

Royal Decree 77/2004

Promulgating the Privatisation Law

We Qaboos bin Saeed Sultan of Oman

Pursuant to:

The Basic Statute of State issued by The Royal Decree 101/96,

The Commercial Companies Law issued by The Royal Decree 4/74, as amended,

The Customs Law issued by The Royal Decree 22/78, as amended;

The Land Law, issued by The Royal Decree 5/80, as amended;

The Companies Income Tax Law, issued by the Royal Decree 47/81, as amended;

The Government Tender Law and Regulations, issued by The Royal Decree 86/84 as amended;

The Law of Omani Government Post-Service Pension & Gratuities, issued by The Royal Decree 26/86, as amended;

The Social Security Law issued by The Royal Decree 72/91 as amended;

The Foreign Capital Investment Law, issued by The Royal Decree 102/94, as amended;

The Policies and Rules of Privatisation approved by The Royal Decree 42/96;

The Financial Law issued by The Royal Decree 47/98 as amended;

And the Capital Market Law issued by The Royal Decree 80/98;

And in accordance with the exigencies of the public interest.

We decree as follows:

Article (1)

The attached Privatisation Law shall be enforced.

Article (2)

The provisions of this law shall apply to the public utilities, which are to be Privatised or restructured prior to their Privatisation. The provisions of Article (24) and (25) of this law shall apply to the public utilities, which have been Privatised or restructured prior to their Privatisation as from 1st August 1999, which Privatization or restructuring laws have not provided for the settlement of the positions of their employees before Privatisation or restructuring.

Article (3)

The abovementioned Royal Decree 42/96 approving the policies and rules of Privatisation referred to above shall be repealed.

Article (4)

The Minister of National Economy after coordination with the concerned Ministers shall issue the necessary regulations and decisions for the implementation of the provisions of this law.

Article (5)

This Decree shall be published in the Official Gazette and shall come into force as from the date of its publication.

Issued on 26 Jummada Al Aula 1425 corresponding to 14th July 2004

Qaboos Bin Saeed

Sultan of Oman

(Official Gazette issue number 771, 17th July 2004).

Chapter One

Definitions

Article (1)

In the application of this law, unless the context otherwise requires, the following words and expressions shall have the meanings assigned to each of them:

The Minister The Minister of National Economy.

The Ministry The Ministry of National Economy.

The Concerned Minister Each Minister within the scope of his ministry or the chairman of a government unit, public corporation, or public institution.

Project Agreements The agreements, licenses and contracts concluded by the government or the companies or the government corporations or institutions in respect of the Project.

Project Company The company with which the government or the government corporations or institutions contract in respect of the Project in accordance with the terms provided for in the agreements, contracts or licenses granted in relation to the Project, and also the government company constituted for the restructuring of the utility prior to its Privatisation.

Privatisation The transfer of ownership, or the management or leasing of the government utilities or entities to the private sector in accordance with the provisions of this law.

The Project The project which the Council of Ministers decides to Privatise.

Retirement Fund The Pension Fund that an employee is subject to according to the entity he works for.

Chapter Two

Objectives and Manner of Privatisation

Article (2)

Privatisation constitutes part of the government programme to achieve the following objectives:

- a) Diversification of national income resource and expansion of the production base of the country;
- b) The provision of opportunities to the private sector to contribute to the development of the national economy;
- c) Mobilization of the market activity and creation of competition;
- d) Enhancement of the efficiency of resource utilization;
- e) Reduction of the financial and administrative burden on the general budget to enable the government to undertake the required strategic investments in the areas of basic services which could not be undertaken by the private sector;
- f) Promotion and development of the capital market;
- g) Increase employment opportunities for citizens in the private sector;
- h) Encouragement of foreign investments and attraction of technical and administrative expertise and modern technology.

Article (3)

The government units, corporations, institutions and companies, intended to be Privatised, shall be restructured wherever necessary before the commencement of the total or partial Privatisation process. Privatisation shall be made according to the following manner:

- a) By granting the private sector the right of building, ownership and management, or concession rights, or building permit, management or leasing of Privatisation projects;
- b) By sale of interest and shares owned by the government in the corporations, institutions and commercial companies;
- c) By concluding contracts for participation in capital and management or either of them;
- d) By any other manner deemed appropriate by the Ministerial Committee.

More than one of the above manners could be used where situations so require.

Chapter Three

The Entities Responsible for the Implementation of the Privatisation Programme

First: Ministerial Committee

Article (4)

A Ministerial Committee for Privatisation shall be established and shall be constituted by a decision of the Council of Ministers.

Article (5)

The Ministerial Committee shall undertake the following:

- a) To determine the sectors and projects intended to be Privatised and submit the same to the Council of Ministers to take the appropriate decision in respect thereof;
- b) To discuss the studies and Privatisation Project programs submitted by the Ministry in respect of the financial, administrative and legal aspects of such Projects prior to its Privatisation and submit recommendations in respect thereof to the Council of Ministers;
- c) To set up clear rules for the Privatisation process within the scope of this law as to the mechanisms and policies to be applied for the implementation of the project Privatisation process and to determine the time plan for it;
- d) To make the decisions relating to the appropriate work mechanisms and timing for the Privatisation within the framework of the programme approved by the Council of Ministers;
- e) To follow up the procedures approved by the Council of Ministers for the implementation of the Privatisation programme in different sectors and to propose suitable solutions to any obstacles encountered;
- f) To review the approved basis and principles for the Privatisation process continuously and suggest updates and development of them as may be appropriate to local needs in order to cope with the qualitative developments in the area of Privatisation at the international level;
- g) To discuss the proposals of the Technical Secretariat for Privatisation in regard to the employees working in the Privatised Projects including training and qualification plans and to take necessary decisions in respect thereof;
- h) To propose the manner of disposal of the proceeds of government asset sales in the Projects that are Privatised;

- i) Any other subjects relating to Privatisation referred to it by the Council of Ministers.

Article (6)

The Ministerial Committee shall submit its recommendations in respect of Privatisation strategy and the manner and procedures for implementing it and the manner of disposal of sale proceeds to the Council of Ministers in order to take the appropriate decision in respect thereof.

Second: Technical Secretariat of the Ministerial Committee for Privatisation

Article (7)

The Directorate General of Private Sector Affairs of the Ministry shall undertake the discharge of the functions of the Technical Secretariat of the Ministerial Committee for Privatisation.

Article (8)

The Technical Secretariat referred to in the preceding article shall be responsible for the following:

- (a) Conduct studies and submit proposals and programmes relating to Privatisation;
- (b) Study of the proposals referred to it by ministries and other government units in respect of the manner and means of Privatisation and restructuring and to submit proposals and recommendations in respect thereof to the Ministerial Committee for Privatisation;
- (c) Submission of the Technical Committees and Task Forces proposals to the Ministerial Committee for Privatisation;
- (d) Proposal of regulatory procedures;
- (e) Coordination with the Ministry of Finance in matters relating to the sale of government interests in companies;
- (f) Preparation of proposals relating to the implementation procedure in respect of the basis and rules relating to the employees in the sectors and Projects which are Privatised as stipulated in this law;
- (g) Preparation, in co-ordination with the Tender Board, of documentation relating to the tendering offers and tendering procedures and the manner of advertising;

- (h) Ensuring compliance with the public, transparent and impartial approaches in the different stages of Privatisation implementation process and contribute in the announcement of the programmes through the preparation and organization of seminars and workshops relating to Privatisation through different mass media;
- (i) Participation with concerned authorities in negotiations relating to the Privatisation process;
- (j) Follow-up of the Privatisation process and preparation of periodic reports regarding the implementation of Privatisation Projects;
- (k) Proposal of criteria and necessary rules and preparation of periodic reports regarding the implementation of Privatisation Projects; and
- (l) Performance of any other works assigned to it by the Ministerial Committee for Privatisation.

The Technical Secretariat shall submit its recommendations and proposals to the Ministerial Committee for Privatisation for approval.

Article (9)

All ministries, government units, public corporations and institutions, companies, and individuals shall be obliged to provide information data and studies as may be required by the Ministry or the Technical Secretariat, and in particular the following:

- (a) Necessary facilities to the experts and consultants who are assigned by the Ministry to perform required works;
- (b) Comply with the rules and regulations of the work according to the guidelines issued by the Ministry; and
- (c) To provide the necessary information required by the Ministry regarding the companies that have been Privatised.

Article (10)

The Ministry may appoint consultants and experts in different specializations and constitute different committees in order to discharge the functions assigned to it in relation to the Privatisation process.

Chapter Four

Regulatory Rules

Article (11)

More than one company may be established to provide the service which is to be Privatised in order to avoid monopoly as far as possible and as may be appropriate to the Project nature.

Article (12)

The Project shall be offered in accordance with the Government Tender Law and Regulations issued by Royal Decree 86/84 as amended, the Tender Board may approve the offer of the Project according to other rules and procedures which are appropriate to the Project subject to the principle of transparency and clarity in the offering procedures.

Article (13)

- (a) The Project Company shall take the form of a public joint stock company and it may on approval of the Council of Ministers take the form of a closed joint stock company or limited liability company where the nature of the Project so requires;
- (b) The foreign participation percentage in the Project Company may amount to 100 per cent of its capital and the single founder is not restricted by a specific percentage of participation in the Project Company;
- (c) The Project Company, in case of subscription less than the offered shares, shall be deemed to convert to a public joint stock company and the Ministry shall, in coordination with the Ministry Of Commerce And Industry and the Capital Market Authority, decide the manner in which coverage is to be provided for the remaining shares.

Article (14)

Subject to the provisions of this law, independent regulatory authorities may be established to regulate the relationship between the government, investor and consumer and the establishment of such authorities and determination of their functions and procedures shall be in accordance with the law, provided such authorities shall, in the light of practical experience, subsequently be merged in one regulatory authority comprising all sectors.

Article (15)

The Project Company shall enjoy the following privileges and incentives:

- (a) It shall be treated for the purposes of taxation as companies wholly owned by Omanis;
- (b) It shall enjoy the same land rights granted to companies wholly owned by Omanis; and
- (c) It shall enjoy any other incentives and facilities provided for in other laws.

Article (16)

All rights and liabilities of the establishment that has been Privatised shall be transferred to the Project Company in accordance with the agreements concluded with it.

Article (17)

The Minister responsible for the Project shall be authorized to sign the relevant Project Agreements.

Article (18)

It shall be prohibited for any person holding a position in the government or undertaking performance of work for the government to divulge any confidential information relating to the Privatisation Projects.

Chapter Five

Settlement of the Position of Workers in Privatisation Projects

Article (19)

The bases and rules provided for in this chapter shall be applicable to Omani workers who are subject to the laws and regulations of government and who are affected by Privatisation or restructuring processes.

Article (20)

The competent authorities shall provide the particulars relating to the number of employees in the utility, which is to be Privatized, and a statement of their responsibilities, and experience, and the number of years of their service and the benefits granted to them.

Article (21)

The companies applying for Privatisation Projects shall, after perusing the particulars available relating to employees, specify in their offers the employees to be employed after the Privatisation, their number and the positions to be occupied by them.

Article (22)

The Project Company shall be obliged to transfer the employees referred to in Article (21) of this law to it and to conclude employment contracts with each of them in which the job description, functions and powers of the position and the advantages and rights shall be stated. The wages and other financial advantages in respect of transferring employees to the company shall not be less than what they have been receiving at the time of their transfer to the company.

Article (23)

The Project Company undertakes not to terminate the transferring employees for a period of five years from the date of their transfer, provided such employees are complying with the regulations and rules of the work in the company.

Article (24)

The Omani employees transferring to the Project Company shall continue payment of contributions in accordance with the pension scheme applicable to them and such Project Companies shall pay contributions in lieu of the government according to the system followed in the Pension Scheme and shall enjoy the treatment of government employees at the end of their service in the Project Company for any reason in respect of the calculation of the post service benefits subject to Article (25) of this law.

Article (25)

The difference between the wage of the transferring employee at the end of the last five years of his service and his wage at the beginning of the said five years shall not exceed 40 percent and if it exceeds this percentage the increase in the wage above 40 percent shall not be included in the wage taken as the basis for the calculation of his pension dues.

Article (26)

The position of employees who are not being employed in the Project Company shall be settled as follows:

- (a) Those who are willing shall be transferred to government units according to the work needs provided they are qualified and trained in new skills, consistent with the work requirements of such units;
- (b) The position of the remaining employees who have not been employed in the Project Company or transferred to government units shall be settled as follows:
 - (i) Those who have completed ten years of service or more shall retire and their rights settled as if they have reached the retirement age according to the pension scheme applicable to the utility before Privatisation with a gratuity of the last basic monthly salary be paid to each of them for each year of service with a maximum of 12 basic monthly salaries and a minimum of five thousand Omani Rials.

Those employees whose period of service falls short of ten complete years of service by six months or less may purchase the remaining balance for the purpose of entitlement and calculation of the pension through the payment of outstanding contributions for such periods to the Pension Fund;

- (ii) Those employees who are not entitled to a pension according to the provisions of paragraph (b) (i) shall each be granted a gratuity of four monthly basic salaries on the basis of the last basic salary for each year of service in addition to the fixed allowances, provided the value of post service gratuity to which he is entitled according to the pension scheme applied by the utility he works for shall be deducted from this gratuity. A period of service that is less than one year shall be deemed to be a full year.

Article (27)

The Ministry of Finance shall incur the following amounts:

- (i) The gratuities paid in accordance with the provisions of this Law;
- (ii) Pensions to which employees provided for in paragraph (b)(i) of Article (26) of this Law and the contributions prescribed to the Pension Fund until they reach the age of retirement, and the funeral and condolence expenses in case of death of the retired employee before reaching the retirement age in accordance with the pension scheme provisions applicable to him. The Pension Fund shall pay due pensions thereafter.