

# Cultural heritage assets

**Santiago Martín Pérez**

Deputy General Manager

Mapfre España

## Introduction

Cultural heritage is understood to be the assets making up Spain's Historical Heritage that have been accorded a special classification under our country's national legislation. Spain's Spanish Historical Heritage Act [[Ley 16/1985 de Patrimonio Histórico Español](#)] (the Act) contains three levels of protection, and Cultural Heritage is placed at the highest level. Cultural heritage assets also include real property located anywhere in Spain not owned by the central government that is protected in that category under the legislation of Spain's regional authorities, the Autonomous Communities.

The Central Government protects that property against unlawful looting and export. The Act contains special provisions, and the public authorities are in charge of preserving, stabilising, and improving properties classified as cultural heritage.

The basic question that needs to be addressed to insure these assets properly, whether under property insurance or under transport insurance, is assessing their value. This is no easy task for assets of this kind, since in most cases their cultural value is incalculable and monetary compensation is small consolation.

The only way around this impediment is what is referred to in the insurance trade as an agreed amount. That is, the owner and the insurer come to a consensus about the value to be indemnified if the insured asset is lost. This prevents the rule of proportional insurance from coming into play due to underinsurance, to the detriment of the owner.

As of 2020 Spain had 17,981 registered real-estate properties classified as Cultural Heritage properties. The number of these properties is plotted in the chart shown below, from the [Anuario de Estadísticas de Cultura](#) [*Cultural Statistics Yearbook*] published by the Ministry of Culture and Sport.

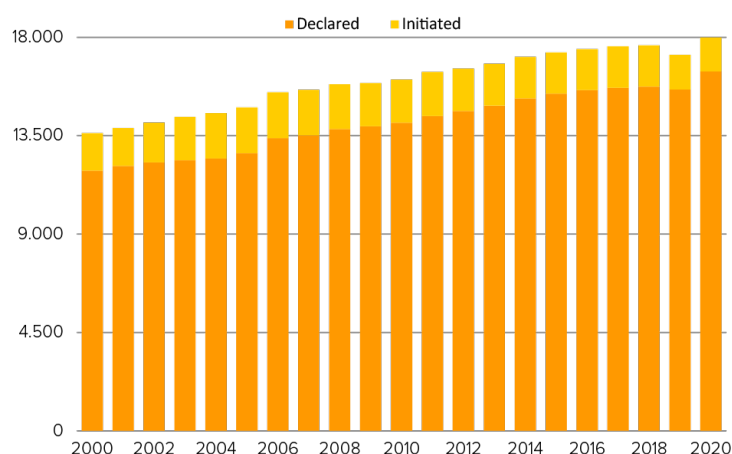


Figure 1. Chart: Registered real-estate properties classified as Cultural Heritage (Absolute values).

Source: Ministry of Culture and Sport. General Sub-directorate of Registers and Historical Heritage Documentation.

In 2020 a total of 23,342 movable properties had been registered as Cultural Heritage.

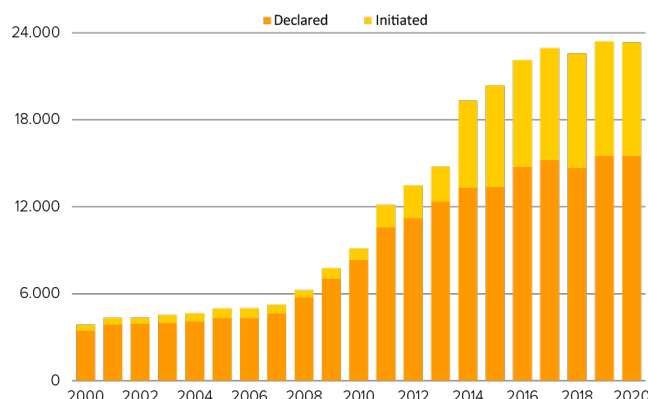


Figure 2. Chart: Registered movable properties classified as Cultural Heritage (Absolute values).

Source: Ministry of Culture and Sport. General Sub-directorate of Registers and Historical Heritage Documentation.

These assets have been classified into the following categories:

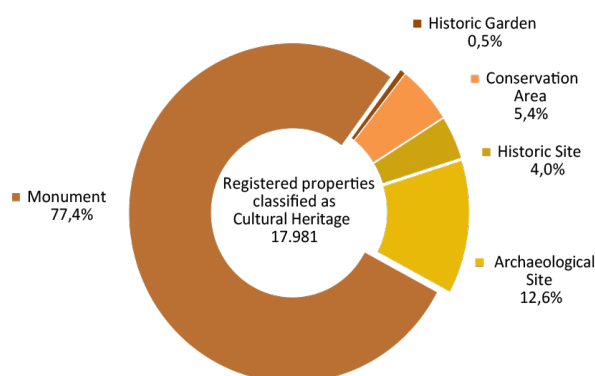


Figure 3. Chart: Registered real-estate properties classified as Cultural Heritage by category. 2020 (Percentage)

Source: Ministry of Culture and Sport. General Sub-directorate of Registers and Historical Heritage Documentation.

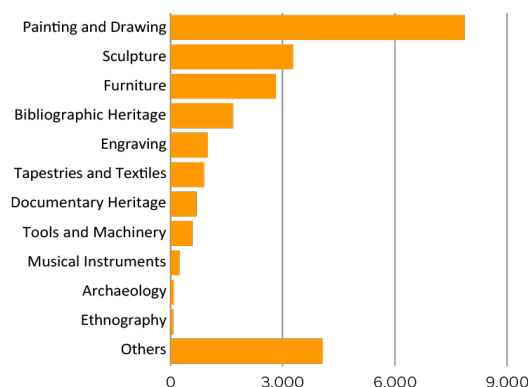


Figure 4. Chart: Registered movable properties classified as Cultural Heritage by category. 2020 (Absolute values).

Source: Ministry of Culture and Sport. General Sub-directorate of Registers and Historical Heritage Documentation.

## The Central Government's insurance coverage of cultural heritage assets

Now that we have described what is meant by cultural heritage, before moving on to the realm of private insurance, it is important to explain what the Central Government's insurance scheme for cultural heritage assets is.

Spain's Royal Decree implementing Additional Provision to the Historical Heritage Act [*Real Decreto 1680/1991*] stipulates that the Central Government will provide a State Guarantee: coverage for destruction, losses, theft, or damage involving works of art with relevant technical, scientific, paleontological, archaeological, ethnographic, historical, or artistic interest on loan, whether temporarily or definitively, to museums, libraries, or archives for exhibition to the public. Public or private museums, libraries, archives, and the borrowers of these works may apply to the Ministry of Culture for insurance coverage of works with relevant cultural interest by the Central Government.

That Royal Decree sets forth the application requirements. One of the main requirements is for borrowers to provide information concerning the insurance purchased to cover sums not covered by the Central Government's insurance scheme.

The insurance scheme consists of the Central Government's commitment to provide compensation for destruction, losses, theft, or damage involving the works listed on the application having in mind the values and conditions stated on the application. There is no cover for destruction, loss, theft, or damage of works caused by:

- An inherent vice in or intrinsic characteristic of the insured work.
- The mere passage of time.
- Deliberate acts or omissions by the lender of the work or by the lender's employees or agents.
- Seizure, retention, or embargo of the work or any similar measure ordered by a competent authority at the request of a third party.
- Nuclear explosions.

There are limits to the compensation guaranteed by the Central Government depending on the value of the works.

## Private insurance for cultural heritage assets

We have already seen what cultural heritage assets are and how the Central Government may provide coverage under the Central Government's insurance scheme, charged to the general national budget. Let us now look at the contribution private insurance can make for these categories of assets.

Two main insurance covers need to be considered for proper coverage of these assets.

- Property damage insurance, to cover damage both to the structure of the museum, library, or similar building and to the content of those buildings (movable property located inside, paintings, tapestries, books, etc.).
- Transport insurance, to cover transport of the assets and exhibits, both from the lender's side and from the borrower's side.

The basic question that needs to be addressed to insure these assets properly, whether under property insurance or under transport insurance, is assessing their value. This is no easy task for assets of this kind, since in most cases their cultural value is incalculable and monetary compensation is small consolation.

The only way around this impediment is what is referred to in the insurance trade as an agreed amount. That is, the owner and the insurer come to a consensus about the value to be indemnified if the insured asset is lost. This prevents the rule of proportional insurance from coming into play due to underinsurance, to the detriment of the owner.

An agreed amount can only be reached with the help of qualified and expert appraisers, to set the insured sum as close to the actual value as possible and ensure that if an asset needs to be restored, the insured sum is sufficient to cover the work needed to restore the asset to its former condition. In many cases returning the asset to its original condition may not even be completely viable, because present-day materials will have to be used in historical buildings, while restoration of artworks requires human involvement, immediately depreciating the asset. The depreciation is sometimes amenable to monetary assessment, but in many other cases the most probable outcome is a loss to the historical heritage that is hard to measure.

Just as specialists play a crucial role in assessing the insurable value, their role in case of a loss is equally vital, since the pool of professionals capable of examining, evaluating, and undertaking restoration of damaged cultural heritage assets is extremely small.

## Risks covered by cultural heritage asset insurance

Covers for these assets in the marketplace tend to be fairly standard. The most common covers are considered below.

### All Risks Property Damage Cover

By definition property damage policies cover material losses and direct damage suffered by the insured object caused by any sudden, accidental event.

Cultural heritage asset insurance usually takes the form of an All Risks policy rather than a named perils policy that may have gaps in coverage and leave certain unforeseen circumstances unprotected.

The main characteristic of these policies is that they enumerate only perils that are excluded, chief among which are:

- Bad faith on the part of the insured.
- Fraud, misconduct, or gross negligence on the part of the insured.
- War and acts by the armed forces in peacetime.
- Atomic and nuclear risks.
- Loss or damage caused by fungi, bacteria, or mould.
- Sanctions and pandemics.
- Perils covered by Consorcio de Compensación de Seguros.

Furthermore, policies for works of art ordinarily include special clauses aimed at defining and resolving scenarios that could arise in the event of a loss.

The most common of these clauses are:

- **Museums and collections clause**, which provides that the insured artworks will continue to be the property of the owner of the work just before the loss irrespective of the amount of the damage and that the indemnity may not exceed the insured sum agreed by the parties.

- **Photographic artwork clause**, which stipulates the terms of compensation in the case of historical photographs for which the negative exists, in which case compensation will cover the cost of replacing the photograph and possible depreciation or lost value assessed by the claims adjuster.

Where no negative exists, the indemnity paid for the photograph will be based on the agreed amount stated in the policy.

- **Restoration clause**, which keeps coverage of the asset in effect while it is undergoing restoration, including transport to and from the studio.
- **Lost artistic value clause**, providing that for purposes of indemnity the insurer will take into account any depreciation/lost artistic value suffered by the artwork as a result of the damage.
- **Recovery clause**, providing that in case of recovery of stolen artworks in whole or in part at any time, the owner will be entitled to retake possession of the works and reimburse the insurer for the indemnity previously paid less any damage the work might have suffered.
- **Salvage costs clause**, providing for indemnification for expenses that were aimed at minimising damage, even if they were ineffective.
- **Professional fees and expenses cover**, providing for compensation for the costs involved in determining the origin, cause, and valuation of the loss. Certain types of firms or professionals may be named by mutual agreement in view of the important role they play in this kind of insurance.
- **Demolition and debris removal costs.**
- **Transport in case of emergency.**

## Transport insurance

Transport insurance is sometimes purchased as a supplement to property damage insurance, but in many cases, it is the primary insurance cover for cultural heritage assets. The property insurance and transport insurance covers are commonly interconnected or even contained in a single policy.

When what is being insured is a building, the usual cover is property damage insurance. Insurance coverage for the content of a temporary exhibition is normally obtained through transport insurance policies, since the works have to be insured during transport from the point of departure, handling at the exhibition site, and return transport. These are known as wall-to-wall policies.

Insurance coverage for the content of permanent exhibitions may be arranged either through property damage policies or transport policies. As a rule, the choice depends on the significance of the risk of transport (for exhibitions that go on tour) or the risk of damage (where the building structure also needs to be insured).

The covers in both property damage insurance and transport insurance tend to be quite similar, though in the case of the latter English terminology tends to be used for the all risks covers. Transport insurance thus refers to:

- *Institute Cargo Clauses A*, the all risks property damage cover for works during transport and throughout the time of the stay.

- *Institute War & Strikes Clauses*, covering damage caused by acts of war, terrorism, and civil strife, depending on the exhibition site.

Unlike property insurance, in which damage from violence caused by acts of terrorism or the armed forces in peacetime are covered by Consorcio de Compensación de Seguros, the transport insurance line does not benefit from coverage by Consorcio, hence these perils have to be covered in the policies themselves.

This is an important point to bear in mind, because acts of terrorism might be thought to be covered under our transport insurance policy in the belief that these policies benefit from coverage by Consorcio, or the policyholder may not realise that our property damage insurance has a 7% excess in case of terrorism and natural catastrophes (thinking that these risks are covered by the policy).

The clauses with risk covers used in the property insurance policies referred to above are standard, and the same ones can be used in transport insurance policies.

The difficulty in managing and insuring buildings or artistic heritage of this kind lies in valuation, a difficulty already mentioned above, and in the high value of the insured sums, making insurance coverage a complex issue. The Central Government's insurance scheme can sometimes serve as a first level of protection supplemented by property damage or "wall-to-wall" policies. The scope of these two insurance instruments in the case of partial losses is not always entirely distinct.