

GOVERNMENT OF ZAMBIA

STATUTORY INSTRUMENT NO. 40 OF 1993

The Privatisation Act
(Act No. 21 of 1992)

**The Privatisation (Trade Sales and Management or
Employee Buyouts) (Sale Tender) Regulations, 1993**

IN EXERCISE of the powers contained in section *twenty-two* and *forty-nine* of the Privatisation Act, 1992, the following Regulations are hereby made:

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| 1. These Regulations may be cited as the Privatisation (Trade Sales and Management or Employee Buyouts) (Sale Tender) Regulations, 1993. | Title |
| 2. (1) Any person may participate in tenders relating to the privatisation of any state-owned enterprise by submitting an application for pre-qualification.
(2) The Agency shall determine and publish the deadline for the submission of applications. | Application for pre-qualification |
| 3. (1) An application by an incorporated company shall be in the form prescribed in the First Schedule to these Regulations.
(2) An application by an incorporated company shall be submitted with certified copies of—
(a) the Board of Directors' resolution authorising the application;
(b) a certificate of incorporation;
(c) the memorandum and articles of association;
(d) the current annual returns;
(e) the Company Form No. 23; and
(f) an audited financial statement. | Application by incorporated companies |
| 4. (1) An application by a partnership shall be in the form prescribed in the Second Schedule to these Regulations.
(2) An application for a partnership shall be submitted with certified copies of—
(a) the articles of partnership or a certificate of registration under the Registration of Business Names Act; and
(b) the last audited financial statement. | Application by partnerships

Cap. 687 |

- Applications by individuals** 5. An application by an individual shall be in the form prescribed in the Third Schedule to these Regulations.
- Confidentiality agreements** 6. (1) An applicant for pre-qualification shall enter into a confidentiality agreement with the Agency.
(2) The Agency shall set out the terms and conditions of the confidentiality agreement.
(3) The confidentiality agreement shall be executed on or before submitting the application for pre-qualification.
- References** 7. A person applying for pre-qualification shall submit to the Agency references from his bankers or financiers or any other referee of good standing.
- Processing applications** 8. (1) The Director shall ensure that an application is in accordance with these Regulations and contains the required information before submitting the application to the Agency for consideration.
(2) The Agency may make consultations relevant to an application.
(3) The decision of the Agency shall be final and binding on the parties and shall be communicated to the applicant within thirty days from the date on which it was received.
- Entitlement on pre-qualification** 9. A person who successfully bids for pre-qualification shall—
(a) be registered as having pre-qualified for that state-owned enterprise;
(b) on payment of a non-refundable fee determined by the Agency, be entitled to receive a tender package relating to the state-owned enterprise to which he pre-qualified; and
(c) be entitled to bid for the state-owned enterprise to which he pre-qualified.
- Submission of bids** 10. (1) A person who pre-qualifies shall be requested by the Agency to submit to the Agency his bid for that state-owned enterprise.
(2) The bid shall be submitted to the Agency in a sealed envelope within a period determined by the Agency.
- Contents of bid documents** 11. The bid document shall contain information regarding—
(a) the price;
(b) the currency of payment;
(c) the manner of payment;
(d) the enhancement of competition;

- (e) the enhancement of efficiency;
- (f) the applicant's capital investments;
- (g) the dissipation of assets;
- (h) export promotion and import substitution;
- (i) dependency on foreign exchange for working capital;
- (j) dividend remittability;
- (l) public participation;
- (m) share ownership plans;
- (n) employee expansion or retention plans;
- (o) pension rights and liabilities for employees;
- (p) training policy for employees; and
- (q) any other information which, in the opinion of the bidder, is relevant to the bid.

(2) The bid document shall contain the following information relating to the bidder:

- (a) technical and managerial ability to manage the enterprise which is the subject of the bid;
- (b) the financial standing;
- (c) the performance record and reputation;
- (d) nationality;
- (e) the names and nationalities of the shareholders, together with the number of shares held by each; and
- (f) any other information the Agency may request.

12. (1) The Director shall submit a bids document to the Agency for evaluation after being satisfied that the document contains the required information.

Evaluation
and selection
of bids

(2) Where the bid document does not contain the required information, the Director shall request the bidder, within such period as he may determine, to supply the required information unless there is insufficient time for the submission of further information.

(3) When evaluating and selecting the bids, the Agency may make such consultations as it thinks fit.

(4) The evaluation and selection of bids shall be at the discretion of the Agency and its decision in that regard shall be final and binding on the parties.

(5) The decision of the Agency shall be communicated to the bidder not later than ninety days after the bid is submitted.

14. (1) The selected bidder and an independent negotiating team appointed by the Agency under section *thirty-two* of the Act shall negotiate the terms and conditions of a share or asset transfer agreement relating to the state-owned enterprise. Negotiations

(2) On the successful completion of the negotiation for the terms and conditions of a share or asset transfer, the parties to the negotiations shall sign a transfer agreement.

FIRST SCHEDULE
(Regulation 3)

FORM 1

PRE-QUALIFICATION APPLICATION FORM FOR INCORPORATED COMPANIES

To: The Director
Zambia Privatisation Agency
P.O. Box 30819
Lusaka

Date.....

We hereby apply for pre-qualification as bidders in the privatisation of
.....Limited

1. Name of Company.....
2. Nationality of Company.....
3. Postal Address.....
4. Registered Office.....
5. Telephone.....
6. Telex No.....
7. Telefax No.....
8. Date of Incorporation.....
9. Place of Incorporation.....
10. Share Capital.....

Authorised
Share Capital

Issued
Share Capital

Paid- Up Share
Capital

9. Particulars of share holders

Name	Residential Address	Occupation	Nationality	Number of Shares Held
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10. Particulars of Directors

Name	Residential Address	Occupation	Nationality
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11. Summary of curriculum vitae of senior management

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12. Nature of business of the Applicant:

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13. Details of any pending legal disputes:

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14. State reason for interest in the particular state-owned enterprise:

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15. State any relationship with the state-owned enterprise (i.e. customer, supplier, creditor, etc.)

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Dated the day of 19.....

Signed by:

Signature.....

Name.....

Occupation.....

Residential Address.....

Postal Address.....

for and on behalf of.....

.....

In the presence of:

Signature.....

Name.....

Occupation.....

Residential Address.....

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Postal Address.....

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NOTE: Attach certified copies of board of directors resolution authorising the application together with certified copies of certificate of incorporation, memorandum and articles of association, current annual returns, companies Form 23 and audited financial statement.

SECOND SCHEDULE
(Regulation 4)

FORM 2

PRE-QUALIFICATION APPLICATION FORM FOR PARTNERSHIPS

To: The Director
Zambia Privatisation Agency
P.O. Box 30819
Lusaka
Date.....

We hereby apply for pre-qualification as bidders in the privatisation of
.....Limited

- 1. Name of Partnership.....
- 2. Address.....
- 3. Telephone.....
- 4. Telex No.
- 5. Telefax No.
- 6. Particulars of Partners

Name	Occupation	Nationality	Percentage of shareholding
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7. Share structure of partnership.....

8. Summaries of curriculum vitae of partners.....

9. Place of business:.....

10. Description of business:.....

11. Details of any pending disputes:.....

12. State reasons for interest in the particular state-owned enterprise:

13. State any relationship with the state-owned enterprise (i.e. customer, supplier, creditor, etc.)

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Dated the day of 19.....

Signed by:

Signature.....

Name.....

Occupation.....

Residential Address.....

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Postal Address.....

.....

for and on behalf of.....

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In the presence of:

Name.....

Occupation.....

Residential Address.....

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Postal Address.....

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NOTE: Please attach certified copies of the Articles of Partnership (if any), certificate of registration under the Business Names Act, Cap. 687 (where applicable) and audited financial statements.

THIRD SCHEDULE
(Regulation 5)

FORM 3

PRE-QUALIFICATION FORM FOR INDIVIDUALS

To: The Director,
Zambia Privatisation Agency
P.O. Box 30819
Lusaka

Date.....

I hereby apply for pre-qualification as bidder in the privatisation of
.....Limited

- 1. Name.....
- 2. Nationality.....
- 3. Occupation.....
- 4. Residential Address
- 5. Postal Address.....
- 6. Details of any pending disputes.....

7. State reasons for interest in the particular state-owned enterprise:
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8. State any relationship with the state-owned enterprise (i.e. customer,
supplier, creditor, etc.)
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Dated the day of.....19.....

Signed by:

Signature.....

In the presence of:

Signature.....

Name.....

Occupation.....

Residential Address.....

.....

Postal Address.....

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LUSAKA
9th March, 1993
[MCI.101/6/32]

R. D. S. PENZA,
Minister of Commerce,
Trade and Industry