

GUIDELINES ON PRIVATISATION

Guidelines on Privatisation and Commercialisation

1. Introduction

The then Head of State, Commander in Chief of the Armed Forces of the Federal Republic of Nigeria, His Excellency, General Abdulsalami Alhaji Abubakar, announced in his national broadcast on July 20, 1998 that Government would privatise its investments in Telecommunications, Electricity, Petroleum refineries, Petrochemicals, Coal and bitumen production, and Tourism, in addition to spill-overs from the first phase of privatisation. Under the programme, Government will retain 40% of the equities of the affected enterprises whilst 40% will be alienated to strategic investors with the right technical, financial and management capabilities. The remaining 20% will be sold to the Nigerian public through the Stock Exchange.

1.2 President Olusegun Obasanjo in his Presidential order to the Vice President of the Federal Republic of Nigeria dated 6th July 1999, directed that as the first step in the phased implementation of the administration's privatisation programme, action was to be initiated to enable the sale of shares listed on the Lagos Stock Exchange and owned by the Federal Government and its agencies in:-

- Commercial and Merchant Banks
- Cement Plants
- Petroleum Marketing Companies

The sales are to be completed by December, 1999 and Core Investors are to be encouraged to buy into any of the privatised enterprises which will be paid in foreign currencies.

1.3 The second phase will consist of hotels and vehicles assembly plants, amongst others.

1.4 The third phase will involve work on the companies currently being prepared for privatisation or currently being audited, including NEPA, NITEL, NAFCON, Nigeria Airways, Refineries, etc.

2. Objectives of the Privatisation and Commercialisation Programme

The objectives of the Privatisation and Commercialisation programme are:

- i) to restructure and rationalise the public sector in order to lessen the dominance of unproductive investments in the sector;
- ii) to re-orientate the enterprises for privatisation and commercialisation towards a new horizon of performance improvement, viability and over all efficiency;
- iii) to raise funds for financing socio-economic developments in such areas as health, education and infrastructure;
- iv) to ensure positive returns on public sector investments in commercialised enterprises, through more efficient management;
- v) to check the present absolute dependence on the Treasury for funding by

otherwise commercially oriented parastatals and so, encourage their approach to the Nigerian Capital Market to meet their funding requirements; vi) to initiate the process of gradual cession to the private sector of such public enterprises which are better operated by the private sector; vii) to create more jobs, acquire new knowledge and Technology and expose the country to international competition.

3. Legal Framework

The legal framework, for the programme is the Public Enterprises (Privatisation and Commercialisation) Act of 1999. It was promulgated by the previous administration.

4. Establishment and Functions of the National Council on Privatisation

The establishment and functions of the National Council on Privatisation as provided for in Sections 9(11) of the Privatisation Act are as follows:-

(1) There is hereby established the National Council on Privatisation (in this Act referred to as "the Council").

(2) The Council consists of:-

- a) the Vice President, as Chairman;
- b) the Minister of Finance, as Vice Chairman;
- c) the Attorney-General of the Federation and Minister of Justice;
- d) the Minister of Industries;
- e) the Secretary to the Government of the Federation;
- f) the Governor of the Central Bank of Nigeria;
- g) the Chief Economic Adviser to the President;
- h) four other members to be appointed by the President; and
- i) the Director-General of the Bureau of Public Enterprises.

(3) Notwithstanding the provisions of subsection (2) of this section, the Council may co-opt the supervising Minister of an affected public enterprise to attend relevant meetings of the Council.

B-Functions and Powers of the Council

(11) The functions and powers of the Council are to:-

- (a) determine the political, economic and social objectives of privatisation and commercialisation of public enterprises;
- (b) approve policies on privatisation and commercialisation;
- (c) approve guidelines and criteria for valuation of public enterprises for privatisation and choice of strategic investors;
- (d) approve public enterprises to be privatised or commercialised;
- (e) approve the legal and regulatory framework for the public enterprises to be privatised;
- (f) determine whether the shares of a listed public enterprise should be by public or private issue or otherwise and advise the Government of the Federation, accordingly;
- (g) determine the time and when a public enterprise is to be privatised;
- (h) approve the prices for shares or assets of public enterprises to be offered for sale;
- (i) review, from time to time, the socio-economic effects of the programme

of privatisation and commercialisation and decide on appropriate remedies;

- (j) approve the appointment of privatisation advisers and consultants and their remuneration;
- (k) appoint as and when necessary committees comprising persons from private and public sectors with requisite technical competence to advise on the privatisation or commercialisation of specific public enterprises;
- (l) approve the budget of the Council;
- (m) approve the budget of the Bureau;
- (n) supervise the activities of the Bureau and issue direction on the implementation of the privatisation and commercialisation programme;
- (o) receive and consider, for approval, the audited accounts of the Bureau;
- (p) submit to the President of the Federal Republic of Nigeria, in each year a report on the activities of the Council and the Bureau;
- (q) receive regular and periodic reports from the Bureau on programme implementation and give appropriate directions; and
- (r) perform such other functions as may, from time to time be necessary to achieve its objectives.

5. Functions of the Bureau

The functions of the Bureau are as provided for in sections 13 - 16 of the Privatisation Act:-

(13) The functions of the Bureau with respect to privatisation are to:-

- (a) implement the Council's policy on privatisation;
- (b) prepare public enterprises approved by the Council for privatisation;
- (c) advise the Council on further public enterprises that may be privatised;
- (d) advise the Council on the capital restructuring needs of the public enterprises to be privatised;
- (e) carry out all activities required for the successful issue of shares and sale of assets of the public enterprises to be privatised;
- (f) make recommendations to the Council on the appointment of consultants, advisers, investment bankers, issuing houses, stockbrokers, solicitors, trustees, accountants and other professionals required for the purposes of privatisation;
- (g) advise the Council on the allotment pattern for the sale of the shares of the public enterprises set out for privatisation;
- (h) oversee the actual sale of shares of the public enterprises to be privatised, by the issuing houses, in accordance with the guidelines approved, from time to time, by the Council;
- (i) ensure the success of the privatisation exercise taking into account the need for balance and meaningful participation by Nigerians and foreigners in accordance with the relevant laws of Nigeria; and
- (j) perform such functions with respect to privatisation as the Council may, from time to time, assign to it.

(14) The functions of the Bureau in respect of Commercialisation;

- (a) implement the Council's policy on commercialisation;
- (b) prepare public enterprises approved by Council for commercialisation;
- (c) advise the Council on further public enterprises that may be commercialised;
- (d) ensure the updating of the accounts of all commercialised enterprises to ensure financial discipline;
- (e) ensure the success of the commercialisation exercise and monitor, on a

continuous basis for such period as may be considered necessary, for the operations of the public enterprises after commercialisation;

- (f) review the objectives for which public enterprises were established in order to ensure that they adapt to the changing needs of the economy;
- (g) ensure that public enterprises are managed in accordance with sound commercial principles and prudent financial practices;
- (h) interface with the public enterprises, together with the supervising Ministries, in order to ensure effective monitoring and safeguarding of the public enterprises' managerial autonomy;
- (i) ensure that the Board and Management of each commercialised enterprise and the Government of the Federation, keep to the terms and conditions of the Performance Agreements, if any, between the public enterprise concerned and the Government of the Federation;
- (j) maintain and review on a continuous basis, any Performance Agreement between a public enterprise and the Government of Federation;
- (k) evaluate and recommend to the Council whether or not a public enterprise is eligible for funding through grants, loans, subventions or equity; and
- (l) perform such functions with respect to commercialisation as the Council may, from time to time, assign to it.

(15) The Bureau shall:-

- (a) provide secretariat support to the Council; and
- (b) carry out such other duties and responsibilities as may be assigned to it from time to time by the Council.

(16) The Bureau shall, subject to the overall supervision of the Council, have powers to:-

- (a) acquire, hold and manage movable and immovable property;
- (b) enter into contracts or partnerships with any company, firm or person which in its opinion will facilitate the discharge of its functions;
- (c) request for and obtain from any public enterprise statistical and other information including reports, memoranda and audited accounts and other information relevant to its functions under this Act; and
- (d) liaise with relevant bodies or institutions locally or overseas for effective performance of its functions under this Act.

6. Definitions

For the purpose of this programme the following definitions will be used:

(a) Full Privatisation

Means divestment by the Federal Government of all its ordinary shareholding in the designated enterprise.

(b) Partial Privatisation

Means divestment by the Federal Government of part of its ordinary shareholding in the designated enterprise.

(c) Full Commercialisation

Means that enterprises so designated will be expected to operate profitably on a commercial basis and be able to raise funds from the capital market without government guarantee. Such enterprises are expected to use private sector procedures in the running of their businesses.

(d) Partial Commercialisation

Means that such enterprises so designated will be expected to generate enough revenue to cover their operating expenditures. The government may consider giving them capital grants to finance their capital projects.

7. In both full and partial commercialisation no divestment of the Federal Government's shareholding will be involved, and subject to the general regulatory powers of the Federal Government the enterprises shall:-

- (i) Fix rate, prices and charges for goods produced and services rendered;
- (ii) Capitalise assets; and
- (iii) Sue and be sued in their corporate names.

8. Implementation Arrangements

(a) Technical/Financial Advisers

World class advisers comprising investment banks, lawyers and other consulting firms shall be engaged to undertake strategic review, restructuring and sale preparation in respect of affected enterprises, based on an approved terms of reference. However, only consultants that are registered by the Bureau of Public Enterprises will be eligible for consideration.

(b) Committees and Sub Committees

The National Council on Privatisation (NCP) in accordance with the provisions of the Public Enterprises (Privatisation and Commercialisation) Act of 1999 will from time to time appoint committees and sub-committees comprising knowledgeable individuals to tackle some of the preparatory works necessary at enterprise level in order to ensure a speedy and smooth privatisation/commercialisation exercise.

(c) Floatation Advisers

Public offer of shares through the Stock Exchange will be the dominant method of privatisation to be used in the sale of the 20% equity reserved for Nigerian investors under the programme. In order to handle the floatation of the shares of affected enterprises on the Stock Exchange, the National Council on Privatisation (NCP) shall appoint professional advisers, in accordance with powers conferred on it to do so by Section 13 (c) of the Public Enterprises (Privatisation and Commercialisation) Act of 1999. The most important professional advisers in each case are:-

- i) The Issuing House
- ii) The Solicitor to the Issue
- iii) The Reporting Accountant
- iv) The Stockbroker to the Issue
- v) Asset Valuers

These professional advisers are responsible for gathering, analysing and reporting on the operations of the affected enterprise, in such a way as to enlighten the prospective investor on the activities of the enterprise to be privatised and whose shares are being sold. The responsibilities of these advisers are described briefly hereunder:-

(i) Issuing House

- Preparation of information memorandum, prospectus, application to the Securities and Exchange Commission (SEC) for the offer price and the Stock Exchange for listing;
- Sale of shares and receiving subscription funds;
- Preparation of the basis of allotment;
- Representing the BPE and the company before SEC and the Stock Exchange;
- Co-ordination of all-parties meetings culminating in the Completion Board Meeting.

(ii) Reporting Accountant

The Accountants are responsible for providing accounting data and calculations for forecasts of the Company's future profits. In expressing his opinion on forecasts, the Reporting Accountant must consider the following:-

- The general character and recent history of the company's business with particular reference to its main products, markets, customers, suppliers, labour force and trend of results.
- The accounting policies normally adopted in preparing the Company's Annual Accounts and the fact that those have been consistently applied in the preparation of profit forecasts.
- Whether or not the preparation of the forecast was consistent with the economic, commercial, marketing and financial assumptions which the Directors have stated to be the underlying bases.
- The Company's general procedures in the preparation of forecast. In particular, the accountant would ascertain whether forecasts are regularly prepared for management purposes and if so, the degree of accuracy and reliability normally achieved. He would also wish to discover the extent to which the forecast results of the expired period are supported by reliable interim accounts; and how the forecasts take account of any material exceptional items;
- Matters of general interest including the adequacy of provisions made for foreseeable losses and contingencies, and the adequacy of working capital as indicated by properly prepared cash-flow forecasts. All these are done to ensure that ultimately, the new shareholders would be buying a good product.

(iii) Solicitors to the Issue

The Solicitor is expected to primarily advise on compliance with the law at every stage of the exercise. He is expected to:-

- Examine the Company's Memorandum and Articles of Association to ensure that those provisions which are considered unnecessary in a public limited liability company are deleted.
- Cause all the necessary resolutions for the different stages of the floatation e.g. restructuring of capital, creation of new shares etc., to be passed.
- Registration of all documents and resolutions with the Corporate Affairs Commission and other Regulatory agencies.
- Following up verifications with the Land Registry etc., on the title deeds held by the company.
- Preparation of Management Agreements, Sale and Purchase

Agreements, Shareholders' Agreement etc., where necessary or reviewing same to ensure that the interest of the company and country are safeguarded.

- Take such actions as are considered necessary in a public floatation in accordance with the law.

(iv) The Stockbrokers to the Issue

The principal role of the Stockbroker is to introduce the Securities on the trading floor of the Stock Exchange. Technically, shares of a publicly quoted Company can only be traded on the floor of the Stock Exchange.

(ii) Asset Valuers

Asset Valuers undertake the professional valuation of the assets of the affected enterprises to provide a guide on the current replacement value of the Company.

9. Marketing of Shares of Enterprises Designated for privatisation

9.1 In order to ensure effective coverage of the country, the following arrangements will apply:-

(a) Availability of Application Forms:-

The maximum possible number of people would be given the opportunity to apply for the shares of privatised public enterprises. Therefore, application forms will be printed in sufficient quantities and distributed to all local government areas in the country.

Abridged prospectus outlining the main features of the offer will be published in national newspapers.

(b) Minimum Application

In order to ensure widespread ownership of shares amongst the different classes in the society, the minimum application for general allotment of shares shall be 100 shares of 50k each. In this way low income earners and even students will be able to participate in the privatisation exercise.

(c) Distribution of Application Forms

Application forms will be distributed through the branch network of the banking system, stockbrokers, local government offices, State Investment companies, Post Offices, Offices of Chambers of Commerce and Industry across the country, State Ministries of Commerce and Industries, Nigerian Missions abroad. Distribution of application forms to receiving agents will be programmed to commence about one week before the opening of application list to prevent late arrival of forms.

9.2 Applicable Prices

The application prices of shares will be as determined by the National Council on Privatisation on the recommendations of the Bureau of Public Enterprises.

9.3 In line with the Privatisation Act, shares will be made available for participation by all interested investors subject to strict conformity with the following guidelines:-

(a) Multiple applications will not be allowed.

(b) Share of privatised enterprises are to be allotted equally between Federal Constituencies. Only residents of the Constituencies are expected to buy such shares.

(c) Fictitious names used in applications will be rejected.

(d) Only Nigerian citizens aged 18 and above are eligible.

9.4 Funding of Share Purchase

Government will provide the enabling environment to facilitate access to capital credit for purchase of shares by the general public. Employers of Labour in both the public and private sectors are urged to extend financial assistance to their employees to enable them purchase shares in privatised enterprises. Commercial Banks in the country are enjoined to extend credit to their adjudged customers against the security of share certificates to be issued. In this way even those who do not have savings will be able to participate in the programme.

10. Debt conversion programme and privatisation

Participation is open to owners of converted debts subject to allotment principles guiding the privatisation programme.

11. COMMUNICATIONS

A co-ordinated and integrated communications programme has been developed to ensure that the concept of privatisation, the processes adopted and the affected enterprises are marketed in such a way that all stakeholders participate effectively in the programme. This is with a view to building a better Nigerian society for the optimisation of the economic resources. Extra effort will be made to mobilise and sensitise the grassroots.

12. Allotment of Shares

12.1 Allotment of shares in privatised enterprises will generally be guided by government policy of "wide geographical spread of ownership". All share allotments will be published in national newspapers. The shares on offer to Nigerians would be sold on the basis of equality of Federal Constituencies.

12.2 Staff Participation

A minimum of not less than 1% of total shares on offer shall be reserved for the staff of any privatised enterprise.

12.3 Limitation on Individual Shareholding

No individual shall be allowed to acquire more than 1% equity in any enterprise whose shares are offered for sale under this programme and where applicants resort to multiple applications, these will be rejected outright or cancelled if subsequently discovered. In the event they will be refunded their application money only.

12.4 General Allotment

The shares on offer to Nigerians shall be sold on the basis of the equality of Federal Constituencies and of the residents of the Federal Capital Territory, Abuja.

13. Strategic Investors/Core-Groups

13.1 Core Investors or Strategic Investors can be described as formidable and experienced groups with the capabilities for adding value to an enterprise and making it operate profitably in the face of international competition. They should possess the capabilities of turning around the fortune of such an enterprise, if by the time of their investment, the enterprise is unhealthy. The major characteristics that distinguish strategic/core group investors are:-

(a) They must possess the technical know-how in relation to the activities of the enterprises they wish to invest in. For example, a Core Investor into a Cement Company must have access to cement production expertise with regards to optimal use of the machinery, maintenance of such machinery and other technical aspects of Cement Production such as procurement of raw materials, etc.

(b) The Core Investors must also possess the financial muscle, not only to pay competitive price for the enterprise they wish to buy into but also to turn around its fortune, using their own resources without relying on the Government for funds. Each Core/Strategic Investor is expected to prepare a Short/Medium/Long term plan for the development of the enterprise and indicate how it will be financed.

(c) The Core Investor must have the management know-how to run a business profitably in a competitive environment where market forces dictate the business environment.

13.2 Given the magnitude of investment level in the utilities earmarked for privatisation, the lack of absorptive capacity of the Nigerian Capital Market, our low technological level among other reasons, it is quite obvious that there is need to utilise the services of core investors in the new dispensation.

13.3 In consonance with S(4) of the Privatisation Act, privatised enterprise which requires participation by Strategic Investors may be managed by the Strategic Investors as from the effective date of privatisation on such terms and conditions as may be agreed upon.

14. Procedures for identifying strategic/core investors

14.1 There is need to employ the services of World Class investment banks, lawyers and other consultants (as privatisation advisers) in the identification and selection of Core Investors. The starting point in the identification of strategic/Core Investors is to place advertisements in Local and International Journals and Magazines inviting strategic investors to submit their expressions of interest to invest in the specified public enterprises. They are then supplied with copies of laws and regulations on privatisation of the country and an information memorandum on the affected enterprise. At the same time, they are given a specific period within which to undertake due diligence studies on the subject enterprise and submit economic bids to the implementation agency for evaluation. After submission of their bids interviews would be held with the parties concerned to discuss their bid contents and the National Council on Privatisation will select the Core Investors.

14.2 The Council intends to use the Technical and Financial Advisers (Privatisation Advisers) as the leading light in the identification and assessment of Core Investors. Such advisers know fairly intimately who are the major actors in the different industries and almost invariably they would

have dealt with them elsewhere in the world. A Committee of the Council, supported by the Advisers will pre-qualify and later interview those adjudged suitable for further negotiations culminating in recommendations to be made to the Council for ultimate appointment as the Strategic/Core Investor to acquire up to 40% of the equity capital of the affected enterprise. Management and Shareholders Agreements will be signed to protect the enterprise from undue interference in routine business decisions by ministry officials post privatisation.

14.3 The critical areas of interest in negotiations with the potential strategic/core investors are:-

- (a) The price to be paid for the 40% equity to be acquired.
- (b) The terms of payment.
- (c) The role of the Strategic/Core Investor in the future management of the public enterprise being privatised.
- (d) The level of participation by Nigerian managers and technology transfer.
- (e) The future development of the public enterprise as perceived by the Strategic/Core Investor.
- (f) The funding arrangements for rehabilitation expansion or diversification of the enterprise post-privatisation.
- (g) Staff welfare, retraining and development.

14.4 The entire process of identifying Strategic/Core Investors will be open and transparent.

15. Timing Of implementation

15.1 The Council will draw up a detailed implementation time table covering the entire list of enterprises to be privatised and prioritise the pace of implementation. In the first batch, all those enterprises already listed on the Stock Exchange will be privatised subject to the absorptive capacity of the capital market. The other phases will be implemented as outlined by Mr. President.

15.2 In respect of the 20% equity reserved for Nigerian investors in NITEL, NEPA, NAFCON and others, adequate time will be given to the Strategic investors to settle down and add value to these organisations before arrangements are made to offer the shares of the affected enterprises to the general investing public through the Stock Exchange. This may take anything between two to three years. It is also quite clear that due to the size of the offering it would be necessary to stagger such offerings in tranches to accord with the absorptive capacity of the Nigerian Capital Market.

16. Issue of share certificates

Share Certificates shall be issued within the usual time specified by applicable regulations to enable successful allottees to exercise their ownership rights in the affected enterprises. However, the Council in collaboration with the SEC and the Stock Exchange will together institute measures designed to outlaw nominal transfers post-privatisation, so as to

prevent irregular accumulation of privatised shares.

17. Accounting to government in respect of completed privatisation

All proceeds from completed sales shall be paid into the Consolidated Revenue Fund and Federal Government will decide on the use of such funds. This will include the use of the funds for productive investment and for the improvement of education, agriculture, health and the settlement of Nigeria's External Debts.

18. For further information please contact:-

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