

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

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

18(1) In regulations 19 to 30, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Act has the same meaning, and -

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

“**auction without reserve**” means an auction at which -

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

“**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 26;

“**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;

“**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 28(4); and

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

- (2) Regulations 19 to 30 must be read together with section 45(6) of the Act.
- (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 32 and 33.

**Mandatory advertising of auctions**

- 19 (1) Subject to regulations 33, 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 compliance with these regulations 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.
- (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**

- 20 (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
  - (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 26;
- (i) disclose as accurately as possible the total costs of advertising and conducting the auction.
- (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 regulation 19 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 percent 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 contains an explanation of the court order including identification of the court.

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- (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.
  - (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 percent 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 were 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 percent 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 were clearly not purchased or attained for the purpose of resale at auction.
- (15) An auction shall not be advertised as "divorce auction" or use similar wording implying court action unless -
- (a) at least 75 percent 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 contains 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 were clearly not purchased or attained for the purpose of resale at auction.
- (18) No auction may be advertised as "absolute" or "without reserve", no advertising may contain the words "auction without reserve", "absolute auction" or "without reserve", or the word "absolute" or words with similar meaning and no auctioneer may offer or sell any goods at auction without reserve unless -
- (a) there are no liens or encumbrances on the goods, except property tax obligations, easements, or restrictions on 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
- (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 auction without reserve, 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 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 "auction without reserve" 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**

- 21 (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;
  - (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 (2) 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 26(3) in order to so bid on behalf of that person;
  - (h) unless the auctioneer is also the owner or rightful holder (who has the right to sell) of the goods to be auctioned, 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 26(2) together with a description of the requirements for registration;
  - (k) provide that the bidders' record contemplated in regulation 26 and the vendor roll contemplated in regulation 28(4) are available for inspection during normal hours without the charge of a fee; and
  - (l) contain a breakdown of the total cost of advertising and conducting an auction and a statement indicating whether additional costs may be added and if so, how such additional costs will be computed.
- (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 21.
- (6) If on the day of the auction the auctioneer who signed the rules of auction as contemplated in subregulation (5) 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 33 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 28(5).

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

- 22 (1) An auctioneer and auction house must at all times strictly comply with section 65(2) of the Act.
- (2) Unless the auctioneer is also the owner or rightful holder (who has the right to sell) of the goods to be auctioned, no auctioneer may sell goods on auction until he or she has first entered into a written agreement with the owner or rightful holder (who has the right to sell) 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 (who has the right to sell) thereof;
  - (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 an auction without reserve or not;
  - (h) a brief description of the goods to be sold;
  - (i) if the sale is of goods at auction without reserve, 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 (who has the right to sell) 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;
  - (b) must protect and secure the goods whilst under his or her control or in his or her possession;
  - (c) must at all times preserve a professional, confidential relationship with his or her client;
  - (d) must timeously reveal estimated costs and services for conducting the auction; and
  - (e) if he or she is aware or ought reasonably to be aware of any risks associated with the auction of particular goods, 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 (who has the right to sell) 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**

- 23 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**

- 24 An auctioneer may not -
- (a) charge or receive any fee or commission in respect of the sale of movable goods unless such goods have been delivered to the purchaser;

- (b) charge or receive any fee or commission in respect of the sale of immovable property until the purchaser and the seller have signed a written agreement in respect of the sale of such immovable property;
- (c) charge or receive any fee or commission from the purchaser if the seller defaults or where such fee or commission has already been paid by the purchaser to the auctioneer, the auctioneer shall immediately refund the purchaser the amount paid, including deposit;
- (d) charge or receive any fee or commission from the purchaser, if the purchaser defaults, exceeding ten percent of the purchase price or the total cost of advertising and conducting an auction and such additional costs as may have been reasonably incurred in accordance with regulation 21(2)(l), whichever is the lesser;
- (e) charge or receive any fee or commission from the seller, unless agreed otherwise in writing, if the buyer defaults or where such fee or commission has already been paid by the seller to the auctioneer, the auctioneer shall immediately refund the seller the amount paid;
- (f) charge or receive any fee or commission from the seller if the seller defaults, unless agreed otherwise, exceeding ten percent of the purchase price or the total cost of advertising and conducting an auction and such additional costs as may have been reasonably incurred in accordance with regulation 21(2)(l), whichever is the lesser;
- (g) enter into any agreement or arrangement with the seller to sell any goods unless the auctioneer has first provided the seller with an estimate of the total cost of the auction;
- (h) accept a bid from a person unless he or she is registered in the Bidders' Record as contemplated in regulation 26;
- (i) set a minimum or reserve price without the express written permission of the seller;
- (j) remove an item or lot from an auction without the express written permission of the seller;
- (k) allow bidding on an item or a lot if the auction thereof has not been advertised as contemplated in regulations 19 and 20;
- (l) during an auction deviate from the sequence of goods as advertised;
- (m) 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;

- (n) hinder the access of any person to any advertisement contemplated in these regulations, rules of auction or vendor's roll; or
- (o) 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**

- 25 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.

#### **Bidder's record**

- 26 (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 30(2), the auctioneer must ensure that 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) The auctioneer must ensure that a person who intends to bid on behalf of another, produces 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) The auctioneer must ensure that 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 in respect of the names of bidders and the bidders numbers referred to in subregulation (6) only, 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 28(1) in the bidders' record.

### **Ownership**

- 27 The auctioneer must ensure that a person who wishes to dispose of his or her property by way of an auction signs a declaration stating that he or she is the owner or rightful holder of the goods (who has the right to sell) and submits that declaration to the auctioneer.

### **Bidding**

- 28 (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 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.
  - (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 declarations contemplated in regulation 21(2)(h) and 27;
    - (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 reserved price and acceptance of the highest bid by the seller, 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.
- (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**

- 29 (1) 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, facilitate, conduct or take part in 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**

- 30 (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 -
- (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 28(4).
- (2) For purposes of regulation 26(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.
- (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**

- 31 (1) Irrespective of any other provision to the contrary in these regulations, all records prescribed in regulations 18 to 33 must be kept for a period of at least three years.



- (2) (a) Any person in possession of any record contemplated in regulations 18 to 33 must forthwith upon receipt of a written request at his or her own cost provide the Commission or any forum empowered to administer the Act or an owner or rightful holder (whose goods were on auction at the auction in question) or a registered bidder (at the auction in question) with true copies of the record so requested or which may be relevant to any record so requested, but if the original record is expressly requested, that original record must be made available for inspection.
- (b) The Commission may not provide copies of any documents which have come into its possession pursuant to paragraph (a) of this subregulation to anyone, unless by order of court, or where it is the interests of justice to do so.

### **Motor vehicle auctions**

- 32 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, being a motor vehicle as defined in section 1 of the National Road Traffic Act, 1996 (Act No 93 of 1996), 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; or
- (ii) another person, a statement on whether there is a duty to repair, who is liable to discharge that duty to repair and the details of the repair, and if applicable, the name and address of the last owner of the vehicle who was not a dealer, bank or entity, or 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, if known;
- (f) the vehicle's year of first registration;
- (g) the vehicle's manufacturer and model designation;
- (h) the vehicle's registration number;
- (i) the vehicle's engine number;
- (j) the vehicle's 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 21(2)(i).

#### **Livestock, game and closed auctions**

- 33 The provisions of regulation 19(1) does not apply to -
- (a) a closed auction; or
  - (b) a livestock or game auction, if such is conducted regularly on a weekly or monthly basis -
    - (i) at the same time, the same place and by the same auctioneer or auction house;
    - (ii) subject to the same rules of auction; and
    - (iii) nothing but livestock or game is on offer.

#### **Maximum amount of cancellation penalty for lay-by's**

- 34 (1) For purposes of section 62(6) of the Act, a penalty shall be reasonable but may not exceed one percent of the full purchase price of the good.
- (2) On cancellation, the supplier must upon request by a consumer immediately provide the consumer with written details on how the penalty was calculated, unless the consumer waives this right in writing.
- (3) 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.