

Legal Regime of Auction Activity

Decree-Law No. 155/2015, of 10 August

1 - What is the procedure for accessing and exercising the auction activity?

Access to and exercise of the auction activity is subject to the authorization regime.

2 - What is meant by auction activity?

The auction activity consists of the sale of movable and immovable property, both tangible and intangible, by means of a mandate given by the owner of the same or resulting from a judicial decision, carried out at auction, through a bidding procedure directed by an auctioneer to whom he personally appears or intervenes through a means of distance communication, in which the good is awarded to the best offer, the contractor being bound to the acquisition of the good.

3 - What is the authorization regime?

The authorization regime is a procedure that begins with a request from the economic operator, in a specific form, carried out and submitted at the entrepreneur's desk (BdE).

The authorization procedure leads to obtaining an administrative permission, to be granted by the Directorate-General for Economic Activities (DGAE), after checking the requirements for access to the activity.

4 - What are the necessary requirements for the granting of authorization to exercise the auction activity?

The necessary requirements for granting authorization for the exercise of the auction activity are the suitability of the auction company and the contracting of civil liability insurance, financial guarantee or equivalent instrument, intended to cover any property damage caused to third parties resulting from the exercise of the activity.

5 - What are the required suitability requirements?

The following situations determine the non-suitability of the singular or legal person:

- a) Have been declared insolvent by judicial decision in the last five years, are in the process of liquidation, dissolution or cessation of activity, subject to any preventive means of liquidating assets or in any similar situation, or have their respective proceedings pending, except when you are covered by a special company recovery plan, extrajudicial company recovery system, or extrajudicial conciliation procedure, under the legislation in force;
- b) Have been convicted, with *res judicata*, for the practice of one of the following crimes, provided that they are punishable by imprisonment for more than six months:
 - Crimes against heritage;
 - Crime of trafficking in precious metals or gems;
 - Crime of criminal association;

Crime of drug trafficking;

Crime of money laundering;

Crime of harmful administration or active corruption;

Counterfeiting crimes;

Crime of influence peddling;

Tax or customs crimes provided for in the General Regime of Tax Infractions (GRTI), approved by Law No. 15/2001, of 5 June;

Crimes provided for in the Industrial Property Code;

c) Have been convicted, with *res judicata*, for the practice of illicit or unfair competition;

d) Find yourself inhibited for the exercise of trade, whatever the cause that determines it.

It also determines the legality of the legal person to verify any of the circumstances provided for in the previous number in relation to its administrators, directors or managers.

The suitability requirements are permanently verified, therefore, its supervening lack implies the expiry of the authorization title reported on the date of its verification.

6 - What happens in cases of supervening lack of suitability?

The suitability requirements are permanently verified, so that, whenever requested, their fulfillment must be proven. The supervening lack of suitability leads to the expiry of the authorization.

7 - What are the minimum conditions of the civil liability insurance contract?

The civil liability insurance to be contracted by the company is intended to cover any property damage caused to third parties resulting from the exercise of the activity.

The value of the insured capital must be at least € 200,000.00, updated in each calendar year by the consumer price index, when positive, referring to the previous calendar year, which is published by the National Statistics Institute.

Auction companies should renew and send to DGAE, annually, through the BdE, a copy of the insurance policy or document proving the maintenance of the financial guarantee contract or equivalent instrument in order to prove its validity.

8 - What situations / changes should be communicated to DGAE?

The following changes must be communicated to the DGAE within 30 days after its occurrence, giving rise to the issuance of a new authorization document:

a) Changes to the insurance contract, financial guarantee or equivalent instrument;

b) Change of directors, officers or managers, in the case of a legal person, accompanied by the respective proof of suitability;

c) Changes to the business name, the legal nature and the headquarters or tax domicile.

DGAE must be informed, within 30 days, of the opening or closing of the public service establishments of the auction companies.

DGAE must also be informed of the cessation of the auction company's activity, within 60 days after its occurrence.

All communications mentioned are made through the Entrepreneur's Desk.

9 - What are the general duties of auction companies?

The general duties of auction companies are:

- a) Make available, at the auction location and on the website, the regulation with the general conditions of operation of the auction;
- b) Organize a register of all auction contracts concluded and keep, on file, a copy of them;
- c) Have the following books:
 - Entry diary, in order, of all goods sent to you for sale;
 - Exit diary of goods sold or returned, with mention of the auction date, names of sellers and buyers and prices obtained;
 - Auction diary, intended to record all auctions held, in chronological order, with indication of the auction date, name of the principal, lot numbers, names of buyers and the total sum of the gross product of the auction;
- d) Have a complaint book;
- e) Display your identification in all establishments they have and on their websites;
- f) The representatives of the auction companies and the respective auction technicians must, in the exercise of the activity, be properly identified with a card indicating their name and the respective auction company.

10 - Which auction service contract is subject to which rules?

The auction service provision contract must:

- a) Be reduced to writing and signed.
- b) Contain the following elements:
 - Auction company identification;
 - Identification of the client or principal;
 - Indication of the type of goods to be auctioned;
 - Remuneration of the auction company;
 - Identification of civil liability insurance, financial guarantee or equivalent instrument;
 - Identification of any ancillary services to be provided by the auction company;
 - Reference to the exclusivity regime, when agreed;
 - Duration, and, if omitted, it is considered concluded for a period of six months.

11 - What are the duties of the auctioneer towards the customers and recipients of the sale?

The auction company is obliged to:

- a) Make sure that your clients have the capacity and legitimacy to hire in the businesses you will promote;

- b) Respect the provisions set out in Decree-Law no. 24/2014, of 14 February, as amended by Law no. 47/2014, of 28 July, relating to contracts concluded at a distance and contracts concluded outside the commercial establishment;
- c) Immediately communicate to the recipients any fact that may jeopardize the completion of the intended business;
- d) Immediately notify customers and recipients whenever they find that the condition of the goods entrusted to them does not correspond to the description contained in the documents that provide for the delivery or collection of the same;
- e) Provide the public with an examination of the things to be auctioned for a minimum of two hours.

12 - What are the rules for conducting electronic auctions?

The rules applicable to conducting electronic auctions are as follows:

- a) Disclosure of the opening and ending day and time of each electronic auction at least three days in advance of its beginning;
- b) Indication, on the respective website, of the place and time when the goods can be examined, when applicable;
- c) Bidding offers, once entered into the system, cannot be withdrawn;
- d) Dissemination of the result of the electronic auction on the website;
- e) Proof of the identity of the participants in the auction by means of secure authentication, namely the citizen card or the digital mobile key.

13 - What facts constitute an offense punishable by a fine?

The following facts constitute an offense, punishable by a fine:

- a) Exercise of the activity without the authorization title or with the expired authorization title
- b) Do not communicate to DGAE the situations / changes subject to this procedure;
- c) Do not annually send to DGAE proof of the validity of the insurance contract or equivalent;
- d) Not having the required books;
- e) Do not show the identification of the auction company in all establishments and respective websites.

The initiation and investigation of administrative offense proceedings are the responsibility of the Food and Economic Security Authority (ASAE), and its inspector general is responsible for the application of fines and accessory sanctions.

14 – When did the legal regime of auction activity come into force?

The legal regime governing auction activity came into force on the day 21 September 2015.