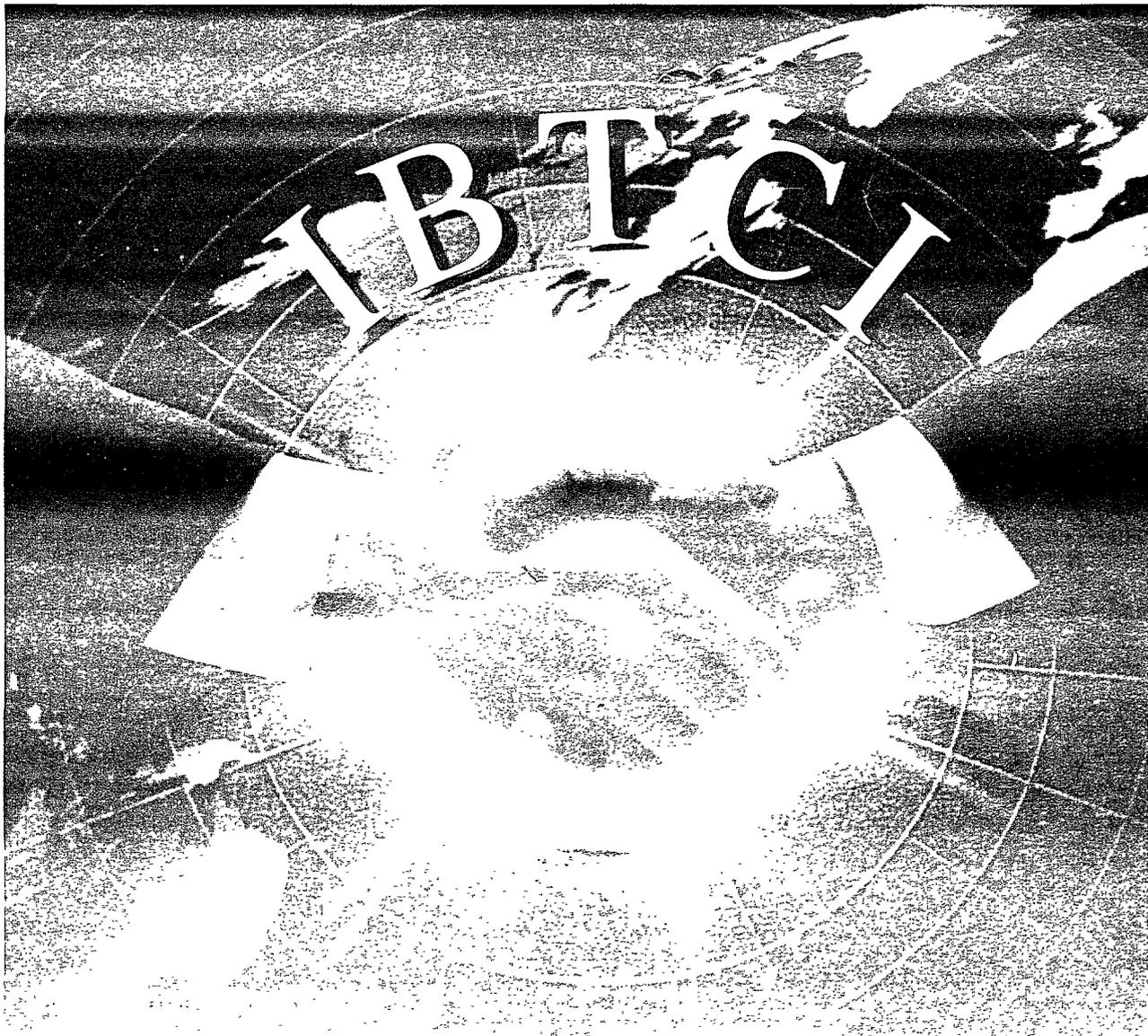


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**International Business & Technical Consultants, Inc.**

# **IBTCI**

**USAID Investment Banking &  
Privatization Advisory Project**



**Contract No. PCE-I-00-97-00017-00**  
**Privatization/Investment Banking TA Support**

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# **Investment Banking Services for Egypt**

## **IBTCI Investment Banking and Privatization Diagnostic Report**

**IBTCI/USAID  
Investment Banking Project Team**

# Investment Banking Services for Egypt

## IBTCI Investment Banking and Privatization Diagnostic Report

### Executive Summary

#### Perceptions Affecting Participation of Investment Banks in Egyptian Privatization

#### Introduction

During October and November, 1999 the consulting staff of International Business and Technical Consultants, Inc. (IBTCI), canvassed many of the firms included on a register of pre-qualified investment bankers and promoters compiled and approved at an earlier date by the Public Enterprise Office. The purpose of this effort was to explore the attitude of a locally experienced cohort of investment promoters (IPs) toward the processes of participation in the Egyptian privatization.

The perception exists among officials responsible for implementation of privatization, that participation of investment promoters in aid of inward investment is desirable and should be encouraged. To that end a review of their attitudes and experiences is deemed useful to determine issues which may affect their ability to profitably and effectively engage themselves as representatives of Holding Companies in the sale of their Affiliated Companies.

A number of issues common to most of the IPs were identified during interviews, usually with Managing Directors or management personnel responsible for competing for privatization mandates.

A compendium of the issues which the IPs, as a group, commonly raised is included below. The specific comments offered by the individuals interviewed forms the body of this report. The views expressed by the IPs appear to be salient. The extent to which the opinions are colored by a degree of success or lack of success in competing for mandates is not possible to determine. All interviewees were assured anonymity to encourage them to speak with candor.

It should be emphasized that many of the opinions are those of Egyptian nationals possessing experience both in the international investment and local investment arenas. Many of them appeared to possess in-depth knowledge of national politics and the conditions peculiar to privatization in their country. In general, the author believes their views to be less subject to individual or professional bias and, rather, more motivated by concern for and genuine interest in the further development of the Egyptian private-sector economy.

#### Common Issues

##### 1. "Short List" of Investment Promoters

- A significant number of short-listed investment promoters do not possess expertise necessary to offer comprehensive investment banking services at an internationally recognized standard

- Qualified consortia of international and local institutions notably absent
- International institutions not motivated to transfer skills through participation in consortia
- International institutions not, generally, motivated to compete for any but the most lucrative privatization mandates; in some cases not even for those
- Cost of fielding qualified international team to prepare Tender Bids prohibitive, not cost effective because of procedural uncertainties in selection process
- Selection of investment promoter according to sole criterion of price is a decisive disincentive to participation in privatization by institutions with a successful private-sector practice

## 2. Decisional Jurisdiction

- Neither the Holding Companies nor the Public Enterprise Office are directly empowered to approve the sale of an Affiliated Company nor to insist upon adherence to standardized sale-procedures
- Determination and negotiation of a given asking price for a company frequently not consistent with standard market-valuation methodology
- The Central Accounting Authority may exercise arbitrary and inflexible prerogative to hinder a transaction
- Decisions to sell a given company may be politicized to the extent that a cabinet-level fiat is necessary to approve or expedite the sale
- There exists no institutionalized process or authority to guarantee that a sale, once initiated, will actually be completed
- There exists no authority to guarantee that, after a Tender for Bids, a mandate will actually be awarded to at least one qualified participating investment promoter or that the company shall actually be offered for sale
- There exists no authority to implement standardized legal and administrative closing and delivery procedures upon culmination of sale

## 3. Transparency

- Affiliated companies are generally loathe to provide financial information; Holding Companies are not always capable of supervising data collection and dissemination
- "Data-room" information provided during Due Diligence is not warranted by Holding Company as true and reliable
- Accounting and auditing firms are not perceived to be answerable to shareholders but, rather, to Holding Company boards
- Documentation used by Central Accounting Authority in setting estimated prices is allegedly held secret; indicative prices are not available even to investment promoters representing Holding Companies
- Hesitancy to provide historical financial data discourages both investment promoter and investor interest for lack of ability to develop an accurate financial profile of the business
- "Creeping Privatization": floatation of minority share-holding without participation of "anchor investor" fosters neither management accountability nor re-structuring and re-capitalization of companies

#### 4. Holding Companies

- Holding Companies (further: HCs) neither understand nor, necessarily concur with comprehensive participation of an investment bank in the development and implementation of a strategic sale
- HCs loathe to “loose control” of sale-process through delegation of authority to investment banker
- HCs are unwilling to engage an investment banker as strategic adviser early in planning-stages in matters of “packaging” affiliates for marketing and sale; significant “Added Value” lost
- HCs do not comprehend concept of “Added Value”, nor do they appreciate the use of an agent when competing for capital in a competitive international arena

#### 5. Conclusions

Under current circumstances, international investment banks in Egypt are hesitant to compete for participation in privatization except in cases of sale of large enterprises enjoying large capitalization, pre-eminent positions in their sectors and dominant market share. The international investment banks with representations in Egypt are able to generate adequate revenue operating in the private sector. Management, therefore, finds it difficult to justify the costs associated with participation in a process perceived as procedurally complicated and offering only uncertain prospect of covering associated costs. A strong disincentive to their participation is the apparent ability of government-owned banks, not constrained by the need to charge performance- and cost-related fees, to successfully contend for sell-mandates while assessing fees which make it impossible for commercial investment banks to compete.

Those Egyptian boutique “investment promoters” with whom we met express, generally, the same concerns about the privatization process as the international investment banks. Some of these firms have enjoyed success because of their knowledge of the Egyptian arena and their ability to work with the state banks and governmental institutions. They know local conditions and use this advantage. Nonetheless, they do not, without reservation, endorse the process and, frequently, are critical of ambiguities in procedures. Many concur in the need for a more structured decision-making process of specified procedures under the aegis of one governmental agency. Representatives of this group almost unanimously recommended that Holding Company management, on the one hand, be made directly responsible to ministerial directive, and on the other hand, relieved by law of potential liability for certain decisions, particularly those related to valuation and sale-price, taken in furtherance of quick and pragmatic privatization.

The investment boutiques would also welcome government initiative in promoting consortia between themselves and international banks. It is the generally held view that the international banks are not motivated to enter consortia and not interested in promoting the transfer of skill which must result from such cooperation.

Finally:

The information presented in this report was gathered prior to the recent change of cabinet in Egypt. Some of the issues raised in the discussion may be addressed by policy changes now under consideration. Our team offers this report to Minister Khattab and his staff as an aid in developing such initiatives as may be deemed appropriate in view of all the conditions, social and economic, which affect the implementation of privatization in the specific Egyptian context.

## Investment Banks in Egyptian: Privatization Diagnostic Interviews

*Commentary from Interviews of: September - November, 1999*

*This report is a compendium of opinions and concerns expressed by representatives, usually principals or general managers, of international investment banks, local investment advisers and "promoters" which are reported here as stated without editorial commentary or critique.*

### **Participants:**

For IBTCI (variously):

Mr. Charles Francis  
Mr. Mohsen Hasaan  
Mr. Rajai Masri, CJF,  
Miss Nancy Victor.

And,

Mr. Daniel Drevillon, General Manager, Bank Paribas;  
Mr. Hazem A Moussa, Manager, HSBC Investment Company Egypt;  
Mr. Morah, Manager, National Bank of Egypt;  
Mr. Farouk Nasr, Principal, International Development Consultants;  
Mr. Ashraf Mahmoud, Al-Ahly for Investment and Development;  
Mr. Safwat Bali, Misr for Financial Investment;  
Mr. Amr M. El Sharnoubi, Citibank;  
Mr. Hasaan Heikal, Manager, EFG Hermes;  
Mr. Nabil Farahat, Cairo Consortium;  
Mr. Ezz El-din El-Masry, Manager, Misr Exterior Bank;  
Mr. Amr Abou Zeid, Mrs. Amani El-Amin, Bank Nationale de Paris;  
Mr. Todd Petersen, Manager, Ghazaleh Group (Talal Abu-Ghazaleh International);  
Mrs. Hala El Barkouky, Principal, Allied Business Consultants.

Date: Sept. 29      Interview with: European Investment Bank

- Egypt suffers from "closed financial markets";
- No international "benchmark" bond has been issued; this affects investor confidence;
- An international bond issue was proposed and failed to be floated as a price could not be agreed;
- Inability to properly price IPOs and equity investment is a further hindrance to investment;
- Privatization process is non-transparent and dauntingly bureaucratic, bureaucracy "sandbags" the process;
- Conditions surrounding bidding to represent Holding Companies (further: "HCs") are unreasonable: two to three weeks to respond to tender for bids;
- Costs of mobilization of qualified team cannot be justified in view of lack of transparency and unreasonable bidding conditions, participation not cost effective;

- International management has declined suggestion of local management to contend for participation in privatization of Egyptian Telecom (!)...non-transparency and lack of clear process cited as reasons;
- HC (further: "HC") staff not conversant with issues in privatization, execution capability weak;
- There exists no adequate, competent counter-party as decision maker in privatization process;
- In cases where sovereign guarantee desirable National Bank is not acceptable as guarantor...government guarantee needed;
- Egyptian market, of all middle-eastern markets is most attractive, nonetheless no consumer credit available to finance development of that market...therefore companies in privatization less attractive...issues of growth and investment finance;
- Local banks don't support international financing operations, no adequate consortia;
- Wished to compete for purchase of cement company, HC was not open to discussion;
- If situation were to improve might consider participation in sale of insurance companies, electricity generation and distribution; ...perhaps reconsider stance toward Telecom.

Date: Sept. 30      Interview with: International Investment Bank

- Short-list of "investment promoters" too extensive, all presumed incorrectly, perhaps purposefully, by HCs to be equally qualified;
- HSBC wants to engage in IPOs and strategic sales in Egypt, however, not cost effective;
- Sales of obsolete companies simply not feasible, this is not understood;
- HCs do not understand role of and proper timing for engagement of investment bank, don't understand concept of value added in international market;
- HCs too secretive; investor cannot form opinion as to interest in particular investment target;
- Investment bank should structure and package offerings by HCs, government inflexible and does disservice by decreeing inflexible timetable for sale of particular companies;
- Re-structuring (in sense of re-grouping and re-organization as preparation for sale) is part of deal structure, should be undertaken early on with view to effective marketing of company;
- Experience is: Even in cases in which potential investor manifests interest if company not on sales-list company cannot be sold (!);
- Set schedule of sales, fixed implementation dates, inflexible bureaucratic process, competition from other investment venues, lack of will to sell, all hinder effective privatization;
- Case study: Sale of Nasr Glass and Crystal failed because Committee established at state-owned bank would (sic) not agree on value of debt in proposed debt/equity swap;
- CAA no longer the problem it once was, currently more flexible on valuations, not an insurmountable problem in sales process, case in point: current Department Store valuations.

Date: Oct. 3                      Interview with: State-owned bank

- Valuation procedure remains a problem especially as concerns pricing of IPOs;
- This bank has allegedly worked in consortium with international investment banks and remains willing to do so; however, admits its public sector advantage in being able to undersell the private sector in competition for tender bids;
- This bank views privatization procedures as adequate and not hindered by bureaucracy;
- Bank will not finance management or employee buyouts, government regulations allegedly forbid bank to provide credits for either management or employee equity participation;
- No privatization of banks foreseen;
- Bank management generally content with progress and procedures of privatization, would, however, welcome privatization of banks.

Date: Oct. 5                      Interview with: Boutique Investment Adviser ...foreign experience

- Experience in consortium with and as representative of major international investment bank, previously regional representative;
- Privatization should have begun with hard-currency generators: hotels and Egypt Air;
- Error committed with selection of public-sector banks to undertake privatization of several hotels, banks entirely inexperienced and, contrary to urging (of PEO?) unwilling to enter effective consortia, selected for political reasons as result of "low-balling" price;
- Obstacles to effective privatization: bureaucratic resistance and lack of appropriate incentives and post-privatization security for managers of affiliate enterprises;
- HCs lack fundamental skills to either understand or deal with concepts of "Added Value" and investment banks generally, not perceived as useful or necessary, moreover, HCs unwilling to pay for counsel and "expertise";
- HCs must be unambiguously directed by minister of privatization that "lowest price tender bid" is not, of itself, adequate justification for awarding investment banking mandate;
- HC management fears civil and, possibly, criminal legal repercussions of accepting any but the lowest bid for investment banking services, direction in this matter urgently required "from the minister".

Date: Oct. 10                      Interview with: International Financial Services Organization

- Asset sales financially too insignificant to attract participation of top-tier financial organizations;
- Ministry of Transportation and Supply (MOTS) has portfolio of enterprises attractive to strategic investors;
- MOTS must more closely supervise its portfolio to expedite privatization;
- MOTS requires expertise to expedite and supervise privatization of its portfolio;
- Bureaucratic structures inhibit privatization sales, no clearly-empowered final decision-maker;
- Government shares in public companies are held by government banks which, in turn, possess inadequate management experience and inadequate decisional structure;

- Tender process flawed from beginning, information provided not adequate for investment bank to make even preliminary decision of interest in participation, information often inaccurate;
  - Participation not cost-effective for investment bank with other sources of business; HCs do not recognize even most basic concepts of fair dealing;
  - This investment bank devoted resources to participation in tender-bid, was awarded the bid only to find that the contract for representation would not be signed;
  - Stock-market floatation preferred by HCs as management remains with floated companies whereas no such guarantee is provided by sale to strategic investor;
  - Financing of privatized companies hindered in cases of international loan syndication by withholding of tax payable on interest to investor;
  - Bond financing not effective as market illiquid, public sector banks forced to subscribe to government issues resulting in “crowding out”;
  - Success fees: Feared potential criminal prosecution of management hinders selection of appropriate investment bank, lowest fees bid therefore most acceptable without regard to experience and capabilities of bidder.

Date: Oct. 11 Interview with: Egyptian-managed local office of International Investment Bank

- Decisional authority in privatization not possessed by HCs;
- HCs subject to (unspecified) political risk; each sales-decision must be made at cabinet level;
- HCs possess inadequate in-house expertise to deal with broad issues of privatization preparation and sales;
- Majority of pre-qualified “investment promoters” not able to provide comprehensive privatization advice;
- Emphasis on price as primary criterion for choice of investment banker prevents qualified representatives from bidding; representation is not cost-effective;
- HCs do not include investment banks in planning process at stage early enough to develop adequate strategy for re-grouping of affiliate companies into saleable industrial units;
- Investor should re-structure target company after acquisition; re-structuring by HC misallocates resources; does not necessarily improve prospects for ultimate sale.

Date: Oct. 11 Interview with: Boutique Investment Promoter...principal foreign-educated with work experience in international public-sector financial organization

- Original concept was to implement “creeping privatization”; increase private ownership in state companies;
- Under previous government valuation was employed as device to brake the pace of privatization;
- Valuation criteria were largely unrelated to cash flow, therefore not realistic indicator of true value;
- Track-record and capabilities of investment banks not adequately considered by HCs;
- Government practice of pre-selecting list of companies to be sold in given time-frame not practical; non-fulfillment of stated goals casts doubt on process and commitment to privatization;

- Problems in decisional-process are systemic; true authority not adequately delegated among government bodies; sales decisions must be made, at a minimum, at cabinet level;
- Procedures and responsibilities of various government agencies exercising influence on privatization should be formalized and accountability for decisions, or absence of decision, strengthened;
- Difficulty arises if investor wishes to negotiate for purchase of company NOT currently on privatization list.

Date: Oct. 11      Interview with: Investment Affiliate of Local Bank

- Valuations problematic as prices set unrealistically high and Central Accounting Agency's price estimate is held secret, not provided even to investment banker or promoter representing HC;
- Accountancy firms involved in valuation tend to respond to requirements of company Boards not to needs of shareholders;
- Flawed decisional process of awarding mandates to investment promoters resulting in cases in which promoter formally chosen but actual contract for representation never awarded;
- Cost to investment bankers and promoters of participating in tender requires guarantee that underlying company will actually be sold;
- HCs use investment bankers as brokers not as providers of comprehensive services;
- Management of affiliate companies have no incentive to aid sale-process; possible loss of position and security not adequately addressed by currently offered "early-retirement" or compensation measures;
- IPOs hindered by thin market for shares and lack of liquidity;
- "Bureaucracy with upper-case "B" " is hindrance to privatization; decisions slow, process unnecessarily complex, therefore outcomes in any given case uncertain.

Date: Oct. 12      Interview with: Local Investment "Consortium"

- HCs don't know what to expect from an investment bank, therefore professional relationships develop strained, not comfortable with broad delegation of representational authority to an agent;
- HCs do not understand that experience and capability of investment banker may improve both likelihood of successful sale as well as improve terms of sale;
- HCs unwilling to accept usual conditions of compensation of investment banker; retainers particularly unwelcome;
- Competition from unqualified investment promoters results in submission of unrealistically low bids;
- Privatization strategy not originally conceived as vehicle for entry of strategic investors;
- Standardized procedures for transfer of company to strategic investor not institutionalized;
- Strategy of floatation of shares without participation of "anchor investor" not flexible enough to address needs of economy and investors;
- Both inadequacy of "early retirement" program and, from investor's perspective, difficulty in enforcing contracts act as disincentive to privatization sales.

Date: Oct. 12 Interview with: Investment Affiliate of Local Bank

- HCs do not have adequate understanding of legal aspects of sale of companies;
- Administration of closing procedures for transfer of company ownership lacking;
- HCs do not re-group smaller production lines into integrated competitive units more suitable for sale;
- HCs do not recognize implicit obligation to pursue transaction in good faith to its conclusion once negotiations undertaken;
- HCs unwilling to certify information provided to potential investors;
- Disagreements arising from non-disclosure result in disruptive re-negotiation of contracts in late stages of sale
- HCs do not enter sales negotiation with clear sale-strategy and motivation to sell;
- HCs inflexible in accommodating financial-structuring necessary to aid financing of sale.

Date: Oct. 14 Interview with: European Investment and Commercial Bank...Egyptian management

- Mismatch exists between HC needs and degree of sophistication required to recognize and address those needs;
- HCs see no reason for privatization, obstruct the process;
- HCs perceive that cooperation with an investment bank results in benefit accruing solely to the investment bank;
- Managers do not comprehend the privatization as policy, no apparent benefit accrues to management in privatization;
- Investment bankers viewed as threat to security and livelihood;
- No mechanism exists for sale of smaller companies not suitable for sale by international investment bank;
- Consortia should be promoted as means of skill-transfer to local investment banking sector
- International banks not interested in knowledge-transfer; do not fully realize that negotiation success requires Egyptian to Egyptian contact;
- Methodology of fielding unsolicited bids for sale of companies unsatisfactory;
- Companies not on official sales-roster cannot be sold; fear of accusation of favoritism or non-transparency;
- Venture capital should be drawn into privatization process;
- Valuation remains a problem because of inflexibility of relevant authorities and fears of accusation if lower than officially-sanctioned price approved;
- *Needed: Mechanism for legal protection of decision-makers in privatization from unfounded allegations of misfeasance from initiation of process through conclusion;*
- If decisional process, fee structure and standards of transparency remain as they currently are this bank (interviewee) is not interested in participating in privatization;
- HCs require their own internal consultants and advisers;
- Current HC privatization officers do not comprehend even most basic analytical techniques or notions of corporate governance.

Date: Oct. 27 Interview with: Boutique Investment Advisory Firm ...successfully managed sale of Cement company

- Government criteria underlying privatization: No layoffs, no write-off of bank debt, valuation at greater than asset value;
- Central Accounting Agency reserve price must be met, if not process blocked if Ministerial Committee does not approve lower price;
- Cabinet decides which companies will be sold and when, criteria for decision unclear;
- HCs require competent help to draft Tender Documents for selection of investment bank as well as all other documentation to be provided by HC to potential investor.

Date: Oct. 28 Interview with: Middle-Eastern International Investment Group, appointed as sole Privatization Adviser to Lebanese Government...comments reflect experience with recent inward investor, HC and government agencies

- HC provided vague information, inadequate operational and financial details;
  - Expended five months time in almost daily negotiations with no tangible results;
  - HC acted without consistency in instructions to investor, delegation of negotiating authority, scope of negotiations;
  - HC would not allow Due Diligence nor provide indicative price;
  - Investor was required to purchase Tender Documents;
  - Financial statements never provided
- Result:** Seriously motivated investor decamped.
- Authority to sell should be removed from HCs and transferred to PEO or similar body;
  - Professionals should be hired and placed at disposal of PEO to “package” and sell companies in portfolio;
  - Adequate delegation of authority does not exist, “bottleneck” exists at “top of decision-chain”;
  - Time and information to formulate bids for representation completely inadequate... one week recently allowed for presentation of commitment to cost of representation in sale of company on the basis of one year’s financial statement of company for sale.
  - Processes of valuation inaccurate, politicized.

# **Investment Banking Services for Egypt**

## **Project Events**

# Investment Banking Services for Egypt

First Project Event

## Orientation Seminar for PEO and Holding Companies

October 24, 1999

### Introduction

A first orientation seminar was held at the offices of the Public Enterprise Office ("PEO"), on the morning of October 24, 1999, with the objective of introducing the staff of IBTCI to representatives of the Holding Companies ("HCs").

### Attendance

#### PEO

Mr. Fouad Abdul Wahab, Director PEO  
Mr. Akrum Bastawi  
Mr. Mohamad Hassounah

#### USAID

Mr. Ross Bigelow

#### IBTCI

Mr. Jayant Kalotra  
Mr. Charles Jelinek-Francis  
Mr. Rajai Masri  
Mr. Mohsen Hassan

### Points of Discussion

1. Mr. Fouad Abdul Wahab opened the session by briefly explaining the purpose and objective of the meeting.
2. Mr. Charles Jelinek-Francis briefly introduced the IBTCI team. He explained the project-goals and role of IBTCI as follows:
3. IBTCI is involved in an advisory role, as a facilitator, and trouble-shooter. IBTCI won't play an executive role and won't be involved in actual privatization work.
4. IBTCI would assist in the enhancing of communications between the HCs and the investment promoters.
5. IBTCI would suggest procedural improvements as where appropriate.
6. IBTCI would organize a series of round-table meetings to address priority issues in preparation for privatization.

7. IBTCI would meet a number of HCs on a one-to-one basis, and determine their needs. Identify multiparty issues for further study in round-tables.
8. IBTCI would meet a number of investment promoters on a one-to-one basis, and determine their concerns.
9. Mohsen Hassan, discussed the role IBTCI will play. He emphasized that their approach would emphasize practicality, in most relevant fashion, and away from theory. He spoke as a colleague to a crowd of HC representatives, addressing them in familiar business language and terms.
10. Mr. Fouad Abdul Wahab expressed appreciation for the assistance sponsored by USAID. He indicated that USAID would be providing further assistance to expedite the process of privatization. He then invited comments from the representatives of the HCs. A discussion among the HCs ensued. Some of the major points raised were:
  - There remain many unresolved issues of legality that complicate the process of privatization. There are inherent tax considerations that could rise in the repackaging process of the transfer of assets from affiliate companies to the holding companies. There remains the eventuality that the purchaser/strategic investor could become tax liable, with recourse, should it be determined that the sold assets were undervalued. Arbitration clauses also seemed in conflict with the general governing law.
  - Some representatives reckoned that some of the sticky legal issues would demand the modification of existing pertinent laws or the promulgation of new laws to address the issues, a process that could be very involved and that can only be carried out at the highest level of policy making. Mr. Fouad Abdul Wahab suggested that should such an eventuality arise, then the matter can be referred to the general assembly of the HC concerned to rule over the matter in question.
  - Questions were raised about the lack of clear standards for valuation.
  - Questions were raised on restructuring prior to sale. Mr. Fouad Abdul Wahab explained that the minister made it clear that restructuring would precede sale.
  - Many specific questions were raised, including a question on the admissibility of sale to a single purchaser after the close of the stipulated tender period, should there be no other competitive bids. Another question was raised about the admissibility of sale of a losing affiliate company to a single willing purchaser, even without the process of an open tender. Mr. Fouad Abdul Wahab concurred with its admissibility.
  - Another issue was raised about the tendering period, and the difficulties, legally, to re-open the tender should no acceptable offer be received.
  - Complaints were raised about the inflexibility of the Central Auditing Agency with regard to valuation.
  - Issues were raised about social responsibilities towards the employees and the suggested schemes for fair compensations.
  - Mr. Fouad Abdul Wahab sympathized with the dilemma of the management of the Holding Companies in attempting to insure the establishment of a fair price. He spoke of his understanding of their concerns and of consequences that could befall them *ex-post*, should the sale-price of the AC be in hindsight, to have been lower than a subjectively stipulated price higher than what the market will pay.

- The Chairman of the Board of the Maritime HC, Atef Marouni, showed enthusiasm and eagerness to commence discussions with IBTCI, on one-to-one basis; the Building and National Construction & Building Holding Company as well.

# Investment Banking Services for Egypt

## Second Project Event

### Investment Banking Services and Legal Framework of Privatization

November 4, 1999

#### Introduction

The first of a series of events to assist the Holding Companies (“HCs”) in the process of privatization was held on Thursday November 4, 1999, at the offices of the Public Enterprise Office (“PEO”). The targeted audience is the decision-makers in the HCs.

The chosen topic for the first workshop was: Legal Framework of Privatization. The invited speaker was counselor Ahmed A. Hassan, Vice Chairman of the State Council. The event was chaired by Dr. Mahmoud Salem, legal and economic advisor to the Minister of Public Enterprises.

Mr. Hassan is involved in the formulation and subsequent interpretation of most all the new investment and commercial laws in Egypt. He and Dr. Salem were responsible, to a large extent, for the formulation and executive interpretations of Law 203, of 1991, which governs the privatization program in Egypt.

The objective of the roundtable was to familiarize a selected group of HC executives with the various laws that govern joint-stock companies and the background of their formulation and development. We also wish to provide a forum for open exchanges to address a range of specific legal issues directly bearing on the HC or its affiliates during privatization.

#### Attendance

##### Speaker

Mr. Ahmed A. Hassan, Vice Chairman, State Council

##### PEO

Dr. Mahmoud Salem, Adviser to Minister  
Mr. Mohamad Hassouna, Restructuring Specialist

##### IBTCI

Mr. Charles Jelinek-Francis  
Mr. Rajai R.Masri  
Mr. Mohsen Hassaan

##### Holding Companies

Mr. Wadie Mishreky	Privatization Advisor, Metallurgical Industries
Mr. Omar Saad Eldin	Director of Privatization Housing, Tourism and Cinemas
Ms. Jamalal Abdul-Aal	Legal Department Housing, Tourism and Cinemas
Mr. Munir M. Ali	Projects Specialist, Chemical Industries

Mr. Ibrahim S. Fawzi  
Ms. Nahed S. Sharief  
Mr. Nabil Dwedar  
Mr. Zaki S. Zakaria

General Manager, Construction Holding Co.  
Senior Attorney, Agricultural Development  
Asst. General Manager, Maritime Holding Co.  
Director Privatization, Maritime Holding Co.

### Organization

The roundtable was held in an informal setting to allow for maximum ease of discussion of issues of immediate concern, and the expression of varying points of views and suggestions.

The first roundtable was dedicated to covering part-I and part-II of the agenda: "Background: Laws Governing the Joint-Stock Companies in Egypt," and "An Elaboration of Documentation Necessary to Prepare a Company for Privatization."

Subsequent events are planned to discuss further legal issues such as: The design and contents of a standard contracts, and other recurring legal issues common to the HCs.

### Points of Discussion

Mr. Hassan proceeded during a three-hour meeting to cover the topics in an orderly sequential fashion. Dr. Salem intervened intermittently relate specifics examples from actual cases to the theoretical theses of the discussion. For example:

#### Why Legal Review?

Mr. Hassan stressed the development of the commercial and investment laws to their present state. He stated that he had endeavored to promote one comprehensive law to facilitate matters and remove confusion in interpretation with of four separate laws. This initiative was, however, not successful.

- It was explained by Messrs. Hassan and Dr. Salem why it is imperative that the HCs be fully familiar with the history and the circumstances of the development of these laws, as well as the varying interpretations occasioned by varying situations
- Many of the ACs are governed by different laws, and their activities as public sector companies, are constrained by certain legal obligations with which management must be fully familiar. This is especially true with regard to many procedures such as liquidation, etc.
- Both Mr. Hassan and Dr. Salem stressed that any mishandling of any aspect of the privatization process, by even virtue of ignorance, could have serious ramifications for the managers involved, to the extent, in some cases, of criminal sanction. Thus the necessity of being fully cognizant of the governing laws and their application is a matter of utmost importance.
- It should be noted that this threat of criminal sanction for mere negligence appears to hinder a more aggressive approach to privatization by company management.

## **Background**

- Mr. Hassan narrated the legal developments pertaining to the laws governing joint-stock companies and the stock markets since 1954.
- He described the five laws currently governing the activities of the ACs in varying degrees and different manners. These laws are:

Law 159 of 1981, regarding joint-stock companies;

Law 8 of 1997, the investment law (guarantees & incentives regarding investment);

Law 97 of 1983, concerning public sector companies and authorities (e.g. the assets and shares of such companies shall not be sold & such selling is forbidden by law);

Law 203 of 1991, regarding the Public Enterprise Companies, where such law allowed the sale of the shares and assets of the public sector companies; and finally,

Law 95 of 1992, regarding the capital market.

- Mr. Hassan, and Dr. Salem, explained each law, and gave specific case-study examples to clarify and emphasize points.
- According to Law 203 of 1991, a public sector company shall be considered (become) a private sector company if the ownership of the HC in the AC doesn't exceed 50% of the equity capital. Law 203 is intended to bring the laws governing the operations of public sector companies closer to private sector laws.
- Messrs. Hassan and Dr. Salem touched on points of inter-institutional confusion and difficulties in the interpretation of the laws.
- The spirit of all the new laws are to contribute to the fast development of a capital market and sufficiently capitalized stock markets; to facilitate the inflow of investment capital to Egypt. and the formation of joint-stock companies. The emphasis on transparency stems from these objectives.
- CAA standards are now closer to international accounting and auditing standards.
- Messrs. Hassan and Dr. Salem discussed the voting rights of minority shareholders. A debate ensued on this issue among nearly all the attendees.
- Mr. Hassan made suggestions how to safeguard the interests of minority shareholders by including safeguards in the Articles of Association He emphasized that is necessary in respect to voting rights, liquidation and share dilution.
- Mr. Hassan reminded the audience that the laws do not permit the revaluation of the assets of the operating company except in the eventuality of merger with another company.

- In order to facilitate the privatization a the Committee for the Facilitation of the Transformation of Public Sector Companies,” was founded., It is comprised of three members: Mr. Ahmad Hassan , Dr. Mahmoud Salem and the Director of the Companies Administration Department.
- Mr. Hassan touched upon the subject of employees as shareholders and the organization of the “Union of Employee Shareholders.”

### **Disclosure & Transparency**

- Mr. Hassan and Dr. Salem impressed upon the HC representatives the need to conduct a proper due diligence to verify the state of the assets and obligations of the ACs designated for privatization.
- This would facilitate the preparation of an Information Memorandum (“IM”), and expedite the process of the sale of assets, as well as remove possible grounds for disputes, that might prove costly and damaging to the seller.
- Messrs. Hassan and Dr. Salem pointed out to the fact that international investors are a sophisticated group that approach the task of acquisition with extreme caution and employ leading reputable international professional specialist houses in all the respective domains: legal, financial and technical. They thoroughly examine all details of a transaction.
- Mr. Hassan related that on a visit to Thailand he was told that three most assurances needed by foreign investors were: Guarantees against expropriation or nationalization; free convertibility and transfer of funds; and foremost, the existence of a fully developed legal framework.
- In this vein, Mr. Hassan allocated significant amount of time to discuss some of the legal framework and mechanisms enacted to further institutionalize the development of an advanced legal system, and ensure transparency.
- He mentioned many examples, of the methodology, function, and the rapid implementation of the binding resolutions of the Grievance Committee.
- This committee was specifically created to enhance the development and effectiveness of a capital market. He admitted that financially trained legal counselors are fewer than needed.
- Mr. Hassan and Dr. Salem requested that the HCs be aware and take into consideration the possible change of valuation of the assets once acquired by the private sector. This might occur as a result of the cessation of concessions, franchises and other inherent advantages, such as monopoly, which were enjoyed by such companies by virtue of their peculiar earlier status as public sector companies. They related a few examples such as the Maritime Agencies rendered worthless when the monopoly status was lost.

### **Due Diligence: Preparing for Privatization**

Counselor Hassan and Dr. Salem recommended full transparency in the conducting of the privatization process and urged the HCs in this regard, to conduct a prior due diligence of their portfolio of ACs, with special emphasis on the following matters:

1. The Articles of Association and Statutes.
2. The Commercial Registry. Some ACs could be operating without proper registration with the competent authorities. This could prove very problematic and time consuming for the prospective investor.
3. The Tax Card, and the overall tax situation: It is not unusual to find many Acs much in arrears on various taxes due (e.g. income tax, salary taxes, sales taxes, stamp tax, real estate tax, etc.).
4. Import & Export cards.
5. The validity of all licenses and permits relating to certain fields of activities.
6. Pending litigation, which shall include all the cases filed by or against the company.
7. Social Insurance.
8. Insurance policies: Validity and premiums outstanding.
9. Current contracts & obligations.
10. The registration and valuation of Trade Marks and intellectual property.
11. List and Status of distributors, suppliers and agents.
12. Establishing the Union of the Employees Shareholders.
13. The validity and enforceability of title to all assets, including real estate.
14. Inspection of the lease contracts.
15. Review of all legal books.
16. The registration of the company in the Stock Exchange. This could prove advantageous to the seller, and can also remove many potential hurdles to the buyer.
17. The registration of the company in the Central Book Keeping.
18. The valuation of the company.
19. The accuracy, completeness and timeliness of duly audited financial statements, along with the accompanying notes and commentaries.
20. A historical narration of all the salient events that affected the business of the company since its inception.

# Investment Banking Services for Egypt

## Third Project Event

### Methodology of Selecting and Dealing with Investment Promoters

November 10, 1999

#### Introduction

This event, convened to discuss the "Methodology of Selecting and Dealing with Investment Promoters," took place at the offices of the PEO on Wednesday, November 10, 1999. The topic is relevant to enhancing communications between the Holding Companies ("HCs"), and Investment Promoters.

The speakers and setting were selected with a view to maximizing communication. Executives of HCs known for success in privatization related their experiences first hand, in a case-study format to an audience of their counterparts from other HCs.

#### Attendance

##### Speakers

Mr. Wadie Mishreky, Privatization and Investment Advisor, Metallurgical Industries  
Mr. Tarek Abul Ola, Chief Investment Advisor, Mining and Refractory

##### PEO

Dr. Mahmoud Salem, Legal and Economic Advisor  
Mr. Mohamad Hassouna, Restructuring Specialist

##### IBTCI

Mr. Charles Jelinek-Francis (excused for illness)  
Mr. Rajai R. Masri  
Mr. Mohsen Hassan

##### Holding Companies

Ms. Salwa A. Mansour	Director Econ. Studies, Mining and Refractory
Mr. Tarek Abul Ola	Chief Investment Advisor, Mining and Refractory
Mr. Wadie Mishreky	Privatization Advisor, Metallurgical Industries
Mr. Ali T. Al-Qadi	Accounting, Agricultural development
Mr. Zaki Zakaria	Chief Privatization Advisor, Maritime Transportation
Mr. Nabil Dwedar	Asst. Gen.Mngr Investment, Maritime Transportation
Mr. Omar Saad El-Din	Director Privatization, Housing, Tourism and Cinemas
Mr. Safwat M. Hassan	Director Privatization, Food Industries
Mr. Ibrahim S. Fawzi	Gen.Mngr. Econ. Studies, Building and Construction

## Organization

The agenda allowed each speaker 25 minutes to present his remarks. This was followed by an approximately one hour of open discussion. Mr. Wadie Mishreky was the first to speak then Mr. Tarek Abul Ol. Followed in a similar fashion. Dr. Mahmoud Salem chaired the event and Mr. Mohsen Hassan acted as a moderator.

### Mr. Wadie Mishreky's Presentation

Selecting Investment Promoters and identification of a Strategic Investor.

Mr. Mishreky favors, from practical experience, the restriction of solicitation for bids to only a very few investment promoters. He reminded the attendees that the role of the investment promoter is predominantly a consulting one. He further described the investment promoter selection process which he sub-divided into five phases.

- *Phase One:* Important factors to consider when selecting Investment Promoters. Selecting from the PEO's approved list.
- *Phase Two:* Preparing Requests For Bid (RFB). Broad Framework of the contents of the Technical and Financial Proposals.
- *Phase Three:* Terms of Reference for evaluation of the Technical and Financial Proposals.
- *Phase Four:* The Evaluation Process.
- *Phase Five:* Final Negotiations and Selection. The Content of the Letter of Award

Discussion (Annex I, attached below, augments the following points):

- Mr. Mishreky argued that a retainer, in addition to success fee, be paid to the investment promoter. He believes this would encourage the investment promoter to carry out its mandate more seriously and more effectively. Proper performance involves significant up-front expense and allocation of resources.
- Mr. Mishreky supports his position with the assertion that assets remaining to be privatized are less attractive than those previously sold. Some did not require the intervention of investment promoters. Now, however, that the option for IPOs is less feasible, the specialized services of the investment promoter become more necessary. In the absence of a retainer, the investment promoter wouldn't have adequate incentive to seriously canvass for an investor. One remark was made that the privatization law (reference is made here to Law 203) limits the role of the investment promoter in the privatization process.
- The attendees seemed skeptical of the basis on which the CAA determined prices, valuation, of assets to be privatized. The CAA, apparently entertains the erroneous notion that the buyer/acquirer is favored by the methodology of valuation employed by the CAA. The attendees favored more standard methods of valuation: replacement value or discounted cash flow.

- Potential future accountability for the ultimate selling price looms large in the minds of decision makers at the HCs.. It could easily become a point of contention and implies an institutionalization of suspicion of the integrity and the good judgment of the decision-makers. Potential liability seems open-ended. This apparent threat explains the caution displayed by the management of the HCs in the disposing of the assets, and is having an impact on the acceleration of the privatization process.
- An addendum to Rule 26 of Law 203, lately issued by the Prime Minister's office, helped allay management concerns by reaffirming the right the General Assemblies of the HCs.to value the assets to be privatized.
- All present stressed the risks attending the failure to effect the sale of a company/asset after it had been advertised. Such failure undermines its value, or may render it completely un-marketable.

### Mr. Tarek Abul Ola's Presentation

#### A Case Study of a Sale to an Anchor/Strategic Investor: Beni Swaif Cement.

- Company background.
- The procedures for privatization.
- Reconciliation of the legal status of the company with Law 159 of 1981.
- Selling company shares to the Union of Employee Shareholders.
- The role of the investment promoter/consultant during various phases of the Privatization Process.

### Points of Discussion

#### PEO's Policy

Dr. Salem opened the session by stating PEO's policies and philosophy regarding the selection of investment promoters.

He indicated that invitations to bid should be addressed to all the investment promoters in the PEO's pre-qualified list (41 in total). That is: In addition to others who might respond to a public advertisement. Dr. Salem believes that the EL 5,000 paid by the pre-qualified investment promoters in answer to the invitation is a sufficient proof of their seriousness and commitment to perform.

This became a point of contention, and several of the attendees, including the speakers, thought that to solicit bids from multiple firms had proven time consuming and costly.

- Dr. Salem's emphasized that multiple bid solicitation helps insure transparency.
- Dr. Salem called for continuous preparation of the companies for privatization. He reminded those present of the need to emphasize the transfer of technology, and not to lose sight of the macro-economic goals of the privatization program. Paramount among the objectives is to ensure the continuation of the AC as an on-going concern after the sale. He emphasized the need to improve and expand production after the sale.

- Additionally, he advised that criteria for the selection of offers should not be financial only, but should assign value to investors who are specialized in the same business activities as the AC.

#### The Presentation by Mr. Abul Ola

Mr. Abul Ola presented a case study of the successful privatization of the Beni Sweif Cement company. The essence of the presentation is contained in Annex II, attached below. The Sale of Beni Sweif Cement Company is exemplary as it involved complex due diligence as well as financial structuring required to address the issue of substantial yen-denominated non-assignable loans. A dramatic revaluation of the exchange rate in favor of the yen since contracting the loans in 1985, caused the revaluation of the assets to unrealistic levels.

Mr. Abul Ola described problems the company faced in the absence of orderly Documents of Title. He explained that in the course of normal business expansion the National Cement Company, the original title-holder, created, new, independent cement plants, without due registration as independent operating companies.

The problem was overcome by a decree of the Prime Minister adding an addendum to Rule 26 of the Executive Regulations, of Law 203. Accordingly the General Assembly of the HC was empowered to adopt a binding resolution approving an acceptable and realistic price derived from the privatization price of a comparable company: Sinai Cement.

#### Creating and Preparing A Data Room

Ms. Salwa Mansour is known among the HCs for having organized an exemplary Data Room.

Ms. Mansour explained which documents the data room should contain and related examples of situations which may arise when dealing with representatives of the prospective investor in the course of due diligence.

It was decided to devote a future project event to further discussion of this topic.

#### Evaluation

At the end of this event the PEO solicited participant evaluation.

The ratings were:

- Excellent 6 persons
- Good 3 persons
- Acceptable 1 person

## Annex I

### Highlights of Methodology of Selection and Dealings with Investment Promoters

Mr. Masshrekie of the HC, Metallurgical Industries, explained the process of selection of investment promoters/bankers. He suggests the process involves five phases.

#### **Phase I**

The HC should first determine the degree of attractiveness to a prospective investor of the ACs' field of specialization and business activities, and broadly classify them into:

- Attractive business and activities.
- A non-attractive business.

The appropriate selling strategy:

- Public Offering (PO), or
- Strategic investor (local, foreign or both).
- The size of the transaction.

The HC should next establish criteria to pre-qualify a short list of prospective investment promoters, drawing first on the PEO's list of pre-qualified promoters while soliciting up-dated information. Mr. Mashrekie proposed the following criteria for qualification:

1. Previous experience in the investment promotion in general, and in the field of activity of the affiliated company in particular.
2. Number of transactions, their sizes and values, successfully completed by the investment promoter.
3. The sale strategies of the above transactions: POs or sale to strategic investors.
4. The need to engage foreign investment promoters is determined by their international presence and a network of wide clientele base.

#### **Phase II**

Issue letters of invitation to short-listed promoters. The letter should contain the following information:

- The size of the transaction in question.
- The selling strategy (PO, or a sale to a strategic investor).
- The minimum price, if known.
- The expected period for the sale of the assets.
- An information memorandum and other related documents.
- The date of submission of the advisory/investment banking proposal.

The solicited bidders should submit two proposals: one technical and one financial. The *technical* proposal should contain:

- A work plan, or a strategy for the promotion of the sale commensurate with the size and type of business to be sold, and strategy to achieve a successful sale, and the realization of the highest price.
- The scope of work and the role that the promoter would perform.
- The time frame required to successfully consummate the transaction.
- The *financial* proposal should contain:
  - The proposed success fee to the investment promoter.
  - The expenses to be borne by the holding company, with a defined ceiling.

### **Phase III**

Prior to receipt of offers from the investment promoters/bankers, the holding company should establish standards, criteria and procedures for evaluating the technical and financial proposals. Mr. Mishreky pointed out may vary to suit the nature, conditions and circumstances of the different transactions and may take into account the following considerations:

- The size and value of the transaction under consideration.
- The nature of the business to be sold, and the degree of its desirability to prospective investors as regards:
  1. The profitability of the business (scaled: good, average or weak).
  2. The market share that this particular business enjoys.
  3. The growth potential of the business likelihood of expansion and development.
  4. The nature of the risks and problems faced by the company.
- The maximum period envisaged to complete the transaction.
- The estimated costs involved (success or no success).

In accordance with the results of the evaluation relative weights are given to each component and to the technical and financial proposals. For example:

- 80% technical: 20% financial  
for a business requiring high promotional capabilities to sell.
- 50% technical: 50% financial  
for business that does not require high promotional capabilities.
- 30% technical: 70% financial  
for business that does not require high promotional capabilities.

#### **Phase IV**

Upon receipt of the offers from the bidders of the investment promoters the following steps should be taken:

##### ***Technical Proposal***

Open the envelopes containing the technical proposal, and record the contents in a special register designated for this specific purpose. Review and evaluate the proposal by a committee of experts.

- Each member of the committee should afterwards be asked to give his/her evaluation independently, and an average value is drawn from these independent assessments which comprises the final technical evaluation of the proposal.
- The technical evaluation committee then prepares a report on its recommendations, citing its justifications based on the specifics of each submitted proposal.
- The evaluation results, along with the committee's report are then put into an envelope, which in turn would be sealed and deposited at the committee's secretariat.

##### ***Financial Proposal***

- A special financial committee is formed, and it oversees the opening of the envelopes containing the financial proposals
- The financial committee should prepare a report estimating the cost of engaging the services of an investment promoter/banker based on the results of the evaluations.
- A comprehensive report should then be prepared containing the results of the technical and financial evaluations.
- The evaluation reports and recommendations should be then approved and authorized by the Chairman of the Board of the HC.

#### **Phase V**

- A letter of notification would be sent to the winning bidder.
- Subsequently, a draft contract would be drawn to establish the legal basis of the arrangement between the HC and the investment promoter. This should include definition of the promoter's role and establish the fee structure.
- Thank you letters are sent to the unsuccessful bidders.

## **Annex II**

### **A Case Study of a Sale to a Strategic Investor**

#### **Beni Sweif Cement Company**

Mr. Abul Ola and Ms. Salwa Mansour, suggested the following procedural steps in preparation for sale of an AC.

**I. Prepare a company history**

- The Founding of the Company.
- The Company's market share in cement.
- The situation of the labor force.
- Capital, in the broad sense.
- Results of operations over the years since inception.
- Disclose financial problems to be resolved during the privatization process.

**II. Define procedures to be followed in the privatization of the company**

- Designating the Company as a candidate for privatization.
- Valuation the Company (the valuation process).
- Preparation of all relevant documents to prepare the company for privatization.
- Advertising publicly the invitation to bid to strategic investors.
- The outcome of the bidding.
- Negotiations with the best bidders.
- Concluding and signing the sales contract.

**III. Undertake reconciliation of the company's position with Law 159 of 1981.**

**IV. Complete the sale of a minority share to the Union of Employee Shareholders.**

**V. Clarify the role played by the consultants to the company at the different stages with regard to:**

- Valuation.
- Preparing and putting in order the various documents to facilitate the privatization of the company.
- Negotiations.

## Investment Banking Services for Egypt

Fourth Project Event

How to Prepare a Public Enterprise Company for Privatization:

A Legal Perspective

November 18, 1999

### Introduction

The fourth project event addressed preparation of state-owned companies for privatization. It took place on Thursday, November 18, 1999, at the offices of the PEO. The guest speaker was Mr. Ahmed Hassan, Vice-Chairman of the State Council of Egypt. This second event in a series of three, was devoted to an in-depth discussion of the various legal issues a Holding Company ("HC") must address when undertaking privatization.

Mr. Fouad Abdul Wahab of the PEO chaired the meeting.

### Attendance

#### Speaker

Mr. Ahmed Hassan

#### PEO

Mr. Fouad Abdul Wahab, Director, PEO  
Mr. Gamil Mossaad, Advisor to the Minister  
Mr. Mohamad Hassouna, Restructuring Specialist

#### IBTCI

Mr. Charles Jelinek-Francis  
Mr. Rajai R. Masri  
Mr. Mohsen Hassan

#### Holding Companies

Nabil M. Dwedar	Asst. Gen. Manager Investments, Maritime Transportation
Zaki S. Zakaria	Director of Privatization, Maritime Transportation
Gamatat Abdul Aal	Director of Legal Affairs, Housing, Tourism and Cinema
Mohamad Hamed	Director Marketing and Planning, Spinning & Weaving
Ahmad Mohamad	Director Legal Affairs, Textile Manufacturing
Abdul Hafez Toukhi	Director Economic Dept., Textile Manufacturing
Fuad Ahmad	Attorney, Pharmaceuticals
Nasser Mustafa	Attorney, Pharmaceuticals
Safwat M. Hassan	Director of Privatization, Food Industries
Ahmad Yusuf	Director Economic Affairs, Electrical Construction
Ahmed Suleiman	Member Board of Directors, Cotton and International Trade
Ahmad S. Jaber	Director Legal Affairs, Cotton and International Trade
Munir Hasan	Engineer, Engineering Industries
Ibrahim Fawzi	Director Economic Studies, Building and Construction

## **Organization**

This event is the second of a series of three designed to enhance the awareness of the HCs of legal matters pertinent to Affiliate Companies (“ACs”) privatization.

The discussion was primarily about issues of transparency, efficiency, and legal compliance in the privatization process.

## **Materials**

A document in Arabic, containing a compendium and explanation of the laws affecting privatization, was distributed to all attendees.

## **Points of Discussion**

Mr. Hassan started the discussion by reviewing and commenting on the different documents that a company in privatization should possess, validated and in good order at all times. He offered specific examples from actual cases and recommended that attention be given to the following particular matters and documents:

### **Valuation**

- The Quadrite Committee examines the validity and accuracy of valuation of the assets or company to be privatized. However, nothing in Law 203 of 1991 addressed the issue of handling disputes.
- The Prime Minister issued a decree No. 2781 on 20, September, 1998, adding an addendum to the Executive Regulation 26 of Law 203. The addendum empowers the General Assembly of the HC, in an extraordinary meeting, to take the final decision as to value and therefore, price of the AC to be sold.
- The promulgation of this addendum alleviated confusion regarding the legal status of appraisals done by the

### **Central Auditing Authority (CAA)**

- Another source of the confusion surrounding appraisals arises from the circumstance that no single method is recognized as the standard. The two commonly used methods are: Discounted Cash Flow and the Adjusted Replacement Value methods.

### **Articles of Association**

- The Articles of Association of the company in privatization should be amended to conform to Law 203.
- Due to the nationalization laws, and other later company, investment and commercial laws, the Articles of Association of some ACs do not reflect recent changes. In order to assure continuing validity of Articles of Association they must be amended.

### Commercial Registration

- Entries in the Commercial Registry should be reviewed for validity. It should contain clear references to a company's branches, industrial plants, all activities, and should be amended to reflect the actual activities of the company.
- In the case that an entry in the Commercial Register does not exist, for a stand alone branch, subsidiary or a factory one should be created.
- Include a statement that empowers the company to sell its assets.

### Tax Cards

- Should exist and be maintained up-to-date.

### Import & Export Card

- Should be valid, and current.
- Specify the goods imported or exported.

### Licenses, Franchises and Permits

- Valid up-to-date licenses, permits and franchises relating to all the activities undertaken by the company and all concessions granted to it.
- Verification of the ability to transfer or assign to the prospective investor of such licenses, franchises and permits.

### Litigation

- Identification of all the outstanding legal actions by or against the company.
- The sums in dispute, subject of litigation, could substantially effect the sale-price of the company.
- Some companies targeted for privatization treat litigation matters very casually, and no appropriate mechanisms are instituted in place for a timely follow-up.
- Unsettled litigation claims if not duly identified and quantified are carried over to the books of the acquirer, since the acquiring company is a legal entity, and not a natural person.
- Failing to duly identify outstanding litigation could potentially criminally implicate the seller as committing a fraudulent act of misrepresentation.
- Mr. Hassan noted that the prospective investors mobilize contingents of international professional advisors from specialized consulting houses for the conduct of due diligence.

- The message for the HCs and Acs is: To identify problems early on, and work on solutions ;that they fulfill their responsibilities as sellers before the professional advisors of the prospective investors begin their due diligence.
- Mr. Gamil Mossad, advisor to the Minister of the Public Enterprise Sectors, and Restructuring Expert of the PEO, recommended the creation of a unit within the company that would be solely dedicated to administering litigation. An information system should be established with the capability to automatically update on a timely basis the status of outstanding cases and assign accountability for timely follow up. Mr. Mossad urged that the CEO of the company be informed in a routinely, on a periodic basis of the status and progress of each case.
- Mr. Hassan, prominent judge, author of legislation, and a lawyer, blamed the ACs for neglecting active follow up of outstanding cases in the courts. He admitted that courts can be slow in processing commercial cases, however, he strongly advises companies to actively monitor the progress of these cases. He was convinced the process could, through active monitoring, be dramatically expedited.
- Mr. Hassan gave disconcerting examples of company management grossly neglecting exercise of rights relating to litigation decided in their favor, for simple lack of effort to remain informed. These cases resulted in substantial financial loss.
- However, Mr. Hassan believes that the court system needs to be further developed.

#### Taxes

- Mr. Hassan urged the company selected for privatization to review its tax situation with the relevant and competent tax authorities. Management should obtain a statement confirming that all taxes have been paid.
- Mr. Hassan remarked that the company might be liable for various taxes such as: Income, Stamp Duty, Sales, Import Duties, and, very importantly, Real estate taxes.
- The interest due on unpaid taxes due could accumulate into significant sums with the passage of time.

#### Deeds of Ownership

- Because of Nationalization in 1961, the ownership deeds and other pertinent ownership documentation may not be in proper order.
- Certain recommendations were made to establish a section in the company to verify the accuracy, monitor, and the keep safe deeds of ownership of real estate. The company should be wary of infringements of ownership occasioned by changes on the property not reflected in the available documentation, such as: Easements and rights of way, and other inchoate interests not recognized in the company's records.

### Social Insurance

- These liabilities could represent off balance sheet liabilities, and can be substantial.
- As with taxes, certifications to the effect that all social insurance liabilities have been timely met and paid should be obtained from the competent authorities.
- Mr. Hassan again emphasized the willingness of the prospective investor to examine every detail. His message to the HC is: To do things correctly from the start, which should, in the final analysis, reflect favorably on its credibility and the successful consummation of the sale.

### Insurance Policies

- All the relevant types of insurance policies (fire, buildings, theft, etc.), should be renewed, and in good stead.
- All premiums due should be fully paid.

### Contractual Obligations

- All kinds of contractual agreements and obligations to which the company is a party, must be very clearly, openly and fully disclosed.
- The company should not incur new contractual obligations outside of the ordinary course of business after the Tender for the sale of the company is announced.

### The Environment and Conditions of Labor:

- The company should review its compliance environmental laws, and regulations; specifically Law 4.
- Foreign investors are extremely sensitive to issues of environmental liability. The company on sale should not take its adherence to environmental protection laws and regulations lightly.
- Labor conditions, compliance with child-labor laws and related social legislation should be fully observed by the company.

### Trade Marks & Intellectual Property

- Insure the proper registration and validity of Trademarks, patents and all other intellectual property in a manner that protects, unequivocally, the rights of the company.
- The company on sale ought to designate an employee to administer these matters.

### Suppliers, Agencies & Distributors

- The company should maintain at all times a register recording, in very clear terms, the agency agreements to which the company is party, as well as a list of suppliers and a list of all distributors.

### Inventory

- Establish a realistic basis for the valuation of the inventory. Book value could misstate market reality.
- The example was noted of the unrealistic valuation of the inventory of the Papers Company; fourfold the market value. In this case the CAA enforced a mistaken appraisal not reflective of the market.

### Leases

- Special attention should be paid to the validity of lease contracts and their enforceability.
- Certain leases might be of value by virtue of locations, duration and right of use. However, absent monitoring and close administration the company might find itself in default, thus forfeiting a valuable intangible asset.

## **Legal Books**

### Company By-laws

- Particular attention should be paid to the company's By-laws. The company should try to reconcile its By-laws, without prejudice to its binding obligations, especially to its labor force and employees, with the requirements that would facilitate the sale, and not place unnecessary and undue burden on the acquiring party.
- The company should refrain from changing the By-laws intentionally in advance of sale, in a manner designed to unduly benefit the employees. No changes should be introduced to the company's By-laws effective the date of announcement for invitation to tender.

### Company's History

- A full account of all the developments that the company underwent since inception, especially in view of transfer of ownership and changing legal situation, should be prepared.

### Registration in the Stock market

- Requires the reconciliation of the Articles of Association to Law 159, governing the Joint-Stock companies, so that the company can qualify to be listed in the stock exchange.

- An example was given of a Joint Stock company having discovered that its capital was not divided into shares as its Articles of Association were not modified to allow this.

### **Financial Statements**

- The AC should have available complete and duly audited financial statements for the past five financial years.
- Preferably, the financial statements should be formatted so they would correspond to International Accounting and Auditing Standards, or can be more readily reconciled and reformatted to such standards.

### **Information Memorandum, Prospectus and Instructions to Bidders**

- They should be comprehensive, accurate, and provide full disclosure and transparency.

### **EVALUATION**

A column in the attendance sheet is reserved for evaluation of the session by each attendee. The rating was as follows:

- *Excellent*      15 (All fifteen attendants)

The audience was interactive, and many attendees participated in the discussions, often asking very pointed questions relating to the specific situations of their companies.

# Investment Banking Services for Egypt

Fifth Project Event

## Seminar for the National Building and Construction Co.

### The Role of Investment Bankers in Privatization

December 6, 1999

#### Introduction

In continuation of the series of project events to highlight issues in privatization IBTCI organized a seminar, for the benefit of the National Building and Construction Company (NBC).

The main topic concerned the role an investment banker can play to expedite the sale of public companies. The meeting was held, at the request of the PEO, on Monday, December 6, 1999, at a banquet hall in the Meridien Heliopolis Hotel. The event was organized with the assistance of Mr. Ahmad Al-Sayed, Chairman, NBC. Mr. Mohsen Hassan, was the moderator.

The participants were senior executives of the 7 Affiliate Companies ("AC") of NBC, as well as the chairman, vice-chairman, and director of privatization of NBC. Additionally, CEOs of two investment banks were invited to speak.

#### Purpose of the Seminar

The Building and Construction Holding Company is preparing five ACs, for privatization. As they appear suitable for sale to a strategic investor an investment banker should be able to effectively assist with these sales.

This seminar provided a forum for open discussion about the services an investment banker may provide to facilitate transactions.

#### Attendance

31 people participated in the seminar:

##### National Building and Construction

Six persons, including:

The Chairman  
Three Members of the Board  
Director of Privatization

##### The Affiliate Companies

Nineteen persons, representing the following ACs:

*Misr Aljedeedah Company for Housing & Contracting*

Three persons, including the Chairman  
*Al-Ma'ady Company for Development and Construction*

Two persons, including a Member of the Board  
*The Egyptian Contracting Company*

Three persons, including the Chairman of the Board  
*The Egyptian Joint-Stock Company for Contracting*

Two persons, including the Member of the Board  
*The Egyptian General Company for Buildings*

3 persons, including the Chairman of the Board  
*Bahr Al-Ahmar General Contracting Company*

3 persons, including the Chairman of the Board.  
*The Arab Foundations Company*

3 persons, including the Chairman of the Board.

#### The Investment Banks

International Investment Advisors, Mr. Hasan Hussein, CEO  
International Development Consultants, Dr. Farouk Nasser, CEO

#### IBTCI

Mr. Charles Jelinek-Francis  
Mr. Rajai Masri  
Mr. Mohsen Hassan

#### Points of Discussion

##### The Holding Company

- Mr. Al-Sayed emphasized that the program of economic reform and privatization has been the salvation of the Egyptian economy. He stated that the public sector prior to the initiation of privatization reached the point of near collapse as a result of the general condition of the companies in that sector
- He asserted that of privatization, especially during the last three years, has been an overwhelming success. Despite the lack of liquidity in the economy, many public sector companies have restructured and revitalized themselves without prejudice to the interests and rights of the employees and creditors.
- With regards to the National Building & Construction Holding Company, has a portfolio of 24 of the Acs of NBC ( 4 housing, 20 contracting companies); of these 12 of the 20 contracting companies were showing, as of June 30, 1996, large losses. The remaining 8 contracting companies were barely profitable.

The choices were to either liquidate the majority of these companies, or effect major restructuring requiring tremendous financial resources. The total debt owed by the affiliate companies, excluding current accounts payable, stood at EL 3,100 million, an immense sum, given the actual state of the companies' balance sheets.

- Mr. Al-Sayed stated with regard to debt restructuring, that the HC succeeded during the past three years to lower the debt level by repaying EL 700 million to the banks., This repayment aided the ACs (better financial structures, and lower cost of servicing debt), as well as, avoid helping hinder a national banking crisis.

The stock market, three years ago, was flourishing, and liquidity conditions were excellent. The HC privatized, by public several ACs, in the housing sector. The stock offering was oversubscribed, and the companies at a multiple of the price expected. Mr. Al-Sayed was quick to note that housing companies, such as the Town of Naser Company and Shams Company, were attractive to investors, if for no other reason than for the value of their land.

- However, Mr. Al-Sayed, pointed out that usually contracting companies are, in comparison, less attractive to investors than the housing companies. *The contracting companies, in his view, are unique, and assessing their true value can not be accurately accomplished except by those who understand that business.*
- He went further to explain his assertion, that, unlike companies in manufacturing industry, contracting companies' true value does not reside in the tangible assets that the company owns, but rather in the effectiveness of its management, and existing contracts (work in progress). Thus, the basis of valuation differs according to the ability to discern the specifics differentiating a strong company from a weak one. *The obvious message on this account is directed to the investment promoters.*
- Prior to the change in the conditions on the stock market, the HC's policy was to maintain a certain measure of control of companies sold to the general public. The purpose was to insure a smooth transition and the continuing (?) successful operation, as ongoing concerns, of the privatized companies. This was done by the retention by the HC of approximately 20% ownership of the sold company's stock, until the company conditions had stabilized. Then the HC's stake would be sold to an anchor/strategic investor.
- *Mr. Al-Sayed noted that the market conditions now have changed. The only option for a sale strategy is through sale to anchor/strategic investor. The task is now more daunting as contracting companies are less attractive to an investor when compared with housing companies owning tangible assets.*
- Mr. Al-Sayed outlined some desirable attributes of a prospective strategic investor; foremost among them the investor: *Must be in the same field of business as the construction company to be acquired.* To emphasize this issue, Mr. Al-Sayed reiterated the uniqueness of contracting as a field of specialization, requiring totally different standards with regard to measuring and assessing value.

### IBTCI

Mr. Francis welcomed the audience, briefly summarizing the purpose objectives of the seminar.

Mr. Rajai Masri then followed with a presentation He discussed the role of the investment banker or promoter in the sale of companies and the methodology for their selection. He based his presentation on a **Working Paper** prepared written in Arabic by IBTCI, and distributed to all participants. (A summary translation is attached, below).

- Mr. Masri emphasized the central theme of the discussion: Maximizing the realizable value/price; and the integral role played by the investment banker as an intermediary for effecting the sale.
- After explaining the conditions and customary financial obligations of an investment banker he highlighted the pro-active, versus the passive, role an investment banker can play to add and create value in a deal.
- Mr. Masri enumerated and discussed the different functions an investment banker would perform to facilitate the sale and enhance the value of the company. He emphasized the necessity for an investment bank to be fully integrated, and act as a full partner to the company on sale while preparing it for privatization, particularly with regard to participation in building an accurate and reliable data base of information pertaining to the company's operations and financing.
- The role of the investment bank in establishing a fair value for the company, on the basis of in-depth analysis, and the company's potential, was emphasized., The active participation of the investment bank in managing the tender process, from the preparation of the tender documents, to point of sale were highlighted.
- Mr. Masri pointed out, that one significant attribute an investment bank must have, given the sale strategy to seek anchor investors, is its international reach, and a proven capability of an extended network of business and investor relations.
- Finally, he discussed the list and contents of tender documents, and the evaluation process for the selection of the investment banker. Special attention was accorded the required contents in the technical and in the financial proposals, ending the presentation by recommending the inclusion of a schedule for a time frame for the tender from beginning until award of contract.

### **The Investment Banks**

#### **The International Investment Adviser**

Mr. Hassan Hussein, CEO, Secretary General of the Egyptian Capital Market Association (ECMA), and Director of the Investment Promotion Section.

- Mr. Hussein began by stating that the contracting companies suffer from a combination of financial problems: Overwhelming debt, the bulk of which is governmental. Mr. Hussein considers the debts an issue that must be addressed.
- The contracting companies are highly leveraged, whereby the equity base is relatively small compared to total assets.
- The inventory of work-in-progress, is very high. (An allusion to the insufficiency of the working capital, and the under utilization of resources.).
- Debt servicing, especially interest cost, is very high, eroding profitability.

- With regard to the promotional campaign for the sale of contracting companies, its success depends upon timing. Mr. Hussein reckons that market conditions are not conducive to effecting successful sale of contracting companies. He reiterated that the economic situation changed dramatically since the sale of the Town of Nasr Company in public offering three years ago. He noted that the real estate market is down, there is a liquidity crunch, and the stock market is down.
- Mr. Hussein reminded the participants of the cyclical nature of the construction industry. He pointed out that the construction contracting industry is the first to experience a slump when economic activity shows signs of a slow down. It is also the first to herald economic recovery with the increased contracting activity. The time is not currently optimal for the sale of either contracting or housing companies.
- Mr. Hussein also reminded the audience of the objectivity of valuation. On the premise that the value of a contracting company resides in the size of the contracted future works, he pointed out that thus far the bulk of works contracted by the ACs are government contracts. The question becomes, would that continue once a company is privatized? He rightly believes that once privatized, a building contracting company would need to diversify and expand its non-governmental works, and accordingly the basis of valuation should be revised.
- Mr. Hussein anticipates difficulty in effecting, at this particular time, optimal sale of general contracting companies in both the local and to foreign strategic investor in particular. However, he believes that specialized contracting companies, such as those in electrical and in petroleum, would always have prospective strategic investors, especially foreign, who would be willing to acquire them.
- Mr. Hussein drew attention to the mistaken ideas that many HCs and their ACs hold about the role and duties of an investment promoter/banker. He stressed that the investment bank/promoter should not be looked at as a passive broker who adds no value. He emphasized that the investment bank/promoter has an active role to play in close conjunction with the HC in determining a fair value for the company. He further indicated that an investment bank/promoter should maintain a strategic alliance with an international investment bank/promoter with *capacity to place the investment*.
- He expressed concern at preferential role accorded local commercial banks by the HCs in the promotion of ACs. He commented that one explanation for this may be that the participating major commercial banks and the ACs to be privatized are both public sector entities belonging to the same owner: the government.
- Mr. Hussein questioned how a commercial bank would enter into an agreement to promote the sale of an AC without charging any fees. In his view, under such conditions the bank couldn't undertake any serious effort to promote the sale. The holding company, therefore, receives no meaningful services with the obvious result: *a less optimal sale*.
- Mr. Hussein protested that the preferential treatment accorded the public sector banks by HCs, is evidenced by non-competitive selection practices of the ACs. This is unfair competition placing other non-commercial banks and qualified investment promoters at a disadvantage.

- Mr. Hussein remarked that the promotion of the sale of an AC abroad is synonymous to marketing the Egypt, itself, This necessitates presentation of the country's present economic conditions, and the outlook for its economy

### International Development Consultants

#### Dr. Farouk Nasser, CEO

- Dr. Nasser spoke briefly about himself and the works his company undertook in the to facilitate the sale of of ACs to strategic investors.
- Dr. Nasser explained that his Ph.D. degree was in civil engineering. He was a professor at Cairo University, and has 25 years experience in the investment field. many years were spent as an executive with a international investment banks, among them Solomon Brothers.
- Dr. Nasser's company just advised in the sale of Alexandria Cement Company to the British firm Blue Circle. It also acted as the investment promoter for the successful sale of the Beni Sweif Cement Company, sold to the French company, Lafarge.
- Dr. Nasser emphasized that the investment promoter should be considered an integral part of the managerial team of the HC during a privatization sale..
- The HC should engage an investment promoter very early on, to help formulate the strategy of sale, and actively participate in the process of valuation. He indicated that notwithstanding the formal valuation submitted to the Central Auditing Authority (CAA), the investment promoter and the management of the company need together to establish a fair value for the company.
- Among the criteria for the selection of an investment promoter, Dr. Nasser emphasized previous experience in the area of the target company's specialization.
- *Enhancement of value* is the central objective for hiring an investment promoter. *Timing* of sale is the most crucial element to effecting successful sale.
- Dr. Nasser divided the tasks to be undertaken by an investment promoter into two broad categories:
  1. Understand the reality of the company's situation from all aspects, and develop the requisite strategy for the sale ("Diagnostic Analysis").
  2. Launch the sale-promotion through a network of business and investment contacts in both local and international markets, together with the use of "road shows".
- Dr. Nasser also noted that the investment promoter should play an active role in the tendering process.

### **Salient Points during Discussion**

After the speeches, candid and animated discussion ensued. This continued for nearly one and a half hours. Active participants were the chairman of the HC, a number of the chairmen of the ACs, the CEOs of the investment promoter companies, Mr. Mohsen Hassan of IBTCI, and Mr. Gamel Mossad, advisor to the Minister of Public Enterprises.

- Mr. Mossad was critical of the investment promoters/bankers. He observed that the investment banks in Egypt operate more like commercial banks. He believed that the HCs resorted to commercial banks instead of investment banks to promote the sale of their ACs, because they are not convinced the investment banks in Egypt are capable of doing the job.
- Mr. Mossad advised that the investment banks need to build the bridges of mutual confidence and trust with the HCs.
- Mr. Mohsen Hassan interjected that in his view the management of the HCs tend to favor commercial banks because of several reasons:
  1. To absolve themselves of any possible future accountability, since both belong to the same owner, the government
  2. Public sector enterprises are not accustomed to pay fees to financial intermediaries in the customary high ranges of 2 to 5 %, especially when the sums involved are substantial. Thus HCs prefer to pay to the commercial banks a much fee as insufficient as of 2 per mil.
  3. The small fee results in poor performance, and even the collapse of the deal. Examples of insufficient quality of representation can be seen in the Information Memoranda prepared by some of commercial banks. By contrast, the work done by a certain qualified investment promoter resulted in enhancing the sale price significantly.
- Dr. Nasser re-stated that valuation must be carried out with the full participation of a qualified investment promoter/banker. He offered as a cautionary example the case of a company which was sold at the price appraised and authorized by the CAA. This price was actually much less than that established by independent appraisal undertaken by an expert investment promoter had suggested. A vivid example of "Value Added".
- Dr. Nasser spoke of underwriting, and advised it wouldn't be in the interest of HCs to contemplate it when dealing with investment promoters. His explanation was, that the underwriter would try to negotiate for the lowest flotation price possible to hedge the market risks he would face when placing the stock.
- Mr. Ahmad Al-Sayed said he needed to dispel the wrongful impression that management of the HCs exaggerate the appraisals in order to prevent ultimate sale, and prolong their jobs. He made it clear that the majority of managers in the public sector enterprises are very qualified by private sector standards. He further noted that many successful managers operating in the private sector now were managers in public sector companies.
- Mr. Al-Sayed observed that during the stock bull market, the HCs could sell directly to the investors without the needed intervention of investment promoters.

- Mr. Al-Sayed went on to explain that the HCs were not passive in the process of valuation. They discussed, negotiated and argued with the representatives of the CAA. Moreover, his HC closely interacts with the market, gauges market moods and monitors its directions. The HC establishes the value of the company to be sold with full appreciation of the timing, and the reality of the market forces.
- Mr. Hussein attempted to address Mr. Mossad's crisis of confidence thesis, pointing out that investment promoters had been formally pre-qualified. The PEO short list, includes 41 pre-qualified investment promoters. He added that the list was compiled from a roster of 120 investment promoter candidates. In his view, a great effort went into producing that short list, and the companies on that list have built a good track record over the years.
- Mr. Mossad believes that very few on that list qualify given the changes in the stock market. In Mr. Mossad's view, confidence cannot be predicated on supposed qualifications, but rather on performance.
- Mr. Al-Sayed stated his views as to building trust and confidence. He referred to the necessity that the promoter commit himself to effect a sale within a given time. Otherwise, he suggested, the investment promoter be financially penalized for failure to complete the transaction. He suggested that the investment promoter should submit a letter of guarantee for his performance in this regard.
- Mr. Hussein explained that the investment promoter does not want to fail therefore before accepting a mandate he customarily first conducts a *market sounding*. If the judgment of the investment promoter is that the market is not receptive to the deal, he would then decline the assignment.
- Mr. Ghannam, the Chairman of the Board of the AC, Mukhtar Ibrahim, talked of a case study, to reinforce the criticism of the performance of investment promoters. He stated that it took an investment promoter three years to promote the sale of a company, which failed, and that the investment promoter himself declared bankruptcy.
- Another point of contention is fees, particularly, retainer fees.
- Dr. Nasser in supporting the concept that both a retainer fee, and a success fee, should be paid to the investment promoter, said that investment bankers would much prefer to represent the buyer who often pays much higher fees than what the seller would pay.
- Mr. Al-Sayed believed that no retainer fee need be paid, but rather only a success fee. In his view, the potential of incurring non-reimbursed expense, ought to act be motivation for the investment promoter to successfully complete the transaction.
- Mr. Ghannam, strongly criticized investment bankers' trading practices in the stock market. He was referring to those investment banks who, beside corporate finance, manage securities portfolios and securities funds. He spoke of examples of manipulation and unfair practices.

- Mr. Hussein responded in his capacity as the Secretary General of ECMA, that a complaint should have been lodged with the Capital Market Authority, and with ECMA. That action would have triggered a full investigation of the abuse as well as disciplinary action and possible termination of the investment companies' activities. Mr. Hussein indicated that financial services companies are obligated to establish "Chinese Walls", to avoid insider trading, and separate the different competing services within the firm.
- Mr. Shahawi, Chairman of the Board of Misr Aljededah for Housing and Contracting made the observation that the contracting market was severely affected by governmental social. policy, particularly relating to construction and general liquidity.
- Among these are the decrees preventing commercial banks from lending for the acquisition of companies, and the freeze on issuing building permits in certain zones. The problem is the general economic situation and lack of liquidity; macro-economic conditions that render the role and tasks of the investment promoter daunting and untenable.
- It was noted with regards to building contracting, the local market is saturated, and what is needed is to locate willing international strategic investors.

## **EVALUATION**

Mr. Ahmad Mohamad Al-Sayed, the chairman of the board of directors of NBC gave his assessment of the meeting in the following words, which he incorporated in a letter, dated December 11, addressed to Mr. Fouad Abdul Wahab, the Director of the PEO:

*" We thank you for your real assistance, and complete transparency that marked the discussions that took place during the meeting on Monday, December 6, 1999."*

He goes on to further say in the aforementioned letter:

*"The meeting is rated excellent by all accounts, in particular the technicalities relating to the methodology."*

## AGENDA

The Fifth Project Event

### The National Building & Construction Holding Company

December 6, 1999

Venue	Meridien Heliopolis Hotel
10:00 – 10:15 a.m.	Opening speech – Mr. Ahmad El-Sayed, Chairman National Building & Construction Holding Company
10:15 – 10:40	IBTCI Speakers  Welcoming Speech – Mr. Charles Jelinek-Francis  Role of Investment Bankers in Privatization – Mr. Rajai Masri
10:40 – 11:20	Investment Banks' Speeches  Mr. Hasan Hussein, CEO Int'l Investment Advisor  Dr. Farouk Nasser, CEO International Development Consultants
11:20 – 11:45 a.m.	Refreshments
11:45 – 13:15	Question & Answer Session – Open Discussions

**(Synopsis in Translation)**

**Working Paper**

The Fifth Project Event

**The National Building & Construction Holding Company**

**Page 1**

The National Building & Construction Holding Company

The Role of the Investment Promoters, and the Methodology for their Evaluation and Selection.

A Strategic Investor

**Page 2**

Table of Contents:

Introduction

The Main Objective, the Ultimate Purpose

Justifications for Engaging the Services of an Investment Promoter/Banker

Conditions & Financial Commitment of the Investment Promoter

“Added Value”: Negotiating from a Position of Strength

- The Role of the Investment Promoter
- Assist in preparing the company for sale.
- Effect the sale placement.
- Assist in the preparation of the Tender Documents, and the process of Tender solicitation
- Setting guidelines, Tender evaluation process.
- Assist in the consummation of the sale.
- The Short-list and Tender Documents for selecting an Investment Promoter/Banker.

**Page 3**

Heading: The Main Objective, the Ultimate Purpose

Content: Achievement of the Optimal Value/Price

**Page 4**

Heading: Justification for soliciting the services of Investment Promoters/Bankers  
 Content: Attractiveness (desirability) of the Investment

- An attractive Investment
- A less desirable Investment.

Sale strategy:

- Public Offering
- Strategic/Anchor Investor

**Page 5**

Heading: Conditions & Financial Obligations of the Investment Promoter  
 Content: Underwriter/ Guarantor and Agent

**Page 6**

Heading: Adding Value: Negotiating from a Position of Strength  
 Content: Promoter's Skills

- The promoter's technical, organizational, managerial and management systems capabilities, and strategy and method of work.
- The promoter's acquaintance, and familiarity with the industry and business-activity of the company subject of sale; knowledge of the financial, technical, managerial, marketing and competitive aspects of the company's operations. Ability to portray actual value and potential to investor.
- The promoter's full understanding of the market forces at play, based on analysis. By extension, a knowledge of players in the market who could qualify as potential strategic investors.
- The ability of the promoter to highlight the benefits of the deal, and the competitive advantages of the company; the ability to assist in formulating competitive strategies, to enhance the company's value and prospects for sale, to construct a business plan based on convincing assumptions and logical projections.
- Possess an extended web of business contacts, and an extended reach that would improve the chances of identifying and attracting the desirable candidate investors.
- Creativity, and ability to conceptualize and structure optimal financing of the deal; knowledge and reach in the financial markets to advise on the source of the funds to consummate the sale.

**Page 7**

Heading: The Role of the Investment Promoter  
 Content: As in the table of contents, above, with further elaboration in pages 8, 9, 10, 11 and 12, below.

**Page 8**

Heading: Preparing the Company for Privatization/Sale  
Content: Data Compilation

- Participate and assist in the valuation of the company. This is based on the promoter conducting a reasonable degree of due diligence, financial analysis, assessment of the investing market conditions (timing) to establish - to the promoter's satisfaction, - a realizable fair value of the company.
- Assist in compiling the requisite audited data, information and documents about the company to include in a comprehensive "Information Memorandum." This with the purpose of facilitating and expediting the performance of due diligence by the prospective investor.

**Page 9**

Heading: Promoting the Sale – Placement Power  
Content: Market Analysis

- Draw a work-plan (strategy) for privatizing the company, with the object of achieving the highest feasible realizable price. This is in conjunction with a well- defined schedule for effecting the sale.
- Conduct an in-depth, comprehensive study on prospective strategic investors, drawing on the widest base possible, and prepare a report with full analysis on the prospects for sale.
- Engage the promoter's network to identify prospective investors, and disseminate information about the company, high-lighting its potential and salient features to attract the desirable investors. Communicate with prospective investors, answer their queries as they arise.

**Page 10**

Heading: Assist in the Preparation of the Tender Documents, and the Invitation to Tender

Content: Sale Documents

Assist in the Preparation of all the Tender Documents, including:

- Terms and Conditions
- Information Memorandum
- A sample contract
- Assist in the design of the advertisement of the Tender Solicitation and the guidelines of procedures to follow.

**Page 11**

Heading: Establishing Guidelines and Assisting in the Evaluation of Tenders.  
Contents: Procedure

- Assist in designing detailed guidelines for procedures; evaluate Tenders.
- Establish procedures to assure full transparency.

**Page 12**

Heading: Consummating the Sale  
Content: Final Negotiation

- Assist in formulating the letter to the winning bidder.
- Assist in formulating negotiation strategies, and assist in the details of the final negotiations with the winning bidder.
- Assist in the design and preparation of the legal documents, and assist in all the steps and procedures to successfully consummate the sale in conformity with the contractual conditions.
- Assist in the procedures to registering and listing the sold company in the stock market.

**Page 13**

Heading: The list and content of Tender Documents for selecting the Investment Promoters  
Content: Documents

- The Invitation to Tender
- Terms and Conditions
- Terms of Reference
- The requirements in the Technical Proposal
- The requirements in the Financial Proposal
- General information regarding the company subject of sale
- The time schedule until the award of contract

**Page 14**

Heading: The Content of the Technical Proposal  
Content: Bid Documents

- Detailed analysis of the method and plan of work.
- A detailed schedule for achieving each element/component/task, along with the promoter's plan to compiling a short list of prospective strategic investors.
- Description of the suggested working team for the project, along with diagrams and charts describing the organization of the work team, and clear definitions of responsibilities and authorities of each individual.
- A profile, or a Curriculum Vitae of each member of the proposed work team.
- List the relevant experiences and relevant strengths of the bidding investment promoter.

**Page 15**

Heading: Content of the Financial Proposal

Content: Fees:

- Retainer Fees
- Success Fee

**Page 16**

Heading: The Time Schedule to Awarding the Contract

Content: Sequence of activities from announcement inviting to tender until final award of contracts.

# Investment Banking Services for Egypt

Sixth Project Event

## Workshop for the Maritime Holding Company

### Prospects for Alexandria Shipyard in Privatization

December 7, 1999

#### **Introduction**

The workshop was held on Tuesday, December 7, 1999, in Alexandria, Egypt, at the offices of the **Maritime Holding Company** and two of its affiliates: **The Alexandria Shipyard Company** and **The Container Handling Company**.

A first meeting took place at the offices of the Holding Company. A second meeting was held at the offices of Alexandria Shipyard Company, at Alexandria Port. A third meeting took place at the location of the Container Handling Company, also at Alexandria Port. A final, summary discussion took place in the offices of the Holding Company prior to departure.

The object of the workshop was to become familiar with the privatization program of the Holding Company (hereinafter HC), and discuss sale strategies and obstacles to the sale in privatization of the two affiliate companies.

#### **Maritime Holding Company**

#### **Attendance**

##### Maritime Transportation

Mr. Atef Marouni, Chairman/CEO  
Dr. Abdul Kader Lashine, Senior Advisor  
Mr. Zaki S. Zakaria, General Manager Investments/Head of Privatization  
Mr. Nabil Dwedar, Assistant General Manager/Investments

##### IBTCI

Mr. Charles Jelinek-Francis  
Mr. Rajai R. Masri  
Mr. Mohsen Hassan

#### **Points of Discussion**

- A short welcome speech by Dr. Lashine, followed by review of the HC's expectations.
- Mr. Charles Jelinek-Francis stated the purpose of the workshop, emphasizing that our primary task is to provide guidance in how to deal with investment promoters/bankers

- Mr. Mohsen Hassan further explained IBTCI's mandate and scope of work. He indicated that the consultative nature of IBTCI team's mandate might permit a cursory diagnostic review of Maritime affiliate companies.
- Mr. R M emphasized the consultative nature of IBTCI's task as outlined in the USAID Scope of Work.
- The HC chairman, Mr. Marouni, highlighted the fact that Maritime Transportation ("Maritime") is a special case. Unlike other HCs, the activities of the affiliate companies of Maritime are conditioned and constrained by the international/global market.
- He gave an example of shipbuilding, an activity of Alexandria Shipyard, which is more and more dominated by shipbuilders in Asia. He suggested that Egypt does not have a competitive advantage in shipbuilding.
- Moreover: Egyptian entrepreneurs do not qualify as prospective anchor investors. This is because of the global, as well as the capital-intensive nature of the affiliate company business.
- Mr. Marouni also explained that the shipping business is becoming more integrated; that mergers have forged new competitive in the shipping industry throughout the world.
- Mr. Marouni made it clear that an international anchor investor would be the obvious candidate to undertake the privatization of the affiliate companies within Maritime. *It appears to him a fundamental question how to create the right formula to attract a prospective strategic investor.* He seemed to suggest a combination of preparatory steps, including restructuring, elimination of some unprofitable activities (shipbuilding), and exploitation of the great value the HC's real estate holdings.
- Mr. Marouni emphasized the need to conduct more in-depth analysis of the affiliate companies. He emphasized again that international operators in ship transportation are operating more and more within an integrated system. "Linkage", is, in his view, the crucial factor in the success of marketing in the shipping industry. He indicated that the industry is fast becoming "inter-linked," 30% computerized to-date, and the balance of 70% well underway for computerization.
- Mr. Marouni further described his vision for the future. He believes that greater efficiency, optimization, and expanded facilities are the factors which guarantee a competitive edge for aspirants to becoming an international hub, as he would wish for Maritime's two affiliate companies
- Mr. Marouni believes the Container Handling Company is competitively the best positioned to handle container traffic in the Eastern Mediterranean. The container handling business planned for Port Said is targeting the trans-shipment business and targeting feeder traffic. As a future competitor, the maximum share Port Said can take from the Container Handling Company's market should not exceed 5-15% over the next 10 years.

- Mr. Marouni spoke generally of the affiliate companies' strengths, and the programs underway to improve their efficiencies and competitiveness. He talked about an automation program and introduction of various automated subsystems. He emphasized continuous training of the labor force and management and that the shipyard has on its premises a Maritime Training Institute, which, according to international standards, is one of the best. Its certifications are acknowledged worldwide.
- Mr. Marouni emphasized the potential of the Container Handling Company's growing business. He stated that containerized trade with Egypt stands now at a mere 1.5 million metric tons, against a potential of 9 to 11 million metric tons. 80% of Egypt's trade is handled through the Port of Alexandria.
- Mr. Marouni sees a need to further improve efficiencies in order to attract shippers, and in particular improve on the time of handling containers. He would develop a system of door-to-door container handling if customs barriers can be overcome.
- Regarding sale of the affiliate companies, Mr. Marouni made it clear that this is a strategic decision affected by considerations of general company strategy and will require further consideration.
- Mr. Marouni seemed to advocate a "Management Buy-out" concept, in the nature of a long-term concession.. He indicated that Maritime Transportation Holding Company is awash in liquidity, and that it realized profits of EL 538 million in 1998.

### Alexandria Shipyard

The IBTCI team, accompanied by Holding Company personnel, visited the offices of Alexandria Shipyard and the Container Handling Company situated in the restricted area of the Port of Alexandria

### Attendance

#### Maritime Transportation

As above, with the exception of Mr. Marouni, Chairman.

#### IBTCI

As above

#### Alexandria Shipyard

Mr. Hussein Mohamed Sinnara, Managing Director  
Mr. Hassan A. Abouraya, Director of Information and Market Research

### Points of Discussion

- Mr. Abouraya gave a presentation of the company's history and activities.

- The company has been in existence since 1960, and conducts its activities out of an area of 400,000 square meters, at the Port of Alexandria. The company's main activity is shipbuilding augmented by other steel construction activities. The company contracts primarily with foreign shipping lines and ship-owners. It builds ships of up to 35,000 dead metric tons, according to designs furnished by the owners.
- In addition to construction of dry cargo ships, the company constructs:
  - Ro-Ro ships
  - Containerized freight ships
  - Tankers
  - Pleasure boats
  - Passenger-car ferries
  - Offshore oil-drilling rigs
  - Gantry cranes
  - De-dusting systems
- The company has design and engineering capability to construct ships up to 35,000 dead metric tons, and various large steel structures.
- The company disposes of all the ancillary activities of a metal-works, as well as engineering, machining and tooling workshops necessary for the work of shipbuilding and construction of other steel structures.
- It appears the company underwent a recent management change. The company has been in the red for quite a while, and proved a drain on the Holding Company's cash.
- The Company underwent recently a debt-, and labor-restructuring in order to contain cost and prepare for privatization. As part of balance sheet cleaning, all the debts on the books of the company were transferred to the books of the HC.
- The labor force was cut from approximately 5,000 to 2,582. The management has an objective to bring the number down further to a level of approximately 2,000 employees, a goal that does not appear readily achievable in the near future, given various social and political considerations.
- The present level of manpower, at close to 2,600, renders the cost of production high. Compared to the cost in Korea, and other Asian markets, it is reckoned shipbuilding is at least 30% higher here.
- The labor restructuring program entailed sub-grouping labor into three categories to be invited to subscribe to early retirement compensation packages:
  - Men of 50-58 years of age;
  - Women of 45 years of age;
  - Men and women of 20 years of employment with the company, of the ages 50 or below for men, and 45 and below for women;
  - Men and women of years of employment that is less than 20 years, which does not entitle them to receiving retirement salaries beside the compensation package.

- Industrial relations seem not optimal between workers and the management. This renders further cuts in the labor force problematic and is a sensitive political issue.
- It also appears, that the previous management was not effective. Alexandria Shipyard does not enjoy a reputation for commercial reliability by virtue of a history of delays, mistaken pricing and cost over-runs.
- The management of the Alexandria Shipyard now contemplates new corporate and business strategies for the future. The management developed a strategy, not necessarily final, and is open to more in-depth analysis, and marketing information. This new corporate strategy calls for abandoning shipbuilding due to the lack of competitiveness. Instead, the management identified three new areas of specialization, which it believes the company can perform more efficiently and competitively, in a growing market.

The three activities are:

- Ship repair and maintenance
  - Ship breaking/stripping
  - Engineering and metal structures
- The management is convinced that with present infrastructure the trained labor-force, proven engineering capabilities, capacious, strategically located plant and storage area, the company would be in a competitive position to carry out these new activities.
  - It appears that an in-depth study should be undertaken to examine the validity of the assumptions by the management. This appears a necessary prelude to privatization and establishment of a realistic price.
  - The approach, in this regard, should be to:
    - Conduct in-depth technical audit and due diligence to examine and establish the true capabilities of the company;
    - Conduct a market study in view of the perceived strategies outlined above;
    - Combine the general strategies with the findings of the market study to develop a marketing strategy;
    - Develop various scenarios for a marketing strategy;
    - Assess the capital investment requirements, training and technical requirements to carry the various marketing strategies;
    - Perform financial analysis, incorporating tools such as sensitivity and Monte Carlo analyses;
    - Prepare a business plan.
  - Establish valuation based on the above.

## The Container Handling Company

### Attendance

#### Maritime Transportation

As above

#### IBTCI

As above

#### The Container-Handling Co.

Mr. Izat Alkoudy, Director of Research  
Mr. Abass Abd El Gawad, Director of Operations

### Points of Discussion

- This company is considered the cash cow of the Maritime Transportation Holding Company. The facilities are state-of-the-art in the industry. The company is considered well run, the cost structure is within the industry's norms, and the facilities at both the Alexandria Terminal and EL-Dekhrila Terminal are among the largest in the Mediterranean.
- The total surface area of both terminals is 543,000 square meters. The facilities are run very efficiently, handling 20 foot and 40 foot containers. According to management the rate of stacking 25 containers an hour compares favorably with world standards. The operation should be fully computerized within one month, and the manpower is well trained.
- The business is considered very capital-intensive.
- Overall efficiency is improving, with the introduction of in-house engineered software and other systems, for example, the EDI (Electronic Data Interchange). Also the company aims at improving efficiency by overcoming the barriers in customs procedures.
- The handling capacity is increasing at an annual rate of close to 10%. By end of 1999, number of containers handled will reach 540,000 T.E.U. This number is expected to reach close to 600,000 in the year 2000, and 650,000 by the year 2001.
- Free storage time is low compared to other major stations in the region, and it is 7 days for inbound, and 10 days for outbound. Transit is 30 days.
- The company was certified ISO 9002 two years ago.
- The company, according to management, took care of the environmental problem relating to sewage.
- On the question of privatization, the sale strategy would be to grant a concession to a pre-qualified strategic investor.

- As with regards to future outlook to developing the business, the company is contemplating increasing the storage capacity from 160,000 T.E.U. to 240,000 T.E.U. With a view to improved handling capacity it is also increasing the number of cranes and fork-lift trucks.

### **Workshop Conclusion**

A final meeting was held with the Chairman, Mr. Marouni, during which he was briefed about the meetings with the affiliate companies. He indicated his interest in further aid in preparing Alexandria Shipyard for privatization. IBTCI noted that provision of in-depth and lengthy consultation would not be possible, however that we would discuss the request with the PEO which is in a position to solicit such aid in the HC's behalf.

# Investment Banking Services for Egypt

## Seventh Project Event

### Issues and Analysis: Open Forum with Investment Promoters

January 17, 2000

#### Introduction

The seventh project event took place at the Public Enterprise Office. The purpose of the meeting was to provide an open forum for discussing concerns of investment promoters regarding their role in the privatization of public enterprises. The IBTCI team prepared the agenda (attached, below).

#### Attendance

##### PEO

Mr. Fouad Abdul Wahab, Director PEO  
Ms. Rasha Omar, Valuation and Financial Analysis Unit

##### Investment Promoters

Mr. Hasan Hussein, CEO,  
International Investment Advisors

Ms. Dhalia O. Khalifa, Managing Director  
Global Capital Group

Mr. El-Sayed M. Moawad, Assistant General Manager  
Banque Misr

Dr. Farouk Nasser, CEO  
International Development Consultants

Mr. AbouBakr Zeitoun, Director Corporate Finance  
Cairo Financial Investments

##### IBTCI

Mr. Charles Jelinek-Francis  
Mr. Rajai Masri  
Mr. Mohsen Hassan

#### Points of Discussion

- Only as few as 6 to 10 investment promoters of the 41 investment promoters short-listed by the PEO, have participated in the privatization of public enterprise holding companies (HCs) have the right to select the investment promoters with whom they wish to deal.

- Commercial banks, especially the public sector National Bank, have been awarded a (disproportionately high?) number of mandates to represent sellers in privatization transactions. This is partially explained by the fact that public commercial banks are frequently the chief lender to an affiliate company.
- Mr. Abdul Wahab discussed a recent decree, # 4328, of the Prime Minister. This decree establishes an independent fund from the proceeds of the sale of privatized companies. The fund's assets shall be allocated to finance the debt settlements and labor restructuring of various companies. Accordingly, this would free the holding companies to select investment promoters on criteria other than creditor-debtor considerations.
- There was a consensus among the investment bankers, that the HCs are not to be disposed to contract for the services of investment banks. This stems from a misunderstanding of the role and scope of work that an investment promoter could perform. It is a problem of general misconception which left to circumstances would only slowly change.
- The investment advisor plays a role greater than that of a promoter and should become involved early in the privatization process. It should play a role in valuation, due diligence and the production of an accurate and comprehensive information memorandum, as well as the actual promotion.
- The investment bankers present felt it was incumbent upon the PEO to take the initiative in selecting the investment promoter for the privatization transactions as they arise, rather than leaving it to the management of the holding companies. Mr. Abdul Wahab argued that such intervention would infringe on established rules and procedures.
- The investment bankers complained that the great majority of the PEO pre-qualified investment promoters are not timely informed of the companies to be privatized, and thus are effectively precluded from participation.
- The investment bankers suggested that the PEO ought to produce a list of companies to be privatized, and circulate it to the pre-qualified investment promoters. Each investment promoter might then express interest in specific companies. The PEO could then forward to the concerned HCs the list of interested investment promoters with the object of soliciting their bids when the target-company is ready for privatization.
- Mr. Hussein and Mr. Zeitoun emphasized that the government ought to view the active participation of investment banks in privatization as a unique opportunity to develop a nascent investment banking industry in Egypt.
- There was a consensus among the present investment bankers that the PEO ought to issue guidelines to the holding companies describing the scope of work required to launch a successful privatization. The PEO should put into place a mechanism to ensure the adherence of the HCs to these guidelines.
- Mr. Hussein expressed frustration over the writing of guidelines and manuals, and he indicated that his experience over the three years convinced him of the non-utility of such documents to effect change in the HCs procedures. He advocates active direct intervention by the PEO in privatization matters.

- Mr. Zeitoun pointed out that circumstances have changed since the issue of the PEO list of pre-qualified investment promoters. He stated that the process of promoting the privatization of companies to be privatized is more difficult than previously. Accordingly, he suggests revisiting the investment promoters' list with the intention to develop clear terms of reference and a scope of work that would serve as criteria for selection of investment advisors.
- It was suggested to create a committee of representatives of the HCs, which had already successfully completed privatization transactions in order that less-experienced HCs draw on their expertise.
- Mr. Hussein and Mr. Zeitoun emphasized that the government ought to view the active participation of investment banks in privatization as a unique opportunity to develop a nascent investment banking industry in Egypt.
- There was a consensus among the present investment bankers that the PEO ought to issue guidelines to the holding companies of the scope of work required to launch a successful privatization process. The PEO should put in place the mechanism to ensure the adherence of the holding companies to these guidelines.
- Mr. Hussein expressed frustration over the writing of guidelines and manuals, and he indicated that his experience over the three years convinced him of the non-utility of such documents to effect change in the HCs procedures. He advocates active direct intervention by the PEO in privatization matters.
- Mr. Zeitoun pointed out that circumstances have changed since the issue of the PEO list of pre-qualified investment promoters. He stated that the process of promoting the privatization of companies to be privatized is more difficult than previously. Accordingly, he suggests revisiting the investment promoters' list with the intention to develop clear terms of reference and a scope of work that would serve as criteria for selection of investment advisors.
- It was suggested to create a committee of representatives of the HCs, which had already successfully completed privatization transactions in order that less-experienced HCs draw on their expertise.

## Agenda: Open Forum Discussion

1. An Overview:
  - a) The types and nature of the remaining companies to be privatized.
  - b) Overviews of the current economic outlook, the stock market, liquidity and the business environment.
2. A diagnosis of the causes that precluded investment banks from playing a comprehensive and active role in privatization.
  - a) Lack of effective communication with the holding companies.
  - b) The investment promoter's view of the investment environment.
3. Requisite specialization, qualifications and capabilities required of an investment promoter.

Procedural disincentives to investment banker participation:

1. The holding companies misunderstanding of the role of the investment banker.
  2. Absence of commensurate financial incentives: retainer and success fees.
  3. The dominant role of commercial banks in privatization, and institutionalization of under-bidding.
4. Recommendations:
    1. Educate the holding companies on the role and scope of work customarily undertaken by investment bankers.
    2. Initiatives by investment bankers for more creative approaches for financing.
    3. The investment bankers' plan of action to strengthen their investors' network.
    4. Establish terms of reference and a scope of work of the proper investment banking process in privatization for use by the holding companies.

## Investment Banking Services for Egypt

Eighth Project Event

### Open Forum Discussion

### PEO Procedure and Policy in Privatization

January 26, 2000

#### Introduction

The IBTCI team prepared a Proposed Review of Issues (attached below) as a working document for the meeting.

The meeting was held at the offices of the PEO, on January 26, 2000.

#### Attendance

##### PEO

Mr. Fouad Abdul Wahab, Director PEO  
Mr. Mohamad Hassouna, Senior Executive PEO  
Ms. Rasha Omar, Staff, PEO

##### IBTCI

Mr. Charles Jelinek-Francis  
Mr. Rajai Masri  
Mr. Mohsen Hassan

#### Points of Discussion

The object of the meeting was to discuss how best to facilitate privatization of Affiliate Companies (ACs). Based upon experience and observations during the course of the Investment Banking Services project the IBTCI team offered their comments.

- The Holding Companies do not fully appreciate the role that can be played by qualified investment banks to facilitate the sale and enhance the value of companies to privatized. The problem seems that of "education". Given the challenge of privately placing an investment with a strategic investor the role of qualified investment bankers is crucial for the effective consummation of a transaction.
- (HCs) about investment banks as effective promoters of investment will likely require more time than the ambitious Without the active intervention of the PEO educating holding companies government privatization schedule allows.
- The PEO, therefore, should promulgate guidelines to the holding companies. These concise guidelines' should in detail the work of investment banking nature that the HCs during privatization will likely need to perform. Familiarity with the specialized nature of such work might encourage HCs to solicit the services of a qualified investment banker.

- The team suggested that monitoring of implementation of the guidelines should be undertaken by the PEO.
- Further, the team suggested that the PEO consider augmenting its staff by establishing an *Investment Banking Advisory Committee* comprised of executives of some of the HCs most successful in privatization.
- "Success" should be defined as the effective sale of significant number of affiliate companies within a holding company.
- Considering the wide disparity that exists in the level of knowledge, sophistication and effectiveness between the advanced holding companies and those lagging in privatization, shared experience of the successful holding companies could provide guidance for the less experienced to emulate.
- Additionally, the IBTCI team confirmed that they are currently drafting guidelines describing a Model Data Room.
- Finally, the IBTCI team discussed their visit to the Maritime Holding Company; findings and recommendations are attached below.

### **Proposed Review of Issues: Investment Banking and Privatization**

#### **Issues for consideration**

##### Investment Promoters

In privatization, as a result of the changing business and economic environment in Egypt during the past three years, and given the nature of the remaining affiliate companies, direct investment by a strategic (anchor) investor appears to be the optimum choice.

As a number of the remaining companies to be privatized seem less attractive than those previously privatized the participation of a qualified investment intermediary is crucial to successfully attract investment. Here-to-fore full-service investment banking houses have not been significantly active in Egyptian privatization.

This is a result of the lack of sufficient appreciation by the HCs of the role and extent of the services a qualified investment bank may provide to facilitate privatization. Also, not all investment promoters seem equipped to deal with the changing realities the markets and economy.

Accordingly, a review of policy and a new approach by the PEO to engage investment banks and enhance their participation in privatization is a matter, which should be considered.

#### **Proposed Procedure**

Define and elaborate a Scope of Work and Terms of Reference

With regard to the role of an investment banker:

Restate the intermediary role to be played by the investment banker. This should be done in a manner reflecting the added value the investment bank is capable of bringing to a transaction. It is important to highlight consulting services, which an investment bank is able to perform:

Valuation, preparation of information memoranda, identification of prospective investors, facilitation of due diligence, tendering, financial engineering and creative financing approaches, contract preparation and negotiation.

Issue a separate decree by PEO to Holding Companies implementing the Scope of Work

The Scope of Work proposed above should be promulgated by the Minister of Public Enterprise among all the HCs.

Empower the PEO to monitor implementation of the decree.

To ensure that the instructions and guidelines promulgated by the MPE are observed and carried out in both spirit and letter by the HCs, a compliance mechanism empowering the PEO should be designed.

This task might call for the active participation of an independent consultant.

Create a Committee of privatization executives of successful HCs

Certain HCs are very advanced in implementing their privatization program. Immediately comes to mind companies such as Mining & Refractory, and Metallurgy. The executives in charge of privatization in such companies are very familiar with preparation of affiliate companies for effective privatization.

They have considerable knowledge and “hands-on” experience in this field a significant disparity exists in the level of sophistication and effectiveness between these advanced HCs and others that are lagging. Therefore, an Advisory Committee which “pools” the experiences of the successful HCs could provide guidance and an example for the lagging holding companies to emulate.

Creating a permanent committee, under the aegis of the PEO, comprised of a select group of privatization executives would significantly assist the lagging holding companies in expediting their privatization program. An independent legal advisor who is fully versed with the laws governing privatization should at all time be attached to such a committee.

The committee would hold periodically workshop meetings to address privatization issues, such as valuation, data room, contents of information memorandum, selecting and dealing with investment promoters, solicitation of bids, negotiations, etc. The committee should be accessible at all times to all HC executives.

The origination of such a committee, and its procedural organization might also require the specialized assistance of an independent consultant.

Create guidelines concerning standard documentation to be available in Data Rooms as well as the methodology for their operation

The IBTCI team could draft such guidelines. IBTCI consultants would coordinate with privatization executives of some of the leading holding companies to for review and comment of this document prior to its final publication.

## **RECOMMENDATIONS: MARITIME HOLDING COMPANY**

Subsequent to IBTCI's visit to the Maritime Holding Company and its affiliates in Alexandria on December 7, 2000 ( See: Sixth Project Event, Workshop for Maritime HC ) the management of the Maritime Holding Company requested recommendations for the privatization of its affiliate company, Alexandria Shipyard. As such an endeavor lies beyond the scope of work and mandate of IBTCI, it was decided to put the matter before the PEO as an extension of the more general policy issues raised above.

### **Background**

The management of the Alexandria Shipyard now contemplates new corporate and business strategies for the future. The new corporate strategy calls for abandoning shipbuilding due to the lack of competitiveness. Instead, the management identified three new areas of specialization, in a growing market. The three activities are:

- Ship repair and maintenance
- Ship breaking
- Engineering and construction in steel

The management is convinced that with the current company its trained labor proven engineering capabilities, strategic location and extensive real estate that the company would be in a good competitive position.

An in-depth study should to be undertaken to examine the validity of the assumptions by the management. This would seem a necessary prelude to any talk of privatization and establishing a realistic price.

### **Proposed Study Outline:**

The approach to follow in this regard should be to:

- Conduct in-depth technical audit/due diligence to examine and establish the true capabilities of the company.
- Conduct a market study in view of the perceived strategies outlined above.
- Combine the general strategies with the findings of the market study to develop a marketing strategy.
- Develop various scenarios for a marketing strategy.
- Assess the capital investment requirements, training and technical requirements to carry the various marketing strategies.
- Perform financial analysis, incorporating tools such as sensitivity and Monte Carlo analyses.
- Prepare a business plan.
- Establish valuation based on the foregoing.

## Investment Banking Services for Egypt

Ninth Project Event

### How to Prepare a Data Room for Due Diligence

February 2, 2000

#### Introduction

The ninth event was held at the offices of the PEO on Wednesday, February 2<sup>nd</sup>, 2000. It was targeted at the Holding Companies ("HC"). The objective of the roundtable was to introduce and discuss the guidelines in preparation by IBTCI for the *Establishment of a Model Data Room*.

#### Attendance

##### PEO

Mr. Fouad Abdul Wahab, Director of the PEO  
Mr. Mohamad Hassouna, Restructuring Specialist

##### MPE

Dr. Abdul Aziz Hijazi, Advisor to the Minister  
Dr. Mohamad Reda AlAdl, Advisor to the Minister

##### IBTCI

Mr. Charles Jelinek-Francis  
Mr. Rajai Masri  
Mr. Mohsen Hassan

##### Holding Companies

Mr. Wadie Mishreki	Metallurgical Holding Company
Ms. Mona Tosson Labib	Engineering Holding Company
Mr. Ahmad Farid	Engineering Holding Company
Mr. Zaki AlSayed Zakaria	Maritime Holding Company
Mr. Nabil Duwaidar	Maritime Holding Company
Mr. Osama Abdul Minim	Cotton and Intern'l. Trade Holding Company
Mr Hasib M. Abdul Rahman	Transportation Holding Company
Mr. Kamel M. Kamel	Transportation Holding Company

#### Material distributed

A first draft of a proposed guidelines "*Establishing A Model Data Room*," was distributed to all attendants. After discussion and review Mr. Fouad Abdul Wahab judged it necessary to schedule additional discussion of this topic.

The completion of the draft is dependent upon comment and observations from the HC personnel. This commentary shall be considered prior to composition of the guidelines in their final form.

### Points of Discussion

Mr. Fouad Abdul Wahab chaired the meeting. CJF briefly introduced the topic, explaining the objective and purpose of the event. RM continued the presentation. The following points were discussed:

- RM described the commercial necessity of establishing Data Room. He emphasized its importance within the wider context of privatizing a company.
- It was emphasized that changed conditions hinder the privatization of some of the remaining affiliate companies. A slower economy, a liquidity crunch and negative tenor of the stock market and the fact that many of the remaining companies are less attractive than those previously privatized complicates their successful privatization.
- An *Anchor/Strategic* investor seems the logical target. This fact necessitates a more active approach engagement by the HCs in the preparation for sale and promotion of their Affiliate Companies (“ACs”). On the promotional side, a better appreciation must be had by the HCs of the “value added”, role and scope of work required of an investment promoter/banker in the realization of a successful sale.
- Restructuring or efforts to “turn around may be required prior to advertising the sale of an AC. Circumstances will vary from one company to another. The general policy]is to limit restructuring to what he terms: “*soft* restructuring.” This requires less time and commitment of resources. Examples of “soft restructuring” are: debt settlements/restructuring, labor restructuring and introduction of managerial systems for increasing efficiency.
- Establishing a data room facilitates the process of sale of an AC in privatization. A well-organized data room expedites the process of Due Diligence by prospective investors. Beside easing the process of Due Diligence, comprehensive presentation of information in the context of a properly organized data room may ameliorate the necessity for escrow or retention accounts to the detriment of the seller’s interests, and substantially lessens the risk of future claims of fraudulent misrepresentations.

## Investment Banking Services for Egypt

Tenth Project Event

### Presentation of a Model for Establishing a Data Room

February 9, 2000

#### Introduction

The ninth event, a "round-table" was a continuation of discussions of the topic "**How to Prepare a Data Room for Due Diligence**," introduced in the 8<sup>th</sup> project event. The event was held in the offices of the PEO, on Wednesday February 9<sup>th</sup>, 2000.

#### Attendance

##### PEO

H.E. Mr. Fouad Abdul Wahab, Director, PEO  
 Dr. Ali Dirgham, Advisor to H.E. the Minister of MPE  
 Mr. Mohammad Hassounah, Senior Executive at the PEO  
 Mr. Mazen M. Fayyad, Manager M.I.S. at PEO  
 Ms. Marwa M. Al- Maslamani, Restructuring Department at the PEO  
 Ms. Dalia Sananah, Economic Researcher, PEO  
 Ms. Maggi R. Sa'd, Research Assistant, PEO  
 Mr. Tarek El-Sharnoubi , Research Assistant

##### IBTCI

Mr. Charles Jelinek-Francis  
 Mr. Rajai Masri  
 Mr. Mohsen Hassan

#### Holding Companies

Ms. Leila M. Naser	Spinning, Weaving & Textiles
Mr. Saber M. Saber	Construction & Building
Mr. Farouk H. Abdul Ghani	Cotton and International Trade
Mr. Osamah Abdel Monaim	Cotton and International Trade
Mr. Fawaz M.A. Odeh	Cotton and International Trade
Mr. Wadie Mishreki	Metallurgical Industries
Mr. Zaki El-Sayed Zakaria	Maritime Holding Company
Mr. Nabil M. Douwaidar	Maritime Holding Company
Mr. Mohamad Ahmad Sarhan	Engineering Industries
Mr. Ahmad M. Farid	Engineering Industries
Mr. Kamel Mustafa	Transportation
Mr. Haseeb M. Abdul Rahman	Transportation
Mr. Safwat M. Hasan	Food Industries
Mr. M. Sharif El-Fakher	Construction & Building

## **Organization**

The event was devoted to further discussions concerning establishment of a Model Data Room. A presentation on Information Technology was made during for the final half-an-hour of the two-and-a-half hour session Mr. Fouad Abdul Wahab chaired the meeting. Mr. Mohsen Hassan moderated.

Mr. Mohsen Hasaan opened the discussion by answering questions regarding the establishment of a data room, which had been raised by Mr. El-Fakher during the previous event.

Those questions were:

1. What is the objective of introducing this new concept of a Data Room? What could be the legal ramifications if any?
2. Where has such a concept had been applied before, and in what manner was it was carried out?
3. How were things done before the introduction of the Data Room concept?
4. Whom does the Data Room concept target as an audience? Is it applicable in all situations of sale of public enterprises?
5. With regards to deposition of originals company documents in the data room: How does the company operate without such documents in its possession in the interim period prior to closing the sale?
6. What would be the repercussions for the company's continuing business interests of allowing the access to company secrets?
7. Who is the party authorized to verify the accuracy of information and data of the documents in the data room? What is the permissible and usual extent of such verification? What action would be taken in case the results of such verification differs with those of the Central Auditing Authority ("CAA")?
8. Under what conditions is a prospective investor allowed access to the data room?
9. What would be the responsibilities of management of the HC as the seller, and the Government of Egypt as the ultimate owner?

Mr. Mohsen Hassan answered the above questions as follows:

- The purpose of creating a stand-alone Data Room is to make available data and information pertaining to the company subject of sale, in an organized manner that meets international standards. This is to allow prospective investors the opportunity to make informed decisions, under conditions of full disclosure and transparency. The objective is to afford prospective investors the chance to appraise the company and to determine a fair market price.
- Full disclosure and complete transparency mitigate the potential for subsequent legal and financial liabilities on the seller after conclusion of the sale.

- Cases have occurred in which sale of an Affiliate Company (“AC”) totally failed due to the inaccuracy and insufficiency of the data and information relating to it. The creation of a data room, with stipulated documents under supervision of specified company staff would mitigate such eventualities.
- Mr. Hassan added that the data room concept is not a novelty, and is a method pursued by HCs in the privatization of their ACs. Examples given of HCs establishing Data Rooms to facilitate the sale of ACs are:
  - Assuit Cement
  - Beni Sweif Cement
  - Alexandria Cement
  - Electric and Plastic Industries
  - National Paper
  - Metalco Co.
  - Qarna Co.
  - Stelco Co.
  - Bricks Co.
  - St. Stephano Hotel
  - Abu Za’bal Fertilizers
  - Telephones Co.
  - Nasr for Steel Pipes.

Mr. Wadie Mishreki of Metallurgical Industries added that:

- The main concern of a prospective strategic investor is to establish the real ownership of a company of its assets, mainly the fixed assets.
- Many Public Sector companies face a problem of the non-existence in some situations of the original deeds of ownership.
- Mr. Mishreki pointed out that the process of due diligence by the prospective strategic investor and his/her representatives and professional advisors proceeds through two distinct phases:

*Phase I:* During which all deeds of ownership are examined. This starting with the deeds of land ownership, followed by examination of all the original documents, proofs of ownership of all the other fixed assets: buildings, equipment and machinery.

*Phase II:* During this phase the professional advisors of the prospective strategic investor re-arrange the audited financial and business information and data relating to the AC into formats conforming to International Accounting Standards. A format, such as GAAP is used to suit the requirements of the prospective investor. During this phase, the investors’ professional advisors request and demand access to greater details relating to the company’s operations.

The interest in acquiring the AC is prospective. The investor wants to be satisfied with potential for developing the company's resources; determine required improvements and additional investments, and prospects for increasing its market share.

During this phase, the prospective investor's advisors must ascertain the real strengths and weaknesses of the AC to be acquired.

The price that the prospective investor will offer is dependent upon the results of thorough analysis. It is usually based on the company's potential as is reflected by the business strategy, which the buyer intends to adopt after acquisition.

- Mr. Mishreki explained that the preferred prospective investor should be afforded complete access to all the information and data relating to the AC's operations. He was keen to point out that it is not unusual to find that a prospective investor possesses more information about the AC, beforehand, than the AC itself has collected and at its disposal.
- Mr. Mishreki, on the basis of his experience, was emphatic about granting full access to information to the preferred prospective investor. Incomplete information could result in a demand by the prospective investor that the HC issues letters of guarantee to safeguard the investors with regard to points remaining unclear or ambiguous.
- Mr. Mishreki emphasized that the Data Room should be situated in the AC even though it is supervised by the Privatization Executive in the HC. This is necessitated by two considerations:
  - a) Easier access of the AC to information relating to its ongoing operations during the tendering period.
  - b) Protection of the documents from potential misplacement, loss or damage as a result of moving them to a different locality.
  - c) The housing of the Data Room within the premises of the AC affords the prospective investor access to the management and staff of the AC who are conversant with all the details relating to its operations.
- Mr. Mishreki emphasized that the process of Due Diligence is continuous until the closing of the deal as evidenced by the signing of the parties of the final contract.

Following discussion of the Data Room, the topic became: "Developing an Information Center and "Information Technology." Very few of the ACs operate with modern information technology. Mr. Mishreki's Metallurgical Industries Holding Company, is among the very few which with assistance of the PEO have initiated use of Management Information Systems (MIS) in the ACs being prepared for privatization.

This session on M.I.S. was meant to be an introduction to be followed by a roundtable solely dedicated to M.I.S.

Mr. Mazen Fayyad of M.I.S. at PEO gave the following brief presentation:

- He explained the general framework of data-bases relating to the situations of the HCs and ACs. He indicated the need to establish five distinct types. They are:

1. A data-base about the prospective investors. Beside the raw data, a system, "neutral assessment", must be applied to classify and filter the information.
2. A data-base about the company employees.
3. A data-base for follow up, and the archives.
4. A data-base of the company's assets, including details of each asset or asset category.
5. A data-base relating to production and sales, including full details of product-lines.

## Investment Banking Services for Egypt

Eleventh Project Event

### Applying Information Technology

February 21, 2000

#### Introduction

The eleventh project event was held on Monday February 21, 2000, at the Public Enterprise Office ("PEO"). The topic of discussion was: Information Technology. The meeting was moderated by, Mr. Mazen Fayyad, the M.I.S. executive at PEO. The presentation was an augmentation of the previous two events dedicated to discussion of a model Data Room.

#### Attendance

##### PEO

Mr. Fouad Abdel Wahab, Director of the PEO  
 Mr. Mazen M. Fayyad, M.I.S. Executive  
 Mr. Essam Abdel Fattah Mohammed, Assistant Manager, Privatization  
 Mr. Ahmad Tharwat Khalil, Assistant Manager, Privatization  
 Ms. Maddi R. Sa'd, Assistant Researcher

##### IBTCI

Mr. Charles Jelinek-Francis  
 Mr. Rajai R. Masri

##### Holding Companies

Mr. Fuad M. Oudeh	Cotton & International Trade
Mr. Osamah Abdel Mon'aim	Cotton & International Trade
Mr. Tarek Hasan Abdel Ghani	Cotton & International Trade
Ms. Leila Mahfouz Naseer	Spinning, Weaving and Textile
Mr. Ibrahim Sayed Fawzi	National Construction and Building
Mr. Saber Mahmoud Saber	National Construction and Building
Mr. Ahmed Mohammed Farid	Engineering Industries
Mr. Nabil M. Duwaidar	Maritime
Mr. Ahmad Mohammed	Textile
Mr. Tarek Abu Zaid	Textile
Mr. Adel Baz	Pharmaceuticals
Mr. Abdel Baki M. Abdel Baki	Pharmaceuticals
Ms. Salwa Abdel Fattah	Mining and Refractory

## Points of Discussion

Mr. Fayyad began the presentation by describing the benefits of automation of the data room, which would result in a more effective retrieval of information and management of documents.

He continued by reviewing the following facts about Information Technology:

- Mr. Fayyad utilized diagrams of the three legs of an information technology structure which he summarized as follows:
  - Human resources
  - Hardware
  - Software
- Mr. Fayyad indicated that the Egyptian government reached an agreement with Microsoft, according to which, Microsoft provides its software programs and systems to the use of state enterprises and educational institutions at a very reduced competitive rates. A round figure of EL 1,000 was quoted for a complete Micro soft system. This according to Mr. Fayyad substantial discount from the going rates of EL 5,000 or more. The quoted figure includes a 15% reserve for training manpower.
  - The complete Microsoft software system would customarily include:
    - Operating system
    - Microsoft office
    - Client back-office
- Mr. Fayyad indicated that very few operating companies operate in *Information Technology* enabling environment. He was quick to highlight the fact that creating such an environment with trained manpower could result in enhancing the value and the price of the affiliate company subject of sale by no less than 20 – 30%.
- Mr. Fayyad had the opportunity, by virtue of his position at the PEO, to be exposed to a number of affiliate companies. His findings are that a substantial percentage of their current hardware is capable of using the latest Microsoft systems, such as Windows 98 and 2000. In his view, any hardware operating on *Pentium* is capable of handling the latest Microsoft systems. The governing theme here, with reference to marrying software with available hardware is the concept of: "Best Utilization."
- He discussed an offer by Microsoft to supply software to the Acs as in a "package deal" and its versus individual procurement of such systems by the ACs. He believes the offer to be advantageous and solicited AC participation.
- Mr. Fayyad discussed and urged the gradual introduction of M.I.S. at the ACs. He thought it best to start in computerizing and applying M.I.S. in the following gradual sequence:
  - Company's Assets: creating an itemized inventory of a company's assets, and recording such information for each asset such as value, accumulated depreciation, the added assets, etc.

- Entry of general data and information pertaining to the previous periods, starting with the most recent past period. This in parallel with the daily recording and entry of data and information pertaining to new transactions.
- Financial System.
- Mr. Fayyad recommended that training manpower on M.I.S. and on application of new systems would be at least 50% cheaper to do it in-house rather than doing it outside with external companies.

Following the presentation, Mr. Fayyad discussed another aspect of automation: Connecting to, and benefiting from the Internet.

He emphasized the following points:

- That creating a web-page pertaining to the company is the least expensive and most effective method to advertise the company, its products and services. It is a medium offering potential visibility 24 hours a day, 365 days a year at a minimum cost. This compares extremely favorably with other media.
- Mr. Fayyad discussed gradual steps to introducing and fully utilizing the Internet in a business setting. He categorized the process into two major stages: The static, and the dynamic.
- The static stage entails the potential for creating value for the company. This stage provides two benefits: Presence, and potential added realized revenues.
- Presence entails displaying relevant business and commercial information about the company, such as the company's name, its products, the locations of its distribution outlets, etc.
- Potential added realized revenues emanate from generating interest and inquiries by prospective customers. Mr. Fayyad indicated that some ACs are not aware of the availability of some products and services at other affiliate companies when they issue RFPs.
- The dynamic stage is a next stage, with a virtual media commercial *presence*; a web site that would engage the company in actual buying and selling through the Internet web, in what is termed "E-commerce".
- Sales should increase substantially using the Internet, and cost of transactions is substantially reduced when concluding sales through this medium.
- Mr. Fayyad concluded by impressing on the HCs that they should take the lead to publicize and explain the benefits of the Microsoft agreement among their affiliate companies, and assist them to implement M.I.S.
- Discussion followed among the holding companies' representatives, regarding the limitations the law imposes on the HCs and their affiliate companies, given their transient status, to investing assets, including M.I.S. related investments.

## Investment Banking Services for Egypt

Twelfth Project Event

### Contract Issues and Suggestions for Negotiation, A Legal Perspective

February 29, 2000

#### Introduction

The twelfth project event was held on Tuesday, February 29, 2000, at the offices of the PEO. The topic of discussion was a continuation of two previous round-tables on the legal framework and related negotiating strategies in privatization sales of public sector enterprises. The speaker again was counselor Ahmad Hassan.

The discussions, were animated; participants again raised issues concerning Data Rooms and Due Diligence. The interest in this topic reflected a deepening awareness of technical issues central to facilitating the successful sale of Affiliate Companies ("ACs").

#### Attendance

##### Speaker

Mr. Ahmad Hassan, Counselor

##### PEO

Mr. Fouad Abdul Wahab, Director, PEO  
Ms. Maggi Raouf Sa'd, Research Assistant  
Mr. Mohammed Salem Salem, Researcher

##### IBTCI

Mr. Charles Jelinek-Francis  
Mr. Rajai Masri  
Mr. Mohsen Hassan  
Mr. Reda Afifi

##### Holding Companies ("HCs")

Mr. Ibrahim Sayed Fawzi	National Construction and Building
Mr. Mohammed Sharif Nazer	National Construction & Building
Mr. Tarek M. Abu Zaid	Textile & Trade
Mr. Mohammed Ahmad	Textile & Trade
Mr. Nabil Duwaidar	Maritime
Mr. Zaki El-Sayed Zakaria	Maritime
Mr. Nasr Ahmad Salem	Transportation
Ms. Leila Mahfouz Nsair	Spinning, Weaving & Textile
Mr. Mustafa Abdulah	Engineering Industries
Mr. Tarek Hasan Abdel Ghani	Cotton & International Trade
Mr. Fuad M. Ahmad Oudeh	Cotton & International Trade
Ms. Fatimah Ahmad Jaber	Cotton & International Trade
Ms. Nabiha Mahmoud Fahmi	Cotton & International Trade

## Points of Discussion

Mr. Ahmad Hassan began by summarizing issues discussed in two previous round-tables devoted to the legal framework of privatization. The session was animated, and a high degree of interaction occurred between the speaker, and the audience. Following are highlights of the issues discussed:

- Mr Hassan briefly referred to the various laws that were enacted to prepare for the sale of public sector companies, and to effect their transformation into joint-stock companies eligible to be listed on Egyptian stock exchanges. He made reference to Privatization Law 203, Joint-Stock Companies Law 159, and the Capital Market Law 95.
- All the above laws, were enacted to allow for the sale of the public sector companies, to supersede Law 97 which forbade the sale of public sector assets.
- Mr. Ahmad Hassan then reviewed what he referred to as "Primary Steps" in the privatization of Affiliate Companies ("ACs"). He emphasized the need that the HC should put in good order all the relevant documents relating to the company. He again stressed the necessity to facilitate the of Due Diligence by the prospective strategic investor. Mr. Hassan revisited the list of "Headings" one by one, giving in the process case-study examples for each heading. He emphasized the effect on price, and the withholding or "freezing" of payments which might result if the supporting documentation of the company were not presented to the satisfaction of the buyer.
- In the matter of "confidentiality" and the extent of the information to be divulged to buyer's representatives, a recurring issue in round-table discussions, Mr. Hassan attempted to finally dispel lingering hesitancy and confusion. He spoke of:

The right of buyer-accessibility to a company's information and data. The process of due diligence should consist of two Phases.

1. *Phase One* comprises the early stage of bidding. Most of the information about the company is contained in the "Information Memorandum", one of the essential tender documents issued for the benefit of all the bidders.

2. *Phase Two* involves permitting the winning (chosen) bidder, his representatives and professional advisors broad access to company information and documentation pertinent to the sale and valuation.

3. The right of the prospective buyer to full disclosure of company's rests upon the convention that "*the seller guarantees the subject/product/item to be sold.*" The seller, again by virtue of a well established general convention, is obligated to "deliver" the subject of sale, and assure it is not in "*contradiction,*" is not in conflict to "*what it is represented to be.*"

4. Mr. Hassan emphasized that this convention is the "essence" of privatization, and governs accessibility to otherwise confidential information. He added that a prospective investor seeks to acquire the *actual value* of an asset, as well as the *potential value* of that asset. In both cases, the buyer is entitled to full and transparent disclosure of all the facts pertaining to the asset to be acquired.

5. Determining the confidential nature of certain types of information is better left to each HC, on a case by case basis. The Board of Directors of each HC should review the matter on a case by case basis as needed.

- Mr. Hassan discussed the practicalities, and virtues of the Central Depository and electronic share registration. He gave vivid examples of the task of transferring ownership of a company's physical stock certificates. A task which requires the creation of single shares, in numbers that physically correspond to the number of issued shares. He described all the attendant details of issuing each share, and providing for their registration in the issuing company's central registry.
- He then compared the mechanism of electronic registration, which arose from promulgation of a new law establishing a central depository system. He indicated that a statement issued by the Central Depository electronic registry suffices for validity and proof of ownership, and is legally binding.
- Another subject of continued contention is *valuation*. After explaining the inhibiting concerns that prompt management of holding companies to adhere to certain levels of unrealistic valuation of the company's assets (paramount among them fear of accountability, and the hesitancy to show loss, especially with regards to *doubtful accounts receivable, and the state and prevailing market prices of inventory*)
- Mr Hassan indicated that an addendum to ruling 26 of the Executive Regulations of Law 203, has greatly alleviated this problem. Now, the final decision on appropriate value rests with the general assembly of the HC; the burden and responsibility of management have been mitigated.
- In response to a question about the management of the HC providing, with regard to any specific asset sold, and especially accounts receivable, financial guarantees to the buyer, Mr. Hassan mentioned that it is not usual to provide them, except in regard to title to real estate. He further indicated that Law 203 has rescinded the right of HCs to issue guarantees.
- Mr. Hassan gave detailed and particular explanation and answers to queries on the methodology of procuring a new or replacement deed for real estate of which the title may not be clear. He described methods for establishing proof of ownership and registration in the general real estate registry ("AlShahr Al-Aqari").

**Investment Banking Services for Egypt**

**GUIDELINES**

***BEST PRACTICES***

**OF**

**DEALING WITH INVESTMENT PROMOTERS**

**WITHIN THE FRAMEWORK OF PRIVATIZATION**

**Prepared By: IBTCI**

**Cairo March 12, 2000**

## Investment Banking Services for Egypt

### Dealing with Investment Promoters within the Framework of Privatization

#### Why An Investment Promoter?

Hiring the services of a qualified investment advisor/promoter should result in successfully consummating the sale of an affiliate company, and the maximization of the realizable value/price of the sale of the affiliate company.

#### How To Maximize Realizable Value/Price?

The investment promoter adds value and maximizes the potential price of a transaction through the rendering of specialized investment banking services. The investment promoter/advisor adds value through the effective deployment of its specialized resources. Among these resources that the Holding Company needs to investigate and be satisfied with are the following:

1. The investment promoter/advisor's technical, organizational, managerial and management systems capabilities.
2. The investment promoter/advisor's work plan, strategy and method of work.
3. The investment promoter/advisor's familiarity with the industry and business activities of the company subject of sale. This involves knowledge of the various financial, technical, managerial, marketing and competitive aspects of the company's operations. This is from both frameworks: *actual* and *potential*.
4. The investment promoter/advisor's full understanding of the market forces influencing the operation and value of the company, backed by market research and analysis.
5. The investment promoter/advisor's knowledge of the potential industrial investment players in the market, who could qualify as prospective strategic investors for the company subject of sale.
6. The ability of the investment promoter/advisor - as judged by the record and performance in similar past transactions – to highlight the attractive sides of the deal, and the competitive advantages that the affiliate company subject for sale possesses.
7. The ability of the investment promoter/advisor to assist in formulating competitive strategies to enhance the affiliate company's value and prospects for sale. This could be reflected in a business plan that the investment promoter/advisor would help prepare, and that would be based on convincing credible assumptions and logical projections.

8. The investment promoter/advisor must possess an extended web of business relations and contacts, and an extended worldwide reach that would improve the chances to identify and attract desirable candidate prospective investors to the sale transaction.
9. Excellent knowledge of the working of the capital markets, and abilities of the investment promoter/advisor for creative thinking and conceptualization of the optimal financing structure for the deal, and potential sources of available funds for early consummation of the sale of the company.

### **The Role Of The Investment Promoter/Advisor**

It is advisable that the minute a decision to privatize the affiliate company, and preparing the company for sale is taken, that the Holding Company should engage the services of a qualified investment promoter/advisor. The investment promoter/advisor would be expected to actively participate in preparing the affiliate company for sale by providing the following consulting, investment banking and promotional specialized services:

#### **I. Participate And Assist In The Valuation Of The Company On A Realizable Market Value/Price Basis.**

This would be based on the investment promoter/advisor conducting certain degree of due diligence to satisfy itself with the completeness of the documents upon which valuation would be based, along with the accuracy of the data and information pertaining to the affiliate company's activities, and the validity of the assumption upon which future projections are made ("*Diagnostic Analysis*").

The investment promoter/advisor should assist in the performance of financial analysis, based on audited financial and operational data and information.

The investment promoter/advisor should satisfy itself with the completeness and accuracy of all the documents that a prospective preferred investor would need to examine for the early consummation of the sale of the affiliate company.

#### **II. Participate And Assist In The Preparation Of A Business Plan For The Purpose Of Concluding The Sale Transaction.**

The investment promoter should assist in the formatting and preparation of a detailed business plan for the company, to acceptable international standards. The plan should reflect the potential of the company. The objective is to attract prospective investors by showing that the company subject of sale is viable once right actions are taken.

Accompanying notes should sufficiently explain the logic and basis of assumptions and projections, that on the basis of which the economic viability of the company is demonstrated.

### **III. Draw A Work Plan (Strategy) For The Sale Of The Company**

The investment promoter/advisor should assist the Holding Company to draw a working plan for sale of the affiliate company, with the object of achieving the highest realizable fair price given market conditions and the company's highlighted desirable attributes. This is in conjunction with a timeframe to concluding the sale.

### **IV. Participate In the Preparation Of An "Information Memorandum."**

The investment promoter/advisor should determine the design, content and formatting, and assist the Holding Company in producing an "Information Memorandum" that meets good international standards of transparency and full disclosure. The "Information Memorandum" is a selling memorandum that must contain complete and accurate data and information relating to the company's operations and financial performance.

### **V. Assist In Soft Restructuring Deemed Necessary For Early Privatization**

The investment promoter/advisor should assist in reviewing the financial structure of the affiliate company, and make recommendations for some remedial actions to possibly effect certain soft restructuring that could significantly improve the attractiveness of the company and enhance its potential value and perceived market price.

### **VI. Assist In The Preparation Of the Tender Documents, And The Invitation to Tender**

The investment promoter/advisor should assist in the preparation of the other Tender Documents, beside the Information Memorandum. The Other Tender Documents would include:

1. Terms and Conditions
2. A Contract Sample

The investment promoter/banker ought to assist in the design of the advertisement of the Invitation to Tender, and the guidelines of procedures to follow.

### **VII. Promotion Of The Sale**

The investment promoter/advisor should conduct an in-depth, comprehensive study on prospective investors, drawing on the widest database possible. The investment promoter/ advisor should prepare a report, for the review and approval of the Holding Company, containing the profiles of prospective investors and the prospects for sale. The investment promoter/advisor should mobilize its networks of relations, allies and associates in the financial and business communities, for the purpose of identifying prospective investors. The investment promoter/advisor would disseminate information on the company subject of sale.

### **VIII. Assist In Setting Guidelines, And Participate In The Evaluation Of Tenders**

The investment promoter/advisor should assist in designing detailed guidelines for Procedures to Evaluating Tenders, including organizational and functional matters relating to the process of evaluation.

The investment promoter/advisor ought to assist in the Evaluation of Tenders, in a manner that would guarantee full transparency.

### **IX. Assist In Consummating The Sale**

In this regard, the investment promoter/advisor can perform the following functions:

1. Assist in formulating and composing the letter to the winning bidder.
2. Assist in the planning of negotiating strategies.
3. Assist in the design and preparation of the requisite legal documents.
4. Assist in all the procedures to bringing the sale to a final fruition.
5. Assist and the registration and the listing in the stock exchange of the company after sale.

### **Selecting the Investment Promoters**

The Public Enterprise Office (“PEO”) short-listed the qualified investment promoters/advisors that the Holding Companies can draw from for the purpose of assisting in selling the affiliate companies.

The Holding Company will need to review the short-list, and subsequent to a tendering process – that ensures that all bidders are fairly treated in an open and “transparent” fashion – select the investment promoter/advisor with the requisite qualifications, capabilities and relevant experience that can effectively assist in the early consummation of the sale.

The Tender Documents for selecting an investment promoter/advisor would include the following documents:

1. Terms and Conditions.
2. Terms of Reference.
3. Structure and Content of the Technical Proposal.
4. Guidelines for the structure of the fees and the Financial Proposal.
5. Description of the affiliate company subject of sale.
6. Timeframe of the complete tendering process

## I. Terms And Conditions

They contain the rules that govern the tendering process. They contain instructions to the bidders with regards to matters relating to:

- The days the validity of the bid should remain in force.
- The period during which the bid must be submitted.
- The language in which the bid must be submitted.
- Number of copies of the bid must be submitted.
- The requirements for the structure and content of the submitted proposals (Technical and Financial).
- The date the winning bidder would need to fully mobilize for the assignment.
- Information on the methodology and manner by which evaluation of the bids would be carried out by the Holding Company in a manner that ensures transparency during all the stages of the tendering process.
- A sample of a standard contract is supposed to be included as part of the "Terms and Conditions."

## II. Terms Of Reference

Gives a detailed description of the scope of work and tasks and services required to be performed by the successful investment promoter/advisor bidder.

The document of the Terms of Reference customarily contains the following:

- Background that highlights the context within which the request for tender is initiated.
- Definition of the proposed assignment and scope of work: *The services to be provided by the investment promoter/advisor.*

## III. The Content of The Technical Proposal

This document specifies the format and style of the technical proposal. It gives instructions regarding the structure and content of the "Technical Proposal." The objective is to standardize all proposals with the purpose to create a fair basis for comparison.

Some of the requirements could be that the submitted Technical Proposal should include:

- An "Executive Summary," that provides an overview of the main points.
- Contained in the Technical Proposal.
- Detailed analysis of the method and plan of work.
- Detailed schedule for achieving each element/component/task, along with the investment promoter/advisor's plan to creating a short-list of prospective strategic investors.
- Description of the suggested working team for the project, along with diagrams and charts describing the organization of the work team, and clear definitions of responsibilities and authorities of each team member. etc.
- Profiles, or resumes ("CVs") of the members of the proposed work team.
- List the relevant experiences and relevant strengths of the bidding investment promoter/advisor.

#### **IV. Structure Of The Financial Proposal**

It defines a structure for proposing a fee. This, as in the case of the Technical Proposal, tends to put all bids on equal footing for the purpose of easier comparison, and serves the objective for transparency.

The fees are to be stated according to a remuneration structure based on two parts:

1. A Fixed Retainer Fee; and
2. A Success Fee.

No allowance is made for payment of any reimbursable expenses.

#### **V. Timeframe For The Selection Of The Investment Promoter/Advisor**

Shows the different steps of the Tendering process. It allows all bidders to know when to expect results. The Timeframe appears in the form of a Timetable. The Timetable divides the tendering process into itemized events, with a date assigned for each event. Example could involve the following events:

- Request for tender.
- Period for submitting questions.
- Responses to questions.
- First date for submitting bids.
- Last date for submitting bids.
- Evaluation of bids.
- Selection of Winning bidder.
- Negotiation with winning bidder.
- Signing of final contract.

## APPENDIX I

### A Suggested Set of Questions To Forward To Investment Promoters/Advisors

- I. The Range Of Specialized Financial Services the Investment Promoter/Advisor Provides.
- II. Lists of the names, positions, academic qualifications, accreditations & professional designations, as well as listing of work experiences, and training workshops of the following persons, arranged chronologically:
  1. The Founders & Partners.
  2. The Senior Managers.
  3. The Skilled Financial/Investment Professionals.
  4. The Number of the total manpower of the firm.
- III. Major offices and branches that are totally or majority owned by the firm. The Investment Promoter/Advisor ought to highlight the following:
  1. The name and address of the office/branch.
  2. The number of total employees.
  3. The specializations and activities carried out by the office/branch.
- IV. Foreign Associates & strategic cooperation agreements. This ought to highlight the following:
  1. The name and the main office address of the foreign associate.
  2. Fields of cooperation with the foreign associate.
  3. Estimated annual volume of transactions, with the foreign associate, in Egyptian pounds.
  4. In case of partnership, the percentage ownership of the foreign partner/associate in the firm.
  5. The nature of the technical and management agreements with the foreign associate/partner.
  6. The validity period of the above mentioned technical and management agreements.
  7. The validity period of the partnership agreements.
- V. A list of the transactions undertaken/performed over the past three years. Under this item, the investment promoter/advisor ought to specify the following:
  1. The name of the transaction.
  2. The name of the client/seller.
  3. The name of acquirer/purchaser.
  4. The size of the concluded transaction in Egyptian pounds.
  5. The services performed by the firm in this transaction:
    - Valuation of the assets and the company subject of sale.
    - Restructuring.
    - Assisting in the preparation of the tender documents.
    - Promotion/underwriting.
    - Participation in the negotiations.

- Assisting in the preparation of the legal documents.
  - Assisting in the issuing and in the registration of shares.
6. The names and roles of co-managers and other participating underwriters.
7. The period it took to consummate the transaction successfully.
- VI. A list of the transactions in the area of privatization that were performed by the firm over the past three years. The information required follows an exact similar pattern as in (V) above.
- VII. The firm's activities in the area of securities underwriting and financings. Under this heading the firm ought to provide information on the following:
- The name of the transaction.
  - The name of the client.
  - The size of the deal/transaction in Egyptian pounds.
  - The role performed by the firm in this transaction.
  - Listing of the participating financial institutions in the transaction, and their roles.
  - The managing institution/bank of the transaction.
  - The source of funding/financing.
  - The plan of work/strategy to promote the deal towards a successful conclusion
- VIII. The capabilities of the firm in attracting strategic/anchor investors. Under this rubric the following information ought to be obtained:
- The name of the privatization transaction.
  - The name of the client.
  - The size of the transaction in Egyptian pounds.
  - The names and addresses of the strategic/anchor investors.
  - The medium through which the prospective strategic/anchor investor was identified and approached.
  - The role played by the firm in performing the other investment banking services to consummate the transaction.
  - A brief description of the manner by which the investment advisor promoted successfully the transaction in question.
- IX. The firm's capabilities in the area of research. Under this item, the type of research, publications, date of first issue and frequency, as well as the type and numbers of researchers employed in a particular research and publication ought to be provided. Examples are:
- Economic coverage of economic indicators in the Egyptian economy.
  - Periodical coverage of the economies of the surrounding Arab countries.
  - Periodical coverage of the economies of certain industrialized countries.
  - Periodical publications of financial and investment analytical research of sectors, industries and specific companies in Egypt.
  - Periodical publications covering financial and investment analytical research of sectors, industries and companies in surrounding Arab countries.
  - Periodical publications of financial and investment analytical research of sectors, industries and specific firms in certain industrialized countries.

- Periodical publications on securities analysis, of financial securities traded in the Egypt market.
- Periodical publications on securities analysis, of financial securities of a selective range of Arab and foreign companies, as traded in their respective markets.

X. Attachments. The investment promoter/advisor ought to provide the following documentation, as attachments, beside providing the above information.

Examples are as follows:

- A booklet containing press clippings about the firm and investment banking transactions.
- A booklet containing press commentaries and articles about the founders/partners and senior management.
- A booklet displaying various tombstones of concluded transactions to which the firm is a party, and as they appear in the press.
- A booklet displaying the different medals and awards for professional excellence won by the firm or/and its executives.
- Recent research reports published by the firm.
- A company brochure.
- The company's annual reports for the last three years.
- Others.

# إرشادات

أفضل الوسائل

للتعامل مع

مروجي الاستثمار ضمن إطار

الخصخصة

قام بإعدادها

المؤسسة الدولية للأعمال والاستشارات الفنية (مصر)

مارس ٢٠٠٠

## التعامل مع مروجي الاستثمار ضمن إطار الخصخصة

### الهدف من التعامل مع مروجي الاستثمار؟

من المفروض أن يؤدي الاستعانة بخبرات وخدمات مستشار ومروجي الاستثمار إلى إتمام عملية بيع الشركات المطروحة للخصخصة بنجاح، وإلى تعظيم العائد عن طريق المساهمة في الإعداد الأفضل للشركة للبيع واختيار مستثمرين بأفضل الشروط.

أيضاً، وعلى المستوى القومي، تهدف وزارة قطاع الأعمال من حث الشركات القابضة للتعاون مع المروجين على خلق سوق استثمار *Investment Banking* تستفيد منه ويبقى ركيزة للتقدم الاقتصادي بعد انتهاء برنامج الخصخصة.

### كيفية تعظيم العائد:

تضفي الشركة المروجة "قيماً مضافة" لصفقة البيع من خلال تقديم مجموعة من الخدمات الاستثمارية المتخصصة لتهيئة الشركة للبيع وعلى أفضل وجه. وينبغي في عملية اختيار الشركة المروجة المناسبة أن تقوم الشركة القابضة بالتحقق من توفر المزايا التالية لدى الشركة المروجة المختارة:

١. قدرات الشركة المروجة الفنية والتنظيمية والإدارية وتوفير كفاءة إدارية العملية.

٢. خطة العمل المقترحة التي يحتويها العطاء الفني، واستراتيجية وكيفية القيام بالأعمال.

٣. مدى اطلاع وتعامل الشركة المروجة مع القطاع والصناعة التابعة لها ونشاطات الأعمال التي تقوم بها الشركة التابعة المعروضة للبيع، مما يتطلب دراية بالجوانب المالية والفنية والإدارية والتسويقية والبيئة التنافسية لنشاطات وأعمال الشركة، وذلك من منظورين متكاملين: منظور واقعي فعلي، وآخر مستقبلي مبني على التوقعات.

٤. دراية الشركة المروجة الكاملة بقوى السوق ذات التأثير المباشر على نشاطات الشركة وعلى قيمتها، وذلك مدعوماً بدراسات السوق والتحليلات والبيانات المؤيدة.

٥. دراية مروج الاستثمار بالمهتمين في مجال الاستثمار في الحقل الصناعي ممن هم مؤهلون للترشيح كمستثمرين رئيسيين مستهدفين لغرض دعوتهم للمشاركة في مناقصة بيع الشركة التابعة.

٦. قدرات الشركة المروجة (المؤيدة بإنجاز صفقات مماثلة سابقاً وبإنجاح) على إبراز الجوانب الجذابة في الصنفقة موضوع المناقصة، وكذلك إبراز الميزات التفضيلية والتنافسية للشركة موضوع البيع.

٧. قدرة الشركة المروجة على المساهمة في تطوير استراتيجية تنافسية للشركة قيد البيع بحيث تعظم قيمة الشركة وتيسر فرص بيعها. ذلك من الممكن تحقيقه من خلال إعداد دراسة برنامج (خطة) عمل *Business Plan*، تقوم الشركة المروجة بالمساهمة في إعداده بالتعاون الوثيق مع إدارة الشركة القابضة، على أن تكون الافتراضات والتقديرية الواردة في خطة العمل هذه منطقية ولها ما يبررها من واقع الإمكانيات والقدرات الفعلية للشركة موضوع الخصخصة.

٨. من الضروري أن يتوفر لدى الشركة المروجة شبكة متفرعة من علاقات الأعمال والاتصالات محلياً ودولياً، بحيث تسهل فرص الاستدلال على وجذب مستثمرين محتملين للتقدم لمناقصة شراء الشركة المطروحة للخصخصة.

٩. معرفة ودراية وإمام جيد بعمل ونشاطات أسواق المال، وتوفير القدرة والإمكانية للشركة المروجة على وضع التصورات وابتكار استراتيجيات حول أفضل هيكلية تمويلية ممكنة لإنجاز صنفقة البيع على ضوء فرص التمويل المتاحة والممكنة.

#### دور مستشار أو مروج الاستثمار:

من المحبذ أن تباشر الشركة القابضة حال اعتماد خصخصة الشركة التابعة، بالاستعانة بخدمات شركة مروجة للاستثمار من بين الشركات ضمن القائمة المختصرة المعتمدة من قبل المكتب الفني التابع لوزارة قطاع الأعمال.

ومن المفروض أن تقوم الشركة المروجة للاستثمار بدور فعال في المساعدة في تهيئة الشركة التابعة للبيع وذلك من خلال توفير وتقديم الخدمات الاستشارية الاستثمارية والترويج الاستثماري الآتية:

أ. المشاركة والمساعدة في عملية تقييم الشركة على أساس القيمة والتمن الممكن تحقيقه من واقع ظروف السوق:

ذلك سيتطلب قيام الشركة المروجة بعمل تشخيص كامل للوضع العام للشركة قيد البيع "Diagnostic Analysis"، ومراجعة تدقيقية "Due Diligence"، وذلك للوقوف على حقائق وضع الشركة المالي والتشغيلي والتنافسي. وتتضمن هذه المراجعات والتشخيصات التيقن من اكتمال ودقة معلومات وبيانات الوثائق والسجلات التي تعتمد عليها حقيقة تقييم الشركة التابعة. أيضاً التيقن من صلاحية التقديرات والافتراضات التي تفصح بها إدارة الشركة التابعة في بياناتها. ومن المفروض أن تتوفر لدى خبراء الشركة المروجة المقدرة على القيام بالتحليلات المالية الضرورية "Financial Analysis"، وذلك بناء على بيانات مالية وتشغيلية وأعمال الشركة التابعة الموثقة من قبل مراجعين قانونيين معتمدين.

ب. الاشتراك والمساعدة في إعداد دراسة خطة عمل "Business Plan" بغرض تسهيل إتمام عملية البيع

على مروج الاستثمار المساعدة في تصميم وإعداد دراسة خطة عمل تفصيلية لاتجاهات نشاط الشركة والتدفقات النقدية والوضع المالي للشركة رهن البيع لسنوات مستقبلية قادمة "Business Plan" وذلك بالمستوى العالمي المقبول. الغرض من هذه الوثيقة هو المساهمة في تسهيل عملية بيع الشركة التابعة بإظهارها كشركة ذات جدوى وربحية معقولة متى تم قيام المستثمر الفائز باتخاذ بعض الخطوات اللازمة المحددة لتحسين أداء الشركة والنهوض بربحيته.

ومن الضروري أن يرفق ضمن دراسة خطة العمل ملاحظات تفسيرية وافية لما يجئ في دراسة خطة العمل من افتراضات وتقديرات مستقبلية.

#### ج. وضع تصور متكامل واستراتيجية بيع الشركة "Work Plan":

من المفترض أن تقوم الشركة المروجة للاستثمار بالمساهمة مع إدارة الشركة القابضة بوضع تصور متكامل واستراتيجية لكيفية الترويج لبيع الشركة التابعة، وذلك على أساس تحقيق أعلى ثمن ممكن، آخذين بالاعتبار وضع السوق ونجاح شركة الترويج بإبراز مزايا والأوجه التفضيلية للشركة التابعة قيد البيع.

وبالإضافة إلى ذلك، فعلى الشركة المروجة للاستثمار تزويد الشركة القابضة ببرنامج زمني لإتمام عملية البيع بنجاح.

#### د. المساعدة في إعداد مذكرة معلومات "Information Memorandum":

على الشركة المروجة للاستثمار التعاون مع إدارة الشركة القابضة في تحديد الشكل العام لمحتوى ومكونات مذكرة المعلومات التي تتفق والمواصفات والمعايير العالمية، خاصة من حيث التزام شروط توفر الشفافية والعلانية. ذلك على اعتبار أن مذكرة المعلومات هي مذكرة بيع، من المفروض أن تحتوي على أكبر قدر من المعلومات الممكنة حول الشركة التابعة، وتوخي الدقة والتحقق من صلاحية وسلامة المعلومات الواردة فيها حول نشاطات الشركة التابعة ومراكزها المالية. هذا وتعتبر الشركة القابضة مسؤولة مسؤولية كاملة عن صحة ودقة المعلومات والبيانات الواردة في مذكرة المعلومات.

#### هـ. إسداء الرأي ووضع بعض التوصيات بخصوص قيام الشركة القابضة

ببعض نشاطات أعمال إعادة الهيكلة غير المتطلبية وذلك بغرض تسهيل بيع الشركة "Soft Restructuring":

من المفروض أن تقوم الشركة المروجة للاستثمار بمراجعة وضع الهيكلة المالية للشركة قيد البيع، وأيضاً وضع العمالة والأنظمة الإدارية وإبداء الرأي

ووضع بعض التوصيات لإجراء بعض التعديلات من حيث القيام ببعض نشاطات إعادة الهيكلة السريعة "Soft Restructuring" بحيث يتولد عنها تحسن ملحوظ يزيد من جاذبية الشركة التابعة، ويرفع من قيمتها وثنمها المتوقع بالسوق.

و. المساعدة في إعداد وثائق المناقصة والإعلان عن المناقصة وإعداد مستندات الطرح بالبورصة:

من المتوقع أن تساهم الشركة المروجة للاستثمار في إعداد وثائق المناقصة لطرح الشركة التابعة للبيع، وذلك إضافة للمساعدة في إعداد مذكرة المعلومات. تحتوي وثائق المناقصة الأخرى بالدرجة الأولى على ما يلي:

١. كراسة الشروط.

٢. عقد نموذجي.

أيضاً من المفروض أن تساهم الشركة المروجة في تصميم وإعداد إعلان التقديم للمناقصة.

ز. الترويج للبيع:

من المفضل أن يقوم المروج بعملية مسح واسعة ومتعمقة وإعداد بيان بأسماء وملاح المستثمرين الرئيسيين المحتملين ونبذة مختصرة عن كل منهم، مستعيناً بذلك على شبكة اتصالات ومعلومات واسعة وممتدة متى أمكن. وعلى المروج الفائز إعداد تقرير يحتوي على أسماء وملاح المستثمرين الرئيسيين المحتملين والمستهدفين ونبذات مختصرة عنهم، وذلك لتقديمه لمراجعة إدارة الشركة القابضة.

من المفروض أن يقوم المروج بتعبئة شبكات اتصالاته من العلاقات والحلفاء والشركاء من الماليين ورجال الأعمال، وذلك على أوسع نطاق ممكن، بغرض التعريف بمستثمرين رئيسيين محتملين.

ولتسهيل تحقيق هذا الغرض، يقوم المروج بتوزيع نبذة عن الشركة التابعة  
موضوع البيع ونشاطاتها ومركزها المالي للسنوات الثلاث إلى الخمس  
الماضية.

ح. المساعدة في وضع الإرشادات وأسس تقييم العروض والمساعدة في  
عملية تقييم العروض:

يقوم المروج بالمساعدة في تصميم وإعداد الأسس والإرشادات للإجراءات  
المفترض اتباعها في عملية تقييم العروض، بما في ذلك الاعتبارات التنظيمية  
والإجرائية البحتة. كذلك فمن المنتظر أن يساهم المروج في عملية تقييم  
العروض، وذلك للمساعدة في ضمان تحقق الشفافية الكاملة.

ط. المساعدة في إتمام عملية البيع:

من الممكن في هذا السياق أن تقوم الشركة المروجة للاستثمار بالخدمات  
الآتية:

١. إعداد وتحضير خطاب ترسية العطاء على المستثمر الفائز (المختار).
٢. المساعدة في إعداد استراتيجية التفاوض.
٣. المساعدة في إعداد وتصميم العقود والاتفاقيات القانونية اللازمة لإتمام  
عملية البيع.
٤. المساعدة في كافة الإجراءات التي من شأنها إتمام عملية البيع بنجاح.
٥. المساعدة في إدراج الشركة مع إتمام عملية البيع في سوق المال.

## عملية اختيار الشركة المروجة للاستثمار

من المفروض أن تقوم الشركات القابضة بالرجوع إلى القائمة المختصرة للمروجين المؤهلين، والتي يتم إعدادها واعتمادها من قبل المكتب الفني التابع لوزارة قطاع الأعمال.

على الشركة القابضة مراجعة القائمة المختصرة، وأن تقوم، وذلك باتباع إجراءات المناقصة المنصوص عليها، باختيار أفضل شركة مروجة للاستثمار ممن يتوفر لديها الإمكانيات والكفاءات والخبرة الملائمة مما يسهل ترويج بيع الشركة التابعة بشكل فعال.

تحتوي وثائق المناقصة لاختيار شركة ترويج للاستثمار على الآتي:

١- كراسة الشروط. *General Terms & Conditions*

٢- البنود المرجعية. *Terms of Reference*

٣- متطلبات خاصة بمحتوى العرض الفني.

٤- إرشادات حول هيكلية المالي من العرض.

٥- وصف عام للشركة التابعة موضوع المناقصة.

٦- الجدول الزمني من ترسية العرض على المستثمر الفائز.

أ. كراسة الشروط *Terms & Conditions*:

وتحتوي على إرشادات تحكم عملية الاشتراك في المناقصة. تحتوي هذه الوثيقة على معلومات للمتقدمين للمناقصة حول النقاط الآتية:

- مدى صلاحية سريان العرض.
- الفترة التي من المتوقع فيها تقديم العرض.
- اللغة الحاكمة لمكونات العرض.

(٨)

- عدد النسخ من العرض الواجب تقديمها.
- متطلبات محتوى العرض وإطاره العام.
- الفترة الزمنية التي يتوقع المروج أن يستهل بدء العمل في تنفيذ المهمة موضوع المناقصة.
- معلومات حول الكيفية التي سيتم فيها تقييم العروض.
- عقد نموذجي.

#### ب. البنود المرجعية *Terms of Reference*:

هذه الوثيقة تزود المتنافس بكافة التفاصيل للمهام التي من المفروض أن ينفذها المنافس الفائز عليه المناقصة، نطاق العمل "Scope of Work" وأيضاً تتعرض هذه الوثيقة إلى مواصفات هذه المهام.

#### ج. متطلبات محتوى الجانب الفني من العرض:

تبين هذه الوثيقة المتطلبات بشأن شكل (*Format*)، ومحتوى العرض الفني، وذلك بغرض التأكد من أن هذه العروض محتوية على كافة المعلومات الضرورية، وأيضاً لتسهيل عملية المقارنة بين العروض. ومن الممكن أن تحتوي بعض المتطلبات على ما يلي:

- ملخص تنفيذي يمثل استعراضاً عاماً للنقاط الرئيسية التي يحتوي عليها العرض الفني.
- أسلوب العمل والعناصر الرئيسية للعمل بالتفصيل.
- جدول زمني تفصيلي لتنفيذ كل عنصر من عناصر العمل الضرورية لإجلاس المهمة.
- توصيف لفريق العمل المقترح لإجلاس المهمة موضوع المناقصة، معززاً برسومات للهياكل التنظيمية والإدارية، وكذلك وصف لمسئوليات وصلاحيات كل منصب.
- بيانات السير الذاتية لكل عضو من أعضاء فريق العمل المقترح.

- نبذة عن خبرة مروج الاستثمار فيما يتعلق بجوانب ومجالات متعددة ذات علاقة.

#### د. متطلبات الشق المالي من العرض:

يتم في هذه الوثيقة تحديد هيكلية معينة لتقديم العرض المالي وتحديد الأتعاب بشكل يسهل عملية المقارنة بين العروض المنافسة. ويقسم موضوع تحديد الأتعاب إلى شقين رئيسيين:

١- مقدم الأتعاب. *A Fixed Retainer Fee*

٢- عمولة إنجاز البيع. *A Success Fee*

هذا وعادة تتحمل شركة الترويج المتقدمة للمناقصة كافة النفقات ومصروفات تنفيذ المهمات والمتطلبات المنصوص عليها في المناقصة.

#### هـ. الجدول الزمني للانتهاء من ترسية العطاء على المنافس الفائز:

يبين هذا الجدول مراحل المناقصة المختلفة بحيث يسهل على المنافس المتقدم للمناقصة التأكد من الموعد الذي سيبت فيه بشأن أفضل العروض. ويقسم الجدول الزمني عملية المناقصة إلى أحداث محددة، يقابل كل حدث موعد محدد، مثال ذلك:

- الدعوة للتقدم بالعروض.
- فترة لتلقي الاستفسارات.
- الرد على الاستفسارات.
- أول موعد لتلقي العروض.
- آخر موعد لتلقي العروض.
- تقييم العروض.
- اختيار أفضل العروض.
- التفاوض مع المتنافس الفائز.
- توقيع عقد البيع النهائي.

(Synopsis Translation of Arabic Original)

## **Working Paper On**

### **Selection and Engagement of an Investment Promoter**

#### **Page 1**

The National Building & Construction Holding Company

The Role of the Investment Promoters, Methodology for their Evaluation and Selection.

A Strategic Investor

#### **Page 2**

Table of Contents:

##### Introduction

The Main Objective, the Ultimate Purpose

Justifications for Engaging the Services of an Investment Promoter/Banker

Conditions & Financial Commitment of the Investment Promoter

“Added Value”: Negotiating from a Position of Strength

##### A. The Role of the Investment Promoter

1. Assist in preparing the company for sale.
2. Effect the sale placement.
3. Assist in the preparation of the Tender Documents, and the process of Tender solicitation
4. Setting guidelines, Tender evaluation process.
5. Assist in the consummation of the sale.

##### B. The Short-list and Tender Documents for selecting an Investment Promoter/Banker.

#### **Page 3**

Heading: The Main Objective, the Ultimate Purpose

Content: Achievement of the Optimal Value/Price

**Page 4**

Heading: Justification for soliciting the services of Investment Promoters/Bankers

Content: Attractiveness (desirability) of the Investment

- An attractive Investment
- A less desirable Investment.

Sale strategy:

- Public Offering
- Strategic/Anchor Investor

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Heading: Conditions & Financial Obligations of the Investment Promoter

Content: Underwriter/ Guarantor and Agent

**Page 6**

Heading: Adding Value: Negotiating from a Position of Strength

Content: Promoter's Skills

- The promoter's technical, organizational, managerial and management systems capabilities, and strategy and method of work
- The promoter's acquaintance, and familiarity with the industry and business-activity of the company subject of sale; knowledge of the financial, technical, managerial, marketing and competitive aspects of the company's operations. Ability to portray actual value and potential to investor.
- The promoter's full understanding of the market forces at play, based on analysis. By extension, a knowledge of players in the market who could qualify as potential strategic investors.
- The ability of the promoter to highlight the benefits of the deal, and the competitive advantages of the company; the ability to assist in formulating competitive strategies, to enhance the company's value and prospects for sale, to construct a business plan based on convincing assumptions and logical projections.
- Possess an extended web of business contacts, and an extended reach that would improve the chances of identifying and attracting the desirable candidate investors.
- Creativity, and ability to conceptualize and structure optimal financing of the deal; knowledge and reach in the financial markets to advise on the source of the funds to consummate the sale.

**Page 7**

Heading: The Role of the Investment Promoter

Content: As in the table of contents, above, with further elaboration in pages 8, 9, 10, 11 and 12, below.

**Page 8**

Heading: Preparing the Company for Privatization/Sale

Content: Data Compilation

- Participate and assist in the valuation of the company. This is based on the promoter conducting a reasonable degree of due diligence, financial analysis, assessment of the investing market conditions (timing) to establish - to the promoter's satisfaction, - a realizable fair value of the company.
- Assist in compiling the requisite audited data, information and documents about the company to include in a comprehensive "Information Memorandum." This with the purpose of facilitating and expediting the performance of due diligence by the prospective investor.

**Page 9**

Heading: Promoting the Sale – Placement Power

Content: Market Analysis

- Draw a work-plan (strategy) for privatizing the company, with the object of achieving the highest feasible realizable price. This is in conjunction with a well- defined schedule for effecting the sale.
- Conduct an in-depth, comprehensive study on prospective strategic investors, drawing on the widest base possible, and prepare a report with full analysis on the prospects for sale.
- Engage the promoter's network to identify prospective investors, and disseminate information about the company, high-lighting its potential and salient features to attract the desirable investors. Communicate with prospective investors, answer their queries as they arise.

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Heading: Assist in the Preparation of the Tender Documents, and the Invitation to Tender

Content: Sale Documents

Assist in the Preparation of all the Tender Documents, including:

- Terms and Conditions
- Information Memorandum
- A sample contract
- Assist in the design of the advertisement of the Tender Solicitation and the guidelines of procedures to follow.

### **Page 11**

Heading: Establishing Guidelines and Assisting in the Evaluation of Tenders.

Contents: Procedure

- Assist in designing detailed guidelines for procedures; evaluate Tenders.
- Establish procedures to assure full transparency.

### **Page 12**

Heading: Consummating the Sale

Content: Final Negotiation

- Assist in formulating the letter to the winning bidder
- Assist in formulating negotiation strategies, and assist in the details of the final negotiations with the winning bidder.
- Assist in the design and preparation of the legal documents, and assist in all the steps and procedures to successfully consummate the sale in conformity with the contractual conditions.
- Assist in the procedures to registering and listing the sold company in the stock market.

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Heading: The list and content of Tender Documents for selecting the Investment Promoters

Content: Documents

- The Invitation to Tender
- Terms and Conditions
- Terms of Reference
- The requirements in the Technical Proposal
- The requirements in the Financial Proposal
- General information regarding the company subject of sale
- The time schedule until the award of contract

### **Page 14**

Heading: The Content of the Technical Proposal

Content: Bid Documents

- Detailed analysis of the method and plan of work.
- A detailed schedule for achieving each element/component/task, along with the promoter's plan to compiling a short list of prospective strategic investors.
- Description of the suggested working team for the project, along with diagrams and charts describing the organization of the work team, and clear definitions of responsibilities and authorities of each individual.
- A profile, or a Curriculum Vitae of each member of the proposed work team.
- List the relevant experiences and relevant strengths of the bidding investment promoter.

**Page 15**

Heading: Content of the Financial Proposal

Content: Fees:

- Retainer Fees
- Success Fee

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Heading: The Time Schedule to Awarding the Contract

Content: Sequence of activities from announcement inviting to tender until final award of contracts.

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# الشركة القومية للتشييد والتعمير

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## دور شركات الترويج وأسس وأساليب اختيارها

”مستثمر رئيسي“

## قائمة المحتويات:

### أ- مقدمة:

- \* الهدف الرئيسي والغاية المستهدفة.
- \* موجبات الاستعانة بشركات الترويج المتخصصة.
- \* الشروط والالتزام المالي للشركة المروجة.
- \* القيم المضافة: التفاوض من موقع القوة.

### ب - دور الشركة المروجة:

- \* المساعدة في إعداد وتجهيز الشركة للبيع.
- \* الترويج.

المساعدة في الإعداد لمناقصة البيع، وتحضير المستندات واستيفاء إجراءات الطرح.  
\* المساعدة في اتخاذ القرار للبت بالمتنافس الفائز، وإجراءات المتعلقة بذلك.

- \* تنفيذ البيع.

### ج - محتويات عطاءات الفوز بعقود خدمات الترويج.

## الهدف الرئيسي و الغاية المستهدفة:

تعظيم العائد عن طريق اختيار المشتري

## موجبات الاستعانة بشركات الترويج المتخصصة:

### جاذبية الاستثمار: □

\* نشاط جاذب للاستثمار

\* نشاط ضعيف الجاذبية للاستثمار

### أسلوب الطرح: □

\* طرح عام بالبورصة

\* مستثمر استراتيجي

## الشروط والالتزام المالي للشركة المرؤوبة:

□ ضامن للاكتتاب أو البيع

□ وكيل - وسيط مالي

## القيم المضافة: التفاوض من موقع القوة:

- قرارات المروج الفنية، والإدارية، والتنظيمية وأسلوبه بالعمل بصفة عامة.
- إطلاع المروج وإلمامه الكامل بطبيعة نشاطات الشركة المعروضة للبيع، ووضعها الفني والمالي والإداري، وموقعها وقدراتها التنافسية الفعلية والممكنة.
- الفهم الأفضل لمعطيات السوق، والواقع التنافسي فيه مبنياً على دراسات تحليل السوق المعتمدة.
- مقدرة المروج على استخراج وإبراز المميزات التفضيلية والتنافسية للشركة مبنياً عن تصورات استراتيجية وإحوية، و مترجماً في خطة عمل متكاملة (Business Plan).
- شبكة اتصالات جيدة تعنى بتحديد مستثمرين رئيسيين متمكنين.
- قوة الابتكار في وضع التصورات المسبقة عن هيكالية التمويل الأنسب ومصادر التمويل الأكثر تيسراً لإتمام صفقة البيع وإضفاء قيم مضاعفة عليها.

## القيم المضافة: دور الشركة المروّجة:

- المساعدة في إعداد وتجهيز الشركة للبيع
- الترويج
- المساعدة في الإعداد لمناقصة البيع، وتحضير المستندات واستيفاء إجراءات الطرح
- المساعدة في اتخاذ القرار للبت بالمتنافس الفائز، والإجراءات المتعلقة بذلك
- تنفيذ البيع

## إعداد وتجهيز الشركة للبيع:

□ تقييم الشركة لمعرفة الأجهزة المتخصصة بالشركة القابضة، ومراجعة السعر العادل على ضوء استنتاجات المروج المبنية على الدراسات التحليلية لواقع الشركة القانوني والمالي والإداري والفني والتنظيمي، والمقارنة بإتمام عمليات مشابهة بالسوق، وفرص توفر المستثمرين وخطة العمل المستقبلية (Business Plan).

□ استيفاء كافة المعلومات والبيانات المدققة في كل ما يتعلق بالشركة وإعداد "مذكرة المعلومات"، التي تساعد المستثمر على تقييم واقع ومستقبل الاستثمار في الشركة قيد البيع.

## الترويج للبيع:

- رسم خطة الخصخصة بما يحقق أكبر العوائد المتاحة ووضع برنامج للخصخصة وخطة زمنية لتنفيذ البيع.
- عقد دراسة حول مستثمرين مرتقبين لعرض الشركة موضوع المناقصة على أكبر قاعدة ممكنة منهم، وإعداد تقرير عن الفرص المتاحة للبيع.
- تجنيد شبكات اتصال شركة الترويج لتحديد والاتصال بالمستثمرين المرتقبين، وتعريف السوق بالمزايا والمكاسب الممكنة للمشتري أن يحققها ومتابعة ما يثيره المستثمرون المرتقبون من استفسارات.

## إعداد مستندات المناقصة وإجراءات الطرح:

- المساعدة في إعداد وتوفير كافة وثائق المناقصة، والشاملة بين أمور أخرى، على الآتي:
  - \* كراسة الشروط
  - \* مذكرة المعلومات
  - \* نموذج عقد مقترح
- المساعدة في إعداد صيغة الإعلان عن الدعوة للتقدم بالعروض

## اتخاذ القرار للبيت:

- المساعدة في وضع القواعد الاستراتيجية التفصيلية لتقييم العروض.
- المساعدة على تقييم العروض المقدمة من المستثمرين المهتمين وضمن شروط ضمان تحقيق الشفافية والعلائية.

## تنفيذ البيع:

- المساعدة على صياغة خطاب للفائز بأفضل العطاءات
- المساعدة على صياغة سياسات التفاوض وتنفيذ المفاوضات التفصيلية مع المستثمر الفائز بالشراء
- المساعدة على إعداد المستندات القانونية أو القيام بصياغتها، وجميع الخطوات اللازمة لإنجاح عملية استكمال شروط اتفاقية الاستثمار
- المساعدة في إتمام إجراءات تسجيل الشركة في البورصة

## محتويات عطاءات الفوز بعقود خدمات الترويج:

- صيغة إعلان الدعوة للتقدم بالعروض
- القواعد التي تحكم عملية الاشتراك في المناقصة، بما يعرف بمراسلة الشروط.
- وضع إطار تفصيلي للأعمال والمهام والدراسات التي سيقوم بها المروج، وتعرض أيضاً إلى مواصفات هذه المهام.
- متطلبات خاصة بمحتوى العروض الفنية والمالية وأطرها العامة لتسهيل المقارنة بين جميع العروض والتأكد من احتوائها على جميع المعلومات الضرورية.
- الجدول الزمني للانتهاء من إرساء الأعمال على أفضل العطاءات.
- وصف عام للشركة المنتفعة من خدمات المروج.

## محتوى الجانب الفني من العرض:

- أسلوب العمل ببيان العناصر الرئيسية بالآتي:
  - \* الإطار التحليلي للخطوات المطلوبة.
  - \* نطاق كل عنصر من عناصر العمل.
- جدول زمني تفصيلي لتنفيذ كل عنصر من عناصر العمل اللازمة لتنفيذ المهمة يتعين في الجدول الزمني خطة المروج إعداد قائمة قصيرة من مستثمرين رئيسيين محتملين على استعداد للتقدم بعطاءات لشراء الشركة.
- توصيف فريق العمل المقترح لتنفيذ المهمة موضوع المناقصة مدعوماً ببيانات توضح الهيكل التنظيمي ومسئولية كل فرد في فريق العمل، وكذلك خطوط السلطة.
- نبذة عن خبرة الشركة المرؤجة.
- السيرة الذاتية لكل فرد من أفراد فريق العمل.

## العرض المالي:

□ الأتعاب:

\* مقدم الأتعاب.

\* عمولة إنجاز البيع، على أساس نسبة من عوائد البيع.

## الجدول الزمني للبيت في أفضل العروض:

- الدعوة للتقدم للعروض.
- فترة زمنية لتلقي الاستفسارات والرد عليها.
- أول موعد وآخر موعد لتلقي العروض.
- تقييم العروض.
- اختيار أفضل العروض.
- التفاوض بشأن العقد الملزم.
- إبرام العقد الملزم.

**Contract No. PCE-I-00-97-00017-00**  
**Privatization/Investment Banking TA Support**

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- **Regulating Laws of the Capital Market and Joint Stock Companies (English / Arabic).**
- **Guidelines for Establishing a Model Data-Room (English / Arabic).**

(Translation of the Arabic Original)

## Investment Banking Services for Egypt

### SYNOPSIS OF THE REGULATING LAWS

Of

### THE CAPITAL MARKET

And

### JOINT STOCK COMPANIES

Compiled by

**AHMED A. HASSAN,**  
Vice President Council of State,

and

**IBTCI/USAID**  
Investment Banking Project Team

In connection with round-tables organized by the PEO, USAID and IBTCI dealing with the laws regulating companies in Egypt this memorandum is offered as a synopsis of the legal and regulatory framework governing the activities of the capital market in Egypt as per law No (95) of the year 1992 and its executive regulations.

Additionally, the Companies Law No. (159) of the year 1981, its executive regulations and the Investment Guarantees and Incentives Law No (8) of the year 1997, its executive regulations, are discussed.

These are the primary laws governing operations on the capital market; as they regulate the establishment of joint stock companies and consequent issuance of securities and their circulation in the market.

Also considered are the complementary laws, economic and financial regulations which create the general framework for investment in Egypt. For the convenience of the reader a more complete list of laws and regulations bearing on companies, the capital markets and privatization is presented in an attached annex.

For instance, the law of the public enterprises sector is the law governing the companies of the public enterprises sector which permitted the circulation of their shares. In order to be transferred to the private sector whenever the public sector shareholding is less than 50%, such thing was prohibited in the public sector law No (97) of the year 1983 which prohibited the circulation of the shares of a public sector company.

In consideration of the limited time available today and with regard to topics for discussion, this memo focuses on primary points, as follows:

**1. Types of the joint stock companies & Issuance of securities:**

- The private joint stock companies,
- The public joint stock companies,
- Public subscription,
- Closed subscription,
- Cash capital and In-kind capital,
- Data and basic formalities & procedures to establish a joint stock company.

**2. Shares and their types:**

- Constraints (restrictions) on the circulation of shares.
- Purchase of a company to its shares.
- Mortgaging of securities.

**3. Companies operating in the field of securities.**

**4. Stock-exchanges.**

**5. The governmental supervisory bodies:**

- The capital market Authority.
- The companies Department.
- Investment Authority.

**1. The settlement of the disputes of the capital market:**

- Complaint.
- Arbitration.

## Types of Joint Stock Companies in Egypt And Issuance of Securities

### Preamble:

Securities are issued in what is called the primary market, which is considered the issuing market. Trading of such securities among buyers and sellers, occurs on the so-called secondary or trading market.

Securities are issued by joint stock companies.

They may be:

- shares of equal value representing a pro-rata share of the company capital upon establishment or of a capital increase;
- bonds or finance shares.

Finance shares represent a debt of the company which entitles the owners of the shares to receive returns or declared annual interest on them.

Hence, it is necessary to know the types of joint stock companies in Egypt which issue these securities and the different regulatory governing them, as well as other regulations that govern their dealings in the stock market.

Joint stock companies in Egypt are divided into two major types as follows:

- Private joint stock companies and,
- Public joint stock companies.

### Private Joint Stock Companies

- 1) These may be established according to the provisions of the joint companies law No (159) of the year 1981 and its executive regulations and as per the specified form.
- 2) They also may be established in according to law No (8) of the year 1997 governing Investment Guarantees and Incentives and its executive regulations and as per the specified form.

(Law No (8) of the year 1997 replaced the Investment law No (230) of the year 1989).

The companies established according to the previous and present investment laws enjoy many guarantees and privileges. The most important of such are that they would be protected from administrative seizure on its funds, that it would enjoy a tax exemption for a period not less than five years and up till ten years.

- 3) They may also be established according to law No. 95, of the year 1992, governing the capital market and its executive regulations. Such companies shall be operating in the fields of securities, brokerage, portfolio management, venture capital, clearing and settlements.

## **Public Joint Stock Companies**

**These companies are owned by the state, and are either:**

- 1) Public Sector companies subject to law No (97) of the year 1983 governing Public Sector Organisations and Companies and its executive regulations (the entity is to be considered public, when 51% or more of the capital is owned by the state).

The shares of these entities may not be disposed of, except for Banks and Insurance companies in accordance with laws no. 155 of 1998 and 156 of 1998, or the shareholdings of the private sector only,

OR

- 2) Companies affiliated to the holding companies subject to the of law No (203) of the year 1991 on the public enterprises and its executive regulations. (Ownership of the holding company and its affiliated companies must be 51 % or more of the capital).

Such a company is authorised to dispose of its shares by sale to the private sector subject to the law No (159) of the year 1981.

The Companies' Law controls and governs the structure of these companies in all matters not otherwise regulated in the Investment Law or the Capital Market Law.

## **Public and Closed Subscription of Shares**

A joint stock company, whether established in accordance with law No (159) of the year 1981 or law No (8) of the year 1997, or other laws, may be a closed company, in which subscription is confined to the founders or some shareholders only.

The company can offer its shares to the public according to specified formalities as indicated in the law No (95) of the year 1992 on the capital market. The most important requirements being:

- the necessity to obtain approval of the public subscription announcement from the Capital Market Authority before publishing in the newspapers, and
- to name the receiving bank, and
- to fulfil other conditions and provide data required for completion of the subscription announcement.

## **Cash and In-kind Capital**

Every joint stock company should have capital not less than the minimum specified by the law or the executive regulations. Capital requirements depend upon the activity of the company and whether:

- the shares are offered for public subscription,
- it is a closed company,
- the shares shall be of equal capital value.

An in-kind contribution may be paid in lieu of a capital contribution. This may consist of tangible assets such as: lands, equipment, know-how, licenses rights, or usufruct rights. The valuation of this contribution is subject to certain formalities, primary among them is the requirement to obtain the approval of the verification committee which is formed by the Capital Market Authority. This committee reviews and approves the appraisal of value by experts retained by the contributing shareholders. It may direct the "in-kind contributors" to pay an additional contribution above appraised value in cash or to withdraw from the company.

The purpose of this procedure is to ensure fair evaluation of the in-kind contribution; determine its equity-value in shares, impose conditions upon ownership of those shares, and protect the financial interest of the other shareholders.

It is obvious that the capital contribution may limited to the cash only, but it may not consist of in-kind contribution alone. This is a critical point to bear in mind if the company offers its shares for public subscription.

It should also be noted that an Investment Fund's capital may not include contributions in-kind.

**The Basic Data for Establishing Stock Companies:**  
**The Investment Law, Company Law**  
**The Capital Market Law and Procedures for Issuing Securities**

**The Founders:** Shall not be less than 3 either individuals or legal entities.

**Articles of Association & the Statutes:** Shall be prepared according to the form attached to each law.

**Percentage of Partnership or Shareholding:** Such percentage shall be determined for each founder & there are no restrictions regarding the said percentage.

**The Name of the Company:** It shall be derived from its objectives & shall not be similar to another company's name.

**The Objectives of the Company:** Shall be within the frame determined by the law & its executive regulations.

**The Investment Contributions:** Shall be appraised to the closest feasible amount

**Initial Capital**

**Authorised Capital:** Shall not exceed five times the issued capital.

**The Issued Capital:** Including the in-kind portion shall be deposited in the bank to proceed the founding procedures (the paid amount for the cash portion shall not be less than 10% of the capital & within 3 months such percentage shall be 25%).

**The Nominal Value of Shares:** The minimum value of each share is 5 L.E.

**The Board of Directors:** May be formed of at least 3 shareholders and two expert members may join the board; a legal entity may be represented by one or more members.

**The Auditor:** Shall be selected from those who are authorised to audit joint stock companies.

**The Legal Counsellor:** Shall be selected from those listed to practise before the court of Appeals, the counsellor shall be sign the articles of association.

**Agent for Founders:** The founders shall select one of them, a lawyer or an accountant to exercise the founding procedures with the competent authorities & to sign for & on behalf of them till the continuation of such procedures, then to transfer the company to the board of directors.

**Public Subscription:** The public subscription statement Announcement shall be registered & affirmed by an auditor & the capital market authority.

The Articles of Association & the statutes of the company shall be submitted with the public subscription announcement.

**Appraisal of In-kind Capital Contributions:**

In-kind contributions may be made to the initial capital. A preliminary report regarding such appraisal shall be prepared, and a committee from the Capital Market Authority shall verify such appraisals, and a fee shall be paid that usually does not exceed ten thousand Egyptian pounds.

**Applications shall be submitted to:**

- 1) Companies Division, Ministry of Economy:

In case the company was established according to law 159 of 1981 or in case a company has among its objectives some of the objectives mentioned at the investment law. (Double Activity).

- 2) Investment Authority:

In case the objectives of the company areas determined in the law no 8 of 1997 & its executive regulation.

- 3) Capital Market Authority:

In case a company was established in order to operate in the field of capital market.

**Notifying when issuing securities:**

The capital market authority shall be notified when securities are to be issued according to article 2 of law no 95 of 1992, & the fees due shall be paid (not to exceed 10 thousand L.E).

**Shares**

A joint-stock company issues shares as single shares, or in lots of five shares, or a multiple thereof. The nominal share value could vary between a minimum price of five Egyptian pounds, and a maximum price of one thousand Egyptian pounds.

The minimum nominal value of the share is 5 L.E. & it shall not exceed 1000 L.E.

**The share certificate shall include:**

The name of the company which issued the share, its legal form, the address, its commercial objectives, the duration its existence, its date of registration in the commercial registry, the number of its shares, its initial-capital; also, the type of share issued, its characteristics or restrictions, the share's nominal value, the paid-in amount and the name of the owner (the shareholder).

The shares shall have coupons with serial numbers, and the number of the share & the paid in amount by the subscriber shall be stated thereon.

The shares are to be either nominal shares or bearer shares, if such shares are ordinary (unrestricted) all such shares shall be equal in rights & obligations. Preferential shares may also be issued.

**Registered Shares:**

Shares that are registered under the name of a specific person, and are traded according to capital market regulations.

**Bearer Shares:**

Are shares not inscribed with the name of the owner, therefore, the person in possession of the physical share shall be considered the owner, and may be transferred endorsement and delivery. Law No. 95 of 1992 permits companies to adopt in their statutes an article regarding the company's right to issue bearer shares in an amount not exceeding 25% of the total of all shares issued by the company.

The value of such shares shall be paid in full at once, as it shall be impossible for the company to track go the owners of bearer shares after issuance.

According to the law substitution or replacement of a lost or damaged bearer share is possible if the issuing documentation or title is can be established for that share. However, in such case the replacement share shall be registered on the company's books as a substitute and the original deed shall be destroyed.

**The right to attend the general assembly of the company: Possessor of bearer shares**

The possessor of such shares may attend the general assembly; he may discuss the board of directors' report, the balance sheet, profits & loss accounts, the auditors report, & whatever else which might arise during the meeting, however they cannot vote in such meetings.

The owners of bearer shares may be notified through a newspaper announcement whenever it is required to do so.

The possessors of such shares are entitled to review the document relating to the general assembly, & when such shareholder is desirous to attend such meeting he shall deposit his

shares according to the same rules of depositing the registered shares. The names of possessors of bearer shares in attendance at the general meeting shall be entered in a register established for that purpose.

**Preferential shares:**

The company's statutes may approve the issuance of shares with extra privileges and preferences. Such privileges may regard the voting, the profits, & the distribution of dissolution revenues.

The preferential shares may not be issued unless such right is stated in the company's by-laws along with the rules and conditions regulating their issuance.

**Ordinary shares:**

Such shares shall be all equal in rights & obligations.

**Concessionary shares:**

Such shares shall not be issued unless the company is practising an activity concerning the utilisation or concession of a public utility or natural resources which is granted to the company for a specific period of time. Therefore, the company's statutes shall provide for redemption of its shares, before expiration of the company's legal existence. (Such shares are not frequently seen, however, some may yet be outstanding from public projects developed through BOT. financing.)

**Restrictions regarding shares' trading:**

Restrictions imposed on the disposal of founding and founders' shares, and shares issued against in-kind contributions.

**The Companies' Law (art. 45) states that:**

Shares issued against in-kind contributions, as well as against contributions of initial capital, shall not be transferable, unless balance sheets, profits & loss accounts, & other documents appurtenant to them shall have been published for two fiscal years and sooner than 12 months from the date of foundation of the company.

During such period, it is forbidden to detach the coupons of the shares, each share shall be stamped with a stamp indicating their kind, date of foundation of the company, and the payments to be effected in virtue of them (the share-coupons)..

Nevertheless, as an exception from the above provision, the transfer of ownership of the shares which was subscribed to by the founders, may take place among founders or from one of the founders to a member of the board of directors in case the shares to be acquired in order to provide it as a guarantee for his (the board member management, or from the latter's heirs to third parties in case of death. The founders shall apply the provisions of such article in case they subscribed to shares representing an increase of the capital prior to the expiration of the period stated above.

**Exceptions:**

Article 46 of the companies' law is as follows:

"Without prejudice to the preceding article, the subscription certificates or shares shall not be transferred for a higher price, than the value of its issuance, plus - when necessary - the expenses of issuance. This prohibition of transfer shall be effective during the period preceding the registration in the commercial registry and shall apply to subscription certificates, but as for shares the prohibition applies during the interval following the date of its registration till the date of publication of the profits & loss accounts for a full year.

(The law denied the right to transfer of such shares at a value exceeding its value of issuance for reasons of public policy: preventing share-price manipulation, as it is not expected that companies shall achieve profits which justifying increased share-price during the such a period. However, as changes occurred in the market and joint stock companies which engaging in actual business activities thereby achieving reasonable results it became necessary to allow the negotiation of some shares - during the period of prohibition of transfer - with a value higher than their issuance value, but only for actual business purposes.)

Article 46 was amended - by virtue of law No. 159/98 – by adding the following clause to the original article: "That (transfer should be) ...according to the conditions & procedures set forth in a decree of the minister of economy".

The said decree was issued by number 251 of 1998 and it is as follow:

"Shares shall not be traded against a value which is higher than its nominal value plus -when necessary- the issuing expenses. Such prohibition of negotiation is for the period commencing with the date of registration in the commercial registry until publication of the financial statements for one full fiscal year, however, the shares can be exchanged for a value higher than the nominal value at the issuance date if the following conditions were fulfilled, as it would be verified and attested to by the Capital Market Authority:

- 1) The shares shall be registered in one of the schedules of the stock exchange market (either the formal or the informal).
- 2) The shares shall be registered in one of the depository companies under the category "A", management of the financial securities records.
- 3) The company shall publish a report in two widely-circulated daily newspapers and at least one of them to be in Arabic. Such report shall include data regarding the founders names, their capacities, their ownership interest; the company's business purpose and activities, the contracts and agreements which were entered into by the company; the business plan and financial projections for the company as well as the revenues of the public offering.

But in cases of merger and the changing of the legal form of the company, the above mentioned report shall include a statement regarding the past operating performance of the company and the financial position before the merger or the effected change, or inclusion of the financial position of the new activity which transferred to the company, and that for a whole one prior year at least.

Such reports shall be drafted & prepared according to the forms issued by the capital market authority.

**Provisions Restricting Trading in Certain Type of Shares  
or Quantity of Shares**

In addition to the foregoing there are other provisions imposed by various laws other than the Companies' law restricting transfer of securities of certain types of companies or according the ratio of the number of shares issued to the initial capital, such restrictions are imposed for reasons of public policy.

**Such provisions are:**

**Article 8 of the Capital Market Law:**

Any shareholder, who desires to conclude a transaction resulting in acquisition of 10% or more of the nominal shares in the capital of a company which offered its shares for public subscription, shall notify the company at least two weeks before preceding in (concluding) such transaction.

The company, within one week from the date of its notification, shall provide/forward such notification to each shareholder possessing at least 1 % of the company's capital

Violating the provisions of the first clause shall result in cancellation of the transaction without prejudice to further prosecution of the parties to it.

The provisions of the previous clauses shall apply in case of conclusion of such a transaction by a board member or an employee of the company, resulting in possession of 5% or more of the company's capital.

The Executive Regulations shall promulgate regulations pertaining to such transactions, and notification procedures.

Further, the Executive Regulation of the Capital Market law stipulates:

**Article 59 of the Executive Regulations of Capital Market Law:**

Whoever desires to conclude a transaction, resulting in acquisition of more than 10% of the number of nominal shares of the capital of a certain company offering its shares for public subscription, or otherwise offering at least 30% of its shares, shall notify the company thereof, at least two weeks before concluding the transaction.

Such notification shall be by registered mail against acknowledgement by receipt, the notification shall include the percentage of the acquirer's participation in the capital of the company, and he shall attach an explanation of the transaction, particularly: the number and type of the shares which are the object of the transaction, the transaction venue in case the shares are not registered with one of the stock exchanges, and the name and the address of the brokerage firm through which the transaction is performed.

Further:

The company, within one week from being notified shall forward such notification to each shareholder holding at least 1% of the number of the company's share-capital. This notification shall be either personally at the shareholder's recorded address, or via publishing an announcement in two widely circulated daily newspapers, in addition to notification to the stock exchange at which the company is registered.

The foregoing provisions shall apply in the case of a transaction by a member of the board, or employee of the company resulting in possession of nominal shares representing 5% or more of the company's capital,

The said employee or the board member shall not dispose of the shares he possess during the period from the notification referred to in the first clause till the transaction is concluded, or till the period prescribed for concluding the transaction has elapsed.

**Article 60 of the same regulations:**

Any person notifying the company of his desire to conclude a transaction referred to in the previous article, may conclude it within one month from the notification date referred to in the said article.

He shall notify the company of holding the transaction, within one week from the date of its conclusion.

In case the transaction is not concluded, he shall notify the company within the week following the expiration of the period referred to in the first paragraph, and indicate the cause. If the Transaction shall not have been concluded through the fault of the purchaser he shall bear the costs incurred to notify the shareholders.

See: The decree of the Minister of Economy No. 447 of 1998.

**Bank and Credit Law, as amended by virtue of law 97 of 1996, Article (21/ Bis 1):**

The percentage of ownership by non-Egyptians in the capital of joint banks & private banks may exceed 49% of the issued capital of any bank, & all other contradictory provisions shall be superseded.

It shall be prohibited to any natural person - except by inheritance to possess more than 10% of the issued capital of any of the banks referred to the first clause except with the approval of the board of the Central Bank of Egypt. Non-compliance with this regulation shall render a prohibited transaction null & void.

If a natural person takes possession, through inheritance, of more that the percentage indicated in the pervious clause, he shall adjust his ownership share according to a decision to be taken by the Central Bank of Egypt within a period not exceeding two years from the date of possession of such an increased share.

The owner of a percentage greater than that percentage stipulated in the law and not adjusted within the required period, shall not exercise rights appurtenant to the number of shares owned in excess of the legal percentage either in the general assembly of the bank, on the board of directors, or in voting for the board members.

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**Article 5 of law No. 97 of 1996 states:**

The provisions of the second clause of article 21 (bis 1) shall not apply to share-holdings which exceed the percentage set by the law at the time of adoption of the law. However, such share-holdings shall not be increased without the approval of the Central Bank of Egypt.

**The Law of Supervision and Control on Insurance in Egypt, Amended by virtue of Law No. 156 of 1998:**

This law regulates the ownership of shares of insurance companies as follows:

Any natural person or legal entity possessing 5% of the capital of an insurance company or re-insurance company, shall notify the authorities of its ownership within two weeks from the date of acquiring such a percentage. It is forbidden to any natural person to own, unless by inheritance, or legal entity to own more than 10% of the issued capital of an insurance or reinsurance company except with the approval of the cabinet after consultation with the Minister of Economy. Non-compliance with this regulation shall render a prohibited transaction null & void.

A natural person possessing through inheritance more than the percentage indicated in the previous clause, shall adjust his ownership share according to a decision of the appropriate authority within a period not exceeding two years from the date of possession of the excess shares.

The owner of a percentage greater than that percentage stipulated in the law and not adjusted within the required period, shall not exercise rights appurtenant to the number of shares owned in excess of the legal percentage either in the general assembly of the bank, on the board of directors, or in voting for the board members.

These provisions shall not apply to share-holdings which exceeded the percentage set by the law at the time of adoption of the law. However, such share-holdings shall not be increased without the approval of the Prime Minister after consultation with the Minister of Economy.

**Investment Law No. 8 of 1997:**

According to the Companies' law, it is, as previously discussed, forbidden to dispose of founder's shares until after publication of a company's balance sheet reflecting two full fiscal years. However, the Investment law authorises an exception from the prohibition of share-transfer. This exception applies to companies established according to the Investment law. Such exception shall be authorised upon approval by the Prime Minister. The chairman of the investment authority is delegated to grant such approval.

**The Disposal of Securities Owned by a Minor:**

Law No.119 of 1952, regarding custody over money sets forth the rights and obligations of a guardian. This law forbids a father, without the permission of a court, to dispose of the real estate or the business-establishment or securities owned by a minor if their value exceeds 300 L.E..

The guardian-ship may not include property given to the minor if the donator so stipulated. The above mentioned restriction shall not apply to property granted, directly or indirectly, to the minor by his father and the father is not obliged to submit a statement of account regarding such donations.

A father may also enter into contract by himself in the minor's name and to the benefit of either contracting party, unless a particular law prohibits such contracts.

### **Repurchase of company shares**

#### **The right of companies to repurchase their shares**

The Companies' law, (as amended by law No. 3 of 1998) permits a company to re-acquire its own shares, however, a company having re-acquired its shares shall dispose of such shares to third parties within a year of acquisition or, alternatively, it shall decrease its capital by the amount of the nominal value of such shares. The law also authorises a company to purchase some of its shares for distribution to employees as a participatory-share of profits.

#### **Notifying the capital market authority**

If a company re-acquired any of its shares it shall notify the capital market authority of such acquisition.

The company shall in its financial statements or other company publication disclose and mention the number of shares re-acquired, the date of re-acquisition and the ratio of the number of such shares to the issued capital. Re-acquired shares shall be treasury shares; the balance of the shares shall be referred to as: issued and out-standing shares.

#### **Treasury shares shall not be entitled any dividends**

Treasury shares shall not have apportioned to them any of the dividends distributed by the company and shall not have appurtenant rights for voting or representation at the general assembly.

Dividends declared to be distributed for the outstanding shares, shall be due and payable as of the date of declaration.

#### **Disposition of treasury shares**

A company shall, within a year from the date of re-acquisition of its shares, dispose of such treasury shares or it shall convene, within 30 days of expiration of the one-year period, an extraordinary general assembly for the purpose of decreasing the capital of the company by the nominal value of the acquired shares.

#### **Hypothecation of Securities**

## **Introduction**

In Egypt, shares are issued either as physical shares in the form set forth by the Companies' law & its Executive regulations or registered-shares entered in the central share registry which provides an account statement issued by the share-registry in substitution for the physical share.

This system was not used in Egypt prior to the adoption of law No. 158 of 1998, amending the Capital Market law. This amendment authorised the issuance of documents representing physical shares as a substitute for them. Therefore, the legal procedures required to hypothecate shares are as follows:

## **Hypothecation of Shares**

Article 76 of the Trade Law, as amended by law 655 of 1954 states that:

The (mortgage) pledge which is to be given as a warranty for a commercial debt is to be proved or evidenced by such means of proof and such methods as shall be customary and acceptable in the course of business either among the contractors or among others.

Notwithstanding usual requirements, a hypothecation pledge of registered securities shall be in writing and indicate that it is given as a warranty. The security certificate shall be inscribed with the pledge and the entity which issued the share shall register the said hypothecation pledge in its books and shall also state the seniority of the mortgagee creditor from the date of registration of the hypothecation pledge.

And the promissory notes to be mortgaged against an endorsement on the back to show that "the value is for guarantee".

Generally, the terms and conditions of provision of security for debt is governed by the Civil Code.

Article 77 states that:

"The mortgagee creditor may not in all cases have a lien on the mortgaged item unless such item were delivered to him or to a third party designated by both contractors and remains in the possession of whomever received it:

Therefore, the following conditions shall be fulfilled when hypothecating physical shares:

- The share shall be issued by the company according to stipulated legal conditions.
- The share shall have an endorsement stating that, it is mortgaged to the mortgagee creditor;
- it shall be signed by the owner of the share or other authorised parties.
- The company that issued the share shall register such mortgage in the shareholders registry.
- The shares must be delivered to the mortgagee or his designee.

## **Hypothecating shares listed in the Central Depository**

As ownership, circulation and transactions, in shares increased Central Depository companies were established in order to safeguard securities and the issuance of statements of accounts. And with regard to the importance of legalising such documents issued according to central depository system either in sale or in purchase, and with regards to all related procedures and transactions, and in specifying the relation between the depository agency and the owner of the shares, and to address the legal problems and disputes that might arise by reverting to the central depository system, while the law en force governs matters related only to actual physical securities, therefore, an accordingly, clause (18) of the Capital Markets Law, was amended, with the provision of such amendment authorizing that the documents issued by the central depository companies be accepted as evidence of ownership in lieu of the physical shares

**Article (18), as amended, states that:**

In case of registering the securities with one of the licensed custodial companies, the documents issued by such companies shall substitute (replace) the physical shares and such documents shall be used either in dealing, attending general assemblies, hypothecating, enforcing priority rights, or in any other activity prescribed by the executive regulations.

Note: The executive regulations, as of Oct. 1999, have not yet been issued and are still under discussion.

**Companies operating in the area of financial securities**

As specified by the law companies operating in the financial markets are those engaging in one or more of the following activities:

- Marketing, promoting and covering the subscription to securities
- Participating in the incorporation of companies issuing stocks & shares or in increasing their capital funds
- Venture capital
- Clearing and settlement in securities dealings
- Formation and management of securities in portfolio and investment funds
- Stock brokerage
- Other activities connected with the area of financial securities as determined by the minister of economy subsequent to the approval of the board of the Capital Market Authority.

**Promoting and underwriting share-subscription**

Activities related to promotion and underwriting subscription to securities shall comprise the following:

- Managing operations related to promoting and the underwriting of financial securities, and solicitation of investors, and all procedures related thereto concerning advertising in the media.

Subscriptions to securities through private-offerings or public subscription may be also re-offered to the public by public subscription. They may also be offered other than by public subscription, with the same conditions and terms as set forth in the approved subscription

announcement, within a period of at most one year from the date of approving such announcement, at a price not restricted by the nominal value of the share.

The entity offering such shares shall be informed by the issuing company of all modifications or changes affecting the shares during the preceding year in order to take procedures & actions deemed suitable in that regard.

The company shall perform its activities according to the provisions of the law and the decrees and executive regulations implementing same, and also according to the agreement signed between the company and the concerned parties.

The Capital Market Authority shall be notified of such agreement and be provided with a copy of such agreement. The Capital Market Authority should forward its comments and remarks over the agreement to the company within 30 days from the date of receiving the agreement.

### **Founding companies**

A company shall be considered to be engaged in the business of establishing companies that issue securities or increasing the capital of established companies:

- If the primary business of the company is promoting secondary subscriptions
- If the company, severally or jointly with its founders possesses more than 50% of the capital of five or more companies (either joint stock companies or partnership limited by shares)
- If the company, severally or jointly with its founders control shares or rights sufficient to form the board of directors of five companies or more (either joint stock companies or partnership limited by shares).
- If the company actually exercises the activity of founding joint stock companies, or partnership limited by shares, or the activity of increasing their capital, and such activities constitute the primary business activity of the company.

### **Venture capital**

The activities of venture capital include financing companies which issue securities, supporting such companies by provision of technical & administrative services; participating in business-projects or the establishment and development of business-projects for the purpose of transfer to joint stock companies or partnerships limited by shares and that when said companies & projects are considered high-risk, or suffering from inadequate shortage in financing.

### **The required legal form**

Companies operating in the field of securities shall assume the form of joint stock companies or partnerships limited by shares.

Such companies shall keep books & registers as necessary for exercising their activities and also shall keep books and records in accordance with and as set forth in the Executive Regulations.

The permissible cumulative value of transactions carried out by companies dealing in securities - with respect to each activity - shall be limited by the amount of company's capital and the amount of reserve deposit paid by it in accordance with the rules and regulations to be set by the **board of the appropriate authority**.

The amount of the reserve deposit shall be determined with consideration to the companies activities, the amount of its business, the risks represented in assuming such activity, as well as the debts and other obligations of the company.

### **Establishing & licensing**

Companies operating in the field of securities, without regard to whether they are organized under Egyptian or foreign law shall not carry on business except in accordance with the provision and conditions prescribed in the Law 95, of 1992, and its Executive Regulations.

The founders or the managing director of such a company may before proceeding to organize it, submit a request to the Capital Market Authority for preliminary approval to conduct business.

The approval shall be issued in light of the capital market's need such activity or its need for founding a company to exercise it.

In case of multiplicity of objectives to be exercised, these activities shall not be contradictory among them selves.

The applications shall be submitted - if the required documents & attachments were complete - to the committee formed for such purpose at the Capital Market Authority.

The committee's decision to reject the application shall be issued with justifications and for stated causes.

The committee's resolutions shall not be final except after being approved by the head of the Authority.

The concerned parties shall be notified of the committee's decision within 15 days from its date of issuance.

The business activities related to the field of securities shall not be undertaken before obtaining the required license from the Authority.

The companies licensed for such activities shall be registered in a special schedule at the Authority. Each company shall be given a serial number. The type of the license granted to the company shall be defined, with data regarding the company, and it's capital, as well as the names of the board members, the directors, and the branches of the company.

Each company granted such license shall be given a certificate of this license stating on its face: the type of business activities licensed and allowed to be undertaken by the company. The company is obligated to note the activities permitted by the license in its business correspondence.

## Stock Markets

### Preamble

Securities shall be registered at and transferred through the stock market.

The Cairo & Alexandria Stock Exchanges, are governed by Law No. 161, of 1957. Prior to enactment of those laws, the stock markets were subject to Law 31 of 1933. It should be noted that both of these exchanges were previously considered active markets and were legally established. However, after adoption of the Nationalisation Law of 1961, the title & ownership of the majority of shares in joint stock companies were confiscated & transferred to the state. Moreover, the state prohibited the right to trade in stock-shares.

After the enforcement of the Nationalisation Law only insignificant equity shares were left in the possession of individuals.

As a result both of the stock exchanges were considered non-existent. There were no shares available to be circulated, moreover, legal restrictions in the Companies' Law, prohibited individuals from establishing joint-stock companies the sole source and mechanism for creation of shares.

Later, as the state adopted new economic policies to liberalise the economy by enacting the Investment Law No.43 of 1974, companies, subject to that law, could be established as closed companies. The Investment Law eliminated the legal restrictions in the Companies' Law No. 26 of 1954, but only with regard to the certain specified investment projects.

A material legislative amendment was adopted by issuing Law No. 159 of 1981, regarding Joint Stock Companies, and its Executive Regulations. Such amendments resulted in an increase in the number of investors desiring to establish joint stock companies. Then Law No. 203 of 1991, regarding Public Enterprise Companies was issued with its Executive Regulations. This law authorized the sale of such companies including offering shares to the public. In order to regulate and organise the Capital Market, Law No. 92 of 1995, was issued replacing Law No. 161 of 1957, regarding stock exchanges.

### Listing

The registration of securities in the stock exchanges' schedule shall be done upon a request from the entity that issued such securities. Securities may be registered or deleted from the schedules by virtue of a decree from the management of the stock exchange, according to the rules drafted by the board of the Capital Market Authority. There exist two schedules:

### Formal (official) records

In this schedule shall be registered:

- 1) The shares of publicly subscribed companies which fulfil the following conditions:
  - The percentage of the nominal shares which to be offered for public subscription shall not be less than 30% of the total number of shares.
  - The subscribers shall not be less than 150 whether foreign or Egyptian.

- The number of shareholders shall not have been fewer than one hundred for any cumulative three- month period within the same fiscal year. In the event that the required number of shareholders shall be less than one hundred in any such three-month period, the shares of such company shall be deleted from the formal schedule and to be registered in the informal schedule.
- 2) Debentures, bonds, & other securities may be offered for public subscription by joint stock companies, and partnerships limited by shares; however such companies shall fulfil the above mentioned conditions.
  - 3) Securities issued by the state (the government) to be offered for public subscription.
  - 4) Stock and other securities of public sector companies & public enterprises sector companies.

### **Non-authoritative records**

In this schedule shall be registered:

- Shares & other securities which does not fulfil the registration conditions of the formal schedules
- Foreign securities

### **Trading in Shares**

Trading in registered securities shall take place only on the stock exchange with which the security is registered; otherwise a transfer shall be deemed void.

Regulations shall be disseminated by the stock exchange concerning transactions in unregistered securities which shall be effected according to the rules drafted by the Capital Market Authority.

The stock exchange shall provide the Authority with information regular reports as set forth in the Executive Regulations.

Dealings in registered securities shall be through licensed brokerage companies, otherwise the transaction shall be deemed void. Brokerage companies guarantee the integrity of a transaction. The Executive Regulations regulate transactions and procedures permitted or prohibited to undertaken by a brokerage company.

The stock exchange shall maintain a register of companies licensed to engage in business in the field of securities, and actively undertaking such business. A registration-fee shall be charged in the amount of 10,000 L.E. Additionally an annual subscription fee shall be charged amounting to 1% of the capital of the brokerage company to a maximum of 5.000 L.E.

The chairman of the stock exchange may ban trading in securities at upon if he has reason to believe that the bid-offer range is a result of or facilitates price manipulation.

He may also cancel transactions completed in violation of the law, regulations, and decrees, or if they were executed at unjustified prices.

Moreover, the chairman of the stock exchange may suspend dealing in a certain security if the continuation of trading might harm the market or the dealers. These restrictions may be imposed by the chairman at such times as he deems appropriate.

In case of exigent circumstances, the chairman of the stock exchange may declare a minimum price and a maximum price for certain securities taking into consideration the closing prices of the securities at the close of trading on the day prior to imposition of a maximum or minimum price. Such prices shall be binding on all transactions by all dealers on all stock exchanges.

The appropriate minister shall be informed of such action, by the chairman of the stock exchange, at the time of introduction of price limits. The minister may prohibit the imposition of the limits and determine pricing policy. He may also supervise transactions under price-limits the stock market and may issue a orders determining the procedures to be followed while trading in securities subject to price limits.

### **Brokerage Companies and Fees**

The appropriate minister shall issue a decree - upon the suggestion of the board of directors of the Capital Market Authority - regulating brokerage commissions & the maximum fees for the services provided in effecting transactions on the stock exchanges.

The minister shall also determine the amount of fees to be charged for registration of securities with the stock exchange. Regarding securities listed in schedule A of article 16 of Law 95 of 1992, such fees shall not exceed 5,000 L.E. annually for each issuance. The said fees shall not exceed 3,000 L.E. if levied on securities registered in Schedule B. Registration fees shall not be due in case the state is the entity which issues such securities.

Additionally, the Capital Market Law states that both Cairo & Alexandria stock markets shall continue their activities with the status of legal entities which was granted to them at the date that law was adopted and also in accordance with Presidential Decree No. 51 of 1997.

### **The Chairman of the Stock Exchange**

The chairman manages all business-affairs of the stock exchange. The chairman shall represent the stock exchange before court & third parties. Moreover, only the chairman of the stock exchange or his designee shall be authorised to sign on its behalf .

The chairman is to be selected from a group of experts in the fields of finance & economics. He shall be appointed by the Prime Minister for a term of 3 years, which may be repeated. In the absence of a chairman appointed in due course the head of the Stock Exchange Committee shall serve as acting- chairman until such time as the Prime Minister shall issue appoint a chairman by decree.

The stock exchanges' board of directors, headed by the chairman, shall be formed from the following members:

- A representative of the central bank (selected by the bank's governor).
- A representative of the Capital Market authority (selected by the chairman of the Capital Market Authority).

- Other bank's representatives to be elected according to the rules & regulations issued by the board of directors of the bank's union.
- 6 members, as representatives of the companies operating in the field of stocks & shares they shall be elected according to the rules set by the minister of economics & international co-operation.

The board's chairman may invite such experts as he deems necessary to attend board meetings, however they are not entitled to vote.

The term of board-membership is 3 years, the term may be repeated.

### **Duties of the board of directors**

The board of directors shall formulate policy and fulfil the following duties:

- Issue decrees & rules in order to guarantee the validity & stability of trading.
- Issue regulations & detailed decrees to regulate the administrative & financial affairs, also to regulate the employees' affairs with due regard to privileges previously granted to them; to draft the internal regulation for the stock exchange.
- To form the required committees for listing the securities in the schedules, supervising and confirming the good order of the market and trading.
- Drafting rules regarding the employment of experts.
- Approving the draft of the annual balance sheet & the financial statements.
- Accepting donations & approving loans to accomplish the objectives of the stock exchange.

The board of directors may delegate some of its duties to one of the committee or to the chairman. The board also may designate one of its members to accomplish a particular mission.

### **Board Meetings**

The stock market's board shall convene upon the invitation of the chairman at least once every two weeks. The chairman may invite the board to convene if at least four board members request.

Such meetings shall be valid if the majority of the members attend and resolutions shall have been taken according to the majority vote of those in attendance. In case of a tie-vote votes the issue shall be decided by the vote of the chairman.

### **The Role of Capital Market Authority**

The chairman of the Capital Market Authority shall be notified of the board's resolutions. If the chairman shall not challenge a resolution within fifteen days of the notification, it shall be adopted and enforceable. However, if a protest is made against the resolution it shall be returned to the Capital Market's board within the same 15 day period along with a statement of reasons for the protest. The protest shall be reviewed by the board. If the board shall again adopt the resolution by vote of three quarters of the majority of its members it shall be then enforced.

The chairman of the stock exchange shall notify the chairman of the Capital Market Authority of violations of laws, decrees, regulations and reporting requirements or activities committed by brokerage companies and other companies operating in the field of stocks. Such violations shall be subject to the penalties mentioned in articles (30,31) of Law 92 of 1995. Complaints of violations and penalties shall be subject to article 32 of the this law.

### **Regulatory Bodies**

According to the law there are 3 governmental bodies which are entitled to supervise joint stock companies and the Capital Market; these are:

- The capital Market Authority
- The companies Departement
- The Investment Authority

### **The Capital Market Authority**

#### The Authority's legal status:

The Capital Market Authority is a public authority, which is an affiliate with the Ministry of Companies and Foreign Trade. It is located in Cairo.

The appropriate minister may with the consent of the board of the authority issue a decree to establish offices and branches for the authority both in the country or abroad. Such entities shall embody the government's authority in supervising the capital market.

#### The jurisdiction and regulatory scope of the Authority:

Regardless of provisions stated in any other law, the Authority shall implement and execute the provisions of the Capital Market Law, its Executive Regulations, and decrees predicated upon their provisions. The authority may adopt whatever procedures are to be deemed necessary for accomplishing its purposes and objectives; particularly:

- Organising and developing the Capital Market; the Authority's opinion shall be considered when drafting new laws regarding the Capital Market
- Organise and supervising seminars and courses to be held for those who are working or intending to work in the capital market field
- To supervise and observe that sufficient information and statements regarding the capital market is provided clearly and frankly in particular with regard subscription announcements which shall be registered according to law
- Supervising the capital market in order to assure the validity of transactions; to assure that all the transactions shall be free from fraud, deception, cheating, self-serving or illusory character
- To implement the provisions of the law and the related decrees and regulations
- Inspecting financial statements
- Investigating complaints upon their submission and to prohibit implementation of the General Assembly's resolutions if it shall have been proven that such resolutions were issued in favour of a particular category of a company's shareholders or were issued to the detriment of a particular category of the shareholders

- Rescinding transactions executed in violation of laws, regulations and decrees, or rescinding transactions undertaken at an unjustified price.
- Prohibiting activity practised without licenses required by Law 92 of 1995.

A company having violated any of the provisions of applicable law or executive regulations or any resolutions of the board of directors of the Authority or operating without a license may be suspended from conducting business by a written decree from the head of the Authority.

The causes of such suspension shall be included in the decree and the suspension period shall not exceed 30 days.

### **The Board of Directors**

The Authority's board of directors is responsible for managing its affairs and directing the various business matters of the authority. The board may adopt whatever final resolutions it deems necessary for exercising the jurisdiction of the Authority to accomplish its purposes and objectives; in particular:

- To draft the policies by which its regulatory authority shall be exercised and to implement related programs and plans
- To draft rules regarding inspection and supervision over the companies subject to Law 92 of 1995
- To set fees for the Authority's services
- To draft rules regarding use of experts and contracting for consultants
- To approve the annual budget

The board may delegate or one or more of its members to perform a certain assignment.

### **Extraordinary Measures**

The board of directors of the Authority, in case of extraordinary circumstances which might threaten the stability of the capital market or shareholder's interests, shall take one of the following actions:

- Issue a warning to the affected company
- Ban a company from practising all or some of the activities permitted by its license
- Demand that the chairman of the affected company convene its board of directors to consider, in consultation with one or more members of the Authority, the violations attributed to the company and to take appropriate actions to eliminate them.
- Appoint a supervisory member to the board of the company for such period of time as determined by the board of the Authority. Such member shall participate in the discussions of the board and may discuss remedial resolutions.
- Announce the dissolution of the affected company and appoint a receiver to manage the company temporary until such time as a new board shall be appointed by the Authority..
- Obligate the company to increase the value of the its mandatory insurance reserve

The Authority's board of directors shall be comprised as follows:

The chairman of the authority  
President

Vice president  
Deputy chairman  
Deputy governor of the central bank  
Member

Further, there shall be,

Four other expert members to be appointed by decree by the Prime Minister. Such appointment shall be for two years, able to be renewed. The appropriate minister shall suggest and recommend qualified candidates to the Prime Minister.

The chairman of the authority and his deputy shall be selected and appointed by the President of the Republic by presidential decree. Such appointment shall be for 3 years, and may be renewed.

### **The Companies' Administration Department**

The Companies' Administration department shall be the competent administrative body in implementing and executing the provisions of Law No.159 of 1981, and its Executive Regulations. In addition to its power to found companies, the law grants the Companies' Administration Department the power to supervise inspect companies as follows:

#### **Supervision**

The law grants to technical employees of the third degree investigative judicial capacity. Such employees shall be selected and agreed upon by the appropriate minister together with the Minister of Justice. These employees shall investigate all the suspected felony or misdemeanour violations according to Law No. 159 and its Executive Regulations

Further:

They may review the records, books and any other business document either at the company or elsewhere. The directors and officers of the company shall co-operate with and provide all information necessary to aid the investigation.

The department may investigate any complaint submitted by a shareholder or any other interested person.

The law permits company department investigators to attend general assembly meetings of the companies upon the approval of the chairman of the department. They shall not be permitted to take active part in the general assembly and shall not be entitled to vote. Their mission shall be to record & register the meeting, and make a written record and commentary.

Any person having an interest may apply to the competent administrative body to allow him to review the documents, records, and minutes of meeting, and reports relating to the company, and obtain data and information duly authenticated by the Companies' Administration Department. However, the department may deny such request if the publication of such information might cause harm to the company or any other entity or if such data may disturb the interest of the country.

The companies investigators may request the general assembly of the company be convened specifically in the case that the board of directors of the company shall not timely convene the general assembly in the manner otherwise set forth in the law.

The company department may register and affirm the minutes of a general assembly meeting.

### **Inspection**

The companies department and the shareholders, who possess at least 20% of the capital of a bank, or at least 10% of the other joint stock companies, may request an inspection of alleged violations attributed to any member of the board or a company's auditor. The inspection may be requested upon evidence of any such violation.

Such request shall be submitted to the inspection committee of the Companies' Administration Department and shall have attached any evidence of the violations. The shareholders who submit such a request must deposit their shares with the inspection committee, and should remain in the custody of the Companies' Administration Department until a resolution is reached.

Following a hearing, which shall be held in a secret session, of the applicants, the board members, and the auditor, the committee may demand an inspection of the company's books and business.

The committee may delegate one or more experts to assist the inspection and it shall determine an amount to be deposited to defray expenses. The inspection shall not commence until the deposit is received.

The warrant granted for inspection may include permission to review documents and records of another company if they relate to the company subject to inspection.

The law obligates the company's board, officers, & directors to provide the inspectors with all records, documents, and papers related to the company as well as all other information required. Penalties for non-compliance with this obligation are provided for in article 163 of Law 159 of 1981.

The inspector may question under oath any person involved with the company's affairs. The inspector, prior to conclusion of his investigation shall submit a detailed report of his findings to the committee.

If the committee determines that violations have not occurred it may order the publication, at the expense of the applicants, of the whole report or its findings in a daily newspaper. The publication of the findings of the committee shall not prejudice the right of the company to pursue legal recourse against the applicants.

If the committee affirms the existence of the alleged violations against the board members or the auditors of the company it shall take prompt action to convene the general assembly. In such a case the chairmen of the general assembly shall be the senior member of the competent administrative body or any other employee to be selected by inspection committee.

Moreover, in such a case, the company shall pay all the fees & expenses of the inspection. The company shall have legal recourse against those persons found to be responsible for the violations in the total amount of expenses and penalties.

The general assembly may adopt a resolution dismissing the culpable board members in addition to filing a liability claim against them. Such resolution shall be valid if agreed upon by partners or shareholders possessing fifty percent (50%) of the capital of the company remaining after deducting the value of the equity of the culpable board member from the total capital of the company.

The general assembly may appoint new auditors and may file a claim against the culpable auditor. The dismissed board members shall not be eligible for re-election until five years have elapsed since the date of their dismissal.

### **The Investment Authority**

The investment authority is the competent administrative body for implementing and executing Law No.8 of 1997 and its Executive Regulations. This law states that investment guarantees and incentives related to the establishment of companies shall be directed by the Investment Authority.

Companies must invest in one of the following fields, in order to qualify for the benefits conferred by this law:

- Reclamation & cultivation
- Livestock, poultry or fish production
- Industry, mining, and transportation
- Oil services
- Housing and tourism projects
- Infrastructure
- Hospitals
- Financial leasing
- Underwriting subscription to securities
- Venture capital
- Computer technology
- Projects sponsored by the Social Funds for Development.

The cabinet may add any other fields to the above.

The above mentioned law grants the Investment Authority all of the powers and jurisdiction which were previously granted to the Companies Department for implementing Law 159 of 1981, to be exercised for the establishment of companies according to law 8 of 1997.

## **Arbitration & Settlement of Disputes** **Provisions of the Capital Market Law**

Because of the technical nature of the trading on the financial markets Arbitration Courts were established to resolve disputes arising from securities' transactions. These courts are charged with resolution of disputes arising under administrative decrees issued either by the Minister of Economy or the Capital Market Authority as well as the referring the disputes referred to arbitration by parties to a particular transaction.

### **Complaints committee**

The Complaints Committee shall be constituted upon decree of the competent minister. The chairman of the committee shall be a vice president of the Council of State. The committee shall include among its members two councillors from the Council of State, to be selected by the council, and a third member to be selected from among the senior administrative staff at the Capital Market Authority. This senior staff-member shall be chosen by the chairman of the Authority. A fourth member, with expert qualification, shall be chosen by the competent minister.

### **The Powers of the Committee**

The committee shall be empowered to investigate complaints arising from issues relating to administrative orders issued either by the minister or the Authority. Investigation of these complaints shall be according to the law, its executive regulations and related regulations pertaining to implementation of the law.

### **Duration**

Complaints shall be submitted to the committee within thirty days from the date that the concerned party received an order, or from the date he received notification of it. Examples of orders upon which a complaint may be based are:

- Evaluation decrees appraising the value of in-kind capital contributions
- Decisions disallowing the company registration
- Decrees deleting company registration and decrees banning a representative of a brokerage company from undertaking transactions in the stock market
- The Capital Market Authority's order disallowing registration of an investment broker or adviser which either eliminates his registration or prohibits him undertaking business transactions in the financial markets.
- A decree disallowing the registration of a union of share-holding workers. (Complaints from such decrees shall be filed within 30 days from the date of notification)
- A decree which disbands a union of share-holding workers, (Complaints from such decrees shall be filed within 30 days from the date of notification)

All complaints, except as noted above, shall be filed within fifteen (15) days from the date of notification, or from the date the concerned party becomes aware of it.

Example of such cases are:

- The refusal to license or to establish a company
- Orders issued by the Authority's board of directors in extraordinary circumstances which might threaten the stability of the capital market, threaten the interests of the shareholders, or the dealers.
- Decrees adopted to dismiss a board member or a member of the Investment Funds Department, filed within 60 days of the date of the decree

Decisions of the Complaints Committee shall be binding and final. Appeals for the invalidation of such decisions shall not be accepted unless the decree was complained against before the competent committee.

### **Appeal Procedures**

The Executive Regulations of the Capital Market Law mandate the following procedures when filing a complaint:

#### Submitting the complaint:

The complaint shall be submitted in one original & six copies; it shall include the following data:

- Name, surname, occupation, and address of the appellant.
- The date of issuance of the decree appealed from, and the date the appellant was notified by delivery of it, or learned of its issuance.
- The subject of the petition of appeal and the reasons upon which it is predicated, as well as the documents evidencing the complaint shall be enclosed.
- The receipt indicating the payment of the fees prescribed in Article 211 of the executive regulations.

#### Fees

An appellant from an administrative decree issued by the minister or the authority, shall deposit in the authority's treasury an amount of 5,000 L.E. to be refunded to him, after deduction of 10% from such amount as administrative expenses, in the event of a favorable disposition of the appeal by the Complaints Committee.

#### The Complaints Office

A Complaints Office shall be established at the Authority. The Complaints Office shall be provided with staff chosen from among the Authority's employees. It shall be the duty of such employees to receive the petitions of appeal and record them on the date of their delivery in a register which shall be kept for that purpose,

The office shall return to the appellant a copy of his petition which shall have been inscribed with a registration-number and the date of entry in the register.

**Investigating Petitions of Complaint**

The Complaints Office shall, upon receiving it, submit the Petition of Complaint, to the Committee's chairman who shall further submit it for discussion by the committee. The Complaints Committee shall have the authority to require from the parties all explanations it deems necessary as well as to require submission to the Committee for examination of all documents it may require.

The Committee shall issue a final decree in the matter of the appeal within 60 days from the date on which the Petition of Complaint was submitted or the date of submission of all evidence it has demanded for examination in relation to the case.

The Decision of the Complaints Committee shall be binding and final.

**Notification**

The Complaints Office shall notify the parties concerned by delivery to them of a certified-copy of the Committee's final ruling including the reasons for its decision. Delivery shall be by registered mail against acknowledgement of receipt.

**Arbitration**

Arbitration is mandatory. The law obligates dealers in securities to settle disputes regarding the arising from transactions governed by the Capital Markets Law exclusively through arbitration. Claims arising out of capital market transactions may not be filed in other legal venues prior to having been referred to arbitration.

The Arbitration Tribunal shall be established by a decree of the Minister of Justice. The presiding arbiter of the Arbitration Tribunal shall be a vice president of the Court of Appeals. Additionally, each party to a dispute shall select one arbiter. If the defendants or the claimants are more than one person, each of them shall also appoint one additional arbiter.

In all cases, the arbitration award shall be binding and final as to the parties unless the Court of Appeals shall enjoin its execution. Appeals from decisions of the Arbitration Tribunal may be undertaken before the competent Court of Appeals.

**Fees & Expenses**

The applicant for arbitration when submitting the arbitration request shall deposit in the treasury of the Capital Market Authority fees & expenses due to defray the cost of the arbitration hearing. Fees shall be levied in accordance with the following schedule in relation to the amount or value of the claim under dispute

<u>The amount in dispute</u>	<u>Fees</u>
Up to L.E. 50.000	L.E. 2.000
Over L.E. 50.000      Up to 100.000	L.E. 3.000
Over L.E. 100.000      Up to 200.000	L.E. 4.000
Over L.E. 200.000      Up to 600.000	L.E. 5.000

Over L.E. 500.000	UP to 1.000.000	L.E. 6.000
More than L.E. 1.000.000		L.E. 10.000

If the value of the claim under dispute and subject to arbitration, is not determined or stated, the fee levied upon application to the Arbitration Tribunal shall be L.E. 5.000.

The Arbitration award shall determine the party who shall ultimately pay the fees and expenses of the proceedings.

### **The Arbitration Petition**

The arbitration request shall include the names of the parties, the names of their legal representatives, the name of their arbiter(s), the subject of the dispute, and a description of the claims. All the documents evidencing the claims shall be enclosed, also the receipt evidencing the payment of the arbitration fees.

### **Commencement of Hearings**

The presiding arbiter shall, within ten days from the date of appointing the arbiters by the parties, determine the date of the first session and the place of the arbitration hearing.

The Arbitration Office shall notify all parties with the date and place of the hearing at least a week before it shall be held.

There shall be established a fully-equipped Arbitration Centre on the premises of the Capital Market Authority.

### **Methods of notification**

All documents and notifications shall be delivered to the parties to an arbitration proceeding by ordinary mail or registered mail against an acknowledgement of receipt.

### **Adjudication of the Dispute**

The arbitration tribunal shall adjudge the dispute promptly and without considering the rules of Civil and Commercial Procedure except as those rules shall apply rights and guarantees relating to fundamental procedures assuring Due Process and fair adjudication of the case. A final decision and award shall be issued within a month of the final hearing of the proceedings.

If any party, having received notice of the arbitration hearing, shall fail to attend a session, the Arbitration Tribunal may adjudge the disputes in the absence of such party.

### **The Arbitration Office**

An arbitration office shall be established in the premises of the authority, such office shall be to receive the arbitration request & to register such requests; within a week from the date of retrieving the request, the office shall notify the other party with a copy of the request in order to select an arbitrator, and that to be within two weeks from the date of his notification.

If the office was not informed by the name of the arbitrator, his capacity & his address during such period, the minister of justice shall in that case select a councillor from one of the judicial authorities as an arbitrator representing that party.

**The arbitration award**

The award shall be issued according to the majority vote of the tribunal.

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# القوانين المنظمة لسوق المال في مصر

المستشار أحمد أمين حسان

نائب رئيس مجلس الدولة

أكتوبر ١٩٩٩م

# القوانين المنظمة

## لسوق المال في مصر

**المستشار أحمد أمين حسان**  
**نائب رئيس مجلس الدولة**

في اطار الدورات التدريبية والدراسية التي تعقد بشأن شرح احكام القوانين المنظمة للشركات في مصر وما يرتبط بها من قوانين منظمة .

تهدف هذه المذكرات ببساطة إلى الاحاطة بالإطار القانوني والتنظيمي الذي يحكم عمل سوق رأس المال في مصر المنظم بالقانون رقم ٩٥ لسنة ١٩٩٢ ولائحته التنفيذية.

كما يعد قانون الشركات المساهمة رقم ١٥٩ لسنة ١٩٨١ ولائحته التنفيذية وأيضاً قانون ضمانات وحوافز الاستثمار رقم ٨ لسنة ١٩٩٧ ولائحته التنفيذية أهم القوانين المرتبطة بسوق المال حيث انهما الرافدان الأساسيان لإنشاء الشركات المساهمة وبالتالي إصدار الأوراق المالية وانتشارها في السوق ويكمل ذلك ويحيط به مجموعة من القوانين واللوائح الاقتصادية والمالية التي تخلق الإطار العام للنشاط الاستثماري في مصر والأمر يقتضي الرجوع إليها والإلمام بأحكامها .

وقد حرصت علي إيراد هذه القوانين واللوائح جميعاً في كشف ملحق لتكون تحت نظر الدارس للرجوع إليها عند الحاجة في أي وقت وهي قد تتصل بقريب أو بعيد بسوق المال فمثلاً قانون قطاع الأعمال العام هو الذي يحكم شركات قطاع الأعمال العام الذي سمح بتداول أسهمها إلي ان تخرج إلي مظلة القطاع الخاص إذا قلت المساهمة العامة عن ٥٠٪ بعد أن كان ذلك محظوراً في اطار قانون هيئات وشركات القطاع العام رقم ٩٧ لسنة ١٩٨٣ الذي كان يحظر تداول الأسهم المملوكة ملكية عامة .

وفي ظل ما هو مقرر من وقت محدد للغاية وما هو مطلوب من عرض مبسط وبعيداً عن المجادلات القانونية فقد ركزت هذه المذكرة على بعض الموضوعات الأساسية وجدت من الملائم احاطة الدارسين بها وهي :

- (١) أنواع الشركات المساهمة وإصدار الأوراق المالية :
- الشركات المساهمة الخاصة
  - الشركات المساهمة العامة
  - الاكتتاب العام
  - الاكتتاب المغلق
  - رأس المال النقدي ورأس المال العيني
  - البيانات والإجراءات الأساسية لتأسيس شركة مساهمة

- (٢) الأسهم وأنواعها :
- القيود التي ترد على تداول الأسهم
  - شراء الشركة لأسهمها
  - رهن الأوراق المالية

(٣) الشركات العاملة في مجال الأوراق المالية

(٤) بورصات الأوراق المالية

(٥) الجهات الحكومية التي لها سلطة الرقابة

- الهيئة العامة لسوق المال
- مصلحة الشركات
- الهيئة العامة للاستثمار

(٦) تسوية المنازعات في سوق المال

- التظلم
- التحكيم

## أنواع

### الشركات المساهمة في مصر

### وإصدار الأوراق المالية

#### مقدمة :

تصدر الأوراق المالية في سوق يسمي السوق الأولي وهو سوق الإصدار ، ولا يمكن تداول هذه الأوراق بين الراغبين في الشراء والراغبين في البيع تنشأ السوق الثانوي وهو ما يسمي بسوق التداول .

وتصدر الأوراق المالية عن الشركات المساهمة وهي اما أسهم تصدر بقيمة متساوية ينقسم إليها رأس مال الشركة عند التأسيس أو زيادة رأس المال أو سندات أو صكوك تمويل ، وهذه تمثل ديوناً علي الشركة تدفع عنه الشركة لصاحب السند عائد أو فائدة سنوية معلن عنها، ومن ثم كان من الضروري معرفة أنواع الشركات المساهمة في مصر التي تصدر عنها هذه الأوراق المالية والقوانين المختلفة التي تنظمها وما يتصل بهذه الأوراق من أحكام باعتبارها هي محل التعامل في سوق الأوراق المالية .

تنقسم الشركات المساهمة في مصر إلي نوعين كبيرين هما : الشركات المساهمة الخاصة ، والشركات المساهمة العامة .

#### النوع الأول : الشركات المساهمة الخاصة :

١ - وهي اما أن تنشأ طبقاً لأحكام قانون الشركات المساهمة رقم ١٥٩ لسنة ١٩٨١ ولائحته التنفيذية ووفقاً للنموذج الخاص بذلك .

٢ - أو تنشأ الشركة المساهمة الخاصة طبقاً لأحكام القانون رقم ٨ لسنة ١٩٩٧ بشأن ضمانات حوافز الاستثمار ولائحته التنفيذية ووفقاً للنموذج الخاص بذلك .

(القانون رقم ٨ لسنة ١٩٩٧ هو الذي حل محل قانون الاستثمار رقم ٢٣٠ لسنة ١٩٨٩).

وتتمتع الشركات التي تنشأ في ظل قانون الاستثمار السابق والحالي بضمانات ومزايا كثيرة أهمها عدم جواز الحجز الإداري علي أموالها وكذلك اعفائها من الضرائب لمدة لا تقل عن خمس سنوات ويمكن أن تصل إلي عشر سنوات .

٣ - أو تنشأ الشركة المساهمة طبقاً لأحكام القانون رقم ٩٥ لسنة ١٩٩٢ بشأن سوق رأس المال ولائحته التنفيذية وهي الشركات العاملة في مجال الأوراق المالية - سمسره - ادارة المحافظ - رأس المال المخاطر - المقاصة والتسوية .

ويعتبر قانون الشركات المساهمة هو المرجع لكل هذه الشركات فيما لم يرد فيه نص خاص سواء في قانون الاستثمار أو في قانون سوق رأس المال .

النوع الثاني من الشركات هو الشركات العامة :

وهي الشركات التابعة للدولة وهي إما :

١ - شركات قطاع عام يسري عليها القانون رقم ٩٧ لسنة ١٩٨٣ بشأن هيئات وشركات القطاع العام ولائحته التنفيذية . (ملكية الهيئات العامة وشركات وبنوك القطاع العام ٥١٪) .

ولا يحوز التصرف في أسهمها إلا بالنسبة للبنوك وشركات التأمين وفقاً للقانون رقم ١٥٥/١٩٩٨ ، ١٥٦ لسنة ١٩٩٨ ، أو مساهمات القطاع الخاص فقط .

٢ - أو شركات تابعة للشركات القابضة يسري عليها أحكام القانون رقم ٢٠٣ لسنة ١٩٩١ بشأن شركات قطاع الأعمال العام ولائحته التنفيذية (ملكية الشركة القابضة وغيرها من الشركات التابعة ٥١٪ فأكثر من رأس المال) .

ويجوز التصرف في أسهمها وتخرج إلي نطاق القطاع الخاص إذا بلغت نسبته ٥١٪ وتخضع للقانون رقم ١٥٩ لسنة ١٩٨١ .

ويعتبر قانون الشركات المساهمة هو المرجع لكل هذه الشركات فيما لم يرد فيه نص خاص سواء في قانون الاستثمار أو في قانون سوق رأس المال .

#### الاكتتاب العام والاكتتاب المغلق :

والشركة المساهمة سواء أسست طبقاً للقانون رقم ١٥٩ لسنة ١٩٨١ أو طبقاً لأحكام القانون رقم ٨ لسنة ١٩٩٧ أو غيره يمكن أن تكون شركة مغلقة أي يقتصر الاكتتاب فيها علي المؤسسين أو بعض المساهمين دون أن تلجأ إلي الجمهور بطريقة العلانية ، ويمكن أن تطرح الشركة أسهمها للجمهور بإجراءات محددة في القانون رقم ٩٥ لسنة ١٩٩٢ بشأن سوق رأس المال أهمها اعتماد نشرة الاكتتاب العام من هيئة سوق رأس المال قبل أن تنشر علي الجمهور في الصحف وتحديد البنك متلقي الاكتتاب وغير ذلك من الشروط ووفقاً للبيانات الأساسية المطلوبة في نشرة الاكتتاب .

#### رأس المال النقدي والعيني :

كل شركة مساهمة يكون لها رأس مال يجب ألا يقل عن الحد الأدنى الذي حدده القانون أو اللائحة التنفيذية بحسب نوع النشاط وبحسب ما إذا كانت أسهمها مطروحة للاكتتاب العام أو شركة مغلقة ورأس المال يقسم إلي أسهم متساوية القيمة .

ويجوز أن يدخل في تكوين رأس المال حصة عينية مثل بعض الأصول أو الأراضي أو المعدات أو حقوق المعرفة أو حقوق الانتفاع وتقييم هذه الحصة يخضع لإجراءات متعددة أهمها اعتماد لجنة التحقق من صحة التقييم الحكومية التي تشكل من خلال الهيئة العامة لسوق المال للتقدير الذي تم لها من خلال الخبراء المكلفين عن أصحاب الشأن والالتزام أصحاب

الحصة العينية بسداد الفرق نقداً أو الإنسحاب وذلك كله حتي يتم تحديد قيمة الحصة العينية تحديداً عادلاً ومعرفة قيمة مساهمة صاحبها والقيود الواردة عليها ، وحماية باقي المساهمين .

وبديهى أنه يمكن أن يقتصر رأس المال علي الحصة النقدية فقط ولكن لا يتصور أن يقتصر علي الحصة العينية خصوصاً إذا كانت الشركة ستطرح أسهمها في الاكتتاب العام .

وتجدر الإشارة إلي أنه بالنسبة لشركة صناديق الاستثمار يجب أن يكون رأسمالها كله نقدياً .

اليافات الأساسية لتأسيس شركة مساهمة  
طبقاً لقانون الاستثمار أو قانون الشركات أو سوق المال  
والإجراءات الخاصة بإصدار الأوراق المالية

- المؤسسون : ويتعين ألا يقل عددهم عن ثلاثة سواء كانوا أفراد أم أشخاص اعتباريين .
- العقد والنظام الأساسي : يتعين إعداده وفقاً للنموذج المعد طبقاً للقانون الذي سنتشأ في إطاره.
- نسب المساهمة : يتعين تحديد نسبة مساهمة كل مؤسس وليست هناك قيود علي النسب .
- اسم الشركة : ويراعي أن يكون اسم الشركة مستقاً من غرضها ولا يلتبس مع اسم شركة أخرى .
- غرض الشركة : ويراعي أن يكون في إطار ما حدده القانون ولائحته التنفيذية .
- التكلفة الاستثمارية : يتعين تحديدها علي الوجه التقريبي كدراسة بين المؤسسين والمساهمين .
- رأس المال : المصرح به : ويجب ألا يجاوز خمسة أمثال رأس المال المصدر المصدر : شاملاً الحصة العينية (لن يقل المدفوع من الحصة النقدية عن ١٠٪ من رأس المال ) يتم إيداعه بالبنك لاستكمال إجراءات التأسيس ، ويجب استكمال النسبة إلي ٢٥٪ خلال ثلاثة أشهر .
- قيمة السهم : يتعين تحديد قيمة السهم الحد الأدنى خمسة جنيهاً .
- مجلس الإدارة : يمكن أن يشكل من عدد لا يقل عن ثلاثة من المساهمين ويمكن ضم عضوين من ذوي الخبرة . ويجوز أن يكون للشخص الاعتباري عضواً أو أكثر مع مراعاة النص علي تعدد أصواتهم في مجلس الإدارة .
- مراقب الحسابات : يتعين اختياره من المصرح لهم بمراجعة شركات المساهمة .

المستشار القانوني : يتعين اختياره من المقيدین بجدول الاستئناف وتوقيعه علي العقد .

وكيل المؤسسين : يقوم المؤسسون باختيار احدهم أو غيرهم من المحامين أو المحاسبين لمباشرة إجراءات التأسيس لدي الجهات المختصة وتأسيس الشركة والتوقيع نيابة عنهم حتي تمام إجراءات تأسيس الشركة وتسليمها لمجلس الإدارة .

الاكتتاب العام : يتعين إعداد نشرة الاكتتاب العام واعتمادها من مراقب الحسابات وهيئة سوق المال .

يتعين أن يكون العقد والنظام الأساسي للشركة معدا لتقديمه مع أوراق النشرة .

تقدير الحصة العينية : في حالة وجود حصة عينية ستدخل في تكوين رأس المال يتعين إعداد تقرير مبدئي بالتقييم وطلب تشكيل لجنة من هيئة سوق المال للتحقق من هذا التقييم وسداد الرسوم وهي لا تجاوز عشرة آلاف جنيه .

تقديم الطلبات : (١) مصلحة الشركات :

في حالة تأسيس شركة مساهمة طبقاً للقانون رقم ١٥٩ لسنة ١٩٩١ أو في حالة تأسيس شركة تدخل في أغراضها بعض مجالات قانون الاستثمار (مزوجة النشاط) .

(٢) الهيئة العامة للاستثمار :

في حالة أن يكون الغرض احدي المجالات المحددة بالقانون رقم ٨ لسنة ١٩٩٧ ولائحته التنفيذية .

(٣) الهيئة العامة لسوق المال :

في حالة تأسيس شركة من الشركات العاملة في سوق المال .

الاحطار بإصدار أوراق مالية : يتعين احطار الهيئة الهامة لسوق المال بإصدار أوراق مالية

طبقاً للمادة (٢) من القانون رقم ٩٥ لسنة ١٩٩٢ وسداد

الرسوم المستحقة وهي لا تجاوز عشرة آلاف جنيه مصري .

## الأسهم

تصدر الأسهم عن الشركة المساهمة بفتة سهم واحد أو خمسة أسهم ومضاعفاتها والحد الأدنى للقيمة الاسمية للسهم خمسة جنيهات ولا تزيد عن ألف جنيه .

ويجب أن تتضمن شهادات الأسهم على الأخص اسم الشركة التي أصدرته وشكلها وعنوان مركزها الرئيسي وغرضها باختصار ومدتها وتاريخ ومحل قيدها بالسجل التجاري وقيمة رأس المال وعدد الأسهم الموزع عليها ، كما يجب أن يذكر نوع السهم وخصائصه وقيمه الاسمية وما دفع منها واسم المالك والأسهم الاسمية .

ويكون للأسهم كيونات ذات أرقام مسلسلة يبين بها رقم السهم ويتم قيد المبالغ المدفوعة من المكتتبين على صكوك الأسهم .

والأسهم اما أن تكون أسهم اسمية هو الأصل العام ، واما ان تكون لحاملها .

وتكون الأسهم عادية وهو الأصل العام أيضاً تتساوي في جميع الحقوق والالتزامات مع بعضها البعض أو قد تكون أسهم ممتازة .

أما حصص التأسيس فلا يجوز إصدارها إلا مقابل التنازل عن التزام منحتة الحكومة أو حق من الحقوق المعنوية ، أما أسهم التمتع فلا يجوز إصدارها إلا بالنسبة للشركات التي ينص نظامها على استهلاك أسهمها .

### الأسهم الاسمية :

وهي التي تصدر باسم شخص معين بالذات يكون هو مالكةا ، ويتم تداولها وفقاً للأحكام المقرره لتداول الأسهم .

### الأسهم لحاملها :

وهي لا يذكر فيها اسم المالك ولكن يعتبر حامل للسهم مالكا له أي ان تداولها يتم بالمناولة وقد اجاز قانون سوق رأس المال رقم ٩٥ لسنة ١٩٩٢ ولائحته التنفيذية ان ينص نظام الشركة علي إصدار اسهم لحاملها بما لا يجاوز ٢٥٪ من إجمالي عدد أسهم الشركة منسوبة إلي جميع الإصدارات .

والزم القانون ضرورة الوفاء بكامل قيمة هذه الأسهم نقداً وهو امر طبيعي حيث يصعب علي الشركة ملاحقة حائزي الأسهم لحاملها ، ومن المعلوم ان الأسهم لحاملها كان المشرع قد حظر اصدارها منذ أوائل الستينات .

ولا يجوز استخراج بدل فاقد عن الورقة المالية لحاملها المفقودة .

كما لا يجوز استخراج بدل تالف عن الورقة المالية لحاملها إلا إذا أمكن التعرف عليها وتحديد معالمها علي ان يثبت علي الورقة في هذه الحالة انها بدل تالف، وعلي الشركة سحب الورقة التالفة واعدامها وان تؤثر في السجلات لديها بما يفيد ذلك.

### حق حائز الأسهم لحاملها في حضور اجتماعات الجمعية العامة للشركة :

لحائزي هذه الأسهم حضور الجمعيات العامة للشركة ولهم حق مناقشة تقرير مجلس الادارة والميزانية وحساب الأرباح والخسائر وتقرير مراقب الحسابات وما يتكشف أثناء الاجتماع من وقائع خطيره ، ولا يكون لحائزي الأسهم لحاملها الحق في التصويت في هذه الاجتماعات .

ويتم اخطار المساهمين من حائزي الأسهم لحاملها باعلان ينشر في الصحف كلما تطلب الأمر ذلك .

ويكون لهم حق الإطلاع في مقر الشركة علي الوثائق الخاصة بالجمعية العامة وعلي من يرغب الحضور ان يودع الأسهم طبقاً لقواعد ايداع الأسهم الأسمية ويدون حضورهم في سجل خاص .

هذا ولا يجوز تحويل الأسهم لحاملها إلي أسهم أسمية أو العكس وفي غير ذلك من أحوال يكون شأن حائزي الأسهم لحاملها شأن أصحاب الأسهم الأسمية في الحقوق والالتزامات ويدفع ربح السهم لحامله مقابل الكوبون المستحق عن الربح ولو كان منفصلاً عن السهم .

#### الأسهم الممتازة :

ويجوز أن ينص نظام الشركة علي تقرير بعض الامتيازات لبعض أنواع الأسهم وذلك في التصويت أو الأرباح أو ناتج التصفية .

ولا يجوز إصدار هذه الأسهم إلا إذا كان نظام الشركة يتضمن عند التأسيس شروط وقواعد إصدار الأسهم الممتازة .

#### الأسهم العادية :

وهي الأسهم التي تتساوي في كل حقوقها والتزاماتها .

#### أسهم التمتع :

وهذه لا تصدر إلا إذا كانت الشركة تقوم علي نشاط يتعلق باستغلال مورد من موارد الثروة الطبيعية أو مرفق من المرافق العامة ممنوح لها لمدة محدودة وبالتالي يتضمن النظام الأساسي للشركة علي استهلاك أسهمها قبل انقضاء أجل الشركة وهذه الصورة حالياً غير موجودة دائماً قد تظهر في القريب العاجل بعد اسناد أكثر من المشروعات العامة بنظام الـ B.O.T

## القيود الواردة علي تداول الأسهم

حظر التصرف في حصص التأسيس والمؤسسين والأسهم العينية :

نص قانون الشركات المساهمة في المادة ٤٥ منه علي أنه :

" لا يجوز تداول حصص التأسيس والأسهم التي تعطي مقابل الحصص العينية ، كما لا يجوز تداول الأسهم التي يكتتب فيها مؤسسو الشركة قبل نشر الميزانية وحساب الأرباح والخسائر وسائر الوثائق الملحقة بها عن سنتين ماليتين كاملتين لا تقل كل منهما عن اثني عشر شهراً من تاريخ تأسيس الشركة .

ويحظر خلال هذه المدة فصل قسائم الأسهم والحصص من كعوبها الأصلية ويوضع عليها طابع يدل علي نوعها وتاريخ تأسيس الشركة والادارة التي تم بها .

ومع ذلك ، يجوز - استثناء من الأحكام المتقدمة - أن يتم بطريق الحوالة نقل ملكية الأسهم التي يكتتب فيها مؤسسو الشركة من بعضهم لبعض أو منهم إلي أحد أعضاء مجلس الادارة إذا احتاج إلي الحصول عليها لتقديمها كضمان لادارته أو من ورثتهم إلي الغير في حالة الوفاة .

وتسري أحكام هذه المادة علي ما يكتتب فيه مؤسسو الشركة في كل زيادة في رأس المال قبل انقضاء الفترة المنصوص عليها في الفقرة (١) ."

### الاستثناءات من حظر التصرف :

كانت المادة (٤٦) من قانون الشركات المشار إليه تنص علي أنه :

" مع عدم الإخلال بأحكام المادة السابقة ، لا يجوز تداول شهادات الاكتتاب ولا الأسهم بأزيد من القيمة التي صدرت بها مضافاً إليها - عند الاقتضاء - مقابل نفقات الإصدار وذلك في الفترة السابقة علي قيدها في السجل التجاري بالنسبة إلي شهادات الاكتتاب أو في الفترة التالية لتاريخ القيد حتي نشر حساب الأرباح والخسائر عن سنة مالية كاملة بالنسبة إلي الأسهم ".

أي أن الأصل العام كان حظر التصرف في هذه الشهادات أو الأسهم بأزيد من القيمة خلال الفترة المشار إليها حماية للجمهور حيث لم يكن من المتصور ان تحقق الشركة أرباحاً خلال هذه الفترة مما يؤدي إلي رفع السعر إلا أنه نظراً لما واجهه السوق من متغيرات وانشاء شركات مساهمة تباشر نشاطاً فعلياً مع احتمال تحقق نتائج فأصبح من الضروري تداول بعض الأسهم بقيمة أزيد من قيمتها بسبب مبررات فعلية تدعو لذلك تبحث في كل حالة علي حدة الأمر الذي أوجب تعديل المادة (٤٦) من قانون الشركات المساهمة المشار إليها بموجب القانون رقم ١٥٩ لسنة ١٩٩٨ حيث أصبحت كما يأتي :-

" مع عدم الإخلال بأحكام المادة (٤٥) السابقة ، لا يجوز تداول شهادات الاكتتاب ولا الأسهم بأزيد من القيمة التي صدرت بها مضافاً إليها - عند الاقتضاء - مقابل نفقات الإصدار وذلك في الفترة السابقة علي قيد الشركة في السجل التجاري بالنسبة إلي شهادات الاكتتاب أو في الفترة التالية لتاريخ القيد حتي نشر القوائم المالية عن سنة مالية كاملة بالنسبة إلي الأسهم وفقاً للشروط والإجراءات التي يصدر بها قرار من وزير الاقتصاد . "

وقد صدر قرار وزير الاقتصاد رقم ٢٥١ لسنة ١٩٩٨ بأحكام تداول الأسهم بأزيد من قيمتها ونص علي أنه :

" لا يجوز تداول الأسهم بأزيد من القيمة الاسمية التي صدرت بها ، مضافاً إليها عند الاقتضاء مقابل نفقات الاصدار وذلك في الفترة التالية لتقيد الشركة في السجلات التجارية حتي نشر القوائم المالية عن سنة مالية كاملة ، إلا وفقاً للشروط التالية وبعد تحقق الهيئة العامة لسوق المال من توافرها :

- ( أ ) ان تكون الأسهم مقيدة بأحد جداول بورصة الأوراق المالية .  
 (ب) ان تكون الأسهم مقيدة لدي إحدى الشركات المرخص لها بنظام الحفظ المركزي أ، إدارة سجلات الأوراق المالية .  
 (ج) ان تنشر الشركة تقريراً في صحيفتين يوميتين صباحيتين واسعتي الانتشار إحداهما علي الأقل باللغة العربية يتضمن بياناً بأسماء المؤسسين وصفاتهم وحصصهم وما باشرته الشركة من نشاط وما أبرمته من عقود وتوقعات الشركة المالية وخطة عملها في المستقبل وأوجه إنفاق أموالها المتحصلة من الاكتتاب في الأسهم .

أما في حالات الاندماج وتغيير الشكل القانوني للشركة ، أو إذا انتقل إليها من جهة أخرى نشاط عامل ، تعين أن يتضمن التقرير الذي يتم نشره بياناً بسابق الأعمال والمركز المالي للشركة قبل الاندماج أو التغيير أو المركز المالي للنشاط الذي انتقل إليها ، بحسب الأحوال ، وذلك عن عام سابق علي الأقل .

وتعد التقارير التي يتم نشرها طبقاً للأحكام السابقة وفقاً للنماذج التي تعدها الهيئة العامة لسوق المال .

## أحكام خاصة بالقيود علي التداول في بعض أنواع الأسهم أو كمينها

وبالإضافة إلي ما تقدم هناك بعض القيود القانونية التي أوردتها التشريعات المختلفة غير قانون الشركات المساهمة تحد من حرية التداول لأسهم بعض أنواع الشركات أو بحسب نسبتها إلي رأس المال وذلك لاعتبارات متعلقة بمصلحة عامة ارتأتها الدولة وهي :-

أولاً : فيما يتعلق بقانون سوق رأس المال ولائحته التنفيذية نصت المادة الثامنة القانون علي أن :

" علي كل من يرغب في عقد عملية يترتب عليها تجاوز ما يملكه ١٠٪ من الأسهم الاسمية في رأس مال إحدى الشركات التي طرحت أسهما لها في اكتتاب عام أن يخطر الشركة قبل عقد العملية بأسبوعية علي الأقل .

وعلي الشركات خلال أسبوع من تاريخ إخطارها بذلك أن تبلغ به كل مساهم يملك ١٪ علي الأقل من رأس مال الشركة .

ويترتب علي مخالفة أحكام الفقرة الأولى إلغاء العملية دون إخلال بمساءلة المتسبب عن هذه المخالفة ."

وتسري أحكام الفقرات السابقة في حالة عقد عملية يترتب عليها تجاوز ما يملكه أحد أعضاء مجلس إدارة الشركة أو أحد العاملين بها من أسهم اسمية ٥٪ من رأس مال الشركة .

ويتعين اتخاذ الإجراءات المشار إليها في هذه المادة قبل عقد كل عملية فيما يجاوز النسبتين المنصوص عليها في الفقرتين الأولى والرابعة .

وتبين اللائحة التنفيذية أحكام عقد العمليات وإجراءات الاخطار والإبلاغ .

كما تضمنت اللائحة التنفيذية لقانون سوق رأس المال الأحكام التفصيلية علي النحو الآتي :-

**مادة (٥٩) :** علي كل من يرغب في عقد عملية يترتب عليها تجاوز ما يملكه ١٠٪ من عدد الأسهم الاسمية في رأس مال إحدى الشركات التي طرحت أسهما لها في اكتتاب عام أو طرح للتداول ببورصات الأوراق المالية لا يقل عن ٣٠٪ من أسهمها أن يخطر الشركة بذلك قبل عقد العملية بأسبوعين علي الأقل بكتاب موصي عليه مصحوب بعلم الوصول متضمنا نسبة مساهمته في رأس مال الشركة ومرفقا به بيان كاف للتعريف بالعملية وعلي الأخص عدد ونوع الأسهم محل العملية ومواصفاتها ومكان عقد العملية بالنسبة إلي الأسهم غير المقيدة بإحدى بورصات الأوراق المالية واسم وعنوان شركة السمسرة التي تتم العملية بواسطتها .

وعلي الشركة خلال أسبوع من تاريخ إخطارها بذلك أن تبلغ به كل مساهم يملك ١٪ علي الأقل من عدد أسهم الشركة علي عنوانه الثابت لديها أو بالنشر عن ذلك في صحيفتين يوميتين واسعتي الانتشار ، وأن تبلغ به كذلك البورصة المقيدة بها .

وتسري الأحكام السابقة في حالة عقد عملية يترتب عليها تجاوز ما يملكه أحد أعضاء مجلس إدارة الشركة أو أحد العاملين بها من أسهم اسمية ٥٪ من رأس مال الشركة .

ولا يجوز له التصرف في أسهمه في الشركة خلال الفترة من تاريخ الإخطار المشار إليه في الفقرة الأولى إلي تمام عقد العملية أو انتهاء المدة المقررة لعقدها حسب الأحوال .

ويتعين اتخاذ الإجراءات المشار إليها في هذه المادة قبل عقد كل عملية فيما يجاوز النسبتين المنصوص عليهما في الفقرتين الأولى والثانية .

**مادة (٦٠) :** يجب علي كل من أخطر الشركة برغبته في عقد العملية علي النحو المشار إليه في المادة السابقة أن يقوم بعقدتها خلال شهر من تاريخ الإخطار المشار إليه بالمادة السابقة .

ويجب عليه إبلاغ الشركة بعقد العملية خلال أسبوع من تاريخ عقدتها.

وعليه - في حالة عدم عقد العملية - إبلاغ الشركة بذلك خلال الأسبوع التالي من انتهاء المدة المشار إليها في الفقرة الأولى مع بيان أسباب ذلك فإن كان السبب راجع إليه تحمل بنفقات إبلاغ المساهمين عن تلك العملية.

مرفق قرار وزير الاقتصاد ٤٤٧ لسنة ١٩٩٨ م .

### قانون البنوك والائتمان المعدل بالقانون رقم ٩٧ لسنة ١٩٩٦ م :

**مادة ٢١ مكررا (١) :** يجوز أن تزيد نسبة ما يملكه غير المصريين في رؤوس أموال البنوك المشتركة والخاصة علي ٤٩٪ من رأس المال المصدر لأي بنك ويلغي كل حكم مخالف لذلك .

ويحظر علي أي شخص طبيعي - بغير طريق الميراث - أو علي أي شخص اعتباري أن يملك ما يزيد علي ١٠٪ من رأس المال المصدر لأي بنك من البنوك المشار إليها في الفقرة الأولى إلا بعد موافقة مجلس إدارة البنك المركزي المصري ، ويقع باطلاً أي تصرف يخالف ذلك .

فإذا تملك الشخص الطبيعي بالميراث ما يزيد علي النسبة المذكورة في الفقرة السابقة يتعين عليه أن يوفق أوضاعه طبقاً للقواعد التي يحددها البنك المركزي المصري خلال مدة لا تجاوز سنتين من تاريخ أيلولة هذه الزيادة ، ولا يترتب علي ملكيته لما يزيد علي هذه النسبة دون توفيق أوضاعه في المهلة المشار إليها أي حقوق عن الزيادة في الجمعية العامة للبنك أو في عضوية مجلس الإدارة أو اختيار أعضاء المجلس .

نصت المادة الخامسة من القانون رقم ٩٧ لسنة ١٩٩٦م علي

مايأتي :

" لا تسري أحكام الفقرة الثانية من المادة ٢١ مكررا (١) من قانون البنوك والائتمان المشار إليه ، علي المساهمات التي تزيد علي النسبة المشار إليها في تلك الفقرة ، في تاريخ العمل بهذا القانون ، ولا يجوز زيادة مبالغ هذه المساهمات إلا بعد موافقة البنك المركزي المصري ."

### قانون الإشراف والرقابة علي التأمين المعدل بالقانون رقم ١٥٦ لسنة ١٩٩٨م

نظم هذا القانون ملكية أسهم شركات التأمين علي النحو الآتي :-

" علي كل شخص طبيعي أو اعتباري يمتلك ٥٪ من رأس مال إحدى شركات التأمين أو إعادة التأمين أن يخطر الهيئة بذلك خلال أسبوعين من تاريخ تملكه لهذه النسبة .

ويحظر علي أي شخص طبيعي - بغير طريق الميراث - أو علي أي شخص اعتباري ان يمتلك ١٠٪ فأكثر من رأس مال الشركة المصدر إلا بعد موافقة مجلس الوزراء بعد أخذ رأي وزير الاقتصاد ، ويقع باطلاً أي تصرف يخالف ذلك .

فإذا تملك الشخص الطبيعي بالميراث ما يزيد علي النسبة المذكورة في الفقرة السابقة يتعين عليه أن يوافق أوضاعه طبقاً للقواعد التي تحددها الهيئة خلال مدة لا تجاوز سنتين من تاريخ أيلولة هذه الزيادة ، ولا يترتب علي ملكيته لما يزيد علي هذه النسبة دون توفيق أوضاع في المهلة المشار إليها أية حقوق عن الزيادة في الجمعية العامة للشركة أو عضوية مجلس الإدارة في اختيار أعضاء المجلس .

ولا تسري أحكام الفقرة الثانية من هذه المادة علي المساهمات التي تزيد علي النسبة المشار إليها في تلك الفقرة في تاريخ العمل بهذا القانون . ولا يجوز زيادة مبالغ هذه المساهمات إلا بموافقة رئيس مجلس الوزراء بعد أخذ رأي وزير الاقتصاد . "

## قانون الاستثمار رقم (٨) لسنة ١٩٩٧م

الأصل طبقاً لقانون الشركات المساهمة انه لا يجوز التصرف في أسهم  
المؤسسين إلا بعد نشر ميزانية سنتين ماليتين كاملتين علي النحو السابق إيضاحه .  
إلا ان قانون الاستثمار أجاز الاستثناء من هذا الحظر بالنسبة للشركات المنشأة  
طبقاً لقانون الاستثمار بموافقة خاصة من رئيس مجلس الوزراء وقد فوض هذا  
الاختصاص لرئيس الجهاز التنفيذي لهيئة الاستثمار .

## التصرف في الأوراق المالية المملوكة للقاصر

حدد قانون الولاية علي المال رقم ١١٩ لسنة ١٩٥٢ اختصاصات الولي  
بالنسبة لأموال القاصر وقرر انه لا يجوز للأب ان يتصرف في العقار أو المحل  
التجاري أو الأوراق المالية المملوكة للقاصر إذا زادت قيمتها علي ثلاثمائة جنيه إلا  
بإذن المحكمة .

ولا يدخل في الولاية ما يؤول للقاصر من مال بطريق التبرع اذا اشترط  
المتبرع ذلك .

كما لا تسري هذه القيود علي ما آل للقاصر من مال بطريق التبرع من أبيه  
صريحاً كان أو مستتراً ولا يلزم الأب بتقديم حساب عن هذا المال .

كما يجوز للأب أن يتعاقد مع نفسه باسم القاصر سواء أكان ذلك لحسابه هو أم  
لحساب شخص آخر إلا إذا نص القانون علي غير ذلك .

## شراء الشركة لأسهمها

### جواز حصول الشركة على أسهمها :

أجاز قانون الشركات المساهمة بعد التعديل الصادر بالقانون رقم ٣ لسنة ١٩٩٨ حصول الشركة بأية طريقة علي جانب من أسهمها وفي هذه الحالة تعين عليها ان تتصرف في هذه الأسهم للغير في مدة أقصاها سنة من تاريخ حصولها عليها ، والا التزمت بانقاص رأس مالها بمقدار القيمة الاسمية لتلك الأسهم وبتابع الاجراءات المقرره لذلك .

كما أجاز القانون للشركة شراء بعض من أسهمها لتوزيعها علي العاملين بها كجزء من نصيبهم في الأرباح .

### اخطار الهيئة العامة لسوق المال :

إذا حصلت الشركة المساهمة بأية طريقة علي جانب من أسهمها وجب عليها اخطار الهيئة العامة لسوق المال بذلك ، كما يتعين عليها عند إعداد قوائمها المالية وفي جميع حالات الإفصاح التي تنشرها أو تعلنها ان تبين ما حصلت عليه من أسهمها ونسبته إلي رأس المال المصدر وتاريخ حصولها عليه .

ويطلق علي ما تحتفظ به الشركة من أسهمها " أسهم خزينة " وعلي باقي الأسهم " أسهم قائمة " .

### عدم استحقاق أسهم الخزينة للأرباح :

لا يكون لأسهم الخزينة أية حقوق في الأرباح التي توزعها الشركة ، ويقتصر استحقاق الربح الذي يتقرر توزيعه علي الأسهم القائمة من تاريخ قرار التوقيع ، كما تستبعد أسهم الخزينة من تشكيل الجمعية العامة للشركة من التمثيل فيها .

### ضرورة التصرف في أسهم الخزينة :

علي الشركة ان تتصرف في أسهم الخزينة قبل مضي مدة لا تزيد علي سنة ميلادية من تاريخ حصولها عليها ، وإلا التزمت بدعوة الجمعية العامة غير العادية للشركة خلال الثلاثين يوماً التالية لمضي تلك المدة لانقاص رأس مال الشركة بمقدار القيمة الاسمية لتلك الأسهم وذلك وفقاً للإجراءات المقررة لدعوة الجمعية ولانقاص رأس المال .

## رهن الأوراق المالية

### مقدمة :

الأسهم في مصر أما أسهم مادية تصدر بالشكل الذي حدده قانون الشركات المساهمة ولائحته التنفيذية ، وأما أن تكون أسهم الشركة مقيدة في نظام الحفظ المركزي ففي هذه الحالة تصدر عن شركة الحفظ المركزي أو عن شركة ادارة سجلات كشف حساب للعميل ، ولم يعرف هذا النظام إلا مؤخراً في مصر ولم يكن منظماً بالقانون إلا أن صدر القانون رقم ١٥٨ لسنة ١٩٩٨ بتعديل قانون سوق رأس المال فأجاز أن تحل الوثائق الصادرة من شركات الحفظ المركزي وادارة السجلات محل صكوك الأسهم ، ومن ثم يتعين كيفية تحديد الوسيلة القانونية اللازمة لرهن الأسهم .

### أولاً : فيما يتعلق برهن بالأسهم المادية :

تنص المادة (٧٦) من القانون التجاري معدله بالقانون رقم ٦٥٥ لسنة ١٩٥٤ علي

أنه:

" يثبت الرهن الذي يقيد ضماناً لدين تجاري بكافة طرق الإثبات المقبولة في المواد التجارية سواء بالنسبة للمتعاقدين أو للغير ."

ومع ذلك يكون رهن الصكوك الأسمية كتابة بمقتضى تنازل يذكر فيه أنه علي وجه الضمان ويؤشر به علي الصك نفسه ويقيد في سجلات المؤسسة التي أصدرت الصك وتحدد مرتبة الدائن المرتهن من تاريخ ذلك القيد .

ويكون رهن الصكوك الأذنية بتظهير يذكر فيه ما يفيد ان القيمة للضمان .

أما رهن الديون التي لا يجوز نقل الحق منها بالمناولة أو بالتنازل عنها بطريق القيد أو بالتظهير فيخضع للأحكام المؤثرة في القانون المدني .

كما تنص المادة (٧٧) من القانون التجاري علي أنه :

" لا يكون للدائن المرتهن في جميع الأحوال حق الامتياز في الشيء المرهون إلا إذا سلم ذلك الشيء إليه أو إلي شخص آخر عينة المتعاقدان وبقي في حيازة من استلمه منهما."

ومفاد ذلك أن رهن الأسهم أو الأوراق المالية المادية لا يتم إلا :

- (١) ان يكون السهم أو السند صادر عن الشركة وفقاً للأوضاع القانونية .
- (٢) أن يؤشر علي السهم أو السند بأنه مرهون لصالح الدائن المرتهن ويوقع من صاحب الصك ، والمخولين بالتوقيع علي الصك .
- (٣) أن يقيد في سجل ملكية الأسهم بالشركة مصدرة الأسهم .
- (٤) أن يسلم إلي الدائن المرتهن أو إلي الشخص الذي حدده .

رهن الأسهم المقيدة بالحفظ المركزي :

لقد ترتب علي التطور الكبير الذي لحق حجم عمليات تداول الأوراق المالية إنشاء شركات الحفظ المركزي وإدارة سجلات الأوراق المالية التي تقوم بحفظ الأوراق المالية وإعطاء كشف حساب بديل عن هذه الأوراق لمالكيها من أجل تيسير التعامل بها ، وبالنظر إلي ضرورة إسباغ الصفة القانونية علي الوثائق الصادرة بنظام الحفظ المركزي في البيع والشراء وإجراء جميع التعاملات وتحديد العلاقة بين جهة الإيداع وصاحب السهم وعلاجاً للمشاكل القانونية التي أسفر عنها العمل من عدم الاعتذار بهذه الكشوف حيث يتطلب القانون تقديم السهم المادي ، فقد تم تعديل المادة (١٨) من قانون سوق رأس المال بما يسمح بجعل الوثائق الصادرة بنظام الحفظ المركزي وإدارة السجلات تقوم مقام الأسهم التي تصدر بها . وقد صدر بذلك القانون رقم ١٥٨ لسنة ١٩٩٨ ونص علي أنه :

" في حالة قيد الأوراق المالية لدي إحدى الشركات المرخص لها بنشاط الحفظ المركزي أو إدارة سجلات الأوراق المالية ، تحل الوثائق التي تصدرها هذه الشركات محل صكوك الأوراق المالية في التعامل وحضور الجمعيات العامة للمساهمين وصرف الأرباح والرهن واستخدام حقوق الأولوية وغير ذلك وفقاً للشروط والإجراءات التي تحددها اللائحة التنفيذية . "

ومن الجدير بالذكر ان اللائحة التنفيذية لم تصدر حتى الآن وهي تحت الدراسة . إلا ان الوضع القانوني للشهادات الصادرة من الحفظ المركزي وإدارات السجلات الأوراق المالية يكون قد أستقر .

# الشركات العاملة

## في مجال الأوراق المالية

حدد قانون سوق رأس المال ولائحته التنفيذية الشركات العاملة في مجال الأوراق المالية بأنها الشركات التي تباشر نشاطاً أو أكثر من الأنشطة الآتية :

- ( أ ) ترويج وتغطية الاكتتاب في الأوراق المالية .
- ( ب ) الاشتراك في تأسيس الشركات التي تصدر أوراقاً مالية أو في زيادة رؤوس أموالها .
- ( ج ) رأس المال المخاطر .
- ( د ) المقاصة والتسوية في معاملات الأوراق المالية .
- ( هـ ) تكوين وإدارة محافظ الأوراق المالية وصناديق الاستثمار .
- ( و ) السمسرة في الأوراق المالية .
- ( ز ) الأنشطة الأخرى التي تتصل بمجال الأوراق المالية ويحددها وزير الاقتصاد بعد موافقة مجلس إدارة الهيئة .

### ترويج وتغطية الاكتتاب :

تتضمن الأعمال المرتبطة بترويج وتغطية الاكتتاب في الأوراق المالية

مايأتي:-

- (١) إدارة عمليات ترويج وتغطية الاكتتاب في الأوراق المالية وجلب المستثمرين وما قد يتصل بذلك من نشر في وسائل الإعلام .
- (٢) الاكتتاب في الأوراق المالية المطروحة وغير المطروحة للاكتتاب العام ، ولها إعادة طرحها في اكتتاب عام أو عن طريق الاكتتاب العام بذات الشروط والأوضاع الواردة بنشرة الاكتتاب المعتمدة خلال مدة أقصاها سنة من تاريخ اعتماد تلك النشرة دون التقيد بالقيمة الاسمية للورقة .

وعلى الجهة مصدرة الورقة موافاة الشركة بأية تعديلات أو تغييرات تطرأ خلال هذه المدة لاتخاذ الإجراء المناسب .

وتباشر الشركة نشاطها وفقاً لأحكام القانون والقرارات الصادرة تنفيذاً له والاتفاق الذي تبرمه مع ذوي الشأن .

وتخطر الهيئة بصورة من هذا الاتفاق ، وعلى الهيئة إبلاغ ملاحظاتها للشركة خلال ثلاثين يوماً من تاريخ وصول الاخطار .

### تأسيس الشركات :

تعتبر شركة عاملة في نشاط تأسيس الشركات التي تصدر أوراقاً مالية أو في زيادة رؤوس أموالها ما يأتي :-

- ( أ ) إذا كان غرض الشركة الرئيسي مباشرة النشاط المشار إليه .
- ( ب ) إذا كانت الشركة منفردة أو مع مؤسسيتها تملك أكثر من نصف رأس مال خمس شركات أو أكثر من الشركات المساهمة أو شركات التوصية بالأسهم .
- ( ج ) إذا كانت الشركة منفردة أو مع مؤسسها لها السيطرة على تكوين مجلس إدارة خمس شركات أو أكثر من شركات المساهمة أو شركات التوصية بالأسهم .
- ( د ) إذا مارست الشركة بالفعل نشاط تأسيس الشركات المساهمة أو شركات التوصية بالأسهم أو زيادة رؤوس أموالها بما يجعله نشاطاً رئيسياً لها .

### رأس المال المخاطر :

يتضمن نشاط رأس المال المخاطر تمويل نشاط الشركات التي تصدر أوراقاً مالية أو دعمها أو تقديم الخدمات الفنية والإدارية أو المشاركة في المشروعات والمنشآت وتمييتها بقصد تحويلها إلى شركات مساهمة أو توصية بالأسهم متي كانت هذه المشروعات وتلك الشركات عالية المخاطر أو تعاني قصوراً في التمويل وما يستتبعه من طول دورة الاستثمار .

### الشكل القانوني المطلوب :

يجب أن تتخذ الشركات العاملة في مجال الأوراق المالية المنصوص عليها في القانون شكل شركة المساهمة أو شركة التوصية بالأسهم .

ويجب عليها إمساك الدفاتر والسجلات اللازمة لمباشرة نشاطها وتلك التي تحددها هذه اللائحة .

الحد الأقصى لقيمة العمليات التي تقوم بها الشركات بالنسبة إلي كل نشاط في ضوء رأس مالها والتأمين المدفوع منها وفقاً للقواعد التي يضعها مجلس إدارة الهيئة .

ويتحدد التأمين بمراعاة حجم ونوع نشاط الشركة ومخاطر مباشرته وأعباء الشركة والتزاماتها .

### التأسيس والترخيص :

لا يجوز إنشاء شركات تباشر نشاطاً من الأنشطة المشار إليها أياً كان النظام القانوني الخاضعة له إلا وفقاً للأحكام والشروط الواردة في القانون ولائحته التنفيذية .

وللمؤسسين أو المسئول عن إدارة الشركة حسب الأحوال قبل المضي في إجراءات تأسيس الشركة أو الترخيص لها بمباشرة النشاط التقدم للهيئة بطلب الحصول علي الموافقة المبدئية علي ذلك مرفقاً بها الأوراق التي تحددها الهيئة .

وتكون الموافقة في ضوء حاجة سوق رأس المال للنشاط المطلوب الترخيص به أو تأسيس الشركة لمباشرته .

وفي حالة تعدد الأغراض المطلوب مباشرتها يجب ألا تكون الأنشطة متعارضة فيما بينها .

وتعرض الطلبات إذا كانت مستوفاه علي اللجنة المشكلة بالهيئة العامة لسوق المال .

ويجب أن يكون قرار اللجنة بالرفض مسبباً .

ولا تكون قرارات اللجنة نهائية إلا بعد اعتمادها من رئيس الهيئة .

ويجب إخطار ذوي الشأن بقرار اللجنة خلال خمسة عشر يوماً من تاريخ إعداده .

كما لا يجوز مزاولة أي نشاط من الأنشطة المتعلقة بمجالات الأوراق المالية إلا بعد الحصول علي ترخيص بذلك من الهيئة .

وتقيد الشركات المرخص بها في جدول خاص يعد بالهيئة لهذا الغرض ، ويعطي لكل شركة رقم مسلسل ويحدد فيه نوع الترخيص الممنوح لها ، ويتضمن بيانات عن الشركة ورأس مالها وأعضاء مجلس الادارة والمديرين والفروع .

وتعطي كل شركة تم الترخيص لها شهادة بذلك يحدد فيها نوع الأنشطة المرخص وعليها أن تشير إليها في مكاتباتها .

## بورصات الأوراق المالية

### مقدمة :

يتم قيد وتداول الأوراق المالية في سوق تسمى بورصة الأوراق المالية .

وقد كانت بورصة القاهرة وبورصة الاسكندرية أسواقاً نشطه من أعرق بورصات العالم وأخر قانون كان يحكمهما هو القانون رقم ١٦١ لسنة ١٩٥٧ باللائحة العامة لبورصات الأوراق المالية ، وقبل ذلك كان المرسوم الصادر في ٣١ ديسمبر ١٩٣٣ .

إلا أنه بصدور قوانين التأميم منذ عام ١٩٦١ ترتب علي ذلك أيلولة ملكية معظم أسهم الشركات المساهمة إلي الدولة ، مع حظر التصرف في حصص الدولة ، ولم يبقي إلا مساهمات ضئيلة للأفراد في بعض الشركات التي آلت إلي الدولة وبعض السندات ومن ثم أصيبت البورصتين بشبه شلل تام لعدم وجود أسهم يجري عليها التعامل وساعد علي ذلك أيضاً وجود كثير من القيود القانونية في قانون الشركات المساهمة لاتشجع علي تأسيس مثل هذه الشركات وهي المصدر الوحيد لخلق الأسهم .

إلي ان انتهجت الدولة سياسة الانفتاح الاقتصادي بصدور قانون الاستثمار رقم ٤٣ لسنة ١٩٧٤ وهو ان كان لم يغير من الأمر كثيراً لنشأة المشروعات في شكل شركات مغلقة إلا ان هذا القانون قد سلك مسلكاً حميداً بازالة القيود القانونية التي كانت موجودة في قانون الشركات المساهمة القائم حينئذ وهو القانون رقم ٢٦ لسنة ١٩٥٤ بالنسبة لمشروعات الاستثمار فقط ففتح الباب لتعديل تشريعي جوهري وذلك بصدور القانون رقم ١٥٩ لسنة ١٩٨١ بشأن الشركات المساهمة ولائحته التنفيذية فازيلت الكثير من العقبات التي أصبحت لا تتفق مع السياسة الجديدة للدولة وتدفق المستثمرين علي تأسيس الشركات المساهمة ، ثم لحق ذلك صدور قانون شركات قطاع الأعمال العام رقم ٢٠٣ لسنة ١٩٩١ ولائحته التنفيذية الذي فتح الباب لبيع أسهم هذه الشركات و طرحها للجمهور الأمر الذي أعاد الحياة من جديد للبورصتين وبعد هذه الطفرة كان لابد من صدور تشريع ينظم سوق رأس المال فصدر القانون

رقم ٩٥ لسنة ١٩٩٢ وقد الغي هذا القانون قانون البورصات رقم ١٦١ لسنة ١٩٥٧ المشار إليه وأورد أحكاماً بديله سيرد ذكرها هنا

### القيود :

يكون قيد الأوراق المالية في جداول البورصة بناء علي طلب الجهة المصدرة لها ، ويتم قيد الورقة وشطبها بقرار من إدارة البورصة وفقاً للقواعد التي يضعها مجلس إدارة الهيئة ويتم القيد في نوعين من الجداول :

#### ( أ ) جداول رسمية تقيد بها الأوراق المالية الآتية :

(١) أسهم شركات الاكتتاب العام التي يتوافر فيها الشرطان الآتيان :

( أ ) ألا يقل ما يطرح من الأسهم الأسمية للاكتتاب العام عن ٣٠٪ من مجموع أسهم الشركة .

(ب) ألا يقل عدد المكتتبين في الأسهم المطروحة عن مائة وخمسين ولو كانوا من غير المصريين .

وإذا ترتب علي تداول أسهم الشركة أن قل عدد المساهمين عن مائة لمدة تجاوز ثلاثة أشهر متصلة أو منفصلة خلال السنة المالية للشركة اعتبرت الأسهم مشطوبة من هذه الجداول بحكم القانون وتنتقل إلي الجداول غير الرسمية .

(٢) السندات وصكوك التمويل والأوراق المالية الأخرى التي تطرحها شركات المساهمة وشركات التوصية بالأسهم في اكتتاب عام علي أن تتوافر فيها الشروط الواردة بالبندين (أ) ، (ب) من الفقرة السابقة .

(٣) الأوراق المالية التي تصدرها الدولة وتطرح في اكتتاب عام .

(٤) الأسهم والأوراق المالية الأخرى لشركات القطاع العام وشركات قطاع الأعمال العام .

(ب) جداول غير رسمية تقيد بها :

- (١) الأسهم وغيرها من الأوراق المالية التي لا تتوافر فيها شروط القيد في الجداول الرسمية .
- (٢) الأوراق المالية الأجنبية .

### العمليات :

لا يجوز تداول الأوراق المالية المقيدة في أية بورصة خارجها إلا وقع التداول باطلاً .

ويتم الإعلان في البورصة عن عمليات تداول الأوراق المالية غير المقيدة وذلك وفقاً للقواعد التي يصدر بتنظيمها قرار من مجلس إدارة الهيئة .

وعلى البورصة أن توافي الهيئة بالبيانات والتقارير الدورية التي تحددها اللائحة التنفيذية .

يكون التعامل في الأوراق المالية المقيدة بالبورصة بواسطة إحدى الشركات المرخص لها بذلك ، وإلا وقع التعامل باطلاً ، وتضمن الشركة سلامة العملية التي تتم بواسطتها . وتبين اللائحة التنفيذية الأعمال التي يحظر على الشركة القيام بها .

تمسك كل بورصة سجلاً تقيد به الشركات المرخص لها بالعمل في مجال الأوراق المالية التي تباشر نشاطها بها ، ويتم القيد مقابل رسم مقداره عشرة آلاف جنيه وإشتراك سنوي مقداره ١٪ من رأس مال الشركة بحد أقصى خمسة آلاف جنيه .  
وقف العمليات :

يجوز بقرار من رئيس البورصة وقف عروض وطلبات التداول التي ترمي إلى التلاعب في الأسعار .

ويكون له إلغاء العمليات التي تعقد بالمخالفة لأحكام القوانين واللوائح والقرارات الصادرة تنفيذاً لها أو التي تتم بسعر لا مبرر له .

كما يجوز له وقف التعامل علي ورقة مالية إذا كان من شأن استمرار التعامل بها الإضرار بالسوق أو المتعاملين فيه .

ولرئيس الهيئة أن يتخذ في الوقت المناسب أيًا من الإجراءات السابقة .

يجوز لرئيس الهيئة إذا طرأت ظروف خطيرة أن يقرر تعيين حد أعلى وحد أدنى لأسعار الأوراق المالية بأسعار القفل في اليوم السابق علي القرار ، وتفرض هذه الأسعار علي المتعاقدين في جميع بورصات الأوراق المالية .

ويبلغ القرار فور اتخاذه إلي الوزير ، وللوزير أن يوقف تنفيذه ، ويبين طريقة تعيين الأسعار ومراقبة الأعمال في البورصات .

وللوزير من تلقاء نفسه أن يصدر قراراً بما يتخذ من إجراءات الظروف المشار إليها .

#### العمولات :

يصدر الوزير بناء علي اقتراح من مجلس إدارة الهيئة قراراً بنظام عمولات السمسرة والحدود القصوي لمقابل الخدمات عن العمليات التي تتم في البورصات .

كما يحدد رسوم قيد الأوراق المالية بالبورصة علي ألا يتجاوز رسم القيد في الجداول المبينة بالبند (أ) من المادة ١٦ من هذا القانون خمسة آلاف جنيه سنوياً عن كل إصدار وثلاثة آلاف جنيه سنوياً عن كل إصدار للقيد في الجداول والمبينة بالبند (ب) من المادة المذكورة .

ولا تستحق الرسوم المشار إليها علي قيد الأوراق المالية التي تصدرها الدولة .

هذا وقد نص قانون سوق رأس المال علي أن تستمر بورصتا القاهرة والاسكندرية في مباشرة نشاطهما بالشخصية المعنوية المقررة لهما في تاريخ العمل بهذا القانون ، ويصدر بالأحكام المنظمة لإدارتها وشئونها المالية قرار من رئيس الجمهورية وذلك بعد ان الغي في

مواد اصداره القانون رقم ١٦١ لسنة ١٩٥٧ بشأن اللائحة العامة لبورصات الأوراق المالية كما أشرنا .

وقد صدر القرار الجمهوري رقم ٥١ لسنة ١٩٩٧ بالأحكام المنظمة لبورصتي القاهرة والاسكندرية ويتضمن أهم الأحكام الآتية :

تباشر البورصة الاختصاصات المقررة لها في قانون سوق رأس المال ولائحته التنفيذية المشار إليهما ، بما يكفل سلامة تداول الأوراق المالية وأداء المتعاملين وحسن سير العمل واستقرار المعاملات فيها ، وكذا عدم مخالفة القوانين واللوائح والقرارات المتعلقة بأعمالها .

#### رئيس البورصة :

يتولى رئيس البورصة إدارتها وتصريف شئونها ، ويمثلها أمام القضاء وأمام الغير ، وله ولمن ينيبه حق التوقيع نيابة عنها .

ويختار رئيس البورصة من بين الشخصيات ذات الخبرة العالية في المجالات الاقتصادية والمالية ، ويصدر بتعيينه قرار من رئيس مجلس الوزراء لمدة ثلاث سنوات قابلة للتجديد لمدد أخرى .

وإلي أن يصدر هذا القرار ، يستمر رئيس لجنة البورصة في إدارتها وتصريف شئونها .

يشكل مجلس إدارة البورصة برئاسة رئيسها ، وعضوية كل من :

- \* ممثل عن البنك المركزي المصري يختاره محافظ البنك .
- \* ممثل عن الهيئة العامة لسوق المال يختاره رئيسها .
- \* ممثلين عن البنوك يتم اختيارهما بالانتخاب وفقاً للقواعد والإجراءات التي يصدر بها قرار من مجلس إدارة اتحاد البنوك .

\* ستة عن الشركات العاملة في مجال الأوراق المالية يتم اختيارهم بالانتخاب وفقاً للقواعد والإجراءات التي يصدر بها قرار من وزير الاقتصاد والتعاون الدولي .

ولرئيس المجلس أن يدعو لحضور جلساته من يراه من ذوي الخبرة دون أن يكون له صوت معدود في المداولات .

وتكون مدة عضوية المجلس ثلاث سنوات قابلة للتجديد لمدد أخرى .

### اختصاصات مجلس الإدارة :

يضع مجلس إدارة البورصة السياسة العامة التي تدير عليها ، ويباشر الاختصاصات الآتية :

- (١) إصدار القرارات والقواعد اللازمة لحسن سير العمل وسلامة استقرار المعاملات في البورصة .
- (٢) إصدار اللوائح والقرارات التفصيلية المنظمة للشؤون الإدارية والمالية للبورصة واللوائح المنظمة لشؤون العاملين بها بما يتفق وطبيعة العمل فيها وبما لا يخل بالمزايا المقررة لهم عند صدورهما ، وكذا وضع اللائحة الداخلية للبورصة .
- (٣) تشكيل اللجان اللازمة لقيد الأوراق المالية في الجداول ، ولمراقبة أسعار الأوراق المالية المتداولة بالبورصة والتحقق من سلامتها ، ولتسيير سائر أعمال البورصة .
- (٤) وضع القواعد المنظمة للاستعانة بالخبراء اللازمين لحسن أداء البورصة لأعمالها .
- (٥) الموافقة علي مشروع الموازنة السنوية والقوائم المالية .
- (٦) قبول المنح والموافقة علي القروض التي تحقق أغراض البورصة .

ويجوز لمجلس الإدارة أن يعهد ببعض اختصاصاته إلي لجنة من أعضائه أو إلي رئيس المجلس ، كما يجوز له أن يكلف أحد أعضائه بأداء مهمة محددة .

وإلي أن تصدر اللوائح والقرارات والقواعد المشار إليها ، يستمر العمل باللوائح والقرارات والقواعد والنظم القائمة في تاريخ العمل بهذا القرار .

### اجتماعات المجلس :

يجتمع مجلس إدارة البورصة بدعوة من رئيسته مرة علي الأقل كل أسبوعين ، وعلي الرئيس دعوة المجلس للانعقاد كلما طلب ذلك أربعة من أعضائه .

وتكون إجتماعات المجلس صحيحة بحضور أغلبية أعضائه ، وتصدر القرارات بأغلبية آراء الحاضرين ، وعند التساوي يرجح الجانب الذي منه الرئيس .

### دور الهيئة العامة لسوق المال :

تبلغ قرارات مجلس الإدارة إلي رئيس الهيئة العامة لسوق المال ، فإذا لم يعترض عليها خلال خمسة عشر يوماً من إبلاغه كانت نافذة . أما إذا اعترض عليها أعادها إلي المجلس خلال هذه المدة للنظر فيها علي ضوء أسباب الاعتراض ، فإذا أصر عليها المجلس بأغلبية ثلثي أعضائه اعتبرت نافذة .

علي رئيس البورصة إبلاغ رئيس الهيئة العامة لسوق المال بما يقع من شركات السمسرة ، وغيرها من الشركات العاملة في مجال الأوراق المالية ذات الصلة بالبورصة ، من مخالفات لأحكام القوانين واللوائح والقرارات والقواعد المنظمة للعمل بالبورصة ، بما في ذلك تقديم بيانات غير حقيقية للبورصة خاصة بالشركة أو بنشاطها ، وتطبيق علي المخالفة الجزاءات المنصوص عليها في المادتين (٣٠، ٣١) من قانون سوق رأس المال المشار إليه ، وعلي رئيس الهيئة اتخاذ الإجراءات القانونية حيال المخالفة طبقاً لأحكام المادتين المشار إليهما، وتسري علي التظلم من القرارات التي تصدر في هذا الشأن، أحكام المادة (٣٢) من ذلك القانون .

## الجهات الحكومية المختصة

### بالإشراف والرقابة

نظراً لأن كل نشاط في مصر - كما هو في العالم - يخضع في مباشرته لاختصاص إحدى الجهات الإدارية التي تكون لها سلطة الرقابة والإشراف علي من يمارس النشاط للتأكد من مطابقته للقوانين واللوائح المنظمة له والترخيص الصادره له تحقيقاً للصالح العام .

فإنه في مجال الشركات المساهمة وسوق رأس المال هناك ثلاث جهات إدارية اناطت بها القوانين هذا الاختصاص .

وهذه الجهات هي : الهيئة العامة لسوق المال ومصحة الشركات والهيئة العامة للاستثمار علي التفصيل الموضح فيما يلي :-

## ١ - الهيئة العامة لسوق المال

### الوضع القانوني للهيئة :

الهيئة العامة لسوق المال هيئة عامة تتبع وزير الاقتصاد والتجارة الخارجية مقرها مدينة القاهرة ، ويجوز بقرار من الوزير بعد موافقة مجلس إدارة الهيئة إنشاء فروع ومكاتب لها داخل وخارج البلاد وهي تمثل سلطة الدولة في الرقابة علي سوق المال .

### اختصاصات الهيئة :

تتولي الهيئة - فضلاً عن الاختصاصات المقررة لها في أي تشريع آخر تطبيق أحكام قانون سوق رأس المال ولائحته التنفيذية والقرارات الصادرة تنفيذاً له . ولها إبرام التصرفات واتخاذ الاجراءات اللازمة لتحقيق أغراضها وعلي الأخص :

- (١) تنظيم وتممية سوق رأس المال ، ويجب أخذ رأي الهيئة في مشروعات القوانين والقرارات المتعلقة بسوق المال .
- (٢) تنظيم أو الإشراف علي دورات تدريبية للعاملين في سوق رأس المال أو الراغبين في العمل به .
- (٣) الإشراف علي توفير ونشر المعلومات والبيانات الكافية عن سوق رأس المال والتحقق من سلامتها ووضوحها وكشفها عن الحقائق التي تعبر عنها (اعتماد نشرات الاكتتاب وفقاً للأوضاع القانونية المقررة) .
- (٤) مراقبة سوق رأس المال للتأكد من أن التعامل يتم علي أوراق مالية سليمة وأنه غير مشوب بالغش أو النصب ، أو الاحتيال ، أو الاستغلال ، أو المضاربات الوهمية .
- (٥) اتخاذ ما يلزم من إجراءات لمتابعة تنفيذ أحكام هذا القانون والقرارات الصادرة تنفيذاً له .
- (٦) فحص القوائم المالية .

- (٧) فحص الشكاوي ووقف تنفيذ قرارات الجمعيات العامة للشركات بناء على طلب أصحاب الشأن إذا ثبت أنها صدرت لصالح فئة معينة من المساهمين أو للاضرار بهم.
- (٨) إلغاء العمليات التي تعقد بالمخالفة للقوانين أو اللوائح أو القرارات الصادرة تنفيذاً له أو التي تتم بسعر لا مبرر له .
- (٩) وقف أي نشاط خاضع للقانون إذا تمت مزاولته دون ترخيص .
- (١٠) وقف نشاط الشركة إذا خالفت أحكام القانون أو لائحته التنفيذية أو قرارات مجلس الإدارة إذا فقدت أي شرط من شروط الترخيص وذلك بقرار مسبب من رئيس الهيئة لمدة لا تجاوز ثلاثين يوماً .

### مجلس الإدارة :

مجلس إدارة الهيئة ، وهو السلطة المختصة بشئونها وتصريف أمورها ، وله أن يتخذ ما يراه لازماً من قرارات نهائية لمباشرة اختصاصات الهيئة وتحقيق أغراضها ، وعلى الأخص :

- (١) رفع السياسة التي تسير عليها ممارسة اختصاصاتها وما يتصل بذلك من خطط وبرامج.
- (٢) وضع قواعد التفتيش والرقابة على الشركات الخاضعة لأحكام هذا القانون .
- (٣) تحديد مقابل الخدمات التي تقدمها الهيئة .
- (٤) وضع قواعد الاستعانة بالخبراء وطلب الاستشارات التي تعين الهيئة على قيامها بوظائفها .
- (٥) الموافقة على مشروع الموازنة السنوية للهيئة .

ولمجلس الإدارة أن يعهد إلي عضو أو أكثر من بين أعضائه القيام بمهمة محددة .

### في حالة قيام الخطر :

لمجلس إدارة الهيئة إذا قام خطر يهدد استقرار سوق رأس المال أو مصالح المساهمين في الشركة أو المتعاملين معها أن يتخذ ما يراه من التدابير الآتية :

- ( أ ) توجيه تنبيه إلى الشركة .
- ( ب ) منع الشركة من مزاوله كل أو بعض الأنشطة المرخص لها بمزاولتها .
- ( ج ) مطالبة رئيس مجلس إدارة الشركة بدعوة المجلس إلى الانعقاد للنظر في أمر المخالفات المنسوبة إلى الشركة واتخاذ اللازم نحو إزالتها ويحضر اجتماع مجلس الإدارة في هذه الحالة ممثل أو أكثر عن الهيئة .
- ( د ) تعيين عضو مراقب مجلس إدارة الشركة وذلك للمدة التي يحددها مجلس إدارة الهيئة ويكون لهذا العضو المشاركة في مناقشات المجلس وتسجيل رأيه فيما يتخذ من قرارات .
- ( هـ ) حل مجلس الإدارة وتعيين مفوض لإدارة الشركة مؤقتاً لحين تعيين مجلس إدارة جديد بالأداة القانونية المقررة .
- ( و ) إلزام الشركة المخالفة بزيادة قيمة التأمين المودع منها .

#### يشكل مجلس إدارة الهيئة من :

رئيساً	رئيس الهيئة
نائباً للرئيس	نائب رئيس الهيئة
عضواً	نائب محافظ البنك المركزي

وأربعة أعضاء من ذوي الخبرة يصدر تعيينهم وتحديد مكافآتهم لمدة سنتين قابلة للتجديد ، قرار من رئيس مجلس الوزراء بناء علي اقتراح الوزير .

ويصدر بتعيين رئيس الهيئة ونائبه وتحديد المعاملة المالية لهما قرارات من رئيس الجمهورية لمدة ثلاث سنوات قابلة للتجديد لمدد أخرى .

## ٢ - مصلحة الشركات

تعتبر مصلحة الشركات هي الجهة الادارية المختصة في تنفيذ أحكام القانون رقم ١٥٩ لسنة ١٩٨١ ولائحته التنفيذية بالنسبة للشركات الخاضعة لأحكامه ، فضلاً عن اختصاصها في تأسيس الشركات فقد حدد القانون لها ممارسة الرقابة والتفتيش أثناء حياة الشركة علي النحو التالي :-

### الرقابة :

(١) منح القانون للموظفين الفنيين من الدرجة الثالثة علي الأقل بهذه المصلحة والذين يصدر باختيارهم قرار من الوزير المختص بالاتفاق مع وزير العدل صفة رجال الضبط القضائي في إثبات الجرائم التي تقع بالمخالفة لأحكام هذا القانون ولائحته التنفيذية .

ولهم في سبيل ذلك حق الاطلاع علي السجلات والدفاتر والمستندات في مقر الشركة أو غيرها ، وعلي مديري الشركات والمسؤولين عن إدارتها أن يقدموا لهم البيانات والمستخرجات وصور المستندات التي يطلبونها لهذا الغرض .

وللمصلحة بحث أية شكوي تقدم من المساهمين أو من غيرهم من أصحاب المصلحة فيما يتعلق بتنفيذ أحكام القانون لائحته التنفيذية .

(٢) أجاز القانون لموظفي مصلحة الشركات المشار إليهم في المادة السابقة حق حضور الجمعيات العامة للشركات بناء علي إذن خاص من رئيس المصلحة ، ولا يكون لهم حق إبداء الرأي أو التصويت ، وتقتصر مهمتهم علي تسجيل وقائع الاجتماع وإبداء ملاحظاتهم كتابة .

(٣) ويكون لكل ذي مصلحة طلب الإطلاع لدي الجهة الإدارية المختصة علي الوثائق والسجلات والمحاضر والتقارير المتعلقة بالشركة ، والحصول علي بيانات منها مصدقاً عليها من هذه الجهة ويرفض الطلب إذا كان من شأن إذاعة البيانات المطلوبة بإلحاق الضرر بالشركة أو بأية هيئة أخرى ، أو الإخلال بمصلحة عامة ، وتبين اللائحة التنفيذية أوضاع ذلك وتحدد رسوم الإطلاع أو الحصول علي البيانات علي ألا يتجاوز الرسم مائة جنيه مصري .

(٤) دعوة الجمعية العامة للشركة في حالة تراخي مجلس الادارة عن ذلك وفقاً للإجراءات المحددة بالقانون .

(٥) اعتماد محاضر الجمعيات العامة للشركات وإيداء الرأي في شرعيتها .

#### التفتيش :

يكون لمصلحة الشركات وللشركاء الحائزين علي ٢٠٪ من رأس المال علي الأقل بالنسبة إلي البنك ، ١٠٪ من رأس المال علي الأقل بالنسبة إلي غيرها من شركات المساهمة أن يطلبوا التفتيش علي الشركة فيما ينسب إلي أعضاء مجلس الادارة ، أو مراقبي الحسابات من مخالفات جسيمة في أداء واجباتهم التي يقررها القانون أو النظام متي وجد من الأسباب ما يرجح وجود هذه المخالفات .

ويقدم الطلب إلي المصلحة لنظره من لجنة التفتيش . ويجب أن يكون الطلب مشتملاً علي الأدلة التي يستفاد منها أن لدي الطالبين من الأسباب الجدية ما يبرر اتخاذ هذا الإجراء ، ويجب أن يودع مع الطلب المقدم من الشركاء الأسهم التي يملكونها ، وأن تظل مودعة إلي أن يتم الفصل فيه .

وللجنة بعد سماع أقوال الطالبين وأعضاء مجلس الإدارة والمراقبين حسابين في جلسة سرية أن تأمر بالتفتيش علي أعمال الشركة ودفاتها وأن يندب لهذا الغرض خبيراً أو أكثر علي أن تعين المبلغ الذي يلزم الشركاء طالبوا التفتيش بإيداعه لحساب المصروفات متي رأت ضرورة تدعو إلي اتخاذ هذا الإجراء قبل انعقاد الجمعية العامة ولا يجري التفتيش إلا بعد أن يتم إيداع هذا المبلغ .

كما يجوز أن يشمل الإذن بالتفتيش الإطلاع علي أية أوراق أو سجلات لدي شركات أخرى ذات علاقة بالشركة محل التفتيش .

وقد أوجب القانون علي أعضاء مجلس إدارة الشركة وموظفيها ومراقبي الحسابات أن يطلعوا من يكلف التفتيش علي جميع الدفاتر والوثائق والأوراق المتعلقة بالشركة التي يقومون علي حفظها أو يكون لهم حق الحصول عليها ويقدموا لهم الإيضاحات والمعلومات اللازمة . ويعاقب من يمتنع عن إجابة ما يطلبه المكلف بالتفتيش في هذا الشأن بالعقوبات المنصوص عليها في المادة (١٦٣) من قانون الشركات المساهمة .

وللمكلف بالتفتيش أن يستجوب أي شخص له صلة بشئون الشركة بعد أداء اليمين .

يجب علي كل من يكلف بالتفتيش أن يودع تقريراً مفصلاً عن مهمته بأمانة اللجنة خلال الأجل الذي يعين في القرار .

وإذا تبين للجنة أن ما نسبته طالبوا التفتيش إلي أعضاء مجلس الإدارة أو مراقبي الحسابات غير صحيح ، جاز لها أن تأمر بنشر التقرير كله أو بعضه أو بنشر نتيجته بإحدي الصحف اليومية وأن يلزم طالبي التفتيش بنفقاته دون إخلال بمسئوليتهم عن التعويض إن كان له مقتض .

وإذا تبينت للجنة صحة المخالفات المنسوبة إلي أعضاء مجلس الإدارة أو المراقبين أمرت باتخاذ التدابير العاجلة ، وبدعوة الجمعية العامة علي الفور ويرأس إجتماعها في هذه الحالة رئيس الجهة الإدارية المختصة ، أو أحد موظفي هذه الجهة تختاره اللجنة .

وتتحمل الشركة - في هذه الحالة - بنفقات التفتيش ومصروفاته ، ويكون لها أن ترجع علي المتسبب في المخالفة بقيمة هذه النفقات والمصروفات بالإضافة إلي التعويضات .

والجمعية العامة أن تقرر عزل أعضاء مجلس الإدارة ورفع دعوي المسؤولية عليهم ،  
ويكون قرارها صحيحاً متي وافق عليه الشركاء الحائزون لنصف رأس المال بعد أن يستبعد  
منه نصيب من ينظر في أمر عزله من أعضاء هذا المجلس . كما يكون للجمعية أن تقرر  
تغيير مراقبي الحسابات ، ورفع دعوي المسؤولية عليهم .

ولا يجوز إعادة إنتخاب المعزولين من أعضاء مجلس الإدارة قبل إنتضاء خمس  
سنوات من تاريخ صدور القرار الخاص بعزلهم .

### ٣ - الهيئة العامة للاستثمار

- الهيئة العامة للاستثمار هي الجهة الإدارية المختصة بتنفيذ أحكام القانون رقم ٨ لسنة ١٩٩٧ في شأن ضمانات وحوافز الاستثمار ولائحته التنفيذية .
- وتتولى الهيئة إجراءات تأسيس الشركات التي تنشأ في إطار القانون رقم ٨ لسنة ١٩٩٧ المشار إليه والتي يجب أن يتضمن أغراضها أحد المجالات المحددة بهذا القانون ولائحته التنفيذية وهي إستصلاح الأراضي وتنمية الثروة الحيوانية والداجنة ، والاستزراع السمكي ، والمشروعات السياحية والفندقية والمشروعات الصناعية ، ويمكن لمجلس الوزراء إضافة مجالات أخرى .
- أعطي القانون للهيئة العامة للاستثمار كافة السلطات والصلاحيات المقررة لمصلحة الشركات في القانون رقم ١٥٩ لسنة ١٩٨١ ولائحته التنفيذية بالنسبة للشركات المنشأة في إطار قوانين الاستثمار .

## تسوية المنازعات والنحكيم

### في قانون سوق رأس المال

نظراً للطبيعة الخاصة التي تتسم بها المعاملات في الأوراق المالية وما تحتاجه من خبراء ومتخصصين للفصل في النزاعات التي تنشأ بين الأطراف المختلفين ، مع العمل على سرعة الفصل بما يحفظ حقوق أصحاب الشأن ، وكذلك فإن القرارات الإدارية التي تصدر من الهيئة العامة لسوق المال أو وزير الاقتصاد ضد احدي الشركات أو الافراد ، فقد حدد القانون طرقاً خاصة للفصل في المنازعات ونظر التظلمات على النحو الآتي :

#### لجنة التظلمات :

تشكل بقرار من الوزير لجنة للتظلمات برئاسة أحد نواب رئيس مجلس الدولة وعضوية اثنين من مستشاري مجلس الدولة ، ويختارهم المجلس وأحد شاغلي وظائف مستوي الإدارة العليا بالهيئة ، يختاره رئيسها وأحد ذوي الخبرة يختاره الوزير .

#### اختصاص لجنة التظلمات :

تختص اللجنة المشار إليها بنظر التظلمات التي يقدمها أصحاب الشأن من القرارات الإدارية التي تصدر من الوزير أو الهيئة ، طبقاً لأحكام القانون ولائحته التنفيذية والقرارات الصادرة تنفيذاً له .

#### مواعيد التظلم :

يكون ميعاد التظلم من القرار خلال ثلاثين يوماً من تاريخ اخطار صاحب الشأن بالقرار أو علمه به وذلك كأصل عام ، وعلى سبيل المثال :

(١) قرار التقدير الصادر من اللجنة المشكلة لتقييم الحصة العينية .

- (٢) القرار الصادر بالامتناع عن القيد أو برفضه أو بشطب القيد أو بوقف من يباشر عمليات التداول بالبورصة ممثلاً لشركة السمسرة .
- (٣) قرار الهيئة بالإمتناع عن قيد مدير الاستثمار أو برفضه أو بشطب القيد أو وقفه .
- (٤) قرار رفض تسجيل اتحاد العاملين بالشركة وذلك خلال ثلاثين يوماً من تاريخ إبلاغهم بقرار الرفض .
- (٥) قرار شطب اتحاد العاملين الخاص بالشركة وذلك خلال ثلاثين يوماً من تاريخ الاخطار .

ويكون ميعاد التظلم خمسة عشر يوماً من تاريخ اخطار صاحب الشأن بالقرار أو علمه في الحالات المحددة بالقانون وعلي سبيل المثال :

- (١) قرار رفض طلب الترخيص والتأسيس .
- (٢) القرارات الصادرة من مجلس إدارة الهيئة باتخاذ تدابير لمواجهة خطر يهدد استقرار سوق رأس المال أو مصالح المساهمين في الشركة أو المتعاملين معها .
- ويكون ميعاد التظلم ستين يوماً في حالة صدور قراراً باستبعاد عضو من مجلس الإدارة أو الإدارة العامة لأعمال صناديق الاستثمار .

وتبين اللائحة التنفيذية إجراءات نظر التظلم والبت فيه ، ويكون قرار اللجنة بالبت في التظلم نهائياً ونافاً ، ولا تقبل الدعوي بطلب إلغاء تلك القرارات قبل التظلم منها .

#### إجراءات التظلم :

حددت اللائحة التنفيذية لقانون سوق رأس المال إجراءات التظلم علي النحو الآتي :

#### تقديم التظلم :

يقدم التظلم من أصل وست صور ، ويجب أن يشتمل علي البيانات الآتية :

- (١) اسم المتظلم ولقبه ومهنته وعنوانه .
- (٢) تاريخ صدور القرار المتظلم منه وتاريخ إخطار أو علم المتظلم به .

- (٣) موضوع التظلم والأسباب التي بني عليها ، ويرفق بالتظلم المستندات المؤيدة  
 (٤) الإيصال الدال علي سداد المبلغ المنصوص في المادة (٢١١) من اللائحة التنفيذية .

#### رسوم التظلم :

يودع المتظلم من القرارات الإدارية الصادرة من الوزير أو الهيئة طبقاً لقانون رأس المال ولائحته التنفيذية أو القرارات الصادرة تنفيذاً له خزينة الهيئة مبلغ خمسة آلاف جنيه مصري يرد إليه إذا صدر قرار لجنة التظلمات لصالحه بعد خصم ١٠٪ منها كمصروفات إدارية .

#### مكتب التظلمات :

ينشأ بالهيئة مكتب للتظلمات يزود بعدد من العاملين بالهيئة ، يتولى تلقي التظلمات وقيدها بالسجل المعد لذلك في يوم ورودها ، وعلي المكتب أن يرد إلي المتظلم صورة من تظلمه مثبتاً عليها رقم القيد وتاريخه .

#### فحص التظلم والبت فيه :

يقوم المكتب بعرض التظلم فور وروده علي رئيس اللجنة لإتخاذ إجراءات عرضه عليها لنظره ، وللجنة أن تطلب ما تراه من إيضاحات ذوي الشأن ومستنداتهم .

وتبت اللجنة في التظلم خلال ستين يوماً من تاريخ عرضه عليها أو من تاريخ استيفاء الإيضاحات التي طلبتها علي حسب الأحوال .

وتكون قرارات اللجنة بالبت في التظلم نهائية ونافذة .

#### إخطار صاحب الشأن نتيجة فحص التظلم :

يخطر مكتب التظلمات صاحب الشأن بصورة معتمدة من قرار اللجنة بالبت في التظلم والأسباب التي بني عليها وذلك بكتاب موصي عليه بعلم الوصول .

## التحكيم

### اللجوء إلى التحكيم الزامي :

الزم القانون ان يتم الفصل في المنازعات الناشئة عن تطبيق أحكام قانون سوق رأس المال ولائحته التنفيذية فيما بين المتعاملين في مجال الأوراق المالية عن طريق التحكيم دون غيره ، بمعنى أنه لايجوز رفع الدعوي أمام المحاكم بهذا الشأن وإلا حكمت المحكمة بعدم قبولها .

### تشكيل هيئة التحكيم :

تشكل هيئة التحكيم بقرار من وزير العدل برئاسة أحد نواب رؤساء محاكم الاستئناف وعضوية محكم عن كل من طرفي النزاع ، وإذا تعدد أحد طرفي النزاع وجب عليهم اختيار محكم واحد .

### نفاذ حكم التحكيم والطعن فيه :

في جميع الأحوال تكون أحكام هيئات التحكيم نهائية وناقذة ما لم تقرر محكمة الطعن وقف تنفيذها .

ويكون الطعن في الأحكام التي تصدرها هيئة التحكيم أمام محكمة الاستئناف المختصة.

### رسوم التحكيم :

يودع طالب التحكيم خزانة الهيئة عند تقديم طلب التحكيم الرسوم المستحقة ومصروفات التحكيم .

وتكون مصروفات التحكيم وفقاً لقيمة كل نزاع على النحو الآتي :

حتى ٥٠ ألف جنيه .	٢٠٠٠ جنيه مصري
أكثر من ٥٠٠٠٠٠ وحتى ١٠٠ ألف جنيه	٣٠٠٠ جنيه مصري
أكثر من ١٠٠٠٠٠ وحتى ٢٠٠ ألف جنيه	٤٠٠٠ جنيه مصري
أكثر من ٢٠٠٠٠٠٠ وحتى ٥٠٠ ألف جنيه	٥٠٠٠ جنيه مصري
أكثر من ٥٠٠٠٠٠٠ وحتى مليون جنيه	٦٠٠٠ جنيه مصري
أكثر من مليون جنيه مصري	١٠٠٠٠٠ جنيه مصري

وإذا كان النزاع موضوع التحكيم غير مقدر القيمة استحق عليه مصروفات تحكيم مقدارها خمسة آلاف جنيه مصري .

ويحدد الحكم الصادر في موضوع التحكيم الطرف الثاني الذي يلتزم برسوم ومصروفات وأتعاب التحكيم .

#### تحديد نظر التحكيم :

يقوم رئيس هيئة التحكيم خلال عشرة أيام من تاريخ اختيار الخصوم لمحكميهم بتحديد ميعاد الجلسة التي ينظر فيها النزاع ومكان انعقادها ، وعلى مكتب التحكيم إعلان جميع الخصوم بميعاد ومكان الجلسة المحددة لنظره قبل هذه الجلسة بأسبوع علي الأقل .

وقد تم تجهيز مكتب للتحكيم بمقر الهيئة العامة لسوق المال .

#### إعلان الأوراق المتعلقة بالتحكيم :

يكون إعلان جميع الأوراق المتعلقة بالتحكيم والأخطارات التي يوجهها مكتب التحكيم برقياً أو بالبريد المسجل المستعجل مع علم الوصول .

**نظر النزاع :**

تنظر هيئة التحكيم النزاع علي وجه السرعة ودون تقيد بقواعد قانون المرافعات المدنية والتجارية إلا ما تعلق منها بالضمانات والمباديء الأساسية في التقاضي ، وعليها أن تصدر حكمها في مدة لا تجاوز شهراً .

وإذا لم يحضر أحد الخصوم بعد إعلانه بميعاد الجلسة ، فلهيئة التحكيم أن تقضي في النزاع في غيبته .

**طلب التحكيم :**

يجب أن يبين في طلب التحكيم أسماء الخصوم وممثليهم القانونيين ، واسم المحكم وموضوع النزاع وطلبات المدعي ، ويرفق بالطلب جميع المستندات المؤيدة له ، وما يفيد سداد رسم التحكيم .

**مكتب التحكيم :**

ينشأ بالهيئة مكتب للتحكيم يتولي تلقي طلبات التحكيم وقيدتها ، وعليه خلال أسبوع من تاريخ تلقي الطلب إخطار الطرف الآخر بصورة من الطلب لاختيار محكم له خلال أسبوعين من تاريخ إخطاره ، فإذا إنقضت هذه المدة دون إبلاغ المكتب باسم المحكم الذي اختاره وصفته وعنوانه ، قام وزير العدل باختيار مستشار من إحدى الهيئات القضائية محكماً عنه .

**صدور حكم التحكيم :**

يصدر حكم هيئة التحكيم بأغلبية الآراء .

# قوانين الاستثمار وسوق المال

## والشركات والقوانين المرتبطة بها

- (١) دستور جمهورية مصر العربية الصادر عام ١٩٧١ والمعدل عام ١٩٨٠ .
- (٢) قانون التجارة .
- (٣) قانون الشركات المساهمة رقم ١٥٩ لسنة ١٩٨١ .
- (٤) اللائحة التنفيذية لقانون الشركات المساهمة الصادرة بقرار وزير شئون الاستثمار رقم ٩٦ لسنة ١٩٨٢ .
- (٥) قانون شركات قطاع الأعمال العام رقم ٢٠٣ لسنة ١٩٨١ .
- (٦) اللائحة التنفيذية لقانون شركات قطاع الأعمال العام الصادرة بقرار رئيس مجلس الوزراء رقم ١٥٩٠ لسنة ١٩٩١ .
- (٧) قانون ضمانات وحوافز الاستثمار رقم ٨ لسنة ١٩٩٧ .
- (٨) اللائحة التنفيذية لقانون ضمانات وحوافز الاستثمار الصادرة بقرار رئيس مجلس الوزراء رقم ٢١٠٨ لسنة ١٩٩٧ .
- (٩) قانون التأجير التمويلي رقم ٩٥ لسنة ١٩٩٥ .
- (١٠) اللائحة التنفيذية لقانون التأجير التمويلي الصادرة بقرار وزير الاقتصاد رقم ٨٤٦ لسنة ١٩٩٥ .
- (١١) قانون الضرائب علي الدخل رقم ١٥٧ لسنة ١٩٨١ .
- (١٢) اللائحة التنفيذية لقانون الضرائب علي الدخل الصادرة بقرار وزير المالية رقم ١٦٤ لسنة ١٩٨٢ معدله بالقرار رقم ٨٩٨ لسنة ١٩٩٤ (الضريبة الموحدة) .
- (١٣) قانون الجهاز المركزي للمحاسبات رقم ١٤٢ لسنة ١٩٨٨ .
- (١٤) قانون سوق رأس المال رقم ٩٥ لسنة ١٩٩٢ .
- (١٥) اللائحة التنفيذية لقانون سوق رأس المال الصادرة بقرار وزير الاقتصاد رقم ١٣٥ لسنة ١٩٩٣ .
- (١٦) قانون هيئات وشركات القطاع العام رقم ٩٧ لسنة ١٩٨٣ .

- (١٧) اللائحة التنفيذية لقانون هيئات وشركات القطاع العام الصادرة بقرار رئيس الجمهورية رقم ٩٠ لسنة ١٩٨٥ .
- (١٨) قانون السجل التجاري رقم ٣٤ لسنة ١٩٧٦ .
- (١٩) اللائحة التنفيذية بشأن السجل التجاري الصادرة بقرار وزير التجارة رقم ٩٤٦ لسنة ١٩٧٦ .
- (٢٠) قانون الغرف التجارية رقم ١٨٩ لسنة ١٩٥١ ولائحته التنفيذية .
- (٢١) القانون رقم ١ لسنة ١٩٧٣ بشأن المنشآت السياحية .
- (٢٢) القانون رقم ٣٨ لسنة ١٩٧٧ في تنظيم الشركات السياحية .
- (٢٣) القانون رقم ٥٩ لسنة ١٩٧٩ في شأن المجتمعات العمرانية الجديدة .
- (٢٤) القانون رقم ٥٥ لسنة ١٩٥١ في شأن الأسماء التجارية .
- (٢٥) القانون رقم ٣٨٨ لسنة ١٩٥٣ في شأن الدفاتر التجارية .
- (٢٦) القانون رقم ٣٨ لسنة ١٩٩٤ في شأن تنظيم التعامل بالنقد الأجنبي ولائحته التنفيذية .
- (٢٧) القانون رقم ١٤٣ لسنة ١٩٨١ في شأن الأراضي الصحراوية ولائحته التنفيذية .
- (٢٨) القانون رقم ١٠ لسنة ١٩٨١ في شأن الاشراف والرقابة علي هيئات التأمين .
- (٢٩) القانون رقم ١٦٣ لسنة ١٩٥٧ في شأن البنوك والائتمان ولائحته التنفيذية .
- (٣٠) القانون رقم ١٢٠ لسنة ١٩٧٥ في شأن البنك المركزي المصري ولائحته التنفيذية .
- (٣١) القانون رقم ٢٠٥ لسنة ١٩٩٠ في شأن سرية الحسابات .
- (٣٢) قرار رئيس الجمهورية رقم ٥١ لسنة ١٩٩٧ بالأحكام المنظمة لإدارة بورصتي الأوراق المالية بالقاهرة والاسكندرية وشئونها المالية .

# **Investment Banking Services for Egypt**

## **GUIDELINES FOR ESTABLISHING** **A MODEL DATA ROOM**

**IBTCI/USAID**  
**Investment Banking Project Team**

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## **I. DEFINITIONS**

### **Adjusted Replacement Value**

One method of determining the value of an affiliate company's assets is the replacement cost method adjusted for applicable depreciation and obsolescence.

### **Advertising for Bidders**

Once the affiliate company has been prepared for sale, the Holding Company will announce its invitation to prospective anchor/strategic investors to submit their competitive bids.

### **Affiliate Company (“AC”)**

An operating public sector company, incorporated in accordance with the provisions of the Privatization Law 203 of 1991. Majority ownership is controlled by a Holding Company

### **Anchor Investor**

A business enterprise that strategically invests in and actively participates in the management and operation of companies that are targeted for acquisition.

### **Central Auditing Authority (“CAA”)**

A governmental agency that is responsible for the external auditing of public sector companies.

### **Confidentiality Letter**

Prior to allowing the representatives and advisors of the prospective anchor/strategic investors access to the Data Room and proprietary and sensitive information relating to the affiliate company, the Holding Company will enter into a confidentiality agreement with the prospective investors. The object of such an agreement is to protect secret and sensitive company information.

### **Data Room**

In addition to the information provided to the bidders in the Information Memorandum, additional information is being made available for inspection by short-listed bidders in a Data Room located at the offices of the AC, to assist the prospective strategic investors in the valuation process. The Data Room contains original records, books, documents and data relating to the AC.

### **Discounted Cash-Flow**

An analysis used to estimate a company's value based on the *Present Value* of its forecasted cash flow.

### **Due Diligence**

The process of a detailed and a comprehensive audit and verification by the representatives and professional advisors of prospective investment advisors of information and data relating to the AC on sale.

## **Evaluating Bids**

Prior to receipt of bids, the HC forms a Bid Evaluation Committee, which will review all the bids received and make recommendations to the HC Board of Directors on how to proceed. ***The HC should seek at this stage to reduce the number of participants to limited number of preferred bidders, who would be allowed to gain access to further confidential information in the Data Room.***

## **Fact Sheet**

A short summary of the financial position and result of operations of the AC over the recent two to three years.

## **Final Negotiations**

If there are major discrepancies and other matters which could arise during the process of due diligence inspections, the prospective investor discuss them, and should some amendments be introduced as a result thereof, such amendments should be made to the draft contract.

## **Holding Company (“HC”)**

A holding company incorporated in accordance with the provisions of the privatization law 203 of 1991. Holding Companies substitute the Public Sector Organizations. The holding company was purposefully created and organized with the specific objective of preparing the ACs under their umbrella, temporarily brought under their ownership, for privatization and sale.

## **Information Memorandum**

A private placement sales document which contains detailed information relating to the AC's history, financings, operations, markets, facilities, etc.

## **Public Sector Company**

A company which is majority owned by a state or a governmental body.

## **Solicited Offer**

An offer made by a prospective investor in response to an organized public invitation to bid.

## **II. INTRODUCTION**

### **What is a Data Room?**

Beside the initial information provided prospective strategic investor bidders at the start of the tendering process, additional information is afforded the Preferred Bidders' advisors through accessibility to all the original records, books and documents relating to the Affiliate Company ("AC"). The Data Room is a designated separate physical space within the premises of the AC.

A Data Room houses, in a proper Librarian setting, all the original records, books and documents (including the different types of contracts and outstanding agreements) relating to the AC subject of sale. This entails the whole process of gathering, grouping, classifying and administering the entry and access to all the records, books and documents relating to the AC.

### **What is the function of a Data Room?**

The grouping of all relevant original documentation relating to an AC, subject of sale, assists the Preferred Bidders' advisors in carrying out *Due Diligence* in the most efficient manner, by making available to them all the information needed for inspection in one well attended central setting. This would assist the Preferred Bidders in the preparation of final bids for the purchase of the AC on sale.

Exhibit I, *A Flow Diagram of the Tendering Process*, illustrates the centrality of the Data Room in the process of tendering for the successful sale of an AC. As the flow diagram shows, this is evident in the sub-processes in the blocks entitled: *Bidding Process* and *Conclusion of Sale*.

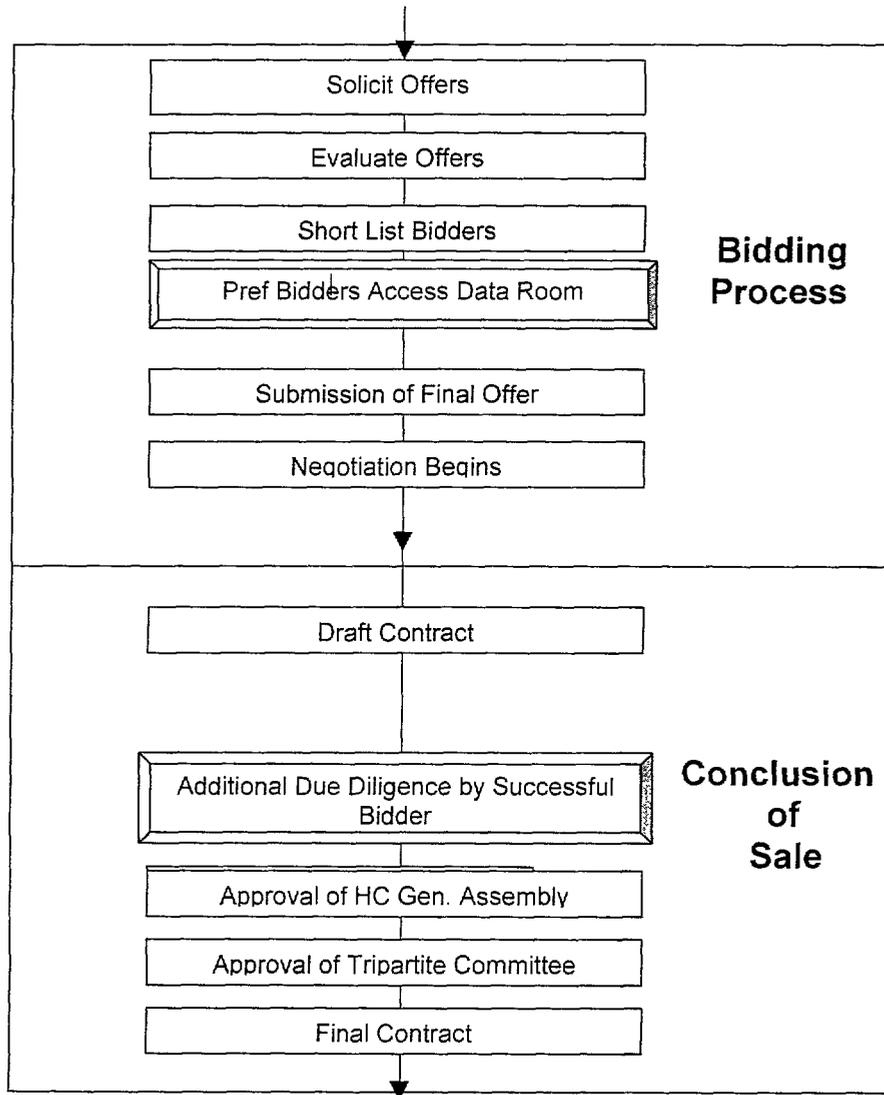
### **What are the contents of a Data Room?**

The Data Room will include a compilation of all the legal, financial, accounting, commercial, technical and administrative records, books and documents relating to the AC's operations. Appendix-I outlines the standard documents found in a model Data Room. The contents vary from one company to another depending on the type of industry and the particulars of the company. Notwithstanding requirements of full disclosure, the privatization executive at the HC reserves the right to add to, remove or revise any documents in the Data Room. Documents may not be removed from the Data Room. However, copies of certain of the documents may be requested from the Data Room manager. ***The Privatization executive at the HC is to determine the documents the prospective investor may copy.***

*(A few lines in this section are drawn from an Arthur Andersen Document Prepared for the MPE/PEO in an earlier project)*

### Exhibit I

## A Flow Diagram of the Tendering Process



### **III. THE FLOW PROCESS FOR CREATING A DATA ROOM**

Exhibit II illustrates the flow process for creating a model Data Room.

#### **A. Designating the AC as a candidate for privatization**

It is considered premature to commence the steps to creating a Data Room before a definite plan to privatize the Affiliate Company under consideration, as evidenced by the final approval of the general Assembly of the HC.

#### **B. Launching of a comprehensive financial and technical audit**

It is ideal that upon the stamping of the seal of approval by the general assembly of the HC to privatize the Affiliate Company, that a thorough and a comprehensive external financial and technical audit be conducted on the company by the Central Auditing Authority (“CAA”), especially if more than three months have elapsed since the last audit.

Undertaking this audit with the view of preparing the company for privatization could result in a more keen examination of the available information, and the verification of data to assure complete and detailed representation of the facts.

#### **C. Taking a decision to create a Data Room**

Data Rooms are temporary arrangements to facilitate the process of due diligence during the tendering period to sell the company, and thus expedite the process of its privatization. The creation of a stand-alone data room could commence as early as two months prior to advertising for the invitation to tender. On the assumption that the tendering period and conclusion of sale could extend additional three months, then the separate existence of a data room, as a standalone, could vary between four to five months.

Upon the conclusion of sale, all the records, books and documents then would revert to their original locations at the different departments within the company.

#### **D. Produce a checklist of the documentation to be contained in the Data Room**

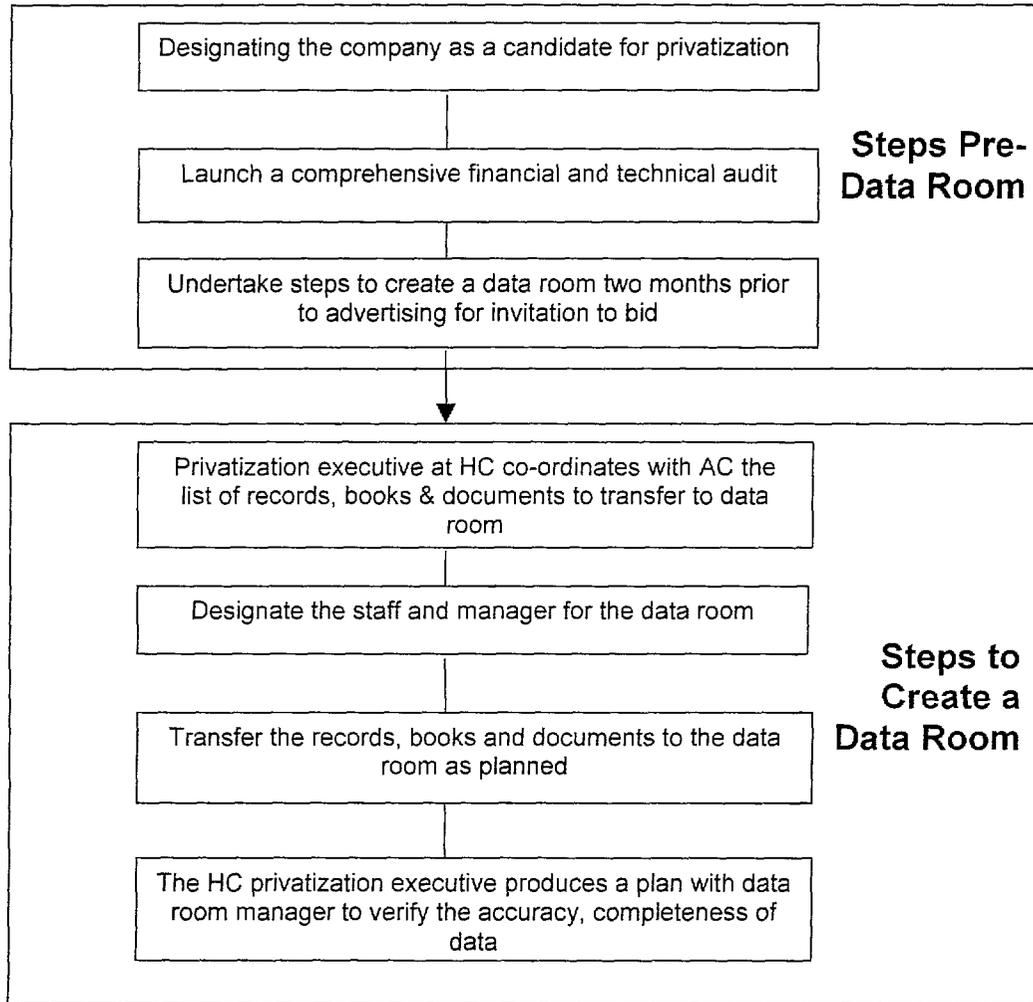
The privatization executive of the Holding Company calls for a meeting with the management of the Affiliate Company to discuss and produce an exhaustive checklist of all documentation to be compiled in the data room. It is preferable to design the appropriate formats to compile the necessary data and information to take account of all the documents to be included and a very orderly manner.

It is preferable to design the formats so it would make for easy codification and classification of the designated documents in a manner that would correspond to their proper filing and shelving system, and that would make for easy retrieval and reference.

The formats also, with the thought-through codification system, should facilitate their entry into a dedicated personal computer that would be located at the data room proper, and for the sole use of the manager and staff of the data room.

## Exhibit II

### The Flow Process for Creating a Data Room



### **E. Designate and Appoint the Manager and the Staff for the Data Room**

Upon the decision to create a data room, the privatization officer at the Holding Company will coordinate with the management of the Affiliate Company to designate and appoint a dedicated manager, and a dedicated staff for the data room.

Given the fact that the duration of the data room is for only a few months, and given the fact that the manager and the designated staff members of the data room have to be very knowledgeable and quite conversant with the details pertaining to the different respective documentation in the data room, and the history of the company, it is practical for these personnel to be employees of the company.

The manager and the staff of the data room would be seconded "on loan" to the data room to assist in its creation and operation. The manager should be a senior staff- member within the company, and someone who commands respect, authority and wide knowledge of the various aspects of the company's operations and businesses.

The other staff members, two to four, depending on the size of the task, would oversee the records, books and documents in the data room that correspond to their areas of specialization. The legal documentation, and personnel would preferably be attended by a staff member of the legal department in the company. Finance and accounting would be overseen by a staff member who works in the finance and accounting department. An engineer/architect would oversee the documentation relating to the technical and production aspects of the operations of the company.

Finally, it would be preferable, naturally depending on the size and level of sophistication of the company's operations, a computer operator could be employed to enter all the documentation to be housed in a data room into a personal computer. This same person could participate in the design and implementation of a librarian-like codification and classification system for the entry of the names, types and number of the documentation to be stored in the data room.

During the existence of the data room, the manager and staff of the data room report to and are accountable to the privatization executive at the Holding Company.

Upon the conclusion of sale, the manager and the staff of the data room revert to their original positions in the company where they served prior to the creation of the data room.

### **F. Designate and allocate the space within the AC offices, and plan the layout, the storing system and all attendant logistics for a stand-alone Data Room**

The function of a data room is in many ways similar to that of a library. The data room is sought by individuals who want to conduct research. These individuals are often specialized advisors to the preferred bidders, the prospective strategic/anchor investors. The research they conduct is termed in the jargon of investment banking and privatization experts: *due diligence*.

These experts and advisors show up in the data room in droves of as few as 3 people at a time, and sometimes as many as 6, 7 or 8, depending on the size, nature of the transaction and the type of investor.

Sometimes as many as 7 or 8 prospective bidders are short listed as Preferred Bidders with right of access to the data room. This would mean that sufficient space, proper seating, proper filing and retrieving systems, proper lighting and acceptable furniture, desks, tables, photocopying and writing facilities ought to be afforded the users of the data room.

The privatization executive at the holding company would need to plan, before hand with the management of the affiliate company, the space layout, and the logistical requirements for the data room. Each situation warrants its own requirements for space and logistics. The privatization executive from the holding company would decide with the management of the affiliate company the more optimal utilization of space and available resources towards the realization of the objective for which the data room is intended.

Moreover, organizing and scheduling visits by the Preferred Bidders' advisors becomes a necessary task in order to avoid overcrowding, and undesirable untimely interaction between competing bidders.

#### **G. Transfer the records, books and documents to the designated area for a data room**

Based on the aforementioned plans, the designated manager of the data room and his staff, under the auspices of the privatization executive at the holding company, and in close coordination with the management of the affiliate company, oversee the transfer of all relevant documentation for the purpose of due diligence, from their respective places in the various departments at the company to the designated space for the data room.

Detailed and exhaustive checklists containing all the documentation to be transferred to the designated space of the data room are to be prepared properly, with accompanied signed minutes of meetings evidencing the transfer of custody of such documents from their respective departments to the custody of the care takers of the data room.

The privatization executive at the holding company, in coordination with the management of the affiliate company is responsible for issuing the manager of the data room with set of instructions and the procedures to duly carry out this particular exercise.

#### **H. Producing a plan for the verification of the accuracy, completeness and timeliness of the available data in the Data Room**

The purpose of the data room is to expedite the process of the sale of an affiliated company by facilitating the process of due diligence to be carried out by the advisors of the preferred bidders.

One aspect of expediting the process of sale is to provide to the prospective investor's advisors all the information they need to examine and inspect, very accurately, completely and in good up-to-date timeliness.

Inaccurate, incomplete and not up-to-date information could very well defeat the purpose of creating a data room in the first place. This could result in unnecessarily prolonging the process of due diligence, delaying the consummation of the transaction, and in freezing significant funds in retention and escrow accounts. In extreme situations this could result in the cancellation of the deal and failure of the sale. However, to provide investors' representatives with unverified inaccurate information could be tantamount to a fraudulent act of misrepresentation for which the management of the company could held liable.

Often investment promoters/advisors acting on behalf of the seller tend to absolve themselves from the rise of eventualities of misrepresentation by obligating the management to sign a form of a Management Representation Letter, very much along the lines of what is illustrated in Appendix-II.

As the text of the letter amply demonstrates, the management is under the obligation to provide accurate, complete and an up-to-date information and data to prospective bidders. **Moreover, and as a general rule, any information provided to anyone prospective bidder, should, by for reasons of transparency, be provided to all prospective bidders.**

The privatization executive at the holding company needs to produce, in coordination with the manager and the staff of the data room, a plan for the verification of the accuracy, completeness and timeliness of the data and information contained in all the records, books and documents in the data room. Besides, the plan should review the authentication and the inclusion of all the modifications that might be warranted by changing events, and that often touches on the various aspects of a company's operations over the expanse of a long stretched history.

Appendix III throws some light on some examples of the kind of verification, a kind of a mini internal due diligence, that can be conducted to try make sure that the information and data are accurate, complete and are up-to-date.

## **VI. ORGANIZATIONAL STRUCTURE OF A DATA ROOM**

As Exhibit III illustrates, the organization of the Data Room is headed by the manager of the Data Room. He has direct authority over a specialized staff of three to four people. They are the staff member in charge of legal matters; the staff member in charge of financial matters; and the staff member in charge of technical information and data. A librarian/computer operator oversees the organizing, codifying, and classifying all kind of records, books, documents and files. He/she also operates the computer as an aid tool to enter the information that would facilitate the filing and retrieving of the stored more readily and more orderly.

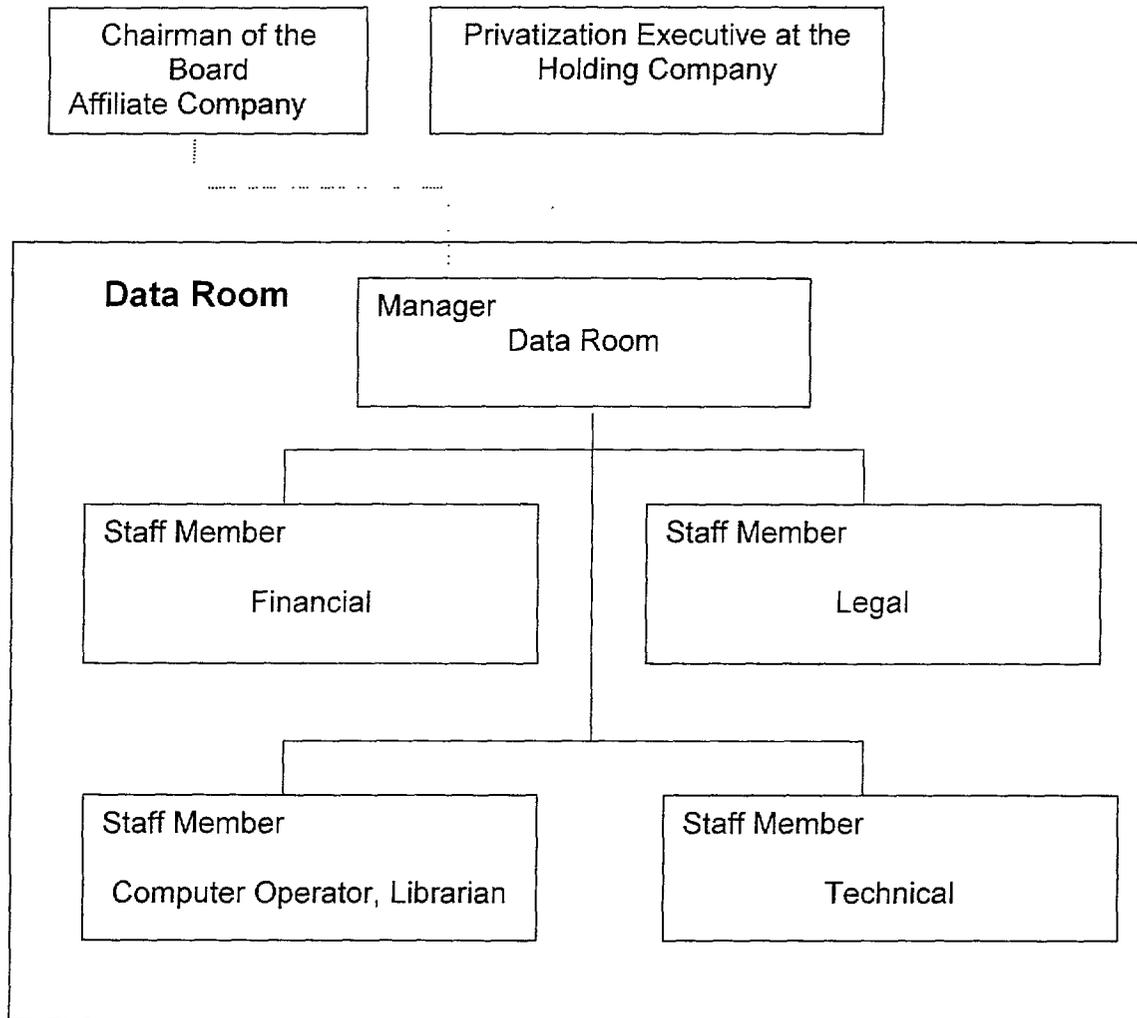
The manager of the Data Room reports directly to the privatization executive in the holding company, during his temporary assignment as manager of the Data Room. He/ she coordinates with the chairman of the board of the affiliate company in all matters relating to keeping the documentation and availability of all information and data relating to the affiliate company in good order.

The manager of the Data Room should be an executive of the affiliate company with well-rounded knowledge of all aspects of company operations. He/ she should be a good public relations person who would confidently call on all the necessary governmental bodies, agencies and various specialist authorities, and other executives of the affiliate company, if needed to put in good order all the information to facilitate and expedite the process of due diligence.

The manager of the Data Room is assisted in the carrying out of each specialized work by the staff member specialized in that respective area of concern.

### Exhibit III

## Organizational Chart for the Data Room



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## **V. MODUS OPERANDI: Gaining Access To The Data Room**

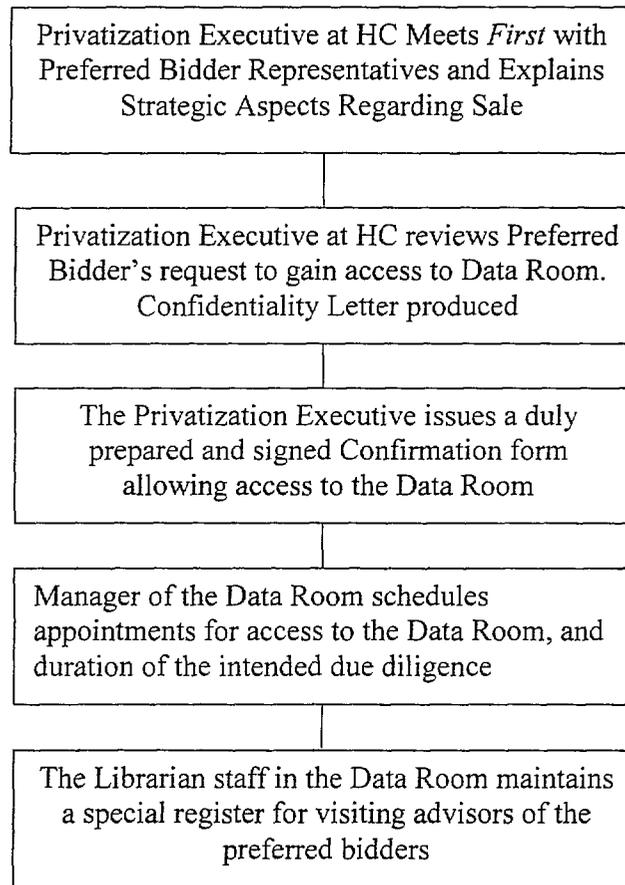
Exhibit-IV illustrates, in a flow diagram fashion, the procedure for the representatives and the professional advisors of the preferred bidders to gain access to the Data Room.

- *Firstly*, the duly authorized representatives of the preferred bidders need to start with the privatization executive at the Holding Company. He/she would discuss with the bidders' representatives strategic matters relating to the sale of the affiliate company subject of the tender. Fact Sheets could be handed out during this meeting. The privatization executive at the holding company, in consultation with the chairman of the board of the holding company and the tender evaluating committee and other executives determine the short list of preferred bidders, and who should gain access to the Data Room for the conduct of due diligence.
- The privatization executive at the Holding Company directs the preferred bidders' advisors to issue the Holding Company with a duly executed "Confidentiality Letter," in the content and form that satisfies the requirements of the Holding company. Appendix-IV suggests some points to include in such a letter.
- Once fully satisfied with the legal enforceability of the delivered "Confidentiality Letter," the privatization executive at the Holding Company will then issue the preferred bidder representatives/professional advisors with a "Confirmation," allowing them access to the data room. Such a confirmation would be typed on a form carrying the letterhead of the holding company. A reference number traceable to a central register of outgoing mail, should be indicated on such a form. The full names, I.D. numbers of the persons allowed access to the Data Room should be provided in the Confirmation, along with the professional firms they are employed by, and the preferred bidder that they are representing in this assignment of due diligence.
- It is preferable that a copy of the Confirmation is kept by each representative authorized access to the Data Room. The original of the Confirmation is sent to the Manager of the Data Room.
- The manager of the Data Room schedules appointments for the representatives of the preferred bidders. The Data Room office hours very much follows those of the Holding Company, usually from 9:00 a.m until 5:00 p.m.
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### A Flow Diagram

#### Modus Operandi: *Gaining Access to the Data Room*



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## Appendix – I

### The Contents of a Data Room

A Data Room generally contains the following standard records and documents:

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- Articles of Association.
- Key customer contracts.
- Leasing contracts.
- Employees contracts
- Minutes of Board of Directors meetings (including general assembly where relevant).
- Intellectual property, trademarks, copyright agreements, permits and licenses.
- Management service contracts.
- Details of any outstanding or pending litigation.
- Details of joint venture agreements, franchises, agencies or partnerships between the AC and third other parties.
- Commercial registry.
- Deeds of land and buildings ownerships.
- All contractual agreements to which the AC is a party.
- The AC's by-laws.
- Evidence of establishment of the Union of Shareholding Employees.
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- All legal books.
- Insurance policy contracts.
- Loan agreements, and all financings agreements.
- Personnel policies.

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- Tax returns records for the past five years, and current status of outstanding tax returns (all taxes pertaining to income, sales, stamp duties, custom duties, real estate, etc.).
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- The amounts in dispute subject of litigation could have a great impact on the realizable price of the company.
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- Because of Nationalization in 1961, the ownership deeds and other pertinent ownership documentation may not be in proper order.
- This subject should receive the utmost attention and action by the privatization executive in close cooperation of the manager of the data room. They should personally oversee the verification of the accuracy, authentication, and planned follow up to put in good order all the deeds of ownership of company's assets, mainly the real estate. The plan should entail a provision for field inspection to ensure conformity of the real with what exists in the company records. In particular, the company inspectors should be wary of infringements on property rights brought about by easements and rights of ways and other myriad contingencies not accounted for in the company's records.

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**Insurance Policies**

- Ensure that all relevant types of insurance policies (fire, buildings, theft, etc.) are in good order and are enforceable.
- Verify that all premiums due should be promptly paid, and any outstanding disputes urgently addressed.

**Contractual Obligations**

- All kinds of contractual agreements and obligations to which the company is a party, must be very clearly and openly disclosed.
- The company should freeze and refrain of causing any changes in its contractual obligations starting the date the Tender for the sale of the company is announced.

**The Environment and Conditions of Labor**

- The manager of the data room should initiate action, in full co-ordination with the privatization executive, to reconcile the company's situation with regards to observance of the laws and regulations en force that pertain to the protection of the environment, especially Law 4.
- Foreign investors are extremely sensitive to the issues of environmental protection. The company on sale should not take its adherence to environmental protection laws and regulations lightly.
- Labor conditions, observing the protective laws to refrain from employment of child labor, and other related social issues should be fully observed by the company being prepared for sale.

**Trademarks & Intellectual Property**

- Insure the proper registration and validity of the trademarks, patents and all other intellectual properties in a manner that protects, unequivocally, the rights of the company at all times.
- The manager of the data room of the affiliate company on sale ought to designate one of his staff members, preferably legal, to administer this function.

**Suppliers, Agencies & Distributors**

- The manager of the data room should oversee that the affiliate company subject of sale should dispose at all times of a register that lists, up-to-date, in very clear terms, the agencies that the company is party to, the list of main suppliers and list of all the distributors.

**Inventory**

- Establish a realistic basis for the valuation of the inventory Book value could be non-representative of the market reality.

## **Leases**

- Certain special attention should be paid to the validity of lease contracts and their enforceability.
- Certain leases could represent special values to some companies by virtue of locations, durations and right of use. These should be checked regularly, and administered closely by the company which otherwise might find itself in default, thus foregoing a valuable intangible asset. The manager of the data room needs to check for the validity of all leases.

## **Company By-laws**

- Very special attention should be paid to the company's by-laws. The company should try to reconcile its by-laws, without prejudice to its binding obligations, especially to its labor force and employees, with the requirements that would facilitate the sale, and not place unnecessary undue burden on the acquiring party. The manager of the data room and his legal staff member, in close coordination with the privatization executive, should see to this.
- The company should refrain from changing the by-laws intentionally in advance of sale, in a manner to pass additional uncalled for benefits to the employees. No changes should be introduced to the company's by-laws effective the date of announcement for invitation to tender.

## **Company's History**

- A chronological narration that takes full account of all the events and developments that might have affected the statuses of the company, and those that have effected it materially since the company's inception to-date, especially in view of transfer of ownership and changing of legal situation, must be meticulously recorded and updated in accordance with original documentation.

## **Financial Statements**

- The manager of the data room assisted by the financial staff member, should verify, in coordination with the company's financial manager, that all the historical financial statements for the past five years are complete, and that they are duly audited.
- The financial statements should be produced to General Accepted Accounting Standards, and the requirements of the CAA.

## **Information Memorandum**

- All the information to be contained in the Information Memorandum will originate from the records, books and documents in the custody of the data room.

## Appendix IV

### A Sample Text of A Confidentiality Letter

To enable serious prospective investors to ascertain whether they wish to invest in the affiliate company subject for sale, the advisors of such investors would need to gain access to all kinds of confidential and proprietary information relating to the affiliated company.

Prior to allowing the investors' representatives to gain access to the Data Room, the privatization executive of the holding company would need to be served with a duly executed confidentiality letter from the investor. The text of such a letter reads in essence as follows:

- That all information provided, whether written or oral, including among others all technical and business information relating to design, engineering, manufacturing, marketing and distribution of products relating to the company, are confidential and are the property of the affiliate company.
- The prospective investor solemnly attests to maintain the information provided his representatives in confidence, and use it only for the purpose of considering whether to invest in the equity of the affiliate company, and not to make any commercial use of it, or use the information for the benefit of the investor or to the benefit of a third party.
- The prospective investor undertakes not to copy, reproduce or distribute any part of the information, except where it is warranted for the purposes of evaluating the affiliate company. However, any copies, reproductions remain the property of the company.
- The prospective investor undertakes to only release the information in confidence to employees, officers, directors, agents and professional advisors, whose duties justify the need to know. The prospective investor shall undertake that all such persons indicate their agreement that they are bound by the terms of the letter of confidentiality prior to being shown or exposed to the information relating to the affiliate company. The prospective investor stands ready to produce such agreement if requested by the affiliate company's representatives.
- The confidential information shall be disclosed in documentary form marked confidential.
- The prospective advisor, or any of his/her representatives or advisors shall not approach, without the written consent of the holding company, any person who is deemed connected in any way with the affiliate company or its suppliers other than the designated privatization staff, and the advisors who have been nominated by the holding company for the purpose of discussions with the holding company.
- At any time, and upon the request of the holding company or on conclusion of the evaluation by the prospective investor of the affiliate company, the prospective investor confirms that he/she will return or undertake to return of each and every copy of information given by the holding company, and within five working days of demand.

*(With the courtesy of Arthur Andersen)*

## **V. MODUS OPERANDI: Gaining Access To The Data Room**

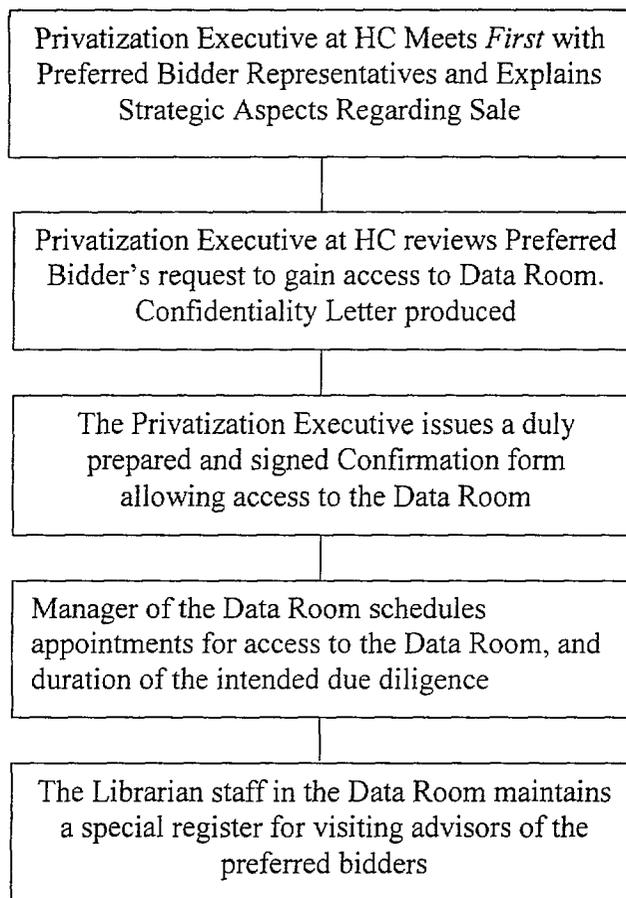
Exhibit-IV illustrates, in a flow diagram fashion, the procedure for the representatives and the professional advisors of the preferred bidders to gain access to the Data Room.

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- Insure the proper registration and validity of the trademarks, patents and all other intellectual properties in a manner that protects, unequivocally, the rights of the company at all times.
- The manager of the data room of the affiliate company on sale ought to designate one of his staff members, preferably legal, to administer this function.

### **Suppliers, Agencies & Distributors**

- The manager of the data room should oversee that the affiliate company subject of sale should dispose at all times of a register that lists, up-to-date, in very clear terms, the agencies that the company is party to, the list of main suppliers and list of all the distributors.

### **Inventory**

- Establish a realistic basis for the valuation of the inventory. Book value could be non-representative of the market reality.

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### **Leases**

- Certain special attention should be paid to the validity of lease contracts and their enforceability.
- Certain leases could represent special values to some companies by virtue of locations, durations and right of use. These should be checked regularly, and administered closely by the company which otherwise might find itself in default, thus foregoing a valuable intangible asset. The manager of the data room needs to check for the validity of all leases.

### **Company By-laws**

- Very special attention should be paid to the company's by-laws. The company should try to reconcile its by-laws, without prejudice to its binding obligations, especially to its labor force and employees, with the requirements that would facilitate the sale, and not place unnecessary undue burden on the acquiring party. The manager of the data room and his legal staff member, in close coordination with the privatization executive, should see to this.
- The company should refrain from changing the by-laws intentionally in advance of sale, in a manner to pass additional uncalled for benefits to the employees. No changes should be introduced to the company's by-laws effective the date of announcement for invitation to tender.

### **Company's History**

- A chronological narration that takes full account of all the events and developments that might have affected the statuses of the company, and those that have effected it materially since the company's inception to-date, especially in view of transfer of ownership and changing of legal situation, must be meticulously recorded and updated in accordance with original documentation.

### **Financial Statements**

- The manager of the data room assisted by the financial staff member, should verify, in coordination with the company's financial manager, that all the historical financial statements for the past five years are complete, and that they are duly audited.
- The financial statements should be produced to General Accepted Accounting Standards, and the requirements of the CAA.

### **Information Memorandum**

- All the information to be contained in the Information Memorandum will originate from the records, books and documents in the custody of the data room.

## Appendix IV

### A Sample Text of A Confidentiality Letter

To enable serious prospective investors to ascertain whether they wish to invest in the affiliate company subject for sale, the advisors of such investors would need to gain access to all kinds of confidential and proprietary information relating to the affiliated company.

Prior to allowing the investors' representatives to gain access to the Data Room, the privatization executive of the holding company would need to be served with a duly executed confidentiality letter from the investor. The text of such a letter reads in essence as follows:

- That all information provided, whether written or oral, including among others all technical and business information relating to design, engineering, manufacturing, marketing and distribution of products relating to the company, are confidential and are the property of the affiliate company.
- The prospective investor solemnly attests to maintain the information provided his representatives in confidence, and use it only for the purpose of considering whether to invest in the equity of the affiliate company, and not to make any commercial use of it, or use the information for the benefit of the investor or to the benefit of a third party.
- The prospective investor undertakes not to copy, reproduce or distribute any part of the information, except where it is warranted for the purposes of evaluating the affiliate company. However, any copies, reproductions remain the property of the company.
- The prospective investor undertakes to only release the information in confidence to employees, officers, directors, agents and professional advisors, whose duties justify the need to know. The prospective investor shall undertake that all such persons indicate their agreement that they are bound by the terms of the letter of confidentiality prior to being shown or exposed to the information relating to the affiliate company. The prospective investor stands ready to produce such agreement if requested by the affiliate company's representatives.
- The confidential information shall be disclosed in documentary form marked confidential.
- The prospective advisor, or any of his/her representatives or advisors shall not approach, without the written consent of the holding company, any person who is deemed connected in any way with the affiliate company or its suppliers other than the designated privatization staff, and the advisors who have been nominated by the holding company for the purpose of discussions with the holding company.
- At any time, and upon the request of the holding company or on conclusion of the evaluation by the prospective investor of the affiliate company, the prospective investor confirms that he/she will return or undertake to return of each and every copy of information given by the holding company, and within five working days of demand.

*(With the courtesy of Arthur Andersen)*

# دليل إرشادي

لتأسيس غرفة معلومات نموذجية

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## تعريف

### قيمة الاستبدال المعدلة:

أحد أساليب تقييم الشركات المبني على تقدير تكلفة استبدال الأصول بأصول جديدة مخصوم منها الإهلاك والأصول غير صالحة الاستخدام.

### الإعلان عن المناقصة:

متى تم إعداد الشركة التابعة للبيع، يتم الإعلان عن مناقصة البيع لدعوة الراغبين من المنافسين من المستثمرين الرئيسيين للحصول على وثائق المناقصة للتقدم بعروض شراء الشركة التابعة.

### الشركة التابعة:

شركة قطاع عام عاملة، تم تسجيلها بموجب قانون الخصخصة لعام ١٩٩١ رقم ٢٠٣ غالبية ملكية الشركة تعود إلى الشركة القابضة، الشركة الأم.

### المستثمر الرئيسي:

مؤسسة اقتصادية التي تقوم بلعب دور رئيسي في إدارة وتشغيل الشركات المستهدفة التي تقوم بالاستثمار بها.

### الجهاز المركزي للمحاسبات:

مصلحة حكومية مسؤولة عن القيام بأعمال المراجعة الحسابية لكافة شركات ومؤسسات القطاع العام.

### خطاب ضمان سرية المعلومات:

قبل الأذن لمندوبي ومستشاري وموظفي المنافسين من المستثمرين الرئيسيين بالدخول إلى واستخدام غرفة المعلومات والاطلاع على الوثائق والمستندات والمعلومات والبيانات التي تخص أعمال ونشاطات الشركة التابعة موضوع مناقصة البيع، تدخل الشركة القابضة المالك الرئيسي للشركة التابعة باتفاقية مع ممثلي المنافسين لضمان الحفاظ على سرية المعلومات والبيانات التي سيقومون بالاطلاع عليها وفحصها. غرض هذا الخطاب هو حماية الشركة التابعة ومصالحها، وذلك بالحفاظ على سرية المعلومات التي تخصها.

### غرفة معلومات:

بالإضافة إلى المعلومات والبيانات الواردة في مذكرة المعلومات التي تقوم الشركة القابضة بتزويدها ضمن وثائق مناقصة البيع، توفر الشركة القابضة لعدد مختار من المنافسين الجديين مهمة الاطلاع على وفحص والتدقيق بالوثائق والمستندات العائدة للشركة التابعة، والتي يتم تجميعها خصيصاً لغرض المراجعة التدقيقية هذا في حين منفصل قائم بذاته ضمن مكاتب الشركة التابعة.

### القيمة بأسلوب حساب الربحية:

أسلوب للتقييم عن طريق خصم التدفقات النقدية المتوقعة (المقدرة) لعدد من السنوات القادمة.

### المراجعة التدقيقية *Due Diligence*:

عملية إجراء مراجعة تدقيقية شاملة للوثائق والمستندات والمعلومات والبيانات العائدة للشركة التابعة موضوع مناقصة البيع وذلك من قبل مندوبي وممثلي ومستشاري القائمة المختصرة من المنافسين من المستثمرين الرئيسيين.

## تقييم العروض:

بعد الإعلان عن فتح باب مناقصة البيع، وقبل استلام عروض الشركات المنافسة الراغبة بالشراء، تقوم الشركة القابضة بتشكيل لجنة لتقييم العروض، والتي ستقوم بمراجعة العروض وعمل التوصيات لمجلس إدارة الشركة القابضة. من الدارج عند هذه المرحلة أن تقوم الشركة القابضة بإعداد قائمة مختصرة تحتوي على عدد محدود من المنافسين الجديين المؤهلين لإتمام البيع.

## صحيفة الحقائق:

معلومات موجزة عن المركز المالي ونتائج أعمال ونشاطات الشركة التابعة للسنوات الاثنتين أو الثلاثة الماضية، والمتضمنة في صفحة واحدة لإعطاء صورة سريعة عن الوضع العام للشركة التابعة موضوع مناقصة البيع.

## المباحثات النهائية:

مباحثات إضافية في المراحل الأخيرة المناقشات لإتمام صفقة البيع ما بين مندوبي الشركة القابضة والمستثمر الرئيسي المختار، يتطلبها ظهور بعض المفارقات الهامة وأمور أخرى غير منظورة إثر الانتهاء من قيام مندوبي ومستشاري المستثمر الرئيسي من إجراء المراجعة التدقيقية لوثائق ومستندات الشركة التابعة. ذلك قد يتطلب إجراء تعديلات على بنود ونصوص مسودة عقد البيع.

## الشركة القابضة:

شركة تم تأسيسها بناء على قانون الخصخصة لعام ١٩٩١ رقم ٢٠٣. الشركة القابضة حلت مكان ما كان يعرف سابقاً بهيئات القطاع العام. تم تأسيس الشركات القابضة خصيصاً لغرض التحضير لخصخصة وبيع شركات القطاع العام التابعة، والتي تنضوي تحت الشركة القابضة على أساس الملكية المؤقتة بانتظار إتمام إجراءات بيع هذه الشركات.

## مذكرة معلومات:

مذكرة بيع تحتوي على معلومات وبيانات مالية، وتسويقية، وفنية تفصيلية عن الشركة التابعة موضوع مناقصة البيع، وكل ماله علاقة بنشاطات وأعمال الشركة وتطورها التاريخي.

## شركة قطاع عام:

شركة مملوكة بالأكثرية من قبل الدولة أو أياً من المؤسسات أو الهيئات الحكومية.

## عروض مقدمة استجابة لإعلان مناقصة *Solicited Offer*:

عروض مقدمة من منافسين من مستثمرين رئيسيين استجابة لمناقصة تمت عن طريق الإعلان العام.

## أ. مقدمة:

### ما هي غرفة المعلومات؟

يحتاج مستشارو المنافسين من المستثمرين الرئيسيين لغرض تقديم عروض الشراء معلومات إضافية عن طريق فحص ومراجعة السجلات والدفاتر والوثائق والمستندات وكافة المعلومات والبيانات الأصلية التي تخص الشركة التابعة المعروضة للبيع. غرفة المعلومات هي عبارة عن حيز ومساحة منفصلة ضمن مكاتب الشركة التابعة يجمع فيها كافة المراجع الأصلية من سجلات، ودفاتر ووثائق ومستندات تتعلق بالشركة التابعة. تعد غرفة المعلومات خصيصاً لغرض تسهيل مهمة القيام بمراجعة وتدقيق المعلومات والبيانات من قبل مندوبي والمستشارين المتخصصين للمنافسين من المستثمرين الرئيسيين المتقدمين لشراء الشركة. تشبه غرفة المعلومات في وضعها النموذجي إلى حد بعيد فكرة المكاتب من حيث التنظيم والترتيب الداخلي، وكيفية تخزين وتشفير والاستدلال على السجلات والدفاتر والوثائق والمستندات وكافة المعلومات والبيانات.

### ما هي مهمة غرفة المعلومات؟

إمكانية تجميع كافة السجلات والدفاتر والوثائق والمستندات والمعلومات ذات الصلة بنشاط وأعمال الشركة التابعة المعروضة للبيع في مكان واحد ومركزية المعلومات يسهل إلى حد بعيد مهمة القيام بأعمال "المراجعة التدقيقية *Due Diligence*" من قبل مندوبي ومستشاري المنافسين من المستثمرين الرئيسيين المتقدمون لشراء الشركة التابعة. ذلك يسهل على المنافسين من المستثمرين الرئيسيين تحضير عروض نهائية لشراء الشركة.

الرسم رقم (١) يبين موقع "المراجعة التدقيقية" ضمن الإجراءات والخطوات المتعددة في عملية مناقصة عرض الشركة التابعة للبيع.

## على ماذا تحتوي غرفة المعلومات؟

تحتوي غرفة المعلومات عادة على مجموعة واسعة من السجلات والدفاتر والوثائق والمستندات والمعلومات والبيانات القانونية والمالية والمحاسبية والفنية بما يتعلق بكافة أعمال ونشاطات الشركة التابعة.

يوضح الملحق رقم (١) المستندات المتوفرة عادة في غرف المعلومات. هذا ويختلف الأمر من شركة إلى أخرى وذلك بحسب طبيعة كل شركة واختلاف أعمالها ونشاطاتها ووضعها العام. يترك لخبير الاختصاص في الشركة القابضة خيار إضافة أو إزالة أو تعديل أية وثيقة في غرفة المعلومات، مع ضرورة مراعاة الشفافية الكاملة. هذا ولا يحق إخراج أية وثائق من غرفة المعلومات من قبل مندوبي ومستشاري الشركات المنافسة. يحق لمندوبي ومستشاري الشركات المنافسة طلب الحصول على نسخ من بعض الوثائق والمستندات في غرفة المعلومات، ويترك لخبير الاختصاص في الشركة القابضة وحده قرار الموافقة على ذلك أو عدمه أو أية وثائق أو مستندات يحق لمستشاري الشركات المنافسة عمل نسخ عنها.

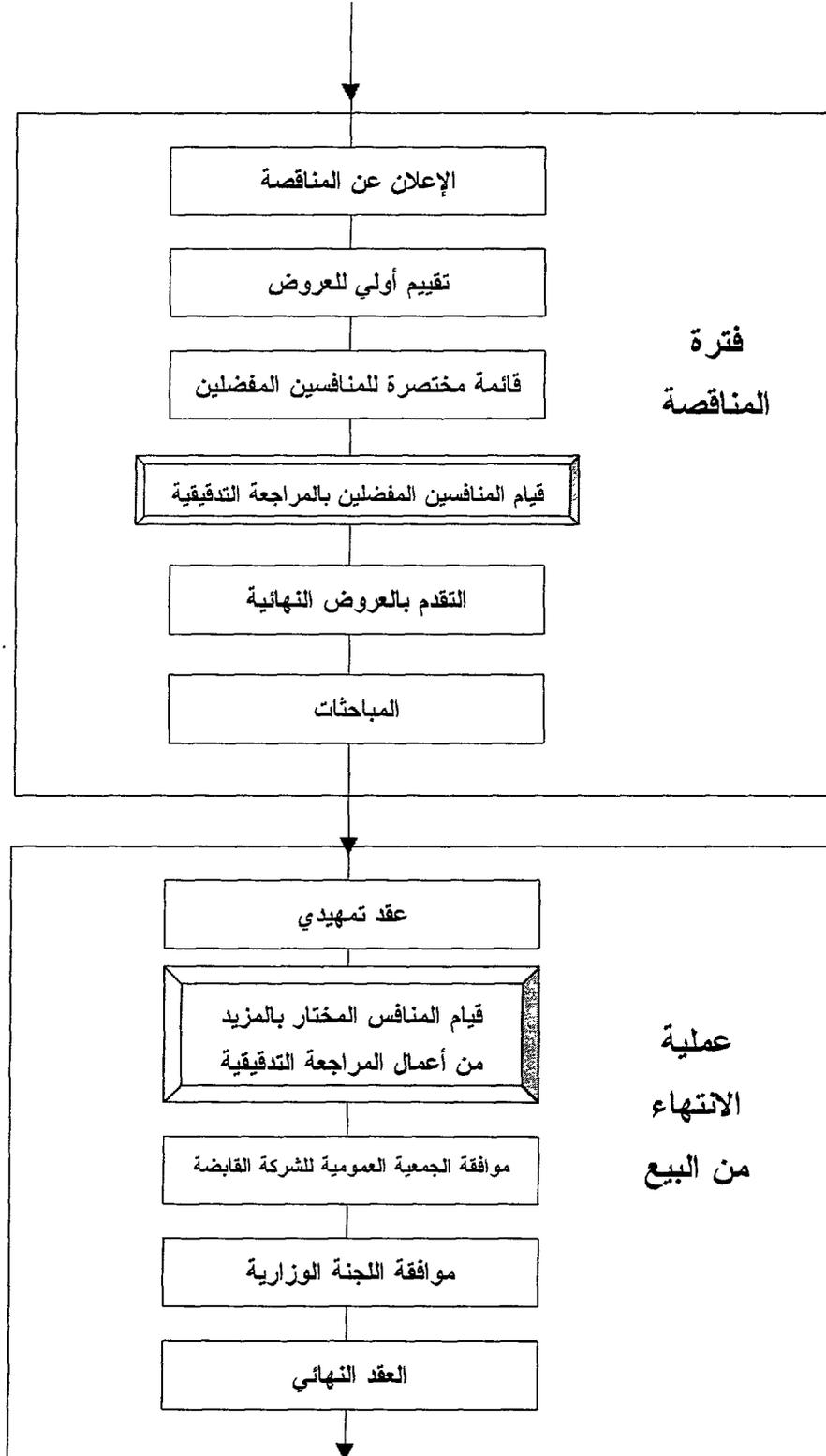
\*\*\*\*\*

(٨)

## رسم (١)

### موقع "المراجعة التدقيقية"

ضمن إجراءات المناقصة لبيع الشركة التابعة



## ب - إجراءات عملية تأسيس غرفة المعلومات:

يبين الرسم رقم (٢) تدرج عملية تأسيس غرفة المعلومات.

### (١) اعتماد الشركة التابعة للبيع:

يباشر في التفكير بتأسيس غرفة المعلومات لدى الشركة التابعة حال قيام الجمعية العمومية للشركة القابضة باعتماد التحضير لعرض الشركة التابعة للبيع.

### (٢) القيام بمراجعة مالية ومحاسبية وفنية شاملة:

من المفضل بغرض تحديث والتأكد من صحة ودقة كافة المعلومات والبيانات المتعلقة بالشركة التابعة، القيام بعمل مراجعة محاسبية ومالية وفنية شاملة، خاصة إذا مضى على المراجعة الأخيرة فترة أكثر من ثلاث شهور.

القيام بأعمال المراجعة لصالح الشركة التابعة يتم في هذه المناسبة من زاوية تحضير الشركة للبيع، ولتسهيل مهمة "المراجعة التدقيقية" لمندوبي ومستشاري المنافسين من المستثمرين الرئيسيين فيما سيتبع.

### (٣) اتخاذ قرار بتأسيس غرفة المعلومات:

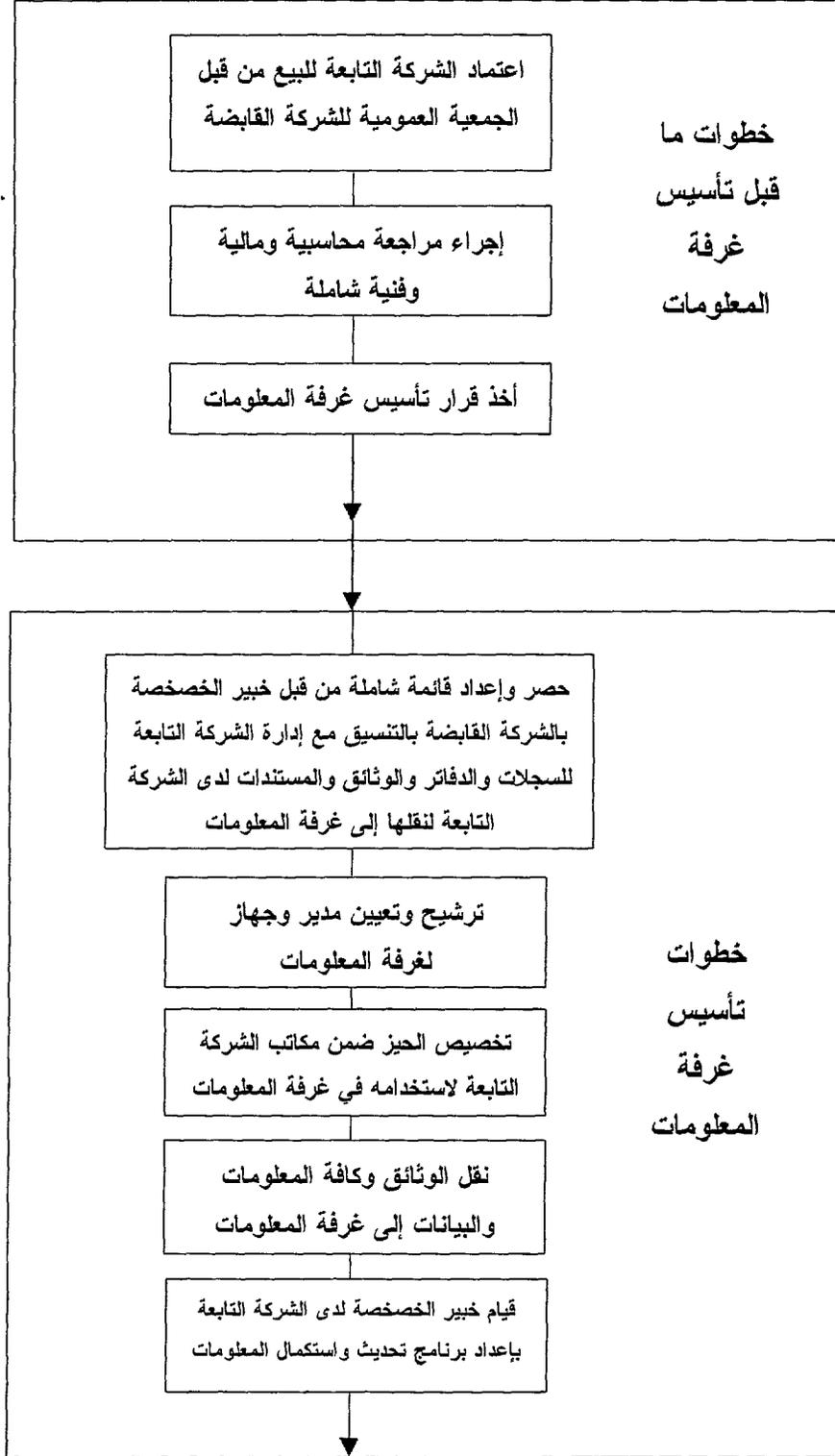
غرفة المعلومات تؤسس بغرض محدد ولمدة محدودة لا تتجاوز في العادة أكثر من أربع إلى خمس شهور، وذلك بغرض تسهيل مهمة إجراء "المراجعة التدقيقية" من قبل مندوبي ومستشاري المنافسين من المستثمرين الرئيسيين، بهدف الإسراع بإجراءات عملية الخصخصة والبيع.

من الممكن البدء بتأسيس غرفة المعلومات، كوحدة قائمة منفصلة قبل شهرين من تاريخ الإعلان عن مناقصة عرض الشركة التابعة للبيع. تستغرق مدة المناقصة والترسية النهائية لعقد البيع على مستثمر رئيسي فترة قد تتراوح ما بين شهرين إلى ثلاث شهور. وعليه فإن فترة بقاء واستمرار غرفة المعلومات قد تتراوح في المتوسط ما بين أربع إلى خمس شهور. ومع الانتهاء من عملية البيع، ترجع جميع السجلات والدفاتر والوثائق والمستندات والمعلومات والقوائم إلى مواقعها الأصلية ضمن دوائر وأقسام الشركة التابعة المختلفة.

(١١)

## رسم (٢)

### تسلسل إجراءات تأسيس غرفة المعلومات



#### ٤) حصر وتحضير قائمة بكافة السجلات والدفاتر والوثائق والمستندات والمعلومات والبيانات التي ستحتوي عليها غرفة المعلومات:

يدعو خبير الاختصاص لدى الشركة القابضة لإدارة الشركة التابعة إلى اجتماع موسع يتم خلاله حصر والإعداد لإخراج قائمة شاملة بكافة السجلات، والدفاتر والوثائق والمستندات والمعلومات والبيانات الخاصة بالشركة التابعة والمفروض نقلها لتكون بحوزة غرفة المعلومات المنوي إنشاؤها، والتي حسب اعتقاد خبير الاختصاص تعبر ضمن ما يتطلب الاطلاع عليه لغرض عملية المراجعة التدقيقية من قبل المنافسين من الشركات الراغبة بالشراء.

من الضروري تصميم نموذج مناسب لشكل القائمة بحيث يمكن الاستعانة برموز وشفرة وتبويبات مرادفة لما هو مبين في أصل السجلات والدفاتر والوثائق والمستندات والبيانات والمعلومات بحيث تيسر المقابلة وتسهل مهمة إدخال وإخراج هذه السجلات والدفاتر والوثائق والمستندات والبيانات والمعلومات بنظام الكمبيوتر بشكل فعال.

#### ٥) ترشيح وتعيين مدير وجهاز غرفة المعلومات:

حال اتخاذ قرار الشروع في تأسيس غرفة المعلومات، يقوم خبير الاختصاص في الشركة القابضة بالتنسيق مع إدارة الشركة التابعة بترشيح وتعيين مدير متفرغ لغرفة المعلومات، وكذلك الجهاز التابع من معاونين المختصين. وأنه نظراً لقصر العمر الزمني لغرفة المعلومات (أربع إلى خمس شهور)، والحاجة إلى أن يكون المدراء والقائمون على شئون غرفة المعلومات من ذوي الدراية والاطلاع والمعرفة الواسعة بشئون وتاريخ ونشاطات الشركة التابعة قيد البيع، لذا فمن المحبذ أن يتم اختيار مدير غرفة المعلومات ومعاونيه من بين الموظفين الحاليين العاملين بالشركة التابعة.

من المحبذ أن يتم إعاره مدير غرفة المعلومات والموظفين التابعين له في غرفة المعلومات من الشركة التابعة. أيضاً فإنه من المفضل أن يختار مدير غرفة المعلومات

من بين كبار مدراء الشركة التابعة ممن له مكانة واحترام كبير وممن هو على اطلاع واسع بكافة شئون وأعمال الشركة التابعة والعلاقات مع الدوائر والمؤسسات الرسمية والحكومية المعنية بالشئون المختلفة الشركة التابعة.

أما بخصوص بقية أفراد طاقم جهاز غرفة المعلومات اللذين قد يتراوح عددهم ما بين اثنين إلى أربع أشخاص، وذلك حسب حجم عملية البيع وطبيعة نشاط الشركة التابعة، فإن كل منهم سيضطلع في المجال الذي لديه فيه اختصاص، فالقانوني سيعنى بكافة المسائل ذات الطابع القانوني، والمالي سيتكفل بكافة الأمور ذات الشأن المالي والمحاسبي، وكذلك يفضل قيام المهندس بتولي الاهتمام بالسجلات والدفاتر والمستندات والوثائق والبيانات والمعلومات ذات الصفة الفنية والتقنية.

أيضاً من المحبذ الاستعانة بمعاون مختص في تشغيل جهاز الكمبيوتر. يقوم هذا الشخص المتفرغ بتشغيل جهاز الكمبيوتر وإدخال المعلومات وإخراجها، وأيضاً للمساعدة في إعداد النماذج الضرورية لتسهيل ذلك. كذلك يحبذ أن يكون من ضمن مهمات نفس الشخص الاهتمام بوضع نظم الحفظ والتشفير والتبويب وإصدار السجلات والدفاتر والملفات والوثائق والمستندات بشكل أشبه ما يكون بكيفية إدارة نشاط المكتبات العامة. يفضل أن تتوفر لدى هذا المعاون خبرة وسابق معرفة واطلاع على كيفية تشفير وتبويب الوثائق والمستندات بالأسلوب والطريقة المكتبية.

يتبع مدير غرفة المعلومات والجهاز المعاون له، حسب السلم الإداري، خبير المختصة لدى الشركة القابضة مباشرة. هذا ويكون لخبير المختصة سلطة تنفيذية مباشرة بالإشراف على وتسيير غرفة المعلومات، وذلك خلال فترة إعاره المدير والجهاز المعاون لغرفة المعلومات من الشركة التابعة.

مع إتمام بيع الشركة التابعة بشكل نهائي، ينتهي الغرض من غرفة المعلومات، ويتم إعادة كافة السجلات والدفاتر والوثائق والمستندات وكافة المعلومات والبيانات إلى أماكنها الأصلية في الدوائر والأقسام المختلفة لدى الشركة التابعة مع تحرير محاضر والتوقيع على الاستلام والتسليم من قبل المسؤولين المعنيين.

وكذلك تنتهي بنهاية مدة غرفة المعلومات مهمة مدير غرفة المعلومات وجهازه المعاون ويقومون باستعادة مراكزهم والتي نقلوا منها بالشركة التابعة عند تأسيس غرفة المعلومات.

## ٦ تخصيص المكان المناسب والتجهيزات اللازمة لغرفة المعلومات ضمن مكاتب الشركة التابعة:

عمل غرفة المعلومات يعتبر شبيه من جوانب مختلفة مع عمل المكتبة. يقصد غرفة المعلومات رواد غرضهم إجراء البحث والتقصي. هؤلاء الرواد هم عبارة عن مندوبي ومستشاري المنافسين من المستثمرين الرئيسيين. البحث الذي يقومون به له تعريف متخصص تحت اسم: "المراجعة التدقيقية *Due Diligence*". في الغالب ما يتردد هؤلاء الرواد دفعة واحدة على غرفة المعلومات بسرب يتراوح عدد أفراد الواحد منه ما بين ثلاث كحد أدنى إلى أحياناً ٦، ٧ أو حتى ثماني أشخاص، وذلك حكماً بحجم العملية ونوعية ومنهجية عمل المنافس من المستثمرين الرئيسيين.

يتم في بعض الحالات التوصل إلى قائمة مختصرة للمنافسين من المستثمرين الرئيسيين قد تحتوي على سبع أو ثماني مستثمرين. لهذا فإن حاجة مندوبي ومستشاري هؤلاء المستثمرين لإجراء "المراجعة التدقيقية" في غرفة المعلومات قد يتطلب تخصيص حيزاً كافياً من المساحة، وتوفير أماكن مناسبة للجلوس وإضاءة جيدة، وتوفير الأثاث المناسب الملبي بما في ذلك المناضد والطاولات وكافة الوسائل التي تسهل الكتابة للزائرين ولساعات طويلة.

هذا وأنه نظراً لرغبة أكثر من شركة منافسة إرسال مندوبيها لإجراء "المراجعة التدقيقية"، فإنه يصبح لزاماً ضرورة تنظيم وبرمجة زيارات هؤلاء الرواد بشكل يمنع الاكتظاظ وتجنب اختلاط وتواجد مندوبي أكثر من شركة منافسة في وقت واحد في نفس المكان.

## ٧) نقل السجلات والدفاتر والوثائق والمستندات وكافة المعلومات والبيانات ذات العلاقة إلى غرفة المعلومات:

يقوم مدير غرفة المعلومات مع جهازه المعاون وبإشراف خبير الاختصاص بالشركة القابضة وبالتنسيق مع إدارة الشركة التابعة بنقل كافة السجلات والدفاتر والوثائق والمستندات وكافة المعلومات والبيانات ذات العلاقة بالشركة التابعة إلى غرفة المعلومات المعدة والمجهزة لهذا الغرض.

يتم ذلك بناء على كشوفات وبيانات وقوائم وجداول يتم تصميمها خصيصاً لهذا الغرض حسب ما تم التتويه أعلاه في برنامج حصر وإخراج كشف وجداول مستوفاة عن كافة السجلات والدفاتر والوثائق والمستندات والبيانات والمعلومات ذات العلاقة التي يجب أن تحتوي عليها غرفة المعلومات.

يتولى خبير الاختصاص بالشركة القابضة بالتنسيق مع إدارة الشركة التابعة مهمة إصدار تعليمات إرشادية تفصيلية والإجراءات التي يجب توضيحها لضمان حسن القيام بـ وتنفيذ هذه المهمة على أفضل وجه. يحرر محاضر تسليم واسـتلام موقع عليها حسب الأصول من المسلم والمستلم.

## ٨) تحضير برنامج لمراجعة والتأكد من صحة وحداثة وشمولية المعلومات والبيانات المتوفرة في غرفة المعلومات وكذلك مطابقتها لأرض الواقع:

الهدف من تأسيس غرفة معلومات هو الإسراع في عملية خصخصة وبيع الشركة التابعة وذلك عن طريق تيسير إجراء "المراجعة التدقيقية" من قبل مندوبي ومستشاري المنافسين من المستثمرين الرئيسيين.

أحد الجوانب الهامة للإسراع في مهمة إكمال بيع الشركة التابعة على أفضل وجه هو توفير المعلومات والبيانات المتعلقة بالشركة التابعة كاملة غير منتقصة ومطابقة لحقيقة الواقع وفي منتهى الحداثة وكذلك في غاية الدقة والشفافية الممكنة.

إعطاء معلومات وبيانات منتقصة وغير دقيقة ومغالطة تهزم الغرض والهدف الذي من أجله تم التفكير بتأسيس غرفة معلومات في المقام الأول. إذ قد ينجم عن ذلك إطالة الفترة الزمنية التي يتطلبها إجراء "المراجعة التدقيقية *Due Diligence*"، وهو ما يترتب عليه تأخير عملية بيع الشركة التابعة، وحتى في أسوأ الاحتمالات تعثر عملية البيع وفشلها كاملاً لا سمح الله. كذلك قد يتأتى عن ذلك تجميد حجم هائل من المبالغ في حسابات معلقة (مجمدة) ولفترات طويلة مما يضر بمصلحة البائع. قد يترتب على تزويد مندوبي ومستشاري المنافسين من المشتريين بمعلومات وبيانات منقوصة و/أو مغلوبة مسؤولية جنائية يتحمل تبعاتها مدراء الشركات التابعة والقابضة بما يعرف بالـ " *Misrepresentation* ".

الملحق رقم (٢) يبين نموذج لبعض التعهدات والتزامات الشركة القابضة لحماية الوسطاء الماليين/ المروجين، على وجه المثال، لحماية الآخرين من تبعات تقصير مدراء الشركة القابضة من تفحص والتأكد من صحة ودقة ومطابقة المعلومات والبيانات لحقائق الواقع.

من الأهمية البالغة بمكان أن يقوم خبير الخصخصة في الشركة القابضة، وبالتنسيق مع إدارة الشركة التابعة ومدير غرفة المعلومات وجهازه المعاون، بوضع برنامج وخطوة تفصيلية للتأكد من اكتمال البيانات والمعلومات وصحتها ودقتها وتطابقها مع الواقع الفعلي وأيضاً حداتها. كذلك أخذ الإجراءات اللازمة الكفيلة بوضع كافة المعلومات والبيانات المنوه عنها أعلاه في الوضع السليم حسب ما هو موصى به.

أيضاً، فإنه لمن الضروري جداً مراعاة مبدأ الشفافية المطلقة في توزيع المعلومات وتوفيرها بشكل عادل على جميع الشركات المنافسة ضمن القائمة المختصرة، وأيضاً ضرورة إتاحة أية معلومات إضافية المطلوبة من مستثمر معين على كافة وجميع المستثمرين المتقدمين دون أي استثناء.

الملحق رقم (٣) يلقي بعض الضوء على بعض الأمثلة لبعض الإجراءات المتوجب أخذها احترازياً لضمان صحة ودقة وأهلية المعلومات والبيانات المتوفرة لغرض اكتمال مهمة "المراجعة التدقيقية" على أحسن وجه وفي أسرع وقت.

## ج - الهيكل الإداري لغرفة المعلومات:

حسب ما يبيّنه رسم رقم (٣) فإن مدير غرفة المعلومات هو المسئول الأول عن إدارة غرفة المعلومات. إن لدى مدير غرفة المعلومات سلطة مباشرة على أعضاء جهاز العاملين في غرفة المعلومات خاصة العضو المختص بالمسائل القانونية والعضو المختص بالمسائل المالية وكذلك العضو المختص بالشؤون التقنية والفنية. أيضاً يتبع مدير غرفة المعلومات خبير تشغيل الكمبيوتر وإدخال المعلومات وتنظيم التشفير والتبويب والإشراف التنظيمي العام.

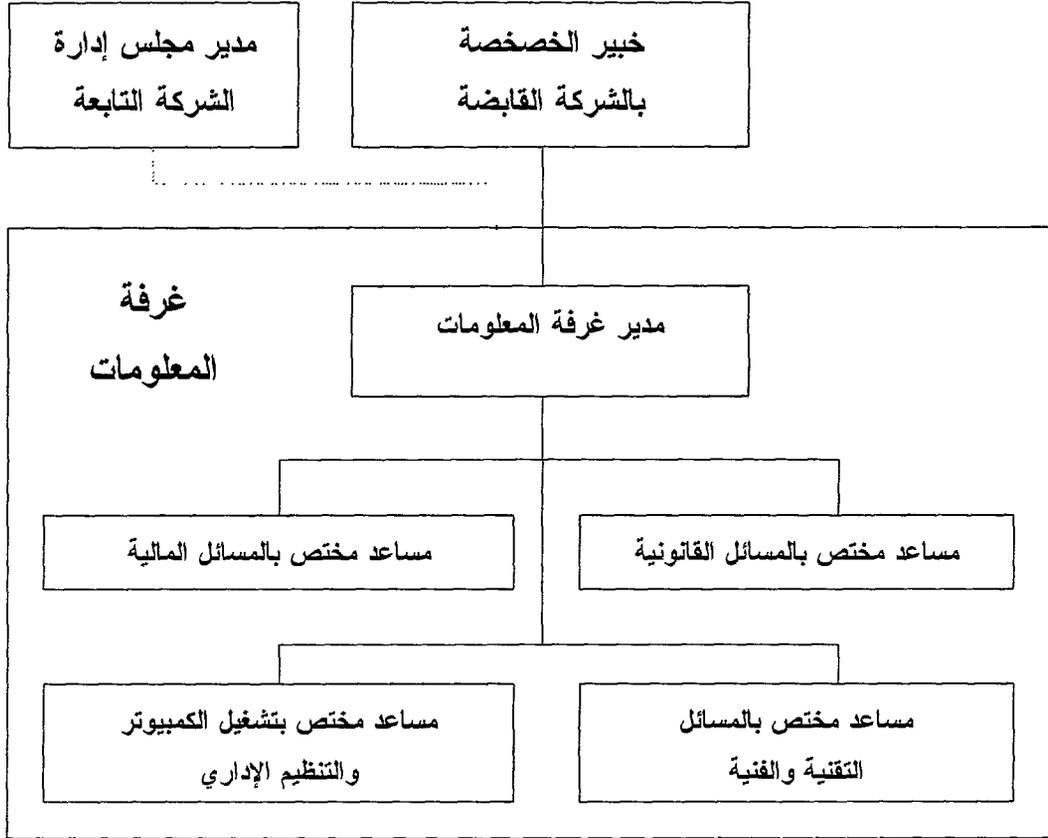
يتبع مدير غرفة المعلومات بدوره، في السلم الإداري، خبير الاختصاص في الشركة القابضة، وذلك من خلال فترة الإعاره والقيام بالمهمة المؤقتة كمدير غرفة المعلومات. يقوم مدير غرفة المعلومات بالتنسيق المستمر، حسب متطلبات العمل، مع دوائر الشركة التابعة للحصول على أية بيانات ومعلومات إضافية، أو للقيام بالاستفسارات والتوضيحات اللازمة بغرض استكمال واستيفاء المعلومات والبيانات وبغرض تنظيمها وتهيئتها بالوضع الأفضل لتحقيق الهدف الأساسي من تأسيس غرفة المعلومات.

كما سبق الإشارة إليه أعلاه، فإنه من المحبذ أن يتم اختيار مدير غرفة المعلومات من بين مدراء الشركة التابعة ممن لهم سعة معرفة واطلاع ودراية بكافة نشاطات وشؤون الشركة التابعة منذ عهد بعيد. من المفضل أن يتم اختيار شخص لهذا المنصب ممن تتوفر لديه الدبلوماسية والحفاصة والكياسة والثقة في التعامل مع كبار المدراء والمسؤولين في الشركة التابعة والشركة القابضة والهيئات والمؤسسات الرسمية والمراجع الحكومية ذات العلاقة، وذلك بغرض سهولة تيسير جمع المعلومات والبيانات وتحديثها ووضع كافة الوثائق والمستندات في الوضع النظامي المطلوب.

(١٨)

رسم (٣)

### الهيكل التنظيمي لغرفة المعلومات



## د - إجراءات الإذن بدخول واستخدام غرفة المعلومات:

الملحق رقم (٤) يبين الخطوات المحبذ تتبعها لضمان الحفاظ على سلامة وسرية المعلومات وحسن استخدام غرفة المعلومات وضمان حماية السرية من قبل مستخدميها من مندوبي ومستشاري المنافسين من المستثمرين الرئيسيين. وعليه فإن هذه الخطوات يمكن أن تتبع الأسلوب الآتي:

- على مندوبي وممثلي المنافسين من المستثمرين الرئيسيين البدء باستقصائاتهم عن طريق الاجتماع بادئ ذي بدء بخبير الخصصة بالشركة القابضة. سيقوم خبير الخصصة لدى الشركة القابضة ببحث المسائل ذات الطابع الاستراتيجي التي تخص بيع الشركة التابعة. خلال هذا الاجتماع من الممكن أن يقوم خبير الخصصة بتسليم مندوبي وممثلي المنافسين من المستثمرين الرئيسيين نسخ عن المعلومات المقتضبة عن واقع الشركة التابعة قيد البيع المتضمنة صحيفة المعلومات *Fact Sheets*.
- يقوم خبير الخصصة خلال هذه الاجتماعات الأولية بتقييم أهلية بعض المتنافسين للحصول على معلومات إضافية وإلى ما توصلت إليه لجان تقييم العروض ورئيسها من استنتاجات أولية حول الأهلية الفنية والإدارية للمتقدمين للمناقصة من الشركات المنافسة، وعليه يتم إقرار السماح للبعض من هذه الشركات المنافسة بأحقية الحصول على معلومات إضافية عن طريق استخدام غرفة المعلومات.
- يقوم خبير الخصصة لدى الشركة القابضة بتوجيه مندوبي الشركات المنافسة بإصدار خطاب ضمان الحفاظ على سرية المعلومات "Confidentiality Letter" بالشكل وعلى النحو الشبيه بعض الشيء بالنموذج المرفق كملحق رقم (٤).
- متى قام خبير الخصصة باستلام "خطاب ضمان الحفاظ على سرية المعلومات" من مندوبي الشركات المنافسة، بالشكل والمحتوى والكيفية المناسبة التي يقتنع فيها خبير الخصصة والمستشارون لدى الشركة القابضة بتلبية الخطاب للمتطلبات القانونية النافذة، يقوم خبير الخصصة بإصدار خطاب إذن *Confirmation* على عدة نسخ لمندوبي الشركة المنافسة.

- من المحبذ إصدار "خطاب إذن الدخول واستخدام غرفة المعلومات *Confirmation*" من أصل ومجموعة نسخ؛ الأصل يرسل إلى مدير غرفة المعلومات والنسخ توزع حسب ألوانها للحفاظ في ملفات بالقطاع المختص بالخصخصة في الشركة القابضة، والنسخ الأخرى تسلم إلى مندوب الشركة المنافسة من المستثمرين الرئيسيين، على أساس نسخة لكل فرد مستشار ممن له حق استخدام غرفة المعلومات. يحتوي الخطاب إلى جانب رقم مرجع، على الأسماء الثلاثية الكاملة للأفراد المستشارين اللذين يحق لهم استعمال غرفة المعلومات، مع بيان رقم وثيقة التعريف الخاص بكل منهم (ID) والمفروض إبراز أصلها مرفقاً بنسخة الخطاب من قبل كل مندوب أو مستشار عند دخوله لغرفة المعلومات.

- يعد سجل خاص، على شكل نظام الصادر والوارد، تسجل فيه الخطابات الصادرة مع رقم الإصدار والمرجع وتاريخ الإصدار. يحمل كل خطاب توقيع خبير الخصخصة في الشركة القابضة ويحبذ أن يتم طبع الخطاب بختم الشركة، إن أمكن.
- يحتفظ في غرفة المعلومات بسجل زيارة، تسجل فيه من قبل مسئول تشغيل الكمبيوتر أسماء الزائرين من مندوبي ومستشاري المنافسين من المستثمرين الرئيسيين، ورقم الخطاب الصادر لهم، وأوقات الدخول والخروج إلى غرفة المعلومات.

- يقوم مدير غرفة المعلومات ببرمجة زيارات مندوبي الشركات المنافسة بشكل مسبق. أوقات دوام غرفة المعلومات تتبع إلى حد بعيد ساعات دوام الشركة التابعة، وهي تمتد عادة ما بين الساعة التاسعة صباحاً ولغاية الخامسة من بعد الظهر.

رسم (٤)

خطوات الإذن لمندوبي الشركات المنافسة  
باستخدام غرفة المعلومات

اجتماع خبير الاختصاص بالشركة القابضة بمندوبي  
الشركات المنافسة المفضلة لشرح قضايا ومسائل  
استراتيجية وعامة

يراجع خبير الاختصاص لدى الشركة القابضة طلب  
الشركات المنافسة باستخدام غرفة المعلومات لإصدار  
خطاب ضمان الحفاظ على سرية المعلومات

يصدر خبير الاختصاص لدى الشركة القابضة خطاب  
إذن دخول واستخدام غرفة المعلومات

يقوم مدير غرفة المعلومات ببرمجة مواعيد استخدام  
مندوبي الشركات المنافسة لغرفة المعلومات

المعاون المختص بشئون تشغيل الكمبيوتر وأنظمة  
غرفة المعلومات يكون مسؤولاً عن إدارة سجل الدخول  
والخروج إلى غرفة المعلومات

## الملحق رقم (١) قائمة بمحتويات غرفة المعلومات

تحتوي غرفة المعلومات بالعادة على السجلات والدفاتر والوثائق والسندات والمعلومات والبيانات الآتية:

### المسائل القانونية:

- النظام الأساسي للشركة وكافة تعديلاته.
- عقود الزبائن الرئيسيين.
- عقود الإيجار.
- عقود العمالة.
- محاضر اجتماعات مجالس الإدارة للخمس سنوات الماضية.
- العلاقات التجارية، براءات الاختراع، التراخيص، حقوق الانتفاع.
- عقود الخدمات الإدارية.
- القضايا المرفوعة من أو ضد الشركة.
- تفاصيل اتفاقيات الشراكة والوكالات.
- السجل التجاري.
- عقود الملكية وتسجيل الممتلكات.
- الالتزامات والتعاقدات القائمة.
- لوائح الشركة.
- تأسيس اتحاد العاملين المساهمين بالشركة.
- الدفاتر القانونية.
- عقود التأمين.
- عقود القروض.
- السياسات الإدارية والعمالية.

## المسائل المالية والمحاسبية:

- البطاقات الضريبية.
- وضع الاستحقاقات الضريبية بكل أنواعها: الدخل، المبيعات، الدمغة، العقارية، الجمارك، ... الخ.
- الميزانيات طبقاً للمعايير المحاسبية وملاحظات الجهاز المركزي للمحاسبات.
- سجل الموردين والوكلاء والموزعين.
- الميزانيات التقديرية للسنوات الثلاثة الماضية.
- خطة عمل حديثة.
- الاستثمارات الرأسمالية ونسبة المنجز من الأعمال.
- قائمة بكافة الضمانات وكافة الالتزامات غير المبينة بالميزانية.
- سجل الأصول الثابتة.
- وثائق التأمين.
- التأمينات الاجتماعية.
- المخزون والمطالبات.
- سجل المستوردين والمصدرين.

## المسائل الفنية والتقنية:

- دليل التشغيل.
- المخطط العام للمصنع.
- المخطط العام للأرض.
- سكيناتيك لعملية الإنتاج.
- رسم خطوات الإنتاج.
- مخطط عام لتوزيع الآلات والمعدات.
- مواصفات فنية للآلات والمعدات.
- خرائط البناء.
- خرائط كهربائية وميكانيكية.
- أنظمة التحكم والشبكات الإلكترونية بأنواعها.
- دليل الصيانة.
- تصاميم ومواصفات المنتج.
- جداول الإنتاج.
- دراسات والأوضاع البيئية.

## الملحق رقم (٢) نموذج خطاب تعهد الإدارة بصحة ودقة المعلومات

إدارة الشركة القابضة للشركة التابعة قيد البيع تقوم بالعادة بإصدار "خطاب تعهد" بصحة ودقة واكتمال وحدثا المعلومات والبيانات التي توفرها الشركة لمراجعة وإطلاع مندوبي ومستشاري الشركات المنافسة من المستثمرين الرئيسيين. هذه البيانات والمعلومات تعد المصدر الأساسي وأحياناً الوحيد للمعلومات والبيانات المتضمنة في مذكرة المعلومات، الوثيقة الرئيسية ضمن وثائق مناقصة طرح الشركة التابعة للبيع.

خطاب التعهد هذا يتضمن في فقراته بين أشياء أخرى، الفقرات الآتية:

- الإدارة مسئولة عن المعلومات والبيانات المقدمة للوسيط المالي/ المروج المتضمنة مذكرة المعلومات. ذلك في كل ما يخص معلومات حول التطور التاريخي للشركة التابعة، التوقعات والتقديرية المالية المستقبلية، وجميع المعلومات المتعلقة بأعمال ونشاطات الشركة موضوع المناقصة.
- تقر إدارة الشركة بأنها قامت بتزويد المروج/ الوسيط المالي/ بنك الاستثمار بكافة المعلومات والبيانات ذات العلاقة والأهمية بالنسبة لنشاطات وأعمال الشركة قيد البيع.
- ليس لدى الإدارة أية خطط أو نوايا للقيام بأية إجراءات أو تعديلات غير معلنة مما قد يؤثر بشكل ملحوظ على قيمة أصول وموجودات الشركة التابعة وزيادة أعبائها المالية والتزاماتها التعاقدية.
- تقر الإدارة بأن الشركة هي الممثلة الحقيقي دون منازع للأصول المسجلة باسمها، باستثناء ما يتم التنويه عنه خلافاً لذلك بالإعلان المبين دون لبس أو موارد.
- تقر الإدارة بأنها ليست على علم عن أية معلومات أو مسائل أو حقائق لم يتم الإعلان عنها مما قد يكون لها تأثير على وضع الشركة المالي الحالي أو المستقبلي.

### الملحق رقم (٣)

#### التيقن من صحة ودقة واستكمال وحداته

#### كافة المعلومات والبيانات المتعلقة بالشركة قيد البيع

على خبير الاختصاص بالشركة القابضة أن يحضر خطة وبرنامج عمل متكاملين، بالتنسيق المحكم مع مدير والجهاز المعاون في غرفة المعلومات، وذلك بغرض مراجعة كافة الوثائق والمستندات والمعلومات والبيانات للتأكد من صحتها ودقتها ومطابقتها للواقع والحقيقة وشموليتها وتغطيتها لكافة ما هو متطلب لتسهيل وتيسير عملية "المراجعة التدقيقية" من قبل مندوبي ومستشاري الشركات المنافسة المتقدمة لشراء الشركة.

فيما يتبع أدناه لمحات عن بعض ما يمكن التحقق منه مسبقاً من قبيل الاحتراز عن صحة ودقة المعلومات والبيانات المتعلقة ببعض الوثائق والمستندات والسجلات والدفاتر في غرفة المعلومات.

#### التقييم:

- التأكد من توفر تقرير اللجنة الرباعية حول تقييم الشركة التابعة قيد البيع.
- من الضروري ملاحظة أن المرجعية النهائية لتقييم الشركة عند البيع يعود الآن إلى الجمعية العمومية للشركة القابضة، وذلك بموجب قرار السيد/ رئيس مجلس الوزراء رقم ٢٧٨١ بتاريخ ٢٠ سبتمبر ١٩٩٨م، والذي ينص على إضافة فقرة في المادة ٢٦ من اللائحة التنفيذية لقانون ٢٠٣.
- قرار السيد/ رئيس مجلس الوزراء المنوه عنه أعلاه أزال كثير من اللبس والتعقيد بشأن الإقرار النهائي للقيمة المناسبة للشركة قيد البيع.
- يظل غياب معيار موحد للتقييم أحد مجالات اللبس المستمرة. ليس هناك من معيار موحد متفق عليه للتقييم. المعياران المتداولان في تقييم الشركات هما: "أسلوب الربحية *Discounted Cash Flow*"، وأيضاً "قيمة الاستبدال المعدلة *Adjusted Replacement Value*".

## النظام الأساسي:

- ضرورة تعديل النظام الأساسي للشركة ليتوافق مع نصوص قانون الخصخصة رقم ٢٠٣.
- نظرا لخضوع مصر لقوانين التأمين وما تبع ذلك في السنين اللاحقة من سن قوانين جديدة بشأن الاستثمار والشركات المساهمة وقوانين أسواق المال، لذا فمن الضروري جدا التحقق من صلاحية النظام الأساسي، وإجراء كافة التعديلات التي تجعله متوافقا كليا للقوانين المرعية السارية.

## السجل التجاري:

- يجب تحديث السجل التجاري بحيث يتم التأكد من احتوائه على كافة المعلومات الصحيحة والمطابقة لحقيقة نشاطات الشركة الفعلية مع ضرورة تسمية كافة أفرع الشركة، ومصانع الشركة، وكل ما استجد من نشاطات.
- ضرورة إخراج سجل تجاري منفصل جديد لبعض النشاطات أو الأفرع أو المصانع التي تزاوّل نشاطها بشكل مستقل عن الشركة الأم، كما كان الحال في مثال شركة إسمنت بني سويف.
- التأكد من وجود أو إضافة مادة أو بند ضمن السجل التجاري يخول الشركة بيع أصولها.

## بطاقات الضرائب:

- يجب توفرها والتأكد من اكتمالها وحدثتها.

## بطاقات الاستيراد والتصدير:

- يجب أن تحتوي على أحدث المعلومات وآخر الإدخالات.
- تحديد السلع والمنتجات المقرر استيرادها أو تصديرها.

## التراخيص وحقوق الانتفاع والتصاريح والموافقات:

- التأكد من صلاحية وحدثة التراخيص والأذونات والتصاريح واتفاقيات حقوق الانتفاع والموافقات الضرورية لمزاولة نشاطات الشركة.
- التأكد من أحقية الشركة في تحويل كافة حقوقها والمنافع التي توول إليها في الاتفاقيات القائمة إلى المشتري.

## القضايا المرفوعة من أو على الشركة:

- حصر كافة القضايا المرفوعة من أو على الشركة.
- من الضروري إدراك أن المبالغ رهن الخلاف موضوع القضايا المرفوعة قد يكون لها تأثير كبير على قيمة الشركة وسعر البيع.
- العديد من الشركات المعدة لعملية الخصخصة تعامل موضوع القضايا المرفوعة بشكل عفوي روتيني، ولا توفر نظام وآلية محددة لمتابعة وتحديث معلوماتها بشكل دوري ومستمر حول التطورات المتعلقة بوضع القضايا المرفوعة.
- على مدير غرفة المعلومات القيام بالتنسيق الوثيق مع خبير الخصخصة في الشركة القابضة لتصميم وتطبيق نظام وآلية المتابعة والتحديث المنوه عنه أعلاه.
- عدم حصر والبت في موضوع القضايا المعلقة مسبقاً قبل إتمام عملية بيع الشركة قد يترتب عليه مخاطر أن توول هذه القضايا لمسئولية المشتري، خاصة وأن المشتري في العادة هو شخصية اعتبارية تنتقل إليه تلقائياً كافة التزامات البائع، على خلاف الشخص الطبيعي الذي يسقط عنه عادة استمرارية تحمل مثل هذه المسئولية.
- الفشل في الإعلان عن القضايا العالقة قد يجرّم الإدارة بإعطاء معلومات خاطئة ومضللة.
- من المفيد في هذا السياق ملاحظة الجدية الكبيرة الذي يتخذ بها المشتري ومدنوبوه عملية الشراء، حيث يوفد المشتري عدداً ليس بالقليل من الخبراء المختصين في كافة المجالات المختلفة وذلك للقيام بـ "المراجعات التدقيقية".

- أيضاً وأنه لمن الضروري جداً التنويه عن ضرورة قيام الشركة مبكراً، حتى قبل البدء بتهيئة الشركة للخصخصة، بالقيام بإيجاد وحدة مستقلة منفصلة لإدارة شؤون القضايا القائمة. لا بد بهذا السياق أيضاً إيجاد نظام تقصي معلومات وآلية لتحديث المعلومات دورياً وباستمرار للوقوف على وضع القضايا والتدخل مبكراً للبت حولها مما تتحقق به المصلحة الأفضل للشركة.
- يجب، وعلى غرار أسلوب إدارة حركة النقد، توفير معلومة يومية أو أسبوعية ترفع للاهتمام الشخصي المباشر لرئيس مجلس إدارة الشركة التابعة حول تقدم الأمور بشأن القضايا المرفوعة.
- حسب مقولة أحد كبار القضاة ممن لهم باع طويل في المساهمة بسن العديد من القوانين المتعلقة بالشركات والاستثمار، فإن الملامة الكبرى تقع على الشركات في التقصير بمتابعة قضاياهم المعلقة، وأعطى أمثلة بأنه على الرغم من اعترافه ببطء الإجراءات لدى المحاكم في البت في القضايا العالقة، إلا أن المتابعة الفعالة والمستمرة من قبل الشركات المهمة كثيراً ما ينجم عنه الإسراع في بت القضايا التي تعني تلك الشركات، وكثيراً ما ينجم عن ذلك نتائج مرضية لها تأثير إيجابي على الوضع المالي للشركة.
- بهذا الشأن فمن المجدي أيضاً التنويه عن أن هناك حالات كثيرة تهمل الشركات في متابعة قضاياها المعلقة لدرجة أنها تغفل عن أحكام إيجابية صادرة لصالحها، ومع القدم ومرور الوقت، ونتيجة عدم اطلاع ومتابعة أصحاب القرار فيها يسقط عن هذه الشركات حق الاستفادة من مثل هذه الأحكام.

### الوضع الضريبي:

- على مدير غرفة المعلومات في الشركة التابعة المعدة للبيع مراجعة الوضع الضريبي للشركة، والعمل على استخراج مخالصة من الهيئات الضريبية المختصة تشهد بقيام الشركة بسداد كامل الاستحقاقات الضريبية المترتبة عليها لتاريخه.

- من المحتمل أن يكون هناك استحقاقات ضريبية متراكمة لم يتم تسديدها من قبل الشركة التابعة قيد البيع، تنتقل مسؤولية سدادها تلقائياً إلى المشتري ممن له شخصية اعتبارية. لهذه الضرائب عدة أشكال كالدخل، وضرائب العقار والدمغة والجمارك، الخ.
- ترك الاستحقاقات الضريبية المتراكمة دون سداد يترتب عليه تراكم الفوائد البنكية عليها وبشكل مركب، مما ينتج عنه تضخم الاستحقاقات ذات العلاقة بالضريبة.

### عقود الملكية وتسجيل الممتلكات:

- تعتبر عقود الملكية وسلامة تسجيل الممتلكات وثائق أساسية لا يتم بدونها بيع الشركات التابعة.
- قد تكون عقود الملكية وتسجيل الممتلكات العائدة للشركة التابعة ليست في وضعها القانوني والنظامي الصحيحين، حكماً بعدم القيام بالتعديلات والإجراءات الصحيحة لتصحيح وضعية الشركة التابعة نظراً لخضوعها لفترة طويلة لقوانين التأميم لعام ١٩٦١م.
- هذا الشأن يتطلب غاية اهتمام ومتابعة الخبير المختص بالشركة القابضة وذلك بالتنسيق الوثيق مع مدير غرفة المعلومات. على كلاهما مسؤولية التأكد من صلاحية وسلامة ودقة المعلومات لعقود الملكية وحسن تسجيلها في سجل الممتلكات المركزي، وأيضاً وضع خطة متكاملة وأخذ الإجراءات العملية السريعة لتحديث وتعديل هذه العقود، بحيث تكون مطابقة لحقيقة الواقع. يجب أن تحتوي هذه الخطة على زيارات ميدانية لتفحص الممتلكات على أرض الواقع. على هؤلاء المسؤولين ضرورة التنبيه إلى إمكانية وقوع بعض المخالفات والمتغيرات غير الموثقة، على سبيل المثال شق بعض الطرق خلال عقار ممتلك للشركة وكذلك استقطاع بعض الأراضي التابعة للشركة التابعة تعديلاً من قبل مشاريع مجاورة قائمة.

## التأمينات الاجتماعية:

- بند عادة ما يخصص له مندوبي ومستشاري المشتري اهتماماً خاصاً. قد تكون هناك مستحقات متراكمة على الشركة التابعة لصندوق التأمينات الاجتماعية، وذلك حال الضرائب المستحقة، كما سلف شرحه. قد تشكل الدفعات المستحقة المتراكمة لصندوق التأمينات الاجتماعية مبلغاً هاماً يؤثر قطعاً على ثمن الشراء.
- كما الوضع مع مصلحة الضرائب، على مدير مكتب المعلومات التأكد من استخراج مستخلص صادر عن الهيئة المتخصصة في مصلحة التأمينات الاجتماعية حسب الأصول، يثبت قيام الشركة التابعة بسداد كافة دفعات التأمينات الاجتماعية المستحقة لتاريخه.
- من المجدي هنا إعادة التذكير بأن المشتري من خلال مندوبيه ومستشاريه سيقومون بالمراجعة والتدقيق المفصل والشامل، وعليه فإنه من الضروري لكسب الوقت وتيسير عملية البيع قيام مدير غرفة المعلومات مسبقاً بالتأكد من دقة المعلومات وسلامة وصلاحيّة وحدائث كافة الوثائق والمستندات المؤيدة لكافة المعلومات والبيانات ذات العلاقة.

## بوالص التأمين:

- ضرورة التأكد من سلامة وضع كافة بوليصات التأمين المتعلقة بالحريق والاختلاس والمباني،... الخ من حيث صلاحيتها وأيضاً استمرار مفعوليتها.
- ضرورة التأكد من سداد كافة الدفعات الشهرية وأخذ الإجراءات السريعة اللازمة لسداد أية دفعات شهرية مستحقة لضمان استمرار صلاحية واستمرار مفعوليتها كافة بوليصات التأمينات.

## الالتزامات التعاقدية:

- يجب الإفصاح والإعلان عن كافة العقود والالتزامات التعاقدية التي تعتبر الشركة التابعة طرفاً مباشراً أو غير مباشر فيها.

- على الشركة التابعة، الامتناع عن الدخول بالتزامات تعاقدية جديدة، خلاف ما يتطلبه ملتزمات العمل لتيسير أعمال الشركة المستمرة، وذلك من تاريخ الإعلان عن مناقصة البيع.

### الأوضاع البيئية وشئون العاملين:

- على مدير غرفة المعلومات أخذ المبادرة وذلك بالتنسيق الوثيق مع خبير المختصة في الشركة القابضة، في اتخاذ الإجراءات اللازمة لتصحيح وضع الشركة التابعة من حيث التزامها بكافة القوانين والتشريعات الخاصة بالبيئة، وعلى وجه الخصوص القانون رقم (٤).
- من المجدي لفت النظر هنا عن حرص المنافسين الأجانب الزائد في مراعاة والتقيد بقوانين وتشريعات البيئة، وإصرارهم على نظامية وضع الشركة التابعة موضوع مناقصة البيع في الالتزام الكامل بهذه القوانين والتشريعات.
- المنافسون الأجانب في الغالب هم شركات عالمية كبرى تخضع لمعايير دولية صارمة، خاصة في الدول الصناعية المتقدمة لضرورة التقيد بـ ومراعاة قوانين العمل، وبوجه خاص حساسيتهم البالغة لموضوع عمالة ما يدرج تسميتهم بـ"القصر"، العاملون دون سن الرشد.

### العلامات التجارية وحقوق الملكية الفكرية:

- ضرورة التأكد من التسجيل حسب الأصول، وصلاحيات العلامات التجارية وبراءات الاختراع وكافة ما درج على تسميته بحقوق الملكية الفكرية العائدة للشركة التابعة، وذلك بالشكل القاطع الذي يضمن حقوق الشركة التابعة بهذا الشأن، وكل من يخلفها من مشتريين.
- من المفضل أن يقوم مدير غرفة المعلومات بانتداب أحد معاونيه، لربما بالتحديد ذلك المعني بالشئون والمسائل القانونية، وذلك لمتابعة والعناية بالمهمة الواردة أعلاه.

## الموردون، والوكلاء، والموزعون والعملاء:

- ضرورة تأكد مدير غرفة المعلومات من الاحتفاظ في جميع الأوقات بسجل يحتوي على قوائم ومعلومات تفصيلية عن كافة الموردين والوكلاء والموزعين والعملاء الرئيسيين للشركة التابعة.

## المخزون:

- ضرورة التأكد من واقعية تقييم المخزون من حيث أسعار السوق، وأيضا من حيث صلاحية المخزون للبيع أو الاستعمال والاستخدام الحالي والمستقبلي.

## عقود الإيجار:

- لا بد من بذل اهتمام خاص لدراسة وضع عقود الإيجار والتأكد من استمرار صلاحيتها وقابليتها للتنفيذ بما في ذلك دفع كافة الإيجارات المستحقة التي تضمن استمرارية صلاحية عقود الإيجار، خاصة مع انتقال التزاماتها إلى المشتري.
- إن بعض عقود الإيجار قد تمثل قيمة مالية هامة بالميزات التفضيلية التي توفرها للمستأجر خاصة من حيث المساحات، والمواقع المتميزة وشروط الإيجار. وعليه فأى إخلال بقيام المستأجر بكافة التزاماته التعاقدية بهذا الشأن قد يفوت على المشتري قيمة مضافة يكون قد أخذها بالحسبان في تقديراته للثمن العادل للشراء.

## لوائح الشركة:

- على مدير غرفة المعلومات التأكد من توافق وتطابق كافة بنود لوائح الشركة للوائح القانوني للشركة وشؤون العاملين دون مخالفات.
- على مدير غرفة المعلومات التيقن من عدم قيام الشركة التابعة بإجراء أية تعديلات حديثا على لوائح الشركة بغرض إضافة مزايا جديدة للعاملين استباقا لعملية البيع مما قد يزيد من التزامات وأعباء المشتري. على مدير غرفة المعلومات التأكد ومراعاة عدم حصول أي إضافات أو تعديل على لوائح الشركة التابعة قيد البيع ابتداء من تاريخ الإعلان عن مناقصة البيع، باستثناء ما تتطلبه الأنظمة والقوانين لتوفيق وضع اللوائح مع الأنظمة والقوانين النافذة.

## بيان التطور التاريخي للشركة:

- ضرورة توفر بيان تفصيلي بالتطور الزمني التاريخي للشركة، بحيث يسرد البيان بشكل تسلسل زمني متتابع كل حدث ذي تأثير على الوضع القانوني وملكية رأس مال الشركة التابعة، وكل أمر ذي علاقة بتطور نشاطات وأعمال الشركة بشكل مميز.

## الميزانيات:

- على مدير غرفة المعلومات التأكد من توفر الميزانيات ونتائج أعمال الشركة وميزانية التدفقات النقدية وذلك للسنوات الخمس الماضية.
- على مدير غرفة المعلومات التأكد من أن جميع الميزانيات ونتائج أعمال الشركة وميزانيات التدفقات النقدية تم إعدادها وفق المعايير المحاسبية المرعية وحسب ملاحظات الجهاز المركزي للمحاسبات.

## مذكرة المعلومات:

- ضمان دقة وصحة المعلومات والبيانات المتضمنة مذكرة المعلومات. فمن الضروري مراعاة أن يكون مصدر هذه المعلومات هو أصل السجلات، والدفاتر والوثائق والمستندات في غرفة المعلومات.

## الملحق رقم (٤)

### نموذج خطاب ضمان الحفاظ على سرية المعلومات

لتسهيل مهمة المنافسين الجديين من المستثمرين الرئيسيين بالتوصل إلى قرار حول استعدادهم لتقديم عرض لشراء الشركة التابعة، فقد يصبح لزاماً على البائع توفير فرص حصول المنافسين على معلومات وبيانات تتعلق بالشركة التابعة. بعض هذه المعلومات، بل وربما أكثرها قد يكون ذا طابع سري يترتب الإعلان والإفصاح عنه ضرر بمصالح الشركة التابعة إذا لم يحافظ على سرية هذه المعلومات والبيانات بشكل صارم من قبل الأطراف الخارجية المأذون لها الاطلاع على هذه البيانات والمعلومات.

وعليه يصبح لزاماً على خبير الاختصاص بالشركة القابضة توجيه مندوبي ومستشاري المنافسين من المستثمرين الرئيسيين لإصدار خطاب ضمان الحفاظ على سرية المعلومات لصالح الشركة القابضة، وذلك بالنص والكيفية الملزمة قانونياً والتي تضمن الحفاظ على وعدم الإضرار بمصالح الشركة القابضة وشركتها التابعة.

فيما يلي أدناه صيغ مقترحة لبعض الفقرات الممكن تضمينها في خطاب ضمان الحفاظ على سرية المعلومات:

- جميع المعلومات التي تقوم الشركة التابعة بتزويدها، سواء كتابياً أو شفويًا، بما في ذلك جميع المعلومات المتعلقة بالتصاميم، والمواصفات، وكيفية التصنيع، والتسويق وتوزيع المنتج المتعلقة بالشركة التابعة، تعتبر معلومات سرية وأنها في جميع الأوقات تعتبر الملك الخالص للشركة التابعة فقط.
- يتعهد المستثمر الرئيسي المتقدم للمناقصة وكافة مندوبيه ومستشاريه الحفاظ على المعلومات التي يحصلون عليها من الشركة التابعة بمنتهى السرية، وللغرض الوحيد للتوصل إلى قرار حول التقدم بعرض لشراء الشركة التابعة، وعدم استخدام هذه المعلومات لأغراض أخرى يستفيد منها هذا المستثمر أو أية أطراف أخرى.

- يتعهد المستثمر الرئيسي ومندوبيه ومستشاريه بعدم إنتاج أية نسخ أو توزيع أي جزء من المعلومات التي يحصلون عليها من الشركة التابعة، إلا في حالات محدودة حسب مقتضيات المصلحة وبما يتم الإذن لهم بها كتابياً وبشكل مسبق من قبل خبير الخصخصة بالشركة التابعة. مع ذلك تعتبر هذه النسخ ملكاً للشركة التابعة وفي جميع الأوقات والظروف.
- على المستثمر الرئيسي ومندوبيه ومستشاريه التعهد بعدم تسريب المعلومات العائدة للشركة التابعة إلا بشكل سري لمن توجب مقتضيات التحضير للمناقصة إطلاعهم على مثل هذه المعلومات من موظفي ومسؤولي ومدراء ووكلاء والمستشارين المتخصصين أصحاب العلاقة للمستثمر الرئيسي المتقدم للشراء.
- على المستثمر الرئيسي أن يحصل على تعهد من قبل المطلعين على هذه المعلومات من طرفه على اعتبار هذه المعلومات سرية وأنهم فرداً فرداً يعتبروا ملتزمين بتعهدات وشروط خطاب ضمان سرية ضمان المعلومات الصادر لصالح الشركة القابضة من قبل المستثمر الرئيسي المتقدم لمناقصة الشراء. إن المستثمر الرئيسي على استعداد دائم لإطلاع خبير الخصخصة في الشركة القابضة على التزام خطي من قبل كافة المطلعين من طرفه على المعلومات التي توفرها له الشركة التابعة، يتعهدون بموجبه بالحفاظ على سرية هذه المعلومات في كافة الأوقات.
- الإعلان عن أية معلومات يجب أن يتم بشكل موثق بحيث يحمل طابعاً واضحاً مرئياً معنوناً "سري".
- لا يحق للمستثمر الرئيسي أو أي من مندوبيه أو مستشاريه أو موظفيه الاتصال بأي طرف له علاقة بالشركة التابعة، سواء من العاملين بالشركة التابعة أو عملائها أو مورديها أو وكلائها،... الخ، إلا أولئك الأشخاص اللذين تم تسميتهم تحديداً كتابة في خطاب صادر عن خبير الخصخصة بالشركة القابضة.
- يتعهد المستثمر الرئيسي المتقدم للمناقصة بإرجاع جميع النسخ وكافة الوثائق والمعلومات التي وفرتها له الشركة التابعة بغرض تحضير عرض الشراء، وذلك إرجاعها كاملة غير منقوصة إلى حوزة غرفة المعلومات بعلم واطلاع خبير الخصخصة بالشركة القابضة.