

## 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.

Sale has to be in line with the Slovenian legislation and the State aid rules.

### 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 represents ZUKSB, of which relevant articles must be taken into account when designing the Process (i.e. preemptive right of SDH, employees, KYC rules, etc.).

#### 2.4 Relevant approvals

Start and the completion of the Process is approved by relevant Committee which among others approves the key milestones / conditions of the Process (e.g. short listing of bidders, exclusivity, selection of the advisors etc.).

#### 2.5 Payment

BAMC will require money as payment for its assets.

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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)

## **2.6 Covering investors' costs**

BAMC will not cover any cost of the investors for participation in the Process.

## **2.7 Selling debt and equity**

If BAMC has both equity and loan exposure towards the company, it will sell both at the same time during the same Process.

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

## **2.8 Sales consortium**

BAMC will try to form or join to a sales consortium of owners in order to obtain the highest possible control premium. If this is not assessed as possible BAMC will then itself offer its stake for sale. In case of sale of minority stakes the re-sale clause and the clause in accordance with Article 13 of ZUKSB are excluded.

## **2.9 Capital increase**

BAMC shall as a shareholder seek to preserve the value of its shareholding. In case of needed capital increase by the company in which BAMC holds an equity stake, BAMC will at the same time strive to combine the capital increase with the potential exit from the company.

## **2.10 Entering in the Process**

An investor may enter the Process at any stage regardless of the above procedure, provided that BAMC assesses its offer as credible (i.e. properly funded, capable of executing the transaction within the set timeline) and financially attractive. Such investor has to follow the same set timeline. If BAMC assesses that the Process will be harmed by giving such an investor access, BAMC may reject the investor's right to participate in the Process.

## **2.11 Additional information of the bidder**

If and when the Process or potential bidders are, by BAMC, assessed as high risk, the BAMC can require additional information on the bidder on his sources of funding or any other additional documentation.

## **2.12 End of the Process**

The Process is completed:

- when the Sale Purchase Agreement ("SPA") is signed.
- if within the set deadline no offers are received or none of the submitted offers is acceptable.

### 2.13 Ongoing Process

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) if such offer is received within 4 months after the unsuccessful completion of the Process.

### 2.14 Notification of SDH

Before BAMC divests its shareholding in the company that is in the strategy of the Government of Republic Slovenia defined as **strategic or important**, it informs Slovenian State Holding (»SDH«) about the intended sale and conditions of the sale of its shareholding in the company, in line with the Article 10a of ZUKSB.

## 3. THE EQUITY SALES PROCESS

### 3.1 Expression of interest

Interested investors may always express their interest online, via the BAMC website by filling in the contact form or by e-mail, post, fax or any other written expression.

The expressed interest can be submitted in Slovenian or English language, and should contain at least the following information:

- The indicative price for the assets that are subject of sale's procedure;
- Potential investor's information (name and tax number, authorized person's contact information, presentation - short description of the interested party's business activities, including volume of business, identity of the interested party's final 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 purpose 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, ie not in the process of D/A or D/E)

The contents of all statements to be provided and signed by the investor are predefined by BAMC (“Know your client” procedure, hereinafter as KYC and are available on BAMC’s internet pages under “Investment opportunities” forms Know your client - KYC).

Incomplete expressions of interest will not be presented to relevant Committee before all the relevant information is obtained.

### **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.

In order to attract as many investors as possible, the **announcement about the start of the sale** has to be published at least on BAMC’s website and in Slovenian media (at least 1 newspaper with country wide reach). When the sale may attract investors operating on a Europe-wide or international scale, the advertisement must be published also in international media (Financial Times etc.).

### **3.3 KYC procedure**

The KYC information about the bidder has to be obtained and verified at the expression of interest or non-binding stage of the Process.

### **3.4 Disclosure of final buyer**

The identity of the buyer shall always be disclosed following the successful conclusion of a sale.

### **3.5 Binding bids**

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

### **3.6 Compliance check review**

Before the final approval of the sale a **compliance check review** of the Process has to be done.

### 3.7 SPA

The SPA has to have:

- **“anticorruption clause”**;
- **“top-up clause”**;
- **“Re-sale clause”**. In case the equity is acquired directly from the banks ie not in the process of D/A or D/E, this clause is excluded from the SPA;
- **“Representations and Warranties clause”**;
- **statement** that the violation of R&W given in accordance with Article 13, Paragraph 3 of ZUKSB will result in the contract being null and void.

### 3.8 End of the Process

At the end of the Process a **press release** with all relevant details of sale is prepared.

#### **Notification/reporting duties**

In cases when BAMC has sold a qualified percentage of ownership in public limited companies being:

- Public companies, i.e. quoted on LJSE
- Non-public companies, for which Takeover Act (ZPre-1) applies, i.e. when they have either
  - More than 4 million EUR of total capital
  - More than 250 shareholders

BAMC has to notify Securities Market Agency (“ATVP”) and the Company.

The purchase price of the public company’s-shares, listed on the stock exchange, has to be disclosed.

## 4. TYPE OF SALE PROCESS

The type of the Process is set at the start of the Process:

### 4.1. Minority stakes (below 50%+1 share of voting rights)

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

### 4.2. Majority stakes (50%+1 share of voting rights)

BAMC will engage a financial and legal advisor in case of sale of majority stakes to assist it in running the Process. The advisors have to be reputable companies and have to sign a statement that they have no conflict of interest in performing the advisory services related to the Process. Any potential conflict of interest has to be disclosed to BAMC, together with the actions taken for prevention of conflict.

The “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:

- Long list (“long list”) of likely interest investors is prepared.
- The Teaser with basic publicly available information about the company is sent to the investors on the long list based on which the interested investors have to submit the “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.
- Based on the recommendation from the financial advisor, 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.
- Based on the due diligence, the investors are asked to submit the binding offer, together with the “mark up” of the SPA which they are ready to execute.

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

A sale of equity can be performed as part of the claims’ sales upon prior approval of relevant Committee.

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

Relevant Committee can allow an exemption from the above stated rules on a case by case basis.

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

- equity based on Takeover offer in accordance with Takeover Act (ZPre-1),
- shares or financial debt instruments (i.e. bonds) of companies, organized as public limited companies, which are quoted on organized markets (i.e. stock exchanges)
- the equity stake or financial debt instrument, of which the last available internal valuation is less than 50.000 EUR, upon the approval of relevant Committee.

An exemption to these rules is also possible in cases of out-of-court enforcement of pledged assets, wherein the procedure is defined upon considering valid legislation and the following circumstances:

- number of potential investors,
- sale of majority or minority stakes (the implementation of DD, external valuations as a part of an auction procedure),
- liquidity difficulties of the company,
- the value of share,

- access to the information etc.

In Ljubljana, August 30<sup>th</sup>, 2016