

OMAN: PRIVATISATION UPDATE



INTRODUCTION

The Sultanate of Oman (**Oman**) has recently published the implementing regulations (Decision No. 4/2020 of the Public Authority for Privatisation and Partnership (**PAPP**) (the Implementing Regulations) for Decree No. 51/2019 (**Privatisation Law**) regulating the privatisation of state assets in Oman. Following the recent major restructuring of the Omani government, Royal Decree No. 110/2020 subsequently abolished the Public Authority for Privatisation and Partnerships (**PAPP**), thereby transferring its competencies, assets, rights, obligations and holdings to the Ministry of Finance whilst replacing all references of the PAPP wherever it occurs in the laws to the Ministry of Finance (**Authority**).

The Privatisation Law represents a huge step forward in the modernisation of Oman's economy in line with the Oman Vision 2040. One way in which the Privatisation Law can help modernise Oman's economy is to reduce Oman's reliance on the oil & gas industry- currently, the oil & gas industry contributes almost half of Oman's GDP, however Oman's plan to diversify the sources of its GDP will be greatly aided by the cash freed up by privatising state assets to enable other investments.

This article considers the provisions of the Privatisation Law and the Implementing Regulations and key points to note.

APPLICABILITY OF THE PRIVATISATION LAW

The Privatisation Law provides that it is applicable to:

- Privatisation Projects (defined as government facilities and utilities (**Public Projects**) or companies partially or wholly directly or indirectly owned by the government and of which ownership or management, as the case may be, will be transferred to a private person by a decision of the Council of Ministers (**Council**));
- Projects of Conversion into Companies (defined as Public Projects which the Council decide to convert into a shareholding company wholly owned by the government); and
- consultancy contracts concluded in respect of Privatisation Projects and Projects of Conversion into Companies.

The Privatisation Law also provides that the provisions of Decree No. 36/2008 (known as the Tender Law) shall not apply to the above projects and that the privatisation of any Public Project shall be a part of a plan prepared by the Authority in accordance with the provisions of the Privatisation Law, that clarifies the policies and the purposes of such privatisation as well as the method of its implementation (**Privatisation Programme**) or approved by the Council (however Article 4 of the Implementing Regulations expands upon this to state that further suggestions for Privatisation Projects cannot be proposed until one year after the date of approval of the Privatisation Programme by the Council).

PRIVATISATION PROGRAMME

Pursuant to Article 7 of the Implementing Regulations, the Authority is required to prepare and submit the Privatisation Programme to the Minister of Finance (the Minister), in preparation for its approval by the Council. The Authority is required to ensure that the Privatisation Programme includes:

- the economic objectives and benefits to be achieved through the Privatisation Programme;
- particular privatisation priorities within various economic sectors;
- suggested Privatisation Projects; and
- a proposed timeframe for the implementation of the Privatisation Programme.

EXPRESSIONS OF INTEREST

Prior to launching a tender, Article 24 of the Implementing Regulations provides that the Authority may explore interest in the Privatisation Project. This can be done through an invitation to submit a letter of intent for the Privatisation Project which can be published on the Authority's website and by any other medium deemed appropriate by the Authority.

QUALIFICATION

Once the Authority has determined that there is interest in a Privatisation Project, it will post an invitation to the qualification process on its website and any other medium it deems appropriate, provided that it includes the following information:

- a summary of the Privatisation Project;
- the expertise required for qualification;
- financial solvency requirements; and
- the closing date and method for the submittal of qualification documentation.

The Authority is permitted to request clarifications on any qualification documentation submitted, and pursuant to Article 30 of the Implementing Regulations, the qualification applications shall be evaluated according to:

- any conditions stated in the qualification documents;
- the financial solvency of the applicant;
- the previous track record of the applicant;
- the expertise of the applicant; and
- any other standards determined by the Authority.

Once the Authority has concluded its qualification procedure, pursuant to Article 31 of the Implementing Regulations, it can notify applicants of those successfully qualified by any means that it deems appropriate.

INVITATION TO TENDER

Pursuant to Articles 5 and 6 of the Privatisation Law, the Authority shall be in charge of calling for tenders and preparing for competition over a Privatisation Project as indicated in the Implementing Regulations. Such tenders will be:

- assessed by independent consultants who have fulfilled the conditions of technical competence, good reputation and international expertise; and
- be chosen by the Authority through procedures in which the principles of transparency, openness, equality of opportunities, equality and freedom of competition are observed.

The Implementing Regulations determine the principles and standards of assessment for a tender process. We note however that Article 23 provides that the prescribed tender process does not apply to Privatisation Projects implemented through "private or public offering". It seems therefore that the tender process would not apply in the case the privatisation is achieved through new shares being issued rather than existing shares being transferred.

In preparing an invitation for tender, Articles 32 and 33 of the Implementing Regulations provide that the document can be Arabic, English or bilingual and must be approved by the Minister prior to issue. Additionally, it is required to contain:

- a detailed statement of the assets, liabilities and obligations of the Privatisation Project;
- basic information, objectives and conditions of the Privatisation Project;
- technical and financial conditions to be met;
- documents to be submitted, dates and procedures to be complied with (including the closing date for the submission of offers); and
- any other requirements determined by the Authority.

To circulate an invitation for tender, the Authority is required to invite qualified applicants to purchase the document, following which, pursuant to Article 35 of the Implementing Regulations, a period of at least thirty days (which may include time for bidders to submit queries) shall be specified for the submittal of bids.

TENDER

To submit their bid, a bidder, pursuant to Articles 38 to 40 of the Implementing Regulations, must:

- prepare one original copy of their bid, sign and seal the same and submit the number of copies of the offer specified in the invitation to tender;
- include in the bid envelope a bid bond (in the form of an unconditional and irrevocable bank guarantee, issued by the bidder in favour of the Authority by a Omani bank or a branch of a foreign bank registered at the Central Bank of Oman, provided that the validity period of the bond is not less than ninety days after the expiry of the validity period of the offer) and all the documents and requirements stated in the invitation to tender; and
- ensure that the bid envelope is well closed and contains the name of the bidder and particulars of the Privatisation Project.

The Authority has the ability, pursuant to Article 43 of the Implementing Regulations to request bidders to clarify their bids or provide additional information.

AWARD

Article 8 of the Privatisation Law (and Article 47 of the Implementing Regulations) provides that each Privatisation Project will be awarded to the bidder offering the best economic terms after "standardising the comparison principles of the bids from all technical and financial aspects, taking in consideration all the factors affecting the determination of the financial value of bids according to the conditions, nature and importance of the Privatisation Project".

Notwithstanding the above, Article 7 of the Privatisation Law provides that the Authority may invite the winning bidder for meetings in order to negotiate certain financial and technical requirements, however such negotiation will not "cover any matters that the invitation for tender considered as unnegotiable or about which the winning bidder did not express any reservations in his bid". If such negotiations fail, the Authority has the right to negotiate with other bidders as per their ranking based on the same principles stated in the previous paragraph until a final agreement is reached with any of them, otherwise, all bids shall be rejected. In all cases, the Authority may not negotiate again with a bidder with whom negotiations have failed.

The Implementing Regulations determine the process of award, however provide at Article 23 that the award process described therein does not apply to Privatisation Projects implemented through private or public offering. Like the tender process, it seems therefore that the award process would not apply in the case the privatisation is achieved through new shares being issued rather than existing shares being transferred.

PROJECT COMPANY

Pursuant to Article 10 of the Privatisation Law, a successful bidder is required to establish an Omani shareholding company to which all of the assets and liabilities of the relevant Public Project shall devolve. In establishing such company, Article 12 of the Privatisation Law provides that such company's share capital may be held 100% by foreign parties.

PRIVATISATION CONTRACT

Article 50 of the Implementing Regulations provides that a privatisation contract will be concluded between the Minister and the successful bidder after approval of the award decision. The contract is required to include the following details:

- the type and legal form of the project company;
- procedures for opening bank accounts, paying privatisation proceeds and transferring ownership of the Privatisation Project;
- details of supplemental agreements such as shareholders' agreements;
- business plans of the project company; and
- any other details required by the Authority.

PROJECTS OF CONVERSION INTO COMPANIES

In terms of Projects of Conversion into Companies, Article 10 of the Privatisation Law, and Article 20 of the Implementing Regulations, provides that the Minister may, after obtaining the approval of the Council, convert a Public Project or a part thereof into a Shareholding Company that is wholly owned by the government in order to raise the efficiency level of management and operation of the Public Project, or in preparation for its privatisation, as indicated in the Implementing Regulations.

Additionally, the board of directors of the project company is required pursuant to Article 11 of the Privatisation Law, and Article 22 of the Implementing Regulations, to submit to the Minister bi-annual reports that include a detailed statement of the actions and procedures assumed thereby to prepare the company for privatisation.

EMPLOYEES

The Privatisation Law sets out a number of provisions relating to Omani employees of a Public Project who are affected by the privatisation of a Public Project or Projects of Conversion into Companies. For instance, a project company is required, pursuant to Article 19 of the Privatisation Law, to employ such employees and to sign an employment contract with each of them. The salaries and other financial benefits provided to such employees by the project company are also required to not be less than what they used to obtain before their transfer. Additionally, the project company cannot dismiss the transferred employees for five years from the date of their transfer, provided that the employees respect 'work regulations and controls'.

IMPACT

One of the key requirements of the Privatisation Law is an economic benefit being provided to Oman, which indicates that the changes do not herald a 'fire sale' of state assets, as has been seen in other jurisdictions implementing privatisation policies. Instead, it appears that a careful, and structured approach will be taken, ensuring that only assets which would benefit from private ownership, will be privatised.

In this regard, the motivation behind privatisations can be seen in the comments of Fabio Scacciavillani, chief strategic officer at the Oman Investment Fund (quoted in the Omani press), who has stated that in Oman "borrowing is done only to implement infrastructure projects that will produce a return. This is applying the golden rule, that is, to pay for current expenditures from revenues, and pay for return yielding projects by financing them". As such, it is clear that a situation such as the UK model, where national utilities were privatised, yet the UK now has a larger public debt than at the time the utilities were state assets, is sought to be avoided.

In terms of prioritisation within its privatisation programme, Oman has previously indicated plans to privatise the land and maritime transport sector over the next three years. As a part of this, it is understood that Oman Shipping (which provides maritime transportation of crude oil, LNG, chemicals and containers with a fleet of around 70 ships), is being prepared for privatisation. In terms of deals that have already occurred, we advised China State Grid on its acquisition of a 49% stake in the Oman Electricity Transmission Company (which completed earlier this year). We note that a number of other privatisations of electricity assets are anticipated.

Given all of the above, and due to a GDP heavily reliant on oil & gas revenues, despite having fewer reserves than its neighbours, and diversification a key goal of the Oman Vision 2040, the privatisation of state assets is likely to continue to gather pace in Oman to deliver greater economic efficiency and free up capital for other investments by the Omani government.

FURTHER INFORMATION

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