

SOME NEW STIPULATIONS ON INITIAL SHARE SALE OF EQUITIZED ENTERPRISES

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On May 17, 2021, the Ministry of Finance promulgated Circular 32/2021/TT-BTC guiding the initial sale of shares and the management and use of income obtained from the equitization of a state-owned enterprise and from the conversion into a joint stock company of a single-member limited liability company with 100% of its charter capital invested by a State-owned Company (**Circular 32**). Several key contents of Circular 32 are as follows:

Firstly, Circular 32 stipulates the initial selling price of shares according to the share purchasers including: investors purchasing shares through auction, employees, trade union at the enterprise and strategic investors. Specifically:

(i) Selling price of shares for investors through auction is the bid price at the auction which is determined as winning bid. The determination of auction results is carried out according to the principle of selecting the bid price from high to low for a sufficient number of shares offered but not lower than the starting price in accordance with clause 5, Article 6, Circular 32.

(ii) The preferential selling price for employees is determined at 60% of the value of a share at par value (VND 10,000/share) for employees working under labor contracts, corporate manager of the equitized enterprise or the similar purchasers at level II enterprise but have not yet enjoyed the preferential purchasing policy in other enterprises, employees representing households having long-term stable contracts with agricultural and forestry companies.

(iii) Trade union at enterprise is also entitled to a preferential share price equal to par value (VND 10,000/share).

(iv) For purchasers as strategic investors: Circular 32 clearly stipulates the determination of the selling price of shares with the aim of ensuring the selling price of shares, avoiding losses and inequality among purchasers. For example, when conducting

auction between strategic investors, the bid price (determined as winning the auction by the principle of high to low selection) is not lower than the average winning bid price of the public auction.

Secondly, Circular 32 stipulates 04 methods of selling shares including: auction, direct agreement, underwriting, and book-building. **Auction** method is applied for auction to the public, and auction for the strategic investors. In the case of public auction, the number of shares that employees and trade union in the enterprise refuse to buy and the number of shares that strategic investors have not subscribed to buy up will be sold in the auction to the public. Auction for strategic investors is applied when there are 02 or more strategic investors satisfying the requirement for share subscription and the total number of shares subscribed is greater than the number of shares offered to strategic investors. Regarding the **direct agreement** method, this method is applied for selling to strategic investor when only 01 strategic investor subscribes for shares. Also, this method is applied to sell unsold shares and sell to employees, trade unions in equitized enterprises. **Underwriting** method is implemented for the initial share sale of equitized enterprises. Lastly, **book-building** method is, in Circular 32, referred to Circular 21/2019/TT-BTC on the initial sale of shares and transfer of state capital by book-building method.

COMMENTS AND RECOMMENDATIONS

Circular 32 has provided clear and specific regulations to support equitized enterprises in terms of initial share sales. Circular 32 replaces the provisions of Circular 40/2018/TT-BTC and its amending Circular 34/2019/TT-BTC guiding the initial sale of shares and the management and use of income obtained from the equitization of a state-owned enterprise and from the conversion into a joint stock company of a single-member limited liability company with 100% of its charter capital invested by a State-owned company, which are no longer relevant to practice. When implementing the initial share sale, the equitized enterprises must clearly identify the purchasing subjects, the methods to be applied in each specific case. Moreover, it is suggested that the equitized enterprises should update the provisions in Circular 32 and relevant legal documents as the basis to plan for initial share sales in compliance with applicable laws.