

DRAFT

**SHARE PURCHASE AGREEMENT
ON SALE OF THE STATE CAPITAL
IN THE COMPANY
“FABRIKA DUHANA MOSTAR” d.d.
MOSTAR**

between

**Agency for Privatization in the
Federation of Bosnia and Herzegovina**

and

(The Buyer)

Sarajevo,

AGREEMENT PARTIES

Agency for Privatization in the Federation of Bosnia and Herzegovina, with its seat in Sarajevo, Street Alipašina 41, represented by its Director Šuhret Fazlić (hereinafter referred to as **the Seller**)

and

registered in the Register _____, represented by a legally and validly empowered _____ (hereinafter referred to as **the Buyer**).

PART I

1. DEFINITIONS

For the purposes of this Agreement, the following terms shall have the meanings ascribed to them:

1.1 **"Party"** or **"Parties"** – shall mean the Buyer and the Seller, as "the agreement party or the agreement parties" as the context may require.

1.2 **"Company"** – the company subject of the privatization.

1.3 **"Shares/Stakes"** – the capital of the Company, owned by the Federation of Bosnia and Herzegovina being transferred to the Buyer pursuant to the terms of this Agreement.

1.4 **"Closing"** – a cumulative fulfillment of the following conditions: signing of the Agreement, payment of the purchase price, a submission of the guarantee for the Buyer's obligation arising from this Agreement, and a validity of the Decision on approval of registration of the executed privatization into the Court Register.

1.5 **"Purchase Price"** – a total amount which Buyer shall pay for the capital referred to under Item 1.3 of this Part 1.

1.6 **"Investments"** – investments into the company by the Buyer not sourced out of the accounts of the company (Company) which is the subject of privatization, which will be realized through equipment and technology, working capital, adaptation of the existing and building new objects and other obligations determined by the Business Plan.

1.7 **"Investment Guarantee"** – a bank guarantee to be obtained by the Buyer by which the bank is obliged towards the Seller in case the Buyer failed to fulfill its

obligations arising from this Agreement, upon the Seller's request, to pay the amount of the guarantee.

1.8 **"Employment Plan"** – shall mean the obligation of the Buyer to maintain the specific level (number) of permanent employees in the Company, and/or to keep the existing number of employees, and/or to employ new employees according to provisions of this Agreement pursuant to the Employment Plan.

1.9 **"Financial Sources Statement"** – shall mean the Statement made and submitted according to Direct Negotiations Rules

1.10 **"Force Majeure"** – shall mean any event that the parties hereunder could not foresee and prevent and which makes the fulfillment of the obligations hereunder impossible. Such events might be wars, international embargo, civil riots, acts of nature, large scale fire, terrorist acts and similar events as provided by law.

1.11 **"Agreement Penalties"** – shall mean the agreed fine payable by the Buyer to the Seller in case of the Buyer's failure or delay in fulfillment of the Buyer's obligations toward the Seller.

2. THE OBJECTIVE OF THE AGREEMENT, INTENTIONS OF THE AGREEMENT PARTIES, DUE DILIGENCE AND CONTROL

2.1 **The Objective of the Agreement.** The objective of this Agreement is to provide efficient business activities and the growth of the Company through the sale of the Company's shares according to the regulations applicable to privatization and according to the obligations assumed by the Buyer pursuant to this Agreement.

2.2 **Intention of the Seller.** The Seller intends to sell the Company's capital and transfer it to the Buyer according to the provisions of this Agreement.

2.3 **Intention of the Buyer.** The Buyer intends to achieve ownership on the Company by buying the Company's capital and to create the conditions for the Company's successful operations and employment by fulfilling its obligations arising from this Agreement.

2.4 **Due Diligence.** The Buyer has performed, i.e. has been provided the opportunity for its own due diligence of the Company's legal status, property and business operations and other relevant documents, in order to get knowledge of the Company.

Accordingly, the Seller hereby states it has no knowledge of any impediments and/or latent risks that have not been mentioned in the documents presented to it.

2.5 **Compliance Review.** Compliance review i.e. control of the performed liabilities will be carried out according to the *Rules on Control of the Fulfilled*

Obligations arising from SPAs in Privatization Process in the Federation BiH (“Official Gazette of F BiH”, No. 52/09 and 5/11).

3. SUBJECT OF THE SALE AND TRANSFER OF THE OWNERSHIP RIGHTS

3.1. **Subject of Sale.** The subject of sale is the state capital making 67% of the total stock capital of the Company “Tobacco Factory Mostar Stock Co. Mostar/ Fabrika duhana Mostar” d.d. Mostar, i.e. 148,321 Company shares.

The state capital referred to in the previous paragraph was determined on the basis of the Company’s Revised Opening Balance Sheet as of June 30, 2007. (Exhibit 1)

3.2 **Transfer of the Ownership Rights.** Upon the Report on the executed privatization procedure the Seller shall issue the Decision on approval for registration of the conducted privatization in the Court Registry upon which the Buyer shall gain the right to register its ownership over the subject of sale.

3.3 **Right to withdraw from the Agreement** – Should the Buyer fail to pay the purchase price according to the provisions of this Agreement, it shall be deemed that the Buyer dropped the purchase of the subject of the sale and its deposit shall not be refunded.

Should the Seller exercise the right referred to in the previous paragraph, this shall not preclude its right to demand the compensation.

4. PURCHASE PRICE, DEADLINE AND PAYMENT

4.1 **Purchase price.** A total price of the capital offered for sale according to the Chapter 3. Item 3.1 (“**Purchase price**”) amounts toKM (in word.....).

The Buyer shall bear the bank fees.

4.2 **Deadline of Payment.** The Buyer shall pay the Seller a purchase price within 15 days as of the date on which this Agreement was signed.

4.3 **Payment.** The agreed amount referred to in the Item 4.1 hereof shall be paid by the Buyer through the remittance-form to the account of the Seller, at:

Bank: “INTESA SANPAOLO BANKA” d.d. Bosnia and Herzegovina

Account title: Agencija za privatizaciju u Federaciji BiH

Payment in KM

Account number: 154-001-2000050827.

Payment in EUR

IBAN: BA 39 154-001-2000050827.

ACC 53011204-037800

A money transfer document shall bear the Company name (the Company which is a subject of privatization), the name of the Buyer and the identification number/reference No. of the Seller (if any).

Along with the remittance form, the Buyer shall provide a notification (*avizo*) to the Seller indicating the amount, purpose, date of this Agreement and the aforementioned identification/reference number.

The payment shall be considered effected and received on the day when "INTESA SANPAOLO BANKA" d.d. Bosnia and Herzegovina had confirmed the receipt of the paid amount.

PART II

5. BUSINESS OBLIGATIONS

5.1 Business Plan. The Buyer shall manage the Company according to the attached Business Plan making integral part of the present Agreement (hereinafter: "Business Plan"), (Exhibit 2).

The Buyer shall maintain the existing business activity of the Company and manage its operations according to a good business practice and following the Business Plan covering 3 (three) years as from the date of execution of the present Agreement ("Business Plan Period").

The Buyer reserves the right to increase and/or modify the range of business activities within the Company and to manage the business operations in the best possible way so as to achieve a sound performance of the Company.

5.2 Disposal of Assets. During the period of this Agreement, the Buyer shall not cause nor enable, without prior approval from the Seller, that:

- a) the assets of the Company are sold, pledged, ceded, bestowed or swapped, except in cases when this would be reasonable in terms of business and in the interest of the Company.
- b) any other measures are taken leading to the same economic results mentioned under line a), apart from those consistent with reasonable economic judgment used to implement the Business Plan.

5.3 Plan Review and Modification. The Buyer shall meet with the Seller at least once a year, or more if necessary, during the Business Plan Period in order to assess the Business Plan progress.

If the Buyer proposes modification of the Business Plan, such modification may be made only upon a prior written consent of the Seller based on assessed justifiability of the proposed modification.

The Buyer shall further provide, for each meeting with the Seller, the documentation to the Seller in support to fulfillment of the Business Plan. The meetings will be organized upon invitation from the Seller and if required, upon invitation from the Buyer as well.

5.4 Sale and Transfer of the Company Shares-Stakes. The Buyer is not entitled to sell, pledge, cede, swap or bestow the Company’s shares/stakes referred to in the Chapter 3, Item 3.1 hereof to third parties until the Seller’s Confirmation is issued stating that all the obligations from this Agreement were fulfilled.

6. INVESTMENT OBLIGATION

6.1 Investment Obligation. The Buyer commits hereunder to make investments into the Company in total amount of ----- KM (in words.....) within years as from the date on which this Agreement is executed:

- Year 1:KM
- Year 2.....:KM
- Year 3..... KM

6.2 Financial Sources for Investments. Financial sources for investments shall be ensured by the Buyer.

Financial sources for investments shall be earmarked and used according to the Business Plan.

6.3 Proof of Investments. The Buyer shall for each meeting, i.e. after investment commitment becomes due, produce to the Seller a valid proof on the investments performed, as determined by the provisions of the *Rules on Control of the Fulfilled Obligations arising from SPAs in Privatization Process in the Federation BiH* (“Official Gazette of F BiH”, Nos. 52/09 and 5/11).

6.4 Delayed Fulfillment. Should the Buyer be in delay with fulfillment of any of its investment obligations, and should it in this regard it be allowed to execute an annex to the present Agreement, the Seller shall request fulfillment of such obligation(s) and payment of an Agreement Penalty by the Buyer.

The Agreement Penalty is agreed to amount 10% (in words: ten percent) of the investment that Buyer failed to make in due time.

The Seller may recuperate the Agreement Penalty set forth under these provisions the from the Guarantee for performance of buyer’s obligations.

Payment of the Agreement Penalties shall not relieve the Buyer from its obligation to make investments.

7. EMPLOYMENT OBLIGATION

7.1 Employment. The Buyer commits to maintain a specific level (number) of permanent employees in the Company and/or to retain the Company's existing employees and/or to hire the new employees in accordance with the provisions of this Agreement based upon the Employment Plan which makes the integral part of the Business Plan at least for a 3 (three) - year period as from the date this Agreement is executed, and to regulate the legal working status in compliance with the labor regulations.

7.2 Proof of Employment. The Buyer shall ensure upon any request from the Seller a valid proof of employed workers in accordance with provisions of the *Rules on Control of the Fulfilled Obligations arising from SPAs in Privatization Process in the Federation BiH* ("Official Gazette of F BiH", Nos: 52/09 and 5/11).

7.3 Delayed Fulfillment. Should the Buyer be in delay with employment obligations and in this regard be allowed to execute an Annex to this Agreement, the Seller shall claim the fulfillment of obligation(s) and the Agreement Penalty payable by the Buyer.

The Buyer is obliged for any delay of employment obligation according to the Employment Plan to pay the Seller the Agreement Penalty in the amount calculated by the following formula:

Number of employees x (multiplied) by a number of months x (multiply) the average paid monthly gross salary of the employees in the Federation BiH according to the last published data.

*Number of employees: Number of employees for whom the employment obligation was not fulfilled according to the Employment Plan.

*Number of months: The total number of months as from the first next day when the Employment Plan was supposed to be fulfilled for a specified period until the day determined by the Annex to the Agreement executed for fulfillment of this obligation.

The Seller may recuperate the Agreement Penalty set out pursuant to these provisions from the Guarantee for performance of buyer's obligations.

Payment of penalties shall not relieve the Buyer from its obligation to perform employment obligations.

8. GUARANTEE FOR PERFORMANCE OF BUYER'S OBLIGATIONS

For performance of its obligations arising from this Agreement, the Buyer shall provide the Seller with a bank guarantee, which must be unconditional, irrevocable and payable upon the first request from the Seller for the amount of.....KM (35% of the offered investments) and issued by the Bank acceptable to the Seller.

The bank guarantee shall cover the period at least 45 days beyond the deadline for performance of the Buyer's obligation(s) in respect of the period it refers to.

The authenticity of the bank guarantee shall be certified by the bank of the Seller. Obligations of the Buyer towards the Seller arising from this Agreement are in no way limited i.e. restricted by Guarantees for performance of buyer's obligations i.e. by the amount guaranteed therein.

9. OBLIGATION TO INFORM

9.1 Obligation of the Buyer to Inform. The Buyer shall inform the Seller in timely manner and not later than 15 days before expiry of a deadline for fulfillment of Buyer's obligation(s), in writing, on each failure to fulfill any of its obligations arising from this Agreement

The Buyer shall also inform the Seller, in writing, within 7 days at latest, of any facts and circumstances referring to the any of the events bellow:

- (a) change of the address of the Buyer, i.e. the Company
- (b) change of the main telephone number, fax number, e-mail address of the Buyer, i.e. the Company
- (c) buyout, takeover or purchase of all or substantially all previously privatized shares/stakes of the Company.
- (d) any bankruptcy or liquidation procedure launched against the Buyer, i.e. the Company
- (e) any other change relevant for realization of this Agreement.

9.2 Obligation of the Seller to Inform the Buyer. The Seller shall inform the Buyer, in writing, within 7 days at latest, on the following changes:

- (a) Change of the address of the Seller,
- (b) Change of the main telephone number, fax number, e-mail address of the Seller,
- (c) Any other changes relevant for realization of this Agreement.

PART III

10. REPRESENTATIONS AND GUARANTEES

10.1 **Representations and Guarantees of the Seller.** The Seller hereby confirms and guarantees to the Buyer as stated hereunder, the following:

10.1.1 **Organization.** The Seller is duly organized and validly exists in accordance with the laws of the Federation of Bosnia and Herzegovina, having all legal authority to sell the subject of sale as per this Agreement.

10.1.2 **Validity of the Agreement.** This Agreement shall make the Seller's obligation valid and binding. The execution and implementation of this Agreement does not require a consent, approval or authorization from any other entity, public authority, therefore it is not in violation of, or in conflict with, nor it make any omission pursuant any law, rule or regulations of any authority upon which the subject of sale cannot be privatized.

10.1.3 **Ownership Rights over the Shares/Stakes.** The Seller has the right and authority to transfer the ownership right over the shares of the Company onto the Buyer on the date stipulated in the Part. 3, Item 3.2 hereunder.

10.1.4 **Ownership Rights over the Real-Estate.** In the Annex No. as Exhibit attached to this Agreement, is provided a list of all the real property with all pertaining rights in favor of the Company.

10.1.5 **Organization and Goodwill of the Company.** The Company is duly organized and validly exists in accordance with the laws of the Federation and Bosnia and Herzegovina, and, to the best of the Seller's knowledge, has the legal power, licenses and powers to carry out its business operations. The evidence of the Company registration is attached to this Agreement as Exhibit No.

10.1.6 **Information Provided by the Seller.** All information provided by the Seller to the Buyer during negotiations are based on documentation and information disclosed by the Company.

10.1.7 **Litigation.** Litigations, based on the record kept by the Company, are listed in the Exhibit No.....attached to this Agreement.

10.1.8 **Financial Statements.** The financial statements of the Company for the period from.....to..... are attached to this Agreement as Exhibit No...

10.2 **Representations and Guarantees of the Buyer.** The Buyer hereby confirms and guarantees to the Seller as stated hereunder, the following:

10.2.1 **Organizational-legal status.** The Buyer is duly organized and validly existing according to laws of....., having all required legal authority to purchase the

subject of sale of this Agreement. The evidence of the Buyer's registration is attached to this Agreement as the Exhibit No.

10.2.2 Legal Validity of the Agreement. This Agreement represents a valid, binding and lawful obligation of the Buyer. The Buyer guarantees that the execution and implementation of this Agreement and the execution of transactions arising from this Agreement have been properly approved by an authorized body of the Buyer and no other agreement, approval, or authorization from any other person, any other Company body, public authority or legal entity is required.

10.2.3 Failures. The execution and implementation of this Agreement by the Buyer and execution of its obligations arising from this Agreement do not represent a violation or violation, nor are they in conflict with, or make omission pursuant any law, rule or regulations of any government authority or court, i.e. the conditions or provisions stipulating partnership, or the Statutes of the Buyer, i.e. any agreement, license, or any other instrument, written or oral, in which the Buyer is one of the parties involved.

10.2.4 Court disputes. As on the date of this Agreement, there are no cases, disputes, litigations or governmental investigation i.e. interrogation ongoing or which as to the best knowledge of the Buyer are threatening the Buyer or any of its subsidiaries i.e. their pertaining property, assets, operations and business activities, which may prevent the Buyer from fulfilling its obligations and/or implementation of any transactions envisaged by this Agreement.

10.2.5 Financing. The Buyer hereby gives assurances it has sufficient funds, i.e. ensured credit lines, to effect payment of the purchase price, to fulfill its investment obligations and carry out other transactions envisaged by this Agreement, including but not limited to execution of the intended activities. The statement of the Buyer's financial availability is attached to this Agreement as the Exhibit No.....

PART IV

11. ECOLOGY

11.1 Indemnity for Environmental Damage. The Seller shall not under any conditions be held responsible for any environmental damage. Any such responsibility is the responsibility of the Buyer and of the Company.

11.2 Responsibility of the Buyer. The Buyer shall be fully responsible for managing the Company assets pursuant to the laws and other regulations applied to protection of the environment. The Buyer shall be responsible for all environmental damages resulting from managing the assets owned by the Company and its subsidiaries.

12. RESPONSIBILITY AND *FORCE MAJEURE*

12.1 **Responsibility.** The Buyer and the Seller are responsible for fulfillment of the obligations arising from this Agreement and from the appropriate regulations.

12.2. ***Force Majeure.*** Implies any event that could not have been foreseen and prevented by the contractual parties, and which impedes the execution of obligations arising from this Agreement. Such events can include wars, international embargoes, civil uprisings, natural disasters, large-scale fires, acts of terrorism, etc. as envisaged by law.

Strikes shall not be deemed *Force Majeure* situations.

In case of failure to perform obligations caused by these events, there is no responsibility of the contractual parties.

13. CESSATION OF THE AGREEMENT

13.1 **Cessation of the Agreement by Fulfillment.** This Agreement shall cease with fulfillment of the agreed obligations i.e. after the period envisaged for fulfillment of the contractual obligations of and by both parties expires.

After the Buyer fulfils all its obligations arising from this Agreement, the Seller shall issue the Buyer an appropriate certificate.

13.2 Termination of the Agreement.

(a) Termination of the Agreement by the Seller

The Seller is entitled to terminate this Agreement if the Buyer failed to fulfill its obligations, in which case the Seller is also entitled to retain all the payments received from the Buyer, including the receipts arising from guarantees, and to claim indemnification for incurred damage;

(b) Termination of the Agreement by the Buyer:

The Buyer is entitled to terminate this Agreement if the Seller failed to fulfill its obligations

PART V

14. JURISDICTION

14.1 Litigations. The parties agree to make maximum effort in order to solve any disagreement, i.e. dispute related to this Agreement through discussion and mutual compromise.

14.2 Court of Jurisdiction. Any dispute or disagreement, including but not limiting to anything that refers to or is connected to interpretation of this Agreement, its validity, its termination or to whether a contractual Party has fulfilled its obligations arising from the Agreement, that cannot be solved through negotiations in good faith between the parties, shall be solved by the court of jurisdiction in the place of the where this Agreement is executed.

15. CLOSING PROVISIONS

15.1 Confidentiality. Prior to transfer of shares/stakes, the Buyer shall keep strictly confidential all the information and documents received from the Seller and the Company, and the Buyer is obliged not to disclose such information to any other person (apart from its employees, agents, and representatives in order to perform “due diligence” in connection with the subject of this Agreement). In case the purchase foreseen by this Agreement does not materialize, the Buyer shall return to the Seller and the Company all received documents including copies thereof.

15.2 Entire Agreement. This Agreement and all enclosures, indicators, maps, addendums, exhibits and annexes, if indicated as such herein, constitute the Entire Agreement.

15.3 Modifications and Amendments to the Agreement. Modifications and amendments to this Agreement shall not be valid unless made as the Annex to the Agreement, in writing, and signed by the contractual parties.

With an Annex to the Agreement are stipulated also the elements referring to Guarantees and the Agreement Penalties.

Modifications and amendments to the Agreement can in no case be made so that the contractual parties give up any crucial element of the Agreement related to the amount of funds earmarked for investments, or to the number of employees agreed by the Buyer pursuant to the Employment Plan.

15.4 Severability. Should any of the provisions of this Agreement be or will become invalid, the validity of other provisions of this Agreement will remain uncompromised. In such case, the invalid provision should be replaced with a legally valid provision which would be as close as possible to the economic effect of the invalid provision.

15.5 **Applicable Law.** This Agreement shall be interpreted in accordance with the laws and regulations applicable on the territory of Bosnia and Herzegovina.

15.6 **Costs and Fees.** All costs and fees arising from execution and implementation of this Agreement, particularly without limitation, public notary costs and registration fees, shall go at expense of the Buyer. Each Party shall bear its own costs related to its respective consultancy services received.

15.7 **Communication.** All notifications, requests and information that one party needs to send to the other as per this Agreement shall be in written form and shall be delivered through courier or by mail with certified receipt on the following addresses:

Seller: **Agencija za privatizaciju u Federaciji Bosne i Hercegovine**
Address: Alipašina 41, Sarajevo, Bosna i Hercegovina
E-mail: apfbih@bih.net.ba
Phones: ++387 33 212 884, 212 885
Fax: ++387 33 212 883

Buyer: ""
Address:
E-mail:
Phones:
Fax: :

Contact person:

15.8 **Copies.** This Agreement is made in four identical copies (in Bosnian and English language). Each party shall receive two copies of the Entire Agreement with each page initialed.

AGREED AND ACCEPTED

No.
Sarajevo,

SELLER

BUYER

LIST OF ENCLOSURES: