

Ordinance No. 35

on the Procedure for Auction Sale of Movables Placed as Collateral with a Bank

(Issued by the Ministry of Justice and Legal Eurointegration and the Bulgarian National Bank on 8 December 1997; published in the Darjaven Vestnik, issue 123 of 22 December 1997)

Chapter One

General Provisions

Article 1. (1) This Ordinance shall establish the terms and procedure for auction sale of movables placed as collateral with a bank.

(2) The provisions of this Ordinance shall apply to all types of collateral placed in favor of a bank, where the pledged item is placed with the bank, or in favor of the bank with a third party designated by the bank.

Article 2. (1) According to the procedure set forth by this Ordinance, only the movables which are collateral for a defaulted loan extended by a bank may be sold at an auction, provided the following conditions obtain:

1. the loan agreement has a clause authorizing the bank to sell the pledged movables without court litigation in compliance with the procedure prescribed by this Ordinance;
2. the pledged item is placed with the bank, or with a third party designated by the bank;
3. the collateral agreement is concluded in writing and has an authentic date;
4. the pledged item or security has a market or stock price;
5. the debtor has defaulted on his obligation and after seven days since the extension of the invitation for a voluntary foreclosure he has failed to meet his obligation.

(2) Where the pledgor is a third party, the pledged item may be sold at an auction according to the procedure provided for by this Ordinance if this has been explicitly stated in the collateral agreement. In this instance, a copy of the invitation to the debtor is delivered to the pledgor in accordance with para. 3.

(3) The invitation under para. 1, item 5 shall be delivered against the debtor's signature or shall be sent by registered post. When the debtor to the creditor bank has effected a change in his address stated in the loan agreement and has not notified the bank of the new address, the invitation extended at the old address shall be deemed delivered.

Article 3. Within the meaning of this Ordinance, an auction sale is also a sale effected on a commodity or stock exchange.

Article 4. The organization and conduct of the auction is undertaken by the bank.

Article 5. Auctions may be organized as open or sealed-bid.

Article 6. Expenses associated with the organization and conduct of the auction shall be paid by the debtor, and expenses under Article 23, para. 2 and other related expenses on the transfer of the movable item shall be charged to the buyer.

Chapter Two

Auction Commission

Article 7. (1) The auction sale shall be conducted by a commission assigned by the persons who manage and represent the bank, hereinafter referred to as ‘the Commission.’

(2) The Commission shall include three to five members, one of whom must be a lawyer, and two must be reserve members.

(3) The Commission must appoint a Chairman to manage its activity, and a secretary who is in charge of its documentation.

Article 8. (1) The Commission’s meetings are considered valid, provided all commission members are present. If a member is missing, the Chairman must assign a reserve member.

(2) The Commission’s resolutions shall be taken by a majority vote of its members. The Chairman has a casting vote in the case of a tie vote.

Chapter Three

Valuation of Movables

Article 9. (1) Movables which are subject to auction sale shall be valued by appraisers, designated by the persons who manage and represent the bank.

(2) Valuation of the items shall be made after the expiry of the term under Article 2, para. 1, item 5.

(3) Movables shall be valued at their market price.

Article 10. (1) Where the movables are left for safekeeping with a third party designated by the bank, the third party must ensure access to the movables.

(2) Should the third party under para. 1 fail to perform its obligation, the bank, through the persons who manage and represent it, may use support from the bodies of the Ministry of Internal Affairs as per Article 40, para. 1, item 4 of the Law on the National Police.

Chapter Four

Auction Participants

Article 11. (1) Participants in the auction may be all local or foreign physical or legal persons who are not subject to limitations within the meaning of this Ordinance, or who are not under judicial disability by law or other legislative act.

(2) The debtor, the Commission members under Article 7, para. 1, and the appraisers under Article 9, para. 1 shall not participate in the auction.

Chapter Five

Announcement and Conduct of Auction

Article 12. (1) The auction must not be announced earlier than seven days after the date of the valuation.

(2) An advertisement that an auction will be held must be placed at a visible place on the premises of the bank's head office, or in its branches depending on the location of the movables, and must be published in at least one official daily newspaper.

(3) At least 15 days must lapse between the date of announcement, including the date of the last notice in publication, and the auction date.

Article 13. (1) The advertisement under Article 12, para. 2 shall contain the following:

1. the name of the bank;
2. the address, telephone and telefax numbers of the bank;
3. a description of the movables placed as collateral;
4. requisites to the persons who are permitted to purchase the movables, where such requisites are provided for by law;
5. the type of the auction;
6. the opening bid price of the movables;
7. the amount of the guarantee for participation in the auction, the bank and the account number for its payment;
8. the place, time and manner of examination of the movables;
9. the deadline for filing the application for participation in the auction;
10. the place, date and time of the auction;
11. the time, place and manner of delivery of the movables and arrangements for making payment.

(2) The advertisement may contain additional information specifying:

1. the place and terms of delivery of the auction documents;
2. the fee charged on the auction documents and the manner of payment;
3. other pertinent data.

Article 14. (1) The opening bid price set at the auction shall be the price specified as per Article 9.

(2) The auction guarantee for participation in the auction shall be ten percent of the opening bid price set for the movables.

Article 15. (1) Auction documents must be provided by the bank and submitted to auction participants against payment or free of charge, provided this has been stipulated in the auction terms.

(2) Auction documents must be prepared in Bulgarian.

(3) Auction documents include:

1. the terms for conduct of the auction;
2. a sample form of the offer – for sealed-bid auctions;
3. the valuation document of the movables;
4. a sample declaration on the origin of funds as per the appendix;
5. other particulars.

Article 16. Persons who wish to take part in the auction shall submit to the bank an application in writing and shall pay the amount of the auction guarantee within the deadline specified in Article 13, para. 1, item 9.

Article 17. (1) An auction shall be held, provided at least two persons have applied for participation.

(2) Should there be less than two persons applying for participation in the announced auction, or in the event that no effective proposals have been made, the Auction Commission must organize another auction within 15 days.

(3) The second auction shall be conducted according to the rules prescribed for the first auction. In the event the movables remain unsold at the second auction, acting on a proposition from the creditor bank, the Commission may decide to give the movables to the bank in lieu of payment, at a price equal to or not below 80 percent of their opening bid price.

(4) Where the price at which the bank has acquired the movables is higher than its claim, plus the expenses made on the preparation and conduct of the auction, the bank shall pay the difference to the pledgor within seven days after the date of acquisition of the movables by the bank.

(5) Where the movables have remained unsold at the second auction and have not been acquired by the bank as per para. 3, a new auction may be held no sooner than 30 days after the second auction, and a new valuation of the movables shall be made.

(6) In all cases where an auction has not been held, a protocol shall be drawn up.

Article 18. (1) The auction shall be held according to the specified date and time under Article 13, para. 1, item 10.

(2) The persons who manage and represent the bank shall order appointment of an Auction Commission two hours before the auction's opening.

(3) At the date and time of the auction under para. 1, the Chairman of the Commission shall:

1. check the presence of Commission members, the pledgor or his representative;
2. announce the auction's opening and objective;
3. check the participants' identity and documentation, and verify compliance with auction requirements.

Article 19. (1) The open-bid auction is public.

(2) The bidding shall start with the opening price as announced by the Chairman of the Auction Commission. He may set a bidding pace which must be observed for any bidding over the opening price.

(3) The bidding is made by the Chairman announcing consecutive bids over the opening price, separated by acoustic signals.

(4) Prior to the third announcement of the last offer, the Chairman warns that this is the final offer, and in the case of no additional bids, shall close the bidding by an acoustic signal.

(5) The auction is won by the participant who has offered the highest price. The Chairman shall announce the winner and, should there be no additionally pledged items, shall close the auction.

Article 20. (1) In a sealed-bid auction, the participants shall submit to the Commission their offers in a sealed envelope at the opening of the auction.

(2) The name of the participant and the item which is the object of auction sale must be noted on the envelope.

(3) The offer includes a description of the item, the bid price (in both figures and in words) which shall be equal to or higher than the opening price, the participant's name, and other particulars as may be required by the bank.

Article 21. (1) After the participants have submitted their offers, the Chairman of the Auction Commission shall announce the end of the bidding by an acoustic signal. In the presence of Commission members, he opens each envelope to check whether the auction participation requirements have been met and then announces the validity of the offer and the offer price.

(2) An offer which does not meet the requirements under Article 20 shall be considered by the Commission.

(3) The offers shall be verified by all Commission members and shall be listed in the order of their respective size.

(4) The auction is won by the participant who has offered the highest price. The Chairman shall announce publicly the successful auction participant and, should there be no other items for sale in the auction, shall close the auction.

(5) Where the highest price has been offered by two or more participants, the auction shall continue with open bidding between those participants, starting with this price.

Article 22. (1) The Auction Commission shall draw up a protocol in triplicate, one each for the bank, the pledgor and the successful auction participant. It shall be signed by the Commission members and the successful auction participant, at the time of the meeting. Commission members with a dissenting opinion shall state in writing their considerations in the protocol and sign it. Should the pledgor have not been present at the auction, the protocol shall be sent to him in accordance with Article 2, para. 2.

(2) The protocol shall include information on:

1. the Auction Commission members;
2. the date, time and place of the auction;
3. the deadline for filing the application for participation in the auction;
4. the names of persons permitted to participate in the auction;
5. the names of persons who have not been permitted to participate in the auction and the reasons therefor;
6. the prices bid by participants;
7. the name of the successful auction participant.

(3) Where the items have been assigned to the bank under Article 17, para. 3 in lieu of payment, this decision of the Commission shall be included in the protocol.

Article 23. (1) The property right on the pledged item shall be transferred to the successful auction participant in accordance with the decision of the Auction Commission included in the protocol, after the price of the item has been paid.

(2) For movables which are subject to auction sale, where an act of the upper legislature requires that the property right be transferred on the basis of an agreement with notary certified signatures or under certain other conditions, the Commission shall make the transfer in accordance with the prescribed procedure. The agreements and other documentation shall be signed by the Chairman of the Commission.

(3) The payment shall be made to the bank's account in the manner and term specified in the advertisement under Article 13, para. 1, item 11.

Article 24. (1) If the successful auction participant has failed to pay the price within the specified term, the Commission shall draw up a protocol whereby the participant offering the next highest price is awarded the auction, and it shall notify him of that, as well as set forth a seven-day term after receipt of the notification for payment of the price. Should this participant also fail to pay the price, the auction is won by the next participant included in the list of offers.

(2) The auction guarantee made by the successful auction participant but who has failed to pay the price shall be kept with the bank to repay the debt. If the debt is less than the amounts kept, the difference is returned.

(3) Auction guarantees of the other participants shall be returned.

Article 25. The selling price of the pledged items shall be used to collect the bank's claims on the loan, including the bank's expenses for the auction.

Chapter Six

Special Sales

Article 26. (1) Pledged items, including agricultural produce, may be offered for sale by the bank on a commodity exchange.

(2) Pledged shares, bonds and treasury bills may be sold on a stock exchange.

(3) This Ordinance does not apply to sales under paras. 1 and 2.

(4) Should the shares have not been sold under para. 2, the bank may acquire them as per Chapter Five.

Chapter Seven

Legal Protection and Foreclosure

Article 27. (1) The pledgor and auction participants may lodge an appeal to the relevant District Court against illegal acts of the bank or the Auction Commission and their refusal to act in conformity with this Ordinance.

(2) The appeal shall be addressed to the District Court according to the place of establishment of the Auction Commission, within seven days after the act has been or should have been committed.

(3) A copy of the appeal shall be delivered to the bank or the Auction Commission. They may enter a caveat in writing within seven days after the receipt of the copy.

(4) The application shall be considered under Articles 214 – 217 of the Civil Procedure Code.

(5) The appeal shall not preclude execution of the action, but the court may rule on termination of the act under appeal.

(6) The ruling of the District Court is final and may not be appealed.

Article 28. Open-bid auction sale concluded as a result of actions contravening law and good manners may be declared null and void at the request of the parties concerned within ten days after the assignment.

Additional Provisions

§ 1. Within the meaning of this Ordinance, banks are the commercial banks and the State Savings Bank.

§ 2. Persons violating the provisions of this Ordinance shall be subject to Article 31 of the Administrative Misdemeanors and Penalties Law.

Final Provisions

§ 3. This Ordinance does not apply where:

1. the debtor is declared insolvent;
2. the pledged item is subject to foreclosure undertaken according to a legal procedure by another creditor, as well as by depository assigned by another creditor under the Law on Special Collaterals.

§ 4. This Ordinance is issued on the grounds of Article 42, para. 2 of the Law on Banks.

Appendix
to Article 15, para. 3, item 4

**DECLARATION
on the origin of funds for auction participation**

The undersigned
(full name)
identification card series....., issued on
by....., city, URN:
mailing address: city (village), postcode
str., company.....
.....

(to be filled in by sole proprietor)

tax office, tax number, BULSTAT.....
tel., fax..... in a capacity of:

- A. Physical person
- B. Physical person sole proprietor
- C. Legal entity proxy.....

(name of the legal entity)

headquartered in, mailing address:
city (village), postcode, str.
tax office, tax number,
BULSTAT, tel., fax

HEREBY DECLARE THAT:

1. I will participate in the auction sale of movables with funds originating from ..
.....
(description of sources)

2. I have paid due income tax on the funds under item 1 for the period of their
acquisition of BGL.
(in words)

(rec. No..... or bank statement.....).
3. The legal entity as represented by me has earned profit for the previous year of
..... BGL.

(in words)
and has paid profit tax of BGL.
(in words)

(rec. No..... or bank statement.....).
4. The legal entity as represented by me owns property and financial assets of
..... BGL.

(in words)
5. I (the legal entity as represented by me) have (has) no obligation to the State.

6. I agree to supply information to the competent authorities on this declaration's
data and on the credit funds used for auction participation.
I am aware of the liability incurred under Article 313 of the Penal Code.

Date

Declarant: