

TRA VINH PROVINCIAL PEOPLE'S COMMITTEE
TRA VINH UNIVERSITY



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NGO THI PHUONG THAO

**LEGAL REGULATIONS ON
AUCTION ENTERPRISES**

DOCTOR THESIS IN ECONOMIC LAW

TRA VINH, 2024

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**LEGAL REGULATIONS ON
AUCTION ENTERPRISE**

Major: Economic Law

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DOCTOR THESIS

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HEADING

1. REASON FOR CHOOSING RESEARCH TOPIC

Auction has been formed and developed for a long time in countries following the market economy mechanism, with the nature of being a business industry that brings huge profits. In Vietnam, Auction was formed during the French colonial period, carried out by facilitators¹. From Decree N^o: 86-CP dated on December 19th, 1996, the auction activities have officially become a professional activity and recognized as a business industry with the participation of enterprises (Enterprise) in the sole region. Auction, according to the development of the country's economy and society, continues to be recognized in Decree N^o: 05/2005/ND-CP, Decree N^o: 17/2010/ND-CP. After a long period of being “constrained” within the framework of a Decree, with an increasingly important position and role in the economy, auction is now officially regulated by Auction Law. Auction activity is not only directly regulated by Auction Law, but it is also regulated in many other documents.

With the purpose of minimizing risks for entities participating in the auction relationship, the Auction Law has had completely new regulations compared to previous Decrees on the conditions for establishing an auction enterprise. However, the reality shows that when placing the regulations of the Auction Law on auction enterprise in the common context with other relevant legal documents in Vietnam as well as the laws of countries around the world, the purpose of the Auction Law is difficult can reach.

With the “cover” of being a conditional business industry, some regulations of the Auction Law interfere too much with the business efficiency of Enterprise, an issue that is inherently determined by market economic laws. On the other hand, the penalties on auction enterprises related to the establishment of Enterprise are not commensurate with the penalties on other enterprises and has not created a solid and comprehensive legal foundation for practical application.

In addition, a number of regulations on the rights and obligations of auction enterprises limit the freedom of enterprises in organizing and carrying out the business activities. The penalties related to the operation process of auction enterprises are not convincing. In particular, there is a lack of legal basis to prosecute criminal liability for auction enterprise in particular and commercial legal entities in general in auction activities. Such penalties against auction enterprise are not enough of a deterrent.

¹ The Decree dated on September 2nd, 1935 was supplemented by Decree dated on December 6th, 1936, May 12th, 1937, April 7th, 1938 and May 4th, 1938 prescribed the regulations on facilitators; Decree dated on August 2nd, 1933 was amended by Decree dated on January 31st, 1934 fixed fees for auction in auction rooms.

For those reasons, PhD student has decided to choose the topic: ***“Legal regulations on auction enterprises”*** for the doctoral thesis in law. Based on research and analysis of legal regulations on auction enterprises, PhD student has pointed out a number of limitations and inadequacies of the current law. At the same time, research relevant legal documents of Vietnam as well as compare and contrast with the laws of countries around the world such as France, Germany, Japan, China, and some states of the United States (Washington, Florida, Texas, Alabama), combining relevant theories and doctrines, PhD student proposes directions for amendments and supplements to improve legal regulations on conditions for establishment, rights, obligations and sanctions for auction enterprises in particular, contributing to perfecting the Vietnamese legal system in general.

2. RESEARCH GOALS AND TASKS

2.1 Research goals

Carrying out this topic, the thesis aims to clarify the theoretical issues of auction enterprises and legal regulations on auction enterprises, in-depth research and point out the inadequacies and limitations of the legal system on establishment conditions, rights, obligations and penalties for auction enterprises. From there, the Thesis proposes amendments and supplements to improve those legal norms - an inseparable part of the Vietnamese legal system.

2.2 Research tasks

Firstly, the thesis researches and evaluates the results achieved as well as limitations from domestic and foreign research projects related to the thesis topic, pointing out unresearched gaps of the those projects. From there, the thesis builds a research orientation.

Secondly, the thesis analyzes in-depth the theoretical issues of auction enterprise and the legal regulations on auction enterprises.

Thirdly, the thesis deeply researches, analyzes and points out the limitations and inadequacies in the legal regulations on conditions for establishing an auction enterprise.

Fourthly, the thesis explores, analyzes in-depth and points out the limitations and inadequacies in the legal regulations on the rights, obligations and penalties for auction enterprises during its operations.

Fifthly, the thesis researches, analyzes and learns from legal experiences of countries around the world in accordance with the socio-economic conditions in Vietnam, and at the same time combines with relevant doctrines and theories to propose new proposals to amend and supplement the system of legal regulations on conditions for establishment, rights, obligations and penalties for auction enterprises, with the aim of perfecting the law regulating these enterprises in Vietnam in the near future.

3. RESEARCH OBJECTS AND SCOPE

3.1 Research objects

The research object of the thesis is theoretical issues on auction enterprises, legal regulations on auction enterprises and the Vietnamese legal system on establishment conditions, rights, obligations and penalties for auction enterprises. In addition, the thesis also researches the legislative experience of France, Germany, Japan, China and some states of the United States, economic and legal theories and doctrines related to the thesis.

3.2 Research scope

3.2.1 Scope of research content

The thesis focuses on researching aspects of enterprise law for auction enterprise. Within the scope of this thesis, PhD student focuses on in-depth research on the specific legal regulations on auction enterprises, including legal regulations on establishment conditions, rights, obligations and penalties for auction enterprises.

3.2.2 Scope of research in space and time

Regarding space: The thesis researches the system of legal regulations that govern all auction enterprises throughout the territory of Vietnam, in comparison with the laws of France, Germany, Japan, China, and some states of the United States.

Regarding time: The thesis mainly analyzes the Vietnamese legal system within the scope from the effective date of Auction Law in 2016 (July 1st, 2017) to the present. In addition, legal documents effective before July 1st, 2017 are also briefly mentioned to see a comprehensive picture of the process of change and development of legal regulations on auction enterprises to date.

4. METHODOLOGY AND RESEARCH METHODS

4.1 Methodology

Dialectical historical materialist methodology of Marxism-Leninism

4.2 Research methods

The thesis uses the following scientific research methods: analysis - synthesis method, comparative method, historical - logical method, deductive method, inductive method, document research method, the method of data collection.

5. STRUCTURE OF THE THESIS

In addition to the heading, conclusion, table of contents, list of references, list of acronyms, appendices, the thesis is structured in 4 chapters:

Chapter 1: Overview of research projects related to the topic and research orientation.

Chapter 2: Theoretical issues about auction enterprises and the legal regulations on auction enterprises.

Chapter 3: Legal regulations on conditions for establishment auction enterprises.

Chapter 4: Legal regulations on rights, obligations and legal liabilities for Auction enterprises.

CHAPTER 1
OVERVIEW OF RESEARCH PROJECTS
RELATED TO THE TOPIC AND RESEARCH ORIENTATION
1.1 OVERVIEW OF DOMESTIC AND FOREIGN RESEARCH
PROJECTS RELATED TO LEGAL REGULATIONS ON
AUCTION ENTERPRISES

1.1.1 Domestic and foreign research projects related to legal regulations on auction enterprises

1.1.1.1 Research projects related to the concept and legal nature of the auction

The following research projects can be mentioned: Brian Learmount (1985), *A history of the auction*; Paul R. Milgrom (1985), *Auction theory*; Vijay Krishna (2002, 2010), *Auction theory*; Oliver Kirchkamp and Wladislaw Mill (2021), *Spite vs. risk: Explaining overbidding in the second-price all-pay auction: A theoretical and experimental investigation*; Caroline Banton (2021), *Auction*; Nguyen Nhu Y (1999), *Great Vietnamese Dictionary*; Davis W. Pearce (1999), *Modern Economics Dictionary*; Legal Science Institute (2006), *Law Dictionary*; Hanoi Law University (2009), *Civil Law Textbook (volume 2)*; Legal Science Institute (2011), *Completing the Law on Auction to promote socialist-oriented market economic institutions in Vietnam*; Hanoi Law University (2017), *Vietnamese Civil Law Textbook, Volume II*; Nguyen Manh Cuong (2013), *Law on auction of goods in commerce in Vietnam*; Justice Academy (2014), *Auction Skills Syllabus*; Hanoi Law University (2015), *Commercial Law Textbook, Volume II*; Le Thi Huong Giang (2019), *Auction for civil judgment enforcement in Vietnam*; Academy of Justice (2020), *Auction Operation Textbook (Volume 1 - General Part)*; Doan Van Huong (2021), *Penalties for administrative violation in the auction according to the law of Vietnam*; Nguyen Thi Thu Hong (2022), *Law on public auction in Vietnam today*.

1.1.1.2 Research projects related to auction enterprises

a. Research projects related to the concept, characteristic, role of auction enterprises

They're mainly concepts mentioned in the legal documents of other countries. Besides, the following projects can be mentioned: Tran Tien Hai (2015), *Implement the law on the auction of land use rights in the North Central provinces of Vietnam today*; Doan Van Huong (2021), *Penalties for administrative violation in the auction according to the law of Vietnam*.

b. Research projects related to conditions for establishing an auction enterprise

The PhD student mainly deals with the legal opinions of France, China, Japan and some states of the United States. In addition, there are general research projects on business investment conditions in Vietnam: Vietnam Chamber of Commerce and Industry and World Bank (2017), *Reviewing report of business conditions and business freedom in Vietnam*; Nguyen Am Hieu (2017), *the reasonableness of the law in limiting the right of business freedom*; Nguyen Dang Duy (2018), *Freedom to choose a business model - Expression of the right of business freedom*; Tran Thi Quang Hong (2019), *Business conditions are a state management tool in the process of perfecting socialist-oriented market economic institutions in Vietnam*; Nguyen Nhu Chinh (2020), *Control business investment conditions for conditional business investment industries and professions in Vietnam*.

There are also research projects on the conditions for establishing business enterprises in the field of judicial assistance: Tran Van Cong (2019), *Organization of law practice according to the law of Vietnam from successful practice in Ho Chi Minh City*; Hoang Manh Thang (2022), *Organization and operations of notary practice organizations according to the current law of Vietnam*.

In particular, there are projects that although they do not directly research the conditions for establishing an auction enterprise, still have some solutions related to this issue: Legal Science Institute (2011), *Improving the Law on Auction to promote Vietnam's socialist-oriented market economy institutions*; Tran Tien Hai (2015), *Implementing the law on auction of land use rights in the North Central provinces of Vietnam today*; Academy of Justice (2014), *Auction Skills Syllabus*; Do Hoang Yen (2016), *Developing Auction Law to meet the requirements of judicial reform*; Academy of Justice (2020), *Auction Professional Textbook (Volume 1 - General Part)*.

c. Research projects related to the rights and obligations of auction enterprises

The following research projects can be mentioned: Hongbin Cai, J. Vernon Henderson and Qinghua Zhang (2013), *China's land market auctions: evidence of corruption*; Neil Brodie (2019), *The "Art World" of the auction houses: The role of professional experts*; Academy of Justice (2014), *Auction Skills Syllabus*; Dao Ngoc Bau and Le Quang Hoa (2016), *Identifying and adjusting legal relationships in the auction activities*; Academy of Justice (2020), *Auction Professional Textbook, Volume 1 - General Part*.

d. Research projects related to the penalties for auction enterprises

There are the following research projects: Christine Riefa and Jojo Y.C. Mo (2016), *Mind the gap: Modeling the liability of online auction intermediaries and market places in Hong Kong on the EU Regime*; Academy of Justice (2014), *Auction Skills Syllabus*; Nguyen Thi Loan

and Vo Thi Thanh Linh (2019), *Law on auction of goods in commerce - Inadequacies and recommendations for improvement*; Academy of Justice (2020), *Auction Professional Textbook, Volume 1 - General Part*; Doan Van Huong (2021), *Ensuring the effectiveness and efficiency of penalties for administrative violation in the auction*; Doan Van Huong (2021), *Penalties for administrative violation in the auction according to the law of Vietnam*; Nguyen Thi Thuy Hang (2022), *Crime of violating regulations on the auction activities - Some shortcomings and recommendations for improvement*.

1.1.2 Evaluate research projects related to legal regulations on auction enterprises and issues that are continued to be researched in the thesis

1.1.2.1 Evaluate research projects related to legal regulations on auction enterprises

First, about the concept and legal nature of auction. Research projects highlight the characteristics of the auction: openness and competition. Furthermore, the legal and economic nature of auction has also been exploited and analyzed by the authors. However, these research projects have not placed auction in a central position in the overall relationship with other factors and subjects, and have not considered auction as a business industry. Though the concepts of auction as well as the analysis of the nature of auction in published research projects are also the theoretical foundation in different aspects and sides so that the PhD student can inherit and introduce a new concept of auction associated with its nature in all relationships with other factors.

Second, about the concept, characteristics and role of the auction enterprises. An auction enterprise is recognized by its legal nature as a business entity in the economy. The concepts in domestic research projects, from the perspective of approaching legal practice, are only for the purpose of restating the provisions of the law of Vietnam on this enterprise at each stage. There is no viewpoint approaching the concept of auction enterprise from a theoretical perspective. The nature of auction enterprise has not been comprehensively considered.

Third, about the conditions for establishing an auction enterprise. Research projects on the conditions for establishing enterprises, conditions for establishing enterprises operating in industries and professions in the field of judicial assistance, although not directly analyzing the conditions for establishing enterprises with legal assistance, are still meaningful. Theoretical foundation for PhD student to compare and inherit in the process of analyzing, identifying, evaluating and making proposals to amend and supplement specific legal regulations on conditions for establishing an Auction Enterprise.

Besides, there are also research projects that partly mention the conditions for establishing an auction enterprise. Most of the projects

were carried out before Auction Law was issued. The proposals of the authors in those research projects have almost been absorbed by Auction Law and recorded in the regulations on conditions for establishing auction enterprise.

As for the research projects on the conditions for establishing an auction enterprise base on the provisions of the Auction Law only stop at the level of listing legal provisions without any recognition, determine and evaluate the compatibility or incompatibility of these conditions with the requirements, demands, position and role of this industry and profession in the market. This is a gap for PhD student to continue to conduct in-depth research on the conditions for establishing an auction enterprise based on the legal foundation currently in effect in Vietnam.

Four, about the rights and obligations of the auction enterprises. Research projects of foreign authors show the role of auction experts in particular and auction enterprises in general in choosing auction types and identifying negative aspects in auction types. The published domestic research projects only stop at the level of generalizing the legal foundation of the rights and obligations of auction enterprises. However, these research projects did not approach the system and in-depth analysis of the rights and obligations of auction enterprises.

Fifth, about penalties for the auction enterprises. Most domestic research projects focus on analyzing the violations of auction enterprises and the issue of penalties for administrative violation for these acts, both in terms of regulatory law and practice. These projects have also shown the overall legal and practical picture of violations of the auction enterprises and penalties for administrative violation for the auction enterprises. However, some research projects based on the legal basis of Decree No. 17/2010/ND-CP and Decree No. 110/2013/ND-CP have now expired. Criminal liability for auction enterprises is also an issue that needs further research.

1.1.2.2 Issues that are continued to be researched in the thesis

Firstly, PhD student inherits the theoretical foundation in different aspects and aspects from published research projects and introduce a new concept of auction that is closely linked to its nature in all aspects relationships with other factors.

Secondly, the results from research projects on the concept of auction enterprise are also inherited by researchers to identify and propose a new concept of auction enterprise with full characteristics and role in different legal positions.

Thirdly, PhD student accesses and inherits research projects related to the conditions for establishing enterprise in industries and professions in the field of judicial assistance, theoretical foundations and related theories and doctrines from research projects on conditions for establishing enterprise in general along with research projects on

business conditions, to analyze, evaluate and make proposals for amendments and supplements to specific legal regulations on conditions for establishing an auction enterprise.

Although direct research projects on the conditions for establishing an auction enterprise are based on legal foundations, most of them have now expired, but the research results from these projects are also studied lifesaver to identify changes in the law on conditions for establishing an auction enterprise in Vietnam. However, some current regulations on conditions establishing an auction enterprise do not meet practical requirements, and do not create motivation for enterprises to operate and promote their role. Therefore, it needs to be revised and supplemented accordingly. These are the contents that PhD student will deeply analyze, evaluate and make recommendations in this thesis.

Fourthly, inheriting results from foreign research projects on the role of auction experts, auction enterprises, and the rights and obligations of auction enterprises in the legal relationship between enterprises and those who have auction assets and those who purchase auction assets, PhD student will have systematic and in-depth analyzes and at the same time make comments and assessments on the rights and obligations of auction enterprises as well as the actual implementation of these rights and obligations. Especially the right to be proactive and creative in choosing the auction type and organizing the auction. Besides, it is found that research projects have not approached the rights and obligations of auction enterprises in their relationships with the State and in the internal relationships of enterprise. This is the gap for PhD student to exploit, research, and analyze systematically and in-depth in this thesis.

Fifthly, results from projects on sanctioning administrative violations against auction enterprises are inherited by PhD student in analyzing legal history in general, and sanctioning administrative violations against auction enterprises in particular. Furthermore, sanctions for auction enterprises, in addition to administrative sanctions, also include the responsibility to compensate for damage and the sanction to revoke their Operation Registration Certificate. These issues have not been thoroughly and comprehensively researched in published projects. This is the gap for PhD student to discuss and analyze in depth in this thesis. In addition, considering criminal liability for auction enterprises is also an issue studied in depth in this thesis.

1.2 NEW SCIENTIFIC CONTRIBUTIONS OF THE THESIS

1.2.1 New theoretical contributions

The PhD student introduce a new concept of auction, auction enterprise on the basis of inheriting results from published research projects and a new theoretical system of legal regulations on auction enterprises.

1.2.2 New contributions to practice

Firstly, the thesis points out the limitations and directions for amending and supplementing the legal foundation on the conditions for establishing an auction enterprise.

Secondly, the thesis points out the inadequacies, limitations, shortcomings and proposes amendments and supplements to the legal system on the rights and obligations of auction enterprises.

Thirdly, the thesis points out the lack of unity, synchronization, persuasion and comprehensiveness, and proposes amendments and supplements to the legal system on sanctions for auction enterprises.

1.3 RESEARCH THEORY

1.3.1 Theories related to the legal nature of auction

Auction theory, free will theory.

1.3.2 Theories related to the characteristics and roles of the auction enterprises

Theory of economic freedom, theory of general equilibrium, theory of social market economy, theory of mixed economy.

1.3.3 Theories related to conditions for establishing the auction enterprises

Natural law doctrine, positive law doctrine, normative doctrine.

1.3.4 Theories related to the rights and obligations of the auction enterprises

Legal theory, invisible hand doctrine, visible hand doctrine, agency doctrine, laws of the market economy: law of competition, law of value, laws of supply and demand.

1.3.5 Theories related to the penalties for the auction enterprises

Legal theory from the perspective of authors Jeremy Bentham and John Austin.

1.4 RESEARCH QUESTIONS AND RESEARCH HYPOTHESES

1.4.1 Main research questions and hypotheses

Main research question: What solutions are needed to improve the legal regulations on auction enterprises to ensure a full legal basis, meeting the requirements of the rule of law for the legal system in general and the law regulating regulate auction enterprises in particular: democratic, fair, humane, complete, timely, synchronous, unified, open, transparent, stable, feasible, accessible, capable adjusting social relations, taking the legal and legitimate rights and interests of people, organization and businesses as the center, creating a favorable environment for people and businesses, promoting healthy competition?

Research hypotheses: the current legal system in Vietnam still has many barriers for auction enterprises, the right of business freedom of enterprise is not guaranteed, and has not created a solid legal foundation for enterprise to implement and promote an effective intermediary role in asset trading.

1.4.2 Secondary research questions and hypotheses

1.4.2.1 Research questions and hypotheses related to the theory of auction enterprises and the legal regulations on auction enterprises

Research question 1: What is an auction enterprise?

Research hypothesis: in Vietnam, there is no legal foundation for the concept of auction enterprise.

Research question 2: What characteristics and roles does auction enterprise have that are similar and different from other enterprises in the market?

Research hypothesis: it's also an enterprise conducting business activities in the market. Auction enterprise has the same characteristics and roles as enterprises operating in other industries and professions outside the field of judicial assistance. Besides, due to the specific characteristics of the industry and business, auction enterprise also has unique characteristics and roles that are different from other enterprises in the market. Therefore, the legal regulations on auction enterprises include general legal regulations like other enterprises and separate legal regulations on auction enterprises.

Research question 3: What principles are the legal regulations on auction enterprise built on?

Research hypothesis: in Vietnam, legal regulations on auction enterprise have not been built based on specific, scientific principles, have not promoted the regulatory effectiveness of the law, and have not created a favorable environment for free enterprises operates in a socialist-oriented market economy.

1.4.2.2 Research questions and hypotheses regarding the conditions for establishing an auction enterprise

Research question 1: in order to have full legal status to enter the market for the auction service business, exercise the business freedom of a business entity and perform well its bridging role, what conditions an auction enterprise need to be met?

Research hypothesis: the law sets necessary conditions for enterprises to be established and conduct business in auction services. However, the conditions that the current law stipulates for auction enterprise do not meet the requirements of ensuring social order and safety of this industry and profession.

Research question 2: What are the conditions set by the law for auction enterprise to be established and provide auction services for the purpose of protecting the interests that the State is interested in, including both public and private interests, including the interests of the enterprise itself, and at the same time orienting the enterprise to effectively perform its role as an intermediary. If the auction enterprise violates the conditions prescribed by law, what are the sanctions for the enterprise?

Research hypothesis: The level of administrative sanctions for auction enterprises is much lighter than that of other enterprises, creating inequality among enterprises operating in the same economy. In addition, the law has not created a complete and comprehensive legal foundation to be able to apply sanctions to revoke the operation registration certificate of auction enterprise thoroughly in practice.

1.4.2.3 Research questions and hypotheses about the rights and obligations of auction enterprises

Research question 1: In internal relations, what rights and obligations are recognized by the law for auction enterprise to both exercise the right to freely do business and seek profits while also performing well their role as intermediaries?

Research hypothesis: the rights and obligations of auction enterprises in internal relations reveal many limitations; some regulations are sketchy and lacking of rigor, leading to difficulties in enforcing those rights and obligations in practice.

Research question 2: in order to achieve the purpose of a business entity in the economy and perform well the role of intermediary, stimulating buyers and sellers to choose auctions, what are the rights and obligations auction enterprises recognized by law in the relationship with entities outside the enterprise?

Research hypothesis: the rights and obligations of auction enterprises in the relationship with entities outside the enterprise do not create conditions for enterprise to be proactive and flexible in organizing and implementing business activities, limiting the promotion of their role intermediary of enterprises in asset buying and selling.

1.4.2.4 Research questions and hypotheses about legal responsibilities for auction enterprises during their operations

Research question: How to promote the effectiveness of legal responsibilities for auction enterprises when they commit acts prohibited by law or do not fully fulfill their legal obligations?

Research hypothesis: the legal regulations on sanction for auction enterprises are not complete and comprehensive, leading to a lack of basis and legal foundation to handle violations of enterprise in reality.

CHAPTER 2 THEORETICAL ISSUES ABOUT AUCTION ENTERPRISES AND THE LEGAL REGULATIONS ON AUCTION ENTERPRISES

2.1 OVERVIEW OF AUCTION

2.1.1 The concept of auction

Auction is an objective, public, and transparent form of asset buying and selling, based on market economic rules, through intermediaries mainly professional enterprises, in order to select the buyer who is the

highest bidder among potential buyers and has fully paid the selling price according to the principles corresponding to each auction type, as stated in the auction sale contract.

2.1.2 The legal nature of auction

To clearly define the legal nature of the auction, it is necessary to place the auction in a central position among the entities involved in the auction. Which includes: (1) The nature of relationship between the auctioned asset owner and auction enterprise is recognized by Auction Law in 2016 as a service contract - Auction Service Contract; (2) The relationship between the auction enterprise and the auction participants is also considered a contractual relationship with the nature of almost a brokerage contract; (3) The relationship between the auction winner and the auctioned asset owner is also recognized as a contractual relationship with the nature of an asset sale contract. There are three basic principles recognized in Vietnamese contract law: the principle of freedom of contract (free will), the principle of good faith and the principle of customary application. Therefore, in the relationship between these entities, contractual principles need to be respected. The State only intervenes by law when it finds it's necessary to protect the legitimate rights and interests of the parties to the contract, prevent negative acts, and protect social and economic order².

2.2 OVERVIEW OF AUCTION ENTERPRISES

2.2.1 The concept of auction enterprise

Auction enterprise is an enterprise established and organized according to the provisions of law, providing auction services, intermediary in buying and selling activities, for the purpose of finding the true value of assets, ensuring the rights of the, meeting the needs of buyers and the profits of enterprises.

2.2.2 Characteristics of auction enterprises

2.2.2.1 Auction enterprise is a business entity

Auction enterprise is recognized by the Constitution and law as having the right to do business freely. The business freedom of auction enterprise also has certain limits with the goal of protecting the rights of other related entities.

2.2.2.2 Auction enterprise is established, organized and operate in accordance with the characteristics of the business industry and profession

(1) Auction enterprise is established, organized and operates in accordance with the provisions of the law on enterprise, the law on auction and other relevant legal documents; (2) Auction enterprise can

² Ngo Huy Cuong (2013). Contract Law Textbook - General Part. Publisher. Hanoi National University, Hanoi. Pages 152-173; Tran Kien and Nguyen Khac Thu (2019). Concept of contract and basic principles of Vietnam's contract law system, *Legislative Studies Magazine*, (2+3), [<http://www.lapphap.vn/Pages/tintuc/tinchi/tiet.aspx?tintucid=210246>] (visited on August 8th, 2023)

only be established under one of two types of enterprise: Sole Proprietorship or Partnership; (3) Auction enterprise must be established or participate in the establishment of the auctioneer; (4) Auction enterprise is only allowed to operate in one business line - auction services; (5) Rights, obligations and penalties for auction enterprises associated with auction activities; (6) The business activities of the auction enterprise not only fulfill the business purposes of the enterprise but also serve as a judicial support activity; (7) The business activities of auction enterprise is always associated with the assets of other individuals and organizations; (8) Auction enterprise is always associated with the legal status of domestic investors.

2.2.3 The role of auction enterprises

2.2.3.1 In the relationship with people who have the auctioned assets

(1) The auction enterprises acts as a focal point, gathers many auction participants, through competitive bidding to clarify the true value of the auctioned assets; (2) More specifically, in Vietnam, the auction enterprises, as an intermediary and objective organization of auction, has the significance of bringing a large source of revenue to the State budget through the auction of land use rights; (3) The auction enterprises, through the auctioneer, is a third party that confers and negotiates to find a “common voice” between buyers and sellers on the basis of balancing the interests of both parties.

2.2.3.2 In the relationship with auction participants

(1) Auction enterprise, through auction experts, has legal and ethical implications related to the origin of the products offered for sale; (2) Auction enterprise is a bridge for auction participants to have the opportunity to access and establish ownership of the auctioned assets, especially rare assets that are difficult to find on the market; (3) Auction enterprise helps auction participants determine the value of assets, especially the assets that are difficult to find on the market such as antiques, works of art, etc.

2.3 THE CONTENT AND SCIENTIFIC BASIS IN DEVELOPING LEGAL REGULATION ON AUCTION ENTERPRISES

2.3.1 The concept of legal regulations and the legal regulations on auction enterprises

2.3.1.1 The concept of legal regulations

The legal regulations are a system of general mandatory rules, promulgated or recognized by competent state agencies according to the order and procedures prescribed by law, comprehensively regulating a certain object.

2.3.1.2 The concept of the legal regulations on auction enterprise

The legal regulations on auction enterprises are a system of general mandatory rules, promulgated or recognized by competent state agencies

according to the order and procedures prescribed and adjusted by law, relationships arising during the process of establishment, operation, and termination of operations of the auction enterprises.

2.3.2 The content and position of the legal regulations on auction enterprises

2.3.2.1 The content of the legal regulation on auction enterprises

Firstly, the group of rules regulates the relationships that arise when establishing an auction enterprise, specifically the relationship between the business founders and the State; Secondly, the group of rules governing relationships arising during the operation of auction enterprise; Thirdly, the group of legal regulations on penalties against enterprises; Fourthly, the group of rules on sanctions/liability of auction enterprise.

2.3.2.2 The separate legal regulation on auction enterprises

Firstly, the group of legal regulations on establishing auction enterprise; Secondly, the group of legal regulations on the rights and obligations of auction enterprises; Thirdly, the group of legal regulations on penalties for auction enterprises.

2.3.2.2 The position of the legal regulations on auction enterprises in the legal system of Vietnam

Firstly, within the national legal system. Legal regulations on auction enterprises are still not really complete, not synchronized and consistent with other legal norms in the Vietnamese legal system.

Secondly, in relations with international law. Vietnam's legal regulations on auction enterprises are independent, separate, disconnected and have many differences with international law.

2.3.3 Principles for developing legal regulations on auction enterprises

(1) Ensure business freedom right; (2) Implement Vietnam's commitments in International Treaties; (3) Suitable for the socialist-oriented market economy in Vietnam; (4) Promote the role of auction enterprises; (5) Protect the legitimate rights and interests of the parties related to the auction.

CHAPTER 3

LEGAL REGULATIONS CONDITIONS FOR ESTABLISHMENT AUCTION ENTERPRISE

3.1 CONDITIONS ON LEGAL FORM AND BUSINESS LINES OF AUCTION ENTERPRISE

3.1.1 Legal form of auction enterprise

Auction enterprise is only organized according to Partnership and Sole Proprietorship model.

3.1.2 The business lines of auction enterprise

Currently, Auction Law only allows auction enterprise to provide auction services. However, auction service is a business line that foreign

investors have not yet had access to the market in Vietnam³. Meanwhile, auction is an industry that attracts investment to domestic investors but also attracts foreign investors in countries around the world.

3.2 CONDITIONS ON THE ENTITY ESTABLISHING AN AUCTION ENTERPRISE

3.2.1 Subject to establish an auction enterprise

In Vietnam, an auction enterprise must be established or participate in the establishment by an auctioneer⁴. Most countries do not set the condition that the founder of an auction enterprise must be an auctioneer.

Point b clause 1 Article 177 of Enterprise Law in 2020 stipulates that Partnership Member must be an individual. In fact, determining an individual's assets is not simple.

3.2.2 Auctioneer's standards and Auctioneer's practice methods at auction enterprise

3.2.2.1 Auctioneer's standards

Firstly, personal standard: being a Vietnamese citizen permanently residing in Vietnam, complying with the Constitution and laws, and having good moral qualities⁵. Ensuring standards of compliance with the Constitution and laws is rigorous and difficult to control.

Secondly, professional standard: must have a university or PhD student diploma in one of the following majors: law, economics, accounting, finance and banking⁶. This can be considered a different standard of Vietnamese law compared to the laws of other countries in the world regarding standards for auctioneer. The laws of many countries focus on the knowledge base of auction expertise rather than the specialized knowledge base of the auctioneer.

Thirdly, professional title standard: must graduate from an auction training course, unless exempted from auction training⁷. Auction Law also sets conditions that people who meet both of the above criteria must have worked in the trained field for 03 years or more to participate in the auction training course with the period of 06 months⁸. (1) Auction Law and its implementation guidance documents do not provide guidance on documents to prove this condition; (2) on the other hand, in Vietnam, the auction training period is only 6 months; (3) the auction training facility is Justice Academy under Ministry of Justice. The framework program of the auction training course is developed by Academy of Justice in collaboration with Department of Judicial Support and submitted to the

³ Clause 5, Section A, Appendix I issued with Decree N^o: 31/2021/ND-CP

⁴ Point a Clause 3 Article 23 Auction Law in 2016

⁵ Clause 1 Article 10 Auction Law in 2016

⁶ Clause 2 Article 10 Auction Law in 2016

⁷ Clause 3 Article 10 Auction Law in 2016

⁸ Article 11 Auction Law in 2016

Minister of Justice for promulgation⁹; (4) Furthermore, if in Vietnam, the cases exempted from auction training focus on people with experience working in judicial support industries and occupations, in France, China, and some states of the United States, who has experience in organizing and running auctions.

Fourthly, standard for experience in auction expertise: meet the requirements of the auction practice internship results test¹⁰. According to the provisions of clause 1 and clause 2 Article 13 of Auction Law in 2016, in order to participate in the auction practice internship results test, individuals must undergo a period of 06 months of auction practice internship period at the auction practice organization. The Examination Council is established by decision of Minister of Ministry of Justice.

3.2.2.2 Forms of practice of auctioneer at auction enterprise

The regulations in clause 3 Article 18 of Auction Law on the forms of practice of auctioneer at auction enterprise are still lacking in strictness, especially for Auctioneer who has participated in the establishment of Auction Law as a Partnership Member. In addition to participating in the establishment, the auctioneer can still contribute additional charter capital or purchase the capital contributions of members of other auction partnerships.

3.3 OTHER CONDITIONS FOR AUCTION ENTERPRISE

3.3.1 Name of auction enterprise

Firstly, attaching business lines and industries to the name of an auction enterprise is not necessary. It has no meaning in enhancing the responsibility of the enterprise or that customers will come to the enterprise.

Secondly, Auction Law does not have any instructions on looking up the name of an auction enterprise, to avoid naming the enterprise identically or confusingly with other enterprises nationwide.

3.3.2 Headquarters, facilities and equipment of auction enterprises

The conditions on physical facilities that the Auction Law of Vietnam sets for auction enterprise are essentially unclear. Furthermore, the headquarters, facilities, and equipment have not affected public order or interests to the extent that the State's intervention is required.

3.3.3 The competent authority allows the establishment and management of auction enterprise

Currently, in Vietnam, allowing auction enterprise to establish and manage the business activities of auction service is the authority of Department of Justice of the province or city under the centrally run where the enterprise is headquartered, the management agency of the auction enterprises in the country is Ministry of Justice. The

⁹ Article 2, Article 3 Circular N^o: 06/2017/TT-BTP

¹⁰ Clause 4 Article 10 Auction Law in 2016

management of the practice activities of auction enterprises and the auctioneers of these agencies is difficult to ensure professionalism and thoroughness.

3.4 PENALTIES FOR AUCTION ENTERPRISES WHEN VIOLATING THE CONDITIONS FOR ESTABLISHING THE ENTERPRISE

3.4.1 Administrative penalties for auction enterprises

Firstly, the form of handling the Operation Registration Certificate of the auction enterprise and the Auction Practice Certificate is not clearly specified in Decree N^o: 82/2020/ND-CP and also Auction Law, for the act of erasing, correcting or falsifying the content of papers and documents issued by the competent agencies, organizations, and persons in the enterprise's application for registration of operation.

Secondly, the penalties for administrative violations for dishonest declarations in the enterprise registration application dossier of auction enterprises are lighter than those of other enterprises.

3.4.2 Revoke the Operation Registration Certificate of auction enterprises

The Auction Law does not stipulate the temporary suspension of trading in auction service for auction enterprise in cases where the enterprise does not ensure operating conditions. This will cause certain consequences, especially in case the 30-day period expires and the enterprise still fails to supplement its operating conditions, the Enterprise's Operation Registration Certificate will be revoked. At the same time, it leads to inconsistency between Auction Law and the law on Enterprise and the law on investment.

3.5 SOLUTIONS TO PERFECT LEGAL REGULATIONS ON CONDITIONS FOR ESTABLISHING AN AUCTION ENTERPRISE

3.5.1 Regarding the legal form of auction enterprise

In Vietnam, the auction enterprises are mainly small-scale, so with a simple organizational structure, Partnership and Sole Proprietorship as currently prescribed are appropriate. When the business activities of auction enterprises increasingly affirm their effective intermediary role in asset buying and selling, the scale of auction enterprises is expanded compared to today, at that time, the law of Vietnam needs to consider gradually "untying" this condition for auction enterprises like the laws of countries around the world.

3.5.2 Regarding the business profession, industry of the auction enterprise

The issue of restricting multi-industry business rights of auction enterprise should continue to be maintained in the future to ensure the professionalism of the enterprise and at the same time is consistent with the enterprise management capacity of Ministry of Justice and Department of Justice.

Regarding auction partnership model, the law of Vietnam should allow foreign investors to enter into joint ventures with the auctioneer to establish and operate. However, this industry and occupation should only be included in the group of business industries and occupations with market access conditions for foreign investors. Accordingly, auction enterprise with foreign investors as members is only allowed to organize real estate auctions.

3.5.3 Regarding the entity establishing an auction enterprise

Firstly, continuing to maintain the condition that the entity establishing or participating in the establishment of an auction enterprise must be an auctioneer who is appropriate and necessary in Vietnam.

Secondly, Enterprise Law needs to add more subjects to become partnership member in both types of partnership, in addition to individuals and legal entities as experienced by the laws of countries around the world. Particularly for auction partnership, of course there must be at least one partnership member who is an auctioneer and the remaining partnership members can be individuals or legal entities.

3.5.4 Regarding auctioneer's standards

Firstly, for personal standard, clause 1 Article 10 of should be separated into two clauses as follows:

"1. Vietnamese citizens permanently residing in Vietnam.

1a. Do not fall into one of the following cases:

a) Being prosecuted for criminal liability; convicted and the sentence has taken legal effect; have been convicted but have not had their criminal records expunged; have been convicted of property fraud and corruption, including cases where criminal records have been erased.

b) Being subject to administrative measures of being sent to a compulsory detoxification facility or compulsory education facility according to the provisions of law on handling of administrative violations".

Accordingly, the provisions in clauses 4 and 5 Article 15 of Auction Law in 2016 also need to be abolished.

On the other hand, it is necessary to supplement information about an individual's criminal record in the criminal record certificate or it is possible to integrate information about an individual's criminal record on the national database on population, specialized data, ensuring interoperability and consistency between these electronic databases.

Secondly, professional standard, clause 2 Article 10 of Auction Law in 2016 needs to be amended and supplemented as follows: *"2. Have a university diploma or higher in one of the majors of law, economics, accounting, finance, banking, or fine arts groups according to the regulations of Ministry of Education and Training"*.

Thirdly, standards for professional titles and practice experience, Article 11 of Auction Law in 2016 need to be amended and

supplemented as follows:

“Article 11. Auction training

1. People who meet the standards specified in clauses 1 and 2 Article 10 of this Law may participate in auction training courses.

2. The auction training course duration is 12 months. People who complete the auction training course will be issued a certificate of auction training graduation by the auction training facility”.

Clause 2 Article 13 of Auction Law in 2016 needs to be amended and supplemented as follows: *“2. The auction practice internship period is 12 months. The auctioneer probationary period is calculated from the date the auction organization notifies the list of auctioneer trainees at its organization to Department of Justice where the auction organization is headquartered”.*

Clause 3 Article 13 of Auction Law needs to be amended and supplemented as follows: *“3. An Auction trainee is guided in practice skills and performs tasks related to auctions assigned by the guide auctioneer and are responsible to the guide auctioneer for those tasks. An auctioneer trainee runs the auction under the supervision of a guide auctioneer. The guide auctioneer is responsible before the law for the auctions he/she supervises the trainee”.*

Fourthly, learning from the experiences of France, China and some states of the United States, an urgent issue in Vietnam is the need to immediately establish an Auctioneer Association, with experts who are thoroughly understanding and knowledgeable of auction, and can even invite foreign auction experts. The Association will undertake the development of a training program framework, organize training, check the results of internships, issue practice certificates and manage the team of auctioneers throughout the country.

Fifthly, Auction Law can learn experiences from France and some states of the United States, add cases of exemption from vocational training for those with experience related to the auction, such as experts in antiquities research, artworks. The examination and recognition of professional qualifications and experience of people who are exempt from auctioneering training must also be conducted by a professional agency, the Auctioneer Association.

3.5.5 Regarding the auctioneer’s practice form

Clause 3 Article 18 of Auction Law in 2016 should be amended and supplemented as follows: *“3. The Auctioneer’s practice specified in point b clause 1 of this Article is carried out through establishment, membership or working under a labor contract at an auction enterprise. Each auctioneer may only practice at one auction enterprise according to the provisions of this Law and other relevant laws”.*

3.5.6 Regarding the name of the auction enterprises

Firstly, clause 2 Article 23 of Auction Law should be amended as follows: *“2. The name of the Sole Auction Proprietorship is chosen by the enterprise owner, the name of the Auction Partnership is chosen by agreement of the members and according to the provisions of law on enterprise”*.

Secondly, Article 27 of Auction Law in 2016 needs to be amended and supplemented as follows:

“Article 27. Provide information on the content of operation registration of auction enterprises

Within 07 working days from the date of issuance of the Operation Registration Certificate or change in the operation registration content of the auction enterprise, Department of Justice shall notify in writing the tax authority, statistical authority, the plan and investment agency where the enterprise is headquartered; announce the operation registration content of auction enterprise specified in clause 1 Article 28 of this Law on the electronic information portal of Department of Justice and the National Auction Electronic Information Portal”.

3.5.7 Regarding the headquarters, facilities, and equipment of the auction enterprises

Auction Law of Vietnam should eliminate conditions on facilities and equipment for auction enterprises. Of course, auction enterprise still has to ensure headquarters requirements according to the regulations of Enterprise Law.

3.5.8 Regarding the competent authority allowing the establishment and management of auction enterprises

Establishing a specialized agency with experts in the field of auction to license and manage the operation process of auction enterprises in Vietnam is a truly necessary issue at this time. According to the experience of countries such as France, the United States, China, etc. in addition to establish the Auctioneer Association, it is also necessary to expand the tasks and powers of the Auctioneer Association for licensing, management, and supervision activities of auction enterprises in Vietnam. The Auctioneer Association will include auction experts, thoroughly knowledgeable, capable of analyzing, evaluating, and identifying negative aspects of auctioneers, auction enterprises, the persons with auctioned assets and auction participants in the auction. At the same time, develop a document to coordinate the work between the Auctioneer Association, Ministry of Justice and Ministry of Planning and Investment in the process of the Association carrying out its tasks and powers.

3.5.9 Regarding penalties for auction enterprises

Firstly, point e can be added to clause 1 Article 16 of Auction Law in 2016 as follows: *“e) Other cases at the request of the competent authority according to the provisions of law”*.

Secondly, point đ clause 1 Article 32 of Auction Law in 2016 needs to be amended and supplemented as follows: “đ) *Other cases according to the Court's decision or request of the competent authority according to the provisions of law*”.

Thirdly, it is necessary to separate point đ clause 1 Article 21 of Decree N^o: 82/2020/ND-CP into a separate clause with a penalty level from 10,000,000 VND to 15,000,000 VND, commensurate with the penalty level for the same behavior of other enterprises is regulated in Article 43 of Decree N^o: 122/2021/ND-CP.

Fourthly, point a clause 2 Article 32 of Auction Law in 2016 needs to be amended and supplemented as follows: “a) *For the cases specified in point a clause 1 of this Article, Department of Justice has a document requesting auction enterprises meet the conditions specified in clause 3 Article 23 of this Law within 30 days from the date of the written request; During the above time limit, the auction enterprises must temporarily cease operations; At the end of the above time limit, if the auction enterprises still do not meet the conditions specified in clause 3 Article 23 of this Law, Department of Justice shall issue a decision to revoke the enterprise's operation registration certificate*”.

CHAPTER 4

LEGAL REGULATIONS ON RIGHTS, OBLIGATIONS AND LIABILITIES FOR AUCTION ENTERPRISES

4.1 RIGHTS AND OBLIGATIONS OF AUCTION ENTERPRISES IN INTERNAL ENTERPRISE RELATIONSHIPS

4.1.1 Rights and obligations of auction enterprises in establishing the enterprise organizational structure

4.1.1.1 Rights of auction enterprises

In auction enterprise, at least the Auctioneer needs to have staff to support some tasks related to the auction. However, this professional department has not been recognized by specific regulations in Auction Law.

4.1.1.2 Obligations of auction enterprises

a. For sole auction proprietorships

Firstly, with the regulations of Auction Law, the auctioneer is the owner of sole auction proprietorship and at the same time the Director of enterprise, which is not really consistent compared to Auction Law in 2020.

Secondly, if the auctioneer is the owner of a sole auction proprietorship, he is not allowed to hire another person to be the Director or General Director, but must hold these positions himself in the enterprise. This regulation is consistent between the management and operation of the enterprise and the professional activities of the auctioneer. Meanwhile, these two activities require completely different capabilities, qualifications, expertise and operations.

b. For auction partnerships

Firstly, although there is only one partnership model in Vietnam, it includes both types of Partnership according to the laws of other countries. The “mixed” regulations and cumbersome organizational structure of partnership under the law of Vietnam also cause many difficulties for the international integration of this company model.

The law of Vietnam on enterprises requires that partnership must always have a Board of Members. With a cumbersome management organization structure as prescribed by Enterprise Law, it will waste time and costs for the company.

Secondly, Director or General Director of auction partnerships must also be an auctioneer. Furthermore, with the current regulations of Enterprise Law, the partnership cannot hire a Director or General Director; this position must be assumed by partnership member. There are two issues that need to be discussed here. The first, not to record the rights to hire a Director or General Director for partnership has limited the partnership’s rights compared to other types of enterprises. The second, for auction partnerships, auction is the professional activity of the auctioneer. Professional activities cannot be identified with corporate governance activities.

4.1.2 Rights and obligations of auction enterprises towards auctioneers

4.1.2.1 Rights of auction enterprises

The regulations on accepting trainees and assigning auctioneers in enterprises to guide trainees are not really clear and satisfactory.

4.1.2.2 Obligations of auction enterprises

Professional liability insurance is always associated with the professional practice of the auctioneers. In addition, in the operations of an auction enterprise, it is impossible not to take into account the enterprise’s responsibility to compensate for damage caused by other employees to customers. For this liability of compensation for damage in an auction enterprise, there is absolutely no financial source shared with the enterprise other than the financial capacity of the enterprise owner and the enterprise.

4.2 RIGHTS AND OBLIGATIONS OF AUCTION ENTERPRISES IN THE RELATIONSHIPS WITH ENTITIES OUTSIDE THE ENTERPRISE

4.2.1 Rights and obligations of auction enterprises in their relationships with the State

4.2.1.1 Rights of auction enterprises

Auction enterprise also has the rights to be treated equally by the State, creating favorable conditions from the time the enterprise is established until its operation.

4.2.1.2 Obligations of auction enterprises

Firstly, auction enterprise is obliged to prepare and store the Auctioned Asset Monitoring Books and Auction Registration Books¹¹. Separating and forcing auction enterprise to record and store both types of books is both time-consuming and cumbersome in storing auction records.

Secondly, the auction enterprise has the obligation to request Department of Justice where the organization is headquartered to issue and revoke the Auctioneer Card¹². Articles 3 and 5 of Decree N^o: 62/2017/ND-CP have different regulations on the use value of the Auctioneer Card. With the current regulations of Auction Law and the guiding documents for implementation, there are three issues as follows:

The first, the auctioneer card is no longer valid when the auctioneer is no longer practicing at the auction enterprise, so maintaining that card causes difficulties for the management of Department of Justice, on the other hand, it is meaningless for auctioneer.

The second, in addition to report on the list of auctioneers, auction enterprise is also obliged to report to Department of Justice on their organization and operations annually or in unexpected cases upon request. The enterprise has to carry out too many administrative procedures while the content of these procedures is the same and all serve the State's management.

The third, the auction enterprise also has the obligation to request Department of Justice where the enterprise is headquartered to revoke the Auctioneer Card¹³. Meanwhile, the legal regulations on the order and procedures for revoking the Auctioneer Card do not require a request from the auction enterprise.

Thirdly, the auction enterprise is obliged to report to Department of Justice where the enterprise is headquartered the list of auctioneers currently practicing and trainees practicing auction at the enterprise¹⁴. Setting the obligation to report the list of trainees at auction enterprise in particular and auction organization in general is unnecessary, causing cumbersome administrative procedures for enterprises.

4.2.2 Rights and obligations of auction enterprises in their relationship with auctioned asset owners

4.2.2.1 Rights of auction enterprises

Firstly, the auction enterprise has the rights to provide the auction services to people with auctioned assets¹⁵. Providing the auction services

¹¹ Point g clause 2 Article 24 Auction Law in 2016

¹² Point h clause 2 Article 24 Auction Law in 2016

¹³ Point h clause 2 Article 24 Auction Law in 2016

¹⁴ Point k clause 2 Article 24 Auction Law in 2016

¹⁵ Point a clause 1 Article 24 Auction Law in 2016

is the right of enterprise, but the regulations on the order and procedures that the enterprise must follow to organize auctions are mandatory.

Secondly, the Auction Law does not stipulate the mandatory contents in auction service contract. But whether or not information about the asset is included in the auction service contract is the basis for determining the responsibilities of the auction enterprise and the person with the auctioned asset.

Thirdly, the auction enterprise has the right to determine the starting price when auctioning assets voluntarily chosen by the owner to sell through auction under the authorization of the person with the auctioned assets¹⁶. In the Auction Vocational Training Program issued with Decision N^o: 1187/QĐ-HVTP dated September 14th, 2017 of Director of Justice Academy¹⁷, the auctioneer has absolutely no skills in determining starting prices for the auctioned assets.

4.2.2.2 Obligations of auction enterprises

Firstly, the auction enterprise carries out the auction according to the principles, order and procedures that specified in Auction Law and is responsible for the results of auction. Invisibly, Auction Law has built a template for the auction process. Even if it is a creative idea for Auction Enterprise/Auctioneer, it is difficult to apply it to this “model” process.

Secondly, regarding the obligation to compensate for damages of auction enterprise to the auctioned asset owners, Article 69 and Article 70 of Auction Law in 2016 stipulate that all auctioneer, auction enterprise, and related individuals and organizations are also responsible for compensating for damages. These regulations lead to the liability for compensation of auction enterprise not being clearly determined.

4.2.3 Rights and obligations of auction enterprises in their relationships with auction participants

4.2.3.1 Rights of auction enterprises

Firstly, the auction enterprise acts as a brokerage service provider and the auction participants are the users of this service. However, the auction enterprise has absolutely no right to receive any payment from the auction participant, even in the case that the auction participant is the winning bidder and purchases the auctioned asset.

Secondly, for the deposit, if the auction winner refuses to sign the minutes of auction or rejects the winning auction result, it is considered a breach of contract and the deposit belongs to the person who owns the auctioned asset¹⁸. Meanwhile, the behavior of the auction

¹⁶ Point g clause 1 Article 24 Auction Law in 2016

¹⁷ Academic of Justice (2017). *Decision promulgated a detailed auction training program*, [<http://hocvientuphap.edu.vn/daotao/Pages/chuong-trinh-dao-tao.aspx?ItemID=7>] (visited on 12/7/2021)

¹⁸ Clause 8 Article 39 Auction Law in 2016

participant/auction winner is a violation of the contract with the auction enterprise.

4.2.3.2 Obligations of auction enterprises

Auction enterprise is obliged to compensate for damage when conducting the auction according to the provisions of law. However, in practice, when the results of the auction are canceled, the Court only concerns with the legal consequences: the parties must restore the original state, return to each other the received asset, and remain the compensation responsibility of the at-fault party, especially the responsibility to compensate the buyer, the Court did not immediately resolve that case but split it into another dispute. At that time, the injured party has to sue another case, wasting time and creating negative psychology for the person who bought the asset. This is proven through the actual case resolved according to Judgment N^o: 105/2017/DS-PT of People's Court of Tay Ninh Province.

4.3 LEGAL LIABILITIES FOR AUCTION ENTERPRISES DURING THEIR OPERATIONS

4.3.1 Administrative penalties for auction enterprises

Decree N^o: 82/2020/ND-CP does not yet foresee all the subjects that carrying out the acts of making false lists of people registering to buy the auctioned assets, making false documents, fake documents participating in auction activities but not to the point of being prosecuted for criminal liability.

4.3.2 Criminal liability for auction enterprises

Firstly, according to the provisions of Article 76 of Criminal Law in 2015, commercial legal entities are not subject to criminal liability for violations of regulations on auction.

Secondly, acts of collusion and connection with auctioned asset owners, auction participants, price appraisal organizations, auction appraisal organizations, other individuals and organizations to falsify the information on the auctioned assets, falsifying auction records or auction results, are equally dangerous to society in nature and level as collusion to reduce or raise prices, however, nowadays auction enterprises are only subject to administrative sanctions for these acts.

4.3.3 Revoke Operation Registration Certificate for auction enterprises

Firstly, if auction enterprise has been granted an Operation Registration Certificate and ceases operation for 01 year without notifying Department of Justice where the enterprise registered its operation, the Enterprise's Operation Registration Certificate will be revoked. However, including this case in cases where auction enterprise has its operating registration certificate revoked is not convincing enough.

On the other hand, if an enterprise has been granted an Operation Registration Certificate but is not operating, it is not subject to having its Operation Registration Certificate revoked. This is ridiculous.

Secondly, auction enterprise will have its operating registration revoked in case it has been sanctioned for an administrative violation for failing to submit a report to Department of Justice on the organization and operations of the enterprise or enterprise branch (if any) annually or in unexpected cases upon request for repeat violations. This regulation of Auction Law is unclear and will make it difficult to apply the law in practice.

In addition, the provisions in clause 1 Article 32 of Auction Law have absolutely no legal basis to handle the revocation of the Enterprise's Operation Registration Certificate in cases where the Enterprise has acts of erasing, correcting or falsifying the contents of the Enterprise's Operation Registration Certificate or enterprise branch. This issue has been mentioned by PhD student and there has been a proposal to amend and supplement point d clause 1 Article 32 of Auction Law in 2016 in section 3.5.9.

4.4 SOLUTIONS TO COMPLETE LEGAL REGULATIONS ON RIGHTS, OBLIGATIONS AND LIABILITIES FOR AUCTION ENTERPRISES

4.4.1 Regarding the rights and obligations of auction enterprises in establishing the enterprise organizational structure

Firstly, Auction Law needs to supplement the regulations on Auction Secretary as experienced from the regulations of the draft of Notary Law (amended and supplemented). Accordingly, adding after Article 19 of the current Auction Law the regulations on duties and standards for auction secretary as follows:

“Article 19a. Auction Secretary

The Auction Secretary is responsible for helping auctioneers perform auctions according to the regulations. The Auction Secretary has the standards specified in clauses 1 and 2 Article 10 of this Law”.

Secondly, for sole auction proprietorship, it is possible to continue to maintain the condition that the founder of the auction enterprise is the auctioneer, and is also the person with unlimited responsibility for all activities of the enterprise, but the auctioneer himself or hires someone else to hold the position of Director of sole auction proprietorship should be recognized as the right of the enterprise.

Thirdly, for the auction partnership:

The first, the current necessary issue is to have breakthrough innovations in enterprise legal regulations on types of partnership. In the immediate future, there is ordinary partnership and limited partnership. From there, the auction enterprises, in addition to sole proprietorship,

can also choose to establish, organize and operate under types of diverse partnership.

The second, regarding the organizational and management structure for two types of partnership. The law of Vietnam should abolish the regulations on Member Council. That is, in ordinary partnership and limited partnership, partnership member holds the right to operate and manage the enterprise. The enterprise does not need to have a Member Council.

The third, Enterprise Law of Vietnam should expand recognition of the contractual right of partnership member to hire a Director or General Director to manage and operate the day-to-day business of partnership.

For auction partnership, retaining the condition “The Auction Partnership has one member who is an auctioneer” is necessary in the current context of auction in Vietnam, but the regulation “General Director or Director of the auction partnership is an auctioneer” is unnecessary.

In summary, point a clause 3 Article 23 of Auction Law in 2016 needs to be amended as follows: “a) *Sole auction proprietorship whose owner is the auctioneer; An auction partnership has at least one partnership member who is an auctioneer*”.

4.4.2 Regarding the rights and obligations of auction enterprises towards auctioneers

Firstly, the issue of accepting internship and assigning auctioneer to guide the trainees

The first, supplement the conditions for accepting internship of the auction organization:

“Article 13a. Conditions for accepting auction practice trainees

1. *There is an auctioneer who meets the conditions for internship guidance.*

2. *There are guaranteed facilities for internship”.*

In addition, supplement the conditions for internship guidance for auctioneers:

“Article 13b. Conditions for guidance on auction practice trainees

1. *Have at least 02 years of auction practice experience.*

2. *Auctioneers who are disciplined or fined for administrative violations in auction practice activities will be given guidance after 12 months from the date of completion of the disciplinary decision or administrative penalty decision. Trainees in auction practice;*

3. *At the same time, an auctioneer may not instruct more than two apprentices”.*

The second, when Vietnam has established a specialized agency to manage auction, the law should assign the management of auction practice trainees to that agency as experienced by the laws of other countries.

The third, Auction Law also needs to have the regulations to provide for cases where people need to auction practice but they cannot contact any auction organizations to receive an internship, then Department of Justice (later the agency is majoring in auction management), in a management role, can intervene and support trainees in finding an auction organization that accepts their trainees.

Secondly, in addition to the professional liability insurance of Auctioneer, Auction Law needs to add the regulations to establish an “*Auction Reserve Fund*”. This fund is formed from the revenue from granting the Auctioneer Card at the request of the auction organization (both Auction Service Center and Auction Enterprise).

4.4.3 Regarding the rights and obligations of auction enterprises in their relationships with the State

Firstly, it is necessary to merge Auction Asset Monitoring Book and Auction Registration Book into a single type of book called “Auction Monitoring Book”.

Secondly, clause 3 Article 14 of Auction Law in 2016 should be added as follows: “3. *A person with an auction practice certificate is issued an Auctioneer Card by Department of Justice at the request of the auction organization where he or she practices. An Auctioneer Card is revoked when that person's auction practicing certificate is revoked according to the provisions of Article 16 of this Law or is no longer practicing at the auction organization*”.

Article 5 of Decree N^o: 62/2017/ND-CP, in addition to the procedures for revoking the Auctioneer Card in case of revocation of the auction practicing certificate as the current regulations, it is necessary to add the procedures for revocation of the Auctioneer Card in case the auctioneer is no longer practicing at the training organization.

Thirdly, point k clause 2 Article 24 of Auction Law in 2016, it is necessary to abolish the obligation to report the list of auctioneers currently practicing at the auction organization and the obligation to report the list of auction trainees of the auction organization in general, auction enterprises in particular.

4.4.4 Regarding the rights and obligations of auction enterprises in their relationship with auctioned asset owners

Firstly, it is necessary to add before point a clause 2 Article 24 of Auction Law in 2016 the obligation to “*check information and documents related to the auctioned assets of the auction organization*”. In addition, clause 3 Article 33 of Auction Law in 2016 needs to be amended as follows: “3. *The auction organization is responsible for checking information about the right to sell assets provided by the person having the auctioned assets. The auction organization is not responsible for the value and quality of the auctioned assets, except in cases where the auction organization does not fully and accurately notify*

auction participants of necessary information related to the value and quality of the auctioned asset as provided by the auctioned asset owner”.

Secondly, the auction training program needs to be designed to dedicate a certain proportion of auction training (including starting price determination) to voluntarily auctioned assets.

Thirdly, it is not necessary to unify the auction order and procedures for both types of assets: assets that are required by law to be sold through auction and assets that the owner voluntarily chooses to sell at auction. You can choose one of the following two directions:

The first direction: Remove from Auction Law the regulations on auction order and procedures for assets that must be sold through auction, and switch back to regulations in specialized legal documents for each specific asset. Auction Law only regulates voluntary auction activities. The auction is conducted by the auction enterprise through the auctioneer on the basis of agreements with the auctioned asset owner in the auction service contract. Auction Law does not have rigid regulations on auction order and procedures for this type of asset.

The second direction: Auction Law regulates auction activities for both mandatory assets and assets voluntarily sold through auction. Auction order and procedures are only prescribed for assets that must be sold through auction. Voluntary assets are auctioned according to the order and procedures chosen by the auction enterprise and auctioneer, to ensure the legal rights and interests of the asset owner as agreed in the auction service contract.

Fourthly, no matter which of the above two amendment directions is chosen, the law also needs to remove regulations on auction forms and methods.

Fifthly, it is necessary to add an Article (Article 20a) to Auction Law in 2016 stipulate the compensation responsibilities of the auction organization and the compensation responsibilities of the auctioneer and employees who cause damage, specifically:

“Article 20a. Compensation and reimbursement in auction activities

1. The auction organizations must compensate for damages to the person who has the auctioned asset, the auction participant, the auction winner, the buyer of the auctioned asset and other individuals and organizations that auctioned at fault caused by auctioneers or employees of their organizations during the process of conducting auctions.

2. Auctioneers and employees who cause damage must return a sum of money to the auction organization that has paid compensation to the damaged person according to the provisions of law; In case of non-refund, the auction organization has the right to request the Court to resolve it”.

At the same time, point đ clause 2 Article 24 of Auction Law in 2016 is amended and supplemented as follows: “đ) *Compensation for damage when conducting auctions according to the provisions of Article 20a of this Law*”.

4.4.5 Regarding the rights and obligations of auction enterprises in their relationship with auction participants

Firstly, the law of Vietnam can learn from the experiences of countries around the world, recognizing the right to receive remuneration of auction enterprises for auction participants. “On this issue, the laws of some countries such as Germany, England, China, etc all stipulate that if the parties do not have an agreement, the remuneration that each party participating in the auctioned asset sales contract must pay to the auction enterprises an amount not exceeding 5% of the auction price according to the principle that the remuneration ratio is inversely proportional to the auction price”¹⁹. Auction Law of Vietnam can inherit this principle to ensure the rights of auction enterprises.

Secondly, clause 8 Article 39 of Auction Law in 2016 needs to be amended and supplemented as follows: “8. *The deposit specified in clause 6 of this Article belongs to the auction organization*”.

Thirdly, it is very necessary to have a precedent or unified trial guidance document of Supreme People’s Court on the issue of considering liability for compensation when the auction results are canceled. Only then, when the auction results are canceled, the legitimate rights and interests of the damaged party as well as the responsibilities of the at-fault party will be resolved quickly and thoroughly.

4.4.6 Regarding legal liabilities for auction enterprises

Firstly, clause 2 Article 23 of Decree N^o: 82/2020/ND-CP should be amended, supplemented and separated into 2 points:

“2. *Fine from 10,000,000 VND to 20,000,000 VND for one of the following acts:*

- a) *Making a false list of people registering to participate in the auction or making false documents or making false documents to participate in the auction without being prosecuted for criminal liability;*
- b) *Collusion to reduce prices or raise prices in auction activities without reaching the level of criminal prosecution*”.

Point a clause 5 Article 23 of Decree N^o: 82/2020/ND-CP should be amended and supplemented as follows: “a) *Cancel the results of auctions if the auctioned assets are public assets for violations violate the provisions at point a clause 1 of this Article if the person committing the violation is the auction winner; point a clause 2 of this Article in*

¹⁹ Dao Ngoc Bau and Le Quang Hoa (2016). Identify and adjust legal relationships in auction activities, *Legislative Studies Magazine* (16(320)), [<http://lapphap.vn/Pages/tintuc/ti chitueasp?intucid=208637>] (visited on 06/8/2023)

case the auction participant on the list of blanks, false documents, or fake documents is the auction winner; point b clause 2 of this Article leads to falsification of auction asset information or auction participation documents or auction results; point b clause 3 and clause 4 of this Article;”

Secondly, expanding the scope of criminal liability for commercial legal entities for violations of regulations on auction activities in Criminal Law is a necessary issue and consistent with the practice of auction in Vietnam today.

In addition, point d is added to clause 1 Article 218 of Criminal Law in 2015 with the following content: *“d. Colluding and connecting with auction asset owners, auction participants, price appraisal organizations, auction asset appraisal organizations, other individuals and organizations to falsify auction asset information , falsifying auction records or auction results”*.

Thirdly, Auction Law needs to add an additional Article regulating the temporary suspension of operations of auction enterprises as follows:

“Temporarily suspending operations of auction enterprises

1. The auction enterprise is temporarily suspended according to the provisions of point a clause 2 Article 32 of this Law;

2. The auction enterprise has the rights to temporarily suspend operations but must notify in writing the suspension and resumption of operations to Department of Justice where the operation is registered and where the branch or representative office is located, no later than ten working days before the date of suspension or resumption of operations. The period of temporary inactivity shall not exceed one year.

3. The auction enterprise temporarily suspend and continue operations as prescribed in clauses 1 and 2 of this Article, the Department of Justice shall notify in writing the tax authority, statistical authority, planning authority and invest where the enterprise is headquartered, announce the time to suspend or resume operations of the auction enterprise on Department of Justice’s electronic information portal.

4. Notify temporary suspension of operations has the following main contents:

- a) Name of the auction enterprise;*
- b) Number, date, month and year of issuance of the Operation Registration Certificate;*
- c) Head office address;*
- d) Time of temporary suspension of operation;*
- d) Reason for temporary suspension of operations;*
- e) Report on debt payment, settlement of auction service contracts signed with customers and labor contracts signed with auctioneers and employees of the enterprise.*

5. *During the period of temporary suspension of operations, the auction enterprise must fully pay the outstanding tax amount, continue to pay other debts, and complete the implementation of the contract signed with the employee, except in cases where there is another agreement.*

For auction service contracts that have been signed with customers but have not yet been completed, an agreement must be reached with the customer on the implementation of those auction service contracts.

6. *In case an auction enterprise temporarily suspends operations, the branch or representative office of that enterprise must also temporarily suspend operations”.*

For the time being, when Vietnam has not yet established a specialized agency to manage auction enterprises, notification of the suspension or resumption of operations of auction enterprises will be done with Department of Justice. When there is a specialized agency (specifically, as proposed, the Auction Committee), the responsibility for this notification must be made by the auction enterprise to that specialized agency.

Article 24 of Decree N^o: 82/2020/ND-CP needs to add additional acts: 1) *“untimely notification of suspension or resumption of operations of auction enterprises”* in clause 1; 2) *“failure to notify the suspension or resumption of operations of the auction enterprises”* in clause 2.

At the same time, according to Auction Law, it is necessary to amend and supplement the provisions in clause 1 Article 32 of Auction Law on cases where auction enterprises have their operation registration revoked, specified as follows:

The first, point c clause 1 Article 32 of Auction Law in 2016 needs to be amended and supplemented as follows: *“c) Do not resume operations without notice of continued temporary suspension of operations, from the date of expiration of the temporary suspension of operations according to the provisions of law and notify temporary suspension of operations”.*

The second, it's added to clause 1 Article 32 of Auction Law in 2016, point b1 as follows: *“b1) After six months from the date of issuance of the Operation Registration Certificate, the auction enterprise has not yet begun operations”.*

The third, point d clause 1 Article 32 of Auction Law in 2016 needs to be amended and supplemented as follows: *“d) Has been administratively sanctioned for failure to submit report as prescribed in point l clause 2 Article 24 of this Law but repeat violations according to the provisions of law on handling of administrative violations”.*

CONCLUSION

1. Through the process of searching, researching, and analyzing domestic and foreign research projects directly and indirectly related to

the thesis “Legal regulations on auction enterprises”, once again, the PhD student can confirm that the topic of the thesis is completely new and does not overlap with any published research project.

2. The thesis has analyzed in-depth a number of theoretical issues about auction enterprises. From there, we can see the position, role, and characteristics of this enterprise in the market economy, and see the big differences in the views, attitudes, and perceptions of lawmakers as well as relevant parties regarding with auction enterprises in Vietnam compared to other countries in the world. In particular, the thesis analyzes in-depth theoretical issues on the legal regulations on auction enterprises, gathers and locates the system of legal regulations governing this enterprise in the legal system of Vietnam. At the same time, the thesis identifies the scientific basis as the basis for the proposals of the PhD student in amending and supplementing the system of legal regulations on auction enterprises, from establishment conditions to rights, obligations and sanctions for with enterprises.

3. To have legal status as a business entity in general, or as an organization providing auction services on the market in particular, what conditions must an auction enterprise fully meet? This issue has been systematized and analyzed in-depth by the thesis, based on comparison with the laws of a number of countries with vibrant development of auction activities with a series of famous auction enterprises in the world. From there, the thesis affirms that it is necessary for the law to set conditions for enterprise to be established and conduct business in auction services. There are appropriately regulated conditions that although different from the laws of countries around the world, are consistent with the socio-economic context in general and the auction market in Vietnam in particular. However, some of the conditions that current law stipulates for auction enterprises have interfered too deeply with the business performance of enterprises, an issue that is inherently determined by the market: headquarter conditions, facilities and equipment of the enterprise. Furthermore, those conditions do not meet the requirements of ensuring social order and safety and have many differences with the laws of countries around the world. The law requiring the person who establishes or participates in establishing an auction enterprise to be an auctioneer is well-founded and consistent with the current situation of auction enterprises in Vietnam. However, the auctioneer’s standards prescribed by law currently do not meet the requirements of auction activities and do not promote the role and flexibility of auctioneer. In addition, the limitations in the regulations on the name of auction enterprise as well as instructions to help the founder of an auction enterprise look up the name of the enterprise to avoid naming the enterprise with the same or causing confusion with other auction enterprises are also analyzed and pointed out in the thesis. The

legal regulations on penalties related to the conditions for establishing an auction enterprise are sometimes not consistent with the law on enterprise, and do not create equality between penalties for auction enterprise and penalties for other enterprises.

4. When the auction enterprise is legally established, the enterprise officially enters the business market. During the business process, enterprises are recognized by law with the same general rights and obligations as other enterprises, and rights and obligations associated with the enterprise's specific business lines. With the research scope of the topic, the specific rights and obligations of auction enterprises have also been analyzed in depth in the thesis. The analysis is placed in comparison with the laws of countries around the world as well as with selected doctrines and theories. From there, the thesis affirms that legal regulations on the rights and obligations of auction enterprises limit the flexibility of auctions and do not take advantage of the role of auction enterprises in general, the auctioneer in particular, and above all the results from auction theory that have been researched by famous scholars around the world. It is these reasons that make the auction activities of auction enterprises in Vietnam different, ineffective and have not created the trust of relevant parties, compared to currently operating auction enterprises in the world. Furthermore, the current legal adjustment mechanism has not created a solid legal foundation to determine the responsibilities of auction enterprises when the auction results are canceled in practice. Some obligations are cumbersome, carry heavy administrative procedures, hinder business operations of enterprises, and need to be revised and supplemented in the near future.

In addition to intervening in adjusting the rights and obligations of auction enterprise, to prevent and obviate negative impacts from business activities of enterprise, the law also stipulates penalties for enterprise. However, these penalties have not been fully and comprehensively regulated, have not created a solid legal foundation, and are not convincing or deterrent enough.

5. Based on the analysis and pointing out the inadequacies, limitations, inconsistencies and synchronization of the system of legal regulations governing auction enterprises, from establishment conditions to rights, obligations and penalties for enterprises, in the legal system of Vietnam, placed in comparison with the laws of countries around the world, the PhD student has proposed proposals and solutions to orient amendments and supplements to perfect the laws of the world. Those legal regulations in particular, the legal system of Vietnam in general, and at the same time guide the international integration process of auction enterprises. The most important and urgent issue today is the immediate establishment of an Auctioneer Association. This Association will include auction experts, and may consider hiring foreign experts to

gain new perspectives on auction in general and auction enterprise in particular. The Auctioneer Association will be responsible for developing programs, training, licensing and supervising Auctioneer, Auction Organizations.

LIST OF RESEARCH PROJECTS HAS BEEN ANNOUNCED BY AUTHOR

1. Ngo Thi Phuong Thao (2018). Auction issue in case where there is only one person registering to participate in the auction, one auction participant, one bidder, and one price acceptor according to the provisions of Auction Law in 2016, *Education and Society Magazine*, (November, 2018), pages 60-65.

2. Ngo Thi Phuong Thao (2018). Determining the starting price when handling the mortgaged assets through the auction method, *Democracy and Law Magazine*, (12 (321)), pages 34-38.

3. Ngo Thi Phuong Thao, Nguyen Ngoc Dien (2022). Conditions for establishing an auction enterprise - comparing the law of Vietnam and the law of France and China. *International Conference on Business and Finance*, Ho Chi Minh City University of Economics, August 25th - 26th, 2022, pages 206-225.

4. Ngo Thi Phuong Thao (2023). Auctioneer's standards under the law of Vietnam - Comparing with the law of France and China, *Law Magazine*, (5 (276)), pages 91-106.

5. Ngo Thi Phuong Thao (2023). Organizational structure of auction enterprise according to the law of Vietnam. Proceedings of the International Conference on Management and Business 2023 (COMB 2023), University of Economics - Da Nang University, August 25th, 2023, pages 1044-1058.

6. Ngo Thi Phuong Thao (2023). Management rights of general partners in auction partnership according to Vietnamese law in comparison with the laws of French and Japan, *Law Magazine*, (10), pages 81-95.