

ADMINISTRATIVE LAW

PRIVATIZATIONS

THE SECOND AMENDMENT TO THE PRIVATIZATIONS GENERAL LAW, BY LAW 50/2011, OF SEPTEMBER 13.

Law 50/2011, of September 13, has introduced a second amendment to the General Law on Privatizations.

This amendment, anticipating the current privatizations procedures, aimed to adopt the national law to the community legislation and also to update the former, in accordance with the last revisions of the Portuguese Republic Constitution and the Securities Code.

The most relevant amendments are the following:

1 - The reprivatizations essential goals foreseen in the law are reduced to the following three:

- (i) to modernise the economic units and increase their competitiveness and contribute to the sectorial or corporate restructuring strategies;
- (ii) promote the reduction of the State weight in the economy;
- (iii) promote the reduction of the public debt weight in the economy.

2 - The reprivatization procedures (either through the sale of shares or increase of share capital) by rule and preferentially shall now be effected through a public tender or public offer in accordance with the Securities Code.

There is still the possibility of using the limited public tender or direct sale mechanism, whenever (i) the national interest or sector defined strategy so demands or (ii) the economic-financial situation of the company so recommends.

3 - It was eliminated the legal disposition foreseeing that a percentage of the capital to be reprivatized was reserved to emigrants.

4 - Regarding the *shares acquisition or subscription by small subscribers regime*, the law still foresees that this acquisition may benefit from special conditions, as long as those shares are not charged or object of a legal transaction through which the ownership of the shares or the relevant inherent rights are transferred, even if with future effects, during a certain period of time as of the date of its acquisition or subscription, otherwise the relevant operation being considered null.

PRIVATIZATIONS (CONTINUATION)

It was eliminated the legal disposition waiving the voting right of such shares in the general meeting, during the period of non transferability.

5 - The *shares acquisition or subscription by employees regime* has also been amended.

Independently of the reprivatization form chosen, the employees working for the company to be reprivatized have a preferential right to acquire or subscribe shares, and, for such purpose, it may be taken into consideration, in particular, the effective duration of their labour supplying.

The acquisition or subscription of shares by the employees of the company to be reprivatized may benefit from special conditions, as long as such shares are not charged or object of a legal transaction through which the ownership of the shares or the relevant inherent rights are transferred, even if with future effects, during a certain period of time as of the date of its acquisition or subscription, otherwise the relevant operation being considered null.

Furthermore, it is now foreseen that the shares acquired or subscribed by the employees, shall grant voting rights to its holders during the non transferability period.

The above referred regime may also be applied to the employees of companies in group or controlling relation, with the company resulting from the transformation of the public company being reprivatized.

6 - It was eliminated the possibility of the State to appoint a director with special powers of veto regarding certain matters and the legal disposition foreseeing privileged shares (with right of veto re-

garding certain matters) that were aimed to be maintained within the State ownership.

7 - Currently the law foresees the possibility of being incorporated one special commission for the monitoring of each one of the reprivatization procedures that shall be extinguished with the term of the relevant reprivatization procedures. These commissions shall replace the former "reprivatizations monitoring commissions".

Regarding incompatibilities and as in the past, it is now foreseen that the functions as a member of the special commissions are not compatible with the functions as a member of the corporate bodies of the companies to be reprivatized.

8 - It was eliminated the taxes and registration costs exemption regarding the amendment of the articles of association of the companies being reprivatized.

9 - It was also added a new article imposing the Government the duty to (within a maximum deadline of 90 days after the law is in force) to establish the extraordinary regime to safeguard strategic assets in sectors considered essential for the national interest, in accordance with the community law.

The above referred amendments have entered into force on September 14, 2011, and are applicable to all reprivatization procedures initiated after such date, as well as, to all pending procedures that have not been object of a reprivatization decree law by such date.

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