PRIVATISATION

Introduction

Privatisation began in 1991 with enactment of the Law on Initial Privatisation of State Property. Under this law, State property was sold for investment vouchers and cash payments. A substantial number of the vouchers issued were used for the privatisation of housing. In addition, former owners of expropriated land and other real estate were allowed to restore their ownership rights.

The first round of privatisation was completed in 1995. The Law on Privatisation of State-Owned and Municipal Property of 4 July 1995 launched the second stage in the process. During this second stage, State-owned and municipal property was sold exclusively for cash and at a market price as determined through evaluation of the property. Lithuanian and foreign investors participated equally in the privatisation process.

The third stage of privatisation began from adoption of the new wording of the Law on Privatisation of State-owned and Municipal Property of 4 November 1997. This enactment introduced several substantial changes, including replacement of the role of the enterprise founder and many of responsibilities of the Privatisation Agency with the State Property Fund.

Applicable Legislation

3) Regulations of Privatisation of State-Owned and Municipal Property by Public Sale of Shares, approved by the 4 June 1998 Resolution No. 666 of the Government of the Republic of Lithuania;
4) Regulations of Privatisation of State-Owned and Municipal Property by Public Auction, approved by the 31 December 1997 Resolution No. 1503 of the Government of the Republic of Lithuania;
5) Regulations of Privatisation of State-Owned and Municipal Property by Public Tender, approved by the 31 December 1997 Resolution No. 1502 of the Government of the Republic of Lithuania;
6) Regulations of Privatisation of State-Owned and Municipal Property by Direct Negotiations, approved by the 30 January 1998 Resolution No. 113 of the Government of the Republic of Lithuania;

7) Regulations of Privatisation of State-Owned and Municipal Property by Lease with the Right to Purchase, approved by the 24 April 1998 Resolution No. 501 of the Government of the Republic of Lithuania;

8) Regulations of Transfer of Control in Private Companies Controlled by State (Municipality), approved by the 5 May 1998 Resolution No. 555 of the Government of the Republic of Lithuania;

9) Regulations of Privatisation of Shares of Enterprises that are Important Infrastructural Entities or Entities Holding a Dominant Position in Certain Branches of the Economy, approved by the 14 April 1998 Resolution No. 443 of the Government of the Republic of Lithuania;

10) Regulations of Preparation of Objects Subject to Privatisation, approved by the 18 December 1997 Resolution No. 1427 of the Government of the Republic of Lithuania.

Regulatory Framework

Privatisation Commission
The Privatisation Commission is a State institution with 13 members, charged with the supervision of the privatisation process and accountable to the Seimas (Parliament). In particular, the Privatisation Commission has the right to:

1) approve or disapprove proposed privatisation programs, proposed privatisation transactions or a proposed list of strategic investors;

2) suspend implementation of privatisation programs and/or deem them to be completed;

3) approve or disapprove the sale of blocks of shares owned by the State or municipality transferred under the contract to the State Enterprise State Property Fund for privatisation, in certain cases.

State Property Fund
According to Article 24 of the Privatisation Law, the Lithuanian State Privatisation Agency, which had operated under the 4 July 1995 Law on Privatisation of State–Owned and Municipal Property, was reorganised into a subdivision of a new State institution, the State Property Fund (www.vtf.lt). The State Property Fund (“the Property Fund”) acts as the owner of State property to be privatised. Under separate arrangements with the municipalities, the Property Fund may also represent individual municipalities in the privatization of municipal property.
Responsibilities of the Property Fund include the following: drafting and submitting to the Government for approval of lists of assets to be privatised; determining of methods and conditions of privatisation; managing of property valuation; restructuring of State controlled enterprises to increase their sale price; identifying of investors; signing privatisation transactions on behalf of the Government and supervising their performance etc.

Municipal property privatisation commissions and municipal property funds (or municipal administrations, if such funds are not established) perform alike functions related to privatisation of municipal property.

**Methods of Privatisation**

The Privatisation Law provides for the following six methods of privatisation: (1) public sale of shares; (2) public auction; (3) public tender; (4) direct negotiations; (5) transfer of control of State or municipally controlled enterprises; and (6) lease with a right to purchase. Certain combinations of these methods may also be applied.

**Public Sale of Shares**
Public sale of shares is a method for selling shares of public companies owned by the State or municipality in the Lithuanian and/or foreign stock markets or outside the stock exchanges under direct transactions. If the shares of public companies are privatised by selling them on the National Stock Exchange, then the rules regulating the activity of the National Stock Exchange are applied. The shares subject to privatisation may also be replaced by GDRs.

**Public Auction**
The public auction, as a method of privatisation, is used with a view of obtaining the highest sale price for the privatised property. However, other privatisation conditions established in the privatization programs of those assets must also be fulfilled. Only share of public and private companies or long-term material assets may be sold by public auction. The buyer is the bidder who has offered the highest price, with no limitation placed on the number of potential bidders.

**Public Tender**
A public tender is a method used for sale of one or several properties to a purchaser who, in response to a tender, has provided the best written price and investment proposal, including a discussion of the investments in the privatised company’s assets to be financed through the increase of its authorised capital. The conditions on retaining the minimum number of
employees of the privatised company are usually also included in the tender. Negotiations to improve the offered conditions may be held with the potential purchaser who has presented the best proposal or with several potential purchasers whose proposals do not differ by more than 15%.

The Privatisation Law also provides that when privatising State or municipally controlled enterprises by way of a public tender, the employees of such enterprises may be given the opportunity to purchase up to 5% of the State or municipally owned shares at a nominal price.

**Direct Negotiations**

Direct negotiations is a method used for the privatisation of properties with specific or unique features that may limit the number of potential interested purchasers (e.g. when certain qualifications are expected from the potential purchaser or when the potential purchaser is already somehow related to the assets being privatised).

Direct negotiations may be carried out with potential purchasers that are known as strategic investors. Such investors are chosen on the basis of special qualification criteria that are usually applied in cases of privatisation of the companies that are strategically important to Lithuania. The Privatisation Commission and the Government approve the list of such potential strategic investors, together with the privatisation program for that specific object.

As a result of direct negotiations with potential purchasers, one or several properties are sold to the investor who has presented the best written price and investment proposal, including a discussion of the investments in the privatised company’s assets to be financed through the increase of its authorised capital. The conditions on retaining the minimum number of employees of the privatised company are usually also included in the scope of direct negotiations.

As in the case of privatisation by public tender, when privatising a State or municipally controlled enterprise through direct negotiations, the employees of such an enterprise may be given the opportunity to purchase up to 5% of the State or municipally owned shares at a nominal price.

**Transfer of Control in State or Municipally Controlled Enterprises**

This method is applied for the privatisation of State or municipally controlled enterprises only if the shares of such an enterprise were not successfully privatised on previous occasions by applying other privatisation methods prescribed in the privatisation program, or if more
than 50% of the State or municipally owned shares in such an enterprise have already been privatised by applying any other privatisation methods.

The method of privatising through the transfer of control in a State or municipally controlled enterprise involves the issuance of convertible bonds or new shares through additional capital contributions, which may result in decrease of the State or municipality's shares below the thresholds of 2/3, 1/2 or 1/3 of total votes at the general meeting of shareholders. Transfer of control is executed through the assignment to the potential investor of the pre-emptive rights of the State or municipality to acquire the newly issued securities of the privatised company.

**Lease with Option to Purchase**

Privatisation through lease with an option to purchase is a public privatisation method under which a potential purchaser, upon agreeing to the transaction and taking over the property, acquires full rights of possession and use. The lessee may exercise its ownership option by paying the full purchase price and fulfilling any other conditions established in the lease contract.

Privatisation through lease with an option to purchase is applied to the privatisation of:

1) long-term material assets, if a previous attempt to privatise these assets by a public auction has failed. The main criterion used in evaluating and accepting the proposal to privatise the assets is the amount of the rent proposed, discounted on the day the tender is held; and

2) State or municipally owned buildings and premises, if the entities using such assets have invested into significant improvement of such assets with the consent of the owner (the State or municipalities). The main criterion used in evaluating and accepting the proposal to privatise the assets is the amount of the rent proposed, discounted on the day the agreement for lease with the option to purchase is signed.

The maximum term of the lease, which cannot exceed 10 years, is established in the privatisation program. The annual rental payments may not be less than the market value of the property divided by the lease term in years.

**Combination of Privatisation Methods**

It is important to note that the use of a combination of privatisation methods is applied to the privatisation of State controlled enterprises that are deemed to be important entities in the country's overall infrastructure or entities holding a dominant position in certain branches of the economy.
According to the Regulations on Privatisation of Shares of Enterprises that are Important Infrastructural Entities or Entities Holding a Dominant Position in Certain Branches of the Economy, an enterprise is considered an important entity in the country's infrastructure and is privatised in accordance with the requirements of the aforementioned regulations when it meets at least one of the following criteria:

1) its authorised capital is over LTL 50 million (approximately EUR 14.5 million);
2) the enterprise holds a dominant position in the market of its main activities;
3) the enterprise is an infrastructure object; or
4) the Government of the Republic of Lithuania has decided to privatise the enterprise under the aforementioned regulations. In addition, the said regulations themselves list certain enterprises that are to be privatised according to the rules established therein.

Depending upon the established privatisation objectives, qualifications applicable to potential investors and the specifics of the enterprise under privatisation, the following combinations of privatisation methods may be used:

1) public tender with transfer of control in a State or municipally controlled enterprise, either at the time the privatisation transaction is concluded or at a later date;
2) direct negotiations with transfer of control in a State or municipally controlled enterprise, either at the time the privatisation transaction is concluded or at a later date;
3) public tender and public sale of shares;
4) direct negotiations and public sale of shares; or
5) other combinations of privatisation methods.

The use of the public sale of shares in the combinations laid out in items 3 and 4 above is envisaged for situations in which it is desirable to publicly sell a portion of the shares of the enterprise or if a strategic investor has not acquired or cannot acquire all the shares put forward due to limitations on share acquisition. In these cases, the remaining number of shares may be sold by public sale on the stock exchange after the conclusion of the privatisation transaction with the strategic investor.

In general, each of the above mentioned combinations involves either a public tender or direct negotiations. Therefore, the dismissed regulations distinguish privatisation processes depending on which of these two methods is involved: privatisation when a public tender dominates; or privatisation when direct negotiations are involved. It is important to note that such process of privatisation of the important infrastructure or dominant enterprises always includes a pre-selection of bidders (strategic investors) and presenting of the initial and final tender proposals.
Preparation of Property for Privatisation

Preparation of assets for privatisation consists of the following:

1) collection of information about the property and including it in the list of objects to be privatised;
2) valuation of the property in order to set the initial price;
3) preparation of privatisation programs for individual properties included in the privatisation list (the privatisation program is a document that contains the name of the property and the method of its privatisation, specific terms and conditions for the separate stages of the privatisation process and a short description of the characteristics of the property and conditions of its privatisation); and
4) publishing in the Privatisation Information Bulletin of information about the property to be privatised.

Payment for Privatised Property

Privatisation payments due from a purchaser who pays in Lithuania are accepted only in the currency of the Republic of Lithuania (the Litas). Payment from a purchaser registered and paying from abroad may be made in Litas and/or a foreign currency, as stipulated in the privatisation contract.

Payment terms and conditions are set forth in the privatisation contract. Payment may be made in instalments, but the last payment may not be made later than 5 years after execution of the contract.

Restrictions on Activities of Enterprises under Privatisation

The Privatisation Law provides that during the period from the publication of the privatisation program for a certain property until signing of a sale-purchase contract, a State or municipally controlled enterprise may not, without a written consent of the respective Property Fund, conclude any of the following transactions:

1) lend, mortgage, guarantee, lease, sell, purchase or otherwise transfer long-term material assets, purchase securities of other companies, issue bonds, increase or decrease its authorised capital, if the sum of the transaction or several transactions
If the above mentioned transactions are concluded without a consent of the Property Fund, they are void, except if they are concluded with third persons who did not and could not know of the restrictions established by the Privatisation Law. If the above mentioned transactions are concluded with the consent of the Property Fund, the Property Fund will inform potential purchasers of such transactions by:

1) publishing the information in the Privatisation Information Bulletin; and/or
2) notifying each of the potential purchasers who have applied for information concerning the privatisation of the State or municipally controlled enterprise.

**Points of Interest**

*Generally, the Privatisation Law and the accompanying regulations are a sufficient legal basis for the privatisation of small and medium enterprises. However, they do not allow the flexibility that may be essential when privatising major enterprises. Therefore, certain special rules or exceptions from the existing ones often need to be approved when the major enterprises are undergoing privatisation.*