

Information Note for Assistance to the Privatisation Agency in Strengthening its Compliance Monitoring Capacity – Local Experts

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1. BACKGROUND INFORMATION

1.1 Beneficiary country

Republic of Serbia

1.2 Contracting Authority

Privatisation Agency of the Republic of Serbia (PA)

During the past period of ten years of sanctions, Socially-Owned Enterprises (SoEs) in Serbia have generated large financial losses totalling a substantial amount in relation to official GDP and quasi-fiscal deficits which burden the economy and the financial sector. The disposition of SoEs, primarily through privatisation, is a keystone of the Government's overall economic reform.

The Law on Privatisation¹ provides the overall framework for the privatisation of Serbia's state and socially-owned enterprises, as well as detailed techniques by which privatisation can be carried out. These techniques are: (a) privatisation following restructuring, (b) public tenders or public auctions, (c) capital markets operations, mainly through auctions procedures, by which the Government is selling share blocks in companies that were partially privatised under earlier privatisation laws.

The PA is the implementing organisation for all of these activities. Some 150-200 medium to large-sized enterprises, many of them at least partly socially owned, have been identified as being suitable for direct international tender privatisation. About 4,000 more enterprises (primarily small to medium-sized) are destined for the auction privatisation track. In addition, about 50 enterprises have been identified as needing restructuring prior to privatisation, and have thus been designated as on the "restructuring/privatisation" track. The Government's minority share holdings in some 780 enterprises is also being offered for sale through the capital markets.

The PA was established in July 2001. By the end of 2003, as work on the various privatisation tracks has substantially increased, the staff has expanded to some 200 employees.

Substantial progress has been made in tender and auction privatisation, as well as selling state owned share packages through the capital markets. More than 1.2 billion Euros has been realised so far. The success rate of privatisation in general was high and, more specifically, impressive results were achieved in public auction privatisation.

The competition in public auction privatisation is very high and reaches an average number of three interested investors in each auction case. The interest of strategic investors who acquired majority of companies through public tenders in 2002 also showed a very high level of competition, attracting between two and three interested bidders.

Further information about the current state of affairs of the PA can be obtained from <http://www.mpriv.sr.gov.yu>

¹ "Privatisation Law", published in "Sluzbeni glasnik RS" No. 39/2001, on 29 June, 2001, and revised on 28 February 2003.

1.4 Current state of affairs in compliance monitoring

The PA has completed nearly 800 privatisations by auction and 31 privatisations by tender has a number of companies undergoing pre-privatisation restructuring

Each privatisation transaction includes contractual obligations for the buyer such as:

- purchase price payment (which in auction privatisation may be paid in instalments)
- investment commitments
- employment and social program commitments
- environmental commitments, etc.

The Agency has been mandated by the Law on Privatisation to perform monitoring of contract compliance, and thus there is a need for efficient and robust monitoring mechanism of the share purchase agreements (SPA) signed with the investors/new owners/shareholders.

Currently a team of 14 lawyers and other experts of the Agency perform the monitoring and administering of these contracts from the office in Belgrade and the Regional Offices in Novi Sad, Niš, Kraljevo and Kragujevac. Within the scope of work of the Legal Centre, the Agency anticipates that during next year there will be a number of SPA cancellations, especially in the auction department and that dozens of the next year's instalments will not be paid. However the existing capacity and qualifications of the Agency's staff are not sufficient to carry out successfully the scope of work envisaged. Therefore, the management of the Agency has made a decision to strengthen the contract monitoring capacity, which will be responsible for monitoring and administering of contractual obligations under the executed SPAs. The methodology for regular and reactive monitoring procedures will be further developed and implemented. It is planned that this activity to be decentralised and co-ordinated between the Monitoring Sector in the Agency and each Regional Office.

Monitoring activity is wide ranging and complex and includes re-negotiation or cancellation of SPAs whenever there are legal grounds for it. Thus, there is a crucial need for assistance of qualified external experts in this particular area.

Consequently, the PA intends to engage **eight individuals** to work within the Privatisation Support Centre to undertake a range of compliance monitoring duties.

1.5 Related programmes and other donor activities

The World Bank, USAID, DFID, GTZ and IFC are now financing consulting and advisory work in the PA for other projects, none of which is in the field of the SPA compliance and performance monitoring.

The European Agency for Reconstruction (EAR) is funding a number of grant related contracts dealing with assisting the privatisation process

Funds allocated under this grant will cover the following activities:

- Management Consulting Services in the field of preparation of the companies for privatisation;
- Environmental Audit;
- Financial Advisory Services in the field of corporate restructuring (including debt-settlement) and Capital Markets;
- Strengthening Compliance Monitoring Capability and,
- Financial Audit.

These objectives and tasks are planned to be implemented through series of service contracts. Two of these other contracts relate to the engagement by the PA of two law firms, also to assist with compliance monitoring

The World Bank is also financing consulting and advisory work in the PA for environmental assessments.

2. CONTRACT OBJECTIVES & EXPECTED RESULTS

2.1. Overall objectives

The PA, supported by the EAR, needs to strengthen its Monitoring Sector by acquiring technical assistance from 8 local consultants of various skills and experience to work as “in house” consultants to the PA.

They will monitor contractual compliance of companies privatised by tender and auction. In addition the consultants will be required to conduct other activities necessary for the efficient functioning of the PA's Monitoring Department.

A maximum budget of €96,000 for this contract has been allocated to provide technical and financial assistance to the Monitoring Sector of the PA to help with the **hiring of 8 local consultants** of various skills and experience to work as “in house” consultants to the PA to monitor **over a period of 12 months** contractual compliance of companies privatised.

The total of €96,000 provided by the EAR will be divided by 8 consultants at a unit price of €12,000 net of taxes, social security and related contributions which will be borne by the PA. These consultants will be hired on an individual basis

2.2. Specific objectives

The activities of local consultants over the twelve months will be divided into two periods: a) prior to the PA's engagement of international law firm conducting monitoring of companies privatized by auction procedure (first 5 months) and b) after the PA's engagement of international law firm conducting monitoring of companies privatized by auction procedure (remaining 7 months).

In the first five months the consultants will undertake monitoring work, whereas in the following seven months they will undertake monitoring work and in addition other duties specified below

2.3. Principal results to be achieved by the Consultants

Period 1:

The results required in the first period are to:

- Monitor the legal, commercial, financial and social aspects of the executed SPAs.
- Provide opinions or recommendations to the PA on the requests submitted by the privatised companies for changes in their contractual obligations
- Create and constantly update the database of monitored companies
- Recommend improvements of the monitoring and implementation of the contractual duties by the investors and the privatisation process in general
- Carry out such other related duties relevant to the Monitoring Sector as may be required by the Head of the Monitoring Sector, including suggestions for improvements to the PA's monitoring database

Period 2:

In the second period, after the engagement of international law firm, the following additional results required are to:

- Ensure that regional PA Project Managers deliver reports on the monitored companies to the PA in course of the ongoing monitoring process;
- Summarize the reports of the regional Project Managers in the PA's Monitoring Department and prepare documentation for weekly meetings of the PA Committee for the determination of measures upon the conducted monitoring activities
- Conduct reactive monitoring of implementation of the investment commitments, organisational status, employment records and the social programmes carried out;

All written outputs will be produced in Serbian.

3. ASSUMPTIONS & RISKS

3.1. Assumptions underlying the project intervention

Stable political situation

Government continued commitment to reform

Increased attractiveness of Serbia to investors

Ministry of the Economy and Privatisation and PA motivated to lead the reform

Parallel progress on the institutional support and development of the monitoring capacity and capabilities

Risk of all the above assumptions not being valid is estimated as very low.

4. SCOPE OF THE WORK

4.1. General

The Consultants will be responsible for producing the results summarised in 2.3 above. The Monitoring Sector and Director of the PA's Privatisation Support Centre will assist the Consultants in undertaking their work, including of monitoring and controlling the companies concerned.

4.2 Specific activities

Period 1

The activities of the Consultants, with assistance of current employees of the Monitoring Sector, shall focus on the following tasks:

- Work on a day-to-day basis with employees of the Monitoring Sector;

- Use appropriate methodology for analysis, monitoring and control of post-privatisation performance of SPA by investors;

- Maintain and, where appropriate, to suggest improvements of the PA's monitoring recording system and data base;

- Conduct desk research and analyses and, where appropriate, to undertake regular and unplanned site visits to the privatised companies.

Monitor implementation of the investment commitments, organisational status, employment records and the social programmes carried out;

Ensure the privatised companies/investors deliver reports to the PA as requested in the SPA or by the PA/Monitoring Sector in course of the ongoing monitoring process;

Co-ordinate activities with the Regional Offices and District Branches of the PA to ensure efficient exchange of information between offices of the PA as well as with the international law firm monitoring tender privatisation under a separate contract;

The Consultants will need to be sufficiently flexible to undertake other related or relevant tasks reasonably assigned to them by the PA within the general responsibilities of the Monitoring Sector.

Period 2:

In the second period, after the engagement of international law firm, the following additional activities shall also be performed by the consultants:

Ensure that regional PA project managers deliver reports on the monitored companies to the PA in course of the ongoing monitoring process;

Summarize the reports of the regional project managers in the PA Monitoring Department and prepare documentation for weekly meetings of the PA Committee for the determination of measures upon the conducted monitoring activities

Conduct reactive monitoring of implementation of the investment commitments, organisational status, employment records and the social programmes carried out;

More specifically,

A - 4 Legal Consultants for monitoring privatisations will analyse and monitor the legal aspects of the SPAs entered into in the process of privatisations, including:

Analysing the positive and negative undertakings, covenants, warranties and representations made by investors

Checking the holding of a general meeting of shareholders, appointments of the new organs of the company, recording the shareholding structure with the temporary register of shares, recording the statutory changes with the appropriate court and other registers

Checking compliance with the collective employment agreements or individual employment contracts and the labour legislation in force

Seeking from the company appropriate documentation, reports whenever due and deliverable under the SPA

Preparation of legal opinions about the possible breach of the SPA suggesting legal remedies including but not limited to calling of the collateral for the investment commitment or the social programme performance, reference to the court action or cancellation of the SPA

Assistance in the execution of the legal remedies accepted by the PA as requested

Co-ordinating activities with financial, auditing and environmental consultants monitoring SPAs

B- 2 Finance Consultants for monitoring privatisations will analyse and monitor the financial aspects of the SPAs entered into in the process of privatisations, including:

Analysis of the financial aspects of the SPA – in particular the implementation of the investment commitments and the financial aspects of the social plan,

Analysis of the post privatisation financial performance of the company (including analyses of the company's turnover, balance sheet, profit and loss accounts, cash flow statement, profit margins, outstanding long and short term liabilities etc) in order to monitor calculations of salary payments, bonus payments or dividend distributions

Monitoring the maintenance and adequacy of the financial collateral/performance bond for the investment commitment and social programme implementation and execute the collateral or call the performance bond if appropriate

Seeking from the privatised companies appropriate documentation or reports whenever due and deliverable under the SPA from the company or from its auditors

Co-ordinating activities with the legal, auditing and environmental consultants monitoring SPAs

Undertake other activities or to take other steps in his/her professional opinion necessary for the successful execution of the monitoring or as reasonably requested by the PA

C- 2 Auditing Consultants for monitoring privatisations will analyse and monitor the financial aspects of the SPAs entered into in the process of privatisations, including:

Analysis of the audited investment accounts/reports,

Analysis of the audited accounts of the company,

Monitoring the cash flow statements and fulfilment of the settlement of pre-privatisation liabilities and undertaking of then new long and short term liabilities

Checking pledging of company's shares or assets as a collateral, and disposal of assets (if any) at fair and market price and at arm's length,

Checking calculation and payment of bonuses, profits and dividends, purchase of shares from the shareholders-employees as set out in the SPA

Co-ordinating activities with legal, environmental and financial consultants monitoring SPAs

4.3. Project management

Contracting Authority:

Privatisation Agency of the Republic of Serbia

Terazije 23

Belgrade 11000 - Serbia and Montenegro

Tel. ++ 381.11.3020.801 Fax ++ 381.11.3248.375

The consultants will work throughout the period of the contract under the direction of **Snezana Dabovic, Director of the Privatisation Support Centre**, the PA Project Manager for this project.

5. LOGISTICS AND TIMING

5.1. Location

Belgrade, Republic of Serbia and such other locations within the Republic of Serbia as are necessary to undertake proper monitoring (including short trips to the decentralised PA offices, if needed).

5.2. Commencement date & period of execution

The currently intended commencement date is early 2004 and the period of execution of the contract will be 12 months. The Consultants will be engaged full time during the entire period of execution of the project.

The PA retains the contractual right, should the need arise during project execution, to ask the Consultants to extend the project in duration and/or scope, to the benefit of the PA. Such extension, would be subject to availability of funding and to the satisfactory performance of the Consultants in terms of progress and results, and would be executed by means of a Contract Addendum. The intervention of events outside the contracting parties control should also be taken into consideration.

5.3. Contracting process

Consultants will be engaged on individual basis and selected through a two stage competitive selection:

Stage 1: Individual Curricula Vitae in the prescribed form attached in the Appendix to this Information Note and with required supporting documentation are called for from interested individuals. The short list will include the interested individuals with the skills and capabilities fitting best the selection criteria and job description.

Stage 2: Interviews will be called for with the short listed candidates.

Interested individuals should also note that no meetings other than the formal interviews with the PA are envisaged as part of the process of hiring.

Only short listed candidates will be contacted.

6. REQUIREMENTS

6.1. Personnel

Four Legal Consultants

Qualifications and skills

A local expert with minimum 3 years of professional working experience, preferably in privatisation, ideally in Serbia and/or the Balkans and/or other Eastern European countries

University degree in law, preferably from an university based in Serbia

In depth knowledge of the Serbian privatisation legislation and other relevant legislation and relevant experience in enterprise operations

Documented capabilities in organising, executing and efficiently documenting the contractual analyses and drafting legal opinions

Proficiency in using PC administration tools

Fluency in written and spoken English

Team player but able to take individual responsibility

Duration of stay

The experts will be based full time in the PA for the twelve months of the period of the project implementation, except for standard vacations

Two Finance Consultants

Qualifications and skills

A local expert with minimum 3 years of professional working experience preferably in the privatisation field and ideally in Serbia, the Balkans and/or other Eastern European countries

University degree in accounting, finance, economics or a related academic discipline

In depth knowledge of the Serbian tax system, financial accounting rules and regulations

Proven skills and experience in financial management and accounting

Documented capabilities in organising, executing and efficiently documenting the aforementioned analyses

Proficiency in using PC administration tools

Fluency in written and spoken English

Team player but able to take individual responsibility

Duration of stay

The expert will be based full time in the PA for the twelve months of the period of the project implementation, except for standard vacations.

Two Auditing Consultants

Qualifications and skills

A local expert with minimum 3 years of professional working experience, preferably in the privatisation field and ideally in Serbia, the Balkans and/or other Eastern European countries.

University or other appropriate degree or qualifications in accounting and/or finance or a similar degree.

In depth knowledge of the Serbian tax system and financial accounting rules and regulations

Proven skills and experience in financial management and accounting

Documented capabilities in organising, executing and efficiently documenting the aforementioned analyses

Proficiency in using PC administration tools.

Fluency in written and spoken English.

Team player but able to take individual responsibility

Duration of stay

The experts will be based full time in the PA for the twelve months of the period of the project implementation, except for standard vacations.

6.2. Office accommodation

Office accommodation of a reasonable standard and of approximately 10 square metres for each expert working on the contract is to be provided by the beneficiary. The beneficiary will also ensure that experts are adequately supported and equipped. In particular it will ensure that there is sufficient administrative and secretarial provision to enable experts to concentrate on their primary responsibilities.

6.3. Incidental expenditure

None

7. MONITORING AND EVALUATION

7.1 Monitoring process

Monitoring of services and supplies contracts signed under this contract and corresponding grants to the PA will be monitored jointly by the EAR and PA.

This contract will be monitored by the PA's Project Manager according to the following:

- planning meeting after project initiation to assess individual project requirements in more detail;

- set programme of site visits, if necessary, depending on PA priorities;

- agree due dates for draft and final progress reports; and,

- regular progress meetings to discuss the programme, and any difficulties that arise.

EAR reserves the right, as deemed necessary, to participate in progress meetings, as well as, if the need arises during project implementation, exercise ex-ante approval of all reports prepared under the contract.

Further monitoring and evaluations could be undertaken by specialist consultants contracted separately, the decision on which remains at discretion of the EAR. The EU Court of Auditors may inspect any EAR project as and when deemed necessary.

7.2 Monitoring indicators

The contract will be monitored in a systematic way in accordance with the objectives for the contract and the results to be delivered by the consultants as set out above

The precise indicators used to monitor the contract will be determined by the PA's Project Manager at the beginning of the contract

APPENDIX – FORM OF CV

Proposed role in the project:

1. **Family name:**
2. **First names:**
3. **Date of birth:**
4. **Nationality:**
5. **Civil status:**
6. **Education:**

<i>Institution</i>	
<i>Date : from</i> <i>To</i>	
<i>Degree(s) or Diploma(s) obtained</i>	

<i>Institution</i>	
<i>Date : from</i> <i>To</i>	
<i>Degree(s) or Diploma(s) obtained</i>	

<i>Institution</i>	
<i>Date : from</i> <i>To</i>	
<i>Degree(s) or Diploma(s) obtained</i>	

7. **Language skills:** Indicate competence on a scale of 1 to 5 (1 - excellent; 5 - basic)

<i>Language</i>	<i>Reading</i>	<i>Speaking</i>	<i>Writing</i>

8. **Membership of professional bodies:**

9. **Other skills:** (e.g. Computer literacy, etc.)

10. **Present position:**

11. **Years within the firm:**

12. **Key qualifications relevant for the Project:**

13. Specific experience in Serbia or other Central and East European countries in transition:

Country	Date from – Date to	Project

14. Relevant professional experience

Date from - Date to	Location	Company	Position	Description

- 15. Short summary (no more than 200 words) of issues and challenges which you expect to find in the job if appointed**
- 16. Other relevant information (eg, Publications)**