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## THE PUBLIC ENTERPRISES IN OWNERSHIP TRANSFORMATION

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**Abstract.** *The investment and transition legislation has been completely changed in Yugoslavia and its two federal units during the last few years. This paper reviews the legal aspects of public enterprises in ownership transformation. This form of enterprise, a participant in economic relationships in capacity of a legal person, is still interesting for the Yugoslav law, because it is based on the state-owned capital that is the subject matter of transformation. Public enterprises are founded, organized and may operate according to the market principles of trading, business cooperation and realization of profit-oriented joint interests and objectives. A public enterprise enjoys a special legal status, separate from the state's subjectivity. It becomes qualified as a legal person by registration in the court register. The subject matter of transformation is also the state-owned capital. Public enterprises are autonomous in decision-making about the starting process of privatization. To protect the public interests, it is necessary that enterprises obtain founder's agreement.*

### 1. INTRODUCTION

Privatization represents the basis for the effectuation of other forms of enterprise transformation. A clear ownership structure and a recognizable legal form, regardless of the initial capital, make up a good basis for other enterprise transformation forms. Ownership transformation essentially calls for a change of the legal form of the enterprise concerned. Based on ownership transformation, a socially and state owned enterprise is turned into a joint-stock company. In this process, the socially or state owned capital is replaced with shareholder equity.

The investment and transition legislation has been completely changed in Yugoslavia and its two federal units during the last few years. A nonstandardized enterprise form remains as an inherited type of organization - socially owned enterprises are specific for

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the legal system, but new regulations do not define their further founding.

This paper reviews the legal aspects of public enterprises in ownership transformation. This form of enterprise, a participant in economic relationships in capacity of a legal person, is still interesting for the Yugoslav law, because it is based on the state-owned capital that is the subject matter of transformation. The enterprise that is performing trade activities of common interest and is founded by the state or a local autonomous organization - local unit is defined as a public enterprise. The services of common interest can also be performed by other enterprise forms, parts of an enterprise, or by an entrepreneur (as defined by the Law of Enterprises). The basic characteristics of a public enterprise are the type of its founder and the scope of activities satisfying common interest.

According to the Law of Enterprises, trade activities include the activities of common interest in the fields of: infrastructure (electric power industry, railroad and PTT transportation, air transportation), utilization and management of the property of common interest (water-power engineering, road network, forestry), public and other services vital for the life and work of the inhabitants and enterprises in a certain area. The Law does not fix the list of these activities, so that a number of other activities having the same attribute - common interest may be added to the examples mentioned above.

The law defines activities of common interest. An enterprise can perform one or more activities if it fulfills the requirements prescribed for such a line of activities. Public enterprises are founded, organized and may operate according to the market principles of trading, business cooperation and realization of profit-oriented joint interests and objectives. Public enterprises may manage its affairs by means of socially (still), state, or privately owned capital, or by other kinds of property. In dependence of the ownership relations, this enterprise form can be established as a capital company - joint-stock company or limited liability company. But, activities of these enterprises can also be performed without founding an actual enterprise - in the form of public institutions, or directly by the state or a local unit, without the status of a legal entity. Also, the enterprises performing the activities of common interest can work in the form of a person company. This activity can also be carried out by a socially owned enterprise (representing the characteristic in the legislation of the Republic of Serbia, but not the Republic of Montenegro) or by an entrepreneur.

However, in the sense of dynamics, no legal forms for further foundation of public enterprises for common utilities will be available. The forms of a capital company or persons company (depending on who is the founder - a legal or a physical person) are the only modus for such an enterprise establishment. The exceptions will be made when either the state or a local unit appear as the founders of an enterprise performing activities of common interest.

A public enterprise enjoys a special legal status, separate from the state's subjectivity. It becomes qualified as a legal person by registration in the court register.

The public enterprise property encompasses property rights (real estate and movable property), financial resources, stocks and bonds and other property rights. The means constituting the property mass of a public enterprise are buildings, machines and equipment, and other means necessary for the enterprise functioning and performing of its activities. Natural resources and common-use goods that are in the state or social property get transferred to a public enterprise for utilization and management. A public

enterprise is liable for its obligations by its whole property. The founders, shareholders and members are liable for the enterprise's obligations in accordance with the regulations of the Law of Enterprises.

## 2. THE ROLE OF THE STATE

Changes in legislation concerning the public enterprise founding are not to cause the discontinuation of the role of the state and the local unit. Moreover, new legal solutions do not imply the transformation of the existing public enterprises into capital companies. The state or a local unit have a double position in performing the activities of common interest: both in the domain of management and in the field of working regime.

In the management domain, the state position is proportional to the structure of enterprise's capital. The role of the state (and of a local unit, as well) is the same as the position of any other capital proprietor. It means that the state has identical positions both in a public enterprise performing activities of common interest (owned by the state or in a joint ownership) and in another enterprise (private or mixed) performing other activities.

Concerning the regime of work, the position of the state or a local unit does not depend on the property structure of the basic capital of an enterprise that performs activities of common interest. The state is obligated to provide permanent carrying out of these activities in accordance with the needs of their users, and not only according to the profit.

## 3. PUBLIC ENTERPRISE STATUS

The Yugoslav legislation is introducing the equality of all the forms of enterprises. All enterprises have the same position, rights, obligations and responsibilities in the market. However, apart from these definitions, the Law of Public Enterprises issues a series of special rules concerning the structure of their administrative bodies. On one side, it is necessary because of the type of activities of these enterprises, and on the other side, for the sake of further democratization of this sector. Independent of the public enterprise property regime, it is necessary to establish an administrative council, supervisory board, and director. It is also necessary to organize the participation of the employees in these organs. In specific cases, it is possible to form a council of employees. In addition, some activities in a public enterprise may be performed only if permitted by a competent organ. The public enterprise director can not simultaneously be the president of the administrative council, and similar.

In a comparative law status, enterprises that perform activities of common interest are not defined in a uniform way. In France, there is a difference between public enterprises and public services (which are not legal entities). Public enterprises can be national or local. They can be founded as public institutions or trade companies (with public - state capital, or with mixed capital). In Great Britain, enterprises performing activities of common interest can be founded by law or a royal charter, and in most cases these activities are delegated to enterprises in private property by agreements of concession.

The manners of performing these activities can be very different. A public enterprise can be founded by law as a state enterprise. In this case, the state is the only shareholder

(for example, railway transport, PTT). An enterprise can be founded by a decision of the local self-managing community - municipality or region (that pool their resources to satisfy mutual needs, specially water management, roads and public utilities, heating, culture). Public enterprises' activities can be performed directly by the state or local self-managing community. Besides, the state can conclude a concession contract between the state (or a local self-managing community) and a legal or physical person.

One of the ways of performing activities of common interest is the foundation of a joint company (with the state or private capital), or the transformation of the existing state-owned enterprises. This way is raising great interest now in Yugoslavia. First, because of the necessity to put radical trade reforms into effect and the role of public enterprises in them, and also because of the adopting and enforcing of basic reform-related laws.

After some ten years from the transition startup in the East and Central European countries, opinions differ considerably as to the modality of privatization. This is mostly caused by two facts: use of different models and frequent changes of legislation.

#### 4. PRIVATIZATION AND PUBLIC ENTERPRISES

Adoption of the Federal Ownership Transformation Act 1989 started up the process of privatization in former Yugoslavia. Since that time, there were many attempts to put this procedure in appropriate frames, but the process has undergone different defects, particularly in 1992 and 1993 due to the hyperinflation.

Nowadays, after many years of international isolation, Yugoslavia is greatly "suffering" because of the appreciable shortage of foreign capital and new technologies. The Ownership Transformation Law of the Republic of Serbia (one of two federal units of FRY) defines the largest possibility of ownership transformation. For the first time, among other firms, there are public enterprises, economic agents that perform functions of special importance for the trade and the whole society.

The privatization in Serbia started up way back in 1990. Socially owned capital was the object of transformation. So, the then transformation did not cover the state-owned capital, neither public utilities (public enterprises), as well. The existing ownership structure has become an obstruction to the rise of efficiency after seven years. At the beginning of 1997, the economic system in Serbia was characterized by an insufficient level of activity, illiquidity and insufficient level of financial flexibility for the production continuity. The decreased inflow into the budget and funds results from a decrease in the collection of sales taxes and profit taxes and expansion of the shadow economy. In these circumstances, the rights of those spending public funds are higher than the possibilities of collecting funds from taxpayers. The change of ownership structure is the only way out of such a situation.

The subject matter of transformation is also the state-owned capital. Public enterprises are autonomous in decision-making about the starting process of privatization. To protect the public interests, it is necessary that enterprises obtain founder's agreement. If the founder is not a Republic, but a local unit, the enterprise has to obtain the agreement of the Government of the Republic of Serbia, as well.

The objectives of the public enterprise ownership transformation are the same as for

other enterprises - more effective functioning of the enterprise, with regard to the specifications of a public enterprise, and better and more rational supply of the population and market by products or services. A very important segment of the ownership transformation in public enterprises is the way of providing a supplementary source inflow into the budget. A public enterprise is a very specific form, however, in comparison with other enterprises.

First, in these enterprises the subject matter of transformation is the state owned capital. The state is the owner and proceeds from the sale of state owned enterprises belong to the government, or inflow into the budget of a local unit.

Second, although public enterprises are autonomous in making decisions about the start of ownership transformation process, they can not organize it without the approval of their founders.

The experience in the implementation of ownership privatization in all the countries in transition points out that it is objectively very difficult to identify the optimal ownership transformation model. Because of that, it can be concluded that the transformation is not a question of formula, but that of approach instead. The change of ownership in public enterprises is only a part of the economic transformation process. This is a long-term and complex process. The objectives of public enterprise ownership transformation are more complex and numerous than the objectives of other factors in the process of privatization: the improvement of the total efficiency of the enterprise operation and profitability, high-quality of servicing, and also the relieving of public finances from subventions that belong to public enterprises (the budget can get a surplus value - profit, as well).

The first step towards the ownership transformation is to grasp the situation of public enterprises. These enterprises had a very important role during the period of international association's sanctions. They were supplying the common conditions for living and working to citizens and economy, in the only possible way for such situation.

Public enterprises, enterprises having state-owned capital at their disposal, may be transformed by the decision of their founder (and owner). The privatization procedure understands:

- the capital valuation; the assessed value will be verified by the Capital Valuation Directorate, and the enterprise subsequently makes a decision for the beginning of the privatization process;
- decision-making with regard to the company's legal status as a share company;
- decision concerning the ownership transformation and parallel approval of the transformation program;
- decision regarding the issue and sale of share;
- obtaining the consent of the founder(s).

The founder of public enterprises can be a local unit or the state. The privatization procedure in these enterprises is different in some details.

## 5. THE MANNERS AND MODELS OF THE OWNERSHIP TRANSFORMATION

The Ownership Transformation Act specifies the following manners of transformation: autonomously, by a special Government program, with the consent of its

founder(s). A public enterprise shall be transformed through the application of one or more of the models: sale of shares (with or without a discount), sale of shares for the purpose of raising additional capital (with a discount), or debt-equity swaps. The enterprises selected by the decision of the Government of the Republic of Serbia shall be transformed in accordance with the special Government program. The criteria for selecting the public enterprise are: strategic importance, size of the enterprise, the number of employers. It has to take into consideration next facts.

If there are debts of public enterprises to any legal person, enterprise or bank, there is a **possibility for conversion of debts to equity**. This model means that creditors can, under the defined circumstances, convert their own demands to equity, and become that way the joint owners over the public enterprise's capital. In a significant number of enterprises, this model shall be a necessary step in the process of the ownership transformation, especially if it makes the transformation-starting base.

The sale of shares for the purpose of raising additional capital - **sale of additional capital (with discount)** is another model of ownership transformation. It understands the sale of shares for the purpose of rising additional capital. The application of this model makes it possible to provide working capital for the development, if this capital comes through the permanent, owner's share. In domestic economic conditions capital is very poor, and the banks are not able to render help by credits because of their inconvenient status. The Ownership Transformation Act defines only the sale of additional capital with discount as the manner of ownership transformation (not the sale of additional capital without discount). The emission of shares of stocks or shares without discounts with consent of the competent organ does not imply the ownership transformation. In this case, the owner of the existing capital is not changing.

**The sale of shares (with or without discount)** of public enterprises can mostly contribute to the state for gathering considerable capital for transition reforms. This model is also very important for enterprises. This way, enterprises can find strategic partners by selling of shares. The sale model leads to the change of the capital owner, but the value of the capital in existing enterprises remains the same.

The best results can be expected by a combination of models, especially the sale of shares model and the debt-equity swap model. One of the public enterprises - Telecom of Serbia transformed ownership before the Ownership Transformation Act was enacted, but the model of its transformation was inclined toward the positive regulation. The state demonstrated its own decisiveness for the privatization process, and the interest of foreign capital appeared very clearly, as well. In this case it used the model of the sale of minor part of shares to strategic foreign partners.

The prices of communal services should be the question preceding the ownership transformation of public enterprises founded on the local level. These prices are very important as they make possible both the stable rate of production and the enterprise development. It is therefore recommended to gradually bring the prices of these services to an adequate level. In Yugoslavia this isn't attained yet. It may be dangerous if public enterprises enter the ownership transformation process not because of structural changes but for the sake of "surviving". In the situation in which public enterprises of communal services have found themselves, the sale of additional capital (sale of shares for the purpose of raising additional capital with discount) represents a condition of their further existence. This is the basic model. It has to be applied in any combination of

transformation models.

The choice of the ownership transformation models shall depend on the public enterprise activities, enterprise value and structure, founder's appraisal in achieving the public interests, structure and number of employees, economic status of the enterprise. The necessary consent of the founder(s) can be either previous (obtained before starting with the preparation of the ownership transformation), or subsequent (after the determination of relevant decisions by the authorized bodies of the enterprise).

## 6. THE OWNERSHIP TRANSFORMATION PROGRAM

After obtaining the consent of the founder(s), the enterprise adopts the program of the ownership transformation, which defines:

- the valuation of the total capital,
- the targets which will be attained by changing the state capital ownership,
- the model of ownership transformation and the form that the enterprise shall be transformed into,
- the solution of an equation of employee rights,
- the sequence and bearers of all activities in the privatization procedure.

The value of capital is assessed by valuation and expressed both in dinars and in foreign currency equivalent, in accounting joint-stock shares (shares). If the total capital is expressed in shares, the value of a single share is fixed in x.000 dinars sum.

The ownership transformation program is the basis for the organization of the most important activities in ownership transformation procedure. This program defines targets of ownership changing. So defined targets influence the choice of models in changing of the property structure. In public enterprises the whole organization will be transformed - business, steering, property, financial, technical. Because of that, it is recommended to combine at least two or all the models in property changing.

Because of the significance of structural changing procedure, making of the transformation program in a public enterprise shall mobilize large number of people from all the organization parts: enterprise management, administrative bodies, representatives of workers through their own trade union, enterprise creditors who have the majority demand.

The interests of employees in public enterprises during the ownership transformation challenge special attention. It is very clear that the ownership transformation creates an unavoidable surplus of workers. In order to prevent social problems of these people, the ownership transformation program should necessarily provide: a review of the current employment conditions, a suggestion how to employ the existing and lacking number of workers, an idea how to reorganize the personnel, and perhaps the most important - how to solve the problem of manpower surplus (retraining and qualifying, buying up the years of service, creation of new programs).

Legal possibilities for the protection of employees in public enterprises are complex. The employees autonomously make the decisions about the ownership transformation. The enterprise managing board or another appropriate organ shall determine the decision. In accordance with the regulations of the Ownership Transformation Act, the employees have privileges in the procedure of acquiring shares. For the first time in a public

enterprise, they have inalienable right to acquire the shares on preferential terms and right to purchase shares at a discount. Whether they will take advantage of this possibility depends on their own decision. The employees in a public enterprise, organized in their own trade union, have the right and chance to consider and come out for (against) the ownership transformation program. After being determined by the administrative body, the enterprise transformation program is forwarded to all the employees and the trade union. The Ownership Transformation Act allows the employees to acquire up to 60% of the total capital of the enterprise. The employees' rights in public enterprises are in direct connection with the protection of working places during the ownership transformation process. It shall be expressed fully if the partner is a foreign investor, who will certainly try to harmonize the number of employees with the real scope of activities. In the current conditions of Yugoslav economy and activities of common interest, it means - solving the problem of surplus manpower and opening the social problem. It is a notorious fact that the state does not have an adequate social program and cannot find a solution to the problem. Situation will be the same even if more financial resources came by ownership transformation for taking care of the surplus manpower. A solution for every enterprise should lie perhaps in the combination of the state social program and the social program on the enterprise level.

All of that may cause conflicts among the employees in public enterprises. The conflicts appear between the employees' rights as workers and their interests as being stockholders. Employees have a priority and right of preemption of shares in their own enterprise. As the future stockholders of the enterprise, by the nature of market laws, the employees should be interested in bigger profit, in order to realize a greater dividend or capital profit on the basis of the share value growth in the market. In these relations, the separation of employees' interests should be unavoidable in the enterprise. Because of that, disregarding the priority rights and right of preemption of shares, the employees will decide to acquire the shares of other enterprises if they consider it more profitable. Having all the previously said into account, it may be concluded that the ownership transformation program should be so composed to easily get the consent of both the founder(s) and the employees.

## 7. VALUATION PROCEDURE

Capital shall be valued by applying the same methodology that is issued for all the other enterprises undergoing transformation. The basic method of assessment is the yield method (discounted cash flow), while the corrective one is the substance method (net equity value and liquidation value). The Office of Capital Valuation shall be established as a separate Republic entity within the Ministry of Economic and Ownership Transformation, for the purpose of performing the control and verification of the capital valuation, the control of the legality of the procedure and the method(s) of ownership transformation.

After these general assertions, it remains to be determined what a public enterprise has to do in order to start with the ownership transformation procedure.

The Ownership Transformation Act went into effect thirty days prior to the appearance of this paper. The following presentation can serve as an example to the



participants in the privatization process.

The transformation program is the basis of the whole process. However, a program of structural changes and determinations about the enterprise transformation should precede it. One can say that the program of structural changes (analysis and appraisal situation in an enterprise in the existing conditions) is the prerequisite for changing the ownership in an enterprise.

## 8. PRIVATIZATION PROCEDURE

In this paper we pay attention mostly to public enterprises which are to be transformed with the consent of the founder (the Ownership Transformation Act determines the enterprises which are to be transformed in accordance with a special government program. The special government program includes a closed list of enterprises that are foreseen for transformation; program covers 75 enterprises.)

Public enterprises will undergo the transformation process through the enactment of: a decision regarding the issue and sale of shares, a decision relating to the enterprise legal status as a share company, and a decision pertaining to the approval of the transformation program. The program and decisions shall be determined simultaneously.

The decision regarding the issue and sale of shares is made on the basis of the Ownership Transformation Law and the Law of Securities. The transformation is started up with an issue of shares on the basis of verified value of capital. The shares issued are ordinary registered shares expressed in new dinars. The value of one share has to be defined by a decision of the issue of shares.

The decision of the issue of shares establishes, among other things: name and domicile of the issuer, the whole scope of the issue and number of shares, nominal value of shares, their class, manner of public tender for share subscription, share payments, share rights, manner of dividend payment and risk-taking.

An important phase in the privatization procedure is to distribute a public tender to indefinite number of persons to share subscription and payments. The public tender comprises the conditions for share subscription, the place and manner of subscription. The beforehand-defined conditions in the decision of the issue of shares cannot be changed in the course of sale. These conditions have to be known to every buyer.

A public tender for share subscription constitutes an invitation to all interested parties to bid for the purchase of shares. Share subscription shall be executed upon signing of the statement of subscription. Upon the expiration of share subscription period, enterprise, within a period of fifteen (15) days, shall notify each subscriber of the number of shares he/she may obtain based on the applicable discount. The deadline for the conclusion of the share purchase agreement shall be 15 days from the date of receipt of the notification. Buyer acquires a property right over a share when he realizes his obligation in money or things and rights expressed in money. Subscribed shares shall be paid either in full or on installment basis. If the paying is on the installment plan, share rights shall be acquired in proportion of paying installments. The subscribed shares may be paid over a period of six years. The sale on the installment plan automatically precludes such shares from being put on the market.

## 9. ROUNDS OF TRANSFORMATION

The ownership transformation of the state capital shall be carried out by public tender in three rounds. It is a very important fact that the enterprise must have a clear ownership structure after the privatization process has been carried out.

The first round of transformation includes the acquisition of shares on preferential terms (it is a gift received on subscription to shares). The right to gift shares is awarded to the employees of the enterprise undergoing transformation, employees of the other enterprises and establishment, former employees, pensioners and farmers. The gift amounts to the dinar equivalent of DEM 400 for each year of service, provided that this sum doesn't total more than 60 % of the capital of the enterprise undergoing transformation. This phase of transformation can last for 30 to 50 days. Shares thus acquired confer the rights to management and dividend. These shares may be put on the market gradually in the course of five years.

The second round includes the sale of shares (at a discount and at full price). The right of preemption is awarded in the second round to the existing shareholders in proportion to the par value of the shares acquired as a gift. The shareholders who have acquired shares as a gift have the right to purchase at a discount shares whose par value may not exceed the dinar equivalent of DEM 6,000. There are two discounts: basic (20%) and supplementary (1% for each year of service). This round of transformation process is going on for 6 months, but it starts 4 months after the first round.

The shares an enterprise has not sold within the set time limits and the shares subscribed to or not paid for have to be transferred to the Share Fund. The Share Fund shall offer the transferred unsold enterprise shares for sale "in the third round" by a public tender. The shares transferred to the Share Fund do not carry controlling rights, but these rights will be guaranteed to the next owner.

Cash proceeds from the sale of the state owned capital of the enterprise undergoing transformation should belong to the founder, i.e. the state or a local unit.

## 10. THE OWNERSHIP TRANSFORMATION IN ACCORDANCE WITH THE SPECIAL PROGRAM

When the enterprise is undergoing transformation in accordance with the special government program, it has to determine: a decision regarding the issue and sale of shares, a decision relating to the enterprise legal status as a share company, and a decision pertaining to the approval of the transformation program. These decisions and program shall be determined simultaneously by the enterprise assembly or another organ that performs its function. The specificity of this manner is the previous consent of the Government, over the verification of the valuation and determined structure of capital.

These enterprises are not public, but socially owned enterprises. They are mainstream for the whole economy, have a path of development and market perspective, but they are overburdened and without the autonomous power for transformation. Numerous employees socially burden them. The criteria for selecting these enterprises are their strategic importance, size of the enterprises and number of employees. The criteria mentioned are applied cumulatively.

Our attention is consecrated to these enterprises because they are very important for the economy of the country, and also because of their similarity to public enterprises in

the transformation process with respect to the consent of the founder, i.e. the Government.

When the transformation is organized in accordance with the special government program, it will be realized by one or more models. The model to be applied shall be defined in the transformation program, and approved by the Government.

In an enterprise in which the ownership transformation is in accordance with the special government program, it is possible to acquire the shares as gift and at a discount. The transformation program can define the regulations that differ from the law, for example, the regulations on the capital sum for the acquisition of shares on preferential terms.

Specifically, in the conditions of transformation in accordance with the special program, the amount of 60 % of the evaluated capital, defined also in other manners for gifts, can be reduced, as well as the quantity of shares for selling at a discount. The percentage shall be defined on the basis of the demands of potential investors.

It can be assumed that 75 enterprises, which will be transformed in accordance with the special government program, have more possibilities for a successful change of ownership. Also, it may be supposed that competent states' organs and institutions will help these enterprises to use all the available possibilities: not only for the transformation of the ownership, but also for the organization, management and finance transformation.

#### 11. FOREIGN INVESTMENT AND OWNERSHIP TRANSFORMATION

The foreign investments are regulated by the Federal Foreign Investments Law. Foreign subjects can, in target of performing activities in Yugoslavia, under the terms of reciprocity, invest capital into enterprises and other forms of organizations, found enterprises, and also acquire concession for the usage of natural resources, goods in common use or for the performance of services of common interest. The foreign physical and legal persons can be joint owners over the capital in public enterprises, under the reciprocal conditions. The Foreign Investment Law prescribes that a foreign investor can invest foreign currencies, things, services, property rights, securities and dinars. The things, services and rights can be expressed in money.

The Ownership Transformation Act does not allow this possibility. It withdraws the investment of things. If a foreign investor wants to buy shares in raising of additional capital in the process of the ownership transformation of public enterprise, he can do that only by money. It is the fact that the state is, due to the existing deficit, very interested in direct selling of a part of public enterprises' capital to strategic partners (foreign investors) in target of supplying extra income. In this respect, it is necessary that the state define the model of investment: the sale of additional capital or the sale of the existing paid-in capital.

A conclusion may be drawn that the foreign investors, in the transformation process in public enterprises, can acquire shares at no discount (the second round of transformation) and the shares from "the third round" by low prices.

Concessions (permissions) for the usage of natural resources, goods in common use or for performing services belong to the special manners of the public enterprises transformation. The foundation of an enterprise by the joint venture of the public

enterprise and foreign persons, as well as the concession system, are not regulated by the ownership transformation laws, except for the part concerning the valuation of the founders' investment.

## 12. CONCLUSION

There are similarities in some regulations of the Federal Law of Enterprises and the Law of Public Enterprises of the Republic of Serbia, but deviations are numerous and more important.

First, the Republic Law defines the public enterprise as a public enterprise society. The Federal Enterprise Law does not recognize this form of organization. Also, when we take administrative bodies into consideration, it is clear that the Federal Law does not define the assembly as an organ in a public enterprise, opposite to the republic legislation. According to certain theoretical assumptions, the Enterprise Law introduces a public enterprise as a particular form. It means that a public enterprise should be organized in one of the following four basic forms of enterprises: a joint-stock company, a limited liability company, partnership or limited partnership. It will most probably happen this way.

However, the basic problem, which brings about certain legal insecurity, is bringing into accordance the existing public enterprises founded under the regulations of the republic laws with those established by the federal laws. The enterprises that do not obey this shall be sanctioned by the prohibition of work. The starting of the liquidation process and erasing from the register's office shall follow.

This situation gets more aggravated by the fact that the Law of Public Enterprises took effect before the positive Enterprise Law. The first may be considered a *lex specialis*, and the other represents a general regulation. Moreover, the federal act has superior legal power in relation to the republic act. Because of that, we have the problem of the application of the *lex specialis* rule, the rule that a later act derogates a prior but lower legal act.

On the basis of the above said, it can be concluded that the regulations of the Law of Enterprises have stronger legal power. The existing public enterprises are obligated to accord their own organization and legal acts with the regulations of this law. This obligation can accelerate the ownership transformation process. Yet, these partial definitions exert influence on eventual founders or members in the transformed public enterprises. Because of that, every partially said or discordant item that may provoke any legal uncertainty has to be eliminated.

Although eight years have elapsed since the startup of transition in the East and Central European countries, opinions differ considerably as to the modality of privatization implementation. At least two factors are important for that: the use of different models and frequent changes of legislation.

The countries taken into consideration as the examples - Czech Republic, Hungary, Poland - were using different privatization models. The basic privatization models are: gift, sale (to inside and/or outside buyers) and transfer of ownership to funds. The sale option is the prevailing ownership transformation model, and specially the sale to outside buyers and sale to employees. The sale model can be easily combined with the other most

frequently used privatization model, the voucher model. The ownership transformation in these countries led to the rise in economic efficiency. The operation of transformed enterprises is creating a new environment with new mechanisms and institutions. New enterprises are emerging. The clear ownership relations, control sovereignty derived from the sovereignty over property, as well as the protection of property and abundance by contracts, are leading to a higher activism of foreign and domestic investors.

So, if we comprehend the positive effects of the ownership transformation in all these countries, we could observe some unsaid regulations in the positive transition legislation in Yugoslavia. The Ownership Transformation Act excluded the voucher model, the model of distribution of capital to the population. In the Republic of Serbia, this determination is interpreted by the fact that the social property and state property can be transferred only by their "economic values" and the valuation of capital is introduced as obligatory. But, this law makes it possible only to certain social levels, privileged on this way, to get the gift in value of DEM 400 for each year of service. It seems that in this manner the discrimination is constituted among the population and the principle of equality and social righteousness is violated. The privatization process may have numerous opponents. On the other side, we can see the positive results of privatization in the countries that included the voucher model (Czech Republic and Slovenia, for example).

The characteristic of legislation in the Republic of Serbia is the insoluble problem of "old currency saving". It is unreal to expect that this problem will be solved by debt-equity swap. The Law somehow favors employees and pensioners, but puts aside a significant number of people - "old currency-savings clients". This way, the property regime loses the trust of the population.

Although this paper does not present the comparative results of other countries in transition, the fact is that the programs of privatization based on the sale and gifts to population achieved success. Such programs provoked the trust in property, financial regime, state and market, and it also proved very important for foreign investment.

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## JAVNA PREDUZEĆA U SVOJINSKOJ TRANSFORMACIJI

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*U Jugoslaviji i njenim federalnim jedinicama u proteklih par godina iz osnova je promenjeno investiciono i tranziciono zakonodavstvo. Cilj ovog rada je prikaz pravnog aspekta javnog preduzeća u svojinskoj transformaciji. Ova forma preduzeća, učesnika u odnosima u privredi kome je priznato svojstvo pravnog lica, u jugoslovenskom pravu je još uvek interesantna jer se zasniva na državnom kapitalu koji je predmet promene vlasništva. Preduzeće koje obavlja privrednu*

*delatnost od opšteg interesa, a koje osniva država, odnosno jedinica lokalne samouprave je javno preduzeće. Delatnost od opšteg interesa mogu obavljati i drugi oblici preduzeća utvrđeni Zakonom o preduzećima, deo preduzeća, kao i preduzetnik. Osnovna obeležja javnog preduzeća jesu svojstvo njegovog osnivača i obavljanje delatnosti od opšteg interesa.*

*Zakonom o svojinjskoj transformaciji predviđaju se tri načina svojinjske transformacije, i to: autonomno, po posebnom programu Vlade, a preduzeća sa državnim kapitalom - uz saglasnost osnivača. Javno preduzeće transformiše se izborom jednog ili više modela: prodajom akcija radi prodaje kapitala (sa i bez popusta), prodajom akcija radi prikupljanja dodatnog kapitala (sa popustom) ili konverzijom dugovanja u akcije poverilaca. Svojinjska transformacija javnih preduzeća čiji je osnivač Republika Srbija pokazuje izvesne specifičnosti u odnosu na transformaciju preduzeća koja je osnovna jedinica lokalne samouprave.*