

Doing Business at ART HK: Better, Bigger, Faster, Stronger

August 15, 2011 by Sheppard Mullin

On the verge of becoming an international institution, the recent Hong Kong International Art Fair, known as "ART HK," represents an exciting development in the state of the art world in China. This growth has critical, yet profoundly inspiring, implications upon the international art community. Since its humble beginnings in 2008, ART HK has shown rapid growth with over 260 galleries from over 38 countries participating in the recent fair. Momentum of ART HK's success and prominence was recently propelled by an announcement that MCH Swiss Exhibition, owners of Art Basel, the world's biggest contemporary art fair, have just signed an agreement with Asian Art Fairs, the owners of ART HK, to purchase a majority stake in ART HK, which went into effect on July 1, 2011.

This tactical move, combined with rising auction revenue, favorable tax considerations, a newfound interest in art as an asset class, and interest based on national identity, cements China's role in the global art market.

It was recently reported in *Artprice.com*, a French-based data service, that China ranks number one in fine art auction revenue, surpassing the U.S. Moreover, the contemporary Chinese auction market has grown from just below \$1 million in 2002 to \$167.4 million in 2010. Prominent auction houses, Sotheby's and Christie's Hong Kong have seen sales turnover increase by 300% between 2009 and 2010. The total auction sales value (all categories) for both auction houses in Hong Kong rose by 122 percent, from US\$658 million in 2009, to US\$1.46 billion in 2010. Even mainland Chinese state-owned auction houses, such as

Poly and Guardian, have seen their Chinese sales seasons grow from \$397 million in 2009 to \$2.2 billion in 2010. This year is also set to become a record year in light of the sale of the Ullén Collection at Sotheby's Hong Kong in April 2011.

The art world focus in Hong Kong, as opposed to mainland China, may have something to do with the tax advantages it provides. While imported art is taxed by mainland China at a steep 34 percent, Hong Kong offers collectors the advantage of more relaxed sales tax and export policies. Organizers of ART HK are aggressively promoting the incredible tax advantages, since there are no tariffs on the import or export of art as it relates to the initial sale at ART HK.

A newfound interest in art as an asset class has also prompted growth in the Chinese art market. The affluent in China have begun to invest in art as an asset, traditionally viewed as a Western luxury. Observers note that the proliferation of art in China is the steady result of a rise in investment-oriented purchases of art, bolstered by China's growing wealth, and not merely spontaneous overnight purchases. In response to this, at least three Chinese financial institutions have set up hedge funds investing in Chinese art. Notably there have been a succession of Chinese clients who have been spending millions of yuan recently at New York auctions.

National identity and pride is showing itself to be another significant factor behind the surge of Chinese interest in the art world. Such national pride is evident by a report released by *Artprice.com* on March 19, 2011 showing that 2010 is the first year that four Chinese artists (Fu Baishi, Qi Baishi, Xu Beihong, and Zhang Daqian) have ranked in the top ten of global art auction earners.

In China, the impact of art fair culture through ART HK is no different than in other emerging markets. Art Basel is itself a pioneer for developing new markets. In fact, in 2002, the decision to open Art Basel Miami Beach in the U.S. was partly to explore the emerging Latin American market. A roaring success –

Art Basel Miami provides a new platform for emerging dealers, contemporary artists, new collectors and the art world cognoscenti.

Popularity of the Chinese market for the international art community during ART HK has clearly prompted auction houses to be active. For example, Christie's has a partnership with ART HK to hold its spring auctions in the same venue and at the same time as ART HK with sales of art, antiques, wines, watches and jewels. Other auction houses, particularly smaller Asian ones, are similarly following suit with auction sales planned at hotels around town during ART HK. On May 23, 2011, ART HK and *ArtTactic* even announced in two art market reports (*China Contemporary Art Market Report 2011* and *US & Europe Contemporary Art Market Report 2011*) that confidence in the Chinese contemporary art market greatly exceeds confidence in its US and European counterparts. In fact, the reports claim that 75% of art industry experts indicate that the Chinese market will continue to grow over the next six months, compared to only 36% of art experts indicating growth in the US and European contemporary art markets.

Hong Kong offers a range of comforts for those doing business in the Hong Kong art market. In addition to the tremendous tax advantages in the importation or exportation of art in Hong Kong, doing business in Hong Kong is made easier by the fact that English is commonly spoken and that Hong Kong adheres to international standards of business law, with a great degree of transparency in transactions. Moreover, in contrast to Shanghai or Beijing, the logistics of obtaining shipments in and out of Hong Kong do not typically involve lengthy turnaround times.

When exporting artwork from Hong Kong, buyers must ensure to complete and submit an export declaration in Hong Kong, as well as an import declaration in the destination country, where import duties and taxes are typically chargeable in the destination country. Where the buyer is shipping the artwork to the same country that the seller originally exported it to Hong Kong from, it may be possible

for the buyer to avoid payment of import customs duty in the destination country under a "returned goods relief" procedure, as long as the seller can provide the buyer with the relevant proof of original export.

There are many factors contributing to the strength of China's position in the international art market, including its beneficial tax considerations, remarkable auction revenue, a newfound interest in art within China as either an investment or because of national identity and a global interest in contemporary Chinese artists. With offices in Shanghai and Beijing, these are issues encountered frequently here at Sheppard Mullin. Overall the future of the Chinese art world looks optimistic, and it is clear that the impact of the art fair culture, especially vis-à-vis ART HK, has a crucial role to play in this continued growth.