

LAW
“ON THE PRIVATISATION OF STATE-OWNED ENTERPRISES IN
THE REPUBLIC OF GEORGIA”

The present law represents legal, economic, organizational and social base for privatization of state-owned enterprises in the Republic of Georgia, it determines the basic conditions and rules for privatisation. The objective of this law is to regulate and provide the process of acquisition the state property by citizens, their unions and non-state legal entities.

Chapter I.

Common Regulations of Privatisation.

Article 1. The notion of privatisation.

1. Privatisation is an acquisition of property rights for state-owned(formerly) property by citizens, their unions and non-state legal entities.
2. As the result of privatisation the state loses to own, use and dispose of the privatized object and the state organizations-to control it.
3. On the base of the rules, foreseen in the legislation of the Republic of Georgia, the state has rights to restrict the direction of activities of enterprises, created by privatisation of state property.

Article 2. The legislation of the Republic of Georgia on the privatisation of state enterprises.

1. In the Republic of Georgia the privatisation is regulated on the basis of the following laws:
 - this law;
 - the law “About the bases of property”;
 - the law “About the bases of economic system in the Republic of Georgia”;
 - other laws and legislative acts.
2. The privatisation of land and state housing fund is regulated on the base of corresponding legislative act of the Republic of Georgia.
3. The privatisation of state-owned enterprises, located within the territory of the Republic of Georgia, which are controlled by organizations of Soviet Union is regulated on the base of the legislation of the Republic of Georgia.
4. Acquisition of state-owned enterprises or part of capital of state-owned partnerships and public stock companies by citizens and legal entities of foreign countries is regulated by the law “About foreign investments” and other legislative acts of the Republic of Georgia.

Article 3. The sphere and objects of privatisation.

1. The privatisation of state-owned industrial enterprises is allowed in all the branches of national economy.
2. According to the state interests of the Republic of Georgia, the determined part of state enterprises is not subject to privatisation. The Government of the Republic of Georgia every year determines a list of such object and Supreme Council certifies it.
3. The object of privatisation can be state-owned enterprise or its structure subdivision, which is decided to be subject to privatisation by Supreme Council or special authorized government body. The list of privatizing objects is stated in privatisation program, which has to be renewed every year by Government and certified by Supreme of the Republic of Georgia.

Article 4. The leading body and state program of privatisation.

1. The leading body for carrying out the privatisation of state-owned enterprises in the Republic of Georgia is State Property Management Committee.
2. State Property Management Committee (from now on - the Committee) is created by decision of Supreme Council of the Republic of Georgia, it is directly submitted to the Government of the Republic of Georgia. In the autonomous republics the corresponding bodies create and in the regions - the corresponding structure subdivisions.
3. To provide carrying out the united privatisation policy in the Republic of Georgia the Committee:
 - works out the state privatisation program (as well as every year supplements and changes to it) and represents it for the Government. The program has to take into consideration the proposals of republican ministries and bodies, public organizations, employees of separate enterprises and local government bodies (municipal, etc.);
 - methodically and organizationally leads and controls the process of privatisation in the Republic of Georgia, reveals illegal decisions and facts in this sphere, takes measures to exclude them;

- together with corresponding services of autonomous republics and local bodies creates commissions of state enterprises privatisation; on the base of their decisions it gives the property certificates to the State Property Fund;
- assists to create The State Property Fund of the Republic of Georgia and its local departments.

In autonomous republics privatisation programs are worked out by corresponding state property management bodies.

Article 5. Distribution and application of means, gained by privatisation of state-owned enterprises.

1. Means, gained by privatisation of state-owned enterprises are put on the special accounts of republican Government, councils of ministers of autonomous republics and local bodies of executive power. The correlation of distribution of the means gained is defined by republican Government.
2. The concrete directions of application of means gained by privatisation determines the republican Government and certifies Supreme Council of the Republic of Georgia.

Article 6. Sellers and buyers.

1. The seller of state-owned enterprises, state-owned parts in capitals of stock companies and partnerships is The State Property Fund of the Republic of Georgia (from now on - the Fund) - state financial company, acting on the commercial base. The Fund is created by decision of Supreme Council and submits to republican Government.

The Fund and its local departments:

- own the certificates of property for state-owned enterprises, state-owned parts in capitals of stock companies and partnerships, represent the interests of the Republic of Georgia as a proprietor at stockholders meetings, take risks within the state-owned part in commercial activities of corresponding enterprises. The Fund has no right to interfere in activities of enterprise after the treaty was signed unless the case is foreseen by legislation;
- sell the certificates of property for state-owned enterprise, state-owned parts in capitals of stock companies and partnership;
- sell the certificates of property for state-owned parts in capitals of stock companies and partnerships, according to the state interests of the Republic of Georgia;
- distribute dividends;
- distribute the means, gained by privatisation of state-owned enterprises, according to legislation of the Republic of Georgia;
- change state-owned parts in capitals of stock companies and partnerships, on the stock of commercial companies.

2. The seller of state and municipal property, owned by autonomous republics and administrative-territorial regions(cities) and their parts in capitals of stock companies and partnerships is the corresponding Fund - State Property Fund of the autonomous republic or of the region.

Within their competence the local Funds are carrying out the same functions that does the republican Fund.

3. Buyers of state-owned enterprises, state-owned parts in capitals of stock companies and partnerships can be citizens and unions of citizens of the Republic of Georgia, citizens and legal entities from foreign countries and legal entities of the Republic of Georgia, if state-owned, municipal, public and religious organizations part in their capital does not exceed 25%. In other case the sale treaty will be invalid.
4. Buyers of state-owned enterprise can be its employees, which create a partnership for this purpose and can use their privileges according to legislation. Citizens, who are not employees of the enterprise can be members of the partnership as well.
5. In the process of privatisation buyers and sellers can act through their representatives, or intermediaries. In the both cases the treaty sides have be legally authorized to satisfy the requirements of present legislation.

Article 7. The sources of means for acquisition of state-owned enterprises.

1. The means for acquisitions of state-owned enterprises, state-owned parts in capitals of stock companies and partnerships can be personal savings of citizens, own means of partnerships and stock companies as well as ones from economic stimulating funds of enterprises. Buyers can use loans or other means.

Chapter II.

The Order and Forms of Privatisation.

Article 8. The presentation and consideration of application for privatisation.

1. Employees of state-owned enterprise can present the application for privatisation of this enterprise in the form of initiative. The application has to be presents in the local body of the Committee. The form of application and the sum to be paid is determined by republican. Government. The employees application for privatisation of the enterprises will be considered if it is signed by more then half of them.
2. Together with the application for privatisation the proposals of possible buyers can be presented in the local body of the Committee. This proposals are to be taken into account when the decision about the privatisation is considered.
3. Applications and proposals for privatisation are considered within the one month period by the Committee. The applicants are informed about the decision in a written form.

4. The negative decision for privatisation can be made in the following cases;

- there exists a legal act, which restricts or prohibits the privatisation of this object;
- due to requirements of this law the applicant can not be considered as a buyer of state-owned property.

5. if an application for privatisation of state-owned enterprise was not considered in established period or applicant considers the negative decision as a groundless one, the latter has the right to appeal to a court of law or to arbitrage court.

6. In the case of positive decision about privatisation, the corresponding bodies (which made this decision) form privatisation commission for this object.

Members of commission are representatives of proprietor, enterprise administration, financial bodies, banks and local administration bodies. Commission has a right to create groups of experts for separate problems. Specialists and experts are engaged on the base of contracts. The form of contracts is determined by the decision of commission.

7. Privatisation commission together with the administration of the enterprise prepares the necessary information about the given enterprise both for buyer and seller (and for public as well).

8. Privatisation commission works out the program of privatisation, which contains:

- the project of reorganization of the enterprise;
- the form of privatisation;
- the starting price of the enterprise;
- recommended form of accounts settling.

Privatisation program can foresee the separating of some structure subdivisions of a given enterprise and their transformation into independent enterprises.

On the base of conclusion of privatisation commission the corresponding state property administrative body makes decision about the destiny of separate enterprise and social objects, which are reflected in the balance sheet of the privatizing enterprise.

To such an objects can be applied:

- their sale to employees, citizens and legal entities, which are acquiring the property of the enterprise;
- their free transference to employees, citizens and legal entities, which are acquiring the property of the enterprise, in the case of necessity with the condition of financing and exploitation of this objects;
- their transition to the balance sheet (as a property) of local administrative bodies or other state-owned enterprises.

Article 9. The form of privatisation of state-owned enterprises.

1. Privatisation of state-owned enterprises in the Republic of Georgia is carried out in the form of competition and auction.

2. The objective of sale an enterprise by competition is to assign to property rights to the buyer, who offers the best conditions to seller.

3. The objective of sale an enterprise by auction is to assign the property rights to the buyer, who offers the highest price to seller.

4. Privatisation commission recommends the form of privatisation and of financial settling for a given enterprise.

In the choosing of privatisation form the following factors can be taken into account:

- the opinion of employees;
- the buyer's proposals, presented together with the application for privatisation;
- the originality of an enterprise and its significance for economy of the Republic of Georgia;
- the social-economic significance of an enterprise for the region of location.

5. The decision about forms of privatisation and financial settling order is made by the Committee and its regional bodies.

Article 10. Reorganization of enterprises before privatisation.

1. The preparation of an enterprise to privatisation implies inventory of its basic production and non-production assets as well as structure reorganization of enterprise for the purpose of separating of same structure subdivisions of a given enterprise and their transformation into independent enterprises.

2. The objects of social infrastructure, reflected in the balance sheet of a given enterprise according to the decision of commission can be sold or transferred in municipal property on the base of a treaty between the Committee and municipal bodies, where the order of financing and preservation of these objects is determined.

Article 11. Determination of starting price of state-owned enterprise which is subject to privatisation.

1. The starting price for an enterprise to be sold by competition of auction can be determined by two possible ways: first from assessing the approximate income and second from assessing the expected means from sale the property of enterprise, taking into account the land lot, occupied by this enterprise.

The first method applies when the Committee does not make decision about the liquidation of the enterprise (on the base of analysis of financial state of the enterprise and its prospects). In this case the starting price of an enterprise is determined by the amount of income, receivable by state as a result of activities of this enterprise.

The second method applies for chronically unprofitable enterprises as well as for that enterprises, which are subject to liquidation. In this case the assessment takes place on the base of results of inventory and the present prices on the market.

2. The methodical instructions for assessment of privatizing objects are worked out and certified by the Committee.

Article 12. Information about privatizing enterprises.

1. Information about the state-owned enterprises and state-owned shares in the capital of stock companies and partnerships, which are to be sold in the form of competition is published in press one month before the date of competition.

2. In a transcript about the enterprise necessarily should present the following information:

- the square of the land lot occupied by the enterprise;
- characteristic of buildings of the enterprise;
- conditions of sale of the enterprise;
- the list of main assets (in groups);
- the project assessment of investments, their approximate value;
- the amount of expenses made;
- the stock of material values;
- the state of cash;
- shares in the capital of stock companies and partnerships, owned by the enterprise;
- patents, licenses, trade mark etc.;
- liabilities of the enterprise;
- balance sheets for last 3 years;
- share of production of the enterprise on the home market and other.

In the case of necessity the Committee determines the supplemental list of indicators and the form of their presentation.

3. Privatisation is carried out publicly. The public control is provided by employees, buyers, public organizations and local administrative bodies.

Article 13. Order of payment.

Payment of the price of acquired formerly state-owned enterprises or formerly state-owned shares in the capital of stock companies and partnerships can be made at once or paid by installments. The order of payment for any specific case is determined by seller.

Article 14. Acquisition of state-owned enterprise in the form of competition.

The decision about the sale of an enterprise in the form of competition is made by the Committee or its regional body if employees of this enterprise and local administrative body agree with such a decision.

The order of holding the competition is determined by the corresponding act, certified by Government of the Republic of Georgia.

Article 15. Acquisition of state-owned enterprise in the form of auction.

The decision about the sale of an enterprise in the form of auction is made by the Committee or its regional body if employees of this enterprise and local administrative body agree with such a decision.

The order of holding the auction is determined by the corresponding act, certified by Government of the Republic of Georgia.

Article 16. Acquisition of state-owned shares in the capital of stock companies and partnerships.

1. Privatisation of enterprise in the form of sale of state-owned shares in capital of stock companies or partnerships can be carried out after the transformation of enterprise into stock company or partnership. The order of transformation is determined by the corresponding act, certified by Government of the Republic of Georgia.

2. The founders of state-owned stock company or partnership are the Committee and its regional bodies, which present an application for registration (and the required documents) of stock company or partnership in the local administrative bodies.

After the registration of state-owned stock company or partnership the Committee transfers the package of its shares to the State Property Fund of the Republic of Georgia, which carries out their sale in the form of competition. Until sold the shares are under control of the Fund.

Article 17. Acquisition of state-owned shares in the capitals of stock companies and partnerships by employees on the privileged conditions.

1. Employees of a state-owned stock company or partnership have advantages to acquire its shares. In this case the discount can not exceed 20% (of par value). The period of redeeming the shares can not be longer than 2 years from the registration of the stock company or partnership.

2. For this purpose employees can use the means leaved in the fund of production stimulating of this enterprise.

3. The advantages, stated in the first point of this article can be spread on the former employees of this enterprise (pensioners) by decision of employees.

4. The advantages stated in this article act within one year period from the start of sale of shares. The shares, which are bought using this advantages can not be sold within two year period from the registration of corresponding stock company(partnership).

Article 18. Acquisition of state-owned enterprise in the form of competition or auction by their employees.

1. Employees of state-owned enterprise can appear in the role of buyer at an auction or competition if they had created the corresponding partnership beforehand.
2. If such a partnership unites more than the half of all employees and takes part in competition or auction it has right to redeem the enterprise by installments. For this purpose employees can use the means leaved in the fund of production stimulating of this enterprise (proportional to ratio of number of employees in partnership to total number of employees).
3. The right to redeem the enterprise by installments is given by the Committee or its regional body. The period of redeeming cannot exceed 2 years and the first payment cannot be less than 50% of the price of this enterprise.
4. Partnership, which unites less than a half of employees of an enterprise, takes part in competition or auction without advantages, they have equal rights with other potential buyers. In the case if the partnership and other buyer offers equal conditions the former has a priority.

Article 19. Social guarantees for employees of privatizing enterprises.

1. The enterprises, stock companies and partnerships, acquired through competition or auction are responsible liabilities associated with work contracts with employees, which were concluded before the privatisation
2. In three month period from the moment of registration of privatisation, the new manager(director) has to conclude a contract with employees or trade union organization of the enterprise, where the liabilities associated with work organization, fees and social defense should be determined as well as provision of employees with social infrastructure. The employees, dismissed by managers decision are provided with one-time grant according to the legislation. Finding a situation for dismissed employees takes place in accordance with legislation of the Republic of Georgia.

Chapter III.

Registration of a Privatisation Contract, Responsibilities, Rights and Obligations of Parties.

Article 20. Registration of a privatisation contract.

1. Independently of the form of acquisition of state-owned enterprise or state-owned share in the capital of stock company or partnership a contract has to be concluded between buyer and seller, the form and contents of which must satisfy the requirements of legislation of the Republic of Georgia.
2. The contract should contain:
 - transcripts about buyers, seller and mediator;
 - name and location of the enterprise;
 - structure and price of property of the enterprise;
 - total amount of shares of state-owned stock company;
 - order and periods of payment;
 - obligations of parties about applying the enterprise;
 - other conditions according to agreement of parties.
3. Transition of the property right for enterprise or share in capital of a state-owned stock company takes place after notarial registration of contract unless other way is foreseen by contract.

Article 21. Obligations of seller and buyer.

1. Seller of a state-owned enterprise or state-owned share in the capital of stock company or partnership is obliged to prepare the enterprise to privatisation, publish the privatisation application, present the property of enterprise and financial accounting documents to buyer, pass this enterprise (share) to buyer and fulfill all other conditions mentioned in privatisation contract.
2. Buyer of state-owned enterprise become a complete successor of rights and liabilities of its property. Buyer of share in the capital of state-owned stock company (partnership) become a partial successor of rights and liabilities of its property proportional to his share.

Article 22. Guarantees and defense of proprietor rights.

1. In the process of privatisation the state gives guarantees to defend the rights and obligations of seller, buyer, mediator and other subjects. If privatisation was carried out with violations of this law, the state does not give any guarantees for defense of the buyer's rights and takes measures to cease privatisation contract (declares it invalid).
2. Defense of the proprietor rights is realized on the base of legislation of the Republic of Georgia.

Article 23. Cessation of privatisation contract.

1. The privatisation contract is ceased in the following cases;
 - the Committee did not agree to privatisation of this enterprise;

- the order of competition or auction was roughly violated;
- the buyer refused to pay the price of enterprise or share;
- the subject, which acquired enterprise or share had no right to appear as a buyer;
- illegal means of payment were used;
- seller and buyer illegally came into agreement about artificial reduction of price of enterprise or share;
- illegal advantages were used by buyer, which gave him an ungrounded priority;
- the requirements of anti-monopoly legislation were violated.

2. The legal and property results of cessation of privatisation contract are determined by legislation of the Republic of Georgia.

3. Argument about declaring of privatisation contract ceased, as well as about the losses of proprietor and other analogical questions is decided in the form of a lawsuit on the base of an appeal of seller, buyer, mediator, procurer authorized person or legal entity.

Article 24. Responsibility for violations of legislation about privatisation

Responsibility for violations of legislation about privatisation is determined by legislation of the Republic of Georgia