

PROCLAMATION NO...../2019

**A PROCLAMATION TO PROVIDE FOR THE
PRIVATIZATION OF PUBLIC ENTERPRISES**

WHEREAS, it has become necessary to introduce reforms to sustain the country's economic growth and transformation and to create an enabling policy environment for private sector investment;

WHEREAS, it has become necessary to improve the provision of finance for development to contribute to implementation of the country's economic growth strategy;

WHEREAS, it has become necessary to broaden the role and participation of the private sector in the economy;

WHEREAS, it has become necessary to improve the efficiency of public enterprises, enhance their competitiveness, improve their access to capital and improve the quality and accessibility of their services;

WHEREAS, to achieve this objective it is found necessary to implement of a privatization program in an open and transparent manner;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows.

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as the Public Enterprises Privatization Proclamation No. /2019.

2. Definition

In this Proclamation, unless the context otherwise requires:

- 1) "Privatization" means a transaction or transactions resulting in either a sale of assets or share capital of a Public Enterprise, in full or in part, to private ownership;

- 2) "Public Enterprise" means an enterprise governed by the Public Enterprises Proclamation No. 25/1992;
- 3) "Pre-privatization activities" means any activity or process performed by the Ministry intended to prepare a Public Enterprise for privatization;
- 4) "Golden share" means a share in the capital of a company, formed by conversion of a Public Enterprise pursuant to this Proclamation, carrying such special rights as are set out in the articles of association of the company to enable the Government to protect the national interest with voting and veto rights over any board resolution;
- 5) "Agency" means the Public Enterprise Holding and Administration Agency;
- 6) "Ministry" or "Minister" means the Ministry of Finance or the Minister of Finance, respectively;
- 7) "Supervising Authority" means an authority, including the Agency, designated by the Council of Ministers with a view to monitoring, protecting and exercising the ownership rights of the Government in accordance with Public Enterprise Proclamation No. 25/1992;
- 8) "Trustee" means the Trustee Directorate General organized within the Ministry.
- 9) "Person" means a natural person or a juridical person;
- 10) Any expression in the masculine gender includes the feminine.

3. Objectives of Privatization

- 1) The privatization program shall support the country's economic growth and transformation, be conducted based on the principles of transparency, openness and integrity, and shall have the following objectives:
 - (a) to improve the efficiency of Public Enterprises, enhance their competitiveness, attract technical expertise and skill sets, and improve access to capital;
 - (b) to generate revenue and enhance the provision of development finance in order to promote financing activities undertaken by the Government;

- (c) to promote the Country's economic development by enhancing the policy environment for private investment and encouraging the expansion of the private sector.

PART TWO

PRE-PRIVATIZATION ACTIVITIES

4. Institutional Responsibilities for Pre-Privatization Activities

- 1) The Council of Ministers shall determine the Public Enterprise to be fully or partially privatized, taking into consideration the recommendations of the Ministry and the Supervising Authority of the Public Enterprise.
- 2) The Ministry : -
 - (a) shall determine any necessary Pre-privatization activities including when to begin the Pre-privatization process and which activities shall be included in coordination with the Supervising Authority of the Public Enterprise;
 - (b) in consultation with the Supervising Authority of the Public Enterprise, shall determine the modality of each sale along with an indicative price (or price range) and number of shares (or proportion of the company) to be privatized.
 - (c) shall determine the readiness of each Public Enterprise for privatization, taking into account factors including but not limited to the Public Enterprise's valuation, results of any restructuring efforts, current market conditions and the likelihood that the Public Enterprise will attract investors.
- 3) Once a Public Enterprise is deemed ready for privatization and the privatization modality has been determined, upon the recommendation of Ministry, the Agency shall commence implementation of the privatization transaction.
- 4) The management board of a Public Enterprise to be privatized shall:

- (a) Provide the Ministry and the Supervising Authority all information regarding the Public Enterprise as requested;
- (b) prepare the enterprise for pre-privatization and privatization in accordance with instructions given to it by the Ministry, in consultation with the Supervising Authority;
- (c) ensure that the assets of the Public Enterprise do not deteriorate or become dissipated during the pre-privatization or privatization phases;
- (d) Refrain from making any new investments during the privatization or pre-privatization phases except in the ordinary course of business or with the agreement of the Ministry.

5. Public Enterprise Restructuring and Other Activities Prior to Privatization

- 1) Pursuant to Article 4 sub-article (2)-(3) of this Proclamation, the Ministry, in coordination with the Supervising Authority, shall evaluate whether the Public Enterprise has the appropriate capital structure, business strategy, corporate governance structures and reporting and disclosure practices prior to privatization, and take appropriate action in the event of deficiencies.
- 2) The Supervising Authority shall provide to the Ministry any financial and operational analyses, and related supporting information it has already conducted in the course of its oversight efforts to support the Ministry's pre-privatization activities.
- 3) The Ministry shall be responsible for any operational or financial restructuring required and shall ensure that such restructuring is limited to bolstering the value of the Public Enterprise and attractiveness prior to privatization.
- 4) The Ministry shall take all necessary action during the pre-privatization phase to prevent anti-competitive behavior, unfair market practices and excessive market dominance following privatization, in accordance with prevailing laws of the country.

6. Conversion of a Public Enterprise to a Share Company

- 1) Notwithstanding Article 307 (1) of the Commercial Code, a Public Enterprise may be converted into a share company with only one shareholder in preparation for privatization.
- 2) In the event the Public Enterprise is converted into a share company, the capital of the share company shall be divided into shares which shall be held as Government shares until such time as any shares are transferred to private ownership.
- 3) Authorities given to shareholders meetings under the Commercial Code shall be deemed given to the Supervising Authority of the Public Enterprise in accordance with Public Enterprise Proclamation ###/2019;
- 4) All provisions of the Commercial Code shall be applicable, with the exception of the provisions of Articles 307(1), 311, 347(1) and 349.
- 5) Notwithstanding Article 546 Sub-Articles (1) - (4) of the Commercial Code and Article 69(1) and (2) of the Income Tax Proclamation No. 979/2008, the Ministry shall, in converting a Public Enterprise into a share company, have the power to determine the assets and liabilities of the Public Enterprise that may be transferred to share company, fix its capital and increase its capital after reevaluating its assets.
- 6) A Public Enterprise converted into a share company shall cease to exist upon registration of the share company.

7. Valuation of Public Enterprise

- 1) The Ministry shall cause an independent valuation of the Public Enterprise, its assets, units or government-owned shares by a qualified expert.
- 2) The valuation shall be carried out following the completion of any financial and/or operational restructuring overseen by the Ministry and shall be conducted in accordance with guidelines issued by the Ministry.
- 3) The floor or indicative price determined as the result of the valuation shall be subject to approval by the Ministry prior to its usage by the Agency in privatization process.

PART THREE

PRIVATIZATION IMPLEMENTATION FRAMEWORK

8. Privatization implementation

- 1) The Council of Ministers shall have the following powers and duties with respect to privatization implementation activities:
 - (a) for a Public Enterprise accountable to a Supervising Authority other than the Agency , approve the transfer of the Public Enterprise to the Agency prior to the privatization transaction;
 - (b) approve the use and structure of any golden share, and the exercise thereof, taking into account the recommendation of the Ministry and the Agency.
- 2) The Agency shall have all the functions necessary for the implementation of privatization and shall in particular include the following:
 - (a) Develop procedures for conducting sales;
 - (b) Determine the bid evaluation criteria for each tender transaction;
 - (c) Determine the timing of sale, organize and oversee each transaction;
 - (d) Hire experts as needed to assist in carrying out transactions;
 - (e) Publicize the offering appropriately providing sufficient time for interested investors to participate in the transaction;
 - (f) Prepare all necessary documentation and sample agreements;
 - (g) Decide on any post-privatization investment requirements;
 - (h) In consultation with the Ministry, decide whether to grant the right to any investor to pay for sales on an installment basis and the currency of payment;
 - (i) Ensure the systematic execution, legality, transparency and efficiency of the privatization process;

- (j) Submit recommendations to the Government as may be appropriate on policy issues relating to the implementation of the program; and
 - (k) Communicate with the public and publicize the activities of the privatization program.
- 3) Pursuant to Article 4 sub-Article (2)-(4) of this Proclamation, once a Public Enterprise is deemed ready for privatization, and the privatization modality has been determined by the Ministry, , the Agency shall commence the implementation of the privatization transaction, through a dedicated unit at the Agency.
 - 4) The Agency shall determine, in collaboration with the Ministry the final offering size and share price immediately before the commencement of an Initial Public Offerings (“IPO”) or similar exchange- or trading-based share offering or based on final transaction negotiations in the case of competitive bid or similar tender-based sale.
 - 5) The Agency shall revert to the Ministry for their agreement in the event the recommended modality for privatization or the recommended share price or number of shares (or proportion of company) to be offered requires modification as a result of changing market or sector conditions or other factors.
 - 6) Where a Public Enterprise privatization transaction fails, upon request by the Supervising Authority to the Council of Ministers and approval thereof and in accordance with relevant provisions of the Public Enterprises law, the Public Enterprise may be dissolved.

PART FOUR

MODALITIES OF PRIVATIZATION

9. Modalities of Privatization

- 1) The use of any transaction modality of privatization shall be based on the principles of transparency and the goal of securing the most favorable terms for the government.
- 2) In accordance with Sub-article (1) of this Article, any one of the following modes of privatization may be used as appropriate:
 - a. competitive tender;

- 2) A purchaser of a Public Enterprise shall be obliged to implement, within the time limit specified and as agreed in the sales contract, any post-privatization investment.
- 3) The Agency shall monitor the execution of any post-privatization obligations.
- 4) The investor shall be obliged to periodically submit to the Agency information that is necessary for monitoring contractual requirements and to allow the representatives of the Agency to enter and inspect the enterprise at any pre-arranged time to make assessments.

11. Post Privatization Evaluation

- 1) The Agency shall commission an independent expert to conduct an evaluation of the privatization transactions undertaken and issue an annual report of its findings.
- 2) The evaluation report shall assess transfer or extinguishment of Government liabilities, status of any Government guarantees and other contingent liabilities, effects of the absence of Government funding on privatized Public Enterprises, assessment of efficiency gains realized by the private sector, and shall include other assessment measurement parameters as necessary.

12. Transfer of Rights and Obligations of Public Enterprises

- 1) A privatized Public Enterprise shall cease to exist upon the completion of registration of the share company. The rights and obligation of the Public Enterprise shall be transferred to the buyer pursuant to the sales contract.
- 2) Notwithstanding the provisions of sub-Article (1) of this Article, rights and obligations pertaining to receivables and payables shall be transferred to the Trustee where the sales contract provides for the non-transferability of such receivables and payables to the buyer.
- 3) The residual assets and liabilities following the decision of the Ministry, in accordance with Article 6 (5) of this proclamation, on the transfer of assets and liabilities of public enterprise being converted into a share company, shall be transferred to the Trustee.

- 4) The provision of sub Article 1 and 2 of this Article shall similarly be applicable with respect to the transfer of rights and obligation of public Enterprises returned to their former owners by the decision of the Agency Pursuant to Proclamation No 110/1995.
- 5) Employees' pension coverage existing before the privatization of any enterprise shall continue without interruption. The new owner of a Public Enterprise shall respect employers' obligations imposed by the appropriate laws with regard to employees' pension.

13. Settlement of Disputes

- 1) Disputes arising between the Agency and a buyer of a Public Enterprise shall be referred to the appropriate federal court unless the parties have agreed in their contract to submit such disputes to a specific arbitration process or tribunal.
- 2) Where the parties have agreed to submit their disputes to an arbitration tribunal, the proceedings thereof shall be conducted in accordance with the provisions of their contract and that of the Civil Procedure Code.

14. Taxation

- 1) For the purpose of determining taxable income, the calculation of depreciation of assets shall be based on their valuation done in accordance with Article 7 of this Proclamation; provided, however, that it shall be based on the actual amount paid by the buyer where the tender price is lower.
- 2) The Agency shall send to the concerned tax authority the breakdown of asset values determined in accordance with sub-Article 1 of this Article.
- 3) The Agency shall also send to the concerned tax authority the breakdown of values of assets transferred to the buyer and which are subject to the payment of stamp duty in relation to documents of title to property.
- 4) The provision of Article 5(6) of the Stamp Duty proclamation No. 110/1998 shall not be applicable with regard to the value of assets transmitted by the Agency in accordance with Sub-Article 3 of this Article.

PART SIX

MISCELLANEOUS PROVISIONS

15. Use of Proceeds

Any proceeds from privatizations shall be paid net of the costs of the transaction into an Industrial Development Fund bank account administered by the Ministry.

16. Duty to Cooperate and the Responsibilities of the Authority

- 1) Any federal or regional government organ or official shall have the duty to cooperate in furnishing any information or rendering any assistance requested in the course of implementing privatization transaction.
- 2) Without limiting the generality stated in sub-article (1) of this Article, the time limit for furnishing information to the Agency and providing required services to buyers shall be determined by the Agency .
- 3) Time spent waiting for the buyer to comply with formalities in relation to the transfer of title deeds, utility contracts and licenses shall not be considered for the purpose of calculating the time limit.

17. Eviction of illegal Occupants

- 1) A court to which an application of suit is lodged for the eviction of a person alleged to illegally occupy the building or premises of a privatized Public Enterprise and impede the handover thereof, shall, unless a statement of defense showing the legality of the occupation is submitted to it, issue and enforce an eviction order within thirty (30) days.
- 2) The provisions of sub-Article (1) of this Article shall also be applicable with respect to the restitution of properties by the decision of the Agency pursuant to Proclamation No. 110/1995; provided, however, that any defense regarding the legality of the occupation shall not be entertained.

18. Repealed and Inapplicable Laws

- 1) The Privatization of Public Enterprises Proclamation No. 146/1998 and the Privatization of Public Enterprises (Amendment) Proclamation No. 182/1999 are hereby repealed.
- 2) No law, regulation, directive or practice shall, in so far as it is inconsistent with this Proclamation, have force or effect in respect of matters provided for by this Proclamation.

19. Applicable Laws

- 1) The provisions of the investment proclamation shall be applicable to investors participating in the privatization of Public Enterprises.
- 2) Notwithstanding the provision of sub-article (1) of this Article, the definition given to “domestic investor “ under the investment proclamations does not include government or public enterprise for the purpose of implementation of this Proclamation.

20. Effective Date

This Proclamation shall come into force as of the -----day, 2019

Done at Addis Ababa, this _____ day of _____ 2019

Sahilework Zewde
**PRESIDENT OF THE FEDERAL
DEMOCRATIC REPUBLIC OF ETHIOPIA**