

PRIVATIZATIONS

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What is the applicable legal framework for privatizations?

The applicable legal framework for privatizations is Law 3049/2002 "Privatization of Public companies and other provisions" (Government Gazette A' 212/10.9.2002) as amended and applies.

What body is competent for privatizations?

The competent body for privatizations is the Inter-Ministerial Committee of Asset Restructuring and Privatizations which is comprised of the Minister of Finance who acts as Chairman, and the Ministers of Development, Competitiveness & Maritime, Environment, Energy & Climate Change, Infrastructure, Transportation, Employment & Social Protection and the Minister supervising the undertaking in question on behalf of the State. A Special Secretariat of Asset Restructuring and Privatizations exists under the ambit of the Ministry of Finance in order to assist the Inter-Ministerial Committee in the performance of its duties.

What undertakings are eligible for privatization?

The undertakings eligible for privatization are state-owned undertakings. State-owned undertakings, for the purpose of privatizations, are those undertakings where the Greek State's stake in the equity exceeds 50% or the company is financed by the Greek State in a percentage that exceeds 50%. Financial institutions with respect to which the Greek State holds an absolutely majority of its share capital are also deemed "public companies" for purposes of privatization. The law for privatization may also be applicable, pursuant to respective decision of the Inter - Ministerial Committee of Privatizations, to subsidiary companies of public companies and other public institutions as well as companies that have been established for the purpose of exploitation of State property which was contributed to said companies or State minority rights in other companies. To this end, according to Law 3986/2011, "Urgent Measures for the application of Mid Term Fiscal Strategy Plan 2012-2015" the company "Hellenic Republic Asset Development Fund SA" has been established. Moreover, according to Law 3985/2011, "Mid Term Fiscal Strategy Plan 2012-2015" the Greek State has published a catalog of the undertakings and assets subject to privatization.

What purpose is served by the company "Hellenic Republic Asset Development Fund SA"?

Pursuant to Law 3986/2011, the object of the company "Hellenic Republic Asset Development Fund SA", is to exploit the private property of the Greek State and of public entities whose share capital is entirely directly or indirectly owned by the Greek State or Legal Entities of Public Law in a transparent and arms length manner. Such property includes inter alia, ownership of shares of those companies listed Table II, Chapter B, Law 3985/2011 "Mid Term Fiscal Strategy Plan 2012 - 2015", as well as real estate and property rights, exploitation and management rights, economic interests, intangible assets and operational, maintenance and exploitation rights of infrastructures referenced in the aforementioned Table. The above

assets are transferred to the “Hellenic Republic Asset Development Fund SA” for no consideration. The proceeds from exploitation of such assets must be exclusively applied towards repayment of the public debt of the Greek State.

To this end, pursuant to Decision No 187/16.09.2011 of the Inter-Ministerial Committee for Assets Restructuring and Privatizations and pursuant to the Table II, Chapter B, Law 3985/2011 “Mid Term Fiscal Strategy Plan 2012 – 2015” the following items has been transferred to “Hellenic Republic Asset Development Fund SA” for further exploitation:

- a) 9,000,000 shares of the company “Athens International Airport SA” which corresponds to 30% of its share capital.
- b) 108,430,304 shares of the company “Hellenic Petroleum SA” which corresponds to 35.477% of its share capital
- c) 15,000 shares of the company “Hellinikon SA” which corresponds to 100% of its share capital
- d) 7,686,362 shares of the company “General Mining & Metallurgical Company LARKO SA” which corresponds to 55.19% of its share capital
- e) The rights of Article 4.2 of the contract dated 31.07.1995 between the Greek State and the companies Hochtief Aktiengesellschaft vorm. Helfamann, ABB Calor Emag Schaltanlagen AG, H. Krantz – TKT GmbH και Flughafen Athen – Spata Projektgesellschaft mbH, for the extension of the contracting period of said contract at a higher limit up to 11.06.2046.
- f) The Greek State right to produce, operate, circulate and in general manage the public lottery provided under Law 339/1936, including the Instant Public Lottery provided under Article 17 of Law 1947/1991 for 12 year period, save those rights to said Public Lotteries which have already been assigned to third parties in the context of securitization of claims under Ministerial Decision 2/84003/0049
- g) The State’s entitlement to collect duties and revenues due up to 31.12.2027 and which arise from the assignment to third parties of the right to use and commercially exploit radio frequencies for mobile telecommunications services and other services related to mobile telecommunication pursuant to Law 3431/2006, of Regulation of General Licenses of the National Committee for Telecommunications and Postal Services,

Such assets may be exploited by the “Hellenic Republic Asset Development Fund SA” in any suitable manner, and preferably as follows:

- (a) sale
- (b) establishment of real property rights and inter alia, horizontal and vertical ownership rights
- (c) transfer of real property rights on assets
- (d) concession of the use or exploitation
- (e) assignment of management
- (f) contribution of the assets to the equity of societate anonyms and then sale of the shares issued
- (g) securitization of claims

What are the forms of privatization?

Pursuant to Law 3049/2002, privatization may occur, indicatively, as follows:

- (a) the sale of all or part of the enterprise, its assets or divisions of the enterprise
- (b) public offering of the enterprise in the Stock Market or other organized market
- (c) the sale of all or part of the shares of the enterprise, with or without a concurrent shareholder agreement, as well as the further transfer of shares in the enterprise and necessary preliminary actions to effect such sale including particularly the process to establish the enterprise, its reorganization or restructuring

The above referenced shareholder agreements may provide that the majority shareholder is required to elect parties designated by the minority shareholder to the Board of Directors or those minority shareholders may appoint up to 1/3 of the members of the Board pursuant to respective provisions of the Articles of Incorporation

- (d) grant of licenses or permits to exploit undertakings
 - (e) formation of companies or participation in companies by the contribution of cash, fixed assets, divisions, rights and shares
 - (f) Leasing, of any type, of enterprises in its entirety, or assets, or rights or parts or divisions thereof
 - (g) The assignment of the management of enterprises to third parties
 - (h) The exchange of shares, etc
- Privatization may be effected in one or more of the above manners.

What are the privatization procedures?

The Inter-Ministerial Committee of Asset Restructuring and Privatizations sets out the policy that will apply for privatization of state undertakings and by its decisions, determines the manner of privatization, the extent and procedure as well as the criteria that will apply for the evaluation of tenders. Usually, the Hellenic Republic will engage legal and financial advisors, following a tender, to assist it in the privatization process. The advisors together with Hellenic Republic draw up the most appropriate procedure for each privatization. The advisors of the Hellenic Republic, or in the absence thereof the Special Secretariat for Asset Restructuring and Privatization, drafts and submits a report to the Inter-Ministerial Committee, accompanied by an analytical timetable for the privatization.

The Inter-Ministerial Committee may also decide that privatization shall occur through a negotiation procedure with interested investors. The vendor, the State or the advisor of the State may invite all interested investors to tender, stipulating in its corresponding invitation to tender the procedure, deadlines, bid content, conditions for bid submission and letters of guarantee (if deemed necessary).

Usually the tender procedure is performed in two phases. During the first phase, an Invitation for the Expression of Interest is published in the foreign and local press setting out the specific professional, financial and technical qualifications required investors to be eligible to participate in the tender. Interested investors file an expression of interest together with the supporting documentation set out in the Invitation for the Expression of Interest that substantiates the Investor's technical, financial and legal status. Eligible investors selected to participate in the second phase are invited to execute a Non Disclosure Agreement prior to entering the second phase. In the second phase, the preselected investors are invited to submit binding bid proposals after performing due diligence and commenting on the draft contracts that have been previously prepared by Hellenic Republic and its advisors.

How are tenders evaluated?

The contract is awarded to the most advantageous, overall tender. The evaluation criteria which are taken into account and assessed in order to select the most advantageous tender, are especially the experience of the bidder in the undertaking's activity, the bidder's solvency and its ability to complete the transaction, the price offered, the quality of the investment project, as well as its size and form and finally job maintenance or the creation of new employment opportunities within the enterprise subject to privatization. Interested investors are made aware of the applicable criteria prior to submission of their binding bid offers.

Does a special privatization regime apply to State entities that are of a general interest and utilities?

Pursuant to Law 3049/2002, by Joint Ministerial Decisions, the Ministers of Finance, Development, Competiveness and Maritime and the Minister supervising the undertaking in question on behalf of the State a) stipulate those State entities of general interest and utilities under privatization related to defense, the nation's security, public health, energy, transportation and communication, safeguarding the proper operation of markets, exploitation of state natural resources for which State consent is necessary in order for strategic decisions to be validly taken, b) describe the protected good and detail the strategic decisions for which State consent is necessary and c) determine the conditions under which the State's consent shall be granted. These decisions must be taken in accordance to clear and objective criteria designed to fulfill the intended objective and which shall be appropriate and implemented without distinctions. The above Joint Ministerial Decisions may also provide that the State shall keep a number of shares (golden shares) which embody privileges such as veto rights with respect to strategic decisions.

In practice, it should be noted that such rights or privileges are set out expressly either in the undertaking's Articles of Incorporation or provided for in special laws.

Does a special tax regime apply for privatizations?

Contracts and/or any acts concluded for the purpose of privatization under Law 3049/2002, including mergers, scissions, dissolution of enterprises, the corresponding transfer of real estate, movable assets, shares or any kind of rights, contribution of property, movable assets, real estate, divisions and business sectors, registration of real property rights including mortgages, liens and pledges are exempt from tax, including tax on capital gains, duties, stamp duties, contributions, rights or any other burden in favor of the Greek State or third parties.

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