Information Sheet

Legal Framework for Auction Activity

The Legal Framework regarding the activity of auctioneers is established in Decree-Law No. 155/2015 of 10 August and came into effect on 21 September.

"Auction Activity" refers to activity involving the sale of moveable and immoveable property, tangible and intangible, through owner or court issued mandate. Auctioned through bidding conducted by an auctioneer who intervenes and appears from a distance. The good goes to the individual who offered the highest (best) bid and is obligated to acquire said good.

"Auction Company" refers to a person or a group of people who partake in auction activity, in accordance with the respective decree.

Auction Activity can only take place in the national territory of either the individual or collective group. This is properly **authorised by the Directorate General of Economic Activities (DGAE) if the requirements are met.**

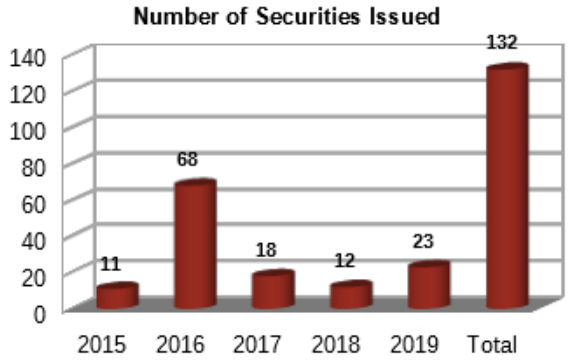
AUTHORISATION FOR ECONOMIC OPERATORS

The request for authorisation to perform Auction Activity is presented at the electronic one-stop shop, called Entrepeneur´s Desk (BdE) through a specific form containing the following elements:

- Identification of the applicant with mention of the name or company and tax identification number;
- Headquarters or tax address, depending on whether it is a legal person or an individual entrepreneur;
- The code to the permanent certificate or declaration which indicates the start of activity, depending on whether it is an individual or collective group.
- Criminal Record of the applicant and in the case of a group the record of the respective administrators and managers
- Written declaration, under honor, attesting that in relation to the applicant or, in the case of a legal person, the respective administrators, directors or managers, there is no circumstance that determines the non-suitability (Article 6 of Decree-Law No. 155/2015)

The deed authorising the exercise of this activity is given to the applicant once they have submitted proof of a compulsory insurance policy, a financial guarantee or its equivalent without which you cannot start this activity.

As shown in the graph below, between September 2015 and 2019, 132 authorisation deeds where issued for the exercise of auction activity.



It should be noted that the auction framework came into effect in September 2015, therefore the deeds issued this year only relate to orders entered in September, October, November and December.

OBLIGATION OF AUCTIONEER COMPANIES

- Have civil liberty insurance, financial guarantee or its equivalent, as stated in article 10
- Have a Complaints Book
- Evidence of identification (name and title of authorisation) in all establishments that serve the public in national territory including all those, which are provisional in nature
- Make the regulation concerning the conditions for the operation of auction available on the website and auction site
- Keep a record of all the auction contracts
- Keep a copy of all auction contracts for a

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minimum of five years from the date of signing

- Have an ordered entry record of all the good which have been put up for sale.
- Have an outbound diary that records all the goods sold or returned. Mention the date of the auction, price sold and the names of the buyers and sellers
- Have an auction diary which indicates the date of the auction, the name of the principal, the lot numbers, the names of the buyers and the gross total of the auctioned products
- The auction house representatives and the auctioneers should be properly identified. This needs to be done with a card that identifies the company and the individual's name.
- Report to the DGAE, through the Entrepreneur's Desk (BdE), the following changes within 30 day of their occurrence:
  - ✓ Changes to the insurance contract, financial guarantee or its equivalent
  - ✓ Changes to the administrations, directors or managers
  - ✓ Changes to the commercial name, legal nature, registered location and fiscal domicile.
- Report to the DGAE, through the Entrepreneur's Desk (BdE), no later than 30 days of the opening or closing of the public establishment
- Annually, renovate and send to the DGAE through the Entrepreneur's Desk (BdE) a copy of the insurance policy or a document proving the maintenance of financial guarantee or its equivalent. This is done in order to ensure the validity of the instrument intended to maintain adequate compensation and cover any damages which result from the auction activity
- Report to the DGAE through the Entrepeneur's Desk BdE the cease of activity within 60 day of occurrence.

AUCTIONS

The contract for the provision of auction services must be done in writing. The contract needs to be clear, precise, legible and digital. Two copies need to be made and both have to be signed by both parties using an electronic signature.

The contract needs to include the elements in Article 15 No. 1 a) to g)

When the contract is omitted for a period, it shall be considered as concluded for a period of six months.

An auction company may require prior registration of the recipients of the auction who are interested in bidding for the goods as well as a deposit payment which cannot be used for their own benefit.

The Auction Company cannot:

- Intervene as an interested party in any business which affects the assets included in the auction of which it is responsible. This is applicable if the person interested in the business is a partner or legal representative, spouse, ancestor or descendant of the first degree
- Sell on credit without the written permission of the customers

Electronic Auctions should take place in accordance with article 19

SUPERVISION

In the event of non-compliance with the law then fines are imposed which vary depending on severity and if they are an individual or group.

The ASAE is the responsible authority that supervises and applies the fines and necessary sanctions.