

**On approval of the Rules for consideration of applications of owners (rightholders) of strategic objects, rehabilitation or bankruptcy managers about encumbrance or alienation of a strategic object**

*Unofficial translation*

Decree of the Government of the Republic of Kazakhstan No. 1223 dated October 28, 2011. Title as amended by the Decree of the Government of the Republic of Kazakhstan dated August 5, 2014 No. 868.

*Unofficial translation*

**Footnote. Heading is in the wording by Decision of the Government of the Republic of Kazakhstan No. 1197 dated 12.31.2015 (shall be enforced from the day of its first official publication).**

In pursuance of paragraph 4 of Article 188 of the Law of the Republic of Kazakhstan "On State Property", the Government of the Republic of Kazakhstan **hereby RESOLVES:**

**Footnote. Preamble - as amended by Resolution No. 44 of the Government of the Republic of Kazakhstan dated 25.01.2023 (shall be enforced ten calendar days after the date of its first official publication).**

1. Approve the attached Rules for consideration of applications of owners (rightholders) of strategic objects, rehabilitation or bankrupt managers about encumbrance or alienation of a strategic object.

**Footnote. Paragraph 1 is in the wording by Decision of the Government of the Republic of Kazakhstan No. 1197 dated 31.12.2015 (shall be enforced from the day of its first official publication).**

2. Declare to be no longer in force:

1) Decree of the Government of the Republic of Kazakhstan dated April 2, 2008 No. 312 "On approval of the Rules the use of the priority right to purchase a strategic object" (Collected Acts of the President and the Government of the Republic of Kazakhstan, 2008, No. 19, Article 168);

2) Decree of the Government of the Republic of Kazakhstan dated April 4, 2008 No. 320 "On approval of the Rules for encumbrance of strategic objects with the rights of third parties and their alienation" (Collected Acts of the President and the Government of the Republic of Kazakhstan, 2008, No. 19, Article 171);

3) Subparagraphs 2) and 3) of Paragraph 1 of the Decree of the Government of the Republic of Kazakhstan dated May 19, 2010 No. 448 "On Amendments and Changes to

Some Decisions of the Government of the Republic of Kazakhstan on Strategic Objects" ( Collected Acts of the President and the Government of the Republic of Kazakhstan, 2010, No . 34, Article 270).

3. This Decree shall be enforced upon expiry of ten calendar days from the day of the first official publication.

*The Prime Minister of the Republic of Kazakhstan*

*K. Massimov*

Approved  
by the Decree of the Government  
of the Republic of Kazakhstan  
No. 1223 dated October 28, 2011

## **Rules**

### **for consideration of applications of owners (rightholders) of strategic objects, rehabilitation or bankruptcy managers about encumbrance or alienation of a strategic object**

**Footnote. Rules is in the wording by Decision of the Government of the Republic of Kazakhstan No. 1197 dated 31.12.2015 (shall be enforced from the day of its first official publication).**

#### **1. General Provisions**

1. These Rules for considering applications from owners (right holders) of strategic facilities, rehabilitation or bankruptcy managers on encumbrance or alienation of a strategic facility (hereinafter - the Rules) have been developed pursuant to the Law of the Republic of Kazakhstan "On State Property" (hereinafter -the Law) and establish the procedure for considering applications from owners (legal holders) of strategic facilities, rehabilitation or bankruptcy managers on encumbrance or alienation of a strategic facility.

**Footnote. Paragraph 1 as amended by Resolution No. 44 of the Government of the Republic of Kazakhstan dated 25.01.2023 (shall be enforced ten calendar days after the date of its first official publication).**

2. Concepts and terms used in these Rules:

1) bankruptcy manager - a person appointed by the authorized body in the field of rehabilitation and bankruptcy to perform the bankruptcy procedure;

2) pledgee - a person whose interest is secured by the pledged property;

3) the national security bodies of the Republic of Kazakhstan (hereinafter -the national security bodies) - special state bodies directly subordinate and accountable to the President of the Republic of Kazakhstan, which are an integral part of the security system of the Republic of Kazakhstan and intended within the powers granted to them:

to maintain security of the individual and society, protect the constitutional order, state sovereignty, territorial integrity, economic, scientific, technical and defense potential of the country;

to carry out and coordinate intelligence activities in order to provide the President of the Republic of Kazakhstan, the Chairman of the Security Council of the Republic of Kazakhstan, the Government of the Republic of Kazakhstan and other state bodies and organizations with intelligence information for decision-making, also to assist in the implementation of the policy of the state leadership in the political, financial, economic, military-political, scientific and technical, humanitarian, environmental and other areas affecting the national interests of Kazakhstan;

4) the authorized body for the management of the relevant industry (field) of public administration (hereinafter - the authorized body of the relevant industry) - the central executive body or department of the central executive body, established by the Government of the Republic of Kazakhstan, exercising management of the relevant branch (field) of public administration and holding rights to republican property on the terms stipulated by the Law and other laws of the Republic of Kazakhstan;

5) rehabilitation manager - a person authorized to manage the debtor for the period of the rehabilitation procedure in the manner prescribed by the Law of the Republic of Kazakhstan "On Rehabilitation and Bankruptcy";

6) the owner of a strategic facility - an individual or legal entity that is the owner of a strategic facility and that intends to make a civil transaction on encumbrance or alienation of a strategic facility;

7) an application for issuing a permit for encumbrance of strategic facilities with the rights of third parties or their alienation (hereinafter - the application) - a document containing basic information on strategic facilities, disclosing the validity and expediency of their encumbrance or alienation;

8) industry opinion of the authorized body of the relevant industry - assessment of documents of owners (right holders) of strategic facilities, rehabilitation or bankruptcy managers submitted to the authorized body of the relevant industry in accordance with paragraph 3 of Article 114 and paragraphs 1 and (or) 2 of Article 188 of the Law, on compliance of the civil law transaction being made, taking into account the determination of the socio-economic significance of strategic facilities, development priorities of the industry, identification of the concentration of rights of the applicant and its affiliates from one country in the same industry, presence or absence of threats to the national interests of the Republic of Kazakhstan.

**Footnote. Paragraph 2 as amended by Resolution No. 44 of the Government of the Republic of Kazakhstan dated 25.01.2023 (shall be enforced ten calendar days after the date of its first official publication).**

**2. The procedure for consideration of applications of owners (rightholders) of strategic objects, rehabilitation or bankruptcy managers about encumbrance or alienation of a strategic object**

3. In order to obtain permission for encumbrance of strategic facilities or their alienation, the owner (rightholder) of the strategic facility, the rehabilitation or bankrupt manager or the pledgee shall send an application to the authorized body of the relevant industry in the form approved by the authorized body for state planning in accordance with subparagraph 1) of paragraph 1 of Article 188 of the Law, and documents, the list of which is provided for in paragraphs 1 and 2 of Article 188 of the Law.

**Footnote. Paragraph 3 – as amended by the resolution of the Government of the Republic of Kazakhstan dated 14.07.2023 № 585 (effective ten calendar days after the date of its first official publication).**

4. The application contains:

- 1) details about an owner of a strategic object;
- 2) details about a person with whom the conclusion of the civil law transaction shall be planned;
- 3) information on creation of a strategic object;
- 4) a general description of a strategic object and its technical characteristics;
- 5) justification of the civil law transaction on alienation (encumbrance of the rights of third parties).

5. If the submitted documents do not comply with Paragraphs 3 and 4 of these Rules, the authorized authority of relevant industry shall return them to the owners (rightholders) of strategic objects, rehabilitation or bankruptcy managers or pledge holder within five business days from the date of receipt of the documents.

6. The authorized authority of relevant industry within five business days from the date of receipt of an application and relevant documents specified in Paragraph 3 of these Rules, if they are consistent, shall send them to the national security authorities to provide information on the transaction.

7. The national security authorities shall send information on completion of the proposed transaction to the authorized authority of relevant industry within ten business days from the date of receipt of the application and documents.

8. The authorized authority of relevant industry, taking into account information from the national security authorities, prepares an industry report within twenty business days from the date of receipt of the application and documents specified in Paragraph 3 of these Rules.

9. The industry opinion contains:

- 1) assessment of current state of industry, including determination of share of domestic, foreign and joint ventures in it;
- 2) validity of alienation object value;
- 3) justification of civil law transaction to encumber a strategic object with the rights of third parties or its alienation;
- 4) assessment of structure of acquirer of strategic object in conjunction with its affiliates in the same industry;

5) assessment of expected effect of civil law transaction on encumbrance of a strategic object with the rights of third parties or its alienation;

6) assessment of perceived risks (threats to the national interests of the Republic of Kazakhstan) in the event of a civil law transaction on encumbrance of a strategic object with the rights of third parties or its alienation;

7) appropriate calculations and justifications in the absence of risks (threats to the national interests of the Republic of Kazakhstan);

8) expediency of applying the priority right of the Republic of Kazakhstan to the acquisition of a strategic facility owned by an individual or legal entity (to be filled out when the owner is an individual or non-state legal entity).

If necessary, the industry opinion may contain other sections, initial data and prerequisites being important for making a decision on civil law transaction

The industry opinion shall be submitted in the form in accordance with Appendix 2 to these Rules.

**Footnote. Paragraph 9 as amended by Resolution No. 44 of the Government of the Republic of Kazakhstan dated 25.01.2023 (shall be enforced ten calendar days after the date of its first official publication).**

10. The industry opinion shall be signed by the first head of state authority or by a person replacing him, and agreed with the national security authorities within five business days.

11. The authorized authority of relevant industry, within ten business days from the day of approval of industry opinion with the national security authorities, shall develop the corresponding project of Decree of the Government of the Republic of Kazakhstan and submit it in the manner prescribed by the Legislation to the Government of the Republic of Kazakhstan.

12. The decision on issuance or refusal to issue a permit to encumber strategic objects shall be taken by the Government of the Republic of Kazakhstan and shall be issued in the form of a Decree.

13. Consideration of applications for encumbrance of strategic objects or their alienation and adoption by the Government of the Republic of Kazakhstan of decisions on them should be carried out no more than forty-five business days from the date of receipt of documents in the authorized authority of relevant industry. The date of receipt of documents shall be considered the date of receipt by the authorized authority of relevant industry of full package of documents specified in Paragraph 3 of these Rules.

14. In the event that the Government of the Republic of Kazakhstan refuses to alienate a strategic object and wishes to use the priority right to purchase a strategic object, the redemption shall be made in the manner provided by Article 192 of the Law.

15. The authorized authority of relevant industry within five days from the date of adoption by the Government of the Republic of Kazakhstan of a decision shall notify an

applicant in writing of the decision adopted by the Government of the Republic of Kazakhstan.

Appendix 1  
to the Rules for consideration of  
applications of owners  
(rightholders) of strategic objects,  
rehabilitation or bankruptcy  
managers about encumbrance  
or alienation of a strategic object  
Form

**Application  
for issuance a permit for encumbrance of strategic objects  
with the rights of third parties or their alienation**

Details about owner of a strategic object (name,  
location of owner of a strategic object) \_\_\_\_\_

\_\_\_\_\_  
(cadastral number of a strategic object)

2) Details about person with whom the civil law transaction  
shall be planned to be concluded (except for sale of shares on stock market,  
alienation of pledged property (strategic object)

\_\_\_\_\_  
(name, location of person with whom the civil law transaction  
shall be planned to be concluded)

\_\_\_\_\_  
(details of citizenship, and in its absence, on the place  
of permanent residence, address of residence (for individuals)

\_\_\_\_\_  
(details of place of registration as a legal entity and  
actual location (for legal entities)

\_\_\_\_\_  
(details on availability of strategic objects in ownership  
of the interested person with the types of strategic objects)

\_\_\_\_\_  
(details on a person's ownership right (other property rights) on strategic objects  
(indicating strategic objects and ultimate beneficiaries of buyer)

\_\_\_\_\_  
(structure of acquirer of a strategic object in conjunction  
with its affiliates in the same industry)

3) Information on creating a strategic object \_\_\_\_\_

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(scope of a strategic object activity)

4) General description of a strategic object and its technical characteristics \_\_\_\_\_

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(value of a strategic object (in accordance with the assessment report determining its market value)

5) Justification for civil law transaction on alienation (encumbrance of rights of third parties) \_\_\_\_\_

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Comparative analysis of the advantages and disadvantages of a civil law transaction on alienation (encumbrance of rights of third parties)  
Appendix:

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(documents specified in Paragraphs 1 and (or) 2 of Article 188 of the Law of the Republic of Kazakhstan “On State Property”).

Appendix 2  
to the Rules for consideration of  
applications of owners  
(rightholders) of strategic objects,  
rehabilitation or bankruptcy  
managers about encumbrance  
or alienation of a strategic object

**Industry opinion of the authorized body of the relevant industry**

**Footnote. Appendix 2 as amended by Resolution No. 44 of the Government of the Republic of Kazakhstan dated 25.01.2023 (shall be enforced ten calendar days after the date of its first official publication).**

1) assessment of the current state of the industry, including the share of the home, foreign and joint ventures in it

\_\_\_\_\_;

2) validity of alienation facility value

\_\_\_\_\_;

(value of strategic facility (according to appraisal report, determining its market value)

3) substantiation of the civil law transaction on encumbrance of strategic facility with the rights of third parties or its alienation

\_\_\_\_\_;

4) assessment of the structure of the strategic facility acquirer in relation to its affiliates in the same industry

\_\_\_\_\_;

5) assessment of the expected effect of the civil law transaction on encumbrance of strategic facility with the rights of third parties or its alienation

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\_\_\_\_\_;

(advantages and disadvantages of making the civil law transaction on encumbrance of strategic facility with the rights of third parties or its alienation)

6) assessment of perceived risks (threats to the national interests of the Republic of Kazakhstan) in the event of completion of the civil law transaction on encumbrance of strategic facility with the rights of third parties or its alienation

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\_\_\_\_\_;

(measures to prevent perceived risks)

7) relevant calculations and substantiations in the absence of risks (threats to the national interests of the Republic of Kazakhstan)

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\_\_\_\_\_;

8) expediency of applying the priority right of the Republic of Kazakhstan to acquisition of the strategic facility, owned by an individual or legal entity

\_\_\_\_\_;

(filled out if the owner is an individual or a non-state legal entity).