

Internal rule no. 27, December 2nd, 1998

Regulates the oversight of the denationalisation processes by the Brazilian Court of Audit

THE BRAZILIAN COURT OF AUDIT, in the exercise of its constitutional, legal and regulation mandates;

Considering its regulatory power established by article 3 of Law 8.443, of 16 July 1992;

Considering the provision of item VIII of article 18 of Law no. 9.491, of 9 September 1997, resolves:

CHAPTER I PRELIMINARY PROVISIONS

Article 1. The BRAZILIAN COURT OF AUDIT is responsible for accompanying, overseeing and evaluating the denationalisation processes carried out by the Federal Administration, comprehending privatisation of State businesses, including the financial institutions, and the concessions, permissions and authorisations of public service, according to article 175 of the Constitution of the Republic and other pertinent legislation.

Paragraph 1. For the purposes of this Internal Rule, the following definitions must be considered:

I – denationalisation: the transference to the private sector of the participation in stocks and of the execution of public services exploited by the Union through the Federal Administration entities;

II – privatisation: the selling by the Union of the rights that ensure to it, directly or by means of other controlled, the power to make the social decisions and elect the majority of the administrators of the society;

III – concession of public service: the delegation by the conceding power of delivery of the public service, through an auction, to a company or a consortium of companies, that shows the capacity to perform the service, at its own risk and for a specified term;

I IV – concession of public service, preceded by the execution of a public work: total or partial construction, conservation, refurbishment, expansion or improvement of any work of public interest, delegated by the conceding power through an auction, to a company or to a consortium of companies that shows capacity for performing the service, at its own risk, in such a way that the investment made by the concessionaire be remunerated and paid off through the exploitation of the service or public work in a specified period of time;

V – permission of public service: temporary delegation of the execution of public services by the conceding power, through an auction, to the individual or company that shows the capacity to perform the service, at its own risk;

VI – authorisation: administrative act of discretionary and temporary nature by which the conceding power makes it possible for the postulant to execute a certain activity or service or to use certain public or private assets, of exclusive or predominant interest to the conceding power, conditioned to previous approval by the Administration;

Paragraph 2. The provisions of this Internal Rule are applicable, when appropriate, to the denationalisation processes to be carried by means of simplified procedures according to article 33 of Decree no. 2.594, of 15 May 1998, as well as to the concession processes for use of a public asset associated to public services.

CHAPTER II PRIVATISATION OVERSIGHT

Article 2. Oversight of the privatisation processes will be performed in five stages, by analysing the following documents and information:

I – FIRST STAGE:

- a) reasons and legal support for the privatisation proposal;
- b) Receipt of Deposit of Stocks referred to in paragraph 2 of article 9, of Law no. 9.491/97;
- c) the mandate that grants the manager specific powers to perform all the acts inherent to and necessary for the privatisation;

d) public notice of the auction for hiring the consulting services referred to in article 31 of the Decree no. 2.594/98.

II – SECOND STAGE:

- a) auction process for hiring the consulting services, including the respective contracts;
- b) auction process for hiring the audit services referred to in article 21 of the Decree no. 2.594/98, including the respective contracts;
- c) auction processes for hiring the specialised services.

III – THIRD STAGE:

- a) reports of the economic and financial evaluation services and of the services of assembly and execution of the privatisation process;
- b) report from the third evaluator referred to in article 31 of the Decree no. 2.594/98, when applicable.

IV – FOURTH STAGE:

- a) report containing the date, value, conditions, and form of implementation of the securities and other means of payment used to solve the financial state of the company or institution;
- b) report containing the date, value, conditions, and form of implementation of the securities and other means of payment used for investment of any kind that was made in the company by the organs or entities from the Federal Administration or those directly or indirectly controlled by it;
- c) report containing the date, value, conditions and form of implementation of the waiver of rights to a private entity or individual, whenever the amount waived surpasses 1% (one percent) of the net equity, as of the company's legal authorisation for the privatisation;
- d) proposal and document establishing the minimum selling price, accompanied by the respective justifications;

e) copy of the minutes from the stock holders assembly in which the minimum selling price was approved;

f) public notice of privatisation.

V – FIFTH STAGE:

a) report containing the final selling price; terms, condition, and privatisation currency used for paying for the operation; list of the buyers, with the indication of types, prices, and the quantity of stocks bought; date, value, and financing conditions granted by a public institution to privatise the company;

b) opinion of the independent auditors, accompanied by detailed report containing analysis and evaluation of the following aspects, among others: observance of the relevant legal provisions applicable to the case; equal treatment of the contenders and regularity of the proceedings in the contenders qualification phase.

Article 3. The organ responsible for the execution and monitoring of the privatisation shall send to the Brazilian Court of Audit the documents described in items I through V in the previous article, observing the following deadlines:

I – five days, at most, after the publication of the public notice for the auction intended to hire consulting services, regarding the documents listed in the first phase;

II – five days, at most, after signing the contracts of the audit consulting service and of specialised services, regarding the documents listed in the second phase;

III – at least sixty days before the public auction or any other kind of selling allowed by Law takes place, regarding the documents listed in the third phase;

IV – at least forty-five days before the public auction or any kind of selling allowed by Law takes place, regarding the documents listed in the fourth phase;

V – thirty days, at most, after the privatisation, regarding the documents listed in the fifth phase.

Paragraph 1. The documents listed in the second article, regarding the public notices and economic and financial evaluation report, must also be sent by electronic means.

Paragraph 2. Any modification in the public notice must be sent to the Brazilian Court of Audit, at least, five days before the publication established in article 28, Paragraph 5, Decree no. 2.594/98.

Article 4. The responsible Technical Unit of the Brazilian Court of Audit shall analyse the elements and send the process to the Rapporteur observing the following deadlines and phases:

I – first phase – the elements related to the four initial stages, at least fifteen days before the date established for the public auction or other type of selling allowed by Law;

II – second phase – the elements related to the fifth stage and the statement referred to in article 6 of this Internal Rule, within ninety days after conclusion of the privatisation.

Article 5. In case there are stocks that represent company control which were not sold, the organ responsible for executing or monitoring the process of privatisation shall send the studies that determine the opportunity for selling the remaining stocks and for establishing their price, at least forty days before the new sale takes place.

Sole Paragraph. Under the hypothesis foreseen in the heading of this article, the Technical Unit in charge shall examine the process within twenty-five days and submit it to the Rapporteur.

Article 6. After the privatisation has taken place, the following documents shall be sent to the Brazilian Court of Audit: statement indicating the amount of resources collected in currency or in privatisation monies; description of all the deductions made during the operation, including those referred to the administrative and promotional expenses; and the net value transferred to the seller or to the organ or the conceding federal entity, according to each case.

Sole Paragraph. The statement due in this article shall be sent within forty five days after the privatisation, by the organ in charge of the execution and monitoring of the process.

CHAPTER III

THE OVERSIGHT OF PUBLIC SERVICES CONCESSIONS, PERMISSIONS AND AUTHORISATIONS

FIRST SECTION

THE PROCESS OF GRANTING

Article 7. The oversight of the processes that grant concessions or permissions to deliver public services will be carried out previously or concomitantly, and in the following stages, with analysis of the respective documents.

I – FIRST STAGE:

a) brief report on the studies on technical and economic viability of the business, including information about the object, area and term of the concession or permission, budget of the works done and of those to be done, date that the budget refers to, estimated costs for delivery of the services, as well as information on possible sources of alternative, complementary, and accessory revenue or revenue from associated projects;

b) report of the studies, investigations, surveys, projects, works and expenses or investments connected to the grant and useful to the auction, that have already been executed or authorised by the organ or by the ceding federal entity, whenever applicable;

c) brief report about the environmental impact studies, indicating the status of the environmental license.

II – SECOND STAGE:

a) pre-qualification public notice;

b) minutes of the opening and closing of pre-qualification phase;

c) report on the pre-qualification judgement;

d) appeals filed and decisions made concerning the pre-qualification phase;

e) auction public notice;

f) contract draft;

g) all the clarifications and additional information sent to the companies participating in the in auctions, as well as the refutations of the public notice, accompanied by the respective answers.

III – THIRD STAGE:

a) minutes of the opening and closing of the qualification phase;

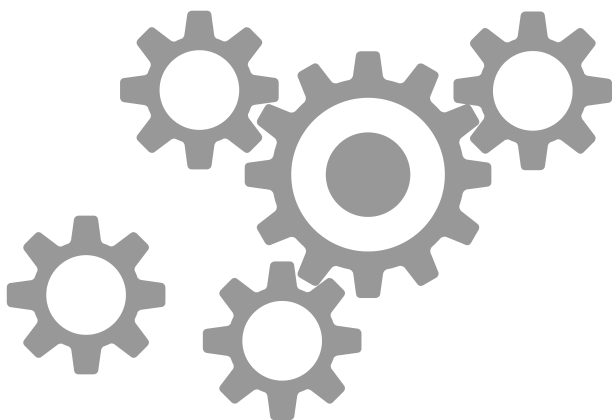
b) report on the qualification judgement;

c) the auctioneers' questions regarding the qualification/eligibility phase and appeals presented accompanied by their respective answers and decisions;

d) minutes of the opening and closing of the proposal's judgement phase;

e) judgement reports and other reports written;

f) appeals filed, concerning the proposal's judgement phase and their decisions.



IV – FOURTH STAGE:

- a) granting act;
- b) concession or permission contract.

Paragraph 1. In cases where a large number of granting rights of the same service is simultaneously put up for auction, with uniform procedures and standardised public notices, the Rapporteur, based on the legal opinions, may authorise the use of sampling techniques and other simplified procedures with the purpose of selecting the grants that should be examined individually in the phases provided for in this article, waiving the examination of all others.

Paragraph 2. The procedures dealt with in the above paragraph will not waive the obligation of sending the documentation requested in this article, within the respective deadlines, unless such waiver is ordered by the Rapporteur.

Article 8. The manager responsible for the conceding organ or federal entity shall send to the Brazilian Court of Audit the copies of all the documents described in the previous article in the following terms:

I – first stage – at least thirty days before the public notice for the auction is published;

II – second stage – within five days of:

- a) its publication, regarding the pre-qualification public notice;
- b) the final result of the judgement, regarding the documents listed in letters “b” through “d” of this stage;
- c) its publication, regarding the auction public notice, accompanied by the contract draft;
- d) expiration of the term for filing appeals against the public notice, regarding the documents listed in letter “g” of this stage;

II – third stage – within five days:

- a) expiration of the term for filing appeals against the results of the qualification phase, regarding the documents listed in letters “a” and “b” of this stage;

b) the decisions concerning the appeals, regarding the documents listed in letter “c” of this stage;

c) the ratification of the result of the proposal’s judgement, regarding the other documents;

II – fourth stage – five days after signing the contractual document.

Article 9. The Technical Unit responsible for analysing the process referred to in article 7 shall file it and analyse its elements, with the required urgency, in no more than thirty work days, sending them to the Rapporteur after the third stage is over.

Sole Paragraph. In order to allow examination by the Brazilian Court of Audit, the conceding organ or federal entity shall wait at least forty five days between the ratification of the result of the proposal’s judgement and the signing of the contract.

Article 10. If to the process of concession or permission of public services granting are eligible for waiver of auction dealt with in the specific law ruling the subject, or in the hypothesis of authorisation of public services granting, the conceding organ or the federal entity shall send, until five days after the end of each semester, a brief report, containing a list of the following documents signed during the previous semester, among other information:

I – concession or permission granting with waiver of auction, specifying its object, area and term and indicating the legal basis;

II – authorisation granting, specifying its object, area and term, indicating the legal basis;

III – signed contracts or any other kind of obligation terms.

Paragraph 1. The conceding organ or federal entity shall maintain an up-to-date file containing the documents concerning the acts described in the heading of this article, in order to respond to any request for information, inspection or audit from the Brazilian Court of Audit.

Paragraph 2. While examining the information and the documents, referred to in this article, the responsible Technical Unit shall observe the provision in article 17 of this Internal Rule.

SECOND SECTION

CONTRACT EXECUTION

Article 11. During the contractual execution phase, oversight shall monitor the faithful observance of the relevant laws and the clauses of the contract and those of the posterior changes made in the contract signed with the concessionaire or with the permissionaire, or the clauses of the term of obligation. Besides this, oversight shall include evaluation of the action exerted by the organ or the conceding federal entity, or by the respective regulatory agency, as well as the guidelines established by them.

Sole Paragraph. The oversight provided for in this article shall be performed according to paragraphs 1 and 3 of article 13 of this Internal Rule, and by examining the Consolidated Monitoring Report prepared by the organ or conceding federal entity, or by the respective regulatory agency. The report must be forwarded to the Brazilian Court of Audit every semester.

Article 12. The organ or conceding federal entity, or the respective regulatory agency, shall inform the Brazilian Court of Audit:

I – the causes, objectives, and limits of intervention in public service concessionaires or permissionaires and, at a later date, the decisions resulting from the administrative procedures referred to in the article 33 of law no. 8.987/95;

II – the causes for declaring expiration of the concession or permission or for applying contractual penalties;

III – the public interest motivation for taking back a service concession or permission, as well as the legal basis for the act;

IV – the vices or illegalities that motivated the annulment of the concession or permission contract;

V – the law suit filed by the concessionaire or permissionaire against the organ or conceding federal entity, with any purpose, including for the purpose of terminating the contract;

VI – changes made to the contract signed with the concessionaire;

VII – the transference of the concession, permission or of the legal control of the concessionaire or of the permissionaire;

VIII – the extension of the concession, permission or authorisation of public services;

IX – regrouping of the concessions of public services, established in article 22 of Law no. 9.074/95.

Paragraph 1. The term for the fulfilment of the provisions in this article is of five days, counted from the formal characterisation of each of the situations listed in numbers I through IX of this article.

Paragraph 2. While examining the information and respective documents, referred to in this article, the responsible Technical Unit shall observe the provisions listed in article 17 of this Internal Rule.

CHAPTER IV

FINAL PROVISIONS

Article 13. The oversight of the processes of privatisation, concession, permission and authorisation of public services shall be carried out by the responsible Technical Unit, under the guidance of the Rapporteur in whose list the company to be privatised is included, in the first case, and in the other cases by the ceding organ or federal entity or the respective regulatory agency.

P Paragraph 1 – In order to fulfil its obligation, the Technical Unit can perform an audit, inspection or survey in the organs and entities responsible for execution and monitoring of the process of privatisation, concession or authorisation of public services, as well as in the company being sold itself.

Paragraph 2 – The responsible Technical Unit can demand the help of the regional unit of the Brazilian Court of Audit for the execution of the tasks foreseen in previous paragraph.

Paragraph 3 – The responsible Technical Unit can, under the guidance of the Rapporteur, demand from any organ or federal entity involved in the process, the elements considered indispensable to the execution of the activities of monitoring, oversight and evaluation, establishing a term to the their response.

Paragraph 4 – The responsible party that does not comply with the provisions of the previous paragraph, except when there is a reasonable justification, will be subject to the penalties provided for in article 58, number IV, of Law no. 8.443/92, according to the amounts established in the Internal Regulation of the Brazilian Court of Audit.

Article 14. The oversight of the process of liquidation of the company included in the National Denationalisation Program shall be executed by the responsible Technical Unit, within the process of annual account rendering.

Article 15. During the oversight of the process of granting concession or permission of public services, executed by public auction, the provisions of this Internal Rule will be followed, when applicable.

Article 16. The provisions of this Internal Rule should be applied, when appropriate, to the processes of granting of subconcession of public services, authorised by the conceding organ or federal entity.

Article 17. Should any indication or evidence be verified in any stage of the oversight of the denationalisation processes, the documents shall be immediately submitted to the Rapporteur's consideration, along with a proposal describing the measures to be adopted.

Article 18. The Technical Unit in charge can propose to the Rapporteur that specialised technical services be requested, according to article 101, of Law 8.443/92.

Paragraph 1 – In the hypothesis foreseen in the heading of this article, the Technical Unit shall supervise the activities, appointing one civil servant to participate in the execution of the work.

Paragraph 2 – The party responsible for an organ or entity of the Public Federal Administration that does not comply with the request specified in this article, unless there is a reasonable explanation, will be subject to the fine described in the heading of article 58, of Law no. 8.443/92. The amounts of the fine will be set according to what is established in the Internal Regulation of the Brazilian Court of Audit.

Article 19. The ordering of the technical-operational procedures to be observed in the oversight process described in this Internal Rule shall be set out in a manual, to be approved by a Decision from the President of the Brazilian Court of Audit.

Article 20. This Internal Rule goes into effect on the date of its publication.

Article 21. Internal Rules no. 07, of 29 November 1994, and no. 10, of 22 November 1995, are hereby revoked.

HOMERO SANTOS
President