Auction companies lack moral self-discipline. The widespread presence of counterfeit goods is to some extent caused by auction companies sacrificing professional ethics in the face of interests. The art auction industry in China is facing a crisis of integrity: auction companies, in order to earn higher profits, engage in collusion with clients, knowingly auctioning counterfeit goods.²⁶⁸
- b. Loopholes existing in the legal system can be exploited, especially within the disclaimer of liability clause. The rapid expansion of the auction market in China has outpaced regulatory efforts, leading to the absence of specific regulations addressing

²⁶⁵ David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in "The New York Times", 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023.

²⁶⁶ LI Rui 厉锐, "Shilun guonei yishupin paimai shichang zhong de 'nanti'" 试论国内艺术品拍卖市场中的“难题” (On the “difficulties” in the domestic art auction market), in *Fine Arts*, 2021.08, p.103. David BARBOZA, *Gaming China's Art Market With Expert Forgeries*, in "The New York Times", 2013, archive.nytimes.com/sinosphere.blogs, last access January 30, 2024.

²⁶⁷ David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in "The New York Times", 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023.

²⁶⁸ ZHOU Wei 周维, "Woguo wenwu yishupin paimai shichang de falü wenti yanjiu" 我国文物艺术品拍卖市场的法律问题研究 (Research on legal issues in the auction market of cultural relics and artworks in China), in *Legal System and Society*, 2011.03, p.121. XIAO Cheng 小成, ZHONG He 钟河, "Zhongguo yishupin paimai shichang si da jiaofeng wenti" 中国艺术品拍卖市场四大交锋问题 (Four major issues in the Chinese art auction market), in *Prosecutorial View*, 2011.24, pp.12-13.

forgeries, and auction houses currently do not bear any responsibility for selling works that later prove to be inauthentic. The presence of the exemption clause represents a weakness in the Chinese regulatory system and simultaneously poses an obstacle to efforts aimed at cleaning up the art market.²⁶⁹

As reported by Barboza, Bowley and Cox, examples of auctioning counterfeit items are endless. In 2010, a painting by Xu Beihong, a 20th-century artist, fetched over USD 10 million at an auction. Later, it was revealed to have been created by a student during a classroom exercise at one prominent Chinese art academy about 30 years after the artist passed away. In 2011, a set composed of a jade-carved stool and dressing table dated to the Han dynasty was auctioned in Beijing for USD 33 million. However, experts noted that during the Han dynasty, the Chinese primarily sat on the floor, not on chairs. Subsequently, a prominent figure in the jade trade from Pizhou, a village in Jiangsu Province, admitted that local craftsmen had produced this set in 2010.²⁷⁰

2.2.2 Defaults and delays in payment

The circulation of forgeries is strictly connected to another significant issue within the art auction market: the problem of defaults and delays in payment. Many buyers have withdrawn from purchases due to concerns about the risk of fakes. It is frequent that a buyer may refuse to pay the auction price, citing quality issues, rights disputes, age concerns, authenticity questions, or objections regarding the provenance of the item.²⁷¹

²⁶⁹ ZHOU Wei 周维, “Woguo wenwu yishupin paimai shichang de falü wenti yanjiu” 我国文物艺术品拍卖市场的法律问题研究 (Research on legal issues in the auction market of cultural relics and artworks in China), in *Legal System and Society*, 2011.03, p.121. HUI Zhong, *China’s new law on art auctions*, in “Art, Antiquity and Law”, Vol. 22, No. 3, 2017, pp.229-243. David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in “The New York Times”, 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023.

²⁷⁰ David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in “The New York Times”, 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023.

²⁷¹ ZHAO Qiang 赵强, “Wenwu yishupin paimai qiye fengxian suyuan – jiyu paimai jiufen de duo anli fenxi” 文物艺术品拍卖企业风险溯源—基于拍卖纠纷的多案例分析 (Tracing the risks of cultural relics and artworks auction enterprises: a multiple case analysis based on auction disputes), in *Modern Business Trade industry*, 2021.33, p.113. ART BASEL and UBS, *The Art Market 2018*, in “Art Basel”, 2018, [d2u3kfwd92fzu7.cloudfront.net](https://www.artbasel.com/art-market-2018), last access November 8, 2023.

According to Article 36 of the Auction Law, once a bidder bids for a price, such price becomes irrevocable, and it remains binding until another bidder offers a higher price.²⁷² Moreover, Article 39 of the same law provides that the buyer must pay for the auctioned item at the agreed price; otherwise, they will be responsible for any default-related liabilities.²⁷³ However, in the Chinese auction market, cases of delays and defaults in payment are quite common. According to Zhang Zhengzhong 张政中, an expert in the art market, defaults in payment stands out as one of the major issues in art auctions. Some individuals refuse to acknowledge their purchase at the time of payment, while others choose to make the payment in installments, but later realize they are unable to complete the payment.²⁷⁴

There are various reasons that contribute to defaults and delays in payment, and some of the more frequent are:

- (1) Uncovered flaws or suspected counterfeit items. The buyer is not willing to pay the auction price, mentioning concerns about quality, rights disputes, the age of the item, authenticity, or objections regarding its provenance.²⁷⁵ Clare McAndrew, founder of the research company Arts Economics, believes that the issue primarily stems not from the lack of willingness or ability to pay, but from the Chinese auction houses' practice of expecting buyers to independently verify the authenticity of their purchases. As a result, buyers frequently postpone payment until items' authenticity is confirmed, especially when dealing with artifacts that have longer histories, making them more susceptible to forgery. If any doubts arise regarding an item's authenticity, they may opt not to complete the payment. This is a different negotiation process compared to other art market hubs, where potential buyers typically conduct authenticity checks before committing to a purchase.²⁷⁶

²⁷² STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015 修正), (Auction Law of the People's Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 36.

²⁷³ *Ibidem*, Art. 39.

²⁷⁴ Silvia BERTOLDO, *La nascita e l'evoluzione del mercato dell'arte in Cina* [Master's thesis, Ca'Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023, pp.170-171.

²⁷⁵ ZHAO Qiang 赵强, "Wenwu yishupin paimai qiye fengxian suyuan – jiyu paimai jiufen de duo anli fenxi" 文物艺术品拍卖企业风险溯源—基于拍卖纠纷的多案例分析 (Tracing the risks of cultural relics and artworks auction enterprises: a multiple case analysis based on auction disputes), in *Modern Business Trade industry*, 2021.33, p.113. ART BASEL and UBS, *The Art Market 2018*, in "Art Basel", 2018, d2u3kfw92fzu7.cloudfront.net, last access November 8, 2023.

²⁷⁶ Melanie GERLIS, *The 5 Biggest Myths About the Chinese Art Market—and the Inconvenient Realities That May Give Investors Pause*, in "Artnet News", 2018, news.artnet.com, last access November 7, 2023.

- (2) Untruthful information about the item. The buyer suspects that the auctioneer has provided false or inaccurate information through catalogs, on-site explanations, and other means, potentially causing misleading advertising and significant misunderstandings among the buyers. As a result, they participate in the auction and place bids on the items, but subsequently refuse to pay the auction price.²⁷⁷
- (3) Regret. Following a successful bid, the buyer may come to believe that their winning bid was too high, or they may observe a significant drop in the market price. Experiencing buyer's remorse and regret over their bid, they refuse to pay the auction price.²⁷⁸
- (4) Lack of funds and inability to pay. At times, buyers may find themselves unable to cover the auction price due to economic hardships and cash flow challenges.²⁷⁹
- (5) Malicious bidding. It refers to a fraudulent practice that occurs in auctions. It involves individuals or entities engaging in deceitful actions to manipulate the auction process. Involves actions such as registering for bidding under false name (including under the identity of deceased individuals), often without their knowledge or consent, and signing bidding agreements to appear as legitimate participants. After winning the bid, malicious bidders may refuse to pay for the item they won, causing financial and legal issues for the auctioneer and trustee, since they are unable to hold them legally responsible.²⁸⁰
- (6) Price manipulation, also called "stir-frying" (in Chinese *chǎozuò* 炒作).²⁸¹ The buyer refuses to make the auction payment, alleging concerns of price manipulation, such as

²⁷⁷ ZHAO Qiang 赵强, "Wenwu yishupin paimai qiye fengxian suyuan – jiyu paimai jiufen de duo anli fenxi" 文物艺术品拍卖企业风险溯源—基于拍卖纠纷的多案例分析 (Tracing the risks of cultural relics and artworks auction enterprises: a multiple case analysis based on auction disputes), in *Modern Business Trade industry*, 2021.33, p.113.

²⁷⁸ ZHAO Qiang 赵强, "Wenwu yishupin paimai qiye fengxian suyuan – jiyu paimai jiufen de duo anli fenxi" 文物艺术品拍卖企业风险溯源—基于拍卖纠纷的多案例分析 (Tracing the risks of cultural relics and artworks auction enterprises: a multiple case analysis based on auction disputes), in *Modern Business Trade industry*, 2021.33, p.113. David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in "The New York Times", 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023.

²⁷⁹ ZHAO Qiang 赵强, "Wenwu yishupin paimai qiye fengxian suyuan – jiyu paimai jiufen de duo anli fenxi" 文物艺术品拍卖企业风险溯源—基于拍卖纠纷的多案例分析 (Tracing the risks of cultural relics and artworks auction enterprises: a multiple case analysis based on auction disputes), in *Modern Business Trade industry*, 2021.33, p.113.

²⁸⁰ *Ibidem*.

²⁸¹ ZHAO Qiang 赵强, "Wenwu yishupin paimai qiye fengxian suyuan – jiyu paimai jiufen de duo anli fenxi" 文物艺术品拍卖企业风险溯源—基于拍卖纠纷的多案例分析 (Tracing the risks of cultural relics and artworks auction enterprises: a multiple case analysis based on auction disputes), in *Modern Business Trade industry*,

artificially increasing the value of certain items. Experts suggest that price manipulation is widespread to create a false sense of demand and inflate prices. At times, the auctioneer and the client might also create an illusion of competition by using accomplices to bid on items, thus artificially increasing prices.²⁸² An operational method involves the client simultaneously assuming the role of both the item owner and the bidder, lifting their sign to place bids on their own goods during the auction, in violation of Article 30 of the Auction Law.²⁸³ It can happen that auction houses too throw in fictitious bids, in violation of Article 22 of the Auction Law.²⁸⁴ Price-boosting processes are often employed by many different actors in the art auction market for diverse purposes: (a) art dealers use it to make substantial profits within a brief timeframe; (b) some painters utilize it to artificially inflate the value of their works, and young calligraphers and painters use it to hype up their artworks that are not very well-known; (c) collectors and investors, particularly those heavily investing in a specific artist, inflate the prices of specific artworks to enhance the overall value of their entire collection; (d) auction companies can earn commissions and a visually appealing transaction volume.²⁸⁵

2021.33, p.113. David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in “The New York Times”, 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023.

²⁸² ZHENG Yaoqi 郑瑶琦, “Yishupin paimai shichang de guifan wenti yanjiu” 艺术品拍卖市场的规范问题研究 (Research on the regulation of the art auction market), in *The World of Chinese Painting and Calligraphy*, 2017.12, p.94.

²⁸³ 第三十条 委托人不得参与竞买, 也不得委托他人代为竞买。Art. 30 A client may not participate in bidding and may not authorize another to bid on his behalf. [STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023, Art. 30. STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 30.]

²⁸⁴ 第二十二条 拍卖人及其工作人员不得以竞买人的身份参与自己组织的拍卖活动, 并不得委托他人代为竞买。Art. 22 An auctioneer and his employees may not get involved as bidders in the auction sale which is arranged by themselves and may not authorize another to act as a bidder on their behalf. [STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023, Art. 22. STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)” 中华人民共和国拍卖法(2015 修正), (Auction Law of the People’s Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023, Art. 22.]

²⁸⁵ Li Jian 力简, “Qianxi muqian yishupin paimai shichang zhong cunzai de ‘sanjia’ wenti” 浅析目前艺术品拍卖市场中存在的“三假”问题 (Analysis of the problem of “three fakes” in the current art auction market), in *Art Market*, 2007.12, p.118. ZHENG Yaoqi 郑瑶琦, “Yishupin paimai shichang de guifan wenti yanjiu” 艺术品拍卖市

(7) Unsuccessful speculation. Some buyers use various connections and means to acquire auction items without making payments. Subsequently, they send these items to other auctions for sale. After the second auction is completed, the proceeds are then used to settle accounts with the first auction company, aiming to earn a profit margin. While this approach may succeed when the art market is thriving, it is not surprising that during a downturn in the art market, the funding chain can easily break, leading to defaults and delays in payment.²⁸⁶

(8) Unsuccessful buyer-collector deal. The payment default occurs because, before an auction, a buyer finds a collector interested in a piece of art, and purchases it on their behalf. The buyer refuses to pay for it, if the agreement with the collector were to fall through.²⁸⁷

Following the market's current focus on high-end artworks, efforts to curb payment-related issues have been ineffective, and these problems persist. Despite regulatory efforts to address the problem, the auction house sector in China still experiences a high rate of delays and defaults in payment.²⁸⁸

In 2017, data collected by CAA revealed that over half of the money pledged in auctions had not been settled nearly six months after the winning bids were made. The analysis of data from 358 auction houses, as reported by Artnet and CAA, indicates that, as of May 15, 2018, only 49% of the total sales value in mainland China in 2017 had been paid. This figure remained consistent throughout the years, fluctuating around the same percentage. In 2018 and 2019, the settlement rate briefly surpassed half of the total value of Chinese art and antique items

场的规范问题研究 (Research on the regulation of the art auction market), in *The World of Chinese Painting and Calligraphy*, 2017.12, p.94. LI Rui 厉锐, "Shilun guonei yishupin paimai shichang zhong de 'nanti'" 试论国内艺术品拍卖市场中的“难题” (On the “difficulties” in the domestic art auction market), in *Fine Arts*, 2021.08, p.103. ZHAO Qiang 赵强, "Wenwu yishupin paimai qiye fengxian suyuan – jiyu paimai jiufen de duo anli fenxi" 文物艺术品拍卖企业风险溯源—基于拍卖纠纷的多案例分析 (Tracing the risks of cultural relics and artworks auction enterprises: a multiple case analysis based on auction disputes), in *Modern Business Trade industry*, 2021.33, pp.113-114. David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in “The New York Times”, 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023.

²⁸⁶ LI Rui 厉锐, "Shilun guonei yishupin paimai shichang zhong de 'nanti'" 试论国内艺术品拍卖市场中的“难题” (On the “difficulties” in the domestic art auction market), in *Fine Arts*, 2021.08, p.103.

²⁸⁷ David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in “The New York Times”, 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023.

²⁸⁸ ARTNET and CAA, *Global Chinese Art Auction Market Report 2017*, in “Artnet”, 2018, [cn.artnet.com/caa](https://www.artnet.com/caa), last access November 8, 2023.

sold, but in 2020 it dropped again under 50%.²⁸⁹ In 2022 and 2023, the problem of delays and defaults in payment persisted within the auction industry. Even larger auction houses encountered challenges related to delayed payments and debt recovery. This indicates that a significant number of buyers continues to fail to fulfill their account payments, with many extending beyond the due date by six months. This issue is especially pronounced for certain high-value lots.²⁹⁰

The problem continues to be a concern for the whole auction market, particularly affecting smaller businesses and leading to cash-flow issues. While it is true that this matter is observed with differing frequencies in auction houses globally, it is also true that the distinct culture of negotiation and transaction in China allowed it to evolve rapidly and widely.²⁹¹ Moreover, such issue causes difficulties in the elaboration of data and market analysis. Often, auction houses do not report missed payments and failed transactions; as a result, the sales figures reported for China, especially for high end items, include a substantial and fluctuating portion of works for which payments have not been settled.²⁹² The implication is that this practice makes the market appear more prosperous than it actually is, giving a misleading impression.²⁹³

²⁸⁹ Melanie GERLIS, *The 5 Biggest Myths About the Chinese Art Market—and the Inconvenient Realities That May Give Investors Pause*, in “Artnet News”, 2018, news.artnet.com, last access November 7, 2023. ARTNET and CAA, *Global Chinese Art Auction Market Report 2017*, in “Artnet”, 2018, cn.artnet.com/caa, last access November 8, 2023. ARTNET and CAA, *Global Chinese Art Auction Market Report 2018*, in “Artnet”, 2019, cn.artnet.com/caa, last access November 8, 2023. ARTNET and CAA, *Global Chinese Art Auction Market Report 2019*, in “Artnet”, 2020, cn.artnet.com/caa, last access November 8, 2023. ARTNET and CAA, *Global Chinese Art Auction Market Report 2020*, in “Artnet”, 2021, cn.artnet.com/caa, last access November 8, 2023. ARTNET and CAA, *Global Chinese Art Auction Market Report 2021*, in “Artnet”, 2022, cn.artnet.com/caa, last access November 8, 2023. ART BASEL and UBS, *The Art Market 2018*, in “Art Basel”, 2018, d2u3kfw92fzu7.cloudfront.net, last access November 8, 2023.

²⁹⁰ ART BASEL and UBS, *The Art Market 2023*, in “Art Basel”, 2023, cdn.sanity.io, last access November 10, 2023, pp.145 and 152.

²⁹¹ ART BASEL and UBS, *The Art Market 2018*, in “Art Basel”, 2018, d2u3kfw92fzu7.cloudfront.net, last access November 8, 2023. ART BASEL and UBS, *The Art Market 2023*, in “Art Basel”, 2023, cdn.sanity.io, last access November 10, 2023, p.145.

²⁹² ART BASEL and UBS, *The Art Market 2023*, in “Art Basel”, 2023, cdn.sanity.io, last access November 10, 2023, p.145.

²⁹³ An example of this can be found in the Poly International Auction case. In 2012, Poly International Auction reported fictitious sales data that appeared higher than the actual figures, because they did not account for failed transactions. Furthermore, Poly declined to authorize the CAA to disclose the details regarding its sales. This manipulation inflated the data, creating the false impression of a more prosperous market than it truly was, and giving a misleadingly optimistic impression of the market's health. [Graham BOWLEY, David BARBOZA, *An art power rises in China, posing issue for reform*, in “CNBC”, 2013, www.cnbc.com, last access November 8, 2023. David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in “The New York Times”, 2013, nytimes.com/china-art-fraud, last access May 13, 2023.]

The reasons for lots remaining unsettled may vary, but this issue highlights the fact that, even in a declining market like that of 2022, auction houses in China have continued to offer flexible payment arrangements to buyers. One of the key factors behind this phenomenon is the typical relationship-based culture in China. Many domestic auction houses depend on a relatively small group of regular clients to sustain their business. In certain cases, these auction houses find it necessary to extend more favorable terms to these clients, including the waiving of bidding deposits, which are otherwise an industry norm in China for regular buyers. In instances where these clients delay payments for various reasons, auction houses exercise caution in pursuing legal actions. This cautious approach stems from their longer-term priority of maintaining positive and enduring relationships with these clients.²⁹⁴

In response to this challenge and the market's credibility concerns, Chinese authorities, working alongside the CAA, have implemented a reform program. Under this program, the association now maintains records of payment defaults for publication, with the intention of exposing those engaging in such practices and partially solving the problem. Additionally, this initiative has not only prompted auction houses to keep records of non-paying buyers, but has also encouraged them to require deposits from potential buyers.²⁹⁵ Sotheby's and Christie's Hong Kong were the pioneers in introducing these deposits in 2011. This move came in response to numerous cases of payment defaults that resulted in legal proceedings, prompting many auction houses to adopt a more cautious and vigilant approach. The implementation of the security deposit has certainly had an impact on the auction market for those who adopted it, resulting in a decrease in the high-value lots sold that year. However, given its effectiveness in addressing the issue of non-payment, many other auction houses, including domestic ones, have chosen to adopt it in the following years.²⁹⁶

To give an example, one of the most notable cases of default in payment was that of the collector Cai Mingchao 蔡明超, who, in 2009, purchased two fountainheads from the Yuanmingyuan at Christie's in Paris. These had been looted by foreign armies during the

²⁹⁴ ART BASEL and UBS, *The Art Market 2023*, in "Art Basel", 2023, cdn.sanity.io, last access November 10, 2023, pp.145 and 223.

²⁹⁵ David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in "The New York Times", 2013, nytimes.com/china-art-fraud, last access May 13, 2023.

²⁹⁶ Audrey WANG, *Chinese Antiquities. An introduction to the art market*, "Handbooks in International Art Business", Lund Humphries Publishers Ltd. in association with Sotheby's Institute of Art, 2012, pp.148-149.

Second Opium War. Cai Mingchao refused to honor the payment as a form of protest.²⁹⁷ Another case happened during China Guardian's spring sale in May 2011. A 1946 ink painting by Qi Baishi, a master of 20th-century Chinese art, titled "Eagle Standing on a Pine Tree", exceeded all expectations by selling for USD 65.4 million. This astonishing price was more than triple the initial estimates and set a record for the highest price ever achieved by a Chinese painting at auction at that time. However, the jubilation was short-lived, as an art critic, Mou Jianping 牟建平, quickly raised suspicions about the authenticity of the artwork, casting doubt on its legitimacy. In the end, the winning bidder refused to honor the purchase, resulting in an effective default on the item many years later.²⁹⁸

²⁹⁷ Audrey WANG, *Chinese Antiquities. An introduction to the art market*, "Handbooks in International Art Business", Lund Humphries Publishers Ltd. in association with Sotheby's Institute of Art, 2012, pp.26 and 149.

²⁹⁸ David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in "The New York Times", 2013, [nytimes.com/china-art-fraud](https://www.nytimes.com/china-art-fraud), last access May 13, 2023.

CHAPTER 3

FOREIGN AUCTION HOUSES APPROACH TO THE CHINESE MARKET

3.1 Foreign investment legal framework

A significant trend in the 21st-century art market is the rise of China as a strong player globally, accompanied by the increasing importance of and interest in Chinese art and antiquities. In the span of three years, from 2008 to 2011, China transitioned from the sixth position to become the world's second-largest art market, behind the United States. This remarkable growth can be attributed to the increasing number of new billionaires in China, displaying an interest in art acquisition. The surge in wealth led to a significant growth in the number of Chinese collectors and speculators, actively engaging in auction activities. Another element that gave the market a boost was the active effort to repatriate Chinese cultural relics that were purportedly looted. The Chinese government is dedicated to reclaiming China's cultural property from overseas collections. In line with China's commitment to the WTO, the mainland market has opened its doors to foreign auction houses and to international competition. However, while foreign houses have gained some access to the Chinese market, they are still restricted from the sale of cultural relics, encompassing artworks created before 1949. While China seeks the repatriation of its own heritage, foreign firms are not allowed to sell these antiquities within China. Nowadays, noteworthy challenges to the operation of foreign houses in China include substantial taxes levied on artworks and the complex Chinese legislation governing cultural heritage and the export of art.²⁹⁹

3.1.1 Foreign investment legal framework before 2019

According to Chinese legislation, up to 2019, when injecting foreign capital into the Chinese market, foreign investors could choose one of the Foreign-Invested Enterprises (*wàishāng tóuzī qǐyè* 外商投资企业, or *sān zī qǐyè* 三资企业, hereinafter referred to as FIEs). The Chinese

²⁹⁹ Audrey WANG, *Chinese Antiquities. An introduction to the art market*, "Handbooks in International Art Business", Lund Humphries Publishers Ltd. in association with Sotheby's Institute of Art, 2012, pp.152-153. Deborah M. LEHR, *China's Art Market Is Booming – But Not for Foreigners*, in "The Diplomat", 2017, thediplomat.com, last access January 8, 2024. Ben JANSSENS, *China opens doors to foreign auction houses*, in "The Art Newspaper", 2004, www.theartnewspaper.com, last access January 20, 2024.

category of FIEs mainly comprises three distinct company structures: Chinese-foreign equity joint venture (*zhōngwài hézī jīngyíng qǐyè* 中外合资经营企业, EJV), Chinese-foreign cooperative joint venture (*zhōngwài hézuò jīngyíng qǐyè* 中外合作经营企业, CJV) and wholly foreign-owned enterprise (*wàizī qǐyè* 外资企业, WFOE).³⁰⁰

The EJV was the first one to be legally introduced, in 1979, with the Law of the PRC on Chinese-Foreign Equity Joint Ventures (*Zhōnghuá rénmín gònghéguó zhōngwài hézī jīngyíng qǐyè fǎ* 中华人民共和国中外合资经营企业法).³⁰¹ Such law constituted an invitation for foreign entrepreneurs to invest in China: it represented the first legal formalization of the policy of openness to foreign investments (*kāifàng zhèngcè* 开放政策, open door policy) and the first step towards the economic reform announced by Deng Xiaoping a few months earlier. EJV was a special type of company, endowed with legal personality, and formed by at least one foreign entity (individual or legal) and one Chinese legal entity. Under the Law on EJVs, the investment scope was confined to industrial companies, and collaboration with a Chinese partner was mandatory. While a minimum investment threshold of 25% was established, an upper limit was not imposed during this period, enabling foreign investors to hold more than 50% of the company.³⁰²

Later on, in 1986, the Law of the PRC on Foreign Capital Enterprises (*Zhōnghuá rénmín gònghéguó wàizī qǐyè fǎ* 中华人民共和国外资企业法) was published.³⁰³ Also known as subsidiaries, WFOEs are companies entirely established by one or more foreign investors. At the time, this option was initially granted only for investment projects that brought high technology or were primarily oriented towards exports.³⁰⁴

³⁰⁰ Renzo CAVALIERI, “Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia”, *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, p.148. Pitman POTTER, *Foreign Investment Law in the People’s Republic of China: Dilemmas of State Control*, in “China Quarterly”, No. 141, 1995, p.163.

³⁰¹ Law of the PRC on Chinese-Foreign Equity Joint Ventures (中华人民共和国中外合资经营企业法), adopted by the National People’s Congress on July 1, 1979; revised in 1990, 2007, 2016 and abrogated on January 1, 2020.

³⁰² Pitman POTTER, *Foreign Investment Law in the People’s Republic of China: Dilemmas of State Control*, in “China Quarterly”, No. 141, 1995, p.163. GAO Shen, *The Evolution of China’s Foreign Investment Policy and Law* [PhD dissertation, The Pennsylvania State University], 2017, core.ac.uk, last access January 11, 2024, pp.51-53. Renzo CAVALIERI, “Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia”, *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, pp.142 and 148-149.

³⁰³ Law of the PRC on Foreign Capital Enterprises (中华人民共和国外资企业法), adopted by the National People’s Congress on April 12, 1986; revised in 2000 and 2016; and abrogated on January 1, 2020.

³⁰⁴ Pitman POTTER, *Foreign Investment Law in the People’s Republic of China: Dilemmas of State Control*, in “China Quarterly”, No. 141, 1995, p.164. GAO Shen, *The Evolution of China’s Foreign Investment Policy and Law*

Two years later, the CJV was introduced, with the Law of the PRC on Chinese-Foreign Contractual Joint Ventures (*Zhōnghuá rénmin gònghéguó zhōngwài hézuò jīngyíng qǐyè fǎ* 中华人民共和国中外合作经营企业法).³⁰⁵ This is a particular hybrid form of contractual joint venture, not widely adopted, and primarily intended to channel investments in the services or infrastructure sector. The main characteristic of CJVs was greater flexibility and tolerance, compared to EJVs.³⁰⁶

Every investment project entering China was subject to a strict regime of severe administrative approval and control by Chinese authorities. In the establishment phase, the Ministry of Commerce of the PRC (MOFCOM) and its local branches, carried out a preliminary examination and had the authority to reject the project or impose modifications with the utmost discretion. Subsequently, after establishment, they monitored the company's activities. The approval process, although over time became increasingly automatic and simplified, still represented a moment of discretion in the decision on whether and how to permit the investment. Until 1995, when a catalog of sectors prohibited and restricted to FDIs was published, investors were unaware of the criteria and internal (*neibu*) regulations based on which Chinese authorities approved projects.³⁰⁷

As for domestic commercial law, in 1993, another important law was formulated in China, the Company Law of the PRC (*Zhōnghuá rénmin gònghéguó gōngsī fǎ* 中华人民共和国公司法).³⁰⁸ The law introduces the two main types of companies of Western legal systems, namely the limited liability company (*yǒuxiàn zérèn gōngsī* 有限责任公司) and the joint-stock

[PhD dissertation, The Pennsylvania State University], 2017, core.ac.uk, last access January 11, 2024, pp.90-94. Renzo CAVALIERI, "Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia", *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, pp.147 and 151-152.

³⁰⁵ Law of the PRC on Chinese-Foreign Contractual Joint Ventures (中华人民共和国中外合作经营企业法), adopted by the National People's Congress on April 13, 1988; revised in 2000, 2016 and abrogated on January 1, 2020.

³⁰⁶ Pitman POTTER, *Foreign Investment Law in the People's Republic of China: Dilemmas of State Control*, in "China Quarterly", No. 141, 1995, pp.163-164. GAO Shen, *The Evolution of China's Foreign Investment Policy and Law* [PhD dissertation, The Pennsylvania State University], 2017, core.ac.uk, last access January 11, 2024, pp.94-95. Renzo CAVALIERI, "Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia", *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, pp.147-148.

³⁰⁷ Renzo CAVALIERI, "Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia", *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, pp.149-150. GAO Shen, *The Evolution of China's Foreign Investment Policy and Law* [PhD dissertation, The Pennsylvania State University], 2017, core.ac.uk, last access January 11, 2024.

³⁰⁸ Company Law of the PRC (中华人民共和国公司法), adopted by the Standing Committee of the National People's Congress on December 29, 1993; in effect since July 1, 1994 and revised in 1999, 2004, 2005, 2013, and 2018.

company (*gǔfèn zérèn gōngsī* 股份有限公司). The law stipulated that the provisions within the Company Law were applicable to FIEs³⁰⁹, thus providing, for the first time, a unified corporate framework applicable indiscriminately to any type of entrepreneur, whether public, private, or foreign. From this point onwards, the process of progressive alignment between the special regulations governing FIEs and the general regulations applicable to Chinese businesses began, culminating only in 2019 with the enforcement of the Foreign Investment Law (FIL).³¹⁰

In order to increase the level of transparency in the process of approval of foreign investments, a couple years later, in 1995, the Catalog for the Guidance of Foreign Investment Industries (*Wàishāng tóuzī chǎnyè zhǐdǎo mùlù* 外商投资产业指导目录)³¹¹ was introduced for the first time. It was a regulatory tool that provided a classification of economic sectors into ‘encouraged’, ‘restricted’, and ‘prohibited’ categories (with all unlisted sectors considered ‘allowed’). Since then, the Catalog has been a fundamental reference for investors, as prior to that moment there was uncertainty regarding what investments were permitted or not. The investment catalog remained in force until 2017 when it was replaced by a system of negative lists, which is now incorporated into the FIL.³¹²

Another important step in the evolution of the law regarding foreign investment is the opening of the Chinese market for mergers and acquisitions (M&A) to foreigners.³¹³ In

³⁰⁹ Article 18 (which became Article 218 with the 2005 amendment and was implicitly canceled with the promulgation of the FIL) stipulated that the special regulations should prevail in the event of a conflict.

³¹⁰ Gabriele CRESPI REGHIZZI, *Evoluzioni del nuovo diritto commerciale cinese*, in “Il Politico”, Vol. 71, No. 3 (213), 2006, p.160. Vittorio TORTORICI, “Company and Foreign Investment Laws with Chinese Characteristics. An Example on How to Mix Market Rules and Socialist Principles”, in Ignazio Castellucci (edited by), *Saggi di Diritto Economico e Commerciale Cinese*, Napoli, 2019, pp.172-173.

³¹¹ Catalog for the Guidance of Foreign Investment Industries (外商投资产业指导目录), adopted by the State Planning Commission of the PRC (and other bodies) on June 6, 1995; substituted in 1997, 2002, 2004, 2007, 2011, 2015, 2017.

³¹² GAO Shen, *The Evolution of China’s Foreign Investment Policy and Law* [PhD dissertation, The Pennsylvania State University], 2017, core.ac.uk, last access January 11, 2024, pp.175-180. Renzo CAVALIERI, “Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia”, *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, pp.149-150. Marius STUCKI, *China’s New Foreign Investment Law - With A Special Note on Swiss-Chinese Investment*, in “SSRN”, 2019, papers.ssrn.com, last access January 11, 2024, pp.7-8 and 10.

³¹³ Interim Provisions for Foreign Investors to Merge Domestic Enterprises (关于外国投资者并购境内企业暂行规定), adopted by Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and other bodies on January 2, 2003; into force since April 12, 2003. Later substituted by Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors (关于外国投资者并购境内企业的规定), adopted by the Ministry of Commerce (order No. 10/2006) in August 8, 2006; in force since September 8, 2006. Finally, modified by Decision of the Ministry of Commerce on Amending the Provisions on the Merger or Acquisition of Domestic Enterprises by

addition to greenfield investments made through the establishment of new legal entities in the form of FIEs, the possibility of investing through the acquisition of Chinese public and private companies (or their shares) or their merger with foreign entities was gradually allowed, starting from 2003. It was required the approval of the share purchase contract and the shareholders' agreements by the MOFCOM and various other administrative bodies. If the foreign investment exceeded 25% of the capital, the company was regarded as a FIE and was subject to the relevant regulations.³¹⁴

On December 11, 2001, the People's Republic of China joined the World Trade Organization (WTO). In accordance with China's admission, the Chinese legal system had to comply with various requirements, including those related to legislative transparency, market access, and equal treatment, which also had direct effects on the special legislation regarding FIEs. Significant progress has been made in the field of WFOEs. Already during the 1990s, the possibility to establish wholly foreign-owned companies had been extended, on an experimental basis, to several other sectors, in addition to technology and export-oriented industries. Finally, on October 31, 2000, with amendments to the law on the WFOEs, in anticipation of access to the WTO, the establishment of WFOEs in any sector of activity was officially allowed, as long as it did not fall under the prohibited or restricted categories outlined in the investment catalog. Moreover, further significant modifications were implemented in the field of FDI liberalization when, in April 2002, the investment catalog was amended. This amendment drastically reduced the sectors restricted to foreign investments, expanding opportunities for foreign investors in distribution and in services, in compliance with the General Agreement on Trade in Services (GATS). Overall, these changes represented major steps forward in FDI regime liberalization, promoting uniformity in rules and equal treatment of FIEs and narrowing the gap between *law in the books* and *law in actions*. In the subsequent years, directly or indirectly influenced by the access to the WTO, the significant limitations on the activities of foreign investors would continue to diminish. For instance, the

Foreign Investors (商务部关于修改《关于外国投资者并购境内企业的规定》的决定), adopted by the Ministry of Commerce (order No. 6/2009) in June 22, 2009.

³¹⁴ Renzo CAVALIERI, "Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia", *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, pp.157-158. HUANG Hui, *China's New Regulation on Foreign M&A: Green Light or Red Flag?*, in "UNSW Law Journal", Vol. XXX, No. 3, 2007, pp.804-814.

administrative approval by the MOFCOM became more and more seamless and streamlined.³¹⁵

(a) The auction sector

As long as the art sector is concerned, the significance of the mainland market emerged relatively late. It was not until the early 1990s that the Chinese art and antiques auction market started to develop and to attract foreign countries' attention. At this time, foreign companies were limited to having representative offices in China, which organized previews of artworks destined for auctions abroad, identified properties for sale, and established and maintained connections with potential buyers. From that point onward, mainland China's accumulation of cultural relics and art solidified its influence in the market. This transformative phase not only witnessed the establishment of a vibrant art market, but also marked the rise of substantial market power in mainland China's cultural relics and art collection.³¹⁶ Foreign companies started to increasingly express interest in entering the Chinese art market and capitalize on the opportunities offered by such a flourishing sector.

Until 2001, China lacked legislation governing foreign investment in the auction sector. However, following China's accession to the WTO, a significant shift occurred. Under its commitments to the WTO, the Chinese government revised the investment catalog in 2002, to expand the scope of sectors accessible to foreign investments. According to said amendment,

佣金代理、批发（不包括盐、烟草）：不迟于 2002 年 12 月 11 日允许外商投资，外资比例可达 50%，[...]；不迟于 2003 年 12 月 11 日允许外方控股；不迟于 2004 年 12 月 11 日允许外方独资，[...]。³¹⁷

Commission agency and wholesale (excluding salt and tobacco): Foreign investment must be allowed no later than December 11, 2002, with a foreign investment ratio of up to 50%,

³¹⁵ Renzo CAVALIERI, "Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia", *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, pp.156-157. Gabriele CRESPI REGHIZZI, *Evoluzioni del nuovo diritto commerciale cinese*, in "Il Politico", Vol. 71, No. 3 (213), 2006, pp.168-170. Julia Ya QIN, Trade, *Investment and beyond: The Impact of WTO Accession on China's Legal System*, in "China Quarterly", No. 191, 2007, pp.720-741. OECD, *China: Progress and Reform Challenges*, in "OECD", 2003, www.oecd.org, last access January 11, 2024.

³¹⁶ SCMP REPORTER, *Christie's enters auction market*, in "South China Morning Post", 2005, www.scmp.com, last access January 8, 2024. BEIJING NEWS 新京报, "Jiashide yu Sufubi de Zhongguo buju" 佳士得与苏富比的中国布局 (Christie's and Sotheby's China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023.

³¹⁷ STATE PLANNING COMMISSION 国家发展计划委员会, "Waishang touzi chanye zhidao mulu (2002)" 外商投资产业指导目录(2002), (Catalogue for the Guidance of Foreign Investment Industries – 2002 version), *Guojia fazhan he gaige weiyuanhui wangzhan*, 2002, (www.ndrc.gov.cn), last access January 10, 2024.

[...]; foreign control must be allowed no later than December 11, 2003; foreign sole proprietorship must be allowed no later than December 11, 2004, [...].

China opened its doors to foreign auction houses starting from December 11, 2002, and committed to fully liberalize commissioned services, which include auctions, by the end of 2004, as part of its obligations as a WTO member.³¹⁸

Moreover, in 2004, the MOFCOM introduced the Measures for the Administration of Auctions. Such Measures included a chapter titled “Establishment, modification, and termination of foreign-invested auction enterprises” (consisting of 9 articles), providing a legal basis for the participation of foreign entities in the Chinese auction market.³¹⁹ Article 67 of the Auction Law only mentions the applicability of its provisions to foreign individuals, enterprises and organizations when entrusting auctions or engaging in bidding within the territory of the PRC. However, during the legislative process, the matter of foreign-invested auction companies was not taken into account. To clarify certain aspects, the Measures now incorporates additional provisions, such as market access, modification and termination procedures, as well as supervision and management of foreign-invested auction enterprises. The auction field became accessible to fully-owned foreign firms that met specific minimum capital requirements and other corporate criteria, enabling companies specializing in the sale of art to operate within China for the first time.³²⁰

Between 2009 and 2011, the Chinese auction market reached its peak, surpassing the United States and claiming the global top spot in 2010. This extraordinary ascent was not solely fueled by a growing market, but was also propelled by the rapid rise in the number of new billionaires in China who displayed a keen interest in art acquisition. The surge in wealth

³¹⁸ SCMP REPORTER, *Christie's enters auction market*, in “South China Morning Post”, 2005, www.scmp.com, last access January 8, 2024. THE ART NEWSPAPER, *Sotheby's And Christie's Go To China*, in “Forbes”, 2004, www.forbes.com, last access January 10, 2024. MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “‘Paimai guanli banfa’ jiedu” 《拍卖管理办法》解读 (Interpretation of the Measures for the Administration of Auctions), *Zhonghua renmin gongheguo shangwubu*, 2005, (tfs.mofcom.gov.cn), last access September 29, 2023.

³¹⁹ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Zhonghua renmin gongheguo shangwu bu ling (di 24 hao) ‘Paimai guanli banfa’” 中华人民共和国商务部令 (第 24 号) 《拍卖管理办法》 (Order No. 24 of the Ministry of Commerce of the People’s Republic of China “Measures for the Administration of Auctions”), *Zhongguo zhengfu wang*, 2004, (www.gov.cn), last access September 27, 2023, Art. 17-25.

³²⁰ SCMP REPORTER, *Christie's enters auction market*, in “South China Morning Post”, 2005, www.scmp.com, last access January 8, 2024. THE ART NEWSPAPER, *Sotheby's And Christie's Go To China*, in “Forbes”, 2004, www.forbes.com, last access January 10, 2024. MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “‘Paimai guanli banfa’ jiedu” 《拍卖管理办法》解读 (Interpretation of the Measures for the Administration of Auctions), *Zhonghua renmin gongheguo shangwubu*, 2005, (tfs.mofcom.gov.cn), last access September 29, 2023.

contributed to a notable expansion in the community of Chinese collectors and speculators actively participating in auctions. Their influence extended beyond mainland China, encompassing overseas territories as well. The influx of these enthusiastic buyers marked a transformative period for the Chinese art market during those years. This burgeoning market prompted the two major international auction houses to undertake strategic measures, seeking a stronger presence in the mainland through FDIs, to better target collectors and hold auctions. In 2012, Sotheby's announced it signed an equity joint-venture agreement with the local firm Beijing Gehua Art Company. In contrast, Christie's became the first international auction house in 2013 to obtain a license allowing the establishment of a wholly foreign-owned auction company and the independent conduct of auctions in the mainland territory. Both these two moves enhance the Asian presence of the auction houses, putting them in direct competition with domestic, government-backed auctioneers such as Beijing Poly International and China Guardian.³²¹

The opening to international competition represented a significant milestone in the evolution of the art sector, enabling the market to attain higher standards and increased competitiveness. However, despite this progress, policy restrictions remained the primary barrier, and the State's control was evident through stringent rules governing the trade in cultural relics. Notably, under the Law of the PRC on the Protection of Cultural Relics (LPCR),

第五十五条 禁止设立中外合资、中外合作和外商独资的文物商店或者经营文物拍卖的拍卖企业。³²²

Art. 55 It is prohibited to establish Chinese-foreign equity joint, Chinese-foreign contractual joint or solely foreign-funded cultural relics shops or auction enterprises engaging in cultural relics auctions.

At the time, foreign companies and Chinese-foreign joint ventures were prohibited from participating in the establishment of shops or auction enterprises dealing with cultural relics. While the two auction houses have been granted some degree of access to the Chinese market, they were still banned from selling cultural relics, encompassing artworks created before 1949.

³²¹ BEIJING NEWS 新京报, "Jiashide yu Sufubi de Zhongguo buju" 佳士得与苏富比的中国布局 (Christie's and Sotheby's China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023. Audrey WANG, *Chinese Antiquities. An introduction to the art market*, "Handbooks in International Art Business", Lund Humphries Publishers Ltd. in association with Sotheby's Institute of Art, 2012.

³²² STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo wenwu baohu fa (2002 xiuzheng)" 中华人民共和国文物保护法(2002 修正), (PRC's Law for the Protection of Cultural Relics – amended in 2002), *Zhongguo zhengfu wang*, 2002, (www.gov.cn), last access January 12, 2023, Art. 55.

This concept is reiterated in Article 5 of the Measures for the Administration of Cultural Relics Auctions, which enumerate “not a Sino-foreign joint equity venture, Sino-foreign cooperative joint venture, or wholly foreign-owned enterprise” as a requirement for companies to apply for the license to conduct cultural relics auctions.³²³ Ostensibly, this restriction left a narrow range of items of interest to sell, limiting their trade to “minor” categories, such as luxury items (watches, jewelry, wines), Western art and Chinese modern and contemporary art. As a consequence, foreign firms lacked competitive advantage over local counterparts, as a substantial portion of auctioned items in the country consisted of old Chinese antiques, and only local firms possessed the authorization to sell these products. Moreover, other examples that showcased the restrictions on the involvement of foreigners in the art market can be found in the LPCR, even if they do not relate solely to foreign auction houses, but to foreign bidders and buyers too. Article 52 provided that “Cultural relics prohibited by the State from exiting China may not be transferred, leased or pledged to foreigners”; and Article 25 stipulates that “Non state-owned immovable cultural relics shall not be transferred or mortgaged to foreigners”.³²⁴ Furthermore, engaging in the unauthorized sale or gifting to foreigners of valuable cultural relics, which are prohibited from being taken out of the country, is deemed a criminal offense under Article 64 of the LPCR, and transgressors will be held criminally liable for their actions.³²⁵ To sum up, foreigners cannot engage either in the sale or in the purchase of cultural relics within Chinese territory. In anticipation of potential changes in the market legislation, Sotheby’s and Christie’s aimed to establish strategic arrangements in advance to capitalize on emerging opportunities. However, despite expectations, as several experts predicted, the situation has remained unchanged for several years. As of the current writing, foreign companies still face restrictions on dealing with cultural relics.³²⁶

³²³ NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Wenwu paimai guanli banfa (2020 xiugai)” 文物拍卖管理办法(2020 修改), (Measures for the Administration of Cultural Relics Auctions – revised in 2020), *Pkulaw.com*, 2020, (www.pkulaw.com), last access October 12, 2023, Art. 5.

³²⁴ STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2002 xiuzheng)” 中华人民共和国文物保护法(2002 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2002), *Zhongguo zhengfu wang*, 2002, (www.gov.cn), last access January 12, 2023, Art. 25 and 52.

³²⁵ *Ibidem*, Art. 64.

³²⁶ David BARBOZA, Graham BOWLEY, Amanda COX, *Forging an art market in China*, in “The New York Times”, 2013, nytimes.com/china-art-fraud, last access May 13, 2023. BEIJING NEWS 新京报, “Jiashide yu Sufubi de Zhongguo buju” 佳士得与苏富比的中国布局 (Christie’s and Sotheby’s China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023. ZHAO Peng 赵芃, “Waizi paimai hang kaishi ‘he cha’” 外资拍卖行开始“喝茶” (Foreign auction houses begin to ‘drink tea’), in *Zhongguo qiyejia 中国企业家*, No. 21, 2013, pp.66-

Limited by restrictions on cultural relics, both Christie's and Sotheby's had to implement alternative strategies to thrive in the Chinese mainland market. Both auction houses adopted variety as the primary sales policy, featuring a range of items such as wine, jewelry, watches, contemporary ink paintings, Asian art, Western art and so on, to appeal to a broader audience. However, the strategic focus of the two companies differed. For Christie's, a key strategy in the mainland was introducing international artworks to China, broadening the horizons of Chinese collectors. The ultimate goal for Christie's was to create a mutually beneficial relationship by gaining increased international attention for Chinese art. On the other hand, Sotheby's chose a different path. Their auctioned artworks primarily originated from the East, with a significant focus on Asia and China, complemented by a supplementary section from the West. The exhibition lectures prioritized topics aligning with the current interests of Chinese collectors and art enthusiasts. Furthermore, knowledge, innovation, and a well-established global brand identity played a pivotal role in helping these foreign firms generate revenue amid competition and policy challenges.³²⁷

3.1.2 Foreign investment legal framework after 2019

As mentioned before, the Foreign Investment Law of the PRC (*Zhōnghuá rénmin gònghéguó wàishāng tóuzī fǎ* 中华人民共和国外商投资法, FIL) was adopted in 2019.³²⁸ In force since January 1, 2020, the FIL includes 42 articles organized in 6 chapters. Although generic and lacking in details, this new law represents a crucial step in the evolution of the foreign investment landscape in China, determining a radical break from the previous situation.

The FIL marks the end of the FIEs regime: special forms of foreign investment are abolished and investors are given the option to use the standard forms of companies allowed in China. A mechanism for standardization of foreign and domestic enterprises is introduced. Therefore,

67. HUI Zhong, *China's new law on art auctions*, in "Art, Antiquity and Law", Vol. 22, No. 3, 2017, pp.229-243. Deborah M. LEHR, *China's Art Market Is Booming – But Not for Foreigners*, in "The Diplomat", 2017, thediplomat.com, last access January 8, 2024.

³²⁷ ZHAO Peng 赵芑, "Waizi paimai hang kaishi 'he cha'" 外资拍卖行开始“喝茶” (Foreign auction houses begin to 'drink tea'), in *Zhongguo qiyejia* 中国企业家, No. 21, 2013, pp.66-67. BEIJING NEWS 新京报, "Jiashide yu Sufubi de Zhongguo buju" 佳士得与苏富比的中国布局 (Christie's and Sotheby's China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023.

³²⁸ Foreign Investment Law of the PRC (中华人民共和国外商投资法), adopted by the National People's Congress on March 15, 2019; in force since January 1, 2020.

form, corporate governance, and operational rules of foreign companies are regulated solely by laws applicable to domestic enterprises: the Company Law and the Partnership Law (Article 31). From the effective date of the FIL, both the laws governing FIEs and all special regulations related to them are abolished. This represents not only the realization of the path towards the unification of corporate forms, that began with the Company Law of 1993, but also the end of the previous dualistic system that, while foreseeing the applicability of the Company Law to FIEs, continued to prescribe distinct corporate rules for FIEs and local enterprises.³²⁹

The FIL is based on the fundamental principle of equal treatment (national treatment), which means similar operational conditions and equal opportunities for foreign and local companies. Article 4 of the FIL ensures that foreign investors receive a “no less favorable” treatment than that granted to domestic investors, in sectors not prohibited or limited, both in terms of market access and during their stay in the market.³³⁰

The Chinese government maintains control over sectors deemed sensitive through the use of Negative Lists for foreign investments.³³¹ This mechanism was initially introduced in the Shanghai Free Trade Zone (SHFTZ) on September 29, 2013, on an experimental basis. It was extended to the whole nation in 2018, replacing the previous Investment Catalog. Annually, the State Council approves two negative lists: a general one applicable nationwide, and the other one specifically for special economic zones. These lists include ‘prohibited’ sectors where all investments are forbidden, and ‘restricted’ sectors where foreign investments are

³²⁹ Renzo CAVALIERI, “Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia”, *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, pp.162-163. ZHAO Min, *Analysis and Interpretation of the New Foreign Investment Law of the People’s Republic of China*, in “China & WTO Review”, Vol. 5, No. 2, 2019, pp.351-386. Marius STUCKI, *China’s New Foreign Investment Law - With A Special Note on Swiss-Chinese Investment*, in “SSRN”, 2019, papers.ssrn.com, last access January 11, 2024, pp.14-15. ZHANG Mo, *Change of regulatory scheme: China’s New Foreign Investment Law and Reshaped Legal Landscape*, in “Pacific Basin Law Journal”, Vol. 37, No. 1, 2020, pp.179-238.

³³⁰ Renzo CAVALIERI, “Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia”, *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, p.163. Marius STUCKI, *China’s New Foreign Investment Law - With A Special Note on Swiss-Chinese Investment*, in “SSRN”, 2019, papers.ssrn.com, last access January 11, 2024, pp.11-14. ZHANG Mo, *Change of regulatory scheme: China’s New Foreign Investment Law and Reshaped Legal Landscape*, in “Pacific Basin Law Journal”, Vol. 37, No. 1, 2020, pp.194-199.

³³¹ Special Administrative Measures (Negative List) for the Access of Foreign Investment (2018) 外商投资准入特别管理措施（负面清单）（2018年版），adopted by the National Development and Reform Commission and the Ministry of Commerce on June 28, 2018; in force since July 28, 2018; substituted in 2019, 2020, and 2021. Special Administrative Measures (Negative List) for the Access of Foreign Investment in Pilot Free Trade Zones (2018) 自由贸易试验区外商投资准入特别管理措施（负面清单）（2018年版），adopted by the National Development and Reform Commission and the Ministry of Commerce on June 30, 2018; in force since July 30, 2018; substituted in 2019, 2020, 2021.

allowed but subject to specific conditions. These limitations may pertain to foreign participation control, maximum shareholding threshold, nationality of the legal representative, or the adopted corporate structure. Investments in all sectors not prohibited or subject to restrictions are considered ‘allowed’. The FIL no longer requires a case-by-case approval of investments by MOFCOM or its local offices; instead, it introduces a more streamlined reporting system.³³² Despite the adoption of negative lists and the principle of national treatment, China still introduced a catalog of ‘encouraged’ industries. Favorable policies and preferential conditions (such as tariff exemptions, access to land use rights at preferential prices or through simplified procedures, reduction in corporate income taxes) are granted to foreign investments directed toward specific sectors, industries, or geographic areas requiring foreign expertise and technology.³³³

Furthermore, when investments concern sectors relevant to national security, they must undergo a National Security Review. This involves a specific examination conducted by an office jointly established by the National Development and Reform Commission (NDRC) and the MOFCOM. Introduced in 2021, the National Security Review grants the government the right to block investment operations based on national security risks, particularly in strategic sectors such as defense, energy, transportation, and telecommunications. The measures governing the review³³⁴ require investors to voluntarily submit a declaration to an office established at the NDRC (jointly directed by NDRC and MOFCOM) before making investments in the military industry and other sectors crucial to national security. If investors do not voluntarily report their investment, the review can also be initiated *ex officio* or upon notification from companies, associations, other authorities, or private individuals.³³⁵

³³² Governed by the Measures for the Reporting of Foreign Investment Information (外商投资信息报告办法), adopted by the Ministry of Commerce and the State Administration for Market Regulation on December 19, 2019; in force since January 1, 2020.

³³³ Renzo CAVALIERI, “Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia”, *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, pp.163-165. Marius STUCKI, *China’s New Foreign Investment Law - With A Special Note on Swiss-Chinese Investment*, in “SSRN”, 2019, papers.ssrn.com, last access January 11, 2024, pp.15-16. ZHANG Mo, *Change of regulatory scheme: China’s New Foreign Investment Law and Reshaped Legal Landscape*, in “Pacific Basin Law Journal”, Vol. 37, No. 1, 2020, pp.199-201.

³³⁴ Measures for the Security Review of Foreign Investment (外商投资安全审查办法), adopted by the National Development and Reform Commission and the Ministry of Commerce on November 27, 2020; in force since January 18, 2021.

³³⁵ Vivian DESMONTS, “China”, in Bernardine Adkins and Samuel Beighton (edited by), *ICLG - Foreign Direct Investment Regimes 2024*, Global Legal Group, 2023, pp.40-47. Marius STUCKI, *China’s New Foreign Investment Law - With A Special Note on Swiss-Chinese Investment*, in “SSRN”, 2019, papers.ssrn.com, last access January 11,

All the FIEs established before the entry into force of the law are granted five years to renegotiate and readjust their articles of association (especially regarding governance), to align with general corporate rules.³³⁶

(a) The auction sector

On December 27, 2021, the NDRC and the MOFCOM jointly released the updated versions of the Negative Lists, both of which became effective on January 1, 2022.³³⁷ The 2021 National Negative List saw a reduction of two restricted items compared to its 2020 version, diminishing from 33 to 31. Simultaneously, the new 2021 FTZ Negative List decreased by three items, cutting it from 30 to 27, thereby broadening access to various industries and fields. For the fifth consecutive year, these updated negative lists have consistently diminished the number of measures restricting foreign investment, signifying a continuous effort to open up China's markets to foreign investors and facilitate high-quality development.³³⁸

In the current version of the Negative List for Foreign Investment, foreign direct investment is now permitted in all sectors of the art industry, excluding businesses related to cultural relics:

30、禁止投资文物拍卖的拍卖公司、文物商店和国有文物博物馆。³³⁹

Item 30 Investment in auction companies, cultural relics stores, and state-owned cultural relics museums that engage in the auction of cultural relics shall be prohibited.

2024, pp.18-20. ZHANG Mo, *Change of regulatory scheme: China's New Foreign Investment Law and Reshaped Legal Landscape*, in "Pacific Basin Law Journal", Vol. 37, No. 1, 2020, pp.229-231. LI Yuwen, BIAN Cheng, *A new dimension of foreign investment in China – evolution and impacts of the national security review system*, in "Asia Pacific Law Review", Vol. 24, No. 2, 2016, pp.155-162.

³³⁶ Renzo CAVALLERI, "Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia", *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, p.163.

³³⁷ Special Administrative Measures (Negative List) for the Access of Foreign Investment (2021) 外商投资准入特别管理措施（负面清单）（2021年版），adopted by the National Development and Reform Commission and the Ministry of Commerce on September 18, 2021; in force since January 1, 2022. Special Administrative Measures (Negative List) for the Access of Foreign Investment in Pilot Free Trade Zones (2021) 自由贸易试验区外商投资准入特别管理措施（负面清单）（2021年版），adopted by the National Development and Reform Commission and the Ministry of Commerce on September 18, 2021; in force since January 1, 2022.

³³⁸ CHINA BRIEFING, *China's Negative List for Foreign Investment Access in FTZs (New Edition): English Version Available*, in "China Briefing", 2021, www.china-briefing.com, last access January 12, 2024. ZHOU Qian, ZHANG Zoey, *China's 2021 Negative Lists Widen Market Access for Foreign Investment*, in "China Briefing", 2021, www.china-briefing.com, last access January 12, 2024.

³³⁹ NATIONAL DEVELOPMENT and REFORM COMMISSION 国家发展改革委员会, "Waishang touzi zhunru tebie guanli cuoshi (fumian qingdan) (2021 nianban)" 外商投资准入特别管理措施（负面清单）（2021年版），(Special Administrative Measures – Negative List – for the Access of Foreign Investment – 2021), *Guojia fazhan he gaige weiyuanhui wangzhan*, 2021, (www.ndrc.gov.cn), last access January 15, 2024, item 30.

Therefore, as of the time of writing, foreign auction houses are still banned from the sale of cultural relics. This strategic move reflects ongoing initiatives to shape a more inclusive environment for foreign investors, while maintaining certain restrictions in culturally sensitive domains.³⁴⁰

As of the present date, to establish an auction house in mainland China, all you need to do is complete a business filing and obtain an auction license. Notably, for wholly foreign-owned enterprises, the threshold for obtaining an auction license has been reduced since 2019. This reduction was implemented when the Ministry of Commerce amended the Measures for the Administration of Auctions. On this occasion, the third chapter concerning the establishment, modification, and termination of foreign-invested auction houses has been canceled in its entirety. In adherence to the recently enacted FIL, the procedure for the establishment of foreign auction houses, including their requirements and the documentation to be submitted, now complies with the same rules as those applicable to domestic companies, as outlined in chapter 2 of the Measures. Under the revised regulations, an entity submitting for an auction license must have a minimum registered capital of at least CNY 1 million (approximately USD 160,000), in addition to other requirements, such as having at least one auctioneer, physical premises, established by-laws, and a documented auction procedure.³⁴¹

Moreover, in overseeing non-antique art business activities, the government adopts a minimal intervention approach. The regulation of the auction business for foreign companies primarily relies on legislation and industry self-regulation. On this matter, the China Association of Auctioneers (CAA), acting as the industry association, has outlined a comprehensive set of industry standards and contract forms for different types of auctions, applicable to international companies as well. The standards for art auctions cover a broad spectrum of topics, encompassing aspects from the collection of lots to the compilation of catalogs, from industry terminology to the best practices for auctioneers. This approach

³⁴⁰ Zach DAI, *Unroll the Scroll Painting: Inside the Chinese Art Market and Its Regulatory Landscape*, in “Art Law Blog”, 2022, www.artlawgallery.com, last access January 13, 2024.

³⁴¹ Zach DAI, *Unroll the Scroll Painting: Inside the Chinese Art Market and Its Regulatory Landscape*, in “Art Law Blog”, 2022, www.artlawgallery.com, last access January 13, 2024. Vivian DESMONTS, “China”, in Bernardine Adkins and Samuel Beighton (edited by), *ICLG - Foreign Direct Investment Regimes 2024*, Global Legal Group, 2023, pp.40-47. MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Shangwu bu guanyu feizhi he xiugai bufen guizhang de jue ding” 商务部关于废止和修改部分规章的决定 (Decision of the Ministry of Commerce to repeal and amend some rules), *Zhonghua renmin gongheguo shangwubu*, 2019, (www.mofcom.gov.cn), last access January 15, 2024.

reflects a concerted effort to ensure transparency, professionalism, and adherence to ethical standards within the auction industry in China, as part of the RPC commitments to the WTO.³⁴²

The issue of high taxes poses a significant bottleneck to the development of the art industry. Hong Kong, in contrast to mainland China, stands out as an appealing hub for art auctions due to its tax-free status. Mainland China, on the other hand, imposes substantial taxes on artworks imported from abroad, creating a considerable financial burden for collectors. Every cross-border art transaction is subject to Value-Added Taxes (VAT) and tariffs. The total tax rate for each purchase is calculated using the formula $(1 + \text{VAT rate}) \times (1 + \text{tariff rate}) - 1$. Since 2019, there has been a reduction in the VAT for imported goods from 16% to 13%. The tariff rate varies based on the medium of art, ranging from 6% for photography to 1% for paintings and sculptures, with installation art being exempt from tariffs. This means that, in order to purchase a piece of art imported from abroad, a Chinese collector will have to face a variable tax range, fluctuating between 20% and 13% of the artwork's price. Additionally, geopolitical factors can impact tariff rates. For instance, during the Sino-U.S. trade war in 2018, Chinese authorities imposed retaliatory tariffs on artworks imported from America or created by American artists. The weight of these tax burdens has led many Chinese collectors to opt for free-port cities, such as Hong Kong, as the place for delivery. The favorable tax environment in Hong Kong provides a more cost-effective solution for art acquisitions, contributing to the city's status as a preferred destination for international art transactions. This partly explains why the two international auction houses typically achieve higher turnovers in Hong Kong, compared to auctions conducted in the mainland.³⁴³

However, the Chinese government has taken initiatives to build free trade zones in several areas of the national territory. Free trade zones (FTZs) are designated geographic areas within

³⁴² Zach DAI, *Unroll the Scroll Painting: Inside the Chinese Art Market and Its Regulatory Landscape*, in "Art Law Blog", 2022, www.artlawgallery.com, last access January 13, 2024.

³⁴³ Zach DAI, *Unroll the Scroll Painting: Inside the Chinese Art Market and Its Regulatory Landscape*, in "Art Law Blog", 2022, www.artlawgallery.com, last access January 13, 2024. The ASSOCIATED PRESS, *Auction Houses Battle for Chinese Market*, in "The New York Times", 2012, www.nytimes.com, last access December 27, 2023. ART MARKET JOURNAL, "Shanghai guoji yishu pin jiaoyi yue gonglüe: zai Zhongguo goumai jingwai yishu pin ruhe jiaoshui?" 上海国际艺术品交易月攻略: 在中国购买境外艺术品如何缴税? (Shanghai International Art Trading Month guide: how to pay taxes for purchasing overseas art in China?), *Art Market Journal*, 2020, (www.chinartlaw.com), last access January 15, 2024. MINISTRY of FINANCE 财政部, "Guanyu shenhua zengzhishui gaige youguan zhengce de gonggao" 关于深化增值税改革有关政策的公告 (Announcement on relevant policies for deepening Value Added Tax reform), *Guojia shuiwu zongju*, 2019, (www.chinatax.gov.cn), last access January 15, 2024.

a country that have specific customs and trade regulations different from the rest of the country. Here, goods can be imported, stored, handled, and re-exported with fewer customs regulations and restrictions compared to the rest of the country. Companies that work within FTZs enjoy preferential policies, streamlined customs procedures, and incentives for businesses engaged in trade-related activities. Only when the goods are moved out of the zone boundaries, they become subject to the prevailing customs duties. Such zones are designed to promote international trade, attract foreign investment, and facilitate economic activities. Sotheby's and Christie's have enjoyed the benefits of policy incentives offered by free trade zones and bonded zones while venturing into the Chinese market.³⁴⁴

After its establishment in 2012, the Sotheby's and Gehua joint venture operated within the Beijing Tianzhu Free Trade Zone (hereinafter referred to as BTFTZ). Approved by the State Council on July 23, 2008, and operating since 2009, BTFTZ stands as the first airport-based comprehensive free trade area in China, seamlessly connected with Beijing Capital International Airport. Functioning not only as a free trade zone, but also as an export processing zone and bonded port zone, BTFTZ has successfully attracted over 300 enterprises to conduct operations within its premises. More than 100 enterprises have chosen to register within the zone, reflecting its significance in fostering business activities.³⁴⁵

An important component of the BTFTZ is the free port³⁴⁶, located within the Beijing Capital International Airport and jointly established by BTFTZ and the Beijing Gehua Cultural Development Group (BGCDG). The free port offers clients the opportunity to acquire artworks and store them in a high-quality, tariff-free storage facility. This arrangement comes without duties and tax implications until the moment of delivery.³⁴⁷

³⁴⁴ ENCYCLOPAEDIA BRITANNICA, *Free-trade zone*, in "Britannica", www.britannica.com, last access January 15, 2024. Jean-Marc SIROËN, Ayçil YÜCER, *Trade Performance of Free Trade Zones*, in "Document De Travail", 2014, pp.1-28. Victor CREMAILH, *FDI China Exclusive: The 21 Free Trade Zones Guide 2023*, in "FDI China", 2023, fdichina.com, last access January 16, 2024.

³⁴⁵ XINHUA News Agency, *Sotheby's taps into Chinese mainland market*, in "China Daily", 2012, www.chinadaily.com.cn, last access December 27, 2023. ZHI Yun, ZHAO Tingting, *Beijing Tianzhu Free Trade Zone achieves rapid growth*, in "China Daily", 2011, www.chinadaily.com.cn, last access December 28, 2023.

³⁴⁶ The term "Free Trade Zone" typically implies an area with specific customs and trade regulations that differ from the surrounding region, aiming to promote international trade and attract foreign investment. On the other hand, "Free Port Zone" or "Bonded Port Zone" often refers to an area where goods can be imported, stored, and processed without being subject to customs duties until they enter the domestic market. Even though they are frequently used as synonyms, it is important to note that they also have slight differences.

³⁴⁷ XINHUA News Agency, *Sotheby's taps into Chinese mainland market*, in "China Daily", 2012, www.chinadaily.com.cn, last access December 27, 2023. ZHI Yun, ZHAO Tingting, *Beijing Tianzhu Free Trade Zone achieves rapid growth*, in "China Daily", 2011, www.chinadaily.com.cn, last access December 28, 2023.

A free port is a designated port zone allowing goods to be unloaded, stored, and shipped under the control of customs authorities without the payment of various duties and taxes. Artworks within a free port may change ownership multiple times, but only the ultimate owner incurs taxes in the artwork's destination country. Free ports serve as a crucial financial tool providing a secure legal escrow for both art market participants and tax authorities. Companies operating in the zone benefit from several preferential policies, including duty-free treatment for foreign goods, tax refunds for domestic goods, the absence of value-added tax or consumption tax within the zone, exemption of import and export license procedures (eliminating part of the customs declaration process). These policies significantly reduce costs and time for enterprises operating in the area. Moreover, if an artwork is ultimately taken abroad instead of entering the Chinese market, no Chinese duties will be levied. In other words, the primary allure of a free port lies in that it avoids various expenses, with the exception of costs associated with the artwork's final exit from the free zone. Additionally, free ports offer advantages such as cost-effective insurance and storage, top-class security, specialized showrooms for optimal artwork presentation, valuation, or restoration. Lastly, these zones are valued for their confidentiality and discretion, making them increasingly popular among collectors, gallery owners, art dealers, brokers, and numerous museums. Storing artworks in bonded warehouses can significantly lower the stress on cash flow and streamline customs clearance procedures for art dealers. The remarkable growth of free ports reflects the 21st-century art market's evolution towards becoming a globally interconnected, streamlined, and dynamic environment.³⁴⁸

Another initiative launched by the Chinese government in September 2013 is the China (Shanghai) Pilot Free Trade Zone (SHFTZ). It is a pioneering economic project aimed at promoting foreign investment and international trade. Located in Shanghai Pudong district, it comprises three areas: the Waigaoqiao Bonded Area, the Yangshan Bonded Port Area, and the Shanghai Pudong Airport Free Trade Zone. The SHFTZ focuses on simplifying trade procedures, reducing bureaucracy, and creating an appealing investment environment for

³⁴⁸ ARTPRICE, *The art market in 2014*, in "Artprice", 2015, imgpublic.artprice.com, last access December 28, 2023, pp.59-60. XINHUA News Agency, *Sotheby's taps into Chinese mainland market*, in "China Daily", 2012, www.chinadaily.com.cn, last access December 27, 2023. ZHI Yun, ZHAO Tingting, *Beijing Tianzhu Free Trade Zone achieves rapid growth*, in "China Daily", 2011, www.chinadaily.com.cn, last access December 28, 2023. XU Lei 徐磊, ZHENG Rui 郑蕊, "Guoji paimai jutou weihe zheji Zhongguo shichang" 国际拍卖巨头为何折戟中国市场 (Why do international auction giants crash in the Chinese market), *Yachang yishu wang*, 2017, (amma.artron.net), last access December 28, 2023.

foreign companies. It provides various incentives, such as reduced tariffs, streamlined customs procedures, and increased flexibility in converting foreign currency. Moreover, the zone allows for more relaxed regulations on foreign investment, enabling foreign businesses to engage in a broader range of industries. As a testing ground for economic and financial reforms in China, it allowed the implementation of innovative policies. Since its establishment, the SHFTZ has successfully attracted numerous multinational corporations, encouraging the Chinese government to establish similar free trade zones and bonded warehouses across the country, such as Shanghai Le Freeport West Bund, Tianjin Free Trade Zone, Guangzhou Free Trade Zone, and many others.³⁴⁹

The SHFTZ has played a significant role in shaping the landscape of the art and auction sector, especially with regard to Christie's entry into China. Said zone has provided Christie's with the necessary infrastructures to store, exhibit, and sell artworks within the country. Since the establishment of the SHFTZ, its tax-free policy has not only facilitated the repatriation of Chinese artworks, but has also served as a boost for the expansion of the local art market. Furthermore, it encouraged Christie's to import Western artworks, fostering the cultural exchange between the East and the West. These developments have contributed to the overall development of the art industry and positioned Shanghai as a prominent player in the global art market.³⁵⁰

To sum up, the establishment of FTZs has brought significant advantages to international auction houses. These include streamlined customs procedures, reduced tariffs, and enhanced logistical efficiency. The relaxed regulatory environment within the FTZs has allowed auction houses to store valuable artworks securely and conduct transactions more smoothly. This has not only attracted major international players like Sotheby's and Christie's but has also spurred the development of the art industry in China.³⁵¹

³⁴⁹ Victor CREMAILH, *FDI China Exclusive: The 21 Free Trade Zones Guide 2023*, in "FDI China", 2023, fdichina.com, last access January 16, 2024. ARTPRICE, *The art market in 2014*, in "Artprice", 2015, imgpublic.artprice.com, last access December 28, 2023, pp.61-62.

³⁵⁰ *Ibidem*.

³⁵¹ Victor CREMAILH, *FDI China Exclusive: The 21 Free Trade Zones Guide 2023*, in "FDI China", 2023, fdichina.com, last access January 16, 2024.

3.2 International auction houses in China

3.2.1 Sotheby's approach

In the 1970s, as London and New York emerged as two pivotal global art trading hubs, Sotheby's made a strategic move to expand its presence into the Asian market. Such expansion occurred in 1973, when Sotheby's established a subsidiary in Hong Kong. Marking a significant milestone, the first antique auction took place at Sotheby's Hong Kong, hosted at the Mandarin Hotel on November 16 of that year. This positioned Sotheby's as the first international company to conduct auctions in Hong Kong. The inaugural sale showcased exceptional Chinese porcelain, achieving a remarkable total of USD 2.3 million in sales. This marked the beginning of Sotheby's influential presence and contributions to the art market in Asia.³⁵²

At that time, the importance of the mainland market had not yet emerged. It was only at the beginning of the 1990s that the Chinese art and antiques auction market began to take shape. From that point onward, mainland China's accumulation of cultural relics and art solidified its market influence. This evolution marked the emergence of substantial market power in mainland China's cultural relics and art collection. Sotheby's, just like its main competitor Christie's, seized the opportunity to enter the Chinese market. In 1994, Sotheby's set up a representative office in Shanghai with the purpose of sourcing items for sale and reaching out to potential buyers. Auction previews in mainland China began in 1995. Subsequently, in 2007, Sotheby's officially established a representative office in Beijing as well.³⁵³

Between 2009 and 2011, the Chinese auction market experienced a peak, surging to surpass the United States and claiming the top spot globally in 2010. This remarkable ascent was fueled not only by a burgeoning market, but also by the rapid increase in the number of

³⁵² BEIJING NEWS 新京报, "Jiashide yu Sufubi de Zhongguo buju" 佳士得与苏富比的中国布局 (Christie's and Sotheby's China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023. Oliver GILES, *50 Years New in Asia: The Team Leading Sotheby's to Success*, in "Sotheby's", 2023, www.sothebys.com/en, last access December 22, 2023.

³⁵³ Carol VOGEL, *Christie's Going, Going to China to Hold Auctions*, in "The New York Times", 2005, www.nytimes.com, last access December 27, 2023. BEIJING NEWS 新京报, "Jiashide yu Sufubi de Zhongguo buju" 佳士得与苏富比的中国布局 (Christie's and Sotheby's China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023.

new billionaires in China who were keen on art acquisition. This extremely thriving market prompted Sotheby's to undertake strategic measures, compelling the company to reevaluate and enhance its presence in the mainland. Recognizing the immense opportunities, Sotheby's sought to refine its position and actively secure a substantial share of the flourishing mainland market.³⁵⁴ In pursuit of this goal, Sotheby's dedicated an entire year to exploring potential opportunities. The culmination of this effort occurred on the afternoon of September 6, 2012 (Beijing time), when Sotheby's unveiled its unexpected strategic move in mainland China.³⁵⁵ On the same day, Sotheby's listed group disclosed on the New York Stock Exchange that Sotheby's Hong Kong (a subsidiary of Sotheby's Group) and Beijing Gehua Art Company (a subsidiary of Beijing Gehua Cultural Development Group, hereinafter BGCDG, Beijing-based state-owned multimedia cultural company) established a ten-year equity joint-venture called Sotheby's (Beijing) Auction Co., Ltd..³⁵⁶ Sotheby's invested USD 1.2 million into the venture, securing an 80% ownership stake, while Beijing Gehua Art Company holds the remaining 20% with an investment of USD 300,000. This project allowed Sotheby's to be the first foreign-founded auction company to obtain a license to conduct auctions on the mainland, surpassing its rival Christie's. The newly established company focuses on modern and contemporary art, along with jewels and luxury watches. It is important to note that Sotheby's was restricted from conducting auctions for cultural relics within mainland China, and this situation did not change up to now.³⁵⁷

Situated in the suburban district of Shunyi, northeast of Beijing, the joint-venture operates within the free port established collaboratively by BGCDG and the Beijing Tianzhu Free Trade Zone (BTFTZ). Adhering to Gehua's marketing strategy of that time, Sotheby's (Beijing) hosted

³⁵⁴ BEIJING NEWS 新京报, "Jiashide yu Sufubi de Zhongguo buju" 佳士得与苏富比的中国布局 (Christie's and Sotheby's China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023. Audrey WANG, *Chinese Antiquities. An introduction to the art market*, "Handbooks in International Art Business", Lund Humphries Publishers Ltd. in association with Sotheby's Institute of Art, 2012.

³⁵⁵ BEIJING NEWS 新京报, "Jiashide yu Sufubi de Zhongguo buju" 佳士得与苏富比的中国布局 (Christie's and Sotheby's China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023.

³⁵⁶ BEIJING NEWS 新京报, "Jiashide yu Sufubi de Zhongguo buju" 佳士得与苏富比的中国布局 (Christie's and Sotheby's China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023. David BARBOZA, *Christie's Is Poised to Auction Art in China*, in "The New York Times", 2013, www.nytimes.com, last access December 27, 2023. ARTPRICE, *The Art Market in 2012*, in "Artprice", 2013, imgpublic.artprice.com, last access November 18, 2023, pp.48-49 and 66-67. SOTHEBY'S, *2012 Annual Report*, in "Sotheby's", 2013, www.annualreports.com, last access December 28, 2023, p.9.

³⁵⁷ The ASSOCIATED PRESS, *Auction Houses Battle for Chinese Market*, in "The New York Times", 2012, www.nytimes.com, last access December 27, 2023. XINHUA News Agency, *Sotheby's taps into Chinese mainland market*, in "China Daily", 2012, www.chinadaily.com.cn, last access December 27, 2023.

its auctions at the free port situated within the Beijing Capital International Airport, thereby leveraging the advantages offered by the BTFTZ. Thanks to the duty-free privilege of the free port, the joint venture can organize auctions, exhibitions, and other activities within this area.³⁵⁸ The establishment of the BTFTZ created a strategic opening for Sotheby's to enter the Chinese market. Notably, as the free port owes its existence to the contribution of BGCDG, Sotheby's stood as the exclusive auction house enjoying the privileges of the free port within the Tianzhu Free Trade Zone. This unique position provided Sotheby's with exceptional local opportunities.³⁵⁹

Gehua's strategic investment in the joint venture was aimed at gaining a profound understanding of business and transaction models in the international art field, thereby accumulating valuable experience for future entry into the international market. The entry of Sotheby's was anticipated to trigger a series of positive chain reactions. According to earlier reports, the art industry was envisioned as the core sector within the free trade zone invested and operated by Gehua Group. The inclusion of Sotheby's in the free trade zone was expected to play a demonstrative and driving role in the expansion of business and attraction of investments in the region. This foresight highlighted the potential impact of Sotheby's presence on business dynamics and investment activities within the area.³⁶⁰

Shortly after its establishment, Sotheby's Beijing held a symbolic first auction of one single lot at the China Millennium Monument on September 27, 2012. The auction showcased a conceptual sculpture by Wang Huaiqing titled "Self and Self Shadow", with an estimated value between USD 128 and 192 thousand. The artwork was sold for CNY 1.69 million (more than USD 260 thousand). Born in 1944, Huaiqing is one of the most important artists in the Chinese art scene. The sculpture, crafted in aluminum alloy, blends Western style with a deep respect for Chinese tradition and culture. It is a symbolic work chosen specifically to celebrate this highly significant event, commemorating the entry of an international auction house into the

³⁵⁸ XINHUA News Agency, *Sotheby's taps into Chinese mainland market*, in "China Daily", 2012, www.chinadaily.com.cn, last access December 27, 2023. ZHI Yun, ZHAO Tingting, *Beijing Tianzhu Free Trade Zone achieves rapid growth*, in "China Daily", 2011, www.chinadaily.com.cn, last access December 28, 2023.

³⁵⁹ ARTPRICE, *The Art Market in 2012*, in "Artprice", 2013, imgpublic.artprice.com, last access November 18, 2023, pp.48-49 and 66-67. ARTPRICE, *Christie's in Shanghai*, in "Artprice", 2013, it.artprice.com/artmarketinsight, last access December 28, 2023.

³⁶⁰ ZHENG Hanliang 郑汉良, "Sufubi yu neidi Gehua hezuo qiangxian jinzhu Zhongguo shichang" 苏富比与内地歌华合作抢先进驻中国市场 (Sotheby's cooperates with local Gehua to be the first with a presence in the Chinese market), *RFI*, 2012, (www.rfi.fr/cn), last access December 28, 2023.

mainland territory. Such first sale not only marked the official establishment of Sotheby's in Beijing, but also represented a milestone event for the international auction house, which had awaited this opportunity for several years.³⁶¹

During the "Sotheby's Beijing Art Week" from November 28 to December 1, 2013, Sotheby's conducted its inaugural large-scale auction in Beijing: the "Modern and Contemporary Chinese Art Auction". This event, characterized by high visibility, comprised various activities such as private negotiations, lectures and educational programs, forums, selling exhibitions (covering various groups of collecting categories), and auctions. The auction featured a total of 141 lots of modern and contemporary Chinese art, and over 750 attendees, achieving a combined turnover of 227 million yuan.³⁶²

However, the joint venture between Sotheby's and BGCDG exhibited signs of a troubled partnership. The significant disparities in systems and backgrounds between the two partners rendered the combination a temporary and unstable solution. While the possibility of disbanding the ten-year joint venture was raised, Sotheby's found itself in a challenging position in an industry where entry and exit are strictly contingent on Chinese government approval, leaving the auction house seemingly helpless.³⁶³

"Because the joint venture is a foreign-invested enterprise under Chinese law, all changes in shareholding and constitution of the joint venture will be subject to approval by the Chinese government, including in the event Sotheby's is seeking to terminate the joint venture agreement, exercise its put option, or wind-up the joint venture. Accordingly,

³⁶¹ The ASSOCIATED PRESS, *Auction Houses Battle for Chinese Market*, in "The New York Times", 2012, www.nytimes.com, last access December 27, 2023. ARTPRICE, *Christie's in Shanghai*, in "Artprice", 2013, it.artprice.com/artmarketinsight, last access December 28, 2023. BEIJING BUSINESS TODAY 北京商报, "Paimai jutou Sufubi Beijing shichang zaoyu canbai" 拍卖巨头苏富比北京市场遭遇惨败 (Auction giant Sotheby's suffered a disastrous defeat in the Beijing market), *Xinlang shoucang*, 2015, (collection.sina.com.cn), last access December 28, 2023. Martina GAMBILLARA, *Asta proibita. È Sotheby's la prima a officiare una vendita nella Cina continentale: accade a Pechino, in catalogo solo una scultura di Wang Huaiqing*, in "Artribune", 2012, www.artribune.com/tribnews, last access December 28, 2023. ARTPRICE, *The Art Market in 2012*, in "Artprice", 2013, imgpublic.artprice.com, last access November 18, 2023, pp.48-49 and 66-67.

³⁶² BEIJING BUSINESS TODAY 北京商报, "Paimai jutou Sufubi Beijing shichang zaoyu canbai" 拍卖巨头苏富比北京市场遭遇惨败 (Auction giant Sotheby's suffered a disastrous defeat in the Beijing market), *Xinlang shoucang*, 2015, (collection.sina.com.cn), last access December 28, 2023. HUANG Xi 黄茜, "Sufubi de 'Beijing zhanlüe'" 苏富比的"北京战略" (Sotheby's 'Beijing strategy'), *Zhongguo wenyi wang*, 2013, (www.cflac.org.cn), last access December 28, 2023. XU Lei 徐磊, ZHENG Rui 郑蕊, "Guoji paimai jutou weihe zheji Zhongguo shichang" 国际拍卖巨头为何折戟中国市场 (Why do international auction giants crash in the Chinese market), *Yachang yishu wang*, 2017, (amma.artron.net), last access December 28, 2023. SOTHEBY'S, *2013 Annual Report*, in "Sotheby's", 2014, www.annualreports.com, last access December 28, 2023, pp.9 and 50.

³⁶³ QIU Yueye 邱月焯, "Sufubi zai Zhongguo wei shenme zongshi luohou yu Jiashide" 苏富比在中国为什么总是落后于佳士得 (Why does Sotheby's always lag behind Christie's in China), *Xinlang shoucang*, 2014, (collection.sina.com.cn), last access December 28, 2023.

Sotheby's ability to successfully operate the joint venture and enforce the joint venture agreement provisions could be constrained by the Chinese government and other unforeseen circumstances."³⁶⁴

At that time, Sotheby's was aiming at achieving independence. Beginning from 2012, it started negotiations with the Chinese Government: the auction house sought to secure a wholly foreign-owned auction license. The objective was to establish a wholly-owned Chinese branch and autonomously conduct business operations in China.³⁶⁵

In terms of performance, Sotheby's (Beijing) witnessed a drastic decline in transaction volume, plunging more than 10 times over three years. The autumn auction conducted during Sotheby's Beijing Art Week in 2013 achieved a transaction volume of CNY 227 million. However, by the 2015 autumn auction, the turnover for Sotheby's Beijing plummeted to a mere CNY 16.5 million, setting a record low for the auction giant's mainland art transactions. Compared with the HKD 2.669 billion (approximately CNY 2.2 billion) realized at Sotheby's Hong Kong 2015 autumn auction, Sotheby's Beijing's turnover lagged significantly. This substantial contraction in performance led to the suspension of auction activities by Sotheby's (Beijing). The decision to suspend auctions prompted reflection within the industry regarding the development trajectory of the auction giant in the Chinese market. It also raised concerns about the future prospects of auctions in free trade zones.³⁶⁶

Comparison between Sotheby's BJ and Sotheby's HK auctions turnover		
Year	Beijing turnover	Hong Kong turnover
Autumn 2013	CNY 227 million	CNY 3.5 billion
Spring 2014	CNY 114.9 million	CNY 2.9 billion
Autumn 2014	CNY 61.74 million	CNY 2.4 billion
Spring 2015	CNY 40.48 million	CNY 2.2 billion
Autumn 2015	CNY 16.50 million	CNY 2.2 billion

³⁶⁴ SOTHEBY'S, *2012 Annual Report*, in "Sotheby's", 2013, www.annualreports.com, last access December 28, 2023, p.12.

³⁶⁵ QIU Yueye 邱月焯, "Sufubi zai Zhongguo wei shenme zongshi luohou yu Jiashide" 苏富比在中国为什么总是落后于佳士得 (Why does Sotheby's always lag behind Christie's in China), *Xinlang shoucang*, 2014, (collection.sina.com.cn), last access December 28, 2023.

³⁶⁶ XU Lei 徐磊, ZHENG Rui 郑蕊, "Guoji paimai jutou weihe zheji Zhongguo shichang" 国际拍卖巨头为何折戟中国市场 (Why do international auction giants crash in the Chinese market), *Yachang yishu wang*, 2017, (amma.artron.net), last access December 28, 2023. BEIJING BUSINESS TODAY 北京商报, "Paimai jutou Sufubi Beijing shichang zaoyu canbai" 拍卖巨头苏富比北京市场遭遇惨败 (Auction giant Sotheby's suffered a disastrous defeat in the Beijing market), *Xinlang shoucang*, 2015, (collection.sina.com.cn), last access December 28, 2023.

In the following years, Sotheby's founded several branches in the mainland territory, but none of them held auctions. In 2014, it set up Sotheby's (Beijing) Commercial Co., Ltd., which dealt with wholesale and commission agency services for handicrafts, collectibles, furniture, jewelry, and watches (excluding auctions). In 2016, Sotheby's (Shanghai) Cultural Development Co., Ltd. was established in West Bund. This subsidiary managed cultural and artistic exchange, corporate image and marketing planning, conference services, exhibition planning, and business information consulting. In 2022, the company established Sotheby's (Shanghai) E-commerce Co., Ltd. in the Waigaoqiao Free Trade Zone, in Pudong. The main areas of interest were technical services, technology development, internet sales, software development, and advertising. The company set up wholly-owned enterprises with the aim of leveraging the flexibility provided by this platform to thoroughly assess and pursue diverse business development opportunities. The objective was to capitalize on the significant prospects presented by the expanding Chinese market.³⁶⁷

2023 marks the 50th anniversary of Sotheby's presence in Asia, a significant milestone celebrated through a series of exhibitions, events, and auctions held across the region. These initiatives show Sotheby's commitment to the development in Asia and a deep engagement with the Chinese mainland market. As a matter of fact, despite the uncertainties posed by COVID-19 and China's zero-COVID policy, Sotheby's remains confident in the mainland market. Notably, in 2021, it was the second-largest art market globally, holding a 20% share after the US.³⁶⁸ Jen Hua, deputy chairman of Sotheby's Asia, expresses optimism, stating that: "With

³⁶⁷ MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, "Shanghai zimaoku zhidu chuangxin jihuo wenhua maoyi" 上海自贸区制度创新激活文化贸易 (Shanghai Free Trade Zone institutional innovation activates cultural trade), *Zhonghua renmin gongheguo shangwubu*, 2022, (tradeinservices.mofcom.gov.cn), last access January 20, 2024. CHINA (SHANGHAI) PILOT FREE TRADE ZONE Administration, "Quanli yi 'fu' jiaokuai jingji huifu chongzhen" 全力以“复”加快经济恢复重振 (Make every effort to accelerate economic restoration and revitalization through "recovery"), *Zhongguo (Shanghai) ziyou maoyi shiyan qu guanli weiyuanhui*, 2022, (www.pudong.gov.cn), last access January 20, 2024. SOTHEBY'S, *Sotheby's Group of Companies*, in "Sotheby's", 2023, (sealed.sothebys.com/affiliates), last access January 20, 2024.

³⁶⁸ Vivienne CHOW, *Sotheby's Is Cooking Up Big Plans for Asia, With Investments in South Korea and Thailand and a New HQ in Mainland China*, in "Artnet", 2022, (news.artnet.com), last access December 29, 2023. PRESS RELEASE, *Sotheby's to Launch its Maison in the Very Heart of Hong Kong To Celebrate Art and Luxury Year-Round, Opening in 2024*, in "Sotheby's", 2022, (www.sothebys.com), last access December 29, 2023. LI Baoxing 李保兴, "Jiedu Sufubi Zhongguo neidi zongbu luohu Shanghai, neidi shichang xin geju!" 解读苏富比中国内地总部落户上海, 内地市场新格局! (Interpretation of Sotheby's mainland China headquarters settling in Shanghai, a new pattern in mainland market!), *Yachang yishu wang*, 2023, (tulu.artron.net), last access December 29, 2023.

the growth we have seen in the region and the rising interest of a new generation of collectors, we can certainly expect China to be at the fore”.³⁶⁹

To celebrate its anniversary, in December 2022, Sotheby’s revealed plans for a new maison in Hong Kong, set to open its doors in 2024. Covering approximately two thousand square meters, the space will be strategically located in the Landmark Chater, at the heart of Hong Kong’s luxury district. It will offer a versatile space designed for a range of functions, to facilitate continuous client engagement. It will present a state-of-the-art exhibition area, to showcase Sotheby’s suite of offerings: live auctions, private sales, exhibitions, and the opportunity to instantly purchase art and luxury collectibles through the newly introduced Sotheby’s Buy Now platform. As part of its expansion strategy, Sotheby’s will also relocate its headquarters to a new office in Hong Kong, set to open in 2024 as well. The new headquarters will span 3300 square meters across four continuous and interconnected floors, within the Six Pacific Place complex.³⁷⁰

Moreover, in May 2023, Sotheby’s opened a new space in Shanghai: Sotheby’s (Shanghai) Auction Co., Ltd.. Located near the Suzhou River, within the city’s art and culture center, this space will feature headquarter offices and exhibition rooms. It will serve as a multi-functional collecting hub for exhibitions, lectures, workshops and a range of online and offline cultural events. The space will integrate Sotheby’s four core collection formats: live auctions, online auctions (displays), private sales and instant purchases of fine art and luxury items. The establishment of this new headquarters aligns with Sotheby’s commitment to cultivating novice collectors in China through on-site events and local auctions. This strategic move reflects Shanghai’s central role as a leading hub for art and luxury collectors and underlines mainland China’s growing influence and potential as a key player in the art market.³⁷¹

³⁶⁹ Oliver GILES, *50 Years New in Asia: The Team Leading Sotheby’s to Success*, in “Sotheby’s”, 2023, www.sothebys.com/en, last access December 22, 2023.

³⁷⁰ PRESS RELEASE, *Sotheby’s to Launch its Maison in the Very Heart of Hong Kong To Celebrate Art and Luxury Year-Round, Opening in 2024*, in “Sotheby’s”, 2022, www.sothebys.com, last access December 29, 2023.

³⁷¹ Vivienne CHOW, *Sotheby’s Is Cooking Up Big Plans for Asia, With Investments in South Korea and Thailand and a New HQ in Mainland China*, in “Artnet”, 2022, news.artnet.com, last access December 29, 2023. Oliver GILES, *50 Years New in Asia: The Team Leading Sotheby’s to Success*, in “Sotheby’s”, 2023, www.sothebys.com/en, last access December 22, 2023. PRESS RELEASE, *Sotheby’s New Shanghai Space Now Open*, in “Sotheby’s”, 2023, www.sothebys.com, last access December 29, 2023. LI Baoxing 李保兴, “Jiedu Sufubi Zhongguo neidi zongbu luohu Shanghai, neidi shichang xin geju!” 解读苏富比中国内地总部落户上海，内地市场新格局！ (Interpretation of Sotheby’s mainland China headquarters settling in Shanghai, a new pattern in mainland market!), *Yachang yishu wang*, 2023, (tulu.artron.net), last access December 29, 2023.

Recently, Sotheby's is engaging with Mainland China collectors through a range of new online channels. A pivotal move in 2023 involved the expansion of Sotheby's Buy Now platform to mainland China. It is an online platform that allows collectors to instantly purchase luxury items, including watches, jewelry, handbags, street fashion, collectible sneakers, decorations, indoor home furnishings, and more. This expansion represents a significant shift, introducing active sourcing in the region for the first time. It provides new opportunities for collectors to engage in buying and selling outside the traditional auction calendar, granting 24/7, 365-day access to luxury, fine and decorative art and objects. In addition to this, Sotheby's has upgraded the Sotheby's WeChat Auction Mini Program. Now, collectors can seamlessly place bids through Sotheby's WeChat Mini Program, aiming to enhance the overall collecting experience within Mainland China. As part of its efforts to tailor services to the local market, Sotheby's has introduced a Simplified Chinese version of its website. This strategic launch reflects Sotheby's commitment to addressing the evolving needs of collectors in Mainland China, ensuring accessibility to their diverse offerings through an array of online tools.³⁷²

3.2.2 Christie's approach

Christie's, another international auction giant, strategically mirrored Sotheby's trajectory and approach, in order to keep pace with its primary competitor. In 1973, just like its counterpart, Christie's established an office in Hong Kong. At that time, the Hong Kong office had the initial purpose of discovering artworks in the region, and subsequently transporting them to London and New York for auction, as well as maintaining customer connections. In 1986, Christie's held its first auction in Hong Kong, following a thirteen-year delay behind Sotheby's inaugural sale in the region. Following this, the company swiftly responded to the surge in the mainland market, by actively planning the establishment of a representative office in Shanghai.³⁷³

³⁷² Oliver GILES, *50 Years New in Asia: The Team Leading Sotheby's to Success*, in "Sotheby's", 2023, www.sothebys.com/en, last access December 22, 2023. PRESS RELEASE, *Sotheby's New Shanghai Space Now Open*, in "Sotheby's", 2023, www.sothebys.com, last access December 29, 2023. LI Baoxing 李保兴, "Jiedu Sufubi Zhongguo neidi zongbu luohu Shanghai, neidi shichang xin geju!" 解读苏富比中国内地总部落户上海, 内地市场新格局! (Interpretation of Sotheby's mainland China headquarters settling in Shanghai, a new pattern in mainland market!), *Yachang yishu wang*, 2023, (tulu.artron.net), last access December 29, 2023.

³⁷³ BEIJING NEWS 新京报, "Jiashide yu Sufubi de Zhongguo buju" 佳士得与苏富比的中国布局 (Christie's and Sotheby's China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023. Carol VOGEL, *Christie's*

As the importance of the Chinese mainland market became evident, Christie's took a proactive step by opening a representative office in Shanghai in 1994, a few months ahead of its competitor. Much like before, the Shanghai office played a crucial role in identifying properties to sell and reaching out to potential buyers. Both the auction houses started to hold auction previews in the mainland in 1995. A year later, Christie's further expanded its presence by opening another representative office in Beijing, more than ten years ahead of Sotheby's. These two strategic moves positioned Christie's as the first international auction house to open offices in the mainland market.³⁷⁴

In order to circumvent the Chinese Government restrictions on foreign investments, in 2005 Christie's signed a licensing agreement with the recently-established Beijing-based Forever International Auction Co., Ltd. (incorporated in 2005, now known as Beijing Yongle International Auction Co., Ltd.), to conduct auction business in Beijing. Under this arrangement, Christie's licensed its name, trademark and logo to Forever. Christie's provided international marketplace access, expertise, auction practices, professionalism, international standards and experts' guidance. Additionally, Christie's had the role of overseeing the entire auction process, from acquiring works for sale to catalog printing and design. In return, Christie's received a fee and managed all of Forever's auctions. The inaugural sale on the 3rd of November 2005, at The Great Wall Sheraton Hotel in Beijing, showcased 45 lots of Modern and Contemporary Chinese art, and it was a resounding success, achieving a total of CNY 97 million / USD 12.1 million. Such partnership operated in the mainland for eight years, and it was regarded by the industry as a strategic move during a period when foreign investment businesses faced restrictions on conducting auctions independently, due to Chinese Government policies. Forever's General Manager at the time, Dong Jun, emphasized "For Christie's, authorizing Yongle to use the trademark has far greater strategic significance than

Going, Going to China to Hold Auctions, in "The New York Times", 2005, www.nytimes.com, last access December 27, 2023.

³⁷⁴ Emily STEEL, *China grants license to Christie's*, in "Financial Times", 2013, www.ft.com/content, last access January 7, 2024. Carol VOGEL, *Christie's Going, Going to China to Hold Auctions*, in "The New York Times", 2005, www.nytimes.com, last access December 27, 2023. BEIJING NEWS 新京报, "Jiashide yu Sufubi de Zhongguo buju" 佳士得与苏富比的中国布局 (Christie's and Sotheby's China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023. QIU Yueye 邱月焯, "Sufubi zai Zhongguo wei shenme zongshi luohou yu Jiashide" 苏富比在中国为什么总是落后于佳士得 (Why does Sotheby's always lag behind Christie's in China), *Xinlang shoucang*, 2014, (collection.sina.com.cn), last access December 28, 2023. PRESS RELEASE, *Christie's to hold auction in Shanghai*, in "Christie's", 2013, www.christies.com, last access January 7, 2024. CHRISTIE'S, *Salerooms & Offices*, in "Christie's", www.christies.com, last access January 7, 2024.

commercial significance”.³⁷⁵ While Forever’s impact on the Beijing art auction market might not have been significant from an industry standpoint, Cai Jinqing³⁷⁶ believes that through this collaboration and with the help of Forever, Christie’s gained valuable insights into the Chinese art market and the preferences of Chinese collectors, over the eight years of cooperation.³⁷⁷

Shortly after Sotheby’s establishment of the Beijing joint-venture, Christie’s swiftly implemented its strategic move to tap into the burgeoning Chinese mainland market. On April 9, 2013, Christie’s announced that it gained a license from the Chinese Government to operate independently in mainland China. The approval from the Shanghai municipality allowed the establishment of a wholly foreign-owned enterprise, named Christie’s (Shanghai) Auction Co., Ltd.. Chinese authorities had previously restricted international auction houses from unhindered access to the mainland market. The Chinese government’s granting of this license marked a historic moment in the art market, expressing a significant shift in openness from the Chinese authorities.³⁷⁸ From this moment, Christie’s became the first international auction house to be granted permission to independently hold auctions in China, positioning itself

³⁷⁵ BEIJING NEWS 新京报, “Jiashide yu Sufubi de Zhongguo buju” 佳士得与苏富比的中国布局 (Christie’s and Sotheby’s China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023.

³⁷⁶ Cai Jinqing (蔡金青) was the former senior vice president and managing director of Christie’s China. Now, she covers the role of President of Kering Greater China (French-based multinational corporation).

³⁷⁷ BEIJING NEWS 新京报, “Jiashide yu Sufubi de Zhongguo buju” 佳士得与苏富比的中国布局 (Christie’s and Sotheby’s China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023. PRESS RELEASE, *Forever to hold its second sale in Beijing*, in “Christie’s”, 2006, www.christies.com, last access January 8, 2024. Carol VOGEL, *Christie’s Going, Going to China to Hold Auctions*, in “The New York Times”, 2005, www.nytimes.com, last access December 27, 2023. ARTPRICE, *Christie’s in Shanghai*, in “Artprice”, 2013, it.artprice.com/artmarketinsight, last access December 28, 2023. SCMP REPORTER, *Christie’s enters auction market*, in “South China Morning Post”, 2005, www.scmp.com, last access January 8, 2024. QIU Yueye 邱月焯, “Sufubi zai Zhongguo wei shenme zongshi luohou yu Jiashide” 苏富比在中国为什么总是落后于佳士得 (Why does Sotheby’s always lag behind Christie’s in China), *Xinlang shoucang*, 2014, (collection.sina.com.cn), last access December 28, 2023.

³⁷⁸ A few years before obtaining the license, Christie’s established an unusual partnership with the Center of International Cultural Exchange, an affiliate of China’s Ministry of Culture. Christie’s financed a series of exhibitions called “Trans-realism” about the rise of Chinese contemporary art. The financial support covered the transportation of artworks, the publication of the exhibition catalog, and even travel expenses for staff from the culture ministry’s subsidiary. The exhibition showcased 29 works by 17 Chinese artists. Notably, the artists were selected by a Chinese government-appointed panel, and were not the politically-focused individuals internationally known. Instead, the group mostly included unknown artists, generally overlooked by collectors and curators outside China. Moreover, none of the exhibited pieces were intended for auction. This collaboration stood out as unusual for Christie’s, as the company typically does not partner with governments to promote lesser-known artists, and the exhibitions did not serve the purpose of showcasing artworks that Christie’s would eventually sell. This strategic move faced sharp criticism from several art experts, who viewed it as a “clearly a political move”, aimed at cultivating a relationship with the Chinese government. Some art scholars suggested that this might be one of the reasons that persuaded the Chinese government to grant Christie’s the license to conduct auction in China, together with the repatriation and restitution of the two bronze fountainheads of the Yves Saint Laurent sale (pp.105-106 for further details). [David BARBOZA, *Christie’s and China: An Artful Diplomacy*, in “The New York Times”, 2010, www.nytimes.com, last access January 20, 2024.]

ahead in the competition among dealers and auctioneers to unlock the potential of the Chinese market. Under the agreement, the company gained the ability to operate throughout China, but would be based in Shanghai and be subject to taxation there. It held a comprehensive auction license, enabling it to provide various services, such as regular exhibitions, art import and export, art advisory, training and more. However, the agreement did impose restrictions on Christie's, preventing the sale of cultural relics, including valuable classical paintings and antiques. Despite this limitation, the move allowed Christie's to sell directly to buyers, catering from a growing class of wealthy collectors in China, who had been investing substantially in fine art, jewelry, watches and wine in recent years. Christie's had the opportunity to leverage preferential tax policies in the China (Shanghai) Pilot Free Trade Zone. The auction house can import artworks into the zone, without paying customs duties. As long as the artwork remains within the zone's boundaries, the buyer is exempt from paying import taxes on the purchased item. The inaugural sale was held in Shanghai on September 26, 2013, and was the first auction conducted independently in China by an international auction house. Christie's curated a diverse selection of 42 lots, encompassing jewelry, wine and a small collection of Contemporary Asian art and Modern or Post-War Western art, fetching a total of CNY 154 million (USD 25 million). Since then, the house has regularly held auctions in Shanghai, with a brief stop during the pandemic.³⁷⁹

In a press release issued weeks later, Christie's CEO Steven Murphy conveyed that Francois-Henri Pinault, the major shareholder of Christie's, "met this morning with the senior official from the State Administration of Cultural Heritage (SACH)³⁸⁰ to announce that the bronze rabbit and rat zodiac heads will be returned to China and the Chinese people as a donation

³⁷⁹ BEIJING NEWS 新京报, "Jiashide yu Sufubi de Zhongguo buju" 佳士得与苏富比的中国布局 (Christie's and Sotheby's China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023. CHRISTIE'S, *Salerooms & Offices*, in "Christie's", www.christies.com, last access January 7, 2024. David BARBOZA, *Christie's Is Poised to Auction Art in China*, in "The New York Times", 2013, www.nytimes.com, last access December 27, 2023. ARTPRICE, *Christie's in Shanghai*, in "Artprice", 2013, it.artprice.com/artmarketinsight, last access December 28, 2023. PRESS RELEASE, *Christie's to hold auction in Shanghai*, in "Christie's", 2013, www.christies.com, last access January 7, 2024. Emily STEEL, *China grants license to Christie's*, in "Financial Times", 2013, www.ft.com/content, last access January 7, 2024. QIU Yueye 邱月焯, "Sufubi zai Zhongguo wei shenme zongshi luohou yu Jiashide" 苏富比在中国为什么总是落后于佳士得 (Why does Sotheby's always lag behind Christie's in China), *Xinlang shoucang*, 2014, (collection.sina.com.cn), last access December 28, 2023. Deborah M. LEHR, *China's Art Market Is Booming – But Not for Foreigners*, in "The Diplomat", 2017, thediplomat.com, last access January 8, 2024. Vivienne CHOW, *By the Numbers: A Breakdown of Results From Christie's Shanghai and Hong Kong Evening Sales, September 2023*, in "Artnet", 2023, news.artnet.com, last access January 9, 2024. CHINA BRIEFING, *Broad Strokes of Success for Auction Houses in China's Fine Arts Market*, in "China Briefing", 2014, www.china-briefing.com, last access January 20, 2024.

³⁸⁰ Today known as National Cultural Heritage Administration (NCHA).

from the Pinault family.”³⁸¹ These two artifacts were originally part of a set of twelve Qing-dynasty zodiac bronze heads, constituting a water clock in the old Summer Palace. In 1860 they were looted from the Summer Palace by British and French troops, during the second Opium War. The heads gained further notoriety when they were sold at auction by Christie’s in Paris in 2009, as part of the Yves Saint Laurent art collection. On this occasion, the Chinese Government raised strong objections to the heads being auctioned, asking the company to repatriate the artifacts to China. Despite the Chinese government opposition, the heads were sold, but the buyer, Cai Mingchao, a Chinese collector and auctioneer, refused to pay, revealing his intent to boycott the sale. The precise timeline of Pinault’s acquisition of the heads remains unclear, as the controversy initially unfolded while the artifacts were under the ownership of Saint Laurent’s surviving partner, Pierre Bergé, who argued that China had no legal right to claim ownership over them.³⁸²

Over the years, Christie’s has moved progressive steps in the mainland market, showing the company’s dedicated focus on its development in Asia. In 2014, Christie’s inaugurated Christie’s (Shanghai) Auction Co., Ltd. Huangpu branch, a new gallery space at the Empire Building on Shanghai’s Bund, creating an interactive venue for a diverse range of activities, including exhibitions, art forums, lectures and more. Demonstrating its continued expansion, two years later, the company further solidified its presence by establishing a flagship³⁸³ space in Beijing: Christie’s (Beijing) Cultural and Art Co., Ltd.. Notably, in 2018, the company launched the first ever sale of Chinese liquor Moutai, adding another dimension to its engagement with the diverse and dynamic Chinese market.³⁸⁴

³⁸¹ JING DAILY, *Christie’s Announces Return of Zodiac Heads to China*, in “Jing Daily”, 2013, jingdaily.com/posts, last access January 9, 2024.

³⁸² BEIJING NEWS 新京报, “Jiashide yu Sufubi de Zhongguo buju” 佳士得与苏富比的中国布局 (Christie’s and Sotheby’s China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023. QIU Yueye 邱月焯, “Sufubi zai Zhongguo wei shenme zongshi luohou yu Jiashide” 苏富比在中国为什么总是落后于佳士得 (Why does Sotheby’s always lag behind Christie’s in China), *Xinlang shoucang*, 2014, (collection.sina.com.cn), last access December 28, 2023. JING DAILY, *Christie’s Announces Return of Zodiac Heads to China*, in “Jing Daily”, 2013, jingdaily.com/posts, last access January 9, 2024. David BARBOZA, *Christie’s and China: An Artful Diplomacy*, in “The New York Times”, 2010, www.nytimes.com, last access January 20, 2024.

³⁸³ A flagship store is a retail location of a brand or company, strategically located in key shopping districts or high-traffic areas within major cities. They serve as more than just sales points, as they are designed to represent and embody the brand’s identity, create a strong brand presence, provide a unique and immersive customer experience, and reinforce the brand’s image and values. These stores play a crucial role in establishing and maintaining a brand’s reputation, allowing customers to interact with the brand in a physical space, and acting as a hub for brand-related events and activities.

³⁸⁴ PRESS RELEASE, *Christie’s announces new business initiative in China*, in “Christie’s”, 2021, www.christies.com, last access January 9, 2024. PRESS RELEASE, *Christie’s and China Guardian to Jointly Present First Thematic*

Just as its competitor, Christie's recently celebrated a very important anniversary: 2023 was the company's 10th anniversary in China as a wholly foreign-owned enterprise and the 10th anniversary of its first auction sale in Shanghai. To celebrate these achievements, Christie's launched a series of live and online sales that took place both in Shanghai and Hong Kong in September 2023. Catering to a diverse range of tastes, these sales encompassed 20th/21st Century Art, Classic Art, Jewelry, Handbags, and Moutai, resulting in a remarkable total of CNY 177,000,600 / USD 24,473,519 generated in Shanghai alone.³⁸⁵

In recent years, Christie's has intensified its investments in spaces, leadership, and technology across Asia. The launch of innovative programs reflects the company's efforts to tap into the growing appetite and evolving collecting tastes in the region. Christie's multifunctional WeChat Mini Program provides clients with a digital auction experience, showcasing the commitment to stay at the forefront of digital and technological advancements.³⁸⁶

Demonstrating confidence in and commitment to the Asian market, Christie's achieved two significant milestones. In 2022, the company relocated its Shanghai office, saleroom and gallery space to BUND ONE, No. 1 East Zhongshan Road. Situated in the heart of Shanghai, BUND ONE is a historic building and a major global city cultural and artistic landmark, which houses multiple art spaces. This new space will serve as a hub for Christie's auctions, preview exhibitions, private sales, cultural salons, and public arts education. The new Shanghai premises will enable Christie's to foster closer interactions with neighboring art institutions, engaging collectors and art enthusiasts through a variety of art events and dynamic experiences.³⁸⁷ Furthermore, Christie's has announced the relocation of its Asia Pacific headquarters to The Henderson, a new urban landmark situated in the luxury center of Hong

Collaboration of its Kind between Leading Auction Houses in Shanghai this September, in "Christie's", 2020, www.christies.com, last access January 9, 2024. PRESS RELEASE, *Christie's Celebrates Shanghai Bund Opening With New Fall Season Offerings*, in "Christie's", 2014, www.christies.com, last access January 9, 2024.

³⁸⁵ CHRISTIE'S, *10th Shanghai Auction Anniversary combined Live sale total CNY 257,773,214 / HK\$277,606,415 / US\$35,641,784*, in "Christie's", 2023, www.christies.com, last access January 9, 2024. Vivienne CHOW, *By the Numbers: A Breakdown of Results From Christie's Shanghai and Hong Kong Evening Sales, September 2023*, in "Artnet", 2023, news.artnet.com, last access January 9, 2024.

³⁸⁶ CHRISTIE'S, *Christie's annual report 2021*, in "Christie's", 2022, www.christies.com, last access January 9, 2024, p.53. PRESS RELEASE, *Christie's announces new business initiative in China*, in "Christie's", 2021, www.christies.com, last access January 9, 2024.

³⁸⁷ *Ibidem*.

Kong. The company will take up four floors within the tower, housing its first year-round saleroom in Asia and a state-of-the-art gallery.³⁸⁸

³⁸⁸ CHRISTIE'S, *Christie's annual report 2021*, in "Christie's", 2022, www.christies.com, last access January 9, 2024, p.53.

BIBLIOGRAPHY

ART BASEL and UBS, *The Art Market 2018*, in “Art Basel”, 2018, d2u3kfw92fzu7.cloudfront.net, last access November 8, 2023.

ART BASEL and UBS, *The Art Market 2023*, in “Art Basel”, 2023, cdn.sanity.io, last access November 10, 2023.

ART MARKET JOURNAL, “Shanghai guoji yishu pin jiaoyi yue gonglüe: zai Zhongguo goumai jingwai yishu pin ruhe jiaoshui?” 上海国际艺术品交易月攻略：在中国购买境外艺术品如何缴税？ (Shanghai International Art Trading Month guide: how to pay taxes for purchasing overseas art in China?), *Art Market Journal*, 2020, (www.chinartlaw.com), last access January 15, 2024.

ARTNET and CAA, *Global Chinese Art Auction Market Report 2017*, in “Artnet”, 2018, cn.artnet.com/caa, last access November 8, 2023.

ARTNET and CAA, *Global Chinese Art Auction Market Report 2018*, in “Artnet”, 2019, cn.artnet.com/caa, last access November 8, 2023.

ARTNET and CAA, *Global Chinese Art Auction Market Report 2019*, in “Artnet”, 2020, cn.artnet.com/caa, last access November 8, 2023.

ARTNET and CAA, *Global Chinese Art Auction Market Report 2020*, in “Artnet”, 2021, cn.artnet.com/caa, last access November 8, 2023.

ARTNET and CAA, *Global Chinese Art Auction Market Report 2021*, in “Artnet”, 2022, cn.artnet.com/caa, last access November 8, 2023.

ARTNET, *About the collaboration*, in “Artnet”, 2023, cn.artnet.com/en, last access May 18, 2023.

ARTPRICE, *Art market trends 2011*, in “Artprice”, 2012, imgpublic.artprice.com, last access May 15, 2023.

ARTPRICE, *Christie’s in Shanghai*, in “Artprice”, 2013, it.artprice.com/artmarketinsight, last access December 28, 2023.

ARTPRICE, *The Art Market in 2012*, in “Artprice”, 2013, imgpublic.artprice.com, last access November 18, 2023.

ARTPRICE, *The art market in 2013*, in “Artprice”, 2014, imgpublic.artprice.com, last access May 15, 2023.

ARTPRICE, *The art market in 2014*, in “Artprice”, 2015, imgpublic.artprice.com, last access December 28, 2023.

BAIDU BAIKE 百度百科, “Guojia shichang jiandu guanli zongju” 国家市场监督管理总局 (State Administration for Market Regulation), *Baidu baike*, (baike.baidu.com), last access September 28, 2023.

BAIDU BAIKE 百度百科, “Paimai gongsi” 拍卖公司 (Auction company), *Baidu baike*, (baike.baidu.com), last access May 13, 2023.

BAIDU BAIKE 百度百科, “Paimai” 拍卖 (Auction), *Baidu baike*, (baike.baidu.com), last access October 4, 2023.

BAIDU BAIKE 百度百科, “Tezhong hangye” 特种行业 (Special industries), *Baidu baike*, (baike.baidu.com), last access May 29, 2023.

BAIDU BAIKE 百度百科, “Zhongguo paimai hangye xiehui” 中国拍卖行业协会 (China Association of Auctioneers), *Baidu baike*, (baike.baidu.com), last access May 19, 2023.

BAIDU BAIKE 百度百科, “Zhonghua renmin gongheguo guonei maoyi bu” 中华人民共和国国内贸易部 (Ministry of Internal Trade of the PRC), *Baidu baike*, (baike.baidu.com), last access October 17, 2023.

BARBOZA, David, BOWLEY, Graham, COX, Amanda, *Forging an art market in China*, in “The New York Times”, 2013, nytimes.com/china-art-fraud, last access May 13, 2023.

BARBOZA, David, *Christie’s and China: An Artful Diplomacy*, in “The New York Times”, 2010, www.nytimes.com, last access January 20, 2024.

BARBOZA, David, *Christie’s Is Poised to Auction Art in China*, in “The New York Times”, 2013, www.nytimes.com, last access December 27, 2023.

BARBOZA, David, *Gaming China’s Art Market With Expert Forgeries*, in “The New York Times”, 2013, archive.nytimes.com/sinosphere.blogs, last access January 30, 2024.

BEIJING BUSINESS TODAY 北京商报, “Paimai jutou Sufubi Beijing shichang zaoyu canbai” 拍卖巨头苏富比北京市场遭遇惨败 (Auction giant Sotheby’s suffered a disastrous defeat in the Beijing market), *Xinlang shoucang*, 2015, (collection.sina.com.cn), last access December 28, 2023.

BEIJING NEWS 新京报, “Jiashide yu Sufubi de Zhongguo buju” 佳士得与苏富比的中国布局 (Christie’s and Sotheby’s China layout), *Art.China.cn*, 2013, (art.china.cn), last access December 22, 2023.

BELLINGHAM, David, “Ethics and the Art Market”, in Iain Robertson and Derrick Chong (edited by), *The Art Business*, London: Routledge, 2008, pp.176-196.

BERTOLDO, Silvia, *La nascita e l’evoluzione del mercato dell’arte in Cina* [Master’s thesis, Ca’Foscari University of Venice], 2019, hdl.handle.net, last access May 13, 2023.

BERTUSSI, Giulia, *Il mercato dell'arte in Cina. Proposta di traduzione e commento della guida ufficiale agli investimenti nel collezionismo e della normativa relativa alle case d'aste* [Master's thesis, Ca' Foscari University of Venice], 2014, hdl.handle.net, last access May 10, 2023.

BOWLEY, Graham, BARBOZA, David, *An art power rises in China, posing issue for reform*, in "CNBC", 2013, www.cnbc.com, last access November 8, 2023.

BULL, Toby, BRUBER, Stephan, "Forge and Export: The Trade in Fake Antiquities from China", in Joris Kila e Marc Balcells (edited by), *Cultural Property Crime: An Overview and Analysis on Contemporary Perspectives and Trends*, Brill, 2014, pp.61-76.

BUTCHER PIAT, Hugo, *China's new State Administration for Market Regulation*, in "China Briefing", 2018, www.china-briefing.com, last access September 28, 2023.

CAVALIERI, Renzo, "Evoluzioni e involuzioni del diritto cinese degli investimenti esteri: dalla prima legge sulle joint ventures alla pandemia", *Annuario di diritto comparato e di studi legislativi*, Vol. XIII, 2022, pp.141-168.

CHEN Bangzhu 陈邦柱, "Guanyu 'Zhonghua renmin gongheguo paimai fa (cao'an)' de shuoming" 关于《中华人民共和国拍卖法（草案）》的说明 (Explanation about the Auction Law of the People's Republic of China – draft), in *Gazette of the Standing Committee of the National People's Congress of the People's Republic of China*, 1996.06, pp.12-14.

CHINA (SHANGHAI) PILOT FREE TRADE ZONE Administration, "Quanli yi 'fu' jiakuai jingji huihu chongzhen" 全力以“复”加快经济恢复重振 (Make every effort to accelerate economic restoration and revitalization through "recovery"), *Zhongguo (Shanghai) ziyou maoyi shiyan qu guanli weiyuanhui*, 2022, (www.pudong.gov.cn), last access January 20, 2024.

CHINA ASSOCIATION OF AUCTIONEERS, "Wenwu yishupin paimai guicheng" 文物艺术品拍卖规程 (Standard for Auction of Cultural Relics and Art Works), *China Association of Auctioneers*, 2010, (www.caa123.org.cn), last access December 12, 2023.

CHINA ASSOCIATION OF AUCTIONEERS, "Zhongguo paimai hangye xiehui jianjie" 中国拍卖行业协会简介 (Brief introduction of the China Association of Auctioneers), *China Association of Auctioneers*, (caa123.org.cn), last access May 18, 2023.

CHINA ASSOCIATION OF AUCTIONEERS, "Zhongguo paimai hangye xiehui guanyu 'jingmai xieyi' hexin tiaokuan de falü zhidao yijian" 中国拍卖行业协会关于《竞买协议》核心条款的法律指导意见 (Legal Guiding Opinions of CAA about the Core Provisions of the "Bidding Agreement"), *China Association of Auctioneers*, 2013, (www.caa123.org.cn), last access January 30, 2024.

CHINA ASSOCIATION OF AUCTIONEERS, "Zhongguo wenwu yishupin paimai qiye zilü gongyue" 中国文物艺术品拍卖企业自律公约 (Self-discipline convention of Chinese cultural relics and artworks auctions enterprises), *China Association of Auctioneers*, 2011, (www.ca123.org.cn), last access December 12, 2023.

CHINA AUCTION, “‘Paimai fa’ 20 sui le” 《拍卖法》20 岁了 (20 years of Auction Law), in *China Auction*, 2017.03, pp.8-10.

CHINA AUCTION, “Jiedu ‘paimai fa’ de xiugai neirong” 解读《拍卖法》的修改内容 (Interpreting the content of the changes to the Auction Law), in *China Auction*, 2016.Z1, p.21.

CHINA BRIEFING, *Broad Strokes of Success for Auction Houses in China’s Fine Arts Market*, in “China Briefing”, 2014, www.china-briefing.com, last access January 20, 2024.

CHINA BRIEFING, *China’s Negative List for Foreign Investment Access in FTZs (New Edition): English Version Available*, in “China Briefing”, 2021, www.china-briefing.com, last access January 12, 2024.

CHOW, Vivienne, *By the Numbers: A Breakdown of Results From Christie’s Shanghai and Hong Kong Evening Sales, September 2023*, in “Artnet”, 2023, news.artnet.com, last access January 9, 2024.

CHOW, Vivienne, *Sotheby’s Is Cooking Up Big Plans for Asia, With Investments in South Korea and Thailand and a New HQ in Mainland China*, in “Artnet”, 2022, news.artnet.com, last access December 29, 2023.

CHRISTIE’S, *10th Shanghai Auction Anniversary combined Live sale total CNY 257,773,214 / HK\$277,606,415 / US\$35,641,784*, in “Christie’s”, 2023, www.christies.com, last access January 9, 2024.

CHRISTIE’S, *Christie’s annual report 2021*, in “Christie’s”, 2022, www.christies.com, last access January 9, 2024.

CHRISTIE’S, *Salerooms & Offices*, in “Christie’s”, www.christies.com, last access January 7, 2024.

CLUNAS, Craig, *Art in China*, New York: Oxford University Press, 2009, (1 ed. 1997).

CREMAILH, Victor, *FDI China Exclusive: The 21 Free Trade Zones Guide 2023*, in “FDI China”, 2023, fdichina.com, last access January 16, 2024.

CRESPI REGHIZZI, Gabriele, *Evoluzioni del nuovo diritto commerciale cinese*, in “Il Politico”, Vol. 71, No. 3 (213), 2006, pp.142-171.

DAI, Zach, *Unroll the Scroll Painting: Inside the Chinese Art Market and Its Regulatory Landscape*, in “Art Law Blog”, 2022, www.artlawgallery.com, last access January 13, 2024.

DESMONTS, Vivian, “China”, in Bernardine Adkins and Samuel Beighton (edited by), *ICLG - Foreign Direct Investment Regimes 2024*, Global Legal Group, 2023, pp.40-47.

DESTO, Alice, *Cultural heritage protection in the People’s Republic of China: the import and export of cultural relics* [Master’s thesis, Ca’Foscari University of Venice], 2020-21, dSPACE.unive.it, last access October 12, 2023.

ENCYCLOPAEDIA BRITANNICA, *Free-trade zone*, in “Britannica”, www.britannica.com, last access January 15, 2024.

GENERAL OFFICE of the STATE COUNCIL of the PRC 国务院办公厅, “Guowuyuan bangong ting guanyu yinfa guonei maoyi bu he guojia liangshi chubei ju zhineng peizhi, neishe jigou he renyuan bianzhi fang’an de tongzhi” 国务院办公厅关于印发国内贸易部和国家粮食储备局职能配置、内设机构和人员编制方案的通知 (Notice of the General Office of the State Council on issuing the functional allocation, internal organization and personnel establishing plan of the Ministry of Internal Trade and the State Bureau of Grain Reserve), *Zhongguo zhengfu wang*, 1994, (www.gov.cn), last access October 17, 2023.

FAN Ganping 范干平, “Yifa jingying shi yishupin paimai lizu zhi ben” 依法经营是艺术品拍卖立足之本 (Managing according to law is the foundation of art auction), in *China Auction*, 2018.04, p.15.

FEI Anling, “La persona giuridica nei progetti di codice civile della Cina: discussioni e prospettive”, *Bullettino dell'Istituto di diritto romano Vittorio Scialoja*, quarta serie, Vol. VI, 2016, pp.87-102.

FENG Jiabo 冯家驳, “92 nian Beijing guoji paimai hui de quwen” 92年北京国际拍卖会的趣闻 (News about the ‘92 Beijing International Auction), *Xinlang shoucang*, 2012, (collection.sina.com.cn), last access May 15, 2023.

FONG Wen C., “Chinese art and cross-cultural understanding”, in Wen C. Fong and James C.Y. Watt (edited by), *Possessing the Past. Treasures from the National Palace Museum, Taipei, exhibition catalogue*, New York: Metropolitan Museum of Art, 1996, pp.27-35.

FU Tingmei, “Legal Person in China: Essence and Limits”, *The American Journal of Comparative Law*, Vol. 41, No. 2, 1993, pp.261-297.

GAMBILLARA, Martina, *Asta proibita. È Sotheby’s la prima a officiare una vendita nella Cina continentale: accade a Pechino, in catalogo solo una scultura di Wang Huaiqing*, in “Artribune”, 2012, www.artribune.com/tribnews, last access December 28, 2023.

GAO Shen, *The Evolution of China’s Foreign Investment Policy and Law* [PhD dissertation, The Pennsylvania State University], 2017, core.ac.uk, last access January 11, 2024.

GERLIS, Melanie, *The 5 Biggest Myths About the Chinese Art Market—and the Inconvenient Realities That May Give Investors Pause*, in “Artnet News”, 2018, news.artnet.com, last access November 7, 2023.

GILES, Oliver, *50 Years New in Asia: The Team Leading Sotheby’s to Success*, in “Sotheby’s”, 2023, www.sothebys.com/en, last access December 22, 2023.

GRAW, Stephen, *An introduction to the law of contract*, Pymont: Lawbook Co., 2005 (fifth edition), p.229.

GREATREX, Michael, “The Pursuit of Certainty: A New Approach to Best Endeavours Clauses”, in *Te Mata Koi: Auckland University Law Review*, New Zealand: University of Auckland, 2019, pp. 155–172.

HUANG Hui, *China’s New Regulation on Foreign M&A: Green Light or Red Flag?*, in “UNSW Law Journal”, Vol. XXX, No. 3, 2007, pp.804-814.

HUANG Wei 黄蔚, “Dui Zhongguo yishupin paimai shichang rencai wenti de sikao” 对中国艺术品拍卖市场人才问题的思考 (Reflection on talents’ problem in China’s art auction market), in *Art Science and Technology*, 2014.04, pp.116 and 167.

HUANG Xi 黄茜, “Sufubi de ‘Beijing zhanlüe’” 苏富比的“北京战略” (Sotheby’s ‘Beijing strategy’), *Zhongguo wenyi wang*, 2013, (www.cflac.org.cn), last access December 28, 2023.

HUI Zhong, *China’s new law on art auctions*, in “Art, Antiquity and Law”, Vol. 22, No. 3, 2017, pp.229-243.

HUO Jincheng 霍进城, “Hetong bian shiwu (er): zhiliang xiaci danbao de lilun yu shiwu” 合同编实务 (二) : 质量瑕疵担保的理论与实务 (Contract compilation practice II: theory and practice of exemption clause), *Weixin (account number gh_99f4c5f14a35)*, 2021, (mp.weixin.qq.com), last access January 24, 2024.

HUO Zhengxin, “Legal Protection of Cultural Heritage in China: a Challenge to Keep History Alive”, in *International Journal of Cultural Policy*, Vol. 22, No. 4, 2016.

JANSSENS, Ben, *China opens doors to foreign auction houses*, in “The Art Newspaper”, 2004, www.theartnewspaper.com, last access January 20, 2024.

Ji Tao 季涛, “Liaoliao 20 nian qian chuangjian paimai peixun de naxie shier” 聊聊 20 年前创建拍卖培训的那些事儿 (Talking about the creation of auction training 20 years ago), *Yachang yishu wang*, 2020, (news.artron.net), last access May 18, 2023.

JING Cuicui 景翠翠, “Woguo yishupin paimai hangye cunzai de wenti ji duice” 我国艺术品拍卖行业存在的问题及对策 (Problems and countermeasures in China’s art auction industry), in *Regional Governance*, 2019.47, pp.222-224.

JING DAILY, *Christie’s Announces Return of Zodiac Heads to China*, in “Jing Daily”, 2013, jingdaily.com/posts, last access January 9, 2024.

KAMYKOWSKA, Zuzanna, “Auctioning institutions in China: economic and legal aspects”, *Ekonomia I Prawo. Economics and Law*, Vol. 22, No. 2, 2023, pp.227-235.

LEHR, Deborah M., *China’s Art Market Is Booming – But Not for Foreigners*, in “The Diplomat”, 2017, thediplomat.com, last access January 8, 2024.

LI Baoxing 李保兴, “Jiedu Sufubi Zhongguo neidi zongbu luohu Shanghai, neidi shichang xin geju!” 解读苏富比中国内地总部落户上海，内地市场新格局！ (Interpretation of Sotheby’s mainland China headquarters settling in Shanghai, a new pattern in mainland market!), *Yachang yishu wang*, 2023, (tulu.artron.net), last access December 29, 2023.

LI Jian 力简, “Qianxi muqian yishupin paimai shichang zhong cunzai de ‘sanjia’ wenti” 浅析目前艺术品拍卖市场中存在的“三假”问题 (Analysis of the problem of “three fakes” in the current art auction market), in *Art Market*, 2007.12, pp.118-119.

LI Rui 厉锐, “Shilun guonei yishupin paimai shichang zhong de ‘nanti’” 试论国内艺术品拍卖市场中的“难题” (On the “difficulties” in the domestic art auction market), in *Fine Arts*, 2021.08, pp.103-104.

LI Yuwen, BIAN Cheng, *A new dimension of foreign investment in China – evolution and impacts of the national security review system*, in “Asia Pacific Law Review”, Vol. 24, No. 2, 2016, pp.149-175.

LIU Lan 刘兰, “Lun paimai fa zhong xiaci mianze shengming yu yishupin jianding de ruogan wenti” 论拍卖法中瑕疵免责声明与艺术品鉴定的若干问题 (On several issues concerning the disclaimer for defects and the appraisal of artworks in the Auction Law), in *Art Market*, 2023.01, pp.69-71.

LIU Shuangzhou 刘双舟, “Tan yishupin paimai zhong de baozhen wenti” 谈艺术品拍卖中的保真问题 (On the authenticity problem in art auctions), in *China Auction*, 2019.06, pp.30-31.

MA Jay 马捷, “Tan yi lu: yishupin paimai ‘bu baozheng’ kao (shang)” 谈艺录: 艺术品拍卖“不保真”考 (上), (Discussion on art record I: an examination of “unfidelity” in artwork auction), *Weixin (account number KWM_China)*, 2022, (mp.weixin.qq.com), last access January 24, 2024.

MAGGIO, Meg, “Auctions (art and antiquities)”, in Edward L. Davis (edited by), *Encyclopedia of contemporary Chinese culture*, New York: Routledge, 2005, pp.22-23.

MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “‘Paimai guanli banfa’ jiedu” 《拍卖管理办法》解读 (Interpretation of the Measures for the Administration of Auctions), *Zhonghua renmin gongheguo shangwubu*, 2005, (tfs.mofcom.gov.cn), last access September 29, 2023.

MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa (2019 xiuding)” 拍卖管理办法(2019 修订), (Measures for the Administration of Auctions – revised in 2019), *Zhonghua renmin gongheguo shangwubu*, 2019, (mofcom.gov.cn), last access June 6, 2023.

MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Paimai guanli banfa (2015 xiuding)” 拍卖管理办法(2015 修订), (Measures for the Administration of Auctions – revised in 2015), *Falü fagui ku*, 2015, (www.flfgk.com), last access September 26, 2023.

MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Shanghai zimaoku zhidu chuangxin jihuo wenhua maoyi” 上海自贸区制度创新激活文化贸易 (Shanghai Free Trade Zone institutional innovation activates cultural trade), *Zhonghua renmin gongheguo shangwubu*, 2022, (tradeinservices.mofcom.gov.cn), last access January 20, 2024.

MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Shangwu bu guanyu feizhi he xiugai bufen guizhang de jue ding” 商务部关于废止和修改部分规章的决定 (Decision of the Ministry of Commerce to repeal and amend some rules), *Zhonghua renmin gongheguo shangwubu*, 2019, (www.mofcom.gov.cn), last access January 15, 2024.

MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Shangwu bu guanyu xiugai bufen guizhang he guifan xing wenjian de jue ding” 商务部关于修改部分规章和规范性文件的决定 (Decision of the Ministry of Commerce on amending some rules and regulatory documents), *Zhongguo zhengfu wang*, 2015, (www.gov.cn), last access September 25, 2023.

MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Zhonghua renmin gongheguo shangwu bu ling (di 24 hao) ‘Paimai guanli banfa’” 中华人民共和国商务部令 (第 24 号) 《拍卖管理办法》 (Order No. 24 of the Ministry of Commerce of the People’s Republic of China “Measures for the Administration of Auctions”), *Zhongguo zhengfu wang*, 2004, (www.gov.cn), last access September 27, 2023.

MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, “Zhonghua renmin gongheguo shangwubu jianjie” 中华人民共和国商务部简介 (Brief introduction of the Ministry of Commerce of the PRC), *Zhonghua renmin gongheguo shangwubu*, 2005, (rss.mofcom.gov.cn), last access October 26, 2023.

MINISTRY of COMMERCE of the PRC 中华人民共和国商务部, *Mission*, in “Zhonghua renmin gongheguo shangwubu”, english.mofcom.gov.cn, last access October 26, 2023.

MINISTRY of FINANCE 财政部, “Guanyu shenhua zengzhishui gaige youguan zhengce de gonggao” 关于深化增值税改革有关政策的公告 (Announcement on relevant policies for deepening Value Added Tax reform), *Guojia shuiwu zongju*, 2019, (www.chinatax.gov.cn), last access January 15, 2024.

MURPHY, J. David, “Art auctions in China”, *Art antiquity and law*, Vol. 1, No. 1, 1996, pp.37-48.

NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Wenwu paimai biaodi shenhe banfa (2020 xiugai)” 文物拍卖标的审核办法(2020 修改), (Measures for the Examination of Cultural Relics as Objects of Auction – revised in 2020), *Zhonghua renmin gongheguo shangwubu*, 2020, (fms.mofcom.gov.cn), last access October 12, 2023.

NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Wenwu paimai guanli banfa (2020 xiugai)” 文物拍卖管理办法(2020 修改), (Measures for the Administration of Cultural Relics Auctions – revised in 2020), *Pkulaw.com*, 2020, (www.pkulaw.com), last access October 12, 2023.

NATIONAL CULTURAL HERITAGE ADMINISTRATION 国家文物局, “Zhuyao zhize” 主要职责 (Main responsibilities), *National Cultural Heritage Administration*, (www.ncha.gov.cn), last access October 20, 2023.

NATIONAL DEVELOPMENT and REFORM COMMISSION 国家发展改革委员会, “Waishang touzi zhunru tebie guanli cuoshi (fumian qingdan) (2021 nianban)” 外商投资准入特别管理措施 (负面清单) (2021 年版), (Special Administrative Measures – Negative List – for the Access of Foreign Investment – 2021), *Guojia fazhan he gaige weiyuanhui wangzhan*, 2021, (www.ndrc.gov.cn), last access January 15, 2024.

NEWELL, Phillip, “The PRC’s Law for the Protection of Cultural Relics”, in *Art, Antiquity and Law*, Vol. 13, No. 1, 2008, pp.1-58.

NOBILI, Chiara, *Le obbligazioni*, Collana notarile - Guido Capozzi, Giuffrè Francis Lefebvre, 2019 (third edition), p.153.

OECD, *China: Progress and Reform Challenges*, in “OECD”, 2003, www.oecd.org, last access January 11, 2024.

PANG Sijian 庞思建, “Cong wu fa kexun dao youfa keyi – yishupin shichang fagui 40 nian” 从无法可循到有法可依—艺术品市场法规 40 年 (From having no law to follow to having to follow a law: 40 years of art market regulations), in *Art Market*, 2018.08, pp.40-45.

PEOPLE’S GOVERNMENT of BEIJING MUNICIPALITY 北京市人民政府, “Qiyе qude congshi paimai yewu de xuke (xuke shenpi) (yiban banli fangshi)” 企业取得从事拍卖业务的许可 (许可审批) (一般办理方式), (General processing method for enterprises to obtain a license to engage in auction business), *Beijing shi renmin zhengfu*, (banshi.beijing.gov.cn), last access September 27, 2023.

POTTER, Pitman, *Foreign Investment Law in the People’s Republic of China: Dilemmas of State Control*, in “China Quarterly”, No. 141, 1995, pp.155-185.

PRESS RELEASE, *Christie’s and China Guardian to Jointly Present First Thematic Collaboration of its Kind between Leading Auction Houses in Shanghai this September*, in “Christie’s”, 2020, www.christies.com, last access January 9, 2024.

PRESS RELEASE, *Christie’s announces new business initiative in China*, in “Christie’s”, 2021, www.christies.com, last access January 9, 2024.

PRESS RELEASE, *Christie’s Celebrates Shanghai Bund Opening With New Fall Season Offerings*, in “Christie’s”, 2014, www.christies.com, last access January 9, 2024.

PRESS RELEASE, *Christie’s to hold auction in Shanghai*, in “Christie’s”, 2013, www.christies.com, last access January 7, 2024.

PRESS RELEASE, *Sotheby’s New Shanghai Space Now Open*, in “Sotheby’s”, 2023, www.sothebys.com, last access December 29, 2023.

PRESS RELEASE, *Sotheby’s to Launch its Maison in the Very Heart of Hong Kong To Celebrate Art and Luxury Year-Round, Opening in 2024*, in “Sotheby’s”, 2022, www.sothebys.com, last access December 29, 2023.

QIN, Julia Ya, *Trade, Investment and beyond: The Impact of WTO Accession on China's Legal System*, in "China Quarterly", No. 191, 2007, pp.720-741.

QIU Yueye 邱月焯, "Sufubi zai Zhongguo wei shenme zongshi luohou yu Jiashide" 苏富比在中国为什么总是落后于佳士得 (Why does Sotheby's always lag behind Christie's in China), *Xinlang shoucang*, 2014, (collection.sina.com.cn), last access December 28, 2023.

RASTELLI, Sabrina, "Conversing with the Past: the Value of Copying in Chinese Painting", in *Raffaello and Zhang Zeduan. New Perspectives on Perspective*, Firenze: Mandragora, 2021, pp.74-90.

RESS RELEASE, *Forever to hold its second sale in Beijing*, in "Christie's", 2006, www.christies.com, last access January 8, 2024.

SCMP REPORTER, *Christie's enters auction market*, in "South China Morning Post", 2005, www.scmp.com, last access January 8, 2024.

SHI Zhihao 施之昊, "Zhongguo gudai paimai de naxie shier" 中国古代拍卖的那些事儿 (Matters about ancient Chinese auctions), *Xinlang shoucang*, 2019, (collection.sina.com.cn), last access May 13, 2023.

SIROËN, Jean-Marc, YÜCER, Ayçil, *Trade Performance of Free Trade Zones*, in "Document De Travail", 2014, pp.1-28.

SMITH, Bryant, "Legal personality", *Yale Law Journal*, Vol. 37, No. 3, 1928, pp.283-299.

SOTHEBY'S, *2012 Annual Report*, in "Sotheby's", 2013, www.annualreports.com, last access December 28, 2023.

SOTHEBY'S, *2013 Annual Report*, in "Sotheby's", 2014, www.annualreports.com, last access December 28, 2023.

SOTHEBY'S, *Sotheby's Group of Companies*, in "Sotheby's", 2023, sealed.sothebys.com/affiliates, last access January 20, 2024.

STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo zhuxi ling (di 70 hao) 'Zhonghua renmin gongheguo paimai fa'" 中华人民共和国主席令 (第 70 号) 《中华人民共和国拍卖法》 (Order No. 70 of the President of the People's Republic of China "Auction Law of the PRC"), *Dang he guojia zhengce fagui ku*, 1996, (zcfg.cs.com.cn), last access September 24, 2023.

STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015修正), (Auction Law of the People's Republic of China – amended in 2015), *Guojia falü fagui shujuku*, 2015, (flk.npc.gov.cn), last access June 5, 2023.

STANDING COMMITTEE of the NATIONAL PEOPLE'S CONGRESS 全国人民代表大会常务委员会, "Zhonghua renmin gongheguo paimai fa (2015 xiuzheng)" 中华人民共和国拍卖法(2015修正)

修正), (Auction Law of the People’s Republic of China – amended in 2015), *English.gov.cn*, 2015, (english.gov.cn), last access June 6, 2023.

STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Quanguo renmin daibiao dahui changwu weiyuanhui guanyu xiugai ‘Zhonghua renmin gongheguo paimai fa’ de jue ding” 全国人民代表大会常务委员会关于修改《中华人民共和国拍卖法》的决定 (The decision of the Standing Committee of the National People’s Congress about amending the Auction Law of the People’s Republic of China), *Zhongguo renda wang*, 2004, (www.npc.gov.cn), last access September 24, 2023.

STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Quanguo renmin daibiao dahui changwu weiyuanhui guanyu xiugai ‘Zhonghua renmin gongheguo dianli fa’ deng liu bu falü de jue ding” 全国人民代表大会常务委员会关于修改《中华人民共和国电力法》等六部法律的决定 (The decision of the Standing Committee of the National People’s Congress about amending six laws including the Electric Power Law of the People’s Republic of China), *Zhongguo renda wang*, 2015, (www.npc.gov.cn), last access September 24, 2023.

STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo paimai fa (2004 xiuzheng)” 中华人民共和国拍卖法(2004 修正), (Auction Law of the People’s Republic of China – amended in 2004), *Zhongguo zhengfu wang*, 2004, (www.gov.cn), last access September 26, 2023.

STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2017 xiuzheng)” 中华人民共和国文物保护法(2017 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Guojia falü fagui shujuku*, 2017, (flk.npc.gov.cn), last access October 12, 2023.

STANDING COMMITTEE of the NATIONAL PEOPLE’S CONGRESS 全国人民代表大会常务委员会, “Zhonghua renmin gongheguo wenwu baohu fa (2002 xiuzheng)” 中华人民共和国文物保护法(2002 修正), (PRC’s Law for the Protection of Cultural Relics – amended in 2002), *Zhongguo zhengfu wang*, 2002, (www.gov.cn), last access January 12, 2023.

STATE ADMINISTRATION for INDUSTRY and COMMERCE 国家工商行政管理总局, “Guojia gongshang xingzheng guanli zongju ling (di 91 hao) ‘Paimai jian du guan li ban fa’” 国家工商行政管理总局令 (第 91 号) 《拍卖监督管理办法》 (Order No. 91 of the State Administration for Industry and Commerce “Measures for the Supervision and Administration of Auctions”), *Zhongguo zhengfu wang*, 2017, (www.gov.cn), last access September 28, 2023.

STATE ADMINISTRATION for INDUSTRY and COMMERCE 工商总局, “‘Zhu ce ziben deng ji zhi du gai ge fang’an’ jiedu yi” 《注册资本登记制度改革方案》解读一 (Interpretation 1 of the “Reform Plan of the Registration System of Registered Capital”), *Zhongguo zhengfu wang*, 2014, (www.gov.cn), last access October 24, 2023.

STATE ADMINISTRATION for INDUSTRY and COMMERCE 工商总局, “‘Zhu ce ziben deng ji zhi du gai ge fang’an’ jiedu er” 《注册资本登记制度改革方案》解读二 (Interpretation 2 of the

“Reform Plan of the Registration System of Registered Capital”), *Zhongguo zhengfu wang*, 2014, (www.gov.cn), last access October 24, 2023.

STATE ADMINISTRATION for MARKET REGULATION 国家市场监督管理总局, “Guojia shichang jian du guan li zong ju ling (di 31 hao) ‘Paimai jian du guan li ban fa’” 国家市场监督管理总局令(第31号)《拍卖监督管理办法》(Order No. 31 of the State Administration for Market Regulation “Measures for the Supervision and Administration of Auctions”), *Zhongguo zhengfu wang*, 2020, (www.gov.cn), last access September 28, 2023.

STATE ADMINISTRATION for MARKET REGULATION 国家市场监督管理总局, “Paimai jian du guan li ban fa (2020 xiuding)” 拍卖监督管理办法(2020修订), (Measures for the Supervision and Administration of Auctions – revised in 2020), *Zhongguo zhengfu wang*, 2020, (www.gov.cn), last access September 28, 2023.

STATE COUNCIL of the PRC 中华人民共和国国务院, “Guowuyuan guanyu yinfa zhu ce ziben dengji zhidu gaige fang’an de tongzhi” 国务院关于印发注册资本登记制度改革方案的通知 (Notice of the State Council on issuing the Reform Plan of the Registration System of Registered Capital), *Zhongguo zhengfu wang*, 2014, (www.gov.cn), last access October 24, 2023.

STATE COUNCIL of the PRC 中华人民共和国国务院, “Zhonghua renmin gongheguo wenwu baohu fa shishi tiaoli (2017 xiugai)” 中华人民共和国文物保护法实施条例(2017修改), (Regulations for the Implementation of the PRC’s Law for the Protection of Cultural Relics – amended in 2017), *Zhongguo zhengfu wang*, 2017, (www.gov.cn), last access October 13, 2023.

STATE PLANNING COMMISSION 国家发展计划委员会, “Waishang touzi chanye zhidao mulu (2002)” 外商投资产业指导目录(2002), (Catalogue for the Guidance of Foreign Investment Industries – 2002 version), *Guojia fazhan he gaige weiyuanhui wangzhan*, 2002, (www.ndrc.gov.cn), last access January 10, 2024.

STEEL, Emily, *China grants license to Christie’s*, in “Financial Times”, 2013, www.ft.com/content, last access January 7, 2024.

STUCKI, Marius, *China’s New Foreign Investment Law - With A Special Note on Swiss-Chinese Investment*, in “SSRN”, 2019, papers.ssrn.com, last access January 11, 2024.

TAO Yu 陶宇, YIN Heng 尹姮, “Yishupin paimai ‘baozhen’ zhidu de zhongwai jiejianyu bijiao – cong ‘Paimai fa’ ‘xiaci mianze’ tiaokuan shuo qi” 艺术品拍卖“保真”制度的中外借鉴与比较—从《拍卖法》“瑕疵免责”条款说起 (Reference and comparison of the “responsibility” system in art auction between China and foreign countries: starting from the “disclaimer of liability” clause in the Auction Law), in *Art Market*, 2022.07, pp.97-99.

THE ART NEWSPAPER, *Sotheby’s And Christie’s Go To China*, in “Forbes”, 2004, www.forbes.com, last access January 10, 2024.

The ASSOCIATED PRESS, *Auction Houses Battle for Chinese Market*, in “The New York Times”, 2012, www.nytimes.com, last access December 27, 2023.

TORTORICI, Vittorio, “Company and Foreign Investment Laws with Chinese Characteristics. An Example on How to Mix Market Rules and Socialist Principles”, in Ignazio Castellucci (edited by), *Saggi di Diritto Economico e Commerciale Cinese*, Napoli, 2019, pp.169-191.

TWIGG-FLESNER, Christian, SCHULZE, Reiner, WATSON, Jonathon, “Protecting rational choice: information and the right of withdrawal”, in Geraint Howells, Iain Ramsay, Thomas Wilhelmsson (edited by), *Handbook of Research on International Consumer Law*, Edward Elgar Publishing, 2018, pp.111-138.

VOGEL, Carol, *Christie’s Going, Going to China to Hold Auctions*, in “The New York Times”, 2005, www.nytimes.com, last access December 27, 2023.

VON HIPPEL, Eike, “The Control of Exemption Clauses a Comparative Study”, *International and Comparative Law Quarterly*, Vol. 16, No. 3, 1967, pp.591-612.

WANG, Audrey, *Chinese Antiquities. An introduction to the art market*, “Handbooks in International Art Business”, Lund Humphries Publishers Ltd. in association with Sotheby’s Institute of Art, 2012.

WEI Changhao, *A guide to 2018 State Council Institutional Reforms*, in “NPC Observer”, 2018, npcobserver.com, last access December 7, 2023.

XIAO Cheng 小成, ZHONG He 钟河, “Zhongguo yishupin paimai shichang si da jiaofeng wenti” 中国艺术品拍卖市场四大交锋问题 (Four major issues in the Chinese art auction market), in *Prosecutorial View*, 2011.24, pp.12-13.

XIAO YANG WIRE 小杨线报, “Dai nin jiangjiang paimai de naxie shi, paimai hang sheli tiaojian ji liucheng” 带您讲讲拍卖的那些事, 拍卖行设立条件及流程 (Talking about the auction, the conditions and procedures for the establishment of the auction enterprise), *Weixin* (account number ymy082912ymy), (mp.weixin.qq.com), last access May 24, 2023.

XINHUA News Agency, “Zhonggong zhongyang yinfa ‘shenhua dang he guojia jigou gaige fang’an” 中共中央印发《深化党和国家机构改革方案》 (The Central Committee of the Communist Party of China has issued the “Plan for Deepening the Reform of Party and State Institutions”), *Zhongguo zhengfu wang*, 2018, (www.gov.cn), last access December 7, 2023.

XINHUA News Agency, *Sotheby’s taps into Chinese mainland market*, in “China Daily”, 2012, www.chinadaily.com.cn, last access December 27, 2023.

XU Lei 徐磊, ZHENG Rui 郑蕊, “Guoji paimai jutou weihe zheji Zhongguo shichang” 国际拍卖巨头为何折戟中国市场 (Why do international auction giants crash in the Chinese market), *Yachang yishu wang*, 2017, (amma.artron.net), last access December 28, 2023.

YU Jinsheng 余锦生, “Zhongguo wenwu yishupin paimai sanshi nian” 中国文物艺术品拍卖30年 (30 years of auction of cultural relics and works of art in China), in *Art Market*, 2023.01, pp.32-37.

ZHANG Mo, *Change of regulatory scheme: China’s New Foreign Investment Law and Reshaped Legal Landscape*, in “Pacific Basin Law Journal”, Vol. 37, No. 1, 2020, pp.179-238.

ZHAO Min, *Analysis and Interpretation of the New Foreign Investment Law of the People's Republic of China*, in "China & WTO Review", Vol. 5, No. 2, 2019, pp.351-386.

ZHAO Peng 赵芑, "Waizi paimai hang kaishi 'he cha'" 外资拍卖行开始“喝茶” (Foreign auction houses begin to 'drink tea'), in *Zhongguo qiyejia 中国企业家*, No. 21, 2013, pp.66-67.

ZHAO Qiang 赵强, "Shichang panzhengqi de wenwu yishupin paimai fengxian dianxing anli diaoyan fenxi" 市场盘整期的文物艺术品拍卖风险典型案例调研分析 (Research and analysis on typical cases of cultural relics and artworks auction risks during market consolidation period), in *China Collective Economy*, 2021.01, pp.131-134.

ZHAO Qiang 赵强, "Wenwu yishupin paimai qiye fengxian suyuan – jiyu paimai jiu fen de duo anli fenxi" 文物艺术品拍卖企业风险溯源—基于拍卖纠纷的多案例分析 (Tracing the risks of cultural relics and artworks auction enterprises: a multiple case analysis based on auction disputes), in *Modern Business Trade industry*, 2021.33, pp.111-115.

ZHENG Hanliang 郑汉良, "Sufubi yu neidi Gehua hezuo qiangxian jinzhu Zhongguo shichang" 苏富比与内地歌华合作抢先进驻中国市场 (Sotheby's cooperates with local Gehua to be the first with a presence in the Chinese market), *RFI*, 2012, (www.rfi.fr/cn), last access December 28, 2023.

ZHENG Yaoqi 郑瑶琦, "Yishupin paimai shichang de guifan wenti yanjiu" 艺术品拍卖市场的规范问题研究 (Research on the regulation of the art auction market), in *The World of Chinese Painting and Calligraphy*, 2017.12, pp.93-94.

ZHENG Zhen, *The legal system of art auction in China*, Singapore: Springer Singapore, 2022.

ZHI Yun, ZHAO Tingting, *Beijing Tianzhu Free Trade Zone achieves rapid growth*, in "China Daily", 2011, www.chinadaily.com.cn, last access December 28, 2023.

ZHOU Qian, ZHANG Zoey, *China's 2021 Negative Lists Widen Market Access for Foreign Investment*, in "China Briefing", 2021, www.china-briefing.com, last access January 12, 2024.

ZHOU Wei 周维, "Woguo wenwu yishupin paimai shichang de falü wenti yanjiu" 我国文物艺术品拍卖市场的法律问题研究 (Research on legal issues in the auction market of cultural relics and artworks in China), in *Legal System and Society*, 2011.03, pp.121-122.