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## **Customs Department**

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### **SOMALILAND CUSTOMS AUCTION PROCEDURES**

#### **1. Introduction**

At present, seized or unclaimed goods may remain in a Custom's warehouse indefinitely, taking up space and denying revenue collection.

The Customs Act 73/2016 empowers the Customs Authority to dispose of such goods - those that have either been seized, abandoned, or have exceeded stipulated time limits, by way of 'sale', 'private treaty', 'public auction', 'destruction' or 'disposal by other means'.

This document explains the conditions when goods are liable for forfeiture under the Act and the process for the disposal of the goods.

#### **2. Definitions**

**Auction:** a public sale in which goods or property are sold to the highest bidder.

**Bidder:** a person or organisation making a formal offer (called a bid) for something, at an auction.

**Private treaty:** sale whereby the goods not sold during an auction are subsequently offered for sale.

**Reserved price:** the lowest price acceptable for an item sold at auction which is usually set in advance of the auction.

#### **3. Legislation**

The Customs Act 73/2016 and Customs Act Regulations 03/2019 cover the conditions where goods may be liable for forfeiture. This legislation provides for the disposal of the following categories of goods:

- 'Out of time' goods as defined in Regulation 84 of the Customs Regulations, i.e. goods which were not regularized with Customs within the time periods prescribed in Regulations 81, 82 and 83; or
- Confiscated (seized) goods, i.e. goods which have been seized by Customs under Section 196 of the Customs Act, or by other authorities; or
- Abandoned goods, i.e. goods which have been abandoned to Customs by their owner as prescribed in Regulation 86 of the Customs Regulations.

The relevant sections of the Act and Regulations can be found in Annex A.

#### **4. Management of the Auction Process**

The customs Authority is responsible for the management of the auction process. This responsibility includes:

- Liaison with approved operators of ‘places of temporary storage’ to ensure prompt reporting of ‘out of time goods’, according to Regulation 84;
- Setting the ‘reserved price’ for goods to be auctioned through a ‘Valuation Committee’;
- Advertising the details of the auction through the Ministry of Finance Development Public Relations Department; and
- Collection and distribution of the proceeds of sale.

## **5. Approval of goods for auction**

### **5.1 General**

The following goods shall not be put to auction and be sold or disposed of in the manner as prescribed by the Somaliland Customs Department namely:

- a) Any goods prohibited under the Customs Act or by any written law for the time being in force in Somaliland, such as:
  - i. Narcotic drugs under international control;
  - ii. Alcoholic beverages;
  - iii. Printed publications, photographs, pictures, books, and magazines which contradict Islamic teachings, decency or morality;
- b) Arms and ammunition;
- c) Transit goods excluding confiscated goods; and
- d) Diplomatic cargo excluding confiscated goods.

No goods shall be withheld from auction unless:

- a) a court of law issues a specified stay order against such auction;
- b) the Director of Customs orders withholding such auction.

### **5.2 Authorisation of goods for auction**

The Customs Manager in charge of the Station where the goods are warehoused shall complete a list of the goods identified as liable for sale under the provisions of the Customs Act and its Regulations. At Berbera Port, this list will be provided by DP World, the approved operator of the Temporary Storage Warehouse.

The Station Manager shall organize a local ‘Auction Committee’ comprising of the following agencies:

- Customs
- Financial Police
- Somaliland Quality Control Commission (SQCC)
- Ministry of Trade Industry and Tourism (MoT)

The Auction Committee will approve the goods for the Auction process and send the approved list to the Customs Director, together with a list of any inspection or licencing fees that are due on the goods

The Customs Director shall, on receipt of the above information, decide on the method of disposal of the goods:

- a) Requisition of the goods for use by the customs Authority;
- b) Sale of the goods through the auction process; or
- c) Destruction of the goods.

The Customs Director shall send an official instruction to advise the Customs Station Manager and the owner of the goods of his/her decision.

The Customs Director shall organize the Valuation Committee to set the reserved price of the goods at auction. The Valuation Committee shall comprise of the Customs Director, the Team Leader of the Customs Tariff Classification and Valuation Section (TCCVS), the Team Leader of the Customer Services Unit and the Customs Manager of the Station where the goods are warehoused. The Valuation Committee shall:

- a) Determine the reserved price of the goods to be auctioned. If the condition of the goods has, for any reason, deteriorated, the reserved price may be re-appraised by the Valuation Committee. The reserved price shall consist of the appraised price, duties and taxes and other charges, including demurrage (warehousing costs) and any penalties that may be due to the circumstances leading to the forfeiture of the goods. The Station Manager shall provide the Committee with any documentation relating to the goods necessary to set the reserved price (copies of the declaration, invoice etc).
- b) Complete a ledger of all goods to be sent for auction. This ledger shall include the original declaration/seizure number, the owner of the goods, a full description of the goods and the reserved price.
- c) Set a date and time for the auction; and
- d) Complete an 'Auction List', showing the description of the goods, the Auction 'Lot' Number (a unique reference number identifying each set of goods to be auctioned), and the place, date and time of the auction.

When assessing the reserved price, the Valuation Committee shall consider the following:

- The transaction value of the goods according to Section 28 of the Customs Act.
- All duties, taxes and other charges due on the goods.
- The local market retail value of the goods in Somaliland.

The reserved price must be sufficient to allow the recovery of all duties, taxes and fees, but provide any successful bidder with a profit margin. A guideline price of 60% of the local market retail value is recommended, as long as it covers the duties, taxes and fees.

If the assessed transaction value of the goods is higher than USD10,000 the auction process must be approved by the Director General of the Ministry of Finance Development.

The goods will be held at the Customs Stations of importation but must be separated from general cargo.

Goods to be sold by auction may be withdrawn from the auction, provided that the owner or his/her agent applies in writing to the Customs Director. If his/her application is accepted, the applicant shall lodge a deposit of money covering the storage charges, duties and taxes as well as other fees and expenses.

## **6. Notice of auction**

The Customs Director shall liaise with the Public Relations (PR) Department of the Ministry of Finance Development to arrange the advertisement of the auction. Notice of the auction (the Auction List) must be given not less than fifteen days in advance of the date on which auction of the goods shall be held.

The customs Authority and the MoFD PR Department shall:

- a) Advertise the auction on the MoFD website and social media accounts;
- b) Place an advertisement in the Government Newsletter and selected private national newspapers, in advance of the date of auction, specifying:
  - i. The date, time and place of auction;
  - ii. The description of goods to be auctioned, including photographs if possible;
  - iii. The Lot Number for each set of goods to be auctioned; and
  - iv. Specified dates and times of public viewings of the goods.
- c) Send the Auction List to the Chamber of Commerce and to other associations of importers/traders in the area where the auction is to be held; and
- d) Display the Auction List at Customs Headquarters and the Customs Station where the goods are held.

The Auction List will contain a warning that Customs shall not give warranty on the quality, quantity, packaging condition or any other particulars of the goods offered for sale.

All expenses incurred on publicity, preparation of files, completion of auction, etc. shall be recovered by the MoFD through the proceeds of sale.

The Customs Station Manager where the goods are stored shall arrange for potential bidders to inspect the goods at the warehouse at least 7 days before the auction. Access to the DP World warehouse in Berbera must be facilitated by DP World.

Every bidder is considered to have inspected the goods and bidding is done on his/her own responsibility. The goods are sold and delivered in the state they are at the time of the sale and the Customs Department cannot be held responsible for any damages, defects or deficiencies or for any misinterpretation that may arise from the description of the goods on sale in the publication.

#### **7. Qualification for bidder/tender**

Any person can participate in the auction by way of open bid/tender/private offer/re-bidding as long as he/she:

- a) Is over 16 years of age;
- b) Is resident in Somaliland;
- c) Holds a valid Tax Identification Number;
- d) Holds a Ministry of Trade, Industry and Tourism Import Licence;
- e) Has not been disqualified by the customs Authority to participate in auction.

#### **8. Conduct of Auction**

The customs Authority will decide on the method of the bidding process for each case. Bids may be made either by sealed tender/private offer, on-line, a public bidding auction, or a combination of the bidding methods.

- a) Sealed Tender/Private Offer: The bidder may participate in auction by way of submission of sealed tender/private offer indicating the lot number and the amount of the bid to Customs prior to the day of auction. The sealed tender/private offer may be opened by the Customs Station Manager on the day of the auction;
- b) On-line bidding: The bidder may submit a price they are happy to pay by way of email to a designated email address (acknowledgement of bids must be issued). The bids will be registered and assessed on the day of the auction;
- c) On the day of the auction the public verbally bid for each Lot in the following manner:
  - i. On the day of auction bidders shall be granted access to the nominated auction site. The customs Authority shall nominate a Customs Officer to act as an auctioneer to oversee the auction, as per the following procedure.
  - ii. Before the start of bidding the auctioneer shall announce the **lot** number and the details of the goods.
  - iii. The auctioneer declares a starting price (highest sealed tender/private offer) and bidders declare whether they wish to increase the starting price, and each subsequent bid amount, until no further bids are made. At this point, the person who bid the highest amount secures the goods.
- d) The following details shall be recorded by the Customs Officer supervising the auction, for the highest and second highest bidders in the auction:
  - i. Full name and contact number;
  - ii. National Identity Card or Passport Number;
  - iii. TIN Number.

## **9. Auction of perishable/hazardous goods**

Notwithstanding the provisions of these rules, the Director may approve the sale of any perishable goods through private offers or open auction at any time on the request of the Customs Station Manager under whose possession/control these goods are held.

## **10. Acceptance of bid**

A bid given at auction shall be subject to acceptance by the Valuation Committee.

Where the amount of the highest bid given at an auction is up to eighty per cent of the reserved price, the Committee may accept the highest bid after satisfying that the reserved price and the quantity/condition of goods are appropriate.

Where the amount of the highest bid given at an auction is up to sixty percent but less than eighty percent of the reserved price, the approval of Customs Director shall be specifically obtained. However, if the Director thinks that the goods can fetch a better price, the Director may put the goods for re-auction in the next auction schedule.

In case where, due to damage or deterioration of goods, the amount of the highest bid is less than sixty per cent of the reserved price, the Customs Director may approve the sale.

If the Department is unable to sell the goods in two consecutive auctions at prices which to cover the duties and taxes, as well as the storage charges, removal expenses and auction fees, the goods shall be considered as abandoned. In such cases the Director of Customs may dispose of the goods through destruction, requisition or through donation to charitable institutions.

### **11. Payment of accepted bids**

A deposit of 50% of the amount of the highest bid accepted at an auction shall be payable by the bidder immediately after the final bid is accepted. If the deposit is not paid the bid will be cancelled and the goods may be sold to the second highest bidder, or re-auctioned, as deemed appropriate.

The balance of the amount of bid shall be paid by the successful bidder in cash or cheque (accompanied by a bank statement to prove possession of the balance), as prescribed by the Director, within a period of seven days excluding holidays, of the final acceptance of the bid.

The customs Authority may extend the period by not more than seven days, on a case by case basis if he/she considers it to be fit and appropriate.

If the balance of the amount of the bid is not paid within the given period, the deposit shall be forfeited in favour of the Ministry of Finance Development, and the goods may be re-sold by auction or otherwise.

### **12. Customs to issue a confirmation of sale at auction**

The customs Authority shall issue a confirmation of sale at auction giving the name and address of the successful bidder, his/her Identity Card/Passport Number and Tax Identification Number, the date and place of the auction, the number of the lot, full description and quantity of the goods in respect of which bid was accepted and the price at which such goods were sold.

The successful bidder shall present the confirmation of sale issued to him/her to the Customs Manager of the Station where the goods are warehoused. Customs shall give delivery of the goods specified in the delivery order to the bidder, and Customs and the bidder will sign the confirmation of sale to confirm release/receipt of the goods.

The successful bidder must pay any inspection or licence fees that may be due on the goods before they can be released.

### **13. Allocation of the proceeds of sales**

The proceeds of sale will be allocated in the following prioritized order by the customs Authority:

- a) An amount equal to the amount of duties, taxes and any penalties; plus auction administration fees is allocated to the MoFD;
- b) Any storage fees and handling charges are allocated to the operator of the place of temporary storage, if not managed by Customs;
- c) Any balance is kept by the customs Authority in the form of a deposit. This amount may be claimed in order of priority by the transporter of the goods or their original owner, provided that the appropriate evidence is produced. The amounts which the transporter is entitled to claim are restricted to the freight and port/discharge fees only. If the goods were seized as a result of an offence committed under the Customs Act 72/2016, the owner will not be permitted to a claim on the deposit;

- d) Any balance remaining unclaimed after the lapse of two months from the date of sale is transferred to the revenue of the MoFD.

#### **14. Refund of adjustments**

The amount of the deposit shall be deducted from the final payment of the whole amount of the bid, but where a bid is not accepted by the appropriate authority, the amount of the deposit shall be refunded to the bidder.

#### **15. Power of Director to cancel auction, etc. –**

- a) Notwithstanding anything contained in these procedures, the Director may:
  - i. Cancel the whole proceeding of an auction.
  - ii. Accept or reject any bid or offer at auction at any time before the goods are delivered to the successful bidder. He/she may also recall the proceedings and recover the goods even after delivery of goods if it is proved that there has been a deliberate attempt to cause loss to the public purse; and
  - iii. Restrict or refuse the entry of persons to the premises where an auction is held or their taking part in the auction.
- b) Notwithstanding the procedures prescribed above, the Director may issue such general or special orders, regulating the auction as he/she thinks fit in order to safeguard the public interest.

## **Annex A: Legislation**

### **Customs Act 73/2016**

#### **Section 74 Goods which cannot be released**

Any necessary measures, including confiscation and **sale**, shall be taken to deal with goods which:

a) cannot be released because:

- i) it has not been possible to undertake or continue examination of the goods within the period prescribed by the customs Authority for reasons only attributable to the declarant; or,
- ii) the documents which must be produced before the goods can be placed under the customs procedure requested have not been produced; or,
- iii) payments or security which should have been made or provided in respect of import duties or export duties, as the case may be, have not been made or provided within the period prescribed; or,
- iv) they are subject to bans or restrictions;

b) are not removed within a reasonable period after their release.

#### **Section 197(2) Procedure on seizure**

Where goods which are of a perishable nature or animals are seized, the Customs Authority may direct that the goods shall be sold forthwith, either by public auction or by private treaty, and that the proceeds of sale shall be retained and dealt with as if they were the goods.

#### **Section 200 Provision relating to condemnation**

1. Where any goods have been seized under the Act, or any other provisions as being liable to forfeiture, then the condemnation of the goods shall in no way be affected by the fact that an owner of the goods was in no way concerned with the offence or the act which rendered it liable to forfeiture.
2. Where any goods are condemned under the Act, then:
  - a) subject to any provisions in force, the goods shall be forfeited and may be sold, destroyed or otherwise disposed of as the Customs authority may deem fit;
  - b) condemnation of the goods shall have effect as from the date when the liability to forfeiture arose;
  - c) condemnation shall, subject to any appeal in proceedings which resulted in condemnation, be final and, save as provided in Section 201 no application or proceedings for restoration or in detinue by any person shall lie.



3. Where goods have been condemned and are in the possession of some authority other than the customs they shall be returned to the customs for disposal under paragraph 2.

### **Customs Act Regulations 03/2019**

#### **Regulation 81 Time Limits for Assigning Goods a Customs-Approved Treatment or Use**

1. For the purposes of Section 49 of the Act, the formalities necessary for the goods to be assigned a customs-approved treatment or use must be carried out within:
  - a. 45 days of the acceptance of the summary declaration in the case of goods arriving by sea;
  - b. 20 days of the acceptance of the summary declaration in the case of goods arriving by any other means of transport than sea.

#### **Regulation 82 Time limit for payment of customs duties and other levies due on the importation of goods**

Without prejudice to the obligation set out in the previous Regulation, under the terms of Section 74 of the Act, it is obligatory to make or, where authorised by Customs, to guarantee payment in the form prescribed in the Act, within 10 working days of issue of the written demand from Customs.

#### **Regulation 83 Time limit for removal of goods cleared by customs**

Goods which have been cleared by customs must be removed from the designated place within 10 working days of the issue of authorisation for release by Customs.

#### **Regulation 84 Out of Time Goods**

In the case of non-compliance with the time limits set out in the previous 3 Regulations, the respective goods are deemed as “out of time” goods. Without prejudice to Customs own internal controls, the operator of any place approved for the temporary storage of goods under the terms of the present Regulation must submit to Customs by the 5th working day of each month, or within an alternative period stipulated by Customs, a list of all goods still in temporary storage whose period of such storage has exceeded by more than 10 days the period provided for in these Regulations. Customs will determine those goods which are out of time and ensure that the necessary measures are taken for their disposal, including confiscation and sale of the goods, under the terms of Section 74 of the Act.

#### **Regulation 395 Detention of goods**

1. Without exception, seized goods shall be detained, unless they are likely to deteriorate quickly, or it would, due to their nature, be impracticable for the Customs to store them.

Seized or detained goods should not be sold or otherwise disposed of by the Customs before they have been definitively condemned as forfeited or confiscated or have been abandoned to the Revenue.