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***Bulgaria Food Industry  
Privatization  
Phase II Analysis -  
Final Report***

Delivery Order No. 21  
Bulgaria Food Industry

Project No. 180-0014  
Contract No. EUR-0014-I-00-1056-00  
Eastern European Enterprise Restructuring  
and Privatization Project

U.S. Agency for International Development  
EUR/RME

June 30, 1993

**Bulgaria Food  
Privatization**

**Phase II  
Analysis**

Prepared for the U.S. Agency for International Development under contract number  
EUR-0014-I-00-1056-00 under subcontract to Deloitte & Touche Tohmatsu

May 1993



7250 Woodmont Avenue, Suite 200, Bethesda, Maryland 20814

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July 7, 1993

Gary Maher  
EUR/RME  
U.S. Agency for International Development  
320 21st Street, N.W., Room 4725  
Washington, DC 20523

**Re: Contract No. EUR-0014-I-00-1056-00, Deliverables for  
Delivery Order No. 21, Bulgaria Food Industry**

Dear Mr. Maher:

In accordance with Article IV of the referenced delivery order, enclosed please find four copies of the following deliverable reports:

- Phase I Report
- Phase II Analysis
- Selvikonserv: Information Memorandum
- Storco Pleven: Information Memorandum

These deliverables were prepared by the Development Alternatives team working in Bulgaria as a subcontractor to Deloitte & Touche under the Eastern European Enterprise Restructuring IQC. If you have any questions concerning this deliverable, please call Lynne Damon at (202) 879-5386. Thank you.

Sincerely,

Kathleen J. Machen  
Operations Manager

Enclosure

# **Engineering Examination of the Selvikonserv Plant**

by

**Christopher Marrison**

February 1993

Prepared for

**Development Alternatives, Inc.  
Bethesda, Maryland 20814**

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## SUMMARY

The plant infrastructure is generally sound. The jam line is in good condition and should serve for many years. The green bean line is basic, but with cheap labor it can be kept working for up to 10 more years. The other lines are coming to the end of their useful lives but can be used for a few more years.

## INTRODUCTION

This report examines the operations and equipment of the Selvikonserv food processing plant from an engineering perspective. The report has two purposes: to allow financial decisions to be made concerning the future of the plant and to give a comprehensive description of the establishment as the basis for future engineering scrutiny.

The report first describes the layout of the site and lists the production lines. It then describes the site's infrastructure and the engineering organization. The bulk of the text details each production line, describing its function, source, age, condition, expected life, and future options. Most of this information was found from interviews with the chief engineer, Ms. Totka Boeva.

## DESCRIPTION OF SITE LAYOUT

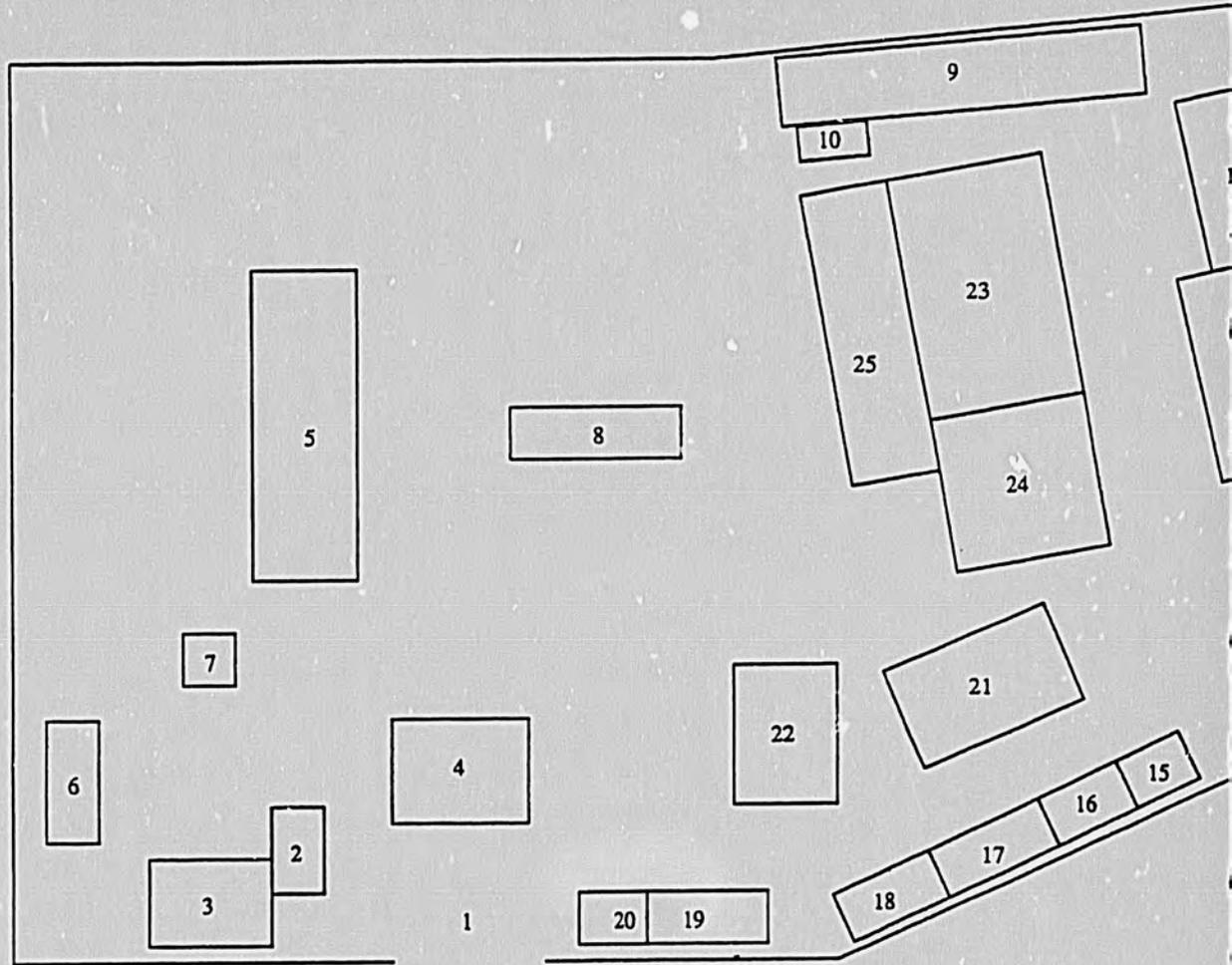
Figure 1 shows a map of the site. Most of the buildings were constructed around 1957. They appear to need minor renovation but are structurally sound. The building housing the jam line was built in 1989 and is in excellent condition. The storeroom/hotel was built in the last five years and shows a few signs of wear and tear. One of the two storerooms is unheated and relies on the heating in the stores on each side of it. Presently these stores hold 1,100 tons of stock, worth 13 million leva. This winter the temperature dropped so low that some (1.15%) of the stock was damaged. This had never happened before. Four separate production lines include the jam line, the green bean line, the plum concentration/tomato puree line, and the cucumber/mixed vegetable/compote line.

The site has its own steam production, burning fuel oil in two boilers. The boilers and associated control and pumping equipment were replaced in 1990. The steam plant seems to be well maintained and is expected to last for 20 more years. The major user of steam is the plum concentrator. The jam line uses very little steam.

## ENGINEERING ORGANIZATION

Selvikonserv has about 160 employees. Of these, 12 are mechanical technicians and 11 are electrical technicians. Normally the technicians have spent 3 years in college before coming to the plant, where they are also trained on the job. The technicians carry out major repairs and equipment building projects and generally seem to be very competent. One professional engineer is in charge of the mechanics, and one is in charge of the electricians. This level of technical staffing is not too excessive.

FIGURE 1  
LAYOUT OF THE SELVIKONSERV



**Key to Layout of Selvikonserv Site**

1	Entrance	13	Storage (Heated)
2	Administration Office	14	Workshop
3	Mess Hall	15	Old Juice Concentration Machinery
4	Weigh Station	16	Laundry
5	Hotel and Storage Building	17	Carpenters
6	Equipment Cleaning Station	18	Garage
7	Fuel Station	19	Storage
8	Glass Pot Store	20	Guard House
9	Jam Line	21	Steam Boilers
10	Glass Pot Cleaning	22	Oil Storage Tanks
11	Storage (Heated)	23	Vegetable and Compote Lines
12	Storage (Unheated)	24	Plum Concentration Line
		25	Raw Material Store

given the great extent of repair and fabrication work that is carried out on the Selvikonserv site. This well-trained group may be a significant asset for the plant.

A total labor force of 160 people does seem excessive and, with Western levels of pay and efficiency, it could be justified only if all the lines were working at full capacity. This is rarely the case, as workers generally switch from one line to another. For example, presently on the jam line the workers can spend a week producing jars of jam and then the line will be shut down. Then the same workers will spend a week putting labels on the jars.

### THE JAM LINE

The jam line was bought in 1991 and is housed in a building constructed in 1989. The conveyor belts, inspection lines, and washing lines were made on the Selvikonserv site. The bottle conveyor belts are also Bulgarian. The fruit bins, pectin tank, sugar tank, citric acid tank, boiling pots, and control machinery were made by Terlet of Holland. The filling equipment and twist-off closing equipment are Italian. The equipment for the Bulgarian-style crimped closing tops is Bulgarian. The continuous sterilizer and dryer was built at Selvikonserv from an Italian design. The labeling and packaging equipment was bought from Italy.

The line is well built and in good condition, showing only the first signs of wear and tear. I expect the line to function well for the next 8-10 years, thereafter requiring an increasing amount of maintenance and becoming prohibitively difficult to maintain 12-16 years from now.

No significant investment is required to maintain the current capacity, but there are two possible areas for improvement. The current labeling machine can deal only with the types of labels that require glue to be added to them. Any sticky-back labels must be dealt with by hand. The Selvikonserv management would like a machine to put on sticky-back labels.

The management would also like a machine to check that the pot has a vacuum seal. After going through the sterilizer, the pot is cooled and the cap should become concave. If it is not concave, there is not an airtight seal and the pot must be rejected. Currently, this check is made by eye. It requires one laborer to check for a vacuum at a labor cost of 70 leva per day. The machine is expected to cost 10,000 leva. If the line worked every day, the machine would pay for itself in six months.

### THE GREEN BEAN LINE

The green bean line was constructed in 1985 and is housed in one of the original buildings of 1959. The building seems to be structurally sound. The capacity of the line is 500 tons per year (11 tons in 8 hours). Previously it made 250-300 tons per year, but last year because of bad weather only 205 tons were produced.

In the initial washing and inspection line, the section most likely to give problems in the near future is that of the sterilizing pots. The pots are 12 years old and are becoming unreliable. The management would like to buy seven modern pots over three years, at a cost of \$150,000-\$200,000.

Overall, the green bean machinery is quite basic, but it is functioning and easy to repair. The condition is moderate and, with the current intensive maintenance, it might last 10 more years.

To improve the life of the green bean machinery, I suggest that the maintenance program be formalized. Currently, the machines are inspected before each shift by a mechanic who has probably been shown the procedure. The quality of the maintenance would probably increase if the mechanic followed a written procedure and then signed a machine log book to say that the check was complete (the chief engineer agreed that this was reasonable). The chief engineer estimates that the cost of a new machine will be \$150,000-\$200,000.

Given the low cost of technical and production labor, my main concern for this line is hygiene and product quality. If the current quality is sufficient for the Bulgarian market and all future expansion goes to the same market, then there are no problems. If the market standard increases, there may be a problem. Three factors influence quality: the care taken in production, guards on the equipment, and the filling process.

The greatest influence is the care taken in actually producing the food: the state of repair, cleanliness of the building, the diligence of the process workers, and the extent and frequency of maintenance of the equipment. Presently, the equipment is cleaned after each shift. Alterations to the machinery also reduce contamination. The most basic mechanical improvement that can be made is to add more guards and covers over the line after the final inspection point.

A particular point of concern is the filling machine (Figure 2). The filler works by continuously cascading the cut beans onto the row of bottles as they pass along a conveyor chain. Any beans that do not go into the pots fall past the chain into a trough to be cycled back up to cascade again. Because of the recycling, it is possible for debris (e.g., oil) from the chain to contact the beans as they fall. The oil to fall into the collecting trough. Such inclusions will be very small but may be significant to a Western buyer. It may be possible to halve the possible contamination with the addition of guards. A complete elimination would require a different kind of filling process.

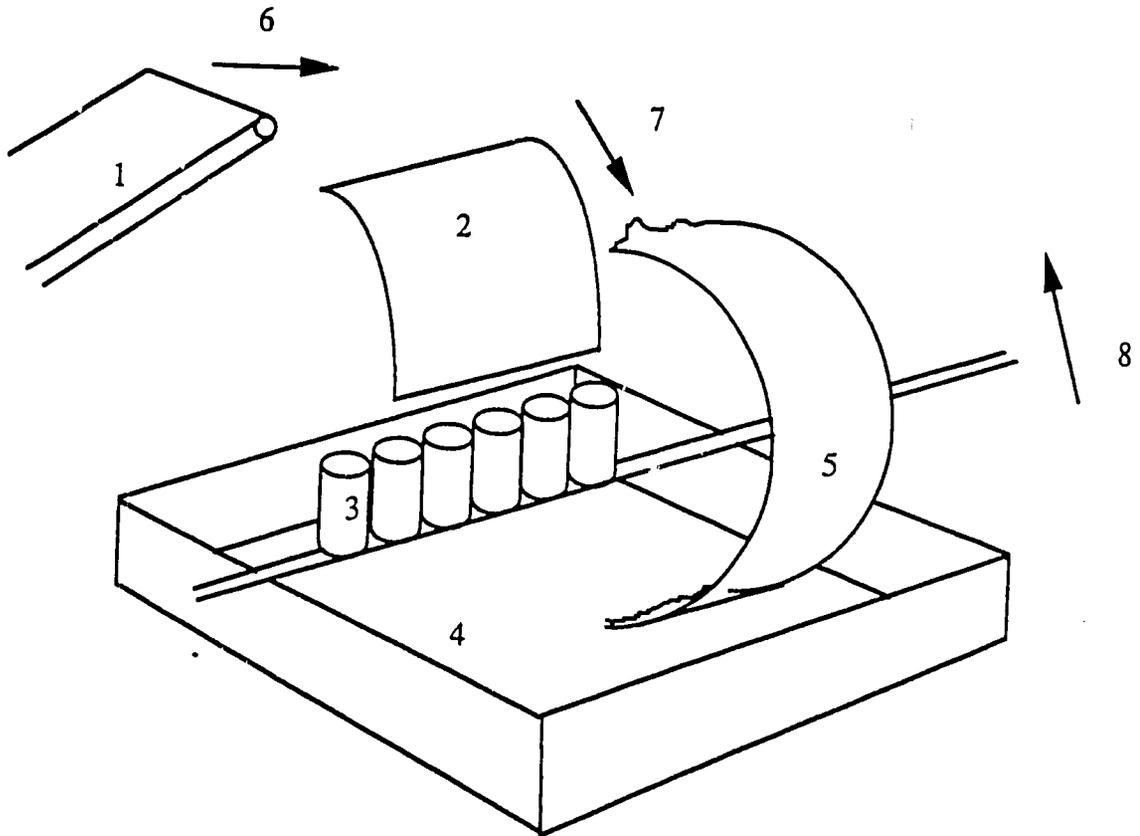
## THE VEGETABLE AND COMPOTE LINES

The vegetable equipment and compote equipment are separate, but they feed into the same filling and closing line. They are housed in the same building as the green bean line. The vegetable line is Bulgarian and most of it was constructed in 1980. The compote equipment is also Bulgarian and was constructed in 1982. The lines have basically the same sequence of operation as that for the green bean line. For all the vegetables and fruit, the initial washing and inspection operations are the same and the conveyor is set up permanently outside the building. From this line, the materials are transported by fork lift to a conveyor, which takes them inside. Inside, the machinery used depends on the vegetable or fruit to be processed. Spare machinery is kept in the corner of the hall and is pulled out as required to make up the production lines. This machinery includes an apple de-corer used for the Russian market, which will be sold or scrapped.

After final processing, the pots or cans are filled by hand and then closed. The closing is done by an Italian twist-off machine (1989), Russian canning machines (1988 and 1981), or a Bulgarian closing machine (1982). The twist-off machine is in reasonable condition and should serve for another 7-10 years. The Russian machines are also in reasonable condition and sturdily built.

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FIGURE 2  
GREEN BEAN FILLING MACHINE



- 1 Conveyor Belt
- 2 Cascade
- 3 Jars on Chain
- 4 Collection Trough
- 5 Cutaway View of Recycling Drum
- 6 Beans Entering
- 7 Beans Falling into Jars
- 8 Beans Being Recycled

machine is now used only as a spare but could be used full time for another 2-3 years. The new Russian machine should last 8-10 years. The Bulgarian closing machine requires a lot of maintenance, and it would be difficult to keep it working for more than 2 to 3 years.

Overall, the line is in poorer condition than the green bean line. It can be kept running for the next five years, but there are the same general quality concerns as for the green bean line. To replace the vegetable and fruit lines would cost a little more than replacing the green bean line because there is approximately one and a half times as much equipment.

Management is considering buying another twist-off machine to run parallel with the older one. This would increase the capacity by 3,600 pots per hour from the current level of 2,500 pots per hour. The machinery would cost \$35,000-\$50,000. Given that current production is far under capacity and the rest of the line has only five more years of life, this is probably a bad investment. The management still seems to be working with the centrally planned mentality of considering production before economy.

### **CONCENTRATED PLUM/TOMATO PUREE LINE**

The concentration equipment is in the building next to the vegetable processing lines. The building is in slightly poorer condition but is generally sound. A tomato processing line and a separate plum line feed into the same set of six concentrator vessels. The tomato processing equipment was built in 1982. It was last used three years ago and has not been used since because of a government decision to process only plums. The tomato equipment is probably in working condition but has been idle for three years, and may have some teething problems if it is used again. The plum concentration equipment was built in 1980 and is in poor condition. I would expect that within four years it will become very difficult to maintain. The concentrator vessels were built in 1985 and are in reasonable condition, usable for another 5-10 years with perhaps only minor replacements, such as new electric motors.

**Engineering Examination  
of the Storco Pleven Plant**

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## SUMMARY

The Cevolani can fabrication line is in a good state of repair, is well maintained, and should function well for the next 10 years. The machines that make the can lids should continue functioning for the same time. There are problems with the machines, with a life expectancy of 5-8 years, that supply the lacquered tin; they are housed in a building that is prone to fire and they are in poor condition. The older canning machinery is coming to the end of its useful life.

The Walter Rau freezer tunnel is in good condition and should function well for the next 10 years. However, the tunnel needs adequate storage to take its production, and the cold stores are in poor condition. The storage rooms need to be renovated and their refrigeration system needs to be replaced. This will cost \$2-4 million, depending on the extent of the renovation.

The vacuum concentrators used for producing puree are in reasonable condition and should need only minor repairs over the next 10 years. The Russian ketchup line is old and lightly mechanized. The ketchup line for the German market is about two years old and is in good condition.

The Hungarian pea processing lines are showing some signs of wear, but, at the current rate of use, they should function well for 10 more years. The other vegetable lines generally consist of moderately old Bulgarian equipment. This equipment is simple but, with a moderate level of maintenance, it will function for several more years.

The jam line, compote line, and pork line have old equipment and are probably of little commercial value.

## INTRODUCTION

This report examines the operations and equipment of the Storco Pleven food processing plant from an engineering perspective. The report has two main purposes: to allow financial decisions to be made concerning the future of the plant and to give a comprehensive description of the establishment as the basis for future engineering scrutiny.

The report first describes the layout of the plant and lists the production lines on each site. It then describes the plant's engineering organization. The bulk of the text details each of the production lines, describing the function, source, age, condition, expected life, and future options. Most of this information was found from interviews with the chief engineer and production manager, Mr. Boris Datshev.

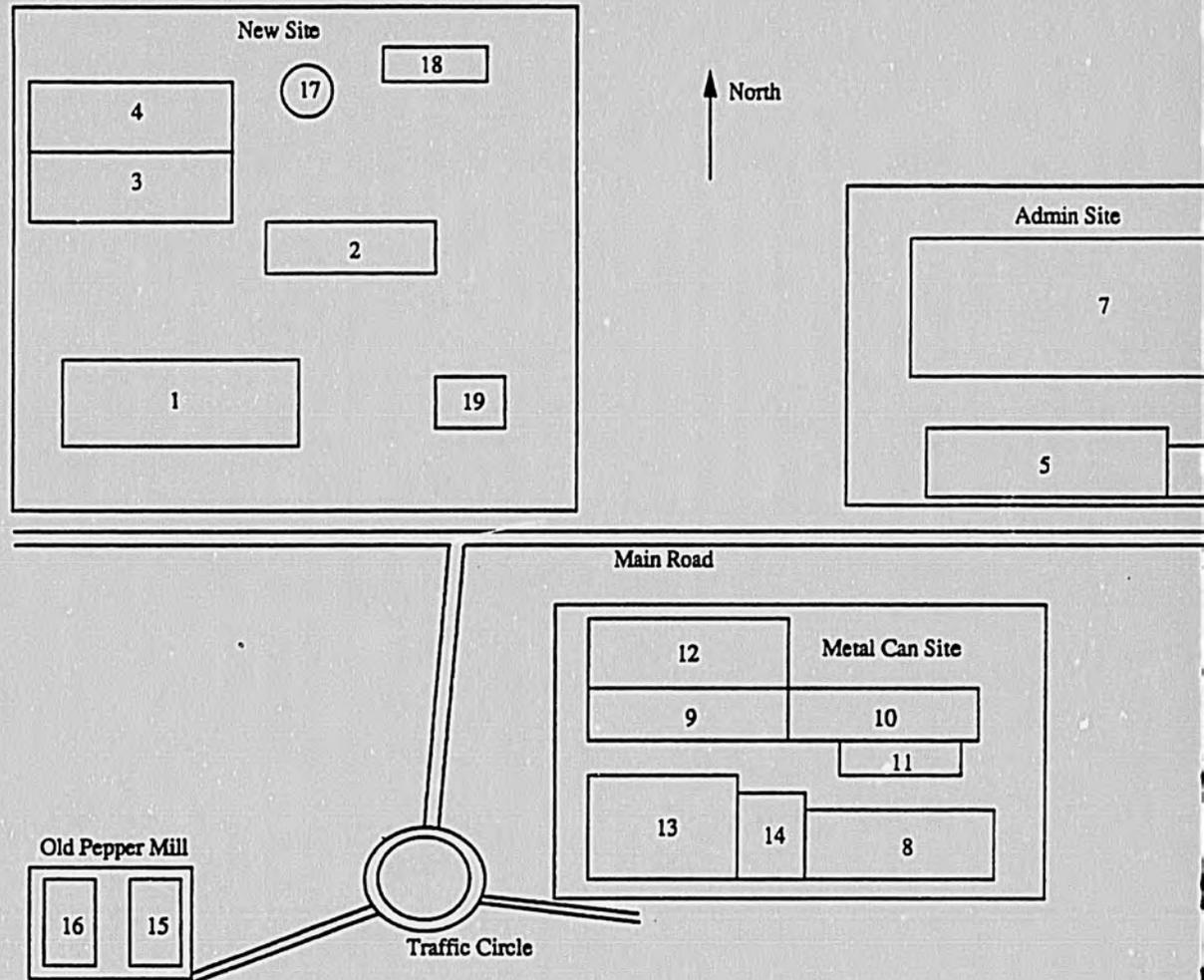
## SITE LAYOUT

Figure 1 shows a map of the plant. There are four sites: the New Site, the Metal Can Site, the Old Pepper Mill Site, and the Administration Site.

On the New Site, there are currently two freezer tunnels, one from Walter Rau, which is two years old, and an American tunnel, which is 30 years old. The tunnels are between two cold storage buildings.

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FIGURE 1  
LAYOUT OF THE STORCO PLEVEN PLANT



**Key to Layout of Storco Pleven Plant**

- |   |                                    |    |   |
|---|------------------------------------|----|---|
| 1 | Freezer Tunnel and Cold Stores     | 10 | Old Russian and Italian Can Fabrication Lines |
| 2 | Unfinished Administration Building | 11 | Lid Production Lines                          |
| 3 | Ketchup Lines                      | 12 | Cevolani Can Fabrication Line                 |
| 4 | Vegetable Lines                    | 13 | Fruit Juice Equipment                         |
| 5 | Old Pork Canning Line              | 14 | Puree Storage Vessels                         |
| 6 | Administration Building            | 15 | Jam Factory                                   |
| 7 | Storage Buildings                  | 16 | Compte Line and Sterilizers                   |
| 8 | Vacuum Evaporators                 | 17 | Planned Site for Autoclaves                   |
| 9 | Lacquer Lines                      | 18 | Transformer Building                          |
|   |                                    | 19 | Metal Workshop                                |

Also on the New Site, there are one vacuum concentrator and two ketchup production lines. One of these lines is new and makes ketchup for the European Economic Community (EC); the other is old and makes low-quality ketchup for Russia. Unless sales pick up, the line for Russia will be scrapped. A Hungarian canned pea line, which was bought in 1982, outputs its cans to one of two identical Hungarian continuous sterilizers. The sterilizers can be used interchangeably in case of unserviceabilities. The second sterilizer will normally be used for the output of the whole tomato canning line and the peeled tomato line, which are under construction. A lightly automated line makes cans of mixed vegetables. Two new Rotomat rotary sterilizers sterilize the vegetables evenly.

In the future, equipment will be moved from other sites, and the New Site will also have a set of autoclaves, a line for peeled tomatoes, a fruit juice line, a puree line, and two extra vacuum concentrators for the purees and fruit juice.

The Metal Can Site has the new Cevolani line for can production and two old can machines, one Russian and one Italian. There are also five lines for making can lids, three lines for lacquering tin sheet, and a machine for making beer bottle caps. On the other side of the site, two vacuum concentrators make purees with associated bottling equipment and a set of 156 puree storage tanks. One line concentrates fruit juice. The puree and juice equipment will go to the New Site.

The Old Pepper Mill Site has a line for processing and concentrating jam, or ajvar, and has a mostly manual line for making compote. There are also nine sterilization pots, three of which are new.

On the Administration Site, there is an old line used for canning meat or vegetables. Most of the operation is by hand, so production is very flexible. This line ends at one of two continuous sterilizers.

## ORGANIZATION

The engineering organization is broken into five groups. There are 25 technicians for the freezer plant, 29 technicians for the ketchup and pea lines, 20 technicians for the can fabrication lines, 20 technicians for the vacuum evaporators, and 7 technicians on the jam site. Six technicians can be directed to any part of the plant. For major projects, such as building new machinery, the task is spread among the groups.

The number of technicians is probably excessive for the current work load, but it may be possible to reduce the number by a third during the quiet winter months. However, I would consider this engineering organization to be a significant asset. Overall, the technicians seem to be well trained and competent, and they regularly undertake extensive engineering projects. I would expect this work force to adapt well when exposed to new or different technologies.

## EQUIPMENT

### The New Site

#### The Freezer Plant

The frozen food plant contains three main units: the Walter Rau (WR) freezer tunnel, American (Luis) freezer tunnel, and the two cold storage buildings. There are two separate refrigeration circuits: one for the WR tunnel and the other for the storerooms and the old American tunnel. Both circuits use a two-stage ammonia system. The first compressor takes the ammonia and compresses it to a higher pressure and temperature (+10° C). As the pressure increases, the temperature increases. The hot (80° C) ammonia then goes to the condenser coils that are exposed to the atmosphere, resulting in high-pressure, low-temperature (30° C) ammonia. This fluid then passes through a throttling valve (a small component), which drops the pressure and drops the temperature to -10° C. This fluid is used to cool a heat-exchange tank and then returns to the compressor. A second compressor takes ammonia returning from the cold store (or freezing tunnel) and compresses it to a higher pressure and temperature (+10° C). This fluid goes into the heat-exchange tank; as it passes by the fluid from the other compressor, it condenses to -10° C. This high-pressure ammonia at -10° C is then throttled to -37° C and goes off to the evaporator coils in the storerooms. A basic circuit diagram is shown in Figure 2 and a T-S diagram is sketched in Figure 3.

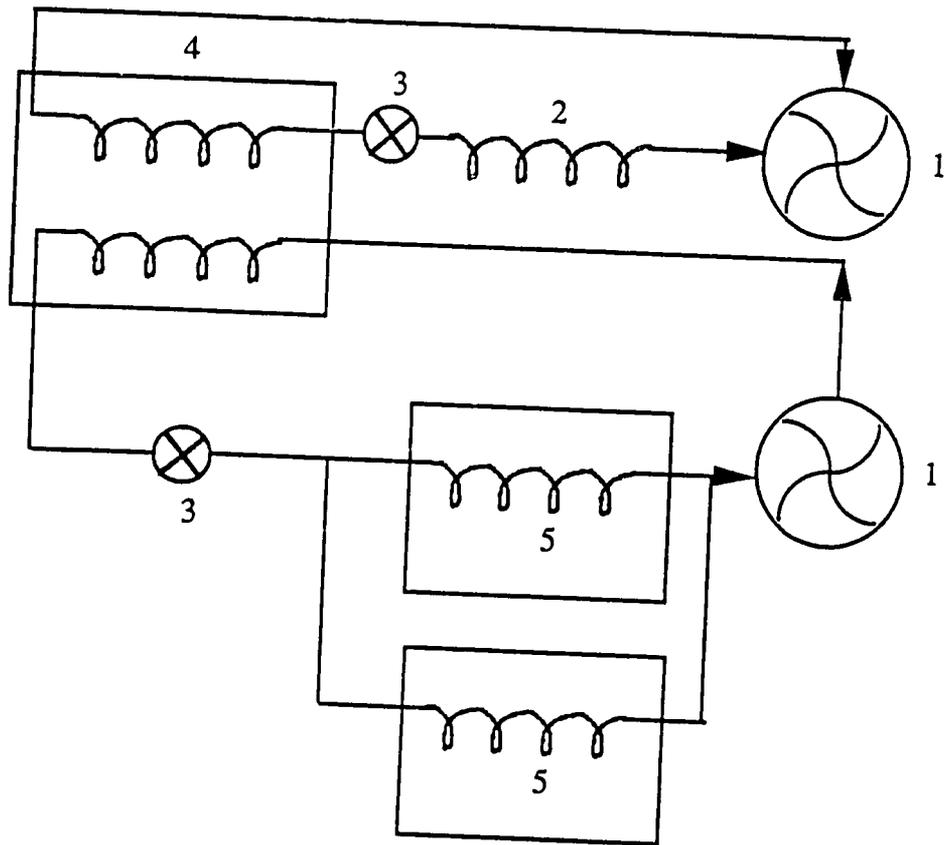
For a two-stage refrigeration system, the major components are a condenser coil exposed to the atmosphere, a heat-exchange tank, an evaporator coil in each storeroom or tunnel, and two compressors. The pipelines are such that the compressors are not dedicated to one particular operation and as a result the compressors can be used together. In summer, four compressors are needed to cool the storerooms. In winter, the cooling fluid can be split between the two stores and only two compressors are needed.

The modern freezer tunnel was constructed by WR two years ago. It consists of the refrigeration tunnel made by Frigoscania, three WR ammonia compressors (in the machine room), two intermediate low-temperature ammonia accumulator tanks, and an evaporator unit inside the Frigoscania tunnel. Normally, the system works from May to October. The system has a capacity of 5,000 tons per year (at 2-4 tons per hour) but last year it was only used for 2,000 tons. The tunnel shows slight wear and tear, with, for instance, slight rusting of the conveyor belts. The evaporation coil blowers seem to be in good condition. The compressors have seen only 3,000 hours of service and have given no trouble. Overall, the tunnel system is in good condition and should run well for another 10 years.

To supply the tunnel with vegetables, there is the usual assortment of 10-year-old washing and inspection equipment that requires approximately 20-25 laborers when operating. This equipment was in reasonable condition, and, with maintenance, it should last for another 10 years. The blancher is sophisticated and was supplied by WR. After the tunnel, there is a weighing and packaging machine, also supplied by WR. The blancher and weighing machine are in the same slight condition as the rest of WR system. The building housing the tunnel was built in 1956 and needs some repairs, at approximately \$10,000. Otherwise, the tunnel system itself seems to be fully viable without further investment.

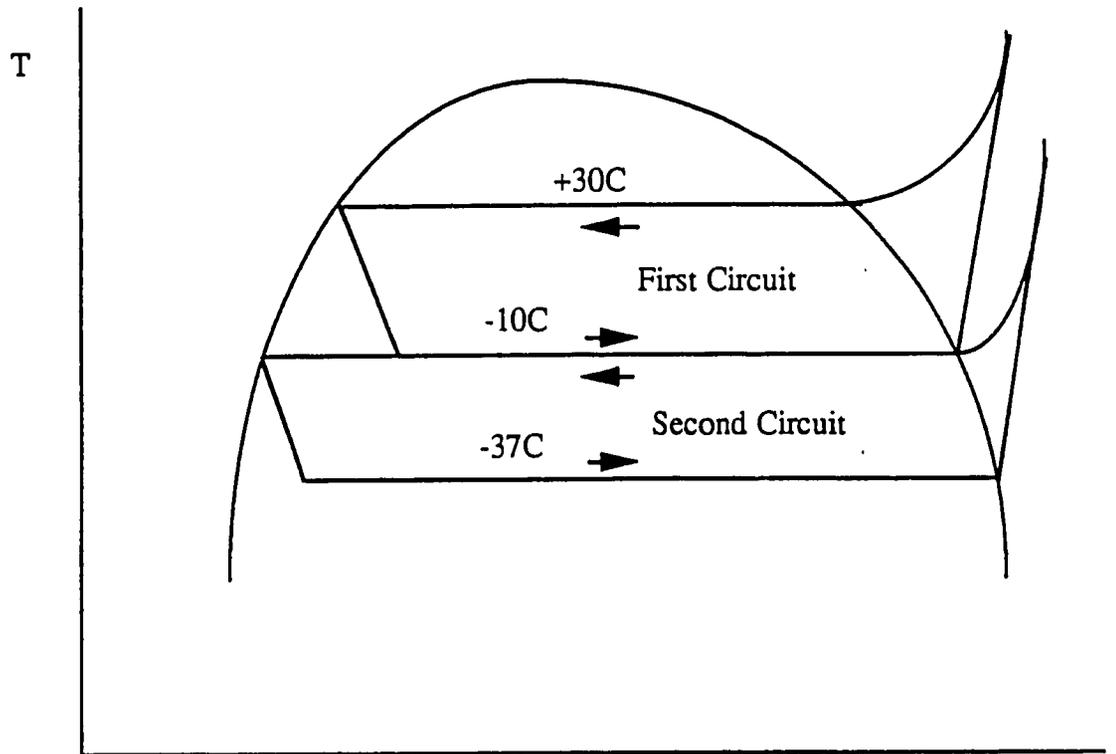
The old American freezing system (Luis) was acquired around 1950. It is in poor condition and will probably last for 2-3 more years. The critical component is the conveyor belt. When it fails, it probably will not be worth replacing. The present belt was bought 2-3 years ago. In the past, this tunnel

FIGURE 2  
SKETCH OF REFRIGERATION CIRCUIT



- 1 Compressor
- 2 Condenser Exposed to Atmosphere
- 3 Throttle
- 4 Heat Exchanger
- 5 Evaporators in Store Rooms

FIGURE 3  
T-S DIAGRAM FOR DUAL COMPRESSION REFRIGERATION



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used to freeze 2,000-3,000 tons per year. Last year, it was only used at the peak of the season and produced 50 tons. The ammonia refrigeration supply for this tunnel is from the same system as the cold stores.

The cold stores are a problem. They consist of two buildings, each with 20 rooms. The two storage buildings were constructed in 1952 and 1956 and can hold 1,500 tons of produce each. In general, the buildings are in fair condition, but the insides of the individual storerooms need renovation. The insulation is falling off the walls and in some places the concrete has fallen off the roof to a depth of 2-4 inches. Each storeroom has an evaporator coil and an air circulation fan. The evaporator coils in the storerooms are 14-15 years old and are rusting apart. Some of the coils are in such poor condition that they have been abandoned, and those storerooms are no longer in service. The four condenser coils are on the roof above the machine room and are of the same 15-year vintage as the evaporator coils. They need extensive renovation or replacement.

The ammonia is pumped by a combination of six Polish compressors. The six compressors are in the machine room. They are 15 years old and are in poor condition, and they have ammonia leaks that reflect their general aged condition. Their original design life was 15 years. They are all wearing out, becoming less powerful (therefore the storerooms become warmer), less efficient, and less reliable (therefore there are likely to be failures that cause a loss of cooling resulting in spoiling of the stock). There have been instances of system failure that have reduced the stock from high to low quality. The pumps will probably fail finally over the next 3-6 years.

Without the storerooms, the WR tunnel is unusable. If only some of the storerooms were in use, the shipping system would have to be very efficient to ensure that stock did not build up. There are three alternatives for the future:

- Do nothing. The store cooling system will die bit by bit over the next six years. The worst compressors could be cannibalized to keep the last compressors running, and heavy maintenance would be required to keep at least some of the coils working. By the end, the WR tunnel would no longer have any storage to take its high-quality output.
- Take out the Polish compressors and put in two WR compressors (using the third WR compressor from the tunnel as a spare for both the tunnel and the store system). Each compressor costs about \$175,000. Two such compressors could supply one of the store houses with its 20 rooms. It would also be necessary to renovate the 20 rooms. Restoring the concrete and insulation would cost about \$1 million. Each room would also require an evaporator at 80,000-100,000 leva each. A condenser would be needed for the system and would cost approximately 1 million leva. Overall it would cost around \$2 million to fully renovate one of the storage buildings.
- Renovate the complete refrigeration system and both storage buildings at a total cost of \$4 million. It should be possible to restore each building separately, to spread the financial load over time.

### **The Ketchup Lines**

The two ketchup lines are supplied by the vacuum concentrator on the New Site or from puree shipped from the Metal Can Site. The concentrator on the New Site is three years old. After the

processing in the concentrator, the puree is pumped to mixing and heating vessels. It is then pumped to either the new line or the line for the Russian market.

On the new line, the filling and twist-off closing equipment was made by Gherri of Italy and was bought in 1992. The closed bottles pass into a Bulgarian linear continuous sterilizer made in 1992. The final labeling machinery is Italian from ABL and is 7-8 years old. The line is generally in good condition and should last 10-15 years. The worst point in the line is the sterilizer, which is at the end of its life but should last 7-10 years without major problems.

The line for the Russian market is largely manual, but the filling and closing equipment is in reasonable condition and could be used for several more years if the line is not scrapped.

### **The Hungarian Pea Line**

The pea line was bought in 1982. Outside the building, two raw material cleaning and inspection lines feed into two selectors that separate the peas into four sizes. Each size then has a filling and canning line. The fillers are Hungarian and show some signs of wear. The canning machines are of Russian type and are drawn from the stock of 15 Russian canning machines scattered about the plant. The Russian canning machines were purchased between 1969 and 1988. After canning, the cans go into one of the Hungarian continuous sterilizers. In general, the line is in good condition and should continue to run as planned for one month per year for the next 10-15 years.

### **The Mixed-Vegetable Line**

The mixed-vegetable line consists of the usual set of 5- to 10-year-old Bulgarian washing and inspection equipment, followed by manual filling and a Russian canning machine. This equipment should be made to last for another 10 years.

The cans are sterilized in one of two Rotomat rotary sterilizers. The Rotomats were acquired in 1989. They are slightly worn but in very good condition.

### **The Metal Can Site**

#### **The Cevolani Can Fabrication Line**

The Cevolani can production machine was bought in 1991. It is in a building constructed in 1991 that is in good condition. The capacity is 100,000 cans every 8 hours, and the line occasionally runs 16-hour shifts. The system is maintained by Bulgarians who were originally trained in Italy. The machine makes cans with 73-millimeter diameters and 0.4 or 0.5 kilograms of contents. If the line is adjusted, they can make 99-millimeter cans. They estimate that the adjustments would take four days, but they have never tried to do it. The standard of maintenance is not excellent, but it is reasonable; the machine shows normal signs of wear and tear.

### **Old Can Fabrication Lines**

There are two old can fabrication lines: one Italian from 1965 and a Russian one from 1975. Both lines use lead soldered seams and make 99-millimeter cans. The Italian line is still used to produce food cans. The Russian line is virtually scrap and is used only occasionally, to make low-quality paint cans. The Italian machine is sufficiently basic that the local mechanics can keep it functional for 3-5 more years.

### **Tin Sheet Lacquer Lines**

There are three lines to lacquer the tin sheets used to make the cans. These lines supply the raw material for the Cevolani and have two main problems. One problem is that the roof of the 1968 building is wooden, which, in an environment where lacquer is dried by the heat of burning gas, is a serious fire hazard. The cost of replacing this roof with concrete would be approximately \$10,000.

The second problem is the age of the equipment. There are three lacquer drying machines, all from Germany: one was bought in 1969, the other two in 1972. The machines are fairly simple but are in poor condition. The automatic temperature control systems no longer work, so all control is manual. The plate feed systems are worn out. When I was there, they turned one on and about 30 percent of the plates were mishandled by the system, damaged, and thrown out. I suspect that slightly damaged sheets also get onto the Cevolani and cause rejected cans. The technician in charge of the canning operation claimed that only 2 percent of the plates were damaged when the machine was running at steady state.

The technician in charge of the can fabrication line estimated that the lines could run for another 8-10 years. This seems optimistic and the lacquering lines will probably have to be replaced in 5-8 years. One modern machine would probably be able to supply the current consumption of tin and may even be able to keep up if the Cevolani line runs at full capacity. However, it may be necessary to buy a second machine. These machines are about the same level of technology as the continuous sterilizers. I would suggest that it could cost \$300,000-\$500,000 to buy a new machine from the West. An alternative is to buy prelacquered sheets from a material supplier.

### **Production of Can Lids**

There are five machines for making can lids. One machine makes lids with 99-millimeter diameters. It is six years old and made by Cevolani. This machine is in good condition. Two Russian machines acquired in 1989 make 73-millimeter lids at a rate of 90,000 lids in eight hours on each machine — the two machines can make 180,000 lids per shift, almost enough to keep up with the new Cevolani line running at full speed. These machines are in good condition and should last as long as the main can fabrication line. Two 15-year-old Italian machines make 73-millimeter lids. The machines are in reasonable condition and will last 7-10 years.

### **Vacuum Concentrators**

The puree concentrators are housed in a building that is in very poor condition, but the equipment is soon to be moved to the New Site. There are the usual simple 10-year-old Bulgarian washing and inspection lines. The tomatoes are then pumped into tanks that separate the skins, seeds, and juice. From there the mush is pumped to one of the two concentrators. The concentrators were built by Rossi

and Catelli in 1968 and 1974. The concentrators are in reasonable condition, but the vacuum pumps are becoming unreliable. The replacement of the pumps should not be a major expense. After the concentrators, the puree is sent to a filling and closing line. The line was built in 1968 with Bulgarian equipment, but several components have been replaced. The fillers are Italian and are 10 years old. Two Russian canning machines are two years old. A 10-year-old Bulgarian glass pot closer and an old Manzini canning machine are from Germany. These machines are solid and probably have 50 years of life. The cans are sterilized in one of two 10-year-old Bulgarian continuous sterilizers. The glass pots are sterilized in a set of 15-year-old Bulgarian autoclave pots. This line is in good condition but could be kept running for another 10 years.

Each of the 156 puree storage tanks can hold 20 tons. The tanks were built between 1978 and 1982 and are in reasonable condition.

### **Fruit Juice Line**

This line is currently dismantled and was not inspected. The equipment consists of Bulgarian washing, inspection, filling, and bottle closing equipment and is 15 years old.

### **The Old Pepper Mill Site**

#### **The Jam Line**

The jam line has the usual set of Bulgarian washing, seed separation, inspection, and bottling equipment. This equipment was built in Bulgaria in 1955. Parallel to the fruit line, there is equipment for processing peppers for the ajvar. After blanching, the fruit passes through a cutter mill and the peppers pass through one of three grinders. The material is then pumped into two concentrators. These concentrators are Bulgarian and are 10-20 years old. Two new vessels are installed. These have been fabricated on the Storco site from parts of old vessels. After the concentrators, the jam, or ajvar, goes to a steam kettle and then to a Bulgarian filling and bottling machine.

The jam line is so old that it has reached a steady state of disrepair and continues to run only with high maintenance. Product quality, which largely depends on the level of hygiene observed during production, cannot be ensured. Nevertheless, recent sales of jam to Canada indicate that the line is able to yield product quality that meets Western standards.

On the Old Pepper Mill Site, there are seven autoclaves that are 5-10 years old and several autoclaves that have not yet been used. Last year, a compote line was built on the site. The line consists of tables where the fruit is prepared and a conveyor belt where the fruit is filled by hand. The line ends with an eight-year-old Hungarian twist-off machine. There have been a few problems with the twist-off machine owing to low-quality glass bottles. The twist-off machine is midway through its life and the line has virtually no machinery.

## **The Administration Site**

### **The Meat and Vegetable Processing Lines**

The vegetable preparation lines are the usual 15-year-old Bulgarian machines. The meat is prepared by hand, then fed through one of three German grinders, which are three years old. The cans are filled with meat and the vegetables are added by hand on the rotary measuring table. Water and steam are added before the cans are closed by a four-year-old Russian canning machine. The cans are then put into a 1967 Dutch sterilizer or a 1976 Bulgarian copy. Other than the meat grinders, all this machinery is in poor condition, but the management thinks it is worthwhile to move the equipment to the New Site. The line currently makes canned food for the army. For any other market, the standards of hygiene may have to be changed.

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**Accountant Report**

**For**

**Selvikonserv**

**and**

**Storco Pleven**

by

Maureen Barry

May 1993

Prepared for Development Alternatives, Inc.

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1. The balance sheets of Selvikonserv and Storco Pleven for years ending December 31, 1991 and 1992, and their income statements for the fiscal periods then ended have been reformatted to conform with generally accepted accounting principles (GAAP) practices in the United States. These were compiled without audit, and the notes constitute an integral part of the compilations.

The original formats conform to the reporting requirements of the Fourth Directive of the European Community. The clients appear to keep their records in accordance with the Bulgarian Accounting Law of April 1991. The provisions of this Law are congruent with international accounting standards. No significant differences were found between those standards and GAAP in the United States with respect to those balance sheet items discussed in the attached notes to the balance sheets on December 31, 1992.

Consequently, based on the limited review of the accounting records conducted without audit at Selvikonserv and Storco Pleven, no problems or issues were encountered related to current accounting practices. Also, no recommendations are made about the financial management procedures to be assumed by senior management at either concern.

2. The scope of work statement called for particular attention to be paid to five items. Comments on these items, or references to coverage in the attached notes to the balance sheets on December 31, 1992, follow:

	Balance Sheet Notes	
	Selvi	Storco
Inventory valuation. Valued at average historical cost.	2,3	2
Accounts receivable. Aging details provided.	1	1
Accounting for exchange rate gains and losses. Congruent with International Accounting Standard No. 21, Paragraph 21.	6	4
Accounting for state budget payments. This line item is a broad term applicable to any payment due to the state that is not specifically identified in some other line item such as social security payable. An example would be turnover taxes payable.		
Book value for physical assets. According to each client, book values represent historical costs less accumulated depreciation.	5	3

Concurrent with my review, another member of the team, referred to at various places in the notes as a technical valuer, performed a financial analysis and a technical evaluation of most of the above items, among other things. Consequently, comments in this report on a number of financial statement line items are limited.

3. Both concerns fail the commonly used tests of liquidity, solvency, and profitability applied in developed economies. Details of the ratios used conclude this report.

Two caveats apply. First, company financial performance in newly emerging democracies should be evaluated in terms of the operating environment. Because all Bulgarian concerns, whether companies or state enterprises, follow the same reporting requirements, official comparative statistics should be available to permit performance comparisons of these two concerns with those in the food industry. Second, the practice in developed economies of presenting multiperiod information for comparative purposes can be misleading when there are significant interperiod fluctuations in economic conditions. For example, in 1992, use of productive capacity dropped 30 percent at Selvikonserv and 20 percent at Storco. This does not mention the freeing of markets, increases in inflation, and loss of markets. Other events, such as Storco's shift in sales mix from 1991 to 1992, make comparative figures such as gross profit margins virtually meaningless without further analysis.

Details of the financial evaluation, from an accounting standpoint and based on the available data compilations, follow.

### Liquidity

Liquidity is generally defined as an enterprise's ability to meet its obligations as they fall due. The most commonly used liquidity ratios, or measures of short-run ability to pay maturing obligations, are the current ratio and the acid test ratio.

The ratios of current assets to current liabilities are:

	<u>Selvikonserv</u>	<u>Storco</u>
1991	2.45	0.91
1992	1.69	1.15

In the absence of industry averages, a rule of thumb of 2 to 1 is generally followed in the United States. For both companies, the current ratio is low — more so in the case of Storco. These ratios assume full collectibility of receivables — which is unlikely.

Another major problem for both companies is that the finished goods inventories comprise a significant portion of the current assets. On December 31, 1992, the percentages were 79 percent for Selvikonserv and 54 percent for Storco. The acid test ratios ([current assets less inventories] / current liabilities) for each company, which eliminate all inventories from the current assets, are:

	<u>Selvikonserv</u>	<u>Storco</u>
1991	15.08%	37.62%
1992	20.78%	38.25%

A good liquidity indication in a developed economy would be 100 percent. From this view, the above ratios are extremely low. In Storco's case, where a high proportion of the receivables are more than one year old, and assuming that perhaps one-half of them may prove uncollectible, the receivables would need to be marked up about 100 percent, and fully sold, to help cover the current liabilities at December 31, 1992.

## Solvency

Various stability ratios are often used as indicators of long-run solvency and stability. These include the debt ratio and the times-interest-earned ratio.

The debt ratios (total liabilities/total assets) of each company are:

	<u>Selvikonserv</u>	<u>Storco</u>
1991	61.9%	83.3%
1992	69.1%	102.4%

The debt ratio provides creditors with a measure of ability to withstand losses without impairing creditors' interests. In the United States, debt ratios of 60 percent and higher became more common with the upsurge in junk bonds. The rate for Selvikonserv in 1992 appears high; Storco has a capital deficit.

The facts that each concern is wholly state-owned, that some of the liabilities are debts owed to the state, and that the state has capitalized debt in the past make the debt ratio less meaningful under these circumstances.

A measure of the safety of creditors' investments, particularly in the long run, is provided by the times-interest-earned ratio. As a general rule, the higher the ratio, the better a company's ability to meet its interest obligations.

This ratio is not calculated for Storco because it was in a loss position for both periods before consideration of interest expenses. For Selvikonserv the ratios ((income plus interest expense)/interest expense) are:

	<u>Selvikonserv</u>	<u>Storco</u>
1991	1.16	NA
1992	1.04	NA

These ratios show that Selvikonserv's income barely covers its interest charges.

## Profitability

In developing economies, profitability is generally considered the major test of management effectiveness. This does not necessarily apply in emerging democracies, particularly in the food industry, where various management policies were dictated by social considerations.

The gross profit margin represents the buffer available in case of higher costs or lower sales in the future. For both companies, interpretation is difficult because the gross profit percentages differed each year. In Storco's case, there was a marked difference in the sales mix between 1991 and 1992. This could also have affected gross profit margins at Selvikonserv.

The success with which the assets have been employed is measured by the rate of return on total assets. Storco was in a loss position for both periods. Consequently, the analysis is compared to Selvikonserv, whose ratios of Net Income/Net sales x Net Sales/Average total assets were:

	<u>Selvikonserv</u>	<u>Storco</u>
1991	2.53%	NA
1992	0.24%	NA

A reasonable threshold rate would be the opportunity cost of capital. For example, the rate could have been earned in a bank savings account. By this standard, the rates of return on assets are extremely low.

SELVIKONSERV - SEWLIEWO  
INCOME STATEMENTS  
(in thousands of leva)

	<u>Year Ended Dec. 31, 1992</u>		<u>Year Ended Dec. 31, 1991</u>	
SALES	18,883	100.0%	19,846	100.0%
COST OF SALES:				
Total cost input:				
Materials	13,997		14,503	
Subcontracted services	1,709		1,481	
Payroll compensation	3,741		2,307	
Social security	1,255		796	
Depreciation and amortization	135	171		
Other costs	<u>615</u>		<u>407</u>	
Total:	<u>21,452</u>		<u>19,665</u>	
Less:				
Net raw materials sales	816		-0-	
Net increases in inventories	5,332		5,262	
Self-produced fixes assets	9		29	
Operating expenses	<u>3,764</u>		<u>2,091</u>	
	<u>&lt;9,921&gt;</u>		<u>&lt;7,382&gt;</u>	
Add:				
Net cost of merchandise sales	-0-		147	
Net cost of casual sales	-0-		1,497	
Inventory shortages	<u>-0-</u>		<u>3</u>	
Cost of sales	<u>-0-</u>		<u>1,647</u>	
	<u>11,531</u>	<u>61.1</u>	<u>13,930</u>	<u>70.2</u>
Gross profit on sales:	7,352	38.9%	5,916	29.8%
Operating Expenses:				
General and administrative expenses	3,381		1,589	
Selling expenses	383		502	
Uncollectible receivables	<u>-0-</u>	<u>&lt;3,764&gt;</u>	<u>149</u>	<u>&lt;2,240&gt;</u>
		<u>19.9</u>		<u>11.3</u>
		<u>3,588</u>		<u>3,676</u>
		<u>19.0%</u>		<u>18.5%</u>
Operating Income:				
Interest income	64		90	
Income from securities transactions	-0-		41	
Foreign currency translation gains	8		2,843	
Late payment fines collected	48		-0-	
Other	<u>38</u>	<u>156</u>	<u>-0-</u>	<u>2,974</u>
		<u>0.8</u>		<u>15.0</u>
		<u>3,744</u>		<u>6,650</u>
		<u>19.8%</u>		<u>33.5%</u>
Other expenses:				
Interest expense	2,064		3,293	
Fines for late payments	119		20	
Foreign currency translation losses	72		2,821	
Other	<u>1,414</u>	<u>&lt;3,669&gt;</u>	<u>-0-</u>	<u>(6,134)</u>
		<u>19.4</u>		<u>30.9</u>
Pretax income form continuing operations:	75	0.4%	516	2.6%
Taxes	<u>75</u>	<u>0.4</u>	<u>516</u>	<u>2.6</u>
Net income:	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-%</u>

COMPILED FROM UNAUDITED DATA

SELVIKONSERV - SEWLIEWO  
BALANCE SHEETS  
(in thousands of leva)

	<u>At December 31, 1992</u>	<u>Notes</u>	<u>At Decemb</u>
<b><u>ASSETS</u></b>			
<b><u>Current Assets:</u></b>			
Cash: domestic	100		878
Foreign	<u>947</u>	1,047	<u>-0-</u>
Trade receivables		1,451	1
Other receivables		128	
<b><u>Inventories:</u></b>			
Materials	3,000	2	6,049
Work in progress	963		546
Finished goods	14,092	3	9,381
Cost of unrealized sales	<u>659</u>	4	<u>-0-</u>
Total current assets		21,340	
<b><u>Fixed Assets (net of depreciation):</u></b>			
Land and buildings	1,176	5	1,072
Plant and equipment	2,450		352
Fixed assets in process	-0-		2,345
Other	<u>99</u>		<u>47</u>
Total fixed assets:		3,725	
<b><u>Intangible Assets:</u></b>			
Incorporation cost	-0-		
Deferred charges		8,482	6
<b>Total Assets:</b>		<u>33,547</u>	
<b><u>LIABILITIES AND CAPITAL</u></b>			
<b><u>LIABILITIES</u></b>			
<b><u>Current Liabilities:</u></b>			
Short-term loans	3,486		3,030
Accounts payable: suppliers	1,837		479
Payables to employees	426		325
Payables to state budget	5,705		506
Social security payable	159		123
Customer's deposits	1,020		2,493
Deferred Income	<u>6</u>		<u>-0-</u>
Total current liabilities		12,639	
Long-term liabilities		<u>10,540</u>	5
Total liabilities:		<u>23,179</u>	
<b><u>CAPITAL</u></b>			
Capital	3,409	7	3,409
Reserves	<u>6,959</u>	8	<u>7,628</u>
Total Capital		<u>10,368</u>	
<b>Total Liabilities and Capital:</b>		<u>33,547</u>	

COMPILED FROM UNAUDITED DATA. THE NOTES FORM AN INTEGRAL PART OF THIS COMPILATION.

NOTES FOR THE SELVIKONSERV-SEWLEWO BALANCE SHEET AT DECEMBER 31, 1992

- An aged trial balance of the accounts receivable was not available. However, as described in Note 4, the company does not record receivables whose ultimate collectibility is considered highly doubtful.
- The components of the raw materials inventory on December 31, 1992, were (in thousands of leva):

Fresh products (such as fruit) and auxiliary materials (such as sugar, salt, vinegar, and spices)		1,028
Packaging materials		1,378
Spare parts		331
Working uniforms		91
Scrap items		29
Fuels		<u>143</u>
Total raw materials inventory	3,000	

A technical opinion would be needed to determine that quantities do not exceed anticipated production needs and net realizable values are at least equal to but not less than historical costs.

- The company uses the average cost method of pricing its work in process and finished goods inventories. Details of the finished good inventory at December 31, 1992, in metric tons (thousand of kilograms) and average costs in thousands of leva were as follows:

<u>Finished Products</u>	<u>Tons</u>	<u>Costs</u>
Cans of vegetables		3,257
Fruit compotes	3,968	
Jams and marmalades	3,395	
Juices		44
Prunes		
Total	<u>856</u>	
	303	11,520
Packaging materials	2,516	2,516
Other	<u>304</u>	<u>56</u>
Totals finished products	3,123	14,092

A technical opinion would be needed to determine that quantities of incomplete and completed products do not exceed anticipated sales and net realizable values are at least equal to but not lower than cost.

- When the ultimate collectibility of sales revenue from a customer is considered highly doubtful, the company's policy is not to book the sale until its realizability is assured. Under U.S. generally accepted accounting principles, this type of transaction needs to be disclosed separately on the balance sheet. Accordingly, the cost of the unrealized sale has been segregated from the finished goods inventory and is disclosed as a separate line item.
- According to the bookkeeper, the book values of the fixed assets are based on historical costs and do not contain any revaluations. A technical opinion would be required to determine whether the book values exceed replacement costs.

The client provided the team's technical valuer with details of the fixed assets and the long-term liabilities.

6. The Bulgarian lev was significantly devalued in 1991; as a result, companies with foreign-denominated debt, such as Selvikonserv, experienced large foreign currency exchange-rate losses. Because of the magnitude of these losses, the Bulgarian government permitted an exception to the general rule of recording translation losses as income statement items, allowing companies to list them on their balance sheets as deferred charges. For those companies currently undergoing the revaluation of the fixed assets either in connection with restructuring from a state-owned to a commercial one or, like Selvikonserv, as a part of a privatization process, the deferred charges can be capitalized as part of the cost of the fixed assets acquired through foreign currency loans. If the revaluation incremental increase is higher than the deferred charge, the difference is credited to capital. If lower, the portion of the deferred charge not absorbed by a revaluation pick-up would be amortized over the life of the asset.

This accounting treatment is congruent with International Accounting Standard 21, Paragraph 23, which reads:

an exchange difference that results from a severe devaluation or from depreciation of the local currency against which there is no practical means of hedging and that affects the carrying amount arising directly on the recent acquisition of assets invoiced in a foreign currency, shall be included in the carrying amount of the related assets provided that the adjusted carrying amount does not exceed the lower replacement cost and the amount recoverable from the disposal or sale of the assets.

7. The company's capital increased from 1.63 million leva to 3.409 million leva on December 31, 1991, as a result of the capitalization of some debt owed to the state.
8. The amount shown for reserves stems from two main sources: (1) amounts classified as special purpose funds under the previous national accounting system; and (2) a 1991 revaluation of the replacement cost of various inventories, such as jars, containers, and lids (caps). The difference between the replacement cost and the carrying amount would be additional paid-in capital. There are no accumulated retained earnings. The state, which is the company's sole owner, levies taxes in amounts equal to any surplus.

STORCO — PLEVEN  
INCOME STATEMENTS  
(in thousands of leva)

	Year Ended December 31, 1992		Year Ended December 31, 1991	
	176,697	100%	193,343	100.0%
SALES:				
COST OF SALES:				
Total cost input:				
Materials	100,306		137,085	
Subcontracted services	6,961		11,392	
Payroll compensation	23,247		14,002	
Social Security	8,072		4,760	
Depreciation and amortiz.	4,919		2,877	
Other costs	<u>3,144</u>		<u>3,056</u>	
Total:	<u>146,649</u>		<u>173,172</u>	
Less:				
Net increases in inventories	9,243		64,321	
Self-produced fixed assets	-0-		1,763	
Operating expenses	8,561		14,580	
Inventory overages	<u>1,081</u>		<u>174</u>	
	<u>&lt;18,885&gt;</u>		<u>&lt;80,838&gt;</u>	
Add:				
Net cost of casual sales	<u>27,363</u>		<u>43,129</u>	
	<u>155,127</u>	87.8	<u>135,463</u>	70.1
Gross profit on sales:	21,570	12.2%	57,880	29.9%
Operating expenses:				
General and administrative expenses	6,711		8,293	
Selling expenses	1,850		6,287	
Uncollectible receivables	<u>28</u>	<u>&lt;8,589&gt;</u>	<u>4</u>	<u>&lt;14,584&gt;</u>
		<u>&lt;4.9&gt;</u>		<u>&lt;7.5&gt;</u>
Operating income:	12,981	7.3%	43,296	22.4%
Other income:				
Interest income	580		296	
Fines for late payment	942		228	
Foreign currency translation gains	483		2,228	
Other	<u>4,266</u>	<u>6,271</u>	<u>1,232</u>	<u>3,984</u>
		19,252	47,280	24.4%
		10.9%		
Other expenses:				
Interest expense	68,679		49,530	
Fines for late payments	6,085		814	
Currency commissions	-0-		1,418	
Foreign currency translation losses	871		923	
Other	<u>2,608</u>	<u>&lt;78,243&gt;</u>	<u>351</u>	<u>(53,036)</u>
		<u>&lt;44.3&gt;</u>		<u>(27.4)</u>
Net loss:	<u>&lt;58,991&gt;</u>	<u>&lt;33.4%&gt;</u>	<u>(5,756)</u>	<u>(3.0)</u>
COMPILED FROM UNAUDITED DATA				

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STORCO - PLEVEN  
BALANCE SHEETS  
(in thousands of leva)

<u>ASSETS</u>	<u>At December 31, 1992</u>	<u>Notes</u>	<u>At December</u>
<u>Current Assets:</u>			
Cash: domestic	2,740		402
Foreign	<u>4,555</u>	7,295	<u>168</u>
Trade receivables	52,464		34,731
Other receivables	<u>1,255</u>	53,719	<u>16,132</u>
Inventories:			
Materials	27,182	2	26,444
Work in progress	8,637		5,889
Finished goods	<u>42,339</u>		<u>40,176</u>
Total current assets:			139,172
<u>Investments:</u>			
Participation in other companies			253
<u>Fixed Assets (net of depreciation):</u>			
Land and buildings	12,195	3	12,573
Plant and equipment	53,889		41,638
Fixed assets in process	5,218		4,000
Other	<u>4,662</u>		<u>1,914</u>
Total fixed assets:			75,964
Deferred charges			<u>47,868</u>
		4	
<b>Total Assets:</b>			<b><u>263,257</u></b>
<u>LIABILITIES AND CAPITAL</u>			
<u>LIABILITIES</u>			
<u>Current Liabilities:</u>			
Short-term loans	77,089	5	65,345
Accounts payable	22,889	6	48,558
Payables to employees	2,030		1,542
Payables to state budget	32,745	5	319
Social security payable	525		127
Other	<u>24,229</u>	7	<u>20,810</u>
Total current liabilities			159,507
Long-term liabilities			<u>110,182</u>
		8	
Total liabilities:			<u>269,689</u>
<u>CAPITAL</u>			
Capital	48,549	9	28,865
Reserves	<u>4,010</u>	10	<u>13,507</u>
Less current period loss			(58,991)
Total Capital			<u>&lt;6,432&gt;</u>
<b>Total Liabilities and Capital:</b>			<b><u>263,257</u></b>

COMPILED FROM UNAUDITED DATA. THE NOTES FORM AN INTEGRAL PART OF

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NOTES FOR THE STORCO PLEVEN BALANCE SHEET ON DECEMBER 31, 1992

1. Details of the aged trail balance of accounts receivable as of September 30, 1992, supplied by the client, are as follows:

<u>Days Outstanding</u>	<u>Amounts in Leva</u>	<u>Percentage of Total</u>	<u>Cumulative Percentage</u>
1 - 30	1,994,512	5.9	5.9
31 - 60	1,304,888	3.9	9.8
61 - 120	5,471,236	16.2	26.0
121 - 180	7,610,642	22.5	48.5
181 - 210	13,469	0.06	49.16
211 - 240	205,137	0.6	49.16
241 - 270	1,286,954	3.8	52.96
271 - 300	1,722,851	5.1	58.06
301 - 330	6,075	0.04	58.1
331 - 360	868,247	2.6	60.7
181 - 360	265,950	0.7	61.4
More than 360	<u>13,041,587</u>	38.6	100.0
Subtotal	33,791,548		
Not detailed	<u>1,263,452</u>		
Total	35,055,000		

A similar analysis at 1992 year end was not available.

The very slow turnover of accounts receivable and payable became a widespread phenomenon in the newly emerging democracies as the COMECON markets collapsed, prices were freed, and the cost of credit soared. Under the previous systems, the credit period was generally fifteen days and bad debts could not be recorded until legal proceedings against debtors had failed. As market conditions tightened and meeting payrolls became a first priority, firms in business communities facing common social problems became reluctant to refuse to recognize uncollectibility until reasonable expectations were extinguished. In evaluating the net realizable value of receivable in these circumstances, the strength of social networks has to be considered.

The "vicious circle" of overdue debt is now creating concern in Western Europe where, in some countries, such as the United Kingdom, average repayments periods are running almost three times the credit period (*Financial Times*, February 23, 1993). Although no exact statistics have been found concerning average repayment periods in the newly emerging democracies, eight months would probably not be an unusual delay. That, coincidentally, is about the halfway mark for Storco's receivables. Examining the pattern of repayments is one commonly encountered method of evaluating net realizable value, which would be useful in connection with this client.

2. The company uses the average-cost method of pricing its work in process and finished goods inventories. A technical opinion would be needed to determine whether quantities on hand are excessive in view of actual or anticipated demand and net realizable values are at least equal to but not less than historical costs.

3. According to the chief economist, full details of the fixed assets were provided to the valuer. A listing of the land and buildings was supplied, however, showing planned amounts as of December 31, 1992, in connection with future transformation of the commercial enterprise. Details follow:

	<u>Land</u>	<u>Buildings</u>	
Cost	147	16,282	1
Accumulated depreciation	<u>0</u>	<u>4,463</u>	1
Book values	<u>147</u>	<u>11,819</u>	1
New values	25,279	119,774	14

4. The deferred charges represent capitalized foreign currency translation losses on foreign denominated loans obtained to acquire capital equipment, incurred when the Bulgarian lev significantly devalued in 1991. Because of the significant losses involved, the Bulgarian government permitted an exception to the general rule of requiring them to flow through the income statement. Instead, they will be capitalized to the extent that they do not exceed asset revaluation amounts. Any excess revaluation amounts will be amortized over the life of the asset or the life of the loan.

This accounting treatment is consistent with International Accounting Standards, Paragraph 31.

5. Details of the short-term notes payable at September 30, 1992, are:

<u>Creditor</u>	<u>Amounts</u> <u>(in thousands)</u>	<u>Due Dates</u>
Commercial Bank Pleven (49 percent interest)	19,074 27,000 <u>25,000</u> 71,074	Overdue September 30, 1992 December 31, 1992
State working capital loan, interest free	<u>30,000</u>	August 31, 1993
Total	101,074	

Updated details of the December 31, 1992, balance of 77.089 million leva were not provided except for the information that it included an overdue amount of 75.089 million leva. A 32.745 million leva state loan appears to be included in the amount of 32.745 million leva of the state budget.

6. The chief economist gave his best estimate of an aged accounts payable trial balance as of September 30, 1992, as:

<u>Days Outstanding</u>	<u>Amounts</u> <u>(in millions)</u>	<u>Percentage</u> <u>of Total</u>	<u>Percentage</u>	<u>Cumulative</u>
1 - 30	2.0	14		14
31 - 60	2.0	14		28
61 - 90	1.5	10		38
91 - 120	1.0	7		45
121 - 150	2.0	14		59
151 - 210	<u>6.0</u>	41		100
	14.5			

This shows a faster turnover than the accounts receivable but illustrates a general picture of delayed repayments. Updated details of year end 1992 balance of 22.889 million leva were not available other than the information that they were all past due.

7. The other current liabilities as of September 30, 1992, consisted of:

Amounts owed to four related factories	5.435 million
Interest payable to banks	<u>1.917</u>
Total	7.352 million

Updated details as of year end 1992 were not available.

8. The following information was provided about the long-term loans payable as of September 30, 1992:

<u>Creditor</u>	<u>Amounts (in thousands)</u>	<u>Interest Rates</u>	<u>Terms</u>	<u>Dates</u>
Commercial Bank, Pleven	<u>3,059</u>	43	Not given	Not given
Commercial Bank, Pleven	<u>50,557</u>	49	5 years	1992
Economic Bank, Sofia	158	49	20 years	March 1989
	<u>480</u>	49	20 years	April 1991
	638			
	710	?	Not given	Overdue Interest
	<u>43</u>	?	Not given	Overdue Interest
	<u>1,391</u>			
Agricultural Coop Bank, Polvdiv	38,721	49	5 years	June 1990
	<u>5,158</u>	?	Not given	Capitalized interest
	<u>43,879</u>			
Total	98,886			

Updated details of the 1992 year end balance of 110.182 million leva were not available beyond the fact that it included overdue loans of 40.324 million leva.

9. The capital account increased from 28.865 million leva at December 31, 1991, to 48.549 million at December 31, 1992. The chief economist explained that this arose principally in connection with a barter agreement whereby Storco exchanged some of its production in return for fixed assets provided by a foreign supplier. Due to an increase in exchange rates, the production was worth more when provided to the supplier and this increment was taken into capital to match the increased value of the fixed assets acquired.

This accounting treatment is consistent with the capitalization of extraordinary foreign currency translation losses discussed in Note 4.

10. The chief economist provided the following analysis of the reserves:

Balance at December 31, 1991	13.507 million
Less absorption of loss for 1991	<u>5.756</u>
	7.751
Less write-off, or write-down, in value of various containers, pots, and crates to reflect replacement cost	<u>3.741</u>
Balance at December 31, 1992	4.010 million

The company's losses for the year ended December 31, 1992, exceeded its to  
resulting in a capital deficit at year end of 6.432 million leva.

**Market Analysis of the Bulgarian  
Processed Fruit and Vegetable Market**

by

Paul Christoff

January 1993

Prepared for

Development Alternatives, Inc.  
Bethesda, Maryland 20814

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## OVERVIEW OF THE SIZE AND COMPOSITION OF THE BULGARIAN FRUIT AND VEGETABLES PROCESSING MARKET

The tables that follow illustrate the magnitude of the decline of production between 1989 (the last year before the changeover to a more democratic system) and 1992. Briefly, combined fruit products production shrank to 13.6 percent in 1992 compared with production in 1989, and vegetables products production shrank to 22.5 percent over the same period.

### PRODUCTION VOLUME — METRIC TONS (000)

	1988	1989	1990	1991	1992
<b>Fruit</b>					
Canned Fruit	255	290	211	63	33
Compote	71	93	66	14	16
Confiture and Jellies	32	29	12	8	5
Marmalade	5	7	6	4	3
<b>Total</b>	<b>363</b>	<b>419</b>	<b>295</b>	<b>89</b>	<b>57</b>
<b>Vegetables</b>					
Sterilized (in cans and jars)	241	206	158	110	41
Tomato Paste	37	60	50	21	19
<b>Total</b>	<b>278</b>	<b>266</b>	<b>208</b>	<b>131</b>	<b>60</b>
<b>Grand Total</b>	<b>641</b>	<b>685</b>	<b>503</b>	<b>220</b>	<b>117</b>

\* Source: Bulgaria Ministry of Industry (figures are rounded)

The causes for the decline are many and interlinked. Some of the major causes include:

- Exports to the former Soviet Union went from roughly 70 percent of total exports to 5 percent or less.
- Domestic consumption was negatively affected in several ways:
  - High unemployment
  - High inflation (100 percent in 1991 and 40 percent in 1992)

- Since men were allowed to retire at 60 and women at 55, Bulgaria is now 2.2 million retirees in a population of 8 million. The pensions of the retirees 450 to 1,600 leva per month, which severely limits consumption.
- In this state of crisis, many Bulgarians went back to the practice of processing vegetables and preserves in cans or jars.

Because of the price distortions caused by inflation and the general lack of government support in this area, we were unable to obtain and present a comprehensive overview for the industry. Individual products will be included in the report on competitive and comparative advantage.

### MARKET TRENDS AND SHORT-RUN OUTLOOK

To compensate for the low level of domestic demand and the virtual disappearance of the export market, producers and export organizations have managed to redirect sales to new export markets as shown below. This trend is undoubtedly a move in the right direction and will be strengthened through the introduction of professional sales and marketing techniques at the producer and export organization levels.

#### ESTIMATED SALES BY MAJOR MARKETS

	1988	1992
Domestic	20%	
Exports to the Soviet Union	75%	
Exports to Western Europe and the Middle East	5%	
Unsold Production		

In the past, the producers were not expected to engage in sales and marketing, and now they are beginning to do so, including Storco and Selvikonserv. However, this is beginning to change slowly. About a year ago Philicon-Plovdiv, the largest tomato products processor in the country, hired a staff of five people to assume responsibility to visit and develop specific markets in Western Europe and the Middle East. Unconfirmed reports that two of the smaller producers are also creating a marketing staff.

The main positive factors and development include:

- The ability to replace the huge loss of USSR business with new markets in the Middle East, and, to a lesser extent, the United States;
- A broader choice of export agents and organizations (including private and government organizations), which now compete with the remaining, vastly smaller government agency, Bulgarplodexport;
- The gradual introduction of marketing at the producer level; and

- Flexibility versus the demands of the export markets (for example, private label business and export of semifinished product).

Among the negatives, which will be discussed in a subsequent chapter, the following should be noted:

- Product quality covers a broad range, depending primarily on the processing equipment used; and
- Export packaging is deficient in quality and appearance.

### **Short-Run Outlook**

It is probably appropriate in the case of Bulgaria to think in terms of 2-3 years before we see significant progress, given the slow pace of reorganizing the former system and the slow progress of privatization. Since, despite all the difficulties, both producers and exporters now have the freedom to act, the companies with strong leadership and good quality products will probably forge ahead, as typically happens in a free or relatively free economy. Some of the weaker producers will merge or close down. The implication for the A.I.D. privatization program is that it is vitally important to be allowed to focus on the potential "winners," since the object is to create success stories for the rest to emulate.

## **SEGMENTATION ANALYSIS — BRANDS, PACKAGING, AND FLAVORS**

### **Branding the Products**

The importance of creating and promoting a strong brand and product image is generally not fully appreciated in Bulgaria. In the past, because everything was owned by the government, several producers sold products under the same brand, including export private label business. The producer was identified by a small insignia somewhere on the label. Ideally, new brands should allow foreigners to readily read and pronounce the brand name, which leads to remembering the brand name and recognizing the product on the shelf.

### **Labels**

Generally, Bulgarian labels are inferior in graphics, paper stock, quality of printing, and the adhesive used to affix the label to the primary package. With the new emphasis on Western European markets that value quality and Near Eastern markets that require Arabic text, there is a great need for better quality and adaptability.

### **Packaging**

Glass jars are produced in Bulgaria, which helps reduce cost. Twist-off lids are also produced locally, but some are imported (ketchup, in particular) to meet customer specifications. In general, glass bottles and jars with twist-off caps are acceptable by Western standards.

The situation is not as satisfactory for cans because the quality of the Bulgarian-made cans is frequently inconsistent in metal thickness. This interferes with the proper application of protective lacquer, which may come off at those locations inside the can where it is thin, affecting both appearance and taste.

Problems also occur with the sealants used to apply the tops and bottoms of cans on the automatic machine. If deficient, discoloration or rust will appear along the rim in humid climates. There have been reports of loss of business in Singapore and Japan.

### **Flavors**

There are significant taste and flavor differences in fruits and vegetables, depending on where they are grown in Bulgaria. This is quite noticeable with fresh produce and some processed products.

Significant differences in exported fruit and vegetable flavor exist for the importing countries. Ketchup is a good example. The answer is simple and practical: the importer furnishes a formula, which the Bulgarian producer duplicates. This requires skill and the right equipment. Performance differs significantly among producers.

## **DESCRIPTION OF THE CURRENT AND DEVELOPING CHANNELS OF DISTRIBUTION**

### **Exports (65-70 percent of total volume)**

Prior to 1990, the state export organization, Bulgarplodexport, handled an estimated 65-70 percent of the volume. Two smaller government organizations handled the balance. In 1992, the respective market shares of players and respective market shares included:

- Government Controlled:
  - Bulgarplodexport — 160-180 employees; 30 percent of volume
  - Bulgarconserv — 40 employees; 20 percent of volume
- Cooperatives (substantially controlled by the government, but likely to go private): Central Cooperative Union — 40-50 employees; 20 percent of volume

- Private Enterprises: 50-60 small companies — 1-5 individuals; 25 percent of volume. Sales reportedly range from \$100,000 to \$3 million.
- Domestic Sales: 12-15 percent of volume — down from 25 percent in 1989.

The estimated breakdown is:

- Institutions (cafeterias, hotels, hospitals, and the army) 15 percent
- Retail stores 70 percent
- Auction exchange, leased and run by private entrepreneurs (purchasers are restaurants, hotels, and retail stores) 15 percent

### **Fresh and Processed Produce Stores in Bulgaria**

Prior to 1990, there were an estimated 450 retail stores for produce in Bulgaria. Because people in smaller towns still tend to favor processing fruit and vegetables for their own use, 335 were located in Sofia. The government-controlled Bulgarplod owned 335 of these stores. After 1990, 200 were privatized and another 80 were reclaimed by their farmer owners. Bulgarplod currently manages 55 stores.

### **COMPETITOR ANALYSIS**

In 1990, there were reportedly 97 fruit and vegetable processors. The number grew to 104 in 1993. Roughly 45 percent are still government owned, 55 percent are cooperatives, and, as of a few months ago, there was one private producer in the Varna area. The following chart ranks the 15 largest producers on the basis of production volume, with an indication of their best products.

Quality of the product is a function of the processing equipment, know-how, and the quality and regional characteristics of the fruit and vegetables. It was beyond the scope of this exploratory study to develop a comprehensive equipment and quality profile for the main producers, but it would be feasible to do so if there is interest.

Company	Reportedly High Quality in:
Philicon – Plovdiv	Peeled tomatoes and ketchup
Storco – Pleven	Tomato concentrate, ketchup, peeled tomatoes, and
Plodex – Ruse	
Tropic – Shumen	
Melfa – Lovetch	Unpeeled tomatoes, jam, and marmalade
Vida-Plod – Vidin	Peeled tomatoes
Republica – Pazardjik	Tomato concentrate peeled tomatoes, jam, and marmalade
Bulcono – Asenovgrad	
Petko Danev – Stara Zagora	
Yagoda – Yambol	Ketchup, peeled tomatoes, and tomato concentrate
Frueto – Sliven	
Ketchup Frookt – Aitos	Tomato concentrate, and ketchup
Petko Enev – Stara Zagora	
Servi-Conserv – Sevliev	Jam and marmalade
Nectar 59 – Silistra	

### PRICING AND PROMOTION PRACTICES IN BULGARIA

We observed price differentials of roughly 5-15 percent in the domestic market; however, there was no indication that pricing is used as part of a marketing strategy as it is practiced in the West. Because the volume sold per retail is low, promotions would not be affordable for the present. Also, because promotions were seldom necessary because there were shortages of most foods for many years.

In the export field, Bulgarian products generally enjoy a 25-30 percent price advantage. Freight charges are added to the cost. However, most European Economic Community (EEC) countries have a quota system, meaning that if the quota has not yet been filled by other EEC countries, a nonmember (such as Bulgaria) is required to pay a 28-30 percent duty. Once the quota has been filled, the duty provision no longer applies. Bulgarian exporters have to be well informed and time-conscious accordingly. The indications are that they do a good job in this area. Sales outside the EEC (to Switzerland, Poland, Czechoslovakia, Greece, Jordan, the Middle East, and North America) are subject to similar restrictions.

## **BUSINESS GROWTH STRATEGY OPTIONS AND FUTURE MARKET SHARE**

The following comments and recommendations generally apply to Storco Pleven and Selvikonserv.

### **Discussion**

The Bulgarian domestic market, formerly around 25 percent of production, is estimated to have dropped to 12-15 percent in 1992. We believe that improvement will be very gradual and at best it will rise to the 25 percent level. Thus, exports represent the logical alternative. Despite the loss of the huge USSR market (70 percent of total exports in 1989), Bulgarian producers and their export agents have managed to recoup most of the loss by boosting exports to Western Europe and the Middle East from 13 percent to 65-70 percent.

### **Implementation Plan**

We believe that Storco and Selvikonserv can restore and improve their growth and profitability through the implementation of the recommendations that follow:

#### **Export Marketing Management**

**Option 1.** Introduce export sales and marketing management and techniques by hiring highly qualified individuals who should be compensated on a salary plus commission basis.

**Option 2.** Appoint Mr. K. Lilov (of Bulgarconserv Ltd.) and Mr. R. Simov (of the company America) as exclusive export sales agents with a performance bonus provision.

**Option 3.** Select a limited number of export agents on the basis of their track records in specific foreign markets. Messrs. Lilov and Simov could be part of that group, serving the markets where they are strong.

#### **Promising Export Opportunities**

Go aggressively after private label business in Western Europe, Canada, and the United States.

#### **Brand Strategy**

Develop brand names that are easy to read and pronounce in the West and in the Middle East.

#### **Packaging**

Upgrade packaging, which is inferior to most other exporting countries and gives the product an inferior image:

- Upgrade the quality and appearance of labels.
- Downsize the shipping cases. The corrugated shipping cases now used are larger than they need to be, resulting in higher packaging costs and waste of 5-6 percent of capacity.
- Standardize the thickness of tin plates. Bulgarian-made tin plate for can production is reportedly of uneven thickness, which compromises the protective lacquer coating thickness when applied.

### **General Comments**

We believe that an American or European food processor may invest in Storco or Selvikonserv to take advantage of low labor costs and good quality fruit and vegetables.

The Bulgarian domestic market potential would be insignificant to a potential U.S. or European investor from the food processing industry. However, a Bulgarian producer could be seen as an attractive, low-cost base for exports to the European and Middle East markets. Russian-made tin plate is reportedly of more consistent quality and is reasonably priced.

### **Estimated Market Share in the Next Three Years**

We believe that one of the export marketing management options presented above will be implemented before we can make a realistic future market share projection. With the right management board, this should be feasible within six to nine months. We believe that an American or European food processor may invest in Storco or Selvikonserv to take advantage of low labor costs and good quality fruit and vegetables.

The Bulgarian domestic market potential would be too insignificant to a potential European investor from the food processing industry. However, a Bulgarian producer could be seen as an attractive, low-cost base for exports to the European and Middle East markets.

**Processed Fruits and Vegetables**  
**German Market Limited Study**

by

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February 1993

Prepared for

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## **PROCESSED FRUITS AND VEGETABLES GERMAN MARKET LIMITED STUDY**

Per our mandate under the Bulgaria Food Privatization Project, the DAI team has analyzed the potential for Bulgarian processed fruit and vegetable products to penetrate the German market. After eight interviews with German importers in Hamburg, the DAI team has concluded that:

- Perceptions of inferior product quality associated with Bulgarian processed fruit and vegetable products are overstated and, although important, are not prohibitive to market entry into Germany; and
- Bulgarian individual enterprises must meet minimum product quality standards and reliably fulfill predetermined supply contracts.

### **German Import Market**

Every year Germany imports about 2 million tons of processed fruit and vegetables worth approximately US\$ 3.6 billion. This market grew by 16 percent from 1990 to 1991 and is expected to grow at 10 percent per year while the former East Germany catches up and cheaper Eastern European products improve their quality.

Germany, like other European countries, has a highly and increasingly concentrated distribution system. The distribution of imports is equally concentrated. Currently, there are 3-5 major importers in Germany. These importers work directly with producers when warranted by the scale of the contract. For specific products, they rely on agents that can afford to specialize in specific products or specific countries. Importers will frequently sell their products under a private label.

Germany represents an important potential market for transition economies in Eastern Europe because of its emphasis on price rather than the novelty of products. A recent example supporting this argument is the successful penetration of Turkish canned mandarins into the historically Spanish canned mandarin stronghold on the German market. German importers understand Eastern European countries because they have maintained significant ties to Hungary, Yugoslavia, and Poland for the past 10 years. However, current import duties of up to 22 percent of the value of finished products originating from countries that are not members of the European Economic Community demand a significant price competitiveness for German imports and create an incentive to import unfinished goods.

The bulk of German imports, more than 70 percent, serve the growing private label segment of the market, which has been estimated at 5 percent of total consumption of processed fruit and vegetables. This segment is growing in significance because of the assimilation of the even more price-conscious East German consumers.

### **German Imports from Eastern Europe**

German imports from Eastern Europe have been dominated by Hungary and, to a lesser extent, Yugoslavia. More than five years ago, Hungary benefited from a first-mover advantage it secured by adopting federal regulations that enforced German product quality standards for all its exports.

Yugoslavia and, more recently, Poland have also overcome poor quality perceptions often associated with Eastern European food products.

The market share of processed fruit and vegetable products originating in Eastern Europe varies by product category. This market share is weak in tomato products and peas, 3.5 percent and 1.5 percent, respectively. It is strong in plum jam and frozen raspberries, 79 percent and 76 percent, respectively. Several interviews with German importers and agents suggest that these market shares are determined by the price competitiveness of the individual products. Once a certain quality standard is met, the price of the product appears to have no influence. This characteristic is enhanced by German law, which does not require the origin of the product to appear on the product label.

### **German Imports from Bulgaria**

Despite perceptions of poor quality, Bulgarian processed food products are penetrating the German market. Although inconsistent quality continues to hamper Bulgarian export potential, the major obstacle has been unreliable Bulgarian suppliers. Interviews with German distributors consistently point out the failure of Bulgarian producers to meet supply contracts in full and on time. Because German distributors are not buying for speculative purposes, failure of Bulgarian suppliers to deliver consistently results in repeat business.

The downfall of the Bulgarian state export agency and the absence of an alternative export system have resulted in a state of confusion and poor information regarding the quality and quantity of Bulgarian products. Bulgarian companies have compounded the situation by making commitments to more than one German import agent. Interviews with German importers reveal that it is common for a Bulgarian supplier to commit delivery of a certain amount of product to more than one importer. For example, a Bulgarian producer with one truckload of product will approach five importers. This practice results in the inaccurate perception that five times the actual product quantity offered is available. This misperception, in turn, often results in underpricing on the part of the importer and the inability to deliver the stated quantities on the part of the supplier.

In spite of inconsistent quality and concerns about reliability, several German importers are willing to pursue sourcing of Bulgarian food products. The challenge for individual Bulgarian producers, therefore, will be to build a track record of reliably delivering food products that consistently meet minimum German quality standards.

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# **Comparative and Competitive Advantage Analysis of Processed Fruit and Vegetable Products in Bulgaria**

by

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Prepared for

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## **COMPARATIVE AND COMPETITIVE ADVANTAGE ANALYSIS OF PROCESSED FRUIT AND VEGETABLE PRODUCTS IN BULGARIA**

The analysis of comparative and competitive advantage of processed fruit and vegetable products in Bulgaria was conducted as part of a privatization project, financed by USAID, of two state-owned enterprises. The analysis was conducted during a one-week visit to Bulgaria, followed by data collection and analysis of information provided by the U.S. Department of Agriculture's Foreign Agriculture Service in Bonn, Germany.

Comparative analysis of Bulgarian producers is constrained by insufficient information on industry and individual firm cost structure. More important, much of the available information is irrelevant because the industry is in transition. Today's best producer may not necessarily produce the best product tomorrow.

Current conditions indicate that there is very limited competition in an industry that does not fully understand its competitors, consumers, and markets. Bulgarian producers are just emerging from the old Soviet economic system that dictated production requirements and prices to satisfy the planned economy. State firms have not yet adjusted to the market economy and competitive forces emerging in Bulgaria that will eventually determine the firms that will develop or exploit comparative advantages.

Although the processed fruit and vegetable industry in Bulgaria is not very sophisticated by Western standards, it produces a number of products that compete effectively in the highly competitive German market. Bulgarian exporters will compete more effectively in products that have a limited sugar content because of the high duties applied against imported canned goods with high sugar content. Bulgaria already demonstrates price competitiveness against both European Economic Community (EC) and non-EC producers in the Bonn market in four of the seven products analyzed, including strawberry jam, other fruit jams, tomato ketchup, and frozen peas.

Bulgarian producers can further enhance the competitiveness of their products by improving packaging of products to reduce transportation costs and improve shelf appearance.

### **METHODOLOGY**

The comparative analysis of Bulgarian fruit and vegetable processors is based on one week of interviews in Bulgaria with private and state brokers, officials of the Ministry of Industry, and information collected from several processing firms, including the two state enterprises that will be privatized, Storco Pleven and Selvikonserv.

The information available for comparative advantage analysis is very limited. There are no current data on industry cost structure available to compare the cost of production of Storco Pleven and Selvikonserv with their local competitors. State firms have become very secretive about their costs of production in the past year as competition has increased through demonopolization, lifting of production controls, and liberalization of prices and trade. Previously, brokers had access to all cost information for state-owned processing enterprises.

Without industry cost structure or sufficient comparative costs of production across several products, the analysis of comparative advantage relies more heavily on qualitative information gathered from interviews of brokers and experts on the processed fruit and vegetable subsector, and ex-factory prices. Ex-factory prices do not accurately reflect cost structure and competitiveness because of variable strategies applied by firms.

Competitive analysis was conducted by comparing C.I.F. prices at Bonn, Germany, for specific products produced by Bulgaria against EC and non-EC producers. The C.I.F. information was derived from information provided by brokers in Bulgaria and the cost of production was provided by two state enterprises. In addition, the USDA's Foreign Agriculture Service in Bonn provided ex-factory and non-EC prices for the seven products. The analysis compares Bulgaria's C.I.F. prices against the C.I.F. prices of non-EC producers in Bonn and compares Bulgaria's C.I.F. prices plus substantial duties against the prices by the EC against EC producers' prices. The analysis is constrained by limited information on the cost structure and prices of Bulgarian and other exporters. Ideally, the analysis would have compared Bulgaria's prices at more than one international market, but information requested from Warsaw, Jeddah, and Prague was not available.

### COMPARATIVE ADVANTAGE ANALYSIS

Comparative advantage within the Bulgarian processed fruit and vegetable industry is not fully explained by one broker when asked who he would buy from for the export market. He responds that if the export goes to countries in the Commonwealth of Independent States, he decides solely on price and supply because local products are about the same for a low standard market. If the foreign buyer is non-EC, such as the Near East, then the broker will check the product quality before purchasing from a local producer. If the foreign buyer is from Germany or another EC member country, then the broker will inspect not only the final product, but also the processing and assembly of the product on the factory floor because European buyers are so stringent and local producers can not be trusted to perform to international standards.

The salient conclusion is that brokers respond more to buyer requirements than to the comparative strengths of the local industry because the old industry standards do not apply to today's market. Currently, there are no clear comparative advantages because the industry is in transition from a planned economy to a market economy. Industry experts, including brokers and officials of the Canning Institute and the Institute for Foreign Trade, say that the industry is undergoing major structural adjustments, making it difficult to determine market size, market share by producer, the number of producers, brokers and distributors, and the relative quality of products.

#### Limited Competition

Processing firms in the fruit and vegetable subsector do not compete with one another in either the domestic or export markets. The domestic market for processed fruits and vegetables is very limited and has not required competitive pricing, product differentiation, or marketing. The old Soviet system was recently dismantled through demonopolization and liberalization of prices and trade did not create producers for competition or create an economy that demanded quality standards.

Producers are almost completely insulated from foreign buyers and their requirements. With few exceptions, producers work through brokers to sell their products overseas. Without direct contact with market forces, consumers and foreign buyers, Bulgarian processors do not understand competition and its requirements for product quality, pricing, and consumer preferences. Producers are adjusting to the structural changes in their industry and striving to survive an extreme credit shortage and a troublesome domestic economy. Several producers are just beginning to realize that market forces will soon determine whether or not firms will survive.

The Bulgarian fruit and vegetable processing industry has the following characteristics:

- With the exception of the state monopoly in cardboard boxes, and oligopolies in the production of tin cans, screw-on lids, and glass jars, most firms produce what is perceived to be relatively generic products of equal or marginal quality.
- The industry is immature by Western standards, with dislocations in distribution systems; poor marketing, production, and financial management capabilities; and no product differentiation.
- The overall quality of production is below Western standards. There is limited production for Western export markets. Traditionally, most exports satisfied the much less demanding Soviet economies.
- Market information is very limited since the breakup in mid-1990 of state monopolies that controlled production and distribution of the domestic and export markets.
- Producers have not developed the management and marketing skills or production efficiencies to distinguish their products from competitors or to effectively target export markets.

### Quality Differentiation

Under the planned economic system in Bulgaria, brokers and distributors relied on state producers to supply specific products for the domestic market and for export. Brokers knew the relative costs of production of state enterprises because records were open, and brokers could determine prices based on the quantity and quality requested by foreign buyers. Brokers had insider information about the technology, production process, and cost structure for each state producer. Each region or state enterprise was widely recognized for its comparative strength in particular products. Most important, brokers usually had a personal relationship with plant managers and relied on their expertise to obtain the quantities requested by foreign buyers at competitive prices. State firms relied almost entirely on brokers for exports.

Today, brokers say that they can no longer rely on the old system. Factory managers have been replaced, some being appointed for political reasons, and the quality of production has diminished significantly in some plants. Brokers do not assume that factories produce the quality required by their clients. Recent demonopolization of the domestic distribution system controlled by Bulgarplod, and the export system through Bulgarplodexport, has resulted in at least 30 small private export brokers and distributors. These private brokers and distributors who formerly worked for state monopolies now exploit the relationships they developed with foreign buyers to buy and sell Bulgarian preserves to export markets.

## Price Comparisons

Table 1 shows producers' ex-factory prices gathered by brokers in Sophia for five products: ketchup, strawberry preserves, unpeeled tomatoes, frozen peas, and peeled tomatoes. The table indicates three brokers' qualitative assessments of product quality, ranking the top three products (best quality) based on experience with the industry. However, brokers say that they cannot assume that producers will make the same quality product today.

Brokers say that ex-factory prices will vary at the time a deal is made for a number of reasons:

- Like all commodities, prices for preserves typically vary up to 15 percent of price depending on the quantity required, available stocks, and cash payments from prospective buyers.
- Factory managers often receive bribes resulting in lower prices.
- The markups or profit margins vary dramatically among producers, making it difficult to determine actual cost competitiveness.

## COMPETITIVE ADVANTAGE ANALYSIS

The analysis of competitive advantage is principally based on comparisons of producers' C.I.F. prices in the same market.<sup>1</sup> The following analysis compares seven specific processed fruit and vegetable products against EC and non-EC products based on C.I.F. prices in Germany. In addition, the analysis considers specific duties — including sugar content duties — applied to imported products and how these duties affect competitiveness. Packaging and transportation are important factors in freight cost and price competitiveness.

Of the seven products analyzed, strawberry jam, other fruit jams, tomato ketchup, and frozen peas are price competitive against both EC and non-EC producers in the Bonn market. As sugar content increases in Bulgarian and other non-EC products, their price competitiveness is significantly reduced. For example, Bulgarian peaches with 30 percent sugar content are very competitive against EC producers at almost 30 percent less than the price of the next cheapest product made in the EC. Application of EC sugar content duties, however, make Bulgarian products more expensive than the costliest EC canned peaches made in France.

There are several conclusions that can be drawn from this analysis. First, Bulgarian producers can and do produce export quality products that are price competitive in the EC market against EC and non-EC producers. Second, Bulgarian firms can target products that have lower sugar content to avoid higher duties that make non-EC products more expensive. Finally, Bulgarian firms can produce competitive intermediate products, such as tomato paste and fruit filling for pastries, that have high sugar content and high demand in the lucrative EC market.

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<sup>1</sup>C.I.F. prices include the ex-factory price plus insurance and freight costs to move the product to the market.

TABLE 1

COMPARATIVE ANALYSIS:  
EX-FACTORY PRICES OF PROCESSED FRUIT AND VEGETABLE PRODUCTS  
(US\$ PER NET TON)

Producer	Ketchup 340g jars Plastic Caps		Strawberry Preserve 370g jars		Unpeeled Tomatoes 680g jars		IQF Peas 10-17 Kg Boxes		Peeled Tomatoes 820g Cans	
	QLTY	Price	QLTY	Price	QLTY	Price	QLTY	Price	QLTY	Price
Plovdiv	III	676							II	475
Yambol	I	710				405			I	440
Agusta					I	425	III	480		
Gabrova									QLTY	
Lovech			III	860	III	410				
Sevlievo			I	860						
Slurmen			II	910		400				440
Pazardjik									I	450
Paruymai		660	I	970	II	460				
Ruse					III		II	475	III	
Aitoc	II	740			I					
Pleven	III	560		1017	II	603	I	500		450

Source: Information provided by BalkanKonserv and BulgarKonserv, two brokers that export processed food commodities in Bulgaria

## Price Competitiveness

Price and quality are generally the most important indicators of competitiveness in international markets. However, commodities such as fruit and vegetable preserves have highly segmented and fluctuating prices that vary according to demand.

The key to competitive advantage for Bulgarian processed fruit and vegetable products is to export them to international markets at competitive prices that meet quality standards. The following analysis of competitive advantage examines the key competitive market indicator — C.I.F. prices — for these products in Bonn, Germany. The analysis focuses on seven specific products and their C.I.F. competitive prices. C.I.F. prices allow comparison of Bulgarian products against non-EC products. Competitive prices is a term used here to include import duties applied against C.I.F. prices. Price comparisons against EC products.

The seven products selected for analysis include ketchup in 340-gram bottles, peach in 820-gram cans, strawberry jam in 454-gram jars, apricot jelly in 454-gram jars, peeled and sliced whole/parts of tomatoes in 820-gram cans, and frozen peas in bulk or individually quick frozen.

## The German/EC Market

The German market is one of the most promising and the most competitive in Europe. EC standards and prices. EC levies and sugar content duties applied against the value of imports from Bulgaria and other non-EC countries reduce their price competitiveness by as much as 50 percent.

The EC applies a schedule of duties that increases as the product comes closer to the EC market. Sugar content is the standard for taxing products that have higher value added content in the chain. Imported intermediate goods, such as tomato paste that does not contain sugar, are taxed at lower rates because these goods do not threaten local EC producers. Many products with low sugar content are often important intermediate products in value-added production within the EC economic zone.

Table 2 presents the EC's harmonized system codes, duties, and sugar content duties for these specific products. Table 3 shows the C.I.F. and competitive market prices for these products in Germany. Table 4 indicates the total metric tons and C.I.F. prices per ton by country of origin by USDA's Foreign Agricultural Service Office in Bonn, Germany. This table compares Bulgarian competitive prices, including all duties, against EC member countries, and Bulgarian C.I.F. prices against non-EC countries. Data do not take into account quality of the products. Therefore, it is difficult to determine how prices may vary by overall product quality.

Against EC member countries, Bulgarian strawberry and other jams and marmalades, ketchup, and frozen peas are very competitive. Duties on peaches in syrup and whole/parts products are less competitive. Several brokers said that Bulgarian jams traditionally are very competitive and have been the key product to open up new markets in the EC.

Bulgarian jams and marmalades, tomato ketchup, peaches, and frozen peas are very competitive against non-EC producers. Bulgarian peeled tomato goods were imported in the largest quantities from non-EC countries after Israel. While Israel's prices for tomato products are 27 percent higher than Bulgaria's, substantially higher volumes for Israeli imports may result from consumer preference for kosher products.

TABLE 2

EEC Duties and Harmonized System Codes for  
Competitive Analysis

HS #	Product Description	EC Duty (Percent)	Sugar Content Duty US\$ Per Net Ton	Sugar Content Duty		
				Content %	ECU Per 100 Kg	US\$ Duty Per Net Ton
20087071	Peaches in Syrup in 820 g cans*	22	290.94	5 - 30%	11.19	145.47
21032000	Ketchup in 340 gram bottles (twist caps)	16	145.47	30 - 50%	20.98	272.74
20079933	Strawberry Jam in 454 g jars	30	272.74	50 - 70%	30.30	393.9
20079939	Apricot Jelly in 454 g jars	30	272.74	70 - 100%	43.36	563.68
20021010	Whole Peeled Tomatoes in 820 gram cans	18	0			
20021090	Whole Unpeeled Tomatoes in 820 gram cans	18	0			
20049050	Frozen Peas in bulk or IQF	24	0			

Source: Commission Regulation (EEC) No. 2505/95 of 14 July 1992 Amending Annexes I and II to Council Regulation (EEC) No. 2658/87 on the Tariff and Statistics Nomenclature and on the Common Customs Tariff L267, Volume 35, 14 September 1992

## Definitions:

- EC Duty = ad valorem tax on cost of product plus insurance  
 Sugar Content Duty Per Net Ton is calculated at ECU 1.30 = US\$ 1.00  
 Sugar Content Duty is based on percent of sugar content in the product  
 ECU is Economic Currency Unit  
 \*The sugar duty is doubled for peaches with more than 15% sugar content

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TABLE 3

Storko Pleven Products – Competitive Analysis  
 All Prices are Per Net Metric Ton at Bonn, Germany  
 (US\$1 = 24 levas)

Costs	Ketchup 340g bottle	Strawberry Jam 454 g	Whole Unpeeled Tomatoes 820 g	Whole* Peeled Tomatoes 820 g	Canned Peaches 820 g	Tomato Paste 820 g	Fr F IQ
Full Cost	15,386.00	23,984.00	9,789.00		7,547.00	17,446.00	14
Profit <sup>a</sup>	3,077.00	4,797.00	1,958.00		1,509.00	3,490.00	1
Factory Price (levas)	18,463.00	28,781.00	11,746.00		9,056.00	20,936.00	16
Ex-Factory Price (US\$)	769.29	1,199.21	489.42	475.00	377.33	872.33	
Freight to Bonn Insurance	360.00 11.29	294.00 14.93	303.00 7.92	303.00 7.78	303.00 6.80	303.00 11.75	
CIF Price	1,140.58	1,508.14	800.34	785.78	687.14	1,187.09	
EEC Sugar Content Duty	125.33 145.47	363.96 272.74	90.62 0.00	88.02 0.00	86.09 290.94	159.54 0.00	
Competitive Market Price	1,411.38	2,144.84	890.96	873.80	1,064.17	1,346.63	1

\*Ex-factory Price for Whole Peeled Tomatoes is from Plovdiv.

<sup>a</sup>Assume a 20 percent profit margin for Storko Pleven.

SelviKonserv Products – Competitive Analysis

Costs	Fruit in Syrup	Fruit Jam	Fruit Marmelade
Full Cost	14,175.00	19,700.00	16,680.00
Profit	335.00	400.00	390.00
Factory Price (levas)	15,050.00	20,100.00	17,070.00
Ex-Factory Price (US\$)	627.08	837.50	711.25
Freight to Bonn Insurance	303.00 9.30	294.00 11.32	294.00 10.05
CIF Price at Bonn	939.38	1,142.82	1,015.30
EEC Duty Sugar Content Duty	101.82 290.94	254.64 272.74	216.39 272.74
Competitive Market Price	1,332.15	1,670.20	1,504.43

Sources: Cost Information was provided by Storko Pleven and SelviKonserv. USDA's Foreign Agricultural Service Office Bonn and Washington provided information on duties. Bulgarian freight companies provided freight and insurance information.

TABLE 4  
Competitive Analysis of C.I.F. Prices in Bonn, Germany

Product Origin	Product at US\$ Per Net Metric Ton													
	Strawberry Jam HS#20079933		Other Jam/Puree HS#20079939		Peaches Syrup HS#20087071		Whole/Parts Tomatoes HS#200210900		Tomato Ketchup Other Tomato Sauce HS#210320000		Whole/Parts Tomatoes Peeled HS#200210100		Frozen Peas HS#20049050	
	MT	\$/MT	MT	\$/MT	MT	\$/MT	MT	\$/MT	MT	\$/MT	MT	\$/MT	MT	\$/MT
EEC Countries														
France	33.00	2,869.46	161.00	2,445.43	319.00	1,027.57	6.00	5,008.06	406.00	1,782.87	2.00	1,982.35		
Italy	118.00	2,205.62	492.00	2,282.15	445.00	947.89	1,052.00	637.23	846.00	1,534.34	10,461.00	537.87	7.00	1,252.86
Netherlands	106.00	1,822.66	219.00	1,890.81			1.00	1,116.67	1,013.00	1,664.76	69.00	647.38		
Belgium/Lux	189.00	2,117.75	323.00	2,174.47					1,056.00	1,630.85				
Switzerland	0.00	5,050.00	4.00	4,280.49										
Austria	2.00	6,036.84	11.00	4,479.09										
Finland			0.00	4,500.00										
Denmark	7.00	2,279.73	28.00	2,314.80	43.00	714.59								
Great Britain	8.00	6,749.37	35.00	4,118.91					82.00	1,341.47	22.00	516.67		
Bulg. Comp. Prices		2,144.84		1,670.20		1,064.17		890.96		1,411.38		873.80		1,167.31
Non-EEC Countries														
Greece					2,483.00	993.89			0.00	0.00	1.00	2,250.00		
South Africa					358.00	1,037.87								
USA	0.00	6,700.00	1.00	11,250.00	2.00	1,588.24			261.00	2,459.12				
Israel											201.00	551.47		
Bulgaria									2.00	418.75	33.00	434.66		
CSFR									13.00	306.82			1.00	3,366.67
Russia			2.00	961.90				3.00	268.00					
Turkey	0.00	3,350.00	4.00	1,883.72										
Hungary									4.00	1,125.00	10.00	453.85		
Mexico									39.00	1,087.47				
Thailand									17.00	1,038.46				
China									1.00	2,250.00				
Spain					1.00	1,442.86					12.00	1,056.52		
Total MT	463.00		1,280.00		3,651.00		1,075.00		206.00	2,382.00	28.00	792.53		
Bulgarian CIF Prices		1,508.14		1,142.82		687.14		800.34	4,250.00		10,839.00		8.00	
										1,140.58		785.78		999.23

Source: USDA's Foreign Agricultural Service Office in Bonn, Germany

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Most of the C.I.F. prices calculated in Table 3 are based on ex-factory prices quoted by brokers. Comparison of prices, however, is not always a precise measure of competitiveness because of hidden subsidies and the price elasticity of these commodities. This is particularly true of the former Soviet Union because prices were often subsidized heavily to gain scarce hard currency in order to purchase machinery parts for plant operations, or simply to bolster the treasury. Such factors can explain discrepancies between prices quoted from different sources. For example, note that the C.I.F. price for canned whole peeled tomatoes, \$434.66 per net ton, is the lowest among Bulgaria and other non-EC countries. The C.I.F. price used in our analysis, calculated in Table 3 at \$785.78 per net ton, is based on ex-factory prices and cost of freight, is significantly higher.

### **Packaging**

Current packaging technology in Bulgaria is antiquated by Western standards. A state monopoly produces boxes of low-grade paper that do not protect the contents adequately. In addition, boxes are produced to respond to prices established by weight, rather than by size. Consequently, boxes usually do not accommodate their content efficiently because the manufacturer of boxes is motivated to produce and sell the heaviest box — regardless of how well it accommodates canned products. Brokers estimate that Bulgarian products are 5 to 6 percent more expensive in freight costs because of inefficient packaging. Demonopolization of the manufacture of boxes, brokers argue, would significantly reduce waste and freight cost.

Packaging also does not serve important marketing purposes. Labels are poorly designed, often unattractive, and labels frequently peel off of their containers. One broker said that Bulgaria lacks label-producing capability. On several occasions, Bulgarian producers sourced labels from Greece, who could write Arabic script required in Middle Eastern markets because local printers cannot produce the script or meet the printing deadlines. Bottles often have a green tint, which detracts from the appearance of the contents, and some liquids are packaged with bubbles that do not present a professional shelf appearance.

These packaging deficiencies are particularly important in the EC market where sophisticated consumers will notice qualitative differences. Brokers believe that improved packaging would allow Bulgarian products to compete more effectively with Hungarian, Polish, and EC producers, and to satisfy private label buyers.

### **Transportation**

Until recently, the Bulgarian truck fleet was dominated by state firms rather than private businesses. Transportation was frequently cumbersome and not as efficient as it should be for Western export markets.

Despred, the state freight-forwarding company, and Somat, the largest road transport company, controlled almost 100 percent of the transportation sector until 1990. Today, Despred maintains about 45 percent of the market share for container freight while Somat maintains 50 percent of the market share after demonopolization.

Transportation prices and modes are quite competitive. A number of new private transport firms founded by former employees of Despred and Somat have entered joint ventures with partners from Western Europe to create strong competition against the former state monopolies.

Transportation by sea and land by container is readily available and currently serves markets in Western Europe, the United States, the Middle and Far East, and Africa. Bulgaria has about 7,500 registered trucks and sufficient railroad facilities. Somat and Despred handle both refrigerated and general freight. An estimated 40 percent of the freight is refrigerated.

Bulgaria is strategically positioned to serve important markets in Europe and the Middle East. While transportation efficiencies can still be improved, freight costs are not considered a disadvantage that limits the competitiveness of Bulgarian processed fruit and vegetable exports.

**Analysis of Laws and Institutions  
for Privatizing Food Industry  
Enterprises in Bulgaria**

by

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Prepared for

Development Alternatives, Inc.  
Bethesda, Maryland 20814

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## EXECUTIVE SUMMARY

One of the purposes of the Food Industry Privatization in Bulgaria Project is to provide a model for the newly created Bulgarian Privatization Agency and for the State ministries and municipal councils involved in the privatization process, particularly those state-owned enterprises in the food processing or agribusiness sector. The author was asked, in response to the legal and institutional portion of the project, to review, evaluate, and offer recommendations on the following issues:

- Inconsistencies or gaps in the legal structure that could prohibit or slow down the transfer of ownership;
- The institutional framework required to implement the privatization laws; and
- Strengths of restitution claims, particularly those relating to Storco Pleven and Selviconserv, the two state-owned enterprises selected in Phase I of the project for the pilot privatization program.

Many of the inconsistencies or gaps in the legal structure that pertain to privatization can be rectified by amending the 1992 Transformation and Privatization of State-Owned and Municipal-Owned Enterprises Act (referred to in this report as the Transformation and Privatization Act) and other laws, and by preparing one Council of Ministers' decree implementing the Act to:

- Eliminate inconsistent terminology for business organizations;
- Clarify the status of the nontransformed enterprises;
- Clarify the status of mandatory transformation to commercial partnerships;
- Offer guidance for the transformation of municipal enterprises;
- Clarify the status of property to remain in state ownership;
- Offer guidance on the preparation of prospectuses;
- Clarify the provisions for restructuring debts of privatizing state-owned enterprises;
- Permit broader use of money received from the sale of state-owned enterprises; and
- Offer guidance on the documents transferring state-owned and municipal-owned enterprises to private ownership.

The number of decrees applicable to the Transformation and Privatization Act produce a confusing situation, as does the inconsistent terminology used in the Act and in the 1991 Law on Commerce to designate business organizations. A Council of Ministers' decree can offer guidance, particularly on the preparation of prospectuses and documents transferring enterprises to private ownership.

Two prime, related issues that must be clarified to promote the rapid transfer of ownership:

- Restructuring debts of privatizing state-owned enterprises; and
- Permitting a broader use of money received from the sale of state-owned enterprises.

Many of the state-owned enterprises accrued large debts during the period they were under state ownership and management. Proceeds or revenues from the sales of a particular enterprise should be used to liquidate or restructure those debts. Proceeds or revenues from the sale of one enterprise could also be used to liquidate or restructure the debts of another enterprise. Clarification should be made as to whether the Council of Ministers' Decree No. 234 of 24 November 1992 is applicable to only those enterprises that come under the Ownership and Use of Farm Land Act or to all state-owned enterprises. Permission should also be given to use the proceeds or revenues from the sale of state-owned enterprises to complete construction projects started during state ownership but stopped during the privatization process because of financial difficulties.

The institutional framework established for privatization, which involves many government authorities and bodies, is complex and time consuming and can cause undue delays in the privatization process. Many of the Ministries and the Privatization Agency need more employees devoted to the privatization process. Some of the following institutional steps need clarification, while others can be combined to simplify the process, and thereby decreasing the time needed for privatization:

- Clarify the prioritization process for privatizing enterprises;
- Require a time frame for privatizing all enterprises, regardless of whether they have already been transformed;
- Increase the 10 million leva limitation for privatization by Ministries;
- Simplify the procedures for present and certain former employees to purchase shares or interests on preferential terms; and
- Combine many of the features in the two required appraisals.

Priorities have to be established on privatizing state-owned enterprises. The Privatization Agency prepares an annual program with minimum targets and goals, but it is not clear whether the Agency should inform the Agency what enterprises to include on the list in the program, or whether the Agency should inform the Ministries what enterprises it will include on the list. In addition, management boards of state-owned enterprises can submit a proposal for a decision to privatize. Government authorities can negate the one-year time limit for privatization by delaying transforming enterprises to commercial partnerships. The 10 million leva limitation requires the Privatization Agency to become involved in the privatization of too many enterprises; therefore, the 10 million leva limitation should be increased to 100 or 150 million leva to decrease the number of enterprises for the Agency to privatize.

Council of Ministers' Decree No. 105 of 15 June 1992 requires an appraisal of the proper valuation governing the assets of an enterprise and then an appraisal of the value of the enterprise after a decision has been made to privatize. Many of the features of these two appraisals can be combined to simplify the process. The prime institutional issue involved with the privatization process is to simplify the procedures for present and certain former employees to purchase shares or interests on preferential terms.

The Transformation and Privatization Act must satisfy present and certain former employees' rights to preferential participation in acquiring up to 20 percent of the shares and interests in state-owned and municipal-owned enterprises that have been transformed into commercial partnerships at 50 percent of value. This requirement can, however, cause delays of up to three months or longer in the privatization process. Preparation of information on persons entitled to purchase shares or interest on preferential terms could start immediately after a decision has been made to privatize, rather than waiting for two weeks after a three-month lapse from the date of commencing issuing stock in the enterprise. The meeting with those eligible to purchase interests in private limited companies could be held soon after the decision is made to privatize the enterprise. Present and former employees can appeal the content in the information to the District Court if they have a disagreement, which could cause lengthy delays.

To eliminate the delays and move the privatization process along rapidly, 20 percent of the shares or interests in the privatizing enterprises could be immediately set aside for the present and former employees. Unused shares or interests could be sold later if not needed for present and former employees.

Determining, processing, and settling restitution claims made by former owners of land now included in the privatizing enterprises and other property improvements on that land are dependent upon several factors. The first step is to determine whether the claimant or his or her heirs actually own a parcel of land, and, if so, determine if that parcel of land is now a part of the privatizing enterprise. If the answer to those questions is yes, the former owner is entitled to restitution.

The next step is to determine the law, act, or decree by which the former owner's property was nationalized or expropriated. If it was nationalized or expropriated under one of the laws, acts, or decrees listed in the Restitution of Nationalized Real Property Act, the former owner may be entitled to restoration of the land and the improvements made by the State or municipality on it. The former owner must declare his or her right to restoration within two months after the publication date of the decision to privatize the enterprise to be eligible for that form of restitution. If the former owner fails to declare his or her right to restoration in the two-month time period, he or she or their heirs are only entitled to compensation.

All other former owners are entitled to proportionate parts of the shares or interest in a privatizing enterprise based on the present value of their former property in comparison to the total present value of the privatizing enterprise, except if restoration claims were filed under the Restitution of Nationalized Real Property Act. Former owners have until May 12, 1993 to file this type of restitution claim or within two months after the publication date of the decision to privatize, whichever is sooner. Storco Pleven and Selviconserv have to follow these steps to determine the legality of the claims filed against their land and property.

Restitution claims submitted to Storco Pleven and Selviconserv — both state-owned enterprises transformed into single-person commercial partnerships — by former owners of land that has been incorporated into the state enterprises should be processed according to the procedures specified in the Transformation and Privatization Act. The two single-person commercial partnerships are being privatized under the Transformation and Privatization Act, and therefore the restitution claims provisions of this act prevail over the other restitution claims laws. In addition, the restitution claims provisions of the Transformation and Privatization Act incorporate most of the laws, acts, and decrees whereby real property was nationalized or expropriated.

To summarize, the procedures and steps for processing restitution claims are as follows:

- File the restitution claim application with the municipal council having jurisdiction over the property;
- Determine if the restitution claim application was timely filed; such claims must be filed within one year after the effective date of the Transformation and Privatization Act or two months after the publication date of the decision to privatize the enterprise, whichever is sooner;
- Determine through land records if the applicant and former owner was actually the owner of the particular parcel of land in question;
- Determine if the particular parcel of land has been incorporated into the privatizing enterprise;
- Determine the former law, act, or decree under which the particular parcel of land in question was nationalized;
- Determine if the former owner ever received compensation upon nationalization of the particular parcel of land in question;
- If the former owner has had his or her land expropriated under one of the laws or decrees in the Restitution of Nationalized Property Act, he or she must declare his or her intention to restoration to the authority or body empowered to privatize within two months after the publication date of the decision to privatize the enterprise;
- Determine the amount of compensation the former owner is entitled to if he or she exercises his or her restoration rights in a timely fashion;
- Determine if the particular parcel of land in question that is not a built-up portion of a privatizing enterprise was formerly farm land;
- Municipal council should appoint appraisers to determine value of the particular parcel of land in question;
- Communicate the appraisal to the former owners;
- Determine the proportionate part of the shares or interest in any partnership formed by the privatizing enterprise that the former owner is entitled to receive;
- Determine if the former owner will appeal the appraisal to the District Court;
- Municipal council then transmits the restitution claim, with all accompanying material and information, to the Council of Ministers; and
- Council of Ministers approves the proportionate share or interest in the new privatizing enterprise and transfers the share or interest to the former owner.

## INTRODUCTION

Development Alternatives, Inc. (DAI) is responsible for Phase II of the Food Industry Privatization in Bulgaria Project it has under contract with the U.S. Agency for International Development. Its task is to concentrate on implementing the pilot privatization of two state-owned or municipal-owned food processing or agribusiness enterprises, or segments of them, that were selected during Phase I of the project. One of the purposes of the project, among others, is to develop a model for the newly created Bulgarian Privatization Agency, and for the State Ministries and municipal councils involved in the privatization process of other state-owned and municipal-owned enterprises, particularly those in the food processing or agribusiness sector. Two state-owned food processing or agribusiness enterprises, Storco Pleven and Selviconserv, were selected in Phase I of the project by DAI, for this pilot privatization project. Because of the difference in the book value of the fixed assets of the two enterprises, Storco Pleven, the larger of the two, is to be privatized by the Privatization Agency and the smaller, Selviconserv, is to be privatized by the Ministry of Industry.

The task of this report is to examine the laws, acts, and decrees that bear on the privatization process in Bulgaria. Many of the laws and acts adopted by the National Assembly and decrees adopted by the Council of Ministers have different titles depending upon the translation from Bulgarian to English. Different legal terms can also be found within the same law, act, or decree depending upon the translated version used. For example, three translated versions of the Transformation and Privatization of State-Owned and Municipal-Owned Enterprises Act adopted by the National Assembly on 23 April 1992 (and known hereafter in this report as the Transformation and Privatization Act) use different English words, terms, and phrases that have different meanings, thereby causing confusion and conflicts.<sup>1</sup>

The first sections of this report, which are intended to provide legal background, relate to the Bulgarian legal system, ownership of property, and privatization laws and procedures used to privatize state-owned and municipal-owned enterprises. Later sections relate more to the legal and institutional analysis assigned to the author in its Scope of Work for the legal portion of Phase II of the project. Inconsistencies or gaps in the privatization laws or acts and legal structures are next identified and evaluated, and an evaluation is made of the institutional framework for implementing the privatization laws or acts to assess the effectiveness of the institutions. Finally, policies and procedures for processing restitution claims under the privatization laws, particularly those submitted by former owners whose land is now a part of Storco Pleven and Selviconserv enterprises, are reviewed and evaluated.

### Scope of Work

The Scope of Work for the legal and institutional analysis portion of the Bulgarian Food Privatization Project to be performed while in Bulgaria from 13 February 1992 to 20 February 1992 had the following three objectives:

- (1) Evaluate the existing privatization-related laws in Bulgaria, including the Law on Commerce, and identify important inconsistencies or gaps in the legal structure that could prohibit or seriously slow down actual transfers of ownership. Recommend appropriate steps to rectify problems identified.

- (2) Evaluate the institutional framework mandated to implement the privatization laws and its effectiveness. Recommend appropriate steps to rectify problems identified.
- (3) Review and determine the strength of the restitution claims submitted by former owners of land to Storco Pleven and Selviconserv based on the existing Bulgarian legal system and government policy on restitution.

In addition, specific issues to be resolved should be identified and actions recommended to ensure the existence of a complete, rational and effective legal and institutional system for privatization.

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## BULGARIAN LEGAL SYSTEM

Bulgaria's Constitution adopted by the National Assembly on 4 December 1947<sup>2</sup> created the legal base for transforming the country into a one-party State with a centrally planned economy and declared the Communist Party to be the leading force or role in society. A new Constitution adopted by the National Assembly on 1 May 1971<sup>3</sup> that superseded the Constitution of 1947 transformed the State from "a State of proletarian dictatorship" to an "all-people's State." It was approved in a National referendum on 16 May 1991. Article 5 of the Constitution of 1971 provided that "national sovereignty, unity of power, democratic centralism, socialist democracy, legality and socialist internationalism" were the main principles of Bulgaria's political system. This 1971 Constitution consolidated the role of the Bulgarian Communist Party as the guiding force in society and further centralized State power.

The National Assembly, officially known as the Grand National Assembly, which was the sole legislative body of the Republic<sup>4</sup> and supreme body of State power under the 1971 Constitution<sup>5</sup> combined the legislative and executive functions of the State. It consisted of 400 representatives elected for five-year terms from constituencies with equal numbers of inhabitants.<sup>6</sup> Therefore, the National Assembly was a representative body of National scope and expressed the will of the Nation and embodied its sovereignty.<sup>7</sup> All other State bodies or organs were directly or indirectly derived from it and were under its guidance and control.<sup>8</sup> The National Assembly was called into session at least three times a year by the Council of State and when requested by one-fifth of the Assembly's members. Legislative bills were submitted by the Council of State, Council of Ministers, standing committees of the Assembly and its members.<sup>9</sup>

A new 40-member body, the Council of State or State Council, was established by the Constitution of 1971 to be the permanent collective head of State or a supreme constantly functioning body of the National Assembly. The Council of State, which was responsible to the National Assembly under the Constitution, consisted of a President, who was the Secretary General of the Communist Party, Vice-President, Secretary and members, all of whom were elected and dismissed by the National Assembly and were members of it as well.<sup>10</sup> Its duties were to see that the National Assembly requirements of the laws adopted by the National Assembly tasks created by laws were performed and

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<sup>2</sup> Bulgaria Constitution of 1947, State Gazette No. 184, 1947.

<sup>3</sup> Bulgaria Constitution of 1971, State Gazette No. 39, 18 May 1971.

<sup>4</sup> *Id.*, Article 77.

<sup>5</sup> *Id.*, Article 66, paragraph 2.

<sup>6</sup> *Id.*, Article 67.

<sup>7</sup> *Id.*, Article 66, paragraph 1.

<sup>8</sup> *Id.*, Article 67, Article 68, number 18.

<sup>9</sup> *Id.*, Article 80.

<sup>10</sup> *Id.*, Article 90, Article 92, paragraph 2.

to manage and supervise the activities of the Council of Ministers and other State organs. The Council of State had broad legislative powers and could issue decrees when the National Assembly was not in session. Such decrees, when adopted by the Assembly, held the power of law, and reduced the legislative power of the National Assembly to rubber-stamping and caused that power to be transferred to the Council of State.

The Council of Ministers, referred to as the cabinet, government or executive branch, was the supreme executive and administrative body of State power.<sup>12</sup> It consisted of about 30 members, composed of a Chairman, who was the Prime Minister and as such was head of government, and Ministers, Chairmen, Ministers and heads of special departments holding equal rank to Ministers. The Council of Ministers was elected by the National Assembly and was required to report its activities to the Assembly or to the Council of State when the Assembly was not in session.<sup>13</sup> Powers to dismiss or to alter the membership of the Council of Ministers or its individual members rested with the National Assembly. The Council was vested with general leadership powers of State government and as such was responsible for deciding domestic and foreign policy, coordinating the activities of the Ministries and other State organs, drafting uniform State economic plans and the budget, implementing the budget and managing State property.

Provisions in the Constitution of 1971 that guaranteed the "leading role in society of the Communist Party" were removed by the National Assembly on 16 January 1990. After being amended several times in 1990, the Constitution of 1971 was finally replaced in July 1991.<sup>14</sup> The old unitary and indivisible power was abandoned and a balance of power among the one-chamber National Assembly (Parliament), Council of Ministers (executive branch) and judiciary was re-established as the basic principle of the Constitution of 1991. Public sector structures remain similar to those of the Constitution of 1971, with the exception of the judicial sector, that has been radically restructured.

The one-chamber National Assembly now has only 240 representatives who are elected on a proportional basis. Although this structure is similar on paper to that of the previous National Assembly, the role of the new Assembly is different. The previous Assembly met only a few times a year to stamp decrees of the former Council of State or laws prepared under the supervision of the Communist Party. The new Assembly is a full-time institution designed to have final authority over laws. Bills are introduced by the Council of Ministers or members of the Assembly and must be approved by a simple majority and signed by the President.

An office of President, who is head of State and whose functions are primarily representative in nature, was created by a 1990 amendment to the Constitution of 1971. The Council of State, which was the 40-member collective body acting as head of State, was eliminated. The President proposes and appoints the candidate for Prime Minister the person designated by the largest parliamentary group after consulting

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<sup>11</sup> *Id.*, Article 91.

<sup>12</sup> *Id.*, Article 98.

<sup>13</sup> *Id.*, Article 102.

<sup>14</sup> Bulgaria Constitution of 1991, State Gazette No. 56, 13 July 1991.

with the other parliamentary groups. The National Assembly elects the proposed candidate as Prime Minister and upon his or her recommendations, the various Ministers.<sup>15</sup>

The Council of Ministers still retains its executive and administrative powers under the Constitution of 1991. It is still responsible for public order, National security, foreign policy, public administration, implementing the budget and managing State property.<sup>16</sup> It still has the right to issue decrees, executive orders and decisions based on authority delegated to it by law. The Council of Ministers formerly used this delegated legislative power extensively due to the generality of many laws. A constant stream of decrees, sometimes at odds with laws and often unpublished, created a very uncertain legal environment. Many decrees and regulations are still issued, but the underlying laws tend to have more substance, thus, better confining the scope of decree-making authority. Regular publication of decrees and regulations is now normal.

Bulgaria has a three-tiered system of government. Below the central government are 27 provinces (*okrugs*) and one city, Sofia, which also has the status of a province and is divided into administrative areas.<sup>17</sup> Subordinate to the 27 provinces are more than 1,000 urban and rural communities (*obshtina*), such as municipalities and villages, constituting the third level of government. The provinces and communities are governed by locally elected People's Councils, as the organ of supreme power, and executive officials elected from the councillors to implement State policy in their geographic areas.

The role of local authorities in designing and implementing local policy is expanding rapidly in Bulgaria. Municipalities used to be subordinated to the State and provincial governments and their rights were unclear. Even though they were sometimes charged with the administering of State property, they rarely owned property in their own name. Municipalities under the Constitution of 1991 have clearly defined property rights and, for the first time, their own budgets.

Bulgaria's main source of law is its Constitution and its main source of legislation are the acts adopted by the National Assembly. Acts must be in harmony with the Constitution which forms their legal basis. Under the Constitution of 1971 only the National Assembly was allowed to decide whether acts were inconsistent with the Constitution and whether they were adopted according to the required procedure.<sup>18</sup> Unless otherwise specified in an act, Bulgarian acts become effective three days after publication in the State Gazette.

Closely related to acts as a source of law are decrees which were issued by the former Council of State for changing the law or modifying individual legal provisions when the National Assembly was not in session; however, the decrees had to be sanctioned subsequently by the National Assembly at its next session. The Council of Ministers could and is still empowered to issue decrees that have legislative force either by virtue of an authorization from the National Assembly or on its own initiative in its capacity as the executive and administrative body. Decrees are used to adopt regulations, ordinances and orders to amplify certain legal text or settling points on the application of the law. Regulations are rules having the force of law issued by an executive governmental authority to implement, clarify and explain

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<sup>15</sup> *Id.*, Article 99.

<sup>16</sup> *Id.*, Article 105.

<sup>17</sup> Bulgaria Constitution of 1971, *supra* note 3, Article 109.

<sup>18</sup> *Id.*, Article 85.

legislation, carry out the intent of legislation and guide the activities of those regulated. In regulations and ordinances are the same and the terms appear to be used interchangeably depending on the translation from Bulgarian to English. In many instances acts adopted by the National Assembly require that criteria, procedures and conditions be specified by the Council of Ministers, which means that a regulation or ordinance must be prepared and adopted through a decree of the Council. Such decrees are quoted by title with the number and date of the Bulgarian State Gazette, referred to as the State Gazette (*Durjhaven Vestnik*), in which they are published.

## OWNERSHIP OF PROPERTY

Bulgaria moved quickly to strict central planning and control after World War II with extensive nationalization beginning in 1948. Industry, mining, insurance, transportation and banks were nationalized and cooperative farming was gradually established as the predominant method of cultivating land. The collectivization of agricultural land into cooperatives, completed in the early 1950's, concluded the process of transforming the Bulgarian economy into a centrally planned and bureaucratically regulated system. Thus, the volume of socialist property substantially increased and had to be administered in a planned way. Two kinds of bodies or organizations were needed for this purpose: (1) a State planning committee as a central body to establish planning assignments aimed at planned development of the National economy; and (2) socialist organizations, such as State enterprises and cooperatives, to transform these assignments into reality.

In addition to adopting the Constitution by the National Assembly on 4 December 1947,<sup>19</sup> which was a socialist Constitution and had extensive provisions on property, the pre-war laws on property and obligations were explicitly abrogated in 1951 and replaced by socialist legislation. Next to the Constitution, the Law on Property of 1951<sup>20</sup> was the most important source of property rights and replaced the pre-war version of defining property rights and relations of individuals.

A unique feature of socialist property law is its concept of hierarchy of property based on ownership. The two socialist Constitutions of 1947 and 1971 differentiated between socialist and personal property (citizen's or individual's property) and defined the main categories of ownership. Socialist property, which formed the basis of social structure in Bulgaria and was the source of the country's wealth and power, consisted of State property (people's property), cooperative property and social organization's property.<sup>21</sup> Such socialist property was to be administered in the interest of all the people.<sup>22</sup> State or people's property was the main form of socialist property and determined the socialist nature of cooperative property and the property of social organizations.<sup>23</sup> Such property belonged to the people in the person of the socialist State.<sup>24</sup> The different forms of socialist property were related in their development and were to be eventually transformed into a single form of State or people's property.<sup>25</sup>

State or people's ownership—ownership by all the people in theory, but by the State in practice—was the highest category of ownership and received special protection. Such property included virtually all urban industrial property for means of production, commercial property, mineral resources

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<sup>19</sup> Bulgaria Constitution of 1947, State Gazette No. 184, 1947.

<sup>20</sup> Law on Property of 1951, State Gazette No. 92, 16 November 1951.

<sup>21</sup> Bulgaria Constitution of 1971, State Gazette No. 39, 18 May 1971, Article 14.

<sup>22</sup> Law on Property of 1951, *supra* note 20, Article 3.

<sup>23</sup> Bulgaria Constitution of 1971, *supra* note 21, Article 15.

<sup>24</sup> *Id.*, Articles 14 & 15; Law on Property of 1951, *supra* note 20, Article 4.

<sup>25</sup> Bulgaria Constitution of 1971, *supra* note 21, Article 15, paragraph 2.

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and public utilities. Only State ownership was permitted for plants and factories, banks, mineral resources, nuclear energy, forests, pastures, water, roads, railways, water transport, post offices and telegraph, telephone, and broadcasting and television systems.<sup>26</sup> regulated by law in theory, State or people's property tended to be managed in practice the decisions of the Council of Ministers. Because this kind of property was excluded from transactions under the Constitution, it was not covered by the provisions of the 1951 Law on

Because of the superiority of State or people's property, the two socialist Constitutions practically unrestricted rights to the State to expropriate individual property. In urban areas they were widely used. All industrial property and much residential property were nationalized by the nationalization or expropriation laws of 1947 and 1948, and small private plots of land were expropriated to secure the land needed for large-scale residential and public construction for others, the Communist Party and other public organizations. Although the State kept firm control over industrial and commercial property, almost all residential property nationalized or later constructed by the State was sold to tenants at low prices in the 1950s and 1960s.

Owners of cooperative property are the cooperatives as legal entities. Cooperatives, with special protection, could own all kinds of property in connection with their activities,<sup>27</sup> provided that the property was not of such a kind which only the State could own. They could own buildings and installations, including the land, which had not been nationalized, but such facilities and land had to be used to the greatest advantage of society.<sup>28</sup>

Closely connected with the land were the activities of cooperative farms, promoted and supervised in their operation by the State.<sup>29</sup> Cooperative farms, however, do not own the land as a legal entity. The land belongs either to the State, which gratuitously transferred it for State utilization or, in some instances, to the cooperative members who pooled it into the cooperative for joint and free cultivation. In the latter case, the land or equivalent land may be returned to the cooperative members for their own farm, provided they remain in agriculturally related activities. The cooperative has a proprietary right over the land which is the right to use it cooperatively. The products produced as a result of cooperative farming are cooperative property, and the farmers are paid a quota from the total income according to the quantity and the quality of their work. Relations between the cooperative and the farmers are regulated by the Model Constitution adopted by the Congress of Cooperatives and approved by the Central Cooperative Union.

Citizen's or individual's property is derived from socialist property, being acquired through their participation in socialist production. Citizens may also hold means of production in their own ownership, such as the craftsmen owning their implements and products of their labor, cooperative farmers owning their basic tools and products of their allocated land and farmers not members of cooperatives.

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<sup>26</sup> *Id.*, Article 16, paragraph 1.

<sup>27</sup> *Id.*, Article 16, paragraph 2.

<sup>28</sup> *Id.*, Article 30, paragraph 1.

<sup>29</sup> *Id.*, Article 23, paragraph 1.

cooperatives owning their land. The law prescribes the type and range of the means of production that may be held as private property.<sup>30</sup>

The personal or individual property of citizens includes objects personally used by them or their families. The State encouraged housing construction with credits and by granting the right to build on state-owned plots. Individuals may own one residence per household as personal property. Personal property also includes the buildings erected by citizens for their recreation, such as villas, country houses and bungalows, with one vacation home per household, and their savings deposits. Individuals are not permitted to own separate rental houses because they are considered a means of production. The State protected personal property acquired by work or in other lawful manners, but it could not be used contrary to society's interests.<sup>31</sup> A trend has been to increase the volume of personal property. Individual property rights and transfers were governed during the socialist period by the Law on Property of 1951.

The State does not itself administer the property it owns, but leaves the "operative administration" to State institutions, State economic organizations or cooperatives.<sup>32</sup> "Operative administration" gives the right to possess, use and dispose of property in accordance with the law and the organization's economic objectives. Transactions concluded by them within this framework relate to the institution as an independent legal body.

Under the Marxist doctrine of "indivisibility of ownership," neither the state-owned nor municipal-owned enterprises own the real property they use, manage or transfer, rather they have a ownership-like right of "operational management." State-owned enterprises that "operationally manage" property could in some cases lease it, but they could not sell it. The relevant overseeing Ministries have ultimate decision-making authority with regard to such property.

At present, all parties accept the basic principle that the Council of Ministers controls real property attached to state-owned enterprises, while municipalities have somewhat more independent authority than state-owned enterprises. Under the Property Act of 1951, the chairman of the local municipal council could transfer state-owned residential property within municipal boundaries to individuals and lease commercial space to private entrepreneurs at prices fixed by the Council of Ministers. However, there is still considerable uncertainty about the exact powers of municipalities with respect to the property they control, including what property they actually own, rather than just administer, and who sets sale prices and is entitled to sale proceeds.

The hierarchy of property was eliminated with amendments in 1990 to the Constitution of 1971 and with the adoption of a new Constitution in July 1991.<sup>33</sup> Article 19 of the Constitution of 1991 states that the economy of Bulgaria is now based on free enterprise and that domestic and foreign investments are to receive equal treatment. Article 17 grants full and equal protection to all property regardless of its ownership and it forbids expropriation except for carefully defined public purposes and with full and adequate compensation. The Law on Property was amended in 1990 to eliminate some of

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<sup>30</sup> *Id.*, Article 21, paragraph 2, Article 25, paragraph 2.

<sup>31</sup> *Id.*, Article 21, paragraphs 4 & 6.

<sup>32</sup> *Id.*, Article 17; Law on Property of 1951, *supra* note 20, Article 7.

<sup>33</sup> Bulgaria Constitution of 1991, State Gazette No. 56, 13 July 1991.

the socialist concepts added in 1951. It now refers to private property and State property, rather than individual and socialist property.

Ownership of state-owned enterprise property became a major issue in 1990 as Bulgaria began its economic transition in earnest. The 1990 amendments to the Constitution of 1971 removed the prohibition against individual ownership of commercial property and the Council of State Decision of 13 January 1989 on "Economic Activity"<sup>34</sup> permitted state-owned enterprises for the first time to enter into joint ventures with private partnerships. State-owned enterprises will be able on their own to transfer real property to the private sector and contribute real property to joint ventures. However, the Formation of State Property Sole Proprietor Companies Act adopted by the National Assembly on 27 June 1991<sup>35</sup> essentially banned such transfers of property by state-owned enterprises. The Council of Ministers retained all rights as sole owner of the state-owned enterprises, as defined under the Law on Commerce,<sup>36</sup> including control over all real property. Although this clarification of ownership by the Act was an important first step in managerial privatization, it clearly slowed down the development of a private real estate market just as it more generally slowed down the privatization process.

Article 1 of the Formation of State Property Sole Proprietor Companies Act provided that the formation and transformation of state-owned enterprises as sole proprietor limited liability companies and sole proprietor joint stock companies should be done by the Council of Ministers and that the management of these state property sole proprietor companies is done under a management contract pursuant to the procedures defined by the Council of Ministers. Shares and interests in such sole proprietor companies formed with state and municipal property may not be transferred under Article 2. Supplementary Provisions of the Act permit the Council of Ministers to ban the import and export of goods and services and set import and export quotas on goods and services and impose terms on investment abroad. This provision was later repealed by the Transformation and Privatization Act.

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<sup>34</sup> State Gazette No. 4, 13 January 1989, as amended.

<sup>35</sup> State Gazette No. 55, 12 July 1991.

<sup>36</sup> State Gazette No. 48, 18 June 1991.

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## LAWS RELATING TO PRIVATIZATION

### Decree No. 56, 1989

Prior to the adoption of laws or acts directly relating to privatization, the Council of State issued Decree No. 56 of 13 January 1989 on Economic Activity<sup>37</sup> as Bulgaria's first attempt to restructure and decentralize the management of state-owned enterprises, as well as to allow private investment in commercial activities to promote its transition to a market economy. Article 1, paragraph 1, of the Decree stated that "Economic activity shall be carried out as the basis of all forms of ownership: State and municipal property consigned for management, property of cooperative and public organizations, of citizens, foreign legal and natural persons and property under joint forms of ownership." Firms were to be the main form for carrying out economic activity;<sup>38</sup> however, individual citizens and groups of citizens could perform economic activities without registering as firms.<sup>39</sup>

Decree No. 56, which was approved by the General Assembly on 9 December 1990, was corrected once in 1989<sup>40</sup> and amended three times in 1989,<sup>41</sup> three times in 1990<sup>42</sup> and five times in 1991.<sup>43</sup> Chapter One on "General Provisions" and Chapter Two on "Firms" were later repealed or superseded by the Law on Commerce.<sup>44</sup> Portions of Chapter Five, on "Economic Activities in the Country of Foreign and Mixed Firms," (Articles 99 to 106) were repealed by the Law on Foreign Investments adopted by the National Assembly on 17 May 1991.<sup>45</sup>

Many of the former forms of private firms or companies were re-established in Bulgaria under Decree No. 56. Firms are proprietary, social and organizationally autonomous entities participating in economic activities with their own name and perform business as an autonomous account; they are legal

<sup>37</sup> Council of State Decree No. 56 of 12 January 1989 on "Economic Activity," State Gazette No. 4, 13 January 1989, as amended.

<sup>38</sup> *Id.*, Article 2, paragraph 1.

<sup>39</sup> *Id.*, Article 2, paragraph 3.

<sup>40</sup> State Gazette No. 16, 1989.

<sup>41</sup> State Gazette No. 38, 39 & 62, 1989.

<sup>42</sup> State Gazette No. 21, 31 & 101, 1990.

<sup>43</sup> State Gazette No. 15, 23, 25, 40 & 48, 1991.

<sup>44</sup> Law on Commerce, State Gazette No. 48, 18 June 1991, Interim and Concluding Provisions, Clause 1.

<sup>45</sup> State Gazette No. 47, 1991, also referred to as Foreign Investment Act. The Law on Foreign Investments, itself, was later repealed by the Law on the Economic Activity of Foreign Persons and the Protection of Foreign Investments, adopted 16 January 1992, State Gazette No. 8, 28 January 1992, Final Provisions, Section 1.

persons except for those operating as individual and collective firms of citizens.<sup>46</sup> They may be municipal firms, groups of public organizations, or owned by partnerships and individual citizens. The initiative for forming, reorganizing or dissolving firms may be undertaken by State organizations, banks, existing firms or citizens.<sup>48</sup> Formation, reorganization and dissolution must be registered with the courts in the district where the firms are located and the decision of the courts on them must be published in the State Gazette and the date of publication is the effective date of formation, organization or dissolution.<sup>49</sup> Firms must submit a charter or memorandum of association or in some cases both, to the court when applying for registration.<sup>50</sup>

Firms have the right to perform economic activities according to the specifications in their registration application and all other kinds of economic activity except those that are prohibited by law.<sup>51</sup> They are permitted to determine on their own: (1) internal organizational and business structure; (2) rights, obligations and responsibility of their divisions and mode of their interaction; and (3) the management of the firm.<sup>52</sup>

Private firms or companies re-established by Decree No. 56 were stock firms (similar to public stock companies or publicly-held larger stock corporations);<sup>53</sup> limited liability firms (similar to limited liability companies or privately or closely-held smaller stock corporations where all the partners are citizens and the partners hold all the shares);<sup>54</sup> unlimited liability firms (similar to limited partnerships of citizens, which may consist of individual, collective or partnership firms).<sup>56</sup> The law describes each of the firms or companies, requirements and prerequisites for formation, procedure for formation, monetary requirements, content of their charters or memorandums of association, liabilities of the firms or companies and liabilities of the shareholders or stockholders, partners and individuals. Private and foreign investment could be structured as one of the more formal entities or informal entities such as "individual, collective, or partnership firms of citizens." The first version of the law restricted the rights of private firms or companies to participate in foreign trade or to hire workers. Those restrictions were later removed.

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<sup>46</sup> Council of State Decree No. 56, *supra* note 43, Article 10, paragraph 1.

<sup>47</sup> *Id.*, Article 10, paragraph 2.

<sup>48</sup> *Id.*, Article 11, paragraph 1.

<sup>49</sup> *Id.*, Article 11, paragraph 2.

<sup>50</sup> *Id.*, Article 11, paragraph 3.

<sup>51</sup> *Id.*, Article 17, paragraph 1.

<sup>52</sup> *Id.*, Article 16, paragraph 1.

<sup>53</sup> *Id.*, Articles 32 to 43a.

<sup>54</sup> *Id.*, Articles 44 to 51.

<sup>55</sup> *Id.*, Articles 52 to 56.

<sup>56</sup> *Id.*, Articles 57 to 64.

Foreign legal and natural persons are now permitted to perform economic activities in the country under Decree No. 56.<sup>57</sup> Economic activities performed and investments of foreign legal and natural persons made in the country are protected by the State. The State ensures equal economic and legal conditions for performing economic activities and for foreign investments in the country.<sup>58</sup>

A stock firm is one whose principal fund is divided into shares of stock<sup>59</sup> and the minimum face value of the principal fund must be at least 1 million leva.<sup>60</sup> Shares may be personal or to the bearer and natural persons can acquire either;<sup>61</sup> the minimum face value of one share must be 50 leva.<sup>62</sup> One share of stock entitles its owner to one vote in the stockholders' assembly, the right to a dividend, and the right to a liquidation dividend in proportion to the face value of the stock.<sup>63</sup> Founders of the stock firm consist of two or more legal or competent natural persons<sup>64</sup> and it is founded by a memorandum of association and charter.<sup>65</sup> The principal organs of a stock firm are the stockholders general assembly, management board, supervisory board and general manager.<sup>66</sup>

The principal fund in a limited liability firm can not be less than 50,000 leva,<sup>67</sup> in which all the partners hold shares<sup>68</sup> that are indivisible.<sup>69</sup> Such firms are founded by at least two legal and/or competent natural persons on the basis of a memorandum of association and charter adopted by the partners.<sup>70</sup> The liability of the partners for the firms obligations are limited to their shares which they have deposited or are obligated to deposit in the principal fund.<sup>71</sup>

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<sup>57</sup> *Id.*, Article 3.

<sup>58</sup> *Id.*, Article 4, paragraph 2.

<sup>59</sup> *Id.*, Article 32.

<sup>60</sup> *Id.*, Article 34, paragraph 1.

<sup>61</sup> *Id.*, Article 34, paragraph 2.

<sup>62</sup> *Id.*, Article 34, paragraph 3.

<sup>63</sup> *Id.*, Article 34, paragraph 4.

<sup>64</sup> *Id.*, Article 35.

<sup>65</sup> *Id.*, Article 33, paragraph 1.

<sup>66</sup> *Id.*, Article 33, paragraph 4.

<sup>67</sup> *Id.*, Article 44, paragraph 3.

<sup>68</sup> *Id.*, Article 44, paragraph 1.

<sup>69</sup> *Id.*, Article 44, paragraph 3.

<sup>70</sup> *Id.*, Article 45, paragraph 1.

<sup>71</sup> *Id.*, Article 44, paragraph 2.

Organs of the firm are the general assembly, supervisory board or comptroller and manager.<sup>72</sup> The general assembly consists of one representative of each of the partner, representative of the firm's employees with a consultative vote.<sup>73</sup> A general manager and chair of the supervisory board participate in the deliberations of the general assembly with a consultative

An unlimited liability firm is one which one or more of the partners bear unlimited liability for the obligations of the firm and the rest are liable up to the amount of their contracted shares.<sup>75</sup> Partners with unlimited liability bear joint responsibility and their mutual relations are regulated by contract. Partners must contribute at least one-third of the principal fund.<sup>76</sup> Shares of stocks may be issued to partners with limited liability for their deposit.<sup>77</sup> The firm's economic activities are carried out by the partners with unlimited liability.<sup>78</sup>

In addition to forming and participating in stock firms and firms with limited and unlimited liability, citizens can form individual, collective and partnership firms.<sup>79</sup> Citizen's firms are registered in the court of the district in which the firm is located.<sup>80</sup> A partnership firm of individuals is a legal entity and is founded on the basis of a constituting contract.<sup>81</sup> Such firms are required to deposit a principal fund of not less than 10,000 leva and at least 75 percent of the principal fund must be deposited before the firm can be registered.<sup>82</sup> Partners are jointly responsible for the obligations of the firm up to the amount of the deposit made or, if that proves to be insufficient, they are obligated to make contributions towards the principal fund with their personal property.<sup>83</sup> Individual and collective firms of citizens do not need to register their principal fund.<sup>84</sup> Citizens are required to personally participate in the work of their registered firms.<sup>85</sup>

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<sup>72</sup> *Id.*, Article 46.

<sup>73</sup> *Id.*, Article 47, paragraph 1.

<sup>74</sup> *Id.*, Article 47, paragraph 2.

<sup>75</sup> *Id.*, Article 52, paragraph 1.

<sup>76</sup> *Id.*, Article 52, paragraph 2.

<sup>77</sup> *Id.*, Article 52, paragraph 3.

<sup>78</sup> *Id.*, Article 55.

<sup>79</sup> *Id.*, Article 57, paragraph 1.

<sup>80</sup> *Id.*, Article 62.

<sup>81</sup> *Id.*, Article 59, paragraph 1.

<sup>82</sup> *Id.*, Article 57, paragraph 2.

<sup>83</sup> *Id.*, Article 58, paragraph 4.

<sup>84</sup> *Id.*, Article 57, paragraph 2.

<sup>85</sup> *Id.*, Article 57, paragraph 3.

Decree No. 56 not only pertained to the organization and operation of State, municipal and private proprietary business firms, but to bankruptcy and liquidation of firms; State regulations of economic activities; economic activities in the country of foreign and mixed firms; economic conditions, including taxation, currency regulations and social security; and the acquisition of immovable property and real rights over it. That portion of the Decree relating to economic activities of foreign and mixed firms was repealed and replaced by the Law on Foreign Investments adopted by the National Assembly on 17 May 1991.<sup>86</sup> Many parts of Decree No. 56 remaining in effect still apply to operating enterprises that either have or will be privatized.

### Significant Legislation, 1991-1992

The primary law or act relating to privatization of state-owned and municipal-owned enterprises is the Transformation and Privatization Act adopted by the National Assembly on 23 April 1992. Other laws or acts adopted by the National Assembly in 1991 prior to the Transformation and Privatization Act having a direct relationship to the privatization of state-owned and municipal-owned enterprises, listed in order of their adoption, are:

- Ownership and Use of Farm Land Act.<sup>87</sup>
- Protection of Competition Act, adopted by the National Assembly on 2 May 1991.<sup>88</sup>
- Law on Commerce, adopted by the National Assembly on 16 May 1991, also referred to as the Commercial Code or Trade Act.<sup>89</sup>
- Formation of State Property Sole Proprietor Companies Act, adopted by the National Assembly on 27 June 1991, also referred to as the Law on the Conversion of State Enterprises to Private Companies.<sup>90</sup>

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<sup>86</sup> State Gazette No. 47, 1991. See note 51, *supra*.

<sup>87</sup> State Gazette No. 17, 1 March 1991, as amended.

<sup>88</sup> State Gazette No. 39, 17 May 1991.

<sup>89</sup> State Gazette No. 48, 18 June 1991.

<sup>90</sup> State Gazette No. 55, 12 July 1991.

### Ownership and Use of Land Farm Act

The Ownership and Use of Farm Land Act adopted by the National Assembly in ear regulates the ownership and use of farm land.<sup>92</sup> Farm land, for the purposes of this Act, is useable for farming that is not:

- Within the building development boundaries of settlements.
- Included as part of the forest reserves.
- Built-up by industrial or other economic enterprises, recreation or health establishments, religious denominations or other public organizations nor is within courtyards, warehouses auxiliary to such above buildings.
- Occupied by open mines and quarries, energy, irrigation, transportation facilities, public utilities, nor is adjacent to such facilities and utilities.<sup>93</sup>

Council of Ministers Decree No. 74 of 25 April 1991, "Rules for the Application of the Ownership and Use of Farm Land Act,"<sup>94</sup> which was adopted to implement the Farm Land Act in sequence article by article. Decree No. 74 also provides that courtyards belonging to Collective Farms or State Farms or part of them located outside building development boundaries of settlements are considered to be farm land if buildings are not built on them and if the courtyards are suitable for farming.<sup>95</sup>

Farm land may be State, municipal, legal person's or individual citizen's property.<sup>96</sup> Foreign governments, foreign legal persons or legal persons with foreign participation exceeding 50 per cent may not own farm land.<sup>97</sup> Those foreign nationals who inherit farm land must sell it to the State, municipalities, legal persons or citizens of their choice within three years after the date of inheritance.

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<sup>91</sup> Ownership and Use of Farm Land Act, State Gazette No. 17, 1 March 1991, as amended, State Gazette No. 74, 9 October 1991; No. 18, 3 February 1992; No. 28, 4 April 1992; No. 46, 1992, 105, 1992. [hereinafter referred to as Farm Land Act].

<sup>92</sup> *Id.*, Article 1.

<sup>93</sup> *Id.*, Article 2.

<sup>94</sup> Council of Ministers Decree No. 74 of 25 April 1991, "Rules for the Application of the Ownership and Use of Farm Land Act," State Gazette No. 34, 30 April 1991, as amended, State Gazette No. 80, 27 September 1991; No. 34, 24 April 1992 [hereinafter referred to as Rules for Farm Land Act].

<sup>95</sup> *Id.*, Article 1, paragraph 2.

<sup>96</sup> Farm Land Act, *supra* note 94, Article 3, paragraph 1.

<sup>97</sup> *Id.*, Article 3, paragraph 3.

if not sold, it is purchased by the municipality within three months at a price established by the Council of Ministers.<sup>98</sup> Foreign legal persons or foreign nationals may, however, lease farm land.<sup>99</sup>

Owners of farm land are free to determine its manner of agricultural use;<sup>100</sup> however, the use may not be detrimental to the soil and it must be in compliance with sanitation, fire and safety regulations and health and environmental protection standards.<sup>101</sup>

Farm and other land will be restored or reinstated in ownership to the former owners or their inheritors under the following circumstances:

- If they owned the farm land prior to the establishment of Cooperative Farms and their farm land was incorporated in them.<sup>102</sup>
- If the land is farm yards managed as farm land by Cooperative Farms or State Farms.<sup>103</sup>
- If the land is incorporated in Cooperative Farms or State Farms and is located within the building development boundaries of settlements, except where the buildings were legally erected on the land by third persons or where the right to build was concluded and the construction of a legally permitted building has begun.<sup>104</sup>

Former owners of land incorporated in Cooperative Farms or State Farms and built-up or used for projects that do not permit ownership restoration or reinstatement shall be compensated, at their own request, with land of equivalent area and quality from the State or municipal land reserve, or by terms and procedures provided by law.<sup>105</sup> Nationalized farm land that cannot be restored or reinstated in ownership for other reasons will be compensated for by terms and procedures provided by law.<sup>106</sup>

<sup>98</sup> *Id.*, Article, paragraph 4; Rules for Farm Land Act, *supra* note 97, Article 2, paragraph 3.

<sup>99</sup> Farm Land Act, *supra* note 94, Article 3, paragraph 5; Rules for Farm Land Act, *supra* note 97, Article 2, paragraph 4.

<sup>100</sup> Farm Land Act, *supra* note 94, Article 4, paragraph 1; Rules for Farm Land Act, *supra* note 97, Article 3, paragraph 1.

<sup>101</sup> Farm Land Act, *supra* note 94, Article 4, paragraph 1; Rules for Farm Land Act, *supra* note 97, Article 4, paragraph 1.

<sup>102</sup> Farm Land Act, *supra* note 94, Article 10, paragraph 1.

<sup>103</sup> *Id.*, Article 10, paragraph 6.

<sup>104</sup> *Id.*, Article 10, paragraph 7.

<sup>105</sup> *Id.*, Article 10b, paragraph 1.

<sup>106</sup> *Id.*, Article 10b, paragraphs 2 & 3.

Persons eligible for restoration or reinstatement must file petitions for restoration or reinstatement of the farm land within 17 months from the date that the Farm Land Act became effective. The Municipal Land Board for the area in which the reinstatable farm land is located.<sup>108</sup> Former ownership is proven by act of notary, deeds of partition, land registers, applications for Cooperative membership, rent ledgers and other evidence in writing.<sup>109</sup>

Restoration or reinstatement is done within the real boundaries of the farm land previously owned by the person where existing or if possible to be established.<sup>110</sup> Whenever boundaries of the farm land no longer exist, restoration or reinstatement in ownership is done within real boundaries of farm land in an equivalent area in the territory of the respective settlement or in an adjacent territory or in another territory with the former owner's consent after division and consolidation of the farm land in the territory.

Municipal Land Boards must post the petitions and accompanying material filed with them in the appropriate municipality or in other places in the area on a weekly basis.<sup>112</sup> These Boards must make a decision one month after filing the petition to make a decision<sup>113</sup> and its failure to do so is appealable to the District Court.<sup>114</sup>

Municipal councils had six months from the date that the Farm Land Act became effective to provide the Municipal Land Boards with information and data on changes in the area of farm land in their respective territory.<sup>115</sup> Article 18, paragraph 1, of the "Rules for the Application of Ownership and Use of Farm Land Act"<sup>116</sup> provides in detail the information and data that must be provided to the Boards by the municipal councils. This information and data is used as the basis for distributing farm land to the former owners. It is difficult for the Municipal Land Board to make a decision within one month of filing petitions if the filing is done before the six-month period expires for the municipal councils to provide the information and data.

Ownership of farm land is restored or reinstated by a ruling of the Municipal Land Board within the former real boundaries wherever they exist or can be recovered. An entry is made in the

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<sup>107</sup> *Id.*, Article 11, paragraph 1.

<sup>108</sup> Rules for Farm Land Act, *supra* note 97, Article 15, paragraph 1.

<sup>109</sup> Farm Land Act, Article 12, paragraph 2.

<sup>110</sup> *Id.*, Article 10a, paragraph 1.

<sup>111</sup> *Id.*, Article 10a, paragraph 2.

<sup>112</sup> *Id.*, Article 13, paragraph 1; Rules for Farm Land Act, *supra* note 97, Article 16, paragraph 1.

<sup>113</sup> Farm Land Act, *supra* note 94, Article 14, paragraph 1.

<sup>114</sup> *Id.*, Article 14, paragraph 3.

<sup>115</sup> *Id.*, Article 15, paragraph 1.

<sup>116</sup> See note 97, *supra*.

setting forth the boundaries of the restored or reinstated land.<sup>117</sup> Whenever former real boundaries are nonexistent, the Municipal Land Board restores or reinstates ownership within new boundaries that are equivalent in area and quality in compliance with the plan of farm land division based on the principles of reallocation.<sup>118</sup> Farm land remaining after former owners have had their land restored or reinstated remains a part of the municipal land reserve.<sup>119</sup>

Landless persons and small landowners are to be given land from the State or municipal land reserves by the respective Municipal Land Boards on terms determined by the Council of Ministers.<sup>120</sup> The date of ownership for land given these persons is the date that the Municipal Boards' rulings become effective.<sup>121</sup> Persons given land may not transfer it for 10 years from the date of receiving it unless it is transferred to the State or municipality.<sup>122</sup>

Among the persons eligible to receive property, preference is given as follows to:

- Persons engaged in farming in a local settlement.
- Persons residing permanently in a local settlement and who relinquished land to the land reserve in another settlement.
- Graduates in farming and young couples undertaking to engage in farming.
- Persons whose farm land was taken for State or policy needs.<sup>123</sup>

Preference among the applicants in the same category is given to those who do not own any land or own less by comparison with others.<sup>124</sup>

The State retains ownership of farm land that it possessed on the effective date of the Ownership and Use of Farm Land Act,<sup>125</sup> except for that land subject to restitution.<sup>126</sup> Additionally, the State retains the ownership of farm land allotted to: (1) research, research and manufacturing, academic

<sup>117</sup> Farm Land Act, *supra* note 94, Article 17, paragraph 1.

<sup>118</sup> *Id.*, Article 17, paragraph 2.

<sup>119</sup> *Id.*, Article 19.

<sup>120</sup> *Id.*, Article 20, paragraph 1.

<sup>121</sup> *Id.*, Article 23.

<sup>122</sup> *Id.*, Article 20, paragraph 2.

<sup>123</sup> *Id.*, Article 21, paragraph 1.

<sup>124</sup> *Id.*, Article 21, paragraph 2.

<sup>125</sup> See note 94, *supra*.

<sup>126</sup> Farm Land Act, *supra* note 94, Article 24, paragraph 1.

institutions, penitentiaries, seed production and pedigree animal farms, forest reserves and hunting (2) defense and military purposes; and (3) reserves under the Environmental Protection Act<sup>127</sup> protected areas of National and international importance for environmental, archaeological and heritage protection.<sup>128</sup> Former owners of land retained by the State are compensated, at their option, with land of equivalent area and quality from the State or municipal land reserve.<sup>129</sup>

Farm land, other than that owned by individuals, legal persons or the State is State property.<sup>130</sup> Municipalities are restored or reinstated ownership in farm land that was taken from them to benefit State Farms, Cooperative Farms, agro-industrial complexes, agribusiness companies and forests.<sup>131</sup>

The Ministry of Agricultural Development, Land Exploitation and Land Ownership, hereinafter referred to as Ministry of Agriculture<sup>132</sup> and Municipal Land Boards may lease low productive land or land located in sparsely populated areas belonging to the State or municipalities to individuals on terms determined by the Council of Ministers. Lessees who cultivate that land for 10 years are granted ownership.<sup>133</sup>

Owners of land incorporated in Cooperative Farms, members of Cooperative Farms and employees of Cooperative Farm based agricultural organizations, as well as persons employed by them, are entitled to a share in the distribution of nonland property of such entities. Shares are based on a person's contribution to the acquisition of the contributed land, years of service with the entity and mortgage to the entity without reimbursement for the acquisition of machinery and equipment.<sup>134</sup> Chapter 1 of the "Distribution of Property of Farming Cooperatives and Other Organizations Established on the Basis of the "Rules for the Application of the Ownership and Use of Farm Land Act"<sup>135</sup> sets out the procedures for distribution.<sup>136</sup>

The privatization of farm land and improvements on it differs from that of agricultural processing enterprises and food processing or agribusiness industries. Privatizing farm land and other property is the responsibility of a Deputy Minister of Agriculture, while privatizing agricultural enterprises

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<sup>127</sup> State Gazette No. 86, 18 October 1991, as amended.

<sup>128</sup> Farm Land Act, *supra* note 94, Article 24, paragraphs 2 to 4.

<sup>129</sup> *Id.*, Article 24, paragraph 5. See *id.*, Article 10b, paragraph 1, for the procedures.

<sup>130</sup> *Id.*, Article 25, paragraph 1.

<sup>131</sup> *Id.*, Article 25, paragraph 2.

<sup>132</sup> Newly established name for the Ministry of Agriculture.

<sup>133</sup> Farm Land Act, *supra* note 94, Article 26; Rules for Farm Land Act, *supra* note 97, Article 1.

<sup>134</sup> Farm Land Act, *supra* note 94, Article 27, paragraph 1.

<sup>135</sup> See note 97, *supra*.

<sup>136</sup> See Rules for Farm Land Act, *supra* note 97, Articles 48 to 55.

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as pig breeding farms, poultry and egg producing farms, dairies and grain and fodder plants, is the responsibility of another Deputy Minister of Agriculture. State-owned enterprises in the food processing or agribusiness sector are privatized by the Ministry of Industry or Privatization Agency, depending upon the book value of the fixed assets of the particular food processing or agribusiness enterprise.

Council of Ministers Decree No. 234 of 24 November 1992 on the "Transformation into State Debt of Bad Bank Credits to Sole Proprietor Companies with State Property and State-Owned Firms, and on Clearing the Credit Portfolios of the Commercial Banks with Over 50 percent State Participation,"<sup>137</sup> permits single person or sole proprietor companies owned by the State, state-owned enterprises and other organizations terminated by Section 12 of the Transitional and Concluding Provisions of Ownership and Use of Farm Land Act<sup>138</sup> to write off bad debts to banks or to have them reconstructed into State debts under certain circumstances.<sup>139</sup>

Section 12 of the Transitional and Concluding Provisions terminated all existing Cooperative Farms and farm cooperatives established under the former Cooperative Organizations Act,<sup>140</sup> existing organizations registered under Decree No. 922 of 1989 on "Land Use and Farming"<sup>141</sup> and existing organizations registered under Council of Ministers Decree No. 56 of 12 January 1989 on "Economic Activity"<sup>142</sup> whose property and shares were in farming teams, farm cooperatives, Cooperative Farms, tractor depots and agricultural institutes. The Cooperative Organization Act and Council of Ministers Decree No. 922 were repealed by the Law on Cooperatives adopted by the National Assembly on 19 July 1991.<sup>143</sup>

### Protection of Competition Act

The National Assembly adopted the Protection of Competition Act on 2 May 1991,<sup>144</sup> with an objective of creating conditions for free enterprise in manufacturing, distribution and services; free pricing; and protection of consumers' interests. To ensure this objective, the Act provides protection against the misuse of monopoly market positions, as well as protection against unfair compensation and

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<sup>137</sup> Council of Ministers Decree No. 234 of 24 November 1992, "Transformation into State Debt of Bad Bank Credits to Sole Proprietor Companies with State Property and State-Owned Farms, and on Clearing the Credit Portfolios of the Commercial Banks with Over 50 percent State Participation." State Gazette No. 98, 4 December 1992.

<sup>138</sup> See note 97, *supra*.

<sup>139</sup> Council of Ministers Decree No. 234, *supra* note 140, Articles 1 & 3.

<sup>140</sup> State Gazette No. 102, 1983, as amended, State Gazette No. 46, 1989.

<sup>141</sup> State Gazette No. 39, 1989, as amended, State Gazette No. 10, 1990.

<sup>142</sup> See note 43, *supra*.

<sup>143</sup> State Gazette No. 63, 3 August 1991, as amended, State Gazette No. 34, 24 April 1992, Transitional and Final Provisions, Clauses 4 & 5.

<sup>144</sup> Protection of Competition Act, State Gazette No. 39, 17 May 1991.

other actions that may have a restrictive effect on domestic competition.<sup>145</sup> The Act d  
monopoly and bans its establishment, along with banning groupings and mergers leading to mo  
and restrictions on competition. A Commission for the Protection of Competition was establishe  
Act as an independent body elected by the National Assembly.<sup>146</sup> Government actions to pre  
establishment and misuse of monopolies and unfair competition are set forth in the Act al  
assigning responsibilities for filing claims, procedures for filing those claims, penalties for offe  
enforcement of penalties.<sup>147</sup>

### Law on Commerce

On 16 May 1991 the National Assembly adopted the Law on Commerce,<sup>148</sup> often ref  
either as the "Commerce Code" or "Trade Act," which became effective on 1 July 1991 and sup  
Chapters 1 and 2 of Council of Ministers Decree No. 56 of 13 January 1989 on "Ed  
Activity."<sup>149</sup> Those state-owned and municipal-owned enterprises registered under Decree M  
however, were permitted to continue functioning pending their reconstruction into commercial co  
pursuant to Articles 61 and 62 of the Law on Commerce.<sup>150</sup> After dealing in the first part  
definitions of merchants or traders, commercial agencies, business names and commercial regist  
Law on Commerce deals in the second part with private merchants or traders or natural pe  
merchants or traders, state-owned and municipal-owned enterprises or public enterprises as me  
or traders and commercial companies as merchants or traders.

With regard to public enterprises as merchants or traders, Article 61 of the Law on Co  
states that a state-owned and municipal-owned enterprise must be either a single-person public  
company (joint stock company or publicly-held or open corporation) or a single-person private  
company (privately-held or closely-held or closed corporation), depending on the book value of t  
assets of the particular enterprise. The designation as "single-person" means that all of the sh  
interests in the capital of the company are held by either the State or municipality. Article 62 p  
that state-owned or municipal enterprises are to be incorporated or reconstructed (also referre  
transformed in other laws or acts) as a single-person public limited company or a single-person  
limited company, again the type of company depending upon the book value of the fixed asset  
enterprise. State-owned enterprises are incorporated or reconstructed as single-person public  
companies or single-person private limited companies by a procedure established by a future  
and municipal enterprises are incorporated or reconstructed as the same type of entities pursua

<sup>145</sup> *Id.*, Article 1.

<sup>146</sup> *Id.*, Article 2.

<sup>147</sup> *Id.*, Articles 16 to 25.

<sup>148</sup> Law on Commerce, State Gazette No. 48, 18 June 1991.

<sup>149</sup> *Id.*, Interim and Concluding Provisions, Clause 1. See note 43, *supra*, for Council of M  
Decree No. 56.

<sup>150</sup> Law on Commerce, *supra* note 151, Interim and Concluding Provisions, Clause 2.

<sup>151</sup> *Id.*, Article 62, paragraph 1.

resolution by the municipal council.<sup>152</sup> The future law referred to in the Law on Commerce for the incorporating or reconstructing of state-owned enterprises is the Transformation and Privatization Act.

One of the purposes of the Transformation and Privatization Act was to establish and regulate the terms and procedures for transforming or reconstructing (referred to as transformation or transforming in this Act, rather than incorporation or reconstruction) state-owned enterprises into single-person commercial partnerships or companies (referred to as single-person commercial partnerships in this Act, rather than single-person public limited companies or single-person private limited companies).<sup>153</sup> The transformation or reconstruction of state-owned enterprises constitutes a division of the assets allocated to the enterprises by the shares and interests as provided by the Law on Commerce.<sup>154</sup>

State-owned enterprises are transformed into or reconstructed as single-person commercial partnerships or companies by the Council of Ministers itself or a body designated by it, which is the Ministry responsible for managing of the enterprise, depending upon the book value of the fixed assets of the enterprise.<sup>155</sup> Should the book value of the fixed assets of any enterprise exceed 10 million leva, the enterprise is transformed or reconstructed by the Council of Ministers itself after receiving a proposal from one of its bodies, which again is the Ministry responsible for managing the enterprise. The Privatization Agency must give an opinion about the Ministry's proposal to transform or reconstruct an enterprise with a book value of fixed assets exceeding 10 million leva before submitting it to the Council of Ministers for a decision.<sup>156</sup>

The Law on Commerce<sup>157</sup> is an organizational law that specifies all forms of organizations under which Bulgarian and foreign natural (individuals) and legal persons (legal entities or corporations) may conduct business or commercial activities or trade. Citizens of Bulgaria may conduct business or commercial activities or trade alone, independently or in association with other persons. A natural person wishing to carry out business or commercial activities or trade independently must register as a private merchant or sole trader. To be eligible to do so, he or she must be legally capable and a resident of the country. Therefore, a foreign national may not register as private merchant or sole trader before obtaining residence in Bulgaria according to appropriate procedure.<sup>158</sup>

If a person wishes to carry out business or commercial activities or trade in association with others, he or she must form a commercial partnership or business organization. Commercial partnerships or business organizations have a legal personality different from that of their founders and members; thus,

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<sup>152</sup> *Id.*, Article 62, paragraph 2.

<sup>153</sup> *Id.*, Article 1, paragraph 1.

<sup>154</sup> *Id.*, Article 1, paragraph 2.

<sup>155</sup> *Id.*, Article 17, paragraph 1.

<sup>156</sup> *Id.*, Article 17, paragraph 2.

<sup>157</sup> See note 151, *supra*.

<sup>158</sup> Law on Commerce, *supra* note 151, Article 56.

they enjoy and are subject to rights and duties of their own. A person acting singularly can also be a member of a commercial partnership called a one-person private limited company.<sup>159</sup>

The Law on Commerce limits the types of commercial partnerships or business organizations that can be formed in Bulgaria to those explicitly regulated by it. They include: general liability partnerships (similar to general partnerships); limited liability partnerships; private liability companies (similar to private-held or closely-held or closed corporations); public limited liability companies (similar to joint stock companies or publicly-held or open corporations); and public liability partnerships (similar to partnerships limited by shares). These business organizations or associations subsequently combine into holding companies.

Each member of a commercial partnership or business organization has to make either a pecuniary or nonpecuniary (non-cash) contributions to its capital. The type or size of the contributions is determined in the partnership's or organization's memorandum of association. Forms of nonpecuniary or in-kind contributions and their transfer to the partnership or organization are regulated for each type of commercial partnership business organization under the Law on Commerce.

Provisions relating to natural persons as private merchants or sole traders and the various types of commercial partnerships or business organizations apply only to those qualifying as merchants or traders under the Law on Commerce, that is natural and legal persons performing commercial activities by themselves. The Law does not apply to persons exercising a liberal profession, farmers selling their produce, artists, authors of works of art, literature and science, and to other categories of persons explicitly mentioned in the Law.<sup>161</sup>

Each person or business organization performing commercial activities or acting as a trader must register irrespective of whether he or she conducts commercial activities alone or in association with other persons. Commercial registers are kept by the District Courts in the territory of the respective District Court. Applicants must give the information required under the Law on Commerce, including company name, registered office, line of business and so forth. Each business organization operating as a trader must conduct business under a company name.<sup>163</sup> Apart from a company name, a trader or trader must have a registered office, which is the official address of the headquarters of the business.<sup>164</sup> District Courts publish the commercial registers in the State Gazette.

Merchants or traders are free to open branch offices outside the population center where their headquarters office is located. They are only obligated to enter the branches in the commercial registers.

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<sup>159</sup> *Id.*, Article 147.

<sup>160</sup> *Id.*, Article 1.

<sup>161</sup> *Id.*, Article 2.

<sup>162</sup> *Id.*, Articles 3 & 4.

<sup>163</sup> *Id.*, Article 11.

<sup>164</sup> *Id.*, Article 12.

of the court exercising jurisdiction over the place where the branch headquarters are located.<sup>165</sup> Merchants or traders may carry out their business through general, special or universal agents whose legal status is detailed in the general provisions of the Law on Commerce.<sup>166</sup>

In addition to the obligation to register, the Law on Commerce requires each merchant or trader to keep financial accounts on the flow of their business assets, including a balance sheet and an annual financial statement that must be approved by a certified public accountant.<sup>167</sup> The Law on Accounting adopted by the National Assembly on 3 January 1991, which is prior to the Law on Commerce, sets forth the rules for bookkeeping, form of accounting records, evaluation of assets and liabilities, procedures for taking inventory, accounting periods and storage and use of the accounting information.<sup>168</sup>

The two types of personal partnerships that can be established by both Bulgarian and foreign nationals are unlimited liability or general partnerships and limited liability partnerships.<sup>169</sup> An unlimited liability or general partnership is an association incorporated by two or more persons to engage in the business of commercial transactions under a joint or common business name in which all the members bear joint unlimited liability.<sup>170</sup> To form an unlimited liability or general partnership, a memorandum of association (articles of partnership) must be prepared in writing with notarized signatures of the partners. The memorandum should contain the names and addresses of the partners, if natural persons, or the company names and registered office, if corporate, the type and amount of their contributions and the appraisal of them, the manner of management and representation, as well as the method of decision-making.<sup>171</sup> Unlimited liability or general partnerships must be declared at the District Court and entered in the commercial register accompanied by the memorandum of association.<sup>172</sup> Persons representing the partnership must submit specimens of their signatures upon registration.<sup>173</sup>

Legal relationship between partners' rights and duties are set forth in the Law on Commerce. Those who are personally and unlimitedly liable for the partnership's debts have unlimited rights to participate in the management of partnership's affairs. Even though it is permissible under the Law to assign the management to one or several partners or to another person, certain more important transactions and legal actions require the consent of all partners. Such transactions include the acquisition

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<sup>165</sup> *Id.*, Article 17.

<sup>166</sup> *Id.*, Chapter 6.

<sup>167</sup> *Id.*, Article 53.

<sup>168</sup> Law on Accounting, State Gazette No. 4, 15 January 1991, as amended.

<sup>169</sup> Law on Commerce, *supra* note 151, Chapters 11 & 12.

<sup>170</sup> *Id.*, Article 76.

<sup>171</sup> *Id.*, Article 78.

<sup>172</sup> *Id.*, Article 79, paragraph 1.

<sup>173</sup> *Id.*, Article 79, paragraph 3.

and disposition of real property, appointment of a managing director who is not a partner and loans exceeding the amount fixed in the memorandum of association. Furthermore, a partner who is directly involved in the management has a right to personally inquire into the partnership's affairs, to inspect the business books and other papers, and to demand explanations from the managing director. In dealing with third parties, an unlimited or general partnership is liable to the extent of its assets. Pecuniary claims are executed, first, from the partnership's assets, and if these are insufficient, from the partners' property. The partners are liable to the creditors personally and jointly.

A limited liability partnership is the second type of personal partnership explicitly regulated in the Commercial Code. Unlike an unlimited liability or general partnership, one or more partners in a limited liability partnership have unlimited and joint liability for the partnership's debts and the liability of the rest is limited to the amount of their pledged contributions.<sup>174</sup> The management and representation of a limited liability partnership is performed by the general partners. General partners must contribute at least 10 percent of the partnership's capital.<sup>175</sup> As with unlimited liability partnerships, limited liability partnerships are formed with memorandums of association or articles of incorporation<sup>176</sup> and must be registered.<sup>177</sup>

The Law on Commerce defines private and public limited liability companies as corporations with their capital divided into shares of stock owned by the company members or shareholders. In this type of business organization, the liability of the shareholders is limited to the amount of capital they have invested in it.

A private limited liability company must have capital of at least 50,000 leva and the value of one share of stock must be divisible by 100 and no share of stock can be less than 500 leva.<sup>178</sup> Limited liability companies, which may be formed by one or more persons, are established on the basis of an articles of association or memorandums of association that must be signed by the member or members. The signatures are notarized.<sup>179</sup> Persons are free to join and to leave a private limited liability company and transfer their shares of stock, which are inheritable.<sup>180</sup> Each member of these companies is entitled to rights in proportion to the share in the capital he or she owns,<sup>181</sup> which also applies to the shareholder's voting power and the right to share in the profits and assets upon dissolution or liquidation.

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<sup>174</sup> *Id.*, Article 99, paragraph 1.

<sup>175</sup> *Id.*, Article 99, paragraph 2.

<sup>176</sup> *Id.*, Article 102.

<sup>177</sup> *Id.*, Article 103.

<sup>178</sup> *Id.*, Article 117.

<sup>179</sup> *Id.*, Articles 113 & 115.

<sup>180</sup> *Id.*, Article 129.

<sup>181</sup> *Id.*, Article 127.

of the companies. Several persons may own one share of stock and, if so, they exercise their ownership rights over that share jointly.<sup>182</sup>

Public limited liability or joint stock companies can be formed in Bulgaria by both Bulgarian and foreign nationals and legal persons. At least two persons are required to form such companies whether they be natural or legal persons.<sup>183</sup> The minimum amount of capital required for the formation of a public limited liability or joint stock company depends upon the method used to raise it; it must be at least 5 million leva if the capital is raised by public subscription.<sup>184</sup> Public limited liability or joint stock companies are formed with articles of association that must be submitted to the court in the district in which the company is located at the time of registration.<sup>185</sup> Articles of association must contain at least the following information:

- Business name and registered office of the company.
- Company's purpose and its duration, if so established.
- Amount of authorized capital, the kind and number of shares and the nominal value of each share.
- Company's managing bodies.
- Kind and value of any non-cash contributions, the persons who may contribute and the number and nominal value of the shares of stock to be received by them.
- Any privileges given to subscribers of stock.
- Any right of subscribers of stock to appoint the first board of controllers or directors and establish terms of office.
- Other conditions concerning the incorporation, existence and dissolution or liquidation of the company.<sup>186</sup>

To be registered in a commercial register, a public limited liability or joint stock company must have fulfilled all the following requirements:

- Adopted its articles of association.
- Have all of its authorized capital subscribed.

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<sup>182</sup> *Id.*, Article 132.

<sup>183</sup> *Id.*, Article 159.

<sup>184</sup> *Id.*, Article 161.

<sup>185</sup> *Id.*, Articles 172 & 174.

<sup>186</sup> *Id.*, Article 172.

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- Have paid up at least 25 percent of its authorized capital.
- Elected a board of comptrollers and/or board of directors.
- Fulfilled all other requirements of the Law on Commerce.<sup>187</sup>

Founders of a public limited or joint stock company must prepare and publish a prospectus by them before offering to issue shares of stock in the company.<sup>188</sup> A prospectus, which is to each prospective purchaser of stock, must provide the following information:

- Company's purpose and its registered office.
- Amount of authorized capital, the number of shares of stock and the nominal value of each share.
- Minimum amount of the first installment, which shall not be less than 25 percent of the nominal value of each share of stock.
- Expiration date of the offer to sell shares of stock.
- Any privileges of the subscribers, which may not be in the form of bonuses, but in the form of preferential rights to dividend.
- Non-cash contributions due from the subscribers.
- Any right of subscribers to appoint the first board of comptrollers and/or board of directors for a period not exceeding three years.
- Other conditions of the subscription.<sup>189</sup>

Public limited liability or joint stock companies may issue registered, bearer and preference shares of stock,<sup>190</sup> which must have the same nominal value for each class<sup>191</sup> in denominations of 1, 5, 10 or multiples of 10 shares.<sup>192</sup> The issuing value of the share is that which is acceptable by the subscribers,<sup>193</sup> but they may not be issued at a value lower than their

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<sup>187</sup> *Id.*, Article 121.

<sup>188</sup> *Id.*, Article 163.

<sup>189</sup> *Id.*, Article 164.

<sup>190</sup> *Id.*, Article 175, paragraph 1.

<sup>191</sup> *Id.*, Article 175, paragraph 2.

<sup>192</sup> *Id.*, Article 175, paragraph 3.

<sup>193</sup> *Id.*, Article 176, paragraph 1.

value, however, a company is free to charge a premium on newly issued shares.<sup>194</sup> Purchasers of bearer stock, unlike registered stock, must pay its entire nominal or issuing value prior to acquiring it.<sup>195</sup> Shares of stock are exchangeable or transferrable, although there are restrictions placed on registered stock.<sup>196</sup> The name of the owner of registered stock must be recorded in the issuing company's stock register upon purchase. Preferred or preference stock entitles the holder to a guaranteed or additional dividend or a share in the distribution of assets upon the liquidation of the company or to other preferential rights. Preferred or preference shares of stock do not carry voting rights in general meetings if so specified in the articles of association.

The management structure of a joint stock company may be one-tier or two-tier. Both types have a general meeting of the shareholders or members which exercises the principal managerial functions.<sup>197</sup> In a one-tier management system, the affairs of a joint stock company are managed collectively by a general meeting of the shareholders and a board of directors.<sup>198</sup> A two-tier system consists of a general meeting of shareholders, management board and board of comptrollers or board of supervisors.<sup>199</sup> Boards of comptrollers or boards of supervisors do not exist under a one-tier management system.

Public limited partnerships or partnerships limited by shares are established on the basis of a contract (articles of partnership) whereby the limited partners, who may not be less than three, are issued shares of stock for their capital.<sup>200</sup> This partnership has both general and limited partners. General partners are the promoters of the partnership and they prepare the articles of partnership and convene the general meeting.<sup>201</sup> The amount to be paid in by each partner is established in the articles of partnership<sup>202</sup> and the general partners must pay in at least 10 percent of the partnership's capital.<sup>203</sup> The articles of partnership and a resolution to dissolve the partnership requires the consent of the general partners.<sup>204</sup> A public limited partnership is managed by the same bodies established for a one-tier system to manage a public limited company.<sup>205</sup> A board of directors consists of all the general

<sup>194</sup> *Id.*, Article 176, paragraph 2.

<sup>195</sup> *Id.*, Article 178, paragraph 2.

<sup>196</sup> *Id.*, Article 180 & 185.

<sup>197</sup> *Id.*, Article 221.

<sup>198</sup> *Id.*, Articles 219 & 244.

<sup>199</sup> *Id.*, Articles 219, 241 & 242.

<sup>200</sup> *Id.*, Article 253.

<sup>201</sup> *Id.*, Article 254.

<sup>202</sup> *Id.*, Article 255, paragraph 1.

<sup>203</sup> *Id.*, Article 255, paragraph 2.

<sup>204</sup> *Id.*, Article 259, paragraph 1.

<sup>205</sup> *Id.*, Article 256.

partners.<sup>206</sup> Only the limited partners are entitled to vote at a general meeting; general partners those holding shares of stock, are entitled to only a deliberative vote.<sup>207</sup>

### Formation of State Property Sole Proprietor Companies Act

The National Assembly adopted the Formation of State Property Sole Proprietor Companies Act, also referred to as the Law on the Conversion of State Enterprises to Private Companies, on 1991<sup>208</sup> in which Article 1, paragraph 1, states that the formation and transformation of state-owned enterprises as sole proprietor joint stock companies (single-person public limited companies) and sole proprietor limited liability companies (single-person private limited companies) are to be done by an act of the Council of Ministers. Article 1, paragraph 2, provides that all of the capital may be contributed by the Council of Ministers as a sole proprietor in accordance with Article 147 and Article 148, paragraph 2, of the Law on Commerce.<sup>209</sup> Management of the State property sole proprietor companies is assigned by management contracts in accordance with procedures defined by the Council of Ministers.<sup>210</sup> Shares and interests in sole proprietor companies formed with State and municipal property may not be transferred, which for all practical purposes stops privatization.<sup>211</sup> Section 1 of the Transitional and Concluding Provisions of the Formation of State Property Sole Proprietor Companies Act states that the Act is applicable until an act has been adopted pursuant to Article 62, paragraph 1, of the Law on Commerce or until a Privatization Act has been adopted. Article 62, paragraph 1, of the Law on Commerce provides that state-owned or municipal enterprises are to be incorporated or reconstructed as single-person public limited companies or single person private limited companies by a procedure established by a law. Clause 15 of the Transitional and Final Provisions of the Transformation and Privatization Act repealed the Formation of State Property Sole Proprietor Companies Act.

### Transformation and Privatization Act

The purpose of the Transformation and Privatization Act adopted by the National Assembly in April 1992 was to regulate the terms and procedures for transforming state-owned enterprises into private person commercial partnerships and for privatizing state-owned and municipal-owned enterprises. The transformation portion of this Act was in compliance with Article 62, paragraph 1, of the Law on Commerce.

Various articles of the Transformation and Privatization Act and paragraphs of Clause 15 of the Act's Transitional and Final Provisions mandate the Council of Ministers to adopt decrees

<sup>206</sup> *Id.*, Article 258.

<sup>207</sup> *Id.*, Article 257, paragraph 1.

<sup>208</sup> Formation of State Sole Proprietor Companies Act, , State Gazette No. 55, 12 July 1991.

<sup>209</sup> Law on Commerce, , State Gazette, 18 June 1991.

<sup>210</sup> Formation of State Sole Proprietor Companies Act, *supra* not 212, Article 1, paragraph 1.

<sup>211</sup> *Id.*, Article 2.

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ordinances, rules and regulations to establish procedures and determine terms required for implementing different provisions of the Act. Clause 16, paragraph 1, of the Transition and Final Provisions gave the Council of Ministers until 30 October 1992 to adopt rules and regulations concerning the procedure whereby the State exercises ownership in the enterprises; however, these rules and regulations have neither been prepared nor adopted. Article 7, paragraph 1, of the Act provides that a fund is to be established with the Privatization Agency to cover administrative expenses arising from the privatization of state-owned enterprises. The Council of Ministers is required under Clause 16, paragraph 2, of the Transitional and Final Provisions of the Act to adopt rules and regulations for the procedures and method of spending money in the fund established with the Privatization Agency under Article 7, paragraph 1, covering the administrative expenses for the privatization of state-owned enterprises. Rules and regulations have been prepared and adopted in compliance with Article 7, paragraph 1, and Clause 16, paragraph 2, as Council of Ministers Decree No. 187 of 24 September 1992 "Procedures and Manner of Spending the Resources of the Fund for Covering the Expenditures for the Privatization of State-Owned Enterprises."<sup>212</sup>

Paragraph 3, Clause 16, paragraph 3, of the Transitional and Final Provisions of the Transformation and Privatization Act requires the Council of Ministers to adopt rules, regulations or ordinances to implement Article 5, paragraphs 2 and 5; Article 16, paragraph 2; Article 22, paragraph 2; Article 23, paragraph 3; Article 24; Article 28; and Article 30, paragraph 2 of the Act. To implement Article 5, paragraph 2, the Council of Ministers adopted Decree No. 187 of 24 September 1992 on the "Procedure for Acquiring Shares and Interests Owned by States and Municipalities on Preferential Terms"<sup>213</sup> to regulate the acquisition of shares and interests in privatizing state-owned and municipal enterprises by entitled persons on preferential terms. Decree No. 187 also fulfills the requirements specified in Article 22, paragraph 2, Article 23, paragraph 3, and Article 24 of the Transformation and Privatization Act that the Council of Ministers establish the terms and procedures for acquiring shares and interests in privatizing enterprises by eligible persons on preferential terms. Decree No. 105 of 15 June 1992 on "Regulation on the Appraisal of Property Subject to Privatization"<sup>214</sup> complies with Article 16, paragraph 2, of the Transformation and Privatization Act indicating that the procedures and criteria for appraising enterprises subject to privatization be established by the Council of Ministers. Article 30, paragraph 2, of the Transformation and Privatization Act requires the Council of Ministers to determine the terms and procedures for conducting auctions and publicly invited tenders and in compliance the Council has adopted Decree No. 105 of 15 June 1992 on "Regulation on Auctions," also referred to as "Ordinance on Auctions,"<sup>215</sup> and Decree No. 155 of 14 August 1992 on "Ordinance on Tenders," also referred to as "Regulation on Competition."<sup>216</sup> Decree No. 155 of 14 August 1992 also listed the State authorities or Ministries designated by the Council of Ministers under Article 3, paragraph 1, subparagraph 1, of the Transformation and Privatization responsible for making a decision to privatize any state-owned enterprise with a book value of fixed assets under 10 million leva.

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<sup>212</sup> State Gazette No. 81, 6 October 1992.

<sup>213</sup> *Id.*

<sup>214</sup> State Gazette No. 50, 19 June 1992.

<sup>215</sup> *Id.*

<sup>216</sup> State Gazette No. 68, 14 August 1992.

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The Council of Ministers, therefore, has adopted all decrees in compliance with paragraph 3, of the Transitional and Final Provisions of the Transformation and Privatization Act for rules, regulations or ordinances relating to Article 5, paragraph 5, and Article 28 of the Act. Article 5, paragraph 5, of the Act provides that any public debt creditor is eligible to participate in privatization by his or her receivables from the debt according to procedures established by the Council of Ministers and Article 28 indicates that the Council of Ministers is to determine the information to be contained in a prospectus for the sale of shares or interests in transferred and reconstructed enterprises. Article 29, paragraph 1, of the Transformation and Privatization Act indicates that the Council of Ministers is to determine the mandatory mode for paying for the shares or interests purchased from the State or municipalities in privatizing enterprises, but does not require the issuance of a decree.

In summary, the Council of Ministers has adopted the following decrees to implement the provisions of the Transformation and Privatization Act:

- Council of Ministers Decree No. 105 of 15 June 1992, "Regulation on Auctions," also referred to as "Ordinance on Auctions."<sup>217</sup>
- Council of Ministers Decree No. 105 of 15 June 1992, "Regulation on the Application of the Property Subject to Privatization," also referred to as "Ordinance on the Application of the Property Subject to Privatization."<sup>218</sup>
- Decree No. 155 of 14 August 1992, "Ordinance on Tenders," also referred to as "Regulation on Competition."<sup>219</sup>
- Council of Ministers Decree No. 187 of 24 September 1992, "Ordinance on the Procedure for Acquiring Shares and Interest Owned by the State and Municipalities on Privatization Terms."<sup>220</sup>
- Council of Ministers Decree No. 187 of 24 September 1992, "Rules on the Procedure and Manner of Spending the Resources of the Fund for Covering the Expenditure on Privatization of State-Owned Enterprises."<sup>221</sup>

Several other laws or acts adopted by the National Assembly have an indirect relationship to privatization in various ways and are listed in the order of their adoption:

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<sup>217</sup> State Gazette No. 50, 19 June 1992.

<sup>218</sup> *Id.* Note that Decree No. 105 has adopted two Regulations or Ordinances.

<sup>219</sup> State Gazette No. 68, 14 August 1992; Article 2, paragraph 1, of this Decree is an "Act of the Body" under Article 3, paragraph 1, subparagraph 1, of the Transformation and Privatization Act of the State-Owned and Municipal-Owned Enterprises Act."

<sup>220</sup> State Gazette No. 81, 6 October 1992.

<sup>221</sup> *Id.* Note that Decree No. 187 has adopted two Regulations or Ordinances.

- "Law on Accounting," adopted by the National Assembly on 3 January 1991, often referred to as "Accounting Act" or "Accountancy Act."<sup>222</sup>
- "Law on Cooperatives," adopted by the National Assembly on 19 July 1991, also referred to as "Cooperatives Act."<sup>223</sup>
- "Law on Environmental Protection," adopted by the National Assembly on 2 October 1991, also referred to as "Environmental Protection Act."<sup>224</sup>
- "Law on the Economic Activity of Foreign Persons and the Protection of Foreign Investments," adopted by the National Assembly on 16 January 1992, also referred to as "Foreign Persons' Business Activity and Foreign Investments Protection Act."<sup>225</sup>
- "Bank and Lending Act," adopted by the National Assembly on 18 March 1992.<sup>226</sup>

There are three laws or acts adopted by the National Assembly relating to restitution of claims by former owners and their heirs of real property previously nationalized or expropriated by either the State or municipalities and they are listed in order of their adoption as:

- "Restitution of the Ownership of Some Shops, Workshops, Warehouses and Studio Act," adopted by the National Assembly on 11 December 1991.<sup>227</sup>
- "Restitution of Nationalized Real Property Act," adopted by the National Assembly on 5 February 1992.<sup>228</sup>
- "Restitution of Some Expropriated Property Act," adopted by the National Assembly on 5 February 1992.<sup>229</sup>

All three of these restitution claims laws or acts were adopted by the National Assembly prior to the adoption of the Transformation and Privatization Act of April 23, 1992. Claims for restitution of real property filed under the three restitution laws or acts appear, in many instances, to be in conflict or inconsistent with restitution claims filed by former owners under the Transformation and Privatization Act. The three restitution laws or acts and their conflicts and inconsistencies with claims filed by former

<sup>222</sup> State Gazette No. 4, 15 January 1991, as amended, State Gazette No. 26, 31 March 1992.

<sup>223</sup> State Gazette No. 63, 3 August 1991, as amended, State Gazette No. 34, 24 April 1992.

<sup>224</sup> State Gazette No. 86, 18 October 1991, as amended, State Gazette No. 100, 1992.

<sup>225</sup> State Gazette No. 8, 29 January 1992.

<sup>226</sup> State Gazette No. 25, 27 March 1992.

<sup>227</sup> State Gazette No. 105, 19 December 1991.

<sup>228</sup> State Gazette No. 15, 21 February 1992.

<sup>229</sup> State Gazette No. 15, 21 February 1992.

owners under the Transformation and Privatization Act will be fully discussed in the Evaluation of Restitution Claims Procedures of this Report.

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## PRIVATIZATION PROCEDURE AND PROCESS

The Transformation and Privatization Act established the conditions, terms and procedures for regulating both the transformation and reconstruction of state-owned enterprises into single-person or sole proprietor commercial partnerships or companies and for the privatization of state-owned and municipal-owned enterprises.<sup>230</sup> Clause 1 of the Supplementary Provisions states that for the purposes of the Act, state-owned and municipal-owned enterprises are juristic persons (legal entities or corporations) that carry on businesses and the State or municipality owns the capital and property. Basically, the Transformation and Privatization Act has two purposes, one being to transform or reconstruct state-owned enterprises into single-person or sole proprietor commercial partnerships or companies and the second being to privatize transformed and nontransformed state-owned and municipal-owned enterprises.

Procedures relating to the transformation or reconstruction and privatization processes set forth in the Transformation and Privatization Act and the Law on Commerce must be closely coordinated by the governmental authorities or bodies and agencies involved. Transformation or reconstruction of a state-owned enterprise constitutes a division or distribution of the assets or property of that enterprise into shares and interests as provided by the Law on Commerce.<sup>231</sup> State-owned or municipal enterprises must be either a single-person public limited company (publicly-held joint stock company) or a single-person private limited company (closely-held stock company) under the Commercial Code; a state-owned or municipal owned enterprise shall be free to incorporate commercial societies or associations.<sup>232</sup> Article 62, paragraph 1, of the Law on Commerce provides that state-owned or municipal-owned enterprises shall be incorporated or reconstructed as single-person public limited companies or single-person private limited companies by procedures established by law. Municipal enterprises can only be incorporated or reconstructed pursuant to a resolution by the municipal council.<sup>233</sup>

The law referred to in Article 62, paragraph 1, of the Law on Commerce for establishing procedures to transform or reconstruct state-owned or municipal owned enterprises into single-person public limited companies or single-person private limited companies is the Transformation and Privatization Act, which was adopted almost a year after the Law on Commerce. Prior to the Transformation and Privatization Act, Article 1, paragraph 1, of the Formation of State Property Sole Proprietor Companies Act adopted by the National Assembly in June 1991 provided that the formation and transformation of state-owned enterprises to sole proprietor limited liability companies (sole proprietor joint stock companies) or sole proprietor limited liability companies (sole proprietor limited liability companies) were to be effected by an act (issuance of a decree) of the Council of Ministers. Management of State sole proprietor companies, where all the shares, capital and property are owned by the State, is to be assigned by a management contract pursuant to such procedure defined by the Council

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<sup>230</sup> Transformation and Privatization of State-Owned and Municipal-Owned Enterprises Act, State Gazette No. 35, 18 May 1992, Article 1, paragraph 1.

<sup>231</sup> *Id.*, Article 1, paragraph 2.

<sup>232</sup> Law on Commerce, State Gazette No. 48, 18 June 1991, Article 61.

<sup>233</sup> *Id.*, Article 62, paragraph 2.

of Ministers.<sup>234</sup> Shares and interests in sole proprietor companies formed with State and property could not be transformed under this Act.<sup>235</sup> This Law, which became effective in 1991, was to apply until the adoption of a law referred to in Article 62, paragraph 1, of the Law on Commerce.<sup>236</sup> Except for that portion of it relating to management, the Law was repealed by the Transformation and Privatization Act.<sup>237</sup>

The type of company into which a state-owned or municipal-owned enterprise is transformed or reconstructed under the Law on Commerce is dependent upon the desires of either the State or the municipality, taking into consideration the financial status of the enterprises. The capital requirements for a private limited company are at least 50,000 leva,<sup>238</sup> and that of a public limited company must be at least 5 million leva if formed by subscription and 1 million leva if formed by public subscription.<sup>239</sup> Both types of companies must register in the commercial register maintained by the court in the district in which they are located<sup>240</sup> and comply with the other requirements of the Law on Commerce.

The privatization of state-owned and municipal-owned enterprises under the Transformation and Privatization Act is the transfer of shares and interests in the transformed or reconstructed companies, partnerships held by the State or municipalities, or the ownership of any whole nontransformed or nonreconstructed enterprise or separate parts of it, to natural or legal persons.<sup>241</sup> A separate enterprise means any organizational structure within an enterprise that can carry on business separate and apart from the whole enterprise.<sup>242</sup> The Transformation and Privatization Act applies both to the privatization of state-owned and municipal enterprises that have been transformed to or reconstructed as companies, partnerships and those enterprises that have not been transformed or reconstructed.<sup>243</sup>

A Privatization Agency, which is to be a State-financed juristic (legal) agency, was established as a State authority with the Council of Ministers under the Transformation and Privatization Act.

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<sup>234</sup> State Gazette No. 55, Article 1, paragraph 3.

<sup>235</sup> *Id.*, Article 2.

<sup>236</sup> *Id.*, Transitional and Concluding Provisions, Clause 6.

<sup>237</sup> Transformation and Privatization Act, *supra* note 238, Transitional and Final Provisions, Article 15.

<sup>238</sup> Law on Commerce, *supra* note 240, Article 117.

<sup>239</sup> *Id.*, Article 161.

<sup>240</sup> *Id.*, Articles 3, 4, 119 & 174.

<sup>241</sup> Transformation and Privatization Act, *supra* note 238, Article 1, paragraph 3.

<sup>242</sup> *Id.*, Supplementary Provisions, Clause 2.

<sup>243</sup> *Id.*, see Chapters 5 & 6.

provide an opinion on proposals for transforming or reconstructing certain state-owned enterprises,<sup>244</sup> organizing and supervising the privatization of state-owned enterprises and implementing privatization in cases provided by the Act.<sup>245</sup> Financing for the Agency is provided by the National budget and kept separate from the proceeds received from selling state-owned enterprises and administrative expenses arising from privatizing those enterprises.<sup>246</sup> Governing bodies of the Agency are a Supervisory Board and Executive Director and their membership, qualifications and duties are specified in the Act.<sup>247</sup> The Supervisory Board, which was to be appointed within one month from the effective date of the Act, consists of 11 members serving four-year terms, five appointed by the Council of Ministers and six elected by the National Assembly.<sup>248</sup> Provisions are made for dismissing members for cause<sup>249</sup> and appointing their replacements.<sup>250</sup> A Chairman is elected among the members.<sup>251</sup> Members' salaries are determined by the Council of Ministers and they can not hold any other salaried position within the Agency.<sup>252</sup> Duties of the Privatization Agency include:

- Draft rules of procedure for the Agency and submit them to the Council of Ministers for adoption.
- Determine the guidelines for operating the Agency in compliance with the Transformation and Privatization Act.
- Approve a draft of the annual privatization program, budget of the Agency and the annual report on implementing the privatization program and submit them to the Council of Ministers.
- Approve the privatization transactions exceeding an amount determined by the rules of procedure of the Agency.
- Establish general rules, terms and conditions for appointing and paying employees of the Agency.
- Approve quarterly reports of the Executive Director on the operation of the Agency.

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<sup>244</sup> *Id.*, Article 17, paragraph 2.

<sup>245</sup> *Id.*, Article 10, paragraphs 1 & 2.

<sup>246</sup> *Id.*, Article 10, paragraph 3.

<sup>247</sup> *Id.*, Articles 11 through 15.

<sup>248</sup> *Id.*, Article 12, paragraph 1.

<sup>249</sup> *Id.*, Article 12, paragraph 2.

<sup>250</sup> *Id.*, Article 12, paragraph 3.

<sup>251</sup> *Id.*, Article 12, paragraph 4.

<sup>252</sup> *Id.*, Article 12, paragraph 5.

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- Hire and dismiss the Executive Director and determine his or her salary.
- Determine locations of regional offices and approve their chiefs.<sup>253</sup>

The Executive Director is responsible for organizing and directing the operation of the Privatization Agency, representing the Agency and empowering others to perform specific tasks. He or she may not hold any other salaried position nor receive remuneration by contract for services, except for research or teaching.<sup>255</sup>

State-owned enterprises are transformed or reconstructed into single-person or sole commercial partnerships or companies by the Council of Ministers or a body designated by the Council. The body is the Ministry responsible for management and operation of the enterprise. If the book value of the assets of any state-owned enterprise exceeds 10 million leva, the transformation or reconstruction of the enterprise is done by the Council of Ministers at the proposal of a body of the Council, which is the Ministry having management and operational responsibility over the enterprise. The body, however, must submit the transformation or reconstruction proposal to the Privatization Agency for an opinion regarding it before it is forwarded to the Council of Ministers for action. Such an opinion must be given by the Agency within one month after receipt.<sup>257</sup>

Shares or interests held by the State or municipality in any enterprises that have been transformed or reconstructed into commercial partnerships, excluding any shares or interests in enterprises that are to remain State property pursuant to Article 2, paragraph 2, subparagraph 4, of the Transformation and Privatization Act, must be offered for sale within five years from the date of registering the transformed or reconstructed commercial partnership.<sup>258</sup> The subparagraph of the Article referred to regarding the exclusion of any shares or interests in enterprises that are to remain State property requires that the Privatization Agency must include in its annual privatization program a list of sectors of enterprises whose privatization will not be settled either in full or in part during the term of the annual program.<sup>259</sup>

There appear to be two different types of state-owned and municipal-owned enterprises in Bulgaria. One type includes those state-owned and municipal-owned enterprises that have been transformed or reconstructed into commercial partnerships pursuant to the Transformation and Privatization Act and the other includes those state-owned and municipal-owned enterprises that have been transformed or reconstructed into commercial partnerships pursuant to the Act, with all of the shares or interests in them owned by the State or municipality. Article 61 of the Law on Commerce pro-

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<sup>253</sup> *Id.*, Article 13.

<sup>254</sup> *Id.*, Article 14, paragraph 1.

<sup>255</sup> *Id.*, Article 14, paragraph 2.

<sup>256</sup> *Id.*, Article 17, paragraph 1.

<sup>257</sup> *Id.*, Article 17, paragraph 2.

<sup>258</sup> *Id.*, Article 19.

<sup>259</sup> *Id.*, Article 2, paragraph 2, subparagraph 4.

state-owned or municipal owned enterprises are to be either single-person public limited companies or single-person private limited companies.

Storco Pleven and Selviconserv, both state-owned enterprises, have been transformed into single-person commercial partnerships in accordance with Article 1, paragraph 1, of the Transformation and Privatization Act for eventual privatization under the Act.

Privatization is to be carried out pursuant to an annual privatization program prepared by the Privatization Agency and approved by the Council of Ministers.<sup>260</sup> Among the items to be included in the annual privatization program are:

- Minimum privatization goals or targets for the year, including minimum number of state-owned enterprises subject to privatization and priority sectors.
- Expected amount of revenue or proceeds from privatizing state-owned enterprises and method or manner of using those revenues or proceeds in compliance with the requirements of the Transformation and Privatization Act.
- Any administrative expenses arising from the privatization activities.
- List of sectors and/or enterprises whose privatization will not be settled either in full or in part during the term of validity of this annual program.
- General guidelines for the privatization policy of municipalities.<sup>261</sup>

After the Council of Ministers approves the annual privatization program, it is submitted to the National Assembly for passage simultaneously with the National Budget Act.<sup>262</sup> Clause 14 of the Transitional and Final Provisions of the Transformation and Privatization Act states that the procedures established in the Act for adopting the annual privatization program do not apply to the program for 1992. Annual reports on implementation of the privatization program must be prepared by the Privatization Agency and submitted, along with the National budget report, to the National Assembly by the Council of Ministers.<sup>263</sup>

The Privatization Agency prepared an annual program for 1992 in which it proposed 92 state-owned enterprises or industries as the minimum privatization goal or target for the year. Twelve were to be privatized by the Agency and the remainder by the Ministries. The names of the enterprises or industries targeted for privatization were given for both the Agency and the designated Ministries in two attached supplements to the program. The Agency did not indicate, however, whether or not the state-owned enterprises or industries had previously been transformed or reconstructed into commercial partnerships.

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<sup>260</sup> *Id.*, Article 2, paragraph 1.

<sup>261</sup> *Id.*, Article 2, paragraph 2.

<sup>262</sup> *Id.*, Article 2, paragraph 3.

<sup>263</sup> *Id.*, Article 2, paragraph 4.

Large state-owned enterprises in the industrial and construction sectors were given privatization by the Privatization Agency during 1992 and small state-owned enterprises in services, tourist and transportation sectors were given priority for privatization by the Ministry and/or enterprises that were not to be privatized during the operation of this program for 1992 in the fields of petrochemical industries, special industries, financial institutions for restructuring debt and enterprises with unsettled ownership. Statements were made in the annual program. The Privatization Agency would not estimate, because it was the first year, proceeds or amount of revenue resulting from the sale of enterprises during privatization or the expected administrative expenditures connected with the privatization process. The Agency recommended that municipal privatization priority to enterprises in the trade, services, urban and inter-urban public transportation and construction sectors.

Decisions to privatize state-owned enterprises are made by: (1) a State body or authority designated by the Council of Ministers, which is the Ministry having management and administrative responsibility over the enterprise, where the book value of the fixed assets of the enterprise subject to privatization are under 10 million leva; (2) the Privatization Agency where the book value of the fixed assets of the enterprise subject to privatization exceed 10 million leva; and (3) the Privatization Agency on advance approval by the Council of Ministers where the book value of fixed assets of the enterprise designated by the Council of Ministers as subject to privatization is over 200 million leva.<sup>264</sup> Article 2, paragraph 1, of Council of Ministers Decree No. 155 of 14 August 1992<sup>265</sup> designates the bodies or authorities (various Ministries) under Article 3, paragraph 1, subparagraph 1 of the Transformation and Privatization Act for making privatization decisions over state-owned enterprises whose book value of fixed assets is under 10 million leva. Municipal councils where the enterprise is located make the decision regarding the privatization of municipal-owned enterprises.<sup>266</sup> Paragraph 1 of Article 3 of the Transformation and Privatization Act applies to state-owned enterprises where the decision of whether or not they have been transformed or reconstructed into commercial partnerships before privatization.<sup>267</sup>

If a body or authority under Article 3, paragraph 1, of the Transformation and Privatization Act has not made a decision to privatize a state-owned or municipal-owned enterprise, a proposal for a decision to privatize a state-owned or municipal-owned enterprise may originate from the management body of an enterprise regardless of whether or not it has been transformed reconstructed into a commercial partnerships; (2) a simple majority of the staff (employees) members of a commercial partnership or enterprise; or (3) the Privatization Agency where the Agency is not the proper authority under Article 3, paragraph 1, of the Act to make a decision on privatization.<sup>268</sup> Proposals for a decision to privatize are made to the proper bodies or authorities empowered under Article 3, paragraph 1, of the Act to make a decision on privatization and those bodies or authorities

<sup>264</sup> *Id.*, Article 3, paragraph 1.

<sup>265</sup> State Gazette No. 68, 14 August 1992.

<sup>266</sup> Transformation and Privatization Act, *supra* note 238, Article 3, paragraph 1, subparagraph 1.

<sup>267</sup> *Id.*, see, for example, Chapters 5 & 6.

<sup>268</sup> *Id.*, Article 4, paragraph 1.

month to decide on the proposals, with denials being justified.<sup>269</sup> This Article acknowledges the right of management and staff to request privatization of their enterprises, or, at least, permits management and staff to request a proper government body or authority make a decision on their proposal to privatize.

The method and procedures used to privatize state-owned and municipal-owned enterprises under the Transformation and Privatization Act differ depending upon whether or not the enterprises have been transformed or reconstructed into commercial partnerships;<sup>270</sup> therefore, Bulgaria uses either a one-tier or two-tier system of privatization. Under the one-tier system, enterprises or parts of them are privatized prior to being transformed or reconstructed into commercial partnerships.<sup>271</sup> Enterprises are transformed or reconstructed into commercial partnerships before the interests or shares held by the State or municipalities in them are privatized under the two-tier system.<sup>272</sup> An attorney in the Ministry of Interior informed me that the Ministry felt it was easier to privatize an enterprise that has been transformed into a commercial partnership because it can be privatized as a whole unit or by selling shares or interests in parts of it.

Privatization methods and procedures also differ under the Transformation and Privatization Act depending upon whether the transformed state-owned or municipal-owned enterprise has been reconstructed as a single-person public limited company (joint stock company) or a single-person private limited company (closely-held corporation).<sup>273</sup> Article 62 of the Law on Commerce requires that the single-person commercial partnerships into which the state-owned and municipal-owned enterprises are transformed be reconstructed as either single-person public limited companies or single-person private limited companies.<sup>274</sup> Methods and procedures differ on processing rights of present and certain former employees to participate in the sale of shares in single-person public limited companies or interests in single-person private limited companies on preferential terms.<sup>275</sup> Shares are sold in enterprises reconstructed as single-person public limited companies or joint stock companies,<sup>276</sup> while interests are sold in enterprises reconstructed as single-person private limited companies or limited liability companies.<sup>277</sup> Two other differences are the different permissible methods that may be used to sell shares or interests in the two transformed enterprises<sup>278</sup> and that the initial selling price of shares in

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<sup>269</sup> *Id.*, Article 4, paragraph 2.

<sup>270</sup> *Id.*, see Chapters 5 & 6.

<sup>271</sup> *Id.*, Chapter 6.

<sup>272</sup> *Id.*, Chapter 5.

<sup>273</sup> *Id.*, Articles 22 & 23.

<sup>274</sup> The reference made to "limited Liability companies" in Article 23, paragraph 1, of the Transformation and Privatization Act actually means "single-person private limited companies."

<sup>275</sup> See Transformation and Privatization Act, *supra* note 238, Articles 5, 22 & 23.

<sup>276</sup> *Id.*, Article 22. The Transformation and Privatization Act uses the term "joint stock company."

<sup>277</sup> *Id.*, Article 23. See note 283, *supra*.

<sup>278</sup> *Id.*, Article 25.

single-person public limited companies is determined by an appraisal of the privatizing enterprise. Such an appraisal is not required to establish the initial selling price of shares in single-person limited companies.

Decisions to sell shares or interests in state-owned or municipal-owned enterprises transformed into commercial partnerships, whether they be reconstructed as joint stock companies or private liability companies, are made by the authority or body specified in Article 3, paragraph 1, of the Transformation and Privatization Act empowered to make decisions on whether to privatize. Decisions to privatize must be published in the State Gazette and in at least two national newspapers.<sup>280</sup> Any shares held by the State or municipalities in enterprises reconstructed as joint stock companies may be sold by: (1) open offering of the shares to the public; (2) public sale of blocks of shares; (3) publicly invited tender; or (4) through negotiations with potential investors.<sup>281</sup> Ministries charged with the responsibility of privatizing enterprises under their jurisdiction may not sell any shares in joint stock companies that are held by the State through open offering to the public without permission of the Privatization Agency.<sup>282</sup> Interests in those enterprises that have been reconstructed as private limited liability companies can only be sold by: (1) public sale of blocks of shares; (2) publicly invited tender; or (3) through negotiation with potential buyers or investors. Determination on the method of selling shares or interests is made by the authority or body empowered to make the decision to privatize under Article 3, paragraph 1, of the Act and the method of sale must be published in the same manner as the decision to privatize or sell.<sup>284</sup> The sale of shares or interests in a transformed commercial partnership that is being sold as a single unit may be by one or more of the methods listed above and the sale may be conducted in several stages as long as it complies with the one-year time limit specified in Article 19 of the Act for privatization.<sup>285</sup> Where shares in an enterprise reconstructed as a joint stock company are sold, the capital may be simultaneously increased by the sale of new shares in compliance with the Law on Commerce.<sup>286</sup>

The method of paying for shares or interests purchased from the State or municipal enterprises transformed into commercial partnerships is determined by the Council of Ministers. If the Ministry of Finance agrees, the Privatization Agency may allow Bulgarian citizens and permanent residents in the country to purchase shares or interests by installment, and if so, the value of an

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<sup>279</sup> *Id.*, Article 20, paragraph 1.

<sup>280</sup> *Id.*, Article 20, paragraph 2.

<sup>281</sup> *Id.*, Article 25, paragraph 1.

<sup>282</sup> *Id.*, Article 25, paragraph 3.

<sup>283</sup> *Id.*, Article 25, paragraph 2.

<sup>284</sup> *Id.*, Article 20.

<sup>285</sup> *Id.*, Article 26, paragraph 1.

<sup>286</sup> *Id.*, Article 26, paragraph 2.

<sup>287</sup> *Id.*, Article 29, paragraph 1.

shares or interests are adjusted in accordance with the basic interest or lending rate.<sup>288</sup> These two statutory provisions do not indicate whether the method of payment and the allowance for installments is to be made on a case by case basis or if the Council of Ministers or Privatization Agency is to publish criteria or guidelines applicable to more than one case. Creditors of any privatizing enterprise may, with permission of the Privatization Agency, acquire shares or interests in the enterprise against its debt to them.<sup>289</sup>

The initial selling price for an opening offer of shares to the public in an enterprise transformed into a joint stock company and for the asking or reserve price at a public auction of blocks of shares or interest, the initial offering price for a publicly invited tender of shares or interests, or the initial price for negotiations with potential buyers or investors of shares or interest in enterprises that have been transformed into either joint stock companies or private limited liability companies are determined from an appraisal of the privatizing enterprise.<sup>290</sup> To determine those values, the Transformation and Privatization Act requires that all state-owned or municipal-owned enterprises privatized under it, regardless of whether or not they have been transformed into commercial partnerships, be appraised by independent Bulgarian or foreign experts or expert firms that are licensed by the Privatization Agency.<sup>291</sup> Licenses may be issued to expert independent appraisers or firms by the Ministry of Finance prior to the establishment of the Privatization Agency, "but not later than two months after the effective date of the Transformation and Privatization Act."<sup>292</sup>

The Council of Ministers, in compliance with a requirement to adopt a regulation or ordinance to establish procedures and criteria for appraising enterprises subject to privatization, adopted Decree No. 105 of 15 June 1992, "Regulation of the Appraisal of Property Subject to Privatization."<sup>293</sup> This Regulation pertains to the appraisal of all state-owned or municipal-owned enterprises subject to privatization, regardless of whether or not they have been transformed into single-person commercial partnerships or separate parts of them, and to liquidated state-owned or municipal-owned enterprises or those in the process of liquidation.<sup>294</sup>

An appraisal to determine value of the enterprise is ordered after a decision has been made to privatize the enterprise and after an appraisal of the related property rights (also referred to as an analysis of the legal state of property or legal position of its possession) has been completed.<sup>295</sup> Appraisals of

<sup>288</sup> *Id.*, Article 29, paragraph 2.

<sup>289</sup> *Id.*, Article 29, paragraph 3.

<sup>290</sup> *Id.*, Article 27.

<sup>291</sup> *Id.*, Article 16, paragraph 1.

<sup>292</sup> *Id.*, Transitional and Final Provisions, Clause 12.

<sup>293</sup> State Gazette No. 56, 15 June 1992. See Transformation and Privatization Act, *supra* note 238, Article 16, paragraph 2; Transitional and Final Provisions, Clause 16, paragraph 3.

<sup>294</sup> Council of Ministers Decree No. 105 of 15 June 1992, "Regulation of the Appraisal of Property Subject to Privatization," State Gazette No. 56, 15 June 1992, Article 2.

<sup>295</sup> *Id.*, Article 3, paragraph 1.

related property rights, which may be performed by qualified lawyers and are certified by the management, are ordered by the authority or body under Article 3, paragraph 1, of the Transition and Privatization Act authorized to make the decision to privatize the enterprises or by the management boards or staff of enterprises under Article 4, paragraph 1, of the same Act authorized to make decisions to privatize their enterprises.<sup>296</sup> The appraisal of property rights of an enterprise is done as follows:

- Property rights governing the assets of the enterprise that includes rights of ownership, easements, restrictions; encumbrances in the form of restrictions, mortgages and pledges and property acquired by compulsory purchase from private owners or cooperatives.
- Property rights in trademarks, patents and other items of intellectual property.
- Concluded lease contracts for using assets of the enterprise by third parties.
- Participation or interests of the enterprise in commercial companies and other business activities.
- Property suits, claims and receivables.
- Other property and non-property rights and obligations.<sup>297</sup>

Information or data to appraise those related property rights may be obtained from decisions on registration of State property, decisions and records on ceding State property for operative market contracts, financial and accounting records and other documents.<sup>298</sup>

At least two of the following methods must be used to appraise the value of property for privatization:<sup>299</sup> (1) net worth or net value of the assets; (2) liquidation value; (3) present value or capitalization of the income by updating (discounting) expected net money income; (4) market adjustment (market multipliers) or sales comparison (appraisal by analogue); (5) other internationally recognized methods; or (6) a combination of the above methods.<sup>300</sup> In addition, the appraiser must take into consideration the environmental impact of the enterprise's production.<sup>301</sup> The selection of persons to make the appraisals is done by public tender or publicly announce competition or direct cases by direct contracting.<sup>302</sup> Provisions of this Regulation on the Appraisal of Property S

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<sup>296</sup> *Id.*, Article 3, paragraph 2.

<sup>297</sup> *Id.*, Article 4, paragraph 1.

<sup>298</sup> *Id.*, Article 4, paragraph 2.

<sup>299</sup> *Id.*, Article 6, paragraph 1.

<sup>300</sup> *Id.*, Article 5.

<sup>301</sup> *Id.*, Article 6, paragraph 3. See provisions of Law on Environmental Protection, 2 October 1991, State Gazette No. 86, 18 October 1991, as amended.

<sup>302</sup> *Id.*, Article 11.

Privatization<sup>303</sup> should be coordinated with Chapter Three, "Valuation of Assets and Liabilities," of the Law on Accounting adopted by the National Assembly on 3 January 1991.<sup>304</sup>

The Council of Ministers is required to determine the mandatory information contained in prospectuses for the sale of any shares or interests in enterprises that have been transformed into commercial partnerships<sup>305</sup> and adopt a regulation or ordinance in compliance with this requirement,<sup>306</sup> which has not been done yet. Article 164 of the Law on Commerce sets forth the content requirements for a prospectus for a public limited liability company or joint stock company. This Article and Article 163, which requires the preparation and publication of a prospectus, pertains to public limited companies or joint stock companies after they become privatized enterprises and sell shares to prospective subscribers. The same type of information required in Article 164 can be used by the State or municipality when preparing prospectuses for the sale of shares or interests in transformed enterprises to prospective purchasers during the privatization process. Article 164 requires the following information in a prospectus:

- Company's purpose and registered office.
- Amount of authorized capital, number of shares of stock and nominal value of each share.
- Minimum amount of the first instalment, which may not be less than 25 percent of the nominal value of each share.
- Expiration date of the offer.
- Any privileges of the subscribers, which will not be in the form of bonuses, interest or preferential rights to dividend.
- Non-cash contributions due from the subscribers.
- Any right of subscribers to appoint the first boards of comptrollers and directors for a period not exceeding three years.
- Other conditions of the subscription.<sup>307</sup>

The biggest procedural difference in the privatization process of transformed commercial partnerships under the two-tier system between those state-owned enterprises and municipal-owned enterprises that have been transformed into single-person public limited liability companies (joint stock companies) and those that have been transformed into single-person private limited liability companies involves the handling of participation by present and former employees entitled to acquire shares and

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<sup>303</sup> Note 303, *supra*.

<sup>304</sup> State Gazette No. 4, 15 January 1991.

<sup>305</sup> Transformation and Privatization Act, *supra* note 238, Article 128.

<sup>306</sup> *Id.*, Transitional and Final Provisions, Clause 16, paragraph 3.

<sup>307</sup> Law on Commerce, *supra* note 240, Article 164.

interest in the privatized enterprises on preferential terms as permitted by Article 5 of the Transformation and Privatization Act: present employees of the privatizing transformed commercial partnerships who have been employed continuously by the enterprise for at least two years before the date of the decision to privatize was declared; former employees whose employment was discontinued within five years of the date of declaring the decision to privatize and were employed by the enterprise for at least ten years and former employees who retired on a pension while in employment of the privatizing enterprise for at least ten years of the date of declaring the decision to privatize and were employed for at least three years of the date of the decision to privatize are entitled to participate in the privatization of the enterprise on preferential terms. The right to participate in the purchase of shares and interests on preferential terms, however, may be exercised only once.<sup>308</sup> Those entitled to participate on preferential terms may acquire a certain portion of the shares in public limited liability companies or interest in private limited liability companies at 50 percent of the price.<sup>309</sup> Juristic or legal persons (corporations) in the State or municipality holds over a 50 percent interest in them may participate in the privatization of state-owned enterprises only with the written consent of the Privatization Agency on a case by case basis and may participate in the privatization of municipal-owned enterprises only with the written consent of the appropriate municipal council for each specific case.<sup>310</sup>

In compliance with Clause 16, paragraph 3, of the Transitional and Final Transformation and Privatization Act, the Council of Ministers has enacted Decree No. 187 of 24 September 1992 adopting an "Ordinance on the Procedure for Acquiring Shares and Interests in the State and Municipalities on Preferential Terms"<sup>311</sup> as required by Article 22, paragraph 2, Article 23, paragraph 3, and Article 24 of the Act. Article 24 states that the terms and procedures for persons under Article 5 of the Act have the right to acquire on preferential terms shares or interests in commercial partnerships by the State and municipalities are to be determined by the Council of Ministers. Article 22, paragraph 2, which pertains to shares in transformed public limited liability companies or joint stock companies to be privatized, and Article 23, paragraph 3, which pertains to interests in private limited liability companies, permits a portion of the shares or interests in the companies be sold at 50 percent of their value in accordance with procedures established by the Council of Ministers.

Council of Ministers Decree No. 187 of 24 September 1992 adopted pursuant to Article 24 of the Transformation and Privatization Act greatly expands the procedures set forth in Articles 22, 23, and 24 of the Act and increases the time period for privatizing state-owned and municipal-owned enterprises. Under the Decree those entitled to purchasing on preferential terms may exercise that right in person or through their representatives.<sup>312</sup> The authority or body responsible under Article 3, paragraph 2 of the Transformation and Privatization Act for making a decision to privatize state-owned and municipal-owned enterprises must announce the initial date for selling shares or interests of the companies or partnerships in the State Gazette and specify in the announcement the place for submitting applications for acquiring shares in joint stock companies or declarations for acquiring joint or common interests in

<sup>308</sup> Transformation and Privatization Act, *supra* note 238, Article 5, paragraph 3.

<sup>309</sup> *Id.*, Article 22, paragraph 1 & 2; Article 23, paragraphs 1 & 3.

<sup>310</sup> *Id.*, Article 5, paragraph 4.

<sup>311</sup> State Gazette No. 81, 6 October 1992.

<sup>312</sup> Council of Ministers Decree No. 187, Article 2.

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private limited liability companies.<sup>313</sup> The price at which persons pay to acquire shares or common interests is fixed by an appraisal of the enterprise made in compliance with the "Regulation on the Appraisal of Property Subject to Privatization" adopted by Council of Ministers Decree No. 105 of 15 June 1992.<sup>314</sup>

Persons entitled under Article 5, paragraph 2, of the Transformation and Privatization Act to participate on preferential terms in the privatization process of state-owned and municipal-owned enterprises that have been transformed into joint stock companies or public limited liability companies may purchase up to 20 percent of the shares belonging to the State or municipality<sup>315</sup> at 50 percent of the price of the shares as determined by the Council of Ministers.<sup>316</sup> The total amount of the discount that a single person is entitled to when purchasing shares on preferential terms may not exceed the total of his or her gross salary or wages from the privatizing enterprise during the past specified number of months, with the number of months depending upon the number of years of employment with the privatizing enterprise.<sup>317</sup> The number of months for computing gross salary or wage increases as the number of years of employment increases. For example, eight months of gross salary or wages are used for persons with less than five years of employment and 12 months of gross salary or wages are used for persons with more than 10 years of employment. Gross salary is adjusted for any changes in the applicable consumer price index to the date on which the sale of shares commences.<sup>318</sup> Rights to purchase shares on preferential terms must be exercised within three months from the date of commencing the sale of shares. Shares allotted to sales on preferential terms, but remaining unsold at the end of this time period, will be sold in accordance with general sales procedure.<sup>319</sup> The shares purchased on preferential terms must be registered with the court in the district in which the enterprise is located, but they are nonvoting for the first three years.<sup>320</sup>

Within two weeks after the expiration date given in Article 22, paragraph 5, of the Transformation and Privatization Act to exercise rights to purchase shares in joint stock companies on preferential terms, which is three months from the date the sale of shares commenced, the joint stock company must organize the preparation of information data that consists of: (1) a list of persons who have declared their right to purchase shares on preferential terms under Article 5, paragraph 2, of the Act and the grounds for their declaration of that right; (2) length of employment of each person with the enterprise or company; and (3) gross labor salary of each person determined for a given number of months, adjusted for the applicable consumer price index in accordance with the procedures in Article 22, paragraph 4,

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<sup>313</sup> *Id.*, Article 3.

<sup>314</sup> *Id.*, Article 4.

<sup>315</sup> Transformation and Privatization Act, *supra* note 238, Article 22, paragraph 1.

<sup>316</sup> *Id.*, Article 22, paragraph 2.

<sup>317</sup> *Id.*, Article 22, paragraph 3.

<sup>318</sup> *Id.*, Article 22, paragraph 4.

<sup>319</sup> *Id.*, Article 22, paragraph 5.

<sup>320</sup> *Id.*, Article 22, paragraph 6.

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of the Act, and the sum total of the discount to which each person is entitled.<sup>321</sup> A copy of the information must be displayed in prominent and accessible places in the territory or region of the joint stock company.<sup>322</sup> Persons are entitled to lodge a complaint under the Law on Administrative Procedure for verification of the content in the information within seven days after its publication. The final information, which is certified by the management board of the joint stock company, is submitted to the government authority or body responsible for making a decision under Article 3, paragraph 1 of the Act to privatize and a copy is kept in the archives of the company.<sup>324</sup> Each person is entitled to a copy of the information if he or she so requests it.<sup>325</sup> In cases where the total number of shares subscribed exceeds 20 percent of the total number of the joint stock company's shares, the shares subscribed by persons eligible to purchase on preferential terms will be reduced proportionally. The reduction will be announced in prominent and accessible places in the territory or region of the company.<sup>326</sup>

Procedures are different for purchasing interests on preferential terms in state- or municipal-owned enterprises that have been previously transformed into private limited liability companies, rather than joint stock companies. Persons entitled to acquire on preferential terms may purchase a joint or common interest amounting to no more than 20 percent of the capital of the enterprise on those terms. Those persons must declare their wish to participate in purchasing the joint or common interest in the private limited liability company.<sup>327</sup> The total size of the interest, method of purchase of it and the individual contributions are determined by a meeting of those desirous of participating in purchasing the joint or common interest. Interests acquired do not give the holders the right to sell them within three years after the date of the sale.<sup>328</sup> The total amount of discount that a single person is entitled to when purchasing a joint or common interest on preferential terms is based on gross salary and length of employment time with the enterprise and is calculated in the same manner as that previously applicable to purchasing shares on preferential terms in joint stock companies.<sup>329</sup>

Council of Ministers Decree No. 187 of 24 September 1992 requires that within three months from the date of commencing the sale of interests in a transformed private limited liability company must convene a meeting of those persons entitled under Article 5, paragraph 1 of the Law.

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<sup>321</sup> Council of Ministers Decree No. 187 of 24 September 1992, "Ordinance on the Procedure for Acquiring Shares and Interests Owned by the State and Municipalities on Preferential Terms," *Official Gazette* No. 81, 6 October 1992, Article 4, paragraph 1.

<sup>322</sup> *Id.*, Article 4, paragraph 2.

<sup>323</sup> *Id.*, Article 4, paragraph 3.

<sup>324</sup> *Id.*, Article 4, paragraph 4.

<sup>325</sup> *Id.*, Article 4, paragraph 5.

<sup>326</sup> *Id.*, Article 5.

<sup>327</sup> Transformation and Privatization Act, *supra* note 238, Article 23, paragraph 1.

<sup>328</sup> *Id.*, Article 23, paragraph 2.

<sup>329</sup> *Id.*, Article 23, paragraph 4.

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Transformation and Privatization Act to acquire an interest in it under preferential terms by publishing an announcement in two central and one local daily newspapers giving information on the agenda, and time and place of the meeting.<sup>330</sup> The right to participate in the meeting must be certified in information similar to that required for persons entitled to purchase stock in joint stock companies on preferential terms<sup>331</sup> and the persons must submit an application or declaration indicating their right to participate.<sup>332</sup> An application or declaration contains an agreement for acquiring a joint or common interest according to the terms, conditions and procedures in Article 23, paragraph 1, of the Transformation and Privatization Act that permits present and former employees to purchase up to 20 percent of the interest of the private limited liability company on preferential terms and in conformity with the price of the joint or common interest specified by the authority or body empowered under Article 3, paragraph 1, of the Act to privatize the enterprise and the individual money installment with which each person wishes to participate up to the amount specified in the information data.<sup>333</sup> The meeting of the applicants for acquiring a joint or common interest determines the amount of joint or common interest available; individual installments of the co-owners of the joint or common interest; manner of disposing of the joint or common interest; and a person who will represent the co-owners.<sup>334</sup> When the declared amount for participation exceeds the price of the joint or common interest determined by the authority or body empowered to privatize, the meeting must proportionally reallocate or redistribute the individual installments.<sup>335</sup> Minutes of the meeting must be taken, which are signed by the participants, and submitted to the authority or body empowered to privatize the enterprise.<sup>336</sup> Relations between the co-owners of the joint or common interests are regulated by a contract between them.<sup>337</sup> One share may be owned by several persons and one person may represent several owners.

A different procedure is used under the Transformation and Privatization Act's one-tier system to privatize state-owned and municipal-owned enterprises, or any separate part of them, which have not been transformed in advance of privatization into single-person commercial partnerships. Such enterprises are sold by public auction or publicly invited tenders.<sup>338</sup> Employees may empower a person to represent them if more than 30 percent of the total number of them in any enterprise, or any separate part of it, declare their wish to bid in the auction or participate in the tender.<sup>339</sup> The total amount of the discount cannot exceed the sum total of the gross wages drawn by the employees participating in the

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<sup>330</sup> Council of Ministers Decree No. 187, *supra* note 330, Article 9, paragraph 1.

<sup>331</sup> *Id.*, Article 4, paragraph 4.

<sup>332</sup> *Id.*, Article 9, paragraph 2.

<sup>333</sup> *Id.*, Article 10, paragraph 1.

<sup>334</sup> *Id.*, Article 11, paragraph 1.

<sup>335</sup> *Id.*, Article 11, paragraph 3.

<sup>336</sup> *Id.*, Article 11, paragraph 4.

<sup>337</sup> *Id.*, Article 11, paragraph 2. See Law on Commerce, *supra* note 240, Article 132.

<sup>338</sup> Transformation and Privatization Act, *supra* note 238, Article 30, paragraph 1.

<sup>339</sup> *Id.*, Article 31, paragraph 2.

purchase calculated in the same manner under Article 22, paragraphs 2 and 3, of the employees participating on preferential terms in the privatization of enterprises that have been into commercial partnerships before privatization.<sup>340</sup> Purchases may be made by installment value of the unpaid amount is adjusted according to the base interest rate if a manufacturing or enterprise is being privatized and if approved by the authority or body empowered under paragraph 1, of the Act to privatize it.<sup>341</sup>

This procedure described above may also be used to privatize whole enterprises, or sections of them, that have been transformed into commercial partnerships if the book value of the is less than 10 million leva.<sup>342</sup> In addition, the same procedures apply to privatizing the real assets of state-owned and municipal-owned enterprises that have been liquidated because of or other reasons after the settlement of their liabilities in accordance with the rules of procedures.<sup>343</sup>

Ownership in nontransformed enterprises that are privatized may be transferred by: (1) for 25 years giving the renter an option to purchase; (2) contracting out the management and giving the parties an option to purchase; (3) selling by installments and retaining title or ownership until (4) selling contingent upon conditions, such as continuing to use the property for the same purpose providing job security, making investment, achieving certain results and so forth.<sup>344</sup> The authority empowered to privatize may terminate the legal person or corporate status of any enterprise is subject to any transaction under this Article.<sup>345</sup>

Article 6 of the Transformation and Privatization Act specifies that the proceeds from the privatization of state-owned and municipal-owned enterprises be placed in a special extrabudgetary account and money in this account be distributed to various special enumerated accounts on a pro rata basis. A portion of the proceeds from the privatization of municipally owned enterprises can be used to settle the bad debts of municipal-owned enterprises.<sup>346</sup> Such a provision is not present for the settlement of bad debts of state-owned enterprises and there should be one.

A portion of the proceeds are to be used to maintain a Mutual Fund to be established under Article 8 of the Transformation and Privatization Act. Article 8, paragraph 1, requires the Ministers to establish such a Fund within three months after enactment of the Act. That Fund

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<sup>340</sup> *Id.*, Article 31, paragraph 3.

<sup>341</sup> *Id.*, Article 31, paragraph 4.

<sup>342</sup> *Id.*, Article 33.

<sup>343</sup> *Id.*, Article 32.

<sup>344</sup> *Id.*, Article 34, paragraph 1,

<sup>345</sup> *Id.*, Article 34, paragraph 2.

<sup>346</sup> *Id.*, Article 6, paragraph 2, subparagraph 3.

been established yet and until it is established, the money remains in the various Ministries responsible for the enterprises. One important use of that Fund is to compensate former owners.<sup>347</sup>

A portion of the proceeds from the privatization of state-owned enterprises can be used to replenish funds covering the administrative expenses arising from the privatization of such enterprises.<sup>348</sup> Article 6 should be amended to permit municipalities to spend more of their proceeds for administering the privatization process. The Privatization Agency is required under Article 7, paragraph 1, to establish a fund to cover the privatization expenses of state-owned enterprises. In addition to receiving a portion of the proceeds from privatization, the Agency is also allocated funds under the National Budget Act administered by the Minister of Finance.<sup>349</sup>

Pursuant to the requirements in Clause 16, paragraph 2, of the Transitional and Final Provisions of the Transformation and Privatization Act, the Council of Ministers adopted Decree No. 197 of 24 September 1992, on the "Procedures and Manner of Spending the Resources of the Fund for Covering the Expenditures for the Privatization of State-Owned Enterprises" for the fund established under Article 7, paragraph 1, of the Act to cover administrative expenses arising from the privatization of state-owned enterprises. Each governmental authority or body empowered to privatize state-owned enterprises under Article 3, paragraph 1, is required by Decree No. 187 to have its own accounts for their revenues and expenditures prepared by the Privatization Agency.<sup>350</sup> Resources from the funds can be spent for a variety of purposes listed in the Decree, but most are for administrative and operational expenses in relation to the privatization process.<sup>351</sup> Expenditures must be approved by the Executive Director of the Privatization Agency and be in compliance the Agency's annual privatization program.<sup>352</sup>

Once a state-owned or municipal-owned enterprise has been privatized, a contract is executed between the State or municipality and the new owners of the enterprise. Such contracts are to be registered with the court of the district in which the privatized enterprise is located. In addition, the contracts should be registered with the governmental body responsible for recording real property ownership and transfers. The contract should include provisions similar to those in a "Warranty Deed" that transfers clear title to the new owners so that they will have a marketable title and can sell the real property if they so desire.

The newly privatized enterprise will choose its own organizational structure under the Law on Commerce; the type of organization is not a part of the negotiations between the State or municipality and the new owners of the enterprise during the privatization process. One of the factors that will be taken into consideration on the type of organization is the financial status of the private enterprise in relation to the requirements of the Law on Commerce. Another factor is the tax advantages of a particular business organization.

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<sup>347</sup> *Id.*, Article 8, paragraph 3, subparagraph 3.

<sup>348</sup> *Id.*, Article 6, paragraph 1, subparagraph 1.

<sup>349</sup> *Id.*, Article 7, paragraph 2.

<sup>350</sup> Council of Ministers Decree No. 187, Article 1, paragraphs 2 & 3.

<sup>351</sup> *Id.*, Article 2, paragraph 4.

<sup>352</sup> *Id.*, Article 4, paragraph 1.

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## IDENTIFICATION OF INCONSISTENCIES OR GAPS IN THE PRIVATIZATION LAWS

Changes or amendments to the Transformation and Privatization Act have been drafted and are now being discussed by a Special Working Group appointed by the Council of Ministers. The large number of decrees adopting rules, regulations and ordinances presently applicable to the Act, in addition to those anticipated in the future, cause confusion and lead to inconsistencies in their application.<sup>353</sup> An example of a single law is the Ownership and Use of Farm Land Act,<sup>354</sup> and a single complete set of rules implementing that Act and following the articles in the Act in sequence is Council of Ministers Decree No. 74 of 25 April 1991, "Rules for the Application of the Ownership and Use of Farm Land Act."<sup>355</sup>

There appear to be a conflict in terminology used to describe business organizations between the Transformation and Privatization Act and Law on Commerce. Article 1, paragraph 1, of the Transformation and Privatization Act states that state-owned enterprises are to be transformed into "single-person commercial partnerships," and Articles 22 and 23 refer to transformed enterprises as "joint-stock companies" and "limited liability companies," respectively. Article 61 and 62 of the Law on Commerce indicates that state-owned and municipal-owned enterprises are to be transformed or reconstructed as a "single-person private limited company" or "single-person public limited company." Terminology for business organizations should be consistent throughout all of the laws or acts.

Article 61 of the Law on Commerce indicates that state-owned and municipal-owned enterprises shall be either a single-person private limited company or a single-person public limited company.

Article 62, paragraph 1, provides that state-owned or municipal-owned enterprises are to be incorporated or reconstructed as single-person private limited companies or single-person public limited companies by procedures established by law and Article 62, paragraph 2, states that municipal enterprises can only be incorporated or reconstructed pursuant to a resolution by the municipal council. Bulgaria has two different types of enterprises as indicated by Chapters 5 and 6 of Transformation and Privatization Act, one type is the transformed single-person commercial partnership and the other is nontransformed enterprises. Neither the Law on Commerce nor the Transformation and Privatization Act makes the status of nontransformed state-owned or municipal-owned enterprises clear.

Article 1, paragraph 1, of the Transformation and Privatization Act states that one of the purposes of this Act is to regulate the terms and procedures for transforming state-owned enterprises into single-person commercial partnerships. Article 17, paragraph 1, of the Act provides that state-owned enterprises shall be transformed into single-person commercial partnerships by the Council of Ministers or a body designated by it, which appears to be mandatory. However, Article 17, paragraph 2, provides that if the book value of the fixed assets of the enterprise to be transformed or reconstructed exceeds 10 million leva, the enterprise will be transformed or reconstructed by the Council of Ministers on the proposal of one of its bodies, which is the Ministry having management responsibility over the enterprise. One

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<sup>353</sup> See notes 223 to 227 for number of decrees applicable to the Transformation and Privatization Act.

<sup>354</sup> State Gazette No. 17, 1 March 1991, as amended.

<sup>355</sup> State Gazette No. 74, 30 April 1991, as amended.

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paragraph of Article 17 appears to be mandatory, as is Article 61 of the Law on Commerce. The other appears to leave the transformation decision up to the proposal of a particular Minister.

The Transformation and Privatization Act refers to privatization of municipally-owned enterprises that have been transformed or reconstructed into single-person commercial partnerships, but contains no statutory authority or guidance on the procedure to do so. An amendment providing such procedures and guidance on transformation or reconstruction of municipal-owned enterprises was added to the Act. The only statutory provision relating to this subject is Article 62, paragraph 1 of the Law on Commerce providing that such transformation or reconstruction is to be done pursuant to a decision by the municipal council.

A proposal for a decision to privatize may be made under Article 4, paragraph 1 of the Transformation and Privatization Act by the management bodies of any enterprise that has been transformed into a commercial partnership or any nontransformed enterprise or by the management staff of any commercial partnership or enterprise. It is unclear if the staff of a nontransformed enterprise or municipal-owned enterprise can make a proposal for a decision to privatize.

Shares or interests held by the State or municipality in any enterprises that have been transformed or reconstructed into commercial partnerships, excluding any interests or shares that are to remain State property pursuant to Article 2, paragraph 2, subparagraph 4, of the Transformation and Privatization Act, must be offered for sale within five years from the date of registering the transformation or reconstruction into a commercial partnership.<sup>356</sup> Sectors and/or enterprises that will not be privatized during the five-year period because they are to remain State property must be listed by the Privatization Agency in its annual program indicating the minimum number of state-owned enterprises targeted for privatization. There appears to be an inconsistency between Article 19 and Article 2, paragraph 2, subparagraph 4. Article 19 provides elimination of certain transformed commercial partnerships from being offered for sale during the five-year period and Article 2, paragraph 2, subparagraph 4, requires for the listing of such and/or enterprises remaining State property that will not be privatized during the validity of the program.

Mandatory information contained in a prospectus supplied to potential purchasers in connection with the sale of shares or interests in transformed enterprises is to be specified by the Council of Ministers. The Council of Ministers is required to adopt such rules and regulations,<sup>359</sup> which has not been done. The Transformation and Privatization Act should be amended to require the same type of information for the potential buyers of enterprises, or separate parts of them, that have been transformed into commercial partnerships in advance of the sale.

Article 164 of the Law on Commerce sets forth the content requirements of a prospectus for the sale of shares in a public limited liability company. More information, however, should be required in a prospectus for the sale of shares in an enterprise that is specified in Article 164. Basically, what the State or municipality is doing when privatizing an enterprise transformed into a commercial partnership is selling shares in an operational public

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<sup>356</sup> Transformation and Privatization Act, *supra* note 362, Article 19.

<sup>357</sup> *Id.*, Article 2, paragraph 2, subparagraph 4.

<sup>358</sup> *Id.*, Article 28.

<sup>359</sup> *Id.*, Transitional and Final Provisions, Clause 16, paragraph 3.

liability company, in which the government body owns all the shares, to private subscribers. In addition to the information required in Article 164,<sup>360</sup> should include:

- Business background on the transformed public limited liability company or private limited liability company.
- Statement on the capitalization of the public limited liability company or private limited liability company.
- Amount of funded debt outstanding and that to be created by the shares or interests to be offered for sale.
- Estimated net proceeds to be derived from the sale of the offered shares.
- Commissions or discounts paid to or to be paid, directly or indirectly, by the public limited liability company or private limited liability company in selling the shares of interests.
- Amount or estimated amount, itemized in reasonable detail, of sales-expenses, other commissions, to be born by public limited liability company or private limited liability company.
- Balance sheet for the past fiscal or accounting year.
- Profit and loss statement of the public limited liability company or private limited liability company, showing earnings, income, expenses and losses for the past fiscal or accounting year.

Council of Ministers Decree No. 234 of 24 November 1992 on the "Transformation into State Debt of Bad Bank Credits to Sole Proprietor Companies with State Property and State-Owned Firms, and on Clearing the Credit Portfolios of the Commercial Banks with Over 50 percent State Participation"<sup>361</sup> permits single-person or sole proprietor companies owned by the State, state-owned enterprises and other organizations terminated by Section 12 of the Transitional and Concluding Provisions of the Ownership and Use of Farm Land Act<sup>362</sup> to write off bad debts to banks or to have them reconstructed into State debts under certain circumstances. It is unclear whether this Decree applies to all single-person or sole proprietor companies owned by the State regardless of their sector or whether it only applies to those terminated by Section 12 of the Transitional and Concluding Provisions of the Ownership and Use of Farm Land Act. The Decree should be clarified and if it does not apply to all transformed privatizing enterprises, it should be amended so that all enterprises have this needed privilege.

Article 5, paragraph 5, of the Transformation and Privatization Act permits public debt creditors to participate in the privatization by using his or her receivables from the debt according to procedures established by the Council of Ministers. The procedures have not yet been prepared or adopted.

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<sup>360</sup> See note 316, *supra*, for the information required in a prospectus by Article 164 of the Law on Commerce.

<sup>361</sup> State Gazette No. 98, 4 December 1992.

<sup>362</sup> State Gazette No. 17, 1 March 1992.

Article 6 of Transformation and Privatization Act specifies that the proceeds from the privatization of state-owned and municipal-owned enterprises be placed in a special extrabudgetary account and money in the account be distributed to various special enumerated accounts on a case-by-case basis. A portion of the proceeds from the privatization of municipally-owned enterprises can be used to settle the bad debts of municipal-owned enterprise.<sup>363</sup> A provision should be added permitting municipally-owned enterprises to use a portion of the proceeds from privatization to settle their bad debts. In addition, a portion of the proceeds from the privatization of state-owned enterprises can be used to replenish funds covering the administrative expenses arising from the privatization of state-owned enterprises.<sup>364</sup> Article 6 should be amended to permit municipalities to spend more of the proceeds resulting from privatizing municipal-owned enterprises to administer their privatization procedures.

Either the Transformation and Privatization Act or Council of Ministers Decree No. 187 of 24 September 1992 should be amended to permit a broader use of the monies received from the sale of state-owned enterprises. Take, for example, the following situation: (1) a state-owned enterprise receives a loan from a bank to construct a new building; (2) the enterprise has financial difficulties that causes the construction not to be completed; and (3) the ministry responsible for managing that enterprise decides to sell it. Money paid by the purchaser of the enterprise is transferred directly to the State and can be used to complete construction of the building and expand the business of the enterprise. The State should guarantee that any of the money will be returned to the enterprise; a certain portion of the revenue should be returned to the enterprise for expansion.

The method of paying for shares or interests purchased from the State or municipal-owned enterprises transformed into commercial partnerships is determined by the Council of Ministers. The Privatization Agency may allow Bulgarian citizens and permanent residents in the country, if approved by the Ministry of Finance, to purchase shares or interests by installments.<sup>367</sup> Neither the Act nor the provision indicates whether the method of payment nor allowance for installments is to be made on a case-by-case basis or if the Council of Ministers or Privatization Agency is to publish criteria or guidelines applicable to more than one case.

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<sup>363</sup> Transformation and Privatization Act, *supra* note 362, Article 6, paragraph 2, subparagraph 1.

<sup>364</sup> *Id.*, Article 6, paragraph 1, subparagraph 1.

<sup>365</sup> Council of Ministers Decree No. 187 of 24 September 1992, "Ordinance on the Procedure for Acquiring Shares and Interests Owned by the State and Municipalities on Preferential Terms," *Official Gazette* No. 81, 6 October 1992.

<sup>366</sup> Transformation and Privatization Act, *supra* note 362, Article 29, paragraph 1.

<sup>367</sup> *Id.*, Article 19, paragraph 2.

A contract between the State or municipality and new owners of the privatized enterprise should contain provisions similar to those in a "Warranty Deed," such as

"This Deed, made between     (Name)    , Grantor, and     (Name)    , Grantee,"

"WITNESSETH, That the said Grantor, for a valuable consideration of     (Amount)     conveys and warrants to Grantee the following described real estate in     (Name of local government)    , District of         :  
    (Full description of real estate according to land recording system)    ."

"Together with all and singular the hereditaments [Permanent objects, such as land, that are capable of being inherited] and appurtenances [Attachments to the land, such as right-of-ways, easements and permanent buildings, that pass incident to it] belonging to it;"

"And     (Grantor)     warrants that the title is good, indefeasible in fee simple and free and clear of encumbrances, except     (List All encumbrances)     and warrants and defends the same."

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## EVALUATION OF INSTITUTIONAL FRAMEWORK TO IMPLEMENT PRIVATIZATION

Differentiating between inconsistencies or gaps in the privatization laws and acts discussed in the previous Section and an evaluation of the institutional framework to implement privatization is difficult and may be overlapping. Items discussed in this Section relate primarily to the control or lack of it that government authorities and bodies have over the privatization process.

The institutional framework for privatizing state-owned and municipal-owned enterprises in Bulgaria under the Transformation and Privatization Act and other privatization laws and acts is very complex and involves many government authorities and bodies. Government authorities and bodies responsible for privatization are very concerned whether the newly privatized enterprises will be able to successfully operate in a free market economy, maintain and expand their business activities and maintain their employment level. This concern and protection against business failures, the large number of government authorities and bodies involved in privatizing enterprises and the numerous required administrative responsibilities are causing delays in the privatization process.

There are several articles in the Transformation and Privatization Act relating to initiating the privatization process and establishing procedures, priorities and a time frame for privatization, but there are no provisions relating to the transformation procedures, priorities or a time frame. Article 17, paragraph 1, of the Transformation and Privatization Act states that state-owned enterprises shall be transformed into single-person commercial partnerships by the Council of Ministers or a body designated by it, meaning the Ministry having management responsibility over the specific state-owned enterprise. Article 62, paragraph 1, of the Law on Commerce provides that a state owned or municipal-owned enterprise shall be incorporated or reconstructed as a single-person limited company or a single-person limited company or a single-person public limited company by a procedure established by a law, which means the future Transformation and Privatization Act, and Article 62, paragraph 2, of the Law on Commerce provides that incorporation or reconstruction of a municipal-owned enterprise is to be done pursuant to a resolution by the municipal council. None of these articles in the Law on Commerce or Transformation and Privatization Act appear to offer any guidance to governmental authorities or bodies on the procedures or establishing a time frame for transforming or reconstructing state-owned and municipal-owned enterprises to commercial partnerships.

A decision to privatize a state-owned enterprise is made by the Privatization Agency or Ministry responsible for its management, depending on the book value of the fixed assets enterprise subject to privatization, or the municipal council for municipal-owned enterprises.<sup>368</sup> Proposals for a request for a decision to privatize state-owned enterprises can also be made by the managing bodies of those that have transformed into commercial partnerships or of those that have not been transformed; workers and employees of commercial partnerships and enterprises; and the Privatization Agency for those enterprises for which it is not the primary authority making the decision to privatize, which means any enterprise having a book value of fixed assets less than 10 million leva.<sup>369</sup>

These articles in the Transformation and Privatization Act relating to privatization appear to be inconsistent with other articles outlining the responsibility of the Privatization Agency. Privatization is to

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<sup>368</sup> *Id.*, Article, paragraph 1.

<sup>369</sup> *Id.*, Article 4, paragraph 1.

be carried out pursuant to an annual program prepared by the Privatization Agency that lists enterprises targeted to be privatized.<sup>370</sup> A question arises from an institutional viewpoint: Are enterprises incorporated into the Privatization Agency's annual program. Do those empowered to make a decision to privatize state-owned enterprises request the inclusion of those over which they have jurisdiction in the annual program of the Privatization Agency? Or, can those empowered with decision-making authority to privatize exercise that authority over enterprises included in the Privatization Agency's Annual program? Provisions of the Transformation and Privatization Act permit the various Ministries, and more particularly the Privatization Agency, maximum control over the timing of privatizing state-owned enterprises.

Article 19 of the Transformation and Privatization Act provides that any shares or interests owned by the State or municipalities in any enterprise that has been transformed or reconstructed into a commercial partnership must be offered for sale within five years from the date of its registration as a commercial partnership. Privatization could also be postponed by delaying transforming or reconstructing state-owned enterprises into commercial partnerships to negate the five-year limitation for privatizing state-owned enterprises. Ministries and the Privatization Agency basically control the timing for transforming and reconstructing state-owned enterprises into commercial partnerships under Article 17 of the Act.

The 10 million leva fixed asset limitation established in Article 3, paragraph 1, relating to government authority or body is empowered to make a decision on privatizing state-owned enterprises was established prior to inflation. This limitation requires the Privatization Agency to become overwhelmed in the privatization of too many enterprises; therefore, the 10 million leva limitation should be increased to 100 or 150 million leva to decrease the number of enterprises for the Agency to privatize. At present time, the Agency is responsible for privatizing 30 percent of the total number of state-owned enterprises, but they have 70 percent of the employees in the state-owned sector of the economy and 70 percent of the sector's assets are in those enterprises. In addition, the various Ministries are responsible for managing the state-owned enterprises; therefore, they are well acquainted with their operations and could handle their privatization. An amendment to the Transformation and Privatization Act has been prepared to increase this 10 million leva limitation.

Requirements in Article 5, paragraph 2, of the Transformation and Privatization Act regarding present and former employees preferential participation in acquiring shares and interests in state-owned and municipal-owned enterprises that have been transformed into commercial partnerships cause delays up to three months or longer in the privatization process. Those persons are permitted to purchase up to 20 percent of the shares owned by the State or municipality in a transformed enterprise or company<sup>371</sup> or a joint or common interest in a private transformed limited liability company

representing 20 percent of the capital of it<sup>372</sup> at a price equal to 50 percent of the price of the shares or interest.<sup>373</sup>

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<sup>370</sup> *Id.*, Article 2, paragraph 1.

<sup>371</sup> *Id.*, Article 22, paragraph 1.

<sup>372</sup> *Id.*, Article 23, paragraph 1.

<sup>373</sup> *Id.*, Article 22, paragraph 3, Article 23, paragraph 3.

The aggregate amount of the discount at which a single person may purchase shares on preferential terms in a joint stock company or an interest on preferential terms in a private limited liability company is dependent upon the gross wages or salary the person has received from the privatizing enterprise during the past specified number of months, with the number of months depending upon the number of years of service to the enterprise.<sup>374</sup> Rights to preferential purchase of shares in joint stock companies must be exercised within three months from the commencement of the sale of the shares<sup>375</sup> and the size of the interest, method of disposal and individual contributions in a private limited liability company are determined at a meeting of the persons wishing to participate in the acquisition of a joint or common interest in the company.<sup>376</sup>

Procedures in Council of Ministers Decree No. 187 of 24 September 1992 adopting an "Ordinance on the Procedure for Acquiring Shares and Interests Owned by the State and Municipalities on Preferential Terms," are complex and can be very time consuming and lengthy.<sup>377</sup> For example, the government authority or body empowered to make a decision under Article 3, paragraph 1, of the Transformation and Privatization Act to privatize a joint stock company has two weeks after the three-month period from the date the sale of shares commenced to begin preparing information data on persons entitled to purchase shares on preferential terms, which includes, among other things, the length of service and gross salary of each person.<sup>378</sup> That information data must be announced by placing it in prominent and accessible places in the region of the enterprise and persons listed in the information data can lodge a complaint about the information data under the Law on Administrative Procedure within seven days from the announcement.<sup>379</sup> With regard to privatizing private limited liability companies, the companies must within three months from the beginning of the sales convene a meeting of the persons entitled to purchase joint or common interests in it on preferential terms.<sup>380</sup> Privatization time may be reduced by immediately setting aside 20 percent of the shares of the joint stock companies or 20 percent of the value of private limited liability companies and retain that ownership in the State or municipality until the shares and interests of the persons entitled to purchase on preferential terms are determined. Other Eastern European countries have used this procedure in their privatization process. In addition, the preparation of the information data could begin immediately after the commencement of the sale of shares in joint stock companies and the meeting of persons entitled to purchase joint or common interests in private limited liability companies could be held during the first part of the three-month period from the commencement date for the sale of interests in the companies.

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<sup>374</sup> *Id.*

<sup>375</sup> *Id.*, Article 22, paragraph 5.

<sup>376</sup> *Id.*, Article 23, paragraph 2.

<sup>377</sup> Council of Ministers Decree No. 187 of 24 September 1992, "Ordinance on Procedure for Acquiring Shares and Interests Owned by State and Municipalities on Preferential terms, State Gazette No. 81, 6 October 1992.

<sup>378</sup> *Id.*, Article 4, paragraph 1.

<sup>379</sup> *Id.*, Article 4, paragraphs 2 & 3.

<sup>380</sup> *Id.*, Article 9, paragraph 1.

Council of Ministers Decree No. 105 of 15 June 1992, "Regulation on the Appraisal Subject to Privatization,"<sup>381</sup> indicates two types of appraisals for property of enterprises subject to privatization, whether or not they have been transformed into a commercial partnership. The first appraisal is that of property rights governing the assets of the enterprise<sup>382</sup> and is ordered by the authority or body under Article 3, paragraph 1, of the Transformation and Privatization Act. The second appraisal is that of the decision-making power to privatize and is to be performed by qualified lawyers.<sup>383</sup> The purposes of this appraisal, which is made by lawyers of the Privatization Agency and Ministers, are to determine if the state-owned and municipal-owned enterprises can function in a free market before making a decision to privatize them and another is to get information as required under Article 12 of Decree No. 105 to determine value of the enterprise in the second appraisal under the methods enumerated in Article 5 of the Decree. An insufficient number of lawyers in the Privatization Agency or appropriate Ministries to perform these appraisals cause delays in the privatization process.

A second appraisal under Decree No. 105 of the property of enterprises subject to privatization is ordered after an appraisal relating to the property rights has been completed and after a decision has been made to privatize the enterprise.<sup>384</sup> These appraisals are to be performed by Bulgarian lawyers, natural or legal persons licensed by the Privatization Agency.<sup>385</sup> Portions of these two appraisals could be combined to save time in the privatization process. Parts of the first appraisal could be performed by appraisers licensed by the Privatization Agency, particularly the collection of documents and materials required for that appraisal. Documents and other material could be collected and organized in a uniform manner and submitted to the Privatization Agency or appropriate Ministry for review and appraisal by their lawyers. Because the second appraisal is not made until after the first appraisal is completed, it appears that lawyers from either the Privatization Agency or appropriate Ministry have the power to recommend that a particular enterprise not be privatized based on their findings from the second appraisal.

A portion of the proceeds or revenues from the sale of state-owned and municipal-owned enterprises are to be used to maintain a Mutual Fund to be established under Article 8 of the Transformation and Privatization Act. Article 8, paragraph 1, of the Act requires the Council of Ministers to establish such a Fund within three months after enactment of the Transformation and Privatization Act. That Fund had not been established yet and until it is established, the money is to be held in the various Ministries responsible for the management of the enterprises. That Fund should be established immediately because one of the important uses of it is to compensate former owners and their heirs for property nationalized or expropriated and made a part of the privatizing enterprise.<sup>386</sup>

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<sup>381</sup> Council of Ministers Decree No. 105 of 15 June 1992, "Regulation on the Appraisal of Property of Enterprises Subject to Privatization," State Gazette No. 50, 19 June 1992.

<sup>382</sup> *Id.*, Article 4.

<sup>383</sup> *Id.*, Article 3, paragraph 2.

<sup>384</sup> *Id.*, Article 3, paragraph 1.

<sup>385</sup> *Id.*, Article 7, paragraph 1.

<sup>386</sup> Transformation and Privatization Act, *supra* note 379, Article 8, paragraph 3, subparagraph 1.

## EVALUATION OF RESTITUTION CLAIMS PROCEDURES

Restitution is an equitable remedy under which a person is restored to his or her original position prior to the loss or injury or placed in the position he or she would have been had the breach not occurred. With regard to the nationalization or expropriation of land, restitution is the act of restoring the land to its rightful owner (former owner or his or her heirs) or providing the rightful owner equivalent compensation for the value of the land nationalized or expropriated. Therefore, restitution means either restoration rights or equivalent monetary compensation depending upon the circumstances.

One of the first procedures in the privatization process is to determine and settle restoration rights or compensation claims made by former owners of land now included in the privatizing enterprises and other real property improvements on that land. Rights to land restoration, monetary compensation or shares or interests in the newly privatized enterprises are dependent upon the privatization and restitution laws or acts used and the acts and decrees that nationalized the land and improvements on it in the first place.

The rights of former owners of land and real property improvements on it to restoration or compensation claims are extremely complex and are dependent upon several factors, among which are:

- The act or decree under which the land and real property improvements were nationalized or expropriated.
- The use of the land and real property improvements on it prior to nationalization or expropriation.
- Changes in the use of the land and real property improvements on it since nationalization or expropriation.
- The present use of the nationalized or expropriated real property.
- Location of the land and real property improvements on it when nationalized or expropriated.
- Changes in the location of the land and real property improvements on it since nationalization or expropriation, for example, is the land and real property improvements on it now within the building development boundaries of settlements?
- The law or act under which the nationalized or expropriated land and real property improvements on it is to be privatized and restitution made.
- Dates of the acts or decrees for privatization of state-owned and municipal-owned enterprises.
- Date of the laws or acts for making restitution to former owners of the land and real property improvements on it.

The National Assembly on 11 December 1991 took a first, limited move by Restitution of the Ownership of Some Small Shops, Workshops, Warehouses and Studios provided for the restitution of certain small shops and other business premises. Specific Article 1 of the Act, former owners and their heirs are able to reclaim their shops, warehouses and studios they sold at artificially low prices pursuant to Council of Ministers 60 of 1975 on "Buying-up Shops, Workshops, Warehouses and Studios,"<sup>388</sup> if within one year of the effective date of the Act they reimburse the buyers, or their successors, with the money received from the sale. Buyers or their successors who made improvements on the property have the cost of the improvements reimbursed by the former owners or their heirs for expenses made on the improvement or restoration.<sup>389</sup>

Former owners or their heirs may not claim missed benefits or yields from the property. If the property has been reconstructed, or has formed new property with other estates, it is impossible to restore the original situation without considerable difficulties for the present or future, it is economically unjustified, the ownership of the property is transformed into co-ownership. In such cases, each of the owners acquires a share of the newly formed property corresponding to the share of each of the owners property in relation to the newly formed one at the time the Act became effective.

Articles 1 and 2 of the Restitution of Nationalized Property Act adopted by the National Assembly on 2 February 1992<sup>391</sup> provides that former owners of real property expropriated under specific laws and now owned by the State, municipalities and public organizations, or by their companies, or by private limited companies or single-person public limited companies under Article 61 of the Constitution on Commerce and exists in the same physical dimensions as when it was nationalized or expropriated, are entitled to have it restored to them. Those specific nationalization and expropriation acts enumerated in the Restitution of Nationalized Property Act include:

- Expropriation of Large Urban Housing Property Act.<sup>392</sup>
- Government Tobacco Monopoly Act.<sup>393</sup>
- Government Oil Products Monopoly Act.<sup>394</sup>

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<sup>387</sup> Restitution of the Ownership of Small Shops, Workshops, Warehouses and Studios, State Gazette No. 105, 19 December 1991.

<sup>388</sup> State Gazette No. 39, 1975.

<sup>389</sup> Restitution of the Ownership of Small Shops, Workshops, Warehouses and Studios, State Gazette No. 399, Article 2, paragraph 1.

<sup>390</sup> *Id.*, Article 2, paragraph 2.

<sup>391</sup> Restitution of Nationalized Property Act, State Gazette No. 15, 21 January 1992.

<sup>392</sup> State Gazette No. 87, 1943, as amended, No. 91, 1943.

<sup>393</sup> State Gazette No. 96, 1947, as amended, Nos. 93 & 234, 1948; No. 41, 1951; No. 3, 1952.

<sup>394</sup> State Gazette No. 55, 1948, repealed No. 39, 1991.

- Spirits and Alcoholic Beverages Monopoly Act.<sup>395</sup>
- Nationalization of Private Industrial and Mining Enterprises Act.<sup>396</sup>
- Cinematography Act.<sup>397</sup>
- Book Printing Act.<sup>398</sup>
- Decree on the Expropriation of Foods Warehouses.<sup>399</sup>
- Transactions in real property that were executed in violation of a resolution adopted by the National Assembly on 6 December 1990<sup>400</sup> on the partial lifting of the ban on the disposal of State and municipal property, which transactions are now declared null and void, and the ownership of rural property is to be restored.

Ownership of the property is restored to the persons from whom it was expropriated or to their heirs<sup>401</sup> or to legal persons (corporations) from whom it was expropriated if those legal persons still exist.<sup>402</sup> If the legal persons no longer exist, restoration is made to those physical persons or their heirs who were partners or members of the legal person at the time of its dissolution.<sup>403</sup> Former owners who received equivalent monetary compensation or an equivalent real property in compensation for their nationalized property are not entitled to have their real property restored.<sup>404</sup> Alternate compensation to be specified later in a separate law will be paid to those former owners whose property was subsequently sold to private parties or changed in other ways.<sup>405</sup> Former owners or their heirs may not claim foregone benefits and yields from property while it was nationalized.<sup>406</sup>

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<sup>395</sup> State Gazette No. 178, 1947, as amended, Nos. 93 & 234, 1948; No. 36, 1949.

<sup>396</sup> State Gazette No. 302, 1947, No. 176, 1941.

<sup>397</sup> State Gazette No. 78, 1948, as amended, No. 95, 1953; No. 65, 1959; No. 85, 1974.

<sup>398</sup> State Gazette No. 52, 1949, as amended, No. 18, 1951.

<sup>399</sup> State Gazette No. 13, 1942.

<sup>400</sup> State Gazette No. 101, 1990.

<sup>401</sup> Restitution of Nationalized Property Act, *supra* note 403, Article 3, paragraph 1.

<sup>402</sup> *Id.*, Article 3, paragraph 2.

<sup>403</sup> *Id.*

<sup>404</sup> *Id.*, Article 4, paragraph 1.

<sup>405</sup> *Id.*, Article 3, paragraph 3.

<sup>406</sup> *Id.*, Article 4, paragraph 1.

Council of Ministers Decree No. 60 adopted on 16 April 1992<sup>407</sup> pursuant to the of Nationalized Real Property Act repealed all acts of the General Assembly and all Council decrees, ordinances and decisions listed in Articles 1 and 2 of the Act that nationalized real

A second restitution law adopted by the National Assembly on 5 February 1992<sup>408</sup> Restitution of Some Expropriated Property Act<sup>408</sup> that had as its purpose the return of any real property to the former owners that was expropriated by the State for development purposes under the Act provided that the property, if a building, still exists, or if a plot of land, it is suitable for reconstruction.<sup>409</sup> Former owners of real property are also entitled to restoration if it is not currently used for the purpose for which it was expropriated.<sup>410</sup> Any monetary compensation received by the former owner for the real property at the time of expropriation must be returned to the former owner. Requests for restoration, or revocation of expropriation as termed in the Act, is made to the Council of Ministers within six months of the effective date of the Act who has 30 days to make a decision. Decisions made within 30 days are deemed to be rejections of the requests; rejections may be appealed to the District Court within 14 days who decides the manner.<sup>412</sup>

In summary, former owners under these three restitution laws are entitled to have their real property restored to them; however, they are not entitled to receive any loss of revenue or compensation for the property during the period it is nationalized. These former owners receive development improvements the State or municipalities made to or on the land without compensating the former owners or municipality for them. Former owners could get buildings that are presently a part of an industrial complex and could, unless they rent them back to the industry, have an adverse affect on the operations of the industry. In other instances, the demand for rent could also be so high that it could adversely affect the industry. Some persons involved with the privatization process feel that the lack of compensation can hinder privatization; therefore, they would prefer providing the former owners with shares in the newly privatized enterprises.

There are real conflicts between the Transformation and Privatization Act and the three restitution laws because the Transformation and Privatization Act and restitution laws refer to the same acts and decrees under which real property was nationalized or expropriated, but offer the former owners different forms of restitution settlements. The Transformation and Privatization Act is fairly inclusive in listing the nationalization or expropriation laws, acts and decrees, permitting the former owners to receive a proportionate part of the shares or interests in newly privatized enterprises. The three restitution laws require in most cases restoration of the real property to the former owners. An amendment is being proposed to the Transformation and Privatization Act that will provide former owners with restitution options, such as a choice of restoration, compensation or shares or interests in the newly privatized enterprise. At the present time, however, one has to look at the acts and decrees under

<sup>407</sup> State Gazette No. 35, 28 April 1992.

<sup>408</sup> Restitution of Some Appropriated Property Act, State Gazette No. 15, 21 February 1992.

<sup>409</sup> *Id.*, Articles 1 & 2.

<sup>410</sup> *Id.*, Article 3.

<sup>411</sup> *Id.*, Article 6.

<sup>412</sup> *Id.*, Article 4.

the real property was nationalized or expropriated and the laws under which the enterprise is being privatized to determine the restitution rights of former owners.

Article 18, paragraph 1, of the Transformation and Privatization Act permits former owners of immovable property (real estate) nationalized by various laws, acts and decrees<sup>413</sup> to file restitution claims either before or after the transformation of the enterprise into a commercial partnership, provided the property actually now exists and it has been incorporated into the long-term fixed assets of state-owned or municipal-owned enterprises. These former owners are entitled to receive a proportionate part of the shares or interest of the companies established from the enterprises, the amount of which is determined on the basis of an expert appraisal. No guidelines have been provided to fix value; however, personnel of the Privatization Agency indicated that value is based on a combination of fixed assets and size of the property. Values could be high because they are today's value and consideration is not given for any improvements that can be deducted because they were made by the State or municipality during their ownership. The same procedures will have to be used as for the appointment of appraisers for valuing state-owned or municipal owned enterprises to be privatized. A proposed amendment to the Transformation and Privatization Act will provide more guidance on determine value and procedures for appointment of appraisers.

Former owners of farm land that has been built up with state-owned or municipal owned enterprises are entitled to the same restitution claims, provided that the land, prior to becoming a part of a state-owned or-municipal owned enterprise, was a part of a Cooperative Farm, State Farm or any other entity formed on the basis of such farms.<sup>414</sup>

An application for a restitution claim under the Transformation and Privatization Act is filed with the municipal council at the location of the property regardless of whether the property has been incorporated into a state-owned enterprise. Claims relating to state-owned enterprises are transmitted to the Council of Ministers for a decision, while those relating to municipal-owned enterprises remain with municipal council for its decision. All applications must be filed within one year after the effective date of the Act, which was 12 May 1992.<sup>415</sup> However, if a decision has been made to privatize an enterprise, a claim must be filed no later than two months after the publication date of the privatization decision regardless of the one-year period.<sup>416</sup> Municipal councils having jurisdiction over the property communicate the appraisals to the former owners and they may appeal the appraisals to the District Court within 14 days of receiving the appraisals.<sup>417</sup>

Recognition is given in the Transformation and Privatization Act to restoration of real property to the former owners nationalized under the specific acts and decrees alluded to in the Restitution of

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<sup>413</sup> Laws, acts and decrees of the National Assembly within the period from 1946 to 1962, excluding property nationalized under Article 26 of the Law on Property and Article 101 of the Ownership Act.

<sup>414</sup> Transformation and Privatization Act, *supra* note 425, Article 18, paragraph 2.

<sup>415</sup> *Id.*, Article 18, paragraph 1.

<sup>416</sup> *Id.*, Transitional and Final Provisions, Clause 6, paragraph 2.

<sup>417</sup> *Id.*, Article 18, paragraph 3.

Nationalized Real Property Act.<sup>418</sup> Clause 6, paragraph 1, of the Transitional and Final of the Transformation and Privatization Act provides that any person whose property has been under the Restitution of Nationalized Real Property Act may declare his or her real rights to the government authority or body empowered to make a decision to privatize the enterprise up to two months after the publication date of the decision to privatize the enterprise that incorporates the laws concerned. Those persons failing to declare their real rights within the time limit are entitled to compensation.<sup>419</sup> Restitution claims submitted to Storco Pleven and Selviconserv, both state enterprises transformed into single-person commercial partnerships, by former owners of land that has been incorporated into the state enterprises should be processed according to the procedures set forth in the Transformation and Privatization Act. The two single-person commercial partnerships that have been privatized under the Transformation and Privatization Act, therefore, the restitution claims provided for in this act prevail over the other restitution claims laws. In addition, the restitution claims provided for in the Transformation and Privatization Act incorporate most of the laws, acts and decrees which applied to the property that was nationalized or expropriated. Under the Transformation and Privatization Act, former owners are entitled to a proportionate part of the shares or interests in any partnership formed from the state enterprises, except if restoration claims were filed under the Restitution of Nationalized Real Property Act.

The procedures and steps for processing restitution claims is as follows:

- File the restitution claim application with the municipal council having jurisdiction over the particular property.
- Determine if the restitution claim application was timely filed; such claims must be filed within one year after the effective date of the Transformation and Privatization Act or within two months after the publication date of the decision to privatize the enterprise, whichever is sooner.
- Determine through land records if the applicant former owner was actually the owner of the particular parcel of land in question.
- Determine if the particular parcel of land has been incorporated into the particular enterprise.
- Determine the former law, act or decree under which the particular parcel of land in question was nationalized.
- Determine if the former owner ever received compensation upon nationalization of the particular parcel of land in question.
- If the former owner has had his or her land that was expropriated under the Restitution of Nationalized Property Act restored, he or she must declare that right to the authority empowered to privatize within two months after the publication date of the decision to privatize the enterprise.

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<sup>418</sup> See note 403, *supra*.

<sup>419</sup> Transformation and Privatization Act, *supra* note 425, Transitional and Final Provisions, Clause 6, paragraph 1.

- Determine the amount of compensation the former owner is entitled to if he or she fails to exercise his or her restoration rights in a timely fashion.
- Determine if the particular parcel of land in question that is not a built-up portion of the privatizing enterprise was formerly farm land.
- Municipal council appoints appraisers to determine value of the particular parcel of land in question.
- Communicate the appraisal to the former owners.
- Determine the proportionate part of the shares or interest in any partnership formed out of the privatizing enterprise that the former owner is entitled to receive.
- Determine if the former owner will appeal the appraisal to the District Court.
- Municipal council transmits the restitution claim, with all accompanying material and information to the Council of Ministers.
- Council of Ministers approves the proportionate share or interest in the new privatized enterprise and transfers the share or interest to the former owner.