

**Contract for Consultancy Services** АГЕНЦИЈА ЗА ПРИВАТИЗАЦИЈУ

Бр. 816-0102  
16.03 2002 год.  
БЕОГРАД

**on the Tender Privatization of the Tobacco Industry:**

**Duvanska industrija Niš and  
Duvanska industrija Vranje,**

**between**

**Privatization Agency  
Republic of Serbia  
Terazije 23, 6<sup>th</sup> floor  
11000 Belgrade  
Federal Republic of Yugoslavia**

**and**

**Morgan Stanley & Co. Limited  
25 Cabot Square  
London, E14 4QA  
United Kingdom**

**and**

**Linklaters Miculiti & Asociatii SCPA  
8 Nicolae Lorga  
Bucharest  
Sector 1, Romania**

**Dated: 16 September 2002**

This CONTRACT (hereinafter called the "Contract") is made the [day] day of the month of September, 2002, between, on the one hand, The Privatization Agency (hereinafter called the "Client") and, on the other hand, each of Morgan Stanley & Co. Limited and Linklaters Miculiti & Asociatii SCPA (hereinafter each called a "Consultant" and together the "Consultants"). Morgan Stanley shall be exclusively liable to the Client for the Services rendered under this Contract, except for the Services to be rendered by Linklaters.

## INTRODUCTION

(1) The Client has issued a Request for Proposals ("RFP") to certain advisory firms (including the Consultants) with respect to the tender privatization of the Tobacco Industry – Duvanska industrija Niš and Duvanska industrija Vranje, (the "Project"), calling for those firms to bid to provide advisory and consultancy services to the Agency as defined in the RFP and in this Contract;

(2) The Consultants have submitted a proposal setting out their professional skills, personnel and technical resources to carry out the required services and have been selected by the Agency according to the tender rules set out in the RFP. This Contract contains the terms and conditions of providing those services to the Agency.

## TERMS AND CONDITIONS

### 1. Contents of Contract

The following documents attached hereto shall be deemed to form an integral part of this Contract:

Annex A: Description of the Services

Annex B: Reporting Requirements

Annex C: Key Personnel and Sub-Consultants

Annex D: Breakdown of Contract Price in Foreign Currency

Annex E: Breakdown of Contract Price in Local Currency

**not used**

Annex F: Services and Facilities Provided by the Client

### 2. General Provisions

#### 2.1 Definitions

Unless the context otherwise requires, the following terms whenever used in this Contract have the following meanings:

- a) "**Applicable Law**" means the laws and any other instruments having the force of law in the Federal Republic of Yugoslavia (or any successor state), and those of the Republic of Serbia, as they may each be issued and in force from time to time;
- b) "**Companies**" means Duvanska industrija Niš and Duvanska industrija Vranje;
- c) "**Contract**" means this Contract signed by the Parties together with all the documents listed in Clause 1 of this signed Contract;
- d) "**Contract Price**" means the price to be paid for the performance of the Services, in accordance with Clause 7;

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- e) **“Foreign Currency”** means any currency other than the currency of the Government;
- f) **“Government”** means the Government of the Republic of Serbia;
- g) **“Linklaters”** means Linklaters Miculiti & Asociatii SCPA;
- h) **“Local Currency”** means the currency of the Government;
- i) **“Morgan Stanley”** means Morgan Stanley & Co. Limited;
- j) **“Party”** means the Client or any of the Consultants, as the case may be, and **“Parties”** means all of them;
- k) **“Personnel”** means persons hired by each of the Consultants or by any Sub-Consultant as employees and assigned to the performance of the Services or any part thereof;
- l) **“Project”** means the privatization of Tobacco Industry – Duvanska industrija Niš and Duvanska industrija Vranje, by means of tender privatization in accordance with the Applicable Law;
- m) **“Services”** means the work to be performed by the relevant Consultant pursuant to this Contract, as described in Annex A; and
- n) **“Sub-Consultant”** means any entity to which a Consultant subcontracts any part of the Services in accordance with the provisions of Clauses 4.4 and 5.

## 2.2 Language

This Contract has been executed in the English language which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Contract.

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## 3. Commencement, Completion, Modification, and Termination of Contract

### 3.1 Commencement and Duration of Contract

This Contract shall come into effect on the date the Contract is signed by all of the Parties (the “Effective Date”) and unless terminated earlier pursuant to Clause 3.4, this Contract shall have a duration of twenty four (24) months from the Effective Date (or such later date as the Parties may agree in writing) (the “Contract Period”).

### 3.2 Commencement of Services

The Consultants will begin carrying out the Services within seven (7) days after the Effective Date.

### 3.3 Modification

Modification of the terms and conditions of this Contract, including any modification of the scope of the Services or of the Contract Price, may only be made by written agreement between the Parties.

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### 3.4 Termination

#### 3.4.1 By the Client

The Client may terminate this Contract in respect of either or both Consultants for cause, by written notice of termination to the relevant Consultant with immediate effect, which shall include without limitation the occurrence of any of the events specified in paragraphs (a) through (e):

- (a) if either of the Consultants does not remedy a material failure in the performance of its obligations under the Contract, within fifteen (15) days after notice in writing by the Agency, or within any further period as the Client may have subsequently approved in writing;
- (b) if either of the Consultants becomes insolvent or bankrupt;
- (c) if, as the result of Force Majeure, either of the Consultants is unable to perform a material portion of the Services for a period of not less than thirty (30) days;
- (d) if either of the Consultants, in the reasonable judgment of the Client, has engaged in corrupt or fraudulent practices in competing for or in executing the Contract; or
- (e) if, as specified in Clause 4.5.1, either of the Consultants has delayed the submission of the deliverables and such delay has resulted in a contractual fine in excess of 20% of the amount of the Retainer Fee due for the respective deliverable.

Any such termination shall be without continuing obligation for the Parties who are the subject of the termination, provided that the indemnification, confidentiality and the Applicable Law provisions shall remain operative.

For the purpose of this Clause:

“corrupt practice” means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the selection process or in contract execution.

“fraudulent practice” means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of the Client, and includes collusive practice among the Consultants and others (prior to or after submission of proposals) designed to establish prices at artificial non-competitive levels and to deprive the Client of the benefits of free and open competition.

#### 3.4.2 By the Consultants

Either of the Consultants may terminate this Contract for cause, by written notice to the Client with immediate effect, which shall include without limitation the occurrence of any of the events specified in paragraphs (a) and (b) of this Clause 3.4.2, save that only Morgan Stanley may terminate in the case of the occurrence of the event specified in paragraph (a):

- (a) if the Client fails to pay any monies due to Morgan Stanley pursuant to this Contract (and not subject to dispute) within forty-five (45) days after receiving written notice from Morgan Stanley that such payment is overdue; or
- (b) if, as the result of Force Majeure, either of the Consultants is unable to perform a material portion of the Services for a period of not less than thirty (30) days.

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Any such termination shall be without continuing obligation for the Parties who are the subject of the termination, provided that the indemnification, confidentiality and the Applicable Law provisions shall remain operative.

**3.4.3** Each Party may terminate this Contract without cause by not less than 30 (thirty) days written notice to the relevant Party. Any such termination by the Client shall be without continuing obligation, save for any compensation earned by the Consultants to the date of termination and Morgan Stanley's right to the Success fee on the Closing of Transaction as defined in Clause 7.3., if Closing occurs within 12(twelve) months following such termination. Any such termination by either of the Consultants shall be without continuing obligation, save for Morgan Stanley's obligation to repay any Retainer fee received by Morgan Stanley and provided that in the case of termination by any of the Parties, the indemnification, confidentiality and the Applicable Law provisions shall remain operative.

**4. Obligations of the Consultants**

**4.1 General**

4.1.1 Each Consultant shall perform those Services for which it is designated as being responsible pursuant to the terms of Annex A and shall carry out its obligations with all due diligence, efficiency, and economy, in accordance with standards and practices generally expected from professionals providing such services. Each of the Consultants shall always act, in respect of any matter relating to this Contract or to the Services to be provided by such Consultant, in accordance with its fiduciary duties to the Client.

4.1.2 The obligations of each of the Consultants under this Contract are several. Neither Consultant shall be responsible to the Client or liable for any breach of the duties or obligations, or liabilities of, the other Consultant under this Contract. Neither Consultant owes a duty to the Client to procure that the other Consultant complies with its duties under this Contract.

**4.2 Conflict of Interests**

**4.2.1 Consultants Not to Benefit from Commissions, Discounts, etc.**




The remuneration of the Consultants pursuant to Clause 7 shall constitute the Consultants' sole remuneration in connection with this Contract or the Services, and each of the Consultants agrees not to accept for its own benefit any commission, fee or similar payment in connection with activities pursuant to this Contract or to the Services or in the discharge of its obligations under the Contract. Each of the Consultants shall use its best efforts to ensure that the employees of that Consultant shall not accept any such additional remuneration.

**4.2.2 Prohibition of Conflicting Activities**

Neither of the Consultants nor employees of that Consultant shall engage, either directly or indirectly, in any of the following activities:

- a) during the term of this Contract, any business or professional activities in the Government's country which conflicts with the activities assigned to it under this Contract; or

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- b) during the Contract period and for a period of two (2) years after the termination of this Contract:
  - (i) acting as a purchaser of the shares and/or assets which are the subject of this Contract on which it advised the Client under this Contract; and
  - (ii) providing advice with respect to the shares and/or assets which are the subject of this Contract to a potential purchaser.

**4.2.3 Actions of Sub-Consultants**

Notwithstanding the foregoing the Consultants' shall not be responsible for or have any liability to the Client in respect of any of the actions or omissions any of their respective Sub-Consultants or such Sub-Consultants' employees which would constitute a breach of the provisions of Clauses 4.2.1, 4.2.2 and 4.3. Each of the Consultants shall however procure that its Sub-Consultants provide a letter to the Client confirming that such Sub-Consultant will comply with such provisions

**4.3 Confidentiality**

**4.3.1 Non Disclosure**

Neither of the Consultants nor employees of that Consultant shall during the term and for two (2) years after the expiration of this Contract, disclose any confidential information relating to the Project, the Services, this Contract, or the Client's business or operations without the prior written consent of the Client.

Notwithstanding the foregoing, the following will not constitute "confidential information" for the purposes of this Contract:

- a) Information which is obtained by the Consultants from a third person, who insofar as is known to the Consultants, is not prohibited from transmitting the information by a contractual, legal or fiduciary obligation to the Client; and
- b) Information which is or becomes publicly available otherwise than as a result of a breach of this Contract by either of the Consultants.

**4.3.2 Permitted Disclosure**

In the event that either of the Consultants is requested or required (by any legal or other regulatory authority) to disclose any confidential information, it is agreed that the relevant Consultant will provide the Client with prompt notice of any such request or requirement so that the Client may seek an appropriate remedy to prevent such disclosure (or to assist the Client in seeking such remedy) or waive the Consultants compliance with the provisions of this Clause 4.3. If, failing the obtaining of an appropriate remedy or the receipt of a waiver hereunder, the relevant Consultant is in the opinion of its legal advisors, compelled to disclose confidential information, the Consultant may disclose that portion of the confidential information which its legal advisors advise that it is compelled to disclose.

**4.4 Consultants' Actions Requiring Client's Prior Approval**

Each of the Consultants shall obtain the Client's prior approval in writing before taking any of the following actions:

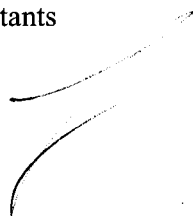
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- a) entering into a subcontract with any Sub-Consultant (except for the Sub-Consultants listed in Annex C) for the performance of any part of the Services to be carried out by such Consultant,
- b) subject to clause 5.2 relating to the removal and replacement of Personnel appointing members of the Personnel not already listed by name as being assigned to the Project by such Consultant or Sub-Consultant in Annex C ("Key Personnel-"), and
- c) publishing or issuing any information related to the Project to the potential investors or other entities, as well as publication of the information related to the Project in the mass media.

#### 4.5 Reporting Obligations

The Consultants shall submit to the Client the reports and documents specified in Annex B in the form and in the numbers set forth in the said Annex. The reports and documents shall be submitted in accordance with the timetable specified in Annex B save to the extent that the timetable is:

- a) impacted by events which are beyond the control of any of the Consultants, such as a failure by DIN and/or DIV and/or the Client to promptly provide all information necessary (in terms of scope, quality and content) to enable the production of such reports and documents to professional standards, provided that the Consultants shall notify promptly the Client in relation to any such event; or
- b) extended with the consent of the Client, such consent not be unreasonably withheld.

##### 4.5.1 Consultants to Adhere to the Deadlines

In the event that the Consultants have delayed submission of the reports and documents as specified in Annex B, and that the delay extends over a period of one week (7 days), subject to the provisions set out in clauses 4.5 (a) and (b), the Consultants shall pay a contractual fine equal to 5% of the amount due for such report or document as specified in clause 7.3 for every 7 days of delay but subject to a maximum of 20% of the amount of the Retainer Fee due for such report or document. This contractual fine shall be deducted from the amount due for the relevant report or document. In the event that the contractual fine exceeds 20% due to the Consultants' delay, the Client may exercise the right to terminate this Contract as specified in Clause 3.4.1.

#### 4.6 Documents Prepared by the Consultants to Be the Property of the Client

All reports, documents and deliverables submitted by any of the Consultants in accordance with Clause 4.5 shall become and remain the property of the Client, and each of the Consultants shall, upon request not later than upon termination or expiration of this Contract, deliver all such documents and deliverables to the Client, together with a detailed inventory thereof. Each of the Consultants may retain a copy of such documents and deliverables. The Consultants shall not use the documents related to this Project for purposes unrelated to this Contract without the prior written approval of the Client.

### 5. Personnel

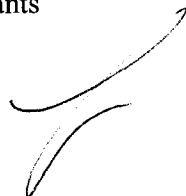
#### 5.1 Description of Personnel

The titles, agreed job descriptions, minimum qualifications, and estimated periods of engagement in the carrying out of the Services of the Key Personnel are described in Annex C. The Key Personnel and Sub-Consultants listed by title as well as by name in Annex C are hereby approved by the Client.

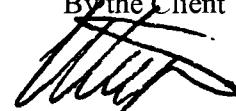
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**5.2 Removal and/or Replacement of Personnel**

If a Consultant deems it necessary to replace any of the Key Personnel, such Consultant shall subject to prior consultation with the Client, provide as a replacement a person of equivalent or better qualification.

If the Client (i) finds that any of the Personnel have committed serious misconduct or have been charged with having committed a criminal action, or (ii) has reasonable cause to be dissatisfied with the professional performance of any of the Personnel, such dissatisfaction being duly justified by written notice from the Client to the relevant Consultant specifying the grounds thereof, then the relevant Consultant shall, within 15 days of receipt of such notice, provide as a replacement a person with equivalent or better qualifications.

The relevant Consultant shall have no claim for additional costs arising out of or incidental to any removal and/or replacement of Personnel.

**6. Obligations of the Client**

**6.1 Exclusive appointment**

The Client hereby appoints the Consultants as its exclusive advisors to provide the Services for the Project, and undertakes to use its best efforts to facilitate the implementation and completion of the Project in accordance with its powers and duties under Applicable Law, including the facilitation of information-gathering from the Companies, visits to the Companies and actions required to be taken by the Companies.

**6.2 Services and Facilities**

The Client shall make available to the Consultants the services and facilities listed under Annex F.

**6.3 Approval by the Client**

On matters requiring Client approval under this Contract specified in Clause 7.3, the Client shall give its decision (approval or non-approval) as soon as possible but in any event within fourteen (14) days of receipt of request for approval submitted by any of the Consultants. Such approval cannot be unreasonably withheld. If the Client does not give its approval, the Client shall give clear reasons for such non-approval. If no communication is made to any of the Consultants by the Client within fourteen (14) days of receipt of request for approval, then the materials shall be deemed approved.

Requests by any of the Consultants for explanation and clarification shall be addressed by the Client within seven (7) days of receipt of such request.

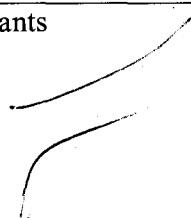
**6.4 Clients dealings with Sub-Consultants**

The Client agrees that it will not have any communication with, give instructions to, or take advice from any Sub-Consultant without the prior consent of the relevant Consultant. The Consultants will not be responsible for or liable to the Client for any such communications, instructions or advice to the extent that such consent is not given.

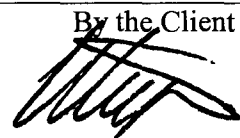
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## **7. Payments to the Consultants**

### **7.1 Retainer and Success Fee Remuneration**

The Consultants' total remuneration shall not exceed the Contract Price and shall be the sum of the Retainer Fee and the Success Fee. The Contract Price shall include all taxes and/or impositions payable by the Consultants under Applicable Law, staff costs, Sub-Consultants' costs, printing, communications, translations, travel, accommodation, and all other costs incurred by the Consultants in carrying out the Services. All invoicing will be in Euros with the Success Fee being calculated on the basis of the currency exchange rate quoted in the *Financial Times* on the date a definitive agreement for the relevant transaction is executed or, absent a definitive agreement, on the date the relevant transaction closes.

### **7.2 Contract Price**

**7.2.1** The "Retainer Fee" for Phase I of the Project is Euro 450,000.

**7.2.2** The Success Fee shall be calculated as a percentage of the Transaction Value as follows:

	Percentage
-Duvanska industrija Niš	1.8%
-Duvanska industrija Vranje	1.8%

The Transaction Value shall be defined as the aggregate of:

- (i) 100% of the agreed sales price for sale of shares or assets and/or new equity raised at the time of closing of the privatization of the Companies from purchasers or investors, excluding any capital contributed by the GOS and/or the Government of the Federal Republic of Yugoslavia (hereinafter: "the GOFRY") or any organizations representing the GOS and/or GOFRY; plus
- (ii) 50% of the total value of future investment commitments (cash or in-kind capital contributions to the capital of the Companies), guaranteed by the purchaser in the privatization contract during the period of three (3) years from closing; and
- (iii) 50% of the total value of future social program commitments in the Companies, guaranteed by the purchaser in the privatization contract during the period of three (3) years from closing.

The Consultants shall be entitled to be paid the Success Fee only upon closing of the transaction as defined in Section 7.3.

### **7.3 Payments**

Payments shall be made to Morgan Stanley, or such other person as Morgan Stanley may direct, for the benefit of itself and for the benefit of the other Consultants against invoice according to the following schedule:

The Retainer Fee shall be paid in installments based on the completion of specific milestones as follows:

- (i) 10% of the Retainer Fee as an advanced payment upon Commencement of Services
- (ii) 30% of the Retainer Fee upon approval of the Company Analysis Report
- (iii) 15% of the Retainer Fee upon approval of the Market Assessment Report and 15% of the Retainer Fee upon approval of the Valuation Report

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(iv) 30% of the Retainer Fee upon approval of the Tender and Sales Documents.

The fee for (i) shall be paid upon Commencement of the Services. Fees for (ii), (iii) and (iv) shall be payable following approval by the Client and shall be paid within thirty (30) days following presentation of an invoice.

The fees for each deliverable shall be the percentage as envisaged above.

The Success Fee will be payable to Morgan Stanley, or such other person as Morgan Stanley may direct, for the benefit of itself and for the benefit of the other Consultants upon closing of each and any individual transaction. Closing of the transaction shall mean signing of the Share Sale and Purchase Agreement, or any other agreement providing management or ownership (or other equity-linked) rights in the Companies, between an investor and the Client and /or the Companies or the Government as the seller in a transaction in connection with the Project. The Client will procure that the Success Fee is paid directly to Morgan Stanley from the sale proceeds on or after closing.

Save as provided for in Clause 7.1 the Consultants, Sub-Consultants and their Personnel shall pay such taxes, duties, fees, and other impositions, as may be levied on them under the Applicable Law the amount of which is deemed to have been included in the Contract Price.

In the event that, as a result of a change of law or otherwise, the Client is required to deduct or withhold on account of, any taxes, duties, fees or charges ("taxes") which are not, or to the extent that such taxes are not, liable to deduction or withholding, then any amounts due under this Contract shall be increased to such amount as may be necessary to remit to the Consultants the full amount they would have received had such payment been made without such deductions or withholdings. For the avoidance of doubt the Consultants shall not be entitled to receive fees which exceed the Contract price.

If the Client has communicated to the Consultants its non-approval of any of the reports and documents specified by the milestones set out in Clause 7.3 in accordance with the time periods set out in Clause 6.3 and such approval has not been unreasonably withheld, to the extent, the Client has not made payment, such circumstances shall not be considered as "delayed payment".

Parties entitled to receive fees under this Contract, other than Morgan Stanley, shall not have the right to request performance under this clause from the Client.

#### **7.4 Interest on Delayed Payments**

The interest rate is the rate applied to the delayed payments stipulated by Applicable Law.

### **8. Indemnity and Limitation on Liability**

#### **8.1 Indemnity**

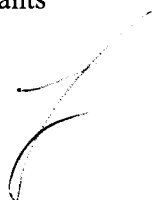
The Client agrees with Morgan Stanley (for the benefit of itself and all other persons referred to hereafter) to indemnify and hold harmless Morgan Stanley and its affiliates, the respective directors, officers, agents and employees of Morgan Stanley and its affiliates and each other person, if any, controlling Morgan Stanley or any of its affiliates from and against any losses, claims, damages or liabilities (or actions in respect thereof) related to or arising out of this engagement or Morgan Stanley's role in connection therewith and will reimburse Morgan Stanley and any other party entitled to be

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indemnified hereunder for all reasonable expenses (including legal fees) as they are incurred by Morgan Stanley or any such other indemnified party in connection with investigating, preparing or defending any such action or claim, whether or not in connection with pending or threatened litigation in which Morgan Stanley is a party. The Client will not, however, be responsible for any claims, liabilities, losses, damages or expenses that result from Morgan Stanley's intentional wrongdoing or gross negligence. The Client also agrees that neither Morgan Stanley, nor any of its affiliates, nor any officer, director, employee or agent of Morgan Stanley or any of its affiliates, nor any person controlling Morgan Stanley or any of its affiliates shall have any liability (whether direct or indirect, in contract or tort or otherwise) to the Client related to or arising out of this engagement or Morgan Stanley's role in connection therewith except for any such liability for losses, claims, damages, liabilities or expenses incurred by the Client that result from Morgan Stanley's intentional wrongdoing or gross negligence. For the avoidance of doubt Morgan Stanley acknowledges that it will be liable for such losses, claims, damages, liabilities or expenses incurred by the Client that result from Morgan Stanley's intentional wrongdoing or gross negligence.

The parties entitled to be indemnified under this clause, other than Morgan Stanley, shall not have the right to request performance under this clause from the Client.

### 8.2 Limitation on Liability

Any liability arising out of Clause 8.1 above will be subject to the following limitation:

- (a) The Client will not be liable for any loss of profit or indirect or consequential loss of Morgan Stanley whatsoever.

### 8.3 Conduct of Proceedings

In the case of third party claims, Morgan Stanley shall notify the Client of any such claim in reasonable detail as soon as reasonably practicable after becoming aware of such claim. Morgan Stanley further undertakes to keep the Client reasonably informed of progress in respect of any such matter and any proceedings being taken against Morgan Stanley or any other person entitled to be indemnified under this clause 8 in connection therewith, including steps proposed to be taken to defend any such proceedings, and will consult with the Client as to any such matters, proceedings or steps. The Client agrees that any failure by Morgan Stanley to notify the Client, to keep it informed or to consult with it as aforesaid shall not relieve the Client of any obligations under this agreement except to the extent that the Client is materially prejudiced by such omission and shall not relieve the Client from any other obligation or liability that the Client may have to Morgan Stanley or to any other person otherwise than under this Contract.

Morgan Stanley undertakes, on behalf of itself and each person entitled to be indemnified under this clause 8, that no such person will, without the Client's prior written consent (such consent not to be unreasonably withheld or delayed) settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding referred to herein. The Client will not, without Morgan Stanley's prior written consent (such consent not to be unreasonably withheld or delayed) settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit or proceeding in respect of which indemnification may be sought hereunder (whether or not any person entitled to be indemnified under this clause 8 is a party thereto) unless such settlement, compromise, consent or termination includes a release of each person entitled to be indemnified hereunder from all and any liabilities arising out of such action, claim, suit or proceeding.

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## **9. Force Majeure**

### **9.1 Definition**

For the purposes of this Contract, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Contract impossible.

### **9.2 No Breach of Contract**

The failure of a Party to fulfill any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Contract, all to be appreciated within the context of such a Force Majeure, and (b) has informed the other Parties as soon as possible about the occurrence of such an event.

### **9.3 Extension of Time**

Any period within which a Party shall, pursuant to this Contract, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

## **10. Settlement of Disputes**

### **10.1 Governing Law**

This Contract, its meaning and interpretation, and the relationship between the Parties shall be governed by the Applicable Law.

### **10.2 Amicable Settlement**

The Parties shall attempt, in good faith to settle amicably all disputes arising out of or in connection with this Contract or its interpretation.

### **10.3 Dispute Settlement**

Any dispute, controversy or claim arising out of or in connection with this Contract, including any question regarding its existence, validity, interpretation, breach or termination (a "Dispute") shall be referred to and finally resolved by arbitration under the rules of the International Chamber of Commerce (the "ICC Rules"), which Rules are deemed to be incorporated by reference into this Clause. The seat of arbitration shall be Zurich. The language of the arbitration shall be English.

### **10.4 Waiver of Sovereign Immunity**

To the extent that any Party may be entitled, in any jurisdiction, to claim sovereign immunity from suit, execution, attachment or other legal process, with respect to any claim brought against such Party under this Contract, and to the extent that in any jurisdiction sovereign immunity may be attributed to any Party (whether or not claimed), each Party hereby irrevocably agrees not to claim and commits to waive such immunity.

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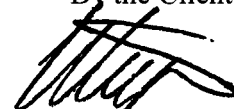
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**11. Authorized Representatives and Notification**

Each Party shall assign an authorized representative within its employment to be responsible for the Project whose duties shall be to liaise and cooperate with the other Parties.

For the Client:

Mr. Vladimir Čupić  
Director

Privatization Agency  
Republic of Serbia  
Terazije 23, 6th floor  
11000 Belgrade  
Yugoslavia

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For Linklaters:

Mr Michael Tetreault Schilling  
Linklaters Miculiti & Asociatii SCPA  
8 Nicolae Lorga  
Bucharest, Sector 1  
Romania

Telephone: +4021 307 1500  
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Email: mt.schilling@linklaters.com

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**12. Miscellaneous**

**12.1 Notices**

Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when (i) delivered in person to an authorized representative of the Party to whom the communication is addressed, or (ii) two (2) days after it has been sent by courier, registered mail, or facsimile (with signed confirmation of receipt) to such Party at the contact address specified in Clause 11.

**12.2 Location**

The Services shall be performed at such locations as are specified in Annex A and, where the location of a particular task is not so specified, at such locations, whether in the Government's country or elsewhere, as the Client may approve.

**12.3 No Assignment**

None of the Parties may assign or transfer any of its rights and obligations under this Contract without the prior written consent of all of the other Parties.

**12.4 Severability**

Whenever possible, each provision of this Contract shall be interpreted in such manner as to be effective and valid under the Applicable Law, but if any provision of this Contract shall be unenforceable or invalid under Applicable Law, such provision shall be ineffective only to the extent of such unenforceability or invalidity, and the remaining provisions of this Contract shall continue to be binding and in full force and effect. In the event of such unenforceability or invalidity, the Parties hereto shall negotiate in good faith to agree on the changes or amendments of this Contract that are required to carry out the intent of this Contract in light of such unenforceability or invalidity.

**12.5 Waiver**

None of the terms of this Contract shall be deemed to have been waived by any Party hereto, unless such waiver is in writing and signed by that Party. The waiver by any Party hereto of a breach of any provision of this Contract shall not operate or be construed as a waiver of any other provision of this Contract or of any further breach of the provision so waived. No extension of time for the performance of any obligation or act hereunder shall be deemed to be an extension of time for the performance of any other obligation or act.

**12.6 General**

Any advice or opinions provided by any of the Consultants may not be disclosed or referred to publicly or to any third party except in accordance with that Consultant's prior written consent. The Client agrees to keep confidential the terms of this engagement subject to any disclosure requirements that may be imposed by any legal or regulatory authority and agrees that no public announcement or communication relating to the subject matter of this letter shall be issued or dispatched without Morgan Stanley's prior consent. The Client agrees that following the closing of the Project any of the Consultants may place advertisements in financial and other newspapers and journals at the relevant Consultant's expense describing its involvement in any transaction resulting from its engagement under this letter and its services rendered.

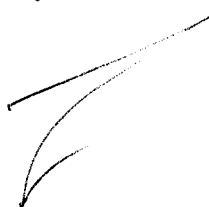
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This Contract may be executed in any number of counterparts , all of which taken together shall constitute one and the same agreement and any party may enter into this agreement by executing a counterpart.

Please note that Morgan Stanley and its associated companies (the "Morgan Stanley Group") are engaged in securities trading, securities brokerage and financing activities, as well as providing investment banking and financial advisory services. In the ordinary course of its trading, brokerage and financing activities, the Morgan Stanley Group may at any time hold long or short positions, and may trade or otherwise effect transactions, for its own account or the accounts of customers, in debt or equity securities or senior loans of any company that may be involved in this Project. The Client hereby acknowledges and agrees that, by reason of law or duties of confidentiality owed to other persons or the rules of any regulatory authority, the Morgan Stanley Group may be prohibited from disclosing information to the Client (or such disclosure may be inappropriate), in particular information as to the Morgan Stanley Group's possible interests as described in this paragraph.

The Parties agree that this Contract is the complete and exclusive statement of the agreement between the Parties which supersedes all proposals or prior arrangements, whether oral or written, and all other communications between the Parties relating to the subject matter of this Contract.

Signed on September 16, 2002:

For and on behalf of The Privatization Agency

   
Vladimir Cupic, Director

For and on behalf of Morgan Stanley & Co. Limited

  
Alan Apter, Managing Director

For and on behalf of Linklaters Miculiti & Asociatii SCPA

  
Michael Tetreault Schilling

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# Annexes

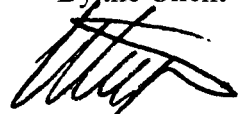
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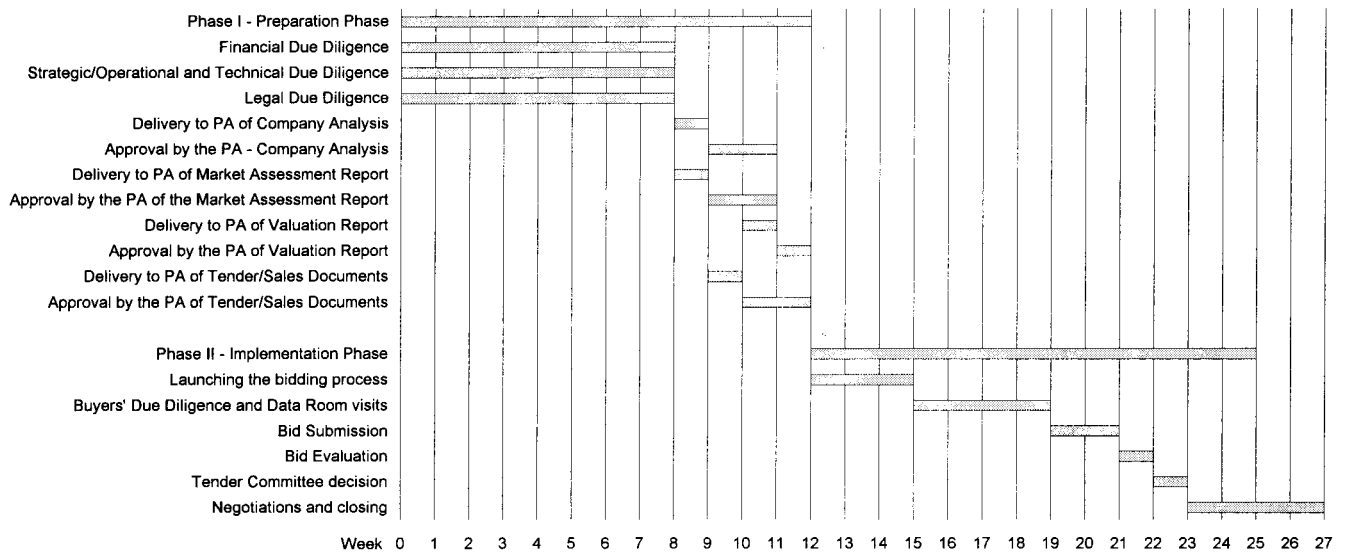
# Annex A - Description of the Services

## A1: WORK PLAN – SUMMARY TABLE

### Indicative Timetable

#### Section A

#### Exhibit 1: Indicative Summary Timetable



Please refer to Annex D, which sets out indicative percentages of services anticipated to be provided in Serbia.

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## A2: DETAILED SCOPE OF WORK

In accordance with the Terms of Reference the Scope of Work for Morgan Stanley and Linklaters will include the following:

### *I Preparation Phase*

- 1) Company Analysis
- 2) Valuation and Market Assessment
- 3) Preparation of Tender/Sales Documents

### *II Implementation Phase*

- 1) Launching and managing the bidding process including advice on tactics
- 2) Managing the due-diligence process and the data room(s)
- 3) Collection and evaluation of bids
- 4) Managing and supporting the negotiations and closing

In an effort to clarify roles and process at an early stage, Morgan Stanley and Linklaters will include the following in the I Preparation Phase:

- Define the process
- Conduct organisational meetings

Privatisations typically include full auctions as they meet both political and financial criteria:

- Value maximisation
- Full transparency and fairness

However, Morgan Stanley and Linklaters will adopt a consultative approach with the PA and potential bidders to maximise success.

Morgan Stanley will manage and coordinate the process to ensure value maximisation and full fairness and transparency.

Subject to no major unforeseen issues, potential purchasers' timing and receipt of relevant regulatory approvals Morgan Stanley and Linklaters will work to complete the privatisation based on the indicative timetable below:

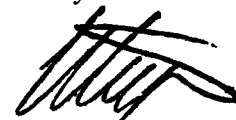
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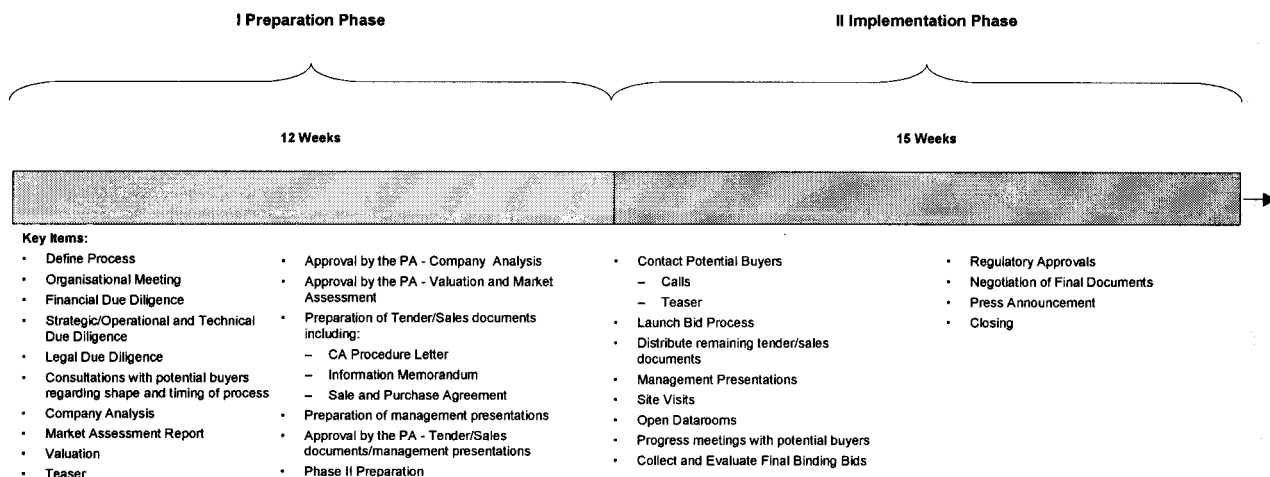
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## Exhibit 2: Privatisation Process Illustrative Timetable



### Section B

Morgan Stanley will submit progress reports to the PA on a bi-weekly basis during the course of the Privatisation Process. In addition, Morgan Stanley will submit the Final Report four weeks after the transaction closing date, which will summarise the key aspects of the transaction.

### I Preparation Phase

Morgan Stanley will conduct a detailed operational and financial review of DIN and DIV, the scope of which is set out on pages 8 and 9. Linklaters will conduct a legal review of all material aspects relevant to the privatisation and DIN and DIV.

Based on Morgan Stanley's findings it will consider, together with Linklaters various options for privatisation or strategic combinations and recommend a schedule and priorities for privatisation. If necessary, Morgan Stanley will recommend certain financial restructuring or other measures, such as audit or reconciliation to international accounting standards of the DIN and DIV financial statements, that may be required prior to privatisation.

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### Targeting Potential Buyers

- Morgan Stanley's thorough understanding of the PA's objectives, DIN and DIV and the potential buyers universe is key to a successful privatisation. Subject to further discussions with the PA regarding preferred buyers, Morgan Stanley's due diligence, and the legal due diligence, Morgan Stanley will conduct its review of potential buyers based on the following:
  - Strategic rationale
    - Lines of business
    - Geographic proximity
    - Complementary assets
  - Ability to add value
    - Sourcing relationships
    - Technical capabilities
    - Brand portfolio
  - Financial impact
    - Size/value fit
    - Synergy potential
    - Ability to finance
  - Feasibility
    - Interest level
    - Involvement in other competing/or pending transactions
    - Regulatory issues

There are several different categories of potential buyers, each wanting to acquire for different reasons, and each bringing different skills to the partnership. Given what we know of the potential buyer universe and of the PA's objectives, it is likely only international strategic buyers can provide the combination of investment and expertise required. We will, however, remain open-minded with regard to other potential acquirers.

Morgan Stanley will produce a comprehensive list of potential investors for DIN and DIV.

### Market Assessment

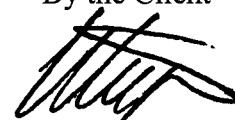
In order to reach a thorough understanding of the strategies followed by the potential bidders for DIN and DIV, and therefore better analyse their approach to the proposed privatisation, Morgan Stanley suggests contacting

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potential investors at a very early stage in the privatisation process. This approach would be carried out under the form of informal conversations aimed at gaining an understanding of each of the buyers' expectations, objectives, preferences and concerns. The experience of other privatisation processes, including those in the tobacco sector, demonstrates vendors cannot sell what buyers do not want to acquire. A key objective is to develop a competitive process between sufficient "qualifying" parties.

On the basis of the list of potential acquirers, Morgan Stanley will contact the potential candidates. In addition to enhancing investors' interest for the privatisation, our objective will be to determine investors' appetite for DIN and DIV. We will focus on the attractive items and deterrents considered by the potential investors. We will review each concern raised and assist you in developing adequate solutions. Given our objective of maximising the chance of success and the general terms of the transaction for the PA, we will analyse and propose solutions that will maximise investors' participation in the process and preserve the PA's interest.

Initial contacts with potential bidders will be made in accordance with the following steps:

- Preparation of a comprehensive list of potential investors to be contacted
- Approval by the PA of the list prepared previously
- Direct contact with key decision-makers
- Organisation of preliminary one-to-one meetings to solicit feedback on process structure to maximise buyers level of interest

Upon completion, our findings will be laid out in a Market Assessment Report that will include the list of the potential candidates together with our insights into buyers and recommendations on process to maximise competitive tension.

Based on our initial analysis of the Companies, we will prepare a brief description of the Companies ("Teaser") that will provide a general overview of the Companies' activities. This Teaser will be a summarised document that will be forwarded to potential interested candidates in order to promote their interest in this privatisation. The Teaser will contain the necessary information for potential candidates to define their potential interest without releasing substantive confidential information. Further details regarding the Teaser are explained in the Marketing Materials section.

#### **Company Analysis**

Upon completion of due diligence, Morgan Stanley will present a Company Analysis Report to the PA, as illustrated below. Morgan Stanley will prepare

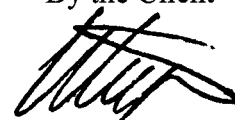
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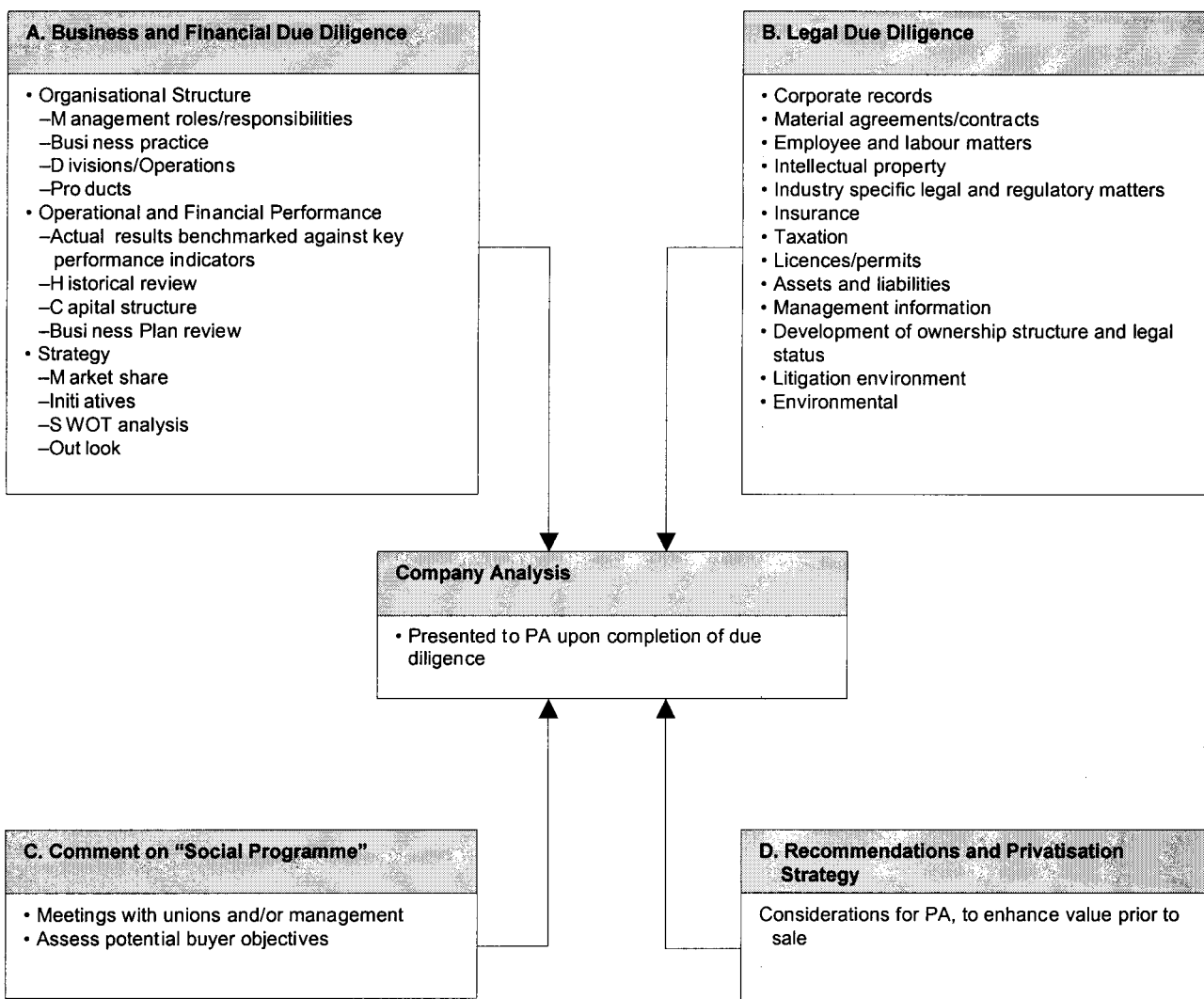


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and be responsible for Sections A, C and D of the report. Linklaters will prepare and be responsible for Section B and D of the report.

**Exhibit 3: Company Analysis**



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### **Scope of Morgan Stanley's Due Diligence**

For the purposes of the Company Analysis Report, Morgan Stanley will perform a business and financial due diligence of DIN and DIV which will include the following:

- Industry Overview
  - Market Characteristics and Structure
  - Key Trends and Statistics
  - Competitive Landscape
- Review of DIN and DIV Operations
  - Facilities
  - Manufacturing Process
  - Sourcing of Raw Materials
  - Suppliers
  - Research and Development
  - Products and Brands
  - Target Market
  - Customers
  - Sales, Marketing and Distribution
  - Product Pricing Policy
  - Market Share/Competitive Position
  - Review of Business Plan
  - Investment Requirements
  - SWOT Analysis
- Management and Employees
  - Organisational Structure
  - Experience/Responsibilities of Management Team
  - Employees/Union Relations
  - Human Resources Policies
- Financial Overview
  - Review of Historical Financial Statements

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- Review of Financial Projections (including key assumptions)
- Review of Budgeting Process
- Review of Capital Structure and Available Debt Facilities

Morgan Stanley will not perform an audit of any of the assets or liabilities of DIN or DIV. Morgan Stanley will not undertake any work customarily performed by audit and accounting firms, including audit of DIN and DIV's financial statements, reconciliation of such financial statements to international accounting principals or examination of the integrity of DIN and DIV's financial systems and controls. In performing its business and financial due diligence and its valuation work, Morgan Stanley will rely on the accuracy and completeness of the historical financial statements prepared by DIN and DIV. After performing its business and financial due diligence, Morgan Stanley may recommend that the PA or DIN and DIV retain an internationally recognised audit and accounting firm to perform certain procedures, such as an audit or reconciliation of the financial statements to international standards, in order to maximise the success of the privatisation process.

#### **Valuation**

Morgan Stanley will prepare valuation ranges for DIN and DIV using best practice valuation methodologies applied in the industry. In preparation for valuation Morgan Stanley will, together with DIN and DIV, develop forecasts of the expected future financial performance with various sensitivities and alternative cases.

Morgan Stanley will consider valuation using a range of valuation methodologies:

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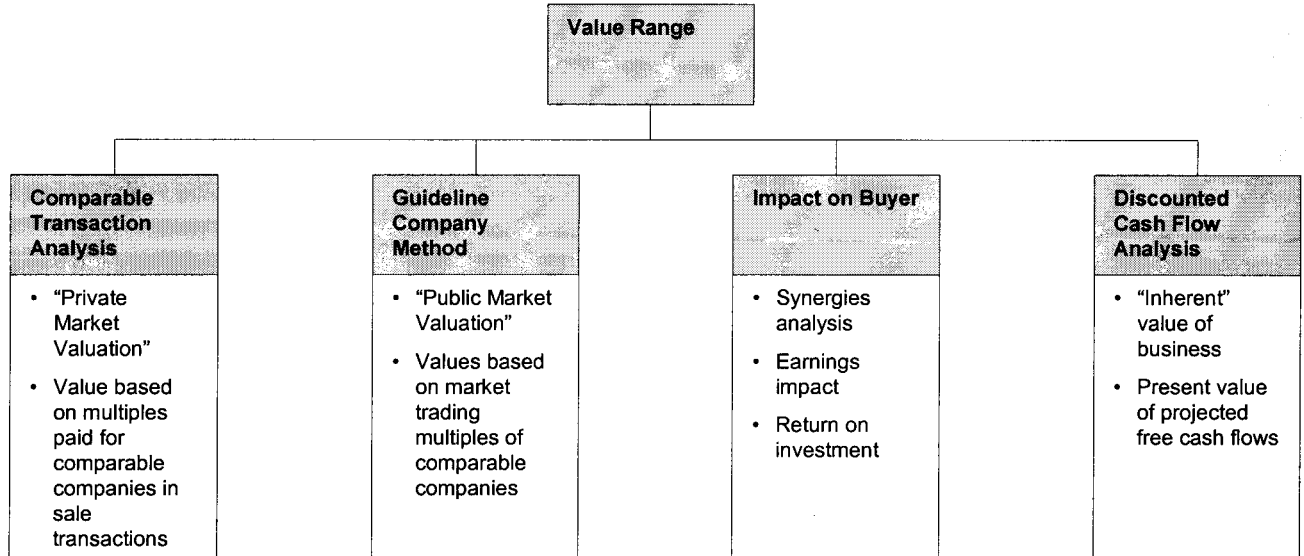
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#### Exhibit 4: Proposed Valuation Methodologies



Morgan Stanley will prepare a separate document showing the indicative range of the value of DIN and DIV (based on the proposed scenarios and applied methodologies) and the underlying assumptions. Morgan Stanley may also propose reasonable measures to enhance the value of the equity and include such proposals in the valuation report.

#### Marketing

The marketing process will be designed to identify the universe of potential buyers willing and able to submit final bids at an attractive valuation and with a strategic fit. Morgan Stanley will dedicate time to "educating" potential buyers in the opportunity to maximise their level of interest.

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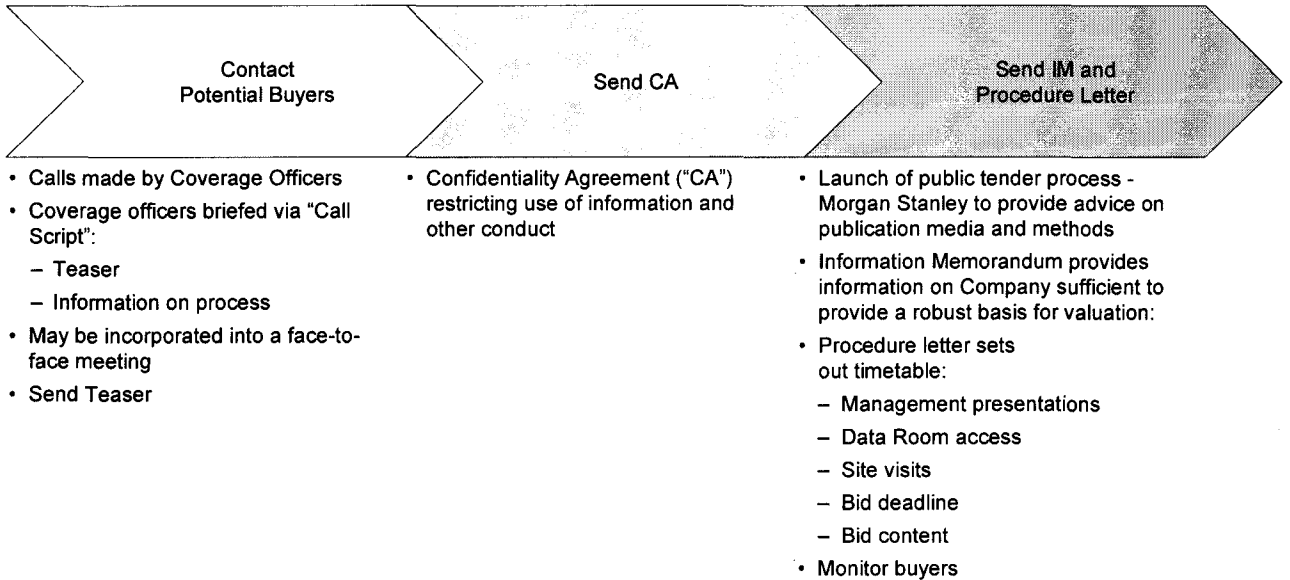
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**Exhibit 5: Marketing**



Before potential buyers receive non-public information they must sign a Confidentiality Agreement Linklaters will review and provide comments on a draft confidentiality agreement provided by the PA. Linklaters will also negotiate the contents of the confidentiality agreement with potential buyers.

**Preparation of Tender/Sales Documentation**

Upon completion of due diligence and valuation, Morgan Stanley will develop, together with the PA, DIN and DIV, the following materials for marketing:

**Teaser**

Morgan Stanley will prepare a Teaser for DIN and DIV, designed to promote the investment opportunity. The Teaser will be distributed to potential investors for the purpose of creating interest and obtaining the necessary **business description**

- Key features of the business including brands and products

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- Location and size of operations
  - Products and typical customers

#### **Key Selling Points**

- Key business strengths/selling points
- Investment considerations

#### **Financial Summary**

- Key items from historical financial statements (no projections)

#### **Charts/Other Exhibits**

- Market shares
- Product brochures/advertising/literature
  - Website references

#### **Process**

- Timetable
- Information
  - Access

#### **Procedure Letter**

The Procedure Letter is sent to potential Buyers with the Information Memorandum (“IM”) and provides process information about timing and content of the tender process. Morgan Stanley will work with the PA to develop the criteria to be used to evaluate potential bids.

- Required in all cases
- Sets deadline and requirements for bids
- Suggested bid requirements:
  - Strategic rationale
  - Valuation range (on a debt free basis)
  - Explanation for valuation range and key factors influencing valuation
  - Investment plans for the business
  - Employment/social plans
  - Sourcing
  - Exports
  - Technical assistance
  - Deal structure
  - Proposed consideration and financing
  - Internal approvals required to complete transaction
  - Other conditions (due diligence, regulatory)

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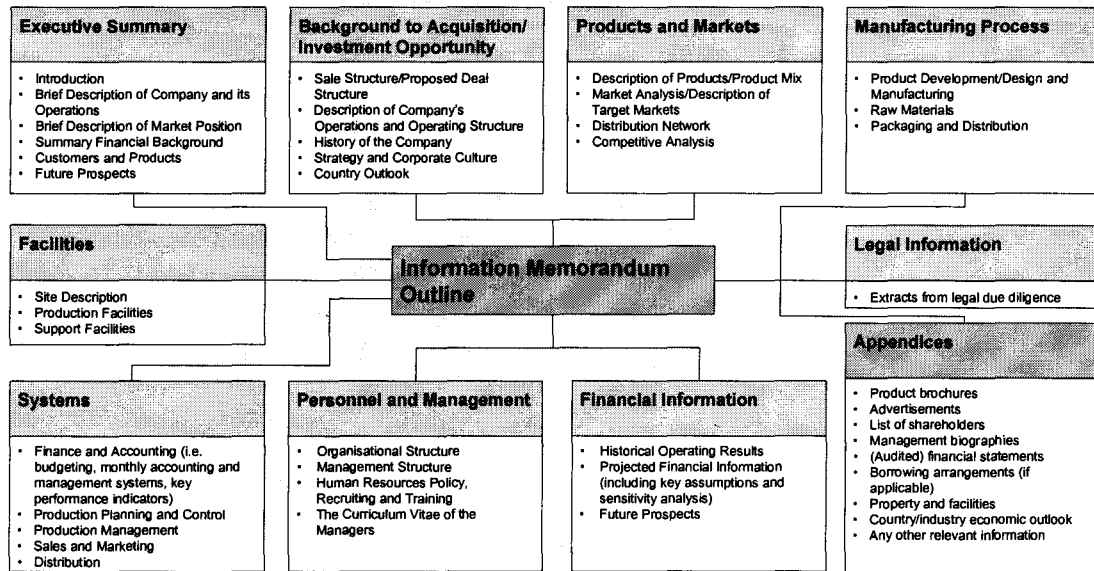
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**Information Memorandum**

The IM should highlight strengths/opportunities and pre-empt concerns/issues. The IM should provide the following information to further allow potential buyers to assess the investment opportunity.

**Exhibit 6: Information Memorandum (IM)**



**Other Documents Necessary for the Bidding Process**

As the case may be, Morgan Stanley will assist in the preparation of any additional documents relating to Morgan Stanley’s financial advisory services which are required for the implementation of the sales process.

**II Implementation Phase**

**Launching and Managing the Bidding Process**

Upon the approval of the Documents prepared under the I Preparation Phase, Morgan Stanley will coordinate and manage the II Implementation Phase.

II Implementation Phase will primarily include potential buyers’ due diligence and the submission of final bids.

Morgan Stanley and Linklaters will work with PA and DIN and DIV to establish data rooms and to co-ordinate and provide site visits and assist with the management presentations.

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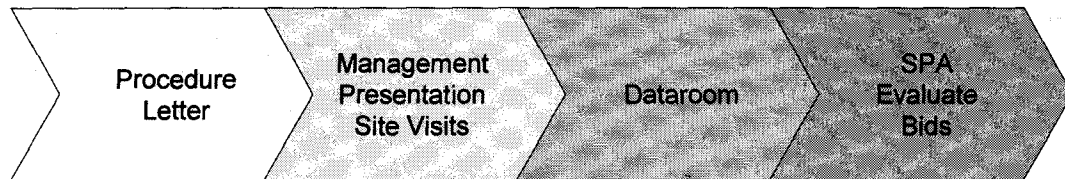
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**Key Objectives of the II Implementation Phase include:**

- Encouraging bidders to take an aggressive view of the value opportunity
- Maximising competitive tension
- Managing the process to emphasise competitive nature

**Exhibit 7: Due Diligence and Bidding Process**



- |   |  |   |  |
|---|--|---|--|
| <ul style="list-style-type: none"> <li>• Procedure letter:               <ul style="list-style-type: none"> <li>- Sets out bid deadline/content</li> <li>- Outstanding due diligence process/logistics considerations</li> <li>- Sequence of potential buyers?</li> <li>- Sequence of mgmt presentation, site visit, dataroom?</li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>• Mgmt presentation is key part of marketing process</li> <li>• Buyers trying to assess management as well as business               <ul style="list-style-type: none"> <li>- Preparation is key (Q&amp;A, coaching)</li> </ul> </li> <li>• Site visits of flagship and other facilities</li> </ul> | <ul style="list-style-type: none"> <li>• Commercial as well as legal documents</li> <li>• Legal:               <ul style="list-style-type: none"> <li>- Technical risks</li> </ul> </li> <li>• Commercial:               <ul style="list-style-type: none"> <li>- Detailed financials</li> <li>- Strategic plan</li> <li>- Commercial risks</li> </ul> </li> <li>• Dataroom rules set out in Procedure Letter</li> <li>• Financial Information</li> </ul> | <ul style="list-style-type: none"> <li>• Sale &amp; Purchase Agreement (SPA):               <ul style="list-style-type: none"> <li>- Seller provides</li> <li>- Marked-up as part of final bid</li> </ul> </li> <li>• Binding bids received by Morgan Stanley</li> </ul> |
|---|--|---|--|

**Management Presentation**

The management presentation is an extremely important part of the marketing process:

- Attended by key decision-makers and financiers where applicable
- Primary opportunity to assess management team
- Reinforce key selling messages
- Addresses any remaining concerns directly

Thorough preparation and rehearsal of the presentation and Q&As is critical.

**Typical Outline**

- Introduction
- Key investment considerations

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- Industry outlook
- Business overview
- Financial overview
- Expansion opportunities
- Conclusion

**Other Considerations**

- Rehearse several times before actual presentation
- Consider hiring a presentation coach
- Consider hiring a translator if required
- Prepare and rehearse Q&As
- Try to anticipate all possible questions
- Presentation quality is very important
- Professional appearance
- Include animation, pictures, and if appropriate, video clips
- Always have a backup on the day: slides and speakers
- Choosing appropriate venue, on-site if possible
- Set up the venue and AV technology well ahead of the scheduled start time
- Refreshments and lunch

The management presentation should fully inform and excite the buyer's key decision-makers. Morgan Stanley will work with DIN and DIV management to develop the management presentation including the following contents:

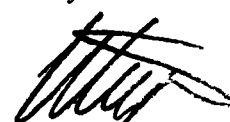
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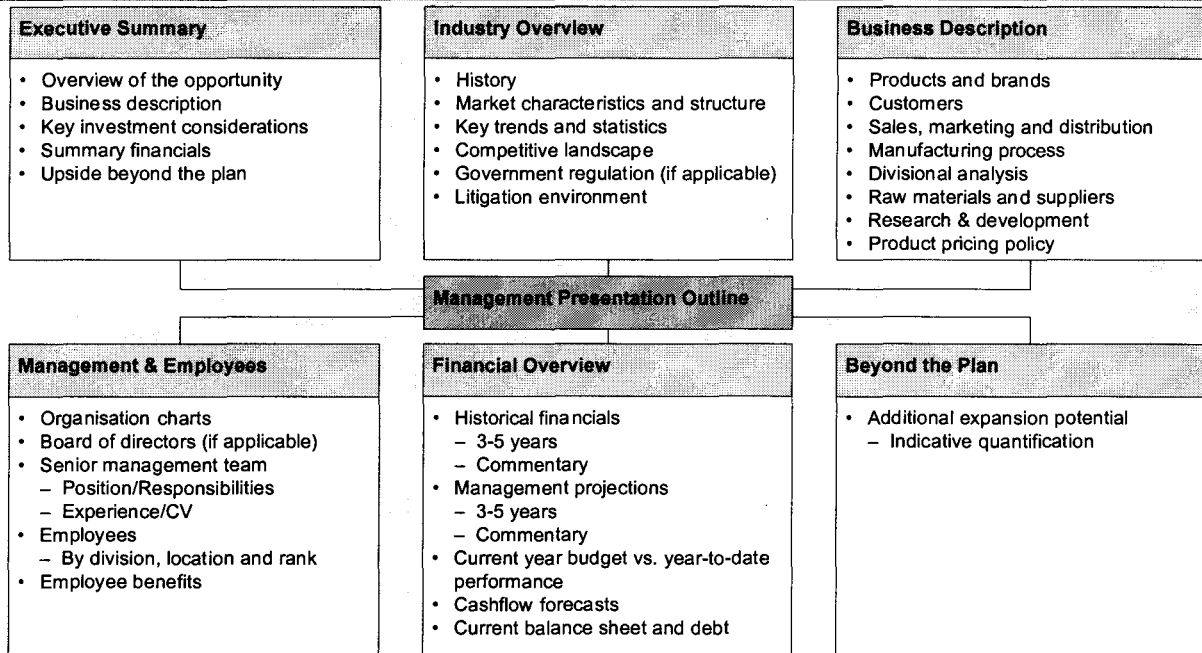
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### Exhibit 8: Content of Management Presentation



#### Site Visits

During the site visit potential buyers will expect a tour (led by management) of DIN and DIV's major facilities.

Representatives of Morgan Stanley will also attend the site visits to monitor questions asked and areas of interest/concern.

Ideally, the site visit will occur on the same day as the management presentation.

#### Data Room

Linklaters will prepare the rules of the data room. Morgan Stanley and Linklaters will coordinate access to the data room for investors and provide the list of information to be made available in the data room as well as the necessary staff to ensure the data room process is conducted effectively and efficiently.

The data room should be made available to each potential buyer over a period of 3 to 5 days in order to enable all potential investors to become acquainted with the following items:

- The precise description of DIN and DIV's activities, its history and its current situation

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- A presentation of the historical financial statements
- A review of the assets and liabilities
- A review of profitability and cash flow
- A review of products, market share and competitive landscape
- A review of facilities
- A description of the investment plan
- A complete review of the legal documentation
- Environmental information
- A presentation of the issues related to the personnel (salaries, pension plans, etc.)
- A tax review

Morgan Stanley and Linklaters will work with DIN and DIV, as appropriate, to provide the necessary contents for the data room..

The data room should be managed with the objective of fostering the interest of potential buyers

- Co-operative approach
- Equality of information to all potential buyers
- Rigorous control of information supplied (if material, it should be provided to all parties)

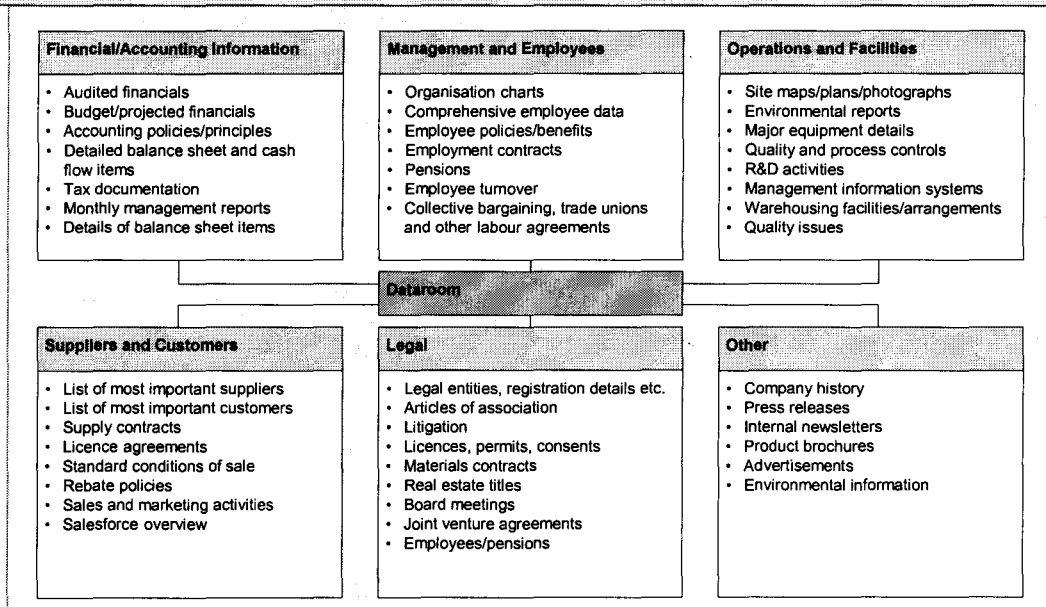
Morgan Stanley and Linklaters will be responsive to questions asked by potential buyers while visiting the data room and thereafter.

Morgan Stanley and Linklaters will work with DIN, and DIV to include the following items in the data room:

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### Exhibit 9: Typical Dataroom Contents



#### Collection and Evaluation of Final Bids

Morgan Stanley, together with the PA and Linklaters will evaluate bids in terms of:

- Meeting the PA's objectives
- Valuation
- Strategic Rationale
- Certainty
  - Financing
  - Conditionality

#### PA's objectives

- Proposed investment plan
- Social programme/Employment commitments
- Environmental compliance
- Maximum valuation

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**Valuation**

- Headline price/value of bid
- Value implications of contract mark-up
- Assumption/transfer of debt
- Earn-out or claw-back mechanisms
- Value of any retained stake:
  - Floor on value/put options
  - Governance rules
- Business plan
- Revenue and earnings growth
- Synergies
- Improvement of strategic position
- Geographical expansion
- Diversification of business profile
- Other issues

**Certainty**

- Ability to guarantee financing source
  - Internally
  - Externally
- If external funding required, lender commitment (none, highly confident letter, committed)
- Approval by Board
- Approval by shareholders
- Regulatory approvals
- Further due diligence
- Anticipated timetable to completion
- Overall enthusiasm for the acquisition:
  - Have bankers/advisors been appointed?
- Other relevant conditions

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### **Negotiation and Closing**

Following receipt of final bids, Linklaters will negotiate transaction documents (SPA) with the preferred potential buyer(s).


- As the case may be Linklaters will prepare any additional documents for the implementation of the privatisation process.
- Linklaters will lead and support the negotiating process
- Linklaters will advise on the preparation of the final Sale and Purchase Agreement based on a draft prepared by the PA and other necessary legal documents
- Linklaters will advise on and support the closing procedures
- Linklaters will provide personnel who are at partner level to participate in the negotiation and closing procedures
- Morgan Stanley will provide support in the negotiations and closing procedures

The final bidder will be notified of their selection. The bidder will then be requested to confirm his agreement with the conditions proposed by the PA in order to reach financial closing. Its selection as winner of the privatisation process will be notified to him only after he has confirmed his approval of the legal documentation that materialises the transaction.

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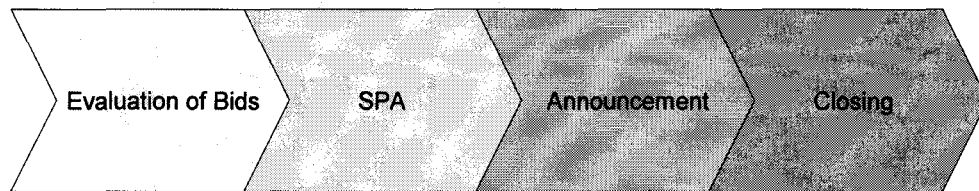
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**Exhibit 10: Negotiation and Closing Sequence**



- Evaluation of bids:
  - Expect minimal conditions
- Selection of preferred bidder
- Lawyers will lead negotiations:
  - Commercial terms already set; however
  - Linklaters and Morgan Stanley will manage and support negotiations through to closing
- Regulation may determine announcement content and timing
- Receipt of regulatory approvals
- Signing
- Consideration exchanged
- Distribution of shares to employees (up to 15%)
- The Privatisation Registry (at least 15%)

**Section C**

Each potential buyer will submit a mark-up of the SPA. Following the selection of the preferred bidder Linklaters will work to finalise the SPA.

Together with local counsel, Law Office Milosevic, Linklaters will provide the full range of legal services necessary to complete the Privatisation in accordance with the instructions of the PA and in accordance with the laws applicable in Serbia.

The services of Linklaters and Law Office Milosevic will include:

**Due Diligence Review and Report/Remedial Action**

A documentary due diligence review of the Companies reviewing and assessing issues pertaining to (i) corporate records of the Companies including Internal Procedures, (ii) material agreements/contracts, (iii) employee and labour matters, (iv) financing arrangements, (v) intellectual property, (vi) industry specific legal and regulatory matters, (vii) insurance, (viii) taxation, (ix) licences and permits, (x) assets and liabilities (xi) management information and (xii) the development of the Companies' ownership structure and change of legal status. A final report summarizing the findings of said due diligence review will be issued and incorporated into the Company Analysis Report. Based on the findings resulting from such due diligence review, Linklaters and Law Office Milosevic will prepare any revisions to the constitutive documents of the Companies, or facilitate any other remedial action to cure issues necessary to prepare the Companies for their successful privatisation.

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### **Review Legal & Regulatory Framework**

Linklaters and Law Office Milosevic will undertake a due diligence review of policy, laws, regulations, licences, tax regimes and general frameworks applicable to the Companies and the subject privatisation with a view to identifying possible shortcomings or obstacles that may apply to the sale of the Companies. Said review will be summarised in a final letter of findings with suggested remedial measures, if any, proposed to the relevant members of the PA and, to the extent necessary, Linklaters and Law Office Milosevic will recommend revisions/amendments to the existing legal framework. Linklaters and Law Office Milosevic will also review subsequent amendments to the legal/regulatory/privatisation framework.

### **Assist with Bidding Rules/Procedures**

Linklaters and Law Office Milosevic will undertake a review of the policy, rules and procedures to be applied to the tender process of the privatisation of the Companies, and will work in close collaboration with Morgan Stanley to comment thereon and/or draft such rules/procedures.

### **Assist with Information Memorandum**

Together with local counsel, Linklaters will undertake to provide comments and material submissions, as necessary, in assisting with the drafting of an information memorandum to be distributed to prospective bidders on the privatisation of the Companies.

### **Draft and Negotiate Deal Documents**

Together with local counsel, Linklaters will provide comments on the SPA to the PA and will undertake drafting and assistance in negotiating the SPA and all other transaction documents to be entered into with a successful bidder; in so doing, Linklaters will be dedicated to (i) negotiating with the investors in order to finalise all related deal documentation, (ii) commenting on or preparing and finalising such documentation, and (iii) providing support in pre- and post- closing operations.

### **Legal Aspects of Documentation**

Together with local counsel, Linklaters will review and, to the extent necessary, comment on all legal documentation and the legal aspects of any other documentation utilised by the PA that is directly related to the performance of said privatisation mandate. The PA shall provide Linklaters, from time to time, and in a timely manner with the opportunity to satisfy each such reasonable request to review and comment on above-mentioned legal documentation.

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**Dataroom**

Together with local counsel, Linklaters will assist Morgan Stanley in the creation and administration of a "Dataroom" in order to facilitate due diligence enquiries of prospective strategic investors.

**General Assistance**

Given the duration of the mandate and the numerous legal issues likely to arise from time to time, Linklaters will make itself available to provide ad hoc assistance during the entire privatisation process on an as-and-when needed basis.

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## Annex B - Reporting Requirements

### B1: STANDARD REPORTING FORM FOR BI-WEEKLY PROGRESS REPORTS

Morgan Stanley will provide bi-weekly progress reports using the standard forms below:

To:	<ACTING DIRECTOR OF THE PA>	From:	<AUTHOR>
CC:	<OTHER RECIPIENTS>	N° of Report / Date	<REPORT NUMBER 01> <DATE>
Number and Names of Appendices:			

#### General Project Information:

Project Name:	<NAME>	Project Code:	<PA - CODE>
Consultants Name:	<ORGANISATION>	Project Manager:	<NAME OF PERSON IN CHARGE>
Deputy P-Manager:	<SECOND PERSON>	Tel (1) Tel (2)	<TEL 1, TEL 2>
P-Start:	<DATE>	Term	<DURATION OF ASSIGNMENT>
Total Days spent:	<TOTAL CALENDAR DAYS, TOTAL MAN-DAYS>	Days in the field	<CALENDAR-DAYS IN THE FIELD MAN-DAYS IN THE FIELD>
Phase:	<CURRENT PHASE>	Status:	<% OF PROGRESS>
Envisaged Closing:	< MONTH / YEAR >	Overall Delay:	< AS APPLICABLE >

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WORK PROGRESS REPORT (BY TASKS IF APPLICABLE)\*:

Task I:	<DESCRIBE TASK / DELIVERABLE>	Deadline:	<DATE AGREED>
Planned Days:	<N° OF CALENDER DAYS / MAN-DAYS >	Actual Days:	<N° OF CALENDER DAYS / MAN-DAYS >
DELAY ALERT	< DELAYS ARISING / REASONS >		
<b>SHORT DESCRIPTION OF PROGRESS AND EVENTS:</b>			
< Description of services performed, events, meetings indicating dates, progress and results >			
<b>SUGGESTED MEASURES TO BE TAKEN:</b>			
<Measures to be taken to ensure progress or avoid delays, other measures to be decided upon or taken indicating the organisation in charge >			

\*) Insert additional Task-fields if necessary.

INVESTOR SEARCH REPORT:

Identified Investors	Contacted	Positive	Negative
<b>Description of Marketing / Pre-marketing activities:</b>			
< Description of research activities, Investor contacts, Meetings with Investors and other efforts undertaken >			

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Investors Status:

Potential Investor	Status	Comment/Reason
< Name of Investor, Country >	< EOI, Making Bid, Pending, Reconsidering, Withdrawn, ... >	< Give a short description of the situation for each Investor >
<b>Lessons &amp; Recommendations:</b>		
< State the chorus of the feedback from the Investors, suggest any measures to be taken >		

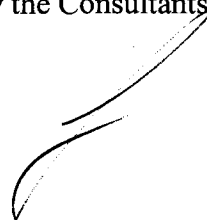
**Other Issues:**

<Describe any other issues not covered by the prevailing form - give comments, >

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## B2: INDICATIVE DEADLINES FOR MILESTONES

The expected deliverables for this assignment are:

**(a) Phase 1:**

Deliverable	Indicative Date
Company Analysis	D1 plus 9 weeks
Market Assessment Report	D1 plus 9 weeks
Valuation Report	D1 plus 11 weeks
Tender/Sales Documents	D1 plus 10 weeks
Bi-weekly Reports on the Progress of the Project	Continuously

D 1 - Commencement Date of the Assignment

**(b) Phase 2:**

Deliverable	Indicative Date
Launching the bidding process	D2 plus 3 weeks
Due-diligence process and data rooms	D2 plus 7 weeks
Collection and evaluation of bids	D2 plus 11 weeks
Negotiation and closing	D2 plus 15 weeks
Final Report	D3 plus 4 weeks

D 2 - Date of acceptance of *(Final Bi-weekly Report of Phase 1 to include all necessary information and/or clarification of progress to date)*

D 3 - Date of the Closing of the Transaction

The ability to meet the above schedule of delivery may be impacted by reasons beyond our control, including, without limitation, the failure by DIN and DIV to promptly provide all information necessary (both in scope, quality and content) to produce the deliverables to professional standard.

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## Annex C - Key Personnel and Sub Consultants

<b>Table 1: Morgan Stanley Personnel</b>					
<b>Name</b>	<b>Firm</b>	<b>Position</b>	<b>Task</b>	<b>Key Qualification</b>	<b>Staff Months</b>
Alan Apter	Morgan Stanley	Project Chairman	Executive responsibilities of the Consortium, senior contact for potential buyers	Senior privatisation and regional experience	7
Rory Maw	Morgan Stanley	Project Director	Managerial responsibilities of the Consortium, buyer support, senior contact for potential buyers	Senior global industry experience	7
Panos Goutakis	Morgan Stanley	Senior Project Manager	Regional management and coordination	Senior privatisation and local expertise	7
Gavin McDonald	Morgan Stanley	Project Director	Project operational issues and execution responsibility	Senior global and industry execution experience	7
Henry Stewart	Morgan Stanley	Project Manager	"Day to Day" managerial responsibilities of the consortium	Industry execution experience	7
Mary Anne Citrino	Morgan Stanley	US - Industry Specialist	US buyer considerations, industry and execution support	US potential buyer expertise	3
Joel Feldman	Morgan Stanley	US - Industry Specialist	US buyer considerations, industry and execution support	US potential buyer expertise	3
James Pearson	Morgan Stanley	Asia - Industry Specialist	Asia buyer considerations, industry and execution support	Asia potential buyer expertise	3
Hiroshi Masaki	Morgan Stanley	Asia - Industry Specialist	Asia buyer considerations, industry and execution support	Asia potential buyer expertise	3
Zaid Abdul-Aleem	Morgan Stanley	Associate	Financial and market analysis, business plan revisions and documentation support	Privatisation and regional experience	7
Alexandre Ricard	Morgan Stanley	Associate	Financial and market analysis, business plan revisions and documentation support	International industry experience	7

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**Table 2: Citadel Personnel (Morgan Stanley Sub-Consultant)**

Name	Firm	Position	Task	Key Qualification	Staff Months
Milutin Nikolic	Citadel	Senior Project Manager	Local project coordination – documentation, communication and production support	Senior local industry and execution experience	7
Pavle Kavran	Citadel	Project Manager	Local "Day to Day" managerial responsibilities of the consortium	Local industry and execution experience	7
Jelena Milenkovic	Citadel	Associate	Financial and market analysis, business plan revisions and documentation support	Local privatisation and industry experience	7
Ivana Basiccevic	Citadel	Associate	Financial and market analysis, business plan revisions and documentation support	Local privatisation and industry experience	7
Uros Lalic	Citadel	Analyst	Financial and market analysis, business plan revisions and documentation support	Local privatisation and industry experience	7
Bora Kostic	Citadel	Local industry specialist	Industry, execution and due diligence support	Local industry and execution experience	7
Vladimir Bulat	Citadel	Local industry specialist	Industry, local logistical support	Local industry and execution experience	7

**Table 3: Linklaters Personnel**

Name	Firm	Position	Task	Key Qualification	Staff Months
Michael Schilling	Linklaters	Senior Legal Advisor	Project management for legal documentation, communication and production	Senior privatisation and regional experience	7
Theodore Cominos	Linklaters	International Legal Advisor	Project management for legal documentation, communication and production	Senior privatisation and international experience	7
Todd Shollenbarger	Linklaters	Associate	Project management for legal documentation, communication and production	Privatisation legal experience	7
Marian Dinu	Linklaters	Associate	Project management for legal documentation, communication and production	Privatisation legal experience	7
Delia Pachiu	Linklaters	Associate	Legal review and analysis	Privatisation legal experience	7
John McIlwaine	Linklaters	Associate	Legal review and analysis	Local legal experience	7
Alexandra Bocan	Linklaters	Trainee Solicitor	Legal review and analysis	Local legal experience	7
Jemma Marlor	Linklaters	Trainee Solicitor	Legal review and analysis	Local legal experience	7
Tim Eastwood	Linklaters	Trainee Solicitor	Legal review and analysis	Local legal experience	7
Argentina Gavatt	Linklaters	Paralegal	Information, document and communication coordination	Local legal experience	7

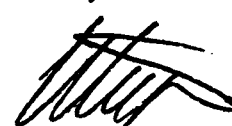
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**Table 4: Law Office Milosevic (Linklaters Sub-Consultant)**

Name	Firm	Position	Task	Key Qualification	Staff Months
Radomir Milosevic	Law Office Milosevic	Senior Local Legal Advisor	Local project management for legal documentation, communication and production	Senior privatisation and local experience	7
Dragoslav Bjelic	Law Office Milosevic	Associate	Local legal review and analysis	Local legal experience	7
Zeljko Gvojic	Law Office Milosevic	Associate	Local legal review and analysis	Local legal experience	7
Aleksandra Nikolov	Law Office Milosevic	Associate	Local legal review and analysis	Local legal experience	7
Jelena Amus	Law Office Milosevic	Associate	Local legal review and analysis	Local legal experience	7

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## Annex D - Breakdown of Retainer Fee in Foreign Currency

**Table 1: Summary of Costs**

Costs	Currency	Amount (€)
Subtotal		375,000
Local Taxes		75,000
<b>Total Amount of Financial Proposal</b>		<b>450,000</b>

**Table 2: Breakdown of Retainer Fee per Activity**

Phase I & II		
Price Component	Currency	Description Amount (€)
Remuneration		273,000
Reimbursables		56,334
Miscellaneous Expenses		45,666
<b>Subtotal</b>		<b>375,000</b>

**Table 3: Breakdown of Retainer Fee per Activity**

Phase I & II			Privatisation of Duvanska Industrija Nis and Duvanska Industrija Vranje			
Names	Position	Input (months)	Indicative % in Serbia	Remuneration Currency Rate (€)	Indicative Amount in Serbia	Total Amount (€)
Alan Apter	Project Chairman	3	30	18,200	16,380	54,600
Rory Maw	Project Director	6	30	3,741	6,734	22,447
Gavin McDonald	Project Director	6	-	3,741	-	22,447
Panos Goulakis	Senior Project Manager	6	30	1,517	2,730	9,100
Henry Stewart	Industry Specialist	6	30	1,517	2,730	9,100
Milutin Nikolic	Senior Project Manager	6	100	3,033	18,200	18,200
Pavle Kavran	Project Manager	6	100	2,427	14,560	14,560
Mary Anne Citrino	US Industry Specialist	3	-	3,033	-	9,100
Joel Fieldman	US Industry Specialist	3	-	3,033	-	9,100
James Pearson	Asia Industry Specialist	3	-	3,033	-	9,100
Hiroshi Masaki	Asia Industry Specialist	3	-	3,033	-	9,100
Michael Schilling	Senior Legal Advisor	3	30	6,067	5,460	18,200
Radomir Milosevic	Senior Local Legal	2	100	3,033	6,067	6,067
Theodore Cominos	International Legal	4	30	3,033	3,640	12,133

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Table 3: Breakdown of Retainer Fee per Activity Phase I & II				Privatisation of Duvanska Industrija Nis and Duvanska Industrija Vranje		
Names	Position	Input (months)	Indicative % In Serbia	Remuneration Currency Rate (€)	Indicative Amount in Serbia	Total Amount (€)
Zaid Abdul-Aleem	Associate	6	30	607	1,092	3,640
Alexandre Ricard	Associate	6	30	607	1,092	3,640
Jelena Milenkovic	Associate	6	100	303	1,820	1,820
Ivana Basicovic	Associate	6	100	303	1,820	1,820
Uros Lalic	Analyst	2	100	607	1,213	1,213
Bora Kostic	Industry Local	6	100	809	4,853	4,853
Vladimir Bulat	Industry Local	1	100	1,213	1,213	1,213
Delai Pachiu	Associate	3	30	607	546	1,820
John McIlwane	Associate	3	30	607	546	1,820
Dragoslav Bjelic	Associate	3	100	607	1,820	1,820
Zeljko Gvojc	Associate	3	100	607	1,820	1,820
Aleksandra Nikolov	Associate	3	100	607	1,820	1,820
Jelena Armus	Associate	3	100	607	1,820	1,820
Jemma Marlor	Trainee Solicitor	1	30	303	91	303
Tim Eastwood	Trainee Solicitor	1	30	303	91	303
Additional Morgan Stanley Financial Due Diligence Fee	NA	2	100	10,010	20,020	20,020
<b>Grand Total</b>					<b>118,000</b>	<b>273,000</b>

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## **Annex E - Breakdown of Retainer Fee in Local Currency**

Not Applicable.

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## Appendix F - Services & Facilities Provided by the Client

None.

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