

Law no.10 / 19

May 14

Having the need to conform the legislation to the Constitution of the Republic of Angola and, on the other hand, to adapt privatization procedures to the legal framework of the Public Business Sector, to increase competition among all interested parties in the adjudication processes, as well as to adjust procedures of privatization to international best practices, in particular as regards the dispersion of the capital of Public Business entities, through the securities market.

There is a need to stimulate the national economy by devolving business and economic initiative to the private sector, with the State playing the role of regulator and coordinator of economic development;

The National Assembly approves, by mandate of the people, under the terms of paragraph l) of article 165 and paragraph c) of article 166, both of the Constitution of the Republic of Angola:

LAW OF PRIVATISATION

CHAPTER I

GENERAL PROVISIONS

Article 1

(Aims and Objects)

The present law establishes the legal frame for the Privatization and re-privatization.

Article 2

(Scope of application)

1- This law applies to Privatizations and Re-Privatizations of public enterprises, equity held directly by the State or other public entities and other assets and public assets, when considered in isolation.

2- This law shall also be applied to the transfer of rights of exploitation of means of production previously forbidden to private initiative for reasons of public interest and other property not subject to a specific legal regime or covered by the absolute reservation of the State, in accordance with the applicable legislation.

Article 3
(General principles)

The privatization process must comply with the principles of justice, competition, legality, competitiveness, equality, impartiality, efficiency and transparency.

Article 4
(Definitions)

For the purposes of this law, the following definitions shall be applied:

(a) 'Public Enterprise Entities', public undertakings, publicly owned enterprises and minority public holdings;

b) "Managing Entity of the Privatization Process", a specialized public institution supervised by the Ministerial Department responsible for the public business sector, which is responsible for executing the Executive's privatization policy and program;

(c) "Trading Committee" means a specialized service constituted by the competent entity to take the decision to privatize, with a view to conducting a specific privatization process whose functions come to an end with the preparation and submission of the final privatization report;

d) "Offer on the stock exchange" means the admission to trading on regulated markets through the initial public offering or the public auction;

e) "shareholdings" means shares or quotas representing the capital stock of commercial companies;

f) "Privatization" means a total or partial transfer made for pecuniary interest of Entities of the Public Enterprise Sector and State assets considered in favor of private entities;

g) "Privatization Process" means a set of administrative acts and procedures provided in the Law, through which the transfer of ownership of Entities from the Public Business Sector to the private sector occurs under the terms of a Privatization Program;

h) "Privatization Program", a programmatic document, approved by the Executive Branch where the Public Enterprise Entities are identified, which must be privatized over an indicative time horizon, in accordance with the objectives defined and approved by the Executive;

(i) "Re-Privatization" means the total or partial transfer of ownership of a costly public undertaking from the public domain to the private sector, where the buyer/acquirer is in the typical private sector and the public undertaking concerned had belonged formerly to the private sector;

j) "Public Business Sector", refers to Entities of the Public Business Sector in accordance with the applicable legislation.

Article 5

(Objectives/Aims)

The Privatizations have the following objectives:

- a) Promote the reduction of the weight of the State in the Economy;
- b) Promote entrepreneurship and national entrepreneurial capacity building;
- c) To promote competition, competitiveness and efficiency of the national economy;
- d) Contribute to a better redistribution of national income and enable a broad participation in the ownership of the company's capital through an adequate dispersion of capital, paying particular attention to the workers of the companies and to the small subscribers;
- e) Increase of the financial resources of the public business sector by the financial allocation resulting from the sale of the privatized assets;
- (f) contribute to the development of the capital market;
- g) Promote the reduction of the weight of public debt in the economy.

Article 6

(Privatization program)

- 1- It is incumbent upon the holder of the Executive Power to approve the privatization program, as well as to coordinate its execution.
2. The privatization program is a binding document indicating the entities of the public business sector and / or assets to be privatized, as well as the objectives and the rationale for the privatization modalities and the period of time within which they must occur.

Article 7

(Prohibition of acquisition)

1- The following entities are prohibited from acquiring entities of the public business sector or assets held by the State that are alienated in privatization processes, under the terms of this law:

- a) Any entity that, for the position it exercises, is in a position of conflict of interests or where said acquisition constitutes an act of public impropriety, in accordance with the applicable legislation;
- b) Officials and administrative agents directly involved in the running of the privatization process, as well as their spouses, parents and children directly or indirectly.

2- Participation in procedures for the privatization of all entities prevented from participating in public procurement procedures, under the terms defined in the Public Contracts Law, is also prohibited.

Article 8

(Registration on behalf of the State)

1. The properties and assets covered in the privatization process to which this law refers, must be registered in the name of the State or of another public entity in the competent conservatory by reason of the matter and the territory and the tax administration whenever it is a matter of real estate.

2. It is the responsibility of the entity managing the privatization process to verify the conformity of the situation of the assets subject to the privatization process with the legal provisions expressed in the previous number, being obliged to proceed to the said registries as a prerequisite for the initiation of the privatization process.

CHAPTER II

PHASES OF THE PRIVATIZATION PROCESS

Article 9

(Privatization process)

The privatization process involves the following phases:

- a) Decision to privatize;
- b) Prior evaluation of the entity of the public business sector or of the asset to be privatized;
- c) Choice of privatization modality;
- d) Transformation of the public companies targeted into public limited companies, subject to Company Law.

Article 10

(Decision to privatize)

1- The decision to privatize is the act by which the competent entity determines the privatization of a public-sector entity or a public asset considered in isolation.

2. The decision to privatize shall include, in particular:

- a) The privatization modality;
- (b) the privatization procedure;

c) The percentage reserved for acquisition by employees and other small subscribers, provided for in article 27 of this law;

d) Possible limitation of maximum percentage of capital to be acquired or subscribed by a singular or collective entity.

3- The decision to privatize is effective only after its publication in Government Official Gazette.

Article 11

(Competence)

The decision to privatize entities of the public business sector or public assets, when considered individually, previously identified in the Privatization Program, is the responsibility of the Executive Branch.

Article 12

(Previous evaluation)

1 - Privatization is always preceded by at least a prior evaluation of the assets of the entity of the public or active business sector or public goods to be privatized.

2- The purpose of the equity valuation is to determine the sale price and must be carried out by a competent and independent entity with proven technical competence.

3- The costs with the prior evaluation provided in this law are supported by the entity that manages the privatization.

Article 13

(Transformation into Public Limited Companies)

1- The public company to be privatized is transformed into a public limited company by act of the competent entity to take the decision to privatize.

2- In the same act in which the transformation referred to in the preceding paragraph is carried out, the company's by-laws must be approved, and the company is governed by the law applicable to commercial companies.

3- The corporation resulting from the transformation referred to in this article maintains the legal personality of the transformed company and succeeds it in legal or contractual rights and obligations.

4 - The act that determines the transformation is title-deed enough for the purposes of registration of the company.

Article 14

(Privatization modalities)

1 - Privatization can be carried out alternatively or cumulatively by one of the following modalities:

- a) Sale of the shares representing the Share Capital;
- b) Increase in the share capital open to the subscription of private entities;
- c) Disposal of assets;
- d) Assignment of the right of exploitation and management.

2 - The privatization modalities referred to in sub-paragraphs a) and b) of the preceding paragraph are carried out in accordance with the Commercial Companies Law and securities market legislation, whenever executed in regulated markets.

Article 15

(Types of procedures)

1 - The privatization only takes place through a tender or an offer on the stock exchange.

2 - The privatization by means of a tender is carried out through:

a) Public Tender;

b) Limited Tender with Prior Qualification.

3- The choice of procedure is made in the Privatization Program, taking into account the characteristics of the entity of the public business sector or of the public assets to be privatized, and the privatization of the same entity can be carried out by combining two or more procedures indicated in this Article.

4 - The use of the simplified contracting procedure is prohibited, under the terms of the Public Contracts Law.

Article 16

(Management and Exploration rights)

1. The provisions of this Chapter shall also be applied to privatization processes consisting in the assignment of the right to operate and management of establishments as well as in the operation of public services previously closed to private initiative and other assets not covered by the absolute reserve of the State.

2 - For the purposes of this law, the operating modalities mentioned in the previous number are defined in the legislation that regulates the Public Business Sector.

Article 17

(Negotiating Committee)

1 - The privatization procedures are conducted by a negotiating committee set up specifically for this purpose.

2- The Negotiating Committee shall be appointed by the competent authority to take the decision to privatize.

3- The Negotiating Committee should include entities that, by their activity, may play a relevant role in the privatization process.

4- The Negotiating Committee referred to in the previous number, regardless of the type of procedure, shall perform the following tasks:

- a) Lead the privatization procedure observing the rules established in this Law, as well as the provisions of the Privatization Program;
- b) Evaluate the proposals presented in the framework of the procedure;
- c) Respond to complaints arising during the procedure;
- d) Prepare the final report of the privatization document with the proposal of the award for the effect of homologation by the competent organ;
- e) Other tasks expressed in the Privatization Program;

5. In all matters that do not conflict with the objectives of this Law, the Negotiation Committee shall be governed by the provisions applicable to the Evaluation Committees provided by the Public Contracts Law.

Article 18

(Evaluation of proposals)

1. In case of Privatizations in which the tender procedure is adopted, the evaluation of tenders must meet the following criteria:

- (a) the most economically advantageous tender;
- (b) the merits of the tenders in alignment with the award criteria which have been announced and the factors which, for that purpose, appear in the program of the procedure;
- (c) Financial and management capacity, the technical competence demonstrated by the interested parties, as well as the proposed investment program to leverage the main activity of the entity to be privatized;
- (d) The intentions of the tenderers as to the continuity or modification of the business activity of the entity of the public business sector to be privatized and the maintenance and conditions of employment of the employees and managers of the entity in question.

2- At the end of the evaluation process, the Evaluation Committee must produce a final evaluation report with a proposal to award and submit it for approval to the competent authority to take the decision to privatize.

Article 19

(Public tender)

1- The public tender is an open procedure in which all interested entities that meet the requirements established in a generic form in the Terms of Reference or the Terms of Reference may participate through the submission of proposals.

2- The deadline for the submission of bids and for the performance of any act in the context of the public tender is defined according to reasonable criteria by the Negotiating Committee responsible for conducting the procedure.

3- The public tender provided for in this law, unless otherwise specified, obeys the rules set forth in the Public Contracts Law.

Article 20

(Restricted Tender by prior qualification)

1 - Privatization may be carried out by means of the restricted procedure for prior qualification, in which only qualified candidates are invited to submit a tender following the assessment of their technical and financial capacity.

2- The Restricted Tender by prior qualification can only be used for the privatization of entities of the public business sector that are in the following conditions:

(a) they are inserted in a sector of activity which lacks investment in technology and innovation;

b) Require a large financial investment in technological resources and specialized labour;

c) Do not correspond to companies or assets over which the State has a strategic interest.

3- The Privatization Program shall specify the companies in the public business sector and / or sectors of activity whose privatization follows the restricted tender procedure by prior qualification.

4- The criteria for the pre-qualification of the candidates must be established in the Terms and Conditions of the respective procedure.

5- The Restricted Tender by prior qualification provided for in this Law, unless otherwise stated, obeys the rules set forth in the Public Contracts Law.

Article 21

(Notice)

In both the public tender and in the restricted tender by prior qualification, the Privatization Process Management Entity must widely publicize the opening of

the privatization process by means of a notice published in the Government Official Gazette and in a major distribution newspaper.

Article 22

(Offer on the stock exchange)

- 1- The stock exchange offer consists of the placement and offer of securities representing the share capital of the entity to be privatized on the stock exchange, which may be acquired by any natural or legal person at the established price.
- 2- It is also considered as an offer on the stock exchange the auction addressed to specially qualified candidates, of an indivisible lot of shares.
3. In the procedure referred to in the preceding paragraphs, taking into account the requirements considered relevant to the company's business, market, technological or other development strategies, the auction is accompanied by a set of collateral obligations to guarantee stability of the new shareholders and for the opening of the company's share capital through the public offering of shares.
- 4- The offer of shares in stock exchange obey the provisions of the Securities Code.

CHAPTER IV

REPRIVATIZATION

Article 23

(Prior authorization and applicable law)

- 1- The system of prior authorization is that which is determined in a proper law/act of the holder of the Executive Power (The President).
2. Without prejudice to the principle of nationalization and confiscation, only public companies that have been nationalized under Law No. 3/76, dated March 3, may be reprivatized.
- 3 - The re-privatization follows the law and procedures foretold for the privatizations.

CHAPTER V

WAYS OF PAYMENT AND DESTINATION OF REVENUES

Article 24

(Payment methods)

1- Payment is made by one of the following ways:

- a) Deposit or bank transfer to the National Treasury;
- b) Bank check in favor of the National Treasury;
- c) Public debt securities.

2 - The limit and the conditions of payment for the form referred to in paragraph c) of the previous number are established in the Terms and Conditions of the privatization procedure.

Article 25

(Record of revenue in the State's general budget)

Revenues from the privatization and re-privatization processes must be deposited into Treasury Coffers and included in the State Budget.

Article 26

(Destination of revenue obtained)

Without prejudice to the allocation for other purposes specifically defined by the Executive Branch, revenues from Privatizations shall be channeled towards the financing of programs that serve the country's economic and social development, with particular emphasis on the promotion of the productive sector.

CHAPTER VI

FINAL AND TRANSITIONAL PROVISIONS

Article 27

(Acquisition of shares by employees and other small subscribers)

1- The Privatization Program provides up to 20% of the share capital of the entity of the public business sector to be privatized shall be reserved for the acquisition or subscription under special conditions by the employees of the privatized company and other small subscribers.

2- In defining the special conditions of acquisition referred to in the preceding number, one may, among other conditions, determine a period within which the respective shares cannot be transacted and in which the respective holder does not confer the right to vote at the general meeting, by himself or by interposed person.

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Article 28

(The legal-labour relation)

1 - The employees of the entities of the public business sector to be privatized maintain the rights and obligations that they hold, under the terms of the labour and social security legislation in force.

2- If the privatization operation involves dismissal of workers, the labour legislation in force shall be applied.

Article 29

(Revocation)

All legislation contrary to the provisions of this law, namely Law no. 10/94, August 31, Privatizations Law no. 8/03, April 18, Amended Privatizations Law.

Article 30

(Doubts and omissions)

The doubts and omissions resulting from the interpretation and application of this Law are resolved by the National Assembly.

Article 31

This Law shall enter into force on the date of its publication.

Seen and approved by the National Assembly, in Luanda, on February 21, 2019.

The President of the National Assembly, Fernando da Piedade Dias dos Santos.

Promulgated on May 3, 2019

To be published

The President of the Republic, JOÃO MANUEL GONÇALVES LOURENÇO.

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