

your Legal Lab

Privatizations in Greece: Approval of HRADF Asset Development Plan and establishment of a “Hyper-Fund”

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I. Introduction

Amidst fierce political conflict the hotly debated omnibus bill pertaining – among others - to privatizations and the establishment of a “Hyper-Fund”, was enacted by virtue of Law 4389/2016 (Government Gazette issue A 94/27.05.2016). Just two days prior to the enactment of the aforementioned law, the Governmental Council for Financial Policy approved by virtue of its decision 33/2016 (Government Gazette issue B 1472/25.05.2016) the asset development plan of the Hellenic Republic Asset Development Fund (HRADF), the entity that has thus far acted as the corporate vehicle for the implementation of the Greek State’s privatization policy.

II. The approved HRADF asset development plan

The asset development plan, as approved by the HRADF on 26.04.2016 and the Governmental Council as above, includes 19 assets pertaining to the sectors of transportation and infrastructure, energy, telecommunications and post, and real estate development. To be more specific, the approved asset development plan encompasses the following assets:

A. Transportation and infrastructure

1. **14 Regional Airports:** long-term (40+10 years) concession. The tender has already been awarded to the consortium Fraport –

Slentel. Financial closure and handover pending (scheduled November 2016).

2. **Piraeus Port Authority (OLP):** Sale of 67% of the share capital of Piraeus Port Authority S.A. The SPA/SHA was signed with Cosco Group (Hong Kong) Ltd in April 2016. Approval of the amended concession agreement by the Greek Parliament and approval of the transaction by the Hellenic Competition Committee is pending.
3. **Thessaloniki Port Authority (OLTH):** Sale of 67% of the share capital of Thessaloniki Port Authority S.A. Eight investors have been pre-selected. Deadline for binding bids is 2016 3rd quarter.
4. **TRAI NOSE S.A. & EESSTY (ROSCO):** Sale of 100% of both TRAI NOSE SA and EESTY share capital. The binding offer date has been postponed to June 22, 2016 for both tenders.
5. **Athens International Airport (AIA):** The term of the initial concession agreement currently in force between AIA and the Hellenic Republic ends in November 2016. Negotiations between AIA and HRADF for the extension of the said concession agreement are underway. Sale of 30% of AIA shares currently held by the HRADF is under consideration.

6. **Egnatia Motorway:** Long-term (35 years) concession. Phase 1 of the tender is expected to be launched in September 2016.
7. **Thessaloniki Water Supply and Sewerage (EYATH):** Sale of 23% of EYATH shares. Advisors to be engaged by 2016 3rd quarter.
8. **Athens Water Supply and Sewerage (EYDAP):** Sale of 11% of EYDAP shares. Advisors to be engaged by 2016 3rd quarter.

B. Energy

9. **Hellenic Gas Transmission System Operation (DESFA):** Sale of 66% of DESFA's shares. The tender has been awarded to SOCAR. Negotiations between SOCAR and third parties for the purchase of a minority stake are underway. Approval of the transaction by DG COMP is pending.
10. **Hellenic Petroleum (HELPE):** HRADF currently holds 35% of HELPE shares. Advisors are expected to be engaged to evaluate alternative strategic options by 2016 3rd quarter.
11. **Public Power Corporation (PPC):** Sale of 17% of PPC shares (potentially by the end of 2016). Advisors to be engaged by 2016 3rd quarter and strategy to be determined by HRADF.
12. **Public Gas Corporation (DEPA):** HRADF currently holds 65% of DEPA shares. Advisors to be engaged by 2016 3rd quarter to assess alternative strategic options and to re-launch a tender process, since the previous one was unsuccessful.

C. Telecommunications and post

13. **Hellenic Telecommunications Organization SA (OTE):** Hellenic Republic, currently holding 6% of OTE shares, shall transfer 5% to HRADF for further sale. Advisor selection is underway.
14. **Hellenic Post SA (ELTA):** HRADF holds 90% of ELTA voting rights. Such voting rights will be transferred to the newly-

established Hyper-Fund after a restructuring plan has been drafted, at least 6 months prior to the said transfer.

D. Real estate development

15. **Hellinikon (former Athens airport):** Sale of 100% shares of Hellinikon S.A. which will get ownership of 30% of the property and will have the right to develop and manage 100% of the property for 99 years. Share Purchase Agreement and MoU have been signed with the investor (Lamda Development). Ratification of the SPA by the Greek Parliament pending.
16. **Astir Vouliagmenis:** Sale of 81.122.156 shares of Astir Palace Vouliagmeni S.A. (including the marina subsidiary). The tender has been awarded to JERMYN consortium. Issuance of regulatory permits and licenses for the development of the property is pending.
17. **Afantou Rhodes:** Sale of 100% of the shares of 2 or more SPVs set up by HRADF for two properties on the island of Rhodes (Golf Afantou & Southern Afantou). The tender has been awarded. Conclusion of the regulatory licensing procedure is pending.
18. **Marinas:** Long-term (40 years) concession of numerous marinas. With the exception of the tender for Marina Pylou, which is currently in phase 2, the remaining tenders will be re-launched.
19. **E-auction III, IV, V, VI & Small Real Estate Assets**

Evidently, after a long period of governmental skepticism vis-à-vis privatizations, which is reflected in delays, postponements and unsuccessful tender processes, privatizations are a top item in the investment agenda and financial policy. It remains to be seen whether this positive momentum will materialize into fruitful tenders and tangible profit for the Greek State.

III. Establishment of a Hyper-Fund

In implementation of the privatization policy agreed between the Greek Government and foreign lenders, the new entity, which will effectively constitute a Hyper-Fund managing a wide array of Greek State assets, has been established as a société anonyme under the corporate name “Hellenic Corporation of Assets and Participation” (“HCAP”) with an initial life-span of 99 years. The initial share capital of HCAP has been set to € 40.000.000 and is divided in 40.000 registered, non-transferable shares. With HCAP’s sole shareholder being the Greek State, HCAP aims at serving a special public purpose, which is determined to encompass a. contribution of resources for the implementation of Greece’s investment policy, and b. paying-off Greece’s public debt in accordance with the provisions of Law 4336/2015 (Greece’s third bail-out agreement). To this end, 50% of HCAP’s profits will be paid to the Greek State in the form of dividend to be used for the purposes set out in the third bail-out agreement, while the remaining 50% will be used for HCAP’s investment projects.

The four “pillars” of HCAP. HCAP will act as the holding company of the following four “immediate subsidiaries”, the share capital and respective share certificates of which are transferred by the Greek State to the new entity:

1. The Hellenic Stability Fund (HSF),
2. The Hellenic Republic Asset Development Fund,
3. The Public Properties Company SA, and
4. The Public Participations Company SA.

HCAP management. The corporate bodies of HCAP are the General Meeting (of the sole shareholder, namely the Greek State), the Supervisory Board, the Board of Directors and the Auditors. In accordance with the provisions of Law 4389/2016, as supplemented – to the extent not contradicted – by the provisions of C.L. 2190/1920 on sociétés anonymes, HCAP’s management is organized as follows:

- a. **General Meeting of the sole Shareholder:** The General Meeting is HCAP’s superior corporate body. It approves, upon proposals submitted by the BoD, the

strategic plan of the entity and of its immediate subsidiaries, with the exception of the HSF and the HRADF with regard to assets already under privatization at the time of the law’s (L. 4389/2016) enactment.

- b. **Supervisory Board:** It consists of five members to be appointed by the General Meeting of the sole shareholder. Three of the Supervisory Board Member, acting collectively, are selected by the Greek State subject to the consent of the EU Commission and the ESM, while two of them, also acting collectively, are selected by the EU Commission and the ESM, subject to the consent of the Greek Minister of Finance. The Supervisory Board’s role is to supervise the Board of Directors in order to make sure that the latter acts in accordance with the applicable legal framework and serves the objectives of HCAP and the public interest. By way of exception from general corporate law, which provides that BoD members in sociétés anonymes are elected by the General Meeting, the authority to appoint the members of the HCAP BoD is vested in the Supervisory Board. In addition to supervisory powers, the Board is entrusted with substantial decisive powers. Notably, it has been granted the authority to sign the resale of assets transferred to HCAP or its immediate subsidiaries back to the Greek State, the incorporation of new immediate subsidiaries, the increase of HCAP’s share capital.
- c. **Board of Directors (BoD):** It consists of five to seven members elected by the Supervisory Board, as above, in accordance with HCAP’s internal regulation. The BoD is entrusted with HCAP management and the attainment of its legally prescribed goals. It enjoys significant decisive authority, as it approves HCAP’s business plan and appoints the management bodies of HCAP’s immediate subsidiaries, with the exception of the HSF.

While the establishment of HCAP constitutes another token of a positive trend favoring

privatizations as a means of implementation of the Greek Government's investment policy, it remains to be seen whether the innovative and expansive structure of the Hyper-Fund will indeed boost foreign investments in Greece, bearing a positive outcome for the debt-struck State.

