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PART II

Statutory Notifications containing Rules and Orders issued by all Ministries and Divisions of the Government of Pakistan and their Attached and Subordinate Offices and Supreme Court of Pakistan

GOVERNMENT OF PAKISTAN

MINISTRY OF PRIVATISATION

[Privatisation Commission]

NOTIFICATION

Islamabad, the 31st July, 2001

**PRIVATISATION COMMISSION
GOVERNMENT OF PAKISTAN**

NOTIFICATION

S.R.O. (I)/2001

In exercise of powers conferred by section 40 of the Privatisation Commission Ordinance, 2000 (LII of 2000), read with sections 22 and 25 thereof, the Privatisation Commission, with the approval of the Federal Government, hereby makes the following rules, namely: -

THE PRIVATISATION (MODES AND PROCEDURE) RULES, 2001

1. Short title and commencement. - (1) These rules may be called the Privatisation (Modes and Procedure) Rules, 2001.

(2) They shall come into force at once.

2. Definition. - (1) In these rules, unless there is anything repugnant in the subject or context:-

(a) "adviser" means an external adviser hired by the Commission with the approval of the Board to advise on a particular privatisation process or any other ancillary activity leading to privatisation;

(b) "negotiated sale process" means the negotiations between the Commission and an interested party for the sale and transfer of the property to be privatised where the conditions specified in sub rule (1) of rule 6 apply; and

(c) "Ordinance" means the Privatisation Commission Ordinance, 2000 (LII of 2000)

(2) All other terms and expressions used, but not defined in these rules, shall have the same meanings as assigned to them in the Ordinance.

3. Manner and procedure for privatisation. - (1) The manner for carrying out the privatisation programme under section 22 of the Ordinance and the procedure for modes of privatisation under section 25 thereof shall, if, and to the extent, the Commission deems necessary, include

(a) legal, technical and financial due diligence of the property being privatised in order to, inter alia,

(i) identify any obstacles to privatisation and suggest, where possible, ways to remove them;

(ii) allow a fair and independent valuation of the property being privatised; and

(iii) prepare a suitable information memorandum together with other marketing instruments;

(b) pre-qualification of prospective bidders to evaluate, where a privatisation requires it, that the prospective bidders are technically and financially in a position to own, manage and operate the assets being privatised;

(c) preparation of bid documents which shall include instructions to bidders and proforma sale instruments and the bid documents shall include appropriate disclaimers to protect the Federal Government, Commission and their respective officers, employees, consultants and advisers in respect of the information provided to the bidders;

(d) holding of pre-bid conferences to discuss concerns of prospective bidders;

(e) creation of an enabling environment; and

(f) carrying out of a bidding process.

(2) Subject to the terms of appointment of an adviser, where an adviser has been appointed for the privatisation, it shall carry out or advise on any or all of the steps specified in clauses (a) to (f) of sub - rule (1).

4. Approval or rejection of highest ranked bidder. - (1) Save in the case of a negotiated sale process, the Commission shall carry out a bidding process which is suited to the needs of the privatisation with the objective of selecting the highest ranked bidder amongst the bidders that he, -

(a) has satisfied the pre-qualification criteria determined by the Commission, if required; and

(b) complied with instructions for bidding provided by the Commission to bidders.

(2) Upon selection of a highest ranked bidder as specified in sub-rule (1), the Board shall refer the matter for approval, or rejection of such highest ranked bidder with full justification, to the Cabinet.

5. **Additional modes of privatisation.** - In terms of clause (f) of section 25 of the Ordinance, there shall be the following additional modes of privatisation namely: -

(a) public offering of shares other than through a stock exchange; [-omitted-]¹

(b) sale of shares, assets, business and property to a person that has a pre-emptive right to acquire the same (or any part thereof) subject to fulfillment of conditions attached to such rights[;]²

[(ba) subscription to shares in the entity being privatised;]³

[(c) transfer of Property to a trust for the employees of an enterprise owned or controlled, wholly or partially, directly or indirectly, by the Federal Government on such terms and conditions as may be approved by the Federal Government]⁴; [-omitted-]⁵

(d) transfer of shares on conversion of exchangeable bonds or any other hybrid equity instrument issued by the President, on behalf of the Islamic Republic of Pakistan, provided that the concerned Divisions of the Federal Government under the Rules of Business, 1973 are consulted, where required[-omitted] [; and]⁶⁷

[(e) Joint Venture.]⁸

¹ Omitted vide Privatisation Commission's Notification No. 16(7)P&C/PC/2002, dated 12th July, 2024. Following amendment was made:

(a) in clause (a), the word "and", shall be omitted;

² Inserted vide Privatisation Commission's Notification No. 16(7)P&C/PC/2002, dated 30th July, 2009 published in the Gazette of Pakistan vide S.R.O. No. 732(I)/2009, dated 15th August, 2009. Following amendment was made:

In clause (b) of rule 5, at the end the "full stop" shall be substituted by "colon"

³ Inserted vide Privatisation Commission's Notification No. 16(7)P&C/PC/2002, dated 12th July, 2024. Following amendment was made:

(b) after clause (b), the following new clause shall be inserted, namely:-

"(ba) subscription to shares in the entity being privatised"

⁴ Inserted vide Privatisation Commission's Notification No. 16(7)P&C/PC/2002, dated 30th July, 2009 published in the Gazette of Pakistan vide S.R.O. No. 732(I)/2009, dated 15th August, 2009. Following amendment was made:

the following new clause shall be added, namely:

"(c) transfer of Property to a trust for the employees of an enterprise owned or controlled, wholly or partially, directly or indirectly by the Federal Government on such terms and conditions as may be approved by the Federal Government".

⁵ The word "and" omitted vide Privatisation Commission's Notification No. 16(7)P&C/PC/2002, dated 26th August, 2024.

⁶ For full stop, at the end, the colon and word "; and" substituted vide Privatisation Commission's Notification No. 16(7)P&C/PC/2002, dated 26th August, 2024.

⁷ Inserted vide Privatisation Commission's Notification No. 16(14)P&C/PC/2001, dated 18th June, 2011 published in the Gazette of Pakistan vide S.R.O. No. 631(I)/2011, dated 18th June, 2011. Following amendment was made:

In the aforesaid Rules, in rule 5, clause (c), for the full stop appearing at the end, a semi-colon and the word "; and" shall be substituted and thereafter the following new clause added, namely: -

"(d) transfer of shares on conversion of exchangeable bonds or any other hybrid debt equity instrument issued by the president, on behalf of the Islamic Republic of Pakistan, provided that the concerned Divisions of the Federal Government under the Rules of Business, 1973 are consulted, where required."

⁸ The following new clause inserted vide Privatisation Commission's Notification No. 16(7)P&C/PC/2002, dated 26th August, 2024, namely "(e) Joint Venture."

[5A. Combined modes of privatisation. - The modes of privatisation provided for in the Ordinance and under these rules may be applied independently or together with other modes.]⁹

6. Negotiated sale. - (1) The Commission may adopt the negotiated sale process for any of the modes of privatisation specified in section 25 of the Ordinance and rule 5 of these rules, if –

- (a) in the opinion of the Board, sufficient interest for a privatisation has not been received;
- (b) the Board has recommended to the Cabinet and the Cabinet has authorized the Commission to initiate the negotiated sale process;
- (c) the Board has approved the party or parties interested in purchasing the property being privatised;
- (d) a team for carrying out the negotiated sale process has been constituted by the Board which shall include a representative from the Ministry under whose jurisdiction the entity being privatized falls; and
- (e) the Board has delegated full power to the negotiation team for carrying out the negotiated sale process and defined the parameters for negotiation.

(2) On conclusion of the negotiated sale process, the terms and conditions of the transfer of the property to be privatised to the interested party shall be submitted to the Cabinet for consideration and approval.

[7. A Special Purpose Vehicle (SPV) incorporated [in or]¹⁰ outside Pakistan, which is wholly and directly or indirectly owned and controlled by the bidder or purchaser and where the performances and obligations of such SPV are irrevocably and unconditionally guaranteed by the bidder or purchaser vide an instrument approved by the Privatisation Commission, may acquire property in a privatisation in accordance with the provisions of the Ordinance. The Privatisation Commission shall have the absolute discretion to impose such eligibility criteria in the Request for Statement of Qualification (RSOQ) documents with regards to a SPV as it may deem expedient and proper from time to time.]¹¹

[No. F. 11(1)L/PC/2000-P&C]

[No. F. 16(14)P&C/PC/2001]

[No. F. 16(7)P&C/PC/2002]

**Munir Ahmed
Director**

⁹ Inserted vide Privatisation Commission's Notification No. 16(7)P&C/PC/2002, dated 12th July, 2024. Following amendment was made:

- (2) after rule 5, amended as aforesaid, the following new rule 5A shall be inserted, namely: -
"5A. Combined modes of privatisation. - The modes of privatisation provided for in the Ordinance and under these rules may be applied independently or together with other modes."

¹⁰ Inserted vide Privatisation Commission's Notification No. 16(7)P&C/PC/2002, dated 12th July, 2024. Following amendment was made:

- (3) in rule 7, after the word "incorporated", the words "in or" shall be inserted.

¹¹ Inserted vide Privatisation Commission's Notification No. 16(14)P&C/PC/2001, dated 22nd January, 2007 published in the Gazette of Pakistan vide S.R.O. No. 67(I)/2007, dated 24th January, 2007. Following amendment was made:

In the aforesaid Rules, after rule 6, the following new rule shall be added namely:-

"7. A Special Purpose Vehicle (SPV) incorporated outside Pakistan, which is wholly and directly or indirectly owned and controlled by the bidder or purchaser and where the performances and obligations of such SPV are irrevocably and unconditionally guaranteed by the bidder or purchaser vide an instrument approved by the Privatisation Commission, may acquire property in a privatisation in accordance with the provisions of the Ordinance. The Privatisation Commission shall have the absolute discretion to impose such eligibility criteria in the Request for Statement of Qualification (RSOQ) documents with regards to a SPV as it may deem expedient and proper from time to time."