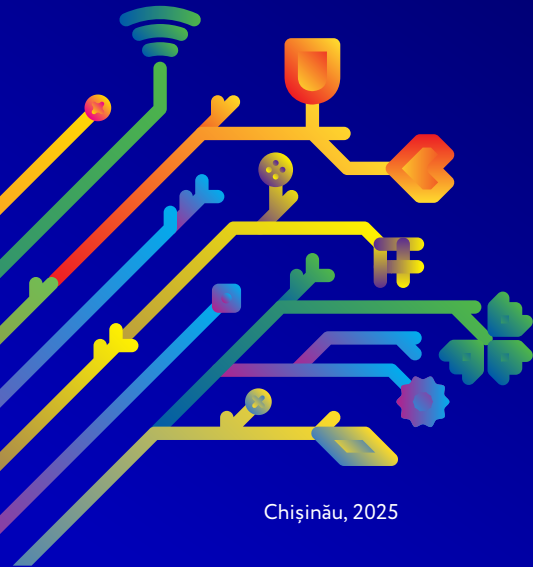


GUIDE ON PRIVATIZATION

Republic of Moldova



Chișinău, 2025



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Vocabulary

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

About the Guide

Invest Moldova Agency ("IMA") issues this Guide on Privatization to reflect topics related to the stages and procedures of public property privatization in the Republic of Moldova (the "Guide").

The Guide is addressed to any foreign investor interested in obtaining a brief overview of the transfer of public patrimony to private non-state investors.

 Development of the market economy	 Privatization history
Privatization of public property represents a tool used not only by Moldova, but in many other countries, representing an efficient way to develop and sustain the market economy.	Republic of Moldova has a specific privatization history, different from the experience of the most European countries. As a former Soviet republic, Moldova learned on its own how to transit from a planned to the market economy.
 Attracting investments	 National privatization legislation
Privatization is also a way to attract both foreign and local private investment that results in increase of efficiencies and creation of new jobs. At the same time, the transfer of public patrimony from state ownership into the hands of private entities needs to be carefully regulated, otherwise, if not made correctly and lawfully, privatization may damage the State, its citizens, the participants to the privatization process, and the economy as a whole.	National privatization legislation created in early '90 suffered multiple reforms up to date and is under the continued scrutiny of Moldovan legislators. However, one may say today that Moldova has created the necessary system of rules of law regulating the privatization mechanism, the rights and obligations of participants, and guarantees of legality, transparency and fair competition.

The Guide was structured as Questions and Answers to describe complex privatization mechanism in plain words. The Guide will help you to have an understanding of:

- how the State exercises its rights as owner of the public patrimony;
- how public property is classified and what property is not eligible for privatization;
- who may not participate in privatization process;
- what are the main privatization methods;
- a roadmap of a privatization through auction and commercial or investment contests;
- what are the main elements of a privatization contract;
- how the State performs post-privatization control; and
- how to solve privatization disputes.

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

To participate correctly in the privatization process, it is essential to follow the relevant laws and rely on information provided by the competent authorities. The guide is intended for guidance purposes only and does not replace the applicable legal and regulatory framework.

1. Privatization in Moldova

Republic of Moldova is a former republic of the USSR that **became a sovereign state in 1990 and obtained independence in 1991**.

The creation of privatization rules in Moldova was triggered by the collapse of the Soviet Union. In planned economy, entire patrimony involved in the Moldovan economic activity was under state ownership.

Until independence, Moldova's economy was organized along standard Soviet lines: all industry was state owned, as were commerce and finance. Approximately one-third of all enterprises were subordinate to the economic ministries of the Soviet Union, and two-thirds were subordinate to the republic-level authorities.

Agriculture was collectivized, and production was organized principally around state farms and collective farms.

From 1991 to 2007 Moldova went through a process of continuous changes and creation of a complex system of laws, regulations, and institutions involved in the privatization process. At the beginning, the legislators selected mass privatization as a method that would allow a rapid transfer of public property to private sector. It relied upon the free distribution of the public property to citizens of Moldova through patrimonial bonds.

As a result of mass privatization by **the end of 1996** more than 3 million citizens of Moldova became shareholders and more than 2 thousand State-owned Enterprises ("SOEs") were reorganized into joint stock companies.

Aside from mass privatization, public property

was transferred to private entities as a result of auctions, contests and direct negotiation.

For complex industries, such as energy sector, privatization was made under special privatization programs approved by the Parliament.

For instance, under an individual privatization program, three electricity distribution SOEs have been privatized in 2000, by their reorganization.

The privatization method used was the sale in an international investment contest.

The successful bidder in privatization of the electricity distribution system in Moldova was the Spanish transnational company – Union Fenosa.

A significant step in the creation of the privatization legal framework as currently known was **the approval of the Law on the**

Administration and Destatization of Public Property No 121 of 4 May 2007.

This law marked the beginning of a new stage in the privatization process widening the types of enterprises subject to privatization and diversifying the privatization methods like commercial contests and investment contests, outcry and discount auctions.

The law allowed the State-owned securities to be sold on Stock Exchange, shifting the privatization deals to the capital market and restructuring privatized enterprises.

The law also empowered the Public Property Agency ("PPA") as central public agency responsible for privatization processes.

From 1991 to 2007 Moldova passed through a process of continuous changes and creation of a complex system of laws, regulations, and institutions involved in the privatization process.

The beginning of a new stage in the privatization process.

1990

Republic of Moldova became a sovereign state

1991

Republic of Moldova obtained independence

1996

More than 3 million citizens of Moldova became shareholders.

2000

Three electricity distribution SOEs have been privatized in 2000, by their reorganization.

2007

The Law on the Administration and Destatization of Public Property No 121 of 4 May 2007.

2019

Moldovan Government announced a moratorium on all further privatizations.

2020

The PPA resumed privatization only after the moratorium ended (HP89/2019 ceased to have legal effect)

Moldova privatization has evolved to a stage where it is nearing completion. Nowadays the state privatization deals with state property, continues to be a significant shareholder. There are still companies where the state is a significant shareholder, such as wineries, tobacco companies, telecom company, hotels, etc. As of **December 31, 2019**, PPA administered 137 state-owned enterprises (SOEs) (compared to 308 in 2001); and its efforts to transfer the public patrimony held majority stakes in 77 SOEs; while other approved by law into the private sector in the government authorities managed 70 SOEs and held best interest of the Republic of Moldova. majority stakes in 3 SOEs.

2. Defining Privatization

01 What are the main laws and regulation governing the privatization process?

Currently, the legal framework regulating the privatization in the Republic of Moldova is represented mainly by the Law on the Administration & Privatization of Public Property No 121 of 4 May 2007 and the secondary legislation approved by the Government. Legal acts governing the privatization in Moldova are listed in Box 1.

Box 1 Privatization laws and regulations

- Law on the Administration and Destatization of Public Property No 121 of 4 May 2007
- Regulation on Outcry and Descending Price Auctions, approved by Government Decision No. 136/2009.
- Regulation on the Procedure for Determining the Initial Price of Sale of Shares and Social Parts of Public Property Subject to Privatization No 453 of 2 June 2020
- Regulation regarding the Organization and Functioning of the Public Property Agency No 902 of 6 November 2017;
- Regulation regarding the Organization and Conducting of Commercial and Investment Tenders for the Privatization of Public Property, approved by Government Decision No 919 of 30 July 2008
- Regulation on the Sale of Public Property Shares on the Regulated Market No 145 of 13 February 2008;
- Civil Code of the Republic of Moldova No 1107 of 6 June 2002

Asset price determination and procedural costs	Eligibility/restrictions to privatization auctions participation	Privatization Dispute Resolution
• Law on Normative Price and Procedure of Sale and Purchase of Land No 1308 of 25 July 1997	• Law on Investments in Entrepreneurial Activity No 81 of 18.03.2004	• Administrative Code of Republic of Moldova No 116 of 19 July 2018
• Law regarding the Evaluation Activity No 989 of 18 April 2002	• Law on Prevention and Combating Money Laundering and Terrorism No 308 of 22 December 2017	• Code of Civil Procedure of Moldova No 225 of 30 May 2003

• Regulation on Initial Price Determination for the Sale of Public Shares proposed for Privatization No 453 of 2 June 2010	• Law on the Administration and Destatization of Public Property No 121 of 4 May 2007	• Law on State Tax No 213 of 31 July 2023
	• Law on the Examination Mechanism of Investments of Importance for State Security No 174 of 11 November 2021	• Law on Arbitration No 23 of 22 February 2008 • Law on International Commercial Arbitration No 24 of 22 February 2008

02 How is privatization defined by Moldovan law?

Privatization is defined as the transfer of public patrimony into private ownership under the Law on the Administration and Destatization of Public Property.

In other words, the state disposes of its assets through privatization, including direct divestment of the state patrimony by the state, divestment of SOEs corporate assets by PPA, and dilution of state holdings in SOEs by secondary share offerings to non-state shareholders.

Privatization is also used by local administrations to dispose of the public assets that is under the ownership of the local administrative units.

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

03 What are the main principles of privatization?

Privatization represents a useful tool for the state to restructure the national economy and to enhance its competitiveness by attraction of private investments from local or foreign private investors.

At the same time, privatization is a sensitive issue. One of the major tasks for Moldovan public authorities is to ensure that the public property is managed in the primary interest of the State, in the most efficient way and maintaining public's confidence in the integrity of the process.

Thus, one of the primary principles of privatization is transparency.

Public authorities shall ensure that transparency of privatization is maintained throughout every step of the procedure.

To this end, the Law requires well-publicized competitive bidding procedures encouraging the widest possible range of domestic and foreign investors to participate; as well as maximum publicity and openness of the public authorities involved in privatization.



Box 2 Privatization principles

- a privatization process correlated to national and local development strategies;
- most adequate privatization method to ensure attractiveness of privatization assets;
- more participants to privatization, in the framework of equality and fair competition;
- protection of legitimate interests of the state, territorial units and privatization participants.

3.Participants to the Privatization Process

The transfer of public property to private entities involves the participation of stakeholders from both public and private sector.

As in the case of a traditional asset alienation transaction, privatization involves two parties –

the seller/transferor and the buyer/recipient.

In contrast to traditional civil transactions, the seller in privatization has a complex structure and its consent to sell is to be expressed by the voices of different state bodies.

A.SELLER side of privatization transaction

The special legal regime of public property means a strict identification of powers and liabilities among different public authorities including the Parliament of the Republic of

Moldova, the Government, Ministries, Public Property Agency and local authorities. Powers related to privatization are distributed among central and local authorities.

01 Central administration

Moldovan Constitution provides for a single-chambered Parliament consisting of 101 members that is the supreme legislative power in Moldova.

The Parliament	is elected every four years on the basis of proportional representation, with a threshold of 6% of the popular vote.
The President	is elected by popular vote and is the exponent of executive power in the state.
The Government,	the executive power, is formed by the Prime Minister, the Deputy Prime Minister and the ministers.
The Prime Minister	is nominated by the President after consultation with the parliamentary majority. The nomination of the Government requires approval of the Parliament.
The central level administration	consists of ministries and the State Chancellery, and a large number of agencies.
The Ministry of Economic Development and Digitalization	elaboration of privatization policies in Moldova represents the responsibility of a sectoral ministry - assisted by a governmental agency – Public Property Agency.
Public Property Agency	is the main agency responsible for implementing the state policy in the field of management and privatization of public property, post-privatization activity and exercises the functions of the owner of state property.

02 Local public administrations

Public administration at the level of administrative/territorial units is based on the principles of:

- local autonomy
- decentralization of public services,
- consultation with local citizens on matters of local interest.

Moldova is a unitary state with local public administrations operating at two tiers.

Second-tier local public administration:

32 rayons (districts)

two municipalities (municipii)
-Chisinau and Balti

one autonomous territorial unit
(UTA Gagauzia)

one unrecognized territorial unit
(transnistrean region)

There are 34 territorial units corresponding to the second level of local administration authority: 32 rayons (districts), including one located in the transnistrean region, which is formally included in the legislation but over which the Republic of Moldova does not exercise effective control, and two municipalities (municipii) – Chişinău and Bălţi. Also, there are two other territorial units with special status: one autonomous territorial unit (UTA Gagauzia), and the other is an unrecognized territorial unit (transnistrean region) which does not consider itself subject to the jurisdiction of the Republic of Moldova.

The second level consists of councils - public bodies with general or special powers created and functioning on the territory of rayons (districts), the Chisinau municipality and the special legal-status autonomous territorial units with the purpose of promoting the interests and resolving the problems of the population of the given territorial administrative unit.

The rayon (district) councils have also the power to coordinate the activities of the first level local councils in order to provide public services at a district or municipal level. The rayon (district) councils are elected by the citizens of the respective rayon (district) for a four-year term.

First-tier local public administrations:

The 32 units are divided into 896 territorial units – towns and villages, that have no direct financial relations with the center.

The first-level territorial units liaise with their second level units regarding budgeting and other financial issues. The first level local public administration consists of local councils - public bodies with general or special powers created and functioning on the territory of a village or town/municipality with the purpose of promoting the interests of the local community and addressing local issues. Mayors of towns (municipalities), villages (communes) and councilors in town (municipality) and village (commune) councils are elected by the citizens of the respective administrative-territorial unit for a four-year term. In the field of privatization, local public administrations are responsible for organizing and conducting privatization of public assets that belong to the administrative-territorial unit that the local public administration represents.

A brief description of how privatization powers are distributed among public authorities is presented in **Box 3**.

Box 3 Distribution of public powers on privatization among central and local authorities

Parliament – supreme legislative power	• adopts laws governing the privatization process, public property legal regime, rights and obligations of participants to the privatization process, liability for law infringement; • determines the list of assets that are not eligible for privatization;
Government – executive power at national level	• approves secondary legislation on privatization; • approves the list of state public property proposed for privatization; • approves individual privatization projects; • performs general supervision of privatization in Moldova;
Public Property Agency– central specialized privatization agency	• keeps evidence of public property; • elaborates the list of public assets proposed for privatization; • organizes and conducts privatization of state public property according to privatization methods; • sign privatization contracts with selected buyers; • perform post-privatization measures to supervise the performance of obligations by the buyer.
Ministry of Economic Development and Digitalization – central public	• promotes state policies in the field of privatization;
Local public administration	• elaborates and approves the list of public assets of the administrative-territorial unit proposed for privatization; • organizes and conducts privatization of local public property according to privatization methods established by law; • sign privatization contracts the selected buyers; • perform post-privatization measures to supervise the performance of obligations by the buyer.

03 What are the powers of PPA?

PPA is a central executive agency responsible to the Government. PPA was created with primary mission to manage the public property in the most efficient way, to ensure effective use of the public property in the best patrimonial interest of the state

PPA is the central authority in the privatization process, as it exercises the owner's attributes over

PPA is responsible to:



- 01 identify the public assets that may be object of privatization



- 03 creating of privatization commissions that organize and conduct the privatization contests or other privatization procedures



- 05 supervise if buyers duly observe their obligations under the contract



- 07 represent the state in courts in litigations related to privatization



- 02 determine the most appropriate and efficient privatization method



- 04 sign the privatization contracts with the selected buyers



- 06 amend or terminate privatization contracts

the public estate on behalf of the state.

PPA is also the first source of information for the public and potential investors regarding the privatization process and its outcome. To this end, the PPA is required by law (Art. 38(4), LP121/2007) to publish the informative notice on privatization offers in the Official Gazette and, where appropriate, in the local press; this is also usually posted on the PPA website

B. BUYER side of the transaction

Moldovan law allows any interested person to participate in privatization procedures of public property.

Any Moldovan or foreign individual or legal entity may buy public estate in privatization transactions.

To participate in the privatization process:

- 01 no special state registration in Moldova is required;

- 02 no special license is necessary;

- 03 no prior approval or authorization is mandatory.



The only qualification requirements to be observed are those that will be determined by the privatization documentation for the specific asset that the buyer is interested to buy from the state.

01 Who is banned from participation to privatization?

In order to ensure a fair competition during privatization, public entities as well as private entities controlled by the state are not allowed to participate in privatization.

Affiliated persons of a bidder will also be banned from participation at privatization process of the same asset. There are also

restrictions for participation of entities in financial difficulties, or that failed to observe their obligations under a previous privatization transaction.

The list of entities prohibited to participate in privatization procedures is presented in **Box 4** below.

Box 4 Entities banned from privatization procedure

Absolute prohibition:

Following entities may not participate in privatizations without exemptions:

- public law entities, public institutions, SOEs, MOEs, commercial companies where the state holds at least 25%;
- individuals or legal entities that participated in previous privatization and failed to observe the conditions under the privatization agreement, or who are responsible for privatization contracts termination or voidance;
- legal entities in liquidation or insolvency procedures;
- Individuals and legal entities that are registered, have their residence, or carry out their main economic activity in jurisdictions or autonomous regions that do not implement international transparency standards, as well as legal entities in which one or more individuals (founders, associates, shareholders, directors, ultimate beneficiaries) who are registered, have their residence, or carry out their main economic activity in such jurisdictions or autonomous regions;
- Individuals and legal entities if they act alone or in concert, including as ultimate beneficiaries, and are residents in jurisdictions that do not implement international transparency standards or whose share capital includes holdings/shares of individuals or legal entities, including foreign ones, directly or indirectly owned by these individuals who act alone or in concert, including as ultimate beneficiaries, residents in jurisdictions that do not implement international transparency standards. Notice: The list of jurisdictions that do not implement international transparency standards is approved by the Government;
- Individuals and legal entities if they have been involved in money laundering and terrorist financing activities;
- Individuals and legal entities if they have been involved in activities affecting the security of the state or public order and have not honored the contractual obligations assumed in the transactions such as: concession, public-private partnerships, Investment agreement in areas of importance for state security in accordance with the provisions of Law no. 81/2004.
- Individuals and legal entities if they could engage in illegal or criminal activities;
- Individuals and legal entities if they maintain or have maintained relationships with institutions/authorities of other states or with individuals or legal entities from other states that increase the risk or pose a threat to the national security of the Republic of Moldova;
- Individuals and legal entities if they maintain or have maintained connections with organized criminal groups, special services, or groups of foreign states linked to international terrorist organizations, with individuals suspected of belonging to them, and that increase the risk or pose a threat to the national security of the Republic of Moldova;

- Individuals and legal entities if they have been convicted, by a final court decision under the Criminal Code, for corruption, money laundering, or terrorist financing actions, or for an offense under the criminal laws of foreign states that corresponds to elements of a similar offense specified in the Criminal Code of the Republic of Moldova;
- Individuals and legal entities if they are under criminal investigation for committing a serious or particularly serious offense.
- Individuals and legal entities who have received a refusal of prior approval in accordance with Art. 9 of Law no. 174/2021 regarding the examination mechanism of investments of importance for the security of the state.

Simultaneous participation restriction:

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

! Simultaneous participation of affiliated persons in privatization is not restricted in case of sale of shares by the state on regulated markets such as Stock Exchange.

02 Where may an interested participant find information on Auctions or Contests?

Privatization notices regarding state property can be consulted:

- on the portal of official publications,
- on the PPA website,
- the Official Gazette,
- on the website of the Invest Moldova Agency.

***Please note that the last two sources may not always be up to date.**

4. Privatization Property

01 Who is the owner of public property?

The owner of the public property is the State or the administrative-territorial unit. Depending on the level of the public authority managing the public property, it may be at the national level (state public property) and local level (public property of administrative-territorial units, such as rayons, municipalities, towns, villages).

The state public property is managed by the Government of the Republic of Moldova through central public authorities (ministries, agencies and departments) and PPA. The local public property is managed by the local council of the corresponding administrative-territorial unit (municipality, rayon, city or village).

02 How is public property classified in Moldova?

One of assets classification in the civil law theory distinguishes between public assets of public domain and public assets of private domain. The distinction is crucial when one wants to identify the exact assets that can be disposed

by the state or the territorial unit. The main distinction between these two categories is that the public assets that are included in the public domain are prohibited from any kind of alienation and



Public assets of public domain

- Any kind of alienation and transfer
- These are involved in a public service
- For the public interest and use

transfer and are for the public interest and use, being involved in a public service or in activities that satisfy the collective needs.

Assets such as natural resources of subsoil, airspace, waters and forests used in the public interest, natural resources of the economic zone and continental shelf, communication networks shall always be considered public assets of public domain.



Public assets of private domain

- May be used in private transactions, including by their disposal through privatization

The public assets representing private domain of the state or of the territorial administrative units may be used in private transactions, including by their disposal through privatization, subject to their inclusion in the lists of assets proposed for privatization as approved by the Government or the local council of the corresponding territorial administrative unit.

Box 5 Register of Public Patrimony

Register of Public Patrimony represents an information system maintained by PPA, aiming collecting, storing and processing legal and financial information of public patrimony.

The Register of Public Patrimony has seven sub-registries as follows:

1. Sub-register of Patrimony of Public Institutions;
 2. Sub-register of immovable property owned by the state;
 3. Sub-register of Patrimony of State/Municipal Enterprises;
 4. Sub-register of Publicly Held Shares (Equity Interests) in Commercial Companies;
- Entities:**
5. Sub-register of State-Owned Assets Granted for Economic Management to Commercial Companies;
 6. Sub-register of public assets granted under concession or other legal title of use (of public-private partnerships);
 7. Other sub-registries which will be developed in the near future.

Any individual or legal entity is entitled to request and obtain paid information from the Register.

The Register may also be found on the website of PPA.

03 What kind of property may be proposed for privatization?

State and territorial units may propose for privatization only public assets that are in their private domain, including:

Shares in limited liability companies and joint stock companies held by the State	unused or leased premises	unfinished constructions
patrimonial units represented by SOEs or MOEs	immovables, movables and patrimonial complexes	land plots adjacent to privatized or private assets, including construction land plots



The public assets proposed by the state for privatization are to be listed in the List of state-owned assets subject to privatization elaborated by PPA and approved by the Government.

The decisions approving the List are published in the Official Gazette. The current list of state-owned assets subject to privatization can be found in annex 2 to the Government Decision No 945/2007, with subsequent amendments.

The List (not always updated) may be found on the

website of PPA, in Romanian language, in section "Activities", subsection: Privatization and post-privatization.

The public assets of a territorial unit proposed for privatization are to be listed in the List of Privatization Property of the respective territorial unit, elaborated and approved by its local council.

The list of the territorial units owned assets are to be published in the local press, including the website of the local public administration.

04 What property is restricted from privatization?

Not all public assets may be sold by the state or by the territorial unit. The list of assets that are prohibited from privatization is to be approved by

the Parliament and any transactions concerning such assets will be void.

Box 6 Assets not eligible for privatization

It is prohibited to privatize assets of public importance, included in:

- assets of public domain and of public law entities;
- defense, state security and public order systems;
- national cultural heritage;
- state and mobilization reserves;
- activities represented by State monopolies;
- natural resources in subsoil, airspace, waters, forests, economic zone and continental plateau;
- land plots from the water fund, including the lands under the waters used in the public interest, the forest fund, the forest water protection strips and those from the sanitary areas;
- communication routes, underground passages for pedestrians;
- oenotecas that are part of the national cultural heritage;
- periodical publications of national and territorial importance;
- exclusive ownership of the State or territorial units.

The exact list of assets that are prohibited from privatization is contained in the Annex to the Law on the Administration and Destatization of Public Property.

5. Privatization Methods

01 General

In **Box 7** you may see the privatization methods that may be used upon privatization of state public property of the public property of UAT.

The most common methods of privatization through competitive bidding are the sale of assets

through public auction or contest, and the public offering of shares through the Stock Exchange. A direct negotiated sale to a single buyer should be avoided. The exact method of privatization is to be determined by PPA or by local council for each type of asset available for privatization.

Box 7 Main privatization methods

Gratuitous Transfer	Sale		Exchange
Exceptional cases <i>*Electronic auction is provided by law, but currently not practiced.</i>	Public Auction: • Outcry Auction; • Descending price Auction; • With no price announcement (currently not practiced).	Public Contest: • Commercial contest; • Investment contest; • Individual project	Exceptional cases
Types of Assets: Shares	Types of Assets: Shares, unused or leased premises; • unfinished constructions; • patrimonial units represented by SOEs or MOEs; • immovables, movables and patrimonial complexes; • Land plots afferent to privatization or private assets, including construction land plots.		Types of Assets: Shares

02 What are the main conditions that apply to all privatization methods?

Notwithstanding the method selected by PPA or local council to sell the state property, the privatization process implies several elements that are common to all privatization methods:

I. Preliminary stage of privatization:

Privatization process represent a complex activity, which implies the participation of different central and local public authorities.

The state, as a Seller, shall carefully prepare all elements of the future privatization, in a way that would preserve the legal interests of the state, of the potential participants to the privatization

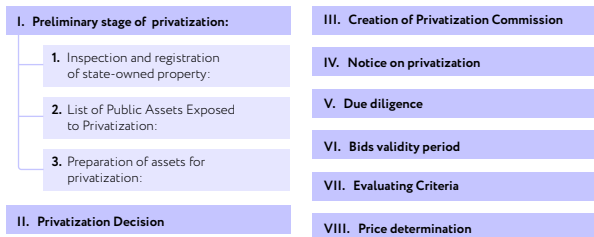
process and of the national economy.

Preliminary stage of privatization consists of the following:

1. Inspection and registration of state-owned property: PPA, together with central and local public administration, will inspect all state-owned property and ensure that such property, as well as any lien thereon is duly registered in the Register of Public Property and other registers required by law (such as Real Estate Register, Register of Legal Entities, Register of Shares in Joint Stock Companies etc.)

PPA will also ensure that state-owned property is strictly delimited from public property owned

Privatization Process



by local public administrations, and that such delimitation is correctly registered in the Register of Public Patrimony.

2. List of Public Assets Exposed to Privatization:
The List of public assets that are subject to privatization is elaborated by PPA in consultation with central and local public authorities, shareholders of SOEs/MOEs and other stakeholders.

Separate lists will be drafted by PPA for state-owned assets and by local public administrations for territorial units' assets proposed for privatization.

To become effective, lists of privatization assets are to be approved by the Government or local

public administrations, and published in the Official Gazette (Monitorul Oficial) of the Republic of Moldova.

The lists contain information allowing to identify the exact asset that is going to be privatized and its main characteristics.

Assets that are not included in the corresponding list may not be proposed for sale or transfer, except for land plots adjacent to privatized buildings.

3. Preparation of assets for privatization: Once the assets that may be privatized are identified, the state through its competent central and local public administration authorities shall prepare all the terms and conditions for future privatization.

In particular, the state may decide:

01 to restructure, reorganize, change administration of SOEs or MOEs before privatization	02 to evaluate the assets and identify the initial price thereof	03 elaborate feasibility studies
04 verify if assets are duly registered and prepared for the transfer of title	05 draft the main terms and conditions for the future privatization contract, in particular related to non-price commitments of the potential buyer	06 determine if other assets in public patrimony are to be transferred for use of the privatization assets and determine the terms and conditions for such transfer into possession and use by the future buyer

The preparatory stage of privatization is of crucial importance as the success of the future privatization contract depends mostly on the work performed by public authorities at this stage.

II. Privatization Decision:

Based on the preparatory work performed at the preliminary stage, PPA will issue the decision on privatization, establishing:

exact asset exposed to privatization
selected method of privatization (auction, commercial or investment contest, individual project, direct transfer of assets)
post price, for price procedures
other terms and conditions, depending on the exact privatization case

III. Creation of Privatization Commission

All privatization methods imply the creation of a privatization commission from the representatives of PPA; local public administrations and central ministries, depending on the asset's specifics.

The Commission is created by the decision on privatization and has the authority to organize the privatization procedure, approve privatization documentation, open and evaluate bids, disqualify participants, select the winner, and negotiate the privatization contract.

IV. Notice on privatization:

The notice on privatization shall be widely publicized and shall provide summary information on the assets, set the date of bidding and invite prospective bidders to obtain privatization documentation.

V. Due diligence:

Interested parties who request the privatization documentation should have the opportunity to carry out a due diligence evaluation of the assets and for that purpose should be permitted to inspect the accounting books, examine the physical assets and interview senior management.

To preserve confidentiality prospective bidders can be required to sign an undertaking not to disclose or to use sensitive commercial information and may be asked to post a bond in support of that undertaking.

VI. Bids validity period:

Bids should remain valid after the closing date to allow careful evaluation and possible negotiation with the top bidder.

VII. Evaluating Criteria:

The criteria for evaluating the bids received could differ from one case to another. Bids may be evaluated on the basis of price and the best value bid would be selected. The inclusion of non-price criteria in bid evaluation can be justified in certain cases. **When factors such as investment or**

employment maintenance promises are included as contest criteria, legally-binding terms to give effect to these promises would be included in the contract with the successful bidder. **PPA** would then need to maintain an effective monitoring and enforcement capacity during the post-privatization period.

VIII. Price determination:

The prices for assets exposed for privatization are to be determined by the privatization commission based on the estimated value established as a result of an independent evaluation. Independent evaluation performed by a duly licensed evaluator is mandatory when state assets or assets of administrative/territorial unit are sold. The independent evaluation is performed based on the contract between the evaluator and PPA or the local council.

The estimated value of assets to be exposed to privatization, included in the evaluation report, is presumed to be accurate and is recommended to be used by PPA or local council upon the sale of the public property, but the privatization commission, usually, sets a higher value.

Box 8 Case study - Privatization of Vestmoldtransgaz through investment contest

Vestmoldtransgaz was a SOE incorporated in 2014 to manage the Iasi-Ungheni gas pipeline and to provide natural gas transmission services on the territory of the Republic of Moldova. In 2017, PPA announced the public investment contest for Vestmoldtransgaz privatization at an initial price of MDL 180 million.

The contest terms and conditions provided as qualification criteria for the participant a non-price obligation to invest a minimum of EUR 93 million within 2 years. "Eurotransgaz" SRL, a company controlled by Romanian Transgaz SA, has been selected as successful bidder, at an adjudicated price of MDL 180,2 million.

Initial price 180 million MDL	Contest term and conditions: to invest 93 million within 2 years €	Final price 180,2 million MDL
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The privatization contract, signed in March 2018, provided for certain conditions precedent, namely:

- Amendment by the State of legislation that would clarify the land expropriation process necessary for project implementation;
- Approval by the Moldovan power regulator of Vestmoldtrasgaz reorganization into a limited liability company;
- Issuance of opinion by Competition Council regarding the transfer of assets, reorganization and share capital increase in Vestmoldtrasgaz;
- Issuance of construction authorization for gas pipeline construction works.

In September 2018, the parties signed a certificate confirming the fulfillment of condition precedents and start of the 2 years deadline for buyer's investment.

03 Most used privatization methods

1. Public Auctions

Public auctions are used to sell individual assets, and less often parts of shares or a business as a going concern.

The terms and conditions of sale are fixed and require that the items to be auctioned are sold to the highest bidder.

A minimum price may be set in advance so that if that price is not reached in the bidding, the seller has the option of either withdrawing the items from sale or negotiating a sale after the auction at a lower price to the highest unsuccessful bidder.

Privatization assets may be exposed to Outcry Auctions. If no bidder was interested in participating in the outcry auction, the asset may be exposed to a Descending Price Auction.

2. Public Contests

A public contest is suitable for the sale of larger or more complex businesses where there is not likely to be wide public participation.

The availability of the enterprise for sale will be advertised and interested parties may be pre-qualified if the seller wishes to establish in advance their financial capacity or to review their operational or investment plans. Bidders may be required to negotiate the transfer agreement before submitting their bids and accompany their bids with a signed copy of the agreement.

In this way, **the seller avoids the risk of a post-contest negotiation** on issues not addressed in the contest document.

You may see in **Box 9** below a comparative presentation of a privatization timeline through auctions and contests.

Box 9 Timeline of privatization through auction and contests

No.	Action	Auction		Public Contest	
		Deadline	Notes	Deadline	Notes
1.	Auction Notice	15 – 30 days before Auction	Auction Notice is published into the Official Gazette of the Republic of Moldova (Monitorul Oficial) and on the webpage of PPA or on the website of the Invest Moldova Agency. Please note that the last two sources may not always be up to date. In case of assets exposed to privatization by territorial units, the Auction Notices are published into the Official Gazette of the Republic of Moldova (Monitorul Oficial) and if applicable, in the press of the local public administration (usually on the web page). Auction notice shall contain: • auction date, time and place; • asset name and location; • initial price and payment terms; • main characteristics of the asset; • how, when and when interested parties may examine the assets; • terms for auction participation;	Not specified	Contest notice is published into the Official Gazette of the Republic of Moldova (Monitorul Oficial) and on the webpage of PPA or on the website of the Invest Moldova Agency. Please note that the last two sources may not always be up to date. In case of assets exposed to privatization by territorial units, the Auction Notices are published into the Official Gazette of the Republic of Moldova (Monitorul Oficial) and, if applicable, in the local press of the local public administration (usually on the web page). PPA Contest Notice shall contain: • number of shares exposed for privatization; • identification of shares issuer and its main business objects; • initial price; • contest procedure; • when and how potential bidders may inspect the asset; • deadline for bids submission;

No.	Action	Auction			Public Contest
		Deadline	Notes	Deadline	Notes
			- Participation fee and deposit for each asset exposed to auction; - payment details for the participation fee and deposit; - deadline for bids submission.		- selection criteria; - Bid bonds amount and payment
2.	Participation fees and bid's bonds	Before bids submission	For participation in outcry or discount auction, the bidder will have to pay a bid participation fee and a depository fee as follows: bid participation fee of at least MDL 600. The participation fee is not reimbursable; depository fee of 10% from initial price. The deposit is reimbursed to unsuccessful bidders within 10 days from the closing of the auction. In case of successful bidder, the depository fee is discounted from the adjudicated price.	Before bids submission	For participation in public contest, the bidder will have to pay a bid bond in the amount determined by the Contest Notice, but not lower than MDL 200,000.
3.	Submission of bids	Not later than 1 day before	Potential bidder submits a participation request, in a form approved by the Government together with following documents: - payment confirmation of participation fee and discount; - excerpts from trade registers of the participant's home jurisdiction and articles of incorporation; - recent financial statements; - powers of attorney for bidders' representative. All documents are to be submitted in Romanian language.	Maximum 30 days as of contest notice auction	Bid shall be accompanied by following documents: - payment confirmation of bid's bond; - excerpts from trade registers of the participant's home jurisdiction and articles of incorporation; - recent financial statements; - powers of attorney for bidders' representative; - a detailed investment program and the investment amount; - banking document confirming bidder's capacity to perform at least 25% of the total investment volume. All documents are to be submitted in Romanian language.
4.	Pre-qualification	n/a	n/a	As indicated in the Contest notice	Privatization Commission selects the bidders that are qualified to participate to the contest, according to the qualification requirements and criteria from contest documentation based on the submitted bids. Pre-qualified bidders will be informed and invited by the Commission to participate in the second stage of the selection procedure.

No.	Action	Auction			Public Contest	
		Deadline	Notes	Deadline	Notes	
5.	Registration for auction/second stage of contest	No later than 15 minutes before Auction	Bidders who fail to register are not allowed to participate.	On the contest date	Bidders who fail to register are not allowed to participate.	
6.	Auction/Contest	One day at the Date mentioned in the Auction Notice	The assets are sold to the highest bidder. If no participant is registered, the Privatization Commission will decide to cancel the auction. Assets that are not traded in two consecutive auctions, may be exposed to a descending price auction.	Phase I of the Contest- Opening of Bids, Qualification of Participants for Phase II, and Notification of Participants -Min. 40 Days Phase II of the Contest: Determining the Winners, Notifying the Winners, and Inviting for Contract Negotiations Approx. 30 Days	The bidder who proposed the highest bid and best investment commitments is selected as winner of the contest.	
7.	Deposits and bonds restitution	10 days as of auction closing	Deposits of 10% are restituted to the unsuccessful bidders who registered to participate in auction	10 days as of contest closing	Bid's bonds are restituted to unsuccessful bidders who registered to participate in contest.	
8.	Asset's Price and Private Tax Payment	20 days for Outcry Auction and 7 days for Descending Price Auctions after the Minutes on auction's results is signed	Bidder's failure to pay the price serves as a ground for the annulment of auction results. The paid deposit of 10% is not reimbursed to the bidder.	At least 50% of the asset's price until the contract	The price is to be paid until the parties execute the privatization contract when it is to be paid in one installment. If contest documentation allows payment of the price in several installments, the payment schedule is to be determined by the privatization contract. However, the first instalment of 50% of the adjudicated price is to be paid before the privatization contract.	
9.	Execution of privatization contract	7 days after the price payment	The contract is signed by duly authorized representatives of both parties, and is subject to notarization and registration, if required by law.	30 days (with possible extension)	The contract is signed by duly authorized representatives of both parties, and is subject to notarization and registration, if required by law.	
10.	Public disclosure of privatization results	10 days after the contract		10 days after the contract		

04 What are the costs for a participant to a privatization process in Moldova?

If you are interested in a privatization project in Moldova, you need to be prepared to support certain costs related to:

contracting the services of consultants for bids preparation and due diligence	privatization participation fees and bids bonds
translations and apostille for documents executed outside Moldova, as the case may be	notarization and registration and other State fees

Some of them will require negotiation with private parties (such as the fees for consultants and translators), but certain costs are strictly

determined by law. You may find in **Box 10** the list of main fees to be paid by the buyer or the potential buyer who participate in a privatization.

Box 10 Main privatization fees and costs

1. Participation Fee:	To be allowed to participate in a privatization procedure, private entities may be required to pay a participation fee. The exact amount of privatization fee is to be determined by the respective decision or privatization documentation. For certain privatization methods, the fee may not be lower than a minimum amount. For instance, in case of auctions, a minimum privatization fee of at least MDL 600. The participation fee is not reimbursable and is used by the seller to cover administrative expenses related to privatization process.
2. Bids bonds:	To guarantee that the participants will honor the terms of the privatization process, otherwise they will compensate the seller. The terms of bids bonds are determined by the respective decision or privatization documentation and may differ depending the privatization method. For instance, in case of auction, a depository fee of 10% from initial price is to be paid by each participant, while a contest requires a bond or at least MDL 200,000. The bond is reimbursed to unsuccessful bidders within 10 days from the closing of the auction. In case of successful bidder, the bond is discounted from the adjudicated price. Successful bidder who refuses to sign privatization contract loses the right to claim back the bond paid to guarantee the bid.
3. Notarization and Registration Costs:	For the notarization of sale-purchase contracts for privatized goods, the following fees apply: a) The state fee as provided by the Law on State Tax, which can amount to up to 0.5% of the asset's value, depending on its type. b) Payment for notarial services, which includes the notary's fee and procedural expenses. This payment is determined through negotiations between the applicant and the notary and depends on the complexity of the notarial act and the value of the transaction. As of the publication date of this guide, a new law regulating the methodology for calculating notarial fees is in the process of being adopted, as the existing methodology approved by Law No. 271/2003 is outdated.

4. Fee of the National Commission of Financial Market:	Purchase of shares in a JSC is subject to a transfer stamp duty of 0.5% of the shares price to be paid to the National Commission for Financial Market by the buyer.
5. Registration fees Real Estate Register:	Purchase of immovable property is subject to registration fees depending on the location of the real estate. The registration fee is to be paid by the buyer upon registration of its title over the privatized real estate at the Public Services Agency.
6. Private tax:	1% of the adjudicated price to be paid by the buyer to the State budget.

6. Privatization Contract

Privatization contract represents the main document that will govern the relations between the State or territorial unit, acting as seller, and the non-state buyer.

Privatization contract is executed based on the outcome of the auction, contest or decision of the privatization commission determining the buyer who corresponds to selection criteria.

The form and content of privatization contract are

determined by the specifics of the privatization assets (shares, SMOs/MOE as going concerns, real estate, movable assets), as well as by the terms and conditions contained in the privatization documentation.

Main rules on sale and purchase agreements regulated by civil law are applied to privatization contracts.

01 Is there a template of privatization contract approved by law?

There is no officially approved template. Privatization contract is usually drafted by the seller, at the preparatory stage of the privatization process, and may be presented as a part of the contest documentation once the privatization notice is made public.

The law does not prohibit the private parties to negotiate the contract once they are selected as successful buyer of the privatization asset.

02 What is the form of privatization contract?

The privatization contract is executed in written form, signed by duly authorized representatives of the seller and the buyer. Depending on the legal regime of privatization asset, certain privatization contracts require additional formalities in order to become effective, such as notarization and registration in different public registries. In particular, the privatization contracts are to be executed in notarized and registered form upon the privatization of the following assets:

Asset	Notarization	Registration
Stocks in limited liability companies	yes	Information on change of shareholder is to be registered in the Register of Legal Entities, otherwise the buyer will not be able to exercise shareholding powers
Any kind of real estate (buildings or part thereof, unfinished constructions, land plots)	yes	Information on transfer of title is registered in the Real Estate Register, otherwise the transfer of title is not valid
SOEs/MOE as going concern	yes	Register of Legal Entities and other registers depending on the assets transferred

03 Who will bear the notarization and registration costs?

The buyer will bear all notarization and registration costs, as well as any state fees related to the transfer of specific type of privatization assets, such as, for instance, the fee to the National Commission of Financial Market in case of shares privatization in JSC.

For privatization costs please refer to **Box 10**.

04 Can privatization contract be concluded in electronic form?

The Law does not expressly prohibit the simple written form of privatization contract to be executed electronically by the parties, who would sign using their electronic signature.

The only rule that would apply in this respect is the requirement to use advanced and qualified electronic signature in contracts governing the relations among public and private entities.

In practice, however, the electronic form of a privatization contract execution is not used. Moreover, the electronic form will not be possible for privatization contracts that under the law are to be executed in notarized and registered form.

05 What are the main elements of the privatization contracts?

The law does not prescribe special elements that need to be included into a privatization contract, and therefore general requirements applicable to civil law contracts will apply.

An important role in determining the elements of the contract is on the seller, who will set up the main privatization terms and conditions depending on the privatization assets and on any post-privatization commitments for the buyer.

06 What are the buyer's obligations in privatization contract?

Privatization contracts may include two types of obligations for the buyer:

The price and the conditions of payment	Non-price future commitments
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1. Price and conditions of payment:

Privatization contract will contain the information on price to be paid by the buyer, as determined in the result of auction or contest results.

No negotiation of the price is allowed after

passing the privatization decision on auction or contest results determining the successful buyer. The price is to be paid by transfer in MDL or in other currency indicated in the privatization contract.

If the buyer is a Moldovan resident, the price is to be paid in Moldovan Leu only.

The general rule applied in privatization contracts is that the price is paid by the buyer before or simultaneously with the contract execution.

For instance, in case of privatization through auction, the contract is not executed until the adjudicated price is not fully paid.

For complex privatization assets, such as SOEs and MOEs sold as going concern, the privatization documentation may stipulate payment of the price in installments.

The exact schedule of payments will be indicated in the privatization contract. If privatization price is to be paid in installments, the title over the privatization asset is transferred only after the full payment of the price is made.

Until the price is paid in full, the buyer may not:

- a) sell, pledge or otherwise transfer the privatization asset, and the long-term assets of the privatized business entity
- b) transfer in all or in part its obligations under the privatization contract
- c) amend the share capital of the privatized business entity or decide upon its reorganization

2. Non-price commitments:

Non-price commitments may be regulated by privatization contracts concluded in the result of individual privatization projects or privatization investment contests when shares or patrimonial complexes are sold.

The law does not establish an exhaustive list of non-price obligations that may be imposed by the privatization contract, and such obligations are to be determined by the seller upon preparation of the assets for privatization.

When determining such obligation, the seller usually takes into account the importance of the asset for the national economy, any negative impacts that its privatization may have over employees, customers, environment etc.

Thus, buyer may be requested:



To maintain a certain average number of staff



To make a certain volume of investment



To preserve the privatized SOE/MOE previous activity



To repay the due and outstanding debts of the privatized SOE/MOE

Failure to observe the non-price obligation may lead to contract termination by the seller.

07 What are the state obligations in privatization contracts?

Most of obligations of the state authorities who represent the state in privatization contracts, acting as seller, refer to post privatization and are related to:

1. Protection of ownership title transferred to the buyer under the privatization contract. The state guarantees the ownership title obtained during privatization process, and the legality of privatization is presumed. The state however does not guarantee the title obtained over assets in privatization procedure conducted in transnistrian region.

2. Creation of a favorable investment climate;

3. Support of privatized business entities by creation of favorable investment climate, providing technical assistance for implementation of business plans of small and medium sized enterprises created in the process of privatization.

7. Post privatization control

The privatization is not terminated upon finalization of the transfer of assets to the buyer. A sound privatization implies the right and obligation of the state to monitor how the commitments taken under the privatization contract are observed. In addition, the state shall evaluate past

privatization procedures and assess how such processes influenced the economy and the markets.

In order to perform post-privatization control and monitor, a special department is created within PPA – the Department of Privatization and Post-privatization.

To perform post-privatization control, PPA may:

Inspect books, technical documentation, and other information to assess the observance of commitments under the privatization contracts;

Perform site inspections, controlling the privatized assets and their integrity.

If the buyer is in breach of the privatization contract, PPA is entitled to initiate court proceedings claiming contract termination and payment of damages.

8. Privatization Disputes Resolution

Disputes that may be raised during privatization process may be divided into administrative non-contractual claims, related to the selection

procedure that are to be solved according to law; and civil contractual claims that are to be solved according to the privatization contract and law.

01 Administrative claims

Participants in the privatization procedure may challenge in court of law the decisions issued by the Privatization Commission if such decision infringe of on their rights and legal interests.

The procedure for challenging decisions is primarily governed by the **Administrative Code**, with special rules from the legislation regulating the specific authority's activities sometimes also being applicable.

The claims in administrative procedure are examined by a three-tier court system.

Challenging administrative acts, such as those issued by the Privatization Commission, only requires a stamp duty of 200 MDL.

For claims related to the reparation of moral and material damages caused by illegal administrative acts, in addition to the stamp duty, a state fee is also charged, proportional to the value of the claim, according to the rates established in the **Law on State Tax**.

02 Contractual claims

Any disputes between the parties to a privatization contract shall be resolved according to the contract procedures or, if the contract is silent in this respect, by the courts of law of the Republic of Moldova.

Private entities will pay a stamp duty for filing the lawsuit of 200 MDL and a state fee proportional to the value of the claim, according to the rates established in the Law on State Tax.

listed in this Guide in **Box 1**, supplemented, if it is the case by the rules on obligations and contracts as contained in the Civil Code of the Republic of Moldova.

Private entities will pay a stamp duty for filing the lawsuit of 200 MDL and a state fee proportional to the value of the claim, according to the rates established in the Law on State Tax.

a) Contractual Disputes Resolution by Courts of Law

b) Disputes Resolution in Arbitration
Commercial Arbitration

c) International Investment Arbitration

a) Contractual Dispute Resolution by Courts of

Law: Moldova does not have courts specialized in privatization, thus any disputes from privatization contracts are to be solved by the three-tier system of courts in Moldova, except when the parties agreed that arbitration has jurisdiction.

The procedure is governed by the Code of Civil Procedure the Republic of Moldova, and the applicable substantive law includes the laws related to public property and privatization procedures listed in this Guide in **Box 1**, supplemented, if it is the case by the rules on obligations and contracts as contained in the Civil Code of the Republic of Moldova.

b) Disputes Resolution in Arbitration Commercial Arbitration

Disputes that might arise in privatization transactions and be subject to commercial arbitration include contract breaches, issues related to the transfer of assets, disagreements over the terms of the privatization agreement, and other commercial issues.

The parties involved in the privatization process can include an arbitration clause in their contracts. This clause stipulates that any disputes arising from the contract will be resolved through commercial arbitration rather than national courts. Although the law permits it, in practice, Moldovan authorities do not typically include arbitration clauses in privatization contracts.

For institutional arbitration procedures, the procedural rules and specific fees of the chosen arbitral institution generally apply, such as those set by the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), or, if agreed upon by the parties, by national institutions like the International Commercial Arbitration Court within the Chamber of Commerce and Industry of Moldova, or the Chisinau International Court of Commercial Arbitration attached to the American Chamber of Commerce in Moldova (AmCham).

The award obtained in arbitration is final and binding upon the parties. If one party fails to voluntarily execute the award, the other party may pursue forced enforcement by obtaining an enforcement writ from the competent court of law.

International Investment Arbitration

In privatization matters involving foreign investors, international investment arbitration may be applicable if there is a bilateral investment treaty (BIT) between the Republic of Moldova and the investor's country of origin. These treaties typically contain clauses that allow investors to seek dispute resolution through international arbitration mechanisms.

For example, investment protection treaties may provide for arbitration mechanisms administered by the International Centre for Settlement of Investment Disputes (ICSID) or other international arbitration institutions, offering a framework for resolving disputes between investors and states.

To apply this mechanism, it is essential to check the specifics of the relevant treaty and adhere to the procedural requirements stipulated therein.

Bilateral Investment Treaties to which Moldova is a party are listed on