

| Company name  | Director     | Employment | Advisor   | See Legend |
|---|--------------|------------|---|------------|
| <b>RAILWAY CARRIAGES - Tabor kolejowy</b>   |              |            |   |            |
| Fabryka Wagonów "PAFAWAG"<br>ul. Fabryczna 12<br>Wrocław<br>ph: (0-71) 55-22-58<br>fax: 56-26-35  | E. Błaszczyk | 1700       | CREDIT ANSTALT FINANCE ADVISERS<br>Al. Jerozolimskie 65/79, 00-697 Warszawa<br>ph: (0-2) 630-60-22 fax: 630-60-03   | 4,5        |
| <b>SHIPYARDS AND RELATED SERVICES - Stocznie i usługi remontowe</b>   |              |            |   |            |
| Morska Stocznia Remontowa<br>/shipyard/<br>ul. Ludzi Morza 16,<br>72-602 Świnoujście<br>ph: (0-936) 34-91<br>fax: 42-536                            | R. Glowacki  | 103        |   | 2,4        |
| Stocznia Remontowa "PARNICA" Sp. z o.o<br>ul. Gdańska 36, 70-952 Szczecin<br>ph: (0-91) 624-252,<br>fax: 623-131                                    | J. Soboniak  |            |   | 2,4        |
| Stocznia "RADUNIA" Sp. z o.o<br>ul. Na Ostrowiu 1, 80-873 Gdańsk<br>ph: (0-58) 31-68-31   | W. Bartelik  |            |   | 2,4        |
| Przedsiębiorstwo Robót Czerpalnych i<br>Podwodnych Sp. z o.o<br>ul. Przetoczna 66,<br>60-702 Gdańsk-Przeróbka<br>ph: (0-58) 37-38-81<br>fax: 373-45 | Z. Barański  | 595        | CONSULTANS Ltd.<br>ul. Wolności 18A, 81-927 Gdynia<br>ph: (0-58) 219186/87<br>komertel: 39124146<br>fax: 219927<br><br>Warsaw section (Oddział w Warszawie)<br>Al. Niepodległości 217/7, 02-087 Warszawa<br>ph/fax: (0-22) 253859<br>komertel: 39123499 | 5,6        |

| Company name   | Director        | Employment   | Advisor | See Legend |
|--|-----------------|--------------|---------|------------|
| <p>Olsztynskie Zakłady Opon Samochodowych<br/>           "STOMIL OLSZTYN"<br/>           ul. Leonarda 9, 10-454 Olsztyn<br/>           ph: (0-89) 33-07-41</p> | <p>J. Dębek</p> | <p>2 808</p> |         | <p>5</p>   |

TIRES - Przemysł oponiarski



# **Privatisation in Poland**

**Ministry of Privatisation  
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## Overview of 1994

The privatization process in Poland will continue while adapting, gradually and progressively, to changes in the economic environment, both in Poland and abroad. Such a continuation will allow for the move from state to private ownership and the development of the capital market to proceed. Statistical data for 1993 indicates that the private sector employs over 60% of workers and produces over 50% of GNP.

The Ministry of Privatisation's plans for 1994 involve a continuation of the Polish multi-track approach to privatisation. The priorities of the Ministry within the Polish privatisation programme are:

- the implementation of the Mass Privatisation Programme and other programmes involving restructuring of enterprises;
- the implementation of the Pact on State Enterprises, which will affect about 4,000 state enterprises not currently involved in other privatisation programmes;
- the continuation of capital privatisation, with greater emphasis placed on the role of public offerings (both IPO and a combination of public offerings and sale of share packets to active investors) leading to an increase of the number of companies traded on the Warsaw stock exchange; and on the privatisation of the petroleum and tobacco industries;
- the legal regulation of the question of restitution (or reprivatization) of property that was nationalized under the Communist governments between 1944 and 1960;
- continued implementation of the Law on financial restructuring of state banks and enterprises;
- the privatisation of one state bank in 1994, with the remaining banks privatised by 1996;
- the completion of the transfer of state farms to the State Agricultural Property Agency (except for cases where no agreement has been reached with creditors) allowing the Agency to concentrate on managing, leasing and selling the property involved;
- the review and resolution of other legal issues including the status of the State Treasury, the legal regulations concerning state enterprises, the protection of creditors, bankruptcy proceedings etc.;
- the development of a variant of capital privatization where management receives financial assistance (from banks and investment funds) to acquire shares in their enterprise; and
- an easing of the conditions placed on employees wishing to buy out their enterprise, especially in areas with structural unemployment.

*These plans require confirmation by Parliament.*

## PRIVATISATION IN 93 - A LOOK BACK

1993 was a year when the changes in the ownership structure accelerated markedly. Current methods, such as capital privatisation and direct privatisation, continued to be applied. To this were added a series of ground-breaking measures providing a continuation to market economy reform:

- \* the introduction of a law on the financial restructuring of state enterprises and banks;
- \* the introduction of the Mass Privatisation programme; and
- \* the signing of the Pact on Enterprises, an accord between government, employers and trade unions.

Revenue from privatisation in 1993 added a little more than the planned USD 225 mln to the State Treasury.

### **Capital privatisation**

Capital privatisation of large and medium-size enterprises by trade sale or public offering continued in 1993. The results of industry analyses commenced and continued through 1992 are used to prepare companies for sale to domestic and foreign investors. The sale of stock and shares in individual companies also took place.

The Capital Privatisation Department assumes the sale of shares in companies grouped in the following industries: ball bearings, breweries, cables and wires, cement and lime, confectionery, construction, electrical motors and switchgear, furniture manufacture, glass, machine tools, mechanical and electrical automotive components, pulp and paper, telecommunications, tyre and rubber manufacture, and shoes.

1993 saw the completion of preparatory work for the privatisation of state enterprises in the petrochemical and tobacco industries. The capital privatisation programme also aims to sell shares of companies in the food processing industry such as sugar mills, potato, fruit and vegetable processing plants.

The capital market was be widened by 5 new entrants from the state sector to the Warsaw Stock Exchange.

### **Direct privatisation**

Furthermore 199 small and medium-sized state enterprises employing between 50 and 700 workers were privatised in 1993. In the majority of cases this involved the lease of the enterprise to its employees, management or Polish investors.

55 enterprises were sold - including by means of fast-track sales. Both enterprises in good financial condition and those with debts are put on sale. They are sold to private investors (Polish and foreign) and employees.

The number of joint-ventures set up between enterprises and both Polish and foreign investors increased slightly. Debt for equity swaps became possible in such cases and agreement for a reduction in the debts of state enterprises by creditors will be sought by the founding bodies.

### **Long-term privatisation schemes**

A number of long-term schemes were implemented in 1993, including the National Investment Fund Programme (so-called "mass privatisation") and the privatisation of two of the nine state-owned banks.

Work to privatise the two national state-owned insurance companies, restructure 1,595 state farms, implement the financial restructuring of state enterprises and banks and elaborate ways to restitute (where possible) property nationalised in 1944-60 were continued.

The Department of Foreign Relations at the Ministry of Privatisation runs the following data-bases; interested parties may make use of them free of charge.

#### **Spare capacity data base**

Lists over 3,500 offers of buildings, plots of land, machinery, factory sites, warehouses etc. that are on sale or for rent.

#### **Privatising enterprises**

State enterprises and State Treasury corporations that seek cooperation with outside investors.

Please address requests for print-outs (giving the industry and geographical area of interest to you) to Renata Szydłowska, Department of Foreign Relations, Ministry of Privatisation, ul. Krucza 36, 00-522 Warszawa, Poland; Fax: +48 (2) 625-11-14.

## Strategies of Privatising State-owned Enterprises

Since 1990 two basic techniques for privatising state enterprises have been implemented. Their choice depends on:

- a. the size of the enterprise in terms of annual turnover, the number of employees and the extent of monopoly control of the market;
- b. projected financial and production indicators;
- c. the enterprise's management structure;
- d. interest expressed in a given enterprise by Polish and foreign investors;
- e. the relations between management, the workers' council and trade unions of an enterprise undergoing privatisation.

The law allows for two fundamental, alternative methods of privatisation:

- "commercialisation" of large and medium-sized state enterprises; this involves transformation into a State Treasury corporation (either as a joint-stock or as a limited liability company); the shares are then sold to private investors;
- direct privatisation ("through liquidation") of small and medium-sized state enterprises (with subsequent sale, transfer of the business into an existing company or its lease in part or as a whole). Privatisation takes place according to article 37 of the Law on the Privatisation (13 July 1990).

The State also makes use of article 19 of the Law on state enterprises (25 September 1981) to put companies into private hands. This is usually liquidation of an enterprise in poor financial condition, followed by the sale of the assets to satisfy creditors.

### Capital Privatisation

The aims of setting up a State Treasury corporation include:

- a. establishing a clear decision-making and supervisory structure;
- b. adapting the legal status of the state enterprise to the requirements of possible subsequent foreign capital participation;
- c. allowing the Minister of Privatisation to set up a supervisory board which operates until the first general meeting or meeting of partners, at which time the executive of the company is elected in accordance with the regulations laid down in the Commercial Code.

The Minister of Privatisation may transform an enterprise into a State Treasury corporation:

1. at the joint application of the director and workers' council of the enterprise, following a general meeting of the workers (delegates) and consultation with the founding body;
2. at the application of the founding body, following approval from the director and the enterprise's workers' council and consultation at a general meeting of workers (delegates).

Alternatively, it may be transformed by the Prime Minister at the request of the Minister of Privatisation. Privatisation proper, that is the sale of stocks and shares to private investors, follows after transformation. By law this must occur within a period not longer than two years.

Privatisation using traditional capital privatisation techniques (initial public offerings, trade sales to Polish or foreign investors, or a combination of these) is used with larger enterprises, especially those that are of strategic economic importance.

Potential buyers of stocks and shares receive a prospectus listing the value of the business based on a valuation carried out by a specialist firm at the request of the enterprise. The prospectus further includes a balance sheet for preceding years and a presentation of future projects. The prospectus should fulfil all the requirements of the Securities Commission regarding the disclosure of economic indicators and financial information of publicly traded companies. The Law on the Privatisation of state enterprises currently allows the employees

of the enterprise to buy 20% of the total shares at 50% off the public price on the first day of sale, without restricting their right to participate in the share offer on general public principles.

Private sale takes the following course:

1. The Minister of Privatisation appoints an adviser (usually one of the advisers working in the sector approach described below).
2. The adviser prepares the enterprise for privatisation, elaborates an appropriate information package and invites investors to participate in the sale through the mass media and through direct contact with foreign investors.
3. Investors who express an interest receive the information package and are asked to present their offer for the shares package, the scale of proposed investment and a social plan (employment levels, pay scale, financing of preferential shares).
4. The adviser analyses the investment proposals and prepares a list of candidates to be invited to negotiations. The candidates have the right to visit the enterprise on sale for the purpose of their own evaluation.

### **Direct Privatisation**

An enterprise can be privatised directly ("through liquidation") under Article 37 of the Law on Privatisation by its founding body on the initiative of its workers' council and following approval by the MOP. This allows for three forms of privatisation of the whole or part of an enterprise, which can be applied separately or jointly:

- a. sale - of the whole or part of the enterprise under the usual procedure,  
- of all of the business without the usual procedure - "fast-track" privatisation;
- b. transfer of the business; a joint-venture company, with the State Treasury as partner transferring all or part of the enterprise, is set up with investors (including institutional investors - banks, and other financial institutions). This is the form of direct privatisation most often involving foreign investors;
- c. lease of the business; this form applies only to Polish investors.

Where an enterprise is sold as a whole and where the legal ownership of land and other fixed assets under its control has been established, "fast-track" privatisation may be implemented. In such a case the privatisation procedure described above is not used. The pricing of the enterprise is simplified by making use, within certain set limits, of a valuation based on the book-value of the enterprise and on annual profits. This accelerates the process leading to a sale and also considerably reduces the cost of privatisation. This method is accessible only to Polish investors during the first invitation to negotiations. Should no buyer be found, foreign investors may participate on the same terms as Polish citizens.

### **The National Investment Funds Programme (so-called "mass privatisation")**

Poland's ambitious mass privatisation programme was approved on 30 April 1993 under the Law on National Investment Funds. It was conceived with the following aims:

- \* to improve the efficiency and value of several hundred Polish state enterprises by converting them to companies and transferring them to new national investment funds. The national investment funds will hire experienced management firms, which will encourage the development of the companies and the inflow of management skills and capital into Poland;
- \* to accelerate radically the privatisation process in Poland;
- \* to give all adult citizens an opportunity to acquire shares in the new investment funds, enabling them to benefit from the increasing value of the Polish companies in the programme;
- \* to enable greater participation in the programme to state sector employees and persons on state pensions and benefits.

All normal types of cooperation with the companies, including management contracts, commercial arrangements and investments in the company's shares or even in large shareholdings of over 50%, will be possible.

It will be possible for any investor to buy shares in any of the investment funds, which will be listed on the Warsaw Stock Exchange. These will be large entities, with assets equivalent to several hundred million US dollars, managed by experienced firms, and should be attractive investments.

It will also be possible to invest, both in bearer form and on the Warsaw Stock Exchange in the Mass Privatisation Programme as a whole through the Share Certificate which will represent as well as spread investment in all the funds.

### **Privatisation through Restructuring**

The Minister of Privatisation may hire a management firm to restructure a State Treasury corporation. Following the preparation of a business profile by the company, the Ministry of Privatisation tenders for specialists to work as a management group.

These can be Polish or foreign persons or groups (investment banks, consultancy firms, other companies). Based on the restructuring plan presented, the group is hired by the Ministry and is expected to restructure and then privatise the company or group of companies covered by the plan. 27 enterprises are participating in the pilot phase of the programme.

### **The Enterprise Pact**

Since the process of privatising the state sector in Poland was begun it has become increasingly clear that the process needs to be accelerated. At the same time the participation of a larger number of the stakeholders in the process has become desirable in order to broaden the support for privatisation among employees.

For this reason the government initiated tripartite discussions on the Enterprise Pact in the second half of 1992. The parties to the talks were government, represented by the Minister of Labour and Social Policy, employers, represented by the Confederation of Polish Employers, and 10 major trade unions. The Pact addresses problems encountered by state enterprises prior to and during privatisation.

The involvement of all the stakeholders in privatisation is an essential step to prevent social conflicts arising from the uncertainty generated by the massive economic changes in Poland.

The first stage of this process was completed with the signing of the Pact by all sides on 22 February 1993. Legislative proposals based on the Pact have been drafted and have been presented to the newly-elected parliament. Once all the proposed laws are passed, the agreement will come into force.

The parties to the agreement agreed to lobby their representatives in parliament to support the legislative proposals. These include proposed amendments to the Law on privatising state enterprises and the following new legislation:

- a law on social benefit funds in state enterprises;
- a law on the remuneration of employees in cases of bankruptcy; and
- various decrees of the Council of Ministers regarding the joining, splitting and liquidation of state enterprises; the election of enterprise directors; and management contracts.

The documents that make up the Pact fall into three distinct areas concerning privatisation, financial matters and social affairs.

#### **Privatisation**

1. In the six months following the passing of the legislation by parliament, the employees and directors of state enterprises may present their privatisation plans to the enterprise's founding body. If the plans are not acceptable on legal grounds or are harmful to the State Treasury, they may be returned to the enterprise for correction. Should no proposal be presented, the Minister of Privatisation or the appropriate founding body will decide by which method the enterprise will be privatised.

The privatisation of state enterprises in poor financial condition will be preceded by



- moves to shore up its position.
2. At present employees in enterprises sold through capital privatisation are guaranteed 20% of the shares at preferential rates. Under the new proposal, 10% of shares will be sold to employees at the preferential rate, and a further 10% distributed without charge.
  3. Employees will be able to vote a representative to the supervisory board of the enterprise once it has been privatised. They will also be able to elect a representative to the company's management, where the company employs over 2,500 people. The present preferential conditions made available to employees in the case of employee-buy-outs are to be eased further.
  4. Income tax deductions for Polish citizens buying stock or shares in privatised enterprises are to be introduced.

#### *Financial*

1. The financial restructuring of state enterprises and banks is defined in a law passed in March 1993. It will allow for creditors to reduce the debt and make available credits to an enterprise in cases where it presents and initiates a restructuring programme. The law will further allow for a market in debts and for debt/equity swaps. Banks, especially those burdened with bad debts, will be capitalised with long-term Treasury bonds. This will in part be covered by the unused fund set up in 1989 to stabilise the zloty. The capitalisation of the banks should strengthen the banks and encourage them to take part in the restructuring of state enterprises.
2. The obligatory 10% dividend on the founding capital of the state enterprises that is levied by the State Treasury will be replaced by a dividend on the net profit of the enterprise.  
Where 1/3 of profits are allocated by the enterprise as investments, the remaining profits can be divided in equal parts into the dividend payment and a share paid to the employees. In this way the excess wage increase tax will continue to be in place as a measure to control inflation, but a prospering enterprise will be able to pass some of the benefits on to its employees.

#### *Social Affairs*

1. A government fund will pay out benefits for up to three months to employees of a state enterprise that has been declared bankrupt. The fund will be financed through a contribution from employers and whose amount will be determined by the Minister of Labour and Social Policy.
2. Certain provisions of the Labour Code are to be amended. These will allow for group agreements to be concluded for more than one enterprise or for a whole region. A tripartite arbitration commission will be set up to intervene in situations where agreement cannot be achieved. The health and safety provisions of the Labour Code are to be revised and strengthened to conform to International Labour Organisation guidelines.

*The provisions of the Pact will be discussed further in parliament. For further information contact the press office of the Ministry of Labour and Social Policy, Tel: +48 (22) 21-49-42.*

The Ministry of Privatisation works in close accord with the **State Agency for Foreign Investment (PAIZ)** to service investor queries regarding matters of privatisation in particular and of investment opportunities in Poland as a whole. PAIZ operates an Information Centre at the Ministry of Privatisation. We invite you to get in touch with them directly:

PAIZ Information Centre, ul. Krucza 36, 00-522 Warszawa, Poland;

Tel: +48 (2) 625-12-07; Fax: +48 (2) 625-11-14.

The Center is open Mondays to Fridays 10am to 3pm.

## INVESTING IN POLAND

Foreign investors can basically embark in business in Poland in two ways:

- participation in the privatisation of the state sector; and
- by establishing a company with either 100% foreign participation or together with a private Polish partner.

To the end of September 1993, 13,801 companies with foreign capital participation had been registered in Poland. In the majority of cases these were private joint-ventures, though the scale of the state enterprises privatised has attracted most of the foreign capital to Poland.

The over 6,000 state enterprises being privatised provide an attractive offer for foreign investors - be they active or passive, with large or small capital, starting in business or expanding their present activities.

Foreign investment in privatisation can take two basic forms, purchase or joint-venture:

- \* with purchase, the capital invested goes to the State Treasury - whether through shares or stock of a company sold through capital privatisation, or the sale of the whole or part of an enterprise going through direct privatisation;

- \* with a joint-venture the foreign capital is invested in the company itself, regardless of the legal status of the Polish partner: a state enterprise, a State Treasury corporation, or an enterprise privatised directly.

Capital privatisation has been the most successful in attracting foreign capital to Poland. So far strategic outside investors have bought stock or shares in 40 companies. One of the most important of these has been the sale of 80% of the shares of the Kwidzyń paper-mill to International Paper for USD 120 mln, with further investment commitments of USD 175 mln. The acquisition of the whole or part of an enterprise privatised directly is a much smaller transaction. One of the largest has been the purchase of a machinery repair station near Nowy Targ by a US investor - SAMBUD - for about USD 150,000.

Up until now the largest transactions in privatisation have involved the setting up of a joint-venture between the outside investor and a State Treasury corporation. Of approximately 30 joint-ventures, the most prominent involved Italian capital: Fiat's investment of USD 180 mln and investment commitments of a further USD 1,800 mln; and Lucchini's USD 34,8 mln investment and USD 150 mln commitments in the Warsaw Steel Mill.

The setting up of a joint-venture between an SOE and a foreign investor is becoming rare. One of the largest of several hundred such joint-ventures is Coca-Cola Bottlers S.A, set up between Ringners S.A. from Norway and Pubrex SOE in Bydgoszcz. Ringners invested USD 13.5 mln and acquired 88% of company shares.

Finally a joint-venture can be set up between an outside investor and the State, where the State liquidates the existing state enterprise by transferring it into the new company. There have been 14 such transactions in Poland so far; the largest involved the construction equipment manufacturer METALPLAST, in which two Danish investors, Nordisk Wavin (41%) and the Danish Investment Fund for Central and Eastern Europe (10%), have invested about USD 7,6 mln.

The number of methods and opportunities for active foreign investment in the privatisation of the state sector is large and may at times seem unclear. Such complexity is not without foundation. Privatisation involves over 6,000 state enterprises of differing size, financial condition, internal structure and external environment so that each case must be treated individually. There is no universal model that could be applied in privatising Poland's state sector.

At the same time the outside investors coming to Poland also differ considerably. They are presented with a choice to enhance the offer. As the summary of government plans for 1993 makes clear, this offer is constantly increasing as the market reforms proceed.

## The Legal Framework for Foreign Investment in Poland

The 1991 foreign investment law greatly simplified foreign investment in Poland, with a consequent increase in the number of such companies being established. Access for potential investors in Poland has been eased by the following:

- \* minimum founding capital for all investors, Polish or foreign, is PZL 40 mln (about USD 2,400) for a limited company and PZL 1 bln (about USD 61,000) for a joint-stock company
- \* there is no limit to the share of foreign participation
- \* no special permits for foreign investors are required, except for the operation of sea- and airports, real estate businesses, wholesale trade in imported consumer goods, legal services or the defense industry
- \* no limits on the transfer of after-tax revenue
- \* no turnover tax on equipment being part of investments
- \* no permits needed to buy shares in state-owned enterprises being privatised
- \* tax exemptions are granted on reinvested revenue
- \* customs exemptions for in-kind contributions to the capital of a Polish company
- \* legal guarantee of compensation for losses suffered due to expropriation
- \* losses may be carried forward over three years
- \* accelerated depreciation

### Publications

The Information Centre of the State Agency for Foreign Investment is responsible for informing interested parties about the investment opportunities in Poland and in the Polish privatisation process. It also provides general information on Polish business activity as a whole. To this end, the PAIZ Information Centre has edited the following publications:

1. Law on Companies with Foreign Participation (14 June 1991) (\$2). Legislation regarding foreign investment in Poland for 100% foreign capital companies as well as joint-ventures with Polish partners. In Polish, English, French, and German.
2. Act on the Privatisation of State-Owned Enterprises (\$2). In Polish, English, French and German.
3. Foreign Investment in Poland (Twigger) (\$11). Commentary on the foreign investment law of June 14 1991. Polish-English publication.
4. Establishing a Company with Foreign Capital Participation (\$4). Information on procedures and documents required in setting up 100% foreign-owned companies and companies with Polish partners. In Polish and English (French and German versions being prepared).
5. Polish Business Law 1992 (\$30). Includes all legislation relevant to doing business in Poland. In English.
6. Taxation and Customs Duties 1993 (\$30). A continuation of "Polish Business Law 1992", adding taxation and customs regulations relevant to business activity in Poland. In English.
7. The Polish Commercial Code (\$20). In German.

If you are interested in any of the above publications, please send your order along with the number of copies required to: Bank PKO SA, V Oddział/Warsaw, account # 501145-9103032-2701-31-1110, Foundation for Privatisation, re: publications. Once you have made the order, please fax or mail a photocopy of the bank receipt along with your order to: PAIZ Information Centre, ul. Krucza 36, 00-522 Warsaw, fax: +48 (2) 625-11-14. Upon receipt of the confirmation of your order, we will ship the publications out promptly.

# PRIVATISATION IN 1994

*This text is a translation of Appendix 10 of the Budget Act passed by Parliament on 5 March 1994.*

## I. PRIORITIES OF THE OWNERSHIP TRANSFORMATIONS PROGRAMME IN 1994

1. The Government will combine privatisations with:
  - 1) restructuring programmes and an increase in domestic and foreign investment, leading to increased economic efficiency, the promotion of competition and a strengthening of the capital market;
  - 2) the broader application of methods resulting in bringing the price of stock of privatized enterprises, sold in public offerings, closer to its market price;
  - 3) efforts to facilitate privatisation with the active participation of employees, especially in the case of SMEs;
  - 4) measures undertaken radically to strengthen ownership supervision;
  - 5) the introduction of supervision on the fulfillment of contractual obligations, in particular with respect to non-financial obligations.
  
2. The Government's task for 1994 will be to:
  - 1) present Parliament - by the end of June - with a list of the industries and types of enterprises over which the appropriate government institutions will exercise control;
  - 2) present a programme for the commercialization of state enterprises;
  - 3) implement the financial restructuring programme for state banks and enterprises, and analyse the effects of the applicable regulations;
  - 4) implement restructuring programmes with respect to industry branches of particular significance to the economy: power and energy, mining, metallurgy, defence, oil and railways;
  - 5) develop an ownership transformation programme for the state agricultural and foods industries;
  - 6) implement the restructuring processes within enterprises, in particular in regions endangered by structural unemployment, making use of the World Bank's EFSAL loan;
  - 7) prepare the financial system to support the restructuring of industry using, among others, revenue from the privatisation of state enterprises;
  - 8) implement the Enterprise Pact;
  - 9) prepare a proposal for an "employee privatisation method" based on the concept of companies with State Treasury participation;
  - 10) implement the National Investment Funds programme (so-called mass privatisation);
  - 11) implement the banking sector privatisation programme, applying IPOs in each case;
  - 12) endeavour to create conditions for encouraging institutional investors such as closed investment funds and pension funds;
  - 13) create an incentives system for domestic and foreign investors;

- 14) introduce a system of sale by installments for Polish investors applicable in both capital and direct privatisation and which will be supported through a specially created Credit Guarantee Fund;
- 15) support the setting up of new private businesses and the development of existing businesses;
- 16) complete the preparation and implementation of the European Bank for Reconstruction and Development programme "Stabilisation, Restructuring, Privatisation";
- 17) increase the number of enterprises privatised through IPOs;
- 18) oppose instances where one investor may gain capital control on a given commodities market;
- 19) carry out a review of the legal regulations and procedures employed in privatisation to ensure greater openness and clarity;
- 20) clarify and adapt the valuation of state enterprises prepared for privatisation; urgently define the principles on the basis of which valuations are carried out; ensure that valuations are carried out by institutions controlled by appropriate government authorities; ensure that the enterprises being valued may present an opinion on the results of the valuation;
- 21) analyse the market conditions under which businesses operate, including the regulations protecting creditors, the vindication of amounts receivable, liquidation and bankruptcy, the registration of new businesses, and the principles governing the granting of permits and quotas;
- 22) undertake work to prepare an Industry Law and further regulations to limit the black economy;
- 23) undertake work to regulate the principles of restitution of nationalised property (reprivatisation).

In 1994, the Government will strive to achieve an income from privatisation which will supplement the state budget by PLZ 12.3 trillion (about USD 560 mln). The allocation of income from privatisation is defined in the Budget Act.

3. Government will present Parliament with legislative proposals containing:
  - 1) a new Law on the Privatisation of State Enterprises in accordance with the Agreement regarding amendments to the Privatisation Law and the easing of conditions regarding leasing of enterprises by their employees included in the Enterprise Pact; furthermore, employees will have the right to acquire free of charge 15% of the shares of enterprises being privatised;
  - 2) legislation to regulate the institution of the State Treasury and define the principles on the management of state property and ownership supervision carried out in the name of the State; this should ensure the liquidation, in as short a time as possible, of the management system of the state sector left over from the 1980s; it should include solutions facilitating the disposal of assets remaining within state enterprises.

## II PRIVATISATION PROGRAMMES

1. As part of the capital privatisation programme, Government will bear in mind the interests of Polish producers and suppliers of raw materials and aim to ensure competition among producers.

In 1994 the number of companies noted on the Warsaw stock exchange will increase considerably. With this aim in mind, the Government will ensure that:

- 1) the combination of public offering of shares with the sale of shares to active investors (trade sales) occurs more often than so far;
- 2) the public offering of shares is combined with second share emissions to strengthen company capital;
- 3) the efficiency of the shares sales system to investors is increased, especially through the direct sale of shares through the Warsaw stock exchange, share subscription and the more efficient organisation of sale venues.

2. With regard to direct privatisation Government will apply the following principles:

- 1) where an enterprise is sold, apart from the price issues, the negotiations will also cover:

- the conditions of payment;
- employment guarantees;
- investment programmes and guarantees;
- environmental protection commitments.

Sales will be accompanied by appropriate promotion, including through the mass media. The offers will be made to domestic buyers in the first instance;

- 2) when an enterprise is contributed by the State into a business, investors will be sought through tenders. Apart from the value of the investor's contribution, the employment and wage conditions of the enterprises being incorporated as well as issues connected with environmental protection will also be negotiated;
- 3) where the enterprise is leased it will take place with employee participation and Polish physical and legal persons capable of fulfilling the financial obligations towards the State Treasury.

Furthermore Government will ensure support for enterprises leased by their employees by reducing the payments required by the State Treasury in the form of lease payments, as well as by reducing the founding capital required to set up companies as part of leasing.

3. Government will initiate the process of establishing National Investment Funds in the 1st quarter of 1994 so as to make it possible to start distributing share certificates in the 3rd and 4th quarter of 1994.

4. Government, through the intermediary of the Agricultural Property Agency, will continue the restructuring and privatisation process of State Treasury agricultural property.

By completing the process of taking over state farms (PGR) from other State authorities, it will be able to concentrate on the tasks set out in the Act on Management of State Treasury Agricultural Property, especially the management of the property and creating new jobs, for which it may make use of the Labour Fund.

Management of the property taken over by the Agency will take the form of sale, lease, hiring administrators, contribution into other entities to establish strong businesses, transfer to local communities for infrastructural purposes, and transfer to State Forestry with the purpose of forestation.

Some of the arable land, as specified by the restructuring programmes, will increase the family farm lands.

Additionally, sole shareholder companies of the Agency will be established with respect to the livestock breeding agricultural property considered strategic for the development, functioning and competitiveness of the agricultural sector in Poland.

5. Government will make it possible for smaller enterprises to participate voluntarily in the "Privatisation through Restructuring" programme. Management groups selected in a public tender are asked to sign contracts which provide for the company's restructuring and its subsequent sale.
6. Government, in accord with the National Bank of Poland, will present a plan for the reform of the banking system in Poland.  
As part of the programme to privatise the Polish banking industry Government will support consolidation processes that lead to its stabilisation.  
Government will ensure that as part of the privatisation of commercial banks it makes use of funds available in the Polish Bank Privatisation Fund (established after the transformation of the Polish Zloty Stabilisation Fund) so that budget spending on the purchase of restructuring obligations is reduced.  
In principle strategic investors taking part in the privatisation of banks should be Polish.
7. Government will present a programme for the privatisation of foreign trade enterprises.
8. Government will monitor the ownership transformation processes of State entities.
9. With regard to municipal property Government will:
  - 1) undertake legislative work regulating the principles of economic activity and ownership transformations in the municipal and budget sectors;
  - 2) continue pilot restructuring and privatisation projects of selected branches of municipal public utility enterprises;
  - 3) provide all possible technical, educational and informational assistance.

Translation by the Department of Foreign Relations,  
Ministry of Privatisation, Warsaw

## THE MASS PRIVATISATION PROGRAMME

The Polish Government is committed to continuing its economic reforms which are designed to build a market economy in Poland. Following the enactment of the relevant legislation on 14th June 1993, Poland is now embarked upon the most ambitious privatisation programme ever undertaken, which is designed both to overcome the difficulties of traditional approaches to privatisation and to encourage wide scale share ownership in Poland. The Mass Privatisation Programme (PPP) was devised as the most appropriate and expedient way of privatising and restructuring a large number of Poland's state-owned enterprises, thereby accelerating the transformation of Polish industry.

As a first step, up to 20 specially-constituted National Investment Funds (NIFs) are being established. Their purpose is to assist in the restructuring of Polish companies by holding shares in the companies taking part in the Mass Privatisation Programme.

Approximately 20 National Investment Funds are to be created, taking the form of closed-end funds registered as joint stock companies. Their principal purpose will be to increase the value of their assets - namely the shares of those Polish companies participating in the PPP - for the benefit of their shareholders.

Each NIF will be controlled by a Supervisory Board chartered with representing the interests of its shareholders, who will be all those Polish citizens holding share certificates. The Supervisory Boards will comprise suitably qualified individuals nominated and appointed by a specially-convened Selection Commission. Two-thirds of the Supervisory Board's members - including the chairman - will be Polish citizens.

The fund management team managing each NIF will report to the Supervisory Board under a management contract and a performance contract which will provide them with financial incentives to increase the long-term value of the fund. Each NIF is expected to remain in existence for at least 10 years, partly as a means of ensuring its manager's commitment over the long term.



After the first year it is intended that each NIF will seek a listing on the Warsaw Stock Exchange. The fund manager will also consider losing the companies in its portfolio as appropriate.

Several hundred large and medium-sized Polish enterprises will participate in the PPP. These enterprises come from a broad range of industrial sectors, including metallurgy, machining and precision engineering, chemical engineering, electrical and electronic products, pulp and paper, foodstuffs, construction and transportation equipment. They are being selected based on their profitability and sales.

Each company will initially have the same share holding structure: 33% will be held by a lead NIF; 27% will be distributed equally to all other NIFs; 25% will be retained by the State Treasury; 15% will be distributed, free of charge, to employees.

The distribution of the 33% lead shareholdings will be decided according to an agreed procedure designed to ensure fairness. Each company will accordingly be one of approximately 30 enterprises held as core investments in its lead NIF. Once the shares of the company have been contributed by the State Treasury to the NIFs, it is expected that the companies will undergo substantial restructuring. The principal aim will be to strengthen their market positions and make them as competitive as possible, in order to enhance the value of the companies and hence of the NIFs.

Shares in the companies may be sold by the NIFs directly to strategic investor and some companies may be sold in their entirety to Polish or international companies or investors. Some may be placed in joint ventures. Eventually, it is hoped that many of the participating companies will themselves join the Warsaw Stock Exchange.

Shareholdings in each NIF will initially be represented by Share Certificates. The PPP has been specifically designed to ensure that Poles are the principal beneficiaries of the mass privatisation process. All resident Polish citizens aged 18 or over will therefore be entitled to participate in the Programme by applying for Share Certificates.

The fee for a Universal Share Certificate, which will be available to any adult Polish citizen, will be no more than 10% of the national average monthly wage, currently equivalent to approximately \$20. On receiving the Share Certificate, the owner will immediately be able to trade it in bearer form and soon after on the Warsaw Stock Exchange. In due course, he will also be able to convert the Share Certificate through a broker into one equal share in each relevant publicly-quoted NIF.

The Law also provides for the creation of a separate class of bearer share certificates, the Compensation Share Certificate, which will be made available free of charge to certain pensioners and certain State employees specified in the Law.

Because the value of all Share Certificates is not linked solely to the performance of a single company or group of companies, but represent a broad spread of investments in several hundred enterprises, this is expected to offer all Polish citizens a direct but diversified interest in key Polish industries.

Institutional, strategic and private investor from abroad will all be able to participate in the Mass Privatisation Programme in a variety of ways:

- Investors can purchase Share Certificates from those citizens who wish to trade them, either in bearer form, or in dematerialised form on the Warsaw Stock Exchange. These Certificates will be convertible into shares in individual NIFs once the NIFs have been listed on the Warsaw Stock Exchange.
- Investors can purchase and trade in shares in the NIFs after they have been listed on the Warsaw Stock Exchange.
- Financial and strategic investors can actively participate in the restructuring of individual participating companies by purchasing shares in them as and when they are offered by NIFs, by providing equity or non-equity finance, by acquiring companies in their entirety, or by forming strategic joint ventures.

- Institutional investors may choose to purchase shares in individual participating companies and when they become publicly listed in the future.

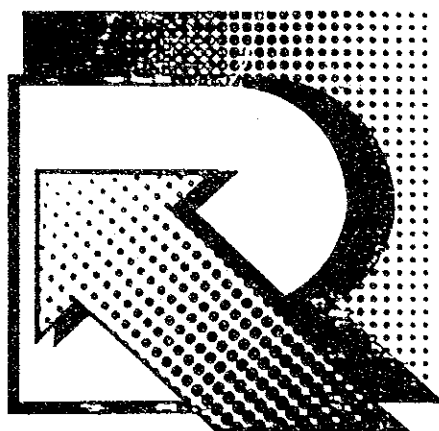
Under the present timetable for the Programme, the process of selection participating companies is expected to be completed by the end of 1993; over 350 are already committed to the Programme. The creation of NIFs appointment of Supervisory Boards fund management firms is expected to be concluded in early 1994. Share Certificates will be distributed in summer 1994 and the NIFs will be listed on the Warsaw Stock Exchange in summer 1995.

POLISH AND FOREIGN INVESTORS IN SOLD COMPANIES

| COUNTRY OF ORIGIN OF INVESTOR  | SOLD in 1990 | SOLD in 1991   | SOLD in 1992  | SOLD in 1993  | SOLD in 1994  |
|--------------------------------|--------------|--|---|---|---|
| GERMANY                        |              | 1. Koszalińska Zakłady Przemysłowe S.A.<br>2. Polena Nowy Dwór S.A.<br>3. Polena Racibórz S.A. | 1. Pomorskie Fabryki Mebli Sp. z o.o.<br>2. Mebla S.A.<br>3. Roméo Sp. z o.o.<br>4. Chra Sp. z o.o.<br>5. Bydgoskie Fabryki Mebli S.A.<br>6. Mebla Sp. z o.o. | 1. Bobo S.A.<br>2. Sławina S.A.<br>3. Odra S.A.<br>4. Czeskie Fabryki Mebli Sp. z o.o.<br>5. ZWUT S.A.<br>6. ELWRO S.A.<br>7. Farnot Plezew S.A.<br>8. Prefabek Rakowice Sp. z o.o.<br>9. Gólcichowska Fabryki Mebli Sp. z o.o. | 1. Gólcichowska Fabryki Mebli Sp. z o.o.<br>2. KCW Warta S.A.<br>3. Słupskie Fabryki Mebli Sp. z o.o. |
| USA                            |              | 1. Fampa S.A.<br>2. Polbat S.A.  | 1. Alima S.A.<br>2. Amimo S.A.<br>3. Zakłady Celulozowo-Papiernicze Kwizdyń S.A.<br>4. Tepla S.A.<br>5. Wizarzet S.A.   | 1. Olza S.A.<br>2. Huta Szkła Jarosław S.A.   |   |
| HOLLAND                        |              | 1. Polam Pta S.A.  |   |   |   |
| SPAIN                          |              |  |   | 1. PZT Telekom S.A. Warszawa<br>2. Tepla S.A. Poznań  |   |
| SWEDEN                         |              |  |   | 1. Koszalińska Zakłady Papiernicze S.A.<br>2. Szczeciński Przemysł Drzewny S.A.   | 1. Polam Szczecinek S.A.  |
| FINLAND                        |              |  |   | 1. Fakop Sp. z o.o.<br>2. Kolo Sp. z o.o.   |   |
| GREAT BRITAIN                  |              |  |   | 1. Polena Wrocław S.A.  | 1. Zakłady Przemysłu Cukierniczego "SAN" S.A.   |
| FRANCE                         |              |  |   | 1. Polam Suweki Sp. z o.o.  | 1. Carota S.A.  |
| AUSTRIA                        |              |  |   | 1. Przedsiębiorstwo Przemysłu Mięsnego Opole S.A.   |   |
| BELGIUM                        |              |  |   | 1. Góralska S.A.<br>2. Strzelce Opolskie S.A.   |   |
| LUXEMBURG                      |              |  | 1. PWN Sp. z o.o.   |   |   |
| MIXED FOREIGN INVESTOR         |              | 1. Polena Bydgoszcz S.A. (NL-GB)   | 1. Olimex Sp. z o.o. (NL-GB)<br>2. ELTA Sp. z o.o. (CH-S)   | 1. Huta Szkła Białystok Sp. z o.o. (D-FL)   |   |
| MIXED INVESTOR (POL - FOREIGN) |              |  | 1. Proamed Sp. z o.o. (PL-NL)<br>2. Czeszyńskie Zakłady Kartoniarstwa S.A. (PL-AUS)   | 1. Ponor Żywiec S.A. (PL-Hong-Kong)<br>2. Hartwig Sp. z o.o. (PL-D)<br>3. Hydrotrans S.A. (PL-USA)<br>4. Energoaparaturnia S.A. (PL-USA)<br>5. Stomil Sanok S.A. (PL-USA)   | 1. Pekpol S.A. (PL-USA)<br>2. HYDROBUDOWA-S S.A. (D-PL)   |

| COUNTRY OF ORIGIN OF INVESTOR   | SOLD in 1990   | SOLD in 1991   | SOLD in 1992  | SOLD in 1993   | SOLD in 1994   |
|---|--|--|---|--|--|
| POLAND  | 1. Zakłady Włocławskie<br>Innowacjów Sp. z o.o.  | 1. Norblin S.A.<br>2. Etornal Sp. z o.o.<br>3. Budokor S.A.<br>4. Farnet S.A.<br>5. Mostostal W-wa S.A.<br>6. Kaprini Sp. z o.o.<br>7. Kralbud Sp. z o.o.<br>8. Krak-Chemia S.A.<br>9. Techma Sp. z o.o. | 1. Ciesach Sp. z o.o.<br>2. Teleko S.A.<br>3. Browary Warm-Miaz-Olsztyn Sp. z o.o.<br>4. Porcelana Wąbrzych S.A.<br>5. Huta Szczyt Rozalia Sp. z o.o. | 1. Rafako Sp. z o.o.<br>2. Kolektoria Przemysłowo-Budownictwa<br>Przemysłowego Bick S.A.<br>3. Delta S.A.<br>4. Polgraph S.A.<br>5. ZPO Bytom S.A.<br>6. Juwenia Sp. z o.o.<br>7. Opolwap S.A.<br>8. Siozunia Szczecin S.A.<br>9. Polmeist Brodnica Sp. z o.o.<br>10. Agrella S.A.<br>11. Nowita S.A.<br>12. Browary Wielkopolskie S.A.<br>13. Bydgoska Fabryka Kabli S.A.<br>14. Pozmest S.A.<br>15. Piernak S.A.<br>16. ZM Zamet S.A.<br>17. Piotrowice Sp. z o.o. | 1. Includa S.A.<br>2. Elmo Sp. z o.o.<br>3. Browar Szczecin S.A.<br>4. SEFAKO S.A.<br>5. Wronki Sp. z o.o.<br>6. Lubawa Sp. z o.o.<br>7. ZPE Warszawa S.A.<br>8. Polam Myślakowice Sp. z o.o.<br>9. Meast Gdynia S.A.<br>10. Teikom-Tezas Sp. z o.o.<br>11. Elektromontaż Warszawa Sp. z o.o.<br>12. Topo Toruń S.A.<br>13. Fabryka Lin i Drutów Drumet S.A.<br>14. ELESTER S.A. |
| PUBLIC OFFERING<br><br>INCLUDES:<br>Erbud and Wedel<br>(Active investors: USA)<br>and<br>Mostostal Export<br>(Active investor: D) | 1. Krozno S.A.<br>2. Próchnik S.A.<br>3. Erbud Kielce S.A.<br>4. Tonaj S.A.<br>5. Mable S.A. | 1. Swarzędz S.A.<br>2. Włoczan S.A.<br>3. Huta Szczyt Irene S.A.<br>4. Zakłady Prowarskie w Żywiecu S.A.<br>5. E Wedel S.A.<br>6. Zakłady Prowarskie Olkocim S.A.  | 1. Mostostal Export S.A. Warszawa   | 1. Polifab Cieszyń S.A.<br>2. Sokoborskie Zakłady Mięsne S.A.<br>3. ZPO Ventus S.A.  | 1. JELFA S.A.<br>2. Polifab Wrocław S.A.<br>3. Rolimpex S.A.<br>4. Skalexport S.A.<br>5. Stomil Dębica S.A.  |

NOTE: Polish investor: 46 companies  
 Foreign investor: 46 companies (does not include Wedel, Erbud and Mostostal Export, which have been counted as public offerings)  
 Mixed Polish-Foreign Investor: 9 companies  
 Mixed Foreign investor: 4 companies  
 Public offering: 20 companies  
 S.A.: joint stock company  
 Sp.z o.o.: limited liability company



# **PRIVATISATION THROUGH RESTRUCTURING**

**- PROGRAM DESCRIPTION -**

*October 1993*





In order to accelerate the privatisation of Polish state owned enterprises, the Ministry of Privatisation (MoP) has developed a program called Privatisation through Restructuring. This approach offers a suitable privatisation method to those small and medium-sized enterprises requiring preliminary restructuring in order to make them economically viable prior to their privatisation.

In principle, the program invites a Management Group (MG) to manage, restructure and privatise a company participating in the program. In return, the MG shall receive a management fee, an annual profit sharing and a commission upon transfer of the shares to private investors. The company will be considered to be privatised as soon as a minimum of 51% of its shares would have been transferred.

The program involves 8 stages summarised and organised as follows :

**1. Preparation of a "Business Profile"**

Business profiles are prepared in order to provide MGs with the data necessary to design a restructuring strategy. The Business profile describes the company and its activities and contain basic financial, economic and technical information.

**2. Promotion of the company to potential MGs and invitation to tender**

The MoP promotes the company in Poland and abroad through the most adapted media (press, direct contacts, mailings...). Potential MGs will, after signing a confidentiality agreement with the MoP, receive a business profile of the company. Those MGs who would wish to do so, will have the opportunity to visit the company in order to conduct an independent due diligence.

**3. Submission of tender bids by interested MGs to the Ministry of Privatisation**

The tender is public and anyone is eligible to bid. Bids - eight copies submitted in Polish in a sealed envelope bearing only the name of the company for which the bid is submitted - must be received at the Ministry of Privatisation, ul. Krucza 36, Room 141, Warsaw, by the designated closing date. Bids shall remain valid for 90 days after the closing date. The MoP reserves the right to accept or reject any bid without having to justify its decision. Moreover, the MoP is not bound to accept any bid and may accept a bid other than the highest.

The tender bid should include the following :

- A *Restructuring Plan* for the company, outlining the MG's proposal for restructuring the company. The plan should include technical, financial and social sections as well as a general approach to restructuring and privatising the company. The proposal should also include sources of financing for proposed capital investments and development programs.
- An *estimate of the company's initial value* quoted in Polish Zlotys or US Dollars. The value quoted by the MG will provide the basis for calculating the deposit and the future commission on sales of company shares.
- The *names, backgrounds, relevant experience and qualifications* of the members of the team proposed by the MG for daily management of the company, given that the duration of the management contract is 2 years.





#### 4. Selection of a MG for the company

Submitted bids will be judged on the following criteria :

- *Restructuring Plan* : It will be evaluated upon its merit and feasibility in areas such as finance, social and environmental awareness, operation and marketing. All groups presenting credible and realistic restructuring plan will be eligible to participate in the tender.
- *Qualifications of the management team* : Bids will be evaluated upon the level of qualification and relevant experience of the management team proposed by the MG.
- *Estimated initial value of the company.*

#### 5. Signing of a management contract between the MoP and the winning MG

Successful bidders will be required to contribute a financial deposit representing a percentage of the initial tendered value of the company. The deposit amount is calculated on the following scale :

| <u>Initial value of the company</u> | <u>Required financial deposit</u>   |
|-------------------------------------|---|
| 0 - 10 Bln PLZ                      | 10 % of Initial value   |
| 10 - 150 Bln PLZ                    | 1 Bln PLZ plus 4 % of the difference between initial value and 10 billion PLZ |
| 150 Bln PLZ +                       | 6.6 Bln PLZ plus 2 % of the difference between initial value and 150 Bln PLZ  |

Successful Polish bidders will enjoy a 50 % discount on the required financial deposit.

Once the financial deposit is paid, the MG will be engaged by the MoP by means of a management contract for a period of two years.

The proceeds from the financial deposit shall be used as capital to finance the restructuring. Upon payment of the financial deposit, the MG shall have the right to a percentage of company shares ("reserved shares") equal to share of the financial deposit compared to the company's initial value at the time of transfer of at least 51 % of the company shares to private investors.

#### 6. Implementation of the pre-privatisation restructuring plan

During the contract period the MG shall be responsible for managing, restructuring and privatising the company. The terms under which these activities will be carried out will be specified in the management contract between the MoP and the MG. A draft of this management contract will be made available by the MoP.

The MG shall not be responsible for damages arising out of claims for restitution by previous owners of the company's shares or assets.

In return for its services the MG shall receive :

- an agreed management fee based on the existing remuneration rates for management within the company. This compensation shall be specified in the management contract.
- a percentage of the net annual profits, equal to the percentage of the financial deposit in relation to the initial value of the company.
- a commission for sale of shares to private investors. Private investors can include, but are not limited to, the MG or company workers<sup>(1)</sup>. The commission shall be equal to 70 % of the real capital gain on the value of shares sold. The real capital gain is the value of the shares sold



(at the time of sales) minus the initial value of the shares (at the time of tender) adjusted according to the zloty/ECU exchange rate.

- The commission shall be paid upon transfer of at least 51 % of the company shares to private investors (this 51 % includes shares granted as commission, shares bought by company workers at a preferential rate, shares sold to private investors and the previous mentioned "reserved shares" resulting from the financial deposit).

#### **7. Privatisation of the company**

- The MG may request the sale of shares to private investors at any time during the management contract period. The MoP shall grant or deny the request within 30 days.
- The MG shall be responsible for the preparation of an offering memorandum for use by prospective investors.
- Share offerings can be conducted by means of tender, by an offer for sale advertised in public, as a result of negotiations entered into through public invitation, or by any combination thereof.
- Unless it has already transferred 51% or more of the shares, the MG shall conduct an offering not later than 30 days prior to the end of the two year management contract period.
- The MoP has the right to reject or accept any proposed sale of shares in any offering.

#### **8. Completion of the management contract**

- The management contract covers a period of 2 years. It could be completed earlier, upon transfer of 51 % or more of the company shares to private investors. The contract can also be extended for not more than 2 years, upon agreement of the parties involved.
- Shares remaining, after the completion of the management contract, will be the responsibility of the MoP.

#### **Miscellaneous:**

- Employees of the company shall have the right to purchase, on preferential terms, up to 20 percent of the company shares as specified by the Polish privatisation law<sup>(2)</sup>. There will be no commission granted on the sale of these shares.
- No party shall be held responsible for early termination in the event of force majeure
- No representation or guarantee is made regarding the reliability, thoroughness or accuracy of the information contained in the Business Profiles made available by the MoP.
- All information contained therein remains subject to modification by the MoP in order to comply with laws and regulations in force at the time of the negotiation and the signing of the management contract.
- Disagreement or disputes in connection with the program will be settled by arbitration.

(1) A commission on shares bought by company workers, will only be granted on those shares that are not bought on preferential terms<sup>(2)</sup>.

(2) The Polish privatisation law is expected to be modified shortly. Under the new law, workers will be entitled up to 10 % of the company shares (free of charge) and to purchase up to 10 % on a preferential basis.



1. 概況

(1) ポーランドにおいて民間部門は、93年度には、雇用の60%、GDPの50%、鋳工業生産の37%、輸出の約40%を占めており、大きな役割を果たしている。特に流通部門においては、90%が民間部門によるものとなっている。しかしながら、民間部門の大部分は新規に設立あるいは改革以前より存在していた民間企業、及び改革以前より農業部門の約80%を占めていた個人農であり、国営企業が民営化された民間企業はまだ少ない。

(2) 「ポ」においては、民営化を担当する省の名称が「所有制度変革省」となっているように、民営化は共産主義政権時代の国有財産の所有権を国民に移転するという政治的な要素が大きい。民営化の加速化が叫ばれながら、民営化計画は大幅に遅れ、特に大規模国営企業の民営化はほとんど手がつけられていないが、民営化の遅れの原因として、次の3点が指摘されている。

①民営化の出発点となる企業の再建・合理化が進まないこと。

無理に民営化しても1人立ちできなければ倒産するだけであり、うまく軌道にのる見込みがなければ民営化できない。優良企業は、最初の段階で既に大部分が民営化されたが、現在残っているのは何らかの問題を抱えている企業であり、早急な民営化は難しい。

②労働組合の反対。

国営企業においては、まだまだ労働組合の勢力が強い。組合の反対は、民営化すれば企業経営はうまくいき、結果として賃金の上昇等を期待していたにもかかわらず、実際は、合理化による雇用カット・労働強化につながる事が明らかになってきたことによるもの。

③民営化のためのコスト・時間がかかること。

株式会社化し、株式を売却するためには、企業価値の算定をしなければならないが、右に多大な時間・費用がかかることが、民営化の遅れの一因となっている。

2. 経緯

- 90年8月 国営企業民営化法、所有制度変革省（民営化省）設置法成立
- 91年1月 優良5企業のパイロット民営化（欧米のコンサルの協力大）
- 91年3月 証券取引法成立
- 91年4月 ワルシャワ証券取引所開設、5社上場
- 91年7月 大衆民営化法案下院提出（9月政府に差し戻し）
- 92年8月 大衆民営化法案及び国民投資基金設置法法案下院提出
- 93年5月 同法案成立。

### 3. 民営化の現状

90年当初、国営企業数約8500社。(内訳: 大企業500社: 売上の45%、  
中企業4000社: 売上の47%、小企業4000社: 売上の8%)

|                                  | 合計    | 93年   | 90~92年 |
|----------------------------------|-------|-------|--------|
| 民営化終了あるいは<br>民営化の過程にある企業<br>(内訳) | 4,035 | 1,443 | 2,592  |
| ①株式売却によるもの                       | 687   | 207   | 480    |
| (イ)個別企業の売却                       | 320   | 23    | 297    |
| (内、売却済み)                         | (98)  | (46)  | (52)   |
| (ロ)大衆民営化による売却                    | 367   | 184   | 183    |
| ②清算によるもの                         | 3,348 | 1,241 | 2,107  |
| (イ)国営企業法による清算                    | 1,111 | 258   | 853    |
| (ロ)民営化法による清算                     | 887   | 172   | 715    |
| (ハ)国営農場法による清算                    | 1,350 | 811   | 539    |

### 4. 民営化の方法

#### (1) 資本民営化

一般的にイメージする典型的な民営化の方法。大中企業のうち経営状況の良いものを対象に、商業化後株式を売り出す。(一般公募、外国投資家)

※ワルシャワ証券取引所には、現在32社が上場している。

#### (2) 清算

清算による売却、他社への現物出資・リース。中小企業を対象としたもの。従業員、経営者へのバイアウト・リースがほとんど(9割は従業員へのリース)である。民営化過程にある企業の8割がこの清算によるもの。

民営化法によるものと国営企業法によるものがあるが、後者は、諸税未払い企業を対象とするもので、清算により破産。又、国営農場法によるものは、国営農場の民営化に適用される。国営農場は清算して一旦農業資産庁へ資産を引き渡した後に、個別に売却していく予定になっている。

#### (3) 大衆民営化

93年5月に法案が成立し、現在実施準備中。94年には投資証明書の配布を開始する予定。経営状況の良好な600の中・大企業を対象とし、二段階(第一段階444社、第二段階200社)に分けて実施する。まず対象企業を商業化し、株式の6割を、外国のアドバイザーが中心となって運営する約20の国民投資基金に譲渡、右基金の株式に無償で交換可能な投資証明書を国民に配布する。(基金の株式は証券取引所で売買される。)投資証明書の配布は、第一段階の444社については、年金生活者・公務員に無償で、第二段階の400社については、購入を希望する成人に有償(平均給与の10%)で行われる。

個々の企業の評価算定を省くことにより、商業化にかかる時間・コストを節約できる上、国民に広く平等に国有資産を分配できるのが利点。

#### (4) その他の方法

##### ①セクトラル・アプローチによる民営化

34業種、143企業を対象に顧問団が業種毎の将来計画、最適な企業再建・民営化に対する勧告を立案する。又、外国投資家との交渉も一括して行う。商工省との調整がうまく行かず、あまり進んでいない。

##### ②再建民営化

企業の再建計画の内容により、経営管理チームと企業再建の契約を結び（経営管理チームは保証金を提供）、企業再建後、売却する。企業価値上昇分の7割が株式で経営管理チームに、3割が従業員に分配される。92年12月に発表された手法。

#### 5. 再民営化

再民営化とは、違法（無賠償で）に国有化された私企業・私不動産（46年国有化法：50人以上の企業、58年小規模国有化法：50年代の小規模企業国有化を法的に処理、等）について、元の所有者からの要求（200兆ズオチに達する）に対し、返還、補償を行うもの。実際には、民営化の進行、財政状況の配慮から共産時代の法制を追認せざるを得ず、再民営化クーポンの配布により、対処する予定。そのための再民営化法案を検討中。

## 収集資料リスト

1 オシフィエンチム化学工場パンフレット

2 オシフィエンチム化学工場に関する基礎資料” BASIC DATA”

[在ポーランド日本大使館作成資料]

3 ポーランド事情





