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CONTENTS

Decree on Regulating, Protecting Foreign Investments

Rules for Enterprises With Foreign Capital

91BA0007Z Tirana GAZETA ZYRTARE in Albanian No 6, Aug 90 pp 188-196

["Decree on the Economic Activity of Enterprises With the Participation of Foreign Capital in the People's Socialist Republic of Albania"]

[Text] On the basis of Article 78 of the Constitution;

At the recommendation of the Council of Ministers;

THE PRESIDIUM OF THE PEOPLE'S ASSEMBLY OF THE PEOPLE'S SOCIALIST REPUBLIC OF ALBANIA RESOLVES:

Chapter I

GENERAL PROVISIONS

Article 1

Economic enterprises with participation of foreign capital can carry on their activity in various sectors of the economy in the People's Socialist Republic of Albania, in accordance with the objectives stated in the current and long-range economic development plans for the economy of the country.

Article 2

An enterprise with the participation of foreign capital (henceforth called "enterprise") is a juridical person with headquarters in the People's Socialist Republic of Albania which is created on the basis of a contract, in which one party is an Albanian juridical person, with headquarters in the People's Socialist Republic of Albania and the other party is a foreigner or an Albanian, a juridical or legal person, with headquarters outside the territory of the People's Socialist Republic of Albania (henceforth called "foreign person").

Article 3

The enterprise has for its purpose:

—modernizing existing facilities or constructing new facilities with advanced technology, for the extraction and processing of the raw materials of the country;

—increasing exports or reducing imports;

—expanding the range of consumer goods;

—creating new jobs;

—implementing modern methods of organizing and managing production and services, etc.

Article 4

The purpose and activity of the enterprise are stated in its contract and statute.

Article 5

The activity of the enterprise, the relationships arising from the contract on the basis of which it is created and its relations with other Albanian juridical persons are regulated by Albanian legislation.

Article 6

The economic activity of the enterprise and the investment of foreign persons in it are protected by the state which assures to these people the same conditions as it does to Albanian juridical persons.

By provision of the Council of Ministers, special restrictions can be placed on foreign persons of those states which place restrictions on the activity of Albanian persons.

Article 7

The enterprise carries out its activity after receiving the appropriate authorization from the proper state organ.

Article 8

The enterprise is responsible for paying its debts from its own funds. It is not responsible for the debts of the state or the debts of other juridical persons. The state and other juridical persons are not responsible for the debts of the enterprise.

Article 9

The period of activity of the enterprise is specified in the contract.

Article 10

The enterprise, in accordance with its statute, determines the 5-year and annual programs of economic and financial activity.

Article 11

The enterprise presents its annual balance sheet and activity report to the local financial organs by 31 March of the following year.

Chapter II

AUTHORIZATION FOR SIGNING THE CONTRACT

Article 12

The authorization for signing the contract or for amending it is given by the Council of Ministers of the People's Socialist Republic of Albania, at the request of the Albanian juridical person, through the ministry which has under its jurisdiction the sector in which the

enterprise will be carrying on its activity. In the case of banking activity, the authorization is given by the Albanian State Bank.

The Council of Ministers examines and makes a decision on the request for authorization no later than two months after it is presented.

Article 13

The request for authorization must include the following:

a) the name of the enterprise, the center of the activity and information on the foreign persons involved;

b) the purpose of the activity of the enterprise;

c) the nature and type of enterprise;

ch) a complete study, which includes a technical and economic analysis of the activity of the enterprise;

d) the amount of capital, the shares of individual participants, the form and currency in which payments will be made, the manner of distributing profits and covering losses, and the minimum sum in the reserve fund;

dh) the draft statute and draft contract.

Article 14

The authorization is given for a period of upto 10 years. Any request for an extension must be presented one year before the expiration of the authorization in effect.

Chapter III

ADMINISTRATION OF THE ENTERPRISE

Article 15

The enterprise carries on its activity in accordance with its contract and statute. Within the territory of the People's Socialist Republic of Albania it establishes economic contacts for carrying out its activity, signing contracts with local enterprises.

Article 16

The enterprise is supplied with raw materials and with other goods under competitive conditions. Material-technical supply from the country or from import is carried out using the currency specified in the contract.

Article 17

The enterprise decides on the form of its relations with partners outside the country. It can sign contracts with them in an independent manner, within the limits permitted by the legislation of the People's Socialist Republic of Albania, or it can collaborate with foreign trade enterprises of the People's Socialist Republic of Albania in carrying out its export and import activity.

Chapter IV

FINANCIAL ADMINISTRATION

Article 18

The enterprise establishes the following funds:

a) a reserve fund to cover losses or risks and to finance fluctuations in the administration of the enterprise and in the Albanian currency, as well as in foreign currency;

b) cultural and social funds as well as the distribution funds, according to the general regulations stated in the statute.

Article 19

At the end of the calendar year, after the payment of all taxes, the enterprise sets aside no less than five percent of its earnings for the reserve fund, until the sum specified in the contract is achieved.

After the payment of taxes and the setting aside of monetary assets, according to Article 18 of this decree, the enterprise can freely establish a fund for its further development or for other purposes.

Article 20

The funds established by the enterprise cannot be blocked. The enterprise has the right to use them freely, for the purpose for which it created them.

Article 21

After the payment of taxes and the establishment of the funds, the profit is divided among the participants.

Article 22

The annual balance sheet of the enterprise and the annual financial report are approved according to the regulations specified in the enterprise statute.

Chapter V

MANAGEMENT OF CURRENCY

Article 23

The enterprise finances itself in leks or in foreign currency.

Article 24

The enterprise keeps an account in foreign currency in the Albanian State Bank. Such an account can also be opened in a foreign bank, by agreement with the Albanian State Bank.

Article 25

Foreign persons have the right to transfer part of their earnings outside the state.

Article 26

The exchange of Albanian currency for foreign currency and vice versa is carried out on the basis of the exchange rate set by the Albanian State Bank.

Article 27

The enterprise has the right to obtain credit in foreign currency from the Albanian State Bank. It can also receive such credit from a foreign bank, by agreement with the Albanian State Bank.

Chapter VI

ECONOMIC CONDITIONS

Article 28

The enterprise creates an economic information system, in accordance with the legal provisions applicable for Albanian enterprises.

Article 29

The enterprise keeps accounts in Albanian currency, in accordance with the appropriate legal provisions applicable for Albanian enterprises. Exceptions to this regulation can be made by the Ministry of Finance.

Article 30

The enterprise gives the appropriate Albanian organs accounting and statistical data on related matters in accordance with the manner and conditions specified in the legal provisions which are applicable for Albanian enterprises.

Article 31

The profits of the enterprise are taxed. The amount of the tax is specified by the Ministry of Finance.

Article 32

When the economic activity of the enterprise during the taxable year results in losses, the tax can be obtained from the profits realized during the next three years.

Article 33

No tax is levied on that portion of the income which, according to a donation agreement, is given to an Albanian educational, cultural or scientific institution or a social organization, and on funds which are designated for the assistance of victims of natural disasters.

Article 34

The enterprise is obliged to keep accounts according to the regulations established by the appropriate Albanian state organs. Each year, at the request of the appropriate tax authorities, it will provide information on the accounting and economic activity it has carried out.

Article 35

The year's earnings are declared within a month of the issuance of the annual balance sheet, no later than 31 March of the next tax year.

Within a month after the presentation of the statement on the profits of the enterprise, the Ministry of Finance issues the appropriate document on taxes, implementing Article 31 of this decree.

Article 36

Raw materials, other materials and equipment imported by the enterprise for products for export are not subject to customs taxes.

Materials, machinery, equipment, etc. which are imported for reinvestment also are not subject to customs tax.

Chapter VII

LABOR RELATIONS

Article 37

Labor relations in the enterprise are regulated by labor contracts.

The parties in the labor contract can agree that a part of the payment to foreign workers of the enterprise will be in hard currency.

Grievances of workers against the enterprise are resolved by an Albanian court. When the plaintiff is a foreign worker, the grievance is resolved by the organ stipulated in the work contract.

The provisions of Albanian labor legislation are applied in the case of problems which are not regulated by the labor contract.

Article 38

Albanian workers in the enterprise are insured in accordance with Albanian social insurance legislation and foreign workers, according to the regulations stipulated in the statute.

Article 39

Additional conditions regarding the payment for the work of Albanians who work in this enterprise can be stipulated by special provisions.

Article 40

The protection of the interests of the workers of the enterprise is guaranteed by Albanian legislation.

Chapter VIII

CLOSING DOWN THE ENTERPRISE

Article 41

The enterprise is closed down when the situations specified in the contract are shown to exist.

Article 42

The expansion of the enterprise is executed according to the regulations specified in its statute.

Article 43

This decree goes into effect immediately.

Tirana, 31 July 1990
Decree No. 7407

FOR THE PRESIDIUM OF THE PEOPLE'S ASSEMBLY OF THE PEOPLE'S SOCIALIST REPUBLIC OF ALBANIA

Secretary: Sihat Tozaj
Chairman: Ramiz Alia

Protection of Foreigners' Investments

91BA0007Y Tirana GAZETA ZYRTARE in Albanian No 6, Aug 90 pp 185-187

["Decree on the Protection of Foreign Investments in the People's Socialist Republic of Albania"]

[Text] On the basis of Article 78 of the Constitution;

At the recommendation of the Council of Ministers;

THE PRESIDIUM OF THE PEOPLE'S ASSEMBLY OF THE PEOPLE'S SOCIALIST REPUBLIC OF ALBANIA RESOLVES:

Article 1

Investments and economic activities connected with investments may be carried out on the territory of the People's Socialist Republic of Albania by enterprises, firms, foreigners or Albanians residing outside of the territory of the People's Socialist Republic of Albania, in accordance with the legislation governing these activities.

Foreign investments on the territory of the People's Socialist Republic of Albania enjoy protection and full security.

Article 2

The term "investments" includes:

a) movable property and real estate;

b) shares in economic activity with the participation of foreign capital;

c) monetary obligations (cash) that are used for the creation of an economic value or obligations of any kind that have economic value;

ch) trade investments, investments for prospecting for, extracting, and exploiting natural resources, and other types of investments.

Article 3

Foreign investments on the territory of the People's Socialist Republic of Albania cannot be expropriated or nationalized and will not be subject to any other similar measure of expropriation or nationalization with the exception of special cases for public purposes and always with the payment of appropriate compensation.

The compensation in the cases mentioned in the first paragraph of this article is equal to the value of the investment expropriated as of the date on which the other party is informed and this compensation is paid without delay, with the usual bank interest at the time of the payment. It is completely realizable and freely transferrable.

In the event that the compensation is delayed, it is paid in one amount which places the investor in a position which is no less favorable than the position in which he would have been if the compensation had been paid immediately on the date of the expropriation.

Article 4

The legality of the expropriation, the nationalization or any similar measure as well as the amount of the compensation can be subjected to examination by a court.

Article 5

Enterprises, firms, or foreign individuals whose investments incur losses on the territory of the People's Socialist Republic of Albania because of war, a state of emergency, and forces of nature such as earthquakes, floods, etc., will receive the same treatment as Albanian enterprises in regard to redress for damages, compensation, etc.

Article 6

The payments in accordance with Article 3 will be made without delay, at the rate of exchange effective as of the date of the payment.

Article 7

Earnings from investments as a result of reinvestment enjoy the same protection as the investments.

Article 8

The People's Socialist Republic of Albania will encourage the spirit of good faith and cooperation for the speedy and just resolution of disagreements which might arise between the investing parties. If a resolution is not

achieved, at the request of one of the parties, the matter can be presented to an arbitrator chosen by the parties.

Article 9

The People's Socialist Republic of Albania will publish all the laws, regulations and procedures that concern or affect investments.

Article 10

This decree goes into effect immediately.

Tirana, 31 July 1990
Decree No. 7406

FOR THE PRESIDIUM OF THE PEOPLE'S ASSEMBLY OF THE PEOPLE'S SOCIALIST REPUBLIC OF ALBANIA

Secretary: Sihat Tozaj
Chairman: Ramiz Alia

Law on State Enterprises

90CH0122C Prague HOSPODARSKE NOVINY (supplement) in Czech 27 Apr 90 pp 3-8

[Supplement to HOSPODARSKE NOVINY by Jaroslava Svobodova, doctor of law, Presidential Office of the CSFR Government: "Law on State Enterprises"]

[Text]

Law on State Enterprises

The Federal Assembly of the Czechoslovak Federal Republic has passed the following law:

PART I. Introductory Provisions

Section 1. The Purpose of the Law

The purpose of this law is to regulate the status and legal relations of state enterprise (hereinafter Enterprise).

Section 2. The Enterprise, Its Role in the Society, and the Work Group

(1) The Enterprise is a producer of goods (products, labor, and services) which performs its entrepreneurial activity independently paying its own expenses; in doing so, it accepts an commensurate business risk.

(2) The work group consists of full time employees.[1]

PART II. General Provisions

CHAPTER ONE. Status and Management of the Enterprise

Section 3. The State and the Enterprise

(1) The state establishes the conditions for the entrepreneurial activity of the Enterprise, and regulates this activity primarily through legal directives.

(2) The activity and territorial range of the Enterprise can only be limited or intervened under the conditions and in the manner stipulated by the law.

Section 4. The Founder

(1) The Founder of the Enterprise is the central government agency or a national committee.

(2) With respect to the Enterprise, the Founder performs the function of an economic manager[2] under the conditions and to the extent stipulated by the law.

Section 5. Legal Status of the Enterprise

(1) The Enterprise is a legal entity; it uses its own name in all legal relations and bears the liability ensuing from them.

(2) The Enterprise is not responsible for the liabilities of the state or other entities. The state is not responsible for the liabilities of the Enterprise unless the law states otherwise.[3]

(3) The Enterprise may claim protection against intervention by the economic control agencies into its activities, which is at variance with the laws, under conditions stipulated by the law.[4]

(4) If the an economic control agency causes property loss for the Enterprise, due to its intervention into the activities of the Enterprise, it is obligated to provide compensation. The law establishes the conditions and extent of compensation for the loss of property, as well as establishing cases when compensation is not provided.[5]

Section 6. The Property Status of the Enterprise

(1) The Enterprise operates with assets and property rights entrusted to it at the time of its foundation, as well as with assets and property rights acquired by it during the course of its operations.[6] The assets with which the Enterprise manages are the property of the state.

(2) The Enterprise is entitled to hold, utilize, and dispose with the property it manages according to laws. The property of the Enterprise may only be confiscated under circumstances stipulated by the law.

(3) The initial capitalization of the Enterprise is the net value of the property entrusted to it at its foundation.

Section 7. The Financial Status of the Enterprise

The Enterprise is directly subject to the state budget (the state budget of the federation or the state budget of the republic), the state funds, and the budgets of the national committees responsible.

Section 8

(1) The Enterprise meets its needs and expenses primarily from the income earned from its entrepreneurial activities, as well as from other resources.

(2) The Enterprise pays levies and state taxes from its profit.

(3) The profit that remains after levies and taxes have been paid (hereinafter Net Profit) is used independently by the Enterprise; in so doing it must first pay its share of contributions in funds that it is obligated to maintain. Net Profit cannot be confiscated.

(4) The Enterprise retains the depreciation of its capital assets.

Section 9

(1) The Enterprise maintains the following funds:

a) a development fund, designed to finance research and development, investments including modernization and reconstruction, and inventory accumulation.

b) a capital reserve fund, designed to cover losses and risks, and to finance fluctuations in the business of the Enterprise;

c) a fund for sociocultural needs, designed to ensure the needs for the social development of Enterprise employees;

d) a special compensation fund, designed to provide personal economic incentives in the entrepreneurial activities of the Enterprise.

(2) The Enterprise may create additional funds from its net profit. In cases established by special regulations, the Enterprise may also create funds for specific purposes from operating costs or from other sources.

(3) The money in the funds cannot be confiscated; the Enterprise decides independently how they should be used in accordance with laws. There is no limitation on the transfer of the balance of the individual funds to later fiscal quarters.

(4) The Enterprise is obligated to keep its accounting record in a prescribed manner, compile an annual balance sheet, and submit it to the founder and competent state administration agencies.

(5) The Enterprise's annual financial report will be audited by a person, or a group of persons, designated by the founder, or an auditor. The Enterprise is liable for all audit expenses.

Section 10. The Internal Organization of the Enterprise

(1) The internal organization of the Enterprise and the organization of internal management are the exclusive prerogative of the Enterprise.

(2) The internal organization of the Enterprise is regulated by the Organization Code, or other enterprise organization directives. The words "enterprise" or "organization" may not be used in the designation of an internal organization unit within the Enterprise.

(3) The Enterprise may determine which internal organization units will be entered in the enterprise register as subsidary plants. The manager of a subsidary plant is empowered to perform all legal tasks concerning the subsidary plant in the name of the Enterprise.

Section 11. Environmental Protection and the Health of the Citizens

(1) In its operations and social activities, the Enterprise is obligated to protect the environment, as effectively as possible, against harmful effects caused by its activities, and particularly to ensure that that these activites do not endanger the health of the citizens. From its own resources it will finance and realize measures to remove any damages caused by its activities and contribute to protection of all elements of the environment threatened by its activities.

(2) The Enterprise is obligated to provide facilities for the protection of the environment and natural resources, put these facilities into operation together with the relevant productive or nonproductive plant, and ensure their continuous and efficient operation.

CHAPTER TWO. The Founding and Dissolution of the Enterprise

Section 12. The Founding of the Enterprise

(1) The Enterprise is established on the basis of a decision by the founder effective on the date on which it is entered in the enterprise register.

(2) The application for entering the Enterprise in the enterprise register is submitted by the founder. The founder is obligated to append the following to the application for entry in the enterprise register:

a) the founding charter;

b) the consent of the government agency having jurisdiction to the purpose of the activity (enterprise), if such consent is required by special regulations.

(3) The founder is obligated to discuss the foundation of the Enterprise with the appropriate local national committee.

Section 13. The Founding Charter

(1) The founding Enterprise charter is published by the founder.

(2) The founding charter must include:

a) the name of the founder;

b) the name and place of business of the Enterprise, and its identification number; the selected name must avoid any possible confusion with the name of another organization, and it must clearly state that it is a state enterprise;

c) the purpose of operations (enterprise);

d) a list of all assets;[6]

e) initial capitalization; if it is not possible to ascertain the amount of the initial capitalization immediately, it must be done within 60 days of the date on which the Enterprise is established;

f) provisions for transfer of the rights and obligations to the Enterprise if such rights and obligations are being transferred to the Enterprise.

Section 14. Breakup, Merger, and Consolidation of the Enterprise

(1) Breakup, merger, or consolidation an Enterprise will be based on a decision by the founder (founders) on the date when the enterprise is entered in the enterprise register. The founder submits the application for entry. In case of a merger, the founder who will be performing the function of founder of the newly merged enterprise will be responsible for the application. (Section 17, para. 2).

(2) An Enterprise that is broken up is dissolved and its assets and liabilities are transferred to the newly created enterprises or to enterprises assuming their obligations, as determined by the founder.

(3) A merged Enterprise is dissolved and its assets and liabilities are assumed by the Enterprise with which it is merging.

(4) If Enterprises are consolidated, the previous Enterprises are dissolved, and their assets and liabilities are transferred to the newly created Enterprise.

(5) The labor unions involved must be consulted on breakups, mergers, and consolidations of an Enterprises.

Section 15. Cessation of Enterprise Operations

(1) Cessation of Enterprise operations:

a) through breakup, merger, or consolidation, or cessation of operations without a liquidation;

b) through liquidation of an Enterprise which ceased operations.

(2) The Enterprise will cease operations based on facts indicated in paragraph 1 becomes efective on the day it is crossed of the enterprise register. The application to cross off an Enterprise from the enterprise register is submitted by the founder or the liquidator.

(3) If an Enterprise ceases operations without being liquidated, the founder will provide information on all its assets and liabilities. If he does not do so, the liquidation will be carried out according to special regulations.

(4) The founder is obligated to discuss the cessetion of operations with the national committee.

(5) According to paragraph 1, labor unions involved must be consulted on cessation of Enterprise operations.

Section 16. Notification Requirements

(1) It is the responsibility of the Enterprise which acquired the assets and liabilities of an Enterprise which ceased operations to notify immediately the Enterprises and other entities affected by the cessation about the acquisition of its assets and liabilities.

(2) It is the responsibility of the founder to notify others when an Enterprise ceasess operations without being liquidated; if the Enterprise is being liquidated, this responsibility passes to the liquidator.

(3) The founder or the liquidator must, without undue delay, publicize the cessetion of Enterprise operations and the acquisition of its assets and liabilities, if the founding charter stipulates such action.

Section 17. The Founders' Agreement

(1) If the merger or consolidation of the Enterprise affects several founders, the latter will make decisions in mutual agreement.

(2) During the decisionmaking process of the takeover of an Enterprise, the founders must come to an agreement as to which one of them will act as founder of the new Enterprise.

PART III. The Agencies of the Enterprise, and the Rights and Obligations of the Founder

CHAPTER ONE. State Enterprise

Section 18. The Agencies of the Enterprise

The Enterprise executives are the chief executive officer and the board of directors (hereinafter Board).

Section 19. The Chief Executive Officer

(1) The chief executive officer is appointed by the founder on the basis of competition, and after consultation with the Board.

(2) The chief executive officer may be dismissed by the founder.

(3) The chief executive officer directs the activities of the Enterprise and, as a statutory offical, deals with all matters and operations. After consulting the Board, he approves the annual financial statement, the net profit distribution, and the basic concept of development of the Enterprise.

(4) The chief executive officer appoints and dismisses his deputy from among the employees in the Enterprise who, in his absence, assumes all his rights and obligations. If he appoints more than one deputy, he establishes their hierarchy.

Section 20. Composition of the Board and Its Term of Office

(1) The founder determines the number of members of the Board.

(2) Half of the members of the Board are appointed or dismissed by the founder, the other half are elected or dismissed by the employee group or its delegates; they must employees of the enterprise, and are elected or dismissed by secret ballot. The Election Code, approved by the employees, establishes the conditions of election or dismissal.

(3) The chief executive officer and his deputies cannot be members of the Board.

(4) The Council elects a chairman and vice chairman from among its members. The Chairman convenes the board and chairs its proceedings; if he is not present, he is represented by the vice chairman.

(5) The Baord is appointed for a term of five years. A member of the Board may resign his post before the end of the term by submitting a written resignation to the Board. If the number of Board members appointed by the founder drops, the founder is obligated to appoint a new board member without delay. If the number of Board members elected by the employees decreases, the procedures established in the Election Code for the election and dismissal of Baord members are followed.

Section 21. The Activities of the Board

(1) The Board:

a) discusses all strategic concepts in regard to the development of the Enterprise;

b) directs the management and operations of the Enterprise;

c) discusses the annual financial statement and the net profit distribution;

d) may recommend that the founder dismiss the chief executive officer;

e) it gives its consent on the breakup, merger, consolidation, or dissolution of the Enterprise.

(2) A majority of more than 50 percent of all Board members is necessary to approve a Board resolution.

Section 22. The Rights and Obligations of the Founder

After consulting the Board, the founder may make a decision on the merger, consolidation, breakup, or dissolution of the Enterprise:

a) based on a program of structural changes in the national economy (expansion or cutbacks in branches and sectors) approved by the appropriate government;

b) on the suggestion of the Enterprise (Enterprises) involved in the merger, consolidation, breakup, or dissolution;

c) if the Enterprise is endangering or unjustifiably reducing its initial capitalization, or is unable to meet its payments or tax obligations, or is unable to create the required size of mandatory Enterprise funds, or if the annual financial statements show a loss in two consecutive years.

CHAPTER TWO. State Enterprise To Satisfy Publicly Beneficial Interests

Section 23. The Purpose of the Enterprise Activities

(1) The provisions of this law, with the exceptions stipulated in this section, apply to Enterprises whose basic objective is to satisfy publicly beneficial interests and which are obligated to do this according to their founding charter.

(2) Establishing Enterprises according to paragraph 1 is only possible in areas of activity, that is to say, in specific cases, which are established by the government of the Czechoslovak Federal Republic or the governments of the republics.

(3) In the founding charter, the founder is empowered to stipulate an obligatory objective for the activity of the Enterprise within the framework of the basic objectives of the activity, and to change this obligatory objective of the activity. The founder may also limit the operating territory where the Enterprise may execute the obligatory objective of its activity.

Section 24. The Enterprise Executives

The Enterprise does not have a Board.

Section 25. The Annual Financial Statement and Net Profit

On the recommendation of the chief executive officer, the founder approves the annual financial statement and decides on the net profit distribution.

Section 26. Merger, Breakup, Consolidation, and Dissolution of the Enterprise

(1) After consulting the local national committee, the founder may also decide on a merger, breakup, consolidation, or dissolution of the Enterprise for reasons other than those stipulated in Section 22.

(2) The labor union concerned must be consulted on measures taken according to paragraph 1.

PART IV. Joint, Temporary, and Final Provisions

Section 27. Joint Provisions

Under the conditions stipulated by this law, the founder may accept or change the nature of an Enterprise, whose basic objective is to satisfy publicly beneficial interests.

Section 28

(1) If an Enterprise is broken up without being liquidated, according to the conditions stipulated by this law, the founder may invest the total assets of the Enterprise into a corporation or transfer them contractually to the ownership of another legal or physical entity. The rights and liabilities of the broken up Enterprise transfer together with the assets. The provisions in the first clause of Section 251 of the Labor Code are not applicable.

(2) The founder may contractually transfer the assets of the Enterprise to the temporary use (rent) of another legal or physical entity in accordance with the Commercial Law.[7] If the founder transfers the Enterprise total assets into temporary use, the rights and liabilities of the Enterprise will be transferred to the renter, unless the contract on temporary use states otherwise.

(3) The law establishes the conditions of, and manner in which the measures according to paragraphs 1 and 2 are to be executed.

Section 29

In an Enterprise that has been established according to this law, the founder is obligated to guarantee the formation of a Board within 60 days from the founding of the Enterprise, unless it is a Public Benefit Enterprise.

Section 30

The status, rights, and obligations of labor unions established through law or issuing from international agreements by which the Czechoslovak Federal Republic is bound, are not affected by this law.

Section 31. Temporary Provisions

(1) Enterprises, established according to Law No. 88/1988 Sb. on state Enterprises, are considered to have been established according to this law from the date on which this law takes effect. Previous internal organization units of these Enterprises, which were entered in the enterprise register, are considered to be subsidiary plants according to this law as of the date on which this law takes effect.

(2) In the case of Enterprises mentioned in paragraph 1, the self-administration units cease to exist as of the effective date of this law.

(3) Within 90 days of the effective day of this law, the founder is required to appoint a chief executive officer and one-half the members of the Board. The current chief executive officer will direct the Enterprise until the new chief executive officer is installed or, in the absence of a chief executive officer, this function will be performed by a person nominated by the founder, who will have the status of a statutory agent.

(4) The provisions in paragraph 3 need not be applied in the case of chief executive officers elected or appointed before this law went into effect. Employees directly under the chief executive officer, who were elected before this law went into effect, are considered to have been elected according to this law as from the date on which this law goes into effect. Other elected employees are considered to be employed in the Enterprise on the basis of a work contract.

Section 32

(1) Up to 31 December 1990, on the suggestion of the Enterprise or its internal division (divisions), or even without their recommendation, the founder may:

a) spin off a division or divisions of the Enterprise, in order to found another Enterprise or enterprises;

b) break up the Enterprise;

c) make a decision on the spin off of one division and its incorporation into another Enterprise. When taking these measures, the founder is required to make a decision on the transfer of assets and liabilities of the division concerned.

(2) When spinning off a division, the founder is required to prepare a founding charter for the Enterprise affected (initial capitalization and/or its purpose).

(3) Up to 31 December 1990, the founder may break up an Enterprise without liquidating it, and invest its assets, as a whole, in a corporation or transfer it contractually to the ownership of another legal or physical entity. The rights and liabilities of the Enterprise that was broken up are transferred together with the property. The provisions in the first clause of Section 251 of the Labor Code are not applicable in this case.

(4) If the founder is a central agency of state administration of the republic or a national committee, measures taken in accordance with paragraph 3 require the prior consent of the government of the Czechoslovak Federal Republic or the government of the Czech or Slovak Republic.

Section 33

Until there is a change in the accounting methods of the Enterprise, the initial capitalization of the Enterprise at its founding consists of the balance of the capital assets and investments, the working capital, and any securities.

Section 34

The Enterprise is required to implement any consolidation program set by the founder before this law came into force. However, the founder may decide to terminate any consolidation program during the time it is being implemented.

Section 35

When the term "state economic organization" is used in legal regulations, it is understood to include state enterprise according to this law, unless stated otherwise.

Final Provisions

Section 36. Provisions of Authority

(1) The government of the Czechoslovak Federal Republic will regulate the accounting of the Enterprise; with the exception of the fund for social and cultural requirements, it may:

a) limit the number of funds required;

b) establish different regulations for the financial management of Enterprises to satisfy publicly beneficial interests;

c) establish different regulations for the creation and use of funds required for Enterprises with up to 100 employees.

(2) The Federal Ministry of Finance will regulate the depreciation of capital assets, development financing and entreprise social consumption, and the auditing of the annual financial statement of the Enterprise.

Section 37

Law No. 88/1988 Sb. on state enterprise is annulled.

Section 38. Entry Takes Effect

This law becomes effective on 1 May 1990.

Commentary

On PART I—Introductory Provisions (Sections 1-2)

The new law is to create conditions for optimal operation of enterprises during the next few years. From this point of view, it should be understood as a law, whose regulatory purpose will be temporary in nature, until future comprehensive laws on economic activities of all entities in the entrepreneurial sphere will become effective.

The forms of management of state enterprises, and thus the enterprises themselves, will be varied and two types of enterprises will emerge: the basic enterprise, whose executives are the chief executive officer and the board of directors, made up of an equal proportion of members appointed by the founder and those elected by the employees; and a special public benefit type enterprise, which differs from the others in that the founder is more involved in the activities of the enterprise.

The present dynamic development in the activity of the entities in the sphere of the national economy, and the necessity to restructure the Czechoslovak economy, are also reflected in the relatively extensive legal adjustment of the introductory and final provisions intended to enable state enterprises to change to different forms of management and operation, as well as to new legal forms of organizing entrepreneurial activity, including leasing.

In contrast to the previous laws, provisions of a proclamatory or declarative nature have been deleted, as were redundant provisions which merely iterate legal amendments already contained in the laws (in particular, all of ARTICLE V, with a few exceptions, on economic and social activity was deleted). Thus the law amendments have been simplified and made more intelligible.

The detailed definitions of the enterprise and its activities have also been deleted, as has the proclamatory and administratively centralist concept, mission and status in the economy, particularly with respect to the tools of management (state plan, etc.).

The basic characteristics of the status and activity of the enterprise are independence and profitable operations.

An appropriate business risk is to be understood as any actions undertaken by the manager of the state enterprise in accordance with the legal code, in which the manager, after considering all the circumstances, has sufficient reason to believe that the probability of the success of his specific business decision is substantially higher than the probability of its failure. Business risk does not include actions by the state enterprise that endanger the health or lives of people. The risk involved in these actions should usually be apparent from the outset. From the existing circumstances, it is obvious that the preparation of managerial decisions is also important, particularly an objective analysis of all available information.

For the purposes of the law, only full time and not part-time employees under a contract are considered to be employees of the enterprise. In this case, the law is based on previous experiences. It is also based on the need to define explicitly that the enterprise employees are primarily those interested in working full time in a specific enterprise and sharing in the results of its work, its entrepreneurial activity, and the economic development. From this point of view, part-time employment is considered to be only supplementary and thus, in the draft amendment, such an employee is not considered to be a member of the work group of the enterprise. Whatever is applicable for part-time employment is also applicable for general work contracts. On the other hand, the possibility of concurrent working relationships is not eliminated; from the point of view of the law, such employees are considered to be employees of those enterprises, with which they have concurrent working relationships.

On PART II—General Provisions (Sections 3-17)

The status and management of the enterprise, particularly the enterprise's relationship with the state and with its founder, have been redefined.

The state's regulatory function toward the enterprise (Section 3) is limited, despite the fact that some of the founder's rights are reinforced, and the state's task is concentrated on establishing conditions for entrepreneurial activity. Furthermore, emphasis is laid on the principle that the enterprise's activity and operational territory may only be limited or interfered with under conditions and in the manner stipulated in the law. In this case, the law's main interest is to ensure the legality of the enterprise activities.

The amendments on special types of economic management, contained in Sections 15-17 and in Section 14 of the previous Law No. 88/1988 Sb. on state enterprise (cutback program, consolidation program, direct administration) have not been included in the new law on state enterprise.

The founder of the enterprise is either a central agency of the state administration or a national committee, and is a representative of the state. The founder of an enterprise according to the law is always a state agency, since it is dealing with state enterprises.

The enterprise is a legal entity. It is not responsible for the liabilities of any other entities, including the state, and the state is not responsible for the liabilities of the enterprise. The law emphasizes the independence of the enterprise, as well as protection of the enterprise against intervention by agencies of commercial management,

when it refers to the relevant amendments in the Commercial Code, and in the law on economic arbitration.

The property status of the enterprise (Section 6) is defined more clearly: the wording of the law is essentially the same in content as the amendment in the Commercial Code.

Basically there are no changes in the financial status of the enterprise (Sections 7-9), but some terms have been defined in greater detail. The provisions on various types of enterprise funds have been moved to Article II in the interest of clarity and comprehensiveness of the amendment and a basis for existing legal adjustments. The same applies to the provisions on the annual financial statement, which was supplemented with necessary provisions for audit.

The internal organization of the enterprise (Section 10) falls entirely under the control of the enterprise, including the naming of internal organizational divisions. However, it is forbidden to call such organization divisions "enterprise" or "organization" since, in the past, this has led to misunderstandings and could cause confusion in economic relations (for example, the designation "syndicated enterprise" or "national enterprise," although neither were truly enterprises).

The law reintroduces the concept "separate plant," so that it will be possible to differentiate between the internal divisions whose manager is empowered to transact legal actions concerning the said organizational division (separate plant) in the name of the enterprise, and other internal divisions of the enterprise which do not have this right.

The law is concerned with the problems of environmental protection and the health of the citizens, even though this adjustment is subject to other regulations. However, it is included here to provide continuity with previous amendments and, especially, because of the existing situation in this area. Also because the said problems are extremely important for the whole society.

The proclamatory and superfluous provisions on the activities of the enterprise and the socialist legislature on the participation of employees in management and election programs of the national front have been deleted. Together with changes in the concept of a state plan, previous provisions on the state plan were also deleted.

The provisions on the founding and dissolution of enterprises are basically unchanged from previous the Law No. 88/1988 Sb.

The declarative nature of an enterprise's registration in the enterprise register is due to the fact that an enterprise does not officially exist until it has been entered in the enterprise register. The founder submits the application for entry along with the required information and attachments as required. Only one provision was deleted which, due to its ambiguity, permitted the founders to choose the forms and elements of organizations, including names, without general rules, since this caused some problems and doubts on the organization of the enterprise.

The name of the enterprise in the founding charter (Section 13) must clearly show it is a national enterprise, and any problems that used to arise because of the names of enterprises would be eliminated. Since, in the future, enterprises will probably not be founded for a limited time only, the regulation of such enterprises, which proved to be impractical, was not included in the law. The closer definition of items in the founding charter is based on past experiences.

The law does not include any provisions on the dissolution of an enterprise that was founded for a limited time only.

The notification obligation (Section 16) is left to the enterprise that is taking over, since it is assumed that this enterprise will have the strongest interest in notifying the business partners. In the future, it is to be expected that this kind of transaction will be announced officially. In the cases stipulated by law, when an enterprise ceases its existence without being liquidated, the founder has the said obligation; when an enterprise is liquidated, this obligation passes to the liquidator.

If an enterprise is taken over, and the founders cannot decide which of them will be the legal founder of the new enterprise, a takeover cannot occur.

On PART III—The Enterprise Organization and the Rights and Obligations of the Founder (Sections 18-26)

The type of state enterprise that is run according to the so-called managerial concept is considered to be a basic enterprise. The enterprise executive bodies are the chief executive officer and the board of directors.

The statutory head of a state enterprise, directing the activity of the enterprise, is the chief executive officer who is appointed and dismissed by the founder. The law stipulates that the founder is obligated to appoint the chief executive officer on a competitive basis after consulting with the board of directors. The type of competition chosen depends on the founder's discretion. The law stipulates that the chief executive officer appoints and dismisses his subordinates from among the employees of the enterprise and, in his absence, the president represents him in all his rights and obligations. This concept is also applied in public interest enterprises. In the latter type of enterprise, the chief executive officer is also authorized to approve the annual financial statements and distribution of the net profits.

One-half of the board of directors is made up of members appointed or dismissed by the founder and half is made up of members elected or dismissed by the employees. In other words, the founder and the employees share equally in the structure of the board of directors, and they are not to be prevented from utilizing expert opinions and knowledge on the board of directors.

The law indicates what is to be done if there is a decrease in the number of the board of directors and the fact that neither the enterprise chief executive officer nor the president may be members of the board of directors. The term of office for the board of directors is set at five years.

The influence of the board of directors is substantial, since it must be consulted on the annual financial statement and methods of distribution of net profits. The board of directors has supervisory authority, since it oversees the management and operations of the enterprise, and thus comes close to the concept of the board of directors in corporations. It is to be expected that a substantial number of the entrepreneurial state companies will be transformed into corporations relatively soon.

The rights and obligations of the founder (Section 22) are very important for the management of the enterprise, particularly from the point of view of implementing organizational or structural changes and in the basic regulating of the enterprise's operations.

The founder has the right to make decisions on mergers, consolidations, breakup, or dissolution of the enterprise, particularly with respect to the implementation of structural changes (expansion or cutbacks), that have been authorized by the governmental authority, and in so doing, he needs only to discuss these measures with the board of directors. He does not need its approval. The founder has similar authority if an enterprise is mismanaged.

A public interest enterprise was set up as a second type of state enterprise.

As is obvious from the name of this enterprise, it is the type of enterprise whose basic activity is to satisfy publicly beneficial interests, and this fact must be noted in the founding charter. In addition, this enterprise is characterized by the fact that the founder is empowered to stipulate in the founding charter a so-called obligatory objective for the activity, i.e., an activity that the enterprise must guarantee in the public interest, within the framework of the basic objective of its activities.

The founder decides on the distribution of the net profit, as well as on mergers, consolidations, breakup, and dissolution of the enterprise (discussion with the appropriate national committee and consultation with the labor union is required before above stated actions can be taken).

It should be emphasized that public interest enterprises can only be founded in those areas of activity or in specific cases which have been determined by the appropriate government.

On PART IV—Joint, Temporary, and Final Provisions (Sections 27-38)

In Section 27 the law notes the requirement for acceptance or changes in the nature of a public interest enterprise.

Section 28 regulates instances when the founder of the enterprise, for the reasons and under the conditions stipulated by this law (primarily in the case of mismanagement or structural changes), dissolves an enterprise and must transfer the assets of the dissolved enterprise. It does not include cases of an enterprise being dissolved without being liquidated, since an enterprise is not actually dissolved until it has been liquidated.

In the cases stipulated in Section 28, the founder transfers the capital assets (assets) of the dissolved enterprise, as a whole, to the ownership of another legal or physical person. Usually he "sells" the entire enterprise to a legal person (for example a group), or a physical person (individual); in the latter instance it is a matter of privatization (in the case of an inefficient, unprofitable, etc. enterprise, it is also possible that it will be given away). Furthermore, under this provision, the law presumes that the assets of the dissolved enterprise will be invested in a corporation; in fact, this will probably be the most frequent case. In all cases the transfer will be made on the basis of a contract.

The rights and obligations pertaining to the transferred assets must be settled at the same time that the property is transferred; these rights and obligations, according to the law, are transferred to the new owner of the company (these rights and obligations include claims, debts, as well as industrial rights, etc.). It was necessary to annul the provisions in the first clause of Section 28 of the Labor Law, since it was based on a different system, in order to make the regulations the same for all cases.

The law also notes leasing, which is regulated by the Commercial Code. The amendment in Section 28 assumes that additional laws will be passed, which will provide greater details.

Section 29 resolves the problem of methods and deadlines for formation of the enterprise executive bodies, if the national enterprise was established according to this new law.

In Section 30 the status, rights, and obligations of the labor union are guaranteed to the same extent as before. This provision is important for guaranteeing the rights of employees, established primarily by the Labor Law. At the same time one must not lose sight of the number of agreements by which our republic is bound in this area.

The temporary provisions deal with the transfer of former state enterprises, established according to Law No. 88/1988 Sb. on state enterprises, in accordance with this law, and some additional measures of a temporary organizational or legal nature.

Section 31 creates the legal fiction, that former state enterprises are considered to have been established according to this law from the date on which this law went into effect and, similarly, former internal organizational division, whose right to transact business in the name of the enterprise was entered in the enterprise register, are considered to be separate plants.

The provisions in Section 32 enable a founder, until 31 December 1990, to implement necessary structural changes in the interest of demonopolization, decentralization, deconcentration, as well as the restructuring of the national economy, even if the enterprise or its internal divisions, have not recommended it.

This is why a founder is permitted to remove an internal division, so as to establish a new enterprise or to integrate it into another enterprise, in addition to breaking up the enterprise (formerly this was provisionally dealt with by CSSR Government Resolution No. 413, dated 21 December 1989).

Furthermore, the founder may, with the prior consent of the appropriate government, dissolve the enterprise and transfer its capital assets, by a contract, to ownership of another legal or physical person or persons, or to invest it in a corporation. As in Section 28, the deadline for this is 31 December 1990.

The provisions in Section 33 assume that enumeration (calculation) of the initial capitalization of the enterprise from the sum of the aforementioned capital assets, will remain temporarily in effect until there is change in the financial accounting methods of the enterprise.

The temporary provisions on the consolidation program in Section 34 serve to ensure that these programs will be implemented in a certain way and within a given time, since this law does not expect them to exist in the future.

The Federal Government and the Federal Ministry of Finance are empowered to implement essential laws on finance, both for financial accounting purposes of the enterprise, as well as for capital depreciation, for development financing and the enterprise social fund requirements, and for audit of the annual financial statement of the enterprise.

Footnotes

1. Section 27 ff. and Section 70 of the Labor Law No. 65/1965 Sb. in the version of subsequent regulations (complete version No. 52/1989 Sb.).

2. Section 26a ff. of the Commercial Code No. 109/1964 Sb. in the version of subsequent regulations.

3. For example, Section 251 of the Labor Law.

4. Sections 26a to 26d of the Commercial Code, Section 1, g, Section 2a, para. 1, and Section 46d of Law No. 121/1962 Sb. on economic arbitration in the version of subsequent regulations.

5. Section 26e of the Commercial Code No. 109/1964 Sb. in the version of subsequent regulations; Section 2a, para. 1 of Law No. 121/1962 Sb. on economic arbitration in the version of subsequent regulations.

6. Section 9a.

7. Section 348 of the Commercial Code No. 109/1964 Sb. in the version of subsequent regulations.

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Law on Private Enterprise by Citizens

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[Supplement to HOSPODARSKE NOVINY by Jaroslava Svobodova, doctor of law, Presidential Office of the CSFR Government: "Law on Private Enterprise by Citizens"]

[Text]

Law on Private Enterprise by Citizens

The Federal Assembly of the Czechoslovak Federal Republic has passed the following law:

ARTICLE I. General Provisions

Section 1

(1) Citizens, as individuals, may be involved in entrepreneurial activities to the extent and under the conditions stipulated in this law. In the case of joint entrepreneurial activities, they may form business associations, silent partnerships,[1] or consortia.[2]

(2) According to this law, entrepreneurial activity is to be understood as the continued manufacture of products, running of a business, provision of services or work, or other activities with the aim of acquiring a permanent source of monetary income (hereinafter Enterprise).

(3) This law does not apply to the creation of works in the sense of the Author's Law, to agricultural production, to the performance of salaried work by doctors and other health workers, reviewers (auditor), or to the provisions of legal aid, resp. to the performance of similar specialized activities, if they are governed by special regulations.

Section 2

A citizen who establishes an Enterprise according to this law (hereinafter Entrepreneur) may also perform special activities assigned by special regulations to organizations,[3] to the same extent and under the same conditions as the organizations with the exception of activities assigned to the state or to a specific organization[4] by special regulations.

Section 3

An Entrepreneur cannot be ordered to fulfill any obligations in the state plan for economic and social development.

Section 4

(1) An Entrepreneur may employ an unlimited number of employees in his Enterprise.

(2) The relationship between the Entrepreneur and his employees is established by the regulations of the labor law.[5] No relationship according to the labor law may exist between a husband and a wife.

Section 5

The Entrepreneur is entitled to acquire an unlimited amount of property for the purpose of the Enterprise.

ARTICLE II. Entitlement to Entrepreneurial Activity

Section 6

(1) Entitlement to Entrepreneurial activity is established by registration, which must be acquired by submitting an application to the competent registration office.

(2) The competent registration office will process the registration, as long as the conditions and requirements in the application correspond with the provisions in this law.

Section 7

(1) Prerequisites for registration are that the applicant is at least 18 years of age, is legally competent, has probity, and has adequate qualifications for the specific type of entrepreneurial activity.

(2) The competent registration office assesses probity in connection with the objectives of the Enterprise, and in regard to the rights of other citizens and organizations.

(3) The registration cannot be processed without submission of the appropriate documents if it is necessary to obtain a special permit, entitlement, or certificate of competence, according to special regulations[6] on the performance of the activity that is to be the objective of the Enterprise.

(4) If the Entrepreneur intends to perform an entrepreneurial activity, that required specific specialized qualifications, competence, or entitlement, through a manager or other employee, the latter must meet the abovementioned conditions.

Section 8

(1) In his application for registration the applicant must state:

a) his first name, last name, permanent residence, birth certificate number, resp. these same data for the manager or other employee (Section 7, para. 4);

b) the objective of the Enterprise;

c) the location of the Enterprise, if permanent;

d) the name of the business (firm),[7] resp. the trademark[8] that he will use. The business name is made up of the Entrepreneur's last name and an additional name to eliminate possible confusion; the competent office for registration may also permit a different business name (firm);

e) date of commencement of business.

(2) The applicant must append the following to the application:

a) proof of permit, entitlement, or competence, if necessary according to Section 7, para. 3 of this law, for the objectives of the Enterprise that he wishes to register;

b) proof of specialized qualifications, competence, or entitlement of the manager or other employee, if this proof is necessary for the Enterprise according to Section 7, para. 4;

c) an excerpt from the criminal register.

(3) An applicant who has no permanent residence in the Czechoslovak Federational Republic, must also append the permit granted him by the competent central organ of the state administration of the republic in whose territory he intends to establish his Enterprise.

(4) The competent registration office need not demand proof of specialized qualifications if the applicant has other means to prove appropriate practical knowledge and experience in the field of Enterprise for which he wishes to register.

Section 9

(1) The decision on registration includes the information stated in Section 8, para. 1, as well as a time limit on the registration, if the applicant so desires.

(2) The competent registration office must send a copy of the decision on registration to the tax office, to the relevant insurance company, and to the competent state office of statistics. If the Entrepreneur has his permanent residence in the Czechoslovak Federational Republic, a copy of the decision of registration must also be sent to the appropriate social security office.

(3) The competent state office of statistics will provide the Entrepreneur with an identification number on the basis of the decision according to paragraph 2.

Section 10

(1) The Entrepreneur is obligated to notify the competent registration office of all changes pertaining to the data and documents that he had to provide and submit with his registration application, or to submit documents about them, within 15 days of these changes.

(2) On the basis of the Entrepreneur's notification according to paragraph 1, the competent registration office will decide whether there will be a change in the decision on registration, or whether the registration will be revoked.

Section 11

(1) The competent registration office will revoke the registration if:

a) the Entrepreneur forfeits his permit, entitlement, or competence, if it is required according to Section 7, para. 3 of this law for the objectives of the Enterprise;

b) the Entrepreneur was sentenced for a deliberate criminal act in connection with the objectives of the Enterprise;

c) if the Entrepreneur requests it.

(2) The competent registration office can revoke registration if the Entrepreneur seriously violates the conditions or obligations ensuing from the decision on registration, from this law, or from other universally binding legal regulations, or if he violates the principles of honest business practice or economic competition;[9] if the registration is revoked for the aforementioned reasons, the Entrepreneur cannot reapply for registration earlier than one year from the legal validity of the decision on revocation of the registration.

(3) The competent registration office may revoke the registration on the grounds stated in paragraph 2 within three months after it determines the reasons that empower it to revoke the registration, but no later than one year after their occurrence.

(4) In the decision on revoking registration, the competent registration office will set a period within which the Enterprise must be terminated, all contracts must be fulfilled, and all relations according to labor legislation must be resolved.

(5) The competent registration office must send a copy of the decision on the change in, or revocation of, the registration to the tax office, the relevant insurance company, the Entrepreneur's social security office, and the competent state office of statistics. If the Entrepreneur is entered in the enterprise register, the competent registration office must send a copy of the decision to revoke the registration to the competent registry court.

(6) The competent registration office will terminate those of the Entrepreneur's activities for which, according to Section 7, para. 4, specialized qualifications, competence, or entitlement were necessary, and which the Entrepreneur does not possess and which were performed for him by a manager or other employee who, according to the Entrepreneur's notification is no longer his employee.

Once the documents, that are necessary in order to run the Enterprise according to Section 7, paras. 3 or 4 of this law, have been submitted, the competent registration office will revoke its decision on the termination of the Entrepreneurial activity.

Section 12

(1) Entitlement to Entrepreneurial activity ceases:

a) through the decision of the competent registration office (Section 11);

b) through the death of the Entrepreneur.

(2) If the Entrepreneurial activity, stated in the decision on registration does not cease due to the death of the Entrepreneur, his rights and obligations ensuing from the Entrepreneurial activity pass to his heirs, but only for the time necessary to fulfill all obligations that originated before the death of the Entrepreneur. A prerequisite for further entrepreneurial activity is the acquisition of entitlement according to Section 6.

ARTICLE III. Legal Relations of Entrepreneurs

Section 13

(1) If the tax base[10] from the Entrepreneur's activity was in excess of 540,000 Kcs during the previous calendar year, and he has more than 25 employees, he is obligated to enter his name in the enterprise register.[11] The Entrepreneur must submit the application for registration before 15 February of the following year, and he must notify the competent registration office at the same time.

(2) An Entrepreneur who has been entered in the enterprise register according to paragraph 1, continues to be registered even if he does not fulfill the conditions stated in paragraph 1 during subsequent years.

(3) When setting up a private Enterprise, or at the beginning of the calendar year, but no later than 15 February, a registered Entrepreneur may enter his name in the enterprise register, irrespective of the provisions in paragraph 1.

Section 14

(1) The provisions in the legal regulations, regulating the rights and obligations of Czechoslovak juridical persons, apply to an Entrepreneur registered in the enterprise registry, unless the law states otherwise, or unless the situation makes them void.

(2) Regulations on setting norms[12] and on metrology[13] apply to all Entrepreneurs.

Section 15

(1) The provisions of universally binding legal regulations on private ownership and co-ownership, apply to objects owned by the Entrepreneur and used by him for the Enterprise, with the exception of the provisions in the Civil Code on the source, purpose, and objectives of private property.[14]

(2) The Entrepreneur may also dispose over the rights and other values linked to the Entrepreneurial activity.

Section 16

(1) In order to use property in nonshare co-ownership by spouses, the Entrepreneur needs the consent of the other spouse when establishing the Enterprise. He no longer needs the consent of the other spouse in further legal activities in connection with the Enterprise.

(2) At the request of one spouse, the court will annul the nonshare co-ownership of spouses, if one spouse was granted the right to Entrepreneurial activity.

(3) If, after annulment of the nonshare co-ownership of spouses, the entrepreneurial activity is performed jointly, or with the help of the other spouse, who is not an Entrepreneur, the income from the Enterprise will be divided between them in the proportion determined by a written contract; if such a contract was not concluded, the income will be divided equally.

Section 17

The Entrepreneur may act through a representative. An Entrepreneur's employee, as his representative, is authorized to perform all legal acts that usually arise during the performance of such work. The provisions of the Civil Code apply to representation based on a power of attorney.

Section 18

(1) The relationship according to civil law between the Entrepreneur and other citizens is regulated by the Civil Code, unless this law states otherwise.

(2) In the course of realizing the entrepreneurial activity, legal relations between an Entrepreneur and a Czechoslovak juridical person, as well as between an Entrepreneur and another Entrepreneur, are regulated according to the Economic Code, with the exception of those provisions which, without the consent of the parties, define the creation of the obligation to conclude, change, or cancel a contract or power of attorney to establish, change, or cancel liabilities, as well as those provisions the contents of which are not commensurate with the nature of private enterprize by citizens, or are in conflict with the status of the Entrepreneur, defined in the law.

(3) The subject of the amendment of the International Trade Code is not affected by the provisions in paragraphs 1 and 2.

(4) The Entrepreneur is empowered to transact business abroad under the conditions stipulated by special regulations.[15]

Section 19

(1) The Entrepreneur is not bound by the time limits set by the Civil Code for providing services, and for correcting deficiencies in the service provided.[16] He is obligated to correct deficiencies in the service provided according to a contract concluded with the customer; if there is no contract defining the period within which the deficiency is to be corrected, he is obligated to correct this deficiency within a period commensurate with the type of service and the circumstances under which it was provided.

(2) When an object is to be repaired, adapted, or made to order, the Entrepreneur is obligated to issue a written confirmation that he received it. He is only obligated to issue a confirmation that he accepted the order[17] if the customer requests him to do so. He is not obligated to do this if the service is performed while the customer waits.

Section 20

An Entrepreneur only must issue a written statement on the scope of the service and its price only if the customer requests him to do so.

Section 21

The Entrepreneur's liability for injury to other citizens during the course of the entrepreneurial activity is regulated according to the provisions of the Civil Code on liability on the part of organizations, resp. organizations providing services, if the injuries occur during the provision of the services.

Section 22

(1) Registration creates the legal obligation to liability insurance on the part of the Entrepreneur for injury to a worker during the execution of his duties or in direct connection with it, for which the Entrepreneur is liable according to the Labor Code.[18]

(2) The Ministry if Finance, Prices, and Wages of the Czech Republic and the Ministry of Finance, Prices, and Wages of the Slovak Republic will prepare a universally binding legal regulation, providing further details on the conditions of this insurance, including the insurance rates.

Section 23

When running his Enterprise, the Entrepreneur is obligated to furnish proof of his entitlement to run an Enterprise, if requested to do so by the competent organs. Furthermore, in the course of the activities of the Enterprise, he has the right and obligation to use the business name (firm) stated in the decision on registration.

Section 24

The Entrepreneur may sell goods and provide services on the territory of the Czechoslovak Federational Republic in those locations assigned to it, and on the markets or in other places designated for it.

Section 25

(1) The Entrepreneur is obligated to keep records of his accounts, which will furnish proof of his income, expenses, the results of the entrepreneurial activity, the property used in its execution, and the obligations ensuing from the activity.

(2) The Entrepreneur will use single-entry or double-entry bookkeeping in accordance with established accounting practices.

Section 26

The status, rights, and obligations of union organs that are established through legal regulations, are not affected by this Law.

Section 27

(1) In running his Enterprise, the Entrepreneur is obligated to protect the living and natural environment as far as possible against harmful effects, caused by the activity, and particularly to make sure that he does not endanger the health of other citizens; using his own resources, he will finance and implement measures to remove damage caused by his activity, aa well as measures to create and protect all sectors of the living and natural environment that are threatened by his activity.

(2) The Entrepreneur is obligated to provide facilities for the protection of the living and natural environment, and to put these facilities into operation together with the appropriate production or nonproduction equipment, and constantly to ensure that they operate consistently and efficiently.

ARTICLE IV. Review of the Decision by a Court

Section 28

(1) The decision on registration, change in registration, and revocation of registration according to this law, may be reviewed by the Kraj court according to special regulations.[19]

(2) The application for review of the decision according to paragraph 1 may only be submitted to the Kraj court after all other legal avenues of court proceedings[20] have been exhausted within the time period determined by the special regulations.[21]

ARTICLE V. Temporary and Final Provisions

Section 29

Permits to sell goods and provide other services granted, before this law came into force, to citizens in accordance with the Czech Republic Statute No. 1/1988 Sb. on the sale of goods and provision of other services by citizens on the basis of permits of the national committee, or in accordance with the Slovak Republic Statute No. 2/1988 Sb. on the sale of goods and provision of services by citizens on the basis of permits from the national committee, are considered to be registration according to this law. A citizen who received such a permit, is considered to be an Entrepreneur, and his legal relations are regulated according to this law, unless the execution of the activities is regulated by special regulations.

Section 30

The national committee's consent, before this law came into force, permitting a citizen to provide temporary private accommodation according to the Czech Republic Statute No. 63/1984 Sb. on the provision of temporary private accommodation with the consent of the national committee, or according to the Slovak Republic Statute No. 64/1984 Sb. on the provision of temporary private accommodation with the consent of the national committee is considered to be registration according to this law. A citizen who was granted such a permit is considered to be an Entrepreneur and his legal relations are regulated according to this law.

Section 31

When the terms "sale of goods and provision of other services by citizen on the basis of a permit by the national committee" or "provision of temporary private accommodation with the consent of the national committee" or "provision of material provision and services by citizens on the basis of a permit by the national committee" are used in universally binding legal regulations, these are to be understood as Enterprise according to this law.

Section 32

The Federal Ministry of Finance will regulate the method of write-offs for basic resources by means of a universally binding legal regulation.

Section 33

After the date on which this law goes into force, the following provisions will no longer be valid:

1. Section 2 of the Decree of the President of the Republic No. 100/1945 Sb. on the nationalization of mines and some industrial Enterprises in version of the Law No. 114/1948 Sb. on the nationalization of some additional industrial and other Enterprises and factories and on the regulation of some relations in nationalized and national Enterprises;

2. Section 3 of Law No. 114/1948 Sb. on the nationalization of some additional industrial and other Enterprises and factories, and on the regulation of some relations in nationalized and national Enterprises;

3. Section 3 of Law No. 115/1948 Sb. on the nationalization of additional industrial and other production enterprises and factories in the sector of foodstuffs, and on the regulation of some relations in nationalized and national Enterprises in this sector, in the version of Law No. 108/1950 Sb., which amends and completes regulations on the nationalization of some enterprises in the foodstuff industry;

4. Section 3 of Law No. 120/1948 Sb. on the nationalization of business Enterprises with 50 or more employees;

5. Section 1, para. 2 of Law No. 121/1948 Sb. on nationalization in the construction industry in the version of Law No. 58/1951 Sb. which amends and completes the law on the nationalization of the construction industry;

6. Section 3 of Law No. 123/1948 Sb. on the nationalization of polygraphic Enterprises;

7. Section 6 of Law No. 124/1948 Sb. on the nationalization of some innkeeping and barkeeping enterprises and accommodation facilities.

Section 34

The following are annulled: Section 397, para. 4, Section 489a and Section 490, para. 2 of the Civil Code and Law No. 272/1949 Sb. on the management of production and distribution in the Minister of Information and Culture's sphere of influence, in the version of subsequent regulations.

Section 35

This Law becomes effective on 1 May 1990.

Commentary

To Sections 1-5

The application of the law is dependent on the constitutional regulation of ownership relations. Therefore the previous constitutional regulations, based on the dominating role of state ownership and providing constitutional guarantees only for so-called socialist forms of ownership, will be changed. The amendment to the Constitutional Law No. 100/1960 Sb. establishes the principle of equality and legal guarantees for all types of ownership. The general provisions of the law create an area for private enterprise by physical persons. The law directly establishes the right to perform entrepreneurial activities which, in accordance with the provisions in Section 2 of the Economy Code (amendment), are defines as the continued manufacture of products, running a business, or provision of services or work, or other activities with the aim of acquiring a permanent source of monetary income. In the course of their entrepreneurial activities, physical persons also may form various types of business associations, where the partners may be juridical persons. The types of business associations and the conditions for their foundation are established by the Economy Code (see the Amendment to the Economy Code Section 106 ff.).

However, the operation of some trades is regulated by special regulations and therefore this law does not apply to them. The law explicitly mentions the creation of work in the sense of the Author's Law, agricultural production, the salaried work by doctors and other health workers, auditors, and the provision of legal aid. In fact, since the Amendment to the Economy Code annuls the provisions in Section 4, para. 1 of Law No. 82/1966 Sb., in the version of subsequent regulations on insurance companies, citizens will be permitted to operate privately even in this area.

The law also enables physical persons to operate in areas that were previously the exclusive domain of organizations. This is based on the principle that all entrepreneurial entities must have the same opportunities for their entrepreneurial activities. In those cases where legal regulations set specific conditions for performing activities, they are equally valid for all entities. If the legal regulations stipulate that certain activities are limited explicitly to specific entities, the provisions of this law cannot be applied to them.

The provisions in Section 3 of the law protect the Entrepreneur against intervention by state organs into his entrepreneurial activity. This is one of the cases where the relevant provisions of the Economy Code (see Section 3 of the Amendment to the Economy Code) do not apply to physical persons in private enterprise.

The provisions in Sections 4 and 5 support the development of Enterprise. The Entrepreneur is not limited by the number of employees and may employ them in any work capacity allowed by the law (working relationship, secondary working relationship, agreements on the performance of work, etc.). The entrepreneur cannot simply employ his or her spouse, one of the reason for this being that if one spouse employs the other, the equality of the spouses, which is anchored in the Family Law, is destroyed.

The Labor Code applies to labor-law relationships between entrepreneurs and their employees, unless a special regulation states otherwise. This special regulation is the CSFR Government Statute on the labor-law relationships that arise during the individual entrepreneurial activities of physical persons, which defines, in particular, the provisions of the Labor Code that are not to be applied in respect of the labor-law relationships between an entrepreneur and an employee, which establishes the authority to conclude collective contracts, completes the reasons for terminating legal working relationships, guarantees the right of a worker to a minimum wage, etc. The draft of the FMPSV Ruling on recompensing workers in individual enterprises is closely linked to the above-mentioned CSFR Statute. The reason for the regulation is to guarantee employees of private enterprises a minimum wage. It also states that the amount of the worker's wages must be agreed in a work contract.

The guarantee to be able to acquire unlimited property is linked to the provisions in Section 33, which states that after the date on which this law comes into force, the provisions in the nationalization decrees, enabling the nationalization of private enterprises, which exceed a specific value, will become invalid.

To Sections 6-12

The legislator's endeavor to support the development of private Enterprise led to the institution of the principle of entrepreneurs' registration to replace the previous granting of permits. In practice this means that, as long as the entrepreneur fulfills the conditions stated by the law, and the application submitted by him includes all the necessary information, he is entitled to registration and the registry office is obligated to process the registration. The aforementioned conditions are guidelines, and should the registration office arbitrarily demand others to be fulfilled, it would be acting in an illegal capacity.

Specific conditions for registration are the age of the applicant—at least 18—probity, and special qualifications. Probity is assessed primarily from the point of view of protection of other citizen's and organizations' rights. For example, in practice this will mean that registration will be denied to a citizen who was forbidden by a court of law or other legal organ to perform activities in the field in which he intends to establish his enterprise.

Special qualifications are verified according to the nature of the Enterprise, for instance through a certificate of apprenticeship, other certificate, degree, etc.

The type of document needed to prove competence in an activity that demands a special permit or entitlement, is defined in the relevant special regulations. A typical example is the permit to handle particularly dangerous poisons, issued mainly by leading health officers of the Czech Republic, Slovak Republic, Kraj or Okres, the permit to handle narcotic psychotropic substances, issued by the competent Ministry of Health and Social Affairs, the permit to perform geological work, issued by ministries and other central organs, the Kraj national committees (after consulting the relevant geologic offices), or the geologic offices themselves, entitlement to project and engineering activities, issued by the competent construction office, the permit for road transport and trucking, issued by the national committees, etc.

If the Entrepreneur intends to perform this kind of activity through his manager or another employee, the law states that these employees must possess the special qualifications, conditions, or competence. However, this only applies if the nature of the enterprise permits it; for example, an Entrepreneur who is granted the right to operate a road transport service, will employ people qualified to work as drivers, but the latter do not need to possess aforementioned right themselves.

In this connection, an important point is that the entrepreneur retains the responsibility of upholding the legal regulations, even if he is performing the Entrepreneurial activity through his manager, and the manager is responsible to the Entrepreneur within the limits and on the basis of relationships according to the labor law.

The provisions in Section 8 provide guidelines to the important points in the application for registration. This means that the registration office may not arbitrarily demand further data without a legal regulation.

Therefore, when guidelines are set, the registration office has no right to demand further information. An important item is the description of the objectives of the activity, both from the point of view of assessing whether the enterprise requires special qualifications or special competence, and from the point of view of assessing whether the activity is forbidden to physical persons. The precise description of the objectives of the activity is also important from the control, financial, statistical, etc. points of view. In practice, there will probably be cases where the entrepreneur might wish to perform activities in several areas, or where his main entrepreneurial activity will be accompanied by additional activities. For example, he may wish to combine various kinds of services. In such cases, it will have to include all the types of activity he intends to perform in the application for registration and, if the legal regulations so stipulate, furnish proof of them with the relevant documents.

The location of the enterprise must also be included in the application, if it is permanent. Assessment of the permanence or temporary quality of the location will depend on the nature of the activity the entrepreneur intends to perform. A typical example of an activity without a permanent location could, for example, be the provision of various services in customers' apartments or homes, where the Entrepreneur does not need his own place of business (for instance housecleaning, various kinds of repair services, wallpapering or painting apartments, etc.).

If the Entrepreneur intends to have branches, in addition to his main place of business, these must also be included in the application for registration.

When deciding on a business name (firm) the legislator assumes that the name will be made up of the last name of the entrepreneur and possibly an additional name. Although the formulation of the text of the provisions in Section 8, para. 1,d leads one to believe that the use of "an additional name" is not assumed in all cases, this addition to the last name will apparently become a matter of course in practice, since it enables the entrepreneur to describe the type of activity he is performing. The text of the aforementioned provision makes it apparent that the registration office must approve the business name made up of a last name and an additional name, while in cases deserving special consideration, approval is dependent on the judgement of this office. An example of a case deserving special consideration is, for instance, a situation where an heir intends to continue the entrepreneurial activity and, for business reasons, wishes to retain the original business name.

A business name is protected in accordance with Section 5 of the Economy Code. The entrepreneur has the

exclusive right, unlimited in time, to use the business name. On the other hand, if a person uses a business name without permission, the person whose interests have been negatively affected, may demand that he stop doing so, and that he provide compensation for damages.

If an applicant is entitled to a trade mark, he must include it in his application. Entitlement to a trade mark is acquired by registering it in the trade mark register compiled by the Office for Inventions and Discoveries. Once he has registered it, the owner of a trade mark has the exclusive right to use it, i.e., he can use it on his product, in advertisements, and in other entrepreneurial activities. The basic copyright period for the owner of a trade mark is ten years from the date on which the application was submitted, and it can be extended by renewing the registration.

In regard to the requirement that the date of commencement of business must be included in the application, we would like to point to its connection with the provisions in Section 6 of this law. If entitlement to entrepreneurial activity originates through registration, the suggested day of commencement of business must either be the expected date of registration, or else a later date must be stipulated. One must remember that the registration proceedings are legal proceedings, and therefore the period for the decision, established in the Court Code applies. This period is generally 30 days.

The specification of the documents that must be attached to the application for registration is a guideline in the sense that, in respect to submitting documents on special qualifications, the registration office may also recognize other forms of furnishing proof of this qualification, on the basis of the applicant's request.

The decision on registration has legal consequences, because the Entrepreneurial activity may not be carried out before the decision is issued.

The decision, as a legal decision, must also state the items in Section 47 of the Court Code, it must, in particular, include the verdict, the reasons for, and an explanation of the revocation.

Sending a copy of the decision on registration to the tax office, offices of statistics and social security is the duty of the registration office. Not fulfilling this obligation does not constitute the invalidity of the decision.

During the performance of the entrepreneurial activities, there will be various changes in the circumstances and conditions on the basis of which the registration was issued. In such cases, the entrepreneur is obligated to notify the registration office of them, and to submit the relevant documents. The period of 15 days, stipulated in the law for notification of the changes and submission of documents, is a prescribed period. If it is violated in the case of substantial changes, for example ones that affect the rights of other citizens or organizations, it can be subjected to the provisions in Section 11, para. 2 (the Entrepreneur seriously violates the conditions or obligations ensuing from the decision on registration), and the registration office may revoke the registration. Apart from that, it is obvious that it will be necessary to submit appropriate documents, particularly if a manager, who is required to have special qualifications or competence, changes, if the enterprise is expanded through additional activities, if there is a change in the permanent location of the Enterprise, etc.

The reasons for revoking registration are listed as guidelines. Violation of the principles of business relations or of economic competition are judged on the basis of the provisions in Section 119 ff. of the Economy Code. The entrepreneur may not misuse his economic status to attain inappropriate advantages, or ones he is not entitled to, at the expense of other entrepreneurs, or at the expense of the consumer. He may not insist on inappropriate conditions when concluding a contract, stop or limit the sale of a product, suppress or hoard products, or cause a shortage of them in any way with the aim of attaining an unjustified advantage, or take advantage of his business partners who bear responsibility for the property. Special emphasis is laid on the consumer, and any discrimination against him is forbidden.

Violation of fair competitive practices is, for instance, the use of false information in the course of business transactions, which could damage the good name of another enterprise, product, or industrial or business activities, the use of information or statements that, during the course of a business transaction could mislead the public as to ownership, method of production, quality, or the volume of goods, etc.

If entitlement to the entrepreneurial activity ceases because of the death of the entrepreneur the time needed to liquidate the Enterprise (its size, number of employees, the impact of cancelled contracts, etc.), as well as the fact that the Entrepreneur's heir might be interested in continuing the enterprise must be considered when setting a date for the termination of the enterprise in the decision on revoking registration. In such cases, the date on which the registration is revoked, and the date on which the new enterprise is registered should be the same, in order to ensure the smooth continuation of the entrepreneurial activity.

To Sections 13-27

The law distinguishes between so-called small enterprises, and larger enterprises by establishing that an entrepreneur who has reached the set limits of operation is obligated to enter his name in the enterprise register.

The entrepreneur submits an application to be entered in the Enterprise register to the competent registry court according to the location of his permanent residence, and his signature on the application must be notarized. The consent of the competent organ of state administration, stating the objectives of the activity, if special regulations require such consent, must be appended to

the application. The first and last names of the entrepreneur, the location of his permanent residence, the objectives of the enterprise, the name (firm), the location of the enterprise if it is permanent, procuration if it has been determined, and the identification number will be entered into the enterprise register.

An Entrepreneur, who has not reached the legal limit is not obligated to enter his name in the Enterprise register. However, he may enter his name, irrespective of the set limit, if he so desires and according to his needs. This will prove to be advantageous, particularly if a small entrepreneur finds an opportunity to participate in foreign trade, since one of the prerequisites for such activity is registration in the enterprise register.

Entering his name in the enterprise register has additional consequences for the entrepreneur. Enterprises entered in the registry buy at wholesale prices, and sell for prices that include turnover tax. Entrepreneurs who are not entered in the register buy at retail prices, and may not pass on the turnover tax when they resell. From the point of view of taxes, the entrepreneur who is entered in the enterprise register will be obligated to pay a pension tax, while entrepreneurs not entered in the register will pay taxes based on the citizens income tax law. As far as obtaining credit is concerned, it is assumed that the banks will treat private enterprises in the same way they treat organizations. The SBCS [Czechoslovak State Bank] provisions, dated 2 January 1990, resolving these problems were published in the Collection of Laws No. 1/1990.

Foreign trade is regulated by the amendment to the law on economic foreign relations. Physical persons may transact foreign trade to the same extent and under the same conditions as juridical persons. The basic prerequisite is registration with the Federal Ministry of Foreign Trade, and this will be done:

—if the applicant is entered in the enterprise register. In the case of a private entrepreneur this means that he either must have a tax base in excess of 540,000 Kcs, or must have more than 25 employees, or that he has voluntarily entered his name in the enterprise register (Section 13 of the Law on Private Enterprise);

—if he posts a bond of 20,000 Kcs;

—if he supports his application for registration by providing "information from the financial office on the active balance of business according to the latest accounting report."

Registration is not required in those cases when no purpose is served, from the point of view of the national economy of the CSFR, in making foreign trade dependent on permits or registration, under the conditions and to the extent stipulated in the operational regulations.

In certain cases, a permit (instead of registration) is required to transact foreign trade.

Article Four of the Civil Code (services) is applied to entrepreneurial activities, however, this law stipulates some exceptions. The entrepreneur is not bound by the time periods set for providing a service or for removing deficiencies in the service provided.

The regulation on the Entrepreneur's liability for injury to other citizens due to the violation of legal obligations, if the damage was caused by those he used for the Enterprise, basically adopts the principles contained in Section 421, paras. 2 and 3 of the Civil Code, since if it did not, third parties would be disadvantaged in comparison to similar relations between organizations and their customers.

The Entrepreneur's liability insurance for injury sustained by employees in the execution of their duties, or in direct connection with them, is both in the interests of the entrepreneur's employees, and in the interest of society as a whole. The legal status of employees in the private sector should only be differentiated from other sectors of the economy if absolutely necessary, and only to the extent corresponding to the present nature of the enterprise of physical persons.

The provisions in Sections 25, 26, and 27 have the nature of declarations, since the rights and obligations mentioned in them are primarily the subject of amendments to other legal regulations. The most important ones are the provisions on the protection of the living and natural environment, emphasizing the priority of the interests of society as a whole over subjective interests.

To Section 28

The necessary legal security for a citizen who intends to establish an Enterprise, or has already established one, is guaranteed by the regulation stating the option for review of the decision on registration, its change, or its revocation, by the local court. However, the request for review may only be submitted once all other legal avenues through court proceedings (appeal proceedings or collapse) have been exhausted.

To Sections 29-35

If the citizen was granted a permit to sell goods or provide other services according to previous regulations before this law came into force, he does not have to apply for registration, since the aforementioned permit replaces it. However, if he was granted permission for activities regulated by special regulations, he must also fulfill the conditions mentioned in those special regulations. However, this does not apply to the permit to transact those occupations mentioned in Section 1, para. 3.

A citizen who obtained a permit to provide temporary private accommodation before this law came into force is also an entrepreneur, and is thus obligated to comply with the provisions of this law.

The final provisions guarantee protection of private ownership in regard to the nationalization decrees of 1945 and 1948. It is explicitly stated that the provisions of these decrees, which presumed the nationalization of private property when a certain amount of property or a certain number of employees was reached, are no longer valid after the date on which this law comes into force.

Section 34 annuls those provisions of the Civil Code that would be a hindrance to private Enterprise. It concerns the authority of national governments to establish cases and prerequisites enabling the transfer of real property or a part of it for temporary use only with the prior consent of the national committee, the resolution of the problem of building on privately owned land, and the methods for transferring vacant building lots owned by citizens.

Footnotes

1. Section 106a ff. of the Economy Code No. 109/1964 Sb. in the version of subsequent regulations.

2. Section 106u and 106za of the Economy Code.

3. Section 1, para. 1 of the Economy Code.

4. Particularly: Sections 1 and 2 of Law No. 222/1946 Sb., on the post office (Postal Law). Section 1, para. 1 and Section 3 of Law No. 63/1950 Sb. on the regulation on usage of tobacco, salt, and alcohol and on the abolition of state financial monopolies. Section 2, para. 1 Law No. 110/1964 Sb. on telecommunications. Section 3 of Law No. 68/1989 Sb. on the organization of the Czechoslovak state railroads.

5. Statute of the Czechoslovak Federational Republic No. .../1990 Sb. on the labor-law relationships in private enterprise by citizens.

6. For example: Section 25, para. 2, Section 34, paras. 1 and 2, Section 37, para. 3, Section 40, para. 1, and Section 43, para. 2 of Law No. 68/1979 Sb. on road transport and domestic freight shipping No. .../1990 Sb. Section 5, paras. 1 and 2, Section 12, para. 1, Section 17, Section 32, para. 2 of Law No. 147/1983 Sb., on weapons and ammunition. Section 3 of CNR [Czech National Council] Law No. 62/1988 Sb., on geologic work and the Czech Geological Office. Section 3 of SNR [Slovak National Council] Law No. 52/1988 Sb. on geologic work and the Slovak Geological Office. Section 5, para. 2 and Section 27 of the CNR Law No. 61/1988 Sb. on mining, explosives and on the state mining administration. Section 5, para. 2, and Section 27 of SNR Law No. 51/1988 Sb. on mining, explosives, and in the state mining administration. Sections 5 and 27 of the CR Government Statute No. 192/1988 Sb. on poisons and some other substances harmful to health. Sections 5 and 27 of the SR Government Statute No. 206/1988 Sb. on poisons and some other substances harmful to health. Section 13, para. 1,b, Section 14 of CNR Law No. 127/1981 Sb. on domestic trade in the version of CNR Law No. 116/1988 Sb., which amends and completes Law No. 127/1981 Sb. on domestic trade. Section 13, para. 1,b, Section 14 of SNR Law No. 130/1981 Sb., on domestic trade in the version of SNR Law No. 108/1988 Sb., which amends an completes SNR Law No. 130/1981 Sb on domestic trade.

7. Section 5 of the Economy Code.

8. Law No. 174/1988 Sb. on trade marks.

9. Section 119 ff. of the Economy Code.

10. Section 13 of Law No. 145/1961 Sb. on citizen's income tax in the version of subsequent regulations.

11. Section 107 of the Economy Code.

12. For example Law No. 96/1964 Sb. on setting technical norms.

13. For example Law No. 35/1962 Sb. on metrology in the version of subsequent regulations. Ruling of the Office of Norms and Measures No. 61/1963 Sb. on ensuring the accuracy of measuring instruments and measurements in the version of subsequent regulations.

14. Sections 125, 126, and 127 of the Civil Code.

15. For example Law No. 42/1980 Sb. on economic relations abroad in the version of Law No. AA/1990 Sb. Law No. 173/1988 Sb. on enterprise with foreign property participation, in the version of Law No. AA/1990 Sb.

16. Section 268, para.1, Section 273, para. 1, Section 277 and Section 281, para. 1 of the Civil Code.

17. Section 264 and Section 283 of the Civil Code.

18. Sections 187-205b of the Labor Code.

19. Section 244 ff. of the Civil Court Code.

20. Sections 53-61 of Law No. 71/1967 Sb. on court proceedings (Court Code).

21. Section 247, para. 2 of the Civil Court Code.

Supplement to Law on Private Enterprise by Citizens

90CH0223C Bratislava NARODNA OBRODA in Slovak 13 Jun 90 p 13

["Text" entitled "More About the Law on Private Enterprise"]

[Text]

Statute of the CSFR Government of 23 April 1990

Statutes Concerning the Private Enterprise by Citizens

Provisions we published the Law on Private Enterprise have been published within the last few days. Readers received it with great interest, and requested further information on the practical application of the law.

Today we are publishing two supplements. The government of the Czech and Slovak Federal Republic, according to Section 269, para. 2 of the Labor Code in the version of Law No. 188/1988 Zb. [Collection of CSSR Laws] (complete version No. 52/1989 Zb.) decrees:

General Provisions

Section 1

The Labor Code (hereinafter the "Code") regulates working relations in private enterprise, unless these provisions state otherwise.

Section 2

For the purpose of this statute, whenever the rights or duties of an organization, or a manager of an organization, are established by the Code, he is to be understood to be a citizen authorized to carry out entrepreneurial activities according to special regulations (hereinafter "entrepreneur").

Section 3

If a labor union is active in a private entreprise, the same Code provisions that regulate union activities in general apply to private enterprise.

Exceptions

Section 4

The following provisions of the Code do not apply to working relations between the entrepreneur and the employee:

Section 9, para. 4; Section 20, paras. 1, 4, and 6; Section 21; Section 26, para. 2; Section 27, paras. 1, 3, and 4; Section 34; Section 35, para. 3; Section 46, para. 1, f the portion of the sentence following the semicolon; Section 53, para. 1, b and c; Section 59, para. 3; Sections 65-68; Section 72; Section 74, para. 1, b, e, an d h, and para. 2; Section 75; Sections 77-81; Section 82, paras. 1, 3, and 6; Section 85; Section 99, a; Section 111, paras. 2-5; Sections 112-113; Section 114, paras. 1 and 3; Section 116, paras. 1-3; Section 118, Section 119, para. 1, last sentence, Section 139, para. 4, Section 140, Section 141, Section 152, para. 2, Section 176, para. 4, Section 185, para. 1, para. 2, the portion of the sentence following the semicolon, and para. 5, the second sentence, Section 186, Sections 207-216, Section 227, Sections 249-251, Section 268, Section 269, para. 1, and Section 271.

Section 5. Labor Contract

1. The entrepreneur may conclude a labor contract with the labor union to provide for the just interests and needs of the employees, and for improved working, health, social, and cultural conditions.

2. The entrepreneur and the management specified in the labor contract are responsible for carrying out the employer's duties according to the law. The labor union representatives are responsible for carrying out the duties of the labor union.

Section 6. On-the-Spot Repudiation of the Work Contract or Part-Time Work Contract

An entrepreneur may, in exceptional cases, cancel a work contract or a part-time agreement on-the-spot if the employee seriously violated the duties of his work contract or part-time work agreement, and it cannot be justifiably be expected of the entrepreneur to continue the work relationship or part-time agreement.

Section 7. Work Rules

For the purpose of internal order and work discipline, the entrepreneur may publish work rules.

Section 8. Hours of Work

If the nature of the work or the working conditions do not permit the hours of work to be scheduled on weekly basis, the entrepreneur may enter into an agreement with the employee on a staggered work schedule or, in accordance with the provisions of the government laws of the Czechoslovak Socialist Republic (Section 2, para. 3, b of the Code), agree to an uninterrupted break period during the week; however, the prescribed hours of work during a specific period, generally four weeks, but possibly an entire calendar year, may not exceed the maximum number of hours per week.

Section 9. Wages

1. The entrepreneur will pay the employee wages according to the wage tariff and in accordance with the internal pay schedules, work contract, or the labor contract. The entrepreneur may not provide other monetary compensations to the employees, unless authorized by law. Loans in kind and other benefits not paid in cash will be provided by the entrepreneur to the employee only to the extent authorized by law as a part of his wages.

2. Regardless of the entrepreneurial profitability, an employee will be guaranteed his wages which, within the individual pay scales, may not be lower than the minimum wage according to the pay schedules unless a higher rate has been agreed to by a work contract. The work contract may not provide for a wage lower than that provided by the wage regulations.

Section 10

The entrepreneur may establish work standards. These standards may not exceed an amount of work commensurate with the physical abilities of the employee; they have to include necessary breaks and compensatory time for hours lost due to the use of personal protective devices and those lost as a result of legal or other work health and safety regulations.

Section 11

1. The entrepreneur will pay his employees for overtime; this shall be at least an additional 25 percent of the basic wage rate and, if the work is performed at night or during a day off during the week, it shall be no less than 50 percent of the basic wage rate. The wage regulations may establish a standard additional payment of no less than 33 percent of the basic wage rate.

2. The entrepreneur may make an agreement with the employee to provide compensatory time in lieu of payment; the agreed to compensatory time off must be granted within three calendar months from the time that overtime was performed unless a longer period was agreed to.

Section 12

An agreement may be made in the work contract or in the labor contract, that some wage components, with the exception of wages according to Section 9, para. 2 and additional wages, are payable at intervals no longer than one month.

Section 13

An entrepreneur, who conducts his entrepreneurial activity through a manager or a supervisor, may establish an individual wage account in accordance with the conditions stipulated by the wage regulations. Supplemental wage-rate component entitlements, under conditions stipulated by the wage regulations, may be deposited to the individual account; however, in accordance with Section 9, para. 2, regular wages may not be transferred to this account. The wage regulation determined the time period and conditions under which the appropriate wage components from the individual account should be paid out to the manager or supervisor, or under which circumstances their right to these pay supplements expire fully or in part, based on their long-term work results.

Section 14. Care for the Workers

The entrepreneur may provide meals and appropriate beverages for the employees on the premises or nearby; alternatively, he may provide the employees with an allowance of up to Kcs 10 per day. The meals mentioned in the above must meet the standard nutritional requirements.

Section 15

The entrepreneur must provide an opportunity for improvement or expansion of his employees' qualifications, and must ensure that their work assignment is commensurate with their qualifications.

Section 16. Alternative Uses of Some Provisions

The law provisions which have been issued for organizations conducting activities similar to those of an entrepreneur, provide for rights and duties between the entrepreneur and his employees in accordance with Section 74, para. 1, g; Section 95, para. 2; Section 105, para. 4; Section 133, para. 6; Section 150, para. 2; and Section 167, para. 2 of the Code.

Section 17. Passing of Rights and Duties Arising From Work Relations

Upon the death of an entrepreneur, the rights and duties arising from work relations pass to his heirs.

Section 18. Validity

This statute takes effect on 1 May 1990.

Ruling of the Federal Ministry of Labor and Social Affairs of 28 April 1990

Remuneration of Employees in Private Companies

The Federal Ministry of Labor and Social Affairs, in accordance with Section 123, para. 1, a and b of the Labor Code (complete version No. 52/1989 Zb.), and after consultations with the Ministry of Finance, Prices and Wages of the Czech Republic and the Ministry of Finance, Prices and Wages of the Slovak Republic as well as the responsible labor union establish:

Section 1. Scope of the Law

This decree determines the remuneration of employees by an entrepreneur with up to 200 employees (hereinafter "entrepreneur" and "employee").

Section 2. Employee Wage Categories

According to this decree, the entrepreneur will assign the employee an appropriate wage rate according to the type of his work and his performance.

Section 3. Wages

The entrepreneur will provide wages for employees for work performed and for its results according to the conditions agreed to in the internal wage and work contract or a labor contract; the individual wage rates may not be lower than the sum of the basic wage rates according to Section 13 and any supplemental payments stipulated in Sections 5 to 9. An agreed portion of the wages, with the exception of the basic wage rate (Section 13) and supplemental payments (Sections 5 through 9), may be provided in non-monetary form.

Section 4. Types of Wages

The use of individual types of wages and a combination of them is the prerogative of the entrepreneur. In addition to payments required by Section 5 through 9, and in view of various demands and difficulties under certain work conditions, the entrepreneur may provide supplemental payments or rewards for promptness.

Section 5. Wages for Overtime

1. The employee is entitled to a wage for overtime work; if he is on a monthly salary, this will be no less than:

1/185 of the basic wage rate for 42.5 and 42 hour weeks;

1/180 of the basic wage rate for a 41.25 hour week;

1/175 of the basic wage rate for a 40 hour week.

2. In addition to wages according to para. 1 and other earned portions of the wage an employee, who was not authorized compensatory time for additional hours worked, is entitled to an additional payment of no less than:

a) an amount equal to 25 percent of the basic wage rate, or

b) an amount equal to 50 percent of the basic wage rate for overtime at night or during his off-week time.

3. An entrepreneur may set a standard additional payment of no less than 33 percent of the basic wage rate for overtime, for alternating day, night, Saturday, and Sunday shifts regardless when the work was performed.

Section 6. Additional Payments for Night Work

Employees who work at night are entitled to an additional payment of no less than 2.50 Kcs for every hour worked as long as they worked for at least two hours. Night work is considered to be work performed between the hours of 2300 and 0600.

Section 7. Additional Payments for Work High Above the Ground

Employees who work in a cramped work space or in uncomfortable positions ensuing from an established work procedure at heights of 150 meters or more are entitled to an additional payment of 5 to 13 Kcs for every hour started.

Section 8. Additional Payments for Work That Is Hazardous to Health

Employees who perform work under very difficult and hazardous working conditions, for instance if they have to use breathing devices, work under water, under high temperatures, or in an ionizing environment are entitled to an additional payment of 10 to 36 Kcs for every hour of work started.

Section 9. Additional Payments for Work on Saturdays and Sundays

The entrepreneur shall provide employees on a standard work week who work Saturdays and Sundays a pay supplement of least 50 percent of the basic wage rate, and/or the appropriate portion of the basic wage rate (Section 5, para. 1), and if this involves work over and above the standard work week hours, no less than 25 percent. The additional payment does not apply to work on Saturdays and Sundays considered to be workdays according to special regulations.

Section 10. Accumulation and Compounding of Additional Payments

In the case of additional payments made according to Sections 6 to 9, and/ or other additional wages (Section 4), and overtime wages (Section 5) the entrepreneur may stipulate an appropriate amount (per hour or month) and accumulate it into a lump sum for a period of up to one year as long as there is no substantial change in the conditions of work; in such a case the entrepreneur need not keep a consistent record of the individual payments to which the worker is entitled.

Section 11. Individual Wage Accounts

1. After coming to an agreement with the manager or another employee, through whom he is conducting his activities, the entrepreneur may open an individual wage account. A part of such an employee's wages may be transferred to this account.

2. The agreement must include the specified portions of the wages which will be transferred to the individual wage account, the extent and conditions of restrictions of the transferred portion of the wages, and the date on which the wages would be paid from the individual account. The agreement to open an individual wage account must be in writing, otherwise it is invalid.

3. If the working relationship is terminated before the due date of payment stipulated in the agreement, the wages from the individual account are paid, according to the agreed conditions, but no later than three months after termination of the working relationship. The procedure is analogous if the type of work agreed to is changed permanently.

4. Wages in an individual account do not bear interest and are not included in the employee's income until they are paid out.

Section 12. Wages and Compensations for Down Time

1. If an employee cannot do his job due to down time, and if the entrepreneur transfers him to other work, he is entitled to payment according to the work he actually performs.

2. If the entrepreneur does not transfer the employee to other work, he is entitled to a compensation that is no less than the basic wage rate.

3. An employee is entitled to compensation only if the interruption in work lasts at least one continuous hour.

Section 13. The Basic Wage Rate

The entrepreneur is required to pay the employees according to wage categories but not less than these basic wage rates:

Employment Category	Occupation	Administrative Function	Kcs/hr Based on a 42.5-hr Workweek	Kcs/hr Based on a 41.25-hr Workweek	Kcs/hr Based on a 40-hr Workweek	Kcs/Month
I	Unskilled worker	Administrative/ technical worker	7.00	7.20	7.40	1,300
II	Skilled worker	Independent administrative/ technical worker	8.50	8.80	9.00	1,570
III	Technician	Independent technical/industrial employee	10.00	10.30	10.60	1,850
IV	Expert technician	Expert technical/ industrial employee	12.00	12.40	12.80	2,200
V		Professional technical/industrial employee	14.10	14.50	14.50	2,600
VI		Supervisory employee	16.20	16.70	17.20	3,000

Section 14. Employee Notification

The entrepreneur is required to inform the employees of the contents of this law, of the methods of remuneration and wage categories, and make the law available to employees for study.

Section 15. Validity

This Law takes effect on 1 May 1990.

Law on Corporations

90CH0136A Prague HOSPODARSKE NOVINY (supplement) in Czech 4 May 90 pp 1-15

["Text" of "Law on Corporations"]

[Text] The Federal Assembly of the Czechoslovak Federal Republic approved the following law:

PART I. General Provisions

Section 1

Corporation

(1) A corporation is a legal entity for the purpose of carrying on business activities, whose initial capital is divided into a number of shares at a previously determined par value.

(2) A corporation is the owner of liquid and other assets held in the name of its members (shareholders) as well as property earned through its business activities.

(3) The word corporation or the abbreviation Inc. must appear in the business name of the corporation.

Section 2

(1) A corporation is capable of acquiring rights and incurring liabilities. It is answerable with its assets for failing to meet its obligations and other responsibilities. A shareholder is not liable for corporate liabilities.

(2) For the purpose of this law, the owner of provisional shares is also understood to be a shareholder.

Section 3

Shares

(1) A share is a commercial instrument with the rights of ownership and participation, in accordance with this law and the bylaws of the corporation, in its management, its profits, and the balance of its assets at the dissolution of the corporation.

(2) Unless this law or the bylaws of the corporation state otherwise, the corporation issues shares that ensure membership rights equal to the number and class of shares held in the corporation.

(3) If several classes of shares are issued, the bylaws must indicate the rights attached to the individual classes of shares. Each share of the same class must have equal par value.

Section 4

(1) Shares may be either registered or bearer shares.

(2) For the registered shares, the corporation keeps a stock ledger with the business names (names) and addresses of the shareholders. The corporation is obligated to issue to its shareholders at their request an extract from the shareholders' list that concerns him. Registered shares can be, unless otherwise stated in the bylaws, transferred by endorsement, which will contain the commercial name (name) and business address (address) of the transferee, as well as the time when the transfer goes into effect. Otherwise, rules of the exchange law apply to the transfer by endorsement.[1]

(3) Bearer shares are freely transferrable by delivery and the rights attached to it belong to the bearer.

(4) Transfer of registered shares must be entered in the shareholder listing to become effective.

Section 5

The par value of a share will be at least Kcs 1,000 or its multiples divisible by thousand. Issuance of a share of lesser par value is void.

Section 6

The stock certificate must contain at least the following data:

a) name and registered office of the corporation;

b) serial number and par value of the share, indication whether it is a registered or bearer share and, if it is a registered share, also the name of the shareholder;

c) class of share and the right attached to that class of share;

d) date of issue, amount of the initial capital of the corporation, and the number of shares of the same class at the time of issuance;

e) signatures of two directors authorized to sign for the corporation.

Section 7

(1) A share issued prior to the time the corporation is entered into the Company Register and before it is fully paid in is void.

(2) Before the corporation is entered in the Company Register or the stock is fully paid in, the founders may issue a provisional share verifying the amount of subscribed capital or other assets and the amount that has been paid in.

(3) A provisional share is a commercial instrument with all the rights of a shareholder. It must be registered and, only after the incorporation becomes effective and the capital is fully paid in, can it be exchanged for a par value share either registered or bearer.

(4) The issuers of the stock or the provisional shares are jointly and severally liable for any losses caused by failure to comply with these provision.

Section 8

(1) The bylaws may specify the issuance of stock which gives its owner a priority claim on profits (preferred stock). The bylaws may limit or deny the voting right attached to preferred stock.

(2) The rules for priority right to the share of profits are established in the bylaws.

(3) The bylaws may also authorize the issuance of other classes of preferred stock.

(4) Preferred stock of any class may be issued only up to 50 percent of the capital stock.

Section 9

(1) The bylaws may specify the issuance of employee share options at a reduced price.

(2) Employee shares are always registered and are transferrable only among employees or retirees of the corporation; such transfer must follow the provisions for transfer of registered shares.

(3) In the event of death or termination of employment, with the exception of a worker's retirement, the rights of the employee shares become extinguished and the shares must be returned to the corporate treasury. Unless the bylaws state otherwise, the corporation is required to pay the current market price for the shares, or its par value if the market price is not available.

(4) Detailed conditions for acquiring or transferring these shares will be determined in the bylaws or at a shareholders' meeting. The holders of employee shares have the same rights as other shareholders.

Section 10

(1) The bylaws may also authorize issuance of shares which pay interest at a previously set amount (interest-bearing shares); the total value of these shares must not exceed 10 percent of the initial capital.

(2) The owner of the interest-bearing shares is entitled to interest on the par value at the rate inscribed on the share, even if the corporation makes no profit in a given year.

(3) The owner of the interest-bearing share is also entitled to a dividend that is higher than the interest rate.

Section 11

(1) The bylaws may authorize the corporation to issue, up to an amount equal to one-half of the initial capital, convertible bond certificates to a person who invests a specified amoount in the corporation. This certificate must provide the right to demand, after a certain period of time, the return of the paid sum including interest entered on the certificate, to demand an exchange for shares, or a priority rights to purchase those shares.

(2) The certificate mentioned in Section 1 can also be used as a lien against the assets of the corporation, or a priority claim on corporate assets ahead of other creditors.

(3) The certificate can be issued in the registered or a bearer form.

(4) The issuance of these certificates does not increase the initial capital nor do shareholders' rights attached to them.

Section 12

(1) The corporation can use its assets that are in excess of its paid in capital to purchase shares issued.

(2) The total par value of these shares acquired by the corporation must not exceed one-third of the paid in capital.

(3) Unless this law provides otherwise, the corporation cannot exercise shareholders' rights on the basis of these shares and is required to sell these shares within 3 years.

Section 13

(1) The corporation may also retire shares acquired according to Section 12 Section 1.

(2) A retired share which has been registered must be deleted from the stock register; both registered and bearer retired shares must be cancelled.

(3) An official of the corporation informs the court of registry within 30 days that shares have been retired, so that an appropriate entry can be made in the Company Register.

Section 14

(1) Registered shares may also be held jointly by two or more owners who must act as a single shareholder of the corporation; they can exercise their rights only through a joint representative.

(2) If the stock is held jointly by two or more persons, the name of their representative must be also entered in the stock register.

PART II. Founding a Corporation

Section 15

Founder

The founder of a corporation may be a state, a legal entity, as well as a physical person. A corporation may be also founded by a single founder.

Section 16

Paid-In Capital

(1) The paid-in capital of the corporation must not be less than Kcs 100,000.

(2) The total of paid-in capital at the time of incorporation must not be less than 30 percent of the intitial capitalization, but at least Kcs 50,000.

Section 17

Subscriptions

(1) Founders ensure the initial capitalization by subscription for the shares of the corporation.

(2) The subscription is accomplished on the basis of a founder contract, and if there is only one founder, according to a plan of incorporation. Duplicates or copies of the incorporationan plan must be notarized.

(3) A founder's contract or plan of incorporation plan must contain:

a) corporate name, address, type of business, and the proposed life of the corporation;

b) proposed initial capitalization and the minimum amount of founders' contribution;

c) number and amount of the par value of the shares and, if several classes of shares are to be issued, their name and description of rights attached to them;

d) place and date of the first and the last subscription to shares;

e) if part of the initial capitalization is to be made up of assets other than cash, the type of assets, their value, the business name and address of their contributor and the name of the court expert who made a preliminary evaluation of the assets;

f) the method for calling a shareholders' meeting.

(4) The conditions for subscribing the capital stock must be made public in an appropriate manner.

Section 18

In the founder's contract or in the founder's plan, the value of the assets other than cash may be quoted at no more than the preliminary estimated value as determined by the court expert.

Section 19

(1) The subscription of stock will be accomplished by signing the register of subscribers. The stock subscription can be done in person, by a statutory agency of the subscriber, or by representative.

(2) Subscribers, with the exception of those who contribute assets other than cash, are required to deposit at the time of the subscription at least 10 percent of the subscribed amount into a bank account designated by the founder.

Section 20

(1) When the shares are oversubscribed, the founder may turn down subscriptions which exceeds the proposed number of shares. If he does not do so, the organization meeting will decide whether to accept or reject the surplus when the final determination of the capital stock is made.

(2) If the founders or the organization meeting have refused a higher subscription, the subscribed amount will be returned to those subscribers within 15 day without deductions. The founders are responsible for carrying out this duty jointly and equally.

Section 21

(1) The founding of the corporation is unsuccessful if by the due date of subscription, shares in the amount of proposed capitalization have not be sold.

(2) If the incorporation fails, the paid-in cash must be returned to subscribers within 15 days without deductions. The founders are responsible for complying with this obligation jointly and equally.

Section 22

Constituent Shareholders' Meeting

(1) The founders are required to invite subscribers to a constituent shareholders' meeting, which must take place within 60 days the due date of the successful stock subscription.

(2) If the founders do not call a constituent shareholders' meeting within the term prescribed in Section 1, the subscribers are released from their obligation and can demand the return of the paid-in cash. The founders are responsible jointly and severally for returning the paid-in cash without deductions.

(3) The subscriber is required to bring the amount of cash paid in at the time of subscription to 30 percent of the par value of the subscribed shares. This provision does not apply to those who contributed assets other than cash.

Section 23

A constituent shareholders' meeting

a) determines that the initial capitalization has been subscribed and at least 30 percent has been deposited, but it must be at least Kcs 50,000;

b) accepts or rejects a higher stock subscription;

c) makes the decision to form the corporation;

d) approves the bylaws of the corporation;

e) makes a decision on the founder's privileges, and confirms any agreements made during the process of establishing the corporation with the founders or other persons, if they affect the corporation;

f) makes a decision on the value of contributions other than cash and the time when they are to be delivered;

g) elects the management and the board of directors and for the first year, except when the founders reserved this right for themselves in the founding contract;

h) chooses a certified public accountant for the company.

Section 24

(1) The constituent stockholders' meeting has a quorum when subscribers, who collectively subscribed at least half of the capital stock, are present.

(2) A simple majority of the shares of attending subscribers is required for resolutions of the stockholders' meeting. However, any departures from the founders' contract or the founders' plan are possible only if there is a unanimous agreement of all subscribers present. The stockholders' meeting cannot set a higher value on the noncash contributions higher than the cash the value stated in the founders' contract or the value set by a court expert, and cannot change the founders' privileges.

(3) When decisions are being made concerning noncash contributions and the founders' privileges, the subscribers in question must abstain from voting.

(4) Notarized minutes must be kept made of the constituent shareholders' meeting.[2]

Section 25

One-Time Incorporation

(1) If the founders' decide in their founders' contract that they will provide the full capitalization, stock subscription and the constitues shareholders' meeting are not required.

(2) In case of a one-time incorporation the founders will agree among themselves on the board of directors, the CPA, and on bylaws.

(3) In subjects not specified in Sections 1 and 2, general provisions apply as appropriate.

(4) The provisions in Sections 2 and 3 also apply as appropriate when the sole founder of the corporation is a legal entity which provides the full capitalization.

Section 26

Bylaws

(1) The bylaws must contain:

a) corporate name and business address of the corporation;

b) the life of the corporation;

c) type of business;

d) amount of initial capitalization and payment conditions for the shares;

e) number and par value of shares and the classes of the shares (registered or bearer);

f) method of entering the corporation in the Company Register;

g) method of calling a shareholders' meeting procedures for meetings having a quorum or lacking one, conditions and methods of exercising the voting rights of the shareholders;

h) number of directors, management, and comptrollers, method of their election, definition of their authority and term of office;

i) rules for preparing the financial statement and rules for distributing the corporate profits;

j) method of publishing facts as required by law and the bylaws;

k) results of failure to pay for subscribed shares when due;

l) amount and use of surplus cash.

(2) According to need, the bylaws shall also provide for:

a) in case of several classes of shares issued—their designation, number, par value, and rights attached to them;

b) rules for issuing certificates according to Section 11;

c) retirement of shares, including the procedures which must be followed;

d) the extent of the authority of management in case of increased capitalization (Sec. 69).

Section 27

Entering the Corporation in the Company Register

(1) A corporation comes into existence on the day it is entered in the Company Register. The request to have the corporation entered into the Company Register is signed by the entire management.

(2) The court of registry will make the entry if it is shown that:

a) an organization meeting took place, as required;

b) initial capitalization is fully subscribed;

c) at least 30 percent of the capitalization is paid in;

d) approved minutes and a notarized record of the organization meeting is attached;[2]

e) an identification number was assigned by the appropriate agency of the state statistical office.

(3) If the business activity to be conducted by the corporation or the founding of a corporation according to special regulations requires it, the registration court with make an appropriate annotation that such permit has been submitted.

PART III. Duties and Rights of Shareholders

Section 28

The shareholder is required to pay the corporation for the full value of the shares within one year from the date the corporation is entered in the Company Register. During that time he is required to make installment payments in such amount and at such time as determined in the bylaws.

Section 29

(1) If the shareholder is late in paying for the shares, he is required to pay an interest rate of 20 percent a year on the amount defaulted.

(2) If the shareholder does not make the payment within 60 days of the call, the board of directors has the right to pronounce the issued temporary certificate of ownership void and the shareholder's rights forfeited; at the same time, it can authorize that the shares be issued to another person. The consideration received is first used to satisfy the claims of the corporation and the remaining portion is given to the former shareholder.

Section 30

If the shareholder transfers the temporary certificate of ownership to another person prior to paying the full par value of the share, he remains liable for the remainder of the subscribed capital as the guarantor.

Section 31

(1) The shareholder is entitled to a share of profits, which the shareholder meeting voted for distribution according to the annual financial statement statement (dividend), corresponding to his share (temporary certificate of ownership).

(2) In the event that the corporation is dissolved, the shareholder is entitled to share in the assets, which may be distributed after dissolution is completed, corresponding to his share of investment (temporary certificate).

(3) Provisions in Sections 1 and 2 do not apply to special rights of certain shares as deteremined in the bylaws.

(4) Satisfying the shareholder to the detriment of the capitalization is not permissible, except when a reduction of the initial capitalization has been authorized.

Section 32

(1) While the corporation is in existence or in the event of its dissolution, the shareholder is not entitled to demand the return of his investment.

(2) The shareholder cannot be required to return dividends accepted in good faith.

Section 33

(1) Every shareholder has the right to attend shareholder meetings, request explanations, and make comments. On the basis of his voting shares, the stockholder is entitled to offer proposals and vote on them as well as on the proposals of other shareholders.

(2) The management is required to provide necessary information on subjects proposed for the agenda of the shareholder meeting, to every shareholder who requests it in writing, at least eight days before the meeting takes place.

(3) The management shall make public in a manner determined by the bylaws at least the substantive data from the annual financial statement, recommendations for the disposition of profits, and reports of the management and the management at least 30 days before the shareholder meeting.

Section 34

(1) The voting right attached to a share is determined by the par value of the share.

(2) The bylaws may limit the exercise of the voting right by establishing the highest number of votes which can be voted by a shareholder.

Section 35

(1) The manner of exercising a voting right shall be defined in the bylaws.

(2) The shareholder cannot exercise his voting right if he failed to carry out his obligation to make payments for the subscribed shares.

Section 36

(1) The shareholder can also exercise his voting right in the shareholder meeting by proxy. The proxy holder cannot be a member of the management, the board of directors, or a comptroller.

(2) The proxy is valid only for one shareholder meeting, even if it is reconvened because there was no quorum. The proxy must be delivered to the management before the meeting takes place.

Section 37

If dividends due on a preferred stock with a limited or denied voting right are not paid by the corporation in the same year or are paid only in part, and such payment is not made in the following year either, the preferred stock gains voting rights which can be exercised until such time that the corporation pays the due dividends.

Section 38

(1) The management will convene a special purpose stockholder meeting if requested by stockholders whose shares represent at least 10 percent of all stocks outstanding.

(2) If a shareholder meeting has been requested according to Paragraph (1), and the management does not call the meeting within 30 days, the meeting is called at the request of the shareholders mentioned in Paragraph 1 by the court or registry within the same time limit.

Section 39

(1) The shareholders, whose voting shares represent at least 10 percent of the capital stock, may request the management, stating the purpose and the reason, to place an item on the agenda of the stockholders' meeting. The bylaws can extend this right also to shareholders whose shares represent a smaller share of the capital stock.

(2) The shareholders can exercise their rights according to Paragraph (1) up to eight days after the day a shareholder meeting has been called.

(3) The management is required to place the item according to Paragraph (1) on the agenda of the shareholder meeting and is required to make it public within eight days in a manner corresponding to the announcement of the shareholder meeting.

(4) If the management does not meet its obligation according to Paragraph (3), the court of registry will place the item on the agenda of the stockholders' meeting, at the request of the stockholders who submitted the item, within three days after the request is delivered.

Section 40

(1) The shareholders whose shares represent at least 10 percent of the capital stock, can request the board of directors, stating the purpose and reasons, to carry out an investigation of the business activities of the corporation.

(2) If the board of directors does not comply with the request submitted according to Paragraph (1) within 30 days, the shareholders mentioned in Paragraph (1) can turn to a stockholders' meeting (Section 39).

Section 41

(1) Any shareholder or any member of the management or board of directors can request a court reversal of an unlawful decision of a shareholders' meeting.

(2) If the reversal is requested by a member of the management, the corporation will be represented in the suit by a member of the board of directors elected by the

board. If the reversal is requested by a member of the board of directors, the court will designate a custodian to represent the corporation.

(3) The person who requests the reversal of a decision is obliged to post with the court a security in the amount of the par value of at least one share, but not more than Kcs 10,000 only.

(4) The judgement of the court is binding on all shareholders.

PART IV. Organization of a Corporation

Section 42

Shareholder Meeting

The shareholder meeting is the highest authority of the corporation; all shareholders have the right to participate in it.

Section 43

Among the exclusive responsibilities of a shareholder meeting is the following:

a) approval and changes of bylaws;

b) increase or reduction of capitalization;

c) changes to rights attached to individual classes of stock;

d) decision to dissolve the corporation;

e) election, recall, or determination of rewards (bonuses) of the members of the management, board of directors, and comptrollers;

f) approval of annual financial statement and distribution of the profits;

g) decision to issue convertible bonds or preferred securities according to Section 11;

h) decisions on all question which this law or bylaws are the exclusive responsibility of the shareholder meeting.

Section 44

(1) The shareholder meetings must be called at times designated in the bylaws, but at least once a year. In case of need, a shareholder meeting may be called at any time.

(2) A shareholder meeting is called by the management, unless this law states otherwise.

(3) A shareholder meeting must be called in the manner prescribed in the bylaws with at least a 30 days' notice. The invitation must contain:

a) name and address of the corporation;

b) time and place of the stockholder meeting;

c) agenda of the stockholder meeting;

d) bylaw provisions for the exercise of voting rights.

(4) If "bearer" shares are issued, the shareholder meeting must be publicized in an appropriate manner and time according to Paragraph (3).

Section 45

(1) Shareholders present at the meeting will sign an attendance list which must include the business name (name) of the shareholder or his proxy and his address.

(2) The attendance list is certified as correct by the signatures of the chairman of the shareholder meeting and the recording secretary.

Section 46

(1) The shareholder meeting has a quorum if shareholders holding more than 50 percent of the voting stocks are present.

(2) If the shareholder meeting does not have a quorum, there will be a second shareholder meeting which must be called within 15 days, having the same agenda and authorized to make resolutions without regard to the number of those present.

(3) Items not included in the publicized agenda can be discussed only if all shareholders are present and if they unanimously agree to discuss the item.

Section 47

The stockholder meeting makes decisions about matters described in Section 43, subparagraphs a) through d) by at least a two-thirds majority of those present and voting; in other matters, unless the bylaws do not prescribe a qualified majority, the shareholder meeting decides by a simple majority.

Section 48

A decision of the shareholder meeting which alters the rights attached to some classes of stock will take effect if at least a three-fourth majority of shareholders representing the stock in question approves the decision in the manner provided by the bylaws; if no other provisions have been made, the provisions on shareholder meetings will be used as applicable.

Section 49

(1) The shareholder meeting first elects a chairman, a recording secretary, two individuals to verify the minutes, and individuals who will count the votes.

(2) The minutes of the shareholder meeting will contain:

a) name and address of the corporation;

b) location and time of the shareholder meeting;

c) names of the chairman of the shareholder meeting, recording secretary, persons verifying the minutes (verifiers), and names of persons who counted the votes;

d) the more important events during the course of the shareholder meeting and verbal comments. Written proposals and comments are attached to the minutes;

e) resolutions of the shareholder meeting including the number of votes for, against, and abstentions;

f) objection of a shareholder, member of the management, or board of directors to any of the decisions, if the objector requests it.

(3) The minutes are signed by the recording secretary, chairman of the shareholder meeting, and two verifiers that they are correct.

(4) The management is obliged to make certain that minutes are completed within 30 days from the conclusion of the shareholder meeting. Together with the announcement of the shareholder meeting and the attendance list, the minutes are kept in the corporate files during its entire life.

(5) Any shareholder can request the management to issue him a extract from the minutes or a copy of the minutes of the shareholder meeting.

Section 50

Management

(1) The management is elected by the shareholder meeting from among the shareholders or other persons. The shareholder meeting can also resolve that if the number of the management does not fall to less than half, the management can supplement their numbers by cooptation. The next shareholder meeting will confirm the coopted members, or will elect others.

(2) The management consists of at least three but not more than 11 members. The chief executive officer is elected by management.

(3) The management is a statutory agency of the corporation. It represents the corporation before third parties, before the court, and before other agencies; it creates and direct the organization of the corporation's work and exercises employer rights.

(4) The method by which the management places the corporation under obligations is determined in the bylaws and entered in the Company Register.

Section 51

The bylaws, resolutions of the shareholder meeting, or the board of directors can limit the rights of the management to represent the corporation; such limitation, however, is ineffectual against third parties. The management is jointly and severally responsible to the corporation for damages caused by exceeding their authority.

Section 52

(1) The management is responsible for presenting the annual financial statement and recommendations for distribution of profits.

(2) The management prepares a report about the business activities, the assets, and business policy of the corporation for the shareholder meeting within the time provided in the bylaws, but at least once a year.

(3) The management ensures proper accounting procedures and bookkeeping in the corporation.

Section 53

The management has the duty to call a shareholder meeting and at the same time inform the board of directors, if:

a) it finds that the corporation lost one third of its capital assets, or

b) the corporation is insolvent for a period longer than 3 months.

Section 54

(1) A member of the management:

a) may not sign business contracts on his own behalf while employed by the corporation;

b) may not be a guarantor for another corporation with a similar line of business;

c) must not be a chief representative of another corporation with a similar line of business.

(2) If a member of the management violates any of the prohibitions listed in Paragraph (1), the corporation may:

a) demand payment of damages;

b) request, in place of damages, that the member of management surrender to the corporation the business he contracted for himself, or

c) demand that he surrender to the corporation any profits gained from business transacted on somebody else's account, or to transfer any claims he may have to the corporations.

(3) The claim of the corporation according to Paragraph 2 expires three months from the day that a member of management learned about the matter, but at the latest one year after it occurred.

Section 55

Board of Directors

(1) Every corporation must elect a board of directors, which must have at least three members.

(2) The members of the board of directors are elected by the shareholder meeting from among the shareholders or other persons. The stockholder meeting must not elect an employee of the corporation as a member of the board.

(3) If the annual average number of full time employees of a corporation exceeds 200, an assembly of the corporation's employees elects one-third of the directors from among the ranks of its employees.

Section 56

(1) The board of directors is competent to verify the corporation's procedures, inspect at any time the books and records of the corporation and ascertain its standing.

(2) The board of directors has the duty to review the annual financial statement, assets and liabilities, and recommendations for distributing profits, and report the results of their review to the annual shareholders' meeting.

Section 57

(1) Members of the board of directors take part in the shareholder meetings of the corporation; they can place their comments on the agenda.

(2) If the view of the employees' representatives on the board of directors differs from the views of the other members, that minority view must also be presented.

Section 58

(1) The board of directors shall call a shareholder meeting if the interests of the corporation require it.

(2) If an action is brought against the management or against members of the board, the corporation is represented by the board of directors.

Section 59

(1) The board of directors exercises its rights jointly or through its individual members. The board of directors can delegate control permanently among it individual members. Delegating control, however, does not affect the responsibility of a member of the board of directors nor his right to carry out other control activities.

(2) If an inspector general is employed by the corporation, he is responsible to the board of directors.

Section 60

Provisions in Section 54 apply also to the members of the board of directors.

Section 61

Comptrollers

(1) Every corporation must select at least one comptroller of corporate accounts books. The comptroller is selected by the shareholder meeting from among the shareholders or other persons.

(2) The comptroller performs tasks which are assigned to him by this law, other legal provisions, provisions, and the shareholder meeting.

Section 62

A One-Person Corporation

(1) A corporation can also be established by a method in which the only shareholder is a legal entity.

(2) A corporation as a single person also comes into existence when the ownership of all shares is acquired by a single shareholder.

Section 63

A single-person corporation is subject to all applicable provisions of this law on corporations; the rights of a shareholder meeting within provisions of Section 62, Paragraph (1) are exercised by the founder, and in cases under Section 62, Paragraph (2) by the shareholder.

PART V. Increase and Reduction in Capitalization

Section 64

Increase in Capitalization

(1) A corporation can increase capital only if the shareholders have fully paid in the total of the par value of previously issued shares, with the exception of cases mentioned in Section 68.

(2) Increase in capitalization is possible by subscription of new stocks, converting of corporate assets in exceess of initial capitalization into initial capitalization, or by exchanging convertible bond certificates specified according to Section 11 for shares.

Section 65

(1) The shareholder meeting makes the decision about increasing capitalization proposed by the management. In addition to the information provided in Section 44, Paragraph 3, the announcement of a shareholder meeting will also indicate:

a) reasons for increasing the capitalization, the method and minimum value of the increase;

b) a proposal for amending the bylaws concerning the increase in capitalization stock;

c) quantity and par value of new shares;

d) if a new class of shares is to be issued, the rights attached to them, as well as the resolution on what rights attached to the previously issued shares will be affected by it and in what way;

e) if the increase in the capitalization is made by subscription of shares, the date of the first and the last subscription;

f) if the increase in capitalization is investments other than cash, their estimated value.

(2) The increase in capitalization shall be carried out by management.

Section 66

(1) If the capitalization increase is made by the sale of shares:

a) all shares must be paid in the amount determined by the shareholder meeting, but at least 30 percent of their par value;

b) the shareholder meeting may, by a 75 percent of voting shares, give a right of first refusal for the new shares to every shareholder, at the same time setting a deadline within which the shareholders is required to exercise this right.

(2) Owners of bonds according to Section 11 may exercise their right to convert their certificates to shares before the shareholders may purchase additional shares.

(3) Otherwise, following the subscription of shares to increase the capitalization, the provisions of this law on corporations apply, with the condition that the sale may commence only after the shareholder meeting approval of the increase in capitalization is entered into the Company Register.

Section 67

(1) If an increase in capitalization, in part or in entirety, by conveyance of assets other than cash is being considered, the corporation may increase the capitalization by the value of these assets even if the total value of previously issued shares has not been entirely paid in.

(2) To establish the value of assets other than cash, as well as the responsibility connected with it, the provisions of this law on corporations will be used as applicable.

Section 68

(1) The corporation may, following the approval of its annual or special financial statement, transfer the assets in exceess of initial capitalization to the initial capitalization by issuing new shares or increasing the par value of individual stocks previously issued.

(2) Unless the stockholder meeting decides otherwise, the newly issued shares will be first offered to the current stockholders. The offer must be made in the manner provided for in the bylaws.

(3) If a shareholder does accept the new shares by the end of the following stockholders' meeting, the corporation may sell the new shares on a first-come basis.

(4) Increase in the par value of shares is accomplished by exchanging them for new shares with a higher par value, or the higher par value is marked on the previously issued shares along with the signatures of two executives authorized to sign for the corporation.

Section 69

Under conditions established in the bylaws, the management may issue new shares or transfer capital in excess par value into the initial capitalization, or it may increase capitalization to the stated amount, but by no more than one-third of the original amount of the capitalization.

Section 70

Conditional Increase in Capitalization

(1) The shareholder meeting may decide on a conditional increase in the capitalization, if the purpose of the decision is to issue bonds according to Section 11.

(2) Owners of convertible bonds indicated in Section 11 may demand shares against the conditionally increased capitalization. The request is to be submitted in writing and should state the number and par value of the shares being requested.

(3) The management may issue shares according to Paragraph 2 only to the extent to which those authorized to do so have exercise their right to convert their bonds into shares, and after the full value of the shares has been paid in.

(4) If bonds under Section 11 have been issued for a less than the par value of the shares, the issuance of new shares is possible only if those authorized paid the corporation the difference between the par value of the share and the value of the bond. The shareholder rights become effective after the new share has been issued.

Section 71

(1) The management will inform the court of registry about the decision of the management or the stockholders' meeting of the decision to increase the capitalization within 30 days of the decision. The same procedure is followed whether the increase in capitalization took place or not.

(2) In case of a conditional increase in capitalization, the management will inform the court of registry of the increase in capitalization resulting from the conditional increase in capitalization during the previous year, within 30 days of the approval of the annual financial statement.

(3) An increase in capitalization is valid from the day the court of registry entered it into the Company Register. For making an entry into the Company Register the rules of incorporation will be used as applicable.

(4) Shares or temporary bond certificates may be issued only after the entry is made.

Section 72

(1) New shares issued on the basis of increase in capitalization according to the bylaws or the resolution of the

shareholder meeting will participate in profits in the year in which the capitalization was increased.

(2) The shares in corporate ownership will particiapte in the increase of the capitalization according to the rules that apply to other shares.

Section 73

Reduction in Capitalization

(1) The resolution of the shareholder meeting will state the reason for the reduction in capitalization, how it will be accomplished, amount by which the capitalization will be reduced, and the deadline for returning the shares to the corporation.

(2) In the process of reducing capitalization, it is necessary to retire the corporate shares.

(3) In reducing the capitalization, it is necessary to follow the rules concerning the minimum levels of capitalization; the reduction must not affect the rights of the bond owners outlined in Section 11.

Section 74

(1) The management will inform the court of registry about the decision of the shareholders to reduce the capitalization within 30 days of the decision having been made.

(2) After the entry in the Company Register is made, the management will announce the decision in an appropriate manner twice in succession with at least a 30-day time lapse.

Section 75

(1) Creditors, whose claims against the corporation arose before the first announcement of the reduction in capitalization, may request the corporation, within 90 days from the last announced decision to reduce the capitalization, to give them a guarantee up to the amount of their claims. Failure to do so within the stated time limit will result in the loss of the creditors' rights.

(2) The corporation is required to provide the creditors, who make a claim according to Section 1, with a guarantee requested.

Section 76

(1) Reduction in capitalization is accomplished by reducing the number of shares, or by reducing the par value of individual shares, or by a simultaneous reduction of the number of shares and their par value, or possibly by assigning the value of a lesser number of shares to a larger number of shares (reverse stock split).

(2) The reduction of the number of issued shares is accomplished by taking a certain number of shares out of circulation (retiring the shares) and buying back the shares which were surrendered or drawn by lottery. Detailed rules for retiring shares by lottery will be determined by the shareholder meeting.

(3) Reduction of the par value of the shares will be accomplished by exchanging them for new shares with a lower par value or by marking the lower par value on them with the signatures of two executives authorized to sign for the corporation.

(4) Reverse stock splits will be accomplished by exchanging a certain number of shares for one at the full par value.

Section 77

(1) The shareholder meeting may decide to reduce the capitalization even if it had not been fully paid in yet.

(2) Such reduction will be accomplished by a resolution of a shareholder meeting stating that further payments for shares will be waived (a release from contract) and issued bonds will be converted into shares at a corresponding par value, or that issuance of additional shares, to which the corporation is entitled according to the bylaws, will be suspended.

Section 78

(1) The management will notify the shareholders, in a manner prescribed in the bylaws, to return their shares for purpose of exchange, annotatation of their reduced par value, retirement, or a reverse stock split.

(2) The corporation will declare invalid those shares which were not retired as called. The corporation must publicize its intent to invalidate the shares.

(3) As replacement for the invalidated shares, the corporation may issue new ones, which it can also sell. The capital obtained from the sale will be either paid out to the shareholders whose shares were invalidated, or invested until the right to make the payments to stockholders is confirmed.

Section 79

(1) After 90 days from the last public announcement according to Section 74, Paragraph 2, the court of registry will enter the request of the corporation to reduce capitalization in the Company Register. The reduction of the capitalization goes into effect when entered in the Company Register.

(2) The entry may be made, provided the following has been accomplished:

a) two public announcements of the decision of the shareholder meeting to reduce the capitalization were made;

b) creditor satisfaction according to Section 75 has been ensured.

(3) Payments to shareholders debited to the capitalization or forgoing of further payment requirements for

shares issued are permissible only after the entry of the reduction in capitalization has been made in the Company Register.

Section 80

Installment Payments for Stocks

(1) If the life of the corporation is limited to a certain period of time because the capital will have been consumed or because its charter has been issued for a limited period of time, the bylaws of the corporation must contain rules as to the method of payments to be made to shareholders during the life of the corporation out of net profits.

(2) Gradual redemption of shares shall be accomplished by retiring shares on basis of a lottery. The owners will be issued, in addition to the par value of the shares, certificates which confirm retention of the rights attached to the shares retired by lottery (redeemed shares).

Section 81

(1) The bylaws must establish the setting aside of a portion of the net profits for dividends to be paid only to owners of shares not retired by the lottery. In case the corporation is liquidated, they will have the first claim to a share of the proceeds based on the par value of their stock holdings.

(2) The corporation is not dissolved by the total redemption of shares, but by a resolution of a shareholder meeting of the owners of redeemed stock certificates.

Section 82

(1) Other certificates may be issued in lieu of shares retired by lottery, guaranteeing their owners the right to be paid part of net profit remaining after dividends have been paid (superdividends) and for the balance of the liquidation proceeds (creditors' securities).

(2) In the event mentioned in Paragraph 1, the corporation will be dissolved by a complete redemption of all shares.

Section 83

(1) Instead of a gradual retirement of shares by lottery, or a gradual repurchase of the shares, the corporation may create a fund from the net profits, which may be used for a one-time repurchase of all shares at the time its charter expires.

(2) If this fund is used to repurchase the shares, all regulations for decrease in capitalization must be followed.

PART VI. Capital Reserve

Section 84

The corporation creates the mandatory capital reserve after its incorporation in the amount and by a method outlined in the bylaws. It adds at least five percent of the after tax profits to the capital reserve every year up to an amount established in the bylaws. The minimum required amount of the capital reserve is 10 percent of the capitalization.

PART VII. Dissolution of a Corporation

Section 85

(1) Requirements for the dissolution of a corporation:

a) resolution of the shareholder meeting to dissolve the corporation in accordance with the bylaws, or

b) accomplishment of the purpose of the corporation, as stated in the bylaws, or by expiration charter which established the corporation.

(2) The dissolved corporation ceases to exist when the corporation is deleted from the Company Register.

Section 86

Liquidation of a Corporation

(1) The liquidation is accomplished by the management or by an individual person proposed by the management and approved by the stockholders.

(2) Stockholders representing at least 10 percent of the capitalization may ask the court of registry, with appropriate justification, to designate another person to liquidate the company. The bylaws may also assign this right a to stockholders representing a smaller share of capital.

(3) The liquidation of the corporation and the person responsible for the liquidation are entered at the recommendation of the management in the Company Register, and the name of the corporation is marked "in liquidation." After the liquidation is entered in the Company Register, the work of the corporate officers is limited to acts needed to carry out the liquidation.

(4) The liquidating individual is required to notify all persons and agencies affected by the liquidation. A financial statement and full accounting are prepared as of the date the liquidation process begins.

(5) During the liquidation process, the liquidator is required to:

a) consolidate corporate assets in one financial institution;

b) close out day-to-day operations;

c) arrange for the payment of taxes and accounts payable;

d) arrange for the payment of all liabilities and settlement of any claims;

e) realize the sale of the corporate assets in the most profitable and efficient manner;

f) provide for continuous a reporting on the course of the liquidation in accordance with the bylaws.

Section 87

(1) The liquidator will prepare a final financial statement at the conclusion of the liquidation process and present it to the stockholder meeting together with the final report on the liquidation process together with a proposal for a distribution of the remaining corporate assets to the stockholders.

(2) After the financial statement and the distribution of the assets have been approved by the stockholder meeting, the liquidator shall:

a) cash in the shares surrendered by the stockholders;

b) provide for a safe storage of the redeemed shares, files and accounting documents;

c) recommend deletion of the corporate name from the Company Register.

Section 88

If the corporation is insolvent, its liquidation is governed by special rules.[3]

PART VIII. Final Provisions

Section 89

The legal standing of trade unions in corporations is governed by special rules.

Section 90

Corporations established according to legislative rules effective prior to this law are considered to have been established according to this law. If their bylaws are in contradiction with this law or they lack certain provisions required by this law, the corporations will make the necessary changes in its bylaws within six months after this law becomes effective.

Section 91

The government of the Czechoslovak Federal Republic may provide rules of procedures for nonrecurring establishment of a corporation and incorporating enterprise, where stockholder will be the state or a state enterprise.

Section 92

The law No. 243/1949 on corporations is hereby rescinded.

Section 93

This law takes effect on 1 May 1990.

[signed] Havel
[signed] Dubcek
[signed] Calfa

Comments Prepared by Dr. Jaroslava Svobodova, Office of the Presidium of the CSFR Government

PART I—General Provisions (Sections 1-14)

In the Czechoslovak legal code, corporations have been regulated until now only in a general way by Law No. 243/1949 on corporations. But the principles of that law bore marks of the time when it was adopted, because its purpose was a strict control of any existing corporations, their gradual liquidation, and transfer of their assets to the legal forms of socialist economic organizations which were then coming into being. Therefore, this law made provided for a broad intervention of state agencies in economic activities, and even the liquidation of a corporation against the will of the shareholders. Since the state retained for itself broad intervention rights while truncating the law in every other respect, it was completely inadequate for the purpose of expanding this form of entrepreneurship for a transition to a market economy.

With the transition to a market economy and its opening up to the world, the wide use of the organized enterprises as corporations has considerable importance. It makes possible a concentration of substantial capital needed for doing business and providing incentives for a wide range possibilities for engaging in profitable business activities.

To place relations which shareholders and corporations will be entering into on firm legal ground, comprehensive legal adjustments are necessary to resolve to the fullest extent possible the rather complicated legal problems of corporations.

The new law looks to analogous structures of corporate laws abroad as well as to regulations that applied in the Czech lands before 1949. It differs from the old law particularly by the fact that it sets comprehensive rules for the establishment and operation of corporations, which previously were left to the specifics of the bylaws. These adjustments will, therefore, be more intelligible to prospective foreign partners and will also serve as guidelines for founders of corporations and people interested in investing in this type of enterprise.

In contrast to the old regulations, the so-called consessionary system, that is, state approval to form a corporation, approval of the bylaws and every change in them by a state agency, was dropped. But a corporation as a legal entity comes into existence only after it has been entered in the Company Register. Such entry requires that several conditions be met. Some of the more important changes in the bylaws are also entered in the Company Register.

Direct state control or a liquidation of a corporations by decision of a state agency have also been suspended.

If one of the cofounders of a corporation or its shareholder (joining an already existing corporation by purchasing stock) is a foreigner, Law No. 173/1988 or its latest amendment on enterprise with foreign participation apply.

This liberalization of rules for formation and operation of corporations is necessary at least temporarily since, as yet, no state structures have been created which could properly evaluate the purpose and object of the business of a corporations that would make a state approval and supervision in the corporation a mere formalility. Administrative procedures could only slow down a quick formation of corporations and a transition from the current forms of economic enterprise to this more progressive form. The purpose of a corporate form of business is also to help obtain the needed capital from a mass of shareholders (that is the reason for proposing a relatively low par value of the shares).

The employees' share in the control and management of the corporation is ensured by their participation in the corporate board of directors as well as in their ability to become shareholders of the corporation in which they are employed. But management itself must be entrusted exclusively to professional managers, who may (or may not) be shareholders—for example, from the ranks of the corporate employees.

The general provisions mainly define the legal nature of the corporation and its ownership relations. The stockholders actually share in the assets of the corporation. The capitalization are assets whose size increases or decreases according to the results of the corporate business management. These assets can tangibles (for example, land, building, and equipment), cash, or intangibles (such as, a right to use a patented invention) whose value can be expressed in terms of cash.

The shares in the total assets are expressed by a certificate of ownership or stock. The value of the stock as indicated is the par (nominal) value. The price for which it is sold and purchased on the stock market is the market price, which can be higher or lower than the par value.

The corporation is a legal entity, with rights and obligations (responsibilities). The corporation itself, as an entity with rights and obligations, is responsible for violating its contractual obligations. Its member (stockholder) is not personally liable or responsible for the obligations of the corporation. The extent of the corporation responsibility and its economic success is reflected in the value of its stock, which will either rise or fall. It may even lose its value altogether by excessive indebtedness, but the shareholder is not liable for the debts of the corporation.

The provisions of Section 3 define the nature of the share as a financial instrument and the rights attached to it. The shareholder participates in the management of the corporation by having the right to vote at the shareholder meeting on the bylaws of the corporation, elect and be elected to bodies which manage the corporation, and share in decisions concerning the business of the corporation. He shares in the profits of the corporation by receiving a designated part of the profits according to the par value of his shares (dividends), and if the corporation is liquidated, he shares in any assets remaining after the dissolution.

The basic types of stocks are those registered in owner's name and bearer shares, that is, those without the name of an owner. The type of shares issued in a specific case will be decided by the founder contract or the bylaws. In both cases, these are negotiable instruments, except that in case of registered shares, the corporation bylaws may determine that they are transferrable only with its approval. This provides the corporation with an overview about the movement of its shares and makes it possible to prevent or restrict the movement of stocks altogether.

A share is to be issued to the stockholder only after its value has been fully paid in. Since the shares are generally paid in installments (10 percent at subscription, another 20 percent before the corporation is entered into the Company Register, and the remaining 70 percent gradually within 1 year from subscription), it is possible to issue a so-called temporary certificate (bill of credit), which certifies the membership in the corporation and the amount paid. The owner of the temporary certificate has the rights of a shareholder (as long as he keeps up the payments on the share), so that for the purposes of this law he is generally also referred to as stockholder.

A share is not effective before the entry into the Company Register and it is fully paid. In the event that the founders would issue shares to the shareholders prematurely (for example, before the entry into the Company Register) they are collectively liable for losses incurred (for example, if the shareholder resells it). The purpose is to protect the creditors.

It is possible to issue, for up to one-half of the capitalization, the so-called preferred stocks, that is, securities which guarantee the owner certain preferences (for example, when dividing profits). Usually these are shares that belong to the founders of the corporation. As a rule, there is a limit on the voting right (at the shareholder meeting) of these shares in consideration of these preferences, so that the owners of preferred stock would not influence the business decisions of the corporation solely to their own advantage.

If the bylaws of the corporation include the possibility of issuing the so-called employee shares, the basic conditions for issuing them shall be determined. In contrast to ordinary shares, which, of course, the employees may also buy, these shares provide for certain advantages to the employees. An employee share is supposed to tie the employee to the enterprise and motivate his personal

interest in its profitability. The bylaws can establish a number of alternatives for obtaining employee shares according to specific conditions.

A special kind of share is an interest-bearing share, which the bylaws may authorize. The law merely limits their total value to 10 percent of the capitalization. Its purpose lies is to guarantee at least a given interest rate if there is no profit to be divided. If the corporation shows profit, the interest, of course, becomes part of the dividend. These dividends are usually referred to as a "construction" interest, that is, during the period when the corporation is being "built" (formed).

By issuing certificates under the provisions of Section 11, the corporation can obtain money for a certain period of time without having to increase the capitalization and the number of shareholders. This is actually a type of debenture bond, which is also a negotiable instrument. According to their nature, these securities are in practice called convertible (under certain conditions they can be exchanged for stocks, if the capitalization of the corporation is increased), or preferred shares (they give the owner priority to shares if the capitalization is increased). The also carry a priority entitlement to satisfaction of claims before other creditors.

If the corporation does not wish to circulate the shares it has repurchased, it may liquidate them. The court of registry must be notified on retirement of shares because the number of stocks issued has recorded. Shares repurchase and thier retirement does not decrease the capitalization, because the shares were repurchased out of the corporate profits.

There are also regulations for cases when one stock is registered in the name of several individuals. But for the purpose of the corporation they act as one shareholder; mutual relations among the co-owners are governed by civil law. That is true also in the event that they do not agree on which one of them will represent them as a shareholder in dealing with the corporation. The situation is different in the case of bearer shares, because the real stockholder is anonymous. The corporation therefore does search for the actual owner, because it deals with whoever presents the bearer certificate.

PART II—Establishing a Corporation (Sections 15-27)

The provisions of Section 15 define who can be a founder of a corporation. For the period of transition it should be possible to have only one founder, although, the term itself (it concerns a corporation, therefore an "association") seems to rule it out. This will enable the state (as a singular legal entity) to change a state enterprise into a a corporation. It also make it possible to avoid a founder contract, which is supplanted by the so-called founder plan. If there are several founders, the basis for founding a corporation is a founder contract. The same option, of course, must be given also to physical persons.

Legal entities are also given the opportunity to form a single corporation (see Section 25).

The purpose of the provision for setting a minimum amount of capitalization and its payment at the time when the corporation is founded is to prevent establishment of an undercapitalized corporation, or having it entered into the Company Register if at least a substantial part of the capitalization is not available.

Procedures for forming a corporation are also established. The founder contract or plan (if there is only one founder) must provide data for the public as well as for the Company Register.

The founder must (unless it is a case of forming a single corporation by a legal entity) publicize the fact that he intends to establish a corporation and invite individuals who may be interested in subscribing to participate in the capitalization.

In the event that there is a contribution other then cash (usually it made by the founder), a preliminary estimate by a court expert is necessary so that the subscribers can verify that the asset exists and what its value is.

To ensure that the subscription is meant seriously and the ability to cover expenses in case the subscriber later declines to pay the balance, subscribers are required to deposit at least 10 percent of the subscribed amount into a bank account opened by the founder for such purpose.

If capitalization is not fully subscribed within the planned time limit, the incorporation fails and the subscription deposit must be returned. Reducing the amount of capitalization or extending deadline is not possible, because it would be against the will of those who already subscribed their share and expected a certain level as well as a set time the corporation would become operational.

If the founder still intends to establish a corporation, the entire process must be repeated.

The founders (founder) have the duty to call a founding meeting (if it does not pertain to a one-time procedure of forming the corporation). Not to call the shareholder meeting within the deadline is a breach of contract. The sanction for the breach is that the subscribers are released freed from their obligation to pay the balance of the subscribed capital and are entitled to have their money refunded. The subscribers may, of course, wave the breach of contract by not asking for refund of their deposit if the founder calls the meeting later.

The provisions of Section 23 define the responsibilities of the organizing meeting. Decisions under subparagraph e) apply in cases where founders reserved certain benefits for themselves (for example, preferred or interest-bearing stock, or naming of the management and board of directors) or cases where the founders concluded contracts prior to the incorporation which the corporation would be required to honor. The organizing meeting is an important act for the founding of a

corporation and its entry into the Company Register. Therefore, it is required that its procedures and outcome be verified by a notary public, who must have been present at the meeting.

A one-step forming of a corporation occurs when the founders (or a founder) subscribe the entire capitalization, so that a public subscription of shares is not held. This was the method by which Czechoslovak foreign trade corporations and enterprises with some foreign capital participation were established, to the extent that they were to have the form of a corporation. Because in such cases a organizing meeting is not held, the founders come to an agreement on bylaws (or the single founder draws up the bylaws), name members of the management, board of directors, as well as comptrollers. Otherwise the process is identical to founding a corporation by subscribed capitalization (Section 16 and following).

The mandatory part of the bylaws is also determined which, in their legal nature, constitute a "social" contract by the shareholders. The court of registry determines whether the requirements of the law at to the bylaws have been met prior to entering the corporation into the Company Registry. The bylaws may be changed during the life of the corporation. Certain acts can be carried out only after changing the bylaws (for example, increasing or decreasing the capitalization) and such changes go into effect only after they are entered into the Company Registry.

By being entered into the Company Registry, the corporation becomes a legal entity able to assume rights and obligations. Until that occurs, the founders act as individual legal entities and any their legal actions are not yet those of the corporation.

PART III—Stockholders' Obligations and Rights (Sections 28-41)

The only obligation of a shareholder is to pay the corporation for the full value of the stock within the designated time. If he does not meet this obligation, he will be penalized by being charged interest for the delay, or possibly by being "expelled" from the corporation. Here the owner of a temporary certificate is considered to be a shareholder according to Section 2, Paragraph 2, because a stock can be issued to him only after his share has been paid in full.

Because scrip is also a negotiable instrument, the shareholder guarantees that the purchaser of the certificate meets his obligation to pay the balance of the subscribed share of the capital. This is designed to protect the corporation from unreliable capital subscribers.

The basic right of a stockholder is the right to a share of the profits (dividend) based on the par value of his shares. The shareholder meeting sets aside a portion of the profits for dividends after the corporation's obligations to the state (fees and taxes) and contributions to corporate funds (of which the capital reserve is mandatory) have been made. In the event that a dividend was not arrived at properly, the shareholder does not have to refund it if he accepted it in good faith.

A shareholder cannot demand the return of his deposit even at the dissolution of the corporation. If he no longer wants to be part of the corporation, he must sell his share to other interested buyers; if the corporation is dissolved, he is entitled only to a prorated share of the liquidated assets.

Therefore, nothing can be refunded to the shareholder from the capitalization—with the exception of a reduction in capitalization.

The provisions in Sections 33-37 define the rights of the owner of voting shares; that is because some shares may have their voting right restricted (for example, preferred stocks).

The duty of the management is to publicize the substantive information to be discussed at the meeting in time and in a manner prescribed in the bylaws (generally in the major daily or weekly publications, in which the corporate announcements are usually published). To the shareholders who request it in writing, the management is required to provide information about the items proposed for the agenda of the shareholder meeting.

The voting right attaches to individual shares of a given par value. Generally, each share has one vote, so that an owner of several shares has a corresponding number of votes. The bylaws may regulate the exercise of the voting right by setting a maximum number of votes that one shareholder can have. Some classes of shares (for example, preferred) do not have any voting right at all, which must be so stated in the bylaws.

Because certificate owners also attend the shareholder meetings and have the right to vote according to the par value of the shares which they purchased but have not fully paid yet, it is a natural result that their voting right be suspended if they do not meet their obligation to make proper and timely payments for the shares held.

The limits on the voting right of preferred shares apply only as long as the corporation pays the dividends as required. Otherwise it is obvious that the corporation is not conducting the business effectively. As a result, the preferred shares may gain voting right so that their owners can take part in making decisions about the management of the corporation.

In addition to regular shareholder meetings, it is possible to call extraordinary stockholder meetings, if the prescribed minimum number of stockholders request it. If the management does not take action, the court of registry may be asked to call the meeting.

If a certain item is not included on the agenda of the shareholder meeting, stockholders may request that, within a certain time limit, it be added. If the management does not accommodate this request, the court of registry will make a decision about placing the item on the agenda.

A minimum number of shareholders may also request the board of directors to carry out an extraordinary review of the management of the corporation, if there are sufficient reasons for it. If the board of directors does not do so, the matter is placed before the shareholder meeting.

There are also procedural rules for protection against unlawful decisions of the shareholder meeting. This concerns civil suits at the municipal court; it is clear from the nature of the matter that the court can either confirm the unlawful decision according to the civil code (that is, not to accept the complaint) or resolve the suit by declaring the decision void. But it cannot change the decision, because the expression of the shareholders' will cannot be replaced by a court decision.

Post a security bond prior to the proceedings is a preventive measure; it is to prevent unnecessary controversies, and in the event that the complaint is not accepted, the bond can be used to defray expenses.

PART IV—Organization of a Corporation (Sections 42-63)

Part IV sets the rules for the establishment and status of the corporate departments and their organization. Sections 42-49 deal with the highest authority of the corporation, which is the shareholder meeting. The scope of its authority, planning and proceedings, and quorum for resolving individual questions are described. Because this is not an organizing meeting, it is sufficient to verify its proceedings by elected checkers, and verification by a notary public is not required. Minutes of regular shareholder meetings are not submitted over to the court of registry.

The executive body of the corporation is the management, which can be supplemented in the period between shareholder meetings by cooptation.

Because acts of the management are binding on the corporation, the method of signing for the corporation must be established in the Company Register.

The provisions in Section 54 are to prevent the directors from abusing their position by doing unauthorized business at the expense of the corporation.

The controlling body is the board of directors. Whereas a member of the management may be, besides a shareholder or a person outside the corporation, also an employee of the corporation, an employee of the corporation may become a member of the board of directors only if the law provides for employees of the corporation to share in controlling the management and business performance of the corporation. In such a case, the members of the board of directors are not elected by the shareholder meeting but by an assembly of the employees.

Section 56, Paragraph 2 states that the number of directors must always be divisible by three.

Controlling official according Section 59, Paragraph 2 is meant to be an employee of the corporation entrusted with controlling duties.

The comptrollers (at least one is required) may also be employees of the corporation. Their activity is generally limited to auditing the accounts and the treasury, but they can also be entrusted with carrying out other controls. But these are not control officials according to Section 59, Paragraph 2. Therefore, comptrollers are subordinated only to the shareholder meeting, and that only in the sense that they carry out tasks which the shareholder meeting assigns to them. Otherwise they cannot be subordinated to anybody in their activities [sentence as given].

The provisions in Sections 62-63 set the rules for establishing a corporation by a single person, that is by a single shareholder who can only be a legal entity, not a natural person. This is a case when that person alone subscribes the entire capitalization (therefore, establishing a corporation in a single step).

A corporation of only one person, including a natural person, can also come into existence subsequently when all shares have been gradually bought up by a single shareholder.

Therefore, it is necessary to differentiate between a corporation established by a single person and a corporation that became a "one man company" later.

When a single natural individual establishes a corporation, it cannot be done in a single-step procedure but by a public subscription of capitalization. Here the highest authority of the corporation will be the shareholder meeting.

In a one person corporation the rights of the shareholder meeting will be exercised by that person.

PART V—Increasing and Reducing Capitalization (Sections 64-83)

An increase in capitalization is possible only if the entire capitalization is already paid up.

In practice there are three possible methods of increasing capitalization. Procedures for increasing capitalization in all three instances have been determined.

A special case is the so-called conditional increase in capitalization, which means that the increase will take place only if owners of convertible obligations (securities according to Section 11) request the exchange of their obligations for shares, that is, what has been an obligation of the corporation will become a share in its assets. If the condition is met, that is, if the obligations are exchanged for shares, or the difference between the value of the obligation and the par value of the share is paid out, the capitalization increases.

The intent to increase capitalization, as well as the fact that an increase in capitalization has or has not taken place, must be announced to the court of registry because it is a change in the bylaws.

If the corporation acquires its own shares by repurchase from its net profits, it can increase its capitalization by that amount by selling them and transferring the sum thus obtained to capitalization.

The intent to reduce capitalization must be publicized because the claims of the corporation's creditors must not be abridged. Although it is not necessary to satisfy the claims of the creditors immediately, it is necessary to provide them with sufficient guarantee (for example, by establishing a right of lien on the property of the corporation).

When reducing capitalization it is, first of all, necessary to take the needed number of shares out of circulation (calling in the shares). If it is necessary to retire the shares which belong to stockholders, the choice of shares to be retired is accomplished by a lottery. The lottery rules must be established in the bylaws.

A special case of stock reduction is the so-called release, that is, announcement by the corporation that it is waiving payments for shares by certificate owners, because it does not need the originally set amount of capitalization. A similar procedure is used in case that the bylaws determine issuance of a greater number of shares, so that the reduction of the capitalization occurs because the originally planned number of shares is not issued.

Because of the fact that, in all the cases, changes in the bylaws are made, an entry into the Company Register is necessary. Section 79 states the conditions for making this entry.

A so-called pseudoreduction of capitalization occurs when the capital of the corporation is gradually being exhausted, or when the corporation was set up in order to utilize a patented invention, the rights to which were given as part of the capitalization. By passage of time the patent on the invention expires.

In such a case, the capital is gradually used up. The shares, therefore, must be gradually "called in" and shareholders are reimbursed from net profits. The necessary number of shares is retired by lottery. As compensation for the withdrawn share, the shareholder will receive a redeemed share, because he remains member of the corporation. By repeated lotteries for all shares all shareholders become owners of redeemed shares, so that the corporation is dissolved by the resolution of a shareholder meeting of the owners of redeemed shares. This is followed by dissolution of the corporation and its liquidation (by entry into the Company Register).

If the so-called creditor redeemed shares are issued, which guarantee the owners a right to a supplemental dividend and any surplus left after the dissolution is completed (that is, what remains after all obligations of the corporation are satisfied). The corporation is dissolved by the simple fact that all shares were redeemed. The corporation is then terminated with an entry in the Company Register.

Section 83 deals with the case when a corporation decides to create a so-called amortization fund financed from net profits so that after passage of time (when capital is exhausted), it can redeem all shares at once. It must then proceed in an analogous way as in decreasing capitalization (particularly Sections 73, 74, 75).

PART VI—Capital Reserve (Section 84)

The capital reserve is the only mandatory fund. Only its minimum amount and minimum annual allocation are fixed. The bylaws may determine a higher amount and higher annual allocations. The use of capital reserve is prescribed in the bylaws (generally, the specific use of the fund must be decided by a shareholder meeting).

A corporation may create other funds according to its needs.

PART VII—Expiration of the Corporate Charter (Sections 85-88)

There is a difference between a dissolution and a expiration of a corporation. A corporation is dissolved by a resolution of the shareholder meeting (or a meeting of owners of redeemed shares, if all shares have been already retired by a lottery—Section 81, Paragraph 2, and Section 82). Otherwise a corporation is dissolved when it has achieved the purpose for which it was founded, or by expiration of its intended duration. Procedure for either event must be established in the bylaws.

The expiration of a corporate charter occurs only following its liquidation, when that is entered in the Company Register (deletion).

The dissolution of a corporation is a process performed by designated individuals. This law deals in more detail only with a voluntary dissolution (which, of course, must always precede the extinction of a corporation), that is, one that the corporation itself has chosen.

A compulsory dissolution, which occurs when the corporation becomes insolvent, would be regulated, until new provisions are issued (bankruptcy law) by the civil court code (Sections 352-354). These laws are indicated with the awareness that they are obviously inadequate for an executory dissolution, but if such a liquidation has to take place before the new law is passed, the necessary actions can be taken according to these laws.

PART VIII—Concluding Provisions (Sections 89-93)

During the time that the Law No. 243/1949 on corporations was in force, corporations were founded mainly in the area of foreign trade and banking, then several

corporation with foreign participation according to Law 173/1989 on enterprises with foreign capital participation.

This law declares these corporation to be corporations according to this law so that it would not be necessary to reestablish them. The bylaws of these corporations are usually very extensive (precisely because the provisions of the law used until now were very brief). If some of the provisions are contradictory to this law or do not contain provisions required by this law, these corporations will make the necessary changes in their bylaws and will inform the court of registry of their action.

The substantive rules for transforming state enterprises into corporations will be established by law. Nevertheless it is expedient that the CSFR Government be empowered to adjust the laws for carrying out these transitions. Topicallity of acceptance of such laws will have to be judged on basis of the developments in the national economy.

Footnotes

1. Law No. 191/1950 on banking transactions.

2. Section 100 of Law No. 951963 on notaries public and notary procedures.

3. Sections 352 to 354 of the Civil Court Code No. 99/1963, in a later version of the regulations (full text No. 78/1983).

Amended Federal Law on Periodical Press, Other Mass Media

90CH0365Z Bratislava NARODNA OBRODA in Slovak 20 Jun 90 pp 12-13

["Text" of Law on Periodical Press and Other Mass Media from 25 October 1966, Collection of CSSR Laws No. 81, Law No. 84/1968, Law of the Slovak National Council No. 131/1970, Law of the Czech National Council No. 146/1971, and Law No. 86/1990]

[Text] The National Assembly of the Czechoslovak Socialist Republic enacted the following law:

PART I

Basic Provisions

Section 1

1. In accord with the constitutionally guaranteed freedom of expression, speech, and press, citizens use periodical press and other mass media to obtain information and publicly express their views.

2. The exercise of the freedom of expression, speech, and press and the social mission of the periodical press and other mass media is facilitated by placing publishing and press enterprises, radio, television, film and other means of information the disposal of citizens and their organizations.

Section 3 [as published]

1. The periodical press are newspapers, journals, and other periodical publications published at least twice a year and in a layout typical for this kind of press. Not considered as periodical press, however, are collections of laws, official bulletins, and also publications that serve exclusively official, service, or operational purposes of government agencies and organizations, scientific and cultural institutions, economic, social, and other organizations.

2. The mass media are, besides the periodical press, news agencies, news and other publicist divisions of radio and television, news films, as well as sound and pictorial records used for regularly providing information to the public about events, manifestations, facts, and views in the Czechoslovak Socialist Republic or abroad.

3. Information are reports, data, facts, and views published in periodical press and other mass media in all the forms of disseminating information.

PART II

Publishing Periodical Press

Section 4

Periodical press can be published by Czechoslovak legal entities as well as Czechoslovak citizens who have reached 18 years of age. Other legal entities and physical persons may publish periodical press only with the approval of the appropriate government agency of the Czech or Slovak Republic depending on the residence of the publisher.

Section 5

1. Authorization to publish periodical press is obtained by registration.

2. Registration of central and regional periodical press is made by the Ministry of Education and Culture, in Slovakia by an official of the Slovak National Council for Education and Culture. Registration of other press is made by the regional national committees.

Section 6

Application for registration of periodical press must be submitted at least 30 days before intended publication and must contain:

a) Name of the periodical press.

b) Orientation of its content.

c) Name and address of the publisher, publishing organization, and printing house (reproducer).

d) Place of publication, address of editorial office and administration.

e) Period in which the periodical press will be published.

f) Expected approximate number of copies, range, format, and price.

g) Personal data of the editor in chief on his citizenship and professional qualification; if the publisher is an individual, he need not designate the editor in chief.

Section 7

1. Publication of periodical press may begin only after registration. If the application does not contain the data required by Section 6, or the data are incomplete or inaccurate, the agency processing the registration will inform without delay, but within three days after receiving the application at the latest, those who submitted it that the registration process will not begin until the application is corrected.

2. The processes of registration will begin the day on which the agency processing the registration receives the application containing the required data. The agency processing the registration is obliged to complete the registration within 15 days from the day it receives the application; it shall issue a certificate of registration.

3. If those who submitted the application do not receive within 30 days after the application was delivered to the agency that is to process it the registration certificate or the notification according to paragraph 1, the day of registration will be the day following the expiration of this term; the agency which processes the registration shall issue a certificate to that effect to the applicants.

4. The publisher is obliged to inform the agency which has issued the registration of any change in the data contained in the application. The change may be made only after that agency registered it; the provisions of Paragraphs 2 and 3 shall apply similarly.

Section 8

The registration will lose its validity and the authorization to publish the periodical press will lapse:

a) If the publication of the periodical press does not begin within one year after registration is obtained.

b) If the publication of a newspaper or other periodical publication is interrupted for a period of more than one year.

Section 9

Each edition of the periodical press must contain the following mandatory data: Publisher. Address of editorial offices. Name of editor in chief and his deputy. Place, date, and number of edition. Price.

PART III

Responsibilities of Publisher, Editor in Chief, and Editors

Section 10

1. The publisher is responsible for the periodical press; for the other mass media, the appropriate organization where all the following provisions pertaining to publishers apply.

2. The publisher delegates management of the mass medium to the editor in chief. An editorial board may also share in the management of the mass medium. The extent of its participation in management, its responsibility, the method of appointing and recalling its members, shall be determined by the publisher.

3. If the publisher appoints an editor in chief, he is responsible to the publisher for the contents of each individual issue of the mass medium, especially ensuring that the contents of the mass medium do not infringe on the legally protected interests of society, citizens, and organizations.

4. If in some mass media the role of the editor in chief is carried out by his deputy, leading editor, or chairman of the editorial board, all provisions pertaining to an editor in chief shall apply to them.

5. The responsibilities of the authors of information as determined by existing rules remain unchanged.

Section 11

The editor in chief or the editor can only be a person who qualifies as citizen and a professional.

Section 12

The editor in chief and other editors are protected in the performance of their work by the existing provisions against all forms of pressure aimed at thwarting their activities.

PART IV

Cooperation of Government Agencies and Organizations

Section 13

1. Government agencies and organizations, scientific and cultural institutions, and economic organizations are obliged to provide, within the scope of their authority, editors in chief and other editors with information essential for giving the public truthful, timely and all-around information or to make possible access to such information.

2. Government agencies and organizations, scientific and cultural institutions, and economic organizations shall refuse to give information or access to it, if it contains:

a) A fact that is the subject of a state, economic, or official secret.

b) A fact the publication of which would demonstrably damage the interests of the state or society. c) A fact the publication of which is in conflict with the principle of protecting citizens' rights.

3. Agencies and organizations mentioned in Paragraph 2 may, however, give information to editors in chief and other editors for their own information, which is not intended for publication. The editors in chief and the editors may not publish such information.

Section 14

1. Government agencies and organizations, scientific and cultural institutions, and economic organizations are obliged to take a position on important, socially beneficial proposals, recommendations, and suggestions, and on important social criticism, which were published in the periodical press or in other mass media and which were expressly brought to their attention by the editor in chief. They shall refuse to make their position public in cases mentioned in Section 13, Paragraph 2.

2. The editor in chief is obliged to publish the position of the government agency, institution or organizations after mutual agreement in a suitable form and appropriate length in the periodical press in one of the next few planned issues, in radio and television in one of the next few planned broadcasts, as a rule within a month.

3. The editor in chief is also obliged to publish in the manner mentioned in Paragraph 2, the position of a social organization on important socially beneficial proposals, recommendations, or suggestions, or on an important social criticisms which were published in the periodical press or other mass media, especially those which the editor in chief expressly brought to the attention of the social organization.

Section 15

1. Government agencies and publishers cooperate closely on matters concerning basic questions of the periodical press and other mass media with the Union of Czechoslovak Journalists and in Slovakia with the Union of Slovak Journalists. They are especially obliged to ask for positions on basic questions of developing the periodical press and other mass media, their technical and material provisions, and basic questions of the editors' responsibilities.

2. Government agencies and publishers create conditions by mutual cooperation for a successful execution of the journalistic work of the editors and they thus help the Journalists' Union to carry out its mission according to its rules.

PART V

Protection Against Abuse of Freedom of Expression, Speech, and Press

Section 16

1. Citizens who use the constitutionally guaranteed freedom of expression, speech, and press enjoy full protection according to existing provisions.

2. Publicizing information which endangers legally protected interests of society or citizens is abuse of the freedom of expression, speech, and press.

3. Protecting society and citizens against abuse of the freedom of expression, speech and press is the responsibility of the publisher, the editor in chief, the editor, and the author to the extent arising from existing provisions. The obligation of the publisher for compensation of damages caused to organizations or citizens by the contents of the periodical press or other mass media is also assessed according to these provisions.

Section 17

1. Censorship is inadmissible.

2. By censorship is understood any interference by government agencies against freedom of speech and pictorial expression and their dissemination by the mass media. This does not affect the authority of the prosecutor's office and the courts.

Section 18

The editor in chief or his authorized deputy (Section 10, Paragraphs 4 and 5) is responsible for not publishing in a mass medium information which contains a fact that is the subject of a state, economic, or official secret. The Government is obliged to make certain that editors in chief of periodical press and other mass media are informed about which facts are the subject of a state, economic, or official secret.

PART VI

Correcting Untrue Statements

Section 19

1. If a mass medium publishes an untrue or truth-distorting item that affects the honor of a citizen or the good name of an organization, scientific or cultural institution, or that concerns the activity of a government agency, the citizen, organization, institution, or government agency may, within two months after the publication of the item, request the editor in chief to publish at no expense a correction and propose its wording.

2. The editor in chief may refuse to publish a correction if he can prove the veracity of the item which he was asked to correct, or if the request for correction was submitted later that the time period stated in Paragraph 1.

3. If there is no cause to refuse the publication of the correction according to the previous paragraph, the editor in chief is obliged to publish the correction. At the same time he must also make certain that the wording of the correction and the manner of its publication were agreed upon in advance with the person who requested the correction; if no agreement was reached, the court will rule according to Section 20. The editor in chief must, within eight days after the request for correction was made, publish the correction in the journal or other periodical publication in the next issue being planned following the request, and in the same place and in the same kind of print as the item to which the correction applies.

4. The correction of an item publicized on the radio or television must be publicized at broadcasting time equally valuable to the one at which the item being corrected was originally broadcast. The correction of an item publicized by news agencies must be published in those newspapers which published the item being corrected and which are designated by the person requesting the correction to do so, at the expense of the agency. The correction of an item contained in a news film or in a sound or pictorial record must be published in those newspapers which the person requesting correction designates, and at the expense of the appropriate film or production organization. The editor in chief of the newspaper designated by the person requesting the correction must publish the correction.

Section 20

If the editor in chief refuses to publish the correction, if he does not publish it at all, if he does not publish it in the manner described in Section 19, Paragraphs 3 and 4, or if the published correction is not satisfactory, the district court, on the appeal of the citizen (organization, institution, government agency) will rule on the obligation to publish the correction. The application must be submitted within 15 days after the expiration of the time limit for the publication of the correction. The Obciansky sudni poriadok [as published] applies to the proceedings. The court ruling on the obligation to publish the correction is also binding on the deputy of the editor in chief.

2. The provisions of the Civil Code on the protection of the individual remain unchanged.

PART VII

Distribution of Periodical Press

Section 21

The system of distribution of the periodical press is determined by the publisher.

PART VIII

Foreign Press and News Agencies

Section 22

1. The exchange of information between the Czechoslovak Socialist Republic and other countries is free. The exchange of information contributes to understanding and friendship among nations and helps them to know each other, and is accomplished by the import and export of periodical press and the activity of news agencies and information facilities.

2. The exchange of information must not be misused for infringing on the honor and rights of Czechoslovak citizens and their socialist coexistence, or for endangering the interests of the socialist state and society or the development of international cooperation for peace.

Section 23

The importation and distribution of foreign periodical press printed or reproduced abroad, distribution of foreign periodical press printed or reproduced in the Czechoslovak Socialist Republic by a foreign publisher on his order, as well as the distribution of news by foreign news agencies (and other similar foreign mass media) are prohibited if their contents promote violence and war, fascist or Nazi ideology, racial discrimination, or is in some other way in conflict with humaneness, or if it attacks the unity of the Republic and the basis of its constitutional order, or breaks international agreements.

Section 24

1. Foreign news agencies (and other similar foreign mass media) may be active in the Czechoslovak Socialist Republic only if their employees and permanent foreign correspondents are accredited to the Ministry of Foreign Affairs.

2. The Ministry of Foreign Affairs and other government agencies give to the employees of foreign news agencies (and similar foreign mass media) and permanent foreign correspondents the help necessary for a proper performance of their work. If, however, the accredited employee or correspondent damages the interests of the society protected by law or international agreements, the Ministry of Foreign Affairs may revoke the accreditation.

Section 25

On the basis of international agreements and understanding other countries and international organizations may install on the territory of the Czechoslovak Socialist Republic foreign information facilities for providing information to the Czechoslovak public about events and life in the foreign country in question or about the activities of international organizations. The extent and the form of the information activity in the Czechoslovak Socialist Republic shall be decided by an agreement or understanding.

Section 26

Foreign news agencies (and similar foreign mass media) or foreign information facilities must not be located in buildings of diplomatic or consular missions and their employees must not be employees of those missions.

PART IX

Concluding Provisions

Section 26 a

The rights and obligations of the editor in chief according to this law belong to the individual who publishes the periodical press, if he has not designated another individual as editor in chief (Section 10, Paragraph 2).

Section 27

Penal Law No. 140/1961, Coll. of CSSR Laws, in the version of Law No. 56/1965, Coll. of CSSR Laws, is supplemented by replacing Section 170 with Section 170 a, which reads, including title, "Section 170 a".

PRESS NEGLIGENCE

The editor in chief of periodical press or other mass media or his designated deputy, who in the performance of his function by negligence causes that because of the contents of the periodical press or other mass media a criminal act is committed, shall be punished, unless the crime in question does not carry a more severe punishment, by incarceration up to 6 months or by a corrective measure or a fine or by prohibition of his activities.

Section 29

Rescinded are:

1. Law No. 184/1950 Coll. of CSSR Laws on publishing journals and on the Union of Czechoslovak Journalists in the version of Law No. 44/1958 Coll. of CSSR Laws.

2. Decree No. 689/1948, Official Gazette of the Czechoslovak Republic, on the use of paper for the publishing of journals.

3. Decree No. 1144/1948, Official Gazette of the Czechoslovak Republic, which contains detailed directives for submitting applications for permission to publish newspapers and journals.

4. Decree No. 1465/1948, Official Gazette of the Czechoslovak Republic, on establishing the Economic Center of Journal Publishers in the Ministry of Information.

5. Decree No. 39/1951, Official Gazette of the Czechoslovak Republic (No. 58/1961 Official Gazette for Slovakia), which contains press regulations, in the version of Decrees No. 191/1951, Official Gazette of the Czechoslovak Republic (No. 232/1951 Official Gazette for Slovakia), No. 3/1960, Coll. of CSSR Laws, and No. 45/1963, Coll. of CSSR Laws.

Law on Official Name, Emblem, Flag, Anthem of Slovak Republic

90CH0364Z Bratislava NARODNA OBRODA in Slovak 21 Jun 90 p 12

["Text" of Constitutional Law of the Slovak National Council on the Name, State Emblem, State Flag, State Seal, and State Anthem of the Slovak Republic]

[Text] The Slovak National Council enacted the following constitutional law:

Article I

1. The name "Slovak Socialist Republic" is changed to "Slovak Republic."

2. If in existing constitutional and other laws the name Slovak Socialist Republic is used, Slovak Republic is understood.

Article II

STATE EMBLEM

1. The state emblem of the Slovak Republic is a red Early Gothic shield with a double silver cross standing on the middle one of three blue hillocks.

2. An illustration of the state emblem of the Slovak Republic constitutes Appendix No. 1 of this law.

Article III

STATE FLAG

1. The state flag of the Slovak Republic consists of three horizontal stripes, white, blue and red arranged under each other. Its dimensions are 2:3.

2. An illustration of the state flag of the Slovak Republic constitutes Appendix 2 of this law.

Article IV

STATE SEAL

1. The state seal of the Slovak Republic consists of the state seal of the Slovak Republic surrounded by a circle in which are written the words "Slovak Republic". The diameter of the state seal is 45 mm.

2. A detailed illustration of the state seal of the Slovak Republic constitutes Appendix 3 of this law.

Article V

STATE ANTHEM

1. The state anthem of the Slovak Republic are the first two stanzas of the song by Janko Matusek "Nad Tatrou sa blyska".

2. The text of the state anthem of the Slovak Republic and its music notation constitute Appendix 4 of this law.

Article VI

The use of the state emblem, state flag, state seal, and state anthem is regulated by the law of the Slovak National Council.

Article VII

This constitutional law goes into effect on the day of its proclamation.

Law of the Slovak National Council of 1 March 1990

on the use of the state emblem, state flag, state seal, and state anthem of the Slovak Republic.

The Slovak National Council enacted the following law:

Section 1

1. The state emblem of the Slovak Republic on documents, rubber stamps, and official stamps is used by:

a. the Slovak National Council and its Presidium, the Office of the Slovak National Council,

b. the Government of the Slovak Republic, its Presidium and the Office of the Government of the Slovak Republic,

c. ministries and other government agencies of the Slovak Republic,

d. national committees,

e. courts, prosecutors, state notaries, and state arbitration of the Slovak Republic.

2. The state emblem of the Slovak Republic may be used according to individual rules by:

a. the Slovak Academy of Sciences and its agencies, possibly also other scientific institutions,

b. state museums and galleries, and other cultural institutions,

c. state schools,

d. state banking institutions, the Slovak State Savings Bank, and the Slovak State Insurance Agency.

Section 2

The state emblem of the Slovak Republic is used:

a. on the insignia of the chairmen of national committees,

b. on the insignia of orders and decorations of the Slovak Republic,

c. in the conference and meeting halls of government agencies, especially in election halls and in ceremonial halls, on Slovak national monuments,

d. on the borders of the Slovak Republic,

e. to mark state nature preserves,

f. on official identification documents of public officials, functionaries, and employees of government agencies of the Slovak Republic.

Section 3

1. The state seal of the Slovak Republic is in the safekeeping of the chairman of the Slovak National Council.

2. The documents, seals, and official rubber stamps with the state emblem of the Slovak Republic are used only when the document contains a resolution or decision of government agencies of the Slovak Republic, or if in question is a document which verifies important facts or authorization (for example, a birth certificate, marriage certificate, death certificate, school report or diploma).

3. Documents, seals, and official rubber stamps with the emblem of the Slovak Republic are not used in general correspondence.

Section 4

1. The state emblem of the Slovak Republic is used on buildings in which agencies and organizations mentioned in Section 1 have their quarters.

2. The buildings are marked with the state emblem of the Slovak Republic which must not be part of the name plate of the agency or organization.

3. As the emblem of the Slovak Republic is considered also its monochrome representation in metal, ceramic or other material if the representation conforms with the state emblem of the Slovak Republic.

Section 5

1. The state flag of the Slovak Republic is attached to a flagpole and furnished with equipment for raising it.

2. Governemnt agencies and organization mentioned in Section 1, Paragraph 1, use the state flag of the Slovak Republic on the occasion of state holidays and days important for the State.

3. Directive for displaying the state flag is issued by:

a. the Ministry of Interior of the Slovak Republic if there is an official occasion of importance for the Republic,

b. a national committee if there is an official occasion of local importance.

4. The displaying of the state flag on buildings of the Slovak National Council is determined by the Presidium of the Slovak National Council.

5. If both the state flag of the Czech and Slovak Federal Republic and the state flag of the Slovak Republic are

displayed, they are placed at equal height next to each other, the state flag of the Czech and Slovak Federal Republic being placed on the left when facing it.

6. If state flags of other countries are also being displayed, the state flag of the Czech and Slovak Federal Republic and the state flag of the Slovak Republic are placed in the place of honor.

7. If the state flag of the Slovak Republic and a municipal flag are being displayed at the same time, they are placed at equal height next to each other, the state flag of the Slovak Republic being displayed on the left when facing it.

Section 6

1. The state standard of the Slovak Republic is a state symbol made in the image of the state flag. The ratio of the width and length of the state standard is set so that the length of the standard is not more than three times its width.

2. To the use of the state standard apply the provisions in Section 5.

Section 7

The Ministry of Interior of the Slovak Republic will determine by a generally binding legal rule the details of using the state emblem, state flag, state standard, state seal, and the state anthem of the Slovak Republic, and it will determine in particular:

a. in which instances and on which documents the state emblem as well as the state seal of the Slovak Republic will be used,

b. in which instances to use the state emblem of the Slovak Republic on the borders of the Slovak Republic,

c. at which occasions will be used, besides the state flag of the Slovak Republic, the state flag of the Czech and Slovak Federal Republic or a municipal flag,

d. on which occasions will be played the state anthem of the Slovak Republic instead of the state anthem of the Czech and Slovak Federal Republic.

Section 8

This law goes into force on the day of its proclamation.

Amended Law on Czechoslovak Citizenship

90CH0366Z Bratislava NARODNA OBRODA in Slovak 9 Jul 90 p 12

["Text" of law that amends and supplements rules for gaining and losing Czechoslovak citizenship]

[Text] The Federal Assembly of the Czech and Slovak Federal Republic enacted the following law:

Chapter I

1. Law No. 194/1949, Collection of CSSR Laws on gaining and losing Czechoslovak citizenship in the version of Law No. 72/1958 and Law No. 165/1968 is changed as follows:

The provision in Section 7 of Law No. 194/1949 on gaining and losing Czechoslovak citizenship in the version of Law No. 72/1958 is omitted.

2. The provisions of Section 14 of the Law of the Czech National Council No. 39/1969 on gaining and losing state citizenship of the Czech Republic in the wording of the legal measure of the Presidium of the Czech National Council No. 124/1969, which amends and supplements Law No. 39/1969, the statutes of Section 15 of the law of the Slovak National Council No. 206/1968 on gaining and losing state citizenship of the Slovak Republic, are hereby made invalid.

Chapter II

1.

a) Decisions on revoking citizenship issued according to regulations stated in Chapter I are rescinded with effect from the time of their issue.

b) Persons whose citizenship has been revoked are considered from the time this law comes into effect as persons released from membership in the state.

2.

a) If a person, to whom the decision mentioned in paragraph 1, letter a) applies, wishes to remain a Czechoslovak citizen, he can notify in writing by 31 December 1993 at the latest directly or through a diplomatic mission or a consular office of the Czech and Slovak Federal Republic abroad the appropriate central government agency, 1) [as published] according to in which of the republics his last permanent place of residence was. If he does that, it will be assumed that he did not cease to be a Czechoslovak citizen, and shall suffer no prejudice because of it.

b) The effects mentioned in Paragraph 2, letter a), second sentence, go into force when the notification of the citizen arrives at the appropriate government agency, and that agency issues a certificate to him.

3.

a) Persons who were released from membership in the state during the period between 1 October 1949 and 31 December 1989, will be granted citizenship if they request it by 31 December 1993 at the latest directly or through a diplomatic mission or a consular office of the Czech and Slovak Federal Republic abroad from the appropriate government central agency.

b) Citizenship cannot be granted according to Paragraph 3 letter a) if that would be in conflict with international obligation which the Czech and Slovak Federal Republic assumed.

Chapter III

This law goes into force on the day of its publication.

1. Law of the Czech National Council No. 2/1969 on establishing ministries and other central government agencies of the Czech Republic in wording of the latest regulations.

Law of the Slovak National Council No. 207/1968 on establishing ministries and other central government agencies of the Slovak Republic in wording of the latest regulations.

Amendments to Constitution on Local Government Structure

Text of Law

91CH0004Z Budapest MAGYAR KOZLONY in Hungarian No 78, 9 Aug 90 pp 1589-1591

[Amendments to the Constitution enacted by the National Assembly on 2 August 1990 as Law No. 63 of 1990, concerning local government]

[Text] Law No. 20 of 1949 concerning the Constitution of the Hungarian Republic as amended several times (hereinafter: the Constitution) shall be further amended as follows:

Paragraph 1

Paragraph 19. Section (3) Subsection (1) of the Constitution shall be replaced by the folowing provision:

(Under this authority the National Assembly shall)

"dissolve any local representative body whose functioning is repugnant to the constitution at the recommendation of the Cabinet submitted on the basis of an opinion rendered by the Constitutional Court; shall determine the area and names of counties and county seats; shall render decisions concerning the designation of cities which exercise the authority of counties, and the establishment of districts in the capital."

Paragraph 2

In the first sentence of Paragraph 20. Section (5) of the Constitution, the word "mayor" shall be inserted after the word "prosecutor."

Paragraph 3

The following provisions shall replace the present provisions under Paragraph 30/A. Section (1) Subsections (d) and (h) of the Constitution:

(The President of the Republic shall)

"(d) issue calls for general elections for the election of the National Assembly and of local autonomous governing bodies;"

"(h) appoint and relieve of their duties State Secretaries and Delegates of the Republic pursuant to rules specified in other law."

Paragraph 4

The following provision shall replace Paragraph 35. Section (1) Subsection (d) of the Constitution:

(The Cabinet shall)

"(d) oversee the legality of action taken by local autonomous governing bodies through Delegates of the Republic, with the involvement of the Minister of the Interior."

Paragraph 5

The following provisions shall replace Chapter 9 of the Constitution:

"Chapter IX.

"LOCAL AUTONOMOUS GOVERNING BODIES

"Paragraph 41. Section (1) The area of the Hungarian Republic shall be divided into the capital city, counties, cities and towns.

"Paragraph 41. Section (2) The capital city shall be divided into districts. Districts may be formed in cities.

"Paragraph 42. The electorate in towns, cities, the capital and its districts, and in counties shall be entitled to the right of local autonomous governance. Local autonomous governance shall mean the administration of local public affairs, which affect the electorate, in a democratic manner, and the exercise of local public authority in the interest of the populace.

"Paragraph 43. Section (1) The basic rights of local autonomous governing bodies (Paragraph 44/A.) shall be equal. The duties of autonomous governing bodies may vary.

"Paragraph 43. Section (2) The rights and duties of local autonomous governing bodies shall be established by law. The legitimate exercise of the rights of local autonomous governing bodies shall enjoy judicial protection, local autonomous governing bodies may turn to the Co nstitutional Court for the protection of their rights.

"Paragraph 44. Section (1) Citizens entitled to vote shall exercise the right of self-governance through representative bodies duly elected by the electorate and through popular referendums.

"Paragraph 44. Section (2) Members of representative bodies shall be elected for four year terms.

"Paragraph 44/A. Section (1) Subsection (a) Local autonomous representative bodies shall govern and regulate independently regarding matters concerning autonomous governance, their decisions may be reviewed only from the standpoint of the legality of action;

"Paragraph 44/A. Section (1) Subsection (b) Local autonomous representative bodies shall exercise ownership rights over property belonging to autonomous governing bodies, shall manage the proceeds of such property independently and may engage in entrepreneurial ventures at their own risk;

"Paragraph 44/A. Section (1) Subsection (c) Local autonomous representative bodies shall be entitled to an appropriate amount of their own revenues to perform the legally established functions of autonomous governing bodies, and shall receive state subsidies proportionate to the tasks to be performed;

"Paragraph 44/A. Section (1) Subsection (d) Local autonomous representative bodies shall determine the types of taxes to be establish, and shall establish tax rates pursuant to law;

"Paragraph 44/A. Section (1) Subsection (e) Local autonomous representative bodies shall establish their organizations and rules of operation pursuant to law;

"Paragraph 44/A. Section (1) Subsection (f) Local autonomous representative bodies may establish symbols for the autonomous governing bodies, and decorations and titles of recognition;

"Paragraph 44/A. Section (1) Subsection (g) Local autonomous representative bodies may submit proposals concerning public affairs affecting the local community, to the organ authorized to decide;

"Paragraph 44/A. Section (1) Subsection (h) Local autonomous representative bodies may freely form associations with other local representative bodies, may establish autonomous alliances of interest to represent their interests, may cooperate with local autonomous governing bodies of other countries within th e scope of their duties, and may hold membership in international organizations representing autonomous local governing bodies.

"Paragraph 44/A. Section (2) Within their scope of authority local representative bodies may promulgate decrees, provided that such decrees do not conflict with higher level legal provisions.

"Paragraph 44/B. Section (1) Mayors shall be the chairmen of local representative bodies. Representative bodies may elect committees and establish offices.

"Paragraph 44/B. Section (2) In addition to his duties related to autonomous governance, on an exceptional basis the mayor may perform state administrative functions and exercise state administrative authority based on a Council of Ministers or ministerial decree consistent with law or legislative authorization.

"Paragraph 44/B. Section (3) State administrative tasks and authority of jurisdiction may be established by law or by Council of Ministers or ministerial decree for town clerks, and in exceptional cases for the administrator of the office of the representative body.

"Paragraph 44/C. The law governing local autonomous governing bodies shall be adopted based on the affirmative vote of two-thirds of the National Assembly representatives present. A law adopted based on the same voting ratio may restrict the basic rights of local autonomous governing bodies."

Paragraph 6

Paragraph 68 of the Constitution shall be amended by adding the following text as Section (4), and by renumbering the present Section (4) Section (5):

"Paragraph 68 Section (4) National and ethnic minorities may establish local and national autonomous governing bodies."

Paragraph 7. Section (1)

In Paragraph 70. Section (3) of the Constitution the words "local councils" shall be replaced by the words "local autonomous governing bodies."

Paragraph 7. Section (2)

In Paragraph 70. Section (3) of the Constitution the words "in electing members of its local councils" shall be replaced by the words "in electing their local autonomous governing bodies."

Paragraph 8

Paragraph 71 of the Constitution shall be replaced with the following provision:

"Paragraph 7l. Section (1) National Assembly representatives, members of town, city and of capital districts, and the number of members of the capital's representative body specified by law, and further, in cases specified by law, the mayor shall be elected by voters directly and by secret ballot, based on an equal right to vote.

"Paragraph 71. Section (2) Members of county representative bodies shall be elected by secret votes cast by meetings of delegates elected by the representative bodies of towns and cities.

"Paragraph 71. Section (3) Separate laws shall govern the election of National Assembly representatives, and members of local representative bodies and of mayors. Such laws shall be adopted on the basis of the affirmative vote of two thirds of the National Assembly representatives present."

Paragraph 9. Section (1)

Paragraphs 1-3 and Paragraphs 6-8 of this law, and the new Paragraph 44/C. of the Constitution established by Paragraph 5. of this law shall take effect upon proclamation of this law.

Paragraph 9. Section (2)

With the exception of the provision mentioned in Paragraph 9. Section (1) of this law, Paragraphs 4-5, shall take effect on the day of the 1990 election of members of local autonomous representative bodies.

[Signed] Arpad Goncz, President of the Republic
Gyorgy Szabad, President of the National Assembly

Legislative Intent

91CH0004Y Budapest MAGYAR KOZLONY in Hungarian No 78, 9 Aug 90 pp 1591-1592

["Legislative Intent to the legislative proposal to amend the Constitution of the Hungarian Republic"]

[Text]

Paragraphs 1-4

1. Paragraph 1 defines the authority of the National Assembly consistent with the legislative proposal co ncerning local autonomous governing bodies; the National Assembly is granted jurisdiction over decisions concerning counties, cities exercising the authorities of counties, and districts of the capital, in due regard to the significance of such decisions.

2. According to Paragraph 2 of the Proposal, the number of offices found to be incompatible with holding the mandate of a National Assembly representative is increased, by adding the office of the mayor. The mayor also performs state administrative functions and exercises such authority /Constitution: Paragraph 44/B. Section (2)/. The consistent separation of the branches of power justifies the provision that mayors cannot be representatives, in the same way as a state administrative worker should not be one, as that is listed in the sentence amending the Constitution.

3. Paragraph 3 of the Proposal defines the authority of the President of the Republic in due regard to the provisions of the legislative proposals concerning local autonomous governing bodies, and the election of local autonomous governing bodies.

4. Paragraph 4 of the Proposal defines the authority of the Government consistent with the legislative proposal concerning local autonomous governing bodies.

Paragraph 5

The new Chapter of the Constitution governing local autonomous governing bodies which replaced the Chapter entitled "The Councils," grants the right to autonomous governance to towns, cities, the capital, the districts of the capital and to counties.

Based on the principle of popular sovereignty, the power of local self-governance is bestowed upon the voters of towns, cities, the capital, the districts of the capital and on counties.

The basic rights of local self-governance are founded on historical Hungarian traditions, and on the basic principles contained in the European Charter for Local Autonomous Governing Bodies adopted by the Council of Europe in 1985.

The Proposal has as its starting point the idea that the basic rights of local autonomous governing bodies are equal, and that local autonomous governing bodies are equal insofar as their autonomous authorities are concerned. The rights and duties of local autonomous governing bodies will be defined by law. In addition to exercising equal rights, the duties of local autonomous governing bodies may vary depending on the size of population and other conditions.

Judicial protection provided for autonomous governing rights and for the lawful governance of autonomous jurisdictions is an important basic principle of autonomous governance. The state organ which oversees the legality of action taken by local autonomous governing bodies may petition the court to declare null and void certain decisions made by local autonomous governing bodies which conflict with laws; and local autonomous governing bodies may also petition the courts relative to state administrative decisions which conflict with law. In case of jurisdictional conflicts local autonomous governing bodies may submit proposals to the Constitutional Court, and may request such courts to review unconstitutional legal provisions and other means of direction expressed by law which violate the right to autonomy.

Citizens entitled to vote elect representative bodies for the continuous exercise of self-governance. In exceptional cases, regarding matters of great significance they render decisions in popular referendums.

The proposal establishes the basic power of self-governance. Such basic rights include independent self-governance, the independent administration and regulation of matters pertaining to autonomous governing bodies. The independence of local autonomous governing bodies is also expressed by the fact that decisions of local autonomous governing bodies may be reviewed only if such action conflicts with the law.

Among the basic rights the fact that a local autonomous governing body can independently manage its property, revenues and material goods, that it can engage in entrepreneurial ventures at its own risk, and that it is entitled to receive revenues, establish taxes and receive state subsidies has distinguished significance.

The right to establish symbols for the autonomous governing body, to establish decorations, the freedom of forming an organization and of determining the order of business flow from the concept of local self-governance.

Local self-governance expresses the interests of the local community, therefore local autonomous governing bodies may propose an initiative in regard to common affairs affecting the local community.

The Proposal provides for the organs of local representative bodies.

In order to accomplish that persons close to the citizenry perform the people's administrative tasks, the Proposal provides that mayors and the town clerk heading the office of the representative body, as well as the administrator of that office, perform the state administrative functions and tasks defined by law. This results in democratic control over the administrative affairs of citizens.

The voluntary and free association of local autonomous governing bodies for tasks of mutual interest, and the right to form alliances of interests among autonomous

governing bodies constitute basic rights of autonomy. Relationships between local autonomous governing bodies play an increasing role also in the framework of European cooperation. The Proposal recognizes cooperation with the local autonomous governing bodies of other countries, and the joining of international organizations of local autonomous governing bodies as basic rights.

Paragraph 6

According to the Proposal the possibility of establishing minority autonomous governing bodies by national and ethnic minorities constitutes a constitutional right.

Paragraph 7

Throughout the text of the Constitution it is appropriate to use the designation of new local organizations in lieu of designations tied to the old councils.

Paragraph 8

Basic principles concerning elections are streamlined with provisions pertaining to the election of local autonomous governing bodies in the Proposal. The Proposal defines cases in which citizens eligible to vote cast direct votes for the election of their representative bodies.

Paragraph 9

From among the provisions contained in the Proposal, those pertaining to the election of local autonomous governing bodies and the method of adopting the law concerning local autonomous governing bodies takes effect on the day the law is proclaimed, the rest of the provisions applicable to new organizations take force this year, on the day new local autonomous governing bodies are elected.

Executive Order on Standards for Water for Drinking, Industrial Use

90WN0243Z Warsaw DZIENNIK USTAW in Polish No 35, 31 May 90, Item No 205 pp 479-480

[Executive Order of the Minister of Health and Social Welfare, Item No. 205, dated 4 May 1990, changing the executive order governing the conditions that water for drinking and industrial use should meet]

[Text] Pursuant to Article 106, Paragraph 2 of the law dated 24 October 1974—Water Law (DZIENNIK USTAW No. 38, Item 230; 1980, No. 3, Item 6; 1983, No. 44, Item 201; 1989, No. 26, Item 139; and No. 35, Item 192, as well as 1990, No. 34, Item 198) the following is decreed:

Paragraph 1. The executive order of the minister of health and social welfare dated 31 May 1977 on conditions which water for drinking and industrial uses should meet (DZIENNIK USTAW, No. 18, Item 72) is amended as follows:

1) Paragraph 3 is amended to read:

"Paragraph 3.1. From the organoleptic and physical-chemical point of view, water should specifically meet the conditions set forth in Annex No. 1 to the executive order, and from the bacteriological point of view, those set forth in Annex No. 2.

Paragraph 3.2. "The content of radioactive substances in the water may not exceed the values of concentration of these substances set forth in other regulations."

2) Paragraphs 4 and 5 are deleted.

3) An annex to the executive order is replaced with Annexes No. 1 and No. 2 in the form given in Annexes No. 1 and No. 2 to the present executive order.

Paragraph 2. The executive order takes effect after 14 days have passed since the day of publication.

[signed] Minister of Health and Social Welfare: A. Kosiniak-Kamysz

Annex No. 1 to the Executive Order of the Minister of Health and Social Welfare Dated 4 May 1990 (Item 205)

Organoleptic, Physical, and Chemical Conditions That Water for Drinking and Industrial Uses Should Meet

Item	Indicator, Name of Compound	Unit of Measurement	Highest Permissible Content or Range	Notes
1	2	3	4	5
	Organoleptic			
1	Color (Pt)	mg/cubic dm	20	
2	Reaction (pH)	—	6.5-8.5	
3	Turbidity	mg/cubic dm	5	
4	Dissolved compounds	mg/cubic dm	800	
5	Hydrogen sulfide	—	Imperceptible smell	
6	Hardness ($CaCO_3$)	mg/cubic dm	500	
7	Smell	—	3—Natural permissible smell of chlorine during disinfection by chlorine, not burdensome	
8	Suspensions, dead and live water organisms, oil stains, etc.		Invisible in glass vessels	
	Physical and chemical			
1	Ammonia (N)	mg/cubic dm	0.5	
2	Arsenic (As)	mg/cubic dm	0.05	
3	Nitrates (N)	mg/cubic dm	10.0	
4	Benzene	mg/cubic dm	0.01	
5	Benzoperene	mg/cubic dm	15.0	
6	Chloramines	mg/cubic dm	2.0	
7	Chlorides (Cl)	mg/cubic dm	300.0	
8	Chlorobenzenes (without hexachlorobenzene)	mg/cubic dm	0.005	
9	Chlorophenols (without pentachlorophenol)	—	Smell imperceptible	

Organoleptic, Physical, and Chemical Conditions That Water for Drinking and Industrial Uses Should Meet (Continued)

Item	Indicator, Name of Compound	Unit of Measurement	Highest Permissible Content or Range	Notes
1	2	3	4	5
10	Chloroform	mg/cubic dm	0.03	
11	Available chlorine (Cl_2)	mg/cubic dm	0.2-0.5	in water supplied to the mains
			0.05 or more	At the terminals of the mains
12	Useful chlorine in the water of a swimming pool	mg/cubic dm	No less than 0.2	At the drain
13	Chromium (Cr^{6+})	mg/cubic dm	0.01	
14	Free cyanides (CN)	mg/cubic dm	0.02	
15	Zinc (Zn)	mg/cubic dm	5.0	
16	Anionic detergents	mg/cubic dm	0.2	
	Cationic detergents	mg/cubic dm	0.1	
	Non-ion detergents	mg/cubic dm	0.2	
17	2,4-D (dichlorphenoxiacetic acid)	mg/cubic dm	0.05	
18	DDT and its metabolites	mg/cubic dm	0.001	
19	1,2-dichloroethane	mg/cubic dm	0.01	
20	1,1 dichloroethene	mg/cubic dm	0.001	
21	Phenols	—	Imperceptible smell	
22	Fluorides (F)	mg/cubic dm	1.5 no less than 0.3 recommended	
23	Formaldehyde	mg/cubic dm	0.05	
24	Aluminum	mg/cubic dm	0.3	
25	Heptachloride and its epoxide	mg/cubic dm	0.0001	
26	Heptachlorobenzene	mg/cubic dm	15.0	
27	Cadmium	mg/cubic dm	0.005	
28	Lindane (HCH gamma)	mg/cubic dm	0.005	
29	Manganese (Mn)	mg/cubic dm	0.1	
30	Methoxychlor	mg/cubic dm	0.03	
31	Copper (Cu)	mg/cubic dm	0.05	
32	Nickel (Ni)	mg/cubic dm	0.03	
33	Lead (Pb)	mg/cubic dm	0.05	
34	Pentachlorophenol	mg/cubic dm	0.01	
35	Mercury (Hg)	mg/cubic dm	0.001	
36	Selenium (Se)	mg/cubic dm	0.01	
37	Sulfates (SO_4)	mg/cubic dm	200.0	
38	Sodium (Na)	mg/cubic dm	200.0	
39	Silver (Ag)	mg/cubic dm	0.05	
40	Carbon tetrachloride	mg/cubic dm	0.005	
41	Carbon tetrachloroethene	mg/cubic dm	0.01	
42	Trichloroethene	mg/cubic dm	0.03	
43	Iron (Fe)	mg/cubic dm	0.5	

Annex No. 2 to the Executive Order of the Minister of Health and Social Welfare Dated 4 May 1990 (Item 205)

Bacteriological Conditions That Water for Drinking and Industrial Uses Should Meet

Water Quality Indicator	Water From Water Supply Systems (Public or Enterprise), Disinfected		Water From Water Supply Systems (Public or Enterprise), Not Disinfected		Water From Local Water Supply Systems, Public Wells, and Enterprise Wells	Water From Equipment for Personal Needs	Water Flowing Into a Swimming Pool	Water in a Swimming Pool and Drain Water
	Supplied to the Mains	In the Mains	Supplied to the Mains	In the Mains				
1	2	3	4	5	6	7	8	9
Number of fecal-type bacteria of the coli group in 100 ml of water not to exceed	0	0	0	0	0	x	0	0
Number of bacteria of the coli group in 100 ml of water not to exceed	0	1	1	2	2	10	2	5
Number of the colonies of bacteria on nutritive agar after 24 hours, at 37° Centigrade, in 1 ml of water not to exceed	10	20	20	40	40	100	100	200
Number of the colonies of bacteria on nutritive agar after 72 hours, at 20° Centigrade, in 1 ml of water not to exceed	50	100	100	200	x	x	x	x
Number of staphylococci in 100 ml of water not to exceed	x	x	x	x	x	x	2	5

Water for filling the tanks of passenger transportation vehicles should meet the requirements set forth in rubric 3.
Water from malfunctioning equipment should at the very least meet the requirements set forth in rubric 6.

Decree on Disbanding, Establishing Military Schools

90EP0799Z Warsaw DZIENNIK USTAW in Polish No 37, 7 Jun 90, Item No 208 pp 497-498

[Executive Order of the Council of Ministers, Item No. 208, dated 21 May 1990, on the establishment of the Academy of National Defense and the Higher Officers School of Military Engineering as well as the disbandment of the Military Political Academy]

[Text] Pursuant to Article 3 of the Decree of 31 March 1965 on Higher Military Schools (Dz.U., No. 27, Item 156, 1987), the following is hereby ordered:

Paragraph 1

1. As of 1 October 1990:

1) Are established:

a) The Academy of National Defense, and

b) The Higher Officers School of Military Engineering named after General Jakub Jasinski.

2) The Military Political Academy named after Feliks Dzerzhinskiy is disbanded.

2. The establishment of the school:

1) Mentioned in Paragraph 1, Point 1), a), takes place by renaming the Academy of the General Staff of the Polish Army named after General of Arms Karol Swierczewski.

2) Mentioned in Paragraph 1, Point 1, b), takes place by merging the General Jakub Jasinski Higher Officers School of Military Engineering with the Higher Officers School of Chemical Warfare named after Stanislaw Ziaja.

Paragraph 2

1. The purposes of the Academy of National Defense are to:

1) Train highly qualified command, staff, specialists, and scientific and instructional personnel for the needs of the Armed Forces.

2) Train state and economic administrators to perform specialized defense tasks.

3) Conduct research in the fields of military, humanistic, and economic sciences.

2. The purposes of the Gen. Jakub Jasinski Higher Officers School of Military Engineering are to engage in:

1) Instruction in engineering-command fields and to train military experts for positions in the Armed Forces requiring a higher professional background.

2) Research and development of the education and command of subunits.

Paragraph 3

Pursuant to Paragraph 1 of the Executive Order of the Council of Ministers of 23 March 1967 on the Establishment of Higher Officers Schools (Dz.U., No. 15, Item 65, 1967; and No. 8, Item 93, 1971), Points 5) and 7) [as published] are deleted.

Paragraph 4

This Executive Order takes effect on the day of its publication.

Chairman of the Council of Ministers: T. Mazowiecki

Law on Creation of Agricultural Marketing Agency

90EP0799Y Warsaw DZIENNIK USTAW in Polish No 39, 21 Jun 90, Item No 223 pp 538-539

[Law, Item No. 223, dated 7 June 1990, governing the creation of the Agricultural Marketing Agency]

[Text] Article 1.1. The state organizational entity called "Agricultural Marketing Agency," hereinafter referred to as "the Agency," is hereby established.

Article 1.2. The Agency is subordinated to the chairman of the Council of Ministers.

Article 2.1. The Agency is a legal entity.

Article 2.2. The Agency is not responsible for the obligations of the State Treasury.

Article 2.3. The State Treasury is not responsible for the obligations of the Agency.

Article 3. The offices of the Agency are located in the capital city of Warsaw.

Article 4.1. The Agency serves to implement the interventionist agricultural policy of the State with the object of stabilizing the farm products market and protecting farm incomes.

Article 4.2. This purpose is accomplished by the Agency chiefly through:

1) Interventionist procurements of farm products and, in particularly justified cases, imports of agricultural finished and semifinished products and foodstuffs.

2) Interventionist sales of farm products in natural and processed form on the domestic and foreign markets.

3) Stockpiling farm products in natural and processed form.

Article 4.3. The scope of activities of the Agency also includes:

1) Analyses of agricultural and food markets, determination of the growth trends in farm output and the

attendant market conditions, and the organization of a system for the rapid provision of the related information.

2) In cases warranted by the situation of agriculture and the agricultural market, drafting for the government organizational-legal proposals concerning the agricultural market, interventionist prices of farm products, foreign trade regulations, and other means of intervening in the evolution of supply or demand. These proposals should concern the agricultural markets within the Agency's scope of activities.

3) The possibility of granting credit guarantees.

Article 5.1. The Agency shall take over from the Main Board of State Stockpiles the state stockpiles of agricultural products and finished and semifinished foodstuffs as well as the funds earmarked for this purpose in the Budget Decree.

Article 5.2. The minister of the domestic trade shall, in cooperation with the ministers of finance and agriculture and food industries, specify the rules, scope, and procedure for the transfer of the state stockpiles and funds referred to in Paragraph 1.

Article 5.3. The Agency shall take over without reimbursement the grain warehouses with a combined capacity of 1 million metric tons administered by the PZZ [State Grain Elevators] Board of Enterprises of the Grain-Milling Industry.

Article 5.4. The minister of agriculture and food industries shall, in cooperation with the concerned parent agencies of the PZZ enterprises of the grain-milling industry, specify the procedure and rules for the transfer of the grain warehouses referred to in Paragraph 3.

Article 6.1. The Agency is managed by a chairman, who is appointed and recalled by the chairman of the Council of Ministers.

Article 6.2. The chairman of the Agency is the chief executive officer of the Agency.

Article 6.3. The duties of the chairman of the Agency include, in particular:

1) organizing the implementation of the purposes of the Agency referred to in Article 4;

2) representing the Agency outside;

3) taking steps to assure the development and effective utilization of activities of the Agency;

4) presenting to the Council of Ministers for approval proposals from the Agency council concerning the prices at which state intervention in marketing takes place.

Article 6.4. The chairman of the Agency submits quarterly reports on the Agency's activities to the chairman of the Council of Ministers, the minister of agriculture and food industries, and the Sejm's agriculture and food industries committee.

Article 7.1. The recommending and advisory body of the chairman of the Agency is the agency council, which consists of a chairman and 20 members.

Article 7.2. The chairman of the council is appointed and recalled by the agency council.

Article 7.3. Members of the council, to include eight representatives of organizations of farm producers as well as of processors, traders, and consumers, are appointed and recalled by the chairman of the Council of Ministers on the recommendation of the appropriate bodies of the concerned organizations.

Article 8. The detailed organizational structure of the Agency is defined in the statute conferred by the chairman of the Council of Ministers on the recommendation of the chairman of the Agency upon first consulting the Sejm's agriculture and food industries committee. The effective scope of activities of the Agency will be determined by the Council of Ministers.

Article 9. The revenues of the Agency derive from budget subsidies earmarked each year in the Budget Decree as well as from its economic activities, trade in securities, and other sources.

Article 10.1. The Agency's financial management follows the rules specified in budget law for institutions funded from the state budget.

Article 10.2. Allowing for the special nature of activities of the Agency, the Council of Ministers shall adapt the rules referred to in Paragraph 1 to the operating conditions of the Agency, and in particular the rules for receiving budget subsidies.

Article 10.3. The Agency retains all of any fund surpluses for the purposes referred to in Article 4, Paragraph 1.

Article 11. The rules for the emoluments of Agency employees shall be defined in an executive order of the Council of Ministers.

Article 12. Technical and organizational services for the chairman of the Agency are provided by the bureau of the Agency.

Article 13. This Decree takes effect on the day of its publication.

President of the Polish Republic: W. Jaruzelski

Executive Order on Guidelines for Sale of Fixed Assets by State Enterprises

90EP0890A Warsaw DZIENNIK USTAW in Polish No 45, 12 Jul 90, Item No 260 pp 637-639

[Executive Order, Item No. 260, of the Council of Ministers, dated 25 June 1990, setting guidelines for

organizing auctions for the sale of fixed assets by state enterprises and for the conditions for refraining from auctions [noncompetitive sales]]

[Text] Pursuant to Article 42, Paragraph 5, of the Decree of 25 September 1981 on State Enterprises (Dz.U., No. 35, Item 201, 1987; No. 10, Item 57, and No. 20, Item 107, 1989; and No. 17, Item 99, 1990), the following is hereby ordered:

Chapter 1
General Provisions

Paragraph 1. A state enterprise, hereinafter referred to as "seller," may sell its fixed assets by means of a public auction.

Paragraph 2.1. To organize the auction, the seller appoints an auction committee of at least three members.

Paragraph 2.2. The seller may commission the conduct of the auction to other organizations when these provide the requisite guarantees.

Paragraph 3. The following persons may not participate in the bidding:

1) The auctioneer and his or her spouse and children.

2) Persons present at the auction in official capacity.

Paragraph 4.1. The auction is public.

Paragraph 4.2. The seller conducts the auction in the following forms:

1) Oral auction (oral bidding).

2) Auction in writing (collection of written bids).

Paragraph 5.1. Prior to the auction the seller appraises the assets with allowance for current market prices. The appraisal may be preceded by expert opinions.

Paragraph 5.2. The appraised price may not be lower than the current market price, and if the latter cannot be determined then it may not be lower than the initial book value allowing for effects of reappraisal minus the depreciation rate.

Paragraph 6.1. The minimum bid may not be lower than three-fourths of the appraised price.

Paragraph 6.2. Sale may not take place at prices lower than the minimum bid.

Paragraph 7. The seller specifies a deposit of up to 10 percent to be paid by the successful bidder so as to secure the on-schedule implementation of the bid.

Paragraph 8.1. The auctioneer determines the auction date and publicizes the auction (or the invitation for written bids).

Paragraph 8.2. The auction date should be fixed so that at least 14 days would elapse between the publication of the auction notice and the actual auction.

Paragraph 9.1. The notice of the auction specifies in particular:

1) Name and address of seller and of auctioneer.

2) Address at and dates on which the fixed assets may be inspected.

3) Kind, types, and quantity of fixed assets to be auctioned.

4) Minimum bid and bid deposit required.

5) Bank account into which the bid deposit should be paid before the specified deadline.

Paragraph 9.2. The invitation for written bids should moreover specify:

1) Place, schedule, and procedure for the presentation of bids as well as period of validity of the bids.

2) The proviso that the seller has the right to freely choose among two or more equal bids.

3) The proviso that the bid deposit is forfeited to the seller if the bidder whose bid is accepted refrains from concluding the agreement.

4) A notation to the effect that the bid deposits paid by bidders whose bids are not accepted will be refunded immediately after a bid is chosen, and that for the bidder whose bid is accepted the bid deposit is credited to the bid price.

Paragraph 10. The notice of the oral auction or of the invitation for written bids is published in at least one daily newspaper as well as in a prominent place on the premises of the seller and in other places considered as expedient, and in the case referred to in Paragraph 2, Subparagraph 2, also in the premises of the organization commissioned to conduct the auction.

Chapter 2
Oral Auctions

Paragraph 11. Oral auctions take place in the form of public bidding.

Paragraph 12. On opening the auction, the auctioneer states:

1) The object of the auction.

2) Minimum bid.

3) Amount of bid deposit.

4) Deadline for payment in full.

5) Changes in the condition and legal status of a fixed asset insofar as such changes take place following the

publication of the auction notice, and the attendant changes in auction conditions.

Paragraph 13. Prior to the auction the bidders make bid deposits in the amount required. The deposits are made in cash or in securities acceptable to the seller.

Paragraph 14. The presence of a single bidder suffices for the auction to take place.

Paragraph 15. The bidding commences when the auctioneer names the minimum bid for a fixed asset.

Paragraph 16. Higher bids may be made in gradations of at least one percent of the minimum bid, with rounding to the nearest 1,000 zlotys. The bid price ceases to be binding once another bidder offers a higher price.

Paragraph 17. After no more bids are received, the auctioneer calls upon the bidders thrice. After the third call the auctioneer closes the bid and adjudicates the item to the highest bidder.

Paragraph 18. The adjudication means that the fixed asset is now the property of the buyer.

Paragraph 19.1. The buyer is bound to pay the purchase price immediately after the adjudication or within a time limit designated by the auctioneer, but not longer than seven days.

Paragraph 19.2. In the event that the buyer is an employee of the seller who engages in private enterprise on his own or an agent, leasee, representative or other person using the fixed assets on the basis of an agreement concluded with the seller, the purchase price may be paid in installments, on the terms and within the time limits agreed upon with the seller.

Paragraph 20. The buyer who fails to pay the purchase price within the time limits specified in Paragraph 19 forfeits the rights ensuing from the adjudication as well as the bid deposit. On the seller's demand he is moreover obligated to reimburse the seller for the expenses of the auction if these exceed the amount of the bid deposit.

Paragraph 21. The buyer who pays the purchase price should immediately pick up the auctioned object.

Paragraph 22. The bid deposit paid in cash by the buyer is credited to the purchase price. Bid deposits paid by other participants in the auction are refunded to them.

Paragraph 23.1. The auctioneer prepares a record of the auction, which should contain information on:

1) Time and place of the auction.

2) Names and surnames of the auctioneers.

3) Minimum bids required.

4) Highest prices bid for fixed assets.

5) Name, surname, and address of the buyer.

6) Purchase price and the advance paid by the buyer, and in the case referred to in Paragraph 19, Subparagraph 2, also the terms and time limits for payment of the balance.

7) Recommendations and statements of persons present at the auction.

8) Mention of reading of the minutes.

9) Signatures of the auctioneers and the purchaser or, if missing, an explanation of their absence.

Paragraph 23.2. If the buyer does not pay the price within the specified time limit, this should be immediately mentioned in the minutes of the auction; likewise, the payment of the purchase price on schedule should be mentioned in the minutes.

Chapter 3
Auctions in Writing

Paragraph 24.1. The auctioneer opens the bids, determines their validity and the payment of bid deposits, and identifies the bidder offering the highest price.

Paragraph 24.2. If it is found that several bidders offer the same price, the auctioneer chooses the buyer or decides to continue the bidding by having these bidders compete prior to a specified deadline. The bidding then is bound by the provisions of Chapter 2.

Paragraph 25. Notification of the bidder that his bid is accepted signifies concluding an agreement for an auction sale.

Paragraph 26. The buyer is required to pay the purchase price immediately after the sale agreement is prepared, or within a time limit, not longer than seven days, specified by the auctioneer. The provisions of Paragraphs 19-22 apply correspondingly.

Paragraph 27. A record of the proceedings is prepared. The provisions of Paragraph 23 apply correspondingly.

Chapter 4
Terms of Noncompetitive Sales

Paragraph 28. A seller may sell fixed assets without resorting to an auction in cases in which:

1) These assets have a market price and it is evident that their auction will not result in a higher price.

2) The objects for sale are property components whose value, minus the depreciation rate, does not exceed the amount specified in the regulations concerning the classification of property components as fixed assets.

3) The objects for sale are the property components representing contributions in kind into a partnership in which the seller is a shareholder.

Paragraph 29. The seller may cancel an auction if the fixed assets cannot be sold at, at least, the minimum required bid price.

Chapter 5
Final Provision

Paragraph 30. This Executive Order takes effect on the day of its publication.

Chairman of the Council of Ministers: T. Mazowiecki

Executive Order on Liquidation of Coal Associations

90EP0888A Warsaw DZIENNIK USTAW in Polish No 46, 18 Jul 90, Item No 269 p 647

[Executive Order, Item No. 269, of the Council of Ministers, dated 2 July 1990, governing specific procedures of the liquidation of the Anthracite Coal Association and the Power Industry and Lignite Association]

[Text] Pursuant to Article 4, Paragraph 2 of the law dated 24 February 1990 on the liquidation of the Anthracite Coal Association and the Power Industry and Lignite Association [published in JPRS-EER-90-115-S, 13 Aug 90] and on amending certain laws, the following is decreed:

Paragraph 1. This executive order sets forth specific procedures for the liquidation of the Anthracite Coal Association and the Power Industry and Lignite Association, henceforth referred to as "associations."

Paragraph 2.1. Along with financial plans for liquidation, the receiver of the associations will prepare plans for settling the obligations of the associations, which determine the means to implement the former.

Paragraph 2.2. The plans for settling the obligations of the associations may provide for the expiration of obligations due to their assumption by the organizational units indicated by the receiver with the consent of creditors. The obligations may be assumed by means of signing appropriate contracts.

Paragraph 3.1. After drawing up the plans referred to in Paragraph 2, Point 1, the receiver of the associations establishes whether and which components of their assets may be transferred to the possession of organizational units set up to accomplish tasks referred to in Article 8, Paragraph 2 of the law dated 24 February 1990 on the liquidation of the Anthracite Coal Association and the Power Industry and Lignite Association and on amending certain laws (DZIENNIK USTAW, No. 14, Item 89), prior to the day the liquidation of the associations is completed, in compliance with Paragraph 2.

Paragraph 3.2. The steps referred to in Paragraph 1 are taken by the receiver after he determines that in the event the components of assets set forth in Paragraph 1 are transferred, the remaining components of the associations will suffice to meet their obligations in full, and in the case of the components of assets of the liquidated Power Industry and Lignite Association, after he determines that their transfer will not disrupt the process of managing the capacity of power-generating equipment.

Paragraph 3.3. If the receiver of the associations determines that the conditions for transferring the components of assets of the associations referred to in Point 2 exist, he transfers the assets of components to the possession of the organizational units referred to in Point 1.

Paragraph 4. Plans for settling the obligations of the associations may provide for the organizational units referred to in Paragraph 3, Point 1 taking over the assets and rights of the associations. The takeover occurs by means of signing appropriate contracts.

Paragraph 5. The assets of the associations which remain after liquidation are taken over by the State Treasury.

Paragraph 6. Regulations on procedures for the liquidation of state enterprises apply in instances not regulated by the present executive order.

Paragraph 7. The executive order takes effect on the day of publication.

Chairman of the Council of Ministers: T. Mazowiecki

Executive Order on Transfer to State Agencies of Tasks, Authority of Power Industry, Coal Associations

90EP0888B Warsaw DZIENNIK USTAW in Polish No 46, 18 Jul 90, Item No 270 pp 648-649

[Executive Order, Item No. 270, of the Council of Ministers, dated 2 July 1990, entrusting the execution of certain tasks and authorities of the Anthracite Coal Association and the Power Industry and Lignite Association to agencies of the state administration]

[Text] Pursuant to Article 8, point 1 of the law dated 24 February 1990 on the liquidation of the Anthracite Coal Association and the Power Industry and Lignite Association and on amending certain laws (DZIENNIK USTAW, No. 14, Item 89) [published in JPRS-EER-90-115-S, 13 Aug 90] the following is decreed:

Paragraph 1. The present executive order sets forth the tasks and powers of the liquidated Anthracite Coal Association and the Power Industry and Lignite Association, the exercising of which will be entrusted to the organs of state administration.

Paragraph 2. Accomplishing the tasks and exercising the powers mentioned below is entrusted to:

1) The minister of industry:

a) Preparing projections of coal demand.

b) Planning and organizing investment projects in the field of building and expanding mining and associated enterprises and related infrastructural facilities.

c) Taking action with a view to ensuring the effective development and efficient utilization of production capacity in the coal industry.

d) Developing and filing proposals concerning the development of economic conditions for the operation of coal mining and the streamlining of coal consumption.

e) Programming and organizing the implementation of scientific-technical progress in the field of working coal deposits and improving the quality of coal and work safety.

f) Supervising the organization and operation of rescue facilities in mining.

g) Taking actions with a view to protecting the natural environment, which are intended to reduce to a minimum and eliminate ecological dangers due to the impact of mining operations on the natural environment.

h) Carrying out financial settlements with the state budget entailed by budgetary subsidies to the coal industry.

i) Taking actions aimed at improving the safety standard of the coal industry.

j) Organizing vocational training to meet the needs of the coal industry.

k) Accomplishing tasks in the field of defense capability and state security involving anthracite coal.

l) Performing functions which the provisions of mining law reserve for a unit directly supervising and controlling mining enterprises with regard to all anthracite coal mines and filling-sand quarries, enterprises building new mines and doing work on the existing coal mines.

m) Accomplishing other tasks and exercising other powers of the Anthracite Coal Association, which are set forth in separate laws and which fall within the scope of the statutory responsibilities of the minister of industry, that have not been transferred to other organs of state administration.

2) The minister of domestic market—drawing up coal balances.

3) The minister of environmental protection, natural resources, and forestry—drawing up programs and organizing geological prospecting for locating coal reserves.

Paragraph 3. The minister of industry is entrusted the following tasks and powers of the liquidated Power Industry and Lignite Association:

1) Determining the need for electric power capacity and production for one-year and multiyear periods, as well as tasks entailed by meeting these needs.

2) Coordinating multiyear and annual tasks in the field of producing electric power and lignite with a view to accomplishing the tasks referred to in Point 1.

3) Planning investment projects involving the construction and expansion of power stations, power and heat plants, electric lines, and lignite mines.

4) Ensuring the reliable operation of the power system.

5) Acting with a view to ensuring the development and optimal use of the production facilities owned by economic units operating in the field of the power industry and lignite production.

6) Managing the capacity of power equipment connected to the common power grid.

7) Planning, organizing, and implementing scientific-technical progress in the power industry and lignite mining.

8) Matters associated with commercial and technical operations in the field of international trade in electric power.

9) Ensuring the cooperation of the domestic power system with the systems of other countries.

10) Taking actions in favor of environmental protection in the power industry and lignite mining.

11) Organizing vocational training in the power industry and lignite mining.

12) Accomplishing tasks in the area of defense capability and security in the field of the power industry and lignite coal.

13) Accomplishing other tasks and exercising other powers of the Power Industry and Lignite Association set forth in separate laws and falling within the scope of the statutory responsibilities of the minister of industry, but which have not been transferred to other organs of state administration.

Paragraph 4.1. The minister of industry is empowered to entrust the accomplishment of the tasks referred to in Paragraph 2, Point 1, letters a) through m), and in Paragraph 3, Points 1 through 12, to organizational units set up for this purpose.

Paragraph 4.2. The minister of domestic market is entitled to entrust the accomplishment of the tasks referred to in Paragraph 2, Point 2 to an organizational unit set up for this purpose.

Paragraph 4.3. The minister of environmental protection, natural resources, and forestry is empowered to entrust the accomplishment of the tasks referred to in Paragraph 2, Point 3 to an organizational unit set up for this purpose.

Paragraph 5. The executive order takes effect on the day of publication.

Chairman of the Council of Ministers: T. Mazowiecki

Executive Order on Merging, Converting, or Creating Economic Entities

90EP0888C Warsaw DZIENNIK USTAW in Polish No 46, 18 Jul 90, Item No 271 p 649

[Executive Order, Item No. 271, of the Council of Ministers, dated 11 July 1990, announcing the requirements that a letter of intent to merge, convert, or create economic entities should fulfill]

[Text] Pursuant to Article 11, Paragraph 6 of the law dated 24 February 1990 on counteracting monopolistic practices (DZIENNIK USTAW, No. 14, Item 88, and No. 34, Item 198) the following is decreed:

Paragraph 1.1. A letter of intent to merge economic entities should contain data on these entities and an evaluation of the positions which the merging entities hold, and which the newly formed entity will hold, in the national or local market. In particular, the following should be set forth in the letter of intent:

1) The names of merging economic entities and their statistical numbers, venues, lines of business, and their territorial extent (national market, local market), affiliation with other organizational structures, and, when this structure is a commercial company, also the number of shares (stock) in its original capital, if it exceeds 50 percent.

2) The shares of individual economic entities in, respectively, the national or local market in which they operate in the year preceding the one in which the entities are merged, and the share expected after the merger; this share should be given in terms of sales prices and natural units for the basic goods and services produced by the units merging.

3) Reasons for the merger of units.

4) If necessary, other data which the author of the letter will see fit to include or the Antimonopoly Office will demand in order to determine whether an economic entity holds or will gain a dominant position in the market.

Paragraph 1.2. Provisions of Paragraph 1 apply as appropriate to a letter of intent to transform a state enterprise into a company; however, the form of the company and the value of original capital should be indicated in the letter.

Paragraph 1.3. If an economic entity may secure a dominant position in the market, or one of the parties creating a new economic entities holds such a position, the following should be indicated:

1) The name of the entity created, its venue, line of business, and its territorial extent (national market, local market).

2) The expected share of the national or local market in which the entity intends to operate; this share should be given in terms of the predicted sales prices and natural units for basic goods and services.

3) If necessary, also other information referred to in Paragraph 1, Point 4.

A letter of intent to create an economic entity should also indicate prerequisites which were taken into account in the determination that the entity may gain a dominant position in the market, or that one of the parties creating the new economic entity already holds such a position.

Paragraph 1.4. The letter referred to in Points 1 through 3 is signed by:

1) The parent agency which orders the merger of enterprises in case state enterprises are merged.

2) The board of the successor cooperative in case cooperatives are merged, or an organizational unit of a cooperative is merged with another cooperative.

3) The board of the successor company or the company to which the assets of the merging companies are passed in case companies under commercial law are merged.

4) In case economic units not referred to in Points 1 through 3 are merged, an organ of one of the economic entities taking actions aimed at merging.

5) A parent agency making a decision on transformation in case a state enterprise is transformed into a company.

6) A gmina organ making a decision on transformation in case a communal enterprise is transformed into a company.

7) In case an economic entity is created, by the proper parent agencies or other entities empowered by separate regulations to create economic entities (organs of other economic entities, promoters, partners, founders, and others).

Paragraph 2. The executive order takes effect on the day of publication.

Chairman of the Council of Ministers: T. Mazowiecki

Executive Order on Aid to Borrowers To Repay Interest on Bank Loans

90EP0890B Warsaw DZIENNIK USTAW in Polish No 47, 25 Jul 90, Item No 277 pp 653-654

[Executive Order, Item No. 277, of the Council of Ministers, dated 9 July 1990, amending the executive order governing the extent, guidelines, and procedures for granting aid to borrowers from 1990 budget funds to pay part of the interest due banks on loans granted after 31 December 1989]

[Text] Pursuant to Article 3, Paragraph 2, Point 2), in connection with Point 1), of the Decree of 28 December 1989 on Bringing Order into Credit Relations (Dz.U.,

No. 74, Item 440), and in connection with Article 11 of the 1990 Budget Law (Dz.U., No. 13, Item 82), the following is hereby ordered:

Paragraph 1. The Executive Order of the Council of Ministers of 9 April 1990 Concerning the Scope, Guidelines, and Procedures for Granting Aid from the 1990 Budget to Borrowers for Paying Part of the Interest Due Banks on Loans Granted After 31 December 1989 (Dz.U., No. 27, Item 154), is amended as follows:

1) In Paragraph 1:

a) In Subparagraph 1 the following Point 9) is added:

"9) The funding of the production of nutrition supplements for children (products denoted by the symbols SWW: 2353-3, 2525-7, 2529-13, 2462-1, 2462-3, 2462-6, 2462-73, 2462-79, 2464-9)."

b) In Subparagraph 2:

—The phrase "and 8" in Point 1) is deleted.

—Point 3) is rephrased as follows:

"3) The loans referred to in Subparagraph 1, Points 7) and 9), amounting to 20 percent of the interest due."

—The following Point 4) is added:

"4) the loans referred to in Subparagraph 1, Point 8), amounting to 50 percent of the interest due."

2) In Paragraph 2 the following Subparagraph 5 is added:

"5. The aid referred to in Paragraph 1, Subparagraph 1, Point 9), concerns interest on a part of the liquid capital loaned to a producer, with that part being determined by the percentile ratio of the volume of the sales of nutrition supplements for children to the overall volume of sales of all output."

3) In Paragraph 3:

a) In Subparagraph 1 the phrase "10 million zlotys" is replaced with the phrase "20 million zlotys."

b) The following Subparagraph 4 is added:

"4. Aid from the central budget for borrowers to pay interest on the loans referred to in Subparagraph 1 is granted and disbursed through the mediation of the lending banks on terms to be coordinated by the Minister of Finance with the Chairman of the Polish National Bank."

4) The following Paragraph 3a is added:

"Paragraph 3a.1. Borrowers are granted aid from the central budget for paying the interest due banks on loans received in 1990 for the purchase of rape, grain, sugar beets, potatoes, fruits, vegetables, herbs, flax, hemp, and mustard, and for financing seasonal stockpiling of these produce in natural and processed form if the interest rate on these loans amounts to 20 percent annually.

"Paragraph 3a.2. The aid referred to in Subparagraph 1 consists in the payment from the central budget of part of the interest due banks, with said part corresponding to the difference between the interest rate on loan refinancing plus two percentage points and the interest rate due banks.

"Paragraph 3a.3. The aid referred to in Subparagraphs 1 and 2 does not apply to the distillery and brewery industries.

"Paragraph 3a.4. Aid from the budget for paying the interest due banks, referred to in Subparagraphs 1 and 2, will be maintained if that interest rate is changed by banks in consultation with the Minister of Finance as a result of an yearly increase of more than 50 percent or a decrease of below 27 percent in the interest rate on refinanced loans during the second half of the year.

"Paragraph 3a.5. In the event that the Polish National Bank raises the interest rate on loan refinancing by more than 34 percent annually, the increase in the interest rate will be reimbursed in equal parts by the budget and the Polish National Bank."

Paragraph 2. This Executive Order takes effect on the day of its publication and is retroactive to 1 July 1990, with the proviso that the regulations governing assistance in paying part of the interest charged on loans of liquid capital for the production of nutrition supplements for children and for the acquisition of wheelchairs for the handicapped, and motor vehicles for the handicapped and for persons caring for incapacitated persons apply to loans granted as of 1 January 1990.

Chairman of the Council of Ministers: T. Mazowiecki

Executive Order on Equating Police Ranks to Military Ranks

90EP0886X Warsaw DZIENNIK USTAW in Polish No 48, 26 Jul 90, Item No 285 p 667

[Executive Order, Item No. 285, dated 11 July 1990, governing the designation of police rank corresponding to military rank]

[Text] Pursuant to Article 47, Paragraph 3, of the decree of 6 April 1990 on the Police (Dz.U., No. 30, Item 179), the following is hereby ordered:

Paragraph 1. The military ranks named below correspond to the following police ranks:

Military	Police
General of arms and division general	General inspector of the Police
Brigade general	Senior Police inspector
Colonel	Police inspector
Lieutenant colonel and major	Assistant police inspector
Captain	Chief police commissioner

Military	Police
Lieutenant	Police commissioner
Junior lieutenant	Assistant police commissioner
Senior staff ensign, senior ensign, and junior ensign	Police subaltern
Master sergeant, staff sergeant, and senior sergeant	Police senior sergeant
Sergeant, platoon leader, senior corporal, and corporal	Police sergeant
Private first class	Senior constable
Private	Constable

Paragraph 2. This Executive Order takes effect on the day of its publication.

Minister of Interior Affairs: K. Kozlowski

Executive Order on Activities of Ministry of Internal Affairs

90EP0886Y Warsaw DZIENNIK USTAW in Polish No 49, 27 Jul 90, Item No 287 pp 669-671

[Executive Order, Item No. 287, of the Council of Ministers, dated 16 July 1990, governing the detailed range of activities of the Ministry of Internal Affairs]

[Text] Pursuant to Article 2, Paragraph 2, of the Decree of 6 April 1990 on the Office of the Minister of Internal Affairs (Dz.U., No. 30, Item 181), the following is hereby ordered:

Paragraph 1. The scope of activities of the Minister of Internal Affairs includes:

1) In the sphere of protecting of state security:

a) Initiating and coordinating activities intended to protect the fundamental political and economic interests of the Polish Republic and outlining the directions of counteracting perils to the security, defense, independence, and integrity of the state.

b) Creating conditions favorable to the prevention and detection of crimes of espionage and terrorism and other major antistate crimes, as well as prosecuting their perpetrators.

c) Exercising general supervision over the activities of the Office for State Protection, and in particular:

—Monitoring the activities intended to identify and counteract perils to the security and legal order of the state.

—Evaluating the status of national security and outlining directions of action in that respect.

d) Presenting to the Chairman of the Council of Ministers information on the state of national security and the activities of the Office for State Protection.

2) In the sphere of protecting the safety of citizens and public security and order:

a) Identifying directions of action and coordinating measures intended to assure protection against lawless assaults on human life and health and the material and cultural accomplishments of the society, as well as maintaining public order.

b) Creating conitions favorable to the prevention of crime and its causes, and defining the rules for the related cooperation with local bodies of the general government administration, local self-governments, and social organizations.

c) Exercising general supervision over the activities of the Police, and in particular:

—Monitoring the activities intended to protect life, health, and property, as well as activities intended to safeguard peace in public places, means of transportation, and road traffic.

—With respect to the granting of weapons permits.

—Evaluating the status of public security and order and combatting crime as well as outlining the related directions of action.

d) Reporting to the Chairman of the Council of Ministers on perils to the safety of citizens or on dangerous disturbances of public order, and presenting appropriate proposals—in accordance with the guidelines provided in separate regulations.

e) Deciding in cases brooking no delay, on the recommendation of the Commanding Officer of the Police, to use armed units or subunits of the Police, upon immediately notifying thereof the Chairman of the Council of Ministers—in accordance with the guidelines provided in separate regulations.

f) Reporting to the Chairman of the Council of Ministers on the state of public security and order and the activities of the Police.

3) In the sphere of protecting the state frontier:

a) Creating conditions favorable to an effective protection of the state frontier.

b) Determining the guidelines for efficient and effective frontier control and prevention of acts of terrorism at frontier crossings.

c) Exercising general supervision over the activities of the Frontier Guards, and in particular:

—Monitoring the implementation of tasks ensuing from international agreements on legal relations at state frontiers and the activities of frontier representatives.

—Participating in the protection of national security in the Polish sea zone.

—Cooperating with the Minister of National Defense as regards the inviolability of the state frontier in the airspace.

—Evaluating the status of the protection of the state frontier and outlining the related directions of action.

d) Reporting to the Chairman of the Council of Ministers on the status of the protection of the state frontier, frontier traffic control, and the activities of the Frontier Guards.

4) In the sphere of fire safety:

a) Coordinating the measures intended to streamline fire safety, to the extent defined in separate regulations.

b) Defining the principles for cooperation between fire departments and local agencies of the general government administration, local self-governments, and social organizations.

c) Encouraging studies and research into a systematic elimination of fire hazards.

d) Exercising general supervision over the organizational units of fire safety, and in particular:

—Assuring the conditions for a proper selection, training, and equipping of fire safety personnel.

—Refining the fire control systems.

—Evaluating the status of fire safety and outlining the related directions of action.

e) Reporting to the Chairman of the Council of Ministers on the state and safeguarding of fire safety.

5) In the shpere of administration of internal and socio-administrative affairs—the exercise of duties specified in separate laws and implementing regulations, and the exercise of the related powers, concerning:

a) Vital statistics registries, name and surname changes, keeping of population and identity document records, and the formation and development of the National Electronic Identity Monitoring System.

b) Granting foreign travel permits.

c) Polish citizenship.

d) The rights and duties of the foreigners sojourning on the territory of the Polish Republic, and the keeping of the pertinent records.

e) The rights and duties of citizens relating to the national defense duty.

f) Associations, assemblies, public gatherings, and badges and uniforms.

g) Granting permits for economic activity [private enterprise] relating to protection of property, investigative and passport services, and the production of and trade in weapons, ammunition, and explosives.

h) Permits for the acquisition of real estate by foreign nationals.

6) In the sphere of petty offenses—the exercise of oversight of mandatory proceedings concerning cases of petty offenses submitted to the jurisdiction of the community courts attached to district courts.

7) In the sphere of the protection of state and official secrets—coordinating the organization of the protection of state and official secrets and of the measures to effectuate adherence to these secrets, on the principles defined in separate regulations.

8) In the sphere of eliminating the consequences of natural disasters—coordinating the measures to provide protection and restore order and the rescue activities intended to eliminate the consequences of natural disasters and other dangerous events imperiling general security, according to guidelines provided in separate regulations.

Paragraph 2. The scope of activities of the Minister of Internal Affairs also includes:

1) Protection of the personnel and sites of foreign diplomatic missions and consular offices, as well as of other foreign missions entitled to privileges and immunities by virtue of law and international agreements and customs.

2) Keeping the public informed about the activities of the Ministry of Internal Affairs and cooperating to this end with the mass media.

3) Cooperating, within the ministry's scope of competences, with other state agencies and with local self-governments concerning the protection of civil rights and liberties.

Paragraph 3. The Minister of Internal Affairs also exercises duties relating to:

1) Improvements in the internal organizational structure of the ministry and the promulgation of legal acts within the scope of the ministry's competence.

2) Determination of personnel policy and attending to appropriate recruitment.

3) Organization and supervision of regular and advanced training for ministry personnel.

4) Sponsoring of research and civic measures taken to combat crime, and coordination of activities relating to technology development within the ministry.

5) Implementation of mobilizational-organizational and defense measures pertaining to the ministry and of other defense-related tasks ensuing from the regulations governing national defense duty.

6) Organization of cooperation with state organizational units with the object of accommodating the scope of their production to the needs of the agencies under the jurisdiction of the Minister of Internal Affairs as regards

manufacturing, services, and the supply of the equipment required by these agencies to accomplish their objectives.

7) Exercise of technical supervision over construction as regards internal safety, and also of supervision over fuel and energy management.

8) Other matters defined in separate regulations.

Paragraph 4. This Executive Order takes effect as of the day of its publication.

Chairman of the Council of Ministers: T. Mazowiecki

Executive Order on Organizational Statute of Ministry of Internal Affairs

91EP0001A Warsaw DZIENNIK USTAW in Polish No 49, 27 Jul 90, Item No 288 pp 671-672

[Executive Order of the Council of Ministers, Item No. 288, dated 16 July 1990, conferring organizational statute on the Ministry of Internal Affairs]

[Text] Pursuant to Article 2, Paragraph 3, of the Decree of 6 April 1990 on the Office of the Minister of Internal Affairs (Dz.U., No. 30, Item 181), the following is hereby ordered:

Paragraph 1. An organizational statute, whose text is given in the Appendix to this Order, is conferred on the Ministry of Internal Affairs.

Paragraph 2. The Minister of Internal Affairs may, when so warranted, merge, shut down, or transform the organizational units of the Ministry of Internal Affairs, in consultation with the Minister-Chief of the Office of the Council of Ministers.

Paragraph 3. Resolution No. 144 of 21 October 1983 of the Council of Ministers On Conferring an Organizational Statute on the Ministry of Internal Affairs, amended by Resolution No. 128 of 27 August 1989 of the Council of Ministers, is hereby declared null and void.

Paragraph 4. This Executive Order takes effect on the day of its publication.

Chairman of the Council of Ministers: T. Mazowiecki

Appendix to the Executive Order of 16 July 1990 (Item No. 288) of the Council of Ministers

Organizational Statute of the Ministry of Internal Affairs

Paragraph 1. The Ministry of Internal Affairs, hereinafter referred to as "the Ministry," is the executive organ of the Minister of Internal Affairs, hereinafter referred to as "the Minister," and operates in consonance with his orders, decisions, and instructions, as well as under his immediate supervision and direction.

Paragraph 2.1. The Minister directs the Ministry with the aid of undersecretaries of state and department directors (or persons holding equivalent positions).

Paragraph 2.2. The Minister may authorize the persons referred to in Paragraph 1 to issue decisions in his name concerning specified matters.

Paragraph 3. As the need arises, the Minister may appoint permanent and temporary councils and committees as his advisory or consulting bodies, on determining their composition and scope of activities and operating procedures.

Paragraph 4.1. The following organizational units are part of the Ministry:

1) The Minister's Cabinet, which provides direct services to the Minister and the undersecretaries of state and handles foreign affairs, complaints and proposals, and media problems.

2) Team of Advisors to the Minister, which develops analyses of the state of national security and public security and order, evaluates the extent of existing foreign and domestic perils, and serves the Minister with advice and direct consultation.

3) Inspectorate for Supervision and Control, whose duties include implementing legally defined activities with respect to the units and bodies supervised by the Minister.

4) Socioadministrative Department, whose duties include, within the scope specified by separate decrees and their implementing regulations, the direct implementation of tasks relating to the administration of internal affairs and the supervision of the implementation of the related tasks by the local agencies of the general government administration and local self-governments, as well as the supervision and coordination of the activities of ministries and institutions intended to preserve the secrecy of classified information and official secrets.

5) Legal Office, which provides legal and legislative services to the office of the Minister.

6) Office for Defense Affairs, which handles tasks relating to mobilization and organization of defense and coordinates other defense-related tasks assigned to the Minister by the regulations governing the national defense duty.

7) Department of Finance, which handles the planning and execution of the budget for the Ministry as a whole.

8) Administration and Business Office, which handles administrative, office, technical, and financial services and the protection of the facilities of the office of the Minister as well as planning the supply and standardization of special-purpose and other equipment and facilities for the Ministry, problems of technological and

construction supervision, and investments in and renovation of the Ministry's facilities.

9) Department for the Public Computerized Census System, whose duties include the design, application, and development of the Public Computerized Census System and its thematic subsystems for the needs of state administration and local self-governments.

10) Personnel Office, which handles organizational and personnel problems concerning the employees of the office of the Minister and employees whose personnel affairs belong within the Minister's purview.

11) Central Archives, which is charged with managing a separate State archives envisaged in separate regulations.

Paragraph 4.2. The internal structure and specific scope of activities of the units referred to in Paragraph 1 are defined by manuals of organization issued by the Minister.

Paragraph 5.1. The Minister supervises the central agencies of state administration and other organizational units under his jurisdiction and exercises the duties of a parent agency of state enterprises. A list of these agencies, units, and state enterprises is contained in the Supplement to the Statute.

Paragraph 5.2. The Minister may revise the list referred to in Paragraph 1 depending on the changes that occur following the conferral of this Statute as implemented pursuant to separate regulations.

Supplement to the Organizational Statute of the Ministry of Internal Affairs

List of Central Agencies of State Administration and Other Organizational Units Under the Jurisdiction of the Minister of Internal Affairs, as Well as of the State Enterprises for Which the Minister of Internal Affairs is the Parent Agency

I. Central Agencies of State Administration and Other Organizational Units Under the Jurisdiction of the Minister of Internal Affairs:

1) National Police Commander.

2) Chief of the Office for State Protection.

3) Commanding Officer of the Frontier Guards.

4) Commanding Officer of the Fire Brigades.

5) Vistula Military Troops Command of the Ministry of Internal Affairs.

6) Main School of Fire Safety Service.

7) Central Board of Health Service at the Ministry of Internal Affairs.

II. State Enterprises for Which the Ministry of Internal Affairs Is the Parent Agency:

1) Engineering Equipment Manufacturing Enterprise in Sosnowiec.

2) Transportation Equipment Repair Enterprise in Lodz.

3) Construction Research and Design Office in Warsaw.

Law on Right to Assembly

90EP0886Z Warsaw DZIENNIK USTAW in Polish No 51, 1 Aug 90, Item No 297 pp 693-695

[Law, Item No. 297, dated 5 July 1990, on the right to assembly]

[Text]

Chapter 1. General Provisions

Article 1.1. Any person may avail himself or herself of the freedom of peaceful assembly.

Article 1.2. An assembly is a group of at least 15 people convened with the object of joint deliberations or with the object of expressing a common position.

Article 2. Freedom of assembly is subject solely to the restrictions of law insofar as they are needed to protect state security or public order, or to protect public health or public morality, or to protect the rights and liberties of others.

Article 3.1. The right to organize assemblies belongs to legally fully competent persons, legal entities, other organizations, and groups of persons.

Article 3.2. Assemblies may not be attended by persons carrying weapons, explosives, or other dangerous appurtenances.

Article 4. The provisions of this Decree do not apply to the assemblies:

1) Organized by agencies of the government or of local self-government.

2) Held under the auspices of the Catholic Church or other churches or denominational groups.

3) Relating to the elections of state and self-government authorities.

Chapter 2. Procedure Concerning Assemblies

Article 5. The procedure to be followed concerning assemblies is a state-assigned duty of gmina bodies.

Article 6.1. Assemblies organized in an open space accessible to persons not identified by name, henceforth referred to as "public assemblies," require prior notification of the gmina body proper for the site of the assembly.

Article 6.2. If assemblies are organized in the proximity of the sites of diplomatic missions, consular offices, special missions, and international organizations entitled to diplomatic immunity and privileges, the gmina body notifies the proper police commander and the Ministry of Foreign Affairs.

Article 6.3. The gmina council may identify sites at which organizing public assemblies does not require prior notice.

Article 7.1. The organizer of the public assembly notifies the gmina body not later than three days, and not earlier than 30 days, of the date of the proposed assembly.

Article 7.2. The notice should contain the following information:

1) First name, surname, birth date, and address of the organizer, and the name and address of the legal entity or other organization, if he organizes the assembly on its behalf.

2) Purpose and program as well as the language in which the participants in the assembly will communicate with each other.

3) Place and date, starting time, scheduled duration, and anticipated number of participants, as well as the itinerary in the event that a change of place is expected during the assembly.

4) Specification of the means, planned by the organizer, serving to safeguard a peaceful course of the assembly, as well as of the resources which the organizer is requesting the gmina body to provide.

Article 8. The gmina body bans the public assembly if:

1) Its purpose or convening is in conflict with this Decree or violates the provisions of penal laws.

2) Convening the assembly may imperil the life or health of people or involve damage to property on a significant scale.

Article 9.1. The decision to ban the public assembly should be handed to the organizer within three days from the date of the notice, but not later than 24 hours before the scheduled starting time of the assembly.

Article 9.2. An appeal may be submitted within three days from the date the decision is presented.

Article 9.3. The submission of an appeal does not suspend the execution of the decision.

Article 9.4. The decision issued upon considering the appeal is handed to the organizer within three days from the date the appeal is submitted.

Article 10.1. The public assembly should have a chairperson who opens the assembly, directs its course, and closes it.

Article 10.2. The chairperson is the organizer of the assembly, unless he delegates his duties to another person, or if the assembly participants, with his consent, elect another chairperson.

Article 10.3. The chairperson is responsible for a lawful course of the assembly and to this end takes the measures envisaged in this Decree.

Article 10.4. The chairperson has the right to demand of a person who by his conduct violates the provisions of this Decree or obstructs or tries to obstruct the assembly that he leave the assembly. In the event of failure to obey the demand, the chairperson may turn for assistance to the police or the municipal guard.

Article 10.5. If the participants in an assembly do not respect the orders the chairperson issues as part of the execution of his duties, or if the course of the assembly conflicts with this Decree or violates the provisions of penal laws, the chairperson dissolves the assembly.

Article 10.6. Once the assembly is dissolved or closed, its participants are obligated to depart from the site of the assembly without any unjustified delay.

Article 11.1. The gmina body may delegate its representatives to the assembly.

Article 11.2. The gmina body provides, upon the organizer's request, insofar as needed and possible, police protection pursuant to the provisions of the Decree of 6 April 1990 on the Police (Dz.U., No. 30, Item 179), to assure a due course of the assembly, and it may delegate its representative to the assembly.

Article 11.3. The delegated representatives of the gmina body are obligated, upon arriving at the assembly, to show their credentials to the assembly chairperson.

Article 12.1. The assembly may be dissolved by a gmina body representative if its course imperils human life or health or threatens property damage on a significant scale, or if it violates the provisions of this Decree or of penal laws, and if the chairman, on being advised of the necessity to dissolve the assembly, refuses to do so.

Article 12.2. The dissolution of the assembly pursuant to Paragraph 1 takes place through the issuance of an oral decision preceded by three successive warnings to the assembly participants about the possibility of the dissolution; the decision is then announced to the chairperson in the presence of the assembly participants, and it has the power of immediate executability. The decision is handed in written form to the organizer within 24 hours after it is taken.

Article 12.3. The organizer and assembly participants have the right to appeal against the decision to dissolve the assembly within three days from the date of its dissolution; the provisions of Article 9, Paragraph 4, apply correspondingly.

Article 13. Complaints concerning assemblies are transmitted by the voivode to the Superior Administrative Court within three days from the date of their submission, and the Court schedules a hearing not later than within seven days from the date it receives the complaint, unless prevented by formal obstacles.

Chapter 3. Changes in Binding Interim and Final Provisions

Article 14. Paragraph 1 of Article 52 of the Code of Petty Offenses is rephrased as follows:

"Paragraph 1. Whoever:

'1) Obstructs or tries to obstruct the organization or the course of a non-prohibited assembly;

'2) Convenes an assembly without the required notice [to the authorities] or chairs such an assembly or a prohibited assembly;

'3) Chairs an assembly after it is dissolved by its chairperson or by a gmina body representative;

'4) Illegally occupies or refuses to depart from the premises at the lawful disposal of another person or organization convening or chairing an assembly;

'5) Attends an assembly while carrying weapons, explosives, or other dangerous instruments;

'—is subject to detention for up to two weeks and imprisonment for up to two months or a fine.'"

Article 15. The following amendments are incorporated in the Decree of 17 May 1989 on the Relationship Between the State and the Catholic Church in the Polish People's Republic (Dz.U., No. 29, Item 154):

1) the decree is renamed as follows:

"On the Relationship Between the State and the Catholic Church in the Polish Republic."

2) Paragraph 2 of Article 15 is rephrased as follows:

"15.2. Public religious ceremonies do not require [official] notice if they are held in:

'1) Churches, chapels, and ecclesiastical buildings, or on ecclesiastical land and in other premises serving for the teaching of catechism or used by church organizations.

'2) At other sites, with the exception of public roads and squares and public facilities; there, the performance of religious ceremonies is subject to consultation with the appropriate body administering or authorized to dispose of these facilities.'"

3) In Paragraph 5 of Article 34 the phrase "in state buildings" is replaced with the phrase "in public facilities."

Article 16. The phrase "in state buildings" in the Decree of 17 May 1989 on Safeguards for Freedom of Conscience and Religion (Dz.U., No. 29, Item 155) is replaced with the phrase "in public facilities."

Article 17. The provisions of this Decree apply to the matters it regulates whenever such matters are not finalized prior to the effective date of this Decree.

Article 18. The Decree of 29 March 1962 on Assemblies (Dz.U., No. 20, Item 89, 1962; No. 12, Item 115, 1971; No. 14, Item 113, 1982; No. 36, Item 167, 1985; and No. 20, Item 104, and No. 29, Item 154, 1989) is hereby declared null and void.

Article 19. This Decree takes effect on the day of its publication.

President of the Polish Republic: W. Jaruzelski

Executive Order on Property of State Enterprises, Units Not Subject to Municipalization

90EP0887A Warsaw DZIENNIK USTAW in Polish No 51, 1 Aug 90, Item No 301 pp 702-703

[Executive Order, Item No. 301, of the Council of Ministers, dated 9 July 1990, governing the establishment of a list of state enterprises and organizational units whose property is not subject to municipalization]

[Text] Pursuant to Article 11, Paragraph 2 of the law dated 10 May 1990—Regulations Introducing the Law on Territorial Self-Government and the Law on Self-Government Employees (DZIENNIK USTAW, No. 32, Item 191, and No. 43, Item 253), the following is decreed:

Paragraph 1. A list is established of state enterprises and organizational units subordinated to or supervised by the former people's councils and local organs of the state administration of the basic level, segments of whose assets constitute national (state) property and do not become municipal property; the list is appended to the present executive order.

Paragraph 2. Components of national (state) property belonging to the Worker's Cooperative Publishing House "Prasa-Ksiazka-Ruch" which is being liquidated do not become municipal property.

Paragraph 3. Voivodes take over the function of supervising organs or parent agencies of the state enterprises and organizational units referred to in Paragraph 1.

Paragraph 4. The executive order takes effect on the day of publication.

Chairman of the Council of Ministers: T. Mazowiecki

Annex to the Executive Order of the Council of Ministers, Dated 9 July 1990, (Item 301)

List of State Enterprises and Organizational Units Subordinated to or Supervised by the Former People's Councils and Local Organs of State Administration of the Basic Level Whose Assets Are Not Subject to Municipalization

I. Warsaw Voivodship

1. Pamet Piaseczno Local Industry Enterprise in Piaseczno

2. Repair and Construction Enterprise of the Economic and Administrative Group of Schools in Pruszkow

II. Bialystok Voivodship

1. Voivodship Engineering and Geodetic Enterprise of Municipal Construction in Bialystok

2. Bialystok Footwear Enterprise in Bialystok

3. Siemiatycze Footwear Enterprise in Siemiatycze

4. State Gardening Farm in Bialystok

5. State Farm in Ignatki

6. State Farm in Kleszczele

7. State Farm in Kuznica Bialostocka

8. Michalowo Agricultural Combine in Michalowo

III. Bydgoszcz Voivodship

1. State Gardening Farm in Bydgoszcz

IV. Chelm Voivodship

1. Auxiliary Farm of the Group of Agricultural Schools in Okszow

2. Auxiliary Farm of the Group of Agricultural Schools in Krasnystaw

V. Elblag Voivodship

1. Malbork Chemical Enterprise Organika in Malbork

VI. Gdansk Voivodship

1. Enterprise for Trade in Chemicals Chemia in Gdansk

2. Chemical Enterprise Organika-Fregata in Gdansk

3. Enterprise for Trade in Metal Products and Technical Services Metalzbyt in Gdansk

4. Commercial and Technical Enterprise for Firefighting and Protective Gear Supon in Gdynia

5. State Training and Production Gardening Farm in Pruszcz Gdanski

VII. Gorzow Voivodship

1. Farm of the Group of Agricultural Schools in Slubice

2. Farm of the State Vocational School of Animal Husbandry in Bobowicko

3. City Repair Enterprise for School Structures in Gorzow Wielkopolski

VIII. Kalisz Voivodship

1. Electrical Equipment Plant Ema-Elfa in Ostrzeszow

IX. Kielce Voivodship

1. Chemical Enterprise Organika-Rzeszow in Skarzysko-Kamienna

2. State Farm in Drazejowice

3. State Farm in Przyleczek

4. Kielce Gardening Combine in Piekoszow near Kielce

5. State Farm in Sedziszow

6. State Farm in Murogonowice

X. Krakow Voivodship

1. Enterprise for School Repairs, Services, and Support in Krakow-Krowodrze

XI. Lomza Voivodship

1. Training Farm of the Group of Agricultural Schools in Wojewodzino

XII. Lodz Voivodship

1. State Farm Rszew in Konstantynow Lodzki

2. State Farm Nakielnica in Aleksandrow Lodzki

3. State Farm Lesmierz in Lesmierz

4. State Farm for Breeding Fur Animals in Strykow and Smolice

XIII. Opole Voivodship

1. Glucholazy Furniture Factory in Glucholazy

2. Knitting Industry Enterprise Splot in Kluczbork

3. Enterprise of Technical Services to State Farms in Jastrzebie

4. Construction Millwork Enterprise Stolbud in Namyslow

XIV. Ostroleka Voivodship

1. State Farm in Niegowo

2. State Farm in Gladczyn

XV. Piotrkow Voivodship

1. Enterprise for the Production of Servicing Plant Equipment WUTEH in Piotrkow Trybunalski

2. Enterprise for the Production of Servicing Plant Equipment WUTEH in Tomaszow Mazowiecki

XVI. Przemysl Voivodship

1. Auxiliary Farm of the Group of Agricultural Schools in Przemysl

2. Auxiliary Farm of the Group of Agricultural Schools in Dubiecko-Nienadowo

XVII. Radom Voivodship

1. State Farm in Rykaly

2. State Farm in Boguszowka

3. State Farm in Gebarzewo

4. State Farm in Sucha

XVIII. Slupsk Voivodship

1. Slupsk Local Industry Enterprise Margo in Slupsk

2. Poultry Enterprises in Slawno

3. Enterprise for Technical and Chemical Services to State Farms in Slawno

XIX. Skierniewice Voivodship

1. Auxiliary Farm of the Group of Agricultural Schools in Lowicz-Blich

2. Auxiliary Farm of the Group of Agricultural Schools in Rawa Mazowiecka

3. Auxiliary Farm of the Group of Agricultural Schools in Sochaczew

4. Auxiliary Farm of the Group of Agricultural Schools in Dabrowa Zdunska

XX. Szczecin Voivodship

1. Knitting Industry Enterprise Luxpol in Stargard Szczecinski

2. Regional Domestic Trade Enterprise in Swinoujscie

3. State Farm Combine Chojna with venue in Krzymow

4. State Farm Combine in Grzybno

5. State Farm Combine in Witnica

6. State Farm Combine in Insk

7. State Farm Combine in Dobra Szczecinska

XXI. Walbrzych Voivodship

1. Air-Conditioning and Ventilation Equipment Plant Klimator in Swiebodzice

2. Flax Industry Enterprise Silena in Swiebodzice

3. State Farm in Bierkowice

4. State Farm in Domaszkow

5. State Farm in Ziebice

6. Agricultural and Industrial Combine in Zelazno

Law on Political Parties

90EP0829Z Warsaw RZECZPOSPOLITA (ECONOMY AND LAW supplement) in Polish 13 Aug 90 p 4

[Law, Item No. 312, governing Political Parties, dated 28 July 1990; also published in Warsaw DZIENNIK USTAW No. 54, 17 August 1990, Item No. 312, pp 762-763]

[Text] Below we publish the complete text of the Law on Political Parties, which will be made official most likely in the August 11 issue of DZIENNIK USTAW, No. 54, on which date it will also start taking effect. Once we are certain of the date and issue number, we shall immediately inform our readers.

* * *

Article 1. A political party is a social organization acting under a specific name with the aim of participating in public life by, in particular, influencing the shaping of state policies and the exercise of political power.

Article 2.1. Members of political parties may be citizens of the Polish Republic who have completed 18 years of age.

Article 2.2. A political party may not maintain branches at workplaces or in the armed forces.

Article 3. The name and symbols of the political party, as reported by the procedure referred to in Article 4, are entitled to the legal protection available for personal rights.

Article 4.1. A political party acquires legal entity once it is entered in the registry of the Warsaw Voivodship Court.

Article 4.2. The entry should contain the name and address of the party as well as information on the manner in which the legal representation of the party is designated. It may also contain a sample logo(s) of the party.

Article 4.3. The entry should also include the names, surnames, addresses, and signatures of at least 15 persons who are fully capable of legal action, of whom three personally submit the entry and accept responsibility for the data it contains.

Article 4.4. The Court's official receipt of the entry is proof of the acquisition of legal entity.

Article 4.5. The political party should submit for registration the names, surnames, and addresses of the persons constituting the legal representation referred to in Paragraph 2.

Article 4.6. The registration of the political party is public. Anyone has the right to obtain certified copies of and excerpts from the entry.

Article 5.1. If the Constitutional Tribunal rules, upon a submission from the Warsaw Voivodship Court or upon the recommendation of the minister of justice, that the aims or activities of a political party conflict with the Constitution of the Polish Republic, it may recommend that the party's statute or program be suitably amended within a specified time limit.

Article 5.2. If the activities of a political party are intended to change by force the constitutional system of the Polish Republic or are reflected in the application of organized violence to public life by the party's leadership, the minister of justice requests the Constitutional Tribunal to ban the party's activities.

Article 5.3. The legal validity of the Constitutional Tribunal's ruling to ban the activities of a political party causes its deletion from the registry.

Article 5.4. In the event that a political party is deleted from the registry referred to in Article 4, Paragraph 1, or banned, and also as a result of dissolution of the party, the party is subject to liquidation. The liquidation proceedings are correspondingly governed by the provisions of Chapter 5 of the Decree of 7 April 1989—Law on Associations (Dz.U., No. 20, Item 104, 1989; and No. 14, Item 86, 1990).

Article 6.1. The assets of a political party serving to accomplish its goals may derive from membership dues, donations, bequests, legacies, income from property, and income from economic activity as well as from public contributions.

Article 6.2. The party may engage in economic activity solely in the form of cooperatives and shares in cooperatives.

Article 6.3. Political parties may not benefit from any material or financial support of foreigners as construed by the foreign exchange law and legal entities with exclusive participation of foreign entities.

Article 6.4. Any income derived by violating the prohibition referred to in Paragraph 3 is subject in its entirety to forfeiture to the State Treasury.

Article 6.5. The rules for funding political parties from public sources are governed by electoral law.

Article 6.6. The taxation of political parties is governed by separate regulations.

Article 6.7. A political party's income from economic activity is exempt from the income tax to the extent to which it is allocated for the purposes specified in the party's statute.

Article 6.8. The funding sources of political parties are made public.

Article 7. Political parties are safeguarded the right of access to state radio and television on principles defined in separate regulations.

Article 8. This Decree takes effect on the day of its publication.

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