

Sub-Title IV
OF JUDICIAL SALES BY AUCTION

313. (1) The Registrar shall publish regularly on the Court of Justice's official website and on the Chamber of Advocates' official website, and any other portal the Registrar may deem appropriate in the circumstances and in two newspapers, one being in Maltese and the other in the English language, lists of the applications for the judicial sales by auctions and update them with the date appointed for such sale and he shall indicate clearly therein the property in such manner that the public is well informed in order to safeguard the parties' interests:

Provided that the debtor, creditor or any other interested person may publish and inform, at their own expense, any particular sale in any online news portal and or newspaper of their choice or broadcast same over any other broadcasting medium.

(2) The advertisement of a judicial sale by auction shall include:

- (a) an indication of the court reference of the judicial sale by auction;
- (b) the names of the parties thereto and their identity card or other identity document numbers if available;
- (c) a clear indication of the property to be sold;
- (d) the value of each property, where a valuation has been carried out in terms of the law; and
- (e) the date, time and place of the judicial sale by auction.

314. (1) Subject to the provisions of this article, the auction shall be held in public either

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- (a) in the building of the courts of justice; or
- (b) in any other building designated by the Minister responsible for justice for the purpose of such auctions and at such time as may be determined by the court:

Provided that the court shall have the power for just cause to order that an auction shall be held at any place and at any time, due notice of such place and time being given in the advertisement.

(2) In the case of sacred vestments and vessels, the auction shall not be held in public but the court shall give such directions as it may deem proper for their disposal in the manner most advantageous to the interested parties with due respect to the sacred nature of the object to be sold by auction.

(3) In the case of a judicial sale by auction of listed securities in regulated markets, the auction shall be held in accordance with the procedures prescribed in rules and bye-laws made under articles 4(2) and 28(2) of the Financial Markets Act.

(4) In the case of a judicial sale by auction of a ship or aircraft, the court may also permit potential bidders to participate virtually in the auction as may be determined and subject to any conditions as may be imposed by the court.

315. (1) Immovable property or rights annexed to such property, or movable property consisting of gold or silver articles, pearls or precious stones or of other precious articles, and commercial going concerns, shall always be appraised by an expert in the field nominated by the court before the sale thereof by auction. Investments shall be sold at market value of such investments on the day of their sale.

(2) With regard to other movable property, an appraisement shall only be made if requested by the creditor or by the debtor. The apportionment of such expense for such appraisement shall be determined by the court.

(3) An appraisal made in conformity with the provisions of articles 308, 311 and 312F and existing in the records of a sale by auction shall be accepted by the court to be the appraisement for the purpose of this article.

316. In any appraisement of gold or silver articles, of pearls or precious stones or of other precious articles, the expert in the field of the movables being sold shall consider the intrinsic value thereof and the cost of manufacture, together with any distinctive characteristic of the said article and appraise the total value thereof.

317. The marshal shall cause the movable property to be removed to the place of sale where it shall be exposed to public view at least two hours before the auction begins.

318. Subject to the provisions of article 305, movable property may be sold by auction in gross, or in separate lots, or under separate items, as the court shall direct, regard being had to the circumstances of the case.

319. (1) The auction shall be, save the exceptions mentioned in the preceding articles, conducted by a public auctioneer in the presence of the Registrar.

(1A) The auction shall commence at the time established by the Court and shall continue until the highest public bid is adjudicated.

(1B) The sale of different items to be sold by auction may be held during the same time, each one separately and in consecutive order.

(2) Bids are made orally. Each bid shall be announced at least three times, unless a higher bid is previously made. The highest bidder, within the time stated in the advertisement, shall be the purchaser.



(3) An offer shall no longer be valid immediately when a higher offer is accepted, even though such higher offer is later declared to be null.

(4) The public auctioneer or broker shall be entitled to a fee which is taxed by the Registrar in accordance with a tariff to be established by the Minister responsible for justice.

(5) No offer may be accepted if such offer is less than sixty per cent (60%) of the value at which the movable or immovable property or the going concern has been appraised: Provided that if no offer is made which is at least equivalent to sixty per cent (60%) of the value at which the movable or immovable property or the going concern has been appraised, the creditor may request that the movable or immovable property or the going concern be placed again for public auction:

Provided that this sub-article shall not apply to ships and other vessels exceeding six metres in length only.

(6) The public auctioneer shall have the obligation to verify that a person submitting an offer should be in possession of the necessary guarantees.

320. The auctioneer shall cause that no bid shall be accepted if it is either made *pro persona nominanda* or by any person who is notoriously incapable of fulfilling the obligations arising out of the adjudication or by any person who had previously submitted a successful bid and failed to deposit the value of the successful bid within the last three years. The Registrar shall endeavour to maintain a register with details of the persons who failed to deposit their successful bids in the last three years.

321. (1) Without prejudice to article 319(6), upon a request made by the execution creditor by means of an application, the court may order that persons submitting offers shall, prior to the auction, put up a deposit, to the satisfaction of the court, to serve as security for the obligations of the bidders under this Sub-Title.

(2) The deposit shall be effected with the Registrar of Courts and held there until the termination of the proceedings for the judicial sale by auction.

(3) Any such deposit shall be immediately refunded by the Registrar of Courts, and in any event no later than thirty days, should the person making the deposit not be adjudicated as the highest bidder.

(4) The person who is adjudicated as having placed the highest bid and acquired the asset/s forming part of the judicial sale shall be entitled to attribute his deposit towards the price.

(5) A bank guarantee drawn on a Maltese bank and deposited in Court shall be permitted in lieu of a cash deposit.

322. The Minister responsible for justice shall by regulations establish the duration of the auction.

323. The sale of the ship or aircraft in accordance with the provisions of this Sub-Title gives the purchaser a title in the ship or aircraft, which is free from all privileges and encumbrances and after the said sale, all claims or demands against the ship or aircraft may be enforced only against the proceeds of the sale irrespective of whether the proceeds of the sale are sufficient to satisfy the claims of the creditors.

324. (1) The auction or adjudication shall in all cases be suspended upon the demand of the debtor with the consent of the execution creditor, or upon the demand of the execution creditor with the consent of the debtor, and in such cases, as well as in the case where the suspension is caused by any other lawful impediment, a fresh advertisement shall be issued for the continuation of the auction on another day which shall be appointed by the Registrar within two weeks.

(2) If the suspension of the auction is demanded by the debtor or a third party, without the consent of the execution creditor, the demand shall not be entertained, unless contemporaneously with the demand a deposit equivalent to one percent (1%) of the outstanding capital due to the execution creditor is made with the registrar, which deposit will be utilised to cover the expense occasioned by the suspension. The court is to determine whether the reason for the suspension was justified and in such case, any surplus of the deposit equivalent to one percent (1%) following the payment of the expenses occasioned by the suspension is to be returned to the debtor or third party requesting the suspension. If the court determines that the reason was frivolous or vexatious, it shall order that any surplus of the deposit be added to the revenue generated by such sale.

Provided that in the case of the suspension of an auction of a ship or vessel or aircraft, the deposit may be less than that stipulated above, and in any event, shall not be more than the amount the registrar in his opinion deems sufficient to cover the expense occasioned by the suspension.

(3) Nor shall any demand for the suspension of an auction be entertained if such demand is made, without the consent of the execution creditor, less than fifteen days before the day appointed for the auction, and no less than seven days in the case of an auction of ship or vessel or aircraft, unless the person making the demand shall declare on oath before the registrar, that the reason for the suspension has arisen within that time, or that he was not aware of such reason before that time.

(4) Any interested person may by application request the court to revoke *contrario imperio* its decree authorising the suspension of the auction or of the adjudication, and

the court shall summarily hear the parties within three (3) days from the filing of such request, before delivering its decree. Any such decree may not be challenged in any court.

(5) The court shall hear the parties about the demand for suspension, and it shall not give its decree relating to such application prior to a deposit having been made of all the expenses with regard to the judicial sale by auction, in accordance with article 326 (2) and (3).

325. The purchaser, unless his bid was filed *animo compensandi*, shall pay the price into court within fifteen working days from the date of the final adjudication, in the case of sale of immovable property or of rights annexed to such property, or of ships, or of aircraft, or of commercial going concerns; and, within fifteen working days of the adjudication, in the case of other movable property.

326. (1) In default of such payment into court, the purchaser shall, upon the demand by application of the party at whose suit or against whom the execution was granted, be liable to pay a penalty equivalent to five per cent (5%) of the bid. Such amount shall still remain held by the registrar of courts and applied to cover the expenses of the auction for which the bid was made and the deposit not affected. Any surplus remaining from such deposit is to form part of the amount eventually to be disbursed as part of the amounts outstanding to creditors.

(2) Moreover, in such case, the property adjudicated may, upon a demand by means of an application made by the party at whose suit or against whom the execution was granted, be again put up for auction at the expense of the purchaser; in which case, if the bids be lower, such purchaser shall be responsible for the difference; and if the bids be higher, the difference shall go in favour of the debtor, saving any right thereon of the execution creditor.

(3) The decree made on the said application shall be served on the purchaser.

327. The purchase money of movable property sold by auction shall be deposited by means of a bank draft or transfer by the purchaser with the registrar, who shall within three working days lodge it into court by means of a lodgement schedule.

328. (1) The delivery of immovable property or of rights annexed to such property, or of commercial going concerns, takes place *ipso jure* on the final adjudication and upon the payment of the price into court or the approval of the set-off.

(2) The delivery of movable property takes place upon the handing over of the thing and the deposit of the price or the approval of the set-off.

(3) In the case of ships or other vessels or aircraft, the court may make such orders, as it may deem fit, to ensure that the property adjudicated be delivered to the purchaser forthwith, upon the purchaser giving such security as the court may determine to safeguard the claims of the parties. Such orders may also be made in other cases in which the court considers that delay in the delivery of the property can cause serious prejudice to the purchaser. An order made under this sub-article shall not be challenged in any way and shall be implemented forthwith.

329. Saving the provisions of article 332 (1) and (2), the purchaser is not bound to pay the money into court if he shall have made his bid *animo compensandi* or if he is a co-owner of the thing being sold relative to the percentage of ownership of which he is already the owner.

330. (1) Any person to whom a liquidated debt is owing under any judgement or executive title or deed or other obligatory writing may bid *animo compensandi*.

(2) Any person who is intent on bidding *animo compensandi* other than the execution creditor shall register his name, identity card number or company number issued by the Malta Business Registry, notification address, including an electronic address, by means of a note before the commencement of the sale by auction attaching to such note the judgement, executive title or deed, giving such person the right to bid *animo compensandi* by making a sworn declaration before the Registrar about the reason why he wishes to bid *animo compensandi*.

(3) It shall be the responsibility of any person bidding *animo compensandi* to monitor the register and the date of the judicial sale by auction.

331. Any bid *animo compensandi* or a bid by a co-owner of the thing being sold is made on condition that the bidder shall bind himself to pay the price into court in case it shall be so adjudged by the court.

332. (1) A purchaser *animo compensandi* or a co-owner purchaser of the thing being sold shall demand by means of an application accompanied by a lodgment schedule, the approval of the proposed set-off, and he shall pay into court the surplus of the price where such price exceeds the amount of the debt and costs, producing the necessary vouchers within the times stated in article 328.

(2) If the purchaser be a person other than the execution creditor, he shall likewise pay into court the amount of the costs incurred by such execution creditor in respect of the judicial recognition of his claim and in respect of the auction proceedings.

(3) The execution creditor shall recover the costs of the auction proceedings unconditionally, and shall recover the legal fees and the costs of the judicial recognition of his claim, upon entering into a bond with sufficient surety to restore the amount thereof to the purchaser in the event of eviction of the immovable property adjudicated.

333. (1) The aforementioned demand shall be published in the Court of Justice website, the web site of the Chamber of Advocates and the Government Gazette and served on the debtor and execution creditor. In the case of sale of vessels or aircraft, any such demand shall also be notified to all creditors who have sued out any warrant of arrest or other precautionary or executive act against the debtor.

334. (1) Any opposition to an application for the approval of a bid made *animo compensandi* may only be made within seven days from the date on which the request for set-off is published as provided in the preceding article.

(2) The court shall consider and decide the application in camera within two working days unless it deems it necessary to listen to either party concerned in open court. In such cases, the application shall be appointed for oral submission within three working days from the date of filing.

(3) Any person who may have an interest and the persons so served shall be allowed within the time of twenty days to file an answer stating in detail the reasons for their opposition and the amounts in contestation; and where such opposition is based on a claim against the proceeds of sale an alleged cause of preference, they are to state the amount of such claim and the basis for the preference. Such persons shall with the answer file all relevant evidence to substantiate their opposition. The Court shall consider and decide the opposition application in camera within seven days unless it deems it necessary to listen to either party concerned in open court. In such cases the application shall be set for oral submissions within thirty days from the date of its filing.

(3) It shall be lawful for the court, in approving the set-off, to require the purchaser to give sufficient security to pay into court the price together with interest, in case it shall be so adjudged.

(4) When the court upholds the demand, any person who may have an interest to enter suit may within twenty days file an appeal by application, which appeal shall be appointed and decided within three months from the date of the decree.

(5) When the Court of Appeal revokes a decision to grant a bid *animo compensandi*, it shall remit the judicial proceedings to the first court.

335. When there is more than one creditor filing a demand for payment from the proceeds in such manner that a competition of creditors would have to take place, it

shall be the same court to commence such proceedings in terms of articles 416 *et sequitur*.

However, where there are no more than five creditors who file a demand to have their credit satisfied from the money generated by the judicial sale by auction, the civil court may proceed to determine the ranking of creditors itself without the need to appoint the demand for hearing, giving each creditor a peremptory time to exhibit his best evidence and make submissions in writing to substantiate his ranking in the ranking of creditors.

336. (1) If the set-off be not approved, the provisions of article 326(2) and (3) shall apply:

Provided that whosoever makes made a bid *animo compensandi* under the condition specified in article 331 shall, within fifteen working days from the date on which he is served with the court order rejecting his application for the set-off, pay the price in the registry of the court in which case the provisions of this article shall not apply. In the event that such party fails to pay the price within such time limit, article 326 shall apply: Provided further that in the event that the property adjudicated is transferred and delivered to the purchaser in terms of article 328(3) the provisions of this article shall not apply.

(2) If the set-off be approved unconditionally, the purchaser shall be entitled to the formal transfer and delivery of the movable property adjudicated or, in the event that the property had already been delivered under article 328(3), the purchaser shall be entitled to the release of any security made by him.

337. (1) If the proceeds of the sale by auction be not sufficient to meet the claims of the execution creditor and of the persons suing out a garnishee order, as well as the costs, fresh executions may be allowed upon the demand of any of them.

(2) The demand shall be filed within fifteen days from the date of adjudication and shall however, on the pain of nullity, be accompanied by two reports drawn up by experts in the field in question confirming that the movable or immovable in question could be sold at a price at least fifteen per cent higher than the price it was adjudicated at the end of the auction. The court, if it deems that there are economic considerations which justify the request to bring the movable or the immovable for sale by auction again, shall, when upholding such request, order that the expenses for this subsequent sale be at the sole expense of the applicant who so requested that the movable or immovable be brought once again for sale by auction.

(3) The deposit referred to in article 326 (2) shall be applicable and due upon every demand for a fresh execution of the sale by auction.

Provided that this article shall not apply to the judicial sale by auction of ships, vessels and aircrafts.

338. If after payment of the claims of the creditors and of the costs, there still remains a balance, the court shall, upon the demand of the debtor, order such balance to be restored to him.

339. If it is evident during the sale that a sufficient sum to meet the debts and the costs of the auction has been obtained, the Registrar shall order the auction to be immediately discontinued. Upon a verbal demand by the debtor, the court shall order that the unsold property is to be restored to the debtor.

340. The amount of the debt due to the execution creditor together with his taxed costs shall, upon his demand, be paid to him out of the proceeds lodged into court, provided there be no lawful impediment.

341. In the case of seizure of perishable merchandise or other articles which are in a state of progressive deterioration or of articles which are about to go out of fashion or become technologically obsolete, it shall be lawful for the court, upon the demand of any person having an interest or of the official consignee, to order such merchandise or other articles to be sold in such manner as the court shall deem proper, including the sale to be effected forthwith by the Registrar or by the consignee.

342. (1) Any other creditor may file a note in accordance with schedule B which note is to be served on the execution creditor and published on the courts of Justice website and the Chamber of Advocates website and published in the Government Gazette and join in the auction proceedings as an addition execution creditor and such additional execution creditor shall have the same rights and obligations as the original execution creditor.

(2) Any execution creditor can continue the auction proceedings independently of the withdrawal by, or the death of any other execution creditor.

343. (1) The registrar shall draw up a *procès-verbal*, specifically stating therein the day and hour of the auction, the nature of the property put up for auction, the name, surname and place of abode of the highest bidder and of the next highest bidder, and other incidental particulars.

(2) Such *procès-verbal* shall be drawn up by the marshal, if the sale by auction does not take place in the building in which the court sits.



344. It shall not be lawful for any judge, magistrate, registrar, court executing officer or licensed auctioneer or broker to bid, either directly or indirectly, in an auction in which he is concerned by reason of his office. Nevertheless, if any of them desires to bid, another person shall be surrogated by the competent authority in his stead.

345. The debtor shall, upon an order of the registrar or court executing officer, be expelled from the place where the auction is held, if he attempts to hinder the proceedings or to dissuade bidders.

346. (1) If the creditor leaves the auction suspended for more than two years, all the acts thereof shall become void.

(2) In all cases, the effects of the decree by which a sale by auction of immovable property or of rights annexed to such property is ordered, shall cease in regard to third parties on the expiration of one year from the date of the registration required under article 306, unless such registration shall have been renewed within that time, on the demand of the execution creditor.

347. (1) Any disposal of immovable property or of rights annexed to such property made by the debtor within a year to be reckoned from the date of the original or renewed registration of the judgment or decree by which the sale by auction of such property or rights was ordered, shall be null in regard to the person at whose suit the judgment or decree was obtained, in which case the court shall on a demand made by application proceed, after hearing the parties, to declare such transfer as null and void and to adopt such measures as it may deem necessary. Lease of property likewise void. The disposal of immovable property or of rights annexed to such property, carried out by the debtor after a court decision has been inscribed in the public registry, shall be null and void. The debtor however shall have the right to file an application in the Civil Court of voluntary jurisdiction, accompanied by a valuation drawn up by an expert in the field, requesting the court to decree that for the purposes of satisfying the outstanding debt so registered in the public registry, a specific property identified by the debtor of equal or more value be so seized for a potential judicial sale by auction, which property is to be released should the debtor settle the creditor's debt in any other manner in the interim.

(2) In regard to such person, any lease or other disposal of the enjoyment of such property or rights and any diminution or restrictions of the enjoyment of such property or rights that would have been made by the debtor after the date of inscription of the warrant of seizure in terms of article 306 (1)(d) shall also be null.

(3) If, pending the auction proceedings, the debtor remains in possession of such property, he may be compelled by the court, following an application filed to this effect

by a creditor, to lodge into court the fruits actually collected or which might have been collected.

348. (1) If the debtor offers for auction movable property sufficient to meet the claim of the creditor without any obstacle or difficulty, the auction of the immovable property or of a commercial going concern shall be suspended.

(2) The auction of the immovable property or commercial going concern stated by the creditor shall likewise be suspended, if the debtor offers other immovable property sufficient to meet the claim of the creditor without any obstacle or difficulty.

349. (1) When the judgement the execution of which is sought is a judgement given by the Court of Magistrates (Malta), its execution, insofar as it has to be executed on immovable property or rights attached to immovable property, is to be effected by the Civil Court, First Hall.

(2) The same rule applies when a demand is made for the execution of two or more judgements, whose total joint amount, not taking into account any expenses, exceeds the sum of fifteen thousand euro (€15,000).

350. (1) The debtor shall have the right to repurchase his immovable property and of a commercial going concern sold by auction provided such right is exercised within four months from the date of registration of the act of adjudication in the Public Registry.

(2) The right of repurchase shall be exercised by the filing of an application accompanied by a schedule of redemption, and a concurrent deposit as is provided *mutatis mutandis*, in Sub-title VI of Title VI of Part II of Book Second of the Civil Code. The court is to uphold the application so long as the amount deposited satisfies the executing creditor's credit, including all legal expenses incurred by the creditor in relation to the judicial sale by auction, which formed the merit of the judicial sale by auction. This application is to be served on the successful bidder.

351. (1) The time period contemplated in article 2086 of the Civil Code, in respect of property adjudicated in a judicial sale, shall be of two years to commence to run from the date of enrolment of the act of adjudication in the Public Registry.

(2) The said period of two years shall be reduced to four months from the date of service by a judicial act of a copy of the act of adjudication, or of a copy of the note of enrolment of the act of adjudication in the Public Registry, and this in respect only of any hypothecary or privileged creditor on whom such service is made.

(3) Where the judicial sale is of a commercial going concern that includes immovable property, the said period of two years shall be reduced to four months to commence to run from the date of enrolment of the act of adjudication in the Public Registry.

(4) Any action by the hypothecary or privileged creditor against the third party in possession of an immovable acquired by virtue of a judicial sale shall be barred if the protest mentioned in article 2072(1) of the Civil Code, (calling upon the debtor to discharge the debt and the third party in possession either to discharge the debt or to surrender the property), is not filed within the period of two years or four months mentioned in the preceding sub-articles of this article, or if the creditor fails to demand judicially the sale of the immovable within six months from the filing of the protest mentioned in article 2072(1) of the Civil Code. Such action shall also be barred if the third party in possession surrenders the property and the creditor fails to start proceedings for the judicial sale within six months from the service of a copy of the note of such surrender.

(5) Notwithstanding the provisions of article 2072(2) of the Civil Code, the demand for the judicial sale of the immovable can be made at any time after the expiration of sixty days from the date of filing of the protest.

(6) The creditors whose action has been barred in terms of the provisions of this article shall not have any right against the third party in possession who had acquired the immovable as a result of the new judicial sale under the said provisions; provided that such creditors shall retain their ranking prior to sale.

(7) If before an adjudication or after an adjudication, the bidder or purchaser, as the case may be, finds that the immovable property is subject to any burdens, leases or other rights whether real or personal, which have not been included in the valuation in terms of article 310, the bidder or purchaser, as the case may be, shall have the right in the former case to demand either to withdraw his bid or to have his bid reduced, and in the latter case the purchaser shall have the right to demand the rescission of the sale.

(7A) When such action is exercised and the sale is effected, the third party which has acquired possession of the immovable thing in whose favour the property would have been originally adjudicated, who shall not also be the same person in whose favour during the second sale the property has been adjudicated, shall be paid from the proceeds of the second sale the sum of money which he would have defrayed together with all expenses made before any other creditor: Provided that where the third party which has acquired possession of the immovable thing during the second sale at a higher price is also the same person in whose favour the property had been originally adjudicated, such third party shall be required to deposit in court only the difference in price, and not the full price.

(8) Such demand for the rescission of the sale is to be made not later than six months from the date of the adjudication by means of an application to be served on the execution creditor and the debtor.

(9) The court shall allow the demand of the bidder or of the purchaser; as the case may be, if it is satisfied that the omission in the said valuation or in the said list was relevant so as to affect the bid made by the purchaser.

352. The adjudication of immovable property as of itself constitutes an executive title and if either the debtor against whom execution is being sought or a third party occupying the premises without title fails to vacate the premises so adjudicated, the purchaser shall be entitled, within three years from the adjudication, to seek the issue of a warrant of eviction on the basis of the said title of adjudication.

353. No action to annul or rescind a judicial sale by auction of an immovable property shall be filed or acceded to unless such action is filed before the lapse of one year from the date when the adjudication of the immovable property has been registered in the Public Registry.