

Practical Law Canada

Private M&A: Auctions

Welcome to the Practical Law Canada training on private M&A auctions. The purpose of this training is to show you how you would use Practical Law Canada in the context of a particular transaction to get up to speed on the subject matter, draft related documents, and get up to date market information.

Since we are discussing an M&A topic, we are going to select the Corporate and M&A practice area.

In our scenario, a partner calls you into her office and tells you that you are going to be working on the auction of a private corporation, and you are representing the seller.

One way to access Practical Law's Private M&A documents is by selecting the Private M&A topic page and browse or scroll through the resources.

Or, what most people do when they know what subject they are looking for, is conduct a keyword search. Practical Law Canada's keyword search works the same as WestlawNext Canada. To limit your search results you can put the phrase you are searching in quotes.

Here, I am just going to search for the word **auction**. As you can see, my search yielded a number of results sorted by relevance.

If you know that you need some background information on auctions, maybe you have never worked on an auction before, or it has been a couple of years since you worked on an auction transaction – and you need a refresher – you can limit your results to Practice Notes.

Practice Notes are plain English how-to guides. You can limit the results in your list by selecting Practice Notes in the Resource Type on the left side.

Since we are representing the seller, I am going to select from our search results list Auctions from the Seller's Perspective.

This Practice Note is going to give you an overview of the auction process from the perspective of the seller, and covers such topics as advantages and disadvantages of an auction to the seller, timing of an auction, the seller's role in an auction and information on the data site.

Throughout the Practice Note, we will link you, where relevant, to other resources that may be helpful. For example, if you are representing the seller, you can expect to be involved in drafting a Confidentiality Agreement or non-disclosure agreement (NDA).

In this Practice Note there is a link to Practice Notes and Standard Documents relating to confidentiality agreements used in M&A transactions.

Notice at the top of the Practice Note a green maintained sign. All Practical Law Canada's core resources are maintained, which means they are kept up to date on a real-time basis. When we make changes to our documents for major changes in law or practice, we will make a note in the resource history.

Another good way to find relevant content is by looking at the right-hand side of any resource and selecting Related Content. Here we point out what other resources we feel would be helpful if you are working on an auction. For example, you may be interested in a timeline of the transaction.

I will now select our Auction Timeline. The *Auction Timeline* is a Checklist that provides a snapshot of the steps involved in an auction. You can send this Checklist to give your client a better understanding of how the auction process will flow. For example, it will let your client know when they should get other parties involved.

Once you are at the drafting or negotiating stage, you can search Practical Law Canada to locate a precedent (called Standard Documents in Practical Law) to help you create your agreement. The keyword search *auction standard document* will yield the most relevant precedent on the site: *Share Purchase Agreement (Pro-Vendor Auction Form)*. You can access the resource by selecting the document link in your search results.

Every Standard Document is annotated with Drafting Notes. The Drafting Notes contain explanations, and drafting and negotiating tips, which will make it easier for you to draft and negotiate your client's agreement.

Generally, the first Drafting Note of every Standard Document provides the user with general background information as well as sets out the assumptions used by Practical Law Canada's Lawyer-Editors when drafting the precedent.

Essentially, this first Drafting Note gives you some insight into how you will need to customize the agreement to fit your deal when you start drafting the agreement.

If you scroll down the Standard Document, you can see how Practical Law Canada uses Drafting Notes throughout the agreement that provide you with drafting and negotiating tips as well as highlight how the bidder may want to modify the provisions contained in this agreement.

When drafting a purchase agreement for your client, you can use our Standard Documents in two ways.

You can either print this document with only the Drafting Notes and use it as a guide, or a document version to use it as a template to draft your agreement, or a combined Document and Drafting Notes. Every Standard Document can also be downloaded into Word.

The Word version is formatted normally and can be saved to your system, and modified to suit your deal. In the Word version all of the Drafting Notes have been stripped out so you don't have to do a lot of deleting.

If you want to see how other negotiated transactions have been completed, you can go to our *What's Market* database. *What's Market* allows you to compare and analyze publicly filed deals.

It also provides a great way to find precedents quickly. In *What's Market* we cover public M&A, publicly filed private M&A agreements and initial public offerings.

As we are talking about a private auction, I am going to access our *Private acquisition database*. When you select this database you will find a list of publicly filed private purchase agreements in reverse date order (most recent agreements are listed first).

Browsing this list is a really easy way to find relevant precedents for your deal.

Using the *What's Market* filters on the left hand side of the page allows you to narrow the list of deals displayed in the database.

For example, by selecting *mining and metals* under the Industry Sector filter and selecting *all cash* under the Consideration filter, you reduce the number of displayed deals to 48. Now you have an easy list of a few relevant precedents to look at.

If you select any of the deals in the list, you can get Practical Law Canada's summary of the agreement as well as links to the underlying agreement as it is filed.

What is also really useful is that you can compare these agreements to see how certain provisions are being negotiated and get a sense of where the market is coming out on certain points.

When you select the Compare button, a chart comes up which has all the terms that we are summarizing from the agreement, and you can select as many as you want.

Let's pick Consideration, Escrow, and Purchase Price Adjustment. Selecting comparison terms will automatically adjust your comparison chart.

What you now have is a chart where you can analyze the provisions with links through to the underlying agreement (if you want to see the actual language). You can also download this comparison to Word or Excel, modify the chart, then email the chart to the partner or client.

If you're on our website and have trouble finding what you are looking for, or you aren't sure how to get started, you will see a number of places where you can contact us. One really easy way is to simply tell us what you're working on.

Your question will be directed to our Editorial Team who will help you find what you need. This is the end of our tutorial on M&A auctions. Thank you all for listening.