

# ACTES LÉGISLATIFS \* LEGISLATIVE ACTS

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## LAW OF APRIL 30, 1993 ON NATIONAL INVESTMENT FUNDS AND THEIR PRIVATIZATION

(Journal of Laws of the Republic of Poland, 1993 N° 44, Item 202)

### CHAPTER 1

#### GENERAL PROVISIONS

##### Art. 1

This law sets forth principles for the establishment, operation and privatization of national investment funds.

##### Art. 2

1. Whenever this law refers to:

- 1) the statutes, shares, share capital, supervisory board, shareholders or general meeting of a joint stock company, the shares of which are contributed to a national investment fund or of which a national investment fund is a shareholder, it shall be deemed to refer, respectively, to the company agreement, shares, stated capital, supervisory board, shareholders or general meeting of a limited liability company, unless the given provision of this law states otherwise,
- 2) a share certificate, it shall be deemed to refer to both a compensation share certificate and a universal share certificate.

2. To the extent not otherwise regulated by this law, provisions of the Commercial Code applicable to joint stock companies shall apply to national investment funds.

### CHAPTER 2

#### PURPOSE OF AND PRINCIPLES FOR THE ESTABLISHMENT OF NATIONAL INVESTMENT FUNDS

##### Art. 3

1. The national investment funds, hereinafter referred to as the "funds", shall be established by the State Treasury in the form of joint stock companies.

2. The rights of the State Treasury as the founder and shareholder of a fund shall be exercised by the appropriate minister being a member of the Council of Ministers.

#### **Art. 4**

1. The purpose of the funds is to increase the value of their assets, in particular by enhancing the value of shares of companies of which the funds are shareholders.
2. The funds endeavor to achieve the purpose stated in Sec. 1 above in particular through:
  - 1) exercising rights with respect to the shares of companies established as a result of transformation of state-owned enterprises into companies wholly owned by the State Treasury, pursuant to the Law dated July 13, 1990 on Privatization of State-Owned Enterprises (Journal of Laws, N° 51, Item 298 and 1991 N° 60, Item 253 and N° 111, Item 480), and shares of other joint stock and limited liability companies, in particular for the purpose of improving the management of the companies in which the funds have a substantial shareholding, including the strengthening of their position in the market and obtaining new technologies and loans for the companies,
  - 2) conducting economic activity through purchase and sale of shares of companies and exercise of acquired rights; and
  - 3) granting and obtaining loans for the accomplishment of the tasks set forth in Items 1 and 2 above, as well as other tasks defined in the statutes.

#### **Art. 5**

1. The business name of a fund may be chosen freely; however, it should contain the phrase "National Investment Fund — Joint Stock Company". The use of the abbreviation "N.I.F. — J.S.C." is permitted. The business name of a fund should be sufficiently different from the business names of other funds.
2. Business names including the phrase or the abbreviation referred to in Sec. 1 above, may be used exclusively by a joint stock company established pursuant to this law.

#### **Art. 6**

1. The State Treasury may make non-monetary contributions to a fund in the form of shares of joint stock companies, hereinafter referred to as "companies", in accordance with the principles set forth in Art. 10 below, so long as it remains the sole shareholder of the fund.
2. The State Treasury may make the monetary contributions to a fund needed for the registration of the fund.

#### **Art. 7**

1. The Council of Ministers shall designate, by ordinance, state-owned enterprises which shall be transformed into companies, and companies wholly owned by the State Treasury, in order to have shares of all such companies contributed to the funds, as well as those funds to which such shares shall be contributed, and the procedure for contributing the shares to the funds.
2. The appropriate minister shall submit to the Council of Ministers motions in matters referred to in Sec. 1 above. Motions concerning the transformation of state-owned enterprises into companies in order to have their shares contributed to the funds shall be submitted if neither the director nor the workers council has forwarded an objection with reasons within

45 days of their notification. The workers council shall take its stand after obtaining the opinion of the general meeting of workers (delegates). The absence of an objection within 45 days of the notification of the organs of the enterprise shall be regarded as an expression of consent.

3. The appropriate minister shall transform a state-owned enterprise designated in accordance with Secs. 1 and 2 above. The transformation shall be effected — unless the provisions of this law state otherwise — according to the principles specified in Chapter 2 of the Law on Privatization of State-Owned Enterprises, and, in the part concerning the transformation of a state-owned enterprise, without needing to observe the requirements of Art. 11 of the Law dated February 24, 1990 on Counteracting Monopolistic Practices (Journal of Laws 1991 N° 89, Item 403).

### **Art. 8**

1. The Council of Ministers shall designate, by ordinance, those companies shares of which shall be contributed to funds established for the purpose of compensating the persons referred to in Art. 30 Sec. 1 below by means of "compensation share certificates".
2. The value of the capital of the companies referred to in Sec. 1 above may not be less than fifty trillion (50,000,000,000,000) Zlotys.

### **Art 9**

1. So long as the State Treasury remains the sole shareholder of a fund, the contributions referred to in Art. 6 above shall be used to cover the share capital and the reserve capital of the fund; the apportionment between share capital and reserve capital shall be determined in the statutes of the fund.
2. The value of non-monetary contributions of the State Treasury to a fund wholly owned by the State Treasury shall equal the aggregate value of the company shares contributed.
3. The value of a share of a company shall be calculated:
  - 1) by dividing the total capital of the company as of the date of the last balance sheet by the number of shares of such company at the time of contribution of its shares to the fund, if after its transformation the company has prepared an annual balance sheet for the previous financial year,
  - 2) by dividing the total capital of such company at the time of either the transformation of a state-owned enterprise into such company or the establishment of such company, by the number of shares provided in the statutes of such company at the time of the contribution of such shares to the fund, in the remaining cases.
4. When the annual balance sheet of a fund is prepared, the value of company shares determined in accordance with Sec. 3 above shall be deemed to be the purchase price of such shares and Art. 425 of the Commercial Code shall apply accordingly.
5. In return for its contributions the State Treasury shall receive the shares of the funds. The State Treasury shall remain the sole owner of the shares of a fund until such shares are made available to entitled entities in accordance with the provisions of this law.

**Art. 10**

1. The State Treasury shall contribute to the established funds 60% of the shares of each company of which it is the sole shareholder, provided, however, that 27% of the shares of each company should be held in approximately equal parts by all designated funds, except for one such fund which shall receive as a whole a package of 33% of the shares of a given company; with respect to each such company, there shall be only one such package of shares which shall be contributed as a whole to one fund. These principles apply only to the distribution of shares of companies among funds wholly owned by the State Treasury.
2. The State Treasury may also contribute to the funds wholly owned by the State Treasury all or a portion of the shares it owns in a company not wholly owned by the State Treasury; such shares should be divided among designated funds, provided that one fund may receive no more than 33% of the total number of shares of a given company.

**Art. 11**

Part of the shares of a fund owned by the State Treasury may be cancelled; provided, however, that such cancellation shall be effected without any obligation on the part of the fund to return to the State Treasury the relevant part of its contribution. In this respect, Arts. 440 - 442 of the Commercial Code shall not apply. The reserve capital of the fund shall be increased by the value of the redeemed shares.

**Art. 12**

1. At the moment of contribution by the State Treasury to the funds of the shares of a company, the share capital of such company wholly owned by the State Treasury shall, by operation of law, be set at the level of 15% of the capital of the company on the date of its entry in the commercial register. In this respect, Art. 311 Para. I of the Commercial Code shall not apply.
2. The amount of decrease of the share capital referred to in Sec. 1 above shall be transferred to the reserve capital of the company.
3. Not later than 14 days after the date of the contribution of the shares of a company to the funds, the management board of such company shall notify the proper court of registration of the adjustment of its share capital in accordance with Sec. 1 above. Within the same period, the management board of the company shall make appropriate adjustments to the apportionment of capital between share capital and reserve capital, as well as a corresponding reduction in the nominal value of the shares of the company. In this respect, Art. 431 Para. 1 of the Commercial Code shall not apply.
4. Immediately upon receiving the notification referred to in Sec. 3 above, the proper courts of registration shall make appropriate adjustments in the commercial registers.
5. With respect to the matters referred to in Secs. 1 - 4 above, the provisions of the Commercial Code relating to the decrease of share capital of a joint stock company shall not apply.

**Art. 13**

1. The nominal value of fund shares, shares of a joint stock company and shares of a limited liability company shall be not less than one-tenth of the minimum nominal value referred to respectively in Art. 340 Para. 1 and Art. 159 Para. 2 of the Commercial Code.

2. With respect to contributions of the State Treasury to funds wholly owned by the State Treasury, the provisions of Arts. 312, 313 and 315 of the Commercial Code shall not apply.
3. With respect to fund shares received by the State Treasury, the provisions of Art. 347 of the Commercial Code shall not apply.

## CHAPTER 3

### GOVERNING BODIES OF A NATIONAL INVESTMENT FUND

#### **Art. 14**

The governing bodies of a fund shall be: the general meeting, the supervisory board and the management board.

#### **Art. 15**

1. Until the first general meeting is convened in which shareholders other than the State Treasury may participate, the members of the supervisory board of a fund shall be appointed and recalled, and their remuneration determined, by the appropriate minister with the consent of the President of the Council of Ministers.
2. The members of the supervisory board of a fund shall be appointed by the appropriate minister from among persons selected through a competition conducted by a Selection Commission.
3. The Selection Commission shall be composed of:
  - 1) four persons elected by the Sejm,
  - 2) one person elected by the Senate,
  - 3) one person designated in each case by the national inter-union organizations and national trade unions being representative of employees of the majority of state places of employment,
  - 4) twelve persons appointed by the President of the Council of Ministers.
4. The President of the Council of Ministers shall appoint the Chairman of the Selection Commission and determine its rules of procedure.

#### **Art. 16**

1. The statutes of a fund shall determine the number of members of its supervisory board; such number shall be an odd number and shall not be greater than nine until the first general meeting is convened in which shareholders other than the State Treasury may participate.
2. At least two thirds of the members of a supervisory board of a fund, including its chairman, should be Polish citizens.

#### **Art. 17**

The term of the first supervisory board shall expire on the day the first ordinary general meeting of the fund has been held in which shareholders other than the State Treasury may participate. In this respect, Art. 381 Para. 1 of the Commercial Code shall not apply.

**Art. 18**

1. Until the first general meeting is convened in which shareholders other than the State Treasury may participate, powers of the general meeting which are not reserved by this law or the statutes of a fund to the exclusive competence of the general meeting, shall be exercised by the supervisory board.
2. Within the period referred to in Sec. 1 above, the statutes of a fund may not grant the supervisory board powers to decide in the following matters:
  - 1 ) change of statutes,
  - 2 ) issuance of new shares,
  - 3 ) merger of the fund with another company,
  - 4 ) dissolution of the fund.
3. In addition to its powers arising under the Commercial Code, the supervisory board shall have the exclusive power to appoint the members of the management board, and, subject to Art. 21 Sec. 2 below, to select a legal entity performing management services, hereinafter referred to as the "management firm", and to conclude the contract referred to in Art. 21 below.

**Art. 19**

The management board of a fund shall be appointed for a period of no longer than two years. In this respect, Art. 367 Para. 1 of the Commercial Code shall not apply. So long as the State Treasury remains the sole shareholder of a fund, only a Polish citizen may be a member of the management board.

**Art. 20**

1. Within eight months after the end of each fiscal year of a fund, the management board shall be obliged to prepare and present to the supervisory board a balance sheet as at the last day of the fiscal year (the balance sheet date), an account of profits and losses for the previous year and a written report on the activities of the fund in the given year. In this respect, Art. 420 Para. 1 of the Commercial Code shall not apply.
2. The Minister of Finance may, by ordinance, determine specific accounting requirements for national investment funds.
3. The management board of a fund shall convene a general meeting within ten months after the end of each fiscal year. In this respect, Art. 390 Para. 1 of the Commercial Code shall not apply.

**CHAPTER 4****MANAGEMENT OF THE ASSETS OF A NATIONAL INVESTMENT FUND****Art. 21**

1. A fund may conclude a contract for the management of its assets with a management firm. The contract shall be executed on behalf of the fund by its supervisory board.

2. Funds wholly owned by the State Treasury may conclude management contracts exclusively with management firms selected by way of competitive tender by the Selection Commission referred to in Art. 15 Sec. 3 above.
3. The tender referred to in Sec. 2 above shall be a public tender and the selection criteria shall be made public. The detailed procedure for conducting the tender shall be determined, by ordinance, by the Council of Ministers.

#### **Art. 22**

1. The contract between a fund and a management firm may provide that the fund will grant a power of commercial representation ("prokura") to the management firm. In the case of granting a power of commercial representation to the management firm, the name of the management firm and the names of individuals exercising the rights of commercial representation shall be disclosed in the commercial register.
2. The contract may not release the management firm from the duty to cover all costs and expenses incurred by the fund for the account of the management firm, or by the management firm or its representatives and advisors, in connection with the carrying out by the management firm of its obligations.
3. A legal act between a third party and a person exercising the rights of a legal person holding a power of commercial representation is binding, even if the name of the person holding the power of commercial representation or the name of the person exercising the rights of commercial representation is not disclosed in the commercial register at the time of execution of such legal act.
4. Acting without or exceeding the scope of authorization by a person who is disclosed in the commercial register and is exercising the rights on behalf of a legal person holding a power of commercial representation does not affect the validity of legal acts performed by such person with respect to third parties, unless a third party has acted in bad faith.

#### **Art. 23**

1. The duties and powers of the management firm shall be determined in the statutes of a fund and in the contract between the fund and the management firm.
2. Neither the statutes of a fund nor any contract between such fund and a management firm shall exclude or limit the liability of the management firm for the damage or loss caused to the fund by intentional wrong or gross negligence of the management firm.

#### **Art. 24**

1. Any modification of a material term of a contract between a fund and a management firm, in particular any modification of the terms and conditions of the remuneration of the management firm, shall require ratification by the general meeting of the fund.
2. The fund may terminate the contract with the management firm without giving cause with no more than 180 days notice; in case of termination by the fund of the contract in circumstances for which the management firm is not responsible, the possible penalty for termination to which the management firm will be entitled shall not exceed in amount one half of the annual fixed management fee.

3. If a contract between a fund which is wholly owned by the State Treasury and a management firm provides for an annual fixed management fee, annual performance fee or a final performance fee, then the following principles regarding the remuneration of the management firm shall apply:
  - 1) the annual fixed management fee shall be established by way of tender referred to in Art. 21 Sec. 2 above;
  - 2) the annual performance fee, including any fee expressed in terms of a percentage of fund shares, shall be determined in an amount not to exceed the value of 1% of the fund shares for each year of rendering services by the management firm, in an amount obtained from the sale of shares and the value of due dividends;
  - 3) the final performance fee, including any fee expressed in terms of a percentage of fund shares, shall be determined in both cases in an amount not to exceed the value of 0,5% of fund shares multiplied by the number of years of service of a management firm, in an amount obtained from the sale of shares and the value of due dividends; such fee shall be payable only after the termination of the contract with the management firm.
4. The fee referred to in Sec. 3 above shall not exceed an amount determined in proportion to the period for which the management firm provided services to the fund.
5. Once any shares of a fund are held by shareholders other than the State Treasury, the principles of remuneration of a management firm which renders services to the fund must satisfy the condition that the portion of fees paid to the management firm which is dependent on the financial performance of the fund, even when expressed in terms of a percentage of fund shares, in no event may exceed the value of 2% of the shares of the fund with respect to each year of service of the management firm.

## CHAPTER 5

### ANTI-MONOPOLY PROVISIONS

#### Art. 25

1. All agreements among funds, or among one or more funds and third parties, regarding acquisitions of shares shall be notified to the Anti-Monopoly Office within 14 days from the date of the conclusion of the agreement. The notification obligation shall not apply to an agreement, as a result of which a fund acquires or obtains, in total, less than 10% of the shares of a given company.
2. The duty of notification referred to in Sec. 1 above rests upon the management board of the fund.
3. Unless the prior approval of the Anti-Monopoly Office is obtained, no management firm shall simultaneously provide management services to two or more funds and no management firm shall own shares in any fund to which it is then providing management services.
4. No member of the supervisory board or management board of any fund shall simultaneously serve as a member of the supervisory board or management board of another fund. This prohibition applies accordingly to persons exercising the power of commercial representation ("prokura") on behalf of a fund.

5. In the event of non-compliance with the requirements and prohibitions determined in Secs. 2-4 above, the Anti-Monopoly Office may issue a decision imposing upon the responsible member of the management board of the relevant fund or management firm a fine not exceeding half of such person's annual income for the previous fiscal year. Appeals from decisions of the Anti-Monopoly Office shall be conducted in accordance with Art. 10 of the Law on Counteracting Monopolistic Practices.

#### **Art. 26**

The provisions of Art. 375 of the Commercial Code shall apply accordingly to the management firm, its employees and its subcontractors.

#### **Art. 27**

The prohibitions referred to in Art. 25 Secs. 3 and 4 and Art. 26 above shall also apply to entities which occupy a "dominant" or "dependent" position with respect to the management firm, as such terms are defined in Art. 2 Item 9 of the Law dated March 22, 1991, on Public Trading in Securities and Trust Funds (Journal of Laws № 35, Item 155 and № 103, Item 447).

#### **Art. 28**

1. Within three years from the date of registration of a fund, parliamentary deputies and senators shall not be members of the supervisory board or the management board of the fund or of a company in which the fund holds at least 20% of the shares,
2. In this respect, the provisions of Sec. 1 above shall not exclude the provisions of Art. 4 Sec. 1 of the Law dated June 5, 1992, on Restrictions in Economic Activity by Persons Exercising Public Functions (Journal of Laws N° 56, Item 274).
3. The election or appointment of persons referred to in Sec. 1 above, which violates the prohibitions set out in that Section, shall be void by law and shall not be entered into the commercial register.

### **CHAPTER 6**

#### **SHARE CERTIFICATES**

#### **Art. 29**

1. A share certificate shall be a bearer security within the meaning of Art. 2 Sec. 1 of the Law referred to in Art. 27 above. A share certificate represents the property rights referred to in Art. 37 and Art. 38 Sec. 5 below.
2. Share certificates shall be issued by the State Treasury for which the appropriate minister shall act.
3. Share certificates may be issued in multiple form.
4. The appropriate minister may entrust to one or more banks or another institution activities relating to the issuance of share certificates.

**Art. 30**

1. The following persons shall be entitled to compensation share certificates, which may be exchanged for shares of the funds referred to in Art. 8 above:
  - 1) persons referred to in Art. 24 of the 1992 Budget Law dated June 5, 1992 (Journal of Laws, N° 50, Item 229 and N° 88, Item 443):
    - a) persons employed by state budgetary entities from July 1, 1991 to December 31, 1991,
    - b) soldiers and officers of the Police, Penitentiary Service, State Security Office and Border Guard, who performed their duties in the period from July 1, 1991 to December 31, 1991,
    - c) persons who in the period from July 1 to December 31, 1991 held the positions of judges, public prosecutors or held state management positions, except for persons whose claims on the above basis have already been fully satisfied;
  - 2) retirement and disability pensioners entitled before November 15, 1991 to pension increases due to their having worked in special conditions or having performed work of a special character, pursuant to Art. 54 Sec. 1, Item 2 of the Law dated December 14, 1982 on Pensions for Employees and Their Families (Journal of Laws N° 40, Item 267, 1984 N° 52, Items 268 and 270, 1986 N° 1, Item 1, 1989 N° 35, Items 190 and 192, 1990 N° 10, Items 58 and 60, N° 36, Item 206, No 66, Item 390 and N° 87, Item 506, 1991 N° 7, Item 24, N° 80, Item 350, and N° 94, Item 442 and 1992 N° 21, Item 84 and N° 64, Item 321), except for retirement and disability pensioners whose pensions were increased pursuant to Art. 6 Sec. 5 of the Law dated October 17, 1991 on the Revaluation of Pensions, Principles of Determining Pensions and the Change of Certain Laws (Journal of Laws, N° 104, Item 450 and 1992 N° 21, Item 84).
2. The Council of Ministers shall determine, by ordinance:
  - 1) the method of calculating the number of compensation share certificates for:
    - a) persons referred to in Sec. 1 Item 1, depending on the status of employment and the number of full months that a person was employed in the period referred to in Sec. 1 Item 1,
    - b) retirement and disability pensioners referred to in Sec. 1 Item 2, depending on their age, the value of sector premia, and the value basis of their pension;
  - 2) the method of using compensation share certificates for this purpose.
3. The preparation of lists of persons entitled to receive compensations share certificates shall be the task of the appropriate places of employment and pension organs. The Minister of Labor and Social Policy shall exercise supervision and control over the preparation of the lists of entitled persons. The Minister of Labor and Social Policy shall, by decree, determine the detailed principles and procedure of preparing such lists and the ways of exercising supervision and control.
4. Disputes concerning rights to receive compensation share certificates shall be settled according to the rules regulating the procedure of settling labor and social security disputes. The

Council of Ministers shall, by ordinance, determine the detailed procedures for bringing claims by entitled persons.

### **Art. 31**

1. All citizens of the Republic of Poland who are registered as permanent residents in Poland and who by December 31 of the year preceding the year of issuance of share certificates shall be at least 18 years old, shall be entitled to receive an equal number of share certificates, hereinafter referred to as "universal share certificates", which may be exchanged for shares of funds other than those referred to in Art. 8 above.
2. The preparation of lists of persons entitled to receive universal share certificates shall constitute a task delegated to the gminas.
3. Within the period set for the distribution of universal share certificates, every citizen may bring to the gmina's office, in writing or orally for the record, a claim relating to inaccuracy in the preparation of a list of entitled persons.
4. The director (or mayor or president) of a gmina shall be obliged to examine the claim within 30 days from its submission and to issue a decision on amending the list of entitled persons.
5. The decision shall be delivered, without delay, to the person who submitted the claim and if such decision refers to any other persons, it shall be delivered also to such other persons.
6. With respect to a decision which dismisses the claim or which results in the deletion of a person's name from the list of eligible persons, any person having a legal interest may, within 14 days from the date the decision is issued, bring an appeal to the appropriate regional court through the director (or mayor or president) of the gmina. The decision and all documentation of the case shall be attached to the appeal.
7. The court shall examine the case in a summary proceeding. A decision of the regional court may be appealed to the voivodship court.

### **Art. 32**

1. The Council of Ministers shall determine, by ordinance, the specimen of share certificates, the procedure of distribution of share certificates, and the dates of commencement and termination of distribution of share certificates.
2. The distribution of share certificates shall be the task of the appropriate minister.

### **Art. 33**

1. The delivery of a universal share certificate during the period specified in the ordinance referred to in Art. 32 Sec. 1 above shall be subject to a fee. The amount of such fee and the procedures for payment shall be set forth by an ordinance of the Council of Ministers.
2. The amount of the fee referred to in Sec. 1 above payable for a universal share certificate shall not exceed 10% of the average monthly wage in the national economy announced by the President of the Central Statistical Office for the last month covered by the available statistics.
3. The delivery of a compensation share certificate shall not be subject to a fee.

**Art. 34**

1. The right to receive a share certificate shall not be transferable or inheritable.
2. After the expiry of the period of delivery of share certificates in accordance with the ordinance referred to in Art. 32 Sec. 1 above, the Council of Ministers may, by ordinance, determine an expiry date for share certificates referred to in the ordinance. The expiry date of share certificates shall be announced no later than a year before such date. The power of the Council of Ministers to declare such an expiry date shall be described on the face of the share certificate.

**Art 35**

1. Subject to Sec. 3 below, the provisions of Art. 1 Sec. 2, Art. 39 and Art. 54 Sec. 1 of the Law referred to in Art. 27 above shall not apply to secondary public trading in share certificates.
2. In order to introduce a share certificate into stock exchange trading or regulated non-stock exchange trading, a holder of the share certificate shall deposit it in accordance with the provisions of Art. 5 of the Law referred to in Art. 27 above.
3. The Warsaw Stock Exchange shall admit to stock exchange trading share certificates presented by an entity conducting a brokerage business in accordance with Art. 71 of the Law referred to in Art. 27 above.

**Art. 36**

The transfer of ownership of a share certificate shall be exempt from stamp duty.

**CHAPTER 7****EXCHANGE OF SHARE CERTIFICATES FOR SHARES  
OF NATIONAL INVESTMENT FUNDS****Art. 37**

A share certificate shall be exchangeable at the National Depository of Securities, through an entity conducting a brokerage business, for an equal number of shares in every fund existing at the time of issuance of the share certificate and designated by the appropriate minister for the realization of such exchange, provided that such exchange shall take place only after shares in all such funds have been admitted to public trading on the basis of Art. 49 of the Law referred to in Art. 27 above.

**Art. 38**

1. The appropriate minister shall designate, by ordinance, the funds referred to in Art. 37 above, the date from which the share certificates may be exchanged for shares of funds and the procedures of such exchange.
2. The appropriate minister shall make all the shares of a given fund available for exchange for share certificates, except for a package of 15% of shares in every fund reserved for other purposes.
3. Upon exchange of a share certificate into shares of the funds, all rights relating to the share certificate shall expire.

4. The appropriate minister, acting for the State Treasury, shall be obliged to retain and collect separately any amounts received in connection with ownership of fund shares, including dividends and liquidation proceeds and interest earned on such amounts, as well as amounts obtained from the sale of fund shares referred to in Sec. 2 above.
5. The appropriate minister may decree the distribution of the amounts referred to in Sec. 4 above, obtained in connection with fund shares reserved for exchange for share certificates, to the holders of such share certificates, in proportion to the number of share certificates held, at any time before or after the exchange of such share certificates for fund shares.
6. The appropriate minister, acting for the State Treasury, is entitled to pay to the management firms the remuneration and dividends relating to the shares, which constitute remuneration paid to them in accordance with Art. 24 Sec. 3 Items 2 and 3 and Secs. 4 and 5.
7. The proceeds referred to in Sec. 4 above, less the amounts paid out referred to in Secs. 5 and 6 above, shall constitute revenue of the State Treasury.
8. The appropriate minister may entrust to one or more banks or another institution activities relating to the exchange of share certificates for shares of the funds and the distribution of the amounts referred to in Secs. 4 and 6 above.

## CHAPTER 8

### PRIVATIZATION FUND AND PRIVATIZATION AGENCY

#### **Art. 39**

1. A fund, hereinafter referred to as the "Privatization Fund", designated to cover the costs of implementation of Privatization according to the provisions of this law shall be established.
2. Fees for the distribution of universal share certificates shall constitute revenue of the Privatization Fund.
3. The appropriate minister shall have disposition over the assets of the Privatization Fund.
4. The Privatization Fund shall be liquidated six months after the end of distribution of universal share certificates; assets remaining in the account of the Fund on the date of its liquidation shall constitute revenue of the State Treasury.

#### **Art. 40**

1. The Council of Ministers may, by ordinance, establish a Privatization Agency, hereinafter referred to as the "Agency", as a state legal person within the meaning of Art. 33 of the Civil Code. The Agency shall have legal personality from the date of entry into force of the ordinance,
2. The Council of Ministers shall grant the Agency its statutes. The statutes shall determine, in particular, the organization and tasks of the Agency with respect to the exercise by the appropriate minister of the rights and duties provided for, in particular, in Art. 38 Secs. 4 - 6 and Art. 39 Sec. 3 of this law.
3. The appropriate minister shall supervise the activities of the Agency.
4. The budget law shall determine the revenues and expenditures of the Agency.

5. Every year the Agency shall submit to the Sejm a report on its activities.
6. The organ of the Agency is the President, who shall be appointed or recalled by the President of the Council of Ministers, upon the motion of the appropriate minister. The Council of Ministers shall effect the liquidation of the Agency by an ordinance, simultaneously determining the procedure of the liquidation.

## CHAPTER 9

### CHANGES IN EXISTING REGULATIONS

#### Art. 41

The Law dated March 22 1991, on Public Trading in Securities and Trust Funds (Journal of Laws N° 35, Item 155 and N° 103, Item 447) shall be amended by replacing in Art. 1 Sec. 1, Item 2 the period after the words "for one purchaser" with a comma and adding new Items 3 and 4, which shall read as follows:

- "3) making available shares to employees on the basis of Article 46 of the Law dated April 30, 1993 on National Investment Funds and Their Privatization (Journal of Laws N° 44, Item 202),
- 4) proposing to acquire, acquiring or transferring rights pertaining to shares in any company established as a result of the transformation of a state-owned enterprise into a company wholly owned by the State Treasury, based on the Law on Privatization of State-Owned Enterprises, if the parties to the agreement are exclusively either employees of the company or persons referred to in Art. 46 of the Law on National Investment Funds and Their Privatization, or a national investment fund."

#### Art. 42

In the Law dated July 26, 1991 on Personal Income Tax (Journal of Laws, N° 80, Item 350, N° 100, Item 442 and 1992, N° 21, Item 86, N° 68, Item 341, N° 100, Item 498 and 1993 N° 28, Item 127) in Art. 21:

- 1) a new Item 41 shall be added, which shall read as follows:  
"41) revenue obtained from the sale of share certificates exchanged for shares of national investment funds established pursuant to the Law dated April 30, 1993 on National Investment Funds and Their Privatization (Journal of Laws, N° 44, Item 202), except for the cases where such sale is the subject of economic activity;"
- 2) a new Item 42 shall be added, which shall read as follows:  
"12) revenue obtained from the sale of shares of national investment funds established pursuant to the Law dated April 30, 1993 on National Investment Funds and Their Privatization (Journal of Laws, N° 44, Item 202), in one year not to exceed half of one month's average salary in the national economy."

#### Art. 43

In the Law dated February 15, 1992 on Corporate Income Tax and on Amendments to Laws Regulating the Principles of Taxation (Journal of Laws N° 21, Item 86, N° 40, Item 174,

N° 68, Item 341, N° 100, Item 498 and 1993 N° 28, Item 127) in Art. 17 Sec. 1, a new Item 21 shall be added, which shall read as follows:

”21) income of the national investment funds established pursuant to the Law dated April 30, 1993 on National Investment Funds (Journal of Laws, N° 44, Item 202), arising from dividends and other revenues from participation in profits of legal persons having their seat within the territory of the Republic of Poland.”

## CHAPTER 10

### TRANSITIONAL AND SPECIAL PROVISIONS

#### Art. 44

1. At the time of registration of a fund, the fund statutes should contain the following restrictions:
  - 1) a prohibition to acquire securities issued by entities not having their seats in Poland or by entities not primarily engaged in business in Poland,
  - 2) a prohibition to hold shares in general partnerships or other entities, investment in which would create unlimited liability for the fund,
  - 3) a prohibition to acquire shares of any company if as a result of such acquisition the fund would have over 33% of the votes of the company, with the exception of a situation where:
    - a) shares exceeding the limit of 33% were obtained by the fund in accordance with Art. 435 of the Commercial Code,
    - b) shares exceeding the limit of 33% were obtained by the fund in the exercise of a preemption right due to all shareholders,
    - c) shares exceeding the limit of 33% were obtained by the fund in the performance of an obligation to make a cash offer to all remaining shareholders of the company to purchase all remaining shares,
  - 4) within three years of the registration of the fund, a prohibition on the fund to sell shares of a company in which the fund owns more than 20% of the share capital and is at the same time, with the exception of state legal persons, its largest shareholder, if as a result of such sale the fund's holding in the share capital of such company would fall below 20%; this prohibition need not apply to situations where such sale takes place as a result of a public offer made by the fund or an offer for sale to a single investor or a group of investors, provided however that the buyer shall acquire all the shares of such company offered for sale in this way,
  - 5) a prohibition on the fund to sell securities that the fund at the time of the making of the sale agreement does not own; unless at the time of making of such agreement the fund is entitled to acquire an appropriate number of securities of the same kind,
  - 6) a prohibition on the fund to acquire securities issued by another fund or entity which is engaged primarily in trade in securities, if as a result of such acquisition more than 5% of the net asset value of the fund would be invested in the acquired securities,

- 7) a prohibition on the fund to acquire precious metals and enter into commodities contracts, options or futures contracts, except for:
    - a) transactions having the aim of reducing the risk within limits allowed by Polish law,
    - b) the acquisition of shares of companies that produce and process precious metals or commodities,
  - 8) a prohibition on the fund to acquire real estate (except for use as office space for the fund or any management firm with which the fund has contracted), or shares in companies engaged primarily in real estate investment, if as a result of such investment more than 5% of the net asset value of the fund would be invested in shares of such company,
  - 9) a prohibition on the fund to borrow money or issue debt securities, if as a result the total value of the Fund's debt obligations would exceed 50% of the net asset value of the fund,
  - 10) a prohibition on the fund to acquire securities, if as a result of such acquisition more than 25% of the net asset value of the fund would then be invested in securities of one issuer.
2. The fund statutes should also provide that any amendment of the statutes resulting in the elimination of any of the restrictions referred to in Sec. 1 above, which takes place within three years of the date of registration of the fund, shall require a unanimous vote of the general meeting of the fund. In such a case, the State Treasury will not be obliged by the provisions of the statutes to a particular manner of voting at the general meeting of the fund.

#### **Art. 45**

Within three years from the registration of a fund, the statutes of such fund, the entry of such fund in the commercial register, and all agreements concluded by the fund, shall carry the following legend:

"This company, pursuant to the Law dated April 30, 1993 on National Investment Funds and Their Privatization is exempted from compliance with Articles 159 Para. 2, 312, 313, 315, 340 Para. 1, 347, 367 Para. 1, 381 Para. 1, 390 Para. 1, 420 Para. 1, 425 and 440 - 442 of the Commercial Code."

#### **Art. 46**

1. The provisions of Arts. 23 and 24 of the Law referred to in Art. 4 Sec. 2 Item 1 above shall not apply to companies referred to in Art. 10 Sec. 1 above. Contributions by the State Treasury of shares of such companies to such funds will not require compliance with the requirements of Art. 20 of the Law referred to in Art. 4 Sec. 2 Item 1. In such a case, however, shares of companies owned by the State Treasury may not be made available for payment to individual persons during the first three years after the establishment of the company.
2. At the date of the contribution of the shares of a company to funds, up to 15% of the shares of the company shall be made available, without payment, to the employees of the state-owned enterprise transformed into such company at the date of its deletion from the register of state-owned enterprises.
3. The total nominal value of the shares referred to in Sec. 2 above shall not exceed 24 average monthly wages paid in the six major sectors of the national economy to one employee

during the period of 12 months preceding the contribution of the shares of the company to the funds multiplied by the number of entitled employees. When determining the value of the shares referred to in this Section, the value of all previous preferences relating to the acquisition of shares of the company granted to its employees shall be taken into account.

4. If, within three months from the date of the contribution of shares of a company to a fund, such company does not determine the rules of distribution of shares to the employees, such shares shall be made available to the employees in equal numbers.
5. The shares referred to in Sec. 2 above should be made available to the employees not later than six months from the date of contribution of shares of a company to a fund.
6. The rights referred to in Secs. 2-5 above shall be also granted, subject to the limit referred to in Sec. 3 above, to individual farmers and fishermen providing raw products on a contractual basis to the state-owned enterprise which has been transformed into a company. A condition of this grant is that such farmers or fishermen have remained bound by contract with such state enterprise for a continuous period not shorter than two years immediately preceding the entry of the company into the commercial register.

#### **Art. 47**

1. Subject to the provisions of Arts. 10 and 46 above, from the total number of shares of a company belonging to the State Treasury, shares shall be reserved in order to:
  - 1) reinforce the social security system,
  - 2) carry out, if necessary, a supplementary compensation for persons referred to in Art. 30 Sec. 1 above.
2. The principles of achieving the objectives referred to in Sec. 1 shall be set forth in a separate law.

#### **Art. 48**

The notarial fee imposed for the preparing of a notarial deed establishing a fund shall not exceed 10 million Zlotys.

### **CHAPTER 11**

#### **FINAL PROVISIONS**

#### **Art. 49**

The provisions of the Law dated July 19, 1991 on Interest on Capital of Companies Wholly Owned by the State Treasury (Journal of Laws, N° 75, Item 330 and 1992 N° 45, Item 200) shall not apply to:

- 1) companies wholly owned by the State Treasury existing at the date of entry into force of this law, designated by the Council of Ministers in accordance with Art. 7 Sec. 1, from the date of entry into force of this law;
- 2) companies wholly owned by the State Treasury which will be established as a result of transformation of state enterprises designated by the Council of Ministers in accordance with Art. 7 Sec. 1.

**Art. 50**

The Law dated December 22, 1990 on the Employee Wage Increase Tax (Journal of Laws 1991 N° 1, Item 1 and 1992 N° 21, Item 85 and N° 73, Item 361, N° 100, Item 498 and 1993 N° 28, Item 127) shall not apply to funds or to companies the shares of which shall be contributed to the funds in accordance with the principles defined in Art. 10 above.

**Art. 51**

The provisions of this law do not restrict the capacity of persons other than the State Treasury to set up joint stock companies or limited liability companies for the purpose of investing, in accordance with prevailing law, in the shares of companies within the meaning of this law.

**Art. 52**

Subject to the provisions of this law, the State Treasury may repeat the issuance of universal share certificates, establishing at the same time additional funds for the purpose of exchanging share certificates for shares of these funds. Art. 39 shall apply accordingly.

**Art. 53**

This law shall take effect fourteen days from the date of its publication, except for Art. 42 Sec. 2, which shall take effect on January 1, 1996.