

## NEWSLETTER

### ▣ BANKING & FINANCE

July 2011

#### The HR sets up a new fund for the privatisation of its private law assets

#### Introduction

On 1 July 2011 the Greek Parliament passed law 3986/2011 (**Law 3986**) on Emergency Measures for the Implementation of the Medium-term Fiscal Strategy Framework for the years 2012-2015 (the **Medium-term Plan**). One of the measures introduced by Law 3986 was the establishment of a fund that will undertake the development and exploitation of private law assets currently owned by the HR and/or state-owned corporations (the **Fund**).

#### Assets

The assets, the ownership of which will be transferred to the Fund, are:

- a) Shares of companies that are expected to be privatised under the Medium-term Plan;
- b) intangible rights, rights of property, management, use, operation and/or maintenance of infrastructures included in the Medium-term Plan;
- c) real estate assets included in the Medium-term Plan.

Transfer of any of the above assets will occur following a decision of the Interministerial Restructuring and Privatisation Committee (the **Interministerial Committee**) (that was set up under law 3049/2002 on Privatisations of State-owned Companies (the **Privatisations Law**)). The Interministerial Committee may transfer to the Fund additional assets falling under any of the categories listed above.

#### Methods for development and exploitation of assets

The Fund is entitled to dispose the assets under its management in any of the following ways:

- a) sale;
- b) establishment of other than property *in rem* rights;
- c) transfer or property or similar rights;
- d) lease;
- e) assignment of the use and/or operation;
- f) assignment of management;
- g) contribution of the assets in a *societe anonyme* and subsequent sale of the shares issued by such *societe anonyme* pursuant to the asset contribution; and

- h) securitisation of business or other receivables.

It should be noted that the Privatisations Law lists certain additional alternatives such as listing of securities on an organised market, exchange of shares and sale-and-lease-back of shares.

### **Other provisions**

The sale or otherwise disposal of the assets under management will be decided on the basis of the Medium-term Plan and pursuant to a business plan that will have been approved by the Fund's Board of Directors.

The proceeds from transactions concluded by the Fund will be applied exclusively towards the repayment of sovereign debt.

Law 3986 introduces special provisions for the facilitation of expropriation procedures, as well as for the termination of lease or similar agreements applying on any of the Fund's assets under management.

### **Commencement of operation of the Fund**

The Board of Directors of the Fund has already been appointed (Chairman: John Koukiades, Managing Director: Constantinos Mitropoulos, Executive member: Andreas Tapratzis, Members: Antonios Vartholomeos and Anna Zoirou).

The Minister of Finance is required to issue a decision within one month from the publication of Law 3986 (ie by 1 August 2011) whereby he will be confirming the commencement of operations of the Fund.

As from that date, all the private law assets that are included in the Medium-term Plan will be transferred to the Fund, pursuant to an Interministerial Committee decision

### **Grandfathering provisions**

All engagement agreements and other similar agreements for the provision of services to the HR, that were entered into before a decision by the Interministerial Committee for the transfer of specific assets to the Fund was published, are valid and enforceable; the Fund is deemed to have substituted the HR as counterparty to such agreements as from the time of publication of the respective Interministerial Committee decision.

In case the process for the engagement of advisors (or other service providers) is pending at the time of publication of an Interministerial Committee decision, the Fund will undertake the completion of the engagement process and proceed to the execution of the respective agreement(s).

### **The Fund and the Privatisations Law**

Over the past years, the role of the administration of privatisations of HR assets was undertaken by the Special Secretariat for Privatisations and Restructurings, that is supervised by the Ministry of Finance, pursuant decisions (on specific assets) of the Interministerial Committee.

Following Law 3986, the administration of state-owned assets' privatisations in Greece seems to be reverting to the model applied from 1997 to approximately 2004, where the privatisations were initiated by decisions of the Interministerial Committee and implemented by the Public Corporation of Securities SA (DEKA) (that was officially dissolved earlier this year), with the assistance of the Special Secretariat for Privatisations and Restructuring.

Law 3986 foresees a similar stream of authorisations, i.e. a decision by the Interministerial Committee (for the transfer of assets to the Fund), followed by decisions of the Fund's Board of Directors (for the development and exploitation of such assets), with the assistance of the Special Secretariat for Privatisa-

tions and Restructurings on all the steps of the privatisation procedure. Therefore the seller or lessor or assignor, etc. of the assets will be the Fund.

Finally, although the “development and exploitation” (“αξιοποίηση”) of HR assets is not expressly characterised as a privatisation under Law 3986, in practical terms it is a form of

privatisation; if this approach is upheld, the transactions effected under Law 3983 would be expected to benefit from various Greek laws that have been introduced for the facilitation of privatisations (so that, for example, the sale of publicly traded securities by the Fund would not trigger a mandatory take-over bid by the buyer of the securities).

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