

## PRIVATIZATION

### XVI.

#### XVI.1. Development of the Privatization Process

Bulgaria launched its privatization process as a means for selling state participations (shares, stakes or assets) in commercial companies in 1992, when the National Assembly adopted the first law governing privatization. The privatization law currently in force replaced the 1992 law in 2002. The Bulgarian state is gradually reducing its involvement in all sectors of the economy, including through the sale to private investors of government-owned equity in nationalized industries or other commercial enterprises. As a result, private ownership now predominates the economy.

According to statistical data published by the Privatization Agency, from 1 January 1993 to 30 June 2004, 5,107 state-owned companies were sold through privatization, out of which 2,835 are whole enterprises and 2,272 are self-standing units. Some 3,517 transactions for the privatization of “minority” or “residual packages” of shares were carried out as well.

By mid-2004, the Government had privatized almost completely the major branches of the economy, such as the main industrial sectors (chemical industry, metallurgy, mechanical engineering, electrical engineering and electronics, food and manufacturing industry), as well as agriculture, construction, transport and services. As at 30 June 2004, there were 146 remaining majority packages of shares in state-owned enterprises, subject to future privatization. These are companies offering specific services or products, e.g., road maintenance, experimental seeds stations, two enterprises active in the defense industry, trade companies, etc. As at the same date, 36 enterprises in the energy sector were still state-owned. Their privatization is currently ongoing or still upcoming. The Privatization Plan for 2004 adopted by the Supervisory Board of the Privatization Agency calls for the sale of 119 majority packages of shares in state owned companies, 100 minority packages and 45 self standing units. The revenues expected from those sales amount to BGN 500 million in cash and BGN 11.4 million in non-cash payments. Under the Privatization Plan, the priority for 2004 is to sell certain large state-owned enterprises, such as Bulgartabac, the Bulgarian tobacco monopoly, Commercial and River Fleets, and Balkancar Holding (in insolvency) with its 14 local companies manufacturing motor trucks and electric trucks and 9 other subsidiaries for sales and servicing abroad.

#### XVI.2. Legal Framework. Relevant Public Authorities

The primary legislative acts that set forth the framework of privatization in Bulgaria are:

- (i) Privatization and Post-privatization Control Act (promulgated in State Gazette, Issue No. 28 of 19 March 2002, as amended) (hereinafter the “Privatization Act”);
  - (ii) The Regulation on Auctions and Competitive Tenders (promulgated in State Gazette, Issue No. 85 of 26 September 2003);
  - (iii) The Regulation Co-ordinating the Terms and Conditions for Organizing and Conducting Centralized Public Auctions for Sale of State-owned Shares (promulgated in State Gazette, Issue No. 89 of 20 September 2002, as amended);
  - (iv) The Regulation on the Information to be Contained in the Declaration under Art. 7, Paragraph 3 of the Privatization and Post-privatization Control Act, and the Procedure and Authorities for Control over the Data Declared (promulgated in State Gazette, Issue No. 96 of 11 October 2002);
  - (v) The Structural Rules of the Privatization Agency (adopted by a Decree of the Council of Ministers No. 163 of 24 July 2002, promulgated in State Gazette, Issue No. 75 of 2 August 2002, effective as of 2 August 2002);
  - (vi) The Structural Rules of the Post-privatization Agency (adopted by a Decree of the Council of Ministers No. 245 of 1 November 2002, promulgated in State Gazette, Issue No. 105 of 8 November 2002, effective as of 8 November 2002.);
  - (vii) The Regulation on the Obligatory Information to be Provided to the Persons Having Expressed Interest to Participate in the Privatization under the Law on Privatization and Post-privatization Control, and on the Documents and Data Representing Official Secret (adopted by Decree of the Council of Ministers No. 205 of 5 September 2002, promulgated in State Gazette, Issue No. 87 of 13 September 2002, effective as of 13 September 2002); and
  - (viii) The Regulation on the Terms and Conditions for Determination of the State’s Liability and for the Elimination of Damages Caused to the Environment as a Result of Past Acts or Omissions upon Privatization (adopted by Decree of the Council of Ministers No. 173 of 19 July 2004, promulgated in State Gazette, Issue No. 66 of 30 July 2004).
- Secondary legislation includes regulations governing the assigning of specific activities related to the preparation of the privatization procedure such as preparation of legal due diligence reports and privatization valuations, court representation, as well as regulations setting out the conditions and the procedure for licensing valuers and the data which has to be registered in the relevant public registers. In addition, the Organisational Rules of the Privatization Agency and the Post-Privatization Control Agency cover the formation and procedural rules of the privatization authorities in this country. Finally, the privatization legal framework contains also certain provisions regulating various specific sectors, such as public offering of securities, foreign investments, state and municipal property, state aid, corporate entities, concessions, etc.
- The Privatization Agency is the governmental

regulatory authority primarily responsible for the organizing and carrying out the privatization process in Bulgaria. The law gives the Privatization Agency regulatory authority over the privatization of state owned companies in all sectors of the economy, including in the energy sector.

The Privatization Act divides the function of privatization from that of post-privatization control. It establishes the Post-privatization Control Agency as an independent authority, responsible for monitoring the performance of executed privatization agreements. The Privatization Agency and the Post-privatization Control Agency are both administrative agencies of the Council of Ministers. Each of the Privatization Agency and the Post-privatization Control Agency have a Supervisory Board and an Executive Board as their management bodies. The members of the Executive Board are appointed by the Council of Ministers, while the members of the Supervisory Body are appointed by the National Assembly.

### **XVI.3. Legal Definition of Privatization**

The term "privatization," as defined in the Privatization Law, includes the transfer by sale to Bulgarian individuals, Bulgarian private legal entities (i.e., entities in which the State and/or municipal equity interest does not exceed 50 per cent), or to foreign persons of

- (a) any interests or shares owned by the State or the municipalities in any commercial corporation;
- (b) any self-standing units owned by commercial corporations wherein the State and/or a municipality holds an interest exceeding 50 per cent of the share capital;
- (c) municipal non-residential estates not included in the property of any municipal owned commercial corporation and used for business purposes (shops, studios, warehouses, service stations, workshops, etc.), as well as construction sites with works in progress which are not included in the property of any municipal owned commercial corporation.

### **XVI.4. Scope of the Privatization Act**

The Privatization Act is the keystone of the privatization legal framework, providing for:

- (i) determination of the companies subject to privatization and the rules for adoption of decisions related to privatization by the competent public authorities;
- (ii) the participants in the privatization process;
- (iii) the rules related to revenues from privatization;
- (iv) the administrative bodies in charge of the privatization process, in particular the Privatization Agency, the Post-Privatization Control Agency, and the municipal councils or council-mandated bodies in charge of the privatization of municipal property;
- (v) the rules related to conflicts of interests;
- (vi) the information that has to be made available with respect to the privatization process, the due diligence reports, the privatization valuations and the publicly available registers;
- (vii) the privatization methods;

- (viii) the special rules for transfer of shares in companies in the process of privatization and the transfer of rights over privatized real estate;
- (ix) the special rules for privatization of companies that are important with respect to the national security of Bulgaria; and
- (x) the rules for granting concessions and licenses related to the activities of companies in the process of privatization.

The Privatization Act explicitly excludes from its scope of application the privatization of medical establishments with State and/or municipal interest, as well as the privatization of non-residential estates wherein such medical establishments are located. In addition, the privatization of State's interest in banks is also excluded from the scope of application of the Law on Privatization.

Under the Privatization Act, the privatization of all state-owned companies (with a few exceptions) is considered "commenced" as from the entry into force of the act itself. Despite this however, the Privatization Agency is also required to adopt a specific decision in order to effectively start any privatization procedure, which decision must specify, inter alia, the method and subject of the privatization. The exceptions to the above rule that all state-owned companies are offered for sale by virtue of the enactment of the Privatization Act itself are those companies explicitly included in Annex No. 1 of the Privatization Act. Among those companies are, inter alia, 29 regional water supply and sewerage companies, the Bulgarian State Railways, the airports of Sofia, Varna, Bourgas, Gorna Oryahovitsa, Plovdiv, Stara Zagora, and Rousse, the Free Trade Zones of Bourgas, Vidin, Rousse, Plovdiv, and Svilengrad, etc. The privatization of the companies covered by Annex No. 1 will be carried out under specific procedures, determined by the privatization body for each of them separately. The procedure can begin only upon a decision of the National Assembly, at the behest of the Council of Ministers.

The Privatization Act sets out the general rules of procedure which apply to privatizations. The principles on which the procedure is based are transparency, efficiency and equal treatment of investors. The exceptions to the equal treatment rule are related to (i) bad debtors under the Law on the Information on Bad Debts and (ii) persons who have a conflict of interest. Natural or legal persons falling within the purview of these exceptions are prohibited from participating in the privatization process.

### **XVI.5. Methods for Privatization**

Privatization is carried out through the sale of shares held in limited liability or joint-stock companies or the sale of assets (so called "self-standing units"). Pursuant to the now effective privatization law privatization may be carried out only through the following competition-based methods:

- (i) public offering of shares;
- (ii) sale of shares or assets by public auction;
- (iii) sale of shares or assets by a publicly

announced tender;  
(iv) centralized public auction of shares (the shares acquired in a centralized public auction may be paid by non-monetary means of payment, such as compensatory instruments and investment bonds);  
and  
(v) acceptance of tender offer as per Articles 149, 149a and 149b of the Public Offering of Securities Act. State-owned shares in joint-stock companies may be sold through any of the above-mentioned methods, while state-owned shares in limited liability companies and self-standing units of commercial companies with more than 50% State interest may only be sold by way of a public auction or publicly announced tender. The specific method of privatization is determined by a decision of the Privatization Agency, which is published in the State Gazette and in at least two central newspapers.  
The companies that are deemed of national security importance are listed in appendix No. 2 to the Privatization Act. They may be privatized only through

a publicly announced competitive tender. The list includes, *inter alia*, Bulgartabak Holding AD (the Bulgarian tobacco monopoly), Vazovski Mashinostroitelni Zavodi EAD (a major military and civil machine-building plant), Bulgaria Air EAD (the national air carrier), etc.

#### **XVI.6. Incentives**

In accordance with the provisions of Chapter Eight of the Privatization Act, certain companies, for which a privatization procedure has been initiated, may be granted concessions or licenses related to their activities without a tender or an auction.

#### **XVI.7. Foreign Investors-Related Measures**

The Encouragement of Investments Act allows foreign investors to exercise the same scope of rights as local investors (unless otherwise provided for by law) or to refer to the more favorable treatment of an international treaty to which Bulgaria is a party.

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