



Ministry of Treasury
of the Republic of Poland

PRIVATISATION IN POLAND
(nature, models, modes, legal basis)

September 2013



Basic legislation related to the regulation of privatisation processes:

- Act of 30 August 1996 on Commercialisation and Privatisation
- Act of 25 September 1981 on State-owned Enterprises
- Act of 8 August 1996 on the Principles of Implementation of Treasury Powers
- Act of 29 July 2005 on Public Offering, Conditions for Introducing Financial Instruments to an Organised Trading System, and on Public Companies
- Act of 29 July 2005 on Trading in Financial Instruments
- Regulation of the Council of Ministers of 30 May 2011 on detailed procedure for selling State Treasury shares
- Regulation of the Council of Ministers of 30 May 2011 on the company analysis carried out before the shares held by the Treasury are offered for sale
- Commercial Companies Code



Current binding documents which include guidelines and determine the scope and areas of privatisation:

- **Privatisation plan for the years 2012 – 2013** - document developed by the Ministry of Treasury, adopted by the Council of Ministers on 27 March 2012, contains a list of a total of 300 entities to be privatised in most sectors of the economy
- **Directions for Treasury assets privatisation** - annually developed document presenting the main intentions of privatisation in a given year, revenues from privatisation and income from dividends (Annex to the Budget Act)
- **government sector programs**



Privatisation objectives are multidimensional and multifaceted

- ✓ **improvement of management effectiveness in business entities**
- ✓ **reduction of public sector involvement in the economy - development of effective and flexible private sector**
- ✓ **increase of possibilities for companies to raise capital using capital market instruments, capital market development**
- ✓ **increase of market competitiveness**
- ✓ **assurance of state budget revenues and provision of funds for separate earmarked funds**
- ✓ **creation of an atmosphere of encouragement, as well as conditions for the development of employee share ownership plan**
- ✓ **attraction of new investment, support of new ventures**



Privatisation

Taking up shares in the increased initial capital of companies wholly-owned by the State Treasury established as a result of commercialisation by entities other than the State Treasury or other state legal persons

**Selling shares held by the State Treasury in companies
(indirect privatisation)**

**Disposing of all tangible and intangible assets of a state-owned enterprise or a company established as a result of commercialisation
(direct privatisation)**



Types of privatisation



Indirect privatisation

involves sale of shares held by the Treasury

Assumes **earlier commercialisation**, i.e. the transformation of a state-owned enterprise into a company wholly owned by the Treasury (sole shareholder)

Direct privatisation

involves disposal of all assets of a state-owned enterprise

The direct nature of the privatisation results from implementation of the process **without the commercialisation stage**



Commercialisation of state-owned enterprises

Commercialisation involves state-owned enterprises, with the exception of enterprises which are:

- put into liquidation and/or bankruptcy
- implementing final court decision to divide or combine state-owned enterprises
- undergoing composition proceedings or banking settlement proceedings (until validation of the composition or settlement)
- managed under a management agreement
- operating under Acts other than the Act on State-owned Enterprises
- in relation to which the competent authorities have requested direct privatisation (until consideration of the proposal)
- in relation to which an order has been issued for the direct privatisation
- performing economic activity in the field of international maritime transport as of 1 January 2006

Commercialisation is performed by the minister competent for the State Treasury

- on the motion of the founding body
- on the motion of the director of state-owned enterprise and the workers' council
- on his own initiative

Commercialisation (2)



- in result of commercialisation, a **company wholly owned by the Treasury** (joint stock or limited liability company) is established
- the company established in result of commercialisation is subject to the provisions of the Commercial Companies Code
- employees of the commercialised state-owned enterprise become employees of the company
- closing balance of the state-owned enterprise becomes the opening balance of the company
- minister competent for the State Treasury draws a **commercialisation act** of the state-owned enterprise which establishes: articles of incorporation, the amount of share capital, names of office holders for the first term, person authorized to submit request for registration of the company in the Register of Entrepreneurs
- **commercialisation date** is the first day of the month after the company was entered to the Register of Entrepreneurs
- in a joint stock company established in result of commercialisation, the **Supervisory Board**
- in a limited liability company established in result of commercialisation, there is no obligation to appoint a supervisory board – the right of control is then executed by a **partner** or his **proxy**

Indirect privatisation - modes



1. publicly announced offer
2. public tender
3. negotiations undertaken on the basis of a public invitation
4. acceptance of an offer in response to a call
5. publicly announced auction
6. sale of shares in organised trading
7. sale pursuant to a public offering of shares covered by prospectus or information memorandum prepared in connection with this offer or the admission of such shares to trading on regulated market
8. stabilisation activity pursuant to conditions specified in the Commission Regulation
9. sale of shares outside organised trading with the use of system matching purchase and sale offers

The Council of Ministers may agree to a mode other than those mentioned above



Selection of the disposal mode of shares held by the Treasury is made by the minister competent for the State Treasury

Main criteria for mode selection

- size; economic and financial standing of the entity
- situation on the financial market
- significance of the entity to the national economy
- optimisation of cost and duration of privatisation processes
- adjustment to the investment needs
- recommendation of privatisation advisor



- **publicly announced auction**
- **public tender**
- **negotiations undertaken on the basis of a public invitation**

Publicly announced auction



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- ✓ Following publication of auction announcement, potential investors **receive information on auction requirements and information concerning the company**
- ✓ Potential investors **submit written applications to participate in the auction, along with confirmation of bid security payment** (from 1% up to 10% of the asking price)
- ✓ During the auction, **the admitted entities report the minimum bid increments**. After calling the highest bid three times, the chairman announces the auction participant who bid highest price
- ✓ **The auction is closed upon signing the share purchase agreement**



- ✓ Following publication of tender announcement, potential investors **sign a confidentiality agreement and receive information on the tender requirements and information concerning the company** (release of memorandum)
- ✓ Potential investors **submit written offers, along with confirmation of bid security payment** (from 1% up to 10% of the minimum price)
- ✓ A Commission **appointed by the Minister of Treasury in the open part of the procedure** opens bids, and then in the closed part – evaluates the offers and selects the most favourable one.
- ✓ **Conclusion of agreement**

Negotiations undertaken on the basis of public invitation



- ✓ Potential investors are invited to negotiate on the basis of public invitation
- ✓ **After signing of a confidentiality agreement**, prospective investors receive the information memorandum on the company (including confidential information on the legal status, as well as financial and economic standing of the company)
- ✓ **Bidders submit written replies** to the invitation to negotiations (initial offer)
- ✓ After an initial evaluation of offers, **the entities admitted to negotiations gain the right to examine the documents of the company and of its enterprise** (the conditions for admission to such an examination and its date are defined by the seller)
- ✓ **Conducting negotiations.** After their completion, prospective investors submit **binding terms and conditions for the sale**
- ✓ **Conclusion of sale agreement with the bidder who has submitted the most favourable bid**, in particular in terms of the price for shares

Indirect privatisation - provision of shares



- The Treasury may dispose of up to **85%** of state-owned shares
- Entitled employees of commercialised state-owned enterprises and companies established in result of commercialisation may acquire free of charge up to **15%** of shares held by the Treasury

Persons entitled to acquire shares:

1. individuals who were employees of the commercialised state-owned enterprise on the date when it was struck from the Register of Entrepreneurs or on the date of when the agreement was concluded to dispose of the enterprise by way of its contribution to the company
2. individuals who were party to a management agreement on the date when the commercialised state-owned enterprise was struck from the Register of Entrepreneurs or on the date of when the agreement was concluded to dispose of the enterprise by way of its contribution to the company
3. employees with at least a 10-year work experience in the commercialised state-owned enterprise or in a company that was privatised by being contributed to the company
4. individuals who, having worked 10 years in the state-owned enterprise subjected to privatisation, have been taken over by other work enterprise
5. farmers or fishermen - individuals engaged in farming or fishing



- 1. sale of an enterprise**
- 2. contribution of an enterprise to a company**
- 3. transferring an enterprise for use against payment**

Direct privatisation allows to make quick ownership changes in small and medium-sized state-owned enterprises

Both individuals or legal persons may participate in the privatisation process

Direct privatisation is carried out by the founder body of state-owned enterprises on behalf of the Treasury, with the consent of the Minister of Treasury



Privatisation revenues in years 2006 - 2012

Year	Total privatisation revenues	Direct privatisation	%
2006	621,9	350,4	56,34%
2007	1 947,1	219,5	11,27%
2008	2 371,7	160,4	6,76%
2009	6 592,3	100,2	1,52%
2010	22 037,1	70,7	0,32%
2011	13 058,8	54,0	0,41%
2012	9 158,2	70,7	0,77%
Total	55 787,1	1 026,0	1,84%



Number of companies privatised in years 2006-2012

Year	Total number	Direct privatisation	%
2006	84	24	28,57%
2007	112	13	11,61%
2008	113	16	14,16%
2009	106	5	4,72%
2010	168	5	2,98%
2011	135	1	0,74%
2012	95	1	1,05%
Total	813	65	8,00%



Privatisation revenues in years 2006 - 2012

Year	Privatisation revenues	WSE privatisatin	%
2006	621,9	0,0	0,00%
2007	1 947,1	0,0	0,00%
2008	2 371,7	1,1	0,04%
2009	6 592,3	4 065,7	61,67%
2010	22 037,1	16 851,2	76,47%
2011	13 058,8	10 191,4	78,04%
2012	9 158,2	7 193,2	78,54%
Total	55 787,1	38 302,6	68,66%



**Bydgoskie Zakłady Przemysłu
Gumowego STOMIL S.A.
Bydgoszcz**

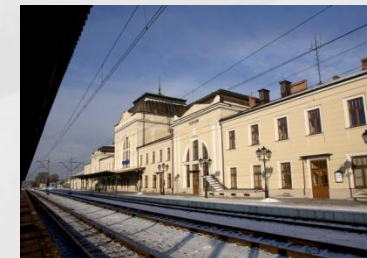


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BZPG "STOMIL" is a company with over 90-years of experience in the production of rubber products. It offers a wide range of products targeted primarily to consumers of industrial goods. These are high-pressure hydraulic hoses and hydraulic cables, industrial hoses, rubber discs and linings, profile cords (sealing), rubber compounds, and other moulded rubber products forming the so-called wide-ranging group of technical and rubber articles. The manufactured products are used in many sectors including mining (mainly coal), construction, agriculture and engineering. Products of BZPG "STOMIL" are characterized by high quality allowing to gain wide recognition, and an established position on the domestic and foreign markets. This is confirmed by the developed brand, trade mark recognition, wide range of products, enabling effective competition on the market, and highly specialized technological staff.

Performance in thousand PLN	2010	2011	2012
Sales revenue	56 034.4	62 335.8	57 774,8
EBITDA	-137.1	3 384.6	1 820.1
Net result	-1 543.3	1 246.5	-1 314.4



The Company has more than 60 years of experience in the execution of a full range of construction and installation works at home and abroad, and has at its disposal a highly qualified team of employees.

At present, the Company provides construction and installation, transport and equipment, fair and exhibition as well as hotel and catering services. The construction and installation services provided mainly in the general construction play the dominant role in generating revenues for the Company, constituting 92% of the total turnover in 2012. The Company operates in southern Poland. The Company has a branch in Frankfurt am Main which carries out works in Germany. In 2012 foreign sales reached 12% of the total turnover.

The Company forms as the dominant entity a capital group together with TBS “Krak-System” S.A., which operates in the scope of public construction and also executes development projects in the area of Krakow.

Performance in thousand PLN

	2010	2011	2012
Sales revenue	153 865.1	221 330.9	111 443.7
EBITDA	6 681.3	6 377.0	5 072.8
Net result	2 036.1	2 597.8	1 577.1



Centrum Produkcijne Pneumatyki PREMA S.A. Kielce



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Centrum Produkcijne Pneumatyki "PREMA" in Kielce is Poland's biggest manufacturer of power and steering pneumatics, used in mechanics and automation of production processes in many industry branches, such as the power, metallurgical, railway, and sugar industries, as well as in the production of machinery and equipment for the food, processing and packaging industries. The Company's offer includes pneumatic actuators, spool valves, gate valves, hydraulic cylinders, Rodless actuators, pneumatic systems, automate processes and machines, installation elements for compressed air, valves controlling air flow rate, assembly posts, customer-made special products, fasteners and accessories for pneumatics. The company also provide services related to productions automation and build of special machines.

Performance in thousand PLN

	2010	2011	2012
Sales revenue	22 269.7	22 482.0	21 705.4
EBITDA	2 419.4	1 400.0	898.7
Net result	1 588.5	741.0	123.4



It is the only EU manufacturer of two-stroke marine diesel engines. These engines, manufactured under license of MAN and Wärtsilä, may be also used in stationary power plants.

HCP also manufactures radial air blowers of high-power and it has the necessary equipment for precision machining of large steel structures.

The Company is a leader of consortia, through which it acquired innovative technologies for energy and environmental protection, i.e. the cogeneration systems for biogas, gas-fired power plants, municipal waste incineration plants of different capacity, wind turbines, autothermal carbonification of all kinds of biomass, installations for chemical gas production in the technology of pyrolysis.

The HCP Group comprises 4 subsidiaries with 100% of HCP's share, namely Energocentrum (sale of electricity and electrical services), Service (handling high-powered internal combustion engines), Infocentrum (IT and telecommunications services), and Centrum Badawczo-Rozwojowe (accredited research laboratory).

Performance in thousand PLN

	2010	2011	2012
Sales revenue	108 109.3	82 913.9	64 912.7
EBITDA	-53 568.6	-17 181.4	-24 879.2
Net result	-23 177.5	1 298.4	-18 799.8



Tarchomin Polfa SA is a pharmaceutical company with a long tradition, strong brand and a stable market position in Poland and abroad. It holds patents on its own original products, it also has the technology and potential to allow for the production of biotech drugs, such as recombinant human insulin preparations. The Company is a leader in the field of infection preventive drugs. It enjoys an established market position in the group of insulin, psychotropic drugs and dermatological preparations. In total, the Company offers over 100 medicinal products for human use.

Polfa Tarchomin SA actively markets its products on the pharmaceutical market in Poland and on foreign markets in more than 20 countries, such as Russia, Lithuania, Bulgaria, Czech Republic, Slovakia and Hungary.

Performance in thousand PLN

	2010	2011	2012
Sales revenue	214 947.5	204 535.2	214 777.2
EBITDA	4 173.7	24 393.1	14 657.8
Net result	-17 414.8	3 554.7	-5 836.7



Fabryka Przewodów Energetycznych S.A. Będzin



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The Company is an experienced and respected (founded in 1928) manufacturer of copper and aluminium wire - both bare and insulated. Its products are used in the rail, energy and automotive industries in Poland and abroad, e.g. in the Czech Republic, Slovenia, Slovakia, Estonia, Latvia, Lithuania, Bulgaria, Romania, Great Britain and Ireland. High quality of products and services is confirmed by certificates, such as EN ISO 9001:2008 awarded by TÜV NORD CERT GmbH, certificates of eligibility, i.e. NTK Certificate (Science and Technology Centre) and certificates of the Railway Institute.

Rich machinery park (including drawing machines for aluminium, copper and their alloys, chain drawing machines for rods, tubular stranding and planetary stranding machines, cable twisting machines for aluminium and copper, Conform type line for copper wires and profiles, line for isolating flat wires, stoves for heat treatment of copper and aluminium), as well as qualified staff allow the Company to produce high-quality products, both in standard sizes and custom-made. With its own tool-room, the Company is able to manufacture any tools needed for production, thus reducing delivery times.

Performance in thousand PLN

	2010	2011	2012
Sales revenue	79 269.9	96 136.9	87 875.6
EBITDA	2 826.0	3 827.3	2 995.6
Net result	901.9	916.2	13.0



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