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## The Denationalization of Kazakhstan

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## The Denationalization of Kazakhstan

### Keywords

Foreign Investment, Investment, Privatization, Comparative Law, Economics

# STUDENT COMMENTS

## The Denationalization of Kazakhstan

### I. EMERGENCE OF A MARKET ECONOMY

Privatizing state property represents a critical yet unfinished step in building prosperous market economies throughout the former Soviet Union. As one Russian scholar noted, with the collapse of the former Soviet economy the most effective tool to combat economic decline is to privatize inefficient, state-dominated enterprises which will in turn nurture a growing private sector.<sup>1</sup> Kazakhstan, the second largest of the former Soviet Republics, was the first to legislate privatization laws and establish a State committee to oversee the privatization program.<sup>2</sup> Last May, Kazakhstan's President Nursultan Nazarbayev released his "Strategy for Kazakhstan's Emergence and Development as a Sovereign State" setting forth his plan for moving Kazakhstan toward a market economy. In the strategy, Nazarbayev identified as the Republic's primary task removal of property from State control through privatization. The strategy established a three-stage economic plan with its main objectives to: 1) build a socially-oriented market economy; 2) saturate the domestic consumer market; 3) introduce a national currency; 4) attract and efficiently utilize foreign investment; and 5) enter the world market independently.<sup>3</sup>

The first stage called for normalization of the consumer market and overall economic stabilization over a three year period by denationalizing and privatizing, as well as developing, a sufficient supply of consumer goods.<sup>4</sup> The second stage involved the development of the necessary infrastructure by modernizing transportation and telecommunication networks, and forming adequate commodity, currency, capital, labor, stock and intellectual property markets.<sup>5</sup> At the third stage, Kazakhstan would

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1. See Leonid Grigoriev, *The Former Soviet Republics Confront Privatization: A Russian Analysis*, Heritage Found. Rep., No. 859, Oct. 11, 1991.

2. *Kazakhstan: Economic and Demographic Structure*, Euromoney Supplement, Feb. 15, 1992, available in Reuter Textline, at 26, Feb. 15, 1992.

3. See B. Kizmenko, *Kazakhstan: Nazarbayev Outlines Economic Targets*, EKONOMIKA I ZHIZN, June 7, 1992, available in Novecon-Reuter Textline, at 5, June 11, 1992.

4. *Id.*

5. *Id.*

move towards an open economy to gain a firm position in international trade and join the industrially developed countries of the world.<sup>6</sup>

The Kazakh privatization laws, as reflected by the above strategy, incorporate a strong State role providing for a more managed transition to a market economy. In all, Kazakh privatization efforts offer an interesting alternative to the widely publicized privatization legislation of Russia. This paper introduces the denationalization and privatization laws and policies, and analyzes the impact they will have on establishing the basis for a market economy and attracting foreign investment.

## II. DENATIONALIZATION AND PRIVATIZATION LEGISLATION

In June of 1991, the Kazakh Supreme Soviet adopted the Law on Denationalization and Privatization (Denationalization Law).<sup>7</sup> The law set forth the legal basis, rules and procedures for the transformation of state-owned property to private property and the creation of conditions favorable to the emergence of a socially oriented market economy. The same month, President Nursultan Nazarbayev approved the first Privatization Program that established the details for implementing the denationalization efforts.<sup>8</sup> President Nazarbayev subsequently amended the Denationalization Law by issuing a decree aimed at speeding up the conversion of Kazakhstan to a market economy.<sup>9</sup> This decree, entitled "On Measures to Enhance the Activity Towards Denationalization and Privatization of Property in Material Production Industries" (Privatization Decree),<sup>10</sup> was passed April 29, 1992. An additional decree, entitled "On Urgent Measures for the Privatization of Procurement, Processing and Servicing Enterprises of the Agroindustrial Complex" (Agro Measures) was recently adopted to similarly provide for the rapid privatization of agricultural enterprises.<sup>11</sup>

These legislative acts set forth the basic laws governing the denationalization and privatization of Kazakh state property. The Denationalization Law establishes the critical basis for Republic jurisdiction to govern those lands, enterprises, and objects on its territory.<sup>12</sup> This law as

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6. *Id.*

7. *Kazakh Parliament Approves Privatization Law* (Alma-Ata Kazakh Radio Network, June 24, 1991) (transcript in FBIS-SOV-91-124, June 27, 1991, at 74).

8. See V. Ardayev, *Privatization Program Approved*, IZVESTIA, Sept. 19, 1991, at 2, available in SovData DiaLine-BizEkon News, Sept. 19, 1991.

9. *Kazakhstan: Nazarbayev Issues Privatization Decree*, IZVESTIA, May 5, 1992, at 1, available in Reuter Textline, May 5, 1992.

10. *Kazakhstan Begins Privatization* (Official Kremlin Int'l News Broadcast) (transcript in Federal News Service, May 5, 1992).

11. *Kazakhstan: Privatization Begins in Agroindustrial Complex*, ECOTASS, Apr. 13, 1992, available in Reuter Textline, Apr. 13, 1992.

12. Law of the Kazakh Soviet Socialist Republic 'On Denationalization and Privatization,' KAZAKHSTANSKAYA PRAVDA, Aug. 1, 1992, at 2, translated in NAT'L TECHNICAL INFO.

amended establishes a unified system of managing public property with a centralized State commission to oversee privatization transactions.<sup>13</sup> The Privatization Decree calls for the implementation of large-scale, regulated 'destatization and privatization' programs of enterprises and outlines the procedure for doing so. The Privatization Decree gives the government majority control over all enterprises and limits foreign investment. The Agro Measures emphasize privatizing agricultural industries under collective management.

In addition to these broad measures, the Privatization Program adopted annually by the Kazakh Cabinet of Ministers, and approved by the Kazakh Supreme Soviet and President, sets forth the details and the areas of emphasis for the denationalization and privatization of Kazakh property.<sup>14</sup>

### III. GOVERNING BODIES

Three state and quasi-state administrative bodies directly govern privatization efforts: the Kazakh State Committee for State Property, commissions for privatization, and privatization bureaus. The Denationalization Law establishes the Kazakh State Committee for State Property (Committee) as the main regulating body that represents the interests of the State in relations involving Kazakh property.<sup>15</sup> The Committee has the authority to convey the rights of possession, use and management of Kazakh property to other state organs and economic interests within and outside the territory of the Republic.<sup>16</sup> Committee decisions bind on all levels of state administration.<sup>17</sup>

Commissions for privatization empowered by the Denationalization Law, govern enterprise and property privatization. These commissions are organized by the seller of a state-owned object once the decision is made to denationalize and privatize.<sup>18</sup> The commission, made up of property owner representatives, the Local Soviet of People's Deputies, enterprise administrations, organs for state statistics, trade union organizations and other specialists, is the organizing body that develops and submits to the seller a plan for privatization.<sup>19</sup>

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SERVICE, U.S. DEPT OF COMM., KAZAKH LAW ON DENATIONALIZATION AND PRIVATIZATION OF 4/91, PB92-966801, [hereinafter Denationalization Law].

13. *Passions Over Property Will be Restrained*, EKONOMIKA I ZHIZN, No. 28, at 2, available in SovData DiaLine-BizEkon News, July 11, 1992. The Denationalization Law originally divided Republic and Communal property. Subsequent legislation abolished this division to eliminate the conflict between republic and municipal government bodies over privatized industries. *Id.*

14. Denationalization Law, *supra* note 12, art. 11.

15. *Id.* art. 8.1.

16. *Id.* art. 8.2.

17. *Id.* art. 8.3.

18. *Id.* art. 13.1.

19. *Id.*

However, specifically regarding industrial enterprises, the Privatization Decree amends this process bypassing all-together the commissions for privatization. Privatization bureaus now organize the task of denationalizing industrial enterprises.<sup>20</sup> The privatization bureaus, established across the Republic, act as mediators between State property owners and potential buyers.<sup>21</sup> These self-financed bureaus examine the privatization project and recommend a particular legal structure to the enterprise. The Privatization Decree legislates that the bureaus shall emphasize and recommend the creation of open joint-stock companies.

#### IV. OBJECTS OF DENATIONALIZATION

The Denationalization Law describes entities and properties of the State as state-owned objects. As specifically provided in the Law, state-owned objects subject to privatization include: all branches of the production and nonproduction spheres, enterprises, associations, organizations, and their structural units and subdivisions, objects of cultural and domestic significance, the social sphere, state housing fund, and other valuable objects.<sup>22</sup> Pursuant to the Denationalization Law, the Committee, in conjunction with the Local Soviets of People's Deputies, designate those enterprises not subject to privatization for reasons of defense, security, social development, environmental protection, popular health, cultural interests or the necessary state monopolization of certain activities.<sup>23</sup> The Denationalization Law further prohibits the privatization of objects that are the exclusive property of the Kazakh SSR, a categorization primarily applicable to land.<sup>24</sup> Although the Denationalization Law establishes the right to acquire land for life for agricultural and housing purposes, the Privatization Program specifically limits agricultural enterprises and farms to obtaining land by perpetual tenure or lease.<sup>25</sup>

Pursuant to the Privatization Decree, the privatization process envisages a first phase of privatizing shops and other trade organizations, catering centers, services, municipal facilities, small factories, small building organizations, public transportation system, farms and housing run by the State.<sup>26</sup> Large and medium state industries will be converted to joint stock companies or business partnerships. Those objects not subject to denationalization and privatization during the first phase include major medical and educational institutions, communication facilities, power plants, telecommunications and radio stations, railways and civil aviation.

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20. See *Decree Outlines Procedures in Kazakhstan*, PRIVATIZATION INT'L, June 1992.

21. See Tatyana Jurbenko, *Kazakhstan Boosts Privatization of State Property*, THE TELEGRAPH AGENCY OF THE SOVIET UNION (TASS), Apr. 29, 1992.

22. Denationalization Law, *supra* note 12, art. 9.

23. *Id.* art. 9.3.

24. Olga Babiy, *Privatization Programme Published in Kazakhstan*, THE TELEGRAPH AGENCY OF THE SOVIET UNION (TASS) Sept. 17, 1991.

25. *Id.*

26. *Decree Outlines Procedures in Kazakhstan*, *supra* note 20.

## V. PARTIES TO THE PRIVATIZATION TRANSACTION

Of specific importance to the development of a market economy is the recognition of individual citizens and legal entities as lawful parties in the privatization process. The Denationalization Law identifies Kazakh citizens, citizens of other republics, citizens of foreign states, and individuals without citizenship as well as Kazakh legal entities as parties eligible to participate in the denationalization and privatization of Kazakh state property.<sup>27</sup> However, the Privatization Decree, recently limited the role of foreign buyers. The Decree specifically states that during "the transitional period of the formation of a market economy, the taking of state enterprises and organizations into private ownership by persons who are not citizens of the Republic of Kazakhstan is not permitted."<sup>28</sup> Thus, foreign investors may participate in privatized property, but only on a minor level during the transitional periods.

The Privatization Program recognizes residents of Kazakhstan as its citizens except for chronic alcoholics, drug users and people repeatedly charged with serious crimes.<sup>29</sup> The Denationalization Law specifically recognizes that labor collectives or a group of workers of a state enterprise, may be a collective buyer in purchasing state enterprises.<sup>30</sup> Finally, the seller is the State in all cases, with the Committee representing State property and Local Soviets of People's Deputies representing communal property.<sup>31</sup> It is unsure what role a new centralized State commission will play in eliminating the division of State property. With regard to purchase transactions, either party may utilize and enter agreements with intermediaries operating as brokers for the purchase or sale of State property.<sup>32</sup>

Kazakh law loosely governs the relationships between buyer and seller and among collective purchasers. The terms and relations negotiated between parties, are recognized as legally binding. For example, a labor collective, including the rights and liabilities of its individuals, is governed by regulations adopted at its general meeting. These regulations, as negotiated between the members of the collective, are recognized as binding on the members' business relations.

However, the Denationalization Law allocates liability between buyers and sellers. The seller bears the burden of liability for property conditions and warranties made by the seller until the time the buyer assumes the right of possession, use, or control or the right of ownership in the privatized property. The liability then shifts to the buyer, although prop-

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27. Denationalization Law, *supra* note 12, art. 10.1.

28. *Privatization Decree in Kazakhstan Sharply Limits Role of Foreigners Acquiring Enterprises*, 3 RUSSIA AND COMMONWEALTH BUS. L. REP., No. 4, June 12, 1992.

29. Babiy, *supra* note 24.

30. Denationalization Law, *supra* note 12, art. 10.2.

31. *Id.* art. 10.3.

32. *Id.* art. 10.4.

erty damage may occur prior to making the final payment pursuant under an installment plan.<sup>33</sup> The buyer is liable for damages to the seller if the buyer fails to pay for the acquired object.

## VI. PRIVATIZATION PROCESS

Pursuant to the Denationalization Law, the privatization process commences with the filing of an application for privatization with the Committee.<sup>34</sup> Privatization may take the form of: leases, concessions, auctions, tenders, competitive bids, joint stock companies, and a privatization voucher system. Any labor collective or group of workers, citizens, legal entities, seller or organ of state government may initiate the denationalization process by filing the application. Upon filing, a seller then has thirty days to decide and inform the buyer of whether the enterprise will denationalize.<sup>35</sup> The decision must be based on standards established by legislation. Those State-owned objects selected for denationalization and privatization, however, shall start privatization efforts irrespective of applications filed by prospective purchasers.<sup>36</sup> Pursuant to the Privatization Decree, industrial enterprises shall mainly take the form of open joint-stock companies. The Decree, in efforts to streamline and speed up privatization of industries, implements a three-step process to transform state enterprises into other ownership formats. First, the enterprise files an application and has it registered. This allows superior state bodies of management to immediately release control of the enterprise.<sup>37</sup> Second, a privatization bureau examines the project in terms of its financial and economic activity, values its assets and drafts the required papers. The bureau then recommends a specific ownership arrangement for the enterprise. Third, the enterprise employees have one week to discuss the proposal, develop and adopt the charter and other foundation documents.

### A. Coupons

In order to create equal economic conditions among the Kazakh citizens, the Denationalization Law originally called for the use of privatization coupons as a means of payment for acquiring State property.<sup>38</sup> Citizens would receive coupons based on work tenure and the number of minor children. The coupon system was originally conceived as the best method for the Republic since it would allow all adult citizens to participate in privatization. The first Privatization Program based its privatization process on a coupon system. However, just last October, the Kazakh government announced that it will not introduce privatization vouchers in the Republic. The Government explained that giving a voucher to

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33. *Id.* art. 28.2.

34. *Id.* art. 12.

35. *Id.* art. 12.3.

36. *Id.* art. 12.2.

37. See Jurbenko, *supra* note 21.

38. Denationalization Law, *supra* note 12, art. 16.



every citizen of Kazakhstan is not "expedient."<sup>39</sup> The government further clarified that it will continue to privatize its own way by starting with small businesses and finishing with selling shares of medium-size and large business.<sup>40</sup>

#### B. *Payment Restrictions*

The Denationalization Law recognizes lawful payment for purchases of State-owned property if made with legal tender of the former Soviet Union, with privatization coupons, or with any funds not the property of the State. There are no restrictions on making payment with borrowed funds or on an installment plan. With regards to installment payments, the State as the seller shall establish the amount of the down payment, the length of the payment period, the conditions and procedure for making the payments, and the liability for the satisfaction and timeliness of the payments.<sup>41</sup> Finally, the Denationalization Law mandates that installment payments may not extend beyond ten years and that a minimum down payment must equal at least twenty percent of the purchase price.

#### C. *Valuation of Properties*

Under the Denationalization Law, the privatization commission set up by the seller recommends an appropriate value and selling price for the privatized object. The commission evaluates the privatized enterprises by considering several factors including, but not limited to: 1) the basis of the residual value; 2) actual prices; 3) demand for the product or services; 4) competitiveness; 5) profitability; 6) development prospects for the enterprise; and 7) global market prices.<sup>42</sup> However, pursuant to the Privatization Decree specifically relating to industrial enterprises, the independent privatization bureaus conduct economic and financial analyses, value the enterprise's assets and prepare the required documents for privatized industrial enterprises. It is assumed that the state enterprises will be evaluated based on the same criteria and factors as set out in the Denationalization Law.

#### D. *Registration and Transformation Documents*

The Denationalization Law requires the buyer and seller to enter a contract addressing specific provisions before making final payment to acquire the property. The required provisions include clauses generally required to find a valid transfer of property under common law. The contract must stipulate: 1) the transfer of rights of ownership, use, and

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39. *Kazakhstan: Government Decides Against Issuing Privatization Vouchers*, NEZAVISIMAYA GAZETA, Oct. 23, 1992, at 4, available in Reuter Textline-Novecon, Oct. 23, 1992.

40. *Id.*

41. Denationalization Law, *supra* note 12, art 15.4.

42. *Id.* art. 17.2.

control of the property to the buyer; 2) the composition and price of the acquired property; and 3) the funding sources and method of and time tables for payment.<sup>43</sup> The contract may further stipulate commitments binding upon the buyer or other provisions regulating production performance, including: 1) the maintenance of production profile and volume and type of products produced or services rendered; 2) the delivery of products to particular consumers; 3) price setting conditions or maximum price levels; 4) environmental protection measures; 5) preservation or development of new work locations; 6) maintenance of existing procedures; and 7) standards for the use of production objects and social infrastructure. Once a buyer has paid in full for the privatized State property, the seller issues a State document certifying the transfer of ownership rights.<sup>44</sup> The new owner thus becomes the legal successor to the property rights, responsibilities, financial and other obligations of the privatized State enterprise.<sup>45</sup> The Denationalization Law mandates that the new owner must meet the provisions of the purchasing contract and any other conditions stipulated in a competitive bid, failure to do so shall incur property liability and loss of ownership rights as enforced by the State.<sup>46</sup>

## VII. GENERAL TOOLS FOR DENATIONALIZATION AND PRIVATIZATION

### A. *Bidding*

Sales sometimes involve competitive bidding.<sup>47</sup> Pursuant to the Denationalization Law, competitive bidding is used when the seller places certain conditions on a purchaser's bid to meet demands for further use of the property.<sup>48</sup> For instance, a seller may require that the new owner accept certain commitments of delivery of products to particular consumers. The procedures for conducting the competitive bidding are established by the privatization commission and approved by the State Committee.<sup>49</sup> The passage of the Privatization Decree presumes that the privatization bureaus shall establish this process for State enterprises.

### B. *Auction*

State property is auctioned the sole purpose of obtaining the highest price. Sellers organize the auctions and either the privatization commission, privatization bureau for industrial enterprise, or an intermediary may implement them. An initial designate price is set at the State-owned object's estimated value and the final price may not fall lower than fifteen

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43. *Id.* art. 27.2.

44. *Id.* art. 27.1.

45. *Id.* art. 30.1.

46. *Id.* art. 30.

47. *Id.* art. 23.1.

48. *Id.* art. 23.

49. *Id.* art. 23.3.

percent below the initial price.<sup>50</sup> The State Committee determines and approves the auction procedures.

### VIII. STATE-OWNED ENTERPRISES

#### A. *Joint Stock Companies*

The Denationalization Law provides for the transformation of State enterprises into joint-stock companies or other forms of ownership association or partnership. Joint-stock companies are required to grant a priority right to workers and pensioners to acquire up to twenty percent of the overall number of shares with a discount of thirty percent of the nominal value of the shares.<sup>51</sup> These advantages for workers of a State joint-stock company are only available for three months once the sale of shares has commenced and such shares may not be resold for two years.<sup>52</sup>

Pursuant to the Privatization Decree with a joint-stock company, investment vouchers (differing from privatization coupons) are distributed free of charge to the work force and pensioners of the enterprise based upon the worker's term of service.<sup>53</sup> Under the Decree, such vouchers will total a maximum of twenty-five percent of all stock of the enterprise.<sup>54</sup> The twenty-five percent employee investment stock shall consist of fifteen percent common stock and ten percent preferred. The first management officers of the privatized enterprise will be retained on a contractual basis and shall receive investment vouchers five times the amount given to an average employee.<sup>55</sup> All employee stock is nontransferable and may only be passed to legal successors. An enterprise is prohibited from purchasing stock from a dismissed employee for five years from date of termination. The remaining seventy-five percent of stock may be distributed as follows: five percent sold at par value to members of the worker collective, ten percent at par value or stock market rate to business relations, ten percent to foreign shareholders or "outside" investors, and a controlling interest of not less than thirty-one percent of stock that remains with the State through the State Property Committee and its territorial branches.<sup>56</sup> Thus as noted above, even as the Kazakh government moves towards a market economy, this decree establishes that a State monopoly on control over enterprises is preserved to guide State enterprises through the transition period.<sup>57</sup>

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50. *Id.* art. 23.4.

51. *Id.* art. 25.2.

52. *Id.* art. 25.4.

53. See Jurbenko, *supra* note 21; *Kazakhstan Begins Privatization*, *supra* note 10.

54. See *Kazakhstan Begins Privatization*, *supra* note 10.

55. *Id.*

56. *Id.*

57. *Id.*

### B. *Leasing*

Since privatization of land is prohibited, most enterprises must operate on leased land. The land code of the Republic of Kazakhstan governs property law regarding leases. The Kazakh law "On Leasing" governs State enterprises released for leasing.<sup>58</sup>

### C. *Labor Collectives or Other Collective Enterprises*

Labor collectives may purchase the property of the State enterprise. Similar to partnership agreements, the regulations adopted by the labor collective govern distribution of property interests between collective members.

The Denationalization Law provides the following advantages as incentives to organizing labor collectives for purchasing privatized enterprises: 1) a preferential right to purchase the enterprise, 2) the right to use some of the enterprise consumption funds to purchase State property conditioned upon the consent of the majority of members of the labor collective, 3) a discount of thirty percent of the cost of the acquired property for autonomously financed enterprises and up to fifty percent discount for budget enterprises and organizations and those enterprises planned to operate at loss, and 4) profits from the enterprise may be used to meet part of the purchase price.<sup>59</sup> These sums are then deducted from the taxable profit. Finally, with regards to any other property interests such as social infrastructures that existed on the books of a State enterprise, such objects may be transferred free of charge to the labor collective that has acquired it.<sup>60</sup> The State entity as the seller makes this transfer decision.

## IX. AGRICULTURAL

The Denationalization Law originally recognized the right of a purchaser to acquire land for the purpose of operating an agricultural enterprise. Subsequent legislation now mandates that land will remain the property of the State under the Privatization Program and farmers will gain land rights through leases. The Agro Measures, like the Privatization Decree, were implemented to clarify and speed up denationalization efforts in the agroindustrial enterprises. This decree sets the goal of privatizing all agroindustrial enterprises of Kazakhstan by March 1, 1993.<sup>61</sup> In addition, those companies showing little profit or losing money are targeted for privatization during the first half of the current year. This is recognized as an effort to bring such enterprises up to efficient operating

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58. Denationalization Law, *supra* note 12, art. 18.

59. *Id.* art. 25.1.

60. *Id.* art. 25.5.

61. See *Kazakhstan: Privatization Begins in Agroindustrial Complex*, *supra* note 11.

standards by ensuring their rapid privatization. The methods available for privatizing agricultural enterprises include joint stock companies and associations of farmer economies.<sup>62</sup> The preference emphasized by the Agro Decree is the creation of collective forms of management. By the first half of 1992, 217 collective State farms were privatized, in addition to another 556 individual farms.<sup>63</sup> Also developing out of the privatization of agroindustry are farming associations. To date farmers have formed over thirty farming associations.

#### X. URBAN PROPERTIES

Kazakh citizens may purchase State and departmental apartments and houses using privatization coupons or other means of payment. A system of privatization vouchers was introduced by the Denationalization Law to distribute housing interests. As a result of these efforts, 305,000 apartments were privatized during the first half of 1992, with nearly 70,000 families now owning their apartments.<sup>64</sup> These apartments were privatized free of charge or purchased with special coupons. Besides individual housing ownership, cooperatives may organize to operate the State residential buildings. Such cooperatives are formed by purchasing more than half of the apartments in a State residential building.<sup>65</sup> Kazakhstan plans to maintain rapid housing privatization with the goal of privatizing its housing sector by mid-1993.<sup>66</sup>

#### XI. DISPUTE RESOLUTION

The Denationalization Law recognizes certain governing bodies responsible for the resolution of any disputes arising during the course of denationalization and privatization. With a dispute between the Kazakh state organs and the former USSR and other former Union Republics, Kazakh and USSR legislation shall govern. Any disputes arising between Kazakh state organs and legal entities or citizens are governed by the courts, the State arbitration board, or with agreement of both parties, a court of arbitration.<sup>67</sup> Citizens, legal entities and the State are protected from losses caused from the denationalization and privatization process by holding parties guilty of illegal actions responsible for the full reim-

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62. *See id.* (First Deputy Chief of the Alta-Ata Regional Agricultural Agency Fyodor Ashenbrenner commenting on the preference to create collective forms of management instead of small private enterprises between raw material producers and processing enterprises for this will help prevent monopolization).

63. *Kazakhstan: Agricultural Privatization - Report*, ZEMLYA I LVUDI, Oct. 15, 1992, at 3, available in Novecon-Reuter Textline, Oct. 15, 1992.

64. *See* O. Stefashin, *Kazakhstan: Privatization of Apartments - Report*, IZVESTIA, Sept. 3, 1992, at 1, available in Novecon-Reuter Textline, Sept. 4, 1992.

65. Denationalization Law, *supra* note 12, art. 22.2.

66. *See* Gail Fitzer, *Kazakhstan Signs Deal with Rothschild Inc.*, Reuters (Money Report), BC cycle, May 21, 1992.

67. Denationalization Law, *supra* note 12, art. 31.1.

bursement of such losses.<sup>68</sup> In all cases, decisions of officials and organs responsible for denationalization and privatization measures are appealable in court. The same applies for unreasonable delays for considering applications for privatization.

## XII. LABOR LAW

The Denationalization Law sets forth regulations mandating that the administration of the State enterprise must observe provisions of previous collective and labor agreements during the period of implementation of privatization.<sup>69</sup> A new collective agreement must be signed between the new owner and the labor collective within six months from the time of transfer of ownership rights.<sup>70</sup> This new agreement is the basic normative act regulating relations between the owner, workers and trade union organization of the enterprise. A collective agreement is required for all enterprises regardless of their form of ownership. Lastly, Kazakh labor legislation restricts the termination of workers by the new owner or administration of the privatized enterprise. Any discharged worker terminated within six months of the time of transfer of ownership rights, use, control or possession of the property, is awarded severance pay in the amount of three months' average earnings.<sup>71</sup>

## XIII. CONCLUSION

From a legal standpoint, the current Kazakh laws governing privatization provides only the most basic groundwork to facilitate the Republic's transition to a market economy. The laws recognize freedom of contract and individual property rights. Most importantly, business relations are left to the parties involved and the State will respect and enforce such agreements. As already illustrated in the discussion above, decrees amending prior legislation are published on a regular basis as the Kazakh government strives to maintain stability, respond to Republic interests and provide the greatest impetus for reform. Although these laws thus far are inadequate to address all issues, they certainly establish a solid framework with which to convert State property into private hands. The Republic is probably better off enacting these general guidelines for privatization than to enact elaborate codes which could all too quickly become unenforceable due to incompatible rigid legal structures in a rapidly evolving market and social structure.

The one weakness of the privatization laws is the prohibition on private ownership of land. Anglo-american law was built on property law. Property law, based on the alienability of land, provides the basis for con-

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68. *Id.* art. 31.2.

69. *Id.* art. 29.2.

70. *Id.* art. 29.3.

71. *Id.* art. 29.4.

tract and tort law. Without this basic foundation, Kazakhstan will be forced to develop a body of law based on property rights to enterprises and objects merely attached to the land. This may not create a great obstacle, though the same Anglo-american law may prove to be inapplicable for borrowing as the Republic continues to look to the west for consultation and guidance.<sup>72</sup> As such, provisions restricting alienability of property interests and the flat prohibition on land ownership will most likely dampen market forces. However, given the condition of the Republic, such laws should provide for the development of a strong internal market, albeit at a slower pace, without the shocks experienced by her northern neighbor.

Kazakhstan consists largely of rural communities. The Republic lacks adequate infrastructure, not to mention communication facilities. While the Republic may be lacking in industrial development, it is rich in natural resources and abundant agricultural land. Due to these conditions specific to Kazakhstan, the government is wise in maintaining a controlling interest in privatized enterprises and restricting land ownership to leasing interests only. Otherwise, without the basic infrastructure or consumer market available for reinvestment, foreign investors could easily enter the Kazakh market and merely export their rich mineral resources. A market must be created in Kazakhstan before the government can withdraw completely to private interests. Maintaining government involvement should only help emerging enterprises in their establishment as viable industries.

What are the prospects for successful privatization in Kazakhstan? Foreign observers project that Kazakhstan may experience a slower path towards a market economy through 1992 and 1993 as a result of its most recent legislation restricting foreign investment. Fear of unemployment, lack of an overall legal infrastructure and an aversion to challenge vested industrial interests are all reasons noted as factors handicapping the privatization process in the near future.<sup>73</sup> More importantly, however, the Kazakh laws appear to have popular support and they continue to create a politically stable investment environment. Political stability is one of the largest determining factors influencing foreign investment decisions in the Republics of the former Soviet Union. As it is, Kazakhstan is one of the most publicly stable Republics of the former Soviet Union<sup>74</sup> and is expected to remain the most stable of the Central Asian States which will maintain foreign investor confidence. As such, political stability will play an important role in Kazakhstan's privatization efforts and more importantly, influence foreign attitudes towards Kazakh investment. Western observers believe that Kazakhstan will attract foreign investments due to

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72. "Kazakhstan: Government Concludes Contract with U.S. Legal Firm," *ECOTASS*, in *Reuter Textline*, May 18, 1992. (making Kazakhstan the first republic to hire the services of a western lawfirm as counsel on reform measures).

73. Denis McCauley & Adam Dixon, *Business Outlook: CIS Kazakhstan*, Bus. E. EUR., Sept. 21, 1992.

74. See *Kazakhstan: Economic and Demographic Structure*, *supra* note 2.

its political stability, vast mineral resources, realistic economic policy of its leadership and Nazarbayev's personality.<sup>75</sup>

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<sup>75</sup> See *French Investors are Offered Easy Terms by N. Nazarbayev*, IZVESTIA, No. 214, Sept. 25, 1992 at 1, available in SovData Dialine - BizEkon News, Sept. 25, 1992.