

## **LAW OF AZERBAIJAN REPUBLIC ON PRIVATIZATION OF STATE-OWNED PROPERTY**

**This law determines economic, organizational and legal basis of privatization of the state-owned property in Azerbaijan Republic.**

### **CHAPTER I**

General Provisions

#### **Article 1. Main definitions**

1.1 Main definitions used in this law are as follows:

1.1.1 Privatization of the state-owned property is transfer of the state-owned property to ownership of buyers in accordance with rules established by this law;

1.1.2 Moment of announcement of the state-owned property open for privatization is a time of endorsement of a decision by relevant agency of the executive power on privatization of the state-owned property;

1.1.3 Subject of privatization is state-owned property of Azerbaijan Republic on and out of the territory of Azerbaijan Republic, the state's share in the statutory funds of joint ventures, stocks owned by the state, land plot under a privatized entity, with exception of state-owned property prohibited for privatization.

1.1.4 Starting price of the enterprise (entity) is the price of the property calculated applying the rule envisaged in the legislation and offered at the auction;

1.1.5 State privatization share is a disposable bearer's securities consisting of four privatization cheques, disseminated to all citizens of Azerbaijan Republic registered in the country by 1 January 1997 free of charge and representing in average 1/8,000,000 portion state-owned property to be privatized;

1.1.6 State privatization option is securities providing a foreign investor with the right to use state privatization cheques and issued in indispensable form;

1.1.7 Privatization agreement is an agreement on sale-purchase concluded between seller and buyer of the state-owned property;

1.1.8 Local investor is citizens of Azerbaijan Republic, legal entities founded by or of which more than 50 percent of the registered capital is owned by citizens of Azerbaijan Republic.

1.1.9. Foreign investor is foreigners, stateless persons, foreign legal entities and their representations, as well as legal entities of Azerbaijan Republic with more than 50 percent foreign investment in the registered capital;

1.1.10 Strategic investor is local or foreign investor who brings in new technology and know-how for the enterprise, directly participated in operating and managing the enterprise and has substantial management and manufacturing experience in the field.

## **Article 2. Major goals and principles of privatization of the state owned property**

2.1 Major goal of privatization of the state-owned property is to achieve liberalization of economy, enhancing entrepreneurship, setting up competitive environment, increasing the effectiveness of the economy through attraction of investment, structural adjustment, creation of new jobs and increasing the living standards.

2.2 Main principles of privatization of the state-owned property are:

2.2.1 Transparency of privatization-related activities and ensuring the state and social control over its course;

2.2.2 Protection of interests of staff established by legislation in the process of privatization of the state-owned property;

2.2.3 Setting up healthy competitive environment;

2.2.4 Creation of equal conditions for all buyers in the privatization process;

## **Article 3. Legislation on privatization of the state-owned property**

Legislation on privatization of the state-owned property in Azerbaijan Republic consists of the Constitution of Azerbaijan Republic, the present law and other legislative framework adopted in conformity with them.

## **Article 4. Circumscription of application of this law**

4.1 This Law shall not apply to:

4.1.1 Privatization of land (with exception of land plots under privatized entities, as well as, land plots under the entities constructed by physical persons or non-state legal entities)

4.1.2 Privatization of the state-owned housing facilities;

4.1.3 Privatization of mineral mines;

4.1.4 Cases of implementation of commitments of Azerbaijan Republic under international agreements of which it is a party.

## **Article 5. State Program of Privatization of State-Owned Property in Azerbaijan Republic.**

5.1 Priorities of implementation of privatization of the state-owned property for the certain period, limitations, and order of buying the state-owned property by physical and legal entities shall be defined in the State Program approved by the relevant body of the executive power.

5.2 The State Program shall envisage:

5.2.1 List of property to be privatized through resolution of the relevant body of executive power envisaged in Articles 6.1.3 and 6.1.4

- 5.2.2 Rule of selection of specific privatization methods;
- 5.2.3 Rule of use of state privatization shares (cheques);
- 5.2.4 Limitations during privatization;
- 5.2.5 Rule of participation of local and foreign investors (buyers) in the privatization process;
- 5.2.6 Rule of recovering the cost of the state-owned enterprise to be privatized;
- 5.2.7 Pre-privatization restructuring and improving of enterprises and entities;
- 5.2.8 Incentives provided to the staff of the state-owned enterprises;
- 5.2.9 Other issues related to privatization of the state-owned enterprises.

## **Article 6. Classification of the state-owned property**

6.1 In terms of privatization, the state-owned property is classified as follows:

6.1.1 Property, which is prohibited to privatize;

6.1.2 Property, which shall be kept under the state ownership until issuance of a special decision;

6.1.3 Property to be privatized through decision of the relevant agency of the executive power;

6.1.4 Property to be privatized through decision of the seller of the state-owned property.

6.2 Following types of property under the state's ownership is prohibited to be privatized:

6.2.1. bosom of the Earth, forests, water reserves, (it was suggested to add "with exception of cases envisaged in the legislation of Azerbaijan Republic in parenthesis) state border stripes and premises on them, air space, waters of the sector of the Caspian sea (lake) belonging to Azerbaijan, satellite communication facilities in the geostationary orbit;

6.2.2 protected and specially used natural reserves;

6.2.3 historical and cultural monuments of Azeri people (with exception of historic and cultural monuments of local importance), exhibits and resources of the national museum, national archive and central library;

6.2.4 property in strategic use of military troops, internal troops, border guards and customs bodies for ensuring defense and national security of Azerbaijan Republic;

6.2.5 sanitary-epidemiological, veterinary, forestry and plant protection facilities, technical control inspection; (it was suggested to delete technical control inspection)

- 6.2.6 patent service, standardization and meteorology facilities;
- 6.2.7 melioration and irrigation facilities of the national importance;
- 6.2.8 road and railways, bridges and tunnels of the national importance;
- 6.2.9 facilities, producing, as well as planting, growing, processing and storing narcotic and poisonous substances;
- 6.2.10 enterprises and facilities for storing toxic substances and substances emitting ionizing rays, radioactive wastes;
- 6.2.11 state geology, cartography, geodesy, hydro-meteorology services, environmental and nature protection facilities;
- 6.2.12 civil defense and mobilization facilities;
- 6.2.13 reformatory and specialized treatment and manufacturing institutions;
- 6.2.14 cemeteries and crematoria;
- 6.2.15 specialized state-owned child, infant and elderly houses;
- 6.2.16 general educational establishments (suggested to be added)
- 6.2.17 other enterprises and organizations ensuring social security of population;
- 6.2.18 state institutions for treatment and prevention of psychiatric, psycho-neurological, communicating, oncological, dermatological and venereal diseases, HIV infected and AIDS-sick patients.

### **Article 7. Limitations imposed during privatization of the state-owned property**

7.1 Certain limitations may be imposed to privatization of state-owned property by the relevant executive power agency in order to ensure national security, health, moral, rights and legitimate interests of citizens through resolution of the relevant body of executive power which has taken decision on privatization.

7.2 Limitations for privatization of the state-owned enterprises may be imposed through keeping either the controlling block (51 percent) or limiting part (25.5 percent) of ordinary shares (shares with right to vote) under the state ownership.

7.3 In case of limitations through keeping the controlling block of shares or limiting part of shares under the state ownership in the process of privatization of the state-owned enterprises (entities), rules of participation of representatives of the state in managing bodies of those joint stock companies shall be ensured by implementation regulations approved by the relevant executive.

### **Article 8. Seller of the state-owned property.**

8.1 Relevant executive power agency is the seller of the state-owned property in the

process of privatization of the state-owned property in Azerbaijan Republic.

8.2 Seller of the state-owned property performs following functions:

8.2.1 keeps register of the state-owned property in the established order;

8.2.2 establishes a commission for privatization of the state-owned property in conformity with the rule established by legislation;

8.2.3 manages the state-owned property announced open for privatization until its selling in the established way;

8.2.4 prepares proposals for pre-privatization restructuring, improving of enterprises within its competence;

8.2.5 makes proposals on transferring the state-owned enterprises for management before privatization;

8.2.6 makes proposals on calling envisaged state-owned enterprises insolvent when necessary;

8.2.7 acts as founder or holder of the equity stake belonging to the state of the joint stock companies established in the process of privatization;

8.2.8 keeps statistical and accounting register of cash earned in the process of privatization of the state-owned property and ensures its transfer to the state budget;

8.2.9 keeps register of the share of the state in the joint stock companies (or in joint ventures), as well as during selling of the share of the state, the responsibilities of buyers defined in the buying-selling agreement;

8.2.10 takes measures to ensure payment of dividends for share of the state in the registered capital.

8.3 Activities of the seller of the state-owned property shall be regulated in conformity with the normative legal document approved by the relevant executive power agency.

## **Article 9. Buyers of the state-owned property**

9.1 Following shall act as buyers of the state-owned property:

9.1.1 Citizens of Azerbaijan Republic, foreigners and stateless persons;

9.1.2 all legal entities registered in Azerbaijan Republic with exception of those indicated in the paragraph 9.2 of this article;

9.1.3 foreign legal entities

9.2. Following cannot act as buyers during the privatization of the state-owned property:

9.2.1 legal entities with more than 20 percent of shares or registered capital belonging to the state;

9.2.2 central and local authorities;

9.2.3 municipalities

9.3 Local investors have unlimited right to participate in all forms and methods of privatization of the state-owned property.

9.4 Foreign investors may participate in the process of privatization of the state-owned property in conformity with this Law and other legislative acts of Azerbaijan Republic.

During the circulation of the state privatization cheques, foreign investors shall use state privatization cheques through submitting privatization options.

9.5 After withdrawal of state privatization cheques from the circulation, relevant executive power agency shall make decision on participation of foreign investors in the privatization process.

9.6 Responsibility for proving the purchase ability in the process of privatization is with the buyer.

9.7 The relevant executive power agency shall define a list of documents to be submitted for participation in the privatization of the state-owned property and rules of participation.

9.8 A consultant may be involved with the purpose of organizing the privatization process during the privatization of the state-owned property.

#### **Article 10. Means of payment during the privatization of the state-owned property.**

A mean of payment of Azerbaijan Republic- manat and state privatization shares (cheques) shall be considered as means of payment during privatization of the state-owned property.

Article 11. Distribution of the funds gained in the result of the privatization of the state-owned property.

11.1 Funds gained in the result of the privatization of the state-owned property shall be transferred to the state budget.

11.2 Allocation of funds from the revenues from privatization to the relevant executive power agency implementing the privatization shall be envisaged in order to involve independent financial consultants in the process of privatization of the state-owned property, organize provision of information concerning privatization and pre-privatization improvement of the enterprises to be privatized.

11.3 Revenues from privatization of the state-owned property shall be exempted from taxes.

**Article 12. Withdrawal of the state privatization cheques and state privatization options from the circulation in the process of privatization of the state-owned property.**

Rules of withdrawal of cheques provided as a mean of payment and options provided by foreigners from the circulation shall be regulated by the State Programme.

**Article 13. State guarantee to investment during the privatization**

13.1 State guarantee to investments and protection of rights and legitimate interests of investors shall be implemented in accordance with the Constitution of Azerbaijan Republic and laws of Azerbaijan Republic.

13.2 No limitation shall be imposed to sell enterprises, their parts or stocks bought by the foreign investors in the process of privatization of the state-owned property in accordance with this law to other foreign and/or local investors.

13.3 No limitation shall be imposed to sell enterprises, their parts or stocks bought by the local investors in the process of privatization of the state-owned property to other local and/or foreign investor.

13.4 Foreign investors may participate in the privatization without providing options with income they earned in Azerbaijan Republic.

**Article 14. State supervision over the privatization of the state-owned property**

In order to perform the state's supervision over the privatization of the state-owned property, a state commission shall be established. Activities of the commission, its rights and responsibilities shall be defined in the normative legal documents approved by the relevant executive power agency.

**CHAPTER 2**

**RULE AND METHODS OF THE PRIVATIZATION OF THE STATE-OWNED PROPERTY**

**Article 15. Decision on the privatization of the state-owned property**

15.1 Decision on the privatization of the state-owned property shall be taken by the relevant executive power agency.

15.1.1 The decision on the privatization shall include justification of expediency of privatization of an entity and methods of privatization.

15.1.2 In case of consideration of keeping of a equity stake with the state's ownership as expedient, a special mention shall be included to the decision.

15.2 In the process of making decision on privatization, importance of the entity in terms of defense ability of the country and national security, economic interests of the country, its sectoral and local importance shall be taken into consideration.

15.3 After the decision on privatization is taken, a privatization commission shall be

established in conformity with legislation.

15.3.1 Privatization commission shall develop enterprise's (entity's) privatization plan at latest in three month.

15.3.2 Privatization commission may involve independent experts and auditors to its work.

15.4 Privatization plan shall include rule and method of selling of the privatized enterprise (entity), timeframe for selling and initial (starting) price of the entity.

Privatization plan shall be approved by the seller of the state-owned property.

#### **Article 16. Methods of privatization of the state-owned property**

16.1 Privatization of the state-owned property shall be implemented through the following methods:

16.1.1 selling the property of the state-owned enterprises to staff of these enterprises and persons considered equal to them with discount rates;

16.1.2 privatization of the state-owned enterprises on the basis of specific projects

16.1.3 selling of the state-owned property through specialized cheque and cash auctions;

16.1.4 selling of the state-owned property through auctions;

16.1.5 selling of the state-owned property through investment competitions;

16.1.6 selling of the rented state-owned property;

16.1.7 selling of the state-owned property through announcing them insolvent;

16.2 Method of privatization of a state-owned property shall be determined by the relevant executive power agency which has taken decision on privatization of the state-owned property in accordance with this Law and the State Programme.

#### **Article 17. Privileges provided to the staff of the privatized state-owned enterprises**

17.1 Staff members of the state-owned enterprises have a right to buy part or shares of property of those enterprises (irrespective of methods of selling of the rest of property or shares) under privileged terms. Forms of provision of such privileges and rules of their implementation shall be defined in the State Programme.

17.2 Following persons shall be eligible for privileges in the sell of the stocks or parts of the state-owned enterprises:

17.2.1 staff members with major employment in that enterprise;

17.2.2 in conformity with legislation of Azerbaijan Republic, those who are eligible to return to the previous employment at that enterprise;

17.2.3 retired persons who had been working in that enterprise for more than seven years;

17.2.4 persons who have been relieved from their responsibilities as a result of staff reduction after 1 January 1995 and have obtained a status of unemployed.

**Article 18. Privatization of the state-owned enterprises on the basis of individual projects.**

18.1 State-owned enterprises and entities of great importance for the country's economy shall be privatized through individual projects and in this case 51 or more percent of shares shall be offered for sale in order to attract strategic investors.

18.2 Rules of privatization of the state-owned enterprises on the basis of individual projects and list of enterprises to be privatized through this method shall be specified by the respective executive power agency.

**Article 19. Selling of the state-owned property through specialized cheque and cash auctions**

19.1 Selling of the state-owned property through specialized cheque and cash auctions is selling of the stocks or equity stakes of the joint-stock companies established in the privatization process on the basis of orders.

**19.2 Rule of conducting the cheque and cash auctions shall be defined by the relevant executive power agency.**

**Article 20. Selling of the state-owned property through auctions**

20.1 Selling of the state-owned property through auctions is selling of that property to buyer without any conditions. In this case, titles over the property is granted to buyer who offered highest price in the course of the auction.

If selling of the state-owned property through auction failed (in case of absence of orders and inability of selling for start price), the seller of the state-owned property may reduce start price in accordance with established rule.

20.2 Rule of conducting the auction shall be defined by the relevant executive power agency.

**Article 21. Selling of the state-owned property through investment competition**

21.1 During the selling of the state-owned property through investment competition, it shall be required to fulfill investment programme regarding the state-owned property. Economic, social and environmental conditions regarding the investment programme shall be defined by the relevant executive power agency which has taken a decision on privatization of the state-owned property. One, which submitted maximum volume of investment and investment programme reflecting effective allocation of this investment shall be considered as a winner of the investment competition.

21.2 Rules for holding the investment competitions shall be defined by the relevant executive power agency.

#### **Article 22. Selling of the rented property**

22.1 In conformity with the legislation of Azerbaijan Republic, buying the state-owned property rented under condition of further purchase shall be implemented in accordance with the rule defined in the State Programme and other normative documents.

22.2 In case of re-establishment of rented state-owned property as open joint stock company, its shares shall be offered to the renter first.

#### **Article 23. Selling of the state-owned enterprises through calling them insolvent**

23.1 If selling of the property of the state-owned enterprise through auction fails, the state commission performing the state supervision over the privatization process may initiate privatization of the enterprise through calling it insolvent.

23.2 If the financial-business performance of an enterprise has been considered as unsatisfactory (insolvent) in the preparatory stage of the privatization of the state-owned enterprise (entity), the relevant executive power agency may take decision on calling this entity insolvent and the enterprise may be liquidated. In this case property of the enterprise shall be sold through auction. Earned funds shall be partially allocated for recovery of debts to creditors.

23.3 Privatization of the state-owned enterprises through calling them insolvent shall be regulated with relevant normative document.

#### **Article 24. Evaluation of the state-owned property to be privatized**

Evaluation of the state-owned property shall be performed in accordance with the relevant normative-legal documents.

During the process of privatization international methods and ways of evaluation may be applied.

#### **Article 25. Information on the privatization of the state-owned enterprises.**

25.1 Announcement of privatization of the state-owned property shall be placed in the official media at least 30 day before selling of the property.

25.2 A list of compulsory data on the privatized enterprise to be published in the medial shall be defined in the State Programme.

25.3 Information on privatization of the state-owned enterprises shall be published in the media within 15 days. Content of information on results of privatization of the state-owned property shall be included to the State Programme

#### **Article 26. Payment for the privatized state-owned property**

Buyer shall pay the cost of the privatized property as lump sum or during the period

as indicated in the privatization agreement (buying-selling agreement).

#### **Article 27. Protection of rights of the staff of the privatized enterprises**

Conclusion of collective agreement between the new owner of the state owned enterprise or a body representing it and staff of the enterprise and labor relations shall be regulated in accordance with the labor legislation of Azerbaijan Republic.

#### **Article 28. Environmental requirements during the privatization of the state-owned property.**

28.1 Seller shall provide information on environmental situation of the subject of privatization.

28.2 Environmental requirements may be envisaged in the buying-selling agreement.

### **CHAPTER 3**

#### **CONCLUDING PROVISIONS**

#### **Article 29. Documentation of the privatization agreements**

29.1 During the privatization of the state-owned property, with exception of specialized auctions, selling-buying agreements shall be concluded between seller and buyer in accordance with the Civil Code of Azerbaijan Republic, this Law and the State Program.

29.2 The selling-buying agreement indicated in the first paragraph of this article shall include alongside with commitments under terms of auction, competition or procurement, the following as requirements of the buying-selling agreement:

29.2.1 information on seller and buyer of the privatized state-owned property;

29.2.2 name, location, area, composition and cost of the privatized entity;

29.2.3 number of shares of the joint stock company, their type and value;

29.2.4 form of payment for the privatized entity and rules of its transfer to buyers ownership;

29.2.5 responsibilities of parties and period of their implementation;

29.2.6 other conditions if agreed.

29.3 If the privatized property has been given to other owner during the effectiveness of the privatization agreement, implementation of these commitments is compulsory for new buyers.

29.4 The seller of the state-owned property shall implement supervision over the implementation of commitments under the buying-selling agreement.

29.5. Ownership rights of the buyer over the privatized property shall be documented by a certificate of ownership issued by the seller of the state-owned

property.

29.6. Owners of the privatized entities may purchase or rent with right of further purchase the land plot where this entity is located in accordance with the legislation, also he/she may use the land plot temporarily or permanently. If there is restriction with this regard, including the cases where buyer is foreign physical and legal person or stateless person, they may rent the land plot without right of purchase.

29.7. Buyer shall be granted ownership rights for shares he purchased at the cheque or cash auction after approval of the minutes of the auction.

### **Article 30. Settlement of disputes during privatization**

All disputes related with privatization of the state-owned property shall be settled by courts in conformity with the order determined by legislation.

### **Article 31. Vitiation of agreements on privatization of the state-owned enterprises**

31.1 These are basis for vitiation of privatization agreements:

31.1.1 violation of this Law or other normative legal documents defining rules of privatization of the state-owned property;

31.1.2 privatization of the state owned property by one, who is not recognized a buyer of the state-owned property.

32.2 Disputes on vitiation of the privatization agreements shall be considered by the court in conformity with legislation.

### **Article 32. Responsibility for violation of this Law**

Legal and physical persons, officials bear responsibility for violation of the Law in the cases and ways envisaged in the legislation.

### **Article 33. Transitional provisions**

33.1 Normative legal documents regulating the privatization of the state-owned property adopted until this law enters into force shall be effective in a part which does not contradict with this Law.

33.2 The Law of Azerbaijan Republic on Privatization of the State-owned Property in Azerbaijan Republic (Notes of the Supreme Soviet of Azerbaijan Republic, 1993, No 1, article 11); State Programme of Privatization of the State-owned Property in the years 1995-1998 (Notes of the Supreme Soviet of Azerbaijan Republic, 1995, No. 22, article 361 and Set of Legislative Acts of Azerbaijan Republic, 1998, v, 11, article 645) shall be considered as ineffective since the day this Law enter into force.

**Heydar Aliyev**  
**President of Azerbaijan Republic**  
**Baku city,**  
**16th of May, 2000.**