

**MALACAÑANG
MANILA**

BY THE PRESIDENT OF THE PHILIPPINES

EXECUTIVE ORDER NO. 323

**CONSTITUTING AN INTER-AGENCY PRIVATIZATION COUNCIL (PC) AND
CREATING A PRIVATIZATION AND MANAGEMENT OFFICE (PMO)
UNDER THE DEPARTMENT OF FINANCE FOR THE CONTINUING
PRIVATIZATION OF GOVERNMENT ASSETS AND CORPORATIONS**

Whereas, pursuant to Republic Act No. 8758 s. 1999, the life of the Committee on Privatization (COP) and the Asset Privatization Trust (APT) will expire on December 31, 2000.

Whereas, Republic Act No. 8758 provided that, "All assets held by the Asset Privatization Trust, all moneys and other properties belonging to it, and all its liabilities outstanding upon the expiration of its term shall revert to and be assumed by the National Government".

Whereas, Republic Act No. 8758 mandated the transfer for disposition of the assets held by the APT by the President of the Philippines to the trust department of the appropriate government agency upon the expiration of the term of APT;

Whereas, Executive Order No. 12, s. 1998 reaffirmed the privatization policy of the Government by encouraging all heads of departments, bureaus, agencies and instrumentalities including government owned and controlled corporations to identify assets and activities that can be efficiently and effectively undertaken by the private sector; by broadening the coverage of privatization activities with the inclusion of some authorities such as Bases Conversion and Development Authority (BCDA), Public Estates Authority (PEA), Philippine Tourism Authority (PTA), Philippine Economic Zone Authority (PEZA) and Subic Bay Metropolitan Authority (SBMA); and by directing the COP to consider other alternative modes of privatization such as leasing, management and maintenance contracts, BOT schemes or joint venture arrangements;

Whereas, under the Constitution and under the Administrative Code of 1987, the President, as Chief Executive, has control and supervision over, and the authority to reorganize, the Executive Branch of the Government, including the Office of the President;

Whereas, the Government's privatization program has proven beneficial and helpful to the economy in terms of generating revenues, improving investment climate, attracting foreign capital and investments, broadening ownership base, developing capital markets and fostering private sector participation;

Whereas, there are remaining partially sold and undisposed accounts approved for privatization consisting of 150 transferred assets, of which 88 are partially sold and 62 are still undisposed, 57 government owned and controlled corporations, of which 31 have been partially sold and 26 are still undisposed, and several surrendered properties with sizeable amount of projected revenues for the much-needed resources of the Government;

Whereas, there is a vast opportunity for greater private sector participation in the development of the Philippine economy with the successful launching of Government's PROGRESS Bonds and the pending enactment by Congress of the bill restructuring of the power industry and privatizing the National Power Corporation;

NOW, THEREFORE, I, JOSEPH EJERCITO ESTRADA, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:

Article I. Restatement of the Policy

Section 1. Restatement of Policy. The National Government hereby restates its privatization policy to promote an orderly, coordinated and efficient privatization of remaining government corporations, assets, activities and idle properties which have been identified as unnecessary and inappropriate for the government sector to maintain.

Article II. The Privatization Council

Section 1. Organization. There is hereby established a Privatization Council (PC), referred to as the "Council", to oversee the privatization program of the Government.

Section 2. Composition. The Council shall be composed of the Secretary of Finance as Chairman, with the Secretary of Budget and Management, Trade and Industry, National Economic and Development Authority and Justice as members. The National Treasurer and the Chairman of the Presidential Commission on Good Government shall be non-voting members of the Council.

The Technical Committee shall also be established to be composed of the representative of the Department of Finance as Chairman, and representatives of the Department of Justice, Department of Budget and Management, Department of Trade and Industry, National Economic Development Authority, Bureau of Treasury and the PCGG, as members.

Section 3. Objectives, Powers and Functions. The Council shall direct, supervise and coordinate all privatization and similar disposition efforts undertaken by the Government in order to promote private sector participation in developing the Philippine economy and to generate maximum cash recovery for the National Government. In pursuit of these objectives, the Council shall assume all the powers, functions, duties and responsibilities, all properties, real or personal assets, equipment and records, as well as the obligations and liabilities previously held or exercised by the COP under Proclamation No. 50, as amended, which have been devolved to the National Government pursuant to Republic Act No. 8758.

Section 4. Meetings. The Council shall meet at least twice a month, or as frequently as necessary to effectively discharge its functions and responsibilities and expedite the disposition of GOCCs, assets, activities and other government properties.

The presence of the majority of the voting members shall constitute a quorum and the concurrence of said majority should be adequate for any decision of the Council: Provided, that were a disposition or rehabilitation proposal is involved, the decision of the Council must be unanimous. In case they are unable to attend, the Chairman and Members may designate any of their immediate subordinates with the rank of Undersecretary or its equivalent to represent them in the meetings of the Council.

The Council shall act on any recommendation for disposition not later than thirty (30) days from the date of its submission to the Council.

Section 5. Legal Counsel. The Secretary of Justice shall be the ex-officio adviser to the Council on legal matters.

Section 6. Funding. The Council shall be provided with an initial budget of Ten Million Pesos (P10,000,000.00) to be drawn from the Organizational Adjustment Fund. Appropriations for the succeeding years shall be incorporated in the budget proposal for the Office of the President.

Article III. Privatization and Management Office

Section 1. Organization – There is hereby organized under the Department of Finance an Office called Privatization and Management Office (PMO), hereinafter referred to as the “Office”.

The Office shall be headed by a Chief Privatization Officer (CPO) who shall be appointed by the President of the Philippines upon recommendation of the Secretary of Finance.

The Chief Privatization Officer shall be assisted by four (4) Deputy Privatization Officers who shall be in charge of specific operations and undertakings as directed by the Chief Privatization Officer. These Deputy Privatization Officers shall be appointed by the Secretary of Finance upon recommendation by the Chief Privatization Officer.

Section 2. Powers and Functions. In addition to the powers, duties and functions under Proclamation No. 50, as amended, the Office shall be empowered to implement the actual marketing/disposition program of the government corporations, assets and idle properties after securing prior approval of the Council, to execute and deliver, on behalf of the National Government, the deeds of sale, contracts and other instruments as may be necessary or appropriate to convey title to such assets, to take title to and possession and conserve assets transferred to it, to engage external expertise as necessary in the fulfillment of its tasks, to adopt internal rules and regulations and to submit periodic reports to the Council on the status of the disposition program.

Any and all sales and other modes of privatization or disposition shall not be considered final unless and until approved by the Council.

All receipts from the sale of assets of the Office, except portions thereof for reimbursable custodianship and/or operational expenses, shall be remitted to the National Treasury.

Section 3. Powers and Functions of the CPO. The CPO shall have the following powers and functions.

1. To enter into management and other contracts as may be appropriate; and
2. To develop the staffing requirements of the Office, and for this purpose, appoint, remove and fix the remuneration of the personnel of the Office: Provided, That as far as practicable, the CPO should rely on secondment from government entities undertaking related functions, and or qualified external expertise in an advisory capacity and on a contractual basis.

Section 4. Qualifications. No personal shall be appointed an Officer unless he or she is of good moral character, of unquestionable integrity and responsibility, and of recognized business competence. No person, or director, officer, consultant or stockholder of corporations constituting or having any interest in the assets assigned to the Office may be appointed as an Officer.

Section 5. Internal Guidelines. The Office, through its Chief Privatization Officer, may adopt and implement such internal rules and regulations necessary or convenient for the proper discharge of the functions of the Office. Provided, That such internal rules and regulations must be in accordance with existing laws, orders, decrees and proclamations. Provided further, That such rules and regulations may be subsequently amended, abrogated or disapproved by the Secretary of Finance.

Section 6. Funding. The Office shall be provided with an initial budget of Thirty Million Pesos (P30,000,000.00) to be drawn from the Organizational Adjustment Fund. The Office shall be allowed to retain commissions, due diligence fees and proceeds from the sale of Asset Bidding Rules, information memoranda and similar documents, as well as a portion or percentage of proceeds from disposition efforts, not to exceed ten percent (10%), to be approved by the Council to maintain a revolving fund to be utilized for the payment of fees and reimbursable expenses and of the costs and expenses incurred by the Office in the conservation and disposition of the assets held by it or in the performance of its other responsibilities under this Executive Order.

Appropriations for the succeeding year shall be incorporated in the budget proposal for the Department of Finance.

Article IV. Operational Provisions

Section 1. Transfer of Assets. Pursuant to the provisions of Republic Act No. 8758, the financial assets of APT shall be transferred for disposition by the President to a

trust department of the Land Bank of the Philippines. The physical assets remaining at the end of the term of APT shall immediately be transferred to the Office under the Department of Finance for appropriate disposition.

Section 2. Utilization of Proceeds. Upon the effectivity of this Executive Order, all receipts from the sale of assets shall be remitted to the National Treasury in the following proportion: sixty percent (60%) to the special account of the Agrarian Reform Fund and forty percent (40%) to the general fund: Provided further, That except for the subsidiaries of the Government Service Insurance System and the Social Security System, all government owned and controlled corporations shall remit to the National Treasury at least fifty percent (50%) of the net proceeds derived from the sale of shares or assets effective October 1, 1992. Provided further that the net proceeds shall mean gross proceeds less related liabilities and selling expenses as stipulated in the provisions of Republic Act No. 7661.

Section 3. Sale of Small Local Investors. Pursuant to the provisions of Republic Act No. 7886, a minimum of 10% of the sale of assets in corporate form shall be reserved to small local investors to develop the domestic capital market.

Any of the following transactions shall be deemed compliance on the sale to small local investors: (a) Initial Public Offering (IPO), (b) Employee Stock Option/Ownership Plans (ESOPs). Provided, that the Social Security System and Government Service Insurance System shall grant loans to qualified employees of the firms under privatization who would like to avail the ten percent (10%) stock offering as provided in this Executive Order, (c) sale to private and government employees, overseas workers, small farmers/fisherfolks and cooperatives through Government Financial Institutions such as GSIS, LBP, DBP and HDMF, (d) sales of assets/shares to individual investors not exceeding a maximum of P100,000.00, (e) sale of retirement funds, pension funds and other funds managed on behalf of employees and other individuals, (f) sale of privatization bonds issued by the Republic of the Philippines provided that the terms of such privatization bonds give the option to holders thereof to exercise the exchange option contained in such bonds either into shares in corporate assets privatized through the IPO or into a cash amount where the privatized corporate asset is being sold to one or more block investors.

Article V. Miscellaneous Provisions

Section 1. Separability Clause – Any portion or provision of this Executive Order that may be declared unconstitutional or invalid shall not have the effect of the nullifying the other provisions thereof: Provided, That the remaining portions can still stand and be given effect in their entirety to accomplish the objectives of this Order.

Section 2. Repealing Clause – All executive orders, rules and regulations and other issuances or parts thereof that are inconsistent with the provisions of this Executive Order are hereby repealed and modified accordingly.

Section 3. Effectivity – This Executive Order shall take effect upon publication but not earlier than January 1, 2001.

DONE in the City of Manila, this 6th day of December in the year of our Lord, two thousand.

(Sgd.) **JOSEPH EJERCITO ESTRADA**
President
Republic of the Philippines

By the President:

(Sgd.) **RONALDO B. ZAMORA**
Executive Secretary