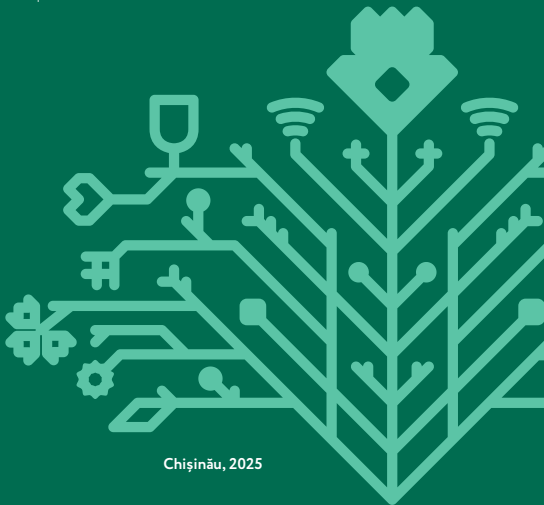


# PRIVATIZATION THROUGH AUCTIONS

## Moldova's Handbook

Overview of auction procedures involved in transferring public patrimony to private, non-state investors, specifically within the privatization process



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# Contents

List of boxes	4
Abbreviations	4
Online sources	4
Vocabulary	5
Introduction to the guide	6
About Invest Moldova Agency	7
1. About auctions in Moldova in brief	8
2. Types of public properties subject to privatization through actions	9
3. Legal framework for auctions	10
4. Auction types	10
5. Participants to auctions	11
a) General criteria for admission	11
b) Entities not eligible for participation	11
6. Preparation for auction	12
I. By the seller	13
a) Identifying assets for privatization	13
b) Price determination	13
c) The exposure of the assets for privatization	14
d) Creating Auction Commissions	14
e) Auction Notice	15
II. By the potential bidders	15
a) Due diligence	15
b) The submission of the application of participation	15
7. Auction process	16
a) Registration of bidders	16
b) Procedures and rules for outcry auctions	16
c) Procedures and rules for descending price auctions	17
8. Post-Auction Procedures	17
a) Finalizing the auction	17
b) Payment and transfer of ownership	18
c) General timeline of privatization through outcry actions	20
d) Post-sale obligations and compliance	21
e) Auction disputes resolution	21
9. Support and resources	22



# List of boxes

<b>Box 1:</b> Relevant laws and regulations for auctions	10
<b>Box 2:</b> Persons and entities not eligible for auctions	11
<b>Box 3:</b> The composition of Auction Commissions and their competencies	14
<b>Box 4:</b> Participation fees and bid's bonds	16
<b>Box 5:</b> Timeline for privatization through auctions	21

## Abbreviations

<b>PPA</b>	Public Property Agency of the Republic of Moldova
<b>IMA</b>	Invest Moldova Agency
<b>LPA</b>	Local Public Administration
<b>MOE(s)</b>	Enterprise(s) fully or partially owned by administrative-territorial units, including the autonomous territorial unit of Gagauzia
<b>SOE(s)</b>	Enterprise(s) fully or partially owned by the state

## Online sources

1. Legislative Portal of the Republic of Moldova - [www.legis.md](http://www.legis.md)
2. Portal of official publications „Official Gazette” - [www.monitorul.gov.md](http://www.monitorul.gov.md)
3. Public Property Agency of the Republic of Moldova - [www.app.gov.md](http://www.app.gov.md)
4. Site of Invest Moldova Agency - [www.invest.gov.md](http://www.invest.gov.md)

# Vocabulary

<b>Auction:</b>	A competitive bidding process where state-owned or local administration owned public assets are sold to private individuals or entities.
<b>Non-residential premises:</b>	Spaces in buildings, other constructions, including annexes of residential blocks, not intended for permanent living.
<b>Seller:</b>	The Public Property Agency of the Republic of Moldova or local public administration that exposes privatization public assets.
<b>Privatization:</b>	Transfer of public patrimony into private ownership.
<b>Public Property:</b>	The totality of assets belonging to the public domain and the private domain of the state, of administrative-territorial units, including the autonomous territorial unit of Gagauzia.
<b>State/Municipal Enterprise as a single patrimonial complex:</b>	A group of assets subject to privatization, consisting of all types of assets intended for activities related to the technological process of the enterprise, including real estate (land granted for use, buildings) and their components, equipment, inventory, raw materials, production, works and services (firm name, registered trademarks and product and/or service marks, other means of individualizing the enterprise and its production, licenses, permits, and any other permissive acts), other assets and exclusive rights that belong to it, as well as its liabilities, except for the assets of the public domain of the state.
<b>Unfinished constructions:</b>	Constructions belonging to the state or administrative-territorial units, except for those belonging to state and municipal enterprises, budgetary authorities/institutions, and public authorities/institutions with self-management, commercial companies with fully or majority public capital (joint stock companies, limited liability companies), whose construction was financed from the public budget.

# Introduction to the guide

This Guide is addressed to domestic and foreign investors, providing a comprehensive overview of auction procedures involved in transferring public patrimony to private, non-state investors, specifically within the privatization process. It serves as both a supplement and an update to the auction-related sections of the Guide on Privatization issued by the Moldovan Investment Agency (IMA) in 2020.

Additionally, this Guide includes contact information for key agencies and support services. Notice: The Guide does not cover the subject of tenders in the public procurement of goods and services. Accordingly, the term "auction" used in this Guide specifically refers to auctions related to privatization processes only.

## The Guide offers a detailed understanding of:

- 01 A general overview on auctions as primary methods of privatization
- 02 Sources of information about announced auctions and public assets available for privatization
- 03 Eligibility criteria and steps to submit an application for participation in an auction

- 04 Stages of auction procedures
- 05 The timeline announcing an auction to the conclusion of the privatization contract
- 06 Procedures for resolving auction-related disputes

The Guide seeks to equip investors with a comprehensive understanding of the auction process but is not intended to address all potential issues and concerns of auction participants.

It is recommended to seek advice from IMA, from local legal consultants, as well as from auction organizers such as the Public Property Agency of the Republic of Moldova, or local public administrations, if applicable. By following the guidance provided in this document, investors can

navigate the privatization auction process more effectively, ensuring a smoother and more informed experience.

The information presented in this guide is accurate as of the date of its preparation, August 2024. While every effort has been made to ensure the accuracy and completeness of the information provided, it is recommended that users verify the currentness of the information as regulations and conditions may change over time.



# About Invest Moldova Agency

The IMA represents the key institution in promoting and facilitating foreign investments in the Republic of Moldova, working daily with dedication and commitment to attract quality investments that support the diversification of the economy.

**The main objectives pursued by the IMA are:**

- Attracting investments to the Republic of

Moldova,

- Creating a favorable business environment, and
- Stimulating economic development.

The Agency is a trusted partner for investors, showing a firm commitment to ensuring their success in the Moldovan market.

**The mission of the Agency is simultaneously realized on four distinct dimensions:**

 Attracting investments	 Providing legal and post-investment support following the realization of investments
 Promoting exports, and facilitating the recognition of local products and services in foreign markets	 Promoting the country's image

The IMA plays a fundamental role in facilitating investors' participation in privatization processes, especially in public auctions.

To inform investors interested in participating in the privatization of assets.

and to ensure transparency and better visibility, IMA posts descriptions of the assets subject to privatization on its website:

<https://invest.gov.md/>.

**This involvement contributes to creating a favorable investment environment and is carried out through various strategic channels and actions, through which the Investment Agency ensures the following:**

Provides a dedicated section for investment profiles, where investors can access detailed information about available privatization projects, auction procedures, eligibility criteria, and deadlines.	Develops and distributes informative materials that offer an overview of the relevant legal and regulatory framework for privatizations, as well as the benefits of investing in the Moldovan economy	Consult investors in identifying privatization projects, developing investment strategies, and navigating auction procedures. In this way, investors have the opportunity to obtain direct information from experts, interact with public authorities, and establish contacts with business partners	Facilitates contact between investors and representatives of the institutions responsible for the privatization process, such as the Public Property Agency, to provide other relevant details	Monitors investor feedback on privatization processes and uses this information to continuously improve their transparency, efficiency, and accessibility
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If, upon consulting the Guide, the investor encounters certain uncertainties, the Agency is open to providing answers to questions and the

necessary support for the investor to form a clear and certain picture of the entire privatization process in the Republic of Moldova.

# 1. About auctions in Moldova in brief

## Privatization process

The privatization process involves the transfer of public assets into private ownership and other activities aimed at reducing the state's involvement in property management, in accordance with the Law on Public Property Administration and Destatization No 121 of 4 May 2007 and the State Property Strategy, approved by Government decision no.911/2022.

## Objective

The objective of privatizing state property is to harmonize the volume and structure of public property with the functions of the state, as well as to attract investments, ensure efficient management, and develop competition in the public sector of the economy.

The term **"privatization"** under the Moldovan law is used to refer to the transfer of assets only, rather than transfer of activities. Thus, privatization does not include the transfer of commercial activities from SOEs to private operators. Such transfer falls under the framework of public-private partnerships or concessions.

Auctions are the most common sales methods used in the privatization of immovable and movable assets of the State. Although the law provides for the applicability of auctions in the privatization of state-owned enterprises, these assets are mostly subject to commercial and investment contests.



As of the drafting of this guide, electronic auctions are not implemented in privatization procedures, although they are already widely used in public procurement auctions for goods and services. Considering the Government's strategy

to digitalize governmental processes, the prospect of electronic auctions appears to be imminent.

The Moldovan government aims to conduct privatization auctions in a transparent manner **to attract domestic and foreign investors**. This approach is part of broader economic reforms aimed at fostering private sector development and improving efficiency in the use of state-owned resources.

Overall, **auctions are a significant method employed in Moldova's privatization strategy**, aiming to attract investment, enhance competition, and facilitate the transition of state-owned assets to private ownership in a regulated and transparent manner.

A crucial role in organizing and managing privatization procedures, including auctions is played by The PPA in its quality of representative of the State in questions of administration of its property.

Depending on the nature of the asset being privatized, local public administrations may also be involved in the process, particularly for assets owned by municipalities or regional authorities.

**An important bridge between investors and the state is the Invest Moldova Agency**, which can provide information and primary consultancy regarding investments through privatization, as well as facilitate dialogue between investors and public institutions on any investment-related matters.



## 2.Types of public properties subject to privatization through actions

In Moldova, accordingly the Law, the following public properties can be exposed to privatization through auction:

Social shares owned by the State or the LPA in the share capital of commercial companies

Enterprises as unique patrimonial complexes (see the definition in Vocabulary section)

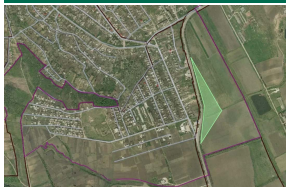
Real estate properties:

- lands for construction
- buildings
- unfinished constructions (see the definition in Vocabulary section)

Movable properties

Complexes of real estate and/or movable properties

Lands for construction



Commercial companies



Enterprise



### 3. Legal framework for auctions

The sale of public assets through auctions is regulated by Law on Public Property Management and Privatization.

The procedures for organizing and conducting auctions are detailed in secondary legislation

approved by the Government – specifically and the Regulation on Outcry and Descending Price Auctions No. 136/2009. Overall, the relevant legal framework for auctions can be found in **Box 1**.

#### Box 1 Relevant laws and regulations for auctions

<b>Laws on privatizations and Auctions procedures</b>	<ul style="list-style-type: none"> <li>• Law on Public Property Administration and Destatization No 121 of 4 May 2007</li> <li>• Regulation on outcry and descending price auctions, approved by Government Decision No. 136/2009.</li> <li>• Regulation on the procedure for determining the initial price of sale of shares and social parts of public property subject to privatization No 453 of 2 June 2020.</li> </ul>
<b>Asset price determination and procedural costs</b>	<ul style="list-style-type: none"> <li>• Law on normative price and procedure of sale and purchase of land No 1308 of 25 July 1997</li> <li>• Law regarding the evaluation activity No 989 of 18 April 2002</li> <li>• Regulation on Initial Price Determination for the Sale of Public Shares proposed for Privatization no.453 of 2 June 2010;</li> </ul>
<b>Eligibility/restrictions to privatization auctions</b>	<ul style="list-style-type: none"> <li>• Law of The Republic of Moldova on Investments in Entrepreneurial Activity No 81 of 18.03.2004</li> <li>• Law No 308/2017 on prevention and combating money laundering and terrorism</li> <li>• Law on Public Property Administration and Destatization No 121 of 4 May 2007</li> <li>• Law no. 174/2021 regarding the examination mechanism of investments of importance for the security of the state</li> </ul>
<b>Auction Dispute Resolution</b>	<ul style="list-style-type: none"> <li>• Administrative Code of the Republic of Moldova</li> <li>• Cod of Civil Procedure of the Republic of Moldova</li> </ul>

### 4. Auction types

In Moldova, the main types of auctions include:

#### Outcry Auctions

Where bidders compete openly against each other until the highest offer is accepted. Commonly used for the privatization of real estate (including unfinished constructions, immovable and movable assets, and complexes of goods), less frequently for equity shares in the share capital of commercial companies and unique asset complexes.

#### Descending Price Auctions

Applies to assets unsold in two outcry auctions, as well as assets withdrawn from outcry auction for various reasons. Start with a high asking price that is progressively lowered until a bidder accepts the current price.

## Notice:

Law 121/2007 Establishes a third type of auction: auction without an initial price announcement, in which, as a rule, the basic criterion for determining the winner is the volume of investments necessary for revitalizing the item being sold. This type of auction, as of the date of this guide's development, is not applied in practice, as its detailed procedure has not yet been established by the Government.



## 5. Participants to auctions

### a) General criteria for admission

Moldovan law allows any Moldovan or foreign individual or legal entity, stateless, or associations of the above, to participate in privatization procedures of public property and, consequently, at auctions. No special state registration in Moldova is required. However, there is an extensive list of situations banning participation in auctions.

### b) Entities not eligible for participation

Are not eligible for participation to an auction the persons that are not allowed by Law to participate in privatizations process (article 26 of Law 121/2007), as well as persons that fail to submit the required documents or to pay the due fees and taxes for participation. The list of prohibitions is presented in **Box 2** below.

## Box 2: Persons and entities not eligible for auctions

### Prohibitions under Law No. 121/2007

Public law entities, public institutions, SOEs, MOEs, commercial companies where the state holds at least 25%;

Persons who have previously participated in privatization and did not fulfill the conditions of the sale-purchase contract, due to whose fault the sale-purchase contracts were terminated or declared void;

Legal entities in liquidation or insolvency procedures;

Individuals and legal entities that are registered, have their residence, or carry out their main economic activity in jurisdictions or autonomous regions that do not implement international transparency standards, as well as legal entities in which one or more individuals (founders, associates, shareholders, directors, ultimate beneficiaries) who are registered, have their residence, or carry out their main economic activity in such jurisdictions or autonomous regions;

Individuals and legal entities if they act alone or in concert, including as ultimate beneficiaries, and are residents in jurisdictions that do not implement international transparency standards or whose share capital includes holdings/shares of individuals or legal entities, including foreign ones, directly or indirectly owned by these individuals who act alone or in concert, including as ultimate beneficiaries, residents in jurisdictions that do not implement international transparency standards. **Notice:** The list of jurisdictions that do not implement international transparency standards is approved by the Government;

Individuals and legal entities if they have been involved in money laundering and terrorist financing activities;

Individuals and legal entities if they have been involved in activities affecting the security of the state or public order and have not honored the contractual obligations assumed in the transactions such as: concession, public-private partnerships, Investment agreement in areas of importance for state security in accordance with the provisions of Law no. 81/2004;

Individuals and legal entities if they could engage in illegal or criminal activities;

Individuals and legal entities if they maintain or have maintained relationships with institutions/authorities of other states or with individuals or legal entities from other states that increase the risk or pose a threat to the national security of the Republic of Moldova;

Individuals and legal entities if they maintain or have maintained connections with organized criminal groups, special services, or groups of foreign states linked to international terrorist organizations, with individuals suspected of belonging to them, and that increase the risk or pose a threat to the national security of the Republic of Moldova;

Individuals and legal entities if they have been convicted, by a final court decision under the Criminal Code, for corruption, money laundering, or terrorist financing actions, or for an offense under the criminal laws of foreign states that corresponds to elements of a similar offense specified in the Criminal Code of the Republic of Moldova;

Individuals and legal entities if they are under criminal investigation for committing a serious or particularly serious offense;

Individuals and legal entities who have received a refusal of prior approval in accordance with Art. 9 of Law no. 174/2021 regarding the examination mechanism of investments of importance for the security of the state.

#### Other situations of prohibition - Article 26 (2)

Affiliated persons may not simultaneously participate in the privatization of the same public asset. Affiliated persons are members of a group of entities controlled by the same persons by virtues of shareholdings of 25% and more or by holding of administrator position. Administrator's spouses and relatives or in-laws up to 2nd degree are also considered affiliated persons.

## 6.Preparation for auction

### Absolute Prohibition

In summary, before initiating the bidding procedures, the following operations take place:



## I. By the seller

<b>01 Identifying assets for privatization</b>	<b>02 Price determination</b>	<b>03 The exposure of the assets for privatization</b>
<b>04 Creating Auction Commissions</b>	<b>05 Auction Notice</b>	

### a) Identifying assets for privatization

The Government or LPA, if it concerns local public property, approves the List of state-owned assets subject to privatization. The decisions are published in the Official Gazette. The current list of state-owned assets subject to privatization can be found in annex 2 to the Government Decision No 945/2007, with subsequent amendments.

### b) Price determination

The Seller prepares the asset for privatization: conducts inventory and evaluation of the asset, sets the sale price.

The prices for assets to be exposed for privatization are determined by the seller based on the estimated value established as a result of an evaluation performed in accordance with Law No 989/2002 regarding the evaluation activity. For the social shares owned by the State or the LPA in the share capital of commercial companies, the initial price is to be established in accordance with the Regulation on the procedure for determining the initial price of sale of shares and social parts of public property subject to privatization. The Regulation is approved by Government Decision No 453 of 2 June 2010. For social parts, in cases where the

The list (not always updated) of state-owned assets is published also on the site of PPA, sections "Activities", subsection: Privatization and post-privatization. The list of LPA-owned assets is to be published in the local press, including the website of the local administration.

state/administrative-territorial unit/autonomous territorial unit of Gagauzia holds a stake of at least 25% of the share capital of the limited liability company, the initial price for the sale of the social part is equal to at least the value resulting from an evaluation carried out in accordance with International Valuation Standards by an independent evaluator.

For social parts, in cases where the state/administrative-territorial unit/autonomous territorial unit of Gagauzia holds a stake of less than 25% of the share capital of the limited liability company and if the limited liability company is not operational, the initial price for the sale of the social part is established according to a formula provided by Government Decision No 453 of 2 June 2010.



### c) The exposure of the assets for privatization

After conducting the evaluation of the asset and the documentation is prepared, it is issued a decision to expose the asset for privatization through action.

Notice: A difference is made between making assets subject to privatization approved by the Government (see paragraph 1 of this section) and making assets exposed to privatization. In the first case, it is about identifying and deciding the assets to be denationalized, while in the

second case, it is about the initiating of the privatization itself. The decision to expose an asset to privatization is issued by: PPA in the case of privatization of state-owned public property goods; or LPA of first and second-level administrative-territorial units, including the autonomous territorial unit of Gagauzia – concerning the property of these administrative-territorial units, including the autonomous territorial unit of Gagauzia.

### d) Creating Auction Commissions

The Seller creates an Auction Commission with responsibilities for the privatization procedure, including approving privatization documentation

and organizing the auction. Please see details concerning the Auction Commissions in **Box 3** below.

## Box 3 The composition of Auction Commissions and their competencies

**In cases of exposure of state-owned public property**, PPA establishes, by order, the Auction Commission, which will include three representatives from the Agency and one representative each from the Ministry of Economic Development and Digitalization, the Ministry of Finance, and the central public administration authority responsible for the administration of the goods being auctioned, as well as a representative from the State Fiscal Service.

Independent experts may be included in the Auction Commission in an advisory capacity.

**In cases of auctioning off assets owned by local administrative-territorial units** subject to privatization, the LPA establishes, by decision, the Auction Commission consisting of representatives from the council and mayor's office of the administrative-territorial unit, as well as their relevant subdivisions. It also includes representatives from the district/municipal council, privatization specialists from the district president's office, and the State Fiscal Service. In the territory of the Gagauz Autonomous Territorial Unit, representatives are appointed by the authorized body of the Executive Committee.

#### The Commission has the authority to organize the privatization procedure, including:

- reviewing the files of assets to be auctioned;
- registering auction participants;
- conducting the auction in accordance with the Regulation;
- ensuring compliance with auction participation conditions and safeguarding participants' rights;
- designating the auction winners;
- withdrawing assets from auction or suspending the auction;
- drafting minutes regarding auction results and decisions of the Auction Commission.



## e) Auction Notice

One of the primary principles of privatization is transparency. Public authorities are obliged to ensure that transparency of privatization is maintained throughout every step of the procedure. To this end, the Law requires well-publicized competitive bidding procedures encouraging the widest possible range of

domestic and foreign investors to participate; as well as maximum publicity and openness of the public authorities involved in privatization. At this end, the seller publishes an Informative Auction Notice regarding the auction in the Official Gazette, or, in case of local public assets, and in the local press.

**The notice will be published at least 15 days before the start of the auction and will include the following:**

the date, time, and location of the auction;	the full name and location of the assets;	the starting price and payment terms;
the main/relevant characteristics of the assets;	the conditions of participation in the auction, including the method and deadlines for payment;	the amount of the participation fee and the deposit for each asset exposed at the auction; information on deadlines, other relevant information.

Also, the notices can be published on the website of PPA, on the website of IMA and may be distributed by the diplomatic bodies.

## II. By the potential bidders

### a) Due diligence

The PPA may decide to carry out a due diligence evaluation of the assets and the interested parties may be permitted to examine the physical assets and meet with senior management. However, PPA is the primary source of information regarding the assets exposed to privatization. To preserve confidentiality, prospective bidders can be required to sign an undertaking not to disclose or to use sensitive commercial information and may

be asked to post a bond in support of that undertaking. Governmental Decision No. 136/2009 sets up a non-exhaustive list of documents for the assets to be auctioned that the seller may provide, and accordingly, interested persons can request to review these documents. The contact details of the persons/entities responsible for providing detailed information about the assets on auction are usually indicated in the informative Auction Notice.

### b) The submission of the application of participation

Not later than one day before the auction, the potential bidder must submit a participation request in Romanian, using a form approved by

the Government. The request should be accompanied by the documents listed in the Informative Auction Notice.

**The set of documents shall include the following:**

- |   |  |
|---|--|
| <b>01</b> Excerpts from trade registers of the participant's home jurisdiction and articles of incorporation. In the case of foreign legal entities, the documents must be legalized. | <b>04</b> Payment confirmation of the participation fee and deposit. For details about payments see <b>Box 4</b> . |
| <b>02</b> For natural people: a copy of the identity card.  | <b>05</b> Powers of attorney   |
| <b>03</b> A declaration regarding the beneficial owner(s) of the legal entity.  | <b>06</b> Recent financial statements.   |

For foreign legal entities, the documents must be legalized. For domestic legal entities, non-original documents must be authenticated by the manager.

## Box 4 Participation fees and bid's bonds

For participation in an outcry or discount auction, the bidder will have to pay a bid participation fee and a depository fee as follows:

Bid participation fee is set by the Auction Commission and amounts to no less than MDL 600 for individuals and 1200 MDL for legal entities. The participation fee is not reimbursable, except in cases where the auction is declared null or the asset is withdrawn from the auction.

Depository fee of 10% of the initial price. The deposit is reimbursed to unsuccessful bidders or in cases where the auction is declared null or the asset is withdrawn from the auction, within 10 days from the closing of the auction. In the case of a successful bidder, the depository fee is deducted from the adjudicated price. A successful bidder who refuses to sign the privatization contract loses the right to claim back the bond paid to guarantee the bid.

Payments can be made in Moldovan leu (MDL) or in EUR/USD.

## 7. Auction process

### a) Registration of bidders

The Registration of bidders is completed no more than 15 minutes before the auction. Bidders who fail to register will not be allowed to participate. If

no participant registers for the goods auctioned, the Auction Commission will finalize the null auction minutes.

### b) Procedures and rules for outcry auctions

The auction takes place as it follows:

- |   |  |   |   |   |
|---|--|---|---|---|
| <b>01</b><br>Before the auction starts, the Commission sets the minimum bidding increment, which must be at least 10% of the starting price but no more than 50%. | <b>02</b><br>The bidder announces the lot number and briefly describes the item. | <b>03</b><br>Participants registered for bidding are announced by their registration numbers. When a number is called, the corresponding participant raises their bidder card to confirm their participation. | <b>04</b><br>Bidding begins when the bidder announces the starting price and the bidding increment. The bidder then waits for higher bids according to the set increment. | <b>05</b><br>To place a higher bid, a participant raises their card and states the new bid amount. The bidder identifies the participant and announces the bid amount and number. |
|---|--|---|---|---|

**Winning Bidder Determination:** If no higher bids are made after announcing the price three times, the item is awarded to the participant with the highest bid at the third strike of the hammer. The auction for that item is then closed.

**Single Participant Scenario:** If only one participant is registered for bidding, the Commission may sell the item to that participant at a price higher than the starting price, but not less than the minimum increment limit specified in point 22 of the regulations.



### c) Procedures and rules for descending price auctions

Assets that remain unsold in two bidding auctions may be offered in a descending price auction. The initial price for the descending price auction is set by the seller, not lower than the initial price stated in the Auction Notice from the last auction. The reduction step cannot exceed 5% from the initial

price. Price reduction can continue up to 75% of the initial price, or higher as per land auction regulations. Items previously unsold or withdrawn from auction can be repeatedly offered in descending price auctions.

#### The auctions take place as it follows:

01

Bidding starts when the initial price is announced

02

The bidder announces the starting price, reduction step, and progressively lowers the price, clearly stating each new price. If after three reductions no participant shows interest, the price is reduced once more

03

The bidder continues lowering the price until a participant agrees with the announced price by raising their bidder card. The bidder then confirms the offer and invites other participants to bid higher

#### Winning Bidder Determination:

If no higher bids are made, the item is awarded to the participant with the highest bid. The auction for that item is then closed. If bidding escalates, the descending price auction transforms into an outcry auction.

#### Single Participant Scenario:

If only one participant registers for a reduction auction, the Commission may sell the item to that participant at the initial price or within the specified reduction step, as per point 24 of the regulations.

## 8. Post-Auction Procedures

### a) Finalizing the auction

Once the auction concludes, the winning participant is required to sign the auction minutes. Failure to do so results in the forfeiture of their right to participate in any subsequent auctions for the same item or right. Additionally,

the deposited fee of 10% will not be refunded. If the winning participant declines to sign the auction minutes, the item (right) will be re-auctioned under the same terms and conditions at the same auction.



## b) Payment and transfer of ownership

Payments	Private Tax	Privatization Contract	Transfer of ownership
<ul style="list-style-type: none"><li>the buyer must pay within 20 days.</li><li>the price is to be paid in a single payment and by transfer in MDL.</li></ul>	<ul style="list-style-type: none"><li>state tax and a one-time payment</li><li>the amount of the tax is established in the state budget laws for the current year.</li></ul>	<ul style="list-style-type: none"><li>both parties sign a sales contract within 7 days</li><li>privatization contract is usually drafted by the seller</li></ul>	<ul style="list-style-type: none"><li>Sell, pledge, or otherwise dispose of/transfer the contract object, including the long-term assets of the enterprise</li></ul>

### Payments

After signing the auction minutes for an open auction, the buyer must pay for the asset and a state tax (the private tax) within 20 days.

For auctions with reduced prices in result of descending price auctions), payment is due within 7 days. No negotiation of the price is allowed after

passing the privatization decision on auction or contest results determining the successful buyer. The price is to be paid in a single payment and by transfer in MDL. Installment payments are not foreseen in the regulations on auctions and accordingly, are not accepted.



### Private Tax

The Private tax is a state tax and a one-time payment levied on transactions involving public property assets during the privatization process. The amount of the tax is established in the state budget laws for the current year. At the elaboration of this Guide, **the privatization tax rate is 1%** of the purchase value of the public property assets subject to privatization and applies to both residents and non-residents.

The sale contract is not signed until the adjudicated price is not fully paid. Failure to pay within these deadlines allows the seller, through the Commission's decision, to cancel the auction results.

In the event of the termination of the sale-purchase contract due to the non-fulfilment or improper fulfillment of the obligations assumed by the buyer, the amounts paid as private tax are not refundable.

### Privatization Contract

Within 7 days of the payment of the sale price and of the private tax, both parties sign a sales contract for the purchased item and make the transfer of the asset.

In brief, the form and content of privatization contract is determined by the specifics of the privatization assets (shares in SMOs/MOE, real estate, movable assets), as well as by the terms and conditions contained in the privatization documentation.

**There is no officially approved template of privatization contract.** Privatization contract is usually drafted by the seller, at the preparatory stage of the privatization process, and may be presented as a part of the tender documentation once the Auction Notice is made public. The law does not prohibit the private parties to negotiate the contract once they are selected as successful buyer of the privatization asset. The privatization contract is to be signed by duly authorized representatives of the seller and the buyer.

Due to the digitization of notarial procedures being at an early stage, the electronic form of privatization contracts is not yet possible. Therefore, the physical presence of the buyer or their representative in the country is required. More detailed information on Privatization Contract may be found in the Guide on privatizations. Usually, the privatization contract must be submitted for authentication by a notary. The notary can be chosen by the buyer.

#### **Notarization and Registration Costs:**

**For the notarization of sale-purchase contracts for privatized goods, the following fees apply:**

- a)** The state fee as provided by the Law on State Tax, which can amount to up to 0.5% of the asset's value, depending on its type.
- b)** Payment for notarial services, which includes the notary's fee and procedural expenses.

This payment is determined through negotiations between the applicant and the notary and depends on the complexity of the notarial act and the value of the transaction. As of the publication date of this guide, a new law regulating the methodology for calculating notarial fees is in the process of being adopted, as the existing methodology approved by Law No. 271/2003 is

outdated.

#### **Registration Fees:**

The purchase of immovable property is subject to registration fees, which vary depending on the location of the real estate. The registration fee must be paid by the buyer upon registering their title over the privatized real estate at the Agency of Public Services.

#### **Transfer of ownership**

As a rule, the ownership right of the privatized asset passes to the buyer after the full payment of the asset's price.

Until the full payment of the sold asset's price and until the complete fulfillment of the post-privatization obligations stipulated in the sale-purchase contract, the buyer is not entitled, without the prior written consent of the seller, to:

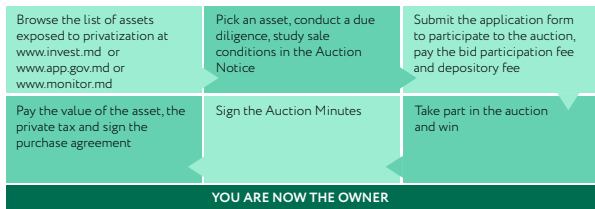
- a) Sell, pledge, or otherwise dispose of/transfer the contract object, including the long-term assets of the enterprise;
- b) Transfer, in whole or in part, its contractual obligations;
- c) Modify the share capital of the purchased commercial company or decide on its reorganization.

The ownership right of the real estate or any other privatized asset, which according to the law is subject to state registration, passes to the buyer on the date of registration.

The basis for the state registration of the transfer of ownership of the privatized asset is the sale-purchase contract and, if applicable, the handover document or the order for the transfer of shares (social parts) or the protocol on boundary line, in case of parcels.



## How to privatize a public asset trough auction



### c) General timeline of privatization trough outcry actions

In **Box 5** below is presented a timeline of a privatization through auctions elaborated by PPA, that estimates that the privatization of

assets through outcry auction are to be done in a minimum of 100 days.

### Box 5 Timeline of privatization through outcry auction



## d) Post-sale obligations and compliance

In privatization contracts, buyers are typically required to fulfill post-privatization obligations, such as complying with conditions to avoid incompatibilities (as detailed in Box 2), making payments in accordance with the installment plan for the privatized asset, maintaining the privatized enterprise's lines of business as stipulated in the contract, and other contractual obligations, as applicable.

Post-privatization supervision includes ensuring compliance with the conditions to avoid incompatibilities (as detailed in Box 2). In the event of the contract termination due to non-compliance with the sale-purchase contract obligations, the amounts paid by the buyer as privatization tax are not refundable.



## e) Auction disputes resolution

Participants in auction procedures may challenge the decisions issued by **the Auction Commission** in administrative court if such decisions infringe on their rights and legal interests.

In Moldova, administrative litigation procedures, with few exceptions, are adjudicated in three levels of jurisdiction. State fees are minimal.

Claims examined under the administrative legal procedure require a state duty of 250 Moldovan Lei (approx. 13 Euros) according to **Article 2 (1) of the State Tax Law**. The procedural rules are regulated by the Administrative Code of the Republic of Moldova, with some additions from the **Civil Procedure Code**. Auction disputes are not subject to national arbitration.

## 8.Support and resources

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