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PRIVATIZATION IN POLAND

Poland was the first Eastern and Central European country to undertake the process of privatization. As a result, its privatization laws and economic reform have provided a pattern and a role model for other countries in the area.

The Privatization Law is the keystone of the stabilization and liberalization program. Approximately 8,000 public-sector enterprises producing three quarter of the Polish GNP were to be privatized under the initial program.

Major elements of the privatization program are:

- transferring centrally-owned assets to local authorities;
- breaking up and privatizing pseudo cooperatives;
- divesting public enterprises of their ancillary activities, such as transportation, distribution, etc., and transferring them to private individuals and corporations;
- selling or leasing approximately 15,000 small shops, retail outlets, and other small establishments to private entities; and
- introducing and implementing the Privatization Law.

The Law on the Privatization of State-Owned Enterprises,[1] preceded by a wide and heated discussion and adopted by an overwhelming majority of the parliament, plays the most important part in the privatization program. The Law applies to most state-owned enterprises but not to the following:

- special state-owned enterprises such as LOT (the Polish Airlines), the Polish State Railways, etc.;
- state banks and insurance companies;
- joint ventures with the Treasury and joint ventures of state enterprises;
- research and development enterprises; and
- cooperatives.

Privatization of these kinds of enterprises is governed by provisions found in other laws.

The Privatization Law provides two types of procedures: one for small companies and one for large enterprises. Small companies are privatized through an asset liquidation procedure.[2] Under

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[1] The Law of July 13, 1990, on the Privatization of State-Owned Enterprises, hereinafter the Law, *Ustawa z dnia 13 lipca 1990 r. o prywatyzacji przedsiebiorstw panstwowych*, *Dziennik Ustaw* (Polish official gazette, Dz.U.) No. 51, item 298 (1990); extension of the law to other enterprises: Dz.U. No. 85, item 498 (1990).

[2] *Id*. art. 37.

this procedure, assets of a company may be sold in part or in whole either to the employees of the enterprise or to a third party.

Large state-owned enterprises are privatized in two phases.[3] In the first phase, the enterprise is transformed into a joint stock company with the Treasury as the sole stockholder.[4] The second phase consists of divestment by the Treasury using three alternative procedures which include:

- auction;
- a public offering of shares; or
- negotiations initiated on the basis of a public invitation.[5]

Employees of an enterprise can buy shares of stock at a 50% discount with two limitations: the number of employee discounted stock cannot exceed 20% of the total number of shares, and the subsidy for each employee cannot exceed the average annual wage during the last twelve months.[6] In addition, a fraction of shares shall be distributed to Polish citizens in the form of coupons.[7] The coupons can serve as payments for the:

- acquisition of stock of individual privatized companies;
- acquisition through financial intermediaries, such as mutual funds which purchase stocks on behalf of shareholders; or
- acquisition of enterprises or their parts.[8]

Polish citizens can buy shares on installments.[9] Foreign investors may freely purchase up to 10% of a company's equity. Foreign acquisition of more than 10% of a company's equity requires special permission.[10] Income from stocks acquired by foreign parties may be repatriated abroad.[11] Money obtained by a foreign party from the sale or write-off of stocks, as well as money obtained

[3] Described in Chapters 2 and 3 of the Law.

[4] *Supra* note 1, arts. 5 and 6.

[5] *Id*. art. 23.

[6] *Id*. art. 24.

[7] *Id*. art. 25.

[8] *Id*. art. 25.

[9] *Id*. art. 27.

[10] *Id*. art. 19.

[11] *Id*. art. 33.

upon the liquidation of a company, may be repatriated abroad without a foreign exchange permit, after the payment of taxes due.[12]

Privatization of the first five large enterprises ended in 1990. In 1991, major stress was on improving privatization programs. During 1991, six large enterprises were privatized through public offering, and the stock was sold on the Warsaw Stock Exchange. Eighteen large enterprises were sold directly to foreign investors. Many others are prepared for sale in 1992. A total of 875 enterprises were privatized through the liquidation procedure.[13]

However, the privatization process did not proceed as smoothly as the government assumed. It met with an unanticipated resistance from employees who realized that in the process they might lose their jobs at a time when the national economy was not prepared to absorb the dismissed work force. Hopefully, the privatization process will continue in 1992, but it is difficult to predict its progress because of the unstable economic and political situation in Poland.

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[12] *Id.* art. 34.

[13] "3-4 Informator Gospodarczy" (Economic Information), January - February 1992, Embassy of the Republic of Poland, Commercial Counsellor's Office, New York.