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The Economic Evolution of Polish Joint Venture Laws

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I. Introduction

Poland, perhaps more than any other Eastern bloc country, is undergoing a profound political and social revolution. In November and December of 1990, hotly contested presidential elections took place in which Lech Walesa emerged the winner. One of the harshest political issues concerned Poland's economy. The initial reform plans to transform Poland's state-run economy into a free market system implemented by Prime Minister Tadeusz Mazowiecki proved to be inadequate and have thrown Poland into a state of disarray with high unemployment and a deep recession.[1] Due to the failure of this "shock therapy"[2] approach to economic reform, Prime Minister Mazowiecki lost his bid to become Poland's president in the November 1990 primary election. After this defeat, he resigned as Prime Minister.[3] Political turmoil, however, continued after this resignation. Because no candidate captured fifty percent of the popular vote in the November election; the two leading candidates, Lech Walesa and Stanislaw Tyminski were forced into a run-off election slated for December 9, 1990. In the run-off election, Walesa defeated Mr. Tyminski and became Poland's first freely elected President in sixty-five years.[4]

As stated previously, the economy was the major issue of this presidential election. During debates preceding the November 1990 election, Lech Walesa attacked the "shock therapy" economic program and its policies as too slow. According to Walesa, acceleration of economic programs was needed.[5] Later, as the December run-off election grew closer, Walesa

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1. Engelberg, *Evolution in Europe: Premier in Poland Resigns as Voters Prefer Newcomer*, N.Y. Times, Nov. 27, 1990, at A1, col. 1.

2. "Shock therapy" is the name given to the radical economic reform program that Tadeusz Mazowiecki put in place after he was appointed Prime Minister. The goal of the plan was to transform the primarily centralized economy of Poland into an economy based on free-market principles. This program included steps that would end subsidies, revise the monetary and banking systems of Poland, and further privatize Polish enterprises. This plan slowed down Poland's hyperinflation, stabilized the zloty exchange rates, and put consumer goods back in stores; a novelty that had not been seen in Poland in some time. However, the plan did have its drawbacks, such as unemployment. Engelberg, *Evolution in Europe: Will Poles Scuttle Economic Plan?*, N.Y. Times, Nov. 28, 1990, at A6, col. 4. Because of the unemployment and various other side-effects associated with this ambitious economic program, the populace of Poland, who expected greater change with the ideological change in governments, voted against Prime Minister Mazowiecki as their next President. Engelberg, *supra* note 1, at 1.

3. *Id.*

4. Engelberg, *Poland Elects Walesa President in Landslide*, N.Y. Times, Dec. 10, 1990, at A3, col. 1.

5. Engelberg, *A Rough Campaign Closes in Poland*, N.Y. Times, Nov. 24, 1990, at A3,

was more inclined to support Mazowiecki's embattled "shock therapy" program, with certain corrections in economic areas such as agriculture, unemployment policies, and shutdowns of inefficient enterprises.[6] Furthermore, after Walesa was declared the winner of the elections, it was reported that he asked Prime Minister Mazowiecki to remain in power until parliamentary elections in the spring of 1991.[7] It is thus apparent that Lech Walesa will continue the initial groundwork set up by Prime Minister Mazowiecki. If Walesa had chosen to completely revamp the revolutionary economic reforms set up by Mozowiecki, it is not clear what effect that would have had on direct foreign investment in Poland. By maintaining this economic direction, however, future western investors are better able to determine the costs and benefits of establishing a business in Poland. Thus, foreign investors can look to existing laws and predict how their investment will fare.

Poland has just completed its first free elections in sixty-eight years and its citizens have viewed an openly harsh and antagonistic political battle, but Poland is still faced with an economy in disarray. Although inflation has been stymied by the "shock therapy" economic plan, there is a huge amount of unemployment and Poland's foreign debt continues to grow.[8] It is thus extremely important that Poland's fledgling government continue its attempt to "kick-start" the economy and modernize its industries, while at the same time dealing with its people who have expected so much with the advent of political revolution. Poland's people have suffered greatly in the transition from a state-based to a market economy.

Poland is still actively attempting to attract more investment by foreign businesses in order to facilitate its economic recovery and promote economic growth. Over the years, there has been a steady expansion of Polish investment opportunities for foreign investors, due to continued relaxation of investment laws. Specifically, Poland is encouraging the formation of joint ventures. The most recent attempt to attract this type of foreign investment is the December 23, 1988, law on Economic Activity with the Participation of Foreign Parties.[9] This law was amended in December of 1989. The amendments were designed to speed the development of a free-market economy and to make the zloty fully convertible.[10]

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col. 1.

6. Engelberg, *The World: Walesa's Victory Now Complicates Poland's Unease*, N.Y. Times, Dec. 30, 1990, at D2, col. 1.

7. N.Y. Times, Dec. 21, 1990, at A3, col. 2.

8. Currently, Poland's foreign debt is hovering around $38 billion. Dornberg, *Poland's Chancy Big Bang*, INST'L INV., Feb. 1990, at 111.

9. *The Law on Economic Activity with the Participation of Foreign Parties / The Polish Foreign Investment Law / Warsaw December 1988* [hereinafter 1990 Law]. Because this law was amended in December 1989, it has been re-titled the Polish Investment Law of 1990. Unless stated otherwise in this comment, I will refer to the original 1988 Law; as amended in 1989, as the 1990 Law.

10. Gordon, *The Polish Foreign Investment Law of 1990*, 24 INT'L LAW. 335, 339 (1990).

In addition, other changes to provisions that deal mainly with foreign currency and taxation have been added.[11] The 1988 Law and its 1989 amendments went into effect on January 1, 1990, and together they are known as the 1990 Foreign Investment Law.[12] This law, by replacing the Polish Foreign Investment Law of April 23, 1986,[13] provides foreign investors with a greater opportunity to invest in joint ventures and have greater management control over the joint venture operation. The remainder of this comment will address the 1990 Foreign Investment Law as it marks the beginning of a new economic era that may provide the solution to Poland's economic woes and provide support for continued political and social reform.

A. *The Advantages of Joint Ventures*

A joint venture is a partnership in which two or more firms create a separate entity in order to carry out an economic activity where all partners take an active role in decision-making.[14] Joint ventures are one way that Poland can accomplish its goals of a solid economy and freedom from its foreign debt. The advantages of joint ventures to both foreign investors and domestic partners from Eastern bloc countries are numerous. For foreign investors, the formation of a joint venture provides access to new markets, reduced labor expenses, and the possibility of diminished production costs. Thus, because production is local (i.e., Polish), the tariffs on what would have been imported goods are eliminated. Host governments may also provide tax exemptions for newly formed joint ventures.[15]

Joint ventures provide the domestic Polish partner with new technology, as well as "the introduction of modern management methods and production techniques, including the training of domestic personnel for managerial and technical positions."[16] Also, through joint ventures, existing industries within the country can be modernized by western technology.[17] Joint ventures can provide jobs and training for local workers as well as an increase in worker productivity through the economization of their collective manpower. The promotion of exports and expansion of markets is, however, of primary importance to the domestic partner. This is true because of the continuing deterioration of available convertible

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11. *Id.*

12. *Id.*

13. THE LAW OF 23 APRIL 1986 ON COMPANIES WITH FOREIGN CAPITAL PARTICIPATION, 17 J. LAWS, Item 88 [hereinafter 1986 Law], *reprinted in* ECONOMIC COMMISSION FOR EUROPE, EAST-WEST JOINT VENTURES. ECONOMIC, BUSINESS, FINANCIAL AND LEGAL ASPECTS, U.N. Doc. ECE/Trade/162, U.N. Sales No. E.88.II.E.18 (1988) [hereinafter EAST-WEST JOINT VENTURES].

14. EAST-WEST JOINT VENTURES, *supra* note 13, at 1.

15. *Id.* at 3.

16. Scriven, *Co-operation in East-West Trade: The Equity Joint Venture*, 10 INT'L BUS. LAW. 105, 106-7 (1982).

17. *Id.*

currency throughout CMEA countries.[18] Promotion of exports provides the domestic partner with the necessary foreign capital and currency to satisfy its foreign debts.[19]

B. *History of Joint Venture Regulation in Poland*

Joint venture regulation in Eastern Europe was enacted because of the "desire to modernize and accelerate economic development."[20] In an effort to modernize and develop, these countries were forced to trade to acquire capital goods, technology, and marketing and managerial skills. Thus, joint ventures became the avenue by which Eastern European governments could generate exports, replenish hard-currency reserves, modernize, and extinguish trade deficits.[21]

Beginning in 1976, Poland began to enact legislation directed toward foreign-owned businesses in Poland. Although the 1976 regulations did not specifically talk about joint ventures, Orders of the Minister of Finance "Concerning Permits of Foreign Exchange Operations by Mixed Companies" were issued as the first cautious step toward greater foreign investment in Poland.[22] These regulations dealt with the financial aspects of mixed capital joint ventures, including regulations on their establishment, operation, and dissolution.[23] For the most part, these regulations were generally geared toward attracting foreign individual investors of Polish extraction.[24] Because these enactments were extremely narrow and restrictive in permitted fields of activity, not to mention the fact that businessmen disregarded their force and effect, the government replaced these orders with more lenient provisions.[25]

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18. Council for Mutual Economic Assistance or COMECON, formed January 20, 1949. Member countries include the U.S.S.R., Czechoslovakia, Poland, Bulgaria, Romania, the former German Democratic Republic, North Korea, Cuba, Vietnam and Mongolia. Boukaouris, *Joint Ventures in the U.S.S.R., Czechoslovakia and Poland*, 21 CASE W. RES. J. INT'L L. 1, 7 n.32 (1989).

19. Scriven, *supra* note 16, at 107.

20. Buzescu, *Joint-Ventures in Eastern Europe*, 32 AM. J. COMP. L. 407, 413 (1984).

21. *Id.*

22. Boukaouris, *supra* note 18, at 7. *See also* Burzynski & Juergensmeyer, *Poland's New Foreign Investment Regulations: An Added Dimension to East-West Industrial Cooperation*, 14 VAND. J. TRANSNAT'L L. 17, 33 (1981); Scriven, *Joint Ventures in Poland*, 15 J. WORLD TRADE L. 424, 426-27 (1980); Rajski, *Legal Aspects of Foreign Investment in Poland*, YEARBOOK ON SOCIALIST LEGAL SYSTEMS 159, 160 (W. Butler ed. 1986) [hereinafter YEARBOOK].

23. Scriven, *supra* note 22, at 426.

24. *Id.* The main goal of these regulations was to attract Polonian private investment. A Polonian investor is described as a person of Polish origin who has "maintained more or less their links to the Polish nation and culture . . . [and who have maintained] traditions rooted in their Polish origin reveal[ing] interest in Polish culture and show[ing] an understanding for the Polish national interests." Boukaouris, *supra* note 18, at 8 n.40 *citing* M. ARNOLDI, WESTERN INVESTMENT IN POLAND (1976-1986) 28 (1987) (unpublished thesis, available in Carleton University Library, Ottawa, Canada).

25. Boukaouris, *supra* note 18, at 7; Jadach, *Ownership and Investment in Poland*, 18 CORNELL INT'L L. J. 63, 76 (1985). Permitted fields of activity for joint ventures will be

The Polish Foreign Investment Law of 1979[26] was enacted for the purpose of defining a specific legal framework for joint ventures.[27] This resolution was quite detailed as to explicit regulation of spheres of activity, legal and organizational status, convertible currency requirements, profits, taxes, employment, and relation of the joint venture to the national economic scheme.[28] With the multitude of rules and regulations contained in secondary legislation, this resolution appeared to be too complicated and restrictive.[29] Also, there were problem provisions that limited both the life of the joint venture (to fifteen years) and profit repatriation.[30]

In response to the problems of the 1979 regulations, the July 6, 1982, law on Principles of Carrying on Economic Activity in Small Industry by Foreign Corporate Bodies and Private Persons on the Territory of the Polish People's Republic was enacted.[31] The 1982 Law was directed toward both Polonian companies and small business venturés.[32] This regulation, although specifically applicable to Polonian companies and small business ventures, expanded the scope of foreign participation in the Polish economy. The most important factor of this limited law was that participation in the specified scope of activities could be in the form of joint ventures or wholly owned foreign companies.[33]

Since the 1982 Law covered only small business ventures, there was a need for regulation of large-scale investment. Hence, on April 23, 1986, the law on Companies with Foreign Capital Participation was enacted. This law was touted as the long-awaited act that would clearly define "the rules which Polish and foreign entrepreneurs could follow to carry out a joint economic activity on a large scale."[34] Although this law ameliorated a variety of problems, foreign investors still struggled with investment in Poland. In light of these concerns, on December 23, 1988, Poland's legislature enacted the law on Economic Activity with the Participation of Foreign Partners. This law repealed the 1986 Law and adhered to the demands of many foreign businesses. This law and later amendments have made the establishment and maintenance of a joint venture much easier. Moreover, the western partner has more control over economic decisions and operations by having the possibility of majority ownership in the venture.

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discussed later in the text. *See generally infra* notes 38-52 and accompanying text.

26. Resolution No. 24 of the Council of Ministers of 7 February 1979 [hereinafter 1979 Resolution].

27. Boukaouris, *supra* note 18, at 9.

28. Scriven, *supra* note 22, at 428.

29. YEARBOOK, *supra* note 22, at 160.

30. *See generally* Boukaouris, *supra* note 18, at 9.

31. YEARBOOK, *supra* note 22, at 160-61, *citing Dziennik Ustaw* no. 19, item 146 (1982).

32. *See generally supra* note 24 on description of Polonian investors and companies.

33. Jadach, *supra* note 25, at 76.

34. Burzynski, *The Polish Law of 1986 on Joint Ventures*, 3 FLA. INT'L L. J. 51, 52 (1987).

C. *Poland's Future: What Role will Joint Ventures Play?*

In the 1970's, CMEA countries realized that joint enterprises created within CMEA countries with foreign capital contribution and with participation in management, would "promote the interests of both parties to East-West co-operation."[35] For Poland, joint ventures will be the key to future economic success and political stability. This article will discuss the important sections of the new 1990 joint venture law of Poland and how it has evolved since its humble beginnings in 1976 and 1979. The main goal of this section is to provide a historical background to the 1990 Law concerning joint ventures and to demonstrate that this evolution has been a systematic and deliberate attempt by past and present Polish leaders to cure the economic ills of the country while maintaining control over the country. Notwithstanding present and radical political developments, the need for foreign investment in Poland has always been necessary and fundamental to economic recovery and growth.

The 1990 Foreign Investment Law continues the positive trend toward relaxation of regulations, so an attractive economic environment is created for foreign investors.[36] Because the 1990 Law has made it easier and more profitable for foreign investors to enter into joint ventures, many foreign businesses have initiated talks about establishing joint ventures in Poland. These positive overtones by foreign businesses signal a new era in Polish economic history that can be continued only if the Polish government realizes that as times continue to change, more reforms will be necessary in order to insure economic growth and development. Without foreign investment, however, Poland's new political and economic outlook will probably not survive its initial months of existence.[37]

II. CHRONOLOGICAL OVERVIEW OF POLISH JOINT VENTURE LAWS

A. *Allowable Scopes of Activity*

Although the 1976 regulations were not directed entirely toward joint ventures, the scope of allowable activities was quite narrow. The activities were limited to crafts, retail trade, and catering, hotel, and other services.[38] Since the 1976 regulations offered no guidance as to what forms of business organizations were permissible, foreign investors had to wait until 1979 to discover what joint venture activities were allowable.

In 1979, a formal legal framework was established that limited the scope of activities to the "production of goods for domestic and export markets along the same lines as regional industrial enterprises and coop-

35. Szasz, *Legal Framework of the Economic and Foreign Trade System of Hungary and Other CMEA Countries*, 10 INT'L BUS. L. 99, 103 (1982).

36. *See generally* Buzescu, *supra* note 20, at 415.

37. Moody, *Mazowiecki Appeals to West to Turn Aid Promises into Action*, Reuter library Report, Oct. 19, 1989.

38. Burzynski & Juergensmeyer, *supra* note 22, at 20.

eratives."[39] Basically, this meant that joint ventures would be allowed in "small down-stream"[40] industries where advanced technology and labor systems could be introduced and where the industries themselves were dependent on Polish raw materials.[41] Such activities included food processing, textiles, consumer durables, light engineering, agricultural chemicals, plastics, and selected other technical enterprises.[42] In order to prevent the influx of capitalist ideals into the national economy, joint ventures were not allowed in key national industries. Due to the limitations on permissible activities, the 1979 regulations failed to attract much foreign investment.[43]

New regulations, as promulgated by the 1982 Law, demonstrated that Poland was adjusting to the influx of foreign investment. Hence, the narrow restrictions of 1979 were relaxed to a certain extent. The limitations of this law were the production of commodities or granting of services, trade, and export of products or services;[44] however, this law only covered small industries.

Amendments to large scale joint venture regulations did not appear until the Polish Foreign Investment Law of 1986. These regulations opened the door for companies with foreign capital participation to perform "any economic activity aimed at the production of goods and rendering of services beyond the sphere of small industry and banking . . . ."[45] Permits could not be granted to companies wishing to establish joint ventures in certain economic areas. Thus, economic activities in defense fields, rail and air transport, communications, insurance, publishing, and other activities involving foreign trade agencies were not allowed unless there was a justifiable economic reason.[46]

The 1990 Foreign Investment Law is an attempt by the government of Poland to consolidate all economic activity with foreign capital participation under one law in order to minimize administrative red tape. Economic activity is defined as "production, construction, trade and services conducted for profit."[47] Thus, almost any economic activity is allowable subject to permit restrictions in article 6. The business activity may be unjustified if state economic interests, state security and defense, state secrets, or the environment are threatened.[48] Furthermore, although the 1982 law is still valid, pursuant to article 40 of the 1990 Law, companies organized under the 1982 Law are permitted to reorganize themselves

39. Scriven, *supra* note 22, at 429.

40. Note, *Joint Ventures in Poland: Polish Proposals Before the Joint American-Polish Trade Commission*, 16 GEO. WASH. J. INT'L L. 377, 383 (1981).

41. Scriven, *supra* note 22, at 429.

42. Note, *supra* note 40, at 382; Scriven, *supra* note 22, at 429.

43. Note, *supra* note 40, at 382-83.

44. Boukaouris, *supra* note 18, at 18.

45. Burzynski, *supra* note 34, at 53.

46. 1986 Law, *supra* note 13, art. 7, ¶¶ 1-2.

47. 1990 Law, *supra* note 9, art. 1, ¶ 2.

48. *Id.* art. 6, ¶ 1.

pursuant to the provisions of the 1990 Law.[49]

One of the major goals of the original 1988 Law was to increase the privatization of Poland's state-controlled industries. To accomplish this goal, Hubert Janizsewski, Vice-President of Poland's Foreign Investment Agency, asked western accounting firms for their help on how to effectively make private certain key parts of Poland's economy. According to Mr. Janizsewski, prime targets for privatization are Poland's shipyards and other light industries.[50] A total of 2,000 joint ventures have been approved so far and an anticipated 1,300 joint ventures between foreign investors and domestic firms will have been approved by the end of 1990. This will result in a total investment of one billion U.S. dollars and will further the goal of privatization.[51] Because of the 1990 Law, joint ventures have become a key instrument in Poland's privatization program. Limitations on the scope of economic activities of companies with foreign capital participation had to be reduced in order to promote this privatization program and further encourage foreign investment in Poland's beleaguered economy.[52]

B. *Procedural Requirements to Establish a Company with Foreign Capital Participation*

The regulations of 1976 required that foreigners who were going to undertake investment activities within Poland obtain permits. The permits were issued for a period of ten years but could be renewed after the date of expiration.[53] Pursuant to this regulation, permits for economic activity had to be obtained from the competent governmental unit within the territory where the proposed activity was to take place. This governmental unit was known as the *voivodship*.[54] The 1976 regulations were at best scant in describing the procedural requirements for joint ventures. Thus, the 1979 Resolution was needed in order to set out the procedural criteria.

Since the 1979 Resolution specifically stated that only state enterprises and cooperatives were authorized to enter into joint venture contracts, the Polish participants in the joint venture process were required to obtain the proper permit.[55] Permits were granted on the basis of an application submitted by the heads of the participating organization. This application was accompanied by a statement from a relevant foreign

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49. *Id.* art. 40, ¶ 1.

50. *Poland Sees Western Firms Investing A Billion Dollars*, Reuters Money Report, Sept. 19, 1989.

51. *Polish Privatization Continues as Cabinet Prepares to Consider Securities Market Bill*, 7 Int'l Trade Rep.(BNA), No. 40, at 1551 (Oct. 10, 1990).

52. Reuters, *supra* at 50.

53. Burzynski & Juergensmeyer, *supra* note 22, at 21.

54. *Id.* Poland is divided into 49 *voivodships*, each of which acts within its territory much like the administrative organs of any government.

55. *Id.* at 33.

trade organization, stating whether the joint venture would export its product to convertible currency markets.[56] The permit was then issued by the appropriate minister or other governmental organization.[57]

Under the 1982 Law, a permit application had to be submitted jointly by the partners.[58] The application contained: the purpose of formation, scope of economic activity, possible employment scheme, amount of capital invested by each partner, and location of the enterprise.[59] When an application was completed, a founding deposit was required from the partners. This was designed to prevent unlawful speculation and misrepresentation in order to gain a quick profit. Finally, the permit was issued by the local Polish administrative authority at the *voivodship*.[60]

The application requirements were basically the same for a permit issued under the 1986 Law, with the exception that if a company wished to engage in foreign trade, the application had to include a request for a foreign trade license.[61] Unfortunately, this is where the similarities ended. Pursuant to the 1986 Law, the only parties entitled to participate in joint ventures were state enterprises, cooperatives, scientific institutions, and commercial companies.[62] Thus, as with the 1979 regulations, these entities, in their status as a partner, were required to finalize a permit.[63] The permit application included drafts of the articles of incorporation, a cost-benefit analysis to establish the probable success of the proposed company, and documentation regarding the legal and financial status of the prospective partner.[64] Once filed, the permit was granted at the central level by the Minister of Foreign Economic Cooperation "acting in agreement with the Minister of Finance and other authorities."[65] After a permit was granted, the enterprise was obligated to register it "according to rules applicable to the commercial register."[66]

The complex application process is simplified in the 1990 Law. Most notably, the new law greatly expands the provisions regarding partnership participation. The parties now entitled to participate in joint ventures include the Treasury, other legal persons established under Polish law, and most importantly, natural persons domiciled in Poland.[67] All these parties must stil meet the application requirements.

An application requires basically the same information as that re-

56. *Id.* at 33-34.
57. *Id.* at 34.
58. Boukaouris, *supra* note 18, at 22.
59. *Id.*
60. *Id.* at 22-23.
61. Burzynski, *supra* note 34, at 55.
62. 1986 Law, *supra* note 13, art. 3, ¶ 1.
63. Burzynski, *supra* note 34, at 55.
64. *Id.*
65. Boukaouris, *supra* note 18, at 22.
66. 1986 Law, *supra* note 13, art. 12, ¶ 1.
67. 1990 Law, *supra* note 9, art. 3, ¶ 1.

quired under the 1986 Law.[68] The application must contain information about the necessary funds required by a company to commence business.[69] The application should also contain a draft of the company's founding act, documentary evidence of the legal status and financial condition of prospective shareholders, and a feasibility study of the proposed company.[70] This differs from the 1986 Law since a company is no longer required to show the legal status of a prospective shareholder, or establish the probable success of the venture. It is preferable, however, that this documentation be included to assure approval of the venture. The documents themselves can be submitted in a foreign language, as long as there are certified copies in Polish.[71] The decision regarding the permit will be made within two months from the date of filing, as compared to three months under the 1986 Law.[72] Registration requirements after permit approval are the same as in the 1986 Law.

Permits are to be issued whenever the business activity ensures introduction of modern technologies and management methods into the national economy; provision of goods and services for export; improvement in the supply of modern and high quality products and services to the domestic market; and protection of the environment.[73]

It is apparent that applications under the 1990 Law are geared toward easing the red tape of the approval process. By giving natural persons the right to participate in joint ventures, the foreign investor has greater freedom to structure the transactions.[74] Also, a participating Polish person has the opportunity to invest in a "free market system." By allowing natural persons the right to participate in joint ventures, Poland may be able to influence Poles who have saved as much as five to ten billion U.S. dollars, and other hard currencies, to invest in Polish businesses.[75] Furthermore, with the eased application and permit process, many small industry investors may be induced to invest. Assuming, of course, they are offered the same protections guaranteed to large-scale investors, and they are spared the hassle and expense of feasibility studies and paperwork.

There is a possible downside to these relaxed requirements. Without a feasibility study or a legal and financial status requirement, persons who approve such joint ventures are handicapped in their decision mak-

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68. *Id.* art. 4, art. 5, ¶ 4.

69. *Id.* art. 10, ¶ 1.

70. *Id.* art. 10, ¶ 2.

71. *Id.* art. 10, ¶ 3.

72. *Id.* art. 10, ¶ 4; EAST-WEST JOINT VENTURES, *supra* note 13, at 41.

73. 1990 Law, *supra* note 9, art. 5, ¶ 2.

74. *Compare* Jadach, *supra* note 25, at 80. According to Jadach, this was a problem with prior joint venture legislation in Poland. The usurpation of ownership rights that occurred under provisions of old joint venture legislation are substantially eliminated by the 1990 Law.

75. Shares, *Helping the East Without Busting the Budget*, BUS. WK., Oct. 2, 1989, at 44.

ing because they lack pertinent information. No large company will enter Poland without first determining whether there are potential profits to be made; smaller companies that can not afford feasibility studies are entering Poland blind. Thus, these studies, like the cost-benefit analysis requirement of the 1986 Law, force a future investor to investigate rather than speculate whether a particular venture will succeed. Finally, permit approval persons or committees had more pertinent information under the old regulations, and therefore, they were in a better position to judge the substance and validity of future joint ventures.

C. *The Legal Status and Position of Joint Ventures Within the Polish Economy*

1. Business Organization Form of the Joint Venture

Although the 1976 regulations were not specific as to what forms of business organizations were permissible, the 1979 Resolution stated that joint ventures were to be organized as limited liability companies under the still existing provisions of the pre-revolutionary Commercial Code of 1934.[76] Thus, provisions in the Commercial Code concerning limited liability companies were mandatory with respect to the formation of the company, its activities, and its termination.[77] The 1982 Law, on the other hand, introduced the concept of joint stock companies. This new regulation allowed individual Polish citizens and other legal entities, not within the socialist sector of the economy, to participate in joint ventures with foreign partners.[78]

The 1986 Law also followed the 1934 provisions of the Commercial Code. The 1986 Law, however, stated that companies with foreign capital participation acted as either limited liability companies or joint stock companies.[79] Both forms enjoyed corporate status and partners were liable for company obligations only to the extent of their assets within the company.[80] These provisions of the 1986 Law are essentially the same under the 1990 Law, except that article 2 of the law provides that the contribution of foreign partners may not be less than twenty percent of the company's total equity.[81]

2. Position of the Joint Venture within Poland's Economy

Historically, joint ventures have not played an essential role in Poland's basic economic planning. The foreign investment regulations of 1976, and the further clarifications for joint ventures in the 1979 resolu-

76. Scriven, *supra* note 22, at 429.
77. Burzynski & Juergensmeyer, *supra* note 22, at 38.
78. Buzescu, *supra* note 20, at 416.
79. Burzynski, *supra* note 34, at 54.
80. *Id.*
81. 1990 Law, *supra* note 9, art. 2, ¶ 1. *See generally infra* notes 92-106 and accompanying text.

tion, attempted to place the activities of joint ventures within the national plan by specific regulation.[82] Joint ventures were placed in the national economic plan in such a way that they were considered outside and independent from the goals and plans of the various ministers and industrial associations. These ministers and industrial associations decided what was important for the state economy at any given time.[83] Thus, pursuant to the 1979 Resolution, after an application was filed by the Polish partner, the joint venture could be exempted from certain production restrictions and requirements. Because the scope of allowable activities was so narrow under the 1979 Resolution, joint ventures had very little impact on national economic plans. Furthermore, Polish economic planners were not keen on including capitalist forms of business in their plans for Poland's socialist economy.[84]

Enterprises created under the 1982 Law concerning small industry were not subject to the requirements of economic planning.[85] Owners or shareholders of companies made decisions concerning business activities based on what was set forth in their operative permit.[86] The undertaking of a new activity beyond that provided for in the operative permit required an additional "special" permit. Also, an augmentation of business activity required that the company acquire an enlargement of the original permit.[87]

The 1986 and 1990 Laws themselves do not differ greatly. Due to the increased scope of joint venture activity, however, joint ventures can no longer be considered an independent area of Poland's national economy. Both laws place joint ventures on a level equal with the large economic organizations in Poland (i.e., state enterprises and cooperatives).[88] Under the 1986 Law, joint ventures enjoyed rights that were denied to state organizations. Specifically, various rules and procedures related to obtaining raw materials and other indispensable production materials were waived for joint ventures.[89] Under the 1990 Law, joint ventures must procure these items just as any other socialized economic entity.[90] Favorable treatment in this specific area no longer exists. Under the 1986 and 1990 laws, joint ventures continue to have the right to lease land for the duration of the company's life.[91]

With the advent of certain aspects of a free market economy within Poland and an attempt by the government to privatize certain state-con-

82. Scriven, *supra* note 22, at 433.
83. *Id.*; Burzynski & Juergensmeyer, *supra* note 22, at 41.
84. Scriven, *supra* note 22, at 433.
85. YEARBOOK, *supra* note 22, at 165-66.
86. *Id.* at 166.
87. *Id.*
88. Burzynski, *supra* note 34, at 56; 1990 Law, *supra* note 9, art. 24.
89. Burzynski, *supra* note 34, at 56.
90. 1990 Law, *supra* note 9, art. 24.
91. 1986 Law, *supra* note 13, art. 28; 1990 Law, *supra* note 9, art 26, ¶¶ 1-2.

trolled industries, it is hard to envision that joint ventures can be treated favorably or referred to by Polish planners as solely an independent economic area, separate from national economic goals and planning. Since joint ventures are allowed in almost any area of the Polish economy and since they will be invaluable to future growth and modernization, economic policy must begin to reflect the joint venture as an integral part of the Polish economy.

D. *Capitalization, Ownership, Other Financial Requirements, and Profits*

1. Initial Capitalization of the Joint Venture Operation

Prior to 1979, minimum capitalization was not required in order to form a wholly-owned foreign company in Poland. After passage of the 1979 Resolution, the minimum investment to form a joint venture was fixed at five million zlotys.[92] This minimum amount could not be decreased during the life of the company;[93] the foreign investor was required to obtain at least four shares of the company; and the shares had to have a par value not less than 250,000 zlotys.[94] Thus, the foreign participant had to invest at least 30,000 U.S. dollars, which represented twenty percent of the minimum capitalization necessary to commence a joint venture.[95] The foreign investor, however, could only invest and own up to forty-nine percent of the total equity of the venture. The Polish participants had to own at least fifty-one percent of the venture's equity.[96]

The 1982 Law regarding small industry was a radical departure from previous regulations. This law allowed for 100 percent foreign ownership in cases "substantiated by economic or social reasons."[97] The effect of this enactment was a large increase in the number of joint ventures formed in the area of small industry.[98]

The 1986 Law, unlike its predecessors, did not have a minimum capitalization requirement. But, just as with the 1979 Resolution, the foreign investor could neither contribute more than forty-nine percent of the capital nor own a majority of the equity in the joint venture.[99] The Minister of Foreign Economic Cooperation could, however, grant exemptions to

92. Scriven, *supra* note 22, at 429.

93. Burzynski & Juergensmeyer, *supra* note 22, at 39.

94. At the time, 250,000 zlotys was approximately $7,500. Recently, of course, the zloty has lost a considerable amount of its value. *See generally infra* note 102 and accompanying text. Scriven, *Joint Venture Legislation in Eastern Europe: A Practical Guide*, 21 HARV. INT'L L. J. 633, 643-44 (1980); Scriven, *supra* note 22, at 429; Burzynski & Juergensmeyer, *supra* note 22, at 39.

95. Scriven, *supra* note 22, at 429.

96. *Id.*

97. Buzescu, *supra* note 20, at 421.

98. *Id.*

99. Burzynski, *supra* note 34, at 52.

this rule if certain criteria were met. An exemption could be granted if the case was economically justified, if it did not threaten state secrets, or if the Minister of Foreign Economic Cooperation acted in accordance with the particular Minister concerned.[100]

Under the 1990 Law, minority ownership by a foreign investor is no longer a requirement. The foreign partner can own the entire operation; however, the 1990 Law requires that foreign partners contribute at least twenty percent of the equity upon formation of the joint venture.[101] The total value of foreign investor contributions cannot be less than twenty-five million zlotys (about 2,600 U.S. dollars at the effective date of the 1990 Law)[102] in order to insure a serious commitment.[103] This amount is adjusted pursuant to changes in currency exchange rates.[104] These less restrictive ownership and capital contribution regulations were passed by the Polish legislature after it was found that the 1986 Law did not completely succeed in attracting investment which might bring needed technology and managerial know-how to Poland.[105] Furthermore, by placing a limitation on the amount of allowed ownership, reinvestment in the venture was impossible after the limitation level was reached. Thus, this money would be treated as profits and taxed at a higher rate than retained earnings.[106] These less restrictive regulations lend themselves to foreign investment since investors not only have greater control over their investment, but are also allowed to reinvest profits back into the enterprise thereby continuing the enterprise's expansion and growth. Furthermore, the possibility of majority ownership gives the investor the opportunity to watch over and control major aspects of the operation. With this security, investors will be more willing to invest more money, technology, and other necessary tools. This in turn, will help Poland escape the dark shadows of debt and inflation.

2. Capital Contribution and its Valuation

Allowable contributions of capital in Poland include cash, tangible assets such as machinery and property, and intangible assets such as patents and trademarks.[107] In this section, the discussion will center upon valuation of non-cash assets such as tangible and intangible goods.

Under the 1979 Resolution, at least fifty percent of all contributions

100. Boukaouris, *supra* note 18, at 30.

101. 1990 Law, *supra* note 9, art. 2, ¶ 1.

102. Gordon, *supra* note 10, at 349.

103. *Id.*

104. 1990 Law, *supra* note 9, art. 16, ¶ 4. In fact, in 1989, the solidarity-led government of Poland introduced radical economic reforms that were specifically geared to, among other things, turning the Polish zloty into a convertible currency. *Poland Seeks Radical Reforms*, The Den. Post, Dec. 18, 1989, at 1. These reforms, although not very successful in some areas, have helped to stabilize zloty exchange rates. *See generally* Engelberg, *supra* at 2.

105. Fulton, *Reassessing the Polish Market*, BUS. AM., Sept. 26, 1988, at 16.

106. Scriven, *supra* note 16, at 108.

107. Buzescu, *supra* note 20, at 422.

by the foreign investor had to be in the form of monetary contributions. Under certain exceptional circumstances, this rule could be modified.[108] Valuation in Polish zlotys of non-monetary capital assets was performed by outside experts.[109] Value was based on prices of the contributed assets in the country of origin and, therefore, the valuation depended on the existing zloty exchange rate. The whole process was further complicated by the fact that there was no evaluation methodology provided for in the regulations. Hence, a whole transaction was subject to disruption if there was an unanticipated valuation.[110] Consequently, foreign investors had difficulty valuing their contributed assets at a premium price.[111]

The 1982 Law required that the minimum foreign investment contribution could not be less than the minimum founding deposit. However, just as the regulations of 1979, it contained no set procedures regarding the valuation of non-monetary assets.[112]

The 1986 Law stated that there were only two kinds of allowable contributions; contributions in cash or in-kind. In-kind contributions consisted of equipment, raw materials, patents, and other rights.[113] In-kind contributions by foreign partners were required to be transferred from abroad or acquired in Polish zlotys obtained from a documented exchange of foreign currency.[114] Polish partners could only contribute in-kind.[115] Finally, valuation of in-kind assets was to be determined by the partners in the contract, subject to possible verification by independent experts if the permit granting body requested an investigation.[116]

The 1990 Law is premised upon the same in-kind cash distinction as that in the 1986 Law; however, there are some differences. Article 16, paragraph 3, provides for contribution by foreign partners who have their headquarters in a CMEA member country. In accordance with binding agreements, these partners can contribute in transferable roubles or in the national currency of their countries.[117] Polish parties may contribute in zlotys, foreign currency, or in-kind. Also, state-owned real estate may be contributed to the extent allowed by the administrator of state land.[118] Once again, valuation is left to the partners, subject to possible verification by the authority issuing the permit.[119]

The relaxation on possible contributions by foreign investors and Polish partners continues the overall positive goal of promoting investment

108. Burzynski & Juergensmeyer, *supra* note 22, at 39-40.
109. Scriven, *supra* note 22, at 431.
110. *Id.*
111. Buzescu, *supra* note 20, at 424.
112. Boukaouris, *supra* note 18, at 32.
113. Burzynski, *supra* note 34, at 54.
114. *Id.* art. 15, ¶ 2.
115. Burzynski, *supra* note 34, at 54.
116. 1986 Law, *supra* note 13, art. 15, ¶ 4.
117. 1990 Law, *supra* note 9, art. 16, ¶ 3.
118. *Id.* ¶ 5.
119. *Id.*

in Poland. Since natural Polish citizens are entitled to participate, they are also entitled to contribute their foreign currency. Thus, by promoting local investments, there is an opportunity for Poland to recover some of the money it has lost to foreign banks.

3. Other Financial Aspects

The 1976 regulations concerning wholly owned foreign businesses contained few limitations on the financial aspects of joint ventures. A potential investor was forced to wait until 1979 to determine what was financially necessary to do business as a joint venture.

First, the 1979 Resolution required that all financial operations of joint ventures on the domestic Polish market be conducted in zlotys.[120] Thus, the books of the joint venture were to be maintained in zlotys. Second, the joint venture was to establish an amortization, risk, and reserve fund.[121] The function of the amortization fund was to "refund the use of machinery or equipment during the joint venture production process."[122] Thus, as machinery depreciated each year, money was contributed to the fund for the purpose of refund and future investment.[123] The risk fund was created for the purpose of covering losses and as a guarantee for the joint venture's debts. It was established from contribution made by the joint venture in its first year of activity. Later, the amount contributed was twenty-five percent of before-tax profit, up to ten percent of the value of the fixed assets and reserves of the company.[124] The reserve fund was used both to cover losses if the risk fund was expended and to purchase necessary assets for the joint venture. The reserve fund could also provide compensation to workers for work related accidents and diseases.[125] If the reserve fund and the risk fund did not completely cover losses of the joint venture, the parties to the venture were required to cover the difference proportionately to their contributed share in the joint venture.[126]

Pursuant to the 1979 Resolution, the joint venture could open zloty and foreign exchange accounts in the Polish National Bank. The foreign exchange account could be used to buy goods and services connected with business operations and as a depository for fifty percent of foreign exchange proceeds from exports.[127] The other fifty percent had to be transferred to the zloty account or used to buy goods and services in connection with the joint venture.[128]

120. Burzynski & Juergensmeyer, *supra* note 22, at 42.
121. *Id.*
122. *Id.*
123. *Id.*
124. *Id.* at 42-43.
125. *Id.* at 43.
126. Buzescu, *supra* note 20, at 425.
127. Burzynski & Juergensmeyer, *supra* note 22, at 43.
128. *Id.*

The 1982 Law provided for the creation of a social and housing fund but lacked a provision for a reserve fund. The founding deposit requirement was deemed to be the source of all funds needed to protect the business.[129]

The 1986 Law required a reserve fund to cover possible losses. The required contribution was ten percent of net profits each year. Those contributions ended once the fund had reached four percent of annual operating costs.[130] The joint venture was further required to sell fifteen to twenty-five percent of its foreign currency proceeds to the State; however, in economically justified cases, this requirement could be waived.[131] The amount of foreign currency proceeds that had to be sold was established by the operating permit. After that requirement was met, the company could use the remaining money as it saw fit.[132] The company had to deposit its foreign and Polish currency into a Polish foreign exchange account. The company could also deposit this currency in a foreign bank if it obtained permission from a Polish bank.[133] Finally, each year, a company was subject to an audit by the Minister of Finance. The share of profit transferable abroad was that shown as the audited profit in the company's annual report.[134]

The 1990 Law is substantially different from the 1986 Law. First, the company is required to have a reserve fund. The necessary contribution to this fund is eight percent of after-tax profit. This requirement ceases after the fund reaches four percent of the company's costs in a fiscal year.[135] The Minister of Finance must still audit the accounting books and records of the company. Financial statements must be prepared within two months of the end of the fiscal year with signatures from all members of the board. These statements must be filed with the "registration court" and the government within two weeks.[136] If the Minister of Finance fails to audit the balance sheet or notify the company of any objections to the balance sheet within three months, the balance sheet is considered audited. If there are objections, they must be complied with before the balance sheet is considered audited.[137]

Under the 1990 Law, the joint venture is required to sell fifteen percent of its foreign currency export proceeds to a Polish foreign exchange bank. In economically justified cases, this requirement may be set at a lower rate by the President of the Foreign Investment Agency. Proceeds from the sale of replaced fixed assets are exempt from this require-

129. Boukaouris, *supra* note 18, at 48.
130. *Id.*; 1986 Law, *supra* note 13, art. 19, ¶ 4; Burzynski, *supra* note 34, at 57.
131. Burzynski, *supra* note 34, at 57; 1986 Law, *supra* note 13, art. 21, ¶¶ 1-2.
132. 1986 Law, *supra* note 13, art. 21, ¶ 3.
133. *Id.* art. 24, ¶¶ 1-3.
134. *Id.* art. 20, ¶¶ 1-4.
135. 1990 Law, *supra* note 9, art. 17, ¶ 4.
136. Gordon, *supra* note 10, at 350.
137. 1990 Law, *supra* note 9, art. 18, ¶¶ 2-3.

ment.[138] After all financial requirements are satisfied, the company may use the balance of its proceeds to purchase necessary goods and services.[139] The 1989 amendments impose new restrictions on the availability of foreign currency for purchasers abroad. Consequently, if a joint venture finds itself in need of an essential item that is only available outside of Poland, it is possible that Polish hard currency reserves will be unavailable.[140]

Under the 1988 Law, a joint venture could open a bank account in the Polish foreign exchange bank of its choice. Just as in the 1986 Law, after obtaining a foreign exchange permit, the joint venture company could also maintain accounts in foreign banks.[141] Under the 1989 amendments, joint ventures can maintain foreign currency accounts in foreign banks but there are no provisions regarding foreign currency accounts in Poland. According to one author, this problem may be eliminated by the Foreign Currency Law, enacted in December 1989.[142] Under the 1990 Law, joint ventures may secure foreign loans without a foreign exchange permit.[143]

After an application is submitted to the Minister of Finance, the minister can issue a guarantee to shareholders that compensation payment will be made in the event of a loss resulting from a decision of State authorities such as nationalization or expropriation.[144] This guarantee only applies to expropriations that are nondiscriminatory (i.e., equal application to all foreign property) and expropriations that are made in the interest of the public.[145]

4. Profits

Repatriation of profits is of fundamental importance to the foreign investor. Pursuant to the 1979 Resolution, profits could be repatriated only if the joint venture had convertible currency available for this purpose.[146] Polish authorities, however, guaranteed foreign partners that requisite permits for remission of convertible currency would be issued. Thus, when there was not enough convertible currency available to pay a foreign partners' share of the profits, the Ministry or the Board of Directors of the Central Federation of Cooperatives would be under an obliga-

138. *Id.* art. 19, ¶ 1.
139. *Id.* ¶ 2.
140. The amendments of December 1989 put limits on the amount of foreign currency that may be used abroad for the purchase of necessary items. Gordon, *supra* note 10, at 353. Thus, it is incumbent on the investor to take these stumbling blocks into account and to have alternative plans available for the acquisition of necessary goods in case just such a situation arises.
141. 1990 Law, *supra* note 9, art. 22, ¶¶ 1-3.
142. Gordon, *supra* note 10, at 350.
143. 1990 Law, *supra* note 9, art. 22, ¶ 4.
144. *Id.* ¶¶ 5-6.
145. Gordon, *supra* note 10, at 351.
146. Scriven, *supra* note 94, at 648.

tion to provide adequate amounts of currency.[147]

This requirement prompted the change in the 1979 Resolution, which stressed export production activities. Such activities generated sufficient convertible currency funds to pay foreign investors their share of the profits.[148] The Resolution provided no limitation as to the amount of profit that could be made.[149] On the other hand, the 1982 Law limited the amount of profit that could be transferred abroad to no more than fifty percent of the net income realized in the previous year. Again, the Ministry of Finance could waive this requirement under certain justifiable circumstances.[150]

For purposes of determining profit, the operating costs of the company include "depreciation of fixed assets and non-material values, computed in accordance with depreciation rates and principles provided for state enterprises."[151] This is in keeping with the 1986 Law. The company's profit was that which remained after income tax was deducted. This money was distributed to the partners in proportion to their interest in the company.[152] The foreign currency profit was that which resulted from "the excess or export earnings over import outlays in the previous accounting year, remaining after the resale provided for in article 21 . . . ."[153] The foreign currency profit could be distributed to the partners in proportion to their participation, and foreign partners could transfer their shares abroad without a separate foreign exchange permit.[154] The earned money could also be reinvested in the company to increase the company's initial capital, as long as an appropriate permit was issued and the equity participation of the Polish partner remained at or above fifty-one percent.[155]

The initial 1988 Law concerning the company's profit was similar to the 1986 Law. For example, the same distribution scheme applied.[156] Pursuant to article 20 of the 1988 Law, a company could distribute profit in foreign currency if its export surplus exceeds its import outlays. A separate foreign exchange permit was not required. A separate permit was also not required for a foreign partner to transfer profit abroad. A Polish partner had the right to put his foreign currency profit in a foreign currency account with a Polish bank. A foreign partner could use his zloty profit in Polish domestic markets without restriction, but the purchase of real estate required a separate foreign exchange permit.[157] Since there was

147. Burzynski & Juergensmeyer, *supra* note 22, at 37.
148. *Id.*
149. Buzescu, *supra* note 20, at 425.
150. *Id.* at 425-26.
151. 1986 Law, *supra* note 13, art. 19, ¶ 1.
152. *Id.* ¶¶ 3, 5.
153. *Id.* art. 22, ¶ 1.
154. *Id.* ¶ 2; art. 19, ¶ 5.
155. *Id.* art. 23, ¶ 1; art. 5, ¶ 1; art. 8, ¶ 1.
156. 1990 Law, *supra* note 9, art. 17, ¶¶ 1-5.
157. *Id.* art. 20, ¶¶ 1-6.

no restriction on equity participation, a foreign investor could reinvest into the company. The company's equity could be increased without a permit if there was no change in the ratio of the partners' equity holdings as set forth in the permit of establishment. If the ratio was changed due to reinvestment, a new permit was required.[158]

Free transfer of profits abroad is still allowed under the 1989 amendments. Pursuant to these amendments however, joint ventures must now resell 100 percent of their foreign currency profits to a Polish foreign exchange bank. The joint venture may then repurchase the permissible amount of hard currency.[159] Foreign partners are allowed to purchase a restricted amount of foreign currency.[160] They can purchase, however, as much as is initially allowed to be freely transferred abroad without obtaining further government consent. This amount is reduced by the aggregate amount of foreign currency that the company's foreign employees choose to convert from their wages.[161]

Under the initial 1988 Law, foreign investors could transfer their earned profit abroad with ease. Now, there are procedural requirements that must be fulfilled. These requirements should not greatly affect foreign investment. The requirements are new guidelines that the Polish government is imposing in order to stabilize and "solidify" Polish currency. It is still possible to invest in almost every aspect of the economy without fear of bureaucratic red tape. Although it may be more difficult to liberate profits now, this problem should be overcome in the near future.

E. *Employment and Management*

Principles concerning the employment and management of joint ventures were set down first in the 1979 Resolution. Pursuant to these regulations, employees of the joint venture were to receive those benefits that were accorded Polish citizens in the same branch of industry. Foreign personnel were exempted from the taxes collected, as well as from making contributions to retirement funds.[162] The managerial board member who controlled the activity of the venture had to be a Polish citizen. This requirement was purposefully worded in a vague manner in order to insure that foreign personnel could hold certain key positions, while the Polish

158. *Id.* art. 21, ¶ 1.

159. Gordon, *supra* note 10, at 351.

160. The foreign partner is allowed to transfer abroad its entire share of the profit. This amount however, has been explicitly restricted to a certain amount of foreign currency. The joint venture, according to the 1989 amendments, must sell all export proceeds to a Polish foreign currency bank. The foreign partner is entitled to purchase in hard currency its proportional share (as determined by ownership interest in the joint venture) of export surplus that represents profits. Furthermore, the foreign partner is entitled to purchase fifteen percent of the remaining profits in hard currency. *Id.* at 351-352.

161. *Id.*

162. Burzynski & Juergensmeyer, *supra* note 22, at 47.

general manager could deal with domestic problems and governmental matters. The arrangements made in the joint venture agreement regarding managerial roles were usually binding so that the foreign investor could maintain some semblance of order.[163]

Under the 1982 Law, majority foreign ownership was allowed, and the inherent problems of management could be alleviated. However, if the company was mixed there had to be agreement among the parties concerning management.[164] Companies were also required to use Polish labor resources according to the principles set forth by the Council of Ministers. Additionally, if Polish labor was utilized, Polish labor requirements had to be met.[165]

The 1986 Law also required the company's manager to be a Polish citizen who permanently resided in Poland. The law included provisions for a supervisory board and labor representation on the company's board.[166] The framework of management was determined by the initial contract agreed upon by the parties.[167] Employment of Polish citizens was governed by applicable Polish law. Furthermore, the 1986 Law required that foreign workers be used only when their special qualifications required their use and that the local state administrative authority must approve such employment.[168] Polish employees were to be paid in zlotys while foreign employees could receive fifty percent of their wages in foreign currency.[169]

Since the 1990 Law contains no provision regarding foreign minority ownership, there are no requirements regarding the management of the joint venture. Thus, partners to joint ventures are free to organize the operation as they please and foreign investors can maintain control over the governing board to insure that their policies are implemented and followed. Employment of both Polish workers and foreign workers must meet the same standards as those enumerated in the 1986 Law.[170] Procedures for paying employees are set forth in the Company's founding act. Salaries for company employees shall be set and paid in zlotys. Under the initial 1988 Law, foreign persons could be partially paid in foreign currency from the foreign currency reserves of the company. As a result of the most recent amendments, all wages must now be paid only in zlotys.[171] This remuneration of foreign employees is subject to a thirty per-

163. Scriven, *supra* note 22, at 432.

164. Boukaouris, *supra* note 18, at 39.

165. *Id.* at 43.

166. *Id.* at 39-40; 1986 Law, *supra* note 13, arts. 17-18.

167. 1986 Law, *supra* note 13, art. 16.

168. *Id.* art. 32, ¶¶ 1-3.

169. *Id.* art. 33, ¶¶ 1-3.

170. 1990 Law, *supra* note 9, art. 31, ¶¶ 1-3.

171. *Id.* art. 32, ¶¶ 1-3. Under the 1989 amendments, technically, foreign employees will be paid in zlotys. These employees can then choose to convert wages paid in zlotys to foreign currency. The amount purchased by these employees results in a reduction of the amount of foreign currency the foreign partner is able to transfer abroad. Gordon, *supra*

cent tax in the foreign currency, unless international agreements with Poland exist to the contrary. Polish citizens are subject to taxes that are applicable to employees of non-socialized entities.[172]

F. *Taxation*

Joint ventures established pursuant to the 1979 Resolution were subject to Polish tax laws. For the first three years of operation the joint venture was exempt from taxation.[173] After that period, taxes levied upon enterprises having majority state ownership consisted of a four percent turnover tax and a five percent tax for the rendering of non-contracting services.[174] With majority ownership vested in a Polish socialized enterprise, the company was also subject to an income tax of sixty-five percent. This could be modified by the Minister of Finance under justifiable economic circumstances.[175] Profits paid to foreign investors were subject to a thirty percent lump sum tax. As with every other regulation, this could be reduced in economically justified cases upon application to the Minister of Foreign Trade and Maritime Economy.[176] Double taxation treaties did and continue to exist between Poland and other countries concerning taxation problems in the area of profit repatriation. A foreign investor must be aware of these treaties and their ramifications for existing or future investments.[177]

Under the 1982 Law, joint ventures had to pay taxes at a rate which varied depending on the profitability of the operation in a given year. The venture also had to pay a turnover tax, an urban property tax and a social insurance tax. A three year tax exemption was provided for in the Law.[178] This exemption was conditioned upon the fact that one-third of the income earned during a specified period had to be reinvested into the operations of the venture.[179] In this event, fifty percent of the investment value was deductible.[180]

The burdensome quality of the 1982 Law was its treatment of personal income tax. Pursuant to 1983 Polish tax law regulations, foreign investors' personal income was subject to an eighty-five percent tax rate. Thus, potential investors were significantly deterred from investing in various small Polish industries.[181]

Under the 1986 Law, joint venture companies paid the same basic

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note 10, at 351-52.

172. 1990 Law, *supra* note 10, art. 32, ¶¶ 4-5.

173. Scriven, *supra* note 22, at 436.

174. Burzynski & Juergensmeyer, *supra* note 22, at 45.

175. *Id.* at 45-46.

176. *Id.* at 46.

177. *Id.*

178. Buzescu, *supra* note 20, at 432-33.

179. Boukaouris, *supra* note 18, at 45.

180. Buzescu, *supra* note 20, at 433.

181. Boukaouris, *supra* note 18, at 46.

taxes as any other state enterprise. Companies with foreign capital participation, however, paid a fifty percent tax on their gross income. For every one percent of export value of production or services sold, there was a 0.4 percent reduction in tax.[182] Contrary to previous legislation, the joint venture enjoyed a two year tax holiday. Money earmarked for investment by the joint venture and import duties on in-kind contribution by the foreign partner were granted tax exemptions under this law.[183]

Under the 1990 Law, the joint venture is required to pay the same basic taxes as under the 1986 Law. The corporate income tax rate, however, is only forty percent and there are allowable deductions. These deductions consist of investment outlays and donations for socially beneficial purposes, as long as the donations do not exceed ten percent of income. The 0.4 percent deduction rate continues to exist, but the income tax can only be decreased by ten percent.[184] The joint venture is exempt from taxation for three years and an additional period of up to three years may be granted if the venture engages in work in the preferred sectors of the economy as determined by the Council of Ministers.[185] Foreign shareholders are subject to an income tax of thirty percent, unless an international agreement provides otherwise. The tax must be paid in zlotys from a documented exchange of foreign currency.[186] Finally, Polish custom duties usually levied upon the in-kind contributions of shareholders will be waived, as will other duties levied upon other types of contributions required for business activities.[187]

Through these revamped tax provisions, Poland is attempting to attract more overall foreign investment, but these provisions are also geared toward investment in special areas of the Polish economy. Consequently, Poland has provided for three year tax exemptions as well as the possibility of continued exemption pending approval of the Council of Ministers for select investment areas. These tax benefits, coupled with other reforms, can be used to attract investments geared toward revitalizing and modernizing uncompetetive Polish industries such as data processing, telecommunications, pollution control, medical equipment, pharmaceuticals, and foodprocessing machinery.[188] These areas are of great concern in Poland. Without these basic industries and services in a semi-modern state, further foreign investments will be hindered.

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182. For example, a joint venture which sold 100% of its production for export would reduce its income tax liability by 40% based on this formula: 100% export x 0.4% reduction = 40%. Final tax liability would be 10% of the joint venture's gross profit (50% initial - 40% reduction = 10% income tax); Burzynski, *supra* note 34, at 57; 1986 Law, *supra* note 13, art. 30, ¶ 2.

183. Burzynski, *supra* note 34, at 58; 1986 Law, *supra* note 13, art. 30, ¶¶ 3-4.

184. 1990 Law, *supra* note 9, art. 27, ¶ 1.

185. *Id.* art. 28, ¶¶ 1-2.

186. *Id.* art. 29.

187. *Id.* art. 30, ¶ 1.

188. Winter, *Poland, Economic Reforms Create Openings for U.S. Firms*, BUS. AM., Apr. 10, 1989, at 18.

G. *Dissolution*

The 1979 Resolution provided that joint ventures could last for a period of fifteen years. This time period could always be extended. Other provisions regarding the termination of the joint venture were left to the partners to decide in their agreement. If the venture terminated because of the passage of time the fixed assets of the venture became the property of the Polish partner unless there was an agreement to the contrary. The existing assets were to be divided proportionately according to the partners' respective shares. Foreign partners were given the right to repatriate their share.[189]

The 1982 Law provided for a life expectancy period of twenty years (or forty years depending on depreciation values). This period could be extended. Among other things, the Polish partner had a right of preemption to buy what was left of the operation upon liquidation of the venture.[190]

The 1986 Law required that the permit state the expected duration of the company's activities. The Minister of Foreign Economic Cooperation could accept or deny the time period at his discretion. When a company dissolved, the assets were to be sold in compliance with the 1934 Commercial Code of Poland. What remained after satisfaction of creditors was divided among the partners in proportion to their initial contributed capital. Polish partners had priority to buy the rights and other assets that belonged to the company. Finally, the foreign partners could transfer abroad that which they received after dissolution.[191]

Like the 1986 Law, the 1990 Law provides for the preemptive rights of the Polish shareholder and other dissolution procedures. The 1990 Law differs from the 1986 Law on only one point. Under the 1990 Law, if the company dissolves within the three year tax exemption period, the company will be liable for the unpaid taxes of that period.[192] This law places foreign investors in a precarious situation. They must make an effort to keep the joint venture operation alive for at least three years. This enables the Polish economy to readjust and adapt to new and different investments. Attempts by the foreign investor to make quick profits will be deterred, thereby emphasizing quality foreign investment. Poland may reap the benefits of a foreign company insight and knowledge thereby furthering the goal of a stable and modernized economic system that is adaptable to the fast-paced world of today.

III. CONCLUSION

Recently, a 525 room hotel was completed in Warsaw. This is no or-

189. Scriven, *supra* note 22, at 435-36.
190. Boukaouris, *supra* note 18, at 50.
191. Burzynski, *supra* note 34, at 58; 1986 Law, *supra* note 13, art. 37.
192. 1988 Law, *supra* note 3, arts. 34-35.

dinary hotel. It is the product of a Polish-American-Austrian joint venture, including Marriot Hotels and LOT, Poland's national airline.[193] Although this joint venture was formed under the 1986 Law, it is a testimony of Poland's commitment to future economic revitalization and industrial modernization. The opening of this hotel symbolized to foreign investors that Poland was a worthwhile gamble. This joint venture represented to the outside world that Poland can and will complete large-scale productions. In fact, many foreign companies have entered into, or are planning to enter into, joint ventures with Polish companies because of the 1988 Law. As Poland attempts to reach further goals by enacting new amendments to these rules and regulations, foreign investment will increase.

Many companies are looking to Poland as a new market of 38 million possible customers. These companies include Today Home Entertainment, which has formed a joint venture in Poland effectively breaking the long-standing monopoly that the Polish state had over all matters relating to the film industry. The entertainment field will be freed from state control and allowed to produce quality domestic entertainment.[194] Chase Enterprises has also formed a joint venture with a Polish company which will bring cable television to many residents of Poland.[195]

Further liberalization of Polish foreign investment laws is intended. This will include provisions for extended tax exemptions, majority ownership, and expanded scope of activities. There is hardly any reason why further investment will not occur. The only possible hindrances to expanded investment in Poland are the current political situation throughout Eastern Europe, and other basic logistical problems within Poland. Radical political changes tend to undermine foreign investor confidence in the stability of Poland. The acquisition of goods necessary for production within Poland may be hindered by a lack of availability.[196]

Poland's movement toward a freer form of government and an open economic system tends to lessen investors' fears. These changes also show Poland's commitment to furthering a free market system and providing a financial environment geared toward stable and profitable investment.[197]

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193. *U.S., Warsaw Agree to Begin Talks on Pact for U.S. Investment in Poland*, [Regulation, Economics and Law] Daily Report for Executives, (BNA) No. 182, at A-15 (Sept. 21, 1989).

194. *Today Home Entertainment Establishes First Private Film and Commercial Enterprise Company in Eastern Europe*, BUS. WIRE, July 7, 1989.

195. Hershey, *Polish TV Joint Venture for Chase Enterprises*, N.Y. Times, Dec. 8, 1989, at D2, col. 5.

196. *See* Gordon, *supra* note 10, at 347. Even though Poland is attempting to shed its centrally planned economy, it is possible that certain aspects of this system will still be in effect until a better system of organization can be formed and arranged. Thus, logistically, certain key items might not always be available. This is something that potential investors must provide for in their basic business plans when they decide to enter into joint ventures within Poland. *Id.*

197. *Poland's Future: Poland Ventures Forth into a Free Market Economy*, Rocky

Recent foreign investment led by West German joint ventures, merit the conclusion that Poland is on the right track. At the very least, Poland has learned from past experiences and past mistakes. Because Poland has a valid investment law in place that has endured the recent internal political changes in Poland, foreign investors' fears associated with revolutionary political changes are diminishing.

Finally, Poland has a well trained work force and possesses many of the needed raw materials that can help facilitate production. Poland has geared its future toward foreign investment. This is the only way Poland can escape many of its economic woes. Joint ventures are and will continue to be the key to Poland's continued economic recovery. These operations will provide Poland with the requisite technology and expertise that will enable domestic businesses to modernize, revitalize communication networks, and create substantial revenues to pull itself out of possible economic ruin.

Polish leaders of today seem to realize that this is only the first wave of reforms needed on the long road to recovery. The Poles will have to work with new problems that arise everyday and continue to use outside help and technology to provide solutions to these dilemmas.

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Mtn. News, Dec. 17, 1989, at 79, col. 1.

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