

الجمهورية اليمنية
رئاسة الوزراء
القطاع الفني للخصخصة

The Republic
of Yemen
The Prime Ministry
Technical Privatization Office



قانون الخصخصة
رقم ٤٥ لسنة ١٩٩٩م

THE PRIVATIZATION LAW
NO. 45 OF 1999

*In The Name Of Allah
The Compassionate
The Most Merciful*

This translation of the original Arabic text is made available to help you understand this law. For Legal purposes only the Arabic text shall be applied,

PRIVATIZATION LAW

NO. : (45) OF 1999

**IN THE NAME OF THE PEOPLE
THE PRESIDENT OF THE REPUBLIC :
IN VIEW OF CONSTITUTION OF THE REPUBLIC OF YEMEN
AFTER THE PARLIAMENT APPROVAL.
WE HAVE PROMULGATED THE HEREINAFTER LAW :**

Chapter (1)

Appellation, Definitions , Objectives , Principals and Genral Provisions

Section (1)

Appellation and Definitions

Article (1) : This Law Is called "The Privatization Law" and organizes, in consistent with the constitution, the privatization procedures of the Economic Units, owned in whole or in part, by the State,

Article (2) : For the purposes of the implementation of this Law, unless the context otherwise requires, the following terms and phrases shall have the respective meanings therein set forth.

The Republic : The Republic of Yemen

The Government : The Government of the Republic of Yemen

The By-Law : The executive By-Law of this Law.

The Privatization : Means conveying the public ownership to the private ownership or transfer its management to other parties.

The Economic Unit : Means the Economic Unit provided for under the Presidential Decree No. 35/ 1991 amended by Law No. 7/ 1997 concerning the Public Authorities, Corporations and Companies owned in whole or in part by the State.

The High

Committee (HC) : The High Committee for Privatization established in accordance with Article (6) of this Law.

The Tehnical Privatization

Office (TPO) : The Technical Privatization Office established in accordance with Article (9) of this Law.

Section (2)

Objectives

Article (3) : The purpose of this Law is to achieve the following objectives:

- a) Emphasize the role of the State in managing the economy according to the market economics.
- b) Reduce the financial burdens of the State arising from the budgetary transfers to the State-owned Economic Units.
- c) Elevate and increase the efficiency of the Economic Units performance on a competitive basis.
- d) Encourage ownership and private investment in a competitive manner that would not lead to monopoly; and, achieves broader participation in ownership through public subscription.
- e) Secure the inflow of new investments and modern environmentally safe and developed technology and.
- f) Encourage the establishment of stock exchange market.

Section (3)

Principals and General Provisions

Article (4) : The HC, TPO and the concerned Ministries are committed to embody the hereinafter principles and general provisions in the course of all privatization operations.

a) Transparency, which means the disclosure of the privatization transactions procedures on a competitive basis and to be available for the public. Direct negotiation is allowed only after failure in attempts to obtain bidding offers or unqualified companies after two announcement periods separated by one-month period. This shall be accomplished according to the following procedures:

- 1- Talks should be addressed to a list of companies not less than 5 qualified companies and to be invited for negotiation.
- 2- Negotiation should be according to general and published terms of reference.
- 3- Representatives from Concerned Bodies including Central Authority for Control and Audit shall participate in the negotiation process.

4- The results of the negotiation should be announced to all parties, then compare it and act accordingly.

- b) Protection of the labor's rights in accordance with the provisions of Article (26) of this Law.
- c) Expansion of ownership base means encouraging ownership to labor, cooperatives, citizens of specialized and professional public unions, of all or some privatized units.
- d) Neutrality of Evaluation : means that neutral specialized evaluators shall perform evaluation of assets, capital or the investments and tangible and intangible returns.
- e) Legal competition freedom and monopoly prevention means privatization process shall not result into a monopoly situation.
- f) Timeliness : means TPO and the other government bodies are committed to execute all privatization programs effectively and within the time limit pursuant to the by- Laws issued according to this Law.

Article (5) : In all cases, the Privatization within the frame of any national economy sector shall commence only after its liberation. High Privatization Committee (HC) shall notify the concerned Committee in the Parliament with the all privatization transactions

along with the complete documents of each privatization process, within one month from its execution date. Privatization process, in whole or in part, shall be executed according to the following methods :

- a) Public offering of shares, this method shall be given the priority, which achieves the objectives of this Law.
- b) Employee participation in the ownership of all or part of an Economic Unit.
- c) Participation contracts in capital and operation.
- d) Management or leasing contracts.
- e) Sale of assets elements owned by the state.
- f) Sale of the State's shares in the mixed sector. This shall not conflict with effective laws and does not lead to monopoly.
- g) Transfer of a fully Government-owned Economic Units to their legitimate previous owners prior to Nationalization.

Chapter (2)

Bodies assigned to implement the Privatization

Section (1)

The High Committee for Privatization and the Sub Committees

Article (6) : (1) Pursuant to this Law, a High Committee for Privatization(HC) shall be established by a Presidential Decree from the Prime Minister and Concerned Ministers.

(2) The (HC) shall undertake the following assignments:

- a) Approves studies and proposals concern with the application of the Privatization approach and its implementation means.
- b) Approves the executive programs, and documents and contracts formats including the transfer or retention of ownership of straregic shares in acordance to the privatization procedures identified in this Law, and submits them to the cabinet for final approval.
- c) Appoints members of the temporary executive boards of directors for the Economic Units, which Have been

approved for privatization, in accordance with the provisions of this Law.

- d) Prepares and sets-up the Economic Units under privatization in the financial, administrative and legal aspects, and approves the proposals of liquidation, incorporation merger and division of the Economic Units, branches and division which deemed necessary to serve the economic and institutional interests, prior to the privatization process and forwards the recommendations to the Cabinet for approval.
- e) Approves the designs of privatization programs submitted by the TPO, starting from the preparation phase and ending with its final execution, and approves the by-laws and guidelines that regulate the various phases.
- f) Approves the contract forms and the other related documents, the land leasing system and issues. decisions related to the appropriate work mechanism for financial stock circulation and their control system connected to privatization.
- g) Approves qualifying and training plans to implement the various tasks associated with privatization programs.

- h) Names the negotiation teams members whenever necessary to the public interest according to the provisions of paragraph (A) article (4) of this Law.

Article (7) : The chairman of the(HC) shall issue the internal by-laws that regulate the committee's functioning, especially the ontrol of the committee's minutes of meetings and resolutions, and their execution follow up.

Article (8) : Temporary committee shall be established, in the concerned ministry or its economic unit, chaired by the minister, or whom he delegates, the responsibilities are to supervise the privatization activities and to coordinate with concerned enterprises and committees, The committee shall carry out those responsibilities in accordance with this law and the by-Laws issued thereafter, under the supervision of the (HC) and executing its resolution with the coordination with TPO. The committee shall be dissolved upon its task accomplishment.

Section (2)

The Technical Privatization Office

Article(9) : A technical consulting office called "the Technical Privatization Office" shall be established, under a Prime Minister's decree, which at the same time performs the HC secretary duties. The TPO shall have a group of dedicated, highly qualified and experienced professionals in the various fields identified by the nature of the TPO assignments.

Article(10) : TPO shall have a dedicated director who shall undertake the responsibilities and duties of the Executive Director of the office and performs the administrative, technical and financial affairs to execute the assignments of the TPO, under the supervision of the Chairman of the HC or whom he delegates.

Article(11) : The TPO shall undertake the following assignments:

- a) Prepares the studies , proposals, and design the privatization programs of which include:
 - 1. The Preliminary and preparation stage.
 - 2. The evaluation.

3. Submits the Proposals and recommendations for decision making.
 4. Follows-up the implementation by concerned ministries; and.
 5. Follows-up the analysis and evaluation of the post-privatization stage.
- b) Studies and reviews the proposals that determine the means and methods of privatization and restructuring; and submits suggestions and recommendations in that respect.
 - c) Reviews and submits the proposals of liquidation, merger, or division of economic units' which prepared by the assigned technical or subcommittees, to the HC for approval.
 - d) Drafts proposals of By-Laws and procedures that regulate the functions of the technical committees.
 - e) Sets- up the organizational and guidance By-Laws that regulate the privatization process set forth in paragraph (a) of Article (11) of this Law, and forward them to the HC for approval.
 - f) Prepares proposal concerning the labor force in the under- privatization units according to

the provisions of Article (26) of this Law and recommends all types of incentives and financial and non-financial grants to mitigate the effects of Privatization process on the labor force.

- g) Prepares standard contract forms for each privatization method.
- h) Participates in the preparation of the documents of bids, offers, and tendering procedures, and in the requirements of their public announcement.
- i) Assists and advises in identifying the appropriate mechanism to circulate shares and financial securities of the under-privatization Economic Units.
- j) Ensures the safety of the transparency, disclosure and neutrality method followed through the publishing and announcing during the implementation of each stage of the privatization process. Participates in open programs by organizing seminars, workshops and media activities about privatization process.
- k) Assists in the negotiation of privatization process:
- l) Publishes the privatization results in the media.

- m) Submits periodical reports to the HC on the privatization process and activities.
- n) keeps the proper accounting records and financial affairs reports.
- o) Submits proposed requests for financial and technical assistance in privatization strategies from the international organization and other donor countries which support privatization programs.
- p) Monitors privatization process and prepares periodic reports on those economic units which have been privatized.
- q) Undertakes any other tasks, as when necessary to achieve the objectives of this Law.

Article (12) : All current or temporary management boards of the Economic Units, are committed to furnish the TPO or its sub- offices with any information, data and studies when ever requested TPO specifically the following :

- a) Estimate their technical services and assistance needs required executing all tasks of the privatization program for each committee.
- b) Provide necessary facilities to the experts and consultants assigned by the TPO to execute the required jobs and.

- c) Comply with the rules and work systems, in accordance with the guidelines emanating from the TPO; and abide by discipline and confidentiality.

Article (13) : The director of the TPO may, whenever necessary, seeks the assistance of some professional consultants to fulfill the TPO assignments in coordination with the concerned Ministries and central Authorities. through:

- A) Secondments for a specific period of time, in accordance with the relevant regulatory legislation in force.
- B) Signs standard contracts for technical / consulting services in specific areas and basically with university academics / professionals or with professionals working for specialized consulting firms which operate in accordance with current laws and regulations.
- C) Seeks Arab and Foreign expertise in the field of privatization, provided that Yemeni counterparts are assigned during the period defined.

Chapter (3)

Guaranties, Conditions and Organizational Rules

Section (1)

Guaranties Conditions

Article (14) : The TPO shall conduct studies, proper financial and legal analyses for each Economic Unit scheduled for Privatization. In case of lack or insufficient data, the HC may, as exceptional case, decides to evaluate such unit through neutral specialized technical professionals.

Article (15) : Decisions on the suitable timing and method of Economic Units privatization, in whole or in part, shall be within the jurisdiction and responsibility of the Cabinet. Those resolutions shall be issued in an executive program (s) based on the recommendation of the HC in accordance with the provisions of Article (5) of this Law.

Article (16) : The State guarantees that the new owners, natural or legal persons, shall be granted all the legal rights for property transfer, including providing land sufficient to the project goals on a lease or sale bases contract, of which its form shall be approved by the HC, in accordance with the current Laws.

Article (17) : The State guarantees to grant the new owners, natural or legal persons, as well as the operators of the Economic Units, all the benefits and facilities that granted to all investors, in accordance with the current laws and legislation.

Article (18) : To enable the Government in retaining special rights to intervene in matters which may affect the national supreme interest, the Cabinet shall have the right to instruct the Central Bank Governor to retain the "Quality Share" in the Capital of an Economic Unit, provided that these special rights are provided for in the by-Laws of the Corporate Company established in accordance with the provisions of Article (22) of this Law. In all cases, regardless the privatization form and content, the Cabinet shall secure the undue impact of privatization on National Supreme interest.

Article (19) : Any person, either citizen or foreigner, is deemed eligible to participate in the privatization processes, in consistent with the provisions of this Law or any organizational By-Law will be issued thereafter.

Article (20) : The Government shall secure the continuity of the Economic Unit's activity after its privatization and prevents the abuse of its land for purposes other than those which Privatized for.

Article (21) : A) Member (s) of the HC or the TPO is prohibited to provide any person with specific information that may give that person or any other possible person an advantage in any privatization process. Such commitment shall be penalized by prison for minimum two years, minimum 500,000 YR fine or any higher penalty quoted in any other Law.

B) Member (s) of the HC or TPO staff are not allowed to have direct or indirect interest or relation with any privatization process (es).

Section (2)

Organizational Rules

Article (22) : A) The Economic Unit, owned in whole or in part by the State, which is listed in the privatization program(s) and approved by the HC and by the Cabinet, shall be transformed into a corporate Company or Limited Liability Company, in accordance with the provisions of current Law and Legislation concerning the Commercial Companies, and shall be deemed from the Private Law's Persons. This shall be undertaken after the evaluation of its tangible, intangible assets and its other investments and transforming them into shares to be deposited

with the Governor of the Central Bank, in his official capacity, on behalf of the Republic.

B) Whenever the HC ascertains that formation of such two companies is not feasible, then it may decide to liquidate such Economic unit in accordance with the Presidential Decree No. 35 for the year 1991, amended by the Law No. (7) for the year 1997 on public authorities, corporations and companies. Or selling the unit's assets without the necessity of the transform into corporate or limited Liability company in accordance with the provision of paragraph (f) of Article (5) of this law.

Article (23) : The Company established in accordance with the provisions of Article (22) of this Law may bear the same name of the privatized Economic Unit, or any other name derived from its goal. Its capital, number of shares and price per share shall be specified in accordance with the provisions of the other Law and Legislation on Commercial Companies.

Article(24): The company established according to the provisions of Article (22) of this Law shall undertake its activities in accordance with the provisions of the other current Law and legislation on Commercial Companies. All Concerned Authorities shall register the

Company, according to current Law and Legislation, in order to be granted the rights and obligations of the companies.

Article (25) : All the assets and liabilities of the privatized unit shall be transformed to those companies established in accordance with the provisions of Article (22) of this Law as from the date of the Cabinet Approval of its establishment. The above mentioned Unit as of the above date shall be deemed dissolved and have to be eliminated from the special record. This shall be done within the time period specified in the Cabinet Approval Decree, Which, in any case, shall not exceed 30 days.

Article (26): A) The number of employees previously agreed upon, shall be transferred from the Privatized Economic Unit to the Company, which established in accordance with the provisions of Article (22) of this Law, on the same previous terms of salaries, monthly bonuse; incentives and any other benefits in accordance with current Laws and legislation Their previous sevice periods shall be continued, and if the benefits in the new company are better, they shall be applied to them.

B) The untransferred employees and the employees of the Economic Unit, that privatized in accordance with the provisions of Article (5) of this Law, which have been dismissed in the new companies, their accumulated benefits shall be secured in accordance with the Civil Service Fund Establishment Law.

Article (27) : The new owner of the company is committed to retain the transferred employees for a period not less than 5 years except who proved to committed a crime that penalized by Law and was sentenced by court.

Article (28): In order to insure the maximum level of public subscription, priority shall be given to the interested employees, wither transferred or not, to the privatized unit.

Article (29): Every Economic Unit approved, in whole or in part, for privatization shall be committed to the following.

- a) Complies and abides by the provisions of this law, and executes the by-Laws, and guidelines issued by the HC or the TPO.
- b) Keeps complete and updated accounts and work records.
- c) Prepares periodic financial data for audit, measurement and evaluation.

- d) Maintains a fixed asset records and reconcile them with the financial statements.
- e) Avoids any activities that may lead to a waste of assets or undertakes liability other than necessary daily normal activities, without the prior written approval from the TPO after the HC approval.
- f) Refrains from taking any procedure that leads to production unrest.

Article (30) : The provisions of Article (22) of this law do not apply to economic Units, which are privatized in accordance with the leasing or management method.

Article (31) : In the event that a decision has been taken to sell the State's shares in a Mixed Company, the following shall be applied:

- a) Abide by the provisions of Company's Establishment Agreement.
- b) Negotiate with shareholders to reach an agreement.
- c) Apply the provisions of this Law.

Chapter (4)

Financial and Conclusive Provisions

Section 1

Financial Provisions

Article (32) : A) All privatization returns shall be deposited into a special fund called (privatization Returns Fund) Those returns shall include local and international financing and grants for privatization projects, An account for those Funds shall be opened at the Central Bank and to be included in the State budget as a separate fund to finance economical and Social development projects.

B) The HC, TPO and Sub Technical Offices, at the Ministries or the Economic Units, shall have independent budget approved by the HC. The preparation of this budget and the spending shall be in accordance with the provisions of the Financial Law and its By-Law.

Section 2

General and Conclusive Provisions

Article (33) : The Provisions of this Law shall not exempt any chairman, general manager, board of directors member (s) or any other manager or employee or worker of the Economic Unit which has been privatized, from any legitimate accountability due to the commitment of any act that penalized by Law, prior to transforming its assets and liabilities to the company established in accordance with the provisions of Article (22) of this Law.

Article (34) : Any provision in any Law or Legislation, precedes the effectiveness of this Law, in conflict with the provisions of this Law shall be deemed void and null.

Article (35): The Prime Minister shall issue the By-Laws, Guidelines and Directives necessary to implement this Law.

Article (36): This Law Shall enter into force as from its issuing date and shall be published in the Official Gazette.

The Presidency of the Republic - Sana'a

On 17 Rajab 1420 H

26 October 1999

Ali Abdullah Salleh

President of the Republic