

More favourable rules for privatisation in Latvia

The Latvian Parliament has recently passed several laws regarding the privatisation process going forward. The package of documents consists of more than ten laws and the Cabinet of Ministers' regulations, including the framework law on completion of the privatisation of state and municipal property and use of privatisation vouchers (the 'Privatisation Act'). The other statutory instruments mainly affect laws regarding land reform in cities and rural areas and the alienation of state and municipal property, as well as establishing the privatisation price. A few more regulations will follow to clarify the main laws.

The Privatisation Act was passed on 16 June 2005, followed by the adoption of several other statutory instruments on 22 and 30 June 2005. The new rules will take effect from 1 September 2005. It is important to stress that privatisation provides an opportunity to acquire state and municipal property below the market price.

The basic principle in applying the old and new rules is that the old rules will be applied only so far as the new ones do not provide otherwise. Although the main principles and substantive provisions remain unchanged, the new rules are crucial for two main reasons. First, strict deadlines are set; and second, the new rules are meant to solve current uncertainties regarding opportunities, conditions and timetables for the privatisation of state and municipal land.

The new amendments cover the full spectrum of privatisation issues, from applications for privatisation and the validity of privatisation vouchers, to limitations on leases of state and municipal land.

As mentioned above, the new rules mostly cover procedural questions, establishing clear procedures and setting reasonable terms for completion of the privatisation process. The starting point is an application for the privatisation of a particular state or municipal property, which must be submitted by 31 August 2006 (the 'Completion Date') to the supervisory authority: either a municipality or the Privatisation Agency. It should be noted that still any person is entitled to initiate a privatisation, but the pre-emptive right, if applicable, must be observed. The major benefit of a privatisation is the option to acquire state or municipal property for approximately 2/3 of the market price, to be established by the State Land Service for privatisation purposes. Moreover, 40 to 80 per cent of that price can be paid in privatisation vouchers, which currently can be purchased below their nominal value. It is important to stress that any application submitted after the Completion Date will not qualify for a privatisation. Only an alienation will be possible. The difference lies in the purchase price: alienation after the Completion Date is only for the market price.

From now on all applications should be entered in the Privatisation Register, the information from which will be publicly available. The Cabinet of Ministers' regulations will list the details to be registered in the Privatisation Register. A decision on privatisation must be adopted within four months from the date of application. Authorities can refuse to privatise a particular piece of real estate only if it is necessary for the performance of state or municipal functions. To avoid situations with lasting legal uncertainty, the Privatisation Act prescribes that any decision of a

privatisation authority is regarded as an administrative instrument, which can be challenged in the courts.

Completely new rules are established for leases of vacant state and municipal land (i.e. without registered buildings). If such land plots are not privatised, they can be leased with or without building rights. However, in the case of a lease with building rights, the lease period is limited to 12 years. Until now such lease agreements have been concluded for up to 50 years and on easy terms. Going forward, the rent range will be defined by the Cabinet of Ministers' regulations. It is unclear whether those limitations will also apply to possible novation agreements, which are commonly used for assigning lease rights partly or fully to third parties.

The transitional provisions of the Privatisation Act are also of major importance, especially regarding current lease agreements for state and municipal land. There is a new option for the lessee to apply for privatisation of land covered by lease agreements concluded before 16 June 2005 which grant the lessee a right to build and register buildings as his own property. However, one essential criteria must be met: no later than by 1 September 2007 the lessee's title to buildings (structures) located on the land plot must be registered at the Land Registry. Considering that under Latvian law foundations of buildings can also be registered at the Land Registry, it is not excluded that foundations may qualify as structures built by 1 September 2007 within the meaning of the Privatisation Act.

The purpose of the new rules is to speed up the privatisation process in Latvia, which is expected to be completed by 31 December 2009. The new rules are designed to put an end to the lengthy and complicated process of privatisation, and to help provide a safe environment for secure investments.

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