

REGULATION
‘ON PROCEDURE FOR THE SALE OF OBJECTS
OF PRIVATIZATION AT AUCTIONS AND TENDERS’

I. GENERAL PROVISIONS

The Regulation is developed in accordance with the law of the Republic of Tajikistan of May 16, 1997 “On privatization of state property”, and it established the general procedure and terms for sale of objects of privatization of the republican and communal property at auctions and tenders.

1. Words and expressions of the Regulation, as they are further defined, will have the following meaning unless otherwise foreseen by the context:

a) “Auction” - advertised bidding for sale of objects of privatization when fulfillment of any terms in relation to the object being privatized is not required;

b) “Tender” - closed bidding for sale of objects of privatization when fulfillment of some definite terms is required;

c) “Object of privatization” - a state owned enterprise or organization as a property complex; segmented production and non-production subdivisions and structural units of the enterprise which do not infringe technological cycle; separate property of a state owned enterprise; the state shares of enterprises and organizations;

d) “Object for sale” - an object of privatization on which the decision of selling it at auction or tender is taken by an authorized body;

e) “Seller” - a body authorized by the Government of the Republic of Tajikistan to implement privatization process in relation to the objects of the republican property, and appropriate Majlisis Oli of people’s deputies in relation to the property of GBAO, oblasts, cities and regions;

f) “Organizer” - a seller or any other legal person selected by the seller on the competitive basis who organizes and holds an auction to sell objects of privatization;

g) “Bidder” - a legal or natural person being registered in the established order to bid in the auction or tender;

h) “Commercial tender” - bidding between the bidders who agreed to fulfill the terms of the tender when the highest bidder is considered to be the winner by the tender commission;

i) “Investment tender” - bidding when the tender commission considers the bidder offering the best program which meets the tender requirements to be the winner;

j) “Lot” - an object of privatization offered for tender. In case shares are sold, lot is a whole number of shares of a concrete joint stock company offered for bidding

k) “Bidding” - sale of lots at auction or tenders;

l) “Lot bidder” - a bidder who agrees to the announced price of the lot by rising his number;

m) “English method” - an auction method when the starting price is increased by previously announced step up to the moment when there is one highest bidder;

n) “Dutch method” - an auction method when the starting price is reduced by announced step up to the moment when one of the bidders agrees to buy the lot at the announced price;

o) “Starting price of the lot” - the price with which auction on every lot begins;

p) “Minimum price of the lot” - the price below which the lot cannot be sold;

q) “Price of sale” - the final price of the lot ascertained in the result of auction;

r) “Winner” - a highest bidder at auction or commercial tender, or a bidder presenting the most effective business plan;

s) “Purchaser” - the winner who made the purchase and sale contract on the object of privatization with the seller;

t) “Auctioneer” - a natural person appointed or hired by the Organizer to auction objects of privatization.

2. Specifically important and significant objects of privatization affecting environment and infringing upon economic interests of the Republic of Tajikistan, and objects of unfinished construction being

of great importance for the economy of the republic are subject to sale at tender. The list of objects of privatization subject to sale at tender is approved by the Government of the Republic of Tajikistan.

Seller makes a decision on the term of offering the object of privatization for tender.

Sale of the object at first two auctions is executed by English method. If the object is not sold at the English auction, the seller has the right in agreement with the Government of the Republic of Tajikistan as for the republican property, and with the Madjlisis Oli of people's deputies and in the limits of competence of the chairmen of GBAO, oblasts, the city of Dushanbe, cities and towns, and regions as for the republican property to continue English auction or use the Dutch auctions.

3. If the object of privatization is a state shareholding of a joint stock company, the seller takes a decision to put it up for auction or tender as a whole, or divides the shareholding into lots, the number of shares in each lot must be whole.

4. The state shareholdings in the joint stock companies which have already registered their prospectus in the order established by the Ministry of Finance of the Republic of Tajikistan are put up for auctions and tenders .

5. Seller sells the state shareholdings in the procedure prescribed by the present Regulation.

6. Functions of the Seller are:

- a) distribution of objects of privatization to be sold at specific auctions and tenders, setting their term and location;
- b) division the shares into lots;
- c) definition of the starting price of the lot;
- d) creation of the auction and tender commission;
- e) receipt of guaranteed fees;
- f) making contracts with the Organizers to organize and conduct auctions;
- g) carrying out control over the course of organization and conducting auctions and tenders;
- h) making purchase and sale contracts with the Winner and control over their implementation;
- i) effecting settlements with the Bidders, Purchasers and Organizers.

7. The Seller organizes and conducts the auction by himself, or in exclusive cases with the Republic of Tajikistan Government's consent he can make a contract with the Organizer on organization and conducting one or several auctions on sale the objects of privatization.

8. Contract on organization and conducting one auction for sale of objects of privatization is made in writing between the Seller and the Organizer and is to contain:

- list of objects for sale;
- deadline for conducting auctions;
- number of shares put up for auction; number of lots, number of shares in each lot, face value of shares;
- auction method for sale of each lot;
- starting and minimum prices of each lot;
- powers the Seller gives to the Organizer to organize and conduct the auction;
- size of the guaranteed fees and procedure of its payment;
- list of documents on each object for sale to be transferred to the Organizer;
- periodicity and the Organizer's form of reporting on preparation and conducting the auction;
- size and remuneration for the Organizer and procedure of mutual settlements with the Seller;
- mutual obligations and property liabilities;
- term of the contract and provisions for cancellation of the contract.

Contract on organization and conducting several auctions for sale of objects of privatization is made in writing between the Seller and the Organizer and it is to contain:

- powers the Seller gives to the Organizer to organize and conduct the auction;
- periodicity and the Seller's form of information about the coming auction is to contain: list of objects for sale put up for the auction; deadline for conducting auctions; number of shares put up for auction; number of lots, number of shares in each lot, face value of shares; the auction method for sale of each lot; starting and minimum prices of each lot; size of the guaranteed fees and procedure of its payment;
- periodicity and the Organizer's form of reporting on the process of preparation and conducting the auction;
- size and remuneration for the Organizer and procedure of mutual settlements with the Seller;
- mutual obligations and property liabilities;
- term of the contract and provisions for cancellation of the contract.

The seller does not have the right to transfer to the Organizer the contractual functions prescribed Paragraph 6 of the present Regulation except sub-points a, b, c, d, f, and g.

9. Natural and legal persons including foreigners, who have been registered in the procedure defined by Paragraph 32 of the present Regulation, with the exception of those persons indicated in Paragraph 10, are admitted to take part in auction.

Participation of foreign natural and legal persons in auctions and tenders is regulated by a specific Law of the Republic of Tajikistan.

10. Bidders at auction and tenders cannot be:

- a) Legal entities of the republic of Tajikistan whose state share in the charter fund exceeds 25 %;
- b) The Organizer of the auction and members of the auction commission;
- c) The Organizer of the tender and members of the tender commission;
- d) The Winners of the previous auctions who did not fulfill obligations prescribed by the present Regulation are deprived the right to participate in the subsequent auctions and tenders within 6 months.

II. PREPARATION FOR AUCTION AND TENDER

11. The Seller of the auction creates an auction commission to execute control over the organization and conducting the auction. Staff, competence and organization of the auction commission activity is defined by the 'Regulation on auction commission' to be approved by the Seller.

12. To prepare and conduct the tender, the Seller creates a tender commission which consists of representatives of the Seller, the Ministry of finance of the Republic of Tajikistan, the Ministry of economy and external economic relations of the Republic of Tajikistan, the Ministry of justice of the Republic of Tajikistan, the higher ministry or department of the republican object being privatized, and the representatives of financial, economic, banking bodies, the Khukumat, other bodies of local government, the higher body of the communal object being privatized. The commission should consist of not less than 5 persons, the number of the members of the commission should be odd. The chairman of the commission is the representative of the Seller.

The tender commission is to:

- independently develop and approve the rules of the work;
- define and approve the terms and conditions of the tender;
- make a decision on the publication of official announcement;
- conduct the tender;
- announce the winner of the tender.

13. Decisions of the auction or tender commission is taken by a simple majority of votes of the total number of the members of the commission. In case of equality of votes, the chairman's vote is decisive.

14. Preparation for auction or tender is carried out in the following procedure:

- lots are formed;
- lots are distributed for specific auctions or tenders;
- term for conducting auctions is set;
- starting prices of the lots are determined;
- procedure of the guaranteed fee payment is defined;
- in case of need a tender for the right of making contract to organize and conduct auction for sale of objects of privatization is held;
- sale prospectus, auction cards and schedules for visiting objects are made;
- official announcement of auction or tender is published and other advertisement is carried out;
- guaranteed fees received;
- participants are registered.

15. With the purpose of complex study of the structure of expenses for financing the object, state of the object, valuation of the object of privatization, studying of the tender terms, the Seller has the right to involve independent consulting firms or an auditor during the period of preparation for tender.

16. The tender commission determines the terms of tender. The terms of tender can be:

- determination of a certain level of volumes of production, nomenclature of the manufacture produced or the services rendered in the term set by the tender commission;
- delivery of production to the certain consumers within the term set by the tender commission;
- preserving, cutting down of not more than on the size established by the tender commission or creating of working spaces in term set by the tender commission;

- obligations on the indicated volume, type and term of investments into the objects of privatization;
- redemption of wage arrears in the term set by the tender commission;
- redemption of the accounts payable in the term set by the tender commission;
- restriction on fulfillment of the bargains (resale, pledge, transfer to management, lease out) in the term set by the tender commission;
- ecological requirements.

17. The starting price of the object of privatization put up for auction or tender is calculated in accordance with Instruction on valuation of objects of privatization approved by the Government Resolution of May 4, 1997, # 181.

18. When selling the object by Dutch method, the starting (primary) price is defined by multiplying the starting price by increasing coefficient. The coefficient is established by the Seller, but it cannot be lower than 5.

19. While putting up the object for the Dutch auction, the floor price of the lot is established in the identical size for all objects at the level of minimal wages multiplied by 50, established in the Republic of Tajikistan at the time of conducting the auction.

20. Guaranteed fee is to ensure the fulfillment of the following obligations of the participant:

- signing the record of the auction results in case he becomes a winner;
- making a purchase and sale contract in accordance with the record of auction results.

21. The guaranteed fee to participate in the auction or tender is established in the identical size for all lots being out up for auction or tender, and is equal to the size which is equivalent to US\$ 50 and is entered in the national currency of the Republic of Tajikistan.

22. The participant has the right to pay any of guaranteed fees, but one guaranteed fee gives the right to purchase one lot.

23. The guaranteed fee is paid in the procedure established in the official announcement. The recipient of the guaranteed fee is the Seller.

24. The Guaranteed fee of the Winner who made a purchase and sale contract is included due to the payments on the purchase and sale contract.

25. The guaranteed fee is not returned to the participant in case of:

- refusal to participate in the auction or tender less than three days before they are conducted;
- refusal of the Winner to sign the record of the auction results, or to make purchase and sale contract;
- non-performance or improper performance of the purchase and sale contractual obligations;
- participant's violation of the present Regulation.

In all other cases the guaranteed fees are returned within 10 banking days after the auction or tender is closed; if the money is entered into the Seller's account after the auction or tender is closed then - within ten banking days after the money is entered.

26. Official announcement to sell the objects of the republican property by auction or tender should be published in the state and Russian languages in the republican mass media and the objects of the communal property - in local newspapers not less than 15 days before auction in case of sale of state shares in the joint-stock companies - not less than 30.

27. Official announcement should contain:

- date, place and time of the auction or tender;
- name, location and major characteristics (type of activity, square of the site and the characteristic of the buildings located on the site, square of the object /general and industrial/, average number of employees) of the object for sale;
- size of the accounts payable;
- size of lots put up for sale (in percentage of the charter fund) from each joint stock company;
- starting prices of the lots put up for sale;
- size of the commission collected by the Seller;
- size of the guaranteed fee defined by Paragraph 21 of this Regulation, procedure of its payment, recipient's settlement account in case of - the fee transfer;
- place and term of submitting applications;
- telephone numbers and addresses where at the indicated time one can get prospectus of sale, auction and tender regulations;
- terms and conditions of tender;
- criterion to define the Winner;
- other additional information on the Seller's decision.

28. Before the publication of the official announcement there must be prepared:

a) the prospectus on every object for sale containing the data on the object and consisting of:
- at selling state owned enterprises as a property complex, production and non-production subdivisions and structural units:

- copies of the legal persons' founder documents;
- copies of the balance sheet (separate balance sheet) with attachments for the recent accounting period before the decision to put up an object of privatization for auction or tender is taken by the Seller;
- acts of valuation;

- at selling shares of joint stock companies:

- copies of prospectus of emission and certificate of registration;
- acts of valuation of the object of privatization;

- at selling a property unit of the enterprise:

- technical certificate of a property unit to be the object for sale, or any other document characterizing technical condition of the object;
- acts of valuation.

The prospectus can also contain other additional data (staff of the bodies of management of the object of privatization, analysis of investment risk, data on possible variants of technical re-equipment, settlements of the enterprise's profits after the re-equipment, estimation of necessary investments for production, valuation of perspective of the production manufactured at the world and domestic markets);

b) Auction card contains the list of lots, indicated in the official announcement, put up for auction which is given to every Bidder at the moment of registration.

c) Objects' visiting schedule

29. After publication of the official announcement, the Seller must ensure free access to study the objects for sale for all interested parties, including visiting and examination of the object, and regulations of the auction and tender.

30. Other kinds of advertisement may be done in any form to attract as many participants as possible.

31. Registration of the of the Bidders is started on the day of the official announcement publication in the republican press and is over one hour before the auction or tender begins.

32. For registration as the Bidder it is necessary to submit:

- two copies of application form for participation in auction or tender without the indication in it the object of sale which the Bidder is going to purchase (Attachment # 1-4). One copy of the application with the indication of the date it is received, certified and stamped by the Organizer is at once returned to the Bidder as the document certifying the application is received and the guaranteed fee is paid;
- passport or any other identification card;
- original and a copy of the payment agreement confirming that the guaranteed fee is paid in the size equivalent to US\$ 200;
- notarized document certifying the representative's authority of the legal and natural person.

Legal persons additionally submit:

- notarized copies of the charter and legal person's registration certificates.

Joint stock companies additionally submit the extract from the stockholders' list with the information of the state share in the charter fund of the company to be signed and stamped by the first chairman.

In case of conducting a commercial tender, the Bidder additionally submits five copies of his agreement to fulfill the condition (conditions) of the tender in the stamped envelope where should be indicated:

- the name of the object of sale;
- agreement to fulfill the condition (conditions) of the tender with the indication of the condition (conditions) published in the official announcement on auction;
- suggestion on the purchasing price of the object of sale;
- information about the Bidder;
- signature of the Bidder.

The Investment bidder additionally submits a business plan (Attachment # 5) on the above mentioned object of sale.

33. The Seller and Organizer have no right:

- to demand that the Bidder should provide them with the information of his intentions to purchase this or that lot from those put up for auction or tender;

-to divulge the information dealing with the Bidders or interfering the course of bidding during the whole period of preparation for auction or tender and the time of their conducting. A person bears responsibility for divulging the above mentioned information in accordance with law of the Republic of Tajikistan;
- to demand that additional documents should be submitted for the Bidder's registration besides those enumerated in Paragraph 32 of the present Regulation.

34. The Organizer or tender commission carries out registration of Bidders separately for each auction or tender in a special paginated register in the order the documents are received.

In case the auction is held, the Bidder's number of registration should coincide with the number of registration in the register.

35. The documents of the registered Bidders are kept in a separate safe until the day of auction or tender.

36. The person, who has got registration, gets an auction number on the day of auction when he shows the second copy of the application. Use of the auction number by other person is forbidden.

37. On the day of auction, the envelopes are transferred to the tender commission in accordance with the attached Record (Attachment #5) on receiving Bidders' applications, signed by the person responsible for receiving the applications.

III. CONDUCTING AUCTIONS

38. Auctioneer conducts Auction. Auction is started with the explanations of the auction regulations. If English and Dutch auctions are held on one day, the Dutch auction shall be held first.

Decision of sequence to put out lots to tender is taken by the Auctioneer. This procedure may differ from the procedure established in the auction card.

The process of auction is watched by the auction commission, representatives of the Organizer (provided his participation in organization of auction). Representatives of mass media and international organizations have the right to attend the auction.

The Bidders and the persons present who try to influence the course of auction or breaking its regulations, are removed from the hall.

Auctioneer begins the auction on every lot with the announcement of the object of sale, its brief characteristics, auction method starting price and the step of changing the price. Auctioneer has the right to change the step in the course of auction, announcing it. The step of changing is established in the limits between 5 - 10 % of the current price of the lot.

39. Auction is held by one of the two methods described below:

a) English method:

The Auctioneer announces a starting price of the lot and the step of increasing the price. By rising their numbers, the lot bidders increase the starting price for the step announced. The Auctioneer announces auction numbers of the bidders on the lot, fixes the price and suggests to increase it. Auctions of the lot continue until the maximum price is proposed. The lot bidder who has offered the highest price for the lot is announced by the Auctioneer. The Auctioneer repeats the last price of the lot three times, and if there are not any other numbers raised, he declares by banging the gavel that the lot is sold.

Auction of the lot is considered to have gone through if there are not less than two lot bidders.

b) Dutch method:

The Auctioneer announces a starting price of the lot and reduces it with the step declared, announcing a new price. The Auctioneer calls the number of the lot bidder who is the first to raise the auction number when the price is announced, and he declares the bidder to be the winner of the given lot. If not a single bidder desires to purchase the given lot when the Auctioneer announces the minimum price, the lot is removed from auction.

The Auctioneer announces the starting price of the lot and suggests buying the lot. If at announcing the starting price, there are two or more bidders to purchase the lot, the Auctioneer begins bidding up. In this case the highest bidder becomes the winner. If after announcing the starting price, there are no bidders, the auctioneer reduces the starting price with the step declared, announcing a new price. The Auctioneer calls the number of the lot bidder who is the first to rise the auction number when the price is announced, and by banging the gavel he declares the bidder to be the winner of the given lot. If not a single bidder desires to purchase the given lot when then the Auctioneer announces the minimum price, the lot is removed from auction.

40. The result of auction on every lot are recorded and the record is signed by the Organizer, the Auction Commission and the Winner at the end of auction on every lot (Attachment # 6). The Auctioneer has

the right to declare a break to sign the record. The record is made in three copies, one copy for each - for the Seller, the Purchaser and the Auction Commission. The Auction Commission must hand a copy of the record on the auction results to the Seller on the day not later than the next day after the auction if conducted.

41. The record on the auction results is a document which fixes the auction results and obligations of the Winner and the Seller to make a purchase and sale contract on the object of privatization at the price of sale. The Winner has the right to make a purchase and sale contract within not more than 5 banking days after signing the record, at the expiration of the term this right is lost.

42. If the lot is not sold by Dutch method after having been put up for auction several times, the Seller takes the decision to use the procedures on restructurization and liquidation in relation to the object of privatization.

IV. CONDUCTING TENDERS

43. The sittings of the tender commission are closed and are conducted if one or more envelope with the offer of the price have been received.

44. The envelopes are opened by the commission during the tender. All the members of the commission have to study and compare the Bidders' suggestions.

45. During the commercial tender, the tender commission announces the Bidder, who bids up and if his bid meets the requirements of the tender, to be the Winner of the tender.

46. During the investment tender, the bidders' business plans are considered by the tender commission. The Winner of the investment tender is defined by the tender commission proceed from the criteria established by the commission.

The tender commission announces the Bidder of the investment tender, whose business plan is more effective and meets the requirements of the tender, to be the Winner of the tender.

47. If the bids of two or more Bidders at the commercial tender contain one and the same price, or business plans of two or more Bidders at the investment tender contain adequate proposals on the investments and other factors, the person who has registered first is considered the Winner.

48. In case of registration of one Bidder of the tender on sale of an object of privatization, the tender commission announces him the Winner under condition he offers the price higher than the starting one.

49. The record is drawn up on the results of every lot (Attachment # 7) with the indication of:

- the staff of the commission;
- terms and conditions of the tender;
- number of the Bidders and their registration numbers in accordance with those indicated in the envelopes;
- the list of prices offered in accordance with the Bidders' registration numbers;
- the Winner, his registration number, his offered price;
- the selling price of the object of privatization.

In case of adequate prices, the date of receiving the application is additionally indicated in the record.

In case of the investment tender, the number of Bidder's balls gained is indicated the record, and also the best proposal in accordance with the business plan submitted.

50. The record is signed by all the tender commission members. Any member of the commission has the right express his own point of view in writing and attach it to the record.

51. The record is made in three copies, one copy for each - for the Seller, the Winner and the tender commission. Two copies of the record are handed to the Seller who must inform the Bidders of the tender results not later than the next day after the tender.

52. The record on the tender results is a document which fixes the tender results and obligations of the Winner and the Seller to make a purchase and sale contract within not more than 10 banking days after signing the record, at the expiration of the term this right is lost.

53. In case of non-conclusion the Winner does not make a purchase and sale contract, the Seller suggests that the other Bidders conclude the purchase and sale contract on the base of the tender commission's record with taking into account the price offered by them.

54. The rest of the Bidders are informed of the number of Bidders on the object declared by them and the list of prices offered by them not later than the next day after the tender. In case of adequate prices, the date of applications is indicated.

55. In case the applications for the commercial and investment tenders on sale of the object of privatization are not submitted, on the day of conducting the tender the commission has to take the decision:

- either to conduct the second tender on sale of the above mentioned object of privatization changing the conditions of tender in the term of not later than one month after the first tender. Commercial tenders cannot be but two;
- or to transfer the Seller the above mentioned object of privatization to be put up for the next auction in the term not later than one month after the tender.

V. PROCEDURE OF EFFECTING ETTLEMENTS WITH PURCHASERS AND REGISTERING OWNERSHIP

56. The winner enters the commission to the seller's account, the size of which should not exceed 5 % of the selling price of every lot, which after entering into the budget of the Republic of Tajikistan is spent for organization and realization of auctions and tenders.

57. The purchase and sale contract of the object of privatization between the Seller and the Purchaser is made in the written form and it should have reference to the record on auction or tender results (Attachments # 8 and #9).

58. Settlements on the purchase and sale contract are executed between the Seller and the Purchaser, for all this the Seller executes settlement in the following procedure:

- a) advance payment is made in the size of not less than 15 % of 10 banking days after the purchase and sale contract is signed. The guaranteed fee is included into the advance payment.
- b) the remained sum should be made not later than 30 banking days after the purchase and sale contract is signed.

59. Privatization securities can be used to pay for the object of privatization (privatization checks until their expiration term). The terms and procedure to use privatization securities are defined by the Government of the Republic of Tajikistan.

60. In case the final payment is delayed for more than 10 banking days, the Seller has the right to cancel the contract in the unilateral manner and claim to indemnify for real losses not covered by the guaranteed fee.

61. After full payment of the object of privatization, the Seller and the Purchaser should sign the act of transfer the object within three days (Attachment # 10).

62. The Purchaser has got ownership of the object of privatization after the state registration in the order prescribed by the law and full payment of the price indicated in the purchase and sale contract.

63. The ownership certificate is the document certifying ownership being given by the state notary offices at the place of the sold object's location.

64. Auction or tender results can be protested within 30 calendar days after the auction or tender.

65. In case the terms and obligation of the tender prescribed by the purchase and sale contract are not fulfilled, legal consequences prescribed by the purchase and sale contract come into force.

VI. MONEY RECEIVED FROMSALE OF OBJECTS OF PRIVATIZATION

66. Money received from sale of objects of privatization is entered to the state budget.

67. The remuneration due to the Organizer is included in the charges of the Seller on preparation and conducting the auction.