

Privatisation in Poland



Olga Zajęzkowska-Drożdż is a Senior Associate at Kubas Kos Gaertner

The Polish Government intends to privatise 802 State Treasury companies from various economic sectors between 2008 and 2011. For this purpose, the Ministry of Treasury has prepared the "Privatisation plan for the years 2008 – 2011", which was adopted by the Council of Ministers in April 2008 and further updated in early 2010. The privatisation plan also provides for the sale of 54 companies, viewed as strategic from the perspective of the Polish economy, that are to be privatised between 2009 and 2010, with 15 companies undergoing the process by the end of 2009 and 39 companies by the end of 2010.

The privatisation plan assumes the privatisation of State Treasury companies from various economic sectors, including the energy, chemical and plastics industry as well as chemical mines, financial institutions, hard bituminous coal mines, pharmaceutical, oil, iron and steel, defence, construction, engineering, transport, wood, food and other sectors.

The implementation of the privatisation plan required amendment of legal provisions, particularly the act of 30th August 1996 on commercialization and privatization (*Journal of Laws 2002*, No. 171, item 1397 as amend.) through the introduction of tools enabling the conduct of a more effective privatization policy, and in particular the abolition of restrictions on the sale of State Treasury shares through auctions (a possibility was introduced for the State Treasury to sell the shares of wholly state-owned companies as long as the reserve price is not lower than the share's book value – such possibility existed hitherto in cases of companies in which the State Treasury owned no more than 10% of the share capital), liberalization of provisions concerning analysis rules at the "pre-privatisation" stage (it is currently obligatory only to carry out an analysis of the company's legal situation as well as its valuation whereas the Minister of Treasury decides on the conduct of other analyses). The possibility to transfer Treasury-owned stocks or shares to local governments free of charge has also been expanded to include all companies in which the State Treasury holds shares. Also, the costs of privatization have been reduced and the duration of privatization processes has been shortened.

Pursuant to Article 1 of the Act of 30th August 1996 on commercialisation and privatisation (*Journal of Laws 2002*, No. 171, item 1397 as amend.) the commercialization and privatization of a state-owned enterprise consists in the complete transformation of a state or communal enterprise into a commercial law company. The act foresees two types of privatization, which could take the form of indirect or direct privatization.

Indirect privatisation consists in the sale of stocks or shares held by the State Treasury in companies with the reservation that commercialisation of the company must be carried out prior to the instigation of the privatisation process. This entails transformation of a state-owned enterprise into a sole-shareholder limited liability company or a sole-shareholder joint-stock company of the State Treasury. A company is formed as a result of commercialization in which the State Treasury takes up 100% of the stocks or shares until the completion of the privatization process during which the company is represented by the Minister of Treasury.

Statutory regulations ensure that the sale of such Treasury-owned stocks or shares occurs in public, whereas the provisions of the Act of 30th August 1996 on commercialisation and privatisation foresee the following modes of indirect privatization:

- 1) public announcement of offering

- 2) public tender

- 3) negotiations commenced on the basis of a public invitation

- 4) acceptance of a bid in response to a call announced on the basis of the act of 29th July 2005 on public offering and conditions on the introduction to trade of financial instruments and on public corporations (*Journal of Laws* No. 184, item 1539)

- 5) publically announced tender

- 6) sale of shares on the regulated market

A possibility has also been foreseen for the sale of shares belonging to the State Treasury by omission of the above-indicated modes if the buyer and the price are indicated in the privatisation agreement and the sale concerns the shares of companies in which the State Treasury possesses under 50% of the share capital, or the sale concerns the shares of companies in which the State Treasury possesses no more than 25% of the share capital.

In order to ensure that the sale of State Treasury stocks or shares takes place publicly, an offer on the sale of shares needs to be announced together with an invitation for the submission of bids in the tender, an invitation is made to take part in negotiations or in an auction in at least one national newspaper together as well as the *Public Information Bulletin* on the website of the Ministry of Treasury.

Direct privatisation is aimed at fast execution of the privatization process through sale, contribution of an enterprise to a company or its handover for use against a fee. The direct nature of privatization consists in the process being carried out with the omission of transformation of a state-owned enterprise into a sole-shareholder limited liability company or a sole-shareholder joint-stock company of the State Treasury. The provisions give rights to voivodes (provinces) to initiate the privatization process and carry it out upon obtainment of permission from the Minister of Treasury, after which they finalise privatization processes and conclude investor agreements. The following forms are distinguished under direct privatization:

- 1) sale of an enterprise

- 2) contribution of an enterprise to a company

- 3) fee-based handover of an enterprise for use

The Polish Ministry of Treasury conducts a policy of actively searching for investors. An internet service for investors has been set up for this purpose on the website of the Ministry of Treasury and an internet Centre of Investor Relations has been opened, thanks to which investors may obtain information on privatization processes. The privatization plan was also presented during the Economic Forum in Krynica, at a seminar held in Brussels (November 2008) and at meetings organized by the Ministry of Treasury in 2009 with representatives of Open Retirement Funds and Private Equity Funds.

Undoubtedly, the State Treasury's privatisation process is complex and requires time. Currently it is not helped either by the biggest global financial crisis since the Great Depression of 1929. Nonetheless, the Polish economy has not been as severely afflicted by it as other countries, including EU member states. Still, a noticeable side effect has been the uncertainty that has taken hold of financial institutions, which limit access to capital. Despite this, Poland was the only EU member state in 2009 that recorded positive GDP growth. Macro-

economic analyses show that Poland recorded a GDP increase of 1.7% in 2009 thus enabling the country to maintain positive economic growth. It is estimated that economic growth could reach over 3% of the GDP in 2010 and as high as 4.5% in 2011.¹

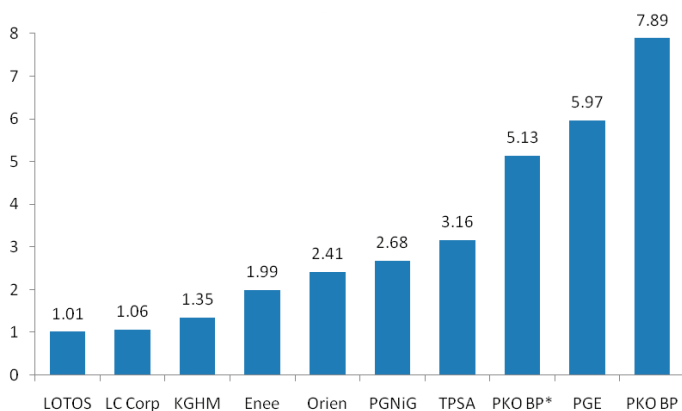
Analyses carried out by the Ministry of Treasury² reveal that revenues obtained from privatization in 2009 totalled PLN 6.97 billion gross – with the conclusion of 105 privatisation agreements, including 14 communalisation agreements. Revenues of PLN 11.53 billion were obtained from the sale of companies as part of public offerings on the stock market, whereas revenues from dividends paid to companies owned by the State Treasury amounted to PLN 7.84 billion. As such, the Ministry of Treasury received PLN 26.34 million in cash flow in 2009.

The estimated economic growth in 2010 – 2011 should positively impact on increased capitalisation of companies put up for sale, owing to a rise in stock market indices as well as the expected improvement of companies' economic performance, which will additionally contribute to increased income from privatizations.

It ensues from the above data that despite the lack of stabilisation on markets and due to economic slow-down around the world, Poland's economic policy in the area of privatisation appears just. On the other hand, disclosure to the market of the management rules of privatized companies that will no longer be under the protective umbrella of state influence could also act as a positive stimulus.

Analyses carried out by the Ministry of Treasury confirm the positive reaction of investors to such a stance of the Polish government on public finances and privatization issues. This is indicated by the high-price debuts of privatized companies on the Warsaw Stock Exchange. For example, the "Bogdanka" Lubelski Węgiel coal mine debuted on the stock exchange on 25th June 2009 reaching PLN 528 million.

The largest issues in the history of the Warsaw Stock Exchange (in PLN billion)



* issues in 2009

Source: <http://www.money.pl/gielda/wiadomosci/artykul/gpw;pge;zyskuje;13;pro;na;debiucie,202,0,554698.html>

Historic issues of shares on the Warsaw Stock Exchange clearly confirm the effectiveness of the privatization process conducted through the Warsaw Stock Exchange. This is also the path chosen by the Ministry of Treasury for a few "pearls" of Polish economy, such as PZU (which has now concluded its dispute with Eureka) and the Warsaw Stock Exchange. Both companies are expected to make spectacular debuts on a European scale.

Pursuant to the determinations of the Council of Ministers of 7th July 2009, the Minister of Treasury was obliged to speed up the conducted privatization processes. 2010 is to be a breakthrough year due to the high forecasted revenue from privatizations. It is estimated that the planned revenues from privatization will reach approx. PLN 25 billion in 2010.

In relation to the privatisation strategy being carried out by the Polish government, the Parliament of the Republic of Poland passed an act on 12th February 2010 on special powers for the Minister of Treasury and their execution in certain capital companies or capital groups conducting operations in the electricity, oil and gas fuels sectors, that shall come into force on 1st April 2010. The act, which concerns a so-called "golden veto", namely special State Treasury authorizations in companies of strategic significance for Poland, gives the Minister of Treasury special powers in capital companies or capital groups conducting operations in the electricity, oil and gas fuels sectors whose assets have been disclosed on the uniform list of buildings, installations, devices and services part of critical infrastructure mentioned in Article 5b indent 7 point 1 of the Act of 26th April 2007 on emergency management (*Journal of Laws* No. 89, item 590 as amend).

Pursuant to Article 2 of the Act, the Minister of Treasury may object to a resolution adopted by a company's management or another of its legal actions whose object is the disposal of assets part of critical infrastructure and which threatens the functioning, continuity of operations or integrity of the infrastructure.

The Minister of Treasury also has the right to object to a company board's resolution on the company's dissolution, change of purpose or discontinuation of use of one of its assets, change of the company objective, sale or lease of the company or an organized part thereof or the establishment of a limited right in property thereon, adoption of a material and financial plan, investment plan, long-term strategy plan or transfer of the company seat abroad. An objection may be raised only if the implementation of the resolution were to constitute a real threat to the functioning, continuity or integrity of the critical infrastructure.

Objections must be expressed in the form of an administrative decision and are subject to administrative appeals. It is also possible to pursue claims for compensation due to material losses suffered by companies – on the basis of the provisions of the act of 22nd November 2002 on compensation of material losses resultant from the limitation of freedom plus human and civil rights during the time of a state of emergency (*Journal of Laws* No. 233, item 1955) – as a result of issuance by the Minister of Treasury of decisions conformant with the law (hence decisions on the expression of an objection).

In the event of issuance of a decision violating the law, a possibility exists to pursue compensation claims through civil-law means (on the grounds of the act of 23rd April 1964, the Civil Code) on the basis of provisions on the liability of the State Treasury for damages.

The Act enters into force on 1st April 2010 and is the effect of determinations made with the European Commission and the expression of acceptance of the stance of the Court of Justice on the scope of a state's interference in the economic activity and decisions made in capital companies and groups, with consideration of the principle of free movement of capital. Therefore, the possibility for the State Treasury to lodge a so-called "golden veto" has been limited to situations in which the exercise of resolutions in capital companies or groups operating in electricity, oil and gas fuels sectors would constitute a real threat for the functioning and continuity of the operations of such entities. ■

For further information please contact:



Tel: +48 (12) 619 4040
www.kkg.pl

1. Miesięczny Przegląd Makroekonomiczny BreBank, February 2010 r.
2. Website of the Ministry of Treasury www.ms.gov.pl