

Auction Law of the PRC – Full English Translation (1996, Amended 2004)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Chapter I — General Provisions

Article 1 — This Law is enacted for the purposes of regulating auction activities, maintaining the order of the auction market, protecting the lawful rights and interests of all parties involved in auction activities, and holding off unfair competition.

Article 2 — This Law shall apply to auction activities conducted by auction enterprises established within the territory of the People's Republic of China.

Article 3 — Auction means the manner of sale and purchase by which specific articles or property rights are transferred to the highest bidder through open competitive bidding.

Article 4 — Auction activities shall abide by the relevant laws and administrative regulations and follow the principles of openness, fairness, justice and good faith.

Article 5 — The State Council shall be responsible for formulating the measures for the administration of auction enterprises specializing in the auction of cultural relics, artworks, and other property.

Article 6 — It is prohibited to establish auction enterprises without undergoing the examination and approval registration formalities according to law. It is prohibited for others to engage in auction business in the name of an auction enterprise without undergoing procedures such as registration.

Chapter II — Object of Auction

Article 7 — The object of auction shall be the articles or property rights of the client that are disposed of by auction according to law, or the property the State administrative organs confiscate, confiscate according to law, and are suitable for auction, or the ownerless property suitable for auction, and other articles or property rights suitable for auction.

Article 8 — Where laws or administrative regulations prohibit the sale and purchase of articles or property rights, they shall not be the object of auction.

Article 9 — Articles or property rights whose transfer is subject to approval according to laws or administrative regulations shall, prior to auction, go through the approval formalities according to law.

Where the auction of cultural relics requires appraisal or permission according to law, the appraisal or permission formalities shall be completed prior to auction.

Chapter III — Parties to Auction

Section 1 — Auctioneer

Article 10 — An auctioneer shall be an enterprise legal person established in accordance with this Law and the Company Law of the People's Republic of China and engaged in auction activities.

Article 11 — An auction enterprise may be established in a city divided into districts. The establishment of an auction enterprise shall be subject to the examination and approval of the competent department of the people's government of the province, autonomous region or municipality directly under the Central Government of the place where it is to be established, and shall be registered with the administrative department for industry and commerce to obtain a business licence.

Article 12 — To establish an auction enterprise, the following conditions shall be met:

- (1) having a registered capital of not less than RMB 1,000,000;
- (2) having its own name, organisational structure, premises and articles of association;
- (3) having auctioneers and other staff members commensurate with its business;
- (4) having rules for auction business that comply with this Law and other relevant laws;

(5) complying with other conditions prescribed by the State Council.

Where an auction enterprise deals in the auction of cultural relics, it shall have a registered capital of not less than RMB 10,000,000 and have personnel with professional knowledge of cultural relics.

Article 13 — An auctioneer shall be an auction enterprise that has passed the qualification examination, has been registered by the competent auction industry association, and has obtained the qualification certificate for the auction industry.

Article 14 — Auction activities shall be presided over by an auctioneer.

Article 15 — An auctioneer shall have the right to request the client to state the source and defects of the object of auction. The auctioneer shall state the defects of the object of auction to the bidders.

Article 16 — An auctioneer shall properly keep the articles delivered by the client for auction.

Article 17 — An auctioneer shall not conduct auction on articles or property rights delivered by the client that are not allowed by the client to be auctioned.

Article 18 — An auctioneer and its staff members shall not participate in bidding in the auction activities organised by themselves as bidders, and shall not entrust others to bid on their behalf.

Article 19 — An auctioneer shall not auction its own articles or property rights in the auction activities organised by itself.

Article 20 — When the auction is completed, the auctioneer shall deliver the auction price to the client in accordance with the agreement, and shall, in accordance with the agreement, transfer the object of auction to the buyer.

Section 2 — Client

Article 21 — A client means a citizen, legal person or other organisation that entrusts an auctioneer with the auction of articles or property rights owned by or lawfully disposed of by the client.

Article 22 — A client shall have the right to determine the reserve price, or the opening price, of the object of auction and require the auctioneer to keep it confidential.

Article 23 — A client shall not participate in bidding, and shall not entrust others to bid on its behalf.

Article 24 — After the auction is completed, the client shall deliver the object of auction to the buyer in accordance with the agreement.

Article 25 — A client may settle accounts on its own with the buyer for the auction price, or may settle accounts with the buyer through the auctioneer as agreed upon.

Section 3 — Bidder

Article 26 — A bidder means a citizen, legal person or other organisation that participates in the bidding for the object of auction.

Where laws or administrative regulations provide restrictions on the sale and purchase of the object of auction, the bidder shall meet the prescribed conditions.

Article 27 — A bidder may bid on its own or may entrust an agent to participate in the bidding.

Article 28 — A bidder shall have the right to know the defects of the object of auction and shall have the right to inspect the object of auction and consult the relevant auction materials.

Article 29 — Once a bidder makes a bid, it shall not withdraw it. The bid shall be invalid when another bidder makes a higher bid.

Article 30 — Bidders shall not collude with each other, and shall not collude with the auctioneer in bidding.

Section 4 — Buyer

Article 31 — A buyer means a bidder who purchases the object of auction with the highest bid.

Article 32 — The buyer shall pay the price of the object of auction in accordance with the agreement; where the price is not paid in accordance with the agreement, it shall bear the liability for breach of contract, or the auctioneer may, with the consent of the client, re-auction the object of auction.

Where the object of auction is re-auctioned, the original buyer shall pay the commission that should be paid by the client for the first auction. Where the auction price of the re-auction is lower than that of the original auction, the original buyer shall make up the difference.

Article 33 — Where the buyer fails to obtain the object of auction in accordance with the agreement, it shall have the right to request the auctioneer or the client to bear the liability for breach of contract. Where the buyer fails to take delivery of the object of auction in accordance with the agreement, it shall pay the resulting storage and custody fees.

Chapter IV — Auction Procedures

Section 1 — Entrustment of Auction

Article 34 — Where a client entrusts an auctioneer to auction articles or property rights, it shall provide proof of identity and proof of its ownership of the object of auction or proof that it may dispose of the object of auction according to law, as well as other materials.

Article 35 — An auctioneer shall verify the relevant documents and materials provided by the client. Where an auctioneer accepts the entrustment, it shall sign a written contract for entrustment of auction with the client.

Article 36 — An auctioneer may request the client to state the source and defects of the object of auction. The client shall truthfully state the source and defects of the object of auction to the auctioneer. Where the client fails to state the defects and thereby causes damage to the buyer, the buyer shall have the right to claim compensation from the auctioneer; where the client is at fault, the auctioneer shall have the right of recourse against the client.

Article 37 — A client may determine the reserve price of the object of auction. The reserve price may not be changed after it is determined.

Where the reserve price has not been reached, the auctioneer shall not sell the object of auction. The auctioneer shall keep the reserve price confidential.

Section 2 — Auction Announcement and Display

Article 38 — An auctioneer shall issue an auction announcement seven days before the auction date.

Article 39 — An auctioneer shall display the object of auction before the auction and provide the relevant materials and conditions for inspecting the object of auction. The display period shall not be less than two days.

Section 3 — Implementation of Auction

Article 40 — The auctioneer shall announce the auction rules and matters for attention before the auction begins.

Article 41 — Where the object of auction has no reserve price, the auctioneer shall state this before the auction begins. Where the object of auction has a reserve price, the auctioneer shall state this when the bidding price has not reached the reserve price during the auction.

Article 42 — Bidders may bid by raising placards, calling out prices, or other methods agreed upon.

Article 43 — The highest bid shall be confirmed by the auctioneer by striking the gavel or by other publicly agreed methods. After the auctioneer has confirmed the highest bid, the auction shall be concluded.

Article 44 — After the auction is concluded, the buyer and the auctioneer shall sign a written confirmation of the transaction.

Article 45 — The auctioneer shall, when conducting auction activities, make auction records. The auction records shall be signed by the auctioneer and the recorder; after the auction is concluded, they shall also be signed by the buyer.

Article 46 — The auctioneer shall properly keep the relevant business operation materials, complete account books, auction records and other relevant materials. The retention period of the account books, auction records and other materials shall not be less than five years from the date of termination of the entrustment contract for auction.

Section 4 — Commission

Article 47 — The client and the buyer may agree with the auctioneer on the proportion of commission. Where the client and the buyer fail to agree with the auctioneer on the proportion of commission and the auction is completed, the auctioneer may charge a commission not exceeding 5% of the auction transaction price from the client and the buyer. The proportion of commission charged shall be inversely proportional to the auction transaction price. Where the auction is not completed, the auctioneer may charge the client the expenses agreed upon; where no such expenses are agreed upon or the agreement is unclear, the auctioneer may charge the client reasonable expenses for the auction.

Chapter V — Legal Liability

Article 48 — Where a client entrusts the auction of articles or property rights that it does not own or has no right to dispose of according to law, it shall bear liability according to law. Where the auctioneer knowingly auctions articles or property rights that the client does not own or has no right to dispose of according to law, it shall bear joint and several liability.

Article 49 — Where an auctioneer or its staff members, in violation of the provisions of Articles 18 and 19 of this Law, participate in bidding or entrust others to bid on their behalf, or auction their own articles or property rights in the auction activities organised by themselves, the administrative department for industry and commerce shall impose a fine on the auctioneer of not less than one time but not more than five times the commission for the auction; where the circumstances are serious, the business licence shall be revoked.

Article 50 — Where an auctioneer, in violation of the provisions of Article 9 of this Law, auctions articles or property rights whose transfer is subject to approval according to law without completing the approval formalities, the administrative department for industry and commerce shall confiscate the illegal gains. Where it fails to stop the violation, a fine shall be imposed.

Article 51 — Where bidders collude with each other in bidding or collude with the auctioneer, and the bidding is invalid, a fine of not less than 10 percent but not more than 30 percent of the highest bid shall be imposed on the bidders participating in the collusion; a fine of not less than 10 percent but not more than 50 percent of the highest bid shall be imposed on the auctioneer participating in the collusion.

Article 52 — Where an auctioneer auctions cultural relics without completing the examination or approval formalities according to law, the competent administrative department for cultural relics shall impose a fine according to law; where the circumstances are serious, the administrative department for industry and commerce shall revoke the business licence.

Chapter VI — Supplementary Provisions

Article 53 — Where foreign enterprises, other foreign economic organisations or individuals entrust the auction of articles or property rights within the territory of the People's Republic of China, or participate in bidding, the relevant provisions shall be applied mutatis mutandis.

Article 54 — This Law shall come into force on January 1, 1997.

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