

Draft for public consultation - 28 October 2010

- (6) If on the day of the auction the auctioneer who signed the rules of auction as contemplated in subregulation (e) above is unavailable to conduct the auction, the auctioneer who then conducts the auction will be deemed to have so certified the rules of auction.
- (7) An auctioneer is personally accountable and liable for the contents of the rules of auction applicable to a specific auction.
- (8) The rules of auction need not be read out at an auction to be valid, but only if -
 - (a) the rules of auction were, where applicable, available to the general public at least 24 hours prior to the commencement of the auction;
 - (b) in the case of a livestock or game auction contemplated in regulation 39(1) are the same as for previous auctions and are generally available on the auction house or the auctioneer's website or at the auction house or the auctioneer's business premises during normal business hours;
 - (c) in the case of a closed auction, were made available to all persons to whom an invitation to take part in that auction was issued; or
 - (d) at an auction other than an internet auction, the auctioneer invites any person present to object to the rules of auction not being read upon, and nobody does.
- (9) The rules of auction may not exclude the right of inspection as contemplated in regulation 34(5).

Auctioneer and auction house to hold and account for consumer's property

- 28.(1) An auctioneer and auction house must at all times strictly comply with section 65(2) of the Act.
- (2) No auctioneer may sell goods on auction until he or she has first entered into a written agreement with the owner or rightful holder of such goods to be sold, whether for a specific auction or auctions on general, which agreement contains the terms and conditions upon which that auctioneer accepts the goods for sale.
- (3) An agreement contemplated in subregulation 2 must as a minimum contain -
 - (a) the name and physical address of owner of the goods to be sold or the owner's agent or the rightful holder thereof;

Draft for public consultation - 28 October 2010

- (b) if the goods are to be sold at a specific auction, the date of the auction or if the goods are to be sold at a number of auctions, a termination date of the agreement;
 - (c) the address of the premises where the auction is to be held;
 - (d) the rules of auction;
 - (e) a description of all of the fees to be charged by the auctioneer or the auction house, which must include commissions, storage, advertising and labour, or a method by which such fees will be determined;
 - (f) an explanation of the settlement of the auction that includes the disbursement of interest money, if applicable;
 - (g) a statement indicating whether the auction is a reserve auction or not;
 - (h) a brief description of the goods to be sold;
 - (i) if the sale is of goods at absolute auction, a statement affirming that the seller of the goods has a bona fide intention to transfer ownership of the property to the highest bidder;
 - (j) an exact copy of section 65(2) of the Act;
 - (k) an exact copy of subsections (1) to (5) of section 45 of the Act.
- (4) An auctioneer must retain a copy of every agreement contemplated in subregulation 2 signed by the owner or rightful holder of the goods to be auctioned for a period of at least three years from the date of the auction.
- (5) In performing the duties of an auctioneer, every auctioneer -
- (a) is the agent of the owner or rightful holder of the goods for all aspects of an auction;
 - (b) must follow all lawful and reasonable requests of the owner or rightful holder of the goods or immovable property sold at auction;
 - (c) must perform his or her duties so that the highest or most favourable offer made by a bidder is accepted; and
 - (d) must otherwise perform his or her duties in accordance with the highest standards applicable to auctions.
- (6) An auctioneer must keep abreast of current market conditions of goods at all times in order to be in a position to advise and perform services for his or her clients to the best of his or her ability.
- (7) An auctioneer -
- (a) owes a duty of care towards his or her client;

Draft for public consultation - 28 October 2010

- (b) must at all times preserve a professional, confidential relationship with his or her client;
 - (c) must timeously reveal estimated costs and services for conducting the auction; and
 - (d) if he or she is aware or ought reasonably to be aware of any risks associated with the auction of particular goods, he or she must forthwith disclose such risks to the client.
- (8) All unsold property must be returned to the owner or rightful holder immediately upon the completion of an auction unless otherwise agreed.
- (9) The owner or rightful holder must be provided with an itemised account of all goods sold immediately upon completion of the auction unless otherwise agreed, which as a minimum must contain -
- (a) the item or lot sold,
 - (b) amount received for the sold item or lot; and
 - (c) the name of the buyers of every item or lot.

Disqualification to conduct auction**29.** A person who -

- (a) has been found guilty by a court of law, whether in the Republic or elsewhere, of an offence of which fraud or dishonesty is an element, or of any other offence for which such person has been sentenced to imprisonment exceeding five years without the option of a fine;
- (b) is of unsound mind; or
- (c) is an unrehabilitated insolvent,

may not conduct an auction or in any other way act as an auctioneer or hold him or herself out as an auctioneer.

Prohibited behaviour**30.** An auctioneer may not -

- (a) charge or receive any fee or commission in respect of the sale of goods unless the goods have been delivered to the purchaser or registered in the

Draft for public consultation - 28 October 2010

- purchaser's name, as the case may be, or the purchaser has agreed to an arrangement which will ensure the delivery of the goods in question;
- (b) accept a bid from a person unless he or she is registered in the Bidders' Record as contemplated in regulation 32;
 - (c) set a minimum or reserve price without the express written permission of the seller;
 - (d) remove an item or lot from an auction without the express written permission of the seller;
 - (e) allow bidding on an item or a lot if the auction thereof has not been advertised as contemplated in regulations 25 and 26;
 - (f) during an auction deviate from the sequence of goods as advertised;
 - (g) knowingly misrepresent, or cause or permit to be misrepresented the value, composition, structure, character or quality or manufacture of the goods put up for sale at an auction;
 - (h) hinder the access of any person to any advertisement contemplated in these regulations, rules of auction or vendor's roll; or
 - (i) pay any other person in order to be appointed as auctioneer, whether in general or for a particular auction or in respect of any specific goods.

False entry in auction record

- 31.(1)** Without detracting from any other applicable law, an auctioneer, including an employee of the auctioneer or the auction house, may not knowingly enter in any record kept or required to be kept by the auctioneer under or in terms of these regulations or any other applicable law, any name or other details other than the real name and details of the actual successful bidder.
- (2) If any name or details other than the real name and details of the successful bidder is entered into the record, the auctioneer will be guilty of contravening this regulation, notwithstanding that the error was made by an employee, unless the auctioneer can prove that he or she was not aware that a name or details other than the real name and details of the successful bidder was entered into the record.

*Draft for public consultation - 28 October 2010***Bidder's record**

- 32.(1) An auctioneer must for every auction have a bidders' record to record the identity of all bidders at an auction.
- (2) Subject to regulation 36(2), every prospective bidder must prior to the commencement of an auction register his or her identity in the bidder's record, and such registration must with the necessary changes meet the requirements of Chapter 1 of the regulations in terms of the Financial Intelligence Centre Act, 2001, published in Notice No. R. 1595 in Gazette No. 24176 of 20 December 2002, in respect of establishment and verification of identity, and sign that entry.
- (3) A person who intends to bid on behalf of another must produce a letter of authority expressly authorising him or her to bid on behalf of that person, and both that person and the person bidding on his or her behalf must meet the requirements of subregulation (2)
- (4) If a person will be bidding on behalf of a company, the letter of authority contemplated in subregulation (3) must appear on the letterhead of the company and must be accompanied by a certified copy of the resolution authorising him or her to do so.
- (5) The bidders' record is available for public inspection at any time, free of charge -
- (a) during an auction, at the premises where the auction is being held; and
 - (b) before or after an auction, at the auction house or auctioneer's place of business and during normal business hours.
- (6) An auctioneer must record the bidder number contemplated in regulation 34(1) in the bidders' record.

Ownership

33. A person who wishes to dispose of his or her property by way of an auction must sign a declaration stating that he or she is the owner or rightful holder of the goods and submit that declaration to the auctioneer.

Bidding

- 34.(1) An auctioneer must provide a prospective bidder whose name appears in the bidders' record with a bidder number before he or she may bid, as well as a paddle or other

Draft for public consultation - 28 October 2010

device to which that number is attached in such a way that it is clearly visible to the persons present at the auction.

- (2) A bid taken from an unregistered person is invalid.
- (3) The place where an auction is held must be open and accessible to any member of the public, subject to the auctioneer's right to refuse a person the right to remain on the auction's premises in the event that that person repeatedly behaves in such a way so as to disrupt the auction without any valid reason.
- (4) An auctioneer must have a vendor's roll in which all details of the auction are recorded, which must, as a minimum, include -
 - (a) the advertising of the auction;
 - (b) the rules of auction;
 - (c) the bidders' record;
 - (d) the ownership declarations contemplated in regulation 27(2)(h);
 - (e) a list of all goods on auction, including goods which were withdrawn from auction;
 - (f) the names of the successful bidders, the goods or lots bought and the prices paid in respect thereof;
 - (g) the details of any challenges to the validity of the auction or the conduct thereof, and the particulars of the persons making such challenges, if available;
 - (h) any items or lots not sold;
 - (i) the details of any reserved price or any matter contemplated in subsections (4) and (5) of section 45 of the Act.
- (5) The auctioneer must afford consumers a reasonable period of time and opportunity to inspect the goods on offer prior to the commencement of an auction, and no fee may be charged for such opportunity, but an auctioneer may -
 - (a) refuse or restrict access to such goods if the consumer after gaining access in any way acts unlawful or in contravention of the applicable rules of auction;
 - (b) require the consumer to adhere to or submit to any security measures reasonably applicable in the circumstances.
- (6) Subject to any reserve price, the highest bidder, when the auctioneer announces the completion of a sale by the fall of the hammer, or in any other customary manner, is the purchaser of the goods or lots on auction.

Draft for public consultation - 28 October 2010

- (7) No fee may be charged for participation in an auction, but this does not apply to refundable deposits.
- (8) The auctioneer must upon concluding the proceedings of an auction -
 - (a) announce that the auction has come to an end;
 - (b) sign the vendor's roll; and
 - (c) certify that the proceedings of the auction were to the best of his or her knowledge conducted in accordance with these regulations, any other applicable law and the rules of auction.

Mock auction

- 35.(1)(a) A mock auction is an auction in which -
 - (a) goods are sold for less than the highest bid, or part of the purchase price is repaid or credited to the purchaser;
 - (b) the right to bid for goods is restricted to persons who have bought or have agreed to buy other goods; or
 - (c) any goods are given away as gifts.
- (2) No person may promote, take part or conduct a mock auction.
- (3) If it can be proved that the reduction in the purchase price or the repayment credit was due to a defect which the auctioneer only became aware of after the highest bid was made, or because of damage sustained after the highest bid was made, the auction will not be considered to be a mock auction.
- (4) No person may promote, organize, participate in or benefit from any kind of conspiracy between an auctioneer, any participants in an auction or any other persons who agree not to bid against each other at an auction or who otherwise conspire to decrease or increase the number or amounts of bids offered at auction.

Internet or electronic auctions

- 36.(1) An auction may be conducted via the internet or other electronic medium or platform, irrespective of where the server or other electronic medium or platform is situated, only if -

Draft for public consultation - 28 October 2010

- (a) it meets all requirements in respect of an auction provided for in these regulations or other applicable law, but with the necessary changes, if any, to suit an electronic medium or platform;
 - (b) the relevant internet website or electronic medium or platform is generally available to anyone over the age of 18 years at any time of the day;
 - (c) the relevant internet website or electronic medium or platform provides high standards of security for electronic transactions;
 - (d) the relevant internet website or electronic medium or platform provides for easy access to all records prescribed in these regulations in a generally used or accepted medium or format;
 - (e) the internet auction provider keeps the information contemplated in regulation 12(4).
- (2) For purposes of regulation 32(2), a prospective bidder in an auction to be held via the internet or other electronic medium or platform must register by providing -
- (a) his or her full names, identification or passport number, age, physical address, internet protocol address, and where applicable, login code or name, and password; and
 - (b) the details of the means by which payment will be effected,
- and the registration webpage must contain a highly visible statement to the effect that any information provided by the prospective bidder which is inaccurate or incomplete will invalidate his or her registration and will render any attempted transaction null and void.
- (3) An auctioneer conducting an auction via the internet or other electronic medium or platform may not exclude liability if any goods purchased by auction are not delivered to the purchaser thereof.

Records

- 37.(1)** All records prescribed in these regulations must be kept for a period of at least five years.
- (2)(a) Any person in possession of any record contemplated in these regulations must forthwith upon receipt of a written request at his or her own cost provide the Commission or any relevant body or forum with certified copies of the record so

Draft for public consultation - 28 October 2010

requested or which may be relevant to any record so requested, but if the original record is expressly requested, that original record must itself be made available.

- (b) The Commission may not for purposes of criminal proceedings provide copies of any documents which has come into its possession pursuant to subregulation (a) to anyone, unless by order of court.

Motor vehicle auctions

38. In addition to any other requirement in these regulations, an auctioneer may not conduct an auction unless a notice containing the particulars and statements required in this subregulation relating to the vehicle is attached to the vehicle and has been attached to the vehicle at all times when the vehicle was available for inspection by prospective bidders, which must include -

- (a) the name and business address of the auctioneer;
- (b) if the auctioneer or auction house is conducting the sale on his, her or its own behalf, whether the auctioneer or auction house is liable to discharge the duty of repair, or not;
- (c) if the auctioneer or auction house is conducting the sale on behalf of -
 - (i) a motor vehicle dealer or bank or other financing entity, the name in which that dealer, bank or entity is licensed and the business address of the dealer, bank or entity and whether the dealer, bank or entity is liable to discharge the duty of repair, or not;
 - (ii) another person, a statement that there will be no duty to repair, the name and address of the last owner of the vehicle who was not a dealer, bank or entity, alternatively a statement that the last owner's name and address are available on request from the auctioneer or auction house;
- (d) if the owner let the vehicle on hire to another person under a vehicle leasing agreement, the name and address of such other person, alternatively a statement that such person's name and address are available on request from the auctioneer;
- (e) the vehicle's year of manufacture;
- (f) the vehicle's year of first registration;
- (g) the vehicle's manufacturer and model designation;

Draft for public consultation - 28 October 2010

- (h) the vehicle's registration number;
- (i) the vehicle's engine number;
- (j) the vehicle's vehicle identification number (VIN);
- (k) a statement whether or not the reading of the odometer of that vehicle is guaranteed; and
- (l) a statement contemplated in regulation 27(2)(i).

Livestock and game auctions

39. If a livestock or game auction is conducted regularly on a weekly or monthly basis -
- (a) at the same time, the same place and by the same auctioneer or auction house;
 - (b) subject to the same rules of auction; and
 - (c) nothing but livestock or game is on offer,
- the provisions of regulations 25(1) and 26(4) do not apply to that auction.

Closed auctions

40. The provisions of regulations 25(1) and 26(4) do not apply to closed auctions.

Maximum amount of cancellation penalty for lay-by's

- 41(1). For purposes of section 62(6) of the Act, a cancellation penalty may not exceed the loss of value on the goods, if any, since the commencement of the lay-by agreement
- (2) Any notices exchanged in respect of the cancellation of lay-by's may be transmitted or stored electronically if the requirements of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002) are met.

Direct referral of matter to Tribunal

- 42(1) For purposes of section 69(a) of the Act, a matter may be referred to the Tribunal by submitting the form contained in Annexure "C" to this Schedule, together with certified copies of any documents the Tribunal should consider, by mailing it to (Postal Address), delivering it by hand to (Physical Address), by filing

Draft for public consultation - 28 October 2010

- it electronically at (Website) or by e-mailing it to (e-mail address).
- (2) The respondent must simultaneously lodge or serve copies of the documents contemplated in subregulation (1) in person or by registered mail to the other party and to the Commission.

Initiating complaint to Commission

43. For purposes of section 71(1) of the Act, a person may file a complaint with the Commission in the form contained in Annexure "D" to this Schedule, together with certified copies of any documents the Commission should consider, by mailing it to (Postal Address), delivering it by hand to (Physical Address), by filing it electronically at (Website) or by e-mailing it to (e-mail address).

Investigation by Commission

44. For purposes of section 72(1)(a) of the Act, the Commission may issue a notice of non-referral in the form contained in Annexure "E" to this Schedule.

Outcome of investigation

45. For purposes of section 73(1)(a) of the Act, the Commission may issue a notice of non-referral in the form contained in Annexure "F" to this Schedule.

Application for matter referred to consumer court by Commission to be heard by Tribunal

- 46.(1) For purposes of section 73(3) of the Act, an application for an order that a matter be referred to the Tribunal must be lodged with the Tribunal within 15 business days of the matter so being referred to the consumer court by submitting the form contained in Annexure "G" to this Schedule, together with certified copies of any documents the Tribunal should consider as well as the document referring the matter to the consumer court, by mailing it to (Postal Address), delivering it by hand