

Order of the President of the People's Republic of China

No. 70

The Auction Law of the People's Republic of China, adopted at the 20th Meeting of the Standing Committee of the Eighth National People's Congress on July 5, 1996, is promulgated now, and shall enter into force as of July 5, 1996.

President of the People's Republic of China: Jiang Zemin
July 5, 1996

Auction Law of the People's Republic of China

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Chapter I General Provisions

Article 1 This Law is enacted for the purposes of standardizing auction activities, maintaining auction orders and protecting the legitimate rights and interests of all parties to auction activities.

Article 2 This Law shall apply to auction activities taken by auction companies within the territory of the People's Republic of China.

Article 3 "Auction" refers to a form of sale under which, specific goods or property rights are transferred to the bidder who makes the highest bid in public bidding.

Article 4 Auction activities shall abide by relevant laws and regulations, and conform to the principles of openness, fairness, impartiality and good faith.

Article 5 The department in charge of auction trade under the State Council shall conduct supervision and administration on the auction trade throughout the country.

The department in charge of auction trade under the people's government of provinces, autonomous regions, municipalities directly under the central government and districted cities shall conduct supervision and administration on the auction trade within their respective regions.

The public security organ shall take the auction trade as a special trade and exercise public security administration on it.

Chapter II Subject of Auction

Article 6 A subject of auction shall be goods or property rights which the auction consignor owns or may dispose of according to law.

Article 7 Goods or property rights which are prohibited from selling and buying by laws or regulations shall not be subjects of auction.

Article 8 In the case of goods or property rights the transfer of which needs prior examination and approval according to laws or provisions of the State Council, the examination and approval formalities must be completed in accordance with the law before the auction.

In the case of entrustment for auction of cultural relics, an appraisal and permit shall be obtained, before auction, from the administrative department for relics at the place of residence of the auction broker.

Article 9 Goods confiscated by the state's administrative organs in accordance with the law or goods seized for covering taxes or penalties or other goods, which should be auctioned according to provisions of the State Council, shall be auctioned by an auction company appointed by the people's government of the province, autonomous region, municipality directly under the central government or the districted city at the place where the goods are located.

Auction of goods confiscated, or seized for covering fines or penalties, by the people's court in accordance with the law, or goods which are recovered by the people's court but cannot be returned, shall apply the provisions of the preceding paragraph.

Chapter III Parties to Auction

Section 1 Auction Broker

Article 10 "Auction Broker" means incorporated companies established in accordance with this Law and the Company Law of the People's Republic of China, to engage in auction business.

Article 11 Auction companies may be established in districted cities. The establishment of auction companies must go through the examination and approval formalities with the department in charge of the auction trade under the people's government of the province, autonomous region or municipalities directly under the central government, and the company established shall apply for registration to, and draw a business license from the administrative department for industry and commerce.

Article 12 For establishing an auction company, the following requirements must be satisfied:

- (1) have a registered capital of at least one million yuan;
- (2) have its own name, organization, residence and articles of association;
- (3) have certified auctioneers and other personnel suited to the auction business they are to engage;
- (4) have auction service regulations in conformity with the provisions of this Law and other relevant laws or regulations;
- (5) have a license for special trade issued by the public security organ;
- (6) conform to the provisions of the State Council concerning the development of the auction trade; and
- (7) other requirements prescribed by laws and regulations.

Article 13 Auction companies engaging in relics auction business shall have a

registered capital of at least 10 million yuan and personnel with professional knowledge of relics auction.

Article 14 Auctions shall be presided over by a certified auctioneer.

Article 15 An auctioneer shall meet the following conditions:

- (1) graduate experience of a junior college or higher, in addition to specialized knowledge in auction;
- (2) work experience of at least two years at an auction company; and
- (3) having good conduct.

Those who have been discharged from public employment or revoked of the auctioneer certificate shall not be an auctioneer within five years of the penalty, nor may those who have been punished for an intentional crime be an auctioneer.

Article 16 Qualification examinations for certified auctioneers shall be unified organized by the auction trade association, which shall issue an auctioneer certificate to those who have passed the examination.

Article 17 As a self-disciplinary organization of the auction trade, the auction trade association shall be an incorporated social organization established in accordance with the law. The auction trade association shall, in accordance with this Law and its articles of association, exercise supervision over auction companies and auctioneers.

Article 18 The auction broker shall have the right to require the consignor to state the source and defects of the subject of auction.

The auction broker shall state the defects of the subject of auction to bidders.

Article 19 The auction broker shall be responsible for the care of goods consigned by the consignor for auction.

Article 20 Without the permission of the consignor, the auction broker having accepted the consignment shall not re-consign it to another broker.

Article 21 When the consignor or auction vendee requires, the auction broker shall maintain confidentiality in respect of identities of the consignor or auction vendee.

Article 22 Auction companies and their personnel may not take part as bidders in auctions conducted by themselves, nor may they designate others to make a bid for them.

Article 23 Auction brokers may not auction their own goods or property rights during auction activities conducted by themselves.

Article 24 After the bargain has been struck, the auction broker shall, in accordance with the engagement, pay the amount of the subject of auction to the consignor and, in accordance with the engagement, transfer the subject of auction to the auction vendee.

Section 2 Consignor

Article 25 "Consignor" means citizens, legal persons or other organizations who consign their goods or property rights for auction to an auction broker.

Article 26 Consignors shall go through formalities of consignment for auction either by themselves or by their agents.

Article 27 Consignors shall state to the auction broker the sources and defects of the subjects of auction.

Article 28 Consignors shall have the right to set the reserve price of a subject of auction and require the auction broker to maintain it confidential.

In the case of auction of state assets which need assessment according to laws or provisions of the State Council, an assessment shall be conducted by an

assessment institution established in accordance with the law and, according to the assessment results, a reserve price shall be set for the subject of auction.

Article 29 Consignors may withdraw the subjects of auction before the auction starts. Consignors withdrawing subjects of auction shall pay the auction broker the agreed charge or, in the absence of an agreed charge, reasonable expenses.

Article 30 Consignors may not take part in bidding, nor designate others to do so.

Article 31 In the case of agreement under which the subject of auction shall be transferred by the consignor, the consignor shall, after the bargain has been struck, transfer the subject of auction to the auction vendee.

Section 3 Bidder

Article 32 "Bidder" means citizens, legal persons or other organizations who bid for subjects of auction.

Article 33 Where laws or regulations stipulate special conditions for the sale of the subject of auction, the bidders shall meet those conditions.

Article 34 Bidders may make bidding either by themselves or by their agents.

Article 35 Bidders shall have the right to find out defects of the subjects of auction, examine the subjects of auction and consult relevant auction materials.

Article 36 A bid may not be withdrawn by the bidder once it has been made, but it shall lose binding force as soon as a higher bid has been made by another bidder.

Article 37 It is forbidden that bidders or bidders and auction brokers conclude with each other to harm the interests of other people.

Section 4 Auction Vendee

Article 38 "Auction Vendee" means a bidder who purchases the subject of auction by making the highest bid.

Article 39 The auction vendee shall pay the amount of the subject of auction in accordance with the engagement, or if he fails to do so, he shall bear the responsibility for breach of contract, or the subject of auction may be re-auctioned after the auction broker has obtained approval from the consignor.

When a subject of auction is re-auctioned, the original auction vendee shall pay the commissions which should be paid by the consignor and himself for the first auction. If the amount from the re-auction is less than that from the original one, the original auction vendee shall make up the balance.

Article 40 Auction venders who cannot acquire the subject of auction in accordance with the engagement shall have the right to demand the auction broker or consignor to assume the responsibility for breach of contract.

Auction venders who fail to accept the subject of auction shall pay the keeping expenses arising therefrom.

Chapter IV Auction Procedures

Section 1 Entrustment of Auction

Article 41 Consignors consigning goods or property rights for auction shall provide their identity certificates and documents of title to the subject of auction or the proof of the right to dispose of the subject of auction in accordance with law and other documents demanded by the auction broker.

Article 42 The auction broker shall verify the documents and materials provided by the consignor. If the auction broker accepts the entrustment, it shall conclude a

written contract with the consignor for the entrustment of auction.

Article 43 Subjects of auction may be appraised if the auction broker thinks it necessary.

If there is any discrepancy between the appraisal conclusion and the statement concerning the subject of auction in the contract for the entrustment of auction, the auction broker shall have the right to require the contract to be modified or terminated.

Article 44 The following particulars shall be clearly stated in a contract for entrustment of auction:

- (1) the name and address of the consignor and auction broker;
- (2) the name, specification, quantity and quality of the subject of auction;
- (3) the reserve price given by the consignor;
- (4) the time and place when and where the auction will be held;
- (5) the time and method when and thereby the subject of auction shall be delivered or transferred;
- (6) the commission and the method by which the commission shall be paid and the time limit for the payment;
- (7) the method by which the amount of the subject of auction shall be paid and the time limit for the payment;
- (8) the responsibility for breach of contract; and
- (9) other particulars agreed by the two parties.

Section 2 Auction Announcement and Exhibition

Article 45 The auction broker shall publish an auction announcement seven days before the auction day.

Article 46 The following particulars shall be clearly stated in the auction announcement:

- (1) the time and place when and where the auction will be held;
- (2) the subjects of auction;
- (3) the time and place when and where the subjects of auction will be exhibited;
- (4) formalities required to be gone through for taking part in bidding; and
- (5) other particulars needed to be announced.

Article 47 Auction announcements shall be published in a newspaper or by other news media.

Article 48 The auction broker shall exhibit the subjects of auction before the auction, and provide relevant materials and conditions for examining the subjects of auction.

The exhibition of the subjects of auction shall last at least for two days.

Section 3 The Performance of Auction

Article 49 The auctioneer shall, before the auction, announce the auction rules and points for attention.

Article 50 If there is no reserve price for a subject of auction, the auctioneer shall give the facts before the auction.

In the case of a reserve price, if the highest bid fails to reach the reserve price, that bid shall have no effect and the auctioneer shall cease the auction of the relevant subject.

Article 51 A bargain is made once the auctioneer has struck hammer on the highest bid or the bid has been publicly confirmed in other forms as making a bargain.

Article 52 After a bargain has been struck, the auction vendee and the auction broker shall sign a sales confirmation.

Article 53 When performing auction, the auction broker shall make written auction records. Auction records shall be signed by the auctioneer and the note taker, and the vendee, if any.

Article 54 Auction brokers shall properly keep the complete account books concerning their auction business activities, the written auction records and other relevant materials.

The account books, auction records and other relevant materials mentioned in the preceding paragraph shall be kept at least for five years, accounting from date on which the contract for auction entrustment terminates.

Article 55 In the case of a subject of auction, the transfer of which involves formalities for change of certificates or licenses or for title transfer according to law, the consignor and auction vendee shall go through said formalities with relevant administrative departments by presenting the sales certification issued by the auction broker and other relevant materials.

Section 4 Commission

Article 56 Consignors and auction vendees may make an agreement with the auction broker on the brokerage proportion.

Where the consignor or auction vendee fails to make an agreement with the auction broker on the brokerage proportion, the auction broker may charge the consignor and auction broker respectively a commission not more than five per cent of the transaction price of the subject of auction, if the auction results in a transaction. The brokerage proportion shall be determined on the principle of being inversely proportional to the transaction price of the subject of auction.

If the auction does not result in a transaction, the auction broker may charge the consignor according to the prior engagement; in the absence of an engagement, the auction broker may charge the consignor the reasonable expenses expended for the auction.

Article 57 In the case of auction and transaction of goods mentioned in Article 9 of this Law, the auction broker may charge the auction vendee a commission not more than five per cent of the transaction price of the subject of auction. The brokerage proportion shall be determined on the principle of being inversely proportional to the transaction price of the subject of auction.

The provisions of Paragraph 3, Article 56 of this Law shall apply if the auction does not result in a transaction.

Chapter V Legal Responsibility

Article 58 Consignors shall bear the responsibility if they, in violation of the provisions of Article 6 of this Law, consign for auction goods or property rights to which they have no title or which they may not dispose of according to law. If the auction broker accepts the consignment knowing well that the consignor has no title to, or according to law, may not dispose of the goods or property rights, he shall bear a joint liability.

Article 59 If any state organ, in violation of the provisions of Article 9 of this Law, dispose of without authorization the goods which according to law should be auctioned by an auction company designated by the people's government of the province, autonomous region, municipality directly under the central government or the districted city where said goods are located, the person in charge directly responsible and other persons directly responsible shall be given a disciplinary sanction and, if any losses have been caused to the state, be liable

for compensation.

Article 60 Auction companies established in violation of the provisions of Article 11 of this Law and without approval and registration shall be banned by the administrative department for industry and commerce with the illegal earnings confiscated and a fine ranging from one to five times the illegal earnings may be imposed concurrently.

Article 61 If the auction broker or consignor, in violation of the provisions of Paragraph 2, Article 18 and Article 27 of this Law, fails to state the defects of the subject of auction and thus causes damage to the auction vendee, the latter shall have the right to claim compensation against the auction broker; if it is the consignor who should assume the responsibility, the auction broker shall have the right to claim recovery against the consignor.

Where the auction broker and consignor declare before the auction that they cannot assure the genuineness or quality of the subject of auction, they shall not be liable for assurance against defects.

The limitation of legal proceedings for claiming compensation in the case of failure to state the defects of the subject of auction shall be one year, accounting from the date on which the party concerned knows or has reason to know that his right has been infringed upon.

In the case of personal injury or property damage due to the defects of the subject of auction, the limitation of legal proceedings for claiming compensation shall apply the relevant provisions of the Law of the People's Republic of China on Product Quality and other laws.

Article 62 If an auction company or its personnel, in violation of the provisions of Article 22 of this Law, take part in the bidding or designate others to make a bid for them, the administrative department for industry and commerce shall give it a warning and may impose a fine ranging from one to five times the auction commission and, if the circumstances are serious, revoke its business license.

Article 63 If an auction broker, in violation of the provisions of Article 23 of this Law, auctions its own goods or property rights during auction activities conducted by itself, the income from the auction shall be confiscated by the administrative department for industry and commerce.

Article 64 If a consignor, in violation of the provisions of Article 30 of this Law, takes part in the bidding or designates others to make a bid for him, the administrative department for industry and commerce shall impose on the consignor a fine not exceeding 30 per cent of the auction transaction price.

Article 65 Where bidders or bidders and auction brokers, in violation of the provisions of Article 37 of this Law, conclude with each other and cause damages to other people, they shall be liable for compensation and the auction shall be deemed void. The administrative department for industry and commerce shall impose on the bidders in conclusion a fine ranging from 10 to 30 per cent of the highest bid and a fine ranging from 10 to 50 per cent of the highest bid on the auction broker in conclusion.

Article 66 Auction brokers who charge commissions in violation of the provisions of Section 4, Chapter IV of this Law concerning the brokerage proportion shall return the overcharged amount to the consignor or auction vendee. The price control authority may impose on the auction broker a fine ranging from one to five times the auction commission.

Chapter VI Supplementary Provisions

Article 67 Foreigners, foreign enterprises and organizations' consignment for auction and taking part in bidding shall apply this Law.

Article 68 Auction companies which are established before the implementation of this Law and fail to satisfy the requirements demanded by this Law shall come up to the requirements within a specified time limit; for those failing to come up to the requirements demanded by this Law within the specified time limit, the administrative department for industry and commerce shall cancel their registration and revoke their business licenses. The concrete implementation measures shall be formulated separately by the State Council.

Article 69 This Law shall enter into force on January 1, 1997.



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