

SANTOMEAN PRIVATIZATION LAW*

(Law no. 14/92, of 15 October, 1992)

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* The official designation for this law is State-owned Companies Reform Framework Law.

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STATE-OWNED COMPANIES REFORM FRAMEWORK LAW
(Law no. 14/92, of 15 October, 1992)

Whereas the need to redefine and rearrange the strategical role of the State in the country's economy, through the transferring to the private sector the non-strategical units of production currently integrated in the public enterprise sector;

Whereas the need to promote an adequate participation of the private sector in the economy and in the carrying out of investments in the country, including the possibility of holdership of equities by the public;

Whereas it is a State task to contribute for the strengthening of the entrepreneurship capacities in the various economic sectors of the national economy, expanding opportunities for the creation of competitive economic activities able to generate new jobs and income;

Where as the reform of the State's enterprise sector depends, firstly, on the suppression of transferences and subsidies for such companies and, then, on the collection of taxes and other contributions equally payable by the private sector;

Lastly, whereas that the public administration should naturally concentrate its efforts in the activities where the State is essential for the achievement of national priorities, namely, in the social and infrastructure areas;

The National Assembly, vested in the powers granted by virtue of sub-paragraph g) of Article 87 of the Constitution, enacts the following:

STATE-OWNED COMPANIES REFORM FRAMEWORK LAW

CHAPTER 1

Procedure for the Reform of State-owned Companies

Article 1

Object

It is hereby established the Procedure for the Reform of State-owned Companies governed by this Law and any other applicable laws in force.

Article 2

Scope

Any company and project currently owned by the State, and any other company and economic unit that may be created for the purpose of rendering basic public services may be subject to the Reform Process, as provided in Article 5.

Article 3

Components of the Reform Procedure

The Reform Procedure is comprised of the Privatization and Liquidation Program set by this Law, without prejudice of any other components that may be deemed necessary for this purpose.

CHAPTER 2

The Privatization and Liquidation Program

Article 4

Assets of the Program

The Privatization and Liquidation Program may include the following assets:

- a) Equity, represented by shares or quotas of share capital of companies, granting the State the total control or the majority of voting rights, and the power to elect or appoint managers of the companies included in the Privatization and Liquidation Program;
- b) State-owned minority equities in any company included in the Program;
- c) The assets and premises of State-owned companies included in the Program;
- d) Any asset of a company included in the Program that may be subject to liquidation, termination or fragmentation by decision of the Special Privatization Council established in this Law.

Article 5

Companies included in the Program

1. The companies included in the Privatization and Liquidation Program shall be selected after evaluation by the Director of Privatization and submission for the approval of the Special Privatization Council.

2. The first list of companies of the Program shall be submitted by the Executive Director of Privatization to the approval of the Special Privatization Council within sixty days after this Law becomes effective.
3. The commercial, industrial, agro-industrial, tourism and services companies shall be included with priority in the first list of the Program.

Article 6

Procedures of privatization

For the purposes of Article 5 above, the following procedures shall be adopted:

- a) Mandatory competitive public tender, announced by means of proclamations and announcements pursuant to Articles 19 and 20, in cases of sale of the totality or the majority of the shares, quotas, companies, or assets deemed as strategical from the company's operational standpoint, contracts and of management contracts or concession contracts.
- b) Direct negotiation, subject to previous stipulation of prices and conditions and due process of publicity, in cases of sale of minority equities in State owned companies or sale of non-strategical assets for the operation of the company.

Article 7

Methods of privatization

The Program of Privatization and Liquidation of companies shall be carried out by one of the following methods:

- a) Total sale of majority and minority equities of the State in the companies;
- b) Participation of the private sector in the share capital, by waiver, total or partial assignment of subscription rights of the Government, in the companies where the temporary presence of the Government is still reasonable;
- c) Transformation, fragmentation, merger or division of companies or enterprises, in order to make possible their subsequent sale;
- d) Liquidation of enterprises, dissolution of companies, or partial termination of States enterprises or sectors, with subsequent sale of the assets, absorption of the liabilities and the remaining assets by the State, and complete legal winding up of the company;
- e) Temporary exploration by the private sector through leasing, management contract or assignment of the companies' assets and premises, subject to a condition of sale in the short term.

CHAPTER 3
Competent Authorities

Article 8

Special Privatization Council

The Program of Privatization and Liquidation shall be managed by an Executive Director of Privatization, shortly referred to as Director of Privatization, who is overseen by a Special Privatization Council, shortly referred to as Privatization Council.

Article 9

Composition of the Special Privatization Council

1. The Special Privatization Council shall comprise the following members:
 - a) The Minister of Economy and Finance, who shall act as Chairman;
 - b) The Minister of Commerce, Industry, Tourism and Fisheries, who shall act as Vice Chairman;
 - c) The Governor of the Central Bank of Sao Tome and Principe;
 - d) The Director of Finance;
 - e) The Director of the Private Investment Promotion Office;
 - f) The Director of Privatization, who shall act as the Secretary, with no vote.
2. The members of the Privatization Council may delegate some of their duties to another member or to other third person freely appointed.
3. The Chairman may invite any person whose presence may be deemed as necessary for the appreciation of the respective processes to participate in the meetings of the Privatization Council with no vote.

Article 10

Duties of the Special Privatization Council

In addition to any other duties provided by this Law, the Privatization Council shall have the following duties:

- a) Discuss, issue opinion and submit to the approval of the Prime-Minister the list of companies included in the Program and the subsequent chronogram of implementation;
- b) Oversee the monthly implementation of the Program, based on the reports of the Director of Privatization, in order to maintain the strict compliance of the principles and norms provided by this Law, especially those regarding

transparency of the sale and liquidation processes and the compliance of the chronogram of implementation of each process;

- c) Assess and approve, prior to the release of the proclamations of each process pursuant to Article 7, with special attention to the minimum price and other terms and conditions of the sale, leasing, management contract or assignment of assets and enterprises;
- d) Assess and approve the accounts of each process submitted by the Director of Privatization, within thirty days after its conclusion;
- e) Approve the complementary rules for the functioning of the National Privatization Fund, oversee monthly, appreciate and approve quarterly the accounts of the National Privatization Fund submitted by the Director of Privatization;
- f) Issue the necessary norms, instructions and directives to the carrying out of the purposes of this Law.

Article 11

Appointment of the Director of Privatization

The Council of Minister shall appoint the Director of Privatization, having regard the suggestion of the Minister of Economy and Finance.

Article 12

Duties of the Director of Privatization

The Director of Privatization shall have the following duties, without prejudice to other provisions in this law:

- a) Assess and submit to the approval of the Privatization Council, the enterprises eligible to the Program, mentioning the method of privatization to be adopted in each case. The first assessments shall be concluded and submitted to the Council of Privatization within sixty days after this Law becomes in force;
- b) Comply with the approved chronogram of implementation of the Program, and adopt the necessary legal, administrative and operational procedures;
- c) Publicize in national newspapers and in other mass media, and in case of big companies, in at least in a newspaper of worldwide circulation, the chronogram of implementation of the Program, as well the proclamations and announcements of each individual procedure of privatization and liquidation as provided in Article 7 of this Law, with at least thirty days prior to each process;

- d) Promote the selection of consultancy firms on economy and law, for carrying out the assessment of assets and to the appropriate auditing of the procedures pursuant to this Law;
- e) Promote the assessment of the assets and liabilities of each enterprise eligible for privatization or liquidation process;
- f) Prepare the proclamations of sale and the announcements of individual privatization and liquidation process, as well as the documentation of each process, based on the assessments carry out as provided in sub-paragraph e) above; and submit said proclamations, announcements and documentation for approval by the Privatization Council, pursuant to sub-paragraph c) of Article 10;
- g) Prepare the chronogram of implementation of each privatization and liquidation process, including all phases up to the conclusion of the sale contracts or other necessary legal proceeds, and of any other actions deemed appropriate to the carrying out of the process;
- h) Submit to the Privatization Council, in a monthly basis, the reports and accounts of the chronogram of implementation and the adopted actions carried out in each process, pursuant to to sub-paragraph b) of Article 10;
- i) Prepare and implementing the necessary operational, accounting and legal proceeds for the processes of sale by direct negotiation;
- j) Act as the liaison office between the Governemt and the potencial investors, rendering all the detailed information on the proclamations to the interested persons on the Program, carrying out the appropriate negotiations and promoting the effective compliance with the chronogram of each privatization process;
- l) Co-ordinate all the proceeds and phases of the Program of Privatization and Liquidation, including, the reception, analysis and issuing opinion of the proposals, drafting and entering into the contracts of each privatization process, under any of the methods of privatization provided in Article 7;
- m) Prepare and submit to the Privatization Council the accounts of each privatization process, within thirty days after the signing of the contracts and of receiving the respective payments;
- n) Supervise the management of the National Privatization Fund and submit the montlhy and quaterly reports for the apreciation and aproval by the Privatization Council;
- o) Issue the necessary norms and instructions to the promptly compliance of the purposes of this Law.

Article 13

Quarterly reports

The Director of Privatization shall elaborate and submit the quarterly accounts and reports, for appreciation and approval by the Privatization Council, without prejudice to the submission of the monthly reports of the National Privatization Fund to the Privatization Council.

Article 14

Conflicts of interest

1. The members of the Privatization Council, staff or any persons engaged in the privatization and liquidation processes, shall not, directly or indirectly:
 - a) Participate in the public offers and direct negotiations carried out under the Program;
 - b) Acquire, by any means, any shares or assets of enterprises and companies of the Program.
2. Paragraph 1 above shall be applicable in every methods of privatization.

Article 15

Duties and obligations of Directors and Managers of enterprises and companies

1. The directors and managers of the companies included in the Program shall adopt, in timely manner, all the necessary actions that the Privatization Council determines to the carrying out of the processes of privatization or liquidation.
2. The directors and managers of the companies included in the Program shall provide, in timely manner, the necessary information to the carrying out of the privatization or liquidation processes.

Article 16

Civil and criminal responsibility

The following persons shall be hold civilly and criminally responsible for any personal actions or omissions that cause unrest to the carrying out of the privatization or liquidation processes:

- a) The directors and managers of the companies included in the Program;
- b) The directors and managers of the of Government, specially those belonging to the overseen ministeries and other departments from which the appropriate implementarion of the Program depends;

- c) The members of the Privatization Council and the public officials with direct responsibilities on the implementation of the Program.

Article 17

Institutional support

1. The Ministry of the Economy and Finances shall render any necessary administrative, operational and financial support to the accurate operation of the Privatization Council and to the prompt fulfilment of the duties of the Director of Privatization.
2. Apart from the available financial and technical resources given by the international financial institutions, the Director of Privatization may engage any supporting operational technicians from the local financial institutions, from the Social and Infrastructures National Fund, and from the Private Investment Promotion Office, having regard to their areas of expertise.

Article 18

Assignment of concessions

1. The privatization of companies that renders public services under a concession or license regime, pursuant to one of the methods provided in Article 7, presumes the subsequent assignment or authorization of assignment, by the State, of the related concession or permission, in accordance with the applicable legislation and the contracts, without prejudice of paragraph 2 below.
2. The new conditions and specific regulations to the concessions and licenses subject of presumption of assignment shall be approved or negotiated, within sixty days from the decision to privatize the company.

CHAPTER 4

Privatization Procedures

Article 19

Proclamations of sales

For the purposes of safeguarding the public knowledge of the privatization conditions, as well as of the economic, financial, legal and operational status of each company included in the Program, the proclamations of sales shall include, namely, the following elements:

- a) The identification, object, date and the incorporation act of the company;
- b) The description, value and location of the assets and premises of the company;
- c) The share capital, the number of shares or quotas, the nominal value of the shares or quotas and the Government share in the company;
- d) The assets and liabilities of the company, and the successors of such assets and liabilities after the conclusion of privatization;
- e) The economic, financial and operational position of the company, detailing the profits and losses, the internal and external debts, payments of dividends, taxes and contributions, or any resources received from the Government in the last three financial years;
- f) The information of any existing control of prices and tariffs of products or services of the privatising company, and the costs variations in the last financial years and the respective comparison with the inflation and currency depreciation rates;
- g) The information of any existing authorized amounts of exchange transfers for materials or equipments of the privatizing company and the costs variations in the last financial years;
- h) The description of the resources invested in investment projects of the respective company in the last financial years and source of the corresponding resources, separating the part, directly or indirectly, financed by the Government;
- i) The summaries of the evaluation studies of the company, carried out pursuant sub-paragraph e) of Article 12;
- j) The criteria for setting of the total price of sale, value of each share or quota of the share capital or of the assets of the privatising company, based on the assessment reports carried out pursuant to sub-paragraph e) of Article 12 and Article 21;

- l) The operational method, pursuant to Article 7 above, for the sale of the shares or quotas of the share capital and assets;
- m) The mention, when applicable, that there will be issued special types of shares or quotas, and the respective special rights granted thereof;
- n) An explanatory report of the privatization of the company.

Article 20

Specific provisions

Appart from other general provisions herein, the processes of privatization and liquidation shall comply with the following specif provisions:

- a) Widespread publication of the proclamations containing the elements provided in sub-paragraphs d) to g) of Article 19;
- b) The Privatization Council shall determinte the minimum individual value for the sale of the shares or quotas of the share capital, assets and premises of each company, having regarded the assessment reports, pursuant to sub-paragraph a) of Article 12, and Article 21.

Article 21

Contents of the assessment reports

The assessment reports provided in the sub-paragraph b) of Article 20 shall mention, namely:

- a) The market conditions;
- b) The profitability of each company;
- c) The criteria for setting the tariffs and prices of the goods produced or services rendered;
- d) The guidelines for setting of the authorized amounts of currency operations that may affect the profitability of the company;
- e) The value, composition and the responsible for the liabilities of the company.

Article 22

Criteria for capital formation

The regulation act the privatization of each company or enterprise shall, namely, mention:

- a) The percentage of the share capital reserved for the subscription to the company's employees;

- b) The percentage of the share capital reserved for the subscription of nationals who provide the technical and financial support for the improvement of the management and efficiency;
- c) The criteria that, taking in account the objectives of the privatization, allows the share capital to be acquired by the highest possible number of nationals.

Article 23

Decision by the highest offer

1. The sale of the shares or quotas of the share capital, assets and permits shall be determined considering the value of the highest offer provided that there are equal or superior to the minimum value set in the respective proclamation.
2. In the event there are no offers that meet the legal requirements provided in paragraph 1 above, there will, immediately, start a process for making alternative choices, intended for partial sale of the shares or quotas, as well as the liquidation or fragmentation of the company, with the subsequent sale of the remaining assets and the legal termination of the company.

Article 24

Specific obligations

The buyers of the shares, quotas of the share capital, assets or permits, as well as the landlords may be subject to specific obligations and restrictions, of temporary and strategic nature, which shall be previously mentioned in the announcements or proclamations of the sale or lease, in accordance with the Article 19.

Article 25

Associations of tenders

Consortia, cooperatives and associations of class, especially of the employees of the respective company, provided they are duly constituted in compliance with the effective laws and previously qualified before the Director of Privatization, may submit proposals in any of the methods of the privatization process provided in Article 7.

Article 26

Individual or collective acquisition

1. The Privatization Council may, by virtue of discretionary power, determine, for some processes and temporary period, a previous reserve of shares or quotas

and assets to the privatizing company to the respective employees, individually or collectively considered.

2. The collectively acquisitions may be granted to associations, cooperatives of class or co-owners previously qualified before the Director of Privatization.

Article 27

Privileged treatment

1. Different conditions regarding payments of purchase of shares or quotas of the share, assets or premises of privatizing companies may be granted to the employees of said companies, even if financial institutions carry out the financing of the operations.
2. The special conditions granted in accordance to paragraph 1 above are not assignable, by any means, unless the price has been fully paid; and in case of death of the buyer, these assets are deemed as a trust.

Article 28

National Privatization Fund

1. For the implementation of the Privatization Program, it is hereby created the National Privatization Fund, of accounting nature, in a national financial institution, by means of deposit of the total or partial payments of the sale of the assets, shares or quotas of State-owned companies, privatized in accordance to this Law.
2. The National Privatization Fund is managed by a Commission headed by the Director of Privatization and two other members appointed by the Privatization Council.

Article 29

Movement of the Fund and specific sub-accounts

1. The certificates, documents, and the moneis to be deposited in the National Privatization Fund shall be booked in a sub-account under the name of the respective privatizing company.
2. The management Commission of the National Privatization Fund shall be competent to deposit the Fund on behalf of the Directorate of Finance trough a special cash account for priority use in financing the sectorial development programs previously approved by the Government.

3. Notwithstanding, the management Commission of the National Privatization Fund may undertake the following exceptional deductions in each company in privatization process:
- a) For the payment of the expenses incurred for publishing the proclamations and announcements of the respective privatizing process;
 - b) For the payment of the expenses incurred with the assessment, consultancy and audit fees and any other service charges deemed necessary to the execution of the respective privatization process;
 - c) For the payment of the expenses incurred with fees, charges and other costs or expenses related with the respective privatization process;
 - d) For the payment of any other non-specified expenses previously approved by the Privatization Council.

Article 30

Evidence of the receipts

1. The financial institution shall give a receipt, on behalf of the depositors, on the amount of the deposit in the National Privatization Fund.
2. The original receipts are deemed as evidence of the compliance of the financial obligations and the acquisition of the assets and shares or quotas of the privatized State-owned company.

Article 31

Remuneration of the commercial bank

The financial institution shall be paid a fee for the services rendered in each privatization process, pursuant to an agreement entered into with the Director of Privatization.

Article 32

Guaranteed bank loans

1. The employees of State-owned companies in privatization process, who make prove of their identities, may obtain bank loans for financing the acquisition of the assets of their respective companies.
2. The financial institution may, by virtue of discretionary power, request a guarantee as a condition to grant the loan provided in the paragraph 1 above.
3. When the financial institution grants a loan without any guarantees from the Government or from the respective company, the financial institution may issue a

Certificate of Privatization Deposit, in the amount of the loan, to be deemed as both the payment and the guarantee in the percentage of such amounts in the capital or assets of the company.

Article 33

Non-negotiability and registry of the bank certificate

1. During the loan period, the borrower shall not sell, assign or trade the certificates and assets that he/she acquires in the respective company. The Director of Privatization shall take the necessary actions to assure the non-negotiability of the certificates and assets during said periods.
2. The Certificate of Privatization Deposit is subject to previous registration, at the expenses of the borrower, before its deposit in the National Privatization Fund.

Article 34

Acquisition of enterprises

After the conclusion of the first privatization process, having regard the proposal of the Director of Privatization, the Privatization Council may, decide to allocate part of the resources of the National Privatization Fund to financing other State-owned companies, with the purpose to make them eligible for privatisation, pursuant to the specific conditions of such operations set by the Director of Privatization.

Article 35

Auditing

1. The National Privatization Fund is subject to, at least, one annual audit by the Inspectorate of Finance.
2. Without prejudice to paragraph 1 above, the Fund may be subject to an independent audit approved by the Government.
3. The report of the audit mentioned in paragraph 2 shall be addressed to the Ministry of Economy and Finance, which shall forward copies to the President of the Republic, the National Assembly and to the Government.

Article 35

Special shares and quotas

1. When appropriate to protect the national interest, the Privatization Council, having regard the suggestion of the Director of Privatization, may retain, directly or

indirectly, on behalf of the State, special shares or quotas of privatised companies with temporary and strategic veto rights in some subjects.

2. The Articles of Incorporation or the contractual instruments of such companies shall specify the subjects, and define the regime of assignment of such companies or of their share capital to foreign-owned companies and the cases of previous consent of by Government.

Article 37

Day-to-day affairs

1. The companies included in the Privatization Program shall adopt their operational strategy compatible to the objectives of privatization and liquidation, and are limited to practice acts of day-to-day affairs.
2. For the purposes of this Law, acts of day-to-day affairs are, namely, those strictly necessary to the ordinary operation of the company, excluding those which undertake new investment projects, engage new staff or promote the renegotiation of contracts with suppliers and cutomers, that unrest its privatization chronogram.

CHAPTER 5

Final Provisions

Article 38

Regulation

For the execution of this Law, the Government is hereby authorized to regulate each case by decree-law.

Article 39

Termination of commisions

It is hereby terminated any existing commissions, working groups and respective existing structures responsible for planning, executing and treatment of the issues related with the Privatization and Liquidation Program, provided by this Law.

Article 40

Management of the State equity

During the execution of the Privatization and Liquidation Program, an autonomous organism having administrative, asset and financial autonomy shall be created to ensure the management of the State equities.

Article 41

Completion of the Program

The Privatization and Liquidation Program provided in this Law shall be completed within eighteen months from the beginning.

Article 42

Efectiveness

This Law shall become effective immediately.

National Assembly, Sao Tome, on the 27, August 1992.

The President of the National Assembly, *Leonel Mário d'Alva*.

Enacted on 7, October 1992.

For publication.

The President of the Republic, *Miguel Anjos da Cunha Lisboa Trovoada*.