

**SUBSIDIARY LEGISLATION 342.01****PUBLIC AUCTION REGULATIONS**

1st June, 1991

*LEGAL NOTICE 69 of 1991, as amended by Legal Notices 424 of 2007 and 237 of 2010.*

- 1.** The title of these regulations is the Public Auction Regulations. Citation.
- 2.** In these regulations, unless the context otherwise requires - Interpretation.  
Amended by:  
L.N. 237 of 2010.  
Cap. 342.
- "the Act" means the Auctioneers Act;
- "antique" and "auctioneer" have the same meaning as is assigned to them in article 2 of the Act, and "auctioneering" means the business of auction run by an auctioneer;
- "Board" means a board of examiners, who cannot be operators in the auctioneering sector, set up from time to time by the Minister in order to assess applicants for a licence to act as auctioneer;
- "buyer" means the buyer of a lot at an auction;
- "Librarian" means the librarian mentioned in article 3 of the National Archives Act, who is Curator of the National Archives; Cap. 339.
- "lot" means one article, or more than one article grouped together, intended for sale at an auction;
- "Minister" means the Minister responsible for trade and includes, to the extent of the authority given, any person authorised by the Minister in that behalf for any purpose of these regulations;
- "reserved price" means the price below which a seller is unwilling to sell a lot and has notified the auctioneer to that effect;
- "seller" means the owner of a lot put up for sale at an auction.
- 3.** (1) An auctioneer shall issue a signed receipt to a seller for lots received by him for sale by auction. Receipt of articles  
by auctioneer.
- (2) The receipt referred in sub-regulation (1) shall contain the following information:
- (a) the name, surname and address of the auctioneer and/or the name of the company or partnership on behalf of which the auctioneer is exercising his business and the name, surname and address of the seller;
  - (b) a description of each lot;
  - (c) the reserved price, if any;
  - (d) the auctioneer's fee and any storage or other fees and commissions chargeable by the auctioneer to the seller;
  - (e) the amount, if any, which the seller shall pay to the auctioneer if the seller retrieves the lot or if the lot is not sold;

(f) any other condition of auction which the seller and the auctioneer may agree thereon.

(3) An auctioneer may refuse to accept a lot for sale in an auction.

Catalogue.

**4.** (1) An auctioneer shall, in respect of each auction to be conducted by him, publish a catalogue of the lots being put up for auction.

(2) The catalogue mentioned in sub-regulation (1) shall contain the following information:

(a) the name of the auctioneer and/or the name of the firm or partnership on behalf of which the auctioneer is trading and the address of his office;

(b) the place where the auction is due to be held;

(c) the dates and times for viewing of the lots on auction and the dates and times of the auction;

(d) the lots due to be auctioned on each day of the auction;

(e) the conditions of the auction and the fees due to be paid by the buyer of a lot at the auction in addition to the purchase price and other charges permissible or imposed by law, including duty imposed under the Duty on Documents and Transfers Act;

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(f) the deposit to be made by the buyer;

(g) a sequential list giving a correct description of each lot to be auctioned;

(h) the lots having a reserved price, below which the seller is unwilling to sell the lots, should be marked by an asterisk in the catalogue;

(i) any lots which are the property of the auctioneer;

(j) the price of the catalogue.

(3) Catalogues shall be available for sale at the place where the auction is due to be held on the days fixed for viewing of the lots to be auctioned and on the days of the auction.

(4) A copy of the catalogue shall also be exhibited in a prominent place for public viewing in each room of the building where the auction is being held.

Public notifications.

**5.** (1) An auctioneer shall publish in at least two daily newspapers the time and dates of the place of viewing and of the auction together with a general description of the lots to be auctioned.

(2) Such publication shall take place at least one clear day before the first day of viewing.

Viewing.

**6.** (1) On each day of viewing an auctioneer shall allow a minimum time of two hours for the viewing of the lots to be sold by auction.

(2) No article may be withdrawn from the auction either by the auctioneer or by the seller at any time after the commencement of

the period of viewing by the public.

(3) There shall be charged no fee by the auctioneer or by any other person for entry to the place where the auction is to be held either during the days of viewing or the days of the auction.

**7.** (1) An auction shall be conducted by the auctioneer specified in the catalogue referred to in regulation 4: The auction.

Provided that where the auction is to be conducted by an auctioneer other than the auctioneer notified in the catalogue, notice to that effect shall be given to the public attending the auction at the commencement of the auction on each of the auction days and a written notice to the same effect shall be prominently displayed at the place of auction throughout the auction days.

(2) An auctioneer shall auction all the lots entered in the catalogue in the order set down therein.

(3) An auctioneer shall identify each lot to be auctioned by the lot number and description of the lot as generally set out in the auction catalogue.

(4) An auctioneer shall not himself or through any other person acting on the same auctioneer's behalf place bids, and an auctioneer shall not in any way buy lots at an auction being conducted by himself.

(5) An auctioneer shall not bid or buy, directly or indirectly, at his auctions for any other person.

(6) An auctioneer shall not take account of a bid unless it is made clearly and publicly.

(7) An auctioneer shall not raise the price of a lot until and unless a genuine higher bid has been made by a bidder.

(8) An auctioneer shall knock down the lot if, after repeating the last bid three times, no further bids are made.

(9) An auctioneer shall either assign the lot to the highest bidder making the last bid, or shall, subject to the provisions of regulation 8, remove the lot from the auction by declaring it as "bought in".

**8.** (1) When a lot is marked as having a reserved price, the auctioneer cannot declare a lot sold if no offer at least equal to the reserved price has been made. Reserved price.

(2) When no reserved price has been set against a lot and a bid is made for that lot, the auctioneer may not withdraw the lot from the auction or declare it "bought in".

(3) A lot may not be bought in if the reserved price thereof has been equalled or exceeded by the last bid, and the auctioneer shall not declare a lot as "bought in" if a bid at least equivalent to its reserved price has been made.

**9.** (1) The buyer may be required by an auctioneer to make a deposit in respect of the lot purchased by him. provided that no deposit may exceed ten per cent of the price at which the lot was knocked down and assigned to the buyer. Buyer's deposit and receipt.

(2) A deposit made by a buyer shall be forfeited to the auctioneer in the event that the buyer does not collect the lot and pay the balance of the purchase price and the fee and the charges due by the buyer in terms of regulation 4(e) by the end of the second working day subsequent upon the last day of the auction.

(3) On forfeiture of a deposit, out of which deposit the auctioneer is entitled to retain the equivalent of the commission chargeable to the buyer under regulation 14, the sale of a lot to the buyer shall be considered rescinded.

(4) In handing over a lot to a buyer, the auctioneer shall require the buyer to provide him with a receipt for the lot.

Records.

**10.** (1) Where an auctioneer conducts other business, auctioneering shall be kept and run as a separate business, and separate records, books, accounts and other documents as required by these regulations or by any other Act shall be kept.

(2) An auctioneer shall keep records showing in respect of each sale by auction and in respect of the lots sold therein -

- (a) the date or dates of the auction;
- (b) the address where the auction was held;
- (c) the lot number of each lot sold;
- (d) the name and address of the sellers of the lots sold by auction;
- (e) the name and address of the buyer of each lot, or, in the case of a lot which has been bought in, a statement to that effect;
- (f) the price at knock down where a lot has been sold.

(3) An auctioneer shall keep books of account in conformity with the principles of regular book-keeping, as well as documents and receipts given out to sellers and secured from buyers.

(4) The accounts, documents and receipts shall be kept at the main office of an auctioneer for not less than three years from the end of the calendar year in which the accounts were made and the documents and receipts were collected.

(5) The obligation to keep books of account and to preserve documents according to any other law or regulation shall remain unaffected.

Minister's powers.

**11.** (1) An auctioneer shall furnish any information requested by the Minister within a period of fifteen days from the date of service of a written request upon an auctioneer to that effect.

(2) The Minister shall have the right to inspect all books of accounts, documents and other records kept by an auctioneer in his premises or elsewhere.

Antiques.

**12.** (1) An auctioneer shall notify in writing the Director of Museums of any antique, and the Librarian of any printed work, map, print, manuscript or other document of bibliographic or historical importance, due to be auctioned at least seven days before the first date fixed for the viewing of lots due to be sold at

the auction.

(2) The auctioneer shall, together with the notification in writing referred to in sub-regulation (1), furnish the Director of Museums and, or, the Librarian, with two copies each of the catalogue of lots to be sold at that auction.

(3) The Director of Museums and, or, the Librarian may, not later than two working days before the commencement of the auction, give an auctioneer directions regarding the sale of an antique due to be auctioned, and the auctioneer shall abide by such directions.

**13.** (1) An auctioneer may, in respect of an unsold lot the reserved price of which was not reached at an auction, charge the seller a fee which shall not exceed the seller's commission on the reserved price of the lot.

Unsold lot.  
*Re-numbered by:*  
*L.N. 237 of 2010.*

(2) An auctioneer may require a seller to collect an unsold lot after the lapse of seven days from the service of a written notice to that effect.

(3) In the event that the seller does not collect the unsold lot within a period of one month from such notice, an auctioneer shall be entitled to auction the lot without reference to the reserved price, if any, and shall pay to the seller the proceeds derived from such sale after deducting the commissions and charges due to him.

(4) In the event that the seller does not collect an unsold lot after a written notice given to him by the auctioneer to that effect, the auctioneer shall also be entitled to charge the seller a storage fee with effect from a day occurring fifteen days after the date of service of the notice, and such storage fee shall not exceed five per cent of the seller's commission in respect of every storage period of one month or part thereof.

**14.** If a lot is retrieved by the seller after its inclusion in an auction catalogue and before its viewing by the public, the auctioneer shall be entitled to charge the seller a fee which, in case a reserved price had been fixed, shall not exceed one-half of the seller's commission.

Retrieval fee.  
*Re-numbered by:*  
*L.N. 237 of 2010.*

**15.** An auctioneer shall, within one month from the last day of an auction, pay to the seller of a lot the proceeds derived from the sale thereof after deducting the fees and commissions due to him.

Payment to the seller.  
*Re-numbered by:*  
*L.N. 237 of 2010.*

**16.** (1) In order to qualify for the grant of a licence to act as an auctioneer, a person shall -

Qualification requirements.  
*Added by:*  
*L.N. 237 of 2010.*

- (a) be not less than eighteen years old; and
- (b) be of good moral character and not have within the last three years been convicted of a criminal act relating to fraud or misappropriation of money or other articles.

(2) In addition to meeting the conditions of sub-regulation (1), the applicant must also satisfy the Board of his knowledge of:

- (a) national auctioneering legislation and procedure;
- (b) national laws and regulations relating to antiques and cultural heritage; and

(c) relevant general commercial practice:

Provided that paragraph (b) shall not be applicable to applicants who declare that they will not be providing their services in the auctioning of antiques.

Cap. 441.

(3) Applications for a licence to act as an auctioneer shall be submitted to the regulatory authority as determined under the Trading Licences Act, subject to any exemptions and under conditions which may be applicable under the Act. The application shall be accompanied by a good conduct certificate issued by the Commissioner of Police. If the applicant fulfils the condition of sub-regulation (1) the regulatory authority shall notify the Board of the application within ten working days.

Cap. 490.

(4) The Board shall interview the applicant and inform the regulatory authority of its decision within three months from the date of being notified. Where duly motivated, this period may be extended by a further month provided that the applicant is duly informed of such extension. Decisions of the Board shall be fully reasoned and shall be subject to appeal before the Administrative Review Tribunal established by article 5(1) of the Administrative Justice Act.

(5) The regulatory authority shall within ten days from receiving notification of the Board's decision issue a licence or a notice of refusal as the case may be.

Cap. 441.

(6) Where a person is already licensed or otherwise legally established to carry on auctioning activities in another Member State, and that person wishes to carry out such activities in Malta on a non-permanent basis, he shall not be required to apply for a licence but only to notify the regulatory authority as provided in the Trading Licences Act:

Provided that where a person who is already licensed or otherwise legally established to carry on auctioning activities in another Member State, carries out auctioning activities in Malta that person shall still be required to comply with regulations 3 to 15.

Fees to be paid to the Director of Trade.  
Added by:  
L.N. 237 of 2010.  
Cap. 441.

**17.** There shall be paid to the Director of Trade, in respect of the consideration by the Board, a fee of three hundred euro (€300) together with the relevant application fee and renewal fee as may be stipulated under the Trading Licences Act and regulations made thereunder.

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