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AUCTION LAW OF THE PEOPLE'S REPUBLIC OF CHINA

e00167

Standing Committee of the National People's Congress

Auction Law of the People's Republic of China

(Adopted at the 20th session of the Standing Committee of the Eighth National People's Congress on July 5th, 1996, promulgated by Order No. 70 of the President of the People's Republic of China on July 5th, 1996, and effective as of January 1st, 1997; Revised at the 11th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on August 28th, 2004)

ContentsChapter I General Provisions

Chapter II Objects of Auction

Chapter III Parties to Auction

Section 1 Auctioneer

Section 2 Client

Section 3 Bidder

Section 4 Vendee

Chapter IV Auction Procedures

Section 1 Authorization of Auction

Section 2 Announcement of Auction and Display of Objects of Auction

Section 3 Execution of Auction

Section 4 Commission

Chapter V Legal Liability

Chapter VI Supplementary Provisions

Chapter I General Provisions

Article 1

This Law is formulated with a view to standardizing acts of auction, maintaining order of auction and protecting the lawful rights and interests of all the parties in activities of auction.

Article 2

This Law applies to auction activities conducted by auction enterprises within the territory of the People's Republic of China.

Article 3

Auction refers to the means of selling and buying by which specific articles or goods or property rights are transferred through public bidding to the bidder that offers the highest price.

Article 4

The parties in activities of auction shall observe the pertinent laws and administrative rules and regulations and adhere to the principles of openness, fairness, justice and good faith.

Article 5

The department in charge of administration of the auction trade under the State Council shall conduct supervision over and administration of the auction trade throughout the country.

The departments in charge of administration of the auction trade under the people's governments of provinces, autonomous regions, municipalities directly under the Central Government, or cities divided into districts shall conduct supervision over and administration of the auction trade in their respective administrative regions.

Chapter II Objection of Auction

Article 6

Objects of auction shall be articles or goods or property rights which are owned by the client or which the client may dispose of according to the law.

Article 7

Articles or goods or property rights banned for sale by laws or administrative rules and regulations shall not be made objects of auction.

Article 8

As regards the articles or goods or property rights whose transference is subject to examination and approval as prescribed by laws or regulations of the State Council, the parties concerned shall, before their auction, conduct the formalities for the examination and approval according to the law.

As regards the cultural relics under authorization for auction, they shall, before their auction, be subject to appraisal and permission given according to the law by the administrative department for cultural relics at the locality of the auctioneer's residence.

Article 9

As regards articles or goods confiscated or used to offset tax money or fines by the administrative organs of the State in conformity with law and other articles or goods, all of which should be auctioned through authorization as prescribed by regulations of the State Council, the auction shall be conducted by auctioneers designated by the people's governments of the provinces, autonomous regions or municipalities directly under the Central Government or of the cities divided into districts, where such property is located.

Auction of articles or goods confiscated or used to offset tax money or fines by the People's Courts according to the law and other articles or goods that are retrieved but cannot be returned to their owners shall be governed by the provisions of the preceding paragraph.

Chapter III Parties to Auction

Section 1 Auctioneer

Article 10

An auctioneer refers to an enterprise legal person that is established in conformity with this Law and the Company Law of the People's Republic of China and engaging in activities of auction.

Article 11

Auction enterprises may be established in cities divided into districts. Establishment of an auction enterprise shall be subject to examination, verification and approval 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 department for industry and commerce for obtaining a business license.

Article 12

To establish an auction enterprise, the following conditions shall be satisfied:

(1)

having a registered capital of RMB one million yuan or more;

(2)

having its own name, organizational structure, premises and Articles of Association;

(3)

having auction masters and other employees commensurate with the trade;

(4)

having rules for the auction trade that accord with the provisions of this Law and other relevant laws;

(5)

observing the regulations of the State Council relating to development of the auction trade; and

(6)

other conditions as prescribed by laws or administrative rules and regulations.

Article 13

An auction enterprise engaging in the auction of cultural relics shall have a registered capital of RMB 10 million yuan or more and employees with the professional knowledge about auction of cultural relics.

Article 14

Auction activities shall be presided over by auction masters.

Article 15

An auction master shall fulfill the following requirements:

(1)

having acquired a 3-year college education or a higher education and professional knowledge about auction;

(2)

having worked two years at least in an auction enterprise; and

(3)

being a person of good conduct.

Anyone, who has been discharged from public employment or whose qualification certificate of auction master been revoked for less than five years or who has been subject to criminal punishment for intentional offense, shall not be employed as an auction master.

Article 16

Examination for qualification of auction masters shall be arranged unifiedly by the Auction Trade Association. Persons who pass the examination shall be issued qualification certificates for auction masters by the aforesaid association.

Article 17

The Auction Trade Association is a public organization legal person established in conformity with law and a self-disciplined organization for the trade of auction. The Auction Trade Association shall, pursuant to this Law and its own Articles of Association, conduct supervision over auction enterprises and masters.

Article 18

An auctioneer shall be entitled to request his clients to make clear the origins and defects of the objects of auction.

An auctioneer shall make defects of the objects of auction known to bidders.

Article 19

An auctioneer shall have the duty of taking care of the articles or goods delivered by his clients to him for auction sale.

Article 20

After accepting entrust, the auctioneer may not entrust another auctioneer to perform the auction without prior consent of his client.

Article 21

An auctioneer shall keep the identity of his client or vendee confidential if so requested.

Article 22

An auctioneer and his employees may not get involved as bidders in the auction sale which is arranged by themselves and may not entrust another to act as a bidder on their behalf.

Article 23

An auctioneer may not put his own articles or goods or property rights on an auction sale which is arranged by himself.

Article 24

When an auction transaction is concluded, the auctioneer shall deliver the money paid for the objects of auction to the clients as agreed and transfer the objects of auction to the vendees as agreed.

Section 2 Client

Article 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.

Article 26

A client may conduct the formalities for authorization of auction by himself or through his agent.

Article 27

A client shall make clear the origins and defects of the objects of auction to the auctioneer.

Article 28

A client shall be entitled to determine the reservation price for the objects of auction and require the auctioneer to keep it confidential.

As regards auction of State assets, assessment of which is required pursuant to law or regulations of the State Council, assessment shall be made by the appraisal institution established according to the law, and reservation prices for the objects of auction shall be determined on the basis of the assessment made.

Article 29

A client may withdraw the objects of auction before the auction sale commences. In such a case, the client shall pay to the auctioneer the expenses as agreed; in the absence of such an agreement, the client shall pay to the auctioneer a reasonable amount of expenses.

Article 30

A client may not participate in bidding and may not authorize others to bid on his behalf.

Article 31

Where it is agreed that the objects of auction shall be transferred by the client, after the auction transaction is concluded, the client shall transfer the objects of auction to the vendees.

Section 3 Bidder

Article 32

A bidder refers to a citizen, legal person or other organization that participates in the bidding for objects of auction.

Article 33

Where requirements for selling and buying of objects of auction are provided for by law or administrative rules and regulations, a bidder shall fulfill those requirements.

Article 34

A bidder may take part in bidding by himself or authorize his agent to participate in it.

Article 35

A bidder shall be entitled to be informed of defects of the objects of auction and be entitled to inspect them and to have access to information relating to them.

Article 36

Once a bidder bids for a price, it shall be irrevocable, and it shall lose its binding force as soon as another bidder offers a higher price.

Article 37

Bidders or bidders and auctioneers may not collude with each other out of ill intention to harm the interests of others.

Section 4 Vendee

Article 38

A vendee refers to a bidder who purchases an object of auction at the highest price offered by him.

Article 39

A vendee shall pay for the object of auction at the price agreed, in the case of failing that, he shall bear liabilities for default or, with the consent of the client, the auctioneer may put the object of auction up at auction again.

In case the object of auction is auctioned again, the former vendee shall pay the commission that he himself and the client should pay for the first auction sale. Where the price for the second auction sale is lower than that for the first one, the former vendee shall make up the difference.

Article 40

In case a vendee fails to obtain the object of auction as agreed, he shall be entitled to request the auctioneer or client to bear liabilities for default.

Where a vendee fails to collect the object of auction as agreed, he shall pay the storage charge incurred thereby.

Chapter IV Auction Procedures

Section 1 Authorization Auction

Article 41

When a client authorizes auction of articles or goods or property rights, he shall provide his identity certificate and, as required by the auctioneer, the ownership certificate for the objects of auction, or certificates and any other materials testifying that he may dispose of the objects of auction according to the law.

Article 42

The auctioneer shall verify the pertinent certificates and materials offered by the client. When an auctioneer accepts authorization, he shall enter into a contract for authorization of auction with the client.

Article 43

The auctioneer may have the objects of auction evaluated, if he deems it necessary.

In case the conclusion of the expert evaluation does not conform to the descriptions of the objects of auction as specified in the contract for authorization of auction, the auctioneer shall be entitled to demand modification or cancellation of the contract.

Article 44

In a contract for authorization of auction, the following particulars shall be specified:

(1)

the name or title and address of the client and auctioneer;

(2)

title, specifications, quantity and quality of the object of auction;

(3)

reservation price offered by the client;

(4)

time and place of the auction;

(5)

time and manner of delivery or transference of the object of auction;

(6)

commission, manner and time limit for its payment;

(7)

manner and time limit for payment of the purchase;

(8)

liabilities for breach of the contract; and

(9)

other matters as agreed upon between parties.

Section 2 Announcement of Auction and Display of Objectives of Auction

Article 45

The auctioneer shall announce the opening of an auction seven days before the date of auction.

Article 46

The following particulars shall be specified in the announcement of auction:

(1)

time and place of auction;

(2)

objects of auction;

(3)

time and place for display of the objects of auction;

(4)

formalities supposed to conduct for participating in bidding; and

(5)

other matters in need of announcement.

Article 47

Announcement of an auction shall be released through newspapers or other media.

Article 48

The auctioneer shall display the objects of auction before the auction sale and provide pertinent information and conditions for bidders to check the objects of auction.

The duration of display shall be at least two days.

Section 3 Execution of Auction

Article 49

The auction master shall announce the auction rules and points for attention before the auction sale commences.

Article 50

Where there is no reservation price for an object of auction, the auction master shall make it clear prior to the auction sale.

Where there is a reservation price for an object of auction and the highest price offered by a bidder does not reach the reservation price, the offer shall be non-binding force and the auction master shall cease the auction sale of the aforesaid object.

Article 51

When the highest offer is confirmed by the auction master by knocking the gavel or any other way of public confirmation, the auction transaction is concluded.

Article 52

After a transaction is concluded, the vendee and the auctioneer shall affix a written confirmation.

Article 53

When an auction sale is under way, minutes of auction shall be made and signed by the auction master and the recorder, as well as the vendee if a transaction is concluded.

Article 54

The auctioneer shall properly keep the complete set of account books pertaining to business operation, the auction minutes and any other relevant materials.

The period for maintaining the account books, auction minutes and other relevant materials as specified in the preceding paragraph shall be at least five years, counting as of the date of expiration of the contract for authorization of auction.

Article 55

Where there is necessity to make changes in certificates or licenses or to transfer ownership of property rights, pursuant to law, with regard to the objects of auction, the client and vendee shall conduct the formalities to the relevant administrative organ by producing the transaction certificate prepared by the auctioneer and relevant materials.

Section 4 Commission

Article 56

The client and vendee may enter into an agreement with the auctioneer on the proportion of commission.

Where a transaction is concluded in the absence of such an agreement, the auctioneer may charge a commission of not more than five percent of the transaction price from the client and the vendee respectively. The proportion of commission to be charged shall be determined according to the principle that it is in inverse proportion to the transaction price.

In case no transaction is concluded, the auctioneer may charge the client the expenses as agreed. In the absence of an agreement, the auctioneer may charge the client a reasonable amount for the expenses of auction.

Article 57

With respect to the auction of articles or goods specified in Article 9 of this Law, where a transaction is concluded, the auctioneer may charge the vendee a commission of not more than five percent of the transaction price. The proportion of commission to be charged shall be determined according to the principle that it is in inverse proportion to the transaction price.

In case no transaction is concluded, the provisions of Paragraph 3, Article 56 of this Law shall apply.

Chapter V Legal Liability

Article 58

Where a client, in violation of the provisions of Article 6 of this Law, authorizes auction of articles or goods or property rights that he does not own or he has no right to dispose of according to the law, he shall bear liability in jure. Where the auctioneer knowingly auctions articles or goods or property rights that the client does not own or has no right to dispose of according to the law, he shall bear joint and several liability.

Article 59

Where a State organ, in violation of the provisions of Article 9 of this Law and without permission, disposes of articles or goods for the auction of which it should authorize the auctioneer designated by the people's government of the province, autonomous region, municipality directly under the Central Government or of the city divided into districts where such property is located, the persons who are directly in charge and other persons who are directly responsible for the offense shall be given administrative sanctions according to the law, where losses have been caused to the State, they shall be liable for compensation.

Article 60

Where anyone, in violation of the provisions of Article 11 of this Law, establishes an auction enterprise without permission and registration, the enterprise shall be prohibited by the administrative department for industry and commerce, the illegal gains shall be confiscated and he may also be fined at least once but not more than five times the amount of the illegal gains.

Article 61

Where an auctioneer or client, in violation of the provisions of Paragraph 2, 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 be entitled 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.

Where an auctioneer and client declare, before the auction sale, that they cannot guarantee the genuineness or quality of an object of auction, they shall not be liable for the warrant of the defects.

In the absence of such declaration, the period for limitation of action for claim of compensation shall be one year, counted as of the day the party concerned came to know or should have known that his rights were infringed upon. The period for limitation of action for claim of compensation for personal or property damage occasioned by defects in an object of auction shall be governed by the pertinent provisions of the Law of the People's Republic of China on Product Quality and other laws.

Article 62

Where an auctioneer or any of his employees, in violation of the provisions of Article 22 of this Law, participates in bidding or authorizes another to bid on his behalf, the administrative department for industry and commerce shall give the auctioneer a disciplinary warning, and may impose on him a fine of not less than once but not more than five times the commission for auction. If the violation is gross, his business license shall be revoked.

Article 63

Where an auctioneer, in violation of the provisions of Article 23 of this Law, puts his own articles or goods or property rights up at auction that is arranged by himself, the administrative department for industry and commerce shall confiscate his earnings from the auction sale.

Article 64

Where a client, in violation of the provisions of Article 30 of this Law, participates in bidding or authorizes another to bid on his behalf, the administrative department for industry and commerce may impose on him a fine of not more than 30% of the transaction price.

Article 65

Where bidders or bidders and auctioneers, in violation of the provisions of Article 37 of this Law, collude with each other out of ill intention and thus cause losses to another, the auction shall be invalid and they shall be liable for compensation according to the law. The administrative department for industry and commerce shall impose on the bidders that participate in such collusion a fine of not less than 10% and not more than 30% of the highest price offered; it shall impose on the auctioneers that participate in such collusion a fine of not less than 10% and not more than 50% of the highest price offered.

Article 66

Where an auctioneer collects commission in violation of the provisions in Section 4 of Chapter IV of this Law pertaining to the proportion of commission, he shall return the part that exceeds the stipulated proportion to the client and vendee. The price control authorities may impose on the auctioneer a fine of not less than once and not more than five times the commission for auction.

Chapter VI Supplementary Provisions

Article 67

This Law shall apply to foreign nationals, foreign enterprises and organizations that authorize auction or participate in bidding within the territory of the People's Republic of China.

Article 68

Auction enterprises, established before the implementation of this Law, that do not satisfy the conditions prescribed in this Law shall, within the prescribed time limit, satisfy such conditions; as regards those that fail to satisfy the aforesaid conditions within the time limit, the administrative department for industry and commerce shall cancel their registration and revoke their business licenses. Specific measures in this regard shall be formulated separately by the State Council.

Article 69

This Law shall be implemented as of January 1st, 1997.

Standing Committee of the National People's Congress 2004-08-28

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