

**DECREE HAVING AUTHORITY OF LAW OF THE PRESIDENT OF THE
REPUBLIC OF
KAZAKHSTAN CONCERNING PRIVATISATION**

The 23rd of December, 1995 N 2721

In accordance with Article 1 of the Law of the Republic of Kazakhstan, dated December 10, 1993 "Concerning the Temporary Delegation of Additional Authorities to the President of the Republic of Kazakhstan and the Heads of Local Administrations", I issue this Decree:

Chapter 1. General Provisions

Article 1. The Definition of Privatization

Privatization means the sale of the state property to the natural persons, private legal entities and foreign legal entities, this sale is conducted by the state as an owner by means of special procedures, established by the present Decree, or by the order established by the present Decree.

Article 2. Participants of Privatization.

1. The seller and the buyer shall be the participants of the process of privatization.
2. Seller means the state body authorized to carry out privatization.
3. Buyer means a physical person, private legal entity or foreign legal entity which purchase assets in the course of privatization.

When Buyer consists of several entities participating on behalf of the Buyer, they act jointly.

4. The following may not be the Buyers in privatization:
 - 1) legal entities in whose charter fund the share of the state exceeds 20 per cent;
 - 2) legal entities which in accordance with legislative acts of the Republic of Kazakhstan or foundation documents have no right to engage in those types of activities the performance whereof is a pre-condition for buying the property at the auction.
5. In the course of selling a state block of shares, the Buyer which is a joint stock company may not acquire more than 25 per cent of shares of the joint stock company if the latter owns shares of the Buyer.
6. The Seller shall have the right to hire an intermediary to organize the process of privatization.

Article 3. Legislation of Concerning Privatization

1. Legislation of the Republic of Kazakhstan concerning privatization shall consist of the present Decree, other legal acts, edicts and regulations of the President of the Republic of Kazakhstan, and the regulations of the Government of the Republic of Kazakhstan.

2. The authorized bodies may issue acts which regulate relations connected with privatization in the cases and within the bounds stipulated by this Decree and other legal acts concerning privatization.

3. Peculiarities of privatizing state-owned agricultural enterprises as well as of property of the state-owned housing facilities, are regulated by special legislation.

Article 4. The Basic Principles of Conducting of Privatization

Publicity, competition, legal successorship, the responsibility of official persons for legality of privatization and reliability of information concerning the property on sale, shall be the basic principles for performance of privatization.

Chapter 2. Property Subject to Privatization

Article 5. Property Subject to Privatization

1. The state property, except for those which are in the exclusive state ownership shall be the property subject to privatization.

2. The following types of the state property shall be subject to privatization:

1) state-owned enterprises and institutions (hereinafter enterprises) as assets and property;

2) production and non-production sub-divisions or units of enterprises considered as assets and property, privatization of which does not interrupt the technological process of production;

3) property of enterprises;

4) stock and shares in charter funds of economic partnerships.

3. State property shall become subject to privatization from the day of the adoption of the decision to privatize the property by State Body Authorized to Manage the State Property.

Article 6. An Enterprise as a Subject of Privatization.

1. An enterprise as property complex subject to privatization includes all types of assets intended for its activities including buildings, constructions, equipment tools, raw materials, finished goods, the rights on the plot of land, the right to claim debts as well as the exclusive rights owned by the enterprise as legal entity.

2. Property of the social and consumer designation may be included into the property complex of the enterprise.

3. The Buyer shall become the legal successor of the rights and obligations of the privatized enterprise, unless otherwise stipulated by this Decree and the buying/selling agreement.

Article 7. Case-by-Case Privatization

1. Particularly large and unique enterprises, the list of which is approved by the Government of the Republic of Kazakhstan shall be privatized on the case-by-case basis.

2. The case-by-case privatization plan shall include the following measures:

1) comprehensive analysis of activities and competitiveness of the property subject to privatization;

2) evaluation of its assets;

3) defining of the size of the state-owned block of shares which is subject to sale;

- 4) proposed system of organizational, structural, technological and other transformations of the property subject to privatization;
- 5) choice of the method of privatization;
3. After the approval of the case-by-case privatization plan by the Government of the Republic of Kazakhstan, its implementation shall be carried out by the Seller.

Article 8. Property of an Enterprise as Property Subject to Privatization

1. Property of an enterprise may be a separate property subject to privatization only in the case of the liquidation of a state-owned enterprise.
2. Sale of the property of a liquidated enterprise shall be carried out exclusively at the auction after the expiry of the deadline established by the legislation for submission of claims by creditors to the enterprise subject to liquidation.

Article 9. Sub-Divisions and Structural Units of Enterprises as Property Subject to Privatization

1. The decision to subtract the structural units and subdivisions of an enterprise and to sell them as independent property subject to privatization may be adopted at any time under the procedure and terms set forth by Article 5 of the present Decree, and in connection with the companies subject to privatization on the case-by-case basis,- by the Government of the Republic of Kazakhstan under the procedure established by the Government of the Republic of Kazakhstan.
2. Subdivisions and Structural units of an enterprise by the moment of privatization must be extracted on the basis of the division balance sheet.

Article 10. Stock and Shares in the Charter Fund of Business Partnerships as Property Subject to Privatization

1. Selling of stock and shares of the state in the economic partnerships must be carried out in compliance with the requirements established by legislation concerning economic partnerships.
2. It shall not be allowed to sell shares the issuance of which is not registered in accordance with the legislation.

Article 11. Privatization and the Rights Connected with the Land

Simultaneously with the privatization of real estate the Buyer shall acquire the ownership of the plot of land in accordance with legislation concerning land.

The value of the land plot shall be included into the price of the property subject to privatization.

Chapter 3. Types of Privatization

Article 12. Types of Privatization

1. Privatization shall be carried out in the following forms:
 - 1) auction sales (auction, tender);
 - 2) direct sale;

2. Actions which do not directly lead to selling of state assets, but which stipulate its subsequent sale (transformation of state enterprises into joint stock companies, leasing of state assets or transfer of the latter into trust management with the right to subsequent purchase accordingly by the Lessee or the Trustee manager), shall not be handled as types of privatization, but as its preliminary stages.

Article 13. Types of Auctions and Tenders.

1. Sales shall be held in forms of auctions or tenders. The entity which offered the maximum price at an auction shall be recognized as the winner of the auction. The entity which according to the conclusion of the Tender Commission appointed by the Seller, offered the best terms, shall be recognized as the winner of the tender.

At auctions, proposals shall be made publicly; at tenders the proposals shall be made publicly or in writing in sealed envelopes under the decision of the Seller.

2. Sales, as a rule, must be public, the procedure for their conduct is set forth by Article 14 of the present Decree.

In exceptional cases which impact the State Security, protection of the natural environment, foreign economic position of the Republic of Kazakhstan, defined by the decision of the Government of the Republic of Kazakhstan, a tender may be closed. The procedure for its conduct shall be established by the Government of the Republic of Kazakhstan.

Only entities which comply with the requirements of Article 2 of the present Decree can be participants of the auctions or tenders..

3. Auctions and tenders in which only one participant took part shall be recognized as invalid, except for a third and subsequent sales at which the property subject to privatization may be sold to a single participant which expressed the will to purchase it.

4. Prior to participating in a sale, the Buyer has the right to carry out an audit of the ecological status of the property subject to privatization.

5. Sales relating to selling of state-owned blocks of shares, as a rule, shall take place at a Stock Exchange.

Article 14. The Procedure of Public Sales

1. The notification concerning a sale must be made by the Seller not less than fifteen days prior to this sale; in the case of selling stock and shares of the economic partnerships, - not less than thirty days prior to the sale. The announcement must be published in the national official press in the Kazak and Russian languages. The announcement must contain information concerning the time, place and type of the sale, the property on sale and the procedure for conducting the sale, including information concerning the registration of the participation in the sale, the provisions describing the winner of the auction or tender, as well as information concerning the starting price and the amount of the security deposit.

2. If the Seller will change the terms of the tender, the notice of all the changes must be made by the Seller in accordance with the procedure and within the deadlines established by the first part of the present Article.

Entities which have submitted their applications to participate in a tender prior to the publication of the notice of making changes in its terms and which refuse to

participate in it because of the changes, shall have the right to claim the refund of the security deposit and reimbursement of their expenses.

3. The Seller shall have the right to cancel a sale, not less than three days prior to the date of the sale, with the reimbursement of actual damage to the entities which submitted their applications to participate in the sale, except for the cases relating to acts of the force majeure, or for any other reasons beyond the Sellers' control.

4. Participants of a sale shall make the security deposit in the amount, deadlines and procedure indicated in the announcement of holding the sale. If sale does not take place, the security deposits shall be subject to refund. The security deposits shall be also refunded to the entities which participated in a sale but did not win the bid. Entities which in writing refused to participate in a sale, not later than three days prior to their date, will receive back their security deposits.

When concluding a buying/selling agreement with an entity which won the bid, the amount of the security deposit made by the buyer shall be included into the buyers' payments under the buying/selling agreement.

5. The entity which won the bid and the Seller shall sign the protocol on the results of the sale, on the day of the auction or tender.

6. The buying/selling agreement must be signed by the parties not later than 10 days after the completion of the sale.

If the entity which won the sale is evading from signing of the protocol on the results of the sale or the buying/selling agreement shall lose its security deposit and shall be obliged to reimburse to the Seller the losses incurred by the Seller to the extent not covered by the security deposit.

The Seller does not have the right to evade from signing of the protocol on sale results and the buying/selling agreement with the entity which has won the bid, except for the cases where the entity which won a sale does not comply with the provisions of Article 2 of the present Decree.

The terms of the buying/selling agreement must not contradict the terms of the sale.

7. Sale performed in violation of the rules established by legislation may be recognized as invalid by the court under the claim of the interested parties.

Recognition of sales relating to a property subject to privatization as invalid shall include the invalidity of the buying/selling agreement.

8. Special requirements in the course of public sales relating to certain types of property shall be established by the Seller.

9. If a property subject to privatization is not sold within six months after its transfer for sale in accordance with the established procedure, the Seller shall return the property subject to privatization to the body authorized to manage of the state property for adoption of further decisions.

Article 15. Direct Sale

1. Property leased in accordance with the procedure established by Article 16 of the present Decree with the right to subsequent buy-out or transferred for trusted management appropriately to lessee or trustee manager, can be subject to direct sale.

Selling of privatization property to lessees or trusted managers shall only be allowed on the terms of proper observation by them of the relevant agreements.

2. The terms of the buy-out of a property subject to privatization shall be defined in the agreement of the parties, unless they are stipulated on the lease agreement or the agreement on transfer for trusted management.

3. Selling of privatization property to certain investors on the case-by-case bases shall be allowed on stipulated terms, provided the property was not sold in the course of the auctions or tenders.

Article 16. Preliminary Privatization Stages

1. An enterprise which is subject to privatization may be first transformed into a joint stock company under the procedure established by legislation;

transferred into trusted management or lease with the right of subsequent buy-out.

2. A trusted manager or lessee shall be elected on the basis of a tender in accordance with Article 13 and 14 of this Decree.

3. Transfer of an enterprise into trusted management or lease shall be documented by appropriate agreement between the Body Authorized by the Government of the Republic of Kazakhstan and the trusted manager or lessee.

The agreement must envisage on what terms the enterprise can be transferred into the ownership of the trusted manager or lessee.

4. The provisions of the civil legislation which regulate the relations of trusted management and leasing shall apply to the relevant provisions of the present Decree, except for the cases stipulated by the present Decree.

5. A state-owned block of shares may be transferred into trusted management, on the basis of a tender in accordance with Article 13 and 14 of this Decree.

Chapter 4. The Procedure and Terms of Privatization

Article 17. Process of Preparation of the Property to the Privatization

1. Preparation of the property to the privatization is to be carried out by the Seller.

2. In the course of preparing the property to the privatization the Seller shall:

1) evaluation of the property subject to privatization in accordance with the legal act prepared by the Seller and approved by the Government of the Republic of Kazakhstan;

2) prepare the information concerning accounts payable and accounts receivable and obligations connected with the property and presents in pursuance of the Buyer's demand information concerning concluded contracts and agreements of the enterprise subject to privatization, in the cases when an enterprise is subject to privatization as assets or the property subject to privatization is the state-owned block of shares;

3) define the terms, forms and types of privatization conduct, and carry out preparation of its implementation;

4) provide for the safety of the property;

5) take other steps which are required for performance of privatization.

Article 18. Taking into Account the Ecological Requirements in the Course of Case-by-Case Privatization

1. The Seller shall be obliged to present to the Buyer the information concerning ecological conditions of the property subject to privatization on the case-by-case basis.
2. The Buyer shall have the right to examine the ecological conditions of the property subject to privatization..

Article 19. The Procedure of the Payments.

1. Payments under the buying/selling agreement of the property subject to privatization shall be made between the Seller and the Buyer.
2. Payment for the purchased property must be made within thirty days from the date of signing the buying/selling agreement.
3. The installment payments shall be allowed only in the cases when the participants of the sale in advance have received the information about the terms of the installment payments.
4. Amount of the initial contribution in the course of selling of the property subject to privatization on an installment basis may be not less than fifteen per cent of the selling price, and the period of the installment plan must not exceed three years.
The rules for execution of monetary obligations shall apply when subsequent amounts are paid under the agreement.
Interest shall be assessed on the outstanding amounts at the rate established by the agreement of the parties, when selling on the installment plan.
5. The properties purchased by the Buyer shall serve as a security for timely payments and the Seller will have the right to claim this property as a security, unless the buying/selling agreement stipulates other type of security.

Article 20. Usage of the Funds Received from Privatization.

Funds received from the selling of the property subject to privatization shall be included to the Revenues of the State Budget, except costs of organizing and conducting the sale, as determined by the Government of the Republic of Kazakhstan.

Article 21. Documentation of the Alteration in the Right of Ownership.

Documentation of the alteration of the right to ownership in respect of a privatized property shall be carried out in the procedure established by the legislation in respect of a privatized property shall be carried out in the procedure established by the legislation of the Republic of Kazakhstan.

Article 22. Supervision of the Implementation of the Buying/Selling Agreement.

1. Subsequent supervision of proper execution of the terms of the buying/selling agreement relating to a privatization property shall be carried out by the Seller.
2. Supervision of implementation of the terms of the agreement shall be carried out until the expiry of the deadlines of their execution by the Buyers where the execution of agreements by those entities must be carried out until the expiry of the deadlines of their execution by the Buyers where the execution of agreements by those entities must be carried out by within certain periods of time (deadlines for

implementation of investment programs, periods of retention of the profile or volume of production etc.)

In order to exercise the supervision, the Seller shall have the right to examine the documents related to the execution of buying/selling agreements

Article 23. The Responsibility of Owners of the Privatized Enterprises for the Hazard to the Environment.

1. The liability relating to hazard to the environment and health of the population as a result of business activities preceding the privatization shall be carried by the former owner of privatization property - the State.

2. Apportionment of transfer of liabilities relating to the environment, as well as of ecological risks to the new owner shall only be allowed on the latter's consent.

3. The responsibility for hazard to the natural environment by business activities of the new owner shall be regulated by the legislation of the Republic of Kazakhstan.

Article 24. The Procedure for the Settlement of Disputes
Disputes which arise in the course of privatization shall be settled by the court.

Article 25. Recognition of the Buying/Selling Agreement as Invalid

1. The following shall be the bases for the recognition by court of the buying/selling agreement as invalid:

- 1) selling of the property to an entity which has no right to purchase it;
- 2) granting to the Buyer of illegal privileges and advantages;
- 3) severe violation of the procedure for performing the sales;
- 4) any other bases stipulated by the legislation of the Republic of Kazakhstan.

2. In case of a subsequent alienation by the Buyer of a property subject to privatization prior to the recognition of the buying/selling agreement as invalid its claim back from the Buyer shall be possible in accordance with the rules stipulated in articles 260-262 of the Civil Code of the Republic of Kazakhstan (General part).

3. The statute of limitations in relation to disputes relating to invalidity of purchase and sale agreements shall be six months from the date of their signing, provided the action is filed by the party to the agreement. In the case where action is filed by any other interested entity or the attorney general official, the statute of limitations in disputes shall be six months from the date when the plaintiff found out or should have found out the circumstances which are the basis for recognition of the Agreement as invalid, but not later than three years from the date of signing the agreement.

Article 26. Dissolution of the Buying/selling Agreement

1. The buying/selling agreement relating to a privatization property may be dissolved on the basis and in the procedure stipulated in the Civil Code of the Republic of Kazakhstan.

2. Dissolution of the purchase and sale agreement shall entail the return by the parties of the property which was transferred in accordance with obligations prior to

the moment of the dissolution of agreement and reimbursement of losses by the accused party.

Chapter 5. Conclusive and Transitory Provisions

Article 27. The Entering into Force of the Present Decree.

1. The present Decree shall enter into force on the first of January, 1996.
2. The present Decree shall apply to legal relations which arose after the entry into effect of the present Decree, that is from the 1st of January, 1996.
3. New terms of statutes of limitations stipulated in this Decree shall apply to the disputes based on the circumstances which arose after the 1st of January, 1996.
4. Property leased prior to the entry into force of this Decree may be purchased by their lessees, provided that they properly execute the lease agreements for non less than two years.
5. The effect of this Decree shall not apply to lease or trusted management relations without the lessee's or trusted manager's right to subsequent purchase of the enterprise, except for the cases stipulated by the paragraph 4 of this article.
6. The following shall be recognized as invalid as of the date of the entry of the present Decree into force:
 - 1) Law of the Republic of Kazakstan "Concerning Denationalization and Privatization", dated June 22, 1991 (Bulletin of the Supreme Soviet of the Kazak SSR, 1991, N 27. i. 349; Bulletin of the Supreme Soviet of the Republic of Kazakstan, 1992, N 6, i. 113; 1993, N 9, i. 218; 1995, N 1-2, i. 20);
 - 2) Decree of the Supreme Soviet of the Kazak SSR "Concerning the Implementation of the Law of the Kazak SSR "Concerning Denationalization and Privatization", dated June 22, 1991, N 27, i.250.

Article 28. Measures of the Implementation of the Present Decree.

The Government of the Republic of Kazakstan shall:

1. Approve before the 1st of March, 1996:
 - the list of the enterprises to be privatized on the case-by-case basis;
 - the procedure for holding closed tenders;
 - the regulatory legal act to evaluate the property subject of privatization.
2. Bring the decisions of the Government of the Republic of Kazakstan into conformity with the present Decree.
3. Provide for revision and abolition of the legal acts of the ministries, departments and the state committees which contradict the present Decree.

**President of the Republic
of Kazakstan N. Nazarbaev.**