

SALES BY AUCTION ACT

Cap 408 – 28 July 1945

ARRANGEMENT OF SECTIONS

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SALES BY AUCTION ACT

1. Short title

This Act may be cited as the Sales by Auction Act.

1A. Interpretation

In this Act—

“Minister” means the Minister to whom responsibility for the subject of finance is assigned;

“Registrar-General” means the person appointed as such under the Registrar-General Act.

[S. 1A amended by Act 43 of 1993.]

2. Appointment of auctioneers

(1) The Minister may appoint, in such manner and on such terms and conditions as may be prescribed, auctioneers who shall have the sole right to—

- (a) conduct voluntary sales by public auction of; and
- (b) value and appraise,

movable property, other than stocks, shares, interests, obligations or other incorporeal rights (*meubles incorporels*).

(2) Any person, other than an auctioneer, who conducts sales under subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one-fourth of the value of the property sold.

(3) Notwithstanding subsection (2), any person, other than an auctioneer, who is authorised by law, may conduct sales of movable property in—

- (a) matters relating to estates of deceased persons;
- (b) bankruptcy; or
- (c) execution of judgments of Courts.

(4) Nothing in this section shall apply to sales by wholesale, of goods and local produce, between merchants and traders according to the usages of trade.

[S. 2 amended by Act 43 of 1993; s. 41 of Act 27 of 2013 w.e.f. 21 December 2013.]

3. —

4. Licence and security

(1) Every auctioneer appointed under section 2 shall—

- (a) pay such fees as may be prescribed in respect of his classified trade under the Local Government Act, and be subject to the control of the Attorney-General; and
- (b) furnish security for the due discharge of his duties in the sum of 100,000 rupees by way of—
 - (i) mortgage;
 - (ii) 2 sureties approved by the Attorney-General, by a bond subscribed and registered by the Master on the order of a Judge; or
 - (iii) a security policy from a guarantee company approved by the Accountant-General.

(2) The security policy under subsection (1) (b) (iii) shall be of the same amount and subject to the same conditions and incidents as to approval, forfeiture, renewal or otherwise as the security bond or mortgage.

[S. 4 amended by Act 43 of 1993.]

5. Declaration of sale

(1) No person authorised by law shall conduct a public auction sale of any movable property unless he has made a declaration to that effect to the Registrar-General not later than at 2 p.m. on the day before the sale.

(2) In a district other than Port Louis, the declaration under subsection (1) shall—

- (a) be made to the Superintendent of Police of the district who shall transmit it to the Registrar-General within 24 hours; and

- (b) contain the name, description and place of residence of—
 - (i) the person in charge of the sale;
 - (ii) the person moving for the sale; and
 - (iii) the owner of the property to be sold, together with a detailed description, item by item, of that property and particulars of the time and place of the sale.

(3) The declaration shall be made on stamped paper, dated and signed by the person in charge of the sale and delivered in duplicate to the Registrar-General or to the Superintendent of Police, as the case may be, who shall retain one copy and deliver the other copy duly signed by him to the person in charge of the sale and the declaration shall only be available to the owner of the property.

(4) No declaration shall be necessary in the case of movable property belonging to the Government or of goods seized in contravention of an enactment.

[S. 5 amended by Act 43 of 1993.]

6. Publication of advertisement

(1) Every person in charge of the sale of property by public auction shall publish an advertisement in a newspaper of every intended sale not later than 24 hours before the date of the sale.

- (2) The advertisement shall contain—
 - (a) the name and description of the person in charge of the sale;
 - (b) a description of the property to be sold;
 - (c) the day and time of the sale; and
 - (d) the name of the owner of the property.

7. Declaration of articles sold

The person in charge of the sale shall—

- (a) annex to each memorandum (*procès-verbal*) of sale a copy of the declaration made to the Registrar-General;
- (b) enter in the memorandum every article sold and its price; and
- (c) append his signature to the memorandum.

[S. 7 reprinted by Reprint 3 of 1983.]

8. Sale on inventory

(1) Where a sale has taken place on inventory, the memorandum (*procès-verbal*) shall state—

- (a) the fact that the sale has taken place;
- (b) the date of the inventory; and
- (c) the name of the notary who effected the sale.

(2) Where a sale has been made on credit by a notary, the memorandum (*procès-verbal*) shall contain the name of the purchaser and the extent of the credit given.

9. Contents of memorandum

Every person in charge of a sale shall comprise in his memorandum (*procès-verbal*) all the articles—

- (a) mentioned in his declaration, including those valued and withdrawn from the sale by the owner or heir; and
- (b) delivered by him for the price of the outbid and the valuation.

10. Registration duty

(1) The registration duty shall be payable, by the person in charge of the sale on the amounts stated in the memorandum (*procès-verbal*), within 10 days of the last transaction, failing which he shall be liable to the penalty specified in section 33 of the Registration Duty Act.

(2) No registration duty shall be payable in respect of any article withdrawn by its owner from the sale where the auctioneer has publicly declared and mentioned the withdrawal in his memorandum (*procès-verbal*).

[S. 10 amended by Act 32 of 1983.]

11. Private sale forbidden

No person authorised by law to conduct a sale of movable property by public auction shall sell that property by private sale.

12. Retention of proceeds of sale

No person authorised by law to conduct a sale of movable property by public auction shall pay out the proceeds of the sale until after 3 days from the date of the sale.

13. Offences

(1) Any person who contravenes this Act shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees.

(2) An offence under subsection (1) may be proved by any officer of the Registrar-General's Department, a police officer or other witness.

(3) An officer deputed by the Registrar-General and a police officer may attend an auction sale and demand the production of the memorandum (*procès-verbal*) of any sale, together with copies of previous declarations, which shall be produced by the person conducting the sale.

(4) (a) Every memorandum (*procès-verbal*) shall, until proved otherwise, be held to be accurate in all particulars.

(b) The proof may be made by oral evidence.

(5) A prosecution under this Act shall be dealt with in accordance with the law relating to registration.

[S. 13 amended by Act 43 of 1993.]

14. —

15. When appraisal necessary

(1) Where any movable property, which has been placed under seal, does not exceed 400 rupees, no public appraisal shall be necessary unless called for by one of the interested parties.

(2) Where one of the interested parties has called for a public appraisal, it shall suffice for the auctioneer to draw up a description of the property.

16. Special report on appraisal

Where, at the making of an inventory, no public valuation is effected, the auctioneer shall draw up a special report of his appraisal, annex it to the memorandum (*procès-verbal*) of sale, and produce the memorandum to the Attorney-General and the Judge, in all sales where their presence is required by law.

17. Assistance in appraisal

Where an auctioneer is unable to appraise an article alone, he may require the assistance of some other experienced person, who shall be sworn by the Judge, and his expenses shall be taxed.

18. Commission and costs of appraisal

(1) Every auctioneer may claim a fee of 150 rupees for every attendance of 3 hours' duration in making an appraisal and, where called out of Port Louis, the same fee as a notary for his time and travelling expenses.

(2) Every auctioneer may charge a commission of 5 per cent on the produce of all auction sales conducted by him, exclusive of disbursements for advertisement and duties on the sale.

[S. 18 amended by Act 43 of 1993.]

19. Declaration and opposition

(1) An auctioneer may—

- (a) receive a declaration and an opposition relating to a sale advertised by him; and
- (b) submit to the competent authority all references to which his operations may give rise and, to that effect, cite before that authority the parties interested.

(2) No opposition or attachment lodged with an auctioneer, and no notification of any judgement decreeing the validity of that opposition or attachment, shall be valid unless the original of the opposition, attachment or notification has been endorsed by the auctioneer or, in case of his absence or refusal, by the Ministère Public.

20. Diary

(1) Every auctioneer shall keep a diary on stamped paper in which he shall enter daily his memoranda (*procès-verbaux*).

(2) The diary shall be countersigned at its beginning and numbered and initialled on each page by a Judge in Chambers.

(3) The diary shall be closed and settled quarterly by the Registrar-General.

21. Sale of Government property

All sales by public auction of—

- (a) public or Government property;
- (b) leases of public or Government property, which, under any other enactment, are made by the *Vendue* Master or any other officer or person on behalf of Government; and
- (c) all sales by auction and leases of public or Government property,

shall be held by an auctioneer appointed by the Financial Secretary.

22. Powers of auctioneer

An auctioneer appointed under section 21 shall, in the exercise of his functions, have all the powers and duties which are exercised by the *Vendue* Master under any enactment specified in section 21.

23. Regulations

The Minister may make such regulations as he thinks fit for the purposes of this Act.

[S. 23 added by Act 43 of 1993.]