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"The Russian Experience"
by

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The Russian Experience

Ownership transfer: Russian experience

Introduction

The problem of transforming property relations and ownership structure is one of the most important for any country undergoing economic transition. The role of property rights as the basis of an economic system determines both the systemic character of the transformation in this sphere and of the reforms at large in the course of transition.

System reforms in the ex-socialist countries**,** both in Russia and countries of the Eastern and Western Europe, started approximately from 1988-89. Privatization gets a special place in the context of transfer from the centralized-planned system of economy to the system of economy based on (at least in accordance with the economic theory) market-competitive principles. The triad «stabilization-liberalization-ownership reform» became classic for substantial determination of directions of the system reforms in the transitional economy, at least at their first stage. Naturally, the core of the ownership reform in the transitional economy is the privatization policy and practice. Each country with the transitional economy had its own peculiarities of the privatization policy, connected with the national conditions, however, in all cases a transfer of assets to the private sector was of system-generating nature from the standpoint of motion towards the market economy. Before the survey of the Russian experience in ownership reform in last 15 years it's very important to view the main approaches to this problem in the countries with transition economy.

Mass privatization (MP). The principle of charge-free distribution of state ownership has not become common in East Europe, therefore the significance of MP for consequent corporate governance of privatized enterprises was unequal across various countries. This model was widely applied in Russia and Czechoslovakia (after the disintegration of the single state - in the Czech Republic), Latvia, Lithuania, Mongolia. In many other countries MP (as the base model) was implemented later (Armenia, Azerbaijan, Georgia, Kazakhstan, Kirgizstan, Moldova, Ukraine). In other countries this model became an auxiliary to other methods of privatization, or was applied to a very small part of shares in a narrow circle of enterprises (Albania, Bulgaria, Poland, Slovenia, Tadjikistan, Estonia). In a number of countries, nevertheless, its implementation was stopped at the stage of acceptance of appropriate legislation (Romania) or in connection with a crisis (Albania in 1997).

In some countries such schemes were not used at all (former GDR, Hungary, Macedonia). Nevertheless, the Hungarian project, for example, provided a possibility for each adult citizen to obtain an interest-free credit at 100 thousand forints for 5 years similarly to the system of crediting of employees. In some countries of former Yugoslavia there was a transfer of a part of shares to various social funds as a special variant of MP.

Within the framework of the program it was assumed that the distribution of vouchers (bonds, checks, points etc.) simultaneously would result in the emergence of small shareholders and/or large outsiders (investment funds). It will give a push to development of the capital market, to the consequent concentration of ownership by active investors and finally to efficiency of corporations. On the whole, it is considered that the role of MP for the future corporate governance initially (originally) remains uncertain, probably to a great extent negative, though in the medium-range period all depends on a practical solution of a dilemma «diffusion of the vouchers - ownership concentration».

Insider's model (MEBO). This model is based on purchase of enterprises (assets of enterprises), or of controlling blocks of shares by employees and managers (jointly or separately) with the formal right of a consequent sale/purchase. Such practice has been rather widely applied in Albania, Belarus, Poland, Romania, Slovakia, Tadjikistan, Turkmenistan, Uzbekistan. In Russia and Georgia this model as a matter of fact has become an official «submodel» (with large legal privileges of employees) in the MP framework. In Lithuania and Mongolia the situation was similar, however it developed spontaneously (employees and members of their families used the vouchers for purchasing of shares in enterprises on the "open" market, i.e. without closed subscription).

Specific insiders' models have developed also in Slovenia, Croatia and Macedonia, however they can be considered separately within the context of the general Yugoslavian «inheritance» and use submodels of different social funds (as a peculiar model of «social – oriented» ownership).

The evaluations of actual participation of employees and managers of the enterprises in their privatization in various countries hardly differ from each other. Nevertheless, findings of many researches show that employees' ownership has taken a certain niche within the framework of transitional economy. Influence of this model on corporate governance, as a rule, is relatively negative, though some contributors consider higher information possibilities of insiders to monitor activity of managers. Obviously, the latter thesis under specific conditions of transitional economies is valid only theoretically (especially taking into account the fact that managers are the most influential insiders).

Model of initial majority control. This model is based on one-stage or, at least, not stretched in time obtaining of a majority (i.e. more than 50% of the voting shares) control by outsiders. Such practice was characteristic of a rather small group of East-European countries, but did not occur in Russia. Though it is the slowest privatization method, its advantage in terms of effective corporate governance is rather obvious.

Western analog (and sample) of this model is the «case by case» method well tested in Great Britain and Chile[1]. This most simple (within the framework of corporate governance) model has been widely applied only in Hungary and Estonia. In former GDR it is possible to consider this model as the dominant one for more than 8 000 enterprises, but only in a combination with MEBOs and liquidation. In Czech Republic this model was a second best choice after MP (32% of the enterprises, but only 5% of the total value of privatized enterprises).

The further development of enterprises in this case depends on the applied method of privatization. As a rule, it is carried out through auctions, tenders, or direct sales, where the preference is obtained, as a rule, by «external» investors, often having established connections with these enterprises. A special variant of this method (which is limited by the state of stock market) is public offering of shares, including offerings on stock exchanges. Another important factor is the nature of investors/owners of majority blocks of shares. In many cases we may speak only about pseudo-outsiders representing interests of enterprises' management (see below).

Certainly, in each country the choice of this or that model (primary, secondary etc.) – and accordingly expected outcomes of privatization - was carried out depending on the balance of political forces and ideological traditions. The political factor in privatization policy, in particular, directly intensifies the contradictions in the legislative base, which manifest themselves in the lack of an

[1] This method has been widely applied (in its pure sense) in transitional countries only since mid-90s to sell strategic enterprises and natural monopolies.

universally applied legal system, in regulatory acts being in force, which contradict each other, in frequent changes in tactics, and in the adoption, in a number of specific instances, of acts giving this or that party exclusive rights outside the legislative framework, or the possibility to cancel decisions that have already been taken.

Although in the course of privatization Russia did not have to resolve such problems as restitution or serious regional separatism, developing and implementing a privatization policy in the Russian conditions was particularly difficult due to the following factors (which weighed more heavily in Russia than in many other countries undergoing transition):

- first, during the process of choosing an all-embracing model at the micro level, there took place the spontaneous conversion of state enterprises and property into other forms of property (collective and private or quasi-collective and quasi-private);

- second, a very high level of concentration, together with the backwardness, of many sectors of Russian industry obstructed the implementation of efficient and socially «soft» structural reforms before and during privatization;

- third, and this, in our opinion, is particularly important, privatization and the problems of ownership reform are an area of economic reforms, in which political and populist pressures have been strongest.

Moreover, the highly politicized nature of the privatization process in Russia and, thus, the contentious character of its development had a major influence on the choice of privatization model, biased towards achieving maximum social compromise. This, in turn, has led to extremely high transaction costs both in the course of implementing the privatization program and later in specific privatization deals.

1. Preconditions of the reforms and spontaneous privatization (1985-1991)

The wave of privatization rising in the world in 1980s reached Russia and former the Soviet Union only by early 1990s. While in 1980s the theme of privatization interested only a narrow circle of scholars of academic kind and only as applied to Western and developing countries, since about autumn of 1990 there began a heated discussion of privatization models acceptable for meeting domestic requirements in Russia. The very term «privatization» became one of the most fashionable and often used terms in the majority of economic programs and discussions, while remaining the subject of fierce political and populist clashes. In this work the author strove for abstaining from any politicized appraisals and for focusing on actual economic processes.

If the period from 1985 till 1989 may be characterized as the period of cosmetic changes of the existing system, when any alternative types of ownership were considered only in the context of the «socialist economy based on multiple economic models» with the predominance of the public sector, the years 1990-1991 were the time of more systematic reforms or, to be more exact, of more systematic concepts of pro-market transformations. There was a noticeable change in the ideological approaches to ownership issues in general and the reforming of ownership patterns in particular. The latter could be seen both in the contents of the programs being considered and in the legislation, which was adopted during this period.

At the same time, against the background of the continuing discussion about permissibility of the alternative types of ownership and privatization methods, the spontaneous process sharply increased its momentum (the process, which was referred to as the nomenclature, bureaucratic, nomenclature-

territorial, «collective», «managerial» etc. privatization (see: Hanson, 1990; Johnson, Kroll, 1991; Radygin, 1992, 1996). This was linked to the lack of uniform and legal privatization procedures, the adoption of the leasing and cooperative legislation, new legislation for the state-owned enterprises.

Thus, USSR law «On State-Owned Enterprises (Associations)» effective since January 1, 1988, introduced a principle of «full business independence» («polnoye hozyastvennoe vedenie»), which gave a unique opportunity for managers of state-owned enterprises to enrich themselves, while being absurd in legal terms. This principle has still remained in the Russian legal system (RF Civil Code, 1995). In fact, this legal novation created certain favorable conditions for legal security (irresponsibility) of enterprises' managers; however to secure private ownership rights in legal terms was also necessary.

The spontaneous privatization of state property manifested itself via granting managers control over assets (via leasing, creation of independent enterprises from structural sub-divisions of larger enterprises, creation of various associations, etc.). As the system of state control over enterprises collapsed, while the legal basis of the private property lacked, new owners to a considerable degree secured their control over enterprises by force using criminal structures and bribes for state officers traditionally responsible for controlling enterprises. There appeared first foreign investors and pseudo-investors, whose goal was the control over financial flows.

2. Mass privatization as the core of ownership reform in Russia (1992-1994)

In the situation of the intensifying crisis of the centralized economy and the emerging spontaneous privatization in the late '80s- early '90s, the issue of methods and mechanisms of managing the public property became especially sharp.

First legislative acts on the privatization were adopted by the Russian Federation (RF) Supreme Council in summer of 1991, but their practical implementation began only in 1992.

The first reformist government of the late 1991 did not have an actual immediate possibility to exercise the operative control over the privatization process. Being fully aware of the impossibility of the renewal of the public property management in full, the Russian government opted for the launching of the privatization process, the start of which was generated by the presidential Decree «On Acceleration of the Privatization of State and Municipal Enterprises» (of December 1991). In accordance with this document there were approved the Fundamental Provisions of the Program for the Privatization of State and Municipal Enterprises in the RF for 1992. The Fundamental Provisions became the first document regulating the privatization process and giving start to the programmed (i.e., not spontaneous) privatization in Russia. Implementation of those Fundamental Provisions started from January 1, 1992. In the end of January 1992 by the presidential Decree was approved the package of legislative acts regulating the privatization procedures (the procedures, assets valuation, main methods, etc.).

On December 27, 1991, the Supreme Council of RF passed Resolution # 3020-1 «On division of the public property into federal property, state property of the Republics in the composition of Russia, Krais, Oblasts, Autonomous Oblasts, Autonomous Okrugs, cities of Moscow and St. Petersburg, and municipal property». Annex #1 to the Resolution identified 21 category of objects being exclusively the federal property, while Annex 2 identified 15 categories of objects that were classified as federal property but might be assigned to the state property of the Republics in the composition of Russia, Krais, Oblasts, Autonomous Oblasts, Autonomous Okrugs, cities of Moscow and St. Petersburg, and municipal property, and Annex 3 stipulated 4 groups (de facto-9 categories) of objects classified as municipal property. The remaining objects of public property not stipulated in Annexes 1-3 were subject to assignment to the state property of the Republics in the composition of Russia, Krais, Oblasts, Autonomous Oblasts, Autonomous Okrugs, cities of Moscow and St. Petersburg, on the grounds of proposals laid out by the local Councils.

De-jure, the noted legislative acts (that have become obsolete by now) formed the main legal base in terms of the division of competence in the area of ownership relations between the federal (Russian Federation), sub-federal (its Subjects), and municipal levels for the whole '90s. Between 1992 through 1994 with respect to the overwhelming majority of the regions they also de-facto constituted the legal basis in terms of the division of competence in the ownership area.

Some months ago, 11th of June, 1992 the Supreme Soviet adopted complete State Program of Privatization. This First Privatization Program (1992) became the fundamental document for the further large-scale privatization in 1992-1994 and also a compromise, on the one hand, between paid and gratuitous privatization and, on the other hand, between the privatization model for everyone and division of property between the enterprises' employees. The choice of this option in 1992 was determined by the need to strike the compromise between the government, parliament and different social groups (employees at privatized enterprises (mostly in the production sphere), managers, civil servants, and the emerging private businesses).

Such compromise caused such obvious – from the economic standpoint – imperfections of the carried out model, such as residual methods of the property evaluation, disregard of the enterprises' restructuring (attraction of investments) before and in the course of the technical privatization, problems of the enterprises' social infrastructure, disregard of demonopolization together with the problem of keeping technological lines, absence of investments and some others.

From the perspective of the ideologues of Russian privatization, an important motive for implementing this scheme was based on the pragmatic assessment of the real situation at the time at which formal privatization commenced; for example:

- the lack of effective demand on the part of the population;
- the lack of interest from foreign investors;
- the existence of more than 240 thousand state and municipal enterprises (which required standard privatization procedures);
- the need for extremely rapid, legal privatization (at the initial stage) in order to limit the spontaneous privatization, which was already well under way.

The privatization was the most intensive in 1993-1994. As is obvious from *Table 1*, a steady and stable reduction of the new objects' involvement becomes typical for 1995-2002.

Table 1

Dynamics of privatization in Russia in 1993-2002

	The number of privatized enterprises (objects), total		**Including the creation of joint-stock companies (JSC), total**	
	Units	**as % to previous year**	**units**	**as % to previous year**
1993	42924	…	13547	…
1994	21905	51.0	9814	72.4
1995	10152	46.3	2816	28.7
1996	4997	49.2	1123	39.9
1997	2743	54.9	496	44.2

1998	2129	77.6	360	72.6
1999	1536	72.1	258	71.7
2000	2274	148.0	199	77.1
2001	2287	100.6	125	62.8
2002	2257	98.7	125	100.0

Source: Russian statistical annual, Moscow, State Statistical Committee of the Russian Federation (Goskomstat Rossii), 2002, p. 332, Statistical bulletins on the progress of privatization of state and municipal enterprises (objects) for January-December 2002, Moscow, Goskomstat Rossii, 2002 (p. 5, 40), Author's Calculations.

The general scheme of this stage of the Russian privatization was based upon the dispersion of a substantial part of the former public property into relatively small stakes, to be distributed among a great number of persons, due to the concrete variant selected. The instrument of the diffusion of the property became privatization coupons (vouchers) distributed to the whole population in late 1992. The residents had a possibility to change them directly for shares of privatized enterprises at special voucher auctions or for securities of voucher investment funds (VIF) that then followed the same procedures of placement. There also was the possibility to sell vouchers for cash to other private individuals or commercial entities that later, again, used those at the voucher auctions. Given that under the big privatization the demand size was ensured by vouchers and monetary resources of residents and private investors, the offer side was ensured by incorporation, i.e. the organization of joint-stock companies (JSC) established on the basis of large and medium-size enterprises. That was made in a compulsory order, following presidential Decree of July 1, 1992 # 721. The process of incorporation was there even after the completion of the voucher privatization.

The *main methods* of the Russian privatization that implied *standard procedures* were, on the one hand commercial tender and auctions, while on the other, incorporation, i.e. the establishment of joint-stock companies (JSC), and the redemption of earlier leased assets.

The tender and auction procedures were used in the course of privatization of small enterprises (mostly in the frame of a small privatization program, i.e. for privatizing trade, public catering and household services) as well as to sell the property (assets) of liquidated and operating public ad municipal enterprises, and incomplete (under construction) objects.

The incorporation processes took place on the basis of large and medium-size enterprises. In combination with the issuance of privatization vouchers for the whole population nationwide, incorporation was used to implement the privatization program through the distribution of shares among employees at incorporated enterprises and a consequent selling of shares at the voucher (until June 30, 1994) an monetary auctions, commercial and investment tenders.

The redemption of earlier leased assets was used to privatize a great variety of enterprises, including large and medium-size enterprises that were transformed into JSC.

In parallel to the State Privatization Program of June 11, 1992, an impressive system of benefits for employees of the incorporated privatized enterprises (including their management singled out as a special category) was introduced: that implied the receipt of shares (free or at a beneficial price), the permission to pay for those partly with vouchers. The enterprises' authorized capitals were estimated proceeding from their face-value as per the balance sheet. In the course of the incorporation, 3 variants of benefits were provided.

Ist variant - *all members of the working collective* are assigned with free privileged (non-voting) shares accounting for 1/4 of the enterprise's overall authorized capital, but worth in total not more than 20 minimal wages rates (MWR) per 1 employee. At the same time, common shares (their overall number could total up to 10% of the authorized capital) were sold at a price 0.7 of their face-value and with a 3-

year installment; in all each employee could acquire those worth a total of no more than 7 MWR); as concerns the *enterprise administrative personnel*, under the terms of contracts concluded with them, they were granted the option for acquisition of common shares accounted for up to 5% of the authorized capital, but in total no more than equal to 2,000 MWR per employee; while *the rest of the shares* were object to free sales for vouchers or money.

IInd variant - *all the members of the working collective* were granted with a chance to redeem common shares amounted to 51% of the privatized company's authorized capital (according to the closed subscription procedures, i.e. no tender was provided) at a price of 1.7 of the shares' face-value, while *the rest* was subject to free sales for vouchers or money.

IIIrd variant - *all the members of the working collective* could purchase common shares accounted for up to 20% of the enterprise's authorized capital at a price of 0.7 of their value and with a 3-year installment, however not more than the amount equal to 20 MWR per each employee; at the same time, *a group of employees (since 1994- a group of any persons*), should they undertake the responsibility for the fulfillment of the privatization plan and prevention of the bankruptcy of the enterprise, upon the consent of the working collective expressed at its meeting, was granted with a chance to acquire common shares at their face-value by the end of the year, providing that such shares made up 20% (since 1994- 30%) of the authorized capital of the enterprise, while the rest was subject to free sales for vouchers or money.

Table 2

Distribution of joint-stock companies in the course of the Russian privatization by variants of benefits (proportion in the total number of created JSC, %)

	I version	II version	III version	Special case	Leased enterprises
1993*	17.2	77.6	1.2	-	4.0
1994	27.8	60.8	2.9	1.1	7.4
1995	36.4	48.0	3.6	3.8	8.2
1996	38.3	44.0	4.4	3.6	9.7
1997	46.8	39.1	2.0	4.8	7.3
1993-1997	24.4	66.4	2.2	1.0	6.0

* - data incomplete;

Source: Statistical bulletins on the progress of privatization of state and municipal enterprises (objects) for January-December 1993 (pp. 55-58), 1994 (pp. 55-57), 1995 (pp. 41-43), 1996 (pp. 41-43), 1997 (pp. 41-43). Moscow, Goskomstat Rossii, Author's Calculations.

The closed subscription by employees and administration to their enterprises' shares, of course, became a more serious instrument for dispersing the former public property compared with voucher auctions and voucher investment funds. According to the mentioned above data of Russian Statistic Committee (*Table 2*), 2/3 of enterprises that passed through incorporation from the start of privatization opted for the aforementioned IInd variant of benefits that provided the redemption of their control block by the means of closed subscription. This allows statement that the transformation of public property in Russia at the stage of its primary distribution (1992-94) was taking place under the prevalence of working collectives and administrations. That helped foster the emergence of various collective enterprises, corporations of closed type and companies with the ownership of the employed staff.

At the same time, though being in excess in terms of their quantity, most likely the major part of the authorized capital of all the mass of incorporated enterprises falls on those of them that used other variants of benefits. Thus, according the results of 1994, 60.8% of the enterprises that experienced privatization through incorporation that year opted the IInd variant of benefits. However their proportion in the overall

authorized capital accounted for 18.8%. Even considering 7.4% of JSC created through their transformation out of leased enterprises, which in the overwhelming majority of cases meant the prevalence of insiders, the total proportional weight of enterprises controlled by insider owners in the aggregate authorized capital of newly established JSC, anyway, made up 22% (in 1993 - about 50%). Obviously, employees and managers at the large enterprises that possessed a greater production capacity and, therefore, a bigger authorized capital mostly were incapable to acquire the control block under the closed subscription - that is why they had to accept the less large-scale Ist variant.

In parallel to that, in the course of the big privatization, the mixed form of ownership was developing (*Table 3*). The incorporation of numerous enterprises of the basic sectors, whose change of ownership form, in compliance with the State Privatization Programs, could be carried out only upon the special decision of the government authorities and according to special schemes, provided ***the fixing of control blocks of the newly created JSC in the government ownership***. Those are complemented with the firms whose residual stakes were still owned by the government (those were not sold for real cash or vouchers, due to various reasons) and the companies in the authorized capital of which the «Golden Share»[2] was included that provided the government with certain possibilities to influence the JSC operations.

Table 3

The creation of joint-stock companies with the maintenance of government participation in the course of privatization in Russia

	The number of enterprises with their control block fixed in the state and municipal ownership		**The number of enterprises with the «Golden share» in their authorized capital**	
	units	**proportion in the total number of created JSC, %**	**units**	**proportion in the total number of created JSC, %**
1993	439	3.2	204	1.5
1994	1496	15.2	792	8.1
1995	698	24.8	429	15.2
1996	190	16.9	132	11.8
1997	84	16.9	58	11.7
1998	142	39.4	28	7.8
1999	101	39.1	42	16.3
1993-1999	3150*	11.1*	1685*	5,9*
1997-1999	327*	29.4*	128*	11.5*
2000	72	36.2	8	4.0
2001	59	47.2	2	1.6
2002	38	30.4	1	0.8
2000-2002	169*	37.6*	11*	2.4*

* - calculated as the amount of values for each in noted period, and does not mean the number of JSC with governmental participation by early 2000 and 2003, for now the part of the originally fixed stakes have been already sold.

[2] «Golden share» is a special type of securities. They were issued during the privatization of former state-owned enterprises in several branches, which were ear marked for government bodies as shareholders. They give the «veto» right on the decisions by shareholders meeting on the questions: 1) changes in statues of JSC; 2) its reorganization or liquidation; 3) participation in other companies; 4) disposal of assets, determined in privatization plan. In the case of further sale «Golden share» is converted into common share.

Source: Russian statistical annual, Moscow, Goskomstat Rossii, 2002, p. 337, Statistical bulletins on the progress of privatization of state and municipal enterprises (objects) for January-December 1994 (pp. 28-30), 1995 (pp. 38-40), 1996 (pp. 38-40), 1997 (pp. 38-40), 1998 (pp. 58-61, 121-124), 1999 (pp. 58-61, 121-124), 2000 (pp. 41-43, 98-100), 2001 (pp. 40-42, 97-99), 2002 (pp. 40-42, 97-99). Moscow, Goskomstat Rossii, Author's Calculations.

Estimating the first stage of legal privatization in Russia it should be noted, that the ***mass privatization model*** has become the core of the Russian privatization program, which unified the large-scale corporatization (side of supply) and distribution of the privatization vouchers among the Russian citizens (side of demand). Important elements of that model included closed subscription to shares among insiders, system of voucher auctions and intermediaries' system – voucher investment funds. Critics and advocates of the voucher privatization (which officially ended on 30 June 1994) agree on one thing only: the formal, quantitative success of the mass privatization programme is obvious and indisputable. The results of the mass privatization programme beyond simple quantitative assessments, were and remain the subject of substantive debates.

From the perspective of developing a new system of property rights, the most important result was the formation of new economic and legal mechanisms and institutional structures. In particular:

- the corporate sector of the economy (more than 30,000 joint-stock companies);
- the corporate securities market, including trading infrastructure and a secondary market for shares in privatised enterprises;
- the system (still in transition) of institutional investors;
- the social class, which, despite its extreme heterogeneity and lack of legal recourse, can be called a class of owners (about 40 million formal shareholders by the end of mass privatization).

In our view, realisation of real (achievable) purposes of the privatization in the transitional economy at different transformation stages is not less important. It would be naïve to estimate the results of implementation of such model in accordance with those formal purposes, that had been stipulated in the privatization programs. The real purpose, in our view, was the only one: temporary mass distribution and vesting of the formal private ownership rights in the Russian society with minimal social conflicts expecting further transactions in favour of efficient responsible owners. Within the framework of model of 1992-1994 there were unsettled issues above all: reform of the enterprises and attraction of investments. Those issues required establishment of such privatization model which would be able to compensate (even if partially) to the enterprises non-economic methods of sale at the first stage.

3. 1995-1998: monetary privatization in the context of the struggle for financial stabilization

The main document for ***the monetary stage of the privatization*** was the «Fundamental Provisions of the State Program for the Privatization of State and Municipal Enterprises in the RF after July 1, 1994» (approved by the RF Presidential Decree # 1535 of July 22, 1994). The Second Privatization Program, approved by the RF President in December 1993, remained in force in the part which is consistent with the Fundamental Provisions. At the beginning of the «monetary» stage the problem of the profit maximisation for the federal budget became dominating and, therefore, the «investments – budget» dilemma was settled in favour of the latter. The best indicators of budget effect's privatization in 90-s were achieved in 1997: 3.3% of total revenues, 0.9% GDP (for consolidated budget) and 5.5% of total revenues, 0.7% GDP (for federal budget)[3]. On the whole with reference to the privatization we can speak about transformation of the uniform privatization policy into a spontaneous process of «throwing off» remaining stocks which

[3] Finances of Russia. Moscow, Goskomstat Rossii, 2000, pp. 22-25, Author's Calculations.

proceeds to the regional level. It was typical for that period to use also quasi-privatization methods for attracting political allies among regional elite and major financial groups. The consolidation process and intensive further ownership redistribution among the first-rate financial alliances and companies – natural monopolies were going on.

This approach was based on the logic of optimization of ownership structure regular for market transformations, preferably through the contraction of the number of objects owned by the state, for the sake of ensuring the existence of stable prerequisites for economic growth. This logic faced objectively existing, serious contradictions the most important of which are:

- the contradiction between the need in maximization of budget revenues through the sales of public assets (stakes and whole enterprises) and the absence of an adequate effective demand (especially in terms of unprofitable or poorly profitable enterprises) and a direct threat of collapse of the stock market;

- the contradiction between the theoretical possibility of sales of the most attractive enterprises (or their stakes) and a practical inefficiency of such sales due to an evident undervaluation of their assets an lobbyist efforts on the part of large financial groups, different agencies and managing bodies disguised as structural and legal reorganizations.

The problem is that the main mass of the property still held by the state is represented either by the objects that are not attractive enough to the main mass of the domestic investors, or by very attractive objects (for instance, control or blocking stakes in national monopolies), the sales of which, if any, are possible only at an adequate market prices and in the presence of certain preconditions.

After adoption of Main Provisions of the state program of privatization of public and municipal enterprises in RF after July 1, 1994 (Presidential Decree of July 22, 1994 # 1535), the new objects for privatization became real estate, land, and indebted enterprises. That is why since 1995 the respective amendments were introduced to the Goskomstat's classification of privatization methods. Despite the a gradual increase in the overall proportional weight of enterprises (objects) privatised through the sales of land, real estate and indebted enterprises in the overall mass of privatized enterprises, the noted privatization methods on the whole can be characterized as ***non-standard or supplementary***, due to their dual nature.

Really, the main objects of privatization transactions since the finish of mass privatization from the point of view of budget revenues were unsold (residual) and specially reserved stocks of shares in JSC, created earlier, in 1992-1994. The most known deals of 1995-1998 were the ***pledge auctions*** (Loan-for-Shares) in the end of 1995. The chronic budgetary crisis and failure of the budgetary privatization task for 1995 became one of the most weighty incentives for implementing that scheme. 12 auctions that had been held on several major Russian enterprises made a profit for the budget in the amount of 5.1 bln roubles in the aggregate, including 1.5 bln roubles of the paid enterprises' indebtedness before the State (in prices after denomination). Two major Russian banks – «ONEXIM» and «Menatep» prevailed among the winners.

The concentration of the federal center's efforts between 1995 to 1998 at the stage of achieving a formal financial stabilization (the lost «battle for the Rouble» one of the resources for which was revenues from the mass privatization), along with the consequent loosening of attention towards local problems (and, sometimes, a demonstrative negligence of those) determined the regional authorities' intensifying impact on the privatization process and the state of ownership relations. The objective factors (the country's size and, indeed, a great variety in regional specifics) mattered to a certain extent, however, the main reason was that the long presidential nationwide run 1995-96, without any clear chances for success

for the weakening party of power in the federal center made the support on the part of the heads of Subjects critically important, providing that their growing legitimacy and independence in the wake of the direct regional elections held practically throughout the country in 1995-1998.

A bitter confrontation between the Legislative and the Executive branches of the Russian power lead to a situation where the privatization's key objective (structural reform enforcement and establishment of an institutional framework for property transformation) was carried out single-handedly by the Executive through its ability to pass decrees such as for instance, the Presidential decrees on Voucher Model Establishment, Loans-for-Shares Auctions, etc. The new law «On privatization of the state property and the guidelines for the privatization of the municipal property in the Russian Federation» (N123-F3 signed by the Russian president on 21 July 1997) was aimed to resolve the conflict and officially leveled the Executive and the Legislative ability to affect the privatization process.

Among its major innovations the following may be singled out: the emphasis was put (even in the name itself) not on enterprises but on the property (the state's share of the property); the program of privatization envisaged the list of objects which were to be privatized during the year (depending on the current market situation) and the list of strategic objects prohibited for privatization (they can be privatized only on the basis of a federal law); a wider range of privatization methods was offered (through legalizing the sale of derivatives which had already happened); the benefits for the employees were still allowed (a 5% or 10% discount from the selling price of stocks) but could be revoked or could become more flexible, the value of the property («property complexes») was to be calculated on the basis of their capital, balance sheet value and market price together; commercial tenders with investment conditions were introduced while the investment tenders were cancelled, the notion of «leasing with the right of redemption» was reintroduced but «at the market price». It is also assumed that unitary enterprises can be transformed into joint-stock companies with 100% state ownership. The state, thereby, acquires the opportunity to sell this property.

The confrontation, however, did not fully subside since certain poorly drafted parts of this well-meaning law rendered it practically unenforceable. In 1998-2001 new Russian parliament (State Duma) not once approve annual privatization programs. However, the certain flexibility of the governmental policy in this area was achieved since first 1999 when the revenues from sales of state-owned property were excluded from budgetary income items and were directed for the budget deficit (since 2000 - proficit) financing.

At the same time the country experienced a parallel process: that is, the emergence of a new secondary ownership structure as a result of the struggle between two trends. One of the latter was the trend to redistribution and concentration of the primary intensively dispersed ownership structure that became derivative from the results of the mass privatization, while the other one was the trend to the closeness of privatized enterprises' capital, along with the maintenance of status quo.

The first trend manifested itself in the concentration of vouchers in investment funds and other commercial structures, along with the consequent exchange of those for large packages of shares of privatized enterprises at voucher auctions and the purchase of shares of privatized companies from their employees by managers and outside investors. The focus then shifted to the operations in the securities market and participation in the monetary privatization procedures.

The opposite trend was implemented primarily through the whole complex of formal- and also mostly informal- constraints using which the management of the privatized enterprises attempted to restrict their employees' sales of their shares to outsiders and to maintain the control over the enterprises, possibilities to generate incomes and maintenance of jobs. The latter motivation is also fairly characteristic

of many employees that do not belong to the management cast. Other forms of realization of the trend to the closeness in the privatized enterprises' capital were the branch and regional ones.

The branch form was implemented through the fixing in the state ownership of control blocks of privatized enterprises with a possible trusting of those to their management, establishing on that base holding structures and financial and industrial groups (FIG=s), and through the issuance of «gold share» that enabled the government authorities to a significant extent establish their control over the enterprises.

The regional aspect to closeness manifested itself in the attraction of representatives of regional authorities to the management of joint- stock companies emerging on the basis of the past public enterprises on the grounds of their possessing the unsold at once stakes (potentially designated for future sales) and in the latent preference granted to the local banking and trade and intermediary capital in the course of actual privatization procedures. The said capital was often related to local authorities or management of privatized enterprises, establishment of dependent firms-registrars that controlled the secondary redistribution of already privatized property.

In practice all these forms were closely interlaced and mutually complementary. Notably enough, in the conditions of informal relations between businesses and power situations often arose when outsiders-investors, which initially had been subjects of implementation of the trend to capital redistribution, in the course of a long struggle for corporate control over enterprises found themselves interested in the use of certain forms promoted the trend to the joint- stock capital closeness. That to a great extent was encouraged by the combination by managers of the roles of a stockholder and manager, and the roles of outsider (through their own companies and funds, etc.) and insider (administration) stockholder.

Let is identify the main characteristics of the current «intermediate» structure of stock ownership:

- relatively long-standing parity between outsiders and insiders;
- participation of company employees in share capital slowly decreases (on a mutually compensating basis), while the role of outsiders and managers investors grows;
- the managers combine the functions of shareholder and manager, outside (through their companies, funds, etc.) and inside (administration) shareholder;
- among the outsiders, parity is maintained between banks, on the one hand, and non-banking financial institutions and other legal entities, on the other.

It should be noted the ***significant role of banks in corporate control*** in that period, although the operating legal framework restricts their investment activities. Under the State Privatization Program, banks may not act as buyers, may not own over 10 percent of a joint-stock company's shares, and may not have over five percent of shares of joint-stock companies among their assets. This is why banks set up subsidiary companies to deal in investments and do business in the market of corporate securities.

The following reasons why banks invest in corporate securities are noteworthy:

- to establish control over a certain promising privatised enterprise or company;
- to buy shares to create «springboards» for expansion;
- the dominant motive is to buy up stock of privatised companies for major foreign and domestic investors (to benefit by the difference in the rates when reselling or get a commission);

- to redistribute in their own favour part of the yield from the sale of stock belonging to the state (the system of authorized banks);

- to create an «insurance fund» (knowing that the state will not let the industrial giants go bankrupt and is likely to grant subsidies or privileges that a shareholder may profit by);

- to own stock of the largest industrial joint-stock companies to create the image of a serious investor.

However, it is too early to refer to banks as a real strategic owner responsible for the company's long-term development (the European model, under which the bank not only controls but finances the company in one form or another). Considering the scope of the tasks that need to be accomplished in the next ten years, it is clear that Russia can rely only on the budget system and the banking network to finance structural economic reform.

A specific issue is the impact of the emerging structure of stock ownership (as a result of mass privatization) upon the evolution of the Russian stock market. Formation of such a model points, among other things, to prolonged reproduction of an environment conducive to conflict of interests and violation of shareholders' rights. This «intermediate» structure of the corporate control model directly affects the evolution of the stock market, aggravating its numerous problems:

- the relatively weak infrastructure is a brake on its development;

- the protection of shareholders' right;

- the insufficient openness of the market (as regards issues and deals);

- the transition to international accounting systems is slow;

- the buy-out of land plots by privatised enterprises is extremely slow;

- over-the-counter market absolutely dominates;

- the restrains on the growth of market liquidity;

- the minimal progress in new issue of stock;

- the low prices for the stock of most privatised enterprises (in the presence of a market) due to the competition of the government securities market and «spontaneous discharges» of parcels of government stock.

During the monetary privatization period was created the basis of special legal regulation on corporate relations and securities market development:

- in 1994-1995, the legal framework determining the institutional aspects of the market's functioning was formed (a single regulating body, the Federal Commission for the Securities Market [FCSM] was set up);

- in 1994 was adopted Section 1 of the RF Civil Code (effected starting from 1st of January 1995, in 1996, the RF Laws «On Joint-Stock Companies»[4] and «On the Securities Market» were adopted;

- 1994-1996 witnessed qualitative changes for the better in the infrastructure (150 licensed registrars and seven licensed depositories and steps to formation of the system of self-regulating organizations of market participants);

- general favourable trends and significant reserves in market liquidity and capitalization, higher market stability;

- gradually winning international recognition and access to the world financial markets (Moody's, Standard & Poor's credit ratings, issue of ADR/GDR by a number of companies, etc.).

A new, really more efficient than the government owner, can't emerge in a day. In principle, this problem could be solved in the course of the secondary re-distribution of the primary (shaped over the voucher stage of privatization, highly dispersed) property structure, providing that favorable external conditions are in place (both locally and nationwide) (low inflation, political stability, etc.). In the modern market economy such owners are institutional investors (banks, investment and insurance companies, pension funds) that concentrate in their portfolio large stakes of non-financial (including production) companies.

In Russia today such structures partly are at the stage of their emergence (pension funds and insurance companies), while the others survive a natural decline caused by the transition of the reforms into another quality (voucher investment funds). The financial crisis in the country in August-September 1998 has proved the genuine doubts regarding the capability of the Russian banks to efficient exercising the corporate control (and strategic stock ownership) functions that are characteristics of commercial banks in the Continental Europe. That is attributed both to the significant role played by corporate managers in the corporate policy and the lack of the connection «the strategic share- (trust, mortgage) holder and the source of funding» in terms of banks. It was very few cases noted between 1995 to 1997 that the Russian commercial banks proved to be capable to ensure an efficient restructuring of enterprises of the real sector they acquired and to bear the costs of control over them.

Russian realities of 1995-1998 have clearly shown an extremely important role of the state as a shareholder in the postprivatization period. As a result of the privatization by 1999 the State (only federal government) owned a significant number of the enterprises' stocks (about 3,900, including 600 with the «golden share» in the capital), the problem of management of which became the key one for the governmental property policy 1995-2003.

The principal claims of the state as a shareholder are the same as those of other shareholder types, be they external investors or working collectives. These claims are as follows:

- the lack of transparency in JSC's activities both for shareholders and the state;

- the diminishing share of «outsider» shareholders due to additional emissions in favor of «insiders» investors made without approval by «outsiders», including the state;

[4] This law was amended in 1996, 1999, and was significantly modified in 2001 (the new version was effected starting from 2002), then minor changes were made in 2002, 2003.

- transfers of material and financial assets from the parent company to subsidiaries being under the control of managers or their friendly companies.

JSCs with state-owned stocks was only one of the categories of public sector objects. According to the RF State Property Ministry [RF Mingosimuschestvo] in 1999 there were about 14,000 unitary enterprises and 23,000 institutions in federal property.

4. Ownership reform in the period of political stabilization and economic growth

In the course of development of privatization along with contraction in the volume of government property in Russia over the '90s, the problem of an operative and strategic management of public enterprises (shares) has become increasingly pressing. The whole sectors of the economy needed solutions to that (fuel and energy, defense, transport, communications, among others).

It was governmental Resolution # 1024 of September 9, 1999 on approval of the Concept for management of government property and privatization in the Russian Federation (below referred to as the Concept) that launched a new stage of ownership reform in Russia. Notably, apparently it has become the first attempt since 1992 to put the problem of state property management higher in the priority hierarchy than a formal change of property form. A drastic downfall in prices for enterprises and their stock packages after the Rouble Depreciation naturally determined in 1998-99 the shift of the federal center's focus of attention towards boosting non-tax budget revenues by means of using government property. That in turn automatically required an introduction of a greater clarity to the relationship between different tiers of the government.

Considering the context of the consequent changes in the political situation in 2000 (the election of the new composition of the Parliament and President, alleviation of the confrontation between the executive and legislative branches of power, the federal center's initiatives with respect to reforming the government structures and strengthening the vertical of power) one can speak today about the beginning of a new stage in the federal center- regions relationship, whose core issue is becoming the center's leadership on the basis of the priority of the federal center.

The program («Main directions of social and economic policy of the Government of the Russian Federation for a long - term perspective») approved by the RF Government in summer 2000 reasonably proceeds from the recognition of the following main directions in the government's property policy:

- Enhancement of the efficiency of managing public property remained in the state ownership;
- Privatization of a considerable part of the state property.

4.1. Problems of public sector management

The Concept 1999 provides an orientation to a gradual decrease in the number of public and municipal public property objects and a parallel implementation of the complex of measures on improvement the control over them. Such a complex comprises:

1. Identification of:
   - the circle and the number of objects needed for exercising functions of the state;
   - of the objectives of the state in terms of every object.

2. Introduction of:

- the procedures for the heads of enterprises, companies and institutions to report on the progress in implementation of the set program (plan);

- the procedures for the managerial decision-making process in the vent of the failure to reach the government's objective or accomplish the planned task;

- the criteria and procedures for transfer of a part of the profit to the budget.

3. The tightening of control over operations of the enterprises, companies, institutions and their heads.

At the same time three main types of objects of such a policy are singled out: 1) unitary enterprises; 2) economic entities with the governmental participation (mainly joint-stock companies); and 3) real estate. Proceeding from the set of objects, the program of measures has been laid down.

To address these tasks, one needs to implement long-awaited measures: to introduce standard reporting forms for government representatives in open-end joint-stock companies (October 1999); to pass a decision on establishment of a register of economic performance indicators of federal state unitary enterprises (FSUE) and JSC whose shares are owned by the federal government (January 2000); transition to an annual approval (for FSUE and JSC with the federal government share over 50%) of economic performance indicators and control over observance with them and the use of property, identification of the share of FSUE's profit subject to transfer to the budget, the recommended volume of dividends to be voted for by RF representatives in JSC boards (February 2000), the regulation of procedures of appointment of governmental representatives and their interaction with the Ministry of Property Relations and the respective branch agencies depending on the size of the government package, including timelines for notifications, submission of proposals, and provision in writing directives and reports on their participation in enterprises' governing boards (March 2000), adoption of «Regulation of realization of rights of the Russian Federation as an shareholder» (November 2001), regulation of procedures of FSUE development programs approval and the transfer of the FSUE's share profit to the budget (April 2002).

There existed a serious challenge in the unitary enterprises management area that fall under the RF Subjects' property and municipal unitary enterprises (as of late 1999, their overall number made up some 65,000) as well as joint-stock companies with the local governments' share in their capital presents.

The problem is it is FSUE and JSC whose shares constitute the federal property that falls within the purview of practically the whole legal base developed over 1999-2001. The exception is RF Government Resolution # 23 of January 11, 2000 «On the register of economic efficiency indicators for federal state unitary enterprises and open-end joint-stock companies whose shares are in the federal property». The document *recommends* executive agencies in RF Subjects to organize the work on creation and conduct of registers of economic efficiency of state unitary enterprises owned by RF Subjects (as well as of open-end joint-stock companies, whose stock belong to RF Subjects).

That's why the urgent need to pass a special law to regulate the state and municipal unitary enterprises activity cannot be questioned. Though the need in such a law has become visible since 1995 (when the Civil Code of RF was promulgated), its final version was passed on November 14, 2002 (# 161-FZ «On state and municipal unitary enterprises»).

The mission of the law is to minimize drawbacks of the right for economic operations. The quintessence of the new law became a certain narrowing of the level of a unitary enterprise's economic

freedom (a strict definition of purposes of its creation and allowed kinds of operations, the volume of legal capacity), strengthening of regulatory procedures of its management by the state and protection of its property rights (regulation of entering in large-scale deals, transactions that involve interest, restriction of their rights for establishing daughter unitary enterprises, an assumption of the possibility of withdrawing a part of their property in favor of the state).

The actual progress in privatization over the past years, i.e. the period of the effect of the 1997 privatization law makes the scenario of a long existence of unitary enterprises most likely. Proceeding from this, it is the focus on a gradual contraction in the number of state and municipal unitary enterprises and a parallel implementation of a set of measures on improving their management laid out by the Concept that appears more grounded.

Retaining ***state unitary enterprises (SUEs)*** as economic agents in Russian transitional economy in the foreseeable future makes it urgent for the government to focus on such a specific regulative matter in the property relations area as minimization of deficiencies generated by the right for economic activity.

In practical terms, this implies *minimization of commercial risks arising in the course of carrying out government entrepreneurship via unitary enterprises*. The list of the most evident and widespread commercial risks in this particular sphere comprises:

- the possibility of a partial alienation of the property the government assigned to SUEs;
- a low probability of generating revenues from SUEs operations, which may be attributed both to their branch specifics (a low profitability and low asset liquidity rates, focus on state orders and the consequent problem of the government honoring its obligations)and to the possibility of outsider structures intercepting the respective financial flows;
- the danger of aging of the production assets due to a non-targeted use of investment funds and 'eating up' profit;
- the risk of SUEs bankruptcy and the government completely loosing its property rights for the assets assigned to them to conduct economic activity.
- The main remedies the government should seek in order to minimize the risks are:
- *bringing SUE's operations* in line with requirements provided by the legal acts of the RF Government and the RF Ministry of State Property of 1999-2001: more specifically, they imply re-registering their renewed charter documents with the RF Ministry of State Property; appointing of enterprises' heads on the contract basis; fixing in their charters the government's right for a share of their profit; introduction of a new accounting and control system;
- *an efficient exercising by the owner of his powers in the frame of the effective lawand the aforementioned requirements* (identification of the volume of powers; control over the use of property and attaining certain indicators of SUEs economic performance; contributing to the non-tax revenues of the budget system by means of SUEs regular transferring a pre-set share of profit from current operations; pursuance of staff policy through the respective rulings of attesting boards and cancellation of contracts);
- specification and organizational optimization of the governing impact of the state on SUEs (creation of specialized SUEs to manage a great volume of relatively small, dispersed assets; integration of unitary enterprises into holding structures; strengthening the governmental control

functions in large SUEs by means of establishment Supervisory Boards that would comprise representatives of all the government agencies controlling the given enterprise; as concerns SUEs of strategic importance, they should be directly subordinated to the RF Government);

- continuation and completion of the work on inventorying the government property in the part of inclusion of public unitary enterprises in the Property Register of RF basing on a clear distinction drawn between federal, regional and municipal tiers (and preclusion of a situation when a federal unitary enterprise exists without clearly defined subordination to a certain agency).

The fact of enactment of the law «On state and municipal unitary enterprises» should not imply refusal of the government policy aimed at strengthening its controlling impact on unitary enterprises by improving the effective legal base developed between 1999 to 2001, i.e. by means of further development of the Standard Chapter of FSUE and the Standard Contract with its head, improving the work of Attestation Commissions with the overall emphasis on enhancement of the level of maintenance of public property.

The main means to ensure the above is to introduce to the said documents provisions on restricting opportunities for heads of unitary enterprises to carry out certain kinds of operations without a prior consent of the owner's representative, extending the incentive system to encourage them honor already concluded contracts, including a range of grounds for their cancellation, consequent penalties, and labor compensations.

As far as contracts are concerned, there may appear new items, such as, for instance, the obligation of heads of unitary enterprises not to combine their position with a paid job in commercial structures, entrepreneurial and political activity, not to take part in transactions involving interests, and to report regularly their personal income and property to their superior agencies. At the same time, the enterprise head labor compensation system should be modified, so that to ensure an interrelation between various bonuses designated for complementing a reasonable fixed salary and economic performance of their enterprises, the presence or absence of disciplinary punishments, and honoring terms and conditions of their contracts. One should also extend the circle of grounds for canceling their contracts at the owner's initiative (in certain cases along with paying off a compensation).

From the perspective of organization of an efficient system of management of, and control over operations of heads of unitary enterprises and restricting their excessive freedom of action, a charter of such an enterprise has to comprise provisions on restricting opportunities for heads of unitary enterprises to carry out certain kinds of operations without a prior consent of the owner's representative.

The implementation of main provisions of the governmental Program with regard to ***joint-stock companies (JSC)*** with governmental participation is capable to contribute to a better realization of the government's interests in the corporate governance area. However, in practice a lot will depend on concrete mechanisms, some of which are analyzed below.

In the medium run, the main question is a more precise specification of the governmental legal rights for property in different JSC. It is based on a number of criteria, of which the most important one is the size of the governmental share in JSC' authorized capital. As concerns majority packages, there should be formed a set of provisions and procedures that would allow the state as a strategic owner to exercise control functions. As far as minority blocks are concerned (under 25%), there should be a set of provisions and procedures allowing the state, among other owners, to exercise the respective control functions.

Today, specifying legal rights the state exercises as a co-owner in various JSC requires addressing three particular tasks:

1. a greater level of clarity and regulation of operations of those individuals who represent the government's interests in JSC by means of amending the effective legal acts on these issues (mostly beyond the frame of law-making processes in the Federal Assembly of RF);

2. the introduction of elementary control mechanisms over financial flows and the process of at least simple reproduction of capital in mixed companies with the governmental participation in their capital and integration of such mechanisms in operational patterns of individuals representing state interests in JSC;

3. the inventory and ranging of the stock packages the government owns in regional and branch aspects from the perspective of execution of the revenue part of budgets of all the tiers, completion of the much-needed institutional reform, not excluding pursuing a more pro-active structural and industrial policy in the future.

It appears that further necessary elements of improvement the process of managing stock (shares) remained in the government's property could be:

- bringing the effective standard contract on representation of state interests (approved in May 1996 and not revised since that time) in consistency with the above documents;

- cancellation of the right of government representatives (both trustees and civil servants) for independent decision making on the circle of matters due for reconciliation, unless there are instructions of their superior governing bodies, in order to minimize manifestations of an opportunist and interest nature;

- to solve the problem of the mechanism of direct encouragement of the work of each of government representatives and trustees by granting them with a certain amount of dividend receipts from the state-owned packages (the Concept suggests allocating not less than 10% of dividends payable on the stock owned by the federal government to fund expenditures associated with managing the stock, however, it does not provide any concrete recommendations in this regard);

- provision of the representation of the state interests in the largest and most important JSC by government executive agencies' staff, for whom such an activity should become a major one, along with the approval of the program of their annual operations by the Government (an introduction of the institution of the authorized government representatives);

- improvement (setting limits of remuneration and compensation for costs incurred by a trustee, solving the problem of licensing trustees' operations proceeding from the law on securities market', along with the organization and conducting of a register of trustees), and a gradual extension of the practice of application of the trusteeship mechanism in the part of stock packages of enterprises of no strategic importance that are owned by the federal government (the most radical variant suggests a transition to this particular form of governance as a solely possible, though considering the effective legal base and current practices, this appears a complex issue);

- development of a set of responsibility measures, including the possibility of amending the Criminal Code of RF in the part of protection of state interests in the event of professional representatives dishonestly exercising their duties;

- a realization of an alienation strategy with regard to minority stock (up to 25%), except those in the largest and financially significant enterprises;

- a differentiated approach to evaluation of efficiency of government representatives' performance depending on the size of the state-owned stock and chances to exercise influence on the decision-making process.

Some general matters that concern managing both unitary enterprises and joint-stock companies with the government participation are worth a separate analysis.

Firstly, as long as the state property management is concerned, it is the governmental staff policy that becomes especially important. Nowadays, in addition to a higher qualification of those who carry out managerial procedures, it is the staff selection and a resolute battle against corruption that remains very urgent. Whilst putting the possibility of using the civil and criminal law provisions aside, one can offer a range of fairly visible measures to address the above:

- introduction of the provision on a mandatory expulsion in the future from the state property managers community those who were dismissed from their duties because of their unfair performance (with a detailed description of such abuses and a respective penalty), along with the creation of a database to store complete information on all the staff ever representing the government interests in the property management area (directors of FSUE, governmental representatives in JSC, trust managers);

- introduction of the provision of a compulsory information by directors of FSUE and governmental representatives in JSC of their income and property as a variant of adoption of a special law on labor compensations for heads of public companies or amendments to the tax law. The enforcement of this particular measure with regard to heads of economic agents with the government share in them is under discussion (and can be related to the size of the government share).

Secondly, there exists a group of questions associated with the rate and quality of economic growth. It is not accidental then that the Concept regards encouraging production and its diversification, improvement of such enterprises' financial and economic performance, attraction of investment, optimizing managerial costs, implementing institutional transformations in the economy as independent objectives in the state property management area. The above objectives can be reached by the following means: the use of state-owned stock packages to secure credits and investment; capitalization of enterprises' debts to the budget and an contribution with their land sites to JSC authorized capital, with the consequent sale of, or trusting the newly issued stock; establishment of vertically-integrated corporate structures; enterprise restructuring with a separation of the property complex needed to solve problems of the national scale, and sales of other assets; and, finally, the use of various privatization procedures.

The nature of the above instruments and a well - known fact of the transition of a main mass of attractive enterprises to the non-government sector show that the above processes to a greater extent concern companies with the government share in their capital, while to a less – unitary enterprises[5].

At the same time, one should take into account that any job on enterprise restructuring that implies separation of any production should involve a great deal of cautiousness and is time-consuming. That can be explained by the need of a thorough account of the whole set of related circumstances and primarily of evaluation of the possibility of downsizing the objects that once were built as a single technological complex. As well, it should imply studying into technical aspects of the problem. The task to create competitive holding structures with the governmental participation poses a serious challenge, too, as the account of the technical aspect of the problem (compatibility, inter-relation and mutually complementary functions of such integrated enterprises) is complemented by demand for concentration of state-owned assets to the extent allowing exercise an efficient control with minimal managerial costs involved.

Obviously, these problems can be solved and visible results can be achieved only in the long run (within 5-7 years), when both unitary enterprises and companies partly owned by the state demonstrate a steady and qualitative implementation of their functions set while fixing them in the government ownership and a considerable increase in non-tax receipts to the budgets of all levels is ensured. By that time, by and large, a sound management system of state-owned assets in unitary enterprises and mixed companies should be built. The system should be based on an individual approach towards each such object and a program-targeted principle that implies a mandatory identification of objectives of the state participation in the given enterprise's capital and, consequently, a strict formulation of tasks and a documentary fixing of means of influence on the given object, providing existence of efficient control instruments.

Naturally, the implementation of all the aforementioned measures, along with a sound staff policy pursued by branch and functional management agencies, does not guarantee absolute protection of the state acting as a principal from potential offensive acts of the manager as an agent. This notwithstanding, it appears that such measures can considerably lower an integrated risk of bankruptcy of unitary and mixed enterprises, inhibit stripping them off assets and eventually lower costs in the public entrepreneurship area.

In all fairness, it should be noted that such negative effects caused by the functioning of an economic institution as poor current performance indicators, stripping an enterprise off its assets, false bankruptcy, etc. in principle appear characteristic of economic agents of other organizational and legal forms, too. For instance, in Russian economy, many privatized companies do not perform as expected, nor they proved to be manageable even under new, private owners. This manifests a universal nature of difficulties arising in the relationship between managers and owners in the transitional conditions.

The measures undertaken under the Concept over the past three years have already brought about some results. Since 1998 positive trend regarding state property and its effect on the budget came with a shift of reliance from non-renewable to renewable sources of income. In other words instead of receiving big one-off sums for selling its property the government is now more keen on extracting stable revenue via retaining and better management of its assets (*Table 4).*

Table 4

[5] Data of the Russian Ministry of Property Relations on 1st of June, 2003 shows 9860 federal state unitary enterprises (FSUE) and 4205 joint-stock companies (JSC) with federal participation.

Volume and structure of Russian federal budget property revenues

	Aggregate revenues from Privatization and Use of State Property		Revenues from privatization, i. e. the sale of State Property (non-renewable source)		Revenues from Use of State Property (renewable source)	
	mn $	**%**	**mn $**	**%**	**mn $**	**%**
1995	1298.9	100.0	1252.7	96.4	46.2	3.6
1996	259.2	100.0	197.8	76.3	61.4	23.7
1997	3272.6	100.0	3171.5	96.9	101.0	3.1
1998	1065.2	100.0	812.8	76.3	252.4	23.7
1999	701.2	100.0	347.2	49.5	354.0	50.5
2000	1783.1	100.0	1115.1	62.5	668.0	37.5
2001	1345.0	100.0	346.6	25.8	998.4	74.2
2002	1614.7	100.0	468.0	29.0	1146.7	71.0
2003*	4432.6	100.0	3085.1	69.6	1347.5	30.1

* - preliminary data.

Source: RF Property Relations Ministry Web site www.mgi,ru, Author's Calculations.

Thus in 2001-2002, more 70% of government's cumulative revenue from its property (includes sale and use) came from renewable resources, whereas in 1995 and 1997 that number amounted to only 3%. Other aspect of this positive trend is serious diversification of renewable sources. Now they consist of dividends on state-owned blocks of shares, profit on Russian participation in JV «Vietsovpetro», leasing payments for use of public estate and land, some part of profits earned by state unitary enterprises. Since 2000 Russian government accelerated the process of creating large holdings with state participation (especially, in defense and nuclear power industries, transport).

4.2. Privatization policy in 2000-2003 and corporate sector development

In 1999-2000 the changes in the political landscape of the country saw an end to the long-standing dispute on privatization between the executive and legislative branches of power. On December 21, 2001 the conflict was resolved by yet another law on privatization, this timed titled, the Federal Law on Privatization of State and Municipal Property, # 178.

The *new law* came into force on April 26, 2002 (only 3 months after the day it was first published) and its approval by the Federal Council (Russia's Upper Legislative Chamber) was made possible thanks to a compromise that divided the power to privatize between several governmental layers. Thus privatization of all so-called strategic enterprises as well as decisions for including an enterprise into a «privatization forbidden» list were to be made by President. Privatization of big natural monopolies, such «Gazprom», «RAO UES» and Federal Railroads was assigned to the Federal Council and required enactment of a separate law, while jurisdiction for all other federal enterprises was given to the government. Municipal and regional properties were to be privatized by local authorities.

In general the law provided for 10 various methods for privatization, based on an enterprise's size, liquidity and/or results of initial sales:

1. transformation of unitary enterprise into a joint-stock company;

2. sale of state and/or municipal property through actions;

3. sale of shares of publicly listed companies through special auctions;

4. sale of state and/or municipal property via tenders;

5. sale of state-owned open joint stock enterprises abroad;

6. sale of shares of open JSC through brokers and exchanges;

7. sale of state and/or municipal property via Dutch-style auctions open to general public (where final sale price or the cut-off point is exactly a half of the price offered at the onset of the auction);

8. sale of state and/or municipal property without disclosure of target prices (should it fail then the sale proceeds via Dutch-style public auctions);

9. incorporation of state and/or municipal property as charter capital contributions for open JSC;

10. sale of share of open join stock companies in accordance with results of trust management with a subsequent right to buy shares.

In addition, under the Law state-owned share packages whose value at the time of sale exceeded 5 million units of minimum wages were to be privatized only by means of becoming a JSC via auctions, specialized auctions, sold abroad, or in accordance with terms and condition specified in the presidential decrees, by contributing of federally owned assets to the charter capital of a strategic joint stock company.

All other types of state properties could be auctioned off, turned into JSC, tendered, or privatized by contributing shares to charter capital, etc. Should a first attempt at a tender and/or an auction be deemed invalid, due, for instance, to a lack of bidders, the Law allowed for the pursuit to continue through other privatization methods described above.

The 2001 Privatization Law undoubtedly introduced important new mechanisms for transferring state assets into private ownership. Thus the Law officially recognized that: a) land of a privatized enterprise constituted an integral part of a privatized property; and b) intellectual property could be counted as a contribution to a charter capital.

By and large the new Law upheld a view, a traditional one of late, that privatization must maximize its fund-raising utility by concentrating on big-ticket sales pursued with individual strategy based on prevailing market conditions and use of newly available methods of privatization.

In theory, the variety of models for privatization should boost growth, hearten institutional reform, cut government's costs and help it get rid off illiquid assets while stimulating a minimum demand from individuals and small businesses. Encouragingly enough, the experience with privatizing a number of enterprises since 2000 demonstrates that given a continued economic growth and enough political will the government may indeed reap significant benefits from new privatizations.

Because transferring assets into private hands will not merely cut government's costs but also create new holding-type structures that would promote competition and growth in a number of key industries such as defense, research and development, transport and communications. Unfortunately, such hopeful prospects stand less assured for small and medium-sized companies, which in all likelihood would remain bogged down by taxation and administrative barriers. Lastly, the inclusion of an enterprise's land under its

privatization as well as a revamped access to market financing give reasonable hope that investment will indeed be followed by a much-needed restructuring.

In spite of the number of aforementioned positive *technical* advances the Law fails to lay out a comprehensive *strategic* vision of how the privatization process should be pursued and what indeed it hopes to achieve.

Such long-term strategy, for instance, should first of all, in addition to overall budget goals, outline which enterprises in which industries would not be subject to privatization whatever the circumstance. Only upon determining a list of these off-privatization enterprises should the government decide which remaining entities go for sale in the short-, medium- and long-term based on an enterprise liquidity status.

The 2001 law also falls short of curing some of the biggest «headaches» of Russian privatization such as transactions transparency and lack of buyer equality in the conditions of systematic corruption – issues that obviously should come to the forefront of any technical aspects of the process. Sadly this lack of focus on bigger picture means that the Law is riddled with a number of loopholes a detailed account of which is provided below.

A first questionable innovation brought about by the Law concerns the abolition of a previous 1997 requirement to annually pass a federal law specifying a list of enterprises available for privatization in the next year, as well as expected terms and conditions for their privatization. That, in effect, takes the Parliament out of the decision process and grants the executive an exclusive right to determine annual privatization program.

Curiously enough the law officially lifted another 1997 requirement for setting up separate list of enterprises that must remain in federal control, thereby giving a misleading impression that no enterprise may be beyond the privatization's reach. The impression is false because deeper in the body of the Law, article 6 line 43 to be exact, it clearly states that unless legally specified otherwise, all state property that had been included into the privatization-banned category up to January 1, 1995 (date of enactment of the 1st section of Russia's Civil Code) must remain in the same.

Thus the new Law in effect upheld the 1993 privatization program, which banned privatization for 44 categories of enterprises over the less restrictive 1992 program, which did the same for only 22 categories.

Secondly, just as its 1997 predecessor the 2001 Law also failed to provide clear selection criteria for enterprises for which privatization is banned on the grounds of their strategic importance, because goods and service they produce are essential for national security. With an aim of policy consistency in mind the 2001 Law instead entrusted the government with an authority to form lists of such strategic enterprises and then subject it to approval by the President. The definition of a strategic enterprise included all federal enterprises and state-owned *JSC* which produce goods and services essential to national security, public health and morals (hereinafter referred to as strategic enterprises and strategic *JSC* respectively)[6].

A third loophole can be found in a requirement that all amendments, changes and recommendations to the existing lists of strategic entities (including proposals for decreasing government's control over such

[6] Earlier these enterprises were included either in a 1996 List of Defense Enterprises not Eligible for Privatization or a 1998 List of Joint-Stock Companies which Produce Goods and Services Essential to National Security not Eligible for Privatization. It is currently absolutely unclear whether the enterprises from either of these 2 lists would also be banned from privatization.

enterprises, their gradual or immediate removal from the list for the purpose of their eventual privatization) be made in the same manner, i.e. initiated by the government and then send to president for approval review.

The new Law however is vague on the process and details of the presidential review of government's proposals. One would imagine that the President would have to rely on technical expertise provided to him by his staff and that is, of course, granting the President does indeed review and not merely rubber-stamps government's proposals. In any case, it is unclear whether the technical expertise should come from staff in his own administrative apparatus, Security Council or some other body. Coupled with the lack of clear criteria for selection of strategic entities this confusion certainly does little for improving the already hazy environment surrounding Russian privatization.

Yet another, fourth loophole of the new 2001 Law arises from an implication that annual privatization programs should be handed for parliamentary review together with an annual budget draft. The Law however provides no guidance to a situation where a budget draft along with the privatization program is not approved, as if the creators of the Law simply deemed such «difficult» scenario as too unlikely ever to occur.

Fifthly, the 2001 Law also fails to set unambiguous criteria for dividing the large notion of «state» property into federal, regional and municipal subclasses. Last such criteria were set in 1991 by the Supreme Council of Russian Federation and are obviously outdated. The lack of clarity is muddled further by a number of often conflicting bilateral agreements made between the federal center and various regions back in the nineties following the break-up of the Soviet Union.

The next two to three years should demonstrate whether these newly devised methods of privatization provided by the Law are successful and conducive to the government's overall aim of financial stability, maintaining budget surpluses and ensuring that its revenue sources are diversified and do not run dry even in the event of tumbling oil prices and peak external debt servicing. The first such results can come as early as in the 2003, the first year in which the legislation can be applied in its full spectrum.

On practice in 1999-2002 economic growth and high prices on the key Russian export commodities were the important factors advantaged the budget revenues rising from privatization.

Like the period 1995-1998 the main objects of privatization transactions in 2000-2002 were state owned stocks of shares in JSC, created earlier. For example:

- 2000: stocks in oil company «ONAKO», some coal companies;
- 2001: stocks in refinery and provision company «NORSI», other coal companies and insurance company «Rosgosstrakh»;
- 2002: stocks in oil companies «VNK» («East oil company») and «Slavneft».

Nevertheless, in contrast to the previous years, in the year 2003 no relatively big privatization transactions took place (the latter usually producing a dramatic increase in revenues from non-renewable sources).

One of the elements of the new Concept of Federal-Property Management is the three-year-long program of privatization. The first such document (the Prognostic Plan (Program) of federal-property privatization for the year 2004) was approved by the Regulation of the RF Government No 1165-r of 15 August 2003. The following sequence of actions is suggested:

- the year 2003 - privatization of state-owned blocks of shares up to 2% of the authorized capital;

- the year 2004 - the State departs from all the joint-stock companies where the stake of the State is less than 25%;

- the year 2005 - the State departs from all the joint-stock companies where the stake of the State is between 25% and 50%;

- the year 2006 - discontinuation of state participation in the companies where the State owns more than 50% of shares, provided that these companies are not strategic;

- by the year 2008 - the completion of privatization of the federal property not used for the realization of state functions of the RF, the conclusive formation of the system of management of the state sector's property, the doubling of revenues from the use of property.

Thus, according to the estimates made by the RF Ministry of Property Relations, in the year 2004, the expected revenue of the Federal Budget from privatization is to amount to 35-40 bln roubles (more than 1 bln $). The basic list of objects scheduled for privatization in the year 2004 includes 1063 federal state unitary enterprises and 719 blocks of shares of joint-stock companies. The largest privatization projects of the following year could be the sale of 7.6% of shares issued by the oil company «LukOIL»[7], of the Novorossiisk, St Petersburg, Vladivostok and some other sea ports, as well as of some airports. In the case of selling the shares of these sea ports, the State reserves the right to introduce a «golden share». At the same time, 123 federal state unitary enterprises and 215 blocks of shares are scheduled for the inclusion in the vertical integrated structures of the defense complex. It should be noted that the possibility of correction of such lists, as it took place in the year 2003, remains traditionally high.

In the context economic growth after crisis 1997-1998 are increasingly important the biggest Russian integrated business groups (IBG). The prevailing high uncertainty and distrust between economic agents generate peculiar financial and economic complexes comprising industrial and other productive enterprises, commercial banks, insurance companies and other subsidiaries which help to reduce transition costs. In 2000 there are 8 the biggest IBG in Russia: «Lukoil», «Yukos», «Surgutneftegaz», «Interros», «Alfa Group - Renova», «Siberian Aluminum - Sibneft», «Severstal», «AFK «Sistema». Majority of IBG grew from energy, fuel and mining companies and thanks to natural rent possess considerable resources, which enable them to build up their economic potential. For example, from 1996 to 2000 their investments (including buying enterprises) doubled each year, putting them in the lead as chef investors in Russian economy. In many cases IBG are the active buyers of privatizing objects.

In the year 2002, as is known, some grave conflict occurred involving various corporate groups that had to do with the privatization tenders that took place in coal mining, transportation (ports, etc.), and the oil industry (primarily, «Slavneft»). On the contrary, the year 2003 is characterized by fewer conflicts associated with the privatization process, at least as regards the biggest deals. This by no means implies that a certain degree of harmonization of the interests of the largest oil and metallurgy groups has been achieved; one can speak only of the assets-to-be-privatized (offered for bidding) having been exhausted as of the year 2003, which are of interest for the buildup of integrated groups in some sectors.

Corporate ownership was initially created as dispersed property of public companies and the Russian regulatory base (laws on joint-stock companies, securities) was built as a system of norms and rules

[7] This last state-owned block of shares of the oil company «LukOIL» (7.6%) wasn't sold before the year 2004, and for this purpose it is intended to list this company on the New York Stock Exchange.

oriented at such a structure. In conditions of 90-s (transition slump, high taxation, etc.) management benefited from this situation: shares had low liquid, dividends weren't paid. For outsiders, gaining control was fact the only way of exercising their property rights: ownership concentration as instrument against the manager's opportunism. In fact, the ownership institution in Russia in 90-s, including corporate sector, was characterized by the constant redistribution of property. In the mid-90's corporate control was captured mainly by sale and purchase of shares, later – by bankruptcy procedures and debt restructuring (change debts on share in capital[8]). Economic growth gave new motive for property redistribution – emerging large chains of companies for spread of the market share. Russia had rise in the number of corporate reorganizations, mergers and acquisitions since 1998. Capital stock transactions realize by dilution issues, share consolidation and exchange.

In result of these changes in 2000's both statistical and survey data show that the main owners are legal entities (non-financial enterprises, in many cases – IBG members) and employees (particularly, managers). The role of the financial institutions and foreign investors isn't significant. The majority of Russian JSC uses mainly their own funds (profit) for investment activity financing. The volume of attracted resources from the banking sector is small like from the stock market. The Russians stock market listing includes less than 250 issues, but the shares only 7-10 companies are liquid. At the same time the corporate bond market is today the dynamic sector of the domestic stock market. As above mentioned, very large problem of corporative sector in Russia is non-transparency of property relations and results of activity. In last years a tendency to pay dividends emerged in some companies where the biggest shareholders consolidated ownership. In some cases this process was caused activities of the state as their shareholder.

Dividends on state-owned blocks of shares are considered by the Government as the most important renewable source of budget revenues. The trends demonstrated in the last few years testify to a significant increase in the corresponding payments. In the year 1996, the dividends on state-owned blocks of shares were paid by just 35 join-stock companies. While in the year 1998, 273 companies with a government stake transferred 574 mn roubles to the federal budget, and 747 companies transferred to it the amount of 10400 mn roubles in the year 2002. It is clear that this growth has resulted from the intensification of the activity of the RF Ministry of Property Relations.

To a great extent, this growth was preconditioned by an increase in the dividends on common equities caused by a number of factors: the policy of corporate governance and capitalization growth, the pressure from sectoral holding companies (such as the «RAO UES» in power industry and «Sviaz'invest» in the sphere of communications), and a reduction in the dividend-tax rate.

In this respect, one could assume that the noticeable successes achieved by the RF Ministry of Property Relations as regards the rise in payment of dividends on the Federal Government's blocks of shares, which took place in the years 2000 to 2003, have resulted not only from the intensification of pressure on the issuers but also from the objective processes existing in Russia's corporate sector in the early 2000s. As far as the given source of government revenues is concerned, this factor will undoubtedly remain decisive in the future as well.

5. The new Concept of Federal-Property Management, current problems and possible perspectives of ownership reform in Russia

Certain positive results of the implementation of the Concept of State-Property Management, and those of the 1999 privatization, the adoption of new laws on privatization in the year 2001, as well as the

[8] One of the versions of debt restructuring is returning stocks to governmental or municipal ownership.

law on unitary enterprises adopted in 2002, providing the executive authorities with a greater freedom of action in the field of de-nationalization, have laid foundation for a discussion, in the years 2002 and 2003, of some new initiatives pertaining to the management of the government sector.[9] The state policy in this sphere should be focused on the following problems: 1) classification of federal property, 2) upgrading the new mechanisms of management as regards the objects constituting this property; 3) optimization of the structure of federal property.

Classification of state, and first of all, federal property should be carried out through a categorial definition of those types of property which could be solely in federal ownership, in the ownership of the Federation's subjects, and in municipal ownership, so as to enable these owners to fulfill the public functions invested in them. In this respect, the draft law "On government and municipal property" developed by the RF Ministry of Property Relations and submitted to the Government in early 2003 represents a basic legal innovation. According to this draft law, the RF, subjects of the Russian Federation and municipalities could own property of the following three major categories: the property necessary for the bodies of state power of the RF, subjects of the Russian Federation and local self-government to exercise the authority invested in them by the RF Constitution, the federal laws and the laws of subjects of the Russian Federation as regards the exercise of this authority:

- the property necessary for the bodies of state power of the RF, subjects of the Russian Federation and local self-government to exercise the authority invested in them by the RF Constitution, the federal laws and the laws of subjects of the Russian Federation as regards the exercise of this authority;

- the property necessary for the maintenance of activity on the part of appropriate bodies, as well as government and municipal employees, as stipulated by the federal laws, the laws of subjects of the Russian Federation and other normative legal acts;

- other property which, in accordance with the federal laws, could not be alienated and withdrawn from state or municipal ownership (property withdrawn from public turnover).

Apart from the property of these three categories, federal ownership could also include property of strategic importance in accordance with the list approved by the RF President on its submission by the RF Government. The list of such property should not include the property classified as belonging to subjects of the Russian Federation or municipalities. Subjects of the Russian Federation also could own property needed by said subjects of the Russian Federation for the exercise of their authority.

The organizational legal forms of functioning of state and municipal property should be as follows: 1) treasury enterprises and institutions holding such property consolidated to them by the right of operative management; 2) transfer of property by concession; 3) inclusion of property in the authorized capital of open-end companies with more than 50% of shares owned by the RF, its subjects or

[9] The Materials of the All-Russian Conference of the RF Ministry of Property Relations, of 26-28 November 2002, «O realizatsii zadach v sphere imushchestvennykh otnoshenii» (On the solution of problems in the sphere of property relations); the materials of the RF Ministry of Property Relations relating to the meeting of the RF Government, of 6 February 2003, «O merakh po povysheniiu effektivnosti upravleniia federal'noi sobstvennost'iu i kriteriiakh ee otsenki» (On the measures designed to improve the efficiency of management of federal property, and on the criteria of its assessment); the Materials relating to the meeting of the RF Government, of 27 November 2003, «O khode realizatsii reshenii Pravitel'stva RF po povysheniiu effektivnosti upravleniia federal'noi sobstvennost'iu, osnovnykh napravleniiakh dividendnoi politiki» (On the progress of the implementation of the decisions of the RF Government on enhancing the efficiency of federal-property management, and on the main directions of the dividend policy).

municipalities. In this case, the authorized capital of an open-end company should not include property which, in accordance with federal legislation, cannot be withdrawn from state or municipal ownership (property excluded from public turnover). The state and municipal property not consolidated to state or municipal treasury enterprises constitutes, respectively, the state treasury of the RF and its subjects and the municipal treasury of municipalities.

Also worthy of attention is the problem of organization of accounting and control as regards the movement of state and municipal property; it is planned to be solved by compiling appropriate lists of property for each level of authority and by keeping registers. The final document reflecting the changes in the body of property which have occurred during the calendar year should be *the annual report on the entry and withdrawal of state and municipal property*.

It is evident that the optimization of the structure of federal property represents a complex and many-sided process related to the medium-term program of socio-economic development of the country, the federal budget and the investment program. Therefore, it seems very logical that the RF Ministry of Property Relations has suggested that a program of management of federal property (assets) for 3 years be developed, so as to systematize the acquisition, withdrawal and use of federal property. The advantage of this approach rests in the proposal that the above Program should embrace every possible operation and procedure regarding property (creation of new objects, redemption, nationalization, privatization, transfer into ownership of regions and municipalities, participation in the activity, transfer by lease and concession, or to trusteeship) which are coordinated with the stages of property management.

It is of principal importance that starting from the date when this law enters into legal force, *no permission should be given to establish any unitary enterprises based on the right of economic jurisdiction*, and to include state and municipal property into the authorized (contributed) capital of commercial organizations (with the exception of open-end companies conforming to the above requirements) and in the authorized funds of non-profit organizations. Also starting from the date when this law enters into legal force, no laws defining the authority of federal, regional and municipal organs but not specifying the types of property necessary for its exercise should ever be passed.

In the year 2004, the Government should authorize the procedure for keeping the registers of state and municipal property, the forms of the corresponding documents, the procedure for free-of-charge transfer of state and municipal property in the case of redistribution of authority among the organs of state power of all levels, as well as the procedure for alienation of the property consolidated to treasury enterprises and institutions. In the years 2004 and 2005, the list of strategically important property will be submitted for the approval of the President, while a number of draft laws defining the types of state and municipal property needed by the organs of power for the exercise of their authority, will be submitted to the legislative bodies of all levels.

The constituent documents created before the coming into legal force of the suggested law on unitary enterprises and based on the right of economic jurisdiction, as well as treasury enterprises and institutions, should be brought into line with the given law prior to 1 January 2008. In case the constituent documents of unitary enterprises based on the right of economic jurisdiction are not brought into line with these requirements on time, such enterprises will be subject to liquidation in accordance with the procedures envisaged by the law. As long as the constituent documents of unitary enterprises based on the right of economic jurisdiction are not brought into line with these requirements, the recording of the property of such enterprises will be conducted in accordance with the requirements of the law.

Thus, the draft law, de facto, determines, among other things, the time-horizon of privatization in its medium-term prospects. The state and municipal property not classified as such, should be subject to conversion or alienation in accordance with the procedures stipulated by the law on privatization, in the

years 2005-2008. Beginning on 1 January 2009, the state and municipal property not included in the registers of state property of subjects of the Russian Federation and the registers of municipal property will not constitute federal property and shall be subject to sale in accordance with the procedures and within the time limits envisaged by the laws on privatization.

The excessive ambitiousness of this Program, as we see it, relates to a number of circumstances.

1) The actual progress of privatization during the period when the 1997 Law on Privatization remained in force, is testimony to the fact that when the Law was relatively strictly observed, the organizational capabilities of the managerial organs as regards rapid reforming of the state sector were in serious conflict with the quantitative limitation - the scope of this reforming. Thus, according to the official data, just 749 enterprises (organizations, objects) of federal property were privatized in the years 1998-2002.

Apart from the federal blocks of shares and FSUEs, there exists a large amount of unitary enterprises and economic unions where local authorities have a share in capital at the regional and municipal levels, the ratios between which still remain unclear.

2) Still lingering is the problem of residual blocks of shares which has been under discussion since the mid-1990s. During the past decade (starting from the conclusion of mass privatization in 1992-94), the number of minority interests owned by the State has been generally declining, though the rate of this decline is too insignificant for us to forecast a complete solution of the problem in the course of just three years.

The new law on privatization («On privatization of state and municipal property» No 178-FZ of 21 December 2001, entered into legal force as of 26 April 2002) provides legal grounds for a mass reduction in the number of state-owned objects and offers the instruments to effect the disposal of relatively unattractive minority interests (in particular, it does not necessitate the evaluation of minority interests offered for sale and envisages the determination of the starting price in accordance with the nominal value of the shares). It is still too early to make any conclusion regarding the efficiency of the new methods of privatization legitimized by the new law on privatization. The demand for these mechanisms is still a matter of theory rather than practice.

3) The above Program indirectly envisages a nearly complete liquidation of the very institute of state unitary enterprises, which is totally justified from a conceptual point of view. Apart from a very limited number of FSUEs, all of them should be converted into treasury enterprises, or - via corporatization - into joint-stock enterprises to be subsequently privatized. The processes of reorganization (merger, liquidation, sale of shares, partial sale) must also involve the subsidiary enterprises of FSUEs. A strong stimulus for abandoning this organizational legal form should come from the provisions of the Law «On state and municipal unitary enterprises» No 161-FZ of 14 November 2002.

Nevertheless, it should be noted that this plan is by no means the first one as regards a drastic curbing of the State's presence in the economy - the RF Ministry of Property Relations has repeatedly planned a full-scale reduction in the number of SUEs. The first variants of this approach (the transformation of all SUEs into treasury enterprises and joint-stock companies) had been discussed as early as 1995-94. In the government program for the years 1997-2000, the issue dealt with was the completion of the program to transform SUEs into the joint-stock companies with 100% of shares being in federal property, by the beginning of 1999. The Program of medium-term (up to the year 2004) socio-economic development of the RF had envisaged that the above program be completed by the end of the year 2001, and then the number of FSUEs be reduced to 1,500-2,000 by the end of the year 2003.

The resistance of branch ministries is equally well known.[10] The problems encountered in this respect deal with both the current financial matters and the more fundamental ones which relate to the administrative reform.

4) The orientation of the Ministry of Property Relations towards the greatest possible reduction in the number of unitary enterprises of all level, with the prospect of their transformation into open-end companies, will result in an increase of the burden shouldered by the organs of state administration, which will have to act within the norms of corporate law. In this respect, there will emerge a necessity to quantitatively increase the number of state representatives in the managerial bodies of joint-stock companies, and at the same time, it will be desirable to upgrade the level of their qualification as well as that of their material incentives.

5) The opposite direction of the possible transformation of unitary enterprises is the creation of treasury enterprises based on the property of the latter which would operate in accordance with the right of operative management. Nevertheless, the duty of the State to bear subsidiary liability for the obligations of these enterprises creates a potential possibility for increasing state expenses, as well as the burdens imposed on the budgetary system. Most likely, that is the reason why treasury enterprises have failed to become a common phenomenon in the state sector of the Russian economy. Similar problems have recently surfaced in relation with the expected reorganization of social services.

If the concept of not burdening the budget by any unscheduled liabilities becomes decisive in the further transformation of the state sector, there will inevitably emerge a question of whether it would be feasible to liquidate the organizational legal form of a unitary enterprise based on the right of economic jurisdiction - the form which, despite all its drawbacks, has at least one advantage over an enterprise based on the right of operative management (treasury enterprise): the State bears no liability for its obligations.

6) The orientation towards the speed of privatization, the desire to complete it, whatever the costs, by a certain date, could be very detrimental to the quality of the process. Despite the fact that the title of the Government's document mentions the prognostic plan (program) of privatization for the year 2004 and the main directions of privatization up to the year 2006, its text actually contains the lists of objects to be privatized only for the year 2004.

7) Another serious problem is the possibility of a relatively rapid elaboration of the criteria of efficiency as regards the use of state and municipal property in not-profit undertakings, because the corresponding functions of both the State and local authorities are rather numerous.

The subjection of the activity conducted by the enterprises of the state sector to the goal of satisfying certain social demands does not permit us to reduce the estimation of the efficiency of their activity to the mere value of direct revenues received by the State from one or other enterprise in the form of dividends or a share in profits; it is also necessary to take into consideration the indirect effects influencing the economy in general. At the same time, these effects are, as a rule, rather difficult to account and analyze in financial terms. Some serious problems could also emerge in the course of attempts to introduce a separate accounting of expenses and revenues for different directions of activity within a single object of federal property (as exemplified by the process of reformation of natural monopolies).

[10] For more details, see, for example, Radygin A., Simachev Yu. Mal'ginov G. et al. «Povyshenie effektivnosti biudzhetnogo finansirovaniia gosudarstvennykh uchrezhdenii i upravleniia gosudarstvennymi unitarnymi predpriiatiiami» (The enhancement of efficiency of budgetary financing of state institutions and that of the management of state unitary enterprises). Volume II. «Problemy upravleniia i zadachi regulirovaniia v sektore gosudarstvennykh unitarnykh predpriiatii». (The problems of management and the aims of regulation in the sector of state unitary enterprises). M., IEPP (IET) -CEPRA, 2003.

8) Finally, there have emerged some rather difficult problems as regards the provision of an adequate normative and legal base. It is evident that the suggested legal structure necessitates the adoption of numerous attendant regulatory and legal acts, thus resulting in the emergence of equally numerous problems. Thus, the actual cancellation of the right of economic jurisdiction would make it necessary to adopt a law on treasury enterprises, whereas the law on unitary enterprises already regulating this organizational legal form has been in effect for just slightly more than a year. Similarly, any speeding up of privatization could require the introduction of alterations in the less than two-year-old law «On privatization of state and municipal property» in order to revise the limitations imposed on this process. The question of legislation stability would therefore become purely rhetorical.

The Edict of the President of the RF No 1514 of 21 December 2001, which was issued in parallel with the adoption of the new law on privatization, contained an instruction to the effect that the RF Government should submit for approval, by 1 March 2002, the lists of strategic enterprises and strategic joint-stock companies. Nevertheless, so far nothing has been heard concerning any approval of any new list of strategic enterprises and joint-stock companies. It should also be mentioned that the text of the law reveals no mechanism for the President to consider the proposals submitted by the Government. Apparently, the Head of the State would have to rely on expert opinions of the structures directly subordinated to him. And yet, it is not quite clear whether it would be the Presidential Administration, the Security Council or some other organ.

Among all the new mechanisms of federal property management, the only relatively well-developed one is, in fact, the institute of state representatives in the managerial bodies of joint-stock companies. There is no legislation on concessions. There is no absolute clarity in the matter of prospects for the partial transformation of state-owned establishments (including non-profit organizations created on the basis of some types of social institutions) into other organizational legal forms. Serious problems can be expected in the course of the introduction into practice of the mechanism of trust management in respect to state-owned blocks of shares. The methods which came into practice in the 90s are predominantly criticized, while all the mechanisms involved are far from being properly developed.

A rather distinctive problem is the matter of coordination of the draft-law «On state and municipal property» with the draft-laws «On the introduction of alterations and amendments in the Federal Law «On the organization of legislative (representative) and executive organs of state authority of subjects of the Russian Federation» and «On the general principles of organization of local self-government in the Russian Federation».

Conclusions

In Russia, the achievement of a considerable enhancement of economic agents' economic efficiency upon their privatization is far from being evident. There are several reasons for that: the specifics of the Russian privatization process in early '90s (a giant role played by managers, prevalence of «insiders» in the primary post-privatization ownership structure, due to the respective privileges) has led to many privatized companies' failure to get a new efficient owner. The consequent capital redistribution took a lot of time, which encouraged the continuous degradation of enterprises' production capacity and decreased their weakness in terms of adjustment to new conditions. Furthermore, the 1997-98 financial crisis has proved the genuine concerns about the ability of the Russian commercial banks (along with a number of other categories of «outsiders»), lacking both financial capacity and managerial skills, to efficiently exercise the corporate control and strategic ownership of shares. In many cases, such shareholders have proved to be incapable to ensure an efficient restructuring of the acquired enterprises of the real sector and to bear the costs related to the control over them.

The current structure of the national economy also poses an obstacle to the increase in economic efficiency in the post-privatization period. The transformational decline experienced by the Russian economy over the '90s primarily battered the processing sector. The shift of the production structure towards the mineral output, has caused Dutch disease. The potential room for managers' innovations has become narrowed, while the effect of the labor market mechanisms has proved to be yet more imperfect (latent unemployment, the limited mobility of labor force).

Similar to the Western practice, the privatization strategy pursued by the Russian government implied the authorities holding certain control instruments over the situation at the privatized enterprises, although the devices (fixing of stakes, issuance of the «Gold Share», restrictions in terms of the composition of participants in privatization deals, putting forward investment and social conditions in the course of the change of ownership) differed considerably from the Western ones.

However the government control instruments over the privatization process were not in conjunction with other directions of the government economic policy (anti-trust, social, and industrial policies). It is only now that the RF government began to elaborate the ways to restructure natural monopolies and to tackle the problem of adequate social policy. The authorities also undertook the first sound steps on the way to improve their control over public property and the respective raising of budget non-tax revenues.

Russia's experience fully proves the conclusion of the necessity of political support to the privatization process. At the same time we regret to argue that the practical apprehension of this solution based on the Western experience was reduced to a mere understanding of the arbitrary employment of the factor of political will at the high level of authority, without backing that up with a detailed and ambivalent law and ensuring transparency of the respective transactions. In the Russian conditions of the '90s (a weak judiciary system, informal ties between single government authorities and businesses, unjustified preferences granted to certain structures compared with the others, elements of corruption and crime), that has led to highly negative results.

Thanks to the tangle between the government authorities and businesses, the rent-oriented behavior characteristic of managers of single enterprises in many cases has outspreaded over groups of companies and the whole sectors of the economy. The intense conflicts of interests between various bureaucratic structures within the government system, large financial structures, top management and their lobbying of their interests camouflaged under structural and legal restructuring made direct sales based upon negotiations and auctions (that were the main privatization methods in Western countries) ineffective.

The instability and the loose development of the Russian stock market, which is attributed to «emerging markets», have determined the impossibility of the implementation of a wide-scale privatization through public placement of shares on the securities market. Such a background extremely complicates the implementation of the pre-privatization preparation of enterprises and selection of financial consultants within the country. The chances to attract foreign consultants were originally constrained by Russia's small financial capacity and, in many cases, the former lacking expertise of the Russian specifics. The existence of rather a perfect corporate law found itself in conflict with the information disclosure problem, and in many cases the information was made unavailable for potential investors. The bankruptcy procedures tended to be used mostly against owners rather than managers, which became especially notable at the stage of the monetary privatization of 1995- 2000, when the suppressed inflation and the growing stock market created relatively good prospects for the economic growth renewal.

At the first sight, the Russian privatization has not faced any serious counteraction on the part of employees of the enterprises concerned and trade-unions, thus it would not require an implementation of costly social programs. In reality, however, the need in arranging compromise between the government

and the parliament and various social groups in 1992, at the stage of mass privatization, forced the government to introduce a huge system of privileges for employees at privatized enterprises (including their managers singled out as a special category). Initially, such a scheme in many cases led to the emergence of the situation of «informal contract» between managers of the privatized enterprises and their employees, providing that underlying such a 'contract' there was the «closeness of capital and *status-quo* for managers in exchange for maintenance of jobs and some social benefits at the enterprise» principle.

Then, however, in the course of the continuous production decline, the formal nature of such an employment was becoming increasingly evident, and the positions of the staff at such enterprises were increasingly deteriorating. The managers at newly privatized enterprises proved to be absolutely uncontrolled, while the new owners that appeared at the enterprises after capital redistribution were holding no obligations, both formalized (as it would have happened in the case of the government sales of its assets) and informal (within the framework of the labor collective) alike. In the context of the government's permanent failure to fulfill its social obligations due to the budget crisis, such a situation created a very specific social tension, which at the same time became incorporated into the overall social instability characteristic of the post-reform Russia.

In result of the ownership redistribution and struggle for corporate control the prevailing feature of Russian corporate sector now is concentrated property of insiders, including large external shareholders, which participate directly in management or strictly controls employed managers. Minority shareholders in most cases are kept away from making-decisions process. The investment policy is aimed at the use of own funds. The main property and corporate control redistribution are going on outside organized markets. The greater part of joint-stock companies formally belong to public companies, but is really operating as private enterprises.

Sources

Bizaguet A. (1988): Le secteur publique et les Privatisations. - Paris: PUF.

Blaszczyk B., R.Woodward, eds. (1996): Privatization in Post-Communist Countries. Warsaw: CASE, Vol.1-2.

Bohm A., ed. (1997): Economic Transition Report 1996. - Ljubljana: CEEPN.

Boyko M., Shleifer A., Vishny R. (1995): Privatizing Russia. - Cambridge MA: The MIT Press.

Dolgopyatova T. (2002): Corporate control in Russian Companies: Models and Mechanisms. Preprint WP 1/2002/05. Moscow, SU-HSE.

Dolgopyatova T. (2003): Stanovlenie korporativnogo sectora I evolutsiya aktsionernoi sobstvennosti (Composition of corporate sector and evolution of equity ownership). Preprint WP 1/2003/03. Moscow, SU-HSE.

Dynkin A., Sokolov A. (2001): Integrorovannye biznes-gruppy – proryv k modernizatsii strain (Integrated business-groups – break to the modernization of the country). Moscow. Centre of Statistics and Science Studies.

Earl J., Frydman R., Rapaczynski A., Eds. (1993): Privatization in the Transition to a Market Economy. London, Pinter Publishers.

EBRD (1997): Transition Report 1997. Enterprise Performance and growth. London.

EBRD (1998): Transition Report 1998. Financial Sector in Transition. London.

Ernst M., Alexeev M., Marer P. (1996): Transforming the Core. Restructuring Industrial Enterprises in Russia and Central Europe. Westview Press.

Hanke S.H., Ed. (1987): Privatization and Development. International Center for Economic Growth. - San Francisco: ICS Press, 1987.

Hanson Ph. (1990): Ownership Issues in Perestroika // Perestroika and the private sector of the Soviet Economy. Ed. by J. Tedstrom. - Boulder: Wetview press, 1990. - P. 67-79.

IET / IEPP (1992-2003): Annual reports on the Russian economy. Trends and prospects. Moscow: Institute for the Transitional Economy.

IEPPP / IET (1998): Ekonomika perekhodnogo perioda. Ocherki economicheskoi politiki postkommunisticheskoi Rossii 1991-1997 (The economy in transition. Essays on the economic policy in the post-communist Russia 1991-1997). Moscow.

IEPPP / IET (2003): Ekonomika perekhodnogo perioda. Ocherki economicheskoi politiki postkommunisticheskoi Rossii 1998-2002 (The economy in transition. Essays on the economic policy in the post-communist Russia 1998-2002). Moscow.

Johnson S., Kroll H. (1991): Managerial Strategies for Spontaneous Privatization // Soviet Economy. - 1991. - Vol. 7. - N 4. -P. 281-316.

Kikeri S., Nellis J., Shirley M. (1992): Privatization: the Lessons of Experience.- Washington: The World Bank.

McFaul M., T.Perlmutter, Eds. (1995): Privatization, Conversion, and Enterprise Reform in Russia. With a forew. by Kenneth Arrow. Boulder, San Francisco, Oxford: Westview Press, 1995.

Nellis J., Shirley M. (1991): Public Enterprise Reform: The Lessons of Experience.- Washington: The World Bank, 1991.

OECD (1995): Mass Privatization. An Initial Assessment. Paris: OECD.

OECD (1998): Capital Market Development in Transitional Economies. Country Experience and Policies for the Future. Paris, OECD.

Perevalov, Yu., Grimadi I., Dobrodei V. (1999): Vliyaet li privatizatsiya na deyatel'nost' predpriyatiy (Does the privatization influence on the enterprise activity ?). – In: Voprosy ekonomiki (Issues of the economics), 1999, No. 6, pp. 76-89.

Radygin A. (1994): Reforma sobstvennosti v Rossii: na puti iz proshlogo v buduschee. (Ownership Reform in Russia: on the Way from the Past to the Future). M.: Respublika.

Radygin A. (1995a): The Russian Model of Mass Privatization: Governmental Policy and First Results. - In: Privatization, Conversion, and Enterprise Reform in Russia. With a forew. by Kenneth Arrow. Boulder, San Francisco, Oxford: Westview Press, 1995, pp. 3-18.

Radygin A. (1995b): Privatization in Russia: Hard Choice, First Results, New Targets. London: CRCE-The Jarvis Print Group.

Radygin A. (1999): Ownership and Control in the Russian Industry. OECD/World Bank Global Corporate Governance Forum. OECD: Paris, 1999.

Radygin A., Entov R. (1999): Institutsional'nye problemy razvitiya korporativnogo sectora: sobstvennost', kontrol, rynok tsennykh bumag (Institutional issues of the corporate sector development: ownership, control, securities market). Moscow. IEPP (IET), Nauchnye trudy (Scientific papers), N 12.

Radygin A., Entov R., Malginov G. (2001): Transformatsiya otnoshenii sobstvennosti I sravnitelnyi analiz rossiskikh regionov (Transformation of ownership relations: comparative analysis of the Russian regions and general problems of the emergence of the new system of ownership rights in Russia). M., IEPP (IET) - CEPRA.

Radygin A., Gutnik V., Mal'ginov G. (1995): Struktura aktsionernogo kapitala i korporativny kontrol': kontrrevolyutsiya upravlyayuschikh? (Postprivatization structure of the equity capital and corpoprate control: counter-revolution of the managers ?) - In: Voprosy ekonomiki (Issues of the economics), N 10, pp. 47-69.

Radygin A., Simachev Yu. Mal'ginov G. et al. (2003): Povyshenie effektivnosti biudzhetnogo finansirovaniia gosudarstvennykh uchrezhdenii i upravleniia gosudarstvennymi unitarnymi predpriiatiiami (The enhancement of efficiency of budgetary financing of state institutions and that of the management of state unitary enterprises). Volume II. Problemy upravleniia i zadachi regulirovaniia v sektore gosudarstvennykh unitarnykh predpriiatii. (The problems of management and the aims of regulation in the sector of state unitary enterprises). M., IEPP (IET) - CEPRA.

Railean V., Samson I., Eds. (1997): Post-Privatization Period in Eastern Europe: a Chance for Enterprises and Shareholders. Chisinau.

Rosenbaum E., Bonker F., Wagener H.-J., Eds. (1999): Privatization, Corporate Governance and the Emergence of Markets. London. MacMillan, Basingstoke.

Shapiro C., Willig R. (1990): Economic Rationales for the Scope of Privatization/ The Political Economy of Public Sector Reform and Privatization. – London. Westview Press, 1990.

Shleifer A., Vishny R. (1994): Politicians and Firms. – In: Quarterly Journal of Economics, 1994, Vol. CIX, pp. 995-1025.

State Statistical Committee of the Russian Federation (RF Goskomstat) (1993-2002): Statisticheskiye bulleteni (Svedinya) o khode privatizatsii gosudarstvennykh i munitcipalnykh predriyatiy v RF za Yanvar-Decabr... (Statistical bulletins on the progress of privatization of state and municipal enterprises (objects) for January-December). Moscow.

State Statistical Committee of the Russian Federation (RF Goskomstat) (2000): Finansy Rossii (Finances of Russia). Moscow.

State Statistical Committee of the Russian Federation (RF Goskomstat) (2002): Rossiiskii statisticheskii ejegodnik (Russian statistical annual). Moscow.

The World Bank - OECD (1997): Between State and Market: mass privatization in transitional economies. Ed. by Ira W. Liberman, Stilpon S. Nestor, Rai M. Desai. The World Bank-OECD.

The World Bank (1996): From plan to market. World Development Report 1996. Oxford University Press.

The World Bank (1998): World Development Report 1998/1999. Knowledge for Development. Washington D.C.

UNCTAD (1993): Public enterprises restructuring and privatization. An annotated bibliography / UNCTAD Secretariat.- Geneve: UNCTAD, 1993.

Vassilyev D. (1995): «Privatization in Russia – 1994». In: Privatization in Central & Eastern Europe 1994. Ed.by Andreja Bohm. CEEPN Annual Conference Series N 5, pp. 343-385.

Vickers J., Yarrow G. (1988): Privatization: An economic Analysis. The MIT Press.

Vuylsteke Ch. (1988): Techniques of privatization of State-Owned Enterprises. Vol.1 «Methods and Implementations»/ World Bank technical paper N 88.- Washington: The World Bank, 1988.

Williamson O.E. (1990): A Comparison of Alternative Approaches to Economic Organization. - In: Journal of Institutional and Theoretical Economics, 1990, Vol. 146, N 1.

Yarrow (1986): Privatization in theory and practice. – In: Economic policy. -Cambridge University Press. - 1986. - April. P. 324 -356.