

## SALE OF EQUITY – RULES AND PROCEDURES

### 1. INTRODUCTION

The sales process of BAMC's equity holdings (hereinafter referred to as "Process") has to be open, transparent and competitive.

When selling equity holdings BAMC (as a publicly-owned company) must in principle behave as a market economy vendor (**Market Economy Vendor Principle**), seeking to maximize the revenues (or minimize the loss) from the Process.

The sale must be in line with Slovenian law and state aid regulations.

### 2. GENERAL PRINCIPLES OF THE PROCESS

#### 2.1 Time for review

Bidders must be given enough time and information to carry out a proper review of the assets for which they wish to submit their bids.

#### 2.2 Equal treatment

All bidders in the respective stages of the Process have to be treated equally.

#### 2.3 Applicable legislation

Sale has to be in line with the Slovenian legislation and the State aid rules<sup>1</sup>. An important part of Slovenian legislation is the Act Defining the Measures of the Republic of Slovenia to Strengthen Bank Stability (ZUKSB), which must be considered in sale procedures (e.g. the pre-emption right of Slovenian Sovereign Holding and employees in companies where the state asset is classified as a strategic or important investment).

#### 2.4 Payment

BAMC will require payment in cash for its assets.

#### 2.5 Covering the costs of parties participating in the sale procedure

BAMC shall not cover any costs incurred by parties participating in the sale process.

#### 2.6 Selling debt and equity

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<sup>1</sup> [http://ec.europa.eu/competition/state\\_aid/studies\\_reports/swd\\_guidance\\_paper\\_en.pdf](http://ec.europa.eu/competition/state_aid/studies_reports/swd_guidance_paper_en.pdf)

If BAMC has both equity and loan exposures towards the company, it will sell both at the same time, in the context of the same process.

When a majority or minority equity stake and loan exposure are on sale, the sale will be conducted under the rules governing the equity sales process, except if the equity value, based on latest internal or external valuation, is zero or negative.

## **2.7 Sale consortium**

BAMC will try to form or join to a sales consortium of owners with a view to obtaining the highest possible control premium. If this is not assessed as possible BAMC will then itself offer its stake for sale.

## **2.8 Entering in the Process**

A party participating in the sale process may enter the process at any stage regardless of the above procedure, provided that BAMC assesses its offer as credible (i.e. the party participating in the sale process is capable of executing the transaction within the set timeline) and financially attractive. Such party participating in the sale process must follow the same set timeline. BAMC may reject a party's participation in the sales process if it assesses that the Process will be harmed by giving such a party access to the sales process.

## **2.9 Additional information of the bidder**

If and when the relevant credit and investment committee deems it necessary, it may require additional information on the bidder as regards his sources of funding, or any other additional documentation.

## **2.10 Completion of the Process**

The Process is completed:

- when the Sale and Purchase Agreement ("SPA") is signed. If there is no closing of the transaction, the process shall be deemed unsuccessful.
- if no offers are received within the indicated deadline or none of the submitted offers are acceptable.

## **2.11 Continuation of the sale procedure in the event of an unsuccessful procedure**

BAMC retains the right to take into account an offer received after the Process has been formally completed as being unsuccessful and to continue with the Process (without initiating a new Process).

## **2.12 Notification of SDH**

Before BAMC divests its equity share in a company that is defined as **strategic or important** in the strategy of the Government of Republic Slovenia, it informs the Slovenian Sovereign Holding («SDH») about the intended sale and conditions of the sale

of its equity stake in the company, in line with Article 10a of ZUKSB. In such cases, SDH shall have pre-emption rights to the equity offered for sale.

### **3. THE EQUITY SALES PROCESS**

#### **3.1 Expression of interest**

Interested investors may always express their interest by e-mail, post, fax or any other form of written expression. The expressed interest can be submitted in Slovenian or English language, and should contain at least the following information:

- The bid with the rough indication of the offered purchase price for the assets that are the subject of the sale procedure;
- Potential investor details (name and tax number, authorized person's contact information, presentation - short description of the interested party's business activities, including its volume of business, identity of the interested party's ultimate beneficial owner, statement that the interested party is acting in its own name and on its own behalf, basic financial data – balance sheet and income statement for the past three years or the entity's entire period of operation, statement that no winding up, bankruptcy, compulsory settlement or other insolvency or restructuring procedures have been initiated against the potential investor...);
- Declaration about the circumstances of financial purchase (a description of the method of financing the purchase, along with the proof or reliable explanation that the interested party has or will have at its disposal adequate funding at least in the amount offered by the interested party in its (non)binding bid (for example: a statement from the bank confirming a deposit has been made by the bidder, a statement from the bank confirming the intent of financing, etc.), whereby the interested party should explicitly determine the actual source of funding for the purchase (including the amounts of funding from own capital (own funds) and by debt financing obtained from third-party sources (banks, etc.));
- Statement about any outstanding debts (existing or potential) the potential investor has in relation to the seller, wherein the interested party should describe whether it has any existing or potential debt to the seller;
- Statement that a potential investor is not considered a legal or natural person under Article 13 of ZUKSB (this rule does not apply in case DUTB is selling a share which it acquired directly, i.e. not in the process of D/A or D/E swap)

The contents of all statements to be provided and signed by the investor are predefined by BAMC ("Know your client" procedure (hereinafter referred to as "KYC"). These statements available on BAMC's website under the "Investment opportunities" section

("Know your client - KYC"). All statements have to be sent to the potential investors upon receipt of their interests.

### 3.2 Start of the Process

The Process is initiated by BAMC when it assesses that the conditions in the industry, market conditions, interest of potential investor, etc. and the specific situation of the company are right.

### 3.3 KYC procedure

The KYC information about the bidder with all available external data bases (Ajpes, Gvin, etc.) has to be submitted at the expression of interest or non-binding stage of the sales process. This applies also to the bidder directly submitting a binding bid. The process continues in case received data are accurate and complete, otherwise the bidder is requested to complement the forms before the relevant credit and investment committee takes a decision.

In case that data are not complemented the relevant bidder is not allowed to participate in the sale process, i.e. it cannot be shortlisted.

Prior to signing the sale contract, the buyer has to complete all declarations appended to the Instructions on performing customer due diligence procedures under the Prevention of Money Laundering and Terrorist Financing Act.

### 3.4 Disclosure of the ultimate buyer

After the sale process is successfully concluded, the buyer's identity is to be disclosed in all cases.

### 3.5 Binding bids

**Opening of the binding bids** can be done by BAMC or by the selected advisor. BAMC reserves the right not to select any preferred bidder and may reject all submitted offers.

### 3.6 Sales Agreement

The SPA must have the **anticorruption clause** and the clause stipulating the contract is void if any association with the debtor is established, within the meaning of Article 13 of the ZUKSB.

The SPA must include a **top-up clause** which obligates the buyer to pay the difference between the price agreed in the SPA and the higher price agreed in the later sale/purchase.

The SPA has to include the **re-sale clause** which stipulates that the investor can't sell the asset in the period of 5 years to the parties defined in the clause. In case of a breach of the clause, the investor has to pay to BAMC the contractual penalty in the amount of 50 % of the purchase price.

The SPA must include an **assurance** in accordance with the 3rd paragraph of Article 13 of the Act Defining the Measures of the Republic of Slovenia to Strengthen Bank Stability (ZUKSB).

If BAMC purchased the equity shares directly from the banks and not indirectly through debt exposures (i.e. in the context of a D/A or D/E swap), the assurance and resale clause shall be excluded from the contract.

The sales agreement must contain a provision that the purchase price may only be legitimately paid:

- by the buyer from the confirmed bank account,
- by the buyer from the buyer's bank account opened with a bank based in the EU, with the exception of Cyprus, Romania, Bulgaria and Luxembourg,
- by the confirmed commercial bank of the buyer,
- by the buyer's commercial bank based in the EU, with exception of Cyprus, Romania, Bulgaria and Luxembourg.

DUTB shall have the right to refuse payment of the purchase price, which is not in line with the before mentioned provision of the sales agreement.

The sales agreement must contain a provision that in the event of failure to properly fulfill the conditions (considering the preceding indent), the seller may, within ten (10) days of receiving the purchase price, notify the buyer that the buyer's fulfilment of conditions is considered to have been met. Such notification shall enable the transfer of ownership to the buyer.

#### **4. TYPE OF THE SALE PROCESS**

The type of the process is set at the start of the process.

##### **4.1. Minority stakes**

The Process can be organized in different forms like public auction, gathering of non-binding or binding offers etc.

#### **4.2. Majority stakes**

BAMC usually engages the services of a financial and legal advisor in case of sale of majority stakes to assist it in running the sales process. DUTB may decide to oversee the sale process without involving a financial and/or legal advisor, through an internal taskforce. For the purposes of these rules, the term “majority stake” shall be understood to refer to a situation where BAMC is the largest individual shareholder of a company

A “Cooperation Agreement” is to be signed with the management of the Company, which stipulates the obligations of the Company with regard to the support of the process.

The Process is organized in the following manner:

- A long list of interested potential investors is prepared.
- A teaser with basic publicly available information about the company is sent to the investors. Interested investors must then submit their “letter of interest” (“LOI”) and sign a non-disclosure agreement (“NDA”).
- The interested investors then receive the Information memorandum (“IM”), containing enough information (also nonpublic) which enables the interested investors to evaluate the Company and submit a Non-binding (indicative) offer.
- BAMC then selects the short list of investors who are invited to continue the Process and conduct the due diligence of the company and are invited to the management presentation.
- After the due diligence, organized either by BAMC<sup>2</sup> or by the advisor, the investors are asked to submit a binding bid.

#### **4.3 NEGATIVE EQUITY VALUE**

When internal or/and external valuation clearly state negative value of BAMC equity stake, a sale of equity can be performed as part of the claims’ sales.

#### **5. OTHER PROVISIONS**

The Board of Directors may allow an exemption from the aforementioned rules on a case-by-case basis, always subject to reasonable arguments put forward by the sales team.

These sales procedures do not apply in cases that BAMC is deciding to sell:

- equity stakes based on a takeover bid in accordance with the law regulating takeovers,
- shares or financial debt instruments (i.e. bonds) of companies, organized as public limited companies listed on organized markets (i.e. stock exchanges).

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<sup>2</sup> Relevant instructions are available on BAMC’s intranet under “Regulations/Virtual data room”

- equity stakes or debt instruments, where the last available internal valuation is less than 50.000 EUR, subject to the approval of BAMC.

An exception to these rules is also possible in cases of out-of-court enforcement of pledged assets, whereas the procedure is defined in line with valid legislation, taking the following circumstances into account:

- number of potential investors,
- sale of majority or minority stakes (the implementation of DD, external valuations as a part of an auction procedure),
- the company's liquidity situation,
- the value of share,
- access to the information etc.

## **6. PROHIBITION OF PURCHASE**

DUTB's and NPL PORT's employees and student workers, members of the DUTB board of directors and DUTB board committee members (hereinafter referred to as "employees") are barred from purchase of assets owned by, or pledged to DUTB, or assets to which DUTB has an entitlement of any kind.

After the end of the employment or other relationship with DUTB, such person may not purchase the aforementioned assets for a further 12 months.

The prohibition also refers to persons closely related to the employee or former employee, as these are defined in Article 18 of the Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act, for the same period of time as is relevant to the employee.

An exemption from a ban on the purchase has to be approved by the board of directors.

Ljubljana, 1. January 2018