

PRIVATIZATION

The presentation hereby has in view the legal provisions in force on the 31st of March 2004

Applicable legislation in this field

- Government Emergency Ordinance no. 88/1997 on privatization of trade companies, published in the Official Gazette no. 381/29th of December 1997 approved by the Law no. 44/1998, as further amended and completed
- Law no. 99/1999 on certain measures for the acceleration of the economic reform, published in the Official Gazette no. 236/1999
- Law no. 137/2002 on certain measures for the acceleration of privatization, published in the Official Gazette no. 215/28th of March 2002
- Law no. 399/2002 for the insuring of financing conditions of the organization and operation of activities connected with the privatizations developed through the State Ownerships and Privatization in Industry Office, published in the Official Gazette no. 429/20th of June 2002
- Government Decision no. 450/1999 on approval of the Methodological Norms for enforcement of the Government Emergency Ordinance no. 88/1997 on privatization of trade companies, as further amended and completed, published in the Official Gazette no. 295/24th of June 1999
- Government Decision no. 678/2001 on approval of the organization and operation regulation of Authority for Privatization and Management of State Ownerships, published in the Official Gazette no. 437/6th of August 2001
- Government Decision no. 869/2001 on organization and operation of State Ownerships and Privatization in Industry Office, published in the Official Gazette no. 581/17th of September 2001

- Government Decision no. 577/2002 on approval of the Methodological norms for enforcement of Government Emergency Ordinance no. 88/1997 on privatization of trade companies, as further completed and amended and of the Law no. 137/2002 on certain measures for acceleration of privatization, published in the Official Gazette no. 434/21st of June 2002
- Government Emergency Ordinance no. 296/2000 on establishment of the Authority for Privatization and Management of State Ownerships, published in the Official Gazette no. 707/30th of December 2000, approved by the Law no. 225/2001

I. Trade companies subject to privatization

The following companies subject to privatization:

- trade companies state capital integrally;
- trade companies and national institutions and companies resulted from the reorganization of the regies autonomes by Government Emergency Ordinance no. 30/1997
- trade companies established by the local public administration authorities on the basis of the Law of local public administration no. 69/1991, republished, as further amended.

II. Bodies having duties in the privatization process

According to law, the following bodies have essential duties in the privatization process:

- Romanian Government;
- Ministry of Economy and Commerce;
- Public institutions involved;

Public institution involved performs the entire privatization process.

Any competent ministry or, as the case may be, an authority of the local public administration, having duties in the privatization of a trade company may be a public institution with duties in the privatization process.

The public institution with essential duties in the privatization process is the Authority for Privatization and Management of State Ownerships (APAPS).

III. Privatization agencies

Any Romanian or foreign legal person, specialized in financial activities like: banks, investments funds and companies, financial companies, companies performing accounting, consulting, intermediation on the securities market or liquidation and distribution of social patrimony services, etc., law offices or firms, regardless of them operation individually or in association.

may be privatization agents.

Foreign legal persons may become associates with a Romanian legal person or firm from the above mentioned categories.

Public institution involved shall conclude with the privatization agent, appointed by restricted public auction, a **mandate contract** commissioning entirely or partially the duties regarding the sale of shares, restructuring and winding up of trade companies.

IV. Privatization methods

Privatization methods are the following ones:

- a) sale of shares for the joint stock companies;
- b) sale of shares for limited liability companies;
- c) sale or lease of the assets;
- d) increase of registered capital by contribution of private capital;
- e) the transfer as a gift or sale of the assets with social character;
- f) any mixture of the above-mentioned methods.

Any Romanian or foreign natural or legal person may be buyer. The shares of a trade company which is subject to privatization may be acquired also by associations formed from employees, members of the board of directors or pensioner with the last place of employment at that trade company. The employees' association of the trade company subject to privatization is a non-profit legal person of private law.

The following persons cannot participate in the privatization process

- Romanian legal persons of public law or trade companies to which the state or another local public administration authority holds more than 33% from the total shares having right to vote in the general meeting of shareholders;

- Romanian or foreign natural or legal persons that have had sales contracts of shares concluded with any public institution involved and that have been settled from causes imputable to them by a final and irrevocable court decision or decision by arbitration or as effect of the resolutive conditions stipulated in the sale contracts of shares.
- Romanian or foreign natural or legal person, having outstanding budgetary debts.

1. Specifications on sale of shares

In the case of the selling of certain blocks of shares exceeding 33%, the public institution involved or the privatization agent shall request the issuing of the budgetary obligations certificates, attesting the budgetary debts of the trade company subject to privatization. The budgetary obligations certificate shall be issued, as the case may be by:

- a) the territorial bodies of the Ministry of Public Finances, for the state budget;
- b) the territorial bodies of the other ministries or institutions, for the budget of state insurances, budgets of special funds;
- c) the local public administration authorities for local budgets.

The certificates shall be issued within 30 days from the date of the request.

The sale of shares is made by:

- a) public offer;
- b) sale methods specific for the capital market;
- c) negotiation; Sale by negotiation is used in the following situations:
 - public institution involved addresses, by publication of a sale ad, to strategic investors, for the purpose of obtaining offers for purchase,
 - as a result of the performing of an auction with offer in envelope, the public institution involved establishes that a sole offer for purchase has been filed obtaining less than 50% from the maximum score determined on the basis of the score rating.

Strategic investor is that investor/group of investors showing the intention to buy a block of shares through which they ensure the control on the issuing trade company and, at the same time, has the necessary financial, technical and organizational resources in order to reach certain development objectives of the trade company. **Control** means the capacity of a shareholder to exercise at least one third from the total of the rights of vote

in the general meeting of shareholders of the trade company subject to privatization.

d) auction with call or in envelope;

e) deposit certificates issued by the banks of investments on the international capital market;

f) any combination of the above mentioned methods.

The sale of shares by any of the methods presented above is developed through the mediation of a financial investments services company selected by auction, subject to conditions established by the public institution involved.

2. Sale or lease of the assets of trade companies and of the regies autonomes

Assets are goods or groups of goods from the patrimony of a trade company or of regies autonomes that may be separated and organized to operate independently, separately from the rest of the activity of the company or of the regies.

2.1 Sale of assets

Trade companies to which the state or a local public administration authority is a majority shareholder and regies autonomes may sale assets subject to approval of the general meeting of shareholders or of the board of directors, as the case may be, and subject to prior approval of the public institution involved. Prior approval of the public institution involved means in a special mandate given to the representative in the general meeting of shareholders or in the board of directors, as the case may be.

In the case of the regies autonomes and of the trade companies to which the state or a local public administration authority is shareholder, beneficiary of external credits, directly contracted or guaranteed by the state, the **approval of the external financier** is also necessary, whenever the loan agreements concluded contain such a condition.

Sale of assets is made by **public auction with call**, with adjudication to the highest price obtained on the market.

On the assets purchasing, the representatives of the public institutions involved in the general meetings of shareholders, members of the board of directors and the executive directors of the selling trade companies or of the regies autonomes **do not have the right to participate**.

Sale of assets with payment by installments

The following may buy assets with payment by installments: traders natural persons, family associations authorized according to law or trade companies established on the grounds of the Law no. 31/1990, as further amended, falling under the category of small and medium-size enterprises, according to law.

Payment by installments is allowed solely if the buyer provides satisfactory real or personal security constituted prior to, or concurrently with the conclusion of the sale-purchase contract.

2.2 Real estate lease contract with irrevocable sale clause

Trade companies and regies autonomes having pending lease purchase contracts, lease or joint venture contracts may sell or conclude contracts of reale estate lease with irrevocable sale clause, through direct negotiations with the lessees or partners, in the situations in which they have made investments in the assets they use, representing more than 15% from the value of these assets. In this case, the value of the investments on the basis of the evaluation report accepted by the parties is subtracted from the sale price.

The provisions from the sale of assets shall be applied accordingly.

3. Free transfer or sale of assets with a social character

Free transfer and with priority of the assets with social character (e.g. nurseries, kindergartens, surgeries, dispensaries, single houses, or blocks of flats, dining – rooms, etc.) may be made by trade companies to which the state or a local public administration authority is a majority shareholder. Such a transfer shall be made to the local public administration authorities, as well as to public institutions.

4. Privatization procedure by increase of registered capital

Procedure of privatization by increase of registered capital by contribution of private capital may be launched:

- a) at the proposal of the trade company;
- b) at the proposal of the public institution involved;
- c) at the reception of a letter of intention from a shareholder of the trade company or from an interested third party.

The increase of registered capital is made by contribution in cash or in kind with professional technological equipments.

The increase of registered capital is made by **public offer of increase of registered capital**. Public offer of increase of registered capital is the procedure through which the trade company sells a block of shares newly issued, subject to following stages:

- granting of the right of preference to the existing shareholders, proportionally to the quotas held previously to the increase of registered capital;
- launching of a primary public offer for sale of shares, through which any of the interested investors, natural or legal persons with a majority private capital, shall be able to subscribe both shares afferent to the quota of the shareholders that do not exercise their right of preference and the shares afferent to the quota held by the public institution involved.

The sale price of the newly-issued shares shall be approved by the general meeting of shareholders together with the other elements of the sale, on the basis of the proposal lodged by the public institution involved and cannot be smaller than the nominal value of one share.

V. Special measures in the privatization process

1. Procedure of special administration

Procedure of special administration involves the administration of the trade company on the basis of a **mandate contract**, by a special administrator, selected by the public institution involved.

Procedure of special administration is instituted in the moment of the launching of the privatization process or anytime afterwards, by order of the minister or by decision of the manager of the local public administration authority, at the companies to which the state or a local public administration authority holds the majority block of shares.

This procedure may also be instituted with the trade companies without activity or under dissolution, if the procedures specific to dissolution were not enforced.

During the period of special administration the procedure of financial supervision of the trade company by the public institution involved is also instituted, consisting of the obligation of the trade company to make all the payments to the budgetary creditors, suppliers of utilities, commercial creditors, after a schedule drawn up by it and the special administrator, for the purpose of the gearing decrease.

2. Conversion in shares of the debts held by the Authority for Banking Assets Capitalization

The debts held by the Authority for Banking Assets Capitalization on the trade company shall be converted in shares, within 30 days from the date of the establishment of the special administration procedure.

The categories of debts, subject of conversion are the following ones:

- a) non-performing banking debts;
- b) commercial debts associated to banking assets subject to capitalization;
- c) debts coming from the execution of securities issued by the state for external loans contracted by the respective trade companies.

The shares appearing as a result of conversion are transferred on the basis of a protocol, for their sale in a common package and for the same price per share with the sale of the block of shares held by the public institution involved.

VII. Environment obligations

Trade companies to which the state or the territorial – administrative units hold a block of shares allowing the exercising of control, have the obligation to initiate and perform the procedure regarding the obtaining of the environment permit.

The environment permit is the document through which the competent environment authority establishes the environment obligations that are to be fulfilled by the trade company subject to privatization, the complying program corresponding to such obligations and identify the liabilities owed to pollution of environment due to past activity of the trade company, on any of the establishments held by it.

When concluding the sale-purchase contract the public institution involved / trade company shall pursue the assuming by the buyer, entirely or partially, of the environment obligations and liabilities established by the competent environment authority, by agreeing upon a quantum of investments destined for the execution of the complying program.