

China - Auction Law, 1996

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Contents

Auction Law of the People’s Republic of China (Adopted at the 20th Meeting of the Standing Committee of the 8th National People’s Congress on July 5, 1996)	1
Chapter I - General Provisions	1
Article 1	1
Article 2	1
Article 3	1
Article 4	1
Article 5	1
Article 6	1
Chapter II - Auction Targets	2
Article 6	2
Article 7	2
Article 8	2
Article 9	2
Chapter Three - Parties Involved in Auction	2
Section III - Auctioneers	2
Article 10	2
Article 11	3
Article 12	3
Article 13	3
Article 14	3
Article 15	3
Article 16	4
Article 17	4
Article 18	4
Article 19	4
Article 20	4
Article 21	4
Article 22	4
Article 23	5
Article 24	5
Section Two - Trustees	5
Article 25	5
Article 26	5
Article 27	5
Article 28	5
Article 29	5

Contents

Article 30	6
Article 31	6
Section Three - Bidders	6
Article 32	6
Article 33	6
Article 34	6
Article 35	6
Article 36	6
Article 37	6
Section Four - Buyers	7
Article 38	7
Article 39	7
Article 40	7
Chapter IV - Auction Procedures	7
Section One - Auction Trust	7
Article 41	7
Article 42	7
Article 43	8
Article 44	8
Section Two - The Auction Notice and Display	8
Article 45	8
Article 46	8
Article 47	9
Article 48	9
Section Three - The Implementation of Auctions	9
Article 49	9
Article 50	9
Article 51	9
Article 52	9
Article 53	9
Article 54	10
Article 55	10
Section Four - Commission	10
Article 56	10
Article 57	10
Chapter V - Legal Liabilities	11
Article 58	11
Article 59	11

Contents

Article 60	11
Article 61	11
Article 62	12
Article 63	12
Article 64	12
Article 65	12
Article 66	12
Chapter Six - Supplementary Articles	13
Article 67	13
Article 68	13
Article 69	13
Metadata	14
SiSU Metadata, document information	14

Auction Law of the People's Republic of China 1
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8th National People's Congress on July 5, 1996)

Chapter I - General Provisions 2

Article 1 3

This Law has been formulated with a view to standardizing the auction behavior, safe- 4
guarding the auction order, and protecting the legitimate rights and interests of various
parties involved in auction activity.

Article 2 5

This Law shall apply to the auction activity carried out by auction enterprises within the 6
territory of the People's Republic of China.

Article 3 7

Auction means the buying and selling form through which designated articles or prop- 8
erty rights are transferred, in the form of public bidding, to those providing the highest
bidding price.

Article 4 9

Auction activity shall abide by relevant laws and administrative decrees, and follow the 10
principle of openness, fairness, impartiality, honesty and credibility.

Article 5 11

The State Council is responsible for managing the department in charge of the auc- 12
tioning industry, which will exercise supervision over and management of the national
auctioning industry.

Article 6 13

People's governments of various provinces, autonomous regions and municipalities 14
directly under the central government and people's governments of cities with districts
are responsible for managing the departments in charge of the auctioning industry,
which will exercise supervision over and management of the auctioning industry within
their respective administrative regions.

Public security departments shall exercise security control over the auctioning industry 15
as special industry.

Chapter II - Auction Targets 16

Article 6 17

Auction target shall be articles or the property rights owned by trustees or disposable according to law. 18

Article 7 19

Articles or property rights whose purchase and sale are prohibited by laws and administrative decrees shall not be taken as auction targets. 20

Article 8 21

Articles or property rights whose transfer is subject to the examination and approval according to law or in accordance with State Council provisions shall, before being auctioned, go through examination and approval procedures according to law. 22

Cultural relics consigned for sale shall, before being auctioned, be assessed and permitted according to law by the cultural administrative department where the auctioneer resides. 23

Article 9 24

Should articles confiscated by the state administrative department according to law, articles used to pay taxes or fines and other kinds of articles be auctioned on consignment in accordance with State Council provisions, they shall be auctioned by the auctioneers designated by the people's governments with districts where such property lies. 25

The auction of articles confiscated by a people's court according to law, articles used to pay fines and found articles that cannot be returned are subject to the stipulation of the above paragraph. 26

Chapter Three - Parties Involved in Auction 27

Section III - Auctioneers 28

Article 10 29

An auctioneer is an enterprise legal person that has been established to engage in auction activity in accordance with this Law and the Corporate Law of the People's Republic of China. 30

Article 11

31

An auction enterprise may be set up in a city with districts. The establishment of an auction enterprise is subject to the examination and approval by the department in charge of managing the auctioning industry as authorized by the people government of a province, an autonomous region and a municipality directly under the central government where it is located, and shall apply and register with the administrative department for industry and commerce receive a business license.

32

Article 12

33

Whoever establishes an auction enterprise shall meet the following requirements:

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(1) Having a registered capital of at least one million yuan;

35

(2) Having his own name, organizational setup, residence and articles of association;

36

(3) Having auctioneers and other staff qualified for the auctioning business;

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(4) Having formulated rules on the auction business that comply with this Law and the stipulations of other relevant laws;

38

(5) Having the permit on a special industry issued by the public security department;

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(6) Complying with the State Council provisions regarding the development of the auctioning industry; and

40

(7) Meeting other requirements as prescribed by laws and administrative decrees.

41

Article 13

42

Should an auction enterprise handle the auction of cultural relics, it shall have a registered capital of at least 10 million yuan and have personnel with the professional expertise of relics auction.

43

Article 14

44

Auction activity shall be presided over by an auctioneer.

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Article 15

46

An auctioneer shall meet the following requirements:

47

(1) Having a university or college education and professional expertise of auction;

48

(2) Having worked in an auctioning enterprise for more than two years; and

49

(3) Having a moral integrity.

50

Those who have been dismissed from their posts and those for whom five years have not passed since their auctioneer certificates were revoked, or those who have been meted out criminal punishment for deliberately committing a crime may not serve as auctioneers. 51

Article 16 52

The examinations for the qualification of auctioneers shall be organized exclusively by the auction Industry Association. Those passing the examinations shall be issued auctioneer qualification certificates by the Auctioning Industry Association. 53

Article 17 54

The Auctioning Industry Association is a mass organization legal person established according to law and a self-disciplining organization in the auctioning industry. The Auctioning Industry Association shall exercise supervision over auction enterprises and auctioneers in accordance with this Law and its articles of Association. 55

Article 18 56

An auctioneer has the right to ask the trustee to state the source and drawbacks of auction targets. 57

The auctioneer shall state the drawbacks of auction targets to the bidders. 58

Article 19 59

An auctioneer has the obligation of taking care of articles submitted by the trustee for auction. 60

Article 20 61

Upon accepting trust, an auctioneer shall not trust other auctioneers for auction unless approved by the trustee. 62

Article 21 63

Should a trustee or a buyer ask to keep secret of his or her identity, the auctioneer shall keep secret for him or her. 64

Article 22 65

An auctioneer and other personnel shall not, in the capacity of bidders, participate in the auction activity organized by them, and shall not trust others to bid for them. 66

Article 23 67

An auctioneer shall not auction his or her own articles or property rights in the auction activity organized by him or her. 68

Article 24 69

After an auction is completed, the auctioneer shall, as agreed upon, pay the sum of money of the auction targets to the trustee, and shall, as agreed upon, transfer the auction targets to the buyer. 70

Section Two - Trustees 71

Article 25 72

An trustee means a citizen, a legal person or an organization trusting the auctioneer to auction his or her articles or property rights. 73

Article 26 74

Trustees may independently handle trust auction procedures, and may also ask their agents to handle trust auction procedures for them. 75

Article 27 76

An trustee shall state the source and drawbacks of his or her auction targets to the auctioneer. 77

Article 28 78

An trustee has the right to set the retentive price of an auction target to the auctioneer. 79

Should the auction of state-owned assets require the evaluation according to law or in accordance with State Council provisions, such assets shall be evaluated by an evaluation agency established according to law and the retentive price of an auction target shall be set in line with the evaluation result. 80

Article 29 81

Before an auction begins, an trustee may withdraw his or her auction targets. Should a trustee withdraw his or her auction targets, he or she shall pay costs as agreed upon to the auctioneer. In the absence of an agreement, he or she shall pay the auctioneer reasonable costs paid for an auction. 82

Article 30 83

Trustees shall not participate in bidding or trust others to providing bidding for them. 84

Article 31 85

Should an auction target be transferred as agreed upon, after the auction is completed, the trustee shall transfer the auction target to the buyer. 86

Section Three - Bidders 87

Article 32 88

A bidder means a citizen, a legal person or an organization participating in bidding for auction targets. 89

Article 33 90

should laws and administrative decrees spell out stipulations on buying and selling requirements for auction targets, any bidder shall meet the prescribed requirements. 91

Article 34 92

Bidders may participate in bidding on their own, or may trust their agents to participate in bidding for them. 93

Article 35 94

A bidder has the right to know the drawbacks of an auction target, to check the said auction target and consult relevant auction data. 95

Article 36 96

Once the bidding price is announced, a bidder shall not withdraw it. When other bidders providing higher bidding prices, his bidding price shall no longer be valid. 97

Article 37 98

Bidders shall not viciously collaborate with other bidders and auctioneers shall not do so with auctioneers to damage the interests of others. 99

Section Four - Buyers

100

Article 38

101

A buyer means a bidder who purchases an auction target with the highest bidding price.

102

Article 39

103

A buyer shall pay the sum of money for an auction target as agreed upon. Whoever fails to pay such a sum as agreed upon shall bear the liabilities of breaking a contract, or with the approval of the trustee, the auctioneer may re-auction the auction target.

104

In the case of re-auctioning an auction target, the original buyer shall pay the commission himself or herself and the trustee shall pay for the auction for the first time. Should the price of a re-auction be lower than the price of the original auction price, the original buyer shall pay for the balance.

105

Article 40

106

Should a buyer fail to obtain an auction target as agreed upon, he or she has the right to demand that the auctioneer or the trustee bear the liabilities of breaking a contract.

107

Should a buyer fail to take back an auction target as agreed upon, he or she shall pay the storage costs arising thereafter.

108

Chapter IV - Auction Procedures

109

Section One - Auction Trust

110

Article 41

111

Should a trustee trust an auctioneer to auction articles or property rights, he or she shall provide his or her identity certificate, or the certificate of the ownership of the auction target as required by the auctioneer, or the certificate or other data which can demonstrate that he or she can dispose of the auction target.

112

Article 42

113

An auctioneer shall verify the relevant documents and data provided by his trustee. Should the auctioneer accept a trust, he or she shall sign a written contract on trust auction with the trustee.

114

Article 43 115

Should an auctioneer deem it necessary to verify an auction target, he or she may do so. 116

Should the verification conclusion contradict the conditions of an auction target stated in an auction contract, the auctioneer has the right to demand a change or rescind the contract. 117

Article 44 118

A contract on a trust auction shall contain the following: 119

(1) The names of the trustee and the auctioneer and their residences; 120

(2) The name, specification, number and quality of an auction target; 121

(3) The retentive price set by the trustee; 122

(4) The time and site of the auction; 123

(5) The delivery of the auction target or the time and form of transferring such an target; 124

(6) The form and the time limit for paying commissions; 125

(7) The liabilities of breaking the contract; 126

(8) Other matters as agreed upon by both parties. 127

Section Two - The Auction Notice and Display 128

Article 45 129

An auctioneer shall release an auction notice seven days before the auction day. 130

Article 46 131

An auction notice shall define the following matters: 132

(1) The time and place of the auction; 133

(2) Auction targets; 134

(3) The display time and place of auction targets; 135

(4) The procedures that those participating in the bidding shall handle; 136

(5) Other matters that need to be announced. 137

Article 47 138

An auction notice shall be issued via newspapers or other mass media. 139

Article 48 140

An auctioneer shall display auction targets before an auction, and provide conditions necessary for inspecting auction targets, as well as relevant data. 141

The display time of auction targets shall not be fewer than two days. 142

Section Three - The Implementation of Auctions 143

Article 49 144

An auctioneer shall announce auction rules and matters needing attention before an auction. 145

Article 50 146

Should an auction target have no retentive price, an auctioneer shall make this clear before an auction. 147

Should an auction target have the retentive price, while the highest bidding price for the auction target fails to reach the retentive price, the price shall not become valid and the auctioneer shall stop auctioning the auction target. 148

Article 51 149

The highest bidding price of a bidder shall indicate the conclusion of the auction after being confirmed by the auctioneer dropping the hammer or by other open forms indicating the completion of a deal. 150

Article 52 151

After an auction is completed, the buyer and auctioneer shall sign a deal conclusion letter. 152

Article 53 153

While proceeding with an auction, an auctioneer shall make a written auction record. The written auction record shall be signed by the auctioneer and the recorder; in the case of the conclusion of an auction, the record shall also be signed by the buyer. 154

Article 54

155

A buyer shall properly keep complete account books related to his or her business and operational activities, the written auction record and other relevant data.

156

The duration prescribed in the above paragraph for keeping account books, the written auction record and other relevant data shall begin to be computed from the date when the trust auction contract is terminated and shall not be fewer than five years.

157

Article 55

158

Should an auction target need to handle, according to law, the procedures of change in the certificate and the transfer of property rights, the trustee and buyer shall handle necessary procedures with the relevant administrative department, on the strength of the auction completion certificate and relevant materials produced by the auctioneer.

159

Section Four - Commission

160

Article 56

161

A trustee and a buyer may jointly set the commission ratio together with an auctioneer.

162

If the trustee, the buyer and the auctioneer have not set the commission ratio, while the auction is completed, the auctioneer may collect commissions not in excess of five percent of the auction completion price from the trustee and buyer, respectively. The ratio of commissions to be collected shall be set in accordance with the principle of making an inverse ratio to the auction completion price.

163

In the absence of the completion of an auction, an auctioneer may collect charges as agreed upon from the trustee; and in the absence of any agreement, the auctioneer may collect from the trustee rational charges as auction expenses.

164

Article 57

165

If the auction of articles as stipulated in Article 9 of this Law is completed, the auctioneer may collect from the buyer commissions not exceeding five percent of the auction completion price. The ratio of commissions to be collected shall be set in accordance with the principle of making an inverse ratio to the auction completion price.

166

In the absence of the completion of an auction, the stipulation of Section 3 of Article 56 of this Law shall apply.

167

Chapter V - Legal Liabilities

168

Article 58

169

Should a trustee violate the stipulation of Article 6 of this law by trusting the auction of articles or property rights of which he or she does not have the ownership or of which he or she may not dispose according to law, he or she shall bear liabilities arising thereafter according to law. Should an auctioneer clearly know that a trustee has no ownership of the articles or property rights for auction or that the trustee may not dispose such articles or property rights according to law, he or she shall bear implicative* liabilities.

170

Article 59

171

Should a state department violate the stipulation of Article 9 of this Law by disposing illicitly of articles that should be auctioned by an auctioneer designated by the people's government of a province, an autonomous region or a municipality directly under the central government or by the people's government of a city with districts where property lies, relevant personnel in charge who are held directly responsible and other personnel who are also held directly responsible shall be meted out administrative punishment according to law, and those who have caused losses to the state shall also bear the liability of compensation.

172

Article 60

173

Whoever violates the stipulation of Article 11 of this Law by establishing an auction enterprise without approval or registration shall have his or her enterprise banned and his or her illegal incomes confiscated by the administrative department for industry and commerce, and may be given a fine that ranges from 100 percent to 500 percent of his or her illegal earnings.

174

Article 61

175

Should an auctioneer and a trustee violate the stipulation of the second paragraph of Article 18 and Article 27 of this Law by failing to state the drawbacks of an auction target, thus causing a loss to a buyer, the buyer has the right to demand compensation from the auctioneer; Should the responsibility rest with the trustee, the auctioneer has the right to demand compensation from the trustee.

176

Should an auctioneer and a trustee state before an auction that they cannot guarantee the genuineness or fakery or the quality of an auction target, they shall not bear the liability for guaranteeing the drawbacks.

177

If no statement is made on the fact that an auction target has drawbacks, the procedural duration for demanding compensation shall be one year and shall begin to be computed

178

from the date when the party concerned knows or should know that his or her right is damaged.

The procedural duration for demanding compensation for personal and property damages caused by the drawbacks of an auction target is subject to the relevant stipulations of the “ Product Quality Law of the People's Republic of China” and other laws. 179

Article 62 180

Should an auctioneer and other staff violate the stipulation of Article 22 of this Law by participating in bidding or trusting others to participating in bidding for them, the administrative department for industry and commerce shall give the auctioneer a warning and may impose on him or her a fine that ranges from 100 percent to 500 percent of his or her auction commissions; where cases are serious, his or her business license shall be revoked. 181

Article 63 182

Should an auctioneer violate the stipulation of Article 23 of this Law by auctioning his or her articles and property rights in the auction activity organized by himself or herself, the administrative department for industry and commerce shall confiscate his or her earnings from the auction. 183

Article 64 184

Should a trustee violate the stipulation of Article 30 of this Law by participating in the bidding or trusting others to participating in the bidding for him or her, the administrative department for industry and commerce may impose on the trustee a fine that is up to 30 percent of his or her auction completion price. 185

Article 65 186

By violating the stipulation of Article 37 of this Law, if bidders viciously collaborate with other bidders or if bidders do so with auctioneers, thus causing losses to others, the auction shall become null and void and they shall bear the liability of compensation according to law. The administrative department for industry and commerce shall impose on the bidders participating in vicious collaboration a fine that is 10 percent to 30 percent of the highest bidding price; and impose on the auctioneers participating in vicious collaboration a fine that 10 percent to 50 percent of the highest bidding price. 187

Article 66 188

By accepting commissions in violation of the stipulation of Section Four of Chapter 189

Four of this Law concerning the ratio of commissions, an auctioneer shall return that part in excess of the reasonable amount to the trustee and the buyer. The price control department may impose on the auctioneer a fine that is 100 percent to 500 percent of the commissions.

Chapter Six - Supplementary Articles

190

Article 67

191

This Law is applicable to foreigners, foreign enterprises and foreign organizations trusting auctions or participating in bidding within the territory of the People's Republic of China.

192

Article 68

193

Should auction enterprises established before the implementation of this Law do not meet the requirements as prescribed in this Law, shall meet the requirements as stipulated in this Law within the prescribed time limit; those still failing to meet the prescribed requirements after the time limit shall have their registrations revoked and their business licenses taken back by the administrative department for industry and commerce. Specific implementation measures shall be formulated by the State Council separately.

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Article 69

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This Law shall come into force from January 1, 1997.

196

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