

ON DENATIONALIZATION AND PRIVATIZATION
OF STATE-OWNED PROPERTY IN THE REPUBLIC OF BELARUS

Law of the Republic of Belarus

of January 19, 1993

The present Law determines the legal bases of denationalization and privatization, as well as the rules and order of privatization of objects which are in the state (Republican and communal) ownership.

The Law aims to set conditions for development of efficient socially oriented market economy, to ensure real variety of property forms and execution of the state anti-monopoly policy.

Chapter I

GENERAL PROVISIONS

Article 1. Notions of Denationalization and Privatization

Denationalization is a process of transfer from the state to legal entities and individuals, partially or completely (through privatization including), of functions of direct control over managing subjects.

Denationalization shall be executed in accordance with the legislation of the Republic of Belarus and with the State Program of denationalization and privatization.

Privatization is acquisition by individuals and legal entities of the ownership right on the objects belonging to the state.

As a result of privatization the state shall completely or partially lose the rights to own, use and command the state property, while the state bodies shall lose the rights to directly manage it.

Privatization shall be executed through free transfer and sale of state-owned property.

Article 2. Legislation of the Republic of Belarus on Privatization

Privatization of state-owned property in the Republic of Belarus shall be regulated by the present Law and by other legislation of the Republic of Belarus.

The objects of state-owned property, located outside the borders of the Republic of Belarus, shall be privatized in accordance with the present Law and with the State Program of denationalization and privatization in the order and on the terms stipulated by international treaties of the Republic of Belarus.

Peculiarities of purchasing of the state-owned property by foreign individuals and legal entities, as well as by legal entities with participation of foreign investors shall be determined by the legislation of the Republic of Belarus on foreign investments.

Peculiarities of privatization of land shall be determined by the legislation of the Republic of Belarus on land.

Peculiarities of privatization of state-owned and public dwellings shall be determined by the Law of the Republic of Belarus «On Privatization of Dwelling Fund in the Republic of Belarus» and by other legislation of the Republic of Belarus.

Article 3. Objects of Privatization

The objects of privatization shall be the following:

- state-owned and public dwellings;
- state-owned enterprises, institutions, organizations, structural units of associations and structural subdivisions of enterprises (hereinafter
- enterprises);
- state-owned property, provided into lease;
- portions (allotments, shares) belonging to the Republic of Belarus and to administrative and territorial units in the property of managing subjects.

The requirements of the present Law and the privatization procedure shall not cover the cases of alienation by state-owned enterprises of the property entrusted to them according to the right of economic management.

The enterprises (associations), organizations and property types included by the Law into the list of objects that may remain only in the ownership of the state, shall not be subject to privatization.

Article 4. Subjects of Privatization

Subjects who acquire the state-owned property in the process of privatization, may be:

- citizens of the Republic of Belarus and Russian Federation;
- non-state legal entities;
- legal entities of the Republic of Belarus, established by at least 50 percent of members of labour collectives of privatized enterprises;
- foreign investors;
- stateless persons.

The non-state legal entities for the aims of the present Law shall be recognized the legal entities in whose authorized capital the share of state property is less than 50 percent.

When transforming, in the process of privatization, of enterprises, which are processing agricultural products and servicing the agriculture, into open joint-stock companies with participation of agricultural enterprises - manufacturers of agricultural products, also state farms (sovkhoses) and other state-owned agricultural enterprises shall take part.

Article 5. Representatives of Subjects of Privatization

Subjects of privatization may act through their representatives (trustees) in accordance with the legislation of the Republic of Belarus.

Chapter II

MAIN PRINCIPLES, STATE PROGRAM OF DENATIONALIZATION AND PRIVATIZATION, LEGISLATIVE ACTS AND BODIES OF PRIVATIZATION

Article 6. Main Principles of Privatization

Main principles of privatization shall be:

- combination of free and paid methods of privatization;
- right of every citizen of the Republic of Belarus to acquire a portion of freely delivered state-owned property;
- differentiation of methods, forms and procedures of privatization;
- separation of competence to execute privatization between bodies of state power and management of various levels;
- provision of certain social guarantees to members of labour collectives of privatized enterprises;
- control over the process of privatization by the state;
- provision of broad publicity of the process of privatization;
- gradual and step-by-step character;
- observation of the Law.

Article 7. Implementation of Main Principles of Privatization

The main principles of privatization shall be implemented through the State Program of denationalization and privatization that determines the following:

- aims, tasks and terms of privatization stages;
- priorities and limitations;
- sources of financing of the works on privatization and directions of spending the assets;
- tasks of bodies of state power and management;
- other directions of the process of privatization.

The State Program of denationalization and privatization shall be passed by the Parliament - the National Assembly of the Republic of Belarus.

The control over implementation of the State Program of privatization shall be fulfilled by the Committee of State Control of the Republic of Belarus and by other authorized bodies.

Article 8. Acts of Legislation on Denationalization and Privatization

The Republican bodies of state management and local Councils of deputies shall draft and pass acts of legislation on denationalization and privatization issues in accordance with the present Law, normative acts of the President of the Republic of Belarus and the State Program of denationalization and privatization.

Article 9. Privatization Bodies and Their Functions

When executing privatization of the Republican property, the interests of the state as the owner shall be represented and protected by the Republican body of state management to manage the state property and privatization, and of the objects, which are in the communal ownership - by the local executive and administrative bodies (hereinafter - privatization bodies).

The privatization bodies shall:

- execute management of the processes of privatization. In case of violation of the legislation of the Republic of Belarus on privatization initiate in the legal order actions to invalidate the decisions taken, and to attract the officials in charge to responsibility;
- establish commissions on privatization;
- take decisions on privatization;
- execute the necessary transformations of organizational and legal forms of state-owned enterprises subject to privatization;
- execute ownership and management of the shares of the joint-stock companies, and shares in authorized capitals of other managing subjects belonging to the state, as well as control over them;
- may take a decision when transforming state-owned and lease enterprises into open joint-stock companies about entrusting packs of shares into the ownership by the state in cases envisaged by the legislation of the Republic of Belarus;
- act as founders of joint-stock companies and other economic societies;
- exchange shares of joint-stock companies belonging to the state for shares of legal entities of other countries and enterprises of non-state property forms;
- organize and hold tenders and auctions to sell objects of state-owned property;
- establish (liquidate) within them the respective funds established with the aim to execute functions of ownership and command of the state-owned property;
- fulfill other functions necessary during privatization.

Chapter III

FREE TRANSFER OF A PART OF STATE-OWNED PROPERTY

Article 10. Aim of Free Transfer of State-Owned Property

The aim of free transfer of a part of state-owned property only to citizens of the Republic of Belarus is to ensure social equality in the process of privatization at the stage of transition to market economy.

Article 11. Distribution of Freely Transferred State-Owned Property

The share of the state-owned property transferred freely to citizens of the Republic of Belarus in the process of privatization shall be determined (for the period of free privatization) by the President of the Republic of Belarus.

The portion of state-owned property which is delivered free of charge to every citizen shall be determined by two quotas:

- the dwelling quota on the basis of the Law of the Republic of Belarus «On Privatization of the Dwelling Fund in the Republic of Belarus» and of the present Law;

- the quota on property of state-owned enterprises on the basis of the present Law and of the Law of the Republic of Belarus «On Nominal Privatization Coupons of the Republic of Belarus».

A citizen shall have the right to unite his/ her quotas with the aim to sell them in accordance with the present Law. In such cases, coefficients of their equivalent exchange shall be used set forth by the Council of Ministers of the Republic of Belarus.

With the aim to realize the right to use their quotas, citizens of the Republic of Belarus shall be given nominal privatization coupons «Dwelling» and «Property» in accordance with the Law of the Republic of Belarus «On Nominal Privatization Coupons of the Republic of Belarus».

Article 12. Use of Quotas

The quotas shall be used first of all by the citizens of the Republic of Belarus to their targeted destination:

- the dwelling quota - for privatization of dwelling apartments in houses of state and public dwelling fund;

- the quota on property of state-owned enterprises - for purchase of privatized state-owned objects.

The quotas left unused for their targeted destination may be directed to other purposes envisaged by the legislation of the Republic of Belarus, or shall be repaid by the state.

Article 13. [Excluded]

Chapter IV

ORGANIZATION AND PROCEDURE OF DENATIONALIZATION AND PRIVATIZATION OF THE PROPERTY OF STATE-OWNED OBJECTS

Article 14. A Proposal on Denationalization and Privatization

A proposal on denationalization and privatization of an object of state property shall be submitted to the respective privatization body.

The form of proposal, list of documents and the procedure of submitting them shall be determined by the Republican body of state management for managing state property and privatization.

The initiative to hold denationalization and privatization of objects of state property may come from the Government of the Republic of Belarus, from the Republican body of state management for managing state property and privatization, from local executive and administrative bodies, from labour collectives and subjects of privatization.

A proposal from a labour collective on establishment of an open joint-stock company in the process of privatization of state property shall be submitted on the basis of decision of the supreme body of self-management of the labour collective (a general meeting or a conference) by the persons authorized to do so based on this decision.

Article 15. Procedure of Examining the Proposal

The proposal on privatization of an object of state-owned property shall be examined by a respective privatization body within one month since the date of receipt.

The decision of the privatization body shall, within one week after its acceptance, be delivered in writing to the subject who has submitted the proposal on privatization.

The decision shall comprise a consent, terms and conditions of holding privatization, or a motivated refusal.

The refusal to accept the proposal on privatization is possible only in the event there are established limitations or ban for privatization.

The refusal of the privatization body to accept the proposal may be appealed in court by the subject of privatization.

Article 151. Commission for Transforming an Enterprise into an Open Joint-Stock Company

The Commission for transforming an enterprise into an open joint-stock company (hereinafter - the Transformation Commission) shall be established at the enterprise for drafting a project of establishing an open joint-stock company in the process of privatization of state-owned property. The procedure of drafting projects of establishment of open joint-stock companies shall be determined by the Republican body of state management for managing of state property and privatization.

The Transformation Commission shall hold inspection of completeness and correctness of inventory and re-evaluation of the state property, prepare proposals on the conditions of using of the objects of social infrastructure which are on the balance of the enterprise, determine the cost of state property and the value of the authorized capital of the established open joint-stock company.

The Transformation Commission shall bear responsibility for the completeness of inventory, for correct evaluation of the cost of the property, and determination of the value of the authorized capital of the open joint-stock company, and may attract, on the contractual basis, experts, auditors and specialized organizations for separate directions of work.

Article 152. Branch Commission on Transformation of Enterprises into Open Joint-

Stock Companies

The ministerial (branch of industry) Commission on transformation of enterprises into open joint-stock companies (hereinafter – the Branch Commission) shall be established for coordination and control over the works of transformation of enterprises into open joint-stock companies:

- on objects in Republican ownership - by Republican bodies of state management, by associations (institutions) subordinate to the Government of the Republic of Belarus;

- on objects in communal ownership - by local executive and administrative bodies.

The Branch Commission shall organize holding of inspections, control the completeness of inventory, the correctness of determination of the cost of state-owned property and of the value of the authorized capital of the established open joint-stock company, take decisions concerning the conditions of use of the objects of social infrastructure which are on the balance of enterprises, agree on the project of establishment of the open joint-stock company, agree on the contracts on joint activities in creating the open joint-stock company with participation of other founders.

Article 16. Commission on Privatization

Upon a positive decision on privatization, the respective privatization body shall establish a Commission on Privatization, who will organize execution of works connected with privatization, and appoint the period to prepare a conclusion about the possibility of privatization of the given object. This period shall not exceed six months after the moment of presentation of the proposal.

The Commission shall comprise representatives of privatization bodies, taxation bodies, administration, authorized representatives of the labour collective.

The Commission on Privatization shall:

- determine the cost of the object;
- identify, during privatization of the enterprise, its debtors and creditors;
- take a decision on the conditions to include the social infrastructure objects, which are on the balance of the enterprise, into the contents of the privatized property;
- make a conclusion about the possibility of privatization of the object;
- get acquainted with any documents concerning the operation of the object;
- if necessary, request written explanations from officials and specialists;
- organize holding of revision and inventory examination during privatization of the enterprise.

Since the moment of its establishment, the Commission shall have the right to cancel any decisions of the administrative bodies of the privatized object, which may lead to changes in the composition and estimates of its property. Instructions of the commission shall be compulsory for execution by the administrative bodies of the object. Disputable issues proceeding from these actions shall be solved in the judicial order.

The Commission shall be entitled to attract specialists, experts and other organizations to take part in its work.

The Commission shall be chaired by a representative of privatization bodies. The Commission shall make a conclusion on privatization of the object. The members of the Commission shall bear personal responsibility for objective character of materials prepared for taking a decision on privatization of the object.

During privatization of shares of an enterprise, that is transformed into an open joint-stock company in the process of privatization of state-owned property, the Commission on Privatization shall be established after agreement of the project of the joint-stock company with the Branch Commission. In this case the Commission on Privatization shall fulfill the following functions:

- prepare a conclusion on the possibility of establishing of an open joint-stock company on the basis of the state-owned property;
- design proposals on privatization of shares of the open joint-stock company established in the process of privatization of the state-owned property.

The Commission on Privatization shall terminate its work:

- after state registration of shares at the Republican body for state management of the market of securities - in case of establishment of an open joint-stock company in the process of denationalization and privatization of the state property;

- when selling the object of privatization at the auction, tender, or buying out of leased property by the leasing enterprise - after taking by the privatization body of the decision on the method and conditions of selling the object.

Article 17. Taking a Decision about Privatization

On the basis of the conclusion of the Commission, the privatization body shall:

- take a final decision about privatization of the state-owned object;
- take a decision about the estimated cost of the privatized object, about the final date and conditions of sale;
- prepare information about each object proposed for privatization, intended for publication.

Article 18. Information Message about Privatization

Not later than one month prior to sale of the object of privatization, in a Republican or local periodical printed media, an information message must be published about the object subject to sale.

The information message shall include the following:

- the full and abridged name of the object;
- its address;
- the body to execute privatization of the given object, and its location;
- the method and the term of privatization;
- the term to move claims to the object being privatized;
- the cost of the property;
- area of the land plot, and characteristics of structures located on it, the conditions of their lease or sale;
- conditions of sale.

During privatization of enterprises, additionally the following data is subject to publication:

- the number of employees;
- the financial situation;
- availability of portions (allotments, shares) belonging to the enterprise in the assets of other enterprises;
- the objects of intellectual property within non-material assets;
- liabilities of the enterprise;
- a generalized nomenclature of the products manufactured;

- other data as determined by the Republican body of state management for managing state property and privatization.

During sale of shares, the data listed in the present Article shall be published in relation to the joint-stock company, whose shares are sold. Additionally, the following information shall be given:

- the value of the authorized capital;
- the number of shares exhibited for sale;
- the nominal value of a share;
- the share of the State in the authorized capital;
- the list of persons who own more than 10 percent of the authorized capital.

The respective privatization body shall perform the publication of the information and bear responsibility for authenticity of the data published.

Within the period indicated in the information message, the persons who wish to purchase the privatized objects shall submit petitions into the respective privatization body. The persons who failed to submit petitions in due term shall not be admitted to privatization of the given object.

Article 181. Methods of Denationalization and Privatization

Denationalization in the process of privatization shall be executed by means of transforming of a state-owned enterprise into an open joint-stock company, or by means of depositing of the state property delivered into lease, into the authorized capital of the open joint-stock company established on the basis of the lease enterprise.

Establishment of open joint-stock companies in the process of denationalization and privatization of the state-owned property shall be made in conformity with the present Law, the State Program of denationalization and privatization, and with other acts of legislation of the Republic of Belarus.

The privatization shall be executed by the following methods:

- sale of objects of state-owned property at the auction, by competition;
- sale of shares belonging to the state, including those owned at preference conditions, in accordance with the legislation of the Republic of Belarus;
- redemption (buy out) of the leased property by a lease enterprise.

The sale of an object of state-owned property at the auction means its purchase by an individual or a legal entity into ownership at an open tender when the buyer is not required to fulfill any conditions (auction without conditions), or when the buyer is required to fulfill certain conditions (auction with conditions), established by the privatization body. During sale of the object of state-owned property at the auction with conditions, the buyer is required to fulfill some of the following conditions: preservation of the purpose or profile of the object of privatization, preservation or creation of jobs, fulfillment of investment programs, preservation of the historical character of the object of privatization, which is a historical and cultural value. Moving forward of any requirements, not envisaged by the present Law, shall not be allowed. The participant who has proposed the maximum price in the course of the tender shall be recognized the winner.

The sale of an object of state-owned property through competition (contest) is its purchase by an individual or a legal entity into ownership, when the buyer is required to fulfill certain conditions set forth by the privatization body. The participant whose proposal is best corresponding to the criterion established shall be recognized the winner. Under other equal conditions, the participant who has proposed the maximum price shall be recognized the winner of the tender.

The sale of the shares belonging to the state of open joint-stock companies, established in the process of denationalization and privatization of state-owned property shall be executed in the order and on the terms, as established by the legislation of the Republic of Belarus.

The shares purchased by citizens of the Republic of Belarus for money on privileged conditions (at the cost by 20 percent lower than the nominal value), and in exchange for the «Property» nominal privatization coupons, cannot be alienated in the period of free privatization, except cases of transfer of the ownership right because of death of the shareholder, or his/her exit for permanent residence outside the borders of the Republic of Belarus.

The buying out by the enterprise of the property of the state-owned enterprise granted into lease, shall be executed in accordance with the legislation of the Republic of Belarus.

Article 19. Selection of the Method of Privatization and Terms of Sale

The body of privatization shall be free in selecting the method of privatization and conditions of sale of the object. The privatization body shall not be entitled to remove any subjects of privatization who have timely submitted petitions to purchase the object from participation in the tender.

Article 191. Peculiarities of Privatization of Enterprises

State-owned enterprises of trade, public nourishment and communal services comprised of structural subdivisions, in the process of privatization may be restructured on agreement with local executive and administrative bodies. Under restructuring in the aim of the present Law one shall understand isolation of structural subdivisions, as objects of privatization, without formation of legal entities out of the composition of the acting enterprise.

In case of redemption (buy out) by a lease enterprise of the property of a state-owned enterprise, that has been provided into lease, it is allowed to conclude an agreement about redemption of the property operated by the structural subdivision with a legal entity formed by the members of the labour collective of this structural subdivision, in case there is a consent of both lessee and lessor.

The state-owned property that is on the balance of the privatized enterprise, on which a privatization ban has been established, or for privatization of which there is a grounded refusal, and the objects of social infrastructure (dwelling houses, children pre-school institutions, dispensaries, stadiums, etc.), upon a decision of the privatization body, may be delivered free of charge to the new owner of this enterprise into ownership and use without the right of command under the condition of preserving their targeted use, in the order established by the Council of Ministers of the Republic of Belarus.

The privatized enterprise is subject to registration as a newly-created enterprise, or to inclusion into the composition of the acting managing subject having a non-state property form in accordance with the legislation of the Republic of Belarus with a simultaneous exclusion from the name of the enterprise of the terms indicating its state and ministerial belonging.

Article 20. Payment for a Privatized Object

The payment for a privatized object may be executed as a lump sum or in portions with account of inflation rate following the terms of the agreement. Payments made by manufacturers of agricultural products for shares of joint-stock companies delivered to them, these companies being formed in the

process of privatization of enterprises processing the agricultural products and servicing the agriculture, shall be made for their nominal value (initial emission) without account for the inflation.

To make payments for the object of privatization, alongside with monetary assets, the nominal privatization coupons shall be used, the order how to apply them is determined by the Law of the Republic of Belarus «On Nominal Privatization Coupons of the Republic of Belarus», by the present Law and by other legislative acts of the Republic of Belarus.

Article 21. Procedures of Documenting of Privatization Deals

A deal committed on purchase of a privatized object shall be documented in the form of an agreement between the privatization body and the new owner (subject of privatization) in accordance with the legislation of the Republic of Belarus.

The agreement shall stipulate the following:

- procedures and term of transfer of the object;
- form and term of payment;
- mutual obligations of the parties concerning further use of the object;
- other conditions set forth by agreement of the parties, unless otherwise stipulated by the legislation of the Republic of Belarus.

The agreement shall be, within 10 days after signing, registered in the respective privatization body.

Article 22. Documenting of the Right of Ownership

The rights to own and use shall transit to the new owner after the agreement has been registered. The right to command the object shall start since the moment of issuance of a certificate.

A certificate on the right of ownership shall be issued by the Republican body of state management for managing state property and privatization during privatization of the objects of Republican ownership, and by the local executive and managerial body in concern of objects of the ownership of administrative and territorial formations within one month after making the payment in accordance with the agreement, and upon the presentation of the necessary documents.

Chapter V

GUARANTEES

AND RESPONSIBILITIES

Article 23. Guarantees and Privileges of the Employees of Privatized

Enterprises

A legal entity formed by at least 50 percent of the labour collective of the enterprise being privatized, shall buy it at a price by 20 percent less than the sum subject to payment in money. The above privilege concerns the legal entities formed only by the employees of the privatized enterprises, as well as the collectives of lease enterprises when they are buying out the property of the state enterprise that has been provided into lease.

The members of the labour collective of the enterprise, transformed into an open joint-stock company, and the persons equated to them, shall buy the state-owned shares of their enterprise for money on privileged terms (at a price by 20 percent lower than the nominal value) in the order determined by the State Program of denationalization and privatization.

In the course of denationalization and privatization of state farms (sovkhoses) and other state-owned agricultural enterprises created on the basis of collective farms (kolkhoses), the members of the labour collectives shall receive the property of such state farms and agricultural enterprises free of charge.

Preparation to and execution of privatization shall not be the grounds for suspension of operation of the enterprise.

For liabilities proceeding from labour relations, the state shall be responsible till the end of privatization.

Since the moment of termination of privatization these liabilities shall be transferred to the new owner.

After privatization of a state-owned enterprise, the members of the labour collective shall receive the right to manage the enterprise in proportion to the share of the property, that belongs to them.

Article 24. Guarantees to the Owner of a Privatized Object

The State shall guarantee protection of rights of the owner of the object, which proceed from the agreement on purchase of a privatized state-owned object.

The owner of a privatized state-owned object shall bear no liabilities on the debts, the claims on which have not been moved in the term, determined by the body of privatization, and not published in compliance with Article 18 of the present Law.

Chapter VI

CONCLUDING PROVISIONS

Article 25. Invalidity of Privatization Deals

Privatization deals on state-owned objects, concluded with violation of the present Law, after it has been enacted, shall be considered invalid since the moment of execution.

Disputes on considering deals invalid shall be considered in the judicial order upon claims of the parties in interest, of the privatization bodies, of the prosecution office.

Article 26. Responsibility for Violation of the Present Law

The persons who assisted, through their illegal actions, to conclusion of deals violating the present Law shall bear criminal and administrative responsibility in accordance with the legislation of the Republic of Belarus. Persons guilty in such actions shall completely reimburse all the losses suffered by the victims.

In case of late transfer into the respective budget of the assets received from sale of shares on privileged conditions to the members of the labour collective and to the persons equated to them, of the portion of dividends charged on the shares belonging to the State, and of the assets from sale of state property at contests (tenders) and (or) auctions, directed in the established order to reconstruction, technical retooling and modernization of production, mastering of technologies and production of new types of products, as well as of dividends charged on the shares belonging to the State, the taxation bodies shall charge from the payer, in indisputable manner, based on the

information from privatization bodies, a penalty into the budget worth 10 percent of the main sum due to payment, and a fine in the value as envisaged by tax legislation.

* unofficial translation *