



Newsletter

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Rules, procedure and forms of privatization of the state property according to the legislation of Georgia

Following the Rose Revolution that took place in the modern history of Georgia, the rules for privatization of the property owned by the state have been simplified by the new government, which was followed by the rapid privatization of the property owned by the state.

The privatization of the state property is regulated by the special legislation, namely, by the law “on the Rules for Privatization of the State Property and the law “on the State Support of Investments”. These normative acts determine the legal, economic, organizational and social fundamentals of privatization of the state property of Georgia as well as the major terms for privatization.

The above law defines the state property as follows: “Enterprises, the subdivisions of these enterprises, which can not be separated as independent enterprises, the constructions and facilities of enterprises liable to liquidation or liquidated by now or of their subdivisions, other tangible or non-tangible assets, shares, stocks owned by the state, non-agricultural lands, where state property is situated, houses and apartments voluntarily transferred in the ownership of the state, property without heirs (including houses and apartments) transferred in the ownership of the state according to the Civil Code of Georgia, as well as all state owned objects and non- tangible good, which can be possessed, used and disposed by the state”. The state pays particular attention to the investors which is demonstrated by the establishment of privileges in relation with administrative organs. These relations are regulated by the Investment Support Agency of Georgia, which in its turn is an administrative organ.

It is noteworthy that the legislator distinguishes between the notions of investor and investor of special importance. Granting of the status of the investor of special importance is carried out on the basis of the Government Decree. This status may be granted to the category of investor which is planning:

- to make investment, the total amount of which exceeds 8 million GEL;
- significantly influencing on the development of the economy and infrastructure of the state from the functional and strategic standpoint;
- to make investment in the mountainous regions of Georgia, the total amount of which exceeds 2 million GEL or which, from the functional and strategic standpoint has positive influence on the development of local economy and infrastructure;

It should be taken into consideration that investor may submit request on granting the above statuses not only before but also after making an investment.

The legislator did not specify what types of privileges may be granted to person, which acquires such status following making the investment. However, the acting legislation gives the definition of investor (without the above status) and such can be deemed a person making an investment in Georgian production.

The legislator sets some limits as to who may buy the state property. Namely, the buyer can be Georgian or a foreign state natural or legal person, in whose property the shares of the state or local self government agency of Georgia is less than 25 per cent.

The legislation determines the list of the property the privatization of which is prohibited, namely:

- Mineral resources, water resources, territorial waters, continental shelf, special economic zone, forest reserve, air space, protected natural territories or natural territories to be used according to specific rules;
- Historical-cultural and artistic value objects, state archives of historical and cultural significance, state collection of film-photo and phono materials, state museums, theaters, collections and archives of the scientific-research establishments of the ministries of Georgia.
- Objects within the system of the state reserve, mobilization supply, state reserve, supply of the precious metals.
- Transmit-production control services of electric technical sector except for part of 35-110 kilowatt power transmit network, which is mainly used for external electric supply of electric power distribution network and is not designed for system or/and intersystem transit of electric power.
- Fundamental science establishments of the Scientific Academy system of Georgia, higher state educational establishments and scientific-research institutions subordinate to them, all types of acting educational and preschool establishments funded by the state.
- Docks of Ports of common-state significance, hydro technical buildings, lighthouses and signal lights, water areas;
- Railway lines of the state significance and related systems of signalization, telecommunication, production control and eclectic supply, main gas pipeline, motorways (when there is no parallel road or road of equivalent significance), aircraft flight management systems and take-off and landing strips;
- Basic and reserve property of the Ministry of Internal Affairs, Ministry of Defense, Prosecutor's Office, Court System, Special Service of Foreign Intelligence of Georgia.
- Frequency spectrum, postal union, technical equipments of television and radio broadcasting of the first channel and antenna-feeder devices, technical equipments of the government union and position of Georgia on gestational orbit.
- Enterprises producing radioactive and military materials, their testing-constructional property and property of scientific establishments.
- State cemeteries and pantheons.
- Upstream facilities of water supply systems, water pumping stations and main pipelines, main collectors of canalization systems and regional cleaning stations.
- Vital importance state medical establishments.
- Administrative premises of the state agencies.

The information on the property subject to privatization is officially published on the web page of the Ministry of Economic Development www.economy.ge.

The information shall be published at least a month before the privatization of the state property by competitive bidding, auction, lease-redemption or purchase of property through direct sale.

The published information shall contain:

- Area of the occupied land;
- Description of the facilities located on it;
- Address;
- Terms of sale the object;
- Date for the submission of application.

It should be taken into consideration that any information, which is not published on the web page and may be of interest for the buyer can be requested from the Ministry of Economic Development in the form of public information based on the administrative code of Georgia.

The forms of privatization of the state property:

- Auction
- Competitive bidding,
- Lease-redemption
- Purchase of property through direct sale methods

The purpose of sale through the Competitive bidding is to transfer the ownership right to the buyer, who bids the best terms to the seller. The purpose of sale by auction is to transfer the ownership right to the buyer, who offers the best price in the bidding process and in some cases, when the auction is announced with particular terms, the privatization of property is accomplished, when these terms are met and the highest price is offered. The aim of sale of the state property through lease-redemption is paid and fix-tem possession and use of tangible good until its purchase for the purpose of independent administration of economic activities.

The authority to manage the above privatization is granted to the Ministry of Economic Development. The latter takes decision on the form of privatization except for the form of direct sale, which is the sole prerogative of the President of Georgia.

The privatization of the state property through competitive bidding is carried out by the Ministry or its territorial organ and the participants in the bidding may be determined by means of prequalification selection. The decision of prequalification selection is taken by the Ministry. The aim of prequalification selection is an identification of the persons, who will take part in the competitive bidding. Prequalification selection or implementation of its separate stages may be entrusted to other person (intermediary) upon the decision of the Ministry. During prequalification selection, the Ministry in each case, taking into consideration the particularities of the particular property, determines prequalification criteria. In the course of prequalification selection the selection time limits are set in each particular case. Information on prequalification selection is published in central or local press or in other forms of media.

The Ministry ensures publication of information on the state property liable to privatization through competitive bidding at least a month before the competitive bidding. The information includes the name of seller, terms of bidding, the name of the property liable to privatization, opening and closing dates for submission of applications, time limit of bidding, the date, time and place for opening the envelopes containing the proposals of the participants of the competitive bidding, the amount of prepayment, which is determined by the Ministry and other information which the Ministry considers appropriate. In case of sale of the share holding, the information in addition shall contain the total amount of the issued shares. Following the publication of information, every interested person is entitled to acquaint beforehand with the state property liable to privatization.

In the course of subsequent use of the property privatized through competitive bidding, the buyer is obliged to comply with the duties assumed by the terms of the competitive bidding and to submit information on their implementation to the Ministry once in a 6 month.

The initial prize of the property liable to privatization is determined by the Ministry of Economic Development. The payment on purchased property can be made at once or by installments. The legislator determines different terms of payment for privatized property, namely, when privatizing the state property by competitive bidding, the buyer shall make final payment within 2 years after purchase, in case of privatization of the state property through auction, the buyer shall make final payment within calendar 30 days, and if the auction is announced on particular terms – not later than 2 years. In case of privatization of the property in the form of lease-redemption the buyer shall make payment not later than 10 years from the date of conclusion of lease agreement. In case of privatization of property by means of direct sale, the amount shall be paid not later than 1 year.

The acting legislation provides for the possibility for the reduction of the initial price only in case if the property subject to privatization was not sold at the first attempt. In such case, the price may be reduced up to 50 per cent. If the property was not privatized at this price, the price may be reduced again.

Decision on privatization of the state property by auction is taken by the Ministry of Economic Development or its territorial organ. In some cases, when it comes to privatization of the state property requested by the investor, the state may refuse its privatization and this issue is decided by the Government of Georgia independently or upon grounded submission of the Ministry within one month from the date of such submission. No decision within this period shall imply the consent of the Government. If the property requested by the investor is the part of the whole property privatization of which would result in the disruption of the entirety of the property, the Ministry or its territorial organ is entitled to refuse the initiation of privatization process only based on the proper substantiation. The entirety of the property may be disrupted if a investor requests the part of the property, the right over which significantly reduces the economic value of the entire property or/and intended use of the rest part of the property. In such circumstances the Ministry is under duty to notify the investor on the entire property or on that part, which may be subject to privatization.

If the investor requests the privatization of the property on special terms, auction shall be announced with the major terms proposed by the investor. No such terms related to a particular natural or legal entity, granting him privileges or making otherwise impossible for other investors to participate in the auction may be set down.

Lease-redemption of the state property (except for shares and stocks) is carried out by means of competitive bidding taking into consideration the principles of privatization of the state property by competitive bidding. The criterion for revealing of the winner is the meeting the terms of the competitive bidding and payment of maximum price for the leased property. Annual price of lease is determined by the state and the payment shall be made proportionally throughout the entire year, however, the completion of lease-redemption agreement within one year is not obligatory and it may be distributed for several years and the right to property is transferred to the buyer upon covering the entire amount. It should be noted that any costs that is to be covered in the course of the operation of the agreement (conclusion of an agreement, registration of an agreement in the public register and/or obtaining of document from the public registry proving property ownership right, notary expenses, etc.) must be covered by the leaser (buyer).

The law further provides for the obligation of submission of information, which implies information of the Ministry of Economic Development on the proper implementation by the leaser of the duties assumed by the terms of the competitive bidding. Submission of information shall take place once in a 6 month, until final performance of all duties under the agreement.

It should be noted that principles of privatization of the state property in the form of direct sale is in conformity with the principles of privatization of the state property by means of competitive bidding except for the decision making, which is sole prerogative of the President of Georgia.

When privatizing the state property through a competitive bidding, an auction or a direct sale, a notarized agreement is concluded between the seller and the buyer and in case of privatization through lease-redemption – lease agreement. The respective agreement is concluded not later than 3 months from the date of taking the decision on direct sale and conduct of a competitive bidding or an auction. The document proving the ownership right over the property shall be issued within 30 calendar days from the date of confirmation of payment of the entire amount.

Limitation period for the disputes related to privatized state property is 3 years, in addition, all disputed questions are considered according to Georgian legislation.

If we take into consideration the legislative opportunities for the privatization of the state property, it can be said, that the privatization procedure became more flexible and available for the last period for not only local but also foreign investors. “Positive” incentives as regards dynamic privatization of the state property are vivid. However, positive results of transferring of the state property to private persons/investors and economic changes favorable for our country will probably be demonstrated in the nearest future.

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