

**The LAW  
On Economic Activity with the Participation  
of Foreign Parties  
of DECEMBER 23, 1988\***

Aiming at the creation or stable conditions for further development of mutually advantageous capital cooperation of Polish and foreign bodies and to guarantee the foreign bodies protection of their property, incomes and other rights, the following is proclaimed :

**CHAPTER 1**

**General Provisions**

**Art. 1.** 1. This law determines the conditions for the commencement of and the principles for the conduct of economic activity with the participation of foreign bodies in the territory of the Polish People's Republic.

2. For the purpose of this law economic activity is defined as production, construction, trade and services conducted for profit.

**Art. 2.** 1. The activity referred to in art. 1 may be conducted either in the form of a limited liability company or joint stock company, hereinafter referred to as "companies," established jointly by Polish bodies and foreign bodies or exclusively by foreign bodies. The contribution of foreign parties may not be smaller than 20 per cent of the registered capital.

2. The provisions of Polish law, in particular the Commercial Code shall apply to the companies unless the provisions of this law state otherwise.

**Art 3.** 1. The Polish bodies entitled to participate in companies shall be :

1) the Treasury and other legal persons established under the laws of the Polish People's Republic and having seats in Poland ;

2) natural persons domiciled in Poland.

2. Foreign bodies entitled to participate in companies shall be :

1) legal persons having their seat abroad ;

2) natural persons domiciled abroad ;

3) companies established by companies referred to in items 1 and 2 which have no legal personality.

**Art 4.** 1. The Foreign Investment Agency, further referred to as "the Agency" is established and shall act as an executive body of the President of the Agency. Organization and the procedure of operating shall be determined in its statute conferred by the Prime Minister.

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\* 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.

2. The President of the Agency is a central administrative authority subject to the Prime Minister in foreign investment problems.

3. The President of the Agency shall be appointed and recalled by the Prime Minister at the request of the Minister of Foreign Economic Relations.

4. The scope of activities of the President of the Agency shall be :

1) drafting and implementing the policy of the state in capital cooperation with abroad ;

2) stimulating and organizing activities increasing the interest of the foreign bodies in undertaking economic activity in the Polish People's Republic in domains and in extent consistent with the interest of the national economy ;

3) supervision of compliance of the activities of bodies operating under this law with its provisions and the conditions determined in the permit of establishing a company ;

4) executing other duties as provided by this law.

5. The Foreign Investment Council shall act as an advisory body of the President of the Agency. The members of the Council shall be appointed and recalled by the Minister of Foreign Economic Relations at the request of the President of the Agency.

**Art. 5.** 1. The establishment of a company shall require a permit. Granting of a permit implies a consent for commencement of economic activity as defined in it.

2. A permit shall be granted if the economic activity shall ensure in particular :

1) introduction of modern technologies and managing methods into the national economy ;

2) provision of goods and services for export ;

3) improvement in the supply of modern and high quality products and services to the domestic market ;

4) protection of the natural environment.

3. A permit is also required for :

1) transfer of shares or stocks among partners ;

2) the access of a new partner to the company ;

3) amendment of the company's founding act regarding proportions of shares in company's initial capital, relative voting rights and the nature and value of partners' contributions ;

4) the change in the subject of the company's activity as specified in the permit.

4. A permit shall be granted by the President of the Agency upon application of the interested persons.

5. No separate foreign exchange permit is required for foreign exchange transactions indicated in par. 1 and 3.

**Art. 6.** 1. A permit shall not be granted if the conduct of economic activity would be aimless due to :

1) endangering the state's economic interests ;

2) the requirements of natural environment protection ;

3) the state's security and defence interests or the protection of state secrets.

2. The decision to deny a permit, referred to in par. 1, item 1 and 3 does not require reasoning of the underlying facts.

3. The interested persons have the right to appeal to the President of the Agency to re-examine the case within fourteen days from the date of the delivery of the decision denying the permit.

4. The decision to deny a permit may not be appealed to the Supreme Administrative Court.

**Art. 7.** Providing the conduct of economic activity specified in the permit by virtue of other regulations requires a license, the permit shall be granted after consultation with the appropriate licensing authority.

**Art. 8. 1.** The President of the Agency may grant the permit under the condition that the foreign body shall undertake economic activity jointly with a Polish body and that the partners' contributions to the registered capital of the company shall be determined by them in specific proportions.

2. In economically justified cases the President of the Agency may give consent to the collecting of the registered capital of a joint stock company through public subscription of shares, determining the proportions of shares to be held by Polish and foreign bodies. In such cases art. 5, par. 3, item 1 and 3 of this law shall not apply. Art. 10, par. 1, item 1 and art. 11, par. 1, item 1, apply respectively.

## CHAPTER 2

### Establishment of Companies

**Art. 9.** Persons establishing a company may arrange their mutual relations and internal relations of the company in compliance with their will in its founding act unless the provisions of the Commercial Code or this law state otherwise.

**Art. 10. 1.** An application for a permit should specify :

- 1) partners ;
- 2) subject and scope of the company's economic activity, including export and import activities ;
- 3) anticipated duration of company's activity ;
- 4) funds essential to start company's activity including the value of the registered capital ;
- 5) proportions in which each partner shall contribute to the company's registered capital and forms of contributions ;
- 6) the seat of the company and the future location of its plants.

2. The application referred to in par. 1 should enclose :

- 1) a draft of a company's founding act as required by the Commercial Code ;
- 2) documentary evidence as to the legal status and financial condition of the future partners ;
- 3) a feasibility study of a proposed company.

3. The documents specified in par. 2 shall be submitted in Polish or in a foreign language together with a certified translation into Polish.

4. The decision granting a permit shall be made within two months from the date of filing the application.

**Art. 11. 1.** A permit shall specify :

- 1) partners, name and seat of a company, location of its plants as well as the subject and duration of company's activity ;
- 2) proportions and form of partner's contributions to the company's registered capital ;
- 3) other requirements that a company should fulfil during the conduct of its economic activity ;
- 4) the duration of the permit's validity.

2. In case of anticipated change of location of its plants, the company shall inform the President of the Agency of the proposed location. Lack of objection within one month is to be understood as a consent.

**Art. 12.** 1. The company shall be registered in court of register in accordance with regulations on the commercial register.

2. The application for registration should have the permit enclosed.

**Art. 13.** Within two weeks from the date of its registration the Board of the company is obliged to notify of this the President of the Agency delivering an extract of court's registration and a copy of a company's founding act.

**Art. 14.** The authority that granted the permit has the right to enter the seat of a company and its plants and to review its books and documentation to verify whether the activities of a company comply with the conditions of the permit.

**Art. 15.** If the company engages in activity incompatible with the conditions determined in the permit, the authority that granted the permit shall request this to be corrected within a specified period, otherwise it may restrict the scope or withdraw the permit.

**Art. 16.** 1. The contribution to a company's registered capital may be made both in cash and in kind.

2. The contribution of the foreign partners may be made :

1) in cash—in foreign currency or in zlotys obtained through a documented exchange of this foreign currency ;

2) in kind—either transferred from abroad or acquired for zlotys obtained through documented exchange or foreign currency.

3. The contribution of a foreign body domiciled or having its seat in one of the member countries of the Council for Mutual Economic Assistance may also be made in transferable roubles or in the national currency of one of these countries in accordance with agreements binding the Polish People's Republic in this respect.

4. The total value of the foreign bodies' contributions to the company's registered capital cannot be smaller than 25 million zlotys. This amount is adjusted accordingly to the changes in the rate of exchange of the zloty to the foreign currency in which the contribution is made.

5. The contributions of the Polish bodies can be made in cash in zlotys, in foreign currency or in kind. The rights to state-owned real property may be contributed to the company to the extent and in accordance with the principles determined in the regulations pertaining administration of state land.

6. The value and the nature of the contributions in kind should be determined in the company's founding act. The value of these contributions can be subject to Verification by independent experts at the request of the authority granting the permit. Should the verification prove that the market value of the contribution in kind is lower from that determined in the application, the cost of verification shall be borne by the contributor.

7. Documents certifying the contributions to company's registered capital can be delivered only to specific persons.

### CHAPTER 3

#### The Company's Economy

**Art 17.** 1. For the purpose of determining profit, the operating costs of a company include depreciation of fixed assets, including those situated permanently

on leased land and non-material values in accordance to depreciation rates and the principles provided for state enterprises.

2. The depreciation allowances shall remain in the company.

3. The company's profit, after deducting the due corporate income tax shall form profit for distribution.

4. To cover balance losses 10% of the profit for distribution is transferred to a reserve fund. A company may cease to make such deductions if its reserve fund reaches in an accounting year 4% of the company's operating costs.

5. The profit is distributed to partners in proportions to their shares in the company's registered capital. Other agreement requires a consent of the President of the Agency.

**Art. 18.** 1. The Minister of Finance determines the general principles of keeping the company's accounts in compliance with the Commercial Code.

2. The annual balance sheet of a company shall be audited by the competent authority of the Minister of Finance or by other body of company's choice authorized by the Minister of Finance to audit the annual balance sheets of the companies, within three months of its filing. The cost of auditing shall be borne by the company.

3. The balance sheet is considered audited if within three months the authority indicated in par. 2 does not notify the company of its objections. After the objections shall be complied with, the balance sheet shall be considered audited.

4. The audited profit shown in the company's annual report forms the basis of determining that part of profit which the foreign partner may transfer abroad under the provisions of this law.

**Art. 19.** 1. A company shall resell 15 per cent of its foreign currency export proceeds to a Polish foreign exchange bank. This obligation does not apply to proceeds from the sale of means of production forming company's assets if they are replaced by new ones.

2. For the purpose of its activity a company may purchase, without a separate foreign exchange permit, goods and services abroad from the part of foreign currency proceeds remaining after the resale referred to in par. 1.

**Art. 20.** 1. A company may distribute profit in foreign currency from the surplus of export proceeds over import outlays without a separate foreign exchange permit.

2. A foreign partner has the right to transfer abroad the amount of profit referred to in par. 1 without a separate foreign exchange permit.

3. A Polish partner has the right to transfer the amount of profit referred to in par. 1 to his foreign currency account in a Polish foreign exchange bank.

4. In economically justified cases the Minister of Finance may give consent to a foreign partner to transfer abroad an amount of profit exceeding that determined in par. 1. Such a consent may constitute a part of a permit for the establishment of a company.

5. A foreign partner is, with the reservation of par. 6, free to use his zloty profit in the domestic trade turnover in the Polish People's Republic without a separate foreign exchange permit.

6. The purchase of real estate from the foreign partner's profit requires a separate foreign exchange permit.

**Art. 21.** 1. Partners have the right to use their part of profit to increase company's registered capital without a separate permit, providing this does not change the proportions of shares determined in the permit establishing a company.

2. After paying due taxes the foreign partner has a right to transfer abroad proceeds from the sale of his shares or stock and money due him in connection with the dissolution of a company without a separate foreign exchange permit.

3. In cases where the amounts referred to in par. 2 shall be received in zlotys, transfer abroad may be executed 10 years from the date of the registration of a company.

4. In specially justified cases the Minister of Finance may give consent to an earlier transfer of the amounts referred to in par. 3.

**Art. 22.** 1. The companies deposit their money in accounts with Polish foreign exchange banks they choose.

2. At the request of a company the banks referred to in par. 1 open and keep accounts in zlotys and in foreign currency and can grant credits to them.

3. A company may keep accounts in foreign banks after obtaining a foreign exchange permit.

4. A company may draw credits abroad without a separate foreign exchange permit.

5. Banks referred to in par. 1 may guarantee liabilities of a company in accordance of the applicable regulations.

6. The Minister of Finance on request of a foreign partner grants him a compensation payment guarantee to the amount of the value of the company's assets due him, in the event of a loss resulting from a decision of state authorities in respect of nationalization, expropriation or from other actions resulting in similar effects to that of nationalization or expropriation.

**Art. 23.** 1. A company may purchase goods and services for foreign currency in the domestic trade turnover from the licensed organizations.

2. Within the field of its economic activity a company may sell goods and services wholly or partially for foreign currency in the domestic trade turnover after obtaining a foreign exchange permit.

3. Companies may sell foreign currencies at the foreign exchange auctions conducted in accordance with separate regulations.

**Art. 24.** Materials and technical supply of companies in the domestic market shall be conducted in accordance with the regulations and procedures determined for socialized economic entities.

**Art. 25.** Socialized enterprises may sell fixed assets to companies and establish in their name limited property rights on these assets.

**Art. 26.** 1. State land can be made available to the companies by way of :

— perpetual use agreements in accordance with the rules applicable to the administration of state land ;

— a lease.

2. Companies may acquire and lease land and other real property not owned by the state in accordance with the existing regulations.

## CHAPTER 4

### Taxes and Levies

**Art. 27.** 1. A company shall pay the following taxes : turnover tax, corporate income tax, agricultural tax, wage tax, real property tax and local taxes as well as stamp free and community or city levies and enjoys reliefs and exemptions in accordance with the principles applicable to non-socialized economic bodies with a status of a legal person, however :

- 1) the corporate income tax shall be 40 per cent of the taxable basis;
  - 2) deducted from the taxable basis shall be :
    - a) investment outlays as defined in the decree of the Council of Ministers ;
    - b) donations for socially useful purposes, including social organizations and foundations with their seats in the Polish People's Republic;
  - 3) the corporate income tax is decreased by 0.4 per cent for each 1 per cent of the share of export sales of goods and services in total economic turnover after deducting turnover tax, with the reservation that the final corporate income tax after applying this relief cannot be lower than 10 per cent of the taxable basis.
2. Donations referred to in par. 1, item 2 b may not exceed 10 per cent of income.

Art. 28. 1. A company shall be exempt from corporate income tax during the first three years from the date of commencing the economic activity which is determined as the date of the first invoice.

2. A company may be granted an additional corporate income tax exemption for a further period of up to three years if it engages in fields of activity determined by the Council of Ministers. The President of the Agency determines the additional exemption period in a permit.

Art. 29. The income of a foreign partner shall be subject to an income tax of 30 per cent, unless international agreements concluded by the Polish People's Republic provide otherwise. The tax shall be collected by the company acting as a taxpayer in accordance with separate provisions. Tax on income paid out in foreign currency shall be collected in zlotys from a documented exchange of such currency.

Art. 30. 1. Exempt from import duties and other levies similar in their effect shall be :

1) items forming partners' contribution in kind to a company's registered capital, such as machines, appliances and equipment as well as other means required for the conduct of economic activity determined in the permit ;

2) machines, appliances and equipment and other means required for the conduct of economic activity determined in the permit, purchased by the company or persons acting on its request within three years of its establishment.

2. Exempt from export duty shall be items falling to a foreign partner in case of a dissolution of a company.

3. A company is entitled to refund of import duty on export sales in accordance with the principles applicable to state owned enterprises.

## CHAPTER 5

### Employment

**Art. 31.** 1. Employment labour relations and conditions of work in the company, social problems, workers' social insurance and trade unions' activity shall be governed by Polish law.

2. A company may employ foreign citizens or persons without a Polish domicile card with the consent of the local state administrative authority of the specific competence of the voivodship level.

3. The permission mentioned in par. 2 shall not be required for persons not employed by the company and acting in its plants on the assignment from the foreign partner with the consent of the company.

**Art. 32.** 1. The principles of remuneration of company's employees shall be determined either in its founding act or resolutions.

2. The remuneration of company's employees shall be determined and paid in zlotys with the reservation of par. 3.

3. Remuneration of employees classified as foreign persons under the Foreign Exchange Law may be partially paid in foreign currency from the foreign currency revenues of the company. This part of the pay may be transferred abroad upon the request of the employee without a separate foreign exchange permit.

4. The remuneration of employees, classified as foreign persons under the Foreign Exchange Law shall be subject to 30 per cent tax in the currency in which the payment shall be effected, unless international agreements binding the Polish People's Republic provide otherwise. The tax shall be collected by the company upon the payment in accordance with the procedures determined in separate provisions. Tax on remuneration paid in foreign currency shall be collected in Polish zlotys after a documented exchange of such currency.

5. The remuneration of the Polish employees of the company shall be subject to tax applicable to employees of non-socialized enterprises.

## CHAPTER 6

### **Transfer of Rights Resulting from Participation in a Company and the Dissolution of a Company**

**Art. 33.** If the sale of shares or stocks is to be made by way of execution, a company may within two months from the date of receiving notice of an order of sale, name a person who will purchase the shares or stocks at a price to be set by a court on request of the company and after consultation with experts.

2. If a request for a price determination shall not be filed during the period specified in par. 1 or a person indicated by the company fails to pay the price within a month of the date of the notification of the company of the price determination or of the consent for the replacement of a partner, whichever expires later, the shares or stocks shall be sold in accordance with the rules of judicial execution with the reservation of art. 5, par. 3, item 2.

**Art. 34.** In case of a dissolution of a company, the Polish partners enjoy the right of preemption of property and rights forming the assets of the company unless its founding document provides otherwise.

**Art. 35.** In case a dissolution of a company shall be notified during the corporate income tax exemption period or within three years after it expires, as stated in art. 28, par. 1 and 2, the company shall be obliged to pay the tax for the period of exemption. In such a case the tax liability arises upon the notification of the dissolution of the company.

## CHAPTER 7

### **Special, Temporary and Final Provisions**

**Art. 36.** Unless this law states otherwise, the regulations pertaining to socialized economic bodies shall not apply to the companies.

**Art. 37.** 1. Companies may associate in the Foreign Investors' Chamber of Industry and Commerce and other Polish economic chambers.



2. The Polish-Polonian Chamber of Industry and Commerce established under the Law of July 6, 1982 on the Principles of Conducting an Economic Activity in Small Industry by Foreign Corporate Bodies and Natural Persons in the Territory of the Polish People's Republic (Dziennik Ustaw of 1985 No. 13, item 58), hereby becomes the Foreign Investors' Chamber of Industry and Commerce hereinafter referred to as "the Chamber." The former foreign members of the Polish-Polonian Chamber of Industry and Commerce may within three months of the date of coming this law into effect, confirm their membership in the Chamber.

3. The President of the Agency shall supervise the Chamber and approve its statute. The President of the Agency may refuse to approve the statute should its provisions infringe the law.

4. The tasks of the Chamber include in particular :

1) representing the economic interests of its members and undertaking measures for the protection of these interests ;

2) assisting its members in solving economic, organizational and legal problems of commencing and conducting their economic activity.

5. The specific tasks of the Chamber and the principles of its activities, authorities, procedures for its establishment, scope of its activity and the rules of financing shall be determined in its statute.

6. The Chamber has legal personality.

7. Should an authority of the Chamber substantially infringe upon the law or the provisions of its statute, the authority supervising the Chamber's activity may set appropriate date in which these violations can be amended or may request a change in the composition of the Chamber's authority within a specified period. In case such a period should expire ineffectively, the supervising authority may suspend that authority and establish an appropriate temporary authority which shall act until a new authority shall be created in accordance with the procedures determined in the statute.

**Art. 38.** 1. This law does not apply to international enterprises, with the reservation of the provisions of par. 2—4 of this article unless an international agreement provides otherwise.

2. If an international agreement provides that international enterprise or its branch with its seat in the territory of the Polish People's Republic has legal personality, this enterprise or its branch should be registered in the commercial register.

3. The registration in the commercial register shall be effected upon application of the appropriate authority of the international enterprise or its branch. The registration shall be made on the basis of a certified copy of the Polish text or a certified translation into Polish of the agreement establishing the international enterprise or its branch. The agreement should have enclosed a list of full names of managing directors and the plenipotentiaries of such an enterprise or its branch.

4. The regulations governing the commercial register on the limited liability companies shall be applied respectively to the registration of the international enterprises or their branches and in accordance with the provisions of the international agreement.

**Art. 39.** 1. The foreign bodies conducting economic activity under the law referred to in art. 37, par. 2, may upon a permit, contribute their enterprise or its part as well as property, rights and money from this activity to companies established under this law.

2. The permit referred to in par. 1 may be granted providing the foreign body

has completed in the contributed enterprise or its part investments in convertible currency of at least 50.000 US dollars.

3. The application for a permit should specify the methods by which the creditors of the foreign body will be satisfied in respect of the liabilities arising in connection with the operation of its enterprise. The granting of a permit may be conditioned by the establishment of a proper security for the creditors' claims.

**Art. 40.** 1. Limited liability companies and joint stock companies established pursuant to the law referred to in art. 37, par. 2 may obtain a permit to reorganize themselves into companies established pursuant to this law.

2. The permit may be granted after fulfilling the requirement of art. 39, par. 2.

**Art. 41.** After obtaining a permit, foreign bodies may purchase shares or stocks in existing companies established under Polish law which are not companies with foreign capital participation, providing that as an effect of this the registered capital of these companies shall be increased. The provisions of this law shall apply to these companies after the registration of the company's capital increase.

**Art. 42.** 1. The permits referred to in art. 39, par. 1, art. 40, par. 1 and art. 41 shall be granted by the President of the Agency.

2. The provisions of art. 6 and art. 10 shall be applied respectively to the application of granting a permit.

3. Should the location and subject of economic activity be the same as in the existing permit, permits referred to in art. 39, par. 1 and in art. 40, par. 1, shall be granted after the applicant fulfils the conditions of art. 39, par. 2 and submits the draft of the founding act of the company in accordance with the provisions of this law.

**Art. 43.** The provisions of art. 28, par. 1 shall not apply to the companies established pursuant to the provisions of art. 39, 40 and 41.

**Art. 44.** 1. Companies with foreign capital participation established under the Law of April 23, 1985 on Companies with Foreign Capital Cooperation (Dziennik Ustaw No. 17, item 88 and of 1987 No. 33, item 181), operating at the time this law comes into force, shall become companies subject to the provisions of this law.

The President of the Agency shall adapt the permits already granted to the requirements of this law within three months after the law comes into force.

**Art. 45.** The President of the Agency shall be an authority of appeal in respect to the decisions of the regional state administrative authorities of the specific competence of the voivodship level and made in accordance with the law mentioned in art. 37, par. 2.

**Art. 53.** The Law of April 23, 1986 on Companies with the Foreign Capital Participation (Dziennik Ustaw No. 17, item 88 and of 1987 No. 33, item 181) is hereby null and void.

**Art. 54.** This Law takes effect as of January 1, 1989.