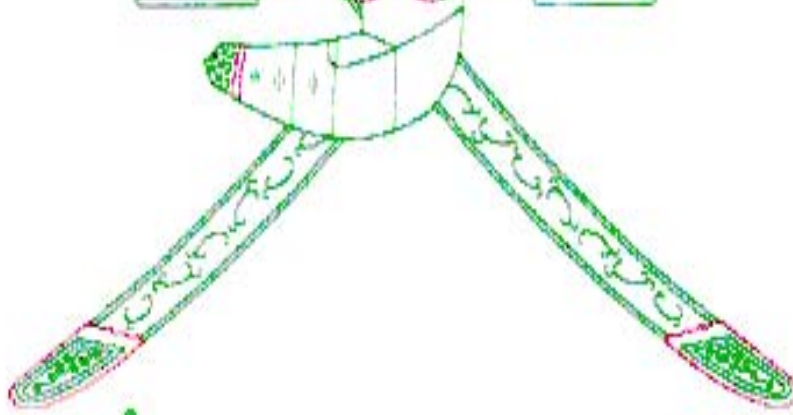




Sultanate of Oman
State Audit Institution



A Case Study of Privatization in Oman Arab - Euro Forum on Privatization "Impact on Management of Public Utilities"



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Tunisia



Privatization and its Impact on the Management of Public Utilities

Enlightening words

" God willing, the current five-year plan experiment will result in increased savings and in developing investment policies that will include strategy for privatization among its objectives, increase productivity, reduce costs and give incentives to local and foreign investors, to effectively participate in the development process"

Sultan Qaboos Bin Said

18/11/1999

Index

	Page No.
Introduction	4
Section One	6
- Privatization Concepts and Meanings	7
- Objectives	9
- Methods and ways.	9
Section Two	12
- General trends in Privatization in Oman	13
- The First Stage 1970 – 1995	13
- The Second Stage 1996 - 2005	15
Section Three	23
- The Legislative and Organizational Framework for Privatisation in Oman	23
- The First Stage of Legislation	23
- The Second Stage of Legislation	26
Section Four	33
- The procedural requirements for implementing Privatization	34
- Practical cases of Privatization in Oman	38
Section Five	
- The role of State Audit Institution in privatization process	42
- The Legal Framework for the Apparatus Control	43
- Types of audit carried out by State Audit Institution	44
- Advantages, Disadvantages & Impact of Privatization by State Audit Institution	45
- The challenges & constraints of privatization program	47
- Solutions proposed for removing constraints & facing challenges	49
- The impact of privatization on management of public utilities	51
Conclusion	54
References	55

Introduction:

The trend prevailing regionally and internationally during the sixties and seventies was to increase the role of state in economy. There was tendency towards the socialist economy, which aimed at achieving high growth rates. The implications of this system unveiled many disadvantages and failures, at a time where there was an increasing tendency towards the return to capitalism, and towards developing its economies, especially after the spread of globalization, and participation in the World Trade Treaty. The world now seems to be a small village.

The Eighties witnessed a uniform increase all over world in privatization, which became an international phenomenon even among the socialist governments.

Amidst these events and changes, the Sultanate's government since the dawn of renaissance was keen to comply with the market mechanism, in distribution of resources, encouragement of free competition, motivate innovation and create conditions that are capable of developing an efficient private sector, a thing that shows a diverse direction to what was prevailing at that time, where the governments preserved the local and foreign private sector in most of the economical activities. Actually the government supported and encouraged the national private sector. This does not belittle the role of the public sector, which increased during this stage for valid reasons and crucial motivations.

The Sultanate's economy is linked and mainly depends on oil as a main resource. There is a need for developing a basic infrastructure that motivates the private sector to seriously participate in economical development.

There is evidence that the Sultanate initiated legislation for and implemented privatization in various forms starting from the year 1996 and thereafter. It still constitutes one of the most remarkable features of Oman's national economic policy.

This study is composed of four sections: section one defines privatization, its objectives, methods, styles as introduction to the subject. Section Two explains the general trends of privatization in the state, and whether these trends are presented in the policies that support private sector, which is based on the free market system, in order to build a developed economy, and in the general policies of the State, that was laid down in the consecutive five year plans since 1975.

Section Three explains the dimensions of the legislative and organizational framework for the privatization process within the Sultanate, and presents a view of the practical cases of privatization along with its social and economical effect, the benefit and advantages achieved, and the resulting problems.

Section Four includes the attitude, and role of the administration in the privatization process through State Financial Control, the practical aspects resulting from its control, its vision about the advantage & disadvantages of privatization.

The paper concludes with the effect of privatization on running public utilities, and the most important recommendations and results learned from privatization.

Section One

Privatization

- **Concepts and Meanings**
- **Objectives**
- **Methods**

Privatization Concepts & Meaning

Definition of Privatization:

The term privatization is relatively new. The concept has a diversified array of meanings and inferences depending on the extent of market freedom in the state's economy. The definitions vary according to the perspective from which privatization is viewed:-

A World Bank report refers to privatization as the transfer of public projects of commercial nature or assets owned by the government to a majority or minority control in private sector. It is essentially a transfer of ownership from public hands to private ones and includes transfer through agreements, transfer of management of the companies and awarding of contracts for services in commercial, agricultural, and industrial activities.

Others consider it as “a wide and connected series of processes ranging between cancellation of nationalization on one side, and open market system in the other. It is the transfer of public companies either completely or partially or transfer of specific assets to the private sector either through sale or change of legal status to a private form or assigning supply contracts to parties other than the public company...”.

Others consider it as “an efficient means of running and operating public projects and depending on international market mechanism and way to get rid of centralism and bureaucracy.”

Others view privatization as a “means to lease production units owned by public sector to the private sector through contracts with the government maintaining its ownership of the units, and profits being shared between the lessee and the government”.

Others see that it as “the liquidation and sale of failing projects' assets”.

Others view privatization as means of “ allowing private sector to participate in joint ventures”

yet others consider it as “permitting private sector to participate in rendering public services such as health and education and other public facilities through contracts made between the government and private sector.

Others consider it to be “a group of integrated policies that aim at greater dependency on market mechanism and private sector initiatives, and competition for realization of development objectives and social justice”.

Privatization is looked at by others as a policy not a philosophy: it is a policy through which public ownership is transferred to the private sector within a limited period of time, that is to be specified in the light of the conditions and facts that surround the national economy, and considered to be one of the main components of the modern market economy”.

No doubt these different definitions collectively refer to the fact that privatization is based on market powers, mechanism, retraction of government’s activities mostly from commercial, industrial, and services sectors, and they were either fully or partially replaced by the private sector, either through ownership transfer or through management or lease contracts. Privatization may be conducted in a form of participation between the government and private sector, especially in public sector activities.

Privatization in the above sense and definition is considered to be a tool for shifting from centralized government controlled operation to competition, freedom. It is therefore not a target but a method of making structural changes in the economy, where projects are efficient, products are of high quality and services are excellent with realistic prices that all members of the society can benefit from.

Privatization can be defined in a way that combines the different definitions as:

“An economic policy that aims at increasing growth rate of economy by transferring public sector projects through sale, management, or lease and preparation of economical environment, to the private sector which can take production and marketing decisions without control by bureaucracy for improving productivity and quality in a free and competitive environment that leads to greater development and attracts local and foreign investments.

Objectives of Privatization:

As we said before, privatization is not a target, but it is a policy through which many objectives such as follows are achieved:-

- Enhance state's general finance by reducing general expenditure volume, and increase of resources that can be used in enhancing infrastructure and development projects.
- Uplifting government performance & efficiency, as a result of the government focusing on its main activities in public sector such as education and health.
- Opening local & foreign investment outlets through reform of economy and retraction of government's role in production activities.
- Open employment market and reduce unemployment rates.
- Develop and improve industrial & production activity.
- Develop local securities market & attract investors.
- Obtain modern knowledge and technology that help in confronting international competition.
- Facilitate the way towards globalization and economical freedom.
- Overcome administrative & technical problems that the public projects face and stop poor performance, deterioration and losses.
- Tackle problems related to public budget deficit.
- Development of the financial, banking and economical system.

Methods & Ways of Privatization:

Privatization methods vary according to the conditions of the economy and environment of each state that seeks to implement that policy. Each method has its advantages and disadvantages, which has to be studied and select the most suitable one that makes privatization a success, and achieves its objectives.

Privatization methods can be summarized as follows:-

1- Sale to the Private Sector:-

It means the transfer of assets, rights and obligations of same establishments whether completely or partially to private sector through direct sale and open auctions or quotations or sale to a foreign investor, it could be also through security markets and finally the project is sold to the employees.

2- Concession Contracts:

It is a sort of administrative contracts through which the government assigns to the private sector the task of establishing & running a public utility on its own cost, against receiving cash amounts from the beneficiaries under its supervision and control, in most cases for specific periods.

3- Administration Contracts:

It means an agreement made between a public establishment and a private company for running the establishment and therefore, it takes over operation without transfer of ownership against remunerations paid to the company, provided that the public company remains responsible for operation and investment cost.

4 - Lease Contracts:

They are contracts through which a public project belonging to the government is leased to a lessee from private sector, who operates it for an annual amount and bears the costs.

5- Barter:

This refers to cases where the government transfers some assets to the creditors or gives a number of shares towards his rights.

6- Division or Restructuring of Projects:-

As per this method, the project is divided into separate units, a process that helps the government in selling it to the private sector.

7- Private Sector Motivation:

This refers to providing a suitable environment and removing constraints that deter expansion of its participation in economic activity and giving necessary incentives and subsidies to encourage its participation.

Needless to say that any of the above mentioned methods may have its advantages to one state, but the same method may not suite another state. Thus it is necessary to be careful in selecting the method suitable for each state. The advantages must exceed its disadvantages.

Any of the above mentioned methods should be linked to real reforms to existing economic policies to suit privatization process, increase role of private sector in financing, establishing, and managing government facilities.

Section Two

General Trends in Privatization in the Sultanate

General Trends in Privatization in the Sultanate

Privatization reflects an economic policy that aims at improving growth rate of economy and at creating a free and competitive environment in the economy for participation by the private sector. It attracts local and international investment in production and services regardless of the method and manner in which the privatization process is carried out. The process can vary and take different forms as defined earlier from 'market mechanism, private sector participation in a joint ventures, public production units lease agreement, management contracts, or transfer of assets and government sanctions to the private sector to the sale of government projects assets to the individuals either completely or in part.

On the basis of the above understanding of privatization process, we can review the method and strategy adopted by the Sultanate for privatization since introduction of development planning from first day of its renaissance in 1970 and identify general trends in privatization. It is evident that the policy of the sultanate fosters a free economy that promotes individual initiative and encourages free and honest competition

This method of privatization can be divided into two stages as follows:-

1- Stage one:

Trends in privatization in the Sultanate were evident during the quarter of century from 1970 to 1995. This consisted of a distinct developmental effort aimed at enhancing the role of private sector in national economy through the following methods.

- Formation and development of appropriate administrative mechanism in government.
- Enacting legislation & rules:
- Creation and development of basic structures.
- Provision of numerous forms of incentives, and support to private sector.

The efforts during that period had the following results:

- The total number of private sector establishments increased from 4758 in 1976 to 75486 in 1995, and the number of establishments registered with the Ministry of commerce and industry increased from 60 in 1976 to 4033 in 1995 registering an increase of 1486.5 % and 6621.7% respectively.
- The private sector participation in Gross Domestic Production rose from 1217 Million Rial Omani in 1988 to 2076 Million Rial Omani in 1995 showing an increase of 70.6%.
- The employment in private sector increased from 87,000 in 1976 to 815,000I in 1995. This sector employed about 67.7% of the total manpower working in the country (exempting workers in defense & security Sector)

The Sultanate under wise political leadership had from the beginning adopted a development strategy different from that selected by a number of other underdeveloped countries. It focused on centralized planning and depended on monopoly of public sector. Its development plans were mostly aimed at development of Human Resources and flow of government investment was based on humanitarian and social considerations. It relied on open and free market system. The wise leadership played a remarkable role in providing economic and social stability.

The government's policy was to support and develop private sector during the period 1970 – 1995. This stage witnessed some difficulties in implementation of strategic development initiatives. It resulted in increase in the budget deficit thereby depleting a significant portion of State Reserve Fund, lower savings rates, high rate of consumption, negative balance of payments and dependence on expatriate employees. It also resulted in slow down of private sector participation in economic activity due to defective legal framework, weakness of the financial incentives system, in addition to limited flow of private capital, to a small number of units. This required a new vision and direction focussing on activating and developing private sector through a privatization process.

2-The Second Stage:

The hallmark of the second stage of fifteen years was the introduction of Five-year Plans based on the futuristic vision laid down in 'Vision 2020' document. This period witnessed a remarkable progress in privatization efforts which aimed at transferring public ownership of assets to the private sector either completely or partially as part of the general economic policies of the state. The first legislation on privatization outlining the policies & regulations for privatization was issued by Royal Decree No. 42/96. This decree is considered to be an integral part of the economic policy of the state, and a major government program to achieve sustainable development and increase in growth rates. The most important portion of this legislation is the section concerning regulation of privatization process.

The privatization trends were apparent in the strategic development initiatives contained in 'vision 2020' document which are:

- Development of a diversified and stable economy in order to develop a private sector that is capable of optimum utilization of human & natural resources of Sultanate efficiently and without harming the environment.
- Encourage existence of an efficient private sector that is capable of facing competition, and development of strategies and policies for establishment of joint ventures, between the government and private sector.

Based on that future vision, in addition to the contribution to development work in the previous stage, the private sector was to contribute to the economy also by the following:

- Creation of an efficient and competitive private sector, that is self reliant and with linkages to global economy.
- Be the main generator of national income.
- Be the main resource for providing attractive employment opportunities to citizens.
- Discharge its social responsibilities.

The general economic policies clearly enunciated a privatization policy in the sixth Five Year plan (2001/20050 where the objectives of development of private sector were indicated through the following:

1- Importance of privatization programs:

Special care was given for the privatization program, and its implementation given importance in order to reduce public expenditure and encourage private sector investment. For this, it was necessary that the State understand the challenges faced in development of private sector throughout in the years 1970-1995, so that it can take measures to tackle it and eradicate its causes, and put in place a new strategy for the development of this sector, that is based on strength to achieve the future vision. These can be summarized as follows:

- Provide a comprehensive and stable economic framework by maintaining balance between revenue and expenditure effective from 1996 and to aim for revenue surplus by fixing a maximum limit for public debt.
- Reduce expenditure and develop Non-Oil revenue.
- Support government savings and build financial reserves.
- Continue to follow the current monetary policies for supporting the Omani Rial and Continue to keep it transferable and avoid inflation pressures.
- Develop market mechanism, support valuations systems and organizations that strengthen free competition and justify revenue trends, in order to maximize privatization of resources.

2- Reduction of Government's role:

Gradual reduction of government's role in production and services sectors and enhance its role in providing strategic policy initiatives in order to cope with the privatization policy set out in Royal Decree No. 42/96. It is worth mentioning that the Fifth five-year Plan 1996/2000 expressed openly that the aim of privatization policy is not to get rid of the financial subsidy that the government bears in providing services, but to expand these services in order to make them reach areas that do not enjoy them yet, and in order to enhance investment opportunities that suits private sector, besides development of its participation in the private sector. The plan explained that the privatization polices consisted of two methods:

2.1 The First Method **Sale of Government Assets:**

In this form of Privatisation, the assets under the government's possession, such as shares in companies held by the Government and other assets belonging to government owned companies are sold to the public. There is an approved procedure laid down for this process to expedite privatization. The process can be described as follows:-

- The Financial Affairs and Power Sources Council shall set out the basis and time table for selling assets in stages that matches financial capabilities of private sector to absorb them and without negative impact on Muscat Securities Market. The council shall supervise the follow up the implementation process after approval by the cabinet. The procedure adopted shall:-
 - Enable most of citizens to purchase the shares, so that ownership base is expanded.
 - Assets shall be sold through Muscat Securities Market in cases of joint stock companies, or adopting a method that assures highest revenue to the Government.
 - The proceeds from sale shall be credited to the State Reserve Fund.

2.2 Second Method: **Promotion of Privatization by enabling the private sector to establish, operate and finance public utility projects**

This method consists of implementing various programs to enable the private sector, to participate in establishing, operating and financing projects in services sector. The procedure reviewed by the Ministerial Committee for Privatization and approved by the Cabinet was issued vide Royal Decree No. 42/96 :-

3-Progress achieved in laying the Legal and Organizational Framework for Privatisation:

The Sultanate has laid down laws, rules and regulations for establishing the procedures and policies for privatization:-

- Establishment of procedures to obtain licences for commercial operations and investment of funds
- Transfer of the power to settle commercial disputes from the Authority for the Settlement of Commercial Disputes to a Commercial Court.
- Cancellation of the commercial sponsorship system to remove obstacles to foreign companies registered under the Law of a foreign Government. Existing Companies were to be re-registered within a period of three years under the new Foreign Capital Investment Law.
- Amendment of law governing ownership of land.
- Review of law and policies pertaining to establishment and functioning of Oman Chamber of Commerce & Industry.
- Activation of the Commercial and Industrial Coordination Committee, and establishment of a centre for promotion of export, business development and investment.
- Comprehensive amendments of laws governing operation of economy and financial systems to ensure that they are supportive of the new economic policies, and to promote better coordination and synergy between various components of the system.

4-Provision of Incentives for increasing Investment in Private Sector

The investment in private sector was encouraged through the following methods:

- Incentives granted shall not constitute a burden on the national economy, or increase disparities.
- Have unified authorities responsible for granting incentives including loans for each sector of the economy.

- Adoption of flexible goals to improve the efficiency of incentives scheme with priority being given to activities that promote diversification of the economy.
- Denial of exemptions from customs duties to production inputs such as raw materials and semi-manufactured raw materials, except where it is necessary for competitive imports and needed to promote harmony among the different sectors of the national economy, and for import of capital items.
- Review of tax laws in order to encourage foreign investment.

5- Support and Develop the Financial & Banking System

The financial and banking system was sought to be developed through the following steps:

a. Enhancing the role of Muscat Securities Market

The role of Muscat securities Market was sought to be enhanced through the following steps:

- Obligate retirement funds to invest a portion of its money in the market.
- Encourage banks to increase their participation in the market, and allow them to deal in brokerage.
- Encourage formation of real estate companies through amendment of law governing ownership of land.
- Specify the responsibilities of the market and Central Bank by issuing the Law governing Investment.
- Amend the Law of Muscat Securities Market, in order to avoid overlapping of duties.
- Promoting young investors to deal in the share markets.
- Encouraging sole proprietors and companies to form and register as joint stock companies.
- Encourage formation of ‘closed investment funds’ and permit expatriates to invest in these funds.
- Prepare awareness programs, in order to introduce the market operations to the citizens and develop their investment sense.
- Facilitate procedures and develop financial disclosure, provide information and promote financial services.
- Link the share market with other securities markets.

b - Development of the Banking System:-

The role of banking system was sought to be enhanced through the following steps:

- Enable mortgaging of receivables, stocks and property to commercial banks .
- Increase participation of commercial banks in long term lending and development of the inter-bank market, and facilitate issue of securities.
- Unify the authorities permitted to grant and disburse soft and subsidized loans.
- Encouraging establishment of small scale savings and borrowing systems, and formation of a specialized bank for this activity.
- Encourage banks to increase their own resources, develop its working methods, and expand range of their services.

6 - Development of Main Structures:

The mechanisms and policies for the enhancement of main structures can be summarized as follows:-

- Encourage participation of private sector in infrastructure projects.
- Provide electrical power necessary for the industrial areas along with other main facilities.
- Establishment of a new port which shall be managed on commercial basis, in order to meet the requirement of national economy.
- Expedite erection of fishing ports as per plans.
- Simplification of official procedures in ports and inland terminals for speedier clearance of goods.
- Allotment of an integrated area for the petrochemical industries.
- Develop communication sector and pave the way for private sector participation by transferring the Public Authority for Communication into a joint stock company, out of which 15% shall be sold through Muscat Securities Market.
- Review the formation and legal framework for communication sector, and set apart the government role as a supervisor, owner and organizer for the sector.

7 - Development of Human Resources:

Human resources were sought to be developed through the following steps:

- Develop skills and capabilities of Omani manpower, in order to enable them to deal with the modern developments and technological advancement.
- Develop administrative, technical and financial abilities of Omani citizens, in order to improve their initiative and increase their interaction with the national economy.
- Enable citizens to focus on development by disseminating development policies and programs.
- Motivate and encourage Omani citizens to be self employed, and prepare the new generation to acquire business skills and attitudes.

The strategies and policies for development of private sector formed part of the new stage in privatization. The basic structures for development of private sector were put in place completely. A number of privatization programs involving various government units and facilities were also launched. While some of them were implemented through management contracts such as privatization of the airport and hotels, others were carried out through assignment of services and facilities to private sectors units in power, waste management, water desalination sectors.

Section Three

The Legislative and Organizational Framework for Privatization in Oman

The Legislative and Organizational Framework for Privatization in Oman

The law that governs privatization provides the legal and organizational framework for controlling, planning, implementing and monitoring of its progress. The law governs both the theory and practice of privatization. The legislation provided the tools, methods for privatization in documented format with obligating provisions and rules to achieve the objective.

From a historical point of view, privatization in Oman did not commence with the Royal Decree No. 42/96 approving policies and regulations of privatization but with the issue of the Constitution vide Royal Decree No. 101/96 in which the economic principles were stated as follows:

“the basement of national economy is justice and principles of free economy and based on fruitful cooperation between the public and private activities”.

The Sultanate’s experience in development since 1970 provided the basic structure for free economic development and also laid down the road map for privatisation, by providing the fundamental environment and the essential services necessary for sustainable development of its various regions through ambitious five year plans, the first of which started in 1976 (1976 to 1980). The previous section dealt with the dimensions of the methodology adopted in privatization of various types like joint venture with private sector in establishing a number of projects, and initiating support policies, and encouraging private sector in productive activities.

This section will cover in brief the legislations issued in Oman in relation to privatization.

The First Stage of Legislation:

The Royal Decree No. 42/90 issued on 8/6/96 constitutes the first legislative step in privatization as a part of the economic policy of the Sultanate. It also adopted the rules and regulations necessary for privatization and formation of a Ministerial Committee for Privatization, which shall be responsible for setting out specific programs for placing various projects to the private sector after observing necessary procedures and priorities.

Privatization policies and rules could be summarized as follows:-

a: The Policies:

- 1- Privatization is considered to be a part of the government's program for achieving sustainable development and raising growth rate of economy and distribution of its results all over the regions, and categories of the society.
- 2- Priority in privatization shall be given to production services that operate on commercial basis such as waste management, power, water, communication, highways, and postal services, provided that the privatization of these services shall match the abilities of the private sector.
- 3- Privatization shall be implemented gradually and in an orderly fashion to accommodate any changes in economical and social situation.
- 4- Clear criteria shall be announced for selection and assessment of investment offers, and also clearly specify the responsibility of concerned governmental bodies, and the method of follow up of privatization programs.
- 5- More than one company shall be formed for providing the required service- whenever it is possible – in order to create competition among them, and in order to give the government the opportunity of comparing performance and efficiency.

The maximum rate of tariff shall be determined and amended by the government, which shall be unified to all clients, whether the project is managed by the government or the private sector.

- 6- Foreign participation in privatization projects shall be encouraged, in order to make use of foreign capital, and technical and administrative expertise according to Foreign Capital Investment Law.
- 7- The government shall set out rules and regulations necessary for protecting environment from any negative aspects that follows privatization of some sectors, due to the private sector's establishment quest for cost reduction.
- 8- The society shall be prepared through various public media to accept the changes in the economical and industrial structure of the state, by explaining the privileges of privatization and its importance in achieving prosperity, especially the lower income segments.
- 9- The revenue of selling the government share in production and service projects shall be credited to the State Public Reserve Fund.

These policies reflect the integrity of the scientific framework of privatization process whether in its methodology or style as a part of the Sultanate's program, in selecting the production service that operate according to commercial basis, and gradual implementation of transference. The policies went further to include the government role in monitoring of various aspects, such as forming more than one company, in order to create competition or specifying a maximum limit for tariff, which amendable only by its approval or environment protection.

The policies in place paid attention to publicity and preparation of society, in order to accept this new economical policy, without ignoring crediting the revenue of selling the governmental assets to the State Public Reserve Fund.

b: Regulations:

- 1- A suitable company shall be selected for financing, implementation and management of the project through an open tender for which many Omani companies shall be invited.
- 2- The company that shall be formed for the privatization project take a form of a joint stock company, 40% of its shares shall be placed for public subscription, and with a local partnership of not less than 51%.
- 3- Companies that formed for privatization projects shall be treated the way national companies are treated from a tax point of view.
- 4- Companies that formed for privatization projects – which are not given governmental guarantees for purchasing their products - shall be treated the way the industrial companies are treated from income tax and custom charges point of view.
- 5- A ceiling has to be fixed for concession company profit i.e. an average of (20%) (for a period of three years) on paid up capital – the revenue that exceeds one third shall be shared with the government.
- 6- The government may grant any soft loans to privatization projects only at the minimum level.
- 7- The government shall set out the specifications that is to applicable in any field of business covered by privatization, which the company shall comply with in implementation, management and operation of projects.

- 8- The privatization projects shall be implemented and managed as per the performance and efficiency criteria set out by the government.
- 9- The staff of the service and production companies that are privatized shall be transferred to the concession company, if possible.
- 10- In order to expand the investors base in privatization projects priority shall be given to the investment groups that have not enjoy any of these project before, in case their offer was equal to the offers of other companies.

The above mentioned regulations reflect the transparency followed in selecting the suitable company, its legal form, valuation of shares, national participation, profit ceiling, in addition to determining the government's role in monitoring the companies through setting out performance criteria, and transfer of staff to the new companies, and expansion of investor base.

The constitution issued by Royal Decree No. 101/96 on 6/11/1996 confirms the methodology and policies chosen by the Sultanate as per Article (11) which expressly stated that : “national economy is based on justice and free economy principles, and based on constructive and fruitful cooperation between public and private business ... in addition to what it states in regard with the protection of private ownership and prohibition of confiscation of public funds.

Upon implementation of the above mentioned regulation, necessity arose for amending its provisions leading to issue of Royal Decree No. 54/2000 on 4/7/2000, a law governing and regulating privatization of Alkamil Power Station and Barka Power and Desalination Station. These amendments were as follows:-

- Article (2), (5) and (10) of the regulations set out in the above mentioned Royal Decree No. 42/96 regarding (formation of the company, maximum profit payable to the company, and determination of priority to investment group) shall cease to be valid.
- The project form specified is a closed joint stock company with foreign participation at 100% of capital and reducing over a period of four years, to not more than 65%.
- Exemption of the project from some provisions of the Commercial Companies Law.
- Exemption of the project from the corporate income tax and customs duties on capital equipment imported during construction stage.

The Second Stage of Legislation:

On 17/7/2004, Privatization Law was issued under Royal Decree No. 77/2004 canceling Royal Decree No. 42/1996 approving privatization policies and regulations. The main features and contents of this law are the following:-

The first Article of the law defined privatization as: “ Transfer of ownership, or management, or lease of government’s facilities or establishment to the private sector”.

Section two of the law mentions the objectives and methods of privatization, under which privatization is considered to be a part of the government program for achieving the following targets:-

- a. Diversification of national income sources and expansion of production base of the state.
- b. Pave the way for the private sector to participate in developing national economy.
- c. Encourage the market forces and free competition.
- d. Increase efficiency of utilization of resources.
- e. Reduce the financial and administrative burden on public budget by enabling the government to make strategic investments required in basic services that the private sector is unable to carry out.
- f. Development of capital market.
- g. Increase of employment chances of citizens
- h. Encouragement of foreign investment, and attracting technical and administrative expertise and modern technology.

Article (3) of the law dealt with privatization methods which are :

- Restructure of the units, authorities, governmental establishments and companies that are to be privatized before starting the total or partial privatization processes, if possible.
- Grant private sector the right of construction, ownership, management, concession, formation permit and lease of privatization projects.

- Sale of government owned shares in commercial establishments & companies.
- Enter into capital or management contracts or any of them.
- Any other methods the Ministerial Committee may consider as fit.

The Article permitted usage of more than one method when necessary.

Section Three of the said law dealt with the authorities concerned with the implementation of privatization programs and specified its duties which are as follows:-

1- The Ministerial Committee for Privatization: To be formed by a cabinet decision with the following duties and responsibilities:-

- Discuss the study reports and programs relating to privatization projects submitted by Ministry of National Economy especially the financial, administrative and legal aspects of these projects, in order to prepare them for privatization and submit recommendations to the cabinet.
- Set out clear regulations for the privatization process within the law in areas like share subscription, and the policies to be implemented in order to privatize a project and specify a time-table for the same.
- Issue the decisions related to appropriate mechanism and time for privatization within the framework of the program approved by the cabinet.
- Follow up the procedures approved by the cabinet for implementation of privatization programs in various sectors, and suggest suitable solutions for any obstacles that may face the same.
- Review the approved basis and principles for the privatization processes continuously, and suggest their updating and development, in order to match local requirements, and to cope with the qualitative developments in privatization on the international level.
- Discuss the suggestions of the Technical Secretariat for Privatization related to the employees in the privatized projects including qualification and training plans, and take necessary decisions on this regard.
- Make suggestions on how to deal with the revenue from sale of the government's assets in the privatized projects.
- Any matter related to privatization referred by the cabinet.

- Submit recommendations regarding privatization strategy, and the means and procedures of their implementation, and what to do with the sales revenue to the cabinet for taking necessary decisions.

2- The Technical Secretariat for the Ministerial Committee for Privatization: The Directorate General for Private Sector Affairs, Ministry of National Economy carry out its duties, which can be summarized as follows:-

- Carry out studies and submit recommendations and programs related to privatization.
- Study suggestions received from other Ministries and government units regarding means and methods of privatization and restructuring and, make recommendations and suggestions to the Ministerial committee for Privatization.
- Suggest organizational procedures.
- Coordinate with Ministry of Finance with regard to sale the government shares in the companies.
- Prepare suggestions pertaining to the procedures for implementing the basis and regulations related to manpower within the privatized projects as per the law.
- Prepare tenders and offer documents, and tender procedures and their publicity in coordination with Tender Board.
- Ensure that transparency and impartiality is applied when implementing various stages of privatization, and participate in announcing programs through investigations, prepare for privatization seminars and workshops through various public media.
- Ensure that all concerned authorities shall participate in privatization negotiations.
- Follow up privatization processes and make periodical reports about their implementation.
- Suggest necessary criteria and regulations and prepare periodical reports about implementation of privatization.
- Any other business the Ministerial Committee may require it to carry out.
- The Secretariat General submits recommendations and suggestions to the Ministerial Committee for approval.

Article (9) of the law obligated all ministries, governmental units, establishments, companies, and individuals to provide information, details and special studies required by the Ministry, or the Technical Secretariat, as follows:-

- Provide Ministry's experts and advisors with the necessary facilities.
- Comply with work rules and regulations as per the guidelines issued by the Ministry.
- Undertake to provide information about the privatized companies as per the request of the ministry.

Article (10) of the law permitted Ministry of National Economy to appoint advisors or experts in various specialization, and form different committees, in order to carry out its duties related to privatization.

Section Four of the law discussed the organizational rules, which can be summarized as follows:-

- More than one company could be formed in order to provide the privatized service to avoid monopoly.
- Place the project as per law and regulations governing tenders in government.
- Tender Board may place the project according to other procedures suitable to the project.

Article (13) of the law specified the legal form of the project as a joint stock company, and permitted the cabinet to form a closed joint stock or a limited liability company, if necessary.

The Article permitted a foreign participation of 100% in the company's capital, and a partner is not obligated participate with a specific percentage in the project.

In case the subscription is shares less than the offered shares, when the company is considered to be transferred into a joint stock company, the Ministry of Economy in coordination with Ministry of Commerce & Industry and Capital Authority decides on how to cover the balance shares.

Article (14) of the law permitted formation independent organizational authorities that organize the relation among the government, the investor and consumer as per the law. These authorities shall be merged in one authority that includes all sectors.

The law granted the company the following incentives:-

- Shall be treated in way similar to the companies fully belong to Omanis from a taxation point of view.
- Enjoy the same rights related to land granted to companies fully belong to Omanis.
- Enjoy any privilege or facilities set out in other laws.

Article (16) of the law provided that all the rights and obligations of the privatized establishment shall be transferred to the project company as per the agreements.

Article (18) prohibited those who hold an official position to disclose any confidential information related to the privatization projects.

Section Five of the law discussed settlement of the staff working in privatized projects, where the privatized company undertakes to transfer the staff who will be accommodate after privatization, make employment contract with them, provided that they should receive remunerations not less than what they use to get when transferred, in addition to that the company undertakes not to terminate their services before a period of five years from the date of transfer, provided that they comply with work rules and regulations, it organized their retirement rights as well.

The law settled the situations of staff who are not accommodated in the new company by transferring them (if they wish) to the governmental units, according to work requirements, provided they be trained to work requirements of these units. Other employees' situations shall be settled according to their service tenure. Those employees who complete more than 10 years in service are entitled to pension, if they reached retirement age. Each of them shall be given a basic salary with a maximum of 12 months and a minimum of 5000 R.O. If the employee is not entitled to pension, then he shall be paid four basic salaries against any month of employment, plus allowances. The Ministry of Finance bears all the end of service dues and pensions payable to them.

The said privatization law forms the second stage of legislation organizing privatization. The law was comprehensive and included the organizational regulations. It allowed formation of organizational authorities and granted privileges and incentives, and the method of rights and obligations transfer, and protection of information. It did not ignore the right of the privatized units' employees and settlement of their dues. This make us assume the perfection of the issued legislation, whereas it covers all the aspects related to privatization such as planning, implementation, follow up and control.

Section Four

- **The Mechanism for Implementing Privatization**
- **Practical cases of privatization processes in the Sultanate.**

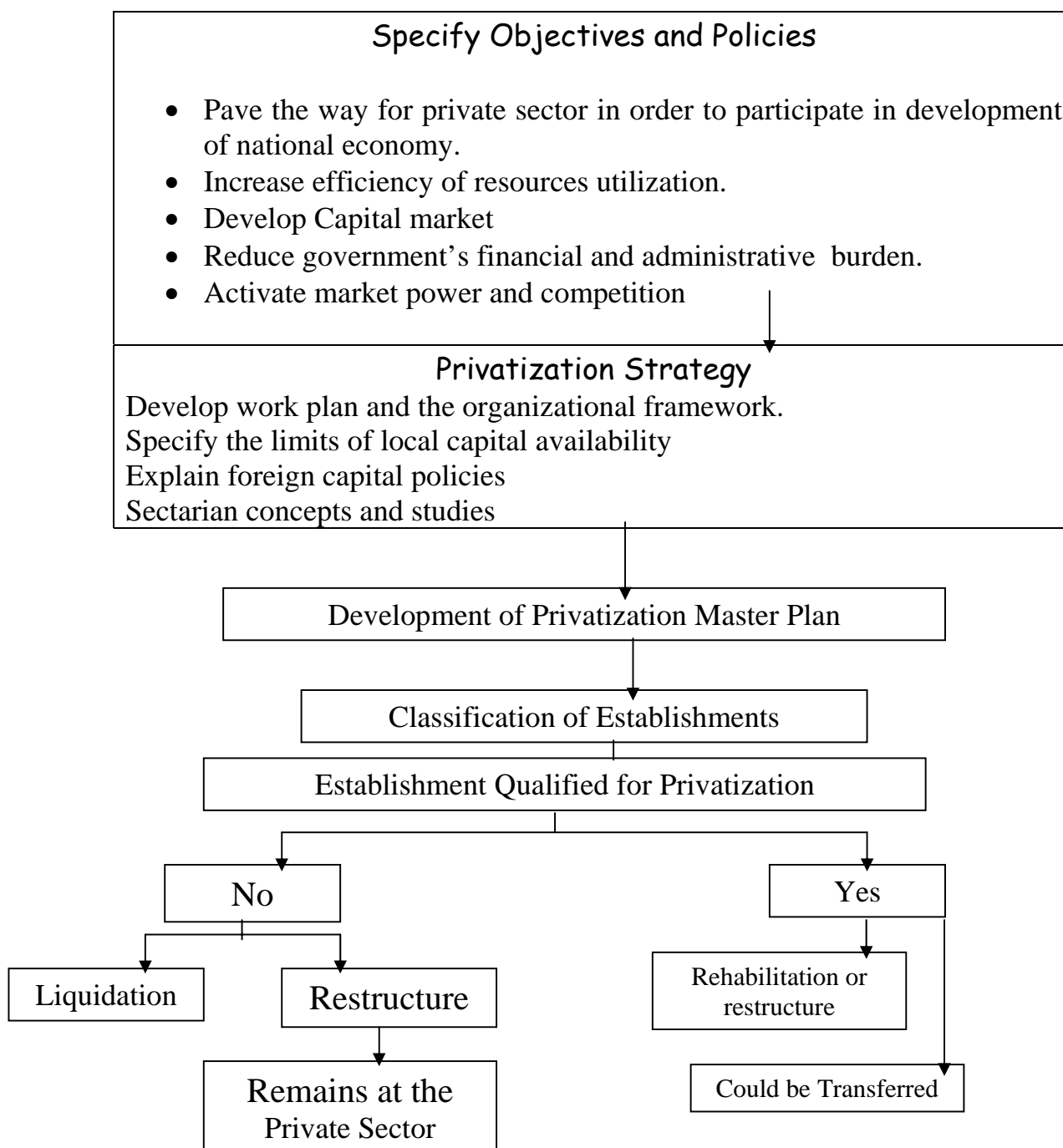
The Procedural requirements for Implementing Privatization

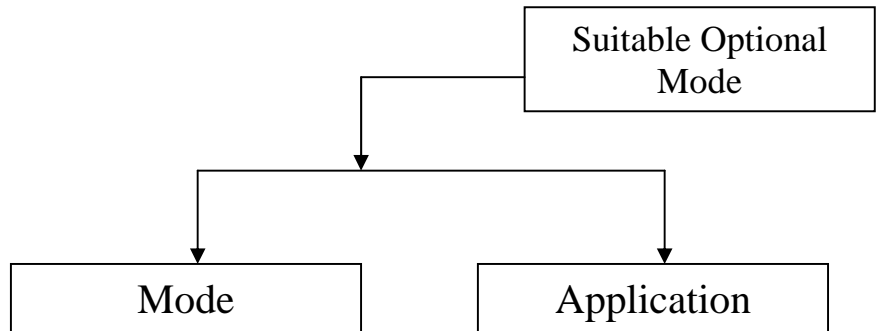
In a previous section we discussed the legislations that organize the privatization process. Here are some of the provisions governing privatization :-

1. A decision to privatize a specific project is to be taken and announced. At this stage the privatization method may be specified during this stage.
2. Set out criteria for selecting the financial, legal and technical advisor, in order to support privatization of the concerned project.
3. Study the situation of the concerned project in detail, recognize its problems and suggest suitable methods for its privatization.
4. Announce the government's intention to privatize the concerned project in different local and international public media, in order to attract letters of intent from qualified financial and investment establishments.
5. After receiving letters of intent they shall be studied and a short list be made. Contact establishment in order to submit their offers based on the referential conditions sent to them.
6. The technical and financial offers shall be studied, in order to select the most suitable establishment in the light of the specified conditions and criteria.
7. Prepare the documents necessary for completing the privatization process, such as the agreements among the contracting parties.
8. Start implementation of practical steps for the privatization of the project within the framework of the adopted method, make a short list of the qualified investors and inform them about the project, in order to obtain final offers from them, and circulate and assign them.

The privatization cycle could be summarized as follows

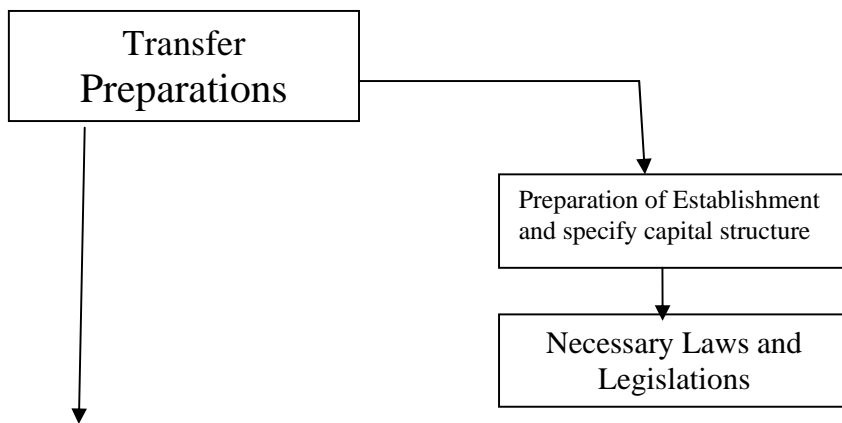
Privatization Circle

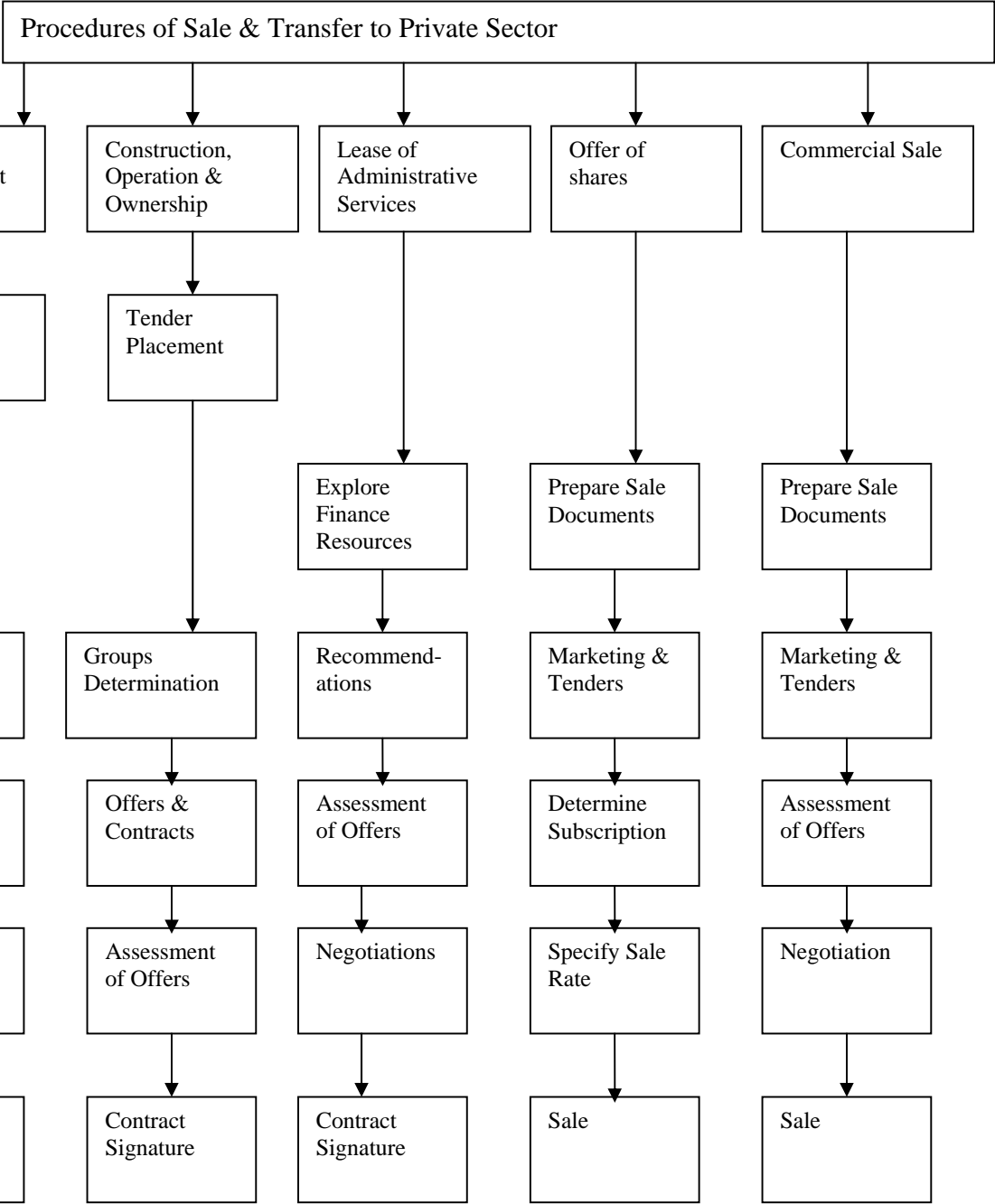




- * Sale/ Participation
- * Complete/ partial placement of the share
- * Administrative Services Contract
- * Construction, Operation and Ownership (BOOT)
- * Construction, Operation and Ownership (BOOT)
- * Lease of administrative Services

- * Technology and additional investment Co.
- * Large profitable establishments
- * Additional capital for establishment
- * Power and Large Projects.
- * Public Sector Services





Practical Cases of Privatization in Oman

1.0: Privatization Programs

The privatization programs within Oman include a number of important sectors of economy, in which the government has taken serious steps to privatize, either through participation of private sector in government establishment units or through restructuring of the sectors included in privatization programs.

Below is a brief presentation of the sectors included in the privatization programs along with its strategies:-

Power Strategy:

Due to the importance of electricity and water sector and the largest influence it has on the privatization policies. The government, therefore, prepared a strategy for privatizing electricity and water sector. This strategy aims to restructuring electricity and water sector by separating generation, transmission and distribution processes, as well as setting an effective and independent organizational framework in taking decision, imposing control and supervision on this sector. The main features of Electricity and Water Sector's restructure and Privatization as follows:-

- 1- Separation of generation, transmission, and distribution facilities.
- 2- Separation of Electricity and Desalination activities by forming the following public companies:-
 - Three companies for power generation and water desalination (Al-Rusail, Al-Ghubrah and Wadi Aljizzy).
 - Three companies for distribution and supplies.
 - A company for power transmission and control centre.
 - Form a company for purchase of Electricity and water, which shall remain under the ownership of the government for sometime, who shall anticipate demand on electricity and water, plan necessary supplies volume, provide the generated power, and make contracts with electricity and water producers.

- Form a public company for generation, transmission, and distribution of power, for areas not linked to the national electricity net.
 - Form a public holding company to supervise all the above mentioned companies.
- 3- Form an independent authority to organize electricity and water sector.
 - 4- The law for organizing and privatizing electricity & Water was issued by the Royal Decree No. (78/2004) on 20th July, 2004 in order to organize the relation among the concerned authorities within the sector.
 - 5- A method was issued to transfer the assets of electricity and water from Ministry of Housing to the new companies according to their specializations, as per Ministerial Decree No. (44/2005), which was enforced effective 1/5/2005.

2.0: Privatization of Electricity Sector Projects:

There are a number of projects privatized in electricity and water sector on the (BOOT) and (BOO) systems such as: Manah Power Project, Salalah Power Project, Al-Kamil Power Station, Barka Power & Desalination Station (First Stage), Sohar Power & Desalination Station. There are projects which are currently under construction such as Barka Power & Desalination Station (2nd Stage), Sur Desalination Station, Salalah Power & Desalination Station, and Al-Duqm Power & Desalination Station.

3.0 Water Supply Sector:

A - Strategic Studies of Water supply in Oman

A strategic plan was prepared for water supply in Oman, that includes the current and future situation of supply and demand, especially potable water, and the investment necessary for bridging the gap in water supplies in future, in order to study mechanisms suitable for providing the investments necessary for the development of this sector, and managing it efficiently, in order to ensure a sustainable and high quality service.

4.0 Waste Management Sector:

- A. Two companies were formed in Muscat and Salalah to manage Waste Management facilities in Muscat Province and Salalah township. The Royal Decree No. (16/2004) granted the waste management facility concession in Salalah to Salalah Waste Management Company, and the Royal Decree No.(69/2005) granted the waste management facility concession in Muscat Province to Oman Waste Management Services Company.
- B. The Ministry of National Economy appointed the consultant Bose Alan to prepare a strategy for the restructure and privatization of waste management and water in the Sultanate, who started the task in September 2006. The study is expected to be completed within six months.

5.0 Communication Sector:

- a. The government in 2005 offered 30% of its holding in Oman Telecommunication to the public for subscription, and to pension funds through Muscat Securities Market.
- b. The Telecom Regulatory Authority took steps necessary for opening up competition in the sector by issuing a second licence for mobile telephone services to the Omani Qatari Communication Company, and another licence for the fixed telephone services is expected to be issued in the future.

6.0 Transportation Sector:

The government appointed a private sector company with minority shareholding by Government to operate the main Omani ports. The Sultan Qaboos Port at Muscat is managed by The Port Services Corporation, and Salalah Port is managed by Salalah Port Services Company, and the Port of Sohar is managed by a closed joint stock company with the government and Rotterdam Municipality as shareholders.

7.0 Postal Services Sector:

A company which is totally owned by the government is established in 2005 under Royal Decree No. 48/2005, in order to run postal services, as a step towards its privatization later on.

8.0 Corporate Sector:

- a. Oman Cement Company: In 2003 the government share was reduced from (63.5%) to (51%) by selling (12.5%) of the government share in Muscat Securities Market as a first step.
- b. Oman Flour Mills: In 2003 the government share was reduced from (59.5%) to (51%) by selling (8.5%) through Muscat Securities Market.
- c. Al Maha Petroleum Products Company: The government in 2004 sold its share of (65%) through Muscat Securities Market.

Now the restructuring of some sectors and projects are under progress. The most important one among them is restructuring and privatization of management of dangerous waste. The government is preparing its plans for managing dangerous waste throughout the Sultanate by the private sector. The Ministry of Regional Municipalities, Environment & Water Resources is supervising the technical and feasibility in cooperation with the Ministry of National Economy. A consultant was appointed for the National Project for Managing Dangerous Waste in the Sultanate. When the final reports on the consultant's study are submitted, the project shall be tendered.

The privatization of the project for solid waste: Since 19/3/2003 technical and commercial studies have been prepared under the supervision of Muscat Municipality on the possibility of privatizing the project. The Ministry is coordinating with the Muscat Municipality, and Ministry of Regional Municipalities, Environment & Water Resources in regard with studying the offers submitted by the international investment companies.

Section Five

- **The legal framework for the audit of privatization process by State audit Institution.**
- **Type of control exercised**
- **Practical examples of audit of privatization by State Audit Institution and Control over result of Privatization**
- **Privileges, advantages, defects, and defaults**

The Role of the State Audit Institution in Auditing Privatization Process

The Legal Framework for the Audit of Privatization by State Audit Institution:

The State Audit Institution formed as per the State Audit Law issued under Royal Decree No. 55/2000 with mandate to protect public funds is responsible for the audit of privatisation transactions. It also renders audit opinion on the effectiveness of internal control systems and internal audit, and accuracy of the accounting of financial transactions, It also checks compliance with the laws and regulations relating to the financial systems, personnel, apart from highlighting financial improprieties. It also reports on defects and shortcomings in laws, policies, and regulations, and assesses the performance of the authorities subject to its audit control, and verifies that they are using resources in fair and efficient manner.

The State Audit Institution verifies:

- Financial control exercised including control over accounting and legal aspects.
- Performance and progress in implementation of the Plan.
- Financial transactions to see whether there are any financial violations.

In order to carry out its duties State Audit Institution may:-

- 1- Check accounts, revenue, expenses, payment vouchers, collection records, manual and automatic expenses or that is recorded in compact discs, and verify financial transactions, and special accounting records, review of reconciliation accounts and ensure that they are supported with legal documents.
- 2- Review the decisions related to personnel, and end of service dues, in order to ensure that they conform with the budget, laws, policies, and financial systems.

- 3- Review stores, workshops, laboratories, farms etc...
- 4- Review loans, investments and credit facilities
- 5- Review final accounts after the expiry of the financial period of the concerned authorities, and state's final accounts and furnish ministry of Finance with their opinion, in order to make corrective measurements before presenting it to the Financial Affairs & Energy Resources Board, and then to His Majesty the Sultan.
- 6- Follow up implementation of development plan projects, and assess performance of administrative and economical units according to the duties assigned to them and the time table, and as stated in the plan, and follow up and assessment of the results, and ensure that resources are used in a fair and efficient manner.

Types of audit carried out by the State Audit Institution:-

Audit carried out at present is post audit of transactions i.e. after financial transactions, without covering any of its preceding activities. This clearly shows that all the stages of the privatization processes are not within the jurisdiction of State Audit Institution according to provisions of its laws.

Privatization is subject to the audit of State Audit Institution to the following extent:-

- Examining whether procedures have been complied with in implementation of privatization process, particularly whether the provisions of privatization law has been complied and sales revenue collected and dealt with properly, in addition to offering opinion on the accuracy of valuation of assets to be sold.
- The audit mandate covers units in which the government holding is more than 50% of its capital, or to which some concession to operate a public utility or natural resource has been granted. It is a post transaction audit and can also assess the social and developmental impact.

It is necessary to mention here that in the absence of concurrent audit of privatization process State Audit Institution cannot exercise adequate

control on public funds, and post audit carried out by State Audit Institution is not completely effective, keeping in mind the fact that after completion of privatization process and execution of contracts to transfers ownership of assets to private agencies the transfer becomes irrevocable.

Advantages, Disadvantages & Impact of Privatization within the Sultanate:

We have discussed the objectives privatization aims to achieve, the first of which is to reform the national economy through activation of market forces and competition, and facilitating private sector participate in developing the economy, increasing the efficiency in utilization of resources, development of securities market, reduction of financial and administrative burden on public budget, diversification of national income sources, expansion of productivity base, increase of employment opportunities in private sector, in addition to encouragement of foreign investment, attraction of technical and administrative expertise, and modern technology.

Advantages of Privatization:

There is no doubt that the realization of all or a part of these objectives constitutes is a giant leap towards economical reforms, and has resulted in benefits that could be summarized as follows:-

- It has given a correct direction for economic reforms and achievement of developmental and social objectives.
- It is a stepping stone for establishing a solid foundation for the implementation of the International Trade Treaty, which has already been implemented.
- It helps in achieving ideal use of available materials, and improving performance efficiency.
- Mitigate resources depletion and rationalize government expenditure.
- Assist in restricting the budget deficit.
- Amend and develop a number of commercial, taxation, investment and financial legislation.
- Activate capital market in order to increase investments, and assist in attracting local and foreign capital.
- Expand ownership base.

- Utilize available cash flow in development and supporting government monetary reserve, and development of major projects.
- Creation of real job opportunities to citizens.
- Transfer of skills and technology to the Sultanate.
- Development of the legal atmosphere such as completion of establishing courts of various grades, and simplification of judicial and administrative procedures.
- Realization of regional and geographical development balance all over the Sultanate.

The achievement of the said goals is basically attributed to the support the privatization programs received from H.M. the Sultan Qaboos Bin Said, in addition to the success achieved in privatizing Aseeb and Salalah Airports, and Barka Power & Desalination Station eradicated the worries and gave confidence on privatization processes.

The privatization procedures taken by the government are praise worthy, who is planning to study and implement privatization project, in order eradicate the worries that may accompanied the privatization concept, for example:-

- General awareness of importance of privatization.
- Setting of laws that ensure control over foreign investment for the benefit of the national economy.
- Gradual privatization of projects.
- Issue the basis, and regulations that determine grants, and incentives to investors.
- Revenue of projects sale shall benefit national economy.
- The governmental subsidy granted to citizens shall not be affected by the privatization processes.
- Ensure maintenance of employees' rights by keeping them on the privatized projects or alternatively train, qualify and distribute them to governmental units or compensate them, and debt the cost of the same form the general budget.
- Development of laws, establishment of commercial and administrative courts, issue of consumer protection laws, and other related laws.

Despite the numerous privileges of the privatization processes, there are other adverse aspects that refer to some shortcomings and hindrances, and challenges that faced the privatization process as follows:-

The challenges and constraints of privatization program:

A) The Legislative & Institutional Environment:

- Existence of multiple of authorities participating in implementation of privatization projects leading to delay in implementation and follow up.
- Poor coordination among the concerned authorities in some sectors when amending or issuing new legislations related to such sectors that may affect its privatization programs.
- The judicial staff lacks experience in relation with privatization issues.
- The local consultants lack experience of studying privatization projects.
- Failure of some companies wherein the government participates, a matter that makes it less attractive to privatization.
- Poor follow up and assessment of restructured companies and sectors, in order to privatize them in future.

B) The Financial Environment:

- The financial resources provided for studying and restructuring sector were insufficient.
- Lack of detailed information about the privatization projects that helps investors in taking the right investment decisions, and enter into privatization.
- Capital Market limited ability to absorb the major privatization projects at the same time.
- The coordination between the financial sector and Muscat Securities Market and those in charge of privatization is limited in regard with placement processes and timing.

C) The Human Environment:

- Lack of qualified cadre for implementation and management of privatization projects, in comparison with the projects and studies to be privatized.
- Private Sector worries as result of the Omanization policy.
- Lack of specialized legal cadre in privatization projects within the authorities concerned with privatization.

D) General concerns:

- Some of the concerned authorities within the sectors to be privatized are not convinced with privatization or they are worried from its results.
- No plan for privatization awareness
- The citizens are worried from the results of privatization in connection with prices and quality, and replacement of public monopoly with a private one.
- Goods prices are likely to increase if subsidy is cancelled.

E) Logistic Support & Institutional Relations:

- Some sectors failure in attracting international companies, in order to participate in financing, construction, and operation of some of main structure projects.
- Lack of documented information & statistic that helps investors in taking investment decisions on time.
- Lack of coordination between public & private sectors, in order to activate private sector's participation in privatization projects.

These challenges do not constitute a big obstacle, if necessary action were taken towards studying them, and setting of suitable solutions, in order to eradicate the reasons behind it, in order to ensure the private sector's participation in privatization projects, and realization of economical, developmental, and social objectives.

Solutions Proposed for removing constraints and facing challenges to privatisation

Here are the most important solutions and suggestions for tackling the above mentioned challenges and obstacles.

A) Legislative & Institutional Environment:-

- Carry out an evaluation study for the policies, objectives, and achievements of the privatization program, and privatization impact on national economy during the past years indicating obstacles and the proposed solutions.
- Support Privatization Technical Secretariat with the specialized cadres, provided that it has to be responsible for all the privatization projects including shares and governmental assets.
- Development and updating of governmental laws and regulations related to investment and commercial companies, in order to remove any obstacles or bureaucratic procedures that may mitigate attracting investment to Oman, and lead to an active participation from private sector in implementing privatization projects.
- The governmental authorities shall coordinate with the authorities in charge of privatization when issuing or amending the laws related to privatization.
- Create data, studies, analysis base for implementing privatization projects.

B. Financial Environment:

- Prepare Muscat Securities Market and other institutions, in order to interact with the requirements of the privatization program.
- Provide a sufficient budget for studying consultative studies related to privatization programs.
- Coordination between the financial sector, Muscat Securities Market and those in charge of privatization projects in regard with offering privatization projects for public subscription and timing.
- Encourage junior investors to invest in the privatization projects, when placed in the market.

C) The Human Environment:

- Provide the specialized and qualified cadres to run and implement the privatization projects, at the Technical Secretariat for Privatization and the privatization targeted units.
- Provide specialized experts and advisors, in order to assist in implementation of privatization projects.

D) Public Worries:

Make extensive awareness programs about privatization programs, in order to educate citizens about the benefits of privatization and respond to their worries in this aspect.

E) Logistic Support & Institutional Relations:-

- Prepare and uplift private sector efficiency, in order to participate effectively in the privatization program.
- Study how to activate the public institutions that support the privatization of the Technical Secretariat for the Ministerial Committee for Privatization, in order to manage the privatization program effectively, and be the sole authority responsibility for privatization in the Sultanate.
- Activate the role of OCIPED in promoting privatization projects.

No doubt that the suggested solutions have found their way to real life, in order to provide all guarantees for the success of the privatization process.

The Impact of Privatization on Management of Public Utilities

The privatization experiment in Oman from a legislative point of view goes back to the year 1996 when the Royal Decree No. 42/1996 on Privatization Policies and Regulations was issued. It was followed by issuing Privatization Law under Royal Decree No. 77/2004. This shows that privatisation experiment is relatively new. However the reality is that practical experiments in privatization was witnessed in the Sultanate many years before, in the form of the government selling its shares and through its strategy of following a free economy that depends on individual initiatives and its policy of encouraging free competition and enhancement of private sector's role in national economy, in order to bear its developmental and social responsibilities.

The impact of privatization on the management of public facilities is narrated below:

In order to assess the impact of privatization on management of public facilities, we have to differentiate between the management of these facilities in two different stages, the first one being the pre-privatization period, and the second being post privatization process:-

1. The Pre-Privatization Stage:

This stage deals with the public facilities and units that are difficult to be entrusted to the private sector. Privatisation of this sector was done by either transferring its ownership to the private sector or by assigning construction and management of these facilities directly through private investment. Examples of this are electricity and water supply sector.

If we look to the electricity and water facilities we will see that they were under centralized management of the Ministries. The objectives of privatization of these facilities could be summarized as follows:-

1. Restructure of some projects that enabled privatization programs was carried out.
2. Reduce the role of government gradually in such activities .

3. Encourage coordination between bodies concerned with the implementation of privatization programs such as the Ministerial Committee for Privatization, and the Technical Secretariat of the Ministerial Committee.
4. Provide data, studies and necessary facilities to the experts, and advisors.
5. Prepare employees working in such facilities to function in a privatized environment.
6. Carry out detailed study of the project and study its problems and suggest privatization methods.
7. Planning for expansion of the range of these services in order to make them reach all regions without prejudice to the government's policy of financial subsidy.
8. Setting out the basis and programs that show sale of government assets in stages that match the capacity of the private sector to absorb the same, and observe its impact on Muscat Securities Market.
9. Shifting to commercial operations and train management in running these facilities through Board of Directors.
10. Enact legislations that suite this stage of privatization, and match the new economic policies.
11. Amend legal forms of the public facilities to public companies, in order to privatize them.

The Post-Privatization Stage:

No doubt that privatization has its impacts on management of the public facilities after completion of privatization, but the nature, range and form of this management is linked to the method of privatization as follows:-

Management of the Facilities Sold to the Private Sector:

It is natural that the transfer of the facilities sold to the private sector means transfer of ownership and management together to the private sector, and thus the government management to these facilities ceases. The management mostly take the shape of a joint stock company (public or closed). The management will be through either Board of Directors or general body of shareholders of these companies. According to the privatization agreements the government may play a role in the management through the following steps:

- Formation of independent organization/ authorities that regulate the relation between the government, investor and consumer.
- Government will intervene to underwrite issue of shares and take up shares in case subscription is less than the offered shares.
- Government interference in controlling the agreements made with the privatization project management in areas like employees and environment.
- Government control in areas like quality of performance and efficiency.
- Government control through Securities Market.

2. Management of Facilities Privatized through Concession or Management or Lease Agreements:-

The said contract indicates that the ownership of the facilities remain with the government, but the private sector will be responsible for its management and operation. The management method varies according to the type of contract and depends on whether it is a concession or management or lease contract.

In general such contracts determine the responsibility and duties of the owner and the private sector (management, lease, concession holder) in managing the facilities or the project. The management will be joint, and the government will play an important role in maintaining its complete rights in these privatized units while changing method of management in order to suite the new form of operation.

There are other forms of privatization such as barter through the transfer of some assets ownership to the creditor or granting him a number of government shares towards the settlement of his dues, It is considered as a new form of managing this facility, especially if with the transfer of shares the government lost its right to manage the facility or the company.

In conclusion, privatization in all its forms from planning to implementation, no doubt has its impact on the management of such facilities. The new management will have to suit the new image of these commercial units functioning in open market based on free competition and effective management.

Conclusion:

This paper tried to throw light on privatization in the Sultanate of Oman, starting with defining privatization, its objectives, and the methods adopted for it. The study also discussed the general policies of the Sultanate in two stages of privatisation, the first of which was at the beginning of the renaissance in 1970. Contrary to practice in many underdeveloped countries the Sultanate's policy was to enhance the private sector's role in national economy. This policy got aggravated in second stage from 1996 with the issue of future vision of Oman Economy 2020, and issue of the first legislation that laid down privatization policies and regulations in 2004, and followed by issue of the first privatization law.

This paper discussed the mechanisms for implementation of privatization process in the Sultanate with examples of these processes, along with the changes accompanying it, either through legislations or through development of official departments, and provision for support to the local and foreign private firms, and reduction of government's role in some production and services sectors.

While the State Audit Institution was preparing this paper, it was necessary to discuss the legal framework of the audit by State Audit Institution, and the role of control in privatization processes, which is directly linked to protection of public funds. The audit of State Audit Institution is limited to post audit, and the results are not as good as when concurrent audit is done. The paper also highlighted the procedures, stages and results of privatization, in addition to a brief presentation of privatization benefits and challenges and shortcomings, and on means to tackle them.

No doubt that the advantages of privatization in Oman has overcome the defects and challenges, with the exhaustive efforts of the government in tackling them. Privatisation has been a successful program and has contributed to sustainable development of the economy and society.

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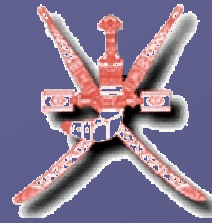
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State Audit Institution

Sultanate of Oman

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Arab-Euro Forum on Privatization

“Impact on public utility management”

December, 1 & 2, 2006

Tunisia

Contents

- Introduction to :
 - Regulatory and legal framework of privatizing in Oman
 - Methods of privatizing in Oman
- Background of Manah Power Plant.
- Method adopted to privatize Manah Power Plant
- Participants in privatization process.
- Chronology of privatization.
- Background of project
- Agreements relating to the Project
- Financing Plan.
- Reciprocal relationships between the project and the government.
- Role of SAI in auditing the project.

Regulatory and Legal framework of privatizing

Stage One , 1996

Royal Decree 42/96 for policies and control of privatization

- ❖ Policies
- ❖ Controls

Stage Two , 2004

Royal Decree 77/2004 promulgating Law of Privatization

- Defining privatization (Transferring managing or leasing governmental facilities to private sector).
- Objectives of privatization.
- Methods of privatization.
- Ministerial Committee on privatization.
- Technical Secretariat of ministerial committee on privatization.
- Possibility to appoint advisors or experts.
- Regulatory rules of Privatization.

Methods of Privatization adopted in Oman

- Transferring ownership from government to private sector.
- Contracts of Management.
- Lease.
- Agreements of concession
- Splitting government project into linked units
- Other methods

Manah Power Plant was privatized by giving concession on Build, Operate, Own and Transfer mode (BOOT).



Background of Manah Power Plant

- First project in Oman in private sector to generate power.
- Project was envisaged in BOOT system.
- Project capacity : 90 Mw (3 turbines x 30 Mw) through:
 - + 5 transferring sub-station
 - + Transferring lines 132 Kv & 33 Kv alongside 182 Km.
- Capital Cost : \$214 million.
- Fuel : Natural Gas.

Method adopted to privatize Manah Power Plant

- Manah Power Plant was privatized by giving concession on Build, Operate, Own and Transfer mode (BOOT).

Participants in privatization process

- Omani Companies (22%)

 - National Trading Co.

 - Tawoos Co.

 - W.J. Towell Co.

 - Zubair Est.

- Non Omani Companies (38%)

 - Global Engineering Tractable (Belgium)

 - Tractable (Belgium)

 - Power Fin (Belgium)

- Subscribers via Muscat Securities Market (40%)



Project Agreements

1- Agreement for project execution:

- 22 year concession (Two years for constructions and 20 years for operations)
- 5 year tax exemption
- Exemption from customs duties.
- Governmental guarantee for all company's payments.
- Converting a percentage of tariff from Omani Rial into US dollar.

Project Agreements – Contd.

2- Agreements for buying and selling power :

- Generation rates and efficiency of plant.
- Assets depreciation rates based on operating hours.
- Supply of Natural Gas.
- Fines in case of failure to meet operating guarantees.
- Method of measuring power sold to Ministry of Electricity.
- Tariff applied.

Project Agreements – Contd.

3- Agreement for Land Lease

- Nominal Lease Charges.
- Lease Period (20 years).
- Land Rights (easement).

Project Agreements – Contd.

4- other supporting agreements:

- Construction Contract
- Operation & maintenance contract
- Foundation
- Funding



Financing Plan



Source of finance:

- ▶ Capital \$72 million 34%
- ▶ Loans & Facilities \$142 million 66%



- International Funding Corporation \$62 million
- Local Banks \$17 million
- Exporting Facilities \$63 million

Purchase Price of Power

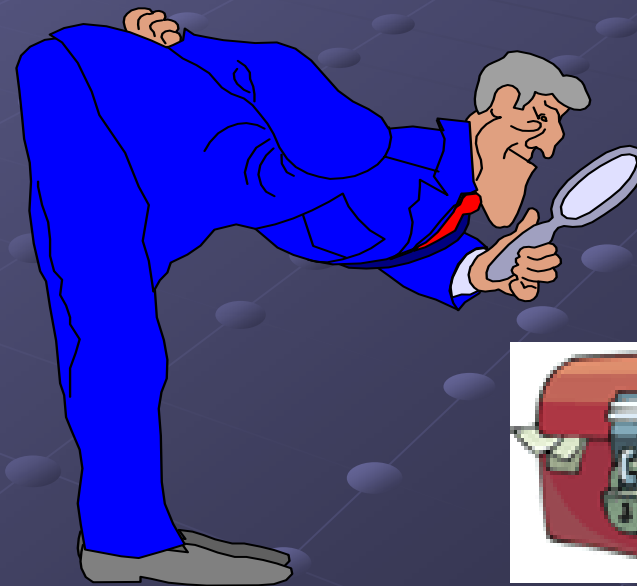
Purchase price is based on capacity and power

Elements of Tariff:

- ▶ Payments towards fixed capacity charges (to repay interest on capital for capacity).
- ▶ Payment towards variable capacity (operational cost) charges.
- ▶ Fixed payments for sub-stations and transmission network.
- ▶ Payment of power charges (Cost of Fuel).
- ▶ Payment for operations and maintenance (Full Overhaul).

Legal framework for Auditing Privatization By SAI

- ▶ SAI performs audit as per Royal Decree 55/2000.
- ▶ SAI auditing is post audit.
- ▶ As per the law, auditing privatization is performed after privatization process is over.



Project's Audit Findings

- ❖ Non-Compliance with terms of award by preparing schedules of repayment not in favor of government.
- ❖ Non-settlement of disputes regarding certain costs and claims.
- ❖ Inaccuracy in determining sites of works execution.
- ❖ Non-Compliance with project's environment terms.
- ❖ The company did not ensure electricity networks as per the agreement.

SAI Views About Project's Pros & Cons

Pros:

- ▶ Advanced technology was brought to Oman through contributions of foreign companies in the project.
- ▶ At the beginning, the project has clearly contributed to fulfilling high increase in demand for power, which existing stations were not able to fulfill.
- ▶ The project uses natural gas available in high volumes in Oman to run turbines which cost lower than diesel used in conventional generators.
- ▶ The project is a successful experience in power sector privatization that contributed later to pave the way for many investors to carry out similar projects.

SAI Views About Project's Pros & Cons - contd.

Cons:

- ▶ Cost of project and return on capital were overstated by the company. That led to increase in tariff of power sold to government. This is mainly due to high perception of risk by the company since this project was the first experience in privatization of power utility not only in Oman, but in the region.
- ▶ The project has been put up for privatization prior to setting up general framework and controls for privatizing power sector. This negatively affected the evaluation, negotiation and awarding processes. This led to changes during implementation and disputes regarding interpretations of certain terms of signed agreements. This placed additional burden on government.