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POLAND: Recent Legislation

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East Europe SUPPLEMENT

POLAND: Recent Legislation

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National Commonweal Fund

90EP0378Z Warsaw DZIENNIK USTAW in Polish
No 67, Item 406, 16 Dec 89 pp 995-996

[Law No. 406 on the establishment of the National Commonweal Fund, dated 30 November 1989]

[Text] Article 1. 1. The National Commonweal Fund, hereinafter referred to as the Fund, is created.

1. 2. The Fund accumulates resources deriving from Poles and friends of Poland in this country and abroad.

Article 2. 1. The resources of the Fund are spent on financing needs presented by the government, churches, denominational associations, and public organizations, and in particular on sponsoring health care and social assistance, environmental protection, and education, science, and culture.

2. 2. The foreign exchange owned by the Fund may also be spent on reducing the foreign debt.

Article 3. 1. The revenues of the Fund are constituted by private or collective donations in the form of:

1) monetary contributions and bonds and shares issued on the territory of the Polish People's Republic;

2) foreign exchange, including: foreign currencies, shares issued in foreign currencies, share certificates, bonds, savings books and other proofs of savings, deposit certificates and receipts, checks, traveler's cheques, promissory notes, letters of credit, payment orders, and other bank and financial documents subject to exchange for foreign currencies;

3) material donations (movable property), and in particular jewelry, gold, platinum silver, and works of art.

3. 2. The Governing Board of the Fund may receive donations in other form than the forms mentioned in Paragraph 1.

Article 4. The donor may specify a particular purpose for his donation or a particular manner in which it is to be utilized, and, if he so desires, his anonymity will be preserved.

Article 5. 1. The donor is exempted from postal, bank, notarial, judicial, Treasury and other fees relating to his donation to the Fund.

5. 2. the fees mentioned in Paragraph 1 are defrayed by the State Treasury.

Article 6. 1. Donations to the Fund are exempted from the tax on inheritances and donations.

6. 2. The value of the donation is deducted in full from the taxation base for income tax, equalization tax, and agricultural tax as reckoned according to special distributions on the principles defined by separate regulations.

6. 3. The Fund's transactions in foreign exchange do not require a foreign-exchange permit.

Article 7. The Fund's bodies are the Supervising Council and the Governing Board.

Article 8. The Supervising Council has 11 members and consists of: the chairman and members, appointed and recalled by the joint resolution of the presidiums of the Sejm and the Senate.

Article 9. 1. The Supervising Council defines the guidelines for the collection and safekeeping of the Fund's resources and supervises the Fund's operations.

9. 2. The tasks of the Supervising Council include, in particular:

1) appointment and recall of members of the Governing Board;

2) approval of the bylaws of the Governing Board;

3) granting general powers;

4) determination of the guidelines for the appraisal and sale of material donations;

5) determination of the directions of expenditure of the Fund's resources;

6) presentation of periodic reports on the utilization of the Fund's resources to the presidiums of the Sejm and the Senate, and their publication;

7) determination of the procedure and deadline for the termination of the Fund's activities.

Article 10. The Supervising Council shall define the rules for keeping the Book of Donations, into which the names of donors will be inscribed.

Article 11. 1. The Governing Board of the Fund is constituted by: the chairman, two vice chairmen, and two members.

11. 2. The Governing Board directs the Fund's operations.

11. 3. The tasks of the Governing Board include, in particular:

1) keeping records of the incoming donations and outgoing expenditures;

2) opening bank accounts and publicizing information on these accounts;

3) disposing of the Fund's resources;

4) making public the list of donors;

5) keeping the Book of Donations.

11. 4. Two members of the Governing Board, or one member and an authorized person, are authorized to make declarations of intention.

Article 12. 1. Donations in the form of jewelry, gold, platinum, silver, and other material donations having a special value are kept on deposit in the National Bank of Poland.

12. 2. Works of art are kept in museums and libraries whose list shall be determined by the Minister of Culture

and Art, as well as in archives whose list shall be determined by the Minister of National Education.

Article 13. 1. Administrative, technical, and organizational servicing of the Fund is handled by the Chancellery of the Sejm and the Chancellery of the Senate.

13. 2. The operating costs of the Fund are defrayed from the central budget's line items relating to the Chancellery of the Sejm and the Chancellery of the Senate.

Article 14. Donations may be offered until 11 November 1990.

Article 15. This Decree takes effect as of the day of its publication.

President of the Polish People's Republic: W. Jaruzelski.

Office of Minister of Navigation and Communication

90EP0379Y Warsaw *DZIENNIK USTAW* in Polish
No 67, Item 407, 16 Dec 89 pp 996-997

[Law No. 47 on the establishment of the office of Minister of Transportation and Navigation, dated 1 December 1989]

[Text] Article 1. The office of the Minister of Transportation and Navigation is established.

Article 2. The Minister of Transportation and Navigation implements the state's policy on the operation and development of transportation and navigation.

Article 3. The scope of activities of the Minister of Transportation and Navigation includes in particular matters relating to:

- 1) creation of conditions for the construction, maintenance, and operation of railroads, public roads, airports, and seaports;
- 2) road and air traffic as well as sea and inland navigation;
- 3) conveyance of passengers and freight by rail, automobiles, sea, air, and inland waterways;
- 4) deep-sea fishery.

Article 4. 1. The Minister of Transportation and Navigation performs his duties by means of, in particular:

- 1) drafting the assumptions of the state's policy on transportation and navigation;
- 2) participating in socio-economic and financial planning;
- 3) initiating projects, and assuring their economic-financial, organizational, and technical implementation, with the object of assuring the proper operation of transportation, its systems, and navigation;
- 4) assuring the conditions and participating in the formation of rules for foreign economic cooperation as well as initiating and implementing international agreements on transportation and navigation;

5) creating conditions for the growth of deep-sea fishery and rational utilization of the resources of the sea.

4. 2. The Minister of Transportation and Navigation announces the tariffs and fees charged for services relating to passenger and freight conveyance in *DZIENNIK URZEDOWY MINISTERSTWA TRANSPORTU I GOSPODARKI MORSKIEJ* [Official Record of the Ministry of Transportation and Navigation].

4. 3. The Minister of Transportation and Navigation implements, in accordance with the scope of his activities specified in this Decree, tasks relating to national defense and security as well as other tasks specified in special decrees.

Article 5. The Council of Ministers may define, by way of an ordinance, the specific scope of activities of the Minister of Transportation and Navigation.

Article 6. The organizational structure of the Ministry of Transportation and Navigation and the list of organizational units subordinated to the Minister of Transportation and Navigation as well as of state enterprises for which the Minister of Transportation and Navigation is the parent agency, is defined in the statute conferred by the Council of Ministers.

Article 7. 1. The office of the Minister of Transportation, Navigation, and Communications is abolished.

7. 2. The matters under the jurisdiction of the Minister of Transportation, Navigation, and Communications, as defined in separate regulations, are, within the scope defined in this Decree, transferred to the jurisdiction of the Minister of Transportation and Navigation.

Article 8. The Minister of Transportation and Navigation becomes, on the effective date of this Decree, as per the scope of his activities defined in this Decree, the parent agency of the state enterprises for which the Minister of Transportation, Navigation, and Communications had heretofore been the parent agency.

Article 9. The Decree of 23 October 1987 on the Formation of the Office of the Minister of Transportation, Navigation, and Communications (DZ.U., No. 33, Item 174), is rescinded.

Article 10. This Decree takes effect on the day of its publication.

President of the Polish People's Republic: W. Jaruzelski.

Office of Minister of Communications

90EP0379Z Warsaw *DZIENNIK USTAW* in Polish
No 67, Item 408, 16 Dec 89 pp 997-998

[Law No. 408 on the establishment of the office of Minister of Communications, dated 1 December 1989]

[Text] Article 1. The office of the Minister of Communications is established.

Article 2. The Minister of Communications implements the state's policy on the functioning and development of communications.

Article 3. The scope of activities of the Minister of Communications includes, in particular, matters relating to:

- 1) creation of conditions for the construction, maintenance, and operation of postal facilities, telecommunications networks, and other means of communication;
- 2) conditions of the organization of postal and telecommunications services;
- 3) supervision of the technical conditions of the performance and utilization of means of communication.

Article 4. 1. The Minister of Communications accomplishes his duties by means of, in particular:

- 1) drafting the assumptions of the state's policy and development programs relating to communications;
- 2) participating in socio-economic and financial planning;
- 3) creating the conditions for and initiating economic-financial, organizational, and technical projects with the object of assuring an efficient performance of telecommunications and postal systems as well as updating them for the purpose of effectively servicing the economy and the society;
- 4) participating in the formulation of principles for foreign cooperation as regards communications and initiating and undertaking international cooperation as regards the technical and organizational development of communications systems, within the framework of specialized international organizations as well;
- 5) determining fees for public postal and telecommunications services and announcing them in DZIENNIK URZEDOWY MINISTERSTWA LACZNOSCI [Official Record of the Ministry of Communications].

4. 2. The Minister of Communications implements, in accordance with the scope of his activities specified in this Decree, tasks relating to national defense and security as well as other tasks specified in special decrees.

Article 5. The Council of Ministers may define, by way of an ordinance, the specific scope of activities of the Minister of Communications.

Article 6. 1. As defined in separate regulations, matters under the jurisdiction of the Minister of Transportation, Navigation, and Communications are, to the extent specified in this Decree, transferred to the jurisdiction of the Minister of Communications.

6. 2. The Minister of Communications becomes, on the effective date of this Decree, as per the scope of his activities defined in this Decree, the parent agency of the

state enterprises for which the Minister of Transportation, Navigation, and Communications had heretofore been the parent agency.

Article 7. The organizational structure of the Ministry of Communications and the list of organizational units subordinated to the Minister of Communications as well as of state enterprises for which the Minister of Communications is the parent agency, are defined in the statute conferred by the Council of Ministers.

Article 8. The following amendments are incorporated in the Decree of 15 November 1984 on Communications (DZ.U., No. 54, Item 275, 1984; No. 33, Item 180, 1987; and No. 41, Item 324, 1988):

1) the phrase "Minister of Transportation, Navigation, and Communications," as used in various provisions of the decree, is replaced each time with the phrase "Minister of Communications," with the proviso of Point 2);

2) in Article 6, Paragraph 1, Point 2, the expression "the Ministers of Industry, of Transportation, Navigation, and Communications and of Environmental Protection and Natural Resources" is replaced with the expression, "Ministers of Industry, of Transportation and Navigation, and of Environmental Protection and Natural Resources";

3) in Article 6, Paragraph 3, and Article 23, Paragraph 2, the phrase "transportation, navigation, and communications" is each time replaced with the phrase "transportation and navigation";

4) in Article 22, Paragraph 1, the phrase, "Ministers of Industry and of Environmental Protection and Natural Resources" is replaced with the phrase, "Ministers of Industry, of Transportation and Navigation, and of Environmental Protection and Natural Resources";

5) Article 38 is reworded as follows:

"Article 38. The Minister of Communications confers on the PTTT [Polish Post, Telegraph, and Telephone] a statute defining the organizational structure and scope of activities of PTTT units";

6) The following Article 38a is added after Article 38:

"Article 38a. The Minister of Communications monitors and evaluates the performance of the PTTT and the activities of the Director General of the PTTT";

7) Point 3) of Article 44 is deleted;

8) in Article 49, Paragraph 3, the expression "or, when so authorized by him, the Director General of the PTTT" is inserted each time after the expression "the Minister of Communications";

9) in Article 80 the expression "in DZIENNIK URZEDOWY MINISTERSTWA TRANSPORTU, ZEGUGI I LACZNOSCI" [Official Record of the Ministry of Transportation, Navigation, and Communications] is each time replaced with the expression "DZIENNIK URZEDOWY MINISTERSTWA LACZNOSCI" [Official Record of the Ministry of Communications];

10) in Article 81 the expression "in DZIENNIK URZEDOWY MINISTERSTWA TRANSPORTU, ZEGUGI I LACZNOSCI" [Official Record of the Ministry of Transportation, Navigation, and Communications] is each time replaced with the expression "DZIENNIK URZEDOWY MINISTERSTWA LACZNOSCI" [Official Record of the Ministry of Communications].

Article 9. This Decree takes effect on the day of its publication.

President of the Polish People's Republic: W. Jaruzelski.

Ministry of Environmental Protection, Resources, Forestry

90EP0380X Warsaw DZIENNIK USTAW in Polish
No 73, Item 433, 20 Dec 89 pp 1099-1100

[Law No. 433 on the establishment of the office of the Minister of Environmental Protection, Natural Resources, and Forestry, dated 20 December 1989]

[Text] Article 1. The office of the Minister of Environmental Protection, Natural Resources, and Forestry is established.

Article 2. The Minister of Environmental Protection, Natural Resources, and Forestry implements the state's policy on environmental protection and its rational management as well as on forest management, including hunting and the management of natural resources, including water resources and geological resources.

Article 3. 1. The scope of activities of the Minister of Environmental Protection, Natural Resources, and Forestry includes, in particular, matters relating to:

- 1) protection and management of the environment, including maritime environment, and rational utilization of its resources;
- 2) protection of nature, inclusive of nature in nature and landscape parks and nature reserves, as well as protection of species by the law on protected forests, wild game, and other creations of nature;
- 3) management of natural resources;
- 4) water management and flood control;
- 5) forests, forest management, protection of forested land and afforestation;
- 6) meteorology, hydrology, and geology.

3. 2. The Minister of Environmental Protection, Natural Resources, and Forestry implements, in accordance with the scope of his activities specified in this Decree, tasks relating to national defense and security as well as other tasks specified in special decrees.

Article 4. The Minister of Environmental Protection, Natural Resources, and Forestry performs his duties by means of, in particular:

- 1) drafting assumptions of the state's policy on environmental protection, natural resources, and forestry;
- 2) participating in socio-economic and financial planning;
- 3) creating the economic-financial, organizational, and technical conditions for environmental protection and management of natural resources and forestry;
- 4) creating the conditions for the growth of foreign economic and scientific-technical cooperation, including also initiating international cooperation in environmental protection;
- 5) initiating and opining on scientific research programs insofar as they relate to his scope of activities;

6) determining the guidelines for environmental protection and rational management of water and forests as well as of fossil deposits as relating to manufacturing, service, and research activities, as well as to the principles for the application of new equipment and technologies.

Article 5. The Minister of Environmental Protection, Natural Resources, and Forestry implements the geology-related tasks of the supreme body of state administration with the aid of the Nation's Chief Geologist.

Article 6.1. The Council of Ministers may define, by means of an ordinance, the specific scope of activities of the Minister of Environmental Protection, Natural Resources, and Forestry.

6. 2. The organization of the Ministry of Environmental Protection, Natural Resources, and Forestry, and the list of the organizational units subordinated to the Minister of Environmental Protection, Natural Resources, and Forestry and monitored thereby, and also the list of state enterprises for which the Minister of Environmental Protection, Natural Resources, and Forestry is the parent agency, are defined in the statute conferred by the Council of Ministers.

Article 7. 1. The office of the Minister of Environmental Protection and Natural Resources is abolished.

7. 2. As defined in separate regulations, matters under the jurisdiction of the Minister of Environmental Protection and Natural Resources, and, within the scope defined by this Decree, to the Minister of Agriculture, Forestry, and Food Industry, are transferred to the

jurisdiction of the Minister of Environmental Protection, Natural Resources, and Forestry.

Article 8. The Minister of Environmental Protection, Natural Resources, and Forestry becomes, on the effective date of this Decree:

1) the parent agency of the state enterprises whose parent agency had previously been the Minister of Environmental Protection and Natural Resources;

2) the parent agency of the state enterprises whose parent agency had previously been the Minister of Agriculture, Forestry, and Food Industries—as per the scope of activities defined in this Decree;

3) the agency exercising jurisdiction over research and development units and other subordinate organizational units which had previously been under the jurisdiction of the Minister of Environmental Protection and Natural Resources;

4) the agency exercising jurisdiction over research and development units and other subordinate organizational units which had previously been under the jurisdiction of the Minister of Agriculture, Forestry, and Food Industries—to the extent specified in this Decree.

Article 9. In the Decree of 12 November 1985 on Changes in the Organizational Structure and Scope of Activities of Certain National and Central Bodies of State Administration (DZ.U., No. 50, Item 262, 1985; No. 33, item 180, 1987; and No. 30, Item 163, and No. 64, Item 387, 1989), Article 3 is deleted.

Article 10. In the Decree of 23 October 1987 on the Establishment of the Office of the Minister of Industry (DZ.U., No. 33, Item 172), in Article 3, Paragraph 2, Point 6), the expression “with the exception of the sawmill, board, and plywood industry” is deleted.

Article 11. This Decree takes effect on 1 January 1990.

President of the Polish People's Republic: W. Jaruzelski.

National Judiciary Council

90EP0380Y Warsaw *DZIENNIK USTAW* in Polish
No 73, Item 435, 29 Dec 89 pp 1101-1102

[Law No. 435 on the establishment of the National Judiciary Council, dated 20 December 1989]

[Text] Article 1. 1. The National Judiciary Council, with site in Warsaw, is established.

1. 2. The National Judiciary Council guards judicial independence and the independence of courts.

Article 2. The National Judiciary Council, hereinafter referred to as the Council, in particular:

1) considers candidacies for the posts of Justices of the Supreme Court, the Supreme Administrative Court, and for the posts of judges of common courts, and military

courts, and presents to the President of the Polish People's Republic recommendations for their appointment;

2) considers and decides on recommendations for the transfer of a judge to another post in view of the gravity of judicial posts;

3) determines the total number of members of the Disciplinary Court and the Higher Disciplinary Court and indicates the number of members of disciplinary courts elected correspondingly by the general assemblies of Justices of the Supreme Court and the Supreme Administrative Court as well as by the meetings of representatives of general assemblies of judges of voivodship courts;

4) grants consent to the continuation of service by judges who exceed the age of 65 years;

5) takes a position on the principles of the professional ethics of judges;

6) receives reports from the First Chairman [Chief Justice] of the Supreme Court, the Minister of Justice, the Chairman of the Supreme Administrative Court, and the chairman of the Higher Disciplinary Court on the activities of the court and takes a position on the status of judicial personnel;

7) takes a position on proposals to change the judicial system as well as on other matters concerning the operating conditions of courts;

8) familiarizes itself with draft legislation concerning the judiciary;

9) makes recommendations on applicant training programs, the scope and procedure of judgeship examinations and the determination of their results, and the rules for evaluating the performances of assistant judges;

10) makes recommendations on matters concerning judges and courts when presented for deliberation to the Council by the President of the Polish People's Republic, other state bodies, and general assemblies of judges.

Article 3. 1. Candidacies for judgeships are presented by the general assemblies of justices of the Supreme Court, the Supreme Administrative Court, and by general assemblies of judges of voivodship courts, in a number twice that of the existing vacancies. A single candidate may be nominated for the post of rayon-court judge in the event that no other suitable candidates are available.

3. 2. Candidacies for the posts of judges of voivodship courts, nominated by assemblies of such judges, are presented to the Council by the Minister of National Defense.

Article 4.1. The membership of the Council includes: the First Chairman of the Supreme Court, the Chairman of the Supreme Court who is in charge of the work of the Military Chamber of the Supreme Court, the Chairman

of the Supreme Administrative Court, two justices of the Supreme Court, one justice of the Supreme Administrative Court, nine common-court judges, a military-court judge, four Sejm deputies, two senators, a person indicated by the President of the Polish People's Republic, and the Minister of Justice.

4. 2. The Council elects its chairman and vice chairman from among its members.

Article 5. The term of office of the Council is 4 years.

Article 6. 1. Sejm deputies serving on the Council are elected by the Sejm of the Polish People's Republic and senators, by the Senate, while the justices of the Supreme Court and the Supreme Administrative Court serving on the Council are elected by the general assemblies of justices of these courts.

6. 2. Common-court judges serving on the Council are elected by an assembly of representatives of the general assemblies of judges of voivodship courts, while the military-court judge serving on the Council is elected by an assembly of military-court judges.

6. 3. A deputy, senator, or judge may not be elected to the Council if he has already served on it for two successive terms of office.

Article 7. 1. The mandate of an elected Council member expires during the Council's term of office in the event of:

- 1) resignation from membership;
- 2) recall by the body which had elected the member;
- 3) expiration of the mandate of the deputy or senator, or expiration of the justice's term of service;
- 4) demise.

7. 2. In the event of expiration of the mandate of an elected council member, a by-election is carried out by one of the appropriate bodies referred to in Article 6. The by-election should be carried out within 2 months from the day the mandate expires.

Article 8. 1. Representatives of the general assemblies of judges of voivodship courts are elected, for the period of the Council's term of office, by general assemblies of voivodship courts in the proportion of one representative to every 50 judges.

8. 2. Elections of representatives of the general assemblies of judges of voivodship courts are held at the latest 1 month before the expiration of the Council's term of office.

8. 3. The date and place of meetings of representatives of the general assemblies of voivodship courts are designated by the Minister of Justice.

8. 4. The meeting of representatives of the general assemblies of judges of voivodship courts takes place in

conformity with the bylaws passed by that meeting; the meeting is presided over by the judge who is most senior in age.

Article 9. 1. The Council deliberates at plenary sessions. To be valid, resolutions of the Council require the presence of at least two-thirds of its membership.

9. 2. Resolutions of the Council are passed by a majority of votes, by voice vote. In the event of a tie, the voice of the chairman is decisive. When so proposed by a Council member, secret balloting may take place.

Article 10. 1. Sessions of the Council are convened by its chairman as needed, but not less often than once every 3 months or upon the request of at least one-third of the membership.

10. 2. The specific operating procedure of the Council is defined in bylaws passed by the Council.

Article 11. Administrative services for the Council are provided by the Chancellery of the President of the Polish People's Republic.

Article 12. 1. Within a month from the day this Decree takes effect the assemblies referred to in Article 6, Paragraphs 1 and 2, shall elect Council members, and the general assemblies of judges of voivodship courts shall elect their representatives.

12. 2. The Minister of Justice shall convene a meeting of representatives of the general assemblies of judges of voivodship courts with the object of electing Council members within 2 months from the day this Decree takes effect.

Article 13. Within 2 months from the day this Decree takes effect the Minister of Justice shall present to the President of the Polish People's Republic recommendations for judgeship appointments of persons who had ceased to occupy their judicial posts owing to their beliefs, political views, or public activism, and who declared their intention to reoccupy their judicial posts and who meet the requirements for such posts.

Article 14. This Decree takes effect on the day of its publication.

President of the Polish People's Republic: W. Jaruzelski.

Office of Minister of Agriculture, Food Industries

*90EP0380Z Warsaw DZIENNIK USTAW in Polish
No 73, Item 434, 29 Dec 89 pp 1100-1101*

[Law No. 434 on the establishment of the office of the Minister of Agriculture and Food Industries, dated 20 December 1989]

[Text] Article 1. The office of the Minister of Agriculture and Food Industries is established.

Article 2. The Minister of Agriculture and Food Industries implements the state's policy on agriculture and

food industries with respect to all economic entities irrespective of the mode of their ownership.

Article 3. 1. The scope of activities of the Minister of Agriculture and Food Industries includes, in particular, matters relating to:

- 1) crop production, crop breeding and protection, and seed breeding;
- 2) animal production and animal breeding;
- 3) protection of the health of animals, production of veterinary medicines, and sanitary-veterinary supervision of foods of animal origin;
- 4) fishery in inland waters;
- 5) agricultural and food processing and the storage of foodstuffs;
- 6) management and protection of land designated for agricultural purposes;
- 7) keeping records of land and buildings with respect to gmina [rural township] areas as well as of the division and parceling of real estate relating to areas not covered by the Decree of 29 April 1985 on Land Management and Expropriation of Real Estate (DZ.U., No. 14, Item 74, 1989, and No. 29, Item 154, 1989);
- 8) Land reclamation and rural water supply;
- 9) agricultural education, rural electrification, mechanization of agriculture;
- 10) agricultural oswiata and science and technology progress.

3. 2. The Minister of Agriculture and Food Industries implements, within the scope of activities defined in this Decree, tasks relating to national defense and security as well as other tasks specified in separate regulations.

Article 4. The Minister of Agriculture and Food Industries implements his tasks by, in particular:

- 1) drafting assumptions of the state's policy concerning agriculture and food industries;
- 2) participating in socio-economic and financial planning;
- 3) creating the economic-financial, organizational, and technical conditions for assuring the growth of agriculture and agricultural and food processing;
- 4) creating the conditions for the development of foreign economic and scientific-technical cooperation.

Article 5. 1. The Council of Ministers may define, by way of an ordinance, the specific scope of activities of the Minister of Agriculture and Food Industries.

5. 2. The organizational structure of the Ministry of Agriculture and Food Industries and the list of the organizational entities under the jurisdiction of the Minister of Agriculture and Food Industries as well as of the state enterprises for which the Minister of Agriculture and Food Industries is the parent agency are specified in the statute conferred by the Council of Ministers.

Article 6. 1. The office of the Minister of Agriculture, Forestry, and Food Industries is abolished.

6. 2. The matters, defined in separate regulations, within the purview of the Minister of Agriculture, Forestry, and Food Industries are, within the scope defined in this Decree, transferred to the scope of activities of the Minister of Agriculture and Food Industries.

Article 7. The Minister of Agriculture and Food Industries becomes, within the scope of his activities defined in this Decree, as of the day this Decree takes effect, the parent agency of the state enterprises for which heretofore the parent agency had been the Minister of Agriculture, Forestry, and Food Industries.

Article 8. In the Decree of 12 November 1985 on Changes in the Organizational Structure and Scope of Activities of Certain National and Central Agencies of State Administration (DZ.U., No. 50, Item 262, 1985; No. 33, Item 180, 1987; and No. 30, Item 163, No. 64, Item 387, and No. 73, Item 433), Article 2 is deleted.

Article 9. This Decree takes effect on 1 January 1990.

President of the Polish People's Republic: W. Jaruzelski.

Amendments to the Constitution Regarding Elections, Offices

90EP0442A Warsaw RZECZPOSPOLITA (Special Supplement) in Polish 22 Mar 90 p 1

[Law amending the constitution governing elections and offices, dated 8 March 1990, in special supplement titled "Before the Elections—Self-Government ABC's"; also published in Warsaw DZIENNIK USTAW No. 16, Item 94, 22 March 1990, pages 197-198]

[Text] Article 1. The following amendments are incorporated in the Constitution of the Polish Republic (DZ.U., No. 7, Item 36, 1976; No. 22, Item 81, 1980; No. 11, Item 83, 1982; No. 39, Item 175, 1983; No. 14, Item 82, 1987; No. 19, Item 129, 1988; No. 19, Item 101, 1989; and No. 75, Item 444, 1989):

1) in Article 2, Paragraph 2, and Article 32f, Paragraph 1, Point 1), the phrase "to the Sejm, to the Senate, and to the people's councils" is replaced with the phrase "to the Sejm and to the Senate";

2) Article 32h is deleted;

3) the title of Chapter 5 is as follows: "The Government and the Administration";

4) in Article 41, Point 11) the word "State" is inserted before the word "administration";

5) The following Article 42a is added after Article 42:

"Article 42a. The office of the voivodship governor is an office of the State administration and represents the government in the voivodship";

6) the title of Chapter 6 is as follows: "Local Self-Government";

7) Articles 43-47 are amended as follows:

"Article 43. 1. Local self-government is the basic form of the organization of public life in the gmina [township].

"The gmina meets the communal needs of the local community.

"Article 44. 1. The gmina is a legal entity and provides public services in its own name in accordance with the provisions of decrees.

"44. 2. The autonomy of the gmina is judicially protected.

"44. 3. To the extent regulated by decrees the gmina performs tasks recommended by the State administration.

"Article 45.1. The constituent body of the gmina is the gmina council, elected by gmina residents. The electoral guidelines and procedures are determined by a decree.

"45. 2. The council elects the executive bodies of the gmina.

"Article 46. The gmina has a right to property ownership and other ownership rights. These rights constitute community property.

"Article 47. The gmina's own revenues are supplemented with subsidies according to guidelines established by a decree";

8) Articles 48-55 are deleted;

9) in Article 59, Paragraph 3, the phrase "elected by people's councils" is each time replaced with the phrase "elected," and the sentence "The guidelines and procedures for the elections of lay-judges of civil and special courts and for their terms of office are determined by a decree";

10) Paragraph 4 of Article 59 is deleted;

11) the title of Chapter 9 is as follows: "Regulations Governing Elections to the Sejm and to the Senate";

12) in Article 94, Paragraph 1, the phrase "and to the people's councils" is deleted;

13) Article 96 is amended as follows:

"Article 96. Any citizen may be elected to the Sejm or to the Senate upon completing 21 years of age";

14) in Article 100 the phrase "deputies, senators, and members of people's councils" is replaced each time with the phrase "deputies and senators";

15) in Article 101 the phrase "a deputy, a senator, and a member of a people's council" is replaced with "a deputy and a senator";

16) article 102 is amended as follows:

"Article 102. The procedures for nominating candidates for deputies and senators and performing their elections are determined by a decree."

Article 2. 1. The first elections to the gmina to be ordered after this Decree takes effect shall be held pursuant to the decree referred to in Article 1, Point 7 (Article 45, Paragraph 1).

2. 2. Until the expiration of the terms of office of the people's councils elected on 19 June 1988, people's councils and local agencies of State administration shall continue to operate on the basis of existing regulations. Said expiration date shall be specified by the decree referred to in Paragraph 1.

Article 3. This Decree takes effect on the day of its publication.

Local Self-Government

90EP0442B Warsaw RZECZPOSPOLITA (Special Supplement) in Polish 22 Mar 90 pp 1, 4

[Law governing local self-government, dated 8 March 1990, in special supplement titled "Before the Elections—Self-Government ABC's"; also published in Warsaw DZIENNIK USTAW No. 16, Item 95, 19 March 1990, pages 198-206]

[Text]

Chapter 1. General Provisions

Article 1. 1. Gmina [township] inhabitants form, by virtue of law, a self-governing community.

1. 2. Whenever this Decree refers to a gmina, this is to be construed as meaning a self-governing community together with its territory.

Article 2. 1. The gmina provides public services in its own name and on its own responsibility.

2. 2. The gmina is a legal entity.

2. 3. The autonomy of the gmina is under judicial protection.

Article 3. 1. The organizational structure of the gmina is determined by its statute.

3. 2. Drafts of statutes for gminas with populations of more than 300,000 are subject to consultation with the chairman of the Council of Ministers.

3. 3. Disputed issues are resolved by the Council of Ministers.

Article 4. 1. The establishment, mergers, and abolitions of gminas, and the determination of their names and

boundaries and sites of their authorities are regulated by executive orders of the Council of Ministers, upon consulting their populations.

4. 2. When establishing, merging, or abolishing gminas and determining their boundaries the goal should be that a gmina should, insofar as possible, encompass a homogeneous area in terms of settlements and land use as well as in terms of the social and economic ties assuring the ability to provide public services.

4. 3. The conferral of the statute of a municipality on a gmina is executed by way of an executive order of the Council of Ministers.

Article 5. 1. Ancillary administrative units such as villages, housing projects, and municipal boroughs may be established within a gmina.

5. 2. A village or a municipal borough (a housing project) is established by the gmina council by passing a resolution, upon consulting the local communities or upon the initiative of said communities.

5. 3. The rules for establishing ancillary administrative units are stipulated in the gmina statute.

5. 4. In cities in which administratively isolated boroughs existed on 1 January 1990, these boroughs may obtain the status of a gmina. Decisions on this issue are taken by the chairman of the Council of Ministers upon consulting the concerned communities. Boroughs that constitute gminas form a mandatory association of gminas.

Chapter 2. Scope of Activities and Purposes of Gminas

Article 6. 1. The scope of activities of the gmina includes all public matters of local importance that do not legally belong in other jurisdictions.

6. 2. Unless laws specify otherwise, the decisions on the matters referred to in Paragraph 1 are taken by the gmina.

Article 7. 1. Meeting the collective needs of the community is one of the particular purposes of the gmina. In particular, these purposes relate to:

- 1) land use and management, and environmental protection;
- 2) gmina roads, streets, bridges, and squares, and traffic control;
- 3) water supply and sewage systems, removal and treatment of communal liquid wastes, maintenance of cleanliness and of sanitation equipment, dumps and utilization of communal wastes, electricity and heating supply;
- 4) local public transportation;
- 5) health protection;
- 6) social assistance, including homes for the aged and similar centers;
- 7) municipal housing construction;
- 8) education, including elementary schools, pre-schools, and other schooling institutions;

9) culture, including public libraries and other centers for the dissemination of culture;

10) physical culture, including recreational areas and sports facilities;

11) public markets and enclosed market areas;

12) municipal greenery and tree plantings;

13) municipal cemeteries;

14) public order and fire safety;

15) maintenance of municipal and administrative facilities and equipment.

7. 2. Specific decrees determine which particular purposes of gminas are mandatory.

Article 8. 1. Specific decrees may make it mandatory for gminas to perform tasks recommended by the State administration.

8. 2. Tasks recommended by the State administration also may be performed by a gmina on the basis of an agreement with the agencies of that administration.

8. 3. The tasks referred to in Paragraphs 1 and 2 are performed upon the provision of the required funds by the State administration.

Article 9. 1. With the object of accomplishing its purposes, a gmina may establish organizational units, including enterprises, and enter into agreements with other entities.

9. 2. A gmina or another communal legal entity may engage in an economic activity that transcends its purposes as a public service institution, if so required by public needs.

Article 10. The provision of public services that are beyond the possibilities of a gmina takes place by means of intercommunal cooperation.

Chapter 3. Gmina Authorities

Article 11. 1. Gmina residents decide by direct, popular vote (by means of elections or referendums) or through the mediation of gmina bodies.

11. 2. The rules and procedure for elections to the gmina council are determined in a separate decree.

Article 12. 1. Issues relating to gmina taxes and the recall of a gmina council prior to the expiration of its term of office are decided upon exclusively by means of a referendum among gmina inhabitants.

12. 2. A referendum may be held on any other issue of importance to the gmina.

Article 13. 1. The referendum is held by the gmina council on its own initiative or upon the petition of at least 1/10 of the authorized local voters.

13. 2. A referendum is valid if at least 30 percent of the authorized local voters participate in it.

13. 3. A referendum on recalling a gmina council prior to the expiration of its term of office is held on the petition

of at least 1/5 of the authorized local voters. The referendum is valid if at least 50 percent of the authorized local voters participate in it.

13. 4. In matters not regulated by this Decree the procedure for holding a referendum is determined by a separate decree.

Article 14. 1. Resolutions by gmina bodies are passed by an ordinary majority of votes, in the presence of a quorum of at least 50 percent, unless other provisions specify otherwise.

14. 2. In the event of a tie, the chairman casts the deciding vote.

Article 15. 1. With the proviso of Article 12, the gmina's constituent and governing body is the gmina council.

15. 2. If the seat of the gmina council is in a city, the council is termed a municipal council, unless the council resolves otherwise.

Article 16. The term of office of a gmina council is four years, counting from the day of elections.

Article 17. The council consists of the following number of councilmen:

- 15, in gminas with a population of up to 4,000;
- 18, in gminas with a population of up to 7,000;
- 20, in gminas with a population of up to 10,000;
- 22, in gminas with a population of up to 15,000;
- 24, in gminas with a population of up to 20,000;
- 28, in gminas with a population of up to 40,000;
- 32, in gminas with a population of up to 60,000;
- 36, in gminas with a population of up to 80,000;
- 40, in gminas with a population of up to 100,000;
- 45, in gminas with a population of up to 200,000, plus five more for every additional 100,000, but not more than 100 councilmen.

Article 18. 1. The competences of the gmina council include all matters remaining within its scope of activities, unless laws specify otherwise.

18. 2. The exclusive competences of the gmina council include:

- 1) voting on the gmina statute;
- 2) elections and recalls of the gmina board, determination of the directions of its activities, and acceptance of reports on its activities;
- 3) appointment and recall of the gmina secretary and the gmina treasurer, with the latter also being the director of the gmina budget;
- 4) passage of the gmina budget, acceptance of reports on the gmina's financial operations, and acceptance of the reports of the gmina board;
- 5) passage of local plans for land use and management;
- 6) passage of economic programs;

7) determination of the scope of activities of villages and municipal boroughs (housing projects) and transfer of part of municipal ownership to these administrative units;

8) passage of resolutions on local taxes and fees, within the limits specified by separate decrees;

9) passage of resolution on gmina property issues that transcend the scope of activities of ordinary administration and pertain to:

a) acquisition or sale of or encumbrances on real estate and its leasing or rental for a period of more than three years, unless particular decrees specify otherwise;

b) acceptance or refusal of bequests and inheritances;

c) issuance of gmina bonds and determination of the rules for their sale, acquisition, and buy-out by the gmina board;

d) borrowing long-term credit;

e) determination of the maximum size of short-term loans contracted by the gmina board during the fiscal year;

f) obligations concerning the initiation of investments and repair projects whose cost exceeds the limit passed annually by the gmina council;

g) formation of and participation in joint-stock companies and cooperatives as well their dissolution or withdrawal from them;

h) determination of the guidelines for contributing, withdrawing, and selling partnership shares and stocks by the gmina board;

i) establishment, dissolution, and reorganization of enterprises, plants, and other gmina organizational units, and providing them with assets;

10) determination of the ceiling on the financial liabilities that the gmina board may independently incur;

11) passage of resolutions on the acceptance of tasks recommended by the State administration, as referred to in Article 8, Paragraph 2;

12) passage of resolutions on cooperation with other gminas and the allocation of suitable assets for this purpose;

13) passage of resolutions on matters concerning the gmina coat of arms, names of public streets and squares, and the erection of monuments;

14) conferral of honorary gmina citizenship;

15) decisions on other matters which legally belong in the jurisdiction of the gmina council.

18. 3. The gmina council monitors the activities of the gmina board and the units subordinated thereto; to this end, it may appoint an auditing commission. Paragraphs 2 and 3 of Article 21 apply correspondingly.

18. 4. The recall of the gmina board or of its discrete members occurs through secret balloting by an absolute majority of votes of the statutory membership of the gmina council. In the event of the recall, the gmina council appoints a new board within 10 days.

Article 19. 1. The gmina council elects, in secret balloting, from among its members, a chairperson and one to three vice chairpersons.

19. 2. The chairperson and vice chairpersons of the gmina council may not concurrently hold the posts of village manager or municipal mayor or manager.

Article 20. 1. The gmina council deliberates at sessions convened by the chairperson as the need arises, but at least once every quarterly period.

20. 2. The first session of a newly elected council is convened by the chairperson of the incumbent council within seven days after the electoral results are published.

20. 3. On the recommendation of the gmina board or at least one-fourth of the statutory membership of the gmina council, the council chairman is obligated to convene a council session within seven days from the day the recommendation is made.

Article 21. 1. The gmina council may appoint permanent and interim commissions for particular purposes, upon specifying their purposes and membership.

21. 2. The members of the commissions may include persons other than councilmen, up to one-half of the membership.

21. 3. The commissions are subordinate to the gmina council and submit to it their plans of work and reports on their activities.

Article 22. The internal organization and operating rules of the council and its bodies are specified in the gmina statute.

Article 23. A councilperson represents voters, maintains regular contact with the local community and its organizations, and accepts their postulates and presents them for consideration to gmina bodies.

Article 24. A councilperson is under the obligation of taking part in the work of the gmina council and its bodies as well as of other local-government institutions to which that person is elected or appointed.

Article 25. 1. A councilperson is entitled to the legal protection provided for public servants.

25. 2. The termination of labor relationship with a councilperson by that person's workplace is contingent

on prior consent by the gmina council. The gmina council may withhold that consent if the termination is linked to events relating to the execution of the councilperson's mandate.

25. 3. Employers are under the obligation of granting work release to councilpersons in order to enable the latter to participate in the work of gmina bodies.

25. 4. Councils are entitled to per diem pay and reimbursement of travel expenses, with the specific guidelines to be determined by the gmina council.

25. 5. The provisions of Paragraphs 3 and 4 apply correspondingly to commission members who are not gmina councilpersons.

Article 26. 1. The executive body of the gmina is the gmina board.

26. 2. The membership of the board consists of the village manager or town mayor or manager as the board chairperson, the vice chairpersons, and other members.

26. 3. The mayor is the board chairperson in gminas in which the offices of gmina authorities are located in a locality having the right of a municipality.

26. 4. The provisions of Paragraph 3 also apply to cities with a population of more than 100,000 in which, prior to the effective date of this Decree, the mayor was the chief executive and administrative officer.

26. 5. Whenever this Decree refers to a mayor, it can also be construed as referring to a city manager.

Article 27. Employees of State administration may not be members of the gmina board.

Article 28. 1. With the proviso of Paragraphs 2 and 3 below, the board members, numbering from four to seven persons, are elected by the gmina council from among its members by secret ballot.

28. 2. The village manager, the mayor, and the deputy village managers and deputy mayors may be elected outside the gmina council, from among gmina residents at large.

28. 3. The gmina council elects the village manager or the mayor by separate secret ballot, by an absolute majority of votes in the presence of a quorum of at least two-thirds of the council.

28. 4. The deputy village managers and deputy mayors are elected by the gmina council on the recommendation of the village manager or the mayor.

Article 29. Following the expiration of the gmina council's term of office the gmina board remains in operation until the day of the election of the new board.

Article 30. 1. The gmina board executes the resolutions of the gmina council as well as the purposes of the gmina as defined by law.

30. 2. The purposes of the gmina board include in particular:

- 1) drafting gmina council resolutions;
- 2) determining how to implement the resolutions;
- 3) management of communal property;
- 4) implementation of the gmina budget;
- 5) hiring and discharge of directors of organizational units of the gmina;
- 6) implementation of the recommended tasks referred to in Article 8.

30. 3. In accomplishing the gmina's purposes the gmina board remains under the sole jurisdiction of the gmina council.

Article 31. The village manager or the mayor organizes the work of the gmina board, directs current affairs of the gmina, and represents the gmina outside.

Article 32. 1. In matters that brook no delay and concern direct peril to public interest, the village manager or the mayor takes steps that normally belong within the competences of the gmina board. This does not apply to the issuance of the public-order regulations referred to in Article 41, Paragraph 2.

32. 2. The steps taken by the procedure referred to in Paragraph 1 require confirmation by the next meeting of the gmina board.

Article 33. 1. The gmina board accomplishes its purposes with the aid of the gmina office.

33. 2. The organizational structure and operating rules of the gmina office are defined in a rule-book passed by the gmina council on the recommendation of the gmina board.

33. 3. The director of the gmina office is the village manager or the mayor.

33. 4. To the extent determined by the gmina board, the village manager or the mayor may entrust the management of gmina affairs in his behalf to the gmina secretary.

33. 5. The director of the gmina office is officially the head administrator with respect to the employees of the gmina office and the directors of the gmina organizational units, with the proviso of Article 30, Paragraph 2, Point 5).

33. 6. The legal status of local-government employees is defined in a separate decree.

Article 34. The gmina secretary and the gmina treasurer (chief budget accountant) take part in the work of the gmina board but have no voting rights.

Article 35. The organizational structure and scope of activities of the village, the municipal borough, and the housing project are defined in a separate statute by the gmina council.

Article 36. 1. The deliberative body in a village is the village meeting, and the executive is the village manager. The activities of the village manager are supported by the village council.

36. 2. The village manager and the members of the village council are elected by secret, direct ballot from among an unlimited number of candidates by permanent residents of the village who are authorized to vote.

Article 37. 1. The deliberative body in a municipal borough (housing project) is the borough (project) council whose membership size is specified pursuant to Article 17. The electoral rules and procedures are determined by the gmina council.

37. 2. The executive body in the borough (housing project) is the borough (housing project) board, elected pursuant to Article 28. The board is headed by a chairperson.

37. 3. The statute of the housing project may specify that the project's deliberative body is the general meeting of the tenants. That general meeting elects the project board: Article 36, Paragraph 2, applies correspondingly.

Article 38. Differences in the organizational structures of the gminas of a special nature are defined by the appropriate decrees. This concerns in particular the health-spa gminas.

Article 39. 1. Decisions on individual matters concerning public administration are taken by the village manager or the mayor.

39. 2. The village manager or the mayor may authorize his or her deputies or other gmina office employees to issue in his name the administrative decisions referred to in Paragraph 1.

39. 3. The gmina council may also authorize the executive bodies of the ancillary units referred to in Article 5, Paragraph 1, and of the units and entities referred to in Article 9, Paragraph 1, to attend to individual matters concerning public administration.

39. 4. The administrative decisions issued by the village manager or the mayor on matters concerning the gmina's own purposes can be appealed to the appeals collegium of the local-government dietine, and the decisions of the State administration, to the voivodship governor.

Chapter 4. Gmina Regulations

Article 40. 1. Pursuant to the law, a gmina has the right to issue regulations, hereinafter referred to as gmina regulations, that are binding in the area of the gmina.

40. 2. Pursuant to this Decree, gmina bodies may issue gmina regulations concerning:

- 1) internal organization of the gmina and of the villages, municipal boroughs, and housing projects;
- 2) organizational structure of gmina offices and institutions;

- 3) guidelines for administering gmina property;
- 4) guidelines and procedures for the utilization of gmina facilities for public use.

40. 3. To the extent not regulated by other decrees or other provisions, the gmina council may issue public-order regulations if these are indispensable to the protection of the life or health of citizens and to the assurance of public order, tranquility, and security.

40. 4. The public-order regulations referred to in Paragraph 3 may provide for imposing fines by the procedure and according to the guidelines specified in the Misdemeanor Code.

Article 41. 1. Gmina regulations are issued by the gmina council in the form of a resolution.

41. 2. In cases brooking no delay, public-order regulations may be issued by the gmina board in the form of an ordinance.

41. 3. The ordinance referred to in Paragraph 2 is subject to confirmation by the next meeting of the gmina council. It becomes null and void in the event that it is not presented for confirmation at the next meeting of the council or the council refuses to confirm it.

41. 4. In the event that the ordinance of the gmina board is not presented for confirmation, or not confirmed, by the gmina council, the gmina specifies the deadline on which it ceases to be binding.

Article 42. 1. Gmina regulations are made public by putting up posters in public places or in some other locally accepted way as well as by announcing them in the local press, unless the law specifies otherwise.

42. 2. Gmina regulations take effect on the day they are made public, unless they explicitly specify a subsequent date.

42. 3. The gmina office maintains a collection of gmina regulations available for public scrutiny.

Chapter 5. Communal Property

Article 43. Communal property is the assets and other property rights belonging to individual gminas and their associations as well as the property belonging to other communal legal entities, including enterprises.

Article 44. The acquisition of communal property takes place on the basis of:

- 1) this Decree, in its prefatory part;
- 2) transfer of property to the gmina's ownership in connection with the establishment or change of gmina boundaries by the procedure referred to in Article 4; the transfer of property takes place by means of an agreement between the concerned gminas or, in the event of absence of such agreement, a decision of the chairman of the Council of Ministers;

3) transfer by the State administration pursuant to the rules defined in executive orders of the Council of Ministers;

- 4) the results of the gmina's own economic activity;
- 5) other legal actions;
- 6) in other cases, defined in separate regulations.

Article 45. 1. Communal-property entities decide independently on the purpose and utilization of their assets upon adhering to the requirements of separate regulations and with the proviso of Paragraph 2.

45. 2. If objected to by the voivodship governor, gmina-council resolutions concerning the following matters are contingent on the assent of the local-government dietine:

- 1) changes in the designation or sale of real property serving for public use or for the direct satisfaction of public needs;
- 2) changes in the designation or sale of objects of special scholarly, historic, cultural, or naturalist importance;
- 3) non-reimbursable disbursement of other components of communal property.

Article 46. 1. A declaration of intent in the name of the gmina as regards property administration is made by two members of the gmina board or one member of the gmina board and an authorized board representative unless the gmina statute specifies otherwise.

46. 2. The gmina board may authorize the village manager or the mayor to be the sole person making declarations of intent relative to the conduct of current affairs of the gmina.

46. 3. If legal actions may result in financial encumbrances, their validation requires countersigning by the gmina treasurer (chief gmina budget accountant) or a person whom he/she authorizes.

46. 4. A gmina treasurer (chief gmina-budget accountant) who has refused to affix his countersignature will affix it upon receiving written instructions from his superior and notifying accordingly the gmina council and the regional accounting chamber.

Article 47. 1. Directors of the organizational units of the gmina which lack legal entity act individually on the basis of an authorization issued by the gmina board.

47. 2. Actions exceeding the bounds of the authorization require the consent of the gmina board.

Article 48. 1. The village or the municipal borough (housing project) administers and avails itself of communal property and disposes of the attendant revenues to the extent defined in its statute. The statute also defines the scope of the activities performed autonomously by the bodies of the village or borough (project) with respect to the property to which they are entitled.

48. 2. The gmina council may not curtail, without consent by the village meeting, the existing rights of villages to avail themselves of property.

48. 3. All the existing rights of gmina residents to [gmina] property and its utilization as well as other property rights and assets, hereinafter referred to as gmina property, remain inviolable.

48. 4. Gmina property is governed by the provisions governing communal property, with the proviso of Paragraph 3.

Article 49. 1. The gmina is not responsible for the obligations of other communal legal entities, and these are not responsible for the obligations of the gmina.

49. 2. In the event of the abolition or break-up of a gmina, its obligations are proportionately transferred to the gminas which took over its property.

Article 50. It is a duty of the persons responsible for the management of communal property to practice special care in that management in accordance with the purposes of that property and its protection.

Chapter 6. Communal Financial Management

Article 51. 1. The gmina manages its own finances on the basis of the gmina budget, hereinafter referred to as the budget.

51. 2. The budget is passed for the calendar year.

51. 3. The villages and municipal boroughs (housing projects) do not establish budgets of their own. The statute of the gmina defines the rights of the villages and boroughs (housing projects) to manage their own finances within the framework of the gmina budget.

Article 52. 1. The draft budget is prepared by the gmina board on taking into consideration the principles of budget law and the guidelines provided by the gmina council.

52. 2. The draft budget along with information on the status of communal property and explanatory notes is presented by the gmina board to the gmina council not later than by 15 November of the year preceding the budget year, with a copy to be transmitted to the regional accounting chamber.

52. 3. The budget is passed before the end of the year preceding the budget year.

Article 53. 1. The procedure for passing the budget and the kinds and specific nature of the information appended to the draft budget are defined by the gmina council.

53. 2. Until the gmina council passes the budget, but not later than by 31 March of the budget year, the draft budget presented to the gmina council remains the basis for budget management.

53. 3. In the event that the gmina council fails to pass the budget by the deadline referred to in Paragraph 2, the regional accounting chamber determines not later than by the end of April the gmina budget with respect to the mandatory own purposes of the gmina as well as with respect to recommended tasks.

Article 54. 1. Gmina revenues are:

- 1) taxes, fees, and other income defined as gmina revenues by separate regulations;
- 2) income from gmina property;
- 3) general subsidy from the State budget.

54. 2. Gmina revenues may include:

- 1) budget surpluses from preceding years;
- 2) targeted subsidies for the implementation of recommended tasks;
- 3) revenues from self-taxation by residents;
- 4) loans and issuance of bonds;
- 5) inheritances, bequests, and donations;
- 6) other income.

Article 55. 1. General subsidies are determined for gminas in accordance with objective criteria formulated in a separate decree.

55. 2. The minister of finance determines, in accordance with Paragraph 1, the size of general subsidies and allocates them to discrete gminas directly from the State budget.

Article 56. The sum total of short-term loans may not exceed five percent of the planned expenditures for a given year.

Article 57. The expenditures of the budget may not exceed its revenues.

Article 58. 1. Resolutions of gmina bodies concerning financial obligations indicate the sources of the revenues from which these obligations are to be met.

58. 2. The resolutions referred to in Paragraph 1 are passed by an absolute majority of votes in the presence of a quorum of at least 50 percent of the membership of the gmina body.

Article 59. 1. Gmina funds are disposed of separately from the banking transactions of the gmina.

59. 2. Gmina expenditures are disbursed in measure with the inflow of budget revenues within the limits passed by the gmina council.

Article 60. 1. The gmina board is responsible for the proper financial management of the gmina.

60. 2. Financial services to the gmina are provided by a bank indicated by the gmina council.

Article 61. 1. The financial management of the gmina is made public.

61. 2. The village manager or the mayor immediately publicizes the budget resolution and the report on its fulfillment by the procedure envisaged for the publication of gmina regulations.

61. 3. The gmina board notifies the gmina residents about the assumptions of the draft budget, the directions of social and economic policy, and the utilization of budget funds.

Article 62. 1. The monitoring of the financial management of gminas and their associations is handled by the regional accounting chambers.

62. 2. The chairpersons of the regional accounting chambers are appointed and recalled by the chairman of the Council of Ministers on the recommendation of the minister of finance.

Article 63. Separate decrees will define:

1) the procedure for the establishment of regional accounting chambers, their organizational structure, and their detailed operating guidelines;

2) the taxes, fees, and income considered to be gmina revenues;

3) general principles of budget procedure in gminas, financial management and public accountability, and a uniform budget classification system;

4) the terms for financial borrowing by gminas.

Chapter 7. Communal Associations and Agreements

Article 64. 1. With the object of jointly providing public services, gminas may form inter-gmina (communal) associations.

64. 2. Resolutions to establish such an association are passed by the councils of the concerned gminas.

64. 3. The rights and duties of the gminas belonging to a communal association, as relating to the implementation of the services transferred to the association for handling, are transferred to the association on the day of publication of its statute.

64. 4. The obligation of forming an association may be imposed only by means of a decree which defines the purposes of the association and the procedure for confirming its statute.

64. 5. Article 39, Paragraph 3, applies correspondingly to communal associations.

Article 65. 1. The association provides public services in its own name and on its own responsibility.

65. 2. The association is a legal entity.

Article 66. The gmina notifies the self-government dietine and the voivodship governor of its intention to join the association.

Article 67. 1. The establishment of an association is contingent on the acceptance of its statute by the councils of the interested gminas, by an absolute majority of votes of the statutory gmina-council quorums.

67. 2. The statute of the association should specify:

1) name and address of the association;

2) members, and the duration of the association;

3) purposes of the association;

4) bodies of the association, their structure, scope of activities, and operating procedures;

5) guidelines for utilizing the facilities and equipment of the association;

6) guidelines for sharing in the expenses of joint activity and in revenues as well as in defraying the operating losses of the association;

7) rules for the admission and resignation of members as well as for property accounting;

8) guidelines for dissolving the association;

9) other rules governing cooperation.

67. 3. Amendments of the statute are made by the procedure followed in formulating the statute.

Article 68. 1. The registry of the associations is kept by the chairman of the Council of Ministers.

68. 2. An association acquires legal entity upon registering, with the date of publication of its statute being consonant with the procedure and rules specified by the chairman of the Council of Ministers.

Article 69. 1. The constituent and supervising body of the association is the assembly of the association, hereinafter referred to as the assembly.

69. 2. With respect to recommended tasks the assembly has the same powers as those of the gmina council.

Article 70. 1. The assembly consists of the village managers and mayors of the gminas belonging to the association.

70. 2. Upon the consent of its council a gmina may be represented in the association by a member of another gmina body.

70. 3. The statute of the association may assign to specified gminas more than one voting right in an assembly. The additional assembly representatives are then designated by the concerned gmina councils.

Article 71. The resolutions of the assembly are passed by an absolute majority of votes of the statutory assembly quorum.

Article 72. 1. An assembly member may present a written objection to an assembly resolution within seven days from the day it is passed.

72. 2. The presentation of the objection suspends the implementation of the resolution and requires a reconsideration of the matter.

72. 3. No objection may be presented to a resolution that has already been reconsidered.

Article 73. 1. The executive body of the association is its board.

73. 2. The association board is appointed and recalled by the assembly from among its members.

73. 3. If so specified in the statute, members of the board may be selected outside of members of the assembly, up to a limit of one-third of the total membership of the board.

73. 4. The provisions applying to a village manager or a mayor apply correspondingly to the chairperson of the association board.

Article 74. 1. Gminas may conclude communal agreements for entrusting to each other the performance of specific public services.

74. 2. A gmina providing public services under the above agreement shares in the rights and duties of the other gminas insofar as they concern these services, and the other gminas are obligated to share the costs of providing these services.

Article 75. Domains not regulated by the intergmina agreements are governed correspondingly by the provisions concerning communal associations.

Chapter 8. The Self-Government Dietine

Article 76. 1. Gminas within a voivodship establish joint representation in the form of the self-government dietine, hereinafter referred to as the dietine.

76. 2. The operating procedures and rules of the dietine and its bodies are specified in the bylaws it adopts.

Article 77. 1. The purposes of the dietine include:

- 1) evaluating the activities of gminas and communal institutions within the voivodship;
- 2) disseminating experience in self-government;
- 3) acting as the mediator in disputes between gminas;
- 4) convening extraordinary sessions of gmina councils;
- 5) granting assent on matters referred to in Article 45, Paragraph 2;
- 6) passing resolutions on the dissolution of gmina boards by the procedure defined in Article 96, Paragraph 2;
- 7) evaluating the performance of the State administration in the voivodship, and evaluating candidates for voivodship governors as well;
- 8) making recommendations on major voivodship issues;
- 9) recommending the waiving of voivodship ordinances that conflict with local interests;
- 10) representing the interests of the gminas vis a vis the State administration;
- 11) appointing members of the appeals collegium referred to in Article 39, Paragraph 4.

77. 2. The dietine moreover passes resolutions concerning matters defined in separate regulations.

77. 3. The activities referred to in Paragraph 1, Points 2)-4) and 8) and 9) are performed by the dietine presidium during the periods in between sessions of the dietine. Concerning the activities referred to in Points 8) and 9), delegates from the concerned gminas participate in the presidium's deliberations.

Article 78. 1. Delegates to the dietine are elected by gmina councils by secret ballot from among council members:

- 1) in gminas with a population of up to 20,000—one delegate;
- 2) in gminas with a population of from 20,000 to 50,000—two delegates;
- 3) in gminas with a population of from 50,001 to 100,000—three delegates;
- 4) in gminas with a population of more than 100,000—one delegate for every additional 100,000 inhabitants.

78. 2. A dietine delegate retains his seat on the gmina council. In the event his term of office as a councilman expires, or if he is recalled by the gmina council, the concerned gmina council immediately carries out by-elections.

78. 3. During the term of office of the dietine a gmina council may recall its delegate by a majority of two-thirds in the presence of a quorum of at least one-half of the membership of the council.

Article 79. 1. The first session of the dietine is convened by the incumbent presidium of the dietine within 30 days after self-government elections.

79. 2. At its first session the dietine elects from among its delegates a new presidium consisting of a chairperson, two vice chairpersons, and six members.

79. 3. The dietine operates until the election of a new dietine by newly elected gmina councils.

Article 80. 1. At least twice a year the voivodship governor and the dietine exchange reports on their activities.

80. 2. At plenary sessions, dietine delegates have the right to make interpellations to the voivodship governor, who is obligated to answer them within not more than 30 days.

80. 3. The delegates report to their gmina councils on the activities of the dietine.

Article 81. 1. A three-member appeals collegium of the dietine pronounces rulings on appeals from individual administrative decisions taken by a village manager or a mayor with respect to the purposes of the gminas.

81. 2. The number of members of the appeals collegium is determined by the dietine, and they are appointed for the dietine's term of office.

81. 3. The appeals collegium is active until a new collegium is elected by the newly elected dietine.

Article 82. 1. The operating costs of the dietine are borne by the gminas, which contribute funds in proportion to their population.

82. 2. The voivodship governor makes it possible for the dietine to avail itself of the needed accommodations and office space.

Article 83. 1. The dietine decides on its own budget and on the size of the contributions [from the gminas].

83. 2. The regulations governing the financial management of gminas apply correspondingly to the financial management of the dietine.

Chapter 9. Gmina Associations

Article 84. 1. To support the ideas of local government and protect mutual interests, gminas may form mutual associations.

84. 2. The organizational structure, purposes, and operating procedures of the association are defined in its statute.

84. 3. Provisions of the Law on Associations apply correspondingly to gmina associations.

Chapter 10. Supervision of Communal Activities

Article 85. 1. Supervision of communal activities is exercised on the basis of the criterion of consonance with law, with the proviso of the provisions of Paragraph 2.

85. 2. With respect to recommended matters supervision is moreover based on the criteria of pertinence, conscientiousness, and efficient management.

Article 86. The supervising organs are the chairman of the Council of Ministers, the voivodship governor, and, with respect to budget matters, the regional accounting chamber.

Article 87. The supervising organs may intervene in communal activities only in cases specified in decrees.

Article 88. The supervising organs have the right to demand indispensable information and data concerning the organizational structure and functioning of the gmina, and they may visit communal administration offices and participate in the sessions of gmina bodies.

Article 89. 1. If the law makes the validity of the decision of a gmina body contingent on its approval or recommendation by another body, the latter body, or on consultation with that other body, the latter body should

take a position on the decision not later than within 14 days from the date notice on that decision or on its intent is delivered.

89. 2. If the body referred to in Paragraph 1 does not take a position on the matter, the decision is considered as accepted in the wording proposed by the gmina upon the expiration of the time limit specified in Paragraph 1.

Article 90. 1. The village manager or the mayor is dutybound to transmit to the voivodship governor the resolutions of the gmina council within 7 days from the date of their passage.

90. 2. Budget resolutions and resolutions rejecting the report of the gmina board are transmitted to the regional accounting chamber within the same time limit as that defined in Paragraph 1.

Article 91. 1. A gmina-body resolution that is inconsonant with law is invalid. The supervising organ issues a ruling on the total or partial validity of the resolution within not more than 30 days from the date a copy of that resolution is delivered by the procedure defined in Article 90.

91. 2. On instituting proceedings to invalidate a resolution the supervising organ may suspend its implementation.

91. 3. The ruling of the supervising organ should provide a factual and legal rationale and contain a clause pointing to the admissibility of appealing the ruling before an administrative court.

91. 4. In the event of an insubstantial violation of law the supervising organ does not invalidate the resolution, and instead merely confines itself to pointing out that it was passed in violation of law.

91. 5. The provisions of the Code of Administrative Proceedings apply correspondingly.

Article 92. If the invalidation concerns a budget resolution, the budget, or the part thereof affected by the invalidation, may not be implemented until the administrative court resolves the issue. The provisions of Article 53, Paragraphs 2 and 3, apply correspondingly.

Article 93. 1. Following the expiration of the time limit referred to in Article 91, Paragraph 1, the supervising organ is no longer competent to invalidate the resolutions of gmina bodies. In that event, the supervising organ may appeal the resolution before an administrative court.

93. 2. In the event referred to in Paragraph 1 it is up to the court to issue a ruling suspending the implementation of the resolution.

Article 94. 1. The resolution of a gmina body may not be invalidated upon the elapse of one year from the date of

its passage, unless the duty of transmitting the resolution within the time limit specified in Article 90, Paragraph 1, was not carried out.

94. 2. If the elapse of the time limit specified in Paragraph 1 is not found to be a valid reason for invalidating the resolution, and if there exist reasons for questioning its validity, a ruling of inconsonance with law is pronounced. The provisions of the Code of Administrative Proceedings concerning the consequences of such a ruling apply correspondingly.

Article 95. 1. Acting within the bounds of Article 85, Paragraph 2, the voivodship governor may suspend the implementation of the resolution of a gmina body and transmit the matter for reconsideration by indicating any existing errors and specifying the time limit for resolving the issue.

95. 2. A receivership commissioner may be appointed upon prior presentation of accusations to the gmina bodies. Before that commissioner begins to operate, the gmina bodies should be asked to immediately present a program for improving the situation, and the dietine should be asked to express its opinion.

95. 3. The commissioner is appointed by the chairman of the Council of Ministers on the recommendation of the voivodship governor in consultation with the dietine.

95. 4. The commissioner is in charge of the implementation of the purposes of gmina bodies and exercises their powers.

95. 2.[as published] If the resolution of a gmina body, passed on reconsidering the matter, does not take into consideration the indications referred to in Paragraph 1, the voivodship governor may waive the resolution and issue a substitute ordinance on notifying the presidium of the dietine and the concerned minister.

95. 3.[as published] The substitute ordinance takes effect within 30 days from the date it is issued, unless in the meantime the minister issues a different decision on the matter.

95. 4. [as published] The provisions of Paragraphs 1-3 apply correspondingly to the activities of the gmina relating to the accomplishment of its purposes referred to in Article 8, Paragraph 1.

Article 96. 1. In the event a gmina repeatedly violates the provisions of the Constitution or decrees, the Sejm may, on the recommendation of the chairman of the Council of Ministers, pass a resolution dissolving the gmina council. The dissolution of a gmina council is tantamount to the dissolution of all the bodies of the gmina. The chairman of the Council of Ministers then designates a person who shall exercise the powers of the gmina bodies until new elections to these bodies.

96. 2. If the repeated violations of the Constitution or decrees are committed by the gmina board, the voivodship governor calls on the gmina council to take the

necessary steps, and if his request remains ineffective, recommends to the dietine that it dissolves the gmina board. The dietine passes the related resolution by an absolute majority of votes in the presence of at least one-half of its delegates. Until the election of the new board, the functions of the board, as well as of the village manager or mayor, are exercised by a person designated by the presidium of the dietine.

Article 97. 1. In the event that the bodies of a gmina are ineffective in providing public services and the prospects for their improvement remain unpromising, the chairman of the Council of Ministers may suspend these bodies and appoint a receivership commissioner for a period of up to two years, but not longer than until the newly elected gmina council elects a new gmina board.

Article 98. 1. The decision of a supervising organ concerning a gmina, as well as the position taken by the procedure described in Article 89, may be appealed to an administrative court by virtue of inconsonance with law, within 30 days from the date of delivery of that decision.

98. 2. The provisions of Paragraph 1 apply correspondingly to decisions concerning the bodies of communal associations and the terms of communal agreements.

98. 3. A gmina or a communal association whose legal interests, powers, or competences, were violated, is entitled to submit an appeal. The basis for submitting the appeal is a resolution of gmina bodies.

98. 4. Proceedings in cases referred to in Paragraphs 1 and 2 are correspondingly governed by the regulations governing appeals against administrative decisions to the administrative court.

98. 5. The decisions of the supervising organ become valid upon the expiration of the time limit for appealing them or on the date the court dismisses or rejects the appeal.

Article 99. 1. The provisions governing the supervision of gminas apply correspondingly to dietines and to communal associations and agreements.

99. 2. In cases of communal associations and agreements that transcend the boundaries of a voivodship, the supervising organs act within the scope of their local competences and through the mediation of the supervising organs proper for the main office of the management of the association or the agreement, unless the statute of the association or the agreement transfers supervisory powers to the chairman of the Council of Ministers.

Article 100. The court proceedings referred to in the preceding Articles are exempt from court fees.

Article 101. 1. Anyone whose legal interest or powers are violated by a resolution passed by a gmina body concerning a public-administration matter may, if his or her request to eliminate the violation proves ineffective, appeal the resolution before an administrative court.

101. 2. The provisions of Paragraph 1 do not apply if an administrative court has already considered the case and dismissed a previous appeal.

101. 3. A request to eliminate a violation is governed by the regulations prescribing the time limits for the settlement of cases in administrative proceedings.

101. 4. In the cases referred to in Paragraph 1 the provisions of Article 94 apply correspondingly.

Article 102. The provisions of this Chapter do not apply to individual decisions concerning public administration that are issued by gmina bodies, by gmina associations, or by the appeals collegiums of dietines. Higher-instance supervision, and supervision outside an instance, in these cases is governed by separate regulations.

Chapter 11. Final Provisions

Article 103. This Decree takes effect at the time and on the principles defined in the Prefatory Provisions of the Law on Local Self-Government, with the exception of Article 5, Paragraph 4, and Article 17, which take effect on the day of the publication of this Decree.

Electoral Law for Gmina Councils

90EP0442C Warsaw RZECZPOSPOLITA (Special Supplement) in Polish 22 Mar 90 pp 1-3

[Law governing elections to gmina councils, dated 8 March 1990, in special supplement titled "Before the Elections—Self-Government ABC's"; also published in Warsaw DZIENNIK USTAW No. 16, Item 96, 19 March 1990, pages 206-219]

[Text]

Chapter 1. General Principles

Article 1. 1. This Decree defines the principles and procedure for the elections of members of gmina councils, hereinafter referred to as the councils.

1. 2. A municipal council as construed by this Decree is a gmina council operating in a city.

Article 2. 1. The elections are direct and popular: any Polish citizen who has completed 18 years of age on election day has the right to vote.

2. 2. The right to vote also belongs to persons whose Polish citizenship has not been confirmed and who are not citizens of another country, if they have been permanent residents of Poland for at least two years.

2. 3. Persons who are permanent residents of the concerned gmina have the right to elect members of its council.

Article 3. The following persons lack the right to vote:

1) persons whom a court validly rules to be totally or partially incapacitated owing to mental illness;

2) persons deprived of civil rights or of voting rights by a valid ruling of a court or of the Tribunal of State.

Article 4. Any person who has the right to elect members of the council also is eligible for candidacy to that council.

Article 5. Elections are equal—voters take part in elections on equal principles. Every voter is entitled to one ballot.

Article 6. 1. Elections are direct—voters elect councilmen directly from among the candidates listed in electoral districts.

6. 2. Ballots can be cast only directly, with the voter appearing personally.

Article 7. Elections take place by secret ballot. The polling premises must contain curtained-off accommodations assuring secrecy of voting. The ballots are cast into a sealed voting urn.

Article 8. 1. In gminas [townships] or towns with a population of up to 40,000 councilmen are elected in single-seat electoral districts. The winner is considered to be the candidate who won the most votes.

8. 2. In cities with a population of more than 40,000 councilmen are elected in multi-seat electoral districts. The apportionment of seats among the candidates is performed in proportion to the total number of votes cast for candidates from a particular list. Seats are allocated to those candidates on a list who win the most votes.

Chapter 2. Ordering Elections

Article 9. 1. Elections for the councils are ordered not later than a month before the expiration of the term of office of the councils.

9. 2. Elections for the councils are ordered by the chairman of the Council of Ministers, on designating the date of the elections on a legal work-free day within 2 months after [as published] the expiration date of the term of office.

9. 3. The order referred to in Paragraph 2 specifies the days on which the time limits envisaged in this Decree (the electoral calendar) expire. The order is published in DZIENNIK USTAW not later than 60 days before election day.

Article 10. Not later than 50 days before election day, the voivodship electoral commissioner shall, on the request of the voivodship governor, separately determine for each gmina the number of vacant council seats pursuant to the provisions of the law on local self-government.

Chapter 3. Electoral Districts

Article 11. 1. An electoral district encompasses the voters resident in a part of the administrative area of a council.

11. 2. When determining the electoral districts allowance should be made for the territorial, economic, and social factors accounting for the bonds and interests linking the local community of citizens resident in the area concerned.

11. 3. In rural gminas the electoral district should consist of one or several villages. To maintain the norm of representativeness a village may be divided into two or more electoral districts.

Article 12. 1. In each electoral district established for council elections in gminas or cities with a population of up to 40,000 only one councilman can be elected per district.

12. 2. In cities with a population of more than 40,000 electoral districts are established for the election of from five to 10 councilmen from each district.

Article 13. When forming electoral districts for elections to the councils a uniform norm of representativeness, based on dividing the population of the gmina or city by the number of councilmen that can be elected for the particular council, should be adhered to. Deviations from the thus defined norm of representativeness are allowed within bounds of 20 percent when so warranted by the considerations referred to in Article 11, Paragraphs 2 and 3.

Article 14. 1. On the request of the concerned gmina or city council board, the voivodship electoral commissioner determines separately for each council:

1) the boundaries and numbering of single-seat electoral districts, or

2) the number of multi-seat electoral districts, their boundaries and numbering, and the number of vacant council seats for every individual district.

14. 2. The order of the voivodship electoral commissioner identifying the electoral districts is published in the voivodship's Official Record, and made known to voters by putting up posters not later than 45 days before election day, on also specifying the address of the concerned territorial elections commission.

Chapter 4. Polling Wards

Article 15. 1. To conduct elections, polling wards encompassing, as a rule, from 1,000 to 3,000 voters each are formed.

15. 2. In gminas and towns with a population of up to 40,000 the polling ward is identical with the electoral district. In warranted cases a single polling ward can be formed for several electoral districts.

15. 3. At establishments for social care or for the disabled, separate polling wards are formed if at least 100 voters registered as permanent residents reside in one such establishment.

Article 16. 1. The concerned territorial electoral commission may, on the request of a gmina board, form polling wards on assigning to them boundaries and numbering, and specify the addresses of the ward electoral commissions.

16. 2. The decision of a territorial electoral commission to establish polling wards is communicated to voters by means of wall posters not later than 25 days before election day.

Chapter 5. Voter Lists

Article 17. 1. The local vital statistics office prepares lists of voters registered for permanent residence in the gmina.

17. 2. A voter who has not been registered anywhere is included in the list of voters for the area of his current domicile if he submits a corresponding request to the vital statistics office at least seven days before election day.

17. 3. Voter lists are prepared on the basis of population records as of the day on which they are prepared.

17. 4. The voter list contains the name and surname of the voter, father's name, date of birth, and address.

17. 5. The list is prepared in two copies, separately for each polling ward. In the case of an polling ward that covers several electoral districts (Article 15, Paragraph 2) a voter list is prepared separately for each electoral district. The voter list should be signed by the person responsible for its preparation and stamped with the seal of the agency which prepared it.

Article 18. The minister of internal affairs shall, in cooperation with the national electoral commissioner, issue an executive order containing a model voter list and prescribing the procedure for the preparation and updating of such lists.

Article 19. Not later than 20 days before election day the agency referred to in Article 17, Paragraph 1, makes the voter list available for public viewing in its offices for a period of five days, five hours daily, at the hours most convenient to voters, upon notifying voters about the time and place where that list can be perused.

Article 20. 1. During the period when the voter list is available for public inspection, any one may submit claims about any inaccuracies in the list to the agency which prepared it.

20. 2. The claim is submitted in writing or verbally for the record.

20. 3. The claim is considered within three days from its submission.

20. 4. On considering the claim, the agency which prepared the voter list:

1) complements or rectifies the list, or

2) deletes from the list the name of the person whom the claim concerns, on mailing a corresponding notice together with a rationale, or

3) disregards the claim, on providing the claimant with a corresponding notice together with a rationale.

Article 21. 1. The decisions referred to in Article 20, Paragraph 4, Points 2) and 3) may be appealed by the claimant, or by the person deleted from the voter list, to the district court proper for the local area concerned. A copy of the decision should be appended to the appeal.

21. 2. The court, being composed of one judge and two lay judges, considers the case in nonlitigious proceedings within 3 days from the day the appeal is submitted. The ruling of the court is handed to the appellant and to the agency which prepared the voter list. There is no appeal from the court's ruling.

Article 22. One copy each of the voter list is transmitted, not later than three days before election day, to the chairpersons of the concerned ward electoral commissions.

Chapter 6. Electoral Commissioners and Electoral Commissions

Article 23. The following are appointed to conduct the elections:

- 1) the national electoral commissioner;
- 2) voivodship electoral commissioners;
- 3) territorial (gmina, city) electoral commissions;
- 4) ward electoral commissions.

Article 24. 1. The duties of the national electoral commissioner include:

- 1) monitoring adherence to electoral law;
- 2) appointment of voivodship electoral commissioners;
- 3) consideration of complaints about the activities of voivodship electoral commissioners;
- 4) making public the composite results of elections for the councils;
- 5) transmittal to the Council of Ministers of information about the course and results of the elections;
- 6) performance of other activities envisaged in the provisions of this Decree.

24. 2. In performing the duties specified in Paragraph 1, Point 1), the national electoral commissioner issues binding guidelines and explanations to voivodship electoral commissioners and electoral commissions.

Article 25. 1. The voivodship electoral commissioner is the representative of the national electoral commissioner for the area of the voivodship.

25. 2. The duties of voivodship electoral commissioners include:

- 1) monitoring adherence to the provisions of electoral law by the territorial and ward electoral commissions;
- 2) assuring, in cooperation with the voivodship governor, the organization of elections in the voivodship;
- 3) forming electoral districts;
- 4) appointing territorial electoral commissions;

5) considering complaints about the activities of territorial electoral commissions;

6) issuing, as the need arises, guidelines and explanations to territorial and ward electoral commissions;

7) ordering the printing of voting ballots and providing them to the ward electoral commissions;

8) determining the composite results of the elections conducted in the voivodship and ordering their announcement by the procedure specified in this Decree;

9) transmitting a report on the course and results of the elections within the voivodship to the national electoral commissioner;

10) implementing other duties ensuing from the provisions of this Decree.

Article 26. The duties of the territorial electoral commissions include:

- 1) forming polling wards;
- 2) appointing ward electoral commissions;
- 3) monitoring adherence to provisions of electoral law by ward electoral commissions and issuing to them, as the need arises, guidelines and explanations;
- 4) considering complaints about the activities of ward electoral commissions;
- 5) registering candidates or lists of candidates for councilmen;
- 6) ordering the printing of the wall posters referred to in Article 44, Paragraph 3, or in Article 52, Paragraph 3, and providing these wall posters to ward electoral commissions;
- 7) issuing certificates to plenipotentiaries of candidate lists and to trusted observers;
- 8) determining the results of elections for the councils and ordering that they be made public by the procedure specified in this Decree;
- 9) transmitting records on the election results, along with attachments, to the voivodship electoral commissioner;
- 10) performing other duties ensuing from the provisions of this Decree.

Article 27. The duties of ward electoral commissions include:

- 1) publicizing candidate lists and biographical data on candidates by putting up wall posters within the polling ward;
- 2) conducting the voting in the ward;
- 3) assuring, on election day, adherence to the provisions of electoral law at the site of and during the balloting;

4) determining the results of the balloting in the ward and making them public as well as transmitting balloting records to the proper territorial electoral commission.

Article 28. The national electoral commissioner is appointed by the chairman of the Council of Ministers within three days from the date the elections are ordered.

Article 29. 1. The national electoral commissioner exercises his duties jointly with the Collegium as an advisory body.

29. 2. The Collegium consists of the national electoral commissioner as the chairman plus three justices of the Constitutional Tribunal designated by the Tribunal's chairman and three justices of the Supreme Administrative Court designated by the chairman of that court.

29. 3. The position taken by the Collegium on matters referred to in Article 24, Paragraph 1, Point 3), is definitive.

29. 4. Organizational and clerical services for the national electoral commissioner are provided by the Office of the Council of Ministers.

Article 30. Voivodship electoral commissioners are appointed by the national electoral commissioner not later than 55 days before election day.

Article 31. 1. The territorial electoral commission consists of: the chairman, the vice chairman, the secretary, and from six to 14 members.

31. 2. The ward electoral commission consists of: the chairman, the vice chairman, the secretary, and from four to eight members.

Article 32. Territorial electoral commissions are appointed by the voivodship electoral commissioner on the recommendation of the concerned gmina (city) board, not later than 45 days before election day.

Article 33. Ward electoral commissions are appointed by the proper territorial electoral commissions not later than 35 days before election day.

Article 34. 1. The membership of electoral commissions may consist only of the voters residing in the administrative area of the concerned council.

34. 2. A member of an electoral commission forfeits his membership the moment his or her candidacy for the council is registered.

34. 3. The national electoral commissioner and the voivodship commissioners may not be candidates for councilmen.

Article 35. 1. Members of electoral commissions perform their duties on an honorary basis. They are entitled to per diems and reimbursement of travel expenses in the amounts and in accordance with the guidelines established by the chairman of the Council of Ministers.

35. 2. Members of electoral commission are entitled to an unpaid leave from their workplaces for the period during which they work for the commission; in this event they are entitled to lump-sum compensation for lost earnings, in the amounts and in accordance with the guidelines established by the Council of Ministers.

35. 3. The amounts and guidelines for the remuneration of voivodship electoral commissioners are determined by the chairman of the Council of Ministers.

Article 36. The national electoral commissioner, the voivodship electoral commissioners, and the members of the electoral commissions are entitled to the legal protection provided for civil servants.

Article 37. The proper agencies of State administration provide voivodship electoral commissioners and territorial and ward electoral commissions with the office space, facilities, and equipment needed to conduct elections efficiently.

Article 38. 1. The chairman of the Council of Ministers specifies the operating procedures for the national electoral commissioner and voivodship electoral commissioners.

38. 2. The national electoral commissioner specifies the operating procedures for territorial and ward electoral commissions and the methods for monitoring the performance of ward electoral commissions.

38. 3. The national electoral commissioner prescribes:

- 1) sample seals of electoral commissions;
- 2) sample blank forms for the registration of candidates and candidate lists for elections to the councils;
- 3) sample [admission] certificates for trusted observers and plenipotentiaries of candidate lists;
- 4) sample ballots;
- 5) sample forms for recording the results of the balloting and elections;
- 6) sample certificates of election.

Article 39. 1. The powers of the national electoral commissioner expire by law six months prior to the expiration date of the terms of office of the councils elected in the elections which he had conducted.

39. 2. Once they complete their activities, territorial and ward electoral commissions are dissolved by the agency which had appointed them.

39. 3. The powers of the voivodship electoral commissioner expire once the territorial and ward electoral commission in the voivodship become dissolved.

Chapter 7. Nomination of Council Candidates in Single-Seat Districts

Article 40. 1. Nominations of council candidates in single-seat districts, separately for each electoral district, are presented to the proper territorial electoral commission not later than 30 days before election day.

40. 2. When nominating a council candidate, his or her name, surname, age, occupation, and domicile should be provided, along with the electoral district for which he or she is a candidate.

40. 3. Appended to each nomination should be the candidate's written declaration of consent to his or her nomination.

40. 4. In the declaration referred to in Paragraph 3 the council candidate may ask that his or her entry in the registry of candidates include information on the name or acronym of the party, political grouping, citizens' committee, or other organization supporting his or her candidacy.

40. 5. A person may be a candidate in only one electoral district.

Article 41. 1. The nomination of a council candidate should be signed by at least 15 voters domiciled in the concerned electoral district.

41. 2. A voter who signs a nomination for a council candidate provides not only his or her signature but also his or her legible name, surname, and address.

41. 3. The first three voters to have signed the nomination of a council candidate are authorized to present declarations concerning the nomination referred to in Paragraph 1.

Article 42. 1. The proper territorial electoral commission immediately registers for the specified electoral district the nomination reported in accordance with the provisions of this Decree, upon preparing an appropriate record and notifying accordingly the persons who presented it.

42. 2. If a nomination contains errors which cannot be rectified, the commission deems it to be invalid and notifies immediately the persons who presented it.

42. 3. If a nomination contains other errors, the commission immediately summons the persons who presented it to rectify these errors within three days. If these errors are not rectified within the specified time limit, the commission invalidates the nomination.

42. 4. The ruling invalidating a nomination may be appealed within two days to the voivodship electoral

commissioner by the persons who had presented the nomination. The commissioner's ruling on the appeal is final.

Article 43. If at least two nominations are not presented within the time limit specified for the presentation of nominations in a given electoral district, the proper electoral commission calls upon voters, by putting up wall posters, to nominate additional candidates. In this event the deadline for nominating and registering candidates is extended for five days.

Article 44. 1. After registering the candidates, the territorial electoral commission establishes in alphabetical order a register of candidates for every electoral district.

44. 2. After establishing the register of candidates the territorial electoral commission orders the printing of wall posters with biographical data on the candidates along with any eventual party-affiliation referred to in Article 40, Paragraph 4.

44. 3. The wall posters referred to in Paragraph 2 should be dispatched in sufficient quantities to ward electoral commissions along with the instruction to have them put up in a given electoral district not later than 15 days before election day. At the same time, one copy each of the various wall posters is transmitted to the voivodship statistical administration.

Article 45. 1. The proper territorial electoral commission deletes from the registry the name of a council candidate who has passed away, forfeited his or her right to stand for elections, or withdrawn consent to his or her own candidacy.

45. 2. The commission immediately notifies voters about any such deletion.

Article 46. 1. A council candidate may designate a trusted observer authorized to represent him before the electoral commissions and the voivodship electoral commissioner.

46. 2. The trusted observer represents the interests of the candidate during, in particular, election time, during the counting ballots and determination of voting results by the ward and territorial electoral commissions.

46. 3. The chairman of the territorial electoral commission issues to the trusted observer a certificate authorizing him or her to be present on the premises of the ward electoral commission during the performance of its activities.

Chapter 8. Nomination of Lists of Council Candidates in Multi-Seat Districts

Article 47. 1. Lists of council candidates in multi-seat districts, separately for every individual electoral district, are reported to the territorial electoral commission not later than 30 days before election day, on indicating the district for which a given list is nominated.

47. 2. The number of the candidates named on a list may not exceed the number of the vacant council seats in a given electoral district.

47. 3. The list of candidates should provide the name, surname, age, occupation, and address of each candidate. Names of candidates on the list are placed in alphabetical order or in some other sequence determined by the persons presenting the list.

47. 4. Appended to each nomination on the list should be written declaration of consent to candidacy by the council candidates.

47. 5. A particular candidate may be nominated for not more than one electoral district and from only one of the lists of candidates.

Article 48. 1. A nominating petition containing a list of council candidates should be signed by at least 150 voters domiciled in the given electoral district.

48. 2. Voters who sign the nominating petition should provide, in addition to their signatures, their legible names, surnames, and addresses.

48. 3. The person authorized to provide declarations concerning the nominating petition referred to in Paragraph 1 is the plenipotentiary of the list of candidates who is named in the written declaration by the first three voters to have signed the nominating petition.

Article 49. The plenipotentiary may request that the name or acronym of the party, political grouping, citizens' committee, or other organization sponsoring individual or all candidates on the list be designated on the list. The request is presented in writing prior to the expiration of the deadline for nominating the candidates.

Article 50. 1. The proper territorial electoral commission immediately registers for the specified electoral district the lists of council candidates nominated in accordance with the provisions of this Decree, upon recording it appropriately and notifying the plenipotentiary of the lists..

50. 2. If the petition contains errors which affect an entire list and cannot be rectified, the commission invalidates it and immediately notifies the plenipotentiary of the list.

50. 3. If the petition contains other errors, the commission immediately notifies the plenipotentiary of the list and asks him or her to rectify them within three days. If these errors are not rectified within three days, the electoral commission invalidates the nominating petition in its entirety or with respect to individual candidates on the list. In the event that the petition is invalidated only with respect to individual candidates, the list is registered with respect to the candidates whom the invalidation does not affect.

50. 4. The ruling invalidating the nominating petition may be appealed within two days to the voivodship electoral commissioner by the plenipotentiary of the list. The commissioner's ruling on the appeal is final.

Article 51. If only one list of candidates is nominated for a given electoral district within the prescribed time limit, the proper territorial electoral commission summons voters, by putting up wall posters, to nominate additional lists of candidates. In this event, the deadline for the nomination and registration of lists of candidates is extended by five days.

Article 52. 1. Upon registering the lists of council candidates the territorial electoral commission assigns numbers to these lists in the sequence in which they were received.

52. 2. The territorial electoral commission orders the printing of wall posters containing information on the registered lists of candidates and biographical information on the candidates. In the event that the [political] affiliation, as referred to in Article 49, of the lists of candidates or individual candidacies is provided, the wall posters also should contain information on said affiliation.

52. 3. The wall posters referred to in Paragraph 2 should be dispatched to ward electoral commissions with the instruction to put them up in the given electoral district not later than 15 days before election day. At the same time, one copy of each wall poster is transmitted to the voivodship statistical administration.

Article 53. 1. The proper territorial electoral commission deletes from the registered list the names of candidates who may have passed away, forfeited the right to stand for elections, or withdrawn their consent to nomination.

53. 2. The commission immediately communicates these decisions to voters and to the plenipotentiary of the concerned list.

Article 54. 1. Plenipotentiaries of the lists may assign trusted observers to ward electoral commissions. A trusted observer represents the interests of the list, in particular during the balloting and during the counting of votes by the ward electoral commission.

54. 2. The chairman of the territorial electoral commission issues to the trusted observer a certificate authorizing him to be present on the premises of the ward electoral commission while its work is in progress.

Chapter 9. Electoral Campaign

Article 55. 1. The meetings and rallies organized as part of the electoral campaign are not subject to the provisions of the Decree of 29 March 1962 on Assemblies (DZ.U., No. 20, Item 89, 1971; No. 12, Item 115, 1982; No. 14, Item 113, 1985; No. 36, Item 167, and No. 20, Item 104, and No. 29, Item 154, 1989).

55. 2. On election day the convening of rallies, the organization of parades and demonstrations, the delivery of speeches, the distribution of flyers, and the conduct of any other form of electioneering on behalf of candidates or lists of candidates, are prohibited.

55. 3. All forms of electioneering in polling premises are prohibited.

Article 56. 1. All electoral posters, inscriptions, or flyers that clearly name their authors or the persons or organization publicizing them are subject to protection by law.

56. 2. The provisions of Article 63a of the Misdemeanor Code do not apply to electoral wall posters.

56. 3. The pasting of wall posters inside and outside buildings of the State administration and of the courts, as well as onto road signs, is prohibited.

Article 57. 1. In the event that the electoral posters, inscriptions, flyers, or other forms of electioneering contain untrue or inexact data or information, any concerned party has the right to submit to a district court a request for a ruling confiscating such materials or an injunction against the publication of such data and information, or some other appropriate temporary court order.

57. 2. The district court considers the request referred to in Paragraph 1 within 24 hours in nonlitigious proceedings conducted by one judge. The related ruling is immediately conveyed by the court to the concerned party referred to in Paragraph 1, to the proper voivodship electoral commissioner, and to the person or organization on whom or on which the court's ruling is binding. The ruling of the district court may be appealed within 24 hours to the voivodship court, which is obligated to consider it within 24 hours after the appeal is received. The valid ruling of the voivodship court is subject to immediate execution.

Article 58. 1. Irrespective of the provisions of Articles 31-33 of the Press Law of 26 January 1984 (DZ.U., No. 5, Item 24, 1988; No. 41, Item 324 and No. 34, Item 187, 1989), untrue or clearly inexact information relating to elections and to the electoral campaign, when reported in the press and in nonperiodical publications, must be immediately rectified and the deadline for publishing the rectification is 48 hours.

58. 2. In the event of refusal to provide rectification, the concerned party has the right to petition the district court to issue an appropriate order, and the district court is obligated to consider the request in nonlitigious proceedings conducted by one judge within 24 hours. The court's ruling is immediately conveyed to the concerned party which had made the request as well as to the party ordered to publish the rectification. The ruling of the district court may be appealed within 24 hours to the voivodship court, which considers it within 24 hours after receiving the appeal. The valid ruling of the voivodship court is subject to immediate execution.

58. 3. As regards the rectification of information printed in publications other than dailies, the court names the daily newspaper in which the rectification is to be published within 48 hours, with the cost of the publication to be borne by the obligated party.

58. 4. In the event of refusal or failure of the obligated party, or the party named in the court's ruling, to publish the rectification, the court orders that the rectification be published in executive proceedings within the time limit specified in its ruling.

Article 59. The exaction of redress ensuing from this Decree does not curtail the right of the injured or damaged party to institute proceedings on the basis of other laws, and in particular on the basis of the Criminal Code, the Civil Law Code, and the Press Law, against persons whose actions during the electoral campaign violated the personal or property rights of others.

Article 60. The conduct of an electoral campaign in workplaces is prohibited insofar as it interferes with their normal operations.

Article 61. 1. The national electoral commissioner shall, in consultation with the chairman of the Committee for Radio and Television "Polish Radio and Television," define the principles for free access to State radio and television by political parties or groupings, citizens' committees, and other organizations or institutions sponsoring the nominated candidates.

61. 2. The decisions referred to in Paragraph 1 are made public by the national electoral commissioner and published in the Official Gazette of the Republic of Poland MONITOR POLSKI not later than 50 days before election day.

61. 3. Any information, announcements, appeals, and slogans published in the (printed) press or announced on radio or on television, with the expenses paid by the candidate or the party or political grouping or citizens' committee or another organization sponsoring the candidate, must specify the sponsor of its publication or announcement and meet the requirements specified in Article 56, Paragraph 1.

Article 62. 1. The financing of an electoral campaign is made public.

62. 2. Candidates or parties, political groupings, citizens' committees, or other organizations supporting the candidates, provide the voivodship electoral commissioner, within two months from election day, with a financial report containing information on their financial expenditures on the campaign as well as information on their funding sources for the campaign.

62. 3. Political parties or other organizations sponsoring candidates in two or more voivodships provide, within three months from election day, the national electoral commissioner with a composite report, as referred to in Paragraph 2.

62. 4. The reports referred to in Paragraphs 2 and 3 are made available for public scrutiny.

Chapter 10. Ballots

Article 63. A ballot for a single-seat district contains in alphabetical order the names and surnames of the candidates for councilmen registered in a given electoral district, along with any party affiliations of the candidates as marked pursuant to Article 40, Paragraph 4.

Article 64. A ballot for a multi-seat district contains all the lists of candidates for councilmen registered in a given electoral district, on specifying the names and surnames of the candidates on each list in the sequence in which they are named on the list, along with any party affiliations of the lists and of individual candidates as marked pursuant to Article 49.

Article 65. The ballot should contain concise information on voting procedures and on the consequences of filling out the ballot improperly.

Article 66. 1. The printing of the ballots is ordered by the voivodship electoral commissioner on the basis of the information provided by the proper territorial electoral commissions.

66. 2. The ballot may be imprinted on only one side. The size and kind of printing type should be the same for all candidates.

Article 67. The ballot is stamped with the seal of the relevant territorial electoral commission.

Chapter 11. Balloting

Article 68. 1. Balloting is conducted in the premises of the ward electoral commission, hereinafter referred to as the polling premises, without any pause, between 0800 and 2000 hours.

68. 2. Before balloting commences, the ward electoral commission checks whether the urn is empty, whether voter lists are on hand, and whether the necessary number of ballots is on hand, and also whether the polling premises contain an adequate number of accommodations assuring secrecy of balloting, whereupon the commission locks the voting urn and stamps it with the commission seal.

68. 3. Once the urn is sealed, it may not be opened until the balloting is completed.

Article 69. 1. From the moment the balloting commences until it ends, the following should be present in the polling premises: the chairman or vice chairman of the ward electoral commission and at least two commission members.

69. 2. From the moment the commission begins its work until the moment that the results of the balloting, trusted observers and representatives of the lists of candidates may be present in the polling premises.

Article 70. 1. The chairman of the ward electoral commission assures the maintenance of order during the balloting and the secrecy of balloting and to this end he may issue appropriate orders.

70. 2. If the need arises, the chairman of the ward electoral commission may, in consultation with the territorial electoral commission, demand of the appropriate security agencies the assignment of security personnel.

Article 71. 1. Before commencing the balloting the voter shows to the ward electoral commission his I.D. card or another document proving his identity.

71. 2. The commission verifies whether the person in question is named on the voter list.

71. 3. A voter named in the voter list who lacks a document considered by the commission as sufficient to prove his or her identity may call upon two credible witnesses known to the commission in order to prove his or her identity. The ruling of the commission on proving identity is final.

71. 4. A voter who is not named on the voter list will be added to the list on election day and permitted to cast a ballot if an entry in his personal document shows that he is registered for permanent domicile in the given electoral ward.

71. 5. The voter named in the voter list or added to that list pursuant to Paragraph 4 receives a ballot from the commission. To avoid multiple balloting by the same person, when issuing the ballot the commission ticks off the voter's name on the voter list.

Article 72. 1. On receiving the ballot the voter enters an accommodation assuring secrecy of balloting in the polling premises.

72. 2. In polling wards established for single-seat districts the voter inserts an "x" in the blank space to the right opposite the name of the candidate for whom he or he votes.

72. 3. In polling wards established for multi-seat districts the voter votes for a particular list of candidates by inserting an "x" in the blank space to the right opposite the name of one of the candidates on that list and thereby indicates that candidate's priority to a council seat.

72. 4. Next, the voter approaches the urn and, holding a ballot folded so that the printed side would not be seen, in the presence of the commission, casts the ballot into the urn.

Article 73. Incapacitated persons may, while balloting, avail themselves of the assistance of other persons exclusive of members of the commission, the representatives of candidate lists, and trusted observers.

Article 74. 1. The balloting may not be interrupted. Should the balloting activities be made temporarily

impossible owing to some extraordinary event, the ward electoral commission may prolong them or postpone them to the following day. Such an order of the commission should be immediately transmitted to the knowledge of the proper territorial electoral commission and made public by the procedure accepted in the local community.

74. 2. In the event balloting is interrupted, the commission seals the urn and entrusts it for safekeeping to the chairman. When balloting is to be resumed, the commission records in writing the intactness or breakage of the seals.

Article 75. 1. At 2000 hours the chairman orders closing the polling premises. From that moment on only the voters who had entered the premises before 2000 hours may cast their ballots.

75. 2. The ward electoral commission may order an earlier closing of the polling premises if all the voters named on the voter list have cast their ballots.

Chapter 12. Determining the Results of Balloting in a Ward Established for a Single-Seat Electoral District

Article 76. Immediately after the balloting ends the ward electoral commission determines the results of the balloting in the ward; trusted observers may be present.

Article 77. 1. The commission determines on the basis of the voter list the number of voters to whom ballots were issued.

77. 2. The chairman, in the presence of the commission, opens the voting urn, whereupon the commission counts the ballots it contains, thus determining the number of the ballots cast.

77. 3. Ballots that have been torn in half or into smaller fragments are not counted when determining the results of the vote.

77. 4. Should the number of the ballots cast differ from the number of persons to whom the ballots were issued, the commission records in writing the probable cause of this discrepancy.

Article 78. 1. A ballot is considered invalid if the letter "x" is written next to more than one candidate's name.

78. 2. Also invalid are ballots that differ from the official ballots or are not stamped with the seal of the territorial electoral commission.

78. 3. If the ballot lacks the letter "x" next to the name of any candidate or if it is filled out in a manner conflicting with the provisions of Article 72, Paragraph 2, the ballot is considered valid but non-voting.

78. 4. Writing in additional names or writing in any other words on the ballot entails no legal consequences and does not affect the validity of the ballot.

Article 79. 1. After the number of valid ballots is determined, the ward electoral commission begins to count the ballots cast for individual candidates.

79. 2. In the event that the polling ward comprises more than one electoral district, the overall number of the ballots cast, as well as the number of the ballots cast for individual candidates, is counted separately for each electoral district.

Article 80. 1. The ward electoral commission prepares two copies of election records. In the event that the polling ward comprises more than one electoral district, the commission prepares these records separately for each district.

80. 2. The record should specify the number of:

- 1) persons authorized to vote;
- 2) ballots cast (Article 77, Paragraph 2);
- 3) invalid ballots;
- 4) valid ballots;
- 5) valid non-voting ballots;
- 6) valid ballots cast in favor of individual candidates.

80. 3. The record also specifies the time of the commencement and ending of the balloting and discusses the orders and rulings issued by the commission as well as other attendant circumstances relating to the balloting.

80. 4. The record is signed by all the members of the ward electoral commission who were present during its preparation. It is stamped with the commission's seal.

80. 5. Trusted observers have the right to add to the record their own notations, with specific comments.

80. 6. Immediately after the record is prepared the electoral commission makes public the results of the vote.

Article 81. 1. The chairman of the ward electoral commission immediately transmits in a sealed envelope a copy of the balloting records to the territorial electoral commission.

81. 2. The procedure for the transmittal and acceptance of the records is determined by the national electoral commissioner.

Article 82. After the action mentioned in Article 81, Paragraph 2, is performed, the chairman of the ward electoral commission immediately transmits to the proper gmina board the following balloting documents: ballots issued, voter lists, and the second copy of the balloting records.

Chapter 13. Determining the Results of Balloting in the Wards Established for Multi-Seat Electoral Districts

Article 83. Immediately after the balloting in a ward is ended the ward electoral commission determines its results. Trusted observers and plenipotentiaries of the lists of candidates may be present during that determination.

Article 84. Article 77 applies to counting the ballots.

Article 85. 1. A ballot is considered invalid if the letter "x" is inserted next to the name of more than one candidate from one or more candidate lists.

85. 2. Also invalid are ballots other than the officially prescribed ones or are not stamped with the seal of the territorial electoral commission.

85. 3. If the ballot lacks the letter "x" next to the name of any candidate or if it is filled out in a manner conflicting with the provisions of Article 72, Paragraph 2, the ballot is considered valid but non-voting.

85. 4. Writing in additional names or writing in any other words on the ballot entails no legal consequences and does not affect the validity of the ballot.

Article 86. After the number of valid ballots is determined, the electoral commission begins to count the ballots cast for individual candidates from the discrete lists.

Article 87. 1. The ward electoral commission prepares two copies of the balloting records:

87. 2. The record should specify the number of:

- 1) persons authorized to vote;
- 2) ballots cast (Article 77, Paragraph 2);
- 3) invalid ballots;
- 4) valid ballots;
- 5) valid non-voting ballots;
- 6) valid ballots cast in favor of each list (total number of ballots cast for candidates on each list);
- 7) valid ballots cast for individual candidates from each list.

87. 3. The record also specifies the time of the commencement and ending of the balloting and discusses the orders and rulings issued by the commission as well as other attendant circumstances relating to the balloting.

87. 4. The record is signed by all the members of the ward electoral commission who were present during its preparation. It is stamped with the commission's seal.

87. 5. Trusted observers have the right to add to the record their own notations, with specific comments.

87. 6. Immediately after the record is prepared the electoral commission makes public the results of the balloting.

87. 7. Articles 81 and 82 apply correspondingly.

Chapter 14. Determination of Election Results in Single-Seat Districts

Article 88. 1. On the basis of the records received from the ward electoral commissions the territorial electoral commission determines the results of the elections separately for each electoral district.

88. 2. The determination of the election results may take place in the presence of trusted observers representing the candidates.

Article 89. 1. The candidate considered elected for a given district is the one who has received the largest number of valid votes.

89. 2. If two or more candidates receive an equal number of votes entitling them to a seat, priority is decided by casting lots, conducted by the chairman of the territorial electoral commission in the presence of commission members and trusted observers. The outcome of the casting of lots is entered in the record of election results.

Article 90. 1. After the election results are determined the territorial electoral commission prepares two copies of the record of election results, specifying, separately for each electoral district, the number of:

- 1) persons authorized to vote;
- 2) ballots cast;
- 3) invalid ballots;
- 4) valid ballots;
- 5) valid non-voting ballots;
- 6) valid ballots cast for individual candidates and the names and surnames of the elected councilmen.

90. 2. The record is signed by all the members of the territorial electoral commission who were present during its preparation. The record is stamped with the commission's seal.

90. 3. Trusted observers have the right to enter in the election record comments specifying concrete accusations.

Article 91. The record referred to in Article 90 is, together with supplements and the records of ward electoral commissions, immediately transmitted by the chairman of the territorial electoral commission to the voivodship electoral commissioner.

Article 92. Immediately after the record of election results is prepared, the territorial electoral commission makes public, separately for each electoral district, the number of:

- 1) persons authorized to vote;
- 2) ballots cast;
- 3) valid ballots cast for individual candidates, and the names and surnames of the elected councilmen.

Article 93. On the basis of the record of election results the territorial electoral commission issues certificates of election to the newly elected councilmen.

Article 94. The second copy of the record of election results is, together with attachments, transmitted by the territorial electoral commission to the voivodship governor, who keeps these materials until the receipt of further instructions from the national electoral commissioner.

Chapter 15. Determining the Election Results in Multi-Seat Districts

Article 95. 1. On the basis of the records received from the ward electoral commissions the territorial electoral commission determines the balloting results for discrete electoral districts.

95. 2. When determining the results of the balloting and the results of the elections, representatives of the lists of candidates may be present.

Article 96. 1. After the balloting results for an electoral district are determined, the territorial electoral commission, on using two copies of a suitable form blank, tabulates the numbers of:

- 1) persons authorized to vote;
- 2) ballots cast;
- 3) invalid ballots;
- 4) valid ballots;
- 5) valid non-voting ballots
- 6) ballots cast for each of the lists (total number of ballots cast for candidates from each separate list);
- 7) valid ballots cast for individual candidates from each list.

96. 2. The tabulation is signed by all the members of the territorial electoral commission who were present at its preparation. The tabulation is stamped with the commission's seal.

Article 97. 1. After the tabulation referred to in Article 96 is prepared, the territorial electoral commission apportions as follows the seats in each electoral districts among the discrete lists:

1) the number of the valid ballots cast for the discrete lists is successively divided by 1.4; 3; 5; 7, and so forth going through odd numbers until the quotients thus derived suffice for an ordering sequence of as many largest numbers as there are seats to be apportioned in an electoral district;

2) each list of candidates is assigned as many council seats as there are the successively highest numbers for that list according to the sequence of quotients determined as above.

97. 2. If the quotients for several lists equal the last of the numbers ordered by the procedure described above, and the number of the lists is greater than the number of council seats remaining to be apportioned, the list with the largest number of ballots receives priority; if two or more lists win an equal number of ballots, priority is decided by casting lots, conducted by the chairman of the territorial electoral commission in the presence of commission members and representatives of the lists. The results of the casting of lots are entered in the record of election results.

Article 98. 1. Seats apportioned to a given list are assigned to the candidates from that list for whom the largest number of votes was sequentially cast.

98. 2. If two or more candidates win an equal number of votes entitling them to a seat from a given list, the candidate named first on the list receives priority, unless the names are placed in alphabetical order. In that event, priority is decided by the casting of lots by the chairman of the territorial electoral commission in the presence of commission members and representatives of the lists. The results of the casting of lots are entered in the election record.

Article 99. 1. After the election results are determined for all the electoral districts with respect to a given council, the territorial electoral commission prepares two copies of the record of election results.

99. 2. The record enumerates the election results for each electoral district (Article 97, Paragraph 1), the number of seats apportioned to each list, and the names and surnames of the elected councilmen, on indicating the lists from which they were elected.

99. 3. Appended to the record is the tabulation referred to in Article 96.

99. 4. The record is signed by all the members of the territorial electoral commission who were present at its preparation. The record is stamped with the commission's seal.

99. 5. Plenipotentiaries for the lists have the right to enter comments containing specific accusations in the balloting record.

Article 100. Immediately after the record of election results is prepared, the territorial electoral commission makes public, separately for each electoral district, the number of:

- 1) persons authorized to vote;
- 2) ballots cast;
- 3) valid ballots cast for discrete lists of candidates;
- 4) valid ballots cast for individual candidates from each list;
- 5) seats apportioned to discrete lists of candidates, and the names and surnames of the councilmen elected from discrete lists of candidates.

Article 101. Articles 91, 93, and 94 apply correspondingly.

Chapter 16. Announcing the Election Results

Article 102. 1. Upon receiving election records from the territorial electoral commissions, the voivodship electoral commissioner makes public, by means of an announcement, the results of the balloting and the results of the elections for councils in the voivodship.

102. 2. The announcement referred to in Paragraph 1 should contain composite information on the results of the balloting in the voivodship, specifying the number of:

- 1) persons authorized to vote;
- 2) ballots cast;
- 3) invalid ballots;

- 4) valid non-voting ballots;
- 5) valid ballots.

102. 3. The announcement also contains a breakdown of data on discrete electoral districts formed for the elections of discrete councils, specifying for each district the number of:

- 1) persons authorized to vote;
- 2) ballots cast;
- 3) invalid ballots;
- 4) valid non-voting ballots;
- 5) valid ballots;
- 6) valid ballots cast for individual candidates in single-seat districts;
- 7) valid ballots cast for discrete lists of candidates (in multi-seat districts);
- 8) valid ballots cast for individual candidates from each of the lists; and the names and surnames of the elected councilmen; for multi-seat districts the lists from which they were elected also are named.

102. 4. The announcement is made public by putting up wall posters in each gmina and by means of the local press.

102. 5. The voivodship electoral commissioner orders publishing the announcement of the results of the balloting and the results of the elections in the voivodship's official record.

102. 6. The voivodship electoral commissioner transmits one copy each of each announcement to the national electoral commissioner and to the voivodship statistical administration.

Article 103. Upon performing the actions referred to in Article 102 the voivodship electoral commissioner transmits election materials to the voivodship governor, who stores these materials until the receipt of further instructions from the national electoral commissioner.

Article 104. The national electoral commissioner makes public the information on the composite results of the elections for the councils throughout the country, which information is subject to being published in the Official Gazette of the Republic of Poland MONITOR POLSKI.

Article 105. Within six months after election day the Central Office of Statistics publishes, in a form determined by the national electoral commissioner, the results of the balloting and the results of the elections for all the councils.

Chapter 17. Validity of Elections

Article 106. 1. Within 14 days from election day voters may file protests against the validity of elections if an electoral crime is committed or if the provisions of this Decree are violated and that crime or violation may affect election results substantially.

106. 2. The protest is filed in writing with the proper voivodship court through the mediation of the voivodship electoral commissioner. If the protest does not adequately document the accusations, the voivodship electoral commissioner may ask the person filing the protest to provide supplementary documentation within seven days from the date the protest is filed.

106. 3. Matters referred to in Paragraph 1 are considered by a bench of three justices of the voivodship court at an open session with the participation of the voivodship electoral commissioner and the concerned parties.

Article 107. 1. The voivodship court invalidates entirely or partially the elections in the concerned electoral district if an electoral crime or violation of the provisions of this Decree affecting substantially the election results or their determination is committed in that district.

107. 2. In invalidating the elections the voivodship court specifies in its ruling the scope of new election proceedings and the action with which they should they commence.

Article 108. 1. In the event of the invalidation of elections, the voivodship governor orders, within 14 days from the day of invalidation, re-elections in the concerned electoral district on taking into consideration the text of the ruling referred to in Article 107 and at the same time specifying the schedule of electoral activities.

108. 2. Re-elections are, to the extent defined in the court's ruling, conducted upon correspondingly applying the provisions of this Decree. The electoral schedule may provide for a shorter election period.

108. 3. The re-elections referred to in Paragraphs 1 and 2 are conducted by the same electoral commissions on the basis of the same voter lists, unless the rationale for the invalidation was an accusation against a commission or against a voter list. In such cases a new commission should be immediately appointed or a new voter list prepared.

Chapter 18. Expiration of a Council Mandate and By-Elections to the Council

Article 109. 1. A council mandate expires owing to:

- 1) demise of the councilman;
- 2) resignation of mandate;
- 3) forfeiture of eligibility;
- 4) a valid court sentence for a crime perpetrated from a motive of personal gain or from other base motives;
- 5) changes in the administrative division of the State, resulting in the expiration of mandates pursuant to Article 114.

109. 2. Council mandates also expire in the event that, pursuant to the provisions of the Law on Local Self-Government, a council is recalled by a referendum or dissolved by a Sejm resolution.

109. 3. The expiration of a council mandate in the cases referred to in Paragraph 1, Points 1)-4), is officially noted in the council.

Article 110. In the event of the expiration of the mandate of a councilman elected from a single-seat district, by-elections are conducted in that district within three months from the day the council officially notes that expiration, unless less than six months remain till the expiration of the council's term of office.

Article 111. 1. By-elections are ordered by the voivodship governor.

111. 2. By-elections are conducted upon correspondingly applying the provisions of this Decree, with the proviso that:

1) the order to conduct by-elections is published in the voivodship's official record;

2) the elections calendar may provide for shorter election periods.

Article 112. 1. In the event of the expiration of the mandate of a councilman elected to a multi-seat district, the council, on officially noting said expiration, passes a resolution appointing to the vacant seat a candidate from the same list who had received the second largest number of votes in the elections, provided that he or she has not forfeited eligibility. When two or more candidates show the same number of votes, the candidate whose name is placed first on the list receives priority.

112. 2. A candidate may relinquish his right to priority in staffing the vacant seat to another candidate from the same list who had received the next largest number of votes. Such a declaration should be presented in writing to the council within three days from the day the notice awarding the seat is delivered.

Article 113. 1. In cases referred to in Article 109, Paragraph 2, the chairman of the Council of Ministers orders within two months by-elections to the council. The term of office of the newly elected councilman expires simultaneously with the term of office of the council.

113. 2. By-elections are not conducted during the last six months prior to the expiration of the council's term of office.

Article 114. 1. Changes in the administrative division of the State that occur during the term of office of the councils cause the following changes in their composition:

1) if a gmina is broken up into two or more gminas, of if a part of a gmina is formed into a new gmina, the existing council is dissolved by virtue of law and new elections to the gminas affected by these changes are conducted;

2) if an area constituting an electoral district for electing the council of a gmina is isolated from that

gmina and incorporated in an adjoining gmina, the councilman or councilmen who were elected in that district become the councilmen of the augmented gmina;

3) if a gmina is incorporated in another gmina, the councilmen of the abolished gmina become councilmen of the augmented gmina;

4) if two or more gminas are merged into a new gmina, the councilmen of the abolished gminas become the councilmen of the new gmina;

5) if an area constituting an electoral district for electing the council of a gmina is isolated from that gmina and incorporated in an adjoining gmina, the councilmen elected from that area become members of the corresponding councils regardless of their domicile.

114. 2. New elections of the councilmen referred to in Paragraph 1 are ordered by the voivodship governor, who specifies, as the need arises, the number of councilmen to be elected in the newly formed electoral districts. When making changes in the composition of the councils on the basis of Paragraph 1, deviations from the number of councilmen fixed for the corresponding councils in the Law on Local Self-Government may take place.

Chapter 19. Provisional and Final Regulations

Article 115. 1. In cases in which on the effective date of this Decree a joint city-gmina people's council operates on two basic-level territorial units, a joint city-gmina council is elected in accordance with the provisions of Article 8, Paragraph 1, and other provisions of this Decree governing the elections in single-seat electoral districts.

115. 2. To conduct the elections referred to in Paragraph 1, a joint territorial electoral commission is appointed.

115. 3. The number of councilmen in the councils referred to in Paragraph 1 is determined in accordance with the combined population of both territorial units.

Article 116. In cities divided into boroughs elections based on this Decree are conducted only for municipal councils, unless, pursuant to the regulations in force, the boroughs of a given city constitute autonomous gminas. In this event gmina councils in the boroughs are elected in accordance with the provisions of Article 8, Paragraph 2, and other provisions of this Decree governing the elections in multi-seat electoral districts.

Article 117. 1. If the application of the provisions of Article 11, Paragraphs 2 and 3, and Article 13, to the establishment of electoral districts involves in justified cases the necessity of increasing or reducing the number of the councilmen to be elected to particular councils, the voivodship electoral commissioner may, during the first elections to gmina councils ordered on the basis of this Decree, specify a different number of councilmen to be elected to a given council than that envisaged in the decree on local self-government.

117. 2. In the cases referred to in Paragraph 1, the number of councilmen may be fixed within the bounds of:

- 1) from 12 to 16 councilmen for gminas with a population of up to 4,000;
- 2) from 16 to 20 councilmen for gminas with a population of up to 7,000;
- 3) from 18 to 24 councilmen for gminas with a population of up to 10,000;
- 4) from 20 to 26 councilmen for gminas with a population of up to 15,000;
- 5) from 22 to 28 councilmen for gminas with a population of up to 20,000;
- 6) from 26 to 32 councilmen for gminas with a population of up to 40,000.

Article 118. 1. In the first elections for gmina councils ordered on the basis of this Decree:

1) the powers of the gmina (city) board referred to in Article 14, Paragraph 1, Article 16, Paragraph 1, and Article 32, are exercised by the appropriate presidiums of basic-level people's councils;

2) the duties of the gmina (city) board referred to in Article 82 are exercised by the appropriate mayors of cities, managers of gminas and cities, or city-gmina managers;

3) the appropriate agencies of the administration referred to in Articles 17 and 37 are to be construed as voivodship governors and the heretofore existing basic-level local agencies of State administration.

118. 2. The election posters or flyers which meet the requirements of Article 56 are not bound by the provisions of the Decree of 31 July 1981 on the Censorship of Publications and Entertainment (DZ.U. No. 20, Item 99; with subsequent revisions).

Article 119. Whenever the provisions of this Decree refer to the voivodship governor, they also refer to the presidiums of the Capital City of Warsaw, the City of Krakow, and the City of Lodz.

Article 120. 1. The cost of the elections is defrayed from the State budget, with the caveat that this does not apply to the expenses relating to the nomination of candidates and to their electoral campaigns.

120. 2. All writings and judicial and administrative proceedings that relate to electoral affairs are fee-exempt.

Article 121. 1. The term of office of the people's councils elected on 19 June 1988 expires on 30 April 1990.

121. 2. The first elections to gmina councils following the effective date of this Decree should be ordered not later than on the day of expiration of the term of office of people's councils.

Article 122. The Electoral Law for People's Councils of 13 February 1984 (DZ.U., No. 7, Item 55, 1988) is hereby repealed.

Article 123. This Decree takes effect on the day of its publication.

Joint Venture Economic Activities With Foreign Entities

26000400 Warsaw *DZIENNIK USTAW* in Polish
No 41, Item 323, 28 Dec 88 pp 613-621

[Law No. 325 governing economic activities with the participation of foreign entities, dated 23 December 1988; previously published in JPRS-EER-89-053, 9 May 1989, pages 25-35]

[Text] With the object of providing stable conditions for the further development of mutually advantageous capital cooperation between domestic and foreign entities and safeguarding the assets, incomes, and other rights of foreign entities, the following is hereby ordered:

Chapter 1. General Provisions

Article 1. 1. This Decree defines the conditions for undertaking and the guidelines for engaging in economic activity with the participation of foreign entities on the territory of the Polish People's Republic.

1. 2. Economic activity as construed by this Decree is manufacturing, construction, commercial, and service activity engaged in with the object of financial gain.

Article 2. 1. The economic activity referred to in Article 1 may be plied in the form of a partnership with limited responsibility or a shareholding company, hereinafter referred to as "partnerships," formed by Polish entities jointly with foreign entities or with the exclusive participation of foreign entities. The contribution of foreign entities to the founding capital of the partnership may not be lower than 20 percent.

2. 2. Provisions of Polish law and especially of the Commercial Law Code apply to the partnerships unless specified otherwise in this Decree.

Article 3. 1. The Polish entities authorized to participate in the partnerships are:

- 1) the Treasury of State and other legal entities established pursuant to the laws of the Polish People's Republic and domiciled in Poland;
- 2) persons domiciled in Poland.

3. 2. The foreign entities authorized to participate in the partnerships are:

- 1) legal entities domiciled abroad;
- 2) persons domiciled abroad;
- 3) partnerships of entities or persons referred to in Points 1) and 2) that lack legal entity.

Article 4. 1. The Agency for Foreign Investments, hereinafter referred to as the "Agency," is hereby established as the executive machinery of the Chairman of the Agency. The organization and operating procedures of the Agency are defined by its statute, conferred by the Chairman of the Council of Ministers.

4. 2. The Chairman of the Agency acts as a representative of the national government on matters of foreign investments subject to the jurisdiction of the Chairman of the Council of Ministers.

4. 3. The Chairman of the Council of Ministers shall appoint or recall the Chairman of the Agency on the recommendation of the Minister of Foreign Economic Cooperation.

4. 4. The scope of activities of the Chairman of the Agency includes:

1) drafting the assumptions of and implementing the policy of the State on foreign capital cooperation;

2) initiating and organizing actions enhancing the interest of foreign entities in undertaking economic activity in the Polish People's Republic in domains and within the scope consonant with the interests of the national economy;

3) supervising the consonance of the activities of the entities operating on the basis of this Decree with the provisions of this Decree and the terms specified in the permit for establishing the partnership;

4) executing other duties specified by this Decree.

4. 5. Attached to the Chairman of the Agency is the Council for Foreign Investments, which is a consultative and advisory body under the Chairman of the Agency. Members of the Council are appointed and recalled on the recommendation of the Chairman of the Agency by the Minister of Foreign Economic Cooperation.

Article 5. 1. Establishing a partnership requires a permit. The granting of the permit implies consent to undertaking the economic activity specified therein.

5. 2. The permit is issued if the economic activity is intended to assure, in particular:

- 1) application of new technological and organizational solutions to the national economy;
- 2) provision of goods and services for export;
- 3) improvements in domestic market supplies of modern and high-quality goods and services;
- 4) protection of natural environment.

5. 3. A permit is likewise required for:

- 1) transfer of stock or shares among partners;
- 2) acquisition of shares or stock by a new partner;
- 3) amending the partnership's founding charter as regards the proportions of shares in the partnership's founding capital, the voting rights to which the partners are entitled, and the nature and amount of the capital contributed by the partners;
- 4) changing the nature of the partnership's activities specified in the original permit.

5. 4. The permit is granted by the Chairman of the Agency upon the request of the interested entities.

5. 5. Foreign-exchange operations [by the partnerships] referred to in Paragraphs 1 and 3 above do not require a separate foreign-exchange permit.

Article 6. 1. The permit is not issued if engaging in economic activity is counterindicated by:

- 1) threat to the economic interests of the state;
- 2) requirements of environmental protection;
- 3) national security and national defense, as well as protection of state secrets.

6. 2. The refusal to grant the permit, when based on reasons referred to in Subparagraph 1, Points 1 and 3, does not have to be accompanied by a rationale.

6. 3. The interested entities have the right to appeal to the Chairman of the Agency for reconsidering the matter within 14 days from the date of the rejection of their application.

6. 4. The decision to decline granting the permit is not subject to appeal to the Supreme Administrative Court.

Article 7. If engaging in the economic activity specified in the permit requires a franchise pursuant to separate regulations, the permit is granted in cooperation with the appropriate franchise office.

Article 8. 1. The Chairman of the Agency may condition granting the permit on the initiation by the foreign entity of economic activity in cooperation with a Polish entity, and on the apportionment of specific proportions of the partnership's founding capital to each partner.

8. 2. In economically justified cases the Chairman of the Agency may permit the procurement of the founding capital of the joint-stock company by means of a public subscription of shares, on specifying the proportions allocated to Polish and foreign entities. In such cases the provisions of Article 5, Paragraph 3, Points 1) and 2), do not apply. The provisions of Article 10, Paragraph 1, Point 1) and Article 11, Paragraph 1, Point 1), apply correspondingly.

Chapter 2. Formation of Partnerships

Article 9. Persons forming a partnership may freely determine their mutual relations as well as the internal relations of the partnership in the founding charter of the partnership, unless provisions of the Commercial Law Code or this Decree specify otherwise.

Article 10. 1. The application for the permit should specify:

- 1) the partners;
- 2) the nature and scope of the economic activity of the partnership, including exports and imports;
- 3) the anticipated period of activity of the partnership;
- 4) the resources needed to activate the partnership, including the size of the founding capital;

5) the proportions in which the discrete partners are to contribute to the founding capital, and the form of these contributions;

6) the seat of the partnership and the expected siting of the plant or factory.

10. 2. The application referred to in Paragraph 1 should be appended with:

- 1) draft of the founding charter of the partnership, as required by provisions of the Commercial Law Code;
- 2) documents showing the legal situation and assets of the future partners;
- 3) an economic and financial assessment study of the proposed partnership.

10. 3. The documents referred to in Paragraph 2 are submitted in Polish or foreign language—if in the latter, together with a certified translation into Polish.

10. 4. The decision on granting the permit is issued within a period not exceeding 2 months from the date of submission of the application.

Article 11. 1. The permit specifies:

1) the partners, the name and seat of the partnership, the siting of its plants or factories, and the nature and scope of activities of the partnership;

2) the proportions in which discrete partners are to contribute to the founding capital of the partnership, and the form of these contributions;

3) other terms which the partnership must meet in the course of its operations;

4) the period of validity of the permit.

11. 2. In the event that it plans to change the siting of its plants or factories, the partnership notifies accordingly the Chairman of the Agency. If there is no opposition within a month, this implies consent to the change in siting.

Article 12. 1. The partnership is subject to being registered in a registration court, pursuant to the provisions governing the Commercial Registry.

12. 2. The application for inclusion in the Registry must be accompanied with a copy of the permit.

Article 13. The governing board of the partnership is obligated to notify the Chairman of the Agency about the registration of the partnership within 2 weeks from the date of said registration, upon transmitting a copy of the court registration along with a copy of the founding charter of the partnership.

Article 14. The office issuing the permit has the right to enter the seat of the partnership and its plants or factories and to inspect their books and accounts with the object of verifying whether the activities of the partnership are consonant with the terms specified in the permit.

Article 15. If the partnership engages in activities conflicting with the terms specified in the permit, the office issuing the permit notifies the partnership to eliminate the attendant discrepancies within a designated period of time, and in the event of the partnership's failure to do so, this office may restrict the scope of the permit or rescind it.

Article 16. 1. Contributions to the founding capital of the partnership may be made in both monetary and non-monetary forms.

16. 2. Contributions by foreign entities may be made in:

1) monetary form—in foreign currencies or in zlotys deriving from documented exchange of these currencies;

2) in nonmonetary form—on condition that they derive from countries other than Poland or are acquired for zlotys derived from documented exchange of foreign currencies.

16. 3. A contribution by a foreign entity with seat in, or domiciled in, one of the countries of the Council for Mutual Economic Assistance may also be made in the form of transfer rubles or in the national currency of that country, pursuant to the related agreements binding upon the Polish People's Republic.

16. 4. The aggregate value of contributions by foreign entities to the founding capital of the partnership may not be below 25 million zlotys. This amount is subject to adjustment depending on the change in the exchange rate of the zloty in relation to the foreign currency in which the contribution is made.

16. 5. Contributions by Polish entities may be made in monetary form, in zlotys or in a foreign currency, as well as in nonmonetary form. Rights to state-owned real estate may be contributed to the partnership in consonance with the scope and guidelines of the provisions governing the management of state-owned land.

16. 6. The value and kind of nonmonetary contributions should be specified in the founding charter of the partnership. On demand by the office issuing the permit, the value of such contributions may be verified by independent experts. If the verification shows that the market value of a contribution is lower than that specified in the application for the permit, the expense of the verification will be charged to the contributor.

16. 7. Contributors to the founding charter of the partnership should be named in the pertinent documents.

Chapter 3. Managing the Partnership

Article 17. 1. With the object of determining profits, the operating cost of the partnership includes the depreciation of fixed capital, including that of the rights permanently linked to the leased land, as well as the depreciation of nonmaterial assets in the amount ensuing from depreciation rates and on the basis of the guidelines applying to state enterprises.

17. 2. The depreciation credit is kept by the partnership.

17. 3. The profits of the partnership represent, after deducting from them the income tax due, the profits for distribution.

17. 4. Eight percent of the profits for distribution are deducted for the sinking fund to cover the balance-sheet liabilities. The partnership may dispense with this deduction if the size of the sinking fund reaches 4 percent of its operating cost for the year concerned.

17. 5. The profits due to partners are distributed proportionately to their share in the founding capital of the partnership. Any other agreement requires approval by the Chairman of the Agency.

Article 18. 1. The Minister of Finance specifies the general accounting rules to be followed by the partnerships, with allowance for the requirements of the Commercial Law Code.

18. 2. The yearly balance sheet of the partnership is audited, within 3 months from the date of its submission, by the appropriate office of the Minister of Finance or by an entity selected by the partnership and authorized by the Minister of Finance to audit that balance sheet. The cost of the audit is charged to the partnership.

18. 3. The balance sheet is considered audited if the office referred to in Paragraph 2 does not notify the partnership within the subsequent 3 months that it has reservations about the submitted balance sheet. Once the partnership adjusts the balance sheet accordingly, the balance sheet is considered audited.

18. 4. The audited profits of the partnership, as specified in its annual report, represent the basis for determining the part of profits which the foreign partner may transfer abroad pursuant to the provisions of this Decree.

Article 19. 1. The partnership sells to a Polish foreign-exchange bank 15 percent of its income in foreign currencies from exports. This duty does not apply to income gained from sales of the partnership's assets or means of production for the purpose of replacing them. In economically justified cases the Agency may specify in its permit a lower sales fee.

19. 2. The income in foreign currencies retained by the partnership from the sales referred to in Paragraph 1 may be used by the partnership to acquire goods and services abroad for its own operations without requiring a separate foreign-exchange permit.

Article 20. 1. The partnership may, without requiring a separate foreign-exchange permit, distribute profits in foreign currencies gained by the partnership in the form of a surplus of income from exports over expenditures on imports.

20. 2. The foreign partner has the right to transmit abroad the profits referred to in Paragraph 1 without having to apply for a separate foreign-exchange permit.

20. 3. The Polish partner has the right to transmit the profits referred to in Paragraph 1 to his own foreign-exchange account in a Polish foreign-exchange bank.

20. 4. In economically justified cases the Minister of Finance may permit the foreign partner to transmit abroad profits exceeding the limit specified in Paragraph 1. Such permission may be incorporated in the permit for establishing the partnership.

20. 5. The foreign partner may, with the caveat of Paragraph 6 below, freely dispose on the territory of the Polish People's Republic of the profits due him in zlotys without having to apply for a separate foreign-exchange permit.

20. 6. The acquisition of real estate by a foreign partner with the profits due him requires a separate foreign-exchange permit.

Article 21. 1. Partners have the right to avail themselves of the profits due them with the object of augmenting the founding capital of the partnership without having to apply for a separate permit, so long as this does not alter the proportion of shares specified in the permit for establishing the partnership.

21. 2. The foreign partner has the right, after paying the appropriate taxes, to transmit abroad the monies obtained from sales of his share or stock in the partnership as well as the monies due him, in the event of dissolution of the partnership, without having to apply for a separate foreign-exchange permit.

21. 3. In the event that the monies referred to in Paragraph 2 are paid in zlotys, they may be transferred abroad after 10 years from the date of registration of the partnership.

21. 4. The Minister of Finance may, in particularly justified cases, consent to an earlier transfer by the foreign partner of the monies referred to in Paragraph 3.

Article 22. 1. The financial capital of the partnership is kept in accounts maintained by them in the Polish foreign-exchange banks they select.

22. 2. The banks referred to in Paragraph 1 shall, upon the request of the partnership, open and maintain accounts of the partnership in zlotys and in foreign currencies, and they may grant loans to the partnership.

22. 3. The partnership may, upon obtaining a foreign-exchange permit, maintain accounts in foreign banks.

22. 4. The partnership may borrow foreign loans without having to apply for a separate foreign-exchange permit.

22. 5. The banks referred to in Paragraph 1 may guarantee the obligations of the partnership pursuant to the regulations in force.

22. 6. The Minister of Finance, when requested by the concerned foreign partner, guarantees to that partner the

payment of compensation for his share in the partnership's assets in the event of a loss due to the decision of the state bodies to nationalize or expropriate the partnership or to apply other measures tantamount to nationalization and expropriation.

Article 23. 1. The partnership may acquire domestic goods and services for foreign currencies from the authorized entities.

23. 2. As part of its economic activity, the partnership may sell domestically goods and services for foreign currencies, entirely or partially, upon obtaining a foreign-exchange permit.

23. 3. Partnerships may sell foreign currencies within the framework of currency bargaining organized on the basis of separate regulations.

Article 24. Domestic supplies of producer goods for the partnerships are provided on the basis of the guidelines and procedure applying to entities of the socialized sector.

Article 25. State enterprises may sell fixed assets to the partnerships and grant to them limited property rights to these assets.

Article 26. 1. Partnerships may be provided with state-owned land:

1) for perpetual use pursuant to the guidelines of the regulations governing the management of state-owned land;

2) on the basis of a lease.

26. 2. Partnership may acquire or lease land and other real estate that is not state-owned, with allowance for the regulations in force.

Chapter 4. Taxes and Fees

Article 27. 1. The partnership pays the following taxes: turnover, income, wage, real estate, and local. In addition it pays fees to the Treasury of State and to the gmina [township] or municipal fund. It is eligible for exemptions and discounts pursuant to the guidelines applying to legal entities which do not belong to the socialized sector, provided that:

1) the partnership's income tax accounts for 40 percent of its taxation base;

2) the following are deducted from the taxation base:

a) outlays on investments whose nature will be specified by the Council of Ministers through an ordinance;

b) donations for socially useful purposes, including donations to the social organizations and foundations sit in the Polish People's Republic.

3) the income tax is subject to reduction by 0.4 percent for each additional one percent of income from exports

of goods and services in relation to the aggregate operating income minus the turnover tax, with the proviso that the income tax still due after these deductions should be not lower than 10 percent of the taxation base.

27. 2. The size of the donations referred to in Paragraph 1, Point 2), b), may not exceed 10 percent of income.

Article 28. 1. The income of the partnership is exempt from income tax for the first 3 years of its operation. The date of commencement of operation is considered to be the date of the first invoice issued.

28. 2. The partnership may obtain exemption from income tax for a longer period, but for not more than three additional years, if it engaged in economic activity in preferential domains defined by the Council of Ministers. The duration of the additional exemption is specified in the permit by the Chairman of the Agency.

Article 29. The income of the foreign partner is subject to a 30 percent income tax unless otherwise specified by the international agreements binding upon the Polish People's Republic. The tax is withheld by the partnership as the payee by the procedure specified in separate regulations, as a deduction from profits. The tax due on income paid in foreign currencies is paid in zlotys deriving from documented exchange of these currencies.

Article 30. 1. Exemptions from import duties and other fees with consequences similar to these duties are granted for:

1) objects representing the nonmonetary contribution of partners to the founding capital of the partnership, meaning objects such as machinery, equipment, facilities, and other resources intended for engaging in the economic activity specified in the permit;

2) machinery, equipment, facilities, and other resources intended for engaging in the economic activity specified in the permit, when acquired by the partnership, or by entities acting on its behalf, within three years from the date of establishment of the partnership.

30. 2. Objects belonging to the foreign partner are exempted from export duties in the event of dissolution of the partnership.

30. 3. The partnership is entitled to reimbursement of export duties on the same basis as state-owned enterprises.

Chapter 5. Employment

Article 31. 1. Employment, labor relations, and working conditions at the partnership, the welfare and social security of employees, and the activities of trade unions, are governed by Polish law.

31. 2. The partnership may employ persons who lack Polish citizenship or a permit for permanent residence in Poland, provided that it obtains the consent of the local

voivodship-level state administration office whose competences include employment.

31. 3. Persons delegated by the foreign partner, upon the consent of the partnership, may be active at plants and factories of the partnership without requiring the consent referred to in Paragraph 2, provided that they are not employees of the partnership.

Article 32. 1. The rules for remunerating employees of the partnership are defined in the founding charter of the partnership or by the resolutions of its management.

32. 2. The remuneration of employees of the partnership is fixed and paid in zlotys, with the proviso of Paragraph 3.

32. 3. Employees who are foreigners as construed by the foreign exchange law may receive part of their remuneration in foreign currencies out of the foreign exchange funds of the partnership. Said part of remuneration may be, upon the request of the employee, transferred abroad by the partnership without having to apply for a separate foreign exchange permit.

32. 4. The remuneration of employees who are foreigners as construed by the foreign exchange law is subject to a 30-percent tax to be paid in the currency of the remuneration, unless specified otherwise in the international agreements binding upon the Polish People's Republic. The tax is withheld by the partnership as the payee by a procedure specified by separate regulations. The tax due on remuneration paid in a foreign currency is payable in Polish zlotys deriving from a documented exchange of that currency.

32. 5. The taxing of the remuneration paid to Polish employees of the partnership is based on the guidelines of the regulations applying to employees of nonsocialized labor establishments.

Chapter 6. Transfer of Rights Ensuing From Participation in the Partnership and Dissolution of the Partnership.

Article 33. 1. If the sale of shares in the partnership is due to execution of a court judgment, the partnership may, within 2 months from the date it receives the notice ordering the sale, specify the person who will acquire the shares for a price to be fixed by a court after it consults experts, upon the partnership's recommendation.

33. 2. Failure to request fixing that price within the period specified in Paragraph 1, as well as failure to pay that price by the person named by the partnership within a month from the date the partnership is notified of that price, or within a month from the date a permit to replace a partner is obtained—depending on which of these periods comes second—results in selling the shares by the procedure specified in the execution of a court judgment, with the caveat of Article 5, Paragraph 3, Point 2).

Article 34. In the event of dissolution of the partnership, unless the founding charter specifies otherwise, the Polish partners have priority to acquiring the objects and rights constituting the capital of the partnership.

Article 35. In the event the dissolution of a partnership is announced during a period when it is exempt from taxation, as well as within 3 years from the expiration date of the period of exemption referred to in Article 28, Paragraphs 1 and 2, the partnership is obligated to pay the taxes for the period covered by the exemption. In this event, the tax obligation arises at the moment the dissolution of the partnership is announced.

Chapter 7. Special, Interim, and Final Provisions

Article 36. The regulations applying to entities of the socialized sector do not apply to partnerships, unless otherwise specified in this Decree.

Article 37. 1. Partnerships may associate themselves in the Chamber of Industry and Commerce of Foreign Investors as well as in other Polish economic chambers.

37. 2. The Polish-Polonia Chamber of Industry and Commerce, established by the Decree of 6 July 1982 Governing the Conduct of Economic Activity in Petty Industry by Foreign Legal Entities and Individuals on the Territory of the Polish People's Republic (DZ. U., 1985, No. 13, Item 58), is henceforth renamed the Chamber of Industry and Commerce of Foreign Investors, hereinafter referred to as the "Chamber." The current foreign members of the Polish-Polonia Chamber of Industry and Commerce may confirm their membership in the new Chamber within a period of 3 months from the effective date of this Decree.

37. 3. The Chairman of the Agency exercises supervision over the Chamber and approves its statute. The Chairman of the Agency may decline to approve that statute if its provisions violate provisions of law.

37. 4. The purposes of the Chamber include, in particular:

- 1) representing the economic interests of its members and taking steps to protect these interests;

- 2) granting to its members assistance in resolving the economic, organizational, and legal problems relating to the inception and conduct of economic activity.

37. 5. The specific purposes and operating principles of the Chamber, its bodies, the procedure for appointing them, its scope of action, and the rules of its financial management, are defined in its statute.

37. 6. The Chamber is a legal entity.

37. 7. If the activities of a body of the Chamber markedly violate the law or the provisions of its statute, the agency exercising supervision over the Chamber may designate a suitable period of time for eliminating these irregularities or demand a change in the membership of that body

within a designated period of time. Should that period elapse without results, the supervisory agency may suspend that body of the Chamber and appoint a suitable interim body until a new body is appointed by the procedure specified in the Chamber's statute.

Article 38. 1. This Decree does not apply, with the caveat of the provisions of Paragraphs 2-4 of this Article, to an international enterprise, unless the international agreement specifies otherwise.

38. 2. If the international agreement provides that the international enterprise or its branch with a seat on the territory of the Polish People's Republic is a legal entity, that enterprise or its branch is subject to recording in the Commercial Registry.

38. 3. Recording in the Commercial Registry occurs upon the request of the concerned department of the international enterprise or its branch. The basis for registration is a certified copy of the Polish text, or a certified translation into Polish, of the agreement to establish the international enterprise or its branch. Attached to the copy of the agreement should be a list of the names of members of the management and authorized representatives of that enterprise or its branch.

38. 4. The registration of international enterprises or their branches is governed by the provisions concerning the commercial registration of joint-stock companies with limited responsibility, upon taking into account the terms of the international agreement.

Article 39. 1. Foreign entities operating on the basis of the Decree referred to in Article 37, Paragraph 2, may, upon permission, contribute their current enterprises or parts thereof, as well as the objects, rights, or liquid capital deriving from these enterprises, as their share to partnerships operating on the basis of this Decree.

39. 2. The permission referred to in Paragraph 1 may be granted after the foreign entity meets the requirement of including as part of the enterprise or part thereof that it is contributing as its share, a foreign exchange contribution amounting to at least US\$50,000.

39. 3. The application for the aforesaid permission should specify how the foreign entity will meet obligations to its creditors in connection with its conduct of the contributed enterprise. Granting that permission may be made contingent on the assurance of a suitable satisfaction of the claims of creditors.

Article 40. 1. Joint-stock companies which limited responsibility and shareholding companies established pursuant to the Decree referred to in Article 37, Paragraph 2, may upon a permit being issued, transform themselves into partnerships operating pursuant to the present Decree.

40. 2. The permit may be granted after the requirement specified in Article 39, Paragraph 2, is met.

Article 41. Foreign entities may, upon a permit being issued, acquire shares or stocks in existing joint-stock companies operating under Polish law that are not companies with the participation of foreign capital, on condition that these entities will augment the operating capital of said companies. Once the higher operating capital is entered in the Commercial Registry, the provisions of the present Decree apply to such companies.

Article 42. 1. The permits referred to in Article 39, Paragraph 1, Article 40, Paragraph 1, and Article 41, are granted by the Chairman of the Agency.

42. 2. The provisions of Articles 6 and 10 apply correspondingly to the applications for the permits referred to in Paragraph 1.

42. 3. Assuming that the site and nature of the operations specified in the previous permit remain the same, the permits referred to in Article 39, Paragraph 1, and in Article 40, Paragraph 1, are granted after the applicant meets the requirement defined in Article 39, Paragraph 2, and submits a draft founding charter of the partnership that meets the requirements of this Decree.

Article 43. The partnerships formed by the procedure referred to in Articles 39, 40, and 41, are not subject to the provisions of Article 28, Paragraph 1.

Article 44. 1. The joint-stock companies with foreign participation established pursuant to the Decree of 23 April 1986 on Joint-Stock Companies with Foreign Participation (DZ. U., 1986, No. 17, Item 88; and 1987, No. 33, Item 181) and operating on the day the present Decree becomes effective become partnerships as construed by the present Decree.

44. 2. The Chairman of the Agency shall, within three months from the date this Decree becomes effective, adapt previous permits to the provisions of the present Decree.

Article 45. In terms of administrative proceedings the Chairman of the Agency is the superior body with respect to voivodship-level local bodies of state administration with special competences, as regards the decisions issued by these bodies pursuant to the Decree referred to in Article 37, Paragraph 2.

Article 46. The following revisions are hereby introduced in the Decree of 24 March 1920 on the Acquisition of Real Estate by Foreigners (DZ. U., 1933, No. 24, Item 202):

1) In Article 1:

- a) the previous text is designated as Paragraph 1;
- b) the expressions "and both by individuals and by legal entities" is deleted;
- c) the following Paragraphs 2 and 3 are incorporated:
"2. A foreigner as construed by this Decree is:
"1) an individual who lacks Polish citizenship;
"2) a legal entity with its seat abroad;

"3) a legal entity domiciled on the territory of the Polish People's Republic but directly or indirectly controlled by a person or entity referred to in Points 1) and 2).

"3. In the case of a commercial joint-stock company, it is considered to be controlled by the persons or entities referred to in Points 1) and 2) of Paragraph 2 if they own directly or indirectly at least 50 percent of the operating capital."

2) In Article 3 the second sentence is reworded: "The permit is valid for one year."

Article 47. Pursuant to the Decree of 19 December 1980 on Tax Obligations (DZ. U., No. 27, Item 111; 1982, No. 45, Item 289; 1984, No. 52, Item 268; and 1985, No. 12, Item 50), in Article 47 the expression "joint-stock companies with limited responsibility" is deleted from the first sentence, and the second sentence is entirely deleted.

Article 48. The following revisions are introduced in the Decree of 16 December 1972 on the Income Tax (DZ. U., 1988, No. 4, Item 37):

1) Article 2, Paragraph 2, is complemented with the following sentence: "This obligation does not, however, apply to individuals temporarily sojourning on the territory of the Polish People's Republic with the object of getting employed by the enterprises operating pursuant to the Decree of 6 July 1982 on the Guidelines for Foreign Legal Entities and Individuals Engaging in Economic Activity in Petty Industry on the Territory of the Polish People's Republic (DZ. U., 1985, No. 13, Item 58) or by the partnerships formed pursuant to the Decree of 23 December 1988 on Economic Activity With the Participation of Foreign Entities (DZ. U., No. 41, Item 325)";

2) In Article 10, Paragraph 1, of the aforesaid Decree of 16 December 1972 the following Point 22) is added:

"Point 22) part of the incomes of the persons referred to in Article 2, Paragraph 1, as derived from their participation in a joint-stock company operating on the territory of the Polish People's Republic, insofar as said part is expended on investments relating to economic activity, acquisition of shares or stocks in the joint-stock companies operating on the territory of the Polish People's Republic, or acquisition of securities issued by authorized Polish entities."

3) The following text is incorporated in Article 11:

a) in Paragraph 2 the expression "on condition that the circumstances mentioned in Paragraph 3 do not occur" is deleted;

b) Paragraph 3 is deleted;

4) In Article 14, Point 7), the following sentence is added: "This provision does not apply to the joint-stock companies operating pursuant to the provisions of the Decree of 6 July 1982 on Foreign Legal Entities and

Individuals Engaging in Economic Activity and Petty Industry on the Territory of the Polish People's Republic (DZ. U., 1985, No. 13, Item 58) and the Decree of 23 December 1988 on Economic Activity with the Participation of Foreign Entities (DZ. U., No. 41, Item 325)";

5) In Article 20:

- a) in Paragraph 3 the expression "with the exception of those specified in Paragraph 5" is deleted;
- b) in Paragraph 4 the expression "with the proviso of Article 5" is deleted;
- c) Paragraph 5 is deleted.

Article 49. The following revisions are introduced in the Decree of 6 July 1982 on Foreign Legal Entities and Individuals Engaging in Economic Activity in Petty Industry on the Territory of the Polish People's Republic (DZ. U., 1985, No 13, Item 58):

1) Articles 3-5 are deleted;

2) In Article 8, Paragraph 2, the expression "local body of state administration with general voivodship-level competences" is replaced with "local body of state administration with specific voivodship-level competences";

3) In Article 8, Paragraph 6, the expression "Minister of Foreign Trade" is replaced with "Chairman of the Agency for Foreign Investments";

4) Article 9 is reworded as follows:

"Article 9.1. The foreign economic entity is obligated to appoint an authorized representative with full powers to represent it vis-a-vis the Polish bodies of state administration and in legal relations with Polish entities insofar as this relates to the conduct of activity pursuant to the present Decree. Such an authorized representative may be a Polish citizen or an authorized Polish legal entity with permanent residence or seat in Poland.

"9.2. Appointing a representative is not required when:

"1) the foreign economic entity has a permanent residence or seat on the territory of the Polish People's Republic;

"2) the foreign economic entity is a legal entity and maintains a branch office on the territory of the Polish People's Republic;

"3) the activities of the foreign legal entity consist exclusively in participating in a joint-stock company that is a legal entity and has its seat in Poland.

"9.3. The state administration office authorized to issue permits may refuse to inscribe in the permit the name or appellation of the aforesaid authorized representative owing to considerations of state security or of protection of state secrets.

"9.4. The refusal to grant a permit for the reasons referred to in Paragraph 3 does not require a rationale.

"9.5. In the event of recall, death, or resignation of the authorized representative and the failure of the foreign economic entity to designate his successor within 1 month, the office issuing the permit applies to a court for designating a curator to manage the day-by-day operations of the enterprise.

"9.6. The person referred to in Paragraph 5 ceases to be active on the day on which the name or appellation of the authorized representative referred to in Paragraph 1 is entered in the permit";

5) In Article 14 the following Point 5) is added:

"5) The name and surname or appellation of the authorized representative, with the proviso of the provisions of Article 9, Paragraph 2";

6) In Article 16, Paragraph 5, the expression "the plenipotentiary" is replaced with "the Chairman of the Agency for Foreign Investments";

7) Article 19 is reworded as follows:

"Article 19. Decisions on issuing permits for the conduct of economic activity as covered by the provisions of this Decree may be appealed to the Supreme Administrative Court in accordance with the guidelines and procedure specified in the Code of Administrative Proceedings, except for the permit refusals issued owing to considerations of state security or protection of state secrets";

8) Article 22 is reworded as follows:

Article 22.1. The employment, labor relations, and working conditions at the enterprise, along with the welfare and social security of employees and the activities of trade unions, are governed by Polish law.

"22.2. The enterprise may employ persons lacking Polish citizenship or a card authorizing their permanent residence in Poland, provided that these persons obtain the consent of the local office of state administration with specific voivodship-level competences regarding employment";

9) Article 23 is reworded as follows:

"Article 23.1. Employees who are foreigners as construed by the foreign exchange law may receive part of their emoluments in foreign currencies from the enterprise's foreign exchange funds. That part of emoluments may be, on the request of the employee, transferred abroad by the enterprise without having to apply for a separate foreign exchange permit.

"23.2. The emoluments of employees who are foreigners as construed by the foreign exchange law are subject to a 30-percent tax payable in the foreign currency concerned, unless the provisions of the international agreements binding upon the Polish People's

Republic specify otherwise. The tax is withheld, by a procedure defined by separate regulations, by the enterprise as the payee. This tax due on emoluments paid in foreign currency is payable in Polish zlotys deriving from documented exchange of that currency";

10) In Article 26, Paragraph 2, the expression "the Minister of Foreign Trade and the Minister of Internal Commerce" is replaced with "the Ministers of Foreign Economic Cooperation and of the Domestic Market";

11) Article 27 is reworded as follows:

"Article 27.1. The enterprise sells to a Polish foreign exchange bank 30 percent of its export income in foreign currencies.

"27.2. The income in foreign currencies remaining after the sale referred to in Paragraph 1 may be used by the enterprise to acquire goods and services abroad for its own operations without having to apply for a separate foreign exchange permit.

"27.3. The enterprise may acquire domestic goods and services for foreign currencies from the authorized entities";

12) In Article 30:

a) Paragraph 1 is reworded as follows:

"1. Foreign economic entities may each year transfer abroad a part of their income amounting to:

"1) 10 percent of the investment capital contributed in convertible currencies by these entities;

"2) the surplus of export income in convertible currencies, retained after the sale referred to in Article 27, over the expenditures on imports, provided that the aggregate amount of funds thus transferred abroad may not be higher than the income attained in the previous tax year after paying the income tax";

b) Paragraph 3 is deleted;

13) In Article 32 the expression "the Minister of Interior Commerce and Services in cooperation with the Minister of Finance and the Minister of Foreign Trade" is replaced with "the Minister of the Domestic Market in cooperation with the Ministers of Finance and Foreign Economic Cooperation";

14) Articles 35-37 are reworded as follows:

"Article 35. Enterprises may lease state-owned real estate.

"Article 36. The foreign owner of an enterprise may lease real estate for his personal use on the same principles as a Polish citizen. His expenditures on this purpose may be defrayed from income obtained as a result of economic activity conducted in Poland.

"Article 37. The dissolution or liquidation of a foreign enterprise and an enterprise with the participation of foreign capital is subject to the corresponding provisions of the Civil Law Code and the Commercial Law Code";

15) The following Articles 39-41 are added:

"Article 39.1. On the basis of the permit granted to an individual to engage on his own in economic activity, that activity may, following his demise, be continued by an authorized representative on behalf of the heirs until a curator is appointed.

"39.2. In the event of the demise of the person referred to in Paragraph 1, the heir (or legatee) or the office issuing the permit applies to a court to appoint a curator to exercise the functions referred to in Article 9, Paragraph 1.

"39.3. The curator exercises his functions until such time when a permit is granted to the heir (or legatee) who has demonstrated his right to the enterprise by inheritance (legacy) or until the expiration of the permit.

"39.4. In the event of the demise of a person owning a share in a partnership that lacks legal entity, the partnership may be operated by the remaining partners or partner if at least one partner is a foreign economic entity.

"39.5. The proper office for permits may refuse to grant a permit to the heir (legatee) or to inscribe his name in the permit granted to a partnership that is not a legal entity, for reasons specified in Article 8, Paragraph 3, Point 2)."

"Article 40. Foreign economic entities and enterprises with foreign participation are subject to taxation pursuant to the provisions governing the taxation of individuals and legal entities that are not entities of the socialized sector, with the proviso that:

"1) the income tax rate is fixed in the amount of 50 percent of income;

"2) the taxation base can be reduced by subtracting donations for useful social purposes, which also applies to donations to social organizations and foundations having their seat in the Polish People's Republic, provided that the aggregate amount of these donations may not exceed 10 percent of income"

"3) the income tax rate is subject to an 0.4 percent reduction for each 1 percent of export sales of products and services in relation to the overall volume of sales minus the turnover tax;

"4) the Council of Ministers may, by issuing an order, specify other reductions of income tax depending on the nature of economic activity, and the conditions for their applicability;

"5) the income tax due after the reductions referred to in Points 3) and 4) are subtracted, may not be lower than 25 percent of income;

"6) tax exemptions for investments are fixed at the level of 50 percent of the funds spent on investments.

"Article 41. 1. This Decree [of 16 December 1972, on the Income Tax] may serve as the basis for granting permits to establish new enterprises only with respect to applications submitted before 1 January 1989."

"41. 2. The provisions of Paragraph 1 also apply to applications for extensions of permits."

Article 50. The position of the Government Plenipotentiary for Foreign Petty Industry Enterprises is hereby abolished.

Article 51. The following changes are introduced in the Decree of 3 December 1984—the Budget Law (DZ. U., No. 56, Item 283; 1985, No. 59, Item 296; 1986, No. 42, Item 202; 1987, No. 33, Item 181; and 1988, No. 19, Item 131):

1) In Article 19 Point 4) of Paragraph 2 is reworded as follows:

"4) the turnover and income taxes payable for individuals and legal entities domiciled abroad, foreign economic entities engaging in economic activity on the territory of the Polish People's Republic, and the partnerships formed by these entities or with their participation on the territory of the Polish People's Republic";

2) In Article 20 Point 4) of Paragraph 3 is reworded as follows:

"4) the turnover and income taxes payable by individuals and legal entities domiciled abroad, foreign economic entities engaging in economic activity on the territory of the Polish People's Republic, and the partnerships formed by these entities or with their participation on the territory of the Polish People's Republic."

Article 52. The Minister of Foreign Economic Cooperation shall publish in DZIENNIK USTAW the uniform text of the Decree on the Conduct of Economic Activity in Petty Industry by Foreign Legal Entities and Individuals, with allowance for the changes ensuing from the regulations published previously and upon applying a continuous numbering of articles, paragraphs, points, and alphabetically ordered letter designations.

Article 53. The Decree of 23 April 1986 on Joint-Stock Companies with Foreign Participation (DZ. U., No. 17, Item 188, and 1987, No. 33, Item 181) is hereby voided.

Article 54. The present Decree is effective as of 1 January 1989.

For the Chairman of the Council of State: K. Barcikowski.

Secretary of the Council of State: Z. Surowiec.

Amended Law on National Bank of Poland

90EP0341A Warsaw RZECZPOSPOLITA in Polish
12 Jan 90 pp 4, 5

[Law on the National Bank of Poland, dated 31 January 1989, published in DZIENNIK USTAW No. 4, Item 22, 10 February 1989; amended 28 December 1989; amendments published in DZIENNIK USTAW No. 74, Item 439, 30 December 1989, pages 1120-1122]

[Text] On 28 December 1989 the Sejm amended by means of a single decree two decrees on the Bank Law, and on the National Bank of Poland. Today we are publishing the text of the second decree, which we made uniform. The new passages are boldfaced.

Chapter 1. General Provisions

Article 1. The National Bank of Poland, hereinafter referred to as the NBP, is the central bank of the state.

Article 2. The NBP is the state's currency-printing bank and the central credit and clearing institution as well as the central foreign-exchange banking institution.

Article 3. The NBP operates on the basis of this Decree, while as regards matters not regulated in this Decree it operates on the basis of the Banking Law and other decrees.

Article 4. 1. The NBP operates on the territory of the Polish People's Republic and is headquartered in the Nation's Capital, Warsaw.

4. 2. The NBP is a legal entity and has the right to use a seal with the eagle emblem as in the national emblem of the Polish People's Republic.

4. 3. The NBP is not subject to inclusion in the registry of state enterprises.

Article 5. 1. The activities of the NBP are intended to, in particular, strengthen the Polish currency.

5. 2. The NBP cooperates in implementing the state's economic policy.

Article 6. 1. The activities of the NBP comprise printing the bank notes of the Polish People's Republic, granting refinancing credit to other banks, accepting deposits, acting as a clearinghouse, organizing trade in foreign currencies pursuant to the provisions of the Foreign Exchange Law, servicing the state budget, and performing other activities specified in this Decree.

6. 2. As part of its activities, the NBP:

1) cooperates in formulating and implementing the state's economic policy in accordance with decrees and Sejm resolutions;

2) initiates and influences the directions of monetary policy, including hard-currency policy, and shapes that policy, upon following the recommendations of the Sejm;

3) monitors the correct operation and growth of the banking system;

4) implements the state's interests as regards cooperation with international banking institutions and foreign banks.

Chapter 2. Issuance of Legal Tender

Article 7. 1. The right to issue the legal tender of the Polish People's Republic belongs exclusively to the NBP.

7. 2. Legal tender issued by the NBP consists of bank notes and zloty and grosz coins.

Article 8. Legal tender issued by the NBP is the legal medium of payment on the territory of the Polish People's Republic.

Article 9. 1. The design and nominal value of the bank notes issued by the NBP as well as the design, nominal value, alloy composition, fineness, and weight of coins, and also the deadlines for introducing them into circulation, are determined by the chairman of the NBP in cooperation with the minister of finance.

9. 2. The chairman of the NBP may withdraw from circulation particular types of bank notes. After the elapse of the deadline fixed by the NBP these bank notes cease to be legal tender on the territory of the Polish People's Republic and are subject to exchange at banks designated by the chairman of the NBP.

Article 10. 1. Bank notes that are worn or damaged to the extent that they no longer meet the requirements set by the chairman of the NBP cease to be legal tender on the territory of the Polish People's Republic and are subject to exchange.

10. 2. The rules and procedure for exchanging the bank notes referred to in Paragraph 1 are determined by the chairman of the NBP.

Article 11. 1. Counterfeit bank notes and coins are subject to retention without reimbursement of their value.

11. 2. The provisions of Paragraph 1 apply correspondingly to counterfeit bank notes and coins in foreign currencies.

11. 3. The chairman of the NBP determines the rules and procedure for the retention of counterfeit bank notes and coins.

Article 12. 1. The right to mint numismatic coins belongs exclusively to the NBP.

12. 2. The NBP may sell in this country and abroad coins, bank notes, and numismatic specimens for the needs of collectors and for other purposes, on terms and according to rules determined by the chairman of the NBP in cooperation with the minister of finance.

Article 13. The NBP organizes the circulation of money and takes appropriate steps to regulate the supply of money in circulation.

Article 14. The chairman of the NBP, in cooperation with the minister of finance, determines the rules for the:

1) bank servicing of the state budget and cooperates in monitoring that servicing;

2) banking management and monitors the operations of the banking entities of the socialized sector.

Article 15. The chairman of the NBP determines the rules for:

1) classification of monetary transactions relating to bank accounts;

2) reporting on cash transactions performed so as to bypass the accounts of the legal entities obligated to handle their finances through the mediation of bank accounts.

Chapter 3. Cooperation in Shaping the State's Economic, Monetary, and Credit Policies

Article 16. 1. The NBP cooperates with the concerned agencies of the government in formulating and pursuing the state's economic policy, with the object of, in particular, strengthening the Polish currency.

16. 2. The NBP issues recommendations on draft socio-economic plans and state budget.

16. 3. The NBP prepares periodic assessments of the state's monetary situation and transmits them, together with its recommendations, to the supreme organs of state power and administration.

Article 17. The NBP drafts assumptions of the state's monetary policy that specify in particular the evolution of the money supply, the interest rates on savings and loans, the currency exchange rate, and the policy on foreign exchange and on foreign credit relations.

Article 18. The chairman of the NBP:

1) cooperates with the minister of finance in planning the balance of payments;

2) prepares balance-of-payments reports and balance sheets of the state's foreign assets and liabilities.

Article 19. 1. Draft assumptions of monetary policy are submitted by the chairman of the NBP to:

1) the Council of Ministers, which takes a position on them;

2) the Sejm, together with the position of the Council of Ministers.

19. 2. The chairman of the NBP submits to the Council of Ministers and the Sejm, on behalf of the Council of Banks, recommendations concerning the planned balance of payments.

Article 20. 1. The chairman of the NBP:

1) **monitors the implementation of the state's monetary policy resolved upon by the Sejm and, in this connection, fixes the proportion of the mandatory reserves of banks and the magnitude of refinancing credit and its interest rate, as well as the size of the commissions charged;**

2) submits to the Sejm and the Council of Ministers an annual report on the implementation of:

a) **assumptions of the state's monetary policy;**

b) balance of payments;

3) submits to the Council of Ministers quarterly reports on the implementation of the balance of payments.

20. 2. The reports referred to in Paragraph 1, Point 3), also are submitted by the NBP chairman to the proper Sejm committee.

Article 21. The NBP has the right to demand from the banks and legal entities and individuals engaging in foreign trade, and also from the legal entities engaging in noncommercial foreign transactions, the data needed to prepare the **draft assumptions of monetary policy** of the state as well as to prepare reports on the implementation of these assumptions and of the balance of payments and the balance sheets of the state's foreign assets and liabilities.

Chapter 4. Credit Operations

Article 22. 1. The NBP may grant refinancing credit to other banks with the object of complementing their financial reserves.

22. 2. The NBP may grant credit in foreign currencies.

Article 23. 1. In granting refinancing credit the NBP guides itself by **the assumptions of the state's monetary policy** and the ability of the credit-requesting bank to repay the principal and interest on schedule.

23. 2. Refinancing credit is granted on the basis of an agreement specifying the amount of the credit, the deadline for its repayment, the interest rate, and other terms, as well as the scope of the NBP's rights relating to the utilization of that credit and the assurance of its repayment.

23. 3. Banks may borrow refinancing credit through the mediation of the bank in which they are associated.

Article 24. Refinancing credit may be granted:

1) up to the amount specified in the credit line;

2) in return for collateral provided in the form of securities, up to the amount of their par value;

3) in another form to be defined by the chairman of the NBP

Article 25. The NBP may accept for discounting promissory notes from other banks. The chairman of the NBP specifies the requirements to be met by the discounted promissory notes and **the discounting rate.**

Article 26. 1. Interest payable on refinancing credit may vary, with allowance to be made for the bank's ability to repay the credit principal and interest on schedule.

26. 2. The chairman of the NBP may specify a ratio, uniform for all banks, of the refinancing credit to the sum total of the indivisible assets owned by the bank requesting the credit plus the funds held in that bank. The refinancing credit granted to that bank may not exceed the amount ensuing from that ratio.

Article 27. If the financial situation of the bank availing itself of refinancing credit deteriorates to an extent imperiling its on-schedule repayment of that credit, or if that bank fails to adhere to major terms of the credit agreement, the NBP may renounce that agreement and demand an earlier repayment of the credit in its entirety or partially.

Article 28. 1. Loans and credit borrowed by the NBP from foreign banking and financial institutions may be used to grant credit in foreign currencies to other banks.

28. 2. The money and credit relations between the NBP and the international banking and financial institutions, as well as between the NBP and the credit recipients referred to in Paragraph 1, are regulated by the agreements they conclude. These relations are correspondingly governed by the provisions of this chapter, unless the agreements specify otherwise.

Chapter 5. Conduct of Bank Accounts

Article 29. 1. The NBP handles the following types of accounts:

1) **the current accounts of other banks;**

2) accounts held in the name of the state budget and other budget entities;

3) accounts specified by the chairman of the NBP in cooperation with the minister of finance, in the name of state organizational entities whose funds are subject to being managed by the NBP;

4) accounts of other legal entities and individuals, with the consent of the chairman of the NBP;

5) accounts to which the provisions of the Foreign Exchange Law apply.

29. 2. The accounts specified in Paragraph 1 may be used to deposit funds payable on demand, certificates of deposit, and funds in foreign currencies.

29. 3. The NBP handles the clearing of interbank transactions as ensuing from its handling of the current accounts of banks.

Chapter 6. Accumulation of Mandatory Reserves

Article 30. 1. To regulate the money in circulation and the lending activities of banks, the NBP holds the mandatory reserves of other banks.

30. 2. A mandatory reserve is represented by a percentile part of the funds kept by the bank in its zloty and foreign-currency accounts in:

- 1) deposits payable on demand;
- 2) time-limit deposits;
- 3) savings deposits.

30. 3. Mandatory reserves are calculated at monthly intervals and kept in special accounts at the NBP. The chairman of the NBP may approve the transfer of the mandatory reserves of cooperative banks through the mediation of the state-cooperative bank in which they are associated.

30. 4. Banks have no right to dispose of the mandatory reserves held in the special accounts at the NBP.

Article 31. 1. The size of the mandatory reserve:

- 1) may not exceed 30 percent of the aggregate funds referred to in Article 30, paragraph 2;
- 2) is not interest-bearing.

31. 2. The chairman of the NBP determines:

- 1) a uniform proportion of the funds subject to being deposited in the special mandatory-reserve account at the NBP, with the proviso that it may vary depending on the type of the deposits mentioned in Article 30, Paragraph 2;
- 2) the principles and procedure for the transfer of funds to the mandatory-reserve account.

Article 32. 1. Maintaining the mandatory reserve at a level not lower than that specified pursuant to Article 31, Paragraph 1, Point 1), is a basic obligation of the banks. In the event this obligation is violated, the bank pays the NBP interest on the difference between the amount that should be deposited in the mandatory-reserve account and the amount actually deposited in that account.

32. 2. The rate of the interest referred to in Paragraph 1 is determined by the chairman of the NBP.

Chapter 7. Issuance of and Trade in Securities

Article 33. The NBP has the right to issue bank securities.

Article 34. The NBP may purchase during the fiscal year the promissory notes issued by the State Treasury in an amount not exceeding 2 percent of the planned expenditures of the state budget.

Article 35. The NBP may be charged with the task of servicing state loans based on the issuance of securities.

Article 36. Securities may be accepted by the NBP for storage and administration.

Chapter 8. Foreign Exchange and Foreign Cooperation Activities

Article 37. The National Bank of Poland:

- 1) grants foreign-exchange permits and monitors foreign exchange to the extent defined in the Foreign Exchange Law;

- 2) grants permits for the operation of foreign currency exchange outlets and monitors the activities of these outlets;

- 3) may grant and borrow foreign credit as well as participate in and accept pledges and sureties in foreign transactions;

- 4) may own and transact in foreign exchange on its own account as well as on behalf of other entities, and it also may engage in hard-currency and foreign exchange operations pursuant to the provisions of the Foreign Exchange Law and international agreements in which the Polish People's Republic is a participant;

- 5) organizes cooperation with foreign banks;

- 6) to the extent defined by this decree, controls the foreign-exchange operations of other banks.

Article 38. The interests of the Polish People's Republic in the International Bank for Economic Cooperation, the International Investment Bank, the World Bank, and other international institutions are represented by the chairman of the NBP.

Article 39. 1. The rules for determining the rate of exchange of the zloty in relation to foreign currencies are defined by the Council of Ministers on the recommendation of the chairman of the NBP in cooperation with the ministers of finance and of foreign economic cooperation.

39. 2. The rates of exchange of foreign currencies in zlotys are determined by the chairman of the NBP and announced by the NBP.

Article 40. 1. The chairman of the NBP may, upon consulting the Council of Banks, authorize a bank to perform the following activities:

- 1) international clearings and other activities relating to Poland's participation in international banking institutions;

- 2) the financing, crediting, and clearing of foreign transactions in goods and services;

3) the granting and borrowing of foreign credit and the granting and acceptance of pledges and sureties in foreign transactions;

4) the provision of foreign-exchange and hard-currency services to consumers.

40. 2. The bank activities referred to in Paragraph 1 are subject to monitoring by the NBP.

40. 3. In the event it is found that the bank activities referred to in Paragraph 1 are performed so as to violate the provisions of laws, charters, or authorizations, the chairman of the NBP may enjoin the offending bank from engaging in specific operations or withdraw entirely or partially the authorization it had granted on the basis of Paragraph 1.

Article 41. 1. The NBP coordinates the cooperation between other banks and the international banking institutions and foreign banks.

41. 2. The banks are duty-bound to transmit to the NBP information on their cooperation with international banking institutions and foreign banks.

Article 42. 1. The NBP administers the state's hard-currency reserves.

42. 2. Funds from the state's hard-currency reserves are released upon the decision of the chairman of the Council of Ministers, taken on the recommendation of the chairman of the NBP in cooperation with the minister of finance.

Article 43. The NBP organizes and performs foreign-exchange and hard-currency services for private customers, and it also may authorize legal entities and non-legal entities other than the banks to provide such services. The provisions of Article 40, Paragraphs 2 and 3, apply correspondingly.

Chapter 9. Monitoring the Activities of Banks

Article 44. To the extent defined in the Banking Law the NBP monitors the activities of the other banks.

Article 45. As part of its monitoring, the NBP evaluates the performance of banks on the basis of the data gathered and may take other measures specified in the Banking Law.

Article 46. All comments and observations made as part of the monitoring should be transmitted to the chairman (board chairman) of the monitored bank and discussed with the bank board.

Article 47. 1. Activities relating to the monitoring are performed by authorized employees of the NBP, who have the right of access to the area of the bank and its organizational units with the object of performing these activities.

47. 2. Monitoring of the bank is directly subordinated to the chairman of the NBP.

47. 3. The organization of bank monitoring and the procedure for its implementation is determined by the chairman of the NBP.

Chapter 10. Organization and Specific Rights and Duties of the NBP

Article 48. The activities of the NBP are directed by the chairman of the NBP.

Article 49. 1. **The chairman of the NBP is appointed and recalled by the Sejm.**

49. 2. The vice chairmen of the NBP are appointed and recalled by the chairman of the Council of Ministers on the recommendation of the chairman of the NBP, while the other members of the NBP Board are appointed by the chairman of the NBP.

Article 50. The chairman of the NBP participates in the sessions of the Sejm and the Council of Ministers.

Article 51. 1. The Board of the NBP consists of the chairman of the NBP, the vice chairman acting as the first deputy chairman of the NBP, vice chairmen of the NBP, and members.

51. 2. The Board of the NBP examines major problems relating to NBP activities and passes the resolutions needed for the performance of the NBP's tasks and concerning in particular:

- 1) lending plans and the balance of payments;
- 2) the operation of the credit and monetary system;
- 3) the state's monetary-credit policy;
- 4) the money in circulation and the related clearings;
- 5) drafts of basic normative acts and regulations concerning the activities of the NBP;
- 6) periodic assessments of the state's financial situation;
- 7) interest-rate policy;
- 8) commission fees and bank fees;
- 9) balance sheets and financial and economic plans of the NBP;
- 10) personnel and salary policy of the NBP;
- 11) organization and accounting system;

12) instruments of the NBP's influence on other banks;

13) annual reports on the NBP's operations.

51. 3. In the event of absence of the chairman of the NBP his duties are exercised by the vice chairman-first deputy chairman of the NBP.

51. 4. Vice chairmen of the NBP oversee and direct the areas of activity assigned to them by the chairman of the NBP.

51. 5. The specific scope of activities and operating procedure of the NBP Board and the procedure for its passage of resolutions are determined by the bylaws issued by the chairman of the NBP.

Article 52. The chairman of the NBP:

1) determines uniform rules of accounting, a typical plan of accounts for banks, and uniform rules for international clearings and the numeration of the organizational units of the banks, and also the principles, scope, and time limits for the transmission of reports by the banks to the NBP;

2) implements duties ensuing from the provisions governing the nationwide duty of defense of the Polish People's Republic and supervises and coordinates the activities of other banks in this respect;

3) in cooperation with the minister of internal affairs and the minister of national defense determines the principles for the storage of funds by banks and by enterprises manufacturing legal tender and for the transportation of these valuables by the banks and enterprises;

4) in cooperation with the minister of internal affairs determines the requirements that must be met by the means, employed by socialized organizational entities, for the protection of their financial resources.

Article 53. 1. The chairman of the NBP issues, pursuant to his decreed powers, ordinances which are published in MONITOR POLSKI, with the exception of the ordinances referred to in Paragraph 2 and in Article 54, Paragraph 1, Point 1).

53. 2. The chairman of the NBP issues internal ordinances, service instructions, and other regulations prescribing the activities and organizational structure of the NBP.

Article 54. 1. The chairman of the NBP publishes DZIENNIK URZEDOWY NARODOWEGO BANKU POLSKIEGO [Official Journal of the National Bank of Poland], which contains in particular:

1) ordinances of the chairman of the NBP concerning exclusively the operations of the banks;

2) recommendations, passed by the Council of Banks, concerning the activities of banks;

3) balance sheets of the NBP and other state banks;

4) notices concerning the formation, closings, and bankruptcies of banks;

5) NBP notices concerning interest rates for refinancing credit, interest rates referred to in Article 32, Paragraph 2, and discount rates for promissory notes.

54. 2. With the approval of the chairman of the NBP, DZIENNIK URZEDOWY NARODOWEGO BANKU POLSKIEGO may also publish the bylaws of banks

Article 55. To insure the credit utilized or the pledges or sureties offered, the NBP may provide collateral in the form of discrete elements of its assets.

Article 56. 1. The execution of remittances due from the NBP is inadmissible.

56. 2. Creditors of the NBP present proofs of judicial execution, arbitration verdicts, or administrative decisions directly to the NBP, which is thereupon obligated to immediately settle its liabilities.

Article 57. The NBP, on par with other budget units, is exempt from taxes and judicial and Treasury fees.

Article 58. 1. With respect to:

1) state enterprises linked to a bank's own operations, the NBP acts as the parent agency as construed by the provisions of the Decree of 25 September 1981 on State Enterprises (DZ.U., No. 35, Item 201, 1987);

2) R&D units, the NBP acts as the monitoring agency as construed by the provisions of the Decree of 25 July 1985 on Research and Development Units (DZ.U., No. 36, Item 170, 1985; No. 22, Item 128, 1987; and No. 41, Item 328, 1988).

58. 2. With respect to the state enterprises and R&D units referred to in Paragraph 1, the NBP:

1) may impose the duty of performing tasks not envisaged in the plans, upon providing the necessary funds;

2) appoints and recalls the director.

Article 59. The NBP initiates and organizes scientific research and engages in publishing activities to the extent ensuing from the tasks of the banks, on cooperating in these matters with scientific institutions.

Article 60. 1. The Scientific Council is active under the chairman of the NBP as his advisory and consultative body.

60. 2. The chairman of the NBP determines the number of members of the Scientific Council and appoints and recalls the chairman and members of the Council.

60. 3. The Scientific Council acts on the basis of bylaws issued by the chairman of the NBP.

Article 61. 1. The chairman of the NBP is the superior of all NBP employees. The rights and duties of NBP employees are defined by the Labor Law Code and by the service regulations issued as an ordinance by the Council of Ministers.

61. 2. The chairman of the NBP:

1) appoints NBP employees to positions whose staffing he has reserved for his decision, and recalls them from these positions, upon consulting the appropriate employee council;

2) grants authorizations for and determines the manner of the signing of documents at the NBP.

Article 62. 1. The following are authorized to provide declarations concerning the rights and duties relative to the property of the NBP:

1) the chairman of the NBP;

2) two persons acting conjointly from among:

a) other members of the NBP Board;

b) authorized representatives of the chairman of the NBP, acting within the limits of the powers granted to them.

62. 2. In order to perform a particular or special kind of activity, the persons mentioned in Paragraph 1 may appoint a representative acting on his own within the limits of the powers delegated to him.

Article 63. 1. The NBP accomplishes its purposes at its main office, district branches, and other organizational units of the NBP.

63. 2. The auditing of the activities of organizational units of the NBP is performed by an auditing section appointed by the chairman of the NBP. The organization, tasks, and scope of activities of the auditing section of the NBP are determined by the chairman of the NBP.

Article 64. 1. The Main Office of the NBP consists of departments and other equivalent organizational units.

64. 2. Decisions to establish, transform, or disband organizational units of the Main Office, district branches, and other organizational units of the NBP are taken by the NBP.

Article 65. The Main Office of the NBP implements the purposes of the NBP with the exception of the tasks entrusted to district branches and other organizational units.

Article 66. 1. The tasks of the district branches of the NBP include, in particular:

1) performance of activities relating to the duties of the NBP as the agency issuing legal tender;

2) organization and provision of foreign-exchange and hard-currency services to consumers;

3) cooperation with local agencies of state administration.

66. 2. A district branch may be charged with activities other than those mentioned in Paragraph 1, insofar as these activities relate to the implementation of the purposes of the NBP.

Article 67. The specific scope of activities and internal organization of the main office and other organizational structures of the NBP are determined by guidelines issued by the chairman of the NBP.

Chapter 11. In-House Funds, In-House Financial Management, Accounting, and Balance-Sheet Reporting

Article 68. The in-house funds of the NBP are: the statutory capital, the reserve fund, fixed-capital fund, and special funds.

Article 69. The statutory capital of the NBP amounts to **500,000 million zlotys** and is formed from deductions from annual profits.

Article 70. The reserve fund of the NBP is formed from deductions from annual profits to the same extent as the statutory capital. The reserve fund is designed to offset potential balance-sheet losses. Additional contributions to the reserve fund may be made only when that fund has been entirely or partially utilized to offset balance-sheet losses.

Article 71. The fixed-capital fund of the NBP is designed to cover the value of fixed assets, nonmaterial and legal values, and other fixed values minus the value of their depreciation. Augmenting or reducing the size of that fund occurs as a result of change in the actual worth of the fixed capital.

Article 72. 1. The following are special funds of the NBP:

1) investment fund;

2) foreign-exchange fund;

3) risk fund;

4) bonus fund;

5) in-house award fund;

6) in-house social fund;

7) in-house housing fund;

8) fund for technical and economic progress;

9) employee assistance fund.

72. 2. The investment fund is formed from the monies accrued to offset the depreciation of fixed assets and nonmaterial and legal values, from the liquidation and sale of fixed assets, and from other sources defined by separate regulations. This fund is complemented by a deduction from annual profits. The investment fund is designed to finance the outlays relating to the activation

of new organizational units of the NBP, the modernization or expansion of existing organizational units, and the acquisition of machinery and equipment. Decisions on NBP investments are taken by the chairman of the NBP.

72. 3. The foreign-exchange fund of the NBP is formed from deductions from annual profits in an amount equal to the revenues of the NBP from its own hard-currency and foreign-exchange operations, 50 percent of the bonuses in foreign exchange derived from sales of coins and numismatic specimens, and dividends from shares in foreign institutions. The foreign-exchange fund is designed for the acquisition of needed special-purpose machinery, equipment, machine parts, and operating materials for the NBP, as well as for other foreign-exchange expenditures relating to the NBP's operations.

72. 4. The risk fund of the NBP is formed from deductions from annual profits and designed to offset:

1) the cost of differences in currency rates of exchange and losses that may be involved in servicing loans of the World Bank and international financial institutions;

2) differences in clearing of accounts with foreign banks owing to the NBP's foreign-exchange and hard-currency operations, when such differences do not arise through the fault of the NBP.

72. 5. The bonus fund is formed from deductions from annual profits in an amount adapted to the planned salary fund. The bonus fund is used to pay prescribed bonuses for NBP employees.

72. 6. The in-house award fund, the in-house social fund, and the in-house housing fund are formed on principles defined by separate regulations.

72. 7. The fund for technical and scientific progress of the BNP is formed from surcharges on the NBP's activities and designed to finance the streamlining of banking procedures and operating methods, and in particular to finance research, development, and application work on technical-organizational progress, the production and acquisition of prototype machinery and equipment, especially when these serve to print legal tender, the mechanization and automation of banking operations, customer services, and the safeguarding of bank property.

72. 8. The employee assistance fund of the NBP is debited to the operating cost of the NBP in an amount determined by the chairman of the NBP and used to provide financial assistance to NBP employees.

72. 9. The size of the deduction from annual profits for the fund mentioned in Paragraph 1, Point 4), and the extent of the surcharges serving to form the funds specified in Paragraph 1, Points 8) and 9), are determined by the chairman of the NBP, while the size of deductions from annual profits for the funds specified in Paragraph 1, Points 1) and 3), is determined by the chairman of the NBP in cooperation with the minister of finance.

72. 10. The chairman of the NBP may also, in cooperation with the minister of finance, establish other special funds.

72. 11. The rules for utilizing the investment, foreign-exchange, risk, and technical-economic progress funds are defined by the chairman of the NBP, and for the bonus and assistance funds, by the chairman of the NBP in cooperation with employee councils and trade unions.

72. 12. The rules for utilizing the in-house award, social, and housing funds are governed by separate regulations.

Article 73. The NBP conducts its own, autonomous financial management with allowance for the assumptions of the national socioeconomic plan. The NBP's financial plan for each year is voted by the NBP Board.

Article 74. 1. The size of the monies to be spent on salaries is determined in relation to banking tasks. The rules for the formation of these monies are determined by the chairman of the NBP in cooperation with the minister of labor and social policy.

74. 2. The rules for the remuneration of NBP employees are determined by the chairman of the NBP after consulting the minister of labor and social policy.

Article 75. The NBP handles the calculations of the accounts of its depositors and follows uniform accounting principles defined by the chairman of the NBP.

Article 76. 1. The Council of Ministers appoints, on the recommendation of the minister of finance, a commission for auditing the annual NBP balance sheet with the object of verifying and assessing that balance sheet.

76. 2. The chairman of the NBP submits, not later than by 30 April of the year following the reporting period, the NBP balance sheet to the Council of Ministers for confirmation.

76. 3. The chairman of the NBP submits annual reports on NBP operations to the Sejm for examination.

Article 77. Part of the balance-sheet profits of the NBP, remaining after the deductions to the special funds specified in this Decree are made, is subject to transfer to the state budget within 30 days from the date the NBP balance sheet is confirmed by the Council of Ministers.

Chapter 12. Revisions of Mandatory Provisions, Interim and Final Provisions

Article 78. In the Decree of 26 February 1982 on Socioeconomic Planning (DZ.U., No. 4, Item 26, 11987; No. 33, Item 181, 1987; No. 20, Item 134, 1988; and No. 41, Item 327, 1988), Paragraph 3 of Article 27 is reworded as follows:

"3. The chairman of the NBP submits to the Sejm, following scrutiny by the Council of Ministers, the draft credit plan and the draft assumptions of the state's money-and-credit policy."

Article 79. 1. The purposes of the NBP as defined in the Decree of 26 February 1982 on the Banking Law (DZ.U.,

No. 17, Item 56, 1982; No. 71, Item 318, 1983; and No. 33, Item 181, 1987) as well as in the Decree of 26 February on the Charter of the National Bank of Poland (DZ.U., No. 7, Item 57, 1982; No. 32, Item 141, 1985; No. 36, Item 170, 1985; and No. 39, Item 192, 1986), as consisting in opening and conducting bank accounts for entities of the socialized sector, handling the clearing of accounts among these entities, and providing them with credit, are now transferred to the scope of activities of the nascent state banks, hereinafter referred to as the state banks.

79. 2. The organizational units implementing the purposes specified in Paragraph 1 are herewith isolated from the NBP and incorporated in the state banks taking over these tasks.

79. 3. The employees of the organizational units referred to in Paragraph 2 as well as the employees of other organizational units and departments of the NBP whose list shall be determined by the chairman of the NBP, herewith become by virtue of law employees of the state banks. The provisions of the NBP service regulations apply to the rights and duties of these employees.

79. 4. The chairman of the NBP shall determine:

1) the specific scope of the tasks transferred from the NBP to the scope of activities of discrete state banks;

2) the organizational units subject to isolation from the NBP together with their property elements and to transfer to discrete state banks;

3) the extent to which discrete state banks will assume the assets and liabilities of the NBP, and the rights and duties ensuing from the agreements they conclude with the NBP.

4) the size of the funds which the NBP is to transfer to discrete state banks for the purpose of forming or augmenting their statutory capital and reserve fund, along with other specified special funds;

5) the interim organizational structure of discrete state banks and the procedure for their takeover of elements of the NBP's property.

Article 80. The Decree of 26 February 1982 on the Charter of the National Bank of Poland (DZ.U., No. 7, Item 57, 1982; No. 32, Item 141, 1985; No. 36, Item 170, 1985; and No. 39, Item 192, 1986) is hereby rescinded.

Article 81. 1. Until the implementing regulations envisaged in this Decree are issued, the existing implementing regulations continue to apply insofar as they do not conflict with the provisions of this Decree.

81. 2. The chairman of the NBP shall publish in *DZIENNIK URZEDOWY NARODOWEGO BANKU POLSKIEGO* not later than by 30 September 1989 a list of the existing implementing regulations that remain applicable.

Article 82. This Decree takes effect on the day of its publication, with the exception of Article 72, Paragraph 4, which is effective as of 1 February 1989.

* * *

The above text of the Decree allows for all the revisions introduced by Article 2 of the decree of 28 December 1989 on Amending the Decree on the Banking Law and the Decree on the National Bank of Poland (DZ.U., No. 74, Item 432), which also includes the following amendments:

Article 3. In Article 27, Paragraph 3, of the Decree of 26 February 1982 on Socioeconomic Planning (DZ.U., No. 4, Item 26, 1987; No. 33, Item 181, 1987; No. 20, Item 134, 1988; No. 41, Item 327, 1988; No. 4, Item 22, 1989; and No. 35, Item 192, 1989) the phrases "draft credit plan and draft assumptions of the state's money-and-credit policy" are replaced with the phrases "draft assumptions of the state's monetary policy".

Article 4. The chairman of the National Bank of Poland shall publish in *DZIENNIK USTAW* the uniform texts of the:

1) Decree of 31 January 1989 on the Banking Law;

2) Decree of 31 January 1989 on the National Bank of Poland, with allowance for the revisions ensuing from the regulations announced a day before the issuance of the uniform texts and upon following a continuous numeration of articles, paragraphs, and points.

Article 5. This Decree takes effect on 1 January 1990, with the exception of Article 2, Point 15, which takes effect on 1 April 1990.

(Attention: This concerns Article 34 in the text published above. This article, precisely, will become effective after a three-month "lag.")

Termination of Employment, Layoffs

90EP0377A Warsaw *RZECZPOSPOLITA* in Polish
26 Jan 90 p 4

[Law governing the termination of the labor relationship between workers and the workplace, dated 28 December 1980, published in *DZIENNIK USTAW* No. 4, Item 19, 27 January 1990, pages 37-39]

[Text] Article 1. 1. The provisions of this Decree apply to workplaces at which employment is reduced owing to economic considerations or organizational, production, or technological changes, including also changes undertaken with the object of improving working or environmental conditions, if these necessitate the termination, all at once or over a period of not more than 3 months,

of labor relationship with a group of employees accounting for at least 10 percent of the workforce at workplaces employing up to 1,000 persons or at least 100 employees at workplaces employing more than 1,000 persons.

1. 2. The provisions of this Decree also apply to workplaces declared to be in receivership or bankruptcy.

1. 3. The provisions of this Decree also apply to part-time employees if the emoluments they are paid at the workplaces referred to in Paragraphs 1 and 2 constitute their sole or—as indicated by the concerned employee—basic source of income

Article 2. 1. The need to terminate labor relationship with employees owing to the considerations referred to in Article 1, Paragraphs 1 and 2, is communicated by the workplace manager in writing to the trade-union organization at the workplace not later than 45 days before the deadline for the layoffs, upon stating the reasons warranting the intended layoffs and specifying the number of workers and the occupational groups considered for layoffs.

2. 2. On receiving the notification referred to in Paragraph 1, the trade-union organization at the workplace has the right to demand of the workplace management that it present information on the economic and financial situation of the workplace and the intentions as regards the level and structure of employment at the workplace; in addition, it has the right to present to the workplace manager, within not more than 14 days from the date it receives the notification about the intended layoffs, proposals making it possible to curtail the scope of these layoffs. The workplace manager is obligated to respond to these proposals within 7 days and make his position known to the workforce.

Article 3. It is mandatory for the workplace manager to also notify the [local] basic-level employment office about the intended termination of labor relationship for the reasons referred to in Article 1, Paragraphs 1 and 2. The notification should be made not later than 45 days before the layoff date.

Article 4. 1. Within not more than 30 days from the notification referred to in Article 2, Paragraph 1, the workplace manager and the trade-union organization at the workplace reach an agreement defining the procedural guidelines on matters concerning the employees intended to be laid off, and in particular the selection criteria for the layoff, the sequence and deadlines for issuing layoff notices, and the obligations of the workplace to the extent necessary to resolve other employee matters relating to the intended layoffs.

4. 2. At a workplace at which more than one trade-union organization is operating, the workplace manager reaches a joint agreement with all the trade-union organizations.

4. 3. In the event that an agreement is not reached because the parties to the agreement cannot approve its text, the guidelines governing matters that concern employees intended to be laid off are defined by the workplace manager upon taking into consideration the decisions taken jointly with the trade union organization while working on said agreement.

4. 4. At a workplace at which no trade-union organization is active, the guidelines for handling matters relating to employees intended to be laid off are defined by the workplace manager upon consulting the workforce by the procedure accepted at the concerned workplace.

Article 5. 1. When terminating labor relationship with employees by issuing a notice for the reasons referred to in Article 1, Paragraph 1, the procedure referred to in Article 38 of the Labor Law Code and the provisions of Article 41 of the Labor Law Code do not apply, apart from the exceptions specified in Paragraphs 2-4 and the special provisions governing the protection of employees against layoffs or termination of labor relationship, and also with the proviso of the exceptions specified in Article 6 of this Decree.

5. 2. When terminating labor relationship with employees and terminating their working and wage conditions, the provisions of Article 38 of the Labor Law Code apply in the event that the agreement referred to in Article 4 of this Decree is not reached.

5. 3. Termination of labor relationship with employees in the situations referred to in Article 41 of the Labor Law Code is inadmissible in cases in which employees are on leave for periods of time lasting less than 3 months, as well as in cases of other, justified work absence of an employee—if the required interval of time preceding that termination without prior notice has not elapsed yet.

5. 4. In situations referred to in Article 41 of the Labor Law Code the workplace may, if the need arises, terminate an employee's working and wage conditions. If this results in a reduction in the employee's emoluments, he or she is eligible, for a period of not more than 6 months, for an equalization allowance reckoned according to the guidelines established by regulations issued on the basis of Article 297 of the Labor Law Code.

5. 5. In situations referred to in Article 1, Paragraph 1, of this Decree, labor contracts concluded for a specified period of time, or for the time required to perform a specific assignment, may be terminated by either party upon prior 2-week notice.

Article 6. If, for the reasons referred to in Article 1, Paragraph 1, it is no longer possible to employ at their previous work stations the employees referred to in Articles 39 and 177 of the Labor Law Code, as well as employees who are members of the governing council of the trade-union organization or of the workers' council at a state enterprise—during their term of office and for a year afterward—the workplace may merely terminate

their normal working and wage conditions, without terminating their labor relationship. If this results in a reduction of emoluments, the affected employees are entitled to equalization allowance until the end of the period during which they are covered by special protection of their labor relationship, with that allowance to be reckoned according to the guidelines specified in the regulations issued on the basis of Article 297 of the Labor Law Code.

Article 7. A workplace may, pursuant to the guidelines specified in Article 36¹ of the Labor Law Code, shorten the time interval for issuing the layoff notice to an employee whose labor relationship is terminated by means of a layoff notice for the reasons referred to in Article 1, Paragraphs 1 and 2, of this Decree.

Article 8. 1. An employee whose labor relationship was terminated by a layoff notice for the reasons referred to in Article 1, Paragraphs 1 and 2, of this Decree, is entitled to: 1) severance pay; 2) equalization allowance.

8. 2. Severance pay is paid in the amount of:

- a) One month's wages if the employee's aggregate work record is less than 10 years;
- b) Two months' wages if the employee's aggregate work record is 10 years but not more than 20 years;
- c) Three months' wages if the employee's aggregate work record is upward of 20 years.

8. 3. An employee entitled to receive lump-sum severance pay upon retiring or entitled to receive to a disability pension is not entitled to the severance pay referred to in Paragraph 2.

8. 4. An employee is entitled to receive an equalization allowance upon commencing work at another workplace at a lower wage than he had been receiving at the workplace with which his or her job relationship was terminated for the reasons referred to in Article 1, Paragraphs 1 and 2.

8. 5. The equalization allowance is paid by the employee's new workplace for a period of not more than 6 months from the termination of his or her labor relationship at the previous workplace for the reasons referred to in Article 1, Paragraphs 1 and 2, with the equalization allowance amounting to the difference between his or her wages at the previous and the new workplaces. The equalization allowance is disbursed from the monies of the Labor Fund.

8. 6. The specific procedure for reckoning the equalization allowance will be defined in an executive order to be issued by the minister of labor and social policy in consultation with the national trade-union federation and the national trade union representative of employees of a majority of workplaces.

Article 9. The disbursement of severance pay to employees whose labor relationship is terminated by a workplace for the reasons referred to in Article 1, Paragraph 1 and 2, during a period when these employees are

on leave or absent from work for justified reasons, or do not render labor service for reasons defined in separate regulations, takes place in accordance with the guidelines applying generally to employees being laid off.

Article 10. 1. The provisions of this Decree apply correspondingly, with the exception of Articles 2-4, in the event that a workplace manager takes individual decisions to lay off employees for the reasons referred to in Article 1, Paragraph 1, if these reasons are the sole cause justifying the termination of the labor relationship and the layoff comprise, over a period of not more than 3 months, not more than 10 percent of the workforce at workplaces employing up to 1,000 persons or not more than 100 employees at workplaces employing more than 1,000 persons, with the proviso of Articles 2-5.

10. 2. When the notices about the termination of labor relationship or about the termination of working and wage conditions are given to employees, the provisions of Article 38 of the Labor Law Code apply, with the proviso of Article 3.

10. 3. The termination of labor relationship by giving notice to employees whose labor relationship is under special protection prior to the notice or termination by virtue of the provisions of the Labor Law Code or of special regulations may take place provided that the trade-union organization at the workplace does not file a protest within 14 days after the receipt of the notice. In the event that the trade-union organization does not file said protest within the 14 days, the workplace manager takes a decision concerning the termination of labor relationship.

10. 4. The employees referred to in Paragraph 3 may be notified by the workplace manager that their working and wage conditions are terminated if, for reasons referred to in Article 1, Paragraph 1, it is no longer possible to employ them at their usual workstations.

10. 5. If the termination of wage and working conditions results in a reduction in the emoluments of the employees referred to in Paragraph 4, they are entitled to receive an equalization allowance to the extent of and in accordance with the guidelines specified in Article 5, Paragraph 4, and in Article 6.

Article 11. The provisions of this Decree apply correspondingly in the event that labor relationship is terminated by an agreement between the parties for the reasons referred to in Article 1, Paragraphs 1 and 2.

Article 12. The workplace should re-employ an employee whose labor relationship it has terminated for the reasons referred to in Article 1, Paragraph 1, in the event it is rehiring personnel in the same vocational or professional group, if the employee declares his or her intention to resume employment at that workplace within a year from the date of the termination of his or her labor relationship.

Article 13. Unjustified or illegal termination of labor contracts is correspondingly governed by the provisions of Subsection 4, Section 2, Chapter 2 of the Labor Law Code.

Article 14. The provisions of this Decree do not apply to employees moving to a workplace established as a result of the organizational-legal total or partial restructuring of their old workplace.

Article 15. 1. In justified cases, on the recommendation of an employment office or of a national trade-union federation or of a national trade union representing the employees of a majority of workplaces, the minister of labor and social policy may, in cooperation with the minister of finance, suspend for 3 months the implementation of the intended decision of a workplace manager to reduce workplace personnel in a situation referred to in Article 1, Paragraph 1.

15. 2. The emoluments of the employees who were not laid off owing to the suspension of the intended decision of the workplace manager will be paid out of the Labor Fund during the suspension period.

Article 16. The provisions of this Decree do not infringe upon the rights of workforce self-government ensuing from separate regulations.

Article 17. The provisions of this Decree do not apply to persons holding appointive positions. However, such persons are entitled to the severance and equalization emoluments envisaged in Article 8 in the event that their labor relationship is terminated under the circumstances referred to in Article 1, Paragraphs 1 and 2, if the regulations governing their rights and duties do not provide for such emoluments.

Article 18. The following Article 79¹ is incorporated after Article 79 in the Decree of 30 June 1970 on the Military Service of the Professional Cadre (DZ.U., No. 16, Item 134, 1970; No. 52, Items 341 and 342, 1972; No. 24, Item 142, 1974; No. 47, Item 282, 1974; No. 15, Item 97, 1979; No. 16, Item 78, 1983; No. 20, Item 104, 1989; No. 34, Item 178, 1989; and No. 35, Item 192, 1980:

"Article 79¹. A soldier may be released from professional military service in the event that, for important personal reasons, he does not consent to taking another equivalent or higher-ranking service post if, in connection with the restructuring of the armed forces, the military unit in which he serves is subject to disbanding or a reduction in force."

Article 19. The following changes are introduced in the decree of 10 April 1974, Housing Law (DZ.U., No. 30, Item 165, 1987; No. 10, Item 57, 1989; No. 34, Item 178, 1989; and No. 35, Item 192, 1989):

1) In Article 57, Paragraph 2, Point 2) is reworded as follows:

"2) termination of labor relationship pursuant to an agreement between the parties";

2) The following Article 57a is added after Article 57:

"Article 57a. 1. In the event of a merger of workplaces, the employee housing they own becomes the employee housing owned by the new workplace.

"2. In the event of the break-up of a workplace an agreement should be reached concerning the division of its employee housing between the workplaces established as a result of the break-up.

"3. The corresponding provisions of Article 57, Paragraph 1, Point 1, and Paragraph 3, Point 1, a), apply to tenants whose labor relationship was terminated owing to the merger or breakup of the workplaces, when they do not become employed in the resulting new workplaces.

"4. In the event of the shutdown of a workplace or the announcement of its bankruptcy, the employee housing owned by that workplace forfeits its status; the tenants living in that housing retain for an indefinite period of time the rights they had acquired in the rental agreement.

"5. The provisions of Article 4 apply correspondingly to tenants living in the buildings transferred by workplaces to municipal ownership."

Article 20. The following changes are incorporated in the Decree of 26 June 1974, Labor Law Code (DZ.U., No. 24, Item 141, 1974; No. 16, Item 91, 1975; No. 6, Item 23, 1981; No. 31, Item 214, 1982; No. 20, Item 85, 1985; No. 35, Item 162, 1985; No. 42, Item 201, 1986; No. 21, Item 124, 1987; No. 20, Item 134, 1988; and No. 20, Item 107, 1989, and No. 35, Item 192, 1989):

1) paragraphs 3 and 4 of Article 41¹ are rescinded;

2) in Article 177, Paragraph 4, in the first sentence the phrase "shutdown of the workplace" is replaced with the phrase "announcement of the bankruptcy or shutdown of the workplace";

3) In Article 196 Point 2 is reworded as follows:

"2) announcement of the bankruptcy or shutdown of the workplace."

Article 21. 1. The benefits envisaged in Article 8 also apply to employees whose labor relationship was terminated for the reasons referred to in Article 1, Paragraphs 1 and 2, after 1 September 1989 but before the effective date of this Decree.

21. 2. The provisions of Paragraph 1 apply correspondingly if the labor relationship is terminated on the effective date of this Decree as a result of a layoff notice given prior to that date.

Article 22. The provisions of this Decree do not apply to employees whose labor relationship was terminated owing to the bankruptcy or shutdown of a state enterprise on the basis of Article 1, Point 2, c), of the Decree of 11 May 1988 on Emergency Powers for the Council of

Ministers (DZ.U., No. 13, Item 98), or pursuant to Article 4, Paragraph 3, of the Decree of 24 February 1989 on Certain Conditions of the Consolidation of the National Economy and on the Revisions of Certain Decrees (DZ.U., No. 10, Item 57), if the bankruptcy or shutdown of the enterprise was announced prior to 1 September 1989.

Article 23. This Decree takes effect on the day of its publication.

Order Lists State Enterprises, Units of Anthracite Coal Association

90EP0382Z Warsaw *DZIENNIK USTAW* in Polish
No 72, Item 425, 28 Dec 89 pp 1075-1077

[Executive Order No. 425 of the Council of Ministers, dated 22 December 1989, governing the list of dependent state enterprises and other state organizational, dependent units grouped together in the Anthracite Coal Association]

[Text] Pursuant to Article 1, Paragraphs 3 and 4, of the Decree of 28 October 1987 on Establishing the Anthracite Coal Association (DZ.U., No. 33, Item 183), the following is hereby ordered:

Paragraph 1. The list of state enterprises and other state organizational units subject to grouping in the Anthracite Coal Association is specified in the Appendix to this Executive Order.

Paragraph 2. The Executive Order of 23 November 1987 of the Council of Ministers on the List of State Enterprises and Other State Organizational Units Subject to Grouping in the Anthracite Coal Association (DZ.U., No. 37, Item 212, 1987; and No. 44, Item 347, 1988) is rescinded.

Paragraph 3. This Executive Order takes effect on 1 January 1990.

Chairman of the Council of Ministers: T. Mazowiecki.

Supplement to the Executive Order of 22 December 1989 (No 425) of the Council of Ministers:

List of State Enterprises and Other State Organizational Units Subject to Grouping in the Anthracite Coal Association:

- 1) Komuna Paryska Anthracite Coal Mine in Jaworzno;
- 2) Brzeszcze Anthracite Coal Mine in Brzeszcze;
- 3) Silesia Anthracite Coal Mine in Czechowice-Dziedzice;
- 4) Czczott Anthracite Coal Mine in Miedzna Wola;
- 5) Jowisz Anthracite Coal Mine in Bedzin;
- 6) Grodziec Anthracite Coal Mine in Bedzin;
- 7) General Zawadzki Anthracite Coal Mine in Dabrowa Gornicza;
- 8) Czerwona Gwardia Anthracite Coal Mine in Czeladz;
- 9) Sosnowiec Anthracite Coal Mine in Sosnowiec;

- 10) Czerwone Zaglebie Anthracite Coal Mine in Sosnowiec;
- 11) Kazimierz-Juliusz Anthracite Coal Mine in Sosnowiec;
- 12) Niwka-Modrzejow Anthracite Coal Mine in Sosnowiec;
- 13) Myslowice Anthracite Coal Mine in Myslowice;
- 14) Wieczorek Anthracite Coal Mine in Katowice;
- 15) Wujek Anthracite Coal Mine in Katowice;
- 16) Katowice Anthracite Coal Mine in Katowice;
- 17) Polska Anthracite Coal Mine in Swietochlowice;
- 18) Dymitrow Anthracite Coal Mine in Bytom;
- 19) Szombierki Anthracite Coal Mine in Bytom;
- 20) Miechowice Anthracite Coal Mine in Bytom;
- 21) Bobrek Anthracite Coal Mine in Bytom;
- 22) Julian Anthracite Coal Mine in Piekary Slaskie;
- 23) Siemianowice Anthracite Coal Mine in Siemianowice Slaskie;
- 24) Barbara-Chorzow Anthracite Coal Mine in Chorzow;
- 25) Debiensko Anthracite Coal Mine in Leszczyny;
- 26) Pstrowski Anthracite Coal Mine in Zabrze;
- 27) Gliwice Anthracite Coal Mine in Gliwice;
- 28) Wawel Anthracite Coal Mine in Ruda Slaska;
- 29) Pokoj Anthracite Coal Mine in Ruda Slaska;
- 30) Slask Anthracite Coal Mine in Ruda Slaska;
- 31) Nowy Wirek Anthracite Coal Mine in Ruda Slaska;
- 32) Budryk Anthracite Coal Mine under construction in Ormontowice;
- 33) Rydultowy Anthracite Coal Mine in Wodzislaw Slaski;
- 34) Anna Anthracite Coal Mine in Wodzislaw Slaski;
- 35) Marcel Anthracite Coal Mine in Wodzislaw Slaski;
- 36) Rymer Anthracite Coal Mine in Rybnik;
- 37) Chwalowice Anthracite Coal Mine in Rybnik;
- 38) I Maja Anthracite Coal Mine in Wodzislaw Slaski;
- 39) Jastrzebie Anthracite Coal Mine in Jastrzebie-Zdroj;
- 40) Moszczenica Anthracite Coal Mine in Jastrzebie-Zdroj;
- 41) Borynia Anthracite Coal Mine in Jastrzebie-Zdroj;
- 42) Zwiastku Mlodziezy Polskiej Anthracite Coal Mine in Zory;
- 43) Krupinski Anthracite Coal Mine in Suszec near Zory;
- 44) Morcinek Anthracite Coal Mine in Kaczyce;
- 45) Walbrzych Anthracite Coal Mine in Walbrzych;
- 46) Victoria Anthracite Coal Mine in Walbrzych;
- 47) Nowa Ruda Anthracite Coal Mine in Nowa Ruda;
- 48) Thorez Anthracite Coal Mine in Walbrzych;
- 49) Transgor Coal Industry Forwarding and Shipping Enterprise in Myslowice;
- 50) Transgor Coal Industry Forwarding and Shipping Enterprise in Sosnowiec;
- 51) Coal Industry Renovation and Construction Enterprise in Tychy;
- 52) Coal Industry Renovation and Construction Enterprise in Sosnowiec;
- 53) Coal Industry Repair Plants in Katowice-Kostuchno;
- 54) Coal Industry Repair Plants in Dabrowa Gornicza;

- 55) Coal Industry Materials Management Enterprise in Tychy;
- 56) Transgor Coal Industry Forwarding and Shipping Enterprise in Chorzow;
- 57) Transgor Coal Industry Forwarding and Shipping Enterprise in Bytom;
- 58) Coal Industry Renovation and Construction Enterprise in Katowice;
- 59) Coal Industry Renovation and Construction Enterprise in Bytom;
- 60) Coal Industry Repair Plants in Siemianowice Slaskie;
- 61) Coal Industry Repair Plants in Bytom;
- 62) Usgor Mining and Materials Services Enterprise in Siemianowice Slaskie;
- 63) Transgor Coal Industry Forwarding and Shipping Enterprise in Zabrze;
- 64) Coal Industry Renovation and Construction Enterprise in Zabrze;
- 65) Coal Industry Repair Plants in Zabrze;
- 66) Coal Industry Railroad Transport and Gangue Management Enterprise in Zabrze;
- 67) Transgor Coal Industry Forwarding and Shipping Enterprise in Rybnik;
- 68) Coal Industry Renovation and Construction Enterprise in Rybnik;
- 69) Coal Industry Repair Plants in Rybnik;
- 70) Coal Industry Railroad Transport and Gangue Management Enterprise in Rybnik;
- 71) Coal Industry Recultivation and Liquid Waste Management Enterprise in Jastrzebie-Zdroj;
- 72) Transgor Coal Industry Forwarding and Shipping Enterprise in Walbrzych;
- 73) Coal Industry Renovation and Construction Enterprise in Walbrzych;
- 74) Wamag Mining Equipment Plant in Walbrzych;
- 75) Coal Industry Supply Enterprise in Walbrzych;
- 76) Coal Industry Building Materials Enterprise in Katowice;
- 77) Basalt Melting Enterprise in Starachowice;
- 78) Mineral Raw Materials Enterprise in Januszkowice;
- 79) Mining Operations Enterprise in Katowice;
- 80) Polmag-Emag Mining Mechanization, Automation, and Electronics Enterprise in Katowice;
- 81) Malapanew Steelworks in Ozimek;
- 82) Zgoda Technology Equipment Plant in Swietochlowice;
- 83) Glinki Drilling and Mining Machinery Plant in Gorlice;
- 84) Weglokoks Coal Marketing Agency in Katowice;
- 85) Kopex Export and Import Enterprise in Katowice;
- 86) Coal Industry Packing Materials Enterprise in Katowice;
- 87) Coal Industry Timbering Plants in Katowice;
- 88) Central Mining Rescue Station in Bytom;
- 89) Main Institute of Mining in Katowice;
- 90) Central Mine Supply Agency in Katowice;
- 91) Coal Industry Construction Enterprise in Katowice;
- 92) Coal Industry Construction-Engineering Enterprise in Katowice;
- 93) Gliwice Coal Industry Construction Enterprise in Gliwice;
- 94) Rybnik Coal Industry Construction Enterprise in Rybnik;
- 95) Prabud Coal Industry Anticorrosion and Construction Operations Enterprise in Swietochlowice;
- 96) Coal Industry Engineering Operations Enterprise in Katowice;
- 97) Wodzislaw Coal Industry Engineering Operations Enterprise in Wodzislaw Slaski;
- 98) Gliwice Coal Industry Engineering Operations Enterprise in Gliwice;
- 99) Prinzbud Coal Industry Engineering Operations Enterprise in Swietochlowice;
- 100) Fabud Coal Industry Construction Enterprise in Siemianowice Slaskie;
- 101) Weglosan Coal Industry Assembling and Installation Enterprise in Bytom;
- 102) Mimet Coal Industry Assembling and Installation Enterprise in Mikolow;
- 103) Fadom Coal Industry Housing Construction Enterprise in Zory;
- 104) Energomontaz PW Coal Industry Power Installation Enterprise in Chorzow;
- 105) Pemugie Coal Industry Mining Equipment Assembling Enterprise in Katowice;
- 106) Famont Coal Industry Housing Construction Enterprise in Gliwice;
- 107) Coal Industry Electrical Equipment Assembling Enterprise in Katowice;
- 108) Elkop Coal Industry Electrical Equipment Assembling Enterprise in Chorzow-Batory;
- 109) Kombud Coal Industry Housing Construction Enterprise in Myslowice;
- 110) Elrow Coal Industry Electrical Assembling Operations Enterprise in Rybnik;
- 111) Budomont Coal Industry Construction Enterprise in Chorzow;
- 112) Coal Industry Heavy Construction Equipment Enterprise in Tychy;
- 113) Prefbet Coal Industry Prefabricated Concrete Components Enterprise in Katowice;
- 114) Progor Coal Industry Research and Design Office in Katowice;
- 115) Coal Industry Construction Research and Design Center in Katowice;
- 116) Coal Industry Construction Forwarding and Shipping Enterprise in Katowice;
- 117) Main Mining Research and Design Office in Katowice;
- 118) Separator Main Coal Processing Research and Design Office in Katowice;
- 119) Central Mining Computerization Agency in Katowice.

Amended Law on Financial Management of State Enterprises

90EP0340A Warsaw RZECZPOSPOLITA in Polish
10 Jan 90 p 4

[Law on financial management of state enterprises, dated 31 January 1989, published in DZIENNIK USTAW No. 3, February 1989; amended 27 December 1989; amendments published in DZIENNIK USTAW No. 74, Item 437, 30 December 1989, pages 1115-1117]

[Text] As known, on 27 December 1989 the Sejm amended the Decree of 31 January 1989 on the Financial Management of State Enterprises (DZ.U., No. 3, Item 10). The amendments were published in DZ.U., No. 74, of 30 December 1989, under Item 437. Now, however, we are publishing a text which we made uniform, thus markedly facilitating the interpretation of the decree. All new fragments are boldfaced.

Chapter 1. General Provisions

Article 1. 1. This decree defines the principles for the financial management of state enterprises, hereinafter referred to as "enterprises."

Article 2. 1. In managing the assets assigned thereto or acquired thereby, the enterprise operates on self-financing principles and uses its own capital and operating income to defray its operating costs and obligations.

Chapter 2. Enterprise Funds

Article 3. 1. The value of the enterprise's capital is reflected by the:

- 1) enterprise's charter capital;
- 2) enterprise fund.

3. 2. The charter capital of the enterprise reflects the value of the part of national property assigned to the enterprise.

3. 3. The enterprise fund reflects the value of the enterprise's capital minus the charter capital.

3. 4. The size of the enterprise's charter capital is subject to recording in the registry of state enterprises.

Article 4. 1. The charter capital is augmented by the state budget subsidies allotted for financing the growth of the enterprise as well as by the mandatory dividend, hereinafter referred to as "the dividend," left to the enterprise, and also by other monies credited to the enterprise by its parent agency or by the State Treasury.

4. 2. The charter capital is augmented or reduced by the changes in the value of the enterprise capital owing to a reappraisal of its fixed assets on the basis of separate regulations. The magnitude of these changes is settled upon on adhering to the ratio of charter capital to enterprise fund that had existed just before the reappraisal.

4. 2a. If, pursuant to a decision by an agency of state administration, the enterprise has to transfer gratis buildings and other structures to another state entity, this means that the value of the charter capital is reduced by the value of these transferred assets. If the recipient is another state enterprise, then the value of its charter capital is augmented by the value of the received buildings and associated structures.

4. 3. The charter capital of housing management enterprises is reduced by the value of the housing write-offs.

Article 4a. 1. In the event of enterprise mergers the charter capital of the resulting enterprise is fixed in the amount of the sum total of the entirety or part of the charter capitals of the merged enterprises.

4a. 2. In the event of the break-up of an enterprise the charter capitals of the resulting enterprises are determined by dividing the charter capital of the broken-up enterprises.

Article 5. 1. The enterprise fund is augmented by:

1) the profits remaining at the disposal of the enterprise;

2) depreciation of fixed capital;

3) the increase in the value of the enterprise's assets owing to a reappraisal of its fixed capital as based on separate regulations; the resulting amount is determined so as to retain the proportions between the charter capital and the enterprise fund existing prior to the reappraisal;

4) income from other sources.

5. 2. The enterprise fund is reduced by:

1) balance-sheet liabilities;

2) depreciation of fixed capital;

3) the amount of the decrease in the value of the enterprise's assets owing to a reappraisal of its fixed capital as based on separate regulations; the resulting amount is determined so as to retain the proportions between the charter capital and the enterprise fund existing prior to the reappraisal;

4) dividends, if these cannot be paid from the profits after taxes.

Article 5a. 1. In the event of a merger of enterprises, the enterprise fund of the resulting enterprise is determined in the amount of the entirety or part of the funds of the merged enterprises.

5a. 2. In the event of the break-up of an enterprise, the funds of the resulting new enterprises are determined by dividing the fund of the broken-up enterprise.

Article 5b. The basis for determining the size of the charter capital and enterprise fund in the cases referred to in Articles 4a and 5a is the closing balance-sheets of the merged or broken-up enterprises.

Article 6. An enterprise that extracts minerals by the open-strip method as well as other enterprises engaging in operations that result in the formation of dumps and or degradation of earth surface may form a special surface-restoration fund out of extra charges added to operating cost. The resources of the surface-restoration fund are earmarked for financing measures to restore depleted open-strip and dump areas to their pristine condition.

Article 7. The expenditures linked to the implementation of the tasks of state enterprises relating to national defense, as ensuing from the provisions of the Decree of 21 November 1967 on the Nationwide Duty of Defending the Polish People's Republic (DZ.U. of 1988, No. 30, Item 207) and from the provisions of other legislation, are charged to the operating cost of state enterprises with the exception of the expenditures made on the basis of separate regulations issued by the Council of Ministers and the National Defense Committee out of specially earmarked state-budget funds.

Article 8. The enterprise may use its profits after taxes and dividends to form other special funds.

Chapter 3. The Powers of the State Treasury

Article 9. 1. The enterprise transfers to the State Treasury a dividend in accordance with the principles defined in this Decree.

9. 2. The basis for reckoning the dividend is the amount of the enterprise's charter capital.

9. 3. The dividend is paid out of profits after taxes.

Article 10. 1. To the extent specified in this Decree, the interests of the State Treasury vis a vis the enterprise are represented by:

1) the minister of finance, with the proviso of Point 2);

2) local agencies of state administration with general powers as regards the enterprises subordinate to people's councils.

10. 2. The minister of finance and the local agencies referred to in Paragraph 1:

1) keep records of the charter capital of enterprises, and of the changes in that capital;

2) collect dividends and credit them correspondingly to the state budget and local budgets.

Article 11. The proportion in which the dividend is payable for the fiscal year is specified in the budget decree, with allowance for the anticipated growth rate of the economy and the prime interest rate on the loans granted to banks by the National Bank of Poland, with the proviso of Article 21.

Article 12. 1. Dividends from agricultural, deep-sea fishing, and nonprofit enterprises other than those specified in Article 13, Point 1), are fixed at one-fourth of the

dividend referred to in Article 11, with the proviso that these dividends are subject to being credited correspondingly to the state budget or to local budgets.

12. 2. The Council of Ministers determines the basis for and manner of reckoning the dividends payable by enterprises implementing entirely or partially tasks for the needs of national defense and national security.

Article 13. The following are exempt from the duty of paying the dividend:

- 1) communal, housing, and urban-transit enterprises;
- 2) the Polish State Railroads State Enterprise;
- 3) the "Porty Lotnicze" [Airports] State Enterprise;
- 4) the Polish Post, Telegraph, and Telephone state organizational entity;
- 5) the enterprise implementing the statutory tasks of sea rescue and salvage;
- 6) enterprises operating under penal institutions and investigative arrests, subordinated to the minister of justice;
- 7) the state forests enterprise;
- 8) hydro-construction enterprises, with respect to the value of ice-breakers.

Article 14. 1. The dividend may be credited to augmenting the charter capital if an enterprise engages in investment projects designed to restructure its operations.

14. 2. The decision to credit the due dividends or their parts to the charter capital is taken, upon a substantiated application made by the concerned enterprise, by the agencies representing the State Treasury referred to in Article 10.

Article 15. 1. The collection of the dividend is governed by the regulations applying to tax obligations.

15. 2. The minister of finance defines the procedure and deadlines for the payment of the dividend.

Article 16. 1. If the attained profits after taxes are insufficient to pay the dividend, the enterprise uses monies from its enterprise fund to pay the dividend, upon notifying the concerned agency representing the State Treasury.

16. 2. In the situation referred to in Paragraph 1, internal proceedings are instituted by the procedure and on the principles defined in the decree of 29 June 1983 on Improvements in the Management of State Enterprises and on Enterprise Bankruptcies (DZ.U., No. 8, Item 46, 1986), with the proviso that the plan for improving the enterprise's performance is subject to approval also by an agency representing the State Treasury.

16. 3. In the event of refusal of the agency representing the State Treasury to approve the recovery plan referred to in Paragraph 2, the parent agency takes the decision to shut down the enterprise.

Chapter 4. Accounting Procedures

Article 17. 1. The enterprise is obligated to conduct correct, accurate, and current accounting and adapt it to the nature of its operations.

17. 2. The minister of finance shall issue an ordinance prescribing the mandatory accounting rules for enterprises.

Article 18. 1. The yearly balance sheet and the financial performance of the enterprise they indicate, as well as other annual financial reports prepared pursuant to the provisions governing state statistics, hereinafter referred to as "the yearly balance sheet," are subject to auditing with the object of determining the foundations for:

- 1) division of profits and settlement of accounts with the state budget;
- 2) isolation of the dividend;
- 3) evaluation of the enterprise's performance.

18. 2. The proper agencies of the minister of finance perform gratis the auditing referred to in Paragraph 1. The minister of finance may authorize other entities to audit the yearly balance sheet.

18. 2a. Certified accountants appointed by the procedure defined in Article 18a may take part in the auditing.

18. 3. The minister of finance determines by means of an ordinance the procedure for auditing the yearly balance sheet of the enterprise, the rules for determining the auditing fees, and the specific rights and duties of certified accountants.

Article 18a. 1. A certified accountant can be a Polish citizen who:

- 1) is fully capable of legal activities;
- 2) enjoys civic rights;
- 3) demonstrates the following qualifications:

a) higher education in economics or law and at least 3 years of experience in accounting, of which at least 1 year in a managerial or autonomous position at an accounting department or in the position of a university lecturer on accounting or a secondary-school teacher of accounting, or

b) secondary-school or officially equivalent education and at least 6 years of experience in accounting, of which at least 3 years in a managerial or autonomous position at an accounting department;

4) has passed the examination for a certified accountant;

5) has deposed the following oath: "I swear that as a certified accountant I shall perform the tasks entrusted to me in full awareness of the responsibility I bear for making professional and impartial assessments and for the probity of my analyses and decisions. I shall adhere to the principles of professional ethics, and in my work I

shall guard the public interest. I shall not divulge to unauthorized persons the information I acquire as a result of my activities";

6) has been included in the roster of accountants kept by the minister of finance.

18a. 2. Inclusion in the roster of accountants is performed by the minister of finance upon the recommendation of the State Examination Commission for Accountants. Deletion from the roster or suspension of the rights of an accountant also is performed by the minister of finance.

18a. 3. Deletion of an accountant's name from the roster of accountants takes place upon:

- 1) the accountant's own request;
- 2) in the event of loss of Polish citizenship;
- 3) in the event of total or partial incapacitation;
- 4) legal sentencing for the perpetration of a deliberate crime, or in the event of a ruling that such deletion be made.

18a. 4. The ruling of deletion from the roster of accountants or of suspension of the rights of an accountant for a period of from 1 to 3 years is made in the event of the accountant's violation of the provisions of his oath referred to in Paragraph 1, Point 5), and in particular in the event of improper performance of professional duties, the attendant infraction of law, and violation of professional ethics. The abovesaid ruling is made upon organizing a prior hearing and consulting the professional organization to which accountants belong.

18a. 5. The roster of certified accountants as well as notices of deletion from that roster or suspension of the professional rights of concerned accountants are published in *DZIENNIK URZEDOWY MINISTERSTWA FINANSOW* [Official Record of the Ministry of Finance].

Article 18b. The minister of finance:

1) appoints the State Examination Commission for Certified Accountants and oversees its activities;

2) determines the size of examination fees to be paid by the applicants for accountancy certifications as well as the size of the remunerations paid to members of the State Examination Commission for Certified Accountants and to other examiners taking part in the conduct of the examinations;

3) may exempt from the examinations a person who has a higher educational background, high professional qualifications, and a documented record of activity in the accounting profession.

Article 18c. 1. A certified accountant has the right to release from work at his regular workplace for a period aggregating 24 work days during a calendar year in order to perform auditing the balance sheet.

18c. 2. The agency handling the auditing reimburses the accountant's regular workplace for the time spent on the auditing in an amount equal to the salary due him for absence from work owing to reasons other than illness, as well as for the wage tax and the social insurance premiums due.

Chapter 5. Special, Interim, and Final Provisions

Article 19. 1. At the enterprises existing on the day this Decree takes effect the charter capital is determined as the sum of:

1) statutory capital in fixed assets as of the status on 31 December 1983, minus the net value of plant-owned employee housing, nurseries, preschools, and other fixed assets used for plant social services and civil defense, but plus the state-budget subsidies utilized for investments as of the status on 1 January 1989;

2) statutory capital in liquid assets as of the status on 31 December 1983, equal to 25 percent of inventories (including the cost of future periods) for the same date.

19. 2. The provisions of Paragraph 1 also apply to enterprises formed after 31 December 1989 as a result of the break-up or merger of the enterprises or entities existing prior to that date, with the proviso that the charter capital is determined by dividing or combining the statutory capital of the enterprises (entities) subjected to break-up or merger.

19. 3. The provisions of Paragraph 1 apply correspondingly to the enterprises formed after 31 December 1983 with the proviso that their charter capital is determined to be the same as their statutory funds specified in the opening balance sheet.

19. 4. In the event the statutory funds of enterprises formed after 31 December 1983 owing to break-ups or mergers cannot be determined from the balance sheet, the charter capital is determined according to the figures in the opening balance sheet.

Article 20. At the enterprises existing on the day this Decree takes effect the enterprise fund is determined as the amount corresponding to that part of the statutory capital which, pursuant to the provisions of Article 19, is not subject to transfer to the charter capital. This also applies to the size of the development fund, the contingency fund, the fund for technical and economic progress, and other special funds formed by charging accordingly the operating cost and profits of the enterprise as of 1 January 1989.

Article 21. If the dividend reckoned in accordance with Article 11 exceeds in 1989 25 percent of the balance-sheet profits, an amount corresponding to 25 percent of these profits is subject to being paid into the state budget.

Article 22. 1. The audited profits of the State Lottery Monopoly are, after taxes, payment of the dividend, and

reimbursement for the Monopoly's operating costs, assigned for social purposes and for growth of the national economy.

22. 2. The minister of finance determines, upon the recommendation of the director of the Polish Lottery Monopoly, what part of the profits is to be set aside for social purposes and growth of the national economy.

Article 23. At state enterprises handling local numbers games the voivodship-level agency of state administration specifies the part of the profits of these enterprises that is to be set aside for social purposes and the growth of the national economy after payment of taxes on the audited profits, the dividend is deducted, and the operating costs of the enterprises reimbursed.

Article 24. At the "Sports Parimutuel" State Enterprise a mandatory deduction of 26 percent of the wagers to the Central Fund for the Promotion of Physical Culture is hereby introduced.

Article 25. 1. Equalization accounting for the domestic prices of products of the same kind is hereby abolished except for black coal and electricity.

25. 2. The existing balance of the accounting referred to in Paragraph 1 should be cleared with the enterprise fund of the enterprise handling that accounting. This also applies to the balance of the accounting handled by enterprise associations, with the proviso that it is to be credited to enterprise funds.

Article 26. The following amendments are introduced in the Decree of 29 June 1983 on Streamlining Enterprise Management and on Enterprise Bankruptcies (DZ.U., No. 8, Item 46, 1986):

1) In Article 9 the following Paragraph 5 is added:

"5. The draft of the program referred to in Paragraph 1 is also subject to approval by the agency representing the State Treasury if the after-tax profits are insufficient to pay the dividend construed by the provisions of the Decree on the Financial Management of State Enterprises";

2) In Article 25 the phrase "part of the statutory capital of the enterprise financing its fixed assets" is replaced with the phrase "charter capital".

Article 27. 1. The Decree of 26 February 1982 on the Financial Management of State Enterprises (Dz.U., No. 8, Item 44, 1986; No. 39, Item 192, 1986; and No. 47, Item 226, 1986; No. 33, Item 101, 1987; and No. 24, Item 167, 1988, and No. 34, Item 254, 1988) is hereby rescinded.

27. 2. The implementing regulations issued on the basis of Article 4, Paragraph 3, and Article 41, Paragraph 3, of the decree specified in Paragraph 1 above shall continue to apply until such time as new implementing regulations are issued on the basis of the present Decree, but not longer than until 31 December 1989, and on the basis of

Article 30, Paragraph 4, and Article 34 of the decree specified in Paragraph 1—until new regulations are issued.

Article 28. This Decree takes effect on the day of its publication and applies as of 1 January 1989.

The above text takes into consideration all the amendments introduced by Article 1 of the Decree of 27 December 1989 on Amending the Decree on the Financial Management of State Enterprises (DZ.U., No. 74, Item 437), which decree also contains the following new provisions:

Article 2. The period of applicability of the existing implementing regulations envisaged in Article 27, Paragraph 2, of the decree referred to in Article 1, is extended until 31 December 1990.

Article 3. The minister of finance shall publish in DZIENNIK USTAW the uniform text of the Decree on the Financial Management of State Enterprises with allowance for the changes ensuing from the regulations issued prior to that publication and upon following a continuous numeration of articles, paragraphs, and points.

Article 4. This Decree takes effect on 1 January 1990, with the proviso that the provisions of Article 1, Point 1), b) and Points 2, 4, and 9 apply as of 1 January 1989. (Note: in the uniform text published here this refers to the following provisions: Article 4, Paragraph 2a; Article 41, Paragraphs 1 and 2; Article 5a, Paragraphs 1 and 2, and Article 5b; and Article 19, Paragraphs 2, 3, and 4.)

Taxes on Increments to Remunerations in 1990

90EP0342A Warsaw RZECZPOSPOLITA in Polish
9 Jan 90 p 4

[Law on taxes on increments to remunerations, dated 27 December 1989; also published in DZIENNIK USTAW No. 74, Item 438, 30 December 1989, pages 1117-1119]

[Text] As previously announced, we publish below the text of yet another decree passed by the Sejm on 27 December 1989 and effective as of 1 January 1990. The Decree on Taxing Wage Increases in 1990 was published in DZ.U., No. 74, 30 December 1989.

Decree

Article 1. 1. This Decree regulates the taxation of wage increases exceeding the ceilings it specifies, with respect to legal entities as well as to the political and state-owned organizational units lacking legal entity but engaging in business operations, and also to public and civil joint-stock companies operating with the participation of legal entities.

1. 2. The provisions of this Decree do not apply to the:

1) State Treasury;

2) people's councils;

3) state-budget units and institutions and their auxiliary entities;

4) National Bank of Poland;

5) higher schools, with the exception of the profit-making activities they engage in;

6) social, professional, and occupational organizations as well as foundations, with the exception of the profit-making activities they engage in;

7) joint-stock companies operating on the basis of the regulations governing the conduct of small industry by foreign legal entities and individuals on the territory of the Polish People's Republic, as well as on the basis of the regulations governing business activities with the participation of foreign entities.

Article 2. 1. The tax on wage increases is to be paid by taxpayers who exceed the ceilings specified by the provisions of Articles 4-6 of this Decree as regards:

1) wages included in the overall operating cost for the tax year (period);

2) awards and bonuses paid from balance-sheet profits for 1990.

2. 2. The basis for the taxation is represented by the remunerations that exceed the ceilings referred to in Paragraph 1.

Article 3. 1. The basis for determining the wage ceilings referred to in Article 2, Paragraph 1, Point 1), in January 1990, is the sum total of:

1) the wages paid for September 1989 and included in the overall operating cost;

2) the increases in discrete wage components, granted on 1 October 1989 owing to the changes in the retail prices of consumer goods and services during the third quarter of 1989, as computed pursuant to Article 2, Paragraph 6, of the Decree of 31 July 1989 On the Increases in Wages and Farm Incomes in Connection with the Changes in the Retail Prices of Consumer Goods and Services in 1989 (DZ.U., No. 48, Item 261, and No. 56, Item 330);

3) the amount resulting from the multiplication of the sum total of the amounts referred to in Points 1) and 2) by the indicator of increases in the retail prices of consumer goods and services in October 1989, and by the correction coefficient of 0.8;

4) the amount resulting from the multiplication of the sum total of the amounts referred to in Points 1)-3) by the sum total of the actual indicator of the increase in retail prices of consumer goods and services in November 1989 and the predicted indicator for December 1989 as well as by the correction coefficient of 0.8.

3. 2. Taxpayers [employers] whose tax obligations relating to the income tax on wage increases, as determined at the rates of 40 percent and 200 percent, exceed 10 percent of their income for 1989, may deduct 1/24th of the ceiling-exceeding wage increases, acknowledged as the cost of deriving their incomes, from the sum total of the remunerations referred to in Paragraph 1.

Article 4. 1. The monthly wage ceiling for January 1990 is the amount of wages determined in accordance with Article 3 plus the amount of the wage increases ensuing from the indicator of the increase in the retail prices of consumer goods and services in January, multiplied by the correction coefficient.

4. 2. The monthly wage ceiling for every successive month is the monthly ceiling for the preceding month plus the wage increase dictated by the indicator of the increase in the retail prices of consumer goods and services for that month and multiplied by the correction coefficient.

4. 3. The ceiling for the tax year (period) is the sum total of the monthly ceilings determined in accordance with Paragraphs 1 and 2.

4. 4. The Council of Ministers shall issue an ordinance determining the level of the correction coefficients referred to in Paragraphs 1 and 2.

4. 5. The forecast increase in the retail prices of consumer goods and services for every month is announced by the minister of finance by the 7th day of every month.

4. 6. The actual increase in the retail prices of consumer goods and services for every month is announced by the chairman of the Main Statistical Administration not later than by the 20th day of the following month.

4. 7. Taxpayers [employers] who employ a growing number of personnel may determine the ceiling for the tax year (period) by dividing the ceiling reckoned in accordance with Paragraph 3 by their average employment in September 1989 and multiplying the thus derived figure by average employment for the period from September 1989 until the end of the tax year (period).

4. 8. The rules for determining the wage ceiling specified in Paragraph 7 also apply to taxpayers who employ increased or reduced numbers of personnel due to the seasonal nature of their production or to organizational changes instituted after 30 September 1989 and consisting, in particular, in:

- 1) break-up of an economic entity;
- 2) merger of economic entities;
- 3) shutdown of plants, plant departments, sections or other organizationally and statistically isolated production and service facilities;

4) transfer or leasing or licensing of the facilities mentioned in Point 3).

Article 5. 1. For taxpayers that started operating after 30 September 1989, the appropriate local Treasury offices will determine for the first month of operation in 1990 the average wage ceiling per employee as the sum of:

1) the average monthly wage representing the basis for determining the wage ceiling in an amount defined by an ordinance of the Council of Ministers;

2) the wage increases ensuing from the indicators of increases in the retail prices of consumer goods and services for the months preceding the startup of the taxpayer's enterprise, multiplied by the correction coefficients referred to in Article 4, Paragraph 4;

3) the amount of the remunerations for commissioned work to an extent not exceeding 30 percent of the wage referred to in Points 1) and 2).

5. 2. The taxpayers shall multiply the ceiling determined by the Treasury Office pursuant to Paragraph 1 by the average employment at their enterprises during the first month of their operation in 1990.

5. 3. The monthly wage ceiling for every succeeding month is constituted by the monthly wage ceiling for the preceding month augmented by the amount ensuing from the indicator of the increase in the retail prices of consumer goods and services for that month and multiplied by the correction coefficient referred to in Article 4, Paragraph 4.

5. 4. The wage ceiling for the tax year (period) is constituted by the sum of the monthly wage ceilings determined in accordance with Paragraphs 2 and 3.

5. 5. In the event of an increase or decline in average employment at their enterprises during the tax year (period), the taxpayers referred to in Paragraph 1 apply correspondingly the provisions of Article 4, Paragraphs 7 and 8, on dividing the wage ceiling reckoned in accordance with Paragraph 4 by the average employment at their enterprises during the first month of their operation in 1990 and multiplying the result by the average employment at their enterprises for the tax year (period) as a whole.

Article 6. 1. The ceiling for the payment of awards and bonuses out of balance-sheet profits, referred to in Article 2, Paragraph 1, Point 2, is constituted by an amount equal to 8.5 percent of the overall operating cost for 1990 minus honorariums and non-individual awards, and at labor cooperatives minus honorariums and individual awards paid to persons who are not members of these cooperatives.

6. 2. Taxpayers [employers] are authorized in 1990 disburse—with the consent of their employees—advance payments of awards and bonuses from profits in the form of Treasury securities or of shares. An amount

corresponding to 50 percent of the value of the securities and shares transferred to employees increases the ceiling referred to in Paragraph 1.

Article 7. 1. Remuneration [wages] included in the overall operating cost is construed as monetary payments or benefits in kind or their equivalents that are included in wages pursuant separate regulations governing the classification of the wages mandatory at entities of the socialized sector.

7. 2. Until the basis for taxing the remuneration included in the overall operating cost is determined, such remuneration is, during the tax year (period), reduced by payments of:

1) lump-sum awards and bonuses included in the overall operating cost for the tax year, as ensuing from the Miner's Card, the Metalworker's card, or other subsector cards introduced prior to 1 January 1990 [i.e., special privileges enjoyed by coal miners, metalworkers, and workers in certain other industries];

2) wages paid for the labor of the disabled and persons receiving the same treatment as the disabled, defined on the basis of separate regulations;

3) remuneration for work on days off, transmitted to social assistance funds;

4) remuneration of persons employed in rehabilitation and rest centers operated by cooperatives of the disabled;

5) severance pay, referred to in the Decree on Special Rules for the Dissolution of Labor Relationship with Employees Owing to Workplace Considerations, as well as in the amendments to certain other decrees.

7. 3. If the taxpayer [employer] commissions the performance of a service or the manufacture of a product and the commissioned entity employs employees of the taxpayer for this purpose, the taxpayer augments the wages paid for the tax year (period) by the amount of the wages paid by the commissioned entity to the taxpayer's employees. The commissioned entity is under the obligation of specifying in its invoice the amount of wages paid to the taxpayer's employees.

7. 4. A taxpayer who lends or leases means of production to a joint stock company which employs the taxpayer's employees in its operations, augments the remuneration for the tax year (period) by the amount paid by the joint stock company to the taxpayer's employees.

The joint stock company is obligated to notify the taxpayer that it employs its employees during the months preceding the month in which the decision to augment the remuneration is taken.

7. 5. Taxpayers [employers] may not introduce wage increases that are retroactive to the months preceding the month in which these increases are introduced.

Article 8. The tax on wage increases is determined according to the following tax scale:

1) for exceeding the ceiling on the wages included in the overall operating cost during the tax year (period):

Ordinal Number	Ceiling Exceeded By	Tax Rate for Every Additional Percent in Excess of Ceiling
1	Up to 3 percent	200 percent
2	Upward of 3 percent	500 percent

2) When the ceiling for the payments of awards and bonuses from balance-sheet profits for 1990 is exceeded, the tax rate is 500 percent of the amount exceeded.

Article 9. The tax referred to in Article 8 constitutes revenues of the state budget and is subject to being transferred to the account of the proper local Treasury office.

Article 10. 1. The tax reckoned according to Article 8, Point 1), is paid from balance-sheet profits or from the surplus of income over expenditures for the tax year (period), and if the tax obligation exceeds the balance-sheet profits or the surplus of income over expenditures, the resulting difference constitutes a balance-sheet loss or a surplus of expenditures over income.

10. 2. For taxpayers [employers] that sustain a balance-sheet loss or a surplus of expenditures over income during the tax period, the tax referred to in Article 8, Point 1), augments that loss or that surplus of expenditures over income.

10. 3. Taxpayers that do not determine their financial performance include in their operating cost the tax referred to in Article 8, Point 1).

Article 11. Payments of awards and bonuses from 1989 income minus the income tax are performed by taxpayers in accordance with the principles defined in the 1989 Budget Decree of 15 February 1989 (DZ.U., No. 7, Item 45; No. 25, Item 134; No. 54, Item 320; No. 59, Item 350; No. 64, Item 392).

Article 12. The following deadlines for the calculation and payment of taxes are established:

1) advance payments—by the 28th day of every succeeding month for the tax period, in the event that the ceiling on the wages included in the operating cost is exceeded;

2) the final calculation and payment of the tax is due within 20 days from the mandatory deadline for the preparation of the balance sheet and results of performance for the tax year;

3) within 5 days from the date of any payment of awards and bonuses from income for 1989 minus the income tax.

Article 13. The minister of finance shall determine the forms for the declarations regarding the tax considered in this Decree as well as the procedure for determining the amount of wages paid for September 1989 and the average employment at the taxpayer's enterprise.

Article 14. The minister of finance may consent to the determination of the wage ceilings referred to in Article 2, Paragraph 1, Point 1), and to the payment of the tax by the enterprises (departments) of legal entities which prepare their own balance sheets.

Article 15. This Decree takes effect on 1 January 1990.

Regulation of Credit Relationships

90EP0339A Warsaw RZECZPOSPOLITA in Polish
8 Jan 90 p 4

[Law on the regulation of credit relationships, dated 28 December 1989; also published in DZIENNIK USTAW No. 74, Item 440, 30 December 1989, pages 1122-1123]

[Text] Article 1. 1. The following are rescinded:

1) the obligations imposed on the banks, concerning the assurance of privileges and preferences relating to:

- a) availability of loans
- b) loan interest rates and repayment terms;

2) provisions of loan agreements specifying fixed and preferential interest rates.

1. 2. All other provisions of loan agreements remain unchanged. The terms of agreements for housing construction loans, as ensuing from these provisions, may not be revised in 1990 without the consent of the borrower, even when the loan amount is increased. The Council of Ministers shall assure compensation for the differences ensuing from these agreements as regards the outlays made in 1990.

1. 3. Unless a bank settles the matter otherwise with a borrower, a variable interest rate applies to loans granted on the basis of an agreement whose terms were rescinded pursuant to the provisions of Paragraph 1, Point 2).

1. 4. As per Paragraph 1, Point 2), and Paragraph 3, the banks can impose a changed interest rate on current loans that are outstanding on the day this Decree takes effect.

Article 2. 1. Of the payments due to the banks under the changed loan interest rate for 1990 as per the provisions of this Decree, 40 percent of the interest is collected by the banks and the remainder is debited to the loan principal.

2. 2. If the borrower so wishes, the bank can charge him a higher interest payment than that specified in Paragraph 1. In that case the proportion of interest payment debited to the loan principal is changed correspondingly.

2. 3. In 1990, in particularly justified cases, for a period of not more than 6 months, if the borrower so wishes, a bank may debit to his loan principal more than 60 percent of the interest payment due due.

Article 3. 1. Borrowers may be granted assistance in that the state budget will pay part of their bank loan or part of the interest rate due on that loan. The extent, directions, and purposes of that assistance are defined in the Budget Decree.

3. 2. The Council of Ministers will define, by means of an ordinance, the:

1) specific scope, principles and procedure for granting assistance in paying the interest rate owed to a bank as referred to in Article 2, Point 1);

2) specific purposes for which, on the basis of agreements concluded with the banks after this Decree takes effect, assistance from state budget funds will be provided to borrowers pursuant to the principles and procedure determined in accordance with Point 1);

3) specific principles for funding the outlays relating to housing construction, farm output, and other social and economic purposes, and for obtaining the funds needed for these purposes.

3. 3. Guiding itself by important social considerations, the Council of Ministers may, during the transition period, but not later than by the end of 1994, restrict, by means of an ordinance, to 40 percent the interest payments due the banks for the kinds of loans specified in Paragraph 2, Point 3). The remaining 60 percent will be subject to debiting to the loan principal.

Article 4. 1. The credit line at the National Bank of Poland to offset the state budget deficit is equal to that budget's indebtedness as of the end of 1989.

4. 2. The indebtedness of the state budget to the National Bank of Poland will be offset by interest-bearing securities issued by the state Treasury which, starting in 1995, will be subject to redemption by the Treasury on the dates specified on these securities.

Article 5. 1. The following amendments are introduced in the Bank Law of 31 January 1989 (DZ.U., No. 4, Item 21; No. 54, Item 320; No. 59, Item 350; and No. 74, Item 439):

1) Paragraph 3 is reworded as follows:

"3. The Council of Ministers will attend to offsetting the differences ensuing from the interest-rate discounts and write-offs of the loans specified in Paragraph 2 and granted until 31 December 1989";

2) Paragraph 4 is deleted.

5. 2. The implementing regulations concerning the interest rates and write-offs respecting the loans referred

to in Article 121, Paragraph 2, of the Bank Law referred to in Paragraph 1 do not apply to newly concluded loan agreements.

Article 6. This Decree takes effect on 1 January 1990.

Tariffs

90EP0410A Warsaw *DZIENNIK USTAW* in Polish
No 75, Item 445, 31 Dec 89 pp 1148-1163

[Law No. 445 governing tariffs, dated 28 December 1989]

Chapter 1. General Provisions

Article 1. 1. This Decree regulates the guidelines for foreign trade, customs duties, customs proceedings, and the organizational structure of customs offices.

1. 2. The proceedings of customs offices are governed by the provisions of the Code of Administrative Proceedings and the provisions governing execution proceedings in administration, unless otherwise specified in this Decree.

Article 2. The terms employed in this Decree are defined as follows:

1) merchandise—goods, wares, and chattels of every description as well as electricity and thermal or other energy that may be the subject of foreign trade;

2) dutiable merchandise—importable or exportable merchandise subject to customs supervision and customs inspection;

3) foreign trade—importation of merchandise from a foreign country and exportation of merchandise into a foreign country as well as transit of merchandise across the Polish customs territory regardless of the manner of its conveyance across the customs frontier;

4) Polish customs territory—the territory of the Polish People's Republic;

5) customs frontier—the state frontier of the Polish People's Republic; a customs frontier is also interpreted as a properly designated line separating a free trade zone or a customs depot from the remainder of the Polish customs territory;

6) entity engaging in foreign trade—a person, a legal entity, or an entity lacking legal entity, that engages in foreign trade on its own account and in its own behalf;

7) traveler—any individual resident in this country or abroad who crosses a customs frontier on the basis of documents defined by separate regulations, with the object of a temporary sojourn abroad or in this country;

8) relocating person—any individual who had lived for at least 6 months in this country or abroad with the object of establishing permanent residence and who,

with the object of establishing permanent residence correspondingly abroad or in this country, crosses a customs frontier on the basis of documents defined by separate regulations; the right to permanent residence in the country of temporary residence is determined pursuant to that country's legislation;

9) customs supervision—examinations and monitoring performed by customs offices with the object of verifying the inviolability and identity of dutiable merchandise and the sites of customs clearance;

10) customs sealing—seals of lead or wax, stamps, or other official markings affixed by customs office or other authorized Polish organizational units, as well as by the customs offices of foreign countries, to dutiable merchandise, premises, customs depots, and means of transportation or their parts;

11) customs inspection—the actions of customs offices to verify that foreign trade is consonant with law and with international agreements;

12) customs clearance—the decision of the customs office to admit a shipment for importation into Polish customs territory or for exportation across the customs frontier and to assess a customs duty;

13) site of customs clearance—properly marked areas, premises, customs depots, warehouses, ramps, and open areas or their specified parts designed for the performance of customs inspection and customs clearance and for the temporary deposition of customs goods, designated by concerned organizational units in cooperation with the district customs director; sites of customs clearance also include railroad means of transportation carrying passengers on international transit routes, during travel, on a correspondingly designated railroad line segment;

14) country of origin of:

a) fruits of the earth—the country in which fruits of the earth were raised, grown, harvested, extracted, or otherwise obtained;

b) resources of the sea and the sea bottom, as well as of those processed at sea—the country whose enterprise gathered the catch or carried out the extraction or processing;

c) finished or semifinished products—the country in which these products were manufactured;

d) treated or processed fruits and products of the earth—the country in which treatment or processing was carried out, if that country's labor and materials account for at least 50 percent of the product's aggregate value;

unless international agreements specify otherwise.

15) customs duties—rates and other assessments specified in this Decree.

Chapter 2. Guidelines for Foreign Trade

Article 3. Everyone has an equal right to engage in foreign trade, on adhering to the terms and restrictions specified in legal provisions and international agreements.

Article 4. 1. The importation of merchandise from a foreign country is subject to customs duties, apart from exceptions specified in legal provisions.

4. 2. The basis for assessing the customs duty is the dutiable value of the shipment, referred to in Article 25, Paragraph 1.

4. 3. The quantity or net bulk weight of the merchandise transported also may serve as a basis for assessing the customs duty.

4. 4. The customs duty is assessed by applying a duty rate as the basis for the assessment.

4. 5. The Council of Ministers determines by means of ordinances:

- 1) customs tariffs;
- 2) it may suspend the collection of customs duties in cases warranted by economic or social needs.

Article 5. 1. Foreign trade is prohibited if international agreements or separate regulations prohibit the possession, dissemination or trade in the merchandise in question.

5. 2. In cases referred to in Paragraph 1 the customs office:

- 1) immediately returns the merchandise abroad or to the Polish customs territory, unless international agreements or separate regulations provide for its forfeiture;
- 2) may declare forfeiture of the merchandise if it is not possible to return it.

3. The expense of returning the merchandise or of its sale or its liquidation in some other way is defrayed by the entity importing or exporting it.

Article 6. 1. If international agreements or separate regulations make the trade in or dissemination of merchandise contingent on the satisfaction of specified requirements, then the importation or exportation of that merchandise may be carried out on condition that these requirements be satisfied.

6. 2. In cases referred to in Paragraph 1 the customs office:

- 1) instructs the trading entity to return the merchandise abroad or to the Polish customs territory, with the proviso of Article 53, Article 1, unless international agreements or separate regulations specify its immediate forfeiture;
- 2) may declare forfeiture of the shipment if its return is not feasible.

The provisions of Article 5, Paragraph 3, apply correspondingly.

6. 3. The provisions of Paragraph 2 do not apply to hazardous, healthwise and environmentally noxious, and perishable freight. In such cases the provisions of Article 5, Paragraphs 2 and 3, apply correspondingly.

Article 7. 1. An import or export license is required if the object of the importation or exportation is:

- 1) merchandise requiring concessions;
- 2) merchandise whose importation or exportation is governed by quantitative or value-based limitations or by temporary restrictions;
- 3) merchandise traded on the basis of international agreements providing for settlements of accounts in the clearing units employed in foreign trade;
- 4) scientific and technical documentation, if it is the object of exports;
- 5) temporarily imported or exported means of production and leased, rented, or released means of transportation for use with the object of engaging in economic activity.

7. 2. The Minister of Foreign Economic Cooperation may, in consultation with the Minister of the Domestic Market, issue executive orders specifying the quantities or value of merchandise imported into Polish customs territory or exported abroad.

7. 3. The Minister of Foreign Economic Cooperation makes public:

- 1) a list of goods whose imports or exports are subject to quantitative or value limitations established in international agreements, or to temporary restrictions;
- 2) a list of countries with which trade is based on the international agreements referred to in Paragraph 1, Point 3).

Article 8. An entity engaging in foreign trade may be granted a license for the importation or exportation of a particular merchandise or a group of merchandise, specifying the country or countries concerned.

Article 9. The Council of Ministers may impose, by means of an executive order, temporary restrictions on the importation or exportation of merchandise if so required by considerations of the country's trade policy or economic interest or national interest.

Article 10. The Minister of Foreign Economic Cooperation may, by issuing an executive order, introduce lump-sum duties on merchandise brought in by travelers or handled by the postal service if the importation of that merchandise is for personal, not business use.

Article 11. The transit of merchandise across Polish customs territory does not require permits and is exempted from quantitative and value restrictions, and is duty-free.

Article 12. 1. The importation and exportation of merchandise is duty-free and does not require a permit if it is destined for the following kinds of use, on the principle of reciprocity:

1) official use by foreign diplomatic missions, consular offices, and special missions in Poland, as well as by international organizations with headquarters or sites in Poland;

2) personal use by the heads of diplomatic missions of foreign countries accredited to Poland, by members of the diplomatic personnel of these missions and of special missions, by members of the personnel of international organizations and other persons eligible for privileges and immunities pursuant to decrees, agreements, or universally recognized international customs, as well as by the resident members of their family households;

3) personal use by the consular officials of foreign countries and resident members of their family households;

4) personal use by persons not eligible for immunities who belong to the foreign personnel of diplomatic missions, consular offices, and special missions in Poland.

12. 2. The exemptions referred to in Paragraph 1 are allowed on condition that, for the first 3 years from the date of its customs clearance, the merchandise be not made available to persons other than those specified in Paragraph 1.

Article 13. The importation and exportation of foreign exchange is duty-free and does not require the licenses referred to in Article 7.

Article 14. 1. The importation of merchandise within the limits of the established norms is duty-free and does not require the license referred to in Article 7 if the object of importation is:

1) personal belongings needed by a traveler while traveling and visiting the country, whether carried aboard or brought along separately in luggage;

2) foodstuffs brought by the traveler for personal consumption during travel to place of destination;

3) liquors, wines, and tobacco products carried by travelers 18 years old and up;

4) articles usually treated as souvenirs whose quantity and nature do not indicate a commercial purpose;

5) ordinary household pets brought by the traveler;

6) articles constituting the property of a traveler who temporarily stays for at least 6 months in this country or abroad for reasons of employment, studies, scientific

research, or medical treatment, when such objects serve for household or professional use;

7) articles constituting the property of a relocating person, serving for that person's personal, household, professional, or business use;

8) articles deriving from the bequest of a person deceased abroad and inherited pursuant to the inheritance law directly by an heir resident in this country;

9) reclaimed property;

10) articles extracted or obtained in exchange for resources of the sea or the sea bottom that have been extracted and delivered by Polish sea-going ships or by foreign ships under Polish charter, as well as their processed forms, when the processing was performed at sea, and the returned equipment, materials, packagings, and spare parts serving to extract and process these resources;

11) merchandise attached abroad to articles shipped from Poland, when repaired under a warranty;

12) articles needed for official use by international enterprises with headquarters or offices in Poland and by foreign institutions, organizations, and enterprises with offices in Poland, with the proviso that they be not made accessible to unauthorized persons within the first 3 years from the date of their customs clearance, and on the principle of reciprocity;

13) articles imported as part of assistance provided by the governments of foreign countries and international intergovernmental organizations;

14) articles constituting humanitarian aid, received by the organizational units established to provide such assistance;

15) articles received by nonprofit foundations;

16) patterns, models, samples, and materials of no commercial value, used in advertising and canvassing, when imported by entities engaging in business activity;

17) the following articles, brought in by organizers of or participants in international exhibitions, fairs, contests, or tournaments, in connection with these events:

a) advertising materials and awards to be distributed;

b) foodstuffs, liquors, wines, and tobacco products intended for receptions and meetings of a representative nature;

c) merchandise intended for the erection, furnishing, and decoration of the participants' booths;

18) goods specified in Point 17), a), when brought along by organizers of international lotteries;

19) articles received by participants in the international events referred to in Points 17) and 18) as awards relating to participation in these events;

20) equipment and stores needed to operate a means of transportation, including propellants in the permanently factory-installed fuel tank of the means of transportation, as well as fuels and lubricants;

21) articles acquired abroad by Polish shippers or forwarders, insofar as they are necessary to continue the operation of the means of transportation abroad;

22) foodstuffs destined for consumption in the means of transportation by attendants and passengers, in international conveyance of freight and passengers;

23) the means of transportation gained as compensation for a similar means of transportation exported with a temporary export permit, that had been destroyed in an accident;

24) coffins and urns with corpses or remains;

25) tombstone tablets and emblems as well as other articles serving for the maintenance or decoration of graves and monuments, if they are not intended for resale;

26) articles received gratis by central-budget units and serving for their operations;

27) pharmaceuticals, sanitary goods, and medical instruments and equipment acquired by social organizations for foreign exchange deriving from public funds, as well as pharmaceuticals and sanitary goods destined for scientific research and registration studies;

28) articles imported in small postal parcels if their customs clearance in the country of consignment took place on the basis of an international agreement; 29) articles consigned to residents of this country if they are duty-exempt in the country of exportation in accordance with international agreements;

30) dutiable merchandise if it is transferred to the State Treasury by the entity engaging in foreign trade and accepted without reimbursement, without any fee other than the customs duties;

31) dutiable merchandise whose consignees cannot be identified or which the consignee does not accept, and whose value is lower than the combined cost of its sale, transportation, storage, and warehousing;

32) dutiable merchandise which has been, owing to a force majeure, destroyed to an extent rendering it useless during its transportation to a customs clearance site or at that site;

33) returned dutiable merchandise constituting the remains after refining, repair, unloading, transloading, disassembling, and other similar activities, with said remains being suitable only as secondary raw materials;

34) catalysts designed for the refining or processing of temporarily imported merchandise;

35) unit packagings serving for advertising and canvassing purposes, labels, templates, cut-outs, trademarks, and servicing instruction utilized in the manufacture of merchandise destined for exportation;

36) research aids and research and mensuration apparatus serving exclusively for instructional or research purposes, imported for schools, institutions, and research centers, as well as for research and development units, with the exception of the aids and apparatus imported for business purposes;

37) merchandise imported with the object of implementing agreements concluded between Polish economic entities and foreign customers for direct cooperation in production, science, and technology, within the scope envisaged in international agreements;

38) dutiable merchandise which has been, prior to its intended sale in Polish customs territory, destroyed or forfeited to the State Treasury.

14. 2. The Minister of Foreign Economic Cooperation issues executive orders for the purpose of:

1) determining the quantitative or value norms for the merchandise referred to in Paragraph 1, Points 2), 3), 4), and 6);

2) possibly determining the quantitative norms for the merchandise referred to in Paragraph 1, Points 1), 7), 17), 18), and 22);

3) possibly precluding or curtailing the privileges referred to in Paragraph 1, Point 4), with respect to travelers with multiple crossings of the customs frontier during a calendar year;

4) determining the duration of the duty-free period for the articles referred to in Paragraph 1, Points 6) and 7).

Article 15. Merchandise admitted for temporary importation is duty-free if its re-exportation is not caused by its destruction or loss through no fault of the entity importing it, or if proof of the reasons for non-exportation of the merchandise is presented.

Article 16. Merchandise imported as part of international agreements on the establishment of joint ventures is exempt from duties and from the import license required pursuant to Article 7, to the extent specified in these agreements.

Article 17. 1. The object of importation into Polish customs territory or of exportation abroad for a specified period of time (temporary importation and temporary exportation) may be:

1) merchandise intended for refining, repair, alteration, or processing;

2) leased, rented, or released means of production and transportation, imported or exported for business purposes;

3) means of transportation other than those specified in Point 2);

4) testing equipment;

5) samples and patterns imported or exported for canvassing purposes;

6) production models and patterns;

7) multiple-reuse packagings;

8) articles intended for auctions, fairs, and exhibitions;

9) articles intended for use in scientific, alpine, and spelunking expeditions as well as in scientific research;

10) articles needed to service congresses, contests, and artistic entertainment as well as for creative filmmaking or television production.

17. 2. The Minister of Foreign Economic Cooperation may, by issuing an executive order, specify other articles subject to temporary importation or exportation.

17. 3. The importation referred to in Paragraph 2 requires the presentation of a collateral in an amount equal to the amount of the duties, except in cases when:

1) the importer is the State Treasury;

2) so envisaged in international agreements;

3) the object of the temporary importation or exportation is the means of transportation and of production referred to in Paragraph 1, Points 2) and 3).

17. 4. Foreign-registered means of transportation referred to in Paragraph 1, Point 3), may be the object of temporary importation if the importation is performed by:

1) entities whose headquarters or residences are sited abroad;

2) travelers on temporary employment-, study-, research-, or medical treatment-related visits abroad, when during that period they make a temporary visit to Poland.

17. 5. Polish-registered means of transportation referred to in Paragraph 1, Point 3), may be the object of temporary exportation if the exportation is performed by:

1) entities with headquarters or residences in Poland;

2) travelers on temporary employment-, study-, research-, or medical treatment-related visits to Poland when during that period they make a temporary visit abroad;

3) persons departing in automobiles rented from an entity sited in Poland, when the entity engages in the automobile-rental business.

Article 18. If the importing or exporting entity does not re-export or re-import the merchandise subject to temporary importation or exportation, or if other requirements specified during customs clearance are violated, the entity is obligated to pay the import duty and a handling surcharge.

Article 19. 1. The time limit for the re-importation or re-exportation is considered as adhered to if within 30 days from the day of its elapse the merchandise is delivered to the customs office and declared for customs clearance of its re-importation or re-exportation. In this event the collateral is refunded.

19. 2. Natural losses or other changes of merchandise warranted by the purpose of the temporary importation or exportation present no barrier to the decision that the obligation of re-importation or re-exportation has been fulfilled.

19. 3. The customs office director may overlook a delay in the re-importation or re-exportation of merchandise if the violation of the re-importation or re-exportation deadline was due to circumstances beyond control or to circumstances deserving consideration. In this event the collateral is refundable and payment of customs duties is not required.

Article 20. 1. The re-exportation of merchandise does not require the license referred to in Article 7, and the re-importation of merchandise does not require a license either and is duty-free, if the identity of the merchandise is proved in an incontestable manner on the basis of the presented documents relating to the original customs clearance.

20. 2. In the cases referred to in Paragraph 1 the entity which had previously imported the merchandise subject to re-exportation is refunded:

1) the collected duty, if the re-exportation takes place within 6 months from the date of the original customs clearance;

2) 50 percent of the collected duty if the re-exportation takes place within 6 to 12 months from the date of the original customs clearance.

No interest is paid on the refunded duties.

Article 21. 1. Exportation and importation of merchandise may take place solely at the border crossings designated for and open to border traffic.

21. 2. Exportation and importation of merchandise via other crossings may take place upon the consent of the customs office director.

Article 22. 1. Exportation and importation of merchandise is subject to customs inspection and customs control.

22. 2. Also subject to customs inspection is merchandise intended for exportation if, on the request of the

exporting entity, the customs inspection is to take place outside the regular customs clearance site.

Article 23. 1. Customs duties are assessed according to the condition of merchandise on the day it is declared for customs clearance, and according to the then mandatory duty rates.

23. 2. In the event that merchandise is not delivered for customs inspection or removed from that inspection, duty is assessed in accordance with the duty rates mandatory on the day on which the merchandise was to be delivered or on the day on which it was removed, or, if it is not possible to determine these days, on the day on which the failure to deliver merchandise or the removal of merchandise was detected.

Article 24. Merchandise may be imported into the Polish customs territory or exported to a foreign country only after its customs clearance.

Chapter 3. Dutiable Value of Merchandise

Article 25. 1. The dutiable value of merchandise is the price paid or supposed to be paid for the merchandise declared for customs clearance (transaction value).

25. 2. Added to the transaction value are the following extraneous actual expenses defrayed by the purchaser:

- 1) commissions paid in connection with sale;
- 2) packaging of merchandise;
- 3) containers, insofar as during the customs proceedings they are considered jointly with the merchandise;
- 4) license fees and charges which the purchaser had to pay as a condition for the sale of the merchandise;
- 5) income or other benefits ensuing from resale, utilization, or other uses of the merchandise directly or indirectly acquired by the seller;
- 6) the expenses associated with the delivery by the purchaser, gratis or at a below-market price, of the articles or services used in connection with the production or sale of the merchandise.

25. 3. The articles or services referred to in Paragraph 2, Point 6), are:

- 1) materials, components, parts, and similar articles constituting component parts or appurtenances of the merchandise;
- 2) tools, castings, dies, and similar articles used in manufacturing the merchandise;
- 3) raw and other materials, dyestuffs, and other articles used in manufacturing the merchandise;
- 4) engineering, research and development, design, and artistic work as well as blueprints and plans needed to manufacture the merchandise.

25. 4. The following deductions from the transaction value apply: the cost of transporting the merchandise, including unloading, harbor fees, and other transportation fees, as well as the cost of insuring the merchandise.

25. 5. In the event that it is not possible to determine the transaction value, the dutiable value of the merchandise is determined by the procedure specified in Articles 27-30.

Article 26. 1. Transaction value cannot be taken as the dutiable value of merchandise in cases in which:

1) the purchaser is subject to restrictions on the disposition or utilization of the merchandise, unless these restrictions are required by law, apply to a particular area on which the merchandise may be resold, or do not cause a marked reduction in the value of the merchandise;

2) the sale or price of the merchandise was made contingent on terms or on the performance of a service whose value cannot be determined;

3) it is not possible to isolate and calculate the income or other benefits referred to in Article 25, Paragraph 2, Point 5);

4) there exists a linkage between the purchaser and seller, unless an investigation of the circumstances of the sale determines that the presence of this linkage has not affected the determination of the price, or unless the transaction value is extremely close to the value determined pursuant to Article 25.

26. 2. Linkage is considered to exist if:

1) the purchaser is a director or member of the governing or supervising board of the seller, or vice versa;

2) the director or member of the purchaser's governing or supervising board is at the same time the director or member of the seller's governing or supervising board, or vice versa;

3) the purchaser and seller are partners;

4) the purchaser is the seller's employer, or vice versa;

5) the purchaser owns or disposes of, directly or indirectly, voting rights or a share in the plant capital, accounting for at least 5 percent of all voting rights or 5 percent of the plant capital, of the seller, or vice versa;

6) the purchaser and seller both are under the direct or indirect control of a third party;

7) the purchaser and seller jointly control, directly or indirectly, a third party;

8) the purchaser and seller are related by ties of blood or marriage up to second cousinship.

Article 27. 1. In the cases referred to in Article 26, Paragraph 1, the dutiable value is taken as the transaction value of an identical merchandise imported into the Polish customs territory and sold at the same or similar period of time as the merchandise in question.

27. 2. Minor differences in external appearance are no obstacle to acknowledging as identical items of merchandise which otherwise are identical in every respect, inclusive of physical features, quality, and general appearance.

27. 3. When determining the transaction value of identical merchandise, allowance should be made for the differences in value ensuing from circumstances of sale, retail or wholesale nature of the sale, and the quantity of the merchandise sold.

27. 4. In the event that more than one transaction value of identical merchandise is determined on the basis of this Article, the dutiable value is taken as the lowest transaction value.

Article 28. 1. If in the cases referred to in Article 26, Paragraph 1, it is not possible to determine the transaction value of identical merchandise, the dutiable value is taken as the transaction value of similar merchandise brought into the Polish customs territory and sold in the same or similar period of time as the merchandise in question.

28. 2. Similar merchandise is, as construed by Paragraph 2, merchandise which, while not similar in every respect, displays similar characteristics and is made of similar materials to the extent that it fulfills the same purposes and can be regarded as commercially interchangeable with the merchandise whose dutiable value is to be determined.

28. 3. The provisions of Article 27, Paragraph 3, apply correspondingly.

Article 29. 1. If in the cases referred to in Article 26, Paragraph 1, it is not possible to determine the transaction value of identical or similar merchandise, the dutiable value is determined by the procedure specified in Paragraphs 2-4 below, and if that too proves impossible, by the procedure specified in Article 30. The importer or exporter has the right to demand that the dutiable value be determined, if that is possible, pursuant to Article 30.

29. 2. In the event that the merchandise whose dutiable value is being determined, or identical or similar merchandise, is subject to sale in Polish customs territory in an unchanged condition, the dutiable value is taken as the price of a sale by a seller to a purchaser between whom there exists no linkage, during the same or similar period, not to exceed 90 days from the date of importation of the merchandise in question; in such cases the following costs are deducted from the dutiable value:

- 1) commissions, profit, and selling expenses by the importer, as specified in the resale price;
- 2) cost of transportation and insurance associated with the delivery of the merchandise;
- 3) duty, taxes, and other public imposts associated with the importation or sale of the merchandise.

29. 3. If the merchandise referred to in Paragraph 2 is not subject to sale in unaltered condition within Polish

customs territory, the importer may request that the sales price referred to in Paragraph 2 be the sales price of the altered merchandise minus the cost of alteration.

29. 4. The provisions of Article 27, Paragraph 3, apply correspondingly.

Article 30. 1. If in the cases referred to in Article 26, Paragraph 1, it is not possible to determine the dutiable value by the procedure specified in Articles 27-29, that value is taken to be the sum of:

- 1) production cost;
- 2) profit and overhead in the amount customarily charged to the sales price of merchandise of the same nature or kind by producers in the country from which the merchandise is imported;
- 3) the advantages associated with the delivery of articles or services referred to in Article 25, Paragraph 2, Point 6);
- 4) the cost of packaging the merchandise.

30. 2. In the event that it is not possible to calculate the dutiable value of merchandise by the procedure defined in Paragraph 1, that value may be determined with the aid of the results obtained when applying Articles 27-30.

Chapter 4. Free Trade Zones and Customs Depots

Article 31. 1. Free trade zones and customs depots may be established on Polish customs territory.

31. 2. A free trade zone is an isolated part of Polish customs territory, treated as a foreign zone, on whose area Polish, foreign, and international economic entities may engage in economic activities.

31. 3. A customs depot is an isolated part of Polish customs territory, treated as a foreign zone, on whose area economic entities sited on Polish territory may warehouse and store merchandise and perform its consignment, assembling, refining, alteration, processing, or repair.

Article 32. 1. Free trade zones are established by executive orders of the Council of Ministers.

32. 2. In establishing a free trade zone the Council of Ministers defines its boundaries, the procedure for separating the free trade zone from the remaining Polish customs territory and the entities obligated to perform the separation.

Article 33. 1. Trade between the free trade zone and the remaining Polish customs territory takes place pursuant to the provisions of this Decree.

33. 2. The Council of Ministers may issue an executive order introducing additional duty exemptions and other customs relief for the trade referred to in Paragraph 1.

Article 34. 1. The provisions of Articles 5 and 6 apply correspondingly to trade between a free trade zone and foreign countries.

34. 2. Trade between a free trade zone and foreign countries is exempt from quota and value restrictions and customs duties and does not require export or import licenses.

34. 3. Trade between a free trade zone and foreign countries is subject to customs supervision and customs inspection.

34. 4. The merchandise brought into a free trade zone is subject to inclusion in State statistics.

Article 35. The establishment and conduct of customs depots requires a permit from the Chairman of the Main Customs Office. The permit is governed correspondingly by the provisions of Chapter 3 of the Decree of 23 December 1988 on Economic Activity (DZ.U., No. 41, Item 324), with the proviso that refusal to issue the permit, withdrawal of the permit, or curtailment of the scope of activity specified in the permit application may also take place in cases in which the siting of the depot and the condition of the premises in which the depot is maintained or will be maintained, as well as the condition of the depot's facilities, are such as to prevent or markedly impede the Customs Service from performing customs supervision or customs inspection.

Article 36. The provisions of Articles 5 and 6 apply correspondingly to trade between a free trade zone and the remaining Polish customs territory as well as foreign countries.

Article 37. The deposition of merchandise in a customs depot requires a permit from the district customs director.

Article 38. 1. Merchandise deposited in a customs depot may be stored or warehoused there for a period of 3 years.

38. 2. The local customs district director may prolong the period referred to in Paragraph 1, but by not more than 12 months.

38. 3. Unclaimed merchandise or merchandise not removed across the customs frontier within the established period of storage or warehousing is subject to sale with the object of defraying the assessed fees.

Article 39. 1. Economic activity conducted in a customs depot is subject to customs supervision and inspection.

39. 2. The depot's registries, account books, and other documents are subject to examination by customs agents.

39. 3. For purposes of inspection, customs agents may, in particular:

- 1) obligate the customs depot manager to assure double sealing (sealing by the depot manager and customs sealing) and to keep a registry of the deposited merchandise;
- 2) institute regular or periodic customs supervision;

3) perform periodic inventories of the deposited merchandise.

Chapter 5. Customs Obligations

Article 40. 1. The importing or exporting entity is obligated to deliver to the frontier customs clearance post and present for customs clearance the merchandise being imported or exported.

40. 2. The shipper or forwarding agent conveying merchandise across the State frontier is obligated to deliver it to the frontier customs clearance post and present to the customs inspector the documentation concerning that merchandise.

40. 3. The entity importing merchandise into the Polish customs territory in cases other than those specified in Paragraphs 1 and 2 is obligated to notify the nearest customs office.

Article 41. 1. The entity declaring merchandise for customs clearance is obligated to prepare the merchandise customs examination and in particular to unpack and display the merchandise and, following its inspection, to repackage it for further transportation.

41. 2. An entity other than that referred to in Paragraph 1 which owns dutiable merchandise subject to customs inspection is obligated to perform the preliminary customs formalities and in particular to open the shipment, unpack and display the merchandise and, following its customs inspection, repackage it.

Article 42. The shipper of dutiable merchandise that was transferred for further consideration to another customs office, as referred to in Article 45, Paragraph 5, is obligated to deliver it to that customs office as specified in the transfer document.

Article 43. Shippers and forwarders are obligated to notify the frontier customs post about any unloading of merchandise between the State frontier and the frontier customs clearance site in the event that such unloading was performed in the absence of a customs agent. The notification should be presented along with the presentation of the merchandise being imported from a foreign country or exported from Poland.

Article 44. The manager of the customs warehouse or customs depot is obligated to keep a record of the deposited merchandise by means of a procedure agreed upon with the customs office.

Chapter 6. Customs Proceedings

Article 45. 1. Proceedings on matters relating to merchandise export and import licenses are handled by the Minister of Foreign Economic Cooperation.

45. 2. The Minister of Foreign Economic Cooperation may issue executive orders specifying cases in which the export and import licenses can be issued by customs offices.

45. 3. Proceedings in cases relating to antidumping duties and permits for the establishment and conduct of customs depots are handled by the Chairman of the Main Customs Office.

45. 4. Proceedings in cases other than those defined in Paragraphs 1 and 3 are handled by the director of the district customs office to which the merchandise was delivered or is to be delivered.

45. 5. The district customs director may, upon the request of the concerned party or ex officio, transfer the case for consideration to another district customs director if so required in the interest of the concerned party or by important official considerations; the transfer is binding.

Article 46. 1. Customs supervision and inspection are handled by customs officials.

46. 2. Customs officials may, in order to perform customs supervision and inspection;

1) verify the identity of the persons crossing the customs frontier;

2) enter, upon showing their I.D. cards, areas and premises.

Article 47. A customs office institutes proceedings ex officio if:

1) the importing or exporting entity cannot be identified;

2) the importing or exporting entity does not fulfill the obligations specified in this Decree;

3) there exists a justified suspicion of violation of the proviso for the duty-free exemptions referred to in Article 12, Paragraph 2, Article 14, Point 12), and Article 122, Paragraph 1;

4) the dutiable merchandise is imported or exported by mail, or if it is a transit-mail shipment..

Article 48. The entity importing or exporting the merchandise in its direct possession during the customs inspection is considered to be an individual unless it proves by means of appropriate documentation that the importation or exportation of that merchandise is performed by a collective entity.

Article 49. The customs office handling the customs proceedings may:

1) demand a certified Polish-language translation of a document prepared in a foreign language;

2) refuse to accept a foreign document that was not legalized by the appropriate Polish diplomatic mission or Polish consular office, if the credibility of the document is dubious or if the legalization requirement ensues from other provisions of law or from an agreement.

Article 50. 1. The entity importing or exporting merchandise whose kind and quantity indicate that it will be used in economic activity submits a written application for initiating customs formalities.

50. 2. The application referred to in Paragraph 1, when submitted by an entity resident or sited in the territory of the Polish People's Republic, should specify:

1) the number of the account maintained in a foreign-exchange bank by the importing or exporting entity;

2) the number of the statistical identifier of the importing or exporting entity, as envisaged by separate regulations.

A copy of the invoice should be appended to the application.

50. 3. In cases other than those referred to in Paragraph 1 the applications for instituting customs proceedings may be made verbally.

50. 4. The Chairman of the Main Customs Office shall issue an executive order defining the requirements additional to those specified in Paragraph 2 that must be met by the applications for instituting customs proceedings, the procedure for filling out the applications, and the documents that must be appended thereto.

Article 51. The application for an import or export license should be submitted not later than 30 days prior to the anticipated delivery of merchandise to the customs clearance site. This period may be shortened.

Article 52. 1. The customs declaration concerning merchandise not intended for business purposes, transported by travelers and relocating persons, should be presented when the customs official commences inspection.

52. 2. In cases other than those defined in Paragraph 1:

1) the import entry declaration should be presented within 14 days from the day of the delivery of merchandise to the customs clearance post;

2) the export declaration should be presented on the day of delivery of merchandise to the customs clearance post or when the customs official commences inspection.

52. 3. Export or import declarations concerning live animals, fruits, and fresh plants as well as hazardous materials should be presented on the day of their delivery to the customs clearance post, regardless of the circumstances.

Article 53. 1. A customs office may decide to disregard an application for instituting customs proceedings if said application is not accompanied by the required attachments, or if it does not meet the requirements defined in the provisions of this Decree, or if it was submitted by an unauthorized persons, if these deficiencies are remedied within 7 days from the day a corresponding notice is issued.

53. 2. In the cases referred to in Paragraph 1 the application is returned to the person who had submitted it.

53. 3. Disregard of an application does not affect the time limit for its submission as specified in the provisions of this Decree.

Article 54. 1. Import and export licenses for a particular merchandise or for groups of merchandise are granted for a designated period of time, upon indicating the countries or group of countries involved. The license may specify particular conditions to be met.

54. 2. The Minister of Foreign Economic Cooperation grants, refuses to grant, or alters the terms of import and export licenses; this provision applies correspondingly to the offices referred to in Article 45, Paragraph 2.

Article 55. The Minister of Foreign Economic Cooperation or the offices referred to in Article 45, Paragraph 2, may refuse to grant an import or export license if so required by considerations of trade policy or important economic or national interests of the country, or in the event of an early disposition of established quotas.

Article 56. An import or export license may be revoked by the office which issued it, or by a higher-level office, if the importing or exporting entity has not fulfilled the conditions it specifies.

Article 57. An import or export license may be altered by the office which issued it, or by a higher-level office, if so required by considerations of trade policy or important economic or national interests of the country.

Article 58. The Minister of Foreign Economic Cooperation shall issue executive orders defining the:

- 1) disposition of the quotas referred to in Article 7, Paragraph 2, or established pursuant to Article 9;
- 2) procedures for keeping a record of the licenses granted;
- 3) requirements that should be met by applications for an import or export license and sample forms used in the processing of these applications.

Article 59. 1. When a traveler crosses the State frontier at a crossing marked as open to persons possessing only the merchandise whose importation or exportation is exempt from customs duties and other restrictions ensuing from this Decree, this is considered as the declaration of that merchandise for customs clearance.

59. 2. In cases in which a traveler crosses the state frontier at a crossing referred to in Paragraph 1, but the merchandise in his possession is not subjected to customs inspection, such merchandise is considered as admitted for entry into the Polish customs territory or for exportation to a foreign country.

Article 60. 1. A district customs director may, to assure the proper declaration of merchandise, upon the request

of the importing or exporting entity, permit the examination of the merchandise and the collection of samples prior to its delivery for customs clearance; such activities may take place only in the presence of a customs official and a representative of the shipper or of the management of the warehouse or customs depot in which the merchandise is deposited.

60. 2. Until the customs official commences an external inspection of the commodity, the shipper has the time to revise the customs declaration.

Article 61. 1. The customs clearance sites and the dutiable merchandise present there are subject to customs supervision.

61. 2. A customs office may, upon the request of the concerned party or ex officio, institute customs supervision of dutiable merchandise located outside the customs clearance sites, as well as of the premises, areas, and means of transportation that are not such sites.

Article 62. Customs supervision is performed by means of:

- 1) examination of the sites of the customs clearance of dutiable merchandise, as well as examination of packagings, customs seals, and documentation;
- 2) inspection of dutiable merchandise and means of transportation;
- 3) guarding of dutiable merchandise or of sites of customs clearance, or of premises, areas, and means of transportation that are not sites of customs clearance;
- 4) escorting dutiable merchandise or means of transportation;
- 5) placement of seals on dutiable merchandise, premises, or means of transportation.

Article 63. Customs inspection is performed by means of, in particular:

- 1) inspection of merchandise and means of transportation as well as search of the areas and premises serving to store the merchandise;
- 2) personal search of persons crossing the State frontier and escorting such persons to the customs office for the duration needed to perform the inspection;
- 3) applying the measures defined in Points 1) and 2) to persons present at a customs clearance site;
- 4) inspection, with the participation of postal officials, of mail shipments solely with the object of verifying whether they contain merchandise whose importation or exportation is dutiable or subject to other restrictions defined in this Decree;

5) examination of documents relating to the importation or exportation of merchandise;

6) verification of the proper implementation of the provisos for duty-free exemptions.

Article 64. 1. Upon receiving a customs declaration the customs office performs the external examination and search of the merchandise.

64. 2. In the event of justified suspicion that a person crossing a customs boundary hides on his or her body dutiable merchandise with the object of avoiding the duty of declaring it for customs clearance, the customs office may conduct a personal search of the suspected person. Personal search may be performed only by a person of the same sex, in suitable premises and in a manner not violating the personal dignity of the suspect.

64. 3. External examination consists in noting the condition of customs seals, the quantity of units, the markings, the numbering and condition of the packaging, and verifying, as needed, the gross weight of bulk merchandise.

64. 4. Customs search consists in:

1) determining the kind, quantity, and, as the need arises, dutiable value of the merchandise;

2) inspection and verification whether the merchandise being imported or exported is undeclared merchandise.

64. 5. The importing or exporting entity has the right to be present during the customs search.

Article 65. The customs office may, in order to determine the kind of merchandise, collect its samples and demand of the shipper the provision of descriptions, drawings, photographs, or other needed services.

Article 66. The following are exempt from customs search:

1) on the principle of reciprocity:

a) articles specified in Article 12, Paragraph 1, Points 1)-3);

b) sealed official shipments transported to and from foreign missions, consular offices, and special missions in Poland;

2) sealed official shipments transported between the Ministry of Foreign Affairs of the Polish People's Republic and Polish diplomatic and special missions and consular offices abroad.

Article 67. 1. Following the inspection the customs office rules on the admission of the declared merchandise for entry into Polish customs territory or for exportation to a foreign country, as well as on the duty to be assessed.

67. 2. The ruling referred to in Paragraph 1 must be handed without delay to the concerned party.

67. 3. In the event of the importation or exportation of merchandise by travelers, the ruling on the admission of

merchandise into Polish customs territory or its exportation abroad may be issued verbally.

67. 4. The ruling referred to in Paragraph 3 must be immediately communicated to the concerned party.

Article 68. 1. In the event of temporary importation or exportation, the customs office specifies in its ruling the period of time for which the merchandise is admitted to the Polish customs territory or can be taken abroad. The ruling may stipulate certain terms that must be met. The provisions of Article 67 apply correspondingly.

68. 2. The customs office considers a temporary customs clearance to be a final customs clearance if the concerned party has met the clearance requirements.

68. 3. The customs office may apply the provisions of Paragraph 2 upon a request by the concerned party submitted after the elapse of the deadline for re-importation or re-exportation, upon assessing a handling surcharge.

Article 69. 1. In cases in which the re-exportation or re-importation of merchandise on other than temporary basis is permitted, the original ruling is waived only in its part concerning the:

1) admission of merchandise into Polish customs territory, or admission of its exportation into a foreign country;

2) duty drawback subject to refunding.

69. 2. Duty drawback is granted upon a written application by the entity which had previously imported or exported the merchandise subject to re-exportation or re-importation, if not more than 12 months elapse since the date of the original customs clearance.

Article 70. 1. An export or import license is granted in return for a fee, with the exception of cases defined in this Decree.

70. 2. Customs offices collect the following fees:

1) bond fee—for storage of merchandise under bond by the customs office;

2) handling fee (duty rate)—for the performance of customs inspection activities within the scope defined by the Minister of Foreign Economic Cooperation;

3) handling surcharge—for failure to implement on schedule the customs obligations referred to in Article 42 and Article 52, Paragraphs 2 and 3;

4) fee for exercising customs supervision upon the request of the concerned party.

70. 3. In the event a customs examination of means of transportation detects the presence of undeclared merchandise, a handling surcharge in an amount equal to the dutiable value of the merchandise is collected from the shipper or forwarding agent.

70. 4. The funds derived from the fees referred to in Paragraphs 1-3 are earmarked for streamlining the operations of customs offices.

70. 5. The Minister of Foreign Economic Cooperation shall issue executive orders defining:

1) fee rates for granting import and export licenses and cases of exemptions from these fees;

2) bond surety rates, handling surcharge rates, and fee rates for exercising customs supervision;

3) the activities involved in customs inspection for which duties are collected, and the related duty rates;

4) guidelines for the disposition of the funds referred to in Paragraph 4.

Article 71. 1. The transit of merchandise across Polish customs territory is exempt from the fees referred to in Article 70, Paragraphs 1-3, with the exception of fees for the performance of customs supervision and handling fees and handling surcharges if these apply to said transit.

71. 2. The importation of the merchandise referred to in Article 12 is exempt from the fees referred to in Article 70, with the exception of bond sureties.

71. 3. The importation and exportation of foreign exchange is exempt from the fees referred to in Article 70, with the exception of bond sureties.

71. 4. In the event of violation of the proviso referred to in Article 12, Paragraph 2, Article 14, Point 12), and Article 122, Paragraph 1, a handling surcharge is collected along with interest on that surcharge and on the customs duty, reckoning from the day of violation of the proviso.

Article 72. Shippers or forwarding agents are obligated, irrespective of their agreements with other agencies, to coordinate with the proper local customs district directors the trip schedules of means of transportation, and particularly the time and site of the crossing of the state frontier and the duration of the stop-over at frontier crossing points.

Article 73. Shippers, forwarding agents, boards of seaports, river ports, and airports, and port authorities which manage customs warehouses and depots are obligated to notify frontier customs posts about events associated with the movement of means of transportation across the State frontier, within the scope and time limits and by the procedure agreed upon with the directors of these posts.

Article 74. 1. Shippers or forwarding agents that transport dutiable merchandise are obligated, on demand by customs offices, to establish and maintain under particular customs offices:

1) customs warehouses for the deposition of merchandise during the time needed to perform customs inspection;

2) customs agencies established to attend to customs formalities upon request by the entities engaging in importation and exportation of merchandise.

74. 2. Customs agencies charged with performing activities relating to customs supervision and customs inspection may establish and maintain customs warehouses.

74. 3. The manager of a customs warehouse is obligated to accept for warehousing the merchandise subject to customs inspection for the duration of the period needed for that inspection.

Article 75. The manager of the customs warehouse or customs depot is obligated to coordinate with the appropriate customs office the procedures for operating the warehouse or depot and to assure the performance of work relating to the activities involved in customs inspection.

Article 76. 1. Customs duties and fees may be assured by placing a lien on the property of the importer or exporter of merchandise prior to the due date of payment of these fees if there exists justified apprehension that these fees shall not be paid.

76. 2. Dutiable merchandise may be detained or seized by customs offices with the object of assuring that duties be paid on the date due. The detention or seizure of dutiable merchandise may be performed without regard to the rights of third parties and has priority over any other charges or privileges.

Article 77. 1. The entity importing or exporting merchandise is obligated to implement the ruling on:

1) the assessed duties and fees by paying them within 14 days from the day on which the ruling becomes final;

2) admission of merchandise for circulation in Polish customs territory or its exportation to a foreign country, by collecting the merchandise from the site of its customs clearance within 30 days from the day on which the ruling became final; in justified cases, upon a request by the concerned party, this period may be prolonged to not more than 6 months.

77. 2. The district customs director may consent to the collection of merchandise by the entity importing or exporting it even before the assessed duties and fees are paid, on condition that a surety is presented.

Article 78. 1. In the event that merchandise is declared for customs clearance by an entity lacking the required import license, export license, or transit permit, or if that entity fails to pay the assessed duties and fees, the merchandise is subject to immediate return to the foreign country of its origin, or to Polish customs territory, or to deposition in a customs warehouse at the expense of the entity to which it belongs.

78. 2. If the immediate return of merchandise or its deposition in a customs warehouse is difficult or impossible, the merchandise is subject to storage under bond by the customs office.

Article 79. 1. The collected duties and fees are refunded to the payer if it is found that they were not due.

79. 2. The duties and fees referred to in Paragraph 1 are refunded ex officio within 14 days from the day on which the circumstances referred to in Paragraph 1 are established.

Article 80. 1. Duties and fees collected for the merchandise imported from foreign countries in the form of raw and other materials, semifinished products, or coproduction components used in the manufacture of exportable merchandise are refunded to the producer of that merchandise within 30 days from the day of exportation.

80. 2. The Minister of Foreign Economic Cooperation shall issue an executive order defining the procedure for the drawback of duties and fees on the merchandise referred to in Paragraph 1.

80. 3. No interest is paid on the refunded duties and fees.

Article 81. 1. Interest is charged on duties and fees that are not paid on the dates due.

81. 2. Interest is paid on the refunded duties and fees referred to in Article 79, Paragraph 1.

Article 82. 1. The transfer referred to in Article 45, Paragraph 5, takes place by way of a ruling which specifies the time limit for the delivery of merchandise, the kind and quantity of the merchandise, and the customs office to which the merchandise should be delivered as well as the person obligated to deliver it.

82. 2. Before issuing the ruling the customs office may perform the external examination and customs inspection of the merchandise to be transferred.

82. 3. The customs office may make the transfer contingent on the provision of surety for the duties and fees owed.

82. 4. The time limit referred to in Paragraph 1 may be not longer than 14 days.

Article 83. 1. Rulings on duty assessments may be not issued after the elapse of 2 years from the day on which the obligation of paying them arose.

83. 2. Overcharging ensuing as a result of the waiver or change of a duty assessment ruling as well as overpayments and independently paid duties are ex officio subject to crediting to the arrears in payment of duties or to current duty payment obligations, and in the event of absence of such arrears or obligations they are ex officio refundable within a year from the day on which the ruling became final or the improperly assessed was paid.

83. 3. Duty assessments may be appealed within 3 years from the day on which they were reckoned.

83. 4. The elapse of time limit referred to in Paragraph 3 may be suspended by:

- 1) instituting the execution of a judgment
- 2) instituting prosecution for an offense or instituting legal proceedings before an administrative court.

83. 5. Each time the elapse of the time limit is suspended, it starts anew beginning with the date of:

- 1) presentation of payment;
- 2) exaction of last payment as part of the execution of an administrative decision or the finding by the executing officer that the execution was ineffective;

- 3) the validation of a judicial ruling or other decision issued concerning a criminal Treasury case, or a verdict, or a ruling by an administrative court.

83. 6. The elapse of the time limit is taken into consideration ex officio.

Article 84. 1. Merchandise that remains unclaimed within the established time limit is subject to sale on the principles and by the procedure envisaged in the regulations governing executive proceedings in administration, without any additional notice.

84. 2. The funds derived from the sale are used to offset, in this order:

- 1) selling expenses;
- 2) cost of transportation, transloading, and warehousing, borne by the State Treasury;
- 3) customs duties;
- 4) merchandise surcharges stemming from other regulations.

84. 3. The surplus funds remaining after the expenses and arrears referred to in Paragraph 2 are returned to the concerned party upon adhering to foreign-exchange regulations. These surplus funds are credited to the State Treasury if the concerned party does not apply for their refund within 12 months from the day of notification or from the day when the impossibility of delivering the notification is established.

Article 85. Persons sojourning abroad should specify their mailing address in this country; in the event that this is not done despite instructions by the customs office, a letter mailed to the last known domestic address or, if that address is unavailable, made public by affixing it to a bulletin board in a Customs Service building for 14 days, is considered as having been delivered.

Article 86. 1. Customs offices operate bonded warehouses.

86. 2. The following types of merchandise are temporarily warehoused under bond by customs offices:

- 1) dutiable merchandise not admitted for free or temporary circulation in Polish customs territory or for exportation to a foreign country, if the return of that merchandise to the foreign country or to Polish customs

territory or its deposition in a [non-bonded] customs warehouse is unfeasible or difficult;

2) merchandise admitted for free circulation in Polish customs territory or for exportation to a foreign country if the concerned party, on paying the customs duties, declares that it will appeal their assessment and consequently does not claim the merchandise;

3) merchandise seized as surety for customs duties;

4) other merchandise insofar as envisaged by separate regulations.

86. 2. [as published] The time limit for bonded warehousing of the merchandise is 2 months. This time limit may be prolonged to not more than 4 months.

86. 3. Merchandise accepted for temporary warehousing under bond by a customs office may be transferred by the district customs director to another person for warehousing under customs supervision.

86. 4. Hazardous freight as well as merchandise that is noxious to health or to natural environment, and also perishable merchandise, are not subject to warehousing under bond.

Article 87. 1. Duty assessments may be entirely or partially canceled if:

1) as a result of execution proceedings or owing to other circumstances or documents it is found that the debtor has no assets from which the duty assessments could be claimed;

2) as a result of execution concerning the debtor's assets or emoluments or other income the debtor or his dependents would be deprived of indispensable means of subsistence;

3) it is obvious that execution proceedings concerning these duty assessments would not result in obtaining sufficient funds to cover the cost of execution;

4) the debtor dies and leaves no assets or leaves movable property not subject to execution pursuant to separate regulations.

87. 2. The write-off of duty assessments also entails the write-off of the interest charged on late payments. If the write-off concerns only a part of duty assessments, then the interest due on that part also is subject to a write-off.

87. 3. If the ruling in favor of a write-off concerns only part of the duty assessments, the ruling should specify the time limit for the payment of the balance. If the debtor does not adhere to the deadline for the payment, the write-off ruling may be entirely rescinded.

87. 4. The provisions of Paragraphs 1-3 do not apply to the duty assessments which the State Treasury is obligated to pay.

Article 88. The Minister of Foreign Economic Cooperation shall issue an executive order defining the:

1) specific procedures for the performance of customs supervision and customs inspection;

2) specific procedures for and time limits of the temporary warehousing of merchandise under bond by customs offices.

Article 89. The ministers of Foreign Economic Cooperation and National Defense shall specify the procedure for the customs clearance of naval vessels and military aircraft and their crews.

Article 90. The Chairman of the Main Customs Office shall issue an executive order defining:

1) instances and procedures for the keeping of records on imported and exported merchandise by customs offices;

2) sample registries, account books, and other recording forms as well as sample forms used in customs supervision, customs inspections, or customs proceedings;

3) procedures and time limits for the storage of customs documents;

4) sealings of public transportation enterprises considered as customs sealings, and the requisite sample forms.

Chapter 7. Antidumping Duties

Article 91. 1. Anti-dumping duties may be additionally levied on merchandise imported into Polish customs territory at dumping prices, with such duties not to exceed the difference between the fair value and the export price of the merchandise (the dumping margin), if importation at dumping prices results in substantive injury or threatened injury to a domestic industry, or in a substantial delay of the rise of a corresponding domestic industry.

91. 2. Merchandise is considered as imported at a dumping price if its price within Polish customs territory is lower than the fair value of similar merchandise.

Article 92. The term "similar merchandise" denotes merchandise that is identical in every respect with the merchandise subject to antidumping proceedings, or, in the event of absence of such similar merchandise, merchandise whose characteristics closely correspond to the characteristics of the merchandise subject to antidumping proceedings.

Article 93. 1. The fair value of similar merchandise is the comparable price paid in normal trade for similar merchandise intended for consumption in the exporting country or in the country of origin.

93. 2. If similar merchandise is not offered in normal trade on the internal markets of the exporting country or the country of origin, or if owing to a particular market situation the sales of that merchandise do not warrant an appropriate comparison, the fair value of similar merchandise is considered to be:

1) the comparable price of similar merchandise in exports to any third country, which may be the highest export price but should be a representative price, or

2) the deductive value, determined by adding to the production cost in the country of origin—with allowance for the cost of materials, manufacturing, marketing, and overhead—a reasonable profit margin which should not exceed the normally derived profit margin on sales of merchandise of the same kind on the internal market of the country of origin.

93. 3. In the event that there exists justified reason to believe that the price at which the merchandise is offered for sale in its country of origin is lower than its production cost, such sale may be considered as inadmissible in normal trade.

Article 94. 1. The export price is the price paid for the merchandise sold with the object of exporting it to Poland.

94. 2. In the event that the export price is not determined or when the circumstances accompanying the transaction indicate that linkages or compensation agreements exist between the exporter and the importer or a third party, or when for various reasons the actually paid price cannot be viewed as credible, the export price may be calculated on the basis of the price at which the imported merchandise is for the first time resold to an independent purchaser.

94. 3. If the merchandise is not resold to an independent purchaser, or if it is not resold in the same condition in which it had been imported, the export price may be calculated on some other justified basis. In such cases allowance should be made for the expenses involved in importation and resale, inclusive of customs duties and taxes, as well as for a reasonable profit margin.

Article 95. 1. To determine the dumping margin, the fair value of merchandise is compared with its export price at the same level of trade, usually meaning the producer's price in relation to sales within, if possible, the same period of time. In every individual case allowance is made for the physical properties of the merchandise and the differences in the circumstances and terms of sale, inclusive of differences in taxation and other public imposts which affect the market value of the merchandise.

95. 2. In the event of variable prices the dumping margin may be determined separately for every individual transaction or on the basis of the most frequent representative price or in relation to the mean weighted price.

95. 3. In the event the dumping margin is variable, it can be determined in the form of its weighted mean.

Article 96. 1. With the object of assessing the injury referred to in Article 91, Paragraph 1, the term "domestic industry" denotes all the domestic producers manufacturing similar merchandise or only those producers whose combined output accounts for at least one-half of the overall domestic output of similar merchandise, with the exception of cases in which:

1) the producers are linked to exporters or importers, or are themselves importers of the merchandise which is assumed to be sold at a dumping price; in this case the term "domestic industry" may be interpreted as referring to the other producers;

2) with respect to a particular kind of production there may exist two or more competing markets on which producers sell entirely or almost entirely their output of a given merchandise and the demand is not substantively met by the producers located outside one of the markets; in this event the producers supplying these markets may be considered as two separate domestic industries.

96. 2. If producers in a particular area of the country are considered to be a domestic industry, then, pursuant to the provisions of Paragraph 1, Point 2), antidumping duties may be levied only on the merchandise intended for final consumption on that market (in that area).

Article 97. 1. The finding that a domestic industry is exposed to substantial injury, threatened injury, or a substantial delay in the formation of that industry, may be based solely on an analysis of the effect of importation at antidumping price on domestic producers. The investigation of that effect comprises the assessment of all major factors and economic indicators affecting the condition of the domestic industry, and in particular:

1) volume of imports at dumping prices, and especially the assessment as to whether it has markedly increased in absolute figures or in relation to domestic production or consumption;

2) actual or potential decline in output or sales of domestic industry;

3) size of employment in domestic industry;

4) capacity utilization of domestic industry;

5) evolution of the level of domestic prices;

6) status of inventories;

7) profit margins and profitability of domestic producers.

97. 2. A finding of threatened injury may be made only after the facts gathered point to the existence of a considerable likelihood that genuine injury may be done to domestic industry.

97. 3. The consequences of the importation of merchandise at dumping prices are assessed by comparing it with the domestic output of similar merchandise, if the available data warrant identifying it in such categories as: production process, sales by producers, and profits. If

the domestic output of similar merchandise cannot be thus identified, the consequences of the importation of merchandise are determined by comparing it with the groups of merchandise most similar to it for which data are available.

Article 98. 1. The institution of antidumping proceedings takes place upon the written request of an individual, a legal entity, or an organizational unit lacking legal entity, acting on behalf of the affected domestic industry, with the request to be submitted to the Chairman of the Main Customs Office.

98. 2. The request referred to in Paragraph 1 should present sufficient evidence of the existence of importation at a dumping price, the injury to domestic industry, and the causal relationship between the importation at a dumping price and the presumed injury.

98. 3. The party making the request may withdraw it at any stage of the proceedings. In this event the Chairman of the Main Customs Office shall quash the proceedings, unless that would violate the interests of the national economy.

98. 4. If the request does not offer the evidence referred to in Paragraph 2, the Chairman of the Main Customs Office rules against instituting the proceedings.

98. 5. In the event that sufficient material evidence is presented, the Chairman of the Main Customs Office may institute proceedings ex officio.

Article 99. 1. On finding that the evidence contained in the request warrants instituting proceedings, the Chairman of the Main Customs Office publishes in Official Gazette of the Polish Republic MONITOR POLSKI his decision to institute the proceedings. The decision should specify the merchandise and the countries which the proceedings concern, as well as present in abridged form the data contained in the request, along with the information that all concerned parties may send comments in writings and and make verbal requests for presentation of the documentary evidence.

99. 2. The Chairman of the Main Customs Office also sends a written notice about instituting the proceedings to all exporters and importers who are known to be directly concerned in the proceedings, as well as to the governments of the exporting countries.

99. 3. Immediately after the proceedings are instituted the Chairman of the Main Customs Office transmits the evidence referred to in Article 98, Paragraph 2, to the Anti-Monopoly Office so that the latter may take within 80 days a preliminary position on whether that evidence indicates that the imports to which the proceedings refer are causing actual or threatened substantial injury to a domestic industry or seriously delaying the rise of the corresponding domestic industry.

Article 100. 1. The Chairman of the Main Customs Office shall decide to quash the proceedings in the event that:

1) he finds that there is no sale at an antidumping price or that the dumping margin is insignificant;

2) the preliminary position taken by the Anti-Monopoly Office is that the imports to which the proceedings refer are not causing actual or threatened substantial injury to a domestic industry and are not delaying the rise of the corresponding domestic industry.

100. 2. In the event that the decision referred to in Paragraph 1 is not taken, the Chairman of the Main Customs Office shall issue, not later than within 90 days from the date the request for instituting the proceedings was submitted, a preliminary ruling specifying the merchandise which he found to be sold at a dumping price as well as specifying the estimated dumping margin.

100. 3. In particularly complex cases, especially when there exist difficulties with the proper gathering and assessment of material evidence, the Chairman of the Main Customs Office may, upon request or ex officio, prolong to 150 days from the date of submission of the request the time limit for issuing the ruling referred to in Paragraph 2.

100. 4. If the findings of the proceedings point to a need to protect domestic industry against injury for the duration of the proceedings, owing to the sale of merchandise at a dumping price, the Chairman of the Main Customs Office may, by issuing the ruling referred to in Paragraph 2, prescribe a temporary antidumping duty in an amount not exceeding the estimated dumping margin, for a period not exceeding 4 months.

100. 5. In the case referred to in Paragraph 4 the import entry of the merchandise under proceedings into Polish customs territory is contingent on the submission of an adequate surety amounting to the temporary antidumping duty.

100. 6. The rulings of the Chairman of the Main Customs Office referred to in Paragraphs 1-3 are subject to publication in Official Gazette of the Polish Republic MONITOR POLSKI, as well as to delivery to the parties and entities referred to in Article 99, Paragraph 2.

Article 101. Following the issuance of the ruling referred to in Article 100, Paragraph 2, the Anti-Monopoly Office presents to the Chairman of the Main Customs Office within 80 days or, in particularly complex cases, within 140 days, its final position on the question of injury.

Article 102. 1. Information transmitted by parties in the course of the proceedings may be utilized solely for the needs of these proceedings.

102. 2. The party providing the information that is of major importance to its competitive position on the market may demand the addition of a confidentiality

clause. In this event, the information to which the confidentiality clause applies should be appended in abridged form for distribution to other participants in the proceedings.

102. 3. Information to which the confidentiality clause applies may not be made available to other participants in the proceedings unless the party providing the information consents thereto.

102. 4. In the event that a party's demand for the inclusion of a confidentiality clause is unwarranted, and said party is opposed to making the information available to other participants in the proceedings, or if the abridgment referred to in Paragraph 2 is not appended, the Chairman of the Main Customs Office may issue a ruling on the basis of other available evidence.

Article 103. 1. The Chairman of the Main Customs Office shall, on taking into consideration the final position of the Anti-Monopoly Office on the question of injury, take a decision not later than within 90 days, and in particularly complex cases within 150 days, from the day the ruling referred to in Article 100, Paragraph 2, had been issued.

103. 2. In the event it is found that the merchandise to which the proceedings refer was or is being sold at a dumping price, and that the dumping margin and the volume of the actual or potential importation of that merchandise are substantive, and that the consequence of importation at a dumping price will be actual or threatened substantial injury to a domestic industry or a major delay in the rise of that industry, an antidumping duty will be levied in an amount not exceeding the dumping margin.

103. 3. The decision to levy the antidumping duty specifies in particular the merchandise subject to that duty, the country of origin or the country from which the merchandise was exported, the name of the exporter, and the amount of the antidumping duty.

103. 4. No retroactive antidumping duty may be assessed, with the proviso of Paragraph 5.

103. 5. The Chairman of the Main Customs Office may assess an antidumping duty on merchandise imported into Polish customs territory not earlier than 90 days after the assessment of the temporary antidumping duty if, with respect to the dutiable merchandise:

1) there was in the past some dumping that caused injury, or the importer knew or should have known that the exporter was selling the merchandise at a dumping price and that such dumping was causing injury, and

2) the injury is caused by sporadic dumping when, within a relatively short period of time, there occurs mass importation of the merchandise to such an extent that, in order to preclude repetition of the injury, it is indispensable to impose a retroactive antidumping duty.

103. 6. The Chairman of the Main Customs Office publishes the ruling referred to in Article 103, Paragraph 1, in Official Gazette of the Polish Republic MONITOR POLSKI, and communicates that ruling to the parties and entities referred to in Article 99, Paragraph 2.

Article 104. 1. Once the proceedings are instituted, but not later than the moment when a ruling is issued, the concerned party may pledge itself to a specific minimum export price. The Chairman of the Main Customs Office may accept that pledge if this will serve to eliminate the injurious effect of importation at the dumping price.

104. 2. In the event that he accepts the pledge referred to in Paragraph 1, the Chairman of the Main Customs Office issues a ruling quashing the proceedings and confirming the pledge; the provisions of Article 103, Paragraph 6, apply correspondingly.

Article 105. The Chairman of the Main Customs Office may, ex officio or on request by a concerned party, waive or alter rulings that impose antidumping duties, as well as rulings confirming the minimum-price pledge, if the party presents evidence showing that, in the light of changed circumstances, such waivers or alterations are warranted. The provisions of Articles 91-104 apply correspondingly.

Article 106. The provisions of this Chapter apply correspondingly in the event that merchandise subsidized by the government of the country of origin is introduced into circulation in Polish customs territory.

Chapter 8. Customs Offices

Article 107. 1. The principal officer of the State administration of customs affairs is the Chairman of the Main Customs Office, who is supervised by the Minister of Foreign Economic Cooperation.

107. 2. District customs directors supervise customs affairs in their districts.

Article 108. 1. The Chairman of the Main Customs Office is appointed and recalled by the Chairman of the Council of Ministers on the recommendation of the Minister of Foreign Economic Cooperation.

108. 2. The vice chairmen of the Main Customs Office are appointed and recalled by the Chairman of the Council of Ministers on the recommendation of the Chairman of the Main Customs Office.

Article 109. The duties of the Chairman of the Main Customs Office include:

- 1) implementation of the State's customs policy;
- 2) participation in formulating the State's customs policy;
- 3) implementation of the State Budget with respect to customs offices;
- 4) supervision of customs offices;

5) formulation and implementation of personnel policy at customs offices;

6) cooperation with the customs offices of other countries and international organizations;

7) exercise of other duties defined in this Decree and in separate regulations.

Article 110. The duties defined in Article 109 are exercised by the Chairman of the Main Customs Office with the assistance of his Office and through the mediation of district customs directors.

Article 111. The duties of the district customs directors include:

1) assessment and collection of customs duties and fees;

2) admission of merchandise for importation into Polish customs territory and exportation from that territory across the customs frontier;

3) exercise of customs supervision and customs inspection of imported and exported merchandise;

4) combatting and prosecution of crimes and transgressions to the extent defined by the Treasury criminal decree;

5) performance of other duties recommended by separate regulations.

Article 112. 1. The organizational structure of the Main Customs Office is defined in the statute conferred by the Minister of Foreign Economic Cooperation.

112. 2. District customs directors perform the tasks entrusted to them by the Chairman of the Main Customs Office with the aid of the offices subordinate to them.

112. 3. The Minister of Foreign Economic Cooperation, in cooperation with concerned ministers, issues executive orders creating and abolishing customs offices and specifying their sites and administrative boundaries and scope of competences.

112. 4. The organizational structure of customs offices is defined in the statute conferred by the Chairman of the Main Customs Office.

Article 113. 1. Customs personnel perform their official duties while wearing uniforms.

113. 2. The Chairman of the Main Customs Office issues executive orders determining the:

1) guidelines for the assignment of uniforms and models of uniforms;

2) cases in which customs personnel perform official duties without wearing uniforms.

Article 114. 1. Agencies of State administration and other State organizational units are dutybound to cooperate with customs offices and provide them with the necessary conditions for implementing the duties defined in this Decree.

114. 2. The Council of Ministers shall issue an executive order defining the guidelines for the cooperation between customs offices and the agencies and units referred to in Paragraph 1 as well as the scope of the services they render to customs offices.

Article 115. 1. The Chairman of the Main Customs Office, in cooperation with the concerned ministers, may authorize other agencies of state administration to perform certain duties of customs offices.

115. 2. When performing the duties referred to in Paragraph 1, the agencies of State administration are entitled to the rights and duties of customs offices.

Article 116. 1. The Chairman of the Main Customs Office may entrust to economic entities the performance, on behalf of merchandise importing and exporting entities, of activities relating to customs supervision and customs inspection (customs agency).

116. 2. The Minister of Foreign Economic Cooperation shall issue an executive order defining the conditions and procedure for entrusting to economic entities the activities referred to in Paragraph 1.

Article 117. When performing the activities referred to in Article 116, Paragraph 1, customs agencies have the rights and duties of customs offices.

Article 118. 1. The performance of customs supervision and customs inspection is subject to monitoring by customs offices.

118. 2. The registries, account books, and other documents maintained by customs agencies are subject to monitoring by customs offices.

Chapter 9. Provisional and Final Regulations

Article 119. Instituted proceedings that were not completed on the effective date of this Decree are subject to handling pursuant to this Decree, with the exception of proceedings in cases of applications for duty-free exemptions, which are subject to being handled pursuant to the previous decree.

Article 120. As issued pursuant to the Decree of 26 March 1975, Customs Law (DZ.U., No. 57, Item 290, 1984; No. 33, Item 181, 1987; and No. 35, Item 193, 1989):

1) implementing regulations remain binding until new implementing regulations based on this Decree are issued, to the extent that they do not conflict with this Decree;

2) recommendations for the performance of certain administrative activities belonging in the scope of activities of customs offices remain binding until 31 December 1991.

Article 121. As issued pursuant to the Decree of 26 March 1975, Customs Law (DZ.U., No. 57, Item 290, 1984; No. 33, Item 181, 1987; and No. 35, Item 193, 1989):

1) import and export licenses remain binding until 31 December 1990 within the scope required by this Decree;

2) permits for the operation of customs depots remain binding until 30 June 1990.

Article 122. 1. Until the expiration of permits to engage in economic activity issued pursuant to the Decree of 6 July 1982 on Guidelines for the Conduct of Economic Activity Relating to Petty Industry by Foreign Legal Entities and Individuals (DZ.U., No. 27, Item 148, 1989; No. 74, Item 442, 1989), the merchandise constituting the material investment by foreign legal entities and individuals in commencing economic activity relating to petty industry on the territory of Poland is duty-exempt and does not require the import and export licenses referred to in Article 7, on condition that it be not made available to third parties for the first 3 years from the date of its customs clearance—with the exception of raw materials, semifinished products, and passenger automobiles.

122. 2. The exemption referred to in Paragraph 1 applies to merchandise imported as part of investment outlays in foreign exchange for the period of time specified in the permit for economic activity relating to petty industry, with respect to the investment outlays whose list is approved by the agency issuing the permits.

Article 123. In the Decree of 23 October 1987 on the Establishment of the Office of the Minister of Foreign Economic Cooperation (DZ.U., No. 33, Item 176), in Article 2, Paragraph 2, Point 1) is deleted.

Article 124. The Decree of 26 March 1975, Customs Law (DZ.U., No. 57, Item 290, 1984; No. 33, Item 181, 1987; and No. 35, Item 193, 1989) is hereby rescinded.

Article 125. This Decree takes effect on 1 January 1990.

President of the Polish People's Republic: W. Jaruzelski.

Order Regulating Foreign Exchange Authorization

90P20010A Warsaw MONITOR POLSKI in Polish
No 1, Item 3, 16 Jan 90, pp 2-7

[Executive Order of the Minister of Finance on general terms of foreign exchange authorization, dated 30 December 1989]

[Text] Pursuant to Article 5, Paragraph 5, Article 8, Paragraph 2, Article 9, Article 11, Paragraph 2, Article 12, Paragraph 2, and Article 21, Paragraph 1 of the Law on Foreign Exchange dated 15 February 1989 (DZIENNIK USTAW No. 6, Item 33 and No. 74, Item 441), 3, the following executive order is enacted:

Chapter 1. Authorization To Take Foreign Exchange Assets Abroad and To Bring Polish Currency Into Poland

Article 1. Wherever permission is granted in this executive order to take Polish currency abroad or bring it into Poland or to carry it on board foreign vessels, said permission does not apply to coins whose nominal value exceeds 50 zlotys and which qualify as legal tender in the Republic of Poland [RP], except as noted in Article 8 and Article 9.

Article 2. 1. Polish nationals departing Poland are permitted to take Polish currency abroad in amounts not to exceed 500,000 zlotys.

2. 2. After passing foreign exchange controls, Polish currency may be used:

1) to purchase consumer articles at places where such articles are sold:

a) on Polish modes of transportation plying foreign routes;

b) on modes of transportation belonging to countries with which the RP transacts settlements under rules governing noncommercial payments during transit through said countries;

2) to purchase tickets and reservations on Polish modes of transportation plying foreign routes:

a) for sleeping berths in Polish railroad cars and on board Polish vessels on routes beginning and ending within the borders of countries referred to in item 1, letter b);

b) for reclining seats in Polish rail cars on international train routes;

c) for passage on Polish vessels, buses and automotive vehicles plying routes beginning and ending within the borders of countries referred to in item 1, letter b);

3) to purchase the currency of a foreign country with which the RP transacts settlements under rules governing noncommercial payments on the basis of coupons issued by the National Bank of Poland.

2. 3. The allowances referred to in Paragraph 1 are given on the condition that unspent Polish currency shall be returned to Poland.

Article 3. Polish nationals and foreign nationals are permitted to take abroad their personal savings passbooks denominated in Polish currency and checkbooks drawn against savings accounts kept in Polish currency, which are nonnegotiable abroad except for purposes as set forth in Article 2, Paragraph 2, provided that they are returned to Poland.

Article 4. The allowances referred to in Article 2, Paragraph 1 and in Article 3 do not apply to Polish nationals traveling abroad for the purpose of taking up long-term residence.

Article 5. Foreign nationals—who are citizens of countries with which the RP transacts settlements under rules governing noncommercial payments are permitted:

1) to bring Polish currency from these countries and to take it back to these countries in amounts set forth in an identifying document confirming purchase of said currency in a bank or other authorized institution of the country of the foreign national's citizenship, consistent with agreements reached by central banks;

2) to take to these countries checks denominated in Polish currency issued in these countries and Polish currency obtained from the exchange by citizens of these countries of foreign currency, checks, and traveler's checks at a Polish foreign exchange bank or currency exchange office operated in compliance with the rules of foreign exchange authorization.

Article 6. 1. Polish nationals departing Poland are permitted to take abroad:

1) foreign currencies that are legal tender in countries with which the RP transacts settlements under rules governing noncommercial payments, checks, and traveler's checks issued in said foreign currency and purchased for purposes of travel and residence abroad from banks, travel agent offices, or other institutions in Poland authorized to sell currency for these purposes;

2) convertible foreign currencies derived from the cashing of bank drafts and postal money orders, checks, notes, and letters of credit;

3) checks and traveler's checks issued abroad in a foreign currency;

4) foreign currencies, checks, and traveler's checks derived from funds held in type-"A" and type-"S" foreign currency accounts and from withdrawals from convertible currency savings accounts attested by deposit certificates.

6. 2. Foreign currencies, which qualify as legal tender in countries other than those with which the RP transacts settlements under rules governing noncommercial payments may be taken abroad by Polish natural persons in amounts up to US\$500 or the equivalent without having to give documentary proof of origins as defined in Paragraph 1.

6. 3. Foreign currencies held in type-"S" foreign exchange accounts may be taken abroad only to those countries with which the RP transacts settlements under rules governing noncommercial payments.

6. 4. When disbursing foreign currencies held in type-"S" foreign currency accounts banks are to comply with the provisions of accords entered into with the central banks of countries with which the RP transacts settlements under rules governing noncommercial payments, specifying the frequency of such disbursements and the manner in which they are to be documented.

Article 7. 1. Foreign nationals departing Poland are permitted to take abroad:

1) foreign currencies obtained from the cashing of foreign bank drafts and postal money orders, checks, traveler's checks, notes, and letters of credit;

2) checks and traveler's checks issued in a foreign currency abroad;

3) foreign currencies held in type-"C" foreign exchange accounts and obtained:

a) from the cashing of foreign bank drafts and postal money orders, checks, traveler's checks, notes and letters of credit;

b) from deposits made in Poland of sums brought or sent into Poland from abroad within limits of the amounts set forth in a foreign exchange declaration certified by Polish customs authorities on clearing customs at a border crossing point or during customs inspection of foreign postal parcels;

c) from the negotiation within Poland of orders for payment issued by Polish nationals in execution of contracts entered into by said Polish nationals with a bank account owner provided that the parties act in compliance with Polish foreign exchange laws, also including the provisions of foreign trade contracts;

d) from the cashing of transfers from the type-"C" foreign currency accounts of other foreign nationals, also including those attributable to the realization of an inheritance, bequest, or order for payment payable on death;

e) from court orders in criminal proceedings, tax law proceedings, misdemeanor cases, civil and administrative proceedings that award foreign currencies to foreign nationals;

f) from the restitution of funds previously withdrawn from said account to be taken abroad in cases where departure never took place, and from uncashed foreign remittances and uncashed transfers payable to Polish institutions;

g) from the cashing of transfers from type-"A" foreign currency accounts held by Polish nationals in cases where the legal foreign exchange status of the owner of a type-"A" account changes and from orders for payment payable on death drawn against type-"A" foreign currency accounts;

h) from the exchange of Polish currency for foreign currency by the National Bank of Poland pursuant to separate legal provisions;

i) from gambling winnings in casinos operated under license to engage in foreign exchange transactions.

4) checks and traveler's checks issued in a foreign currency derived from transactions as set forth under item 3;

5) foreign currencies won by foreign nationals in gambling casinos operated under license to engage in foreign exchange transactions upon presentation of an identifying declaration issued by the casino manager attesting to the amount of the winnings.

7. 2. Foreign currencies, checks, and traveler's checks obtained from funds held in type-"C" foreign exchange accounts may also be taken abroad by Polish nationals with authorized access to the balances of these accounts.

Article 8. 1. Polish nationals and foreign nationals are permitted to take abroad:

1) gold coins that qualify as foreign exchange assets;

2) coins which are legal tender in the RP purchased in Poland for coin collecting purposes with foreign currency from an enterprise or institution authorized to sell such coins.

8. 2. Exports referred to in Paragraph 1 may take place on the strength of a certificate issued by an authorized enterprise or institution confirming the sale of said coins to a specifically named person.

Article 9. Polish nationals and foreign nationals are permitted to import into Poland coins made from noble metals that qualify as legal tender in the RP.

Article 10. 1. Polish nationals departing Poland while they are employed or undergoing academic or professional training abroad are permitted to take with them the foreign exchange assets brought into the country regardless of the amount of funds originally taken out of the country pursuant to allowances referred to in Article 6, Paragraph 2.

10. 2. Allowances referred to in Paragraph 1 also apply to situations where sums of foreign exchange assets are being taken back out of the country by Polish nationals who are crew members of Polish vessels or who serve as personnel on other Polish modes of international transportation.

10. 3. Currencies of a country neighboring Poland may be taken back out of the country by Polish nationals referred to in Paragraph 1, who are employed in said country and who exit and re-enter Poland daily on the authority of personal identity papers or equivalent documents, in amounts not to exceed the equivalent of 100,000 zlotys without certification by customs authorities that said currency was brought into Poland.

Article 11. 1. It is permitted to take abroad the following foreign exchange assets held in the purser's office of a Polish vessel:

1) foreign currencies belonging to the ship's owner, in amounts to be determined by the owner, needed to defray costs associated with the ship's voyage;

2) foreign currencies and other foreign exchange assets issued or drawn in foreign currencies and gold qualifying

as a foreign exchange asset that are the property of ship's crew members provided they were tendered for safe-keeping in the ship's purser's office prior to the ship's entry into a Polish customs zone and declared in writing by the ship's captain to the customs authorities at the time of inbound clearing of customs together with an itemized listing of the assets constituting the property of named individuals; the redemption of currencies and other foreign exchange assets by individual depositors is not subject to foreign exchange restrictions;

3) Polish currency which is the property of members of the ship's crew and deposited in the ship's purser's office in amounts exceeding export allowances conforming to the provisions of Article 2 on the conditions that the sums taken out are repatriated to Poland on the return voyage.

11. 2. During the interval between the completion of clearing customs by an outbound vessel and the completion of the clearing of customs by an inbound vessel in a Polish port, Polish currency deposited in a ship's purser's office (Paragraph 1, Item 3) may not be disbursed to depositors unless a crew member is discharged (separated from service) while overseas. In the latter case, the ship's captain shall attest to the redemption of funds with a declaration authorizing the depositor to bring said funds back to Poland.

11. 3. The transfer of a deposit of foreign exchange assets constituting the personal property of a ship's crew member from the purser's office of one Polish vessel to the purser's office of another Polish vessel does not require foreign exchange authorization.

Article 12. Polish nationals who are employees of outlets for the sale of consumer goods and the sale of tickets and reservations for Polish currency on Polish international transportation modes are permitted to take Polish and foreign currency abroad and to bring Polish currency back into Poland that constitute operating cash on hand and earnings from sales.

Article 13. 1. Polish nationals who are employees of business entities are permitted to take funds abroad drawn from the foreign currency bank accounts of these entities denominated as convertible foreign currencies and checks in amounts up to US\$10,000 or the equivalent for purposes of purchasing goods and services associated with the relevant business activity and in order to defray transportation and lodging expenses.

13. 2. Polish nationals departing Poland are permitted to take abroad convertible foreign currencies, checks, and traveler's checks in amounts up to US\$1,000 or the equivalent purchased from foreign exchange banks for the purpose of paying outstanding obligations owed to foreign nationals resulting from the purchase from said persons of movable assets and proprietary interests as from transportation, freight forwarding, and insurance services.

13. 3. Polish nationals departing Poland are permitted to take abroad foreign currencies, checks, and traveler's checks purchased from foreign exchange banks in amounts determined by laws governing the payment of official business travel expenses outside Poland.

Chapter 2. Authorization To Remit Foreign Exchange Assets Abroad

Article 14. 1. Polish and foreign nationals are permitted to send remittances to countries with which the RP transacts settlements under rules governing noncommercial payments payable to foreign persons, who are citizens and legal persons of these countries, and to Polish citizens domiciled in these countries—in the form of sums of money constituting:

- 1) salaries and wages of employees of diplomatic, commercial, and other official missions in the RP representing countries with which the RP transacts settlements under rules governing noncommercial payments or representing international organizations of these countries;

- 2) salaries and wages paid on the basis of international agreements on labor contracts, stipends, per diem payments, and other receivables connected with employment or study in the RP;

- 3) accounts payable to foreign nationals invited to Poland by a Polish national who is not a natural person for the purpose of giving scholarly lectures and presenting scholarly papers;

- 4) authors' and artistic honoraria;

- 5) damages owed in connection with occupational accidents and also damages and compensations owed in connection with wrongful acts;

- 6) legal tender held in the RP prior to departure from the country to a destination in one of these countries for purposes of taking up residence;

- 7) pensions and annuity-type transfer payments;

- 8) insurance premiums;

- 9) legacies;

- 10) alimony in amounts up to 100,000 zlotys per month;

- 11) allowance in amounts of up to 40,000 zlotys per month for immediate family members;

- 12) other funds payable by force of law under orders issued by authorized governmental agencies—on condition of reciprocity and provided that the total amount of funds remitted for any of the above reasons does not exceed 6 million zlotys per annum per person.

14. 2. Remittances are made following the exchange of Polish currency for the currency of the country to which funds will be sent by the National Bank of Poland.

14. 3. Remittance of funds for reasons cited in Paragraph 1 is contingent on the remitter providing documentary proof of grounds for their remittance.

Article 15. 1. On condition of reciprocity, remittances may be made to countries with which the RP does not transact settlements under rules governing noncommercial payments in the form of pension and annuity

transfer payments payable to foreign persons who are legally entitled to such payments on the basis of a ruling of the Social Security Administration attesting to the entitlement.

15. 2. Remittances are made following the exchange of Polish currency for the currency of the country to which funds will be sent by the National Bank of Poland.

Article 16. Business entities are permitted to send remittances abroad drawn from their foreign currency bank accounts in foreign currency to cover the costs of paying employee salaries and wages within limits of the terms of contracts executed abroad and entered into with foreign persons.

Article 17. 1. Except as noted in Paragraph 3, it is permitted to remit abroad foreign currencies held in type-"A" and type-"S" accounts for the purpose of purchasing movable assets and services and to cover other travel-related expenses as well as to cover dues payable by virtue of membership in organizations abroad.

17. 2. It is permitted to remit abroad foreign currencies held in type-"A" and type-"S" foreign currency bank accounts and in convertible currency savings accounts attested by deposit certificates in amounts up to the balance of the account including interest in the event that the account owner goes abroad to take up permanent residence or the status of residence abroad is changed from temporary to permanent as well as in the event that the account is acquired by way of inheritance, bequest, or a depositor's order for payment payable on death to a foreign national.

17. 3. Remittance abroad of foreign currencies held in type-"S" foreign currency bank accounts may be made only to countries with which the RP transacts settlements under rules governing noncommercial payments.

17. 4. It is permitted to remit abroad foreign currencies held in type-"C" foreign currency bank accounts that originate in transactions listed in Article 7, Paragraph 1, Item 3.

17. 5. Foreign nationals are permitted to remit abroad foreign currencies derived from the cashing of foreign bank drafts and postal money orders, checks, traveler's checks, notes, and letters of credit.

Article 18. 1. Polish nationals are permitted to remit abroad foreign currencies from their foreign currency bank accounts for the purpose of paying:

- 1) the costs of court and arbitration proceedings related to standing trial together with foreign nationals provided that the amount of these costs does not exceed US\$20,000 or the equivalent in a given case;

- 2) taxes, customs fees, and other administrative (official) fees provided that liability under which these costs are incurred by a Polish national is grounded in law;

3) costs of obtaining legal counsel and trial representation provided that the amount of these costs does not exceed US\$50,000 or the equivalent in a given case.

18. 2. Polish nationals are permitted to remit abroad convertible foreign currencies purchased from foreign exchange banks for purposes specified in Paragraph 1.

Article 19. Polish legal persons are permitted to remit foreign currencies abroad drawn from their foreign currency bank accounts or purchased from foreign exchange banks for the purpose of paying dues and fees associated with membership in international organizations and international hotel chains.

Article 20. Business entities are permitted to remit abroad foreign currencies drawn from their foreign currency bank accounts or purchased from foreign exchange banks in order to pay outstanding obligations chargeable to the following:

- 1) procurement costs, including costs attending participation in exhibitions and fairs, advertising costs, fees charged for participation in symposia and conferences, and fees charged for public information services;
- 2) fees for agent and representational services;
- 3) costs of repairing and overhauling imported machinery and equipment;
- 4) costs associated with the protection of intellectual property.

Article 21. 1. Business entities are permitted to remit abroad foreign currencies drawn from their foreign currency bank accounts and payable to a foreign contracting party due to contract, tort, and excess earnings liability arising in connection with a valid contract for the purchase or sale of goods and services, provided that payment is made in the currency of contract.

21. 2. Business entities providing hotel and campground services are permitted to remit abroad foreign currencies drawn from their foreign currency bank accounts and payable to foreign nationals using said services due to contract and tort liability arising in connection with the service rendered.

21. 3. Business entities are permitted to remit abroad convertible foreign currencies purchased from foreign exchange banks for purposes specified in Paragraphs 1 and 2.

Article 22. Business entities are permitted to remit abroad foreign currencies for the purpose of honoring outstanding obligations in said currencies owed to foreign nationals and related to the purchase of tourist services from said foreign nationals.

Article 23. Polish nationals are permitted to remit abroad foreign currencies drawn from their foreign currency bank accounts or purchased to this end from foreign exchange banks in order to finance costs of maintaining representation abroad (including employee salaries and wages and repair and upkeep costs of occupied premises) and to enter into contracts for this

purpose with foreign banks for the opening of bank accounts in which remitted foreign currencies shall be held provided that notification is given to the National Bank of Poland as to:

- 1) the opening of bank accounts abroad;
- 2) balances and activities in these accounts at quarterly intervals.

Article 24. Polish nationals are permitted to remit or take abroad foreign currencies to be used to defray costs associated with the maintenance of Polish diplomatic missions, consular offices, and other Polish agencies enjoying diplomatic or consular immunities and privileges as well as foreign currencies allocated for the purchase of real property by said missions and offices.

Chapter 3. Permission To Engage in Other Activities Requiring Foreign Exchange Authorization

Article 25. 1. Business entities are permitted to extend loans involving foreign exchange transactions with foreign partners in connection with exports by said entities of goods (excluding fuels and raw materials) and services provided that:

- 1) the amount of such loans shall not exceed US\$500,000 or equivalent value in convertible foreign currency and the term of their repayment shall not extend beyond 360 days from the date of issuance;
- 2) interest and other terms of such loans shall not be any more favorable for the borrower than is customary in analogous cases in the international capital market;
- 3) sufficient security shall be established for repayment and repatriation to Poland of receivables associated with the extended loan.

25. 2. Notification of the issuance of a loan is to be given to the National Bank of Poland and to the Foreign Debt Service Fund, citing the identity of the borrower, the amount of the loan, the types of goods or services for which credit was extended, and terms of repayment within 14 days of the date of the loan's issuance.

Article 26. 1. Business entities are permitted to negotiate loans involving foreign exchange transactions with foreign partners in connection with imports by said entities of goods and services, provided that:

- 1) the amount of the loan negotiated does not exceed US\$500,000 or equivalent value in convertible foreign currency and the term of its repayment does not exceed 3 years from the date on which the loan was negotiated;
- 2) the terms of the loan negotiated shall not be any more favorable for the borrower than is customary in analogous cases in the international capital market.

26. 2. Notification of the negotiation of a loan is to be given to the National Bank of Poland and to the Foreign Debt Service Fund, citing the identity of the lender, the amount of the loan, the types of goods or services for the

purchase of which a loan was negotiated, and the terms of repayment within 14 days of the date on which the loan was negotiated.

Article 27. 1. Except as noted in Paragraph 2, Polish nationals are permitted to effect payments abroad involving trade in goods and services with foreign partners without mediation by a foreign exchange bank in amounts up to US\$10,000 or the equivalent per transaction.

27. 2. If foreign currencies were purchased from foreign exchange banks, the amount of payment referred to in Paragraph 1 may not exceed US\$1,000 or the equivalent value.

27. 3. Polish nationals engaged in foreign trade in goods and services are permitted to collect receivables in foreign currency without mediation by a foreign exchange bank in amounts up to US\$10,000 or the equivalent per transaction.

27. 4. Business entities are permitted to settle accounts with like foreign entities in the form of offsetting debts provided that said obligations are deemed due and payable and not forgiven and on the condition that the amount of the offset does not exceed US\$50,000 or the equivalent value in a foreign currency.

Article 28. Polish nationals who are natural persons and who resided abroad and returned to Poland to take up residence are permitted to leave foreign exchange assets abroad that were their personal property prior to returning to Poland.

Article 29. 1. Foreign nationals engaged in the sale of consumer articles on board regularly scheduled modes of ground transportation belonging to countries with which the RP transacts settlements under rules governing non-commercial payments are permitted to sell such articles for the foreign currency of said countries during their transit through Poland.

29. 2. Foreign nationals operating regularly scheduled buses that belong to the countries referred to in Paragraph 1 are permitted to sell tickets and reservations on these buses during their transit through Poland for the foreign currency of these countries.

29. 3. The foreign nationals referred to in Paragraphs 1 and 2 or, in the case of legal persons, their employees are permitted to export the foreign currencies or Polish currency collected from such sales to countries with which the RP transacts settlements under rules governing noncommercial payments on condition of reciprocity.

Article 30. 1. Polish nationals are permitted to remit foreign currencies allowed to be sent abroad in conformity with the provisions of the foreign exchange law to bank accounts of foreign nationals in Poland.

30. 2. Foreign nationals are permitted to make remittances in Poland from their foreign currency bank

accounts payable to Polish nationals in foreign currencies by reason of transactions made abroad involving sales by Polish nationals of movable assets or property rights as well as by reason of services rendered by Polish nationals involving transactions with foreign partners.

Article 31. 1. Polish nationals are permitted to purchase convertible foreign currencies from foreign exchange banks for purposes specified in Article 13, Paragraphs 2 and 3, Article 18, Paragraph 1, Article 19, Article 20, Article 21, Paragraphs 1 and 2, Article 22, Article 23, and Article 24.

31. 2. The purchase of foreign currencies for the purpose referred to in Article 13, Paragraph 3 may take place on condition that a document listing the costs of official business travel is submitted to the seller bank.

31. 3. Polish currency used to purchase convertible foreign currencies may be drawn solely from the bank account of a Polish national who directs that such purchase be made.

Article 32. Business entities are permitted to purchase convertible foreign currencies from foreign exchange banks in order to make payments on loans originating on the basis of loan contracts written in convertible foreign currencies and entered into prior to 31 December 1989:

- 1) with foreign nationals enjoying foreign exchange authorization;
- 2) with Polish foreign exchange banks in conformity with all laws governing such transactions.

Article 33. Polish nationals are granted a waiver from the obligation to repatriate foreign exchange assets held abroad and realized as income from ownership of foreign real property and used for purposes of maintaining said real property.

Article 34. A waiver is granted from the obligation to repatriate to Poland foreign exchange assets realized by Polish diplomatic missions, consular offices, and other Polish agencies enjoying diplomatic or consular immunities and privileges.

Article 35. 1. Polish nationals are permitted to collect payment in Polish currency for services rendered in connection with the transportation of persons, freight forwarding services, the shipment and insurance of parcels on foreign transportation routes and for other services rendered abroad in behalf of foreign nationals:

1) who draw funds from bank accounts for the deposit of Polish currency originating:

- a) from the sale of real property, legal titles to real property, title to an apartment held under cooperative ownership and arising from allocations made by housing cooperatives, and titles to detached single-family homes, or title to apartments in small multifamily buildings, as well as from foreclosure on real property;

b) from the realization of an inheritance, a testamentary bequest, or an order for payment payable on death—in amounts up to and not exceeding the value of the property or titles sold as appraised at prevailing market prices by a bank recognized expert;

c) from the negotiation of author's and patent ownership rights;

d) from alimonies lawfully adjudicated by a Polish court of law or on the basis of a settlement before a court of law;

e) from consular fees made payable to diplomatic missions and consular offices;

f) from accounts heretofore subject to foreign exchange restrictions;

g) from the earnings in Polish currency of foreign nationals engaged in business activity in Poland on the basis of the Law dated 6 July 1982 on the Conduct of Business Activity in the RP in the Small-Scale Manufacturing Sector by Foreign Legal and Natural Persons (DZIENNIK USTAW 1989, No. 27, Item 148 and No. 74, Item 442) and the Law dated 23 December 1988 on Foreign Joint Venture Business Operations (DZIENNIK USTAW No. 41, Item 325, and No. 74, Item 442);

2) who are invited to Poland by executive and national governmental agencies, foreign exchange banks, and executive bodies of political and social organizations and whose expenses in Poland are paid by the hosts;

3) who came to Poland in order to fulfill international contracts and accords, agreements on cooperation with foreign institutions of higher learning and on the invitation of rectors of institutions of higher learning in connection with their employment in said institutions;

4) who carry identity papers for passage across Polish national frontiers provided that such documents are issued by countries with which settlements are transacted under rules governing noncommercial payments and on the condition that conveyance occurs exclusively within the borders of said countries by means of Polish modes of transportation and by rail as well as by means of rail, air, coastal, and bus modes of transportation belonging to said countries along routes which do not cross the borders of these countries.

35. 2. Allowances referred to in Paragraph 1 also apply in cases where Polish currency originates from documented disbursements from Polish currency bank accounts kept by institutions of higher learning to cover obligations to academic instructors, undergraduate university students, postgraduate students and doctoral candidates, student teachers, and interns in said institutions provided that the duty of institutions of higher learning to defray such obligations arises from international agreements or valid laws.

Article 36. Through 31 December 1990 business entities fulfilling construction and service export contracts

entered into prior to 31 December 1989 with countries with which the RP transacts settlements under rules governing noncommercial payments are permitted to purchase convertible foreign currencies from foreign exchange banks to be remitted to type-"A" foreign currency bank accounts for employees hired under the terms of said contracts for the purpose of covering a portion of their wage and salary costs.

Article 37. Of the terms used in this executive order:

1) "foreign currency bank account"—denotes an account kept in a Polish foreign exchange bank in a foreign currency;

2) "type-'A' foreign currency bank accounts"—denotes bank accounts of Polish natural persons denominated in convertible foreign currencies;

3) "type-'S' foreign currency bank accounts"—denotes bank accounts of Polish natural persons denominated in the currencies of socialist countries;

4) "type-'C' foreign currency bank accounts"—denotes bank accounts of foreign nationals denominated in convertible foreign currencies;

5) "outstanding obligations owed to foreign nationals"—denotes the obligation to make cash payments to a foreign national as confirmed by a sales contract, a pro-forma invoice, an import license, an insurance contract, bills for payment, or other documents stipulating the type, amount, and due date of a monetary obligation to a foreign national.

Article 38. The executive order of the Ministry of Finance dated 22 September 1989 on General Terms of Foreign Exchange Authorization (MONITOR POLSKI No. 34, Item 264) is hereby nullified.

Article 39. This executive order enters into force on the date of its promulgation, effective as of 1 January 1990.

Minister of Finance

In coordination with:

The President of the National Bank of Poland

Cooperatives

90EP0412A Warsaw RZECZPOSPOLITA in Polish
9 Feb 90 p 4

[Law governing changes in the organization and activities of cooperatives, dated 20 January 1990; published in DZIENNIK USTAW No. 6, Item 36, 7 February 1990, pages 54-57]

[Text] Article 1. 1. On the effective date of this Decree unions of cooperatives enter upon the status of being in receivership.

1. 2. The provision of Paragraph 1 applies to cooperatives of legal entities as well as to cooperatives of legal entities and individuals if these cooperatives, being

formed as a result of the transformation of a union of cooperatives, take over partially or entirely the assets of that union.

1. 3. The liquidation of unions of cooperatives and the cooperatives referred to in Paragraph 2 is governed correspondingly by the provisions of the Decree of 16 September 1982, Law on Cooperatives (DZ.U., No. 30, Item 210, 1982; No. 39, Item 176, 1983; No. 39, Item 192, 1986; No. 33, Item 181, 1987; No. 41, Item 324, 1988; and No. 3, Item 12, 1989, and No. 6, Item 33, 1989) unless otherwise specified in the present Decree.

Article 2. 1. The liquidator of a central union of cooperatives shall be appointed by the minister of finance immediately after this Decree takes effect, while the liquidators of other unions of cooperatives and of the cooperatives referred to in Article 1, Paragraph 2, are appointed by the directors of local Treasury offices upon the authorization of the minister of finance.

2. 2. The liquidator of the Central Union of Cooperatives of the Disabled and of the Central Union of Cooperatives of the Blind shall be appointed by the minister of labor and social policy immediately after this Decree takes effect, while the liquidator of the Cepelia Central Union of Cooperatives of Folk Arts and Crafts shall be appointed by the minister of culture and art.

2. 3. A deputy in charge of affairs of cooperatives of the disabled and of the blind shall be appointed by the minister of labor and social policy immediately after this Decree takes effect.

Article 3. 1. Irrespective of his or her duty to prepare a financial liquidation plan and a plan for satisfying encumbrances, including the encumbrances mentioned in Article 6, the liquidator prepares a plan for disposing of plants, factories, and other isolated organizational units established with the object of conducting economic activity, hereinafter referred to as "plant," and other material components of the assets of the union of cooperatives.

3. 2. The plans referred to in Paragraph 1 are subject to confirmation by a meeting of representatives of the cooperatives associated in the union, as referred to in Article 6. A plan is confirmed by a majority of votes of the representatives present at the meeting.

3. 3. In the event of failure to confirm the plan referred to in Paragraph 2 by the meeting of representatives of the cooperatives within 30 days, the plan may be confirmed by the agency which appointed the liquidator.

3. 4. The liquidator is obligated to assure continued operation of the plant of the liquidated union of cooperatives.

3. 5. The plans referred to in Paragraph 1 should allow for excluding from the assets of the union of cooperatives subject to liquidation the existing plant and other material assets received without reimbursement from cooperatives during the last 10 years preceding the effective date of this Decree. That plant and these material

components are returned without reimbursement to the cooperatives from which they had been transferred.

3. 6. The plant and other material assets may be, with the exceptions specified in Paragraph 5, on the basis of an agreement with the liquidator, transferred to the ownership of the cooperatives associated in the liquidated union, cooperatives established by the cooperatives associated in that union, and labor cooperatives established by employees of the plant with the object of continuing the operation of the plant. The transfer of ownership of the plant and of the material assets of a liquidated central union of cooperatives may also take place in favor of cooperatives which resigned from that union and did not associate themselves with another central union of cooperatives.

3. 7. The transfer of the plant may occur on the principle of partial or full reimbursement depending on the availability of the funds needed to defray the encumbrances of the liquidated union of cooperatives insofar as these encumbrances are related to the plant's operations, or without reimbursement if the purchaser assumes these obligations in general.

3. 8. The provisions of Paragraph 7 apply correspondingly to the transfer of other material assets.

3. 9. Cooperatives and plant employees may request the liquidator to transfer the plant to the cooperatives referred to in Paragraph 6 within 3 months from the day this Decree takes effect. These requests are considered by the liquidator when preparing the plans referred to in Paragraph 1.

3. 10. A labor cooperative founded by at least one-half of the employees of the plant may demand the transfer of that plant to its ownership if these employees submit the request referred to in Paragraph 9 and if each of them has acquired a membership share in an amount equivalent to at least 3 months' average monthly wage received by the employees of that plant.

3. 11. The liquidator assures the implementation of the confirmed plan for disposing of the plant and other isolated organizational units as well as of other material assets of the union of cooperatives. In particular, the liquidator:

1) notifies the requestors referred to in Paragraph 9 about the scope and conditions on which their requests can be considered;

2) takes steps to transfer the plant to the cooperatives authorized to take them over in accordance with the confirmed plan.

Article 4. The plant and other material assets of a liquidated union of cooperatives that are not transferred to cooperatives under the guidelines defined in Article 3 are subject to sale under the following guidelines:

1) the sale should be performed by means of an unrestricted auction organized by the liquidator; if the plant cannot be sold in toto, discrete elements of its facilities may be sold by the same procedure;

2) priority of purchase belongs to the person who offers the most favorable price and other terms of purchase; in the event that a cooperative offers the same price and terms of purchase as another person, priority of purchase belongs to the cooperative;

3) the right to purchase is granted by the liquidator.

Article 5. 1. The provisions of Article 3, with the proviso of Paragraph 2, apply correspondingly to vocational schools, training centers, social and cultural-educational facilities, and other nonprofit units of the liquidated unions of cooperatives.

5. 2. In the event that cooperatives do not take over the operation of vocational schools, these schools are subject to transfer to the Supreme Council of Cooperatives in cooperation with the minister of national education, and in justified cases to the appropriate educational agencies or to persons indicated by the minister of national education.

Article 6. 1. The encumbrances of unions of cooperatives to banks and other creditors relating to guarantees for the repayment of credit and loans borrowed by the cooperatives and plant of these unions are transferred to the Supreme Cooperative Council.

6. 2. The handling of the lists of applicants for cooperative-built housing will be taken over by the local agencies of state administration.

Article 7. 1. The liquid capital remaining after the liquidation of a union of cooperatives is divided among cooperatives in parts to be determined by the meetings of representatives for the liquidation plan, with the exception of the funds required to secure the repayment of the encumbrances referred to in Article 6, which are taken over by the Supreme Cooperative Council for the duration of the period required. The funds remaining after the liquidation of a central union of cooperatives also are credited to the cooperatives which had resigned from that union but did not associate themselves with another central union of cooperatives.

7. 2. Following the expiration of the encumbrances referred to in Article 6, the remaining funds taken over by the Supreme Council of Cooperatives to secure the implementation of these encumbrances are divided into parts whose extent is determined by the meeting of representatives referred to in Paragraph 1.

7. 3. In the event that it is not possible to sell other material assets of the liquidated union of cooperatives, they are taken over by the Supreme Cooperative Council.

Article 8. 1. Whenever a third party has materially benefited from the legal actions by a union of cooperatives performed to injure cooperatives after the effective date of the Decree of 23 October 1987 on Revising Certain Guidelines for the Operation of the National Economy (DZ.U., No. 33, Item 181), each of the member cooperatives may demand, within 3 months

from the effective date of the present Decree, that such actions be deemed ineffective so far as it is concerned, if the union of cooperatives had acted knowing that it would injure the cooperative and if the third party was aware of this or, by exercising adequate vigilance, could learn of this.

8. 2. A legal action is performed to injure a cooperative if that action results in a marked reduction in the value of the assets of the union of cooperatives.

8. 3. If a legal action resulting in injury to a cooperative has materially benefited a legal entity established on the initiative of the union of cooperatives, the supposition is that said legal entity was aware that the union of cooperatives had knowingly acted to injure the cooperative.

8. 4. If a legal action resulting in injury to a cooperative has materially benefited a third party which either made no reimbursement for that benefit or made a reimbursement that was substantially less in value than that benefit, the supposition is that the union of cooperatives had knowingly acted to injure the cooperative. In this case, each of the injured cooperatives may demand that such action be ruled null and void in relation thereto, even if the third-party beneficiary was unaware, and even if despite exercising adequate vigilance it could not become aware, that the union of cooperatives had knowingly acted to injure the cooperatives.

8. 5. If the third party does not voluntarily satisfy the claims of the cooperatives referred to in Paragraph 1, the board of each of these cooperatives may file a request with the voivodship court for declaring null and void the legal action performed at the expense of injury to the cooperatives.

8. 6. In the event that the legal action performed by a union of cooperatives and injuring cooperatives is declared to be null and void, the provisions of the preceding Articles apply to it.

8. 7. In matters not specifically regulated by the preceding Paragraphs the corresponding provisions of Book 3, Title 10, of the Civil Law Code apply.

Article 9. 1. During the period until 31 December 1990 members of the cooperatives whose property rights and encumbrances are linked to a discrete organizational unit of a cooperative or to a part of the cooperative's assets such as can be so isolated organizationally, may, upon sodeciding by a majority of votes, demand of the governing board of the cooperative that it convene a general meeting with the object of passing a resolution to break up the cooperative in such a way that said organizational unit can be formed into a new cooperative. In

this case the regulations governing the establishment of a cooperative apply correspondingly.

9. 2. The resolution of the general meeting concerning the break-up of a cooperative is passed by a majority of votes.

9. 3. The general meeting may pass a resolution rejecting the break-up only if so dictated by important economic interests of the old cooperative or by vital interests of its members.

9. 4. In the event that the general meeting passes a resolution rejecting the break-up of the cooperative, the members who had demanded said break-up may, within 6 weeks from the day the general meeting was held, file with the voivodship court a plea for issuing a ruling in lieu of the break-up resolution.

9. 5. The provisions of Paragraph 4 apply correspondingly in the event that the general meeting fails to consider the demand of members within 3 months from the date that demand is presented.

9. 6. The provisions of Paragraphs 2-5 apply correspondingly in the event that the demand for a break-up is presented by a cooperative body appointed to represent the members whose property rights and encumbrances are linked to a discrete organizational unit of the cooperative.

Article 10. 1. The cooperative movement is represented in this country and abroad by the Supreme Cooperative Council.

10. 2. The association of cooperatives in the Supreme Cooperative Council is voluntary.

10. 3. The Supreme Cooperative Council is a legal entity.

Article 11. The Supreme Cooperative Council:

1) sponsors cooperation and mutual assistance among cooperative organizations in this country and abroad;

2) initiates and comments on draft legislation concerning the cooperative movement or issues of major importance thereto;

3) initiates and organizes scientific research and publishing activities relating to the needs of the cooperative movement and employee issues at cooperatives, and cooperates in this respect with academic institutions;

4) accomplishes other purposes as defined in this Decree and in other decrees.

Article 12. 1. The general meeting of the Supreme Cooperative Council consists of representatives of cooperatives, two from each voivodship.

12. 2. The representatives referred to in Paragraph 1 are elected by voivodship assemblies of delegates of cooperatives from among delegates to these assemblies. The elections of representatives are by majority vote, in

secret balloting, from among an unlimited number of candidates. A voivodship assembly may recall its representative from the Supreme Cooperative Council.

12. 3. In the event of the expiration of a representative's mandate the voivodship assembly of cooperative delegates may carry out a by-election.

12. 4. Delegates to the voivodship assembly are elected and recalled by general meetings of the cooperatives sited on the area of the voivodship, one delegate from every general meeting.

Article 13. The guidelines, operating procedures, and bodies of the Supreme Cooperative Council are defined in a statute passed by the general meeting of the Supreme Cooperative Council. The statute and its revisions become effective after the registration court finds, in non-litigious proceedings, that they are consonant with law.

Article 14. The expenditures of the Supreme Cooperative Council are financed from the balance-sheet surpluses of cooperatives.

Article 15. 1. The mandates of the [incumbent] members of the general meeting of the Supreme Cooperative Council expire once the representatives referred to in Article 12 are elected, but not later than on 15 May 1990.

15. 2. The Presidium and the Auditing Commission of the existing Supreme Cooperative Council continue to exercise their duties until the elections to the bodies of the Supreme Cooperative Council.

Article 16. 1. The Presidium of the Supreme Cooperative Council shall organize voivodship assemblies of cooperative delegates by 30 April 1990 with the object of electing representatives-members of the general meeting of the Supreme Cooperative Council. In the event that a voivodship assembly of cooperative delegates does not become convened by the above deadline, the date and place of the deliberations of that assembly shall be designated, upon the request of a delegate (delegates) by the voivodship court and publicized by means of press notices.

16. 2. The first general meeting of the [newly elected] Supreme Cooperative Council shall be convened by the Presidium of the existing Supreme Cooperative Council and chaired by the incumbent chairman of the Supreme Cooperative Council. If no such meeting is convened within the deadline specified in Article 15, Paragraph 1, the date and place of the first general meeting of the Supreme Cooperative Council shall be designated by the Voivodship Court in Warsaw upon the request of a representative-member (representatives-members) of the general meeting of the Supreme Cooperative Council and publicized by means of press notices.

16. 3. The expenses of convening the meetings are defrayed from the funds of the Supreme Cooperative Council. This also applies to the cost of the public notices referred to in Paragraphs 1 and 2.

Article 17. Once the liquidation of the unions of cooperatives is completed, the Supreme Cooperative Council satisfies the related material claims of employees on following the same guidelines as those prescribing the satisfaction by the State Treasury of employee claims on liquidated state enterprises.

Article 18. 1. During the period until 31 July 1991 the transfer of ownership of assets and other property rights, performed on the basis of this Decree, is exempt from taxes, Treasury fees, and judicial and notarial fees, with the exception of office fees.

18. 2. The provisions of Paragraph 1 also apply to fees for making entries in land and mortgage registers.

Article 19. 1. Until the Law on Cooperatives is amended, but not later than by 31 July 1991, the provisions of that law concerning audits, the provisions of Part II of that law, and the provisions defining the rights and obligations of unions of cooperatives and their bodies, no longer apply.

19. 2. The liquidator is authorized to take steps requiring the bodies of the liquidated union of cooperatives to carry out the measures needed to bring about the liquidation.

19. 3. On the effective date of this Decree all the public, occupational, professional, and economic organizations shall cease to exercise the functions of the central and other unions of cooperatives referred to in the Cooperative Law Decree and other decrees as well as in their statutes and also the functions conferred on them by the Cooperative Law Decree. Article 7 applies correspondingly to the funds accrued in these organizations from contributions by cooperatives in return for their exercise of the functions of central unions of cooperatives.

19. 4. By 31 March 1990 cooperatives shall conduct elections to their bodies regardless of the date on which the terms of office of these bodies expire. A cooperative which does not conduct these elections is subject to liquidation. The provisions of the Cooperative Law Decree on the liquidation of cooperatives apply to the liquidation of the cooperatives which do not conduct said elections.

Article 20. 1. The minister of justice shall announce by 31 March 1990 the list of the binding normative legal acts issued on the basis of this Decree by the Supreme Cooperative Council and the central unions of cooperatives.

20. 2. The normative legal acts not included in the list referred to in Paragraph 1 cease to be binding on the day this Decree takes effect.

Article 21. This Decree takes effect on the day of its publication.

Amended Law Governing Regulations for State Enterprises

90EP0443A Warsaw RZECZPOSPOLITA in Polish
21 Mar 90 p 4

[Law on amending the law on state enterprises, dated 9 March 1990; also published in DZIENNIK USTAW No. 17, Item 99, 21 March 1990, pages 222-225]

[Text] We sent the text of the law dated 9 March 1990 on amending the law on state enterprises to the printing plant on the very same day the president of the Republic of Poland signed it. After all, this is a legal act which—without exaggeration—is awaited by all enterprises in the country. However, such haste makes it impossible to give the date on which the law will take effect. This will be the date of DZIENNIK USTAW in which it is published; it is not known to us yet.

Article 1

The Law dated 15 September 1981 on State Enterprises (DZIENNIK USTAW, 1987, No. 35, item 201, and 1989, No. 10, item 57, and No. 20, item 107) is amended as follows:

1) Article 1 reads:

“Article 1. A state enterprise is an autonomous, self-managing and self-financed economic entity which is a corporate person.”;

2) Articles 2 and 3 are deleted;

3) Article 12 is deleted;

4) in Article 13, Paragraphs 3 and 4 are deleted;

5) in Article 14:

a) in Paragraph 1, the words “and to liquidate” are added after the words “to set up”;

b) in Paragraph 2, the words “of setting up and the guidelines” are replaced by the words “of setting up, liquidating, and the guidelines”;

6) Articles 15 through 17 are deleted;

7) Article 25 reads:

“Article 25. 1. Mergers and breakups of a state enterprise set up through the procedures outlined in Article 9 are ordered by the parent agency on its own initiative with the consent of the employee council, or at the request of the employee council.

“25. 2. With a view to better utilization of the means of production and improving economic efficiency, the minister with responsibilities for the line of business of an enterprise may make a decision on breaking up the state enterprise:

“1) on his own initiative,

"2) at the request of the parent agency or the employee council of the enterprise,

"3) at the request of the employee council and the manager drawing up the balance, or the manager of an enterprise which does not have an employee council upon soliciting the opinion of the parent agency and enterprise organs. These decisions can be appealed as set forth in Article 61 of the law.";

8) following Article 25, Articles 25¹ and 25² are added which read:

"Article 25¹. 1. A state enterprise may be liquidated if:

"1) after paying profit tax, the profit of the enterprise is not sufficient to pay dividends;

"2) the enterprise has been barred by a legally valid court order or a final administrative decision from engaging in all spheres constituting its line of business to date, and the enterprise has not embarked on operations in a different line of business,

"3) a curing commission makes such a request,

"4) in total, more than one-half of the value of enterprise assets:

"a) consist of shares and other deeds of participation in companies or bonds,

"b) have been given for use to other persons on the basis of contracts under civil law.

"25¹. 2. A decision on liquidation is made by the parent organ on its own initiative or at the request of the employee council of the enterprise, unless the minister of finance offers an objection within 2 weeks.

"Article 25². The decision of the parent agency referred to in Article 25¹ may be appealed by the employee council and the director as set forth in Article 61.";

9) in Article 27, Paragraph 3 is deleted;

10) in Article 29, Paragraph 1 Point 2 and the designation of Point 1 are deleted;

11) the previous content of Article 30 is designated as its Paragraph 1, and Paragraph 2 is added which reads:

"2. The Council of Ministers will outline by decree the types of employee claims which are maintained or arise upon the liquidation of a state enterprise and are guaranteed by the state treasury and the guidelines for awarding them.";

12) Article 38 will read as follows:

"Article 38. 1. The director of a state enterprise is appointed by the employee council.

"2. In a newly established enterprise, the first director is appointed by the parent agency. In the same manner, the parent agency may appoint a director if the employee council fails to exercise its powers envisaged by Paragraph 1 within 6 months.

"3. Until the director is appointed in a newly established enterprise, the parent agency may appoint a temporary enterprise manager for a period not longer than 6 months. This provision does not infringe on the powers referred to in the first sentence of Paragraph 2.";

13) following Article 38, Article 38¹ is added which reads:

Article 38¹. Directors of public-utility enterprises are appointed and dismissed by the parent agency.

"2. The decision of the parent agency referred to in Paragraph 1 may be appealed by the employee council as set forth in Article 61.";

14) Articles 38a through 38c are deleted;

15) Article 39 reads:

"Article 39. 1. The enterprise director is appointed from among the candidates selected through a competition. The appointment of a director without a competition is invalid."

39. 2. The competition panel consists of three persons appointed by the employee council and two appointed by the parent agency.

39. 3. The Council of Ministers will set forth by decree the organization and mode of holding a competition. [no end quotation marks as published]

16) following Article 39, Articles 31¹ through 39⁸ are added which read:

"Article 39¹. The director of an enterprise is appointed for 5 years or indefinitely.

"Article 39². 1. The employee council may dismiss the director of an enterprise upon soliciting the opinion of the parent agency. The parent agency states its opinion within 1 month of the day it is solicited. The failure to state its opinion before the above deadline does not cause the proceedings for the dismissal of a director to be suspended.

"39². 2. Substantiated objections to the decision of the employee council referred to in Paragraph 1 may be raised by the parent agency within 2 weeks of the receipt of the notice. Raising an objection suspends the execution of the decision.

"39². 3. If the employee council stands by its decision, the parent agency has a right to take the case to court within 7 days. Within 14 days, the court sets a court date.

"39². 4. The enterprise director is dismissed by the parent agency if he is not dismissed by the employee council in cases which justify the severance of the labor contract without notice, as well as for the reasons set forth in Article 39⁷.

"39². 5. The decision referred to in Paragraph 4 may be appealed by the employee council as set forth in Article 61.

"Article 39³. If objections have been raised with regard to the decision dismissing the director, the labor contract with the dismissed director is terminated through the procedures and in keeping with the guidelines set forth in Articles 70 through 72 of the Labor Code after the objection is withdrawn by the organ which has raised it or the petition to repeal the decision (resolution) on terminating the director is dismissed by the court.

"Article 39⁴. 1. If a director is dismissed he is entitled to severance pay in the amount of 6 times his monthly remuneration.

"39⁴. 2. Severance pay is not due if the dismissal occurred:

"1) at the request of the director,

"2) for reasons which justify terminating the labor contract without notice through the fault of the employee or for the reasons referred to in Article 39⁷.

"Article 39⁵. 1. Legal actions with regard to the labor contract of an enterprise director are undertaken by the organ which appointed the director.

"39⁵. 2. The organ appointing the director of a state enterprise proposes the terms of employment and remuneration to the individuals who enter the competition for the position of director.

"Article 39⁶. 1. An employee council which is entitled to appoint the director may suspend his performance of duties for no longer than 6 months if the further discharge of his responsibilities jeopardizes the basic interests of the enterprise. The employee council appoints a temporary enterprise manager for the duration of the suspension.

"39⁶. 2. The decision on the suspension may be appealed by the enterprise director and the parent agency as set forth in Article 61. The appeal does not cause the execution of the decision to be suspended.

"39⁶. 3. During his suspension, the enterprise director remains entitled to his previous remuneration and other entitlements entailed by the labor contract.

"Article 39⁷. 1. The director of a state enterprise, his deputy, chief accountant, individuals employed in equivalent positions, and members of the employee councils cannot participate or have a share in the economic entities set up by this enterprise, or be employed by them, or do work for them on the basis of another legal arrangement. This ban does not apply to being members of the Boards of Trustees.

"39⁷. 2. A violation of the provisions of Paragraph 1 constitutes grounds for dismissal from the position or terminating a labor contract. The provision of Article 6, Paragraph 1 of the law dated 25 September 1981 on the self-management of the work forces of state enterprises (DZIENNIK USTAW, No. 24, item 123; 1986, No. 17, item 88; 1987, No. 33, item 181, and 1989, No 10, item 57) does not apply.

"39⁷. 3. The provision in Paragraph 1 does not violate provisions on special duties of persons who have management responsibilities in economic entities.

"Article 39⁸. The individuals referred to in Article 39⁷ Paragraph 1 are entitled to a commission on the profit of the state enterprise. The Council of Ministers will set forth by decree the guidelines for allocating the commission."

17) in Article 42:

a) Paragraph 1 reads:

"1. The parent agency endows the enterprise with funds necessary for performing the operations set forth in the legal act on setting it up."

b) in Paragraph 3, the period at the end is deleted and the words "except as envisaged by the provisions of Paragraphs 4 and 5." are added,

c) Paragraphs 4 and 5 are added which read:

"4. A state enterprise may sell fixed assets through a public auction in the process of exercising the rights it enjoys under Paragraph 3 with regard to the all-people's assets allocated to it during its creation and acquired during its operations.

"5. The Council of Ministers will set forth by decree the guidelines for organizing an auction and the conditions under which it is permissible to omit the auction."

18) Article 47 is deleted;

19) in Article 48, Paragraph 2 the words "five hundred thousand" are replaced with the words "fifty million";

20) in Article 54, Paragraph 1 the period is deleted, and the words "or does not pay dividend" are added.;"

21) in Article 60:

a) Paragraph 1 reads:

"1) The parent agency is entitled to suspend an enterprise director from the execution of his duties for a period of no longer than 6 months if he commits a glaring violation of the law or if the further discharge of his responsibilities by him jeopardizes the fundamental interests of the enterprise."

b) Paragraph 2 is deleted,

c) in Paragraph 3, the words "for a period of time no longer than 6 months" are deleted,

d) Paragraph 5 is added which reads:

"5. The provisions of Article 39⁸, Paragraph 3 apply accordingly";

22) following Article 62, Chapter 13 is added which reads:

"Chapter 13. Curing Procedures.

"Article 63. If an enterprise fails to pay dividends, curing procedures must be initiated with regard to it.

"Article 64. 1. The initiation of curing procedures is supervised by the parent agency in coordination with the minister of finance and upon soliciting the opinion of the employee council. This decision cannot be appealed.

"64. 2. The beginning of curing procedures and their completion must be recorded in the register of state enterprises.

"64. 3. Curing procedures are introduced for a definite period of time. If necessary, this period of time may be extended.

"Article 65. 1. The parent agency sets up a curing commission in the enterprise when it resolves to initiate curing procedures.

"65. 2. The following are members of the curing commission: two representatives of the employee council of the enterprise, two representatives of the minister of finance, one representative of the banks which are enterprise creditors, and two representatives of the parent agency. The parent agency appoints the chairman of the commission.

"65. 3. The parent agency recalls a member of the curing commission at the request of the entity which a given member represents.

"65. 4. The curing commission ceases to operate after the completion of curing procedures and after finishing a final report on the course and result of procedures to the parent agency.

"Article 66. 1. Meetings of the curing commission are convened by its chairman on his own initiative, at the request of the parent agency, the minister of finance, or the employee council of the enterprise.

"66. 2. The mode of operation of the curing commission is set forth in its statute adopted by the commission and confirmed by the parent agency.

"66. 3. Guidelines for remuneration of the members of curing commissions are established by the minister of finance.

"Article 67. At the time the entry referred to in Article 64, Paragraph 2 is made:

"1) the curing commission assumes decisionmaking powers of the employee council with the exception of the powers to delegate and request the dismissal of the members of the commission,

"2) decisionmaking resolutions of the general meeting of employees (delegates) become binding after they are confirmed by the curing commission.

"Article 68. 1. The curing commission recalls or suspends immediately the director of a state enterprise and appoints a temporary enterprise manager for the duration of curing procedures.

"68. 2. The curing commission adopts a program of curing the enterprise developed with the participation of the temporary enterprise manager.

"68. 3. The temporary manager implements the program of curing the enterprise under the supervision of the curing commission.

"Article 69. 1. If an enterprise pays both the current mandatory dividend and the one in arrears, the parent agency will issue an order on ending the curing procedures in coordination with the minister of finance.

"69. 2. The parent agency may, in coordination with the minister of finance, issue an order on ending the curing procedures if the enterprise has paid the current mandatory dividend, and the status of the enterprise suggests that its dividends in arrears will be paid.

"Article 70. 1. If the curing commission finds that the draft program submitted or further implementation of the program do not indicate the curing of the enterprise, it may request that the enterprise be liquidated.

"70. 2. If the enterprise does not pay the current dividend and that in arrears immediately after the completion of curing procedures, the parent agency, in coordination with the minister of finance, will place it in liquidation.

"Article 71. The costs of curing procedures are to be charged to the state enterprise.

"Article 72. The powers of the minister of finance set forth in the present law are exercised by the director of the proper treasury chamber in cases when a local organ of state administration is the parent agency."

Article 2

1. The labor contracts of the directors of state enterprises appointed before the day the present law took effect will expire 2 years after the day they took effect unless they expire sooner.

2. The labor contracts of directors of state enterprises who were appointed within the 3-year period before the present law took effect, in compliance with the requirements of Article 39, Paragraph 1, will expire on the 5th anniversary of the date of appointment unless they expire sooner.

3. In the cases of discontinuation of the labor contracts of the directors of state enterprises referred to in Paragraphs 1 and 2 they are entitled to severance pay along the guidelines set forth in Article 39⁴. A director is not entitled to severance pay if he has been appointed for 5 years and the labor

contract is discontinued when this period of time comes to an end or if he is again appointed to the same position immediately after the expiration of the labor contract.

4. Guidelines for the remuneration of directors appointed before the day this law takes effect are set forth by the Council of Ministers.

Article 3

In the law dated 25 September 1981 on the self-management of the work forces of state enterprises (DZIENNIK USTAW, No. 24, item 123; 1986, No. 17, item 88; 1987, No. 33, item 181; 1989, No. 10, item 57):

1) Article 3 reads:

"Article 3. Except as provided by Article 39⁸ of the law dated 15 September 1981 on state enterprises (DZIENNIK USTAW, 1987, No. 35, item 201; 1989, No. 10, item 57 and No. 20, item 107; 1990, No. ??, item ??), service on the employee council of an enterprise and on the employee council of a plant is performed by volunteers";

2) in Article 24, Paragraph 1:

a) Point 4 reads:

"4) Expressing consent to setting up or joining a commercial company or another organization of structure envisaged by the provision of law or purchasing participation (shares) in it, as well as adopting resolutions on leaving such a structure and the demand to disband it or sell participation (shares) in it,";

b) Point 5 is added which reads:

"5) Expressing consent to omitting the holding of an auction in the process of giving the components of enterprise assets to corporate persons or individuals to be used, in a form envisaged by civil law, for economic operations, as well as expressing consent to giving fixed assets which constitute the components of enterprise assets for use by corporate persons or individuals.";

c) Point 10 reads:

"10) Expressing consent to the disposal of fixed assets constituting the objects of continued use by the enterprise, and to making gifts,".

d) Article 34 is deleted.

Article 4

In the law dated 26 January 1984 on guidelines for creating enterprise remuneration systems (DZIENNIK USTAW 1988, No. 28, item 196) in Article 1:

1) Paragraph 6 reads:

"6. In coordination with nationwide trade union organizations, the Council of Ministers will set forth by decree the guidelines for remuneration of the managers and temporary enterprise managers referred to in Article 1, Paragraph 2 through 4, 6, and 7, except as provided by Paragraph 7. Guidelines for the remuneration of the managers of the units referred to in Points 1 and 5 are set forth in separate regulations.";

2) In Paragraph 7, the number "5" is deleted.

Article 5

In the law dated 31 January 1989 on the financial management of state enterprises (DZIENNIK USTAW, No. 3, item 10 and No. 74, item 437) in Article 16, Paragraphs 2 and 3 are deleted.

Article 6

1. In the law dated 24 February 1989 on some conditions for consolidation in the national economy and on amending certain laws (DZIENNIK USTAW, No 10, item 57), Articles 1 through 7, 10, and Paragraph 2 in Article 16 are deleted.

2. Proceedings in the matters conducted along the guidelines and in the mode determined on the basis of Article 4 or Article 7 of the law referred to in Paragraph 1 which are not completed on the day the present law takes effect are to be conducted along the guidelines and in the mode set forth in the law on state enterprises.

3. Within 6 months of the day the law takes effect, the Council of Ministers will provide to the Sejm information on the exercise of powers entailed by the provisions of Articles 1 through 7 of the law referred to in Paragraph 1.

Article 7

1. The law of 29 June 1983 on improving the operation of state enterprises and their insolvency (DZIENNIK USTAW, 1986, No. 8, item 46; 1989, No. 3, item 10) is repealed.

2. Previous regulations apply to the proceedings aimed at improving the operations of state enterprises or their insolvency initiated prior to the date the law takes effect.

Article 8

The minister of industry will publish in DZIENNIK USTAW the uniform text of the law dated 25 September 1981 on state enterprises, with the continuous numbering of chapters, articles, paragraphs, and points maintained, incorporating changes resulting from the regulations published before the day the uniform text is issued.

Article 9

The law takes effect on the day of publication.

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