

Tunisia

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The privatization process

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Privatization and public-private partnerships (PPP) in Tunisia have been enhanced recently, as a result of the reduction in government intervention in numerous sectors.

Since 1987, and pursuant to the plan of structural adjustment initiated in 1986, Tunisia started to open up state-owned company capital to national and foreign private investors. This process has now reached maturity; private companies are no longer operating in the red, but are generally profitable.

By the end of 2005, 194 companies had been privatized at a total value of TND2.4 billion (\$1.8 billion). In 2006 Tunisia undertook its biggest-ever privatization operation in terms of value, the privatization of 35% of Tunisie Telecom, the national telecommunications company, representing almost twice as much as all other privatizations since 1987 combined.

The privatization process has introduced certain businesses into the private sector which were up until this point exclusively public sector businesses, such as the conditioning of minerals, land transportation, transport of goods, telecommunications and education. To achieve these operations, the Tunisian government has implemented a raft of legislation covering the procedures and conditions of transfers of shares or titles held by the state, so as to facilitate the development of a free-market economy.

Legal framework

The main piece of legislation covering privatization is Law 89-9 of February 1 1989 relating to participations, companies and publicly-owned establishments (Law 89-9). Pursuant to articles 24 to 27 of Law 89-9, any transfer of shares or exchange of company titles in which the state holds a direct participation must obtain approval from the Commission of Stabilization and Reorganization of Public Participation Companies (*Commission d'Assainissement et de Restructuration des Entreprises à Participation Publique*) (CAREPP), although the final decision lies with the prime minister.

The company being privatized is granted special tax advantages – a key factor in encouraging private initiative and attracting foreign investment into Tunisia. Pursuant to articles 29, 30 and 32 of Law 89-9, privatized businesses enjoy several tax exemptions, including:

- Fiscal relief on the benefit or reinvested income;
- Exemption from partition duties relating to the reduction of the capital;
- Exemption from registration duties on operations relating to real

estate and goodwill transfer;

- Exemption from company income tax for a certain period;
- Exemption from capital gains tax on transfers carried out by the assignor companies; and
- Total or partial exemptions from share transfer stock exchange taxes.

These advantages are granted on a case by case basis by the prime minister, following guidance from the CAREPP.

Procedures and methods of privatization

Privatization must be a financially attractive proposition for both the state and private investors. A preliminary evaluation of the target company is therefore necessary, as well as a more detailed audit carried out by the potential purchasers.

The privatization process begins by the minister of development deciding to consider the capital restructuring of a company. Then, the Tunisian authority proceeds to the evaluation of the titles or assets of the company, and the General Privatization Department undertakes a financial and technical study to decide upon the final strategy to be adopted.

The file is then submitted to both the Technical Privatization Committee and the CAREPP for opinion (bearing in mind that the final decision rests with the prime minister).

Apart from share transfers to employees, all transactions conducted within the framework of a privatization must be carried out by a competition procedure, or more exactly according to one of the following options:

- Market best offer transfer (*cession au mieux du marché*);
- Public call sale transfer (*cession par offer publique de vente*);
- Negotiated transfer (*cession de gré à gré*); or
- A combination of all these methods.

Article 33-4 of Law 89-9 allows for the transfer of blocks of shares through an invitation to tender on the basis of required specifications.

Concessions consist of a transfer of management, and the transfer of an activity, from a public entity to a private entity for a determined period. It can also take the form of private investment in certain activities or sectors that are usually the reserve of the public sector. These techniques (build-own-operate, build-operate-transfer etc) are increasingly important because of the size of the projects which are under development and the number and the extent of the interested sectors.

The Tunisian authorities have recently awarded concessions relating to the Radès power plant and the Onas project; the concession for the Skhira refinery is pending at the time of writing.

The biggest Tunisian privatization, undertaken over the past few months, has been that of the national telecommunications operator,

Tunisie Telecom. The privatization, under which 35% of the company's share capital has been transferred, generated considerable income for the government and has been considered fully successful.

For this operation, the Tunisian government was looking for a strategic partner to contribute to the success of Tunisia's most profitable company. From this we can conclude that government policy is tending to favour the PPP approach rather than the pure privatization model.

Corporate and commercial

Recommended firms

Tier 1

Abdelly & Associates
 Adly Bellagha & Associates
 Ferchiou & Associés Meziou Knani
 Salaheddine Caid Essebsi & Associates

Tier 2

Kallel & Associates
 Mili & Associates

Tier 3

Mahbouli & Associates
 Mallouche & Associés

Abdelly & Associates

With over 80 years of legal practice under its belt, Abdelly & Associates is well-equipped to offer a wide range of financial law services. For example, it has vast experience of mergers and acquisitions, joint ventures and privatizations. It is also something of an authority in banking, energy and telecommunications work.

Samir Abdelly leads the firm from Tunis, but he also manages the firm's other offices in Algeria and Libya. Due to this international capacity, the firm wins a solid amount of project finance mandates. In particular, Abdelly prides himself as a foreign investment expert. As a result, he handles many instructions personally, and he has often been active in oil, mining and energy projects.

Leading lawyer

Samir Abdelly

Key contact partner

Samir Abdelly

Adly Bellagha & Associates

Adly Bellagha & Associates is a well-respected law firm that works out of its office in Tunis. It is made up of four partners and two associates and provides excellent financial law advice, particularly in the hydrocarbon and telecommunications industries. Indeed, clients seem to be happy with the advice provided, one saying that the firm acted "with success and great efficiency."

Name partner Adly Bellagha is the lynchpin of the firm, and clients are appreciative of the work that he does: "the advantage of Adly Bellagha is his very good knowledge of the situation in Algeria, and the fact that he can work in Arabic, French and English." With praise such as this, it is easy to see how the firm attracts clients like Citibank, the Arab Banking Corporation, Arab Tunisian Bank, SDV Tunisie, Etritech, Société Chimique and the Titan Cement Company.

Over the past 12 months, Adly Bellagha & Associates has advised Saida and P&K Tunisie with regard to large loans, and represented SCAC Tunisie in a complicated restructuring issue. SCAC Tunisie also hired the firm for due diligence work relating to the registration of a share assignment between non-resident shareholders with Bourse des Valeurs Mobilières.

The firm was also heavily involved in the high-profile privatization of Tunisie Telecom in March 2006. Hend Ben Achour and Yassine El Hafi represented Oger Telecom and Adly Bellagha and Faiza Telissi advised Telecom Italia in unsuccessful bids during the tender process.

Leading lawyer

Ably Bellagha

Key contact partners

Hend Ben Achour
 Yassine El Hafi
 Faiza Telissi

Ferchiou & Associés Meziou Knani

Three years after the merger of Ferchiou & Associés with Meziou Knani, the firm is now firmly established in the top tier in Tunisia. There four partners at the practice, who continue to be particularly well-regarded in the oil and energy arenas. The firm is also perceived as a telecommunications specialist, and is frequently seen in large privatizations and newsworthy mergers and acquisitions transactions.

This has certainly been the case in 2006. In July, the firm advised Tecom Investments and the Dubai Investment Group on the acquisition of 35% of the state-owned Tunisian telecoms operator Tunisie Telecom. Both clients are subsidiaries of Dubai Holding, and their second round bid of \$2.2 billion won the tender process. This is the largest transaction ever seen in Tunisian history. Name partner Noureddine Ferchiou was instrumental to the success of this process, and peers describe him as "a most impressive lawyer due to the volume of work and revenue."

Leading lawyer

Noureddine Ferchiou

Key contact partner

Noureddine Ferchiou

Salaheddine Caid Essebsi & Associates

Brothers Salaheddine and Beji Caid Essebsi are the two partners in charge of a seven-lawyer team at Salaheddine Caid Essebsi. Between the pair there is almost a hundred years of legal practice, so the firm is rich with experience. In addition, Beji is a former minister of foreign affairs and president of the House of Representatives, and competitors call Salaheddine "the godfather of Tunisian law." It is for these reasons that the firm has shot to the top tier in the rankings this year.

Salaheddine Caid Essebsi & Associates markets itself as a general law firm with capabilities to offer services in company, tax, commercial, trade, banking, foreign investments, trademark, hydrocarbon and arbitration issues.

Along with Ferchiou & Associés Meziou Knani, the firm co-advised two Dubai Holding subsidiaries in relation to the \$2.2 billion acquisition of a 35% stake in Tunisie Telecom. This impressive transaction comprised a lengthy tender process that involved 13 invited bidders, of which only six decided to participate in the first round.

Leading lawyers

Beji Caid Essebsi
 Salaheddine Caid Essebsi

Key contact partner

Salaheddine Caid Essebsi

Kallel & Associates

With a frequent presence in privatizations by the Tunisian government, Kallel & Associates is sufficiently prepared to stake a claim for a place on the rankings. Despite being a smaller operation than some of its rivals, the two-partner Tunis firm maintains a healthy client list, which is mostly made up of local businesses but does include some multinational names too.

The firm takes a generalist approach to financial law advice, and is just as comfortable representing its clients in M&A transactions as it is acting on a project financing. That said, Sami Kallel is well-known for his arbitration skills and his excellence at intellectual property. It is for these reasons that the market highlights Kallel as the firm's leading lawyer.

Leading lawyer

Sami Kallel

Key contact partner

Sami Kallel

Mili & Associates

Lofti Blel, Mohammed Zied Chaabane and Faouzi Mili make up three-partner firm Mili & Associates. The trio specializes in completing intellectual property and competition mandates, although they are also capable of fielding a team to act on most types of corporate and commercial transaction. For example, the firm regularly advises on foreign investment issues, real estate matters and multi-jurisdictional contracts.

Mili & Associates has forged some excellent relationships with firms in the US, the UK, Jordan and Cyprus. Most importantly, it has a close relationship with French law firms such as Ayache & Salama, Cabinet Chaillot and Request Chabanel. In addition, Mili & Associates is the Tunisian law firm of choice for the French and Dutch embassies.

International corporate clients of Mili & Associates include Euro RSCG Design from France, Japan's Mitsui OSK Lines and the UK's Zeneca Pharmaceuticals. On the banking side, meanwhile, the client roster contains the likes of the World Bank and Stichting Bevordering Chequeverkeer, the association of Dutch banks.

Leading lawyer

Faouzi Mili

Key contact partner

Faouzi Mili