POLICY BRIEF
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Challenges and Opportunities in Privatization of Commercial Non-Performing State-Owned Enterprises (SOEs)

Introduction

State Owned Enterprises (SOEs) in Kenya have played a significant role in delivering public goods and services, and alleviating market distortions in commercial and competitive sectors. However, according to the IMF, nearly half of Kenya's state enterprises incurred losses in 2023, equivalent to roughly 0.7% of GDP in FY2022/23.1 The remaining profitable entities, especially the Central Bank of Kenya, had profits/dividends totalling to only 0.29% of GDP, thus overall profits were insufficient to offset the sector's losses. Although SOEs may have benefits, the fiscal risks posed by non-performing companies have led to pressure on the government to privatize struggling SOEs. In 2023, the Government of Kenya developed the 2023 Privatization Act, with the goal of facilitating privatization of SOEs.2 Reformers hope that privatization will also reduce fiscal pressures on the government and contribute to capital market growth.

This policy brief examines the opportunities and challenges associated with the privatization of commercial non-performing SOEs.

An SOE is considered non-performing when it exhibits several factors. These include liquidity gaps, where despite owning valuable assets, the entity lacks sufficient cash flow to meet obligations such as salaries and supplier payments. Other aspects of non-performance include: liabilities increasing at a faster rate than current assets, persistent financial losses, rising unpaid obligations, and instances of debt default. While non-commercial state corporations such as public universities are not expected to generate profits, and are not normally considered for privatization, they must still "perform" through sustainable finances, and eschew poor governance and operational inefficiencies.

This brief discusses the pros and cons of privatization. When done right, it can grow fiscal space, enhance operational efficiency, and enable the development of financial markets. But privatization can fail to deliver when it is constrained by weak legal frameworks, public resistance, and the complexity of privatizing strategic assets.

Opportunities from Privatization

Perhaps the most notable opportunity for the government of Kenya in pursuing privatization is attaining revenue from the proceeds. For example, the World Bank estimates privatization proceeds for Kenya could reach as much as US$1.2 billion, based on the privatizations of SOEs across all competitive sectors like agriculture, energy, finance and infrastructure.[3] Additionally, the World Bank notes that if the privatization process is accompanied by measures to level the playing field between private firms and privatized entities, this could yield long-term structural gains. The Bank estimates that this could reduce Kenya's debt-to-GDP ratio by 5.5 percentage points, raise real wages by 1.2 percent, and increase GDP by 1.0 percent relative to the baseline scenario. This emphasizes that privatization's benefits go beyond immediate proceeds and also contribute to fiscal sustainability and inclusive economic growth.

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Apart from the proceeds, privatization reduces the government's annual financial obligations to nonperforming SOEs, such as subsidies, transfers, and debt guarantees. Many SOEs remain heavily dependent on public funds to sustain their operations. For instance, in FY 2023/24, capital expenditure transfers to Semi-Autonomous Government Agencies (SAGAs) totalled KSh 179.1 billion, while current expenditure transfers amounted to KSh 481.6 billion;[4] altogether this is approximately 18 percent of the total budget of KSh 3.6 trillion. Debt guarantees further add to this burden. Most notably, in FY 2023/24, the National Treasury was compelled to fully assume KSh 88 billion in guaranteed debt owed by Kenya Airways.[5] Such liabilities, which ultimately falls on taxpayers, can be avoided with a privatization, which would shift the cost onto private investors.

Moreover, privatized firms tend to experience improved profitability, higher labor productivity, and increased output. This is enabled by better managerial oversight and accountability and a profit-seeking approach.[iii] A notable case study is the KenGen share issue privatization that happened in 2007. Research findings reveal positive improvements in KenGen's financial performance post-privatization. There was improvement particularly in the firm's liquidity and profitability, alongside a reduction in the debt-to-total-assets ratio, reflecting reduced leverage and a healthier capital structure.[6] These results suggest that privatization can improve a firm's financial position. Notably, while pending bills will be factored into the terms of sale, privatization ensures that once the company is sold, any rolled-over pending bills that were previously on the government's books will be eliminated.

Another notable benefit of privatization, particularly through share issue privatizations, is the development of capital markets. Privatization will allow the companies to be listed on the Nairobi Securities Exchange, thus enabling the attraction of both local and foreign investments. For example, Safaricom's share issue privatization attracted both significant foreign investment such as Vodafone's stake and also substantial domestic participation which saw over 800,000 Kenyans acquiring shares. This mix of local and foreign capital has helped make Safaricom one of Kenya's largest taxpayers, while increasing activity on the domestic capital market.[7]

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Challenges in Privatization

One notable impediment to privatization in Kenya is the presence of weak legal and regulatory frameworks. Kenya's privatization framework recently received several legislative changes through the Privatisation Act 2023, which replaced the Privatisation Act 2005. While the 2005 law provided for privatization under multi-layered oversight and parliamentary approval, the 2023 Act established the Privatisation Authority and centralized power under the Executive to identify and privatize strategic state corporations without prior parliamentary approval. The 2023 Act was intended to fast-track the process albeit at the expense of some checks and balancesii. However, in January 2025, the High Court declared the 2023 Act unconstitutional and void. The decision was based on procedural grounds, in particular grossly inadequate public participation, which violated Article 118 of the Constitution. The court did not particularly challenge the substance of the Act; rather, it held that there was failure to meet both the quantitative and qualitative requirements for facilitating public engagement in the legislative process. This implies that privatization could still proceed if a similar law were re-enacted with proper adherence to constitutional procedures. This ruling exemplifies how failure to adhere to constitutional processes can slow down reform efforts.

Another challenge in privatization lies in the complexity of privatizing large or strategic SOEs. Entities involved in sectors such as power transmission, mining, and finance are often viewed as critical to national security or economic sovereignty.

In fact, privatizations tend to experience public resistance as they may be viewed as a sale of national assets to foreign investors for individual gain. For example, when the government attempted to privatize the Kenya International Conference Centre in 2024, the move attracted significant public disapproval both because it is a strategic facility and a national monument. The High Court blocked its privatization, citing heritage protection laws.

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Privatization of large SOEs also carry the risk of firms gaining excessive market control and undermining competition. A solution to this is to establish caps or restrictions on which businesses can participate in privatization tenders, mitigating the risk of giving a firm excessive market dominance. The Competition Authority of Kenya will be critical in reviewing transactions for potential anticompetitive effects, but there is a need for enhanced regulations as well.

To ensure that privatization in Kenya delivers sustainable fiscal and economic benefits, the process must be guided by a robust legal, institutional, and procedural framework that enables both investor confidence and public trust. The priority should be to either resolve the weak legal and regulatory frameworks in the 2005 Privatization Act by giving clarity on the regulation of monopolies and what restrictions should be imposed on businesses participating in privatization tenders, or to resolve the constitutional defects in the Privatization Act 2023 by ensuring full compliance with Article 118's requirements on public participation. The process should not merely meet the minimum procedural thresholds, but should aim for inclusive, transparent, and evidence-based engagement that demonstrates how public input shapes the final legislation. This will help prevent future litigation that could stall or reverse privatization programs.

The government should also pursue privatization by seeking the most robust potential fiscal gains. Therefore, competitive sectors such as telecommunications, power generation, manufacturing, and agro-processing should be prioritized, as global and local evidence shows they yield the highest efficiency gains and fiscal returns.[8] Sectors that are monopolies such as power transmission, rail infrastructure, and water supply, require a different approach such as long-term concessions and not privatization. Strategic assets with high heritage or security value, like the Kenya International Conference Centre, ought to remain under public ownership.

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Notably, contingent liabilities such as debt guarantees should be fully disclosed and addressed prior to privatization, with mechanisms in place to prevent the transfer of hidden obligations to private investors that could erode sale value. The KenGen privatization is a good example of how well-structured privatizations can improve liquidity, and strengthen a firm's capacity to manage liabilities, contributing to more stable and self-sustaining corporate operations. Additionally, enhanced transparency, improved shareholder protections, and streamlined listing processes are essential in amplifying the benefits of share issue privatizations by deepening Kenya's domestic investor base and attracting sustainable foreign investment.

Conclusion

Privatization of non-performing State-Owned Enterprises present a strategic opportunity to enable Kenya to reduce fiscal pressures, improve operational efficiency, and stimulate private sector driven growth. If the process is carried out well, it will free the government from the financial burden of subsidies, transfers, and debt guarantees, deepen the country's capital markets, and attract both domestic and foreign investment. Case studies such as KenGen and Safaricom demonstrate how privatization can strengthen a firms' performance and broaden public shareholding. However, Kenya must target competitive sectors such as telecommunications, power generation, manufacturing, and agro-processing, and also avoid privatizations that are either monopolies or strategic.

The notable challenges regarding weak legal frameworks, inadequate public participation, and public mistrust are evidence that privatization cannot succeed as a purely transactional exercise. The nullification of the 2023 Privatization Act is a reminder that adherence to constitutional processes and inclusive consultation is foundational to legitimacy and sustainability. The government must strengthen oversight, and embed transparency in every stage of the process. Ultimately, privatization in Kenya should be guided not only by the goal of fiscal relief, but by the broader imperative of building a resilient, competitive, and publicly trusted economic framework.

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