

PRIVATIZATION OF STATE-OWNED COMPANIES



LAW FIRM "SAJIĆ" BANJA LUKA
Bulevar vojvode Z.Misica 49b, B.Luka
Bosnia ad Herzegovina
Phone: +387 51 227 620, fax: 227 623
E-mail: info@afsajic.com
www.advokatskafirmasajic.com

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PRIVATIZATION OF STATE-OWNED COMPANIES

Privatization is the process of transfer of assets, i.e. state-owned capital to privately owned property. In a broader sense it can also be understood as individual management of state-owned property.

In the Republic of Srpska until 2007, the privatization process was under the jurisdiction of the Directorate for Privatization of the Republic of Srpska and after that, the remaining state-owned capital in enterprises in the Republic of Srpska was included in the portfolio of the Share Fund of the Republic of Srpska managed by the Investment and Development Bank of the Republic of Srpska (IRBRS).

Since 20 June 2007 IRBRS has taken over the role of authorized seller of the state-owned capital in enterprises.

Objectives of privatization

Objectives of privatization can be divided into economic, political and others.

The political objectives usually include: end of political control over the state-owned property and thus interruption of economic and financial losses of individual companies, use of privately owned economic initiatives, creating a large class of productive property owners, avoiding a close down of companies, reducing the budget deficit, strengthening the local capital market or using successfully privatized companies as a driving force of the dynamic development of a particular economic sector.

The economic objectives may include: stimulating economic growth of the country, accelerating the development, improving the financial profitability of companies, creating competition, strengthening the access to international knowledge and international capital markets, strengthening management of companies (hiring managers with an international capacity and experience) and achieving good prices for the country, preferably in foreign currencies.

These objectives if correlate may affect each other, either to reinforce each other or even to be in conflict.

Privatization in the Republic of Srpska

The privatization of state-owned capital in companies in the Republic of Srpska is carried out under the Law on Privatization of state-owned capital in state-owned companies and by-laws.

The subjects of privatization are shares and stakes in companies owned by the Republic of Srpska.

The subject of privatization cannot include: natural resources, goods in general use, facilities of general, cultural and historical significance, which were given to a company for use.

The state-owned capital in companies in the field of production and distribution of electricity, oil industry, railway transport, telecommunications, water supply, mining, forestry, public media, games of chance, weapons production, military equipment and other enterprises of strategic importance shall be privatized under special privatization programs adopted by the Government of the Republic of Srpska with the consent of the National Assembly of the Republic of Srpska.

Buyers in the privatization process can be domestic and foreign natural and legal persons. Buyers may not be state authorities, organizations and enterprises from Bosnia and Herzegovina with state-owned capital exceeding 25% of the total capital, as well as domestic natural and legal persons which have not settled tax liabilities.

To prepare the privatization, it is necessary that the IRBRS determines the structure and value of the state-owned capital and transfer the same to the funds.

The structure and value of the basic capital of a company shall be determined in accordance with the provisions of the Law on Opening Balance and by-laws i.e. on the basis of financial statements of the company on 30 June 1998.

Privatization of the state-owned capital may be performed through several methods:

❖ **Sale of shares through the stock exchange**

The subject of privatization by selling on the stock exchange market can be a part or the whole block of shares of the state-owned capital in the joint stock company.

Sale on the stock exchange market shall be conducted through the process of:

- organizing special auctions for share packages,
- sale in the ordinary course of stock exchange.

In the case of the sale of at least 50% + one share of equity capital in the joint stock company, the size of the share packages that will be sold at the auction, possible sale conditions and eligibility criteria for participants, as well as their change in the event of a failed auction determines the IRBRS, with the consent of the Government of the Republic of Srpska.

For joint stock companies whose value of the state-owned capital is less than 300.000,00 BAM the subject of the auction is the full package of shares of the state-owned capital, and the sale on the stock exchange shall be made without determining the sale conditions and restrictions.

Initial price of one share and package of shares of the state-owned capital in the joint stock company shall be determined as the minimum price. If a joint stock company in the last financial statement shows loss in or above the amount of total capital, the initial share price is 1% of the nominal value of shares. The auction for package of shares shall be conducted in accordance with the Rules of Banja Luka Stock Exchange Market. The deadline for payment for the purchase at auction for a package of shares with specific terms and conditions is eight days from the date of the purchase contract.

After closing of the deal, the stock exchange shall submit a report on concluded transaction to the Central Registry of Securities and the stock exchange members, representatives of buyers and sellers, within a period regulated with the stock exchange regulations.

The Central Registry shall transfer the shares which are the subject of the auction on the basis of:

- Stock exchange report on concluded transaction,
- Order for the transfer of shares of stock broker - buyer,
- Seller confirmation on payment of the purchase price in full.

The Central Registry transfers shares within three working days of receipt of accurate and complete documentation.

❖ **Tender**

❖ **Acceptance of a public takeover bid,**

Includes:

- the assessment of acceptability of a takeover bid, about which the decision is to be issued by the IRBRS, and based on that
- it makes a decision on the acceptance of the takeover bid, after which
- it deposits shares through an approved broker (with documentation: certified sales order of the Seller for shares that are subject to the acceptance of the takeover offer, the Seller's decision on acceptance of a takeover bid)

❖ **Sale to employees of the company (so-called ESOP method),**

is done under the special incentive conditions, in accordance with the decision of the Government, which refer to:

- discount on the established selling price, which is determined individually for each buyer, in the percentage corresponding to the years of service in the company,
- delayed payment, for a maximum period of up to 20 years

❖ **Combination of previous methods.**

Companies that are subject to privatization may conduct financial restructuring of the debt, or the conversion of the debt into shares of the company.

Risks of privatization

Objectives, of course, come along with risks at the level of the company. In this context it should be borne in mind that privatization is usually associated with the reduction of the workforce and reducing social programs and rights. Such reductions may be conducted by the state prior to privatization, to improve efficiency / reduce losses of companies and thus increase their value and improve their marketing position; or the new owner, with or without the knowledge, approval, and even support of the government. These decisions are very likely subject to corruption.

The economic objectives of privatization are often in a subordinate position in relation to the political, or vice versa, which creates potential conflicts (such as when diminishing the importance of foreign capital, even at the expense of the future better access to international knowledge; when the local elites in or outside the company are given special privileges; when certain ethnic minorities are excluded from the list of potential bidders or they are given preferential access etc.). These situations should be carefully monitored and assessed from the aspect of prevention of corruption, which is the biggest risk in the privatization process.

Problems in the process of privatization

Privatization of individual companies can be much more predictable and less vulnerable to corruption if the state has a detailed, clear privatization policy and strategy, which unambiguously determine elementary rules and regulations. This includes clear criteria on which companies should be privatized and when. The privatization policy should also determine the institutional aspects (whether responsibility is to be given to a separate, central privatization agency or to be divided into different technical ministries) and protective measures of control and surveillance (internal and external audits, parliamentary oversight etc.).

The vulnerability of the privatization process regarding corruption and other forms of abuse in a critical measure is determined by the selected method and modalities of privatization, the general political and administrative environment in the country, the character and quality of the basic economic structure (whether the economy works on the basis of competition, whether it is controlled and regulated by the state), the quality of laws and institutions, rules and regulations relating to the privatization program and its control.

NATASA KREJIC

Attorney



Attorney at the Law Firm Sajic, born in 1978 in Banja Luka, gained the university degree at the University of Banja Luka, Faculty of Law in 2004 and started working in the Law Firm Sajic in 2003 as a legal trainee. In 2004 was registered in the Register of Legal Trainees, passed the bar examination in 2009 and gained the title of expert associate for legal matters. In the Register of Attorneys of the Bar Association of the Republic of Srpska was registered in 2011.

Areas of practice: Corporate Law, M&A, Competition Law, Taxes and Customs, Stock Exchange, Commission of Securities, Central Registry of Securities.

Membership: The Bar Association of the Republic of Srpska, Union Internationale des Avocats (UIA).

Languages: English

E-mail: natasa@afsajic.com

Telephone: 051/223-644, 051/227-620

The Law Firm "Sajić" is a partnership Banja Luka founded in 2003 with headquarters in Banja Luka.

We almost predominantly deal with civil and commercial law. We provide legal advice in all areas of law, represent clients before all courts and government institutions in the Republic of Srpska and Bosnia and Herzegovina, participate in negotiations with domestic and foreign legal and physical entities, give opinions and recommendations regarding the application of regulations, etc.

Our team consists of 20 employees, of which 7 are lawyers. Each of us specializes in just a few narrow fields of law, which enables us to provide our clients with high quality, professional service.