

***REPUBLIC OF MONTENEGRO
DECREE ON THE SALE OF SHARES
AND COMPANY ASSETS BY PUBLIC
AUCTION***

1. GENERAL

Article 1.

This Decree regulates the procedures for the sale of shares and assets of the companies to be privatized by auction in accordance with Article 7a(5) of the Privatization of the Economy Act (Official Gazette of the Republic of Montenegro Nos. 23/96 and 6/99).

Article 2.

Auctions are methods of privatization conducted through open competitive bidding of participants and which is based on price.

Article 3.

The Auction Commission (further in the text: Commission), which is appointed by the Privatization Council, organizes and performs the sale through public auction.

The Auction Commission has five members.

The Privatization Council appoints the Chairman of the Commission (further in the text: Chairman), among Commission members.

The decision to sell shares and assets of the companies to be privatized must be made by the company's Board of Directors and has to be approved by the Privatization Council in cases when the book value of the assets are over 50,000 DEM.

Article 4.

The Auction Commission is authorized to:

- o organize and conduct sales through auctions;
- o register auction participants;
- o keep order at auctions and take measures to deal with obstruction of their conduct;
- o announce the buyer;
- o sign the minutes;
- issue a receipt to the buyer (hereinafter referred to as: the receipt) for the object purchased at auction, on behalf of the seller.

The Auction Commission makes decisions on the auction by majority vote.

Article 5.

The Montenegro Agency for Economic Restructuring and Foreign Investment (hereinafter referred to as: the Agency) shall provide consulting, administrative, and logistical support to the Auction Commission in accordance with the instructions of the Privatization Council.

Article 6.

The right to participate in auctions is rendered to any legal or physical, domestic or foreign entity, except the companies to be privatized and other legal entities which are directly or indirectly majority owned by a state or its institutions.

An entity referred to in the previous paragraph obtains the capacity of a participant in an auction (hereinafter referred to as: participant) by virtue of its registration for participation in an auction.

The purchaser at an auction is the participant who first bids the highest price.

Article 7.

The shares and assets to be sold by auction (hereinafter referred to as: objects of auction) are those which are designated in the Privatization Plans adopted by the Government in accordance with the Privatization of the Economy Act Capital increases are effected in the case of the sale of shares only if called for in a Privatization Plan More than one object can be sold at one auction.

Article 8.

The Privatization Council shall prepare information on the objects of auction, on the basis of the Privatization Plan.

The Privatization Council and the Auction Commission shall be responsible for the accuracy of information on the objects of auction, referred to in the previous paragraph of this Article. Participants and buyers are responsible for making their own investigations into the status, quality, performance and suitability of all objects of auction.

Article 9.

For shares and assets of companies to be privatized, the means of payment to be used at auctions are money and certificates representing frozen foreign currency deposits, in accordance with current regulations.

Article 10.

Auction sale procedures consist of:

- o auction preparation;
 - o application for participation and registration of participants;
- conducting the auction and announcing the buyer; and activities following the auction.

2. AUCTION PREPARATION

Article 11.

The Auction Commission provides the necessary conditions for conducting the auction, in co-operation with the Agency and the competent authorities of the companies and the Funds, whose shares and assets are objects of auction.

Article 12.

The Commission publishes the invitation for participation for each particular auction (hereinafter referred to as: public announcement) in at least two daily newspapers that are accessible in the whole of the Republic of Montenegro, not later than 30 days before the auction is conducted.

The public announcement referred to in the previous paragraph comprises:

- o the seller's name;
- o place and address where the auction is conducted;

- o date and time of the auction;
- o method for submitting applications for participation in the auction and deadline for applications;
- o date, time and place of registration of participants;
- o amount of deposit for participation in the auction and method of payment of deposit;
- o the unique number and the designation of the enterprises the shares or assets of which are objects of auction;
- o a code number for each object of auction;
- o the initial price of each object of auction;
- o a notice that if none of the auction participants bid on the initial price, the bidding process will be continued immediately using the Dutch auction method;
- o in the case of shares to be sold:
 - code and name of the core activity of the enterprise,
 - enterprise registration number,
 - total nominal value of the capital of the enterprise,
 - nominal value of the shares offered for auction,
 - financial and other data on the enterprise relevant to participants, as determined by the Privatization Council.

in cases in which new shares are subscribed through a capital increase, the following information is provided in addition:

- the amount and form of the required capital increase.
- o in the case of assets to be sold:
 - description of the asset,
 - book value of the asset,

in cases where the asset is a real estate the Cadaster record number of the certificate of ownership of that real estate is to be specified together with the address of the Cadaster office which maintains the records of that specific real estate.

- place, address, date and time when the asset can be inspected.

Article 13.

The Auction Commission, in cooperation with the Agency and ZOP shall provide every registered auction applicant equal access to information, including inspection of the companies or assets in question.

3. APPLICATION FOR PARTICIPATION AND REGISTRATION OF PARTICIPANTS

Article 14.

Based on a public announcement, interested persons submit an application to participate in an auction (hereinafter referred to as: application) to the Auction Commission.

The application must be submitted in writing directly or by registered post, not later than 5 days before the auction is conducted.

Article 15.

The application is submitted for each of the objects of auction that the bidder intends to bid for.

Article 16.

When a legal or natural person applies to bid for more than one object of auction, it has to delegate to one person the authority to represent it at the bidding, who is responsible for the bid and the fulfillment of all obligations vis-à-vis the Auction Commission.

Article 17.

Members of the Auction Commission or their families or any legal entity owned by members of the Auction Commission or their families cannot submit an application for an auction.

Article 18.

The application of a physical person includes: code number of the object of auction; designation of the enterprise whose shares or assets are being sold; surname, name and one parent name; address; unique personal number in the case of Yugoslav citizens; passport number in the case of citizens of other countries; account number for reimbursement of deposit; proof of payment of deposit in the amount of 2% of the nominal value of shares or book value of assets; signature.

The application of a legal person includes: code number of the object of auction; designation of the enterprise whose shares or assets are being sold; unique number and designation of the applicant; account number for reimbursement of deposit; proof of payment of deposit in the amount of 2% of the nominal value of shares or book value of assets; surname and name of the Director and his/her signature.

Article 19.

The Auction Commission conducts the registration of auction participants not later than one hour before the beginning of the auction.

The Auction Commission is not allowed to divulge the registered participants to third parties prior to the auction.

Article 20.

The registration process includes:

- checking the identity of the applicant or his/her authorized person;
- presenting proof of payment of deposit;
- issuing a numbered auction card;
- signature of the applicant or authorized person on the list of participants, which confirms his/her participation in the auction

Article 21.

The authorized person referred to in line 1 of the previous Article submits a copy of the notarized power of attorney to the Auction Commission.

Proof of payment of the deposit referred to in line 2 of the previous Article is presented for each application.

An applicant cannot acquire the status of participant unless he/she has proof of payment of the deposit.

The list of participants referred to in line 4 of the previous Article is an integral part of the minutes of the auction.

4. CONDUCTING THE AUCTION AND ANNOUNCING THE PURCHASER

Article 22.

The Chairman conducts the auction.

The Chairman appoints the record clerk at the auction who will keep full and accurate minutes of the auction proceedings according to Article 36 below.

The Auction Commission may appoint professional auctioneers to conduct auctions in lieu of the Chairman.

Article 23.

The Chairman is responsible for the equal treatment of all participants and the unhindered process of bidding, including the pronouncement of penalties against participants who obstruct the bidding.

A Commission Member appointed by the Chairman monitors the sequence of bidding, in other words the raising of bidding cards by participants.

Article 24.

Before the start of the auction the Auction Commission determines whether the conditions for conducting the auction have been fulfilled.

If at least two persons acquire the status of participants, then the conditions for conducting the auction for any object of auction are considered fulfilled.

Article 25.

If the condition referred to in paragraph 2 of the previous Article is not fulfilled, the Commission pronounces the auction for that object unsuccessful.

Article 26.

When the conditions for conducting an auction have been fulfilled, the Chairman announces how many participants there are, the sequence in which they acquired the status of participants, information on the participants, and the presence of participants or their authorized persons.

If any applicants are not satisfied with the announcement referred to in the previous paragraph, they may express objections, orally, in the minutes.

Objections referred to in the previous paragraph do not prevent the auction, and the Commission assesses the justification for the objections. If the Commission accepts the objections, it remedies the failure by allowing the objecting applicant to participate.

If the Commission assesses that the objections are not justified, the objectors have the right to file an appeal to the Privatization Council within 3 days of the day of the auction.

Article 27.

Having acted in accordance with the provisions of the previous Article, the Chairman announces the contents of the public announcement, explains the further course of proceedings, and offers the opportunity for participants to ask any questions about the proceedings.

Upon completion of the activities referred to in the previous paragraph, the Chairman states the object of auction and the successive increments in price during the auction, announces the initial price and invites participants to bid.

Article 28.

The initial price of objects of auction is to be set 20% lower than the nominal value of shares or book value of assets. The successive increments of the prices during the auction process may vary, according to the judgement of the Auction Commission, but cannot be larger than 10% from the last offered price.

If there is a bid at the initial price, the Chairman establishes a new price, applying the pre-established price increment, and invites the participants to accept the offer for the newly established price.

If, even after the third invitation by the Chairman to bid, none of the participants bids on the initial price, the Chairman, with a rap of the gavel, declares the initial bidding for the object to be unsuccessful.

Article 29.

Establishment of the new price, applying the pre-announced increment of the price, shall be repeated for as long as participants continue bidding at each newly established price.

If, after the second Chairman's invitation to bid, no one bids on the last established price, the Chairman invites the participants to bid for the last time.

If, even after the Chairman's third invitation to bid no participant bids, the Chairman announces the auction closed, with a rap of the gavel, and declares the participant who first bid the highest price to be the buyer.

Article 30.

When the Chairman declares the buyer, any participants who are not satisfied with the conduct of the auction may orally announce in the minutes that they intend to appeal to the Privatization Council which they should submit within 3 days of the auction.

Article 31.

Dutch Auctions

If the initial bidding for an object is unsuccessful, a new bidding for the object is initiated immediately, using the Dutch auction method.

A Dutch Auction is a bidding process in which the price decreases by decrements from the starting price until one participant agrees to purchase the object at the announced price.

In a Dutch auction, the starting price shall be set 20% lower than the nominal value of shares or the book value of assets to be sold.

The successive reductions in prices during the Dutch auction process may vary, according to the judgement of the Auction Commission, but cannot be larger than 10% from the last offered price.

The Dutch method of bidding is carried out as follows: the Chairman (or professional auctioneer) announces the initial price of the object and successively reduces it by the pre-established price decrement, each time announcing the new price.

The Chairman announces the number of the participant who raises his auction number first when the new price is announced and with a rap of his gavel, the Chairman announces that this participant is the winner.

If two or more numbers are raised at one announced price, the Chairman decides who raised his number first.

In exceptional cases, the Auction Commission can decide to reinitiate the Dutch auction process from the starting price.

If no participants raise their auction numbers for an object when the Chairman announces the price of one dinar, the object is removed from bidding and the participants lose the right to reimbursement of their deposit.

In the case of an object for which no bids were received at a Dutch auction, the Privatization Council decides whether to offer the object at a subsequent auction or to take other measures with respect to the object.

Article 32.

If a participant disturbs the bidding process, the Chairman issues a public warning to the participant and warns the participants of measures which will be taken if he/she persists in disturbing the bidding process.

If the person referred to in the previous paragraph disturbs the bidding process again, the Chairman pronounces a removal penalty for that person, which is carried out voluntarily or by the authorized persons to secure order at the auction.

A participant disturbs the bidding process if he/she:

bids against the rules, without lifting the bidding card;

talks to his/her associates without the approval of the Chairman;

speaks when the Chairman is speaking;

repeats or makes comments on what the Chairman has said; or

by any other action disturbs the work of the Auction Commission or the bidding procedure.

That participant is not entitled to reimbursement of deposit.

Article 33.

A participant against whom a removal penalty was pronounced is entitled to file an appeal in writing to the Privatization Council within 3 days of the auction.

Article 34.

The Chairman may pronounce the measures referred to in paragraphs 1 and 2 of Article 32 against other persons as well as participants.

Article 35.

After the bidding has been completed for one object of auction from the public announcement, the minutes of that auction are read aloud and signed and a receipt is issued to the buyer for the purchased object (hereinafter referred to as: receipt).

The Auction Commission issues the receipt, the content of which will be determined by the Privatization Council, in duplicate, of which one copy is given to the Agency and the other to the buyer.

The receipt should also contain the contract terms and the buyer is to countersign the receipt as acknowledgment of the terms from the receipt.

Article 36.

The minutes are prepared covering the beginning, the conduct and the ending of the auction.

The minutes are also prepared in the event that the condition for conducting the auction is not fulfilled as referred to in Article 24 of this decree.

Article 37.

The minutes referred to in the previous Article shall contain the following:

- o a list of registered participants;
- o the initial price of the object of auction;
- o measures pronounced against participants and observers;
- o objections and appeals by applicants and participants;
- o final selling price obtained in bidding and data on the buyer;
- o payment terms;
- o three last bids, if any;
- o name and last name of the Chairman, the other members of the Auction Commission and the record clerk;
- o date and time of the beginning and end of the auction; and
 - other information which the Auction Commission considers relevant.

Article 38.

The minutes are signed by:

- o the members of the Auction Commission and the record clerk;
- o the buyer;
- o the participant whose bid is the first in rank after the buyer's accepted bid;
 - the participant whose bid is the second in rank after the buyer's accepted bid.

Article 39.

The minutes are compiled for each of the auction objects in 4 identical copies, each copy being distributed to the Agency; buyer and participants referred to in the previous article.

Article 40.

The auction session is continued until the bidding for all objects from the public announcement is completed.

5. ACTIVITIES FOLLOWING THE AUCTION

Article 41.

The Privatization Council shall consider appeals referred to in paragraph 5 of Article 26 and in Articles 30 and 33 of this Decree within seven days from the day of the auction.

If the Privatization Council determines that the grounds for appeal are justified, it accepts the appeal, cancels the auction conducted for that object, and schedules a new auction.

If the Privatization Council determines that the grounds for appeal are not justified, it issues a decision rejecting the appeal.

Article 42.

A buyer who does not make the required payment within the deadline stated in the receipt shall be excluded from the process and from any future auction and shall not be entitled to reimbursement of deposit.

Article 43.

Provided there were other bids, the Agency shall invite the participant referred to in section 3 of Article 38, to contact the Agency to be issued with a receipt. This receipt is to spell out the selling price, which that participant bid at the auction.

Article 44.

If the participant referred to in the previous Article does not respond to the invitation within the deadline determined in the invitation or does not make payment within the deadline stated in the receipt, the Agency shall invite the participant referred to in section 4 of Article 38, to visit the Agency to be issued with a receipt establishing the selling price as the final price which that participant bid at the auction.

Article 45.

If the participant referred to in the previous Article does not respond to the invitation within the deadline determined in the invitation or does not make payment within the deadline stated in the receipt, the auction shall be declared unsuccessful.

Article 46.

Participants referred to in sections 3 and 4 of Article 38, if invited to become the buyer in accordance with Articles 43 or 44, make an advance payment in the amount of the deposit if their deposit has already been returned to them, and pay the rest of the selling price within the deadline indicated in the receipt.

Article 47.

Participants who have not acquired the capacity of buyer shall be reimbursed by the Agency for their deposit within 7 days of the auction.

If the Agency does not reimburse the deposit within the deadline referred to in the previous paragraph, the Agency is obliged to pay default interest in accordance with current regulations.

Article 48.

After the buyer has signed the receipt, which includes the sale and purchase contract terms, and made the final payment according to its terms, ownership and possession of the acquired object of auction will pass to the buyer.

The sale and purchase contract is signed in six copies.

In the case of shares the contract is signed by representatives of the Funds and the Buyer, four copies are for the Agency and the Funds and two for the buyer.

In the case of the sale of company assets the company's director signs the contract.

In the case of the sale of a real estate the contract is to be notarized, the transaction is to be registered at the Cadaster and the selling party is responsible for the sales tax.

Article 49.

The Agency notifies the enterprise whose shares were sold, the owners whose shares were sold at the auction, and the Central Registry of Securities of the results of the auction.

Article 50.

Ownership of enterprise shares is transferred to the buyer at the moment when the total amount of payment is received based on the selling price reached at auction.

The Funds, in their character as transitional owners of shares, will take the necessary steps to effect the transfer of ownership.

Full payment must be made within 15 days from the issue of the certificate.

The shares referred to in paragraph 1 of this article will be ordinary voting shares, bearer shares tradable with no limitation.

6. TRANSITIONAL AND CLOSING PROVISIONS

Article 51.

The buyer's deposit is included in the selling price.

No interest is paid on the deposit.

Article 52.

The Auction Commission transfers the complete documentation from the auction to the Agency the following day from the date of the auction.

The Agency shall keep the documents referred to in the previous paragraph as well as other documentation related to the auction for at least 3 years.

Article 53.

This decree comes into force on the 8th day after its publication in the Official Gazette of the Republic of Montenegro