

Content

Title : Regulations Governing The Recognition Of An Impartial Third Party And Its Public Auction Procedure [Ch](#)

Date : 2001.06.14

Legislative : 1.Promulgated by the Ministry of Finance on June 14, 2001

Content : Chapter I General

Article 1

Regulations Governing the Recognition of an Impartial Third Party and its Public Auction Procedure (hereinafter called "the Regulations") have been made in accordance with Article 15, Paragraph 2 of the Financial Institutions Merger Act (hereinafter called "the Act").

Article 2

An impartial third party should handle those businesses set out in Article 6 of the Regulations based on the spirits of independence, objectivity, and fairness, so as to balance the interests of creditors and debtors. .

Chapter II The Recognition of an Impartial Third Party

Article 3

An institution which complies with the following conditions can apply to the governing body to be recognized as an impartial third party:

- 1.A limited liability company with a paid-in capital exceeding NT\$1 billion;
- 2.Legal persons as shareholders own more than 50% of the issued capital;
- 3.More than one-fifth of the employees should have the following qualifications:
 - a.More than ten real estate appraisers or those who have actually engaged in appraisal work for more than five years;
 - b.More than one lawyer;
 - c.More than one accountant;
 - d.More than one architect;
 - e.More than two land registration agents;
 - f.More than five real estate brokers.

Article 4

An institution which complies with the conditions mentioned in the above Article should fill in an application form, and submit it, together with the following documents, to the governing body for recognition:

- 1.Documents concerning the registration of the company or the

minutes of initiators meeting;

2.The articles of incorporation should indicate, among others, that the company should have more than nine Board members and three supervisors, that more than one third of them should be experts with legal, accounting, and architectural knowledge and experience, and that the names of the Board members and supervisors should be submitted to the governing body for approval;

3.A list of shareholders or initiators;

4.A list of Board members and supervisors or their designators;

5.The identification documents of the responsible person;

6.Paid-in capital, after deducting cumulative losses, if any, still exceeds NT\$1 billion as certified by a CPA, or the name and address of the bank which has been entrusted to receive the payment of shares and a document certifying that initiators have fully paid the shares in accordance with the relevant regulations;

7.Business regulations;

8.Other documents that may be required by the governing body.

An institution which has been reviewed and recognized as an impartial third party shall be issued a recognition certificate by the governing body.

Article 5

The business regulations mentioned in Paragraph 1, Subparagraph 7 of the above Article should at least cover the following aspects:

- 1.Organizational structure and departmental responsibilities;
- 2.Regulations governing the appraisal of floor prices for the auction of real estates, and the processes of various auction activities;
- 3.The establishment of a Real Estate Auction Floor Price Appraisal Committee and its members;
- 4.The establishment of a real estate data bank;
- 5.Internal management and accounting control system;
- 6.Personnel allotment, management and training;
- 7.Business principles and directions;
- 8.The criteria of service charges.

Article 6

A recognized impartial third party should only conduct those businesses listed below:

- 1.Pursuant to Article 15, Paragraph 1, Subparagraph 3 of the Act, it will be entrusted by asset management corporations (AMCs) to handle the public auction of real estate which serve as collateral to financial institutions;
- 2.Pursuant to Article 15, Paragraph 1, Subparagraph 4 of the Act, it will be entrusted by the court as requested by the governing body to handle the public auction of real estate in accordance with the provisions of the Compulsory Execution Act;
- 3.Pursuant to Article 15, Paragraph 3 of the Act, it will be entrusted and supervised by compulsory execution agencies to handle compulsory execution cases as applied by financial

institutions;

4.The appraisal of monetary assets of financial institutions;

5.Other businesses as may be approved by the governing body.

Article 7

A Board member and supervisor of an impartial third party should not have any one of the following matters:

1.Any one of the matters as specified in Article 30 of the Company

Act:

2.Having been a Board member, supervisor, manager, or the equivalent of a legal entity when it pronounced bankruptcy, the termination of bankruptcy has not reached three years or any compromise reached has not been carried out;

3.A record of having written false or bad checks within the last 3 years (resulting in a bad credit report);

4.Having violated the provisions in the Securities Transaction Act, Company Act, Banking Act, Insurance Act, Credit Cooperative Act,, Farmers' Association Act, Fishermen's Association Act, or Foreign Exchange Management Act, and having been convicted by the court of a punishment more serious than a fine, whose execution has completed, a deferment has expired, or five years have not passed after being pardoned;

5.Having committed such a crime as internal rebellion or external interference of the state after the termination of Mobilization and Rebellion Suppression Period and having been convicted by the court as such;

6.Having been convicted of a compulsory work under security preservation punishments or a hoodlum reformatory punishment, whose execution has not been made or has not completed or five years have not passed after the completion of execution; or having been convicted of other security preservation punishments whose execution has not been made or has not completed;

7.Having committed the crime of corruption under the Criminal Code or its special Acts or any crimes under the Organized Crime Prevention Act;

8.Having committed such crimes as vote buying, accepting bribery, affecting voting or campaign, manipulating elections through bribery under the Criminal Code or its special acts, or having committed the crime of embezzlement, fraud, dishonesty, or forging documents by using opportunities or means in the positions occupied, and having been convicted by the court of a fixed-term imprisonment or above; however, those cases where a deferment has been pronounced or the imprisonment has been converted to a fine and the execution has completed are excluded.

9.Having committed crimes other than those indicated in the five Subparagraphs mentioned above, and having been convicted by the court of a fixed-term imprisonment or above and whose execution has not been done or has not yet completed; however, those cases where a deferment has been pronounced or the imprisonment is below six months and can be converted to a fine are excluded;

10.Having had facts which suggested that the person has engaged in or has been connected with other dishonest or improper activities, and these facts are sufficient enough to demonstrate that he (or she) would not be suitable to handle those businesses to be conducted by an impartial third party.

Should a Board member or supervisor be a legal entity, the above requirements are applicable to the representative of the legal entity or a person designated to perform the relevant functions.

Article 8

Aside from not having those matters indicated in Article 7, Paragraph 1 above, the manager of an impartial third party should have the following qualifications:

- 1.Having had one of the qualifications indicated in Article 3, Subparagraph 3 above, and having engaged in related professional businesses for more than two years;
- 2.Having had a master's degree or above, having worked as a supervisor in finance, appraisal, construction management, brokerage or related institutions or in public or private enterprises for more than two years, or having been a lecturer in finance, appraisal, construction management, brokerage or related courses in domestic or foreign colleges or above for more than three years, and having performed outstandingly in above positions;
- 3.Having graduated from a college or above, having worked as a supervisor in finance, appraisal, construction management, brokerage or related institutions or in public or private enterprises for more than three years, and having performed outstandingly in above positions;
- 4.Having worked as a supervisor in finance, appraisal, construction management, brokerage or related institutions or in public or private enterprises for more than five years;
- 5.having had other facts that are sufficient to demonstrate that the person has professional knowledge or experience in auctioning and can handle public auction businesses in a sound and effective manner, and having obtained prior approval from the governing body;

The manager mentioned above includes president, executive vice president, senior vice president, manager and deputy manager.

Article 9

In case any application items or documents attached thereto submitted by an institution already recognized as an impartial third party are found to be forged or untrue, the governing body can withdraw the recognition.

Article 10

Should a recognized impartial third party have the following matters, the governing body could terminate the recognition:

- 1.Not having conducted its businesses in accordance with the provisions set out in Article 2 of the Regulations;

- 2.Having conducted those businesses that are recognized but not having followed the relevant regulations and the matter is considered serious, or having been indicted by a prosecutor because of the violation of Acts;
- 3.Not having complied with the conditions or requirements set out in Article 3 or Article 4, Paragraph 1, Subparagraph 2, and having made no improvement before the deadline;
- 4.Having conducted businesses other than those listed in Article 6 without prior approval, and having made no improvement before the deadline;
- 5.Having violated the provisions set out in Articles 7 and 8, and having made no improvement before the deadline.

Chapter III The Public Auction Procedure of an Impartial Third Party

Section 1 An Entrusted Auction

Article 11

An agreement concerning an entrusted auction should be made in writing, and it should at least indicate the following:

- 1.The creditor;
- 2.The order of priority of the mortgage;
- 3.The kind of executive title;
- 4.Expenses in obtaining the executive title;
- 5.The actual amount of the debt;
- 6.The target of the entrusted auction;
- 7.The method of auction;
- 8.Auction expenses

Article 12

After being entrusted to handle the auction of real estate, an impartial third party should request the real estate registration agency to make a note under "Other Registration Matters" in the ownership part of the registration book that "the real estate is being auctioned by an impartial third party".

In case an entrusted auction is terminated or something occurs that makes the auction no longer necessary, the impartial third party should advise the real estate registration agency within seven days thereafter to remove the above-mentioned note.

Section 2 Fixing the Floor Price

Article 13

An impartial third party should set up a Real Estate Auction Floor Price Appraisal Committee, which should comprise more than five members. The Committee would determine the floor price of real estate which has been entrusted for auction, and the floor price so determined would be reported to the Board of Managing Directors or Directors for information.

More than two-thirds of the members of the Floor Price Appraisal Committee mentioned above should be architects, real estate appraisers or those who have actually engaged in real estate appraisal for more than five years, and real estate brokers.

When entrusted to handle the auction of real estate, an impartial third party should appraise the floor prices of land and building separately in accordance with the floor price appraisal regulations approved by the Board of Directors.

Article 14

Having determined the floor price of real estate following the procedure indicated in the above-mentioned Article, an impartial third party should advise the mortgagor, debtor, and creditor of the floor price, and afford them an opportunity to express their opinions.

Should the mortgagor, debtor or creditor disagree with the floor price, he (or she) should present his (or her) views, together with the relevant proof, to the impartial third party within seven days after being advised of the floor price.

After receiving the above-mentioned views, the Real Estate Auction Floor Price Appraisal Committee should reappraise the floor price based on the proof and opinions received. If the views and proof are considered valid, the Committee should revise the floor price accordingly. However, if they are considered invalid, the floor price becomes final. Those who had expressed the disagreement would be duly informed.

Article 15

Prior to the appraisal of the floor price of real estate, an impartial third party should make a field visit to the real estate, take pictures, and make an inspection record concerning the utilization of the real estate.

The inspection record mentioned above should indicate the following:

- 1.in the case of auctioning land: How the land is utilized; if there are working subjects or farm crops, and if so, their owners;
- 2.the occupier or user of a building: if it is occupied or used by someone other than the mortgagor or debtor; the name of the occupier or user and the reasons thereof.

Section 3 Auction Proclamation

Article 16

In auctioning real estate, an impartial third person should publicize the following in the internet, proclaim them at the head office or the branch concerned till the auction date, and publish them in a nation-wide newspaper for more than three consecutive days:

- 1.The location, kind, actual condition, occupying and utilizing situations, and other relevant matters of that real estate;
- 2.The date, time, place, and method of auction;
- 3.The floor price of the auction;
- 4.The deadline for paying the price; if the payment is to be made in installments, the amount of down payment, the number of installments, and the deadline for payments;
- 5.The qualifications or conditions, if any, of buying the real estate;

- 6.The place, date and time of perusing the relevant data of the real estate;
- 7.The amount of deposit to be paid and the means of payment;
- 8.Should the winning bidder fail to make the full payment before the deadline, how the deposit would be handled.

The mortgagor, debtor, and creditor should also be advised of the above-mentioned contents of the proclamation.

Article 17

The date of auction should not be less than seven days and more than 14 days after the proclamation.

Section 4 Auction

Article 18

The auction of real estate can be conducted by bidding or outcry or through the Internet.

Before an auction is made through internet, an impartial third party should prepare the relevant operating regulations and submit them to the Board of Directors and then to the governing body for approval; only thereafter can such auctions be made.

The winning bid should be awarded to a bidder whose bid is the highest and also exceeds the floor price.

Article 19

In case an auction is carried out through bidding, bidders should put their sealed bidding documents into a tender box installed by an impartial third party.

The bidding documents mentioned above should indicate the following:

- 1.The name or title, age, identification document number or unified serial number and address of the bidder;
- 2.The real estate lot number;
- 3.The actual bid.

Article 20

A bid would be considered invalid if it has not been submitted in the manner set out in the above-mentioned Article, the bidder has not paid the full amount of the deposit as required, or the bid is below the floor price.

Article 21

In case an auction is made through bidding, the person in charge of the auction should open the sealed bids in front of the public after the bid submission has been completed.

If more than one bidder offer the same highest price, bidders will be given another chance to outbid each other. However, if none of them were willing to up their bid, the winner would be determined by drawing lots.

Article 22

In order to carry out an auction through outcry, an impartial third party should set up a place suitable for such an auction. The setting up of the place and the rules concerning the outcry should be submitted by the impartial third party to the governing body for reference.

The person in charge of the auction as mentioned above should announce every bid loudly three times. If there is no higher bid offered thereafter, he (or she) should indicate that the bid is awarded by clapping a board or through other suitable means.

Article 23

The winning bid should be considered null and void if the bidder has failed to make the full payment prior to the deadline as set out in the proclamation or has not made the down payment in full under the installment plan.

Should the above-mentioned situation occur, an impartial third party should inquire all bidders whose bids exceeded the floor price whether they would be willing to purchase the real estate based on the original prices they had offered and to make responses within seven days after receiving the inquiry. The bidder who had offered the highest price and is willing to buy wins the bid. The provision set out in Article 21, Paragraph 2 above is also applicable in this case.

Article 24

An impartial third party should advise the mortgagor, debtor, and creditor the result of the bidding by indicating the following:

1. The winning price;
2. The land appreciation tax to be paid;
3. The auction expenses and the expenses in obtaining the executive title (calculated based on the lawsuit expense certificate issued by the court) to be paid;
4. The amount of money to be paid as calculated based on the principal, interest, and default charge shown in the executive title;
5. The amount to be paid to the mortgagee.

The mortgagor, debtor, or creditor may express his (or her) opinion regarding Paragraph 1, Subparagraphs 4 and 5 mentioned above within seven days after being advised thereof. In case a disagreement is expressed, the impartial third party should make recalculations based on the views and proof received. If these views and proof are considered valid, the amount should be recalculated accordingly. However, if they are considered invalid, the amounts would be final. The one who had expressed the disagreement would be duly advised. If there is no disagreement, the impartial third party should distribute the money in accordance with the order set out in Paragraph 1, Subparagraphs 2 to 4 mentioned above, so as to clear the mortgage of the creditor. Any residual should be returned to the mortgagor. However, should there be any mortgagees other than AMCs and who are enjoying lower than second order of priority, the residual should be

deposited in the court, and the mortgagees should be duly advised.

Section 5 Reauction

Article 25

Should any of the following occur in the auction of real estate, an impartial third party could make two more auctions after obtaining the consent of the creditor:

- 1.No bid has been submitted;
- 2.Bids have been submitted, but they have been considered invalid;
- 3.No winning bid has been determined after following the procedure set out in Article 23, Paragraph 2.

In case a reauction is made as indicated above, the floor price could suitably be adjusted downward, and each adjustment should not exceed 20% of the previous floor price.

Article 26

If the reauctions indicated in the above Article are not successful, an impartial third party should not proceed with any further reauction. However, with the consent of the mortgagor, another reauction could be made.

In case another reauction is made by an impartial third party in accordance with the preceding Paragraph, the floor price could suitably be adjusted downward, and the adjustment should not exceed 20% of the previous floor price.

Article 27

The date of a reauction should not be less than 15 days and more than 30 days after the previous auction (or reauction).

Section 6 The Registration of Transfer

Article 28

After a buyer pays the full price in accordance with the auction conditions, an impartial third party should issue an auction award certificate.

The buyer could present the auction award certificate mentioned above to the real estate registration agency and apply for the registration of right transfer and the cancellation of mortgage in accordance with the land registration regulations. The buyer could make the above application without being joined by the mortgagor.

Article 29

If real estate to be submitted by a mortgagor or debtor is currently occupied by the mortgagor or debtor himself (or herself), the buyer could request the court to remove such occupation through the civil lawsuit procedure. In case a third person occupies the real estate illegally after an inspection record is made in accordance with Article 15 mentioned above and becomes involved in a criminal act, the buyer could report to the local police to handle the matter as a criminal case.

Chapter IV Supplementary Provisions

Article 30

The Regulations shall come into force from the date of its promulgation.

Data Source : Financial Supervisory Commission Laws and Regulations Retrieving System