

POLISH FOREIGN INVESTMENT LAW
(THE LAW OF DECEMBER 23, 1988 ON ECONOMIC ACTIVITY
WITH THE PARTICIPATION OF FOREIGN PARTIES)*

*Eugeniusz Piontek***

Against the backdrop of perennial balance of payment strains, high double-digit inflation, in 1988 well above 70 per cent, and a huge State's indebtedness, Polish policy-makers have re-examined the role of foreign direct investment (FDI) to make them more effective factor in modernization of the national economy.

I. GENERAL LEGAL AND ECONOMIC SETTING

Experiments with FDI encouraged by the authorities since 1976 have been conceived not only as an incremental source of capital to complement the dearth of domestic resources but also as a generator of technology transfer, a vehicle for managerial and marketing skills, as well as the most effective instrument of organic integration of the national economy within international manufacturing and service markets.

Originally, however, FDI was restricted to contractual "joint ventures." This was an intermediate form of capital cooperation between full internationalization characterized by majority or wholly foreign owned enterprises and an arm's length licencing requiring merely a weak relationship between technology suppliers and buyers. Then, in mid-seventies, for the first time in a post-war period a door to the Polish economy had been opened to FDI either in a form of a wholly foreign owned or incorporated joint ventures with Polish partners. This, however, was originally confined to FDI by Polish nationals from abroad. In the early eighties the scheme had been extended to all foreign investors without any discrimination because of their nationality. FDI continued, however, confined to the so-called "small business sector" of the economy.

With a lapse of time and experience won, conviction became gaining ground that such a limitation does not fit to the real needs of the economy.

* The Law of December 23, 1988 has been amended in December 1989 ; this amendment will be discussed in one of the next issues of our *Review*.

** Professor of International Law at Warsaw University.

Critically considered were also various other restrictions on FDI ingredient in 1976—1985 legislations. Thus, traditional reservations with respect to FDI in socialized sectors of the national economy were growingly seen in terms of past doctrinal apprehension *vis-à-vis* private ownership in general and a foreign capital in particular. The first tangible result of these transvaluations in the domain under consideration was the Law on FDI of 23rd April, 1986 which allowed foreigners to set-up equity joint venture with economic units belonging to the socialized sector of Polish economy. This half-step forward brought about rather mediocre results. In two and a half years time only 40 companies with foreign participation were established of which 23 have actually started their business operations. Total foreign investment capital input into those companies was also meager. Thus necessity of more fundamental reform of the law on FDI became evident. In late 1987 preparatory works were undertaken with the aim of making Polish offer for foreign investors truly attractive and competitive.

In the meantime, a number of other legislative reforms were undertaken to facilitate a process of remodelling the national economy after the market oriented pattern. In 1982, a new Law on Banks was enacted. This piece of legislation have paved the way for demonopolization of the Polish banking system. Among its novelties were provisions allowing for setting-up banks with foreign capital participation. At the moment, fairly advanced are legislative works aiming at further and more substantial liberalization of the banking system. Also Polish hard currency regulations have, in the eighties, undergone fundamental changes to be better suited to new requirements of much more open than before, newly emerging market economy system. The enactment in 1983 of the Bankruptcy Law, and in 1986 of the Law on Combating Monopolistic Practices in the National Economy should also be mentioned in this context.

Till now, however, perhaps the most spectacular legislative achievement has been the enactment of the Law on Business Activity. It has broken in a radical way with decades old concept consisting in making a conduct of any business activity subject to the issue of a detailed permit combined with rigorous surveillance of its performance. Instead, the Law declares conducting of a business open and free for all Polish legal and natural persons, as well as their organizations subject to registration. Permits in a form of concession are required only with respect to limited domains of business activity such as manufacturing of explosives, pharmaceuticals, alcohols and spirits, tobacco and the like. At the same time, the Law has guaranteed to all Polish citizens, their companies and all other economic units an open access to foreign trade. Again, like in most market economy countries, licences are required only with respect to

limited number of items which are subject to quantitative restrictions. These have already won to the Law a nick-name of "The Constitution of Economic Liberties." The enactment by Sejm on 23rd December, 1988 of the new Foreign Investment Law (FIL) should be assessed against this wider legal and economic environment.

II. THE FOREIGN INVESTMENT LAW

The 1988 FIL is distinguished for its comprehensiveness and transparency of administration. A freedom of entry is conditional. The establishment of the company requires a permit. Thus, short of adopting simple rules that either promote or discourage investment indiscriminately, project-by-project screening has been adopted to extract all the potential benefits from each prospective investment on the one hand, and to determine what is required to attract a desired investor on the other. The Law determines only some qualitative criteria of entry of a general character.

To secure the achievement of the above ends, authority to negotiate with the investor (foreign or foreign and his Polish partner alike) is concentrated in one organization that has the full authority to accept or reject an applicant, and to conclude the terms that will govern the investor's sojourn in the country. This organization is the President of the Foreign Investment Agency, having a status of the central administrative authority.

Consequently, the potential costs for the firm considering entry are likely to be low because the adopted approach facilitates quick negotiations and predictable pattern of outcomes. At the same time, concentration of powers in the hands of the President of the Agency should assure the uniformity of public policy toward FDI, contribute to greater transparency of relations between investors and public authorities, as well as reduce a scope of undesirable meddling into business activity of the investor by branch and local authorities. To this end the President of the Agency has been entrusted with coordinative powers which allow for the elimination of most potential strains resulting from the distance between negotiation and implementation of the investment project.

Separate explanation requires "general philosophy" of the Polish FIL. Thus, it is widely assumed that market for foreign investment has many characteristics of goods and service markets. Therefore, just as firms compete for market share of consumers expenditures, so too countries compete for market share of new FDI. As a result, just as firms formulate strategies designed to gain a relative advantage over competitors, governments adopt strategies to attract profitable foreign investment projects.

Again, as in the goods or service markets, some foreign investors, as *sui generis* “buyers”, are very sensitive to “price” while the others, to the distinctive features of the “good” represented by the investment site. While the former approach reflects dominant interest in investment oriented toward the worldwide export market, so the latter is characteristic of investments oriented toward recipient, host country’s domestic market. Accordingly, governmental strategies are tailored to one of those preferences or represent some combination of the two. Polish FIL aims primarily at attracting foreign investors sensitive mainly to “price” factor, though not exclusively since, “in economically justified cases,” it also provides for special incentives in favour of “good” interested investors. Thus, the Polish offer should be seen as fairly open and resilient one.

The FIL subjects companies to which it refers to regulations of the Polish Commercial Code (Article 2, Paragraph 2), with few exceptions resulting from the provisions of Articles 16, Paragraph 7, Article 17, Articles 33—34 and to some extent Article 18.

At the same time, by virtue of Article 36, the regulations pertaining to socialized economic units are not applicable to companies established under the FIL, unless this latter law states otherwise. The above provision aims at securing most favourable treatment for companies with the participation of foreign parties since, on the whole, regulations governing the activity of non-socialized economic units, in private sector of economy, are hitherto more liberal and flexible. In few years to come, however, both sectors are to be treated alike. Thus, the importance of the stipulation of Article 36 is rather of temporary character.

1. *Circles of Prospective Investors*

1) As for foreign investors who may undertake business in Poland, these are all legal and natural persons domiciled abroad, as well as companies without legal personality domiciled abroad and established by persons referred to above (Article 3, Paragraph 2). Since the Law does not make any difference because of the investor’s origin, a Polish citizen permanently domiciled abroad is also a foreign investor within the meaning of this Law.

2) As for Polish partners, who under the Law are entitled to establish companies with foreign investors are the Treasury and other legal persons established under the Polish law, having their seat in Poland, as well as natural persons domiciled in Poland (Article 3, Paragraph 1). Thus, under the FIL actually no category of subjects, both foreign and domestic alike, are excluded from undertaking business activity in Poland, either because of their nationality or legal status and other reasons.

2. *Modes of Business Activity*

1) Two main aspects of the mode of business activity provided for in the FIL may be identified, namely : (a) subjective and (b) organizational ones.

a) As regards subjective aspect, Article 2, Paragraph 1 stipulates that a foreign investor may undertake and conduct business activity in Poland either single-handedly or with other foreign and/or Polish party or parties. Consequently, the FIL stipulates for no maximum foreign equity ceiling. Due, however, to the privileged treatment FDI enjoy, as compared with wholly domestically owned economic units, the contribution of foreign parties (one or more together) to any given undertaking cannot be lower than 20 per cent of equity (Article 2, Paragraph 1) and no less than 25 million zlotys adjusted accordingly to the changes in the rate of exchange of zloty to the foreign currency in which the contribution is made (Article 16, Paragraph 4). The above requirements are also to prevent the establishment of apparent, faint investments or in a case of joint venture with Polish party to prevent using such investment, at a token price, to control or adversely influence strategies of the latter party.

Separate mentioning deserves reservation made in Article 8, Paragraph 1 of the FIL. It says :

“The President of the Agency may condition the issuing of a permit upon a foreign party’s undertaking business activity jointly with a Polish party and the setting of a specified ratio between the Shareholders’ contributions to a company’s equity.”

As legislative history of the FIL has it, the above serious infringement upon the statutory freedom of choice of prospective investors has been conceived as a special safeguard to be used in exceptional situations only. Among them establishment of a casino was mentioned. The clause could also be necessary to be applied whenever for reasons listed in Article 6, Paragraph 1 of the FIL issuing of a permit would have otherwise been refused.

b) As for organizational aspect, the FIL provides only for two types of business vehicles from among which a foreign investor who wishes to start business in Poland has to choose. These are (i) limited liability company and (ii) joint stock company (Article 2, Paragraph 1).

Within thus defined limits, a foreign investor has four more specific options to choose from.

— Firstly, in accordance with Article 2, Paragraph 1 of the FIL, a foreign investor can establish a limited liability company in which he will hold 100 per cent of ownership interest (so-called “one-man company”).

— Secondly, under Article 2, Paragraph 2 of the FIL, a foreign investor can establish a limited liability or joint stock company, with the equity contributed by the founders jointly with other foreign or/and Polish parties.

— Thirdly, subject to the conditions provided for in Article 8, Paragraph 2 of the FIL, a foreign investor can together with other foreign and/or Polish party or parties, establish a joint stock company, with equity raised through a public subscription of shares.

— Fourthly, under Article 41 of the FIL, a foreign investor can enter business in Poland through the acquisition of shares or stock in the existing Polish limited liability or joint stock companies. If a given company did not have foreign shareholders, a foreign party has through taking up shares or stock to increase an equity of such company.

2) Main characteristics of the Polish limited liability and joint stock companies under Commercial Code of 1934 are typical of the features of classical models of such companies shaped in Continental Europe in the first half of our century. Comparing the Polish regulation with the British one, a distinction made under the former between limited liability and joint stock companies, under the latter basically reflects a difference between “private” and “public” companies according to the Companies Act of 1907 and since EEC directives on companies a distinction drawn between “Limited” and “PLC” companies.

a) A limited liability company can be established by one or more legal or natural persons. The founding contract should have the form of a notarial deed. A company is managed by a Director (or Directors) and the Shareholders Meeting. A Supervisory Board or Committee of Auditors may also be established. The company’s equity, through the shares held by all partners, should be raised before the company’s registration date. The shareholders are free to determine their mutual obligations as well as the internal relations of the company, the composition and the authority of management, decision-making procedure and the voting rights at the Shareholders Meeting. The partners may also restrict, in the company’s founding contract, the right of disposal of the shares of the company.

b) A joint stock company can be established by at least three founders unless the Treasury is one of them. An agreement between the founders on the establishment of a joint stock company is required. The founders also prepare the company articles (Statute). Both documents should have the form of a notarial deed. The founders, or third parties, may take up all the shares of the company or, provided the conditions formulated in the FIL are fulfilled, raise the share capital by public subscription. The establishment of a Supervisory Board or alternatively a Committee of Auditors is mandatory. Under the FIL only inscribed shares are allowed.

Shares issued for contribution in money can be paid for in one-fourth of their per value.

3. *The Scope of Economic Activity*

According to Article 1, Paragraph 2 of the FIL, a foreign investor may undertake in Poland manufacturing, production and construction, as well as trade and service activities in any field of the national economy. Thus, as to the principle, there are no statutory exceptions with respect to the kind or branch of business activity opened for foreigners in Poland. In individual cases, however, the President of the Agency may find that particular investment project is undesirable due to : 1) the threat to State economic interests, 2) the requirements of the environment protection, 3) State security and defence interests or the protection of State secrets (Article 6, Paragraph 1 of the FIL). A permit shall then be denied unless through consultation between the President of the Agency and the applying party or parties a satisfactory solution was found.

Stipulations of Article 6, Paragraph 1 should be read, in this context, together with the provisions of Article 11, Paragraph 1, Section 3 and, in particular, with Article 8, Paragraph 1 of the FIL. Under the latter, the President of the Agency may condition the issuing of a permit upon a foreign party's undertaking business activity jointly with a Polish party and the setting of a specified ratio between the shareholders' contributions to a company's equity.

The above safeguards should not be interpreted as representing hidden barriers of access to the Polish market. As the legislative history of the FIL suggests, their real purpose has been to provide the legal framework flexible enough to allow for reconciliation of conflicting interests which may arise in practice in the sensitive areas without repelling otherwise interesting and useful investment projects. Thus, the actual function of the above clauses boils down to facilitating rather than hampering an access for FDI to the Polish market. Not without importance for the practical interpretation of the respective provisions is an accelerating pace of liberalization in Polish economy.

4. *Forms of Contribution to the Equity of a Company*

In accordance with Article 16 of the FIL, the contribution to a company's equity may be made both in money and in-kind. The money contribution of the foreign investor should be made in foreign currency or in Polish currency, zlotys, from a documented exchange of a foreign currency. The in-kind contribution may consist of property as well as

rights. The FIL, and the Commercial Code alike, allow the partners to determine the nature of contribution. Thus, these are the investors themselves who are to decide about the character and proportion of various components of a company's founding capital. No one else has a right to intervene in this domain.

In keeping with the accepted interpretation of Articles 163 and 311 of the Polish Commercial Code contribution in-kind may consist of : (a) things like realities, machines, equipment, and other material, as well as (b) rights on non-material assets such as copyrights, patents, licences, etc. and (c) debts.

As in-kind contribution cannot be considered labour or unappraisable assets such as customers (goodwill). There should, however, be no doubt that confidential know-how can be capitalized and contributed by licencing or assignment although the grey area includes such problems as whether the trade secrets can be contributed to a company's equity.

5. *Action to be Taken to Commence Economic Activity*

Since establishment of a company with a foreign participation requires a permit, interested party or parties should apply for one to the President of the Agency. According to Article 10 of the FIL such application should, *inter alia*, have the draft of a company's founding act attached as well as documentary evidence as to the legal status and financial standing of prospective shareholders. In case of a foreign investor such documents may be an extract from his domestic court register, the opinion of a bank or credit institution.

A feasibility study of the proposed company shall also be enclosed. In Poland, such reports are habitually prepared according to the UNIDO methodology formulated in UN Publication 19/206. Specialized consulting agencies, both State controlled and private ones, may assist in the preparation of documents that have to be submitted to obtain a permit.

According to Article 10, Paragraph 4 of the FIL, the decision on whether to issue a permit shall be made within two months from the date of the filing of the application. After the permit is granted, the company shall be registered in court proper for the seat of the company and from that date it may commence its business.

It is worthy of separate stressing that the permit for the establishment of the company is a document to which the Polish authorities attach great importance. This, *inter alia*, is evidenced in Article 15 of the FIL, which provides that if the company engages in activity incompatible with the conditions set forth in the permit, the authority that issued the permit

shall request this to be corrected within a specified period ; otherwise it may restrict the scope or withdraw the permit.

For the above soliciting by the applicant for as flexible formulation of the permit as possible it is strongly advisable. Entrusting the President of the Agency with power to issue permits and with a right of general supervision over observance of conditions set forth in the permits should contribute to the stable and reasonable policy in this domain.

6. *Basic Economic Freedoms*

Basic economic freedoms guaranteed under the FIL include : 1) operational freedoms ; 2) freedoms with respect to employment ; 3) rights to acquire land for business purposes and 4) freedom to dispose of profits.

1) A company has the sole authority to decide on the object and volume of output, within the limits set forth in its founding act and in the permit. It may freely choose its trade partners at domestic market and abroad. It is also free to set the price of its goods and services. A company may sell goods and services in the domestic market for convertible currency provided it obtains a foreign exchange licence. A company may also freely purchase goods and services for foreign currency on the domestic market from the licensed entities.

According to Article 22, Paragraph 1 and 2 of the FIL, a company may, after it obtains a foreign exchange licence, open and maintain accounts with foreign banks. No licence is, however, required to obtain foreign credits (Article 22, Paragraph 4 of the FIL).

Companies established under the FIL purchase raw materials, other materials and equipment available in the domestic market on the same principles as other Polish economic units. However, as concerns purchase of the still centrally distributed raw materials they enjoy a privileged treatment accorded to state enterprises. In 1989 on the list of centrally distributed materials were : aluminium, coal, coke, copper, diesel oil, heating oil, silver and tin.

2) A company has the sole authority to decide on its employment policy and actual state of employment. However, a company can employ persons not having a Polish citizenship or a Polish permanent residence card only with the consent of the local State administrative authority. A consent is not required if such a person is only seconded by a foreign investor and is not employed by the company.

The principles for the remuneration of company employees are laid down either in a company's founding act or in the company's resolutions. Thus, a company enjoys unrestrained freedom in this domain, with two reservations, namely : the remuneration of Polish citizens can be set and

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paid only in the domestic currency, zlotys, while as concerns foreign employees their remuneration may be partially paid in foreign currency from the foreign currency revenues of the company (see : Chapter 5 of the FIL).

3) According to Article 26, Paragraph 1 of the FIL, a company may acquire and lease land and other real estate not owned by the State. However, if the foreign party or parties own at least 50 per cent share in the company, the purchase of real estate by the company requires the consent of the Minister of Internal Affairs (Article 46 of the FIL introducing changes in the Law of March 24, 1920 On Acquisition of the Real Estate by Foreigners, and in particular in Article 1, Paragraph 3 of the latter Law).

State land may be made available to the companies with foreign capital participation either (a) under a perpetual lease in accordance with the regulations applicable to the administration of such land or (b) under lease (Article 26, Paragraph 1 of the FIL).

4) A company is free to pay dividends to its shareholders from the company's after-tax profit. The foreign currency dividend may, as to the principle, be paid only from the surplus of export earnings over import outlays. A foreign shareholder has the right to transfer abroad this part of a dividend without a separate foreign exchange permit. However, upon the application of the company, the Minister of Finance may allow to transfer abroad a dividend due to a foreign shareholder in excess of the above amount. Such entitlement may either take the form of separate permit or may constitute part of the permit for the establishment of the company (Article 20, Paragraph 4 of the FIL).

In the light of the legislative history of the FIL, foreign shareholders may count for receiving the above permit when a company is engaged in capital intensive investment in preferred branches of the national economy and/or is manufacturing goods or rendering services in short supply for the needs of the domestic market.

As concerns part of the profit in zlotys, a foreign shareholder is free to use one, according to his own preference, in the domestic market (Article 20, Paragraph 1 of the FIL).

Separately, according to Article 21, Paragraph 1 of the FIL, shareholders have also the right to use their part of the profit, both in convertible currency and in zlotys, to increase a company's equity.

7. Taxes and Other Burdens

Article 27, Paragraph 1 of the FIL, gives the complete list of taxes which are due to be paid by a company. In business terms, the most.

important of those taxes is corporate income tax, which the FIL sets at 40 per cent of taxable income. Investment outlays—as defined in the decree of the Council of Ministers—and donations for socially beneficial purposes up to 10 per cent of the income are deducted from the taxable income. Moreover, the company will only pay the maximum rate of the corporate income tax if all its sales were on the domestic market. The tax rate is decreased by 0.4 per cent for each one per cent of the share of export sales in total sales. However, the corporate income tax, after deductions, cannot be lower than 10 per cent of the taxable income. At the same time, a company is exempted from corporate income tax during the first three years of its business activity. The date of the commencement of business is the date of the first invoice. This statutory tax holiday may be extended for additional three years if the company enters one of the preferred sectors of the national economy (Articles 27 and 28 of the FIL).

As it has already been mentioned, a company may freely distribute the after-tax profit. It has, however, to deposit 8 per cent of the after-tax profit with the reserve fund, for losses coverage. The company may cease to make such contribution when the reserve fund reaches 4 per cent of company's costs in a fiscal year (Article 17, Paragraph 4 of the FIL).

As concerns personal income tax, including tax on dividends, foreign shareholders and employees domiciled in a country with which Poland has no agreement on the avoidance of double taxation, the rate of income tax is 30 per cent (Articles 29 and 32, Paragraph 4 of the FIL respectively). In other cases the tax will vary from 5 to 15 per cent, according to the Convention. Tax Conventions have been concluded by Poland with 21 countries : Austria, Belgium, Czechoslovakia, Denmark, the Federal Republic of Germany, Finland, France, the GDR, Great Britain, Holland, Hungary, Japan, Malaysia, Norway, Pakistan, Spain, Sri Lanka, Sweden, Thailand, the USA and Yugoslavia. Separate mentioning deserves obligation stipulated in Article 19, Paragraph 1 of the FIL. According to the above provision, a company has to sell 15 per cent of its foreign currency export proceeds to a Polish foreign exchange bank. Proceeds from the sale abroad of the replaced fixed assets of the company are exempt from this obligation. Moreover, upon an application of the company, the President of the Agency may set in the permit a lower rate of sale.

This rather unusual obligation is justified on the ground of a strain Polish balance of payment situation and the ensuing from it great demand for convertible currency. Since, however, every company needs domestic currency for current local payments, the above obligation is not a great burden, in particular, when a company exports extensively. On the other hand, a company can buy much more zlotys for the same amount of

foreign currency by selling this currency at the voluntary foreign exchange auctions conducted in Poland on the basis of separate regulations (Article 23, Paragraph 3 of the FIL).

There is a need, in this context, to mention that wholly domestically owned economic units sell to Polish foreign exchange banks, on average, some 80 per cent of their export proceeds.

8. *Special Custom Privileges*

By virtue of Article 30 of the FIL, companies with the participation of foreign parties enjoy a number of custom privileges. Firstly, they are exempt from custom duties and other fees of a similar effect on imported machinery, equipment as well as other items required for the conduct of business activity, within three years of their establishment.

Secondly, they are entitled to refund import duty on export sales in accordance with the privileged principles applicable to State-owned enterprises.

Thirdly, foreign shareholders are exempt from the above burdens on imported items constituting their in-kind contribution to a company's equity.

Fourthly, exempt from the export duty are items falling to the foreign shareholder upon the dissolution of the company.

All above privileges but the latter one, along with the income tax exemptions and deductions should encourage foreign investor to invest heavily, particularly in the course of the first three years since establishment of a company. It has been the intention of the Polish legislator and of the administrative authorities of the State to attract sound foreign investors interested in a long-term business activity in Poland.

9. *Special Guarantees*

According to Article 22, Paragraph 6 of the FIL, the Minister of Finance, upon the application of a foreign shareholder, issues him with a compensation payment guarantee to the amount equal to the value of the company's assets due to him, in the event of a loss resulting from a decision of any State authorities in respect of nationalization, expropriation, or from measures having effect equivalent to nationalization or expropriation.

In this context worth of separate stressing are much further going obligations assumed by Poland in favour of foreign investors under bilateral investment protection treaties to which Poland is a party. Currently such treaties with the United Kingdom and China are in force,

and investment protection treaties have been signed, but are not yet ratified, with Belgium and Luxemburg as well as with Austria. Quite advanced negotiations are with France, Italy and the FRG.

Characteristic to those treaties are clauses like one contained in Article ,5 of the Polish-United Kingdom Treaty of December 8, 1987. It states *inter alia* :

“1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subject to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as ‘expropriation’) in the territory of the other Contracting Party except for a public purpose which is not discriminatory and against prompt, adequate and effective compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, and shall be paid within three months of the expropriation, be effectively realizable and be freely transferable...

2. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.”

Needless to argue that such a guarantee patterned after the so-called “Hull-clause” represents the strongest possible safeguard for foreign investor against adverse effects of nationalization, no matter how remote such a possibility might have been. Thus, it is in the common interests of all those concerned, investors, host and recipient countries to have such treaties concluded.

As for the FIL itself, not without importance is the declaration of intention of Polish legislator contained in the Preamble to the Law, which states :

“In order to create stable environment for future development of mutually advantageous capital cooperation between Poland and foreign parties, to guarantee the foreign parties the protection of their property, income and other rights the following is proclaimed

10. *Dissolution of a Company*

In case of the dissolution of a company, its assets are subject to liquidation. The amounts remaining after the payment of debts and recovery of outstanding liabilities are distributed between the partners. In case of amounts in foreign currencies their transfer abroad by a foreign party does not require a separate foreign exchange permit. However, in case

of amounts received in zlotys their transfer abroad may take place 10 years from the registration date of a company, unless a permission of the Minister of Finance is obtained for an earlier transfer.

If a company is dissolved during the corporate income tax exemption period or within three years after such period has expired, the company shall pay tax for the exemption period. In such case tax liability arises upon the notification of the dissolution of the company (Chapter 6 of the FIL).

The above regulations aim at achieving three main purposes : to guarantee foreign investors undisturbed transfer abroad of their dues, to prevent using dissolution of the company for income tax evasion and to secure in a balanced manner the balance of payment interests of the State. Again, bilateral investment protection treaties may play constructive role in the sound resolution of relevant problems.

Certainly, the FIL is a piece of legislation which is not free of shortcomings or even faults. Still, it seems to represent quite reasonable and competitive offer for foreign investors who wish to establish their business in Poland.