

*Draft for public consultation - 28 October 2010*

value or syndication value has been used, and two valuations must be submitted and must be undertaken and signed by the respective valuers;

- (xiii) full details about previous transactions regarding the property, including -
  - (aa) in the case of a new development, the total cost thereof, including the market value of the land. The contractor or contractors are to confirm in an affidavit the total costs, including the costs of any improvements;
  - (bb) the sales history of the property for the past ten years, including details of -
    - (A) the various legal entities who owned the property according to the title deeds and the selling price of the property with each change of ownership and the relevant dates; and
    - (B) if one or more legal entities owned the property according to the title deeds, any changes in the ownership of the legal entities, the selling price of the property with each change of ownership and the relevant dates.

(f) The fees for valuations must not be dependent upon the amount of the valuation.

**Claims against Guardian's Fund: Prohibition on alienation of rights**

20. No person may enter into or act upon any agreement whereby one person cedes to any other person, charges, sets off against any debt or alienates in any other manner, his or her right or title to, or any claim against the Guardian's Fund.

**419 schemes**

- 21.(1) Without derogating from and notwithstanding anything contained in any other legislation or law, no person may by any false pretence, and with the intent to defraud -
- (a) obtain, from any other person, in the Republic or in any other country, for himself or any other person; or
  - (b) induce any other person, in the Republic or in any other country, to deliver to any person,
- any property, whether or not the property is obtained or its delivery induced through the medium of a contract induced by false pretence.

*Draft for public consultation - 28 October 2010*

- (2) No person may by false pretence, and with the intent to defraud, induce any other person, in the Republic or in any other country, to confer a benefit on him or her or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for.
- (3) Without derogating from any other law, no person, being the occupier of or who is concerned with the management of any premises may cause or knowingly permit the premises to be used for any purpose contemplated in subregulations (1) or (2).
- (4) Without derogating from any other law, no person may by false pretence, and with the intent to defraud any other person, invite or otherwise induce that person or any other person to visit the Republic for any purpose connected with the contravention of this regulation.
- (5)(a) Without derogating from any other law, no person may conduct a financial transaction which involves the proceeds of a specified unlawful activity -
- (i) with the intent to promote the carrying on of a special unlawful activity; or
  - (ii) where the transaction is designated in whole or in part -
    - (aa) to conceal or disguise the nature, the location, the source the ownership or the control of the proceeds of a specific unlawful activity, or
    - (bb) to avoid a lawful transaction under South African law.
- (b) Without derogating from any other law, no person may transport or attempt to transport a monetary instrument or funds from a place inside the Republic or elsewhere or through a place outside the Republic or to a place in the Republic, from or through a place outside the Republic -
- (i) with the intent to promote the carrying on of a specified unlawful activity; or
  - (i) where the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and the transportation is designed in whole or in part -
    - (aa) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of a specified unlawful activity, or
    - (bb) to avoid a lawful transaction under South African law,
- if he or she knows or ought to know, having regard to the circumstances of the case, that the monetary instrument or funds involved in the transportation are the proceeds of some form of unlawful activity.

*Draft for public consultation - 28 October 2010***Prohibition on feasibility studies promising funding**

22. No person may offer, conduct, sell or otherwise provide an agreement for a feasibility study or a feasibility study itself which states, promises or otherwise intimates that the purchase or use of the feasibility study guarantees funding, financing, sponsorship or any other backing, whether from within the Republic or elsewhere.

**Calculation of interest for multiplication scheme**

23. For purposes of section 43(3) of the Act, the applicable REPO rate is the rate which applied at the date of the investment or commencement of participation. The effective annual interest rate will be:

$$r = \frac{R \times 1200}{C \times T}$$

Where:

- r = the effective interest rate,  
R = the interest in Rand, which is the difference between the amount paid out to the investor or participant and the amount invested,  
C = the amount invested by the investor or any amount paid by a person to become a member of a scheme, and  
T = the period of the investment in months.

**Definitions, interpretation and application: auctions**

- 24.(1) In regulations 25 to 40, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has the same meaning, and -

**"absolute auction"** means an auction at which -

- (a) goods are sold to the highest bidder without reserve;
- (b) the auction does not require a minimum bid;

*Draft for public consultation - 28 October 2010*

(c) the auction does not allow competing bids of any type by the seller or an agent of the seller; and

(d) the seller of the goods cannot withdraw the goods from auction after the auction is opened and there is public solicitation or calling for bids;

**"advertisement"** means any written, oral, or electronic communication that offers goods or any combination thereof by or at auction, or promotes, solicits, induces, or offers to conduct an auction or to provide auction services;

**"auction"** means a sale at which prospective purchasers are invited to bid and includes a sale at which bids are suggested and the suggested amounts progressively reduced until a bid is actually made, but does not include any process, project or matter related to a request for proposals issued by an organ of state;

**"auction house"** means a company or other juristic person which from time to time conducts auctions as part of its business;

**"auctioneer"** means the person conducting an auction, irrespective of whether he or she is doing so for his or her own account or as employee of or agent for an auction house or other person;

**"bidders' record"** means the document contemplated in regulation 32;

**"closed auction"** means an auction where the auctioneer or the owner, as the case may be, issues an invitation to take part in an auction only to a finite list of consumers;

**"defect"** means any quality, condition or situation, or lack thereof, relevant to the successful use or operation of goods or immovable property, but excludes any visible minor cosmetic flaw;

**"game"** means game as defined in section (1) of the Game Theft Act, 1991 (Act No. 105 of 1991);

**"goods"** includes, where appropriate, services;

**"livestock"** means cattle, sheep, goats, pigs, horses, mules and donkeys;

**"lot"** means any group of goods sold or offered for sale as a unit and identified as such;

**"vendor's roll"** means the document contemplated in regulation 34(4); and

**"URL"** means an operational uniform resource locator, providing access to information on the internet.

(2) Regulations 25 to 40 must be read together with section 45(6) of the Act.

*Draft for public consultation - 28 October 2010*

- (3) Subject to subregulation (4), these regulations apply to all auctions, irrespective of the nature of the goods offered on auction, the value of the property or the reason for conducting the auction.
- (4) These regulations do not apply to -
  - (a) transactions concluded under the auspices of a registered or licensed stock exchange or similar institution; or
  - (b) an auction where the goods for sale have been donated for sale at an auction and the proceeds of the auction are paid to a bona fide religious, educational, cultural, welfare, social or sports organisation or body which does not as its primary activity undertake commercial or business operations, but an auction conducted as a sale in execution or ordered by a court of law does not constitute an auction contemplated in paragraph (a).
- (5) Any provision in any agreement relating to goods sold or bought at an auction or advertised or offered for sale at an auction, or any agreement providing for conducting the auction itself, in conflict with these regulations, does not from the moment of its conception or conclusion, as the case may be, have any force or effect, but this subregulation must not be interpreted so as to prevent holding a person liable for any relevant contravention.
- (6) These regulations do not detract from any law providing for or related to the advertising, sale, purchase, delivery, rendering or financing of goods.
- (7) An auctioneer selling immovable property by way of auction must comply with any other applicable law in respect thereof, including legislation regulating the activities of estate agents.
- (8) An auctioneer must comply with all general provisions of these regulations as well as those applicable to the category of auction or auctioneer provided for in regulations 38 to 40.

**Mandatory advertising of auctions**

- 25.(1) Subject to regulations 39 and 40, no goods may under any circumstance whatsoever be sold by auction unless the inclusion of such a particular item or lot or service in that auction has been advertised in print or electronically in such a manner that the general public has had a reasonable opportunity to become aware of the auction, the goods on offer and of the rules governing the auction.

*Draft for public consultation - 28 October 2010*

- (2) The onus to prove that an auction was advertised as contemplated in subregulation (1) rests on the auctioneer.
- (3) An auctioneer must for purposes of subregulation (1) advertise the auction of a particular item or lot at least 24 hours prior to the commencement of the auction, but -
  - (a) any goods may be withdrawn at any time prior to the commencement of the auction;
  - (b) in the event of an auction where goods offered for sale include immovable property, this period must exceed five business days.
- (4) If an auction or part thereof relates to goods sold in execution or by order of court, the advertisement must clearly state that fact.

**General rules on advertising of auctions**

- 26.(1)** Despite the rules and rulings of any advertising standards body, all advertising of auctions must -
- (a) be accurate; and
  - (b) provide sufficient information for a reasonable consumer to -
    - (i) understand that it relates to an auction; and
    - (ii) be able to find the place where the auction is to be held.
- (2) Advertising relating to an auction must subject to subregulation (3) -
- (a) be in a legible format and size;
  - (b) contain a reference to these regulations, together with the URL of an operational internet site where a copy of these regulations can be obtained;
  - (c) state the date, place and time of the auction;
  - (d) state the name of the auctioneer and the auction house, if any, and if registration or licensing of auctioneers or auction houses after the commencement of these regulations becomes mandatory, such registration or licensing number;
  - (e) state where the rules of auction can be obtained;
  - (f) state the particulars of the goods offered on auction;
  - (g) if applicable, state that the auction will be held over a number of days;
  - (h) state, if applicable as contemplated in section 45(4) of the Act, that a sale by auction is subject to -
    - (i) a reserved or upset price; or

*Draft for public consultation - 28 October 2010*

- (ii) a right to bid by or on behalf of the owner or auctioneer, in which case the owner or auctioneer, or any one person on behalf of the owner or auctioneer, as the case may be, may bid at the auction; and
  - (iii) contain a reminder that all prospective bidders must register as such prior to making bids during the auction and that such registration requires proof of identity and of residence as contemplated in regulation 31(2).
- (3) The requirements of subregulation (2) do not apply to roadside advertising or classified advertising in printed newspapers, but such advertising must -
  - (a) at the top of the advertising prominently display the word "auction";
  - (b) indicate where a full advertisement as contemplated in subregulation (2)(b) can be obtained; and
  - (c) state the date, place and time of the auction.
- (4) A consumer may at any time during ordinary business hours request an auctioneer to provide him or her with access to an advertisement contemplated in subregulation (2), and the auctioneer must forthwith without charging any fee whatsoever comply with such a request, but -
  - (a) a consumer is entitled to only one free copy;
  - (b) the auctioneer may provide a URL of an operational website which will provide a copy of the full advertisement in a format generally used.
- (5) Any material or publication not meeting all of the requirements of this regulation does not constitute advertising for purposes of this regulation 25 and this regulation.
- (6) An auction may not be advertised as a "sale in execution" or use similar wording implying court action unless -
  - (a) at least 75% of the items or lots in the auction are being offered pursuant to a court order;
  - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction;
  - (c) the advertising contains an explanation of the court order including identification of the court.
- (7) Unless all items or lots being offered at auction are pursuant to a court order, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.

*Draft for public consultation - 28 October 2010*

- (8) Subregulations (6) and (7) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and were clearly not purchased or attained for the purpose of resale at auction.
- (9) An auction may not be advertised as an "insolvency auction" or use similar wording implying insolvency unless -
  - (a) at least 75% of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;
  - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - (c) the advertising contains the order number of the Master of the High Court.
- (10) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.
- (11) Subregulations (9) and (10) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the Master of the High Court and was clearly not purchased or attained for the purpose of resale at auction.
- (12) An auction may not be advertised as "deceased auction" or use similar wording implying insolvency unless -
  - (a) at least 75% of the items or lots in the auction are being offered pursuant to an order of the Master of the High Court;
  - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - (c) the advertising contains the order number of the Master of the High Court.
- (13) Unless all items or lots being offered at the auction are pursuant to an order of the Master of the High Court, then the advertising must indicate that the auction is "with additions", "supplemented" or use similar wording.
- (14) Subregulations (12) and (13) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to an order of the Master of the High Court in an auction if such goods are offered pursuant to an order of the Master of the High Court and was clearly not purchased or attained for the purpose of resale at auction.

*Draft for public consultation - 28 October 2010*

- (15) An auction shall not be advertised as "divorce auction" or use similar wording implying court action unless -
- (a) at least 75% of the items or lots in the auction are being offered pursuant to a court order;
  - (b) the items or lots were clearly not purchased or attained for the purpose of resale at auction; and
  - (c) the advertising must contain an explanation of the court order including identification of the court.
- (16) Unless all items or lots being offered at the auction are pursuant to a court order, then the advertising shall clearly indicate that the auction is "with additions", "supplemented" or use similar wording.
- (17) Subregulations (15) and (16) do not prohibit clear, non-misleading advertising of the inclusion of specific goods being offered pursuant to a court order in an auction if such goods are offered pursuant to a court order and was clearly not purchased or attained for the purpose of resale at auction.
- (18) No auction may be advertised as "absolute", no advertising may contain the words "absolute auction" or the word "absolute" or words with similar meaning and no auctioneer may offer or sell any goods at absolute auction unless -
- (a) there are no liens or encumbrances on the goods, except property tax obligations, easements, or restrictions of record, in favour of any person other than the seller, or unless each and every holder of each and every lien and encumbrance has in writing agreed to the unqualified acceptance of the highest bid for the property, without regard to the amount of the highest bid or the identity of the high bidder, or that a financially responsible person in writing absolutely guarantees the immediate and complete discharge and satisfaction of any and all liens and encumbrances immediately after the sale or at the closing, without regard to the amount of the highest bid received, or the identity of the high bidder; and
  - (b) there is the bona fide intention at the time of the advertising and at the time of the auction to transfer ownership of the goods, regardless of the amount of the highest and last bid, to the highest bidder, that intent existing without reliance on any agreement that any particular bid or bid level must be made or be reached, below which level the goods will not be transferred to the highest bidder; and

*Draft for public consultation - 28 October 2010*

- (c) the rules of auction contain a binding requirement that the auction be conducted without reserve.
- (19) Subregulation (18) does not prohibit -
- (a) a secured party or other lien holder who is not the seller from bidding at an absolute auction, but such bidding does not constitute, nor is it tantamount to the direct or indirect establishment or agreement to the establishment of a reserve price on the goods by the seller or by the auctioneer, or by anyone aiding or assisting, or acting upon behalf of, the seller or the auctioneer;
  - (b) any individual party to the dissolution of any marriage, partnership, or corporation from bidding as an individual entity apart from the selling entity, on goods being sold at auction pursuant to that dissolution;
  - (c) any individual party or heir of a deceased person's bona fide estate from bidding as an individual entity, apart from the selling entity, on goods being offered at auction pursuant to that estate being settled; or
  - (d) the inclusion of non-misleading advertising of certain goods to be sold at "absolute auction" and the non-misleading advertising of certain goods to be offered at auction with reserve, within the same advertisement, or for sale at the same date and place, but that advertisement must make clear, through appropriate emphasis, which goods are being offered by each method.

**Rules of auction****27.(1) An auctioneer must -**

- (a) in writing compile the rules of auction; and
  - (b) except in the case of a livestock or game auction or a closed auction, make the document available to the general public at least 24 hours prior to the commencement of the auction.
- (2) The rules of auction must, as a minimum -
- (a) on the first page of the document in large letters display the words "rules of auction", and immediately beneath that the date, place and time of the auction;
  - (b) contain the full names, physical address and contact details of the auctioneer, and where applicable, of the auction house;
  - (c) contain all mandatory information required by these regulations, and if applicable, the information contemplated in section 45(4) or (5) of the Act;

*Draft for public consultation - 28 October 2010*

- (d) contain a statement to the effect that the rules of auction comply with section 45 of the Act and with these regulations;
  - (e) contain the text of subsection (1), (2) and (3) of section 45 of the Act;
  - (f) provide that an auction will commence at the published time and that it will not be delayed to enable any specific person or more persons in general to take part in the auction;
  - (g) provide that a person who attends at the auction to bid on behalf of another person must produce a letter of authority meeting the requirements of regulation 32(3) in order to so bid on behalf of that person;
  - (h) contain a statement to the effect that the auctioneer has a trust account into which all moneys will be paid for the benefit of the seller, minus the agreed commission;
  - (i) contain a statement to the effect that the auctioneer will during the auction announce the reason for the auction unless that reason is the normal and voluntary disposal of goods by the owner;
  - (j) provide that a person who intends to bid at the auction must register prior to the commencement as contemplated in regulation 32(2) together with a description of the requirements for registration; and
  - (k) provide that the bidders' record contemplated in regulation 32 and the vendor roll contemplated in regulation 34(4) are available for inspection during normal hours without the charge of a fee.
- (3) The rules of auction may not -
- (a) exclude liability in respect of inaccurate information provided in the advertising of the auction;
  - (b) exclude liability in respect of the rules of auction not meeting the requirements of these regulations; or
  - (c) contain any qualification, reservation or diminution of the requirements of these regulations unless expressly provided for.
- (4) In the event that the rules of auction are amended after their initial publication, the auctioneer must expressly indicate that the new version is an amended version.
- (5) The rules of auction must be signed by the auctioneer who is going to conduct the auction and he or she must certify that the rules of auction to the best of his or her knowledge meets the requirements of this regulation.