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Poland

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VIII. Regional

A. FREE TRADE

The United States, Brazil, Argentina, Uruguay, and Paraguay on June 19, 1991, signed a framework agreement on trade and investment. The agreement creates a council which will monitor trade relations and investment flows in the member countries and seek to reduce trade barriers among them.

Poland*

The building of legal institutions of a market economy has been a consistent guideline of Polish legislation. This process, however, is not free from inner tension. The barriers that emerged at the end of 1990 and at the beginning of 1991 are, to a small degree, of a political nature connected with the formation of a minority government after the presidential elections last year. What is crucial are economic determinants stemming from the complexity of the process of building a modern market economy in Poland practically from scratch. This is best evidenced by the Sejm (Lower House) resolution of February 23, 1991, on the guidelines of the social and economic policy in 1991.¹ The resolution underlines that although significant legal acts have been passed to stabilize the national economy, the recession has aggravated and is of a lasting character; fundamental problems remain with regard to the decisive share of the state sector in the national economy and difficulties with boosting the economy. In this situation, the basic tasks that legislation faced at the beginning of the year were to give institutional and legal foundations to the mass privatization program of the state sector, especially with regard to the securities market, and to create legal grounds for a free inflow of foreign capital to the Polish market. Also a supplementary trend in Polish legislation is in progress pertaining to its permanent adjustment to new social, political, and economic conditions.

I. Formation of Institutional Structures for the Privatization Process

The need to create institutional structures for the privatization process was formally reflected in the Sejm resolution of February 23, 1991.² This resolution obliged the government to speed up privatization by providing mass access to

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1. Resolution of Feb. 23, 1991, Monitor Polski [MP] No. 13, item 83.

2. MP No. 13, item 86.

shares of state-owned enterprises to citizens on preferential terms and by institutionalizing the securities market. As a result, the legislature passed the Law on Public Securities Trading and Trust Funds³ of March 22, 1991 (law of March 22, 1991) on the basis of a government draft.

A. SECURITIES EXCHANGE IN WARSAW

The Warsaw Stock Exchange has been established, in accordance with the law of March 22, 1991, as a single shareholder company of the state treasury. The right to enter into transactions at the stock exchange is vested exclusively in official brokers, that is, those entered on the brokers' list, and in banks that have obtained permission. Brokers' firms can be run by natural persons, legal persons, or units with no legal entity. Joint stock companies that run brokers' firms can issue only registered shares. A permit is required to run a broker's firm. The same principles apply to the commencement of brokerage by foreign parties. A precondition for admitting securities to be traded at the stock exchange is to deposit them in the national Securities Deposit under the management of the company running the Warsaw Stock Exchange. The primary functions of the Deposit are to register securities, keep deposit accounts, and supervise the size of the issue and quantity of securities.

The law of March 22, 1991, does not provide for a monopoly of the state stock exchange. With the approval of the prime minister, securities exchanges can also be managed by other companies, but their shares can be purchased only by entities managing brokers' firms, the state treasury, and banks.

The Securities Commission is a supervisory body controlling the proper operation of the securities market. The commission was established in accordance with the law of March 22, 1991, as a general state administration body subordinate directly to the prime minister.

B. MUTUAL INVESTMENT TRUSTS

The introduction of mutual investment trusts into the Polish capital market is aimed at reducing the risk of investment by small shareholders and increasing the effectiveness of control over enterprises. Under the law of March 22, 1991, trust funds established for collective buying into securities can be managed only by trust funds' corporations. Such corporations are established in the form of joint stock companies based in Poland. The Securities Commission must approve the articles of association and the selection of a bank-trustee to which the corporation entrusts the fund's assets.

II. Companies with Foreign Participation

The great significance of attracting foreign investment into the Polish market follows limited possibilities of introducing profound structural changes in the

3. Dziennik Ustaw (Dz.U.) No. 35, item 155.

national economy solely by means of material privatization, that is, buying of state-owned enterprises by private local investors. A massive entrance of foreign investors into the Polish market would significantly ease the shortage of local capital and simultaneously introduce high technology.

The adoption of the law of June 14, 1991, On Companies with Foreign Participation (Law on Joint Ventures)⁴ meets these expectations halfway. The legislature's intention was clearly to break away with the economic and political domination of the state function in the area in which it produced a distinct discrepancy between the requirements of foreign parties' operations and the aspirations of state bodies in shaping the former's activity.

A. PRINCIPLES OF FOREIGN INVESTORS' PARTICIPATION IN THE POLISH MARKET

The Law on Joint Ventures is generally based on the principle of the freedom of investment by foreign parties in the form of limited liability companies or joint stock companies. The law requires a permit in three instances: (1) when the scope of the company's activity includes managing seaports and airports, real estate brokerage and real estate purchase and sale transactions, defense industry contracts subject to license, wholesale trade of imported consumer goods, or providing legal assistance; (2) when a state legal entity issues shares of stock (with the exception of single shareholder companies of the state treasury),⁵ if the state legal entity's contribution to the equity of the company is in nonmonetary form, such as an enterprise or its organized part; or (3) when a license is required pursuant to specific regulations. A permit is refused when the state's economic interests or defenses are threatened or if refusal is necessary to protect state secrets.

The Minister of Privatization is the competent body to issue permits and supervise the activity of companies. The minister's supervision is based on the criterion of legality. Persistent violations by a company of the provisions of law or conditions set forth in the permit may result in withdrawal of the permit followed by a motion to dissolve the company. Such a decision is made by a court on the motion of the minister.

B. TAXES AND REPATRIATION OF PROFIT

The Law on Joint Ventures replaces statutory exemptions from corporate income tax with exemptions granted at the discretion of the Minister of Finance on the basis of: (1) the amount of the equity share (stock) capital of foreign parties (minimum 2 million ECU) that is meant to encourage long-term investment in

4. Dz.U. No. 60, item 253.

5. At the same time, the requirement of a permit from a state body in order to purchase more than 10 percent of shares of privatized state-owned enterprises, contained in the law of July 13, 1990, On the Privatization of State Enterprises (Dz. U. No. 51, item 298), has been abolished.

the Polish market; and (2) priorities of economic policy, including investment in areas endangered with structural unemployment, introduction of new technologies, and production exports when such exports amount to at least 20 percent of the company's total output. The exemption may be sought by companies in which foreign parties are issued stock or foreign parties acquire stock not later than December 31, 1993.

A foreign party's income obtained from the distribution of the company's profit is subject to the corporate income tax of 30 percent. The repatriation of profits does not require a separate foreign exchange permit. A foreign party is also entitled to purchase foreign currency at a foreign exchange bank and transfer it abroad without a separate foreign exchange permit for the amount obtained from the sale or redemption of company shares of stock and the amount due to the foreign party in case of liquidation of the company. This principle also applies to compensation guaranteed by the law for losses incurred in the company's property as a result of expropriation or the use of other measures of similar effect.

The freedom to transfer foreign currency also applies to the remuneration of company employees who are considered foreign persons under the Foreign Exchange Law.⁶ The tax levied on the remuneration of foreign employees amounts to 20 percent of the amount of remuneration, unless international agreements provide otherwise.

III. Adjusting Legislation to New Political and Economic Conditions

Legislative reactions to new political and economic conditions are of a multidirectional character. In the first place, one should point to a further resignation of the state from some administrative monopolies such as those abolished by the laws of March 9, 1991, On Amendments to the Mining Law and the Geological Law,⁷ and also the law of February 14, 1991, the Law on Notaries Public,⁸ abolishing the institution of the state notary public in favor of the freedom to practice this profession by private entities. A significant gap in the organization of the labor market has been filled by the laws of May 23, 1991, On Trade Unions, On Organizations of Employers, and On Solving Collective Disputes.⁹ Finally, one should mention the law of June 28, 1991, On Setting up the Office of the Minister of Industry and Trade,¹⁰ initiating the process of reforms of the central administration aimed at combining several ministries.

6. See the Law of Feb. 15, 1989—Foreign Exchange Law (Dz.U. No. 6, item 33; No. 74, item 441; No. 35, item 155; and No. 60, item 253).

7. Dz.U. No. 31, items 128 and 129.

8. Dz.U. No. 22, item 91.

9. Dz.U. No. 55, items 234, 235, 236.

10. Dz.U. No. 66, item 286.